

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. IAN GEBHARDT

**DECISION OF THE HEARING TRIBUNAL OF
THE COLLEGE OF PHYSICIANS
& SURGEONS OF ALBERTA
REGARDING SANCTIONS
February 12, 2024**

I. INTRODUCTION

1. The Hearing Tribunal held a hearing into the conduct of Dr. Ian Gebhardt on February 7, 2024 to hear submissions on sanction following its decision on the merits issued on June 27, 2023. The members of the Hearing Tribunal were:

Dr. Randall Sargent (Chair);
Ms. Juane Priest (Public Member); and
Mr. Douglas Dawson (Public Member).

2. Mr. Matthew Woodley acted as independent legal counsel for the Hearing Tribunal.
3. In attendance at the hearing was Mr. Craig Boyer, legal counsel for the Complaints Director of the College of Physicians & Surgeons of Alberta (“College”); Dr. Ian Gebhardt; and Mr. Alan Rudakoff and Ms. Ashley Reid, legal counsel for Dr. Gebhardt.

II. PRELIMINARY MATTERS

4. The parties confirmed that there was no objection to the composition of the Hearing Tribunal or its jurisdiction to proceed with the hearing. There were no matters of a preliminary nature.

III. BACKGROUND

5. In its decision dated June 27, 2023 (the “Merits Decision”), the Hearing Tribunal found Allegation 1 (a) to (e) was proven on a balance of probabilities and that the conduct constitutes unprofessional conduct under the *Health Professions Act*, RSA 2000, c H-7 (“HPA”). The proven allegation is:

That on or about June 6, 2017, you did act inappropriately with your patient, particulars of which include one or more of the following;

- a. place your patient’s hand on your penis,
 - b. have your patient stroke your penis,
 - c. place your mouth on your patient’s penis,
 - d. ask your patient to place his mouth on your penis,
 - e. have your patient place his mouth on your penis.
6. Two additional exhibits were entered with the consent of both parties:

Exhibit 9: Patient Impact Statement dated January 30, 2024

Exhibit 10: Letters of reference for Dr. Gebhardt (67 pages), various dates

IV. SUBMISSIONS ON SANCTION

7. Legal counsel for the Complaints Director began his submissions on sanction by referring to the findings of the Hearing Tribunal contained in the Merits Decision, including the findings that the patient had a functional age of between 9 and 14, that the proven conduct represented an egregious breach of the Standard of Practice regarding Sexual Boundary Violations in force at the relevant time (para 356), represented an exploitation by Dr. Gebhardt of his role as a trusted health professional, and was abuse of a vulnerable disabled adult (para 358).
8. In relation to the direction provided by the Hearing Tribunal for the parties to make submissions on the applicability of section 80(2) of the HPA, Mr. Boyer indicated that the Crown had entered a stay relating to the *Criminal Code* charge that had been laid against Dr. Gebhardt and that more than a year had passed since that charge was stayed. However, legal counsel indicated that the Hearing Tribunal was obliged to address section 80(2) in its sanction decision.
9. Legal counsel then referred the Hearing Tribunal to *Jaswal v Newfoundland Medical Board* (1996), 431 APR 181 ("*Jaswal*"), for the purpose of providing a framework to his submissions on an appropriate sanction. A summary of legal counsel's submission on the *Jaswal* factors is set out below in the Hearing Tribunal's reasons for its decision on sanction.
10. In terms of what an appropriate sanction would be, legal counsel for the Complaints Director submitted that the Hearing Tribunal should revoke Dr. Gebhardt's registration with the College and make a costs order against him for all or a significant portion of the investigation and hearing costs. In the alternative, if the Hearing Tribunal was not satisfied that revocation was an appropriate sanction, the Hearing Tribunal should impose a lengthy period of suspension (between 18 and 24 months), order that Dr. Gebhardt undergo a multidisciplinary assessment, require the use of a chaperone on an indefinite basis, and make a similar costs award to that set out above representing not less than 75 to 80 percent of the total costs.
11. Legal counsel for Dr. Gebhardt began his submissions by noting that Dr. Gebhardt respects the College and the disciplinary process and that while he respects the conclusions reached in the Merits Decision, he disagrees with them and has expressed an intention to appeal those findings. Despite that, he noted that Dr. Gebhardt was prepared to address the sanctions that the Hearing Tribunal ought to impose. Legal counsel noted that Dr. Gebhardt is a family physician with an active patient load of approximately 1,700 patients in Medicine Hat, and that he has therefore had approximately 17,000 patient interactions in the 10 years of practice from 2007 until the visit with the patient which was at issue in this hearing.
12. Legal counsel for Dr. Gebhardt then referred the Hearing Tribunal to the letters of reference set out in Exhibit 10, noting that these letters were from a cross-section of Dr. Gebhardt's patients, other health professionals and community members. Legal counsel then provided the Hearing Tribunal with excerpts of those letters (referring specifically to information on pages 2, 3, 5, 7, 9, 10, 14, 15, 18, 19, 27, 35-37, 47, 53 and 61). He noted that many of these

letters were provided by individuals who were aware of the nature of the findings made by the Hearing Tribunal in the Merits Decision, or who reiterated their earlier comments about Dr. Gebhardt after learning about those findings. He submitted that the letters reflect the fact that Dr. Gebhardt is respected as a physician, provides vital services to his patients, and that patients would be harmed if Dr. Gebhardt's license was revoked as a result of this process. Legal counsel then turned to the *Jaswal* factors, a summary of which is set out below in the Hearing Tribunal's reasons for its decision on sanction.

13. Legal counsel for Dr. Gebhardt submitted to the Hearing Tribunal that an appropriate sanction in these circumstances would be a suspension of 18 months (less the 17.5 months that Dr. Gebhardt was suspended during the criminal process), an order requiring Dr. Gebhardt to attend a multidisciplinary assessment and to abide by and conditions arising from it, an order requiring that he practice with a chaperone, and an order requiring him to pay no more than 50 percent of the costs of the investigation and hearing.

V. DECISION

14. The Hearing Tribunal has deliberated on the submissions of the parties. For the reasons set out below, the Hearing Tribunal makes the following orders pursuant to section 82(1) of the HPA:
 - a. Dr. Gebhardt's practice permit is suspended for a period of 20 months. Dr. Gebhardt shall be deemed to have served 17.5 months of that period of suspension, leaving a further period of suspension of 2.5 months.
 - b. The remaining period of suspension referred to above shall be held in abeyance pending Dr. Gebhardt successfully complying with the orders of the Hearing Tribunal. Should Dr. Gebhardt fail to abide by these orders, his period of suspension shall be served at a time determined by the Complaints Director.
 - c. Dr. Gebhardt's practice permit shall be subject to an indefinite condition that a College approved chaperone (who is a regulated health professional) must be present throughout all attendances (in-person or online video) with any patient whether or not the patient's parent/legal guardian/caregiver are also present.
 - d. Dr. Gebhardt shall at his own cost participate in a multidisciplinary assessment by an assessment program approved by the Complaints Director, and that Dr. Gebhardt's practice permit be subject to any conditions or restrictions arising out of that assessment.
 - e. If there are disagreements about nature, scope, duration, application or interpretation of any of the orders of the Hearing Tribunal, the Hearing Tribunal retains jurisdiction to resolve those issues.
 - f. Dr. Gebhardt shall be required to pay two-thirds of the actual costs of the investigation and hearing within 60 months of the date of the decision of the Hearing Tribunal, on payment terms deemed acceptable by the Complaints Director, acting reasonably.

VI. REASONS

15. The Hearing Tribunal acknowledges that the decision about what sanction is appropriate given the seriousness of the proven allegation and the various mitigating and aggravating circumstances is exceptionally difficult. The evidence presented to the Hearing Tribunal suggests that it is necessary to craft a sanction which captures the impact on various stakeholders: most importantly, the patient and his family; Dr. Gebhardt; and the patients and colleagues who rely upon Dr. Gebhardt for the provision of medical services. The Hearing Tribunal accepts the submission of legal counsel for Dr. Gebhardt that there is a shortage of family physicians in Medicine Hat (as there is in many parts of the Province) and the impact of the Hearing Tribunal's decision on the availability of family medicine practitioners in Medicine Hat ought to be considered. The Hearing Tribunal is also cognizant of the culture shift that has taken place in recent years in relation to the issue of sexual abuse of patients, and the need for clear denunciation by the profession for such egregious misconduct. Essentially, the Hearing Tribunal's task is to balance these interests and render a decision on sanction that is in the public interest, and that will protect the public.
16. Given the framework used by the parties in their submissions, the Hearing Tribunal will frame its consideration of sanction based on the factors in *Jaswal*.
17. **Nature & Gravity of the Unprofessional Conduct.** The parties acknowledged that the proven misconduct at issue in this hearing is extremely serious. As noted by the Hearing Tribunal in the Merits Decision, Dr. Gebhardt abused the trust placed in him as a health professional and engaged in the sexual exploitation of a vulnerable patient. This conduct falls at the far end of the spectrum of unprofessional conduct and warrants a significant sanction. It is a significant aggravating factor tending towards the most serious of sanctions.
18. **Age and Experience of the Physician.** Again, both of the parties acknowledged that Dr. Gebhardt is an experienced family physician. He started his practice as a physician in 2007. He is not new to the profession and naturally he ought to have known that his conduct was wrongful and egregious. This is an aggravating factor.
19. **Previous Character of the Physician.** Legal counsel for the Complaints Director acknowledged that Dr. Gebhardt had no disciplinary history. Legal counsel for Dr. Gebhardt reiterated that fact, and referred back to the letters of reference that reflect Dr. Gebhardt contributions to the community in Medicine Hat. This is a mitigating factor.
20. **Age and Mental Condition of the Victim.** The parties agreed that this was a serious aggravating factor. Although the patient was an adult, it was clear that his mental age was somewhere in the 9 to 14 year range. He was a vulnerable person and Dr. Gebhardt knew it. Dr. Gebhardt took advantage of the patient and this fact suggests that a significant sanction is required.
21. **Number of Times the Conduct Occurred.** The parties agreed that there was only one instance of unprofessional conduct at issue. Legal counsel for Dr. Gebhardt pointed out that this was a single instance of misconduct in a long career involving tens of thousands of

patient interactions. As set out in more detail below, this also distinguishes these facts from other cases in which cancellation of the member was ordered. This is a mitigating factor.

22. **Acknowledgement of the Physician.** Dr. Gebhardt did not acknowledge responsibility for his conduct; however, the parties agree that Dr. Gebhardt was entitled to defend himself against the allegation, and that the fact he did not admit to having engaged in misconduct cannot be treated as an aggravating factor. For those reasons, the Hearing Tribunal has treated this factor as neutral.
23. **Existence of Other Consequences.** The Complaints Director acknowledged that Dr. Gebhardt was suspended from his medical practice for a period of 17.5 months as a result of the criminal charge arising from the same underlying facts. Counsel for Dr. Gebhardt submitted that this had a significant financial and emotional impact on Dr. Gebhardt and his family. He stated that this was not to make the Hearing Tribunal feel sympathy for Dr. Gebhardt, but rather to communicate the nature of the impact. He has also borne the expense of a chaperone and significant legal fees in relation to this defence. The Hearing Tribunal acknowledges that Dr. Gebhardt's conduct has resulted in some negative impact on him. While the Hearing Tribunal finds that this factor is mildly mitigating, it notes that the consequences suffered by Dr. Gebhardt were caused by his own misconduct.
24. **Impact on Victim.** The Hearing Tribunal considered the patient impact statement provided by the patient's mother in considering this factor. It accepts that the negative impact of Dr. Gebhardt's conduct on the patient has been significant, which is particularly distressing given the patient's developmental challenges. These impacts include a distrust of physicians, stomach aches, a lack of sleep and physical aggression. These are devastating impacts on the patient which require denunciation by the profession.
25. **Mitigating or Aggravating Circumstances.** Legal counsel for Dr. Gebhardt made submissions about other mitigating circumstances that the Hearing Tribunal should consider. He referred to the fact that Dr. Gebhardt cooperated throughout the investigation and hearing process, including working with the Complaints Director and the College regarding his suspension and reinstatement. He declined from making public statements and conducted himself as a professional throughout the hearing process. He also highlighted the fact that since Dr. Gebhardt's return to practice following his suspension, he has seen thousands of patients without incident. The Hearing Tribunal accepts that these circumstances are mildly mitigating.
26. **General and Specific Deterrence.** Legal counsel noted that there was a need for both general and specific deterrence given the very serious nature of the proven misconduct. Legal counsel for Dr. Gebhardt stressed the point that general deterrence can be accomplished through a lengthy suspension, a multidisciplinary assessment, and a practice permit condition regarding the use of a chaperone. He suggested that members of the profession would understand from those sanctions that serious consequences flow from serious misconduct. He also submitted that the goal of specific deterrence has been accomplished (in part) through the investigation and hearing process. There is no doubt that the facts of this case require a significant sanction to communicate to the membership and to Dr. Gebhardt that such misconduct will result in significant consequences.

27. **Maintenance of Public Confidence in the Profession.** Legal counsel for Dr. Gebhardt submitted that this goal has been accomplished many times over. Specifically, the process involving the laying of charges, the hearing, the media coverage and the fact that the matter was taken very seriously by the College suggests that the public understands the College is able to successfully govern the members of the profession. While the Hearing Tribunal agrees that the public likely understands the hearing process, a significant penalty is required in order to communicate to the public that such disturbing conduct on the part of a member of the medical profession—including a betrayal of trust—will attract the most serious of sanctions.
28. **Degree to which the Conduct Departs from Acceptable Conduct.** Again, the parties agreed that the conduct at issue here was a marked and significant departure from the conduct expected of a regulated health professional. The Hearing Tribunal agrees and finds that this is a significant aggravating factor.
29. **Sanctions in Similar Cases.** Legal counsel for the Complaints Director provided the Hearing Tribunal with a number of cases setting out sanctions for broadly similar conduct. These were broken down into two categories: cases where tribunals ordered that the member's practice permit be cancelled, and cases where tribunals ordered long periods of suspension with conditions. It is clear to the Hearing Tribunal that decision-makers have taken similar findings of misconduct very seriously. The facts in the cases provided to the Hearing Tribunal are unique and contain elements which tend to justify more or less serious consequences. In *Bardwaj* (2020 CanLII 19361), there was a similar breach of trust and inappropriate sexual conduct. However, the Hearing Tribunal notes that the misconduct at issue in *Bardwaj* related to sexual conduct with four patients and the prescription to one patient of high levels of opioids. The misconduct took place on multiple occasions, with multiple patients, over a period of approximately nine years. This conduct is even more egregious than the conduct at issue here, which was limited to one instance of misconduct relating to one (vulnerable) patient. In *Klein* (2022 CanLII 83357), a resident was found guilty of administering an illicit substance to a colleague; the conduct was clearly very serious, but the conduct was exacerbated by the member's failure to participate in the hearing process which suggested that he did not recognize the authority of the regulator. While the facts in *Ahmad* (2022 CanLII 38089) are somewhat similar to the facts in this case, an important distinction is that Dr. Ahmad failed to comply with College-mandated requirements relating to the use of a chaperone. That is, along with the clear misconduct relating to sexual interactions with a patient, he also failed to abide by a condition that was meant to address public risk. Dr. Ahmad also made false entries in medical records. It is clear to the Hearing Tribunal that cancellation was the only viable option in light of the combined nature of the misconduct. Similarly, the facts in *Levin* (2015 CanLII 103209) which lead to the cancellation of registration and practice permit are serious and involved sexual abuse by Dr. Levin of three patients and a resulting *Criminal Code* conviction. The Hearing Tribunal also considered the facts in *Sazant v College of Physicians and Surgeons of Ontario*, 2012 ONCA 727, but it notes that the cancellation of Dr. Sazant's registration was mandated by the provisions of Ontario law; the similar statutory provision in Alberta has no application here given the timing of Dr. Gebhardt's misconduct.

30. The Hearing Tribunal has also considered the cases provided by legal counsel for the Complaints Director which ordered lengthy periods of suspension for serious misconduct, including the decision in *Taher* (2017 CanLII 141843), *Graff* (2018 CanLII 31997), *Gupta* (2018 CanLII 76401) and *Alarape* (2020 CanLII 10423). While the facts of each are unique, the Hearing Tribunal accepts that the conduct at issue broadly corresponds to the nature of the misconduct at issue here in terms of the nature and frequency of the misconduct. For example, in *Taher*, the physician engaged in sexual misconduct against both a patient and coworkers. While this represents significant misconduct against multiple individuals, Dr. Gebhardt's misconduct was directed at a particularly vulnerable individual. The Hearing Tribunal agrees with legal counsel for Dr. Gebhardt that several of the cancellation decisions noted above deal with multiple victims, multiple occurrences, or other related misconduct which called into question the ability of the College to effectively regulate those members.
31. Having considered all of the factors noted above, the Hearing Tribunal concludes that the public interest favours a sanction involving a long period of suspension, combined with orders which ensure that any risk of a future instance of similar misconduct is eliminated. The Hearing Tribunal would have accepted the submissions of the Complaints Director that cancellation was appropriate but for the following: (a) the proven allegation appears to be one instance of significant misconduct in what is otherwise an unblemished career as a family physician in Medicine Hat; (b) Dr. Gebhardt's participation in the process and his cooperation with the College relating to his interim suspension and chaperone condition; (c) the clear fact that many patients will be adversely affected if Dr. Gebhardt's practice permit were revoked, and the fact that many of his patients continue to have trust in his care despite the fact of knowing about the finding in the Merits Decision; and (d) the fact that conditions can successfully protect the public interest moving forward. In the circumstances, a period of suspension of 20 months is appropriate in order to convey the seriousness of the sanction and to condemn Dr. Gebhardt's conduct. Consistent with past practice of the College, 17.5 months of that suspension is deemed to have been served. The Hearing Tribunal has concluded that the balance of that period (2.5 months) will be held in abeyance to ensure Dr. Gebhardt's compliance with the other sanctions imposed by the Hearing Tribunal, and to avoid further interruption to Dr. Gebhardt's ongoing care of his patient load.
32. In relation to the protection of the public, the Hearing Tribunal is of the view that a requirement for Dr. Gebhardt to practice under the supervision of a chaperone indefinitely will ensure that no patient is put at risk of similar misconduct in the future. A chaperone will ensure that no similar misconduct would be possible, and such a condition will represent an ongoing reminder to Dr. Gebhardt of the ongoing financial and reputational harms arising from his misconduct. It will also allow patients to continue to see their family physician without incurring any risk. The Hearing Tribunal accepts that it is able to consider the impact of its decision on sanction on the public interest regarding the availability of family physicians in Medicine Hat; while it was a factor considered by the Hearing Tribunal, it was considered only to the extent that other conditions could ensure the protection of the public if Dr. Gebhardt were permitted to continue to serve that community.
33. Further, a condition requiring Dr. Gebhardt to undergo a multidisciplinary assessment will help to uncover any risks that might arise in the future. A requirement that the assessment

be completed, and that Dr. Gebhardt's practice permit be subject to any conditions deemed appropriate by the multidisciplinary team will ensure that additional safeguards are put in place that are tailored to Dr. Gebhardt. Further, the requirement that Dr. Gebhardt pay for that assessment represents a further reminder and deterrent to Dr. Gebhardt regarding the consequences for his unprofessional conduct.

34. Finally, in relation to costs, the Hearing Tribunal concludes that the proven misconduct here is serious, and that therefore the circumstances warrant an order that Dr. Gebhardt bear a significant portion of the total costs of the investigation and hearing. While the costs of these proceedings were significant, particularly in relation to expert evidence called by the Complaints Director, the Hearing Tribunal concludes that these costs were required as a result of Dr. Gebhardt's own conduct: the victim that he chose was a vulnerable person. The Hearing Tribunal required expert testimony about the challenges experienced by the patient, and how his memory and recall differed from others without developmental challenges. The Hearing Tribunal notes that Dr. Gebhardt cooperated with the College and that this is his first finding of unprofessional conduct. Those factors suggest that an order requiring him to pay all of the costs would be disproportionate, particularly given the serious financial consequences that Dr. Gebhardt has already suffered as a result of his interim suspension. Balancing all of those factors leads the Hearing Tribunal to order that Dr. Gebhardt pay two-thirds of the total costs of the investigation and hearing, in an amount to be determined by the Hearings Director upon the conclusion of this matter.

VII. ORDERS

35. For the reasons set out above, the Hearing Tribunal makes the orders pursuant to section 82 of the HPA as set out in paragraph 14, above. Further, the Hearing Tribunal directs the Hearings Director to provide a copy of the Merits Decision and this decision to the Minister of Justice pursuant to section 80(2) of the HPA.

Signed on behalf of the Hearing Tribunal by the Chair:



Dr. Randall Sargent

Dated this 12th day of February, 2024.