

Insurance Insights

The importance of health practitioners' compliance with public health policies and directions

Brief Context

In *Nursing and Midwifery Board of Australia v Bergin* [2022] VR 4, a registered nurse (**Practitioner**) was found to have engaged in professional misconduct due to her failure to remain in isolation while awaiting the outcome of a COVID-19 test.

Background

The Practitioner was employed at a residential aged care facility. By virtue of the Practitioner's vocation, strict compliance with certain policies and directions was required.

The relevant policies and/or directions included:

- The employer's COVID-19 Screening Policy dated 22 March 2020, which prohibited staff members from attending work and/or attending the facility if unwell with flu type symptoms, and
- The West Australian Commissioner of Police's *Quarantine and Isolation (Undiagnosed) Directions* issued under *the Emergency Management Act 2005 (WA)* which required, at the relevant time, that a person who underwent a test for COVID-19 needed to remain isolated until the person was informed that his or her test results were negative.

The Practitioner's Conduct

On 21 July 2020, the Practitioner informed her employer that she was unwell with cold-like symptoms and therefore unable to work. The Practitioner subsequently attended a COVID-19 testing clinic to undergo a COVID-19 test.

Despite instructions to remain isolated until the COVID-19 test result was known, the Practitioner attended a shopping centre, disregarding public health and community safety principles and breaching the *Quarantine and Isolation (Undiagnosed) Directions* by potentially endangering the health and safety of the general community.

The Practitioner returned to work despite not receiving the outcome of her COVID-19 test, thereby potentially endangering the health and wellbeing of the aged-care residents.

The Practitioner's employer subsequently terminated the Practitioner's employment and the WA Police Force charged the Practitioner for failing to comply with *Quarantine and Isolation (Undiagnosed) Directions* pursuant to s 86(1)(a) of the *Emergency Management Act 2005* (WA).

The Tribunal's Decision

The Nursing and Midwifery Board of Australia referred the matter to the State Administrative Tribunal (**Tribunal**) alleging the Practitioner was guilty of professional misconduct further to the *Health Practitioner Regulation National Law Act 2010* (WA).

The Tribunal found that the Practitioner's conduct constituted professional misconduct as defined in section 5 of the National Law, which is conduct substantially below the standard reasonably expected of a registered health practitioner of an equivalent level of experience.

The practitioner's registration was consequently suspended for 11 months.

Key Takeaways/Implications

This case demonstrates that health practitioners have a stringent responsibility to abide by policies and directions designed to protect public health and safety. Failure to do so exposes them to potential findings of professional misconduct and disciplinary action.

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