

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. YOLANDA ALCARAZ-LIMCANGCO

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

I. INTRODUCTION

- [1] The Hearing Tribunal of the College of Physicians & Surgeons of Alberta ("College" or "CPSA") met on April 29, 2022 by virtual conference to consider the written submissions on sanction of the Complaints Director and of Dr. Yolanda Alcaraz-Limcangco.
- [2] The members of the Hearing Tribunal were:
- Dr. Don Yee of Edmonton as Chair
 - Dr. Randall Sargent of Canmore
 - Ms. Juane Priest of Calgary (public member)
 - Ms. Naz Mellick of Edmonton (public member)
- [3] Ms. Julie Gagnon acted as independent legal counsel for the Hearing Tribunal.

II. PRELIMINARY MATTERS

- [4] The Hearing Tribunal issued its decision on the merits on January 4, 2022 ("Merits Decision"). The Hearing Tribunal found the following allegation in the Notice of Hearing had been proven and constituted unprofessional conduct:
- You did fail to participate in and complete the Individual Practice Review ("IPR") as required under your agreement with the College of Physicians & Surgeons of Alberta (the "CPSA") dated February 7, 2018, as part of the terms of resolution of the CPSA's complaint file number 160552.1., particulars of which include the most recent failure or refusal to engage in the IPR process as requested by letter dated December 3, 2020, from Dr. D. Hartfield, Assistant Registrar.
- [5] In the Merits Decision, the Hearing Tribunals requested the parties to discuss timing and method of providing submissions on sanction to the Hearing Tribunal. The parties jointly determined that written submissions on sanction would be provided to the Hearing Tribunal.

III. DOCUMENTS BEFORE THE HEARING TRIBUNAL

- [6] The following were provided to the Hearing Tribunal for its consideration on sanction:
- a. Written Submissions on Sanction and Authorities of the Complaints Director, enclosing the following:
 - 1. *Health Professions Act, RSA 2000, c H-7*
 - 2. *Casey, J. Regulation of Professions in Canada*

3. *Jaswal v Newfoundland (Medical Board)*, 1996 CarswellNfld 32
 4. Decision of the Hearing Tribunal regarding Dr. Joanne Suk-Wah Tse dated January 30, 2021
 5. Decision of the Hearing Tribunal regarding Dr. Joanne Suk-Wah Tse dated May 17, 2021
 6. CPEP Clinical Competence Assessment and Education from CPEP. Retrieved from <https://www.cpepdoc.org/wp-content/uploads/2018/03/Overview-of-Assessment-Process-2018-1.pdf>
 7. *Lysons v Alberta Land Surveyors' Association*, 2017 ABCA 7 (CanLII)
 8. *Alberta College of Physical Therapists v Fitzpatrick*, 2015 ABCA 95 (CanLII)
 9. *KC v College of Physical Therapists of Alberta*, 1999 ABCA 253 (CanLII)
- b. Written Submissions on Sanction of Dr. Alcaraz-Limcangco.
 - c. Written Reply Submissions on Sanction of the Complaints Director.

IV. SUBMISSIONS

Submissions on behalf of the Complaints Director

- [7] The Complaints Director's written submissions set out the legislative authority for the Hearing Tribunal to order sanctions as well as the purposes of orders in a discipline proceeding. Protection of the public is of paramount importance. Maintaining the integrity of the profession, fairness to the member, specific deterrence and general deterrence should also be considered.
- [8] The Complaints Director's written submissions reviewed the factors in *Jaswal v Newfoundland Medical Board* as well as authorities in support of the proposed order and costs.
- [9] The Complaints Director seeks the following orders:
1. Dr. Alcaraz-Limcangco shall, at her own cost, attend at the Centre for Personalized Education for Physicians ("CPEP") for a Clinical

Competence Assessment and remediation plan by June 15, 2022 or such later date acceptable to the Complaints Director.

2. The results of Dr. Alcaraz-Limcangco's Clinical Competence Assessment shall be provided to the Complaints Director and the Hearing Tribunal by July 15, 2022 or such later date acceptable to the Complaints Director. Following its review of the results of Dr. Alcaraz-Limcangco's Clinical Competence Assessment, the Hearing Tribunal may, at its sole discretion, direct Dr. Alcaraz-Limcangco to enter and fully cooperate with the IPR process.
3. Dr. Alcaraz-Limcangco shall pay a fine of \$10,000 within 1 year of being served with a copy of the Hearing Tribunal's decision in this matter on a monthly schedule satisfactory to the Complaints Director. However, if Dr. Alcaraz-Limcangco completes Orders 1 and 2 by July 15, 2022, the fine shall be reduced to \$5,000 and be paid by Dr. Alcaraz-Limcangco within 1 year of being served with a copy of the Hearing Tribunal's decision in this matter on a monthly schedule satisfactory to the Complaints Director.
4. Dr. Alcaraz-Limcangco shall pay the full costs of the investigation and hearing within 24 months of being served with a copy of the Hearing Tribunal's decision in this matter on a monthly schedule satisfactory to the Complaints Director. For greater certainty, additional costs incurred by the Hearing Tribunal under Order 2 are included in the costs owed to the CPSA.

[10] The Complaints Director noted that the costs incurred by the CPSA as of February 15, 2022 are \$63,000 and that the final costs may well exceed \$70,000.

Submissions on behalf of Dr. Alcaraz-Limcangco

[11] Dr. Alcaraz-Limcangco's written submissions note that she agrees with the proposed direction to undertake the CPEP Program and that she abide by the resulting direction of the Hearing Tribunal and Continuing Competence Department. She requests that the date to complete the program be September 30, 2022 to allow sufficient time to make the necessary financial and logistical arrangements.

[12] Dr. Alcaraz-Limcangco opposes the request for a fine. In her written submissions, it is noted that Dr. Alcaraz-Limcangco testified in the hearing that she has suffered significant financial stress from the impact of her resignation from AHS, and the very limited practice which she has been able to pursue in light of her effort to respect the College's view of her practice limitations to mental health issues. A fine would aggravate that burden considerably.

- [13] Dr. Alcaraz-Limcangco also submits that only a portion of the costs of the investigation and hearing should be awarded, in the amount of one-half of the proposed costs.
- [14] Dr. Alcaraz-Limcangco notes the following mitigating factors: lack of disciplinary history, compliance with the College's directions over the majority of the relevant period, the absence of any harm to patients, the voluntary compliance with the College's restrictions.
- [15] Dr. Alcaraz-Limcangco takes the position that the presence of a disciplinary history is not an aggravating factor.
- [16] Dr. Alcaraz-Limcangco submits the following sanction is appropriate:
- a. Dr. Alcaraz-Limcangco shall, at her own cost, attend at the Centre for Personalized Education for Physicians ("CPEP") for a Clinical Competence Assessment and remediation plan by September 30, 2022 or such later date acceptable to the Complaints Director.
 - b. The results of Dr. Alcaraz-Limcangco's Clinical Competence Assessment shall be provided, within 7 days after receipt, to the Complaints Director and the Hearing Tribunal. Following its review of the results of Dr. Alcaraz-Limcangco's Clinical Competence Assessment, the Hearing Tribunal may, at its sole discretion, direct Dr. Alcaraz-Limcangco to enter and fully cooperate with the IPR process.
 - c. Dr. Alcaraz-Limcangco shall pay one half of the costs of the investigation and hearing, within 60 months of being served with a copy of the Hearing Tribunal's decision on sanction in this matter on a monthly schedule satisfactory to the Complaints Director.

Reply Submissions on behalf of the Complaints Director

- [17] In the Complaints Director's reply submissions, it is noted that the Complaints Director is prepared to accept the proposal by Dr. Alcaraz-Limcangco for timing to complete the CPED Clinical Competence Assessment and remediation plan by September 30, 2022.
- [18] The Complaints Director proposes that the results be provided to the Complaints Director and Hearing Tribunal by October 30, 2022, or such later date acceptable to the Complaints Director.
- [19] The Complaints Director continues to request the fine and costs as set out in the Complaints Directors written submissions on sanction. A fine serves as the primary mechanism for specific and general deterrence. Unlike a fine, costs are requested on a recovery basis and are not intended to be punitive.

V. DECISION OF THE HEARING TRIBUNAL ON SANCTION

- [20] The Hearing Tribunal reviewed and considered the submissions of the parties on sanction. The Hearing Tribunal finds that the CPEP is appropriate as is the power for a further direction by the Hearing Tribunal that Dr. Alcaraz-Limcangco enter into and fully cooperate with the IPR process. The Tribunal notes that both the Complaints Director and Dr. Alcaraz-Limcangco view these as appropriate orders. The Hearing Tribunal also finds that a fine is appropriate, as well as payment of costs of the investigation and hearing.
- [21] The Hearing Tribunal's reasons and the specific orders of the Hearing Tribunal are set out below.

VI. REASONS

- [22] The Tribunal considered the principles of sentencing and the factors in *Jaswal*, in particular the following:
- i. Nature and gravity of the proven allegations: The Tribunal finds the proven conduct to be very serious. A physician entering into a Terms of Resolution agreement with the College, must abide by the terms of that agreement. A physician must also respond to communications of the College. Failure to do so undermines the integrity of the profession and impacts the College's ability to self-regulate.
 - ii. Age and experience of the offending physician: Dr. Alcaraz-Limcangco has been registered with the CPSA since 2011 and has worked in more than one jurisdiction. She would be expected to know the importance of complying with and responding promptly to communications from her regulatory body. However, as noted by the Complaints Director, all members, regardless of experience are expected to comply with agreements entered into with the College and to reply promptly to communications from the College.
 - iii. The presence or absence of any prior complaints or convictions: Dr. Alcaraz-Limcangco had one prior complaint that was resolved by way of a Terms of Resolution. It is Dr. Alcaraz-Limcangco's failure to comply with that Terms of Resolution that led to the present hearing. The Hearing Tribunal agrees with the Complaints Director that this is an aggravating factor. The public should be able to rely on a member's compliance with a Terms of Resolution. The failure to do so seriously undermines the integrity of the profession and the public's confidence in the ability of the College to self-regulate.

- iv. The number of times the offence was proven to have occurred: The conduct occurred over a period of time from 2018-2020. There were multiple instances of correspondence from the College to Dr. Alcaraz-Limcangco and her counsel where Dr. Alcaraz-Limcangco did not reply to or engage with the College's direction. The Hearing Tribunal agreed with the Complaints Director that this was an aggravating factor.
- v. The role of the physician in acknowledging what has occurred: Dr. Alcaraz-Limcangco defended the allegation in the Notice of Hearing, as she is entitled to do. However, there was no acknowledgement of the conduct, which if done, can be viewed as a mitigating factor.
- vi. Whether the offending physician has already suffered other serious financial or other penalties: Dr. Alcaraz-Limcangco has a condition on her practice permit restricting her practice to mental health. This may well have had a financial impact on Dr. Alcaraz-Limcangco. However, no specific financial information was provided to the Tribunal for its consideration.
- vii. The presence or absence of any mitigating circumstances: The Hearing Tribunal considered the position of Dr. Alcaraz-Limcangco that the following are mitigating factors: lack of disciplinary history, compliance with the College's directions over the majority of the relevant period, the absence of any harm to patients, the voluntary compliance with the College's restrictions. The Hearing Tribunal does not find that these are mitigating factors. As noted above, the disciplinary history led to the Terms of Resolution and Dr. Alcaraz-Limcangco failed to comply with the Terms of Resolution. It is not sufficient to say that she complied with much of the College's directions. A member must comply with all of the College's directions. While there was no evidence of harm to patients, the College considered that the results of the prior assessment which included summaries of specific clinical encounters. These indicate that there was a potential for harm to patients resulting from Dr. Alcaraz-Limcangco's low level of clinical competency. The restriction by the College, in light of Dr. Alcaraz-Limcangco's assessment results was appropriate and in the view of the Tribunal, necessary to protect the public.
- viii. The need to promote specific and general deterrence: The Tribunal placed high emphasis on this factor. The Tribunal wishes to emphasize to Dr. Alcaraz-Limcangco and to the membership generally the importance of communicating with, responding to the College and abiding by the terms of any agreement with the College.
- ix. The need to maintain the public's confidence in the integrity of the medical profession: The Hearing Tribunal also placed a high degree of emphasis on this factor. Dr. Alcaraz-Limcangco's conduct in failing to abide by the Terms of Resolution undermines the public's confidence in

the integrity of the profession and in the ability of the College to self-regulate, especially since in this case the College was trying to remediate a regulated member to a point where she could practice safely.

- x. The degree to which the conduct is clearly regarded, by consensus, as being outside the range of permitted conduct: The conduct is clearly outside of what is permitted.

- [23] The Tribunal considered the authorities submitted in determining the appropriate sanction and the order for costs.
- [24] Protection of the public is paramount in considering the appropriate sanction. The orders of the Hearing Tribunal must ensure the public is protected. The CPEP is appropriate in the circumstances. There is a need for both the Clinical Competence Assessment and remediation plan. Both the Complaints Director and Dr. Alcaraz-Limcangco agree that this order is appropriate, with some time for Dr. Alcaraz-Limcangco to complete the CPEP. This aspect of the orders is remedial in nature, so that deficiencies in Dr. Alcaraz-Limcangco's practice can be addressed and so that there can be a path forward for Dr. Alcaraz-Limcangco to safely practice medicine as an independent practitioner.
- [25] The ability for the Hearing Tribunal to direct Dr. Alcaraz-Limcangco to enter and fully cooperate with the IPR process is also remedial in nature. Both the Complaints Director and Dr. Alcaraz-Limcangco agree that this order is appropriate. The Tribunal also finds that this order is appropriate and will serve to protect the public interest. The Tribunal notes that it expects the parties to communicate with each other regarding the appropriate terms of the IPR and that specific and detailed terms would be provided to the Tribunal for its consideration and review.
- [26] The Hearing Tribunal finds that the fine is appropriate. As a self-regulating profession, it is critical for members to have open, forthright and timely communications with the College. The Tribunal finds that it is important to send a strong message to Dr. Alcaraz-Limcangco and to the membership about the importance of communicating with the College. Dr. Alcaraz-Limcangco showed a pattern of resistance in the face of communications with the College regarding the Terms of Resolution.
- [27] Part of the privilege of self-regulation is the requirement that members comply with any agreement reached with the College and that members respond to the College, so that the integrity of the self-regulatory process is maintained. If the College is not able to regulate its members, the public will lose confidence in the integrity of the profession and this jeopardizes the College's ability to maintain the privilege of self-regulation.

- [28] In the circumstances of this case, the Hearing Tribunal views that a fine of \$10,000, the maximum fine per allegation as set out in the HPA, is appropriate. The Tribunal wishes to send a very clear message to Dr. Alcaraz-Limcangco and to the membership generally that this type of conduct will not be tolerated. However, the Tribunal finds that while a fine of \$10,000 is warranted, a reduction in the fine to \$5,000 if Dr. Alcaraz-Limcangco cooperates with the orders of the Hearing Tribunal is suitable in this case. The Tribunal has considered the nature of the allegation and the facts of this case and believes that providing an incentive for Dr. Alcaraz-Limcangco's cooperation is appropriate.
- [29] The Hearing Tribunal also views that this is an appropriate case to order full costs of the hearing. While a member is entitled to contest a hearing and advance a full and robust defense, the member may be held responsible for some or all of the costs of a hearing in doing so.
- [30] The Hearing Tribunal views this to be an appropriate case for full costs. Dr. Alcaraz-Limcangco was unsuccessful in resisting the allegation. No admissions were made by Dr. Alcaraz-Limcangco that could have shortened the hearing. The Complaints Director's witnesses were all necessary to establishing the allegation.
- [31] No specific evidence was advanced regarding Dr. Alcaraz-Limcangco's financial circumstances. However, the Hearing Tribunal did consider that Dr. Alcaraz-Limcangco's practice has been restricted to mental health for a period of time and accepts that the restriction on practice may well have had a financial impact on her.
- [32] However, similar to the considerations for the fine, the Tribunal believes it is appropriate to provide an incentive for Dr. Alcaraz-Limcangco's cooperation with this process. For this reason, the Tribunal is prepared to reduce the costs to 75% if Dr. Alcaraz-Limcangco complies with the orders regarding the CPEP and further cooperate with the IPR process.
- [33] Given the amount of the costs, the Tribunal also views that it is appropriate to give Dr. Alcaraz-Limcangco a period of time to pay the costs. The Tribunal finds that 36 months is appropriate. In reaching its decision on costs, the Tribunal weighed the factors and case law regarding costs, with the need to ensure Dr. Alcaraz-Limcangco is able to pay the costs and get back to successful practice.

VII. CONCLUSION AND ORDERS

- [34] For the reasons set out above, the Hearing Tribunal orders as follows:
1. Dr. Alcaraz-Limcangco shall, at her own cost, attend at the Centre for Personalized Education for Physicians ("CPEP") for a Clinical

Competence Assessment and remediation plan by September 30, 2022 or such later date acceptable to the Complaints Director.

2. The results of Dr. Alcaraz-Limcangco's Clinical Competence Assessment shall be provided to the Complaints Director and the Hearing Tribunal by October 30, 2022 or such later date acceptable to the Complaints Director. Following its review of the results of Dr. Alcaraz-Limcangco's Clinical Competence Assessment, the Hearing Tribunal may, at its sole discretion, direct Dr. Alcaraz-Limcangco to enter and fully cooperate with the IPR process.
3. Dr. Alcaraz-Limcangco shall pay a fine of \$10,000 within 1 year of being served with a copy of the Hearing Tribunal's decision in this matter on a monthly schedule satisfactory to the Complaints Director. However, if Dr. Alcaraz-Limcangco completes Orders 1 and 2 within the timelines set out in Orders 1 and 2, the fine shall be reduced to \$5,000 and be paid by Dr. Alcaraz-Limcangco within 1 year of being served with a copy of the Hearing Tribunal's decision in this matter on a monthly schedule satisfactory to the Complaints Director.
4. Dr. Alcaraz-Limcangco shall pay the full costs of the investigation and hearing within 36 months of being served with a copy of the Hearing Tribunal's decision in this matter on a monthly schedule satisfactory to the Complaints Director. For greater certainty, additional costs incurred by the Hearing Tribunal under Order 2 are included in the costs owed to the CPSA. However, if Dr. Alcaraz-Limcangco completes Orders 1 and 2 within the timelines set out in Orders 1 and 2, the costs shall be reduced to 75% and be paid by Dr. Alcaraz-Limcangco within 36 months of being served with a copy of the Hearing Tribunal's decision in this matter on a monthly schedule satisfactory to the Complaints Director.

Signed on behalf of the Hearing Tribunal by the Chair this 2nd day of June, 2022.



Dr. Don Yee