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. GAYLORD WARDELL

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

I. INTRODUCTION

1. The Hearing Tribunal held a hearing, virtually through Zoom, into the conduct of Dr. Gaylord Wardell on October 13 and 14, 2021.

2. The members of the Hearing Tribunal were:

    - Dr. Erica Dance of Edmonton as Chair;
    - Dr. Robin Cox of Calgary (physician member);
    - Ms. Anita Warnick of Calgary (public member); and
    - Mr. James Lees of Edmonton (public member).

3. Ms. Mary Marshall acted as independent legal counsel for the Hearing Tribunal.

4. In attendance at the hearing were:

    - Ms. Stacey McPeek, legal counsel for the Complaints Director of the College of Physicians & Surgeons of Alberta (the "College");
    - Dr. Gaylord Wardell, Investigated Member; and
    - Mr. Mike Theroux, legal counsel for the Investigated Member.

II. PRELIMINARY MATTERS

5. There were no objections to the composition of the Hearing Tribunal or to the jurisdiction of the Hearing Tribunal to proceed with a hearing nor were there any other matters of a preliminary nature. Pursuant to section 78 of the *Health Professions Act*, RSA 2000, c. H-7 (the "HPA"), the hearing was open to the public.

III. CHARGES

6. The Notice of Hearing listed the following allegations:

    1. You did fail to comply with the Standard of Practice regarding Referral Consultation, in particular you failed to provide a written consultation report to the physician who referred the patient to you following your assessment of the patient on March 16, 2017, in particular, one or more of the following patients:

        - [Patient A];
        - [Patient B];
        - [Patient C];
        - [Patient D];
        - [Patient E];
        - [Patient F];
        - [Patient G];
        - [Patient H];
        - [Patient I];

2. You did fail to comply with the Standard of Practice regarding Telemedicine in that you did issue a prescription by electronic means to one or more of your patients listed below, when having only consulted with your patient via electronic communication on or about March 16, 2017;

3. You did fail to comply with the requirements of the Standard of Practice for Cannabis for Medical Purposes in the care you provided a medical authorization for cannabis on or about March 16, 2017 to one or more of your patients listed below, particulars of which include one or more of the following:

    a. Fail to attempt and find conventional therapies ineffective in treating the patient's medical condition or symptoms;

    b. Fail to see your patient at least once every three months; and

    c. Fail to determine from available prescription databases the current medication history of your patient and determine if cannabis was contraindicated given any existing prescription or non-prescription medications being utilized by the patient.

    The patients noted in allegation #2 and #3, being seen via Skype on March 16, 2017, are:

    - [Patient J];
    - [Patient K];
    - [Patient L];
    - [Patient M];
    - [Patient N];
    - [Patient O];
    - [Patient P];
    - [Patient Q];
    - [Patient R];
    - [Patient S];
    - [Patient A];
    - [Patient B];
    - [Patient C];
    - [Patient D];
    - [Patient E];
    - [Patient F];
    - [Patient G];
    - [Patient T];
    - [Patient H];
    - [Patient I];
    - [Patient U];
    - [Patient V];
    - [Patient W];
    - [Patient X];
    - [Patient Y];
    - [Patient Z];

- [Patient AA];
- [Patient AB];
- [Patient AC];
- [Patient AD];

IV. EXHIBITS

7. The following Exhibits were entered into evidence during the hearing:

Exhibit 1: Agreed Exhibit Book Containing Tabs 1 to 11

- **Tab 1:** Notice of Hearing dated May 28, 2021 (pages 1-4)
- **Tab 2:** Memorandum of Complaint from Dr. Caffaro, dated June 25, 2018 (pages 5-8)
- **Tab 3:** Letter of response from Dr. Wardell dated August 3, 2018 (pages 9-10)
- **Tab 4:** Letter of response from Dr. Wardell, dated June 18, 2019 (pages 11-12)
- **Tab 5:** Letter of response from Dr. Wardell, dated July 18, 2019 (pages 13-14)
- **Tab 6:** Letter of response from Dr. Wardell with redacted patient list, dated May 28, 2020 (pages 15-17)
- **Tab 7:** Complete and Unredacted Patient Charts from March 16, 2017 (pages 18-381)
- **Tab 8:** Letter from Dr. Caffaro to Dr. Wardell, dated December 2, 2020 (page 382)
- **Tab 9:** Standard of Practice: Cannabis for Medical Purposes (pages 383-386)
- **Tab 10:** Standard of Practice: Referral Consultation (pages 387-393)
- **Tab 11:** Standard of Practice: Telemedicine (pages 394-397)

Exhibit 2: Letter dated August 31, 2020 from Dr. Michael Caffaro to Mr. Mike Theroux

Exhibit 3: Letter dated December 3, 2020 from Craig Boyer to Michael Theroux, containing draft with Notice of Hearing and production

Exhibit 4: Letter dated January 21, 2020 from Health Canada to Dr. Monica Wickland-Weller

V. DOCUMENTS PROVIDED TO THE HEARING TRIBUNAL

8. The parties agreed to provide written submissions to the Hearing Tribunal following the hearing.

9. Counsel for the Complaints Director provided written submissions dated October 29, 2021 setting out the position of the Complaints Director regarding the allegations. The following authorities were also provided:

    a. *Council for Licensed Practical Nurses v. Walsh*, 2010 NLCA 11.

    b. *College of Physicians and Surgeons of Alberta v. J. H.*, 2008 ABQB 205.

10. Counsel for Dr. Wardell provided written submissions dated November 5, 2021, setting out the position of the Dr. Wardell regarding the allegations. The following authorities were also provided:

    a. *Heath v College of Physicians & Surgeons (Ontario)*, 1997 CanLII 14525 (ON SCDC), 6 Admin LR (3d) 304 (Ont Ct (Gen Div))

    b. *FH v McDougall*, 2008 SCC 53

    c. *Alsaadi v Alberta College of Pharmacy*, 2021 ABCA 313

    d. *Yee v Chartered Professional Accountants of Alberta*, 2020 ABCA 98

    e. *MacLeod v Alberta College of Social Workers*, 2018 ABCA 13

    f. *Visconti v College of Physicians and Surgeons of Alberta*, 2010 ABCA 250

    g. *Access to Cannabis for Medical Purposes Regulations*, SOR 2016-230 as it appeared on 16 March 2017

    h. *Tetterington v Wiens*, 1995 ABCA 102

    i. *Belknap v Meakes*, 1989 CanLII 5268 (BC CA)

    j. *Brough v Yipp*, 2016 ABQB 559

VI. EVIDENCE

Opening Statement by Ms. McPeek, Counsel for the Complaints Director

11. Ms. McPeek presented an opening statement on behalf of the Complaints Director. The main points made were:

    a. This is a straightforward matter, and the College would be calling one witness, Dr. Michael Caffaro, who was the Complaints Director at the time of the complaint.

    b. The evidence is largely documentary and will speak for itself.

    c. The issue is to determine if Dr. Wardell followed the Standards of Practice relating to three areas of practice.

    d. First is the Standard of Practice for Cannabis for Medical Purposes. Dr. Wardell failed to attempt conventional therapies, failed to see the patients for at least three months following the consultation, and failed to determine from available prescription sites the current medical histories of the patients.

e. Second is the Standard of Practice for Telemedicine. All these patients were seen via Skype and Dr. Wardell failed to abide by the Standard of Practice for Telemedicine in that he only consulted with these patients during the one visit.

f. Third is the Standard of Practice for Referral Consultation. Dr. Wardell failed to provide a written consultation report for the patients who were referred to him.

g. Ms. McPeek asks the Hearing Tribunal to make a finding of unprofessional conduct on all three charges.

Evidence of Dr. Caffaro

12. Ms. McPeek called Dr. Michael Caffaro as a witness, and he gave the following testimony:

a. Dr. Caffaro is currently the Assistant Registrar of the College responsible for registration. Previously, specifically from April 2015 to December 2020, he was the Assistant Registrar responsible for Professional Conduct, and was the Complaints Director at the time the complaint about Dr. Wardell was opened.

b. Dr. Caffaro opened this complaint after a social media post from a patient, Patient AD, who resided outside Alberta, was shared with him. The patient commented on his recent procurement of an authorization document for growing or obtaining cannabis for medical purposes, authorized by Dr. Wardell.

c. The social media post raised concerns for Dr. Caffaro about the appropriateness of Dr. Wardell's authorization of cannabis for medical purposes and his compliance with relevant Standards of Practice that might apply to this situation.

d. The College pursued an investigation which included a Memorandum of Complaint dated June 25, 2018 created by Dr. Caffaro, an inquiry made to Dr. Wardell, and a response from Dr. Wardell.

e. The initial response dated August 3, 2018, reviewed Dr. Wardell's clinical experience and areas of practice and his usual process for seeing a patient upon referral. The response then reviewed the specifics of Dr. Wardell's interaction with Patient AD. Further responses from Dr. Wardell and from his legal counsel were received in 2019 and 2020.

f. Specific to Patient AD, Dr. Wardell explained to the College that he obtained a detailed medical history from the patient, that he would only have suggested alternative therapies if they were indicated or had been used previously, and that there were no databases within Alberta for him to access prescription information as Patient AD was an out of province patient without an Alberta Health Care number.

g. Dr. Wardell identified to the College that Patient AD was referred by an out-of-province colleague and that follow up would not be with Dr. Wardell. Dr. Caffaro recalls that Dr. Wardell stated he spent two to three hours with Patient AD in that consultation.

h. Dr. Caffaro believed that telemedicine was a frequent and substantial part of Dr. Wardell's practice despite Dr. Wardell's attestation that he rarely used telemedicine in his practice.

i. After the initial investigation, Dr. Caffaro requested a list of all patients seen on the same day as Patient AD's visit, March 16, 2017.

j. Examples of the charts of the patients seen by Dr. Wardell on March 16, 2017 were reviewed in detail by Dr. Caffaro highlighting areas where Dr. Caffaro felt Dr. Wardell's documentation of a detailed history, previous use of therapies and their effectiveness, allergies, relevant family history, physical exam including height and weight or vital signs, and other medical details was not as robust or complete as would be expected by Dr. Caffaro.

k. Standardized scales including the Brief Pain Inventory ("BPI"), Hospital Anxiety and Depression Scale ("HADS"), and the Opioid Risk Tool ("ORT") were reviewed on the charts of several patients, specifically highlighting times the tool was incomplete, missing, or completed inappropriately.

l. All patients were identified as residing outside of Alberta.

m. Several the charts contained a "Consultation Referral" document completed by a Nurse Practitioner from Perth, Ontario named Michael Bingley, but none of the charts included a referral note by Dr. Wardell in response.

n. No follow up plan or follow up visits were documented for any of these patients.

o. Dr. Caffaro was asked to review the Standard of Practice for Telemedicine. Dr. Caffaro referred to related Standards of Practice which govern medical records and charting standards.

p. Mr. Theroux objected to this line of questioning stating that the College's charges in the Notice of Hearing are narrow and specifically reference the concern of issuing a prescription by electronic means, not other parts of the Standard of Practice for Telemedicine. Mr. Theroux proposed that raising issues with other parts of the Standard of Practice would be inappropriate as it would be akin to expanding the charges "on the fly at a hearing" and would be unfair to Dr. Wardell. Mr. Theroux cited the recent decision in *Alsaadi v. Alberta College of Pharmacy* as supporting this assertion. Ms. McPeek responded by stating that the charge is broadly worded and that it encompasses the entire Standard of Practice.

q. The Hearing Tribunal considered this objection and the submissions relating to the objection from both parties. The Hearing Tribunal determined it would hear the evidence and that it would be the role of the Hearing Tribunal to determine the appropriate weight and relevance of the evidence, and then to assess that evidence against the allegations that are outlined in the Notice of Hearing.

r. Dr. Caffaro went on to describe that the concern with Dr. Wardell's compliance with the Standard of Practice for Telemedicine stemmed from the lack of adequate history, examination, establishing a diagnosis, identifying underlying conditions, and determination of the appropriateness of the therapy.

s. With respect to the Standard of Practice for Referral Consultation, Dr. Caffaro noted there was no documentation of communication back to the referring practitioner about the consultation for any of the patients who were referred to Dr. Wardell.

t. Dr. Caffaro reviewed his concerns with Dr. Wardell's compliance with the Standard of Practice for Cannabis for Medical Purposes by highlighting that Dr. Wardell did not see the patient for ongoing care at a minimum of every three months as outlined in the Standard.

Cross-Examination of Dr. Caffaro

13. Mr. Theroux questioned Dr. Caffaro, and the responses during cross-examination were:

a. There is an expectation of fairness and transparency in the work of the College.

b. Typically, after an investigation is complete, the investigator will create an Investigation Report, which is shared with the Complainant and the Investigated Member at some point after the conclusion of the investigation. In this case, however, the Investigation Report was discussed with counsel for the Complaints Director before it was shared with Dr. Wardell.

c. The College only corresponded with Dr. Wardell with respect to Patient AD, and not about any of the other patients referred to in the Notice of Hearing.

d. The College did not have any information on how often Dr. Wardell booked patients for telemedicine visits, outside of the one day of booking that was requested and shared by Dr. Wardell.

e. There was no charge in the Notice of Hearing referring to the Standard of Patient Record Content or to charting in general.

f. Dr. Caffaro was called as a lay witness, given his role as former Complaints Director, and not as an expert witness. Dr. Caffaro is not an anesthesiologist, nor does he have extensive training in pain medicine. The College did not retain an expert in anesthesiology, pain medicine, or cannabis prescribing to assess if Dr. Wardell met the standard of care in this case.

g. One of the patient records was reviewed to highlight that if a physician gathers information that a particular patient has used cannabis for a long time without apparent issue, that this would provide information to that physician that it was safe to prescribe medical cannabis in that case.

h. That the BPI, HADS, and ORT are useful tools for a physician to have on the patient chart if they are considering a prescription for medical cannabis.

i. The Consult Referral document included in several patient records does not take the form of a letter addressed to anyone in particular, and not to Dr. Wardell specifically. The College did not confirm if the Consult Referral form came directly from Dr. Wardell's office or if it was provided by the patient or someone on behalf of the patient. The Standard of

Practice for Referral Consultation is engaged only if there is a request between practitioners to consult on the patient.

Redirect of Dr. Michael Caffaro

14. Ms. McPeek re-examined Dr. Michael Caffaro and the key points made were:

    a. The HPA does not delineate that an Investigation Report must be provided to any party.

    b. A draft Notice of Hearing was shared with counsel for Dr. Wardell on December 3, 2020.

    c. On January 21, 2020, Health Canada wrote a letter to the College noting that Dr. Wardell "continues to be the highest authorizing physician" for medical cannabis and that the patients involved predominantly lived outside of Alberta.

Questions of the Hearing Tribunal

15. The Hearing Tribunal did not have any questions for Dr. Caffaro.

16. Mr. Theroux followed up with a question clarifying that the letter from Health Canada to the College dated January 21, 2020, referred to patients seen in 2019 while the concerns raised about Dr. Wardell's prescribing of cannabis were for patients seen in 2017.

Opening Statement by Mr. Theroux

17. Mr. Theroux presented an opening statement on behalf of Dr. Wardell. The main points made were:

    a. Dr. Wardell graduated from medical school in 1978 and after a few years completed specialty training in anesthesiology. Later he developed an interest in pain management and chronic pain, although it was not a specialty in Canada until 2016. He moved to Alberta in 2001 where he practiced exclusively in pain management and palliative care, and then opened his current clinic, the Sante Surgi Clinic, in Medicine Hat in 2006.

    b. Dr. Wardell's clinic is the only comprehensive pain clinic in the South Zone of Alberta. It is a comprehensive pain medicine clinic, and not a "cannabis clinic or dispensary". However, Dr. Wardell is one of a relatively few physicians in Canada who provide authorizations to grow cannabis for medical purposes.

    c. Growing cannabis is the only way that many low-income Canadians can access cannabis for medical use due to the prohibitive cost of dried cannabis from licensed producers. Dr. Wardell's patients are interested only in the medicinal benefits of cannabis, and do not want the central nervous system effects that come from decarboxylated cannabis. Otherwise said, they do not want to "get high".

    d. Regarding the first charge, relating to the Standard of Practice for Referral Consultation, these patients were not referred to Dr. Wardell and so this Standard of Practice is not triggered, and no consultation letter was required.

e. Regarding the second charge, relating to the Standard of Practice for Telemedicine, the scope of the charge is narrow, and the only issue is whether Dr. Wardell was permitted to issue an authorization to Health Canada for his patients to grow cannabis. The Complaints Director did not pursue charges relating to the other areas of this Standard.

f. The third charge relates to the Standard of Practice for Cannabis for Medical Purposes. Dr. Wardell has a comprehensive process for assessing and treating his patients, assessing for contraindications, and for arranging follow up once they have access to the cannabis after authorization. Further, the fact that none of these patients resided in Alberta meant there was no prescription databases that were available to him.

g. Dr. Wardell is a qualified, conscientious, and hardworking physician who is trying to do the best for his patients. He is dedicated to relieving pain and has been appropriately following the standards in this new, rapidly, and still evolving medical practice area.

Evidence of Dr. Gaylord Wardell

18. Mr. Theroux called Dr. Gaylord Wardell as a witness, and he gave the following testimony:

a. Dr. Wardell reviewed his medical training and clinical practice. In 2001 he moved to Medicine Hat and took over the palliative care program, in addition to his anesthesia practice, in what was then called the Palliser Region of Alberta Health Services, and which is now part of the South Zone. He opened his current pain clinic in 2006 or 2007.

b. Eventually he retired from anesthesia in approximately 2010 and since then has focused on pain medicine. Currently, his pain clinic is the only fully functioning clinic in the South Zone of Alberta.

c. About 60 percent of his pain clinic patients are below the poverty line and many of them are “on assistance of some kind”. Many of Dr. Wardell’s patients are seeking raw cannabis to avoid the ‘high’ that comes from decarboxylated cannabis. They want to grow the cannabis themselves due to the high cost of raw cannabis purchased from licensed producers which is difficult to acquire.

d. The vast majority of Dr. Wardell’s patients are referral patients for issues regarding chronic pain. Cannabis is one of the tools that may be appropriate and, if so, he will authorize them to use cannabis.

e. Very few patients come to Dr. Wardell specifically seeking approval to grow their own cannabis, and these are a different group of patients. The clinic saw a need from patients across Canada to find someone who understood cannabis, who was qualified to provide an opinion and be able to fill out the Health Canada form, and so created a process for how to see these patients in the clinic, and they are all scheduled at one time.

f. Dr. Wardell’s team determines what the parameters are for seeing these patients. The process includes collecting demographic information along with completion of the BPI, HADS, and ORT forms, which are peer-reviewed and accepted tools. These are reviewed by his patient intake team to ensure the forms are all there. Dr. Wardell reviews this information before seeing the patient, which usually takes about 10 minutes on average.

g. When patients are seen, there are two components to Dr. Wardell's assessment. The first part is allowing the patient to tell him their story regarding their use of cannabis or desire to use cannabis. He then combines what they know with his knowledge of existing science to determine if the patient is a reasonable candidate to grow cannabis.

h. Once Dr. Wardell confirms a patient is appropriate for cannabis treatment, he completes Health Canada's Medical Document for the Access to Cannabis for Medical Purposes Regulations ("Medical Document") which is given to the patient as part of Health Canada's requirements. There are other steps patients must go through to complete this process including, for example, security checks.

i. Dr. Wardell believes Health Canada to have a "rigorous process" for patients who wish to grow their own medicinal cannabis. This process can take six to eight months. Once approved, it takes another three to five months to produce cannabis that they could use. After the visit Dr. Wardell's advice to his patients would typically be to recontact him once they have the cannabis, at which time he would assist them in how to use it.

j. For those patients who are referred to Dr. Wardell by health care professionals, such as family physicians and chiropractors, Dr. Wardell prepares a consult letter back to the referring professional.

k. However, the patients being reviewed in this hearing were not referred to him and therefore no letter was sent back as there was no referring health care professional.

l. Dr. Wardell reviewed some patient charts specifically referring to his assessments of risk, consideration for other therapies, and how he utilized the specific tools included. Specific to the ORT, many patients are confused by the fact that a patient is to fill out only the column that is appropriate to their gender and so about half the time patients make mistakes in filling out that form.

m. Dr. Wardell highlighted that there is no evidence to say that a patient's response to cannabis is related to their body mass index, height, or weight. As such he did not record those statistics. Dr. Wardell also explained why detailing an injury that happened many years ago is not going to affect the treatment of the pain when being assessed by a chronic pain specialist.

n. Dr. Wardell clarified that his office manager completes some parts of the assessment, and some of the patient histories are recorded by an assistant in his office who is a physician from Egypt with a lot of experience, but who is not licensed to practice medicine in Canada.

o. Mr. Bingley is a Nurse Practitioner from Perth, Ontario who Dr. Wardell is familiar with but who did not communicate with Dr. Wardell nor ask him directly for a consultation. The patients are often supported by patient advocate or support groups who supply added information such as this referral document.

p. Patient AD was scheduled at the end of the day so that Dr. Wardell could spend more time with him, estimating this may have been a one-hour meeting.

q. In summary, Dr. Wardell did not complete a referral letter as none of the patients were referred to him. He did assess patients for their previous use of conventional therapies which had not been effective. None of the patients being reviewed lived in Alberta. Dr. Wardell had access to information in his chart and which was provided by the patient.

r. Since 2017, and more recently there has been about an 85 percent reduction in requests for authorization to grow medicinal cannabis in Dr. Wardell's experience.

Cross-Examination of Dr. Wardell

19. Ms. McPeek questioned Dr. Wardell, and the main points made in cross examination were:

a. While Dr. Wardell consulted with Patient AD for about 10 minutes as he did for the other 29 patients seen that day, he spent longer with Patient AD as he wanted to "take the opportunity to talk to a notorious character like Patient AD". Dr. Wardell stated that he did not mean to imply that the consultation with Patient AD was unique or more extensive than it was for other patients seen that day.

b. Telemedicine comprises less than 25 percent of Dr. Wardell's practice.

c. Each of the patients being reviewed were already using cannabis and wanted authorization to grow their own cannabis. The Health Canada authorization provided to each patient permits them to access cannabis, which could be by purchasing or by growing their own plants.

d. In the communication to the College dated August 3, 2018, Dr. Wardell stated that patients are "referred" to him "from a wide variety of medical professionals" and that "Patient AD was referred to me by a colleague". In the case of Patient AD, Dr. Wardell states that he did not mean 'referred' in a medical sense, and that he did not mean 'colleague' to be a physician.

e. In a communication dated July 18, 2019, where it refers to Dr. Wardell as a "consulting physician", Dr. Wardell states this is not meant to imply the patient was referred, but that he is a specialist who is therefore a consulting physician as opposed to a primary care physician.

f. Dr. Wardell refers to himself as a "consulting physician", and to many of his interactions as "referrals", and to various people as "colleagues", including his patients.

g. Several patient records were reviewed to determine if or where it was documented that Dr. Wardell himself tried conventional therapies and found them to be ineffective before authorizing the use of cannabis. Dr. Wardell confirmed that he did not personally prescribe other therapies himself, and instead relied on the patient's report of what they had previously tried for their symptoms.

h. Dr. Wardell attested that, whether it was documented or not, he would have explored with the patient whether they had tried other more traditional therapies. Dr. Wardell stated this is part of the patient's "cannabis story" and how the patient began using cannabis. Dr. Wardell always reviews this with his patients.

i. There were no prescription databases to check for these patients given they lived outside Alberta and Dr. Wardell did not attempt to contact anyone else about the patient's prescriptions.

j. There are instances noted where a patient's primary complaint was pain, but the BPI was either missing or incomplete. Dr. Wardell attested that whether there is documentation or not, he is confident that he would have reviewed the pain history of these patients.

k. Mr. Theroux objected to the questioning about charting as there was no charge relating to charting included in the Notice of Hearing. Further, he submitted that the charge relating to the use of telemedicine is narrow, referring only to whether Dr. Wardell was entitled to issue authorizations via telemedicine. In response, Ms. McPeek submitted that obtaining a history is part of the requirement under the Standard of Practice for Telemedicine, which is included in the Notice of Hearing.

l. The Hearing Tribunal considered this objection and the submissions relating to the objection from both parties. The Hearing Tribunal determined it would allow this line of questioning and hear the evidence as counsel for the Complaints Director should have a wide latitude during cross-examination, including to test for credibility.

m. Referring to the HADS tool, Dr. Wardell highlighted that there are no specific numbers or cut-offs which would indicate whether it was appropriate to prescribe cannabis. Dr. Wardell acknowledges that he did not always have completed HADS tools in the chart, but he asserts that, if relevant, he would have discussed those concerns with the patient.

n. Regarding the ORT, Dr. Wardell acknowledges that the forms are often completed incorrectly by patients and that review and clinical decision making would be required.

o. Dr. Wardell confirmed that he did not see any of the patients reviewed in follow up, nor did he provide any ongoing care to these patients.

p. Dr. Wardell attested that all the patients listed were already using cannabis and that he did not follow up on any of these patients regarding their use of cannabis.

Redirect of Dr. Wardell

20. Mr. Theroux re-examined Dr. Wardell and the key points made were:

a. Several patient records were evaluated to demonstrate that Dr. Wardell reviewed conventional therapies tried by the patients in the past, and which were noted by the patient not to be effective. Dr. Wardell stated that his standard of practice would be to have a full discussion about prior therapies attempted, even if he did not document this. His advice also would have been to keep trying “other things”.

b. None of the patients gave Dr. Wardell permission to treat them with anything other than cannabis. Dr. Wardell stated that “as competent patients, they felt they had a right to ask to use cannabis”.

c. Dr. Wardell clarified how patients complete the BPI and why some forms would not be fully filled out, specifically if they had no pain on the day they were evaluated. Details of how he interprets parts of the HADS score were also reviewed.

d. Re-trying conventional therapies which previously had been found non-effective would not demonstrate adherence to statements in the Canadian Medical Association (CMA) Code of Ethics on commitment to the wellbeing of the patient, treating patients with dignity and respect, and only recommending diagnostic and therapeutic services considered to be of benefit to the patient.

e. Ms. McPeek objected to the line of questioning regarding the CMA Code of Ethics in that Dr. Wardell had not been charged with breach of this code. Mr. Theroux stated that this was relevant considering Ms. McPeek's questions about trying conventional therapies.

f. The Hearing Tribunal considered this objection and the submissions relating to the objection from both parties. The Hearing Tribunal determined it would allow this line of questioning and consider the weight that should be given to the evidence.

Questions of the Hearing Tribunal

21. The Hearing Tribunal questioned Dr. Wardell and the following key points were made:

    a. In 2017, Dr. Wardell's patients would have had access to legally acquired cannabis from licensed dispensaries for medicinal use prior to, or instead of, being authorized to grow it themselves.

    b. Dr. Wardell's intake team included his wife, who is an RN and who set up the program, and occasional help from an assistant, Dr. Mohamed, who is not licensed to practice medicine in Canada.

    c. The process for this highly selected group of patients who were seeking authorization to grow their own cannabis was set up in a way “so that none of these patients would have their time wasted”. If the patients did not qualify, they would not go through this process. This is in contrast to the patients who are referred to him by other doctors requesting cannabis, where about half would not be considered candidates for cannabis.

    d. Any patient can self-refer to Dr. Wardell's pain clinic, not just those seeking authorization to grow cannabis.

    e. Dr. Wardell estimated that this group of patients made up approximately 7.6 percent of his clinic time.

VII. SUBMISSIONS

22. The Hearing Tribunal accepted both oral and written submissions. Oral submissions were provided during the hearing, and written submissions were accepted on a predetermined timeline after the hearing. The main points made by both parties are summarized below.

Counsel for the Complaints Director

23. Ms. McPeek provided closing submissions on behalf of the Complaints Director:

    a. The Hearing Tribunal has three functions as outlined in *Council for Licensed Practical Nurses v Walsh*: to make findings of fact, to identify the standard of conduct that is expected of the professional in the circumstance at issue, and to apply the standard to the established events.

    b. The Hearing Tribunal will need to assess what weight should be applied to the testimony given by the two witnesses, Dr. Caffaro and Dr. Wardell.

    c. Ms. McPeek highlighted inconsistencies in Dr. Wardell's communications between earlier letters to the College and testimony provided in the hearing. Examples included how long Dr. Wardell spent with Patient AD, and whether these patients were referred to him by another health care professional or not.

    d. Further, within his own testimony, Dr. Wardell demonstrated inconsistencies. For example, he stated that his team ensures all required forms are completed in advance of the assessment, but when the charts were reviewed, several were missing or were incomplete. As such, Ms. McPeek suggests that little weight should be provided to Dr. Wardell's testimony.

    e. There are three standards which are applicable in this case: the Standard of Practice regarding Referral Consultation; the Standard of Practice regarding Telemedicine; and the Standard of Practice regarding Cannabis for Medical Purposes.

    f. Regarding the first charge, relating to the Standard of Practice for Referral Consultation, Dr. Wardell failed to provide a written report to the health care provider who referred the nine listed patients to him. Dr. Wardell suggested to the College that patients were referred to him, and in each of these nine charts, there is a documented called “Consult Referral” where Michael Bingley is listed as the referring physician.

    g. Dr. Wardell also suggested that the fact that these patients have other medical care providers lessens his obligations to establish a diagnosis, complete a history, or discuss conventional therapies as noted in the standards relating to telemedicine and cannabis. Ms. McPeek submitted that he “cannot have it both ways. Either these patients were referred, and the Referral Consultation Standard of Practice applies, or they were not, and he cannot rely on their referrals to lessen his obligations”.

    h. Regarding the second charge which related to the Standard of Practice for Telemedicine, the Complaints Director submits that the charge should be interpreted more broadly than counsel for Dr. Wardell suggests and that *Alsaadi* does not apply. The standard applies in full as all 30 consultations occurred by Skype, and it is up to the Hearing Tribunal, not Dr. Wardell, to determine the adequacy of the charge.

    i. Charges in administrative hearings are not equivalent to criminal hearings. Charges of unprofessional conduct do not need to meet the same standards as those for a criminal indictment. The focus should be on fairness and, specifically, whether the investigated

member was aware of the nature of the allegations so that they could prepare for a hearing, which was the case here. Dr. Wardell also knew the standard applied as he mentioned it himself in his communication with the College.

j. *Alsaadi* is not applicable as it dealt with a matter where the Notice of Hearing was amended to add a new allegation during the hearing, not an issue where parties did not agree with the interpretation of the wording of a charge, as in this case.

k. The standard states that a regulated member must not issue or sign a prescription by electronic means unless they have first obtained a medical history and conducted an appropriate exam sufficient to establish a diagnosis. They must then ensure there are no contraindications to the treatment and have an appropriate discussion with the patient about the treatment.

l. Dr. Caffaro noted there were several aspects missing from the charts that one would expect if they were to meet the standard. The manner in which the BPI, HADS, and ORT were completed by patients or used by Dr. Wardell was variable, and in some charts, they were missing entirely. Dr. Wardell issued a prescription without obtaining an appropriate medical history or conducting an appropriate exam as required by the standard.

m. The third charge relates to the Standard of Practice for Cannabis for Medical Purposes and there is nothing to suggest a lesser standard applies. There are three issues relating to this standard.

n. First, a practitioner must attempt and find conventional therapies ineffective. While Dr. Wardell stated that he considers alternative therapies, his charts show little evidence of this. Further he does not himself attempt any conventional therapies with these patients. Ms. McPeek states there “is no 'if' that lessens that requirement. No tool, no other physician. Not the CMA Code of Ethics. Nothing.”

o. The standard also requires that the member, at a minimum, see the patient every three months. There is also no way to lessen this requirement, including how long it might take to grow cannabis once authorized. While patients may seek to grow their own cannabis, the authorization does not limit them in how they access cannabis. As such, the patients would be able to access cannabis immediately, from a licensed supplier, if they chose to. Dr. Wardell testified that many of his patients were already using cannabis or could have accessed it in the interim. Dr. Wardell admits that he did not see the patients in follow up and that this is a breach of the standard.

p. Finally, practitioners are to review available prescription databases as part of obtaining a full medical history. Dr. Wardell did not review any prescription databases, nor did he make any attempt to contact the patient's other medical providers to do this.

q. Ms. McPeek also addressed the notion of procedural fairness stating that Dr. Wardell had ample ability to respond to the allegations. There is no obligation in the HPA for sharing the Investigation Report with the Investigated Member. Dr. Wardell's counsel acknowledged that he received a draft Notice of Hearing over six months before the final notice was issued, and that there were communications between the College and Dr. Wardell about each allegation.

r. Even if there were procedural defects, which Ms. McPeek denies, these can be remedied in a fair hearing, as noted in the decision of the *College of Physicians and Surgeons of Alberta v. J.H.*:

"The Court noted that a finding of irregularity at the inquiry stage does not necessarily result in court intervention in the administrative process, and courts have generally concluded that mistakes made by a first stage investigative committee can be remedied or addressed at the second stage hearing before a discipline committee."

s. Ms. McPeek submitted that the hearing was indeed a fair hearing.

t. In conclusion, the Complaints Director submitted that Dr. Wardell committed unprofessional conduct in that he breached the Standards of Practice regarding Referral Consultation, Telemedicine, and Cannabis for Medical Purposes.

Counsel for Dr. Wardell

24. Mr. Theroux provided closing submissions on behalf of Dr. Wardell:

a. Counsel for Dr. Wardell submitted that the College failed to establish on a balance of probabilities that Dr. Wardell did not comply with the Standards or Practice identified in the Notice of Hearing. Therefore, the charges should be dismissed. Further he submitted that most of the charges should not have been brought to a hearing in the first place.

b. The Notice of Hearing is what governs the relevance of these proceedings and is very important to physicians and their opportunity to have a fair hearing.

c. The College had a failed process in this case as it did not give Dr. Wardell the opportunity to respond to the allegations in the usual manner. Dr. Wardell was only asked to respond to concerns relating to one patient, Patient AD, and the Investigation Report was only shared after the draft Notice of Hearing. Dr. Wardell did not have the chance to respond to the concerns relating to 29 of the 30 patients listed.

d. As such, the College has "wasted a couple of days dealing with charges about a failure to provide a consultation letter". If the College had asked Dr. Wardell, they would have come to an understanding that there was no request for a consultation in those nine cases.

e. Further time was "wasted on an allegation of failure to follow up within three months" when it would have been "silly and pointless" to follow up prior to the patient having completed the process and have actually grown their own cannabis.

f. Finally, communication earlier in the process could have avoided the College "desperately trying to expand this hearing" into areas of charting and aspects of the telemedicine standard that were not raised in the investigation.

g. Regarding charting, there was no allegation of improper charting. Dr. Wardell explained his usual practice, and a physician's standard practice is good evidence of how they interact

with patients. A chart is not meant to include everything that happened in a visit, only the salient points.

h. Dr. Wardell's process to screen and assess patients is thoughtful and conscientious, including the use of various tools. He does consider what conventional therapies have been tried and failed in the past.

i. There are no reasons to characterize Dr. Wardell's practice as “churning out these authorizations”, nor is there any indication that Health Canada was concerned about his practice.

j. Dr. Wardell was not unreliable in his earlier communications with the College. His first letter was divided into parts where he initially discussed his usual practice, which is typically patients who have been referred to him, but this does not represent his cannabis patients. He separately discusses Patient AD and clarified that when he said Patient AD was referred by a colleague, he did not mean a medical doctor. There is no referral letter on Patient AD’s chart, and Patient AD is not included in the list of patients alleged to be referrals.

k. Regarding the first charge, relating to the Referral Consultation Standard, there was no request for consultation from a medical practitioner, and therefore no requirement for a referral letter to be sent in reply. Mr. Bingley did not write a letter to Dr. Wardell asking Dr. Wardell to see his patient, as would be expected in a typical referral request.

l. The College erred in assuming Mr. Bingley's note was a referral. The only reason that this was first raised in the hearing and not in earlier communications with the College is because the Complaints Director never asked Dr. Wardell about these patients during the investigation.

m. Regarding the charge relating to the Standard of Practice for Telemedicine, the only allegation against Dr. Wardell is that he issued a prescription by electronic means. It is “plain and obvious” that a physician is permitted to issue prescriptions through a telemedicine consultation and is one of the primary purposes of the Telemedicine Standard. The charge does not extend to other precepts, nor to the subparagraphs of precept (5) in the Standard.

n. The College is trying to expand the charges to include subparagraphs (a) and (b) under precept (5) in the Telemedicine Standard. The College never put this concern to Dr. Wardell until the draft Notice of Hearing.

o. The scope of the hearing is determined by the charges in the Notice of Hearing. In the *Alsaadi* case, the Court of Appeal confirmed that only rarely will the Complaints Director be able to add new allegations to a Notice of Hearing during the hearing itself:

“Where further specific allegations are added to a very general existing allegation like 'failure to cooperate', but which are of a different character from the other particulars, they are better seen as fresh allegations, not particulars.”

p. Even if the charge were broader and included precept (5), there would still be no breach as Dr. Wardell did complete a medical history and appropriate examination of the patient as is required in the Standard.

q. Dr. Wardell admits his charting was not perfect, but his standard practice should be relied upon.

r. Regarding the third charge relating to the Standard of Practice for Cannabis for Medical Purposes, one must read the Standard in a reasonable way which accords with good medicine and standard practice in this area.

s. Dr. Wardell did review conventional therapies which had not been effective with his patients and considered the wellbeing of the patient, as per the CMA Code of Ethics.

t. While the Standard of Practice is saying family physicians who see a patient with pain should themselves first try more conventional therapies before cannabis, this does not apply to the situation of a pain specialist seeing a patient who has a very long history of pain and who has previously tried conventional therapies.

u. In Dr. Wardell's case, it would have been “bad medicine”, and contrary to the wellbeing of the patient, to have them go back and try conventional therapies.

v. The second part of the standard at issue is that Dr. Wardell did not see the patients at least once every three months. However, Dr. Wardell's patients wanted to grow their own cannabis, and this would take months.

w. Dr. Caffaro testified that the point of this precept was to ensure the medication is having the desired effect. In these cases, the desired effect would not have happened for far more than three months so follow up within that three-month period does not make sense.

x. Dr. Wardell acknowledged that these patients were already using cannabis, and that it is possible that they had authorized prescriptions. If that was the case, the physician who prescribed the cannabis would be responsible for their follow up care, not Dr. Wardell.

y. The last part of the third charge relates to Dr. Wardell's failure to review available prescription databases. The College does not prohibit physicians in Alberta from seeing patients out of province and given that these patients were from out of province, there were no prescription databases available to him. There is no obligation for a physician to contact any other medical professional to clarify medication information.

z. While the charge mentions ensuring there is no contraindication to cannabis, the Standard does not specify this. Further, the College did not submit any information on what contraindications are relevant, and they did not provide an expert opinion in this case.

aa. Dr. Wardell requests the Hearing Tribunal dismiss all the allegations of unprofessional conduct against him.

VIII. FINDINGS

25. The Hearing Tribunal carefully considered each element of the allegations against Dr. Wardell having regard to the evidence and submissions of both parties. The onus of proof is on the College. The standard of proof is one of a balance of probabilities. The Hearing Tribunal's decisions, and reasons for each decision, are set out below.

Charge 1

26. You did fail to comply with the Standard of Practice regarding Referral Consultation, in particular you failed to provide a written consultation report to the physician who referred the patient to you following your assessment of the patient on March 16, 2017. Nine patients are listed relevant to this charge.

Decision on Charge 1

27. The Hearing Tribunal finds that this charge is not proven.

Reasons for the decision on Charge 1:

28. The Hearing Tribunal agrees that in each of the nine patients listed in the allegation, there is document titled "Consult Referral" which is completed and signed by a nurse practitioner named Michael Bingley from Perth, Ontario.

29. Based on this document, the College alleges that the patients listed were referred to Dr. Wardell. As such, and as per section 10(b) of the Standard of Practice for Referral Consultation, Dr. Wardell had a duty to provide a written report to Mr. Bingley after seeing these patients. Both parties agree that no such written report was sent to Mr. Bingley by Dr. Wardell.

30. However, Dr. Wardell denied that these patients were referred to him, so the Standard does not apply, and no written report was required. In his testimony, Dr. Wardell states that these forms came to him as part of a package of background patient information supplied by patient advocate groups. Dr. Wardell asserts that Mr. Bingley did not send these referral letters directly to him, nor did Mr. Bingley contact Dr. Wardell directly in any other way.

31. The Standard of Practice for Referral Consultation, at precept 6(d)(iii), specifies that a written request for consultation should include the "name and contact information of the consultant or consulting service". The Hearing Tribunal noted that none of these documents are addressed to Dr. Wardell specifically, nor do they mention Dr. Wardell, his service in general, or his clinic.

32. These documents were the only evidence supplied by the College to support the allegation against Dr. Wardell. There was no evidence provided that the College contacted Mr. Bingley as part of their investigation to confirm his intentions with respect to this document. On the other hand, Dr. Wardell's testimony provided a reasonable alternative explanation for the presence of the document on the charts of these patients. Given that the onus of proof is on the College, the Hearing Tribunal determined, on a balance of probabilities and considering the evidence provided, that this allegation was not proven.

Charge 2

33. You did fail to comply with the Standard of Practice regarding Telemedicine in that you did issue a prescription by electronic means to one or more of your patients listed below, when having only consulted with your patient via electronic communication on or about March 16, 2017. Thirty patients are listed relevant to this charge.

Decision on Charge 2

34. The Hearing Tribunal finds that this charge is not proven.

Reasons for the decision on Charge 2

35. The Hearing Tribunal first set out to determine how this allegation should be interpreted as the parties disagreed on whether precept (5) and subsections (a) to (c) are included in this charge. The Hearing Tribunal agrees that the wording of the allegation was not expressed as clearly as the other charges and did not specify the relevant sections of the Standard that were of concern.

36. However, the Hearing Tribunal felt the only reasonable way to interpret the charge when reviewing the Standard is to include precept (5) with subsections (a) to (c). It would not be possible to know if a regulated member could issue a prescription by electronic means as outlined in the charge unless they reviewed precept (5) and subsections (a) to (c).

37. The Hearing Tribunal did not agree with submissions on behalf of Dr. Wardell that the *Alsaadi* case applied to this situation. In the *Alsaadi* case, the Complaints Director applied to amend the Notice of Hearing at the hearing itself, and this was granted. The original Notice of Hearing dealt with "conduct not consistent with … the duty to comply" (paragraph 19). The Alberta Court of Appeal concluded as follows: "Where further specific allegations are added to a very general allegation like 'failure to cooperate', but which are of a different character from the other particulars, they are better seen as fresh allegations, not particulars" (paragraph 20). The Alberta Court of Appeal notes as follows regarding amendments at paragraph 23: "While the *Act* does not preclude amending the notice of hearing, it is clear that adding complaints or particulars bypasses certain of the provisions". In Dr. Wardell's case, the Complaints Director was not adding fresh allegations to an existing allegation, nor did the Complaints Director apply to amend the Notice of Hearing during the hearing. In this case the College was instead interpreting the existing allegation in a different manner than Dr. Wardell.

38. Given the Hearing Tribunal's interpretation of the charge as having included precepts (5) subsections (a) to (c), the Hearing Tribunal then set out to determine if Dr. Wardell failed to meet the Standard, including these sections.

39. Regarding section 5(a) of the Standard, which states that a regulated member must obtain a medical history and conduct an appropriate examination of the patient, there was no expert opinion provided by the College to support the allegation that Dr. Wardell did not meet the Standard. The Hearing Tribunal carefully reviewed the charts of all 30 patients listed and the testimony and evidence provided by the Complaints Director and by Dr. Wardell to decide on this allegation.

40. The Hearing Tribunal noted variation in the charts with respect to the robustness of the documentation. However, in each case the Hearing Tribunal agreed that the charts included important information including a history relevant to the presenting request for cannabis authorization, primary complaint, past medical history, occupational or functional goals where relevant, as well as how they tolerated cannabis already being used.

41. As an example, in the chart of Patient B, Dr. Wardell documents the patient's primary complaints, past medical history, and occupational and functional needs. Included in the chart is the “Referral Form” which includes more details about the patient's history and medications, along with patient completed forms including a “Medical Cannabis Assessment”, and the HADS, BPI, and ORT. The charts of Patient C and Patient E are similarly robust examples.

42. On the other hand, some charts are less fulsome. For example, the chart of Patient AC is poorly documented with areas crossed out and little history primarily documented by Dr. Wardell. The Hearing Tribunal noted that charting itself was not at issue at this hearing and felt that Dr. Wardell's reported standard practice along with the patient chart taken in full, including the added documents, should be considered against the robustness of his charting. As such, there is still adequate documentation of the patient's primary complaints, previous medication use, past medical and surgical history as well as a review of systems. Patient U and Patient AD had similarly weaker charting, but the Hearing Tribunal still found Dr. Wardell to have met the minimum standard.

43. The Hearing Tribunal acknowledged that a physical exam would not always be possible during a virtual visit, nor would it necessarily affect the decision making in these cases given the primary request of the patient.

44. Regarding section 5(b) of the Standard stating that a regulated member must ensure there are no absolute contraindications to the treatment, the Hearing Tribunal acknowledges Dr. Wardell's expertise in this area of medicine and his ability to determine if contraindications to the proposed treatment existed. The College did not present any evidence on which contraindications were to be considered or which were overlooked in these cases. As such there was no evidence provided that section 5(b) was not met.

45. Finally, section 5(c) of the Standard states that a regulated member must have an appropriate informed discussion with the patient about the proposed treatment to ensure that the patient understands the risks and benefits. The Hearing Tribunal felt that Dr. Wardell's taking of a patient's “cannabis story” and the fact that the patients were all noted to already be users of cannabis was evidence that these patients were making an informed decision about the treatment. As such section 5(c) was also met.

Charge 3

46. You did fail to comply with the requirements of the Standard of Practice for Cannabis for Medical Purposes in the care you provided a medical authorization for cannabis on or about March 16, 2017 to one or more of your patients listed below, particulars of which include one or more of the following:

    (a) Fail to attempt and find conventional therapies ineffective in treating the patient's medical condition or symptoms;

(b) Fail to see your patient at least once every three months; and

(c) Fail to determine from available prescription databases the current medication history of your patient and determine if cannabis was contraindicated given any existing prescription or non-prescription medications being utilized by the patient.

47. Each part of this charge was considered by the Hearing Tribunal separately as outlined below.

Decision on Charge 3a

48. The Hearing Tribunal found that this section of the Standard had been breached, but that it did not amount to unprofessional conduct.

Reasons for the decision on Charge 3a

49. This charge relates to section 2(b) of the Standard of Practice for Cannabis for Medical Purposes which states that a "regulated member who chooses to treat patients with cannabis must attempt and find conventional therapies ineffective in treating the patient's medical condition or symptom(s)."

50. There are two parts to this standard: "attempt" and "find", which were considered separately.

51. After careful review of the patient records, the Hearing Tribunal agrees that Dr. Wardell reviewed and documented more conventional therapies in many, but not all, of the cases. In the cases where it was documented, the patients were noted to have found those therapies ineffective.

52. The Hearing Tribunal felt it reasonable to rely on Dr. Wardell's testimony that it is his usual practice to review conventional therapies previously tried with all his patients, as part of their "cannabis story", even if not clearly documented. As noted earlier, charting was not an issue at this hearing.

53. As such, if the Standard allowed for historical review of conventional therapies previously tried and found ineffective, Dr. Wardell would have met the Standard as he did "find" conventional therapies ineffective for his patients.

54. However, the Standard, as it is written, also required Dr. Wardell to "attempt" conventional therapies, which he testified that he did not do. As such, the Hearing Tribunal found that he technically breached this Standard.

55. Next, the Hearing Tribunal considered if this breach rose to the level of unprofessional conduct. The Hearing Tribunal considered what it felt was a reasonable application of this Standard and found that it was more relevant for patients who were considering cannabis for the first time. In those cases, attempting conventional therapies before cannabis would both be required and appropriate.

56. In contrast, Dr. Waddell's patients were all already using cannabis, and several were documented to have been using for many years both with good effect and without complication.

57. The Hearing Tribunal agreed with Dr. Wardell's testimony that insisting these patients stop using cannabis and instead try or re-try other more conventional therapies, would not be the patients' preference and would not likely be in the best interest of these patients who were finding their use of cannabis to be effective. In some cases, such as when discussing opioid use as a more conventional therapy, this could be harmful to the patient.

58. Dr. Wardell was open about his intention to assist this subset of patients, who were all already using cannabis, to access authorizations so that they could grow cannabis themselves, both for the benefits of raw cannabis as well as to decrease the cost. In these cases, the Hearing Tribunal did not feel it was unprofessional for Dr. Wardell to forgo attempting conventional therapies himself.

Decision on Charge 3b

59. The Hearing Tribunal found that this charge was proven, and that it amounted to unprofessional conduct.

Reasons for the decision on Charge 3b

60. This charge relates to section 4(b) of the Standard of Practice for Cannabis for Medical Purposes which states that a "regulated member completing a patient medical document must at a minimum see the patient every three months following stabilization".

61. There was no evidence provided in the charts or the testimony at the hearing that Dr. Wardell saw any of these patients in follow up after he first saw them in March of 2017, despite having provided them with an authorization to access cannabis.

62. Dr. Wardell explained that these patients were requesting authorization to grow their own cannabis, and that this process would take six to nine months. He testified that it would therefore not make sense to follow up earlier, and that he instead indicated they should recontact him once their plants have grown and they have started using that cannabis.

63. The Hearing Tribunal rejected this argument for the following reasons. First, the authorization provided to the patient was to access cannabis. While Dr. Wardell believes the goal of these patients was to grow the cannabis themselves, the authorization allows them to access it from licensed dispensaries which would mean they would have the cannabis much earlier.

64. Second, even if all patients only planned to use cannabis that they grew using this authorization, and even if the standard meant to imply follow up three months after accessing the cannabis once grown, there is still no evidence the patients were seen at that interpreted timeline. Specifically, the charts in question were provided to the College on May 28, 2020, over three years after the patients were seen. Despite time passed, none of the documents showed any record of a follow up visit to meet this Standard whether at three months after authorization, as per the College's interpretation, or at the timeline offered by Dr. Wardell in his testimony to access cannabis once grown. Therefore Dr. Wardell breached the Standard referred to in this part of the charge.

65. Further, Dr. Wardell was aware, and documented in each case, that these patients were all already using cannabis. This may have been from other prescriptions and authorized

dispensaries, or from alternate, unauthorized access. The charts often state that it is safe or appropriate for them to “continue” using cannabis. This argument supported Dr. Wardell when considering his assessment of these patients who were already using cannabis, as well as where he did not attempt to prescribe more conventional therapies himself. However, if the patients were already using cannabis, and he was authorizing their continuation of cannabis use, the argument that it would take many months to access cannabis once grown as a reason not to follow the patients as required by the Standard does not seem reasonable.

66. For those patients who were using cannabis prescribed by a heath care provider, Dr. Wardell's evidence was that he would rely on whomever authorized the cannabis to appropriately follow the patients in the meantime. However, Dr. Wardell stated, and the Hearing Tribunal agreed, that he was not acting as a referring physician, and he did not communicate with these other care providers to ensure this follow up was taking place. As counsel for the Complaints Director pointed out, Dr. Wardell cannot have it “both ways”. Either these patients were referred to him and he can rely on the referring physician to provide follow up for their cannabis use in the meantime, or they were not referred, in which case he is himself responsible for follow up care as required in the Standard.

67. Given these considerations, the Hearing Tribunal determined that Dr. Wardell was in breach of section 4(b) of the Standard of Practice for Cannabis for Medical Purposes. As such, charge 3(b) is proven, and this does amount to unprofessional conduct.

Decision on Charge 3c

68. The Hearing Tribunal found that there was a breach of the relevant section of the Standard, and that it did amount to unprofessional conduct. The second part of this charge was not proven.

Reasons for the decision on Charge 3c

69. The third part of this charge was that Dr. Wardell failed to determine from available prescription databases the current medication history of his patients and determine if cannabis was contraindicated given any existing prescriptions or non-prescription medications.

70. This first part of this charge refers to section 2(e) of the Standard of Practice for Cannabis for Medical Purposes which states that a “regulated member who chooses to treat patients with cannabis must review available prescription databases, including the Pharmacy Information Network (PIN) and TPP Alberta to obtain a patient medication profile”.

71. Dr. Wardell admits that he did not check prescription databases. However, he does not feel this was a breach of the standard as there were no “available” databases, such as those suggested in the Standard, for these patients who resided outside of Alberta. Instead, Dr. Wardell relied on the information provided by the patient to determine their medication list.

72. The Complaints Director argued that Dr. Wardell could have contacted the patients' other medical professionals to obtain or confirm the medication list, or to access their prescription databases, as this is an important aspect of a patient medical history.

73. The Hearing Tribunal agreed that Dr. Wardell could have accessed prescription databases by contacting the patient's care provider(s). While the examples of available prescription databases

listed are likely only relevant to patients in Alberta, the Standard does not limit review only to those listed databases. As such, there was a breach of the Standard and this amounts to unprofessional conduct.

74. The second part of this charge, referring to determining if "cannabis was contraindicated given any existing prescriptions or non-prescription medications", is not referenced in the Cannabis Standard of Practice.

75. No expert opinion or other evidence was provided by the College as to which contraindications may be of concern when cannabis is being authorized, nor which prescriptions or non-prescription medications are relevant in these cases.

76. As such, after careful review of the charge, the relevant Standard of Practice, and the submissions of both parties, the Hearing Tribunal concluded that Dr. Wardell breached section 2(e) of the Cannabis for Medical Purposes Standard which amounts to unprofessional conduct. The remainder of the charge as worded was not proven.

Procedural Fairness

77. Counsel for Dr. Wardell raised concerns of procedural fairness in the investigation, the process leading up to the hearing, and at the hearing itself. Counsel for the Complaints Director responded to these concerns. The issues are summarized again here.

78. Issues cited by counsel for Dr. Wardell include the fact that Dr. Wardell was only engaged by the College to respond to concerns relating to one of the patients listed, Patient AD. As such, Dr. Wardell did not have the chance to address concerns relating to the other patients later listed in the Notice of Hearing prior to the hearing.

79. Further, counsel for Dr. Wardell submitted that it was unfair that the Complaints Director did not share the Investigative Report until after the draft Notice of Hearing was created, and even then, it was only shared once specifically requested.

80. The Complaints Director noted that Dr. Wardell had ample opportunity to communicate with the College, and he received the draft Notice of Hearing over six months before the Notice of Hearing was issued, leaving sufficient opportunity to prepare.

81. The Complaints Director also noted that any procedural defects can be remedied at the hearing (*College of Physicians and Surgeons of Alberta v. J.H.*).

82. The Hearing Tribunal considered the matter of procedural fairness and each party's submission on these issues.

83. There is no requirement in the HPA that an Investigative Report be shared.

84. While the issues of the remaining patients were not reviewed with Dr. Wardell prior to the draft Notice of Hearing, the draft Notice was shared with ample opportunity to prepare, and counsel for Dr. Wardell acknowledged that communications took place with the College relating to each charge.

85. Importantly, the Hearing Tribunal found the hearing to be reasonable and fair, adhering to principles of administrative law. Both parties were given ample opportunity to present their cases, and to examine and cross examine witnesses. Any objections raised were considered by the Hearing Tribunal carefully and fully. Reasons for each decision are outlined above. As such, the Hearing Tribunal has determined that the concerns for procedural fairness are not justified and did not affect the outcome of the hearing. Further, the Hearing Tribunal agrees with submissions by counsel for the Complaints Director that procedural defects earlier in the process may be cured by a fair hearing.

IX. CONCLUSION

86. The Hearing Tribunal found as follows in relation to the charges:

    Charge 1 was not proven.

    Charge 2 was not proven.

    Charge 3a was not proven.

    Charge 3b was proven.

    Charge 3c was proven in part.

X. ORDERS / SANCTIONS

87. The Hearing Tribunal will consider submissions from the parties with respect to appropriate orders or sanctions at a later date, to be arranged by the Hearings Director.

Signed on behalf of the Hearing Tribunal by the Chair:

Dr. Erica Dance

Dated this 16th day of February, 2022.