

IN THE MATTER OF THE *HEALTH PROFESSIONS ACT*, R.S.A. 2000, c.H-7, AS AMENDED (THE “ACT”);

AND IN THE MATTER OF A HEARING INTO THE CONDUCT OF [REDACTED] A MEMBER OF THE ALBERTA COLLEGE OF SOCIAL WORKERS;

AND IN THE MATTER OF A PROFESSIONAL CONDUCT HEARING REGARDING THE CONDUCT OF [REDACTED] [REDACTED] UNDERTAKEN VIRTUALLY DUE TO THE GLOBAL PANDEMIC CAUSED BY THE COVID-19 VIRUS;

AND IN THE MATTER OF COMPLAINTS INTO THE CONDUCT OF [REDACTED] PURSUANT TO S. 54 OF THE ACT

**REASONS FOR DECISION OF THE HEARING TRIBUNAL –
DECISION ON MERITS AND SANCTION (PROCEEDING BY CONSENT)**

SUMMARY

1. A hearing into the conduct of [REDACTED] (the “Member”) proceeded by consent pursuant to a public hearing held on March 23, 2021 by way of a virtual WebEx Hearing, before a Hearing Tribunal (the “Hearing Tribunal”) of the Alberta College of Social Workers (the “College”).
2. The matter proceeded by way of consent with the Member admitting the following conduct:
 1. *Engaged in inappropriate physical contact with A.B. and B.A., specifically, touching their arms;*
 2. *Used derogatory language to describe colleagues; and*
 3. *Engaged in actions including raising my voice, slamming an office door, and making comments perceived as bullying and abusive.*
3. The Hearing Tribunal accepted the admissions of the Member with respect to his conduct and confirmed the admitted unprofessional conduct. The Hearing Tribunal then proceeded to address the appropriate sanctions to be ordered in light of such admissions.
4. The Complaints Director and the Member were able to arrive at a consent resolution with respect to proposed sanctions. The Hearing Tribunal reviewed the proposed sanctions and accepted the parties’ joint submission respecting sanctions.
5. Therefore, the Hearing Tribunal orders that the sanctions to be imposed in this matter are as

follows:

1. *A Reprimand shall be issued as against the Member.*
2. *The Member shall be required to undergo one (1) counselling session per month for one (1) year from the date of this Order for a total of twelve (12) sessions. The costs of these sessions shall be the responsibility of the Member. The ACSW shall be entitled to any such reporting as it deems necessary from time to time only as regards to verification.*
3. *In addition to the above counselling sessions, the Member shall be obliged to undertake two (2) consultations within six (6) months of the date of this Order for a total of two (2) consultations with a senior RSW practitioner, as approved by the ACSW. The costs of these consultations shall be the responsibility of the Member. The ACSW shall be entitled to any such reporting as it deems necessary from time to time.*
4. *The Member shall pay costs in the sum of One Thousand Dollars (\$1,000.00) within three (3) years of the date of this Order.*
5. *The Complaints Director shall maintain the discretion to further suspend the Member's permit to practice pending a Hearing should the Complaints Director, in his/her sole discretion, conclude that the Member has breached this Order.*
6. *There shall be publication of this Consent Order on a "without names" basis on the ACSW website.*

CONDUCT OF THE HEARING

Composition of the Hearing Tribunal

6. The Composition of a Hearing Tribunal is required to comply with Section 12 of the Act. This section provides:

12(1) Fifty percent of the voting members of a council, a complaint review committee and a hearing tribunal and of a panel of any of them must be public members but with the consent of the council the percentage of the public members may be greater than 50%.

(2) Despite the bylaws governing quorum, the number of public members required by subsection (1) must be present at an appeal under Part 4 before a council, a ratification of a settlement and a review by a complaint review committee and a hearing by a hearing tribunal.

(3) Despite subsections (1) and (2), the powers and duties of a council, complaint review committee or a hearing tribunal or a panel of any of them are not affected by a vacancy in the office of a public member for up to 6 months from the date that the schedule to this Act that governs the college comes into force.

7. In conformity with s. 12 of the Act, the members of the Hearing Tribunal appointed in these proceedings are:

Pat Matusko, Public Member (Chair)
Evelyn Wotherspoon, RSW

Archana Chaudhary, Public Member
Barbara Artzen, RSW

8. There were no objections to the composition of the Hearing Tribunal and all parties agreed that the Hearing Tribunal was properly constituted.

Public Hearing

9. The hearing was a public hearing pursuant to s. 78 of the Act. Several members of the public were in attendance, including the complainants.

Parties

10. The parties in attendance at the hearing were:

██████████ the Member
Sheryl Pearson, Complaints Director for the College
Karen Smith, legal counsel to the Complaints Director
Shauna Finlay, independent counsel to the Hearing Tribunal

The Hearing

11. The Notice of Hearing issued by the College (**Exhibit 1**) set out the specific allegations against the Member. The Member was alleged to have engaged in conduct that:

(i) constituted unprofessional conduct pursuant to s. 1(1)(pp)(i), (ii), and (xii), of the Act;

(ii) contravened s. E.1 (b) and (c), F.3(b) and s. G.1(b) of the Standards of Practice 2019; and

(iii) contravened Value 4 of the Code of Ethics 2005.

12. As noted above, the Hearing proceeded by consent via the virtual platform, WebEx, and a number of admissions were made by the Member with respect to his conduct. The Member's admissions were set out in an Admission of Unprofessional Conduct, **Exhibit 5**. The Member admitted that he had:

1. Engaged in inappropriate physical contact with A.B. and B.A., specifically, touching their arms;

2. Used derogatory language to describe colleagues; and

3. Engaged in actions including raising my voice, slamming an office door, and making comments perceived as bullying and abusive

13. Given the foregoing admissions pursuant to s. 70 of the Act, and following a consideration of the admissions by the Hearing Tribunal, such admissions were accepted by the Hearing Tribunal. In reliance upon the admissions, the Hearing Tribunal found that the Member did engage in conduct that constituted unprofessional conduct and were breaches of the Standards of Practice 2019 and the Code of Ethics 2005 as set out in the Consent Order executed by the Member (**Exhibit 6**).

14. The Member indicated to the Hearing Tribunal that he had learned some lessons from these proceedings, although they were difficult lessons to learn. He fully accepted responsibility for his actions and agreed with the sanctions set out in the consent order.
15. The Hearing Tribunal considered the appropriate sanctions to apply to the Member in light of his admissions and noted the joint submission was made by the Complaints Director and the Member with respect to sanctions.

Law regarding Sanctions generally and Joint Submissions

16. The Hearing Tribunal heard submissions from the Complaints Director regarding sanctions generally, and then specifically with respect to joint submissions.

17. With respect to sanctions generally, the Complaints Director noted that there are five objectives to sanctions:

i. Protection of the Public--This is the primary obligation of a professional regulatory entity in response to its mandate to govern its members. The Hearing Tribunal must evaluate what risks there are to the public by the professional continuing to practice.

ii. Deterrence--In imposing sanctions, with the effect of deterrence, the regulatory body sends a message to the particular member and other members of the profession, generally, that this conduct will not be condoned.

iii. Rehabilitation--Steps should be taken by the Hearing Tribunal to foster the Member's return to professional practice is appropriate.

iv. Fairness--The Hearing Tribunal should impose similar consequences on a member comparable to those imposed on other members in similar circumstances, recognizing that each set of facts is typically unique.

v. Integrity of the Profession--The ACSW is mandated with regulating its members and, as such, has obligations in exercising this privilege. It ought to be seen to be properly monitoring the conduct of its members in order to continue that privilege.

18. With respect to the specific sanctions that are appropriate in any particular case, the Complaints Director referred to the *Jaswal* decision and noted that these informed the discussions about sanction with the Member.

19. In *Jaswal v. Newfoundland Medical Board*, 1996 CarswellNfld 32 (TD) at para. 35 the Court found:

Here, if the Board chose a 14 months' suspension because it happened to coincide with what they were led to believe was the period during which Dr. Jaswal had in fact been suspended from his employment, that in itself is evidence of having acted on a wrong principle. A sentencer should not impose a sentence simply to coincide with what has actually happened; rather, the sentencer should be led to the proper penalty by the application of principles applicable to the case at hand. From the cases cited, the following is a non-exhaustive list of factors that ought to have been considered:

1. *the nature and gravity of the proven allegations*
2. *the age and experience of the offending physician*

- 3. the previous character of the physician and in particular the presence or absence of any prior complaints or convictions*
- 4. the age and mental condition of the offended patient*
- 5. the number of times the offence was proven to have occurred*
- 6. the role of the physician in acknowledging what had occurred*
- 7. whether the offending physician had already suffered other serious financial or other penalties as a result of the allegations having been made*
- 8. the impact of the incident on the offended patient*
- 9. the presence or absence of any mitigating circumstances*
- 10. the need to promote specific and general deterrence and, thereby, to protect the public and ensure the safe and proper practice of medicine*
- 11. the need to maintain the public's confidence in the integrity of the medical profession*
- 12. the degree to which the offensive conduct that was found to have occurred was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct*
- 13. the range of sentence in other similar cases*

20. The Complaints Director then reviewed the circumstances of the current conduct against the foregoing factors.

21. In this case, the Complaints Director submitted:

- The nature and gravity of the admitted unprofessional conduct was on a lesser scale.
- The age and experience is that of a a very senior, very experienced member
- The previous character of the member demonstrated no prior complaints.
- The aged and mental condition of the offended person(s). It is noted that the complainants in this case are colleagues.
- With regard to the number of times that the offence was proven, it is noted that some of the offences occurred once. In other instances, they occurred on a number of occasions.
- The role in acknowledging what occurred. The Member has taken responsibility for his actions
- Factor 7 addresses the suffering by the member of serious penalties as a result of the allegations. In this case, the Member has lost the chair position in his employment. He has faced criminal charges that were initiated and then resolved through the use of a peace bond and he has ultimately retired from the faculty position he held. These are significant consequences.

- The impact on the patients in this case the Complainants, has been stated clearly in the investigator's report

22. The Complaints Director offered no comment on Factors 9 through to 13.
23. Finally, the Complaints Director referred the Hearing Tribunal to the decision of *R. v. Anthony Cook*, 2016 SCC 43. This decision, although given in the criminal context, discusses how courts should treat joint submissions on sentence. The Supreme Court of Canada found that a court should only depart from a joint submission that fails the public interest test. Under this test, the joint submission may only be departed from where the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest. The Court reasoned that for joint submissions to be possible, parties must have a high degree of confidence that they will be accepted. Therefore, the more stringent public interest test was appropriately a very stringent test and best reflected the many benefits that joint submissions bring to the criminal justice system and the corresponding need for a high degree of certainty in them.
24. This same test has been applied in the regulation of professionals and the consideration of joint submissions in professional conduct hearings.
25. The Hearing Tribunal accepted the law as set out above and considered whether the sanctions proposed by the parties met the public interest test. In this case, the Hearing Tribunal did not find any reason to depart from the joint submission on sanctions proposed by the parties.
26. In conclusion, the Hearing Tribunal has no reason not to accept the joint resolution proposed by the parties.

ORDER OF THE HEARING TRIBUNAL

27. Therefore, the Hearing Tribunal orders that the sanctions to be imposed in this matter are as follows:
 1. *A Reprimand shall be issued as against the Member.*
 2. *The Member shall be required to undergo one (1) counselling session per month for one (1) year from the date of this Order for a total of twelve (12) sessions. The costs of these sessions shall be the responsibility of the Member. The ACSW shall be entitled to any such reporting as it deems necessary from time to time only as regards to verification.*
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6. *There shall be publication of this Consent Order on a "without names" basis on the ACSW website.*

P.A. Matusko

Pat Matusko, Public Member (Chair)