

COLLEGE OF PHYSICIANS & SURGEONS OF ALBERTA

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

AND IN THE MATTER OF A HEARING REGARDING  
THE CONDUCT OF DR. JOANNE SUK-WAH TSE

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

## **I. INTRODUCTION**

The Hearing Tribunal held a hearing into the conduct of Dr. Joanne Suk-Wah Tse on January 21 and 22, 2021. On January 30, 2021 the Hearing Tribunal issued its decision finding Dr. Tse guilty of unprofessional conduct in respect of one of two allegations in the Notice of Hearing. The Hearing Tribunal requested submissions on sanctions from the parties.

On February 12, 2021 following correspondence from the parties, the Hearing Tribunal provided further directions. The Tribunal directed that it would hold an oral hearing to determine sanctions, and that the Complaints Director should provide his written submissions by March 5, 2021 and Dr. Tse should provide her written submissions by March 19, 2021.

On behalf of the Complaints Director, Mr. Boyer provided written submissions on sanctions on March 5, 2021. Dr. Tse provided an email message on March 12, 2021.

The Hearing Tribunal convened on April 16, 2021 to consider the parties oral and written submissions.

The members of the Hearing Tribunal were Dr. David Sheppard of Edmonton as Chair, Dr. Eric Wasylenko of Okotoks and Mr. James Clover of Sherwood Park as the public member.

Mr. Gregory Sim acted as independent legal counsel for the Hearing Tribunal.

In attendance at the sanctions hearing were Mr. Craig Boyer and Ms. Stacey McPeck, legal counsel for the Complaints Director, and Dr. Joanne Suk-Wah Tse. Dr. Tse elected not to engage legal counsel to assist her.

## **II. PRELIMINARY MATTERS**

Neither party objected to the composition of the Hearing Tribunal or its jurisdiction to proceed with the hearing. There were no preliminary matters raised by either party.

### III. SUBMISSIONS

Mr. Boyer referred to his March 5, 2021 written submission concerning sanctions and costs and had no additional oral submissions. Mr. Boyer's written submissions argued that sanctions in professional discipline cases are intended to achieve two goals, deterrence and rehabilitation. Deterrence includes deterrence of the individual regulated member as well as general deterrence of the profession.

Mr. Boyer argued that the Hearing Tribunal should consider factors identified in *Jaswal v. Medical Board (Newfoundland)*, (1996) 42 Admin. L.R. (2d) 233. While not all of the factors are applicable in this case, the list of factors is:

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

Mr. Boyer submitted that Dr. Tse is a senior physician and she ignored the Alberta Health audit process for many years, even after she signed the Terms of Resolution Agreement with the College. In a publicly funded healthcare system in which physicians bill Alberta Health for insured services to patients, the practice of medicine includes

complying with Alberta Health billing audits. Dr. Tse disregarded these obligations, and her obligations to her own regulatory College.

Dr. Tse had a prior history of complaints that were resolved consensually with Terms of Resolution with the College. These included complaints about the improper termination of the physician-patient relationship (complaint 150410.1); the improper storage and access to several hundreds of patient records (150455.1); and failing to cooperate with the College's investigation process (160311.1). Dr. Tse has also previously been found guilty of unprofessional conduct. In 2018 a Hearing Tribunal found that Dr. Tse committed unprofessional conduct by retaliating against a patient who had made a complaint about her. Dr. Tse had retaliated by commencing a lawsuit against the patient for defamation.

Mr. Boyer submitted that the evidence demonstrated that Dr. Tse has practiced in a very disorganized manner for many years. He said she claimed to be acting solely in the best interests of her patients, yet the evidence suggested that her patients had to accommodate her schedule by coming to see her in the middle of the night. Mr. Boyer also pointed out that the suspension of Dr. Tse's billing privileges under the Alberta Health Care Insurance Plan had no apparent impact upon her.

The Complaints Director therefore proposed the following sanctions orders:

1. That Dr. Tse receive a \$5,000 fine for the breach of the Terms of Resolution Agreement;
2. That Dr. Tse be required, at her own cost, to enter into an Individual Practice Review ("IPR") process directed by the Continuing Competence Department of the CPSA and that she must complete that process within three months from the start date. If Dr. Tse fails to engage in the IPR assessment by June 30, 2021, her practice permit should be suspended until the IPR is completed. The Complaints Director should receive a copy of the IPR assessment report once it is issued.
3. That Dr. Tse implement changes in practice that are recommended by the IPR assessment report.
4. That if there is a disagreement over practice changes that should be implemented by Dr. Tse, that the Hearing Tribunal should retain jurisdiction to determine the nature, scope and duration of any practice conditions to be ordered based on the IPR assessment report.

5. That Dr. Tse be responsible for two-thirds of the costs of the investigation and hearing, to take into account the one charge that was dismissed, but also that the proceedings were necessary.

Mr. Boyer concluded that the sanctions to be imposed should balance deterrence with rehabilitation. The fine will serve as a deterrent, while the IPR will achieve rehabilitation by ensuring that Dr. Tse's practice complies with current standards.

Dr. Tse advised the Hearing Tribunal that she had read Mr. Boyer's March 5, 2021 written submissions, but she had no submissions of her own on the sanctions to be imposed. Her March 12, 2021 email did not make submissions on the appropriate sanctions.

In response to questions from the Hearing Tribunal Mr. Boyer explained that the IPR process involves a College practice reviewer conducting a virtual or in-person review of a selection of the physician's patient charts. Dr. Tse does not use an electronic medical record system so the review would be done using paper charts. The reviewer will review a selection of charts against assessment criteria and then identify any areas requiring improvement. The reviewer will prepare a report and meet with Dr. Tse to review the results. Mr. Boyer clarified that the reviewer will only conduct a chart review. The reviewer will not seek to observe Dr. Tse interacting with her patients.

The Hearing Tribunal also asked how the proposed IPR was logically connected to the finding that Dr. Tse had failed to comply with her Terms of Resolution Agreement. Mr. Boyer explained that Dr. Tse was found to have failed to comply with the Terms of Resolution Agreement in that she failed to comply with Alberta Health processes for the audit and review of claims. Alberta Health billing audits are part of the practice of medicine in a publicly-funded health care system. Dr. Tse's failure to comply with the audit over a lengthy period of time and her failure to comply with her agreement with the College raised concerns about her practice and its management. The IPR is intended to oversee and identify any significant problems with Dr. Tse's practice and its management. It is a remedial practice improvement approach, but it is logically connected to the Hearing Tribunal's finding of unprofessional conduct.

Dr. Tse also responded to this question. She indicated that she would not mind participating in the IPR if that was necessary. Dr. Tse also responded to Mr. Boyer's suggestion that her practice was disorganized. She confirmed that she sees patients in the middle of the night. She said

that her patients choose to see her at these times because she doesn't work that often. She added that she trained in emergency medicine and her patients will sometimes come to see her in the middle of the night after being released from the emergency department. She said that she has over 300 patients who wrote testimonials for her. Dr. Tse also confirmed that her charting is done in English, apart from a few place names that are written in Mandarin.

On the subject of investigation and hearing costs Mr. Boyer submitted that the costs to date were approximately \$35,400.

#### **IV. DECISION**

The Hearing Tribunal has carefully considered the record and the submissions of the parties. The Hearing Tribunal makes the following orders in this case:

1. Dr. Tse shall pay a fine of \$5,000 for the breach of the Terms of Resolution Agreement;
2. Dr. Tse shall be required, at her own cost, to enter into an Individual Practice Review process directed by the Continuing Competence Department of the CPSA and that she must complete that process within three months from the start date. If Dr. Tse fails to engage in the IPR assessment by June 30, 2021, her practice permit will be suspended until the IPR is completed. The Complaints Director should receive a copy of the IPR assessment report once it is issued.
3. Dr. Tse shall implement changes in practice that are recommended by the IPR assessment report.
4. If there is a disagreement over practice changes that should be implemented by Dr. Tse, the Hearing Tribunal shall retain jurisdiction to determine the nature, scope and duration of any practice conditions to be ordered based on the IPR assessment report.
5. Dr. Tse shall pay two-thirds of the costs of the investigation and hearing in this matter, according to a statement of costs to be provided to her.

The Hearing Tribunal was not provided with any other similar cases of unprofessional conduct to compare, but the Tribunal is satisfied that the

above sanctions orders are appropriate and proportionate and they serve the dual objectives of deterrence and rehabilitation. The Tribunal is also satisfied that the sanctions are fair. Dr. Tse did not make submissions opposing the proposed sanctions.

Dr. Tse's proven conduct was clearly unprofessional and serious. The College must be able to rely on physicians to comply with agreements that are used to resolve discipline matters. If the College is unable to rely on such agreements it will undermine the College's ability to regulate the conduct of physicians in order to protect the public.

Dr. Tse is an experienced, senior physician. She should be expected to understand the College's role and standards and be prepared to comply. Dr. Tse's failure to comply with the Terms of Resolution Agreement requires a weighty sanction carefully tailored to the circumstances. A weighty sanction is necessary to achieve the purposes of sanctions and to maintain the public's confidence in the proper regulation of the medical profession.

The Hearing Tribunal considered Dr. Tse's past discipline history but we note her prior unprofessional conduct overlapped in time with the conduct in this hearing, and it was different in nature. The Tribunal did not consider Dr. Tse's past discipline history to be a significant aggravating factor.

The Tribunal also considered that Dr. Tse came to the sanctions hearing and declined to oppose the Complaints Director's proposed sanctions. She said that she would accept the sanctions to be imposed with her head held high and she would not run from them. This can be considered a mitigating factor. There was no evidence in this case that Dr. Tse's conduct caused or contributed to any patient impacts or harm and this can also be considered a mitigating factor.

The Hearing Tribunal found that despite her endorsement of the Terms of Resolution Agreement, Dr. Tse failed to re-engage with Alberta Health and comply with its request for several hundred patient records needed for its audit for nearly two years. Dr. Tse said that she needed time to transcribe her patient records because they were contained on scraps of note paper. This was not an appropriate reason to delay complying with the Alberta Health Audit and the Terms of Resolution Agreement. Dr. Tse acknowledged this, but it supports the need for an IPR of her medical practice. The Hearing Tribunal heard evidence of a number of other concerns about Dr. Tse's practice but those concerns were not the subject of this hearing.

The \$5,000 fine will denounce Dr. Tse's conduct and deter her and other physicians from engaging in any similar type of unprofessional conduct in

the future. The IPR will provide the College with the ability to oversee Dr. Tse's practice and identify and address any significant issues requiring rehabilitation in order to protect the public.

The order for Dr. Tse to pay two-thirds of the costs of the investigation and hearing in this matter is also appropriate. The Hearing Tribunal was advised that the costs of the investigation and hearing up to April 16, 2021 are approximately \$35,400. Even allowing for the likely increase in this amount to account for the sanctions hearing, the Hearing Tribunal considered this to be within a reasonable range.

While one of the two allegations in the Notice of Hearing was dismissed, other considerations are also relevant. The investigation and hearing into this matter were necessary because of Dr. Tse's proven failure to comply with the Terms of Resolution Agreement. The Terms of Resolution Agreement was itself a means to resolve other complaints without the need for hearings. Dr. Tse had many opportunities to comply with Alberta Health and with the Terms of Resolution Agreement over a period of years. If she had done so earlier the costs could have been minimized, or avoided altogether. The order for costs appropriately recognizes that the College should bear some portion of the overall costs, but the majority of those costs should fall upon the physician whose conduct was determined to have been unprofessional. Otherwise the College and its regulated members would bear the costs of regulating Dr. Tse's proven unprofessional conduct.

Signed on behalf of the Hearing  
Tribunal by the Chair



May 17, 2021

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Dated:

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Dr. David Sheppard