

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. 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.
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.

## **II. ALLEGATIONS**

6. The Notice of Hearing listed the following allegations:
  - i. On or about November 23, 2016, you did inappropriately bite the upper arm of Nurse [REDACTED]
  - ii. 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;
  - iii. (charge severed in accordance with November 25, 2019 decision of the Hearing Tribunal).
7. At the hearing on March 9, 2021, Dr. Martin admitted the allegations in relation to charges #1 and #2, and acknowledged that his admitted conduct constituted unprofessional conduct.
8. After considering the evidence and submissions, the Hearing Tribunal found that the allegations had been proven on a balance of

probabilities, and that the proven allegations amounted to unprofessional conduct pursuant to section 1(1)(pp) of the Health Professions Act. In its written decision dated March 29, 2021, the Hearing Tribunal found that Dr. Martin's admitted conduct constituted 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 Hearing Tribunal found the conduct to be a breach and violation of sections 7, 9, and 52 of the Canadian Medical Association Code of Ethics in force at the time.

9. The Hearing Tribunal reconvened on April 13, 2021 to hear evidence and submissions from the parties on appropriate sanctions in relation to these findings of unprofessional conduct.

### **III. EVIDENCE**

a. On behalf of the Complaints Director

1. Nurse [REDACTED]

10. Ms. [REDACTED] testified that she began working in the Slave Lake Emergency Dept near the end of March 2016 and had worked with Dr Martin frequently since that time.

She testified that on November 23, 2016 Dr Martin bit her on her shoulder after she said, jokingly, "bite me". This left a bruise on her arm despite the fact she was wearing two layers of clothing. A photograph was taken soon afterward by a co-worker, included in the exhibit book showing the bruise.

11. She also testified that on two separate occasions, she heard Dr. Martin calling out loudly in the Emergency Dept., "uterus, I need a uterus", which indicated that he wanted a female nurse chaperone for the purpose of examining a female patient. She stated she felt demeaned by this and reported it verbally to her site supervisor. She stated she heard nothing in response to this complaint. She stated that she believed other nurses were significantly affected by hearing this and believes that two nurses left the emergency department due to interactions with Dr. Martin.
12. One day after the 'bite incident', she filed an online report to the hospital administration. She then received a letter of apology from Dr. Martin, but stated she was not satisfied with that outcome because she

believed that Dr Martin received a promotion within the Family practice administration soon after the incident. She stated the stress of the incident caused her to be off work for approximately a month and thereafter, she avoided shifts in the ER if Dr Martin was working.

13. When cross examined by Ms Stratton, Nurse [REDACTED] admitted that Dr Martin apologized to her immediately after the biting incident. She also stated he offered the following day to have an administrative notation made on his file and she received a formal letter of apology from him through the Hospital Administrator. She had no knowledge of there being any formal reprimand being made against him.

She made a formal written complaint to the CPSA in June 2018 and in that complaint, she stated she sought to have Dr. Martin formally reprimanded, and ordered to take some sensitivity training.

b. On behalf of Dr. Martin

1. Dr Martin

14. Dr Martin testified that he was 39 years of age at the time of the biting incident, and had been practicing in Slave Lake Emergency Dept since 2003. He had been a nurse prior to Medical School.

He stated the atmosphere in the Emergency Dept was very collegial and at times nurses and doctors played practical jokes on each other. He stated that after the biting incident and discussions with the Medical Director about it, that from his perspective, the atmosphere changed and he stated he was careful about not crossing any professional lines with the nursing staff thereafter.

He denied that he received any sort of promotion after the biting incident, and stated he had been placed in a leadership role some years prior to the incident.

He understood that a reprimand had been placed on his file by Dr Worry, his Medical Director.

15. When questioned regarding the use of the phrase "uterus, I need a uterus", he admitted that he used this phrase more than once in the emergency department when requesting a female chaperone. He stated that he stopped doing so when admonished by a male nurse, and he denied ever using that phrase at work thereafter.

16. Dr. Martin stated that he has taken numerous courses in self-awareness, conflict resolution and medical leadership since 2017 in order to make himself a better physician and leader. He testified that he has needed to take many days away from work without pay due to the college complaint, and the need to travel to Edmonton to the CPSA office to meet with the Complaints Investigator, and to meet with his lawyers.

He demonstrated remorse by apologizing in front of the panel to Nurse [REDACTED], not only for the biting incident, but the inappropriate method of calling for a chaperone.

17. During cross examination by Mr. Boyer, Dr. Martin acknowledged that he had been the Medical Director for the Slave Lake Medical Centre since 2014. This post ended in September 2018.

2. [REDACTED]

18. [REDACTED] testified that she had been a senior consultant for the North Zone Medical Affairs. In her role, she managed complaints and feedback regarding physicians and was in that role throughout 2016.

She knew Dr Martin during the material time and remembers the general details of the biting incident. She testified about the general decision-making process that the Medical Director would go through in determining the degree of investigation required for any complaint, as well as the specific complaint regarding Dr Martin. She explained that in the case of Dr Martin, Dr Worry chose to provide feedback to Dr Martin as the best way of dealing with that situation. She also opined that Dr Martin was compliant with the process.

19. She had a similar role when the same complaint was brought to the attention of Dr Muir, the Deputy Zone Medical Director, in 2018. She established that the file was reviewed and it was decided that an apology was appropriate. She had a role in drafting the letter that was sent back to Nurse [REDACTED], which stated that it was understood a formal apology from Dr Martin had been sent to Nurse [REDACTED] and from the Deputy Director's perspective that was sufficient.
20. During cross examination by Mr Boyer, she testified that a Triggered Initial Assessment would be a formal investigation of any complaint and that this was not done in response to the biting incident and the complaint registered by Nurse [REDACTED]. She did not recall any

complaints about Dr. Martin asking for “a uterus” in the Emergency Dept.

Questioning from the panel established that there was no reprimand added to Dr Martin’s AHS file as a result of the biting incident.

3. [REDACTED]

21. [REDACTED] was a Nurse Practitioner at the Family Care Clinic in Slave Lake between 2013 and present day and had worked with Dr Martin in various locations in the Slave Lake Health Care Centre including the Emergency dept. She testified that she has acted as a chaperone for female exams done by Dr Martin on many occasions. She stated she had never heard Dr Martin use the phrase, “uterus, I need a uterus” nor had she heard of it being used in the Emergency Dept.

#### **IV. SUBMISSIONS ON SANCTION**

a. Submissions on behalf of the Complaints Director

22. Mr. Boyer submitted that Dr Martin had violated provisions of the Canadian Medical Association Code of Ethics, those being sections 7,9 and 52. He explained that was significant in the nature and gravity of his actions. He referred to the *Jaswal* factors, submitting that the most relevant were:
- Dr Martin had significant experience in the Health Care field as a leader in the medical facility and previously, as a nurse, and ought to have known his conduct was demeaning and misogynistic.
  - Dr Martin had not suffered significantly due to his actions in that travelling to Edmonton to visit with his legal team and address the complaint is part of being a Regulated Professional. There had not been any established letter of reprimand placed on any of his professional files despite the complaint being registered with the Zone Medical Director.
  - The impact of his actions significantly affected the Complainant, causing her to miss one month of work without pay. Two other nurses left the Emergency Dept allegedly due to Dr Martin’s behaviour.
  - The need for specific deterrence was not submitted to be a major factor, given that Dr Martin has not repeated the

impugned behaviours. The need to promote general deterrence was argued to be a very significant factor in order to ensure safe and proper practice of medicine and to communicate to the profession that this type of conduct was unacceptable, especially given that Dr Martin was in a position of leadership within the department of Family Practice.

- The conduct was proven to be outside the range of acceptable conduct.
- The range of similar cases was most closely aligned with *Dimock vs the CPSA of Ontario*. This case dealt with unacceptable comments towards nurses that went on for a significant length of time and resulted in sanctions which included a 4 month suspension and a requirement to take an ethics course. The case of *College of Nurses of Ontario vs Lento* also dealt with a series of comments towards patients and colleagues, resulting in a 5 month suspension.

27. Mr. Boyer submitted that an appropriate sanction in this case should include a 3 month suspension, remedial courses on ethics and professionalism, plus payment of 2/3 of the costs of the investigation and hearing, excluding the costs pertaining to the severance of the first allegation (the first day of the hearing).

b. Submissions on behalf of Dr. Martin.

28. Ms. Stratton submitted that Dr Martin had swiftly and consistently apologized, verbally and in writing, for his behaviour in biting Nurse [REDACTED]. She stated that the bite was unintentional and essentially a "joke gone bad". With regard to the use of the word "uterus" when calling for a female chaperone, Dr. Martin stopped using it when it was pointed out to him that it was not funny, and he did not intend for the comment to be demeaning. He has not repeated the act since 2016. The letters from Dr Worry did constitute a reprimand.

2. As for the *Jaswal* factors, Ms. Stratton submitted that:

- Dr. Martin was a young Medical Director when the conduct occurred and was simply trying to diffuse the tension within the stressful emergency dept.
- There was a very significant impact on Dr. Martin due to the complaints hanging over his head since 2018. He responded to the complaints promptly with an admission and apology.

- Dr. Martin has not repeated any of the unprofessional behavior once he was admonished for doing so.
- He has not had any prior findings of unprofessional conduct.
- He has suffered financial loss due to the time away from his practice required to address these issues with the Complaints Director.
- Simply publishing the details of this hearing in the Messenger will be sufficient general deterrence.
- In regard to the range of sanctions imposed in similar cases, Ms. Stratton submitted that the conduct in issue in the cases summarized by Mr. Boyer was far more egregious, more repetitive and involved unprofessional behaviours involving clinical interactions with patients, when compared to the actions of Dr. Martin.

In other cases, where the conduct in question more closely aligned with a "joke gone bad" the sanctions imposed were most often reprimands and costs awards.

30. Ms. Stratton submitted that unlike the conduct in many of the cases cited by Mr. Boyer, the biting incident was unintentional. In light of Dr. Martin's apology, co-operation and the fact that this matter has been ongoing for more than 3 years, an appropriate sanction should be limited to a reprimand and payment of 25% of the costs excluding the first hearing day.

## **V. FINDINGS**

31. The Hearing Tribunal agreed with both Counsel that the need for a specific deterrent was largely mitigated by the fact that Dr Martin immediately apologized verbally and in writing for his actions in relation to the "biting" incident, and he has now acknowledged the unprofessional nature of his comments to the nursing staff [referring to female chaperones as "uteruses"] and has not repeated the behaviour since, nor have there been any other complaints registered against him. However, the Hearing Tribunal believes that the biting incident ought not to be minimized by referring to it as unintentional given that the investigated member did in fact purposely close his teeth on the nurse's arm which resulted in bruising the nurse's arm through two layers of clothing. The Hearing Tribunal believes an appropriate sanction must take into account the need for general deterrence to denounce the behaviour in question, which it found to be 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 healthcare workers. An appropriate sanction for the acknowledged conduct must not only inform the profession that behaviours such as these are completely unacceptable, it must also assure the public that the College takes matters such as these most seriously. To accomplish those objectives, the Hearing Tribunal orders that Dr Martin receive a Reprimand and a one month suspension of his licence to practice medicine, with the suspension to be held in abeyance pending his completion of a course on Ethics and Professionalism acceptable to the Complaints Director, to be completed by Dr. Martin prior to the end of August 2021. The panel also orders that Dr Martin pay two thirds of the costs of the investigation and hearing, other than those costs which pertain to the first hearing day dealing with severance of the first allegation.

## **VI. ORDERS**

To accomplish those objectives, the Hearing Tribunal orders that Dr Martin receive a Reprimand and a one month suspension of his license to practice medicine, with the suspension to be held in abeyance pending his completion of a course on Ethics and Professionalism acceptable to the Complaints Director, to be completed by Dr. Martin prior to the end of August 2021. The panel also orders that Dr Martin pay two thirds of the costs of the investigation and hearing, other than those costs which pertain to the first hearing day dealing with severance of the first allegation.

Signed on behalf of the Hearing  
Tribunal by the Chair



Dated this 21 day of June 2021

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Dr. John Pasternak