

CITATION: *Medical Board of Australia v Azam* [2017] QCAT 156

PARTIES: Medical Board of Australia
(Appellant)
v
Muhammad Azam
(Respondent)

APPLICATION NUMBER: OCR184-14

MATTER TYPE: Occupational Regulation Matters

HEARING DATE: 5, 6, 7 and 16 December 2016

HEARD AT: Brisbane

DECISION OF: **Judge Sheridan, Deputy President**
Assisted by:
Dr Kong Goh
Dr Glenda Powell
Mr Michael Halliday

DELIVERED ON: 29 May 2017

DELIVERED AT: Brisbane

ORDERS MADE: **1. Pursuant to s 196(1)(b)(iii) of the *Health Practitioner Regulation National Law (Queensland)*, the Tribunal finds Dr Azam has behaved in a way that constitutes professional misconduct.**

CATCHWORDS: PROFESSIONS AND TRADES – HEALTH CARE PROFESSIONALS – MEDICAL PRACTITIONERS – DISCIPLINARY PROCEEDINGS – PROFESSIONAL MISCONDUCT – where the practitioner allegedly abused his position of influence and trust by failing to maintain appropriate professional boundaries with respect to two patients – where the practitioner allegedly during the course of a consultation touched a patient when it was not necessary for the examination, without consent and inappropriate – where the practitioner allegedly breached the chaperone conditions on his registration – where the practitioner allegedly caused the chaperone register to be falsified – where the

practitioner allegedly failed to maintain the chaperone register – where the practitioner allegedly instructed a nurse to falsify clinical records – where the practitioner allegedly engaged in behaviour that would be perceived to be harassing or intimidating, or caused such behaviour to occur, towards a patient – where the practitioner denies all the allegations made against him – whether the practitioner behaved in a way that constituted professional misconduct

EVIDENCE – ADMISSIBILITY – TENDENCY, CO-INCIDENCE AND PROPENSITY – SIMILAR FACT EVIDENCE – GENERALLY – where there was some similarity in the events described by the witnesses – where it was submitted that the similarities were such that the evidence in one allegation should be allowed to be used in support of another allegation – where the Tribunal is not bound by the rules of evidence – where the Tribunal must act fairly and according to the substantial merits of the case – whether similar fact evidence is admissible in disciplinary proceedings before the Tribunal

Health Practitioner Regulation National Law (Queensland), s 193(1)(a).

Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 28(2), s 28(3).

Briginshaw v Briginshaw (1938) 60 CLR 336, applied.

Purnell v Medical Board of Queensland [1999] 1 Qd R 362, considered.

Zaidi v Health Care Complaints Commission (1998) 44 NSWLR 82, considered.

Medical Board of Australia v Gomez [2015] QCAT 121, considered.

Nursing and Midwifery Board of Australia v Singh [2014] VCAT 1171, considered.

APPEARANCES:

- APPLICANT:** P J Davis QC, with M P Williams instructed by Lander & Rogers
- RESPONDENT:** D K O’Gorman SC, with S Lane instructed by K&L Gates

REASONS FOR DECISION

- [1] On 16 January 2014, the Medical Board of Australia (**Board**) referred to the Queensland Civil and Administrative Tribunal (**Tribunal**) disciplinary proceedings against the practitioner, Dr Muhammad Azam. The referral was made under s 193(1)(a) of the *Health Practitioner Regulation National Law (Queensland)* (**National Law**) on the basis the Board reasonably believed Dr Azam had behaved in a way that constituted professional misconduct.
- [2] The initial referral was amended on 22 July 2016 to incorporate additional allegations of misconduct.
- [3] By the date of the initial referral, Dr Azam had been practicing subject to conditions first imposed by the Board on 25 October 2012 in the exercise of its immediate action power. The Board, following receipt of notifications alleging, amongst other things, sexual impropriety, had taken that action. The conditions imposed at that time may conveniently be called “chaperone conditions” and in particular required Dr Azam to have a chaperone present at any consultation with a female patient.
- [4] At the time of the imposition of those conditions, Dr Azam was practicing as a general practitioner at the Springwood Medical Centre in partnership with Dr Khan through a jointly owned company.¹
- [5] The notifications giving rise to the allegations the subject to the referral were made at various dates between 10 September and 18 September 2012. The notifications were made by Dr Khan, Ms Martin the practice manager, Ms Langford a nurse employed at the practice and Detective Constable Godfrey the police constable who had investigated the complaint of indecent assault made to the Queensland Police Service by a patient of Dr Azam’s.
- [6] On 9 July 2013, an order was made by the Supreme Court of Queensland winding up the company jointly owned by Dr Azam and Dr Khan. Dr Khan had commenced the application to wind up as his relationship with Dr Azam had reached a stage where, for a number of reasons, they could

¹ The partnership company was called ‘A & Y Medical Pty Ltd’.

no longer work together. Dr Khan continues to operate a medical practice from the same premises in Springwood.²

Current Proceedings

- [7] The amended referral in these proceedings makes the following allegations against Dr Azam:
- (1) On various occasions, Dr Azam abused the position of influence and trust inherent in a doctor/patient relationship by failing to maintain appropriate professional boundaries with respect to:
 - (i) Patient JBD between 3 May 2011 and 8 June 2011 by attempting to kiss her and saying inappropriate words to her and on 8 June 2011 by engaging in sexual intercourse;
 - (ii) Patient ANS on 17 April 2011 by embracing her and saying inappropriate words to her (**allegation 1**);
 - (2) On 17 April 2012, during the course of a consultation with patient ANS, Dr Azam touched the patient when it was not necessary for the examination, and it was without her consent and inappropriate (**allegation 2**);
 - (3) On 5 September 2013, Dr Azam breached the chaperone conditions by consulting a female patient without a chaperone being present at all times (**allegation 3**);
 - (4) On or about 6 September 2013, Dr Azam sought to mislead the Board as to his compliance with the chaperone conditions by causing the chaperone register to be falsified in respect of his consultation with the patient referred to in allegation 3 (**allegation 4**);
 - (5) On various occasions with respect to various patients, Dr Azam breached the chaperone conditions imposed on him by failing to maintain the chaperone register (**allegation 5**);
 - (6) On or about 22 May 2012, Dr Azam instructed Nurse Langford to amend the clinical records for patient DE to reflect she had chaperoned in the consultation when Nurse Langford had in fact not been present (**allegation 6**); and
 - (7) After being informed of a notification being made to the Board or the Australian Health Practitioner Regulation Agency (**AHPRA**), Dr Azam engaged in behaviour that would be perceived to be harassing or intimidating, or caused such behaviour to occur, towards a patient (**allegation 7**).

² Affidavit of Dr Khan sworn 30 January 2015, [5].

- [8] During the hearing, the Board called and tendered evidence as to each of the allegations against Dr Azam. Dr Azam challenged some of that evidence by cross-examination but, during the course of the hearing, advised the Board that he did not require Dr Khan or Ms Martin to be produced for cross-examination.
- [9] Otherwise, Dr Azam did not call or adduce any evidence to contradict the evidence before the Tribunal. The affidavits of Dr Azam, which had been filed in the Tribunal, were not tendered either by the Board or Dr Azam. However, by agreement, the Board tendered as evidence the affidavits of Ms O'Brien and Ms Brant. Those affidavits had been originally filed on behalf of Dr Azam.
- [10] On behalf of Dr Azam, it was submitted that based on the evidence received, the Tribunal could not be satisfied to the requisite standard that the allegations had been made out. The Tribunal accepts, as was submitted, that the Tribunal must be satisfied to the standard referred to by Dixon J in *Briginshaw v Briginshaw*.³ As Dixon J said, "... 'reasonable satisfaction', should not be produced by inexact proofs, indefinite testimony, or indirect inferences".⁴
- [11] It is submitted by Dr Azam that the Tribunal could not be so satisfied because:
- a) Dr Azam has always denied all the allegations;
 - b) There is a considerable body of evidence supporting that denial; and
 - c) The evidence adduced by the Board does not withstand scrutiny.

Animosity between Dr Azam and Dr Khan

- [12] It was also submitted on behalf of Dr Azam that "the role, nature and influence" of Dr Azam's former business partner, Dr Khan, casts considerable doubt on the veracity of the allegations and raises serious questions about the reliability of much of the evidence.
- [13] It was also submitted the role of Ms Martin, who remained in Dr Khan's employ until at least January 2015, raises questions. In the written submissions, reference was made to an email from Ms Martin to Dr Azam dated 13 September 2012, which it was said clearly showed the level of animosity between Ms Martin and Dr Azam and that Ms Martin and Dr Khan were working together. The object of the collusion was said to be to cause financial damage to Dr Azam by having him lose his registration.

³ (1938) 60 CLR 336.

⁴ *Ibid*, 362.

- [14] Those submissions were made in circumstances where neither Ms Martin nor Dr Khan were required for cross-examination and therefore the allegations were not put to them.
- [15] It was submitted JBD's evidence and that of Nurse Langford was affected. JBD gave evidence of having told Ms Martin about Dr Azam's conduct but fully explained her reason for doing so. However, Nurse Langford clearly explained the actions she had taken.
- [16] For reasons that will become apparent, the Tribunal does not accept that there is any basis for this submission relating to the alleged influence of Dr Khan over some of the evidence. The Tribunal will instead proceed to consider each of the allegations in the referral separately in order to determine whether the evidence is sufficient to prove each allegation.

Cross-admissibility of Evidence

- [17] In proceeding to consider the evidence in support of each allegation, the Board seeks to rely on evidence led in support of one allegation to support another allegation on the basis that it is admissible as similar fact or propensity evidence. The Board submits that the evidence of patient JBD in allegation 1 and the evidence of patient ANS in allegation 2 ought to be cross-admissible in proof of the alleged misconduct in each of those allegations. Further, the evidence of Nurse Tankey in allegation 4 and the evidence of Nurse Langford in allegation 6 ought to be cross-admissible.
- [18] The Board submitted that the similarities in the evidence are such that the evidence in one should be allowed to be used in support of the credibility of the witness in giving evidence in support of the other and vice versa. The issue of the admission of evidence to support the credibility of a witness has previously been considered in the context of Tribunal proceedings; and more particularly, in the context where the Tribunal is not bound by the rules of evidence but must act fairly and according to the substantial merits of the case.⁵ The Queensland Court of Appeal in *Purnell v Medical Board of Queensland*⁶ and the New South Wales Court of Appeal in *Zaidi v Health Care Complaints Commission*⁷ have considered the issue. Horneman-Wren DCJ in *Medical Board of Australia v Gomez*⁸ refers in detail to passages from the decision in *Purnell*.
- [19] In *Purnell*, Mackenzie J said:
- This is a case where identification of the person who allegedly did an act is not in dispute. The issue is whether the act complained of was done. Where this is the issue proof of the commission of an act on a particular person may become more certain if other witnesses testify that a similar act has been committed on them. Provided the complaints of the similar acts are made

⁵ *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 28(2), s 28(3).

⁶ [1999] 1 Qd R 362 (*Purnell*).

⁷ (1998) 44 NSWLR 82.

⁸ [2015] QCAT 121.

by witnesses who are truly independent of the complainant whose testimony is in issue, in the sense that collaboration between the complainant and the other witnesses and the possibility that the other witnesses' complaints are the product of suggestibility following the witnesses becoming aware of the complainant's complaint can be ruled out, it is unlikely that the various independent accounts are a coincidence. There may be some cases where other possible explanations consistent with innocence may need consideration, as in the present case where the effects of medication upon perception is an issue. If it can be excluded, the basic proposition stated above operates. The strength of the inference will depend on the facts of the particular case. The number of complaints is not of itself critical. One similar allegation containing the same peculiar feature or features may have considerable weight in supporting a complainant's evidence. On the other hand where acts alleged do not contain any particularly unusual features but are similar, the fact that there are a number of allegations from different persons may assist in drawing an inference that the act with which the court or tribunal is concerned occurred to the required standard of proof. There is no doubt a spectrum of circumstances which require consideration on a case by case basis between those two positions.

Ultimately the question is whether the inference that the act complained of was committed upon the complainant can be properly drawn having due regard to the standard of proof applicable to the kind of case before the court or tribunal. Where credibility of a complainant's evidence is in issue the fact that complaints of similar acts have been made by other persons can provide strong support of the complainant's evidence in the absence of any factors diminishing the strength of the inference logically available from the fact that they were made independently of and unaffected by the complainant's own account.⁹

In adopting the general approach taken in *Purnell and Zaidi*, the Victorian Civil and Administrative Tribunal in *Nursing and Midwifery Board of Australia v Singh* said:

In the Tribunal's view, in considering the evidence in this case, in which serious allegations are made against a nurse, it should have regard to the principles underlying the rules relating [to] the tendency and coincidence evidence, even though it is not required to apply those rules. In particular, the Tribunal is conscious of the strong prejudicial effect, when considering whether the respondent is guilty of a particular disciplinary charge, of evidence by other complainants about other alleged acts. We proceed on the basis that there must be a high level of probative value in such evidence, before it should be taken into account in determining whether the respondent is guilty of the first allegation.

Also, the Tribunal is mindful of the statement in *CGL v Director of Public Prosecutions* that the greater the degree of specificity with which similarities can be identified, the more likely it will be that evidence will be probative of a tendency to do acts of a distinctive kind. Conscious of the prejudicial effect on Mr Singh's case of categorising similar conduct too broadly, we have not relied on evidence of acts such as kissing on the lips, for example, as

⁹ [1999] 1 Qd R 362, 379-380.

constituting probative evidence in relation to allegations of touching the breasts or of kissing on the neck, or of hugging.¹⁰

- [20] This approach, which is consistent with the degree of satisfaction demanded in disciplinary matters, will require a close analysis of the evidence of each witness before a decision of admissibility is made. The evidence of one witness will need to be sufficiently probative before it could be admitted as similar fact evidence.

Allegations 1 and 2

- [21] Patient JBD gave evidence in support of allegation 1 and patient ANS gave evidence in support of allegations 1 and 2.

Evidence of JBD

- [22] JBD deposes to having first consulted Dr Azam on the recommendation of her sister in about March 2011, seeking treatment for her daughter for an ear problem. She said that soon after the first consultation with Dr Azam she started to receive phone calls on her mobile phone which were unrelated to the care of her daughter.
- [23] JBD said she recalled a particular consultation in April 2011. By reference to the medical records she could say that consultation occurred on 28 April 2011. She said that during that consultation she became very upset and distressed with the difficulties she was experiencing in her everyday life. She said she burst into tears during the consultation and Dr Azam invited her to come back the next week for an appointment on her own. She says that during the appointment, and in subsequent appointments with Dr Azam and her daughter in relation to her daughter's continuing ear problem, Dr Azam often told her she was beautiful and that her daughter was beautiful.
- [24] It is not disputed that she returned for an appointment a week later. The medical records confirm that there was an appointment on 4 May 2011 and JBD said that date was consistent with her recollection that she had made an appointment the week after the appointment on 28 April 2011.
- [25] JBD said she attended three other appointments with Dr Azam; one in late May or early June 2011 to obtain antibiotics for a broken fingernail and two in June 2011 to discuss her mental health issues, with one appointment in early June and the final appointment being on 8 June 2011.
- [26] She said that at the consultation in early June 2011, Dr Azam asked to measure her height. She said he put his hands on her hips and then leant towards her trying to kiss her. She said he said to her, "What are you doing. Don't you want to kiss me, you're beautiful." She said that as she

¹⁰ [2014] VCAT 1171, [151]-[152] (citations omitted).

had attended the consultation after being at the gym, she responded that she did not feel fresh.

- [27] She said Dr Azam then wanted to measure her weight. She stood on the scales, Dr Azam stood behind her and put his hands on her waist and said, "Perfect". She said none of her mental issues were discussed at that appointment and Dr Azam asked her to make another appointment.
- [28] The next appointment was on 8 June 2011. On that date, she attended at the surgery for her 12 noon appointment. When she was called into the consultation rooms, there was a brief discussion and Dr Azam then said he was having lunch at 12.30pm and said to her, "Let's go have lunch". She said Dr Azam told her where to meet him at 12.30pm.
- [29] She said that they met at the agreed time and she followed Dr Azam to his car. Once in the car she said that Dr Azam said, "Let's go for a drive". JBD said that they drove until they reached, what she now knows was, the Daisy Hill Conservation Park. She said Dr Azam parked his car, they got out and started walking down an unmarked pathway. She said the carpark and paths around that area were quite busy with a lot of people walking around, mainly school children. She said they stopped at a scrubby area near a large log, completely off any recognisable track, and sat on the log and talked for a few minutes. She said Dr Azam then leant over and started to kiss her, he then pulled her tights down and they had consensual intercourse.
- [30] She said they then returned to the car and drove back to the practice. JBD said that during the car drive Dr Azam received a phone call from Nicole. Nicole told Dr Azam that the drug representative had arrived for his appointment. Once back at the surgery, Dr Azam left, telling patient JBD to wait. Dr Azam subsequently returned and gave JBD \$300 telling her to buy herself and her daughter a present. He also asked that she buy two prepaid SIM cards so they could contact each other. JBD said Dr Azam rang her two or three times during the afternoon.
- [31] The phone records of Dr Azam uncovered by the police as a result of the search warrant executed on him confirm Dr Azam phoned JBD twice that afternoon; albeit at different times from the times recalled by JBD. The phone records also disclose 16 calls from Dr Azam to JBD in the period between 2 June and 8 June 2011. JBD's evidence that she did not have Dr Azam's mobile telephone number was not challenged; the inference being that Dr Azam must have made the calls to JBD.
- [32] After the events of that day, Dr Azam did not call JBD again. JBD said that the events of 8 June 2011 and the way Dr Azam conducted himself afterwards made her feel terrible. In her affidavit, she said, "Dr Azam giving me the \$300 made me feel like a whore." In cross-examination, she agreed she was not offended by Dr Azam's conduct leading up to 8 June. She admitted she was excited by it. She said she was flattered by the attention. She then said, "However, the treatment that he gave after that

day... I felt used and I felt humiliated.” She said she felt like a sexual object.

- [33] JBD said that her feeling of being used, made her decide to raise the matter with Nicole, whom she knew to be the practice manager. JBD attended at the surgery and told Nicole that she had had sex with Dr Azam. She said she told Nicole because she wanted her to know who she was working for and what kind of a guy he was.
- [34] Around this time she was attending consultations with her usual general practitioner, Dr Potapov. In a consultation with Dr Potapov, JBD disclosed to Dr Potapov the events of 8 June 2011. Under cross-examination, JBD accepted she had not told Dr Potapov at the time of her first appointment after 8 June 2011. She said it had been weighing on her mind. She said, it hit a point where she had the confidence to say it to Dr Potapov.
- [35] Dr Potapov was also called to give evidence. Whilst there is a discrepancy between her notes and the evidence of JBD, the Tribunal does not consider that the discrepancy affects the credibility of the evidence given by JBD.
- [36] Ms Martin confirmed in her affidavit evidence the phone call she made to Dr Azam’s mobile on 8 June 2011 and also her conversation with JBD at the surgery on or about 15 June 2011. Ms Martin also confirmed JBD’s description of Dr Azam’s car. By reference to the software records of the practice, Ms Martin was also able to confirm that Dr Azam had used his account to delete from the practice records the appointment for JBD on 8 June 2011 at 12.15pm.

Evidence of ANS

- [37] Patient ANS had been a patient of the practice since about 2009. ANS said that at a consultation in about March 2012 that she stated at the commencement of the consultation that she was struggling with stress from work. She said she was crying and very emotional in that consultation. She said that Dr Azam wrote a prescription and in giving her the prescription said she would feel worse before she felt better.
- [38] ANS said that she took the prescribed drugs but did not like the side effects of the medication. ANS said that she made further appointments to see Dr Azam to address her mental health issues. She attended further appointments on 2 April and 17 April 2012.
- [39] She said that during the appointment on 17 April 2012, Dr Azam questioned her about her personal life. She said that when she thought the consultation had ended, she was still upset and crying and Dr Azam opened his arms to embrace her. ANS admitted that she went in for the hug. She said on doing that Dr Azam rubbed her back in a circular motion until his hands hit her bottom. She said that he then tried to kiss her and said to her, “I care about you [ANS]. You don’t know how much I care about you”. She said at this stage his head was against her face and she

could feel his hand rubbing the right side of her body and moving up towards her right breast.

- [40] ANS said she was shocked and wondered whether he was going to rape her. She said that Dr Azam then said to her, "You are so gorgeous and you are so beautiful". She said he referred to being a broken man and wanted to meet up with her; she said he was saying he could give her everything she needed.
- [41] At this point, she said, "My son is outside, I'm a mess." She then moved to the door of the consultation room and opened the door.
- [42] There is some similarity in the events described by JBD and ANS. Each was a female patient of similar age who had told Dr Azam of their individual stresses. Dr Azam had described each of them to their face as being beautiful. The initial acts occurred in the same surgery. However, that is where the similarities end: the physical acts by Dr Azam were different in each case, and the act with respect to JBD occurred on more than one occasion.
- [43] It is, in any event, unnecessary to reach any firm conclusion on the matter. JBD was a very impressive witness. Whilst the patient, through cross-examination, was shown to have been in error in her recollection as to the timing of the subsequent phone calls from Dr Azam on the day that the alleged sexual intercourse took place, also in error as to the name of the place where the sexual intercourse took place and other slight variations, these are not matters of significance and are completely understandable from a person in her position. Similar considerations apply to variations between her unsigned statement as prepared by AHPRA and other evidence given by JBD, though with more cogency given that the AHPRA statement was never signed or accepted by JBD.
- [44] In any event, JBD otherwise was firm in her description of the events, and forthright but reasonable in her rejection of matters put to her in cross-examination with which she disagreed. She described, against her own interest, how she was flattered by the attention she was being shown by Dr Azam and excited by the invitation to lunch.
- [45] JBD's evidence is consistent with the statement she made to Ms Martin and Dr Potapov (her general practitioner) as relayed by them without objection. Her evidence in relation to the phone call by Ms Martin to Dr Azam in the car is supported by Ms Martin's recount of the same event.
- [46] An assessment of JBD's credibility as a witness in relation to allegations 1 and 2 is strengthened by the independent evidence which supports her account of the events in relation to allegation 7. This evidence will be dealt with in more detail later, but consists of letters received by JBD containing the fingerprints of Dr Azam, the phone records of Dr Azam, the admission of Dr Azam in these proceedings of having retained Mr Schafferius as a private investigator in relation to JBD and the pre-trial sworn evidence of

Mr Schafferius, his record of interview and the taped pre-text phone call between JBD and him.

- [47] ANS also gave very credible evidence about the events. There was no exaggeration. She stated that, during the consultation, Dr Azam's hand went towards her breast, but specifically said it was only once and that he did not actually touch it. She admitted that she accepted the hug and did not exaggerate his actions after that. ANS went to the police the day after the consultation to complain about the doctor's conduct.
- [48] The Tribunal is satisfied that the events described by JBD and ANS occurred as they stated; without the need to consider whether the evidence of one witness supports the evidence of the other. The Tribunal finds allegations 1 and 2 of the referral proven.

Allegations 3 and 4

- [49] Patient CD and Nurse Tankey gave evidence in relation to a consultation between Dr Azam and patient CD on 5 September 2013.
- [50] CD signed a statement for AHPRA on 21 November 2013, just 3 months after the consultation, in which she said that she had attended for two consultations with Dr Azam. On the first occasion there was a female third party present whom she was told was a female student doctor and on the second occasion there was no female present in the consultation room; though there was a female nurse who attended to dress a wound on her earlobe in the treatment room at the practise.
- [51] In cross-examination, CD admitted that she could not remember very much about the consultation on 5 September 2013, just bits and pieces. The cross-examination was short. It was put to CD that she could not remember whether it was the first or second visit when the group of five people, "you, Dr Azam, your boyfriend, your daughter and the female," were present. CD responded, "No. I remember that was the first visit. The second visit, my daughter was present, not my partner at the time." CD was then asked, "There was a female present on the second occasion?" The patient answered, "That's correct."
- [52] What is not clear from the patient's answer is whether the patient was referring to the nurse who dressed her earlobe in the treatment room or whether she was stating that a female was present in the consultation room with Dr Azam. No clarification of the circumstances occurred in cross-examination, or re-examination.
- [53] Nurse Tankey swore a statutory declaration on 31 October 2013 and an affidavit on 30 January 2015. Both in her statutory declaration and affidavit and in giving evidence before the Tribunal, Ms Tankey's evidence was that she was not present in the consultation room with Dr Azam when he saw the patient, who it is accepted was patient CD. Whilst Ms Tankey's evidence is that she was not in the consultation room, Ms Tankey recalled attending the dressing of the earlobe of a young lady in the treatment

room. She recalled that Dr Azam came into the treatment room to review. The electronic medical records of CD are consistent with Ms Tankey having dressed a wound on the patient's earlobe.

- [54] Under cross-examination, Ms Tankey said that she could not recall the consultation in specifics; noting it was three years ago. At the start of the cross-examination, she denied it was possible she was in the consultation room as well as the treatment room. At the end of the cross-examination, it was put to Ms Tankey that she was not able to say that there was a consultation other than in the treatment room. She agreed with that proposition. It was then put to her that, as she was present in the treatment room, it was possible she was present for the whole of the consultation. She responded, "I could've been."
- [55] That evidence is inconsistent with the clear evidence of CD that she recalled being in both the consultation room and treatment room that day. In cross-examination, it was not put to CD that there was no other consultation other than in the treatment room.
- [56] Ms Tankey also gave evidence of being asked by Dr Azam to sign a document. She said that she recalled being asked while she was on hold on a phone call. At the time of signing the statutory declaration some three months after the request, she could recall clearly the details of the phone call.
- [57] She said that when she subsequently inquired with Dr Azam about the document, he led her to believe that she was signing a personal record retained by Dr Azam. She said she made it clear to Dr Azam that she was only indicating she was present in the treatment room; not in the consultation room. She said that she was aware at the time that Dr Azam was subject to conditions requiring the presence of a chaperone for all consultations with female patients.
- [58] Ms Tankey said that it was only subsequently that she realised that she had signed a document, which was in fact part of the chaperone register. No challenge was made to any of her evidence about the circumstances in which she signed the document.
- [59] This evidence tends to confirm the original evidence of both patient CD and Ms Tankey that no chaperone was present as required.
- [60] Overall, I am satisfied to the requisite standard that no chaperone was present and that any record indicating one was present in the consultation room is not true. I also accept Ms Tankey's evidence as to the circumstances in which she signed the chaperone register. There can only be one reason why Dr Azam would have procured Ms Tankey to falsify the chaperone register and that was in an endeavour to mislead the Board as to his compliance with the chaperone conditions. The Tribunal finds allegations 3 and 4 of the referral proven.

Allegation 5

- [61] The allegation against Dr Azam relates to his failure to maintain the chaperone register as required by the conditions imposed on his registration. The allegation in respect of the patients listed in the particulars is not that there was no chaperone present during the consultations but rather that the chaperone register did not record the fact of their attendance upon Dr Azam for a consultation. According to the Medicare records, Dr Azam saw a number of female patients on various dates between February and July 2013. The chaperone register, however, contains no record of the 48 patients listed in the particulars of the allegation as having been seen by Dr Azam on the dates listed in the particulars.
- [62] In response to this allegation, Dr Azam had filed affidavits of two nurses employed at the practice to work as chaperones, Ms O'Brien and Ms Brant.¹¹ By agreement, the affidavits of Ms O'Brien and Ms Brant were tendered at the hearing by the applicant; not by Dr Azam. The nurses were not called. The statement of Ms Araeiiti, another nurse employed at the practice to work as a chaperone, was part of the agreed bundle of documents.¹²
- [63] All nurses said they were to act as a chaperone for every consultation between Dr Azam and a female patient during the hours they worked. With the exception of Ms Brant, it is unclear from their evidence as to whether the nurses had been made aware that Dr Azam had conditions on his registration requiring a chaperone to be present for every consultation with a female patient.
- [64] Both Ms O'Brien and Ms Araeiiti said that during the hours they worked, they were in the room for every consultation Dr Azam had with a female patient. Both Ms O'Brien and Ms Araeiiti said they could not explain why patient names may not have been recorded in the chaperone register. Ms Brant gave no evidence to try to explain the discrepancy.
- [65] In the Statement of Agreed Facts, it is accepted the register was incomplete.¹³ In a letter to AHPRA from Avant Law on behalf of Dr Azam it was acknowledged there may be some errors but it was asserted that, given the number of female patients seen, it was a small percentage of times the logbook had been incomplete.¹⁴ It was stated in that letter that all female patients had been seen with a chaperone. Given his admission

¹¹ Affidavit of Ms Brant sworn 24 August 2016; Affidavit of Ms O'Brien sworn 25 August 2016.

¹² Statement of Ms Araeiiti signed 15 October 2013, Agreed Bundle of Documents, Tab 29.

¹³ Statement of Agreed Facts and Issues in Dispute, [20].

¹⁴ Letter from Avant Law to AHPRA dated 17 October 2013, Agreed Bundle of Documents, Tab 18.

and the other findings in terms of the other allegations, the Tribunal does not accept that this statement is true.

- [66] It is not disputed that with respect to a number of patients the chaperone log contained errors. Further, there is no evidence to support a suggestion that there were errors in the Medicare records.
- [67] Given the evidence before the Tribunal, the Tribunal finds the allegation that Dr Azam failed to complete the chaperone register on 48 occasions proven.

Allegation 6

- [68] Nurse Langford gave evidence in support of this allegation. In her affidavit dated 30 January 2015 filed in these proceedings, Ms Langford said she was forced by Dr Azam to add an entry to the medical records of patient DE to say that she had acted as a chaperone when Dr Azam saw patient DE. Ms Langford said the request from Dr Azam came when she was in the tearoom of the practice. Ms Langford said that at the time of the request she had only been working at the practice a few weeks.
- [69] Ms Langford said that the request was made after Dr Khan had come into the tearoom to tell Dr Azam he had just received a phone call from police following a patient complaint. In response to Dr Khan's statement, Ms Langford said Dr Azam said that he needed Ms Langford to say that she had acted as a chaperone for the consultation with patient DE. Dr Khan in his affidavit referred to having received the telephone call from the police.¹⁵ Dr Khan believed the initial conversation between Dr Azam and himself occurred in his consultation room. He referred to having subsequently seen an aggressive exchange between Ms Langford and Dr Azam in the tearoom.
- [70] Ms Langford said she questioned the request by Dr Azam and said it was illegal and against her code of conduct to write false notes. Ms Langford said she initially said no to Dr Azam's request but felt frightened and pressured, and became worried about losing her job. Later that same day, Ms Langford said she amended the electronic medical record of patient DE to say what Dr Azam had told her to write. Ms Langford's evidence was that the electronic medical records could be altered retrospectively including the date on which an entry amending the record was made.
- [71] Ms Langford subsequently made a notification to AHPRA dated 12 September 2012 in relation to the conduct of Dr Azam in requiring her to amend the electronic medical records. Ms Langford gave a statement to the police signed on 15 October 2012 and signed a statutory declaration on 26 November 2012.

¹⁵ Affidavit of Dr Khan sworn 30 January 2015.

- [72] In cross-examination, it was put to Ms Langford that what she wrote was correct. She specifically denied the allegations, stating, "I wasn't the chaperone." It was not suggested to Ms Langford that she had not written what she was told to write.
- [73] Statements were admitted into evidence allegedly from patient DE. The statements formed part of the agreed bundle of documents.¹⁶ In cross-examination, it was put to Ms Langford that she was in fact present for the consultation with DE. Ms Langford did not accept that. DE could not be located and she was not called as a witness.
- [74] It is difficult to put much weight on the statements of DE against the sworn testimony of Ms Langford. Ms Langford presented as a very nervous witness. It was clear that she remained very concerned as to the potential impact of her conduct in altering the record. She was clearly worried as to whether any action would be taken against her. Not surprisingly, that affected her demeanour but she was clearly telling the truth. There is no doubt Ms Langford had felt enormous pressure to do what Dr Azam had asked her to do and that she had clearly not acted as a chaperone for Dr Azam's consultation with DE.
- [75] It was submitted by the Board, that given the similarity in the evidence of Nurses Tankey and Langford, the Tribunal should have reference to one in the proof of the other. Given the evidence accepted by the Tribunal, it is not necessary for the Tribunal to have regard to the evidence of one of the nurses in support of the evidence of the other nurse.
- [76] The Tribunal finds allegation 6 proven.

Allegation 7

- [77] Allegation 7 contains eight individual allegations. Allegations 7.1 to 7.5 contain the particulars of the more general allegation of Dr Azam having engaged in behaviour that would reasonably be perceived to be harassing or intimidating, or of him having caused such behaviour to occur.
- [78] Allegation 7.6 asserts a fact that is admitted. In the Board's submissions, the fact is said to flow from the behaviour alleged in paragraphs 7.1 to 7.5; the admitted fact being that Dr Azam had consented to an order being made by the Magistrates Court at Beenleigh on 13 January 2016. Dr Azam was before the Court on a charge of stalking. By consent, the Court made a restraining order prohibiting Dr Azam from contacting, directly or indirectly, or approaching within 100 metres of JBD when she is at any place. The order was to be enforced for a period of two years. The charge of stalking against Dr Azam was dismissed.

¹⁶ Statement of DE provided to AHPRA signed 12 February 2013, Agreed Bundle of Documents, Tab 25; Statement of DE provided to Avant Law signed 12 February 2013, Agreed Bundle of Documents, Tab 26.

- [79] It is submitted by the Board that the fact of consent to the order does not constitute any “professional misbehaviour.” Nor could it be said, in fact, to constitute any admission of any of the other particulars contained in allegation 7.
- [80] Allegations 7.6 and 7.7 allege a failure to give notice to the Board of having been charged with the offence of stalking. The fact that Dr Azam was charged on 21 November 2014 is admitted.¹⁷
- [81] Section 130 of the National Law requires a practitioner to give notice to the Board within seven days of being charged of an offence punishable by 12 months’ imprisonment. The failure to give notice is also admitted. In making the admission, however, it was said there was an explanation for the failure.¹⁸ The Tribunal has no evidence of the explanation. Given the terms of the section and the admissions made, any explanation could only go to what consequences flow from the failure; rather than to excuse the failure.
- [82] In view of the admissions, the allegations in paragraphs 7.6 to 7.8 are proven.
- [83] In terms of allegations 7.1 to 7.5, JBD gave evidence of events subsequent to the alleged sexual intercourse with Dr Azam and the subsequent notifications to AHPRA. She gave evidence of having received visits from a person identifying himself as Kevin seeking to persuade her to withdraw her complaint against Dr Azam. She had reported to police these visits and gave a statement to police in relation to these visits on 20 August 2014.¹⁹
- [84] Prior to giving that statement to police, JBD had given a prior statement to police regarding the events of 8 June 2011.²⁰ She had also provided a statement to AHPRA following an approach from AHPRA; though that statement had never been signed by JBD.²¹
- [85] JBD recalled that the first visit from a person named Kevin occurred on Mother’s Day on 11 April 2014. Kevin had said to JBD that he was the father of a daughter of a similar age and appearance to JBD and that his daughter had had a bad experience with Dr Azam. He said that Nicole (the practice manager) had provided to him JBD’s name and address. JBD said he asked JBD to tell him what he did to her. She told him she did not wish to talk about it. He then asked whether she had made a complaint about Dr Azam and she said she had not but she had been approached by AHPRA.

¹⁷ Statement of Agreed Facts and Issues in Dispute, [31].

¹⁸ Ibid, [33].

¹⁹ Affidavit of Constable Godfrey sworn 21 October 2016, Exhibit LDG-10.

²⁰ Ibid, Exhibit LDG-8.

²¹ Statement of JBD provided to AHPRA (unsigned), Agreed Bundle of Documents, Tab 23.

- [86] JBD said that Kevin tried to befriend her by having a more general conversation with her. She said that he had also mentioned that his father's name was Keith and that he was sometimes called Keith.
- [87] JBD admitted that on that first visit she did not feel intimidated by Kevin.
- [88] She said that Kevin visited her on two other occasions. She said she could not recall the dates of these visits but they occurred between 11 May and 3 August 2014. She said on the subsequent occasions he continued to ask her whether she was making a complaint and whether she wanted to use the same solicitor as his daughter. By this time, JBD had been to see a solicitor and she said she attempted to give him the name of her solicitor but he refused to take it.
- [89] A woman who said she was Kevin's daughter also attended the residence and spoke to JBD's then partner. JBD was not home at the time.
- [90] By the time of the August visit, JBD said that she had become extremely annoyed and upset that Kevin would not leave her alone. She said she was feeling intimidated and pressured to speak to AHPRA about withdrawing her complaint. She said on this occasion she made it very clear to Kevin that he was not to contact her again. On this occasion she said Kevin had said to her that his daughter was not going through with her complaint as she did not want the media attention.
- [91] Shortly after this visit JBD made further contact with the police. She attended at the Logan Police Station on 20 August 2014 and gave a sworn statement. While at the Police Station on 20 August 2014 JBD made a call to Kevin. The call was answered, "It's Keith.", to which JBD responded, "Hi, Kevin." Keith then said he did not know any Kevin's. JBD said, "Well Keith, Kevin, it's JBD calling." The male person then responded, "Oh Okay yeah sorry [JBD]."
- [92] The full text of the pre-text call is an exhibit to the affidavit of Constable Godfrey.²² During the pre-text call, JBD referred to having received a letter on Friday. She said to Keith that the letter included a pre-paid envelope with a PO Box address. She said that when she searched the PO Box it came up with his name and that he was a private investigator. She said the letter had offered her \$2000 and commented to Keith that that was not a lot of money.
- [93] Up until this part of the conversation, Keith had not made any admissions; he had said someone else must have been using his PO Box address. However, at this point JBD asked, "Can you have a chat to Azam and see if he's got maybe a little bit more..." In response, Keith said, "Ok." When she asked, "Can you promise me Azam is not going to hurt me?", Keith

²² Affidavit of Constable Godfrey sworn 21 October 2016, Exhibit LDG-11.

responded, "I'll get back to him and ah he won't hurt you, he wouldn't be game...".

[94] The letter to which JBD was referring in the pre-text call was a letter said to be from Helen P. The letter contained a pre-paid envelope with a PO Box number. The letter and envelope was an annexure to the affidavit of Constable Godfrey.²³ In her affidavit, Constable Godfrey detailed the statements that she said Mr Schafferius made during the record of interview. Her evidence was given without objection and no suggestion was made that it should not be treated as truth of the facts stated. In the record of interview she said that Mr Schafferius had said that:

- a) Mr Schafferius had a girl named 'Helen' who assists him with investigations;
- b) the PO Box referred to in the letter was the same PO Box used by Mr Schafferius in his business.

[95] In JBD's statement to police dated 20 August 2014, she said the letter was received on Friday 15 May 2014. JBD refers again to that date in her affidavit. No submissions were made by either party with respect to the date of receipt of that letter, but having regard to the statement by JBD in the call to Kevin on 20 August 2014 and the attendance by JBD at the police on that date, it would seem that the letter was more likely received by JBD on or about 15 August 2014 and not on 15 May 2014. The letter having been received around this date is also consistent with the evidence of Constable Godfrey of she having seized, when JBD attended at the police station on 20 August 2014, a letter/envelope from JBD which she [JBD] had received at her residence on or about 15 August 2014.²⁴ The letter/envelope seized and exhibited to the affidavit of Constable Godfrey bears a postmark stamp of 14 August.

[96] JBD said that, after the pre-text call, she communicated with Keith by text messages. She said that he continued to try to get her to withdraw her complaint. She said he often tried to meet up with her. In her statement given on 22 November 2014, she said that the communications with Keith had stopped about six weeks earlier.

[97] She then said that on 17 November 2014 she received the first of a number of further letters. Each letter was in a white envelope with her name and address typed on. Only one of the letters had a postmark. JBD said she suspected some of the letters had been hand delivered to her letterbox. The letter purported to be from a friend. It reminded JBD that the day was almost here when she would be called to the courts. The letter referred to the ruthless media attention which would flow from the

²³ Affidavit of Constable Godfrey sworn 21 October 2016, Exhibit LDG-18.

²⁴ Ibid, [26] and Exhibit LDG-12

pursuit of the complaint against Dr Azam. The letter made no offer of any money by way of inducement to withdraw.

[98] The letter contained a typewritten letter for JBD to sign and return in the pre-paid envelope. Relevantly, the typewritten letter to be signed by JBD stated:

I, [JBD], states that information that I have provided to Nicole Martin and Queensland Police Service stating that I had sexual intercourse with Dr Azam on 08/06/2011 is false.

I did not have sex with Dr Azam at anytime.

Nicole Martin pressured me to give false statement.

I am making this statement voluntarily and without any monetary inducement and not as a result of any threat or any other compulsion.

[99] JBD said she immediately thought the letter was from Dr Azam. The same letter was placed in her letterbox on three consecutive days.

[100] On 21 November 2014, JBD saw Dr Azam at her daughter's school. Dr Azam said they needed to talk. JBD said she would meet him at the local Hungry Jacks. JBD said they spoke for about 30 minutes. She said she cannot recall the whole conversation but remembers parts of it. She said she said to Dr Azam that he had been putting letters in her letterbox. She said, "You offered me \$2000 in the letter?" She said Dr Azam said in response, "I thought this could help, I know I haven't gone about it the right way, I'm sorry. It's all getting so big."

[101] She said to him, if I could sign a letter that made this magically go away I would. He then responded, "My insurance lawyer can reassure all your fears and doubts that everything will be ok if you sign. Come in my car and we can go there now." JBD said she told Dr Azam, "I am not going to lie or receive a bribe from anyone."

[102] Following this meeting with Dr Azam, JBD sent a text message to Constable Godfrey, as the investigating officer, telling her about the three letters hand delivered and Dr Azam having turned up at her daughter's school. Constable Godfrey responded asking JBD to come and see her that evening.

[103] At about 2.30pm that same day, JBD said she heard Dr Azam at the gate calling her name. After a couple of minutes he left and she then received a phone call asking her to come back down to Hungry Jacks. She said she could not leave the house now. She said she agreed he could come to her house.

[104] Once Dr Azam was inside the house, she sent a text message to Constable Godfrey saying that she needed her to come now as he [Dr Azam] was at her house. Not long after, the police arrived and took Dr Azam to the Logan Police Station.

- [105] Once at the police station, Dr Azam became unwell. He was transported to Logan Hospital. Prior to being transported, Dr Azam was charged with unlawful stalking and released on a bail undertaking including conditions that he have no contact with JBD or her family.
- [106] In the Statement of Agreed Facts, Dr Azam admits to having spoken to JBD both at the school and later at Hungry Jack's.²⁵
- [107] A number of items were seized from Dr Azam including his mobile phone. A search warrant was executed in relation to Dr Azam's vehicle that was parked outside JBD's house. A number of items were seized from the vehicle including a typewritten letter and white envelopes. The typewritten letter seized was in the same terms as the recent letters received by JBD.
- [108] The next day JBD attended at the police station to give a further statement. On her way to the police station, she again checked her mailbox and found a further copy of the typewritten letter for JBD to sign, withdrawing her complaint. This time only her first name was handwritten on the envelope. JBD said she believed the letter had been delivered the previous day as she had not checked her mailbox that day. The envelope also contained a note stating:
- Hi [JBD],
- you asked for a magic letter which will cause every thing to go away.
- as you wanted everything to go away, this letter is for you to sign.
- If you sign this letter and send it to AHPRA, every thing will go away and AHPRA woun't [sic] bother you.
- [109] The contents of the letter corroborates JBD's evidence of her conversation with Dr Azam the previous day. JBD gave the police the letters she said she had received. Subsequent examination revealed Dr Azam's fingerprints were on some of the letters.²⁶
- [110] On 26 November 2014 the police executed a search warrant of the premises where Mr Schafferius was believed to be residing. The police seized a number of items including a mobile phone, computer, diary, digital camera, and letters, documents and envelopes. A record of interview was conducted with Mr Schafferius that day. It is the statements made by Mr Schafferius in that record of interview which are detailed in the affidavit of Constable Godfrey.
- [111] The Board called Mr Schafferius to give evidence before the Tribunal. Mr Schafferius had sworn an affidavit dated 26 October 2016. It is admitted that Mr Schafferius was the agent engaged by Dr Azam to locate

²⁵ Statement of Agreed Facts and Issues in Dispute, [30].

²⁶ Affidavit of Constable Godfrey sworn 21 October 2016, [56].

and/or conduct surveillance on JBD.²⁷ It is also admitted that on or about 4 March 2014, Dr Azam received a text message from the agent to the effect the agent had “commenced investigations”.²⁸

- [112] In his examination in chief in these proceedings, Mr Schafferius confirmed that everything contained in his affidavit was true and correct. He said he first met with Dr Azam at the McDonald’s in Calamvale. He said Dr Azam initially paid approximately \$400 in cash to obtain information about JBD. He said Dr Azam gave him information about JBD including her address, age and name.
- [113] Mr Schafferius admitted to meeting JBD on two or three occasions and of having used the pretence of being the father of a daughter who had been inappropriately touched by a doctor at the practice. He said he recalled exchanging text messages with Dr Azam but not emails. The records recovered from the execution of the search warrants indicate that both text messages and emails were sent between Mr Schafferius and Dr Azam.
- [114] In his affidavit, Mr Schafferius admitted that the police conducted a search of his property on 26 November 2014 and seized property belonging to him. He admitted that during the search the police located a letter which contained an offer if JBD withdrew the complaint against Dr Azam. He admitted to drafting the letter. He said that Dr Azam had asked him to draft such a letter and deliver it to JBD. He said he had refused to deliver the letter to JBD.
- [115] In giving his evidence in the Tribunal, under cross-examination Mr Schafferius accepted the police found a letter on his computer and accepted that he had drafted that letter. He accepted that the letter was compiled independent of Dr Azam. When asked whether he had provided a copy of the letter to Dr Azam he said, “I don’t recall and I don’t think I would have provided it to him. Nothing’s ever been done with that letter.”
- [116] It was then put to him that he did not intend to deliver the letter to JBD, to which he responded, “No. No intention whatsoever.” He was then asked whether he had ever spoken to Dr Azam about the letter, to which he responded, “I don’t recall having spoken to him about it.”
- [117] He also said in answer to earlier questions in cross-examination that Dr Azam had not given any instructions to pay any money or offer any other inducement. Mr Schafferius confirmed this evidence in re-examination. In re-examination, he was further asked, “Did you in fact, offer any money or inducements to JBD to withdraw her complaint?” Mr Schafferius responded, “No, I don’t recall having offered any money at all.”

²⁷ Statement of Agreed Facts and Issues in Dispute, [27]–[28].
²⁸ Ibid, [29].

- [118] Early in his cross-examination, Mr Schafferius referred to having had open-heart surgery earlier that year and, as a result, he had suffered severe depression and loss of memory. He said that his memory now is not as good as it should be. He also referred to having been asked to sign his affidavit whilst in emergency at the Wesley Hospital.
- [119] Following these comments, in re-examination Mr Schafferius was asked whether his memory was better at the time of giving the record of interview with police. He confirmed that his memory would have been reasonable back then.
- [120] In re-examination, he also denied having seen any of the letters before, including the letter found in the bin at his house.
- [121] In the affidavit of Constable Godfrey, in addition to the statements identified earlier as having been said by Mr Schafferius in the record of interview, she said Mr Schafferius had said:
- a) Dr Azam asked him if he would deliver a letter to JBD;
 - b) Dr Azam scribbled down words which were intended to be used in the letter to be delivered to JBD;
 - c) He typed up a letter on his computer, including by amending the word [used by Dr Azam] 'summons/writ' to say 'called to give evidence';
 - d) Dr Azam wanted Nicole Martin's name added to the letter to address Nicole Martin 'putting JBD up to it';
 - e) He never sent the letter to JBD.
- [122] The evidence given by Mr Schafferius in both cross-examination and re-examination is inconsistent with his record of interview with police and his affidavit. It is also in complete contradiction with the phone records uncovered by the police as a result of the search warrants executed. The records disclose an incoming text message from Mr Schafferius to Dr Azam on 5 August 2014 in which Mr Schafferius said he had arranged for another woman to see [JBD] on the pretext of being a friend of the family who felt very upset for his wife and children and for that lady to offer up to \$2000 financial assistance to help her [JBD] with her welfare if she withdrew the complaint. The message to Dr Azam asked, "What do you think? I will get that done this week. No need to meet tonight. If you want to put something into my account to cover costs that would be appreciated."
- [123] Unfortunately, the copy of the records of the phone of Mr Schafferius referred to in the Affidavit of Constable Godfrey and forming part of the

Agreed Bundle of Documents are missing the pages which covered the period between 9 March 2014 and 25 October 2014.²⁹

- [124] The Tribunal accepts a letter was sent offering money. In the pre-text call Mr Schafferius certainly did not suggest he did not know what JBD was referring to when she referred to a letter and an amount of \$2000. In fact, Mr Schafferius agreed to discuss with Dr Azam increasing the amount.
- [125] Mr Schafferius was an unhelpful, uncooperative witness who conveniently claimed memory loss when he did not wish to answer a question or wished to give an unhelpful answer to a question. His demeanour of giving evidence has, however, to be seen in its context. In his affidavit, Mr Schafferius admits to being asked by Dr Azam to conduct an investigation into JBD, to meeting up with JBD and to drafting a letter containing an offer to JBD if she withdrew the complaint against Dr Azam. Mr Schafferius made other admissions to Constable Godfrey. He had every reason not to be forthright and candid about his participation in a scheme which would result in JBD withdrawing her evidence. There is no basis to believe anything Mr Schafferius said in cross-examination or re-examination in the Tribunal.
- [126] The evidence of JBD, which as I indicated previously I accept, the admissions made by Mr Schafferius to the police, in his affidavit and in the pre-text call, the draft copies of the letters found in the possession of Mr Schafferius and Dr Azam, and the discovery of Dr Azam's fingerprints on some of the letters received by JBD demonstrates that Dr Azam engaged in behaviour that would reasonably be perceived to be harassing or intimidating, or caused such behaviour to occur, towards JBD. In all relevant respects the Tribunal finds the particulars contained in paragraphs 7.1 to 7.5 of the referral proven. The letter alleged to have been received on or about 15 May 2014 was more likely received on or about 15 August 2014 but little turns on that date. The substance of the allegation was the issue between the parties. It was clearly proven.
- [127] The Tribunal has found each of the allegations in the referral proven. The conduct accepted as proven clearly amounts to professional misconduct.
- [128] As agreed, the Tribunal will now hear from the parties as to sanction.

²⁹

Cellebrite Report of Keith Schafferius' mobile phone records, Agreed Bundle of Documents, Tab 58.