

COLLEGE OF PHYSICIANS & SURGEONS OF ALBERTA

("THE COLLEGE")

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. MAX KLEIN

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

April 20, 2022

INTRODUCTION

1. The Hearing Tribunal held a hearing into the conduct of Dr. Max Klein on February 8-9, 2022. The members of the Hearing Tribunal were:

Dr. Robin Cox of Calgary as Chair;
Dr. Oluseyi Oladele of Edmonton;
Ms. Juane Priest of Calgary (public member);
Ms. Archana Chaudhary of Edmonton (public member).

2. Mr. Gregory Sim acted as independent legal counsel for the Hearing Tribunal.

3. Appearances:

Ms. Stacey McPeek, legal counsel for the Complaints Director.

Dr. Max Klein did not attend on either day.

PRELIMINARY MATTERS

4. There were no objections to the composition of the Hearing Tribunal or its jurisdiction to proceed with the hearing.

5. Ms. McPeek, for the Complaints Director, made an application to allow the Hearing Tribunal to proceed, despite the absence of Dr. Klein. The Hearing Tribunal agreed to hear the application, and Ms. McPeek made the following submissions:

- Section 72(1) of the *Health Professions Act (HPA)* requires that the investigated person must appear before the Hearing Tribunal. However, Section 79(6)(a) states that despite Section 72(1), if the investigated person does not appear at a hearing, and there is proof that the investigated person has been given notice to attend, the Hearing Tribunal may proceed with the hearing in the absence of the investigated person.
- Section 77(a) states that the hearings director must, at least 30 days before the hearing, give the investigated person a notice to attend and give reasonable particulars of the subject matter of the hearing.
- Section 120(3) states that if a notice is required to be given under Part 4 by a hearings director, the notice is sufficiently given if it is given by personal service to the person or sent to the person by certified or registered mail at the person's address as shown on the register or the record of the registrar.

- Several attempts were made to contact Dr. Klein, and to notify him of the allegation and details of the hearing into the matter. Four exhibits document these attempts and demonstrate that the requirements of Section 120(3) had been met.
- Exhibit 1 was the Notice of Hearing for Dr. Klein, dated August 16, 2021. This notice states that “you should take further notice that you are entitled to attend at the same time and place in person and with legal counsel, but that in the event you do not attend at the said time and place, the said hearing tribunal may proceed in your absence.”
- Exhibits 2 and 3 were statutory declarations from Lisa Jackson of the office of Shores Jardine LLP, legal counsel for the Complaints Director, and from Amanda Marshall, process server. These exhibits showed that several attempts were made to serve Dr. Klein with the Notice of Hearing. These attempts included registered mail sent on June 24, 2021 and October 28, 2021 to [REDACTED] Edmonton, Alberta, [REDACTED] the last known address of Dr. Klein shown on the register of the College. Additional copies were sent to Dr. Klein’s email address on file. The College obtained a process server, Amanda Marshall, who attempted to serve Dr. Klein with the document on November 2, 2021 at the above address, without success, as he was not to be found at that address.
- Dr. Klein has an obligation to keep his address current with the College. In accordance with Section 120(3) of the *HPA*, Dr. Klein was given notice to attend and reasonable particulars on October 18th, 2021, by sending the notice of hearing by registered mail to the address shown on the register. This would be sufficient to allow the Hearing Tribunal to proceed in his absence.
- The Complaints Director then went beyond the requirement of the *HPA*, as a possible new address was found - [REDACTED] Sherwood Park, Alberta, [REDACTED]. Exhibit 4, statutory declaration of Amanda Marshall, process server, documented that she attended this address on January 18, 19, and 21, 2022. Dr. Klein was not to be found at that location, however there were packages addressed to him on the porch. On January 21, 2022 the door was answered by a female occupant who stated that Dr. Klein was not at home.
- A further letter with the Notice of Hearing was sent to Dr. Klein at the new address on January 21, 2022, by registered mail. As of the morning of the hearing, it had not been picked up.
- The letter of October 18, 2021, together with the Notice of Hearing, is sufficient to satisfy the Hearing Tribunal that Dr. Klein has been given notice to attend and the hearing may proceed in his absence.

In addition, the documents were also sent several times by email, and none came back as undeliverable. The College has made an earnest attempt to ensure that Dr. Klein is aware of the hearing and able to attend and present his case. The Complaints Director submitted that Dr. Klein was evading the College's attempts to serve him.

6. The Hearing Tribunal then considered the application and determined that the criteria outlined in Section 120(3) had been met and the hearing should proceed despite the absence of Dr. Klein.
7. There were no other matters of a preliminary nature.

CHARGES

8. The Notice of Hearing listed the following allegation:

That on the evening of January 23, 2015, you did administer to Dr. [REDACTED], without her knowledge or consent, an illicit substance, which included Methylenedioxymethamphetamine (known as MDMA or Ecstasy).

OPENING STATEMENT

9. Ms. McPeek, for the Complaints Director, made the following opening statement:
 - The Hearing Tribunal would be asked to consider whether it is more likely than not that, on the evening of January 23rd, 2015, Dr. Max Klein administered to Dr. [REDACTED], without her knowledge or consent, an illicit substance which included methylenedioxymethamphetamine, also known as MDMA or Ecstasy.
 - Dr. Klein failed to interact with Dr. [REDACTED] with courtesy, honesty, respect, and dignity, he failed to refrain from conduct that may reasonably be considered as offensive to others, and he failed to respect the personal boundaries of a co-worker. His actions constituted unprofessional conduct, as defined in the *Health Professions Act*.
 - Four witnesses would be called by the Complaints Director: Dr. Michael Caffaro, (Complaints Director at the time), Dr. [REDACTED], Mr. [REDACTED] (Dr. [REDACTED] husband), and Dr. Mark Yarema (expert witness).

EVIDENCE

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

- Exhibit 1: 2021-08-16 NOTICE OF HEARING Dr. Klein
- Exhibit 2: 2022-02-07 Statutory Declaration - L. Jackson
- Exhibit 3: 2021-11-05 Statutory Declaration of Attempted Service
- Exhibit 4: 2022-01-25 Statutory Declaration of Attempted Service
- Exhibit 5: Complaint Reporting Form - Dr. [REDACTED] 2015-02-25
- Exhibit 6: EF ACD to T. Ryan re staying the investigation 2015-03-10
- Exhibit 7: Caffaro Memo regarding discussion with counsel - acknowledgment complaint in abeyance 2015-09-01
- Exhibit 8: Letter from Klein Counsel to Caffaro with update on ongoing investigations 2016-08-05
- Exhibit 9: Letter from Klein counsel to Caffaro regarding AHS investigation 2018-01-23
- Exhibit 10: Letter from Klein Counsel to Caffaro regarding Klein's intention to return to practice 2018-09-07
- Exhibit 11: Caffaro email to Klein counsel advising investigation would be reactivated, but may be delayed 2018-09-13
- Exhibit 12: 2018-10-22 Letter from Dr. M. Klein
- Exhibit 13: K. Ivans memo re interview of Dr. M. Klein 2019-04-15
- Exhibit 14: 2020-01-06 Letter from AHS with hospital records
- Exhibit 15: LF CD to Klein referring to external counsel 2020-08-16
- Exhibit 16: CPSA Code of Conduct - reissued Jun 5, 2014
- Exhibit 17: 2015-01-21 Texts between Dr. [REDACTED] and Dr. Klein January 21-24, 2015
- Exhibit 18: 2015-01-30 – Dr. [REDACTED] Witness Statement to EPS
- Exhibit 19: YAREMA, Dr. Mark C - CV Feb 2 2022
- Exhibit 20: 2021-03-31 Expert Opinion Report

Exhibit 21: 2016-09-01 Statutory Declaration of Dr. [REDACTED]

Testimony of Dr. Michael Caffaro and related information

11. Dr. Caffaro was affirmed and questioned by Ms. McPeek.
12. Dr. Caffaro joined the College on April 8, 2015 as Complaints Director, and transitioned into the role by July 2015, taking over from Dr. Owen Heisler. Dr. Caffaro identified a number of documents that were entered as exhibits.
13. The investigation into the complaint against Dr. Klein was already underway when Dr. Caffaro took over the case. Dr. [REDACTED] made the initial complaint (Exhibit 5). Dr. [REDACTED] is the Head and Neck Fellowship Director at the University of Alberta Hospital, and Dr. [REDACTED] was a fellow in that program. Dr. [REDACTED] lodged the complaint on her behalf, dated February 21, 2015. A response to the complaint from Dr. Klein was requested by the College.
14. In an email from Dr. John Ritchie, Assistant Complaints Director, to Mr. Tim Ryan, of Gowlings, legal counsel for Dr. Klein, dated March 10, 2015, an undertaking was discussed (Exhibit 6). The email also stated that the College was willing to "stay" the investigation into the complaint, pending the outcome of a police investigation, at the suggestion of Mr. Ryan.
15. Exhibit 7 was a memo to Dr. Klein's file, dated September 1, 2015, recorded by Dr. Caffaro, updating the situation following a conversation with Mr. Ryan. There were three processes involving Dr. Klein outside the College's domain. According to Mr. Ryan, the police investigation had been dropped. The University of Alberta had made a decision that was not in Dr. Klein's favor, and he was banned from campus. Alberta Health Services had also formally terminated Dr. Klein. Appeals were underway.
16. Exhibit 8 was a letter from Mr. Ryan to Dr. Caffaro, dated August 5, 2016, confirming that the Alberta Health Services appeal was still active, but that there appeared to be no ongoing police investigation.
17. Exhibit 9 was a letter from Mr. Ryan to Dr. Caffaro, dated January 23, 2018. Dr. Klein had elected not to proceed with the Alberta Health Services appeal, although one issue had been dealt with by arbitration. Dr. Klein still had issues to resolve with the University, but Mr. Ryan was not representing him in that case.
18. Exhibit 10 was a letter from Mr. Ryan to Dr. Caffaro, dated September 7, 2018. This indicated that Dr. Klein still had legal issues with the University and with Alberta Health Services that he was not able to pursue. He did hope to resume his training, and therefore was requesting that the College reopen their process that had been put on hold.

19. Exhibit 11 was an email from Dr. Caffaro to Mr. Ryan, dated September 13, 2018, indicating that the file would be reactivated and an investigator assigned.
20. Dr. Klein responded to a request from the College investigator for a response to the complaint, in a letter dated October 22, 2018 (Exhibit 12).
21. Exhibit 13 was a meeting memorandum, recorded by Ms. Kristy Ivans, College investigator, dated April 15, 2019. The meeting was held that day and Dr. Klein, Mr. Ryan, Ms. Ivans, and Ms. Marnie Mills, another College investigator, attended.
22. Exhibit 14 was a letter, dated January 6, 2020, from Alberta Health Services to Ms. Ivans and attached medical records of Dr. [REDACTED] for January 24, 2015.
23. Dr. Caffaro explained the College process further. Once information has been gathered, a preliminary Investigation Report would be submitted to the Complaints Director. An Investigation Meeting is then held and additional information obtained as required. In this case, the preliminary findings of the Investigation Report were sent to Dr. Klein on August 6, 2020 (Exhibit 15). Dr. Caffaro indicated to Dr. Klein that a disciplinary hearing was being considered, and also informed him that Dr. [REDACTED] was now the complainant.
24. Dr. Caffaro indicated that the College's Code of Conduct "Expectations of Professionalism for Alberta Physicians" had been reissued in June 2014 (Exhibit 16).

Testimony of Dr. [REDACTED] and related information

25. Dr. [REDACTED] was affirmed and questioned by Ms. McPeck. Dr. [REDACTED] provided some background and described her recollection of the events of January 23-24, 2015.
26. Dr. [REDACTED] was a head and neck fellow at the University of Alberta. Dr. Max Klein was a fifth-year resident in the ENT program at the University of Alberta. Prior to the events in question their relationship involved little interaction, but was professional. They had not previously socialized regularly outside of work.
27. Beginning on January 20, 2015, Dr. Klein started asking Dr. [REDACTED] to go for a beer. Dr. Klein continued asking Dr. [REDACTED] to go for a beer via text messages (Exhibit 17). Dr. [REDACTED] initially declined, but agreed to go on January 23, 2015 (a Friday). Dr. [REDACTED] usually had a clinic on Fridays, but had an emergency operating room (OR) case booked for the evening. Prior to the OR case, Dr. [REDACTED] met with her husband and went for dinner. Dr.

█████ was under the impression that Dr. Klein wished to meet to explain his absences and behavior.

28. Following dinner with her husband, Dr. █████ returned to the hospital for her OR case. After this case, at around 8pm, Dr. █████ met with Dr. Klein to go for the drink. Dr. █████ was under the impression that another resident might be joining them, but this did not happen. Dr. █████ suggested Earl's as a destination. Once they were on their way by car (Dr. Klein driving), Dr. Klein said he would rather not go to Earl's, preferring to get a snack from McDonald's. Once they got their snacks, Dr. Klein pulled into a parking lot and produced a bottle of gin and two bottles of grapefruit juice. The gin and juice were already with him in the vehicle. Dr. Klein mixed the gin and juice in the two bottles. Dr. █████ did not know if the bottles had been previously opened. Dr. █████'s drink tasted bitter and strong, which she thought was due to the gin. They ended up swapping the bottles at around 8:45pm, but she only took a sip from the second one. It tasted different to her.
29. Dr. Klein was driving around the city at this point, and Dr. █████ felt that his conversation became increasingly inappropriate. This included comments about Dr. Klein's previous sexual experiences, Dr. █████'s physical appearance, as well as raising an incident that had happened to Dr. █████ when she was a medical student. Dr. Klein also attempted to touch Dr. █████'s knee and thigh. Dr. █████ became very upset at this point, as they continued to drive around the city. She began to feel strange sensations of numbness, but not that she would associate with alcohol. She asked Dr. Klein to take her home, and she arrived there around 10pm.
30. Once home, Dr. █████ began to feel increasing symptoms of numbness and agitation. She noticed that her pupils were very large in the bathroom mirror. At one point she was crawling on the floor. At around 11:30pm, she asked her husband to take her to the emergency room, as she suspected she had been drugged. She arrived at the hospital around midnight and was admitted around 2am on January 24, 2015.
31. Dr. █████ then texted Dr. Klein, saying that she felt really strange and asking if there was something in the drink. Dr. Klein responded with several texts, denying that he had put anything in her drink. He suggested that the cause was the amount of alcohol she had consumed.
32. Dr. █████ was evaluated by Dr. Inwood, emergency physician, who suspected poisoning, possibly with MDMA. Dr. Inwood ordered a toxicology screen, and treated Dr. █████ with intravenous fluids and some sedation with midazolam. Dr. █████ was told that her screen for alcohol was negative and she learned that it was positive for MDMA. She stabilized and returned home at 4am, continuing to experience some symptoms until around 8-9am.

33. Dr. █████ reported the events to her department head, Dr. █████, and her program director, Dr. █████, as well as the police, on January 24, 2015. Her statement to the police, dated January 30, 2015, is Exhibit 18.
34. Dr. █████ stated that she rarely drank during her fellowship year, and only in moderation. She had never sought treatment or been diagnosed as an alcoholic. She had only ever consumed MDMA once, experimenting at the age of 16 years. She does not take drugs and needed to be clear-headed for the safety of her patients.
35. Dr. █████ confirmed that from the time that she met Dr. Klein on January 23, 2015, until her hospital admission, she was in no contact with anybody except Dr. Klein and her husband.
36. Dr. █████ was asked if she knew █████, who had made a statement about Dr. █████. Dr. █████ had never met █████, but she understood that █████ had been in a relationship with Dr. Klein at some point. Dr. █████ understood that the statement (Exhibit 21) claimed that Ms. █████ overheard a conversation between Dr. █████ and a friend, in which Dr. █████ admitted making false claims and ruining a resident's career. This supposedly took place in the restroom of Mercer Tavern in Edmonton, sometime in the spring of 2015. Dr. █████ asserted that this did not take place.

Testimony of Mr. █████, Dr. █████'s husband

37. Mr. █████ was affirmed and questioned by Ms. McPeck.
38. Mr. █████ first met Dr. █████ in 2012. They were married and living together at the time of the alleged incident. Mr. █████ described Dr. █████ as believing in the good in everybody and being a very trusting person.
39. Mr. █████ described the events of January 23-24, 2015. Specifically, he and Dr. █████ had takeout dinner sometime after 5pm, then he took her back to the hospital at 6:30pm for her OR case. She was behaving normally at that time. She told Mr. █████ that she was going to meet with Dr. Klein after the case, as he was struggling at work. Mr. █████ returned home and next saw Dr. █████ between 9:30 and 10:00pm, when she returned home. She was upset, as Dr. Klein had not talked about work, but brought up a subject that made her upset and uncomfortable. Then, around 10:30pm, Dr. █████ began to act strangely. By 11pm, she was acting more oddly, walking strangely with exaggerated movements, and was totally out of character. He had never seen her acting this way, before or since. This was not how she might behave after consuming some alcohol. He had never seen her consume MDMA at any time and he did not administer it to her either. Mr. █████ suspected some sort of drug effect.
40. At around midnight, they went to the hospital, and a drug screen was agreed to by the physician. Mr. █████ persuaded Dr. █████ to text Dr. Klein

and he texted back several times (Exhibit 17). They went home between 4-5am, as Dr. [REDACTED] was more stable. The incident was reported to Dr. [REDACTED]'s department head on the morning of January 24, 2015, and later that day to the police.

Testimony of Dr. Mark Yarema, expert witness

41. Dr. Mark Yarema was affirmed and questioned by Ms. McPeek.
42. Dr. Yarema described his training and experience in emergency medicine and toxicology and supplied his curriculum vitae (Exhibit 19). The Hearing Tribunal found him qualified as an expert witness in toxicology.
43. Dr. Yarema had prepared an expert opinion for the College, dated March 31, 2021 (Exhibit 20), in relation to the complaint against Dr. Klein.
44. Dr. Yarema's opinion was based on a review of the literature, as well as the letter of complaint, Dr. Klein's response, a letter from Dr. [REDACTED], the University of Alberta Emergency Room Record, and the record of the interview with Mr. [REDACTED]. Dr. Yarema came to three main conclusions:
45. Firstly, Dr. [REDACTED]'s presenting symptoms, together with the toxicology report, indicated that MDMA was the most likely cause, as opposed to alcohol, which was undetectable at 01:50am.
46. Secondly, making several assumptions, Dr. [REDACTED]'s alcohol level at 01:50am on January 24th would have been 3-28 mmol/L if she had consumed 4-7 ounces of gin starting at 8:35pm on 23rd. In fact, her alcohol level was undetectable, supporting the conclusion that alcohol was not the cause of her presentation.
47. Thirdly, Dr. [REDACTED]'s drug screen was consistent with the ingestion of MDMA \pm midazolam. The presence of midazolam, however, was explainable as it had been administered to her in the emergency room.
48. Dr. Yarema expanded on the typical symptoms caused by MDMA which were those experienced by Dr. [REDACTED]. He also stated that the effects of MDMA usually start around 30-60 minutes after ingesting it, peak around 2 hours, and typically last between 4-6 hours, sometimes much longer. He also indicated that there were no reasons why Dr. [REDACTED] should have increased alcohol metabolism and that, as her alcohol level was undetectable (not zero), she probably had not drunk as much as was suggested (4-7 ounces of gin).

Closing Submissions, Ms. McPeek, for the Complaints Director

49. Ms. McPeek first summarized the evidence provided by the four witnesses.

50. Dr. Caffaro had explained the reasons why the investigation took as long as it did. It was at Dr. Klein's request that the investigation was stayed, as there was a criminal investigation in progress. Once the College investigation was reopened, also at the request of Dr. Klein, the matter was promptly and thoroughly investigated. Given the circumstances, including the Covid pandemic, there was no undue delay.
51. Dr. Caffaro also entered several key pieces of evidence, including the medical records of Dr. [REDACTED], and the written response and interview summary of Dr. Klein, concerning the allegation.
52. Dr. [REDACTED] provided her recollection of the events of January 23-24, 2015. Her symptoms peaked about one to one and a half hours after she was dropped off at home by Dr. Klein. She denied taking MDMA herself and stated that the only persons she had contact with between 8pm and midnight on January 23, 2015 were her husband and Dr. Klein.
53. Mr. [REDACTED]'s testimony corroborated Dr. [REDACTED]'s testimony.
54. The expert witness, Dr. Yarema, opined that Dr. [REDACTED]'s symptoms were more consistent with MDMA ± midazolam, than alcohol. Furthermore, the drug screen was consistent with MDMA ingestion. Dr. Yarema stated that the effects of MDMA begin 30-60 minutes after ingestion and peak at around 2 hours.
55. Dr. Klein did not attend the hearing, therefore the only responses available to consider were his written response to the complaint (Exhibit 12), and the meeting memorandum of Dr. Klein's interview, recorded by Ms. Ivans (Exhibit 13).
56. Dr. Klein had stated that it was Dr. [REDACTED] who initiated going for a drink. He stated that he declined going to Earl's, as it would take too long. Dr. Klein surmised that Dr. [REDACTED] took the MDMA herself, either before they met or after he dropped her off at home.
57. The Hearing Tribunal's decision will come down to a matter of credibility between Dr. [REDACTED]'s and Dr. Klein's versions of events.
58. There is uncontroverted evidence that Dr. [REDACTED] ingested MDMA on the evening of January 23, 2015. Dr. [REDACTED] denies taking this substance herself, and there is no evidence to contradict her. Dr. [REDACTED] denies taking MDMA after experimenting with it once as a teenager, and Mr. [REDACTED] testified that he was not aware of any drug use by his wife.
59. The only two people who could have administered the MDMA to Dr. [REDACTED] were Dr. Klein and Mr. [REDACTED]. The timeline of Dr. [REDACTED]'s symptoms was suggestive of the ingestion occurring at 8:30-9:15pm, at the time when Dr. [REDACTED] and Dr. Klein were consuming their drinks. There is no evidence that

Mr. █████ administered the drug to his wife. The only individual with the opportunity to administer MDMA to Dr. █████ was Dr. Klein.

60. Dr. █████'s description of the events has been consistent, including her report to the police, as well as her testimony at the hearing.
61. Dr. Klein's responses to the College includes several inconsistencies. Dr. Klein claimed that Dr. █████ was the one who initiated the idea of going for a drink. The texts between Dr. Klein and Dr. █████, however, showed that Dr. Klein was the one who proposed going for a drink over several days.
62. Dr. Klein also declined going to a restaurant because it would take too long. Later on, however, Dr. Klein and Dr. █████ were driving around the city for some two hours, which does not concord with time pressure being an issue.
63. When Dr. █████ texted Dr. Klein from the hospital, questioning whether there was anything in her drink, Dr. Klein denied putting anything in the drink and suggested that Dr. █████ had consumed a large amount of alcohol. This was found to be unlikely by Dr. Yarema, as Dr. █████'s alcohol level was undetectable.
64. Dr. Klein denies remembering all the specifics of his conversation with Dr. █████ during their drive. Given the circumstances of receiving a text from Dr. █████ suggesting something had been put her drink, and having been suspended from work the next day, with the police involved, it is unlikely that Dr. Klein would not have tried to remember the specifics of what had occurred the evening before.
65. There are thus inconsistencies in Dr. Klein's responses that indicate that his version of events is unreliable.
66. The statutory declaration of █████ (Exhibit 21) should carry very little weight, as she did not testify at the hearing, nor was she available for an interview with the College or with the University of Alberta during their investigation.
67. Overall, the evidence should demonstrate to the reasonable person that Dr. Klein more likely than not administered to █████ an illicit substance, MDMA on January 23rd, 2015, without her knowledge and consent.
68. These actions constitute a breach of the College's Code of Conduct that was in effect at the time, dated June 5, 2014 (Exhibit 16). This states that: "as a physician, I will (a) interact with physicians and others with courtesy, honesty, respect, and dignity; (b) refrain from conduct that may reasonably be considered offensive to others; such conduct may be behavioural, including inappropriate actions; and (f) respect the personal boundaries of co-workers."

69. A breach of the Code of Conduct constitutes unprofessional conduct as defined by the *HPA*. Accordingly, the complaints director submits that there is sufficient evidence for this Hearing Panel to find Dr. Klein guilty of unprofessional conduct.
70. In response to a question from the Hearing Tribunal, Ms. McPeck further submitted that Dr. Klein was guilty of unprofessional conduct as defined in the *HPA 1(1)(pp), (ii and xii)*, in that he harmed the integrity of the regulated profession.

Dr. Klein was not present at the hearing, therefore made no submissions either orally or in writing.

FINDINGS

71. The Hearing Tribunal deliberated and considered the following:
72. There was uncontroverted evidence, including the hospital record of Dr. [REDACTED] and the expert opinion of Dr. Yarema, that Dr. [REDACTED] ingested an illicit substance, MDMA on the evening of January 23, 2015. Although the toxicology blood and urine results in the hospital record may not have followed the chain of custody that would be required in a criminal trial in court, the Hearing Tribunal accepted this evidence, as allowed in the *HPA* section 79(5).
73. Two versions of the events of January 23-24, 2015 were considered, namely that Dr. [REDACTED] administered MDMA to herself, or that Dr. Klein administered it to her without her knowledge or consent.
74. Considering the evidence given by the four witnesses, and the submitted exhibits, the Hearing Tribunal agreed with Ms. McPeek that Dr. [REDACTED]'s version of events was most credible. Dr. [REDACTED] testified and gave a consistent account of the events of January 23-24, 2015. Her evidence was corroborated by Mr. [REDACTED] and by Dr. Yarema's opinion.
75. Dr. Klein declined to testify or even to attend the hearing. The limited information provided by Dr. Klein to the College contained some inconsistencies and lacked credibility.
76. The Hearing Tribunal gave very little weight to the statutory declaration of [REDACTED]. [REDACTED] did not attend the hearing so there was no opportunity for the Tribunal to hear her testimony in person or for any cross-examination.
77. The standard of proof required was a balance of probabilities. The Hearing Tribunal was therefore required to assess the evidence and determine whether the alleged conduct was more likely than not to have occurred. The Hearing Tribunal determined that the evidence was clear and this standard of proof had been met.
78. The Hearing Tribunal also agreed with Ms. McPeek that Dr. Klein's conduct harmed the integrity of the medical profession and constituted unprofessional conduct as defined by the *HPA*. Drugging one's colleague, or anyone, without their knowledge or consent, is well-outside the scope of appropriate behaviour for a physician. Dr. Klein's conduct will come as a shock to the public. It will make it difficult for the public to place their health and trust in the hands of physicians.
79. For these reasons, The Hearing Tribunal finds the allegation to be proven and that the conduct of Dr. Klein was unprofessional as defined in the *HPA 1(1)(pp)(xii)*.

Next Steps

80. The Hearing Tribunal considered the next steps. Dr. Klein did not appear at the hearing and may have been trying to avoid receiving or being served with notices from the College. In the interests of Dr. Klein, however, the Hearing Tribunal wishes to give him an opportunity to make submissions on the sanction phase of the hearing, either in written form or in-person.
81. The Hearings Director is requested to send a copy of this written decision to Dr. Klein by registered mail at the last address on the College's register and at the [REDACTED] address in Sherwood Park. The Hearings Director is also requested to send a copy of this decision to Dr. Klein by email to Dr. Klein's last known email address.
82. The Hearing Tribunal will receive written submissions on sanction from both parties within four weeks of the date of this decision. If either party wishes to call additional evidence on the issue of sanctions, or to make oral submissions in addition, or as an alternative, they may request to do so and the Hearing Tribunal will determine this request.

Signed on behalf of the Hearing Tribunal by the Chair:

A handwritten signature in black ink, appearing to read "R.G. Cox", enclosed in a thin black rectangular border.

Dr. Robin G. Cox

Dated this 20th day of April, 2022.