

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. EILEEN MA

**AMENDED DECISION OF THE HEARING
TRIBUNAL OF
THE COLLEGE OF PHYSICIANS
& SURGEONS OF ALBERTA (“the College”)
January 24, 2024**

I. INTRODUCTION

1. The Hearing Tribunal held a hearing on November 27, 2023 by Zoom into the conduct of Dr. Eileen Ma. The members of the Hearing Tribunal were:

Dr. John Pasternak of Medicine Hat as Chair;
Dr. Fraulein Morales of Edmonton;
Mr. Don Wilson of Calgary (public member);
Ms. Anita Warnick of Calgary (public member);

Mr. Fred Kozak acted as independent legal counsel for the Hearing Tribunal.

2. Appearances:

Dr. G. Giddings, Complaints Director;
Ms. Stacey McPeck, legal counsel for the Complaints Director;
Dr. Eileen Ma;
Ms. Taryn Burnett, legal counsel for Dr. Ma.

II. PRELIMINARY MATTERS

3. There were no objections to the composition of the Hearing Tribunal, or any other preliminary objections to proceeding with the hearing. The Hearing was open to the public, and it was noted that three members of the public were in attendance.

III. CHARGES

4. The Amended Notice of Hearing, dated October 20, 2023, listed the following allegations:
 1. On or about June 26, 2020, you did access the personal health information record regarding █████ at the University of Calgary Student Wellness Services without an authorized purpose for doing so.
 2. On or about June 26, 2020, you did access the personal health information record regarding █████ at the University of Calgary Student Wellness Services without an authorized purpose for doing so.
 3. On or about June 24, 25, and 26, 2020, you did access the personal health information record regarding █████ at the

University of Calgary Student Wellness Services without an authorized purpose for doing so.

5. The Tribunal was advised by Ms. Burnett that the Investigated Member had agreed to the underlying facts all three of the allegations and also conceded that her actions mounted to unprofessional conduct.

IV. EVIDENCE

6. The following Exhibits were entered into evidence during the hearing:

Exhibit #1-The Agreed Exhibit Book containing tabs 1 through 12:

- Tab 1. AMENDED NOTICE OF HEARING DATED OCTOBER 20, 2023 - PAGE 1
- Tab 2. LETTER OF COMPLAINT FROM █████ DATED APRIL 16, 2021 - PAGE 4
- Tab 3. WOLF EMR AUDIT LOG FOR █████'S PATIENT FILE JUNE 26, 2020 - PAGE 8
- Tab 4. LETTER OF RESPONSE FROM DR. MA DATED JULY 5, 2021 - PAGE 9
- Tab 5. LETTER OF COMPLAINT FROM █████ DATED MARCH 4, 2021 - PAGE 12
- Tab 6. WOLF EMR AUDIT LOG FOR █████'S PATIENT FILE JUNE 26, 2020 - PAGE 16
- Tab 7. LETTER OF RESPONSE FROM DR. MA DATED MAY 3, 2021 - PAGE 18
- Tab 8. LETTER OF COMPLAINT FROM █████ DATED JULY 16, 2021 - PAGE 21
- Tab 9. WOLF EMR AUDIT LOG FOR █████ 'S PATIENT 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 Swann Hallberg & Associates 9 FILE JUNE 24 - 26, 2020 - PAGE 51
- Tab 10. LETTER OF RESPONSE FROM DR. MA DATED OCTOBER 26, 2021 - PAGE 56
- Tab 11. CERTIFICATE OF COMPLETION: CMPA EDUCATION ONLINE PRIVACY AND CONFIDENTIALITY, DATED JULY 26, 2020 - PAGE 60
- Tab 12. UNIVERSITY OF CALGARY INVESTIGATION SUMMARY - PAGE 61

Exhibit #2 The Joint Submission Agreement.

Submissions:

7. Ms. McPeck took the Hearing Tribunal through all of the aspects of the evidence in the Exhibits which demonstrated that Dr. Ma had improperly accessed the three clinical records identified in the Amended Notice of Hearing without authorization, albeit for relatively short periods of time. She submitted that unauthorized entry or access into a patient's medical files was improper, regardless of intent or the length of time of the access, breaching sections 25, 27 and 60 of the *Health Information Act* and as such, was considered unprofessional conduct pursuant to *Health Professions Act*. She also suggested that the actions of the Investigated Member amounted to a breach of the *CMA Code of Ethics and Professionalism*, in that Dr. Ma's motives were personal, in that she sought information relevant to a personal billing dispute at the expense of maintaining and safeguarding the patients' privacy. Counsel for the Complaints Director referred the Hearing Tribunal to the letters of complaint from the aggrieved parties. The Tribunal was also made aware of the University of Calgary's private investigation, and the summary of findings from that investigation, which concluded that Dr. Ma and other physicians had wrongfully gained access to patient's records, acknowledged their actions, expressed remorse and took initiatives to complete further training in patient information confidentiality. The actions of all of the investigated physicians including Dr. Ma were audited for a further six months and no further breaches were identified.
8. Ms. Burnett drew the Hearing Tribunal's attention to the University of Calgary investigation report, which stated that the physicians' actions were not driven by mere curiosity or a desire to infringe on the privacy of any of the affected individuals, which she submitted was a mitigating factor. She also stated that none of the patients' information was disseminated to anyone other than the president of the University, which she submitted also mitigated the harm caused by the unauthorized access.
9. After retiring to consider whether the evidence supported Dr. Ma's admission of unprofessional conduct, the Hearing Tribunal returned and advised both parties that it accepted that the evidence supported the allegations, and it therefore accepted Dr. Ma's admission of unprofessional conduct. The Hearing Tribunal then asked counsel for the parties to provide submissions on in support of the Joint Sanction Proposal found in Exhibit #2.

10. Ms. McPeek referred the Hearing Tribunal to the established authority on joint submissions, *R. v. Anthony-Cook* which outlines the public interest test in criminal law. This establishes that a panel should not depart from a joint submission unless the proposed penalty would either bring the administration of justice into disrepute or would otherwise be contrary to the public interest. She also highlighted for the Panel the *Bradley v. Ontario College of Teachers* decision which establishes the same test ought to apply to professional disciplinary matters.
11. She then referred to four main factors to consider for the protection of the public:
 1. To assure the public that the College is able to regulate the profession;
 2. To send an appropriate message to the profession by way of the sanction that the conduct in question, as general deterrence;
 3. To ensure that the sanction deters the Investigated Member from repeating the conduct;
 4. To encourage rehabilitation of the investigated member to allow them to return to practice and continue to provide the highest level of care.
12. Ms. McPeek then submitted which of the factors in *Jaswal v. The Newfoundland Medical Board* were most relevant to this case.
13. The most pertinent to the Hearing Tribunal were:
 - The nature and gravity of the proven conduct; in this case the very short amount of time during which the Investigated Member accessed the records placed her actions at the lower end of the spectrum of severity. There was no evidence that Dr. Ma used the information gained in an exploitive way that would harm the individuals.
 - The previous character or complaints of the investigated member; this was the first issue that Dr. Ma has faced in her career.
 - Acknowledgement of the conduct; Dr. Ma acknowledged her wrongdoing as soon as she had been notified by the University of Calgary, and voluntarily completed the CMPA course on patient confidentiality immediately thereafter.
14. Neither counsel were able to find other similar cases involving a breach of patient privacy at the very low end of the spectrum of severity.

15. In addressing the matter of costs, Ms. McPeek reminded the Hearing Tribunal that Dr. Ma had fully cooperated with the College, admitting to the allegations thereby saving the College from expending more resources than necessary through a contested hearing.
16. Ms. Burnett agreed, submitting that the Hearing Tribunal accept the joint submission as reasonable in the established circumstances.
17. The Hearing Tribunal then adjourned to deliberate on an appropriate sanction based on the evidence and submissions of counsel. After a short adjournment, the parties were then advised that the Hearing Tribunal accepted the joint submissions and proposed orders, with written confirmation to follow at a later date. Accordingly, Dr. Ma is to receive a reprimand and (at her own expense) is required to participate in and unconditionally pass the privacy and confidentiality course provided by the CMPA. The Hearing Tribunal was advised that Dr. Ma had successfully completed that course prior to the hearing. Proceedings were then adjourned.

V. REASONS

18. The intentional unauthorized access of confidential patient information by Dr. Ma breached sections 25, 27 and 60 of the *Health Information Act* and was conduct contrary to the *CMA Code of Ethics and Professionalism*. As such, Dr. Ma's actions constituted unprofessional conduct pursuant to the *Health Professions Act*, no matter how briefly the information was accessed, and regardless of the motive. However, in this case, those factors were both significant to the Hearing Tribunal in accepting the Joint Sanction Proposal for unprofessional conduct that is properly characterized as a breach of privacy at the very lowest end of the spectrum. The Joint Sanction Proposal was therefore reasonable.

VI. ORDERS

19. The Hearing Tribunal hereby orders:
 1. Dr. Ma is to receive a written reprimand;
 2. Dr. Ma (at her own expense) is required to participate in and unconditionally pass the privacy and confidentiality course provided by the CMPA. The Hearing Tribunal was advised that Dr. Ma had successfully completed that course prior to the hearing.

Signed on behalf of the Hearing Tribunal by the Chair:

A handwritten signature in black ink, appearing to read "Pasternak", written in a cursive style.

Dr. John Pasternak

Dated this 24th day of January, 2024.