



**NEW ZEALAND HEALTH  
PRACTITIONERS  
DISCIPLINARY TRIBUNAL**

TE RŌPŪ WHAKATIKA  
KAIMAHI HAUORA

Level 24, AON Building,  
1 Willis Street, Wellington 6011

PO Box 10509, The Terrace,  
Wellington 6143, New Zealand

Telephone: +64 4 381 6816  
Website: [www.hpdt.org.nz](http://www.hpdt.org.nz)

**BEFORE THE HEALTH PRACTITIONERS DISCIPLINARY TRIBUNAL**

<b>HPDT NO</b>	1127/MLS20/474P
<b>UNDER</b>	the Health Practitioners Competence Assurance Act 2003 ("the Act")
<b>IN THE MATTER</b>	of a disciplinary charge laid against a health practitioner under Part 4 of the Act.
<b>BETWEEN</b>	<b>A PROFESSIONAL CONDUCT COMMITTEE</b> appointed by Medical Sciences Council of New Zealand
	<b>Applicant</b>
<b>AND</b>	<b>SEAN DAVISON</b> formerly of Dunedin, registered Medical Laboratory Scientist
	<b>Practitioner</b>

**HEARING held by video conference on 11 August 2020**

<b>TRIBUNAL</b>	Ms Maria Dew QC (Chair) Mr C Kendrick, Ms O Lowe, Mr M Acosido, Dr B McCulloch (Members) Ms D Gainey (Executive Officer)
<b>APPEARANCES</b>	Ms J Hughson for the PCC Mr R Stewart for the Practitioner

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**DECISION OF THE TRIBUNAL**

**27 November 2020**

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## **Introduction**

[1] On 25 February 2020, the Professional Conduct Committee (“PCC”) of the Medical Sciences Council of New Zealand (“Council”) laid two disciplinary charges under the Health Practitioners Competence Assurance Act 2003 (“HPCA Act”) against Mr Sean Davison, also known as Peter Sean Romeo Davison, a registered medical laboratory scientist, formerly of Dunedin and now residing in South Africa.

[2] Charge 1 laid under s100(1)(c) of the Act relates to Mr Davison’s three convictions for murder in South Africa.

[3] Charge 2 laid under section 100(1)(b) of the Act relates to Mr Davison’s failure to inform the Council about his involvement in two of the three murders as well as the three convictions. The Charges are set out in full in the Appendix to this decision. At the hearing, the PCC elected not to proceed with this Charge under the alternate s100(1)(a) of the Act.

[4] Mr Davison admits both Charges and the facts upon which they are based. Nevertheless, it remains for the Tribunal to determine whether the Charges are established, and if so what, if any, penalty should apply.

[5] The parties produced an Agreed Statement of Facts and an Agreed Bundle of Documents. The Tribunal heard submissions on liability and penalty from counsel appearing for the PCC and Mr Davison.

[6] The hearing was held by audio-visual link and was open to the public. The practitioner attended from his home in South Africa.<sup>1</sup> TVNZ was granted permission to film the hearing subject to the requirement to follow the Tribunal’s Practice Note on Media Guidelines dated 1 July 2020.

## **Background facts**

[7] The background facts set out below have been taken from the Agreed Statement of Facts dated 8 April 2020.

[8] Mr Davison is a New Zealand citizen who lives in Cape Town, South Africa, where he works as a Professor of Biotechnology at the University of Western Cape.

[9] On 18 June 2019, Mr Davison was convicted of three offences of murder in South Africa and is currently serving a sentence of three years correctional supervision. This sentence requires him to live under house arrest except for the purposes of work, religious activity or medical care.

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<sup>1</sup> The practitioner did not attend the latter part of the hearing during the penalty phase. However, his counsel in New Zealand remained to attend on his behalf.

[10] Mr Davison is, and at all material times was, a New Zealand registered medical laboratory scientist. He is qualified BSc (Hons) (University of Otago, 1984) and PhD (Microbiology Department) (University of Otago, 1990).

[11] Mr Davison was first registered in the Medical Laboratory Scientist - Provisional Scope of Practice, with the Council on 19 July 2018. The conditions on scope include that Mr Davison must practise within microbiology/molecular biology only. Mr Davison's entry on the Council's register records that his supervisor is Professor Gouws and his supervision location is the University of Western Cape. Mr Davison does not hold and has never held a current Annual Practising Certificate with the Council.

[12] Mr Davison is also registered with the Health Professions Council of South Africa ("HPCSA") as a medical biological scientist in the category of Independent Practice (Biological Sciences). His current registration expires on 31 March 2021.

*Conviction in New Zealand for aiding and abetting suicide*

[13] In August 2006, Mr Davison returned to New Zealand to care for his mother who was terminally ill with cancer. Mr Davison and his mother were very close.

[14] In or about September 2006, Mr Davison's mother commenced a water-only diet. She wanted to die and had asked several people, including Mr Davison to help her to do that.

[15] On 25 October 2006, a morphine pump was installed at her home. The same day as the pump was installed Mr Davison crushed up what he believed would be a lethal number of morphine tablets (which his mother had been prescribed and which he had started stockpiling so they could be used for an overdose). Mr Davison then mixed the crushed morphine tablets in a glass of water. He handed the glass to his mother and she swallowed the contents. Mr Davison stayed with his mother until the District Nurse arrived, and then went to bed. At around 2am the following morning, the nurse awoke Mr Davison and told him his mother had died. As no post-mortem was ever carried out it is not possible to say whether she died from the overdose or not.

[16] This offending only became known after a draft copy of a manuscript, Mr Davison wrote for a book, was sent to a journalist. Someone then sent this to the Auckland Police. Mr Davison was interviewed about his offending on television. During the interview he suggested that at the time he was not aware that what he was doing was a criminal offence.

[17] On or about 24 November 2011, Mr Davison pleaded guilty to and was convicted in the High Court at Dunedin, of counselling and procuring his mother to commit suicide, in consequence of which she attempted suicide, being an offence

punishable by a maximum term of imprisonment of 14 years under section 179(a) of the Crimes Act 1961 (aiding and abetting suicide).

[18] At the time of his sentencing on 24 November 2011, Mr Davison was 50 years of age and a Professor of Biotechnology employed by the University of Western Cape, South Africa. He had a wife and two young children.

[19] On sentencing French J noted, her view that while there was significant pre-meditation and a breach of the principle of the sanctity of life, Mr Davison had acted out of compassion and love and not for any personal gain. Her Honour noted that the evidence, including Mr Davison's manuscript for his book, satisfied her that Mr Davison was aware, at the time of his offending, that he would be breaking the law. Her Honour noted further that the risk of reoffending had been assessed in the Pre-Sentencing Report, as "*low*".<sup>2</sup>

[20] Mr Davison was sentenced to home detention for a period of five months. He was discharged on the original count of attempted murder, which the Crown had elected not to pursue. Prior to this conviction, Mr Davison had no criminal or traffic conviction history in New Zealand.

[21] The Council was aware of this conviction at the time it granted Mr Davison's application for registration in July 2018.

#### *Subsequent events in South Africa*

[22] In 2011, Mr Davison founded Dignity SA which is a group that supports and advocates for law change in the right to assisted suicide in South Africa.

[23] On 2 November 2013, at or near the Radisson Hotel, Granger Bay in the district of Cape Town, South Africa, Mr Davison unlawfully and intentionally killed Dr Anrich Burger, a medical doctor and quadriplegic, by administering a lethal concoction of drugs to Dr Burger.

[24] On 29 April 2015, the High Court of South Africa Gauteng division, granted an application for an order entitling a Mr Stransham-Ford the right to die if assisted by a "*qualified medical doctor*".<sup>3</sup> Mr Stransham-Ford was assisted by Dignity SA in the case. He died without assistance, after being informed of the decision. Mr Davison, through Dignity SA, was involved in the hearing of this case. Mr Davison is not and has never been a "*qualified medical doctor*".

[25] On 25 July 2015, at or near Bordeaux Court, Fresnaye, in the district of Cape Town, South Africa, Mr Davison unlawfully and intentionally killed Mr Justin Varian, a

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<sup>2</sup> *R v Davison*, HC Dunedin, CRI 2010- 012-4876, 24 November 2011.

<sup>3</sup> *Stransham-Ford v Minister of Justice and others* [2015] ZAGPPPHC 230, 2015(4) SA 50(GP).

man who had a diagnosis of motor neurone disease. Initially Mr Davison placed a bag over Mr Varian's head to use helium deoxygenation. Mr Davison then ended Mr Varian's life by asphyxiation and/or helium deoxygenation.

[26] On 8 November 2015, at or near Fern Close, Constantia in the district of Wynberg, South Africa, Mr Davison unlawfully and intentionally killed Mr Richard Holland, a man who had suffered brain injuries and had no motor function following a bicycle accident in 2012, by administering a lethal dose of fluid containing pentobarbital to Mr Holland.

[27] On 6 December 2016, the decision granting the application for an order entitling Mr Stransham-Ford the right to die if assisted by a qualified medical doctor, was overturned on appeal by a unanimous decision of the Supreme Court of Appeal of South Africa.<sup>4</sup> In its decision, the Court (Wallis JA) expressed the view that it is desirable that *"issues engaging profound moral questions beyond the remit of judges to determine, should be decided by the representatives of the people of [South Africa] as a whole"*.

[28] It remains the case that there is no right to assisted dying in South Africa, by a qualified medical doctor or otherwise. Assisted dying has not and has never been decriminalised in South Africa.

#### *Application for New Zealand registration*

[29] On 24 May 2017, Mr Davison submitted an online application to the Council for registration in the Medical Laboratory Scientist scope of practice. On the form Mr Davison indicated that he wished to return to New Zealand to work as a Medical Laboratory Scientist. In response to the question *"do you have any criminal convictions, or do you have any criminal charges pending?"*. Mr Davison replied *"I was convicted of the assisted suicide of my 85-year-old mother in the Dunedin High Court in 2011. My mother was a medical doctor who was terminally ill and went on a failed hunger strike to end her life. I assisted her to take an overdose of morphine at her pleading"*.

[30] The Council received documents in support of Mr Davison's application for registration, by post on 21 August 2017. The documents included a covering letter dated 8 August 2017 in which Mr Davison indicated he wanted to make a career shift and return to New Zealand and work in pathology laboratories; a South African police clearance certificate dated 21 June 2017 stating that *"no convictions have been recorded for any crime in the Republic of South Africa against [Mr Davison]"*; as well as a certified copy of Mr Davison's HPCSA registration certificate (Medical Biological Scientist – Independent Practice (Medical Biochemistry)) with effect from 30 April 2001

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<sup>4</sup> *Minister of Justice and Correctional Services v Estate Stransham-Ford* (531/2015) 2016 ZASCA 197 6 December 2016.

and a copy of his HPSCA practising licence for the period 1 April 2017 to 31 March 2018.

[31] The Council also received an HPCSA letter of good standing about Mr Davison with an issue date of 5 February 2018.

[32] In early 2018 Mr Davison moved his family to Australia, and he applied for a work position in New Zealand.

[33] On 20 February 2018, the Council's Registration Committee decided to refer Mr Davison's application for registration to the full Council for consideration of his 2011 New Zealand conviction. The application was considered at the Council meeting on 22 February 2018. Council noted the 2011 conviction and that a further internet search had revealed that Mr Davison had offended again by his involvement in an assisted suicide in South Africa. The Council resolved to request Mr Davidson to provide evidence of any rehabilitative steps taken since these matters, before his application was considered further.

[34] On 5 March 2018, the Council Registrar (Margaret Steel) sent a letter to Mr Davison requesting further information before it decided on his application for registration, referencing sections 15 and 16(c) of the HPCA Act. Mr Davison was asked as follows: *"To assist the Council in making this decision they have asked you to provide further information about what you have done in the intervening years [since his 2011 conviction] which could give the Council assurance that this was a one-off offence and you would not propose a risk to the public in general"*.

[35] On 14 March 2018, the Council received a response from Mr Davison: *"Thank you for your letter dated 3rd March seeking information on what I have done in the years since my conviction for the assisted suicide of my mother, which may impact on my fitness to practice [sic] as a health practitioner."*

[36] Mr Davison went on in his letter to focus on the advocacy work he had undertaken regarding physician-assisted dying and he referred to his public profile on this topic. Mr Davison advised the Council: *"Should you approve my registration and I am successful in gaining employment in New Zealand, I do not intend to be involved in the local campaign to seek a law change on assisted dying, but rather continue working at an international level"*.

[37] Mr Davison commented also: *"I hope the MRC (sic) Council will appreciate that although I am campaigning for a law change on assisted dying I am doing it in a dignified manner that will not impact adversely in my role as a health practitioner in New Zealand."*

[38] In his letter to the Council Registrar of 14 March 2018, Mr Davison did not disclose that he had been involved in assisting with the deaths of Dr Burger, Mr Varian or Mr Holland.

[39] On 18 March 2018, the Council's Registration Committee referred Mr Davison's application for registration back to the full Council.

[40] On 10 April 2018, the Council Registrar sent a letter to Mr Davison and asked him to comment about the accuracy of a media report from the Citizen Newspaper dated 27 September 2014.<sup>5</sup> The Council Registrar also asked Mr Davison to comment on the matters reported in this article and to provide confirmation from the South African Police Services that he was not facing any criminal charges, as well as other information relating to his 2011 conviction.

[41] By letter dated 29 April 2018, Mr Davison acknowledged that *"the essence of the media report is correct in that I did assist quadriplegic Dr Burger's suicide in 2013"*. He stated that the headline to the report correctly stated his unwillingness to assist in euthanasia again.

[42] Mr Davison wrote, among other things: *"It is important to note that my assistance occurred in a country, South Africa, where although the law related to assisted suicides is similar to New Zealand's, it is essentially decriminalised until a new law is in place. For that reason, Dr Burger was able to inform the police of what he was going to do prior to ending his life. Together we also made a video for the police to make it clear that he ended his own life at his own choosing with minimal assistance...hence my comment in the Citizen newspaper that I was unperturbed that my assistance may lead to criminal charges was based on this knowledge..... I was certainly not going to take a foolish risk of being arrested and imprisoned in a country where a prison sentence is close to a death sentence because AIDS is so endemic in South African prisons. Dr Burger was also not willing to put me at such risk without careful assurances from the Police."*

[43] Mr Davison resubmitted with this letter *"a police clearance from South Africa dated 21 June 2017. Although this certificate is 10 months old, I can give you my word that I am not facing any criminal charges since this date."* In the penultimate paragraph of his letter Mr Davison wrote: *"I wish to give you my assurance that once I return to New Zealand, I will not be involved in assisting any suicides. Above all else I do not want to compromise the future of my young children."*

[44] On 18 June 2018, Mr Davison's application for registration was considered at a full Council meeting. The Council resolved by a majority to register Mr Davison.

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<sup>5</sup> <https://citizen.co.za/news/south-africa/248996/sean-davidson- speaks-assisted-suicide/>



[45] On 17 July 2018, the Council's Registration Committee confirmed conditions on scope and provisional registration. A confirmation of registration letter and certificate was sent to Mr Davison on 19 July 2018.

[46] On 18 September 2018 Mr Davison was arrested in South Africa and charged with the murder of Dr Burger ("Count 1"). On or about 16 November 2018 Mr Davison was charged with the murder of Mr Varian ("Count 2"). On or about 29 April 2019 Mr Davison was charged with the murder of Mr Holland ("Count 3").

### *Convictions*

[47] On or around 18 June 2019, Mr Davison was convicted in the High Court of South Africa (Western Cape Division, Cape Town) having pleaded guilty to the above three offences of murder each punishable by a minimum sentence of life imprisonment.<sup>6</sup>

[48] Pursuant to a Plea and Sentence Agreement,<sup>7</sup> when pleading guilty to the three counts of murder, Mr Davison made the following admissions:

- (a) He understood the charges against him;
- (b) He was in no way unduly influenced or threatened to plead guilty nor were any promises made to him should he plead guilty other than the terms of the Agreement; and
- (c) He was in sound and sober senses while entering into the Agreement; and
- (d) He admitted he understood the charges against him and freely, voluntarily and without any influences pleaded guilty to all three counts of murder.

[49] The prosecution and Mr Davison agreed that there were substantial and compelling factors<sup>8</sup> which warranted a departure from the applicable minimum sentence of life imprisonment. The parties agreed and submitted to the High Court a proposed sentence which they considered was fair and reasonable. Based on that agreement, the High Court sentenced Mr Davison to three years correctional supervision.<sup>9</sup> The terms of the correctional supervision are as follows:

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<sup>6</sup> Under section 51(1) and Part 1 of Schedule 2 of the Criminal Law Amendment Act, No. 105 of 1997 (South Africa). See *The State v P Davison* (CC38/2019) High Court of South Africa Western Cape Division.

<sup>7</sup> Made pursuant to section 105A of the Criminal Procedure Act, No. 51 of 1977 (South Africa).

<sup>8</sup> Under section 51(3)(s) of the Criminal Procedure Act, No. 51 of 1997 (South Africa).

<sup>9</sup> Under s276(1)(h) of the Criminal Procedure Act, No. 51 of 1977 (South Africa).

- (a) That Mr Davison is placed under house arrest for the full duration of the three years of correctional supervision, except for the purposes of work, religious activity and attending a bona fide medical practitioner;
- (b) Mr Davison may not leave the magisterial district of his residence or place of work without the permission of his Correctional Supervision Officer;
- (c) Mr Davison must perform voluntary community service as determined by the Correctional Supervision Officer. The community service shall not be less than sixteen hours per month. The Commissioner may suspend the number of hours partly or readjust them depending on Mr Davison's cooperation with conditions in general;
- (d) Mr Davison is obliged to attend programmes as identified by Correctional Services as well as any other programmes which may become necessary. Programmes will be under the supervision and determined by the Correctional Supervision Officer;
- (e) For the full duration of the sentence Mr Davison must refrain from using any alcohol or drugs other than those prescribed by a medical practitioner;
- (f) Mr Davison submits to being monitored by the Commissioner, in order to achieve the objectives of the sentence; and
- (g) Mr Davison is required to:
  - (i) Obtain the written permission of the Commissioner before he changes his residential address; and
  - (ii) Comply with any reasonable instruction concerning the compliance with the administration of the sentence or any other condition issued by the Commissioner of Correctional Services or its representatives.
- (h) Further, Mr Davison was sentenced to eight years direct imprisonment which is wholly suspended for a period of five years on condition that he is not convicted of murder, conspiracy to commit murder, attempted murder or a crime involving violence in which a sentence of direct imprisonment is imposed without the option of a fine, committed during the period of suspension.
- (i) Mr Davison was deemed unfit to possess a firearm in terms of section 103 of the Firearms Control Act, No. 60 of 2000 (South Africa).

[50] The facts which Mr Davison admitted in the High Court of South Africa [Western Division, Cape Town] are set out in the Plea and Sentence Agreement.

[51] In respect of Count One (Dr Burger) Mr Davison admitted:

- (a) The deceased, Dr Burger, was a medical doctor who was rendered a quadriplegic after a motor vehicle accident in 2005.
- (b) After the motor vehicle accident and being left a quadriplegic, Dr Burger on more than one occasion expressed a desire to end his life. He suffered severe neuropathic pain in his legs and was totally dependent on others.
- (c) Prior to his death, Dr Burger and Mr Davison (as a founder member of Dignity SA, an organisation that advocates the right to assisted dying) met. Thereafter they had numerous meetings to discuss Dr Burger ending his life.
- (d) It was during these meetings that Mr Davison agreed to assist Dr Burger in ending his life.
- (e) In execution of the plan to end his life, Dr Burger met Mr Davison on 2 November 2013, near the Radisson Hotel in Granger Bay.
- (f) Dr Burger, with the help of his assistant, booked himself into the Radisson Hotel. Mr Davison remained outside.
- (g) The assistant left the hotel and Dr Burger remained behind in his hotel room.
- (h) Dr Burger, being a quadriplegic, was unable to consume medication on his own.
- (i) Mr Davison caused Dr Burger's death by administering a lethal concoction of drugs to Dr Burger.
- (j) Mr Davison left the hotel room and contacted Dr Burger's assistant, fiancé and mother.
- (k) The cause of death was consistent with a multiple drug overdose.
- (l) Mr Davison entered the hotel. Mr Davison and Dr Burger were alone in Dr Burger's hotel room prior to his death.

[52] In respect of Count Two (Mr Varian) Mr Davison admitted:

- (a) During 2010, the deceased, Mr Varian, suffered a stroke. In 2011, he was diagnosed with Motor Neuron Disease.
- (b) From 2012 until his death, Mr Varian was bedridden and suffered tremendously. Mr Varian had great difficulty eating, swallowing and sleeping. He was unable to move without assistance. Mr Varian often expressed his wish to die and asked family members and friends to respect his wishes.
- (c) Mr Varian approached Mr Davison to assist him to end his life.
- (d) Prior to the death of Mr Varian, Mr Davison and Mr Varian met, and Mr Davison agreed to assist Mr Varian in ending his life.
- (e) On 25 July 2015 Mr Davison arrived at Mr Varian's flat in Fresnaye and confirmed with Mr Varian that he no longer wished to live.
- (f) Due to Mr Varian's immobility and the fact that he had difficulty swallowing, Mr Davison placed a bag over Mr Varian's head and attempted to make use of helium deoxygenation as a method to end Mr Varian's life.
- (g) The equipment that was used was not fit for purpose and the initial technique used was inadequate.
- (h) Mr Davison then ended Mr Varian's life by asphyxiation and/or helium deoxygenation.
- (i) On the same day it was certified that Mr Varian had died from natural causes. Mr Varian was subsequently cremated, and the true cause of death could not be anatomically determined.

[53] In respect of Count Three (Mr Holland) Mr Davison admitted:

- (a) The deceased, Mr Holland was a keen sportsman who was extremely fit and active.
- (b) On 11 October 2012 he was knocked off his bicycle whilst on a training ride in Dubai.
- (c) As a result of the accident, Mr Holland suffered brain injuries and had no motor function. He was unable to speak and had no audible voice. All communication was done through eye movements or agreement to a verbal alphabet for Mr Holland to spell the word that he wished to communicate. He could not feed himself and was fed through a tube

into his stomach. Towards the end of his life he was able to swallow soft food. He experienced extreme pain which included severe migraines and body pain from severe spasticity of his muscles.

- (d) On numerous occasions, Mr Holland expressed the desire to end his life. He requested Mr Davison to be approached to assist him to end his life.
- (e) Mr Davison visited Mr Holland and after a long consultation, Mr Davison agreed to assist Mr Holland to commit suicide.
- (f) On 8 November 2015 Mr Davison attended Mr Holland's home in Fern Close, Constantia. Mr Davison enquired from Mr Holland, in the presence of his family, whether he still wished to commit suicide. Mr Holland confirmed that he did. On the same day, Mr Davison administered to Mr Holland a lethal dose of fluid, containing pentobarbital, which subsequently caused the death of Mr Holland.
- (g) Mr Holland's cause of death was due to pentobarbital toxicity.

[54] In respect of each of the Counts, Mr Davison admitted that he intended to cause the death of each of the deceased, that his actions did in fact cause the death of each of the deceased and that such conduct was unlawful and punishable by (South African) law.

#### *Council awareness of convictions*

[55] Mr Davison did not notify the Council of these convictions. The Council became aware of the convictions through the media.

[56] The Council Registrar sent a letter to Mr Davison on 11 July 2019 requesting further information from him about the convictions and also to seek clarification about the information he had provided to the Council in his letter of 29 April 2018. In that letter Mr Davison had asserted that suicide is "*essentially decriminalised*" in South Africa.

[57] Among other questions, Mr Davison was asked to explain why he did not disclose to the Council that he was involved in other assisted suicides following his conviction in New Zealand in 2011 (and in addition to Dr Burger's death, which the Council was only aware of through media reports, as above). Mr Davison was advised that upon receipt of this information the Council would consider what action, if any, would be taken regarding these convictions (referencing sections 100(1)(c), 100(2)(b) and 146 of the HPCA Act).

[58] Mr Davison responded to the Council by letter dated 15 August 2019. Mr Davison confirmed his recent three murder convictions in South Africa and his guilty pleas. Mr Davison stated that his comment in his letter of 29 April 2018, relating to his belief that assisted suicide was “*essentially decriminalised*” in South Africa was based on the High Court decision in the Stransham-Ford case which had not been overturned at the time Mr Davison murdered Mr Varian and Mr Holland.

[59] In his letter, Mr Davison gave as the reason that he had not disclosed to the Council that he was involved in the deaths of Mr Varian and Mr Holland: “*because my involvement was minor compared to Dr Burger’s death. Like the charge for Dr Burger’s death, these additional charges were not expected. These two deaths went beyond the purchase and use of Nembutal, which the police had a relaxed attitude to.*”

- (a) In relation to his involvement in the death of Mr Holland, Mr Davison stated that his role was “*minor*” and that he had been requested to be present “*because [Mr Holland’s family] were aware that I had been involved in this before, and my presence gave them piece of mind in case things didn’t go smoothly.*”
- (b) In relation to Mr Varian’s death, Mr Davison advised: “*I became involved at a late stage because they required my technical knowledge as a laboratory scientist on the operation of the gas cylinders, gauges, and air flows; helium gas being the only available option of an assisted suicide since he [Mr Varian] was no longer able to swallow Nembutal.*” Mr Davison stands by those reasons.

[60] Mr Davison admits that in the period prior to his registration with the Council (and from 19 July 2018, when he was granted provisional registration with the Council, until on or about 15 August 2019, when he responded to the Council Registrar’s letter) he did not disclose to the Council that he had been involved in the murders of Mr Varian and Mr Holland.

[61] Mr Davison now accepts that his failure to disclose these matters to the Council was in circumstances, when he knew:

- (a) His involvement in those murders was unlawful criminal conduct; and
- (b) The Council, when it had considered his application for registration in 2018, had sought information from him to satisfy itself that his prior criminal offending in respect of his mother and his unlawful involvement in the death of Dr Burger was the extent of his criminal offending and/or that he would not pose a risk to the public in general.

[62] Mr Davison accepts that this was information that his registration body in New Zealand, could reasonably expect to receive from him. Mr Davison says now that at the time (in the relevant period) he felt his involvement in those murders was a “private matter” that should not be shared with the Council or anyone other than those he was authorised to share it with.

[63] Mr Davison admits that in the period from 18 June 2019 until on or about 15 August 2019, he failed to notify the Council that he had been convicted of the murders of Dr Burger, Mr Varian and Mr Holland. He accepts that this was information that his registration body in New Zealand could reasonably expect to receive from him as it was relevant to his ongoing practising and/or registration status in New Zealand.

### **Medical Sciences Council Code of Ethics**

[64] The Medical Sciences Council’s Code of Ethics<sup>10</sup> sets the standards of ethical conduct expected of practitioners. Relevantly, the Code provides:<sup>11</sup>

- (a) In terms of their relationship with the New Zealand public, practitioners are expected to act in such a manner to justify public trust and confidence.
- (b) In terms of their relationship with colleagues and the profession, practitioners are responsible for:
  - (i) reporting any unethical conduct, unsafe practise or illegal professional activities to the appropriate bodies; and
  - (ii) accepting responsibility for upholding the integrity of the profession.

### **Relevant law**

[65] The disciplinary charges are laid under sections 100(1)(b) and (c) of the HPCA Act. The relevant provisions of s100 are as follows:

#### **“100 Grounds on which health practitioner may be disciplined**

- (1) The Tribunal may make any 1 or more of the orders authorised by section 101 if, after conducting a hearing on a charge laid under section 91 against a health practitioner, it makes 1 or more findings that
  - ...
  - (b) the practitioner has been guilty of professional misconduct

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<sup>10</sup> Medical Sciences Council (2018) *Policy & Guidelines: Code of Ethics*.

<sup>11</sup> Principles 1.1, 2.3 and 2.5.

because of any act or omission that, in the judgment of the Tribunal, has brought or was likely to bring discredit to the profession that the health practitioner practised at the time that the conduct occurred; or

(c) the practitioner has been convicted of an offence that reflects adversely on his or her fitness to practise.

(2) The Tribunal may make a finding under subsection (1)(c) only if the conviction concerned

...

(b) has been entered by any court in New Zealand or elsewhere for an offence punishable by imprisonment for a term of 3 months or longer.

(3) The Tribunal may not make an order under section 101, on the basis of a finding under subsection (1)(c) if the responsible authority was aware of the conviction concerned at the date of the practitioner's registration."

#### *Charge 1 - Referral of convictions*

[66] Charge 1 before the Tribunal is that Mr Davison's three murder convictions in South Africa separately or cumulatively reflect adversely on his fitness to practise as a medical laboratory scientist under section 100(1)(c) of the HPCA Act.

[67] There are two elements to a charge under section 100(1)(c):

- (a) The convictions must meet the threshold in section 100(2)(b) that they relate to offences punishable by imprisonment for a term of 3 months or longer. It is not a requirement that the practitioner is sentenced to a term of imprisonment and the words "*or elsewhere*" make clear that convictions in overseas jurisdictions are caught; and
- (b) The convictions must reflect adversely on the practitioner's fitness to practise as a health practitioner (in this case, a Medical Laboratory Scientist).

[68] It is well established by this Tribunal that the term "fitness to practise" extends beyond competence issues. It includes conduct that, considered objectively, will have a negative impact on the trust and confidence which the public is entitled to have in the practitioner and the profession as a whole, including conduct which falls below the standard legitimately expected of a member of the relevant profession, whether of a clinical character or not.<sup>12</sup>

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<sup>12</sup> See for example, *Golding 771/Nur15/330P*; *Mr E 245/Nur09/116P*



[69] As such, the Tribunal must consider whether the offending impacts on wider standards of professional conduct and confidence in the profession.<sup>13</sup>

[70] Counsel for the PCC referred to *Murdoch*, a case in which this Tribunal stated:<sup>14</sup>

“[34] Fitness to practice cannot, in the context of a conviction, relate only to the practitioner’s clinical ability. It must also involve a moral consideration and conduct which offends the law or is immoral or unethical, must affect adversely on the practitioner’s fitness to practice. Registration carries with it obligations to behave in a way which is ethical, honest and in accordance with the law. Failure to uphold the law or dishonesty must adversely affect a practitioner’s fitness to practice.”

[71] The fitness to practise of a health practitioner who participated in assisted dying came before the Tribunal in *Martin*. Ms Martin, a registered nurse, attempted to end the life of her terminally ill mother by administering an overdose of morphine. She was convicted of attempted murder. The Tribunal did not hesitate to find that Ms Martin’s conviction reflected adversely on her fitness to practise as a registered nurse. The Tribunal stated:<sup>15</sup>

“[47] Ms Martin’s actions in prematurely ending the life of her mother were not compatible with the fundamental obligation of all health professionals to respect the sanctity of life. Ms Martin’s actions were pre-meditated and clearly designed to cause her mother’s premature death. Ms Martin accepted the responsibility of caring for her terminally ill mother, and was trusted to administer appropriate levels of morphine to achieve pain relief. Ms Martin was trusted to carry out the responsibility of being her mother’s primary care giver because of her nursing experience.

[48] The Tribunal accepts, as did Wild J in the High Court, that Ms Martin did not have “malice forethought”, that she was candid in her admissions in her book and that her mother’s life is likely to have been prematurely terminated by a relatively short time (possibly only hours).

[49] Notwithstanding these facts the Tribunal is firmly of the view that serious questions are raised about a health professional’s fitness to practise if they are convicted of attempted murder when prematurely terminating the life of a critically ill patient.”

### *Charge 2 - Professional Misconduct*

[72] Charge 2 is that Mr Davison’s failure to notify the Council of his involvement in two of the three murders and his three murder convictions, amounts to professional

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<sup>13</sup> See *Sathe* 568/Den13/246P.

<sup>14</sup> *Murdoch* Phys06/45P at [34].

<sup>15</sup> *Martin* 45/Nur05/19P.

misconduct, being conduct that has or is likely to bring discredit on the medical sciences profession under section 100(1)(b) of the HPCA Act.

[73] Section 100(1)(b) requires that the conduct “has brought or was likely to bring discredit to the profession that the health practitioner practised at the time that the conduct occurred” [emphasis added]. Although he is registered with the Council, Mr Davison has never practised as a medical laboratory scientist in New Zealand. The application of section 100(1)(b) to a registered but non-practising health practitioner was considered by the Court of Appeal in *IRG v Professional Conduct Committee of the Psychologists’ Board*.<sup>16</sup> The Court stated: “As to para (b), we consider that the phrase “the profession that [he] practised at the time that the conduct occurred” is to be construed as meaning the profession on whose register his name was entered”. It follows that section 100(1)(b) will apply to any conduct of a health practitioner while they are registered whether or not they are also practising that profession at the relevant time.

[74] In *Collie v Nursing Council of New Zealand*,<sup>17</sup> Gendall J discussed the meaning of “discredit” and stated:

“[28] To discredit is to bring harm to the repute or reputation of the profession. The standard must be an objective standard with the question to be asked by the Council being whether reasonable members of the public, informed and with 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.”

[75] There is no requirement that the conduct alleged to bring discredit to the profession occurred in the actual practice of the profession in the sense of, for example, a health practitioner caring for a patient. However, behaviour that is entirely personal and private is not likely to bring discredit to a profession. The conduct must have a connection with or “logical link to the profession, its standards, and public expectations of members of that profession” rather than being purely personal or private behaviour.<sup>18</sup>

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<sup>16</sup> [2009] NZAR 563, at [5]. See also [46].

<sup>17</sup> [2001] NZAR 74.

<sup>18</sup> *Collie* per Gendall J, at [18] and [25].

[76] There is a well-established two stage test for determining professional misconduct in this jurisdiction.<sup>19</sup> The two steps are:

- (a) 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 bringing, or likely to bring, discredit on the profession; and
- (b) If so, whether the departure from acceptable standards has been significant enough to warrant a disciplinary sanction for the purposes of protection of the public and/or maintaining professional standards?

[77] The burden of proof to prove both Charges is on the PCC. The PCC must produce evidence that establishes the facts on which each Charge is based to the appropriate civil standard of proof.

[78] 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 each Charge are more likely than not. The Tribunal must apply a degree of flexibility to the balance of probabilities considering the seriousness of the allegations, and the gravity of the consequences flowing from a particular finding.<sup>20</sup>

### **Consideration of Charge 1 – Referral of convictions**

[79] The Tribunal is satisfied that Charge 1 is established, including each of its Particulars.

[80] Mr Davison admits the three convictions for murder entered by the High Court of South Africa on 18 June 2019. He also admits that the convictions reflect adversely on his fitness to practise as a medical laboratory scientist under section 100(1)(c) of the HPCA Act.

[81] Each of Mr Davison's three murder convictions was punishable by a minimum sentence of life imprisonment.<sup>21</sup> A much lighter sentence was in fact imposed – three years' correctional supervision - because the court accepted that there were "*substantial and compelling factors ... which warrant[ed] a departure from the applicable minimum sentence of life imprisonment*".

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<sup>19</sup> *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA), as applied in *Johns v Director of Proceedings* [2017] NZHC 2843.

<sup>20</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1 (SC) at [112].

<sup>21</sup> Under section 51(1) and Part 1 of Schedule 2 of the Criminal Law Amendments Act, No. 105 of 1997 (South Africa). See *The State v P Davison* (CC38/2019) High Court of South Africa Western Cape Division.

[82] However, under s100(2)(b) of the HPCA Act, the applicable threshold is the available sentence in respect of the offence, not the sentence imposed. It follows that each of the three convictions meets the threshold requirement of a *“conviction ... entered by any court ... elsewhere for an offence punishable by imprisonment for a term of 3 months or longer”*.

[83] The Agreed Statement of Facts includes details of a fourth conviction - Mr Davison’s conviction in New Zealand in 2011 for aiding and abetting his mother’s suicide. The PCC appropriately did not refer this conviction to the Tribunal under section 100(1)(c) because the Council was aware of the conviction at the time it approved Mr Davison’s application for registration. Under section 100(3), the Tribunal may not make an order in relation to such a conviction.

[84] As each of the three South African convictions meets the section 100(2)(b) threshold, the Tribunal must go on to consider whether those convictions, either separately or cumulatively, reflect adversely on Mr Davison’s fitness to practise.

[85] The Tribunal is satisfied that the three murder convictions both separately and cumulatively reflect adversely on Mr Davison’s fitness to practise as a medical laboratory scientist in New Zealand.

[86] These were serious offences involving the deliberate and premeditated taking of life.

[87] In relation to Mr Varian’s death, Mr Davison relied on his technical knowledge and skill as a medical laboratory scientist in carrying out the offence. Mr Davison admitted to the Council: *“I became involved at a late stage because they required my technical knowledge as a laboratory scientist on the operation of the gas cylinders, gauges, and air flows; helium gas being the only available option of an assisted suicide since he [Mr Varian] was no longer able to swallow Nembutal.”*

[88] Assisted dying, whether by a qualified medical doctor or otherwise, was not lawful in South Africa at the time of each offence and has never been decriminalised there.

[89] Mr Davison was aware that his conduct was criminal at the time of each offence:

- (a) At the time of Mr Burger’s death in 2013, Mr Davison was advocating for a law change in South Africa to allow assisted dying. There was evidence before the South African court that members of the public knew he was a “go to” person for assisted dying.

- (b) At the time of Mr Varian's and Mr Holland's murders in 2015, there was an ability to apply to a South African court for an order entitling such individuals the right to die if assisted by a "*qualified medical doctor*". Despite Mr Davison being aware of this process, a court order was not sought in either case and, in any event, Mr Davison was not himself a "*qualified medical doctor*".

[90] Despite Ms Davison's advocacy for physician-assisted dying, he did not arrange for a qualified medical doctor to attend at any of the deaths. This undoubtedly increased the risk of harm and possible suffering for all three men.

[91] The Tribunal accepts that Mr Davison acted out of a genuine sense of compassion and empathy for the plight of his victims. This was recognised by the South African court in the significantly reduced sentence it imposed, an approach which was supported by family members of all three victims. However, Mr Davison was not entitled to act on his personal beliefs in breach of the law. As Gendall J stated in *Professional Conduct Committee v Martin*:<sup>22</sup>

"Respectful adherence to the criminal law, especially when the law is designed to protect life and maintain the expectations of society, is to be expected of professional persons, irrespective of their personal views."

[92] The Tribunal is satisfied that the conduct for which Mr Davison was convicted in South Africa fell well below the professional standards legitimately expected of a member of the medical sciences profession practising in New Zealand and would undoubtedly impact negatively on the public's trust and confidence both in Mr Davison personally and the profession as a whole.

[93] The PCC submitted that Mr Davison's actions in South Africa were "*deliberate and serious breaches of the obligation on all health practitioners to respect the sanctity of life*" enshrined in section 8 of the New Zealand Bill of Rights Act 1990. Section 8 affirms the right to life, although it is qualified: "*No one shall be deprived of life except on such grounds as are established by law and are consistent with the principles of fundamental justice*".

[94] In reaching its decision on Charge 1, the Tribunal has not relied on section 8. The conduct did not occur in New Zealand and occurred before Mr Davison was registered as a health practitioner in New Zealand. There is no need to look behind the criminal convictions in South Africa and assess whether Mr Davison's conduct also breached New Zealand's fundamental rights. Mr Davison's conduct reflects adversely on his fitness to practise because he knowingly committed unlawful criminal acts of a very serious nature in South Africa.

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<sup>22</sup> CIV-2006-485-1461, 27/2/07, Gendall J, at [37].

[95] The PCC also advanced a submission, opposed by counsel for the practitioner, that Mr Davison's continued advocacy for assisted dying reflects adversely on his fitness to practise. Mr Davison's advocacy work was not the subject of a charge and the Tribunal does not accept the PCC's submission.

### **Consideration of Charge 2 – Professional Misconduct**

[96] The Tribunal is satisfied that Charge 2 is established. Mr Davison's failure to notify the Council of:

- (a) his involvement in Mr Varian's and Mr Holland's deaths in 2015, from the date of his registration on 19 July 2018 until 15 August 2019 (Particular 1); and
- (b) all three murder convictions from the date of those convictions on 18 June 2019 until 15 August 2019 (Particular 2)

both separately and cumulatively amount to professional misconduct, being conduct that has or is likely to bring discredit on the medical sciences profession under section 100(1)(b) of the HPCA Act.

[97] Mr Davison admits the facts that underpin Charge 2 and that they amount to professional misconduct under section 100(1)(b) of the HPCA Act.

[98] Mr Davison applied to the Council for registration on 24 May 2017. This was after he had been involved in all three killings in South Africa but before he had been charged with or convicted of those crimes. Prior to being granted registration on 19 July 2018, Mr Davison disclosed his 2011 conviction in New Zealand for aiding and abetting his mother's suicide. He also admitted to some involvement in Dr Burger's death, although only in response to specific questions from the Council after it became aware of the case through an internet search.

[99] When it considered his application for registration, the Council needed to decide whether Mr Davison's disclosed conviction for aiding and abetting his mother's suicide reflected adversely on his fitness to practise.<sup>23</sup>

[100] On 5 March 2018, the Council asked for further information: *"To assist the Council in making this decision they have asked you to provide further information about what you have done in the intervening years which could give the Council assurance that this was a one-off offence and you would not propose a risk to the public in general."*

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<sup>23</sup> Under section 16(c) of the HPCA Act.

[101] In the correspondence which followed in the lead-up to his registration, Mr Davison:<sup>24</sup>

- (a) Initially only disclosed his work in advocating for a law change in South Africa to allow physician-assisted suicide and made no mention of his involvement in the three deaths.
- (b) When asked directly by the Council about a media report of Dr Burger's death, admitted his involvement but characterised it as "*minor assistance*", despite his later admissions disclosing more significant involvement.
- (c) Advised the Council that since Dr Burger's death he had been unwilling to assist in euthanasia again, despite his subsequent involvement in the deaths of Mr Varian and Mr Holland in 2015; and
- (d) Advised the Council that assisted suicide was "*essentially decriminalised*" in South Africa, despite admitting to this Tribunal that he was aware that that was not the case.

[102] It was clear from the information sought by the Council prior to Mr Davison's registration that it regarded any further or ongoing involvement by him in assisted dying to be material to its assessment of his fitness to practise. The information Mr Davison provided to the Council in response gave the clear impression that his involvement in assisted dying was limited to his mother in 2011 and Dr Burger in 2013. That information was misleading and gave rise to a continuing obligation on Mr Davison, as from the date of his registration, to correct the position by informing the Council about his involvement in the deaths of Mr Varian and Mr Holland in 2015.

[103] In the context of his registration with a professional body, this was not information Mr Davison was entitled to keep private. As with the death of Dr Burger, Mr Davison did not disclose his involvement in Mr Varian's and Mr Holland's deaths to the Council until confronted in August 2019.

[104] Mr Davison was arrested and charged with Dr Burger's murder on 18 September 2018, approximately two months after being registered in New Zealand. He was subsequently charged with Mr Varian's murder (in November 2018) and Mr Holland's murder (in April 2019) and convictions on all three counts were entered on 18 June 2019 following Mr Davison's guilty pleas. The Council became aware of media reports of the convictions in late June 2019. Mr Davison did not contact the Council at any stage to notify it of the three murder charges laid against him or the subsequent

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<sup>24</sup> See paragraphs [29] to [45] above.

convictions. He only 'disclosed' the convictions to the Council on 15 August 2019 in response to the Council confronting him about media reporting of the convictions.

[105] Mr Davison had an obligation to notify the Council as soon as reasonably practicable about the three convictions in South Africa. His failure to do so over a period of more than eight weeks, between 18 June 2019 and 15 August 2019, was unreasonable and Mr Davison accepts this. He had been aware of the three murder charges against him for many months prior and had been negotiating a Plea and Sentence Agreement in the lead up to 18 June 2019.

[106] The Council's registration process makes clear that criminal convictions are relevant information. Mr Davison had submitted a South African police clearance certificate with his application. In its letter of 10 April 2018, the Council had also specifically asked Mr Davison to confirm that he was not facing any criminal charges in relation to Dr Burger's death.

[107] The Tribunal is satisfied that Mr Davison's failure to be open and honest with his professional body about his involvement in Mr Varian's and Mr Holland's deaths and his three murder convictions was conduct likely to bring discredit on the medical sciences profession. As Mr Davison now accepts, this was information that the Council would reasonably expect to have received from him as it was relevant to his ongoing registration status in New Zealand. Mr Davison's conduct fell well short of the expected standards of his profession. Reasonable members of the public would consider his non-disclosures to be unacceptable and this would likely lower the reputation of, and therefore discredit, his profession.

[108] Mr Davison's conduct was also inconsistent with the requirements in the Code of Ethics to act in a manner to justify public trust and confidence and uphold the integrity of the profession.

[109] The Tribunal is also satisfied that Mr Davison's conduct is a significant enough departure from expected professional standards to warrant a disciplinary sanction. Mr Davison had provided misleading information to the Council prior to his registration and then failed to correct the position over a period of more than a year. He then failed to advise the Council about three serious criminal convictions, information which he ought to have known the Council would regard as material to his continued fitness to practise.

### **Penalty**

[110] Given that the Tribunal is satisfied that both Charges are established, it must go on to consider the appropriate penalty under section 101 of the Act. The penalties may include:



- (a) Cancellation of the practitioner's registration;
- (b) Suspension of the practitioner's registration for a period not exceeding 3 years;
- (c) Censure;
- (d) An order that the practitioner may only practice with conditions imposed on employment or supervision or otherwise;
- (e) A fine of up to \$30,000 (in respect of Charge 2 only);<sup>25</sup> and
- (f) An order as to costs of the Tribunal and/or the PCC to be met in part or in whole by the practitioner.

[111] The Tribunal accepts as the appropriate sentencing principles those contained in *Roberts v Professional Conduct Committee*,<sup>26</sup> where Collins J identified the following eight factors as relevant whenever the Tribunal is determining an appropriate penalty. In particular, the Tribunal is bound to consider what penalty:

- (a) most appropriately protects the public and deters others;
- (b) facilitates the Tribunal's important role in setting professional standards;
- (c) punishes the practitioner;
- (d) allows for the rehabilitation of the health practitioner;
- (e) promotes consistency with penalties in similar cases;
- (f) reflects the seriousness of the misconduct;
- (g) is the least restrictive penalty appropriate in the circumstances; and
- (h) looked at overall, is the penalty "fair, reasonable and proportionate in the circumstances."

#### *PCC submissions on penalty*

[112] In relation to Charge 1, the PCC submitted that cancellation of Mr Davison's registration and a fine is a fair and proportionate penalty. In particular:

- (a) Mr Davison's criminal conduct was premeditated and repeated.

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<sup>25</sup> In accordance with section 101(2) of the HPCA Act, a fine may not be imposed in respect of a charge laid under s100(1)(c).

<sup>26</sup> [2012] NZHC 3354 at [44]-[51].

- (b) It involved the use of his professional skills and knowledge.
- (c) He knew his conduct was unlawful at the time of the offending and he continues to hold the beliefs about assisted dying by which he seeks to legitimise his actions.
- (d) Mr Davison has acknowledged that his empathy for those who are suffering has made him a risk to himself and to the wellbeing of his family.
- (e) He has no remorse for his crimes given his belief in assisted dying and there is a risk that he will engage in such conduct again.

[113] The PCC seeks censure and a fine in relation to Charge 2. The PCC submitted that Mr Davison deliberately withheld relevant information from the Council and sought to downplay his involvement in all three deaths, only making admissions when confronted about reports the Council had seen in the media. The PCC urged the Tribunal to send a clear message to registered health practitioners that there is an expectation that practitioners will be open and forthcoming with their professional bodies about criminal offending.

*Practitioner's submissions on penalty*

[114] Counsel for the practitioner accepted that cancellation of registration, censure and an order for costs would be appropriate. However, the imposition of a fine was opposed. In particular:

- (a) Mr Davison has admitted the charges from the outset and cooperated. Mr Davison was willing to hand in his registration as he wanted to reduce costs, but the HPCA Act required the process that has been followed in bringing these proceedings before the Tribunal.
- (b) While accepting that his murder convictions are very serious, Mr Davison's involvement in the three deaths was borne out of compassion. None of the men's families wanted Mr Davison prosecuted because they believed Mr Davison had fulfilled their relative's wish to die.
- (c) Counsel urged the Tribunal to consider the substantial and compelling factors in mitigation that warranted departure from the minimum life sentence being imposed in South Africa. These included the fact that Mr Davison's guilty plea had brought closure to the families and minimised the potential trauma to them of a trial.

[115] Mr Davison says he has respect for all human life and that this includes *“respecting the wishes of those who choose, without undue influence or coercion, to end their lives in a dignified manner on their own terms”*.

[116] Mr Davison tendered a formal apology to the Council through counsel at the Tribunal hearing for his failure to notify them about his involvement in Mr Varian’s and Mr Holland’s deaths and his three convictions. Two character references for Mr Davison were also provided to the Tribunal.

#### *Comparable cases*

[117] In relation to Charge 1, *Martin* is the most relevant case. In that case the High Court overturned the order of the Tribunal placing conditions on Ms Martin’s practice and cancelled her registration.

#### *Tribunal findings on penalty*

[118] The aggravating factors in relation to Charge 1 are:

- (a) The crimes for which Mr Davison has been convicted are extremely serious and carried a discretionary minimum penalty of life imprisonment. All three murders were pre-meditated and Mr Davison knew on each occasion that he was acting unlawfully. His conduct was repeated on three separate occasions over several years and followed a criminal conviction for similar conduct in New Zealand.
- (b) At least one of the murders (Mr Varian) involved Mr Davison utilising his professional skills and knowledge.
- (c) Mr Davison is not a qualified medical doctor. Even if assisted dying had been legal or decriminalised in South Africa at the relevant time, he performed procedures for which he was not qualified. This put these men at an increased risk of harm.
- (d) Mr Davison continues to refuse to apologise for his involvement in the three murders. As recorded in his counsel’s written submissions, *“Mr Davison] does not apologise for his role in those deaths given his involvement was based on a compassionate desire to help a fellow human being end their suffering in a dignified way”*.

[119] The Tribunal accepts that Mr Davison acted out of compassion but this was misguided. As a professional person, Mr Davison was not entitled to follow his personal beliefs and considered himself above the law.

[120] The aggravating factors in relation to Charge 2 are that Mr Davison misled the Council prior to his registration and then failed to correct the position or provide obviously relevant information to the Council over a period of more than a year.

[121] In mitigation, Mr Davison has admitted both Charges and cooperated fully with the PCC and Tribunal throughout this process.

[122] There can be no doubt that cancellation is appropriate in relation to Charge 1 and this has been accepted by Mr Davison. The Tribunal also censures Mr Davison in relation to both Charges to mark its disapproval of his conduct.

[123] If Mr Davison applies for registration in the future, it will be for the Council to determine whether he ought to be restored to the register. It is not appropriate for the Tribunal to impose any conditions on his return to practice under section 102 of the HPCA Act, because there have been no issues raised as to his competence or any need for further training.

[124] A fine may not be imposed in relation to Charge 1. The Tribunal has concluded that a fine is not necessary in relation to Charge 2, given the cancellation and censure already imposed and Mr Davison's limited financial means. Mr Davison provided sworn affidavit evidence as to his limited financial means.

## **Costs**

[125] Under s101(f) of the HPCA Act, the Tribunal may order the practitioner to pay part or all of the costs and expenses of and incidental to the PCC's investigation and prosecution, so far as they relate to the subject matter of the Charges, and the costs of the hearing by the Tribunal. There is no GST awarded on costs in the Tribunal, as is the case in costs before the courts.

[126] Costs in any health professional disciplinary proceeding involve a judgement as to the proportion of the costs which should properly be borne by the profession as a whole (being responsible for maintaining standards and disciplining its own profession) and the proportion which should be borne by a practitioner who has caused the costs to be incurred.

[127] In this jurisdiction, it has long been established that in considering the appropriate quantum of costs, the Tribunal must consider the need for the practitioner to make a proper contribution towards the costs. In doing so, the Tribunal takes 50% of the total reasonable costs as a starting point, in accordance with the dicta in *Cooray v Preliminary Proceedings Committee*.<sup>27</sup> This percentage may increase or decrease depending on the individual case.

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<sup>27</sup> HC Wellington, AP 23/94, Doogue J, 14 September 1995.

[128] The PCC's costs in relation to its investigation and this prosecution are \$22,146. The Tribunal's costs are \$11,343.

[129] An award of costs is not intended to be punitive and the practitioner's means, if known, should be considered.<sup>28</sup> Mr Davison provided a statement of means, a copy of which was notarised following the hearing. It is appropriate to reduce the practitioner's contribution considering his very limited financial means and also in recognition of his admissions of the Charges and his cooperation with the PCC and Tribunal.

[130] The practitioner is to pay a 25% contribution to costs, which amounts to \$5,604 to the PCC and \$2,835 to the Tribunal.

### **Suppression Orders**

[131] Mr Davison has not made an application for permanent name suppression and his interim name suppression lapsed at the conclusion of this hearing.

[132] Mr Davison applied under s95 of the HPCA Act for an order permanently suppressing publication of his residential address and the details of his financial means contained in his letter to the Tribunal dated 5 June 2020. Counsel for the PCC did not object to such an order. Having regard to the interests of the practitioner and the public interest, the Tribunal is satisfied that the order sought is desirable and makes the order sought.

### **Orders of the Tribunal**

[133] The Tribunal finds the two disciplinary Charges established under s100(1)(b) and s100(1)(c) of the Act.

[134] The Tribunal also makes the following penalty orders under s101 and s102 of the Act, in respect of the practitioner, Mr Sean Davison:

- (a) The practitioner is censured to mark the disapproval of the Tribunal;
- (b) The practitioner's registration is cancelled effective as at the date of this decision, subject to any rights of appeal that may be exercised; and
- (c) The practitioner is to pay a 25% contribution to the costs of both the PCC and Tribunal, being a payment by the practitioner of \$5,604 to the PCC and \$2,835 to the Tribunal.

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<sup>28</sup> *Vatsyayann v PCC* [2012] NZHC 1138.

[135] The Tribunal makes an order under s95 of the Act for permanent suppression of the practitioner's residential address and the details of his financial means contained in his letter dated 5 June 2020.

[136] Under 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 Medical Sciences Council of New Zealand to:
  - (i) 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; and
  - (ii) provide a copy of this decision to the Health Professions Council of South Africa.

**DATED** at Auckland this 27<sup>th</sup> day of November 2020



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M Dew QC  
Deputy Chair  
Health Practitioners Disciplinary Tribunal

## **APPENDIX**

### **Particulars of Charge 1 (Referral of Convictions)**

On or around 18 June 2019, SEAN DAVISON, registered medical laboratory scientist, formerly of Dunedin, was convicted in the High Court of South Africa (Western Cape Division, Cape Town) having pleaded guilty to three offences of murder each punishable by a minimum sentence of life imprisonment under section 51(1) and Part 1 of Schedule 2 of the Criminal Law Amendments Act, No. 105 of 1997 (South Africa) in that:

#### **Particulars of convictions**

- i. On 2 November 2013 at or near the Radisson Hotel, Granger Bay, in the district of Cape Town, Mr Davison unlawfully and intentionally killed Anrich Burger (Dr Burger), a medical doctor and quadriplegic, by administering a lethal concoction of drugs to Dr Burger; and
- ii. On 25 July 2015 at or near Bordeaux Court, Fresnayne, in the District of Cape Town, Mr Davison unlawfully and intentionally killed Justin Varian (Mr Varian), a man who had a diagnosis of Motor Neurone Disease, by placing a bag over Mr Varian's head and administering helium with the intent of helium deoxygenation and/or asphyxiation; and
- iii. On 8 November 2015 at or near Fern Close, Constantia in the district of Wynberg, Mr Davison unlawfully and intentionally killed Richard Holland (Mr Holland), a man who had suffered brain injuries and had no motor function following a bicycle accident in 2012, by administering a lethal dose of fluid containing pentobarbital to Mr Holland.

("the convictions")

In circumstances which included that in or around November 2011 Mr Davison had pleaded guilty to and been convicted in the High Court at Dunedin, New Zealand of counselling and procuring his mother (Patricia Elizabeth Davison) to commit suicide, in consequence of which she attempted suicide, being an offence punishable by a maximum term of imprisonment of 14 years under section 179(a) of the Crimes Act 1961 (aiding and abetting suicide).

The three convictions particularised above at i, ii, and iii either separately or cumulatively reflect adversely on Mr Davison's fitness to practise as a medical laboratory scientist pursuant to s 100(1)(c) of the Act.

### **Particulars of Charge 2 (Professional Misconduct)**

1. In the period from 19 July 2018 when he was granted provisional registration with the Medical Sciences Council of New Zealand, until on or about 15 August 2019, Mr Davison failed to disclose to the Council that he had been involved in

the murders of Mr Varian and Mr Holland in South Africa:

a. when he knew that his involvement in those murders was unlawful conduct; and/or

b. knowing that the Council, when it had considered his application for registration in 2018, had sought information from him to satisfy itself that his prior criminal offending in respect of his mother and his unlawful involvement in the death of Dr Burger was the extent of his criminal offending and/or conduct and/or that he would not propose a risk to the public in general; and/or

c. was information his registration body in New Zealand could reasonably expect to receive from him.

and/or;

2. In the period from 18 June 2019 until on or about 15 August 2019, Mr Davison failed to notify the Council that on 18 June 2019 he had been convicted of the murders of Dr Burger, Mr Varian and Mr Holland as particularised in Charge One.

This conduct amounts to professional misconduct pursuant to s 100(1)(a) and/or (b) of the Act, when particulars 1 and 2 are considered separately and cumulatively.