

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. ADRIAAN KRIEL

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

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Dr. Adriaan Kriel on August 6, 2020. The members of the Hearing Tribunal were:

Dr. Mark Chapelski of Lloydminster as Chair, Dr. Neelan Pillay of Calgary and Ms. Archana Chaudhary of Edmonton (public member). Ms. Ayla Akgungor acted as independent legal counsel for the Hearing Tribunal.

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. Adriaan Kriel, Mr. Kristian Duff, legal counsel for Dr. Kriel and Mr. Duff's associate, Ms. Shayla Stein.

II. PRELIMINARY MATTERS

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

III. CHARGES

The Notice of Hearing listed the following allegations:

1. you did display a lack of skill or judgement in the performance of a blepharoplasty on your patient, JM , on or about June 13, 2018;
2. you did display a lack of skill or judgment in the performance of a procedure on or about July 11, 2018 to address complications experienced by your patient, JM ;
3. you did display a lack of skill or judgment in the performance of a liposuction procedure on your patient, SA , on or about October 2, 2018;
4. you did display a lack of skill or judgment in failing to refer your patient, SA , to a specialist in a timely manner given the complications experienced by your patient following the procedure you performed on or about October 2, 2018;
5. during the period of 2005 to 2009, you did perform over 140 blepharoplasty procedures in a facility that was not an approved non-hospital surgical facility under the Bylaws of the College;
6. during the period of 2010 to 2019, you did perform over 140 blepharoplasty procedures in an unaccredited facility contrary to Sections 8.1 and 8.6 of Schedule 21 of the Health Professions Act.

7. during the period of 2007 to 2009, you did perform over 50 liposuction procedures in a facility that was not an approved non-hospital surgical facility under the Bylaws of the College;
8. during the period of 2010 to 2018, you did perform over 280 liposuction procedures in an unaccredited facility contrary to Sections 8.1 and 8.6 of Schedule 21 of the Health Professions Act.
9. by letter dated August 16, 2005, you did provide false information to Dr. Bryan Ward of the College indicating that you had ceased performing blepharoplasties.
10. you did provide false information to the College through your annual renewal information forms for 2011 to 2018 by indicating that you did not perform surgical procedures which require sedation.

IV. EVIDENCE

The following Exhibits were entered into evidence during the hearing:

Exhibit 1 –Exhibit Book with Tabs 1-25:

1. Notice of Hearing dated June 25, 2020.
2. Complaint Form from JM dated September 8, 2018.
3. Response Letter from Dr. Kriel dated October 18, 2018.
4. Undertaking by Dr. Kriel dated September 26, 2018.
5. Dr. Kriel's Chart for JM .
6. Letter from Dr. M. Ashenhurst, Eye Surgeon, dated February 4, 2019 with records for JM .
7. Letter from Dr. A. Carlsson, Ophthalmologist dated March 14, 2019.
8. Letter from Dr. M. Ashenhurst, Eye Surgeon, dated August 19, 2019.
9. Correspondence between Dr. B. Ward, Assistant Registrar and Dr. Kriel from June to August 2005.
10. Summary of Blepharoplasties performed by Dr. Kriel in unaccredited surgical suite since 2005.
11. CPSA list of accredited blepharoplasty providers.
12. Dr. Kriel's Registration Information Forms for 2015 to 2019.
13. CPSA list of Accredited Non-Hospital Surgical Facilities as of July 18, 2019.
14. Memo by Dr. Ritchie regarding Section 56 complaint investigation dated June 6, 2019.
15. Letter from K. Damron to Dr. Kriel dated June 17, 2019 re new complaint and response.
16. Undertaking by Dr. Kriel dated June 19, 2019.
17. Summary of liposuction procedures performed by Dr. Kriel in unaccredited surgical suite since 2005.

18. Letter from Gowling WLG to College dated August 14, 2019 with response by Dr. Kriel and chart of SA .
19. Letter from Dr. Kriel to Dr. Ritchie, undated (received December 9, 2019) with further response.
20. Letter from Dr. E. Campbell, plastic surgeon to Dr. J. Ritchie, Associate Complaints Director dated February 3, 2020.
21. Dr. Campbell chart notes for attendance with SA .
22. Letter from Dr. Brooks, plastic surgeon, to Dr. Campbell dated February 4, 2019.
23. Section 46 of CPSA Bylaws in force in January 2006.
24. Section 36 Of CPSA Bylaws in force in January 2016.
25. Standard of Practice regarding medical services requiring accreditation outside of hospitals.

Exhibit 2 - Admission and Joint Submission Agreement.

Exhibit 3 - Undertaking of Dr. Adriaan Kriel dated July 15, 2020.

V. SUBMISSIONS

College of Physicians and Surgeons of Alberta

Mr. Boyer for the College outlined that there are four categories of allegations. One is the lack of skill or judgement in the performance of a blepharoplasty on patient JM and treating complications thereafter. Two is allegations relating to the lack of skill or judgement in the performance of a liposuction procedure on patient SA and including complications of the procedure. Three is charges relating to the performance of blepharoplasties and liposuctions over a number of years in an unaccredited facility. Four is the provision of information that was not accurate when dealing with the College, and in particular dealing with Dr. Ward, and also on annual renewal forms.

Mr. Boyer advised that there is a signed admission and joint submission on penalty. He acknowledged that it is the Hearing Tribunal that must consider the evidence put before it and determine whether there is sufficient evidence to support the admission and the Tribunal determines the final penalty.

Mr. Boyer submits that there is clearly evidence from the complaints, the information from physicians who treated the patients in addition to Dr. Kriel, as well as evidence of accredited facilities by the College and the fact that Dr. Kriel's office was not an accredited facility and he did not have approval to perform the type of procedures, which are restricted to accredited facilities, in his office setting. Mr. Boyer submits that there is more than sufficient evidence put before the Hearing Tribunal to support the admission of the allegations by Dr. Kriel and that they amount to unprofessional conduct.

Dr. Adriaan Kriel

Mr. Duff for Dr. Kriel advised the Tribunal that this is Dr. Kriel's first disciplinary proceeding. Dr. Kriel is accepting full responsibility for his actions that he acknowledges they were inappropriate and constitute unprofessional conduct pursuant to the *Health Professions Act* ("HPA"). Mr. Duff explained that Dr. Kriel is a passionate physician and has spent many years serving his community in Medicine Hat and elsewhere in Canada.

FINDINGS

The Hearing Tribunal gives deference to a signed admission. It is however our mandate to determine guilt or innocence of a member before us. The submission by the College was brief. Mr. Boyer referred to the exhibits presented which when reviewed showed four categories of unprofessional conduct.

With respect to the first category of allegations (allegations 1 and 2), lack of skill and judgment performing a blepharoplasty, it was clear JM did not have a good outcome of the surgery. This in itself does not indicate lack of skill or judgement or unprofessionalism. However, the supporting documentation from the specialist taking over JM's care revealed that the blepharoplasty was not performed in a skillful manner. In particular, the records from the specialist revealed that, one month after the blepharoplasty was performed by Dr. Kriel, JM presented with a generalized deformed appearance, an inability to completely close her eyes, generalized discomfort, facial swelling and mildly blurred vision. JM's general appearance showed a fresh scar and swelling along the lateral canthal areas of both eyes, with redness and cicatricial ectropion of both lower lids (worse on the right side). In addition, she demonstrated a right-sided forehead droop with loss of sensation over the temporal region of the forehead.

JM was then referred to an oculoplastic surgeon who confirmed the findings of the specialist. The surgeon also confirmed right sided brow ptosis, causing asymmetry with altered sensation. This was suggestive of possible nerve damage. The surgeon performed a further surgery on JM to correct the various problems.

In the circumstances, the Hearing Tribunal accepts that Dr. Kriel's conduct was unprofessional.

In terms of the second category of allegations (allegations 3 and 4), regarding lack of skill and judgment in performing liposuction on SA, it was clear that SA did not have a good outcome of the surgery. Again, the supporting documentation of the specialist involved in the aftercare led the Tribunal to believe that there was a lack of skill and judgement when Dr. Kriel performed the surgery on SA. In particular, when examined by the specialist six months after the liposuction procedure, SA presented with a significant number of

blotchy scars, several areas of redness, and a buried suture beneath her skin. Protruding from several of the scars was some brown material. SA subsequently underwent 4 operations with the specialist to have at least 12 scars revised by excising the scars and closing them with dissolving sutures. Given these circumstances, the Hearing Tribunal accepts that Dr. Kriel's conduct was unprofessional.

With respect to the third category of allegations, there is no doubt in the Tribunal's mind that Dr. Kriel was performing procedures, blepharoplasty and liposuction, in his office which was not an accredited facility. These procedures are only to be performed in a hospital or accredited facility. The Tribunal was presented with evidence that Dr. Kriel performed over 140 blepharoplasty procedures between 2005 to 2009 in his facility, which was not an approved non-hospital surgical facility, contrary to CPSA Bylaw 46, and over 146 blepharoplasty procedures between 2010 and 2017 in his unaccredited facility contrary to sections 8.1 and 8.6 of Schedule 21 of the HPA.

The Tribunal was also presented with evidence that Dr. Kriel performed 56 liposuction procedures between 2007 and 2009 in his facility, which was not an approved non-hospital surgical facility under CPSA Bylaw 46, and 285 liposuction procedures between 2010 and 2018 in his unaccredited facility contrary to sections 8.1 and 8.6 of Schedule 21 of the HPA.

On this basis, the Tribunal is satisfied that the conduct set out in allegations 5-8 occurred and that this conduct is unprofessional.

With respect to allegation 9, Dr. Kriel sent Dr. Ward a signed letter August 16, 2005 that stated he stopped performing blepharoplasties. This was inaccurate as the Tribunal was presented with evidence that Dr. Kriel continued to perform this surgery on a regular basis from 2005 right through to 2017. The Tribunal has no difficulty in concluding that making false representations to the CPSA amounts to unprofessional conduct.

As far as allegation 10, in Dr. Kriel's license renewal forms for the years 2011 to 2018 he attested to not performing procedures that require sedation or general/regional anesthesia. However, the evidence before the Tribunal demonstrated that Dr. Kriel's practice involved using anesthesia for his liposuction procedures, which were performed from 2007 through to 2018. Making false attestations on College license renewal forms is unprofessional conduct.

Mr. Duff for Dr. Kriel agreed with the submissions by Mr. Boyer for the College.

The Hearing Tribunal finds that the conduct set out in allegations 1-10 has been established and that Dr. Kriel is guilty of unprofessional conduct with respect to all 10 allegations.

SUBMISSIONS ON PENALTY

The College and Dr. Kriel made a joint submission on penalty:

1. That Dr. Kriel shall receive a suspension of twelve months to be served in full and starting on a date determined by the Complaints Director, being no earlier than the day following the date of the hearing before the Hearing Tribunal.
2. That Dr. Kriel shall sign a written Undertaking to the College that he shall not perform any procedure that is restricted to being provided only in an accredited facility unless and until he is relieved of that written Undertaking in whole or in part.
3. Dr. Kriel shall also be responsible for the costs of the investigation and hearing.

Mr. Boyer submitted that there are two general principles to consider when dealing with sanction: deterrence and rehabilitation. Deterrence must be specific and deter the individual facing charges as well as general in order to deter the profession as a whole. The focus of these sanctions is mainly on deterrence as it is important to deter Dr. Kriel and the profession at large from performing procedures in unaccredited facilities.

The public and the government trust the College to regulate the profession to ensure the safe delivery of medical care including standards for emergency resuscitation and appropriate infection prevention control. When a physician does not respect or adhere to these standards, a significant penalty is warranted and that is why the joint submission proposes a suspension of 12 months.

Mr. Boyer presented the Tribunal with a number of other cases setting out sanctions for conduct similar to the conduct at issue in this case. The cases demonstrated penalties ranging from a 4-week suspension for one instance of a procedure being performed in an unaccredited facility to three and five months suspensions for performing unauthorized out-of-hospital procedures over a period of months to a 2-year suspension for a physician who had a number of patients with significant complications from liposuction done in an unauthorized office setting. Finally, one case ordered cancellation of registration for another physician for performing procedures that were inappropriate in a clinic setting.

Mr. Boyer submitted that these cases demonstrate that the penalties for performing procedures in an unaccredited facility are intended to be significant. However, the Hearing Tribunal is entitled to consider that Dr. Kriel, to his credit, has admitted the allegations, saved his patients from having to go through a hearing and acknowledged his unprofessional conduct. In these circumstances, the penalty of revocation would not be appropriate given Dr. Kriel's cooperation.

To underscore the severity of a 12-month penalty, Mr. Boyer noted that it is common to see a one-year suspension ordered in cases of sexual boundary violations, which are clearly situations involving the upper end of the spectrum of unprofessional conduct. It is a significant message of deterrence.

Mr. Boyer submitted that the penalties put forward by the parties are significant and respond to the principles of deterrence outlined in the *Jaswal* case. The penalties also allow Dr. Kriel the opportunity to return to practice and continue to contribute to the profession in a positive way and to that extent the penalties proposed have a component of rehabilitation.

Mr. Boyer closed his submissions by reminding the Hearing Tribunal of the principle of deference that applies to decision-makers considering joint submissions. In particular, the Supreme Court of Canada decision in *R. v. Anthony-Cook*, requires that the Hearing Tribunal defer to the joint submission of the parties unless the proposed penalties would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.

Mr. Duff echoed the comments of Mr. Boyer. He pointed out that Dr. Kriel has agreed to the penalties and that the Hearing Tribunal should accept the joint submission unless there would be a manifestly unjust reason not to. In this case, there is no such reason and deference should be given to the joint submission that was entered into between the parties.

ORDERS

The Hearing Tribunal gives great deference to the joint submission. The Tribunal understands that there is a high standard to accept a joint submission and it should be accepted unless it would bring the administration of justice into disrepute, or is otherwise not in the public interest.

It is clear to the Tribunal that Dr. Kriel demonstrated a lack of skill and judgment in performing two surgical procedures, performed these procedures in a non-accredited office and provided inaccurate information to the College on several occasions. This occurred over many years. The Tribunal considers this a serious breach of professional ethics and conduct which deserves a considerable penalty. This penalty must not only deter the member to not behave in this manner again, but be a sign to the profession that we will not tolerate this type of behavior.

The Tribunal considers a one-year suspension significant. This length of time demonstrates to the public and the members that the Tribunal takes this unprofessional conduct seriously. The Tribunal also agrees with Dr. Kriel paying the costs of the investigation and hearing. Finally, the Tribunal has reviewed the signed undertaking and finds that the undertaking serves an important role in ensuring the protection of the public by prohibiting Dr. Kriel from further engaging in unauthorized practices.

Therefore, the Tribunal accepts in whole the joint submission on penalty between the College of Physicians and Surgeons of Alberta and Dr. Kriel and makes the following orders:

1. Dr. Kriel shall receive a suspension of twelve (12) months to be served in full and starting on a date determined by the Complaints Director, being no earlier than the day following the date of the hearing before the Hearing Tribunal.
2. Dr. Kriel shall sign a written Undertaking to the College that he shall not perform any procedure that is restricted to being provided only in an accredited facility unless and until he is relieved of that written Undertaking in whole or in part.
3. Dr. Kriel shall be responsible for the full costs of the investigation and hearing.

Signed on behalf of the Hearing
Tribunal by the Chair



Dated: October 16, 2020

Dr. Mark Chapelski