

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. MICHEL PREVOST

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

April 19, 2022

I. INTRODUCTION

1. The Hearing Tribunal held a hearing into the conduct of Dr. Michel Prevost on February 24, 2022. The members of the Hearing Tribunal were:

Dr. Douglas Faulder (Chair);
Dr. Vonda Bobart;
Mr. James Lees (Public Member);
Ms. June MacGregor (Public Member).

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

Also in attendance at the hearing were:

Ms. Stacey McPeck, legal counsel for the Complaints Director;
Dr. Michel Prevost;
Mr. Tim Ryan, legal counsel for Dr. Prevost.

II. PRELIMINARY MATTERS

2. 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.
3. The hearing was open to the public pursuant to section 78 of the *Health Professions Act* ("HPA"). There was no application to close the hearing.

III. CHARGES

4. The Notice of Hearing listed the following allegations:
 1. On or about March 23, 2018, you did fail to maintain an appropriate physician and patient boundary with your patient, [Patient A], particulars of which include one or more of the following:
 - a. Revealing intimate information about yourself to your patient,
 - b. discussing your patient's sexual orientation when there was no medical purpose for discussing it,
 - c. Air kissing your patient, and
 - d. Making an inappropriate comment to your patient in stating "do you want anything else...juice, water or a b...j...";
 2. On or about December 20, 2017, you did demonstrate a lack of skill or judgment in failing to assess and treat the level of pain being experienced by your patient, [Patient B], during the procedure;

3. On or about January 26, 2018, you did demonstrate a lack of skill or judgment with your patient, [Patient B], when you punched your patient on his leg to demonstrate the expected pain level from a hair transplant procedure;
 4. Between August 1, 2018 to August 31, 2019, you did provide Botox injections on approximately 79 occasions to patients for the treatment of migraine headaches care in contravention of the conditions on your practice permit restricting you to only esthetic medicine and hair transplantation;
 5. You did prescribe drugs monitored by the Triplicate Prescription Program to [Patient C] contrary to the restrictions on your practice permit to practice only esthetic medicine and hair transplantation; and
 6. You did prescribe Zopiclone to [Patient D] contrary to the restrictions on your practice permit to practice only esthetic medicine and hair transplantation.
5. Dr. Prevost admitted the allegations as set out in the Notice of Hearing (the "Allegations") and agreed that the conduct set out in the Allegations amounted to unprofessional conduct. The hearing proceeded by way of an Agreed Exhibit Book and a Joint Submission on Sanction ("Joint Submission") by Dr. Prevost and the College.

IV. EVIDENCE

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

Exhibit 1: Exhibit Book

Tab 1: Notice of Hearing dated August 16, 2021

Tab 2: Letter of Complaint from [REDACTED] dated August 17, 2018 with attached letters of support

Tab 3: Letter of response from Dr. Prevost dated September 12, 2018

Tab 4: Dr. Prevost's 2015 Practice Permit

Tab 5: Registration Understanding and Acknowledgment, dated March 11, 2015

Tab 6: Letter from Dr. Prevost's counsel, dated December 5, 2018, enclosing certificate of ethics course

Tab 7: Memorandum by Kristy Ivans, dated June 14, 2019 regarding interview of [Patient A]

- Tab 8:** Memorandum by Kristy Ivans, dated June 21, 2019 regarding interview of [REDACTED]
- Tab 9:** Memorandum by Kristy Ivans, dated June 21, 2019 regarding interview of [REDACTED]
- Tab 10:** Memorandum by Kristy Ivans dated June 21, 2019 regarding interview of [REDACTED]
- Tab 11:** Undertaking of Dr. Prevost, dated July 8, 2019, regarding referral to Physician Health Monitoring Program (PHMP)
- Tab 12:** Undertaking of Dr. Michel Prevost, dated September 11, 2019
- Tab 13:** Meeting Memorandum by Kristy Ivans dated September 19, 2019 regarding interview of Dr. Prevost
- Tab 14:** Letter from Dr. Prevost's counsel, October 15, 2019, with feedback on memorandum of interview of Dr. Prevost
- Tab 15:** Memorandum by Kristy Ivans dated October 29, 2019 regarding interview of [Patient B]
- Tab 16:** Letter from Kristy Ivans to Dr. Prevost's counsel, dated October 30, 2019, resent via email on November 27, 2019
- Tab 16a:** Memorandum by Dr. Wickland-Weller dated October 6, 2017 regarding summarizing telephone conversation with Dr. Prevost
- Tab 17:** Letter from Dr. Prevost's legal counsel, dated November 28, 2019
- Tab 18:** Practitioner Prescription Summary for prescriber Dr. Prevost from January 1, 2015 to September 1, 2019
- Tab 19:** Patient Prescription Summary for [Patient C] from January 1, 2017 to June 30, 2017
- Tab 20:** Total billing claims from Dr. Prevost for Botox treatment of migraines from August 1, 2018 to August 31, 2019
- Tab 21:** ReNu Hair Clinic record for [Patient A]
- Tab 22:** ReNu Hair Clinic record for [Patient B]
- Tab 23:** Report from D. McKibbon, psychologist, dated October 2, 2019

- Tab 24:** Report from Dr. Kraitberg, dated December 16, 2019
- Tab 25:** Monitoring Report from Dr. van der Merwe, dated August 11, 2020
- Tab 26:** Report from Dr. Kraitberg, dated November 8, 2021
- Tab 27:** CPSA Standard of Practice: Boundary Violations: Sexual
- Tab 28:** CPSA Standard of Practice: Patient Record Content

Exhibit 2: Admission and Joint Submission Agreement

V. SUBMISSIONS REGARDING ALLEGATIONS

Counsel for the Complaints Director

7. Counsel for the Complaints Director reviewed the Allegations against Dr. Prevost, and the information in the Exhibit Book.
8. Counsel for the Complaints Director referred to Dr. Prevost's practice permit, which shows that he was restricted to practicing aesthetic medicine and hair transplantation, and his Undertaking to the College dated March 11, 2015 limiting his practice to aesthetic medicine and hair transplantation.
9. Counsel for the Complaints Director submitted that the Allegations are proven and amount to unprofessional conduct as follows:
 - Section 1(1)(pp)(i) – charges 2 and 3
 - Section 1(1)(pp)(ii) – charge 1
 - Section 1(1)(pp)(viii) – charges 4, 5 and 6
 - Section 1(1)(pp)(xii) – all charges

Counsel for Dr. Prevost

10. Counsel for Dr. Prevost submitted that the evidence shows that this was a particularly difficult time for him in his life and practice. He had just moved from Ontario to Alberta to begin a new practice, and there were many issues with respect to the change in his scope of practice. He was also suffering from mental health issues, and was only beginning to initiate an appropriate course of treatment. Dr. Prevost took proactive steps to attend a boundaries course, put in place a counsellor that he sees regularly, and attend appointments with his psychologist and psychiatrist in Ontario. Since 2018, things have stabilized in Dr. Prevost's life through the combination of appropriate treatment, the fact that he has come to terms with his change in

scope of practice, and that he has settled in Alberta. The charges relate to a period of time that was difficult for Dr. Prevost, but he has come through it and is working well in his new scope of practice.

Questions from the Hearing Tribunal

11. Counsel for the Complaints Director responded to questions from the Hearing Tribunal regarding the applicable provisions in the definition of unprofessional conduct.
 - The *Standard of Practice on Boundary Violations: Sexual* states that a regulated member must not request details of a patient's sexual or personal history unless related to the patient's care. This relates to charge #1.
 - Failing to assess and treat a level of pain experienced by a patient demonstrates a lack of skill or judgment, as does punching a patient in the leg to demonstrate a pain level. This relates to charges #2 and #3.
 - Dr. Prevost had conditions imposed on his practice permit, and then prescribed in contravention of those conditions which falls within the definition of unprofessional conduct in section 1(1)(pp)(viii). This relates to charges #4, #5, and #6.
 - The conduct in all six of the Allegations is conduct that harms the integrity of the profession and falls within section 1(1)(pp)(xii).
12. Counsel for Dr. Prevost submitted that this is not a situation involving sexual abuse or misconduct. Instead, it is a boundary situation involving inappropriate discussions with a patient, and a failure to recognize that what they are doing may be considered more personal than professional.

VI. FINDINGS REGARDING ALLEGATIONS

13. Given Dr. Prevost's admission to the Allegations, the Hearing Tribunal considered the submissions from the parties along with evidence presented in Exhibit 1 to determine if the evidence supports Dr. Prevost's admission.
14. The extensive evidence submitted proves the six allegations listed in the Notice of Hearing, and Dr. Prevost admits this. Each allegation is well proven to be unprofessional conduct and Dr. Prevost admits this. The Hearing Tribunal accepts the mitigating factors outlined by Dr. Prevost's counsel. The behaviour admitted to by Dr. Prevost is obviously inappropriate, but there were personal complicating factors.
15. The Tribunal found that the proven Allegations constituted unprofessional conduct under section 1(1)(pp)(i), (ii), (viii) and (xii) of the HPA as follows:

1(1) In this Act,

(pp) "unprofessional conduct" means one or more of the following, whether or not it is disgraceful or dishonourable:

- (i) displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services;
- (ii) contravention of this Act, a code of ethics or standards of practice; and
- (viii) contravening an order under Part 4, conditions imposed on a practice permit or a direction under section 118(4)
- (xii) conduct that harms the integrity of the regulated profession.

VII. SUBMISSIONS REGARDING SANCTION

Counsel for the Complaints Director

16. Counsel for the Complaints Director stated that the parties are proceeding by way of a Joint Submission. Dr. Prevost's practice permit will be suspended for six months, with four months to be served and two months held in abeyance pending the fulfillment of other parts of the order. Dr. Prevost will receive one month's credit for the time that he was out of practice from September to October 2019. As such, there are three months remaining in the suspension that must be served. Dr. Prevost will be subject to the following conditions: he will remain under the CPSA Physician Health Monitoring Program; have a chaperone present for all patient encounters; and remain under the care of a psychologist or psychiatrist to address his lack of insight.
17. Counsel for the Complaints Director referenced the memorandum of law regarding joint submissions. She indicated that a hearing tribunal should give considerable deference to a joint submission and that the submission should only be rejected in very limited circumstances. In support of this position, she referenced the following decisions: *R v Anthony-Cook*, 2016 SCC 43, *Ontario (College of Physicians and Surgeons of Ontario) v Zadra*, 2017 ONCPSD 24, and *Bradley v Ontario College of Teachers*, 2021 ONSC 2303.
18. Counsel for the Complaints Director reviewed the proposed sanctions and submitted that they protect the public, maintain the integrity of the profession, accomplish specific and general deterrence, and are fair to the member through provisions that address rehabilitation. She reviewed the factors in the decision of *Jaswal v. Medical Board (Nfld.)*, 1996 CanLII 11630 (*Jaswal*) and how those factors applied to the present case.
 - *The nature and gravity of the proven allegations:* The conduct is serious. Boundaries between a patient and physician are important, and when they are not respected it can affect patient care. When

undertakings with a regulator are broken, it harms the integrity of the profession and calls into question the ability of the College to regulate members.

- *The previous character of the member:* Dr. Prevost has prior complaints. However, the conduct that led to those complaints is not similar to the conduct that is under consideration in this hearing.
- *The number of times the offence was proven to have occurred:* The Allegations do not involve a larger pattern of conduct. Regarding the boundaries allegation, this was a series of comments that stemmed from the treatment of one patient. They were not repeated incidents involving several patients. Regarding the allegation relating to lack of skill or judgment, this was an interaction with a single patient and not a larger pattern of conduct. The Botox injections were done numerous times, but there was a misunderstanding on the part of Dr. Prevost regarding whether they constituted aesthetic medicine. Allegations #5 and #6 involve isolated incidents. Regarding Allegation #5, an acquaintance coerced Dr. Prevost into prescribing, and he immediately took steps to cut ties with that individual. It was a single prescription, but with refills. Allegation #6 involved a prescription for Dr. Prevost's partner.
- *The role of the physician in acknowledging what occurred:* Dr. Prevost has cooperated with the investigation and has facilitated the hearing by the admission and joint submission on sanction. This has greatly reduced the costs of the hearing and the need to call witnesses.
- *Whether the member has already suffered other serious financial or other penalties:* Dr. Prevost had one month absent from practice from September to October 2019.
- *The presence or absence of any mitigating factors:* The report prepared by the Comprehensive Occupational Assessments of Professionals program outlines mitigating factors including Dr. Prevost's mental health issues and medication. These factors may have affected his behaviour, and should be considered as mitigating factors. There is no suggestion of malicious, predatory or exploitive intent behind any of these behaviours.
- *The need to promote specific and general deterrence:* Specific deterrence should be given more weight in this situation since the profession would be aware that this conduct is inappropriate. Dr. Prevost requires further effort to understand and adopt professional behaviour and boundaries, as well as the limits on his licence.
- *The need to maintain public confidence:* Some of the conduct related to breach of undertakings.

- *Degree to which offensive conduct is outside the range of permitted conduct:* All of the conduct is clearly outside of the acceptable range of permitted conduct. This has been acknowledged by Dr. Prevost.
 - *The range of sentence in other similar cases.*
19. Counsel for the Complaints Director referred to three decisions:
- a. *College of Physicians and Surgeons of Ontario v. Ateyah*, 2021 ONCPSD 29; this decision canvasses prior case law around boundary violations involving inappropriate comments or behaviours.
 - b. *Ontario (College of Physicians and Surgeons of Ontario) v. Sweet*, 2012 ONCPSD 11; the physician received a four-month suspension for prescribing in contravention of conditions.
 - c. *Ontario (College of Physicians and Surgeons of Ontario) v. Skocylak*, 2006 ONCPSD 8; the physician received a four-month suspension for prescribing in contravention of conditions.
20. Counsel for the Complaints Director submitted that the suspension sends a very clear message that the conduct was wrong and deserving of sanction. A suspension is on the higher end of the available sanctions, and reflects the seriousness of the conduct, the need for specific deterrence, and the need to maintain public confidence in the ability of the College to regulate the profession. The period of the suspension that is held in abeyance recognizes the necessity of remediation, and reinforces the importance of working to establish better boundaries. The credit for one month out of practice recognizes the penalty that has already been suffered by Dr. Prevost. The remaining conditions reinforce the potential for ongoing remediation while protecting the public. There is continued oversight of Dr. Prevost through the CPSA's Physician Health Monitoring Program. The requirement to remain under the care of a psychologist or psychiatrist addresses concerns about Dr. Prevost's lack of insight and self-reflection. It is appropriate to order Dr. Prevost to pay two-thirds of the costs of the investigation and hearing to help the College recoup the costs. Overall, the joint submission is proportionate to the conduct.

Counsel for Dr. Prevost

21. Counsel for Dr. Prevost submitted that the reports from his treating counsellor and psychiatrist speak to his fitness to practice. Dr. Prevost should remain under treatment and monitoring to ensure that these types of situations do not arise again because of mental health issues or medication issues.
22. Dr. Prevost does Botox injections for cosmetic procedures. This is allowed by his practice permit. The breach of the Undertaking was providing Botox for migraines and temporomandibular joint issues, with the difference being a therapeutic use of Botox versus a cosmetic use of Botox. This was a

misunderstanding, and Dr. Prevost has adjusted his practice so that it will not be repeated.

Questions from the Hearing Tribunal

23. In response to a question from the Hearing Tribunal regarding the length of time that Dr. Prevost would be under the CPSA's Physician Health Monitoring Program, counsel for Dr. Prevost submitted that the head of the Physician Health Monitoring Program determines when it is no longer necessary.
24. In response to a question from the Hearing Tribunal Dr. Prevost indicated that he is currently working part time, and his intention is to continue to work part time. His current schedule is Wednesdays, Thursdays, Fridays and Saturdays at two to four hours per day.

VIII. FINDINGS REGARDING SANCTION

25. The Hearing Tribunal adjourned to consider the submissions from the parties and determined that the proposed sanction order was appropriate, and balances remediation and discipline. The Hearing Tribunal is satisfied that the proposed sanctions serve the dual goals of protecting the public interest and the remediation of Dr. Prevost. The Hearing Tribunal was also mindful that much deference should be given to joint submissions. The Hearing Tribunal finds that the agreed sanctions address the factors outlined in *Jaswal* and are not unfit or unjust.
26. The Hearing Tribunal has decided that suspension, conditions and responsibility for costs are appropriate for the obvious and admitted unprofessional conduct. Suspension is a significant penalty, but balanced by the significant opportunity given Dr. Prevost to demonstrate rehabilitation and remediation of his conduct.
27. Following the Hearing Tribunal's decision regarding sanction, Dr. Prevost submitted that he would like to begin the suspension portion of the Order on February 28, 2022. There were no objections from counsel for the Complaints Director provided that patient care and continuity were considered. The proposed Order was amended accordingly to state that the suspension will commence on February 28, 2022.

IX. ORDERS

28. The Hearing Tribunal hereby orders pursuant to section 82 of the HPA:
 - a. Dr. Prevost's practice permit shall be suspended for a period of six months, with four months to be served and two months held in abeyance pending fulfillment of the other orders of the Hearing Tribunal. The suspension will commence on February 28, 2022.

- b. Dr. Prevost shall receive credit for one month of time out of practice in September – October 2019 against the period of active suspension resulting in three months of suspension yet to be served by Dr. Prevost.
- c. Dr. Prevost’s practice permit be subject to the following conditions:
 - i. That Dr. Prevost remain under monitoring of the CPSA’s Physician Health Monitoring Program; and
 - ii. That Dr. Prevost shall have a chaperone present for all patient encounters unless and until the Assistant Registrar responsible for the Physician Health Monitoring Program agrees that the discontinuance of the chaperone condition is appropriate.
- d. Dr. Prevost shall remain under the care of a psychologist or psychiatrist to address the lack of insight and self-reflection identified in the March 4, 2021 Comprehensive Occupational Assessments of Professionals report, and shall not discontinue therapy unless and until the psychologist or psychiatrist recommends and the Assistant Registrar responsible for the Physician Health Monitoring Program agrees that discontinuance of therapy is appropriate.
- e. Dr. Prevost shall be responsible for two-thirds of 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:



Dr. Douglas Faulder

Dated this 19th day of April, 2022.