

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. YIFEI SHI

**DECISION OF THE HEARING TRIBUNAL OF
THE COLLEGE OF PHYSICIANS
& SURGEONS OF ALBERTA
November 27, 2024**

I. INTRODUCTION

1. The Hearing Tribunal held a hearing into the conduct of Dr. Yifei Shi on September 17, 2024. The members of the Hearing Tribunal were:

Mr. Terry Engen, Public Member, Chair;
Dr. Vonda Bobart;
Dr. Goldees Liaghati-Nasseri;
Mr. Kevin Kelly, Public Member.

2. Appearances:

Ms. Monica Tran, legal counsel for the Complaints Director;
Dr. Gordon Giddings, Complaints Director;
Dr. Yifei Shi ("**Dr. Shi**" or the "**Investigated Person**");
Mr. Michael Sestito and Ms. Katherine Martin, legal counsel for Dr. Shi;
Ms. Julie Gagnon, independent legal counsel for the Hearing Tribunal;
Ms. Sandy Clark, Hearing Facilitator.

II. PRELIMINARY MATTERS

3. Neither party objected to the composition of the Hearing Tribunal or its jurisdiction to proceed with the hearing.
4. The Chair confirmed that the hearing was open to the public under section 78 of the *Health Professions Act*, RSA 2000, c. H-7 ("**HPA**"). No application was made to hold the hearing or a part of the hearing in private.
5. There were no matters of a preliminary nature.

III. CHARGE

6. The Notice of Hearing listed the following allegation (the "**Allegation**"):

On November 17, 2022, you pled guilty to and were convicted of one count of unlawfully defrauding the Government of Alberta of a value exceeding \$5,000 between January 1, 2016 and January 1, 2017 inclusive, contrary to section 380(1)(A) of the *Criminal Code of Canada*.

7. The Investigated Person admitted to the allegation and that the conduct constituted unprofessional conduct.

IV. EVIDENCE

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

Exhibit 1 – Agreed Exhibit Book consisting of:

Tab 1 Notice of Hearing dated April 15, 2024

- Tab 2 Section 56 Memo dated April 24, 2021
- Tab 3 Letter of response from Dr. Shi dated December 9, 2022
- Tab 4 Indictment and Information dated January 4, 2022
- Tab 5 Certificate of Conviction dated November 17, 2022
- Tab 6 Letter from Dr. ████████ to ████████ dated May 26, 2021
- Tab 7 Forensic Psychiatry Report of Dr. Shi by Dr. ████████ dated March 12, 2024
- Tab 8 Addendum to Forensic Psychiatry Report dated April 26, 2024

Exhibit 2 – Admission and Joint Submission Agreement

9. The parties provided an Agreed Statement of Facts which sets out the facts and admissions below.
10. The Investigated Person admits that on November 17, 2022, she pled guilty to and was convicted of one count of unlawfully defrauding the Government of Alberta of a value exceeding \$5,000 between January 1, 2016 and January 1, 2017 inclusive, contrary to section 380(1)(A) of the *Criminal Code of Canada*.
11. The Investigated Person was sentenced criminally to imprisonment of four years, to pay restitution in the amount of \$827,077.02 and a prohibition on having authority over certain types of funds for a period of 10 years.
12. The Investigated Person served ten months in custody and is currently on parole until November 2026.
13. On March 17, 2024, the Investigated Person's parole conditions were modified such that she may be permitted to return to medical practice.
14. A practice visit on May 14, 2021 with the Individual Practice Review program at the CPSA did not identify any major concerns with the Investigated Person's practice and concluded the Investigated Person was safe to practice.
15. In March 2024, the Investigated Person underwent an independent forensic psychiatry assessment with Dr. ████████, who prepared a report, dated March 12, 2024, which concluded that the Investigated Person's risk of reoffending was low, that there are no psychological or psychiatric issues impairing her ability to practice medicine and she is fit to practice.
16. On April 26, 2024, Dr. ████████ issued an addendum to her report outlining a recommendation that the Investigated Person be restricted to multi-physician family medicine practices on a temporary basis, that the Investigated Person attend counselling, and that the Investigated Person does not require a formal Physician Health Monitoring Program or biological monitoring.

17. The CPSA endorses Dr. ██████ recommendation that the Investigated Person attend counselling for her own benefit but does not find it necessary to mandate attendance.
18. The Investigated Person admits the conduct outlined in the Notice of Hearing amounts to unprofessional conduct and that the Investigated Person makes the admission in accordance with Section 70 of the HPA.

V. SUBMISSIONS ON THE ALLEGATIONS

Submissions on behalf of the Complaints Director

19. Ms. Tran reviewed the documents in the Agreed Exhibit Book and noted the admission by the Investigated Person, as permitted under section 70 of the HPA. The Hearing Tribunal must determine pursuant to section 70(2) of the HPA if the admission is accepted in whole or in part.
20. Ms. Tran submitted that the evidence clearly supports the admissions by the Investigated Person and that the conduct amounts to unprofessional conduct.
21. Ms. Tran highlighted the definition of unprofessional conduct in the HPA, in particular section 1(1)(pp)(ii), which addresses conduct that contravenes the Standards of Practice. Under the Standards of Practice – Responsibility for a Medical Practice, the Investigated Person was required to take responsibility for her medical practice, which includes ensuring that billing is appropriate.
22. Ms. Tran also noted section 1(1)(pp)(iii), regarding conduct that is a contravention of another enactment that applies to the profession. The Investigated Person breached the Criminal Code of Canada. The criminal conviction related to overbilling for medical services and so there is a clear nexus between the medical profession and the criminal conduct.
23. Finally, Ms. Tran noted section 1(1)(pp)(xii), which addresses conduct that harms the integrity of the medical profession. Ms. Tran noted that physicians are in a position of power and trust. There are corresponding responsibilities and expectations from the public. Physicians who are convicted of criminal offences do not reflect well on the integrity of the medical profession. This is particularly true when the offence relates to a significant function of the medical profession, that is, billing for medical services.

Submissions on behalf of the Investigated Person

24. Mr. Sestito noted that the Investigated Person acknowledges that she made a series of grave errors and has accepted responsibility for her actions. She has provided significant financial restitution for her inappropriate actions and has faced significant consequences to her liberty through the criminal proceedings.

25. Mr. Sestito pointed to the reports by Dr. ██████ which he noted endorse the approach taken by the parties in the hearing.

VI. FINDINGS ON THE ALLEGATIONS

26. The Hearing Tribunal considered the submissions of the parties and the exhibits. The Hearing Tribunal agreed that there was sufficient evidence to establish that the conduct in the Allegation was proven and that the conduct constitutes unprofessional conduct pursuant to section 1(1)(pp) of the HPA, as follows:
- (ii) contravention of the HPA, a code of ethics or standards of practice;
 - (iii) contravention of another enactment that applies to the profession; and
 - (xii) conduct that harms the integrity of the regulated profession.
27. The Investigated Person's conduct breached the Standards of Practice: Responsibility for a Medical Practice, which requires a physician to direct and take responsibility for her medical practice, including all non-regulated staff and billing for medical practice. The conduct in this case is significant and occurred over a one-year period.
28. The Hearing Tribunal noted the importance of physicians understanding and complying with their responsibilities and obligations under the HPA and related Standards of Practice. A physician is ultimately responsible for their practice, even if tasks, such as billing, are delegated. The onus is on the physician to ensure compliance with the requirements for her medical practice. The breaches of the Standards of Practice in this case are serious and constitute unprofessional conduct.
29. In this case, the Investigated Person breached the Criminal Code in a manner that directly engaged the profession. A physician is responsible for the billings submitted to Alberta Health. This duty cannot simply be delegated to others without oversight, as the physician will ultimately be responsible for improper billings.
30. Where a physician has concerns about whether the billing practices are appropriate, as occurred in this case, it is incumbent on that physician to explore the matter further. Simply relying on other physicians in the practice may not be sufficient and the physician will ultimately be responsible if the billing practices are improper. Physicians who are new to the practice must recognize their obligations. There are resources to assist physicians, including within the College and through Alberta Health.
31. Finally, the conduct of the Investigated Person clearly harms the integrity of the profession. The conduct is a serious breach of the trust placed in physicians and such conduct undermines the public's confidence in the profession.

32. For these reasons, the Hearing Tribunal finds that the conduct constitutes unprofessional conduct pursuant to section 1(1)(pp)(ii), (iii) and (xii) of the HPA.

VII. SUBMISSIONS ON SANCTION

Submissions on behalf of the Complaints Director

33. Ms. Tran reviewed the Joint Submission Agreement and the proposed sanction. She made submissions regarding the deference owed to a joint submission on sanction as set out in *R v Anthony-Cook*, 2016 SCC 43. A tribunal should not depart from a joint submission on sanction unless the proposed sanction would bring the administration of justice into disrepute or would otherwise be contrary to the public interest. Ms. Tran also pointed to *Bradley v Ontario College of Teachers*, 2021 ONSC 2303 to show that this test has been applied in professional disciplinary matters.
34. Ms. Tran noted the fundamental purpose of sanction in the professional regulatory context is to ensure that the public is protected. The Hearing Tribunal is also tasked with ensuring that the public has confidence in the profession and to send a message to other members of the profession through sanction that the conduct was unacceptable. The sanction should also serve to rehabilitate the member. The specifics of the case must be considered, including any mitigating or aggravating factors.
35. Ms. Tran reviewed the factors in *Jaswal v Newfoundland Medical Board*, 1996 CanLii 11630 (NL SC). She noted that the aggravating factors in this case are the nature and gravity of the proven allegations and the degree to which the conduct falls outside of the range of acceptable conduct. The conduct in this case is very serious. The integrity of the public health care system depends on the integrity of physicians to bill appropriately. This type of conduct can be seen to break down public confidence and trust in the profession. Ms. Tran noted that while there is one Allegation, the conduct occurred over the span of one year and was not a one-off event. This is also an aggravating factor.
36. Ms. Tran noted that there were some mitigating factors. The Investigated Person had only been practicing for about three years as a physician when the conduct occurred. This is only slightly mitigating, as the conduct is serious regardless of the age and experience of the member. The Investigated Person has no prior complaints. Further, the admission of unprofessional conduct is a significant mitigating factor. The Investigated Person has also had serious financial and other penalties, including 10 months of incarceration and significant financial restitution being made.
37. Ms. Tran reviewed other cases involving billing issues for physicians and noted that the proposed sanction was within the range of other cases. The joint submission on sanction has been structured to satisfy the need for deterrence

and to protect the public from unprofessional conduct, while putting in place conditions to assist the Investigated Person in rebuilding her practice.

38. In terms of costs, Ms. Tran pointed to the decision of the Court of Appeal of Alberta in *Jinnah v Alberta Dental Association and College*, 2022 ABCA 336. This case falls into one of the categories identified in *Jinnah*, being serious unprofessional conduct, where it is appropriate to award a significant portion of the costs. The Court noted in *Jinnah* that fraud on an insurer was an example of serious unprofessional conduct.

Submissions on behalf of the Investigated Person

39. Mr. Sestito noted that the Investigated Person adopted the submissions made by Ms. Tran. He noted the public interest is paramount in assessing a joint submission on sanction. He submitted that the public interest is served given the deterrent effect of the sanction. In addition, he noted that if a joint submission on sanction is rejected without meeting the test, the public interest may be disserved as it may result in a chilling effect on parties entering into joint submissions in the future. Mr. Sestito also noted the significant costs savings and efficiencies in proceeding by joint submission.
40. Mr. Sestito noted some additional mitigating factors, including that the Investigated Person has undergone a full psychiatric assessment with a view to admitting responsibility but also understanding the motivations behind her actions and ensuring that they don't occur in the future. She is undergoing significant counselling to ensure she looks after her mental health and continues to be fit to practice and not be a risk of re-offence. She has paid restitution to Alberta Health and their file is closed. She has, other than this case, no further outstanding issues with Alberta Health, criminal or other regulatory proceedings.

Hearing Tribunal Questions

41. The Hearing Tribunal clarified with the parties whether the Investigated Person was currently practicing. Mr. Sestito confirmed that she was not currently practicing as she was waiting for the outcome of the hearing, but it is her intention to practice in a multi-physician practice.
42. The parties also confirmed the intention for the conditions to start from the date of the decision of the Hearing Tribunal.
43. Ms. Tran advised that the costs of the proceedings were currently at \$10,373.80 which did not include the costs of the hearing.

VIII. DECISION ON SANCTION WITH REASONS

44. The Hearing Tribunal considered the exhibits and submissions of the parties. The Hearing Tribunal found the reports by Dr. [REDACTED] to be of significant

assistance in its deliberations. The reports establish confidence that with the recommended sanctions, there is not a significant risk to the public if the Investigated Person returns to practice. This is important in ensuring that the public is protected and that the public's confidence in the integrity of the profession is maintained.

45. The Hearing Tribunal noted that a physician is ultimately responsible for their practice, including billing. The Investigated Person was new to the profession. However, she remains responsible for her practice. A physician must ensure compliance with all legal and regulatory requirements. A physician cannot rely on what others in the practice may be doing, especially where they have a sense that something may be wrong. A new physician is advised to rely on available resources, including Alberta Health resources and to be vigilant in ensuring compliance with regulatory requirements.
46. If a physician believes that something is not right in the practice with respect to billing, there is a professional duty on that physician to further probe the matter, including contacting the College or Alberta Health. It is not appropriate to simply rely on others in the practice, especially where a new physician believes that something is not right.
47. The Hearing Tribunal considered the *Jaswal* factors as set out by Ms. Tran and Mr. Sestito, including the aggravating and mitigating factors in this case. The proposed sanction is fair and appropriate. It denounces the conduct but also has a significant rehabilitative component.
48. In the circumstances of the case, and given the agreement of the parties, the Hearing Tribunal also considered that the payment of full costs of the investigation and hearing is appropriate.
49. The Hearing Tribunal finds that the sanction is reasonable. It achieves the goals of specific and general deterrence and protects the public. The Hearing Tribunal is also cognizant of the high level of deference that is owed to a joint submission on sanction. The Hearing Tribunal finds no reason to intervene with the proposed joint submission on sanction.

IX. ORDERS

50. For the reasons set out above, the Hearing Tribunal orders the following in accordance with section 82 of the HPA:
 - a. Dr. Shi shall receive a reprimand, with the Hearing Tribunal's written decision serving as that reprimand;
 - b. Dr. Shi's practice permit be suspended for a period of 2 months, which will be held in abeyance pending fulfillment of the other orders of the Hearing Tribunal;

- c. Dr. Shi shall serve the two-month suspension outlined in (b), at a time to be directed by the Complaints Director, if:
 - i. Dr. Shi does not comply with one of the other orders of the Hearing Tribunal; or
 - ii. within five years of the Hearing Tribunal's written decision, the Complaints Director receives or opens a complaint regarding issues similar to that identified in this matter that, in the opinion of the Complaints Director, acting reasonably, is likely to be referred to a hearing;
- d. Dr. Shi shall pay a fine in the amount of \$10,000;
- e. Dr. Shi shall make full restitution to Alberta Health for any amounts determined to be owing;
- f. Dr. Shi shall have the following conditions on her practice permit:
 - i. Dr. Shi shall submit to random audits of her billing for five years;
 - ii. Dr. Shi shall be restricted to multi-physician practice for at least one year;
 - 1. After one year from the date of the Hearing Tribunal's decision, Dr. Shi may apply to the Complaints Director to remove this condition upon providing information to the satisfaction of the Complaints Director, acting reasonably, that Dr. Shi is aware of the Standards of Practice and appropriate billing procedures.
- g. Dr. Shi shall be responsible for 100% of the costs of the investigation and the hearing before the Hearing Tribunal;
- h. The Hearing Tribunal shall retain jurisdiction to determine any issues arising from performance of the terms of this Order.

Signed on behalf of the Hearing Tribunal by the Chair:



Mr. Terry Engen

Dated this 27th day of November, 2024.