

COLLEGE OF PHYSICIANS & SURGEONS OF ALBERTA

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

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF DR. GINA ARPS

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

October 18, 2024

I. INTRODUCTION

1. The Hearing Tribunal held a hearing into the conduct of Dr. Gina Arps on December 5, 2023. The members of the Hearing Tribunal were:

Ms. Naz Mellick as Chair (and public member);
Dr. Don Yee;
Dr. Douglas Faulder;
Mr. Glen Buick (public member).

2. Appearances:

Mr. Craig Boyer, legal counsel for the Complaints Director;
Dr. Gina Arps;
Ms. Karen Pirie, legal counsel for Dr. Arps;

Ms. Katrina Haymond acted as independent legal counsel for the Hearing Tribunal.

II. PRELIMINARY MATTERS

3. Neither party objected to the composition of the Hearing Tribunal or its jurisdiction to proceed with the hearing. There were no matters of a preliminary nature.
4. Pursuant to section 78 of the *Health Professions Act* ("HPA"), the hearing was open to the public. There was no application to close the hearing.

III. ALLEGATIONS

5. The Notice of Hearing listed the following allegations:

1. During the period of 2021 and 2022, you did fail to comply with the practice restrictions imposed on your practice by agreement with the College of Physicians and Surgeons of Alberta signed by you on November 20, 2017, particulars of which include one or more of the following;

- a. You did perform an invasive procedure, pelvic examination, or intrauterine device insertion or removal on one or more of the following patients;¹

- i. [REDACTED].;
- ii. [REDACTED].;
- iii. [REDACTED].;
- iv. [REDACTED].; and

¹ Patient names have been replaced with initials in this decision.

- v. [REDACTED].
 - b. You did give injections to patients at your clinic, being a location that was not an Alberta Health Services facility, including one or more of the following patients:
 - i. [REDACTED].;
 - ii. [REDACTED].;
 - iii. [REDACTED].; and
 - iv. [REDACTED].
2. On or about October 26, 2022, you did fail to comply with minimally acceptable infection prevention and control measures and requirements, including the directions issued by Alberta Health Services by letter dated November 25, 2020, particulars of which include one or more of the following;
- a. Keeping expired drugs and medical products in your clinic,
 - b. Adding hand-written expiry dates to disinfectant containers to create the impression that the product had not expired,
 - c. Failing to maintain on site at your clinic current written infection prevention and control policies,
 - d. Storing needles with product yet to be administered in the clinic refrigerator,
 - e. Storing pre-sterilized devices in a manner that did not protect the devices from contamination,
 - f. Failing to have a temperature monitoring device on the refrigerator in which you were storing injectable medication such as Botox and Lidocaine,
 - g. Operating an autoclave in an area which was unsanitary,
 - h. Failing to maintain a record of sterilization monitoring onsite,
 - i. Processing soiled equipment from your veterinary practice at your clinic where you saw and treated human patients,
 - j. Using sharps used on human patients in your clinic for use on animals in your veterinary practice.
3. You did fail to be candid with the investigators who attended your clinic on October 26, 2022, particulars of which include one or more of the following:
- a. Stating that you did not provide Botox injections to patients at your clinic, and
 - b. Stating that there was no injectable medication like Botox in the clinic.

IV. EVIDENCE

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

Exhibit 1: Agreed Exhibit Book, Tabs 1-18

Tab 1: Notice of Hearing dated January 24, 2023

Tab 2: Section 56 memo by Dr. J. R. [REDACTED] dated April 27, 2021

Tab 3: Terms of Resolution dated November 17, 2022

Tab 4: Letter from Dr. H. [REDACTED] to Dr. C. [REDACTED] dated December 16, 2020 re section 51.1 referral

Tab 5: Report dated October 31, 2022 from Unannounced Inspection visit on October 29, 2022

Tab 6: Alberta Health billing information for patients listed in Notice of Hearing for period of January 2021 to December 2021

Tab 7: Alberta Health billing information for patients listed in Notice of Hearing for January 2022

Tab 8: Alberta Health billing information for patients listed in Notice of Hearing for period of February 2022 to September 2022

Tab 9: Alberta Health billing information for patients listed in Notice of Hearing for period of September 2022 to January 2023

Tab 10: Letter of Response from Dr. Arps dated June 24, 2021 – re College file 210240

Tab 11: Undertaking by Dr. Arps to Withdraw from Practice dated December 12, 2022

Tab 12: Memo by K. M. [REDACTED] dated January 17, 2023 summarizing interviews of patients [REDACTED].

Tab 13: Comprehensive Occupational Assessment Program report dated March 10, 2023

Tab 14: Letter from Dr. [REDACTED], family physician, dated July 21, 2023

Tab 15: Letter from Dr. [REDACTED], psychiatrist, dated August 22, 2023

Tab 16: CPSA Standards of Practice regarding Infection Prevention and Control

Tab 17: CPSA Guideline on Infection Prevention and Control for Medical Clinics

Tab 18: CPSA Standards for Reusable and Single Use Medical Device Requirements for Medical Clinics

Exhibit 2: Fully Signed Admission and Joint Submission Agreement – Dr. Arps, dated November 30, 2023

V. SUBMISSIONS

Submissions on Behalf of the Complaints Director

7. Mr. Boyer began by providing a brief overview of the allegations set out in the Notice of Hearing and the evidence in Exhibit 1. Mr. Boyer reviewed and summarized the materials and highlighted the significant sections of the Exhibits as they pertained to Dr. Arps' admissions.
8. After summarizing the numerous documents in Exhibit 1, Mr. Boyer submitted that there was sufficient evidence to prove the allegations in the Notice of Hearing. Further Dr. Arps has admitted that the allegations set out in the Notice of Hearing are true and that her conduct amounts to unprofessional conduct.

Submissions on behalf of Dr Arps

9. Ms. Pirie confirmed that Dr. Arps' acknowledged conduct met the threshold of unprofessional conduct.

Questions from the Hearing Tribunal

10. The Tribunal sought clarity from the parties with respect to Dr. Arps' conduct cited in allegation 3, and whether that conduct was unprofessional because it harms the integrity of the profession.
11. Mr. Boyer submitted that lying to an investigator harms the integrity of the profession because physicians have a duty to cooperate with investigations. Dr. Arps failed to cooperate with the investigation since she did not honestly answer whether she had injectables at her clinic. This dishonestly constitutes deception, and as such meets the statutory definition of unprofessional conduct. He cited *Artinian v. College of Physicians and Surgeons of Ontario* in support of his position.
12. Ms. Pirie confirmed Dr. Arps was prepared to accept that allegation 3 met the threshold of unprofessional conduct but stated that whether the Tribunal determines the finding on the basis of harming the integrity of the profession, or something else, was of less relevance from Dr Arps' perspective.
13. Ms. Pirie took issue with Mr. Boyer's use of the term "lying" in reference to allegation 3. The charge in allegation 3 indicates Dr. Arps "failed to be

candid". Ms. Pirie submitted that this suggests more nuanced conduct, not outright deception.

VI. DECISION OF THE HEARING TRIBUNAL

14. The Tribunal carefully reviewed and considered the evidence, Dr. Arps' admissions and the parties' submissions. The Tribunal found that the allegations in the Notice of Hearing were factually proven on a balance of probabilities. The Tribunal also found that Dr. Arps' conduct constitutes unprofessional conduct pursuant to section 1(1)(pp) of the HPA. The Tribunal's reasons are set out below.

VII. FINDINGS AND REASONS REGARDING THE ALLEGATIONS

15. Dr. Arps is a general practitioner who during the relevant period conducted procedures at the [REDACTED] in [REDACTED], Alberta (the [REDACTED]). The Tribunal notes that the allegations in the Notice of Hearing refer to Dr. Arps' practice at the [REDACTED] only.
16. The evidence in Exhibit 1 confirms that between December 2016 to October 30, 2017, the CPSA Infection Prevention and Control group and Alberta Health Services (AHS) received information and carried out inspections of Dr. Arps' [REDACTED] in [REDACTED] following two patients acquiring infections after Dr. Arps performed platelet-rich plasma (PRP) procedures (an invasive procedure). The CPSA treated the information as a complaint (CPSA complaint file 170692) and conducted an investigation. The investigation found evidence of serious and repeated deficiencies in Dr. Arps' practice and that Dr. Arps did not meet the expectations of the CPSA Standards of Practice and contravened the CPSA Physician Competence Assessment - Rules for Member Participation.
17. The CPSA and Dr. Arps entered into an interim agreement dated November 20, 2017. Pursuant to this agreement, a condition was placed on Dr. Arps' practice permit restricting her from performing certain medical procedures in all settings except AHS facilities: injections, intrauterine device (IUD) insertion and removal, PRP procedures, and any other procedures using devices that come into contact with blood, normally sterile tissue or body space, mucous membranes, or non-intact skin. Dr. Arps acknowledged that failing to fulfill the terms of this interim agreement with the CPSA may constitute unprofessional conduct. (Exhibit 1, Tab 5)
18. On November 17, 2020 Dr. Arps entered into a "Terms of Resolution" (the TOR) agreement with the CPSA to resolve complaint 170692 without a hearing. The TOR agreement required Dr. Arps to enter into an Individual Practice Review (IPR); cooperate with all reasonable recommendations and requests arising from the assessment and associated continuing competence process; provide consent for the CPSA to obtain prescribing and billing data; obtain the Primary Healthcare Panel Report and or other

relevant reports; and comply with any further direction from the Complaints Director to meet sufficient compliance.

19. The TOR also stated that upon intake to the IPR, Dr. Arps would be permitted to perform IUD insertion and removal and Pap tests at non-AHS facilities but stipulated that the CPSA could reinstate restrictions on permitted procedures under the appropriate circumstances.
20. On October 29, 2020 the CPSA and AHS carried out an unannounced inspection of Dr. Arps' [REDACTED] in response to two additional complaints about infection prevention and control issues in October of 2020. This inspection "...identified multiple infractions with respect to infection prevention and control procedures, including several previously identified issues of concern". Upon receiving the findings from the inspection, the CPSA's Assistant Registrar, Continuing Competence referred Dr. Arps to the Complaints Director.
21. The Complaints Director received the referral and on April 27, 2021 initiated this CPSA complaint file 210240. The complaint was investigated and subsequently referred to this hearing.
22. The evidence in Exhibit 1 at Tab 5 also shows that as a result of the October 29, 2020 inspection, AHS issued a letter to Dr. Arps dated November 25, 2020. The letter confirms that the inspection was attended by an AHS Public Health Inspector, a CPSA IPAC Consultant and Dr. Arps. As detailed in the letter, the inspection found insufficient administrative controls, issues related to personal protective equipment and maintenance of hand hygiene in addition to several general IPAC concerns. The inspection also found deficiencies related to medication storage, handling and safety and insufficient observance of COVID 19 IPAC measures. In the same letter, AHS outlined the appropriate corrective actions for Dr. Arps to implement corresponding to the noted deficiencies.
23. On October 26, 2022, the CPSA IPAC group and AHS (Environmental Public Health) carried out a further unannounced inspection at Dr. Arps' [REDACTED]. The CPSA investigators subsequently issued a report dated October 31, 2022 (Exhibit 1, Tab 5). The Investigation Report, supported by photographs and copies of patient charts taken at the time of the inspection, confirmed the following issues:
 - Critical infection prevention and control deficiencies noted during the inspection of the clinic on October 29th 2020 remained;
 - Dr. Arps' office area was disorganized and unhygienic;
 - Dr. Arps was not storing or handling injectable medication appropriately;
 - Patient records and the presence of vaginal insertion devices, an IV infusion bag, a Hologic specimen collection kit and rapid test throat

swabs among other items indicated Dr. Arps was performing invasive procedures in breach of practice restrictions;

- A number of issues related to sterilization, improper storage and retention of medication and sharps.
24. On December 22, 2022, Dr. Arps entered into a further written agreement with the CPSA to place a condition on her practice permit. The condition required that she immediately cease providing any professional services, other than notifying patients of her withdrawal from practice, completing prescription refills, reviewing laboratory investigations and facilitating the transfer of care of her patients. Dr. Arps also agreed to undergo a multi-disciplinary assessment which was completed by March 10, 2023 and determined that she was not fit to return to practice at that time. The assessment recommended reassessment in 6-12 months. Dr. Arps was subsequently assessed by her treating family physician and by a psychiatrist and determined to be fit to return to medical practice as of August, 2023.
 25. Allegation 1 alleged that during 2021 and 2022, Dr. Arps failed to comply with practice restrictions imposed on her pursuant to her agreement with the CPSA dated November 20, 2017. That agreement restricted Dr. Arps from providing invasive procedures, pelvic examinations or IUD insertion or removal, except in AHS facilities. The Tribunal reviewed and relied upon the AHS patient billing information at Tabs 6 through 9 of Exhibit 1, as well as Tab 12 of Exhibit 1, which is a summary of interviews of three of the patients referred to in Allegation 1b. This evidence confirms that Dr. Arps treated the particular patients listed in Allegation 1 and during 2021 and 2022 performed procedures in contravention of the November 20, 2017 agreement as alleged in allegation 1a and 1b. Allegation 1 was proven on a balance of probabilities.
 26. Allegation 2 alleged that on or about October 26, 2022, Dr. Arps failed to comply with minimally acceptable infection prevention and control measures and requirements, including directions issued by AHS in its letter dated November 25, 2020. The Tribunal finds that Dr. Arps was clearly in breach of IPAC measures. Dr. Arps' non-compliance as specifically outlined in the Investigation Report is consistent with the particulars set out in allegation 2. The Tribunal therefore finds Allegation 2 proven on a balance of probabilities.
 27. Allegation 3 alleged that Dr. Arps failed to be candid with the investigators who attended her clinic on October 26, 2022, particulars of which included stating that she did not provide Botox injections to patients at her clinic and stating that there was no injectable medication like Botox in the clinic.
 28. As set out in the Investigation Report, during the inspection Dr. Arps denied that she performed invasive procedures in the [REDACTED]. Dr. Arps also denied that she stored Botox or fillers on site. Dr. Arps claimed that

she used Botox to treat patients for chronic migraines. However, the investigators located a refrigerator in the clinic storage room containing several boxes of Botox and other injectable medications. Additionally, patient records for the relevant period and other evidence suggested Dr. Arps more likely than not injected Botox for cosmetic applications. The details included billing codes confirming injection fees and patients returning to Dr. Arps' [REDACTED] for touch ups to address wrinkles. The investigators also found types of syringes common for cosmetic injections of Botox. Additionally, the amounts of Botox as noted in patient charts were inappropriate for migraine treatments. The Investigation Report also stated that Botox used for chronic migraines would usually occur only after other treatments are tried. The investigators found "a universal lack of chart documentation showing any prior treatments and prophylactics offered to patients for migraines". These findings are generally inconsistent with the provision of Botox for the treatment of migraines.

29. Accordingly, the Tribunal finds that given the evidence of Dr. Arps' failure to employ generally accepted and appropriate protocols for the use of Botox in the treatment of chronic migraines, it is more likely than not that Dr. Arps stored injectable medications including Botox at the [REDACTED] and that she injected Botox for patients for cosmetic applications, and as such Allegation 3 is proven on a balance of probabilities.
30. To determine whether Dr. Arps' conduct was unprofessional conduct, the Tribunal considered the meaning of unprofessional conduct under the HPA.
31. Section 1(1)(pp)(ii) and (xii) provide as follows:
 - 1(1) In this Act,
 - (pp) "Unprofessional conduct" means one or more of the following, whether or not it is disgraceful or dishonorable:
 - (ii) Contravention of this Act, a code of ethics or standards of practice;
 - (xii) Conduct that harms the integrity of the profession.

Allegations 2 and 3

32. Allegation 2 deals with Dr. Arp's failure to comply with minimally acceptable infection prevention and control measures and requirements. This failure contravened the CPSA Standards of Practice Regarding Infection Prevention and Control, the CPSA Guideline on Infection Prevention and Control for Medical Clinics, and the CPSA Standards for Reusable and Single-use Medical Device Requirements for Medical Clinics.

33. The Tribunal found that Dr. Arps contravened the CPSA Standards of Practice Regarding Infection Prevention and Control, Standards 1 through 5 which provide as follows:

1. A regulated member practicing in a community medical clinic **must** practice in accordance with the Infection Prevention and Control Requirements for Medical Clinics.
2. In a situation where a location offers both community medical care and accredited services, a regulated member **must** ensure all requirements related to infection prevention and control are followed accordingly.
3. A regulated member who practices in a community medical clinic and uses reprocessed, reusable medical devices **must** ensure procedures for the cleaning, disinfecting and sterilizing of those devices comply with the Reusable and Single Use Medical Device Requirements for Medical Clinics.
4. A regulated member who practices in a community medical clinic and uses single-use medical devices **must** follow Part A of the Reusable and Single-use Medical Device Requirements for Medical Clinics.
5. A regulated member **must** ensure ongoing quality assurance through monitoring practices and changing practice accordingly.

34. Allegation 3 deals with Dr. Arps' failure to be candid with investigators during an IPAC inspection. The evidence outlined above shows Dr. Arps breached section 6(c) of the CPSA Standards of Practice Regarding Infection Prevention and Control, which provide as follows:

6. Regulated member **must** fully cooperate with any IPAC- related practice visit or inspection in accordance with the *Health Professions Act* including
 - (c) providing all information requested by the assessor, including answering the assessor's questions.

35. The wording of the CPSA Standards makes clear that the provisions contained therein are mandatory requirements. Dr. Arps therefore had an obligation to strictly comply, and her failure to comply was amply demonstrated by the evidence. Standards of Practice directed at infection prevention and control are clearly designed and intended to protect the public's interest in the safe and effective practice of medicine. Dr. Arps' repeated failures to abide by those standards was contrary to the public interest and constitutes unprofessional conduct.

Allegations 1 and 3

36. Allegations 1 and 3 deal with Dr. Arps' failure to comply with practice restrictions and her failure to be candid with investigators.
37. The evidence confirms the CPSA had concerns about Dr. Arps' compliance with CPSA IPAC measures dating back to 2016. Inspections of Dr. Arps' practice found serious and persistent deficiencies. The CPSA's concerns were sufficiently serious that Continuing Competence and the IPAC program made two referrals about Dr. Arps to Professional Conduct. The CPSA provided recommendations for Dr. Arps' remediation, but as noted in Dr. H [REDACTED]'s December 16, 2020 referral letter (Exhibit 1, Tab 4), "The typical approach of on-site inspection with education followed by written reports and re-evaluation have not been effective when working with Dr. Arps. This despite the considerable amount of feedback and guidance provided to Dr Arps by CPSA's IPAC program and Alberta Health Services Environmental Public Health".
38. In the same letter, Dr. H [REDACTED] further goes on to state "...Dr. Arps' recent request to Professional Conduct to have her practice conditions reevaluated by Continuing Competence and revised so she may complete invasive procedures when she has been unable to adhere to basic IPAC standards in her clinic, demonstrate[s] poor insight and judgment".
39. Having regard to all the evidence and section 3(1)(a) of the HPA, the Tribunal finds that it is a serious matter for a physician to undertake an agreement with the CPSA, and then repeatedly not honour it. In the Tribunal's view, physicians who ignore such agreements undermine the integrity of the profession.
40. Ms. Pirie stated in her submissions that a finding of unprofessional conduct "on the basis of harming the integrity of the profession was really of less relevance from Dr. Arps' perspective". (Transcript page 13, lines 7-9). She later stated, "that protection on behalf of the profession is somewhat at the expense of Dr. Arps". (Transcript page 20, lines 10-11).
41. The Tribunal finds these statements overlook the fact that a physician who is not candid during the course of an inspection and who disregards their agreed-upon practice restrictions actively thwarts the CPSA's ability to properly regulate its members. Without this ability, public confidence in the CPSA and its members is undermined. For this reason, the Tribunal finds that Dr. Arps' unprofessional conduct goes directly to the heart of the integrity of the profession.
42. The ability of the CPSA to regulate its members and protect the public requires that when a physician, whether intentionally or not, fails to meet mandatory obligations under Standards of Practice, the Code of Ethics, or the HPA, the CPSA can direct appropriate remedial actions and expect the

physician to comply. A regulated member of the CPSA agrees to be bound by these rules.

- 43. All physicians play a part in upholding the integrity of the profession, a fundamental component of professional conduct. The public would not trust a profession to self-regulate if its members conduct themselves without transparency and a sense of accountability, and without respect for the CPSA regulatory role and processes. The evidence clearly shows Dr. Arps would not or could not meet this standard of conduct to which she had agreed to be bound. She did not respect the CPSA’s directives and hence its regulatory role. Thus, her conduct harmed the integrity of the profession.
- 44. For these reasons, Dr. Arps’ admitted conduct constitutes unprofessional conduct. The Tribunal found the conduct to be very serious for the reasons discussed above.

VIII. SUBMISSIONS ON SANCTIONS

Submissions on behalf of the Complaints Director

- 45. Mr. Boyer referred to the Joint Submission Agreement which provided that Dr. Arps and the Complaints Director agree to make the following joint submission on penalty and ask the Hearing Tribunal to Order that:
 - a) Dr. Arps’ practice permit shall be suspended for a period of 9 months as sanction for the findings of unprofessional conduct, of which 6 months shall be served and 3 months shall be held in abeyance subject to Dr. Arps fulfilling the other terms of the order made by the Hearing Tribunal, and
 - b) Dr. Arps shall receive credit for the time she has been out of practice since December 2022 against the period of active suspension to be served in accordance with paragraph (a) above;
 - c) [REDACTED]
 - d) [REDACTED] and
 - e) Dr. Arps shall be responsible for one-half of the costs of the investigation and the hearing before the Hearing Tribunal to a

maximum of \$15,000 payable on terms acceptable to the Complaints Director and to commence after a return to practice occurs.

46. Mr. Boyer then referred to a Brief of Law on Joint Submissions and to *Jaswal v. Medical Board (Newfoundland)*(1996), 431 APR 181 (Nfld SCTD). *Jaswal* sets out factors to consider for sanction, which should also address general and specific deterrence, as well as rehabilitation.
47. Mr. Boyer submitted that the sanctions in the Joint Submission on Sanction in this matter balance the two principles of deterrence and rehabilitation as articulated in *Jaswal* and are acceptable given Dr. Arps' admissions of unprofessional conduct.
48. Mr. Boyer reviewed previous CPSA decisions and submitted that these decisions provide some guidance for the Hearing Tribunal. Mr. Boyer submitted that the *Dr. Kriel* case demonstrates that a physician who acts in breach of practice restrictions is guilty of unprofessional conduct and such conduct attracts a suspension.
49. In the *Dr. McAlpine* decision, the physician used his patient's triplicate prescriptions to access and use those drugs. Dr. McAlpine underwent a COAP assessment which identified a health issue. The Tribunal credited Dr. Alpine with time while he was out of practice to deal with his health issues. These health issues were relevant to the physician's unprofessional conduct.
50. In the *Dr. Wachtler* matter, the physician violated prescribing restrictions, which amounted to unprofessional conduct. The Tribunal ordered a suspension, retraining, ongoing monitoring and full costs. In Dr. Idahosa's case, the physician was forging prescriptions in the names of other physicians to obtain drugs for his own use. The Tribunal ordered a suspension and full costs.
51. Mr. Boyer confirmed that Dr. Arps has been out of practice since December 2022 pursuant to her December 22, 2022 agreement. Given the passage of time and the length of time she has been out of practice, the CPSA considers Dr. Arps to have fulfilled the term of suspension proposed in the Joint Sanction.
52. Mr. Boyer submitted that the pathway to Dr. Arps' return to the profession should involve a multidisciplinary assessment. The Assistant Registrar in charge of the Continuing Competence Program identified Dr. [REDACTED] to provide an independent assessment of Dr. Arps' fitness to return to practice.

Submissions on behalf of Dr. Arps

53. Ms. Pirie advised that it had been approximately one year since Dr. Arps has practiced at her clinic in which she is the sole practitioner in a rural area with significant patient needs and little physician support. These were factors that played into the breaches enumerated in the Notice of Hearing.
54. Ms. Pirie submitted that the cases referred to by the CPSA were not generally applicable to Dr. Arps' matter because the facts in the cases involved diversion of medication, which is a considerably more serious issue than infection prevention and control issues.
55. Ms. Pirie advised that Dr. Arps has taken ownership of the issues that were raised in the allegations and has agreed to the proposed period of suspension. Further, Dr. Arps' absence from practice has not only penalized her but also her patients, who love her and have been deprived of her care for a long time as it is. Dr. Arps' patients' positive disposition towards her is confirmed in the patient interviews in evidence before the Tribunal at Exhibit 1, Tab 12.
56. [REDACTED]
57. Ms. Pirie submitted that on balance, the suspension Dr. Arps will serve and the percentage of costs she will pay are high but within the appropriate range. They are more than adequate to maintain the integrity of the medical profession. Ms. Pirie added that the protection of the profession is somewhat at the expense of Dr. Arps, but she has accepted the unprofessional nature of her conduct as it pertains to the allegations, and the totality of the penalty as proposed.

Questions from the Hearing Tribunal

58. The Tribunal asked how the CPSA plans to address the infection prevention and control issues that were raised in the allegations once Dr. Arps returns to practice.
59. Mr. Boyer stated that the pending assessment by Dr. [REDACTED] may impose conditions on Dr. Arps, and regardless, the infection prevention and control program continues to operate. Further, given that Dr. Arps has already attracted notice respecting this issue, the Continuing Competence program and the CPSA's Infection Prevention and Control program would continue to monitor Dr. Arps following any return to practice.

FINDINGS AND REASONS REGARDING SANCTION

60. The Tribunal carefully considered the parties' submissions and reviewed all the evidence and decisions in the Complaints Director's Brief of Law. The Tribunal is aware that significant deference is owed to joint submissions on sanction and ought not to reject a joint submission unless the proposed sanction is contrary to the public interest or would bring the administration of justice into disrepute.
61. The Tribunal found that the proposed sanction was appropriate regarding the relevant *Jaswal* factors and serves as an appropriate deterrent to Dr. Arps, to the profession at large, it protects the public and provides an appropriate pathway for Dr. Arps to return to practice.
62. In determining the appropriate orders, the Tribunal considered the factors set out by the Court in *Jaswal v. Newfoundland*. The Tribunal's consideration of the applicable *Jaswal* factors is set out below.

Nature and Gravity of the Proven Allegations

63. As discussed above, Dr. Arps failed to comply with CPSA's Standards of Practice related to IPAC.
64. Ms. Pirie argued that decisions involving drug diversion were more serious than those involving infection prevention and control issues. The Tribunal finds that in the circumstances, Dr. Arps' unprofessional conduct became serious because of the number of issues, the follow up inspections and investigations, and Dr. Arps' continued failure to adequately address her deficiencies in order to meet the minimum IPAC requirements. According to the evidence, these breaches were ongoing from 2016 to October 2022 despite several attempts by the CPSA to provide Dr. Arps with guidance, education and remediation. Moreover, the Tribunal found that Dr. Arps' violations of her practice restrictions and her failure to be candid with inspectors demonstrated conduct that undermined the integrity of the profession. For these reasons Dr. Arps' unprofessional conduct is at the higher end of seriousness, and thus warrants the proposed sanction specifically as it pertains to costs and a suspension period.

Previous Character and Prior Complaints or Convictions

65. As set out in *Jaswal*, evidence of prior complaints and findings of unprofessional conduct is one factor to consider when assessing the appropriate sanction.
66. Dr. Arps had drawn notice and review from the CPSA, as well as AHS, since 2016. Dr. Arps was unable to meet the Terms of Resolution for prior complaints regarding several CPSA IPAC measures. In this situation, the prior complaints and the attempts at resolution through education,

inspections and guidance, as well as assessments, demonstrate that Dr. Arps ought to have been well aware of concerns with her CPSA IPAC contraventions and the need to adhere to her practice restrictions which were in place since 2017. We note, according to the evidence, (Exhibit 1, Tab 4) Dr. Arps' history of complaints was already lengthy by December 2020, when Dr. H [REDACTED] referred Dr. Arps to the Complaints Director. As such, the prior complaints and the CPSA's attempts to address them were an aggravating factor that is appropriately addressed in the proposed sanction.

Number of Times the Offence Occurred

67. The Tribunal found that in 2021 and 2022 Dr. Arps breached her practice conditions by performing invasive procedures on nine patients. Dr. Arps was also guilty of failing to comply with the minimal IPAC measures and requirements respecting ten particulars. Finally, the Tribunal determined Dr. Arps failed to be candid with investigators during the October 26, 2022 inspection. All these allegations were proven and rose to the level of unprofessional conduct.

Role of the Physician in Acknowledging What Occurred

68. Dr. Arps admitted to the allegations and has taken responsibility for her actions, which permitted the matter to proceed by way of a consent hearing. Dr Arps' admissions prevented a potentially lengthy contested hearing process given the number of allegations involved. This is a mitigating factor.

Whether the Physician has Suffered Other Serious Financial Consequences

69. The Tribunal considered Dr. Arps' submissions that she has been out of practice for over a year and has undergone costly multidisciplinary assessments. We accept that Dr. Arps suffered adverse financial consequences as a result; therefore, it is appropriate for Dr. Arps to commence paying costs only once she resumes her practice. Additionally, a fine is unnecessary in this matter because Dr. Arps will have to pay the costs for undergoing the independent medical examination.

The Presence or Absence of any Mitigating Circumstances

70. [REDACTED]

[REDACTED]

71. [REDACTED]

Need to Promote Deterrence and Need to Maintain Public Confidence in the Profession

72. The Hearing Tribunal was satisfied that the significant suspension and the independent medical examination will adequately deter Dr. Arps and other members of the medical profession from similar unprofessional conduct and encourage them to obtain assistance before such unprofessional conduct occurs in the future. The jointly submitted sanctions will maintain public confidence in the medical profession.

Degree to Which the Conduct was Outside the Range of Permitted Conduct

73. There is no doubt that Dr. Arps' conduct fell outside the range of permitted conduct and is not acceptable. In this case the Complaints Director and Dr. Arps have considered Dr. Arps' health as a factor in her conduct and treated this as a mitigating factor for sanctions. This is appropriate.

Range of Sentence in Similar Cases

74. The Tribunal reviewed the previous decisions described above which had some similarities to that of Dr. Arps. While the Tribunal considered the unique facts of the matter before it to assess the jointly submitted sanctions, we found that prior decisions provided some general guidance regarding the penalty.
75. Overall, based on our careful review of the submitted cases, the Tribunal finds that the jointly proposed sanctions are acceptable. They are not contrary to the public interest or undermine the administration of justice. They are reasonable and proportionate to the nature of the proven unprofessional conduct. Given the circumstances, remediation is an important objective which is served by Dr. Arps undertaking an independent assessment.
76. On the issue of costs, the parties have agreed that Dr. Arps should be responsible for one-half of the costs up to a maximum of \$15,000. This is not out of line with the previous cases provided and is subject to significant deference. We see no reason to interfere.

IX. ORDERS

77. Based on the above, the Tribunal hereby makes the following orders pursuant to section 82 of the HPA:

a. Dr Arps' practice permit shall be suspended for period of 9 months as sanction for the findings of unprofessional conduct, of which six months shall be served and three months shall be held in abeyance subject to Dr Arps fulfilling the other terms of the order made by the Hearing Tribunal;

b. Dr Arps shall receive credit for the time she has been out of practice since December 2022 against the period of active suspension to be served in accordance with paragraph (a) above;

c. [Redacted]

d. [Redacted] and

e. Dr. Arps shall be responsible for one-half of the costs of the investigation and the hearing before the Hearing Tribunal to a maximum of \$15,000 payable on the terms acceptable to the Complaints Director and to commence after a return to practice occurs.

Signed on behalf of the Hearing Tribunal:



Naz Mellick

Dated this 18th day of October, 2024.