

COLLEGE OF PHYSICIANS & SURGEONS OF ALBERTA

IN THE MATTER OF
A HEARING UNDER THE *HEALTH PROFESSIONS ACT*,
R.S.A. 2000, c. C-7

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF DR. BARRY LYCKA

**DECISION OF THE HEARING TRIBUNAL OF
THE COLLEGE OF PHYSICIANS
& SURGEONS OF ALBERTA**

I. INTRODUCTION

1. The Hearing Tribunal held a hearing into the conduct of Dr. Barry Lycka on August 7, 2020. The members of the Hearing Tribunal were:
2. Dr. Douglas Faulder of Edmonton as Chair, Dr. Neelam Mahil of Edmonton and Ms. Marg Hayne of Edmonton (public member). Mr. Fred Kozak acted as independent legal counsel for the Hearing Tribunal.
3. In attendance at the hearing was Mr. Craig Boyer, legal counsel for the Complaints Director of the College of Physicians & Surgeons of Alberta. Also present was Mr. James Heelan, legal counsel for Dr. Barry Lycka. Dr. Lycka did not attend the hearing, but through his counsel consented to it proceeding in his absence.

II. PRELIMINARY MATTERS

4. Neither party objected to the composition of the Hearing Tribunal or its jurisdiction to proceed with the hearing. The Chair noted that pursuant to section 78 of the Health Professions Act, the hearing was open to the public, unless the Hearing Tribunal ordered all or some portion of the hearing closed to the public. On behalf of the Complaints Director, Mr. Boyer applied to have the hearing closed to the public on the basis that Dr. Lycka intended to enter a plea of “no contest” to the charges in the Notice of Hearing, and it would therefore be necessary to make more detailed submissions to the Hearing Tribunal including personal and confidential information about the complainant. Mr. Heelan supported the application. The parties provided the Hearing Tribunal with Exhibits 1 and 2 in support of the application to close the hearing.
5. After adjourning to deliberate on the application, the Hearing Tribunal noted the importance of transparency and openness in professional conduct hearings, both of which are important to maintain public confidence in the profession’s complaint resolution process. However, the Hearing Tribunal recognized that openness had to be balanced against protecting the patient’s identity in this case, and to ensure that patients are not discouraged from making complaints in the future cases. The Hearing Tribunal determined that that balance was best achieved by closing the hearing to the public during counsel’s submissions on the evidence related to the charges and “no contest” plea, with the public invited to re-attend submissions on appropriate sanctions, in the event of findings of unprofessional conduct.

III. CHARGES

6. The Notice of Hearing listed the following allegations:
 - a. Between January 2014 and January 2017, you did have an inappropriate sexual relationship with your patient, [REDACTED].

- b. You did fail to create and maintain a clinical record for your assessment and treatment provided to your patient, [REDACTED], on or about one or more of the following occasions:
- i. resulting in a prescription for [REDACTED] which was dispensed on September 14, 2014;
 - ii. resulting in a prescription for [REDACTED] which was dispensed on May 13, 2015;
 - iii. resulting in a prescription for [REDACTED] which was dispensed on June 2, 2015;
 - iv. resulting in prescriptions for [REDACTED] [REDACTED] which were dispensed on April 14, 2016;
 - v. Resulting in a prescription for [REDACTED] which was dispensed on May 13, 2016;
 - vi. Resulting in a prescription for [REDACTED] which was dispensed on August 12, 2016; and
 - vii. Resulting in a prescription for [REDACTED] which was dispensed on October 25, 2016.

IV. EVIDENCE

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

Exhibit 1 – Exhibit Book containing Tabs 1 to 12

- 1. Notice of Hearing dated July 20, 2020
- 2. Complaint Form by [REDACTED] dated March 26, 2018 with enclosures
- 3. Letter from J. Heelan to K. Ivans dated July 17, 2018 with patient records for [REDACTED]
- 4. Letter of response from Dr. Lycka to K. Damron dated August 8, 2018
- 5. Additional letter of response from Dr. Lycka to K. Ivans dated October 29, 2018
- 6. Memorandum by K. Ivans dated April 9, 2018 re: Interview of [REDACTED]
- 7. Additional letter of response from Dr. Lycka dated January 16, 2019, enclosing hotel credit card statements

8. Fax from Shoppers Drug Mart dated July 31, 2019 with patient medical history of [REDACTED] and Shoppers Drug Mart patient list dated April 4, 2018
9. Alberta Health Care billings by Dr. Lycka for visits with [REDACTED]
10. Memorandum dated March 19, 2019 regarding Dr. Lycka's withdrawal from practice due to health reasons
11. College of Physicians & Surgeons of Alberta Standard of Practice – sexual boundary violations
12. College of Physicians & Surgeons of Alberta Standard of Practice – patient record content

Exhibit 2 – No Contest and Joint Submission Agreement

V. SUBMISSIONS

Submissions by Mr. Boyer

8. Mr. Boyer provided a summary of the evidence from Exhibit 1.
9. The complaint to the College was received in March 2018. The complainant met Dr. Lycka [REDACTED] in 2013, and the two started a sexual relationship shortly thereafter, often meeting for that purpose at a hotel. The complainant stated that their sexual relationship continued until January 2017.
10. In his response to the complaint, Dr. Lycka acknowledged the sexual relationship, but claimed that it ended before the complainant became a patient of his in September 2014, when he says the relationship became [REDACTED].
11. Mr. Boyer referred to clinical records, Alberta Health billings and pharmaceutical records (all contained in Exhibit 1) that demonstrated a doctor-patient relationship existed from September 2014 until May 2016.
12. Mr. Boyer also referred the Hearing Tribunal to credit card receipts and hotel receipts found in Exhibit 1, documenting payments made by Dr. Lycka to a hotel for the period January 2015 to June 2016.
13. With respect to the first charge in the Notice of Hearing, Mr. Boyer submitted that the complainant's version of events is more credible than that of Dr. Lycka's; that is, the sexual relationship continued for a significant time after the complainant became a patient thereby amounting to a boundary violation.
14. With respect to the second charge, Mr. Boyer referred to the patient records, patient chart and prescription records found within Exhibit 1, noting that there

were no clinical entries for the dates of the prescriptions identified in the Notice of Hearing.

Submissions by Mr. Heelan

15. Mr. Heelan confirmed that while Dr. Lycka was not admitting conduct amounting to unprofessional conduct, he was making no contest against the allegations in the notice of Hearing to avoid the stress of a contested hearing.

VI. FINDINGS

16. The Hearing Tribunal finds that the allegations in the Notice of Hearing have been proven on a balance of probabilities, and that the proven allegations amount to unprofessional conduct.
17. All of the evidence in Exhibit 1 is consistent with the information obtained from the complainant; that is, her sexual relationship with Dr. Lycka continued long after the records confirm she became a patient of Dr. Lycka's, thereby constituting a clear boundary violation. Dr. Lycka's written response, that his sexual relationship ended and he then became [REDACTED], prior to her becoming a patient, lacks credibility. Dr. Lycka continued to primarily meet the complainant at a hotel until at least June 2016, where they had been meeting for sex prior to September 2014. There is no credible reason offered why [REDACTED] would have had to take place in a hotel. [REDACTED]
[REDACTED] The conduct described in the complaint is also inconsistent with Dr. Lycka's version of the change in his relationship to this patient. An objective assessment of the evidence, in its totality, is more consistent with the complainant's version of events and Hearing Tribunal's finding that the sexual relationship continued after the complainant became Dr. Lycka's patient.
18. The Hearing Tribunal also finds that there is uncontroverted evidence that Dr. Lycka failed to create and document appropriate clinical records for the prescriptions detailed in the Notice of Hearing.

VII. ORDERS

19. The parties presented the Hearing Tribunal with a Joint Submission Agreement in the event of a finding of unprofessional conduct which was marked during the hearing as Exhibit 2.
20. After hearing the sanction submissions of counsel for the Complaints Director and counsel for Dr. Lycka, the Hearing Tribunal determined that the proposed sanction order was appropriate, was consistent with the *Jaswal* factors, and consistent with previous College decisions dealing with boundary violations warranting a suspension. Accordingly, the Hearing Tribunal accepts the joint sanction proposal and makes the following orders:
 - a. Given that Dr. Lycka has withdrawn from practice for health reasons, in the event that he is found by the Physician Health and Monitoring Program of the College to be sufficiently fit to return to practice, that he shall then be required to serve a suspension of his practice permit for a period of 12 months to start on a date determined by the Complaints Director;
 - b. Upon completion of the period of suspension, Dr. Lycka shall also be required to enter into an After Care Agreement with the Assistant Registrar responsible for the Physician Health and Monitoring Program for a term of no less than 5 years, or until he retires from practice, whichever date comes first;
 - c. Prior to the completion of the period of suspension, Dr. Lycka shall complete a Boundaries course as selected by the Complaints Director;
 - d. Dr. Lycka shall be responsible for the costs of the Boundaries course and the costs of the monitoring and any ongoing treatment under After Care Agreement;
 - e. Dr. Lycka shall be responsible for the costs of the investigation and the hearing before the Hearing Tribunal, which shall be paid in full within 30 days (or in an alternative manner satisfactory to the Complaints Director) of the written decision being issued by the Hearing Tribunal.

21. In accepting the joint sanction proposal, the Hearing Tribunal determined that the sanctions suggested by the parties fall within an acceptable range of outcomes, but notes that had the boundary violation taken place after recent amendments to the *Health Professions Act*, the unprofessional conduct outlined above would have required permanent cancellation of Dr. Lycka's practice permit.

Signed on behalf of the Hearing
Tribunal by the Chair

A handwritten signature in black ink, appearing to read 'Faulder', with a stylized, cursive script.

Dated: September 21, 2020

Dr. Douglas Faulder