

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. BRIANNE HUDSON

**DECISION OF THE HEARING TRIBUNAL OF
THE COLLEGE OF PHYSICIANS
& SURGEONS OF ALBERTA
REGARDING SANCTIONS and COSTS**

December 7, 2023

INTRODUCTION

1. In a decision dated January 9, 2023, the Hearing Tribunal found the following allegations of unprofessional conduct against Dr. Hudson were proven:
 - i. Between August 2019 and December 2019 you did have a sexual relationship with your patient, amounting to sexual abuse as defined under the *Health Professions Act*;
 - ii. You did submit your 2020 Renewal Information Form with the false information that you had not had a sexual boundary violation [with a] patient that had not been reported to the College of Physicians and Surgeons of Alberta;
2. The Hearing Tribunal convened via videoconference on May 24, 2023 for a sanction hearing in order to determine what orders to make in accordance with section 82 of the *Health Professions Act* ("HPA"). The members of the Hearing Tribunal were:
 - Ms. Naz Mellick of Edmonton as Chair (public member);
 - Dr. Brinda Balachandra of Edmonton;
 - Dr. Randall Sargent of Canmore;
 - Mr. James Lees of Edmonton (public member);
3. Ms. Katrina Haymond acted as independent legal counsel for the Hearing Tribunal at the sanctions hearing.
4. Appearances:
 - Dr. Dawn Hartfield, Complaints Director
 - Mr. Craig Boyer, legal counsel for the Complaints Director;
 - Dr. Brianne Hudson;
 - Ms. Taryn Burnett, legal counsel for Dr. Hudson.

PRELIMINARY MATTERS

5. There were no objections to the composition of the Hearing Tribunal or its jurisdiction to proceed.

IMPACT STATEMENT

6. Section 81.1(2) of the HPA provides that if the subject-matter of a hearing relates to a complaint alleging sexual abuse and the Hearing Tribunal decides that the conduct of an investigated person constitutes unprofessional conduct based in whole or in part on sexual abuse, before making an order under section 82, the Hearing Tribunal must provide the patient with an opportunity to present any written or oral statement describing the impact the sexual abuse has had on the patient.

7. The patient's stepmother attended the sanctions hearing and read an impact statement. Before reading the statement, the patient's stepmother stated that her stepson was Dr. Hudson's patient, but he died of a drug overdose in his apartment on approximately August 10, 2022. The patient's stepmother advised the Hearing Tribunal that the impact statement would reflect her thoughts as well as those of her husband, the patient's father. Ms. Burnett did not object on Dr. Hudson's behalf to the patient's stepmother reading the statement.
8. The patient's stepmother's statement reflected that she and her husband were deeply concerned about the negative impact of Dr. Hudson's relationship with the patient, both on his life and theirs. As a result of Dr. Hudson's actions, the patient's parents were constantly torn between protecting their own boundaries and being pulled into their son's life. They struggled to find the balance required in dealing with an adult child with intractable drug dependency issues who was also being sexually abused and exploited by Dr. Hudson. They felt Dr. Hudson positioned herself between their son and them. As the patient's parents, they felt used, manipulated and intimidated by Dr. Hudson's tactics.
9. The patient's stepmother stated that they were appalled by Dr. Hudson's attitude towards their son. They observed Dr. Hudson exercise her power and influence over their son's decision-making. They felt powerless and disgruntled that a trusted medical professional was crossing these clear boundaries with their child.
10. The patient's stepmother stated that the situation affected their marriage and her husband became depressed. Dr. Hudson inserted herself into their relationship and accused the patient's stepmother of bad parenting. She caused them emotional and mental trauma that will never heal. This left the couple angry, hurt, and concerned for their health. They were consumed by guilt, self-doubt and anxiety because of Dr. Hudson's conduct towards them and their son. The patient's stepmother's interactions with Dr. Hudson were emotionally traumatizing and mentally draining. Dr. Hudson used sexual activity to emotionally manipulate and isolate the patient from his family.

Application to Close Part of the Hearing

11. On behalf of Dr. Hudson, Ms. Burnett made an application to hold a portion of the hearing in private pursuant to section 78(1)(a)(iii) of the HPA. This section permits the Hearing Tribunal to hold part of the hearing in private if not disclosing a person's confidential personal, health, property or financial information would outweigh the desirability of having the hearing open to the public.
12. Specifically, Ms. Burnett directed the application to that portion of the hearing in which Dr. Hudson's personal financial information would be disclosed. Ms. Burnett submitted that under 78(1)(a)(iii), the disclosure of Dr. Hudson's

confidential financial information outweighed the desirability of having that portion of the hearing open to the public.

13. Ms. Burnett indicated that Dr. Hudson's evidence will contain specific information about her personal finances, because this information speaks to the issue of her ability to pay any fines or costs related to these proceedings. She added that personal financial information, including information contained in documents filed with Revenue Canada, is sensitive in nature, and it would be reasonable and appropriate to close that aspect of Dr. Hudson's evidence to the public, inclusive of exhibits tendered which show her earned income.
14. Ms. Burnett further submitted that it would be inappropriate to expose Dr. Hudson's private financial information to the public because her ability to pay and the impact of costs and fines on Dr. Hudson are not issues that are central to the decision of the Tribunal.
15. In response to Ms. Burnett's submissions, Mr. Boyer advised that he did not object to closing part of the hearing as long as the closed portion was strictly confined to Dr. Hudson's evidence related to her finances and her ability to pay.
16. After hearing the submissions of the parties and adjourning to deliberate, the Tribunal granted Dr. Hudson's application under s. 78(1)(a)(iii) and ordered the portion of the hearing concerning evidence of her personal finances closed to the public. In granting the application, the Tribunal found Dr. Hudson's privacy interests in respect of that information outweighed the need for transparency.
17. The Tribunal acknowledges the value of open and transparent College discipline hearings. Open and transparent discipline hearings serve the public interest by maintaining its confidence in the proper regulation of the medical profession and the hearing tribunal process.
18. Section 78 of the *HPA* establishes that discipline proceedings are presumptively open to the public. Because the Tribunal is restricting the private portion of the hearing to Dr. Hudson's evidence of her personal finances and no more, the Tribunal concludes this is a reasonably minimal limitation of the open hearing principle.
19. Additionally, the Tribunal agreed with the parties that ascertaining Dr. Hudson's financial circumstances for the purposes of evaluating her ability to pay fines or costs would necessarily entail disclosure of particular documents of a private and sensitive nature.

Evidence of Dr. Hudson

20. Dr. Hudson first addressed her finances and her ability to pay any fines or costs orders. This portion of the hearing was held in private.

21. [REDACTED]

22. The remainder of the hearing was open to the public. Dr. Hudson confirmed [REDACTED] was her patient. When he attended at the hospital where she worked, he was in dire need of care. She felt she was morally and ethically obligated to rescue her patient even if it meant violating rules, especially in a manner that fell outside the limits of a physician-patient relationship. Dr. Hudson acknowledged that it was wrong of her to initiate a personal relationship with the patient and to further develop an intimate relationship.
23. Dr. Hudson acknowledged that she failed to recognize the power imbalance between her and the patient and how that perpetuated the patient's vulnerability. While Dr. Hudson believed she was acting in the patient's best interests, she also confirmed that her actions disempowered the patient and disrespected the patient's autonomy.
24. Dr. Hudson admitted difficulty coming to terms with the characterization of the patient as her victim. Dr. Hudson admitted that the process involved in understanding will take time, however she will continue to work towards acceptance. Dr. Hudson expressed her regret for the ways she harmed, disempowered and victimized the patient.
25. Dr. Hudson addressed the family and apologized for her behavior and the harm she caused them and the patient.
26. In her testimony, Dr. Hudson also stated she was sorry to the College of Physicians and Surgeons of Alberta; to her family and friends; to her former patients; to her former physician colleagues; and to her community of Grande Prairie.
27. Dr. Hudson stated that despite her mistakes and lapses in judgment, it was never her intention to harm the patient. Dr. Hudson confirmed that she accepts the decision of the Hearing Tribunal to permanently revoke her license to practice medicine in Alberta.

Cross-examination

28. Dr. Hudson confirmed she issued a statement to the media after the Hearing Tribunal issued its decision finding her to have committed unprofessional

conduct. The entire statement appeared in a publication dated January 26, 2023 under the heading "Grande Prairie doctor responds to CPSA suspending licence for sexual relationship with patient" (Exhibit 9).

29. Dr. Hudson also confirmed that in 2017 a hearing tribunal of the CPSA made a finding of unprofessional conduct against her in relation to a separate matter.

Questions from the Tribunal

30. The Tribunal asked Dr. Hudson whether she gave any consideration to how her CPSA colleagues should deal with the shame of a patient being abused by a physician. Dr. Hudson had no immediate answer and stated it would require some thought.
31. The Tribunal pointed out to Dr. Hudson the disconnect between her statement to the Tribunal and her statement to the media in January 2023. Dr. Hudson indicated that she has had more time to process events and acknowledged that her address at the proceedings today is a more accurate reflection of her thoughts related to the events in this matter.

SUBMISSIONS OF THE PARTIES

Submissions on Behalf of the Complaints Director

32. Mr. Boyer began his submissions by acknowledging that the present hearing is the first sanction hearing for the CPSA arising from a finding of sexual abuse under the HPA. As such, there are no prior CPSA discipline decisions to guide the Tribunal other than those cases pertaining to sexual boundary violations that predate *Bill 21* amendments to the HPA.
33. Mr. Boyer indicated the Complaint's Director is seeking the following orders:
- An order directing the cancellation of Dr. Hudson's practice permit and registration with the CPSA;
 - A fine of \$5,000 applicable to the second charge of providing false information on Dr. Hudson's 2020 CPSA Renewal Information Form;
 - An order directing Dr. Hudson to pay 2/3 of the costs of the investigation and hearing, in monthly installments over a 5-year term;
 - An order that a default by Dr. Hudson in payment exceeding 60 days would result in the remaining balance of the costs becoming immediately due and payable, effectively revoking the monthly payment plan.
34. Mr. Boyer submitted that the order for cancellation is mandatory pursuant to section 82(1.1) of the HPA, given the Hearing Tribunal's finding of unprofessional conduct based on sexual abuse.

35. The Tribunal's authority to order fines is prescribed in section 158 and section 4 of Schedule 21 of the HPA. These provisions state that the Hearing Tribunal may order fines of up to \$10,000 per finding of unprofessional conduct to a cumulative maximum of \$50,000. In this case the proposed \$5,000 fine reflects Dr. Hudson's proven dishonesty in her conduct in the second charge about the Renewal Information Form. Mr. Boyer referred us to the similar previous cases of *Dr. Garbutt*, 2020 CanLII 65429 (AB CPSDC), *Dr. Khumree*, 2022 CanLII 28632 (AB CPSDC), *Dr. Sayeed*, 2022 CanLII 2813 (AB CPSDC) and *Dr. Postnikoff*, 2021 CanLII 85309 (AB CPSDC) in which \$5,000 fines were also imposed.
36. For costs, Mr. Boyer submitted that 2/3 of the investigation and hearing costs would be appropriate, relying again on the cases of *Dr. Garbutt*, *Dr. Khumree*, *Dr. Sayeed* and *Dr. Postnikoff*. In all but Dr. Khumree's case the Tribunal ordered the physician to pay 2/3 of the costs. In the case of Dr. Khumree it ordered him to pay 50%. The Complaints Director recognized that in this case, Dr. Hudson's financial circumstances will require time to pay and proposed installment payments over 5 years, but with an acceleration clause.
37. Mr. Boyer submitted that a default in payment lasting more than 60 days should result in the remaining balance of the costs becoming immediately due and payable. The Hearing Tribunal has the power in section 82(j) of the HPA to set the time for payment. This would also facilitate section 82(4) of the HPA, which provides that fines and costs are a debt to the College and may be recovered in a debt action. The acceleration clause would allow the College to exercise this statutory remedy and sue for the full costs if Dr. Hudson were to default for more than 60 days. Without it, the College could only sue for amounts that have fallen due and would have to wait to sue on future unpaid amounts.
38. Mr. Boyer referred to cases affirming the use of installment payment plans to manage costs obligations arising from discipline proceedings. He submitted that the legislature's imposition of mandatory cancellation in cases of sexual abuse has effectively nullified any incentive to pay outstanding fines and costs amounts. The College would maintain its discretion to determine how to proceed in the event of a default of payment, whether to consider Dr. Hudson's circumstances at the time and negotiate new terms of payment or accelerate the amounts owing and sue Dr. Hudson in debt.
39. Mr. Boyer then referred to prior cases on investigation and hearing costs beginning with *Jinnah v. Alberta Dental Association & College*, 2022 ABCA 336. In *Jinnah*, the Court confirmed that a regulated health professional who engaged in serious unprofessional conduct such as sexual assault on a patient may properly be subject to an order to pay a substantial amount of the costs. Similarly, orders for the regulated health professional to pay a substantial amount of the costs were made in the previous cases of *Al-Ghamdi v. College of Physicians and Surgeons of Alberta*, 2020 ABCA 71, *Erdmann v. Complaints Inquiry Committee*, 2016 ABCA 145, *Ironside v. Alberta Securities Commission*,

2009 ABCA 134, *Zuk v. Alberta Dental and College*, 2018 ABCA 270, *College of Physicians and Surgeons of Alberta v. Ali*, 2017 ABCA 442, *Osif v. College of Physicians and Surgeons of Nova Scotia*, 2009 NSCA 28 and *Jaswal v. Newfoundland (Medical Board)*, 42 Admin L.R. 2(d) 233.

40. Mr. Boyer submitted that the costs to the end of April were reasonable at \$77,139 for a matter involving 3 ½ days of hearings. The Complaints Director proposed that Dr. Hudson be responsible for 2/3, or \$51,426 of the costs, payable in installments over a period of 5 years. That would result in a monthly installment within the range of what Dr. Hudson said she could afford to pay.

Submissions on Behalf of Dr. Hudson

41. Ms. Burnett agreed with Mr. Boyer that this is the College's first contested hearing regarding allegations of sexual abuse since the amendments to the HPA came into force. Dr. Hudson did not dispute that cancellation was mandatory, but she argued that the proposed fine is unwarranted and the costs and acceleration clause are an extreme remedy unsupported by any authority.
42. The *Jinnah* decision provides that costs are not an additional sanction; they are not meant to be punitive. The Tribunal should consider all of the circumstances, including Dr. Hudson's ability to pay in light of her cancellation.
43. The cases relied upon by the Complaints Director were not analogous. None of *Dr. Khumree*, *Dr. Postnikoff*, or *Dr. Sayeed* were cancelled so the orders in those cases for fines and large amounts of costs have no precedential value for Dr. Hudson's case.
44. In Dr. Hudson's case cancellation is the ultimate sanction so there is no need for an additional punitive fine or a large costs order. In *Mohrenberger v. Physiotherapy Alberta College + Association*, 2022 ABPACA 1, the Hearing Tribunal recognized that an order cancelling the registrant's registration would impact the amount of costs to be ordered and determined that 50% payable over approximately 4 years was an appropriate amount.
45. The *Al-Ghamdi* case is not analogous because it was a 47-day hearing involving 67 witnesses and Dr. Al-Ghamdi's own conduct prolonged the decision and increased the costs to an extreme extent. Similarly, in the *Erdmann* case the registrant's own conduct prolonged the proceedings and increased their complexity and costs. The *Zuk* case is distinguishable in that there was no evidence that the order for costs would cause a burden on Dr. Zuk.
46. Dr. Hudson has given evidence of her financial circumstances and the burden that an order for costs will impose upon her; but she has not denied her willingness or intention to pay. On the contrary, despite difficult financial circumstances Dr. Hudson offered that she could pay between \$1,000 and \$1,200 each month and there is no need for an acceleration clause. The

Alsaadi v. Alberta College of Pharmacy, 2021 ABCA 313 case says that just because a registrant could pay does not mean the proposed amount of costs is reasonable. The Tribunal must still consider all of the registrant's circumstances.

47. Ms. Burnett requested the Hearing Tribunal to set a percentage of the costs that Dr. Hudson would be required to pay, as well as an upper limit on Dr. Hudson's financial obligation for costs as was done in the case of *Nelson v. Alberta College of Occupational Therapists*. Ms. Burnett suggested that in this case an order for Dr. Hudson to pay 50% of the costs would be reasonable. A similar order for approximately 50% of the costs was made in *Hills v. Provincial Dental Board of Nova Scotia*, 2009 NSCA 13, though in that case the registrant was not cancelled.
48. Ms. Burnett submitted that the proposed acceleration clause would be inappropriate because 60 days to cure a default is unreasonable. There is also no case authority for an acceleration clause as part of a cost order in proceedings under the HPA. Section 82(4) of the HPA provides the power for the College to enforce a decision regarding costs by proceeding with a debt action in civil court. Allowing payment over time with the ability to bring the matter back before the Complaints Director in the event circumstances change puts the College in a better position of collecting on its costs.
49. Ms. Burnett submitted that Dr. Hudson attempted to avoid a contested sanction hearing, but the Complaints Director's insistence on an acceleration clause remained an intractable issue between the parties and the main cause for extending the proceedings. As such, Dr. Hudson should not be responsible for the costs associated with the sanctions hearing.

ORDERS

50. The Tribunal has carefully considered the evidence and findings from the merits hearing, the evidence provided at the sanction hearing, and the submissions made on behalf of the parties. The Hearing Tribunal hereby makes the following orders pursuant to Section 82 of the HPA:
 1. Dr. Hudson's registration and practice permit are cancelled immediately.
 2. Dr. Hudson will pay a fine in the amount of \$5000.00 by June 30, 2024, or within six months of the date the Hearing Tribunal issues its decision, whichever is earlier.
 3. Dr. Hudson will pay 2/3 of the costs of the investigation and hearing, to a maximum of \$90,000.00, subject to the following terms:
 - a. Costs will be payable in equal monthly installments over a period of 60 months;
 - b. The first payment will be due within three months of the date that the Hearing Tribunal's decision is issued.

4. If there are extenuating circumstances, Dr. Hudson may seek an extension for payment of costs or may request a variation in the payment schedule by submitting her request to the Hearings Director, who may grant an extension or variation of the payment schedule in their sole discretion.
5. If Dr. Hudson defaults in payment of the costs for more than 60 days without obtaining an extension or variation in accordance with paragraph #4, then the total costs amount less amounts paid to date will become a debt due and owing to the College.

REASONS FOR ORDERS

1. Dr. Hudson's registration and practice permit are cancelled immediately.

51. Section 82(1.1) of the *Health Professions Act* states the following:

(1.1) *If the subject-matter of a hearing relates to a complaint alleging sexual abuse or sexual misconduct, and the hearing tribunal decides that the conduct of an investigated person constitutes unprofessional conduct based in whole or in part on sexual abuse or sexual misconduct, in addition to any order that the hearing tribunal may make under subsection (1),*

(a) in respect of a decision of unprofessional conduct based in whole or in part on sexual abuse, the hearing tribunal must order the cancellation of the investigated person's practice permit and registration, ...

52. In the merits phase of this matter, the Tribunal held that Dr. Hudson sexually abused her patient, therefore s. 82(1.1)(a) applies, which mandates cancellation of Dr. Hudson's practice permit and registration. In accordance with the *HPA*, and the language of the relevant provision, the Hearing Tribunal has no discretion regarding sanction. Further, given the mandatory cancellation, remediation measures are not applicable in this case since there exists no path forward for Dr. Hudson to re-enter the profession. The Tribunal affirms its obligation under the legislation and hereby orders the cancellation of Dr. Hudson's practice permit and registration effective immediately.

2. Dr. Hudson will pay a fine in the amount of \$5000.00, by June 30, 2024, or within six months of the date the Hearing Tribunal issues its decision, whichever is earlier.

53. Mr. Boyer argued a fine is appropriate to address the dishonesty in allegation ii. Ms. Burnett argued that a fine would not be appropriate because cancellation of Dr. Hudson's practice permit is the "ultimate" sanction and a fine would be punitive in the circumstances. The Tribunal disagrees with Ms. Burnett's argument.

54. The Tribunal views allegation ii as a distinct charge warranting a discrete sanction. This is because the allegation pertains to providing false information on the Renewal Information Form (RIF) and not to conduct specific to sexual abuse *per se*. As such, the Hearing Tribunal finds that a fine is appropriate.
55. As a self-regulating profession, it is critical for physicians dealing with the College to be honest and accurate in all their communications, which includes the Renewal Information Form. Honest and accurate communications and reporting from physicians is critical to maintaining the integrity of the self-regulatory process. The inability of the College to regulate physicians will inevitably lead the public to lose confidence in the integrity of the profession. This in turn will undermine the College's ability to maintain the privilege of self-regulation.
56. The Tribunal notes that it is reasonable to assume that the accuracy of the information of the RIF is wholly within the agency of the registrant. As the Tribunal wrote in the merits decision, the question that Dr. Hudson answered was not ambiguous in terms of its meaning, and further stated at paragraph 217 the following:

The Renewal Information Form is the tool by which the College maintains up to date information about its physician registrants and includes monitoring for patient safety issues such as sexual abuse. It is essential that the College be able to trust physicians to answer completely and honestly in order for the College to carry out its public protection mandate. Dr. Hudson's conduct undermined the College's ability to regulate the medical profession in the public interest. The Hearing Tribunal concluded that her conduct harms the integrity of the medical profession contrary to section 1(1)(pp)(xii) of the Health Professions Act.

57. The Tribunal found the cases of *Dr. Garbutt* and *Dr. Postnikoff* instructive for determining the amount of the fine. In those cases, the physicians were each fined \$5000.00 for providing false information on their RIF in the context of sexual boundary violations. Neither physician returned to practice and chose to retire instead.
58. Pursuant to section 158 of the *HPA* the Tribunal can order fines of up to \$10,00.00 per finding of unprofessional conduct. With respect to Dr. Hudson, the Tribunal has determined that a fine of \$5000.00 is appropriate as this amount is proportionate to Dr. Hudson's unprofessional conduct in charge ii and consistent with the cases cited above. Given the importance of the function of the RIF to the College's self-governance duties and its public protection

mandate, the Tribunal finds that it is important to send a strong message to physicians that providing false information on the RIF will not be tolerated.

59. As noted above, specific deterrence is not applicable in Dr. Hudson's case as she will not be returning to practice. However, the Tribunal does not accept that Dr. Hudson should avoid a fine on that basis, nor on the basis, as Ms. Burnett has argued, that cancellation is the "ultimate" sanction. For the Tribunal, mandatory cancellation only means that the legislature has deemed cancellation to be the *fitting* consequence for a physician who commits sexual abuse of her patient. The *HPA* does not direct tribunals to excuse physicians from fines or other sanctions related to other proven allegations of unprofessional conduct whether they are associated with sexual abuse or not. While the Tribunal has considered the cumulative impact of all of its orders in this case, in the Tribunal's view mandatory cancellation does not mitigate the need for a fine related to the other serious finding of unprofessional conduct.

3. Dr. Hudson will be responsible for payment of 2/3 of the costs of the investigation and hearing, to a maximum of \$90,000.00, payable subject to the following terms:

a. Costs will be payable in equal monthly installments over a period of 60 months;

b. The first payment will be due within three months of the date that the Hearing Tribunal's decision is issued.

60. Mr. Boyer sought an order for Dr. Hudson to pay two thirds of the costs of the CPSA investigation and hearing, with equal monthly payments over a 5-year term. Ms. Burnett argued that Dr. Hudson should be responsible for half of the costs up to and including only the merits decision because the sanctions proceeding was unnecessary. According to Mr. Boyer, the costs for the College came to \$77,139.00 by the end of April 2023.

Should costs be awarded in this case?

61. Section 82 of the *HPA* provides tribunals with the statutory power to award costs in the event of a finding of unprofessional conduct against a health professional. The decision to award costs is discretionary and costs should not serve as another penalty.

62. As the Alberta Court of Appeal explained in *Jinnah*, "the purpose of costs in the *Health Professions Act* is full or partial indemnification of the College in appropriate cases"; however, statutory power granted to tribunals to order costs does not determine the "manner in which [that power is] to be exercised". The Court affirmed the principle that in the professional disciplinary context, costs are discretionary and subject to the standard of reasonableness,

and further established a “presumption” that “the profession as a whole should bear the costs in most cases of unprofessional conduct”.

63. Even so, the Court did outline occasions when a hearing tribunal may impose a significant portion or all of the College’s cost on the physician. On those occasions compelling reasons must exist. A compelling reason can be found in at least the four following ‘scenarios’:

- When the unprofessional conduct is serious;
- Where the physician is a serial offender;
- Where the physician fails to cooperate with the College investigators and forces the College to expend more resources than is necessary to ascertain facts related to the complaint;
- Where the physician engages in hearing misconduct.

64. In the present matter the Tribunal found that Dr. Hudson sexually abused her patient and she provided false information on the 2020 RIF. ■ was Dr. Hudson’s patient, and at paragraphs 152 and 153 of the Merits decision, the Tribunal wrote the following:

Dr. Hudson stated that, when she took over [the patient]’s care in December 2018, he was contending with significant social and health issues in addition to his paraplegia and opioid dependence. He was anemic and poorly nourished which inhibited his wound healing; he had a PICC line; he was an amputee with serious infections of the bone and blood. Because he had wounds and ulcers that would not heal, he required specialized care to change his dressings. He could not maintain basic standards of cleanliness and his wound care was not being maintained. He was homeless and incarcerated and had an imminent court date respecting very serious charges but had not yet retained legal representation.

Dr. Hudson should have recognized that [the patient]’s circumstances meant that he was in a highly vulnerable state in December of 2018. She should also have recognized throughout 2019 that many of those same circumstances continued. [The patient]’s vulnerable state and Dr. Hudson’s position of authority meant that there was a significant risk of a power imbalance between them in December 2018 and continuing through 2019.

And at paragraph 206:

Engaging in the sexual abuse of a patient is extremely serious unprofessional conduct. As described in the Association of Alberta

Sexual Assault Services' letter read in the legislature during debate on Bill 21, a health professional who abuses their position of power and control to do this can have devastating lifetime effects.

65. As indicated in the merits decision, the evidence demonstrated that Dr. Hudson knowingly "crossed the line". In sexually abusing the patient, Dr. Hudson took advantage of her patient's vulnerability and revealed her inability and unwillingness to uphold an essential trust when weighed against her own interests and motives. While Dr. Hudson sexually abused a particularly vulnerable individual, there is no dispute that a finding of sexual abuse of any patient constitutes one of the most serious contraventions of the *HPA* and a breach of integrity of the highest magnitude. The mandatory permanent cancellation of the physician's practice permit and registration in light of a finding of sexual abuse of a patient further reflects the seriousness of the unprofessional conduct, as does the impact of the conduct. The Tribunal has also considered the patient's stepmother's impact statement in this regard.
66. The Tribunal also considered that Dr. Hudson was previously found to have engaged in unprofessional conduct. In *Jinnah*, the Court of Appeal held that there is a big difference between a regulated health professional who has been sanctioned once and one who has been sanctioned twice. Professionals who have previously been sanctioned should be extra vigilant; if they engage in unprofessional conduct a second time and the second breach is serious, they may expect a costs order indemnifying the College for a substantial portion or all of its costs.
67. The Tribunal finds that based on these factors it is entirely fair and justified for Dr. Hudson to pay a substantial portion or all of the costs the CPSA incurred in investigating and prosecuting this matter.

The amount of costs

68. In determining the appropriate amount, the Tribunal has considered the seriousness of charges, the conduct of the parties, the reasonableness of the amounts involved and Dr. Hudson's ability to pay.
69. As stated above, because of the serious nature of Dr. Hudson's breach of the *HPA* and the College's standards of practice, in the Tribunal's view, it is appropriate to order a substantial amount or all of the costs of the investigation and hearing.
70. Regarding the parties' conduct, Dr. Hudson was unsuccessful in resisting the allegations, but she did not prolong or unduly complicate the hearing or engage

in hearing misconduct. We are not of the view that the Complaints Director unduly complicated the hearing or engaged in any hearing misconduct either.

71. In relation to the amounts involved, Mr. Boyer indicated that the College's investigation and hearing costs for the 3½ days of hearings in Dr. Hudson's matter up to the date of the sanctions hearing total \$77,139. The Tribunal compared this to decisions in other professional discipline cases and found the costs were not disproportionate.
 72. The Tribunal considered Dr. Hudson's position that she had been prepared to agree to sanctions other than the acceleration clause so the sanctions hearing was unnecessary. The Tribunal notes that no agreement on sanctions was reached. Cancellation was mandatory given the operation of section 82(1.1) of the HPA and Dr. Hudson opposed the terms of the Complaints Director's proposed fine and costs order. Dr. Hudson also testified and was cross-examined. The sanctions hearing was therefore necessary.
 73. The Tribunal carefully considered Dr. Hudson's evidence of her finances to ascertain her ability to pay. The Tribunal is mindful that costs should not deliver a 'crushing financial blow.' In light of Dr. Hudson's financial evidence and her stated ability to pay between \$1,000 and \$1,200 per month, the Tribunal has determined that a reasonable order would be to reduce the College's overall investigation and hearing costs by 1/3 and order Dr. Hudson to pay 2/3 over a period of 5 years in equal monthly installments. The Tribunal has also elected to impose a cap on the costs order, so that Dr. Hudson will be responsible for no more than \$90,000 in costs in any event.
4. *If there are extenuating circumstances, Dr. Hudson may seek an extension for payment of costs or may request a variation in the payment schedule by submitting her request to the Hearings Director, who may grant an extension or variation of the payment schedule in their sole discretion.*
74. The Hearing Tribunal recognizes that there may be extenuating circumstances that present an obstacle to Dr. Hudson complying with the obligation to pay the costs. If there are extenuating circumstances, Dr. Hudson may seek an extension for payment of costs or may request a variation in the payment schedule by submitting her request to the Hearings Director, who may grant an extension or variation of the payment schedule in their sole discretion.
5. *If Dr. Hudson defaults in payment of the costs for more than 60 days without obtaining an extension or variation in accordance with paragraph #4, then the total costs amount less amounts paid to date will become a debt due and owing to the College.*

75. Pursuant to s. 82(4) of the HPA, 'A fine or expenses ordered to be paid under this section ...are a debt due to the college and may be recovered by the college by an action in debt'. The College is seeking a means by which to claim the balance owing in a single civil claim if Dr. Hudson defaults on the payments owing to the College. The parties referred to this as an 'acceleration clause'.
76. Ms. Burnett argued that the inclusion of an acceleration clause is an unprecedented and extreme remedy, unsupported by case authority. Such a clause amounts to a further penalty which is not permitted as part of costs. The provisions in the *HPA* allow for the College to pursue enforcement through civil court proceedings. This should be sufficient.
77. Mr. Boyer argued that the College requires an acceleration clause in the event of a default of payment because the College cannot use suspension or cancellation of Dr. Hudson's practice permit to compel payment given that Dr. Hudson's practice permit has been permanently cancelled. Also, without the acceleration clause, the civil enforcement of fines and costs has the potential to become unwieldy because it creates the impractical reality of having to sue every month for each installment when it became due.
78. After carefully considering the parties' submissions, the Tribunal has decided to include an acceleration clause.
79. The Tribunal's authority to direct Dr. Hudson to pay a portion of the College's investigation and hearing costs is found in section 82(1)(j) of the HPA. Section 82(1)(j) permits the Tribunal to direct Dr. Hudson to pay costs "within the time set in the order". The Tribunal is also authorized by section 82(1)(l) to make "any order that the hearing tribunal considers appropriate for the protection of the public." The Tribunal considers that sections 82(1)(j) and (l) give it the authority to include the acceleration clause.
80. The acceleration clause specifies a period of time, 5 years, within which Dr. Hudson must make monthly installment payments towards the investigation and hearing costs. It also directs a period of time, 60 days, within which Dr. Hudson may default on a monthly installment payment without triggering the acceleration clause, and after which the entire balance of her costs obligation will become immediately due and payable. Further, the Tribunal considered that it is not in the public's interest for actions in debt to collect costs due to the College to be unnecessarily complicated by installment payment plans. The acceleration clause is a simple means of providing certainty as to the amount owing at the time of default.
81. The Tribunal also considered that Dr. Hudson's practice permit and registration have been cancelled permanently, so she has little incentive to maintain her payments to the College to avoid a suspension under section 82(3)(c) of the HPA. The only incentive is to avoid an action in debt for any unpaid balance. The Tribunal's orders provide flexibility for Dr. Hudson to seek extensions or variations of the payment schedule in extenuating circumstances, while

preserving a certain and efficient mechanism for the College to enforce the costs, if necessary.

Signed on behalf of the Hearing Tribunal by the Chair:

A handwritten signature in black ink, appearing to read 'Naz Mellick', with a large, stylized initial 'N'.

Ms. Naz Mellick

Dated this 7th day of December, 2023.