NEW ZEALAND
HEALTH PRACTITIONERS
DISCIPLINARY TRIBUNAL
TARAIPUINARA WHAKATIKA KAIMAHI HAUORA

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**BEFORE THE HEALTH PRACTITIONERS DISCIPLINARY TRIBUNAL**

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| **HPDT No.** | 875/MRT16/363P |
| **UNDER** | the Health Practitioners Competence Assurance Act 2003 (the HPCA Act) |
| **IN THE MATTER** | of a disciplinary charge laid against a health practitioner under Part 4 of the Act |
| **BETWEEN** | **A PROFESSIONAL CONDUCT COMMITTEE appointed by THE MEDICAL RADIATION TECHNOLOGISTS BOARD OF NEW ZEALAND**<br>**Applicant** |
| **AND** | **JONATHAN WADE LITCHFIELD (formerly GRAVE)** of Auckland, Medical Radiation Technologist<br>**Practitioner** |

**HEARING held at Auckland on 15 November 2016**

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| **TRIBUNAL:** | Mr D M Carden (Chair)<br>Dr B Allen, Ms H Gunn, Mr S D'Cruz and Dr S Palmer (Members)<br>Ms K Davies (Executive Officer)<br>Ms J Kennedy (Stenographer) |
| **APPEARANCES:** | Mrs J Hughson for the Professional Conduct Committee<br>The practitioner, Mr Litchfield, in person (for part) |

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## Introduction

1. Mr Jonathan Wade Litchfield (Mr Litchfield) was until recently named Jonathan Wade Grave. He is a registered medical radiation technologist.
2. The case for the Professional Conduct Committee is that:
   2.1. During 2015 the New Zealand Medical Radiation Technologists Board (the MMRTB) imposed conditions on Mr Litchfield's practice as a medical radiation technologist.
   2.2. Mr Litchfield failed to observe certain of those conditions. That failure related to provision to the MRTB of three different reports on three different dates.
   2.3. Mr Litchfield knew that these reports were required to satisfy the MRTB that he was addressing alcohol and prescription drug misuse issues that he had and/or that he was fit to practise as a medical radiation technologist.
3. Also during that year, between 1 April 2015 and 25 August 2015 Mr Litchfield worked as a medical imaging technologist and so practised his profession while not holding a current practising certificate. (APC).
4. In December 2015 when Mr Litchfield was required to provide a drug and alcohol test in order to get his APC he requested another registered medical radiation technologist whom he knew to supply him with a urine sample for the drug and alcohol test he was required to undertake; and on 15 December 2015 Mr Litchfield substituted his own urine sample for another person's urine sample and thereby submitted a false urine sample for testing.
5. These matters were inquired into by a Professional Conduct Committee (PCC) of the MRTB and Charges were laid before the Tribunal under the Health Practitioners Competence Assurance Act 2003 (the HPCA Act).
6. The Tribunal has heard the Charges and reached the decisions recorded below.

## The Charges and hearing

7. The Charges against Mr Litchfield read:

> *Pursuant to section 81(2) of the Act the Committee charges that Jonathan Wade Litchfield formerly known as Jonathan Wade Grave ("Mr Litchfield"), registered medical radiation technologist of Auckland:*

***Charge No 1 – Practising without a current practising certificate***

*During the period 1 April 2015 to 25 August 2015, when he was employed and/or worked at the Mt Roskill Medical and Surgical Centre in Auckland as a medical imaging technologist, Mr Litchfield practised his profession of medical radiation technology while not holding a current practising certificate.*

*The conduct alleged amounts to a breach of section 100(1)(d) of the Act.*

***Charge No 2 – Failure to observe conditions included in scope of practice***

*Failed to observe conditions which the Board had imposed on his practice to apply to 30 November 2015, in that he failed to provide to the Board, on 30 May 2014, 30 November 2014 and 30 November 2015, reports from his supervisor and from the Community Alcohol and Drug Service (CADS) and self-reports, which reports Mr Litchfield knew were required to satisfy the Board that he was addressing his alcohol and prescription drug misuse issues and/or that he was fit to practise as a medical radiation technologist.*

*The conduct alleges* [sic] *amounts to a breach of section 100(1)(f) of the Act.*

***Charge No 3 – Professional Misconduct***

*In or around December 2015 Mr Litchfield acted fraudulently and/or dishonestly and/or otherwise inappropriately in that:*

1. *With the intention of misleading the Board as to his current drug and alcohol use and/or fitness to practise, Mr Litchfield requested another registered medical radiation technologist whom he knew ("Mr M") to supply him with a urine sample for a drug and alcohol test which the Board required him to undertake; and/or*

2. *On or about 15 December 2015, when undertaking drug and alcohol testing at Mt Roskill Medical Centre, Mr Litchfield substituted his own urine sample for another person's urine sample and thereby submitted a false urine sample for testing, when he knew or ought to have known that the Board would be misled by the test results when it was considering his application for an annual practising certificate and/or his fitness to practise as a medical imaging technologist.*

*The conduct alleged in particulars 1 and 2 separately and/or when considered cumulatively amounts to professional misconduct under section 100(1)(a) and/or (b) of the Act.*

8. The Charges were heard in Auckland. The PCC was represented by counsel. Mr Litchfield attended on his own account and remained for a period of the hearing but then left during a brief adjournment. He did not return but he did send a text message to the Executive Officer indicating that he did not intend to attend the hearing further. Concerns that had been held by the Tribunal regarding his safety were allayed by that text message.
9. The PCC proceeded on the basis of an Agreed Summary of Facts which had been signed by Mr Litchfield and dated 22 September 2016. During the time he was at the hearing, Mr Litchfield accepted that Summary and did not challenge any detail of it. There was also produced to the Tribunal a bundle of documents which had been agreed between the parties and was accepted on the basis that had been discussed at an earlier conference, namely that each document in the bundle:
    (a) is what it purports to be on its face;
    (b) was signed by any purported signatory shown on its face;
    (c) was sent by any purported author to, and was received by, any purported addressee on its face;
    (d) was produced from the custody of the party indicated in the index;
    (e) is admissible evidence; and
    (f) is received into evidence as soon as referred to by a witness in evidence, or by counsel in submissions, but not otherwise.

**Background**

10. Mr Litchfield had been formally known as Jonathan Wade Grave and there was produced to the Tribunal a New Zealand Birth Certificate recording his current and former names. That certificate does not state when the name change occurred. The Agreed Summary of Facts records that Mr Litchfield was "*until recently formerly known*" as Jonathan Wade Grave.
11. Mr Litchfield's registration in the medical imaging technologist scope of practice was approved on 27 March 1996.

12. Between mid-March 2013 and August 2015 Mr Litchfield was employed by, and was practising as a medical imaging technologist at, Mt Roskill Medical and Surgical Centre in Auckland, with his supervisor at the Centre being a Dr Rajiv Sood (Dr Sood).
13. Two significant events occurred in 2012.
14. First, the MRTB received written notice from another registered health practitioner raising concerns that Mr Litchfield may be unable to perform required functions as a medical imaging technologist due to alcohol and drug dependency and therefore may not be fit to practise. The MRTB ordered Mr Litchfield to undergo a medical examination and a report from a psychiatrist dated 29 October 2012 was provided to it.
15. The Agreed Summary of Facts records that the MRTB was satisfied from that report that Mr Litchfield was suffering from an alcohol addiction which was partly in remission and that he had long-term history of alcohol and drug addiction and mental health issues.
16. Other matters were noted by the MRTB from that report and the MRTB decided that Mr Litchfield could only practise his profession as a medical radiation technologist on certain specified conditions.
17. In summary, the conditions, which took effect from 30 November 2012, required:
    17.1. That Mr Litchfield work under supervision at an MRTB approved place of employment.
    17.2. That Mr Litchfield's employer assign a named registered health practitioner to provide supervision.
    17.3. That the supervisor check Mr Litchfield's sobriety every time Mr Litchfield reported for duty.
    17.4. That the supervisor provide the MRTB with three-monthly reports or immediately notify the MRTB of concerns about Mr Litchfield's health status outside the timeframe.
    17.5. That Mr Litchfield authorise the Community Alcohol and Drug Service (CADS) to provide the MRTB with three-monthly reports on Mr Litchfield's engagement with his treatment plan.

17.6. That Mr Litchfield be subject to random alcohol and drug testing with the results sent directly to the MRTB.

18. The duration of the conditions imposed was uncertain to the Tribunal because the Agreed Summary of Facts referred to them being effective for "*12 months until 31 March 2013, with the option for renewal for a further 9 months*.…" but, as noted above, the conditions took effect from 30 November 2012 which is only some 4 months before 31 March 2013 and renewal for a further 9 months would have meant a total of 13 not 12 months.

19. The Tribunal does not need for present purposes to reconcile those ambiguities.

20. The second event was that in June 2012 Mr Litchfield disclosed to the MRTB that he had been convicted of driving with excess blood alcohol on 11 June 2012; and reported previous convictions for drink-driving and dangerous driving in 1997.

21. The recent conviction was referred to a PCC of the MRTB which reported to the MRTB on or about 15 May 2013 with a recommendation.

22. It is the case for the PCC that those recommendations from the PCC were accepted by the MRTB and that on or about 15 July 2013 the MRTB resolved to extend the conditions earlier mentioned from 30 November 2013 to 30 November 2015 and further that Mr Litchfield would be required to provide reports from his supervisor, CADS, and "*self-reports*" on 30 May 2014, 30 November 2014, and 30 November 2015.

23. The Tribunal has significant disquiet about this total process as set out below.

24. The PCC relied on the Agreed Summary of Facts which recorded the resolution of the MRTB by way of extension of conditions and the acceptance by Mr Litchfield of those facts.

25. The Agreed Summary of Facts:

25.1. Refers to receipt by the MRTB of:

25.1.1. A supervisor report from Mr Litchfield's then supervisor on 19 February 2013.

25.1.2. CADS reports on 20 May 2013 and 26 March 2014.

25.1.3. Self-reports from Mr Litchfield purportedly dated 25 May 2014 and 23 November 2014 which the PCC said at the

hearing were received late in 2015 and this was confirmed at the hearing by Mr Litchfield.[1]

25.2. Confirms Mr Litchfield's acceptance that he failed to observe all of the conditions which had been placed on his practice including those by way of extension on 30 November 2012.

26. In March 2015 Mr Litchfield applied for an APC for the 2015/2016 practising year but did not make payment of the practising fee and an APC was not issued. Mr Litchfield has not held a current practising certificate since 1 April 2015.

27. On 28 April 2015 the then Registration Co-ordinator at the MRTB sent an email to Mr Litchfield asking if he still wished to go ahead with his application for an APC and reminded him that he had still not made payment of the fee; but no response was received from Mr Litchfield.

28. On or about 24 August 2015 Mr Litchfield telephoned the MRTB secretariat concerning his annual practising certificate, admitting that he had worked as a medical radiation technologist the whole time since he had made his online application and despite having forgotten to pay for his APC which as a consequence had not been issued to him.

29. Mr Litchfield ceased work immediately that day, 24 August 2015, as soon as he realised he did not hold a current APC.

30. On 28 August 2015 the MRTB wrote to Mr Litchfield noting non-compliance with conditions on his practice because of the outstanding reports due 30 May 2014 and 30 November 2014. Mr Litchfield was advised that until this information was received by the MRTB it was unable to make a decision on his application for an APC. Mr Litchfield confirmed receipt of that letter and that his email address was correct.

31. On 8 September 2015 the Professional Standards Committee of the MRTB held an extraordinary meeting and resolved that a letter be sent to Mr Litchfield advising that a decision on his APC would not be issued until he had submitted the information requested by the MRTB letter of 28 August 2015; and on 11 September 2015 the MRTB wrote to Mr Litchfield requesting this information.

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1 Transcript page 19

32. Further exchanges occurred between September and November 2015 between Mr Litchfield and the MRTB concerning the supply by Mr Litchfield of the reports that had been required of him.

33. The Agreed Summary of Facts records the following prescriptions for Mr Litchfield all from different doctors, namely:

    33.1. On 13 October 2015 14 codeine tab 30mg for "*pain in the shoulder*".

    33.2. On 19 October 2015 25 codeine tab 30mg for "*cough*".

    33.3. On 1 December 2015 50 diazepam tablets for "*anxiety*".

34. On 19 November 2015 the MRTB advised Mr Litchfield by email that his application for renewal of his APC had been declined because of failure to provide all information requested concerning conditions on his scope of practice.

35. On 4 December 2015 Mr Litchfield underwent a blood alcohol (ethanol) test which was reported as <2 mmol/L.

36. On 6 November 2015 Mr Litchfield telephoned another medical radiation technologist and asked him to provide him with a urine sample for him to take to a drug test. That was declined and the other technologist tried to point out the potential consequences if Mr Litchfield went ahead with his plan to use another person's urine sample. That other technologist sent an email to Mr Litchfield that day expressing those concerns.

37. There then followed further exchanges between Mr Litchfield and the MRTB concerning the reports required and including Mr Litchfield's difficulty with finding the cost for a drug/alcohol test to get his APC.

38. Mr Litchfield attended his place of employment on 15 December 2015 and had a urine drug test as ordered by Dr Sood. The results of the test were all reported as negative and the creatinine level as normal.

39. The Agreed Summary of Facts records Mr Litchfield's admission that he did not supply his own urine sample for this urine drug test. When asked at the hearing by the Tribunal if he was prepared to identify the person whose urine was used for the sample Mr Litchfield did identify that person (although in subsequent email exchanges from Mr Litchfield he has stated that that was factually incorrect).

40. After further exchanges between Mr Litchfield and the MRTB, on 18 December 2015 Mr Litchfield wrote to the MRTB concerning certain medications which he said he had been receiving, including diazepam (for which he had received a prescription); but acknowledging the "*dishonest plan to use someone else's urine*" for his tests and expressing his true regret.
41. On 23 December 2015 the Clinical Supervisor at CADS wrote to the MRTB reporting the disclosure by Mr Litchfield of having substituted someone else's urine for the test stating that on 18 December 2015 Mr Litchfield reported "*he was unsure about whose urine it was, his own or someone else's*…".

**The Charges – Discussion**

42. The burden of proof is on the PCC; and the standard is that of the balance of probabilities, the more serious the allegation, the higher the standard. The Tribunal must inquire into the Charges and reach its own conclusion despite any agreement between the parties as to the facts or legal issues.
43. The Charge of professional misconduct, Charge No 3, requires that, in addition to finding the necessary facts and breach of standards, the Tribunal must also reach the conclusion that the Charge is of sufficient severity to warrant disciplinary sanction to protect the public, to maintain standards in the profession or, where necessary, to penalise the practitioner.
44. In respect of each Charge submissions for the PCC were that the Charge was made out. It relied on the facts as contained in the Agreed Summary. This was not disputed in any case by Mr Litchfield who did address the Tribunal but made no effective submission of denial.

**Charge No 1 – practising without a current practising certificate**

45. This Charge is laid under section 100(1)(d) of the HPCA Act which provides for a charge before the Tribunal where a practitioner has practised his or her profession while not holding a current practising certificate.
46. The Tribunal accepts the submissions for the PCC that it is only necessary for three essential elements to be established, namely that:
    46.1. Mr Litchfield was a registered medical radiation technologist at the time.

46.2. Mr Litchfield did not hold a current practising certificate during the dates set out in the Charge, and

46.3. Mr Litchfield practised as a registered medical radiation technologist during those dates.

47. There is no requirement to find any element of knowledge or intention on the part of the practitioner, any deliberate intention to flout professional obligations, or that the practitioner knew or ought to have known that he did not have a current practising certificate. There is authority for the defence of a charge by establishing a complete absence of fault but that is not advanced by Mr Litchfield in this case and does not need consideration.

48. The principal purpose of the HPCA Act is to protect the health and safety of the public by providing mechanisms to ensure that health practitioners are competent and fit to practise their professions.

49. The holding of an APC is a cornerstone requirement of the accountability regime of the HPCA Act.[2]

50. The Tribunal finds that this Charge is made out. It is accepted that during the period in question, 1 April 2015 to 25 August 2015, Mr Litchfield was a registered medical radiation technologist. Mr Litchfield has apparently been so registered since March 1996 or thereabouts and the Tribunal has a copy of his APC for the previous period to 31 March 2015.

51. The Tribunal finds that Mr Litchfield did not hold a current practising certificate from 1 April 2015 onwards and that includes the period covered by the Charge.

52. Although it is not necessary for the Tribunal to find any fault on Mr Litchfield's part in relation to the renewal of his APC, the Tribunal does accept that Mr Litchfield was aware that the APC needed renewing and that he had failed to do so. The question of the appropriate fee came up and a reminder was sent to Mr Litchfield on 28 April 2015 to which there was no response. The Tribunal accepts the submission that any suggestion of oversight on Mr Litchfield's part is not supported by the evidence. The Tribunal further finds, as is acknowledged in the Agreed Summary of Facts, that during the period in question Mr Litchfield had been working as a radiation medical radiation

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[2] Refer Henderson 477/Phar12/210P

technologist for the whole time since he had made his online application. The Tribunal finds Charge No 1 made out.

**Charge No 2 - Non-compliance with conditions on scope of practice**

53. This Charge, laid under section 100(1)(f) of the HPCA Act, alleges a failure to observe conditions imposed on Mr Litchfield's scope of practice. These were conditions imposed, it is said, to apply to 30 November 2015. The allegation is of failure to provide various reports on the three specified dates, 30 May 2014, 30 November 2014 and 30 November 2015. These are said to be reports from Mr Litchfield's supervisor, from CADS, and self-reports. It is part of the Charge that Mr Litchfield knew these reports "*were required to satisfy [the MRTB] that he was addressing his alcohol and prescription drug misuse issues and/or that he was fit to practise as a medical radiation technologist*."

54. For a charge to be made out under section 100(1)(f) there needs to be proven that:

    54.1. A condition has or conditions have been placed on the practitioner's scope of practice.

    54.2. The practitioner has failed to observe that condition or those conditions.

55. It was submitted by the PCC that:

    55.1. A charge of this kind is absolute in its terms and that the only elements required to be proven are the conditions on the scope of practice and the failure to observe one or more of these.

    55.2. In the case of *Bhatia*[3] there was a mis-characterisation of a charge under this subparagraph as one of professional misconduct and the wrongful introduction of the element of a threshold test.

    55.3. The imposition of conditions on a scope of practice is one of the mechanisms to ensure competence and fitness to practise and thereby protecting the health and safety of members of the public; and that non-compliance is a serious matter.

    55.4. There is no requirement on the PCC to prove intent or knowledge.

    55.5. In any event the facts support a submission that Mr Litchfield knew the reasons why the conditions had been imposed on his practice, that his

3 344/Med10/151P

failure to observe those conditions were in the context of his knowledge of the need to satisfy the MRTB that he was addressing his alcohol and prescription drug misuse issues and/or that he was fit to practise as a medical radiation technologist.

55.6. Further, that that element of knowledge leads to the seriousness of the alleged failure.

56. The PCC relied on the Agreed Summary of Facts which includes:

56.1. That on or about 15 July 2013 the MRTB resolved to extend Mr Litchfield's conditions earlier imposed from 30 November 2013 to 30 November 2015 and that Mr Litchfield be required to provide the appropriate reports on the three specified dates.

56.2. That the MRTB wrote to Mr Litchfield on 15 July 2013 notifying him of the requirement to send the reports on those dates.

56.3. Various agreed facts concerning the reports in fact supplied and the dates of supply.

57. The first question for the Tribunal is whether there were conditions imposed on Mr Litchfield's scope of practice. This does not refer to the conditions that had been imposed by the MRTB referred to in paragraph 16 above which took effect from 30 November 2012 for a period of 12 (or arguably 13 – refer to the contentious factual matters above) months.

58. The MRTB relies on what is said to have been resolved "*on or about 15 July 2013*" (the expression used in the Agreed Summary of Facts). It relies on Mr Litchfield's agreement to that aspect but the best evidence it can provide to the Tribunal comprised a printout of an email from a person, apparently the chairperson of the MRTB, to persons apparently members of the MRTB and an email response from one of those persons apparently agreeing to the proposal.

59. There is no written record provided of any other process in completion of any resolution by the MRTB and no written record of the actual decision reached or the terms of it.

60. Under the heading "*Resolution*" in that email from the chairperson, there is this extract:

> *"Following a Professional Conduct Committee (PCC) investigation, the Board accepts the recommendation of the PCC, under section 80(2)(e) of the HPCA Act, that the Board continue to counsel [Mr Litchfield], and that the counselling takes the form of reports from his*

> *supervisor, CADS, and self-reports at 30 May 2014, 30 November 2014 and 30 November 2015 to ensure that he continues to be successful in overcoming his issues with alcohol and prescription drugs and therefore not reflect adversely on his fitness to practise as a radiation technologist."*

61. There is no reference in the text to conditions on scope of practice. The emphasis is on counselling.

62. A letter written dated 15 July 2013 from the registrar of the MRTB refers to the MRTB's having accepted the recommendations of the PCC and continues:

> *"…that is the Board will continue to monitor your practice to ensure your continued success in addressing your alcohol and prescription drug misuse issues, thereby ensuring these do not reflect adversely on your fitness to practise as a medical radiation technologist."*

63. Again, there is no reference to conditions on scope of practice; further, there is no reference to counselling; and the emphasis in that letter is on continuation of monitoring of Mr Litchfield's practice and ensuring his continued success in addressing the issues mentioned.

64. The original conditions had referred to three-monthly reports from a supervisor but the second set of conditions referred to reports from the supervisor on the three named dates. If the original conditions were extended, as the Agreed Summary of Facts records was resolved by the MRTB, then there would have been ambiguity about the reporting period from the supervisor.

65. The Tribunal was provided with the APCs for Mr Litchfield, for the 2012/2013 and 2013/2014 years which referred to the six conditions that had applied to take effect from 30 November 2012. It was also, however, provided with the APC for the 2014/2015 year. It was during that period that two of the reports to which the Charge refers, namely due on 30 May 2014 and 30 November 2014, were said to have been required to be provided. That APC contains exactly the same description but it makes no reference to the further reporting on the three specified dates to which this Charge refers. Had there been a reference to further conditions, this would have put any employer on notice of the need for compliance with these. There was no APC issued for the subsequent year and therefore there were no conditions of practice noted.

66. The Tribunal has taken into account these various facts. It largely discounted the fact that Mr Litchfield has agreed to the fact that the MRTB resolved to extend the conditions "*on or about 15 July 2013*". Mr Litchfield could have challenged this in preparation for the hearing before the Tribunal; but the reality is that he was led to believe throughout that this had occurred and the Tribunal has taken it that he has simply accepted that as fact.

67. Faced with the other facts now before the Tribunal, however, the Tribunal has concluded that it is not satisfied on the balance of probabilities the MRTB had imposed conditions of the kind referred to in the Charge.

68. There is inadequate evidence of a proper resolution process or of a formal resolution having been concluded by the MRTB in proper form. Even the exchanges of emails that have been provided do not satisfy the Tribunal that the resolution was for imposition of conditions on scope of practice. The letter from the registrar of the MRTB or 15 July 2013 does not help either because it does not refer to any resolution of the MRTB for conditions on scope of practice.

69. The whole thrust of the email exchanges and the letter from the registrar is one of counselling and monitoring of practice to assist Mr Litchfield with his alcohol and drug related issues and would have been interpreted by him accordingly. Any suggestion that conditions on scope of practice had been imposed was not included in the subsequent APC issued to Mr Litchfield.

70. Accordingly, the Tribunal is not satisfied on the first point required to be proven that there had been conditions included on Mr Litchfield's scope of practice as is alleged.

71. So far as the conditions that had been imposed taking effect from 30 November 2012 are concerned, these were certainly included in the APC for the 2014/2015 year. To that extent, this is consistent with there having been a resolution of the MRTB extending the conditions until 30 November 2015. That recommendation of the PCC, however, was not translated into the text of the proposed resolution from the Chair of the MRTB and the proposed resolution does not refer to that extension at all. Although there is reference to the extension of those conditions by implication in their inclusion in the 2014/2015 APC, the Tribunal is not satisfied that there was proper process for imposition of extension of those conditions on Mr Litchfield's scope of practice.

72. That conclusion having been reached, it is not necessary for the Tribunal to consider whether or not the conditions were satisfied. Suffice it to say that there was evidence of self-reporting having been concluded by Mr Litchfield but not submitted to the MRTB on the dates in question; which in turn raises questions about the authenticity of them. Further, there was apparently some compliance with reporting for attendance at CADS and some suggestion of uncertainty about who would initiate the provision of reports from Mr Litchfield's supervisor and from CADS. In an email exchange between Dr Sood and the MRTB Dr Sood refers to his having been "*happy with his [Mr Litchfield's] performance and [not having] any concerns regarding his attendance or work performance*".

73. Dr Sood on 3 December 2015 said:

> "*I was not aware that I was expected to provide reports on the dates mentioned in your letter*"
>
> (refering to the three dates in question in this Charge) and
>
> > "*His last urine and blood test was in June 2013 which was normal. … I also refer to a report from St Luke's Community Mental Health Clinic dated 10/03/2015 which also confirms that his substance abuse is in remission.*"

74. The Tribunal does not find this Charge made out.

**Charge No 3 –professional misconduct –provision of sample**

75. There are two particulars to this Charge, the first relating to a request from Mr Litchfield to another medical radiation technologist to supply him with a urine sample for a drug and alcohol test which he was required to undertake; and the second relating to his substitution of another person's urine sample for his own when he knew or ought to have known that the MRTB would be misled by the test results.

76. To some extent the first particular is absorbed into the second, insofar as one was the continuum of the process initiated by the other. Mr Litchfield had been required to provide this urine sample. He knew that there was a risk that any sample from him would not pass the test and so he enquired of his colleague to provide the sample which was refused. He then, however, obtained a sample from another person which he provided for the purpose of the test.

77. This was all in the context of Mr Litchfield's APC having expired on 31 March 2015 and his having ceased work on 24 August 2015 when he realised he could not continue to do so without an APC.

78. The Professional Standards Committee of the MRTB requested information from Mr Litchfield on 11 September 2015 concerning whether he was still seeking treatment through CADS.

79. There were further exchanges of information between Mr Litchfield and the MRTB between mid-November and mid-December 2015 concerning the requirements for issue of a new APC.

80. Those requirements included the urine testing which was required in compliance with the condition that had been placed on Mr Litchfield's APC for random alcohol and drug testing. There were comments by Mr Litchfield about the cost of this and his ability to afford this.

81. On 6 December 2015 Mr Litchfield telephoned his colleague asking him to provide a urine sample so that he could take the test in question. The colleague declined and advised him against the course of supplying someone else's sample for this test.

82. The MRTB advised Mr Litchfield on 11 December 2015 that the tests were required. On 14 December 2015 Mr Litchfield sent an email to the MRTB in which he referred to having just secured the necessary fee for the test result and referring to other formalities of his APC application.

83. Mr Litchfield had approached another person, whom he identified at the hearing, apparently with the same request for a substitute sample. On 15 December Mr Litchfield attended his place of employment and purportedly had the urine drug test there. The results of the test were all reported as negative and with a creatinine level as normal.

84. The sample that Mr Litchfield had obtained from the other person was the one that he submitted for the test on 15 December 2015 at his place of employment.

85. It is the Tribunal's assessment of this sequence of events that Mr Litchfield had reason to believe that his own urine sample would not meet the test and so he approached his colleague for a sample which was declined; that he kept the MRTB informed of progress purportedly in the context of his difficulty in finding the test fee; and that when he had finally obtained a urine sample from a third person he created the appearance that he had at last found the necessary

monies for the fee; that Mr Litchfield then attended his own employer's place for a urine sample test and provided the substitute sample; and that it was on the basis of that sample that the matter was to proceed.

86. The Tribunal has no hesitation in finding that each of the particulars 1 and 2 of this Charge No 3 are made out as misconduct both as malpractice on Mr Litchfield's part and as acts and conduct which brought discredit to his profession.

87. The Tribunal also has no hesitation in finding that that behaviour warrants disciplinary sanction for the purpose of protecting the public and maintaining standards in the profession. First there is the question of dishonesty on Mr Litchfield's part. Clearly for him to have acted dishonestly in this way impacts on his professional ability to conduct his professional obligations in a proper and comprehensive way. Secondly, there is the deceit to the MRTB on the one hand and the deceit of his employer on the other. For a professional such as Mr Litchfield to deceive those persons in authority over him clearly casts significant questions as to his ability to understand his professional obligations and maintain the standards in the profession. Thirdly, for him to have substituted a sample in this way so that he could obtain the necessary APC means that, had he been issued with that APC, he would have continued to practise his profession without the necessary care being taken to protect the public in respect of any drug or alcohol issues that he may have had.

88. Completion of an APC renewal application involves much more than simply payment of a necessary fee; it involves the responsible authority assessing the totality of information supplied to assess whether the person is appropriately fitted and continues to be qualified to practise the profession in question.

89. Concerns had been raised about Mr Litchfield's drug and alcohol issues and these had apparently been the subject of conditions on his scope of practice; and it was vital that the MRTB had accurate information concerning these issues when making a decision about renewal of his APC.

90. It is to Mr Litchfield's credit that on 18 December 2015 he disclosed these issues and owned up to his dishonesty. The Tribunal was not given any detail as to how it came about that that letter had been written but the Agreed Summary of Facts records exchanges in the days leading up to 18 December 2015 between Mr Litchfield and the MRTB concerning the issue of his APC

and there had been a report on 15 December 2015 by email from Mr Litchfield's colleague about the request that had been made of him for the substitute urine sample. Perhaps Mr Litchfield realised that he was not going to get away with his deception; perhaps he was stricken with a guilty conscience; but in either event he did own up to his dishonesty at that stage.

91. This Charge being one of misconduct, the Tribunal must also find that the threshold has been passed that the conduct warrants disciplinary sanction either for maintaining standards or for protecting the public or, to the extent necessary, punishing the practitioner. The Tribunal has no difficulty in making that finding in this case. The standards of the profession have been significantly compromised by each and both of the matters to which the particulars refer. The safety of the public is put in jeopardy because wrongful information has been supplied for the purpose of an APC and the MRTB had no accurate basis on which to assess whether there should be a renewal of Mr Litchfield's APC.

92. The Tribunal finds that Charge No 3 and each of its two separate particulars 1 and 2 are made out as misconduct warranting disciplinary sanction both separately and cumulatively.

**Penalty – discussion**

93. That decision having been announced to the hearing, submissions were then made by the PCC as to the appropriate penalty and orders to be considered. By that stage Mr Litchfield had left the hearing and he therefore made no submissions on this topic himself. He had made no comment on this prior to leaving the hearing. There is some information provided to the Tribunal in the agreed bundle which does record Mr Litchfield's position on some of these issues which the Tribunal has taken into account in assessing penalty.

94. What has also occurred since the hearing is that the Tribunal has submitted proposed conditions on practice to the PCC (which was the only party present when those conditions were discussed) and has had further submissions from the PCC on that as to which there is further comment below. In the course of that exchange, which had been copied to Mr Litchfield by email, Mr Litchfield has made further comment but the Tribunal must disregard this as it goes rather to matters other than conditions, namely a statement Mr Litchfield had made to

the hearing. The opportunity to advance matters was at the hearing and Mr Litchfield chose not to do so.

95. In oral submissions, the PCC submitted:

95.1. That there was a period of time when Mr Litchfield was in sole charge without an APC; Mr Litchfield was aware of the requirement for an APC; his explanation for not having obtained a renewal was without foundation; and that he was reminded about non-payment of the fee.

95.2. That Mr Litchfield did not pursue his APC renewal because the MRTB may have been alerted by the urine test that he was required to provide to a continuing alcohol and drugs abuse issue.

95.3. That Mr Litchfield's intention was to flout a mechanism in the APC renewal process.

95.4. That this was a breach of trust by Mr Litchfield which was deliberate, in that the MRTB would have been misled by the substitute urine test result.

95.5. That Mr Litchfield has compromised his colleague from whom he requested the sample and the person whom he requested to provide the substitute sample.

95.6. That there are good grounds to suspect that Mr Litchfield may reoffend.

95.7. That there are health issues on Mr Litchfield's part which need to be addressed.

95.8. That any outcome from this Tribunal hearing needs to assist Mr Litchfield's commitment to rehabilitation.

95.9. That the mitigating factors include Mr Litchfield's co-operation to the extent this has occurred in the disciplinary process; that, while he did not meet with the PCC, he has co-operated with the prosecution before the Tribunal; and that there is no evidence of actual harm having occurred to any other person in these events.

95.10. That a key purpose of any order of the Tribunal must be to send a message to the profession appropriately and to act as a deterrent, both to Mr Litchfield and to other practitioners.

95.11. That cancellation of Mr Litchfield's registration is an option as is suspension; but that it is not currently clear whether Mr Litchfield's alcohol addiction is under control.

95.12. That any conditions imposed should focus on rehabilitation with restrictions on employment, including that he not be in sole charge but work in a group environment (and these conditions were further elaborated on in later written submissions which are referred to below).

95.13. That there should be an order for censure.

95.14. That any order for fine or costs would depend to a degree on Mr Litchfield's means.

96. The available penalties for the Tribunal are:[4]

96.1. That registration be cancelled.

96.2. That registration be suspended for a period not exceeding 3 years.

96.3. That the health practitioner be required, after commencing practice following the date of the order, for a period not exceeding 3 years, to practise his or her profession only in accordance with any conditions as to employment, supervision, or otherwise specified.

96.4. Censure.

96.5. A fine of up to $30,000.00 (but not if he or she has been convicted of a relevant offence or damages have been awarded against him (which does not apply here)).

96.6. Costs.

97. The eight factors normally taken into account on the basis of authorities[5] are:

97.1. What penalty most appropriately protects the public.

97.2. The important role of setting professional standards.

97.3. A punitive function.

97.4. Rehabilitation of the health professional.

97.5. That any penalty imposed is comparable to other penalties imposed upon health professionals in similar circumstances.

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4. Section 101 of the HPCA Act.

5 *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354; *Katamat v PCC* [2012] NZHC 1633 at [49]; *Joseph v PCC* [2013] NZHC 1131 at [65] – [66]; *Singh v Director of Proceedings*, [2014] NZHC 2848 (esp. at [56] – [60] and [66]).

97.6. Assessing the health practitioner's behaviour against the spectrum of sentencing options that are available and trying to ensure that the maximum penalties are reserved for the worst offenders.

97.7. An endeavour to impose a penalty that is the least restrictive that can reasonably be imposed in the circumstances.

97.8. Whether the penalty proposed is fair, reasonable and proportionate in the circumstances presented.

98. The Tribunal has taken the two Charges found into account as a composite whole. Although they are separate in their factual context and indeed each rely on separate parts of the HPCA Act, there is a common thread which runs through the events and this dictates that the Charges found be considered together.

99. The Tribunal also takes into account the other background facts which are either admitted in the Agreed Summary of Facts or contained in the agreed bundle of documents. These put a framework to the two Charges found to be made out and they help the Tribunal address the real issues that this case raises.

100. The two initiating concerns in 2012 related to the questions raised by another health practitioner about Mr Litchfield's inability to perform his required professional functions due to alcohol and drug dependency and his fitness to practise on the one hand; and the excess blood/alcohol driving and reference to previous driving conditions five years earlier on the other.

101. One outcome of investigation of these was the medical examination by the psychiatrist leading the MRTB to the conclusion of a long-term history of alcohol and drug addiction and mental health issues.

102. Although Mr Litchfield was then abstinent from alcohol and other drugs and his mental health issues were well controlled, the decision of the MRTB was that Mr Litchfield was then suffering from an alcohol addiction only partly in remission and had the long-term history of those issues. It placed the conditions on his scope of practice effective from 30 November 2012 which were to run to late 2013 (and there is ambiguity as to whether this was the end of November or the end of December 2013). Those conditions had called for the assignment of a supervisor who was to check Mr Litchfield's sobriety and report three-monthly to the MRTB or if there were any concerns. There were also to be

three-monthly reports authorised from the CADS and random alcohol and drug testing.

103. There was then the process in May 2013 which informally resulted in Mr Litchfield's being required to provide reports on the three nominated dates from both his supervisor and the CADS; and also self-reports. It was the non-provision of those reports on the relevant dates that became an issue in the renewal of Mr Litchfield's APC from 1 April 2015.

104. For the reasons given above, the Tribunal has not found Charge No 2 made out concerning compliance with those conditions, but the process that was undertaken by the MRTB resulted in the apparent necessity for provision of the urine sample which in turn prompted Mr Litchfield to the dishonest course that he did in providing a false sample. It was with that background that the process for renewal of Mr Litchfield's APC from 1 April 2015 resulted in non-compliance with requirements as to payment of fees and provision of test results.

105. There were also issues raised concerning the non-provision by him of timely reports from his supervisor or from the CADS or indeed self-reports. That in turn meant that his APC was not renewed but he continued nevertheless to practise as a registered medical radiation technologist without that APC.

106. There are mitigating factors concerning the provision of those reports:

    106.1. First, the Tribunal has found that these were not conditions adequately placed on Mr Litchfield's scope of practise for the identified period and there was no legal professional liability on his part to provide these.

    106.2. Secondly, the conditions do not make it clear who is to initiate the reports, whether this be Mr Litchfield himself or whether it be the MRTB by direct contact with the reporter, either the supervisor or CADS.

    106.3. Thirdly, although the supervisor reports and the CADS reports were not provided on or about the appropriate dates, the evidence suggests that these reports would have indicated substantial compliance by Mr Litchfield with the conditions and matters of concern.

    106.4. Fourthly, it has been Mr Litchfield's position that he completed his self-reports for the two dates in question, 30 May 2014 and 30 November 2014, but that these were "*locked*" on his computer and

inaccessible and he was unable to provide them. While the Tribunal does not need to make a definitive finding on whether it accepts that explanation, the Tribunal does comment that that would not have been an acceptable excuse in any event because Mr Litchfield should have taken the trouble to explore with the MRTB the possibility of his rewriting the reports in a timely fashion.

106.5. Fifthly, although self-reports have value, they are nevertheless subjective and run the risk of lack of credibility through being self-serving.

107. The Tribunal has taken into account also the aggravating and mitigating factors as outlined by the PCC in its submissions above.

108. The conclusion that the Tribunal has reached concerning the total picture affecting Mr Litchfield in the context of the two Charges found to be made out, practising without an APC and misconduct in requesting and then supplying a false urine sample, is that he has had these addiction and mental health issues in 2012. He has had these monitored and supervised to a degree in accordance with the MRTB advices of conditions on scope of practice such that there have been no areas of concern in the meantime. When required to provide the urine sample Mr Litchfield thought that he could not do so with any assurance that this would be "clean".

109. The written record of medications prescribed for Mr Litchfield do not show significant risk for him. The Agreed Summary of Facts refers to codeine for pain in the shoulder and cough and diazepam for anxiety. In an email dated 25 February 2016 from Mr Litchfield to the MRTB for the PCC Mr Litchfield gives some a significant outline of health issues that were of concern to him and the medication he was taking.

110. With those medications involved, instead of fronting up with the reasons he now says that he did not want to provide his own sample and explaining the position comprehensively, he chose the dishonest route.

111. Mr Litchfield practised as a medical radiation technologist during the almost five-month period in 2015 without an APC but stopped doing so when he realised that he should not be.

112. Each decision of the Tribunal must be on its own facts and merits, but there must be consistency to the extent this can be achieved between this decision and

other decisions of the Tribunal. The PCC in its oral submissions referred to several cases where cancellation of registration of a health practitioner had been ordered. These cases included forgery and the ordering of drugs while on suspension,[6] provision of false contact details for referrals in a job application,[7] dishonesty about the practitioner's son's health condition and consistent lying,[8] false references for an employment application and sustained dishonesty,[9] and a false declaration of a United States qualification said to have been at an "*alarming level*".[10]

113. Although the PCC has suggested that cancellation of Mr Litchfield's registration is an option, the Tribunal has concluded that this is not a necessary course in the circumstances. The focus can be on Mr Litchfield's rehabilitation, while at the same time protecting the public and maintaining standards in the profession. The Tribunal concludes that this can be done without cancellation of Mr Litchfield's registration.

114. Those cases referred to by the PCC where cancellation had resulted can be distinguished on the grounds that the offending there, was more serious than is the case with the two Charges found to be made out in this case.

115. Although there are the serious aspects to the false urine sample referred to above, that does not, in the Tribunal's view warrant cancellation of Mr Litchfield's registration. Matters of concern can be dealt with by a period of suspension and appropriate conditions.

116. The severity of the case does, however, warrant a period of suspension. The maximum period of suspension that the Tribunal can order is 3 years and the conclusion is that there should be an order for suspension for a period of 12 months.

117. It is in that way that a deterrence message can be conveyed to Mr Litchfield, the medical radiation technologist profession and other health professions. Mr Litchfield must know and other professionals must also know that offending in this way to this degree of severity does call for a substantial period of suspension such as this.

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6 *Gilgen* 149/Med07/60 and 61P
7 *Singh* 475/Nur12/212P
8 *Leach* 389/Nur11/179P
9 *Thampy* 811/Nur15/329P
10 *Middlebrook* 829/Nur16/364P

118. That could have monetary consequences for Mr Litchfield (although there was some suggestion at the hearing that he was employed in other work) which will in itself have a penal consequence. Suspension is not intended to penalise as such, but its deterrence effect must be considered.

119. It will also provide an opportunity for Mr Litchfield to undertake any further addiction or mental health assessment and assistance that he may need. He can embark on that course now and get the benefit of whatever the outcome of that is during the 12-month period so that when the time is over, if he wishes to return to the profession, he can do so better equipped from his addiction and mental health issues perspective to discharge his professional responsibilities without offending again in this way.

120. The Tribunal accepts the PCC submission that, as things stand at present, there is a prospect of re-offending in some way by Mr Litchfield and that he needs further assessment and assistance with these issues. Indeed, his own appearance at the hearing gave cause to the Tribunal for concern. The way he addressed the Tribunal, his demeanour, the way he left the hearing in the middle of it without explanation, and the content of what he did say to the Tribunal, all added up to a picture of a person needing further assistance and medical help. One member of the Tribunal was sufficiently concerned after Mr Litchfield's departure from the hearing that he may be at risk to himself that she expressed that concern at the hearing; but that concern was allayed by Mr Litchfield's text message to the Executive Officer. His demeanour and presentation at the hearing were, however, in themselves of concern to the Tribunal. A period of suspension will enable him to address that.

121. Following the hearing, because in the particular circumstances of the hearing the PCC had not been able to address the detail of any proposed conditions (there having recently been an earthquake which affected that process) the Tribunal requested and was supplied with submissions from the PCC concerning proposed conditions.

122. In the memorandum, the PCC said that following the 12-month period of suspension indicated to the hearing by the Tribunal, Mr Litchfield would need to take steps to obtain an APC and follow the MRTB processes in respect of such applications. This included satisfying the MRTB as to his fitness to practise. The submission was that Mr Litchfield was unlikely to obtain an APC

without having first satisfied the MRTB he had undertaken at his own cost a medical assessment by a psychiatrist to be nominated by the MRTB focusing on his alcohol and drug addictions and any other related medical conditions. It was said that the MRTB would be likely to impose conditions requiring Mr Litchfield to practise only in accordance with a recommended treatment programme (although that seems to the Tribunal to be prejudging the matter). At all events, it was said that that process must be undertaken and that may result in some requirement from the MRTB concerning addiction and mental health issues for Mr Litchfield.

123. So far as the Tribunal's jurisdiction is concerned, the period of 12 months suspension will enable Mr Litchfield to address these issues constructively and to set in train things that will help him satisfy the MRTB in due course on any APC application and more importantly enable him to practise his profession in a way that protects the public and maintains standards.

124. The period of suspension should run for 12 months from the date of this decision. Although there has been a period of time elapse between the hearing and this decision being given to the parties (because of exchanges concerning proposed conditions and the intervention of the vacation), the Tribunal considers that the 12-month suspension period from the date of this decision is appropriate.

**Conditions**

125. The Tribunal can order conditions following resumption of practice after a period of suspension for a maximum period of 3 years. That 3 year period can be cumulative on the period of suspension.[11]

126. The Tribunal indicated to the hearing the conditions that it was considering. Counsel for the PCC was not able to make submissions on whether those would be effectively able to be managed and the opportunity was given for further submissions, based on the indication that the Tribunal had given.

127. The submissions from the PCC on this point referred to two conditions the MRTB was likely to impose should Mr Litchfield apply for renewal of his APC at any time (as noted above) but essentially submitted that for 12 months after

[11] *L v PCC*; Auck HC: CIV-2009-404-998: 4/8/09; Andrews J; *PCC v S* 188/Psy08/86P; *J v Director of Proceedings;* Auck HC: CIV- 2006- 404- 2188; 17/10/06: Baragwanath J

the suspension concluded following resumption of practice Mr Litchfield be required to comply with all conditions imposed on him by the MRTB and that Mr Litchfield be supervised with daily clinical supervision in his workplace, along with three 3-monthly supervision sessions, and that Mr Litchfield for that period only practise in a group environment and not in sole charge.

128. It was sought that the Tribunal recommend to Mr Litchfield that he take advice and such steps as are likely to be necessary to ensure he is ready to practise again.

129. Although he was not at the hearing at the time this had been discussed, Mr Litchfield did provide a response to those submissions, but this did not address the question of conditions.

130. The Tribunal does not consider that it can or should effectively impose as a condition that Mr Litchfield comply with conditions imposed by the MRTB. Firstly, the MRTB should not be making any decisions on any conditions until the time comes that that should be considered and then should only do so in a proper manner. It would be significantly gainsaying events if the Tribunal were now to assume what the MRTB may do in the future as to imposition of conditions and for the Tribunal to give a blank requirement that Mr Litchfield comply with these. The MRTB has its own jurisdiction to impose conditions on practice and, if it is of the view in due course that there should be conditions on Mr Litchfield's scope of practice as part of his APC, then it can order that at the time and take the responsibility for the order itself. If a condition is ordered or conditions are ordered by the MRTB then, and these are within its jurisdiction, then there will be a mechanism for enforcement of it without the necessity for the Tribunal having given some umbrella condition order accordingly.

131. What is of concern to the Tribunal is that as soon as practicable after completion of receipt of this decision, Mr Litchfield should take, if he is not already taking, advice about his health issues, including any addictions and mental health questions, and do whatever he can to comply with the advice that he is given. This should happen during the period of suspension and continue thereafter. The Tribunal can only order a condition to be operative after the period of suspension and resumption of practice.

132. The condition referred to below in the orders made is for proper assessment of Mr Litchfield's health position by a professional determined by the MRTB

(probably a psychiatrist but nevertheless someone who can address the issues facing Mr Litchfield and which have faced him in the past and which may have been alluded to in the psychiatric report already obtained). That report is to be at Mr Litchfield's cost and to the extent necessary he must consent to participating, and be actively involved, in that process.

133. The second condition requires Mr Litchfield's compliance with whatever treatment and programme that report recommends which may be an alcohol and drug addiction treatment programme or some mental health treatment but will be, of course, what is recommended as the best treatment and course to help Mr Litchfield. The condition requires his compliance at his expense with that advice and report. If he does not do so, he will be in breach of that condition. The treatment and advice is to continue after the period of suspension on any on-going basis up to 3 years as required by the MRTB. The condition imposed by the Tribunal is that Mr Litchfield can only resume practice if he has commenced and continues with that reporting and treatment programme. The person providing that reporting and treatment programme will need to report to the MRTB accordingly (with Mr Litchfield's consent and permission) and confirm Mr Litchfield's compliance with the recommendations made and the treatment.

134. There is to be a further condition that for the period of 12 months following the period of suspension and on resumption of practice Mr Litchfield be supervised. In its oral indication of its decision, the Tribunal referred to three-monthly reporting by the supervisor to the MRTB; but the written submissions for the PCC sought daily clinical supervision with weekly reporting and three-monthly supervision sessions with an independent health professional also reporting three-monthly. The submissions also sought that the clinical supervisor also reported on compliance with conditions that may be imposed on any APC.

135. The Tribunal does not consider that daily supervision is required as this could be overly restrictive on Mr Litchfield's ability to practise properly. What is required is that the supervisor be aware of any issues which might indicate alcohol or drug dependence. Mr Litchfield will have had the benefit of the medical and psychiatric advice referred to in the earlier conditions and should be complying with that so as to comply with the further condition on compliance. He should be responding to that and remaining sober and drugs-

free. Others in the group practice to which the further condition below refers will have some perception of Mr Litchfield's drug and alcohol addiction conditions and whether this is a matter of concern.

136. The Tribunal considers that it should be left to the discretion of the supervisor as to the extent to which those issues are monitored and reported on to the MRTB. In that way, there can be flexibility in the interaction between Mr Litchfield and the supervisor, informality and unpredictability as to how and when the supervisor checks for drug or alcohol dependence issues, a level of judgement by the supervisor as to the extent of any questions of issue, and a balanced and comprehensive report by the supervisor on a three-monthly basis to the MRTB.

137. The Tribunal does not think that it is necessary to have two supervisors, one for weekly assessment of sobriety and compliance with conditions and the other for professional issues. The substance of the Charges found to be made out, Charges Nos 1 and 3, do not relate directly to clinical competence and the Tribunal does not consider that supervision for that side of Mr Litchfield's practice is required. The drug and alcohol dependence issues need to be addressed, they should be addressed through the medical help ordered, and those should be the prime focus of any supervisor in his or her report to the MRTB.

138. Accordingly, the condition ordered by the Tribunal for supervision is that this be for the period of 12 months after resumption of practice by Mr Litchfield by a supervisor appointed or approved by the MRTB at Mr Litchfield's expense with the supervisor focusing on:

    138.1. Any concerns of alcohol or drug abuse or dependency.

    138.2. Any non-compliance with the statutory, regulatory and practice requirements for an APC and otherwise as required by any conditions that may be imposed from time to time on Mr Litchfield's scope of practice.

    138.3. Mr Litchfield's compliance with the condition referred to below not to practise except in a group environment and specifically not in sole practice or sole charge.

    The supervisor is to report to the MRTB at least three-monthly on all aspects of the supervision and specifically any areas of concern for

non-compliance; including that the supervisor is to notify the MRTB promptly should there be such matters of concern or non-compliance.

139. The further condition is imposed that for the period of 12 months after the period of suspension and on resumption of practice Mr Litchfield is to work in a group environment and specifically not in sole practice or sole charge so that there is some group surveillance of his health issues and, if so recommended by the psychiatrist and approved by the MRTB, some assessment of his freedom from any alcohol or drug addiction symptoms.

**Censure and fine**

140. This is also a case where an order for censure should be made. This is not a formality, but a significant expression by the Tribunal of its disquiet about the facts and background to the Charges found to be made out.
141. The Tribunal considered the imposition of a fine but is of the view that this is not necessary. First, although Mr Litchfield did not give evidence about his means, the indications from the documents in the bundle are that he does not have significant means from which to pay a fine. Secondly, the order for suspension could, and the order for conditions on practice will, have a significant financial impact on Mr Litchfield. Accordingly no order for fine is made.

**Costs**

142. The PCC sought an order for costs, referring to the normal principles governing such orders and to the fact that there was little, if any, real information about Mr Litchfield's means. It indicated that its costs were approximately $18,810.73. The Tribunal must also consider its costs which were estimated at $18,970.97. That means costs totalling approximately $38,000.00.
143. The normal principles from the authorities is that an order for 50% of these costs could be considered by the Tribunal with an allowance either upwards or downwards for all factors, taking into account the means of the practitioner and of the fact that, to the extent that costs are not met by the practitioner, they fall to be met by other members of the profession.
144. The PCC submitted that a 30% contribution would be appropriate to be ordered.

145. As noted above, the Tribunal has little in the way of evidence of Mr Litchfield's means other than that the documents indicate that these are not significant. The hearing was facilitated because Mr Litchfield did not effectively defend the Charges or make any significant submissions and that he did assist the hearing significantly by agreeing to the Summary of Facts.
146. Taking that co-operation into account, taking into account the fact that Charge No 2 has been found not to be made out (and the facts behind this Charge were the basis on which the matter came to the attention of the MRTB), taking into account that the most serious Charge, Charge No 3, has been found to be made out, and taking into account what the Tribunal knows of Mr Litchfield's means, the order is that he should contribute $7,500.00 towards the costs of the PCC and the Tribunal to be divided equally between them. This represents approximately just under 20%.

**Conclusion and orders**

147. Charge No 1 is found to be made out, namely that Mr Litchfield had practised without a current practising certificate and so breached the HPCA Act.
148. Charge No 2 is not found to be made out.
149. Charge No 3 and each particular is found to be made out, namely that Mr Litchfield has acted fraudulently, dishonestly and inappropriately such as to constitute misconduct as both malpractice and conduct bringing discredit to the profession.
150. Mr Litchfield is censured in respect of both Charges Nos 1 and 3.
151. Mr Litchfield is suspended for a period of 12 months from the date of this decision.
152. Mr Litchfield may after commencing practice following the date of this decision for the following periods practise his profession as a medical radiation technologist only in accordance with the following conditions:
    152.1. That Mr Litchfield shall as soon as reasonably practicable and at least within 1 month of resumption of practice undergo a proper assessment of his health position by a professional determined by the MRTB (probably a psychiatrist but nevertheless someone who can address the issues facing Mr Litchfield and which have faced him in the past and

which may have been alluded to in the psychiatric report already obtained). That report is to be at Mr Litchfield's cost and to the extent necessary he must consent to participating, and be actively involved, in that process.

152.2. That as soon as that assessment has been concluded and for the period of 3 years after resumption of practice by Mr Litchfield (or such lesser time as the MRTB may determine having regard to the information provided to it), he comply at his expense with whatever treatment and programme that report recommends which may be an alcohol and drug addiction treatment programme or some mental health treatment. Mr Litchfield can only resume practice if he has commenced and continues with that reporting and treatment programme. The person providing that reporting and treatment programme is to report to the MRTB accordingly and confirm Mr Litchfield's compliance with the recommendations made and the treatment.

152.3. That for the period of 12 months following resumption of practice by Mr Litchfield he be supervised by a supervisor appointed or approved by the MRTB at Mr Litchfield's expense with the supervisor focusing on:

152.3.1. Any concerns of alcohol or drug abuse or dependency

152.3.2. Any non-compliance with the statutory, regulatory and practice requirements for an APC and otherwise as required by any conditions that may be imposed from time to time on Mr Litchfield's scope of practice.

152.3.3. Mr Litchfield's compliance with the condition referred to below not to practise except in a group environment and specifically not in sole practice or sole charge.

The supervisor is to report to the MRTB at least three-monthly on all aspects of the supervision and specifically any areas of concern for non-compliance; including that the supervisor is to notify the MRTB promptly should there be such matters of concern or non-compliance.

152.4. That for the period of 12 months after resumption of practice by Mr Litchfield he is to work in a group environment and

specifically not in sole practice or sole charge so that there is some group surveillance of his health issues and, if so recommended by the psychiatrist and approved by the MRTB, some assessment of his freedom from any alcohol or drug addiction symptoms.

153. Mr Litchfield is ordered to pay the sum of $7,500.00 towards the cost of inquiry into, and prosecution of the Charge, by the PCC and the costs of the hearing by the Tribunal, to be divided equally between the PCC and the Tribunal.

154. The Tribunal directs the Executive Officer:

154.1. To publish this decision, and a summary, on the Tribunal's website;

154.2. To request the MRTB either to publish the summary of, or a reference to, the Tribunal's decisions in its principal professional publications to members, in either case including a reference to the Tribunal's website so as to enable interested parties to access the decision.

**DATED** at Auckland this 10th day of February 2017

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David M Carden
Chairperson
Health Practitioners Disciplinary Tribunal