BEFORE THE HEALTH PRACTITIONERS DISCIPLINARY TRIBUNAL

HPDT NO: 856/Phys16/345P

UNDER the Health Practitioners Competence Assurance Act 2003 (“the Act”)

IN THE MATTER of a disciplinary charge laid against a health practitioner under Part 4 of the Act.

BETWEEN A PROFESSIONAL CONDUCT COMMITTEE appointed by the PHYSIOTHERAPY BOARD OF NEW ZEALAND Applicant

AND TANIA SUZANNE WILLIAMS Practitioner

HEARING held at Auckland on 10-11 August 2016

TRIBUNAL: Ms M J Dew (Chair)

Ms A Kinzett, Dr D Reid, Dr M Skinner, Ms S Stewart,

(Members)

Mss D Gainey (Executive Officer)

Ms J Kennedy (Stenographer)

APPEARANCES: Mr J Coates and Ms C Deans for the Professional Conduct Committee (the PCC)

Mr M Tolich for the Practitioner
Introduction

1. This is one of the first cases to come before the Tribunal dealing with a health practitioner’s professional boundaries with patients in a sports setting.

2. Ms Tania Suzanne Williams (“Ms Williams”) has been a registered physiotherapist since May 2013. She faces a charge of professional misconduct under s100 of the Health Practitioners Competence Assurance Act 2003 (“the Act”). Currently, Ms Williams works in a private physiotherapy practice in Auckland.

3. In March 2016, the Professional Conduct Committee of the Physiotherapy Board of New Zealand laid a Notice of Charge that during April and October 2014, Ms Williams entered into sexual and/or inappropriate relationships with two patients, or former patients, and by doing so she conducted herself in a manner that amounts to professional misconduct.

The charge

4. The particulars of the charge are as follows:

   1.0 That between, on or about, April and October 2014, while Ms Williams was engaged as the head physiotherapist for the Club (“the club”) and the Union (“the Unions”), she entered into a sexual relationship with a member of the Club and the Union, Mr R, whom she was treating as a patient.

   AND/OR

   2.0 That between, on or about, April and October 2014, while Ms Williams was engaged as the head physiotherapist for the Club and the Union, she entered into a sexual relationship with a member of the Club and the Union, Mr R, whom she had formerly treated as a patient.

   AND/OR

   3.0 That between, on or about, April and October 2014, while Ms Williams was engaged as the head physiotherapist for the Club and the Union, she entered into a sexual and/or inappropriate relationship with a member of the Club and the Union, Mr M, whom she was treating as a patient.
AND/OR

4.0 That between, on or about, April and October 2014, while Ms Williams was engaged as the head physiotherapist for the Club and the Union, she entered into a sexual and/or inappropriate relationship with a member of the Club and the Union, Mr M, whom she had formerly treated as a patient.

The conduct alleged above amounts to professional misconduct pursuant to section 100(1)(a) and/or (b) of the Act and particulars 1.0 to 4.0, either separately or cumulatively, are particulars of that professional misconduct.”

The hearing

5. The hearing proceeded on the basis of an Agreed Summary of Facts dated 15 July 2016, in which the practitioner admitted particulars 1 and 3 of the Charge. The practitioner also accepted that this conduct was sufficiently serious to amount to professional misconduct under the Act.

6. The parties provided an Agreed Bundle of Documents containing correspondence to the Physiotherapy Board from the complainants and from the practitioner’s counsel and other relevant documents relating to Ms Williams physiotherapy services provided to the Club (“the club”) and Union (“the Union”).

7. The PCC produced the following evidence, by consent:

   (a) The affidavit of Mr J dated 5 August 2016;

   (b) The affidavit of Mrs M dated 5 August 2016; and

   (c) The expert opinion of Dr Angela Cadogan dated 19 April 2016.

8. The practitioner gave evidence at the hearing and called two witnesses:

   (a) Mr N, Physiotherapist; and

   (b) Mr E, Physiotherapist.

The facts

9. The facts set out below are taken from the Agreed Summary of Facts and the documents produced in the Agreed Bundle.
10. Ms Williams was engaged as the physiotherapist for Club from April 2014 to August 2014. Subsequently, the practitioner was also engaged as the physiotherapist for the Union tournament from August 2014 to October 2014. Ms Williams did receive Accident Compensation Corporation payments for these services but did not receive any co-payment from either the club or Union.

*The Club (the club)*

11. The club is based in xx. It participates in the xx Union club competition, which begins every year in April and ends in mid-August. Mr John J (“Mr J”) was the president of the club. The club is a complainant in this proceeding. Mr J is also a complainant personally in this proceeding and is related to Mr J and Mrs M named below.

*The Union (the Union)*

12. The Union runs a separate rugby tournament in the xx region. Every year the Union tournament starts in mid-August and runs through to the end of October. The tournament takes place on Saturdays and multiple games take place at the same time. Mr J was also the president of the Union.

*Mr R (“Mr R”)*

13. Mr R (“Mr R”) is a rugby player. In 2014, he played in the premier team for the club. In June 2014, Mr R injured his ankle and calf and because of this he was unable to play for the club for a few games. Mr R later played in the Union tournament as from August 2014 for the entire tournament period. Ms Williams entered into a sexual relationship with Mr R between early May and early July 2014. Mr R is also complainant in this proceeding.

*Mr M (“Mr M”) and Mrs M (“Mrs M”)*

14. Mr M (“Mr M”) played rugby in the premiere team for the club in 2014. He was also player/coach in the Union tournament from August to early October 2014. In or about June 2014, Ms Williams entered into a personal relationship with Mr M, which had turned into a sexual relationship by late September/early October 2014. Mr M left the Union tournament in early October 2014.

15. Mr M’s marriage to Mrs M (“Mrs M”) ended in September 2014. Mr M is still [ ]. Mrs M is also a complainant in this proceeding.
Ms Williams' involvement with the club and Union

16. On 2 December 2013, Ms Williams emailed the club to indicate her interest in providing physiotherapy services. Ms Williams stated that she had worked with other clubs and “would be able to provide regular physio for your team”. She advised that her services were free under ACC. Ms Williams started her role as physiotherapist for the club in April 2014.

17. On 14 July 2014, Ms Williams emailed Mr J to express her interest in providing her services for the Union tournament. Ms Williams’ offer to provide physiotherapy services during the tournament was accepted by Mr J, on behalf of the Union, and she started in August 2014.

18. While Ms Williams was engaged by the club and the Union she provided good physiotherapy services to the rugby players. However, Ms Williams’ involvement as the physiotherapist for both the club and the Union ended abruptly on or about 10 October 2014, when the relationship with Mr M was discovered by Mr J.

The first relationship: Ms Williams’ relationship with Mr R

19. In April 2014, Ms Williams met Mr R when she was working as the physiotherapist for the club and he was playing for one of the club teams.

20. Ms Williams provided Mr R with physiotherapy services, including rubbing down his calves and hamstrings, before rugby games. Mr R’s injuries included a calf strain. She did not provide physiotherapy services to him before every game.

21. In early May 2014, Ms Williams called Mr R to talk about some of the problems that she was having with her relationship and asked him to come over to talk to her about it later in the week. Ms Williams wanted advice about how to work things out with her partner. Mr R agreed to go over to her house to have a chat. Later that week, on a Friday night, Mr R went over and when he arrived at her house Ms Williams provided Mr R with alcohol and food. Later in the evening they had sex.

22. Subsequently, Ms Williams and Mr R had sex at her house on five separate occasions. The sexual relationship was at all times consensual. On at least one occasion, Mr R
went round to Ms Williams’ house for physiotherapy treatment. After she had provided him with the physiotherapy they had sex. The last time Ms Williams had sex with Mr R was in July 2014.

23. In July 2014, Mr J heard rumours about Ms Williams’ relationship with Mr R and he approached them both, separately, with his concerns that physiotherapists entering into personal relationships with players was inappropriate and unprofessional. This was prior to Ms Williams entering into a sexual relationship with Mr M. Ms Williams avoided Mr R during the tournament while she was the physiotherapist for the event. Ms Williams did this because she was trying to be professional and because the former sexual relationship made it uncomfortable for her.

24. Ms Williams did not consult with any colleague or other member of the physiotherapy profession about the fact that she had developed a sexual relationship with Mr R. Ms Williams accepts that her relationship with Mr R is a breach of the ethical and professional standards expected of her as a registered physiotherapist.

The second relationship: Ms Williams’ relationship with Mr M

25. Ms Williams first met Mr M in April 2014 when she was working as the physiotherapist for the club and he was playing for one the club teams.

26. Mr M had problems with both of his knees and a bad right shoulder. Ms Williams strapped these before every rugby game. On at least two occasions, between April and September 2014, Mr M also received private physiotherapy from Ms Williams at [ ], which was paid for by ACC. Between June and September 2014, Ms Williams communicated regularly with Mr M through text messages. In addition, Ms Williams sometimes called Mr M on his cell phone. If Mrs M answered his cell phone, Ms Williams would end the call without talking.

27. By late September/early October 2014, Ms Williams and Mr M had entered into a sexual relationship. At this time, Ms Williams was the physiotherapist for the Union tournament and Mr M was a player/coach in the tournament. Ms Williams believed that the marriage of Mr M to Mrs M had ended when she entered into a sexual relationship with him.
28. In October 2014, Mr J terminated Ms Williams’ involvement with the club and the Union when her sexual relationship with Mr M came to light. Mr M also ceased to play and coach in the Union tournament at that time. When Ms Williams’ involvement with the Union tournament was terminated in October 2014, there was no physiotherapist immediately available to replace her.

29. Ms Williams accepts that her relationship with Mr M is also a breach of the ethical and professional standards expected of her as a physiotherapist.

Subsequent events

30. As from October 2014, Ms Williams continued to practise as a physiotherapist up until she gave birth to her third child in [ ]. During this period, Ms Williams took part in at least three supervision sessions with Mr E to discuss issues with her practice, as well as any difficulties she is facing with patients.

31. From at least June 2015, when Ms Williams was practising outside the [ ] clinic she volunteered to be accompanied by a physiotherapy student acting as a chaperone to avoid being in isolating situations with patients.

Impact of Ms Williams’ conduct

32. In October and November 2014, the complainants raised their written complaints about Ms Williams’ conduct with the Physiotherapy Board. As a result the Physiotherapy Board commenced an investigation and subsequently in 2016 the present charge was laid with the Tribunal.

Relevant Physiotherapy Codes of Conduct

33. There are several physiotherapists’ code of conduct documents that were in place at the time of these events in 2014:

(a) The Aotearoa New Zealand Physiotherapy Code of Ethics and Professional Conduct 2011 ("the Code of Ethics");

(b) The Sports Physiotherapy Code of Conduct 2013 ("Sports Code of Conduct"); and

34. The Code of Ethics provides that physiotherapists must:

(a) behave in a respectful manner towards their patients/clients as well as their whanau and family (1.2);

(b) not exploit any patient/client whether physically, sexually, emotionally, or financially. Sexual contact of any kind with patients/clients is unacceptable (2.9);

(c) establish and maintain appropriate professional boundaries with patients/clients and their whanau and families (2.10);

(d) feel free to refuse to treat a patient/client if they have good reason for doing so, and should inform the patient/client of alternative options of care, and where appropriate to another practitioner (4.5); and

(e) take particular care to uphold the values within this code when using electronic communication and social networking sites (10.2).

35. The Code sets minimum standards that all physiotherapists are obliged to achieve.

36. The Sports Code of Conduct provides a set of guidelines for professional behaviour expected of physiotherapists providing services in sports physiotherapy. The Code of Conduct again sets minimum standards, including:

(a) Relationships with Patients:

i. Rule 2(ii) – “Not exploit any patient/client whether physically, sexually, emotionally, or financially. Sexual contact of any kind with any patients/clients is unacceptable”.

ii. Rule 2(iii) – “Act in a considered and professional manner during all team social activities, especially where alcohol is consumed. Commentary: A sports physiotherapist is part of the team by virtue of their professional role. As a health professional within that team, the sports physiotherapist should consider how their individual actions in
a team social setting reflects on themselves and the physiotherapy profession, and impacts on future physiotherapy patient relationships and may endorse particular team behaviours. Insofar as a sports physiotherapist has a role in ensuring patient health and welfare, the abuse of any substances should be discouraged.”

(b) The definition of a Patient is provided in the Preamble to the Code as being: “A patient/client in this setting is the individual receiving the sports physiotherapy services, or, the group of people for whom the sports physiotherapist is contracted or otherwise engaged to provide sports physiotherapy services”

37. Finally, the Physiotherapy New Zealand Position Statement states:

(a) Rule 1: Physiotherapy New Zealand considers that a sexual relationship with a current patient is never acceptable, breaks professional boundaries and is unethical.

(b) Rule 2: Physiotherapists, like a number of other professionals, are involved in relationships in which there is a potential imbalance of power. The physiotherapist to patient relationship is not one of equality. In seeking assistance, guidance and treatment the patient is vulnerable. Sexual exploitation of the patient is an abuse of power. Because of the power imbalance, initiation by the patient and their consent is not considered a valid defence.

(c) Rule 4: Definition of a Patient: “A person should be considered to be a current patient until that person ceases to receive professional advice, treatment or support from the physiotherapists. The point at which she/he ceases to be a patient will vary according to the:

- Nature of the professional consultation.
- Length of the patient/physiotherapist professional relationship.
- Reason for seeking professional treatment.
- Degree of dependency involved in the professional relationship.
• Degree of knowledge and personal disclosure that has occurred during the therapeutic relationship."

(d) Rule 10: Signs that may indicate potential for breaking of sexual boundaries:
“Particular care must be taken to preserve the boundaries in the professional relationship which can be broken in an insidious way. Although the following actions are not necessarily transgressions, they are warning signals which should alert a physiotherapist that the boundaries are being blurred. They include:

• Extending or accepting personal social invitations – when working with a sports team you are often included in the team social events and it is important you remain aware of your professional role.

• Sharing of information not needed for the professional relationship e.g. cell phone numbers, access to personal Facebook pages.

• Failing to manage seductive advances by a patient in an appropriate professional manner.

• Giving inappropriate special status to the patient e.g. appointments at odd hours especially when other staff are unlikely to be present.

• Stating an attraction to the patient.

• Confiding in a patient about the physiotherapist’s personal problems.

• Offering to drive the patient and "see him/her in".

• Giving patient significant gifts, or receiving them.

• Not charging or billing for treatment.

• Sexualising the atmosphere by:
  - sexual talk, including sexual emails or texts
  - using sexual remarks to praise the patient”

(e) Rule 11: “Prohibited behaviour includes actions which inevitably break through professional boundaries. These include:
The physiotherapist acting on feelings of sexual attraction towards a patient.

Making any suggestion that a sexual relationship with the patient is part of treatment.

If you recognize your own behaviour in any of the above points or you feel attracted to a patient, ask for help and advice from a respected peer who can help you to decide the appropriate and ethical course of action. It may be appropriate to organize the transfer of the patients’ care to another physiotherapist.”

Expert opinion – Dr Angela Cadogan

38. The PCC produced a detailed written expert opinion from Dr Angela Cadogan dated 11 April 2016. This expert opinion was produced by consent.

39. Dr Cadogan is an experienced and senior sports physiotherapist with experience working for top level sports teams, including the NZ Women’s Cricket Team and the Ahmedabad Rockets ICL team. Dr Cadogan is also one of the authors of the Sports Physiotherapy Code of Conduct and is a lecturer on Professional Standards in Sports Physiotherapy.

40. The expert opinion addressed the typical role of a physiotherapist in a sports team setting, particularly in a rugby setting relevant to the present case. The opinion also addressed the role of a head physiotherapist at a sports tournament and the expected professional boundaries to be maintained by a physiotherapist both in a sports team and tournament settings.

41. Dr Cadogan provides a useful analysis of the differing workplace context for Sports Physiotherapy which warrants mention:

“The workplace context in Sports Physiotherapy is varied and differs from that of most other physiotherapy settings. While most physiotherapy services are carried out in a clinic or hospital setting, the ‘work-place’ for a sports physiotherapist varies widely and can include local and international training and competition venues, sports fields and grounds, sports high performance centres, hotels and various accommodation and transit facilities while travelling with teams.
The unique and varied context of Sports Physiotherapy places the physiotherapist in many informal professional and social situations that would not normally be encountered in the typical patient-physiotherapist relationship. This unique environment presents challenges to professional boundaries that do not exist in most other areas of physiotherapy practice. This necessitates a clear understanding and strict maintenance of professional boundaries in order to preserve the confidence and trust required to establish and maintain effective patient-physiotherapist relationships within the sporting environment.”

42. The reasons given by Dr Cadogan for the importance of maintaining professional boundaries are taken from the code of conduct and other professional standards documents. In summary they are:

(a) To preserve trust and confidence required for an effective therapeutic relationship;

(b) To avoid an abuse of power inherent in the power imbalance within a therapeutic relationship;

(c) To avoid the impairment of clinical judgment; and

(d) To uphold the integrity of the profession.

43. Dr Cadogan also provided her opinion on the definition of a “patient” in a sports team setting, relying on the definition provided in the Code of Conduct, she stated at page 15 of her opinion:

“Expert Opinion on the Definition of a “Patient” in the Sports Team/Tournament Context”

It is my expert opinion that in the context of a rugby team or tournament, all members of the group for which the physiotherapist’s services have been engaged should be considered as “patients”. The basis for this opinion follows:

• Compared with corporate or industrial settings, a rugby team is a comparatively small group. The physiotherapist is in regular contact with all
members of the team, often in confined environments such as team changing room over a period of approximately five to six months. The physiotherapist will therefore become acquainted with all members of the team as a direct result of the professional role, and will get to know many members of the team in a social and/or therapeutic context.”

• “While tournament situations typically involve larger numbers... the physiotherapist is part of the tournament by virtue of their professional role and has an obligation to uphold professional standards ... at all times for the duration of the tournament.”

• “The physiotherapist services are engaged to be available to provide a range of services that include but are not limited to the provision of one on one assessment and/or treatment other physiotherapy services include provision of advice.... regarding aspects of training, preparation, injury prevention.......the availability of the physiotherapist to provide such advice as required to all members of the team/tournament constitutes professional physiotherapy services delivery regardless of the necessity for physical contact with the recipient.

44. Dr Cadogan gave her opinion on whether it was a breach of Ms Williams’ professional and/or ethical obligations if she was not providing one-on-one physiotherapy to either male patient at the time she entered into a sexual relationship with each man, but she was still engaged as the physiotherapist for the team and/or tournament they were playing in. Her response was:

   In my opinion, this scenario represents a breach of the professional and ethical standards expected of a sports physiotherapist. In this scenario, both men are considered ‘patients’ by virtue of their inclusion in the ‘group’ for which the physiotherapist has been engaged to provide professional services ([the club or the Union]), irrespective of whether they had ever received direct one-on-one physiotherapy services. By definition Ms Williams therefore entered a sexual relationship with a ‘patient’.”

45. However, we note that Dr Cadogan did acknowledge that it will always be a matter for assessment as to the point at which a current patient ceases to be a patient. The point at which they cease to be a patient will vary depending on the circumstances according to
the nature of the professional consultation, length of professional relationship, reason for treatment, degree of dependence and degree of personal disclosure in the therapeutic relationship.¹

46. The Tribunal accepts the evidence of Dr Cadogan. There is a somewhat unique context to providing physiotherapy services to sports teams. It appears that the opportunity and risk for blurring professional and social boundaries is more pronounced in a sports team environment. Special care must therefore be taken by sports physiotherapists. The Sports Physiotherapy Code of Conduct is of particular importance to practitioners in this area.

The law relating to professional misconduct

47. Ms Williams is charged with professional misconduct under s100 of the Act, which provides:

“I00 Grounds on which health practitioner may be disciplined

(1) The Tribunal may make any 1 or more of the orders authorised by section 101 if, after conducting a hearing on a charge laid under s91 against a health practitioner, it makes 1 or more findings that –

(a) the practitioner has been guilty of professional misconduct because of any act or omission that, in the judgment of the Tribunal, amounts to malpractice or negligence in relation to the scope of practice in respect of which the practitioner was registered at the time the conduct occurred; or

(b) the practitioner has been guilty of professional misconduct because of any act or omission that, in the judgment of the Tribunal, has brought or is likely to bring discredit to the profession that the health practitioner practised at the time that the conduct occurred.”

¹ These factors are taken from the 2012 Position Statement, Rule 4.
48. The Tribunal and the Courts have considered the term “professional misconduct” under s100(1)(a) and (b) of the Act on numerous occasions. The Tribunal draws on the guidance now available in those cases.²

49. In Collie v Nursing Council, Gendall J states at paragraph [21]:

“Negligence or malpractice may or may not be sufficient to constitute professional misconduct and the guide must be standards applicable by competent, ethical and responsible practitioners and there must be behaviour which falls seriously short of that which is to be considered acceptable and not mere inadvertent error, oversight or for that matter carelessness.”

50. It is for the Tribunal to determine whether the conduct has or is likely to bring discredit on the physiotherapy profession under s.100(1)(b) of the Act. In Collie at [28], Gendall J discussed the meaning of this provision, under the previous legislation, and stated:

“To discredit is to bring harm to the repute or reputation of the profession. The standard must be an objective standard for the question to be asked by the Council being whether reasonable members of the public, informed and with the knowledge of all the factual circumstances, could reasonably conclude that the reputation and good-standing of the nursing profession was lowered by the behaviour of the nurse concerned.”

51. There is a well-established two stage test for determining professional misconduct set out in previous decisions of both this Tribunal and its predecessor.³ The two key steps involved in assessing what constitutes professional misconduct are:

(a) First, an objective analysis of whether the practitioner’s acts or omissions can reasonably be regarded by the Tribunal as constituting malpractice, negligence or otherwise bringing or likely to bring discredit on the profession; and

(b) Secondly, the Tribunal must be satisfied that the practitioner’s acts or omissions require a disciplinary sanction for the purposes of protection of the public or maintaining professional standards or punishing the practitioner.

² PPC v Nuttall, (8Med04/03P), Collie v Nursing Council of New Zealand, [2000] NZAR 74, Aladdin
52. The burden of proof in the present case is on the PCC. This means that it is for the PCC to establish that the practitioner is guilty of professional misconduct. It is for it to produce the evidence that establishes the facts on which the charge is based to the appropriate standard of proof.

53. The standard of proof is the civil standard of proof, that is proof which satisfies the Tribunal that on the balance of probabilities the particulars of the charge are more likely than not. The Tribunal must apply a degree of flexibility to the balance of probabilities taking into account the seriousness of the allegation, and the gravity of the consequences flowing from a particular finding.4

54. The Tribunal is also required to consider each particular independently and then cumulatively, in the context of determining whether the overall charge is established.5

Particular 1 – April to October 2014, sexual relationship with patient, Mr R

55. The Tribunal is satisfied that this particular is established. The agreed summary of facts establishes that during this period, Ms Williams was engaged as the head physiotherapist for the rugby club and for the Union tournament, respectively.

56. Ms Williams entered into the sexual relationship with Mr R during this period from early May to early July 2014. During the period of the sexual relationship, Mr R was both a “patient” as part of the rugby club team group Ms Williams was providing physiotherapy services to and in addition she was providing him with one on one treatment during this period.

Particular 3 – April to October 2014, inappropriate/sexual relationship with patient, Mr M.

57. The Tribunal is also satisfied that this particular is established. As from June 2014, Ms Williams had entered into an inappropriate personal relationship with Mr M. This developed into a sexual relationship from late September/October 2014 and [ ].

12/Den05/04 and 13/Den04/02D and Dale 20/Nur05/09D.

3 McKenzie v MPDT [2004] NZAR 47 at [71] and PCC v Nuttall (8Med04/03P)

4 Z v Complaints Assessment Committee [2009] 1 NZLR 1 and followed by this Tribunal in PCC v Karagiannis 181/Phar08/91P.

5 Duncan v Medical Practitioners Disciplinary Committee [1986] 1 NZLR 513.
58. During the period of the inappropriate relationship, Mr M had been a “patient” as part of the rugby club team and in one on one treatment sessions with Ms Williams. Once the sexual relationship developed, Mr M continued to be a “patient” both as a player at the tournament and with at least one private physiotherapy treatment.

59. Particulars 2 and 4 of the charge are alternative particulars, in the event that the two patients were found to be former patients. Given the finding that both men were current patients of Ms Williams at the time of the inappropriate relationships with them, these particulars 2 and 4 are not established.

Is a disciplinary sanction required?

60. The Tribunal is satisfied that the conduct established in both particulars 1 and 3, separately and cumulatively, require a disciplinary sanction. The sanction is required in order to meet the primary objectives of the Act; namely to protect the public and maintain appropriate professional standards for the physiotherapy profession. Ms Williams’ conduct in entering into sexual relationships with both patients is a clear and significant departure from acceptable professional standards.

61. It is an essential feature of the trust that is placed in members of the physiotherapy profession that they carry out their duties in a way that does not breach the ethical and clinical boundaries set for the profession. It is also clearly a matter of community expectation that such conduct amounts to malpractice and is a serious matter of discredit to the profession.

Penalty

62. The Tribunal, once satisfied the charge is established, must go on to consider what penalty may be appropriate under s101 of the Act. The penalties may include:

(a) Cancellation of registration;

(b) Suspension of registration for a period not exceeding 3 years;

(c) An order that the practitioner may only practise in accordance with any conditions as to employment, supervision or otherwise, such conditions not to be imposed for more than 3 years;
(d) An order that the health practitioner is censured;
(e) A fine not exceeding $30,000;
(f) An order that the practitioner pay part of all of the costs of the Tribunal and the PCC or the Director of Proceedings.

63. The Tribunal adopts the sentencing principles as contained in Roberts v Professional Conduct Committee in which Collins J identified the following eight factors as relevant whenever the Tribunal is determining an appropriate penalty. In particular, the Tribunal is bound to consider what penalty:

(a) most appropriately protects the public and deters others;
(b) facilitates the Tribunal’s important role in setting professional standards;
(c) punishes the practitioner;
(d) allows for the rehabilitation of the health practitioner;
(e) promotes consistency with penalties in similar cases;
(f) reflects the seriousness of the misconduct;
(g) is the least restrictive penalty appropriate in the circumstances; and
(h) looked at overall, is the penalty which is “fair, reasonable and proportionate in the circumstances.”

Penalty evidence

64. The practitioner and Mr N and Mr E provided evidence to the Tribunal on penalty.

65. The key aspects of the witnesses’ evidence is noted below:

(a) Mr N is a physiotherapist and director of [ ]. He graduated from AUT in 2013. He had studied at AUT with Ms Williams. Mr N also completed a clinical placement with Ms Williams at Middlemore Hospital and later was engaged by Ms Williams to assist with physiotherapy services for the club and at the Union

---

6 [2012] NZHC 3354 at [44]-[51]
tournament. They also worked together at a private physiotherapy practice, [ ] from February 2014 until March 2015. Since April 2016, they have worked together at [ ]. Mr N states that he considers Ms Williams to be a competent practitioner and he is willing to support her work despite this charge before the Tribunal.

(b) Mr E is a senior physiotherapist with [ ]. He graduated in 2008 and has since completed a Masters of Health at AUT in 2014. Mr E worked with Ms Williams from February 2014 to September 2015 at [ ]. He was able to confirm from his knowledge of her clients and practice during that time, that she was a competent practitioner. During June/July 2015, Ms Williams told Mr E about the relationship with Mr R but did not disclose the issues over the relationship with Mr M until just prior to the Tribunal hearing. Mr E stated that he had had several meetings with Ms Williams on the Code of Conduct and ethics to address professional boundary issues arising out of the relationship with Mr R. Mr E remains willing to provide supervision to Ms Williams.

66. Ms Williams gave evidence of her personal circumstances. Currently, she is a single mother to her three children. She works in private practice with [ ] and treats only female patients. Ms Williams has not worked for any male sports teams since February 2015. While, she did work at three other rugby tournaments after leaving the club and Union in October 2014, she worked with a male chaperone physiotherapist to avoid any repeat problems.

67. The practitioner acknowledged that her behaviour had been unacceptable and that she had breached professional boundaries with both patients. Ms Williams states that at the time she was unaware of the definition of a “patient” in a sports context and that she acted in a naïve and irresponsible manner.

68. In mitigation she stated that she was relatively inexperienced as a physiotherapist at the time and did not understand her obligations fully. Ms Williams referred to the consensual nature of the relationships and that she had found it difficult to maintain professional boundaries with the players as she was working in close proximity with them and became isolated from colleagues. Ms Williams also spoke of the harassment she experienced as a physiotherapist when working for the club. Ms Williams accepts that she should have spoken with colleagues and sought advice as feelings started to
develop for these two patients. The practitioner also referred to the supervision that she had sought from Mr E and from Mr N as part of her rehabilitation.

69. Ms Williams expressed her remorse for the hurt she had caused and in her evidence apologised to the complainants. Finally, Ms Williams referred to her limited financial means, which are not detailed in this decision. The Tribunal accept Ms Williams has limited financial means as she does not own her own home or have any savings.

Penalty submissions

70. The PCC submit that the following penalties should be imposed that:

(a) Ms Williams registration is suspended for not less than two years;

(b) Censure of the practitioner;

(c) Conditions are imposed for a period of two years after her return to practice, restricting her employment to a District Health Board or accredited group physiotherapy private practice setting and providing for supervision and ethics training; and

(d) A fine to be imposed on the practitioner.

71. The practitioner submitted that the appropriate penalty in this case was not to impose any period of suspension but to impose the conditions as sought by the PCC. The practitioner is willing to accept the conditions as sought. Mr Tolich for the practitioner submitted that Ms Williams was not in a position to pay a fine and any costs contribution would need to be made over time given her limited financial situation.

Comparable cases on penalty

72. The Tribunal was referred to a number of previous penalty cases determined by the Tribunal. In most cases, a sexual relationship with a current patient will be regarded as serious and cause for a substantial penalty. The range of penalties will of course vary according to the level of vulnerability of the patient, the abuse of power involved by the health practitioner and the risk to patient safety.
The following cases reflect the range of patient sexual relationship cases:

(a) *Singh v Director of Proceedings* [2014] NZHC 2848 – this case involved an appeal from a decision of the Tribunal where Dr Singh was found to have engaged in sexual conduct, including oral sex, with a patient. The High Court upheld the liability decision but amended the Tribunal’s decision on penalty from cancellation of registration to a suspension for two years.

Ellis J found that Dr Singh’s conduct was deliberate rather than negligent, and that he lacked insight and failed to take responsibility for his actions. However, the Court also found that Dr Singh practised in an area where services are badly needed and even a suspension of Dr Singh would leave a considerable gap. Ellis J was satisfied that public safety would be adequately protected by a lengthy suspension and publication of his name – albeit “by a very narrow margin”.

(b) *Singleton (398/Phys10/158P)* – this is the only published decision from the Tribunal, at the date of hearing, involving a physiotherapist entering into an inappropriate relationship with a current patient. Mr Singleton formed a relationship with an elderly patient that included correspondence of a sexual nature by text message, and providing counselling when he was not qualified to do so. The Tribunal did not find that any sexual activity actually occurred between Mr Singleton and the patient. The practitioner’s registration was cancelled as the Tribunal considered the misconduct was sufficiently serious to warrant this sanction.

(c) *Patel (59/Med06/36D)* – Dr Patel had a sexual relationship with a current patient whom he was treating for depression. He accepted the charge and the Tribunal suspended him for 2 years; fined him $10,000; censured and ordered him to pay 50% costs. In deciding not to cancel his registration, the Tribunal noted that Dr Patel did not evade the consequences of his actions; entered the earliest possible guilty plea; made efforts to address his conduct and voluntarily gave up practising medicine.

(c) *Gulliver (61/Nur06/35P)* – Mr Gulliver, a mental health nurse, entered into an intimate relationship with a mental health patient, which became sexual after the patient was discharged. The Tribunal noted the patient was “very
vulnerable” and it was “disturbing” that Mr Gulliver seemed to lack recognition that the relationship compromised the patient’s care. In mitigation, the Tribunal acknowledged Mr Gulliver’s guilty plea; that he had a mentor and supervisor, and that the relationship had occurred over a decade earlier with no professional breaches occurring since. Ultimately, the Tribunal cancelled his registration, fined him $500 and ordered him to pay 50% costs.

74. Since the current Tribunal hearing, there has also been a further Tribunal decision issued regarding a physiotherapist in a sexual relationship with a patient. The decision is *Mr N (838/Phys16/338D)* issued on 19 August 2016. The case involved an experienced male physiotherapist in private practice who became involved in a sexual relationship with a former patient. They had known each other for many years before the female became his patient. She had a shoulder injury and received nine sessions of treatment with the practitioner. At the end of the last treatment they exchanged text messages and later that evening started a consensual sexual relationship. The Tribunal concluded that the offending was not at the most serious end of offending principally because of the following factors:

(a) they had known each other previously through family and church connections;

(b) There was no evidence of impropriety during the clinical relationship; and

(c) The relationship was consensual and the practitioner had mistakenly considered it was appropriate to start the sexual relationship given the clinical treatment had concluded.

75. The Tribunal in that case ordered censure, a fine of $5,000 and conditions to be imposed on his practice together with 40% of the costs of the hearing.

76. Ultimately, this Tribunal must tailor the penalty required to the individual case before it, though mindful of the need to ensure some consistency with previous cases. We consider the present case sits in the range between suspension and censure. We do not consider this is a case that would warrant cancellation based on comparable cases.

**Tribunal consideration of penalty**

77. The Tribunal heard submissions from both parties as to the aggravating and mitigating features in this case.
78. The aggravating features in this case as determined by the Tribunal are:

(a) Ms Williams engaged in two inappropriate sexual relationships with patients spanning, collectively a lengthy period of time from May to October 2014. This was not a one off error of judgment but involved a sustained lack of professional judgment on Ms Williams’ part.

(b) The first relationship with Mr R was initiated by Ms Williams inviting him to her home. On later dates she again invited him to her home and provided him with physiotherapy treatment and alcohol before having sex. This is a serious misuse of her position as a physiotherapist and it should have been evident to her that this was breaching the professional boundaries that are set for all health practitioners.

(c) The second relationship took place despite the caution given to her by the President of the club Mr J in July 2014. Mr J had advised her that it was unprofessional behaviour and so by entering into the second relationship Ms Williams was deliberately acting in breach of her known professional obligations.

(d) Ms Williams’ conduct once discovered in October 2014, caused significant disruption for the Union tournament as Ms Williams left the tournament without the physiotherapy support it required.

(e) The misconduct also caused significant distress and disruption to the club membership and immediate families involved. The impact of her conduct has been evident from the complaints received from Mr J and Mrs M; and

(f) There is also evidence that Ms Williams was not forthright with the PCC once the investigation of her conduct commenced. In a letter from her counsel dated 25 September 2015, addressed to the PCC Ms Williams initially denied the sexual relationships occurred during her time with the club or the Union.

79. The Tribunal also takes into account the following mitigating factors:

(a) Ms Williams is otherwise a competent practitioner in a clinical sense. The witnesses spoke well of her ability and there is no complaint about the physiotherapy treatment services she provided to the club or Union.
(b) Since the complaints, Ms Williams has taken steps in her own rehabilitation in seeking a chaperone at later tournaments and now avoiding treatment of male patients in her current role. Ms Williams also sought out supervision with Mr E.

(c) Ms Williams has apologised to the complainants in this proceeding and acknowledged her fault in this proceeding.

(d) The Tribunal also recognises that Ms Williams did not, at the time of these events, have the experience or support that might have allowed her to better recognise the breach of boundaries. Ms Williams was at the time a solo mother, relatively recently graduated from training and working somewhat in isolation as a contractor to a private physiotherapy practice.

80. The Tribunal is also mindful of the fact that Ms Williams is one of the relatively small number of Maori physiotherapist health professionals working in New Zealand. It is in the interests of the profession as a whole, and the community more broadly, that Maori physiotherapists remain within the profession where possible.

81. After taking into account the seriousness of the charge, the aggravating and mitigating features and comparable cases, the Tribunal has determined that the appropriate and proportionate penalty overall is as follows:

(a) the registration of the practitioner is to be suspended for a period of 12 months;

(b) the practitioner will be censured to mark the disapproval of the professional misconduct; and

(c) conditions to be imposed for a period of three years, after Ms Williams resumes practice following the period of suspension. These conditions are designed to ensure that Ms Williams practices safely and with appropriate supervision following her period of suspension.

82. The details of the penalty are set out on the final pages of this decision. The Tribunal does not impose a fine in this case. The suspension of Ms Williams’ registration and her censure are sufficient penalty in this case given her limited financial means.
Costs

83. The costs incurred by the PCC are in excess of $60,000. This was based on a written schedule of costs produced for costs incurred up until 8 August 2016 of $52,026.98 together with additional costs incurred up to and including the hearing.

84. The schedule of estimated costs for the Tribunal, as produced at the hearing, are $22,938 excluding GST.

85. As is the usual practice of the Tribunal, it has used as a starting point that a health practitioner will generally be expected to contribute 50% of the actual and reasonable costs of the Tribunal and the Director of Proceedings. However, in the present case the Tribunal has determined that a discount is appropriate to reflect the fact that Ms Williams has provided some co-operation to the PCC and Tribunal by the Agreed Summary of Facts and her admission of the charge of professional misconduct. The Tribunal has also taken into account Ms Williams limited financial means and the fact her financial position will be further impacted by the period of suspension. In all the circumstances, the Tribunal considers the proper contribution to costs in this case should be 12% of the total costs of both the Tribunal and the PCC.

Name suppression

86. The PCC applied for permanent name suppression for the various complainants, the rugby club and the rugby union involved and the two patients in this proceeding. An application for suppression was also made in relation to the two Physiotherapy practices in which Ms Williams has worked. The final suppression application made was in relation to the current status of the relationship between Ms Williams and Mr M.

87. These various applications are not opposed by the practitioner. The Tribunal is satisfied that the suppression of the names and identifying features of these parties is desirable. There is no public interest factor that requires publication of their names. The Tribunal therefore grants permanent name suppression to these parties who are listed in the Orders of the Tribunal set out on the final pages of this decision.
The practitioner has also applied for permanent name suppression. The grounds on which this application are made are, in summary:

(a) To protect her three children, one of whom is disabled and her elderly mother who lives on the same property with her;

(b) All the relevant parties being the complainants are already aware of her misconduct and the complaints made against her to the PCC;

(c) Ms Williams believes that she is not a risk to the public, she is willing to undertake rehabilitation and would accept a condition not to provide services to male patients;

(d) Ms Williams will suffer distress and embarrassment if her name is published particularly with her local Marae.

The PCC oppose the practitioner’s application for name suppression on the grounds that there is a strong public interest in the openness and transparency of the disciplinary process. The PCC also argue that given the finding of professional misconduct that the public interest factors in support of publication become more compelling. Finally, the PCC submit that Ms Williams’ affidavit filed in support of her application for suppression does not reveal sufficiently compelling reasons that go beyond what is an expected consequence of the disciplinary process.

The Tribunal must take into account the important presumption of openness in judicial proceedings as set out in s95. The discretion given to the Tribunal to order non-publication must only be used in accordance with the guidance given under that section and in the case law.

When the Tribunal is considering an application to suppress the name of any person appearing before it, or whether parts of a hearing will be in private, it must consider whether it “is satisfied that it is desirable” to make such an order taking into account the following:

---

Coorey v PCC, AP 23/94, 14 September 1995
92. A useful summary of these interests has been provided by the Court in *Anderson v PCC*,\(^8\) in which Gendall J states:

“[36] Private interests will include the health interests of a practitioner, matters that may affect a family and their wellbeing, and rehabilitation. Correspondingly, interest such as protection of the public, maintenance of professional standards, both openness and ‘transparency’ and accountability of the disciplinary process, the basic value of freedom to receive and impart information, the public interest in knowing the identity of a practitioner found guilty of professional misconduct, the risk of other doctors’ reputations being affected by suspicion, are all factors to be weighed on the scales.

[37] Those factors were also referred to at some length in the Tribunal. Of course publication of a practitioner’s name is often seen by the practitioner to be punitive but its purpose is to protect and advance the public interest by ensuring that it is informed of the disciplinary process and of practitioners who may be guilty of malpractice or professional misconduct. It reflects also the principles of openness of such proceedings, and freedom to receive and impart information.”

93. The Tribunal also recognises that once a practitioner has been found guilty of professional misconduct, the person should expect that an order preventing publication will generally not be made. This is especially so where the charge is sufficiently serious to warrant striking off or suspension from practice.\(^9\) In *Tonga v Director of Proceedings*, Pankhurst J stated at [42]:

“[F]ollowing an adverse disciplinary finding more weighty factors are necessary before permanent suppression will be desirable. This, I think, follows from the protective nature of the jurisdiction. Once an adverse finding has been made, the probability must be that public interest considerations will require that the name of the

---

\(^8\) *Anderson v PCC* HC Wellington CIV 2008-485-1646, 14 November 2008

\(^9\) *B v B* HC 4/92Blanchard J at [99]
practitioner be published in the preponderance of cases. Thus, the statutory test of what is ‘desirable’ is necessarily flexible. Prior to the substantive hearing of the charges the balance in terms of what is desirable may incline in favour of the private interests of the practitioner. After the hearing, by which time the evidence is out and findings have been made, what is desirable may well be different, the more so where professional misconduct has been established.”

94. The Tribunal does acknowledge that there are some private interest factors in this case relating to Ms Williams children and her elderly mother. However, we did not consider these are out of the ordinary realm of cases in which there is unfortunately inevitable embarrassment caused to family as a result of an adverse disciplinary finding.

95. In this case there are a number of public interest factors to consider, which we do below:

(a) The public interest in knowing the name of the practitioner: In the present case, we consider there is much weight to be placed on this factor. The practitioner has now been found guilty of professional misconduct in relation to serious professional misconduct. One of the Tribunal’s primary roles is the protection of the public and maintaining professional standards. The public interest in knowing the name of the practitioner, for the benefit of any future patients or employers, remains material in this case.

(b) Accountability and transparency of the disciplinary process: This is an important factor in this case, as with others. The statutory presumption contained in s95 of the HPCA Act is that hearings will be in public unless ordered otherwise. A significant feature of the transparency of the process is the publication of the name of the practitioner found guilty of professional misconduct particularly in serious cases such as this.

(c) Freedom of speech: This is a factor that is to be considered as usual.

(d) Risk of unfairly impugning other physiotherapists: The Tribunal considers that this remains a risk in this case, if the name of the practitioner is not published. Other practitioners are at risk of being unfairly the subject of conjecture if the name of the practitioner is not published.
96. The Tribunal is not satisfied that name suppression for the practitioner is desirable in this case. We have not been satisfied that there are compelling private interests that override the public interest factors in this case. The Tribunal is therefore not willing to grant the practitioner’s application.

Orders of the Tribunal

97. The Orders of the Tribunal are as follows:

(a) The charge of professional misconduct laid against Ms Tania Williams under s100(1)(a) and (b) of the Health Practitioners Competence Assurance Act is established;

(b) Ms Williams’ registration as a health practitioner is suspended for a period of 12 months pursuant to s101(1)(b) of the Act. The period of suspension shall commence seven days from the date of this decision;

(c) Ms Williams is censured in accordance with s101(1)(d) of the Act;

(d) After re-commencing practice, following the period of suspension, the practitioner may only practise in the physiotherapy profession in accordance with the following conditions to be imposed for a period of three years, in accordance with s101(1)(c) of the Act:

   i. The practitioner will only be permitted to work as a physiotherapist for a District Health Board or an accredited group physiotherapy private practice, as approved by the Physiotherapy Board of New Zealand;

   ii. Any employment or engagement during the three year period by the practitioner as a physiotherapist is to be approved by the Physiotherapy Board;

   iii. The practitioner is to practise under professional supervision provided by a supervisor approved by the Physiotherapy Board. The supervisor to report to the Physiotherapy Board at intervals determined as appropriate by the Board. The costs of such supervision to be met by the practitioner;
iv. Ms Williams must not practise in a sole charge practitioner role or engage, employ or supervise other practitioners or students of physiotherapy including in a chaperone role;

v. Ms Williams must, within six months of resuming practice, complete a paper in ethics and professional boundaries, such as the Physiotherapists Certificate of Proficiency. The costs of the course to be met by the practitioner;

vi. The practitioner must inform any current or future employer of the Orders of this Tribunal.

(e) The practitioner is ordered to meet 12% of the costs of both the Tribunal and the PCC amounting to a total of to $9,952.56 to be paid as follows:

i. $2,752.56 in respect of the costs and disbursements of the Tribunal; and

ii. $7,200 in respect of the PCC costs and disbursements.

(f) Permanent suppression orders are made under s95 of the Act in respect of the complainants, patients and Physiotherapy practices that are referred to in the evidence, namely:

i. Mr R;

ii. Mr J;

iii. Mrs M;

iv. Mr M;

v. The Club;

vi. The Union;

vii. [ ];

viii. [ ]
(g) There will also be an order permanently suppressing the details of the current status of the relationship between Ms Williams and Mr M [ ].

(h) The Tribunal, subject to the suppression orders above, directs the Executive Officer:

- To publish this decision and a summary, on the Tribunal’s website;

- To request the Physiotherapists Board of New Zealand to publish either a summary of, or a reference to, the Tribunal’s decision in its principal professional publications to members, in either case including a reference to the Tribunal’s website so as to enable interested parties to access the decision.

98. The Tribunal also recommends that Ms William join Physiotherapy New Zealand so that she can benefit from the training and collegial support available through that organisation.

DATED at Auckland this 19th day of October 2016

MJ Dew, Chairperson
Health Practitioners Disciplinary Tribunal