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
DR. SANJEEV BHARDWAJ (PENALTIES PHASE)

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

I. INTRODUCTION

On March 27, 2019, the Hearing Tribunal issued reasons for decision finding that Dr. Sanjeev Bhardwaj had engaged in unprofessional conduct. In particular, the Hearing Tribunal found that Dr. Bhardwaj had engaged in the following conduct:

1. During the period from 2005 to 2015, Dr. Bhardwaj failed to meet the minimum standard of care of a family physician in the care he provided to his patient, Patient A, particulars of which include one or more of the following:

    a. Dr. Bhardwaj continued to prescribe high levels of opioids (daily morphine equivalent in excess of 20 milligrams) to his patient despite being aware of signs of aberrant behavior and addiction;

    b. Dr. Bhardwaj failed to enforce the opioid agreement signed by his patient despite being aware of signs of aberrant behavior and addiction;

    c. Dr. Bhardwaj failed to refer his patient to a chronic pain and addiction specialist;

    d. Dr. Bhardwaj failed to follow the 2010 McMaster University National Opioid Use Guideline;

    e. Dr. Bhardwaj continued to renew his patient's prescriptions for high levels of opioids without adequate assessment to justify the continued prescribing; and

    f. Dr. Bhardwaj's charting for his 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, Dr. Bhardwaj had sexual involvement with his vulnerable patient, Patient A, contrary to the College's Standard of Practice regarding Sexual Boundary Violations;

3. During 2006 and 2007, Dr. Bhardwaj had sexual involvement on two occasions with his vulnerable patient, Patient B, contrary to the College's Standard of Practice regarding Sexual Boundary Violations;

4. During 2014, Dr. Bhardwaj had sexual involvement with his vulnerable patient, Patient C contrary to the College's Standard of Practice regarding Sexual boundary Violations; and

5. In or about 2008, Dr. Bhardwaj had sexual involvement on one occasion with his 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, Dr. Bhardwaj reported to the College on his annual renewal information form that he had not engaged in a sexual or inappropriate personal relationship with a patient when he knew that such answer was false.

A subsequent hearing to determine orders for penalty arising out of the findings of unprofessional conduct was held from May 1-3, 2019. 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 were Mr. Craig Boyer and Ms. Annabrit Chisholm, 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 on penalty.

II. PRELIMINARY MATTERS

1. Testimony of [redacted]

At the outset of the hearing on sanction, Mr. Peacock raised a concern with a witness proposed to be called by the Complaints Director. The witness, [redacted] is the daughter of Patient B. Patient B has now passed away. Mr. Peacock's concern with [redacted] evidence is that it would be largely hearsay and the Hearing Tribunal already had the content of the interview with Patient B in evidence. Further, the witness was [redacted] when events happened and is not qualified to give opinion on the impact of the events on her mother.

In response, Mr. Boyer noted that [redacted] would testify about the impact that Patient B's alcoholism had on the family as well as Patient B's ability to recover from her alcoholism. Mr. Boyer noted that impact on the patient is a factor considered in the *Jaswal* analysis.

The Hearing Tribunal discussed the objection by Mr. Peacock and agreed to allow [redacted] to testify. However, the Hearing Tribunal cautioned Mr. Boyer that it would have concerns if [redacted] testimony strayed or differed significantly from Patient B's statement to the investigator. The Hearing Tribunal also cautioned that it would have concerns if [redacted] was purporting to give opinion evidence about whether what she observed in her mother was caused by Dr. Bhardwaj's conduct. The Hearing Tribunal advised that it would determine the appropriate weight to give to [redacted] testimony.

2. Section 78 application

At the close of Dr. Bhardwaj's case, after the Hearing Tribunal had heard all the evidence, and prior to the parties making closing submissions, Mr. Peacock made an application to keep certain

information from the hearing private under s. 78 of the *Health Professions Act* on the basis that certain of the witnesses' testimony described personal and sensitive treatment information relating to Dr. Bhardwaj. In particular, Mr. Peacock was concerned about the testimony of Dr. Joffe, Dr. Buhler and [redacted]

Section 78(1)(a)(iii) provides, in relevant part, that a hearing is open to the public unless the hearing tribunal holds the hearing or part of the hearing in private on its own motion or on an application of any person that the hearing or part of the hearing should be held in private because not disclosing a person's confidential personal, health, property or financial information outweighs the desirability of having the hearing open to the public.

In response, Mr. Boyer fairly pointed out that the s. 78 application was not a square fit in that the hearing had already unfolded to the point where all the witnesses had been heard and this was done as an open hearing. Indeed, a member of the public, Dr. Bhardwaj's sister, had been present already throughout the hearing. Mr. Boyer questioned whether section 78 could be applied in a backwards fashion to the extent that the hearing had already, for the most part, taken place as an open hearing and it would be difficult to essentially undo what had already occurred.

In the Hearing Tribunal's view, section 78 is intended to specifically address access to the hearing and to this extent, it is an awkward application of section 78 to go back and close part of the hearing when it has already taken place as an open hearing. The Hearing Tribunal notes, however, that while section 78 relates specifically to access to the hearing, rulings made under section 78 do have impact when it comes to the examination of the record of the hearing under section 85 of the *Health Professions Act*.

For example, section 85(3) states that a member of the public may examine the decision and the testimony given before the hearing tribunal, however recorded, except the part of the testimony that was given while the hearing was held in private. Similarly, section 85(4) states that a member of the public, on paying the reasonable costs of transcribing, copying and delivering it, may receive a copy of the decision and the testimony, however recorded, except the part of the testimony that was given while the hearing was held in private. It should be noted, however, that a member of the public is only entitled to review the decision and the testimony. Evidence provided through exhibits is not captured by section 85 and is therefore not available to members of the public regardless of whether a hearing is open or closed.

The Hearing Tribunal reviewed the evidence of Dr. Joffe, Dr. Buhler and [redacted] The Hearing Tribunal agrees that their testimony contains personal treatment information related to Dr. Bhardwaj. However, the Hearing Tribunal is not prepared, in these circumstances, to make an order directing that the portions of the hearing involving the testimony of Dr. Joffe, Dr. Buhler and [redacted] be closed ex post facto. While Dr. Joffe and Dr. Buhler spoke in their testimony about Dr. Bhardwaj's diagnoses and treatment and while [redacted] spoke about Dr. Bhardwaj's treatment in the Sexaholics Anonymous program, the testimony provided, for the most part, high-level commentary on these issues. More detailed information on Dr. Bhardwaj's treatment is found

in the reports from Dr. Joffe and Dr. Buhler contained in Exhibits 5 and 6 and these exhibits will not form part of the public record.

Further, given that Dr. Bhardwaj is relying on his treatment and progress in treatment as a significant part of the basis as to why he should be given an opportunity to be returned to the practice of medicine, the Hearing Tribunal feels that it is appropriate to have the testimony related to these aspects form part of the public record of the decision. In the Hearing Tribunal's view, allowing the testimony of Dr. Joffe, Dr. Buhler and [redacted] to remain public, while recognizing that the public will not have access to the detailed reports of Dr. Bhardwaj's treating physicians, strikes the appropriate balance in protecting Dr. Bhardwaj's privacy and also ensuring that these proceedings are open and transparent. As such, the Hearing Tribunal declines to close portions of this hearing after the fact.

III. EVIDENCE – EXHIBITS

Exhibits 1 and 2 were entered during the unprofessional conduct phase of the hearing. During the penalty phase of the hearing, the parties entered the following exhibits:

Exhibit 3: Pine Grove Residential Discharge Summary dated November 4, 2016
Exhibit 4: Dr. William Friend opinion dated August 10, 2018
Exhibit 5: Dr. Ken Joffe report dated December 17, 2018
Exhibit 6: Dr. Jay Buhler report dated January 10, 2019
Exhibit 7: Dr. William Friend opinion dated February 20, 2019
Exhibit 8: Pine Grove Residential Discharge Summary dated January 31, 2019
Exhibit 9: Dr. William Friend opinion dated March 13, 2019
Exhibit 10: Dr. Jennie Ward report dated April 4, 2019
Exhibit 11: Email from [redacted] dated December 29, 2018
Exhibit 12: Release agreement dated November 17, 2017
Exhibit 13: The Twelve Steps and Traditions of Sexaholics Anonymous
Exhibit 14: Curriculum Vitae of Jay Buhler, Registered Psychologist
Exhibit 15: Jay Buhler handout on "What is Sex Addiction?"

IV. EVIDENCE - WITNESSES

1. <u>Witnesses for the Complaints Director</u>

The Hearing Tribunal heard from three witnesses on behalf of the Complaints Director: Patient A; Dr. William Friend, a forensic psychiatrist; and Ms. [redacted] the daughter of Patient B. Patient B passed away in November 2018.

(a) <u>Patient A</u>

The Hearing Tribunal found that during the period from 2010 to 2014, Dr. Bhardwaj had sexual involvement with Patient A, a vulnerable patient. Patient A was called by the Complaints Director to testify as to the impact of Dr. Bhardwaj's conduct on her.

Patient A is a stay at home mom to three kids aged [redacted]. She described seeing a clinical psychologist, Jennie Ward. As a result of disclosures made by Patient A during their sessions, Dr. Ward made the complaint against Dr. Bhardwaj to the College (with Patient A's consent). Patient A described feeling terrified and scared about the complaint process. She described suffering from anxiety and depression but indicated that she no longer sees Dr. Ward because it is too expensive. Instead she sees a nurse named Millie who helps her with her anxiety and depression and who costs less than Dr. Ward.

Patient A was asked whether she had read the memos prepared by the College's investigator, Kristy Evans, describing Ms. Evans's interviews with Patient A on May 27, 2016 and October 3, 2017 and whether anything had changed in the content of those memos. Patient A confirmed that she had read the memos and that the content remained accurate.

In the May 27, 2016 memo, Patient A described being scared and having been abused by Dr. Bhardwaj. Patient A described trying, unsuccessfully, to find another family physician but always being told to return to Dr. Bhardwaj. She described feeling forced to return to Dr. Bhardwaj, as he was the only one who would prescribe her opioids in the amounts she was taking and she feared the pain of withdrawal. She stated that she understood implicitly that in order to receive her much needed opioid prescription she had to go along with Dr. Bhardwaj's sexual behaviors. Patient A described often leaving Dr. Bhardwaj's office shaky and in tears.

Patient A stated in the May 27, 2016 memo that she was fearful of Dr. Bhardwaj, particularly since the complaint was filed. However, Dr. Bhardwaj has not threatened her in any way.

In the October 3, 2017 memo, Patient A explained that the only reason she did what she did with Dr. Bhardwaj was because she was addicted to opioids and had no other options but to continue to see him. She feels that in all accounts he pursued her sexually and undermined her ability to get help for her problems.

When asked by counsel for the Complaints Director about the impact on her life as a result of Dr. Bhardwaj's conduct, Patient A indicated that she suffers from anxiety and depression, that her children suffer as a result of her anxiety and depression and further, that her relationship with her husband suffers. She stated that Dr. Bhardwaj's conduct hurt her tremendously; it still does and always will. What happened with Dr. Bhardwaj haunts her. Patient A states that she doesn't trust doctors as a result of what happened with Dr. Bhardwaj.

On cross-examination, Patient A confirmed that she stopped seeing Dr. Bhardwaj in early 2015 and has had no contact with him since. She confirmed that Dr. Bhardwaj had never threatened her in any way. She also confirmed that she stopped seeing Dr. Bhardwaj because he would no longer prescribe opioids for her.

Patient A confirmed that she had taken civil action against Dr. Bhardwaj and that the action had been settled. The Release Agreement relating to that settlement was entered as Exhibit 12.

Patient A's psychologist, Dr. Ward, did not testify at the hearing, but a report from Dr. Ward dated April 4, 2019 was entered as Exhibit 10. In that report, Dr. Ward confirmed that Patient A was traumatized by the abuse from Dr. Bhardwaj, which was the primary reason for her attending therapy. Patient A had an extreme fear of retribution if she spoke out against Dr. Bhardwaj. Patient A showed symptoms of posttraumatic stress, anxiety and depression in the severe range. Dr. Ward opined that these symptoms were a direct result of the abuse perpetrated by Dr. Bhardwaj.

(b) Dr. William Friend

Dr. Friend reviewed his experience and credentials. Dr. Friend graduated from the Faculty of Medicine at McGill University in 1983 and completed a residency in psychiatry at Washington University Medical Centre between 1983 and 1988. From 1988 to 2001, Dr. Friend was a member of the medical staff at various hospitals in the United States and Canada, holding both Acting Director and Director positions during this time.

From 2004-2013, Dr. Friend held the position of Clinical Director, Forensic Psychiatry Services at the Alberta Hospital in Edmonton. From 2001-present, Dr. Friend has been a member of the medical staff at Alberta Hospital. In 2013, Dr. Friend obtained a certificate in Forensic Psychiatry from he Royal College of Physicians and Surgeons of Canada. Dr. Friend has been accepted as an expert witness on dozens of occasions in the Provincial Court and Court of Queen's Bench in Alberta and in the British Columbia Supreme Court.

Dr. Friend was qualified before the Hearing Tribunal as an expert witness in general and forensic psychiatry. There were no objections to his qualifications in this regard.

Dr. Friend confirmed that the opinions entered as Exhibits 4 (August 10, 2018), 7 (February 20, 2019), and 9 (March 13, 2019) were his opinions. Dr. Friend confirmed that while he had received some additional information since providing those opinions, nothing in that information would change his opinions. Dr. Friend confirmed that he had been asked by the College to provide an expert opinion regarding the care provided by Dr. Bhardwaj to Patients A, B, C, and D. In order to prepare his opinion, Dr. Friend reviewed a number of documents including the complaint against Dr. Bhardwaj, his response, interviews with Dr. Bhardwaj and Patients A and B, medical records for Patients A, B, C and D as well as triplicate prescription profiles for Patients A, B, and C.

Dr. Friend was asked to summarize the findings of his August 10, 2018 report (Exhibit 4) where he was asked by the College to address 4 questions. The questions and Dr. Friend's comments on the same are set out below:

(1) In your experience, would the conduct demonstrated by Dr. Bhardwaj towards his patients A, B, C and D be consistent or inconsistent with predation on vulnerable individuals by a sexual offender?

Dr. Friend confirmed that the definition of predation is the act of injuring, exploiting or plundering others for personal gain and that, in his opinion, Dr. Bhardwaj did injure and exploit his four female patients for personal gain. The personal gain of Dr. Bhardwaj was his sexual satisfaction. He indicated that Dr. Bhardwaj's conduct involved stated or unstated attempts to trade drugs for sexual favours from individuals who all suffered mental disorders and were therefore all vulnerable.

Dr. Friend opined that Patient A's opiate addiction was extended for a much longer period than necessary and for a number of years was not properly addressed by Dr. Bhardwaj. With respect to Patient B, Dr. Friend opined that Dr. Bhardwaj's behavior may have reduced her confidence in physicians and may in the future inhibit her from seeking timely medical care. He also noted that Dr. Bhardwaj's behavior may have seriously damaged Patient B's self-esteem.

All patients were taken advantage of by Dr. Bhardwaj and it is reasonable to assume that all of them lost trust in physicians and suffered from his actions. Dr. Friend concluded that Dr. Bhardwaj engaged in acts of predation towards vulnerable patients with respect to all of Patients A, B, C and D.

With respect to being a sexual offender, Dr. Friend was clear that he was not opining on whether Dr. Bhardwaj was a sexual offender in the *Criminal Code* sense but that his views related to sexual offences within the context of accepted ethical codes of medical conduct. Dr. Friend noted that even the Hippocratic Oath, which is of ancient origin, prohibits sexual relations with patients and Dr. Bhardwaj's conduct violates this oath. Dr. Friend noted that the Canadian Medical Association Code of Ethics states that physicians must not exploit patients for a personal advantage, which is what Dr. Bhardwaj did.

Accordingly, Dr. Friend concluded that, within the context of medical ethics, that Dr. Bhardwaj acted as a sexual offender and engaged in sexual predation against vulnerable individuals.

(2) Is sexual addiction a recognized diagnosis?

Dr. Friend confirmed that the DSM-V, which is the current diagnostic and statistical manual for mental disorders, does not recognize sexual addiction at this time. The concept of excessive sexual drive is hampered by a lack of research and explicit criteria.

Dr. Friend concluded that the disorder of sexual addiction has not yet been established as a valid psychiatric disorder.

At this point in Dr. Friend's evidence, Mr. Peacock confirmed that there is no dispute between the parties that sex addiction is not a recognized mental disorder.

(3) If you are of the opinion that Dr. Bhardwaj acted in a predatory manner towards his patients, would having a sexual addiction affect your assessment of him in any way?

Dr. Friend stated that sexual addiction should not factor into any consideration of Dr. Bhardwaj's behavior for several reasons. First, sex addiction is not a recognized psychiatric disorder. Second, it is not at all clear that sexual addiction in a man is anything more than a man wanting to have sex with one or many women very, very badly and being unable or unwilling to control that behavior. Whether unable or unwilling, in the case of a male physician, practicing medicine would place female patients at risk. Third, there is no evidence that the hypothetical disease of sex addiction reduces or negates intent or causes its sufferers not to appreciate the nature of their acts. In Dr. Bhardwaj's case, he actively sought out sexual encounters and knew exactly what he was doing.

Fourth, there is no evidence that the hypothetical disease of sex addiction causes its sufferers not to know that their actions are wrong. This can be contrasted to other illnesses such as dementia or paranoid delusion, where sufferers may not appreciate that their actions are wrong.

Fifth, if the hypothetical disease of sex addiction produces such an extreme compulsive drive that it cannot be resisted, then any male physician so afflicted is clearly unfit and dangerous to the practice of medicine.

In this case the question of sexual addiction does not bear on an assessment of future risk.

(4) Any other aspect of the care provided by Dr. Bhardwaj that you feel is relevant to this complaint.

Dr. Friend opined that the most important consideration before the College was Dr. Bhardwaj's risk of reoffending in the future with other female patients and that given the repetitive nature of his conduct with multiple patients, this was a matter that needed to be considered seriously by the College. However, Dr. Friend confirmed that he had not been asked to make a risk assessment nor did he have all the materials he would need to make such an assessment (such as information regarding Dr. Bhardwaj's attendance at John school, documented attendance at and participation in his sex addiction group, his psychiatric and psychological records and his criminal record).

In summary, Dr. Bhardwaj's care fell below the standard of practice in the following ways:

(1) Multiple sexual events involving multiple patients;
(2) Failure to appropriately assess chronic pain (in the case of Patient A);

(3) Inappropriate prescribing of opiates and other substances with abuse potential (particularly in the case of Patient A); and
(4) An apparent failure to document the patient's physical and mental condition while prescribing the above substances (especially in the case of Patient A).

Dr. Friend opined that practicing with a chaperone or restricting Dr. Bhardwaj's practice to surgical assistance would not likely be successful approaches to dealing with Dr. Bhardwaj's conduct. Dr. Friend formed this opinion because Dr. Bhardwaj met his patients outside the office on multiple occasions and if these behaviors occurred again, the chaperone would have no knowledge of these activities. Secondly, surgical assistants have access to patient charts, which contain their phone numbers and addresses and given his historical pattern of behavior, Dr. Friend expressed concern that Dr. Bhardwaj might attempt to make contact with these patients directly at their home or on the telephone. Accordingly, these options might not be successful in Dr. Bhardwaj's case in ensuring the safety of patients.

Dr. Friend was then asked to review his March 13, 2019 opinion (Exhibit 9). The purpose of this opinion was to review the discharge summary (January 23, 2019 to January 31, 2019) obtained from Pine Grove Professional Enhancement Program. Dr. Friend confirmed that nothing in the discharge summary would cause him to alter his August 10, 2018 or February 25, 2019 opinions (Exhibits 4 and 7).

Dr. Friend noted that Dr. Bhardwaj was diagnosed by Pine Grove with an antisocial and narcissistic personality disorder with borderline traits. Dr. Friend stated that these diagnoses are associated with a pervasive pattern of disregard for, and violation of, the rights of others; a pervasive pattern of grandiosity, need for admiration, and lack of empathy; as well as a pervasive pattern of instability of interpersonal relationships, self-image and affects, and marked impulsivity.

Dr. Friend noted that physicians are charged with responsibility for providing care to a wide variety of highly vulnerable patients including children, women, the addicted, the mentally ill as well as the elderly. It is therefore reasonable to consider whether an individual with a characterological structure like Dr. Bhardwaj, which involves a pattern of disregarding and violating the rights of others, lack of empathy and impulsivity is suitable for the practice of medicine.

Dr. Friend noted that Pine Grove supported Dr. Bhardwaj returning to practice in a non-clinical position such as insurance review, chart review and non-clinical positions. Dr. Friend opined that, given Dr. Bhardwaj's behaviors of seeing patients in homes, hotel rooms and cars for sexual purposes; given that he could still have access to patient information from charts and records and given his characterological features as diagnosed by Pine Grove, even placing Dr. Bhardwaj in non-clinical roles would put patients at risk. Accordingly, Dr. Friend disagreed with Pine Grove's return to work recommendations.

On cross-examination, Dr. Friend was asked whether he was offering an opinion on the risk to the public if Dr. Bhardwaj was returned to practice. Dr. Friend confirmed that he had not conducted a formal risk assessment in the sense of assessing risk of re-offending, as he did not have sufficient information to make that assessment. Rather, in his report, he was providing a commentary on Dr. Bhardwaj's behavior.

With respect to Dr. Friend's classification of Patient C and D as vulnerable, it was put to Dr. Friend that there was very limited information available to him on these patients. Dr. Friend agreed that he could not make a formal diagnosis of mental illness with respect to either Patients C or D but noted that the chart notes provided indicia of mental disorder for Patient C and indications of substance abuse concerns regarding Patient D. It was put to Dr. Friend that he had an obligation to draw a distinction between making a formal diagnosis of mental illness and his impression that Patients C and D might suffer from mental illness. Dr. Friend agreed with this proposition.

Dr. Friend confirmed that he was given an opportunity to review the treatments that Dr. Bhardwaj had undergone and the other steps that Dr. Bhardwaj had taken to change his behavior. Dr. Friend confirmed that this information did not change his opinion regarding Dr. Bhardwaj because the information remains that Dr. Bhardwaj has a serious set of personality disorders (narcissistic, antisocial, borderline traits), which continue to give Dr. Friend concerns.

Dr. Friend confirmed that Dr. Bhardwaj's underlying personal traits could be treated but noted that it is difficult to do successfully. Dr. Friend confirmed that he had not assessed the impact of treatment on Dr. Bhardwaj.

Dr. Friend agreed on cross-examination that Pine Grove would have an advantage in their assessment of Dr. Bhardwaj as they had been directly involved with Dr. Bhardwaj's care and treatment. Dr. Friend was aware that Pine Grove's assessment was that Dr. Bhardwaj could return to practice in a non-clinical role. Dr. Friend indicated, however, that in a non-clinical role, Dr. Bhardwaj could still attempt to contact patients using their information from patient charts.

With respect to Dr. Friend's concern that Dr. Bhardwaj could attempt to contact patients at home, it was pointed out to Dr. Friend that, with respect to Patient B, it was Dr. Bhardwaj's assertion that Patient B had contacted him to come over to her home and not the vice versa.

Dr. Friend conceded that there was a dispute on the facts as to whether Dr. Bhardwaj had "actively sought on patients" and agreed that that there was no evidence that Dr. Bhardwaj had sought out patients outside of his practice for sexual encounters.

Dr. Friend cited an example of how Dr. Bhardwaj did not feel he forced himself onto a victim but that victim says she was forced. This dispute of understanding was concerning to Dr. Friend.

On re-direct, Dr. Friend explained that there are formal scales used for risk assessment such as the VRAG and SORAG. These are risk assessment guides used in criminal populations. Dr. Friend

confirmed that it was not clear how these assessment tools would apply to an individual who has committed offences against patients but not in criminal proceedings. Dr. Friend further confirmed that there was no evidence of any formal risk assessments being conducted by either Dr. Joffe or Dr. Buhler.

In response to questions from the Hearing Tribunal, Dr. Friend confirmed that, even if sexual addiction was a disorder (which it is not clearly), this disorder would not negate intent nor would it impair the ability to understand the impact of conduct. An individual would know what he was doing.

Dr. Friend further confirmed that antisocial and narcissist personality traits do not impair the ability to distinguish right from wrong. This can be contrasted to psychotic disorders where the ability to appreciate one's actions may be impaired. Narcissistic and antisocial personality traits impair the ability to empathize but do not impair the ability to distinguish right from wrong. An individual with these personality traits will still understand that they will receive a penalty for their conduct. These personality traits mean that the individual does not conform their behaviors to societal standards. They understand what they are doing is wrong but they do it anyway.

Dr. Friend further confirmed that he provided an opinion, not a formal risk assessment, in part because this type of assessment may not be valid outside of the criminal context. Dr. Friend's opinion is that there may still be concerns with Dr. Bhardwaj in a non-direct patient care role because there can still be patient contact given that patient contact information is contained within the patient records.

(c) [redacted]

[redacted] confirmed that her mother had passed away at the [redacted] in November 2018. [redacted] confirmed that her mother struggled with alcoholism and addiction. [redacted] indicated that she had been in foster care while her mother struggled with addiction. When [redacted] came out of foster care, her mother relapsed and it was difficult to watch.

[redacted] stated in 2006, [redacted] helped to try to get Patient B to detox and stated that [redacted] would take care of [redacted] sister. [redacted] noted that her mother was working at first, but then had to move into treatment. By 2007, [redacted], she had moved out and was living on her own.

[redacted] confirmed that she knew of Dr. Bhardwaj and he had been her family physician as well as her son's family physician and her mother's family physician.

2. <u>Witnesses for Dr. Bhardwaj</u>

Six witnesses were called on behalf of Dr. Bhardwaj: Dr. Bhardwaj himself; Ms. Sonia Bhardwaj, Dr. Bhardwaj's sister; Dr. Ken Joffe, a psychiatrist; Mr. [redacted] Dr. Bhardwaj's sponsor in the Sexaholics Anonymous Program; Dr. Jay Buhler, a registered psychologist; and Dr. Peter Kamp, a physician working with the Pine Grove Residential Professional Enhancement Program.

(a) Dr. Bhardwaj

Dr. Bhardwaj was born on May 26, 1972 in Nairobi, Kenya. He moved to Canada at age 1 with his family and they settled in the north part of Edmonton. He has a sister who is three years younger than him. He had a very close relationship with his mother, who he described as loving and kind and he could talk to her about anything. He described his father as colder, someone who worked a lot and had difficulty expressing his emotions.

Dr. Bhardwaj's childhood was pretty good until age 12, when his mother passed away [redacted] Dr. Bhardwaj could not talk to his father about his mother's passing and felt very isolated and alone. He and his sister went to one session with a grief counsellor.

Dr. Bhardwaj described his relationship with his sister as typical – they had fights. They were not close in the beginning and his sister was closer to their father.

Dr. Bhardwaj went to Ross Sheppard for high school and was in the International Baccalaureate program. He did an undergrad degree in pharmacology and then graduated from medical school in 1999 at age 27. Dr. Bhardwaj applied to do a residency in family medicine which he did at the Royal Alexandra Hospital and completed in 2001. Dr. Bhardwaj worked in rural medicine in Bonnyville, Alberta for three years and then returned to Edmonton in 2005. Dr. Bhardwaj has not practiced as a physician since May 2016.

Dr. Bhardwaj married in 1999 at age 27 and had a daughter in 2001 and a son in 2003. He moved to Stony Plain and practiced in a clinic setting at Meridian Clinic and had admitting privileges at Westview Hospital.

Dr. Bhardwaj was then asked to describe his history with sexual compulsion. Dr. Bhardwaj indicated that he started looking at pornography at age 16 in magazines and on the Internet. He indicated that he didn't get a "sex talk" from his father but that a friend had told him how to masturbate. Dr. Bhardwaj indicated that he masturbated every day, which he found shameful, although it was normal.

At age 19, he began seeing prostitutes but kept that fact to himself. He acknowledged that he recognized that it was illegal but he continued to do it. He was apprehended by police after he had seen about 20 prostitutes over time and given two options: (1) he could be arrested or (2) he could go to "John School". Dr. Bhardwaj chose "John School" which involved a weekend course that addressed the perils of prostitution, the impact on women and on Johns, professionals, courses and group lectures.

Initially, his arrest made him fearful. He did not want to see prostitutes again because he did not want to get caught. Ultimately, however, this did not stop him and between 2004 and 2014, he saw another 20 or so prostitutes. Dr. Bhardwaj stated that he knew this was wrong and he knew

there could be consequences, but he did it anyway. He didn't tell anyone about seeing prostitutes.

In terms of his family life, Dr. Bhardwaj stated that he put up a facade for his wife and that he was essentially leading a double life. He said he tried to be a good husband and father but he wasn't and he recognizes that he hurt his family terribly. He stated that he didn't know as much then as he does now about how much he hurt them.

With respect to the complaint by Patient A and the disclosures made regarding Patients B, C and D, Dr. Bhardwaj confirmed that there were some differences in his account of what had happened and the accounts of the Patients. However, he acknowledged responsibility for his conduct, stating that it was 100% his responsibility, that he took the blame and was truly so sorry for what he had done. He noted that because of his ego and self-obsession he wanted what he wanted. He is now trying to make amends every day.

When asked if he forced the Patients to engage in sexual activity, Dr. Bhardwaj stated that it never felt that way but he recognizes now that the doctor-patient relationship limits consent. He denied however that he traded sex for drugs.

Dr. Bhardwaj confirmed that he had not engaged in any sexual activity with any other patients, staff, residents or students other than Patients A, B, C, and D. He further confirmed that he had not been the subject of any other complaints to the College beyond the present complaint.
Dr. Bhardwaj stated that he found out about the complaint by Patient A when the College asked for a copy of her chart. He then received the complaint. On receipt of the complaint, Dr. Bhardwaj described himself as being in complete shock – his world as he knew it was over, his double life was over.

Dr. Bhardwaj confirmed that after the complaint was filed, he signed an undertaking to practice in the presence of a chaperone. However, he did not go back to practice thereafter as he felt he needed to work on himself as he had issues related to sexual addiction and narcissism. He noted that he had taken the last three years to work on himself before even considering a return to practice.

When the complaint was filed, Dr. Bhardwaj described himself as being suicidal. He stated that he had gone to Canadian Tire and bought a ladder and a rope. He also obtained some rye. He drove himself to a remote location but indicated that he could not go through with it as he saw his kids in his mind. He still felt suicidal, however.

Next, Dr. Bhardwaj called his wife and dumped everything on her. At that point, his wife had been living in Burnaby for six months. Their plan had been for him to work 3 weeks in Edmonton and then go to B.C. for one week. His wife had moved to Burnaby in October 2015 as she was trying to commence a career as a real estate agent.

His wife could see how distraught Dr. Bhardwaj was and got him to drive himself to the Emergency Room at the Misericordia. Dr. Bhardwaj saw Dr. Joffe at that time. Dr. Bhardwaj then stayed with his sister for two weeks and began seeing Dr. Buhler, a psychologist. Dr. Buhler suggested that Dr. Bhardwaj attend a 12-step Sexaholics Anonymous program. This was the first time that Dr. Bhardwaj had heard the term "sex addiction" associated with him.

Dr. Bhardwaj started attending Sexaholics Anonymous and stated that he made incredible connections within the group and did not feel so alone. He stated that he went to 3-4 meetings per week consistently. In 1-2 months, he was able to find a sponsor and started to work on the 12 steps.

Dr. Bhardwaj stated that in the six months leading up to March 2016, he was drinking daily and using marijuana to numb his feelings. He was very lonely and without his kids at this time. He would consistently repeat this cycle. He stopped using drugs and alcohol in March 2016 as he realized that these were co-addictions and he wanted to have feelings instead of numbing them.

Dr. Bhardwaj then attended the Pine Grove Residential Professional Enhancement Program in the United States from July to November 2016 as an inpatient for sex addiction. The Program involved group and individual counselling, art therapy, and 12-step therapy. The goal of the Program was to understand the reasons behind his addiction and the diseased attitudes that led to his addiction. The Program did not focus on sex addiction per se, but took a more holistic approach of focusing on personality traits.

Dr. Bhardwaj described some of what led to his addiction as having a negative view of the world and blaming things on everyone else because he did not want to face himself. At Pine Grove, Dr. Bhardwaj was able to put his character defects on the table and learn, in a safe and comfortable environment, that it is O.K. to be human and make mistakes and own them. Dr. Bhardwaj stated that he attended at Pine Grove as he did not want to abuse or hurt people and he wanted to make connections with other people.

Dr. Bhardwaj was referred to page 7 of the Pine Grove Discharge Summary (Exhibit 3) where it stated as follows: "Dr. Bhardwaj engaged in lapse behavior in his last week of treatment, by accessing inappropriate sexual material online. He did not reach out for help and the information was reported to the Program staff through protective software installed on his phone. The report was received after his discharge and was unable to be fully processed in a therapeutic setting."

Dr. Bhardwaj explained that he had not accessed pornography but that he had viewed some inappropriate naked images on Pinterest. He deleted the Pinterest app right away and told his Sponsor and Accountability Partner from Sexaholics Anonymous.

Dr. Bhardwaj also continued seeing Dr. Joffe given his acute suicide attempt and has been seeing him since December 2016 on a monthly basis. Dr. Joffe was helping with his depression and assisting in stabilizing him. Dr. Bhardwaj still has depression but is stable now. Dr. Joffe helped him with his family and with talking with his wife. Dr. Joffe also assists Dr. Bhardwaj with impulse

control. Dr. Bhardwaj confirmed that he had reviewed the Pine Grove Discharge Summary with Dr. Joffe.

Mr. Peacock then took Dr. Bhardwaj through the Pine Grove discharge summary recommendations and Dr. Bhardwaj was asked to address his completion of each recommendation. Dr. Bhardwaj confirmed that he is continuing to see Dr. Buhler (recommendation #1) and he works with Dr. Buhler on narcissism and instilling more empathy.

He is not attending a weekly men's group with Dr. Buhler (recommendation #2) as he is continuing to attend Sexaholics Anonymous and this group fulfills the same function. Dr. Bhardwaj describes Sexaholics Anonymous as the biggest help of his life. Dr. Bhardwaj noted that Step 1 of Sexaholics Anonymous is to admit powerlessness to lust and that life has become unmanageable. Dr. Bhardwaj indicated that he has become more and more involved with Sexaholics Anonymous and acted as the Chair of the Edmonton InterGroup as well being on the Retreat Planning Committee. Dr. Bhardwaj's home group consists of 20-30 members. Dr. Bhardwaj explained that he began to volunteer as it was the right thing to do and it felt good. He also became a sponsor. Dr. Bhardwaj sees his own sponsor at least once per week. Dr. Bhardwaj also sees his sponsor socially and has housesit for him. His sponsor is married with kids.

In terms of sex addiction, Dr. Bhardwaj considers his sobriety date to be November 13, 2016. Sobriety in this context means no sex with self or someone other than your spouse. Dr. Bhardwaj indicated that the Pinterest incident does not negate his sobriety as it did not involve inappropriate touching.

Dr. Bhardwaj is attending a Dialectical Behavior Therapy group at the Royal Alexandra Hospital (recommendation #3) and continues to meet routinely with Dr. Joffe for medication management (recommendation #4).

Dr. Bhardwaj lives with his father in his childhood home which satisfies the requirement of recommendation #5 that Dr. Bhardwaj not live alone due to his depression and isolation.

Dr. Bhardwaj is compliant with recommendation #6, which requires him to provide random drug screens to monitor sobriety. This was arranged through Caniff & Associates. He has had no positive tests to date. Dr. Bhardwaj also completed a polygraph test in January 2019 in accordance with recommendation #7.

Recommendation #8 required that Dr. Bhardwaj return to Pine Grove in six months for a one-week re-check to evaluate progress since discharge, maintenance of recovery and to reassess clinical recommendations. Dr. Bhardwaj attended Pine Grove in January 2019 for a five-day reevaluation process. The Discharge Summary arising from the January 2019 attendance was entered as Exhibit 8. Dr. Bhardwaj indicated that he attend Pine Grove in January 2019 because he wanted an independent opinion on return to practice. While there, he underwent a polygraph and met with Dr. Kamp and Sally Moody, a therapist.

Dr. Bhardwaj has installed protective software on all his electronic devices in accordance with recommendation #9

Dr. Bhardwaj confirmed that he is following the discharge recommendations arising from the January 2019 Pine Grove Discharge Summary including continuing to see Dr. Buhler and Dr. Joffe, undergoing random drug screens and using protective software.

Dr. Bhardwaj confirmed that he understood that Pine Grove's recommendation was that he could work as a physician in a non-clinical role. Pine Grove described appropriate non-clinical roles as insurance review, chart review and non-clinical positions. Pine Grove recommended that Dr. Bhardwaj not provide direct patient care at this time.

Dr. Bhardwaj indicated that he is completely willing to accept the recommendation that he return to practice in only a non-clinical role. He stated that he does not want to hurt anyone again, either patients or his family.

In terms of the impact of his actions on his family, he indicated that his wife wants a divorce and his kids want nothing to do with him. His kids have grown up without a father and that is on him. Dr. Bhardwaj indicated that he has put his own father through a lot of stress and anxiety. Financially, Dr. Bhardwaj told his wife that she could have everything – their property and RRSPs. Dr. Bhardwaj has no savings and made a substantial payout to Patient A as part of the civil action that was filed. He has been subsisting on income from his disability benefits.

In terms of impact on his medical practice, Dr. Bhardwaj indicated that his abrupt departure left his patients and fellow physicians having to fend for themselves and this put everyone in a really tough spot and affected the reputation of the clinic. Dr. Bhardwaj stated that he has been back to his old clinic a couple times and maintains a relationship with one physician there where they see each other socially and go for dinner.

With respect to consequences suffered by the Patients, Dr. Bhardwaj acknowledged that he caused a loss of trust in these Patients and that he was responsible for not getting them help earlier to manage their addictions.

Dr. Bhardwaj stated that he would like to practice medicine again and feels like he has a lot left to give. He is trying to pick himself up again and feels like he has been given a second chance at life. He wants to be given a chance to practice medicine again. He stated that he has been keeping his medical knowledge current.

When asked the admittedly self-serving question of whether he was at risk of re-offending again, Dr. Bhardwaj stated that he never wanted to be that person again. He stated that he has a connection now to a higher power. He is now living with a higher moral code and tries to live it every day. He stated that he will not re-offend because he is working on his program every day and does a routine that is not going to change. Dr. Bhardwaj stated that he wants to keep moving forward and not go backwards.

On cross-examination, Dr. Bhardwaj acknowledged that his conduct was wrong but that he did it anyway. He also acknowledged that he read the question on his annual CPSA renewal form about having engaged in a sexual or inappropriate personal relationship with a patient and answered the question in the negative even though that answer was false. Dr. Bhardwaj admitted that he hid information from the College that it needed to know.

Dr. Bhardwaj conceded that being a physician is a privilege and a position of trust and that he had violated that privilege and trust.

Dr. Bhardwaj confirmed that he continues to see Dr. Joffe and Dr. Buhler on a monthly basis and that attends his Sexaholics Anonymous meetings 2-3 times per week. Each meeting is about 90 minutes long.

Dr. Bhardwaj acknowledged that he had caused Patients C and D harm as well as Patients A and B and that all these patients were vulnerable.

Dr. Bhardwaj confirmed that he would accept the Hearing Tribunal's decision on penalty.

The Hearing Tribunal inquired of Dr. Bhardwaj what was meant by his narcissism being challenged (page 5 of the Pine Grove January 2019 Discharge Summary). The Discharge Summary stated: "During this recheck, Dr. Bhardwaj's narcissism with his communication with his children was challenged in that he reported that he stopped emailing them because it was too painful for him." Dr. Bhardwaj explained that he was trying to take actions of love in communicating with his children but he stopped when his children did not respond because it was too painful for him. Dr. Bhardwaj explained that his expectations of a response from his children led to resentment when no response was received. He stated that he recently learned about practicing actions of love and is focusing on this now.

The Hearing Tribunal inquired of Dr. Bhardwaj what steps he would take to protect the public if he were returned to practice. Dr. Bhardwaj replied that he follows a routine with his daily sobriety renewal partner, he has a meditation practice and is involved in a two-way prayer group with the Sexaholics Anonymous members. He explained that while he is powerless over his thinking, he is not powerless over his actions. He noted that the tenth step in the program is to review the day. Where have I caused harm? Do I need to make amends? Dr. Bhardwaj stated that it is not about saying sorry – it is about what he is going to do about it. Dr. Bhardwaj stated that regardless of the outcome of the Hearing Tribunal process, he is going to continue what he is doing because he is now on a different path.

The Hearing Tribunal asked Dr. Bhardwaj what steps he would take operationally to protect the public if he were back in a clinic setting. Dr. Bhardwaj indicated that he would ensure he had restricted access to computers, that he would have a chaperone in place at all times and bear that cost himself and that he would start with a practice restricted to male patients only.

When asked if he should be prescribing narcotics, Dr. Bhardwaj stated that he should not be prescribing narcotics at this time.

One of the return to work recommendations in the January 2019 Pine Grove Discharge Summary states that Dr. Bhardwaj should not accept a job as a manager or a supervisor as it would create a power dynamic which is a role that Dr. Bhardwaj needs to avoid at this time. The Hearing Tribunal queried whether Dr. Bhardwaj's roles as a sponsor and InterGroup Chair with Sexaholics Anonymous were contrary to this recommendation. Dr. Bhardwaj explained that his roles within Sexaholics Anonymous were not leadership roles. He was just another group member with experience who could give hope to others. At Sexaholics Anonymous, they learn humility and how to let go of control. Dr. Bhardwaj confirmed that he did not view his roles with Sexaholics Anonymous to be contrary to the Pine Grove recommendations.

(b) Ms. Sonia Bhardwaj

Ms. Bhardwaj is Dr. Bhardwaj's younger sister. They are three years apart. She is a registered nurse in a clinical nurse educator role with Alberta Health Services. Ms. Bhardwaj agreed with Dr. Bhardwaj's characterization of their relationship and upbringing. Dr. Bhardwaj was closer to their mother and she was closer to their father. Their mother was a nurturer who Ms. Bhardwaj described as their family backbone or rock. She described their upbringing as an average middle class upbringing.

Ms. Bhardwaj indicated that they experienced some challenges after their mother's passing. The nurturing aspect of their lives disappeared. For example, their mother used to take them to temple on Sundays but that fell away after she passed away.

Between 2010 and 2015, Ms. Bhardwaj described relying on Dr. Bhardwaj as a big brother. They used to study together. They bonded and got closer in their later years. Ms. Bhardwaj described Dr. Bhardwaj as being very competitive, a perfectionist who wanted to excel.

Ms. Bhardwaj became aware of the complaint against Dr. Bhardwaj when Dr. Bhardwaj's wife phoned her. She was very frantic and told Ms. Bhardwaj to go to the Misericordia hospital. When she arrived at the Misericordia, Dr. Bhardwaj was very distraught. More and more of what happened came out later.

Ms. Bhardwaj contrasted her observations of her brother before and after the complaint proceedings. Prior to the complaint, Ms. Bhardwaj described her brother as having a huge ego, being selfish with his time, preoccupied with material things, quick to react, defensive and quick to anger. Dr. Bhardwaj never spoke about his feelings and stuffed them away.

After the complaint proceedings, he began to work very hard to improve himself. Ms. Bhardwaj stated that Dr. Bhardwaj shows up every day. He is very thoughtful and mindful. He no longer reacts but reflects first. Ms. Bhardwaj stated that Dr. Bhardwaj's values have changed and he has renewed his morals. His relationships in life are more meaningful. He has been able to

reconnect with their father and is a gentler person. He does kind things like shovel a neighbour's snow.

Ms. Bhardwaj stated that Dr. Bhardwaj's changes have been physical as well. Dr. Bhardwaj has lost weight, eats healthy and will cook. She stated that his mask has come off and the light has come through. The emptiness is gone and he is alive again. He is making good decisions and meaningful connections and choosing wisely.

There were no questions on cross-examination or from the Hearing Tribunal for Ms. Bhardwaj.

(c) Dr. Ken Joffe

Dr. Joffe is a practicing psychiatrist at the Misericordia hospital in good standing and is on staff at the University of Alberta as a clinical lecturer in the Division of Psychiatry. Dr. Joffe did a Royal College fellowship in 2004. His practice focuses on general adult psychiatry, both in-patient and out-patient. He treats the full spectrum of psychiatric disorders from schizophrenia to depression.

Dr. Joffe was qualified as an expert in general psychiatry. He is a treating physician of Dr. Bhardwaj and would be asked to comment on the recommendations in the Pine Grove reports in that capacity.

Dr. Joffe confirmed that he prepared the report contained at Exhibit 5. Dr. Joffe confirmed that when he prepared his report, he had reviewed Dr. Friend's August 10, 2018 report, the first Pine Grove report and materials related to the CPSA proceedings including the complaint.

Dr. Joffe explained that his first interaction with Dr. Bhardwaj was when Dr. Bhardwaj attended the emergency room at the Misericordia. Dr. Joffe was the on-call psychiatrist that evening. Dr. Bhardwaj was not admitted to the hospital at that time but an appointment was made for him to see Dr. Joffe in his office. Dr. Joffe has seen Dr. Bhardwaj approximately 36 times since March 2016. Initially, he was seeing Dr. Bhardwaj twice per month and then the appointments moved to once per month.

Dr. Joffe's main focus has been to monitor Dr. Bhardwaj's mood symptoms and suicidal ideations. Dr. Bhardwaj continues on a stable dose of antidepressants. Dr. Joffe indicated that Dr. Bhardwaj shows up on time for all appointments, fills his regimen on time and is compliant with his medications.

Like Pine Grove, Dr. Joffe diagnosed Dr. Bhardwaj with a narcissistic personality disorder along with borderline and antisocial traits. Dr. Joffe indicated that the overall functional impairment associated with these disorders includes being grandiose, having high self-esteem, feeling entitled and deserving and manipulating others to get what one wants with less than desirable remorse. When asked how narcissistic characteristics played a role in Dr. Bhardwaj's conduct, Dr. Joffe indicated that Dr. Bhardwaj had become obsessed with sex and this had taken control

over his life. Narcissistic characteristics involved self-centeredness, a need for admiration and a sense of entitlement. Additionally, they often lack empathy for others and are exploitative to achieve their goals. Dr. Joffe opined that this personality structure explains in part why Dr. Bhardwaj behaved the way he did towards Patients A, B, C and D.

Dr. Joffe confirmed that Dr. Bhardwaj has gained insight into these deficits and his behaviors. When asked how he made that determination, Dr. Joffe indicated that he feels that Dr. Bhardwaj is absolutely genuine in what he says to Dr. Joffe in treatment sessions and, in addition, Dr. Bhardwaj is seeing his psychologist and attending Sexaholics Anonymous regularly and would have gained insight through these channels.

Dr. Joffe confirmed that sexual addiction is not a currently a DSM-V diagnosis and is the subject of much controversy and research. Dr. Joffe confirmed that Dr. Bhardwaj knew what he was doing when it came to his interactions with Patients A, B, C and D. However, Dr. Joffe was not sure that he would agree with Dr. Friend's characterization of Dr. Bhardwaj as "just a man wanting to have sex".

Dr. Joffe pointed out that Dr. Bhardwaj had a long history of Substance Use Disorder, viewing of pornography and use of prostitutes. Dr. Joffe indicated that the fact that Dr. Bhardwaj knew what he was doing was wrong does not negate a potential diagnosis. For example, often those addicted to substances know it is wrong and still cannot resist. With treatment, they can learn about themselves, learn to deal with urges, and are capable of future self-control.

When asked to explain his opinion that Dr. Bhardwaj had complied with treatment, Dr. Joffe explained that Dr. Bhardwaj went to Pine Grove for intensive rehabilitation and, by all accounts, worked hard on his issues. Following this, he had been engaged with his psychologist on a regular basis and attended a Dialectic Behavior Therapy/Advanced Skills Group for several months. He attends Sexaholics Anonymous regularly and is now a sponsor for others and chair of the Edmonton branch, which involves attending conferences. He has abstained from alcohol, marijuana and sexual activity and does not view pornography. Dr. Joffe described Dr. Bhardwaj as accountable and living a much healthier life, with humility.

Dr. Joffe agreed that he had seen changes in Dr. Bhardwaj over the years. Dr. Joffe described Dr. Bhardwaj as initially being angry at others and showing remorse at being caught. Now, he is less angry at others and angrier with himself as he takes accountability. His personality traits will continue to improve over time.

Dr. Joffe stated that Dr. Bhardwaj has worked very hard and there is evidence of significant change in him. Dr. Joffe opined that perhaps this was not appreciated by Dr. Friend.

When asked to comment on whether Dr. Friend's concern that Dr. Bhardwaj would attempt to contact patients outside of the office setting, Dr. Joffe testified that he had no concerns regarding patient safety. Dr. Joffe stated that over 12 years, there was only one patient that Dr. Bhardwaj met outside of clinical hours. This was not a repetitive pattern.

Further, Dr. Bhardwaj's personality has changed significantly. Dr. Joffe stated that Dr. Bhardwaj feels that he deserves nothing and Dr. Joffe tells him that he deserves a productive life. Dr. Joffe opined that Dr. Bhardwaj is not pre-occupied with sex anymore. What preoccupies him now is eating right, exercising, Sexaholics Anonymous, etc. Dr. Joffe stated that Dr. Bhardwaj is not who he used to be.

On cross-examination, Dr. Joffe confirmed that "Cluster B" disorders (including narcissistic personality disorder) are generally very difficult to treat. Dr. Joffe further confirmed that, as a physician in a therapeutic relationship with Dr. Bhardwaj, he was acting in Dr. Bhardwaj's best interests and not as an independent assessor.

Dr. Joffe confirmed that Dr. Bhardwaj's narcissistic behavior primarily manifested with a focus on sex and that Dr. Bhardwaj would have felt that he deserved the sexual gratification. Dr. Joffe testified that Dr. Bhardwaj has improved with treatment such that Dr. Joffe would characterize Dr. Bhardwaj as having narcissistic personality traits rather than a narcissistic personality disorder. To this extent, Dr. Joffe disagreed with Pine Grove's diagnosis of narcissistic personality disorder.

Dr. Joffe was referred to Dr. Friend's March 13, 2019 report where Dr. Friend disagreed with Pine Grove's return to work recommendations on the basis that there was still a risk of Dr. Bhardwaj contacting patients outside the clinical context. Dr. Joffe testified that he did not share Dr. Friend's opinion and instead agreed with Pine Grove's recommendations. Dr. Joffe noted that Dr. Friend had not changed his opinion over his three reports and that Dr. Friend had not asked about Dr. Bhardwaj's treatment, progress or assessments. That being the case, it was not clear to Dr. Joffe how Dr. Friend could assess risk to the public without being aware of the progress made by Dr. Bhardwaj while in treatment.

Dr. Joffe was asked to comment on Pine Grove's recommendation that Dr. Bhardwaj not accept a job as a manager or supervisor as this would create a power dynamic. Dr. Joffe disagreed with this recommendation and indicated that, in his view, Dr. Bhardwaj does not have inflated self-esteem.

In Dr. Joffe's opinion, Dr. Bhardwaj is ready to do non-clinical work at this time and if he continues to remain stable, then Dr. Joffe would support Dr. Bhardwaj returning to practice in a clinical role. Dr. Joffe was not able to comment on a timeframe for when Dr. Bhardwaj might be fit to return to clinical practice.

On re-direct, Dr. Joffe confirmed that he understood that the College has to act in the best interests of the public and that this fact did not affect the objectivity of his opinion.

Dr. Joffe was asked by the Hearing Tribunal how he made a diagnosis of narcissistic personality disorder with borderline and antisocial traits. He explained that narcissistic personality disorder is easy to pick by listening to how Dr. Bhardwaj spoke. Over time, the traits started to disappear

in their conversations. There is no specific assessment tool to diagnose narcissistic personality disorder with borderline and antisocial traits. The best diagnostic tool is talking face to face.

The Hearing Tribunal inquired of Dr. Joffe what factors he considered when making the assessment that Dr. Bhardwaj had moved from a narcissistic personality disorder to only having narcissistic personality traits. Dr. Joffe indicated that by listening to what Dr. Bhardwaj said he could get a pretty good idea of how Dr. Bhardwaj was truly functioning. Dr. Joffe confirmed that there is no clear boundary between narcissistic personality disorder and narcissistic personality traits. It is more a matter of clinical judgment.

The Hearing Tribunal asked Dr. Joffe to opine on whether Dr. Bhardwaj could go back to having a narcissistic personality disorder. Dr. Joffe indicated that it was possible but that there was a low risk of that happening for Dr. Bhardwaj because he has significant insight into his prior behaviors. The biggest challenge is if the individual does not realize that their behaviors are caused by themselves. Where someone has that understanding, as does Dr. Bhardwaj, that is a strong protective factor.

Dr. Joffe explained that everyone has personality traits. They do not become a disorder unless it leads to distress or impairment in functioning and makes for a lot of issues in life. If there is distress or impairment, then it is usually classified as a disorder. Dr. Joffe confirmed that if Dr. Bhardwaj maintains his treatment, then he can remain as having narcissistic personality traits rather than a disorder.

As a result of the questions posed by the Hearing Tribunal, Dr. Joffe was asked by Mr. Boyer whether there was the potential that Dr. Bhardwaj was just saying to Dr. Joffe what he wanted Dr. Joffe to hear as opposed to being genuine. Mr. Boyer noted that Dr. Bhardwaj had been going through the process for three years and had the advantage of being a medical doctor. Dr. Joffe indicated that this was possible but that Dr. Bhardwaj was a family physician and not a psychiatrist and that Dr. Joffe's assessment was that Dr. Bhardwaj was being genuine and honest in their discussions. Dr. Joffe believes what Dr. Bhardwaj is saying is true.

In response to a question from Mr. Peacock, Dr. Joffe confirmed that Dr. Bhardwaj's actions were consistent with what Dr. Bhardwaj was telling Dr. Joffe. Dr. Joffe noted that, at first, Dr. Bhardwaj was going through treatment for the College proceedings, but now is continuing with treatment for himself. Dr. Joffe hoped that Dr. Bhardwaj would continue with his treatment for himself.

(d) [redacted]

[redacted] is Dr. Bhardwaj's Sexaholics Anonymous sponsor. He noted that Sexaholics Anonymous is a 12-step program based on Alcoholics Anonymous. [redacted] explained that Sexaholics Anonymous participants acknowledge that they are powerless over lust.

[redacted]. is a 23-year member of Sexaholics Anonymous. He described involvement in the program as attending meetings regularly, reading literature, answering questions, righting wrongs, making

amends and being of service for the next member. [redacted]. has a few dozen men that he sponsors in the program, including Dr. Bhardwaj. The sponsor's role is to walk the new member through the process and be a support.

In describing his observations of Dr. Bhardwaj, [redacted]. noted that he showed up at Sexaholics Anonymous pretty broken. He was a deer in the headlights and his world had ground to a halt. He was working on cleaning up the wreckage. [redacted]. and Dr. Bhardwaj agreed to meet weekly and [redacted]. was always available to Dr. Bhardwaj on the phone for support. [redacted]. noted that members always have 5 or 6 phone numbers at their disposal for support.

Eventually Dr. Bhardwaj became a sponsor himself and Chair of the Sexaholics Anonymous Intergroup. Dr. Bhardwaj spoke to [redacted]. prior to assuming either of these roles. [redacted]. was supportive of Dr. Bhardwaj taking on these roles as [redacted]. had witnessed his recovery and thought that Dr. Bhardwaj was in a good position to give back. [redacted]. had witnessed a lot of ego deflation in Dr. Bhardwaj.

[redacted] confirmed that he was aware that Dr. Bhardwaj was the subject of a College complaint and that [redacted] had provided the statement at Exhibit 11. [redacted]. testified that he provided his statement as he wanted to support Dr. Bhardwaj. [redacted] indicated that Dr. Bhardwaj was not the same broken man he was two years ago. Dr. Bhardwaj has gotten to know [redacted].'s family. Dr. Bhardwaj has housesat and animal sat for [redacted] and at those times has the key to his house. Dr. Bhardwaj was also in attendance at [redacted] [redacted]th birthday party. [redacted]. confirmed that there was alcohol at the party, but he has never seen Dr. Bhardwaj drink.

[redacted] stated that he would have no concerns about Dr. Bhardwaj being his family physician because he trusts Dr. Bhardwaj, what he is doing and why he is doing it.

On cross-examination, [redacted]. was taken to The Twelve Steps and Traditions of Sexaholics Anonymous (Exhibit 13). [redacted]. confirmed that he was familiar with the Twelve Steps. [redacted]. was referred to the 10th tradition, which states "Sexaholics Anonymous has no opinion on outside issues; hence the Sexaholics Anonymous name ought never be drawn into public controversy."

When asked if his presence as a witness at the hearing was contrary to this principle, [redacted]. indicated that he was sharing his experiences working with Dr. Bhardwaj and not providing an opinion. Mr. Peacock suggested that the changes he described in Dr. Bhardwaj were an opinion. [redacted]. denied this and stated again that this was related to his experience with Dr. Bhardwaj.

In response to questions from the Hearing Tribunal, [redacted]. indicated that Dr. Bhardwaj had recovered sufficiently to sponsor others. He is only sponsoring men. He further confirmed that the Intergroup Chair position does not involve a power relationship. Rather, it is the group consciousness that decides.

As a 23-year member, [redacted]. is aware of members who are doing well and those who are not doing well. Attending meetings regularly and on time are surface indicators of doing well but members

are also good at hiding things. He has observed members go from broken to a complete recovery (functioning well). As far as Dr. Bhardwaj, he has gone through the steps, and stays with his supports. If he stays on this path, then his chances of complete recovery are good. However, there isn't a bright line where you can easily say that someone can be done with the program. [redacted]. stated that individuals do not necessarily need to remain in the program to stay healthy.

(e) Dr. Buhler

Dr. Buhler has a Master's degree in Marriage and Family Therapy from Fresno Pacific University in California. In 2013, he obtained Certified Sex Addiction Therapist Training. This training involved four modules, 120 hours of instruction, 30 hours of supervised practice and an exam.

Dr. Buhler is a member of the College of Alberta Psychologists and is currently a psychotherapist in private practice with his main areas of focus being attachment theory, substance abuse, trauma and relationships.

Dr. Buhler was qualified as an expert in psychology in the area of sex addiction.

Dr. Buhler confirmed that he authored the report contained at Exhibit 6. In order to prepare the report, Dr. Buhler reviewed the Pine Grove Residential Discharge Summary dated November 4, 2016 (Exhibit 3), Dr. Friend's opinion dated August 10, 2018 (Exhibit 4) and Dr. Joffe's report dated December 17, 2018 (Exhibit 5). Dr. Buhler was provided with Dr. Friend's opinions dated February 20, 2019 (Exhibit 7) and March 13, 2019 (Exhibit 9) and the Pine Grove Residential Discharge Summary dated January 31, 2019 (Exhibit 8) after preparing his report.

Dr. Buhler confirmed that his role was as Dr. Bhardwaj's psychotherapist and as a result was not providing an opinion on fitness to practice or predictive statements regarding future behavior. Dr. Buhler explained that to do so would potentially contaminate the therapeutic relationship as it is one based on trust.

Dr. Bhardwaj came to be in Dr. Buhler's care as a result of a referral from the AMA Physician and Family Support Program. Since Dr. Bhardwaj's initial appointment on April 16, 2016, Dr. Buhler has seen Dr. Bhardwaj approximately 38 times. Dr. Buhler had Dr. Bhardwaj complete the Sexual Dependency Inventory (SDI) 4.0 which included a psychodynamic interview. Based on his score, Dr. Buhler stated that Dr. Bhardwaj met the diagnostic criteria for sexual addiction. Dr. Buhler confirmed that he was aware that sexual addiction was not a DSM-5 diagnosis. He noted that it was difficult to identify criteria that define sexual addiction and more research in the area is needed. He noted that one of the difficulties with establishing criteria to diagnose sexual addiction is the risk of pathologicalizing aspects of human sexual behavior which are not pathological. Dr. Buhler confirmed that he has a handout on his website which explains sexual addiction (Exhibit 15).

Dr. Buhler explained that the SDI 4.0 is a self-report assessment that takes 2-2.5 hours to complete online. It covers over 500 items related to sexual behaviors, impulses, degree of preoccupation, etc.

Dr. Buhler agreed that Dr. Friend's criticisms of the SDI 4.0 (pages 52 and 53 of Exhibit 7) were well-founded and valid. Dr. Buhler agreed that an individual could create a false score. When asked why he would then use the SDI 4.0, Dr. Buhler stated that it was imperfect but still one tool of many that could be used for assessment. He noted that the SDI 4.0 asks very specific questions about sexual behaviors and impulses that a client might not otherwise talk about due to shame. Dr. Buhler noted that the SDI 4.0 may also help with denial breakthrough.

In Dr. Buhler's view, Dr. Bhardwaj answered the SDI 4.0 honestly. The assessment showed narcissistic patterns. Dr. Bhardwaj expressed sadness and shame that he had exploited vulnerable women. Dr. Buhler stated that people don't usually come to those conclusions as quickly as Dr. Bhardwaj did.

When asked to comment on how sexual addiction could be treated if it is not a disorder, Dr. Buhler stated that sexual addiction is viewed in the same way as other addictions. It would be viewed as an attachment disorder and Dr. Buhler stated that there are effective modes of treatment. There are three phases of recovery: (i) identifying the problem (getting over denial and defences); (ii) relapse prevention strategies (making amends, attending Sexaholics Anonymous) and (iii) addressing the issues that underlie the addiction. Dr. Buhler confirmed that he had followed this approach with Dr. Bhardwaj.

Dr. Buhler confirmed that, during his treatment, Dr. Bhardwaj developed empathy from the perspective of those he had hurt. He engaged in mirroring and acknowledged his conduct.

Dr. Buhler stated in his report at Exhibit 6 that it was important to consider the degree to which the factors underlying Dr. Bhardwaj's sexual acting out were addressed. These factors included unhealthy family of origin dynamics, the early death of his mother (abandonment and unresolved grief), development of entitlement and self-centeredness, issues of control, manipulation, exploitation, inappropriate boundaries, shame and challenges regulating distressing affective states including anger and despair. Dr. Buhler opined that Dr. Bhardwaj has made significant progress in addressing these issues.

Dr. Buhler described Dr. Bhardwaj as highly committed to his recovery with his own intrinsic motivation to change. He indicated that Dr. Bhardwaj has suffered through a lot of harm and shame. He has been open and honest and reached out very quickly for support and engaged in recovery wholesale. This is demonstrated in part by the length of his ongoing sobriety. Dr. Buhler stated that Dr. Bhardwaj has grieved through the pain of estrangement from his wife and kids. He has developed empathy and understanding related to this. He is engaged in his 12-step program, is a highly motivated individual, committed to making changes and has made great strides in all his goals.

Dr. Buhler stated that there are five stages of change: precontemplation, contemplation, preparation, action and maintenance. Dr. Bhardwaj is now in the maintenance phase. He has been in this stage for at least a year and is committed to it.

Dr. Buhler was asked by the Hearing Tribunal whether any of the assessment tools that he had used for Dr. Bhardwaj could comment on the risk of relapse. Dr. Buhler indicated that he was not familiar with any tools that could predict relapse. Relapse is more likely when there are trauma reactions, trauma triggers and the individual is less motivated to change. Success rates are lower for those relying on willpower alone. Those with supports and who are committed to change, like Dr. Bhardwaj, do well.

When asked by the Hearing Tribunal if Dr. Bhardwaj had to continue in treatment to remain at the maintenance stage, Dr. Buhler indicated that Dr. Bhardwaj has issues that require attention but the degree of attention required will vary over time. He noted that many people remain in their fellowships such as Sexaholics Anonymous for their whole lives.

Dr. Buhler further confirmed that he had only administered the SDI 4.0 once to Dr. Bhardwaj and that it had been administered at Dr. Bhardwaj's worst moment in time.

(f) Dr. Kamp

Dr. Kamp is the attending physician at the Pine Grove Professional Enhancement Program. Dr. Kamp did not provide testimony before the Hearing Tribunal in the formal sense but was made available to the members of the Hearing Tribunal to address any questions arising out of the Pine Grove Discharge Summaries.

Dr. Kamp was referred by the Hearing Tribunal to the Master Problem List in the November 4, 2016 Discharge Summary and asked to explain the scores listed there. Dr. Kamp explained the first column was the initial score and the second column was the score on discharge. The scores are calculated by group consensus of the treatment team. A score of 0 means that there is no concern whereas a score of 4 is the score of the highest severity. When asked what score is needed to show progress in a non-clinical setting, Dr. Kamp explained that they do not depend on a set score – what they like to see is improvement in the score. A change in the score of 0.25 would indicate some improvement.

When asked how much change Dr. Kamp wanted to see on the rating scale, he stated that the main thing they like to see is continued improvement and that they did see that in the case of Dr. Bhardwaj. Dr. Kamp noted that progress is generally slower on an outpatient basis than when someone is in a period of intensive inpatient therapy.

Dr. Kamp was referred to the discharge diagnosis in the January 31, 2019 Discharge Summary of Antisocial and Narcissistic Personality Disorder with Borderline Traits. Dr. Kamp confirmed that Pine Grove still feels that Dr. Bhardwaj has this disorder.

In response to a question as to his concerns about patient safety, Dr. Kamp confirmed that he did not see a risk if Dr. Bhardwaj was returned to practice in a non-clinical setting. Dr. Kamp did not have a concern that Dr. Bhardwaj would use patient contact information to seek out sexual gratification. However, the risk is higher in a clinical setting and Pine Grove is not ready to recommend a return to practice in a clinical setting at this time.

Dr. Kamp was asked to comment on the indication in the January 31, 2019 Discharge Summary that Dr. Bhardwaj's prognosis was "Fair". Dr. Kamp explained that there are four levels of prognosis: Good, Fair, Guarded and Poor. Fair means that the patient is likely to do well if he continues to do the things he needs to do, but there is still work to do. Good is a highly optimistic diagnosis but it is rarely used for physicians because of the general layers of issues and complexity. A Guarded prognosis means that Pine Grove is very hesitant that things will turn out well. Dr. Kamp noted that the discharged prognosis had been upgraded from "Guarded" in the November 4, 2016 Discharge Summary to "Fair" in the January 31, 2019 Discharge Summary because Dr. Bhardwaj's recovery work had progressed to a point where this was appropriate.

Dr. Kamp indicated that there is always a risk of relapse in addiction cases but that risk is limited right now. The Hearing Tribunal noted that in the January 31, 2019 Discharge Summary, Dr. Bhardwaj still scored a 3 (High Severity) when it came to Vocational Issues – Professionalism (Professional Sexual Misconduct). Dr. Kamp explained that it was difficult to score Dr. Bhardwaj in this area because he has not been working and getting used to the stresses that come with practice. As such, there is still a need for monitoring in this area.

The Hearing Tribunal pointed out to Dr. Kamp that according to the November 4, 2016 Discharge Summary, Dr. Bhardwaj's score on admission for Vocational Issues – Professionalism (Professional Sexual Misconduct) was 3.50. On discharge, the score had increased in severity to 3.75. Dr. Kamp indicated that this was more a matter of them coming to a better understanding of Dr. Bhardwaj's previous behaviors than a deterioration in Dr. Bhardwaj's state. Dr. Kamp noted that the score on admission may have been higher had they had all the relevant information at that time.

Dr. Kamp was asked about the interrelationship of the different diagnoses in Dr. Bhardwaj's case. He confirmed that it is certainly the case that addictions, depressions and disorders all interact and make diagnosis and prognosis more difficult.

Dr. Kamp's overall impression of Dr. Bhardwaj was that he would do well if he continued to do the therapeutic work he needed to do. Dr. Kamp reaffirmed that there was still too high a risk for Dr. Bhardwaj to return to clinical practice, but that Pine Grove was prepared to support a return to practice in a non-clinical role.

V. SUBMISSIONS

(a) Complaints Director

The Complaints Director sought revocation of Dr. Bhardwaj's license to practice medicine. Mr. Boyer noted that this was perhaps a departure from prior typical College practice of seeking a suspension and imposing monitoring and conditions on any return to practice. Mr. Boyer referred to the case of *Matheson* v. *College of Physicians and Surgeons of Prince Edward Island* as an example of the approach.

Mr. Boyer then referred to the case of *Taher* v. *College of Physicians and Surgeons of Alberta*. Dr. Taher was convicted of criminal sexual assault against a patient and two of his staff members. The offences involved grabbing and touching and not sexual intercourse. Two independent assessments were conducted on Dr. Taher. The first assessment indicated that Dr. Taher was not fit to return to practice and the second assessment concluded that he was fit to return to practice with conditions. The Hearing Tribunal ordered an 18 month suspension but indicated that Dr. Taher would receive credit for the time that he had been out of practice such that the period of suspension was considered fulfilled. On return to practice, Dr. Taher was also subject to significant monitoring and a number of practice conditions including only seeing female patients in the presence of a chaperone and establishing a mentor relationship with a senior colleague.

Mr. Boyer explained that when the *Taher* decision was released, there was significant public outcry with what were viewed by the public as lenient penalties. Mr. Boyer indicated that the *Taher* decision led the Alberta Legislature to enact Bill 21 (amendments to the *Health Professions Act* which prescribe certain penalties in cases where regulated health professionals engage in sexual misconduct against patients).

Mr. Boyer reinforced that Bill 21 does not have application to the present case as it does not apply to complaints that were in progress before it came into force. However, Mr. Boyer noted that while Bill 21 does not have technical application to this case, it does reflect society's changing expectations about how cases involving sexual misconduct by professionals should be addressed.

Mr. Boyer also drew the Hearing Tribunal's attention to the case of *Maritz* v. *College of Physicians and Surgeons of Alberta*. The investigated member in that case was engaged in an inappropriate sexual relationship with two patients and breached the terms of his Continuing Care Contract and an Undertaking to the College. During the hearing, the Complaints Director of the College sought cancellation as the appropriate order for penalty. Instead, the Hearing Tribunal ordered an 18-month suspension as well as practice restrictions. The Complaints Director appealed the decision on penalty. Council upheld the penalty as being reasonable but also noted that had Bill 21 been in force at the relevant time, the investigated member would have been facing mandatory cancellation.

Mr. Boyer noted that the orders for penalty in the *Matheson, Taher and Maritz* cases should now be viewed with some caution as they pre-date the changing legal landscape brought on by Bill 21.

Mr. Boyer summarized the expert evidence provided to the Hearing Tribunal and made certain observations with respect to the experts. He noted that Dr. Joffe had described Dr. Bhardwaj as

having narcissistic personality traits whereas Dr. Kamp had clarified that Pine Grove's diagnosis remained that of narcissistic personality disorder. Mr. Boyer noted that Dr. Joffe presented as an empathetic and compassionate treating psychiatrist, noting that that is certainly what you would want in a treating professional, but that Dr. Joffe's opinion must be viewed through that lens. Mr. Boyer suggested that Dr. Friend's opinion, which is less complimentary of Dr. Bhardwaj, is more objective and therefore should be given greater weight. Mr. Boyer reinforced that the Hearing Tribunal does not have to disbelieve Dr. Joffe's opinion to accept Dr. Friend's opinion but that it must consider how much weight to assign to the professional opinions and why.

Mr. Boyer also pointed the Hearing Tribunal to the case of *Norberg* v. *Wynrib*, a seminal case on doctor-patient relationships from the Supreme Court of Canada, where the physician involved traded sex for drugs with a patient. Some of the key points from *Norberg* include the fact that where there is an ability to dominate and influence (a power dependency), any consent to a sexual relationship will be inherently suspect. The case also notes doctor-patient sexual relationships are exploitative as is a scenario where the physician, rather than treating a drug addiction, uses it for his own personal (sexual) gain. Doctor-patient relationships are fiduciary relationships and in that context, a doctor owes a patient the duties of loyalty, good faith and avoidance of a conflict of duty and self-interest. On the question of consent, the court concluded that the unequal power between the parties and exploitative nature of the relationship removed the possibility of the patient providing meaningful consent to the sexual conduct.

Mr. Boyer noted that, like Dr. Wynrib, Dr. Bhardwaj had exploited vulnerable patients for his own sexual gratification. In Dr. Bhardwaj's case, this occurred with 4 separate patients. In doing so, Dr. Bharwaj breached his fiduciary duties to his patients and took advantage of a power dependency relationship.

Mr. Boyer further noted that Dr. Bhardwaj testified that he did not trade sex for drugs with his patients. However, Mr. Boyer stated that there was certainly a quid pro quo here and that the Hearing Tribunal needed to consider this and, in particular, whether Dr. Bhardwaj's testimony on this point was evidence of denial of his conduct.

With respect to the *Jaswal* factors on penalty, Mr. Boyer made the following submissions:

In terms of the nature and gravity of the offences, Mr. Boyer stated that these were all very serious acts – ones that do cry out for a very serious penalty. As far as the age and experience of the investigated member, Dr. Bhardwaj was 34 years of age when he started practicing and is now 47 years of age. He had been practicing since 2001. Dr. Bhardwaj has no prior findings of unprofessional conduct.

With respect to the age and mental condition of the affected patients, it is clear that both Patients A and B were struggling with addiction and were very vulnerable in that regard. Patient B also had additional stressors of her children being removed to foster care and going through a divorce. Patient C's health records also show stressors in her life such as mental health treatment, anxiety at work and issues with her relationships.

As far as the number of times that the conduct was proven to have occurred, Mr. Boyer stated that if all the encounters between the 4 affected patients are added up, then there were 30 + inappropriate sexual encounters.

Dr. Bhardwaj did acknowledge his unprofessional conduct and was forthright in admitting what he had done, which can be regarded as a mitigating factor when it comes to the determination of penalty. Mr. Boyer noted that this is a significant factor, but it is ultimately just one factor. Further, Mr. Boyer indicated that Dr. Bhardwaj was still denying that he had traded sex for drugs and that this denial should be considered by the Hearing Tribunal when assessing penalty.

In terms of whether Dr. Bhardwaj has suffered financial or other serious penalties as a result of his conduct, Mr. Boyer stated that Dr. Bhardwaj has been out of practice since 2016, which would have significant impacts in terms of loss of income. He was also involved in a civil action with respect to Patient A which had financial impact on him.

With respect to impact on the affected patients, Mr. Boyer submitted that this was a very significant factor for the Hearing Tribunal to consider and that there was evidence before the Hearing Tribunal directly from Patient A in this regard and also Patient B's daughter, in addition to the statements that Patient B made to the investigator.

As far as general and specific deterrence and the need to maintain the public's confidence in the integrity of the medical profession, Mr. Boyer submitted that Dr. Bhardwaj's conduct was egregious and reprehensible and that society's expectations have evolved in terms of the seriousness of the sanctions that it now expects when a physician engages in sexual misconduct. Mr. Boyer submitted that in a case where a physician has taken advantage of four separate patients, the public interest in keeping that physician out of practice should prevail over efforts at rehabilitation.

With respect to similar cases, Mr. Boyer pointed to the *Roberts* case (2008). Dr. Roberts married a patient that he had been in a psychotherapeutic relationship with. The College has a zero tolerance rule for sexual relationships where the physician is providing psychiatric care. As a result, Dr. Roberts' registration was cancelled. Mr. Boyer also referred the Hearing Tribunal to a number of cases arising out of Saskatchewan where physicians had their membership revoked for engaging in sexual boundary violations.

Mr. Boyer noted that sexual abuse of patients is not acceptable and that the Hearing Tribunal must ask itself here whether Dr. Bhardwaj's conduct is so egregious that the privilege of being a member of the College of Physicians and Surgeons has been lost. Are society's changing and rising expectations such that Dr. Bhardwaj has lost the privilege of being a physician in Alberta?

Mr. Boyer also noted that the transitional rules under Bill 21 that apply with respect to reinstatement are not clear. Generally, if a complaint was made under the legislation in force before Bill 21 came into effect, it must be dealt with under that legislation. Under Bill 21, there

is no right to reinstatement where membership has been cancelled as a result of conduct, which amounts to sexual abuse. The conduct at issue in this case would amount to sexual abuse if Bill 21 did have application. However, because Bill 21 was not in force at the time of the complaint against Dr. Bhardwaj, it is not clear whether the ban on reinstatement would apply in Dr. Bhardwaj's case. The Regulation has not yet been amended to reflect Bill 21 and it is not clear what will transpire when the regulation is amended.

Ultimately, Mr. Boyer submitted that when the gravity and totality of Dr. Bhardwaj's actions are considered, revocation is the only appropriate penalty.

In terms of costs, Mr. Boyer noted that a significant costs order was appropriate and that in the *Maritz* decision, the physician had been ordered to pay 60% of the costs of the investigation and hearing. A costs order of this magnitude would likewise be appropriate in this case.

(b) Dr. Bhardwaj

Mr. Peacock, on behalf of Dr. Bhardwaj, noted that under the current Regulation, if Dr. Bhardwaj's license is revoked, the earliest point as to which he could apply for reinstatement would be 3 years. If the Regulation is amended as a result of Bill 21 to capture transitional complaints such as this one against Dr. Bhardwaj, then it is possible that Dr. Bhardwaj could never return to practice. It is possible that he will never be able to return to practice and possibly not for as many as 6 years (since Dr. Bhardwaj has now been out of practice since 2016). In Mr. Peacock's submission, this would be a practical ban on him ever returning to practice and the Hearing Tribunal must consider this seriously.

In terms of the *Jaswal* factors, Mr. Peacock acknowledged that there is no doubt that the unprofessional conduct at issue is serious, grave and egregious. Mr. Peacock confirmed that Dr. Bhardwaj does not have any prior convictions of unprofessional conduct and noted that while Dr. Bhardwaj did have a history with prostitutes, he was never charged criminally in this regard.

In terms of the age and mental condition of the affected patients, Mr. Peacock submitted that these were all adult patients but at least two of them had addictions. With respect to patients C and D, Mr. Peacock submitted that there was no evidence to establish that either of these patients had addictions or mental health conditions and that the issues referred to by Mr. Boyer with respect to Patient C pre-dated Patient C's encounters with Dr. Bhardwaj. Mr. Peacock submitted that it was never Dr. Bhardwaj's intent to trade sex for drugs and that the Hearing Tribunal should be cautious about making that finding. Mr. Peacock stated that Dr. Bhardwaj now fully appreciates the power dynamic between a doctor and a patient while he may not have at the time the conduct took place.

With respect to the number of times that the conduct occurred, which is 30+ times over nine years, Mr. Peacock acknowledged that this factor weighs against Dr. Bhardwaj.

As far as Dr. Bhardwaj's role in acknowledging his conduct, Mr. Peacock reinforced that this was not a case where Dr. Bhardwaj had acknowledged his conduct on the eve of the hearing. Rather, his acknowledgement was immediate and comprehensive. Dr. Bhardwaj never downplayed his actions and was fully cooperative in the complaint process. He acknowledged the significant breach of trust and the breaches of the Standards of Practice and Code of Ethics. Dr. Bhardwaj admitted his conduct in the response to Patient A's complaint, to the investigator and took the additional significant step of self-disclosing the unprofessional conduct with respect to Patients B, C and D. He has demonstrated genuine and sincere remorse and it is very important for the Hearing Tribunal to consider that Dr. Bhardwaj has accepted full responsibility and accountability and remorse for the harm he caused to his patients, to the profession and to his family. The Hearing Tribunal should further consider that, after the complaint was made, Dr. Bhardwaj was asked to sign an undertaking to practice with a chaperone. Instead, he withdrew from practice of his own accord to work on himself.

In terms of other significant financial or other penalties suffered by Dr. Bhardwaj as a result of his unprofessional conduct, Mr. Peacock submitted that Dr. Bhardwaj had been the subject of a civil action which had financial implications for him, he has not practiced since May 2016, he suffered the breakdown of his marriage and is estranged from his children and his on disability income and living with his father. Mr. Peacock noted that the intent in listing these impacts is not to feel sorry for Dr. Bhardwaj but to illustrate that he has paid a heavy price already for his actions.

With respect to impact on the affected patients, Mr. Peacock acknowledged that the impact on Patient A was significant and ongoing. With respect to Patient B, however, Mr. Peacock submitted that the evidence does not establish that the encounters with Dr. Bhardwaj caused her to spiral or exacerbated her alcohol abuse. There is no evidence with respect to the impact on Patients C and D, but certainly there was a breach of trust involved with respect to all the affected Patients.

Mr. Peacock set out a number of mitigating factors for the Hearing Tribunal's consideration. First, Mr. Peacock noted that Dr. Bhardwaj was struggling with sex addiction. This was not offered as an excuse – Dr. Bhardwaj knew what he was doing was wrong but he lacked the ability to empathize with the harm he was causing to get his sexual gratification. He was impaired to that extent.

Second, it is important for the Hearing Tribunal to consider the steps he has taken to address his underlying issues. He underwent intensive rehabilitation at Pine Grove and continues to be committed to treatment from his psychiatrist and psychologist. He is committed to and actively engaged in his Sexaholics Anonymous group. The evidence of his treating professionals is that Dr. Bhardwaj has made real and substantial changes since 2016 and is committed to his recovery. Mr. Peacock acknowledged that Dr. Bhardwaj is still a work in progress and he will need to continue with supports in place if he is to be successful.

Mr. Peacock raised some concern with the testimony of Dr. Friend in that Dr. Friend did not address the impact of all of Dr. Bhardwaj's treatment or efforts at rehabilitation on Dr. Friend's opinion that Dr. Bhardwaj would remain a risk to the public even in a non-clinical role. Mr. Peacock suggested that Dr. Friend's characterization of Dr. Bhardwaj having several instances of contact with patients outside the clinical setting was unfair and that as a forensic psychiatrist, Dr. Friend should understand the importance of being objective and fair in the use of his language describing Dr. Bhardwaj's conduct.

Mr. Peacock noted that this matter has taken a long time. Dr. Bhardwaj admitted his conduct in April 2016 regarding Patient A and the other patients in November 2016 but the investigation report was not completed until November 2018. Mr. Peacock indicated that if a penalty of suspension is ordered that the Hearing Tribunal needs to consider the time that Dr. Bhardwaj has already been out of practice.

In terms of the public protection factors such as deterrence and ensuring the public's confidence in the integrity of the medical profession, Mr. Peacock submitted that there is no doubt that Dr. Bhardwaj's conduct requires a significant sanction. However, this need for a significant sanction can be met by imposing a significant suspension which takes into account his time already out of practice.

Mr. Peacock urged the Hearing Tribunal to give Dr. Bhardwaj an opportunity to regain trust and demonstrate his recovery. Pine Grove indicated that his risk to the public is a minimal one. Mr. Peacock indicated that he would be the first to acknowledge that the world has changed since 2015 in terms of the public's expectations regarding the sanction of sexual misconduct. However, Mr. Peacock urged the Hearing Tribunal not to be swayed solely by public outcry and reminded the Hearing Tribunal that its consideration of the public interest has to be more informed and based on the evidence in front of it. While the Hearing Tribunal needs to be sensitive to public perception, responding to public pressure is not the same thing as acting in the public interest.

With respect to the range of sentences in other similar cases, Mr. Peacock confirmed that the prior CPSA practice of long suspensions and monitoring in cases of sexual misconduct had been fairly described. Mr. Peacock noted that while things had changed, it was important for the Hearing Tribunal not to automatically act as if Bill 21 was in force. With respect to the Saskatchewan cases referred to by Mr. Boyer, Mr. Peacock pointed out that in Saskatchewan there are relatively short periods of time that physicians need to wait before they can seek reinstatement of their practice permits after cancellation. As such, cancellation in Saskatchewan may be viewed as having less overall impact on the physician in terms of long-term career prospects.

Mr. Peacock submitted that when all these factors are considered and balanced, the appropriate sanction is a suspension of 36 months with credit for Dr. Bhardwaj's time out of practice. This would amount to the longest suspension ever ordered by the CPSA. After the suspension is served, Dr. Bhardwaj would be seeking to return to a non-clinical role with no direct patient contact. There is no request to return to clinical practice as Dr. Bhardwaj's knows that he must

regain the College's trust. Dr. Bhardwaj will have a tough time finding employment in this capacity because he will need to inform potential employers of his limited scope of practice and they will be aware of the College decision and Dr. Bhardwaj's conduct. Dr. Bhardwaj proposes that the restriction to non-clinical practice be in place for at least one year after his return to practice and only be removed after an individualized assessment which clears him for return to clinical practice. Dr. Bhardwaj would be subject to a continuing care agreement for a period of 5 years which would include monitoring conditions such as a workplace monitor, drug and alcohol screening and continuing with his treatment and his 12-step program. The treatment providers would also provide various reports to the College, the frequency and nature of which could be determined by the Complaints Director.

In sum, Mr. Peacock submitted that this was not an easy case and that it may feel the easiest for the Hearing Tribunal to agree to revocation. But this is not the right thing to do. There is a way, through the significant suspension and monitoring, to give Dr. Bhardwaj a second chance and recognize that he has recovered significantly to not be a risk to the public while at the same time impress on the public that the conduct in question was egregious.

In terms of costs, Mr. Peacock submitted that the factors related to costs as discussed in *Jaswal* and *Maritz* should likewise be considered by the Hearing Tribunal here. Mr. Peacock submitted that given Dr. Bhardwaj's admissions of unprofessional conduct, significant parts of the investigation were unnecessary and the unprofessional conduct phase of the hearing was significantly streamlined. Accordingly, the costs should be significantly less than 60%.

VI. FINDINGS

The Hearing Tribunal has carefully considered the evidence, the submissions of the parties and the factors related to penalty as set out in *Jaswal* v. *Newfoundland Medical Board*.

1. *Jaswal* factors

(a) Factors pointing to the need for a very significant penalty

With respect to the nature and gravity of the proven allegations, there is no doubt that the conduct engaged in by Dr. Bhardwaj is egregious and falls at the most serious end on the spectrum of unprofessional conduct. The nature and gravity of the conduct at issue calls out for the most serious of penalties.

The Hearing Tribunal finds that the age and experience of Dr. Bhardwaj bear only some relevance in the consideration of appropriate penalties. While Dr. Bhardwaj was a relatively experienced physician and increasingly so at the time of the conduct at issue and therefore his knowledge and understanding of boundary violations involving sexual misconduct ought to have precluded him from engaging in such. The evidence is clear that Dr. Bhardwaj knew what he was doing and persisted in this egregious conduct over a sustained period.

With respect to the age and condition of the affected patients, the Hearing Tribunal accepts that there is evidence to support that both Patients A and B were particularly vulnerable in that they suffered from substance abuse disorders. The evidence is less clear with respect to any mental health conditions for Patient C and there are no medical records in evidence with respect to Patient D. However, by nature of the doctor-patient relationship and the power imbalance contained in that relationship, the Hearing Tribunal accepts that all patients are, to a certain degree, vulnerable to their physicians. The fact, however, that at least with respect to Patients A and B, Dr. Bhardwaj chose to focus his efforts on extremely vulnerable patients also supports the need for a very significant penalty.

As far as the number of times the offence was proven to have occurred, the evidence is that there were 30+ inappropriate interactions between Dr. Bhardwaj and Patients A, B, C or D, which occurred at intermittent points between 2006-2015. The number of offences and the sustained period of time over which they occurred also cries out for a very significant penalty.

The impact of Dr. Bhardwaj's conduct on the affected patients is of significant concern to the Hearing Tribunal. With respect to Patient A, the evidence is clear that she suffered and continues to suffer post -traumatic stress, depression and anxiety as a result of Dr. Bhardwaj's conduct as well as fear of retribution as a result of making the complaint. Her relationships with both her husband and her children suffered and continue to suffer as a result of her anxiety and depression. Patient B described to the investigator that she felt shame and guilt as a result of her interactions with Dr. Bhardwaj. She stated that she felt taken advantage of while at she was most vulnerable and she now feels an inability to trust physicians. While, as noted by Mr. Peacock, there was no evidence before the Hearing Tribunal that Dr. Bhardwaj's conduct exacerbated Patient B's alcohol addiction, there remains sufficient evidence for the Hearing Tribunal to conclude that Dr. Bhardwaj's actions nonetheless had a significant adverse impact on Patient B. There was no direct evidence before the Hearing Tribunal with respect to Patients C and D of the impact of Dr. Bhardwaj's actions on them. However, the Hearing Tribunal is prepared to accept, as a general principle, that being exploited by a physician for his own sexual gratification would result in at least some degree of negative impact on the affected patient. The harm caused by Dr. Bhardwaj to his patients also points to the need for a very serious penalty.

The public protection factors of specific and general deterrence as well the need to maintain the public's confidence in the integrity of the medical profession also support the need for a very serious penalty. It is difficult to see how the public's confidence in the medical profession can be maintained unless the most serious of penalties are issued for the most serious of conduct. Similarly, the principles of deterrence will not be served unless it is made unequivocally clear to both Dr. Bhardwaj and the members of the profession that the most serious breaches of trust will be sanctioned by the most serious of penalties.

The range of sanctions in other similar cases would likewise support very serious penalties in this case. Certainly, the Saskatchewan line of authorities would support cancellation as an appropriate penalty, although it is recognized that cancellation may not carry as significant weight where the opportunity for reinstatement may arise fairly soon after cancellation. The

Alberta authorities, to this point, have tended to support a lengthy suspension and comprehensive practice conditions over cancellation as being the appropriate penalty. However, both counsel were frank in acknowledging that the public's expectation with respect to the sanctioning of sexual misconduct has changed and greater penalties for this type of conduct are required. While Bill 21 does not apply to Dr. Bhardwaj's case, it nonetheless remains a reflection of changing societal attitudes towards sexual misconduct and the serious harms it causes.

(b) Mitigating factors

Balanced against the above factors are other *Jaswal* factors which may be considered mitigating in Dr. Bhardwaj's case.

One of the most significant mitigating factors in this case is Dr. Bhardwaj's acknowledgement of his conduct. Dr. Bhardwaj acknowledged his conduct as soon as the conduct came to light and then went on, of his own initiative, to provide the College with information about three additional patients who had been subject to his sexual misconduct. The filing of the complaint was clearly a very difficult time for Dr. Bhardwaj, but he demonstrated courage and honesty in immediately acknowledging his unprofessional conduct and being cooperative throughout the difficult road that followed. Dr. Bhardwaj also withdrew from practice voluntarily and chose to work on himself. Throughout the complaint proceedings and this hearing, Dr. Bhardwaj has demonstrated genuine remorse and regret for his conduct and its impact on the patients and their families, as well as the impact on his own family. While Dr. Bhardwaj did not characterize his understanding of his actions at the time as trading sex for drugs, the Hearing Tribunal accepts he now understands that, given the power imbalance in a physician-patient relationship, the patients could not truly consent to a sexual relationship with him.

The Hearing Tribunal has also considered the significant efforts that Dr. Bhardwaj has made at rehabilitation. Dr. Bhardwaj attended an intensive therapy program targeting sex addiction at Pine Grove and, since then, has consistently attended treatment with his psychologist, psychiatrist and been a regular participant and sponsor in his Sexaholics Anonymous program. The Hearing Tribunal accepts that all of Dr. Bhardwaj's efforts at rehabilitation are genuine and that he has made significant strides in this regard.

The Hearing Tribunal notes that Pine Grove, Dr. Joffe and Dr. Buhler all supported Dr. Bhardwaj returning to non-clinical practice. None of these experts were prepared, at this time, to support Dr. Bhardwaj in returning to clinical practice. Dr. Friend did not support a return to clinical or non-clinical practice at this juncture. Dr. Friend was concerned with a return to even non-clinical practice because Dr. Bhardwaj would have access to patient contact information and in light of his characterological features and behaviors of seeing patients in homes, hotel and cars for sexual purposes, patients could still be placed at risk.

The Hearing Tribunal finds that Dr. Bhardwaj did meet Patient B in a motel for a sexual encounter. However, the evidence is not clear as to whether Dr. Bhardwaj initiated contact to meet at the motel or whether Patient B initiated the contact. The Hearing Tribunal also finds that Dr.

Bhardwaj had an encounter with Patient A in a car. There is no evidence, however, before the Hearing Tribunal which would demonstrate that Dr. Bhardwaj made efforts to contact patients using information from patient records to initiate sexual encounters, outside of an already established clinical relationship. To this extent, and given the opinions of Pine Grove, Dr. Joffe and Dr. Buhler, the Hearing Tribunal accepts that the risk to the public is low if Dr. Bhardwaj were to return to non-clinical practice.

The Hearing Tribunal also accepts that Dr. Bhardwaj has suffered significant and other penalties as a result of his conduct. He has been out of practice since May 2016 with disability benefits as his source of income and is living with this father. He has suffered estrangement from his wife and children. He paid out a civil settlement to Patient A. These factors must be considered as part of the overall proportionality of the penalties ordered.

Dr. Bhardwaj submitted that he suffered from sex addiction, although the Hearing Tribunal notes that the evidence was consistent that sex addiction is not a DSM-V recognized disorder. While sex addiction was not offered as an excuse for his conduct, it was argued that this condition left Dr. Bhardwaj in a position where he lacked the ability to empathize with the harm he was causing to get his sexual gratification. The Hearing Tribunal accepts that Dr. Bhardwaj may have lacked the requisite empathy to recognize the harm he was causing, but the evidence was clear on all counts that Dr. Bhardwaj maintained the ability to recognize that what he was doing was wrong. Despite this recognition, Dr. Bhardwaj continued in a sustained pattern of inappropriate sexual interactions with 4 different patients, over 30 times in total, over a period of approximately 9 years.

2. Eligibility for reinstatement

One of the issues raised by counsel to be considered by the Hearing Tribunal was, in the event of cancellation of registration, whether Dr. Bhardwaj would be permitted to apply for reinstatement. It was suggested that the Hearing Tribunal needs to consider eligibility for reinstatement as it would impact on the severity of cancellation as a penalty.

If Bill 21 had applied to Dr. Bhardwaj's circumstances, which it does not, and Dr. Bhardwaj's registration was cancelled pursuant to the amendments under Bill 21, then Dr. Bhardwaj would not be permitted, at any point, to re-apply for registration as a physician.

At present, section 35 of the *Physicians, Surgeons and Osteopaths Profession Regulation*, Alta Reg. 350/2009 provides that physicians whose registrations have been cancelled as the result of disciplinary proceedings may not apply for reinstatement until 3 years have elapsed from the time of cancellation. The Regulation does not appear at this time to have been amended to account for the changes to the *Health Professions Act* as a result of Bill 21.

The concern raised by counsel is that when the Regulation is amended, it may be that it would be amended to apply the ban on reinstatement retroactively to all cases of cancellation arising from sexual abuse, as that term is now defined in the *Health Professions Act*. However, at

present, given that there have been no amendments to the Regulation, the reinstatement rule that applies to Dr. Bhardwaj is that he would remain eligible to apply for reinstatement three years after his registration was cancelled. Accordingly, an order for cancellation made at this time would not amount to a lifetime ban on membership with the College. If Dr. Bhardwaj continues on his present track to recovery and rehabilitation, then he may well consider whether he is in a position to seek reinstatement three years from now.

3. Decision on penalties

When all of the above factors are considered, the Hearing Tribunal has determined that, on balance, the appropriate penalty in this case is cancellation of Dr. Bhardwaj's registration with the College.

While the Hearing Tribunal has found that there is a likely a low risk to the public should Dr. Bhardwaj return to non-clinical practice, the Hearing Tribunal is nonetheless satisfied that this is a case where the public interest must be given greater weight than Dr. Bhardwaj's efforts at rehabilitation. When the nature and extreme gravity of the conduct, the prolonged period over which the conduct occurred, the significant number of times that the conduct occurred, the fact the conduct was directed at, in at least two cases, extremely vulnerable patients, and the significant impact of Dr. Bhardwaj's conduct on Patients A and B are considered, the Hearing Tribunal is satisfied that cancellation is warranted in this case. Ultimately, as suggested by Mr. Boyer, this is a case where the conduct is so egregious that Dr. Bhardwaj must lose the privilege attached to being a physician in Alberta.

The Hearing Tribunal has also considered the changing societal views on sexual misconduct. These views have been recognized by the Legislature in enacting Bill 21 and the Hearing Tribunal is prepared to put some weight on this factor in determining that cancellation is the appropriate penalty in this case. Having said that, the Hearing Tribunal wishes to be clear that it is not applying Bill 21 to the circumstances of this case. Had Dr. Bhardwaj's case been determined under Bill 21, the Hearing Tribunal would have had no choice but to cancel Dr. Bhardwaj's membership. The Hearing Tribunal is cognizant that it is not bound by this stricture in Dr. Bhardwaj's case but cancellation nonetheless remains one of the penalties available to the Hearing Tribunal in its discretion. Based on the facts and evidence in this case, the Hearing Tribunal has determined that cancellation of membership is the appropriate penalty.

In making this determination, the Hearing Tribunal wishes to state that it does not doubt the sincerity of Dr. Bhardwaj's efforts at rehabilitation and his genuine desire to rebuild the trust that was violated through his conduct. He is to be commended for his efforts and for his willingness to accept responsibility for his actions at an early point. However, the mitigating effect of Dr. Bhardwaj's efforts in this regard is not sufficient to override the seriousness of his conduct.

In terms of costs, the Hearing Tribunal has determined that Dr. Bhardwaj should pay 50% of the costs of the hearing and investigation. A full costs award is not appropriate given Dr. Bhardwaj's early admissions of unprofessional conduct. These admissions would have allowed the College

to shorten the investigation proceedings and did streamline the unprofessional conduct hearings resulting in reduced overall costs.

The Hearing Tribunal has also considered that when the order for costs is less than 100%, the other members of the profession bear the remaining costs of the investigation and prosecution of Dr. Bhardwaj's unprofessional conduct through their membership fees. However, the Hearing Tribunal has balanced this consideration against the fact that Dr. Bhardwaj has been out of practice since 2016, is relying on disability benefits for his income and was already required to pay a civil settlement as a result of his conduct. In these circumstances, the Hearing Tribunal is of the view that a costs order of 50% is appropriate.

VII. ORDERS / SANCTIONS

The Hearing Tribunal therefore makes the following orders with respect to Dr. Bhardwaj:

1. Dr. Bhardwaj's membership in the College of Physicians and Surgeons of Alberta is cancelled, effective the date of this decision; and

2. Dr. Bhardwaj shall pay 50% of the costs of the hearing and investigation payable on terms acceptable to the Complaints Director.

The members of the Hearing Tribunal wish to thank Mr. Boyer and Mr. Peacock for their comprehensive and helpful presentations in this challenging case.

Signed on behalf of the Hearing Tribunal
by the Chair

Dated: February 24,2020

Dr. Vonda Bobart