NEW ZEALAND
HEALTH PRACTITIONERS
DISCIPLINARY TRIBUNAL
TARAIPUINARA WHAKATIKA KAIMAHI HAUORA

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BEFORE THE HEALTH PRACTITIONERS DISCIPLINARY TRIBUNAL

HPDT NO: 910/Mid17/386P

UNDER	the Health Practitioners Competence Assurance Act 2003 ("the 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 MIDWIFERY COUNCIL OF NEW ZEALAND** **Applicant**
AND	**Ms PANIA LEE** formerly of Hamilton, registered midwife **Practitioner**

HEARING held in Wellington 28 August 2017

TRIBUNAL: Mr K Johnston QC (Chair), Dr C Benn, Mr T Burns, Dr R Maude and Ms J Thorpe (Members)

IN ATTENDANCE: Ms G Fraser (Executive Officer)
Ms H Hoffman (Stenographer)

APPEARANCES: Mr M McClelland QC for the PCC
No appearance by or for the Practitioner

Introduction

1. By Notice of Charge dated 24 May 2017, a Professional Conduct Committee of the Midwifery Council of New Zealand charges the Practitioner, Pania Lee Nin, formerly of Hamilton, Midwife, with professional misconduct pursuant to s100(1)(c) of the Health Practitioners Competence Assurance Act 2003.

2. The charge is that:

> *"1 On or about 21 NOVEMBER 2016, Ms Nin was convicted and sentenced in the District Court at Hamilton of two representative charges pursuant to section 240(1)(a) and 241(a) of the Crimes Act 1961 (offences relating to making false claims for maternity services and obtaining by deception a pecuniary advantage) (the **convictions**).*
>
> *2 Each of the convictions was for an offence punishable by imprisonment for a term of seven years."*

3. The Notice of Charge particularises the convictions as follows:

> *"**Particulars of convictions***
>
> *3 Between 28 April 2008 and 30 September 2011 Ms Nin submitted claims for payment to the Ministry of Health for lead maternity carer (**LMC**) services by falsely creating records for two women and 55 babies that did not exist, and in doing so, Ms Nin obtained by deception the amount of $151,080.00.*
>
> *4 Between 8 September 2014 and 3 December 2015, Ms Nin submitted claims for payment to the Ministry of Health for LMC services by falsely creating records for 3 women and 65 babies that did not exist and in doing so, Ms Nin obtained by deception the amount of $206,059.09."*

4. And it concludes:

> *"The convictions, either separately or cumulatively, reflect adversely on [the Practitioner's] fitness to practise as a midwife pursuant to s100(1)(c) of the Act"*.

5. The originating documentation including the Notice of Charge having been served on the Practitioner, by letter dated 14 June 2017 she acknowledged receipt of the same, indicating that she did not propose to defend the charge or take any active part in these professional disciplinary proceedings, and has not done so.

6. The case was set down for hearing in Wellington on 20 August 2017. Prior to the scheduled hearing, those acting for the Council filed and served a bundle of documents consisting of copies of the Notice of Charge, the Ministry of Health's Summary of Facts in the criminal proceeding, District Court Judge A S Menzies' sentencing notes, the relevant entry in the criminal record evidencing the convictions particularised in the Notice of Charge; and letters written by the Practitioner to the secretariats of the Council and the Tribunal.

Charge

7. As already mentioned, the charge is laid pursuant to s100(1)(c) of the Act, which provides:

> *"(1) The Tribunal may make one or more orders authorised by section 101 if, after conducting a hearing on a charge laid under section 91 against a Health Practitioner, it makes one or more findings that:*
>
> …
>
> *(c) The Practitioner has been convicted of an offence that reflects adversely on his or her fitness to practise …*
>
> …"

8. Section 100(2) provides that the Tribunal may make a finding under ss(1)(c) only if the conviction concerned is of a certain character or *"… been entered in any court in New Zealand or elsewhere for an offence punishable by imprisonment for a term of three months or longer."*. The charges on which the Practitioner was convicted were certainly offences punishable by imprisonment for a term of three months or longer.

Facts

9. In the criminal proceedings, which, by definition, preceded this professional disciplinary proceeding, the charges laid by the Ministry of Health were admitted by the Practitioner.

10. In those circumstances, we treat the Ministry's Summary of Facts as being an accurate description of the background, and we set this out in full (though we do not include the Schedule which runs to 32 pages).

> *"**INTRODUCTION***
>
> *The defendant Pania Lee NIN is a Lead Maternity Care (LMC) midwife.*
>
> *The defendant applied to the Ministry of Health (MOH) to provide maternity services and was duly authorised to claim payment for care under the Section 51 Maternity Services Notice from 1998.*
>
> *In 2002 the Section 51 Maternity Services Notice was replaced by the Primary Maternity Services Notice (2002), and from July 2007 this was replaced by the Primary Maternity Services Notice 2007. As a Maternity Provider authorised to claim under the Section 51 Notice, the defendant was grand parented across to claim under both of the 2002 and the 2007 Notices.*
>
> *The defendant initially submitted claims for payment maternity care directly to MOH electronically.*
>
> *On 29 August 2014 the defendant joined the Midwifery and Maternity Providers Organisation (MMPO) and submitted claims for maternity care to MOH through MMPO.*

MATERNITY CLAIMING

In New Zealand, the Notice sets out the terms and conditions on which the Crown will make payment to a maternity provider for providing maternity services.

Most maternity providers provide pregnancy, childbirth and postnatal care in the community as a LMC. Most LMCs are self-employed midwives, and make claims to the Ministry of Health for the maternity services they provide pursuant to the terms of the Notice. The Notice requires the LMC to have a current Annual Practising Certificate issued by the New Zealand Midwifery Council.

Claims for care may be submitted to the MOH by the LMC either manually (paper based) or electronically via the Online Maternity Claiming system. The Online Maternity Claiming system mirrors the information requested on manual claim forms but requires the LMC to log on using their unique username and password to complete and submit claims.

Some LMCs belong to the Midwifery and Maternity Providers Organisation (MMPO) which is a member based co-operative. MMPO mange and submit claims to MOH on their LMC member's behalf, and retain a small percentage of the claim. Claims may be submitted by the LMC to the MMPO either electronically or manually, with electronic claimants using an unique log on to access the MMPO claim system.

The maternity services payment process is an honesty based claiming system which relies on the maternity provider to act in good faith when submitting claims to MOH for payment. All claims submitted to MOH by a LMC or MMPO are processed and paid unless there is a pre programmed rejection in the payment system due to error.

All LMC's have agreements with local maternity facilities to provide birthing services in a supported environment, and in addition some provide services for women wanting to birth at home.

A National Health Index number (NHI) is a unique identifier allocated to each person in New Zealand either at birth or, in the case [of] visitors or immigrants, when they first receive health services in New Zealand. When a person comes into contact with any New Zealand health service, the NHI is used to match them with their health record. The NHI system is administered by NHI Services, a part of the Ministry of Health.

A LMC must have the NHI of the woman to whom she is providing pregnancy and maternity care in order to claim for the services under the Notice, either directly or through MMPO.

When a baby is born in New Zealand, it is allocated a NHI at the birthing facility where it is born. In the case of a home birth, the LMC who delivers the baby contacts NHI services, advises of the birth and obtains a NHI for the baby. The LMC must have the NHI of the baby to claim the birth and postnatal care.

INVESTIGATION

In February 2016 the Ministry of Health, Audit and Compliance Unit began an audit of claims submitted for maternity services under the Primary Maternity Services Notice 2007 (the Notice) to the Ministry of Health (MOH) by the defendant.

The defendant had been identified as claiming maternity services when she did not have a current Annual Practising Certificate and when there was some suggestion she was residing in Australia.

The audit confirmed that Pania NIN did not have a current practising certificate, and she had been making claims to MOH for maternity care while residing in Brisbane.

The MOH then conducted an investigation of all of the defendant's claims for maternity and home birthing services, submitted while she was in New Zealand and after she had moved to Australia. Nine (9) women for whom the defendant had claimed maternity and home birth care were contacted.

The investigation identified that over the period January 2008 to January 2016, while resident in both New Zealand and Australia, Pania NIN submitted claims and has been paid for maternity care and birthing services for five (5) mothers and one hundred and twenty (120) babies that do not exist.

***REPRESENTATIVE CHARGES**:*

Obtained by deception – Section 240 Crimes Act 1961

(28 April 2008 to 30 September 2011)

This charge relates to the fraudulent claims for LMC services made by the defendant between 28 April 2008 and 30 September 2011 when the defendant was

residing in New Zealand, Pania NIN created records for two (2) women and fifty-five (55) babies that did not exist.

Amount paid to the defendant $151,080.00 (No GST claimed or paid)

See attached schedule 1.

Obtained by deception – Section 240 Crimes Act 1961

(8 September 2014 to 3 December 2015)

This charge relates to the fraudulent claims for LMC services made by the defendant between 28 April 2008 and 30 September 2011 when the defendant was residing in Brisbane. Pania NIN created records for three (3) women and sixty-five (65) babies that did not exist.

Amount paid to the defendant $206,059.09 (includes GST of $16,554.54 and MMPO claim service fees of $1417.50)

See attached schedule 2.

DEFENDANT'S RESPONSE

The defendant was interviewed on 21 March 2016 and 31 March 2016.

Pania NIN confirmed she contacted NHI Services at MOH and obtained NHI's for "created" mothers and babies in order to make claims to MOH for maternity services and births. The defendant admitted, in total, to creating false NHI numbers and making claims for 5 mothers and 120 babies that do not exist. The defendant confirmed that although she was registered for Goods and Services Tax (GST) from 1 March 2015 and was paid GST by MOH, she did not pay any of the GST to Inland Revenue.

The defendant didn't know why she made the claims. The defendant stated she spent the money on living costs.

Pania NIN is remorseful and has been cooperative throughout the investigation.

Sadie Scott

Investigator

Ministry of Health

REPARATION

Reparation of $357,139.09 (GST inclusive) is requested and is payable to:

Ministry of Health

Audit and Compliance

PO Box 3877

CHRISTCHURCH 8140

Ref: File 8949"

11. From his detailed sentencing notes, it is clear that the District Court Judge treated the Practitioner's offending as serious, identifying as the only mitigating circumstances her previous good character, and her early admission of liability and acceptance of responsibility. The sentence imposed was one of imprisonment.

12. So, in the end, what the Tribunal is dealing with is a midwife who over a lengthy period of time commencing in April 2008 and concluding in December 2015 kept up a sustained, premeditated and sophisticated fraud, lodging well over 100 fraudulent claims and thereby defrauded the public purse of over $350,000. This, in the Tribunal's assessment, is fraud on a significant scale.

Liability

13. In his submissions on behalf of the PCC Mr McClelland traversed the burden and standard of proof, and then submitted that there was no serious question as to the PCC's ability to establish a breach of s100(1)(c), that is to say that the Practitioner had been convicted of offences of the type referred to in that section and that her offending reflected adversely on her fitness to practise as a midwife.

14. In this regard, he reminded us that the authorities are clear that the term "fitness to practise" extends beyond competence and includes conduct that, as he put it, "… *impacts on trust and confidence on the Practitioner and the profession as a whole, conduct that involves a breach of trust that is unethical, and conduct that is inconsistent with the standards widely expected of the profession."*

15. Mr McClelland referred us to the key authorities. While appreciative of this assistance, we do not regard it as necessary to analyse any of the cases here.

16. In the end, Mr McClelland's submission was that "… *the charge against [the Practitioner] has been established. The convictions constitute a significant departure from the standards reasonably expected of a midwife. The conduct giving rise to the convictions reflects adversely on her fitness to practise as a midwife."* The Tribunal agrees.

17. Under the heading "Ms Nin's non-attendance", Mr McClelland referred us to the correspondence in the agreed bundle. As he submitted, in that correspondence, the Practitioner admits her offending, accepts that she has brought discredit to the profession as well as to herself, her family and her friends, and does not offer any substantive explanation for her offending.

18. The Tribunal has had no difficulty in concluding that the PCC has made out both elements of the charge laid against the Practitioner, that is to say that she has been convicted of offences of the type referred to in the Act, and that her conduct calls seriously into question her fitness to practise as a midwife.

Penalty

19. In relation to penalty Mr McClelland referred us to the leading decisions as to the factors which the Tribunal must take into account. These have been referred to and analysed in any number of previous decisions. It would not add anything for us to reiterate that analysis.

20. In the Tribunal's assessment, the key issues in this case are the protection of the public and the maintenance of professional standards. In particular whilst we are conscious of the need to ensure that rehabilitation is considered, because the Practitioner has not taken any part in this professional disciplinary proceeding, nor offered any evidence or

submissions by way of explanation for or in mitigation of her conduct, it is difficult to see how we can make a realistic assessment of the prospects of her rehabilitation in the future.

21. In the end, we have reached the conclusion that the only realistic option in this case, having regard to the seriousness of the Practitioner's offending, and the extent to which this reflects on her fitness to practise, is to censure the Practitioner and cancel her registration. In the circumstances, we regard that outcome as the least punitive available to us.

22. That conclusion has been reached having regard to previous decisions of the Tribunal arising in comparable circumstances to which Mr McClelland referred us and to other decisions which our own researches have thrown up. In short, the seriousness of the Practitioner's offending, as emphasised by the District Court Judge in his sentencing notes, and the extent to which her conduct reflects on her fitness to remain a member of the profession are such that we do not regard ourselves as having any realistic alternative.

Costs

23. In sentencing the Practitioner and imposing a reparation order for the amount of money defrauded from the public purse, the District Court Judge observed that it might seem a forlorn hope to think that she will ever be able to repay any significant proportion of those monies.

24. Equally, a costs order in this case might be seen as having been made more in hope than expectation that the Tribunal or the PCC will ever recover their costs. However, we have no evidence before us as to the Practitioner's financial position which would enable us to temper an order on impecuniosity grounds. Furthermore, there is, in the Tribunal's view, a danger in simply assuming that, as the Practitioner is currently serving a term of

imprisonment, it would be pointless to make any such order, because of the potential precedent value of the order.

25. In the circumstances, it seems appropriate to make an order that the Practitioner pay 30% of the Tribunal's costs and 30% of those of the PCC.

26. We received evidence that the Tribunal's costs amount to $14,140 and those of the PCC amount to $2,500. There will be costs orders accordingly.

Conclusion

27. The Tribunal's formal order is as follows:

- Pursuant to s100(1)(d) of the Health Practitioners Competence Assurance Act 2003, the Tribunal censures the Practitioner;
- Pursuant to s101(1)(a), the Tribunal makes an order cancelling her registration;
- Pursuant to s101(1)(f), the Tribunal orders the Practitioner to pay $4,242 as a contribution to the Tribunal's costs and $750 as a contribution to the PCC's costs.
- The Tribunal directs the Executive Officer, pursuant to s157, to publish a copy of this decision, and a summary, on the Tribunal's website. The Tribunal further directs the Executive Officer to request the Midwifery Council of New Zealand either to publish the summary of, or a reference to, the Tribunal's decisions in its 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 Wellington this 11th day of September 2017



Kenneth Johnston QC
Chair
Health Practitioners Disciplinary Tribunal