

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. STANLEY FU

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

Corrected Decision: A corrigendum was issued on March 12, 2018; the corrections have been made to the text and the corrigendum is appended to this decision.

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Dr. Stanley Fu on January 11, 2018. The members of the Hearing Tribunal were:

Dr. Paul Greenwood, Chair
Dr. Doug Perry
Ms. Sheri Epp, Public Member

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

In attendance at the hearing was Ms. Aman Athwal, legal counsel for the Complaints Director of the College of Physicians & Surgeons of Alberta (the “College”). Dr. Stanley Fu and his legal counsel, Ms. Christine Plante were also present.

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

II. ALLEGATIONS

The allegations to be considered by the Hearing Tribunal were set out in the Amended Notice of Hearing, dated November 17, 2017, which were as follows:

1. That you did fail to provide relevant entries from the patient chart for October 23 and 24, 2015 to Dr. John Ritchie, College Investigator, when providing your response dated January 18, 2016 regarding your management of A.B.;¹ and
2. That you did inappropriately bill Alberta Health Care for a patient visit on October 24, 2015 regarding A.B. when you had not seen that patient.

At the hearing, Dr. Fu admitted that the allegations were true and acknowledged that the conduct amounted to unprofessional conduct.

III. PRELIMINARY MATTERS

There were no preliminary matters presented by the parties.

IV. EVIDENCE

By agreement the Parties entered the Exhibit Book, containing 8 items. These were marked as Exhibits 1 through 8.

¹ The Notice of Hearing referred to the patient by his full name, however for the purposes of this decision the patient will be referred to as “A.B.”

The Exhibit Book contained the following items:

- Exhibit 1: Notice of Hearing, dated June October 17, 2017
- Exhibit 2: Amended Notice of Hearing, dated November 17, 2017
- Exhibit 3: Memorandum from Dr. Jean Langley to Dr. Michael Caffaro, dated June 1, 2016
- Exhibit 4: Letter of response from Dr. Fu, dated July 21, 2016
- Exhibit 5: Patient record dated October 23, 2015 from Dr. Fu's response to the College, dated January 18, 2017
- Exhibit 6: Patient record dated October 23, 2015 and October 24, 2015 provided by Dr. Pamela Goebal
- Exhibit 7: Alberta Health Care billing information for October 24, 2015
- Exhibit 8: Extracts of Patient Chart from Alberta Children's Hospital

An Agreed Statement of Facts was entered as Exhibit 9.

The hearing proceeded based on the Agreed Exhibits and Agreed Statement of Facts, and no witnesses were called to testify.

V. SUBMISSIONS

Ms. Athwal made a brief opening statement, in which she summarized the contents of the Exhibit Book and the Agreed Statements of Fact. Ms. Athwal explained that Dr. Fu admitted the allegations in the Notice of Hearing, and acknowledged that his conduct constituted unprofessional conduct.

Ms. Athwal explained that the College received a letter of complaint from a physician, dated November 10, 2015, regarding Dr. Fu's care of A.B. (the "the First Complaint"). Dr. Fu provided a written response to the First Complaint, dated January 18, 2016. The College received a second complaint about the care provided to A.B. by a different physician at the same clinic (the "Second Complaint"). While investigating the Second Complaint, the College's Investigator noted discrepancies in the patient records submitted by the other physician who provided care to A.B., as compared with the patient records submitted by Dr. Fu in response to the First Complaint. In particular, the patient records provided by Dr. Fu in response to the First Complaint appeared to have been edited by Dr. Fu, and did not disclose the sign off date at the bottom of the page.

The Investigator's concerns were referred to the Complaints Director, who initiated a new complaint against Dr. Fu (the "Current Complaint").

Ms. Athwal noted that there are two allegations in the Notice of Hearing. The first relates to Dr. Fu's failure to provide relevant chart entries for care provided to A.B. on October 23 and October 25, 2015. The second allegation relates to an inappropriate bill issued to Alberta Health Care in relation to a visit with A.B. on October 24, 2015. Ms. Athwal indicated that Dr. Fu admitted both allegations.

Ms. Plante also made brief comments on behalf of Dr. Fu. She indicated that there was no intention on Dr. Fu's part to deny that an entry had been made on October 23, 2015. That entry was initially created by a staff member. However, Dr. Fu did not enter his chart notes in relation to the care provided on October 23, 2015 at the time. He entered his notes sometime later, and did not sign off on that entry until January 19, 2016, which was after he received the Current Complaint and he had already submitted his response to the College.

With respect to the October 24, 2015 entry, Ms. Plante submitted that Dr. Fu did not actually see A.B. on October 24th, and only spoke to A.B.'s mother. He did not intentionally withhold the October 24th entry from the College, but did not provide it because he did not think it was relevant. Moreover, Dr. Fu acknowledged that he should not have billed for an office visit on this date, as he did not actually see A.B. in the office, and only spoke to A.B.'s mother.

FINDINGS

After hearing from the parties and reviewing the evidence compiled in the Exhibit Book and the Agreed Statement of Facts, the Hearing Tribunal felt there was sufficient evidence to support Dr. Fu's admissions in relation to both allegations, and determined that the conduct constitutes "unprofessional conduct" in accordance with s. 1(1)(pp) of the *Health Professions Act* ("HPA").

In relation to allegation #1, a letter of complaint was submitted to the College dated November 10, 2015. The complaint was submitted by a physician who raised concerns regarding the medical care Dr. Fu provided in relation to A.B. on October 23, 2015. Although Dr. Fu did not see A.B. on October 23, 2015, he consulted with A.B.'s mother following the receipt of A.B.'s lab results showing elevated sugar levels. Following the consultation, A.B. was admitted to the Alberta Children's Hospital on October 24, 2015 where he was diagnosed with new onset type 1 diabetes.

Dr. Fu provided a written letter of response to the Current Complaint, dated January 18, 2016. He also provided an excerpt from A.B.'s patient chart for the October 23, 2015 consult, which differed from the version of the chart provided by the other physician in her response to the Second Complaint. Dr. Fu explained that although a chart entry had been created by staff, he did not complete and sign off on the chart entry for October 23, 2015 until after he received and responded to the First Complaint. At that point, he realized that he should finalize and sign off on the chart entry. Because it was not finalized and signed off until January 19, 2016, a different version of the chart note was submitted with the letter of response that he provided to the College on January 18, 2016.

In addition, Dr. Fu did not provide the Investigator with a copy of the chart note for October 24, 2015, as he determined that the October 24th entry was not relevant to the First Complaint.

The Hearing Tribunal finds that complete copies of the October 23 and 24, 2015 chart notes were relevant to the First Complaint submitted in relation to the care that Dr. Fu provided with respect to A.B. and that Dr. Fu ought to have provided this information to the Investigator, together with his letter of response, dated January 18, 2016. Accordingly, the Hearing Tribunal accepts Dr. Fu's admission and finds that allegation #1 has been proven.

In relation to allegation #2, Dr. Fu made a submission to AHC for services allegedly provided to A.B. on October 24, 2015, including a diagnostic interview and evaluation, and a limited assessment of the patient's condition requiring a history related to the presenting problems, and an examination. Although Dr. Fu provided counselling to A.B.'s mother on October 24, 2015, he did not in fact see or examine A.B. In the circumstances, the Hearing Tribunal accepts Dr. Fu's admission that he inappropriately billed AHC for the patient visit on October 24, 2015.

Accordingly, the Hearing Tribunal finds that allegations #1 and #2 are proven. Moreover, the Hearing Tribunal finds that the conduct constitutes "unprofessional conduct" as defined in s. 1(1)(pp) of the HPA.

VI. ORDERS

The parties entered a Joint Submission and Admission Agreement as an exhibit. The parties jointly submitted that the following Orders should be imposed:

1. Dr. Fu should receive a suspension of his practice permit for a period of two weeks, to be served within a reasonable period of time following the written decision of the Hearing Tribunal and served starting on a date approved in advance by the Complaints Director; and
2. Dr. Fu should be responsible for the costs of the investigation and the hearing before the Hearing Tribunal payable on terms acceptable to the Complaints Director.

Counsel for the College submitted that the law states that a Joint Submission should be taken seriously by the Tribunal and given deference by the Tribunal.

Counsel for the College also made submissions with respect to the factors referenced in *Jaswal v. Newfoundland Medical Board*, (1996), 42 Admin L.R. (2d) 233. She indicated that the sanctions sought would adequately protect the public and would serve as an appropriate deterrent to Dr. Fu and other members of the profession. In addition, she provided the Hearing Tribunal with the Court's decisions in *Artinian v. College of Physicians and Surgeons of Ontario* (Div. Ct.), [1990] O.J. No. 1116; *Idicula v. College of Physicians and Surgeons of Alberta* (Alta. C.A.), [1987] A.J. No. 428; and *Schubyn v. Alberta Podiatry Assn.*, [1996] A.J. No. 463, and suggested that these decisions were of some assistance in determining the appropriate orders in this case.

Counsel for Dr. Fu also made submissions with respect to the orders jointly proposed by the parties. She submitted that Dr. Fu's actions arose from poor judgment and incorrect assumptions. However, the allegations related to a single patient and there was no evidence of any pattern of misconduct. She submitted that the cases provided on behalf of the College were distinguishable and therefore not helpful. Counsel for Dr. Fu also submitted that Dr. Fu has already suffered and has been out of practice for a one year period and has participated in significant remediation following the complaint relating to the care he provided to A.B.

The Hearing Tribunal carefully considered the evidence in the Exhibit Book and the Agreed Statement of Facts, and submissions on behalf of both parties with respect to sanction. The Hearing Tribunal also considered the factors in *Jaswal*, including the seriousness of the conduct, the fact that it was an isolated incident, and Dr. Fu's cooperation and his admission of unprofessional conduct.

In addition, the Hearing Tribunal accepts that there are strong public policy reasons why a Hearing Tribunal should exercise deference when presented with a joint submission on sanction. The Hearing Tribunal found that the joint submission with respect to sanction was appropriate and it was not clearly and manifestly unjust or contrary to the public interest.

Accordingly, the Hearing Tribunal accepted the joint submission, and hereby makes the following orders pursuant to section 82 of the HPA:

1. Dr. Fu will receive a suspension of his practice permit for a period of two weeks, to be served within a reasonable period of time following the written decision of the Hearing Tribunal and served starting on a date approved in advance by the Complaints Director; and

2. Dr. Fu will be responsible for the costs of the investigation and the hearing before the Hearing Tribunal payable on terms acceptable to the Complaints Director.

Signed on behalf of the Hearing Tribunal by
the Chair



Dated: March 12, 2018

Dr. Paul Greenwood

**Corrigendum of the Decision of the Hearing Tribunal of the
College of Physicians and Surgeons of Alberta**

The fourth paragraph under the heading SUBMISSIONS was changed to read the following:

Ms. Athwal noted that there are two allegations in the Notice of Hearing. The first relates to Dr. Fu's failure to provide relevant chart entries for care provided to A.B. on October 23 and October 25, 2015. The second allegation relates to an inappropriate bill issued to Alberta Health Care in relation to a visit with A.B. on October 24, 2015. Ms. Athwal indicated that Dr. Fu admitted both allegations.

The second paragraph under heading FINDINGS was changed to read the following:

In relation to allegation #1, a letter of complaint was submitted to the College dated November 10, 2015. The complaint was submitted by a physician who raised concerns regarding the medical care Dr. Fu provided in relation to A.B. on October 23, 2015. Although Dr. Fu did not see A.B. on October 23, 2015, he consulted with A.B.'s mother following the receipt of A.B.'s lab results showing elevated sugar levels. Following the consultation, A.B. was admitted to the Alberta Children's Hospital on October 24, 2015 where he was diagnosed with new onset type 1 diabetes.