

Domestic and Family Violence: The public interest in regulating what was once “private violence”

Resource Sheet

Content warning

The content and the emotional impact of the information covered in this document may be confronting and distressing as it references family and domestic violence. If you need help, [support services](#) are available.

AUSTRALIA

National policy documents

The [National Plan to End Violence against Women and Children 2022-2023](#) is the overarching national policy framework that guides action towards ending violence against women and children. Australia’s [National Research Organisation for Women’s Safety website](#) provides a guide to the various Commonwealth, state and territory government frameworks and policies to reduce violence against women and their children.

Council of Australian Governments Health Council [Policy Direction 2019-01 – Paramourncy of public protection when administering the National Scheme](#) This Policy Direction mandates that when determining whether it is necessary for regulatory action to be taken, National Boards and Ahpra must consider the potential impact of the practitioner’s conduct on the public, including those who are the potential targets of family and domestic violence.

Legislation

[Health Practitioner Regulation National Law](#) (as enacted in each state and territory of Australia) – the legislation governing the National Registration and Accreditation Scheme.

[Chronology of current family and domestic violence legislation in Australia](#) – this chronology summarises the current family and domestic violence legislation in operation in each Australian jurisdiction.

Case law

[Health Care Complaints Commission v Haasbroek \[2018\] NSWCATOD 177 \(31 October 2018\)](#) involved family violence offences by a medical practitioner against his former wife. In deciding to reprimand the practitioner, the Tribunal commented that although there was ‘*no element of risk to the general public...[the orders] must also uphold the standards of members of the medical profession to ensure that they continue to be held in high regard by their patients, the public generally, and other professionals. ...General Practitioners are frequently the first point of contact for victims of domestic violence and that the public can only have confidence in such practitioners if the response of those practitioners to domestic violence, both personally and publicly, is exemplary.*’

[Nursing and Midwifery Board of Australia v GMR \(Review and Regulation\) \[2020\] VCAT 158](#). The practitioner was found guilty of assaulting his 16-year-old daughter by hitting her with a rolling pin for approximately 20 minutes. The Tribunal found the conduct amounted to professional misconduct. He was reprimanded and his registration cancelled for a period of three months. Of note the Tribunal stated the relevant factors to be considered in matters of family violence ‘*include the nature and seriousness of the conduct, evidence of contrition, the need or otherwise for specific deterrence, other disciplinary findings, evidence of character, evidence of rehabilitation, any delay between the start of the investigation until the completion of the Tribunal hearing and other mitigating factors. Also relevant is the degree of insight that the practitioner has into his or her offending conduct.*’

[MBA v Koulouris \(Review and Regulation\) \[2020\] VCAT 348](#). The practitioner was charged with assaulting his domestic partner by hitting her with a belt approximately 17 times. The practitioner subsequently breached an

intervention order by recommencing living with the victim and committed a second act of family violence, by punching the victim in the face. He was charged with breach of the intervention order and the two assaults. The practitioner was not convicted due to his agreement to enter a Diversion Program. The Tribunal found that the practitioner had engaged in professional misconduct noting he *'did not demonstrate the necessary moral integrity and rectitude of character consistent with registration as a medical practitioner. It was conduct liable to reduce community confidence in the medical profession'*. Referring to the *Haasbroek* case, the Tribunal found there was no material difference between the practitioner's role (radiologist) and any other medical practitioner who has contact with patients. He was reprimanded and his registration suspended for a period of three months.

[Medical Board of Australia v PYP \(Review and Regulation\) \[2021\] VCAT 876](#). The practitioner was arrested and charged with assault for striking his wife on the face in the presence of their young son. After police raised family violence concerns for the safety of PYP's wife and their son, the wife signed a statement that she wished to withdraw her complaint and have police take no further action, but the matter proceeded and PYP was found guilty of assaulting his wife. The Tribunal found the conduct amount to professional misconduct commenting *'that for a medical practitioner, this kind of conduct is inconsistent, in our view, with the qualities required to be a fit and proper person to hold registration.'* ... *'An offence of this kind has particular resonance for medical practitioners who may be the first point of contact for a person who is themselves a victim of an act of family violence.'* The practitioner was reprimanded, and his registration suspended for six months. In arriving at its decision, the Tribunal placed great weight on the issue of deterrence and considered that *'a period out of practice is required to send a sufficiently clear message to others in the profession.'* In this case, the Tribunal also had regard to what the consequences for PYP's wife of a suspension might be and whether and in what way that should be taken into consideration.

[Nursing & Midwifery Board of Australia v Augustin \(Occupational Discipline\) \[2022\] ACAT 54](#). The practitioner was found guilty of striking his wife while she was holding their 4-month-old child. The victim did not suffer physical injury as a result of the conduct, and the decision in this case confirms that there does not need to be physical injury for domestic violence committed by health practitioners to amount to professional misconduct. In deciding to impose a reprimand only, the Tribunal noted that it was the practitioner's attitude towards his conduct and engagement in the disciplinary process which favoured this outcome (without the need for further action). The Tribunal noted the practitioner had self-reported the incident, showed genuine remorse and insight, and had successfully completed anger and family violence training. The Tribunal also commented: *'Domestic and family violence of any kind and no matter the degree has no place in our society. Perpetrators are to be held accountable. An important pillar of accountability and education is to recognise that engaging in such conduct has extended consequences for those holding professional registrations, such as the respondent does.'*

[Aly v Medical Board of Australia \(Review and Regulation\) \[2022\] VCAT 1096 \(27 September 2022\)](#) The practitioner's registration had been suspended under immediate (interim) action after he was committed to stand trial on charges of rape and recklessly causing injury in the context of a previously consensual sexual relationship. The alleged victim was not a patient. The Tribunal held that immediate action against the practitioner, including suspension, was not in the public interest. It set aside the Board's decision and substituted it with a decision that no action be taken against the doctor. However, the Tribunal did note that if the outcome of the criminal proceedings is that the practitioner is found guilty of the charges against him, what may be in the public interest is likely to change.

[Health Care Complaints Commission v FLJ \[2023\] NSWCATOD 7](#)

This case concerned a medical practitioner who pleaded guilty to and was convicted of serious criminal offences related to domestic violence, which were – assault occasioning actual bodily harm; distribute an intimate image and text message without consent; intimidate with intent to cause fear of physical or mental harm; use a carriage service to menace/harass/offend. In considering the appropriate regulatory sanction, the Tribunal commented that the circumstances of the Practitioner's criminal conduct *'justifies severe condemnation, which it considered is not achieved by a reprimand (as sought by the practitioner) but not of such significance that cancellation is warranted (as sought by the HCCC)*. Ultimately, the Tribunal made an evaluative judgment to suspend the practitioner for a total of 2 years and 10 months.

[Hejazin v Medical Council of New South Wales \[2021\] NSWCATOD 185](#)

The practitioner had his registration suspended (through interim action) by the Medical Council following him being charged with two criminal offences relating to acts of domestic violence against his former partner (including choking his former partner, and pushing and threatening her in front of their son). The practitioner entered pleas of not guilty to each of the charges and appealed for a stay of the decision of the Medical Council


to suspend him. Before the Tribunal, the practitioner submitted that where evidence is incomplete or further investigation is underway, the relevant test is whether the evidence available establishes a risk to the public. The Medical Council argued that there had been a shift in recent Tribunal decisions to align with community expectations about the serious nature of criminal related matters including family violence and the risk that family violence causes to vulnerable patients. The Tribunal concluded that the balance of convenience fell on the side of the practitioner, and that the financial consequences to his and his family were enormous and would have a detrimental impact upon the children's relationship with their father. The Tribunal was of the view that no conditions were necessary and that the risk to vulnerable patients was a prospective one that could be managed by the Applicant diligently progressing his substantive appeal.

Profession specific position statements

[Australian Nursing & Midwifery Federation Position Statement: Domestic and family violence](#)


[Australian Medical Association Position on Family and Domestic Violence](#)

Other resources

 [There's No Place Like Home](#) is an award-winning podcast putting survivors of family violence at the centre of the story. Running over two seasons, the episodes clearly and comprehensively explain the drivers of family and domestic violence and the various innovation solutions already being put into practice in Australia and internationally.

Support services

 1800RESPECT (1800 737 732) or 1800respect.org.au is the national domestic, family and sexual violence counselling, information and support service.

The Men's Referral Service is offered by [No to Violence](#) and provides assistance, information and counseling to help men who use family violence. They can be reached on  1300 766 491.

Canada - Ontario

Articles

College of Physicians and Surgeons of Ontario - Article about initiatives addressing intimate partner violence
<https://www.cpso.on.ca/News/News-Articles/Recognizing-Intimate-Partner-Violence>

Legislation

HEALTH PROFESSIONS PROCEDURAL CODE, SCHEDULE II TO THE *REGULATED HEALTH PROFESSIONS ACT*, R.S.O. 1991, S.O. C. 18 <https://www.ontario.ca/laws/statute/91r18>

Ontario Regulation 856/93 made under the *Medicine Act, 1991*
<https://www.ontario.ca/laws/regulation/930856>

Case law

Dr. Jha v. College of Physicians and Surgeons of Ontario, 2022 ONSC 769 <https://canlii.ca/t/jp0xr>

DISCIPLINE COMMITTEE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO between: College of Physicians and Surgeons of Ontario and Dr Mohammed Farid Shamji (Decision Date 24 April 2020)
<https://www.canlii.org/en/on/oncpsd/doc/2020/2020oncpsd26/2020oncpsd26.html>

DISCIPLINE COMMITTEE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO between: College of Physicians and Surgeons of Ontario and Dr Calvin Tai-Ien Lian (Decision Date 26 November 2012)
<https://www.canlii.org/en/on/oncpsd/doc/2012/2012canlii100758/2012canlii100758.html>

Support services

<https://www.canada.ca/en/public-health/services/health-promotion/stop-family-violence/services.html>

Canada – British Columbia

Case law media

<https://www.cbc.ca/news/canada/british-columbia/bc-arrest-warrant-doctor-1.6772681>

Prosecution policy

[Intimate Partner Violence \(gov.bc.ca\)](#)

Support services

<https://www.canada.ca/en/public-health/services/health-promotion/stop-family-violence/services.html>

The USA – Florida

Case law

STATE OF FLORIDA DIVISION OF ADMINISTRATIVE HEARINGS Angela Harris v Department of Children and Family Services Case No. 01-4260 Decision date 13 March 2002

STATE OF FLORIDA DIVISION OF ADMINISTRATIVE HEARINGS Stevie Hunt v Department of Health and Rehabilitative Services Case No. 96-2775 Decision date 29 October 1996

STATE OF FLORIDA DIVISION OF ADMINISTRATIVE HEARINGS Yorell Lassiter v Agency for Health Care Administration Case N. 23-1480 Decision date 12 July 2022

STATE OF FLORIDA DIVISION OF ADMINISTRATIVE HEARINGS Veronica Williams v Agency for Persons with Disabilities Case No. 22-2233EXE Decision date 8 December 2022

STATE OF FLORIDA DIVISION OF ADMINISTRATIVE HEARINGS Catherine Schubert Rivera v Agency for Persons with Disabilities Case No. 15-5039EXE Decision date 10 November 2015

STATE OF FLORIDA DIVISION OF ADMINISTRATIVE HEARINGS W.D v Department of Health and Rehabilitative Services Case No. 96-0576 Decision date 26 October 1996

Legislation

The 2022 Florida Statutes (including 2022 Special Session A and 2023 Special Session B)

Title XLIII Domestic Relations, Chapter 741 Domestic Violence

Clauses:

- 28: Domestic Violence; definitions
- 29: Domestic violence; investigation of incidents; notice to victims of legal rights and remedies; reporting
- 30: Domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement; public records exemption
- 31: Violation of an injunction for protection against domestic violence
- 281: Court to order batterers' intervention program attendance
- 283: Minimum term of imprisonment for domestic violence
- 313: Unlawful action against employees seeking protection
- 403: Address confidentiality program; application; certification
- 404: Certification Cancellation

- 405: Agency use of designated address
- 2901: Domestic violence cases; prosecutors; legislative intent; investigation; duty of circuits; first appearance
- 2902: Domestic violence; legislative intent with respect to judiciary's role

Title XXXII Regulation of Professions and Occupations, Chapter 456 Health Professions and Occupations: General Provisions

Clauses:

- 031: Requirement for instruction on domestic violence

Support services

National Domestic Violence Hotline: 📞1.800.799.SAFE (7233)

<https://www.thehotline.org/get-help/domestic-violence-local-resources/>