

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. J. ROWAN SCOTT

**DECISION OF THE HEARING TRIBUNAL OF
THE COLLEGE OF PHYSICIANS
& SURGEONS OF ALBERTA ON SANCTION
April 23, 2025**

I. INTRODUCTION

1. The Hearing Tribunal held a sanction hearing into the conduct of Dr. J. Rowan Scott on February 7, 2025. The members of the Hearing Tribunal were:

Mr. Glen Buick (public member) as Chair;
 Dr. Don Yee;
 Dr. Kim Loeffler;
 Mr. Terry Engen (public member).

2. Appearances:

Mr. Craig Boyer, legal counsel for the Complaints Director;
 Dr. J. Rowan Scott;
 Ms. Katherine Fisher and Mr. Patrick Coones, legal counsel for Dr. J. Rowan Scott;
 Ms. Julie Gagnon acted as independent legal counsel for the Hearing Tribunal.

II. PRELIMINARY MATTERS

3. There were no objections to the composition of the Hearing Tribunal or the jurisdiction of the Tribunal to proceed with the hearing.
4. The merit hearing had been closed to the public, but Mr. Boyer, on behalf of the Complaints Director, indicated there was no intention of requesting closure of this sanction hearing. Ms. Fisher indicated that, as Dr. Scott would not be called upon to provide further evidence at this hearing, there would be no request to close the hearing. The sanction hearing therefore was open to the public.

III. MERIT DECISION

5. The Tribunal held a merit hearing into the conduct of Dr. Scott on May 22 and 23, 2024. In its merit decision issued July 30, 2024 (the "Merit Decision"), the Tribunal found that Allegation 2 was proven on a balance of probabilities, namely:

That the Investigated Person displayed a lack of knowledge, skill, or judgment in the provision of professional services when, in a medical letter, dated February 12, 2020, [he] speculated on the behaviour and potential psychiatric diagnoses of [the Complainant], who was not [his] patient, whom [he] had never examined, and without [the Complainant's] consent.

6. The Tribunal found that the conduct constituted unprofessional conduct pursuant to section 1(1)(pp)(i) of the *Health Professions Act* ("HPA"), as a lack of judgment in the provision of a professional service and pursuant to section 1(1)(pp)(xii) of the HPA as conduct that harms the integrity of the medical profession.

IV. SUBMISSIONS

Submissions on behalf of the Complaints Director on Sanction

7. Mr. Boyer singled out several sections of the Tribunal's Merit Decision as particularly germane in reaching a decision on sanction. Paragraph 77, he noted, said "...the investigated person went beyond the scope of relaying his findings, assessments, advice and treatment given to the patient. [He] accepted as fact the information relayed by his patient and proceeded to engage in speculation about the behaviour of the complainant and provided potential psychiatric diagnoses." From paragraphs 84 and 86, he noted, "The investigated person [speculated] regarding the behaviour of the complainant and including the complainant's conduct...[which]... may constitute libel or slander, and speculates about potential psychiatric diagnoses" and "...passages clearly show that the investigated person is engaging in speculation and providing potential psychiatric diagnoses about the complainant." Paragraph 92 notes that "The investigated person draws conclusions that the complainant is engaging in a pattern of emotional spousal abuse and parental alienation...[which]...are samples of speculation by the investigated person on the complainant's behaviour."
8. Mr. Boyer pointed out that the Tribunal Merit Decision said, in paragraph 108, "The investigated person, as the medical professional, had the ability to decline answering questions that were objectionable. That is, he could have refused to answer questions that asked him to improperly speculate or provide a diagnosis on the complainant, as this was someone he had never met or examined and had not obtained consent from."
9. Mr. Boyer also referred to the *Jaswal* factors, often cited in connection with determining appropriate sanction. He referred to the gravity of the conduct cited in the proven allegation and submitted that the report had serious impact on the complainant. He noted that "Dr. Scott was a very senior member of the medical profession when this conduct occurred", not an inexperienced physician. He emphasized the requirement to promote not only specific but general deterrence and thereby to protect the public and to maintain the public's confidence in the integrity of the medical profession.
10. Mr. Boyer brought forward cases in support of his submissions on sanction, although none involved allegations similar to the proven allegation in this case.
11. Mr. Boyer noted that were Dr. Scott a practicing physician, a more severe sanction would be sought – in addition to some suspension, the Complaints Director would have advocated for some remedial work to have been done such as the CPEP PROBE course on professionalism and ethics and probably a course on writing reports. Given that Dr. Scott is retired, however, and not likely to resume practice, a reprimand would be sufficient.

Submissions on behalf of the Investigated Person on Sanction

12. Ms. Fisher began her submissions by stating that Dr. Scott does not contest the proposed sanction that a reprimand be issued in this case. However, she indicated that the "addition of a costs sanction" would be an inappropriate penalty.
13. Ms. Fisher, too, referred to the *Jaswal* factors. She submitted first that Dr. Scott's conduct does not fall into the category of serious unprofessional conduct as described in *Jinnah*, such as sexual assault or fraudulent conduct. Serious conduct is to be reserved for conduct involving willful negligence or disregard for the well-being of a patient.
14. Ms. Fisher submitted that in this case, Dr. Scott wrote the report in response to a request from his patient's lawyer. She noted that it was "not his intention to diagnose the complainant but rather to describe within the report information that his patient had shared with him", and further that the report was not entered as evidence in the divorce proceeding, and Dr. Scott was not questioned on the report.
15. Ms. Fisher further noted that there were no findings of fact made by the Hearing Tribunal with respect to any impact of the conduct on the complainant. Ms. Fisher suggested that the Tribunal should put limited weight on that factor in considering this issue.
16. Ms. Fisher submitted that the fundamental purpose of sanction in the professional regulatory context is to ensure that the public is protected from the proven unprofessional conduct. She noted that Dr. Scott has now been retired for more than four years with no intention of returning to practice and submitted that the public is adequately protected from the proven unprofessional conduct.
17. In conclusion, Ms. Fisher repeated that a reprimand would be the appropriate sanction for the Tribunal to impose. "Nonetheless," she submitted, "in the event that the Tribunal does determine that a 'costs sanction' is necessary...only a very modest 'costs sanction' would be warranted."

Submissions on behalf of the Complaints Director on Costs

18. In discussing the issue of costs, Mr. Boyer began with comments about *Jinnah*, the case which has the most significant impact on this subject, at least for those professions governed by the *Health Professions Act*. He submitted that "...when there is a review of the case law across Canada, there is no uptake by other courts outside the province of Alberta that *Jinnah* is good law." He submitted that "*Jinnah* is based on the premise that the profession should, as the default, carry the load of professional discipline costs, and not the investigated person who is found guilty of unprofessional conduct. And that is the opposite of what the case law across Canada says."

19. Mr. Boyer noted some aspects of *Jinnah* that should be applied regarding factors that should be considered, e.g., how many charges were proven; the nature of the conduct; whether there have been other financial consequences suffered by the complainant; and also the impact of the costs on the investigated person.
20. Mr. Boyer indicated that the overall cost of the hearing is estimated to be just under \$100,000. He submitted that it would be desirable in this case to make a decision on an appropriate amount of costs rather than a percentage of costs. One out of two charges was proven. The witnesses who were called needed to be called. There were many written submissions provided on the issue of admissibility, incurring a significant amount of time and costs before the hearing to prepare those submissions, which he suggested should not have been required. The report should have been simply part of an agreed exhibit book, thus facilitating a much more efficient process. Mr. Boyer suggested costs should be in the range of fifty percent.

Submissions on behalf of the Investigated Person on Costs

21. Ms. Fisher first addressed why in her submission a 'costs sanction' was an inappropriate penalty in the circumstances.
22. Ms. Fisher pointed out that as was articulated in the *Jinnah* decision, in general professions should bear most, if not all of the costs associated with the privilege and responsibility of self-regulation. A significant portion of the costs of an investigation and hearing should not be imposed on a regulated member unless a compelling reason exists to do so. *Jinnah* sets out four different circumstances to establish a compelling reason. First, when a professional has engaged in serious unprofessional conduct. Second, when a professional is a serial offender who has engaged in unprofessional conduct on two or more occasions. Third, when a professional fails to cooperate with the college's investigators and forces a college to spend more resources than necessary to ascertain certain facts to a complaint. And fourth, when a professional engages in hearing misconduct and unnecessarily prolongs the hearing or otherwise results in increased costs of prosecution that are not justifiable, they should expect to pay costs and to completely or largely indemnify the college for its unnecessary hearing expenditures.
23. Ms. Fisher stated that such circumstances do not exist with respect to Dr. Scott. At the time of Dr. Scott's hearing on May 22 and 23, 2024, *Jinnah* was, without question, the applicable law in Alberta.
24. Ms. Fisher, after discussing several cases in support of her position, also submitted that it is not sufficient that the professional conduct in question be serious. In *Jinnah*, she stated, the Court of Appeal also articulates at paragraph 141 that the regulated member guilty of breaches that rise to the

magnitude of serious unprofessional conduct must have known that such behaviour is completely unacceptable and constitutes unprofessional conduct.

25. Ms. Fisher further noted that there is a dearth of guidance to physicians concerning the preparation or content of expert reports.
26. "It is therefore very important," Ms. Fisher submitted, "to consider the fact that Dr. Scott has now been retired for more than four years with no intention of returning to practice. The public is adequately protected from the proven unprofessional conduct." She stated in conclusion, "Dr. Scott submits when all of the relevant factors are considered, this situation militates against [a] costs sanction. In the circumstances, a written reprimand, with the hearing decision serving as that reprimand, is the appropriate sanction for this Tribunal to impose."

V. DECISION WITH REASONS

27. Although there was not a joint submission, both parties agree that a reprimand is the appropriate sanction in this case. The Tribunal agrees. This decision and the Tribunal's Merit Decision serve as the reprimand.
28. The Tribunal considers it important to note that this sanction is primarily influenced by Dr. Scott being retired and having no intention of returning to practice. Were the conduct attributed to a practicing physician, consideration would certainly have been given to a meaningful suspension and remedial courses.
29. The Tribunal found in the Merit Decision and reiterates here that there was serious unprofessional conduct involved. The Tribunal makes no finding regarding the effect on the complainant, about which no evidence was put forward during the hearing. The serious unprofessional conduct refers rather to the report's frequent and extensive engagement by Dr. Scott into speculative diagnoses of the complainant and other family members. Such conduct seriously undermines the integrity of the profession and is not consistent with expectations on physicians or what the public has a right to expect. As the Tribunal said in paragraph 120 of the Merit Decision, "The conduct in this case undermines the integrity of the profession. As noted in the Canadian Psychiatric Association Position Statement: Third-party Assessments/Independent Medical Evaluations (May 2020) (Exhibit 10): 'Unfortunately, when inexperienced individuals or unethical practice come to legal or public attention, the entire profession of psychiatry is tarnished.' The Hearing Tribunal agrees with this statement and finds that the Investigated Person's conduct undermined the integrity of the medical profession."
30. With respect to costs, the Tribunal considers the seriousness of the conduct outweighs the arguments put forward by Ms. Fisher, which reflected primarily conduct affecting one or more patients. The conduct in this case was serious

unprofessional conduct considering the risk of misleading many and, as noted in the preceding paragraph, tarnishing the entire profession of psychiatry.

31. The Tribunal rejects the continued use of the phrase “cost sanction” by Counsel for Dr. Scott. Costs do not represent a sanction. The right of the College to recover all or a portion of hearing costs is set out in the *Health Professions Act*, and while *Jinnah* sets out a different view, it accepts that costs may be apportioned to a professional where one or more of the four categories is met. The Tribunal did not find that the preliminary applications by Dr. Scott were inappropriate or would engage the *Jinnah* factor for hearing misconduct. However, the Tribunal found that this case engages the *Jinnah* factor of serious unprofessional conduct. The Tribunal finds that it is appropriate to order a portion of the hearing costs to be paid by Dr. Scott on the basis that he engaged in serious unprofessional conduct.

VI. ORDERS

32. For the reasons outlined above, the Hearing Tribunal orders pursuant to section 82 of the HPA the following:
 - a. Dr. Scott will receive a reprimand with the Hearing Tribunal’s Merit Decision and this decision on sanction serving as the reprimand.
 - b. Dr. Scott is ordered to pay costs of 25% of the total amount for the investigation and hearing, to a maximum of \$25,000.00. Costs are to be paid within six months of this decision, or within such time as agreed to by the Complaints Director.

Signed on behalf of the Hearing Tribunal by the Chair:



Glen Buick

Dated this 23rd day of April, 2025.