

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. ANURAG GOSWAMI

**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. Anurag Goswami on June 2, 2022. The hearing was conducted virtually via Zoom.
2. The members of the Hearing Tribunal were:
  - Naz Mellick, Chair (public member);
  - Dr. Ralph Strother;
  - Dr. Brinda Balachandra; and
  - Doug Dawson (public member).
3. Mr. Jason Kully acted as independent legal counsel to the Hearing Tribunal.
4. The following persons were also in attendance:
  - Ms. Ashley Reid and Ms. Aman Costigan, legal counsel for the Complaints Director of the College;
  - Dr. Anurag Goswami, investigated person; and
  - Ms. Megan McMahon, legal counsel for Dr. Goswami.

## **II. PRELIMINARY MATTERS**

### **Application to Recuse Tribunal Member due to Apprehension of Bias**

5. Prior to the hearing being conducted on June 2, 2022, Dr. Goswami raised a concern that Tribunal member Naz Mellick had an apprehension of bias because of Dr. Goswami's beliefs and the small community in which he and Ms. Mellick apparently belonged.
6. Dr. Goswami and the Complaints Director were invited to make written submissions on the apprehension of bias issue.
7. In written submissions made on April 11, 2022, Dr. Goswami confirmed he was applying to have Naz Mellick disqualified from the hearing panel on the basis of an apprehension of bias.
8. Two concerns were raised by Dr. Goswami in his submissions:
  - a. First, legal counsel to a nearby medical center owned by a Dr. Rashid Malik entered into a business dispute with Dr. Goswami [REDACTED] surrounding the name of the medical clinic owned by Dr. Goswami. Dr. Goswami understood the spelling of "Mellick" and "Malik" were different but had a "concern" the two individuals "may" be related. He stated that he understood "Malik" could be spelt different depending on environment and demography.

- b. Second, Dr. Goswami saw a patient in a clinic and declined to agree with the patient's asserted level of disability. After this the patient posted negative reviews on his clinic's review page through three different accounts, one of which was the YYC Muslim Association, which Dr. Goswami understood to be related to the Islamic Family & Social Services Association on which Ms. Mellick appeared to sit as a board member.
9. Dr. Goswami argued that Ms. Mellick's perception of impartiality was impaired "given the fact that she appears to be associated with two individuals or organization that have expressed a point of view adverse to the applicant". Accordingly, a reasonable person would have the perception there was a real apprehension of bias.
  10. In written submissions made on April 25, 2022, the Complaints Director opposed the application to have Ms. Mellick disqualified from the Tribunal on the basis that Dr. Goswami had not established a reasonable apprehension of bias.
  11. The Complaints Director argued that the relationship between Ms. Mellick and Dr. Malik was "tenuous, at best" and amounted to no more than mere suspicion. There was no sufficient or cogent evidence to discharge the onerous burden needed to prove a reasonable apprehension of bias. A neutral observer may see the two have similar last names but there was no evidence to establish any kind of relationship. In addition, Dr. Goswami stated that "legal counsel" for Dr. Malik entered into a dispute with Dr. Goswami and it was unclear whether legal counsel did so on behalf of Dr. Malik or someone else. The Complaints Director also submitted that even if Ms. Mellick and Dr. Malik were related, there was no evidence to indicate Ms. Mellick would not be neutral because of the relationship.
  12. With respect to the second ground raised, the Complaints Director submitted Dr. Goswami had only provided mere suspicion and no evidence of a reasonable apprehension of bias. Dr. Goswami suggested that the account that posted the negative review was an account for the YYC Muslim Association which was related to the Islamic Family & Social Services Association. However, there was no evidence to support this claim. Further, even if the two were related, that did not provide more than mere suspicion to suggest Ms. Mellick was aware of or endorsed the negative review.
  13. After reviewing the parties' submission, the Tribunal convened on April 28, 2022 to make a determination on the application.
  14. On May 2, 2022, the Hearings Director communicated the following to the Complaints Director and Dr. Goswami on behalf of the Hearing Tribunal:

The Hearing Tribunal has considered the submissions from counsel for Dr. Goswami and counsel for the Complaints Director in respect of Dr. Goswami's application for the recusal of Ms. Naz Mellick on the basis of an apprehension

of bias. The Tribunal has determined that the two allegations of bias, first that Ms. Mellick may be related to a Dr. Rashid Malik because the spelling of their surnames are similar and second that Dr. Goswami's clinic received a negative online review from a "YYC Muslim Association" which Dr. Goswami understands to be related to an organization on which Ms. Mellick sits on the Board of Directors (Islamic Family & Social Services Association), are both speculative and based on conjecture. The Tribunal finds that both allegations are without merit and that there is no information to indicate an informed person would believe Ms. Mellick is unable to exercise her role impartially in this case.

Dr. Goswami's application for the recusal of Ms. Mellick is fully dismissed and Ms. Mellick will serve as a Tribunal member in the upcoming hearing. The Hearing Tribunal will provide more fulsome written reasons on its decision on this application at a later date.

15. These are the Hearing Tribunal's written reasons regarding its decision to dismiss Dr. Goswami's application to disqualify Ms. Mellick due to a reasonable apprehension of bias.
16. With respect to what constitutes a reasonable apprehension of bias, the Alberta Court of Appeal has stated:

The test for reasonable apprehension of bias is whether an informed person viewing the matter realistically and practically would have a reasonable apprehension of bias. The grounds must be serious and substantial; a real likelihood or probability is necessary, not a mere suspicion. The burden of proof is on the party alleging a real or apprehended breach of impartiality by establishing actual bias or a reasonable apprehension of bias...<sup>1</sup>

17. Bias or prejudice represents a predisposition to decide an issue in a certain way which does not leave the mind open to conviction. It is a condition or state of mind that sways judgment and renders a decision maker unable to exercise their functions impartially in a particular case.
18. As observed by Dr. Goswami, there is a strong presumption that decision-makers will be impartial and will decide an upcoming case on its evidence, applying the law as best as they can without fear or favour. Evidence is needed to demonstrate that impartiality, or the appearance of impartiality, is at risk.
19. With respect to Dr. Goswami's first ground, Dr. Goswami presented only a mere suspicion of a concern and presented no serious or substantial issue of a reasonable apprehension of bias. Dr. Goswami stated that he had a "concern" Dr. Malik and Ms. Mellick "may" be related. This is exactly the kind of "mere suspicion" that has been clearly stated to not be grounds for a reasonable

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<sup>1</sup> *College of Physicians & Surgeons of Alberta v Dr. Ali*, 2017 ABCA 442 at para 28, citing *Beaverford v Thorhild (County No. 7)*, 2012 ABCA 99 at para 7.

apprehension of bias. The suggestion that a decision maker will not be impartial because that individual has a name that is supposedly similar to another individual involved in a completely separate dispute is speculative and based on conjecture. Further, the Tribunal is of the view that "Malik" and "Mellick" are not even similar enough to give rise to even a speculative concern. This submission is equivalent to arguing that the names "Johnson" and "Johnston" are similar enough to give rise to a concern that two individuals are related. Dr. Goswami's argument is based simply on how names are spelt and not on any indication about an actual relationship between Ms. Mellick and Dr. Malik. The spelling of names has no tangible consideration on Ms. Mellick's ability to act impartially.

20. Ms. Mellick does not know Dr. Malik, she has no relationship with Dr. Malik, and she has no information regarding the dispute between Dr. Malik's legal counsel and Dr. Goswami. Ms. Mellick had no prior interaction with Dr. Goswami or knowledge of Dr. Goswami prior to these College proceedings.
21. With respect to Dr. Goswami's second ground, Dr. Goswami's submissions indicate he is aware of the identity of the patient that posted three negative reviews. One of the reviews was posted from a "muslims yyc" account which Dr. Goswami stated was related to the Islamic Family & Social Services Association on which Ms. Mellick sits as a board member. Similar to his first argument, Dr. Goswami has presented only a weak suspicion of a concern and no real likelihood or probability of any bias. There is no suggestion that the patient who posted the reviews knows Ms. Mellick in any way or that Ms. Mellick is familiar with the reviews or what led to the reviews. There is no indication that the Islamic Family & Social Services Association has anything more than an "relation" to the YYC Muslim Association. There is simply no link between Ms. Mellick's service on the Board of Directors of the Islamic Family & Social Services Association and the review and Dr. Goswami.
22. Ms. Mellick sits on the Board of Directors of the Islamic Family & Social Services Association, which is a governance board. She has no information on the YYC Muslim Association and no prior knowledge of the reviews or who may have posted them.
23. Dr. Goswami presented only speculation as to why Ms. Mellick should not sit on the Tribunal. There was no evidence that she is associated with the two individuals, or that she even knows anything about the two individuals, who have expressed a point of view adverse to Dr. Goswami. There was no evidence, let alone cogent evidence, to allow an informed person viewing the matter realistically and practically to think that Ms. Mellick would be influenced, consciously or unconsciously, in an inappropriate manner.
24. The Tribunal notes that Dr. Goswami initially raised a concern that Ms. Mellick had an apprehension of bias because of Dr. Goswami's beliefs and the small community in which he and Ms. Mellick apparently belonged. While no further argument was submitted on this issue, the Tribunal finds that even if the two

were members of a shared community, this would not give rise to a reasonable apprehension of bias without more. If two individuals belong to the same community, whether they be political, religious, or otherwise, or to different communities with opposing perspectives, this would not be enough to establish a reasonable apprehension of bias. A real likelihood or probability that the individual will not be impartial or that the individual will be apprehended to not be impartial, based on some evidence, is necessary.

25. Accordingly, the Tribunal determined, based on the facts of this case and the context, that there was no reasonable apprehension of bias for Ms. Mellick and no basis to disqualify her from sitting on the Tribunal.

### **Application to Hold Hearing in Private**

26. On behalf of Dr. Goswami, during the hearing on June 2, 2022, Ms. McMahon made an application to hold the hearing in private pursuant to section 78(1)(a) of the HPA.
27. Ms. McMahon acknowledged that a hearing is open to the public unless the Tribunal orders that it should be private. She submitted that Dr. Goswami was relying upon s. 78(1)(a)(iii) of the HPA to hold the hearing in private because not disclosing a person's confidential personal, health, property or financial information outweighed the desirability of having the hearing open to the public.
28. She stated the complainant's confidential health information could be disclosed, as well as personal information about Dr. Goswami's [REDACTED]. She submitted the desirability of having the hearing open to the public did not outweigh disclosing their personal information. While the complainant's information was not referred to in large measure, the conduct was referred to which had some information and other personal information was contained in the exhibits that could be applied for to be reviewed by the public. With respect to Dr. Goswami's [REDACTED] the disclosure of the nature of the allegations, Dr. Goswami's behavior leading to the hearing, and the admission of unprofessional conduct was confidential information about personal family circumstances.
29. Ms. McMahon stated the disclosure of personal [REDACTED] circumstances would impact Dr. Goswami's [REDACTED]. She submitted the public interest and transparency of College proceedings had to be balanced with these interests. She submitted no sentencing goal or public interest goal was achieved by leaving the hearing open to the public and observed that no members of the public were present. She submitted that leaving the hearing open could be punitive of the third parties referenced, being Dr. Goswami's [REDACTED] or [REDACTED].

30. Ms. McMahon referred to cases of when a hearing was held in private. In the case of the College and McKennitt, there were a significant number of records relating to personal and health and other sensitive information of patients and third parties. The Complaints Director supported the application and the application was granted as the Tribunal found there was a risk of disclosing private health and other personal information belonging to innocent third parties. In the case of the College and Stewart, the Complaints Director applied to hold the hearing in private at the request of a patient. The hearing was ordered closed because testimony and arguments referenced names, intimate details regarding personal health information, and the relationship with the physician. Ms. McMahon also discussed the case of Re Maritz where parts of the hearing where evidence was heard was closed.
31. Ms. McMahon also advised that Dr. Goswami intended to request the Registrar to refrain from publishing names in the written decision made by the Tribunal, including that of Dr. Goswami.
32. Ms. Reid advised the Complaints Director supported the application and that it was appropriate that the hearing be closed to protect the confidentiality of the complainant. She indicated the complainant expressed concern about being identified in relation to the matter and that there were concerns if the hearing was open to the public, the complainant could be identified which could have negative consequences for the complainant.
33. Ms. Reid stated any issue about redaction of the written decision was outside of the Hearing Tribunal's jurisdiction.
34. After hearing submissions from the parties, the Hearing Tribunal determined that the hearing would not be held in private and dismissed the application made on behalf of Dr. Goswami.
35. The Hearing Tribunal noted that s. 78(1) of the HPA states "A hearing is open to the public unless..." and that this creates a presumption of an open hearing. The Tribunal found that concerns about disclosure of confidential information did not outweigh the presumption and desirability of having the hearing open to the public.
36. The Tribunal found that the concerns raised about how the disclosure of Dr. Goswami's actions would impact [REDACTED] did not involve the disclosure of a person's "confidential personal, health, property, or financial information" that outweighed the desirability of having the hearing open to the public. No information about Dr. Goswami's [REDACTED] would be disclosed during the course of the hearing and third parties would not be identified. While Dr. Goswami's actions would be disclosed, such disclosure is appropriate as part of the discipline process for regulated members. The expectation of privacy for regulated members is diminished because of the transparency and accountability requirements in the HPA. Hearings should not

be closed to avoid embarrassment or discomfort on the part of the regulated member or others because of the regulated members conduct.

37. The value of open and transparent College discipline hearings outweighs the general concern that publicly available information will lead to gossip and reputational harm to the regulated member or related third parties. Open and transparent discipline proceedings are necessary so that the public maintains confidence in the proper regulation of the medical profession and the Hearing Tribunal process.
38. The Tribunal also understood there would be no testimony from either Dr. Goswami or the complainant and that access to the records of the proceeding are limited. It also observed that no members of the public were present during the hearing. The Tribunal observed the complainant's information was limited and that it could be protected in the written decision and that the complainant would not be identified by name.
39. In light of all these factors, the Tribunal found the hearing should not be held in private.
40. In addition, the Tribunal noted that Ms. McMahon intended to request the Registrar to refrain from publishing names found in the Tribunal's decision, including Dr. Goswami's name. The Tribunal is cognizant that, pursuant to s. 119 of the HPA, decisions regarding publication are made by the College's Registrar and that the Hearing Tribunal has no jurisdiction to determine publication. Nonetheless, it was Dr. Goswami's conduct that necessitated the need for a disciplinary hearing. Publication of a physician's conduct is part of transparency in disciplinary proceeding and serves to maintain the integrity of the profession. Publication demonstrates that the College takes unprofessional conduct seriously and that such conduct is addressed in a transparent manner and not concealed from the public, including future patients and employers. This demonstrates to the public, as well as other members of the profession, that the conduct of the College was fair and aimed at the protection of the public.
41. No other preliminary matters raised at the outset of the hearing.

### **III. ALLEGATIONS**

42. The Notice of Hearing listed the following allegations:
  1. Between December 2016 and April 2017, you did have an inappropriate sexual relationship with your patient, [REDACTED] contrary to the College of Physicians & Surgeons of Alberta (the "College") Standard of Practice on Sexual Boundary Violations;



2. From March 1, 2017 and December 2018, you failed to report your sexual boundary violation with your patient, ██████ to the College as required by the College's Standard of Practice on Self-Reporting to the College; and
3. On your annual renewal form for 2018 practice permit you have reported to the College on your annual renewal information form that you had not engaged in a sexual or inappropriate personal relationship with a patient when you knew that such answer was false.

#### **IV. EVIDENCE**

43. The following Exhibits were entered into evidence during the hearing by agreement:

Exhibit 1      Agreed Exhibit Book, Tabs 1-8

Exhibit 2      Admission and Joint Submission Agreement

#### **V. SUBMISSIONS REGARDING ALLEGATIONS**

##### **Submissions on Behalf of the Complaints Director**

44. Ms. Reid advised that Dr. Goswami had admitted to the conduct alleged in the Notice of Hearing and that he admitted he engaged in unprofessional conduct.
45. Ms. Reid reviewed the allegations found in the Notice of Hearing and then reviewed the contents of the Agreed Exhibit Book. She submitted there was clear and concise evidence in the Agreed Exhibit Book to support the allegations as being proven and that the admitted conduct amounted to unprofessional conduct.
46. Ms. Reid advised that in a response letter dated December 20, 2018, Dr. Goswami acknowledged the relationship with ██████ and other facts, including that he had a sexual encounter with ██████ in March of 2017. She indicated there were some differences in Dr. Goswami's recollection as compared to the complainant's recollection found in the complaint form but submitted the differences were not material to the allegations.
47. Ms. Reid reviewed Dr. Goswami's renewal information form for the year 2018. She indicated that Dr. Goswami answered "No" to the question of "Are you presently, or have you ever, engaged in a sexual or inappropriate personal relationship with a patient that has not been previously reported to this College" despite the fact that Dr. Goswami had a relationship with the complainant in 2017.
48. Ms. Reid went through Dr. Goswami's billing records for his treatment of the complainant and noted that the first entry was December 11, 2012 and that treatment continued through 2013, 2014, 2015, 2016, 2017, and 2018.

Specifically, on February 18, 2013, Dr. Goswami described the health service that he provided as "other psychiatric evaluation and interview. ..." and that a diagnostic code of "depressive disorder not otherwise classified" was entered. She advised that the same health service code appeared in other entries in 2013, 2014, 2016 and early 2017 and that it appeared in conjunction with a depressive disorder code or neurotic disorder codes.

49. Ms. Reid reviewed the Standards of Practice that were in place at the time of the conduct. She advised that Dr. Goswami's conduct related to the Sexual Boundary Violations standard, specifically subsections 3(a) and 5. She also advised that his conduct violated the Standard of Practice for self-reporting to the College, including subsection 1(b).
50. Ms. Reid submitted that the Tribunal should accept the admission of unprofessional conduct by Dr. Goswami on the allegations.

#### **Submissions of Behalf of Dr. Goswami**

51. Ms. McMahon advised that the facts as stated were agreed to and that she had nothing further to add beyond what was contained in the admission agreement in which Dr. Goswami admitted to the allegations.

### **VI. DECISION OF THE HEARING TRIBUNAL**

52. The Hearing Tribunal's task is to review the allegations in the Notice of Hearing, and determine whether the allegations are factually proven, on a balance of probabilities, and whether the conduct is unprofessional conduct as defined in the HPA.
53. The Hearing Tribunal carefully reviewed and considered the evidence in the Agreed Exhibit Book, as well as the submissions of the parties. The Hearing Tribunal found that the three allegations in the Notice of Hearing were factually proven on a balance of probabilities. The Tribunal also found that Dr. Goswami's conduct constituted unprofessional conduct.

### **VII. FINDINGS AND REASONS**

54. In the Admission and Joint Submission Agreement, Dr. Goswami admitted the allegations were true and that his conduct amounted to unprofessional conduct.
55. Dr. Goswami's admission that the allegations were true was supported by the evidence presented in the Agreed Exhibit Book.
56. The complainant's medical chart demonstrated that Dr. Goswami saw [REDACTED] from December 2012 to September 2018. It demonstrated that Dr. Goswami saw [REDACTED] for anxiety and other medical issues on repeated occasions and that he offered counselling to [REDACTED].

57. In his initial response to the complaint, Dr. Goswami acknowledged that he had a sexual encounter with ■■■ on March 1, 2017.
58. The medical chart demonstrated that Dr. Goswami had seen ■■■ in January 2017 for "other psychiatric evaluation and interview" and that there was a diagnosis code of "depressive disorder". It also demonstrated Dr. Goswami saw the patient twice in March 2017, with both of these interactions occurring after the admitted sexual encounter for "other psychiatric evaluation and interview" and that there were diagnosis codes of "neurotic disorders" and "depressive disorder".
59. Section 3(a) of the College's Standard of Practice on Sexual Boundary Violations, which was in force at the time of the conduct, states that a physician must not "initiate any form of sexual advance toward a patient or a person with whom the patient has a significant interdependent relationship such as a parent, child or significant other". Section 5 states that "A physician who has had a psychotherapeutic relationship with a patient must not engage in a sexual or intimate relationship with that patient at any time during or after the conclusion of the psychotherapeutic relationship."
60. The evidence and admissions clearly demonstrate that Dr. Goswami and ■■■ had an ongoing physician-patient relationship, which included a psychotherapeutic relationship, that existed prior to the sexual encounter on March 1, 2017 and which continued after the sexual encounter. Dr. Goswami admitted that there was an inappropriate sexual relationship with his patient between December 2016 and April 2017. Accordingly, Dr. Goswami breached the Standard of Practice on Sexual Boundary Violations and allegation 1 is factually proven
61. The Standard of Practice on Self-Reporting to the College, in force at the time of the conduct, states a physician must report "a sexual or inappropriate personal relationship between the physician and the patient" at the time of registration or whenever the physician becomes aware. There is no evidence to indicate that Dr. Goswami reported his sexual encounter with ■■■, which he acknowledged occurred on March 1, 2017, to the College after the encounter occurred or prior to seeking renewal of his practice permit in December 2018 as required. Dr. Goswami admitted he failed to do so. Allegation 2 is factually proven.
62. Dr. Goswami's renewal form for his 2018 practice permit indicates Dr. Goswami answered "No" in response to the question "Are you presently, or have you ever, engaged in a sexual or inappropriate personal relationship with a patient that has not been previously reported to this College?" In the renewal form Dr. Goswami also answered "Yes" to the affirmation that read "I affirm that, to the best of my knowledge, the information contained in this Registration Information Form is true and accurate".

63. This renewal form was submitted after he had a sexual encounter with ■ in March 2017. Dr. Goswami had taken no steps to report this to the College and he made this declaration while knowing it was not true and accurate. Allegation 3 is factually proven.
64. The Tribunal considered the meaning of unprofessional conduct under the HPA, which includes:
  - a. A lack of knowledge, skill or judgment in the provision of professional services [section 1(1)(pp)(i)];
  - b. contravention of the HPA, the code of ethics, or standards of practice [section 1(1)(pp)(ii)]; and
  - c. conduct that harms the integrity of the medical profession [section 1(1)(pp)(xii)].
65. Dr. Goswami's conduct occurred before April 1, 2019 and the implementation of *An Act to Protect Patients*. As such, the conduct is governed by the legislation and Standards of Practice that were in force at the time the conduct occurred.
66. As discussed above, Dr. Goswami's sexual relationship with his patient breached subsections 3(a) and (5) of the Standard of Practice "Sexual Boundary Violations" which was in force.
67. The College's Standard of Practice on Sexual Boundary Violations prohibits physicians from initiating or responding to any form of sexual advance from a patient and prohibits any sexual or intimate relationship at any time with a patient that a physician has had a psychotherapeutic relationship with. A sexual boundary violation with any patient is serious, but the Standard of Practice further recognizes the elevated concern when a physician violates sexual boundaries with a patient where there is a psychotherapeutic relationship. Dr. Goswami was treating the patient for mental health concerns and was aware of her psychological state.
68. Dr. Goswami's conduct in engaging in a sexual encounter with a long-term patient is very serious. There is a significant risk that his judgment could have been compromised by the sexual encounter, a risk that was increased given the continued care he provided. When a physician has a sexual relationship with a patient, there is a risk of patients developing feelings of dependency and a risk that physicians will take advantage of their position of power and authority, a risk that is elevated when mental health treatment is concerned. This is demonstrated by the complainant's statement that they suffered anxiety and panic attacks as a result of Dr. Goswami's conduct. As a professional, Dr. Goswami had an obligation to recognize his position of authority over the complainant and to recognize a sexual encounter was not appropriate.

69. In addition to breaching the standard of practice, Dr. Goswami's conduct harms the integrity of the medical profession. It demonstrates to members of the public that physicians can use their authority and their privilege to engage in sexual activities with someone that they have intimate knowledge about, including knowledge on sensitive issues. It undermines the role of physicians as those who assist individuals when they are vulnerable.
70. Allegations 2 and 3, the failure to report and reporting information to the College knowing it was false, breached subsection (1)(b) of the Standard of Practice "Self-Reporting to the College".
71. Requiring physicians to report matters to the College ensures that the College can effectively implement its regulatory functions and protect the public interest. If physicians do not comply with their regulatory obligations to report these matters to the College, the College will be frustrated in its mandate and patients may be harmed. The College relies on members acting with honesty and integrity and members have an obligation to make the required disclosures. This disclosure obligation is a responsibility that comes with the benefits of being a member of a regulated profession. Failing to provide accurate information to one's own regulator undermines the College's ability to carry out its public protection mandate and harms the integrity of the medical profession in the eyes of the public.
72. For these reasons, Dr. Goswami's admitted conduct constitutes unprofessional conduct.

## **VIII. SUBMISSIONS ON SANCTION**

### **Submissions on Behalf of the Complaints Director**

73. Ms. Reid reiterated that the parties were proceeding by way of a joint submission on sanction. She reviewed the sanctions that were being requested, which included:
  - a. A suspension of Dr. Goswami's practice permit for 11 months, with 5 months held in abeyance pending successful completion of a professional boundaries course and with such suspension to start on a date determined by the Complaints Director with Dr. Goswami's input;
  - b. Completion, at Dr. Goswami's own cost, of an appropriate course on professional boundaries acceptable to the Complaints Director;
  - c. Completion, at Dr. Goswami's own cost, of a multidisciplinary assessment as directed by the Complaints Director. Dr. Goswami would also undertake and complete any treatment recommended by the assessment and if there was need for treatment of practice conditions, the Complaints Director would impose the conditions. Any dispute about the conditions could be remitted to a hearing panel for a decision;

- d. Dr. Goswami's practice permit would be subject to conditions, specifically a chaperone requirement, for a minimum of three years starting on November 29, 2018 and the Complaints Director, upon receipt of the multidisciplinary assessment, could vary the conditions depending on the results on the assessment; and
  - e. Payment of the costs of the investigation and hearing by Dr. Goswami.
74. Ms. Reid advised that the multidisciplinary assessment is a situation-specific assessment which focuses on the impact of a professional's personal life and their health on their practice. It involved interviews and evaluations by a number of different professionals from different disciplines typically done over two to three days at a cost of around \$10,000.
75. Ms. Reid presented a Brief of Law on joint submissions which focused on the Supreme Court of Canada case of *R v Anthony Cook*. She advised that the basic principle is that a joint submission should be given due deference and should not be rejected unless the sanction was in some way manifestly unjust or would bring the discipline process into disrepute or would be contrary to the public interest.
76. Ms. Reid submitted that the purpose of sanctions was to ensure that the public is protected from acts of unprofessional conduct. She advised there were a number of ways to protect the public.
77. First, the public can be protected by deterring the specific member, in this case Dr. Goswami, from engaging in similar conduct in the future. Second, the public can be protected by deterring other members of the profession from engaging in similar conduct. Third, the public can be protected by efforts to educate and rehabilitate a professional member because the member will understand why they acted the way they did and develop strategies to avoid engaging in similar conduct in the future.
78. She advised that all three were considered and that the proposed penalty reflected an appropriate balance between deterrence and rehabilitation and addressed the concerns identified in the allegations.
79. Ms. Reid acknowledged that Dr. Goswami's conduct predated the amendments to the HPA that came into force on April 1, 2019 which require hearing tribunal to order specific sanctions when they make certain findings. She advised those requirements did not apply in Dr. Goswami's case because his admitted conduct and the receipt of the complaint occurred prior to the amendments.
80. Ms. Reid submitted the Tribunal, in considering whether the proposed sanction was appropriate, should consider the sentencing factors referenced in *Jaswal v Medical Board of Newfoundland*. She reviewed the factors that were applicable to Dr. Goswami's case.

81. With respect to the nature and gravity of the proven allegations, she submitted that Dr. Goswami's conduct was dishonest and that he misled the College in his renewal application. She stated his admitted conduct was not in a gray area and that it was specifically addressed by the Standards of Practice.
82. Regarding the age and experience of the offending physician, Dr. Goswami had been practicing for a number of years and had sufficient age and experience to know and understand his responsibilities as a professional. He ought to have known better and should not have comprised the esteem that physicians are given.
83. Regarding prior complaints or convictions, Dr. Goswami did not have a prior discipline history.
84. With respect to the age and mental condition of the offended patient and the impact of the incident on the patient, the impact on the complaint was serious as she went through a lot of anxiety and had panic attacks. She was also a vulnerable individual who had a medical history involving mental health issues and Dr. Goswami treated her depressive and neurotic disorders over many years. Dr. Goswami was in a position of privilege and trust. These were aggravating factors.
85. The role of the physician in acknowledging what occurred was a mitigating factor as Dr. Goswami admitted his conduct early in the investigation, made an admission at the hearing, and proceeded by agreement at the hearing.
86. Regarding the range of sanctions in similar cases, Ms. Reid reviewed seven cases. She advised three had the same or substantially similar allegations as those admitted by Dr. Goswami and that the other four were cases that generally touched on sexual boundary violations. The cases that involved similar allegations were:
  - a. *The College and Dr. Sayeed* dated December 13, 2021 – Dr. Sayeed entered an inappropriate relationship with a patient he had been treating for nearly 20 years. The Hearing Tribunal noted that the patient was vulnerable and had a medical history involving psychiatric care. On his 2017 and 2018 annual renewal forms, Dr. Sayeed reported that he had not engaged in an inappropriate or sexual relationship knowing that answer to be false and he failed to self-report from 2016 to 2017. The Hearing Tribunal ordered that Dr. Sayeed receive a 19-month suspension and that he should receive credit for the time that he had already been out of practice in Alberta since December 2018. His practice permit was also subject to conditions that had been imposed by the regulator in Saskatchewan, which included a requirement that he have a chaperone present for female patient encounters. He was also required to participate in the Physician Health Monitoring Program, pay a fine of \$5,000, and pay two-thirds of the costs.

- b. *The College and Dr. Postnikoff* dated July 6, 2021 – Dr. Postnikoff retired and cancelled his registration. The Hearing Tribunal ordered two-thirds costs and a fine of \$5,000 but noted that given the conduct, it would have been worthy of a significant sanction had there not been a retirement.
  - c. *The College and Dr. Garbutt* dated July 31, 2021 - Dr. Garbutt retired and cancelled his registration. The Hearing Tribunal ordered two-thirds costs and a fine of \$5,000 but noted that given the conduct, it would have been worthy of a significant sanction had there not been a retirement.
87. Ms. Reid also reviewed other cases that imposed significant sanctions in other sexual boundary cases, including:
- a. *The College and Dr. Lycka* dated September 21, 2020 - This decision went by no contest and the Hearing Tribunal ordered a 12-month suspension, a boundaries course at Dr. Lycka's cost, an after-care agreement with the Assistant Registrar for five years, and costs of the investigation and the hearing.
  - b. *The College and Dr. Lasaleta* dated May 26, 2020 - The Hearing Tribunal ordered a 12-month suspension with credit received for the time that he was out of practice, and the effect of this was that his full 12-month suspension was deemed to have been served at the point that he applied for reinstatement. If his application for reinstatement was granted, he would complete a multidisciplinary assessment similar to the multidisciplinary assessment in Dr. Goswami's case. Dr. Lasaleta was required to undertake treatment recommended by the assessment, and his practice permit would include any practice conditions recommended by the assessment. He was also ordered to pay costs of the investigation and hearing.
  - c. *The College and Dr. Khumree* dated March 2, 2022 – The Hearing Tribunal ordered a suspension of 6 months, with 3 months held in abeyance. Dr. Khumree was subject to conditions recommended by a multidisciplinary assessment, including a requirement that he attend regular therapy sessions. He also had to complete educational requirements, pay a fine of \$5,000, and pay 50 percent investigation and hearing costs.
  - d. *The College and Dr. Taylor* – In contrast to Dr. Goswami's situation, Dr. Taylor only treated the patient twice, then there was a single sexual encounter, and there was no continuing care after that encounter. The Tribunal 6-month suspension, with 2 months held in abeyance. They also ordered a multidisciplinary assessment with practice conditions that might flow from that assessment, a boundaries course, and that Dr. Taylor pay 75 percent of the costs.
88. Ms. Reid submitted that given all of the *Jaswal* factors, the penalty proposed was similar to the sanctions ordered in the other cases and served the



sanctioning purposes. The 11-month suspension for Dr. Goswami was a serious and significant sanction that would deter Dr. Goswami from engaging in similar conduct in the future. It would also deter members of the profession from engaging in similar conduct. The assessment and the boundaries course serve educational purposes and address the need for rehabilitation. The purpose of the assessment was to identify the factors that contributed to Dr. Goswami's conduct and to identify whether any of those factors would be of concern moving forward. The boundaries course would also ensure that he understood his professional obligations moving forward. With respect to the chaperone requirement, while it had been three years since it was imposed, such a requirement was consistent with what had been ordered in past cases, and it was going to send a message to the profession that the public will be protected and that boundary violations do cause harm.

89. With respect to costs, the purpose of a costs order in a professional discipline matter is not to punish the professional member, but to allow the professional regulatory body to recover some of the expenses incurred in the proceedings. Cost orders are common in professional disciplinary sanctions, but the Hearing Tribunal should consider them in the circumstances of the investigated person.
90. In conclusion, Ms. Reid submitted the joint submission on penalty was fair and reasonable and appropriately balanced the need for rehabilitation and deterrence. The sanctions were intended to improve Dr. Goswami's professional practice and to ensure he was a contributing member of the profession.

### **Submissions on Behalf of Dr. Goswami**

91. Ms. McMahon submitted that Mr. Reid had fairly summarized the case law in her submissions and its application to Dr. Goswami's case.
92. Ms. McMahon submitted that the principles in relation to joint submissions are important ones and that joint submissions are to be encouraged and not ignored. Joint submissions are in the public interest because they help avoid lengthy discipline hearings and increased costs which are borne by members of the profession as a whole. They also provide certainty of outcome, which is required in order to induce accused persons to waive their rights to a contested trial or hearing. The legal test for a decision-maker in considering a joint submission is whether the public interest is served or if it will bring justice into disrepute in accepting the joint submission. Moving away from a joint submission should only be done if accepting it will bring justice into disrepute.
93. Ms. McMahon submitted that the sanction proposed in the joint submission was within similar sanctions for similar cases and that it should be accepted.
94. She stated that Dr. Goswami acknowledged his actions were inappropriate and unprofessional and that his candor in admitting his actions and coming to an

agreement on sanction saved the College time and investigation resources. She stated that the chaperone condition in place since 2018 had not brought forward any other issues or complaints. She submitted his actions were an isolated, but serious, transgression that was out of character for Dr. Goswami.

95. Ms. McMahon submitted the sanctions would deliver the message to the public that such conduct is never appropriate and serve to deter Dr. Goswami from any future misconduct.
96. Ms. McMahon also noted the complainant was given an opportunity to submit a further victim impact statement and elected not to do so.
97. Ms. McMahon observed that in Dr. Postnikoff's case, Dr. Postnikoff was a psychiatrist and although Dr. Goswami provided psychotherapeutic treatment, the facts were different.
98. In conclusion, she submitted that deference should be given to the joint submission proposed and that it was in the public interest to make the orders proposed by the parties.

### **Questions from the Hearing Tribunal**

99. The Hearing Tribunal asked if the chaperone order was still in place.
100. It was confirmed that the chaperone order was still in place and that Dr. Goswami was still being chaperoned, until such time as there was clear direction that it could be removed.
101. Ms. Reid stated that the language of Dr. Goswami's undertaking stated that the chaperone requirement continued until the complaint was resolved. She stated that the Tribunal would make the order but deem it served. Ms. McMahon stated the joint submission provides that the Complaints Director may vary conditions upon receipt of the results of multidisciplinary assessment so if there was a concern where the chaperone conditions needed to be re-visited, the Complaints Director has the discretion to address it further.
102. The Hearing Tribunal asked the parties if, in determining the appropriate sanctions, they considered that following a sexual boundary transgression, the therapeutic relationship continued for a significant period of time following the admitted sexual boundary transgression. The parties were also asked if it was considered that the continued therapeutic relationship also consisted of psychotherapeutic interactions, specifically on March 23, 2017 and March 25, 2017. In addition, the Tribunal observed that on August 25, 2018, there was an interaction between Dr. Goswami and the complainant that was for a disorder of urethra and urinary tract, which would require an examination of an area that would be considered sensitive.

103. Ms. Reid advised that the continued treatment of the complainant was an aggravating circumstance that was considered and that led to a more serious sanction. She stated the agreed upon sanction reflected the appropriate considerations. Ms. McMahon advised these issues did form part of the discussions the parties had in arriving at the joint proposal on sanction.

## **IX. DECISION**

104. Being mindful that significant deference is owed to joint submissions on sanctions, after adjourning to consider the submissions from the parties and the answers to its questions, as well as to complete an independent review of the exhibits and the case law, the Tribunal determined that the joint submission on sanction should be accepted and that it would make the orders agreed to.
105. As discussed above, Dr. Goswami's conduct occurred before April 1, 2019 and the implementation of *An Act to Protect Patients*. The Hearing Tribunal recognized that if the conduct occurred after April 1, 2019, the HPA would require certain orders to be imposed if certain findings were made. In this case, there was no legislative requirement regarding the orders and the Tribunal recognized that any sanction imposed should reflect the sentencing principles discussed by the parties. While the Tribunal recognized it could impose sanctions that included cancellation of a member's registration and practice permit and while the Tribunal does not condone Dr. Goswami's conduct in any way, it found that the joint submission did not bring the administration of justice into disrepute and therefore should be accepted.
106. The proven conduct was a very serious sexual boundary violation with a vulnerable patient. The therapeutic relationship continued for a significant period of time following the admitted sexual boundary transgression and consisted of psychotherapeutic interactions, specifically on March 23, 2017 and March 25, 2017. In addition, the Tribunal observed that on August 25, 2018, there was an interaction between Dr. Goswami and the complainant that was for a disorder of urethra and urinary tract, which would require an examination of an area that would be considered sensitive. All of these facts demonstrate that there was an ongoing physician-patient relationship involving a vulnerable patient after a sexual encounter.
107. Such conduct is inexcusable and warrants a significant sanction that demonstrates to Dr. Goswami, other members of the profession, and the public that such conduct cannot occur and will not be accepted within the medical profession. While there was a lack of evidence of numerous sexual encounters or a lengthy sexual relationship, this does not reduce the seriousness of the conduct. Dr. Goswami engaged in sexual relations with a vulnerable patient that he had provided care to on a number of occasions, including mental health care for depressive and neurotic disorders over many years. The physician-patient relationship then continued. Dr. Goswami had an obligation to maintain an appropriate physician-patient relationship and to not

cross boundaries with his patient. The Tribunal views this a significant power imbalance and views Dr. Goswami as being in a significant position of authority. Dr. Goswami abused his power and authority. He took advantage of his position of privilege as a physician and placed his own interests ahead of the needs of his patient. He breached the trust of his patient and the public.

108. Further, Dr. Goswami failed to be candid with the College and was then dishonest with the College. He failed to disclose that he had engaged in a sexual relationship with a patient after it occurred. He then made a false misrepresentation and specifically stated that he did not have such a relationship. While Dr. Goswami's failure to disclose what occurred was serious, his misrepresentation to the College was even worse. Dr. Goswami's actions fell short of the expectations for a regulated member of the College. Failing to provide information and providing false information undermines the College's ability to carry out its public protection mandate and it harms the integrity of the medical profession in the eyes of the public.
109. As submitted by Ms. Reid, this was not a gray area. All physicians would understand their responsibilities as professionals and recognize Dr. Goswami's conduct was not acceptable. As an experienced physician, Dr. Goswami should have understood his obligations.
110. Dr. Goswami's acknowledgement of what occurred and his honesty and cooperation early in the investigation were mitigating factors to be considered against the serious conduct. In addition, there was an absence of aggravating factors such as a previous discipline history.
111. The sanctions proposed were consistent with previous decisions and reflect the serious nature of the conduct. In the case of Dr. Taylor, which involved a sexual encounter with an episodic patient, the Tribunal ordered a 6-month suspension, with 2 months held in abeyance, as well as a multidisciplinary assessment with practice conditions that might flow from that assessment and a boundaries course. Dr. Goswami's conduct is more serious than that of Dr. Taylor given his lengthy physician-patient relationship with the complainant and the nature of the care provided, as well as his lack of candour with the College. In the case of Dr. Sayeed, the Tribunal ordered that Dr. Sayeed receive a 19-month suspension and that he should receive credit for the time that he had already been out of practice in Alberta, which was 8 months. His practice permit was also subject to conditions that had been imposed by the regulator in Saskatchewan, which included a requirement that he have a chaperone present for female patient encounters. He was also required to participate in the Physician Health Monitoring Program and pay a fine of \$5,000. The Tribunal is of the view that Dr. Sayeed's case is similar but more serious as the patient had a medical history involving psychiatric care, similar to the complainant in this case, but that Dr. Sayeed had been treating the patient for nearly 20 years. The Hearing Tribunal also noted that Dr. Sayeed engaged in a longer relationship with the patient and that he had repeated occurrences of failing to report to the College. Dr. Sayeed was also given

credit for time he was out of practice. Dr. Goswami's conduct is similar to that of Dr. Sayeed but Dr. Goswami had a shorter sexual relationship and fewer occurrences of failing to report to the College. He will also not receive any credit towards his suspension time.

112. In examining the cases, the Tribunal is of the view that a lengthy suspension, a multidisciplinary assessment with practice conditions that might flow from that assessment and a boundaries course have been determined as being appropriate sanctions. With respect to the length of suspension, it ranges from 6 months to 19 months. A suspension of 11 months, with 5 months held in abeyance, for Dr. Goswami is appropriate given the conduct and the range of suspensions in other cases.
113. There is a need to ensure that Dr. Goswami, as well as other members of the profession, are aware that this type of conduct will not be tolerated. The sanction imposed must deter future conduct of this nature and maintain the public's confidence in the integrity of the profession.
114. The Hearing Tribunal accepted that the joint submission would do so. The 11-month suspension, even with 5 months being held in abeyance pending completion of the professional boundaries course, for Dr. Goswami is a serious and significant sanction that will deter Dr. Goswami from engaging in similar conduct in the future. The suspension is for a significant period and will have a significant impact on Dr. Goswami's career. The suspension will also deter members of the profession from engaging in similar conduct. It will also demonstrate to other members of the profession and the public that the College will take appropriate action when sexual boundaries are crossed and when a physician fails to disclose facts to the College. The length is proportional to the proven conduct and meets the sentencing principles.
115. The assessment and the boundaries course serve educational purposes and address the need for rehabilitation. The assessment will identify factors of concern moving forward and the boundaries course will ensure Dr. Goswami understands his professional obligations moving forward.
116. With respect to the chaperone requirement, the Tribunal acknowledges that it protected the public while this matter was ongoing. In examining the circumstances, the Tribunal notes that the condition has been in place since 2018 and no additional concerns were raised. Further, the unprofessional conduct did not arise from an examination of a female patient and there is an absence of evidence of concerns arising from examinations. Accordingly, the Tribunal is of the view that the chaperone condition is deemed served. Should a concern arise from the results of multidisciplinary assessment, the Complaints Director has the discretion to revisit the chaperone requirement.
117. It is appropriate that Dr. Goswami be responsible for costs of the hearing and investigation, as it was his conduct that necessitated the proceedings. He has agreed to such responsibility.

118. In conclusion, the Hearing Tribunal agreed that the proposed orders were appropriate having regard to the *Jaswal* factors and the principles that are relevant in assessing sanction in the professional discipline context. Specifically, the Hearing Tribunal found that the sanctions would deter both Dr. Goswami and the profession at large from similar unprofessional conduct in the future. The sanctions also serve the public's interest and uphold the integrity of the profession.

## **X. ORDERS**

119. Accordingly, the Hearing Tribunal made the following orders pursuant to s. 82 of the HPA:

- a. Dr. Goswami's practice permit shall be suspended for a period of 11 months, with 5 of those months held in abeyance pending successful completion of the professional boundaries course described at (b). The suspension shall start on a date determined by the Complaints Director with Dr. Goswami's input.
- b. Dr. Goswami shall complete, at his own cost, an appropriate course on professional boundaries acceptable to the Complaints Director. The professional boundaries course may be completed while Dr. Goswami is serving his suspension.
- c. Dr. Goswami shall undergo, at his own cost, a multi-disciplinary assessment as directed by the Complaints Director, and:
  - i. Dr. Goswami will, at his own expense, undertake and complete any treatment recommended by the multi-disciplinary assessment;
  - ii. If, as a result of the multi-disciplinary assessment, there is a need for treatment or practice conditions the Complaints Director will impose such conditions; and
  - iii. If there is any dispute between the parties regarding the conditions to be imposed on Dr. Goswami's practice permit, the matter may be remitted to a Hearing Panel for a decision.
- d. Dr. Goswami's practice permit shall be subject to the following conditions for a minimum total of 3 years starting November 29, 2018 and the Complaints Director, upon receipt of the multi-disciplinary assessment and depending on the results of the multi-disciplinary assessment above, may vary the conditions:
  - i. Dr. Goswami shall have a chaperone present when seeing any female patient or individual who identifies as female over 14 years of age;

- ii. Dr. Goswami shall advise all staff members employed at his workplace about the chaperone requirement;
- iii. Dr. Goswami shall post a notice about the chaperone requirement in the clinic waiting area and in each exam room;
- iv. Dr. Goswami shall ensure clinic staff advise female patients of the chaperone requirement, either when the appointment is booked or during registration for walk-in appointments;
- v. Dr. Goswami must create and maintain a log to show he is complying with sections i., ii., iii. and iv. as detailed above;
- vi. The Complaints Director is authorized to conduct unannounced inspections to ensure Dr. Goswami's compliance with his practice conditions;
- vii. The chaperone shall be acceptable to the Complaints Director.

These conditions are deemed served as of the date of this written decision from the Tribunal and Dr. Goswami's practice permit will not be subject to the conditions after the date of this written decision, subject the Complaints Director varying the conditions upon receipt of the multi-disciplinary assessment.

- e. Dr. Goswami shall be responsible for the costs of the investigation and hearing before the Hearing Tribunal payable on terms acceptable to the Complaints Director.

Signed on behalf of the Hearing Tribunal by the Chair:



Naz Mellick

Dated this 9<sup>th</sup> day of August, 2022.