



**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

BEFORE THE HEALTH PRACTITIONERS DISCIPLINARY TRIBUNAL

HPDT NO **1331/Nur22/556P**

UNDER the Health Practitioners Competence Assurance Act
2003 (“the Act”)

IN THE MATTER of a disciplinary charge laid against a health practitioner
under Part 4 of the Act

BETWEEN **A PROFESSIONAL CONDUCT COMMITTEE appointed by
the NURSING COUNCIL OF NEW ZEALAND**

Applicant

AND **Ms SARAI IVA TEPOU** of Auckland, registered nurse
Practitioner

HEARING held in Auckland on 21 – 22 November 2022

TRIBUNAL Mr W McCarthy, Chair
 Ms S Baddeley, Ms K Batchelor, Ms J Byford-Jones,
 Ms S Matthews MNZM (Tribunal members)

 Ms D Gainey (Executive Officer)
 Ms H Hoffman (Stenographer)

APPEARANCES Mr M McClelland KC and Ms S Nightingale for the Professional
 Conduct Committee (PCC)
 No appearance by or for the practitioner

DECISION OF THE TRIBUNAL

Introduction

[1] In a Notice of Charge dated 10 June 2021, a Professional Conduct Committee (**PCC**) appointed by the Nursing Council of New Zealand, laid three disciplinary charges against Ms Sarai Iva Tepou, a registered nurse of Auckland (**the practitioner**), under s 100 of the Health Practitioners Competence Assurance Act 2003 (**the Act**).

[2] The essence of the charges relates to inappropriate social media comments made by the practitioner towards her fellow health practitioners, and the spreading of COVID-19 misinformation by the practitioner through social media and a radio interview.

[3] The practitioner did not engage with the PCC investigation or with the Tribunal.

[4] A hearing was held to determine the matter on 21 November 2022 at Auckland. As the practitioner did not attend the hearing, the matter proceeded by way of formal proof.

The charges

[5] An application was filed to amend the charges slightly on 14 November 2022. Leave was granted to amend the charges on the day of the hearing.

[6] The charges laid by the PCC, with the full particulars of each charge, are set out in full in Appendix A of this decision. The details of the practitioner's social media posts and the interview transcript are included in the particulars in Appendix A.

[7] The charges (excluding particulars) are set out below for ease of reference:

Charge 1

That Ms Tepou posted offensive and/or inappropriate comments and/or comments which were derogatory to nurses and/or other health professionals on her personal Facebook page for the purpose of discouraging vaccination against COVID-19.

Charge 2

That Ms Tepou circulated offensive and/or inappropriate material and/or material, on Facebook page(s) which was/were open to the public, which brought, or was likely to bring, nurses and/or other health professionals into disrepute. The comments made by Ms Tepou were made from her personal and/or business Facebook pages, for the purpose of discouraging vaccination against COVID-19.

Charge 3

On or about April 2021 Ms Tepou participated in a lengthy radio interview in English on a Tokelauan radio station called "PMN Tokelau", where she communicated offensive and/or inappropriate rhetoric and information and/or misinformation related to the COVID-19 vaccine, and/or rhetoric and information and/or misinformation about the COVID-19 vaccine that was likely to bring the nursing profession into disrepute, for the purpose of discouraging vaccination against COVID-19. This radio station was for the Tokelauan community and the interview remains on the PMN Tokelau Facebook page.

The conduct alleged in Charges 1.0, 2.0 and 3.0 amounts to professional misconduct pursuant to section 100(1)(a) and/or (b) of the Act and particulars 1.1 – 1.2, 2.1 – 2.3 and 3.1 – 3.21 either separately or cumulatively, are particulars of that professional misconduct.

The hearing

[8] The hearing of the disciplinary charge proceeded on the basis of a bundle of documents prepared by Counsel for the PCC, which included:

- (a) Facebook comments made by the practitioner;
- (b) COVID-19 refusal letter templates;
- (c) Transcript of the aforementioned radio interview on PMN Tokelau on or about 17 April 2021;
- (d) A Ministry of Health PowerPoint titled "Vaccine Rollout-Tokelau" dated 17 September 2021;
- (e) Latest COVID-19 health key messages dated 19 March 2021;

- (f) Latest COVID-19 health key messages dated 22 April 2021;
- (g) Latest COVID-19 health key messages dated 29 April 2021; and
- (h) Nursing Council of New Zealand Code of Conduct.

[9] During the course of the hearing, the PCC submitted a number of other documents, including the Nursing Council Social Media Guidelines.

[10] The PCC called two witnesses during the hearing:

- (a) Ms Ms H, an anaesthetic assistant for the Hutt Valley District Health Board, who came across concerning comments made by the practitioner relating to COVID-19 in a closed Facebook group of parents who were planning to refuse to vaccinate their children; and
- (b) Ms A, [], Mental Health, Addiction and Intellectual Disability Service for Te Whatu Ora. Ms A gave evidence on the Pacific COVID-19 vaccine roll-out and the effect the practitioner's radio interview may have had on the roll-out.

The relevant facts

[11] The practitioner is a registered nurse based in Auckland and is of Tokelauan and Tuvaluan descent. She graduated with a nursing degree from the Auckland Institute of Technology on 31 March 1991, and became a registered nurse on 2 May 1991. The practitioner later trained as a midwife and was practising as a midwife at the time of the hearing.

[12] The charges relate to conduct by the practitioner that took place between April – June 2021. This was during the New Zealand government's COVID-19 response and vaccination

roll-out. At this time, Pacific people were among groups being prioritised to receive the COVID-19 vaccine. In particular, the Tokelauan community's vaccination rate was low.

Facebook comments and letter templates

[13] Around June 2021, an anaesthetic assistant for the Hutt Valley DHB, Ms H, gained access to a closed Facebook group called "School Communities Unite". This group was made up of parents who were planning to refuse to vaccinate their children against COVID-19.

[14] On or around 25 June 2021, Ms H found comments made by the practitioner about the COVID-19 vaccine. In her comments, the practitioner stated that she was a nurse and expressed mistrust of her colleagues. In a Facebook comment thread, the practitioner stated:

...ditto kept hm for hpv vax although form not signed ... im a nurse dont trust my peers" [sic]

[15] In a second comment in the same thread, she stated:

Yeap focusing on basics ... foods lifestyle improve immunity ... try REFRAIN FRM DHBs most peers pricked!!

Few others adamant stay clear ... im one of FEW in GOLDEN DNA COMMUNITY ... AS IN UNTOUCHED DNA BY NANOTECH PRICK!

[16] Ms H also found Facebook posts from 24 June 2021 where the practitioner had circulated template letters that could be sent to schools by parents, grandparents or students over the age of 16, advising that the students concerned would not be receiving the COVID-19 vaccination. The letters were also shared on the practitioner's business Facebook page, called "Pasifika Independent Registered Midwife".

[17] The letter template titled "refusal to vax for under 16" stated:

There is overwhelming evidence coming out of countries where the Pfizer vaccine is administered that the use of spike proteins in vaccines are knocking out the heart protective proteins that naturally occur in the body. For young people in particular this is a very serious issue leading to premature death from

myocarditis (heart damage). There are reports thus far from Israel in particular, that they have 1700 cases of myocarditis in their young population, from vaccinations in schools.

As a parent/grandparent I am not going to wait around for the government to ask you to be involved in any vaccination programme at the school.

This letter is to inform you that I do not give my consent for my son/daughter/grandchild to be injected with any substance. I will also consider any move by the Board or the Principal to encourage the uptake of the vaccine injection at the school as a threat and will inform the police of any such action.

[18] Under this letter template posted on her personal Facebook page, the practitioner commented:

Keeping Golden DNA communities intact ... quote Golden DNA ... the uninjected [sic].

[19] The letter template titled “refusal letter over 16s” stated:

The news from other parts of the world is that young people in particular are suffering and dying from myocarditis (heart inflammation) as a result of being vaccinated. Israel has reported 1700 cases in my age group as a result of school vaccinations. The Pfizer is the vaccine that is being used in Israel and what is being used here.

I will not of course be receiving the vaccine, but I will inform police should there be a threat by this school ‘roll out’ such. I feel it is my duty to protect others in this case from what is in fact a threatened assault.

Schools throughout the country will be receiving this letter from parents and grandchildren who have the care and control of under 16-year-olds.

I will include some background information as to the medical background to the spike protein that doctors are saying is the main problem with this vaccine.

[20] On 25 June 2021, Ms H laid a complaint with the Midwifery Council about the practitioner’s Facebook comments and the circulation of the letter templates. In her complaint she commented that she found the practitioner’s comments to be highly concerning.

[21] The Midwifery Council referred this complaint to the Nursing Council on 29 June 2021.

Radio interview on PMN Tokelau

[22] On 17 April 2021, the practitioner was interviewed on a Tokelauan radio station called “PMN Tokelau” about the COVID-19 vaccination roll-out. PMN Tokelau is a radio station for the Tokelauan community, and the majority of its listeners are middle-aged / older people who can speak the language.

[23] During the interview, the practitioner discussed her views on the COVID-19 vaccine, including a number of claims about the efficacy, safety and underlying agenda of the COVID-19 vaccination roll-out, and vaccines generally. For example, she stated that in terms of the vaccine roll-out:

...we have to look in the bigger picture what we're in is a spiritual war, what we're living now is a spiritual war between, you know, evil and bad, the evil and the good, so this vaccine was, you know, supposedly some chip that's gonna change your DNA. We as humans which I know a lot of people who listen who are believers know that we are made in the image of God. With this vaccine that's coming in, it's gonna change the makeup of our DNA so we're not a hundred per cent human because you've got some foreign sort of, you know...

[24] The practitioner's claims about the COVID-19 vaccination also included the following:

- (a) that vaccines in general have never had a robust safety check;¹
- (b) that Bill Gates knows the vaccine ingredients and does not vaccinate his own children;²
- (c) questioning Pacific doctors who said the vaccine was safe;³

¹ Particular 3.4.

² Particular 3.9.

³ Particular 3.10.

- (d) characterising her own research on the COVID-19 vaccine as “really frightening”;⁴
- (e) that there is a link between autism and vaccines generally;⁵
- (f) that the COVID-19 vaccine destroys natural immunity;⁶
- (g) linking the COVID-19 vaccine as being part of a ‘spiritual war’;⁷ and
- (h) that the COVID-19 vaccine alters the make-up of DNA and contains a [micro]chip.⁸

[25] This interview remained on the PMN Tokelau Facebook page at the time of the hearing.

Code of Conduct and Guidelines

[26] Four principles of the Nursing Council’s Code of Conduct (**the Code**)⁹ are relevant:

- (a) Principle 3 requires nurses to work in partnership with health consumers to promote and protect their wellbeing. Standard 3.1 states: “Explain and share information with health consumers that they want and/or need. Give health consumers information that is honest and accurate in a way they can understand and invite questions”. Standard 3.8 states: “Use your expertise and influence to promote the health and well-being of vulnerable health consumers, communities and population groups.
- (b) Principle 6 requires nurses to work respectfully with colleagues to best meet health consumer needs. Standard 6.4 states: “Your behaviour towards

⁴ Particular 3.13.

⁵ Particular 3.14.

⁶ Particular 3.16.

⁷ Particular 3.19.

⁸ Particular 3.19.

⁹ Nursing Council of New Zealand (2012), *Code of Conduct for nurses*.

colleagues should always be respectful and not include dismissiveness, indifference, bullying, verbal abuse, harassment or discrimination. Do not discuss colleagues in public places or on social media. This caution applies to social networking sites, e.g. Facebook, blogs, emails, Twitter and other electronic communication mediums”.

- (c) Principle 7 requires nurses to act with integrity to justify health consumers trust. Standard 7.1 states: “Be open and honest in your interactions with health consumers”. Standard 7.2 states: “Protect vulnerable health consumers from exploitation and harm”.
- (d) Principle 8 requires nurses to maintain public trust and confidence in the nursing profession. Standard 8.1 states: “Maintain a high standard of professional and personal behaviour. The same standards of conduct are expected when you use social media and electronic forms of communication”.

[27] The Nursing Council has also published “Guidelines: Social Media and Electronic Communication” (**the Guidelines**) which state: “Nurses are responsible for maintaining the same standards of professional behaviour in social and electronic media as they would when communicating face to face”.

[28] The Guidelines specify how particular parts of the Code apply to social media use, including:

- (a) In relation to Principle 6: “Be respectful to your employer, colleagues and other health providers in all communications or posts. Be professional in your language and the opinions you express”.
- (b) In relation to Principle 8: “If you are identified as a nurse online you should act responsibly and uphold the reputation of your profession”.

Relevant law

[29] The practitioner is charged with professional misconduct under section 100(a) and/or (b) of the Act which provides:

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 s91 against a health practitioner, it makes 1 or more findings that –

- (a) the practitioner has been guilty of professional misconduct because of any act or omission that, in the judgment of the Tribunal, amounts to malpractice or negligence in relation to the scope of practice in respect of which the practitioner was registered at the time the conduct occurred; or
- (b) the practitioner has been guilty of professional misconduct because of any act or omission that, in the judgment of the Tribunal, has brought or is likely to bring discredit to the profession that the health practitioner practised at the time that the conduct occurred.

[30] The Tribunal and Courts have considered the term professional misconduct many times. In *Collie v Nursing Council*, Gendall J said:¹⁰

Negligence or malpractice may or may not be sufficient to constitute professional misconduct and the guide must be standards applicable by competent, ethical and responsible practitioners and there must be behaviour which falls seriously short of that which is to be considered acceptable and not mere inadvertent error, oversight or for that matter carelessness.

[31] The Tribunal has also consistently adopted common usage definitions of “malpractice” as being:

¹⁰ *Collie v Nursing Council of New Zealand*, [2001] NZAR 74 at [21].

the immoral, illegal or unethical conduct or neglect of professional duty. Any incidence of improper professional conduct¹¹; and

Improper treatment or culpable negligence of a patient by a physician or of a client by a lawyer... a criminal or illegal action: common misconduct.”¹²

[32] It is for the Tribunal to determine whether the conduct has or is likely to bring discredit on the medical profession under s100(1)(b) of the Act. In *Collie* at [28], Gendall J discussed the meaning of this provision, under the previous legislation, and stated:

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

[33] There is a well-established two stage test for determining professional misconduct set out in previous decisions of both this Tribunal and its predecessor.¹³ The two key steps involved in assessing what constitutes professional misconduct are:

- (a) First, an objective analysis of whether the practitioner’s acts or omissions can reasonably be regarded by the Tribunal as constituting malpractice, negligence or otherwise bringing or likely to bring discredit on the profession; and
- (b) Secondly, the Tribunal must be satisfied that the practitioner’s acts or omissions require a disciplinary sanction for the purposes of protection of the public or maintaining professional standards or punishing the practitioner.

[34] The burden of proof in the present case is on the PCC. This means that it is for the PCC to establish that the practitioner is guilty of professional misconduct. It is for it to produce the

¹¹ Collins English Dictionary, 2nd Edition.

¹² The New Shorter Oxford Dictionary, 1993 Edition.

¹³ *McKenzie v MPDT* [2004] NZAR 47 at [71] and *PCC v Nuttall* (8/Med04/03P).

evidence that establishes the facts on which the charge is based to the appropriate standard of proof.

[35] The standard of proof is the civil standard of proof, that is proof which satisfies the Tribunal that on the balance of probabilities the particulars of the charge are more likely than not. The Tribunal must apply a degree of flexibility to the balance of probabilities taking into account the seriousness of the allegation, and the gravity of the consequences flowing from a particular finding.¹⁴

[36] The Tribunal is also required to consider each particular independently and then cumulatively, in the context of determining whether the overall charge is established.¹⁵

Freedom of expression

[37] While the Tribunal did not have the benefit of submissions on behalf of the practitioner, the Tribunal is of the view that the right to freedom of expression is engaged in this matter, and as such our decision must consider the New Zealand Bill of Rights.¹⁶

[38] Section 14 of the New Zealand Bill of Rights (**NZBORA**) states that “[e]veryone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form”. Section 5 of the NZBORA provides that the right to freedom of expression “may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”.

[39] In this case, the practitioner’s right to impart information and opinions is subject to the conduct expected of a health practitioner under the Act¹⁷. The Tribunal is mindful that the principal purpose of the Act is to “protect the health and safety of members of the public”¹⁸.

¹⁴ *Z v Complaints Assessment Committee* [2009] 1 NZLR 1 and followed by this Tribunal in *PCC v Karagiannis* 181/Phar08/91P.

¹⁵ *Duncan v Medical Practitioners Disciplinary Committee* [1986] 1 NZLR 513.

¹⁶ New Zealand Bill of Rights Act 1990, s 3.

¹⁷ S100 of the Act.

¹⁸ S3 of the Act.

[40] Counsel for the PCC referred to the decision of *Canaday*¹⁹, which raised a number of similar issues to the present matter. Dr Canaday was appealing the interim suspension of his practising certificate, imposed due to his vocal public opposition to the COVID-19 vaccination programme and the public health measures taken in New Zealand.

[41] In relation to Dr Canaday's submission that he has the right to freedom of expression under s 14 of the NZBORA, DCJ Harrop said at [81]:

The right to freedom of expression that Dr Canaday strongly asserts and holds dear must yield, to some extent, in the context of professional responsibility. As Mr Mount pointed out the Court of Appeal has held as much in the legal professional disciplinary case of *Orlov v New Zealand Law Society*:

...We agree with Heath J that the provisions of the Bill of Rights must be read in light of the duties on counsel that are either articulated in the Act or implicitly recognised. Excessively aggressive or scandalous conduct that breaches those obligations will not qualify for protection under the right to freedom of expression.

[42] At [84] he stated:

The application of these high and general principles of course depends very much on the context. Dr Canaday is a medically qualified speaker who has expressly relied on his qualifications and experience to express, indeed to emphasise, the validity of the points he makes, as being based on "the actual science", by inference in contrast with the majority view about the COVID-19 vaccine response. These statements have been made in the midst of a public health emergency in circumstances where those who are uncertain about whether to get vaccinated are likely to be especially vulnerable to being misled. As I have noted, individual decisions to not get vaccinated will have created a serious risk of harm not only to the individual in question but also to those with whom they come into contact and the wider community and its hospital and healthcare systems. This means that with Dr Canaday's freedom to speak comes a very significant associated professional responsibility for accuracy and balance. In terms of s 5, significant limitation is justified.

[43] In this instance, the practitioner was similarly a registered health professional who was relying on her expertise as a nurse to support her position opposing the COVID-19 vaccination. Based on the reasoning of DCJ Harrop in *Canaday*, given the public health

¹⁹ *Canaday v Medical Council of New Zealand* [2022] NZDC 4436

emergency and the serious risk of harm caused by individual decisions not to get vaccinated, the practitioner was required to present information fairly and accurately.

[44] Further, the Tribunal notes that there exist a range of acceptable professional avenues if a health professional does wish to challenge an accepted medical view, such as peer-reviewed research. It is not the Tribunal's intention to dissuade individuals from raising genuine, evidence-based concerns. Indeed, robust debate is often a necessary part of medical development and the limiting of informed debate would be contrary to the overriding purpose of the Act.

[45] As in *Canaday*, the Tribunal considers that regulating the spread of misinformation by a New Zealand health professional to vulnerable communities in the context of a global pandemic is a justified limitation on the practitioner's freedom of expression and proceeds on that basis.

Consideration of Charge 1 – Facebook comments

PCC Evidence

[46] Ms H gave evidence that she found concerning comments made by the practitioner on the closed Facebook group "School Communities Unite".

[47] She provided screenshots of various Facebook comments, where the practitioner identified herself as a nurse. The practitioner expressed distrust in her nursing peers, district health boards and the COVID-19 roll-out.

PCC Submissions

[48] The PCC submitted that the practitioner's social media comments about her nursing colleagues were disrespectful, demeaning and inappropriate.

[49] Counsel for the PCC referred to the decision of *Hugill*,²⁰ which was the Tribunal's first consideration of allegations of inappropriate comments made by a practitioner on social media.

[50] In *Hugill*, the practitioner made racist generalisations about Māori nurses within the Taranaki region, which the Tribunal found were offensive, inappropriate and derogatory of Māori and other nurses. The Tribunal also found the practitioner's conduct fell well short of the expectations within the Code of Conduct and Guidelines.

[51] The Tribunal in *Hugill* found the practitioner's conduct was malpractice, being immoral and unethical conduct and a neglect of professional duty and was also likely to bring substantial discredit to the nursing profession.

[52] The PCC submitted that, based on the Tribunal's observations in *Hugill*, the practitioner's comments about her nursing colleagues were disrespectful, demeaning and inappropriate. The PCC further submitted that the comments similarly did not adhere to the Code of Conduct or the Guidelines regarding the conduct expected towards colleagues on social media.

[53] Accordingly, the PCC submitted that the practitioner's conduct constituted malpractice and was conduct that is likely to bring discredit to the nursing profession.

Tribunal findings – Charge 1 – Facebook comments

[54] The Tribunal accepts the evidence of Ms H and is satisfied that Charge 1 and particulars 1.1 and 1.2 are made out.

[55] The practitioner's social media comments identified her as a nurse, heightening the responsibility on her to act responsibly and professionally.

²⁰ *Hugill* 1114/Nur20/468P.

[56] Her comments encouraged distrust of other health professionals and District Health Boards, due to their support for the COVID-19 vaccination. These comments were made alongside further comments that opposed the COVID-19 vaccination more generally.

[57] The Tribunal acknowledges that the comments in this matter may be considered less serious than those in *Hugill*. However, it agrees with the PCC that the comments were disrespectful and demeaning towards other nurses. Expressing distrust of health professionals impliedly questions their integrity and professional judgement.

[58] In making these comments, it is the Tribunal's view the practitioner failed to observe the Code of Conduct and Guidelines, in particular Principles 6 and 8, by making public statements that were disrespectful and unprofessional towards her colleagues.

[59] The distinction between private and public in the social media space is complex, with the Guidelines acknowledging this. Nurses are entitled to private lives online, however where they are commenting on matters touching on their scope of practice, professional obligations still persist. The Tribunal agrees with the author of the Guidelines that "traditional expectations regarding the conduct of the nursing profession still apply in this non-traditional context". Nurses should be particularly acute to the reality that comments they perceive as private can become public on social media. While the Facebook comments were made in a "closed group", in the Tribunal's view the practitioner was intending to reach an audience which she did not know personally.

[60] The Tribunal was particularly concerned that these comments were made within the context of a pandemic. Trust in the health system and health professionals is a key aspect of successful public health interventions. The New Zealand government's pandemic response relied heavily on widespread public support for the COVID-19 vaccination roll-out.

[61] The Tribunal considers that contributing to public scepticism and mistrust of health professionals during this public health response was completely unacceptable behaviour. Such conduct falls seriously short of the standard expected of health professionals at this time.

[62] Accordingly, the Tribunal finds that the practitioner's conduct is malpractice, being immoral and unethical conduct and a neglect of professional duty. It is also likely to bring substantial discredit to the nursing profession.

[63] Given the context within which the practitioner's comments were made, and the potential impact of the comments on the government's COVID-19 roll-out, the Tribunal considers the practitioner's conduct amounts to professional misconduct and requires a disciplinary sanction. Charge 1 and particulars 1.1 and 1.2 are therefore established with particulars 1.1 and 1.2 cumulatively amounting to professional misconduct under both s100(1)(a) and (b) of the Act.

Consideration of Charge 2 – circulation of letter templates

PCC Evidence

[64] Ms H also gave evidence that the practitioner circulated two letter templates from her business Facebook page, one entitled "refusal to vax for under 16" the other entitled "refusal letter over 16s". The letters were intended to be used to object to COVID-19 vaccines being administered within schools.

[65] The practitioner also made a further Facebook comment under the first letter referring to those who were not vaccinated as having "golden DNA".

PCC Submissions

[66] The PCC submitted that if the circulation of letter templates resulted in individual decisions not to get vaccinated, this will have created a serious risk of harm not only to the individual in question, but also to those with whom they come into contact and the wider community and its hospital and healthcare systems.

[67] In considering the risk of harm, Counsel for the PCC again referred to the decision in *Canaday*²¹. At [73], DCJ Harrop drew a distinction between oral advice to an individual statement and public statements made in relation to COVID-19:

This case is different because Dr Canaday's statements have not been made in a clinical setting at all; as a radiologist he has not in recent years practised medicine in the typical doctor-patient way. There is very little evidence of any adverse impact on anyone in particular. But despite being unclear, the potential harm he has caused is much more substantial. A significant number of unknown and unidentified people who have listened to his advice may have been influenced in their decisions about whether or not to get vaccinated. It is reasonable to assume that some will have been influenced by what he, as a senior and experienced doctor, has said publicly when speaking against the vaccinations and the risks associated with them. Also, by contrast with oral advice to a patient, many of Dr Canaday's public statements are accessible in perpetuity on the internet. They have a much greater potential reach and a much greater period of potential reach.

[68] He then discussed at [74] the specific risks that arose from making public statements opposing the COVID-19 vaccine:

To the extent that one or more people have decided not to get vaccinated when they otherwise would or may have done, then the potential effects go well beyond the effects on those people. Each such person will present a greater risk not only to themselves but to members of the community with whom they may interact. There is what I believe to be indisputable evidence that those who are not vaccinated are more likely to spread the disease and more likely to suffer more serious consequences themselves. Inevitably, directly and indirectly, any individual decision not to get vaccinated is likely to place additional and unnecessary strain on New Zealand's rather vulnerable healthcare system. This conclusion is supported by the observation of Cooke J in *Yardley*.

[69] He continues at [77] to discuss the influence that Dr Canaday had as a medical professional:

However, I accept Mr Mount's submission and the view of the Council that Dr Canaday's views, by reason of his position as a doctor and his long experience as a medical expert will have carried significant weight with listeners and as a result posed a material risk of harm in terms of increasing vaccine hesitancy. I also accept Mr Mount's submission that there are not just two "choirs", the group who were always going to be vaccinated and the group who were never going to be vaccinated. Within our

²¹ *Canaday* [2022] NZDC 4436.

community there is a group of people who have been genuinely unsure about whether or not to get vaccinated, for a range of reasons. For people in that category who heard what Dr Canaday said, his remarks may well have been influential in their deciding not to get vaccinated.

[70] At [78], he concluded that Dr Canaday's conduct:

...has given rise to a potentially significant risk of increased vaccine hesitancy and/or scepticism, which in turn has potentially far-reaching consequences for the health of the New Zealand public in the midst of a public health emergency.

[71] The PCC submitted that the circulation of letter templates in this context constituted malpractice and was conduct that is likely to bring discredit to the nursing profession.

Findings of the Tribunal - Charge 2 – circulation of letter templates

[72] The Tribunal accepts the evidence of Ms H and is satisfied that Charge 2 and particulars 2.1 – 2.3 are made out.

[73] The letter templates were intended to be used to support vaccination refusal for children and young people over the age of 16. By circulating these, the author intended to undermine the roll-out of the COVID-19 vaccine.

[74] Unlike the first charge, the practitioner does point to reports out of Israel regarding the incidence of myocarditis. However, the general tenor of the letter in the Tribunal's view lacked balance and overstated the "overwhelming" evidence against the COVID-19 vaccine. The fact that the practitioner commented "keeping Golden DNA communities intact...quote Golden DNA...the uninjected" underlines that the practitioner was not engaging in a responsible conversation required of a health professional.

[75] Again, in making these comments, it is the Tribunal's view the practitioner failed to observe the Code of Conduct and Guidelines, in particular Principles 3 and 8.

[76] As observed by DCJ Harrop in *Canaday*, if the circulation of the letter templates influenced the decision of one or more people not to get vaccinated, this may have had far-reaching effects on the health of the New Zealand public in the midst of a pandemic.

[77] Accordingly, the Tribunal finds that the practitioner's conduct is malpractice, being immoral and unethical conduct and a neglect of professional duty. It is also likely to bring substantial discredit to the nursing profession.

[78] Again, given the context within which the practitioner's comments were made, the tenor of the comments, and the potential impact of the comments on the decision of one or more people not to get vaccinated, the Tribunal considers the practitioner's conduct amounts to professional misconduct and requires a disciplinary sanction. Charge 2 and particulars 2.1 – 2.3 are therefore established, with particulars 2.1 – 2.3 cumulatively amounting to professional misconduct under both s100(1)(a) and (b) of the Act.

Consideration of Charge 3 – Radio interview

PCC Evidence

[79] Ms Caroline Cheetham gave evidence attaching a transcript of the practitioner's radio interview on 20 September 2021.

[80] During the interview, the practitioner identified herself as a health professional several times. The practitioner made several claims about the COVID-19 vaccination, without providing an evidential basis.

[81] Ms A gave evidence about the COVID-19 vaccination roll-out targeted at Pacific communities within the Capital Coast DHB. She discussed the challenges Pacific communities have with health literacy, and the targeted approach that had been taken towards these communities. In relation to the Tokelauan community, she stated:

The Tokelauan community was very slow to respond. We communicated the messages and facts to the Tokelauan community as we received them from the Ministry of Health (“MOH”) – and that the MOH was the one source of truth.

Compared to the Cook Island, Samoan and Fijian communities, the Tokelauan community’s vaccination rate was low.

[82] Ms A also commented on the potential impact of the practitioner’s interview on PMN Tokelau radio station. She said these messages:

...had the potential to create confusion in the Tokelau community. The community is already at high risk of being confused from all of the different messages on social media regarding the vaccine.

Sarai’s interview would have added to the confusion and potentially added to people mistrusting health services. It undermines the efforts of the health system response to the pandemic.

PCC Submissions

[83] During the PCC’s oral submissions, it was submitted that Charge 3 is the most serious.

[84] The PCC noted that the practitioner is a respected figure in the Tokelauan community and is a dual-registered health professional. It further noted that her conduct and comments were aimed at a community which already experiences challenges with health literacy, as evidenced by the government’s targeted vaccination roll-out.

[85] The PCC again relied on the comments of DCJ Harrop in *Canaday*, that the practitioner’s conduct occurred during a public health emergency in circumstances where those who were uncertain about whether to get vaccinated were likely to be especially vulnerable to being misled. As DCJ Harrop found, individual decisions to not get vaccinated will have created a serious risk of harm not only to the individual in question, but also to those with whom they come into contact and the wider community and its hospital and healthcare systems.

[86] Accordingly, the PCC submitted that the practitioner's conduct carried a significant likelihood of undermining the public trust and confidence in both the public health response to the COVID-19 pandemic and a national health emergency and the nursing profession. In this way, the practitioner brought discredit to the nursing profession.

Tribunal findings – Charge 3 – Radio interview

[87] The Tribunal accepts the evidence of Ms Cheetham and Ms A and is satisfied that Charge 3 and particulars 3.1 – 3.21 are made out.

[88] The Tribunal was grateful for Ms A's evidence about the low vaccination rates within the Tokelauan community, and the risk of confusion that the practitioner's interview could have caused.

[89] The Tribunal agrees with the PCC that this charge is the most serious. The practitioner would have known that as a trusted member of a community and a self-identified health professional, her opinion would carry significant weight. Knowing this, she deliberately used her speech to undermine the audience's confidence in the efficacy of the COVID-19 vaccine without providing any evidence. It is particularly egregious given the size and composition of the audience and some of the outlandish, unsubstantiated claims that were made in the course of the interview.

[90] In making these comments, it is the Tribunal's view the practitioner failed to observe the Code of Conduct and Guidelines, in particular Principles 3, 6 and 8.

[91] Again, as observed in *Canaday*, if the practitioner's comments influenced individual decisions not to receive the COVID-19 vaccination, then this potentially had wide-ranging impact on the community and New Zealand's health system.

[92] Accordingly, the Tribunal finds that the practitioner's conduct is malpractice, being immoral and unethical conduct and a neglect of professional duty. It is also likely to bring substantial discredit to the nursing profession.

[93] As with charges 1 and 2, given the context within which the interview took place, the extraordinary nature of the claims, and the lack of any discernible evidence supporting these claims, the Tribunal considers the practitioner's conduct amounts to professional misconduct and requires a disciplinary sanction. Charge 3 and particulars 3.1 – 3.21 are therefore established with particulars 3.1 – 3.21 cumulatively amounting to professional misconduct under both s100(1)(a) and (b) of the Act.

Summation of charges

[94] The Tribunal is satisfied that the allegations in each charge and their particulars are sufficiently supported by the evidence and are established.

[95] Accordingly, the Tribunal finds that the established charges separately and cumulatively amount to professional misconduct under both s100(1)(a) and (b) of the Act.

Penalty

[96] Having found the charges established the Tribunal must next determine what penalty is fair, reasonable and proportionate.

[97] Section 101 of the Act provides for the following penalties:

- (a) Cancellation of registration.
- (b) Suspension of registration for a period not exceeding three years.
- (c) Conditions imposed on practising certificate.
- (d) Censure.
- (e) Payment of costs to the Tribunal and / or the PCC.

[98] The appropriate sentencing principles are those contained in *Roberts v Professional Conduct Committee*,²² where Collins J identified the following eight factors as relevant whenever this 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 which is "*fair, reasonable and proportionate in the circumstances*".

[99] The objective when determining penalty is described in *Young v Professional Conduct Committee*:²³

The protection and maintenance of professional standards is an important part of the protection of the public. It is through the maintenance of high professional standards that the public is protected. Deterrence is in the same category. This is intended to discourage others from acting the same way reflected in the severity of the punishment imposed.

²² *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 2254 at [44] – [51].

²³ *Young v Professional Conduct Committee* HC Wellington CIV 2006-485-1002 1 June 2007 at [30].

[100] The Tribunal's role is to determine the appropriate penalty considering the nature of the conduct and the purposes of the Act, which are, to protect the public interest and the integrity of the profession.

PCC submissions on penalty

[101] The PCC submitted that the following aggravating factors are relevant to penalty:

- (a) The practitioner is a respected member of the Pacific community and is both a registered midwife and a registered nurse, therefore heightening her professional responsibilities towards a broader range of vulnerable health consumers than is otherwise normally the case.
- (b) The practitioner is Tokelauan and Tuvaluan and therefore has the ability, in her capacity as a dual-registered health professional, to influence marginalised and vulnerable communities who were prioritised by the Ministry of Health in the government's COVID-19 vaccine roll-out. She promoted anti-vaccination statements that contradicted the best available scientific evidence and undermined the government's vaccination roll-out.
- (c) The religious tenor of some of the practitioner's comments, which were serious given the importance of religion within some parts of the Tokelauan community.
- (d) The practitioner's conduct has the potential to add to people's mistrust of key health services and undermined the efforts of the health system to respond to the pandemic.
- (e) Pacific communities have challenges with health literacy and the practitioner's conduct put these already vulnerable communities at further risk by adding to the confusion in the Tokelauan community with respect to the COVID-19 pandemic and in particular the COVID-19 vaccine. This was at a time when

Pacific people had been prioritised to get the vaccine. Her actions were likely to increase vaccine hesitancy or scepticism which likely had far-reaching consequences for the health of the public during the public health emergency by increasing the risk of persons contracting COVID-19, increasing the risk of persons suffering more serious symptoms than they otherwise would have had they been vaccinated, and increasing the risk of spreading COVID-19 within the community by reducing the uptake of the vaccine.

- (f) The Tokelauan community's vaccination rate was low compared to the Cook Island, Samoan and Fijian communities.
- (g) The practitioner's conduct directly undermined the New Zealand government's response to a global health pandemic.
- (h) The practitioner did not engage in any part of the PCC process and has not engaged in any part of the Tribunal process.

[102] The PCC submitted that there are no mitigating factors in this case due to the practitioner's complete lack of engagement throughout.

[103] The PCC submitted that the following penalties would be appropriate:

- (a) Suspension of the practitioner's registration for a period of 12 months.
- (b) Within a period of six months from when the practitioner recommences practice as a registered nurse following her period of suspension, either:
 - i. She completes a course in relation to professional ethics as approved by the Nursing Council at her own expense, and that upon completion of the course she provides a written reflection to the Nursing Council focusing on evidence-based practice and the importance of respecting your colleagues; or

- ii. She enrolls in and successfully completes the Professional Nursing Practice paper through Massey University.
- (c) Censure.
- (d) An order that the practitioner must disclose the Tribunal's decision to any employer for a period of 12 months following her return to practice.
- (e) That the Tribunal make its written decision available to the Midwifery Council immediately.

Tribunal consideration of penalty

[104] The Tribunal considers the following aggravating factors are particularly relevant when considering penalty:

- (a) The practitioner's radio interview was targeted at the Tokelauan community, who already experiences challenges with health literacy and had low COVID-19 vaccination rates at the time the comments were made.
- (b) The practitioner's comments had the potential to contribute to individual and community mistrust of health services and health professionals.
- (c) The practitioner's comments had the potential to undermine the New Zealand government's response to the COVID-19 pandemic.
- (d) The practitioner did not provide robust evidence in support of her criticism of the New Zealand government's COVID-19 response.
- (e) The practitioner did not engage with the PCC's investigation or the Tribunal process.

[105] The Tribunal accepts the PCC's submission that there are no mitigating factors to consider due to the practitioner's lack of involvement in the Tribunal's process.

[106] Accordingly, the Tribunal determines the following penalties are the least restrictive in the circumstances:

- (a) The practitioner's registration is suspended for a period of 12 months under s101(1)(b).
- (b) The practitioner is censured under s101(1)(d).
- (c) Two conditions under s101(1)(c) apply if she recommences practice:
 - i. Within 6 months of recommencing practice as a registered nurse following suspension, the practitioner is to complete a course in relation to professional ethics approved by the Nursing Council at her own expense. She will then be required to submit a written reflection to the Nursing Council focused on evidence-based practice and the importance of respecting colleagues.
 - ii. For a period of 12 months following her recommencing practice, the practitioner must disclose the Tribunal's decision to any employer.

Costs

[107] Under s101(f) of the 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.

[108] 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.

[109] 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*.²⁴ This percentage may increase or decrease depending on the individual case.

[110] The PCC's costs in relation to its investigation and this prosecution are \$24,726.87. The Tribunal's costs are \$ 32,405.22.

[111] The Tribunal does not have any detail as to the practitioner's personal circumstances and financial position, so proceeded on the basis that she is in a position to pay costs. Given her lack of engagement with the PCC and the Tribunal process, the Tribunal considers it appropriate for the practitioner to pay 40% of the total costs.

Suppression of names

[112] Counsel for the PCC sought permanent name suppression under s95 for:

- (a) Ms H. Due to her accessing the "School Communities Unite" Facebook page, Ms H has received abusive Facebook messages, emails and texts, and her employer also received complaints about her. Ms H is concerned about the impact her involvement in these proceedings may have on her employer and employment.
- (b) Ms A. Ms A is concerned that people within the Tokelauan community may not understand her involvement with these proceedings and may not receive the information that she has given evidence well, giving rise to personal issues for her.

²⁴ HC Wellington, AP 23/94, Doogue J, 14 September 1995.

- (c) Ms T. Ms T was a member of the facebook group with who the practitioner interacted. Ms T did not attend the hearing and did not have the opportunity to seek permanent name suppression at her own behest.

[113] The Tribunal is satisfied it is desirable to make an order prohibiting the publication of the name of Ms H, Ms A and Ms T, and any particular affairs under s 92(d). For completeness, Ms A can be referred to as working with or being involved with the Pacific COVID-19 vaccination roll-outs.

Orders of the Tribunal

[114] The three charges of professional misconduct are established.

[115] The Tribunal makes the following penalty orders:

- (a) The practitioner's registration is suspended for a period of 12 months under s101(1)(b).
- (b) The practitioner is censured under s101(1)(d).
- (c) Under s101(1)(c) conditions are imposed on the practitioner's practice as outlined in paragraph 106 of this decision.

[116] The practitioner is to pay a 40% contribution of costs to both the PCC and the Tribunal, being a payment by the practitioner of \$9,890.75 to the PCC and \$12,962.08 to the Tribunal.

[117] The Tribunal makes an order under s 95 for permanent name suppression of Ms H, Ms A and Ms T.

[118] Pursuant to 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 Nursing Council of New Zealand to publish either a summary of, or a reference to, the Tribunal's decision in its professional publications to members, in each case including a reference to the Tribunal's website so as to enable interested parties access to the decision.

DATED at Auckland this 7th day of September 2023

A handwritten signature in black ink, appearing to read 'W. McCarthy', written in a cursive style.

Winston McCarthy
Deputy Chairperson
Health Practitioners Disciplinary Tribunal

APPENDIX A

IN THE MATTER OF

the Health Practitioners Competence Assurance Act 2003

AND

IN THE MATTER OF

Sarai Iva Tepou, registered nurse of Auckland

DISCIPLINARY CHARGE

TAKE NOTICE that a Professional Conduct Committee appointed by the Nursing Council of New Zealand pursuant to section 71 of the Health Practitioners Competence Assurance Act 2003 (“the Act”) has determined, in accordance with section 80(3)(b) of the Act, that the complaint about the conduct of Sarai Iva Tepou, (“Ms Tepou”) registered nurse of Auckland, referred to the Committee pursuant to section 68(1) of the Act, should be considered by the Health Practitioners Disciplinary Tribunal. The Professional Conduct Committee has reason to believe that grounds exist entitling the Tribunal to exercise its powers under section 100 of the Act.

CHARGE

- 1.0.** That Ms Tepou posted offensive and/or inappropriate comments and/or comments which were derogatory to nurses and/or other health professionals on her Facebook page which was open to the public. The comments made by Ms Tepou were made on her personal Facebook page for the purpose of discouraging vaccination against COVID-19. In particular:

Particulars:

- 1.1. Ms Tepou replied to a comment by Ms T on Facebook:

“ . . . ditto kept hm for hpv vax although form not signed . . . I’m a nurse don’t trust my peers” [sic].

1.2. Ms Tepou replied to a comment by Ms T on Facebook:

“Yeap focusing on the basics... foods lifestyle improve immunity ... try REFRAIN FRM DHBs most peers pricked!!

Few others adamant stay clear ... im one of FEW in GOLDEN DNA COMMUNITY ... AS IN UNTOUCHED DNA BY NANOTECH PRICK!” [sic].

In respect of particulars 1.1 and 1.2 the PCC relies on the full context of the Facebook postings.

CHARGE

2.0. That Ms Tepou circulated offensive and/or inappropriate material and/or material, on Facebook pages which were open to the public, which brought, or was likely to bring, nurses and/or other health professionals into disrepute. The comments made by Ms Tepou were made on her personal and/or business Facebook pages, for the purpose of discouraging vaccination against COVID-19. In particular:

Particulars:

2.1. Ms Tepou circulated a letter template on her personal and/or business Facebook page titled *“refusal to vax for under 16”* which undermined and/or potentially undermined and/or was intended to undermine the COVID-19 vaccination rollout in schools implemented by the Ministry of Health. In particular, the letter stated:

2.1.1. *“There is overwhelming evidence coming out of countries where the Pfizer vaccine is administered that the use of spike proteins in vaccines are knocking out the heart protective proteins that naturally occur in the body. For young people in particular this is a very serious issue leading to premature death from myocarditis (heart damage). There are reports thus far from Israel in particular, that they have 1700 cases of myocarditis in their young population, from vaccinations in schools.*

2.1.2. *As a parent/grandparent I am not going to wait around for the government to ask you to be involved in any vaccination programme at the school.*

2.1.3. *This letter is to inform you that I do not give my consent for me son/daughter/grandchild to be injected with any substance. I will also consider any move by the Board or the Principal to encourage uptake of the vaccine injection at the school as a threat and will inform the police of any such action". [sic]*

2.2. Ms Tepou, under this letter template posted on her personal Facebook page, commented:

"Keeping Golden DNA communities intact . . . quote Golden DNA . . . the uninjected " [sic].

2.3. Ms Tepou circulated a letter template on her personal and/or business Facebook page titled "*refusal letter over 16s*" which undermined and/or potentially undermined and/or was intended to undermine the COVID-19 vaccination rollout in schools implemented by the Ministry of Health. In particular, the letter stated:

2.3.1. *"The news from other parts of the world is that young people in particular are suffering and dying from myocarditis (heart inflammation) as a result of being vaccinated. Israel has reported 1700 cases in my age group as a result of school vaccinations. The Pfizer is the vaccine that is being used in Israel and what is being used here.*

2.3.2. *I will not of course be receiving the vaccine, but I will inform police should there be a threat by this school 'roll out' such. I feel it is my duty to protect others in this case from what is in fact a threatened assault.*

2.3.3. *Schools throughout the country will be receiving this letter from parents and grandchildren [sic] who have the care and control of under 16-year-olds.*

2.3.4. *I will include some background information as to the medical background to the spike protein that doctors are saying is the main problem with this vaccine”*

In respect of particulars 2.1 – 2.3 the PCC relies on the full context of the two letter templates and the associated Facebook posts.

CHARGE

3.0. On or about April 2021 Ms Tepou participated in a lengthy radio interview in English on a Tokelauan radio station called “PMN Tokelau”, where she communicated offensive and/or inappropriate rhetoric and information and/or misinformation related to the COVID-19 vaccine, and/or rhetoric and information and/or misinformation about the COVID-19 vaccine that was likely to bring the nursing profession into disrepute, for the purpose of discouraging vaccination against COVID-19. This radio station was for the Tokelauan community and the interview remains on the PMN Tokelau Facebook Page <https://fo-fo.facebook.com/PMNTokelau/videos/sarai-tepou/278652217072219/>. In particular:

Particulars:

3.1. Ms Tepou stated during the radio interview about the COVID-19 vaccine mandate for health professionals:

“If we have to look at the, for me for example we’re talking about me as a health professional, I’ve been in this industry for nearly 30 years, now it’s been on the radio or as in the mainstream media in the last two, three weeks about shortages of midwives in general, more so shortages of Pasifika nurses. Now me, myself, Sarai, I do not want to take the Covid vaccine because it’s an experimental, you know, vaccine. It’s only been what less than six months. I’m not the only one that feels this way. I have other colleagues who feel the same way. Myself and a few other colleagues were willing to give up our license if they’re going to enforce this vaccine upon us” [sic]

- 3.2. Ms Tepou stated during the radio interview about the research into the COVID-19 vaccine:

“I’m hoping they do the research, you know basic research as in what the ingredients look globally because New Zealand’s not the first country that we’ve had this vaccine. It’s commenced overseas, in the UK, in America and Europe, so look at the I’m gonna say the fatalities ‘cos we have had people die from this vaccine, we’ve had other severe effects from this vaccine”. [sic]

- 3.3. Ms Tepou stated during the radio interview about the research into the COVID-19 vaccine:

“Before I answer that question I’ll give you an example, um, I’m not gonna name the clinic but there is a clinic that I work closely with. Everyone in that clinic has actually taken the vaccine. I’ve spoken to one of the colleagues there, and I’m saying to the colleagues, ‘cos I’m a registered nurse and I’m a registered midwife, praise the lord thank you. But she’s a registered nurse as well and it’s a Pacific clinic . . .

. . . So I said oh okay, have you done research? Oh actually I haven’t. Then I was bringing up my, you know, little bits of research about this Covid vaccine and she had no idea what it is. I mean you have colleagues of mine, which I’m sure there’s many, not just Pacific but mainstream Palagi whatever ethnicity. There are places some people visit which the Ministry of Health are saying and have they done their research? Um I don’t think so because if they knew what was in it they probably wouldn’t wanna take it”. [sic]

- 3.4. Ms Tepou stated during the radio interview about the safety of the COVID-19 vaccine:

“You know, vaccines in general have never had a thorough robust safety check. I’m talking about vaccines in general. But obviously this one coming out falls into that category as well, you know what I mean?”. [sic]

- 3.5. Ms Tepou stated during the radio interview about the research into, and the safety of, the COVID-19 vaccine:

“I have huge concerns [announcer], I mean, you know myself and some of my colleagues have actually taken time to research. It’s an experimental vaccine and, you know, the research is supposed to be, you know, 2023 I think it is, one of my colleagues was saying before they can have the numbers, how can they do the research when it’s only just come out? . . .

. . . No they’ve only just made it six months ago and there’s still an experimental stage and yet we’re running it out to the, you know, the general population. Now some of the side effects, like I said before, let’s just break it down so the community can hear we have, has anyone died from this vaccine and I’m not saying just in New Zealand, well actually I’ve heard of one probably about a month ago and I’ve just heard from one, someone told me yesterday there was another one who died from it, a border worker. So yes there’s two I think in New Zealand who’s died from this vaccine. And overseas there’s been quite a few. So death is one, anaphylactic shock is one, anaemia’s one, sterility is a huge one, sterility is, you know, [inaudible] like you can’t get pregnant. So, you know, these things like that is a huge concern. Now if I have to break it down even more and I’m, and like I said to you before coming on [announcer] I need to be upfront.

There’s no more PC here I mean it’s a huge concern for me. Bill Gates is the man that’s behind this, it’s all about money, you know, there’s he’s invested, his millions of dollars, actually billions of dollars into this vaccine like, you know, he’s selling the vaccine. He made 20 million [inaudible] 200 million for every 20 million that he invests in it, so it’s all about money for him. But the other thing with [inaudible] de-population, I’m just gonna say, I mean de-population is basically killing off the population and there is no agenda, people need to do their own research. So eugenics, his father was all about, you know, planet, no, you know what I’m trying

to say, his father, so he's the son of a eugenist, a eugenist is basically depopulation. That's the real agenda". [sic]

- 3.6. Ms Tepou stated during the radio interview about the COVID-19 vaccine mandate:

"Is it really okay to have a government which to me is, you know, it's tyranny, like you're forcing us to do something we don't wish to do. This is the body [inaudible]. Do we really want, is it right to be forced anything, like medicines or vaccines and we really don't want to have it, of course we should be, right now, we should have the right to say no". [sic]

- 3.7. Ms Tepou stated during the radio interview about the research into, and the safety of, the COVID-19 vaccine:

"Okay, you know, okay, you know, I had a discussion with a colleague of mine she's a highly, you know, experienced midwife but she's actually on the opposite side of how I feel so I was having a discussion with her, she's a registered nurse, registered midwife for like 40 years. She got the vaccine, she's a midwife at Auckland City Hospital, and I was saying to her, okay it's your choice if you wanna take it. She hasn't done the research that I have done 'cos if she did she probably wouldn't have taken it and I said listen, why don't you just stick to the basic information you learnt in nursing school, basic immunity, you know, our immunity is pretty robust to fight most infections. Now if you look at the statistics of how many people actually died of this Covid virus in New Zealand, how many was there? It's only like, what, 26? . . .

. . . but what I'm saying, does that justify the huge lockdown, does that justify, you know, the enforcement of this, you know, the vaccine? No it doesn't. If you look at this – please let me just talk for here – you know, if you look at the, you know, suicide rates, 600 to 900 died last year, that's way more than this 26 number of the threat you say, it's not a pandemic, it's not a pandemic, how can it be when there's only 26 who died? You know, this vaccine they try to pull out it doesn't

justify, you know, trying to enforce it on everyone in New Zealand when there's only 26 who died". [sic]

- 3.8. Ms Tepou stated during the radio interview about the COVID-19 vaccine:

"I'm not generalising here because I am a nurse, I did my basic studies so I have done studies on immunity in general which is what I was saying to my colleague who's a nurse, I said why don't you just remember what you learnt in nursing school? Our immunity is pretty, so look at the statistics, our immunity overall for those under-65 year olds is strong, I mean, how many people actually got this Covid last year, under the 65, quite a few of them, how many of them actually died, um not a lot. The ones who actually did die were the 65 years over who have compromised immunity and even those who were a bit younger who probably had some medical issues anyway. So our immunity is pretty robust to fight the virus anyway. So then if you don't need this vaccine, but if you wanna take it go ahead, but I'm saying, you know, the Stance are trying to push it onto us, you know, it shouldn't be like that. Specially [inaudible] if you don't wanna take it". [sic]

- 3.9. Ms Tepou stated during the radio interview about the COVID-19 vaccine and the vaccine mandate:

"And the one thing is, Bill Gates, he doesn't vaccinate his own kids and he knows the ingredients of what's in the vaccine. It's a known fact that he doesn't vaccinate his own children . . .

. . . Okay, please, I mean, come on, why are we talking about Gates is he's the one that's the father of the vaccine, he's the one that's making and buying these vaccines and selling it globally, that's why he's part of the conversation. He's the one that's, he's the one that's had a conversation with Jacinda, he's met her several times and, you know, she's bought the vaccine, he's the father, he's the one that making the vaccines and he, ah there's so much more to talk about Gates, but what he represents is eugenics which is, you know, de-population. Him and all his [non-English]. I know it sounds controversial but honestly what's happening

in New Zealand and the lockdowns, you know, the poor communities losing their businesses, those are the things we're ignoring and there are a bunch of us Kiwis who do not wanna take the vaccine and now even, you know, we're feeling [non-English] because if we're at work even our managers are now threatening us, well if you don't wanna take it, we'll look at your contract and you need to leave this job. Is that okay [announcer], of course it's not okay. Are you kidding me? No".
[sic]

- 3.10. Ms Tepou stated during the radio interview about the COVID-19 vaccine and the safety of the vaccine:

"Okay. The solution is, you know, giving glory to our heavenly Father above knowing that he is our heavenly Father, 'cos most of us are Christians so I'm talking like this. He's made our body the way it is, he's made our bodies have a thing called immunity, and what is immunity? Having the ability in our human bodies to be able to fight infections in general. So, you know, this vaccine's not even medication . . .

. . . so if we can just look after our immunities, if we can just be accountable to ourselves as humans, do the exercise, don't eat too much processed food, try and lead a healthy lifestyle, be the person that you are in your household and try and be the best you can and buy the food that's healthy for your kids. Stay away from fizzy drinks, stay away from too much sugar and then lead a healthy, and that would complement it and make your immunity robust to be able to fight infections in general. That is the solution we should be doing, and also, you know, people in general just do your basic research. I mean, you know, just because you have, the thing is, I've seen on your page you've had the Pacific doctors go on there, blah, blah, blah, and I've heard them say it's safe. No it's not safe, because our people have had the worst effects from it, we've had people die from it, how can it be safe, even one person's too many". [sic]

- 3.11. Ms Tepou stated during the radio interview about the COVID-19 pandemic:

“ . . . if we can just use our basic commonsense here and use our basic intelligence. If you can see there was only 26 people die from it and flu, you know, the flu virus in general which is not a Covid but just the other normal flu virus, we had more people die from that than the Covid. So we just use our basic commonsense, don't get sort of scared from the media, what the media are trying to push out there, and just because Bloomfield and Jacinda's saying all this doesn't mean that what they're saying is right”. [sic]

3.12. Ms Tepou stated during the radio interview about the COVID-19 vaccine:

“ . . . no the fear is not the actual vaccine, the fear is, well it is of course, obviously it is”. [sic]

3.13. Ms Tepou stated during the radio interview about the COVID-19 vaccine:

“For those who want to take the vaccine, take your vaccine and good luck to you because the research I've done on it so far is really frightening, it is really frightening”. [sic]

3.14. Ms Tepou stated during the radio interview about the COVID-19 vaccine:

“ . . . I've had like, you know, autism and autism rates have gone up and what do you do about autism and vaccines? The vaccine is actually causing autism and it was on the mainstream media like two, three years ago. That's an example of the risk and even a lady, a client of mine, she's got a child with autism and I've had another client of mine who's just, I mean autism, who wants to have a child born that has that because of a medicine they've been putting in into the body? That's one of the side effects of vaccines in general, yeah, no”. [sic]

3.15. Ms Tepou stated during the radio interview about the COVID-19 vaccine:

“so yeah, community who’s listening to me now, when you go to your GP or you go to at work, ask the nurse ask the doctor there say well first of all, you know, is there a document to say can you hundred per cent agree that there’s no, you know, serious side effects if I take this vaccine [inaudible] sign it ‘cos something does go wrong with them then they’re liable. I mean of course you don’t, you know, ask them what are the ingredients, ask them why are we taking it when there’s only like 26 people have died from it, and ask them what are the other, you know, statistics overseas because it’s only just come here in March. So ask them all the basic um questions or even get, you know, the little address in the box, there’s a little instruction with the ingredients in it, pull that out and let them go through each one and tell exactly what it is. Some of the um, the ingredients have been for like aborted foetal cells. What is that, you know, when a person aborts their baby, they’ve actually had, they actually make vaccines from babies who have been aborted. That’s one of the side, that’s one of the ingredients, aluminum, a neurotoxin, is an ingredient, um mercury, a neurotoxin is an ingredient. When this Covid vaccine comes out there’s some sort of technology in there that can actually change the makeup of your DNA . . .”. [sic]

3.16. Ms Tepou stated during the radio interview about the COVID-19 vaccine:

“I was listening to this vaccine um doctor somewhere in Europe who actually is a doctor, who is pro-vaccine in general, and he makes vaccines so he, I saw a posting where he a huge concern about this vaccine because if you do take this vaccine it actually destroys your natural immunity. People don’t notice but they might have to take the vaccine so you have to wait a few months before it happens, before, you know, there’s, you know illnesses or infections that have been, I’m talking about not the Covid virus but other infections that, you know, your body might be exposed to that if you take this Covid vaccine it actually destroys your natural immunity ability to fight the other infection and that doctor that I was watching had huge concerns that once, you know, these people who take the vaccine, if they get infected with other infections that’s the time when their bodies probably may not be able to function as normally to fight infection”. [sic]

3.17. Ms Tepou stated during the radio interview about the COVID-19 vaccines:

“... they’re making one vaccine for one variant and then another variant pops up, so it’s a concern even that, I mean it sounds like they’re not sure what they’re doing, and not just in New Zealand but even, you know, those who are pushing different vaccines all over the world but I mean you can see it on, you know, things like the blood clotting with the, you know, what’s that vaccine the AZ, I can’t even pronounce it properly but they’re pushing for the, not pushing, but that’s the one with the side effects with the elderly with the blood clotting, that’s one of the side effects, they’ll be so many other side effects too, um yeah”. [sic]

3.18. Ms Tepou stated during the radio interview about the COVID-19 vaccine:

“... if you are going to take it have you done enough research to, you know, because once it’s in your body I mean the consequence of it later on is, it’s quite concerning”. [sic]

3.19. Ms Tepou stated during the radio interview about the COVID-19 vaccine:

“... Just because they’re the ones [inaudible] and they’re telling us what to do, it doesn’t mean that they are right in what they’re doing so do your other research and look at other, you know, doctors overseas, and then pray to God and say lord please show me the way, is this the right thing to do? Now I’m going back to the bible, let’s talk about the bible because it does relate, you know, what’s it mean, you know, we have to look in the bigger picture what we’re in is a spiritual war, what we’re living now is a spiritual war between, you know, evil and bad, the evil and the good, so this vaccine was, you know, supposedly some chip that’s gonna change your DNA. We as humans which I know a lot of people who listen who are believers know that we are made in the image of God. With this vaccine that’s coming in, it’s gonna change the makeup of our DNA so we’re not a hundred per cent human because you’ve got some foreign sort of, you know ...

There’s going to be within this vaccine that makes us not hundred per cent an image of God, I mean that’s another example that we need to look at as well.

You know, people listen, they know there's a reason [inaudible] an ID chip, this is a similar thing. You know the chip in your hand? Well there's a chip in this vaccine as well. . ." [sic]

3.20. Ms Tepou stated during the radio interview about the COVID-19 vaccine:

"First of all pandemic, it's not a pandemic, there's only 26 people that died, um what's the advice, you know the thing is a lot of people are listening, I mean, this is international Australia, China probably and the USA and New Zealand. I don't know how many who've had the vaccine and I'm you know [non-English] just have to pray for your, pray for your body, pray for your life and your family if you have taken the vaccine. Because maybe you have not heard of anyone else talking with the other perspective to encourage you to do your research so if you've taken the vaccine I'm sorry but it's too late, it's already in your body so those who are contemplating taking it or not taking it, please take the time to do research. [announcer] can give you my cellphone number, [announcer] can give you my email, reach out to me on Messenger [inaudible] and I can send you some links, and then you just sit down with your family, this is a life and death situation, I'm sorry but it is. Sit down with your family pray [inaudible] lord just show me the way, what is the truth here? Should I take it or should I not and if God does speak to you and you listen to his voice, that's the answer what you should do. I'm a strong, strong staunch believer in the true living father [announcer] but that's why God guided me to this. I mean how can I be, you know, I just think of it as actually a good thing that I'm Tok because for our community to have someone like me thinking outside the box. I do have, you know, colleagues in the industry who are, you know, doctors and that, it's like, you know, I respect them but I believe that they have not done their research thoroughly because simply most public's listening to what Bloomfield's putting out, you know, I mean". [sic]

3.21. Ms Tepou stated during the radio interview about the COVID-19 vaccine mandate:

". . . like there are documents which I do have [inaudible] in my network, there are documents to, you know, like these are documents that you can present

to your employers to exempt you from taking the vaccine so please reach out to me, I've got some documents, I have a friend who's a lawyer, a friend of mine, who's having these documents for people who are, you know, to exempt them from taking the vaccine. Reach out to me if you don't, just ask [announcer] for my details, reach out to me on Messenger or my email, I've got a midwife post Facebook page as well and I'll forward the documents to you. So if you feel like you're being coerced by your employers there are laws to protect you, so reach out to me and I will forward it on to you". [sic]

In respect of particulars 3.1 - 3.21 the PCC relies on the full context of the radio interview and the radio transcript.

The conduct alleged in Charges 1.0, 2.0, and 3.0 amounts to professional misconduct pursuant to section 100(1)(a) and/or (b) of the Act and particulars 1.1 – 1.2, 2.1 – 2.3, and 3.1 – 3.21 either separately or cumulatively, are particulars of that professional misconduct.

DATED this 10th day of June 2021

Marie Kiely

Convenor

Professional Conduct Committee