

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. SUBRATA CHAKRAVARTY

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

INTRODUCTION

On December 17, 2018 the Hearing Tribunal (the “Tribunal”) held a hearing into the conduct of Dr. Subrata Chakravarty. The members of the Tribunal were: Dr. Alasdair Drummond of Stettler as Chair, Dr. Robin Cox of Calgary and Ms. Sheri Epp of Calgary (public member). Mr. James T. Casey Q.C. acted as independent legal counsel for the Tribunal. Also in attendance at the hearing were: Mr. Craig Boyer, legal counsel for the Complaints Director; Dr. Subrata Chakravarty, the investigated member; Ms. Rose M. Carter Q.C., legal counsel for Dr. Chakravarty; and Ms. Renee Gagnon, co-counsel for Dr. Chakravarty.

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

In order to protect the identity of the medical student intern this decision will refer to her as “A.B.” throughout this document. A medical student intern who was also at Dr. Chakravarty’s residence and who witnessed some of the events will be referred to as “C.D.”

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CHARGES

The allegation against Dr. Chakravarty from the Amended Notice of Hearing is as follows:

That on or about December 15, 2016, you did inappropriately touch A.B. on one or more occasions and request that she sleep in a bed with you, when you knew that she had been drinking alcohol, she had chosen not to drive home and she was a medical student who you had been instructing at the hospital earlier on December 15.

The matter proceeded by way of a Joint Submission and Admission Agreement. As part of that Agreement Dr. Chakravarty admitted that the allegation is true and that his conduct represents unprofessional conduct within the meaning of the *Health Professions Act* (the “HPA”).

EVIDENCE

As part of the Joint Submission and Admission Agreement the following exhibits were entered by agreement of the parties:

Exhibit 1

- Tab 1 Notice of Hearing dated September 13, 2018
- Tab 2 February 16, 2017 letter from Dr. M. Lewis
- Tab 3. Undated handwritten note from A.B.
- Tab 4. February 22, 2017 letter from C.D.
- Tab 5. April 10, 2017 memo regarding the interview of A.B.
- Tab 6. Undated letter of response from Dr. Chakravarty
- Tab 7. CPSA Standard of Practice on Boundary Violations
- Tab 8. CMA Code of Ethics

Exhibit 2 Amended Notice of Hearing dated December 14, 2018

- Exhibit 3 Agreed Statement of Facts dated December 17, 2018
- Exhibit 4 Tab 1 March 18, 2015 CPSA Investigation Report - file 140415.1
Tab 2 August 2015 Report from the Gabbard Center
Tab 3 November 5, 2015 Terms of Resolution
Tab 4 January 10, 2016 Physician Health Monitoring Agreement
Tab 5 Comprehensive Occupational Assessment dated December 14, 2018
- Exhibit 5 Joint Submission and Admission Agreement dated December 11, 2018

The Joint Submission and Admission Agreement contains Dr. Chakravarty's admission that the allegation in the Notice of Hearing is true. The agreed upon exhibits do include statements by A.B., the student intern; B.C., the student intern who was also in attendance; and a statement by Dr. Chakravarty.

FACTUAL BACKGROUND

The Exhibits establish the factual background to this matter.

Previous Complaint

In 2014 the CPSA had received and investigated a complaint that Dr. Chakravarty engaged in sexual boundary violations with two interns. Dr. Chakravarty denied that there was any sexual intent but acknowledged that he should have been more aware of boundary issues that could arise with the use of demonstrative techniques as a teaching tool, particularly when the demonstrations take place near intimate areas of the body.

As part of the investigative process Dr. Chakravarty agreed to participate in a Multidisciplinary Evaluation by the Gabbard Centre in August 2015. The report from the Gabbard Centre concluded that Dr. Chakravarty was motivated by good intentions to teach his learners. The Gabbard Centre assessors did not believe that a predatory or sexualized interaction with the students was at the root of his actions. The report concluded that Dr. Chakravarty was at low risk for engaging in any inappropriate activities with learners. The report recommended that he continue in practice at his current location. In other words, he was fit to practice. The report noted that Dr. Chakravarty had already taken a boundaries education course. The report recommended a formalized mentoring relationship for Dr. Chakravarty and continued studies and self-reflection on ethics, boundaries and the all-important power differential between physician and patients and between physicians and learners. Dr. Chakravarty indicated to the assessors he was not ready to return to having direct responsibilities for learners. The authors of the report indicated they did not see any reason why Dr. Chakravarty could not then return to his role of lecturer in group settings or in a role of teacher to other colleagues' students who are attending surgeries while he is in the OR.

On November 5, 2015 the College of Physicians and Surgeons of Alberta (the "CPSA") and Dr. Chakravarty entered into Terms of Resolution that resolved the complaint with Dr. Chakravarty agreeing to enter into a Physician Health Monitoring Program. The content of the requirements would be guided by the recommendations in the Gabbard Centre report. Dr. Chakravarty agreed to cooperate with all reasonable recommendations and requests arising from the Physician Health Monitoring Program. The Terms of Resolution were to continue until Dr. Chakravarty had completed his obligations thereunder. In January 2016 the CPSA and Dr. Chakravarty signed an Agreement under which Dr. Chakravarty entered into a formal mentorship arrangement and agreed to meet with the Assistant Registrar of the Physician Health Monitoring Agreement on request. The Agreement was to continue in place for a minimum of 3 (three) years from December 10, 2015.

Current Complaint

After a year with less involvement with learners, a Director asked Dr. Chakravarty to resume teaching. A.B. and C.D. were student interns working at the same hospital as Dr. Chakravarty. On December 15, 2016, Dr. Chakravarty conducted a teaching session attended by A.B., C.D. and others. Dr. Chakravarty's statement indicates that, following the session, a group from the hospital went to a restaurant to celebrate the last day of work of a resident. Dr. Chakravarty then invited the group to go to his house to play ping pong and socialize. A.B. had to stay back at the hospital but met the group later at Dr. Chakravarty's home. In attendance were student interns, a resident, Dr. Chakravarty, and other hospital staff. No members of Dr. Chakravarty's family were at the home.

The group drank alcohol and socialized throughout the evening. People began to leave. A.B. and C.D. stayed behind to watch television with Dr. Chakravarty. A.B. and C.D. decided to stay overnight in separate spare bedrooms because they were too intoxicated to drive and there were spare bedrooms available. At this stage all the visitors had left except A.B. and C.D.

A.B. and C.D. provided statements as to what happened that evening. Dr. Chakravarty admitted that the events as set out in the allegation in the Notice of Hearing. He admitted that he inappropriately touched A.B. on one or more occasions and requested that she sleep in a bed with him, when he knew that she had been drinking alcohol, that she had chosen not to drive home, and that she was a medical student who he had been instructing at the hospital earlier on December 15. The students left the home the next morning.

A.B. disclosed to officials in the Faculty of Medicine & Dentistry at the University what had happened. On February 16, 2017 Dr. Melanie Lewis, Associate Dean, Learner Advocacy & Wellness, filed a complaint with the CPSA.

The CPSA conducted an investigation into the complaint. As part of the investigation the CPSA arranged for Dr. Chakravarty to undergo a Comprehensive Occupational Assessment Program (the "COAP") in Edmonton, Alberta. A report was prepared following the assessment (the "COAP Report") which indicated there was no evidence of any predatory tendencies or any sexual disorders. Dr. Chakravarty's personality profile and clinical interviews suggested someone at risk for poor judgment and decision-making. The COAP Report concluded that Dr. Chakravarty's lack of understanding of the problems with his judgment and others' interpretation of his behavior remains a concern. The COAP Report indicated that Dr. Chakravarty is fit to practice.

The COAP Report outlined the following recommendations:

- that Dr. Chakravarty engage in intensive educational activities;
- that he not be involved in teaching as there are no clear explanations for his current or past difficulties;
- if he wishes to re-engage in teaching with learners there should be a reassessment to determine if he has gained insight and understanding of the factors that led to two complaints in a relatively short period of time; and
- that he have a workplace monitor with consideration being given to conducting 360 degree evaluations so that Dr. Chakravarty is given direct feedback about his interactions and how he is perceived to others.

SUBMISSIONS

Through the joint submissions on sanction, the Complaints Director and Dr. Chakravarty proposed the following sanctions:

1. Dr. Chakravarty shall receive a suspension of his practice permit for a period of 6 (six) months to start on a date determined by the Complaints Director.
2. Dr. Chakravarty shall, at his own cost, enter into and fulfill a new Continuing Care Agreement with the Assistant Registrar responsible for the College's Physician Monitoring Program for Boundary Violators, for a period of at least 5 (five) years after the date the Agreement is signed and Dr. Chakravarty shall not be discharged from that Agreement without the agreement of the Assistant Registrar and having regard to any further assessment of Dr. Chakravarty.
3. The new Continuing Care Agreement shall incorporate the recommendations set out in the COAP assessment report dated December 14, 2018.
4. Dr. Chakravarty's practice permit shall include the restriction that he have neither academic oversight nor other involvement with any learners, be it medical student, resident or other health care trainee, until such time as he has demonstrated to the satisfaction of the Complaints Director that he is reasonably safe to be trusted in the role of instructor. The Complaints Director may require Dr. Chakravarty to undergo further assessment, at Dr. Chakravarty's expense, before determining if Dr. Chakravarty be allowed to have any involvement with medical learners.
5. Dr. Chakravarty shall be responsible for the full cost of the COAP assessment report dated December 14, 2018.
6. Dr. Chakravarty shall be responsible for 75% of the costs of the investigation and the hearing before the Hearing Tribunal payable on terms acceptable to the Complaints Director.

Ms. Carter, on behalf of Dr. Chakravarty, acknowledged the seriousness of the allegations but stressed that Dr. Chakravarty has accepted responsibility for his actions by admitting the facts set out in the allegations and acknowledging that he engaged in unprofessional conduct. Ms. Carter also noted that while the situation is serious this is not the same as a situation of sexual misconduct towards a physician's patient. Ms. Carter stressed that Dr. Chakravarty cooperated with the Comprehensive Occupational Assessment and paid the significant cost of the assessment. He further accepts responsibility by agreeing to the 6 month suspension through the joint submission on sanction. The CPSA's concerns about his interactions with learners are appropriately addressed through the provision that he not have academic oversight or other involvement with any learners.

Mr. Boyer, on behalf of the Complaints Director, submitted that this is a joint submission on sanction and as a result the Tribunal should not deviate unless the proposed sanction is contrary to the public interest. The CPSA is concerned that the latest incident took place during the currency of the previous monitoring agreement. As a result, the parties have agreed upon a very significant set of sanctions which includes a 6 month suspension and a ban on involvement with learners. These sanctions will further specific and general deterrence. Mr. Boyer noted that Dr. Chakravarty's acceptance of responsibility avoided the need for the medical students to testify about very difficult circumstances.

In response to questions from the Tribunal as to whether there should be a permanent ban on interactions with learners or whether there should be a minimum length of time for the ban, Mr. Boyer stressed that Dr. Chakravarty will be in the Continuing Care Agreement for at least 5 years. He submitted that it would be highly unlikely that the Complaints Director would approve Dr. Chakravarty to have any interactions with learners during the time that he is under the Continuing Care Agreement. In addition, there is the additional safety check that the Complaints Director can require Dr. Chakravarty to be assessed again before making a decision on whether to permit him to have any involvement with medical learners.

FINDINGS

The Tribunal accepts Dr. Chakravarty admission that the allegations in the Notice of Hearing are true and that his conduct represents unprofessional conduct within the meaning of the *Health Professions Act*.

ORDERS /SANCTIONS

The Tribunal considers Dr. Chakravarty's misconduct to be very serious. There is a significant power imbalance in a physician-learner relationship which is recognized in the CPSA's Standard of Practice on Boundary Violations. Paragraph 6 addresses Physician-Learner Relationships:

A regulated member must not:

- A. sexualize a teacher-learner relationship by making sexual comments or gestures toward a learner;*
- B. enter into a close personal or sexual relationship with a learner while directly or indirectly responsible for mentoring, teaching, supervising or evaluating that learner; or*
- C. enter into any relationship with a learner that could present a risk of conflict of interest or coercion while directly or indirectly responsible for mentoring, teaching and/or evaluating that learner.*

"Learner" is defined in the Standard of Practice as including, but not limited to, clinical trainee, medical student, other health professional learner, graduate student, resident, or fellow.

In determining the appropriate sanction, the Tribunal considered a range of factors. With respect to the seriousness of the misconduct, Dr. Chakravarty made sexual advances towards a learner he had been instructing. This is completely unacceptable and is a violation of paragraph 6(a) of the Boundary Violations Standard of Practice since Dr. Chakravarty attempted to sexualize a teacher-learner relationship. This conduct would have had a very negative impact on A.B. as she was attempting to complete her medical education and having to deal with this very difficult situation. The conduct constitutes an abuse of power and brought shame on Dr. Chakravarty's medical colleagues. The medical profession needs to understand that this type of conduct is intolerable and will result in serious sanctions.

The Tribunal also considered the first complaint. There was no finding or admission of unprofessional conduct in the first matter and the Gabbard Center Report concluded that there was no sexualized intention with respect to the students in the first complaint. However, the fact that the conduct concerning A.B. occurred while Dr. Chakravarty was still covered by the Physician Health Monitoring Agreement is a matter of significant concern. The fact that Dr. Chakravarty has already engaged in courses and self-reflection on the issues of ethics and boundaries and still engaged in this conduct is a matter of very serious concern to the Tribunal.

The Tribunal also took into account mitigating factors. Dr. Chakravarty admitted the unprofessional conduct which is a significant mitigating factor. This avoided the need for the victim and her colleague to testify. It is true that Dr. Chakravarty originally denied that he had done anything wrong but ultimately he formally admitted the truth of the allegation and accepted responsibility.

The Tribunal also took into account that the proposed sanctions were jointly recommended by the Complaints Director and Dr. Chakravarty. The Tribunal acknowledged the case law that provides that hearing tribunals should not depart from joint submissions on sanction unless the proposed sanctions are unreasonable or unfit.

During the hearing the Tribunal raised questions about the joint submission. The Tribunal questioned whether there should be a permanent ban on Dr. Chakravarty's academic oversight of learners or a ban for a specific period of time. After considering counsels' responses and bearing in mind that this is a joint submission, the Tribunal accepts the proposed ban with its indefinite nature. During the hearing the Tribunal asked whether the Complaints Director could possibly lift the restrictions with respect to interacting with learners while Dr. Chakravarty was in the Continuing Care program. The Complaints Director indicated that he could not see justification for lifting the restricting on learners while Dr. Chakravarty is still in the program. While paragraph 3 of the orders below provides the Complaints Director with discretion on the length of the ban, the expectation of the Tribunal is that the restriction will not be lifted while Dr. Chakravarty continues in the program. This means that in all likelihood the restriction will remain in place for at least 5 (five) years. In addition, the joint submission has a number of other checks and balances that will serve to protect the public including learners:

1. There is a very significant suspension of Dr. Chakravarty's practice permit for 6 (six) months.
2. Dr. Chakravarty shall not be discharged from the Continuing Care program even after 5 (five) years without the agreement of the Assistant Registrar responsible for the CPSA's Physician Monitoring Program for Boundary violators.
3. The Assistant Registrar can insist on a further assessment of Dr. Chakravarty before determining whether to discharge him from the program.
4. Before the Complaints Director decides whether to lift the restrictions on involvement with learners, the Complaints Director may require a further assessment.
5. The Continuing Care Agreement is to incorporate the recommendations set out in the December 14, 2018 COAP assessment report which include:
 - a. A recommendation that Dr. Chakravarty not engage in a community based family medicine practice due to the relative lack of structure and more potential for miscommunication.
 - b. A recommendation that Dr. Chakravarty engage in some intensive educational activities to assist him in addressing conditions where lapses in judgement could occur.
 - c. A recommendation that Dr. Chakravarty have a workplace monitor and that consideration be given to conducting regular 360 degree evaluations so that Dr. Chakravarty is given direct feedback about his interactions and how he is perceived by others. The Tribunal considers the ongoing monitoring to be very important given the history and all the circumstances.

Taking into account all aspects of the proposed orders, the Tribunal concludes that the orders will protect the public and find the proposal to be reasonable. Given its conclusions, the Tribunal accepts the joint submission on sanction and makes the following orders under section 82 of the *Health Professions Act*:

1. Dr. Chakravarty shall receive a suspension of his practice permit for a period of 6 (six) months to start on a date determined by the Complaints Director.
2. Dr. Chakravarty shall, at his own cost, enter into and fulfill a new Continuing Care Agreement with the Assistant Registrar responsible for the CPSA's Physician Monitoring Program for Boundary Violators, for a period of at least 5 (five) years after the date the Agreement is signed and Dr. Chakravarty shall not be discharged from that Agreement without the agreement of the Assistant Registrar and having regard to any further assessment of Dr. Chakravarty.
3. The new Continuing Care Agreement shall incorporate the recommendations set out in the COAP assessment report dated December 14, 2018.
4. Dr. Chakravarty's practice permit shall include the restriction that he have neither academic oversight nor other involvement with any learners, be it medical student, resident or other health care trainee, until such time as he has demonstrated to the satisfaction of the Complaints Director that he is reasonably safe to be trusted in the role of instructor. The Complaints Director may require Dr. Chakravarty to undergo further assessment, at Dr. Chakravarty's expense, before determining if Dr. Chakravarty be allowed to have any involvement with medical learners.
5. Dr. Chakravarty shall be responsible for the full cost of the COAP assessment report dated December 14, 2018.
6. Dr. Chakravarty shall be responsible for 75% of the costs of the investigation and the hearing before the Tribunal payable on terms acceptable to the Complaints Director.

Signed on behalf of the Hearing Tribunal by
the Chair



Dated: February 25, 2019

Dr. Alasdair Drummond