

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Health Ombudsman v Heath; Medical Board of Australia v Heath* [2024] QCAT 303

PARTIES: **HEALTH OMBUDSMAN**
(applicant in proceeding number OCR 168 of 2021)
MEDICAL BOARD OF AUSTRALIA
(applicant in proceeding number OCR 90 of 2022)

v

RICHARD JOHN HEATH
(respondent)

APPLICATION NO/S: OCR 168 of 2021
OCR 90 of 2022

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 21 August 2024

HEARING DATE: 24 July 2024

HEARD AT: Brisbane

DECISION OF: Judicial Member Robertson
Assisted by:
Professor S Brun, Medical Practitioner Panel Member
Dr J Cavanagh, Medical Practitioner Panel Member
Mr P Davies, Public Panel Member

ORDERS: **In relation to proceeding number OCR 90 of 2022:**

- 1. Pursuant to s 196(1)(b)(iii) of the *Health Practitioner Regulation National Law (Queensland)*, the respondent has behaved in a way that constitutes professional misconduct.**
- 2. Pursuant to s 196(2)(a) of the *Health Practitioner Regulation National Law (Queensland)*, the respondent is reprimanded.**
- 3. Pursuant to s 196(2)(b) of the *Health Practitioner Regulation National Law (Queensland)*, conditions are imposed on the respondent's registration in the form of 'Annexure A' to this decision.**
- 4. Pursuant to s 196(3) of the *Health Practitioner Regulation National Law (Queensland)*, the review period for the conditions is 12 months.**

5. Part 7, Division 11, Subdivision 2 of the *Health Practitioner Regulation National Law (Queensland)* applies to the conditions imposed by this decision.
6. Pursuant to s 196(2)(d) of the *Health Practitioner Regulation National Law (Queensland)*, the respondent's registration is suspended for a period of six (6) months, commencing 60 days from the date of this decision.

In relation to proceeding number OCR 168 of 2021:

1. The parties are to inform the Tribunal whether their position in relation to the agreed sanction in proceeding number OCR 168 of 2021 has changed, by email to the associate to the Deputy President at associate.dannjdc@courts.qld.gov.au and the Registry at QCATCivil@justice.qld.gov.au, by 4:00pm on 30 August 2024.
2. In the event that the parties are no longer agreed as to sanction, the parties must provide directions by consent to the Tribunal for the filing and service of submissions, by email to the associate to the Deputy President at associate.dannjdc@courts.qld.gov.au and the Registry at QCATCivil@justice.qld.gov.au, by 4:00pm on 30 August 2024.
3. In the event the parties either:
 - (a) advise that their position on sanction remains as agreed; or
 - (b) fail to advise by 4:00pm on 30 August 2024 that their position on sanction has changed;

the matter will be heard and determined on the papers without oral hearing, pursuant to s 32(2) of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld), as soon as practicable after 30 August 2024.

CATCHWORDS:

PROFESSIONS AND TRADES — HEALTH CARE PROFESSIONALS — MEDICAL PRACTITIONERS — DISCIPLINARY PROCEEDINGS — PROFESSIONAL MISCONDUCT — where the respondent is subject to two disciplinary referrals heard in sequence — where the referrals relate to, inter alia, breach of conditions, prescribing issues regarding drugs of dependence and inadequate record keeping — where the practitioner has earlier been subject to immediate registration action — where the immediate registration action was set aside by the Tribunal — where the immediate registration action related to conduct not the subject of the referrals — whether the

time spent out of practice ought to be taken into account in determining sanction

Health Ombudsman Act 2013 (Qld)
Health Practitioner Regulation National Law (Queensland)
Queensland Civil and Administrative Tribunal Act 2009 (Qld)

Dental Board of Australia v Nairn [2022] WASAT 86
Health Ombudsman v Barber [2017] QCAT 431
Health Ombudsman v Brown [2019] QCAT 218
Heath v Medical Board of Australia [2024] QCAT 163
Legal Services Commission v Jackson [2017] QCAT 449
Legal Services Commissioner v Munt [2019] QCAT 160

APPEARANCES & REPRESENTATION:

Applicant: N J Townsend, legal officer in the Office of the Health Ombudsman for the Health Ombudsman (OCR168-21)
 S Robb KC instructed by Piper Alderman for the Medical Board of Australia (OCR090-22)

Respondent: J R Jones instructed by Moray & Agnew Lawyers

REASONS FOR DECISION

- [1] There are two referrals before the Tribunal.

Proceeding number OCR 168 of 2021 — Health Ombudsman v Heath

- [2] The first filed referral in time is Health Ombudsman (**HO**) v Heath. It relates to admitted conduct on one occasion on 21 September 2020 when the respondent, an experienced medical practitioner with over four decades in general practice, treated a patient in a clinical setting in breach of a condition then on his registration that he was “not to practice in any General Practice role requiring direct or indirect clinical patient contact”.
- [3] He was then subject to a suite of registration conditions and was working in an administrative capacity in one of his practices, when, in the temporary absence of other doctors, he treated a patient with a finger injury knowing that he could not because of the conditions. There is no criticism of his clinical skills or decision making, just that he breached a condition imposed on his registration which is of course, serious conduct by someone so experienced.
- [4] The parties agree as to the factual context, the characterisation of the conduct, and the proposed sanction. However, for reasons relating to the other referral before the Tribunal, final determination of the first referral should be deferred until the Tribunal has reached a decision on the second referral which was, until very recently, also subject to complete agreement as to facts, characterization, and sanction. I assume that is why both matters were listed for the one day.

Proceeding number OCR 90 of 2022 — Medical Board of Australia v Heath

- [5] The other, later referral is by the Medical Board of Australia (**Board**) and proceeds on the basis of a further amended referral filed 12 April 2023, and a second further amended response filed on behalf of Dr Heath on 22 December 2023.
- [6] On 22 May 2024, the parties filed a further amended statement of agreed facts, findings and determinations (**FASOFAD**).¹
- [7] The admitted conduct concerns Dr Heath’s prescribing of drugs then classified as S4, S8 or specified condition drugs under the *Health (Drugs and Poisons) Regulation 1996* (Qld) (**Drugs Regulation**), to 19 individual patients at various times between at least 2011 and 2019.
- [8] The allegations relate to conduct including:
- (a) failing to keep adequate clinical records, including to document the clinical indication for prescribing S4 and S8 and specified condition drugs;
 - (b) failing to report as required, or to obtain approvals as required, by the Drugs Regulation;
 - (c) in relation to some persons who the respondent knew or ought to have known were drug dependent;
 - (i) conducting the assessment, management and diagnosis of patients in a way below the standard expected of a general practitioner with the respondent’s training and experience; and
 - (ii) prescribing outside the advice of consultants or in a way inconsistent with the relevant product information.
- [9] Aspects of the respondent’s accepted conduct was variously:
- (a) contrary to parts of the Board’s 2010 or 2014 Codes of Conduct;
 - (b) inconsistent with the requirements of either ss 78, 120, 122 or 213 of the Drugs Regulation.
- [10] The parties agreed that:
- (a) the accepted conduct constitutes professional misconduct within the meaning of the definition at (a) and (b) of the *Health Practitioner Regulation National Law (Queensland)* (**National Law**);²
 - (b) the respondent should be reprimanded;
 - (c) the respondent’s registration should be suspended for six months;
 - (d) that specified conditions should be imposed on the respondent’s registration, with a 12 month review period, and an order that Part 7, Division 11, Subdivision 2 of the National Law applies to the conditions.

¹ A copy of the FASOFAD is reproduced in Appendix 1 of these reasons.

² National Law s 5 (definition of ‘professional misconduct’).

[11] Paragraph 209 of the FASOFAD is in these terms:

The parties agree that the Tribunal should:

- 209.1 make a finding that the Respondent has engaged in professional misconduct pursuant to section 196(1)(b)(iii) of the National Law;
- 209.2 reprimand the Respondent pursuant to section 196(2)(a) of the National Law;
- 209.3 suspend the Respondent's registration for 6 months pursuant to section 196(2)(d) of the National Law;
- 209.4 impose the conditions attached at 'Annexure A', pursuant to section 196(2)(b) of the National Law;
- 209.5 impose a 12 month review period for the conditions, pursuant to section 196(3) of the National Law;
- 209.6 order that Part 7, Division 11, Subdivision 2 of the National Law applies to the conditions.³

The immediate action review — *Heath v Medical Board of Australia*

- [12] On 2 May, 2024, that is some weeks prior to the filing of the FASOFAD, the Tribunal published its reasons in *Heath v Medical Board of Australia*.⁴
- [13] The reasons relate to a review application by Dr Heath to challenge immediate action taken by the Board in relation to conduct that could be described as relating to issues of maintaining appropriate professional boundaries with female patients in consultations concerning contraception.
- [14] On 12 October 2023, the Board took immediate action to suspend the respondent's registration. On 11 March 2024, and having sought to have the Tribunal invite it to reconsider the original immediate action decision, the Board revoked the decision to suspend the respondent's registration and imposed conditions on the respondent's registration, including a gender-based condition. In the result the respondent's registration was suspended for a number of months, which suspension was removed by the Board. There was no concession by the Board that the suspension of the respondent's registration at the relevant time it was imposed was not reasonable.
- [15] It is not in dispute that as part of its amended immediate action, the Board imposed a practice location condition on his registration, and, until the Tribunal made another decision on 2 May, the Board had not approved any practice location for Dr Heath, and he did not return to work until 23 May, so the period out of practice was approximately 7 months.
- [16] The review proceeding was not concerned with whether immediate action could or should have been taken at the time the Board took the action in October 2023 or March 2024, but rather with whether it should be taken as at the time of the review on the material before the Tribunal, sitting with assessors.⁵

³ FASOFAD, [209]; Hearing Bundle filed 19 July 2024 (**HB**) pp 115–116.

⁴ [2024] QCAT 163 (**Heath review decision**). The decision has been taken on appeal to the Court of Appeal.

⁵ *Ibid*, [15]–[17].

- [17] On the review, the Tribunal found that the respondent posed a relevant risk such that immediate action ought be taken, and conditions were imposed. The Tribunal did not maintain the gender- based condition on review. No finding was made that suspension imposed by way of immediate action between 12 October 2023 and 11 March 2024 was a disproportionate regulatory response to the respondent’s conduct.

The effect on the referral proceedings

- [18] Dr Heath argues that to impose a period of 6 months suspension now would be punitive, and he argues that the time out of practice relating to the review proceedings should be counted in the Tribunal’s present exercise of discretion. In other words, he wishes to resile from his agreed position on 22 May when the FASOFAD was filed, but only in relation to the period of suspension.
- [19] The question as framed by Mr Jones at the hearing is whether in light of the period out of practice as a result of immediate action taken by the Board in relation to what is accepted by Dr Heath to be completely unrelated (and as yet unproved) conduct, it would be fair for the Tribunal, in the exercise of its independent discretion, to impose sanctions for admitted professional misconduct the subject of the FASOFAD, which would include a period of suspension.
- [20] Neither party has been able to find any decision, from this Tribunal or any equivalent Tribunal throughout the country, which deals with this discrete point.
- [21] The parties accept that notwithstanding the parties proposing an agreed position on sanction, determining the appropriate sanction requires an exercise of the Tribunal’s independent discretion having regard to the relevant matters. Where the parties jointly propose a position that fact is “plainly a relevant and important matter”. Where the Tribunal is satisfied that an agreed position is appropriate, it is highly desirable that the Tribunal accept it.

The Board’s Position

- [22] The Board submits that the agreed position as agreed by the parties, after lengthy negotiations between their lawyers all highly skilled in this area of law, should be maintained by the Tribunal. By reference to such cases as *Legal Services Commission v Jackson*,⁶ the Board submits that there is no “collateral oppression” (in that case arising out of delay) that would require the Tribunal, in appropriately exercising its discretion, to take into account periods out of practice that relate to unrelated conduct, that may or may not lead to disciplinary proceedings in this Tribunal in the future.
- [23] The Board further submits that having regard to the structure and purpose of the National Law, it would be an inappropriate exercise of the Tribunal’s discretion in these proceedings to take into account consequences (a period out of practice) to Dr Heath as a result of immediate action taken by it using a different power than that for which sanction is imposed⁷ in relation to unrelated conduct.
- [24] By reference to what Mr Jones describes in his brief two-page written submission as the “yardstick cases”,⁸ Ms Robb KC submits that these cases demonstrate that the

⁶ [2017] QCAT 449, [89]-[90] (Thomas J).

⁷ Under s 156 as opposed to s 196.

⁸ Outline of submissions on behalf of the applicant filed 19 July 2024 (**Board’s submissions**), [14]–[21]; HB pp 970–971.

agreed position as at 22 May is well within the bounds of an appropriate disciplinary response to the serious admitted conduct the subject of this referral.

Dr Heath's amended position

[25] As noted earlier, Mr Jones relied on a short, written submissions filed 22 July. He submits:

...the final orders should not include a suspension. This is because of a combination of matters, which include that:

- (a) on 12 October 2023, the Applicant took immediate action in relation to unrelated matters;
- (b) the effect of that immediate action was to prevent the Respondent from working between 12 October 2023 and 2 May 2024 (almost seven months);
- (c) the immediate action was set aside by the Tribunal; and
- (d) the almost seven months during which the Respondent was unable to work was not considered when the parties arrived at the joint position.

Considering:

- (a) the respondent's personal circumstances including the almost seven months that the Respondent could not work in the latter part of last year and the earlier part of this year;
- (b) the delay;
- (c) the objectives of the National Law;
- (d) the purpose of disciplinary proceedings; and
- (e) the yardstick cases;

it is respectfully submitted that the previously agreed sanction would be punitive and the final orders in the matter should not include a suspension.⁹

[26] In his oral submissions, Mr Jones essentially repeated his written submissions but conceded (as he had to) that all the factual matters set out in [3] of those submissions were known to his client and the lawyers at the time of the filing of the FASOFAD. As the transcript reveals, he did not resile from the position that the "yardstick cases" did support the sanction proposed at that time.

Discussion

[27] At [2(d)] of his submissions, Mr Jones submits that "the almost seven months during which the respondent was unable to work was not considered by the parties when they arrived at the joint submission". Ms Robb submits that is because it was then accepted (at least by implication) that it was not relevant to the agreed outcome. In the submission, there is a footnote after the word "considered", "because some had not yet occurred, and the cumulative effect had not yet been appreciated".¹⁰

⁹ Outline on behalf of the respondent filed 22 July 2024 (**respondent's submissions**), [2]–[3] (footnotes omitted).

¹⁰ Transcript of proceedings, 24 July 2024, p 1-14, lines 4–8.

- [28] I assume this is a reference to the fact that with the Tribunal publishing its reasons in the review matter on 2 May, the practice and gender-based conditions were removed. Dr Heath states in his affidavit filed on 22 July that he did not in fact return to work until 23 May. He and his advisors must have been aware of his inability to work because of the conditions as at the day of the filing of the FASOFAD, that is, the day before he returned to work.
- [29] In that affidavit, Dr Heath states that he has suffered severe financial hardship as a result of the Board's immediate action, including having to relinquish the lease on the Sunshine Beach Medical Centre. He refers to receiving a notice to remedy breach dated 22 December 2023 from the lessor's solicitor on 9 January 2024. He was not cross-examined on that affidavit, but it is clear from the notice itself,¹¹ that he had not paid rent and outgoings on the premises since October 2023. It follows that when the FASOFAD was filed, both he and his advisors must have appreciated that the lease was in jeopardy.
- [30] As Mr Jones appropriately concedes, all the cases cited by him in his additional written submission dated 24 July¹² related to periods out of practice which are directly referable to the impugned conduct the subject of the disciplinary proceedings to which the sanction imposed relates.
- [31] For these reasons, the principled approach is for the Tribunal to consider all the circumstances of the referral taking into account the relevant legislative scheme and the decided cases, and to exercise its independent discretion in that light.
- [32] Section 4 of the National Law provides that:
- An entity that has functions under this Law is to exercise its functions having regard to the objectives and guiding principles of the national registration and accreditation scheme set out in sections 3 and 3A.
- [33] Section 3A of the National Law provides, relevantly:
- (1) The main guiding principle of the national registration and accreditation scheme is that the following are paramount—
 - (a) protection of the public;
 - (b) public confidence in the safety of services provided by registered health practitioners and students.
 - (2) The other guiding principles of the national registration and accreditation scheme are as follows—
 - (a) the scheme is to operate in a transparent, accountable, efficient, effective and fair way;
 - ...
 - (e) restrictions on the practice of a health profession are to be imposed under the scheme only if it is necessary to ensure health services are provided safely and are of an appropriate quality.

¹¹ Affidavit of Richard John Heath filed 22 July 2024 (**second Heath affidavit**), Exhibit 'RJH-16', p 70.

¹² MFI-B — "Comparatives" Summary prepared by Mr Jones dated 24 July 2024, received by email from the respondent's solicitors after the hearing.

- [34] In *Health Ombudsman v Brown*,¹³ the then-Deputy President of this Tribunal, Allen KC DCJ, by reference to the general principles that are relevant when a Tribunal is considering an appropriate disciplinary response to admitted professional misconduct by a health care provider, said:

With respect to the purposes of sanction, it is convenient to cite the reasons of the Tribunal in *Barber*, at paragraphs [34] to [36]:

In considering the appropriate sanction, the Tribunal must be mindful that the main principle for administering the HO Act is that the health and safety of the public are paramount. The jurisdiction being exercised by the Tribunal is protective, not punitive.

It has been accepted that protection of the public has various aspects. In *Craig v Medical Board of South Australia*, it was said,

The public may be protected by preventing a person from practising a profession, by limiting the right of practice, or by making it clear that certain conduct is not acceptable.

The order may be directed to remind the practitioner as to the seriousness of their departure from professional standards and so as to deter them from any further departure.¹⁸ It is however, not just confined to the erring practitioner, but extends to orders to secure the maintenance by other members of the profession of proper professional standards and to emphasise to them that certain types of behaviour are not acceptable professional conduct. Such orders also act to assure the public that appropriate standards are being maintained within the profession so as to maintain the confidence of the public in the high standard of the profession.¹⁴

- [35] As in the other “yardstick cases” referred to in Mr Jones’ submission, in *Brown*, the respondent registered nurse was given the benefit of over four years out of practice as a result of conditions imposed on his registration but referable to the conduct the subject of the disciplinary referral.
- [36] The conduct admitted by Dr Heath in the FASOFAD is undoubtedly very serious misconduct. It involved multiple failures by a very experienced doctor to comply with the law, namely the Drug Regulation, in relation to a large number of patients over a period of years, and it involved many breaches of the Boards’ Codes of Conduct in 2010 and 2014. In his affidavit filed 15 January 2024, he states:

As a result of my experiences during the investigation of this matter and the further education I have completed, I have come to properly appreciate that my failure to keep detailed consultation records and comply with my obligations under the Drugs Regulations created an untenable risk to my patients that their care would be compromised. My lack of proper record keeping has also placed me in an unenviable position from a medico-legal perspective, in that when asked to justify my clinical decision making, I have needed to rely upon my memory of events, usual practice and other documentation on the clinical file, rather than being able to refer to my own detailed consultation note.¹⁵

¹³ [2019] QCAT 218 (*‘Brown’*).

¹⁴ Ibid, [22], quoting *Health Ombudsman v Barber* [2017] QCAT 431 (Sheridan DCJ) (footnotes omitted in original).

¹⁵ Affidavit of Richard John Heath filed 15 January 2024 (**first Heath affidavit**), [254(j)], HB p 893.

[37] Having regard to the general principles applicable to sanction, in this case, the Tribunal regards the following principles and factors as being of more importance in this case:

- (a) making clear by its orders that the Tribunal denounces the conduct to secure the maintenance by other members of the profession of proper professional standards and to emphasize to them that certain types of behaviour are not acceptable professional conduct; and
- (b) to assure the public that appropriate standards are being maintained within the profession so as to maintain the confidence of the public in the high standards of the profession.

[38] These are particularly important principles in almost every case, bearing on the protection of the public and public confidence in the safety of services provided by registered health practitioners.

[39] Given the many educational and training courses undertaken by Dr Heath evidenced by both affidavits and the annexures thereto, specific deterrence does not loom large in this case. He has shown remorse and insight, and it is not submitted that by taking this discrete legal point, his insight and remorse should be found to be reduced.

[40] Undoubtedly, Dr Heath's regulatory history was considered by the parties in formulating the agreed position on sanction in the FASOFAD.¹⁶

[41] The parties would also have considered the significant financial detriment suffered by Dr Heath following on from the notification from the Medicines Compliance Human Tissue Unit of the Queensland Health Department to the HO on 4 December 2018, which lead to an investigation and the filing of these proceeding in the Tribunal. Dr Heath refers to these "significant financial losses" in his first affidavit.¹⁷

[42] I agree with the submission made by Ms Robb to this effect:

The outcome of the review proceeding was known to the parties at the time the matters in the Agreed facts were negotiated and agreed (the Agreed facts were settled between the parties on 22 May 2024; the decision in the review proceeding was delivered by the Tribunal on 2 May 2024: *Heath v Medical Board of Australia* [2024] QCAT 163). The review decision is under appeal by the Board.

The regulatory action taken in relation to the conduct the subject of the review proceeding, pending appeal, may be relevant to any future consideration of sanction in relation to the conduct that it is relates to [*sic*], by virtue of the factual nexus.^[18]

There is no factual, legal or rational connection between the sanction to be imposed in this matter and the suspension imposed by the Board to protect public health or safety under s 156 of the National Law. The power to impose a sanction following a finding of professional misconduct in s 196(2) of the National Law is different from and unrelated to the power to take immediate action. The immediate action to suspend was taken in relation to conduct that

¹⁶ See the discussion at [133]–[154] of the Heath review decision (n 4) and Board's submissions (n 8), [11]–[12] at HB pp 969–970.

¹⁷ First Heath affidavit (n 15), [247]; HB pp 891–892.

¹⁸ *Dental Board of Australia v Nairn* [2022] WASAT 86, [182].

occurred after and that is of a different nature to the conduct the subject of this referral. Any risk mitigation it was intended to effect and occasioned was not related to the facts and circumstances of the respondent's prescribing conduct. Any deterrent effect it carried does not attach to the conduct the subject of this referral.^[19]

The outcome of the review proceeding and the five months that the respondent was precluded from practising by virtue of the Board taking immediate action were not matters taken into account in settling on the six months suspension that appropriately attaches to the misconduct the subject of this referral because, other than as matters of fact, they are not relevant to the determination of the appropriate sanction in this matter.²⁰

- [43] I am not prepared to hold that periods out of practice which are not related to conduct the subject of disciplinary proceedings can never be taken into account by the Tribunal; however, in the circumstances of this case, it would not be appropriate to depart from the agreed position of the parties as at the date of the filing of the FASOFAD. With the agreed sanction of a reprimand and conditions, together with a 6 month suspension from practice, the Tribunal, in the exercise of its discretion, is satisfied that those orders represent an appropriate response to the admitted professional misconduct in this case. As requested by Dr Heath, I will defer the operation of the suspension period for a period of 60 days from the date of these orders (the Board submitted for 30 days), to enable him to get his affairs in order.

Orders

In relation to proceeding number OCR 90 of 2022:

1. Pursuant to s 196(1)(b)(iii) of the *Health Practitioner Regulation National Law (Queensland)*, the respondent has behaved in a way that constitutes professional misconduct.
2. Pursuant to s 196(2)(a) of the *Health Practitioner Regulation National Law (Queensland)*, the respondent is reprimanded.
3. Pursuant to s 196(2)(b) of the *Health Practitioner Regulation National Law (Queensland)*, conditions are imposed on the respondent's registration in the form of 'Annexure A' to this decision.
4. Pursuant to s 196(3) of the *Health Practitioner Regulation National Law (Queensland)*, the review period for the conditions is 12 months.
5. Part 7, Division 11, Subdivision 2 of the *Health Practitioner Regulation National Law (Queensland)* applies to the conditions imposed by this decision.
6. Pursuant to s 196(2)(d) of the *Health Practitioner Regulation National Law (Queensland)*, the respondent's registration is suspended for a period of six (6) months, commencing 60 days from the date of this decision.

In relation to proceeding number OCR 168 of 2021:

1. The parties are to inform the Tribunal whether their position in relation to the agree sanction in proceeding number OCR 168 of 2021 has changed, by email

¹⁹ Ibid, [180]–[181]; *Legal Services Commissioner v Munt* [2019] QCAT 160, [59] (Daubney J).

²⁰ Board's submission (n 8), [41]–[44] (footnotes reproduced).

to the associate to the Deputy President at associate.dannjdc@courts.qld.gov.au and the Registry at QCATCivil@justice.qld.gov.au, by **4:00pm on 30 August 2024**.

2. In the event that the parties are no longer agreed as to sanction, the parties must provide directions by consent to the Tribunal for the filing and service of submissions, by email to the associate to the Deputy President at associate.dannjdc@courts.qld.gov.au and the Registry at QCATCivil@justice.qld.gov.au, by **4:00pm on 30 August 2024**.
3. In the event the parties either:
 - (a) advise that their position on sanction remains as agreed; or
 - (b) fail to advise by **4:00pm on 30 August 2024** that their position on sanction has changed;

the matter will be heard and determined on the papers without oral hearing, pursuant to s 32(2) of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld), as soon as practicable after **30 August 2024**.

Annexure A — Schedule of Conditions

Supervision for prescribing of drugs of dependence and record-keeping

1. The Practitioner must be supervised by another registered health practitioner (**the supervisor**) with respect to his prescribing of drugs of dependence and record keeping with respect to patients being prescribed drugs of dependence.

For the purpose of this condition, ‘drugs of dependence’ are defined as:

Any monitored medicines, drugs of dependence or substance subject to misuse howsoever named or referred to, scheduled or otherwise regulated by law in any state or territory in which they may practise, including but not limited to those contained within Schedule 8 and Schedule 4 of the Uniform Schedule of Medicines and Poisons (**the SUSPMP**) as amended from time to time and as published at <https://www.tga.gov.au/publication/poisons-standard-susmp>; and/or pharmaceutical items containing any active ingredient listed that is a monitored medicine, drug of dependence or substances subject to misuse.

For the purposes of this condition, ‘supervised’ is defined as:

The Practitioner must consult with the supervisor, who is to be accessible by telephone or other means of telecommunication and available to attend the workplace to observe and discuss the management of patients and/or the performance of the Practitioner with respect to his prescribing of drugs of dependence, when necessary and otherwise at **weekly** intervals for the first 6 months, progressing to **fortnightly** intervals thereafter.

2. Within 14 days of the notice of imposition of this condition, the Practitioner must, on the approved form (**HPN10**), nominate a primary supervisor and at least one alternate supervisor to be approved by the Board. Each of these supervisors shall be recognised by Ahpra as having specialist registration within general practice.
3. The Practitioner must ensure that each nomination is accompanied by an acknowledgement, on the approved form (**HPNA10**), from each nominated supervisor that they are willing to undertake the role of supervisor and are aware that Ahpra will seek reports from them.
4. If no approved supervisor is willing or able to provide the supervision required, the Practitioner must cease practice immediately and must not resume practice until a new supervisor has been nominated by the Practitioner and approved by the Board.
5. Within 14 days of the notice of the imposition of these conditions, the Practitioner is to provide to Ahpra, on the approved form (**HP10**) acknowledgement that Ahpra may:
 - (a) obtain information from relevant authorities (such as but not limited to Medicare);
 - (b) obtain information and/or a report from the senior person (Director of Medical Services, Practice Manager, Owner, Proprietor (senior person) at each place of practice on a quarterly basis; and

Annexure A — Schedule of Conditions

- (c) obtain a report from the approved supervisor on a monthly basis.
6. Within 21 days of the notice of the imposition of these conditions, the Practitioner is to provide to Ahpra, on the approved form (**HPS10**), acknowledgement from the senior person at each place of practice that Ahpra may seek reports from them.

Education

7. The Practitioner must undertake and successfully complete a program of education, approved by the Medical Board of Australia (**Board**) and including a reflective practice report, in relation to the following:
- (a) clinical record-keeping; and
 - (b) prescribing of drugs of dependence
8. Within 14 days of the notice of the imposition of these conditions, the Practitioner must, on the approved form (**HPN24**), nominate for approval by the Board an education course, assessment or program (**the education**) addressing the topics required. The Practitioner must ensure:
- (a) the nomination includes a copy of the curriculum of the education; and
 - (b) the education consists of a minimum of 2 hours for clinical record-keeping including:
 - (i) clinical management including history taking, examination, diagnosis and treatment planning;
 - (ii) prescribing; and
 - (iii) coordination of care including referral for specialist review; and
 - (c) the education consists of a minimum of 2 hours for prescribing drugs of dependence including:
 - (i) the legislative framework for prescribing drugs of dependence;
 - (ii) compliance with professional standards and approved clinical guidelines for prescribing drugs of dependence; and
 - (iii) identifying patients with known or apparent drug dependence.
9. The Practitioner must complete the education within 6 months of the notice of the Board's approval of the education.
10. Within 21 days of the completion of the education, the Practitioner must provide to Ahpra:
- (a) evidence of successful completion of the education; and

Annexure A — Schedule of Conditions

- (b) a reflective practice report demonstrating, to the satisfaction of the Board, that the Practitioner has reflected on the issues that gave rise to this condition and how the Practitioner has incorporated the lessons learnt in the education into the Practitioner's practice.

General

11. Within 21 days' notice of the imposition of these conditions the Practitioner must provide to Ahpra, on the approved form (**HPC**), the contact details of the senior person at each current place of practice. In providing this form, the Practitioner acknowledges that Ahpra will contact the senior person and provide them with a copy of the conditions on the Practitioner's registration or confirm that the senior person has received a copy of the conditions from the Practitioner. The practitioner will be required to provide the same form:
 - (a) within seven days of the commencement of practice at each subsequent place of practice; and
 - (b) within seven days of each and every notice of any subsequent alteration of these conditions.
12. All costs associated with compliance with the conditions on their registration are at the Practitioner's own expense.

Appendix 1 — Further Amended Statement of Agreed Facts, Findings and Determinations filed by 22 May 2024

IN THE QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

QCAT File No: OCR090-22

IN RELATION TO A REFERRAL UNDER S193B(2) OF THE *HEALTH PRACTITIONER REGULATION NATIONAL LAW (QUEENSLAND)*

MEDICAL BOARD OF AUSTRALIA

Complainant

and

DR RICHARD JOHN HEATH

Respondent

**FURTHER AMENDED STATEMENT OF AGREED AND ~~DISPUTED~~ FACTS, FINDINGS
AND DETERMINATIONS**

Filed on behalf of:

The Complainant, MEDICAL BOARD OF AUSTRALIA, by Piper Alderman; and

The Respondent, DR RICHARD JOHN HEATH by ~~Avant Law~~ Moray & Agnew

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Date of filing: May 2024 ~~9 February 2023~~

Appendix 1 — Further Amended Statement of Agreed Facts, Findings and Determinations filed by 22 May 2024

FURTHER AMENDED STATEMENT OF AGREED AND DISPUTED FACTS, FINDINGS AND DETERMINATIONS

- A In this Statement of Agreed and Disputed Facts, the Medical Board of Australia is referred to as “**the Complainant**” and Dr Richard John Heath is referred to as “**the Respondent**”.

RELEVANT BACKGROUND FACTS

1. On 4 December 2018, the Office of the Health Ombudsman (**OHO**) received a voluntary notification pursuant to sections 144(1)(a) and 145 of the *Health Practitioner Regulation National Law (Queensland)* (**National Law**) from the Medicines Compliance & Human Tissue Unit of the Queensland Department of Health (**MCHTU**).
2. The MCHTU notified of the following concerning the Respondent:
 - 2.1 on 18 May 2018, Medicines Regulation and Quality (**MRQ**) had raised concerns in relation to the continual non-compliance by the Respondent of the provisions of the (now repealed) *Health (Drugs and Poisons) Regulation 1996* (**the Drugs Regulation**); and
 - 2.2 a prescriber review of the Respondent’s prescribing of Schedule 8 (**S8**) controlled drugs and Schedule 4 (**S4**) restricted drugs of dependency between 1 March 2017 and 31 August 2018 had identified 1,172 breaches by the Respondent of the Drugs Regulation relating to 92 patients.
3. The breaches identified by the MCHTU related to the following provisions of the Drugs Regulation:
 - 3.1 Section 78 (16 patients – 100 breaches);
 - 3.2 Section 120 (62 patients – 930 breaches);
 - 3.3 Section 122(1) (9 patients – 77 breaches); and
 - 3.4 Section 213 (5 patients – 65 breaches).
4. The MCHTU issued the Respondent with a compliance notice pursuant to section 153R of the *Health Act 1937 (Qld)*.
5. On 24 December 2019, the OHO wrote to the Australian Health Practitioner Regulation Agency (**Ahprra**) and confirmed that it had decided to refer the matter to the **Board Complainant** for management under s 91 of the *Health Ombudsman Act 2013 (Queensland)*.
6. On 13 January 2020, the Complainant decided to investigate the Respondent’s conduct under section 160(1)(a) of the National Law.
7. On 5 January 2022, the Complainant decided to notify the OHO under section 193(1)(a)(i) of the National Law that the Complainant had formed a reasonable belief that the Respondent had behaved in a way that constitutes professional misconduct.

Appendix 1 — Further Amended Statement of Agreed Facts, Findings and Determinations filed by 22 May 2024

3.

8. On 14 January 2022, the OHO asked the Complainant to continue to deal with the matter under section 193(2) of the National Law.
9. On 2 February 2022, the Complainant decided to refer this matter to the Queensland Civil and Administrative Tribunal under section 193B(2) and 193B(3)(a)(i) of the National Law.

AGREED FACTS AND DISPUTED FACTS ISSUES RELEVANT TO THE GROUNDS OF REFERRAL

General

10. The Respondent has held registration as a medical practitioner (registration MED001369568) under the National Law since it commenced on 1 July 2010.
11. Once the National Law commenced on 1 July 2010, the Respondent was personally responsible for complying with this legislation.
12. The Respondent was required to comply with the Complainant's 'Good Medical Practice: a Code of Conduct for doctors in Australia' (2010) (**2010 Code of Conduct**) and later 'Good Medical Practice: a Code of Conduct for doctors in Australia' (2014) (**2014 Code of Conduct**).
13. In October 2017, the Royal Australian College of General Practitioners (**RACGP**) released Guidelines for Prescribing Drugs of Dependence in General Practice (**RACGP Guidelines**). Whilst not a set of mandatory rules, the RACGP Guidelines aim to assist GPs in the management of drugs of dependence by providing a synthesis of relevant clinical standards and best available evidence relating to appropriate prescribing of drugs of dependence in the primary care setting.
14. At all material times, the Respondent:
 - 14.1 was a fellow of the RACGP;
 - 14.2 owned and operated [REDACTED] which included [REDACTED] and [REDACTED];
 - 14.3 was prohibited from prescribing a S8 controlled drug to a drug dependent person without the approval of the Chief Executive pursuant to section 122(1) of the Drugs Regulation;
 - 14.4 was prohibited from prescribing a S4 restricted drug of dependency to a drug dependent person without the approval of the ~~chief~~**Chief executive** Executive pursuant to section 213 of the Drugs Regulation;
 - 14.5 was prohibited from prescribing a specified condition drug unless it was prescribed under an approval from the Chief Executive pursuant to section 78 of the Drugs Regulation; and
 - 14.6 was required to report to the Chief Executive, in the approved form, before prescribing a S8 controlled drug in the treatment of a patient for more than two months pursuant to section 120 of the Drugs Regulation.

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4.

Allegation 1 – [REDACTED]

Agreed Facts

15. Mr [REDACTED] was a patient of [REDACTED] from 28 September 2015 onwards.
16. The Respondent provided treatment to Mr [REDACTED] on various dates between 13 January 2016 and 15 December 2018.
17. The Respondent knew or ought to have known that Mr [REDACTED] was a drug dependent person.
18. The Respondent failed to keep adequate clinical records of his consultations with, and treatment of Mr [REDACTED], in breach of Part 8.4 of the 2014 Code of Conduct.
19. Between 1 March 2017 and 31 August 2018, the Respondent prescribed Mr [REDACTED] S8 controlled drugs for more than two months without providing a report to the Chief Executive in the approved form as required by section 120 of the Drugs Regulation.
20. The Respondent did not document any clinical indication for his prescribing of the following regulated drugs to Mr [REDACTED]:
 - 20.1 Alprazolam, a S8 controlled drug (from 29 May 2018 – 15 December 2018);
 - 20.2 Targin (oxycodone), a S8 controlled drug (on 30 June 2018 and 1 August 2018); and
 - 20.3 Diazepam, a S4 restricted drug of dependence (between 13 June 2016 and 15 December 2018).
21. The Respondent's conduct with respect to Allegation 1 amounts to unsatisfactory professional performance and/or unprofessional conduct as those terms are defined in section 5 of the National Law.
22. The Respondent's conduct with respect to Allegation 1, in combination with all of the admitted conduct in the referral in combination, and in the aggregate, amounts to professional misconduct within the meaning of section 5(a) or (b) of the National Law.

Facts and issues in dispute

23. There are some facts and issues in the Board's Further Amended Referral which have not been agreed by the Respondent (as set out in the Further Amended Response) but the Respondent will not be contesting these facts and issues.
24. Whether the Respondent's conduct with respect to allegation 1 amounts to unsatisfactory professional performance, unprofessional conduct or professional misconduct as those terms are defined at section 5 of the National Law.

Allegation 2 – [REDACTED]

Agreed Facts

25. Ms [REDACTED] was a patient of [REDACTED] from 28 July 2005 onwards and became a patient of the Respondent when he first treated her on 29 January 2009.
26. The Respondent knew or ought to have known that Ms [REDACTED] was a drug dependent person.

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5.

27. On various dates in 2011 and 2013-2019, the Respondent prescribed Ms [REDACTED] with diazepam, a S4 restricted drug of dependency without any documented clinical indication in breach of clauses 8.4.1 and 8.4.4 of the 2010 and 2014 Code of Conduct.
28. Between 1 March 2017 and 31 August 2018, the Respondent prescribed Ms [REDACTED] with diazepam, a S4 restricted drug of dependency on five occasions without the requisite approval of the Chief Executive in contravention of section 213 of the Drugs Regulation.
29. On various dates between 17 March 2016 and 18 August 2018, the Respondent prescribed S8 opioids (Palexia SR, Targin and Oxycontin) to Ms [REDACTED] and in so doing he:
 - 29.1 prescribed Palexia SR 50mg 'once daily prn' on 17 March 2016 in a manner which was inconsistent with the Palexia SR Product Information Sheet;
 - 29.2 escalated the morphine equivalent dosage of S8 opioids prescribed to Ms [REDACTED] from 30mg per day to 105mg per day without any documented explanation in breach of clauses 8.4.1 and 8.4.4 of the 2014 Code of Conduct;
 - 29.3 prescribed Oxycontin in a manner which was inconsistent with the Product Information Sheet for Oxycontin;
 - 29.4 prescribed S8 controlled drugs to Ms [REDACTED] on 18 occasions without the requisite approval of the Chief Executive in ~~breach~~ contravention of section 122(1) of the Drugs Regulation;
 - 29.5 failed to document his management plan with respect to his prescribing of opioid medications to Ms [REDACTED] in accordance with clause 2.4.1 of the RACGP Guidelines (from 2017 onwards);
 - 29.6 prescribed Oxycontin to Ms [REDACTED] once daily 'prn' which was inconsistent with clause 2.4.1 of the ~~RACGP~~ RACGP Guidelines; and
 - 29.7 changed Ms [REDACTED]'s dosage of Oxycontin from 30mg 12-hourly to 20mg 8-hourly on 18 August 2018 which was inconsistent with the Product Information Sheet for Oxycontin.
 - 29.8 the Respondent reintroduced prescription opioids for treatment of Ms [REDACTED]'s knee pain on 17 March 2016 without a confirmed diagnosis;
30. The Respondent's assessment, management and diagnosis of Ms [REDACTED] was below the standard expected of a general practitioner with the Respondent's training and experience.
31. The Respondent's conduct with respect to Allegation 2 amounts to unsatisfactory professional performance and/or unprofessional conduct as those terms are defined in section 5 of the National Law.
32. The Respondent's conduct with respect to Allegation 2, in combination with all of the admitted conduct in the referral in combination, and in the aggregate, amounts to professional misconduct within the meaning of section 5(a) or (b) of the National Law.

Facts and issues in dispute

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6.

33. ~~There are some facts and issues in the Board's Further Amended Referral which have not been agreed by the Respondent (as set out in the Further Amended Response) but the Respondent will not be contesting those facts and issues.~~
34. Whether:
- 34.1 — the Respondent escalated Ms [REDACTED]'s dosage of Palexia SR between 17 March 2016 and 18 August 2018;
 - 34.2 — the Respondent escalated Ms [REDACTED]'s dosage of Targin between 17 March 2016 and 18 August 2018;
 - 34.3 — the Respondent escalated Ms [REDACTED]'s dosage of Oxycontin on 18 August 2018;
 - 34.4 — the Respondent's prescribing of S8 opioids between 17 March 2016 and 18 August 2018 was in breach of clauses 2.1.1 and 2.2.4 of the 2014 Code of Conduct;
 - 34.5 — the Respondent's prescribing of S8 opioids between 2017 and 18 August 2018 was inconsistent with clause 2.4.2 of the RACGP Guidelines;
 - 34.6 — ~~the Respondent reintroduced prescription opioids for treatment of Ms [REDACTED]'s knee pain on 17 March 2016 without a confirmed diagnosis;~~
 - 34.7 — trialling non-opioid prescription analgesics for Ms [REDACTED] prior to re-introducing opioids (Palexia SR 50mg) was contraindicated given Ms [REDACTED] was experiencing severe knee pain and had a medical history of Hepatitis C and gastritis;
 - 34.8 — the Respondent's assessment, management and/or diagnosis of Ms [REDACTED] was below, or substantially below, the standard expected of a general practitioner with the Respondent's training and experience; and
 - 34.9 — the Respondent's conduct with respect to Allegation 2 amounts to unsatisfactory professional performance, unprofessional conduct or professional misconduct as those terms are defined at section 5 of the National Law.

Allegation 3 — [REDACTED]

Agreed Facts

- 35. Ms [REDACTED] was a patient of [REDACTED] from 4 January 1997 until October 2017.
- 36. On 20 August 2017, Dr Gordon Strachan referred Ms [REDACTED] to the Respondent confirming he had prescribed her 'Durogesic 50 x 5' and that she had been on Durogesic for a long time.
- 37. Between 5 August 2017 and 6 September 2017, the Respondent prescribed Ms [REDACTED] a total of 26 patches of Durogesic, a S8 controlled drug, in circumstances where:
 - 37.1 he had not contacted the MCHTU to confirm Ms [REDACTED]'s status as a drug dependent person;
 - 37.2 Ms [REDACTED] requested Durogesic patches for unspecified musculo-skeletal pain;

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7.

- 37.3 he had not documented any assessment or management plan in relation to Ms [REDACTED]'s chronic back pain;
- 37.4 he had not made any enquiries with Ms [REDACTED]'s previous treating general practitioner to confirm her diagnosis and management;
- 37.5 his prescribing was in breach of clauses 2.1.1, 2.2.6, 8.4.1 and 8.4.4 of the 2014 Code of Conduct.
- 38. Between 9 August 2017 and 6 September 2017, the Respondent prescribed a S8 controlled drug on three occasions to Ms [REDACTED] without the approval of the Chief Executive in contravention of section 122(1) of the Drugs Regulation.
- 39. Between 10 August 2017 and September 2017, Ms [REDACTED] was exhibiting drug seeking behaviour.
- 40. The Respondent's assessment, management and diagnosis of Ms [REDACTED] was below ~~or substantially below~~ the standard expected of a general practitioner with the Respondent's level of training and expertise.
- 41. The Respondent's conduct with respect to Allegation 3 amounts to unsatisfactory professional performance and/or unprofessional conduct as those terms are defined in section 5 of the National Law.
- 42. The Respondent's conduct with respect to Allegation 3, in combination with all of the admitted conduct in the referral in combination, and in the aggregate, amounts to professional misconduct within the meaning of section 5(a) or (b) of the National Law.

Facts and issues in dispute

- 43. There are some facts and issues in the Board's Further Amended Referral which have not been agreed by the Respondent (as set out in the Further Amended Response) but the respondent will not be contesting those facts and issues.
- 44. **Whether:**
 - 44.1 Ms [REDACTED] was exhibiting drug seeking behaviour prior to 10 August 2017; and
 - 44.2 the Respondent's conduct with respect to Allegation 3 amounts to unsatisfactory professional performance, unprofessional conduct or professional misconduct as those terms are defined at section 5 of the National Law.

Allegation 4 – [REDACTED]

Agreed Facts

- 45. Ms [REDACTED] was a patient of [REDACTED] from 4 August 1999 onwards and suffered complex health needs including chronic pain and Obsessive-Compulsive Disorder (OCD).
- 46. The Respondent knew or ought to have known that Ms [REDACTED] was a drug dependent person.

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8.

47. The Respondent failed to keep adequate clinical records for Ms [REDACTED] and this was in breach of Part 8.4 of the 2014 Code of Conduct.
48. Between 1 March 2017 and 31 August 2018, the Respondent prescribed a controlled drug (Palexia SR and Endone) to Ms [REDACTED] on nine occasions without the approval of the Chief Executive in breach of section 122(1) of the Drugs Regulation.
49. The Respondent prescribed S4 restricted drugs of dependence (oxazepam and diazepam) on 16 occasions to Ms [REDACTED] between 1 March 2017 and 31 August 2018 without the approval of the Chief Executive in breach of section 213 of the Drugs Regulation.
50. On or about 18 September 2018, Dr Paul Frank, pain physician, recommended that the Respondent seek input from psychiatrist, Dr Khaldoun Alsaei in relation to Ms [REDACTED]'s medications, pain and OCD.
51. Prior to 18 September 2018, the Respondent had not previously referred Ms [REDACTED] for psychiatric assessment despite her long-standing mental health issues including her chronic pain and OCD.
52. On 22 November 2018, the Respondent referred Ms [REDACTED] to Dr Alsaei, psychiatrist.
53. In a report dated 28 November 2018, Dr Alsaei expressed concern about Ms [REDACTED]'s benzodiazepine regime and recommended it be rationalised down to one benzodiazepine.
54. On 3 January 2019, the Respondent prescribed Ms [REDACTED] diazepam 5mg 1 nocte, oxazepam 15mg tablets 1 nocte, temazepam 10mg 1-2 nocte prn which was contrary to the advice of Dr Alsaei.
55. The Respondent's assessment, management and diagnosis of Ms [REDACTED] whilst prescribing S4 and S8 regulated drugs was below the standard expected of a general practitioner with the Respondent's training and experience.
56. The Respondent's conduct with respect to Allegation 4 amounts to unsatisfactory professional performance and/or unprofessional conduct as those terms are defined in section 5 of the National Law.
57. The Respondent's conduct with respect to Allegation 4, in combination with all of the admitted conduct in the referral in combination, and in the aggregate, amounts to professional misconduct within the meaning of section 5(a) or (b) of the National Law.

Facts and issues in dispute

58. There are some facts and issues in the Board's Further Amended Referral which have not been agreed by the Respondent (as set out in the Further Amended Response) but the Respondent will not be contesting those facts and issues.
59. Whether:
 - 59.1 — the Respondent's failure to refer Ms [REDACTED] to a psychiatrist prior to 22 November 2018 was:
 - (a) — in breach of the 2010 and 2014 Codes of Conduct; and

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9.

(b) — below the standard expected of a general practitioner with his training and experience in circumstances where he had previously referred Ms [REDACTED] to other specialists for treatment of her chronic pain and OCD;

59.2 — the Respondent's prescribing of diazepam 5mg 1 nocte, oxazepam 15mg 1 nocte and temazepam 10mg 1-2 nocte prn on 3 January 2019 was:

(a) — in breach of clause 2.2.9 of the 2014 Code of Conduct; and

(b) — below the standard expected of a general practitioner with his training and experience; and

59.3 — the Respondent's conduct with respect to allegation 4 amounts to unsatisfactory professional performance, unprofessional conduct or professional misconduct as those terms are defined at Section 5 of the National Law.

Allegation 5 — [REDACTED]

Agreed Facts

60. Ms [REDACTED] was a patient of [REDACTED] from 24 March 2001 onwards.
61. On 3 June 2016, the Respondent gave Ms [REDACTED] a steroid injection for her sub-acromial bursitis as well as a prescription for 28 tablets of Targin 5mg/2.5mg at a dose of 1-2 tablets 'bd' for pain associated with that condition in circumstances where she had already received a steroid injection to treat that condition.
62. The Respondent continued to prescribe Ms [REDACTED] Targin over a two-year period between 19 November 2016 and 8 January 2019 for an unspecified left shoulder injury.
63. The Respondent did not document any clinical indication or management plan for prescribing Ms [REDACTED] Targin between 3 June 2016 and 8 January 2019. This conduct was in breach of clauses 8.4.1 and 8.4.4 of the 2014 Code of Conduct and inconsistent with clause 2.4.1 of the RACGP Guideline.
64. On 21 February 2018, the Respondent changed Ms [REDACTED]'s prescription for Targin from Targin 10mg/5mg 1 mane to Targin 10mg/5mg 1 mane and Targin 5mg/2.5mg 1 daily prn without any written explanation in breach of clauses 8.4.1 and 8.4.4 of the 2014 Code of Conduct.
65. Between 1 March 2017 and 31 August 2018, the Respondent prescribed Ms [REDACTED] S8 controlled drugs for more than 2 months without providing a report to the Chief Executive in the approved form as required by section 120 of the Drugs Regulation.
66. The Respondent's assessment, management and diagnosis of Ms [REDACTED] whilst prescribing S4 and S8 regulated drugs was below the standard expected of a general practitioner with Dr Heath's training and experience.
67. The Respondent's conduct with respect to Allegation 5 amounts to unsatisfactory professional performance and/or unprofessional conduct as those terms are defined in section 5 of the National Law.

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10.

68. The Respondent's conduct with respect to Allegation 5, in combination with all of the admitted conduct in the referral in combination, and in the aggregate, amounts to professional misconduct within the meaning of section 5(a) or (b) of the National Law.

Facts and issues in dispute

69. There are some facts and issues in the Board's Amended Referral which have not been agreed by the Respondent (as set out in the Further Amended Response) but the Respondent will not be contesting those facts and issues.
70. **Whether:**
- 70.1—the Respondent's prescription of Targin to Ms [REDACTED] on 3 June 2016 was:
- (a) — appropriate;
 - (b) — a suitable management plan; and
 - (c) — in breach of clause 2.1.2 of the 2014 Code of Conduct;
- 70.2—the Respondent's prescription of Targin for Ms [REDACTED] between 19 November 2016 and 8 January 2019 for treatment of pain associated with the following conditions (which were not recorded in his clinical notes for Ms [REDACTED]) was in breach of clause 2.1.2 of the 2014 Code of Conduct and inconsistent with clause 2.4.2 of the RACGP Guideline:
- (a) — right subacromial bursitis and rotator cuff dysfunction;
 - (b) — left subacromial bursitis and rotator cuff dysfunction; and
 - (c) — cervical spondylosis and perineural cyst;
- 70.3—the Respondent's change of Ms [REDACTED]'s prescription for Targin on 21 February 2018 from Targin 10mg/5mg 1 mane to Targin 10mg/5mg 1 mane and Targin 5mg/2.5mg 1 daily 'prn' was an increase to Ms [REDACTED]'s prescription and/or clinically appropriate and/or was inconsistent with clause 2.4.2 of the RACGP Guidelines;
- 70.4—the Respondent's assessment, management and diagnosis of Ms [REDACTED] was below or substantially below the standard expected of a general practitioner with the Respondent's level of training and expertise; and
- 70.5—the Respondent's conduct with respect to allegation 5 amounts to unsatisfactory professional performance, unprofessional conduct or professional misconduct as these terms are defined at Section 5 of the National Law.

Allegation 6 - [REDACTED]

Agreed Facts

71. Mr [REDACTED] was a patient at [REDACTED] from 15 August 2017 until November 2017.
72. Prior to 15 August 2017, Mr [REDACTED] had received treatment from [REDACTED] in Melbourne between 2015 and 2017 for severe stump pain.

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11.

73. The Respondent knew or ought to have known that Mr [REDACTED] was a drug dependent person.
74. The Respondent failed to keep adequate records for Mr [REDACTED] in breach of Part 8.4 of the 2014 Code of Conduct.
75. The Respondent's assessment, management and diagnosis of Mr [REDACTED] was below or substantially below the standard expected of a general practitioner with the Respondent's level of training and expertise.
76. The Respondent did not document any handover of care from Mr [REDACTED]'s previous practitioner by contacting the [REDACTED] and requesting clinical reports to confirm previous clinical assessment and treatment planning.
77. The Respondent cannot recall whether he in fact attempted any handover of care from Mr [REDACTED]'s previous practitioner at the [REDACTED].
78. At his initial appointment on 21 August 2017, the Respondent increased Mr [REDACTED]'s dose of Fentanyl to a 100mg patch despite his previous pain specialist having prescribed a 75mg patch.
79. Between 21 August 2017 and 10 October 2017, the Respondent prescribed Mr [REDACTED] Fentanyl 100 patch, a S8 controlled drug (opioid) on three occasions without documenting any assessment, treatment plan or transfer of care. This conduct was in breach of clauses 8.4.1 and 8.4.4 of the 2014 Code of Conduct and was inconsistent with (from October 2017 onwards) part 2.4.1 of the RACGP Guidelines.
80. The Respondent prescribed Fentanyl 100 patch to Mr [REDACTED] between 21 August 2017 and 10 October 2017 without the approval of the chief executive in breach of section 122(1) of the Drugs Regulation.
81. The Respondent's conduct with respect to Allegation 6 amounts to unsatisfactory professional performance and/or unprofessional conduct as those terms are defined in section 5 of the National Law.
82. The Respondent's conduct with respect to Allegation 6, in combination with all of the admitted conduct in the referral in combination, and in the aggregate, amounts to professional misconduct within the meaning of section 5(a) or (b) of the National Law.

Facts and issues in dispute

83. There are some facts and issues in the Board's Further Amended Referral which have not been agreed by the Respondent (as set out in the further amended response) but the Respondent will not be contesting those facts and issues
84. **Whether:**
 - 84.1 — the Respondent failed to appropriately handover care from Mr [REDACTED]'s previous general practitioner;
 - 84.2 — the Respondent's increase of Mr [REDACTED]'s dose of Fentanyl to a 100mg patch was below the standard expected of a general practitioner with his training and experience; and

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12.

~~84.3 — the Respondent's conduct with respect to allegation 6 amounts to unsatisfactory professional performance, unprofessional conduct or professional misconduct as these terms are defined pursuant to section 5 of the National Law.~~

Allegation 7 - [REDACTED]

Agreed Facts

85. Mr [REDACTED] was a patient of [REDACTED] from 8 April 2015.
86. The Respondent knew or ought to have known that Mr [REDACTED] was a drug dependent person.
87. Between 7 December 2017 and 31 August 2018, the Respondent prescribed Mr [REDACTED] a S8 controlled drug (hydromorphone) on 13 occasions without the approval of the Chief Executive in contravention of section 122(1) of the Drugs Regulation.
88. On 13 April 2015, the Respondent prescribed Mr [REDACTED] Palexia SR 50MG i.b.d prn.
89. Up until 22 April 2015, On 15 April 2015, the Respondent changed prescribed Mr [REDACTED]'s prescription to Palexia SR 100mg daily.
90. On 22 April 2015, the Respondent ceased Mr [REDACTED]'s prescription for Palexia SR and prescribed him Oxycontin 10mg to 20mg daily.
91. On 4 May 2015, Mr [REDACTED] presented upon another practitioner and reported an adverse reaction to Palexia SR and Oxycontin. Mr [REDACTED] was instead prescribed Durogesic 12mcg – one patch every 72 hours.
92. On 20 May 2015, Mr [REDACTED] reported an adverse reaction to the Durogesic patch and the Respondent prescribed him Jurnista 16mg daily.
93. The Respondent did not document any explanation for this the changes in Mr [REDACTED]'s medication as described in paragraphs 67 to 71, 87 to 90 in breach of clauses 8.4.1 and 8.4.4 of the 2014 Code of Conduct.
94. On 13 October 2016, the Respondent ordered a supervised urine drug screen in connection with Mr [REDACTED]'s prescription for Jurnista 16mg daily which revealed the presence of oxycodone. He did not document any discussion in relation to these urine screen results in his clinical record in breach of clauses 8.4.1 and 8.4.4 of the 2014 Code of Conduct.
95. On 19 December 2017, the Respondent ordered a supervised urine drug screen for routine surveillance which revealed the presence of oxycodone. He did not document any discussion in relation to these urine screen results in his clinical record in breach of clauses 8.4.1 and 8.4.4 of the 2014 Code of Conduct.
96. The Respondent failed to document any steps taken to monitor and assess Mr [REDACTED]'s back pain between May 2015 and January 2019 in breach of clauses 8.4.1 and 8.4.4 of the 2014 Code of Conduct.
97. Between 14 June 2017 and January 2019, the Respondent prescribed Mr [REDACTED] S4 restricted drugs of dependency (benzodiazepines) without any documented clinical indication in breach of clauses 8.4.1 and 8.4.4 of the 2014 Code of Conduct.

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13.

98. Between 14 December and January 2019, the Respondent, on 12 occasions, prescribed Mr [REDACTED] S4 restricted drugs of dependency (benzodiazepines) without the approval of the Chief Executive in contravention of section 213 of the Drugs Regulation.
99. Between June 2017 and January 2019, the Respondent did not document any steps taken to closely monitor Mr [REDACTED]'s use of benzodiazepines between June 2017 and January 2019 despite his drug dependency in breach of clauses 8.4.1 and 8.4.4 of the Code of Conduct.
100. The Respondent did not recommend to Mr [REDACTED] that he be placed on a mental health care plan for psychologist input and treatment of his anxiety.
101. The Respondent did not recommend referral to a pain specialist despite Mr [REDACTED]'s history of chronic pain and addiction.
102. The Respondent's assessment, management and diagnosis of Mr [REDACTED] was below the standard expected of a general practitioner with the Respondent's training and experience.
103. The Respondent's conduct with respect to Allegation 7 amounts to unsatisfactory professional performance and/or unprofessional conduct as those terms are defined in section 5 of the National Law.
104. The Respondent's conduct with respect to Allegation 7, in combination with all of the admitted conduct in the referral in combination, and in the aggregate, amounts to professional misconduct within the meaning of section 5(a) or (b) of the National Law.

Facts and issues in dispute

105. There are some facts and issues in the Board's Further Amended Referral which have not been agreed by the Respondent (as set out in the Further Amended Response) but the Respondent will not be contesting these facts and issues:
106. Whether::
 - 106.1—the Respondent escalated Mr [REDACTED]'s prescriptions of Oxycontin 10mg-20mg and Palexia SR100 to Jurnista 16mg for backpain between 15 May 2015 and 20 May 2015;
 - 106.2—the Respondent failed to make any enquiries into the presence of Oxycodone in Mr [REDACTED]'s urine screening on 13 October 2016 and 19 December 2017 in breach of 2.1.1 and 2.1.2 of the Code of Conduct;
 - 106.3—the Respondent escalated the doses of S8 opioid medication prescribed to Mr [REDACTED] between May 2015 and January 2019;
 - 106.4—the Respondent's failure to recommend to Mr [REDACTED] that he be placed on a mental health care plan for psychologist input and treatment of his anxiety was in breach of 2.1.4 of the Code of Conduct;
 - 106.5—the Respondent's failure to recommend to Mr [REDACTED] that he be referred to a pain specialist despite Mr [REDACTED]'s history of chronic pain and addiction was in breach of 2.1.4 of the Code of Conduct;

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~~106.6 the Respondent's assessment, management and diagnosis of Mr [REDACTED] was below or substantially below the standard expected of a general practitioner with the Respondent's level of training and expertise; and~~

~~106.7 the Respondent's conduct with respect to allegation 7 amounts to unsatisfactory professional performance, unprofessional conduct or professional misconduct as those terms are defined at section 5 of the National Law.~~

Allegation 8 – [REDACTED]

Agreed Facts

107. Mr [REDACTED] was a patient of [REDACTED] from 14 June 2001 onwards.
108. The Respondent knew or ought to have known that Mr [REDACTED] was a drug dependent person.
109. On various dates between 26 February 2013 and 16 November 2018, the Respondent prescribed Mr [REDACTED] the following S8 controlled drugs (opioids) and S4 restricted drugs of dependency (benzodiazepines) without any documented clinical indication in breach of clauses 8.4.1 and 8.4.4 of the 2010 and 2014 Code of Conduct:
 - 109.1 Oxycodone (S8) between 6 March 2017 and 8 March 2017;
 - 109.2 Palexia (S8) between 2015 and 2017;
 - 109.3 Norspan (S8) on 10 November 2018;
 - 109.4 Alzopram (S4) on 10 November 2018;
 - 109.5 Diazepam (S4) between 6 March 2017 and 10 November 2018; and
 - 109.6 Tramal (S4) between 26 February 2013 and 10 November 2018;
110. Between 1 March 2017 and 31 August 2017, the Respondent prescribed Mr [REDACTED] S8 controlled drugs on one occasion without the approval of the Chief Executive in contravention of section 122(1) of the Drugs Regulation.
111. Between 26 September 2018 and 10 November 2018, the Respondent prescribed Mr [REDACTED] the S4 restricted drug Tramal while he also prescribed Mr [REDACTED] Xanax and the SSRI anti-depressant Prozac.
112. The combination of SSRI anti-depressants and pain-relieving medications such as Tramal is known to increase the risk of Serotonin Syndrome and the Respondent knew of this risk and knew that caution should be exercised in prescribing these medications.
113. The Respondent's assessment, management and diagnosis of Mr [REDACTED] was below, the standard expected of a general practitioner with the Respondent's training and experience.
114. The Respondent's conduct with respect to Allegation 8 amounts to unsatisfactory professional performance and/or unprofessional conduct as those terms are defined in section 5 of the National Law.

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115. The Respondent's conduct with respect to Allegation 8, in combination with all of the admitted conduct in the referral in combination, and in the aggregate, amounts to professional misconduct within the meaning of section 5(a) or (b) of the National Law.

Facts and issues in dispute

116. There are some facts and issues in the Board's Further Amended Referral which have not been agreed by the Respondent (as set out in the Further Amended Response) but the Respondent will not be contesting these facts and issues.
117. Whether:
- 117.1 the combination of SSRI anti-depressants and pain-relieving medications such as Tramal causes Serotonin Syndrome;
- 117.2 the Respondent's prescribing of SSRI anti-depressants and pain-relieving medications such as Tramal to Mr [REDACTED] was:
- (a) below the standard expected of a general practitioner with his training and experience; and
- (b) in breach of clauses 2.1.2 and 7.2.3 of the 2014 Code of Conduct.
- 117.3 the Respondent's assessment, management and diagnosis of Mr [REDACTED] was below or substantially below the standard expected of a general practitioner with the Respondent's level of training and expertise; and
- 117.4 the Respondent's conduct in relation to allegation 8 amounts to unsatisfactory professional performance, unprofessional conduct or professional misconduct as those terms are defined at section 5 of the National Law.

Allegation 9 – [REDACTED]

Agreed Facts

118. Mr [REDACTED] was a patient of [REDACTED] from 4 January 1997 onwards.
119. The Respondent kept inadequate records for Mr [REDACTED] in breach of Part 8.4 of the 2010 and 2014 Code of Conduct.
120. On 13 July 2010, the Respondent initiated a trial of Ritalin capsules (methylphenidate) which is a specified condition drug under the Drugs Regulation. He did not seek a diagnosis from a psychiatrist prior to prescribing Ritalin for Mr [REDACTED].
121. On 28 July 2010, the Respondent referred Mr [REDACTED] to Dr Philip Bird, psychiatrist, for an opinion in relation to the continued use of the medication for both therapeutic and legal reasons.
122. On 27 September 2010, Dr Bird provided a preliminary assessment of Mr [REDACTED]'s Attention Deficit Hyperactivity Disorder (ADHD) and confirmed his diagnosis of ADHD on 19 October 2010, three months after the Respondent commenced the Ritalin trial for Mr [REDACTED].
123. Between 1 March 2017 and 31 August 2018, the Respondent prescribed Mr [REDACTED] methylphenidate on eight occasions without the approval of the Chief Executive or without

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evidence the patient was being treated in the manner required by section 78(2) of the Drugs Regulation.

124. The Respondent's assessment, management and diagnosis of Mr [REDACTED] was below the standard expected of a general practitioner with the Respondent's training and experience.
125. The Respondent's conduct with respect to Allegation 9 amounts to unsatisfactory professional performance and/or unprofessional conduct as those terms are defined in section 5 of the National Law.
126. The Respondent's conduct with respect to Allegation 9, in combination with all of the admitted conduct in the referral in combination, and in the aggregate, amounts to professional misconduct within the meaning of section 5(a) or (b) of the National Law.

Facts and issues in dispute

127. There are some facts and issues in the Board's Further Amended Referral which have not been agreed by the Respondent (as set out in the Further Amended Response) but the Respondent will not be contesting those facts and issues.
128. Whether:
 - 128.1 a diagnosis from a psychiatrist was required by section 78(1) of the Drugs Regulation prior to prescribing Ritalin to Mr [REDACTED] in 2010 to treat his suspected adult ADHD;
 - 128.2 the Respondent's prescribing of Ritalin to Mr [REDACTED] in 2010 was in breach of clauses 2.1.2, 2.1.4 and 7.2.3 of the 2010 Code of Conduct;
 - 128.3 the Respondent's assessment, management and diagnosis of Mr [REDACTED] was below or substantially below the standard expected of a general practitioner with the Respondent's level of training and expertise; and
 - 128.4 the Respondent's conduct in relation to allegation 9 amounts to unsatisfactory professional performance, unprofessional conduct or professional misconduct as those terms are defined at section 5 of the National Law.

Allegation 10 – [REDACTED]

Agreed Facts

129. Mr [REDACTED] was a patient of [REDACTED] from 16 February 2009 onwards.
130. The Respondent kept inadequate records of his treatment of Mr [REDACTED] in breach of Part 8.4 of the 2014 Code of Conduct.
131. The Respondent increased Mr [REDACTED]'s dose of dexamphetamine between 3 August 2015 and 27 June 2016 from 5mg to 60mg daily without any documented explanation for the increased dosage in breach of clauses 8.4.1 and 8.4.4 of the Code of Conduct.
132. Between 7 August 2017 and 31 August 2018, the Respondent prescribed specified condition drugs (lisdexamphetamine and dexamphetamine) to Mr [REDACTED] on 13 occasions without the requisite approval or without evidence the patient was being treated in the manner required by section 78(2) of the Drugs Regulation

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133. The Respondent's conduct with respect to Allegation 10 amounts to unsatisfactory professional performance and/or unprofessional conduct as those terms are defined in section 5 of the National Law.
134. The Respondent's conduct with respect to Allegation 10, in combination with all of the admitted conduct in the referral in combination, and in the aggregate, amounts to professional misconduct within the meaning of section 5(a) or (b) of the National Law.

Facts and issues in dispute

135. There are some facts and issues in the Board's Further Amended Referral which have not been agreed by the Respondent (as set out in the Further Amended Response) but the Respondent will not be contesting these facts and issues.
136. Whether the Respondent's conduct with respect to allegation 10 amounts to unsatisfactory professional performance, unprofessional conduct or professional misconduct as these terms are defined at section 5 of the National Law.

Allegation 11 – [REDACTED]

Agreed Facts

137. Ms [REDACTED] was a patient of [REDACTED] from 2 March 2004 onwards.
138. The Respondent kept inadequate records in relation to his treatment of Ms [REDACTED] in breach of Part 8.4 of the 2014 Code of Conduct.
139. Between 9 September 2004 and 29 December 2004, the Respondent prescribed Ms [REDACTED] a specified condition drug (dexamphetamine) without first obtaining a psychiatric opinion to confirm his diagnosis.
140. Between 15 February 2017 and 20 October 2018, the Respondent again prescribed Ms [REDACTED] dexamphetamine without first obtaining a psychiatric opinion to confirm his diagnosis and proposed treatment.
141. Between 1 March 2017 and 31 August 2018, the Respondent prescribed Ms [REDACTED] a specified condition drug on 14 occasions without the requisite approval or without evidence Ms [REDACTED] was being treated in the manner required by section 78(2) of the Drugs Regulation.
142. The Respondent's assessment, management and diagnosis of Ms [REDACTED] between February 2017 and October 2018 was below , the standard expected of a general practitioner with the Respondent's training and experience.
143. The Respondent's conduct with respect to Allegation 11 amounts to unsatisfactory professional performance and/or unprofessional conduct as those terms are defined in section 5 of the National Law.
144. The Respondent's conduct with respect to Allegation 11, in combination with all of the admitted conduct in the referral in combination, and in the aggregate, amounts to professional misconduct within the meaning of section 5(a) or (b) of the National Law.

Facts and issues in dispute

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18.

145. ~~There are some facts and issues in the Board's Further Amended Referral which have not been agreed by the Respondent (as set out in the Further Amended Response) but the Respondent will not be contesting these facts and issues.~~
146. Whether the Respondent's:
- 146.1 ~~conduct in prescribing dexamphetamine to Ms [REDACTED] in 2004 without first obtaining a psychiatric opinion was below the standard expected of a general practitioner with the Respondent's training and experience;~~
 - 146.2 ~~prescribing of dexamphetamine to Ms [REDACTED] between February 2017 and October 2018 was:~~
 - (a) ~~below the standard expected of a general practitioner with his training and experience; and~~
 - (b) ~~in breach of clauses 2.1.2 and 2.1.4 of the 2014 Code of Conduct;~~
 - 146.3 ~~assessment, management and diagnosis of Ms [REDACTED] was below or substantially below the standard expected of a general practitioner with the Respondent's level of training and expertise; and~~
 - 146.4 ~~conduct with respect to allegation 11 amounts to unsatisfactory professional performance, unprofessional conduct or professional misconduct as those terms are defined at section 5 of the National Law.~~

Allegation 12 – [REDACTED]

Agreed Facts

147. Ms [REDACTED] was a patient of [REDACTED] from 29 December 2015 onwards.
148. The Respondent knew or ought to have known that Ms [REDACTED] was a drug dependent person.
149. The Respondent kept inadequate records in relation to his treatment of Ms [REDACTED] in breach of Part 8.4 of the 2014 Code of Conduct.
150. Between 1 March 2017 and 31 August 2018, the Respondent prescribed Ms [REDACTED]:
- 150.1 a S8 controlled drug (oxycodone) on 37 occasions without the approval of the Chief Executive in contravention of section 122(1) of the Drugs Regulation; and
 - 150.2 a S4 restricted drug of dependency (diazepam) on 25 occasions without the approval of the Chief Executive in contravention of section 213 of the Regulation.
151. The Respondent's conduct with respect to Allegation 12 amounts to unsatisfactory professional performance and/or unprofessional conduct as those terms are defined in section 5 of the National Law.
152. The Respondent's conduct with respect to Allegation 12, in combination with all of the admitted conduct in the referral in combination, and in the aggregate, amounts to professional misconduct within the meaning of section 5(a) or (b) of the National Law.

Facts and issues in dispute

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19.

153. ~~There are some facts and issues in the Board's Further Amended Referral which have not been agreed by the Respondent (as set out in the Further Amended Response) but the Respondent will not be contesting those facts and issues.~~
154. ~~Whether the Respondent's conduct with respect to allegation 12 amounts to unsatisfactory performance, unprofessional conduct or professional misconduct as those terms are defined at section 5 of the National Law.~~

Allegation 13 – [REDACTED]

Agreed Facts

155. Mr [REDACTED] was patient of [REDACTED] from 4 January 1997 onwards.
156. The Respondent kept inadequate records in relation to his treatment of Mr [REDACTED] in breach of Part 8.4 of the 2014 Code of Conduct.
157. The Respondent knew or ought to have known that Mr [REDACTED] was a drug dependent person.
158. Between 1 March 2017 and 31 August 2018, the Respondent prescribed Mr [REDACTED] a S8 controlled drug (morphine sulphate) on 21 occasions without the approval of the Chief Executive in contravention of section 122(1) of the Drugs Regulation.
159. The Respondent's conduct with respect to Allegation 13 amounts to unsatisfactory professional performance and/or unprofessional conduct as those terms are defined in section 5 of the National Law.
160. The Respondent's conduct with respect to Allegation 13, in combination with all of the admitted conduct in the referral in combination, and in the aggregate, amounts to professional misconduct within the meaning of section 5(a) or (b) of the National Law.

Facts and issues in dispute

161. ~~There are some facts and issues in the Board's Further Amended Referral which have not been agreed by the Respondent (as set out in the further amended response) but the Respondent will not be contesting those facts and issues.~~
162. ~~Whether the Respondent's conduct with respect to allegation 13 amounts to unsatisfactory performance, unprofessional conduct or professional misconduct as those terms are defined at section 5 of the National Law.~~

Allegation 14 – [REDACTED]

Agreed Facts

163. Mr [REDACTED] was a patient of [REDACTED] from 7 June 2005 onwards.
164. The Respondent kept inadequate records in relation to his treatment of Mr [REDACTED] in breach of Part 8.4 of the 2014 Code of Conduct.
165. The Respondent prescribed a specified condition drug (dexamphetamine) to treat Mr [REDACTED]'s adult ADHD on 12 occasions between 1 March 2017 and 31 August 2018 without the approval of the Chief Executive pursuant to section 78 of the Drugs Regulation.

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166. The Respondent's conduct with respect to Allegation 14 amounts to unsatisfactory professional performance and/or unprofessional conduct as those terms are defined in section 5 of the National Law.
167. The Respondent's conduct with respect to Allegation 14, in combination with all of the admitted conduct in the referral in combination, and in the aggregate, amounts to professional misconduct within the meaning of section 5(a) or (b) of the National Law.

Facts and issues in dispute

168. ~~There are some facts and issues in the Board's Further Amended Referral which have not been agreed by the Respondent (as set out in the Further Amended Response) but the Respondent will not be contesting those facts and issues.~~
169. ~~Whether the Respondent's conduct with respect to allegation 14 amounts to unsatisfactory performance, unprofessional conduct or professional misconduct as those terms are defined at section 5 of the National Law.~~

Allegation 15 – [REDACTED]

Agreed Facts

170. Ms [REDACTED] was a patient of [REDACTED] from 22 May 2017 until 7 February 2018.
171. The Respondent knew or ought to have known that Ms [REDACTED] was a drug dependent person.
172. The Respondent kept inadequate records in relation to his treatment of Ms [REDACTED] in breach of Part 8.4 of the 2014 Code of Conduct.
173. Between 22 May 2017 and 31 August 2018, the Respondent prescribed Ms [REDACTED]:
- 173.1 a S8 controlled drugs (oxycodone and morphine) on 23 occasions without the approval of the Chief Executive pursuant to section 122(1) of the Drugs Regulation; and
- 173.2 a S4 restricted drugs of dependency (lorazepam) on seven occasions without the approval of the Chief Executive pursuant to section 213 of the Drugs Regulation.
174. The Respondent's conduct with respect to Allegation 15 amounts to unsatisfactory professional performance and/or unprofessional conduct as those terms are defined in section 5 of the National Law.
175. The Respondent's conduct with respect to Allegation 15, in combination with all of the admitted conduct in the referral in combination, and in the aggregate, amounts to professional misconduct within the meaning of section 5(a) or (b) of the National Law.

Facts and issues in dispute

176. ~~There are some facts and issues in the Board's Further Amended Referral which have not been agreed by the Respondent (as set out in the Further Amended Response) but the Respondent will not be contesting those facts and issues.~~

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177. ~~Whether the Respondent's conduct in relation to allegation 15 amounts to unsatisfactory performance, unprofessional conduct or professional misconduct as those terms are defined at section 5 of the National Law.~~

Allegation 16 – [REDACTED]

Agreed Facts

178. Mr [REDACTED] was a patient of [REDACTED] from 16 August 2017 onwards.
179. The Respondent kept inadequate records in relation to his treatment of Mr [REDACTED] and admits this conduct was in breach of Part 8.4 of the 2014 Code of Conduct.
180. Between 17 January 2018 and 31 August 2018, the Respondent prescribed Mr [REDACTED] Jurnista 16mg mane and Jurnista 8mn nocte (S8 controlled drugs) for over two months without providing a report in the approved form to the Chief Executive as required by section 120 of the Drugs Regulation.
181. The Respondent's conduct with respect to Allegation 16 amounts to unsatisfactory professional performance and/or unprofessional conduct as those terms are defined in section 5 of the National Law.
182. The Respondent's conduct with respect to Allegation 16, in combination with all of the admitted conduct in the referral in combination, and in the aggregate, amounts to professional misconduct within the meaning of section 5(a) or (b) of the National Law.

Facts and issues in dispute

183. ~~There are some facts and issues in the Board's Further Amended Referral which have not been agreed by the Respondent (as set out in the Further Amended Response) but the Respondent will not be contesting those facts and issues.~~
184. ~~Whether the Respondent's conduct in relation to allegation 16 amounts to unsatisfactory performance, unprofessional conduct or professional misconduct as those terms are defined at section 5 of the National Law.~~

Allegation 17 – [REDACTED]

Agreed Facts

185. Ms [REDACTED] was a patient of [REDACTED] from 10 August 2007 onwards.
186. The Respondent kept inadequate records in relation to his treatment of Ms [REDACTED] in breach of Part 8.4 of the 2014 Code of Conduct.
187. Between 4 January 2017 and 15 December 2018, the Respondent prescribed Ms [REDACTED] Palexia SR which is a S8 controlled drug for a period of over two months without providing a report in the approved form to the Chief Executive as required by section 120 of the Drugs Regulation.
188. The Respondent's conduct with respect to Allegation 17 amounts to unsatisfactory professional performance and/or unprofessional conduct as those terms are defined in section 5 of the National Law.

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189. The Respondent's conduct with respect to Allegation 17, in combination with all of the admitted conduct in the referral in combination, and in the aggregate, amounts to professional misconduct within the meaning of section 5(a) or (b) of the National Law.

Facts and issues in dispute

190. There are some facts and issues in the Board's Further Amended Referral which have not been agreed by the Respondent (as set out in the Further Amended Response) but the Respondent will not be contesting those facts and issues.
191. Whether the Respondent's conduct in relation to allegation 17 amounts to unsatisfactory performance, unprofessional conduct or professional misconduct as those terms are defined at section 5 of the National Law.

Allegation 18 – [REDACTED]

Agreed Facts

192. Mr [REDACTED] was a patient of [REDACTED] from 17 June 2002 onwards.
193. The Respondent kept inadequate records in relation to his treatment of Mr [REDACTED] in breach of Part 8.4 of the 2014 Code of Conduct.
194. Between 8 April 2017 and 31 August 2018, the Respondent prescribed Mr [REDACTED] Pallexia SR which is a S8 controlled drug for over two months without providing a report in the approved form to the Chief Executive as required by section 120 of the Drugs Regulation.
195. The Respondent's conduct with respect to Allegation 18 amounts to unsatisfactory professional performance and/or unprofessional conduct as those terms are defined in section 5 of the National Law.
196. The Respondent's conduct with respect to Allegation 18, in combination with all of the admitted conduct in the referral in combination, and in the aggregate, amounts to professional misconduct within the meaning of section 5(a) or (b) of the National Law.

Facts and issues in dispute

197. There are some facts and issues in the Board's Further Amended Referral which have not been agreed by the Respondent (as set out in the Further Amended Response) but the Respondent will not be contesting those facts and issues.
198. Whether the Respondent's conduct in relation to allegation 18 amounts to unsatisfactory performance, unprofessional conduct or professional misconduct as those terms are defined at section 5 of the National Law.

Allegation 19 – [REDACTED]

Agreed Facts

199. Ms [REDACTED] was a patient of [REDACTED] from 24 March 2001 onwards.
200. The Respondent kept inadequate records in relation to his treatment of Ms [REDACTED] in breach of Part 8.4 of the 2014 Code of Conduct.

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201. Between 11 February 2016 and 15 March 2017, the Respondent prescribed Ms [REDACTED] Palexia SR which is a S8 controlled drug for over two months without providing a report in the approved form to the Chief Executive as required by section 120 of the Drugs Regulation.
202. The Respondent's conduct with respect to Allegation 19 amounts to unsatisfactory professional performance and/or unprofessional conduct as those terms are defined in section 5 of the National Law.
203. The Respondent's conduct with respect to Allegation 19, in combination with all of the admitted conduct in the referral in combination, and in the aggregate, amounts to professional misconduct within the meaning of section 5(a) or (b) of the National Law.

Facts and issues in dispute

204. There are some facts and issues in the Board's Further Amended Referral which have not been agreed by the Respondent (as set out in the Further Amended Response) but the Respondent will not be contesting those facts and issues.
205. Whether the Respondent's conduct in relation to allegation 19 amounts to unsatisfactory performance, unprofessional conduct or professional misconduct as those terms are defined at section 5 of the National Law.

FINDINGS AS TO CONDUCT

206. The Parties agree that that the conduct which gives rise to Allegations 1 to 19, collectively and in the aggregate constitutes professional misconduct as defined at subparagraphs (a) and or (b) of the definition of that term in section 5 of the National Law.
207. The Parties are in dispute as to whether the conduct which gives rise to Allegations 1 to 19 constitutes professional misconduct as that term is defined at subparagraph (c) of the definition of that term in section 5 of the National Law.

DISCIPLINARY DETERMINATIONS

208. The Parties reserve their respective positions with respect to sanction pending receipt of further particulars and expert evidence.
209. The parties agree that the Tribunal should:
- 209.1 make a finding that the Respondent has engaged in professional misconduct pursuant to section 196(1)(b)(iii) of the National Law;
- 209.2 reprimand the Respondent pursuant to section 196(2)(a) of the National Law;
- 209.3 suspend the Respondent's registration for 6 months pursuant to section 196(2)(d) of the National Law;
- 209.4 impose the conditions attached at 'Annexure A', pursuant to section 196(2)(b) of the National Law;
- 209.5 impose a 12 month review period for the conditions, pursuant to section 196(3) of the National Law.

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209.6 order that Part 7, Division 11, Subdivision 2 of the National Law applies to the conditions.

Dated ~~31 May 0~~ of February 2023

Piper Alderman

Per:



Solicitors for the Complainant

Moray & Agnew

Per:



Solicitors for the Respondent

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Annexure A - Proposed Conditions

Supervision for prescribing of drugs of dependence and record-keeping

1. *The Practitioner must be supervised by another registered health practitioner (the supervisor) with respect to his prescribing of drugs of dependence and record keeping with respect to patients being prescribed drugs of dependence.*

For the purpose of this condition, 'drugs of dependence' are defined as:

Any monitored medicines, drugs of dependence or substance subject to misuse howsoever named or referred to, scheduled or otherwise regulated by law in any state or territory in which they may practise, including but not limited to those contained within Schedule 8 and Schedule 4 of the Uniform Schedule of Medicines and Poisons (the SUSMP) as amended from time to time and as published at <https://www.tga.gov.au/publication/poisons-standard-susmp>; and or pharmaceutical items containing any active ingredient listed that is a monitored medicine, drug of dependence or substances subject to misuse.

For the purposes of this condition, 'supervised' is defined as:

*The Practitioner must consult with the supervisor, who is to be accessible by telephone or other means of telecommunication and available to attend the workplace to observe and discuss the management of patients and/or the performance of the Practitioner with respect to his prescribing of drugs of dependence, when necessary and otherwise at **weekly** intervals for the first 6 months, progressing to **fortnightly** intervals thereafter.*

2. *Within 14 days of the notice of imposition of this condition, the Practitioner must, on the approved form (HPN10), nominate a primary supervisor and at least one alternate supervisor to be approved by the Board. Each of these supervisors shall be recognised by Ahpra as having specialist registration within general practice.*
3. *The Practitioner must ensure that each nomination is accompanied by an acknowledgement, on the approved form (HPNA10), from each nominated supervisor that they are willing to undertake the role of supervisor and are aware that Ahpra will seek reports from them.*
4. *If no approved supervisor is willing or able to provide the supervision required, the Practitioner must cease practice immediately and must not resume practice until a new supervisor has been nominated by the Practitioner and approved by the Board.*
5. *Within 14 days of the notice of the imposition of these conditions, the Practitioner is to provide to Ahpra, on the approved form (HP10) acknowledgement that Ahpra may:*
 - a. *obtain information from relevant authorities (such as but not limited to Medicare);*
 - b. *obtain information and/or a report from the senior person (Director of Medical Services, Practice Manager, Owner, Proprietor (senior person) at each place of practice on a quarterly basis; and*
 - c. *obtain a report from the approved supervisor on a monthly basis.*
6. *Within 21 days of the notice of the imposition of these conditions, the Practitioner is to provide to Ahpra, on the approved form (HPS10), acknowledgement from the senior person at each place of practice that Ahpra may seek reports from them.*

Education

7. *The Practitioner must undertake and successfully complete a program of education, approved by the Medical Board of Australia (Board) and including a reflective practice report, in relation to the following:*

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- a. *clinical record-keeping; and*
 - b. *prescribing of drugs of dependence.*
8. *Within 14 days of the notice of the imposition of these conditions, the Practitioner must, on the approved form (HPN24), nominate for approval by the Board an education course, assessment or program (the education) addressing the topics required. The Practitioner must ensure:*
- a. *the nomination includes a copy of the curriculum of the education; and*
 - b. *the education consists of a minimum of 2 hours for clinical record-keeping including:*
 - i. *clinical management including history taking, examination, diagnosis and treatment planning;*
 - ii. *prescribing; and*
 - iii. *coordination of care including referral for specialist review; and*
 - c. *the education consists of a minimum of 2 hours for prescribing drugs of dependence including:*
 - i. *the legislative framework for prescribing drugs of dependence;*
 - ii. *compliance with professional standards and approved clinical guidelines for prescribing drugs of dependence; and*
 - iii. *identifying patients with known or apparent drug dependence.*
9. *The Practitioner must complete the education within 6 months of the notice of the Board's approval of the education.*
10. *Within 21 days of the completion of the education, the Practitioner must provide to Ahpra:*
- a. *evidence of successful completion of the education; and*
 - b. *a reflective practice report demonstrating, to the satisfaction of the Board, that the Practitioner has reflected on the issues that gave rise to this condition and how the Practitioner has incorporated the lessons learnt in the education into the Practitioner's practice.*

General

11. *Within 21 days' notice of the imposition of these conditions the Practitioner must provide to Ahpra, on the approved form (HPC), the contact details of the senior person at each current place of practice. In providing this form, the Practitioner acknowledges that Ahpra will contact the senior person and provide them with a copy of the conditions on the Practitioner's registration or confirm that the senior person has received a copy of the conditions from the Practitioner. The practitioner will be required to provide the same form:*
- a. *within seven days of the commencement of practice at each subsequent place of practice; and*
 - b. *within seven days of each and every notice of any subsequent alteration of these conditions.*
12. *All costs associated with compliance with the conditions on their registration are at the Practitioner's own expense.*