

COLLEGE OF PHYSICIANS & SURGEONS OF ALBERTA

IN THE MATTER OF
A HEARING UNDER THE *HEALTH PROFESSIONS ACT*,
R.S.A. 2000, c. H-7

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF DR. WYNAND WESSELS

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

I. INTRODUCTION

[1] The Hearing Tribunal held a hearing into the conduct of Dr. Wynand Wessels, a regulated member of the College of Physicians and Surgeons of Alberta (the "College") on October 16, 2020. The hearing was held by videoconference.

[2] In attendance at the hearing were:

Members of the Hearing Tribunal:

Dr. Colm MacCarthy, Chair

Dr. Robin Cox, member

Ms. Pat Matusko, public member

Also in attendance were:

Ms. Julie Gagnon, independent legal counsel for the Hearing Tribunal

Ms. Jenna Chamberlain, associate lawyer

Mr. James West, Assistant Complaints Director

Mr. Craig Boyer, legal counsel for the Complaints Director

Mr. Russell Green, student-at-law

Dr. Wynand Wessels, investigated person

Mr. James Heelan, legal counsel for Dr. Wessels

Members of the public and members of the media were also in attendance.

II. PRELIMINARY MATTERS

[3] There were no objections to the composition of the Hearing Tribunal or its jurisdiction to proceed with the hearing. There were no other preliminary matters raised by the parties.

[4] The hearing was open to the public pursuant to section 78 of the Health Professions Act, R.S.A. 2000, c H-7 (the "HPA").

[5] The hearing proceeded by way of an admission of unprofessional conduct.

III. CHARGES

[6] The Notice of Hearing listed the following charge:

1. You did, on or about June 24, 2016, demonstrate conduct that harms the integrity of the medical profession, by tying a piece of rope into a shape that could be perceived as being a hangman's noose and hanging it on a door leading to an operating room at the Grande Prairie Queen Elizabeth II Hospital where other medical and hospital staff could see the rope.

ALL OF WHICH is contrary to the provisions of the *Health Professions Act*, R.S.A. 2000, c. H-7 as amended, including the Canadian Medical Association Code of Conduct, constituting unprofessional conduct.

IV. EVIDENCE

- [7] The following documents were entered into evidence by agreement of the parties:

Exhibit 1: Exhibit Book containing:

- Tab 1 Notice of Hearing dated September 10, 2020
- Tab 2 Memorandum from Dr. Michael Caffaro dated August 9, 2019 with attached photographs of knotted rope hanging on door
- Tab 3 Letter from Dr. Wynand Wessels to Ms. Katherine Damron dated August 29, 2019 with attached letters from Dr. Wessels to Dr. S.W. and Dr. T.A.
- Tab 4 Memorandum by Mr. James West dated November 15, 2019
- Tab 5 Letter from Dr. O.O. to Mr. West dated October 4, 2019
- Tab 6 Letter from Dr. S.W. to Mr. West dated October 15, 2019
- Tab 7 Letter from Dr. A.L. to Mr. West dated November 15, 2019
- Tab 8 Letter from Dr. T.A. to the College dated December 3, 2019
- Tab 9 Email from N.R. to Mr. West dated December 10, 2019
- Tab 10 Letter from Dr. R.D. to Mr. West dated January 15, 2020
- Tab 11 Letter from Dr. J.P. to Dr. Wessels dated August 4, 2016
- Tab 12 Letter from Dr. J.P. to Mr. West dated February 4, 2020
- Tab 13 Memorandum from Mr. West with Summary of Witness Interviews of Dr. R.B., Dr. T.A., Dr. R.D., and Dr. J.P.
- Tab 14 Memorandum from Mr. West dated September 18, 2020
- Tab 15 Report from Dr. Janet Wright of Comprehensive Occupational Assessment Program dated August 28, 2020
- Tab 16 Canadian Medical Association Code of Ethics

Exhibit 2: Email from Dr. R.D. to Dr. Wessels dated June 24, 2016.

Exhibit 3: The following documents:

1. Letter from Dr. R.P. to Mr. James Heelan dated October 8, 2020
2. Letter from R.P. to Mr. Heelan dated October 8, 2020
3. Letter from S.W. to Mr. Heelan dated October 10, 2020
4. Letter from C.M. to Mr. Heelan dated October 8, 2020

5. Letter from Dr. E.K. to Mr. Heelan
6. Letter from M.M. to Mr. Heelan dated September 22, 2020
7. Letter from C.W. to Mr. Heelan dated September 17, 2020
8. Letter from S.C. to Mr. Heelan dated October 13, 2020
9. Letter from Dr. C.S. to Mr. Heelan dated October 12, 2020

V. OPENING SUBMISSIONS

Complaints Director

- [8] Mr. Boyer presented the opening statement of the Complaints Director. Mr. Boyer indicated his understanding, based on his conversations with Mr. Heelan, was that there would be no dispute over the fact that the rope was created and hung by Dr. Wessels. The only issue before the Hearing Tribunal was the gravity, the significance, and the symbolism of the rope.
- [9] Mr. Boyer indicated portions of the evidence suggest the rope was a lasso. However, Mr. Boyer submitted that, in the statements gathered from the medical staff at the hospital, it was perceived by some as a noose. Mr. Boyer submitted there is more than sufficient evidence to demonstrate the rope was tied by Dr. Wessels, it was in the shape of a noose and placed on a door, open to be seen by the hospital staff. It was observed by staff members who took offence. It was then brought to the attention of the College. Mr. Boyer submitted that a noose is an instrument of death and has been a symbol of death for many years. Mr. Boyer also submitted that a noose is perceived by some people as a symbol of racism.
- [10] Mr. Boyer referred to Tab 16 of Exhibit 1, the College's Code of Ethics. Mr. Boyer read section 52 of the Code of Ethics, which states "treat your colleagues with dignity and as persons worthy of respect." Mr. Boyer submitted that using a noose as a method of communicating with colleagues is not conduct which shows dignity and respect. Mr. Boyer claimed the evidence shows many of the hospital staff perceived the rope as demeaning and calling the integrity of the medical profession into disrepute.
- [11] Mr. Boyer submitted that the evidence in Exhibit 1 is clear evidence that the conduct occurred and it was perceived as an offensive act. In this case, Exhibit 1 contains all the evidence of the Complaints Director.

Investigated Person

- [12] Mr. Heelan presented the opening statement of Dr. Wessels. Mr. Heelan submitted that the charge in Tab 1 of Exhibit 1 has been acknowledged and the question for the Hearing Tribunal to determine was the context and symbolism of Dr. Wessels' actions. Mr. Heelan submitted that the evidence before the Hearing Tribunal demonstrates Dr. Wessels was not engaged in any

racism or hate toward any group, nor was he trying to intimidate or threaten any individual or group. Mr. Heelan indicated that the evidence shows that Dr. Wessels quickly realized the error of his ways. Mr. Heelan admitted this was a thoughtless and foolish act by Dr. Wessels, but Dr. Wessels did not intend for his actions to be symbolic, racist, intimidating or violent.

VI. WITNESS TESTIMONY

Dr. Wynand Wessels

Examination in Chief

- [13] Dr. Wessels provided evidence of his background and history. Dr. Wessels grew up in rural South Africa. As a child, his family moved a lot and he was exposed to many diverse people. His experiences taught him to be tolerant of all people. In his childhood, he was excluded from external news, movies and information from the rest of the world. He was raised in small towns in which the farmlands and schools had diverse populations.
- [14] Dr. Wessels grew up in South Africa at a time when the population was segregated and Apartheid was in place. This was just how it was but he never discriminated against anyone. Government censorship was extreme. Growing up, he did not see any movies that had violence or racial themes.
- [15] Dr. Wessels described his history of making knots. He was involved in the scouts and learned to make knots. He would use the knot to make lassos. There was one exercise used in scouts if a group was not working as a team and getting along. Two people would have to join either their arms or legs with rope, and they would do the next exercise as a team.
- [16] Dr. Wessels stated that, in South Africa, a noose is not a symbol for racism. His understanding was that it was not seen as a sinister symbol in South Africa.
- [17] Dr. Wessels provided information about his professional career. He went to medical school in 1998. During his career, he has worked with many diverse people. In South Africa, there were segregated hospitals, but he worked in both and experienced racial diversity throughout his training. In South Africa, he worked mainly in family medicine. He worked as a locum for a few years before taking a full-time position with a family medicine practice. He then trained in orthopedics. Dr. Wessels moved to Canada and has been in Canada for 15 years, mainly in Grande Prairie.
- [18] On June 24, 2016, Dr. Wessels was standing outside the operating room with a nurse. He found a piece of rope. He has a habit of making knots with ropes. He tied a noose knot because he considered it to be a nice knot. The nurse asked Dr. Wessels what he was doing and he said he was just making a few knots. Dr. Wessels told her about putting groups together and tying people together, which he did in scouts. Dr. S.W. arrived and asked Dr. Wessels what he was doing and Dr. Wessels told him he was tying knots. Dr. S.W. asked if

the knot was for Dr. O.O. Dr. Wessels replied that it was not for Dr. O.O., it was for anybody that was not a team member. Dr. Wessels then placed the noose on the door.

- [19] The conversation he was having with the nurse was not serious, it was lighthearted. They were talking about improving the system in the hospital. Dr. Wessels expressed that his one goal is to improve the system in the hospital. He stated there are many physicians who are not team players and he believes many of the nurses agree. When talking about team building, he was not talking about tying anybody down, he was talking about tying an arm to an arm or a leg to a leg in a team building exercise.
- [20] After he put the rope on the door, Dr. Wessels dealt with his case. Somebody told him that was not a smart thing to do, hanging a noose. Dr. Wessels realized this must have been perceived as something sinister or bad. After he finished with his case, the rope was gone. Dr. Wessels went to the manager's officer and saw the rope was on her desk. Dr. Wessels told the manager he did something stupid and that he would fix it.
- [21] Dr. Wessels does not recall any verbal interaction in that period of time with Dr. O.O., did not have a dispute or unhappiness with him and denied that the noose was intended for viewing by Dr. O.O.
- [22] Dr. Wessels identified Tab 3 of Exhibit 1 as the letter he wrote outlining what occurred the morning of June 24, 2016. Mr. Heelan read an excerpt from an email written by the nurse who was with Dr. Wessels that morning, at Tab 9 of Exhibit 1:

I had been venting to Dr Wessels [sic], discussing the general lack of discipline in our hospital in regards to "difficult" behaviours. Dr Wessels [sic] was playing with a piece of surgical rope in a knot at the time (from a traction weight), and I felt that because of my frustration at the "difficult behaviours" he taped it to one of the doors where I was scrubbing. I felt that this action was completely harmless, and was never intended or directed at anyone in particular at that time.

- [23] Dr. Wessels stated this description matches his memory of the events.
- [24] Dr. Wessels discussed the issues at the hospital. He has experienced issues with physicians refusing to follow the policies of administration. In the orthopedics department, he believes there has been a decline in cohesiveness. He felt there was action in the hospital to undermine administration. Their department has divided into two groups. At the time of the incident, the atmosphere amongst the surgeons was not harmonious. Alberta Health Services ("AHS") had appointed external companies to conduct interviews. They decided not to continue to try to resolve the issues. Mr. Heelan read an excerpt from the interview conducted by Mr. West of Dr. R.B., at Tab 13 of Exhibit 1:

Asked by the investigator if there was any contention after the incident, he explained that there was discontent within the orthopedics' department prior to the incident and it remained thereafter. Dr. [R.B.] stated that the Dr. Wessels' incident was dealt with in isolation, meaning not within the greater context of the discord. Dr. [R.B.] stated that the discord continues to this day, despite many attempts to mediate. He said that there was no satisfying the entire orthopedics' department. Dr. [R.B.] maintains that Dr. Wessels' incident does not fit a pattern of his profile.

- [25] Dr. Wessels asserted the rope was not intended for anyone. Mr. Heelan read an excerpt from Tab 3 of Exhibit 1, a letter from Dr. Wessels:

I was not working with Dr. [O.O.] that day and have never had a reason to target him in any way and there have been no issues between Dr. [O.O.] and I.

- [26] Mr. Heelan read an excerpt from Tab 4 of Exhibit 1, a memorandum written by Mr. West:

According to Dr. Wessels, it was other people who assumed the noose was taped to the door for Dr. [O.O.]. Asked if he had any reason to be angry with Dr. [O.O.], Dr. Wessels said that they only had one confrontation, when Dr. [O.O.] was assisting Dr. Wessels and that former overstepped his surgical assistant role and the latter was not pleased. Dr. Wessels reported that he spoke to the OR manager about the confrontation and asked that Dr. [O.O.] not assist him any longer. However, since then, they have performed surgery together, even up to last week.

- [27] Dr. Wessels indicated this was accurate. Mr. Heelan asked Dr. Wessels to reconcile these two statements. Dr. Wessels said he had no issues with Dr. O.O. on June 24, 2016. Dr. O.O. had previously worked in South Africa as a surgeon. His qualifications were not recognized in Canada and his practice was limited to a surgical assistant. Dr. Wessels often works with the new staff, because he is easy going. After he started, Dr. Wessels worked with Dr. O.O. for many weeks. Dr. Wessels understood that, as an assistant, it can be hard to not help with the surgical procedure. There was one incident where Dr. O.O. did not stay within his limit of surgical assistant. Dr. Wessels told him they should take a break and not work together for a few days. After that, their relationship was good. Dr. O.O. often reads articles and tells Dr. Wessels about them. They had no remaining issues between them when the rope incident occurred and, since the rope incident, they have continued to work together.
- [28] At the time of the incident, Dr. R.D. was Chief of Surgery. Dr. Wessels sent an email to him describing what happened and that he had made a mistake. This email is Exhibit 2. Dr. Wessels thought Dr. R.D. would be a good person to talk to about how to fix the situation. Dr. R.D. told him the comments were stupid but he knew Dr. Wessels likely did not have any malice. Dr. Wessels said he

would apologize to everyone in the room. Dr. O.O. walked by and Dr. Wessels asked him if he saw the rope. Dr. O.O. said he did not see the rope. Dr. Wessels told Dr. O.O. that the rope was not aimed at him and was not for him. Dr. Wessels expressed to Dr. O.O. that he can talk to him about any concerns. Dr. Wessels understood that Dr. O.O. was not concerned and believed he would have said something if he was upset. Then, Dr. S.W. walked by and Dr. Wessels asked him why he did not raise his concerns with him directly. Dr. S.W. said issues in the hospital should go to management. Dr. Wessels decided not to pursue this conversation.

- [29] Dr. R.D. wrote a letter to Mr. West about the events, at Tab 10 of Exhibit 1. In this letter, Dr. R.D. wrote that, at the time of the event, Dr. Wessels thought it was a joke. Dr. Wessels stated that he does not think hanging a noose is a joke.
- [30] Dr. Wessels stated the email in Exhibit 2 was an accurate description of the events that occurred.
- [31] As part of the AHS process, Dr. Wessels provided apologies to two doctors. These two apology letters are at Tab 3 of Exhibit 1. In these apology letters, Dr. Wessels wrote that he reviewed the use of specific symbols in North America. Dr. Wessels stated he educated himself on symbolism. He did a lot of research and now understands why his actions were so foolish.
- [32] In the letter at Tab 11 of Exhibit 1, Dr. J.P. indicated the AHS matter would be closed if Dr. Wessels wrote two apology letters and attended an in-person meeting. This meeting never occurred. In the letter at Tab 12 of Exhibit 1, Dr. J.P. explained that he asked Dr. Wessels to write apology letters only to Dr. S.W. and Dr. T.A. because he determined these two physicians were affected by the incident and took offence. As of August 4, 2016, the date of the letter at Tab 11 of Exhibit 1, Dr. Wessels considered the matter closed.
- [33] Dr. Wessels stated that he is not racist, he works with people of different colours and ethnicities, and he does not treat people differently because of their ethnicity or skin colour, including patients. Dr. Wessels did not consider his actions of tying and hanging the rope on the door to be a racist gesture. Dr. Wessels did not intend to send a violent message by hanging the rope on the door. Dr. Wessels admitted that his behaviour was unacceptable.

Cross-Examination

- [34] Dr. Wessels was asked about his self-study into symbolism. Dr. Wessels focused on the symbolism of the noose. Dr. Wessels did everything he could to learn about the noose. He said it was easy to find information on the internet. He read Wikipedia pages and reviewed the sources referenced in the Wikipedia pages he read. Through these articles he found a book, *The Thirteenth Turn*, which was very helpful and provided a lot of information.

- [35] Mr. Boyer asked Dr. Wessels about the noose as a symbol of criminal deterrent. Dr. Wessels said South Africa has capital punishment and they used to hang people with a noose. Dr. Wessels agreed that a moratorium on capital punishment was put in place in South Africa in the 1990's. Dr. Wessels agreed that capital punishment was outlawed in South Africa in 1995. Dr. Wessels said that, as a child, he did not know anyone was hung but, as an adult, he understood that people were hung in South Africa. Dr. Wessels agreed that, as a surgeon, he understands the mechanics of death by hanging. Dr. Wessels agreed a noose can be a deadly symbol.
- [36] Mr. Boyer read an excerpt from Tab 3 of Exhibit 1, in which Mr. Wessels wrote he "had not appreciated the profound symbolism behind the knot". Mr. Wessels said he was referring to the knot as a symbol of racism. Dr. Wessels did not, at the time, consider it a symbol of death because the knot is used for many different purposes, not just for hanging. Dr. Wessels used that knot for other purposes. Dr. Wessels acknowledged that he has not lived in South Africa for more than 15 years and this incident occurred in Grande Prairie.
- [37] Dr. Wessels was aware of the discord in the hospital and the allegations of discrimination and racism against the hospital and staff and himself as an orthopedic surgeon. Dr. Wessels indicated that this allegation was found not to be proven. Dr. Wessels agreed that racism and discrimination were sensitive topics at the hospital before June 24, 2016.
- [38] Dr. Wessels identified the pictures at Tab 2 of Exhibit 1 as the rope he tied to the door. The picture was a fair representation of how he placed the rope on the door. The door led to room 4 and, at the time of the incident on June 24, 2016, Dr. S.W., Dr. O.O. and N.R. were in room 4. Dr. Wessels knew they were in the room at that time. Dr. Wessels agreed that he hung the rope on a door which he knew they could use. Dr. Wessels understood that he had an obligation to treat colleagues with respect and dignity and that his conduct was not an act of respect or dignity.

Questions from the Hearing Tribunal

- [39] The Hearing Tribunal asked Dr. Wessels to explain the connection between hanging the rope and team building. Dr. Wessels said he has a history of team building and ropes. When he was a scout they did a team building exercise and would tie each person side by side to resolve issues. It did not have a bad connotation, it was forcing people to work as a team. Dr. Wessels indicated this was the connection between the rope and team building. The Hearing Tribunal asked if he expected his coworkers to understand the meaning behind the rope. Dr. Wessels said this was the mistake he made. He put the rope on the door based on the closed conversation he had with N.R. He did not realize other people might see it and interpret team building differently.
- [40] The Hearing Tribunal asked Dr. Wessels to further describe the conversation he had with Dr. O.O. He had previously stated that he felt Dr. O.O. was not concerned about the incident. However, in the letter at Tab 5 of Exhibit 1, Dr.

O.O. said he did not have an open discussion with Dr. Wessels regarding the incident and he felt the rope represented a threat, racial insult, slur directed at black persons, meant to intimidate and a threat to life, insinuations of slavery, hangman's noose, main object used in segregation era lynching, and an illegal object internationally. In response to this question, Dr. Wessels said Dr. O.O. wrote the letter at Tab 5 of Exhibit 1 after the fact. Dr. Wessels felt he gave Dr. O.O. the option to comment and opened further conversation if needed. Dr. Wessels felt that Dr. O.O. was not amused by the situation, but that he understood the context was not aimed at him. Dr. Wessels agreed with the comments made by Dr. O.O. that if you are a black man and you have been exposed to the racial connotation of the noose, then it is a bad symbol. However, it was not used in that context and not directed to a particular person. Dr. Wessels was thinking about the conversation he had with N.R., he was not thinking about anybody else except the general lack of cohesiveness and teams within the hospital.

- [41] The Hearing Tribunal asked Dr. Wessels if he believed there was a power imbalance between himself and Dr. O.O. Dr. Wessels said that, in the medical structure, he doesn't see a power imbalance. They work as a team and cannot work without each other. Dr. Wessels believes they can have open conversations and he does not perceive himself to be above Dr. O.O.
- [42] The Hearing Tribunal asked, during his time in Canada, whether he became aware of the symbolism of the noose. Dr. Wessels said he never truly learned about Canadian culture. He had learned about Indigenous culture in Canada, but did not spend much time studying other aspects of Canadian culture. Dr. Wessels admitted he should have spent more time learning about Canada.

Additional Questions Arising

- [43] Mr. Boyer asked Dr. Wessels if he understood Dr. S.W. and Dr. O.O. were in room 4 when he put the rope on the door. Dr. Wessels said that he knew they were in there, but he had no intention of targeting them. N.R. was also in that room, and they had a conversation about the rope.

VII. CLOSING SUBMISSIONS

Complaints Director

- [44] Mr. Boyer presented the closing submissions of the Complaints Director. Mr. Boyer said the issues to be determined by the Hearing Tribunal were the motivations or what should have been readily apparent to Dr. Wessels, and what could be taken by others from hanging that noose on the door of operating room 4 on June 24, 2016. Dr. Wessels admitted to the act, and admitted it was inappropriate and contrary to the Code of Ethics. The evidence before the Hearing Tribunal supports a finding that the conduct amounts to unprofessional conduct. The remaining question asked by the parties was the motivation or lack of awareness behind hanging the rope on the door.

- [45] In the evidence, the Hearing Tribunal heard about Dr. Wessels' experience as a scout in South Africa. Mr. Boyer submitted that the Hearing Tribunal must look at the culture and circumstances that existed on June 24, 2016. The evidence indicates there was conflict in the orthopedic group and two separate offices had been created, with Dr. S.W. in one group and Dr. Wessels in another group. There was a culture of lack of cooperation and this was apparent to the staff.
- [46] Mr. Boyer submitted the Hearing Tribunal must look at the possible situations which could have existed on June 24, 2016, for example:
1. The noose was created to deliver a message of racial intimidation and threat;
 2. The rope was a message sent to try to encourage or promote cohesiveness and team building;
 3. The rope was a message of threat or condemnation of other members of the staff for a lack of following the rules and policies established by the hospital and Alberta Health Services;
 4. There was an ongoing conflict between Dr. Wessels and Dr. S.W. and this was a message. Dr. S.W. received the message and brought his concerns to management.
- [47] Mr. Boyer asked the Hearing Tribunal to assess the evidence and make a determination about the context in which these actions occurred. Mr. Boyer stated the decision of the Hearing Tribunal will inform the parties about the appropriate sanction to request.
- [48] Mr. Boyer submitted the noose is historically an instrument of death and Dr. Wessels understood the mechanics of death through a noose, including, the breaking of the cervical vertebrae, asphyxiation, and cutting of the blood flow to the brain.
- [49] Mr. Boyer submitted that, because the rope can only be viewed in an objective perspective, the Hearing Tribunal must consider what was the message received by the other parties. However, the Hearing Tribunal must determine the motivation of Dr. Wessels in hanging the rope. Mr. Boyer submitted this was clearly an act of unprofessional conduct, but the gravity will come down to the determination of which narrative is most likely true.

Dr. Wessels

- [50] Mr. Heelan presented the closing submissions of Dr. Wessels. Dr. Wessels has admitted the allegations and that his conduct harms the integrity of the medical profession. The issue in this case is the context behind Dr. Wessels' actions. The Hearing Tribunal must determine whether Dr. Wessels was engaged in a racist gesture, directed at a particular individual; or if this was a

threat or effort to create fear in a particular individual or group of individuals; or whether this was a vendetta against Dr. S.W.; or whether this was a foolhardy joke between a nurse and a doctor which led to a public display. Mr. Heelan submitted that this was an inside joke between a nurse and a doctor that was informed by the dysfunction in the hospital.

- [51] Mr. Heelan submitted that the evidence clearly demonstrates that Dr. Wessels was not trying to intimidate or harass a particular individual and he was not trying to make a racist statement. Mr. Heelan submitted that the evidence shows this was a foolish joke for which Dr. Wessels is paying a significant price.
- [52] Mr. Heelan summarized the evidence provided by Dr. Wessels. Mr. Heelan submitted that, since June 24, 2016, Dr. Wessels has been consistent in his evidence. Mr. Heelan referred to Exhibit 2, which includes an email written by Dr. Wessels on June 24, 2016. Mr. Heelan submitted that this email reaffirms Dr. Wessels' intention when he tied the knot and put it on the door.
- [53] Mr. Heelan submitted there was only one other true witness to the events, N.R. Mr. Heelan submitted that the email written by N.R. at Tab 9 of Exhibit 1 reaffirms Dr. Wessels' evidence. Dr. Wessels and N.R. talked about the frustration they had with difficult behaviours and, because of these frustrations, Dr. Wessels taped the rope to the door. Mr. Heelan submitted that N.R., at the time, felt this action was completely harmless and was not intended to be directed at anyone in particular. Mr. Heelan submitted N.R. confirmed the events described by Dr. Wessels.
- [54] Mr. Heelan submitted that the evidence supports what Dr. Wessels has told the Hearing Tribunal in his evidence. This was a foolish, ill-advised joke, and Dr. Wessels tried to immediately address the incident. The evidence shows Mr. Wessels realized how thoughtless he had been. He spoke to Dr. A.L. to explain the incident and apologize. He spoke to Dr. S.W. the day of the incident. He spoke to Dr. O.O. the day of the incident and Dr. Wessels felt he did not appear unduly concerned about the incident.
- [55] AHS has already been involved in this situation. Mr. Heelan submitted that the AHS process was driven by Dr. Wessels himself. Immediately after the incident, Dr. Wessels sought out the individuals who were or could have been affected by his actions. He then wrote apology letters to Dr. S.W. and Dr. T.A.
- [56] Mr. Heelan submits Dr. Wessels did not write to Dr. O.O. because, through the AHS process, it was determined the incident did not warrant an apology to Dr. O.O. Mr. Heelan addressed the letter written by Dr. O.O., at Tab 5 of Exhibit 1. In this letter, Dr. O.O. wrote that he felt he did not have an open discussion with Dr. Wessels regarding the incident. Mr. Heelan submits that there was a discussion but, in retrospect, Dr. O.O. now feels it was not as open or candid as he would have liked. Mr. Heelan submits it is clear a discussion occurred. In addition, after the incident, Dr. Wessels and Dr. O.O. continued to work together in a professional way.

- [57] Mr. Heelan submitted that Dr. Wessels has made it clear in his evidence that at the moment he put the knot on the door, he did not appreciate the profound symbolism behind the knot. To Dr. Wessels, the rope was a lasso which he was going to use to tie people up. Mr. Heelan submitted it was not a representation of the most heinous things that the noose represents and the most profound form of a racist gesture.
- [58] Mr. Heelan submitted that, since the incident, Dr. Wessels has undertaken self-study and has been through an incredible ordeal. He clearly now recognizes the symbolism behind the knot he fashioned.
- [59] Mr. Heelan read an excerpt from the report from Dr. Wright, at Tab 15 of Exhibit 1:

Dr. [A.] has never heard Dr. Wessels make any racist comments or felt that he was racist. He notes there are others who he could not say this about. Dr. [A.] states: "as a brown man I can tell you who is racist and it is not Dr. Wessels." Dr. [A.] notes that there is no symbolism to a noose in South Africa and so he feels that Dr. Wessels would [sic] unaware of the symbolism this holds in North America.

Mr. Heelan submits the context is important in this case. The context is also important when determining the placement of the knot. There was discontent in the orthopedic department prior to this incident and thereafter. Mr. Heelan submits this does not excuse Dr. Wessels behaviour, but it does explain why he would joke about tying people who are misbehaving together and why the reactions to this action have taken on the significance they have.

- [60] A number of colleagues of Dr. Wessels claimed that racist comments were not something they would expect from Dr. Wessels. Exhibit 3 contains character references from individuals of various ethnicities who reported never seeing or witnessing any sort of discriminatory comments from Dr. Wessels. Dr. Wessels went through an assessment and there was no evidence that Dr. Wessels had been racist in his behaviour or interactions at any time or currently.
- [61] Mr. Heelan submitted that the Hearing Tribunal should accept the clear evidence that Dr. Wessels was not targeting anyone, he was not attempting to make any form of a racist gesture, and he was not attempting to harm or cause discomfort or fear or threaten, intimidate, or harass anyone. Mr. Heelan submitted that Dr. Wessels was a fool, but he is not racist.
- [62] Mr. Heelan read an excerpt from Dr. Wright's report at Tab 15 of Exhibit 1:

From his presentation, his self-description, and the available collateral information, there is no evidence that the incident with the rope in 2016 was intentionally racist. There is also no evidence that Dr. Wessels has been racist in his behaviour or interactions at any time in the past or currently. He acknowledges that what he did with the rope in 2016 was thoughtless and ill-advised, and he took responsibility for it. He accepted

the consequences at the time and made appropriate apologies and undertook significant personal learning in order to better understand the significance of what he had done. In Dr. Wessels' view, the incident was in the past until the complaint to the College was made and it was announced in the media. While the political issues within the hospital are outside the purview of this assessment, it does appear that there are conflicts and concerns between and within departments that may provide at least a partial explanation for how the 2016 incident has played out since that time.

- [63] Mr. Heelan asked the Hearing Tribunal to accept that Dr. Wessels did harm the integrity of the medical profession by tying a piece of rope into a shape that could be perceived as a hangman's noose. However, Mr. Heelan submitted that the Hearing Tribunal should conclude there was no racist intent in the hanging of the knot, no violent statement, no threat, no effort to intimidate, and it was not directed at any individual or group.

Questions from the Hearing Tribunal

- [64] The Hearing Tribunal had one question about the scope of the admission. The Hearing Tribunal asked whether the admission by Dr. Wessels is both an admission that the allegation is factually proven on a balance of probabilities, and an admission of unprofessional conduct.
- [65] Mr. Heelan submitted that it is both the fact of the hanging of the rope and that this action constitutes unprofessional conduct. Mr. Heelan submitted that the question for the Hearing Tribunal is whether or not Dr. Wessels' actions were a joke that went bad, a racist gesture, or something in between.
- [66] Mr. Boyer submitted that the Hearing Tribunal is asked to determine the characterization of the context and motivation of Dr. Wessels.

VIII. DECISION OF THE HEARING TRIBUNAL

- [67] The Hearing Tribunal adjourned to review the evidence and consider the submissions of the parties. The Hearing Tribunal accepts the admission by Dr. Wessels and finds that the allegation is proven on a balance of probabilities.
- [68] The Hearing Tribunal also finds that the conduct constitutes unprofessional conduct under section 1(1)(pp) of the HPA, as follows:
- ii. contravention of this Act, a code of ethics or standards of practice;
 - xii. conduct that harms the integrity of the regulated profession.
- [69] The Hearing Tribunal's reasons are set out below.

- [70] The Hearing Tribunal notes that Dr. Wessels admitted to the conduct. The Hearing Tribunal accepts Dr. Wessels' admission. The evidence is clear that Dr. Wessels tied a piece of rope into a shape that could be perceived as being a hangman's noose and hung it on a door leading to an operating room where other medical and hospital staff could see the rope.
- [71] The Hearing Tribunal finds Dr. Wessels' conduct breached the College's Code of Ethics. The Code of Ethics, at paragraph 52, requires members to "treat your colleagues with dignity and as persons worthy of respect." Dr. Wessels hung a piece of rope which could be perceived as a hangman's noose in a location where medical and hospital staff could see the rope. The Hearing Tribunal will discuss Dr. Wessels' intention in more detail below. However, regardless of Dr. Wessels' intention, hanging a rope in this shape in a common area of the hospital demonstrated a failure to treat his colleagues with dignity and respect.
- [72] The Hearing Tribunal finds Dr. Wessels' conduct harmed the integrity of the profession. The rope was seen by some of Dr. Wessels' colleagues. After the incident, many medical colleagues, staff, and other people heard about the incident. The Hearing Tribunal finds that Dr. Wessels' conduct offended some of his colleagues and was perceived as violent and racist by some people. Dr. O.O.'s impression of the object was that it was a threat, racial insult and slur meant to intimidate and threaten life (Tab 5 of Exhibit 1). Dr. T.A. believed the rope portrayed violence and racism (Tab 13 of Exhibit 1). Conduct which offends people and can be perceived as such a negative symbol or gesture, regardless of intention, harms the integrity of the profession.
- [73] The parties have asked the Hearing Tribunal to determine Dr. Wessels' motivation and, in particular, whether Dr. Wessels intended to tie the rope as a joke, as a racist symbol or message, or for a different reason. The Hearing Tribunal found that there is not enough evidence, on a balance of probabilities, to prove Dr. Wessels was motivated by racism. However, the Hearing Tribunal found that his actions were more than a mere joke. The Hearing Tribunal also found that his actions were not simply an attempt at team building. The Hearing Tribunal found Dr. Wessels was motivated by the discord in the hospital and hung the rope on the door with the intention of sending a message to one or more individuals.
- [74] The Hearing Tribunal carefully considered whether there was evidence that Dr. Wessels was motivated by racism. The evidence established that the rope was perceived by some people as a racist gesture or as a symbol of racism. However, there is not enough evidence to support a finding that Dr. Wessels was motivated by racism or intended to create a racist symbol when he hung the rope on the door.
- [75] The Hearing Tribunal rejected the argument that Dr. Wessels' actions were merely a joke. Mr. Heelan submitted the rope was put up as a joke or part of an inside joke with N.R. The Hearing Tribunal disagreed with this submission.

There is insufficient evidence to indicate Dr. Wessels' actions were intended to be a joke. In the letter at Tab 7 of Exhibit 1, Dr. Wessels indicates this was a "foolish joke". However, in the email at Tab 9 of Exhibit 1, N.R. and Dr. Wessels were talking about "difficult behaviours". N.R. did not mention a joke or any discussion which she perceived as a joke.

- [76] The Hearing Tribunal also considered whether the rope was intended by Dr. Wessels as a symbol of team building. The evidence of Dr. Wessels was that the rope was used for team building when he was a scout. However, the evidence of Dr. Wessels was also that the rope was intended for anyone misbehaving at the hospital. In addition, whether used as a racist symbol or not, a rope tied in the shape of a noose and hung on a door would reasonably be viewed as threatening and intimidating and would not be reasonably interpreted as a message of team building.
- [77] In addition, the Hearing Tribunal considered Dr. Wessels' response that he does not believe there is a power imbalance between himself and Dr. O.O. The Hearing Tribunal rejected this evidence. The Hearing Tribunal finds that there is a power imbalance between Dr. Wessels, an orthopaedic surgeon, and some medical and hospital staff, including nurses and surgical assists.
- [78] Finally, the Hearing Tribunal considered the situation of conflict described at the hospital. The Hearing Tribunal found Dr. Wessels was motivated by the discord in the hospital. The evidence shows there was a high level of conflict between the members of the orthopedic department at the hospital. Dr. Wessels hung the rope after he had a conversation with N.R. about the discord in the hospital. The Hearing Tribunal finds there is a clear connection in the evidence between the hospital environment at the time the rope was hung and Dr. Wessels' actions.
- [79] Considering all of the evidence, including Dr. Wessels' position of power and the general threatening or intimidating nature of taping a rope in the shape of a noose to a door in an area visible to many medical and hospital staff, the Hearing Tribunal found, on a balance of probabilities, the evidence indicates Dr. Wessels was intending to send a message to one or more individuals. Dr. Wessels put the rope in a location where his medical colleagues and the hospital staff could view the rope. Based on the location of the rope, and the position of power Dr. Wessels held, the Hearing Tribunal found he acted with the intention of sending a message and that such message would be reasonably interpreted as intimidating or threatening.

IX. CONCLUSION

- [80] The Hearing Tribunal will hear submissions on sanction from the parties. The Hearing Tribunal asks that the parties consult each other to determine whether submissions will be made in writing or in person, and the timing of such submissions. The parties may request that the Hearing Tribunal make further directions regarding submissions on sanction, if needed.

Signed on behalf of the Hearing Tribunal by the Chair this 18 day of December, 2020.



Dr. Colm MacCarthy