

COLLEGE OF PHYSICIANS & SURGEONS OF ALBERTA

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

AND IN THE MATTER OF A HEARING REGARDING  
THE CONDUCT OF DR. ALAN N. LIN

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

## **I. INTRODUCTION**

The Hearing Tribunal held a hearing into the conduct of Dr. Alan N. Lin on June 19, 2020. The members of the Hearing Tribunal were:

Dr. Vonda Bobart of Edmonton as Chair;  
Dr. Neelam Mahil of Edmonton; and  
Ms. Nancy Brook of Ryley (public member).

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

In attendance at the hearing were:

Mr. Craig Boyer of Shores Jardine LLP, legal counsel for the Complaints Director of the College of Physicians & Surgeons of Alberta and Ms. Aizlynn Regan, articling student with Mr. Boyer's firm;

Dr. Alan N. Lin; and

Mr. Tim Ryan and Ms. Shayla Stein of Gowlings WLG, legal counsel for Dr. Alan N. Lin.

## **II. PRELIMINARY MATTERS**

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**

The Notice of Hearing listed the following allegation of unprofessional conduct:

1. That on December 13, 2017, you did fail to adequately supervise your resident Anna Steve during an operation on your patient, [REDACTED], with the result being that your patient's scaphoid bone was surgically removed in error.

## **IV. EVIDENCE AND SUBMISSIONS**

The following Exhibits were entered into evidence during the hearing:

Exhibit 1: Agreed Exhibit Book containing the Notice of Hearing, the original complaint, response form Dr. Lin, expert opinion, the patient's chart, telephone interviews and other documentation.

## Exhibit 2: Admission and Joint Submission Agreement

Mr. Boyer began by explaining that the Complaints Director and Dr. Lin had reached an agreement that they would put before the Hearing Tribunal pursuant to section 70 of the Health Professions Act.

Mr. Boyer then explained that this case arises from a procedure to remove the complainant's trapezium on December 13, 2017. Dr. Lin was the attending surgeon, but a third year resident performed the surgery while Dr. Lin was to be providing supervision. In the course of the surgery, the patient's scaphoid bone was erroneously removed instead of the trapezium. The bones of the wrist are very small and the error likely resulted from the misidentification of anatomical landmarks. The error was detected after the surgery was complete. Upon learning of the error, Dr. Lin met with the patient to explain what occurred and accepted responsibility for the error. The issue arising for the Hearing Tribunal to consider is whether Dr. Lin's failure to properly supervise the resident amounted to unprofessional conduct.

Mr. Boyer then identified key excerpts from the Agreed Exhibits. Mr. Boyer submitted that the error was very significant for the complainant patient, in that the wrong bone was removed from her wrist. Had proper supervision been provided, proper anatomical landmarking would have been performed by the resident and verified by Dr. Lin. Mr. Boyer identified Dr. Lin's admission of unprofessional conduct and submitted there was more than sufficient evidence to support that admission and to permit the Hearing Tribunal to accept it.

Mr. Ryan submitted that the experts agreed that removing the wrong bone from the patient's wrist was a breach of the standard of care. The College's expert suggested that it was an egregious error and unprofessional conduct, but Dr. Lin's expert disagreed and suggested Dr. Lin's conduct in supervising the resident did not reach the level of unprofessional conduct. Despite that disagreement, Dr. Lin accepted that the error ultimately resulted from his failure to properly supervise and he agreed that his conduct was unprofessional.

## **V. FINDINGS**

In Dr. Lin's signed admission, he admits that on December 13, 2017 he failed to adequately supervise his resident during an operation on his patient. Dr. Lin failed to detect and prevent the removal of the wrong bone from the patient's wrist. Dr. Lin admitted that the allegation in the Notice of Hearing was true and that his conduct was unprofessional conduct.

The Hearing Tribunal reviewed the evidence in the agreed exhibits and decided to accept Dr. Lin's admission of unprofessional conduct.

In the complaint reporting form, the complainant explained that Dr. Lin was to have performed surgery to reduce pain she was experiencing in her wrist on December 13, 2017. After the surgery, she remembered Dr. Lin coming to see her while she was recovering in the recovery room. She recalled Dr. Lin explaining that the wrong bone had been removed. When she and her husband returned to see Dr. Lin in follow-up on December 18, 2017, he explained that there had been a mistake and he apologized to her for removing the wrong bone. Dr. Lin explained that a further surgery may be needed in the future to adequately support the wrist. The complainant was distraught.

Dr. Lin responded to the complaint. He is a plastic surgeon practicing mainly in the area of reconstructive plastic surgery, with a clinical specialization in hand and wrist surgery.

Dr. Lin explained that the surgery he scheduled for the complainant on December 13, 2017 was a left-hand trapezial excision and hematoma distraction arthroplasty. Pre-operatively Dr. Lin reviewed the complainant's x-rays and his chart to confirm the diagnosis and the operative plan. He also completed a surgical briefing prior to anesthesia, and prior to incision of the skin, he completed a surgical time-out to again confirm the plan of trapezial excision. Dr. Lin had a senior plastic surgery resident working with him on December 13, and he reviewed the operative plan and determined that the resident was capable of performing the procedure under his supervision.

Dr. Lin sat on the opposite side of the table from where he would normally sit if performing the procedure himself. His response stated that the procedure was a bit more technically challenging than normal, but not so much that he was concerned about possible errors. Dr. Lin said that he directly supervised the entire procedure from beginning to end and he

accepted full responsibility for the procedure and the outcome. He documented the error in the operative report. Dr. Lin explained that following the procedure he used fluoroscopy to x-ray the complainant's wrist and he immediately identified that the scaphoid had been removed instead of the trapezium. He considered the possible options and decided to leave the trapezium in place and close the wound. Dr. Lin felt that removing the scaphoid would have offloaded the trapezial metacarpal joint and he expected to see an improvement in the complainant's pain despite the surgical error.

Following the surgery, Dr. Lin attempted to speak with the complainant in the recovery room and to apologize to her. He indicated he would contact her the next day to reiterate the information in case the effects of the anesthesia made it difficult to remember. Dr. Lin said that he called the complainant the following day and again explained the error and apologized. He also offered the complainant multiple opportunities to ask questions. He saw her in follow-up in his office, along with her husband several days later, on December 18, 2017. He again apologized and explained what had occurred. He reviewed the pre-operative x-rays and explained what should have been done in the surgery. He also explained that there was radiologic and pathologic evidence of scaphoid arthritic changes along with trapezial metacarpal arthritis, and that future surgical stabilization might be necessary.

The College obtained an expert opinion statement from Dr. Michael Morhart. Dr. Morhart opined that the surgical error made under Dr. Lin's supervision fell below the standard of care and it was egregious and therefore unprofessional. Dr. Lin obtained an expert opinion statement from Dr. Sean Bristol. In Dr. Bristol's opinion, the error did breach the standard of care but it was not so egregious to amount to unprofessional conduct on the part of Dr. Lin. Dr. Bristol opined that Dr. Lin performed appropriate pre-operative checks but mistakenly the wrong bone was removed. While Dr. Lin could have used intraoperative x-rays to confirm the correct bone prior to removal, this is not routine and not considered the standard of care.

Despite the conflicting expert opinions, the Hearing Tribunal accepted Dr. Lin's own admission that he was ultimately responsible as the supervising surgeon and his failure to prevent the error through supervision was unprofessional conduct. The Tribunal finds the allegation proven and that Dr. Lin's conduct was unprofessional conduct.

## VI. SUBMISSIONS ON ORDERS

Mr. Boyer provided submissions on sanctions. He presented the joint submission on sanctions in the Admission and Joint Submission Agreement, which provided for Dr. Lin to receive a caution, and for Dr. Lin to be responsible for 75% of the costs of the investigation and hearing before the Hearing Tribunal.

Mr. Boyer submitted that Dr. Lin should be commended for his professionalism and his acceptance of responsibility in his response to this complaint. Mr. Boyer then described several relevant sanctioning factors from *Jaswal v. Medical Board (Newfoundland)*, 1996 CanLII 11630 (NLSC). Mr. Boyer pointed out that Dr. Lin has already modified his approach to his practice. He now uses a hypodermic needle to mark the trapezium – carpometacarpal joint to be sure he has properly identified the trapezium when performing similar procedures. As a result there is no need for the sanctions to achieve a remedial effect. Deterrence is important, but the jointly submitted caution would adequately deter Dr. Lin as well as others in the professional from lowering their standards for supervision of residents. Mr. Boyer characterized a caution as a type of warning, without the punitive implications of a reprimand although he acknowledged that there is no clear differentiation between a caution and a reprimand. Mr. Boyer then referred the Tribunal to the case of *R. v. Anthony-Cook*, 2016 SCC 43 (S.C.C.), in which the Supreme Court of Canada explained the principle that requires the Hearing Tribunal to defer to a joint submission on sanctions provided it is in the public interest.

Mr. Ryan submitted that all professionals will make a mistake at some point. There is always question whether an error is an innocent error or whether it amounts to unprofessional conduct. He said that Dr. Lin ultimately concluded that this error was his responsibility, and so he entered his admission of unprofessional conduct and agreed to a joint submission on sanctions. Mr. Ryan then commented on the jointly submitted sanction of a caution. A caution is the “entry-level” of sanctions. It brings the issue to the professional’s attention, but it is not punitive in nature. Given Dr. Lin’s very minor unprofessional conduct, a caution is all that is appropriate. Mr. Ryan also highlighted that upon realizing what had occurred, Dr. Lin went immediately to his patient to report the error, apologize and offer information. This signals an early willingness to accept full responsibility and this is a mitigating factor. Mr. Ryan also explained that the jointly submitted proposal for Dr. Lin to pay 75% of the investigation and hearing costs was in recognition that there

were other charges that the Complaints Director elected not to proceed with.

## **VII. ORDERS**

The Hearing Tribunal makes the following orders pursuant to section 82 of the *Health Professions Act*:

1. Dr. Lin shall receive a caution; and
2. Dr. Lin shall be responsible for 75% of the costs of the investigation and the hearing before the Hearing Tribunal.

## **VIII. REASONS FOR ORDERS**

The Hearing Tribunal carefully considered the Admission and Joint Submission Agreement. The Tribunal decided to accept the jointly submitted sanctions and hereby imposes a caution and an order that Dr. Lin shall pay 75% of the investigation and hearing costs.

In coming to its decision, the Hearing Tribunal considered several relevant factors from *Jaswal v. Medical Board (Newfoundland)*, cited by Mr. Boyer. In particular, the Tribunal considered the following:

1. The nature and gravity of the proven allegation

The patient had the wrong bone excised and her original problem of osteoarthritis was not treated. She may suffer instability of her hand. Dr. Mohart, one of the expert witnesses said that he has never had this happen to him in his 20 years of clinical practice and he felt that taking the wrong bone was not a reasonably expected complication or outcome of trapeziectomy surgery.

On the other hand, Dr. Bristol referred to the literature and commented that the wrong bone is sometimes removed and teaching residents can be a factor that leads to this error. He referenced that Dr. Lin made appropriate pre-operative checks and he had previous experience working with the resident. While intraoperative fluoroscopy could be used to verify the correct bones, this is not required by the standard of care.

On balance the Hearing Tribunal considered this to be a neutral factor with respect to sanctions. Dr. Lin's conduct was not so grave as to require more than a caution.

2. The age and experience of the offending physician

Dr. Lin is a qualified, licensed plastic surgeon who has been practising since 1996. His practice comprises hand and wrist surgery as well as reconstructive plastic surgery. He had performed surgeries on the patient prior. These were all uneventful. There is no question that Dr. Lin is an experienced surgeon and a senior member of the profession. Inexperience and young age are not mitigating factors in this case.

3. The previous character of the physician and in particular the presence or absence of any prior complaints or convictions; the number of times the offence was proven to have occurred

The evidence is that this was Dr. Lin's first incident in which the scaphoid was erroneously excised. Dr. Lin has not had any other complaints of unprofessionalism. He admitted his responsibility right away to the patient and kept following up with her. His response to the College was also forthright.

4. The role of the physician in acknowledging what had occurred

Dr. Lin has taken full responsibility for the error with the patient and with the College. He is to be commended for this and this is to be treated as a mitigating factor. Dr. Lin's approach saved having to call witnesses and the time and difficulties that go with a contested hearing.

5. The need to promote specific and general deterrence and, thereby, to protect the public and ensure the safe and proper practice of medicine. The need to maintain the public's confidence in the integrity of the medical profession

The Hearing Tribunal has considered Dr. Lin's approach to this matter and accepts that a caution, the least severe possible sanction is appropriate to apply in this case. The Tribunal is confident that Dr. Lin will have learned from this error and it is very unlikely to be repeated by Dr. Lin. The Tribunal also believes that a caution sends an appropriate deterrent message to other members of the profession.

6. 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



As above, there is some dispute among the experts engaged by the Complaints Director and by Dr. Lin as to whether Dr. Lin's supervision failure amounted to unprofessional conduct. Despite this dispute, Dr. Lin chose to admit unprofessional conduct and enter into a joint submission on sanctions. This is a mitigating factor given Dr. Lin's cooperation and acceptance of responsibility and his generally exemplary approach to managing a patient concern about his care.

7. The range of sentence in other similar cases. The parties provided two previous case summaries, in order to illustrate that cautions have previously been used and in what circumstances. In the case of Dr. Adams in 2013, the Hearing Tribunal imposed a caution, required the physician to abide by a condition and pay 100% of the costs. In the case of Dr. Hennig, deficiencies in medical record keeping and coordination of follow-up care also warranted a caution. Dr. Hennig was ordered to pay 50% of the costs. This sanction falls in between 2 previous sanctions where one case, the physician, Dr. Adams in 2013 had to pay 100% of costs and the other physician Dr. Henning in 2017 had to pay 50%.

The Hearing Tribunal also considered that other College Hearing Tribunals have adopted the reasoning in *R. v. Anthony-Cook* when considering joint submissions on sanctions. The Supreme Court of Canada set out the test against which to measure the acceptability of a joint submission. The bar is high to reject a joint submission on sanctions. The Tribunal must accept a jointly proposed sanction, unless the proposed sanction would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

Joint submissions on sanctions are vitally important to the well-being of the justice system at large. Generally, such agreements are unexceptional and they are readily approved. In rare cases, a joint submission on sanctions will be unduly lenient or perhaps unduly harsh. In those instances, judges (or professional regulation tribunals) are not obliged to go along with the proposed penalty. However, a joint submission should not be rejected unless it fails to meet the public interest test: a trial judge (or tribunal) should not depart from a joint submission on sanctions unless the proposed sanctions would bring the administration of justice into disrepute or is otherwise contrary to the public interest. A joint submission on sanctions is a form of resolution agreement that was negotiated by the parties to reflect the interests of both the public and the member, in light of the facts to which the member had agreed. The parties have a right to a high level of confidence that their joint position will be accepted.

The Tribunal considered the jointly proposed sanctions against that test, and after thorough deliberation, accepted the joint submission as appropriate.

Signed on behalf of the Hearing  
Tribunal by the Chair



August 19, 2020

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Dated

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Dr. Vonda Bobart