

# Professional misconduct can end a career—who should get a second chance?

July 4 2024, by Marta Rychert

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We all make mistakes at work. And many factors can contribute to professional lapses, including fatigue, illness and lack of training or professional support. Usually we pick up the pieces and move on.

But for those who work in high-risk sectors and with [vulnerable people](#)—teachers and doctors, among others—the outcome of professional

[misconduct](#) can be career-ending.

Disciplinary bodies and workplaces can respond to misconduct by removing a professional's ability to practice. Alternatively, they can impose rehabilitative measures to help someone return to work.

For example, they can oblige someone to undergo more training or to practice under supervision for a set period. But the risk of repeated misconduct or harm to the public is a concern.

So how do we balance public safety with the goal of rehabilitation? And would greater emphasis on rehabilitation avoid wasted investment in expensive education and training?

## **Balancing safety and second chances**

In New Zealand, registered professionals such as teachers, lawyers and health practitioners may be held accountable before a disciplinary tribunal.

Our analysis of [15 years of disciplinary decisions](#) about health practitioners reveals the range of conduct involved, from crossing professional boundaries to practicing without registration or misappropriating funds.

Registered professionals may even be disciplined for conduct outside their work, such as being convicted of dangerous driving.

The tribunals' primary concern is to protect the public and maintain professional standards. This way we can all trust in our education, health and legal workforce, knowing their services are safe and comply with expected standards.

These tribunals also have the power to suspend practitioners or cancel their registration, effectively ending that person's career. But by law the tribunals should also consider alternative responses and whether the goal of public protection can be achieved in other ways.

They can oblige a practitioner to practice under supervision, complete additional training, attend an ethics course or undergo addiction treatment (if relevant). But there is little consistency in how this is applied. More research on what works best is needed.

## **The case for rehabilitation**

Our analysis found the majority of tribunal decisions included some rehabilitative element. And there has been an increase in tribunals ordering conditions such as training, supervision and mentoring.

But the likelihood of receiving a rehabilitative outcome differs across professions. We found nurses were [more likely than doctors to be deregistered](#) as a result of disciplinary proceedings, for instance.

It also appears some professional tribunals are more inclined than others to address the core issues that contributed to the misconduct. In fact, some [explicitly craft](#) "compassionate" penalties, taking account of distressing circumstances that led to professional breaches.

Recent decisions by tribunals and the High Court highlight the growing importance of professional rehabilitation. These also illustrate the challenges in deciding who deserves it. In one case, the [lawyers' disciplinary tribunal said](#) failure to consider rehabilitation would leave its "job largely undone".

In 2022, the High Court overturned a disciplinary tribunal's decision to deregister a pharmacist, because the tribunal did not sufficiently assess

the prospects of her rehabilitation.

The case involved mismanagement of a pharmacy and breach of conditions imposed on the pharmacy license. In overturning the original decision, the High Court [described the penalty](#) as "unduly harsh" and reaffirmed the importance of rehabilitation.

## **Who deserves rehabilitation?**

Our society makes great investments in the training and support of health practitioners, lawyers and teachers. Supporting them to continue practicing safely, rather than striking them off, may have societal and economic benefits.

But sometimes misconduct cannot be remedied. For example, when teachers engage in sexual relationships with their students, the outcome is often deregistration. The severity of such misconduct and protecting students from harm are prioritized over rehabilitation efforts.

In one case, where a female teacher developed an intimate relationship with her vulnerable student, [the tribunal said](#) deregistration was the only acceptable outcome. This was despite the teacher's remorse, her insight into her behavior, and the fact she prioritized the student's needs after the relationship ended.

In other sectors such as [criminal justice](#) and health, theoretical concepts have guided rehabilitation practice. For example, the "[risk-needs-responsivity](#)" model is widely adopted in the rehabilitation of criminal offenders, and provides guidance for implementing the programs.

## **Towards a better model**

Despite rehab being a common response in the justice system, we don't have similar models [specifically developed](#) for professional misconduct. And surprisingly little is known about how New Zealand tribunals craft rehabilitation penalties.

While tribunals often consider practitioners' levels of "remorse" and "insight", assessing the prospects of rehabilitation poses challenges (as the recent High Court appeal demonstrated).

We also don't know what responses work best in restoring practitioners to safe and competent practice after misconduct. For example, how effective are mandated ethics courses, or how well do practitioners engage with supervision conditions?

An [interdisciplinary research project](#) is under way to understand this. We are seeking the views of teachers, lawyers and health practitioners who have been ordered to undergo treatment, training, supervision, mentoring, counseling or health assessment by their disciplinary tribunals.

Understanding their experiences of professional [rehabilitation](#) will help improve consistency within and across tribunals, and could transform how workplaces in other sectors respond to misconduct.

*Health professionals, teachers and lawyers who have received rehabilitative conditions from a disciplinary tribunal and would like to participate in this research are invited to [contact the team here](#).*

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## Provided by The Conversation

Citation: Professional misconduct can end a career—who should get a second chance? (2024, July 4) retrieved 4 July 2024 from <https://phys.org/news/2024-07-professional-misconduct-career-chance.html>

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