

**COMPLAINTS RESOLUTION PANEL
AOTEAROA NEW ZEALAND ASSOCIATION OF SOCIAL WORKERS**

IN THE MATTER OF a complaint against
MEMBER “Z”

Counsel: Jonathan Parker for the Member
Alastair Sherriff for ANZASW Convenor

Panel: Leo Watson, Justin Canty, Andrea McKenzie, Carmen
Payne, Pat Rosier

Date of Preliminary Decision: 29 October 2012

Submissions received on preliminary decision:

- 14 November 2012 (Association)
- 20 November 2012 (Member)
- 23 November 2012 (Association in reply)

Date of Final Decision: 21 December 2012

DECISION OF PANEL

*Tuia i runga, Tuia i raro, Tuia i roto, Tuia i waho,
Tuia kia kotahi te whakaaro, hei oranga pai mo nga whanau katoa.
Mauri Ora.*

1. The Aotearoa New Zealand Association of Social Workers received a written complaint concerning social worker Z, and as a result, the Association initiated its disciplinary procedures pursuant to its Standing Orders.
2. This Complaints Resolution Panel has been convened to consider the complaint, and the submissions made by counsel for the Association, and for the Member. We received the relevant documentation on 10 September 2012.
3. Under clause 5.30 of the Standing Orders, the relevant provisions are:

- 5.30 A member is guilty of a disciplinary offence in circumstances where he or she:
- 5.30.1 has been guilty of professional misconduct; or
 - 5.30.2 has been guilty of conduct that:
 - 5.30.2.1 is unbecoming of a social worker; and
 - 5.30.2.2 reflects adversely on the member’s fitness to practice as a social worker;
4. Counsel for the Member has advised in his submissions dated 7 September 2012 that the Member has agreed that:
- a. She is a member of the Association and was, at all material times, subject to the Association’s Code of Ethics;
 - b. The facts set out in the Particulars to the Notice of Charge are true;
 - c. The agreed facts are sufficient to support a finding of conduct unbecoming of a social worker that reflects adversely on that social worker’s fitness to practice as a social worker.
5. These acknowledgements represent an admission by the Member that her conduct amounted to misconduct as defined under clause 5.30.2 of the Standing Orders.¹
6. The Panel has also been advised that the Member consents to the Panel considering and determining the matter on the papers without the need for a hearing.²
7. Under such circumstances, the Standing Orders carefully prescribe the “only options” open to the Panel under clause 5.11.18, and we have addressed these options in this decision.

Agreed Facts relating to the Complaint

8. The key relevant Particulars of the Notice of Charge, as agreed between the parties, are as follows.

¹ Clause 5.11.17.1 of the Standing Orders.
² Clause 5.11.17.2 of the Standing Orders.

The Member was employed by a Christian Social Services organisation in the role as City Missioner, a role which had a significant Social Work component. The Member's membership of the Association had the effect that the Code of Practice and Practice Standards of the ANZASW were applicable to the Member and all aspects of the Member's practice regardless of how the Member or the Member's employer defined the Member's role.

1. The Member received a call at home from Staff at an emergency and temporary residential service operated by the Member's employer after hours, at 9.30pm on 19 September 2011.
2. The emergency and temporary residential service was for persons or families with serious drug and alcohol issues and which provided 24 hour care at the facility.
3. The Client had entered the facility and the service in April 2010...
4. At the time of the call to the Member on the 19th of September 2011, the staff at the facility reported to the Member that the child in question [of the Client] (the Victim):
 - a. Was in the midst of a manic episode;
 - b. That the child had a history of severe behavioural issues;
 - c. The Member could hear the child yelling and screaming when on the phone to the staff;
 - d. The Member was advised that the child had been in a manic episode for at least two hours and had been kicking, punching and yelling at his siblings and his pregnant mother as well as causing damage to the property at the facility, and running outside the building, and up the road.
5. When the Member arrived at the facility the Member sat down beside the child, and then witnessed the manic behaviour described, having left home immediately after the phone call and travelling to the Unit where the staff members and the Victim were present.
6. The Member assessed the situation over a period 10 minutes observing that:
 - a. Two staff members of the service were attempting to restrain the Victim but were having difficulty;
 - b. The Victim was clearly still in the midst of a manic episode;
 - c. The Member was unable to calm the child down enough to speak to him or to get his attention.
7. The Member considered there was a risk to the child and others due to the child's manic behaviour.
8. The Member sat down next to a staff member who was restraining the child, lent across the staff member, and slapped the child lightly on his right cheek.
9. The Member was then able to lift the child into a restraint hold designed to prevent the child from kicking, biting, head butting or scratching either the Member or the other staff present.

10. The Member spoke to the Victim telling him he would be released in two minutes counting down the two minutes aloud before releasing him.
 11. During the two minute countdown period, the child calmed down significantly and when released the child got back on to the Member's lap.
 12. The Member completed incident notes and forwarded these to her employer Board within 48 hours of the incident.
 13. The victim, a child under 14, was not injured by the slap in any lasting way.
9. As a preliminary point, the Particulars above include numerous references to the child having a “manic” episode. The Panel sought clarification from the Association as to whether this term was used to record a formal diagnosis of bipolar affective disorder, or whether it was a colloquial use for dysregulated and/or aggressive behaviour. The Association advised that the term was used in the latter sense. Counsel for the Association has since clarified that the term was word used by the Member in response to the Complaint. Nevertheless, the Panel expresses our reservation about the use of a technical term in a colloquial manner in the context of a Notice of Particulars for a disciplinary charge, in circumstances where counsel submitted that the Particulars “*may be treated by you as agreed, accepted, Statements of Fact.*”³

Dual Roles of a Member of the Association

10. Counsel for the Association submitted that the Panel should endorse the applicability and relevance of the Code of Ethics of the Association to those who practice social work as members of the Association, regardless of whether or not they are practicing in other areas of endeavor, and irrespective of the title of their employment, at any given time.
11. Mr Sherriff provided examples of where social workers may have dual roles, perhaps as professional counsellors, or mediators. The Panel

³ Submissions by Counsel for the Convenor, 31 August 2012, para 7.

notes that in addition, many social worker practitioners are engaged in management or policy work.

12. The Panel has no hesitation in accepting the Association’s view that a member of the Aotearoa New Zealand Association of Social Workers is subject to the Association’s Code of Ethics at all times, regardless of the employment or role that he or she is undertaking, or the job title.

Policies and Procedures for dealing with aggressive behaviour

13. The Panel was of the view that the facts of this case raised important issues in relation to the need for agencies and Members to have policies and procedures in place, with appropriate training for Members in relation to those policies and procedures, relevant to dealing with aggressive behaviour (including any additional policies relating to aggressive behaviour by a child), and relevant to the use of physical restraint of an aggressive client/child. By the term “aggressive”, the Panel includes behaviour that is threatening or challenging, in either a verbal or physical way. The Panel requested further information from the Association on that issue which has been considered in this decision.
14. The Panel was advised by the Association on 24 September 2012 that the Association has no authority as to what policies and procedures are adopted by agencies, but that through requiring members to adhere to the Code of Ethics, there can be an influence on agency practice. However, the Panel was advised by the Convenor that:

“...an amendment to the Association’s Code of Ethics (now section 3.5.2) was debated by the Association’s Board and approved on 01 September 2012. From that date, Section 3.5 of the Code of Ethics is as follows:

3.5 Members do not abuse or take advantage of any professional relationship with clients for personal, professional, political, financial, or sexual gain.

3.5.1 Sexual relationships with current or former clients, supervisees, students or their family /whanau members are unethical. Neither

do members encourage or engage in sexual intimacy, either during the time of that professional relationship, or for that subsequent period of time during which the power relationship could be expected to influence personal decision making. It always remains the responsibility of the member, as a social worker, to maintain appropriate boundaries. It is not appropriate to terminate a professional relationship in order to facilitate an intimate relationship with a client, student or supervisee. A sexual relationship, sexual contact or any other form of sexual behaviour between a member and a client is never a valid form of therapy or assistance.

3.5.2 *Except where approved and monitored control and restraint procedures are in place as an aspect of a Member’s employment obligations, and for which the Member has received training, the use of force, assault or violence (including non-physical violence such as shouting or intimidation) is never a valid form of therapy and assistance.*

This amendment is being issued as an insert to the current Code until a full Code reprint is due. There is a NZ Standard⁴ that makes it clear that there are ethical and legal, as well as clinical principles that apply in matters involving the use of restraint. The Standard makes it clear that all organisations should develop clear policies and procedures to guide service providers in the implementation of the Standard. Once the Panel’s decision about this complaint is published, the Association will draw Members’ attention to it and recommend that they check the policy of their organisation and comply with it if it meets this Standard or, where no policy exists, Members accept responsibility for advocating that their organisation adopts policies consistent with the Standard.

15. The Panel acknowledges that the Association has been proactive in responding to the issue raised by this complaint in relation to dealing with aggressive behaviour, and we are encouraged by the fact that the Association is referencing the Standards in formulating its amendment to the Code of Ethics.
16. Reflecting on the amendment in clause 3.5.2 of the Code in the context of the incident the subject of this complaint, the Panel offers the following comments:
 - a. The amendment refers to “*the use of force, assault or violence (including non-physical violence such as shouting or*

⁴ NZS 8134.2 (2008) *Health and Disability Services (Restraint Minimisation and Safe Practice)*; and associated Standards 8134.2.1 *Restraint Minimisation*; NZS 8134.2.2 *Safe Restraint Practice*; and NZS 8134.2.3 *Seclusion*.

intimidation)”. The Panel considers that the amendment should make explicit that physical restraint is included in the intended scope of the amendment. This could be achieved by adding the words “*or physical restraint*” after the word “*force*”;⁵

- b. The Panel recommends the words “*therapy and assistance*” should read “*therapy and/or assistance*”;
 - c. The Panel takes the view that the Association does have a significant role in relation to encouraging the implementation of standards applicable to agencies, (in addition to its Members), to ensure that the supervisory relationship with social workers is robust and compliant. Code of Ethics 6 relating to Supervisory Relationships is indicative of the importance of agencies and their role in supervision of social work practice. The Panel also endorses the Association’s supplementary comment that Members have a responsibility for advocating that their own agency adopts policies consistent with the Standard.
17. To progress the effective awareness, and implementation, of the amendment in clause 3.5.2, the Panel recommends to the Association that it encourage agencies to offer professional development opportunities for Association members in the area of dealing with aggressive behaviour, and the New Zealand Standards concerning the use of physical restraint. This may include drawing on resources such as Association members who are Mental Health Social Workers and professional trainers employed by District Health Board Mental Health Services. The Panel also recommends that such professional development training have a particular focus on de-escalation techniques.⁶ In this regard, the Panel adopts the Association’s

⁵ The Panel acknowledges that in submissions on behalf of the Convenor dated 14 November 2012, Mr Sherriff does not accept that further clarification is required. The Panel remains of the view that clarification would be helpful and appropriate.

⁶ Human Rights Commission Report on Rights of People Who Are Detained - Use of Restraint in Mental Health Services
<http://www.hrc.co.nz/report/chapters/chapter11/detention05.html>

submissions on the preliminary decision dated 14 November 2012 at paragraphs 7 and 11 that “*while the Association can encourage agencies to apply standards consistent with the Code of Ethics, it cannot enforce that.*” And further, that “*the primary obligation of employers (of social workers) [is] to provide staff with professional development and training relevant to their roles.*”

Findings on the Charge of Misconduct

18. The Panel has carefully considered the factual context of this incident involving the Member.
19. The Panel took from the Notice of Particulars two critical incidents that required consideration:
 - a. The physical restraint applied by the Member to the child; and
 - b. The slapping of the child.
20. In submissions from the parties on the preliminary decision, counsel both objected to the Panel’s focus on the physical restraint. Mr Sherriff for the Association submitted that “*the restraint is not part of the charge or the Particulars supporting the charge.*” Mr Parker for the Member agreed.
21. The Panel does not accept that the use of physical restraint was not part of the charge of the Particulars supporting the charge. The Panel considers that this is a case which falls directly within the parameters of the Panel’s jurisdiction.
22. The use of physical restraint was squarely raised in the Notice of Particulars.
 1. The Member sat down next to a staff member who was restraining the child, lent across the staff member, and slapped the child lightly on his right cheek.
 2. The Member was then able to lift the child into a restraint hold designed to prevent the child from kicking, biting, head butting or scratching either the Member or the other staff present.

3. The Member spoke to the Victim telling him he would be released in two minutes counting down the two minutes aloud before releasing him.
 4. During the two minute countdown period, the child calmed down significantly and when released the child got back on to the Member's lap.
23. The Notice of Particulars then states:
- “2. The Association considers that, in the circumstances, when viewed singularly or cumulatively, these particulars amount to conduct unbecoming of a Social Worker.....”
24. Both parties had accepted the Notice of Particulars as agreed facts. As such, the Panel has before it the requisite evidence, and the requisite social work expertise, to make a determination on both the use of physical restraint, and the slapping.
25. The fact that the Complaint did not regard the use of physical restraint as objectionable is even more reason to bring the issue to the attention of the Association and its membership through this decision.
26. The Panel condemns the use of physical restraint by the Member. There are grave risks of injury (including the risk of death) involved in the use of physical restraint, even when used by appropriately trained professionals. In addition, there are significant risks of trauma and psychological harm to a person restrained against their will.
27. The Panel has taken into account the fact that the Member considered there was a risk to the child and to others from the child's behaviour. In situations of significant danger of harm to self or others, the appropriate response is to immediately call crisis services (Police, CATT) and apply de-escalation techniques. We note with concern that the Particulars of the Notice of Charge state that another staff member was also involved in the physical restraint of the child.
28. Furthermore, the Panel condemns the slapping of the child by the Member. This would be unacceptable in any circumstances, but the conduct was exacerbated when the child was slapped across the face by the Member while the child was restrained by another staff

member. The Panel has taken into account the fact that the Particulars state that the Member “slapped the child lightly” and that there has been no injury to the child.

29. The Panel finds the Member guilty of a disciplinary offence as set out in Standing Order 5.30.2 namely that she is guilty of conduct that is unbecoming of a social worker and that reflects adversely on her fitness to practice as a social worker.

Two Issues for Panel Determination

30. Counsel for both the Member and the Association have provided written submissions to the Panel. Both counsel agree that there are two issues for the Panel’s determination:
 - a. What penalty (if any) should be imposed on the Member, consistent with the provisions of the Standing Orders; and
 - b. In what circumstances should publication of this determination be ordered.

Penalty

31. The Panel has considered the jurisdiction available to us under clause 5.11.18 of the Standing Orders.
32. Firstly, the Panel considers that a censure of the Member is appropriate and that a written censure should be issued by the Association to the Member which records this Panel’s finding of conduct unbecoming of a social worker and that reflects adversely on her fitness to practice as a social worker.
33. Secondly, in terms of membership, the Panel has been advised by counsel for the Member that she intends to voluntarily resign her membership of the Association. (We note that the Member has remained a member for the purposes of this complaint resolution process, and that this is a requirement of the Standing Orders.) However, the voluntary resignation of the Member’s membership does

not satisfactorily address two circumstances which may arise in the foreseeable future. The Member might apply in due course to be a member of the Association. Alternatively, the Member might be involved in social work practice in the community, even where she is not a member.

34. After issuing our preliminary decision, the Panel received written submissions on behalf of both parties on this issue, which we have taken into account. We note Mr Parker’s submission that the Member confirms she will not reapply to be a member of the Association. Mr Parker advises that the Member has made no undertaking that she will never work as a social worker. He advises that the Member is “*not necessarily opposed to undertaking training.*”
35. The Panel has no evidence before us that there have been any initiatives to undertake applicable professional training or development after the incident, or any supervision and monitoring of that training. There is also no evidence before us that there has been any social work supervision provided by the relevant agency, either before or after this incident, in relation to physical restraint or use of force.
36. The Panel therefore directs that before the resignation of the Member takes effect, she is to undertake training in Non-Violent Crisis Intervention, which should include reflection on this incident itself. The training is to occur within an independent professional supervisory relationship, and a satisfactory written collaborative supervisor and supervisee report is to be provided back to the Association within four months of the date of this decision.
37. We invite the Convener of the Association to liaise with the Member about the logistics of that training and supervision. We believe it is appropriate that, consistent with the Association’s expectations of professional development, the reasonable cost of this training is to be borne by the Member. For the avoidance of doubt, we direct that this training as specified above constitutes a re-certification condition in

the event that the Member applies to be a Member of the Association in the future.

38. Thirdly, the Panel has considered the submissions of both counsel as to costs. The Association seeks an order that the Member pay between \$100.00 and \$500.00 towards the costs of this disciplinary process, taking into account the financial circumstances of the Member in seeking that order. Counsel for the Member submits that no financial penalty should be imposed.
39. The Panel is of the view that no financial penalty under Standing Order 5.11.18.4.4 is appropriate in this case. We have required the Member to meet the reasonable costs of her training, and we believe that to be a more constructive and mana-enhancing approach than the imposition of a financial penalty. In addition, we do not believe any order as to costs to be appropriate (Standing Order 5.11.18.4.3).

Publication

40. Consistent with Mr Sherriff's submissions, the Panel directs that in the publication of this decision, there is a permanent suppression order in relation to all details or particulars which might identify the following:
 - a. The complainant;
 - b. The Member's employer, including the geographical location of the Member's practice;
 - c. The Victim and/or the Victim's family.
41. Turning to the publication or otherwise of details which identify the Member concerned, counsel for the Association initially submitted that in the usual course of events, the Association would seek publication of the Member's name, but that in this instance, the Association would only seek publication of her name if she does not voluntarily resign and comply with other orders of the Panel. On the

other hand, counsel for the Member submitted that any details which might identify the Member should not be published.

42. In his submissions of 23 November 2012, Mr Sherriff for the Association submitted that given the possibility that the Member may practice social work in the future, which is unlikely to be subject to any Code of Ethics, the Association's position was that the Member's name must not be suppressed from publication. Mr Parker submitted that any publication should be dependent on the Member's resignation.
43. The Panel has carefully considered the submissions made in relation to the preliminary decision. We are satisfied that our preliminary decision strikes the appropriate balance of all the factors relating to publication.
44. The Panel agrees that publication of a Member's identity can be an effective deterrent, but it can also be a punishment which has disproportionate consequences. The Panel directs that in the publication of this decision, all details or particulars will be permanently suppressed which might identify the Member concerned, but that this direction is conditional on the Member undertaking the training as directed and voluntarily resigning her membership thereafter. The Panel reserves to the Association the right to lift the Member's name suppression if the Member does not comply with the terms of this decision. The Association shall provide the Member with twenty working days notice if it intends to do so, to allow the Member an opportunity to comment.
45. A version suitable for publication will be made available by the Panel shortly.

We thank the parties and their counsel for their cooperation and assistance to the Panel. We acknowledge that this is a stressful and difficult time for all concerned, and we particularly acknowledge the Victim and his family. Mauri ora tatou katoa.

Dated this 21st day of December 2012



Leo Watson



Justin Canty



Pat Rosier



Carmen Payne



Andrea McKenzie