

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. BRADLEY STEWART

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

**October 19, 2023**

## **I. INTRODUCTION**

[1] The Hearing Tribunal held a hearing into the conduct of Dr. Bradley Stewart on October 25, 2022 and February 17, 2023. The hearing was conducted via Zoom.

[2] The members of the Hearing Tribunal were:

Ms. Naz Mellick, Chair, public member;  
Dr. Goldees Liaghati-Nasserri, physician member;  
Dr. Fraulein Morales, physician member;  
Ms. Archana Chaudhary, public member.

[3] Ms. Julie Gagnon acted as independent legal counsel for the Hearing Tribunal.

[4] The following persons were also in attendance:

Dr. Dawn Hartfield, Complaints Director;  
Mr. Craig Boyer, legal counsel for the Complaints Director;  
Dr. Bradley Stewart, investigated member (October 25, 2022 attendance only);  
Mr. Tim Ryan, legal counsel for Dr. Bradley Stewart;  
Jennifer White, Hearing Facilitator.

## **II. PRELIMINARY MATTERS**

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

[6] Pursuant to section 78 of the *Health Professions Act* ("**HPA**"), the hearing was open to the public. The Hearing Tribunal raised the issue of a publication ban ordered by the Court in relation to criminal proceedings involving Dr. Stewart and the Complainant. The Hearing Tribunal directed, with agreement of the parties, that in keeping with the publication ban, the Complainant would be referred to as "the Complainant" or "the Patient" during the hearing.

[7] Mr. Boyer advised he would be making an application to close part of the hearing in anticipation of the Complainant addressing the Hearing Tribunal with an impact statement. Mr. Boyer indicated he would proceed with the application when the Complainant was called to provide the statement.

## **III. ALLEGATION**

[8] The Amended Notice of Hearing listed the following charge:

That between January 2011 and October 2013, you did fail to maintain an appropriate professional relationship with your patient, [omitted], particulars of which include improper text messages and emails sent by you to your patient and you providing your patient with personal gifts of chocolates, jewelry and a gift certificate for a spa.

#### **IV. EVIDENCE**

[9] The following Exhibits were entered into evidence during the hearing:

Exhibit 1 Agreed Exhibit Book

- Tab 1: Notice of Hearing dated November 30, 2017
- Tab 2: Criminal Information of charge against Dr. Stewart under section 271 of the Criminal Code
- Tab 3: Amended Standstill Agreement dated February 27, 2020
- Tab 4: Complaint dated March 15, 2016
- Tab 5: Undertaking for Chaperone by Dr. Stewart dated March 24, 2016
- Tab 6: Response from Dr. Stewart dated July 19, 2016
- Tab 7: Dr. Stewart's patient chart
- Tab 8: Alberta Health billing information re visits with Dr. Stewart between January 2011 and October 2013
- Tab 9: Emails exchanged between Dr. Stewart and the Complainant – 28 page
- Tab 10: Email from Dr. Stewart to the Complainant dated August 13, 2011 with photograph of skeleton and naked woman
- Tab 11: Text messages between Dr. Stewart and the Complainant on May 16, 2012
- Tab 12: Photographs of a ring and earrings given to the Complainant by Dr. Stewart
- Tab 13: Email from Maui Dive Shop to the Complainant confirming purchase of jewelry in January 2012
- Tab 14: Transcript of oral decision issued by Justice A. Germain on September 10, 2021
- Tab 15: Amended Notice of Hearing
- Tab 16: Conditions currently on Dr. Stewart's practice permit
- Tab 17: Amended Hearing Tribunal decision dated January 9, 2013
- Tab 18: List of Tysabri patients permitted to be seen during period of suspension
- Tab 19: CPSA Notice of Suspension with exempted periods of limited practice
- Tab 20: Assessment report dated May 13, 2013

- Tab 21: Assessment report dated January 7, 2022
- Tab 22: CPSA Standard of Practice – Sexual Boundary Violations (in effect until April 1, 2019)
- Tab 23: Hearing Tribunal decision dated November 1, 2021
- Exhibit 2 2022-10-12 Fully signed Admission and Joint Submission - Dr. Stewart
- Exhibit 3 2022-10-12 Brief of Law - Joint Submissions

## **Witnesses**

- [10] No witnesses were called to give evidence regarding the first phase of the hearing dealing with the allegation.
- [11] The Complainant provided an impact statement after the Hearing Tribunal delivered its findings on the allegation in the Amended Notice of Hearing.
- [12] The following witnesses testified during the hearing:
- Dr. Dawn Hartfield was called as a witness on behalf of the Complaints Director during the sanction portion of the hearing.
  - Dr. Bradley Stewart, the investigated member provided testimony during the sanction portion of the hearing.

## **V. SUBMISSIONS REGARDING THE ALLEGATION**

### **Submissions on behalf of the Complaints Director**

- [13] Mr. Boyer reviewed the events and the reasons that led the Complaints Director to issue the Amended Notice of Hearing (Exhibit 1, Tab 15).
- [14] Mr. Boyer confirmed the Complainant submitted a complaint to the CPSA about Dr. Stewart in 2016 regarding his conduct that occurred in 2011 and 2013. Thereafter the College issued a Notice of Hearing dated November 30, 2017 outlining a number of allegations against Dr. Stewart.
- [15] Mr. Boyer advised that the Complainant also went to the police which resulted in a sexual assault charge being laid against Dr. Stewart followed by criminal proceedings. As such, the Complaints Director and counsel for Dr. Stewart agreed to halt the College's investigation until the outcome of the criminal proceedings.
- [16] Mr. Boyer reviewed pertinent findings of Justice Germaine's decision in the criminal proceedings wherein he dismissed the charge against Dr. Stewart. Mr. Boyer referred to *F.H v. McDougall* to advise that a tribunal is bound to make consistent findings regarding the same facts, determined on the same standard of proof, already made by a tribunal of competent jurisdiction. To

do otherwise would be to commit a legal error. The application of this principle formed the basis upon which the Complaints Director revised the allegation against Dr. Stewart and issued the Amended Notice of Hearing.

- [17] In his submissions, Mr. Boyer also reviewed the contents of the Agreed Exhibit Book and highlighted the following:
- the complaint dated March 15, 2016 and Dr. Stewart's response dated July 19, 2016;
  - the patient record covering the treatment from January 2011 to October 2013;
  - Dr. Stewart's billing information relating to the Complainant;
  - emails between Dr. Stewart and the Complainant, covering the period of January 2011 to July 2012;
  - an email dated August 13, 2011 from Dr. Stewart to the Complainant. Mr. Boyer described the sexually explicit content of the email as an "inappropriate visual joke";
  - a text message between Dr. Stewart and the Complainant from May 16, 2012;
  - photographs of the jewelry that Dr. Stewart gave to the patient as gifts;
  - an email from the vendor of the jewelry which confirmed the jewelry was purchased in January 2012.
- [18] After reviewing the above items of the Agreed Exhibit Book, Mr. Boyer submitted Dr. Stewart's conduct amounted to unprofessional conduct when measured against the CPSA's Standards of Practice on Sexual Boundary Violations that were in place at the time of the conduct.

### **Submissions on Behalf of Dr. Stewart**

- [19] Mr. Ryan advised that he had nothing further to add and confirmed that the parties reached an agreement on the basis of the submissions Mr. Boyer set out above.

## **VI. DECISION OF THE HEARING TRIBUNAL**

- [20] The Hearing Tribunal's task is to review the allegation in the Amended Notice of Hearing and determine whether the allegation is factually proven on a balance of probabilities. The Hearing Tribunal must then determine whether the conduct is unprofessional conduct as defined by the HPA.
- [21] The Hearing Tribunal carefully reviewed and considered the evidence and the parties' submissions. The Hearing Tribunal found that the charge in the Amended Notice of Hearing is factually proven on a balance of probabilities. The Hearing Tribunal also found that Dr. Stewart's conduct constitutes unprofessional conduct.

**VII. FINDINGS AND REASONS - ALLEGATION**

- [22] Dr. Stewart was charged with sexual assault contrary to section 271 of the *Criminal Code*. Justice Germaine presided over the trial and delivered his oral judgment on September 10, 2021 wherein he dismissed the charge against Dr. Stewart. Given the findings of the court in criminal proceedings and the submissions of the parties, the Hearing Tribunal confirms that it is bound by Justice Germaine's findings with respect to the original Notice of Hearing and therefore accepts the allegation set out in the Amended Notice of Hearing.
- [23] In the Admission and Joint Submission Agreement (Exhibit 2), Dr. Stewart admitted the allegation in the Amended Notice of Hearing was true and that his conduct amounted to unprofessional conduct.
- [24] Dr. Stewart's admission that the allegation is true was supported by the evidence presented in the Agreed Exhibit Book.
- [25] The Complainant's medical chart and billing records demonstrated that Dr. Stewart saw the Complainant from January 2011 to October 2013. They demonstrated that Dr. Stewart treated her primarily for multiple sclerosis (MS) and one occasion for "other disorders of soft tissues, (n)euralgia, neuritis and radiculitis, unspecified".
- [26] In his response to the College regarding the complaint, Dr. Stewart stated that the Complainant was referred to him by her family physician "regarding sensory complaints in 2011. She was investigated and (he) eventually diagnosed her with multiple sclerosis."
- [27] The evidence shows that Dr. Stewart and the Complainant exchanged a number of emails and text messages during the period in which Dr. Stewart was providing medical care to her. In his response to the College regarding the complaint, Dr. Stewart explained that "As with any severely ill multiple sclerosis patient, there were many emails and telephone conversations that took place over the years..." in which he treated the Complainant. Dr. Stewart also indicated that "Most of my colleagues utilize emails in order to facilitate better lines of communication with patients requiring greater than average amounts of care."
- [28] The email communications show that Dr. Stewart discussed, amongst other things, the Complainant's symptoms, medications and procedures. In addition, Dr. Stewart provided medical advice. In their email communications, Dr. Stewart and the Complainant also refer to subjects unrelated to the patient's care.
- [29] The evidence in the Agreed Exhibit Book demonstrates that between July 17, 2011 and July 18, 2011, the parties exchanged a number of emails that clearly indicate Dr. Stewart confirmed he gave the Complainant truffle chocolates. In one of his emails to the Complainant on July 17, 2011, he

elaborated: "You know what it's taking the place of, [omitted]. Eat as much as you like!".

- [30] The evidence also shows that Dr. Stewart sent an email to the Complainant on August 13, 2011 that contained a picture of a naked woman and a skeleton. The skeleton figure appears to be performing oral sex on the naked woman as she reclines on a sofa.
- [31] The evidence demonstrates Dr. Stewart and the Complainant engaged in a text message exchange on May 16, 2012, wherein the Complainant asked Dr. Stewart to confirm the name of one of her medications. Dr. Stewart responded and the Complainant thanked him. Dr. Stewart further responded by texting the following message to the Complainant: "Are you taking Tall Blonde and Sexy pills again?!?".
- [32] The Agreed Exhibit Book contained two photographs, one of a ring and another of a pair of earrings. These exhibits were provided by the Complainant. In the criminal proceedings, Justice Germain found that Dr. Stewart had purchased a ring and earrings that he gave to the Complainant and that Dr. Stewart gave her a gift of a spa session for her birthday. The Hearing Tribunal relies on these findings. The evidence and Dr. Stewart's admission establish that the allegation is proven.
- [33] The Hearing Tribunal considered the meaning of unprofessional conduct under the HPA, which includes:
- a. A contravention of the HPA, the code of ethics, or standards of practice (section 1(1)(pp)(ii)); and
  - c. Conduct that harms the integrity of the medical profession (section 1(1)(pp)(xii)).
- [34] Dr. Stewart's conduct occurred before April 1, 2019 and before *An Act to Protect Patients* was implemented. As such, Dr. Stewart's conduct is governed by the legislation and Standards of Practice that were in force at the time the conduct occurred.
- [35] The College's Standard of Practice on Sexual Boundary Violations, which was in force at the time of Dr. Stewart's conduct, states:
- (1) A physician must maintain professional boundaries in any interaction with a patient and must not sexualize any interaction with a patient through conduct including, but not limited to, the following:
- ...
- (d) sexualizing comments, gesture or tone of voice
- ...

(3) A physician must not:

(a) initiate any form of sexual advance toward a patient or a person with whom the patient has a significant interdependent relationship such as a parent, child or significant other.

- [36] The evidence clearly demonstrates that Dr. Stewart and the Complainant had an ongoing patient-physician relationship during which the relevant conduct occurred. The evidence and admissions also demonstrate that some of Dr. Stewart's interactions with the Complainant were sexualized and were a form of sexual advance towards the Complainant. The interactions included emails that contained sexual innuendo, explicit sexual imagery, and a text message that was overtly flirtatious and alluded to the Complainant's physical traits in sexual terms. Furthermore, the gifts of chocolate truffles, earrings, a ring, and a spa treatment for her birthday can be seen as inducements in the context of Dr. Stewart sexualizing his interactions with the Complainant and making a sexual advance towards the Complainant. Accordingly, Dr. Stewart breached the Standard of Practice on Sexual Boundary Violations.
- [37] Dr. Stewart's interactions with his patient breached sections of the Standard of Practice on Sexual Boundary Violations which was in force at the time of the conduct.
- [38] In addition to breaching the standard of practice, Dr. Stewart's conduct harms the integrity of the medical profession by damaging the public's perception and expectations of physicians as those who assist individuals when they are vulnerable. Patients are necessarily vulnerable during physician-patient interactions. They expose their bodies, their histories, their emotions, and their thoughts as a necessary part of the care process. They allow physicians past their everyday personal boundaries. Why? Because they are worried, they are suffering, they want to be free of pain, they want to be healthy and well, they want to be whole and they are in need of medical care. Because they trust the physician, a highly trained and uniquely qualified individual, to provide that care. Because they trust the system that selects, trains, employs, and authorizes physicians to act in this capacity. And because they trust that the governing system has defined standards of care and codes of conduct that protect patients and their interests; and they trust physicians will act in a way that is consistent with these standards as a matter of respecting the patient's dignity.
- [39] Patient trust is vital to the correct, everyday functioning of the medical system. In voluntary physician-patient interactions, patients must have absolute certainty that a physician's actions and conduct must always be for their (the patient's) benefit. The physician is required to first consider the well-being of the patient. By sexualizing his interactions with the Complainant, Dr. Stewart failed to do this.
- [40] Dr. Stewart was on the scene to assess and address his patient's serious and complex medical issues, not to pursue some private, personal agenda.



Physicians can never abuse the power they gain from occupying their position of privilege and trust. They obviously cannot engage in sexually motivated, self-seeking behaviour. Such self-seeking behaviour on the part of one physician damages every patient exposed to this type of conduct and it damages patient trust in the entire system. It implicates the system because, on the one hand, the system requires vulnerability on the part of its users and, on the other, the system's functionaries are seen to exploit that same vulnerability for their personal ends. The College relies on its members to act with integrity and in accordance with its standards. Failing to do so affronts the College's ability to carry out its public protection mandate and seriously harms the integrity of the profession.

- [41] For these reasons, Dr. Stewart's admitted conduct constitutes unprofessional conduct. The Hearing Tribunal found the conduct to be very serious for the reasons set out above.

## **VIII. SANCTION PHASE**

### **Applications Regarding Complainant's Statement**

- [42] The Complainant provided an impact statement, outlining how she was affected by Dr. Stewart's conduct.
- [43] Citing section 78 of the HPA, Mr. Boyer requested that the Hearing Tribunal close the hearing during the Complainant's address in consideration of the publication ban.
- [44] The Complainant represented to the Hearing Tribunal that the Court in the criminal proceedings had lifted the publication ban in May 2022. Neither the parties nor the Hearing Tribunal received independent or official confirmation that the ban was no longer in effect. Because of this, the Hearing Tribunal decided to close the hearing in accordance with s. 78 of the HPA, and to hear the Complainant's statement in private for the purpose of protecting her identity.
- [45] Mr. Ryan drew the Hearing Tribunal's attention to the brief of law he submitted pertaining to impact statements. The Complainant commenced her statement, and upon Mr. Ryan raising an objection, the Hearing Tribunal paused the Complainant's statement and removed her temporarily from the proceedings as it sought to clarify its process before the Complainant resumed.
- [46] The parties agreed that there were no specific provisions in the pre-Bill 21 HPA that granted a patient who was a victim of a sexual boundary violation the opportunity to address a tribunal with an impact statement. Therefore, given that the complaint was brought to the CPSA in 2016, the Complainant had no express right to address the Hearing Tribunal; nonetheless, the parties agreed to extend this opportunity to the Complainant subject to the law on impact statements.

[47] The Hearing Tribunal found that the Complainant’s oral statement was governed by the principles on impact statements as expressed in the case law provided by Mr. Ryan. As such, the Hearing Tribunal advised the Complainant that her statement must be restricted to descriptions of the harm done or the loss suffered by her, arising from Dr. Stewart’s boundary violation as detailed in the Amended Notice of Hearing. The Complainant was not permitted to revisit facts as she saw them, nor to refer to facts not already ruled upon at these proceedings. As noted above, the Hearing Tribunal ruled that the facts as alleged in the Amended Notice of Hearing were proven and that Dr. Stewart’s conduct constituted a sexual boundary violation that amounted to unprofessional conduct. The Hearing Tribunal disregarded any information from the Complainant during her statement that strayed from those parameters outlined in the case law, including testimony that amended or added alleged facts to the Amended Notice of Hearing.

**Complainant's Statement**

[48] [REDACTED]

[49] [REDACTED]

[50] [REDACTED]

[51] [REDACTED]

[52] [REDACTED]

[53] [REDACTED]

[54] [REDACTED]

### **Evidence of Dr. Bradley Stewart**

- [55] Dr. Stewart confirmed he was seeking accommodations respecting any suspension the Hearing Tribunal may order as part of the sanction. He outlined several reasons for accommodation, the main one being there are not enough neurologists in Alberta and Edmonton to serve a growing population.
- [56] Dr. Stewart also testified that a large percentage of his patients do not have family doctors and rely on his office to provide various treatments for a number of conditions, whether those conditions are side effects of medications or other secondary conditions arising from primary neurological illness.
- [57] Dr. Stewart stated that according to his staff he has 4300 patients of which about 400 are MS patients, and that many of these patients require regular monitoring. He indicated that should he fall behind on paperwork, patient care may be compromised. Dr. Stewart reviewed the different conditions of other patients he treats besides those with MS.
- [58] When asked about the available coverage for his patients, Dr. Stewart reviewed the numerous steps he has taken so far to ascertain this information. He said some physicians will not see patients. He also discussed long waiting lists for referrals to other neurologists, qualified physicians and relevant clinics. Dr. Stewart testified to his past experience with using the offices of Alberta Health Services ("**AHS**") to assist with looking after his patients but was frustrated because many of his patients were left without any access to care for a sustained period of time.
- [59] Dr. Stewart stated that a sanction of six months for his boundary violation ought to be qualified by terms that suspend his practice for two weeks, then permit him fully to practice for two weeks, that is, two weeks off, followed by two weeks on. This would allow him to provide appropriate ongoing patient care.
- [60] Dr. Stewart further testified that he participated in the College sexual boundary violations course, attended for assessment and evaluation regarding boundary violations, and attended therapy on and off for a few years in order to understand the root cause of his behavior.
- [61] Dr. Stewart testified to taking full responsibility for conduct that occurred ten years ago, and to taking steps to better himself as a person and a

professional. He apologized to the Complainant, the College, the patients he let down, and the community at large.

- [62] On cross-examination, Dr. Stewart confirmed he provided medical care to the Complainant while under suspension as a result of disciplinary proceedings in 2013 involving a different patient. This suspension allowed Dr. Stewart to see patients three days a month who were being treated with the drug Tysabri.
- [63] Mr. Boyer asked Dr. Stewart whether he made contact with the zone medical director to arrange medical coverage for his patients during the anticipated suspension period. Dr. Stewart admitted he had not because he claimed such individuals are administrators and do not have insight into clinical matters, and in any case, there are not enough doctors available to cover patients with appropriate care.
- [64] In response to a question from the Hearing Tribunal, Dr. Stewart confirmed he was not in a group practice. The Hearing Tribunal also asked Dr. Stewart to illustrate what his clinical practice would look like with a schedule of two weeks on and two weeks off. Dr. Stewart said he would see as many patients as he could, extend his workday by starting earlier and ending later, and extend his work week from four days to five days.
- [65] When the Hearing Tribunal asked how he would handle urgent patient needs during his two weeks off, Dr. Stewart answered that he anticipated he would have continued access to the Electronic Medical Records, and he could direct his staff appropriately. He also indicated his patients may need to use emergency services.

#### **Evidence of Dr. Dawn Hartfield**

- [66] Dr. Hartfield confirmed her role as Assistant Registrar and Complaints Director at the College of Physicians and Surgeons.
- [67] Mr. Boyer asked about the issue of arranging coverage for patients of a physician who is required to serve a suspension. Mr. Boyer also asked Dr. Hartfield to discuss her conversations with the former zone medical director and the current zone medical director.
- [68] Dr. Hartfield acknowledged that the matter was complex, and indicated the importance of determining how the system might leverage resources and support Dr. Stewart's patients. She testified that the zone medical directors have a good understanding of the available resources and reviewed the processes that zone medical directors could implement to best support patients. Dr. Hartfield noted that the zone medical directors were available for collaboration and consultation with Dr. Stewart. She indicated they had already reviewed his referrals and assigned some of his patients. She was aware this differed from Dr. Stewart's perspective on these matters.

- [69] Dr. Hartfield recommended three months' lead time prior to Dr. Stewart's suspension in order to plan for patient support. This amount of lead time would give Dr. Stewart time to organize himself, ascertain what is happening with his patients and to create a list of which patients will be given priority, and to communicate any necessary directions to his patients.
- [70] The Hearing Tribunal asked Dr. Hartfield whether all of Dr. Stewart's patients could be prioritized, assigned neurologists, and receive appropriate care, while Dr. Stewart is serving his six month's suspension. Dr. Harfield explained that patients will be identified who are the highest priority in terms of need. Those patients will be assigned to other medical professionals based on meaningful assessments. Dr. Hartfield indicated that she did not know whether every patient could be seen.
- [71] Dr. Hartfield acknowledged that she did not discuss Dr. Stewart's patient use of emergency centres with the zone medical directors.
- [72] In response to a question from the Hearing Tribunal about Dr. Stewart's proposal of serving his suspension on a two week on, two week off basis, Dr. Hartfield indicated that during a suspension, physicians are not permitted to engage in patient related activities or professional activities. Hence, during a period of suspension (referred to in this decision as an active suspension), physicians cannot order lab tests or access the results, review, renew or write prescriptions, bill for patient care, or teach. Dr. Hartfield also advised that the College communicates with AHS and pharmacies directly about the physician's suspension and informs the public and patients about the suspension by publishing the information on the CPSA's website. In Dr. Hartfield's view, Dr. Stewart's proposal would not only create administrative challenges, but would result in confusion for patients that could negatively impact patient care.

## **IX. SUBMISSIONS ON SANCTIONS**

- [73] The parties presented the Hearing Tribunal with a Joint Submission Agreement (Exhibit 2) which outlined the following sanctions:
- a. Dr. Stewart's practice permit shall be suspended for a period of six months starting on a date acceptable to the Complaints Director and no later than 60 days after the date of the decision issued by the Hearing Tribunal;
  - b. The Hearing Tribunal shall determine whether the suspension is to be served with or without any interruption in the period of six consecutive months;
  - c. The order of the Hearing Tribunal will not cancel or vary the practice conditions on Dr. Stewart's practice permit that are in effect on the date of the hearing;

- d. Dr. Stewart shall be responsible for 75% of the costs of the investigation and hearing, which may be paid by monthly installments over a 12-month period following the date of statement of costs provided to Dr. Stewart by the Hearings Director.

### **Submissions on behalf of the Complaints Director**

- [74] Mr. Boyer referred to a Brief of Law on joint submissions. (Exhibit 3). He reviewed the legal principle that tribunals must accord due deference to the parties' joint submission on sanction unless the tribunal is satisfied that sanction is contrary to the public interest, inappropriate and unjust.
- [75] Mr. Boyer advised that the parties were proceeding by way of a joint submission on sanction. The parties cooperatively arrived at an overall balanced recommendation and agreed to a six-month suspension as an appropriate penalty for Dr. Stewart's conduct. However, they differed on whether Dr. Stewart should serve his suspension in one six-month block or with a dispensation of two weeks per month to see patients during the suspension period. Given the parties did not agree upon how Dr. Stewart is to serve his suspension, the task of the Hearing Tribunal is to determine this issue. Mr. Boyer acknowledged that the joint submission was atypical because of the complexity of Dr. Stewart's disciplinary history.
- [76] Regarding the range of sanctions in similar cases, Mr. Boyer cited three CPSA decisions where the physicians committed boundary violations without the tribunals finding the physician engaged in sexual activity with the patient. In those cases, the tribunals settled on suspensions that ranged from three to six months, with abeyance periods ranging from one to three months.
- [77] In *Tsujikawa* the physician prescribed narcotics to an emotionally vulnerable patient with whom he lived. In that case, the physician's suspension was six months. He served three months and three were held in abeyance.
- [78] In *Prevost*, the physician who practiced in a hair transplant clinic failed to maintain professional boundaries respecting two patients. The tribunal gave him a six-month suspension with four months to be served and two months to be held in abeyance. In *Krog*, as a result of the physician sending inappropriate text messages to a patient, he was suspended for three months of which he served two months with one month held in abeyance.
- [79] Mr. Boyer acknowledged that Dr. Stewart's previous disciplinary matter dealt with a personal relationship with a patient which overlapped with the patient-physician relationship. Mr. Boyer advised that the matter before the present Hearing Tribunal is distinct in that Dr. Stewart's conduct occurred wholly within the physician-patient relationship without a resulting domestic relationship between the Complainant and Dr. Stewart.
- [80] With respect to whether the Hearing Tribunal ought to allow an exemption to permit Dr. Stewart to serve his suspension in increments, Mr. Boyer referred

to two cases: the CPSA disciplinary proceedings of Dr. Dicken and the Court of Appeal judgment of *Dr. Visconti v. CPSA*. In *Visconti* the court ruled that the fact that a physician is in high demand with a busy practice cannot be used to justify a lower standard of consequences for the physician. In *Dicken*, the physician engaged in a sexual relationship with the nineteen-year-old mother of an infant patient. Dr. Dicken, a pediatric surgeon, called many specialist witnesses to testify on his behalf that a lengthy suspension of the physician would have a very significant impact on the pediatric population who would be underserved or suffer as a result of Dr. Dicken's absence. The tribunal ultimately ordered a lesser period of active suspension and Dr. Dicken actively served three months of a nine-month suspension.

- [81] Mr. Boyer advised that the Hearing Tribunal in Dr. Stewart's prior disciplinary matter involving a boundary violation imposed a suspension but also granted Dr. Stewart a dispensation to practice three days a month in order to see patients who were on the medication Tysabri. Dr. Stewart actively served his suspension the rest of the month outside of the three-day exemption. Mr. Boyer referred to a list of patients at Tab 18 of Exhibit 1 to demonstrate that one of those patients Dr. Stewart treated, during the dispensation period, was the Complainant in the present matter. Hence Dr. Stewart appeared to misuse the special dispensation that the tribunal granted to him in 2013.
- [82] Mr. Boyer did not refer extensively to the *Jaswal* factors but submitted that the cases he cited above are relevant for assessing the range of sentences in similar cases. Mr. Boyer added that the twenty-year age difference between the Complainant and Dr. Stewart and his prior disciplinary history are relevant to the Hearing Tribunal's *Jaswal* analysis.
- [83] Mr. Boyer addressed why particular provisions the Hearing Tribunal might have expected to form part of the sanction were absent. He confirmed that Dr. Stewart's practice permit is presently subject to a chaperone condition in accordance with a November 2021 Hearing Tribunal decision related to conduct that occurred in 2016. Mr. Boyer also indicated the Joint Agreement before the Hearing Tribunal does not require Dr. Stewart to undergo further psychological assessments because two assessments are already on the record: an assessment report dated May 13, 2013 and a further assessment report from a forensic psychiatrist, dated January 7, 2022. Mr. Boyer submitted that the two assessment reports in evidence are relevant to the issues of risk and rehabilitation.
- [84] Mr. Boyer reiterated that the central issue before the Hearing Tribunal is whether Dr. Stewart can serve his suspension in a manner where he is on duty for two weeks then actively serving his suspension for two weeks. The Complaints Director's position is that Dr. Stewart should serve his suspension in one six-month block, without any interruptions, and without any portion held in abeyance. This form of suspension more appropriately serves the principle of specific deterrence for Dr. Stewart and general deterrence for the profession at large.

- [85] Mr. Boyer submitted that it is appropriate for Dr. Stewart to bear 75 percent of the costs given that his conduct involves a sexual boundary violation. This amount is consistent with the principles regarding costs set out in *Jinnah v Alberta Dental Association and College*.
- [86] Mr. Boyer acknowledged the parties had different perspectives regarding AHS's effectiveness in organizing resources for patient care during Dr. Stewart's absence from practice. However, Mr. Boyer submitted Dr. Hartfield's evidence establishes that when a physician is absent from practice, the AHS zone medical directors are available to provide robust assistance within an established system that is responsive to patient care and safety for patients requiring specialized medical attention. To that end, Dr. Hartfield testified that the zone medical director for Edmonton is presently engaged in triaging Dr. Stewart's patients. Dr. Hartfield additionally provided relevant information about the various administrative challenges and patient confusion that would likely ensue as a result of an intermittent suspension. Mr. Boyer noted that the evidence outlined by Dr. Hartfield undermines Mr. Ryan's position that Dr. Stewart should be permitted to practice for intermittent periods during his suspension to ensure continuity of patient care and safety.
- [87] Mr. Boyer acknowledged that the Complaints Director would accept the Hearing Tribunal amending provision (a) of the agreement to include a six-month lead time to allow Dr. Stewart to prepare his patients for his absence and to coordinate with AHS to organize their care.

### **Questions from the Hearing Tribunal**

- [88] The Hearing Tribunal asked Mr. Boyer if there was a CPSA protocol that provided guidance about patient management when a physician is absent from practice for a period of time. Mr. Boyer referred to Dr. Hartfield's evidence outlining the process. He also indicated that once the Hearing Tribunal confirms it has accepted the parties Joint Submission, the process can get underway. Mr. Ryan agreed, but also submitted that it would be helpful for the Hearing Tribunal to indicate when it expects to issue its written decision.

### **Submissions on Behalf of Dr. Stewart**

- [89] Mr. Ryan advised that he wished to clarify points raised by Mr. Boyer in his submissions to the Hearing Tribunal. Mr. Ryan indicated that while the Complainant was Dr. Stewart's patient in 2013 and she attended for a clinical appointment once at Dr. Stewart's office, Dr. Stewart did not engage in any of the particular conduct for which he was charged during that appointment. It is therefore unfair of Mr. Boyer to characterize Dr. Stewart as misusing his dispensation to practice on a limited basis during a previous suspension.
- [90] Mr. Ryan submitted Dr. Stewart has insight into his particular circumstances, and from his testimony in these proceedings, it is clear he is remorseful. He



has changed and admitted that his conduct was unprofessional. Dr. Stewart has undergone various therapies that have resulted in self-awareness, and an understanding of how to avoid boundary issues.

- [91] Mr. Ryan argued that the *Visconti* case is not applicable to the matter before this Hearing Tribunal because the physician in that case sought to avoid serving his sentence. This contrasts with Dr. Stewart who has taken responsibility for his conduct and accepted his suspension. Dr. Stewart is asking the Hearing Tribunal for an accommodation that permits him to see his patients during the suspension period.
- [92] According to Mr. Ryan, the six-month suspension is significant and addresses the sentencing goal of general deterrence by sending a strong message to the college membership that this behavior is unacceptable for physicians.
- [93] With respect to specific deterrence, Mr. Ryan indicated that a six-month suspension reflects the boundary violations in the amended Notice of hearing, Dr. Stewart's past history, and the seriousness of the matter. But a balanced approach to how Dr. Stewart serves his suspension is required in order to protect patients from falling through the cracks. Dr. Stewart provided evidence that his past experiences with AHS to organize his patients during a previous suspension did not work well.
- [94] Mr. Ryan submitted the two weeks on, two weeks off proposal represents a balanced approach, and administrative issues raised by Dr. Hartfield can be resolved. Dr. Stewart's approach to executing his suspension addresses his legal obligations while maintaining patient care.
- [95] Mr. Ryan submitted that Dr. Stewart's suspension term should include an abeyance period of three months. Mr. Ryan suggested a six-month suspension, with three months served actively, incorporating the two weeks on, two weeks off structure. Three months of the six months suspension would be held in abeyance. Alternatively, if there are administrative difficulties associated with this, Dr. Stewart would accept one month on and one month off. Mr. Ryan further requested three to four months of lead time for Dr. Stewart to organize his practice prior to serving his suspension.

### **Reply Submissions on behalf of the Complaints Director**

- [96] Mr. Boyer responded that the caveat in paragraph (b) of the parties' agreement is that the Hearing Tribunal shall determine whether the suspension is to be served with or without any interruptions. The proposal before the Hearing Tribunal, executed by the parties, does not include any joint submission on an abeyance period.

### **Questions from the Hearing Tribunal**

- [97] The Hearing Tribunal suggested that Mr. Ryan submissions imply that special dispensations regarding suspensions ought to be extended to subspecialists

because they are few and their patients may not receive the care they require, while more generalist physicians who are found guilty of the same conduct would not have such an option. Mr. Ryan responded that the structure of the suspension Dr. Stewart proposed is about patient need and is sensitive to circumstances that require an accommodation for a physician who has a very specialized practice. It is not meant as a 'pass' for physicians practicing in highly specialized areas of medicine.

- [98] The Hearing Tribunal asked Mr. Ryan about Dr. Stewart's preparations for his patients. Mr. Ryan advised that he did know but advised the Hearing Tribunal to refer to Dr. Stewart's evidence of October 25, 2022 regarding this issue. Mr. Ryan reiterated that a three-to-four-month lead time would be reasonable to make appropriate arrangements for his patients in contemplation of his absence.
- [99] Referring to Dr. Stewart's evidence, Mr. Ryan listed a number of factors that made a flexible approach to suspension appropriate in this case. He stated that there are insufficient neurologists available in the community to serve Dr. Stewart's patients during his absence; Dr. Stewart was unable to secure a single referral for any of his patients through his efforts with AHS; and a flexible approach would permit Dr. Stewart himself to provide coverage to his own patients to ensure they receive the specialized care they require.
- [100] Mr. Ryan submitted that if Dr. Stewart can practice for two weeks then actively serve his six-month suspension for two weeks, then he can ensure that he is maximizing the coverage for his patients and minimizing the chances of there being emergent situations.

## **X. DECISION**

- [101] The Hearing Tribunal is aware that significant deference is owed to joint submissions on sanctions, and there is no basis for rejecting the agreed sanction unless the sanction would bring the administration of justice into disrepute.
- [102] The Hearing Tribunal carefully considered the parties' submissions and reviewed the evidence and case law. The Hearing Tribunal determined that Dr. Stewart shall serve a six-month active suspension in a single block of time without interruption and without any period being held in abeyance. However, with the parties' agreement, the Hearing Tribunal amended provision (a) of the joint submission on sanction for the suspension to start no later than 180 days after the date the decision is issued by the Hearing Tribunal rather than 60 days as set out in the joint submission. The Hearing Tribunal accepted the remaining sanctions in the joint submission on sanction.
- [103] The Hearing Tribunal found that the sanctions were reasonable and appropriate in the circumstances of the case and in the context of the *Jaswal*

factors and relevant principles regarding sanction associated with professional disciplinary matters.

## **XI. REASONS**

### *Time Before Suspension Begins*

[104] The parties requested a period of lead time before the suspension begins, to allow Dr. Stewart to address his patient load. The joint submission on sanction noted a 60-day period of lead time. In her testimony, Dr. Hartfield suggested a period of three months may be appropriate to address the concerns raised by Dr. Stewart.

[105] The Hearing Tribunal determined it would grant Dr. Stewart six months' lead time in consideration of Dr. Stewart's patients' needs. The parties did not object to the Hearing Tribunal varying the proposed lead time before the start of the suspension.

[106] The Hearing Tribunal finds six months ample time for Dr. Stewart to prepare his patients for his absence. The Complaints Director explained that the AHS zone medical directors are there to collaborate with Dr. Stewart to assist with his preparations and organize appropriate resources.

### *Request by Dr. Stewart for a Period of the Suspension to be held in Abeyance*

[107] With respect to whether there would be a period of abeyance, the Hearing Tribunal considered the submissions and cases presented by the parties.

[108] The Hearing Tribunal found that the boundary violations by Dr. Stewart represent very serious unprofessional conduct. The Hearing Tribunal considered the statement of the Complainant and the impact that Dr. Stewart's conduct has had on her.

[109] For the purpose of addressing general deterrence, Hearing Tribunal found it necessary to send a strong message to the membership that sexualizing interactions with patients is unacceptable. The Hearing Tribunal also considered the issue of specific deterrence. Dr. Stewart's conduct warrants a clear sanction without any dispensation.

[110] A six-month suspension, actively served in its entirety, demonstrates to Dr. Stewart, and the membership generally, that sexualizing interactions with patients will not be tolerated.

[111] It is clear from the Alberta Health billing records (Exhibit 1, Tab 8) that Dr. Stewart had a fairly lengthy physician-patient relationship with the Complainant. She was severely ill with multiple sclerosis, relentlessly subject to the disease process and required Dr. Stewart's specialized expertise as a neurologist. In his written response to the College (Exhibit 1, Tab 6) he noted he employed email communications "in order to facilitate better lines of

communication with patients requiring greater than average amounts of care". However, he used this method of communication to perpetuate some of his offending conduct upon a patient who had placed her trust in him. Dr. Stewart was in a significant position of authority, and, in the Hearing Tribunal's view, he abused this authority by taking advantage of his position of privilege as a physician to engage in self-serving conduct. Dr. Stewart failed to consider the well-being of his patient when he sexualized his interactions with her and thus violated her trust and the trust of the public.

[112] The Hearing Tribunal considered that Dr. Stewart has a prior disciplinary history. He has a finding of unprofessional conduct from 2013 involving boundary violations. He has a further finding of unprofessional conduct from 2021 for failing to have a chaperone present in breach of an undertaking. The Hearing Tribunal recognized that the 2021 hearing involved conduct occurring after the conduct at issue in this hearing. The Hearing Tribunal further noted that the joint submission on sanction (Exhibit 2) makes no mention of holding any part of the period of suspension in abeyance or asking for a determination on this issue by the Hearing Tribunal.

[113] However, the Hearing Tribunal found that given the 2013 decision and the severity of the conduct in the present case, Dr. Stewart should serve the entire six-month suspension and it was not appropriate to hold any of the period of suspension in abeyance.

*Request by Dr. Stewart to Serve the Suspension in Two Week Increments*

[114] With respect to whether the suspension would be served with or without interruption, the Hearing Tribunal considered the evidence presented by Dr. Stewart and Dr. Hartfield and the submissions of the parties.

[115] Regarding Dr. Stewart's patients, who because of the complexity of their health status, may fall through the cracks during his absence, the Hearing Tribunal carefully weighed the benefits or risks of the plan proposed by Dr. Stewart. The Hearing Tribunal finds that Dr. Stewart's plan is untenable and may put patients at more risk. Dr. Stewart testified that he is not in a group practice. Dr. Stewart gave evidence regarding the type of work he thought he could engage in while suspended. This is contrary to the evidence given by Dr. Hartfield. While suspended, Dr. Stewart cannot engage in any professional services for his patients, even if he does not see patients directly. Given this, there would be periods of time that patients would not be seen and their records could not be reviewed by Dr. Stewart. In addition, there would be a risk of confusion by patients of when Dr. Stewart is available to provide services or when he is not available. There is an increased risk of harm to patients who may choose to wait for him to be available.

[116] In addition, the Hearing Tribunal was concerned with the administrative complexities arising from this type of suspension and the risk of confusion for the medical community managing and following up with his patients. For

pharmacies, there may be a risk of confusion as to the periods of suspension, which could interfere with the prescribing of medications for patients. The Hearing Tribunal found that such confusion could put patients at risk.

- [117] The Hearing Tribunal viewed that there were significant patient safety concerns with the proposal for two weeks on and two weeks off (or for any period of on and off work) proposed by Dr. Stewart.
- [118] The Hearing Tribunal accepted Dr. Hartfield's evidence that AHS zone medical directors provide a reasonable system to manage these concerns. Physicians, even specialized physicians, are required to take leaves of absence from time to time (for example during maternity leaves or periods of illness).
- [119] In the view of the Hearing Tribunal, the more prudent approach is for alternative measures to be put in place during Dr. Stewart's absence. The Hearing Tribunal trusts that Dr. Stewart will work cooperatively with the zone medical directors to triage patients and ascertain suitable resources to ensure the best care for his patients during his period of suspension.

*Maintaining the Requirement for a Chaperone*

- [120] The parties jointly submitted that the Hearing Tribunal not cancel or vary the practice conditions on Dr. Stewart's practice permit that were in effect on the date of the Hearing. The Hearing Tribunal finds no reason to interfere with this requirement. The Hearing Tribunal understands from Mr. Boyer's submission that this is a strict requirement.
- [121] It is appropriate to maintain this condition on Dr. Stewart's practice permit given that Dr. Stewart's conduct in the present disciplinary matter relates to a sexual boundary violation. The chaperone requirement further serves to protect the public.

*75% of Costs of the Investigation and Hearing*

- [122] The parties jointly submitted that Dr. Stewart shall be responsible to pay 75% of the costs of the investigation and hearing. The Hearing Tribunal finds no reason to interfere with this submission.
- [123] Dr. Stewart acknowledged his boundary violation and admitted that his conduct amounts to unprofessional conduct. Dr. Stewart's admission prevented a potentially lengthy and contentious hearing requiring witness evidence.
- [124] Dr. Stewart's conduct is serious. In addition, Dr. Stewart has a prior finding of unprofessional conduct from 2013 and another finding from 2021. Further, the parties submit that the payment of 75% of costs is appropriate.
- [125] The Hearing Tribunal agrees that Dr. Stewart should be responsible for a substantial portion of the costs of the proceedings and that the costs order is

in line with the factors set out in the *Jinnah* decision. Boundary violations are inherently more serious as they are obvious and blatant contraventions of explicit and clear standards of practice and codes of ethics which govern the profession. Therefore, a health professional's breach of the rule is knowingly undertaken with a clear disregard for professional obligations. As such, holding the physician responsible for a significant portion or all of the costs is appropriate.

*Remedial Measures Taken by Dr. Stewart*

- [126] The Hearing Tribunal acknowledges that rehabilitation measures undertaken by a physician address protection of the public which is of paramount importance in considering an appropriate sanction. Dr. Stewart has attended therapy and the College's sexual boundary violations course for an extended period of time. He has undergone psychological assessments and further education. Dr. Stewart took a number of steps to gain insight into his conduct and to understand his professional obligations.
- [127] The Hearing Tribunal accepts these rehabilitation efforts go towards protecting the public. Dr. Stewart has expressed his remorse for his conduct and the Hearing Tribunal has not been made aware of any further complaints of a similar nature made against Dr. Stewart to the College.
- [128] Had Dr. Stewart not undertaken these remedial measures, the Hearing Tribunal would have expected such measures to form part of a joint submission on sanction.

*Conclusion*

- [129] In conclusion, for all of the above reasons, the Hearing Tribunal is satisfied that the sanctions serve to protect the public and achieve the goal of general and specific deterrence. The sanctions are not demonstrably unfit, they serve the public interest and uphold the integrity of the profession.

**XII. ORDERS**

- [130] Accordingly, pursuant to s. 82 of the HPA, the Hearing Tribunal orders the following:
- a. Dr. Stewart's practice permit shall be suspended for a period of six months starting on a date acceptable to the Complaints Director and no later than 180 days after the date of the decision issued by the Hearing Tribunal.
  - b. Dr. Stewart shall actively serve his suspension without any interruption in the period of six consecutive months.

- c. The order of the Hearing Tribunal will not cancel or vary the practice conditions on Dr. Stewart's practice permit that are in effect on the date of the hearing.
- d. Dr. Stewart shall be responsible for 75% of the costs of the investigation and hearing, which may be paid by monthly installments over a 12-month period following the date of statement of costs provided to Dr. Stewart by the Hearings Director.

Signed on behalf of the Hearing Tribunal by the Chair:

A handwritten signature in black ink, appearing to read 'Naz Mellick', with a large, stylized initial 'N'.

Ms. Naz Mellick

Dated this 19<sup>th</sup> day of October, 2023.