

STATEMENT OF DECISION

Respondent:	Mr Samir Fahmy Ishak
Complainant:	NSW Police (North Sydney)

1 Background and Complaint

- 1.1 On 2 January 2015, Mr Ishak, a Sonographer, was arrested and initially charged with eight counts of aggravated indecent assaults under section 61M(1) of the *Crimes Act 1900 (NSW)* on four women for whom he had in 2014. An additional charge of aggravated indecent assault on a further woman who Mr Ishak provided sonography services to at Cronulla Medical Practice was made against him in October 2015. As part of his bail conditions he was not allowed to continue working as a sonographer.
- 1.2 Throughout 2015, NSW Police provided the Commission with information about Mr Ishak's arrest and provided the Commission with the Police brief of evidence. The Commission's investigation into Mr Ishak's conduct was paused pending the outcome of his criminal trial.
- 1.3 In late November 2016, Mr Ishak's trial commenced at the Downing Centre District Court. In December 2016, Mr Ishak was convicted on the nine charges of aggravated indecent assault, the aggravation being that the five victims were under his authority. Throughout the trial Mr Ishak maintained his innocence and even following conviction he has continued to assert his innocence and offered no apology to his five victims.
- 1.4 In sentencing Mr Ishak on 14 September 2017, the Court considered Mr Ishak's age (69 at the time) and his general debility. Mr Ishak was sentenced to an aggregate head sentence of five years imprisonment with a standard non parole period of three years, to commence from 14 September 2017 expiring 13 September 2020.

2 Issues

- 2.1 The Commission investigated the following issues:
- Whether Mr Ishak has breached the Code of Conduct for non-registered Health Practitioners (the Code of Conduct) made under Schedule 3 of the *Public Health Regulation 2012*, in relation to his conduct whilst treating five patients. The conduct investigated occurred on 4 May 2011; 3, 4, 21 and 27 November 2014; and
 - Whether Mr Ishak poses a risk to the health or safety of members of the public.
- 2.2 The relevant clause in the Code of Conduct for this case is:
- Clause 3(1): a health practitioner must provide health services in a safe and ethical manner.

3 Respondent

- 3.1 Mr Ishak was born on 1 January 1948 in Egypt. He obtained his Diploma of the Health Technological Institute at the Health Technical Institute of Embabah in Egypt in 1969.
- 3.2 He was a Sonographer registered with the Australian Sonography Accreditation Registry from September 2003. Sonography is a diagnostic medical procedure that uses high frequency sound waves to produce dynamic visual images of organs, tissues, or blood flow inside the body, often referred to as an ultrasound scan. Sonography can be used to examine many parts of the body, such as the abdomen, breasts, musculoskeletal (tendons, joints, shoulders), female reproductive system, prostate, heart, and blood vessels. A sonographer is not a doctor.
- 3.3 Mr Ishak ran and owned a business called 'Park Road Radiology' in Chester Hill for over 20 years, but he also worked as a sonographer at a number of medical facilities around Sydney, including the Greenwood Medical Centre in North Sydney where he worked for approximately six months in 2014.

4 Investigation

- 4.1 NSW Police have provided the Commission with documentation from the Brief of Evidence in relation to the conviction of Mr Ishak. This includes statements of the five patients, statements of Mr Ishak's colleagues at Greenwood Medical Centre, statements of expert sonographers and the transcript of an interview with Mr Ishak,
- 4.2 NSW Courts Service Centre provided the Commission with the following:
- Certificate of Conviction dated 20 September 2017.
 - Indictment
 - Continuation Sheet
 - Agreed Facts sheet
 - Court Attendance Notice
 - Transcript of District Court Proceedings held on 30 November 2016; 2, 5, 7, 8 and 9 December 2017.
 - Judgment on Sentence dated 14 September 2017.

5 Summary of Evidence

Agreed Facts in the District Court

- 5.1 Patient A attended a practice in Cronulla on 4 May 2011 where Mr Ishak was self-employed. She required a trans-vaginal ultrasound. Mr Ishak inserted the transducer into Patient A's vagina whilst holding it in his right hand. Once the examination was completed he removed the transducer and used his left hand to swipe across Patient A's body, touching her clitoral hood. This conduct made up the first charge against Mr Ishak. There was no clinical reason for him to have touched her clitoral hood but it was done deliberately and for Mr Ishak's sexual gratification.
- 5.2 Patient B attended Greenwood Medical Centre on 3 November 2014 to have an ultrasound examination of a lump on her left breast. She removed her bra and sat up on the examination bed with her legs swinging off the side. Mr Ishak enquired as to where the lump was and whether she had any discharge from her nipple. Patient B explained where the lump was located and stated that whilst she had never had

discharge from her nipple she sometimes got white spots on them. Without any explanation, Mr Ishak then used his left hand to squeeze Patient B's left nipple quite hard for around 30 seconds to one minute, and he did this whilst the lower part of his body was pressing against Patient B's legs. This conduct made up the second charge against Mr Ishak.

- 5.3 Mr Ishak then carried out the ultrasound examination of Patient B's breasts. When he was finished, Patient B sat up on the bed and was about to get her clothes when Mr Ishak simultaneously pulled both of her nipples, causing Patient B pain and discomfort. Mr Ishak then cupped both of her breasts in his hands and juggled them for about three to five seconds. Following this he then pressed the palm of his hand on each of Patient B's breasts and made a circular motion, moving his hand around on the breasts for a few seconds. This conduct constituted the third charge against Mr Ishak. There was no clinical purpose for him to have touched Patient B's breasts in the manner that he did. Mr Ishak did this for his sexual gratification.
- 5.4 Patient C attended Greenwood Medical Centre on 4 November 2014 to have an ultrasound performed in relation to a lump on her right groin that was about 15 centimetres away from her vagina. Patient C removed her underwear and lay down on the bed. Mr Ishak then put the transducer on the right side of her pelvis where the lump was and moved the transducer around the area. However he then moved the transducer lower and side to side until it was pressing against the top of her labia. This conduct constituted the fourth charge against Mr Ishak. Patient C flinched and said words to the effect of "*Stop, what are you doing, the lump is 15 centimetres away, why do you have it there?*" Mr Ishak replied "*It's okay, just relax, just relax*" and moved the transducer back up to the location of the lump. The examination continued for a short period of time before Patient C asked him to stop, got up, dressed herself and left. There was no clinical reason for Mr Ishak to have pressed the transducer against the top of the complainant's labia, he did this for his own sexual gratification. Later that evening Patient C told her partner about what had happened and that it was weird. The next day she made a complaint to her referring general practitioner, telling her that it was weird and that she had felt very uncomfortable.
- 5.5 Patient D attended Greenwood Medical Centre on 21 November 2014 to have a trans-vaginal ultrasound examination to determine if she had any ovarian cysts. She was wearing a jumpsuit and so had to remove the whole garment. She asked Mr Ishak for a sheet to cover herself and he responded "*Don't be shy, go naked, I'm a doctor*". He was not in fact a doctor but throughout the examination he repeated to patient D a number of times words to the effect of "*I'm a good doctor*".
- 5.6 Mr Ishak first performed an abdominal ultrasound and whilst doing this he spoke with Patient D, asking her where she was from and whether she was married or single. Patient D indicated that she came from another country and that she was single and he offered the view that it was better not to get married before the age of 30. Mr Ishak then asked her to remove her underwear so that he could perform a transvaginal ultrasound. Patient D removed her underwear, lay down on the bed so that her legs were bent and her feet were on either side of the bed. Prior to Mr Ishak inserting the transducer into her vagina, without warning he placed his hand at the top of her vagina so that his thumb was on her clitoris, his palm was on the top of her labia majora and his fingers were towards her belly. Mr Ishak was pressing down and he kept his hand in that position for more than five seconds. This conduct constituted the fifth charge against Mr Ishak.

- 5.7 Following that, Mr Ishak removed his hand and picked up the ultrasound transducer with his right hand. He then used his left hand to touch and part her labia majora, starting from the top near her clitoris and moving his fingers downwards. While parting the labia, he repeated this action about four times. This conduct constituted the sixth charge against Mr Ishak. Mr Ishak told Patient D “*don’t tense, relax*” and inserted the transducer and proceeded to conduct the trans-vaginal ultrasound examination. Halfway through the examination Mr Ishak stopped to retrieve a cushion and asked Patient D to raise her hips, which she did. She was very capable of doing that, and remaining in that position without Mr Ishak’s help, however when she raised her hips he put his right hand on her bottom and kept his hand there while he slid the pillow underneath her. Mr Ishak then slid his hand down her bottom, down to underneath her knees and did so slowly. This conduct constituted the seventh charge against Mr Ishak.
- 5.8 Mr Ishak then continued with the transvaginal ultrasound examination. After he had completed it, Patient D then got off the bed and got dressed. As she was standing by the door and facing Mr Ishak, he told her to come back in a month or so, so that he could check her breasts. He then started poking her breasts on top of her clothing, with one or more fingers of his right hand, poking towards the top of her breasts and poking one breast at a time. When he did this, he asked Patient D “*does it hurt, does it hurt*” and she replied “*no*”. This conduct constituted the eighth charge against Mr Ishak.
- 5.9 The next morning Patient D called the North Sydney Sexual Assault Centre to complain as she was shocked, scared, confused and felt betrayed.
- 5.10 Patient E attended Greenwood Medical Centre on 27 November 2014 to have a trans-vaginal ultrasound examination by Mr Ishak. With the transducer held in his right hand, he properly inserted it into her vagina. However, using his left hand he touched and spread her labia majora and labia minora and pressed against the top of her clitoris. He did this about three or four times. This conduct constituted the ninth charge against Mr Ishak. A few days following this, Patient E made a complaint to her General Practitioner about what had occurred, stating that she had felt very uncomfortable during the examination.
- 5.11 On all occasions that Mr Ishak touched these five patients, he was not wearing gloves.

Criminal Proceedings

- 5.12 As a result of Patient D speaking with the North Sydney Sexual Assault Centre, she decided to make a complaint to the Police. The Police investigation found that three other women had experienced similar indecent behaviour by Mr Ishak. On 2 January 2015 Mr Ishak was arrested and initially charged with eight counts of aggravated indecent assaults under section 61M(1) of the *Crimes Act 1900 (NSW)* on four women for whom he had provided sonography services, including breast, pelvic and transvaginal ultrasounds at the Greenwood Medical Centre in 2014. An additional charge of aggravated indecent assault on a further woman who Mr Ishak provided sonography services to at Cronulla Medical Practice was made against him in October 2015.
- 5.13 The trial commenced on 28 November 2016 at the Downing Centre District Court and lasted for seven non-consecutive days. All of the five patients gave evidence but Mr Ishak did not. On 12 December 2016 the jury convicted Mr Ishak of the nine

counts of aggravated indecent assaults under section 61M(1) of the *Crimes Act 1900 (NSW)*.

- 5.14 In the sentencing remarks on 14 September 2017 Acting Judge Madgwick stated that the victim impact statements from the women, taken together, provide ample proof that in respect of relatively minor indecent acts, quite considerable and severe psychological impacts can occur. His Honour stated that it is an element of the offences that the women were under Mr Ishak's authority, in the sense that he was able to command their activities because they had surrendered a degree of control to him as a paramedical person. This also goes to the fact that very serious breaches of trust were involved that greatly disturbed the wellbeing and confidence of the women. Mr Ishak showed no remorse following his conviction and maintained his innocence.
- 5.15 In sentencing Mr Ishak on 14 September 2017, the Court considered Mr Ishak's age (69 at the time) and his general debility. Mr Ishak was sentenced to an aggregate head sentence of five years imprisonment with a standard non parole period of three years, to commence from 14 September 2017 expiring 13 September 2020.

6 Submissions under section 40 and Mr Ishak's appeal

- 6.1 On 1 March 2018, the Commission advised Mr Ishak of its proposal to take action under section 41A of the Act and invited his submissions under section 40 of the Act.
- 6.2 On 27 March 2018, the Commission received Mr Ishak's submissions. Mr Ishak advised the Commission that:
- He had withdrawn his registration from the Australian Sonographer Accreditation Registry (ASAR) after the trial verdict.
 - He was seeking to appeal his criminal convictions; and
 - In light of the appeal process, that the Commission should defer any decision to issue a public statement.
- 6.3 On 28 March 2018, Mr Ishak's legal representative confirmed that Mr Ishak had taken steps to appeal both the conviction and the sentence, and had filed a Notice of Intention to Appeal.
- 6.4 On 3 April 2018, the Commission wrote to Mr Ishak to advise that the Commission had determined to defer its decision pending the outcome of his appeal.
- 6.5 Between April 2018 and June 2019, the Commission obtained updates from Mr Ishak's legal representatives regarding the appeal.
- 6.6 On 14 June 2019, Mr Ishak's legal representatives advised the Commission that Mr Ishak was no longer able to proceed with his appeal.

7 Findings and Determination

- 7.1 Based on the criminal conviction of Mr Ishak of nine counts of aggravated indecent assaults under section 61M(1) of the *Crimes Act 1900 (NSW)*, the Commission has determined that Mr Ishak has breached Clause 3(1) of the Code of Conduct made under Schedule 3 of the *Public Health Regulation 2012* by failing to provide services in a safe and ethical manner for the five female patients he consulted separately on 4 May 2011; 3, 4, 21 and 27 November 2014.

7.2 Given the circumstances of the breach, the Commission has determined that Mr Ishak's conduct poses a risk to the health or safety of members of the public. Mr Ishak's conduct towards the five female patients was deliberate and had no clinical basis. His assault of these five female patients was a serious breach of the trust that patients place in healthcare practitioners, especially when procedures are involved that place the patient at a level of discomfort and vulnerability.

7.3 Accordingly, the Commission has determined to make the following prohibition order under section 41A(2)(a) of the *Health Care Complaints Act 1993* (the Act):

Mr Samir Fahmy Ishak is permanently prohibited from providing any health services in any capacity, either paid or voluntary.

7.4 The Commission has determined to issue the following public statement under section 41A(2)(b) of the Act:

The NSW Health Care Complaints Commission conducted an investigation into the conduct of Mr Samir Fahmy Ishak, a Sonographer, as a result of his conviction at the NSW Downing Centre District Court in December 2016 of nine charges of aggravated indecent assault under section 61M(1) of the Crimes Act 1900 (NSW).

The investigation found that Mr Ishak breached Clause 3(1) of the Code of Conduct for non-registered Health Practitioners made under Schedule 3 of the Public Health Regulation 2012 and provided health services in an unsafe and unethical manner for the five female patients he consulted separately for breast, pelvic and/or transvaginal ultrasounds, in the following ways:

- During the consultation with Patient A for a trans-vaginal ultrasound on 4 May 2011 Mr Ishak used his left hand to swipe across her body, touching her clitoral hood.*
- During the consultation with Patient B for an ultrasound examination of a lump on her left breast on 3 November 2014 Mr Ishak used his left hand to squeeze Patient B's left nipple quite hard for around 30 seconds to one minute, and he did this whilst the lower part of his body was pressing against Patient B's legs. Mr Ishak also simultaneously pulled both of her nipples, causing Patient B pain and discomfort. Mr Ishak then cupped both of her breasts in his hands and juggled them for about three to five seconds. Following this he then pressed the palm of his hand on each of Patient B's breasts and made a circular motion, moving his hand around on the breasts for a few seconds.*
- During the consultation with Patient C for an ultrasound examination of her pelvis on 4 November 2014 Mr Ishak moved the transducer from the lump in her groin lower and side to side until it was pressing against the top of her labia.*
- During the consultation with Patient D for a trans-vaginal ultrasound on 21 November 2014 Mr Ishak, prior to inserting the transducer into her vagina, without warning placed his hand at the top of her vagina so that his thumb was on her clitoris, his palm was on the top of her labia majora and his fingers were towards her belly. Mr Ishak pressed down and he kept his hand in that position for more than five seconds. Mr Ishak then used his left hand to touch and part her labia majora, starting from the top near her clitoris and moving his fingers*

downwards. While parting the labia, he repeated this action about four times. Mr Ishak then proceeded to conduct the trans-vaginal ultrasound and halfway through the examination he stopped to retrieve a cushion and asked Patient D to raise her hips, which she did, and he put his right hand on her bottom and kept his hand there while he slid the pillow underneath her. Mr Ishak then slid his hand down her bottom, down to underneath her knees and did so slowly.

- During the consultation with Patient E for a trans-vaginal ultrasound on 27 November 2014 Mr Ishak properly inserted the transducer into her vagina and then used his left hand to touch and spread her labia majora and labia minora and pressed against the top of her clitoris. He did this about three or four times.

The evidence indicates that Mr Ishak's conduct was deliberate and had no clinical basis. His assault of these five female patients was a serious breach of the trust that patients place in healthcare practitioners, especially when procedures are involved that place the patient at a level of discomfort and vulnerability. The Commission is satisfied that Mr Ishak poses a risk to the health or safety of members of the public.

The Commission therefore makes the following prohibition order:

- *Mr Ishak is permanently prohibited from providing any health services in any capacity, either paid or voluntary.*

7.5 Pursuant to sections 41B(3)(a),(b) and (c) of the Act, the Commission will provide a copy of this Statement of Decision to the complainant, the Medical Radiation Practice Board / Australian Health Practitioner Regulation Agency (AHPRA), and make it publicly available.

8 Section 41B(5) of the Health Care Complaints Act 1993

8.1 The Commission has removed from this Statement of Decision material which it considers to be confidential information.