

COLLEGE OF PHYSICIANS & SURGEONS OF ALBERTA

IN THE MATTER OF
A HEARING UNDER THE *HEALTH PROFESSIONS ACT*,
RSA 2000, c H-7

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF DR. ROGER HODKINSON

**DECISION OF THE HEARING TRIBUNAL OF
THE COLLEGE OF PHYSICIANS
& SURGEONS OF ALBERTA
JANUARY 22, 2025**

I. INTRODUCTION

1. The Hearing Tribunal held a hearing into the conduct of Dr. Roger Hodkinson on November 18, 2024. The members of the Hearing Tribunal were:

Dr. Don Yee as Chair;
 Dr. Anca Tapardel;
 Mr. Glen Buick (public member);
 Ms. Sarah Gingrich (public member).

Ms. Mary Marshall acted as independent legal counsel for the Hearing Tribunal.

Also present were:

Mr. Craig Boyer, legal counsel for the Complaints Director;
 Dr. Roger Hodkinson;
 Mr. Alan Honner and Mr. Nicholas Smith, legal counsel for Dr. Hodkinson.

II. PRELIMINARY MATTERS

2. There were no preliminary issues raised. There were no objections to the composition of the Hearing Tribunal or the jurisdiction of the Hearing Tribunal to proceed with the hearing.
3. The hearing was open to the public pursuant to section 78 of the *Health Professions Act*, RSA 2000, c. H-7 ("HPA"). There was no application to close the hearing.

III. CHARGES

4. The Further Amended Notice of Hearing dated November 12, 2024, listed the following allegation:
 1. On one or more of the following dates, being November 13, 2020 and April 9 to 14, 2021, you made public statements in which you identified yourself as a medical specialist in pathology and former assistant professor in the faculty of medicine at the University of Alberta and made statements regarding public health measures in response to the COVID-19 Pandemic that were unprofessional, for one or more of the following reasons:
 - a. One or more of the statements were presented as medical opinion that was outside the scope of practice as a pathologist and you failed to state that limitation;
 - b. One or more of the statements were contrary to the Canadian Medical Association Code of Ethics and Professionalism, including one or more of the following sections 31, 32, 33, 39 and 41;

And further particulars of the unprofessional statements made by you include, one or more of the following statements;

- c. *Masks are utterly useless, there is no evidence based with their effectiveness whatsoever.*
- d. *You're being led down the garden path by the chief medical officer of health for this province.*
- e. *So, the vaccine is first of all unnecessary. Secondly, it's reckless in terms of how it's being introduced because it's certainly not been shown to be safe.*
- f. *Anyone that's saying that this vaccine is safe without any qualification is guilty, in my opinion, if they're in medicine, of medical malpractice.*
- g. *Let me state emphatically again: nothing works to control the spread of this virus.*

IV. EVIDENCE

5. The following Exhibits were entered into evidence during the hearing:

- Exhibit 1:** Agreed Exhibit Book
- Tab 1:** Amended Notice of Hearing dated May 16, 2024
 - Tab 2:** Revised Amended Notice of Hearing dated November 12, 2024
 - Tab 3:** Complaint from [REDACTED] dated November 24, 2020 10
 - Tab 4:** Dismissal of Complaint letter by Dr. C [REDACTED] dated December 22, 2020
 - Tab 5:** Complaint Review Committee decision dated September 24, 2021
 - Tab 6:** Expert report from Dr. [REDACTED], pathologist, dated October 18, 2022
 - Tab 7:** Expert report from Dr. [REDACTED], pathologist, dated July 20, 2023
 - Tab 8:** Expert report from Dr. [REDACTED], public health specialist, dated April 13, 2023
 - Tab 9:** Expert report from Dr. [REDACTED], public health specialist, dated April 18, 2023
 - Tab 10:** Complaint Review Committee decision dated October 24, 2023

- Tab 11:** Transcript of Dr. Hodkinson’s statement before Edmonton City Council Committee virtual meeting on November 13, 2020.
- Tab 12:** Agenda of November 13, 2020 meeting of the Edmonton City Council, Community and Public Services Committee meeting
- Tab 13:** Transcript of Dr. Hodkinson’s statement during media interview on April 9, 2021
- Tab 14:** Transcript of Dr. Hodkinson’s statement posted on social media on or about April 11, 2021
- Tab 15:** Section 56 memo by Dr. H [REDACTED] dated January 12, 2021
- Tab 16:** Canadian Medical Association – Code of Ethics and Professionalism

Exhibit 2: Signed Admission and Joint Submission Agreement dated November 14, 2024

6. Counsel for the Complaints Director filed the following materials:
- a. Brief of Law on Joint Submissions dated November 14, 2024;
 - b. Brief of Law on Freedom of Expression regarding Regulated Professionals dated November 14, 2024, with the following cases:
 - i. *Rocket v. Royal College of Dental Surgeons of Ontario*, [1990] S.C.J. No. 65;
 - ii. *Doré v. Barreau du Québec*, 2012 SCC 12;
 - iii. *Strom v. Saskatchewan Registered Nurses Assn.*, 2020 SKCA 112;
 - iv. *Christian Medical v. College of Physicians and Surgeons of Ontario*, 2019 ONCA 393;
 - v. *Zuk v Alberta Dental Association and College*, 2018 ABCA 270;
 - vi. *Peterson v. College of Psychologists of Ontario*, 2023 ONSC 4685;
 - vii. *Trozzi v College of Physicians and Surgeons of Ontario*, 2024 ONSC 6096;
 - viii. *Gill v. Health Professions Appeal and Review Board*, 2024 ONSC 2588;

- ix. *Pitter v. College of Nurses of Ontario and Alviano v. College of Nurses of Ontario*, 2022 ONSC 5513; and
- x. *Chartered Professional Accountants (Order of) v. Pilon*, 2020 QCCDCPA 40 (Google translation from French).

V. SUBMISSIONS REGARDING THE ALLEGATION

Submissions on Behalf of the Complaints Director

7. Mr. Boyer thanked Mr. Honner for his cooperation and assistance that allowed for this hearing to take place on the basis of agreement. He stated that the hearing was proceeding on the basis of admissions by Dr. Hodgkinson to the allegation in the Further Amended Notice of Hearing dated November 12, 2024 ("Notice of Hearing").
8. Mr. Boyer specified that the allegation involves public statements made by Dr. Hodgkinson and there is a balancing needed between freedom of expression under the *Canadian Charter of Rights and Freedoms* (the "Charter") and Dr. Hodgkinson's obligations as a regulated professional.
9. Mr. Boyer highlighted materials in Exhibit 1. He outlined the sequence of events leading to the hearing including the original letter of complaint from a member of the public regarding comments Dr. Hodgkinson made at a public meeting of the City of Edmonton during a discussion of a masking bylaw. This meeting occurred in November 2020. He highlighted the dismissal letter from the then Complaints Director and pointed out that the complainant requested a review of the dismissal under the HPA. The Complaint Review Committee (CRC) decision directed further investigation into the complaint. Mr. Boyer referred to the CPSA Investigation Report containing opinions from two experts, a memo from the CPSA Complaints Director who opened a self-initiated complaint file under section 56 of the HPA, and ultimately the CRC decision to refer the matter to a hearing after reviewing the Investigation Report. The expert opinions came from an expert in pathology and an expert in public health with each providing two reports.
10. Mr. Boyer highlighted transcript records of Dr. Hodgkinson's public statements of concern. He stated from the five comments that Dr. Hodgkinson has admitted to making, the first two were made at the November 13, 2020, city council meeting; comments 3 and 4 were made during a media interview on April 9, 2021; and the fifth comment was made on April 11, 2021, and posted on social media April 12, 2021.
11. Mr. Boyer reviewed details from the experts' opinions. The opinion from the pathology expert was that comments made about masking and public health measures to limit the spread of COVID-19 and vaccine safety and efficacy were outside of the scope of competency of a pathologist. The public health expert noted that Dr. Hodgkinson's comments about the Chief Medical Officer of Health and other medical professionals were demeaning and dismissive

and contrary to his ethical obligations outlined in the CMA Code of Ethics and Professionalism ("CMA Code"). He also noted that Dr. Hodkinson's comments about vaccines having no ability to limit the spread of the COVID-19 virus were not consistent with accepted public health medicine guidance.

12. Mr. Boyer reviewed the case law presented in the Brief of Law regarding Freedom of Expression for Regulated Professionals. He stated these cases establish a justifiable limit on Dr. Hodkinson's freedom of expression. *Rocket v. Royal College of Dental Surgeons of Ontario* was a case of prohibition on dental surgeons advertising. The Supreme Court of Canada (SCC) indicated a total prohibition on advertising was an unjustifiable violation of the freedom of expression.
13. *Doré v. Barreau du Québec* is a 2012 Supreme Court of Canada case that involved an argument between a lawyer and a judge where the lawyer wrote a private letter that the law society found to be inappropriate and unprofessional. Mr. Doré appealed this decision. The Supreme Court of Canada held that a disciplinary body must balance the protection of a regulated member's freedom of expression with the regulator's statutory objectives. The SCC set out the Charter values analysis that is to be employed. This case is an example of one where the court considered whether the exercise of a statutory authority is an unjustified restriction on a Charter right.
14. *Strom v. Saskatchewan Registered Nurses' Association* was a 2020 Saskatchewan Court of Appeal decision involving a registered nurse who made comments on Facebook expressing her concern about the long-term care home staff providing care to her grandfather. This decision provided a list of contextual factors to consider when analyzing comments made by a regulated professional should the comments be the subject of professional disciplinary hearings including whether or not the regulated professional was on duty, whether they identified themselves as a professional, the extent of the professional connection between the nurse charged and the nurses or institution the nurse charged has criticized, whether the speech related to services provided to the nurse charged or their family or friends, whether the speech was the result of emotional distress or mental health issues, the truth or fairness of any criticism levied by the nurse charged, the extent of the publication and the size and nature of the audience, whether the public expression by the nurse was intended to contribute to social or political discourse about an important issue, and the nature and scope of the damage to the profession and the public interest.
15. Mr. Boyer outlined other cases in the Brief of Law regarding Freedom of Expression for Regulated Professionals that, while still important, are not as central to the case before the Hearing Tribunal. *Zuk v Alberta Dental Association and College* is a 2018 Alberta Court of Appeal case that involved a dentist who inappropriately criticized the Alberta Dental Association and College and his fellow members. Dr. Zuk called some members of his

regulatory body “Veneer Nazis, preying on uneducated and impressionable consumers” and other comments about conduct of members of his regulator. The Court of Appeal upheld the decision that the comments constituted unprofessional conduct.

16. *Peterson v. College of Psychologists of Ontario* provides guidance in the evaluation of Charter values. *Trozzi v. College of Physicians and Surgeons of Ontario* dealt with comments made by Dr. Trozzi about public health measures during the Covid pandemic. *Gill v. Health Professions Appeal and Review Board* is another Ontario decision involving a physician.
17. Mr. Boyer reviewed the five comments that Dr. Hodkinson admitted to making with reference to how the public health expert viewed the comments.
18. Mr. Boyer emphasized that Dr. Hodkinson has admitted to making all five comments. He stated section 70 of the HPA says a Hearing Tribunal must consider the evidence when considering an admission of unprofessional conduct. He submitted that the evidence, when put through a proper Charter analysis provided by the presented case law, does prove that Dr. Hodkinson’s admitted statements in the Notice of Hearing do cross the line and are unprofessional and that the Hearing Tribunal should accept his admission and find that the statements represent unprofessional conduct.

Submissions on Behalf of Dr. Hodkinson

19. Mr. Honner stated his submissions should not be construed as Dr. Hodkinson withdrawing or contesting his admission.
20. Mr. Honner reviewed some of the case law presented in the Brief of Law regarding Freedom of Expression for Regulated Professionals. The *Peterson* case demonstrated that when a person joins a regulated profession, they do not lose their Charter rights, but instead they take on obligations and should abide by their College’s rules, which may in some cases limit their freedom of expression. The HPA has imposed a statutory mandate on regulatory colleges to regulate members in a manner that protects and serves the public interest. Among other things, Colleges must establish and maintain an ethical code.
21. The *Brown v Alberta Dental Association*, 2002 ABCA 24, decision referenced in *Zuk* noted the paramount objective of a professional statute is to protect the public. The CMA Code was enacted in part to maintain the dignity of the profession and thereby protect the public interest as set out in *Brown*. The CMA Code is enforceable and requires a regulated professional to treat colleagues with dignity and as persons worthy of respect and requires that physicians engage in respectful communications with all media.
22. Mr. Honner stated that Dr. Hodkinson admits he breached the CMA Code with his admitted comments regarding the Chief Medical Officer of Health leading people down the garden path. He implied that some of his colleagues were

reckless in how they introduced COVID-19 vaccines and stated that some of his colleagues who recommended that the vaccine was safe without qualification are negligent and guilty of medical malpractice.

23. Mr. Honner stated that Dr. Hodkinson's comments breached sections 31 and 32 of the CMA Code and that Dr. Hodkinson has not in this case challenged the constitutionality of the HPA, nor has he challenged the constitutionality of the CMA Code on Charter grounds. He stated the Hearing Tribunal must engage in a proportionality exercise that balances the severity of the interference of the Charter protection with the statutory objective. In this case after the analysis is performed, the Hearing Tribunal is accorded a certain measure of deference as long as their decision falls within a reasonable range of possible and acceptable outcomes.
24. Mr. Honner stated that the case law has clearly established that Dr. Hodkinson and other professionals are free to criticize public health measures per the *Strom* decision, but the manner in which they do so is circumscribed by their code of ethics, which is necessary to protect the dignity and integrity of the profession.
25. Mr. Honner confirmed that Dr. Hodkinson is admitting that he went too far in the language he used in his criticisms and acknowledges that his comments crossed the line, albeit not by leaps and bounds, and also admits to engaging in unprofessional conduct with his comments.
26. Mr. Honner reviewed the *Gill* case from the Brief of Law regarding Freedom of Expression for Regulated Professionals. Complaints were made against Dr. Gill regarding COVID-19 related comments she made on social media. The complaints resulted in cautions. A judicial review assessed the reasonableness of the cautions and noted that the decision endorsed Dr. Gill's right to disagree with government and public health authorities, even if she did so in strong terms. They, however, did not endorse her right to engage in misinformation speech. This shows a reasonable restriction on freedom of speech. Mr. Honner submitted that Dr. Hodkinson did not engage in misinformation speech but instead he breached the CMA Code. Mr. Honner noted this case is a little bit like that of *Doré*, who was free to criticize the administration of justice, just not in the way he did it because he is a regulated professional.
27. Mr. Honner contrasted Dr. Hodkinson's conduct against that of Dr. Trozzi whose licence was suspended and was described as ungovernable. The comments were very different in that Dr. Trozzi made comments to the effect that COVID-19 was a deceptive criminal campaign and an excuse for a global dictatorship. He claimed the vaccines have "killed millions of people" and have made record profits for "murderous criminals" like Bill Gates, who are "running a scam". He also stated public health measures and recommendations could not be trusted and are crimes against humanity. Dr. Trozzi also called for the killing of Bill Gates, Dr. Fauci, World Health

Organization officials and certain TV personalities. Dr. Trozzi stated that Canadian health regulators are part of a criminal conspiracy and that the College of Physicians and Surgeons of Ontario had an “assigned role in the lying and killing, and the punishments dished out to doctors who did not go along with it”. Dr. Trozzi was found to have spread information contrary to public protection. In contrast, Dr. Hodgkinson violated the CMA Code and made comments beyond his scope of practice as a pathologist. He is not accused of making statements that are misleading or untrue. Mr. Honner submitted that Dr. Hodgkinson’s comments are in a different universe compared to Dr. Trozzi’s.

28. Mr. Honner contrasted Dr. Hodgkinson’s case against Dr. Zuk’s. There were 35 allegations of unprofessional conduct made against Dr. Zuk; 21 were proven, and most were upheld on appeal. Dr. Zuk described certain members of his profession as “Veneer Nazis” who were preying on an uneducated and an impressionable public. He alleged corruption within his regulatory body and made allegations of quasi-criminal conduct of his regulator that was supposedly based on his own inside information. Dr. Trozzi lost his license and Dr. Zuk received a one-year suspension. Mr. Honner stated that Dr. Hodgkinson’s case is most analogous to Drs. Peterson, Gill and Pitter.
29. Mr. Honner submitted that Dr. Hodgkinson admits to the allegation and that the Hearing Tribunal needs to conclude whether the admitted conduct amounts to unprofessional conduct. He stated the path to get to that decision is to look at Dr. Hodgkinson’s comments relative to the ethical code that restricts his speech. This code does restrict Dr. Hodgkinson’s speech, but does not do it in a manner that is more than necessary because it allows him to criticize the public health measures, our health system, et cetera. It just circumscribes the way he has to do it. He emphasized that there is no allegation that Dr. Hodgkinson spread misinformation or said anything untrue.

VI. DECISION REGARDING ALLEGATION

30. The Hearing Tribunal adjourned to review Exhibits 1 and 2 and accepted Dr. Hodgkinson’s admission of the allegation in the Notice of Hearing and finds all aspects of the allegation to be made out. The Hearing Tribunal found that Dr. Hodgkinson’s conduct constitutes unprofessional conduct for the reasons set out below.

VII. FINDINGS AND REASONS

31. The Hearing Tribunal considered Dr. Hodgkinson’s admission under section 70 of the HPA. An admission of unprofessional conduct on the part of the physician may only be acted upon if it is acceptable to the Hearing Tribunal. The admission was acceptable to the Hearing Tribunal, and the Hearing Tribunal considered whether the admitted conduct was unprofessional conduct.

32. The sole allegation against Dr. Hodkinson in the Notice of Hearing was that on the dates of November 13, 2020, and April 9 to 14, 2021, he made public statements where he identified himself as a medical specialist in pathology and former assistant professor in the faculty of medicine at the University of Alberta and made five specific statements regarding public health measures in response to the COVID-19 pandemic that were unprofessional, for one or more of the following reasons:
 - a. One or more of the statements were presented as medical opinion that was outside the scope of practice as a pathologist and that he failed to state that limitation;
 - b. One or more of the statements were contrary to the Canadian Medical Association Code of Ethics and Professionalism, including one or more of the following sections 31, 32, 33, 39 and 41;
33. Dr. Hodkinson admitted to the allegation and that his conduct was unprofessional conduct.
34. The minutes from the November 13, 2020, City of Edmonton council meeting confirm that Dr. Hodkinson made a presentation during discussion about an amendment to extend the Temporary Mandatory Face Coverings Bylaw 19408. The transcript of his presentation confirms Dr. Hodkinson introduced himself at the outset of his presentation as a medical specialist in pathology and that he made the first two specified comments in the allegation regarding masks being useless and being led down the garden path by the Chief Medical Officer of Health. The transcript from Dr. Hodkinson's April 9, 2021, media interview confirms he made the third and fourth comments in the allegation regarding the COVID-19 vaccine being unnecessary and vaccine safety. Additionally, the transcript from Dr. Hodkinson's video recording posted April 12, 2021, confirms he made the fifth comment in the allegation regarding how nothing can control the spread of COVID-19.
35. The CPSA Standard of Practice - Code of Ethics and Professionalism requires that all regulated members abide by the CMA Code of Ethics and Professionalism. The CMA Code states that to enhance trustworthiness in the profession, one of the virtues physicians must uphold is humility, and that a humble physician "acknowledges and is cautious not to overstep the limits of their knowledge and skills...".
36. With regard to interaction between physicians and colleagues, the CMA Code outlines that physicians must treat colleagues with "dignity and as persons worthy of respect" and "engage in respectful communications in all media". Additionally, this section of the CMA Code outlines that all physicians should "take responsibility for promoting civility, and confronting incivility, within and beyond the profession" and "avoid impugning the reputation of colleagues". These statements are in sections 31, 32 and 33 of the CMA Code.

37. With regard to interaction between physicians and society, the CMA Code outlines that physicians must “support the profession’s responsibility to act in matters relating to public and population health, health education, environmental determinants of health, legislation affecting public and population health”. Physicians must also “provide opinions consistent with current and widely accepted views of the profession when interpreting scientific knowledge to the public” and “clearly indicate when you present an opinion that is contrary to the accepted views of the profession”. These statements are in sections 39 and 41 of the CMA Code.
38. After reviewing the transcript of Dr. Hodkinson’s November 13, 2020 presentation at the City of Edmonton city council meeting, the pathologist expert opinion (Dr. ██████) concluded the comments made by Dr. Hodkinson are not within the recognized core competencies required for General Pathologists practicing in Alberta and lie outside of the generally accepted scope of practice for a General Pathology specialist. Dr. ██████ also cited sections 31, 32, 39 and 41 of the CMA Code and noted General Pathologists, like all physicians, are bound by the CMA Code.
39. Dr. ██████ also reviewed comments Dr. Hodkinson made in his video recording posted April 12, 2021. Here, Dr. ██████ again cited sections 31, 32, 39 and 41 of the CMA Code and noted Dr. Hodkinson is bound by this code. He concluded that these comments lie outside the generally accepted scope of practice for a General Pathology specialist.
40. The public health expert opinion (Dr. ██████) also reviewed Dr. Hodkinson’s presentation at the City of Edmonton Council meeting and his April 12, 2021, recording and concluded his comments did not align with virtues, commitments and professional responsibilities outlined in the CMA Code and cited several areas of the CMA Code that he found were not followed. He also concluded Dr. Hodkinson is not a specialist in public health and that he was making comments outside of his scope of expertise in pathology. He noted that Dr. Hodkinson made several comments regarding pandemic management, including how nothing can control the spread of COVID-19, when he has no specialized training in this area.
41. The Hearing Tribunal considered Dr. Hodkinson’s admitted comments in the context of the conclusions from the two experts along with the relevant sections of the CMA Code and found that in making these comments, Dr. Hodkinson has failed to abide by the CMA Code. The Hearing Tribunal therefore found Dr. Hodkinson to have breached the CPSA Standard of Practice – Code of Ethics and Professionalism. This breach was significant.
42. When considering whether Dr. Hodkinson’s conduct constituted unprofessional conduct, the Hearing Tribunal considered that a finding of unprofessional conduct arising out of Dr. Hodkinson’s communications has an impact on his right to freedom of expression under section 2(b) of the Charter. The Supreme Court of Canada in *Doré v. Barreau du Québec* has set

out the proportionality analysis that is required in balancing Charter rights to ensure that they are limited no more than is necessary, given the applicable statutory objectives at issue. The Hearing Tribunal recognizes Dr. Hodkinson's Charter rights and finds that those rights are impaired as little as possible while still achieving the objectives of the statute governing the College's mandate.

43. The Hearing Tribunal is satisfied that a finding of unprofessional conduct furthers important statutory objectives under the HPA. The College is entrusted with regulating in the public interest. The context in which the allegation of unprofessional conduct arose is a key factor in the finding of unprofessional conduct. This hearing is about Dr. Hodkinson's communications during a public health emergency caused by the COVID-19 pandemic. A finding of unprofessional conduct based on Dr. Hodkinson's communications to the public about COVID-19 furthers the statutory objective of maintaining the integrity of the profession by demonstrating that the College takes its role in protecting the public interest seriously.
44. Apart from pandemic-related information, promoting professionalism in communications and preventing misleading advertising were found to be important statutory objectives for a health profession regulator in *Rocket v. Royal College of Dental Surgeons of Ontario*. A regulated professional's freedom of expression must be balanced against the regulatory objectives of professional bodies when it comes to protection of the public, ethical standards, and integrity of the profession. These limits on a professional's freedom of expression extend to areas that are statements that the public cannot verify as being true or are inappropriate from a professional perspective. An important consideration in professional communications is the inherent vulnerability of patients with respect to health professionals. Members of the public are susceptible to statements made by Dr. Hodkinson whose communications are presented to the public as the opinions of an experienced and trustworthy physician.
45. The Hearing Tribunal is satisfied that, in light of the statutory objectives, a finding of unprofessional conduct is a proportionate response relative to the impact on Dr. Hodkinson's freedom of expression. The College would not be fulfilling its responsibility to regulate the profession in the public interest if it did not take action to investigate and deter such conduct. Further, the impact on Dr. Hodkinson's freedom of expression is limited. A regulated professional must make comments within the scope of their training and act within the ethical expectations of their code of conduct. With respect to physicians, this means a physician has to stay within their scope of expertise and training and must act within the constraints of the ethical expectations of the Canadian Medical Association Code of Ethics and Professionalism.
46. The Hearing Tribunal finds that Dr. Hodkinson's conduct constitutes unprofessional conduct as defined by section 1(1)(pp)(ii) of the HPA as being conduct that contravenes a code of ethics and standard of practice.

47. Given this finding, the Hearing Tribunal invited the parties to make submissions on sanction.

VIII. SUBMISSIONS ON SANCTION

Submissions on Behalf of the Complaints Director

48. Mr. Boyer presented the Brief of Law on Joint Submissions and stated the Hearing Tribunal should accept the proposed sanction in the Joint Submission unless it is manifestly unjust and not in the public interest. He stated the Joint Submission strikes an appropriate balance between sanction and remediation.
49. Mr. Boyer stated there is CPSA case law that featured a caution as sanction. The remediation proposed is a course from the Canadian Medical Association Physician Leadership Institute (PLI) on Influence and Advocacy. He explained the next iteration of this course should be available in the next 12 months. He stated that there is always an important role of advocacy in all professions and to do it with attention to the CMA Code and to deliver comments that are beneficial to public discourse and debate benefit all of us. There is a small cost component to the sanction. Mr. Boyer briefly referenced the *Jaswal* factors but stated this case is best guided by the cases available in the Brief of Law regarding Freedom of Expression for Regulated Professionals, which show how the courts have recognized that there are appropriate times for professional discipline.
50. Mr. Boyer stated there is no reason to impose sanctions from more egregious freedom of expression cases such as *Zuk* and *Trozzi*. He submitted the proposed sanction strikes an appropriate balance of deterrence to the individual and profession, remediation, and a responsibility for some costs. He submitted that the Hearing Tribunal should accept the Joint Submission as presented.

Submissions on Behalf of Dr. Hodkinson

51. Mr. Honner stated *Anthony-Cook* is the leading case on joint submissions, which established that a joint submission should not lightly be rejected. Here, the Supreme Court of Canada stated a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest. The logic is rooted in criminal law that highlights guilty pleas. Guilty pleas benefit the accused because the Crown recommends a sentence the accused is prepared to accept. It minimizes stress, legal costs for the accused and the Crown is assured of a guilty finding. There are savings to institutional resources, and both parties know the strengths and weaknesses of the case while negotiating the agreement. Joint submissions work because of the high probability that a judge or panel will defer to them.

52. In the CPSA 2024 *Wollach* decision, the Hearing Tribunal noted significant deference to a joint submission on sanction should be accorded and should only be rejected if it was “manifestly unjust and would not serve the interests of justice if accepted”.
53. In the CPSA 2024 *Lee* decision the Hearing Tribunal used language from *Anthony-Cook* when it indicated the public interest test applies. The public interest test is the test that says a hearing tribunal can only reject a joint submission on sanction when it is so unhinged that it will bring the administration of justice into disrepute or is otherwise contrary to the interests of justice.
54. Mr. Honner stated the Hearing Tribunal should not be considering if the joint submission is fit, as the Supreme court of Canada has rejected the fitness test in *Anthony-Cook*. The only question before the Hearing Tribunal is whether this sanction would bring the administration of justice into disrepute.
55. Mr. Honner reviewed the factors to consider when determining sanction as outlined in *Jaswal* in the context of this case. While Dr. Hodkinson’s comments did cross the line, there was no fraud or inappropriate behaviour with a patient. Regarding nature and gravity of the proven conduct, the case is an expression case where the events occurred during an unprecedented pandemic where people had differing views on management. Regarding age and experience, Dr. Hodkinson is 82 years old. He obtained his medical education at Cambridge University and completed his pathology residency in 1973 in Vancouver. He has been an assistant clinical professor at the University of Alberta and past Chair of the Royal College specialty examination in pathology. He has several publications and awards. He is an accomplished physician and has dedicated a large part of his life to serving people through medicine. His admission to the allegation is a factor in his favour when it comes to penalty.
56. In regard to presence or absence of prior complaints, Mr. Honner explained that Dr. Hodkinson has no disciplinary record over his medical career, which spans over 50 years. The conduct involves comments he made in public, and there is no individual patient involved. Since his comments were made in November 2020 and April 2021, there have been no further complaints made against him.
57. Dr. Hodkinson has admitted the conduct and that is a factor in his favour when it comes to penalty. Regarding finances, Mr. Honner stated the costs are not unsubstantial but also that Dr. Hodkinson is no longer in practice voluntarily for reasons unrelated to this hearing.
58. Mr. Honner submitted the concerns about Dr. Hodkinson arose from a unique situation and that there is no further need for specific deterrence outside of the Joint Submission. He stated criticizing institutions is a good thing in that it promotes accountability and transparency of self-regulated professions.

Therefore, the sanction should not put a chill on this. He submitted a caution is therefore the proper form of deterrence.

59. Mr. Honner reviewed similar cases regarding the range of sentences imposed. Dr. Gill received a caution. In Ontario a caution is not based on a finding of unprofessional conduct but instead is described as educational and remedial in nature. An investigative committee can issue a caution to a physician as an alternative to referring that complaint to a disciplinary panel.
60. Mr. Honner stated the law in Alberta is different where a caution is based on a finding of unprofessional conduct, but the difference is a difference of words. Dr. Gill's caution appears on the public register of the Ontario College of Physicians and Surgeons. Dr. Hodkinson's caution will similarly be posted on the College's website.
61. Mr. Honner stated the *Peterson* case is analogous. Dr. Peterson is a psychologist who made some social media comments that drew criticism. He was ordered to participate in a program at his own expense. Like the Dr. Gill order, it was not disciplinary, and it was proportional in that it did not prevent Dr. Peterson from expressing himself on controversial topics.
62. Mr. Honner outlined the *Pitter v. College of Nurses of Ontario (2022)* decision. This was a case where the college investigated two registered nurses for statements they made that were contrary to public health guidelines. Their comments contained harmful misinformation including vaccines altering DNA, vaccines having the ability to track and manipulate thoughts and movements and vaccines affecting future fertility as part of an attempt to decrease global population. He submitted that Dr. Hodkinson's admitted comments are nowhere close to the severity of the comments from the two nurses who engaged in spreading misinformation. The Ontario tribunal issued a caution. Dr. Hodkinson is not accused of spreading misinformation.
63. Mr. Honner submitted that the Joint Submission is not contrary to the interests of justice and would not bring it into disrepute.

Reply Submission on Behalf of the Complaints Director

64. Mr. Boyer indicated that Mr. Honner is correct in that there is no disputing the details Mr. Honner submitted regarding Dr. Hodkinson's professional training and background and that Dr. Hodkinson has had no prior disciplinary issues in his professional career.

Question from the Hearing Tribunal

65. Mr. Boyer clarified that the written decision from the Hearing Tribunal would serve as the caution issued to Dr. Hodkinson.

IX. DECISION REGARDING SANCTION

66. The Hearing Tribunal accepts the Joint Submission and makes the following orders:
- a. Dr. Hodkinson shall receive a caution.
 - b. Dr. Hodkinson shall, at his own cost, complete the online course on Influence and Advocacy offered by the Canadian Medical Association, within 12 months of the date of the decision issued by the Hearing Tribunal.
 - c. Dr. Hodkinson shall be responsible for a portion of the costs of the investigation and hearing, being the sum of \$5,000, which may be paid by equal monthly installments over a period of 12 months starting after the date of the decision issued by the Hearing Tribunal.

X. FINDINGS AND REASONS FOR SANCTION

67. The Hearing Tribunal considered the factors set out in the *Jaswal* case referenced by Mr. Boyer and Mr. Honner. The Brief of Law on Joint Submissions and the Brief of Law regarding Freedom of Expression for Regulated Professionals were also reviewed. Dr. Hodkinson's admitted conduct was serious, as he made comments about a global pandemic that were outside of his scope of expertise as a pathologist and were disrespectful toward medical colleagues.
68. The Hearing Tribunal found that Dr. Hodkinson's admitted unprofessional conduct was a significant breach of the CPSA Standard of Practice - Code of Ethics and Professionalism as his admitted comments breach several sections of the CMA Code as outlined above. This CMA Code is the cornerstone of physician ethics and professionalism, as it provides guideposts for how physicians should conduct themselves as professionals and in doing so uphold physicians' trust of their own colleagues, the public's trust in the medical profession and the overall integrity and dignity of the medical profession. Ultimately, this CMA Code, when followed by regulated physicians, is meant to maintain and protect the public interest.
69. The Hearing Tribunal also considered that Dr. Hodkinson is 82 years old and no longer in medical practice as a pathologist. He also acknowledged the nature and gravity of his unprofessional conduct with his admission. The Hearing Tribunal also considered that Dr. Hodkinson's admitted conduct did not involve any patient under his care or any fraudulent behaviour.
70. The Hearing Tribunal recognized that prior to the present issue, Dr. Hodkinson practised medicine for over 50 years without a single disciplinary issue with his regulatory body and that his comments were made during an unprecedented global pandemic.

71. The Hearing Tribunal appreciated that Dr. Hodgkinson admitted to the allegation and that the parties provided a Joint Submission on sanction. This saved the time and expense of proceeding with a contested hearing.
72. The Hearing Tribunal was satisfied that the required coursework will provide Dr. Hodgkinson further insight into this matter. The Hearing Tribunal had no concerns with the scale of the financial cost imposed in the sanction. The conduct at issue is serious, and it is appropriate that Dr. Hodgkinson bears some of the costs of the investigation and hearing.
73. Overall, the Hearing Tribunal found the Joint Submission appropriate in its proportion and details after review of relevant case law in the Brief of Law regarding Freedom of Expression for Regulated Professionals, and the submissions from the parties.
74. The Hearing Tribunal appreciated that this case is one that highlights the importance of public discourse and the Charter right to freedom of expression that everyone, including regulated professionals, are entitled to. At the same time, there is a requirement of regulated physicians to adhere to their code of ethics, which circumscribes their Charter rights, in the context of making qualified statements within their area of expertise and responsibilities to communicate respectfully with and about colleagues. The Hearing Tribunal decision will serve as a caution, and a reminder that Dr. Hodgkinson and other physicians must practice in compliance with the CMA Code.
75. The Hearing Tribunal does understand its obligation to defer to the Joint Submission unless it is contrary to the public interest or would undermine the administration of justice. Given our findings and reasons above, we conclude the sanctions proposed in the Joint Submission meet the public interest test, and we therefore impose them as proposed by the parties, pursuant to section 82 of the HPA.

XI. ORDER

76. The Hearing Tribunal hereby orders pursuant to section 82 of the HPA:
 - a. Dr. Hodgkinson shall receive a caution.
 - b. Dr. Hodgkinson shall, at his own cost, complete the online course on Influence and Advocacy offered by the Canadian Medical Association, within 12 months of the date of the decision issued by the Hearing Tribunal.
 - c. Dr. Hodgkinson shall be responsible for a portion of the costs of the investigation and hearing, being the sum of \$5,000, which may be paid by equal monthly installments over a period of 12 months starting after the date of the decision issued by the Hearing Tribunal.

Signed on behalf of the Hearing Tribunal by the Chair:

A handwritten signature in blue ink, consisting of a large, sweeping loop followed by several smaller, more intricate strokes.

Dr. Don Yee

Dated this 22nd day of January, 2025.