

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. KEITH ONEIL MARTIN

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

I. INTRODUCTION

[1] The Hearing Tribunal held a hearing into the conduct of Dr. Keith Oneil Martin on March 9, 2021. The members of the Hearing Tribunal were:

Dr. John Pasternak as Chair
Dr. David Sheppard
Mr. Doug Dawson (public member).

[2] Mr. Fred Kozak QC acted as independent legal counsel for the Hearing Tribunal.

[3] 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. Keith Oneil Martin and Ms. Barbara Stratton QC, legal counsel for Dr. Keith Oneil Martin.

II. PRELIMINARY MATTERS

[4] Neither party objected to the composition of the Hearing Tribunal or its jurisdiction to proceed with the hearing. The hearing was conducted virtually. There were no matters of a preliminary nature.

[5] Pursuant to section 78 of the *Health Professions Act*, RSA 2000, c. H-7 ("HPA"), the hearing was open to the public.

III. ALLEGATION

[6] The Notice of Hearing listed the following allegations:

1. On or about November 23, 2016, you did inappropriately bite the upper arm of Nurse Kathleen Galbraith;
2. You have used inappropriate language with the nursing staff at the Slave Lake Hospital, in particular using the phrase or something to the effect that you would say out loud "uterus, I need a uterus" when asking a nurse to attend as a chaperone with a patient you intended to examine;
3. (charge severed in accordance with November 25, 2019 decision of the Hearing Tribunal).

IV. EVIDENCE - EXHIBITS

[7] The following Exhibits were entered into evidence during the hearing:

1. Notice of Hearing dated September 25, 2019;
2. Amended Notice of Hearing dated February 16, 2021;
3. Agreed Exhibit Book; and
4. Agreed Statement of Facts.

V. SUBMISSIONS

Complaints Director

[8] Mr. Boyer referred to Exhibit 3, noting that the complaint giving rise to these proceedings was made by Nurse Kathy Galbraith in June 2018. Exhibit 3, Page 3 indicates that the incident leading to the complaint occurred on November 23, 2016 in the charting room beside the nursing station at the Slave Lake Health Care Centre. In responding to a comment by Dr. Martin, Nurse Galbraith jokingly said "bite me" whereupon Dr. Martin unexpectedly bit nurse Galbraith on her right upper arm. At the time, Nurse Galbraith was wearing scrubs with a thick long-sleeved hoodie. She indicated the bite was very painful and was hard enough to leave a circular bruise. The incident left her shocked and upset. Nurse Galbraith indicated in her complaint that she tried to return to work the day following the biting incident, but felt very uncomfortable and afraid when she saw Dr. Martin. Dr. Martin asked her that day if they could talk about the incident, and Nurse Galbraith declined, indicating to Dr. Martin that his actions were totally inappropriate. She acknowledged that she received a letter of apology from Dr. Martin in December, 2016, but also indicated in her complaint that she continued to feel bullied and unsupported at work. Nurse Galbraith indicated that because of her ongoing struggles in her attempt to return to work, she was off work without pay from November 25, 2016 to December 21, 2016.

[9] Mr. Boyer also referred to Dr. Martin's admission in Exhibit 4 that on occasion, at the Slave Lake Health Care Centre, when he required a female nurse to serve as a chaperone during an examination of a female patient, rather than calling for a nurse, he would use the phrase, "...uterus, I need a uterus".

[10] Mr. Boyer submitted that the admitted conduct constituted a clear breach of sections 7, 9, and 52 of the Canadian Medical Association Code of Ethics in force at the time of the incidents.

Dr. Martin

[11] As a point of clarification, Ms. Stratton indicated to the Hearing Tribunal that in addition to the complaint made to the College, Nurse Galbraith made two complaints to the hospital, the first in 2016 and the second in 2018. She confirmed that Dr. Martin took no issue with the underlying facts, that he admitted the allegations, and also acknowledged that the proven allegations constituted unprofessional conduct.

VI. DECISION

[12] The Hearing Tribunal considered the following allegations:

1. On or about November 23, 2016, you did inappropriately bite the upper arm of Nurse Kathleen Galbraith;
2. You have used inappropriate language with the nursing staff at the Slave Lake Hospital, in particular using the phrase or something to the effect that you would say out loud "uterus, I need a uterus" when asking a nurse to attend as a chaperone with a patient you intended to examine;
3. (charge severed in accordance with November 25, 2019 decision of the Hearing Tribunal).

[13] The Hearing Tribunal considered all of the evidence, Dr. Martin's admissions and acknowledgement of unprofessional conduct, and the submissions of the parties. The Hearing Tribunal finds that the allegations have been proven on a balance of probabilities, and that the proven allegations constitute unprofessional conduct as defined in section 1(1)(pp) of the HPA.

VII. REASONS AND FINDINGS

[14] After considering the evidence and submissions, the Hearing Tribunal finds that the allegations have been proven on a balance of probabilities, and that the proven allegations amount to unprofessional conduct pursuant to section 1(1)(pp) of the Health Professions Act. Regardless of Dr. Martin's intention, his admitted conduct constitutes a clear, serious and flagrant disregard of the dignity, right and entitlement of his co-workers to feel safe and respected in their workplace, and to be treated as respected and valued professional

health care workers. As such, the conduct is a breach and violation of sections 7, 9, and 52 of the Canadian Medical Association Code of Ethics in force at the time.

VIII. NEXT STEPS

[15] The parties are scheduled to appear before the Hearing Tribunal on April 13, 2021 to adduce evidence and make submissions on appropriate sanctions in relation to these findings of unprofessional conduct.

Signed on behalf of the Hearing
Tribunal by the Chair



Dated: March 29, 2021

Dr. JOHN PASTERNAK