

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. BRUCE HOFFMAN

**DECISION OF THE HEARING TRIBUNAL OF
THE COLLEGE OF PHYSICIANS
& SURGEONS OF ALBERTA
July 25, 2023**

I. INTRODUCTION

- [1] The Hearing Tribunal held a hearing into the conduct of Dr. Bruce Hoffman on March 20, 21, 22, and 24, 2023. The hearing took place via videoconference on Zoom. The members of the Hearing Tribunal were:
- Mr. Glen Buick (public member) as Chair;
 - Dr. Harish Amin (physician member);
 - Dr. William Craig (physician member); and
 - Ms. Naz Mellick (public member).
- [2] Mr. Matthew Woodley of Reynolds Mirth Richards & Farmer LLP acted as independent legal counsel for the Hearing Tribunal.
- [3] In attendance at the hearing were:
- Mr. Craig Boyer, legal counsel for the Complaints Director of the College of Physicians & Surgeons of Alberta ("College");
 - Dr. D. Hartfield, the Complaints Director; and
 - Ms. Jennifer White, Hearing Facilitator.
- [4] Also present were Ms. Karen Pirie and Ms. Emily McCartney, legal counsel for Dr. Hoffman, along with Dr. Hoffman.

II. PRELIMINARY MATTERS

- [5] Neither party objected to the composition of the Hearing Tribunal or jurisdiction of the Hearing Tribunal to proceed with the hearing. There were no matters of a preliminary nature. Pursuant to section 78 of the *Health Professions Act*, RSA 2000, c. H-7 ("HPA"), the hearing was open to the public.

III. ALLEGATIONS

- [6] The Amended Notice of Hearing listed the following allegations:
1. *Between October 2014 and March 2019, [Dr. Hoffman] did provide private laboratory testing for [the] patient, at significant cost to [the] patient and contrary to the College's Sale of Products by Physicians Standard of Practice;*
 2. *Between January 2017 and March 2019, [Dr. Hoffman] did fail to collaborate with Dr. JS, neurologist, who was also involved in the care of [the] patient, contrary to Section 1 of the College's Referral Consultation Standard of Practice;*
 3. *Between January 2017 and March 2019, [Dr. Hoffman] did fail to collaborate with Dr. AW, neurologist, who was also involved in the care of [the] patient, contrary to Section 1 of the College's Referral Consultation Standard of Practice;*

4. *Between October 2014 and March 2019, [Dr. Hoffman] did fail to record in the patient chart the details provided to the patient, in advance of the provision of the uninsured professional service, contrary to Section 2 of the College's Charging for Uninsured Professional Services Standard of Practice;*
5. *[Dr. Hoffman] did charge the Alberta Health Care Insurance Plan for services rendered to the patient, while also charging the patient fees for the same visit, contrary to Section 9 and Section 11 of the Alberta Health Care Insurance Act, occurring on or about one or more of the following dates:*
 - a. *October 8, 2014;*
 - b. *January 13, 2015;*
 - c. *March 30, 2015;*
 - d. *March 31, 2015;*
 - e. *April 10, 2015;*
 - f. *May 25, 2015;*
 - g. *June 3, 2015;*
 - h. *June 18, 2015;*
 - i. *October 30, 2015;*
 - j. *June 9, 2016;*
 - k. *October 17, 2016;*
 - l. *October 28, 2016;*
 - m. *March 17, 2017;*
 - n. *July 17, 2017;*
 - o. *July 21, 2017;*
 - p. *October 26, 2017;*
 - q. *March 14, 2018;*
 - r. *March 21, 2018;*
 - s. *June 4, 2018;*
 - t. *August 7, 2018;*
 - u. *November 20, 2018;*
6. *[Dr. Hoffman] did bill the Alberta Health Care Insurance Plan for a visit with the patient, without creating a contemporaneous record of assessment and treatment provided for a visit that occurred on one or more of the following dates:*
 - a. *July 11, 2018;*
 - b. *July 18, 2018;*
 - c. *July 25, 2018;*
 - d. *August 1, 2018; and*
 - e. *August 8, 2018;*

ALL OF WHICH is contrary to the provisions of the *Health Professions Act*, RSA 2000, c. H-7 as amended, the *Canadian Medical Association Code of Ethics* and the *Standards of Practice* established by the College, thereby constituting unprofessional conduct.

IV. EVIDENCE

Agreed Exhibits

- [7] The parties entered an Exhibit Book into evidence by agreement as Exhibit 1, containing the following documents:

Exhibit 1

Tab	Item	Page
1	NOTICE OF HEARING DATED DECEMBER 22, 2021	1
1.1	AMENDED NOTICE OF HEARING DATED MARCH 15, 2023	7
2	LETTER OF COMPLAINT FROM THE PATIENT'S HUSBAND DATED APRIL 14, 2019, WITH ENCLOSURES	11
3	LETTER OF RESPONSE FROM DR. HOFFMAN DATED AUGUST 1, 2019, WITH PATIENT RECORDS	26
4	PATIENT RECORDS RECEIVED FROM DR. HOFFMAN ON AUGUST 23, 2019 (SIX BINDERS CONTAINING A TOTAL OF 3377 PAGES) WITH COVER LETTER - NOTE: TABLE OF CONTENTS AT FRONT OF EACH BINDER WAS NOT IN ORIGINAL MATERIALS PROVIDED TO CPSA, BUT WAS CREATED BY COUNSEL IN FEBRUARY 2023	213
5	PATIENT RECORDS RECEIVED FROM DR. HOFFMAN ON OCTOBER 17, 2019 (THREE BINDERS CONTAINING A TOTAL OF 1168 PAGES) WITH COVER LETTER	3612
5.1	DR. HOFFMAN CURRICULUM VITAE - MARCH 2023	4781
6	LETTER FROM DR. AW DATED MARCH 8, 2019 WITH PATIENT RECORDS	4800
7	LETTER FROM DR. JS DATED SEPTEMBER 16, 2019 WITH PATIENT RECORDS	4873
8	LETTER FROM AHS DATED NOVEMBER 21, 2019 WITH AUTOPSY REPORT	4889
9	LETTER FROM DR. JS DATED JANUARY 26, 2021	4896
10	AHC BILLINGS BY DR. HOFFMAN REGARDING THE PATIENT FROM OCTOBER 6, 2014 TO NOVEMBER 23, 2018	4899
11	HOFFMAN INSTITUTE INVOICES SUMMARY OF LAB INVOICES FOR THE PATIENT	4902
12	OPINION FROM DR. HM DATED 26 FEBRUARY 24, 2023	5029
12.1	CURRICULUM VITAE FOR DR. HM	5036
13	CPSA STANDARD OF PRACTICE: SALE OF PRODUCTS BY REGULATED MEMBERS	5042
14	CPSA STANDARD OF PRACTICE: REFERRAL CONSULTATION	5043
15	CPSA STANDARD OF PRACTICE: PATIENT RECORD CONTENT	5046

[8] The following additional exhibits were entered in the course of the hearing:

Exhibit	Item
"A"	(FOR IDENTIFICATION) LETTER FROM DR. DK TO DR. JL, DATED MARCH 14, 2020 (SUBSEQUENTLY MARKED AS EXHIBIT 2)
2	LETTER FROM DR. DK TO DR. JL, DATED MARCH 14, 2020 (PREVIOUSLY EXHIBIT A FOR IDENTIFICATION)
3	LIST OF DATES OF VISITS OF DR. BRUCE HOFFMAN WITH THE PATIENT WHERE BILLINGS FOR TRADITIONAL MEDICINE WERE MADE
4	DR. HOFFMAN'S MASTER'S THESIS CASE STUDIES
5	LETTER FROM DR. MC TO DR. BRUCE HOFFMAN, DATED JULY 10, 2020
6	LETTER FROM BM TO DR. JL, DATED DECEMBER 14, 2020
7	DOVEPRESS RETRACTION NOTICES OF Dr. MH ARTICLES
8	RETRACTION WATCH ARTICLE RE RETRACTION OF DR. MH ARTICLES
9	STIPULATION AND ORDER OF THE MINNESOTA BOARD OF MEDICAL PRACTICE RE DR. MH, M.D.
10	CURRICULUM VITAE OF MRS. MG
11	E-MAIL FROM MM TO THE PATIENT DATED SEPTEMBER 5, 2014
12	SALES RECEIPT DATED OCTOBER 6, 2014
13	SALES RECEIPT DATED OCTOBER 7, 2014
14	SALES RECEIPT DATED OCTOBER 8, 2014
15	BUNDLE OF RECEIPTS FROM HOFFMAN CENTRE FOR INTEGRATIVE MEDICINE RE THE PATIENT - 2014-2019
16	E-MAIL CHAIN BETWEEN THE PATIENT AND STAFF FROM HOFFMAN CENTRE FOR INTEGRATIVE MEDICINE (DECEMBER 2015)
17	E-MAIL CHAIN BETWEEN THE PATIENT AND MRS. MG FROM HOFFMAN CENTRE FOR INTEGRATIVE MEDICINE (OCTOBER AND NOVEMBER 2018)
18	E-MAIL CHAIN BETWEEN THE PATIENT AND MRS. MG FROM HOFFMAN CENTRE FOR INTEGRATIVE MEDICINE, TOGETHER WITH ATTACHMENT OF CALGARY LABS REQUISITION FORM (OCTOBER 2018)
19	SALES RECEIPT DATED OCTOBER 31, 2018
20	SPREADSHEET PREPARED BY MRS. MG
21	E-MAIL CHAIN BETWEEN THE PATIENT AND STAFF FROM HOFFMAN CENTRE FOR INTEGRATIVE MEDICINE (APRIL 2016)
22	E-MAIL CHAIN BETWEEN THE PATIENT AND STAFF OF HOFFMAN CENTRE FOR INTEGRATIVE MEDICINE (NOVEMBER 2015)
23	SUMMARY OF ORIGINAL RECEIPTS (HC POS)

Witnesses

- [9] Mr. Boyer called four witnesses to give evidence on behalf of the Complaints Director:
- The Patient's Husband
 - Ms. JD
 - Dr. JS
 - Dr. AW
- [10] Ms. Pirie called four witnesses to give evidence on behalf of Dr. Hoffman:
- Dr. DK
 - Dr. Bruce Hoffman
 - Mrs. MG
 - Dr. HM
- [11] The Hearing Tribunal has summarized the relevant portions of the witnesses' evidence below.

The Patient's Husband

- [12] ██████████ was the husband of the Patient, who was a patient of Dr. Hoffman from 2014 until her death in 2019. The Patient's husband is the author of the complaint to the College, as he believed there had been some unethical and improper behaviour in some areas related to Dr. Hoffman's treatment of the Patient.
- [13] In early 2014, the Patient was diagnosed with Atypical Parkinsonism. Her neurologists agreed she clearly had symptoms of a neurological condition, but without appearing "like the average Parkinson's patient". Not content with only the diagnosis of a fatal disease, the Patient began searching for alternative treatment possibilities and, in the fall of 2014, she and her husband made an appointment with Dr. Hoffman. The Patient's husband stated that the Patient wanted someone who would look at underlying causes and give her hope that she could recover, and that Dr. Hoffman "certainly did give her this idea that recovery or certainly remission was very possible and that was something he knew how to accomplish."
- [14] The Patient's husband went on to testify that the initial interview and testing cost \$8,000, and it turned out to be \$8,000 every few months for appointments and testing, which he said was "the very cheap part of it." He outlined that quite a lot of the testing was done at the clinic or at labs in Calgary or Vancouver, where they lived, and while most of the samples were collected at the clinic, most tests had to be done at labs in the U.S. or in Europe because of the specialized requirements.
- [15] The Patient's husband testified that early on, after the first round of tests, Dr. Hoffman told the Patient that her condition was caused by a reaction to mold,

and that Dr. Hoffman could treat this mold illness. Special testing established that their 100-year-old house harbored several different kinds of mold and that it was important to the Patient's health that they move, taking with them nothing that could not be made completely free of mold. The Patient's husband testified that it took them a year to clear everything up, sell their house, and move to rental accommodation that seemed to be a safe place for the Patient to live.

- [16] The move was an expensive process for them, and the Patient's husband testified that he was never able to get a clear picture in advance from Dr. Hoffman related to the costs involved over the course of treatment. He stated that the amount they paid to the clinic was over \$186,000.00, and that they had to spend about the same amount in addition for other specialized tests and supplements, so that he believed the total cost amounted to close to \$400,000.00.
- [17] The Patient's husband testified that he worried that there appeared to be an unending process of testing, yielding additional concerns such as Lyme disease, with no apparent permanent end to any of them. He eventually became very concerned about the costs involved, and the effect the process was having on their future prospects. At the same time, he was devoted to the Patient, who was firm in her desire to continue with Dr. Hoffman. After a couple of years, probably in 2017, he stopped going to the consultations with Dr. Hoffman, and said there had to be an agreement to disagree as far as his own involvement with the clinic and treatment there was concerned. After that time, he no longer accompanied the Patient to her appointments with Dr. Hoffman and reduced his considerable involvement with the search for less expensive supplements, etc., and the tasks involved in apportioning and recording the dozens—sometimes over a hundred—supplements and other pills each day.
- [18] Questioned about whether any of the Patient's care by Dr. Hoffman would be covered by the public health system, the Patient's husband replied that they were told nothing in the clinic was paid by the public health care system; he said they had no idea that the Patient's health insurance was being used for anything, with the exception of some much less expensive tests done at Calgary Labs. He testified that there was no information given by the clinic about determination of the price the Patient and her husband paid for the private tests. He said, "...the idea that he was billing Alberta Health was a total shock to me ... [the Patient] never knew that and I didn't know until sometime after she had passed away."
- [19] Questioned about Mucuna as one of the supplements used by the Patient, the Patient's husband testified that it was probably the treatment that he would most support. He described Mucuna as basically an herbal form of L-dopa, used to supplement dopamine which would alleviate some of the Patient's symptoms. She had been prescribed L-dopa as a drug but rejected it because it caused her severe nausea. She tolerated the Mucuna better,

although the Patient's husband testified that it made her ill as well. The Patient's husband said he did not understand why it took Dr. MH a full year to get her on the correct dosage.

- [20] Asked about Dr. MH, the Patient's husband testified that Dr. MH was in the U.S., he thought Minnesota, and was doing telemedicine with the Patient and Dr. Hoffman on weekly calls, related primarily to Mucuna. The Patient's husband said it was his understanding that Dr. Hoffman had to be on the calls "to make it legal".
- [21] Under cross-examination by Ms. Pirie, the Patient's husband agreed that the Patient had, in years preceding the Atypical Parkinsonism diagnosis, sought out alternative treatment methods for various things. The Patient's husband accepted that the Patient might have investigated and suggested to Dr. AW that Lyme disease might be impacting her neurological disorder, and also that she had been looking into Mucuna on her own.
- [22] Ms. Pirie asked whether it was the case that neither Dr. Hoffman nor Dr. MH charged for the regular video calls related to Mucuna, etc., to which the Patient's husband agreed, but noted that it was required that the Patient use the Mucuna formulation insisted upon by Drs. Hoffman and MH, which was very expensive (\$700 per week). It was the Patient's husband's understanding that the formulation was produced by CHK labs, which had been owned by Dr. MH and later by members of his family. (The Patient's husband indicated that he and the Patient eventually were able to get the same formulation themselves and import it from the U.S. for half the cost.)
- [23] Hearing Tribunal member Dr. Craig asked the witness if he could recall roughly when he stopped attending the consultations between the Patient and Dr. Hoffman. The Patient's husband said that, while he could not recall the exact date, he thought it would have been probably 2017, a couple of years before the Patient's death.

Dr. JS

- [24] Dr. JS is a neurologist, one of the two whom the Patient consulted regularly in Vancouver, the other being Dr. AW, both referred by the Patient's family doctor, Dr. DK.
- [25] Dr. JS testified that apart from Drs. AW and DK he had no contact with any other physicians involved in the Patient's care. He said the Patient did mention she was seeing an "integrative health specialist or something like that" in Calgary but had no record of any of those visits.

Dr. AW

- [26] Dr. AW is a neurologist to whom the Patient was referred by Dr. DK. It was he who brought in Dr. JS, and he testified he was aware of Dr. Hoffman and "of

an American ... who was prescribing the Mucuna”, but that he had never had any dealings directly with Dr. Hoffman.

- [27] Referring to the diagnosis of Progressive Supranuclear Palsy (PSP), which was identified in the autopsy as the cause of the Patient’s death, Mr. Boyer asked Dr. AW what would be the prognosis for someone diagnosed with the disease, and whether there is long-term treatment or the possibility of arresting the disease. Dr. AW responded that it is progressive and fatal, that there is no way to stop the progression of the disease. The treatment for managing the symptoms is similar to that for idiopathic Parkinson’s, that is, dopamine supplementation.
- [28] Hearing Tribunal member Ms. Mellick asked Dr. AW if, besides exercise and medication, he would recommend any supplements in treating the Patient’s diagnosis. The witness said no.

Ms. JD

- [29] Ms. JD was a life-long friend of the Patient (since high school) and had known the Patient’s husband since his marriage to the Patient. She had frequent telephone conversations with the Patient, and there were occasional family visits in both Vancouver and Calgary. She talked with the Patient and her husband at the time of their first visit to the Hoffman clinic and found them positive and enthusiastic about the possibility of fruitful treatment. She noted that at that time the Patient was slowing, but was otherwise a pretty active, engaged person.
- [30] Ms. JD testified that from late 2014 on, the Patient’s symptoms progressed; she slowed down, she stopped driving, had episodes of freezing and falling that she never had before. Mr. Boyer asked for her impression of the Patient’s reaction to the diagnosis, and she said she thought the Patient was really frightened, and that was why she sought out so many opinions. She thought the Patient found the idea of her condition being an incurable disease “absolutely terrifying”.

Dr. DK

- [31] Dr. DK, examined by Ms. Pirie, was the Patient’s family doctor for many years. She confirmed being aware that after the Patient’s death, the Patient’s husband brought a complaint to the College against Dr. Hoffman.
- [32] Dr. DK had written in reference to her medical records for the Patient, at the request of the College. Her letter read, in part:

My understanding about Functional Medicine is that it attempts to identify and treat the causes that contribute to the ultimate manifestation of a symptom complex, to which we in Traditional Western Medicine give a title, in [the Patient’s] case, Parkinson's.

The many mini-diagnoses that [the Patient] received at the Hoffman Clinic, such as Lyme's, Mold, chemical sensitivities, obscure infections, etc., could be contributors to her symptoms, which came as a surprise in such a healthy relatively young woman.

- [33] Her letter went on to say that the many treatment protocols the Patient explored, and tried, within and independent of the Hoffman Clinic, helped her experience much delight in her last few years. From her vantage point, Dr. DK said, Dr. Hoffman offered the Patient the hope and the possibility of improved health. She considered that, for the Patient, the Hoffman Clinic experience was invaluable.
- [34] In cross-examination by Mr. Boyer, Dr. DK confirmed that she would have made the Patient's referral to Dr. AW, as she was not aware of the Patient having any other primary physician in Vancouver. She also confirmed that she did not communicate directly with Dr. Hoffman, she was informed by the Patient. Dr. DK also confirmed that she would not disagree with the diagnosis by Drs. JS and AW, that the Patient's condition was a progressive and fatal disease.
- [35] Hearing Tribunal member Dr. Craig asked if Dr. DK felt that the Patient was thinking properly, or that she was confused at any time. Dr. DK replied that from her point of view, the Patient was doing everything within her world reality to be as proactive as she could for offering herself the possibility of healing and more life. She thought the Patient was actually a very empowered, proactive, intelligent, caring woman.

Dr. Bruce Osmond Hoffman

- [36] Examined by Ms. Pirie, Dr. Hoffman reviewed his medical education in South Africa and his experience there and in Canada, culminating in establishing the clinic in Calgary in 2000. He stated that he had never forsaken his traditional medical training, but described his present practice as integrated medicine, using the best of traditional medicine and the most relevant evidence-based options trying to identify upstream "antecedents" that might act as "triggers" for complex disease diagnoses. He did note that replacing the missing dopamine is critical in treating Parkinson's to achieve symptom improvement or resolution. He testified that if she didn't get dopamine in some way, her symptom presentation for Parkinson's would continue to deteriorate.
- [37] Dr. Hoffman testified that he and other integrated medicine practitioners trying to diagnose and treat complex illness have to do so in a non-insured category, privately, because the Canadian health system does not allow for an alternative approach to traditional diagnoses. He stressed that clinic staff advise prospective patients that most of the costs are non-insured services, that the clinic is a private facility, and that patients will have to pay for their visits.

- [38] Referring back to the Patient's husband's testimony, he denied that anyone would have been told the cost would be \$8,000.00—Dr. Hoffman said patients would always have been advised that the cost would be in a range of \$8,000 to \$30,000, and that that would be only for diagnostic services. He said it had been estimated that overhead costs of the clinic amounted to 73 percent of their total income and mentioned a \$250 average mark-up for each unit of the lab tests.
- [39] In response to questioning, Dr. Hoffman confirmed that there were instances when he would have billed Alberta Health Care Insurance for a service, while also billing privately for the other services he had performed on the visit. He indicated that he had sought both legal and medical practitioners' advice on this issue in the early days of opening the clinic. He testified:
- ...as an integrative physician, it's very difficult to follow the separation. Because at all times I'm integrating my traditional medical training with my functional medicine. I'm crossing them all the time. You know, I will deal with diet as I'll deal with thyroid hormones. I'll be doing all of the same in the same visit, and which sometimes is not clearly delineated. And to draw a line in the sand and say this is this and this is that, I am always integrating. So I try to, but it may not be up to the satisfaction of the statute or whatever it's called.
- [40] Dr. Hoffman testified that the Patient's husband had raised concern about the cost of the service, and he (Dr. Hoffman) discussed this with the Patient. He testified that the Patient said to him, more than once, that this was her problem, not his (Dr. Hoffman's).
- [41] In the course of testifying about the content and thoroughness of the treatment which the Patient received, Dr. Hoffman testified that he did not advise or recommend that the Patient sell her home. He said she had read that many patients with a reaction to mold cannot recover if they do not remediate adequately or leave their residence. He said that he would never recommend a patient leave their home unless there is really no option and denied specifically ever having advised the Patient to do so.
- [42] Under cross-examination by Mr. Boyer, Dr. Hoffman confirmed that his hourly fee, for the first year or two at least, was \$500, and that the Patient had been billed for \$87,640 for lab tests done in the U.S. and Europe over the four-and-a-half years. Dr. Hoffman added that the lab costs *per se* were increased to cover additional "hard costs" like shipping, dry ice or other specialized packing material, credit card fees, and currency conversion, and then an average of \$250 per test was added to cover operational costs of the clinic.

- [43] Referring to page 1707 of Exhibit 1, a NeuroScience invoice, Mr. Boyer asked about a numbered company, ██████████ Alberta Ltd., which Dr. Hoffman identified as the company through which the private work of the clinic is billed, while Alberta Health Care billing is done through the doctor's professional corporation.
- [44] Mr. Boyer questioned Dr. Hoffman about the billing for several tests, taking sellers' billing for the test and showing a mark-up of 100 percent to over 300 percent. Dr. Hoffman responded that there would have been several hard costs, shipping, currency exchange, etc., so that it was not possible for him to explain the validity of the charges without knowing the details.
- [45] Referring to Dr. Hoffman's notes from a visit with the Patient (p. 3732 of Exhibit 1) Mr. Boyer referred to the record showing a service code of 0303A, an Alberta Health Care billing code, but which then shows private billing of \$1,000 meaning that there were both public and private billings on the same date. Dr. Hoffman said it was the same date, but not for the same services, as he was treating the Patient's complex symptom presentations, of which Parkinson's disease was one. When Mr. Boyer suggested that this meant one symptom was considered insurable services under Alberta Health Care and others were treated as being alternative, private health care, Dr. Hoffman replied that it wasn't based on symptoms. It was based on the doctor's understanding of how he approaches patients in an integrative model, using his traditional medical doctor lens, his traditional training, while also addressing the complexity of the patient's presentation.
- [46] Dr. Hoffman went on to say that he does many things on each visit which he considers traditional medicine, such as considering symptoms and medication. Similarly, he would order not only lab tests to be done in U.S. or European laboratories, but more straightforward lab tests which he expected to be covered under Alberta Health Care.
- [47] Hearing Tribunal member Ms. Mellick asked Dr. Hoffman if he ever received any direct consultation notes or letters from Drs. JS or AW; he said not directly, but through the Patient and Dr. DK he would read updated consult notes that were written by the doctors.
- [48] Ms. Mellick asked Dr. Hoffman to give the panel, especially the public members, more clarity about the distinction between conventional medical practice and functional and integrative medicine, and whether the last was naturopathy. Dr. Hoffman said his training as a traditional medical doctor is single-organ-based drug or surgery treatment; he noted that a family practitioner tends to do multiple aspects, but in case of specialized need would refer to a specialist in the particular organ-based domain. Integrative medicine, he said, uses the best of traditional medicine with the best of evidence-based practices in the alternative world, looking for networks of interacting dynamics. It is not an acute-disease-based approach, but looks

mostly at chronic diseases, looking at multi-system, complex, upstream root causation of disease.

- [49] Hearing Tribunal member Dr. Craig asked if Dr. Hoffman's file would include copies of his communication with Dr. DK. Dr. Hoffman said no, that his communication was through the Patient, verbally, plus staff requesting from Dr. DK copies of consultation letters from the neurologists, Drs. AW and JS. He clarified that that did not mean his chart would have copies of all the letters, mentioning particularly that there were some to which he did not have access when he first saw the Patient.
- [50] The Hearing Tribunal notes that, during the cross-examination of Dr. Hoffman, an objection was raised to the introduction of an exhibit proposed by legal counsel for the Complaints Director. The document was a record from a medical board in the United States relating to findings against Dr. MH. The document was executed in 2020, which was after the consultations between Dr. Hoffman and Dr. MH which relates to the facts here.
- [51] The Hearing Tribunal decided that the exhibit was, broadly speaking, relevant to the issue of Dr. Hoffman's referral to Dr. MH, and the fact that significant information created by Dr. MH was provided by Dr. Hoffman to the Patient.
- [52] The Hearing Tribunal indicated that it was very much alive to the issue of relevance to the allegations in the Amended Notice of Hearing, and invited submissions from the parties at the conclusion of the case about what use can be made of it. The document was marked as Exhibit 9.
- [53] The Hearing Tribunal has now had an opportunity to consider the relevance of Exhibit 9 to the findings that it must make. It finds that Exhibit 9 is not helpful to it; the events set out in that Exhibit reflect poorly on Dr. MH but are apparently from a period after Dr. Hoffman made arrangements for Dr. MH to be involved in the care for the Patient. While the findings relating to Dr. MH are concerning, the Hearing Tribunal cannot and does not attribute any of those findings or knowledge about the underlying issues to Dr. Hoffman for the purpose of this hearing.

Mrs. MG

- [54] Introduced by Ms. Pirie, Mrs. MG outlined her role at the clinic as a patient care assistant during the period when the Patient attended the clinic, and then transitioning to office manager. She described the Patient as very smart, engaged, and curious. She said the Patient was one of the smartest patients at the clinic.
- [55] In describing the process of enrolling in the clinic, and detailing the numerous forms patients must complete, she testified that they always tell and reiterate to patients that the clinic is private, and that patients are billed for uninsured services. She stated the clinic does functional medicine tests,

not covered by provincial health care. She did note that with blood tests done at Calgary Labs (now DynaLife), they have a split form which outlines some tests "covered by health care" on the first page, and then others for clinic needs that are not covered. She later testified that patients were always told that tests ordered on page 1 were covered by provincial health care, while other costs involved were paid directly by patients.

- [56] Mrs. MG covered in detail the routine followed with patients both initially and at follow-up appointments, confirming what tests, etc., are being recommended and have been confirmed by the patient, arranging blood draws and tests or treatment that can be performed at the clinic, and providing instructions for whatever the patient is to do outside the clinic.
- [57] Ms. McCartney introduced a bundle of the Patient's sales records from the clinic, which were marked as Exhibit 15. Mrs. MG confirmed she had prepared this material, which she believed to be a complete review of all the billings/transactions with the Patient for laboratory expenses over the course of her treatment at the clinic.
- [58] In addition, Exhibits 16 and 17 were introduced to show e-mail chains between the clinic and the Patient to indicate her involvement, her getting some tests done in Vancouver for which details would be provided by the clinic. The Patient and her husband would have paid for such activity direct, without going through the clinic. Mrs. MG explained the detailed billing information going to the client: fee for Dr. Hoffman's consultation (billed originally at \$500 per hour), plus costs for each test agreed to by the Patient.
- [59] Ms. McCartney introduced a sales receipt for the Patient dated October 31, 2018, which included a \$640 charge for a "MycoTox" test – it was included in the bundle of receipts identified as Exhibit 15 but identified uniquely as Exhibit 19. She then referred to page 4940 of Exhibit 1, which is a Statement Summary from Great Plains Laboratory, Inc. for November 1-30, 2018. It included a Mycotoxin urine test, which Mrs. MG identified as the one for which the Patient paid (Exhibit 19).
- [60] The charge on the Great Plains summary was US\$289. Ms. McCartney asked how, then, the clinic arrived at the price to the Patient of \$640 (Canadian). The witness testified that there was currency conversion, FedEx shipping and credit card fees. She went on to testify that in many cases there were additional costs such as special containers, ice, dry ice, etc.
- [61] In addition, Mrs. MG testified that it was the clinic's policy to add a "mark-up" for tests amounting to "plus or minus" \$250.00. This was established to cover the overhead costs of the clinic, such as supplies, rent, salaries, technician fees and all other costs or expenses. She calculated that the average mark-up per test for the Patient's purchases in that year was \$227.

- [62] Responding to questions from Ms. McCartney, Mrs. MG stressed that the Patient was always informed about the cost of tests, etc., and that the Patient was always alert to charges. Mrs. MG referred to an instance where the Patient enquired about possibly being double billed for a test, and another case where the clinic was asking for confirmation from the Patient that charge for a consultation (\$500) which had been inadvertently omitted from a bill could be added, and the Patient confirmed but asked if the charge shouldn't be \$750.00, as the consultation lasted an hour-and-a-half rather than the regular one hour.
- [63] Under cross-examination by Mr. Boyer, Mrs. MG testified that billing to Alberta Health had been part of her duties as a patient care assistant, but that she was unaware of the relationship between doctors' billing Alberta Health and the doctor's overhead costs, as it was her understanding that overhead costs were covered by the private clinic billing.
- [64] Asked what advance guidance on cost was given to patients, Mrs. MG said it was not possible to give patients firm advance notice, as the costs would depend on the result of the patient's consultation with Dr. Hoffman, and the particular tests which the patient agreed to take. She said that in the 2014-2019 period, staff would tell initial patients the range of costs would probably be in the area of \$10,000 to \$30,000 depending on the tests and treatment involved. The cost of subsequent visits would be dependent on treatment, results of tests, etc., so it is not possible for staff to give patients an estimate of ongoing costs before each consultation and the resulting (patient) decisions on what they are prepared to pay for.
- [65] Mr. Boyer reviewed a number of transactions referenced in Exhibits 15 and 20, putting to Mrs. MG some apparent differences and instances of what appeared to be over-charging of expenses, without any detail of several possible expenses apart from currency exchange, taxes, etc. He introduced Exhibit 23, a 23-page listing of all receipts from the Patient's account with the Hoffman Centre from her first appointment.
- [66] Hearing Tribunal member Dr. Craig asked Mrs. MG to expand on her mention of an EMR. She explained that the clinic made very limited use of the Electronic Medical Record before COVID-19, principally for patients' demographics, their schedules and linking to Calgary Labs. Any copies of reports, say from Drs. AW and JS, would be kept in the patient's chart, not copied to the EMR.
- [67] Dr. Craig asked about the process of arranging blood tests, and whether the Centre was able to rationalize shipping—that is, when the blood for several patients for identical tests had to go to the same lab, could the separate samples be packaged together for shipping. Mrs. MG said that was not possible, as the shipments often involved special arrangements such as dry ice, and it was thus not possible to include more than one patient's test in the courier parcel.

Dr. HM

- [68] Following her introduction by Ms. Pirie, Dr. HM outlined her medical education and career, and how she became interested in pursuing qualification in functional medicine. She continues to practice, is licenced in B.C., California, New York, and Florida, and is currently on the faculty of the Institute for Functional Medicine.
- [69] The Hearing Tribunal agreed to her qualification as a family physician with expertise in the area of functional medicine; there was no objection from legal counsel for the Complaints Director.
- [70] Dr. HM said she likes to describe functional medicine as “really good medicine.” It attempts to identify the root cause of illness, using a personalized and “systems biology” approach, identifying antecedents, triggers and mediators. Asked about “integrative medicine”, she said it really tries to pull in the best of all worlds, with diagnoses still made the traditional way, and then using the best of conventional and alternative complementary treatments.
- [71] Ms. Pirie asked Dr. HM to discuss the Allegation related to laboratory testing at significant cost, contrary to the *Sale of Products by Regulated Members* Standard of Practice. Dr. HM said the vast majority of diagnostic testing is not available in Canada, and many of the tests are only available in the U.S. or Europe. She said the Patient fully understood the costs of the treatment, and she did not see in the files any testing that was not explainable in relation to a particular purpose.
- [72] Asked about Allegations 2 and 3, relating to communication with Dr. JS and Dr. AW, Dr. HM said it was apparent that Dr. Hoffman was not the referring physician to those specialists, that was the family physician (Dr. DK). Dr. HM said it was clear that Dr. Hoffman’s role was that of a specialist. There were copies of consult letters from the neurologists in Dr. Hoffman’s chart, so it was clear that he was aware of the treatments being suggested by them, and it appeared that he was in communication with Dr. DK.
- [73] Dr. HM said she saw no indication in the records she reviewed that Dr. Hoffman was treating the Patient in a manner contrary to the neurologists’ treatment; in fact, there was some indication in the chart that in some instances he was encouraging the Patient to follow the neurologists’ recommendations, although she did not want to take the medicine involved.
- [74] In conclusion, Ms. Pirie asked Dr. HM if she had confirmed her impressions of Dr. Hoffman’s billing practices regarding uninsured services. Dr. HM stated she considered that patients received a number of consent forms, clearly outlining his approach to billing. It was Dr. HM’s impression that the Patient was clearly aware of the billing practices for uninsured services. She

reiterated her opinion that a functional medicine provider, spending a significant amount of time with each patient, would address multiple issues during that time. She said, "...it would make sense that you would bill Alberta Health Care for the insured services and do private billing for the uninsured services." In Dr. HM's opinion, the Patient clearly was aware of the costs and details of her investigations and treatments and was happy with her care.

V. SUBMISSIONS

Complaints Director

[75] In support of Allegation 1, Mr. Boyer referred to the tables in Exhibit 23, which catalogued all the costs which had been charged to the Patient—in particular, he referred to the total cost of lab work charged to her, which amounted to approximately \$86,000. These costs include the charge from the labs, currency conversion, credit card fees, packaging, shipping and handling, and in addition an amount of approximately \$250 for each test, this amount intended to cover miscellaneous costs and all overhead for the clinic, such as salaries, rent, etc. He submits that this practice is governed by the *CPSA Standard of Practice on Sale of Products by Regulated Members* and quoted paragraph 2 of that Standard:

The regulated member must not sell the product at a price in excess of the fair market price paid by the regulated member plus a reasonable handling cost.

- [76] Mr. Boyer argued that "a reasonable handling cost" of a product being sold (in these cases the lab tests) cannot be interpreted as covering overhead costs of the clinic.
- [77] Referring to Exhibit 20, the Excel spreadsheet prepared by Mrs. MG to summarize the Patient's expenses with the Clinic relative to labs, Mr. Boyer noted several entries that were, in his view, inaccurate. He underlined that the total costs to the patient in the Excel spreadsheet amounted to \$78,725 as opposed to the \$86,000 detailed in Exhibit 23.
- [78] In summary, he noted that a substantial portion of that \$86,000 went to the Clinic through the "mark-up" process. Referring to Dr. Hoffman's testimony that he was only following the advice of his accountant or his lawyers, Mr. Boyer said there was no evidence of the doctor's getting any guidance from the College on what he should do in light of the *Standard of Practice*.
- [79] Referring to Allegations 2 and 3, Mr. Boyer submitted that whether or not consultation with the neurologists would have changed the approach to the Patient's care, it was Dr. Hoffman's obligation to collaborate, especially since he is providing treatment "in this rarefied area of integrated and functional medicine".

- [80] Allegation 4, Mr. Boyer noted, "is not being argued as one that is proven" and is effectively withdrawn.
- [81] Allegation 5 deals with the question of "double billing", in contravention of sections 9 and 11 of the *Alberta Health Care Insurance Act* on several occasions listed in the Allegation. Mr. Boyer stated that Dr. Hoffman would say this part of the visit was traditional and the rest of the visit was alternative or complementary, privately billed.
- [82] Mr. Boyer went on to say the problem with that approach is that it leaves open the ability of the doctor to identify an element of the visit as "traditional" care, and thus an insured service, while the rest of the visit, although it is for the same symptoms, the same problem, the same plan of therapy, can be billed privately.
- [83] Mr. Boyer went on to refer to section 11(1) of the *Alberta Health Care Insurance Act*, as follows:
- No person shall charge or collect from any person (a) an amount for any goods or services that are provided as a condition to receiving an insured service provided by a physician...
- [84] Mr. Boyer argued that this is the position that Dr. Hoffman and Mrs. MG had described to the panel: the idea is that the doctor can't manage what he can't measure nor treat what he can't test. And so, the private lab tests are part of the parcel. If someone wants to get care from Dr. Hoffman, they've got to go through the tests. And so, he argued, it also shows why the private billings for the same visits where there are all these other private tests and everything else going on is contrary to that element of the *Alberta Health Care Insurance Act*. "So while Dr. Hoffman justifies his double billing by selecting components of his integrated medical care as being private and public, I would submit that that's not within the intent of the prohibition against double billing because it is effectively allowing a doctor to do both simply because he says, well, measuring this part of the blood chemistry allows me to bill publicly, and measuring all the rest allows me to bill privately."
- [85] In relation to Allegation 6, Mr. Boyer explained it concerns the failure of Dr. Hoffman to create any chart record for the billings to Alberta Health on the five dates from July 11 to August 8, 1918, listed in the Allegation. He described these five instances as a clear infraction of section 39 of the *Alberta Health Care Insurance Act*, which delineates the requirement for a practitioner to make available the records that substantiate billings submitted to the Alberta Health Care Insurance Plan. As such, it is evidence of unprofessional conduct.

[86] Mr. Boyer concluded his submissions as follows:

This case...after the Amended Notice of Hearing was put forward by the Complaints Director, this is not an attack on integrated or functional medicine, the concept of looking at root causes of disease and trying to improve patients' outcomes and lives through a more holistic approach. But this case is about the manner in which Dr. Hoffman carries on his clinic under the Hoffman Centre of Integrated Medicine.

So you think of a patient like [the Patient], who receives tragic news from her traditional medical care providers. First of all, the belief is that she had atypical Parkinsonism. What we ultimately know is that she had progressive supranuclear palsy or one of those Parkinson's Plus conditions, which is even more serious and more tragic than the original diagnosis.

We have heard from experts in the field, Dr. AW and Dr. JS, that the neurodegenerative disease that they first believed she had, and then what was ultimately diagnosed on autopsy is progressive and fatal. And you can see how a woman who is bright, intelligent, who is wanting to ... take care and take charge of her life, that that news would be hard for anyone to take. But you can think of what was going through [the Patient's] mind: I will not see my son grow up. I will not see my son get married. I will not see my own grandchildren. I will not grow old with my husband.

So you can understand how she could struggle with the diagnosis and struggle with accepting that this is ultimately a fatal disease. Her husband and her longtime friend saw the reality, but they stood by her. As you heard [the Patient's husband] say, if it was giving her hope, he wasn't going to deny [the Patient] that hope. But the problem is that the testing and the upcharging that was used by Dr. Hoffman was taking advantage of that hope for profit, which is contrary to what the Standard of Practice of the Council had put in place.

And so, at the end of the day, it is submitted that Dr. Hoffman should be found guilty of the charges as set out in the Amended Notice of Hearing, other than charge 4, and that his conduct should be found to amount to unprofessional conduct.

Dr. Hoffman

[87] Ms. Pirie began by referring to Dr. Hoffman's *curriculum vitae*, and the efforts and education that he put himself through over 30 years of practice, having taken hundreds of hours of training and education, with the idea of

enhancing his traditional medicine training with the best evidence-based, complementary medicine available to maximize the lives of his patients. And that, she submitted, is precisely what brought the Patient to Dr. Hoffman's clinic, and it is the reason she stayed.

- [88] Regarding Allegation 1, Ms. Pirie submitted that the Allegation is not made out, on the grounds that the *Sale of Products by Physicians Standard of Practice* is not engaged in this situation. That *Standard* does not apply to lab testing. Lab testing is a service, not, as the *Standard of Practice* lists, a product, a device, or an appliance. Lab tests are not something that the Patient could purchase at the front desk and take home with her like a book. Lab tests require professional expertise to review, interpret and report on.
- [89] Ms. Pirie noted that the panel heard evidence from Dr. Hoffman about the size and scope of this clinic and that a major part of what a patient pays goes toward business operational costs. He described the costs of running the clinic as very high. Dr. Hoffman and Mrs. MG both described how the clinic arrives at the cost of lab testing for a patient. They explained that the calculation is overseen by an accountant and a business manager and consists of the actual cost of the test that a lab charges a clinic, the currency conversion when applicable, shipping and handling, which can be complicated and different for various tests, and any special packaging required, plus a markup of approximately \$250 toward operational expenses for everything from variable costs, changes in the exchange rate, lab tech salaries, rent, equipment, etc. The spreadsheet provided by Mrs. MG (Exhibit 20) provides a good overview of how this worked in the Patient's case.
- [90] Ms. Pirie praised the work done by Mrs. MG in pulling together the information contained in her spreadsheet and offered explanations or refutations of some of the criticism presented by Mr. Boyer.
- [91] In particular, Ms. Pirie raised the issue of the markup for lab services to cover operational expenses. She described this as an appropriate method, supported by guidance offered by the Alberta Medical Association in their guideline to billing uninsured services. She indicated those guidelines suggested that members consider charging for their services at an hourly rate, and that charges represent fair market value. The fees should appropriately reflect physicians' professional costs, and administrative costs, direct cost, clerical time and resources, supplies and equipment used to provide the service, indirect costs, physicians' practice needs, including equipment cost, professional fees, dues, accounting and legal fees. The guidelines also include a reminder to consider patients' ability to pay.
- [92] She recalled that patients are always presented with the costs of tests to be taken, etc., to confirm whether they want them (and are prepared to pay for them) before the order for the test is forwarded. She responded to the criticism that the "what I can't measure I can't deal with" meant that if the patient does not do this, the doctor will not treat them. She said Dr. Hoffman

completely denied that that would be the case. He said, I'll continue to treat, but when patients come and say can you help me with this problem but are uncomfortable with doing the tests for that problem, he just has less data available to him. What he said in his testimony was he tells patients then to just modify their expectations.

- [93] Referring to Allegations 2 and 3, Ms. Pirie said it was evident that Dr. Hoffman saw the consult letters provided to Dr. DK and/or the Patient, and that the neurologists knew what Dr. Hoffman was doing. There were instances where Dr. Hoffman supported a recommendation for a pharmacological treatment to provide dopamine, but it was the Patient's decision to find an alternative (because of her violent nausea on taking it) and Dr. Hoffman assisted her to find an acceptable alternative (Mucuna), including facilitating a connection with Dr. MH to find the most effective dose.
- [94] Ms. Pirie notes that the other doctors did not take any initiative to consult Dr. Hoffman and asks that the allegations be dismissed.
- [95] With respect to Allegation 5, Ms. Pirie noted that evidence was heard to the effect that it can be acceptable to bill for both an insured service and uninsured service on the same visit. She noted that Dr. Hoffman acknowledged that his precise documentation of which part of the visit should be delineated as the insured was not the best, and that he indicated to the panel that it is his intention to bring the AMA back in to revisit how best that can be addressed on those few occasions when the health care system is also billed in this type of scenario.
- [96] Ms. Pirie submits that this Allegation is not made out, but in the alternative, given that the services were clearly provided, but not necessarily adequately recorded, if the Allegation is determined to be made out, she submits that it does not rise to the level of unprofessional conduct.
- [97] On Allegation 6, Ms. Pirie reminded the Hearing Tribunal that Dr. Hoffman agreed to the facts but considered that the one-month clump of five errors in billing in the course of four-and-a-half years of treatment did not rise to the level of unprofessional conduct.
- [98] Ms. Pirie reverted to the "Dr. MH order" matter that had been raised and became Exhibit 9 (to which Ms. Pirie had objected). Her objection remained, on the grounds that the order did not appear to relate directly to the issue of the Patient's care, and that in any case the order was dated in 2020, long after Dr. MH had been consulted on the question of Mucuna dosage. Dr. Hoffman testified that he had no knowledge of any of the problems raised by the 2020 order, and in any case Dr. MH's involvement was positive for the Patient.

[99] In closing, Ms. Pirie said, in part:

We have more than four years' worth of [the Patient's] personal thoughts, beliefs, and expectations recorded in her own words. And what comes across clearly is her gratitude to Dr. Hoffman. She wanted a physician who would listen to her and go beyond conventional medicine to improve what life she had left to live. Yes, she arrived at the clinic hoping for a cure, 10 but Dr. Hoffman said a cure was not going to be possible. And Dr. [DK] testified in cross-examination that [the Patient] understood the gravity of her diagnosis...

We have heard time and again this week that [the Patient] was a bright, curious, determined woman. And her own statements powerfully demonstrate this. I admire [the Patient's] determination and for having the courage to educate herself on her health options and explore the care she wanted. She was entirely competent to do so.

[The Patient] did not blindly do whatever Dr. Hoffman suggested and at whatever cost. It is apparent in her approach and from her own words that [the Patient] was thoughtful and deliberate in exercising her autonomy as an informed patient. She was very aware that the private services were costly, and that was a price she was willing to pay. And she was very grateful for Dr. Hoffman's efforts to leave no reasonable stone unturned in trying to give her the best possible remaining life.

VI. ANALYSIS AND DECISION

Allegation 1:

Between October 2014 and March 2019, [Dr. Hoffman] did provide private laboratory testing for [the] patient, at significant cost to [the] patient and contrary to the College's Sale of Products by Physicians Standard of Practice.

[100] The evidence is clear that Dr. Hoffman provided laboratory testing to the Patient, and that the testing involved significant costs to her. Dr. Hoffman acknowledged that his clinic's approach was to add on average \$250 to the actual hard cost of the laboratory tests in order to cover miscellaneous expenses such as the costs of dry ice, shipping and office overhead relating to laboratory testing.

[101] The evidence indicates that for some tests performed, the additional fee charged above the hard costs was significantly greater than the \$250 average. The contested issue between the parties in relation to this allegation is whether such practices were contrary to the College's *Standard of Practice on Sale of Products by Regulated Members*. The relevant portions of that *Standard* state:

- (1) For the purpose of this standard, products include, but are not limited to, any product, device or appliance offered for the diagnosis, cure, alleviation or prevention of disease, disorders or injuries in a patient.
- (2) The regulated member must not sell the product at a price in excess of the fair market price paid by the regulated member plus a reasonable handling cost.

[102] Legal counsel for the Complaints Director submitted that the Standard clearly applied and that lab tests were a product used for the diagnosis of disease, disorders or injuries in a patient.

[103] Legal counsel for Dr. Hoffman argued that the Standard simply does not apply because the lab tests are not a "product" but is rather a "service". She points to another Standard of Practice, the *Standard on Charging for Uninsured Services*, which more naturally contemplates the conduct at issue in this case (although she did not suggest that there was a breach of that Standard either based on these facts). She pointed to the evidence which clearly indicated that the Patient was well aware of the costs of the lab tests and that she chose which tests she would undergo and pay for. In any event, she noted the evidence of Dr. Hoffman and Mrs. MG in relation to the significant overhead costs incurred by the clinic given its size, number of staff, and operations.

[104] The Hearing Tribunal concludes that the lab tests provided by the clinic to the Patient here were "products" as defined in the Standard.

[105] First, is it clear that paragraph 1 of the Standard is meant to incorporate a wide definition of "product". That is clear through the use of "include, but are not limited to". The evidence was that the lab tests would be provided in some cases through a collection device, some of which would be taken home for collection; that suggests that the lab tests involve a product.

[106] The Hearing Tribunal does not accept that lab tests can only be considered a "service" for that reason. While the clinic does provide a service by collecting samples in certain instances and sending the samples for testing at labs in the U.S. or Europe, part of the process involves a product, and that product is clearly used for the purpose of diagnosing disease, disorders or injuries in a patient.

[107] The Hearing Tribunal finds that such an interpretation is consistent with the goal of regulated how regulated members can sell products to patients and the need for the protection of patients in such a transaction.

[108] The Hearing Tribunal also has no problem with concluding that the additional overhead charges imposed by Dr. Hoffman exceed a "reasonable handling

cost". A "reasonable handling cost" relates to the costs associated specifically with "handling" the product which is being sold to the patient. While it may be appropriate to add to the cost of a product the costs of shipping and other costs directly associated with shipping, the evidence before the Hearing Tribunal indicates that the clinic imposed a target mark-up of \$250 for each laboratory test.

- [109] While Dr. Hoffman provided evidence about why that number was recommended and by whom, the obligation in the Standard is his to observe. It is clear that the \$250 mark-up was meant to account for general overhead expenses that exceeded those costs directly associated with handling the product. The Standard does not contemplate a mark-up for general operational expenses. It is not necessary for the Complaints Director to adduce evidence showing that these charges exceed charges imposed by other clinics, nor is it relevant that the Patient in this case willingly paid those additional expenses.
- [110] Patients are often vulnerable and will pay for products which they believe will assist them in diagnosis or recovering from serious illnesses; the Standard ensures that—regardless of a patient's willingness to pay unreasonable costs—they are protected from such a practice. The relevant finding is that the mark-up imposed by Dr. Hoffman were not reasonable handling costs but was rather an attempt to generate revenue to be applied against general operating and variable expenses.
- [111] The factual basis for Allegation 1 is proven, the *Standard* was breached and the Hearing Tribunal finds that the conduct rises to the level of unprofessional conduct. This was not a 'one-off unreasonable costs' associated with a particular product. On the contrary, the average mark-up of \$250 applied to each and every laboratory test provided by Dr. Hoffman's clinic to the Patient. Given the scale of the breach of the Standard, the Hearing Tribunal finds that this amounts to unprofessional conduct.
- [112] The Hearing Tribunal finds Dr. Hoffman guilty of unprofessional conduct for Allegation 1.

Allegations 2 and 3

2. *Between January 2017 and March 2019, [Dr. Hoffman] did fail to collaborate with Dr. JS, neurologist, who was also involved in the care of [the] patient, contrary to Section 1 of the College's Referral Consultation Standard of Practice;*
3. *Between January 2017 and March 2019, [Dr. Hoffman] did fail to collaborate with Dr. AW, neurologist, who was also involved in the care of [the] patient, contrary to Section 1 of the College's Referral Consultation Standard of Practice.*

[113] These allegations focus on an alleged violation of section 1 of the *Referral Consultation Standard of Practice*, which states:

- (1) A regulated member **must** recognize his or her limitations in the delivery of patient care and collaborate as appropriate with other healthcare providers for the benefit of the patient.

[114] The evidence was clear that Dr. Hoffman did not directly reach out to or speak with Drs. JS and AW in his care of the Patient. It is clear that Dr. Hoffman received through the Patient, or as a result of inquiries from his office, specialist letters which set out the results of consultations that the Patient had with those specialists and others. That is, the evidence indicates that Dr. Hoffman gathered information about those other physicians' care and treatment of the Patient, but he did not directly collaborate with them in his treatment of her.

[115] The Hearing Tribunal finds that there was a breach by Dr. Hoffman of section 1 of the Standard but does not find that such a breach represents unprofessional conduct in these circumstances.

[116] The Hearing Tribunal specifically notes that Dr. Hoffman was not the physician who referred the Patient to the specialists; that was done by her family doctor.

[117] Further, it is clear that Dr. Hoffman gathered significant information from the Patient about her health care and obtained updated information through the Patient or through inquiries made by his office staff. The specialists were aware that Dr. Hoffman was involved and that he was overseeing the administration of Mucuna.

[118] Further, Dr. Hoffman's approach was based on functional medicine and was therefore different from the care being provided to the Patient by the specialists.

[119] While there was a lack of direct collaboration, particularly given the similar issues being treated, it is not possible to conclude that this reflected unprofessional conduct on the part of Dr. Hoffman based on these facts.

[120] The Hearing Tribunal finds Dr. Hoffman not guilty of unprofessional conduct in relation to Allegations 2 and 3.

Allegation 4

4. *Between October 2014 and March 2019, [Dr. Hoffman] did fail to record in the patient chart the details provided to the patient, in advance of the provision of the uninsured professional service, contrary to Section 2 of*

the College's Charging for Uninsured Professional Services Standard of Practice.

[121] Legal counsel for the Complaints Director stated in his closing submissions that the totality of the evidence before the Hearing Tribunal did not prove the allegation, and that there was no basis for a finding of unprofessional conduct.

[122] Accordingly, the Hearing Tribunal finds Dr. Hoffman not guilty of unprofessional conduct in relation to Allegation 4.

Allegation 5

5. *[Dr. Hoffman] did charge the Alberta Health Care Insurance Plan for services rendered to the patient, while also charging the patient fees for the same visit, contrary to Section 9 and Section 11 of the Alberta Health Care Insurance Act, occurring on or about one or more of the following dates: a. October 8, 2014; b. January 13, 2015; c. March 30, 2015; d. March 31, 2015; e. April 10, 2015; f. May 25, 2015; g. June 3, 2015; h. June 18, 2015; i. October 30, 2015; j. June 9, 2016; k. October 17, 2016; l. October 28, 2016; m. March 17, 2017; n. July 17, 2017; o. July 21, 2017; p. October 26, 2017; q. March 14, 2018; r. March 21, 2018; s. June 4, 2018; t. August 7, 2018; u. November 20, 2018.*

[123] This allegation focuses on alleged violations of section 9(1) and 11(1) of *Alberta Health Care Insurance Act*, which state:

9(1) No physician or dentist who is opted into the Plan who provides insured services to a person shall charge or collect from any person an amount in addition to the benefits payable by the Minister for those insured services. ...

11(1) No person shall charge or collect from any person

- (a) an amount for any goods or services that are provided as a condition to receiving an insured service provided by a physician or dentist who is opted into the Plan, or
- (b) an amount the payment of which is a condition to receiving an insured service provided by a physician or dentist who is opted into the Plan

where the amount is in addition to the benefits payable by the Minister for the insured service.

[124] It is acknowledged by Dr. Hoffman that he did, in fact, bill both Alberta Health and the Patient for aspects of the same visit on the occasions listed in the Amended Notice of Hearing. His answer to that fact is that he engaged in

both traditional medicine practices and also functional medicine practices during the visit. That, in his view, allowed him to bill for traditional medicine services to Alberta Health, and to bill the Patient for his functional medicine practice. The Complaints Director acknowledges that there are instances where a physician might bill separately for one visit where a patient receives insured services and also uninsured services (such as Botox injections).

[125] However, the issue here relates to the fact that functional medicine involves aspects of traditional medicine which might be dealt with by a family doctor (for example, diet, exercise, supplements). The Complaints Director says that it is a breach of the legislation to bill in the way that Dr. Hoffman did in relation to the Patient.

[126] The Hearing Tribunal finds that Dr. Hoffman billed in a manner which breached section 9 of the *Alberta Health Care Insurance Act*. It is clear based on the records before the Hearing Tribunal that Dr. Hoffman charged Alberta Health for aspects of the Patient's visit to his clinic on the dates noted, but that he also charged the Patient for those visits in accordance with his billing practices. Where he billed Alberta Health, the records indicate that he did not reduce his direct billing to the Patient to account for the billing for insured services to Alberta Health. That is, the records reflect that this was a true "double billing" for the same visit; Dr. Hoffman charges his patient for his time in accordance with his billing practices while billing Alberta Health for aspects of that same visit. This conduct is inconsistent with the plain language of section 9 of the *Alberta Health Care Insurance Act*.

[127] The Hearing Tribunal notes Dr. Hoffman's argument that guidelines issued by the Alberta Medical Association confirm that it is acceptable to bill both Alberta Health and the patient for services provided at the same encounter. The Hearing Tribunal takes no issue with that statement; the problem with Dr. Hoffman's practice is that he failed to delineate which and separate those charges and reduce the fees charged to the Patient where he also charged Alberta Health for his services. He acknowledged that his record keeping in relation to that issue was not ideal, but in order to avoid a violation of the *Alberta Health Care Insurance Act*, the Hearing Tribunal finds that it must be clear that a patient did not also pay for the same services (or time) that was billed to Alberta Health. The *Alberta Health Care Insurance Act* is clearly legislation which applies to Dr. Hoffman and qualifies as unprofessional conduct pursuant to section 1(pp)(iii) of the HPA.

[128] In relation to whether this proven conduct rises to the level of unprofessional conduct, the Hearing Tribunal has considered the fact that the total amount billed to Alberta Health by Dr. Hoffman in relation to the Patient was \$1,389, and that the allegation only relates to \$840 of that total. However, the Hearing Tribunal is of the view that section 9 of the *Alberta Health Care Insurance Act* represents an important element of the public health care system in Alberta. It is a core issue relating to the cost of medical services, and a breach of the obligation set out in it is serious. This is not a one-off

occurrence where an error was made but reflects a practice by Dr. Hoffman to bill the Patient for his time while also receiving compensation from the public health care system for that same time. It is a serious matter and the Hearing Tribunal finds that the proven breaches amount to unprofessional conduct.

[129] The Hearing Tribunal finds Dr. Hoffman guilty of unprofessional conduct for Allegation 5.

Allegation 6

6. *[Dr. Hoffman] did bill the Alberta Health Care Insurance Plan for a visit with the patient, without creating a contemporaneous record of assessment and treatment provided for a visit that occurred on one or more of the following dates: a. July 11, 2018; b. July 18, 2018; c. July 25, 2018; d. August 1, 2018; and e. August 8, 2018.*

[130] The Complaints Director noted that this Allegation is based on the fact that Dr. Hoffman failed to create any chart records for billings to Alberta Health on the dates set out in the Allegation, including one which purported to be a complete physical examination. Legal counsel submitted that the records do not reflect one or two errors, but rather a pattern of multiple failures in a short period of time to abide by Dr. Hoffman's duty to create records for visits billed to Alberta Health.

[131] Dr. Hoffman admitted the factual basis for this Allegation. The focus of his submission was that a small grouping of billing errors in a one-month period, particularly given the four-and-a-half years of care involved here, cannot amount to unprofessional conduct.

[132] The Hearing Tribunal finds that Dr. Hoffman engaged in the conduct set out in the Allegation, and that such conduct is unprofessional conduct.

[133] First, the Hearing Tribunal notes that the obligation to create records is not based on a general best practice obligation, but rather a positive statutory duty set out in section 39 of the *Alberta Health Care Insurance Act*. It is also very well known that a physician must create accurate and timely records of visits with patients. This is not a technical issue of non-compliance with a new or poorly understood requirement. It is a failure to create records of five visits with a long-time patient over the course of a few weeks. It is sufficiently serious to amount to unprofessional conduct. It reflects a lack of judgment in the provision of medical services (s 1(1)(pp)(i), and also represents a violation of the *Alberta Health Care Insurance Act* (s 1(1)(pp)(iii)).

[134] The Hearing Tribunal finds Dr. Hoffman guilty of unprofessional conduct for Allegation 6.

VII. CONCLUSION

[135] For the reasons set out above, the Hearing Tribunal finds Dr. Hoffman guilty of unprofessional conduct in relation to Allegations 1, 5 and 6.

[136] The Hearing Tribunal requests that the parties arrange for submissions on sanction arising from these findings. The Hearing Tribunal also requests that it be provided with any previous findings of unprofessional conduct pursuant to section 81 of the HPA.

[137] If the parties are unable to agree on the manner in which submissions will be made (in writing, orally, or both) they may seek direction from the Hearing Tribunal.

Signed on behalf of the Hearing Tribunal by its Chair:

A handwritten signature in cursive script, appearing to read "Glen Buick".

Mr. Glen Buick

Dated this 25th day of July, 2023.