

COLLEGE OF PHYSICIANS & SURGEONS OF ALBERTA

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

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF DR. TAREK MOTAN

**DECISION OF THE HEARING TRIBUNAL OF
THE COLLEGE OF PHYSICIANS
& SURGEONS OF ALBERTA
October 2, 2024**

I. INTRODUCTION

1. The Hearing Tribunal held a hearing into the conduct of Dr. Tarek Motan on September 5, 2024. The members of the Hearing Tribunal were:

Dr. Vonda Bobart as Chair;
Dr. Thilinie Rajapakse;
Mr. Don Wilson (public member);
Mr. Glen Buick (public member).

2. Appearances:

Mr. Craig Boyer, legal counsel for the Complaints Director;
Dr. Tarek Motan;
Mr. James Heelan K.C. and Mr. Patrick Coones, legal counsel for Dr. Motan;
Ms. Vivian Stevenson acted as independent legal counsel for the Hearing Tribunal.

II. PRELIMINARY MATTERS

3. 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. The hearing was open to the public pursuant to section 78 of the *Health Professions Act* ("HPA").

III. CHARGES

4. The Amended Notice of Hearing listed the following allegations:
 1. During the period of August 2015 to November 2017 you did fail to comply with the College of Physicians & Surgeons of Alberta's Standard of Practice regarding Conflict of Interest, particulars of which include one or more of the following:
 - a. Accepting payment of rebates from pharmaceutical manufacturers based on your prescribing of fertility drugs, such as Gonal-f, Puregon, and Menopur, to your patients;
 - b. Referring your patients to whom you prescribed fertility drugs, such as Gonal-f, Puregon and Menopur, to use the [REDACTED] Pharmacy for dispensing of the prescribed fertility drugs to facilitate the payment of rebates to you from the pharmaceutical manufacturers;
 - c. Failing to inform your patients in a full, frank and timely manner that you were receiving rebates from pharmaceutical manufacturers based on the fertility drug being prescribed by you to the patient, including

your patients [REDACTED]
[REDACTED];

- d. Failing to obtain informed consent from your patients, including [REDACTED]
[REDACTED], that you were in a real or perceived conflict of interest by receiving rebates from pharmaceutical manufacturers based on fertility drugs, such as Gonal-f, Puregon and Menopur, you were prescribing to your patients;
 - e. Paying or offering to pay a portion of the rebates received by you from the pharmaceutical manufacturers to the [REDACTED] Pharmacy.
5. Dr. Motan admitted the allegations as set out in the Notice of Hearing (the "Allegations") and agreed that the conduct set out in the Allegation amounted to unprofessional conduct under the HPA. The hearing proceeded by way of an Agreed Exhibit Book and a Joint Submission on Sanction ("Joint Submission") by Dr. Motan and the College of Physicians and the College.

IV. EVIDENCE

6. By agreement, the following Exhibits were entered into evidence during the hearing:

Exhibit 1: Agreed Exhibit Book dated August 20, 2024

- Tab 1:** Notice of Hearing dated March 5, 2023
- Tab 2:** Amended Notice of Hearing dated August 16, 2024
- Tab 3:** Letter of Complaint from Dr. Caffaro, CPSA Complaints Director, dated March 29, 2021
- Tab 4:** Letter from CPSA to Dr. Motan with notice of complaint, dated April 15, 2021
- Tab 5:** Letter of response from Dr. Motan's counsel, dated April 23, 2021
- Tab 6:** Letter from Dr. Motan to Dr. Zygun self-reporting to Alberta Health Services dated February 1, 2018
- Tab 7:** Alberta Health Services Triggered Initial Assessment Report dated November 21, 2018
- Tab 8:** Letter from Dr. Motan to Alberta Health Services in response to TIA with enclosed financial records dated January 16, 2019
- Tab 9:** Consensual Resolution Agreement between AHS and Dr. Motan dated November 2019
- Tab 10:** Letter from Dr. Motan self-reporting to CPSA (no date)
- Tab 11:** Form of letter sent by Dr. Motan to fertility patients dated April 2021

- Tab 12:** Form of letter sent by Dr. Motan to drug companies (no date)
- Tab 13:** Complaint from [REDACTED] dated April 21, 2021
- Tab 14:** Letter of response from Dr. Motan re [REDACTED] dated February 15, 2022
- Tab 15:** Complaint by [REDACTED] dated May 10, 2021
- Tab 16:** Letter of response from Dr. Motan re [REDACTED] dated February 15, 2022
- Tab 17:** Complaint of [REDACTED] dated October 18, 2022
- Tab 18:** Letter of response from Dr. Motan re [REDACTED] dated March 7, 2023
- Tab 19:** CPSA Standards of Practice – Conflicts of Interest
- Tab 20:** Certificate of Completion of CPEP Probe Program - November 21 to 23, 2019

Exhibit 2: Amended Admission and Joint Submission Agreement dated August 16, 2024.

7. Counsel for the Complaints Director, also filed the following materials:
- Brief of Law regarding Joint submissions dated September 3, 2024
 - *Alberta College of Pharmacists v Kieser*, September 22, 2016
 - *Alberta College of Pharmacists v. King*, September 22, 2016
 - *Alberta College of Pharmacists v Stadnyk*, September 22, 2016
 - *College of Chiropodists of Ontario v. Ginsberg* 2023 ONCOCOO 2
 - *Ontario (College of Physicians and Surgeons) v. Denys* 2019 ONCPSD 28
 - *Ontario (College of Physicians and Surgeons) v. Savic* 2015 OCPSD 10
 - *Jaswal v Newfoundland Medical Board* 1996 CanLii 11630
8. The Hearing Tribunal received the Agreed Exhibit Book and other filed materials in advance of the hearing by agreement and had the opportunity to review those materials prior to the hearing.

V. SUBMISSIONS

Submissions by Counsel for the Complaints Director

9. Counsel for the Complaints Director thanked counsel for Dr. Motan for his assistance in reaching an agreement in relation to the Allegations.
10. Counsel for the Complaints Director summarized the evidence in Exhibit 1 and the process that brought these matters before the Hearing Tribunal.

11. The Allegations relate to rebates that Dr. Motan received from pharmaceutical companies between August of 2015 and November of 2017 (the "Rebates").
12. The matter came to the notice of the College as a result of a self-report by Dr. Motan. In February of 2021 Dr. Mohan provided the College with the findings of a Triggered Initial Assessment ("TIA") undertaken by Alberta Health Services ("AHS") relating to the Rebates. The TIA Report concluded that each of the allegations made in those proceedings was founded. In a consensual resolution agreement arising from the TIA proceedings, Dr. Motan had agreed to self-report to the CPSA, among other things.
13. Dr. Motan's self-report forms part of the Agreed Exhibit Book (p. 102). In the self-report Dr. Motan advised that AHS had determined that he breached standards and expectations set out by the College and that he was self-reporting his non-compliance.
14. Dr. Motan also indicated in his self-report that he had entered into arrangements with three pharmaceutical companies to be paid rebates for drugs which were ordered by, received by and dispensed through a community pharmacy. He advised that he received the Rebates, which were placed into a bank account and that he paid a portion of the Rebates to the pharmacy. Dr. Motan further advised that the arrangements occurred without notification to the CPSA or AHS.
15. As a result of the self-report, the Complaints Director initiated a complaint under s. 56 of the HPA. The College also received complaints from four of Dr. Motan's patients relating to the Rebates and other concerns.
16. Dr. Motan provided a written response to the complaints. His counsel's letter of response to the College responding to the complaints together with Dr. Motan's letter to AHS responding to the TIA are agreed exhibits (Exhibit 1 p. 10 and p. 13).
17. The letters from and on behalf of Dr. Motan did not necessarily accept the characterization of his conduct by AHS, but Dr. Motan expressed regret at the decisions he had made in relation to the Rebates. He advised that it was his intention to create a fund to enhance the clinic through education of nurses, lab staff and research and that he never intended to benefit personally from the Rebates, nor did he. Dr. Motan stated that he also regretted his naivety, and that the TIA had been exceedingly difficult and had involved daily reflection and remorse.
18. Dr. Motan advised the College that as part of his consensual resolution agreement with AHS he had attended and successfully completed the PROBE Ethics and Boundaries course, had issued letters of apology to his patients and had undergone a suspension of his clinical privileges, which meant that he was unable to practice medicine between November 13, 2019 and January 1, 2020.

19. Because Dr. Motan had previously served as a member of CPSA Council, the College directed the investigation of the matter to the College of Physicians and Surgeons of British Columbia ("CPSBC"). The Allegations were based on the CPSBC investigation. The issues that had been referred to the CPSBC for investigation included complaints regarding Dr. Motan's care of his patients. Counsel for the Complaints Director advised the Hearing Tribunal that CPSBC recommended that allegations related to Dr. Motan's conflict of interest go forward to a hearing but had concluded that there was insufficient evidence of unprofessional conduct relating to the exercise of Dr. Motan's clinical judgment or with respect to the quality of the care that his patients received to warrant referring those matters to a hearing. Accordingly, the matters that were the subject of the admission and the hearing related only to allegations of conflict of interest.
20. During his submissions, counsel for the Complaints Director drew the attention of the Hearing Tribunal to various portions of the TIA Report (Exhibit 1 p. 17-82) including the findings in that Report that:
 - a. Dr. Motan had received total gross rebates from the pharmaceutical companies of \$1,216,607.56.
 - b. The net rebates from the pharmaceutical company after paying taxes was approximately \$436,000.
 - c. The funds were put in a bank account under the name of the Centre for Assisted Reproduction Edmonton ("CARE").
 - d. CARE was not a separate legal entity, but a separate bank account owned by Dr. Motan's Professional Corporation.
 - e. Approximately \$88,000 had been expended on expenses related to the clinic where Dr. Motan was practicing.
 - f. The balance of the Rebates was still held in the CARE account.
 - g. Dr. Motan did not disclose his conflict of interest and his relationship with the pharmaceutical companies to the CPSA.
 - h. Dr. Motan's patients were unaware of his arrangements with the community pharmacy and with the pharmaceutical companies.
 - i. Dr. Motan's arrangements with the pharmaceutical companies were made during the time that Dr. Motan was a member of the CPSA Council (he was a Council member from 2014 to 2017).
21. Counsel for the Complaints Director submitted that there was clearly sufficient evidence in the Agreed Exhibit Book to establish the conduct as set out in the Allegations.
22. Counsel for the Complaints Director also referred to the CPSA Standards of Practice – Conflict of Interest and submitted that the evidence before the Hearing Tribunal established that Dr. Motan's conduct had breached those Standards of Practice and was unprofessional conduct. Dr. Motan had received

all of the Rebates in the name of his professional corporation, and he provided his medical services through that professional corporation. Accordingly, there was a clear connection between Dr. Motan's practice and the arrangements relating to the Rebates.

Submissions by Counsel for Dr. Motan

23. Counsel for Dr. Motan did not take issue with the submissions of the Complaints Director. He reiterated that in Exhibit 2 Dr. Mohan had admitted the allegations and that the conduct alleged was unprofessional conduct. Counsel for Dr. Motan acknowledged that the case against Dr. Motan had been made on its merits.

VI. FINDINGS REGARDING ALLEGATIONS

24. The Hearing Tribunal reviewed the evidence submitted by the parties and considered the submissions of counsel. The Hearing Tribunal accepted Dr. Motan's admission and found the Allegations set out in the Notice of Hearing were proven, that the proven conduct was in contravention of the CPSA Standards, and that the conduct amounted to unprofessional conduct under the HPA.
25. The CPSA Standards of Practice-Conflict of Interest are clear and unambiguous. A regulated member must avoid any real, potential or perceived conflict of interest. Such a conflict of interest will arise when a reasonable person could believe that a regulated member's duty to act in the patients' best interests may be affected or influenced by other competing interests, including financial ones. The arrangements entered into by Dr. Motan created a financial interest.
26. More specifically, the CPSA Standards expressly state that a regulated member must not accept or offer rebates, fees or other inducements relating to pharmaceuticals. The Rebates fell within this express prohibition.
27. The Hearing Tribunal is satisfied that the conduct admitted by Dr. Motan breached the CPSA Standards and rose to the level of unprofessional conduct because that conduct brought disrepute to the medical profession.

VII. SUBMISSIONS REGARDING SANCTION AND COSTS

28. The parties presented the Hearing Tribunal with a Joint Submission on sanction and costs.

Submissions by Counsel for the Complaints Director

29. The Brief of Law jointly submitted to the Hearing Tribunal set out the legal test for a decision maker in considering a joint submission. That test is set out by the Supreme Court of Canada in *R. v. Anthony Cook* 2016 SCC 43. The

Supreme Court stated that the proper legal test for a decision maker is the public interest test:

Under the public interest test, a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest. (para. 32)

30. In the Brief of Law, counsel referred to numerous cases in which the public interest test in relation to joint submissions had been applied in the context of professional discipline proceedings, including by Hearing Tribunals of the CPSA.
31. In his submissions to the Hearing Panel, counsel for the Complaints Director reviewed the factors in the decision of *Jaswal v Medical Board (Nfld)* 1996 CanLII 11630 (NLSC) and the application of those factors to the proven Allegations.
32. Counsel for the Complaints Director submitted that the conduct at issue was serious in nature and that Dr. Motan was of sufficient experience that he should have known better than to engage in it. These were factors that supported significant sanctions.
33. On the other hand, counsel for the Complaints Director noted that Dr. Motan had advised that he did not appreciate the conflict of interest because he always acted in the best interests of his patients and that he had expressed regret. Dr. Motan cooperated fully with the TIA and with the CPSBC investigation, had admitted his conduct and had agreed to proceed by way of the Joint Submission, all of which were mitigating factors in terms of sanction.
34. Counsel for the Complaints Director referred to and highlighted the sanctions imposed in a number of cases from other disciplinary tribunals which involved similar types of allegations as being relevant to the Hearing Tribunal's considerations.
35. Counsel for the Complaints Director also submitted that the Hearing Tribunal should take into account the impact that the conduct already had on Dr. Motan, including the suspension of his clinical privileges by AHS, his participation and completion of the PROBE course on ethics at his own expense, the media attention that had surrounded this matter including in relation to this hearing, and that Dr. Motan had been served with a class action in early 2024.
36. Given all of these factors, it was the submission of counsel for the Complaints Director that the jointly proposed sanctions were reasonable, appropriate and in line with the range of sanctions that had been imposed in similar circumstances.

37. Counsel for the Complaints Director noted that one of the proposed sanctions involved the Hearing Tribunal making an order with respect to the Rebates that remained in the CARE account. He advised the Hearing Tribunal that this was an unusual condition but submitted that the Hearing Tribunal had jurisdiction to order it under sections 82(i) and 82(l) of the HPA. In his submission, the Rebates could be considered fees for professional services that were improper or inappropriate and were being directed to be repaid and that such an order was appropriate for the protection of the public.
38. With respect to costs, counsel for the Complaints Director submitted that the joint proposal that Dr. Motan pay 50% of the costs was appropriate. He referred to the cases that had been provided in relation to sanction and drew the attention of the Hearing Tribunal to the fact that the costs structures were different in relation to different Colleges so the costs numbers should be viewed in that light. At the request of the Hearing Tribunal, counsel for the Complaints Director provided the Tribunal with information as to the costs up to the date of the hearing, which as of the end of August were approximately \$28,500.00.

Submissions by Counsel for Dr. Motan

39. Counsel for Dr. Motan expressed Dr. Motan's deep embarrassment for his conduct and noted the regret that Dr. Motan had expressed to the College and AHS throughout the related proceedings.
40. Counsel for Dr. Motan submitted that the material demonstrated his client's naivete in how he conducted his affairs, but equally clearly demonstrated that Dr. Motan had taken full responsibility for his actions. Dr. Motan had self-reported the matter to the CPSA, had acknowledged the conflicts of interest and had written letters to his patients apologizing for his lack of transparency regarding his arrangements with the pharmaceutical companies. He had cooperated fully throughout the CPSA proceedings and admitted that his conduct was unprofessional.
41. Counsel for Dr. Motan emphasized that, as demonstrated by the TIA findings, there had been no personal benefit to Dr. Motan as a result of his conduct. Rather, he had paid a steep price. That price included the suspension of his clinical privileges which, since he worked in a hospital setting at the time, prevented him from practicing medicine. Dr. Motan also endured intense media scrutiny and may face more. He is named in a class action with further potential financial consequences. He has and will continue to bear the consequences of his actions.
42. Counsel for Dr. Motan agreed with the application of the *Jaswal* factors to this case as outlined by Counsel for the Complaints Director. He submitted that it was clear that the sanctions were sufficiently punitive to act as a deterrent to Dr. Motan from engaging in any similar conduct and to act as a general deterrent by sending a stern warning to the profession.

43. Counsel for Dr. Motan advised the Hearing Tribunal that Dr. Motan continues to work in a hospital setting providing care to patients who cannot afford boutique-style private fertility care. His patients include people who have recently immigrated to Canada, non-English speaking patients and patients with physical impairments and special needs.
44. In closing, counsel for Dr. Motan agreed with counsel for the Complaints Director that the proposed sanctions were appropriate and reasonable taking into consideration the *Jaswal* factors. He urged the Hearing Tribunal to accept the parties' Joint Submission.

VIII. FINDINGS REGARDING SANCTION AND COSTS

45. After hearing the sanction submissions of both counsel and adjourning for deliberations, the Hearing Tribunal accepted the sanctions jointly proposed by the parties. The Hearing Tribunal advised that more detailed reasons would follow.
46. The Hearing Tribunal considers the proposed sanctions to be appropriate and reasonable with regard to the *Jaswal* factors including consideration of the sanctions imposed in similar circumstances relating to conflicts of interest.
47. The Hearing Tribunal accepts the submissions of counsel that the conduct at issue was of a serious nature. Trust is a central feature of the relationship between a physician and their patient. Conflicts of interest, whether actual or perceived, undermine that trust. The Hearing Tribunal also agrees with the submissions of counsel that as Dr. Motan was an established physician at the time and had served as a member of the CPSA Council he should have known better. Both of these factors support a more severe sanction.
48. There was no evidence of any prior complaints against Dr. Motan and this is a mitigating factor.
49. Although the Rebate arrangements were with three different pharmaceutical companies, the Rebates were received over a period of more than two years, and there were 5 complaints relating to the Rebates, the Hearing Tribunal considers all the conduct at issue to be related to Dr. Motan's failure to act appropriately in relation to a particular conflict of interest. The Hearing Tribunal considers the frequency or number of incidents to be a neutral factor in terms of sanction.
50. Dr. Motan acknowledged what had occurred and expressed his regret in his correspondence to the College and AHS. He apologized to his patients. This is a mitigating factor.
51. The Hearing Tribunal took into consideration the consensual resolution agreement and the impact of the agreement on Dr. Motan in terms of financial

and other consequences. The Hearing Tribunal agrees that this is relevant in terms of the length of the suspension being proposed and the financial consequences because of Dr. Motan being unable to practice medicine for a period of time. The Hearing Tribunal also considered the information about the proposed class proceeding as well as the fact that under the terms of the sanction, the remaining Rebates would be available to Dr. Motan in terms of a settlement or judgment against him.

52. Regarding the impact of the conduct on Dr. Motan's patients, the Hearing Tribunal had regard to the complaints received from four of Dr. Motan's patients. Although the complaints were largely focused on matters that were not before the Hearing Tribunal, in terms of Dr. Motan's failure to disclose his arrangements with the pharmaceutical companies and the pharmacy, the Hearing Tribunal was cognizant that many of Dr. Motan's patients were seeing him in extremely stressful circumstances and were particularly vulnerable as a result. At least one of the patients indicated they had experienced a loss of trust in physicians because of the arrangements relating to the Rebates not being disclosed.
53. In terms of specific and general deterrence, the Hearing Tribunal was satisfied that in the circumstances of this case the proposed sanctions would achieve both. The Hearing Tribunal considered the suspensions by AHS and the CPSA totaling 6 months to be a significant financial and reputational penalty and one that, in conjunction with the other proposed sanctions, sends a stern warning to other physicians.
54. The Hearing Tribunal was satisfied that the proposed sanctions were reasonable and appropriate when viewed against the sanctions imposed in similar cases of breaches of conflict of interest standards relating to financial interests. The conduct is serious, but less serious in the case of Dr. Motan than in some of the other cases to the extent that there is no evidence of personal financial benefit to Dr. Motan and no evidence before the Hearing Tribunal of an impact on the quality of care that his patients received. The sanctions proposed against Dr. Motan fall in the mid-range of the sanctions imposed in the cases presented to the Hearing Tribunal and the Hearing Tribunal accepts that as appropriate.
55. The Hearing Tribunal finds that based on the wording of s. 82(i) and (l) of the HPA it has the jurisdiction to make the proposed order relating to the remaining Rebates. The Hearing Tribunal is prepared to find that the remaining Rebates are improper fees for professional services that it is directing to be repaid in some fashion. The Hearing Tribunal also finds the order sought to be an order that protects the public interest because the lack of financial benefit to Dr. Motan is an important factor in the Hearing Tribunal's decision to accept the Joint Submission.

56. For all of these reasons, the Hearing Panel was able to conclude that the Joint Submission did not offend the public interest. There is no basis to depart from the sanctions as proposed.
57. With respect to costs, the Hearing Tribunal took into consideration the fact that costs were included in the Joint Submission and should be given the same deference as the sanctions.
58. The conduct at issue is sufficiently serious in the view of the Hearing Tribunal that a costs order is appropriate. The Hearing Tribunal does not consider payment of 50% of the costs of the investigation and hearing to be punitive and did not consider it unfair or unprincipled, taking into account that the amount that had accrued to the end of August was in the neighbourhood of \$28,500.00 and that in terms of additional costs, because of the Joint Submission the hearing proceeded for less than half a day.

IX. ORDERS

59. As stated at the conclusion of the Hearing, the Hearing Tribunal makes the following Orders:
 - a. Dr. Motan's practice permit shall be suspended for a period of 6 months, of which he shall be required to serve 3.5 months to account for the time his clinical privileges had already been suspended from November 13, 2019 to January 1, 2020 and his cooperation in admitting the charges in the Notice of Hearing, and to start on a date determined by the Hearing Tribunal, and being no later than 60 days after the decision issued by the Hearing Tribunal;
 - b. If Dr. Motan does not use the after-tax income he has received from the payments from the pharmaceutical companies (as detailed in the TIA Report) to settle the class action commenced by representative plaintiff, [REDACTED], he shall provide written confirmation to the Complaints Director that he has made the proposed donation to the University of Alberta, Division of Reproductive Endocrinology/Education Fund and shall not use a charitable donation tax receipt for his personal or professional tax obligations.
 - c. Dr. Motan shall attend and complete the PROBE Ethics and Boundaries course (already completed).
 - d. Dr. Motan shall pay a fine of \$5,000.00 within 30 days of the written decision of the Hearing Tribunal being issued;
 - e. Dr. Motan shall be responsible for 50% of the costs of the investigation and the hearing, payable on terms acceptable to the Complaints Director.

60. The Hearing Panel has included the direction regarding the PROBE Ethics and Boundaries course even though the course has been completed. The Hearing Panel did so as suggested by counsel, because in this way the orders reflect what the parties were prepared to agree to and what the Hearing Panel would have expected in these circumstances.

Signed on behalf of the Hearing Tribunal by the Chair:



Dr. Vonda Bobart

Dated this 2nd day of October, 2024.