

COLLEGE OF PHYSICIANS & SURGEONS OF ALBERTA

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

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF DR. SVETA SILVERMAN

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

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Dr. Sveta Silverman on May 5, 2021. The members of the Hearing Tribunal were:

- Dr. Vonda Bobart, Chair
- Dr. Robin Cox (Physician Member)
- Ms. Patricia Matusko (Public Member)
- Ms. Juane Priest (Public Member)

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

In attendance at the hearing was Mr. Craig Boyer, legal counsel for the Complaints Director of the College of Physicians & Surgeons of Alberta. Also present was Dr. Sveta Silverman and Ms. Katherine Fisher, legal counsel for Dr. Sveta Silverman.

II. PRELIMINARY MATTERS

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. The hearing was open to the public, and no applications were made to close any portion of the hearing.

III. CHARGES

The allegations to be considered by the Hearing Tribunal (the "Tribunal") were set out in the Notice of Hearing, which were as follows:

1. during the period of July to November 2017 you did inappropriately access NetCare health records regarding [REDACTED];
2. during the period of July 2016 to November 2017 you gave advice to and referrals for [REDACTED] regarding complementary and alternative medical treatment of her cancer when you were not approved by the Registrar to provide Complementary and Alternative Medical therapy as required under the College's Standard of Practice regarding Complementary and Alternative Medicine;
3. during the period of July 2017 to November 2017, you gave advice to [REDACTED] that was disparaging towards the treatment and advice she was receiving from the Cross Cancer Institute, and in particular her oncologist, Dr. [REDACTED], contrary to the provisions of the Canadian Medical Association Code of Ethics.

Dr. Silverman admitted that the allegations were true and acknowledged that the conduct amounted to unprofessional conduct.

IV. EVIDENCE

The following Exhibits were entered into evidence by agreement of the Parties:

EXHIBIT	DESCRIPTION
Exhibit 1:	Agreed Exhibit Book Containing Tabs 1 to 20
Tab 1:	Notice of Hearing dated March 29, 2021
Tab 2:	Letter of Complaint from [REDACTED] dated June 4, 2019 with enclosures
Tab 3:	Screenshots of texts between Dr. Silverman and [REDACTED]
Tab 4:	Letter from Alberta Health Services dated July 4, 2019 with enclosed Cross Cancer Institute records for [REDACTED]
Tab 5:	Letter from Dr. [REDACTED] dated July 9, 2019 with records for [REDACTED]
Tab 6:	Letter of response from Dr. Silverman dated August 1, 2019
Tab 7:	Letter from K. Fisher dated September 25, 2019 with enclosed excerpt of text messages
Tab 8:	Letter from Alberta Health dated November 25, 2019 with NetCare Audit log showing access by Dr. Silverman to [REDACTED] health records
Tab 9:	Memorandum by Dr. Giddings dated June 5, 2020 regarding interview of [REDACTED]
Tab 10:	Memorandum by Dr. Giddings dated June 8, 2020 regarding interview of [REDACTED] and [REDACTED]
Tab 11:	Memorandum by Dr. Giddings dated June 23, 2020 regarding interview of Dr. [REDACTED]
Tab 12:	Letter of complaint from Dr. [REDACTED] dated June 24, 2020
Tab 13:	Letter of response from Dr. Silverman dated June 29, 2020
Tab 14:	Memorandum by Dr. Giddings dated July 16, 2020 regarding interview of [REDACTED]
Tab 15:	Letter of response from Dr. Silverman dated August 11, 2020
Tab 16:	Expert Opinion dated August 14, 2020 from Dr. [REDACTED]

EXHIBIT	DESCRIPTION
	Tab 17: Expert Opinion dated August 29, 2020 from Dr. [REDACTED]
	Tab 18: Alberta Health billing records for all visits by [REDACTED] in 2016 and 2017
	Tab 19: Canadian Medical Association Code of Ethics and Professionalism
	Tab 20: CPSA Standard of Practice – Complementary and Alternative Medicine
Exhibit 2:	Admission and Joint Submission Agreement

The hearing proceeded based on the Exhibit Book and Admission and Joint Submission Agreement, and no witnesses were called to testify.

V. SUBMISSIONS

Mr. Boyer made a brief opening statement, in which he summarized the contents of the Exhibit Book and the Admission and Joint Submission Agreement. Mr. Boyer explained that Dr. Silverman admitted the allegations in the Notice of Hearing, and acknowledged that her conduct constituted unprofessional conduct.

Ms. Fisher advised that Dr. Silverman confirms that the allegations are true and that they constitute unprofessional conduct. The evidence has been entered by way of an Agreed Exhibit Book, and that evidence is not contested. Dr. Silverman has issued apologies related to her conduct, and she reiterates those apologies at this time. Ms. Fisher advised that she will have further submissions related to sanction.

VI. FINDINGS

After hearing from the parties and reviewing the evidence compiled in the Exhibit Book and the Admission and Joint Submission Agreement, the Tribunal determined that there was sufficient evidence to support Dr. Silverman's admission of the allegations, and determined that the conduct constitutes "unprofessional conduct" in accordance with section 1(1)(pp) of the *Health Professions Act* ("HPA").

Dr. Silverman's conduct is unprofessional conduct as described in the following sections of the definition of unprofessional conduct in section 1(1)(pp) of the HPA:

- contravention of the HPA, the code of ethics, or standards of practice [section 1(1)(pp)(ii)];

- contravention of another enactment that applies to the medical profession [section 1(1)(pp)(iii)];
- conduct that harms the integrity of the medical profession [section 1(1)(pp)(xii)].

Dr. Silverman inappropriately accessed Netcare records regarding [REDACTED]. Correspondence from Alberta Health (Exhibit 1, Tab 8) shows that the Netcare records were accessed numerous times from July 2017 to November 2017. During this time Dr. Silverman was not involved in providing care for [REDACTED].

Dr. Silverman's conduct contravened the Canadian Medical Association Code of Ethics and Professionalism which requires physicians to recognize and manage privacy requirements within practice environments (paragraph 20). Dr. Silverman misused her access to electronic health records, Netcare, to look up information about [REDACTED] when she was not involved in providing care. Further, she provided information to [REDACTED] following access to Netcare records based on information she viewed during access.

As such, Dr. Silverman's actions constitute unprofessional conduct as defined in section 1(1)(pp)(ii) of the HPA because they contravene a code of ethics.

Dr. Silverman's conduct also contravenes legislation that applies to the medical profession, specifically the *Health Information Act*. The *Health Information Act* requires that electronic health records be accessed for specific and limited reasons. Dr. Silverman was not providing health services to [REDACTED], and she was not authorized to have access to [REDACTED]'s records in Netcare. In accessing these health records, Dr. Silverman contravened the *Health Information Act*.

As such, Dr. Silverman's actions constitute unprofessional conduct as defined in section 1(1)(pp)(iii) because they contravene an enactment that applies to the medical profession.

Dr. Silverman's actions constitute unprofessional conduct as defined in section 1(1)(pp)(xii) of the HPA because they harm the integrity of the profession. Because of the ease of access to electronic health records, there is a greater onus on members of the College to access information only when appropriate and for professional use. Physicians are entrusted by society and patients with access to health information in Netcare, which is important to provide optimal patient care, but with that access comes significant legal and ethical responsibilities around the access and use of that information. Contravention of this trust and responsibility brings disrepute to the profession and harms the ability of the profession to self-regulate.

As such, Dr. Silverman's actions constitute unprofessional conduct as defined in section 1(1)(pp)(xii) because they harm the integrity of the profession.

Dr. Silverman gave advice to and referrals for ██████████ regarding complementary and alternative medical treatment during July 2016 to November 2017. The College's Standard of Practice – Complementary and Alternative Medicine in effect at that time states that a regulated member must be approved by the Registrar to provide Complementary and Alternative Medicine. Dr. Silverman was not approved by the Registrar. As such, Dr. Silverman's actions constitute unprofessional conduct as defined in section 1(1)(pp)(ii) of the HPA because they contravene the College's Standard of Practice – Complementary and Alternative Medicine.

Dr. Silverman gave advice to ██████████ that was disparaging towards the treatment and advice she was receiving from the Cross Cancer Institute, and in particular her oncologist, Dr. ██████████. Dr. ██████████ was interviewed as part of the investigation into the complaint, and submitted her own complaint (Exhibit 1, Tab 12). Dr. ██████████ stated that she had no knowledge of the personal relationship between Dr. Silverman and her patient. ██████████ was unduly influenced towards non-standard and often extreme alternative therapies by Dr. Silverman, and Dr. ██████████ was concerned that there were several remarks which served to undermine her competence and treatment recommendations. These comments disparaged Dr. ██████████ to ██████████ and undermined her patient's trust. Dr. ██████████ described ██████████ as a bright young lady who was desperately fighting for the best treatment possible.

The Tribunal was provided with numerous text messages between ██████████ and Dr. Silverman. The tone and content were negative and highly inappropriate. A text message exchange on July 25, 2017 serves as an example. ██████████ was concerned about the way that the doctors looked at her. In response, Dr. Silverman stated: "Who cares how they look at you; that's how they break people spirit, create doubts and negativity. Get results and "get out of there"!! DO NOT FALL FOR THIS, please." As another example, Dr. Silverman expressed an opinion in a text dated August 8, 2017 that maybe Dr. ██████████ will "learn to be human and stop playing god". There are other examples where Dr. Silverman was critical of Dr. ██████████'s recommendations and treatment, and questioned her motives.

Dr. Silverman's conduct contravened the Canadian Medical Association Code of Ethics and Professionalism when she failed to treat her colleague with dignity and as a person worthy of respect. As such, Dr. Silverman's actions constitute unprofessional conduct as defined in section 1(1)(pp)(ii) of the HPA because they contravene a code of ethics.

When Dr. Silverman disparaged her colleague and conventional treatments, she undermined a vulnerable patient's confidence in her treatment. Dr. Silverman's actions constitute unprofessional conduct as defined in section 1(1)(pp)(xii) because they harm the integrity of the profession.

VII. ORDERS / SANCTIONS

The Tribunal heard submissions from both Mr. Boyer and Ms. Fisher regarding sanctions for Dr. Silverman. An Admission and Joint Submission Agreement was entered as Exhibit #2.

The parties jointly submitted that the following Orders should be imposed:

- a. Dr. Silverman's practice permit be suspended for a period of three months;
- b. If Dr. Silverman provides a written apology to [REDACTED]'s family and to Dr. [REDACTED], each in a form that is acceptable to the College, the period of active suspension to be served by Dr. Silverman shall be reduced to one month, with the balance held in abeyance for up to five years (it is acknowledged that the Complaints Director has provided her approval to the proposed form of apology letters);
- c. If, within five years from the date of the Hearing Tribunal's written decision, there is a further credible complaint to the College against Dr. Silverman regarding issues similar to the ones identified in this matter, the College, acting reasonably, may then determine that Dr. Silverman must serve the balance of the suspension and suspend Dr. Silverman's practice permit;
- d. Dr. Silverman shall, at her own expense, participate in and unconditionally pass the CPEP PROBE course, which course shall be undertaken from May 20-22, 2021. Confirmation of Dr. Silverman's completion of and evaluation results from the CPEP PROBE course shall be provided to the College as soon as such results are available from CPEP.; and
- e. Dr. Silverman shall be responsible for 75 percent of the costs of the investigation and the hearing before the Hearing Tribunal payable on terms acceptable to the College.

Mr. Boyer submitted that the law on joint submissions is that the Tribunal should give deference to a joint submission on sanction and only reject it if it is manifestly unjust and inappropriate in the circumstances. The proposed sanction addresses the principles of sanctioning, being both rehabilitation and deterrence specific to the member and to the profession at large.

The sanction addresses rehabilitation in a couple of ways. Rehabilitation is done by rebuilding trust and relationships. The Hearing Tribunal does not have the legislated authority to order an apology. However, Dr. Silverman has demonstrated a willingness to give apologies and this is part of rehabilitation. The other element of rehabilitation is the PROBE course, which is an exercise in improving professional knowledge on ethics and professionalism. With regards to deterrence, both specific and general, the

sanction that is being proposed is a period of suspension with a portion held in abeyance if apologies are given.

There should also be consistency with similar sanctions in other matters. Mr. Boyer submitted that there was not an identical set of facts in another discipline case. However, there are common themes in four cases from Ontario.

1. *Attuah (Re)*, [2013] O.C.P.S.D. No. 23;
2. *Bhatt (Re)*, [2016] O.C.P.S.D. No. 10;
3. *Kakar (Re)*, [2017] O.C.P.S.D. No. 5; and
4. *College of Nurses of Ontario v Syed*, 2006 CanLII 81751 (ON CNO).

The *Attuah* case concerned practising outside the scope of practice, and breaching an undertaking to restrict the course of practice. There was no harm to a specific patient. There was a three-month suspension imposed along with costs.

The *Bhatt* case is one where the physician interfered with patient care, and was rude. There was a history of complaints. There was a reprimand, a four-month suspension, and conditions on licence. In this situation, Dr. Silverman did not have a complaint history or discipline order, and that is a mitigating factor in her favour.

The *Kakar* case concerns prescribing outside of the area permitted, as well as poor record keeping. There was a six-month suspension, conditions on practice, and costs.

The *Syed* case concerns inadequate care and disparaging comments made about a colleague. There was a four-month suspension, a professionalism course, and work with a practice consultant.

Mr. Boyer submitted that the joint submission has taken elements from all of these cases, and there is a combination of rehabilitation, specific deterrence, and general deterrence. There is the ability to lessen the length of the suspension. There is a portion of the suspension that is being held in abeyance for a period of time, but there has to be continued good behaviour and conduct. If the conduct that is the subject of this hearing is repeated, there may be an imposition of the remaining portion of the suspension.

A suspension is a serious sanction. The requirement to pay costs and to take a professionalism course at her own expense creates additional expenses which have a direct impact on Dr. Silverman. This decision will be part of the public record for many years, and this is also an aspect of deterrence. There is a clear message to the public that this type of conduct is not acceptable. Practitioners who want to advocate for alternative and complementary medicine can do so, but there are proper processes and a balance to apply.

Mr. Boyer requested that the Hearing Tribunal take the joint submission into considerable consideration, and that deference be given to the work put into it and the alignment of the proposed sanction with decisions dealing with a similar type of conduct. The PROBE course is an interactive course which addresses ethics and professionalism. If Dr. Silverman does not unconditionally pass the course, this matter will be brought back before the Tribunal to consider the appropriate sanction.

Ms. Fisher submitted that the penalty proposed in the joint submission is reasonable and in the public interest. It has been arrived at through discussion, negotiation and consideration of many factors. Joint submissions should not be rejected unless they are unfit or unreasonable. Deference should be given to joint submissions provided that the sanction is within an acceptable range. The circumstances that arise here have been described in an expert report as a "tangled boundaries issue". Dr. Silverman's conduct arises in the context of what is considered to be a friendship with [REDACTED], as opposed to more of a traditional physician-patient relationship.

The allegations and the admissions relate to serious conduct. Dr. Silverman has admitted to inappropriately accessing health records, providing advice that would be beyond the scope of her practice, and making comments that may be seen to be disparaging in nature. Ms. Fisher submitted that they do not fall on the much higher end of the spectrum that might be reserved for conduct that involves willful neglect or disregard for the well-being of a patient.

Dr. Silverman is a senior and experienced physician and has practiced in Canada as a pathologist since 2005. She has previously practiced in the former Soviet Union as a pediatric surgeon. She has no prior complaints and no prior involvement in the College's disciplinary process. There is no evidence before the Tribunal that Dr. Silverman has engaged in any other conduct outside of these particular circumstances. There will be financial consequences to Dr. Silverman as a result of the PROBE course, and costs associated with the hearing process.

Ms. Fisher submitted that the four recent Ontario decisions are not entirely analogous, but they do engage conduct related to the scope or nature of practice and comments regarding other health care professionals. The cumulative effect of the penalty that has been proposed is significant.

The Tribunal considered Dr. Silverman's conduct in this matter, the evidence in the Exhibit Book, the Admission and Joint Submission Agreement, and submissions from both parties on sanctions. The Tribunal also considered the seriousness of the conduct, the context in which it occurred, and other factors referenced in *Jaswal v Newfoundland Medical Board* (1996), 42 Admin LR(2d) 233.

The Tribunal carefully considered the joint submission on a proposed penalty and whether it was sufficient to protect members of the public. The allegations deal with serious conduct involving a vulnerable patient who was suffering from cancer. The conduct occurred numerous times over a lengthy period of time, and the negative impact of the conduct on the patient and her family was very significant. Dr. Silverman is a senior and experienced physician, and she should have been very aware of the requirements that were placed on her by the HPA, the *Health Information Act*, CPSA standards of practice, and the Canadian Medical Association Code of Ethics and Professionalism. Dr. Silverman met ██████████ in her role as a pathologist in June 2016. The ongoing relationship between Dr. Silverman and ██████████ was described as a “tangled” one between friendship and physician-patient. Regardless of how the relationship is categorized, the evidence shows that Dr. Silverman used her position of trust as a physician to exert a negative influence over ██████████. This was compounded by the fact that she misused her access to Netcare to obtain health information about ██████████.

Case law establishes that a disciplinary tribunal should accept a joint submission on penalty unless it can be shown that the joint submission is unfit, unreasonable or contrary to the public interest. There was no case law exactly on point with the situation before the Tribunal.

The Tribunal deliberated not only on matters related to the proven allegations, but also on the actions leading to the allegations – actions that were directed toward a terminally ill patient who was desperately hoping and searching for a cure. ██████████ stated: “I want the best of the best. I don’t care about money. I care about staying alive and being a mom”. The Tribunal finds that the actions of Dr. Silverman not only failed to support the medical and psychological needs of the patient and her family, but they also supported and facilitated ██████████’s excessive financial expenditures. For example, Dr. Silverman encouraged ██████████ to travel out of country to seek alternative therapies.

The Tribunal finds the allegations are proven and the conduct does rise to the level of unprofessional conduct. The Tribunal wants to ensure that, while this was an uncontested hearing, the member, the profession and the public must know that this type of behavior is not acceptable and will not be tolerated. After spending a lengthy period of time in discussion, with careful consideration of all of the facts and applicable law on joint submissions, the Tribunal found the penalty fitting, although low, but within the acceptable range. The Tribunal did not find that the proposed penalty was manifestly unfit, unreasonable or contrary to the public interest. The Tribunal believes the suspension serves to denounce the conduct, and acts as both a specific and general deterrent, sending a clear and very strong message to the profession and to the public that this highly unprofessional conduct will not be tolerated and is subject to disciplinary action. Rehabilitation for the physician is also necessary, therefore the requirement that Dr. Silverman

complete a course with emphasis on professional responsibility and ethics is essential and rehabilitative.

For these reasons, the Tribunal made the following orders:

- a. Dr. Silverman's practice permit be suspended for a period of three months;
- b. If Dr. Silverman provides a written apology to [REDACTED]'s family and to Dr. [REDACTED], each in a form that is acceptable to the College, the period of active suspension to be served by Dr. Silverman shall be reduced to one month, with the balance held in abeyance for up to five years (it is acknowledged that the Complaints Director has provided her approval to the proposed form of apology letters);
- c. If, within five years from the date of the Hearing Tribunal's written decision, there is a further credible complaint to the College against Dr. Silverman regarding issues similar to the ones identified in this matter, the College, acting reasonably, may then determine that Dr. Silverman must serve the balance of the suspension and suspend Dr. Silverman's practice permit;
- d. Dr. Silverman shall, at her own expense, participate in and unconditionally pass the CPEP PROBE course, which course shall be undertaken from May 20-22, 2021. Confirmation of Dr. Silverman's completion of and evaluation results from the CPEP PROBE course shall be provided to the College as soon as such results are available from CPEP; and
- e. Dr. Silverman shall be responsible for 75 percent of the costs of the investigation and the hearing before the Hearing Tribunal payable on terms acceptable to the College.

Signed on behalf of the Hearing
Tribunal by the Chair



June 11, 2021

Date

Dr. Vonda Bobart