



## **Nursing misconduct penalty reduced amidst exceptional mitigating circumstances**

**Date: Tuesday June 28, 2016**

A registered nurse who had started a relationship with a former patient admitted to allegations of professional misconduct brought by Nursing and Midwifery Board of Australia (NMBA). The NMBA sought to suspend him for 2 years, a penalty which would have financially and psychologically crippled our client. Against a backdrop of tragedy, we fought to see his misconduct penalty reduced to recognise his circumstances and his insight into his conduct. The Queensland Nurses Union supported their member.

Our client had been working as a registered nurse for 20 years, practicing mostly in mental health.

Over this time our client met, married, and separated from his wife, who suffered from significant mental health issues. Even following their separation, our client continued to care for her. In 2008 she tragically committed suicide in 2008, leaving behind our client and their young son. The effects of this period of care and grief were significant – our client was later diagnosed with chronic adjustment disorder with mixed anxiety and depressed mood, unresolved grief and chronic post-traumatic stress disorder as a result of the anguish he suffered.

It was against the backdrop of these tragic circumstances that our client was part of the mental health team providing nursing care to a patient in mid to late 2012. After periods of direct care, the patient sought out our client, commencing frequent contact between the two and the start of what our client agreed became an inappropriate personal relationship.

Around this time the patient was thrown out of home, becoming homeless. Suffering from depression and alcohol dependence, and with nowhere to go, the patient sought out our client's home, broke in, and was found unconscious with a bottle of pills next to her. The patient was hospitalised for a week, with our client ensuring that he was not rostered on during this admission. Despite feeling uncomfortable about their out-of-hospital contact, our client did not notify his employer the patient had been in touch.

Following discharge from hospital, the patient stayed with our client – on the couch – after telling him she had nowhere else to stay. Some months later, the patient and our client started a sexual relationship, and they eventually lived together. Their relationship continued until mid-September 2014.

While AHPRA were investigating the matter, our client made false statements to the investigation. He later volunteered corrections, apologising for having misled investigating officers. AHPRA focused on this dishonesty in arguing for firm sanctions and the application of conditions on our client's ability to practice.

While we agreed to all of the allegations, we argued that there were mitigating circumstances that should be taken into account by the NMBA when considering the sanction it was seeking from the Tribunal.

Our client's wife had suffered with alcohol and substance abuse, as had the patient. When considering the offending conduct, our client's Psychologist and Psychiatrist found that our client had considered a significant degree of countertransference, where the patient had "evoked a sense of his now deceased wife." The Psychologist and Psychiatrist went on to say that our client had "unknowingly and subconsciously thought that by rescuing the patient and keeping her safe he was somehow preventing the death of his wife."

We submitted that these were exceptional factors. Our client had suffered from chronic mental health disorders in the years leading up to his wife's death for over a decade, including the time period in question, and this had affected his judgment.

The NMBA relied on the case of [Psychology Board of Australia v Wakelin\[2014\] QCAT 516](#) to argue for a 2 year suspension, as well as the imposition of conditions, sanctions and a formal reprimand. We argued that our client's circumstances were distinguishable from *Wakelin*. In that case there had been a high degree of deception with the Board, with a sexual relationship commencing as soon as the treating relationship had ended.

Deputy President Judge Suzanne Sheridan agreed that *Wakelin*, and other similar cases, should be distinguished from the facts in this matter. Her Honour found that while grounds existed for taking disciplinary action, our client's insight and judgment was severely impaired following the tragic death of his wife. Her Honour held that our client's conduct had not been knowingly exploitative, and that the relationship had not caused any harm to the patient – in fact, the relationship had been loving and supportive.

That our client had, at his own initiative, taken part in an educational program on maintaining professional boundaries, and continued psychological counselling, was also significant. Our client's admissions, cooperation, and remorse all displayed a developed awareness and insight into his conduct.

Her Honour commented on the protective nature of disciplinary penalties, and the role that personal deterrence will play. Judge Sheridan held that there was no justification for suspension, agreeing with our client that he should continue psychological treatment for the next 12 months, and that a reprimand for that same length of time was an appropriate disciplining.

While our client did the wrong thing, his unique circumstances and this range of mitigating factors had not been considered by the NMBA. By challenging their proposed penalty, with the support of the QNU, we were able to fight for an appropriate result that

considered our client's circumstances and the context in which his misconduct had occurred.

If you're part of disciplinary proceedings and need representation or support through your matter, Hall Payne Lawyers are experts in employment law with over 25 years of experience in arguing against harsh penalties and regulatory overreach. For assistance, contact HPL Principal [Luke Forsyth](#) (Sydney) or [Talitha Burson](#), (Brisbane) available on [1800 659 114](#) or via the [contact form](#).

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