



## Nursing and Midwifery Board decision: no suspension of registration after serious criminal charge

Date: Monday January 11, 2021

Being charged with a serious criminal offence often results in a health practitioner being subject to immediate suspension of their registration, otherwise known as 'immediate action'. Hall Payne recently acted for a member of the Queensland Nurses and Midwives Union (QNMU) who had action proposed to have their registration immediately suspended due to a serious assault charge.

In proposing to suspend a practitioner's registration, the Nursing and Midwifery Board ("NMBA") often contend that it is in the public interest to take immediate action in relation to their registration, as:

1. the alleged offence may erode the intrinsic trust that the public has in the profession to provide care to patients; and
2. the practitioner's suitability to hold registration is unclear.

### Argument against suspension

#### Public interest argument

In opposing the public interest argument raised by the Board, we relied on the case of [\*Farschchi v Chinese Medical Board of Australia\*](#). In this case, it was found that there is a public interest in ensuring action is only taken when it is necessary to do so.

We argued that immediate action was not necessary as the circumstances surrounding the incident did not call in to question the practitioner's suitability to practice with integrity, truthfulness, dependability or compassion. Further, the public must see an application of the presumption of innocence being applied to the practitioner who, at this point, had not been found guilty of a

criminal offence.

## Public confidence argument

In relation to any question of whether public confidence in health practitioners generally is undermined by this case, we suggested that, as found in [\*CJE v Medical Board of Australia\*](#), the public would understand that allegations made against one individual practitioner are rare and that the profession as a whole should not be judged on those allegations.

## NMBA decision: no action taken

The Board considered Hall Payne's submission and decided not to take action in respect of the practitioner's registration.

This was an excellent result for the member, enabling them to continue to practise without any conditions on their registration.

## Do you need legal advice?

By seeking legal advice early, the member contributed to achieving a positive result.

If you are charged by police with an offence which is likely to impact on your professional registration, it is imperative you seek immediate advice from your Union or a lawyer experienced in disciplinary proceedings.

Most importantly do not respond to AHPRA (either verbally or in writing) until you have sought legal advice.

If you need advice or representation in relation to any type of disciplinary matter, including AHPRA matters, you should seek advice as soon as possible.

## Legal advice and assistance continues during COVID-19

We continue to provide our client services during the coronavirus outbreak.

Most of our teams have now returned to their respective offices with others remaining fully equipped to work remotely, where necessary.

## Get help from a health lawyer

You can contact us by phone or email to arrange your consultation; either face-to-face at one of our offices, by telephone or by videoconference consultation.

Phone: [1800 659 114](tel:1800659114)

Email: [general@hallpayne.com.au](mailto:general@hallpayne.com.au)

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