NEW ZEALAND
HEALTH PRACTITIONERS
DISCIPLINARY TRIBUNAL
TARAIPUINARA WHAKATIKA KAIMAHI HAUORA

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**BEFORE THE HEALTH PRACTITIONERS DISCIPLINARY TRIBUNAL**

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| **HPDT NO:** | **1096/PHYS20/470P** |
| **UNDER** | the Health Practitioners Competence Assurance Act 2003 ("the Act") |
| **IN THE MATTER** | of a disciplinary charge laid against a health practitioner under Section 91 of the Act. |
| **BETWEEN** | **A PROFESSIONAL CONDUCT COMMITTEE appointed by the PHYSIOTHERAPY BOARD OF NEW ZEALAND** |
| | **Applicant** |
| **AND** | **MATTHEW EDWARD HYLLA**, registered physiotherapist of Auckland |
| | **Practitioner** |

**HEARING held via videoconference 19 May 2020**

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| **TRIBUNAL** | Ms A Douglass (Chair) |
| | Ms A Kinzett, Ms K Davie, Ms S Stewart, and Mr J Salesa (Members) |
| | Ms K Davies (Executive Officer) |
| **APPEARANCES** | Ms A Miller, counsel for the Professional Conduct Committee (PCC) |
| | No appearance by or for the practitioner |

## DECISION OF THE TRIBUNAL

**CONTENTS**

**Introduction**

[1] Mr Hylla has been registered as a physiotherapist since 2007. He faces one Charge of professional misconduct with four Particulars. It is alleged that from January 2014 to 31 March 2018 he conducted himself in an inappropriate and/or unprofessional manner with respect to ACC claims and the storage and retention of clinical records.

[2] From January 2014 until January 2016 Mr Hylla was employed by various physiotherapy practices in Auckland. From January 2016 to April 2018 he was the owner of Premier Physiotherapy Limited.

[3] Mr Hylla provided services to Accident Compensation Corporation (ACC) under a provider contract and the Accident Compensation (Liability to Pay or Contribute to a Cost of Treatment) Regulations 2003.

[4] On 9 March 2018, Mr Hylla submitted a request to the Physiotherapy Board of New Zealand (the Board) for cancellation of his registration. He advised the Board he did not wish to renew his Annual Practising Certificate. He has not been practising as a physiotherapist since.

[5] Mr Hylla also advised the Board about an investigation conducted by ACC. This involved billing ACC for sideline assessments and treatments for periods both prior to Mr Hylla leaving the country in 2014 and upon his return in 2015. "Sideline treatments" refer to treatments carried out by a physiotherapist on the sidelines of sportsgrounds and events.

[6] During the course of the initial investigation by ACC, Mr Hylla advised ACC he had failed to maintain the safety of his clinical records. He had destroyed the hand-written clinical records for the period 1 January 2014 to 31 January 2016 after they were water damaged and he believed them to have become a health hazard.

[7] Following notification from ACC of the results of the investigation to the Board, on 11 February 2020, a Professional Conduct Committee (PCC) appointed by the Board laid a Charge under the Health Practitioners Competence Assurance Act 2003 (the Act) before the Tribunal.

**The Charge**

[8] The Charge is laid pursuant to s 100(1)(a) of the Act, alleging that the practitioner's conduct amounts to malpractice and/or negligence in respect of his scope of practice, and pursuant to s 100(1)(b) of the Act as it is alleged that such conduct has or is likely to bring discredit to the profession.

[9] Minor amendments were made to the Charge and were consented to by Mr Hylla, in advance of the hearing. The particulars of the amended Charge are set out in the Schedule to this decision. [1]

[10] Mr Hylla has admitted Particulars 1, 3 and 4 of the Charge which relate to the overpayment of ACC claims and storage and retention of clinical records. He does not admit Particular 2 which concerns claims for treatments purported to have been provided by him whilst travelling to and from New Zealand between March 2014 and September 2016, when he was either leaving New Zealand on those dates; had just returned to New Zealand on those dates; or was overseas.

**The hearing**

[11] The hearing proceeded by way of videoconference before the Tribunal. The PCC was represented by counsel. Mr Hylla attended a pre-hearing conference by telephone, however he declined to attend the hearing and he was not represented by counsel.

[12] An order for interim name suppression of name and identifying details of the practitioner was made prior to the hearing.[2]

[13] At the conclusion of the hearing the Tribunal gave an indication of its decision on liability, penalty and permanent name suppression.

[14] We set out below the reasons for our decision and the orders so made.

**Evidence**

[15] An Agreed Summary of Facts and Admission of Liability (ASOF)[3] signed by Mr Hylla was produced to the Tribunal.

[16] The PCC produced an Agreed Bundle of Documents (ABOD)[4] which had been collated on an agreed basis with Mr Hylla canvassed at the pre-hearing conference. The Bundle included correspondence to and from ACC regarding the PCC's investigation including:

(a) Mr Hylla's travel history – PAX (passenger movement history) in and out of New Zealand at the material times alleged in the Charge;

(b) A statutory declaration from Mr Hylla dated 5 July 2018;

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1 Amended Charge dated 23 April 2020.

2 HPDT 1071/Phys 20/472P Order for interim suppression of name of practitioner and identifying details and Directions Conference dated 11 March 2020.

3 Document 2, Agreed Statement of Facts and Admission of Liability dated 21 April 2020.

4 Document 1, Agreed Bundle of Documents dated 24 April 2020.

(c) PCC correspondence regarding the investigation into the conduct of Mr Hylla, including correspondence with ACC;

(d) Correspondence from Mr Hylla to the Board following the PCC investigation;

(e) Aotearoa New Zealand Physiotherapy Board Code of Ethics and Professional Conduct with Commentary; and

(f) Position statement – Physiotherapy Health Records.

[17] Mr Hylla provided written submissions, an application for permanent name suppression and accompanying (unsworn) statements as to his personal and financial circumstances.

**Relevant law under the HPCA Act**

*Professional misconduct*

[18] Section 100 of the Act provides the grounds on which a health practitioner may be disciplined. The section provides that malpractice and/or negligence (s 100(1)(a)) and/or conduct likely to bring discredit to the profession can constitute professional misconduct (s 100(1)(b)).

[19] The Tribunal and the Courts have considered the term "professional misconduct" under s 100(1)(a) on many occasions. In *Collie v Nursing Council of New Zealand,*[5] Gendall J described negligence and malpractice as follows:

> 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.[6]

[20] "Malpractice" is defined as:

> Immoral, illegal or unethical conduct or neglect of professional duties. Any instance of improper professional conduct"[7] and, "*Law* Improper treatment or culpable neglect of a patient by a physician or of a client by a lawyer … 2 *gen* criminal or illegal action: wrongdoing, misconduct.[8]

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5 [2001] NZAR 74.

6 [2001] NZAR 74 at [21].

7 Collins English Dictionary (12th ed).

8 Shorter Oxford English Dictionary (1993 ed) as cited in *Dr E* 136/Med07/76D at [12] – [14].

[21] In *B v the Medical Council of New* Zealand,[9] a case decided under the previous legislation, a case decided under the previous legislation, the Court stated:

> The structure of the disciplinary processes set up by the Act, which rely in large part upon judgment by practitioner's peers, emphasises that the best guide to what is acceptable professional conduct is the standards applied by competent, ethical and responsible practitioners. But the inclusion of lay representatives in the disciplinary process and the right of appeal to this court indicates that usual professional practice, while significant, may not always be determinative: the reasonableness of the standards applied must ultimately be for the court to determine, taking into account all the circumstances including not only usual practice but also patient interests and community expectations, including the expectation that professional standards are not to be permitted to lag. The disciplinary process in part is one of setting standards.

[22] Under s 100(1)(b) of the Act, the Tribunal must also consider whether the alleged conduct has or is likely to bring discredit on the medical profession. In *Collie*,[10] Gendall J 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.

[23] At the forefront of the Tribunal's deliberations is that the primary purpose of its disciplinary powers is the protection of the public and by the maintenance of professional standards. There is also a punitive element, although it is accepted that punishment is of secondary importance.[11]

*Burden and standard of proof*

[24] The burden of proof is on the PCC.

[25] The appropriate standard of proof is the civil standard, that is, to the satisfaction of the Tribunal on the balance of probabilities, and on the evidence that the events alleged by the PCC are more likely than not to have occurred. The degree of satisfaction called for

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9 Noted [2005] 3 NZLR 810.

10 *Collie v Nursing Council of New Zealand* at [28].

11 *Katamat v PCC* [2012] NZHC 1633 at [53] and *Roberts v Professional Conduct Committee* [2012] NZHC 3354.

will vary according to the gravity of the allegations. The greater the gravity of the allegations, the stronger the evidence required to satisfy the burden.[12]

*Professional misconduct – the threshold test*

[26] There is a well-established two-stage test for determining professional misconduct and the threshold is "inevitably one of degree".[13] These two steps are:

(a) First, did the proven conduct fall short of the conduct expected of a reasonably competent health practitioner operating in that vocational area? This requires 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 to the profession; and

(b) Secondly, if so, whether the departure from acceptable standards has been significant enough to warrant a disciplinary sanction for the purposes of protecting the public by maintaining professional standards and/or punishing the health practitioner.

[27] The threshold for justifying a sanction has been described as "not unduly high", as the measure of seriousness beyond the mere fact that the conduct warrants sanction is a matter to be reflected on in penalty. As Moore J observed in *Johns v Director of Proceedings*[14]

> … given the wider range of conduct which might attract sanction in this jurisdiction the threshold should not set [sic] unduly high. It is a threshold to be reached with care having regard to the purposes of the Act and the implications for the practitioner.

**Tribunal's consideration of the Charge**

[28] The Tribunal has considered all of the evidence, including Mr Hylla's statements and email correspondence, and the submissions of counsel. Salient aspects of the evidence are referred to where relevant.

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12 *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1.

13 *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA), where the Court of Appeal endorsed the earlier statement of Elias J in *B v Medical Council* (High Court, Auckland 11/96, 8 July 1996) noted at [2005] 3 NZLR 810, as applied for example, in *Johns v Director of Proceedings* [2017] NZHC 2843.

14 [2017] NZHC 2843, Moore J at [82]–[83], concurring with Courtney J in *Martin v Director of Proceedings* [2010] NZAR 333 (HC).

[29] Even though the practitioner has admitted Particulars 1, 3 and 4, the Tribunal nonetheless must be satisfied that those admissions are appropriate, based on the evidence before us.

**Particular 1 – ACC claims**

[30] Particular 1 of the Charge relates to two periods of time between 1 January 2014 and 31 March 2018 where payment claims were made to ACC. The claims at issue are broken down into two sub-particulars during this period.

[31] Mr Hylla was practising as a physiotherapist on his own account in addition to the contract work he did for other practices at the time. The treatment of patients on the sideline consisted of injury assessment, questioning and testing, hands on therapies including mobilisation and manipulation, soft tissue release, massage, exercise prescriptions, patient education and rehabilitation exercises (and any necessary first aid of acute injuries). These sideline treatments were for an estimated duration of approximately 20 minutes per patient. Mr Hylla invoiced ACC for a 60 minute treatment per patient and received payment from ACC on that amount.[15]

[32] The first period of ACC claims for sideline treatments for sporting events was between 1 January 2014 and 31 January 2016 (sub-particular (1)(a)).

[33] During this first period, 100% of the total treatments carried out on Saturdays and Sundays related to sideline billing. Twenty per cent of the total treatments on Mondays, Wednesdays and Fridays related to sideline treatments and 40% of the total treatments on Tuesdays and Thursdays related to sideline treatments.

[34] The bulk of the billing was carried out in one process prior to Mr Hylla going overseas for 13 months from 28 July 2014. It is Mr Hylla's evidence that he only realised that he had billed ACC for the excess treatment time when he attended an interview with ACC on 10 April 2018.[16]

[35] The patient notes were handwritten during this period and were subsequently destroyed by Mr Hylla following water damage.[17]

[36] The overpayment from ACC for these sideline treatments during this first period was $38,070.21, and as acknowledged by Mr Hylla he received from ACC more than he was entitled to receive.[18]

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15 Statutory declaration dated 5 July 2018, ABOD, p 203.
16 Statutory declaration of Mr Hylla dated 5 July 2018, ABOD, p 204.
17 Agreed Summary of Facts para [24] and [27] – [28].
18 Annexure A to Mr Hylla's statutory declaration, para [9], ABOD, p 210.

[37] The second period of claims to ACC for sideline treatments was between 1 February 2016 and 31 March 2018 (sub-particular (1)(b)), after returning from overseas on 20 August 2015. The overpayment Mr Hylla received from ACC for this second time period was a total of $75,145.97 more than he was entitled to receive.[19]

[38] During this second period, Mr Hylla used the Gensolve electronic system for recording his claims. Mr Hylla admitted to ACC that in relation to the second period of time he knew he was overclaiming these treatments. He stated to ACC that he was:[20]

> …was fully aware of the process and the fact that I was billing ACC for 60 minute treatments and that I was being paid on that basis.

[39] Once again, the patients were treated at the sideline for a total of 20 minutes or under but were charged to ACC as standard one hour treatments.

[40] In relation to the second period of time, Mr Hylla acknowledged that he knew he was overclaiming his billing to ACC. He also admitted that the percentages of sideline treatments during the second period differed to the previous period. For example, the percentages given for the times on Tuesdays and Thursdays were the same but should have been lower as by that time his clinic location was closer to the club where he gave sideline treatments and some clients would've been seen in his clinic. He also reduced his hours after the birth of his daughter and didn't work evenings. [21]

[41] When asked at interview for ACC's investigation why he kept billing ACC for 60 minute treatments when he knew the sideline treatments were for 20 minutes or less he replied: [22]

> Honestly I don't know, I couldn't put it down to any reason. There are always financial pressures, I'm not going to make excuses.

[42] In relation to Particular 1(a), the Tribunal is satisfied that it was incumbent on Mr Hylla to take care when making claims to a third party funder, and to satisfy himself that the claims were commensurate with the work undertaken. His failure in this respect was negligent in a professional disciplinary sense. Mr Hylla's conduct was unethical, and involved clear neglect for his professional duties, and therefore amounts to malpractice.

[43] As to Sub-particular 1(b), the second period of over-billing was particularly egregious because Mr Hylla knowingly invoiced ACC for 60 minutes of treatment when the treatment provided was no longer than 20 minutes. This was an opportunity for

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19 Agreed Summary of Facts, para [17].
20 Statutory declaration dated 5 July 2018, para [14], ABOD, p 204.
21 Statutory declaration dated 5 July 2018, para [20] and [26]. ABOD, p 205.
22 Statutory declaration dated 5 July 2018, para [18], ABOD, p 205.

Mr Hylla to realise his initial mistake and to correct his system of billing for sideline treatments.

[44] The Tribunal finds that Mr Hylla's conduct was a significant departure from his professional obligations as set out in the Aotearoa New Zealand Physiotherapy Code of Ethics and Professional Conduct (Code of Ethics).[23] Principal 6.3 of the Code of Ethics provides:

> **Principal 6.3:** must act with honesty and integrity in all professional activities (including when interacting with: funders, employers, employees, insurers).
>
> **…**
>
> **Principal 6.6:** must ensure that financial remuneration is commensurate with the work performed.

[45] These obligations in the Code of Ethics are fundamental to the practice of physiotherapy.

[46] Mr Hylla's conduct in knowingly making false claims to ACC for financial gain was in breach of the Code of Ethics and was a serious neglect of his professional duties. These claims were not consistent with his professional and ethical obligation to act with honesty and integrity, and that he made claims to ACC for 60 minute sideline treatments when the treatment he had provided was no longer than 20 minutes.

[47] Particular 1 concerned the inappropriate overpayment under Mr Hylla's provider contract with ACC. Counsel for the PCC referred to a number of cases involving inappropriate funding claims to ACC amounting to professional misconduct.

[48] Mr Hylla's overbilling to ACC is similar conduct to that found in the disturbing pattern of recent cases brought by the PCC for the Physiotherapy Board.[24]

[49] In *Stiven,*[25] Mr Stiven was found guilty of professional misconduct for making ACC claims for treatment provided to family members and staff, and for failing to keep adequate records in relation to another patient. Mr Stiven admitted the charge. The Tribunal sounded a warning about the number of recent cases involving ACC billing by the physiotherapy profession:[26]

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23 ABOD page 258 and 259, Aotearoa New Zealand Physiotherapy Code of Ethics and Professional Conduct, October 2011, para 6.3.

24 *Evans* HPDT 1007/Phys18/433P); *Nonoa* HPDT 1013/Phys18/427P) and *Stiven* HPDT 1066/Phys 19/450P.

25 HPDT 1066/Phys19/450P.

26 HPDT *1066/*Phys19/450P at [54].

> … the Tribunal does wish to take this opportunity to record its concern that this is now the third case to have reached the Tribunal relating to ACC billing in the physiotherapy profession in the past two years. These cases must serve as a caution to the profession that the misuse of ACC treatment provider status is serious. It is a privilege extended to members of the health profession to operate as providers through ACC funded services. This system relies, in large part, on the honesty and integrity of health professionals who bill services to ACC.

[50] In respect of the first time period (sub-particular (1)(a)) Mr Hylla's professional misconduct could be regarded as unintentional however during the second time period (sub-particular (1)(b)) Mr Hylla was knowingly making false claims to ACC. Not only is this conduct negligent and malpractice but also as in these circumstances the reputation and good standing of the profession has been lowered by Mr Hylla's actions.

[51] The Tribunal finds that Particular 1, including sub-particulars (a) and (b) is established. Mr Hylla's conduct separately and cumulatively amounts to negligence and malpractice in the scope of his profession as a physiotherapist and has or is likely to bring discredit to his profession, such being professional misconduct pursuant to sections 100(1)(a) and 100 (1)(b) of the Act.

**Particular 2 – ACC claims while travelling and/or overseas**

[52] Mr Hylla does not admit Particular 2 of the Charge, namely that he made payment claims to ACC between March 2014 and September 2016 for treatments purported to have been provided by him when he was travelling overseas. It is alleged that he was either leaving New Zealand on those dates; had just returned to New Zealand on those dates; or was overseas.

[53] The PCC produced evidence of the PAX (Passenger Movement History) which shows Mr Hylla's movement from and to New Zealand at the material time. Matched against ACC's Schedules of Claim the PAX (Passenger Movement History) demonstrated that Mr Hylla was shown to be travelling or overseas in respect of all of these claims as set out in the seven sub-particulars(a)-(g).

[54] Mr Hylla acknowledged that he cannot provide evidence to confirm that treatment was in fact provided to patients on the dates set out in those sub-particulars.[27]

[55] One of Mr Hylla's explanations, was that on some of those dates he may have seen the patients and provided treatment, prior to his departure from New Zealand or following his arrival into New Zealand. This explanation is difficult to reconcile with the PAX (Passenger Movement History) which showed, for example,

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[27] Agreed Summary of Facts, para [22].

(a) Sub-particular (a) where ACC was invoiced for four treatments said to have been provided on 20 March 2014 when he had left New Zealand at or around 12.03am on that date.

(b) Sub-particular 2(c) where ACC was invoiced for eight treatments said to have been provided on 17 June 2014 when he left the country at 7am on that date; and

(c) Sub-particular 2(d) where ACC was invoiced for ten treatments said to have been provided on 21 June 2014 when he had arrived in New Zealand at or around 4.39pm on that date.

(d) Sub particular 2 (e) where ACC was invoiced for four treatments on 18 June 2014, four treatments on 19 June 2014, and 7 treatments on 20 June 2014 when he was out of New Zealand from 7.00am on 17 June 2014 until at or around 4.39pm on 21 June 2014.

[56] It is highly improbable that Mr Hylla provided so many treatments to patients at such odd times of the day before travelling or arriving back in New Zealand and impossible for him to provide treatments when he was not in New Zealand.

[57] The remaining sub-particulars of Particular 2 ((b), (f) and (g)) relate to invoices for treatments during the daytime and could have been practically undertaken. The Tribunal does not accept Mr Hylla's explanation as to what may have happened on those dates. He says that he may have seen the patients and provided treatment to them, however Mr Hylla was unable to provide the clinical records or an appointment diary to corroborate that the treatment was in fact provided to the patients on the dates in question.

[58] While overseas, Mr Hylla explained that he would arrange for locum cover and process ACC claims using his ACC provider number. Mr Hylla did not provide a statement from any of the locum providers to say that they had filled this role during the time he was overseas. In any event, the Tribunal was told that ACC requires the provider number to be specific to the individual and this number cannot be shared with other health professionals.[28]

[59] The Tribunal is satisfied that it is more likely than not that Mr Hylla made payment claims to ACC for treatments said to have been provided when they were not provided on the dates set out in sub particulars (a)-(g) inclusive of Particular 2. These claims to ACC were contrary to his professional and ethical obligations to act with honesty and integrity.

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[28] ACC Treatment Provider Handbook, October 2011, p 36. (And subsequent editions in 2015 and 2016.)

[60] Particular 2 is established as negligence and malpractice by Mr Hylla in the scope of his profession and as acts or conduct which bring discredit to his profession.

**Particular 3 – storage of clinical records**

[61] Particular 3 relates to the period between 1 January 2014 and 31 January 2016 in which Mr Hylla acknowledged that he did not comply with his ethical and legal obligation to ensure the secure storage of patient health records, in that he stored patient health records on a shelf and/or a cupboard in the lounge of his home.

[62] During this period of time Mr Hylla made handwritten clinical notes of patients he treated on the sideline. While he was overseas he stored his handwritten clinical notes in a storage facility. However, when he returned from travelling overseas Mr Hylla removed the clinical notes from the storage facility and stored them, together with his handwritten clinical notes up until 31 January 2016, in a cardboard box kept on the bottom shelf of a bookcase in the lounge of his home.

[63] In or around June 2016 these clinical records became water damaged following a water leak in an adjoining semi-detached unit. This affected the carpet and furniture in the home where Mr Hylla and his wife lived at the time. The areas by the water leak had become affected by mould and the handwritten clinical notes had become substantially covered with mould spores. Photographs were provided of this damage to the carpet in his home but no photos were provided of damage to the clinical notes that were stored on a shelf or in a cupboard.

[64] As a result of the mould, Mr Hylla became concerned about his health and that of his wife.[29] He admitted he destroyed all of his handwritten clinical records. He did not seek advice from anyone before destroying these records, and he did not retain any copy of these records for future reference.

[65] The Tribunal finds that Mr Hylla was in breach of his professional obligation under the Code of Ethics to respect the confidentiality, privacy and security of patient information, including ensuring that all patient records are stored securely.[30] In the commentary to the Code of Ethics it states:

> Examples of secure storage of patient/client records include: storing in a locked filing cabinet or in a locked office, or on a password protected computer in a locked office, or on a password protected storage device. Patient/client records must be disposed of in accordance with the law.

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29 Letter from Mr Hylla to Physiotherapy Board of New Zealand dated 15 February 2019, ABOD, p 9.

30 Code of Ethics, Principle 3.3, ABOD, p 255.

[66] Particular 3 is established as negligence and malpractice by Mr Hylla in the scope of his profession and as an act or conduct which bring discredit to his profession.

**Particular 4 – retention of patient records**

[67] In relation to Particular 4 the Tribunal is satisfied that Mr Hylla did not comply with his legal obligation to ensure the retention of patient health records for a minimum of 10 years. This requirement is set out in the Position Statement on Physiotherapy Records,[31] applying Regulation 5 and 6 of the Health (Retention of Health Information) Regulations 1996.

[68] Mr Hylla advised ACC he had failed to maintain the safety of his clinical records. He had destroyed the handwritten clinical records for the period 1 January 2014 - 31 January 2016 after they were water damaged and he believed them to have become a health hazard.

[69] As accepted by Mr Hylla, the Tribunal finds that by storing his handwritten clinical records on a shelf or in a cupboard in the lounge of his home he did not meet his professional obligations to ensure the secure storage of patient records. In addition, he also accepts that by destroying those records when they became water damaged in his home he was not acting in compliance with the legal obligation to retain all health records for a minimum of ten years from the date of the last patient consultation.

[70] The Tribunal finds that Mr Hylla was well aware of his professional obligations to ensure secure storage of patient records because he had during this period while overseas made arrangements for secure storage of his patient records.[32] Mr Hylla failed to then deal with the damage to the records by either taking photocopies of the damaged records and notifying the Board to mitigate the water damage. Photographs were taken of the damaged carpet but such photographs did not include or record the retrievable records.

[71] Particular 4 of the Charge is established as negligence and malpractice by Mr Hylla in the scope of his profession and as an act or conduct which brings discredit to his profession.

**Liability finding warranting disciplinary sanction**

[72] The Tribunal finds that the conduct alleged in each particular and sub-particular of the amended Charge either separately or cumulatively amounts to professional misconduct pursuant to s 100(1)(a) and s 100(1)(b) of the Act.

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31 Position statement on Physiotherapy Records, May 2016, ABOD, p 270.

32 Letter from ACC Provider Remedies Group to Registrar, Physiotherapy Board of New Zealand dated 11 February 2019, ABOD, p 8.

[73] By continuing to invoice ACC and to receive payments for 60 minute treatments when he knew the sideline treatments were for 20 minutes or less Mr Hylla was in breach of his obligations to ACC which relies heavily on the trustworthiness of a physiotherapist that claims for treatment funding are made accurately and honestly. Mr Hylla also conducted himself in an unprofessional manner by failing to comply with his legal obligation to ensure secure storage and retention of patient health records.

[74] Mr Hylla's conduct is not mere inadvertent error or oversight. This is negligence and malpractice and is conduct which has brought or is likely to bring, discredit to the physiotherapy profession. It falls seriously short of acceptable conduct by a health practitioner.

[75] Mr Hylla's conduct will have a negative impact on the trust and confidence which the public is entitled to have in the practitioner, and the physiotherapy profession as a whole, and falls below the standard expected of a physiotherapist as set out in the profession's Code of Ethics.[33]

[76] The Tribunal has no doubt that Mr Hylla's conduct is a significant departure from acceptable professional standards and his conduct is sufficiently serious to justify a disciplinary sanction.

**Penalty**

*Principles*

[77] Having determined that the Charge of professional misconduct is established against Mr Hylla the Tribunal turns to address the question of penalty.

[78] The available penalties under s 101(1) of the Act are: cancellation of registration; suspension for a period not exceeding three years; a fine not exceeding $30,000, imposition of conditions on practise for a period not exceeding three years; and censure.[34]

[79] The Tribunal's role is to determine the appropriate penalty, given the nature of the conduct, to ensure that both the public interest and the integrity of the profession are maintained. The principles for imposition of a penalty are well established. In *Roberts v PCC,* Collins J set out the relevant principles and a summary is as follows:[35]

(a) The first consideration requires the Tribunal to assess the penalty that most appropriately protects the public.

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33 ABOD, p 243.

34 Health Practitioners Competence Assurance Act 2003, s 101(1).

35 [2012] NZHC 3354 per Collins J at [44]-[51].

(b) The Tribunal must be mindful of the fact that it plays an important role in setting professional standards.

(c) The penalties imposed by the Tribunal may have a punitive function, although protection of the public and setting professional standards are the most important factors.

(d) Where appropriate, the Tribunal must give consideration to rehabilitating health professionals.

(e) The Tribunal should strive to ensure that any penalty it imposes is comparable to other penalties imposed in similar circumstances.

(f) The Tribunal must assess the health professional's behaviour against the spectrum of the sentencing options available.

(g) The Tribunal should endeavour to impose the penalty that is the least restrictive that can reasonably be imposed in the circumstances.

(h) The Tribunal must assess whether the penalty imposed is fair, reasonable and proportionate in the circumstances.

[80] In *A v Professional Conduct Committee*,[36] the Court discussed the range of sanctions available to the Tribunal, particularly cancellation and suspension. The Court observed that four points could be expressly, and a fifth impliedly, derived from the authorities:[37]

> [81] First, the primary purpose of cancelling or suspending registration is to protect the public, but that 'inevitably imports some punitive element'. Secondly, to cancel is more punitive than to suspend and the choice between the two turns on what is proportionate. Thirdly, to suspend implies the conclusion that cancellation would have been disproportionate. Fourthly, suspension is most apt where there is 'some condition affecting the practitioner's fitness to practise which may or may not be amendable to cure'. Fifthly, and perhaps only implicitly, suspension ought not to be imposed simply to punish.

[81] In *Katamat v Professional Conduct Committee,*[38] the High Court confirmed that the primary factor in determining a penalty will be what penalty is required to protect the public and to deter similar conduct. The overall decision is ultimately one involving an exercise of discretion.

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36 *A v Professional Conduct Committee*[2008] NZHC 1387.

37 [2008] NZHC 1387 per Keane J at [81]-[82].

38 [2012] NZHC 1633 Williams J at [53].

*Submissions*

[82] The PCC submitted that any penalty imposed must not only reflect the seriousness of Mr Hylla's misconduct but it also must send a clear message to the profession. The level of offending against ACC makes cancellation an available penalty, in conjunction with an order for censure and costs. Alternatively, if the Tribunal is not minded to cancel Mr Hylla's registration, the PCC seeks a period of suspension (followed by conditions), a fine; censure; and costs.

[83] The PCC submitted the following aggravating factors:

(a) Mr Hylla has abused his position of trust as an ACC treatment provider by claiming for funding to which he was not entitled;

(b) The period of time over which the offending occurred (4 years) including the repetitive – and deliberate – nature of some of Mr Hylla's conduct with respect to claims made over the period in question; and

(c) The related inadequacies in secure storage of clinical records and destruction of such records.

[84] In mitigation, the PCC acknowledged that Mr Hylla had cooperated with ACC's investigation and admitted his wrongdoing; he has agreed to repay ACC a little over $99,000, and Mr Hylla has cooperated with the PCC throughout its investigation. He has admitted three of the Particulars of the Charge and agreed to a Summary of Facts.

[85] Mr Hylla provided a written statement to the Tribunal for this disciplinary hearing confirming that he had no further statements regarding the investigation or the findings of both ACC and PCC's investigations.[39]

[86] Mr Hylla had previously submitted all responses during and after these processes and he has been cooperative throughout its entirety.

[87] Mr Hylla stated that the disciplinary proceedings had taken a mental and emotional toll on him and has been of significant detriment to his mental health. It is for this reason that he did not wish to appear before the Tribunal in person.

[88] Mr Hylla has been remorseful in respect of his conduct. As early as July 2018 when he first made a statutory declaration to ACC Mr Hylla stated:

> I am deeply regretful of my actions regarding the above declaration. I would like to stress that there was no intention to deceive prior to my going overseas in July

[39] Document No. 5 Statement to the HPDT by Matthew Hylla dated 8 May 2020.

> 2014 whilst I was doing the bulk manual billing. I am extremely sorry for my foolish decision-making upon my return.
>
> I am very willing to repay the entire sum that is owing, and will be in discussion with the relevant party. … I would also like to stress that my return to study and discontinuation of Physiotherapy is not in response to this investigation. The change was already in the making and decided soon after my daughter was born.[40]

[89] In Mr Hylla's recent statement to the Tribunal he said:

> I am deeply regretful and sorry for my actions. I regret that these actions sullied the reputation of the Physiotherapy profession. With regards to the punitive measures that have been proposed by the PCC in their submission to the HPDT, I would agree to this. I do not want to contest and cause any prolonging of these proceedings.[41]

[90] In March 2018 Mr Hylla requested that the Board cancel his registration. In doing so, Mr Hylla advised that he was under investigation by ACC. In the declaration to ACC and in his advice to the Board he also indicated that he was undertaking vocational training and did not plan to return to the physiotherapy profession.

[91] On 12 July 2018 Mr Hylla emailed the Board to notify it about ACC's investigation stating that the billings had been made by him personally and had nothing to do with any of the clinics for which he had been working with during the relevant period. In that email Mr Hylla advised that:[42]

> I have not renewed my Annual Practising Certificate, and do not intend to do so as I am now in the process of a new career path. I did inform the Board of this back in March 2018. I have not been practising physiotherapy since the elapse of my APC. Please note, this decision to change career was made prior to the start of the investigation, and is not related to it whatsoever.

[92] The Tribunal was also informed that ACC had not formally decided to not prosecute Mr Hylla. The rationale for not prosecuting was that Mr Hylla was no longer practising as a physiotherapist reducing the risk of harm and negating the public interest to prosecute.[43]

[93] Mr Hylla advised that the sideline treatments that he had been billing were separate to the part-time positions that he held and was in circumstances where he was effectively

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40 Statutory declaration of Mr Hylla dated 5 July 2018, ABOD, p 207.
41 Statement to the HPDT by Matthew Hylla dated 8 May 2020.
42 Agreed Summary of Facts and Admission of Liability, p 10.
43 Letter from ACC to PCC dated 25 June 2019, ABOD, p 214.

working for himself as a sole provider. These treatments were regarding various sports clubs that he had been working with where he would assess and treat patients in a dedicated separate "physio office" within the club rooms and venues.[44]

[94] Although Mr Hylla has accepted the penalties proposed by the PCC the Tribunal must nonetheless consider imposing a just and proportionate penalty in relation to the Charge as established.

*Comparable cases*

[95] The Tribunal has taken into account the cases referred to by the PCC, particularly those that concern overbilling ACC by phsyiotherapists. While each case turns on its facts these cases demonstrate the range of penalties imposed in similar circumstances.

[96] In *Evans*[45], Mr Evans was found guilty of professional misconduct in relation to his ACC billing practises including making 251 claims in excess of 12 hours in one day; claims for two treatments to the same patient on the same day, under different ACC numbers; and for claiming ACC funded treatment for family members. Mr Evans admitted the charge, and the Tribunal noted that:[46]

> … invoicing ACC for more treatment time than provided … amounts to professional misconduct. It fell well short of the conduct expected of a reasonably competent health practitioner practising as a physiotherapist as a registered ACC provider.

[97] The Tribunal censured the physiotherapist, suspended his registration for a period of two months; imposed conditions on resumption of practice and fined him $5,000. The Tribunal ordered that the physiotherapist pay a contribution of $33,738 towards the costs of the Tribunal and the PCC.

[98] In *Nonoa,*[47] Mr Nonoa was found guilty of professional misconduct that amounted to negligence, malpractice and brought discredit to the profession, for invoicing services to ACC under another provider's name when those services were not provided by either practitioner; for invoicing ACC for treatment provided to family members when there were no exceptional circumstances and without independent verification; and failing to keep accurate and/or adequate patient records.

[99] The Tribunal imposed conditions for two years, imposed a fine of $5,000, censured Mr Nonoa and ordered him to pay 15% of costs. The Tribunal declined to impose a

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44 Letter from Mr Hylla to PCC dated 8 May 2019, ABOD, p 211.
45 HPDT 1039/Phys18/433P.
46 HPDT 1039/Phys18/433P at [33].
47 HPDT 1013/Phys18/427P.

period of suspension as this penalty is generally reserved for those cases in which there has been a deliberate intention to defraud and gain financial advantage.[48]

[100] In *Stiven*[49] the Tribunal censured Mr Stiven, fined him $2,500 and imposed conditions that he practise under supervision, with a focus on ethics, funding obligations, and record keeping, for a period of 12 months. Mr Stiven was also ordered to contribute 30% towards costs (approximately $30,000).

[101] Counsel for the PCC also submitted that there are a number of "conviction reflecting adversely" cases pursuant to s 100(1)(c) of the Act which are a useful comparator where there has been similar misconduct, albeit that it has resulted in a conviction where the practitioner has already been punished by the criminal justice system.

[102] By way of example, in *Kenny*[50] a chiropractor had his registration cancelled after being convicted (for the second time) for submitting false treatment injury claim forms to ACC and claiming for treatments he did not provide totalling $2,282.72. The Tribunal found that Dr Kenny's conduct was deliberate and premeditated and further ordered conditions that needed to be met before Dr Kenny could be restored to the register and conditions that would be in place for two years after he was restored to the register. It censured him and ordered he pay costs.

[103] Some of these "conviction reflecting adversely" cases have resulted in cancellation or significant periods of suspension from practice.[51] In those "conviction reflecting adversely" cases a fine may not be imposed.[52] Emphasis is usually placed on the prospects of the practitioner for rehabilitation within the profession.

*Tribunal's decision on penalty*

[104] In the normal course the professional misconduct by Mr Hylla, although serious, would not necessarily warrant cancellation of his registration. Cancellation is an available penalty and does not prevent the practitioner from reapplying for registration at some point in the future albeit subject to conditions that may be imposed under s 102 of the Act.

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48 HPDT 1013/Phys18/427P at [81].

49 HPDT 1066/Phys/19/450P.

50 HPDT 990/Chiro18/421P.

51 See for example *Palmer* HPDT 96/Phys06/43P, (suspension for 9 months, censure and costs); *Marchand* HPDT 280/Med09/133P, (suspension for 9 months, conditions, censure and costs); and *Chiew* HPDT 180/Phar08/96P, (fraudulent claims with reparation in the sum of $220,000; suspension for 9 months, conditions, censure and costs).

52 HPCA Act, s 101(2).

[105] One of the principle considerations whether to order cancellation of registration is whether there is a lesser penalty that would suffice.[53]

[106] In *Houlding*[54] Mr Houlding was found to have conducted himself in an inappropriate and unprofessional manner by failing to keep patient records in respect of 74 patients. In deciding to order cancellation of Mr Houlding's registration the Tribunal took into account that the lesser penalty of suspension was not open to the Tribunal because of Mr Houlding's stated retirement from practice and intention not to practise again. In those circumstances, suspension would be meaningless. Mr Houlding was aged 71 and had retired from practice. Likewise any considered order for conditions on his practice would be meaningless given that he was not intending to practise any longer. Nor did the Tribunal consider that the options of fine and censure would be adequate to reflect its concern about the level of offending.[55]

[107] In addition to cancellation the Tribunal, censured Mr Houlding and it considered in that case there should be some financial penalty and imposed a fine of $5,000. He was also ordered to pay costs of $27,000.

[108] The Tribunal finds that cancellation of Mr Hylla's registration is an appropriate penalty in this case. This sends a strong message to Mr Hylla and the profession about the seriousness of the offending that occurred and the dishonesty involved in relation to the later ACC claims. There were significant sums of money involved and while Mr Hylla has agreed to repay nearly all of the money wrongly claimed there has been a serious breach by Mr Hylla of his professional and ethical obligations.

[109] Mr Hylla has already previously sought to have his name removed from the Register and he no longer intends to practise as a physiotherapist. If suspension, a less restrictive penalty, were to be imposed it would likely have no practical effect as Mr Hylla is no longer working in the profession and does not intend to return to it. With cancellation, should he ever consider returning to the profession then he may reapply for registration with the Board. The Tribunal considers it would be more appropriate for the Board to consider whether Mr Hylla is fit to practise in the profession and any appropriate conditions that may be imposed at the time should he seek to re-enter the physiotherapy profession.

[110] As demonstrated in some of the similar cases, suspension with conditions would be imposed in circumstances if there is a likelihood of rehabilitation and an intention to support practitioners who wish to maintain their professional practice.

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53 *Roberts v PCC* [2012] NZHC 3354.

54 HPDT 1061/Phys19/461P.

55 *Houlding* HPDT 1061/Phys19/461P at [89]-[90].

[111] On the basis that cancellation is the most serious of penalties available to the Tribunal, the Tribunal considers a proportionate approach is not to impose a fine.

[112] Mr Hylla will be censured to mark the profession's condemnation of the seriousness of his conduct and the breach of professional standards.

**Costs**

[113] The starting point is a 50% contribution to costs of the PCC and the Tribunal's costs which can be reduced or increased depending on the circumstances.[56]

[114] The PCC investigation and prosecution costs were estimated at $29,723.25.[57]

[115] The Tribunal's estimate of costs is $16,706.80.[58] The total costs estimated therefore are approximately $46,000.

[116] The PCC submitted that there was no justification for costs to be less than the 50% starting point.

[117] The justification for costs awards lies in the unfairness of requiring the profession as a whole to bear the full cost of professional disciplinary proceedings. In *PCC of the Physiotherapy Board v Chum*[59] the PCC referred to the fact that the disciplinary levy payable by all physiotherapy practitioners had increased some 350% with a strong feeling amongst members that professionals who comply should not be required to subsidise the practitioners who breach their obligations and cause the Physiotherapy Board to incur additional costs.

[118] As the Tribunal acknowledged in *Chum*,[60]

> …in general terms a health practitioner should only be ordered to pay by [sic] 50% of the actual and reasonable costs incurred (including the costs of the Tribunal); and that percentage can be increased or decreased in any individual case appropriate, particularly taking into account the means of the practitioner to the extent these are known.

[119] Mr Hylla provided an unsworn statement of his financial means. This showed his outgoings included mortgage payments, student loan and the ACC repayments. To pay off the majority of the repayments to ACC he has borrowed against his mortgage to

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56 *Cooray v Preliminary Proceedings Committee* (unreported) AP 23/94 Wellington Registry, 14 September 1995, Doogue J at [9]; *Vatsyayann v PCC* [2012] NZHC 1138, Priestly J at [34].

57 Submissions of counsel PCC as to Penalty dated 1 May 2020, Schedules 1 and 2 and page 14.

58 Document No. 7 HPDT Estimate of Costs.

59 HPDT 895/Phys17/379P at [49].

60 *Chum* HPDT 895/Phys17/379P at [50].

repay ACC a lump sum of $60,000 with the remaining amount of approximately $35,000 being paid by way of a $100 weekly payment.

[120] While there has been cooperation by Mr Hylla it remains the case that his fellow physiotherapists are the ones who will be required to meet the costs associated with his wrongdoing that are not met by him.

[121] The Tribunal considers that a contribution by Mr Hylla of 40% of the total reasonable costs is fair and proportionate. This sum will be fixed at $18,000. This takes into account Mr Hylla's cooperation with ACC, his notification to the Board of the ACC's investigation and subsequent cooperation with the PCC's investigation, the provision of an Agreed Summary of Facts and admission of most of the Charge.

**Application for permanent name suppression**

*Section 95 – principles*

[122] Mr Hylla was granted interim name suppression.[61] He has made an application for permanent name suppression pursuant to s 95 of the Act.[62] The PCC opposes Mr Hylla's application.

[123] Section 95 of the Act provides the hearings to be made in public unless the Tribunal orders otherwise. This is the primary principle and endorses the principle of open justice. Section 95(2) however gives the Tribunal discretion to grant name suppression where the Tribunal is satisfied that it is desirable to do so.

[124] Section 95 of the Act provides:

> **95 Hearings to be public unless Tribunal orders otherwise**
>
> (1) Every hearing of the Tribunal must be held in public unless the Tribunal orders otherwise under this section or unless section 97 applies.
>
> (2) If, after having regard to the interests of any person (including, without limitation, the privacy of any complainant) and to the public interest, the Tribunal is satisfied that it is desirable to do so, it may (on application by any of the parties or on its own initiative) make any 1 or more of the following orders:
>
> (a) an order that the whole or any part of a hearing must be held in private:

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61 HPDT 1071/Phys20/470P.

62 Document No. 9 Application for permanent suppression of name and identifying details dated 8 May 2020.

(b) an order prohibiting the publication of any report or account of any part of a hearing, whether held in public or in private:

(c) an order prohibiting the publication of the whole or any part of any books, papers, or documents produced at a hearing:

(d) an order prohibiting the publication of the name, or any particulars of the affairs, of any person.

[125] Therefore, there is a presumption that the Tribunal's hearings are held in public, unless the Tribunal is satisfied – after having regard to the interests of any person and the public interest – that it is "desirable" to order name suppression.

[126] The requirement of the Tribunal to be "satisfied that it is desirable to do so" involves an evaluation of competing considerations of the interests of any person and the public interest, with the starting point being the fundamental of open justice.

[127] The public interest factors to be considered by the Tribunal have been set out in a number of decisions.[63] These public interest factors include:

(a) Openness and transparency of disciplinary proceedings;

(b) Accountability of the disciplinary process;

(c) Public interest in knowing the identity of the health practitioner charged with the disciplinary offence;

(d) Importance of freedom of speech and the right enshrined in s 14 of the New Zealand of Rights Act 1990; and

(e) Unfairly impugning other practitioners.

[128] The Tribunal is required to weigh up the competing considerations of the private interests of any person and the public interests.

[129] It is well established that where a charge of professional misconduct is made out the practitioner will be made in the preponderance of cases.[64]

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63 See for example, summary in *Johns v Director of Proceedings* [2017] NZHC 2843, Moore J [167]-[177].

64 *Tonga v Director of Proceedings* HC CIV-2005-409-2244, 21 February 2006, Panckhurst J.

[130] While in some cases personal interests may displace presumption of openness and transparency these must be "weighty factors".[65]

[131] In this case in order to show that it is desirable to prohibit publication of Mr Hylla's identity he must show that there is some damage out of the ordinary and disproportionate to the public interest and open justice, in order to displace the presumption of reporting. There must be something "sufficiently compelling" and more so than stress or embarrassment to justify suppression of a practitioner's identity.[66]

*Tribunal's consideration of permanent name suppression*

[132] Mr Hylla seeks name suppression on the basis that he has an uncommon surname and that he is one of only three "Hylla's" in the country (the other two being his wife and daughter). So if a Google search is undertaken then these details are very easy to use to the detriment of his family members and that his wife could be potentially tarred by being "guilty by association" and mental health concerns for his daughter.

[133] The PCC opposed the application and submitted that an uncommon name, and the associated impact of publication of family members, is not sufficient in the past to justify an order for non-publication, even where a charge of professional misconduct is not established.[67]

[134] The Tribunal has no doubt that Mr Hylla's family have been affected adversely by the publicity surrounding this matter and would be affected with future publicity. However, this is an inevitable consequence of bringing a disciplinary charge.[68]

[135] As to the use of the Google search engine that argument has also been rejected as it is something entirely outside the control of the Tribunal.[69]

[136] Mr Hylla also submitted that as he was no longer practising physiotherapy and has not been since he tried to cease his registration with the Board in early 2018. On this basis is not a threat to the public in a professional sense and has offered to commit to the Board that he will never try to reregister as a physiotherapist again.

[137] In the circumstances of this case the Tribunal is not persuaded that this factor together with having a common name that may easily be identified is sufficient to outweigh the public interest factors that operate in the disciplinary jurisdiction.

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65 *Tonga v Director of Proceedings* at [42].
66 *Dr X v Director of Proceedings* [2014] NZHC 1798 per Simon France J at [14]-[15].
67 *Scherp* HPDT 532/Mid12/221D at [153] and [159].
68 *Ruhe,* HPDT 357/Nur10/164P at para 18.4.
69 *Wiggins,* HPDT 928/DH17/390P at [30].

[138] The Tribunal considers that there is a public interest and it is desirable that Mr Hylla's identity is known. The fact that he no longer intends to practise as a physiotherapist does not persuade the Tribunal and is not a compelling factor to depart from the primary principle of open justice.

[139] Mr Hylla has not advanced any compelling evidence of risk of publication that would have impacted on his future career prospects or the impact on his family. The Tribunal considers that publication of the practitioner's name is part of the accountability of the disciplinary process and the objectives of the Tribunal. It also means that other physiotherapists (including those Mr Hylla may have worked with during the relevant periods of time) are not unfairly impugned.

[140] Accordingly, the application for permanent name suppression is declined.

**Result and orders**

[141] The Tribunal finds that the Charge has been established. The conduct amounts to professional misconduct in that it separately and cumulatively is negligence and malpractice in the scope of his profession and has brought and is likely to bring discredit to the profession. This conduct is sufficiently serious to warrant disciplinary sanction.

[142] In respect of the penalty, the Tribunal makes the following orders:

(a) Cancellation of the practitioner's registration effective from the date of this decision pursuant to s 101(1)(a) of the Act;

(b) Censure of the practitioner to mark the Tribunal's disapproval and to send a signal to the physiotherapy profession of the practitioner's conduct, its seriousness, and the discredit it brings to the profession, pursuant to s 101(1)(d) of the Act;

(c) The practitioner pay an approximately 40% contribution towards the total reasonable costs of the Tribunal and the PCC fixed in the sum of $18,000;

(d) The application for permanent name suppression by the practitioner is declined.

[143] Pursuant to s 157 of the Act the Tribunal directs the Executive Officer:

(a) To publish this decision and a summary on the Tribunal's website; and

(b) To request the New Zealand Physiotherapy Board to publish either a summary of, or a reference to, the Tribunal's decision in its 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.

**DATED** at Dunedin this 26th day of June 2020

……
A Douglass
Chair

**SCHEDULE**

**PARTICULARS OF CHARGE**

Pursuant to section 81(2) of the Act, the Professional Conduct Committee lays a charge that Mr Hylla conducted himself in an inappropriate and/or unprofessional manner in the following ways:

1. Between on or around 1 January 2014 and 31 March 2018 Mr Hylla made payment claims to the Accident Compensation Corporation (ACC) that were not consistent with his professional and ethical obligation to act with honesty and integrity, in that:

    (a) Between on or around 1 January 2014 and 31 January 2016 Mr Hylla undertook sideline treatments for participants of sporting events and invoiced the cost of these treatments directly to ACC. In doing so, Mr Hylla invoiced ACC for 60 minutes per treatment when the treatment provided was no longer than 20 minutes, and he was therefore paid $38,070.21 more than he was entitled to receive; and/or

    (b) Between on or around 1 February 2016 and 31 March 2018 Mr Hylla undertook sideline treatments for participants of sporting events and invoiced the cost of these treatments directly to ACC. In doing so, Mr Hylla knowingly invoiced ACC for 60 minutes per treatment when the treatment provided was no longer than 20 minutes, and he was therefore paid $75,145.97 more than he was entitled to receive; and/or

2. Between on or around 20 March 2014 and 1 September 2016 Mr Hylla made payment claims to ACC that were not consistent with his professional and ethical obligation to act with honesty and integrity, in that he:

    (a) Invoiced ACC for four treatments said to have been provided on 20 March 2014 when he had left New Zealand at or around 12.03am on 20 March 2014; and/or

(b) invoiced ACC for 11 treatments said to have been provided on 2 April 2014 when he had arrived in New Zealand at or around 9.39am on 2 April 2014; and/or

(c) Invoiced ACC for eight treatments said to have been provided on 17 June 2014 when he had left New Zealand at or around 7.00am on 17 June 2014; and/or

(d) Invoiced ACC for 10 treatments said to have been provided on 21 June 2014 when he had arrived in New Zealand at or around 4.39pm on 21 June 2014; and/or

(e) Invoiced ACC for treatment said to have been provided on 18 June 2014 (4 treatments); 19 June 2014 (4 treatments); and 20 June 2014 (7 treatments) when he was out of New Zealand from at or around 7.00am on 17 June 2014 until at or around 4.39pm on 21 June 2014; and/or

(f) Invoiced ACC for 11 treatments said to have been provided on 1 September 2016 when he had left New Zealand at or around 7.26pm on 1 September 2016; and/or

(g) Invoiced ACC for 5 treatments said to have been provided on 1 July 2016 when he had left New Zealand at or around 1.06pm.

3. Between on or around 1 January 2014 and 31 January 2016 Mr Hylla did not comply with his ethical and legal obligation to ensure the secure storage of patient health records, in that he stored patient health records on a shelf and/or cupboard in the lounge of his home and/or failed to protect those patient health records from loss when they became water damaged; and/or

4. In or around June 2016 Mr Hylla did not comply with his legal obligation to ensure the retention of patient health records, in that he disposed of patient health records for the period between on or around 1 January 2014 and 31 January 2016 in contravention of the legal requirement to retain all health records for a minimum of 10 years from the day following the last day of the patient consultation, and/or

without retaining any other clinical record of the treatment provided to those patients.

The conduct alleged above either separately or cumulatively amounts to professional misconduct pursuant to section 100(1)(a) and/or 100(1)(b) of the Act.