

# Failure to Disclose can be Unprofessional Conduct

11 March 2019

8 min. read

[conduct](#) / [dispute resolution](#) / [failure](#) / [disclosure](#) / [QCAT](#) / [unprofessional conduct](#)

## Key issues:

- Failure to disclose changes to criminal history when submitting an annual registration application may amount to unprofessional conduct
- Professionals should always keep obligations to regulatory bodies in mind, particularly those relating to the disclosure of any changes which may impact upon their suitability to practise

A recent judgment (*Health Ombudsman v Armstrong* [2018] QCAT 382) by the Queensland Civil and Administrative Tribunal (**QCAT**) has found that a nurse's failure to disclose changes to her criminal history when submitting her annual application for re-registration may amount to unprofessional conduct. As a result of the hearing before QCAT, the nurse's registration was cancelled and the nurse was disqualified from applying for registration for a period of two years.

## Facts

The practitioner had held various roles within Queensland Health from 2000 and had been a registered nurse from February 2004. When the practitioner was referred to QCAT, she was referred on four charges, being:

1. On 23 March 2012, the practitioner was served with a complaint and summons charging her with the offence of obtaining a financial advantage for herself, by receiving overpayments from Centrelink. On 14 August 2013, the practitioner was convicted in the Queensland Magistrates Court for the offence of obtaining a financial advantage for herself during the period of 16 August 2007 to 17 November 2010, resulting in an overpayment of \$22,560.70 (**Charge 1**).
2. That conviction resulted in a failure by the practitioner to comply with a good behaviour bond that had been imposed upon her as a result of a previous conviction for the same offence (**Charge 2**).
3. Subsequently, the practitioner was charged with acting contrary to section 130 of the *Health Practitioner Regulation National Law (Queensland)* (**National Law**) as she had failed to notify the Nursing and Midwifery Board (**Board**) that she had been:
  - a. served with a complaint and summons on 23 March 2012, charging her with the offences of receiving a financial benefit for self; and
  - b. convicted and sentenced in the Magistrates Court (**Charge 3**).
4. Finally, in completing her online renewal of registration application in 2012 and 2014 the practitioner, contrary to section 135 of the National Law, lied in relation to changes to her criminal history arising from the service of the complaint and summons the convictions in the Magistrates Court respectively (**Charge 4**).

In addition to the charges above, during the course of her interactions with the Magistrates Court, it was alleged that the practitioner falsified a medical certificate for the purpose of vacating a compulsory conference in relation to those Magistrates Court hearings.

## Requirement to disclose

During the application to renew registration as a nurse (which was an annual requirement), the practitioner would have been presented with the following questions:

1. During your preceding period of registration, have there been any changes to your criminal history that you have not declared to AHPRA?
2. Do you have any criminal history that you have not disclosed to AHPRA (other than that disclosed in the question above)?

## Arguments before QCAT

In relation to charge 3, the practitioner argued that when the Magistrates Court case in relation to the complaint and summons first commenced, she had informed her line manager (being the nurse unit manager) of “what was happening” and asked her line manager if there was anybody else she was required to inform. The practitioner alleges that her line manager told her there wasn’t any other person or body who needed to know of the complaint and summons, so the practitioner did not inform anybody else.

The practitioner also alleged that she had requested a friend to inform her line manager and AHPRA of where she was on the day she was admitted to prison (as a result of Charge 1). Whilst the practitioner’s friend accepted that the practitioner had requested she contact her line manager, it was not accepted that she had requested he contact AHPRA.

## Decision

QCAT discussed the scope of ‘*criminal history*’ and whether being served with a complaint and summons was a sufficient change to the criminal history of a person (as opposed to a conviction being recorded against that person) that required disclosure in accordance with the National Law.

In determining that the practitioner should have disclosed the complaint and summons to AHPRA, QCAT had reference to the National Law, which defined ‘*criminal history*’ in very broad terms to include ‘*every charge made against the person for an offence, in a participating jurisdiction or elsewhere, and whether before or after the commencement of this law*’. Whilst it was noted that it was unclear whether the online application made the applicant aware of the broad scope of ‘*criminal history*’, QCAT held that ignorance of the law is no excuse and found that the practitioner had failed to disclose the service of the complaint and summons as required by the National Law.

QCAT ultimately found that the practitioner had a clear obligation to notify AHPRA of both the complaint and summons and the conviction and failed to do so. QCAT found that Charges 3 and 4 were made out against the practitioner. QCAT also found the practitioner guilty of falsifying a medical certificate to vacate the compulsory conference before the Magistrates Court.

## Categorisation of conduct

Pursuant to the National Law, there are different types of conduct that can be engaged in by a registered health practitioner, including unprofessional conduct and professional misconduct:

1. *unprofessional conduct, of a registered health practitioner, means professional conduct that is of a lesser standard than that which might reasonably be expected of the health practitioner by the public or the practitioner’s professional peers, and includes:*
  - a. *a contravention by the practitioner of this Law (being the National Law), whether or not the practitioner has been prosecuted for, or convicted of, an offence in relation to the contravention; and*
  - b. *a contravention by the practitioner of:*
    1. *a condition to which the practitioner’s registration was subject; or*
    2. *an undertaking given by the practitioner to the National Board that registers the*

*practitioner; and*

*c. the conviction of the practitioner for an offence under another Act, the nature of which may affect the practitioner's suitability to continue to practise the profession...*

2. *professional misconduct, of a registered health practitioner, includes:*

*a. unprofessional conduct by the practitioner that amounts to conduct that is substantially below the standard reasonably expected of a registered health practitioner of an equivalent level of training or experience; and*

*b. more than one instance of unprofessional conduct that, when considered together, amounts to conduct that is substantially below the standard reasonably expected of a registered health practitioner of an equivalent level of training or experience; and*

*c. conduct of the practitioner, whether occurring in connection with the practice of the health practitioner's profession or not, that is inconsistent with the practitioner being a fit and proper person to hold registration in the profession.*

## **Conduct of the practitioner**

QCAT considered that the conduct resulting in Charges 3 and 4 were secondary to the original misconduct in Charges 1 and 2 and viewed Charges 3 and 4 as an aggravation to the totality of the conduct that was to be considered by it.

The judgment also noted that a failure to notify and a failure to make full declarations may justify findings of unprofessional conduct on their own.

In determining the appropriate disciplinary action to take against the practitioner, QCAT considered:

1. that it should be guided by doing what best promoted the health and safety of the public and that its jurisdiction in relation to these issues was protective, not punitive;
2. the history of dishonest conduct by the practitioner throughout the matter (evidenced by the falsified medical certificate and whilst she was undertaking an educational course to correct dishonesty behaviour); and
3. the practitioner's refusal to accept responsibility for her behaviour.

The practitioner argued that at no stage did any of her dealings with patients or colleagues ever come into question and it was never suggested that she placed them in any danger. The practitioner also alleged that she was forced to undertake this conduct due to the Queensland Health payroll problems.

QCAT acknowledged the first of the practitioner's arguments, but dismissed the second given a lack of evidence in support.

QCAT found that the totality of the practitioner's conduct amounted to professional misconduct under the National Law and ordered that the practitioner's registration be cancelled and that she be precluded from reapplying for a period of two years.

## **Take away points**

The decision of QCAT is a reminder to all professionals to always keep obligations to regulatory bodies in mind, particularly those relating to the disclosure of any changes that may impact upon a practitioner's suitability to continue to act in their chosen profession. This also includes declarations which professionals make in the annual renewals of their registrations. It is evident from the above decision that a failure to comply with those obligations can result in severe consequences for practitioners, including the cancellation of their professional registration and being prevented from working in their profession for a significant period of time.

For more information or discussion, please contact HopgoodGanim Lawyers' [Dispute Resolution](#) team.

11 March 2019

[conduct](#) / [dispute resolution](#) / [failure](#) / [disclosure](#) / [QCAT](#) / [unprofessional conduct](#)

[Previous article](#) [Next article](#)