

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. RICARDO SARRIA

**DECISION OF THE HEARING TRIBUNAL OF
THE COLLEGE OF PHYSICIANS
& SURGEONS OF ALBERTA
October 30, 2023**

I. INTRODUCTION

1. The Hearing Tribunal held a hearing into the conduct of Dr. Ricardo Sarria on September 6, 2023. The members of the Hearing Tribunal were:

Dr. Vonda Bobart of St. Albert as Chair;
Dr. Goldees Liaghati-Nasseri of Rocky View;
Mr. Darwin Durnie of Sylvan Lake (public member);
Mr. Kwaku Adu of Edmonton (public member).

2. Ms. Mary Marshall 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. Also present was Dr. Ricardo Sarria and Mr. Daniel Morrow, legal counsel for Dr. Sarria.

II. PRELIMINARY MATTERS

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

III. CHARGES

5. The Notice of Hearing listed the following allegations:
 1. During the period of November 2008 to May 2010, you did fail to maintain an appropriate doctor-patient boundary with your patient, [Patient A] particulars of which include one or more of the following:
 - a. kissing your patient on the lips,
 - b. kissing your patient on the cheek,
 - c. pulling your patient's head towards you so you could kiss her,
 - d. asking your patient about masturbation when there was no medical reason for that inquiry.

IV. EVIDENCE

6. By agreement, the following Exhibits were entered into evidence during the hearing:

Exhibit 1: Agreed Exhibit Book

Tab 1: Notice of Hearing dated January 24, 2023

Tab 2: Complaint by [Patient A] dated March 27, 2020

- Tab 3:** Undertaking by Dr. Sarria dated April 14, 2020
 - Tab 4:** Letter of response by Dr. Sarria dated September 8, 2021 with transcribed chart
 - Tab 5:** Treatment Chart for [Patient A]
 - Tab 6:** Alberta Health Billing for visits by [Patient A] with Dr. Sarria
 - Tab 7:** Transcript of interview of mother of [Patient A] dated January 10, 2022
 - Tab 8:** Transcript of interview of [Patient A] dated March 11, 2022
 - Tab 9:** Transcript of interview of Dr. Sarria dated April 21, 2022
 - Tab 10:** Transcript of interview of sister of [Patient A] dated May 5, 2022
 - Tab 11:** Transcript of interview of former boyfriend of [Patient A] dated May 11, 2022
 - Tab 12:** Further letter of response by Dr. Sarria dated June 14, 2022
 - Tab 13:** Dr. Sarria registration history with College of Physicians and Surgeons of Alberta
 - Tab 14:** College of Physicians and Surgeons of Alberta Standard of Practice on Sexual Boundary Violations issued on January 1, 2010
 - Tab 15:** Doctor/Patient Sexual Involvement: College of Physicians and Surgeons of Alberta Policy established under the Medical Profession Act
- Exhibit 2:** Fully Signed No Contest and Joint Submission Agreement dated September 1, 2023.

7. Counsel for the Complaints Director also filed the following materials:
- a. Brief of Law Regarding Joint Submissions dated September 6, 2023:
 - b. Case Law:
 - i. *Bradley v. Ontario College of Teachers*, 2021 ONSC 2303;
 - ii. *Ontario (College of Physicians and Surgeons of Ontario) v Bélanger*, 2018 ONCPSD 18;
 - iii. *Ontario (College of Physicians and Surgeons of Ontario) v Zadra*, 2017 ONCPSD 24;
 - iv. *Ontario (College of Physicians and Surgeons of Ontario) v. MacNeil*, 2017 ONCPSD 3;

v. *R. v. Anthony-Cook*, 2016 SCC 43.

V. SUBMISSIONS

Submissions by Counsel for the Complaints Director

8. Counsel for the Complaints Director thanked counsel for Dr. Sarria for his assistance in reaching an agreement. The allegations are kissing and inappropriate questions about masturbation ("the Allegations"). Exhibit #2 is a No Contest and Joint Submission Agreement. Essentially the Investigated Member does not make an admission of the conduct. The agreement is that the physician will not call evidence, will not dispute the evidence called by the Complaints Director, and will not make submissions regarding the evidence. When there is a No Contest and Joint Submission Agreement, the Hearing Tribunal must be satisfied that the evidence put forward by the Complaints Director is sufficient to satisfy the proof of the allegations in the Notice of Hearing.
9. Counsel for the Complaints Director submitted that the following decisions support the use of the No Contest and Joint Submission Agreement:
 - *Decision of the Hearing Tribunal of the College of Physicians & Surgeons of Alberta dated September 20, 2020 in the Matter of a Hearing Regarding the Conduct of Dr. Barry Lycka;*
 - *Decision of the Hearing Tribunal of the College of Physicians & Surgeons of Alberta dated November 1, 2021 in the Matter of a Hearing Regarding the Conduct of Dr. Bradley Stewart.*
10. Counsel for the Complaints Director reviewed the materials in Exhibit #1. He submitted that the College of Physicians and Surgeons of Alberta Standard of Practice on Sexual Boundary Violations issued on January 1, 2010, and the Doctor/Patient Sexual Involvement: College of Physicians and Surgeons Alberta Policy established under the *Medical Profession Act* applied at the relevant time and show that the conduct set out in the Allegations was not acceptable.
11. The role of the Hearing Tribunal is similar to the role when there is an admission pursuant to section 70 of the HPA. Pursuant to section 70, the Hearing Tribunal is still obligated to be satisfied that there is evidence to support the admission. Counsel for the Complaints Director submitted that the materials in Exhibit #1 provide more than sufficient evidence to be satisfied on a balance of probabilities that the patient's description of what occurred did occur.

Submissions by Counsel for Dr. Sarria

12. Counsel submitted that Dr. Sarria reached an agreement with the College because of a health condition, his plans to retire effective December 31, 2023, and the desire to avoid the stress of a contested hearing.

VI. FINDINGS

13. The onus of proof is on the Complaints Director. The Allegations must be proven on a balance of probabilities. The onus and burden of proof must be satisfied in the case of a no-contest agreement.
14. The Hearing Tribunal found that the allegations were proven and that they constituted unprofessional conduct under sections 1(1)(pp)(i) and (xii) of the HPA as follows:

1(1) *In this Act,*

(pp) *"unprofessional conduct" means one or more of the following, whether or not it is disgraceful or dishonourable:*

(ii) *contravention of this Act, a code of ethics or standards of practice; and*

(xii) *conduct that harms the integrity of the regulated profession;*

15. The Hearing Tribunal carefully considered the materials in Exhibit #1. The complaint was submitted in March of 2020. The patient was born in September 1991, and the conduct occurred from November 2008 to May 2010 when the patient was around 17 or 18 years of age. Shortly after the complaint came to the attention of the College, Dr. Sarria gave an undertaking for having a chaperone present for all female patients and that undertaking remains in place. The evidence before the Hearing Tribunal contains transcripts of interviews with three witnesses, billing information, the patient chart, and the complaint. Although Dr. Sarria in his written responses during the investigation denied the Allegations, the Hearing Tribunal determined that there was sufficient evidence to be satisfied on a balance of probabilities that the patient's description of what occurred did occur. The Hearing Tribunal determined that Dr. Sarria did kiss his patient and ask her questions about masturbation when there was no apparent medical reason.
16. Dr. Sarria's conduct breaches the College of Physicians and Surgeons of Alberta Standard of Practice on Sexual Boundary Violations issued on January 1, 2010, and the Doctor/Patient Sexual Involvement: College of Physicians and Surgeons Alberta Policy established under the *Medical Profession Act*.

Dr. Sarria's patient was young and vulnerable, and his conduct is harmful to the integrity of the profession.

VII. SUBMISSIONS REGARDING SANCTION

17. The parties presented the Hearing Tribunal with a Joint Submission Agreement following the finding of unprofessional conduct, and the Hearing Tribunal heard submissions on the appropriate sanction.

Submissions by Counsel for the Complaints Director

18. Counsel for the Complaints Director reviewed the brief of law on joint submissions. The Hearing Tribunal should give significant deference to a joint submission and only reject it in limited circumstances.
19. Counsel for the Complaints Director reviewed five previous Hearing Tribunal decisions in support of the joint submissions on sanction:
 - a. Dr. Michel Prevost – Hearing Decision dated April 19, 2022;
 - b. Dr. Efe Michael Ovueni – Hearing Decision dated December 20, 2021.
 - c. Dr. Haroon Imtiaz – Hearing Decision dated August 11, 2020;
 - d. Dr. Subrata Chakravarty – Hearing Decision dated February 25, 2018; and
 - e. *Mabbott, Re*, 2006 CanLII 61034 (AB CPSDC).
20. Dr. Chakravarty propositioned a student intern who had been at his house when alcohol was consumed, and that involved a six-month suspension, a continuing monitoring program, a prohibition on teaching students, and costs at 75 percent.
21. Dr. Prevost's decision concerned sexual conversations and discussions with patients at a hair transplant clinic, and that involved a six-month suspension with four months served and two held in abeyance, a chaperone condition, and two-thirds costs to be paid.
22. Dr. Mabbott left the patient disrobed for an extended period of time and there was repeated examination of the genitals for no medical purpose. Retirement was accepted as the outcome and costs were ordered against him.
23. Dr. Imtiaz made inappropriate comments to two patients and failed to have a chaperone present for sensitive examinations. The decision involved a six-month suspension with two months served and four months held in abeyance, and approximately half of the costs.

24. Dr. Ovueni hugged and air-kissed a member of staff without consent, and that involved a three-month suspension with two weeks served and the rest held in abeyance, a requirement to complete and unconditionally pass the CPEP PROBE course, a \$3,000 fine and 100 percent of the costs.
25. Dr. Sarria will be retiring at the end of 2023. If he does not seek a 2024 practice permit, then the penalty of the suspension and the CPEP PROBE course will not need to be fulfilled. By accepting the retirement and closing of the practice by the end of this year, the public interest is served because it happens faster than the usual process with a merit hearing and a sanction hearing before the Hearing Tribunal.

Submissions by Counsel for Dr. Sarria

26. Counsel for Dr. Sarria submitted that he was in agreement that there is a high threshold for the Hearing Tribunal to depart from a joint submission. The proposed sanction is appropriate, and the cases referred to by counsel for the Complaints Director provide a range that is commensurate with what is being proposed in the joint submission. It is in the public interest and the interests of Dr. Sarria's patients that he be provided with time to wind down his practice in an orderly manner. By agreeing to this process, Dr. Sarria has expedited matters.

Findings of the Hearing Tribunal Regarding Sanction

27. After hearing the sanction submissions of counsel for the Complaints Director and counsel for Dr. Sarria, the Hearing Tribunal determined that the proposed sanction order was appropriate and consistent with previous College decisions.
28. The Hearing Tribunal considered the factors in the decision of *Jaswal v. Medical Board (Nfld.)*, 1996 CanLII 11630 (NL SC) and how those factors applied to the present case:
 - i. *The nature and gravity of the proven allegations:* The Allegations are very serious and involve a breach of trust. The proven conduct calls into question the integrity of the profession, and the sanctions would be more severe if this behaviour occurred at a later date following the amendments to the HPA dealing with sexual misconduct and sexual abuse.
 - ii. *The age and experience of the member:* Dr. Sarria is an older and experienced member who would have known that this behaviour is wrong.
 - iii. *The previous character of the member:* The Hearing Tribunal was not aware of any previous complaints or orders against Dr. Sarria.

- iv. *The age and mental condition of the offended patient:* The patient was a teenager and the behaviour was extremely violating and non-consensual.
 - v. *The number of times the offence was proven to have occurred:* The behaviour occurred a number of times and involved a single patient.
 - vi. *The role of the physician in acknowledging what occurred:* Dr. Sarria did not acknowledge the behaviour and agreed to not contest the Allegations.
 - vii. *Whether the member has already suffered other serious financial or other penalties:* The Hearing Tribunal is unaware of other penalties. Dr. Sarria is retiring at the end of 2023 which is an abrupt cessation of income from his medical career.
 - viii. *The impact on the offended patient:* This was a traumatizing event for the patient.
 - ix. *The presence or absence of any mitigating factors:* The Hearing Tribunal is unaware of any additional mitigating factors.
 - x. *The need to promote specific and general deterrence:* The principles of sanctioning are to achieve specific and general deterrence, as well as rehabilitation or remediation in appropriate situations. Specific and general deterrence are important considerations in this situation.
 - xi. *The need to maintain public confidence:* This is clearly unacceptable physician conduct and the impropriety is amplified by the fact that the law has changed. The conduct is not acceptable in any situation. The patient was a minor, and Dr. Sarria was in a power position. The penalty must reflect the seriousness of the conduct.
 - xii. *Degree to which offensive conduct is outside the range of permitted conduct:* The conduct is well outside the scope of permitted behavior.
 - xiii. *Sanctions in other cases:* Counsel for the Complaints Director referred the Hearing Tribunal to five CPSA decisions that show that the proposed sanctions fall within the range of previous decisions.
29. The Hearing Tribunal was also mindful that joint submissions should not be interfered with lightly. In *R. v. Anthony-Cook*, 2016 SCC 43 (S.C.C.), the Supreme Court of Canada set out the test against which to measure the acceptability of a joint submission. The bar is high to reject a joint submission on penalty. The Hearing Tribunal must accept a jointly proposed penalty unless the proposed penalty would bring the administration of justice into disrepute or is otherwise contrary to the public interest. The Hearing Tribunal considered the jointly proposed penalty against that test, and after thorough deliberation, accepted the joint submission as appropriate.
30. In reviewing the proposed sanction, the Hearing Tribunal considered the need to promote deterrence by imposing a penalty that reflects the seriousness of the unprofessional conduct. A six-month suspension with

three months in abeyance is a severe sanction and a sign to both Albertans and the medical profession that similar behaviour will not be tolerated.

31. The Hearing Tribunal determined that it was appropriate for Dr. Sarria to pay the majority of the costs in these circumstances given that the behaviour was clearly unacceptable, and Dr. Sarria would be well aware of that.
32. The Hearing Tribunal has determined that there are reasonable and probable grounds to believe that these allegations are founded. In response to questions from the Hearing Tribunal, counsel for the Complaints Director submitted that when a matter has already gone to the police, then it is unnecessary to submit a report pursuant to section 80(2) of the HPA. Counsel for Dr. Sarria submitted that the College had agreed to hold its process in abeyance pending the outcome of the criminal process which ultimately ended with a stay of the charge. The period following the stay that the Crown has to re-engage the charge has lapsed. As such, counsel for Dr. Sarria submitted that there is no obligation or rationale for sending this matter back to the Crown.
33. After considering the submissions, the Hearing Tribunal also directs the Hearings Director pursuant to section 80(2) of the HPA to send a copy of this decision to the Minister of Justice. The provisions in section 80(2) are mandatory and apply when the Hearing Tribunal is of the opinion that "there are reasonable and probable grounds to believe that the investigated person has committed a criminal offence". The Hearing Tribunal realizes that earlier charges were stayed, but in this situation the Hearing Tribunal is fulfilling its mandatory duty under the HPA, and it is then within the jurisdiction of others to determine whether it is appropriate to initiate criminal proceedings in the particular circumstances.

VIII. ORDERS

34. The Hearing Tribunal makes the following orders:
 - a. That Dr. Sarria's unprofessional conduct is serious and is deserving of a suspension of his practice permit for a period of 6 months, of which 3 months shall be served and 3 months shall be held in abeyance unless the CPSA receives a new complaint about Dr. Sarria's conduct occurring after the date of the Hearing Tribunal's order, and in such case the Hearing Tribunal shall reserve its jurisdiction to determine if the 3 months of suspension held in abeyance shall be served based on the new complaint received by the CPSA.
 - b. Prior to the completion of the period of suspension, Dr. Sarria shall, at his own cost, attend and unconditionally pass the CPEP PROBE Ethics and Boundaries program by January 31, 2024.

<https://www.cpepdoc.org/cpep-coursesiprobe-ethics-boundaries-programcanada/>

- c. The conditions on Dr. Sarria's practice permit imposed under paragraph 1 of his Undertaking signed on April 14, 2020, shall remain conditions on his practice permit unless and until the Registrar is satisfied that the conditions are no longer needed for protection of the public.
 - d. Dr. Sarria shall be responsible for 75% of the costs of the investigation and the hearing before the Hearing Tribunal, which shall be paid in full within 30 days of the written decision being issued by the Hearing Tribunal.
35. In the event that Dr. Sarria retires by December 31, 2023 and does not apply for a practice permit for 2024, then the penalty of suspension and CPEP PROBE course described in paragraph 36(b) above shall not be required to be fulfilled by Dr. Sarria.
36. If Dr. Sarria chooses to apply for and is granted a practice permit after January 1, 2024, he shall be required to serve the period of three months of suspension and shall complete and unconditionally pass the CPEP Probe course before returning to practice.

Signed on behalf of the Hearing Tribunal by the Chair:



Dr. Vonda Bobart

Dated this 30th day of October, 2023.