

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. REGAN TAYLOR

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

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Dr. Regan Taylor on November 9, 2021. The hearing took place via videoconference on Zoom. The members of the Hearing Tribunal were:

Dr. Neelam Mahil of Edmonton as Chair;
Dr. Robin Cox of Calgary (physician member);
Mr. James Lees of Edmonton (public member); and
Ms. Anita Warnick of Calgary (public member).

Mr. Jason Kully acted as independent legal counsel for the Hearing Tribunal.

In attendance at the hearing was Mr. Craig Boyer, legal counsel for the Complaints Director of the College of Physicians & Surgeons of Alberta. Also present was Dr. Regan Taylor and Mr. David McKinnon, legal counsel for Dr. Taylor.

II. PRELIMINARY MATTERS

Neither party objected to the composition of the Hearing Tribunal or jurisdiction of the Hearing Tribunal to proceed with the hearing. There were no matters of a preliminary nature.

III. CHARGES

The Amended Notice of Hearing listed the following allegation:

1. On or about June 10, 2016, you did have an inappropriate sexual encounter with [REDACTED], who you had treated as an episodic patient on May 20, 2016.

IV. EVIDENCE

The parties entered an Exhibit Book into evidence by agreement as Exhibit 1, as well as an Admission and Joint Submission Agreement as Exhibit 2. The Exhibit Book contained the following documents:

1. Notice of Hearing dated July 2, 2021
 - 1.1 Amended Notice of Hearing dated November 8, 2021
2. Complaint Form from [REDACTED] dated September 7, 2019
3. Undated Letter of Response from Dr. Regan Taylor to Dr. Caffaro, received October 24, 2019

[REDACTED]

4. Letter of Response, with enclosures, from Dr. Regan Taylor to Katherine Damron dated October 28, 2019
5. Marnie Heberling Memorandum regarding interview of [REDACTED] dated December 16, 2019
6. Marnie Heberling Memorandum regarding interview of Dr. Regan Taylor dated December 19, 2019
7. Emails between M. Heberling and [REDACTED] (December 20, 2019)
8. Dr. Caeley Lorincz Letter to Marnie Heberling dated January 23, 2020 with Patient Chart for [REDACTED]
9. Alberta Health billing information for Dr. Regan Taylor for [REDACTED]
10. Alberta Health letter dated September 11, 2020 with NetCare access information
11. Dr. Lee Green Report dated June 18, 2021
12. Transcript of interview of Dr. C. Lorincz dated July 29, 2021
13. Dr. Lee Green Report dated September 9, 2021
14. Letter from Dr. M. Lewis of Caleo Health Clinic dated October 26, 2021
15. College of Physicians & Surgeons of Alberta Standard of Practice on Sexual Boundary Violations dated January 1, 2020

The parties did not introduce any other evidence. No witnesses were called to testify.

V. SUBMISSIONS

On behalf of the Complaints Director, Mr. Boyer advised the Hearing Tribunal that the parties had reached an agreement regarding an admission to the charge in the Amended Notice of Hearing. He advised that as part of the agreement, the Complaints Director agreed to withdraw three allegations and to amend the remaining allegation as stated in the Amended Notice of Hearing.

Mr. Boyer reviewed the relevant documents in the Agreed Exhibit Book and identified how they related to the allegation.

Mr. Boyer also advised the Exhibit Book contained two letters from Dr. Lee Green who provided opinions to the Complaints Director on whether or not the behavior of Dr. Taylor was unacceptable to the point of being unprofessional. Dr. Green's opinion was that it was an error in judgment but that it fell short of being unprofessional. Mr. Boyer submitted the Complaints Director did not find the opinions particularly compelling given the lack of discussion and examination of the facts.

Nonetheless, there was an agreement between Dr. Taylor and the Complaints Director that certain charges would be withdrawn in exchange for an

admission of unprofessional conduct to the specific stated charge in the Amended Notice of Hearing.

Mr. Boyer submitted that the evidence contained in the Exhibit Book provided more than sufficient evidence to conclude that it was unprofessional for Dr. Taylor to enter into the sexual encounter with the episodic patient who he had seen on May 20th when the sexual encounter occurred on June 10th, 2016. He submitted that the evidence was sufficient to support the admission of unprofessional conduct and that the Tribunal should accept the admission.

Mr. McKinnon stated the opinions of Dr. Green indicated that, after reviewing all of the material provided by the Complaints Director, the relationship did not appear to rise to the level of a boundary violation under the standard that existed at the time. After being provided additional information, Dr. Green advised that his evaluation was unchanged. Mr. McKinnon also submitted that Dr. Green's opinion spoke to a caution against allowing hindsight bias on the outcome to affect the evaluation of the events themselves and that there has been rapid and major change in how physician relationships with former patients have been viewed over time and particularly in the last five years.

In his reply submission, Mr. Boyer indicated the Complaints Director had concerns with the analysis provided by Dr. Green as the analysis failed to consider the fact that Dr. Taylor was responsible for a follow up on a test and failed to do so. Mr. Boyer also stated that this occurred closer to the time of the beginning of the communication between Dr. Taylor and the episodic patient and that this should have been considered by Dr. Green in his analysis. In any event, Mr. Boyer stated Dr. Green's analysis was a side issue because Dr. Taylor had admitted his conduct was unprofessional.

VI. FINDINGS

The Hearing Tribunal carefully considered Dr. Taylor's admission to the allegation in the Amended Notice of Hearing and the submissions by Mr. Boyer and Mr. McKinnon as well as the evidence provided to the Tribunal. The Hearing Tribunal determined that it would accept Dr. Taylor's admission and determined that the allegation was factually proven and that Dr. Taylor's conduct constituted unprofessional conduct.

The evidence demonstrates that Dr. Taylor is a family doctor and that he had a sexual encounter with [REDACTED] on or about June 10, 2016. Dr. Taylor acknowledged and admitted he and [REDACTED] had a sexual encounter that included sexual intercourse on June 10, 2016.

Prior to this sexual encounter, Dr. Taylor had seen [REDACTED] on May 20 for episodic care, in particular the removal of her IUD. At this time, Dr. Taylor also ordered a test for sexual transmitted infections (STI) and took a tissue sample for a Pap smear test. Dr. Taylor called [REDACTED] by phone on May 24,

2016 to inform her that the STI results were negative. Dr. Taylor's billing logs confirmed he saw █████ on May 20, 2016 and that he called her on May 24, 2016. The NetCare Audit Log included in the Exhibit Book also confirms that Dr. Taylor reviewed █████'s records on May 19, May 20, May 24, and June 8, 2016.

After this May 24, 2016 interaction, █████ subsequently searched for Dr. Taylor on Instagram and contacted him through Instagram. █████ asked Dr. Taylor out for a drink on June 10, 2016 and Dr. Taylor advised her that he could not see her again as a patient after. This was agreed to because █████ had a family physician. Dr. Taylor then agreed to meet █████ socially, which led to the sexual encounter on June 10, 2016.

Given this evidence, it is clear that Dr. Taylor had a sexual encounter with █████, who he had provided episodic care to, and that the allegation is factually proven.

Dr. Taylor admitted this sexual encounter was inappropriate and amounts to unprofessional conduct, and the Hearing Tribunal agrees. The HPA defines unprofessional conduct to include a breach of the Standards of Practice and in this instance Dr. Taylor breached the Standard of Practice pertaining to Sexual Boundary Violations that was in force at the relevant time. The Standard stated that, in the absence of a continuing power imbalance, a physician must not have any sexual or intimate involvement with the former patient for a period of time after the last physician-patient encounter depending on the nature and extent of the physician-patient relationship.

Although █████ had only seen Dr. Taylor for episodic care and there was no continuing care, █████ was in a vulnerable position as she had just received care from Dr. Taylor approximately 3-4 weeks earlier and had just spoken to him by phone to get her test results approximately 2 weeks earlier. While Dr. Taylor stated he could not see █████ again after the social encounter, this did not negate the influence that his previous care had, particularly care that was provided so close in time. The period of time between the care provided by Dr. Taylor, which involved sensitive care and which provided intimate information about █████, was very short and did not amount to an appropriate period of time.

The Hearing Tribunal finds that Dr. Taylor's behaviour is a clear sexual boundary violation and breach of the CPSA's Standard of Practice. It was not simply an error in judgment. Any boundary violation with a patient is serious given the power imbalance and the risk of harm to a patient. In addition, sexual boundary violations constitute serious and egregious unprofessional conduct that puts the public at risk and harms the integrity of the medical profession.

As a physician, Dr. Taylor holds a position of trust and respect. Engaging in a sexual encounter so soon after seeing an individual, who was in a vulnerable and sensitive position given the nature of the care, suggests that his position

of trust and respect was used for personal gain. This harms the standing and reputation of the profession.

VII. SUBMISSIONS ON SANCTION

The Admission and Joint Submission Agreement (Exhibit 2) contained a joint submission on penalty that was presented to the Hearing Tribunal.

Mr. Boyer submitted the Tribunal's role in hearing a joint submission was to give deference to it and only interfere and reject it if the Tribunal felt it was manifestly unjust. Mr. Boyer provided the Tribunal with a Brief of Law addressing the deference that a discipline tribunal must exercise when presented with a joint submission on penalty. The authorities establish that the bar for rejecting or varying a joint submission is very high; a joint submission should only be varied or rejected where it would bring the administration of justice into disrepute. Mr. Boyer submitted that the Tribunal should be satisfied that the proposed sanctions were fitting.

Mr. Boyer submitted the general approach to sanctions is one of balance of deterrence specific to the physician and the profession at large and to rehabilitation.

Mr. Boyer acknowledged the eventual admission of unprofessional conduct on behalf of Dr. Taylor as a positive mitigating factor as it made the process easier on the complainant. However, he did not want it to negate the negative impact that Dr. Taylor's conduct had on the patient. He also stated that the Exhibit Book contained information about the impact of Dr. Taylor's conduct on the episodic patient and how she was left in a difficult situation.

Mr. Boyer submitted other cases could be examined for guidance. These included the College's decision involving Dr. Ferrari in which Dr. Ferrari engaged in a sexual relationship with a patient. After a contested hearing, a 12 month suspension was ordered with 6 months of the suspension being held in abeyance. A multi-disciplinary assessment, conditions on practice arising out of the assessment, and costs of the investigation and hearing were also ordered.

Mr. Boyer also referred to the case of *Ontario (College of Physicians and Surgeons of Ontario) v Peirovy*, 2019 ONCPSD 12, where a doctor had seen the patient for a minor ailment and then started a sexual relationship with the patient that involved sexual touching but no sexual intercourse. The Tribunal imposed a sanction that included a two-month suspension. There was recognition that Dr. Peirovy had only been in independent practice for 5 months and was new to practice.

In *Jaswal v Newfoundland Medical Board*, [1996] N.J. No. 50, Dr. Jaswal, a very young physician entered into a relationship with a patient he had seen in the ER and who he had met at a hotel. The decision indicated there was no

sexual intercourse and the Court reduced the suspension to a 2 month suspension.

In *Quebec College of Physicians v Bitchocka*, 2012 CanLII 31290, the unofficial translation indicated there was a single patient encounter and then a social interaction that included sexual touching but no sexual intercourse. A 3 month suspension as well as the requirement to take a workshop on doctor and patient relationships was ordered.

Given this context of other decisions, and understanding the general principles of deterrence and rehabilitation, Mr. Boyer submitted the proposed sanction fell within the range of possible sanctions given the finding made by the Tribunal on the allegation.

Mr. Boyer then reviewed the proposed joint submission which involved a 6 month suspension, of which 4 months would be served and 2 would be held in abeyance pending the completion of the other terms of the order, and which would start on a date determined as acceptable to the Complaints Director.

Dr. Taylor would also be required to undergo a multidisciplinary assessment, such as the Comprehensive Occupational Assessment Program operated by Dr. Janet Wright and her colleagues, that would assess if there was any need for therapy to address underlying factors, any conditions on practice that were recommended, and what the risk of this type of behavior reoccurring was. Mr. Boyer advised this was consistent with many of the decisions of the College where there was a sexual encounter between a patient and a doctor, including the Dr. Ferrari decision.

There was also a requirement to take a boundaries education course, such as the one offered by the Professional Boundaries Inc, the medical and ethics professional course out of the University of California, Irvine School of Medicine.

The last sanction was that Dr. Taylor would be responsible for 75 percent of the costs of the investigation and hearing.

Mr. Boyer also advised that if there was any disagreement or inability to agree on the nature, scope or duration of a practice condition arising out of the multi-disciplinary assessment, the Hearing Tribunal would retain jurisdiction to make that determination.

Mr. Boyer submitted these sanctions were consistent with the facts of the case, the previous factors considered in *Jaswal*, and other discipline decisions where there was a single patient encounter and then a sexual or sexualized encounter shortly after the episodic care. He submitted the sanction provided adequate deterrence and rehabilitation and that it was not an unfit sanction.

Mr. McKinnon submitted that it was significant that Dr. Taylor acknowledged his conduct was unprofessional and that the parties had reached an agreement on the evidence. He also advised that Dr. Taylor had expressed a sincere apology to the complainant and the profession as a whole and that he reiterated the apology.

Mr. McKinnon submitted that, in accordance with the observations of Dr. Green, this was a circumstance of a gray area in respect of a former patient and that it was a no-win situation for everyone involved.

Mr. McKinnon also reviewed the *Jaswal* factors that applied. Mr. McKinnon acknowledged the sexual relationship with a former patient was serious but submitted that on the spectrum of such cases, it was not on the more egregious end of that spectrum. He submitted the most egregious conduct involved situations of ongoing physician and patient relationships, ongoing power imbalances, or disregard for the patient's well-being, which did not exist in this case. He also advised the conduct arose in the context of Dr. Taylor being pursued by the patient after the one-time episodic care.

Mr. McKinnon submitted that Dr. Taylor was relatively inexperienced, as he had finished his residency only two years prior to the incident. He also advised Dr. Taylor had no prior involvement in the College's disciplinary process until this complaint.

In terms of the age and mental condition of the patient, Mr. McKinnon submitted that the patient was a consenting adult who had no assessment or treatment for mental health concerns at the time of the incident. In terms of the number of times the offence occurred, it was a single sexual encounter. Mr. McKinnon submitted that Dr. Taylor had admitted to the conduct and cooperated with the College.

Mr. McKinnon submitted that there had been financial consequences on Dr. Taylor as there were costs of continuing remedial education he engaged in and there would be financial consequences associated with the lost income from the period of the suspension, costs associated with the assessment, and the costs of the process.

In respect to the impact on the offended patient, Dr. Taylor recognized the encounter had an impact and acknowledged and apologized for that. For mitigating factors, Mr. McKinnon also advised that Dr. Taylor had already enlisted in the PBI boundaries course.

With respect to deterrence, there was no suggestion that Dr. Taylor posed any ongoing risk. Mr. McKinnon submitted that the joint sanction accomplished specific and general deterrence and that the penalty would maintain the public's confidence in the integrity of the medical profession. He also advised that there was a lack of consensus that the conduct fell outside

the permitted range of conduct as this was a gray area, reflected by Dr. Green's opinion.

In terms of the range of penalties in similar cases, the circumstances of each were somewhat different but they confirmed that the joint sanction agreed to by the parties was a sufficient sanction in the circumstances.

In conclusion, Mr. McKinnon submitted the joint sanction was reasonable and in the public interest. The suspension was a very serious penalty and the sanction carried with it financial consequences as Dr. Taylor would not be able to practice during the suspension and was required to pay costs of the hearing and investigation. With respect to the remedial aspects, Dr. Taylor had already embarked on maintenance and accountability seminars with PBI and was prepared to undertake the multi-disciplinary assessment. He submitted that the Tribunal should be satisfied that the joint submission represented a just penalty.

In reply, Mr. Boyer stated that the complainant was kept apprised of the discussion about the admission and joint submission and indicated the complainant was aware she could appear to provide an impact statement. Mr. Boyer advised that the complainant confirmed she was satisfied with the information presented to the Tribunal and that she felt that she did not need to appear to speak to it.

VIII. ORDERS

After carefully reviewing the joint submission, the Brief of Law, the facts of the case, and the submissions, the Tribunal accepted the joint submission on penalty.

The Hearing Tribunal acknowledged that deference should be given to a joint submission on sanction and that the Hearing Tribunal ought not to depart from the joint submission unless the proposed sanctions would bring the administration of justice into disrepute or would otherwise be contrary to the public interest. The Tribunal found that the joint submission was appropriate in the circumstances.

The Tribunal took into account the entire proceedings with attention to the following in rendering its decision on sanction:

- Although Dr. Taylor's acknowledgment of unprofessional conduct came after an investigation, it was an important mitigating factor. The complainant was not required to testify and revisit the incident which had a significant negative impact on her.
- While the complainant's consent to the joint submission was not required, the Tribunal was assured by the fact that the complainant was satisfied with the information and sanction presented to the Tribunal.

- The Tribunal recognized the serious nature of the allegations. Although there was a single patient encounter, it involved sexual intercourse and occurred shortly after the episodic care. Dr. Taylor's conduct had a serious impact on the patient. The Tribunal also recognized that Dr. Taylor's conduct has a significant negative impact on the profession and the public interest as a whole, as it raises concerns about physicians using their position of trust for personal gain.
- The sanctions provided adequate deterrence and rehabilitation. Dr. Taylor would be required to undergo a multidisciplinary assessment and comply with any recommendations for therapy or conditions on his practice. This is consistent with many of the decisions of the College where there was a sexual encounter between a patient and a doctor, including the Dr. Ferrari decision. Dr. Taylor will face further scrutiny by way of the assessment and possible conditions arising. This will serve the purpose of general and specific deterrence, as well as rehabilitation.
- There is also a requirement to take a boundaries education course, which is aimed at both rehabilitation and deterrence as it will provide education to Dr. Taylor.
- The 6 month suspension, with 4 months being served, is a significant sanction and is within the range of suspension imposed in other similar cases. While the Tribunal acknowledges that none of the cases were exactly the same as Dr. Taylor's situation, it found the other cases submitted by the Complaints Director to be of assistance. Dr. Ferrari's conduct was more serious as it involved a longer relationship with multiple sexual encounters and there was an absence of many mitigating factors, including the absence of an admission. As a result, the Tribunal viewed a 12 month suspension as being on the higher end of a sanction for conduct similar to that engaged in by Dr. Taylor. On the lower end are the cases of Dr. Peirovy, as he did not engage in sexual intercourse with the patient and he was very new to the profession, and Dr. Bitchocka, as he did not engage in sexual intercourse. Therefore, a two month or three month suspension would have been inappropriate in Dr. Taylor's case. In reviewing the circumstances of other cases, the Tribunal found that the proposed 6 month suspension, with four months being served, was appropriate and reflected the facts of Dr. Taylor's case. This length of suspension appropriately accounted for the mitigating factors that distinguished it from Dr. Ferrari's case and for the more serious nature of the conduct which distinguished it from Dr. Peirovy's and Dr. Bitchocka's case.
- In the circumstances, the Hearing Tribunal is satisfied that a 6-month suspension is serious and, along with the order for the assessment, will reinforce to both Dr. Taylor and to members of the profession in general that boundary violations will not be tolerated by the profession or the public. This is a substantial message to the members of the profession.

- While the Hearing Tribunal accepted the joint submission and found it to be appropriate, this acceptance is not an endorsement of all the submissions made on Dr. Taylor's behalf. Specifically:
 - The Tribunal does not agree this was a "gray area". Dr. Taylor should have known that it was inappropriate to engage in a sexual encounter with █████ given the care he provided and the timing of the care and the sexual encounter.
 - Any sexual relationship with a former patient is serious misconduct.
 - While Dr. Taylor was a newer member of the profession, having finished his residency 2 years prior to the conduct, this was sufficient time to become aware of the College's expectations. Furthermore, the Tribunal is of the view that every physician should be aware of the expectations regarding sexual boundary violations, regardless of their experience, given the power imbalance, the vulnerability of patients, and the impact that a sexual boundary violation may have.
 - The financial consequences that Dr. Taylor would suffer as a result of the sanctions were not a mitigating factor. They were part of the sanction proposed and did not arise prior to the penalty. This was not a case where Dr. Taylor lost his employment or was previously suspended from practice. The financial consequences of the sanctions form part of the penalty and serve as a deterrent to Dr. Taylor and to other members of the profession. They are aimed at preventing such conduct in the future.
- The Hearing Tribunal notes that this conduct occurred in 2016, prior to the enactment of Bill 21, which came into effect in April of 2019 and brought with it significant and mandatory penalties under the HPA for instances of sexual abuse and sexual misconduct. The Hearing Tribunal notes, had this conduct taken place following the revisions in the HPA as a result of Bill 21, it could have met the criteria for "Sexual Abuse" and led to the cancellation of Dr. Taylor's registration and practice permit. While this demonstrates just how serious the proven conduct is, the Tribunal must judge the conduct against the expectations and requirements that existed in 2016. The conduct is serious and warrants a significant penalty but neither the parties nor the Hearing Tribunal are bound by the provisions of Bill 21 in this case.
- It is appropriate that Dr. Taylor be responsible for 75% of the costs of the hearing and investigation, as it was his conduct that necessitated the proceedings. The Hearing Tribunal accepts the parties' agreement in this regard.

Protection of the public is a paramount consideration in circumstances such as these. The joint sanction proposal in its totality achieves this objective and falls within a range of reasonable outcomes for the described conduct based on the

HPA and legislation in place at the time of the conduct, and is therefore accepted by the Hearing Tribunal.

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

- a. Dr. Taylor's practice permit will be suspended for six months (4 months to be served and 2 months held in abeyance pending fulfillment of the other orders of the Hearing Tribunal) starting on a date acceptable to the Complaints Director.
- b. Dr. Taylor will, at his expense, undergo a multi-disciplinary assessment by a program such as the Comprehensive Occupational Assessment Program operated by Dr. Janet Wright and her colleagues in Edmonton to assess what, if any, factors lead to the conduct, the need, if any, for any therapy or limits on practice, and the risk, if any, of such behaviour occurring again.
- c. If the parties are unable to agree on the nature, scope or duration of any practice condition recommended by the assessment, the Hearing Tribunal retains jurisdiction to determine the nature, scope and duration of the practice condition on Dr. Taylor's practice permit.
- d. Dr. Taylor will complete a Boundaries Course acceptable to the Complaints Director such as the Professional Boundaries Inc (PBI)- Medical Ethics and Professionalism Course (ME-22) offered by the University of California, Irvine School of Medicine Office of Continuing Medical Education by a deadline set by the Complaints Director.
- e. Dr. Taylor will be responsible for 75% of the costs of the investigation and hearing, payable on terms acceptable to the Complaints Director.

Signed on behalf of the Hearing Tribunal by the Chair:



Dr. Neelam Mahil

Dated this 9th day of December 2021.