

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. JOHANN MARITZ

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

INTRODUCTION

[1] The Hearing Tribunal held a hearing into the conduct of Dr. Johann Maritz on November 13 and 14, 2017. The members of the Hearing Tribunal were:

- Dr. John Pasternak of Medicine Hat (Chair),
- Dr. William Craig of Edmonton, and
- Ms. Archana Chaudhary of Edmonton (public member)

(collectively, the “Panel”).

[2] Mr. Fred Kozak, Q.C. was present, acting as Independent Legal Counsel for the Hearing Tribunal. Mr. Michael Swanberg, Mr. Kozak’s associate, was also present.

[3] Also present was Mr. Craig Boyer, legal counsel for the Complaints Director of the College of Physicians & Surgeons of Alberta and, representing Dr. Johann Maritz was Ms. Valerie Prather, Q.C. legal counsel, and Matt LeFleche, Ms. Prather’s associate. Dr. Johann Maritz was present.

[4] There were no objections to the composition of the Hearing Tribunal or the jurisdiction of the Hearing Tribunal to proceed with a hearing.

I. PRELIMINARY MATTERS

[5] Both Mr. Boyer and Ms. Prather presented to the Panel the four allegations against Dr. Maritz and explained to the Panel that Dr. Maritz had agreed to the first three allegations. The Panel was presented an Agreed Statement of Facts (Exhibit 35). The Panel advised both Counsels that it accepted the Agreed Statement of Facts and the admission of guilt by Dr. Maritz for the first three allegations. A book of Agreed Exhibits numbered 1 through 34 was accepted into evidence by the Panel and marked as Exhibits 1-34.

[6] Mr. Boyer outlined for the Panel that he intended to introduce evidence pertaining to Allegation #4 from the Notice of Hearing and, Ms. Prather outlined her planned witnesses that would pertain to the defense of Allegation #4 as well as witnesses who would attest to the role of Dr. Maritz’s Practice Monitor which would pertain to the argument for penalty on the first three allegations. She also proposed to call Dr. Louise Webb to testify regarding Dr. Maritz’s psychological treatments and his prospects for the future, as well as Dr. Maritz himself in defense of the Allegation #4.

[7] Ms. Prather noted the presence of a reporter from the Edmonton Journal in the gallery, and made an application to either direct a publication ban on the names of Ms. A and her child, or close the hearing due to privacy concerns regarding the nature of Allegation #1. Allegation #1 pertains to an improper relationship Dr. Maritz allegedly had with the complainant, who we will refer to as “Ms. A.” Ms. A later had a child, and there were some questions, for a time, regarding whether Dr. Maritz might be the father of that child. Ms. Prather’s concern was that, since Dr. Maritz practices in a very small community, publication of details surrounding Allegation #1, including the name of the complainant, could lead to negative intrusions on the child’s privacy.

[8] Mr. Boyer submitted that the Panel's jurisdiction to resolve this concern was restricted to determining whether to open or close the hearing to the public, either in whole or in part, and the Panel did not have jurisdiction to order a publication ban over the names of individuals. Mr. Boyer noted the Panel may decide to close a hearing where portions of testimony could adversely affect a person's confidential health, property or financial information that would outweigh the desirability of having the hearing open to the public, citing section 78(1) of the *Health Professions Act*, RSA 2000, c H-7 [HPA] in support:

78(1) A hearing is open to the public unless

- a) the hearing tribunal holds the hearing or part of the hearing in private on its own motion or on an application of any person that the hearing or part of the hearing should be in private
 - (i) because of probable prejudice to a civil action or a prosecution of an offence,
 - (ii) to protect the safety of the person or of the public,
 - (iii) because not disclosing a person's confidential personal, health, property or financial information outweighs the desirability of having the hearing open to the public,
 - (iv) because the presence of the public or complainant could compromise the ability of a witness to testify, or
 - (iv) because of other reasons satisfactory to the hearing tribunal,

[9] Mr. Kozak advised that, because his firm acts as Counsel for the Edmonton Journal, he was in a conflict of interest and could not provide any advice to the Panel on this particular matter.

[10] The Panel notes that Ms. Prather's application to restrict the publication of Ms. A's and her child's names came after she had mentioned Ms. A's name on the record during her opening statements. Regardless, the Panel considered the application and whether it should apply to the remainder of the hearing.

[11] The Panel was satisfied that publication of the complainant's name with respect to Allegation #1 could have a deleterious effect on her child. This is particularly a concern in this case, where all of the principal individuals involved live in a small community where everyone knows everyone else. That being said, the Panel is mindful that section 78 of the *Health Professions Act* (the "HPA") imposes a presumption that disciplinary hearings are to be open to the public unless a compelling reason exists to close the hearing. The Panel understands that public hearings are important to maintain the public's confidence in the disciplinary process, and to maintain public confidence in the system of self-regulation established pursuant to the HPA more generally. The Panel was also satisfied that it did not have jurisdiction to order a publication ban with respect to the name of the complainant in Allegation #1.

[12] Accordingly, the Panel asked counsel to advise it if questions pertaining to Allegation #1 were going to be asked either on direct or cross-examination, and the Panel proceeded to close the hearing to the public for only those portions of testimony which touched on Allegation #1. The Panel also requested that counsel take care to refrain from mentioning the complainant's name with respect to Allegation #1 on the record. Otherwise, all other portions of the hearing remained open to the public, including the media. This ruling applies to all transcripts from the

hearing as well – the public shall not have access to those portions of the transcript involving those parts of the hearing that were closed to the public. The Panel addressed the journalist from the Edmonton Journal in the gallery and asked if she would give an undertaking to not disclose the identity of Ms. A or her child. After seeking instructions from her editor, the reporter agreed to that undertaking. Lastly, these reasons have been edited to ensure that the complainant's name does not appear, and is replaced by "Ms. A" throughout. The name of the complainant's child also does not appear in these reasons. The Panel is satisfied that this ruling strikes an appropriate balance between protecting the privacy interests of an innocent third party, the child of Ms. A, and fostering public confidence in the disciplinary process established under the HPA by otherwise ensuring that as much of the hearing remains open to the public (and the media) as possible.

[13] The Panel notes that, in future hearings, applications of this nature should be made at the outset, before opening statements take place. The efficacy of this ruling is slightly undermined by the fact that Ms. A's name was mentioned on the record while members of the public, including the media, were present before the application to close the hearing was made. The Panel thanks the reporter from the Edmonton Journal for giving her undertaking to not disclose the name of Ms. A or her child despite those names being disclosed on the record while she was present.

[14] At the conclusion of the hearing, it was agreed that the Panel would recess to first render a written decision on the disputed allegation (Allegation #4), and whether that allegation gives rise to a finding of unprofessional conduct. A decision on sanction was reserved pending the outcome of the disputed Allegation #4. The Panel also heard evidence with respect to Allegations #1, #2 and #3 which will be relevant at a later date when determining the appropriate sanction for those charges. This decision summarizes all of the evidence heard by the Panel, including evidence relevant to the sanctions stage, which will be dealt with in a future decision after both parties have been given an opportunity to present legal argument on the appropriate sanctions that should be imposed. The substantive submissions summarized below and the decision pertain only to whether the Panel accepts the joint recommendation that Allegations #1, #2 and #3 constitute unprofessional conduct worthy of sanction, and whether the Panel finds that Allegation #4 is proven and constitutes unprofessional conduct worthy of sanction.

II. ALLEGATIONS

[15] The allegations against Dr. Maritz are as follows:

1. In or about January 2000, you did have an inappropriate sexual relationship with your patient, [Ms. A];
2. Between March 2003 and April 2015, you did have an inappropriate sexual relationship with your patient, [REDACTED], which was also in breach of your personal covenant to the College of Physicians & Surgeons of Alberta ("College") set out in paragraph 7 of Schedule B and paragraph 5 of Schedule C of your Continuing Care Contract with the College dated April 25, 2006;
3. You did fail to disclose in a timely manner to the College or your therapist, Meg Hinton, that you were involved in a sexual relationship with your patient, [REDACTED], during the currency of your Continuing Care Contract dated April 25, 2006; and

4. You did breach your Undertaking with the College dated May 27, 2016, in that you did assess and prescribe medication to [REDACTED] on Saturday, June 11, 2016 contrary to the restrictions set out in your Undertaking to the College dated May 26, 2016.

Dr. Maritz admitted to Allegations 1, 2 and 3, and admitted that all three constitute unprofessional conduct. Dr. Maritz did not admit to Allegation #4.

III. EVIDENCE – EXHIBITS

[16] The following are exhibits that were submitted at the Hearing, and accepted by the Panel as evidence:

1. Notice of Hearing dated October 12, 2017.
2. Memorandum prepared by Dr. Caffaro regarding conversation with Dr. Forestier dated March 30, 2017.
3. Statutory Declaration of [Ms. A] dated November 8, 2017.
4. Patient Record for [Ms. A] for 1998 to 2002.
5. Continuing Care Agreement for Dr. Maritz dated April 25, 2006.
6. Undertaking between Dr. Maritz and the College of Physicians & Surgeons of Alberta dated May 20, 2015.
7. Undertaking between Dr. Maritz and the College of Physicians & Surgeons of Alberta dated January 25, 2016.
8. Undertaking between Dr. Maritz and the College of Physicians & Surgeons of Alberta dated May 27, 2016.
9. Undertaking between Dr. Maritz and the College of Physicians & Surgeons of Alberta dated October 18, 2016.
10. Complaint by [REDACTED] dated April 22, 2015 (with redactions of portions not relevant to issues in Notice of Hearing).
11. Response of Dr. Maritz to complaint dated November 18, 2015 (with redactions of portions not relevant to issues in Notice of Hearing).
12. Patient Record for [REDACTED] for 2002 to 2015.
13. Emergency Department record for [REDACTED] dated June 11, 2016.
14. Rexall Pharmacy record for [REDACTED].
15. Record of patients seen in the Emergency Department on June 11, 2016.
16. Statement from [REDACTED] dated July 26, 2016.
17. Affidavit of [REDACTED] sworn September 21, 2016.
18. Letter from Dr. Maritz regarding prescribing issue dated September 21, 2016.
19. College of Physicians & Surgeons of Alberta Standard of Practice – Self-Reporting to the College dated January 1, 2010.

20. College of Physicians & Surgeons of Alberta Standard of Practice – Sexual Boundary Violations dated January 1, 2010.
21. Report from J. Canniff dated May 12, 2003.
22. Discharge Summary from Sante Treatment Centre dated February 13, 2004.
23. Letter from Dr. Paul Flynnne to Dr. Maritz dated March 9, 2004.
24. Report from Gabbard Centre dated May 2, 2015.
[with redactions of portions not relevant to issues in the Hearing]
25. Report from Dr. Doug Adams dated October 4, 2015.
[with redactions of portions not relevant to issues in the Hearing]
26. Report from Dr. Paul Janke dated October 5, 2015.
27. Report of Meg Hinton dated (a) January 26, 2016 (b) August 26, 2016, and (c) May 9, 2017.
28. Report of Dr. Louise Webb dated (a) August 24, 2016 (b) June 8, 2017.
29. Letter from Ms. Prather to Dr. Beach, dated July 3, 2017.
30. Letter from Dr. Caffaro and Dr. Beach to Ms. Prather dated July 18, 2017.
31. Report of Dr. Bill Sara dated November 3, 2017.
32. Report of Dr. Cynthia Baxter dated October 30, 2017.
33. Certificates of Continuing Professional Development by Dr. Maritz.
34. Petitions from the Crowsnest Pass (Samples only).
35. Agreed Statement of Facts.
36. Letter from Dr. M. Caffaro to Crowsnest Pass Health Centre dated June 14, 2016.
37. Letter from Dr. M. Caffaro to Crowsnest Pass Health Centre dated June 14, 2016.
38. Letter from Dr. M. Caffaro to Rexall Pharmacy #7222 dated June 14, 2016.
39. Letter from Dr. T. Theman to Dr. Johann Maritz dated July 21, 2016.
40. Letter from Valeri Prather Q.C, to Dr. M. Caffaro dated July 28, 2016.
41. Affidavit of Dr. Johannes Maritz, affirmed September 21, 2017.
42. Letter from Dr. T. Theman to Dr. Johann Maritz dated October 26, 2016.

IV. EVIDENCE

[17] The Panel accepted all of the Exhibits, including the Agreed Statement of Facts submitted by consent by both parties. The Agreed Statement of Facts is appended to this decision, and the Panel considered and relied on the facts as described therein to reach its decision.

a. Dr. Michael Caffaro

[18] Mr. Boyer, on behalf of the Complaints Director of the College of Physicians & Surgeons of Alberta (the “College”) called Dr. Michael Caffaro to testify with respect to Allegation #4. Dr. Caffaro became the Provisional Complaints Director of the College on April 8, 2015. He

testified that he received a complaint from [REDACTED] in April 2015 (with respect to Allegations #2 and #3). Based on the Agreed Statement of Facts, the Panel understood that Dr. Maritz voluntarily withdrew from practice on April 29, 2015, and he returned to practice on May 28, 2016 in the emergency room at the Crowsnest Pass Hospital.

[19] Dr. Caffaro testified that Dr. Maritz signed an Undertaking with the College on approximately May 26, 2016 to facilitate his return to practice with specific conditions. These conditions included:

- (a) Dr. Maritz agrees that he shall practice with at least one other physician in any hospital setting;
- (b) Dr. Maritz is restricted to seeing only male patients in any non-emergency department setting;
- (c) Dr. Maritz must have a chaperone for all female patient encounters in the emergency department setting;
- (d) Dr. Maritz will not provide follow-up care to any female patient seen in the emergency department – female patients requiring hospital admission or ongoing care in the community will be transferred to another physician;
- (e) Dr. Maritz agrees to have a practice monitor in continuous practice within any non-hospital setting;
- (f) Dr. Maritz agrees to engage an experienced physician as a practice mentor.

[20] Approximately two weeks later, Dr. Caffaro received a telephone call from a physician in the Crowsnest Pass, Dr. Jennifer Coppens, who alleged that Dr. Maritz had attended to a patient outside the hospital setting and provided a prescription to the individual, which could possibly have constituted a breach of the Undertaking. Dr. Coppens indicated the patient was [REDACTED], and that she had treated [REDACTED] for a throat infection shortly after Dr. Maritz's encounter with him. Further, Dr. Caffaro testified that Dr. Coppens told him that [REDACTED] had been told by Dr. Maritz to "keep it quiet", which Dr. Caffaro understood to mean that Dr. Maritz had asked [REDACTED] to not disclose their encounter to anyone else. Dr. Coppens' notes from her examination of [REDACTED] were disclosed as Exhibit 13 in these proceedings.

[21] To corroborate the information Dr. Coppens provided him, Dr. Caffaro obtained further information from the Crowsnest Pass Hospital regarding Dr. Maritz's shift on June 11, 2016. This included a log of the patients seen by Dr. Maritz while on emergency call that date. Dr. Caffaro also obtained a copy of the written prescription, and evidence of the prescription being filled (Exhibit 15).

[22] It was apparent from that information that the patient, [REDACTED], was not seen by Dr. Maritz in the Emergency Department during his shift. Based on that information, Dr. Caffaro believed that Dr. Maritz had breached the conditions of the signed Undertaking detailed in Exhibit 8. He then opened a complaint under section 56 of the HPA and notified the Registrar by memorandum with a request for consideration of an immediate suspension under section 65 of the Act.

[23] The suspension was issued by Dr. Trevor Theman, Registrar of the College, on July 21, 2016.

[24] In cross-examination, Ms. Prather questioned Dr. Caffaro on the fairness of suspending Dr. Maritz without notice in this case. Dr. Caffaro admitted that in general an investigation is usually conducted, with the knowledge of the member and that a suspension would not ordinarily be the result until the investigation was completed.

[25] Dr. Caffaro testified that, based on the information provided to him by Dr. Coppens and his review of the patient log from the Crowsnest Pass Hospital, he was satisfied that Dr. Maritz had attended a patient outside of the Emergency Department, had prescribed medication to the person, and was told that the patient had been advised by Dr. Maritz to keep it all quiet. He admitted that he did not contact [REDACTED] for his input, nor did he ask for input from Dr. Maritz before recommending to the Registrar that Dr. Maritz be suspended. He also acknowledged that Dr. Coppens' notes on her examination of [REDACTED] (Exhibit 13) do not mention Dr. Maritz telling [REDACTED] to "keep it quiet." Dr. Coppens' notes do mention that [REDACTED] had been given a prescription for amoxicillin, and that he had taken two doses of the amoxicillin, but did not feel like it had helped.

[26] Ms. Prather referred Dr. Caffaro to Exhibit 16, which is a letter from [REDACTED] to the College in which he described his interaction with Dr. Maritz on June 11, 2016. Ms. Prather sent this document to Dr. Caffaro one week after the suspension took effect. [REDACTED] letter stated:

- Dr. Maritz came into the pharmacy on June 11, 2016, and [REDACTED] was feeling very ill and took the opportunity to ask Dr. Maritz about his sore throat.
- He opened his mouth for Dr. Maritz, but Dr. Maritz did not examine him.
- He had only lived in the community for five months and did not personally know Dr. Maritz.
- He asked Dr. Maritz to prescribe something for him and provided Dr. Maritz with a blank prescription pad to do so.
- Dr. Maritz stated to him that he was not able to see patients outside of his office setting, or the Emergency Department, but due to the distress that [REDACTED] was in, Dr. Maritz provided [REDACTED] with a note for amoxicillin but specifically instructed [REDACTED] that he could not fill the prescription until it had been signed by either another pharmacist or another physician.
- He assured Dr. Maritz that he would not fill the prescription until a pharmacist or another physician signed the prescription first.
- At no time did Dr. Maritz tell him that he should keep quiet about this.
- [REDACTED] denied that he told the emergency physician later that day that he had been instructed by Dr. Maritz to not tell anyone about their encounter.

[27] On September 21, 2016 Dr. Maritz provided a letter to the College which detailed his recollection of the events of June 11, 2016 with [REDACTED] (Exhibit 18). This letter corroborated the events as detailed by [REDACTED], and he stated that he did not record any chart notes or bill Alberta Health and Wellness for the encounter.

[28] Ms. Prather presented a sworn affidavit from [REDACTED] on September 21, 2016 to the College which detailed his recollection of the encounter with Dr. Maritz (Exhibit 17). Ms. Prather presented a sworn affidavit by Dr. Maritz dated September 21, 2016 detailing Dr. Maritz's description of the encounter with [REDACTED] on June 11, 2016.

[29] Ms. Prather also presented a letter to her from Ms. Meg Hinton, registered psychologist, dated August 26, 2016 (Exhibit 27). Ms. Hinton was Dr. Maritz's therapist. She began counselling Dr. Maritz in 2002 through the Alberta Medical Association Physician and Family Support Program regarding Dr. Maritz's boundary violations. In her letter, Ms. Hinton opined that despite Dr. Maritz's prescription miscommunication, and although the situation is disappointing, it does not alter her opinion that Dr. Maritz was not a risk to his patients and should be allowed to return to practice, with appropriate restrictions.

[30] Ms. Prather then referred to Exhibit 28 which was a letter from Dr. Louise Webb, a clinical psychologist, dated August 24, 2016. Dr. Webb began therapy sessions with Dr. Maritz on May 31, 2016. Referring to the interaction with [REDACTED], Dr. Webb opined that Dr. Maritz had made a very minor violation with a pharmacist, through a misplaced intention of trying to help out a fellow professional, while simultaneously attempting to adhere to his practice restrictions. She felt it unfair to remove his license without giving him an opportunity to better understand the issue and provide him an opportunity to explain the situation. She felt there was no risk that he would harm his patients if he would be allowed to continue practice under the restrictions that were originally in place.

[31] Dr. Caffaro then testified that on October 18, 2016 the Complaints Director agreed to allow Dr. Maritz to return to practice subject to conditions set out in an Undertaking signed by Dr. Maritz on October 18, 2016 (Exhibit 9). This Undertaking contained certain additions which detailed more specifically that Dr. Maritz was not to provide any medical advice, treatment, prescriptions or drug samples to any person who is not a patient seen in a permitted non-hospital practice or hospital emergency department setting. It also established that Dr. Maritz must engage an experienced physician as a Practice Mentor in accordance with the recommendations of Dr. Glen Gabbard in his report of May 2, 2016. A letter was sent to Dr. Maritz from Dr. Theman dated October 26, 2016 (Exhibit 42). This letter advised Dr. Maritz that his practice permit would be reinstated with the conditions agreed to in the most recent Undertaking. Dr. Caffaro also testified that a Practice Monitor for Dr. Maritz was approved of by the College and Dr. Maritz began practicing again in November 2016.

[32] Dr. Caffaro then testified that in July 2017 Dr. Maritz, through his legal counsel, requested a relaxation of some of the requirements in the signed Undertaking of October 2016. Dr. Caffaro testified that certain practice restrictions were relaxed on July 18, 2017 on the joint recommendation of himself and Dr. Jeremy Beach, the Assistant Registrar for the Physician Health and Monitoring Program at the College. These relaxations were made in light of acceptable reports from the Practice Monitor, Dr. William Sara, and Dr. Maritz's treating professionals who provided the College with evidence that Dr. Maritz had made good progress and had complied with all restrictions in that timeframe.

b. Dr. William Sara

[33] Ms. Prather called Dr. William Sara to testify. Dr. Sara has been a general practitioner in anesthesiology since 1970, and has practiced in the Crowsnest Pass since 1976. Dr. Sara acted as Dr. Maritz's Practice Monitor from November 2016 through to November 2017 in accordance with the requirements of the October 18, 2016 Undertaking. In his capacity as Practice Monitor, Dr. Sara was asked to supervise Dr. Maritz to ensure that all of the requirements of the October 18, 2016 Undertaking were adhered to. Dr. Sara testified that he knew Dr. Maritz ever since Dr. Maritz moved to the Crowsnest Pass in 1989; however, their relationship was as professional colleagues and they were not friends prior to Dr. Sara agreeing to serve as Practice Monitor. Dr. Sara testified that, over the course of the time he spent with Dr. Maritz as Practice Monitor, he developed a friendship with him, but he testified that this did not compromise his ability to objectively monitor and review Dr. Maritz's practice.

[34] Ms. Prather referred Dr. Sara to Exhibit 31, which was a letter from Dr. Sara to Ms. Prather dated November 3, 2017 detailing Dr. Sara's observations on how well Dr. Maritz had complied with the October 18, 2016 Undertaking to the date of the letter. Dr. Sara testified that, with respect to the condition requiring Dr. Maritz to only practice at a hospital or medical clinic, Dr. Maritz complied with this requirement with one exception when he was permitted by the College to attend a terminally ill male patient at the patient's home.

[35] Dr. Sara confirmed that Dr. Maritz would only treat patients at his clinic when Dr. Sara was present, as required in the Undertaking. If Dr. Sara arrived late, patients were required to wait until Dr. Sara's arrival. Similarly, if Dr. Sara was called away for an emergency, activity at the clinic was suspended. Dr. Sara testified that Dr. Maritz complied with this condition.

[36] Dr. Sara confirmed that Dr. Maritz had not treated any female patients. Further, Dr. Sara confirmed that he reviewed all phone feedback to patients and patient Electronic Medical Records ("EMRs") and faxed confirmation of his reconciliations to the College regularly for the first nine months. Thereafter, Dr. Sara has continued to review and reconcile patient EMRs with phone feedback, but he has not been required by the College to send regular reports.

[37] Dr. Sara met with Dr. Maritz frequently, at least once per week, to discuss his practice and his compliance with the Undertaking. Dr. Sara did not monitor Dr. Maritz's hospital practice directly, but he did make inquiries to hospital staff about Dr. Maritz's conduct there. Dr. Sara testified that no personal, professional or ethical issues were ever drawn to his attention from the hospital staff he consulted with.

[38] Dr. Sara testified that when the restrictions were relaxed in July of 2017, he spent less time at Dr. Maritz's office, but continued to monitor his charting by way of the EMR. He had several conversations with Dr. Beach, throughout this time and monitored Dr. Maritz to ensure he adhered to the restrictions set out by the College in a very comprehensive fashion.

[39] Overall, Dr. Sara testified that Dr. Maritz complied with all of the requirements of the October 18, 2016 Undertaking, and conducted himself in a thoroughly professional manner throughout the time Dr. Sara served as Practice Monitor. Dr. Sara noted that many females had requested to be treated by Dr. Maritz, and Dr. Maritz declined to treat them to ensure he remained compliant with his practice restrictions.

[40] On cross-examination, Dr. Sara confirmed he had vague knowledge of the substance of Allegation #1, but he was unaware of the details. Dr. Sara also confirmed that Dr. Maritz was not accompanied by a chaperone during his hospital shifts, and he believed this was due to the financial burden that would be borne by the hospital.

c. Dr. Johann Maritz

[41] Ms. Prather then called Dr. Maritz as a witness. Dr. Maritz testified that he had been in practice in the Crowsnest Pass as a general practitioner since 1998. With respect to Allegation #1, he testified that he commenced an intimate relationship with Ms. A in approximately 1999, at which time he was approximately 38 years old and Ms. A was approximately 30 years old. At the time, Ms. A was one of his patients. Dr. Maritz acknowledged that, at the time of the relationship, he understood that it was a violation of professional boundaries to commence an intimate relationship with a patient. The relationship with Ms. A ended sometime in 2000.

[42] Dr. Maritz recalled a confrontation with Dr. Colleen Forestier in late 2002, in which Dr. Forestier indicated she knew that Dr. Maritz had had an inappropriate relationship with a patient, and had fathered a child by that relationship. Dr. Forestier advised Dr. Maritz that if he did not self-report the inappropriate relationship to the College, she would report him. Dr. Maritz testified this was the first time he heard there was a possibility that he was the father of Ms. A's child, and this revelation caused him distress. Dr. Maritz contacted Ms. A and asked whether he was the father of her child, and she denied it. He offered to conduct a paternity test, but Ms. A indicated that was unnecessary. A paternity test was eventually conducted, and it determined that Dr. Maritz was not, in fact, the father of Ms. A's child. The paternity test was appended to a statutory declaration executed by Ms. A and marked as Exhibit 3 in these proceedings.

[43] Dr. Maritz reported the relationship to Dr. Paul Flynnne in early 2003. Dr. Flynnne referred Dr. Maritz to Dr. Canniff, a psychologist, for a psychological assessment. Exhibit 21 is a detailed psychological assessment by Dr. Canniff in which he made recommendations for intensive residential treatment for sexual addiction. Dr. Maritz stated that he disagreed with the term "sexual addict" and did not think he was a "sexual addict", but he nevertheless complied with Dr. Canniff's recommendation by enrolling himself in a residential program in the United States specifically designed to treat individuals who have been diagnosed as "sexual addicts" that he attended between November 2003 and February 2004.

[44] Dr. Maritz stated that he met [REDACTED] in 2002. At the time, she was one of Dr. Maritz's patients, and she eventually began working in his clinic in an administrative support capacity. He admitted that he began an intimate relationship with [REDACTED] prior to attending the residential treatment centre for sexual boundaries in 2003. He stated that while in the treatment centre he did not disclose to any of his therapists at the time that he had engaged in a sexual relationship with [REDACTED] prior to attending. He remained at the treatment centre for three and a half months and when he returned to the Crowsnest Pass, he attempted to refrain from continuing his relationship with [REDACTED]. She did remain as both a patient and an employee of his clinic throughout this time. Dr. Maritz acknowledged that the relationship with [REDACTED] was inappropriate and a violation of his professional boundaries.

[45] Upon his return from the residential program in the United States, Dr. Maritz was required by the College to attend an aftercare course on professional boundaries directed by Dr. Canniff and to limit his working time to 45 hours per week. He also received psychological treatments from Ms. Meg Hinton upon his return. Dr. Maritz did not disclose his on-going relationship with [REDACTED] to either Dr. Canniff or Ms. Meg Hinton.

[46] During this time he did attempt to encourage [REDACTED] to seek a different physician for her primary care, which she did on a couple of occasions. However, Dr. Maritz testified that [REDACTED] consistently requested to return to his care and he allowed that. [REDACTED] became Dr. Maritz's office manager in 2006. Shortly thereafter, responsibility for Dr. Maritz's aftercare at the College was assumed by Dr. Janet Wright, after Dr. Flynne left the College. Dr. Maritz signed a Continuing Care Contract (the "CCC") with Dr. Wright in April 2006, which was intended to last for five years. This contract included that he must designate a physician workplace monitor, agreed to by the College, and that regular updates would be provided to the College on request.

[47] Dr. Peter McKernan, a family physician who was chief of staff at another family care clinic located in the Crowsnest Pass, was appointed as monitor pursuant to the CCC. Dr. Maritz testified that he did not make Dr. Wright or Dr. McKernan aware of his relationship with [REDACTED], stating that he knew it was wrong, and that he would lose his license if he did disclose this.

[48] The CCC also stipulated that he must have a chaperone for any female examinations. He had [REDACTED] attend the Chaperone Course made available by the College and she became his chaperone for these circumstances. He stated that [REDACTED] performed this task in his office consistently after that.

[49] He testified that after 2010 the relationship with [REDACTED], which continued, became somewhat dysfunctional and verbally abusive at times. He stated that throughout these dysfunctional times he prescribed anti-depressants to [REDACTED] as part of his doctor-patient relationship with her. The relationship continued until the early part of 2015 when he suspected that she had stolen approximately \$45,000.00 from an office safe, to which he testified she had a key.

[50] On April 5, 2016 [REDACTED] went to the RCMP and alleged that Dr. Maritz had physically assaulted her on a number of occasions as far back as 2012. Criminal charges were brought against Dr. Maritz as a result of [REDACTED] accusations. These charges were eventually withdrawn by the Crown in August 2016 in return for Dr. Maritz entering into a one-year peace bond.

[51] On April 22, 2015 [REDACTED] complained to the College about Dr. Maritz (Exhibit 10). On April 29, 2015 Dr. Maritz voluntarily withdrew from practice (Exhibit 6).

[52] In June of 2015, Dr. Maritz resumed therapy with Meg Hinton and arranged to be assessed by Dr. Douglas Adams, a psychologist. He also arranged to be assessed by Dr. Paul Janke, a general and forensic psychiatrist. Their reports were entered as Exhibits 25 and 26.

[53] In November 2015 the College recommended that Dr. Maritz be assessed by Dr. Gabbard and have on-going psychotherapy with Dr. Webb. In May of 2016 Dr. Maritz returned to work after signing an Undertaking with the College (Exhibit 8).

[54] Dr. Maritz then testified about the events of June 11, 2016 as it pertained to his interaction with [REDACTED]. He stated that:

- After he completed his shift at the Crowsnest Pass Emergency Department, on the morning of June 11th, he travelled to the Rexall Pharmacy to deliver a prescription for a patient to the pharmacist on staff, [REDACTED].
- This was the first time he had ever met [REDACTED].
- [REDACTED] complained to Dr. Maritz about his sore throat and feeling ill. He opened his mouth but Dr. Maritz declined to inspect his throat. [REDACTED] presented him with a blank prescription pad in order to write him a remedy for his illness.
- He advised [REDACTED] of his practice restrictions and that he could not write [REDACTED] a prescription due to those restrictions. He then testified that [REDACTED] asked if he had “any suggestions”, and he responded that he “can do that, but you need to get somebody else to sign this because this is not valid”. Dr. Maritz acknowledged writing the document entered as Exhibit 14 and giving it to [REDACTED], but denied that it was an official prescription for amoxicillin.
- He denied conducting an assessment or examination of [REDACTED].
- He denied instructing [REDACTED] to hide the fact of this encounter.
- He confirmed he did not bill Alberta Health for his encounter with [REDACTED], nor did he record the encounter in a chart.

[55] On cross-examination, Dr. Maritz stated, with regards to the [REDACTED] interaction:

- He could not identify, on the prescription written to [REDACTED], any notation that would indicate that the prescription was not a valid prescription that must be counter-signed.

[56] Dr. Maritz indicated that he “felt extremely hopeless” when he received the Notice of Suspension from Dr. Theman in July 2016 with respect to the [REDACTED] incident.

[57] Dr. Maritz acknowledged that, as part of the Undertaking he gave to the College, he understood that if he was found in violation of any of its terms, his practice permit would be immediately suspended.

[58] In cross-examination, Dr. Maritz also admitted that he had not been honest with the College and his therapist about his relationship with [REDACTED] over many years. He also acknowledged that, pursuant to the HPA, he was required to file annual renewal forms for his license which ask whether he was engaged in a sexual relationship with a patient, and he falsely answered “no” to this question each time he filed an annual renewal form for the duration of his relationship with [REDACTED]. Dr. Maritz agreed that, in his annual renewals, he had actively informed the College that there were no boundary violations to report, and he knew that was false.

[59] In answering questions from the Panel, Dr. Maritz stated:

- That the pharmacy in which he saw [REDACTED] was in fact remote from the hospital setting.
- He explained that his usual routine in assessing a patient would be to collect information about their symptoms, current medications or relevant medical history before issuing a prescription.
- He stated he felt uncomfortable with the encounter with [REDACTED] at the time it occurred as he recalls that he knew that it was outside of the restrictions imposed on his practice by the College.
- Given that he testified that his direction to [REDACTED] was to see another healthcare professional, he regrets giving [REDACTED] the written direction of treatment that he handed to [REDACTED].

d. Dr. Louise Webb

[60] Dr. Webb testified that she is a PhD Psychologist who worked, in part, as a counsellor for the Physician and Family Support Program under the Alberta Medical Association. She has been involved in counselling physicians who have violated professional boundaries on many occasions.

[61] She began treating Dr. Maritz on May 31, 2016. Exhibit 28 is a letter from Dr. Webb to Ms. Prather dated August 24, 2016 which summarized thirteen (13) sessions of therapy with Dr. Maritz. Dr. Webb testified that Dr. Maritz admitted to the wrongfulness of his behaviour with respect to his two sexual boundary violations with Ms. A and [REDACTED]. Her role was primarily to provide support to Dr. Maritz as he faced the stress of having his license revoked. With respect to Dr. Maritz's encounter with [REDACTED], it was Dr. Webb's opinion that this constituted a very minor boundary violation.

[62] She opined that this boundary violation was minor and arose with the misplaced intention of trying to help out a fellow professional while simultaneously attempting to remain adherent to his restrictions. He failed in that attempt. She termed it a boundary violation as an example of his inability to say "no" and set limits with patients. At one point in their therapy sessions she had concerns over Dr. Maritz's potential suicidal ideation after being suspended for yet another term.

[63] At one point in time Dr. Maritz had requested that Dr. Webb write a letter in support of softening the College's restrictions on his practice to allow him to see female patients again, and she stated that at that point in therapy, he needed more time to prove that he was showing good decision making skills before she would be in a position to support a relaxation to his practice restrictions. Exhibit 28 also contains another letter from Dr. Webb as of June 8, 2017 after she had seen Dr. Maritz for thirty five (35) sessions of therapy for more than one year.

[64] In the June 8, 2017 letter she opined that he was now ready to see female patients, as she felt he had progressed significantly in setting limits with his patients, and being able to say "no" to them when he felt that was appropriate. At this point in time she felt that he was at low risk

for inappropriate behaviour with female patients, that he did not possess a narcissistic personality disorder and that ongoing therapy was going to sufficiently mitigate any risk of repeating previous behaviours with female patients.

[65] It was her opinion that physicians in Dr. Maritz's situation are never at zero risk of repeating boundary violations and, in his case, due to all of the circumstances he has faced since March of 2015 and his response to treatment that he should require no more than random checking of his charts and periodic reporting to the College by a workplace monitor. She felt that it would be therapeutically beneficial for him, after all the restrictions that he has had to live with, that it would be good for his self-esteem to be allowed to expand his practice.

[66] Ms. Prather then referred Dr. Webb to Exhibit 32, which is a letter from Dr. Cynthia Baxter, a forensic psychiatrist. Dr. Baxter was asked by Ms. Prather to assess Dr. Maritz on two occasions between August 23 and October 11, 2017 for approximately four (4) hours. In this letter, Dr. Baxter establishes that she reviewed an extensive amount of documentation on Dr. Maritz from 1998 through to the June 8, 2017 letter from Dr. Louise Webb. Dr. Webb testified that she discussed Dr. Maritz's case with Dr. Baxter on October 30, 2017.

[67] On cross-examination, Dr. Webb admitted that she had not seen the document in Exhibit 8 which was the signed Undertaking by Dr. Maritz to the College dated May 27, 2016, nor had she been aware of any of the information that Dr. Maritz would have provided to the College in his annual licence renewals. Therefore, her opinion on the severity of Dr. Maritz's interaction with [REDACTED] and the appropriateness of the College's response to it was not informed by these facts.

[68] Dr. Webb clarified for the Panel that she did not believe that the breach of the Undertaking, with respect to his encounter with [REDACTED], was as serious as some other potential breaches that she has experienced with other physicians. She also believed that Dr. Maritz had reported himself to the College with respect to his interaction with [REDACTED].

V. SUBMISSIONS

[69] Both counsel agreed that Allegations #1, #2 and #3 all constituted unprofessional conduct worthy of sanction. Accordingly, counsel submissions were focused on whether Allegation #4 is proven and discloses conduct worthy of sanction.

a. Complaints Director's Submissions

[70] Mr. Boyer opened his remarks by noting the the Panel has three roles with respect to Allegation #4:

1. Make findings of fact;
2. Identify the standard against which that conduct is to be judged; and
3. Apply those findings to that standard.

[71] Mr. Boyer noted that the Panel heard conflicting evidence regarding whether Dr. Maritz's encounter with [REDACTED] was an "assessment", whether the document Dr. Maritz wrote is properly classified as a "prescription", and whether the entire encounter should be classified as a "minor incident" unworthy of professional sanction.

[72] Mr. Boyer argued that the Panel should disregard Dr. Webb's opinion as to the gravity of the breach of the undertaking given that her opinion was founded on an incomplete understanding of the facts. Dr. Webb incorrectly believed that Dr. Maritz had self-reported the encounter with [REDACTED] to the College, which was not the case, and Dr. Webb was unaware that the Undertaking Dr. Maritz was practicing under expressly stated that he would be suspended if he failed to abide by the Undertaking's requirements.

[73] Mr. Boyer argued that the interaction between Dr. Maritz and [REDACTED] constituted an "assessment" because a treatment decision was made and presented to [REDACTED] in the form of a document that was filled out and signed by the doctor, and that document met the legal requirements of a prescription. In particular, there were no notations on the paper given to [REDACTED] that made it invalid without either countersigning by another professional or reassessment by another physician prior to filling it. In all material respects, Mr. Boyer submitted that the document provided by Dr. Maritz to [REDACTED] was a "prescription".

[74] Mr. Boyer noted that Dr. Maritz had signed the Undertaking with the College, which was made under very serious circumstances, in order to return to practice only three weeks prior to the interaction with [REDACTED].

[75] Mr. Boyer concluded by noting that Dr. Maritz's actions constituted unprofessional conduct in that he breached Section 1(1)(pp)(viii) of the HPA by contravening conditions imposed on a practice permit or a direction under section 118.

b. Dr. Maritz's Submissions

[76] Ms. Prather agreed that the task of the Panel is to determine whether the charge in Allegation #4 is proven. She noted that the essence of the charge is whether Dr. Maritz performed an *assessment* on [REDACTED] and officially *prescribed* medication to him. At the heart of this issue is whether the encounter with [REDACTED] can properly be classified as the "practice of medicine," therefore constituting a breach of Dr. Maritz's practice conditions.

[77] Ms. Prather argued that the encounter between Dr. Maritz and [REDACTED] was not the practice of medicine in that no assessment was conducted according to the signed affidavits by both Dr. Maritz and [REDACTED]. Ms. Prather noted that the original complaint was based on incorrect information received by Dr. Caffaro from Dr. Coppens in the Emergency Department. Both [REDACTED] and Dr. Maritz denied the allegation made by Dr. Coppens that Dr. Maritz had instructed [REDACTED] to "keep quiet" about the encounter.

[78] With respect to the note given to [REDACTED] by Dr. Maritz, this was simply a note that might outline a potential course of treatment for the pharmacist and the affidavits from both [REDACTED] and Dr. Maritz support that understanding. Nevertheless, despite that understanding, Ms. Prather argued that [REDACTED] unilaterally decided to dispense and take the medication outlined on the note, despite having been informed that he would require a countersignature from another physician or pharmacist before dispensing the medication.

[79] Furthermore, Ms. Prather argued that the fact that Dr. Maritz advised [REDACTED] that he had practice restrictions that would disallow him from assessing and treating [REDACTED] in that context constituted proof that the interaction was not a medical assessment, and could not fall within the ambit of the signed Undertaking.

[80] Ms. Prather argued that Dr. Maritz did not perform a proper examination, did not make treatment notes and did not bill for the encounter, all of which demonstrated that the encounter was nothing more than an error in judgment on the part of Dr. Maritz.

[81] Lastly, Ms. Prather noted that Dr. Caffaro failed to properly investigate the encounter with [REDACTED] due to his failure to interview either Dr. Maritz or [REDACTED] prior to notifying Dr. Theman that Dr. Maritz had contravened his signed undertaking with the College. She argued this was a breach of procedural fairness that prejudiced Dr. Maritz, as Dr. Maritz was not given an opportunity to explain himself before the decision to suspend was rendered.

VI. FINDINGS

a. With respect to Allegation #1

[82] Allegation #1 is: In or about January 2000, you did have an inappropriate sexual relationship with your patient, [Ms. A].

[83] The Panel agrees with the joint submission of the parties, and finds Dr. Maritz guilty of unprofessional conduct worthy of sanction as defined in section 80(1) of the HPA. The Panel notes that Dr. Maritz has admitted to this allegation.

[84] The Panel specifically notes that according to Dr. Maritz's treatment notes with respect to Ms. A (Exhibit 4), the doctor/patient relationship between Dr. Maritz and Ms. A began on September 22, 1998. The last entry made by Dr. Maritz was September 22, 2000. Ms. A's Statutory Declaration (Exhibit 3) clearly demonstrates that the intimate relationship coincided with the period Ms. A was seeing Dr. Maritz for medical treatments.

[85] According to Ms. A's Statutory Declaration, the sexual relationship was brief, beginning between late 1999 and ending early 2000, during which time she was also under the medical care of Dr. Maritz. She declared that she was 30 years old and not in a vulnerable state at the time, the relationship was consensual and opined that Dr. Maritz did not behave in a predatory manner.

[86] In February 2000 she became pregnant and remained his patient, and he remained her primary physician for the first portion of her pre-natal care. She developed pre-mature labour and was referred to Dr. Forestier in September of 2000.

[87] It has been determined by testimony and DNA evidence that Dr. Maritz was not the father of Ms. A's child (Exhibit 3). Dr. Maritz was prompted by Dr. Forestier to self-report this inappropriate sexual relationship to the College in 2002 or 2003. No official complaint was registered and Dr. Maritz reported the sexual relationship to Dr. Flynnne who was Assistant Registrar responsible for the Physician Wellness Program at the time.

[88] Dr. Flynnne did not report this to either Dr. Theman or the Investigative Chair appointed by the Council of the College. As such the matter was never considered to be dealt with at any hearing before the Investigating Committee. Dr. Flynnne requested that Dr. Maritz be examined by Dr. James Canniff, clinical psychologist, who diagnosed Dr. Maritz with a sexual addiction, and recommended residential treatment.

[89] Dr. Maritz returned to active medical practice, with restrictions, set out by Dr. Flynnne in March 2004. Dr. Maritz has admitted his guilt to this allegation, and the Panel accepts that Allegation #1 is proven, and constitutes unprofessional conduct worthy of sanction.

b. With respect to Allegation #2

[90] Allegation #2 is: Between March 2003 and April 2015, you did have an inappropriate sexual relationship with your patient, [REDACTED], which was also in breach of your personal covenant to the College of Physicians & Surgeons of Alberta ("College") set out in paragraph 7 of Schedule B and paragraph 5 of Schedule C of your Continuing Care Contract with the College dated April 25, 2006.

[91] Dr. Maritz has admitted that in, or about, the summer of 2003, he commenced a sexual relationship with his patient, [REDACTED]. [REDACTED] was also Dr. Maritz's employee. His residential treatment program, triggered through his relationship with Ms. A, began in November 2003. After returning from the Sante Treatment Centre, Dr. Maritz resumed the sexual relationship with [REDACTED], while she was his patient.

[92] On April 25, 2006, at the request of Dr. Janet Wright who replaced Dr. Flynnne, Dr. Maritz signed a CCC with the College (Exhibit 5). The restrictions on Dr. Maritz's practice were set out in Schedule C to the CCC and can be summarized as follows:

- a) To limit his practice hours to 45 hours per week plus one night per week on call.
- b) To have a chaperone present for examinations of all female patients where disrobing is required.
- c) No intensive psychotherapy.

[93] Dr. Maritz acknowledges that the relationship with [REDACTED] was a breach of his personal covenant to the College set out in paragraph 7 of Schedule B and paragraph 5 of Schedule C of the CCC of the College dated April 25, 2006.

[94] Dr. Maritz acknowledges that he did not disclose his relationship with [REDACTED] to the College during the currency of his CCC dated April 25, 2006, nor did he disclose this information when asked specifically each year upon renewal of his licensure with the College.

[95] Dr. Maritz acknowledges that he did not disclose to his therapist, Ms. Meg Hinton, his relationship with [REDACTED] while he was engaged in therapy with her during the currency of his CCC dated April 25, 2006. The CCC came to an end in 2011. Dr. Maritz's relationship with [REDACTED] continued for over ten years until March 18, 2015.

[96] [REDACTED] complaint was received by the College on April 22, 2015, with regard to the relationship that Dr. Maritz had with her whilst she was his patient (Exhibit 10).

[97] The Undertaking signed by Dr. Maritz wherein he voluntarily withdrew from practice provides that the College agrees that in the event that the [REDACTED] complaint went to a hearing, and a suspension was recommended, the College would advise the Panel that the Complaints Director was of the view that the voluntary withdrawal from practice should be taken into account as part of the term of any suspension.

[98] On April 29, 2015, Dr. Maritz voluntarily withdrew from practice (Exhibit 6). Dr. Maritz has admitted his guilt to the allegation, and the Panel accepts that Allegation #2 is proven, and constitutes unprofessional conduct worthy of sanction

With respect to Allegation #3

[99] Allegation #3 is: You did fail to disclose in a timely manner to the College or your therapist, Meg Hinton, that you were involved in a sexual relationship with your patient, [REDACTED], during the currency of your Continuing Care Contract dated April 25, 2006.

[100] Dr. Maritz acknowledges that he did not disclose his relationship with [REDACTED] to the College during the currency of his CCC dated April 25, 2006.

[101] Dr. Maritz also acknowledges that he did not disclose to his therapist, Ms. Meg Hinton, his relationship with [REDACTED] while he was engaged in therapy with her during the currency of his CCC dated April 25, 2006. In June 2015 Dr. Maritz resumed therapy with Meg Hinton and fully disclosed his relationship with [REDACTED] to Ms. Hinton. Dr. Maritz continued in therapy with Ms. Hinton until her retirement in 2017. Ms. Hinton's opinion on Dr. Maritz's progress, and practice restrictions, were set out in Exhibit 27.

[102] Dr. Maritz admitted his guilt to this allegation and the Panel accepts that Allegation #3 is proven, and constitutes unprofessional conduct worthy of sanction.

c. With respect to Allegation #4

[103] Allegation #4 is: You did breach your Undertaking with the College dated May 27, 2016, in that you did assess and prescribe medication to [REDACTED] on Saturday, June 11, 2016 contrary to the restrictions set out in your Undertaking to the College dated May 26, 2016.

[104] As a result of the Gabbard assessment, done at the request of the College in April 2016, Dr. Maritz was allowed to return to practice with the restrictions outlined in an Undertaking dated May 27, 2016 (Exhibit 8). The restrictions are summarized as follows:

1. Dr. Maritz agrees that he shall practice with at least one other physician in any non-hospital setting.
2. Dr. Maritz is restricted to seeing only male patients in a non-emergency department setting.
3. Dr. Maritz must have a chaperone for all female patient encounters in the emergency department setting.
4. Dr. Maritz will not provide follow-up care to any female patient seen in the emergency department, female patients requiring hospital admission and on-going care in the community will be transferred to another physician.
5. Dr. Maritz is to have a practice monitor in continuous practice within any non-hospital setting.
6. Dr. Maritz agrees to engage an experienced physician as a practice mentor.

7. Dr. Maritz agrees that either of the Assistant Registrar for Physician Health Monitoring Program or the Complaints Director will discuss the above restrictions on practice with the site chief of medical staff or applicable Department Head in any hospital in which Dr. Maritz shall be working.
8. Dr. Maritz acknowledges that health matters requiring monitoring require a separate Agreement with Dr. Susan Ulan, Assistant Registrar, Physician Health Monitoring Program, as per any and all recommendations from Dr. Glen Gabbard and his report of May 2, 2016.
9. Dr. Maritz Acknowledges that if he is found in violation of any of items (1) through (8), that his practice permit will be immediately suspended.

[105] There was much testimony regarding the nature of the admitted interaction between Dr. Maritz and [REDACTED] on the morning of June 11, 2016. The Panel finds the following with respect to what occurred on that day:

[106] The Panel accepts that [REDACTED] was a pharmacist employed at a Rexall Pharmacy in the Crowsnest Pass at the material time. On June 11, 2016, Dr. Maritz went to the Rexall Pharmacy after finishing his shift in the Emergency Department at the Crowsnest Pass Hospital to fill some prescriptions. [REDACTED] was the only pharmacist on duty that day. At the time, he was feeling sick. Noticing that Dr. Maritz was a physician, [REDACTED] asked if Dr. Maritz could examine him, and he opened his mouth for Dr. Maritz. The Panel accepts that Dr. Maritz did not look into [REDACTED] throat. The Panel accepts that Dr. Maritz informed [REDACTED] of his practice restrictions and, that he could not examine him or write a prescription for his sore throat. The Panel accepts that [REDACTED] gave Dr. Maritz a prescription pad anyway, Dr. Maritz wrote on it, but told [REDACTED] that it was not a valid prescription, it would need to be countersigned by another physician or qualified medical professional before the medication could be dispensed. The Panel accepts that [REDACTED] then filled a prescription for amoxicillin based on the note Dr. Maritz gave him.

[107] The Panel accepts that, later that day, [REDACTED] attended the Crowsnest Pass Emergency Department and was examined by Dr. Coppens. The Panel accepts that [REDACTED] told Dr. Coppens that he filled a prescription for amoxicillin based on the note provided by Dr. Maritz earlier that day, but that the amoxicillin did not appear to have alleviated his sore throat. Recognizing that Dr. Maritz was subject to practice restrictions, Dr. Coppens reported this to Dr. Caffaro.

[108] There is conflicting evidence on whether Dr. Maritz told [REDACTED] to “keep it quiet” with respect to their interaction. Dr. Caffaro testified that Dr. Coppens relayed this information to him when she first contacted him about the encounter. However, the Panel notes that Dr. Maritz denied saying this both in his sworn affidavit, and in his testimony before the Panel. The Panel also notes that [REDACTED] also denied being told to “keep it quiet” by Dr. Maritz in his sworn affidavit, although the Panel notes that it did not have the benefit of hearing [REDACTED] give oral evidence under oath on this fact. The Panel is also disadvantaged by not having the opportunity to hear Dr. Coppens give oral testimony regarding what she was told by [REDACTED], and what she told Dr. Caffaro.

[109] The burden of proof in disciplinary proceedings before the Panel rests with the College. The College must introduce sufficient evidence to demonstrate, on a balance of probabilities,

that the alleged facts actually occurred. With respect to the suggestion that Dr. Maritz told ██████████ to keep their encounter quiet, the Panel finds that the College has not met its burden of proof on a balance of probabilities.

[110] The Panel notes that several witnesses opined on the severity of what took place in Allegation #4, and whether that conduct was unprofessional. In making its decision, the Panel was not guided by opinions expressed by witnesses regarding the severity of the ██████████ encounter, or whether that encounter constitutes unprofessional conduct. Both of those are questions squarely before this Panel to decide; accordingly the Panel has placed no weight on opinions expressed by witnesses on whether the ██████████ encounter constitutes unprofessional conduct.

[111] In order for the Panel to make a finding on this allegation, it consulted schedule 21, section 3 of the HPA which defines what constitutes the “practice of medicine”:

Practice

3(1) In their practice of medicine physicians, surgeons and osteopaths do one or more of the following:

- (a) assess the physical, mental and psychosocial condition of individuals to establish a diagnosis,*
- (b) assist individuals to make informed choices about medical and surgical treatments,*
- (c) treat physical, mental and psychosocial conditions,*
- (d) promote wellness, injury avoidance, disease prevention and cure through research and education,*
- (e) engage in research, education and administration with respect to health, and*
- (f) provide restricted activities authorized by the regulations.*

[112] Despite the assertions by Dr. Maritz and ██████████, the Panel finds that the interaction between Dr. Maritz and ██████████ on the morning of June 11, 2016 constituted a medical encounter between doctor and patient in that the patient established a health complaint and the physician responded by providing advice on medical treatment in writing.

[113] With respect to the note provided to ██████████ by Dr. Maritz, the Panel notes that it has all the indicia of an official prescription. It sets out the prescribed antibiotic, dosage and frequency, and was signed by Dr. Maritz. There is nothing written on the note to indicate that it was not a valid prescription, or that it had to be countersigned by another qualified health professional first. While the Panel has accepted that Dr. Maritz verbally instructed ██████████ to not fill the prescription until it had been countersigned by another qualified health professional, the Panel finds this instruction was inadequate. The document provided by Dr. Maritz had all the indicia of being a prescription, and the responsibility rested firmly with Dr. Maritz to ensure his compliance with his practice restrictions. Dr. Maritz cannot shift blame

to [REDACTED] after providing him with a document with all the indicia of a prescription, and then telling him he could not rely on the document as such. The fact that [REDACTED] was himself a trained health professional does not affect Dr. Maritz's obligations. Furthermore, the Panel notes that the electronic record of the amoxicillin prescription lists Dr. Maritz as the prescribing physician, further suggesting that the "note" provided by Dr. Maritz was accepted as a prescription. The Panel concludes that the note written by Dr. Maritz for [REDACTED] constitutes an official prescription for amoxicillin.

[114] The Panel accepts that the encounter was not necessarily a comprehensive or ideal medical encounter, in that the doctor did not perform a complete examination before making his therapeutic statement, and did not create proper documentation of the encounter. He also did not bill for the service. However, none of these factors are determinative of whether the encounter constituted the "practice of medicine" as defined in the HPA. The Panel finds that Dr. Maritz conducted an assessment of [REDACTED] which was sufficient (from his perspective at the time) for him to write a prescription for amoxicillin to [REDACTED]. Despite the cursory nature of the assessment, the Panel finds that Dr. Maritz evinced an intention to treat [REDACTED] physical ailment by prescribing [REDACTED] amoxicillin. Dr. Maritz must have satisfied himself, based on the symptoms he observed and [REDACTED] description of his symptoms, that amoxicillin was an appropriate medication to prescribe in the circumstances. This is sufficient to constitute an "assessment", despite its shortcomings, because it was an interaction where medical advice was dispensed to treat a physical ailment. This constitutes the "practice of medicine" as defined in the HPA, specifically with reference to section 3(1)(b) ("assist individuals to make informed choices about medical and surgical treatments"), and 3(1)(c) ("treat physical, mental and psychosocial conditions").

[115] As the Panel has found that the interaction between Dr. Maritz and [REDACTED] constitutes the "practice of medicine" it must now determine whether that interaction contravened the Undertaking Dr. Maritz was subject to at the time. In particular, the first condition of the Undertaking is clear that Dr. Maritz was not permitted to "practice" outside of a hospital setting without supervision. Dr. Maritz acknowledges that he understood that restriction, and his initial reaction to [REDACTED] request for an assessment and prescription indicates he knew that what [REDACTED] was asking him to do was outside the restrictions on his practice. As the Panel has found the interaction between Dr. Maritz and [REDACTED] constitutes the "practice of medicine", it clearly contravenes the Undertaking as Dr. Maritz gave medical advice and wrote a prescription outside of a hospital setting without a supervising physician being present.

[116] Section 1(1)(pp)(viii) of the HPA defines "unprofessional conduct" as including "contravening an order under Part 4, conditions imposed on a practice permit or a direction under section 118(4)." Dr. Maritz was subject to "conditions imposed on [his] practice permit" pursuant to the Undertaking. He breached one of the conditions when he conducted a cursory assessment of [REDACTED] and wrote him a prescription to treat his sore throat. This is sufficient to bring the encounter under the definition of "unprofessional conduct" in the HPA.

[117] Counsel for Dr. Maritz has suggested that the encounter be considered a "minor" error in judgment, and that the encounter amounted to "nothing". It is true that not every mistake or indiscretion committed by a practicing physician will lead to a finding of unprofessional conduct and sanctions from the College. The College will only concern itself with errors and indiscretions that are sufficiently serious to warrant such scrutiny. However, the Panel disagrees

with Dr. Maritz's suggestion that the encounter should be treated as too minor to warrant disciplinary intervention. Dr. Maritz was subject to practice restrictions at the time of the encounter. He knew what was required of him, and the restrictions were clearly written and communicated to him. Nevertheless, he conducted a cursory assessment and wrote a prescription to [REDACTED] in a context that was clearly impermissible pursuant to his practice restrictions.

[118] Adhering to restrictions placed on a physician's practice is a serious matter, and any proven contravention of a restriction placed on a practice permit invites scrutiny by the Panel. Ensuring adherence to practice restrictions is central to the College's mandate to protect the public and maintain the public's confidence in the regulation of the health profession – the public must be satisfied that physicians who are subject to practice restrictions will be called to account when those restrictions are breached. To do otherwise would potentially erode the public's confidence in the self-governance of the health profession, and compromise public safety. For these reasons, the Panel is satisfied that the encounter between Dr. Maritz and [REDACTED] cannot be characterized as a "minor" indiscretion that is insufficiently serious to warrant disciplinary intervention. The Panel has found that Dr. Maritz contravened a restriction placed on his practice permit, and that is a sufficiently serious matter to bring this within the ambit of unprofessional conduct deserving of sanction.

[119] Lastly, the Panel notes that the procedural fairness issues raised by Dr. Maritz with respect to the manner in which he was suspended after the College was notified of his encounter with [REDACTED] are irrelevant to the issue of whether the encounter constitutes unprofessional conduct. Those issues are better dealt with at the sanctions stage, where the Panel considers what the appropriate response should be to the proven unprofessional conduct in light of the College's interim sanctions imposed prior to the hearing.

[120] For the above reasons, the Panel finds Dr. Maritz guilty of unprofessional conduct worthy of sanction on Count #4.

VII. ORDER

[121] The Panel finds Dr. Maritz guilty of unprofessional conduct deserving of sanction on all four counts. The Panel invites both parties to make submissions regarding the appropriate sanctions that should be levied against Dr. Maritz for these four counts of unprofessional conduct, and it shall render a decision on sanctions after the parties have been given that opportunity.

Signed on behalf of the Hearing Tribunal by the Chair



Dated: February 14, 2018

Dr. John Pasternak

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. JOHANN MARITZ

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

INTRODUCTION

[1] The Hearing Tribunal held a hearing into the conduct of Dr. Johann Maritz on November 14 and 15, 2017. At that hearing, the Hearing Tribunal ruled that Dr. Johann Maritz was guilty of unprofessional conduct deserving of sanction with respect to all four counts. The Hearing Tribunal's written reasons for its decision were issued on February 14, 2018 (hereinafter referred to as the "Merit Decision").

[2] The Hearing Tribunal reconvened on April 17, 2018 to hear oral submissions from the parties regarding the sanction that should be imposed on Dr. Maritz in light of the Merit Decision. The same panel which heard and decided the Merit Decision presided over the sanctions hearing:

- Dr. John Pasternak of Medicine Hat (Chair),
- Dr. William Craig of Edmonton, and
- Ms. Archana Chaudhary of Edmonton (public member)

(collectively, the "Panel").

[3] Mr. Fred Kozak, Q.C. acted as Independent Legal Counsel for the Hearing Tribunal. Mr. Michael Swanberg, Mr. Kozak's Associate, was also in attendance.

[4] In attendance at the hearing was Mr. Craig Boyer, legal counsel for the Complaints Director of the College of Physicians & Surgeons of Alberta. Also present was Dr. Johann Maritz, Ms. Valerie Prather, Q.C., legal counsel for Dr. Maritz and Ms. Prather's Associate, Mr. Mathieu LaFleche.

[5] Neither party objected to the composition of the Panel, or to the Independent Legal Counsel's attendance at the hearing.

I. PRELIMINARY MATTERS

[6] The Chair reminded both Counsel that the patient in Allegation #1 shall continue to be referred to as "Ms. A" both during the hearing and in these reasons (see paragraphs 7-13 of the Merit Decision).

II. PROVEN ALLEGATIONS

[7] During the Merit Hearing, the Panel found that all four allegations against Dr. Maritz constitute unprofessional conduct deserving of sanction. Dr. Maritz admitted to the first three allegations, and admitted they constitute unprofessional conduct worthy of sanction, and the Panel accepted these admissions. With respect to Allegation #4, which Dr. Maritz did not admit constituted unprofessional conduct worthy of sanction, the Panel found that the underlying facts for Allegation #4 were proven, and that Dr. Maritz was guilty of unprofessional conduct worthy of sanction with respect to that allegation.

The four proven allegations are summarized as follows:

1. In or about January 2000, Dr. Maritz did have an inappropriate sexual relationship with his patient, [Ms. A]. Dr. Maritz admitted to this allegation;
2. Between March 2003 and April 2015, Dr. Maritz did have an inappropriate sexual relationship with his patient, [REDACTED], which was also in breach of his personal covenant to the College of Physicians & Surgeons of Alberta ("College") set out in paragraph 7 of Schedule B and paragraph 5 of Schedule C of his Continuing Care Contract with the College dated April 25, 2006. Dr. Maritz admitted to this allegation.
3. Dr. Maritz did fail to disclose in a timely manner to the College or his therapist, Meg Hinton, that he was involved in a sexual relationship with his patient, [REDACTED], during the currency of his Continuing Care Contract dated April 25, 2006. Dr. Maritz admitted to this allegation.
4. Dr. Maritz did breach his Undertaking with the College dated May 27, 2016, in that he did assess and prescribe medication to [REDACTED] on Saturday, June 11, 2016 contrary to the restrictions set out in his Undertaking to the College dated May 26, 2016. Dr. Maritz did not admit to this allegation, and the Panel found it was proven and constituted unprofessional conduct worthy of sanction in the Merit Decision.

III. SUBMISSIONS ON SANCTION

a. Submissions on behalf of the Complaints Director of the College

[8] Mr. Boyer provided a written submission which was reviewed by the Panel prior to the sanction phase of the hearing. He also made verbal submissions at the sanctions hearing. He asserted that Dr. Maritz had demonstrated significant unprofessional conduct involving sexual relationships with two patients, one lasting more than a decade, with non-compliance to monitoring programs initially set out by Dr. Flynn and later by Dr. Wright. Mr. Boyer submitted that Dr. Maritz had, therefore deceived the College during, and after, these monitoring programs by maintaining an inappropriate relationship with [REDACTED] until her complaint was filed in 2015. Dr. Maritz's behaviour then culminated in practicing contrary to his practice restrictions with [REDACTED]. In light of the evidence and findings of the Hearing Tribunal, Mr. Boyer submitted that Dr. Maritz should be found to be an ungovernable professional, and the appropriate sanction would be cancellation of Dr. Maritz's registration.

[9] Mr. Boyer cited the decision of *Jaswal v. Newfoundland Medical Board*, [1996] NJ No 50 (Nfld Sup Ct (TD)) to help guide the Panel with respect to relevant factors that should be taken into consideration when assessing the appropriate penalty to be imposed (known as the "Jaswal Factors"). The *Jaswal* Factors were summarized at paragraph 36 of the Court's decision:

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;
13. The range of sentence in other, similar cases.

[10] Mr. Boyer referred to the Continuing Care Contract; signed on April 25, 2006 with Dr. Wright, in particular point 6 – which is to refrain from any close personal relationships with patients.

[11] It has been proven that Dr. Maritz did maintain his intimate relationship with [REDACTED] at the time he signed the agreement and then for many years after that. After the *CPSA Standards of Practice* were developed in 2010, it was Dr. Maritz's duty to report his relationship with [REDACTED]. He was therefore in breach of this standard until 2015 when [REDACTED] complained to the College. He lied on his licensure renewal form each year during this period on whether he was engaged in a sexual relationship with a patient.

[12] Regarding allegation #4, Mr. Boyer argued that:

1. Dr. Maritz had been allowed back into practice May 26, 2016, after signing an Undertaking. He then breached that Undertaking within three weeks of signing it, by treating a patient outside the confines of agreed parameters. He failed to take ownership of the transgression by attempting to pass the blame onto the pharmacist, and index patient, who was significantly his junior at age 24. Mr. Boyer asserted that the agreed and proven facts demonstrated a long pattern of unprofessional conduct and deception towards the College illustrating that he is ungovernable as a physician.
2. Dr. Maritz had argued that the Complaints Director's decision to immediately suspend his license after allegation #4 had been reported was unfair. Mr. Boyer argued that the Complaints Director's decision to immediately suspend Dr. Maritz's license was justified for the following reasons:
 - i. The Undertaking included a provision that stated "Dr. Maritz acknowledges that if he is found in violation of any of items (1) through (8), that his practice permit will be immediately suspended."
 - ii. Although Dr. Maritz sought judicial review of the suspension, prior to it taking place, Dr. Maritz signed a further document with the Complaints Director which set out terms and conditions for return to practice in October of 2016. The preamble to that agreement included a statement that Dr. Maritz and the Complaints director wished to resolve the issues being subject to judicial review, and the fairness of the suspension was one of the alleged grounds for the judicial review.
 - iii. The College acted within its legal parameters in opting for immediate action, by a Regulator, without prior notice to the member. Mr. Boyer cited the decision of *Scott v. The College of Massage Therapists*, 2016 BCCA 180 [Scott] where an alleged sexual assault had occurred resulting in the immediate suspension of the practitioner prior to the investigation being completed. Mr. Boyer asserted equivalency here given the history of repeated deception in sexual boundaries as justification for immediately suspending Dr. Maritz's license in order to protect the public.

[13] Mr. Boyer argued that Dr. Maritz's behaviour constituted a consistent pattern of disregarding the directions of the College, and that Dr. Maritz should be found to be "ungovernable" as a result of this history. In support of this position, Mr. Boyer cited the following discipline decisions:

- i. *College of Physicians and Surgeons of Saskatchewan v Ali*, 2016 SKQB 42 [Ali], in which the member had a lengthy record of inappropriate patient boundary violations, fraud and dishonesty, and he never demonstrated any remorse or acceptance of responsibility. He documented his feelings of being victimized by his regulatory body. The result was revocation of his licensure. Mr. Boyer asserted that Dr. Maritz's unacceptable conduct for a lengthy period of time and efforts by the College failed to produce tangible change in attitude or conduct, similar to the facts in *Ali*.
- ii. *Ahluwalia v. College of Physicians and Surgeons of Manitoba*, 2017 MBCA 15 [Ahluwalia], in which a member repeatedly misrepresented documentation to that College which convinced the Manitoba Court of Appeal that there was no suggestion the member could be rehabilitated and upheld the penalty of loss of licensure. Mr. Boyer argued that the facts in *Ahluwalia* are similar to the proven allegations against Dr. Maritz in that there has been similarity in a long pattern of deception and a failure to comply with restriction placed upon his practice.
- iii. *Litchfield v. the College of Physicians and Surgeons of Alberta*, 2008 ABCA 164 [Litchfield] in which the Alberta Court of Appeal upheld a decision to cancel licensure of the member after evidence of repeated, flagrant and inappropriate boundary violations in clinical settings. The member demonstrated inability to accept and remediate his behavior in that case. Mr. Boyer asserted that the facts in *Litchfield* are similar to the proven allegations against Dr. Maritz in that he had a flagrant disregard to physician-patient boundaries, and had demonstrated an inability to comply with conditions placed upon his practice permit.
- iv. *Re Malhotra*, 2005 CanLII 60058 (College of Physicians and Surgeons of Alberta) [Malhotra], in which the physician was found to have falsified treatment records.
- v. *Re Quaye*, 2005 CanLII 60059 (College of Physicians and Surgeons of Alberta) [Quaye], in which the physician had failed to pay an order of costs against him arising from a previous disciplinary decision, and for failing to respond to the College regarding an investigation into his practice.
- vi. *Re Roberts*, 2008 CanLII 21187 (College of Physicians and Surgeons of Alberta) [Roberts], in which the physician had a sexual relationship with a patient and subsequently married that patient, and had failed to refer that patient to another psychiatrist when such care was required.

[14] During oral argument, Mr. Boyer responded to Dr. Maritz's suggestion that he was misdiagnosed as a sexual addict in 2003, and this diagnosis gave rise to serious deleterious consequences to Dr. Maritz. Mr. Boyer argued that the sexual addict diagnosis given in 2003 should not be criticized thirteen years later as the DSM psychiatric diagnoses have been re-evaluated a number of times since, and at that time sexual addiction was recognized as a potential diagnosis in the DSM, and was a valid diagnosis based on the information that was before the attending physicians and psychiatrists at that time. Further, Mr. Boyer argued that the potential mis-diagnosis in 2003 is a distraction from the real issue before the Panel, which is the sanction that should be imposed to respond to the proven allegations of unprofessional conduct.

[15] Mr. Boyer argued that the Panel should order Dr. Maritz to pay 100% of the costs of both the investigation and hearing in this matter.

[16] Mr. Boyer referred to the *Jaswal* decision which set out the following factors to help determine whether a tribunal should order the disciplined member to pay all or part of the College's expenses:

- a. the degree of success, if any, of the physician in resisting any or all of the charges;
- b. the necessity for calling all of the witnesses who gave evidence or for incurring other expenses associated with the hearing;
- c. whether the persons presenting the case against the doctor could reasonably have anticipated the result based upon what they knew prior to the hearing;
- d. whether those presenting the case against the doctor could reasonably have anticipated the lack of need for certain witnesses or incurring certain expenses in light of what they knew prior to the hearing;
- e. whether the doctor cooperated with respect to the investigation and offered to facilitate proof by admissions, etc.;
- f. the financial circumstances of the doctor and the degree to which his financial position has already been affected by other aspects of any penalty that has been imposed.

[17] Mr. Boyer noted that the Alberta Court of Appeal cited these factors with approval in *Alberta College of Physical Therapists v Fitzpatrick*, 2015 ABCA 95 [*Fitzpatrick*]. He argued that most of the witnesses called during the merit hearing were required because Dr. Maritz did not admit to allegation #4, which he was ultimately unsuccessful in defending.

[18] Mr. Boyer cited *Chen v. the College of Denturists of Ontario*, 2017 ONSC 530 [*Chen*] which stated that "while the member has the right to a thorough investigation and the right to a hearing, he also bears some responsibility for the overall costs. The costs of the investigative and discipline process cannot solely be the onus of the rest of the college's membership" (paragraph 6).

[19] Mr. Boyer cited *Hoff v. Alberta Pharmaceutical Association*, [1994] AJ No 218 (QB) [*Hoff*], which stated that "as a member of the pharmacy profession the appellant enjoys many privileges. One of them is being part of a self-governing profession. Proceedings like this must be conducted by the respondent association as part of its public mandate to assure to the public competent and ethical pharmacists. Its costs in doing so may be properly borne by the member whose conduct is at issue and has been found wanting" (paragraph 25).

[20] Mr. Boyer summarized his submissions by stating that the logical sanction in this case for the member would be cancellation of his practice permit and ordering Dr. Maritz to pay 100% of the costs of the investigation and hearing.

b. Submissions on behalf of Dr. Maritz:

[21] Ms. Prather argued that Dr. Maritz does not present a risk to the public and, since his return to practice in November 2016, all the evidence suggests he has worked diligently and cooperatively with the College to abide by his practice restrictions. He recognizes, and acknowledges, his past unprofessional behaviour and is remorseful. He has already served nineteen months of suspension in total and suffered profound financial, personal and professional consequences arising from the interim suspension. Ms. Prather argued Dr. Maritz was vulnerable due to being misdiagnosed as a sexual addict in 2003 and that he failed to disclose his relationship with [REDACTED] to the College for fear of furthering this misdiagnosis. Accordingly, Ms. Prather argued that Dr. Maritz's failure to report his relationship with [REDACTED] should not be construed as evidence of ungovernability, since he did not disclose this relationship due to a fear of further repercussions resulting from his misdiagnosis as a sexual addict. He has participated in extensive therapy for boundary violations. Neither of his sexual boundary violations

arose from a clinical setting with patients nor has he exhibited predatory behaviour. For these reasons, Ms. Prather argued that Dr. Maritz's conduct was not sufficiently serious to warrant cancelling his license, and instead argued that an appropriate penalty would be a suspension of 18 months, with full credit for his interim suspensions.

[22] Ms. Prather applied the facts of this matter to the *Jaswal* factors to support her position that a period of suspension was an appropriate penalty in the circumstances.

[23] Regarding the nature and gravity of the proven allegations; his boundary violations fall on the low end of the spectrum given the non-clinical and consensual non-predatory features in each case. There was no evidence that either relationship affected the physician-patient relationship and Dr. Maritz did attempt to transfer [REDACTED] care to another physician during the course of their relationship. She opined that sexual addiction and hyper-sexuality are not diagnostic entities in the DSM-5 revision of psychiatric diagnoses. Ms. Prather noted that analyses conducted by Dr. Baxter and Dr. Janke found that Dr. Maritz has not exhibited hyper-sexuality or compulsive sexual behaviors, suggesting he was misdiagnosed as a sexual addict in 2003.

[24] The previous character of Dr. Maritz; Ms. Prather noted that this hearing is Dr. Maritz's first before a disciplinary tribunal. Accordingly, the termination of Dr. Maritz's license would be an overly onerous penalty given Dr. Maritz has not been disciplined previously by a Hearing Tribunal. She placed some onus on the College for failure to bring his initial boundary violation to the professional discipline department, despite being aware of it since 2003. Had this taken place she asserted Dr. Maritz would not have repeated his mistake with [REDACTED].

[25] The age and mental condition of the offended patient; Ms. Prather stated that no significant difference in ages existed between the doctor and the patient with respect to both of the boundary violations. It was established that although Dr. Maritz prescribed antidepressants to [REDACTED] on two occasions, she refused to take them and denied the need or desire to receive treatment from a therapist during their relationship. Overall, Ms. Prather argued that neither boundary violation involved an exploitation of an age differential or impaired mental state.

[26] The role of the physician acknowledging what has occurred; Dr. Maritz has acknowledged his role in the admitted allegations and has expressed remorse. He has attended extensive rehabilitation counselling, and there has been evidence from the professionals that he has attended, that he has made gradual and consistent improvement in his attitudes towards boundary violations.

[27] Whether the offending physician has already suffered other serious financial penalties or other penalties as a result of the allegations made; Dr. Maritz has suffered serious financial penalties as a result of the allegations that have been made against him. He agreed to a voluntary withdrawal from practice effective April 29, 2015 and in total his length of withdrawal and suspension was effectively nineteen months. It was noted that in one of the signed Undertakings with the Complaints Director that the Complaints Director stated that "the College agrees that in the event that this matter goes to a hearing and a suspension is recommended, the College will advise the Hearing Panel that the Complaints Director is of the view that the voluntary withdrawal from practice should be taken into account as part of the term of suspension".

[28] The impact of the incident of the offended patient; in the case of Ms. A; she swore to a statutory declaration which stated that Dr. Maritz had not taken advantage of her in any way and did not behave in a predatory manner. She stated that her health care was not negatively impacted by the relationship with Dr. Maritz. There has been no testimony from [REDACTED] to establish any negative impact on her medical care due to the relationship with Dr. Maritz; and that [REDACTED] was a consenting individual in their long relationship, despite the knowledge that it represented a breach of Dr. Maritz's professional obligations.

[29] Need to promote specific and general deterrence; Ms. Prather argued that Dr. Maritz's nineteen months of absence from practice, a significant component arising voluntarily, already represented a significant sanction for a boundary violation of this nature. She drew a sharp distinction between a physician who is involved in consensual relationships with patients as opposed to boundary violations involving sexual assault, as well a distinction between a physician who co-operates and a physician who does not. She asserted that there was no need for any further specific deterrents for Dr. Maritz as he has been effectively deterred by the emotional anguish which he has suffered as a result of his relationship with [REDACTED].

[30] The need to maintain the public's confidence in the integrity of the profession; Ms. Prather opined that the need to maintain the public's confidence that physicians will not be permitted to commit boundary violations needs to be balanced with the recognition that physicians are capable of making relationship mistakes in times of emotional distress. She referred to the 253 letters of support for Dr. Maritz, received by the College, from patients in the community in which Dr. Maritz had been working.

[31] Range of sentences in other similar cases; Ms. Prather submitted that the following cases are analogous to Dr. Maritz's, and demonstrate that a period of suspension is an appropriate and commensurate penalty:

- a. *Faul v. the College of Physicians and Surgeons of Alberta*, 2006 CanLII 61032, who had a sexual relationship with his former patient for three years, and was suspended for nine months, two of which were held in abeyance
- b. *Forestell v. the College of Physicians and Surgeons of Alberta*, 2005 CanLII 60056, who, after having a sexual consensual relationship with his patient, was suspended for nine months, three of which were held in abeyance.
- c. *Tsujikawa v. the College of Physicians and Surgeons of Alberta* (reasons unreported, summary reported as 2013 CanLII 34544), who had a sexual relationship with a patient whilst prescribing narcotics to the patient and was suspended for six months, three of which were held in abeyance.
- d. *Haraphongse v. College of Physicians and Surgeons of Alberta*, 2003 CanLII 57470; the physician was suspended for six months, two of which were held in abeyance.
- e. *Dicken v. College of Physicians and Surgeons of Alberta*, 2016 CanLII 98638, who engaged in a sexual relationship with the mother of one of his pediatric patients, was suspended for nine months, with six months held in abeyance.

[32] Further, Ms. Prather argued that the discipline cases referred to by Mr. Boyer, in particular, *Malhotra*, *Quaye* and *Roberts*, are distinguishable from this case. All involved physicians being removed from the register, however in the case of *Quaye*, the physician was struck from the register for failing to comply with the orders of a previous hearing tribunal and in *Roberts* there was an established physician-patient relationship which arose from the course of a psychotherapeutic relationship.

[33] Regarding Dr. Maritz's encounter with [REDACTED], Ms. Prather opined that Dr. Maritz did not flagrantly ignore the fact that he was under practice restrictions in his actions, and it has been established that Dr. Maritz took no steps to conceal what he was doing. Ms. Prather drew a connection with the decision of *Adams v. College of Physicians and Surgeons of Alberta*, 2013 CanLII 14723, who received a caution for failure to comply with a practice restriction. She also argued that Dr. Maritz had already received a lengthy suspension arising from the matter involving [REDACTED] based on the premise that Dr. Maritz had told [REDACTED] to keep the matter quiet, a fact which was not supported by the evidence. Ms. Prather asserted that in other cases involving professionals being judged ungovernable, there were proven behaviors of repetitive conduct, despite sanctions, and there was strong

evidence that Dr. Maritz had demonstrated remorse with respect to his past conduct. Further, Ms. Prather argued that Dr. Maritz evinced a willingness to abide by the College's directions since November 2016, as he has participated in every rehabilitative program mandated by the College and has practiced in accordance with a number of significant practice restrictions since 2016. He has been monitored by Dr. Bill Sara for more than twelve months, who has confirmed that Dr. Maritz is respecting the current practice restrictions imposed by the College.

[34] Ms. Prather asserted that Dr. Maritz presents a low risk to commit future boundary violations and reiterated the opinion of Dr. Gabbard in 2016 who stated "When someone is engaged in boundary violations with a patient, we can never say there is no risk for reoffending. However, if the program we have outlined above is implemented, and if Dr. Martiz is fully invested in making the program work, and commits to working on his vulnerabilities outlined above, we think there would be a very low risk of reoffending." Ms. Prather also referred to the comments of Meg Hinton in January 2016: "From my professional interactions with Dr. Maritz, I have no concerns that he would be a risk to his patients, should he be allowed to return to his practice while he awaits further assessment and treatment. Dr. Maritz has indicated his desire to implement any procedures and practices that will provide the College and his patients reassurance of their physician and emotional safety and his patients receive the care they require and deserve." Ms. Prather quoted from Dr. Sara's evidence "I have now monitored Dr. Maritz' practice for twelve months. He has respected the practice restrictions. I have not observed any ethical or 'boundary' issues."

[35] In oral argument, Ms. Prather explained her rationale that Dr. Maritz be ordered to pay 50% of the costs of the investigation and hearing in this matter. Specifically, given the submission that an eighteen month penalty of suspension was appropriate and the fact that Dr. Maritz had already been effectively suspended for nineteen months, Dr. Maritz should be given credit for the financial impact of the additional month of suspension. Further, she asserted that the misdiagnosis of sexual addiction did significant harm to Dr. Maritz, harm which cannot be undone now unless it was assessed in a reduction of cost assessment. Ms. Prather submitted that Dr. Martiz has already suffered financially for the nineteen months that he has been out of practice, and this should be considered a mitigating factor. She reiterated the unfairness in the College's action against Dr. Maritz with regards to the suspension for the [REDACTED] matter. She asserted that the College acted on the understanding that Dr. Maritz had instructed [REDACTED] to keep their encounter quiet without investigating the validity of that assertion, and in spite of Dr. Maritz's and [REDACTED] insistence that Dr. Maritz had not attempted to conceal the matter.

[36] Ms. Prather submitted that, in the circumstances, the appropriate penalty is a suspension of eighteen months, which shall be considered satisfied as a result of the voluntary withdrawal from practice and interim suspensions Dr. Maritz has already served. Further, Ms. Prather submitted that Dr. Maritz should pay 50% of the costs of the investigations and hearings, provided that he be entitled to review, and make further submissions with respect to the calculation of the costs by the Complaints Director.

c. Additional Submissions

[37] During the sanctions hearing, the Panel asked Mr. Boyer to provide it with copies of the full sanction decision in the *Dicken* matter and the Alberta Court of Appeal's earlier decision in the *Quaye* matter. Mr. Boyer sent these decisions to the Panel and opposing counsel on April 17, 2018.

[38] On April 20, 2018, Ms. Prather sent a letter via Mr. Kozak to the Panel providing additional written argument responding to these two decisions. With respect to the *Dicken* decision, Ms. Prather noted that the boundary violation in that case involved a consensual sexual relationship, and there were no allegations that Dr. Dicken had failed to provide competent care to his patients. Dr. Dicken was suspended for nine months, with six held in abeyance pending compliance with additional conditions.

[39] With respect to the Alberta Court of Appeal's decision in *Quaye* (2000 ABCA 38), Ms. Prather noted that it appeared Dr. Quaye had been suspended as a result of his inability to competently and safely engage in the practice of medicine, which is not a relevant consideration with respect to Dr. Maritz. Ms. Prather attached a copy of the Alberta Court of Queen's Bench's earlier decision in the *Quaye* matter (1998 ABQB 957), and noted that the procedures and policies of the College in place at that time are not analogous to the statutory framework which governs the profession today. Overall, Ms. Prather noted that the term of suspension found in *Quaye* is not inconsistent with Dr. Maritz's submission that an 18 month suspension is warranted in this case.

IV. FINDINGS

[40] Section 82 of the *Health Professions Act*, RSA 2000, c H-7 [HPA] gives the Panel the jurisdiction to impose a range of penalties when a regulated member has been found guilty of unprofessional conduct worthy of sanction. Potential penalties include imposing conditions on the investigated person's practice permit generally or in any area of the practice of the regulated profession (section 82(1)(c)), suspending the member's practice permit for a stated period (section 82(1)(g)), cancellation of the member's practice permit (section 82(1)(h)), and requiring the member to pay a portion or all of the costs of the investigation and hearing (section 82(1)(j)).

[41] The Panel considered both the written and verbal submissions of counsel in arriving at its decision. In particular, the Panel has found that the following factors are particularly significant in guiding its decision on sanctions.

[42] Dr. Maritz admitted to three of the four allegations of unprofessional conduct, and vigorously defended his actions with respect to the fourth. This resulted in a lengthy hearing and numerous witnesses being called to determine the merits of the fourth allegation.

[43] Throughout the evidentiary portion of the hearing the Panel was satisfied that Dr. Maritz has shown significant remorse for his sexual boundary violations, and genuinely intends to avoid similar conduct in the future. The Panel considers these to be mitigating factors in determining the appropriate sanction. However, despite all the counselling and rehabilitation Dr. Maritz has undergone, the Panel agreed with the assertions of Dr. Gabbard and Dr. Baxter that it is impossible to say with 100% certainty that Dr. Maritz will not re-offend again.

[44] The Panel finds it significant that this is the first formal disciplinary hearing that Dr. Maritz has faced, and considers that a mitigating factor. The College has not proven to the Panel's satisfaction that Dr. Maritz is an ungovernable physician. In particular, the Panel distinguishes this situation from the cases cited by Mr. Boyer where the physician was found to be ungovernable, as Dr. Maritz has not demonstrated that he is incapable or unwilling to address and correct his behavior. Rather, the evidence shows that Dr. Maritz has diligently sought therapy and has adhered to his practice restrictions since November 2016. He has also demonstrated genuine remorse for his actions. Accordingly, the Panel finds that cancelling Dr. Maritz's practice license is not warranted in this case.

[45] Dr. Maritz has successfully demonstrated a willingness and ability to comply with the practice restrictions set by the College in November 2016, which includes that he shall see only male patients in his practice of medicine. The many letters of support sent by members of the community to the College suggest that Dr. Maritz is an effective physician whose work is appreciated by his clients. Further, an experienced practice monitor, Dr. Sara, has been working closely with Dr. Maritz to monitor Dr. Maritz's adherence to his practice conditions. Dr. Sara's close involvement with Dr. Maritz has been beneficial, and has greatly assisted Dr. Maritz with complying with his practice conditions to date. The Panel is convinced that Dr. Maritz has demonstrated he is not ungovernable, and can safely and effectively practice medicine subject to appropriate practice restrictions.

[46] That being said, the proven unprofessional conduct is serious, and persisted over the course of many years and involved different patients. With respect to allegations #1, #2, and #3, Dr. Maritz engaged in inappropriate sexual relationships with two different patients over the course of many years. He failed to terminate the physician/patient relationship during this lengthy period of time. Dr. Maritz knew that his behaviour was inappropriate and unprofessional, but persisted in his actions over an extended period of time.

[47] Further, the Panel disagrees with the assertion that the diagnosis of sexual addiction in 2003 should be treated as a significant mitigating factor. The Panel disagrees that this diagnosis drove Dr. Maritz to begin and maintain the inappropriate sexual relationship with [REDACTED]. Dr. Maritz was diagnosed with sexual addiction in 2003 based on the version of the DSM that was in place at that time. The fact that the field of psychology has evolved, and medical professionals today might reach different conclusions than the diagnosis that was given in 2003, does not prove that the College treated Dr. Maritz unfairly. Dr. Maritz testified that he knew that his relationship with [REDACTED] contravened his professional ethics, and he nevertheless persisted in that conduct for many years.

[48] The Panel agrees with the College that a physician must adhere to any practice restrictions placed on their license, and the failure to do so is a serious matter warranting disciplinary intervention. Accordingly, with respect to allegation #4, the Panel finds that Dr. Maritz's proven contravention of a restriction placed on his practice permit is a serious matter, particularly in light of his past conduct.

[49] The Panel finds that the College acted reasonably when it suspended Dr. Maritz without notice after his encounter with [REDACTED] had been reported to the Complaints Director, given that an immediate suspension was stipulated clearly in the signed undertaking agreement.

[50] With respect to allegation #4, had this divergence from the imposed practice restriction been a standalone event, then a caution might have been an appropriate penalty. However, the Panel agrees that the College was managing a physician with a history of previous deception and contravention of College rules and therefore the imposition of a suspension was, in the eyes of the Panel, an appropriate response in the circumstances to protect the public. The Panel therefore disagrees with Dr. Maritz's assertion that the interim suspension imposed by the College was unfair. The fact that the College imposed an interim suspension upon being made aware of the Dr. Maritz's encounter with [REDACTED] does not entitle Dr. Maritz to a lesser penalty, and the Panel does not consider that to be a mitigating factor in diminishing the costs to be paid by Dr. Maritz arising from the investigation and hearings in this matter.

[51] The Panel finds that protecting the public is the most important consideration in determining the appropriate penalty in this matter. Overall, given the length of time the unprofessional conduct persisted, and the fact that Dr. Maritz did not self-report this conduct to the College, the Panel finds Dr. Maritz presents a heightened risk to engage in further inappropriate relationships with female patients in the future. The penalty imposed must recognize and mitigate this risk to properly protect the public and maintain the public's confidence in the profession.

[52] In the circumstances, given the seriousness of the proven unprofessional conduct, it is appropriate to impose a lengthy suspension of 18 months as recommended by Dr. Maritz's counsel. A lengthy suspension serves to protect the public, and serves as both a specific and general deterrent. Dr. Maritz is to be given full credit for the time his license was suspended on an interim basis, as well as for the time he voluntarily withdrew from practice. Accordingly, Dr. Maritz has already served the full 18 months' suspension, and no further term of suspension is required.

[53] The Panel is satisfied that a term of suspension of 18 months is consistent with past disciplinary decisions. In particular, while the Panel notes that an 18-month term of suspension is higher than any of the comparator cases cited by Dr. Maritz, the Panel finds this is appropriate, given the fact that the

boundary violations persisted over a long period of time, were not self-reported, and continued despite specific direction from the College that sexual relationships with clients is inappropriate and may lead to disciplinary action. Dr. Maritz's encounter with [REDACTED] further underscores the seriousness of Dr. Maritz's unprofessional conduct, in that he violated a condition placed on his practice permit mere weeks after the restrictions were put in place, and then failed to self-report that incident. Taken together, the boundary violations are serious, and should attract a serious penalty to both specifically deter Dr. Maritz from engaging in similar conduct in the future, and to deter other physicians from engaging in similar conduct. While the Panel is not satisfied that cancellation is an appropriate penalty in this case, a lengthy period of suspension is warranted.

[54] The Panel is concerned that Dr. Maritz presents a heightened risk of engaging in similar unprofessional conduct in the future. In particular, the Panel is concerned by the fact that Dr. Maritz did not self-report any of the proven unprofessional misconduct to the College. Physicians are obligated to self-report behaviour that may contravene their professional duties and ethics. The College's Standards of Practice expressly requires physicians to self-report inappropriate personal relationships, and adherence to practice restrictions:

- (1) A physician must report the following personal circumstances to the College at the time of registration or whenever the physician becomes aware thereafter: (a) any physical, cognitive, mental and/or emotional condition that is negatively impacting¹ your work or is reasonably likely to negatively impact your work in the future².
 - (b) a sexual or inappropriate personal relationship between the physician and the patient.
 - (c) any voluntary or involuntary loss or restriction of diagnostic or treatment privileges granted by an administrative authority or any resignation in lieu of further administrative or disciplinary action.
- (2) A physician must adhere to restrictions imposed by the College, to the satisfaction of the College, or withdraw from medical practice.

[55] With respect to Allegation #1, Dr. Maritz reported it to the College only after another physician threatened to report him first. Dr. Maritz did not self-report any of his conduct concerning [REDACTED], despite the length of time this conduct persisted. Further, Dr. Maritz did not self-report his encounter with [REDACTED], despite admitting that he knew he was potentially in breach of his practice restrictions. The Panel notes that physicians are obligated to self-report any conduct that *potentially* contravenes their professional obligations, so Dr. Maritz cannot be excused for his failure to self-report his encounter with [REDACTED] on the grounds that he mistakenly believed the conduct might not attract disciplinary intervention. He knew that he was potentially in contravention of his practice restrictions, and that is sufficient to trigger a duty to self-report.

[56] During the Merit Hearing, the Panel asked Dr. Louise Webb questions about whether she was under the impression that Dr. Maritz had self-reported his encounter with [REDACTED] to the College. Dr. Webb's testimony suggested she was, in fact, under that mistaken impression. The relevant excerpt from the hearing transcript is reproduced below (Transcript of Proceedings held before the Hearing Tribunal of the College of Physicians and Surgeons of Alberta, November 13 and 14, 2017 at pages 227-28):

DR. PASTERNAK: You mentioned earlier that if you knew that a physician was in breach of contract or boundaries, that you would encourage them to self-report?

DR. WEBB: Yes.

DR. PASTERNAK: And if they refused to self-report, that you would report them yourself. In the case of this circumstance with the signed agreement stating number 1 and number 9, would you have considered that a breach that should be self-reported?

DR. WEBB: Yes. And my recollection is he already had done that. That was my understanding. In that conversation he was more saying here's what's happened, here's what I've done.

DR. PASTERNAK: I see.

DR. WEBB: And I don't think he -- my recollection is he did not know whether the licence was going to be suspended or not for sure. None of that had been communicated to him. That's my recollection. But as far as I knew, this was already -- been made aware to the College.

DR. CRAIG: And in that knowledge, was it your impression that Dr. Maritz had notified the College himself of this?

DR. WEBB: That's my recollection, yes. That's my understanding. That's to the best of my recollection.

[57] It is unclear if Dr. Maritz expressly stated to Dr. Webb that he had self-reported his encounter with [REDACTED] to the College, or if he merely omitted that detail in his discussion with her. At the very least, the Panel finds that Dr. Maritz failed to clearly disclose to his therapist that he had not self-reported the incident to the College, and Dr. Webb was left with the mistaken impression that he had. Dr. Maritz's failure to be candid with his therapist regarding this matter reinforces the Panel's concern that Dr. Maritz will not be candid with the College in the future, and represents a heightened risk to not self-report professional misconduct in the future.

[58] The Panel recognizes that Dr. Webb was unequivocal in her suggestion that "the restrictions placed on Dr. Maritz are completely out of proportion to his behavior in the past and no longer necessary to protect the public" (Exhibit 28). Given that Dr. Webb was under the mistaken impression that Dr. Maritz had self-reported his encounter with [REDACTED] to the College at the time the report was drafted, the Panel places less weight on the conclusions reached by Dr. Webb. Her opinion may well have been different if she was aware of all surrounding circumstances.

[59] Since Dr. Maritz has evinced a repeated tendency to cover up unprofessional conduct and to not self-report that conduct to the College, the Panel is concerned that he will continue to cover up unprofessional conduct and not self-report in the future. While the Panel is not convinced that this makes Dr. Maritz an "ungovernable physician", the Panel is convinced that it is appropriate to place continuing restrictions on his practice permit in order to protect the public and to monitor his conduct, in addition to imposing a lengthy term of suspension.

[60] In determining appropriate restrictions to be placed on Dr. Maritz's practice permit, the Panel has considered the two letters provided by Dr. Louise Webb and Dr. William Sara, as well as the Forensic Psychiatry Assessment by Dr. Cynthia Baxter, which were all conducted in 2017.

[61] Dr. Cynthia Baxter provided a report dated October 30, 2017 on her assessment of Dr. Maritz (Exhibit 32). Dr. Baxter recommended that restrictions continue to be placed on Dr. Maritz's practice license to prevent boundary violations from occurring. Dr. Baxter suggests that Dr. Maritz poses an ongoing risk of "[d]eveloping romantic relationships with women where he holds a position of power or where there is a boundary issue prohibiting the relationship," and "[p]roviding medical care to a woman with whom he is in a relationship." She suggests that appropriate practice restrictions could include

maintaining the restriction on seeing only male patients in a private clinical setting, and seeing female patients in the emergency room with a chaperone present for conducting intimate examinations. Dr. Baxter also supports continuing the supervision of Dr. Maritz's practice through a practice monitor. Dr. Baxter considers Dr. Maritz to be at a low risk of reoffending.

[62] Of the opinions submitted, Dr. Webb's was the most critical of the interim restrictions placed on Dr. Maritz, calling them "extremely rigid" and "completely out of proportion to his behavior in the past." As noted above, the Panel is concerned that Dr. Webb's opinion was founded on an incomplete understanding of the surrounding facts, given she remained under the mistaken impression that Dr. Maritz had self-reported his interaction with [REDACTED]. As noted above, the Panel places less weight on the conclusions reached by Dr. Webb.

[63] Dr. William Sara submitted a report dated November 3, 2017 (Exhibit 31). Dr. Sara's report confirms Dr. Maritz has complied with his practice restrictions, and Dr. Sara is supportive of relaxing the restrictions further. Dr. Sara concludes "[b]ased on my observations of the past year, I am confident in my own discipline to anticipate that Dr. Maritz's medical practice will continue to evolve to be a credit to the community and to our profession." Dr. Sara's testimony during the Merit Hearing confirms his opinion that Dr. Maritz has governed himself well during the period he was under Dr. Sara's observation.

[64] The Panel also notes that earlier assessments of Dr. Maritz's fitness to practice support continued monitoring and the imposition of practice restrictions, although less weight has been given to these letters given the passage of time (see e.g. Letter from Dr. Adams dated October 4, 2015; Letter from Dr. Paul Janke dated October 5, 2015; Letter from Meg Hinton dated January 26, 2016; Assessment from The Gabbard Center dated April 8-9, 2016; Letter from Dr. Louise Webb dated August 24, 2016).

[65] The Panel finds that it is appropriate to place continuing restrictions on Dr. Maritz's license to practice. This is consistent with the recommendations made by Dr. Sara and Dr. Baxter in their reports.

[66] However, the Panel disagrees that the practice restrictions should be relaxed further. The Panel notes that Dr. Maritz's boundary violations were unrelated to clinical encounters themselves, and instead consisted of him developing consensual sexual relationships with patients. The Panel does not believe that a practice restriction requiring Dr. Maritz to treat female patients with a chaperone present would prevent Dr. Maritz from engaging in an inappropriate social or sexual relationship with a female patient in the community in the future. This is consistent with Dr. Baxter's observations on the nature of Dr. Maritz's boundary violations.

[67] The Panel is satisfied that Dr. Maritz poses an elevated risk to engage in inappropriate sexual relationships with other female patients in the future. Dr. Maritz engaged in inappropriate relationships with two female patients over an extended period of time. At no time did he self-report this conduct. While he has sought and received counselling and treatment, the Panel is not convinced that Dr. Maritz should be able to treat female patients in an unmonitored setting. His community is small, and his inappropriate romantic relationships developed in the course of the physician/patient relationship, and continued restrictions and monitoring of interactions with female patients is therefore warranted. Given the Panel's concerns regarding Dr. Maritz's candour and honesty, the Panel is concerned that relaxing his practice restrictions at this time will not allow for the level of monitoring required to ensure continued adherence to these restrictions and his professional obligations generally. His record since November 2016 shows that he successfully treats male patients, and is effective in doing so.

[68] Accordingly, the Panel finds that the practice conditions currently listed on Dr. Maritz's license to practice are to remain in place for a period of three years following the date of this decision. Further, it is apparent that Dr. Maritz has benefitted from Dr. Sara's involvement as practice monitor. Accordingly, the Panel believes it is appropriate for this monitoring to continue with a practice monitor that is acceptable to the Complaints Director. The Panel finds that maintaining these practice restrictions for a

period of three years is in the public interest, promotes the objective of rehabilitating Dr. Maritz, and gives Dr. Maritz an opportunity to demonstrate he is capable of following his practice restrictions to the letter.

[69] With respect to the costs that shall be paid by Dr. Maritz for the investigation and hearing in this matter, the Panel notes that it has a significant degree of discretion in determining the proportion of costs that should be paid by the disciplined member. The Panel is satisfied that it is appropriate for Dr. Maritz to pay 100% of the costs of the investigation and hearing in this matter.

[70] The Panel has considered the various factors outlined in *Jaswal* and affirmed by the Alberta Court of Appeal in *Fitzpatrick* for determining the quantum of costs that should be paid by the disciplined member. In particular, the Panel notes Dr. Maritz was unsuccessful in opposing the finding of unprofessional conduct for allegation #4, and was accordingly entirely unsuccessful at the Merit Hearing. Generally, where a disciplined member is found guilty of unprofessional conduct with respect to all allegations before the Hearing Tribunal, it is appropriate for the disciplined member to bear the costs of the investigation and hearing, unless mitigating factors are present which suggest it would be inappropriate to do so. In circumstances such as this where the disciplined member has been found guilty of all charges before the Hearing Tribunal, the members of the profession should not be required to bear the cost of the proceedings, unless circumstances exist suggesting it would be inappropriate for the member to bear the full costs.

[71] In this case, the Panel finds there is no reason to depart from this principle, and accordingly finds Dr. Maritz should pay 100% of the costs of the investigation and hearing. Dr. Maritz submitted that he should only be required to bear 50% of the costs on the basis that he was misdiagnosed with sexual addiction, was unfairly suspended by the College following his encounter with [REDACTED], and has already suffered financially as a result of the allegations and his interim suspension and voluntary withdrawal from practice. The Panel has already rejected the first two assertions, and while the Panel acknowledges Dr. Maritz suffered financially due to the interim suspension and voluntary withdrawal from practice, that alone is an insufficient rationale to reduce the quantum of costs payable by him.

[72] The Panel notes that section 82(1)(j) of the *HPA* affirms that the following are legitimate expenses that may be included as part of a costs award:

- (i) the expenses of an expert who assessed and provided a written report on the subject-matter of the complaint,
- (ii) legal expenses and legal fees for legal services provided to the college, complaints director and hearing tribunal,
- (iii) travelling expenses and a daily allowance, as determined by the council, for the complaints director, the investigator and the members of the hearing tribunal who are not public members,
- (iv) witness fees, expert witness fees and expenses of witnesses and expert witnesses,
- (v) the costs of creating a record of the proceedings and transcripts and of serving notices and documents, and
- (vi) any other expenses of the college directly attributable to the investigation or hearing or both.

[73] The Panel orders that Dr. Maritz pay 100% of the costs associated with the investigation and hearing of this matter, including all those costs specifically itemized in section 82(1)(j). Further, the Complaints Director may permit Dr. Maritz to make installment payments over a period of time if the Complaints Director is satisfied that Dr. Maritz is unable to pay the full costs award in aggregate without experiencing undue hardship.

[74] Notice of this decision shall be given to the profession. The Merit Decision and this Sanctions Decision shall be published, including Dr. Maritz's name.

V. ORDERS

[75] The Panel orders that:

1. Dr. Maritz shall be suspended for a period of eighteen (18) months;
2. Dr. Maritz shall receive credit for the time he served for interim suspensions imposed by the College, and for the period Dr. Maritz voluntarily withdrew from practice. Accordingly, Dr. Maritz has served the period of suspension imposed by this decision;
3. All current restrictions on Dr. Maritz's practice license shall remain in effect for a period of three years from the date of this decision;
4. Dr. Martiz shall employ, or otherwise engage, a mature practicing physician (approved by the Complaints Director) who shall report to the College on demand regarding Dr. Maritz's adherence to his practice restrictions for a period of three years from the date of this decision
5. Dr. Maritz shall post a notice to his patients, in his place of practice, setting out the restrictions on his license; and
6. Dr. Martiz shall be responsible for 100% of the costs of the investigation and hearing. The terms of this payment shall be at the discretion of the Complaints Director, acting reasonably.

Signed on behalf of the Hearing Tribunal by
the Chair



Dated: August 3, 2018

Dr. John Pasternak