

## CASE STUDIES: COURT AND TRIBUNAL DECISIONS

This resource is designed as a reflective and practical exercise for use in psychology supervision.

Two sets of reflective questions have been designed for use alongside this resource – **Reflective Questions: Ethical & Tribunal Case Studies** and **Reflective Questions: Ethics in I/O Psychology**.

The following pages contain case examples of Court and Tribunal outcomes relevant to the National Law<sup>1</sup>; specifically, those involving the Psychology Board of Australia and independent Psychologists. This content has been directly extracted from the Australian Health Practitioner Regulation Agency (AHPRA) website, <https://www.ahpra.gov.au/Publications/Tribunal-decisions.aspx>

### AHPRA (2021):

*“Court and tribunal outcomes are independent and public.*

*Tribunal decisions relate to complaints or concerns about the conduct, performance, or behaviour of a health practitioner.*

*Court decisions can sometimes refer to an appeal of a tribunal decision or more commonly the outcome in court of a criminal offence matter.*

*We publish summaries of these outcomes on the AHPRA and National Board websites. For decisions about practitioners in New South Wales, please refer to the Health Care Complaints Commission website.*

*We also publish a link to tribunal or court decisions on each practitioner’s record on the Public register which involve adverse findings and which were delivered after the start of the National Registration and Accreditation Scheme.*

*Publishing outcomes can help the person we receive the complaint or concern about to see through the eyes of the person who raised it with us.*

*They also help practitioners understand how the National Law helps them to practice safely or ethically.*

*Importantly, they show members of the public what is an acceptable and unacceptable level of care and behaviour.*

*A full record of decisions made by adjudication bodies (other than panels) relating to complaints made about health practitioners or students is published in the Australian Health Practitioner Law Library published on the Australian Legal Information Institute’s (AustLII) website.”*

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<sup>1</sup> The Health Practitioner Regulation National Law, as in force in each state and territory (the National Law).

## Psychologist reprimanded and disqualified for 18 months

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**07 May 2021**

A Victorian psychologist has been reprimanded and disqualified from applying for registration for 18 months for professional misconduct after he failed to comply with audit and supervision conditions.

Mr W, a registered psychologist, was alleged to have failed to comply with audit and supervision conditions imposed on his registration by the Victorian Civil and Administrative Tribunal (the tribunal) on 16 June 2017. Mr W's conduct included returning his patient files to his clients, which prevented the Psychology Board of Australia (the Board) from completing a scheduled audit of his practice.

Mr W did not accept the role of the Board and AHPRA in reviewing his clinical practice, particularly in relation to record keeping. He contended that he was not bound to comply with the audit and supervisory conditions, citing the *Privacy Act 1988*. The tribunal rejected this argument noting that disclosure of the patient records was authorised under the Tribunal's 2017 order and inspection of those records was allowed under the National Law<sup>2</sup>. Mr W was not entitled to ignore or stymie the audit and supervision conditions.

On 10 December 2020, the tribunal found that Mr W had engaged in professional misconduct and ordered that he be reprimanded and disqualified from applying for registration for 18 months from the date of the orders.

The tribunal viewed that both a reprimand and period of disqualification were necessary, because of the need for both general and specific deterrence.

The tribunal... 'must send a clear message to the psychology profession that failure to comply with conditions imposed by the Tribunal to protect the public will not be tolerated'.

The Part 1 and Part 2 decisions are available on the Austlii website.

Link:

<https://www.psychologyboard.gov.au/News/2021-05-07-Psychologist-reprimanded-and-disqualified.aspx>

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<sup>2</sup> The Health Practitioner Regulation National Law, as in force in each state and territory (the National Law).

# Psychologist reprimanded and disqualified for professional misconduct

23 Sep 2016

A tribunal has reprimanded a psychologist for engaging in professional misconduct.

The Victorian Civil and Administrative Tribunal (VCAT) has found that Mr T engaged in professional misconduct and reprimanded him, disqualifying him from applying for registration for 18 months. Mr T had previously let his registration lapse in November 2012.

The Psychology Board of Australia (the Board) referred the matter to the tribunal in October 2015, after a notification was received by Australian Health Practitioner Regulation Agency (AHPRA) concerning Mr T's conduct as a registered psychologist, namely entering into a relationship with a client.

During its investigation, the Board found that:

- In February 2010, the client in question was referred to Mr T under an Employee Assistance Program.
- In April 2010, those sessions ended. A general practitioner re-referred the client to Mr T under a Mental Health Plan. Mr T diagnosed the client with Dissociative Identity Disorder and treating her was complex, difficult, and challenging.
- From May 2010 onwards, Mr T and the client spoke on the telephone and sent each other text messages. At his invitation, the client sent him email messages which over time became of a personal nature. He then took or accompanied the client to outdoor locations, including parks and shopping centres.
- In October 2010, Mr T had lunch at the client's house, following a treatment session there. Shortly after that, he and the client commenced a sexual relationship.
- In November 2010, he gave the client a present of jewellery.
- In December 2010, he and the client started living together. During their relationship they attended relationship counselling. Until at least April 2011, Mr T continued to provide psychological treatment to the client.
- In October 2012, the client ended the personal and sexual relationship.

The tribunal found Mr T while working as a psychologist, engaged in professional misconduct in relation to all five allegations made by the Board, which included:

- **Practicing outside scope of professional competence**, where the practitioner failed to undertake a comprehensive assessment of the client at their first, or in any subsequent, consultation, formulate and implement an appropriate treatment plan, demonstrate the knowledge or skill needed to respond in an appropriate and therapeutically effective manner to the client's condition and refer her to an appropriately qualified psychologist or to otherwise ensure she received appropriate treatment.

## CASE STUDIES: COURT AND TRIBUNAL DECISIONS

- **Failing to seek professional supervision**, because of the client's complex presentation, Mr T required professional supervision to ensure he was able to provide appropriate psychological services to the client and to maintain professional boundaries. He was required to arrange such supervision under the Code and, importantly, to seek professional assistance in the circumstances in which he found himself before the personal/sexual relationship started.
- **Personal relationship with the client**, between May 2010 and October 2010, Mr T transgressed the professional boundary that should have been maintained.
- **Sexual relationship**, by entering a romantic and sexual relationship with a current client until at least April 2011 and a former client thereafter, the tribunal considered Mr T had engaged in professional misconduct of the most serious nature.
- **Failure to disclose to other health professionals**, between July 2010 and October 2012 Mr T failed to disclose to other health professionals involved in the client's care that he was in a personal and then sexual relationship with her.

VCAT took into account Mr T's admissions, the changes in his life, and the time that has elapsed since the offending behaviour. It, however, pointed out that he had not taken any further education in the field of psychology, nor sought professional help to analyse his own shortcomings that would be required to support any application for future registration.

As Mr T had not been registered as a psychologist since November 2012, the determinations that could be imposed were limited. VCAT reprimanded Mr T, further disqualifying him from applying for registration as a registered psychologist until 27 January 2018 (a period of 18 months) and indicated that any shorter period would fail to convey to the profession its strong disapproval of Mr T's conduct.

The full decision is available on the Austlii website.

Link:

<https://www.psychologyboard.gov.au/News/2016-09-23-psychologist-reprimanded.aspx>

# Psychologist disqualified and prohibited for boundary violations

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**15 Feb 2021**

A tribunal has disqualified a psychologist from applying for registration and prohibited her from providing any mental health, psychological or counselling services for two years after finding the practitioner's boundary violations with a patient amounted to professional misconduct.

The Psychology Board of Australia (Board) became aware of Ms M's behaviour in March 2018 when a patient made a notification of a personal and intimate relationship with Ms M to the Australian Health Practitioner Regulation Agency (AHPRA). The Board took immediate action in the form of imposing conditions on her registration and started an investigation into the allegations.

In September 2018, the Board referred Ms M to the Victorian Civil and Administrative Tribunal (the tribunal). In December 2018 Ms M decided not to renew her registration as a psychologist.

It was alleged in the tribunal that Ms M:

- transgressed professional boundaries by engaging in an inappropriate dual relationship with her patient;
- provided treatment that was not evidence-based and not clinically justified, namely 'energy medicine' therapy; and
- failed to maintain privacy and confidentiality and transgressed professional boundaries by discussing the patient with her husband and encouraging the patient to pursue a friendship with her husband.

The tribunal found that the conduct amounted to professional misconduct.

The tribunal noted that although the conduct was not predatory or criminal and did not involve a sexual relationship, there were a number of aggravating features which relocated it to the more serious end of boundary violations by a psychologist. These factors included that:

- the patient was particularly vulnerable because of his history, which Ms M was aware of;
- a high level of trust existed between Ms M and the patient, and harm was caused including the patient's loss of trust in therapeutic processes and practitioners, and
- Ms M used the delivery of therapy to develop the personal relationship, including the use of so-called 'energy medicine' to physically touch the patient, which was opportunistic and misrepresented the therapy as evidence-based.

The tribunal also noted that Ms M:

- was responsible for initiating the romantic relationship, and escalating it to a physical relationship, despite being aware of her professional obligations;

## CASE STUDIES: COURT AND TRIBUNAL DECISIONS

- made no attempt to raise and properly deal with her feelings and conduct in formal supervision;
- used her financial circumstances to place psychological pressure on the patient to conceal their relationship;
- continued to attempt to keep the patient in a relationship after he repeatedly requested she stop, and
- seriously breached the patient's privacy when she attempted to engage the patient in a relationship with her husband.

The tribunal was of the view that the breach of boundaries 'lies so far outside the practice of psychology that it demonstrates a preparedness to utilise the position of power and trust as a registered psychologist to pursue the person's own interests over the needs of the patient, and demonstrates a failure (or refusal) to recognise the inherent vulnerability and power imbalance between psychologist and patient.'

The tribunal commented that as an experienced psychologist there was no doubt that Ms M ought to have known better, and also had regard to the fact that Ms M cooperated with the disciplinary process, took full responsibility for her conduct early on, demonstrated remorse and undertook rehabilitative action.

On 13 May 2020 the tribunal reprimanded Ms M, disqualified her from applying for registration as a registered health practitioner for a period two years, and prohibited Ms M from providing any health service involving the provision of mental health, psychological or counselling services for a period of two years.

The full tribunal decision is available on the Austlii website.

Link:

<https://www.psychologyboard.gov.au/News/21-02-15-Psychologist-disqualified.aspx>

## Psychologist suspended for 18 months after inappropriate relationship with client

**25 Mar 2021**

A Western Australian clinical psychologist has been suspended for 18 months for professional misconduct after having an inappropriate sexual relationship with a client.

The Psychology Board of Australia (the Board) referred clinical psychologist, Dr M to the Western Australian State Administrative Tribunal (the tribunal) in August 2020 for professional misconduct.

The Board alleged that in 2013 Dr M entered into a personal relationship with a person who, from April 2011 to August 2011, had been her client. In July 2015, the relationship between Dr M and the client became sexual. The Australian Health Practitioner Regulation Agency (AHPRA) became aware of the relationship on 20 April 2018.

During the period of 2013 to 2015, Dr M's personal and professional relationship blurred with her former client, becoming intimate. Dr M had knowledge of the client, his marriage and mental health.

Additionally, in 2014 Dr M asked to speak with the client's daughter who was suffering from anxiety; the client agreed, and Dr M spoke with his daughter on three occasions. Dr M used her training and knowledge as a psychologist during these discussions; she did not take notes or maintain records of these discussions. Dr M and the client continued to speak infrequently until 2017 when their communication became more regular and included messages and photographs of a sexual nature.

Dr M acknowledged she did not meet the high standards of professional conduct her profession expects and expressed regret for that. She also expressed remorse at the affect her conduct had on the client's family. The tribunal accepted Dr M had no previous disciplinary history, that her conduct was isolated to one client and that she has practiced for several years since without repeating the conduct.

The tribunal found Dr M's conduct constituted professional misconduct, reprimanded her and suspended her registration for a period of 18 months from 26 November 2020. The tribunal also imposed conditions on her registration once the period of suspension ends, including:

- supervised practice for six months; and
- completing education in managing professional boundaries, avoiding conflicts of interest and dual/multiple relationships.

Dr M was also ordered to pay costs of \$5,000. The full tribunal decision is available on the Austlii website.

Link:

<https://www.psychologyboard.gov.au/News/2021-03-25-Psychologist-suspended-for-18-months.aspx>

## Tribunal reprimands psychologist, orders conditions on registration

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**06 Aug 2021**

A Victorian psychologist has been reprimanded and a condition placed on his registration after he failed to hold appropriate professional indemnity insurance and made false declarations at renewal and audit.

Mr P, a registered psychologist, was alleged to have failed to maintain appropriate professional indemnity insurance (PII) for approximately 12 months and recklessly made false declarations to AHPRA about his PII arrangements at renewal of registration and in a subsequent random audit.

The Psychology Board of Australia's (the Board) professional indemnity insurance arrangements registration standard requires registered psychologists to have appropriate PII arrangements in place when practicing. Mr P was unable to provide evidence of his PII arrangements as part of a random audit to show compliance with the Board's registration standards.

The Board referred the allegations to the Victorian Civil and Administrative Tribunal (the tribunal) in June 2020. Mr P agreed with the Board that by failing to maintain appropriate PII he had breached his obligations under the Board's registration standard and contravened the National Law.

In May 2021 the tribunal found that Mr P had engaged in professional misconduct and ordered that he be reprimanded, and a condition placed on his registration. The condition requires Mr P to provide a certificate of currency showing appropriate PII coverage on an annual basis.

The tribunal noted that Mr P's failure to renew his PII in early 2018 appeared to be an isolated event and also noted a number of mitigating factors, including that Mr P had been practicing for almost 40 years; had no prior disciplinary outcomes; had cooperated with the Board; and did not seek to excuse his actions and demonstrated insight and remorse.

In recording the reasons for its decision, the tribunal observed '*It needs to be made clear to members of the profession that they must comply with section 129 of the National Law and the registration standard, because the requirements are there to protect the public. It also needs to be made clear to members of the profession that they must never be reckless when they make relevant declarations to the Board.*'

The tribunal's decision is published on the Austlii website.

Link:

<https://www.psychologyboard.gov.au/News/2021-08-06-Tribunal-reprimands-psychologist-orders-conditions-on-registration.aspx>

## Psychologist who mismanaged vulnerable patient suspended for one year

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**19 Mar 2020**

The Victorian and Civil Administrative Tribunal (the tribunal) has reprimanded and suspended a psychologist after it was found she had engaged in professional misconduct.

Ms W was found to have allowed a professional relationship with a client to develop into a platonic social friendship, without ensuring that her client/friend was sufficiently protected from the foreseeable collateral impacts of that transition. Associated with this were inadequacies in client care in relation to record-keeping, risk assessments, and continuity of client care.

The practitioner had also been the subject of prior disciplinary action for boundary transgressions in 2012 to 2013, resulting in supervision conditions being imposed on her registration in December 2014.

The tribunal made findings of professional misconduct in relation to each of the six allegations against the practitioner, namely that she:

- engaged in inappropriate communications outside scheduled sessions, and established a personal platonic relationship with her client during the treating relationship;
- crossed professional boundaries, and not acted in her client's best interests, by telling the client that she had previously been the subject of a complaint in relation to boundary violations;
- failed to record in her clinical file conversations with other professionals involved in the treatment of her client, thus prejudicing the client's best interests in the event that her clinical file was relied upon by others in the future;
- failed to make adequate assessments of the risks faced by her client;
- failed to make reasonable arrangements for the continuity of psychological services for her client after the professional relationship ended, and the personal relationship had commenced;
- engaged in a personal relationship with her client after cessation of the treating relationship, without adequate consideration of her welfare, and whether an equal relationship could be established.

The practitioner was found guilty of professional misconduct. The tribunal ordered that the practitioner be reprimanded and her registration be suspended for a period of 12 months. Following the suspension, the practitioner will also have education and supervision conditions imposed on her registration.

The tribunal noted that one of the lessons arising from this case is the danger for health professionals in using informal means to communicate with their clients. In this case, text messaging. This can lead

## CASE STUDIES: COURT AND TRIBUNAL DECISIONS

practitioners more easily down the road towards breaching their ethical obligations, and to the blurring of boundaries between professional and personal conduct.

The full findings are available on the Austlii website.

Link:

<https://www.psychologyboard.gov.au/News/2020-03-19-tribunal-suspends-psychologist-over-mismanagement.aspx>