

## Health Insights

# NCAT overturned Medical Council's decision to suspend medical student's licence

### **Case: *Hyland v Medical Council of New South Wales* [2021] NSWCATOD 199**

The NSW Civil and Administrative Tribunal (“the Tribunal”) set aside the Medical Council of New South Wales’ (“the Council”) decision to suspend Mr Hyland’s registration as a medical student.

### **Background**

The Council considered that it was appropriate to suspend Mr Hyland’s registration “in the public interest”, under s 150(1)(a) of the *Health Practitioner Regulation National Law 2009* (NSW) (“the National Law”) following a hearing in August 2021. In arriving at its decision, the Council considered a number of factors, including that:

- Mr Hyland was charged with offences relating to property damage and domestic violence against his then partner on 12 May 2019 and 12 March 2021; and
- Mr Hyland had not provided written notice to the National Board of the charges within 7 days, as is required under s 130 of the National Law.

Notably, Mr Hyland had been found not guilty on the 2019 charges and has pleaded ‘not guilty’ to the 2021 charges, which are yet to be heard.

Following the Council’s decision, Mr Hyland appealed to the Tribunal to make a new decision on the matter, arguing that the criminal charges have no connection with his practice of medicine as a student practitioner and, consequently, there is no potential for harm and no risk to the health or safety of any person if he continues his studies. Mr Hyland’s appeal was allowed by way of right under s 159A of the National Law, which reads as follows:

*A student may appeal to the Tribunal against a decision of the Council for the health profession to issue an order—*

*(a) suspending the student’s registration; or*

*(b) imposing conditions on the student’s registration.*

*Note— An appeal under this section is an external appeal to the Tribunal for the purposes of the Civil and Administrative Tribunal Act 2013.*

*(3A) The appeal is to be dealt with by way of a new hearing and fresh evidence, or evidence in addition to or*

*in substitution for the evidence that was before the Council, may be given.*

*(4) On an appeal, the Tribunal may by order terminate, vary or confirm the order, as it thinks proper.*

## The Tribunal's Decision

The key question that was to be answered in this case was whether allowing Mr Hyland to continue to be registered, or to be registered with conditions, involved an 'unacceptable risk' to: (i) the protection of the health or safety of any person ("first limb"); or (ii) the public interest ("second limb"): s 150 of the National Law.

In relation to the first limb of s 150 of the National Law, the Council appeared to submit that the Tribunal should be satisfied that suspension was appropriate as follows:

1. There is an unacceptable risk that he will treat patients with a mental illness in a derogatory or disrespectful manner, as Mr Hyland had sent text messages in relation to his former partner's psychological state ("First Submission").
2. The text messages sent were a serious breach of trust, as it contained an excerpt from the former partner's psychologist's report ("Second Submission").
3. Mr Hyland has showed poor judgment, as he had videoed his former partner during an incident ("Third Submission").
4. Mr Hyland's personal life applies to his conduct as a student practitioner, as: (i) his friends and family trusted and looked to him for professional advice; and (ii) he has encountered victims of domestic violence in his clinical training as a student ("Fourth Submission").

The Tribunal rejected the First Submission on the basis that the messages were sent in the context of a dysfunctional personal relationship and no inference can be made to suggest Mr Hyland would communicate in such a manner with patients who have a mental illness. Similarly, on the Second Submission, it was found that the perceived breach of trust did not occur in a doctor-patient relationship and it could not be inferred that Mr Hyland would breach the trust of his patients.

On the Third and Fourth Submission, the Tribunal was unable to identify any harm that would be realised if Mr Hyland continued to be registered as a student.

The Tribunal, more than once, indicated that Mr Hyland would be under supervision while attending to patients as a student, implying that supervision plays an important role in protecting the health or safety of any person in relation to student practitioners generally.

With reference to the second limb of s 150 of the National Law, the Tribunal identified the need to maintain public confidence in health practitioners, and accepted that there is also a public interest in upholding the reputation of registered students. However, it was emphasised that where a student practitioner has been charged with a criminal offence, the 'public interest' encompasses upholding the right to a fair trial, including the presumption of innocence and the privilege against self-incrimination. The Tribunal took the position that, while a risk to the reputation of student practitioners was apparent, that risk did not amount to a degree that was 'unacceptable'. The salient factors in this conclusion appeared to be that Mr Hyland

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was acquitted of the 2019 charges, denied guilt of the 2021 charges and made consistent, previous representations to his general practitioner prior to any charges being made by the former partner.

Given neither the first or second limb of s 150 of the National Law was satisfied, no obligation to suspend, or impose conditions on, Mr Hyland's registration could be triggered.

## Comments

Mr Hyland's appeal is an important development for practitioners, as it demonstrates how criminal charges interact with both limbs of s 150 of the National Law. For the first limb, it appears that the alleged criminal conduct will be considered in its context and an assessment will be made as to whether the conduct is logically connected with, or transferrable to, the roles and responsibilities of a supervised student practitioner. For the second limb, this case reminds us that: (i) the degree of any reputational risk imposed on the profession by criminal charges must be so gross that it is 'unacceptable' in order for a s 150 action to be triggered; and (ii) the public interest extends to the student's right to a fair trial.

The full judgment can be accessed [here](#).

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