

COLLEGE OF PHYSICIANS & SURGEONS OF ALBERTA

IN THE MATTER OF
A HEARING UNDER THE *HEALTH PROFESSIONS ACT*,
R.S.A. 2000, c. C-7

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF DR. SANJEEV BHARDWAJ

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

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Dr. Sanjeev Bhardwaj on December 12, 2018. The members of the Hearing Tribunal were:

Dr. Vonda Bobart of Edmonton as Chair, Dr. Stacy J. Davies of Calgary and Mr. Michael Kozielec of Canmore (public member). Ms. Ayla Akgungor acted as independent legal counsel for the Hearing Tribunal.

In attendance at the hearing was Mr. Craig Boyer, legal counsel for the College of Physicians & Surgeons of Alberta (the "College"). Also present was Dr. Sanjeev Bhardwaj and Mr. James Peacock, legal counsel for Dr. Bhardwaj.

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

II. ALLEGATIONS

The allegations to be considered by the Hearing Tribunal were set out in the Notice of Hearing as follows:

1. During the period from 2005 to 2015 you failed to meet the minimum standard of care of a family physician in the care you provided to your patient, Patient A, particulars of which include one or more of the following:
 - a. you continued to prescribe high levels of opioids (daily morphine equivalent in excess of 20 milligrams) to your patient despite being aware of signs of aberrant behavior and addiction;
 - b. you failed to enforce the opioid agreement signed by your patient despite being aware of signs of aberrant behavior and addiction;
 - c. you failed to refer your patient to a chronic pain and addiction specialist;
 - d. you failed to follow the 2010 McMaster University National Opioid Use Guideline;
 - e. you continued to renew your patient's prescriptions for high levels of opioids without adequate assessment to justify the continued prescribing; and
 - f. Your chart for your patient failed to meet the minimum standard for charting as outlined in the College's Standard of Practice for Patient Record Content.
2. During the period from 2010 to 2014, you had sexual involvement with your vulnerable patient, Patient A, contrary to the College's Standard of Practice regarding Sexual Boundary Violations;
3. During 2006 and 2007, you had sexual involvement on two occasions with your vulnerable patient, Patient B, contrary to the College's Standard of Practice regarding Sexual Boundary Violations;
4. During 2014, you had sexual involvement with your vulnerable patient, Patient C, contrary to the College's Standard of Practice regarding Sexual boundary Violations; and

5. In or about 2008, you had sexual involvement on one occasion with your vulnerable patient, Patient D, contrary to the College's Standard of Practice regarding Sexual Boundary Violations; and
6. During the period of 2011 to 2016 you reported to the College on your annual renewal information form that you had not engaged in a sexual or inappropriate personal relationship with a patient when you knew that such answer was false.

Dr. Bhardwaj acknowledged that the particulars of his conduct outlined in the six charges set out in the Notice of Hearing dated November 7, 2018 are factual and correct, and that his conduct amounts to unprofessional conduct under the *Health Professions Act* (the "Act").

III. PRELIMINARY MATTERS

There were no preliminary issues raised prior to hearing evidence.

IV. EVIDENCE – EXHIBITS

By agreement, the parties entered an Exhibit Book with Tabs 1-20 as Exhibit 1 and an Agreed Statement of Facts, dated December 12, 2017, as Exhibit 2.

The Exhibit Book contained the following documents:

- Tab 1: Notice of Hearing dated November 7, 2018
- Tab 2: Complaint from Dr. Jennie Ward, dated February 24, 2016
- Tab 3: Undertaking of Dr. Sanjeev Bhardwaj dated April 5, 2016
- Tab 4: Letter of response from Dr. Bhardwaj dated April 26, 2016
- Tab 5: Patient chart for Patient A from Meridian Medical Clinic
- Tab 6: Patient chart for Patient A from Dominion Medical Centers (Dr. A. Shah)
- Tab 7: Memorandum from Kristy Ivans regarding interview of Patient A dated May 17, 2017
- Tab 8: Memorandum from Kristy Ivans regarding interview of Dr. Bhardwaj dated August 30, 2017
- Tab 9: Opinion from Dr. Ronald Lim dated January 14, 2017
- Tab 10: Memorandum from Kristy Ivans regarding interview of Patient A dated October 3, 2017
- Tab 11: Memorandum from Dr. Michael Caffaro regarding report by Dr. Susan Ulan dated December 7, 2016
- Tab 12: Letter of response from Dr. Bhardwaj dated February 7, 2017
- Tab 13: Memorandum from Kristy Ivans regarding interview of Patient B dated January 11, 2018
- Tab 14: Patient chart for Patient C from Meridian Medical Clinic
- Tab 15: Patient chart for Patient B from Meridian Medical Clinic
- Tab 16: Alberta Health billings regarding Patient C
- Tab 17: Alberta Health billings regarding Patient B
- Tab 18: Triplicate Prescription Profile for Patient C
- Tab 19: Triplicate Prescription Profile for Patient B
- Tab 20: Summary of response by Dr. Bhardwaj on his annual renewal information form for the years 2001 to 2018

The Agreed Statement of Facts contained the following agreed facts:

1. At all material times, Dr. Sanjeev Bhardwaj was a regulated member of the College of Physicians and Surgeons of Alberta.
2. Dr. Bhardwaj was served with the Notice of Hearing on November 7, 2018.
3. Dr. Bhardwaj acknowledges that the particulars of his conduct outlined in the six charges set out in the Notice of Hearing dated November 7, 2018 are factually accurate and correct, and that his conduct amounts to unprofessional conduct under the *Health Professions Act*.
4. The Complaints Director and Dr. Bhardwaj disagree on the appropriate sanction that should be imposed by the Hearing Tribunal and the parties wish to have a contested sanction hearing which will include witnesses being called by the Complaints Director and Dr. Bhardwaj.

V. SUBMISSIONS

(a) Complaints Director

Mr. Boyer, on behalf of the Complaints Director, submitted that Exhibits 1 and 2 provide ample evidence to conclude that the evidence supports Dr. Bhardwaj's admissions and that the admissions should be accepted in accordance with s. 70 of the Act.

Mr. Boyer further submitted that Dr. Bhardwaj's conduct was in clear violation of the College's Standard of Practice regarding Sexual Boundary Violations, the College's Standard of Practice for Patient Record Content, the College's Standard of Practice regarding Self-Reporting as well as the Canadian Medical Association's Code of Conduct (the "CMA Code of Ethics"). He further noted that Dr. Lim, a specialist in Family Medicine with a focused area in Addiction Medicine and Chronic Pain, reviewed Dr. Bhardwaj's treatment of Patient A and provided an expert opinion that the care provided by Dr. Bhardwaj in the ongoing management and investigation of chronic non-malignant pain and addiction to opioids for Patient A did not meet the acceptable standard of care that is expected of a family physician in Alberta.

(b) Dr. Bhardwaj

Mr. Peacock, on behalf of Dr. Bhardwaj, reinforced that Dr. Bhardwaj has admitted the substance of the allegations as set out in the Notice of Hearing. He further noted that, from the moment that Dr. Bhardwaj became aware of the complaint against him, he acknowledged it and accepted responsibility from the very start. He also noted that the allegations in the Notice of Hearing which don't relate to Patient A came to the attention of the College through Dr. Bhardwaj's own self-reporting.

VI. FINDINGS

The Hearing Tribunal accepts Dr. Bhardwaj's admission of unprofessional conduct in the six allegations against him.

On review of the exhibits, the Hearing Tribunal found that the evidence did indeed prove the six allegations brought against Dr. Bhardwaj. The Tribunal accepted all the evidence tendered by the parties.

With respect to the Allegation 1, the Hearing Tribunal is satisfied that Allegations 1(a)–(f) have been established. Dr. Bhardwaj admits to the conduct in Allegations 1(a)-(e) in both his written response to the complaint dated April 26, 2016 (Exhibit 1, Tab 4) as well as during his interview

with the College investigator on August 30, 2017 (Exhibit 1, Tab 8). Further, Dr. Lim's expert report (Exhibit 1, Tab 9) also supports the occurrence of the conduct set out in Allegations 1(a)-(f) and the fact that this conduct falls below the acceptable standard of care for an Alberta physician.

The Hearing Tribunal is satisfied that the conduct set out in Allegation 1(a)-(f) amounts to unprofessional conduct. Unprofessional conduct is defined at s. 1(1)(pp) of the Act, in relevant part, as: (i) conduct displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services; (ii) a contravention of the Act, a code of ethics or standards of practice; and (xii) conduct that harms the integrity of the regulated profession.

The conduct set out in Allegations 1 (a)–(f) displays a clear lack of judgment on Dr. Bhardwaj's conduct. Continuing to prescribe opioids to a patient demonstrating signs of aberrant behavior and addiction and failing to abide by the opioid agreement signed by the patient demonstrate a significant lapse of judgment. This conduct also harms the integrity of the profession and represents a clear violation of the requirements under the CMA Code of Ethics to consider first the well being of the patient and to take all reasonable steps to prevent harm to patients.

Further, in his April 26, 2016 response (Exhibit 1, Tab 4), Dr. Bhardwaj admits that he gave Patient A repeat prescriptions in part because he was sexually attracted to her. He hoped that she would reciprocate his feelings if he pleased her by giving her the medication she was requesting. This is a clear and significant violation of the CMA Code of Ethics requirements to resist any influence or interference that could undermine the physician's personal integrity, to recognize and disclose conflicts of interest that arise and resolve them in the best interest of patients and to refrain from exploiting patients for personal advantage.

There is also ample evidence to support the conduct set out in Allegations 2-5. All of these allegations involve sexual involvement with patients. Dr. Bhardwaj admits sexual involvement with the patients listed in Allegations 2-5 in both his responses dated April 26, 2016 (Exhibit 1, Tab 4) and February 7, 2017 (Exhibit 1, Tab 12). The sexual involvement with patients is also admitted by Dr. Bhardwaj in his interview with the College investigator on August 30, 2017 (Exhibit 1, Tab 8). Further, the investigation interviews with Patients A and B corroborate Dr. Bhardwaj's admission to sexual encounters (Exhibit 1, Tabs 7 and 13).

The Hearing Tribunal concludes that the conduct in Allegations 2-5 represents the most serious of unprofessional conduct. This conduct is a clear violation of the Sexual Boundary Violations Standard of Practice which mandates that physicians must not initiate any form of sexual advance towards a patient or respond sexually to advances made by a patient. Further, the conduct in question harms the integrity of the profession and breaches the CMA Code of Ethics, in particular the provision that ensures that physicians must not exploit patients for personal gain.

With respect to Allegation 6, the summary of the responses by Dr. Bhardwaj (Exhibit 1, Tab 20) make it plain that on his annual renewal forms for the years 2011 to 2018, Dr. Bhardwaj answered "no" to the question: "Are you presently, or have you ever, engaged in a sexual or inappropriate relationship with a patient that has not been previously reported to the College of Physicians and Surgeons of Alberta?" However, by Dr. Bhardwaj's own admission, he was engaged in inappropriate sexual relationships with patients during the years 2011 to at least 2014 and certainly would have had to answer "yes" to whether he had ever been engaged in a sexual or inappropriate relationship with patients on his annual renewal forms in subsequent years.

The Hearing Tribunal accepts that the conduct in Allegation 6 is unprofessional conduct in that it violates the Self-Reporting Standard of Practice which mandates that a physician must report to

the College at the time of registration or whenever the physician becomes aware thereafter of a sexual or inappropriate personal relationship between the physician and the patient.

Dr. Bhardwaj admits that all six allegations are factual and that his behavior was unprofessional. The evidence admitted supports this. The Hearing Tribunal is satisfied and concludes that all the allegations are proven and that the behavior involved rises to the level of unprofessional conduct under the Act.

VII. ORDERS / SANCTIONS

At the request of the parties, the hearing was bifurcated to deal only with the issue of unprofessional conduct on December 12, 2018. A hearing on sanctions will take place from May 1-3, 2019.

Signed on behalf of the Hearing Tribunal by
the Chair



Dated: March 27, 2019

Dr. Vonda Bobart