

Health, Environment and Innovation Committee,  
Queensland Parliament

30 January 2025

**By email**

To the Chair and Members of the Health, Environment and Innovation Committee,

**HEALTH PRACTITIONER REGULATION NATIONAL LAW AND OTHER  
LEGISLATION AMENDMENT BILL 2024**

We are writing to you **on behalf of the Australian Lawyers Alliance (ALA)**.

The ALA is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

The ALA is grateful to have been invited to provide evidence to the Health, Environment and Innovation Committee ('Committee') on 28 January 2025, represented by Lidia Monteverdi.

**Arising from the ALA's appearance before the Committee, please find *enclosed* a response to the question on notice sent to the ALA by the Committee.**

Thank you for your attention on these important matters, and please do let the ALA know if we can be of further assistance.

Yours sincerely,



**Sarah Grace**  
**President,**  
**Queensland Branch Committee**  
**Australian Lawyers Alliance**



**Lidia Monteverdi**  
**Senior Member,**  
**Medical Law Special Interest Group**  
**Australian Lawyers Alliance**

*Enclosed:* Responses to the Question on Notice put to the Australian Lawyers Alliance by the Health, Environment and Innovation Committee, Queensland Parliament



## Responses to the Question on Notice put to the Australian Lawyers Alliance by the Health, Environment and Innovation Committee, Queensland Parliament

**1. Can you provide any case law examples of unsatisfactory professional conduct related to sexual misconduct?**

In our submission to this inquiry, the ALA contended that “unsatisfactory professional conduct” should also be recorded in the National and Specialists Registers in addition to “professional misconduct”.<sup>1</sup>

The ALA maintains our contention that ensuring that a broad range of harmful and unsafe conduct is captured in the National and Specialists Registers is important for public safety. As such, we welcome the opportunity to clarify that our recommendation relates only to instances of sexual misconduct which constitute “unsatisfactory professional conduct”.

We also further submit that it is important to acknowledge that the general public is not aware of the distinction between the two thresholds mentioned above. The ALA submits that the general public would, however, be concerned and want to know about any sexual misconduct – irrespective of whether it is classed as “professional misconduct” or “unsatisfactory professional conduct” – on the part of their registered health practitioner or prospective registered health practitioner.

When it comes to sexual misconduct, the ALA contends that public safety and the ability for a patient or prospective patient to make their own mind up about a practitioner or prospective practitioner is paramount. This is particularly so for members of the public who have a trauma background.

**Provided overleaf are four case law examples of where practitioners were found guilty of unsatisfactory professional conduct relating to sexual misconduct.**

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<sup>1</sup> See: Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024 (Qld) proposed new sections 225A and 225B.

## **(1) [Health Care Complaints Commission v Benness \[2024\] NSWCATOD 27](#)**

The practitioner is a specialist obstetrician and gynaecologist, with a subspecialty in urogynaecology. A complaint was made by four patients who had consulted the practitioner for their urogynaecological problems.

Patient A alleged that the practitioner squeezed her breasts while she was lying on the examination table, undressed from the waist down, and asked when she had last had a breast examination. She was shocked as it was unexpected since the practitioner had not broached the subject of a breast examination prior to her being on the examination table. The Tribunal found the practitioner failed to obtain adequate informed consent prior to touching her breasts and failed to have proper clinical reasons for doing so.

Patient C alleged that the practitioner squeezed or touched her breasts while she was clothed. He asked when her last mammogram was, and she responded that it was up to date. She was shocked at the unwanted contact. The Tribunal found the practitioner failed to obtain adequate informed consent prior to touching her breasts and failed to have proper clinical reasons for doing so.

Further allegations made in relation to Patients B and D were not made out to the requisite standard.

The Tribunal found the practitioner guilty of unsatisfactory professional conduct notwithstanding that the Tribunal was "*conscious of the seriousness of the proven conduct*".

By way of separate hearing, the practitioner was cautioned and ordered to undergo training:

[Health Care Complaints Commission v Benness \[2024\] NSWCATOD 133](#)

## **(2) [Health Care Complaints Commission v Sultan \[2017\] NSWCATOD 47](#)**

The practitioner is a general practitioner who also worked in the emergency department of a local hospital. He treated the patient in the context of her attendances at the emergency department.

She became an admitted patient of the hospital, not under the care of the practitioner. He was not part of the treating team during her admission. The patient had attempted to find him in the emergency department to thank him for the treatment he had previously provided to her but was unable to locate him and left a message with the nursing staff to pass on her thanks.

The practitioner paid the patient a social visit at around 10.30pm after his shift had concluded. During the visit, he indicated that he needed to conduct a chest examination. During the chest examination, he brushed his hand against the patient's breast and thereafter became aroused with an erect penis.

The Tribunal found there was no sexual motivation to the practitioner's conduct and attached credit to the practitioner as he had admitted some aspects of the allegations and the objective nature of the conduct.

The Tribunal found the practitioner guilty of unsatisfactory professional conduct.

By way of separate hearing, the practitioner was reprimanded and conditions placed on his registration: [Health Care Complaints Commission v Sultan \(No. 2\) \[2017\] NSWCATOD 121](#)

### **(3) Health Care Complaints Commission v Balafas (No 4) [2021] NSWCATOD 209**

The practitioner is a general practitioner. A complaint was made by two patients.

The allegations made by Patient A were found to have amounted to unsatisfactory professional conduct and professional misconduct.

The allegations in relation to the practitioner's treatment of Patient B that the Tribunal found had been made out were that he:

- (a) performed a pap smear without obtaining informed consent and without adequately explaining the reason for the pap smear.
- (b) conducted a pelvic examination without adequately explaining the reasons for the examination and failed to obtain informed consent.
- (c) inappropriately conducted a breast examination, inadequately explained the reasons for doing so and did not obtain her informed consent.

The Tribunal found that the practitioner's conduct in relation to Patient B amounted to unsatisfactory professional conduct.

By way of separate hearings, the Tribunal made orders in relation to the practitioner's registration: [Health Care Complaints Commission v Balafas \(No 5\) \[2021\] NSWCATOD 218](#) (interlocutory orders) and [Health Care Complaints Commission v Balafas \(No 6\) \[2022\] NSWCATOD 183](#)

#### **(4) Dr Gregory Smith**

Leonie McCabe was previously married to Dr Peter Agnew. It was an abusive relationship that she managed to extract herself from, along with her two young daughters.

When Leonie left Dr Agnew, her sister and brother-in-law (Dr Gregory Smith) advised Leonie that she was no longer welcome at their home. This reaction caused a lot of harm and distress to Leonie and gives context as to why she would never have consented to Dr Gregory Smith being involved in her treatment.

In 2022, Leonie decided to undergo surgery with Dr Peter Myers. Unknown to Leonie, Dr Gregory Smith was the assisting surgeon. He was provided with the theatre list a week prior to the surgery on 10 October 2022 and failed to disclose the conflict of interest. He informed Dr Myers of the family connection after Leonie had been anaesthetised but we understand that he did not inform Dr Myers that their relationship was estranged. Dr Myers decided to proceed with the surgery on that basis.

Dr Smith's involvement in Leonie's surgery was not disclosed to her even after the surgery. She only became aware when she was claiming the Medicare rebate and private health fund rebate and saw that Dr Gregory Smith was listed as the assistant. Leonie immediately started to shake, feel hot and flushed in the face and felt a sense of being overwhelmed. She felt nauseated and off balance because her boundaries had been grossly violated. She would never have consented to Dr Smith touching her, especially while she was under a general anaesthetic and, therefore, unable to protect herself from someone that she considers a threat to her physical and emotional wellbeing.

Leonie subsequently lodged a complaint with the OHO and Ahpra determined that his professional conduct was unsatisfactory. A copy of Ahpra's letter to Leonie is **attached**. The ALA has received permission from Leonie to share her story and circumstances with the Committee.

**Private and Confidential**

14 April 2023

Ms Leonie McCabe

**By email only:** [leonie@leoniemccabe.com.au](mailto:leonie@leoniemccabe.com.au)

Dear Ms McCabe

**Action taken in relation to Dr Gregory Smith after assessment**

I refer to the letter advising you of the assessment of the notification about Dr Gregory Smith. The Medical Board of Australia has now considered the information provided in relation to this notification and decided the following:

**Decision**

The Board:

1. noted the decision on 28 February 2023 to propose to caution Dr Gregory Smith under section 178(2)(a) of the Health Practitioner Regulation National Law as it applies in each state and territory (National Law).
2. noted Dr Smith's response to the proposed action dated 23 March 2023 and 27 March 2023.
3. formed the reasonable belief under section 178(1)(a) of the National Law that Dr Smith's professional conduct is unsatisfactory.
4. decided under section 179(2)(b)(i) of the National Law to take the proposed action.
5. decided under section 178(2)(a) of the National Law to caution Dr Smith

**Reasons**

1. It is clear from the information provided that Ms Leonie McCabe's experience was distressing for her.
2. We received a notification about Dr Gregory Smith which raised concerns that he assisted with a surgery on his sister-in-law, Ms Leonie McCabe.
3. We require medical practitioners to meet the standards of practice set out in the Board's *Good medical practice: a code of conduct for doctors in Australia* (the Code).
4. Clause 4.15 and 10.12 of the Code states:

*4.15 Providing care to those close to you*

*Whenever possible, avoid providing medical care to anyone with whom you have a close personal relationship. In most cases, providing care to close friends, those you work with and family members is inappropriate because of the lack of objectivity, possible discontinuity of care, and risks to the patient and doctor. In particular, medical practitioners must not prescribe Schedule 8, psychotropic medication and/or drugs of dependence or perform elective surgery (such as cosmetic surgery), to anyone with whom they have a close personal relationship.*

*In some cases, providing care to those close to you is unavoidable, for example in an emergency. Whenever this is the case, good medical practice requires recognition and careful management of these issues.*

#### 10.12 Conflicts of interest

*Patients rely on the independence and trustworthiness of doctors for any advice or treatment. A conflict of interest in medical practice arises when a doctor, entrusted with acting in the interests of a patient, also has financial, professional or personal interests, or relationships with third parties, which may affect their care of the patient. Multiple interests are common. They require identification, careful consideration, appropriate disclosure and accountability. When these interests compromise, or might reasonably be perceived by an independent observer to compromise, the doctor's primary duty to the patient, doctors must recognise and resolve this conflict in the best interests of the patient. If in doubt, seek advice from colleagues, your employer, professional organisation or professional indemnity insurer.*

5. In response to the concerns raised, the practitioner stated he wishes to apologise to Ms McCabe for the distressed caused by his attendance at her surgery.
6. Having considered the concerns raised with us, we then assessed the risk that the practitioner posed in the future by considering:
  - a. information about where and how the practitioner practises
  - b. historical information about the practitioner, and
  - c. the practitioner's response.
7. We took into account the steps taken by the practitioner that should ensure safe, professional practice into the future.
8. These steps include:
  - a. completing formal education which included topics concerning treating staff, family and friends,
  - b. reviewing the Code, and
  - c. providing insight and reflection into the concerns raised.
9. The Board acknowledged the steps taken by Dr Smith in response to the notification. However, on consideration of the information available, the Board reasonably believed that Dr Gregory Smith's professional conduct was unsatisfactory because he failed to appropriately manage a conflict of interest. It is appropriate to impose the caution in these circumstances.

Thank you for taking the time to raise your concerns.

This matter has now been closed.

### Privacy

This letter may contain personal information about other people. This information has been disclosed to you under the National Law and in accordance with our Privacy Policy. You are asked to treat any personal information about other people confidentially and sensitively. Commonwealth, State or Territory laws may restrict how you can use other people's personal information.

### Your feedback

Your feedback is important to us. Telling us about your experience with Ahpra can help us improve what we do and how we do it. In the coming weeks we will email you a link to a brief survey about

Australian Health Practitioner Regulation Agency  
National Boards  
GPO Box 9958 Melbourne VIC 3001 [Ahpra.gov.au](http://Ahpra.gov.au) 1300 419 495

Ahpra and the National Boards regulate these registered health professions: Aboriginal and Torres Strait Islander health practice, Chinese medicine, chiropractic, dental, medical, medical radiation practice, midwifery, nursing, occupational therapy, optometry, osteopathy, paramedicine, pharmacy, physiotherapy, podiatry and psychology.

your experience. The survey is voluntary, and you will not be asked to identify yourself when responding. The information you provide will be handled in accordance with [Ahpra's Privacy Policy](#) and [Qualtrics's Privacy Policy](#).

If you have any queries, please contact me on 03 8708 9272 or [notifications1@ahpra.gov.au](mailto:notifications1@ahpra.gov.au) quoting the reference number below.

Yours sincerely



**Nathan Darlington**

Regulatory Advisor - Notifications

**Reference Number:** 00510533

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