

Social Workers Disciplinary Tribunal

Social Workers Registration Act 2003

BEFORE THE SOCIAL WORKERS DISCIPLINARY TRIBUNAL

REF: SWDT 25/25P

Under The Social Workers Registration Act (“the Act”)

In the matter A disciplinary charge laid against a registered social worker under Part 4 of the Act

Between **A Professional Conduct Committee** appointed by the **Social Workers Registration Board**
Applicant

And **Dr Jacquelyn Elkington** of Dunedin, registered social worker
Practitioner

HEARING 15 JULY 2025 [in Dunedin]

TRIBUNAL W McCarthy (Chair), I Nemani, Dr S Hunt, M Veldmeijer, A McKenzie

REPRESENTATIVES E Mok and R Boles for the Professional Conduct Committee
No Appearance for the Practitioner

HEARING OFFICER DLatchman

Decision on Liability, Penalty and Non-Publication

Dated: 15 July 2025

Background

1. On 1 April 2025, a Professional Conduct Committee (**PCC**) appointed by the Social Workers Registration Board (**the Board**) laid a disciplinary charge against Dr Jacquelyn Elkington (**the practitioner**) pursuant to ss 66 and 71(1)(c) of the Social Workers Registration Act 2003 (**the Act**).
2. The particulars of the charge relate to the practitioner inappropriately issuing a COVID-19 vaccine exemption (**exemption**) to a client, not disclosing to the Board that she was the subject of a Health and Disability Commission (**HDC**) investigation when renewing her practicing certificate and failing to properly co-operate with a subsequent PCC investigation into her conduct.
3. A panel of the Tribunal convened in Dunedin on 15 July 2025 to hear the charge. The practitioner did not attend the hearing.

The Charge

4. The Charge laid by the PCC is set out in full in Appendix A of this decision. The particulars of the charge are as follows:
 - (a) On or about 11 December 2021, Dr Elkington purported to issue a Covid19 vaccine exemption (exemption) to a client when she had no authority to do so; and/or
 - (b) In issuing the exemption, Dr Elkington falsely represented that she was a qualified health practitioner for the purposes of the Health Practitioners Competence Assurance Act 2003; and/or
 - (c) In and around December 2021, Dr Elkington:
 - (i) failed to undergo supervision; and/or
 - (ii) worked outside the limits of her social work practice, in particular by purporting to issue at least one Covid-19 vaccine exemption to a client, without first seeking supervision and guidance; and/or
 - (d) When applying to renew her practising certificate as a social worker in or around November 2022, Dr Elkington:
 - (i) did not disclose to the Board that she was the subject of an ongoing Health and Disability Commissioner (HDC) investigation; and/or
 - (ii) when questioned about the HDC investigation, Dr Elkington falsely stated that the HDC investigation was complete; and/or
 - (e) During the HDC investigation and subsequent PCC investigation between December 2021 and September 2024, Dr Elkington:

- (i) failed to cooperate fully with the investigations; and/or
- (ii) provided misleading and/or false information in the course of the investigations, including:
 - (A) misrepresenting that she was qualified to issue Covid-19 vaccine exemptions; and/or
 - (B) advising the PCC that, with reference to the information requested during the HDC investigation, “any notes requested of me have already been submitted” and “I did submit a lot of information at the time it was requested”.¹

Evidence

5. The PCC filed four affidavits in support of the claim. The affidavits had significant documentary annexures corroborating the evidence of the deponents:

- a) **Affidavit of Karen Schulze** – Ms Schulze is a registered social worker who was the Presiding member of the PCC which investigated the matter. Ms Schulze confirmed that the practitioner was a registered social worker at the time of the alleged events, working for Turuki Health Care and the practitioner’s own private business Ngati Consult Limited.

Ms Schulze states that the PCC was apprised by the HDC on 23 March 2022 that they were investigating a complaint made against the practitioner alleging that the practitioner inappropriately issued the vaccine exemption on 11 December 2021. The matter was eventually referred to the PCC by the HDC on 13 March 2023, with the PCC being appointed to investigate the matter on 24 November 2023.

During the course of the investigation, Ms Schulze says that they requested information from the practitioner on multiple occasions beginning on 8 March 2024 (requesting a response by 22 March 2024). After this request was not met, a follow up email was sent on 26 March 2024 (requesting a response by 4 April 2024). On 10 April 2024, a production notice letter was sent to the practitioner (seeking a response by 25 April 2024) requiring her to send copies of notices of her examination with the patient she provided an exemption for (with identifying details redacted) and copies of notes from any other examinations where she had issued vaccine exemptions (with identifying features redacted). On the same day the practitioner responded detailing that “any notes already requested of me have been submitted. I have nothing further to add nor do I have

¹ Notice of Disciplinary Charge dated 1 April 2025

copies” and that “any other examinations have not been consented for sharing. I am not trying to be difficult here. Unfortunately, I don’t have any notes from exemptions, to even request consent”.²

On 1 May 2024, the PCC again reiterated its requirement that the practitioner provide copies of the notes and advise who the notes had been submitted to. The PCC also asked for the name of her supervisor. On 19 May 2024, the practitioner replied to the PCC. Instead of providing the requested information, the practitioner outlined her belief that she had followed the Code of Conduct to the best of her ability and expressed remorse for any harm she may have caused.

On 10 June 2024, the practitioner was provided with a disclosure bundle which included confirmation from the HDC that they had not been provided copies of client notes. Further emails were disclosed on 26 July 2024. An offer was made to the practitioner to meet with the PCC and/or provide a written statement in this correspondence and subsequent correspondence.

On 26 July 2024, the practitioner sent a YouTube video to the PCC entitled *River of Lies: The New Zealand Scamdemic, Episode One* as her response to the PCC. The practitioner stated she was confused as to how to respond further.

During August and September there was discussion about the PCC meeting with the practitioner. While a video conference was arranged, on 5 September 2024, the practitioner advised that due to the passing of Kiingi Tuheitia, she would not be attending the arranged meeting and that she was no longer registered and there was no urgency for her to be registered so “[o]bligations on the part of either of us, may have no jurisdiction”. On the same day, the PCC responded confirming that it did have jurisdiction and that the PCC would proceed to determine the matter given her non-attendance.

On 13 November 2024, the practitioner was informed of the PCC’s provisional decision and was invited to provide any comments by 27 November 2024. After the PCC received no response, the practitioner was informed of the PCC’s final decision on 3 December 2024.

b) Affidavit of Alice Coventry – Ms Coventry’s is Deputy Chief Legal Advisor at the HDC. Her evidence sets out the complaint the HDC received against the practitioner and steps taken to investigate the complaint.

Ms Coventry says that on 16 December 2021³ a complaint was made by an employee of [REDACTED]. The employee said that [REDACTED] had come into the [REDACTED] on 15

² Affidavit of Karen Schulze at [64 of BOD]

³ Affidavit of Alice Mary Coventry at [8 of BOD]

December 2021 and had presented a vaccine exemption issued by the practitioner. The employee stated that to their knowledge the practitioner was not qualified to issue COVID-19 exemptions.

Ms Coventry notes that between 31 March 2022 and 14 September 2022, the HDC sought a response to the complaint they had received as well as requesting information relating to how many exemptions the practitioner had issued and her process and basis for issuing exemption requests. While the practitioner responded intermittently during this time period, saying at times that she felt harassed and did not understand the process, no formal response to the complaint was provided, nor was the information requested by the HDC provided during this time period.

On 21 September 2022, the practitioner provided a response to the HDC complaint. In summary the practitioner said that she was legally permitted to issue vaccine exemptions as she was an “appropriately qualified” health practitioner, the practitioner had issued the exemption to [REDACTED] due to “cultural reasons, for religious reasons and for mental wellbeing reasons”. The practitioner refused to provide the information requested by the HDC due to client confidentiality and because she did not consider herself to be a health provider for the purposes of the HDC process. She also noted that it was not for the original employee complainant to engage with [REDACTED] as the employee had no legal basis to apply the vaccine mandates and he did not know [REDACTED] circumstances.

On 27 January 2023, the HDC started its formal investigation where information relating to how many exemptions she had issued and her process and basis for issuing exemption requests (including clinical records) was required to be produced. Despite attempts to contact the practitioner by phone and email, no further response was received. On 13 March 2023, the matter was referred to the Board and the HDC then closed its investigation. On 8 March and 29 May 2024, the HDC received requests from the PCC for a copy of the HDC’s investigation file and confirmation that the practitioner had not provided any practice notes from the practitioner regarding [REDACTED], and that following her written response to the HDC complaint, the practitioner had refused to engage further with the HDC process. Ms Coventry confirmed in her affidavit that this was the case.

- c) **Affidavit of Megan Chapman** – Ms Chapman is the Deputy Registrar (Registration) at the Board. Her role includes receiving and reviewing applications from individuals seeking to renew their practising certificates. She outlined that the Act requires all social workers to hold a practising certificate and that they expire every year on 30 June 2025. She stated that when renewing their practising certificates, social workers need to provide an online declaration affirming that they are a fit and proper person to practise as a social worker and, as a part of this, to answer a number of questions relevant to the declaration through a drop down box saying yes or no. One of this

questions is “Since your last PC [practising certificate] have you been the subject of any disciplinary proceedings in Aotearoa New Zealand or overseas, or under investigation in Aotearoa New Zealand or overseas for any matter that could become the subject of disciplinary proceedings?”.

Ms Chapman noted that the practitioner answered no to this question on or about 22 June 2022 and did not disclose to the Board that she was subject to a HDC process following a complaint. She says that the then Deputy-Registrar emailed the practitioner to inquire about the HDC process and her failure to disclose it. Later that day, the practitioner responded saying that she had not finished submitting the renewal application and that she had not signed the declaration as she had been interrupted. On 27 June 2022, the Deputy-Registrar informed the practitioner that her renewal application had been deleted to allow the practitioner to resubmit her application.

On 14 July 2022, an automated reminder was sent to the practitioner informing her that her practising certificate had expired and that to continue practising as a social worker she would need to complete her online declaration and pay her practising certificate fee. On 17 July 2022, the practitioner responded to the email addressing her response to the then Registrar, Paul Kirby. In her response the practitioner recorded her view that the automated email was a reminder/threat and that it could be “perceived as border line bully”.

On 12 August 2022, the practitioner submitted a new renewal application and again did not declare the ongoing HDC process. On the same day the Registrar contacted the practitioner to obtain further information. Ultimately the Board elected not to issue a practising certificate to the practitioner.

Affidavit of Paul Kirby – Mr Kirby was the Registrar of the Board at the time of the alleged conduct. His responsibilities included administering the registration of social workers and issuing practising certificates.

He says that on 23 March 2022, the Board was notified by the HDC that they had received a complaint against the practitioner and that the complaint would be assessed.

He says that when the practitioner made her second declaration on 12 August 2022, he phoned the practitioner to discuss the declaration on the same day. Mr Kirby wrote a email to the practitioner summarising their conversation which was produced alongside his affidavit. Mr Kirby noted in the email that the practitioner had informed him that she thought the HDC process was finished. He also noted that the Board had not been advised that the process had concluded and sought evidence of it being completed. On the same day the practitioner responded by email that

she recalled phone conversations concerning a matter relating to exemptions but that she was led to believe that there was nothing further than that. In the same email the practitioner said she would investigate the matter and get back to him.

On 16 September 2022, the practitioner informed Mr Kirby by email that she was in communication with the HDC and that it should be cleared up soon. In the email she stated that the delay was a result of password process and that she would provide a further update by the end of the week.

Legal Principles

6. Section 82 of the Act sets out the grounds on which the Tribunal may discipline social workers. Section 82(1) provides that the Tribunal can impose certain disciplinary sanctions set out in s 83 if, relevantly, the Tribunal is satisfied the social worker has been guilty of professional misconduct (section 82(1)(a)) or if the social worker has been guilty of conduct that is unbecoming of a social worker and reflects adversely on the social worker's fitness to practise as a social worker (section 82(1)(b)).
7. Section 82(2) of the Act provides that a social worker is guilty of professional misconduct if he or she, relevantly, breaches the Code of Conduct (section 82(2)(a)) or commits an act or omission that, in the opinion of the Tribunal, has brought or is likely to bring discredit to the social work profession (section 82(2)(d)).
8. In previous decisions the Tribunal has adopted a two-step approach to assessing professional misconduct:
 - a) The first step requires an objective analysis of whether the social worker's acts or omissions can reasonably be regarded by the Tribunal as constituting a breach of the Code or was an act or omission that could reasonably be regarded by the Tribunal as constituting a departure from acceptable professional standards that brings or would likely bring discredit to the profession.
 - b) If the Tribunal is so satisfied, the second step requires the Tribunal to form an opinion as to whether those acts or omissions warrant discipline for the purposes of protecting the public and/or enhancing the professionalism of social workers. This step is commonly referred to as the "threshold".
9. In assessing conduct against the standard of avoiding conduct that puts the reputation of the social work profession at risk, or brings the profession into disrepute, "bringing discredit" on the nursing profession was considered in *Collie v Nursing Council of New Zealand*⁴, where, at paragraph [28], Gendall J considered a definition of this:

⁴ 2001] NZAR 74 at [28]
Level 3,
117 Lambton Quay
Wellington 6011

To discredit is to bring harm to the repute 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.

10. As to the threshold step, the Court of Appeal in *F v Medical Practitioners Disciplinary Tribunal*⁵ expressed the issue as being that in cases of both professional misconduct and ‘conduct unbecoming’, “it will be necessary to decide if there has been a departure from accepted standards and then whether the departure is significant enough to warrant sanction [emphasis added].” The threshold has been described as “not unduly high⁶”, as the degree of seriousness beyond the mere fact that the conduct warrants sanction is a matter to be reflected on in penalty. However, the threshold is to be reached with care having regard to the purposes of the Act and the implications for the social worker.
11. The two-stage test for professional misconduct is an objective one and does not allow the Tribunal to consider matters personal to the practitioner in any significant way when objectively assessing whether there has been professional misconduct (or ‘conduct unbecoming’)⁷. Personal factors may be given full consideration at the penalty stage if a charge is found to have been established.
12. 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. This remains so even where the practitioner does not participate.
13. 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.

Non-participation of the practitioner

14. At the commencement of the hearing, the Executive Officer for the hearing, Ms Deepika Latchman, gave evidence that the practitioner had been advised of the charge against her and had also been advised of the date and location of the Tribunal hearing.
15. Given the circumstances, the Tribunal was satisfied that the practitioner had adequate notice of the hearing, and the Tribunal was content to proceed to hear and determine the charge in the practitioner’s absence.

⁵ CA 213/04, 4 May 2005,

⁶ *Johns v Director of Proceedings* [2017] NZHC 2843 at [82] per Moore J affirming the approach set out by Courtney J in *Martin v Director of Proceedings* [2010] NZAR 333 (HC) at [30]–[31] as correct in the New Zealand context.

⁷ *Cole v Professional Conduct Committee of the Nursing Council* [2017] NZHC 1178, at [126]–[130]

Tribunal's consideration of the charge

16. The Tribunal is satisfied that that the facts underlying particulars 2(a), (b), (d) and (e) of the Charge have been established by the evidence heard and summarised above. The Tribunal considers that particular 2(c)(ii) has been partially established in respect of the practitioner working outside the limits of her social work practice. Particular 2(c)(i) and the remainder of particular 2(c)(ii) relating to the alleged failure to undergo and seek supervision are not established. The Tribunal did not have any information relating to the practitioner's supervision arrangements so was unable to make a determination in relation to these particulars.
17. Turning to professional misconduct, it is well established that ethical documents established by the Board as the professional body are relevant to determining the standards reasonably expected of a social worker, and therefore in considering whether their acts or omissions amount to misconduct. The standards which should apply in situations such as the present are evident from the Code of Conduct issued by the Board pursuant to s 105 of the Act (**the Code**). The March 2016 version of the Code applied in this case, as the conduct was alleged to have started in 2021.
18. The Tribunal considers that the established particulars breach the Code. The practitioner did not act honestly and ethically in all personal and professional behaviour (standard 1.1) and did not comply with all legal, professional and ethical obligations and any other relevant standards, including those in the Act (standard 1.2) as she falsely represented to both her client and the HDC that she was a qualified health practitioner for the purposes of the Health Practitioners Competence Assurance Act 2003. In addition to this initial deception, the practitioner subsequently provided false declarations to the Board in the course of her applications for renewal and false information to the PCC during its investigation.
19. The Tribunal also considers that the practitioner breached principle 6 of the Code by failing to appropriately respond to the complaint made against her, as well as principle 9 as her conduct undermines public trust and confidence in the social work profession. While it is clear that the practitioner considered that she was acting appropriately, she did not provide accurate information about her knowledge, skills and experience (standard 9.3).
20. The Tribunal considers that these breaches brought discredit to the profession. While the practitioner evidently has her own personal beliefs relating to New Zealand's COVID response, these beliefs do not entitle any practitioner to ignore professional standards that social workers are required to adhere to. The Tribunal was particularly concerned with the practitioner's conduct during the course of the HDC's and PCC's investigation.

21. Given the seriousness of the conduct established, the Tribunal considers that a disciplinary response is required. While the practitioner's initial conduct occurred in a unique historical context, there was a pattern of dishonesty perpetrated by the practitioner over a sustained period.
22. As the Tribunal has reached this view on professional misconduct, there is no need to consider the alternative charge.

Discussion – Penalty

23. Having found the charge proved, the Tribunal is required to consider whether it is appropriate to order any of the penalties set out in s 83 of the Act.
24. The principles relating to penalty have been well traversed in this and other similar professional discipline tribunals. In summary, penalty must reflect the principles and purposes of the Act. The multiple factors set out in *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand*⁸ are also applicable.
25. When cancellation is contemplated, the Tribunal must turn its mind to consider whether a lesser penalty, such as suspension and/or conditions would be more appropriate and/or proportionate in the overall circumstances.⁹
26. The PCC submits that the established conduct is serious and that cancellation of the practitioner's registration and censure are appropriate in the overall circumstances and necessary to ensure the protection of the public and the maintenance of proper professional standards.
27. The PCC acknowledges that the initial conduct is unique in the social workers context but referred the Tribunal to the case of *PCC v Chafin*¹⁰ where a pharmacist, amongst other things, made personal attacks against individuals leading New Zealand's public health response against COVID, disclosed information relating to complaints, and made a false declaration to the Pharmacy Council. The pharmacist's registration was cancelled and a censure was imposed.
28. The PCC also referred to two HDC reports¹¹. The HDC issued two separate reports both concerning general practitioners who had issued vaccine exemptions during the Covid-19 pandemic, Dr N and Dr A. The HDC found that the conduct of Dr N and Dr A in issuing those exemptions did not meet the

⁸ *Roberts v Professional Conduct Committee of the Nursing Council* [2012] NZHC 3354 at [41] – [51].

⁹ See *CAC v Esera* RSW1/D1/SWDT/2017, 30 May 2018 at [100], citing *Katamat v PCC* [2012] NZHC 1633.

¹⁰ *PCC v Chafin* 1401/Phar23/586P, 18 June 2024.

¹¹ A Decision by the Deputy Health and Disability Commissioner (Case 21HDC02881), 12 September 2024; A Decision by the Deputy Health and Disability Commissioner (Case 21HDC02883), 12 September 2024.

required legal, professional, ethical, and other relevant standards. In both cases, the HDC recommended that the practitioners undertake further training and undergo a peer-reviewed audit of their practices. Further, the HDC recommended that the Medical Council consider whether a competence process was warranted. In relation to Dr N, the HDC noted that the Medical Council was already reviewing her performance.

29. The PCC did not identify any aggravating or mitigating factors personal to the practitioner. However, the Tribunal considers that practitioner's lack of prior disciplinary history is mitigatory.
30. Overall, the Tribunal considers that a suspension of 12 months, a condition that the practitioner undertake monthly supervision and a censure, rather than cancellation, is the most appropriate penalty in the context. While the Tribunal agrees with the PCC that the established conduct is serious, we do not consider that it is as serious as *Chafin*, and the Tribunal is mindful that the passage of time means that a repeat of the initial conduct, at least, is unlikely.
31. In reaching this position the Tribunal acknowledges that there was a sustained period of dishonesty following the initial conduct, which the practitioner exhibited during the course of the HDC and PCC investigations, as well as the false declaration provided by the practitioner to the Board.
32. However, the Tribunal ultimately arrived at the conclusion that the unique context of the initial conduct, combined with a lack of prior disciplinary history, suggests that a rehabilitative approach is warranted. A lengthy suspension, combined with a condition that the practitioner undertake monthly supervision with a Board approved supervisor for a 12-month period upon return to practice in the Tribunal's view provides for the protection of the public and the maintenance of proper professional standards.

Non-Publication

33. The power of the Tribunal to make non-publication orders is under s 79 of the Act. The starting point is that hearings are to be public. This presumption may be displaced if, having regard to the interest of any person (including the privacy of any complainant) and to the public interest, and if the Tribunal is satisfied that it is desirable to do so, we may make orders prohibiting publication of details including names, identifying particulars and/or the evidence produced at a hearing.
34. The PCC made an application for permanent orders suppressing the name and identifying details of [REDACTED] given his apparent vulnerability.
35. The Tribunal considers that there is little public interest in the name and identifying details of [REDACTED] being made public and any such entrance is outweighed by his personal

circumstances. The Tribunal considers that the name of the complainant and his place of employment could lead to the identification of [REDACTED], so these details are also suppressed.

Costs

36. Section 83(e)(ii) and (iii) respectively provide that the Tribunal may order that a social worker pays part or all of the costs of and incidental to the PCC inquiry and the prosecution of the charge.
37. The normal approach for the Tribunal is to start with a 50% contribution. Other factors may be taken into account to reduce or mitigate that proportion, or to increase that proportion. The balance of the investigation, prosecution and the hearing after the order for costs must be met by the social worker profession, through the Social Workers Registration Board.
38. The PCC indicated that the legal costs and expenses incurred for its investigation and prosecution of the Charge totalled \$26,657.83 (excluding GST). The costs for the Tribunal were estimated to be \$22,518.90 (excluding GST) which reflects that the costs associated with a public hearing are not insubstantial.
39. There is no evidence before the Tribunal that the practitioner has an inability to pay a costs awards, and the practitioner's conduct during the investigation and non-attendance at the hearing did not result in any economies. For these reasons, the Tribunal does not consider that there should be any adjustment from its usual starting point.

Penalty Orders and Order for Non-Publication

40. Accordingly, we make the following orders:

- a. The practitioner's registration be suspended for 12 months pursuant to s 83(1)(a).
- b. Upon return to practice, the practitioner undertake monthly supervision with a board approved supervisor with a focus on the Code of Conduct, specifically professional accountability and responsibilities in relation to all matters considered in this decision, with the supervisor regulating reporting to the Board pursuant to s83(1)(d);
- c. The practitioner be censured pursuant to s 83(1)(b); and
- d. The practitioner pay a 50% costs contribution totalling **\$24,588.36** pursuant to s 83(1)(d).

2. We make the following order for non-publication:

- a. The name and identifying particulars of the [REDACTED], which includes the name of the complainant and location of the complainant's work.

Dated: 11 February 2025



Winston McCarthy
Chair

APPEAL NOTICE

1. The parties have a right of appeal to the District Court pursuant to section 88 (2) and 88(3)(c) of the Social Workers Registration Act 2003.
2. Any appeal must be brought by notice of appeal in accordance with the rules of court, and within 20 working days from the date on which notice of the decision is given, or within any further time that the District Court Judge allows.