

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. BARRY WOLLACH

**DECISION OF THE HEARING TRIBUNAL OF
THE COLLEGE OF PHYSICIANS
& SURGEONS OF ALBERTA
MAY 1, 2024**

I. INTRODUCTION

1. The Hearing Tribunal held a hearing into the conduct of Dr. Barry Wollach on May 10, 2023. The members of the Hearing Tribunal were:

Ms. Naz Mellick of Edmonton as Chair and public member;
Dr. Neelam Mahil of Edmonton;
Dr. Neelan Pillay of Calgary;
Mr. Douglas Dawson of Edmonton (public member).

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

Also in attendance at the hearing were:

Mr. Craig Boyer, legal counsel for the Complaints Director;
Dr. Barry Wollach;
Mr. Tim Ryan, legal counsel for Dr. Wollach.

II. PRELIMINARY MATTERS

2. Neither party objected to the composition of the Hearing Tribunal or its jurisdiction to proceed with the hearing. There were no matters of a preliminary nature.

III. CHARGES

3. The Notice of Hearing listed the following allegation:

On or about October 28, 2019, you were convicted of an offence under Section 271 of the *Criminal Code of Canada* relating to events on or about November 4, 2016, when you did commit a sexual assault on Ms. X.

IV. EVIDENCE

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

Exhibit 1: Agreed Exhibit Book

Tab 1: Notice of Hearing dated May 10, 2023

Tab 2: Dr. Michael Caffaro, Assistant Registrar and Complaints Director, Section 56 memo to file dated January 17, 2019

Tab 3: Undertaking of Dr. Barry Wollach dated January 16, 2019

Tab 4: Agreement between Dr. Barry Wollach and the College of Physicians & Surgeons of Alberta dated February 18, 2020

Tab 5: Certificate of Conviction dated October 21, 2019

Tab 6: *R. v. Wollach*, 2022 SCCA – leave denied on November 3, 2022

Tab 7: College of Physicians & Surgeons of Alberta, Physician profile for Dr. Barry Wollach

Tab 8: College of Physicians & Surgeons of Alberta, registration history for Dr. Barry Wollach

Exhibit 2: Admission and Joint Submission Agreement

5. Counsel for the Complaints Director also filed the following materials:
 - a. Brief of Law Regarding Joint Submissions dated March 29, 2023.
6. Counsel for the Complaints Director cited the following decisions in support of the Joint Submission Agreement on penalty:
 - a. *Alberta College of Physicians and Surgeons Re Malik*, July 11, 2022;
 - b. *Alberta College of Physicians and Surgeons Re Verma*, June 16, 2022;
 - c. *Struck (Re)*, 2015 CanLII 103209 (AB CPSDC);
 - d. *Nqumayo (Re)*, 2011 CanLII 61677 (AB CPSDC);
 - e. *Cooper, Re*, 2003 CanLII 57468 (AB CPSDC);
 - f. *Levin, Re*, 2015 CanLII 103209 (AB CPSDC)

V. SUBMISSIONS REGARDING ALLEGATION

Submissions on Behalf of the Complaints Director

7. Prior to commencing his submissions, Mr. Boyer thanked Mr. Ryan for his cooperation and assistance with the Admission and Joint Submission Agreement.
8. In his submissions, Mr. Boyer reviewed the contents of the Agreed Exhibit Book and highlighted the following:
 - The Notice of Hearing in Exhibit 1 alleging Dr. Wollach had been convicted of sexual assault;
 - The Certificate of Conviction dated October 21, 2019.
9. Mr. Boyer advised that the matter of Dr. Wollach’s conviction came before the College in January 2019. At that time Dr. Wollach signed an undertaking to withdraw from practice. Until then, Dr. Wollach practised as an anaesthesiologist. He retired in December 2019 and has remained out of practice.

10. Mr. Boyer advised the Hearing Tribunal that the Provincial Court of Alberta issued a conviction of sexual assault against Dr. Wollach, who then appealed to the Alberta Court of Appeal, which upheld the conviction. Subsequently Dr. Wollach applied for leave to appeal to the Supreme Court of Canada. His application was denied on November 3, 2022. Mr. Boyer indicated that the College proceeded with its allegations against Dr. Wollach once he had exhausted the appeals process.
11. Mr. Boyer advised that the Exhibit Book did not include either the Provincial Court decision or the Court of Appeal decision, even though both decisions are publicly available on the CanLII database. The exclusions of the court decisions from the Exhibit Book were made at the request of Dr. Wollach as his admission pertained only to the fact that he was charged and convicted of sexual assault and not to the underlying facts of the charge itself.
12. Mr. Boyer submitted that, in accordance with the HPA, unprofessional conduct includes situations where a member has been found to have contravened another enactment that applies to the profession, and the Criminal Code is an enactment that applies to the profession.
13. Mr. Boyer reviewed CPSA decisions where members were found guilty of serious Criminal Code violations that established the basis of findings of unprofessional conduct.
14. Mr. Boyer submitted that given that Dr. Wollach was convicted of sexual assault under the Criminal Code and given that the Criminal Code is an enactment applicable to the HPA, his conduct should be considered unprofessional conduct within the meaning of the HPA.

Submissions on Behalf of Dr. Wollach

15. Mr. Ryan advised that Dr. Wollach had no intention of practising medicine in the future. However, Mr. Ryan stated that Dr. Wollach felt he was wrongfully convicted and wished to preserve the right to pursue any potential legal remedy that may be available to him.
16. Mr. Ryan submitted that the Joint Submission Agreement leaves open the issue of whether Dr. Wollach can be reinstated to practice, but that issue was not before the Tribunal at these proceedings.

VI. FINDINGS REGARDING ALLEGATION

17. The Hearing Tribunal carefully reviewed and considered the evidence and the parties' submissions. The Tribunal found that the charge in the Notice of Hearing is proven on a balance of probabilities. Further, the Tribunal found the allegation constitutes unprofessional conduct under section 1(1)(pp)(iii) and (xii) of the HPA as follows:

1(1) *In this Act,*

(pp) *"unprofessional conduct" means one or more of the following, whether or not it is disgraceful or dishonourable:*

- (iii) *contravention of another enactment that applies to the profession;*
- (xii) *conduct that harms the integrity of the regulated profession*

VII. Reasons

18. Dr. Wollach was charged with sexual assault contrary to section 271 of the Criminal Code. Justice B.C. Stevenson presided over the trial and found Dr. Wollach guilty of sexual assault. Given the findings of the court in the criminal proceedings and the decisions of the courts on further appeals, the Tribunal confirms that it is bound by Justice Stevenson's verdict.
19. Further, in the Admission and Joint Submission Agreement (Exhibit 2), Dr. Wollach admitted he was convicted of sexual assault, and admitted that the conviction amounted to unprofessional conduct.
20. Dr. Wollach's admission that the allegation is true was supported by the evidence presented in the Agreed Exhibit Book. As indicated by Exhibit 1, the College received notification from the Calgary Police Service that Dr. Wollach had been charged with one count of sexual assault arising from an incident in 2016. The allegation concerned a victim who was not a patient nor professionally connected to Dr. Wollach. In light of the criminal charge, the Complaints Director opened a complaint against Dr. Wollach.
21. Dr. Wollach then signed an undertaking with the College on January 16, 2019, where he agreed to withdraw completely from practice in Alberta until the College completed an investigation into the Complaint and the matter was fully adjudicated.
22. On October 21, 2019, the Alberta Court of Justice issued a Certificate of Conviction stating that on November 5, 2016, Dr. Wollach committed sexual assault contrary to section 271 of the Criminal Code of Canada. The Certificate of Conviction also indicated that Dr. Wollach was sentenced to imprisonment for 30 months.
23. Given the above, the Tribunal found there was sufficient evidence to establish that the allegation against Dr. Wollach was proven on a balance of probabilities. Furthermore, Dr. Wollach's conviction constitutes unprofessional conduct, as it is a serious violation of the Criminal Code and thus a contravention of another enactment that applies to the profession.

24. The Tribunal found Dr. Wollach's conviction of sexual assault is an egregious and reprehensible criminal act that cannot be reconciled with public expectations of an ethical physician. Dr. Wollach's criminal conviction places him beyond the pale of the profession because he failed to respect the fundamental dignity and humanity of his victim. For these reasons, Dr. Wollach's conduct harms the integrity of the medical profession that is inherently a trust profession and constitutes unprofessional conduct.

VIII. SUBMISSIONS ON SANCTION

Submissions on Behalf of the Complaints Director

25. Mr. Boyer began by referring to the College's Brief of Law on Joint Submissions and highlighted the law that tribunals should give significant deference to a joint submission on sanction and should only be rejected if it is manifestly unjust and would not serve the interests of justice if accepted.
26. In terms of the *Jaswal* principles (*Jaswal v Medical Board (Newfoundland)* (1996), 431 APR 181 (Nfld SCTD)), Mr. Boyer confirmed that rehabilitation did not apply in this case given the gravity of Dr. Wollach's conduct. Mr. Boyer submitted that in prior CPSA decisions where physicians were convicted of serious criminal code violations, these convictions formed the basis of findings of unprofessional conduct and the revocation or cancellation of the members' registration.
27. Mr. Boyer reiterated that Dr. Wollach had already retired from the practice of medicine. However, in accordance with section 3 of the HPA, the CPSA is obligated to serve the public interest by ensuring accountability and transparency regarding Dr. Wollach's conduct.
28. Mr. Boyer submitted that Dr. Wollach should be responsible for costs set at \$8,500.00, which were the full costs up to the hearing but did not include the costs of the hearing itself. Mr. Boyer stated the amount was negotiated between the parties and accounted for Dr. Wollach's cooperation thereby resulting in an efficient hearing process.

Submissions on Behalf of Dr. Wollach

29. Mr. Ryan had no further submissions and confirmed to the Tribunal that substantial negotiations occurred between the parties to arrive at the Admission and Joint Submission Agreement.

IX. FINDINGS AND REASONS REGARDING SANCTION


30. The Tribunal carefully considered the parties' submissions and reviewed the evidence and the College's Brief of Law. The Tribunal is aware that significant deference is owed to joint submissions on sanction and ought not to reject it unless the proposed sanction is contrary to the public interest and would bring the administration of justice into disrepute.

31. The Tribunal found that the proposed sanction was appropriate regarding the relevant *Jaswal* factors and served as an appropriate deterrent to the profession at large and as protection of the public.
32. The Tribunal agrees the cases cited by the College to determine the appropriate sanction are applicable in this matter. In 2000, the Alberta Court found Dr. Cooper guilty of manslaughter. He was unsuccessful in his appeals, and based on the manslaughter conviction, the College ordered Dr. Cooper's name struck from the Alberta Medical Register effectively cancelling his practice permit.
33. Dr. Verma was found guilty in criminal court of possession of child pornography. On this basis, the College subsequently cancelled his practice permit and registration.
34. Drs. Nqumayo and Levin were found guilty in the Alberta courts of sexually assaulting their patients. Both physicians were unsuccessful in appealing their convictions. The College proceeded with disciplinary action against them, which included revocation of their respective practice permits and registration.
35. The Tribunal notes that Dr. Wollach's conviction did not involve patients. Regardless, sexual assault against any individual is reprehensible conduct that cannot be reconciled with the public's expectations of an ethical physician. Such behaviour cannot be tolerated of a professional placed in a unique and highly sensitive trust position *vis-a-vis* the public, and therefore that warrants the most significant sanction from the College.
36. Regarding costs, the Tribunal found that \$8,500.00 as proposed by the parties is appropriate because Dr. Wollach's matter proceeded by way of a consent hearing, and his admission prevented a potentially lengthy hearing process. Additionally, \$8,500.00 is reasonable as the amount reflects the costs up to the hearing of this matter.
37. The Tribunal notes that Dr. Wollach has retired from practice. Nonetheless, a public hearing is required in the interests of transparency and accountability and to maintain the public trust in the College's ability to regulate the profession and provide relevant direction to its members.
38. In light of the above, and in accordance with the parties' fully signed Admission and Joint Submission Agreement, the Tribunal finds that cancellation of Dr. Wollach's practice permit and registration in addition to payment of costs are appropriate in the circumstances.

X. ORDERS

39. The Hearing Tribunal hereby orders pursuant to section 82 of the HPA:
- a. Dr. Wollach's practice permit and registration shall be cancelled effective immediately.
 - b. Dr. Wollach shall be responsible for payment of a portion of the costs of the investigation and hearing set at \$8,500.00.
40. Due to circumstances that arose following the hearing, Hearing Tribunal Member Dr. Neelam Mahil, who participated in the hearing and subsequent deliberations and decision-making for this matter, did not participate in finalizing this written decision. The decision was finalized with three members pursuant to section 16(3) of the HPA.

Signed on behalf of the Hearing Tribunal by the Chair:

A handwritten signature in black ink, appearing to read 'Naz Mellick', written in a cursive style.

Ms. Naz Mellick

Dated this 1st day of May, 2024.