COLLEGE OF PHYSICIANS & SURGEONS OF ALBERTA

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

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF DR. JOHN SLANINA

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. John Slanina, a regulated member of the College of Physicians and Surgeons of Alberta ("the College"), on February 10, 2020. The hearing was held at the offices of the College in Edmonton, Alberta.

2. The members of the Hearing Tribunal were:

   Dr. Don Yee, Chair
   Dr. Vonda Bobart, member
   Ms. Archana Chaudhary, public member

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

4. Also in attendance at the hearing were:

   Mr. Craig Boyer, legal counsel for the Complaints Director of the College
   Dr. John Slanina, Investigated Member
   Ms. Karen Pirie and Ms. Sydni Kind, legal counsel for Dr. Slanina

II. PRELIMINARY MATTERS

5. There were no objections to the composition of the Hearing Tribunal or the jurisdiction of the Hearing Tribunal to proceed with the hearing. There were no matters of a preliminary nature.

III. ALLEGATION:

6. The Allegations to be considered by the Hearing Tribunal were set out in the Notice of Hearing as follows:

   1. You did fail to create a clinical record for your assessment of your patient, [redacted] on or about October 11, 2015 when you issued a prescription for 20 tablets of Ativan 0.5 mg;

   2. You did fail to create a clinical record for your assessment of your patient, [redacted] on or about January 22, 2016 for which you submitted a claim to the Alberta Health Care Insurance Plan for health service code 03.03A in the amount of $72.29;

   3. You did fail to create a clinical record for your assessment of your patient, [redacted] on or about June 5, 2016 when you issued a prescription for 30 tablets of Ativan 0.5 mg.;

4. You did fail to create a clinical record for your assessment of your patient, [redacted] on or about June 10, 2016 when you issued a prescription for Xanax 0.25 mg.;

5. You did fail to create a clinical record for your assessment of your patient, [redacted] on or about July 12, 2016 when you issued a prescription for 30 tablets of Ativan 0.5 mg and 60 tablets of Imovane 7.5 mg.;

6. You did inappropriately commence a defamation legal action against [redacted] on October 25, 2017 based on her complaint made to the College of Physicians & Surgeons of Alberta (the "College") regarding your conduct.;

7. During the period of October 2015 to July 2016, you did fail to maintain an appropriate professional boundary with your patient, [redacted] and

8. You did fail to disclose to the College when completing your registration information form for renewal of your Practice Permit for 2016 and 2017 that you had engaged in an inappropriate personal or sexual relationship with your patient, [redacted]

IV. EVIDENCE

7. Mr. Boyer advised that he and Ms. Pirie had compiled an agreed Exhibit Book which was entered as Exhibit 1 by agreement.

8. The Exhibit Book contained the following documents:

Tab 1: Notice of Hearing dated December 7, 2019
Tab 2: Complaint Reporting Form from [redacted] dated March 28, 2017
Tab 3: Letter dated April 19, 2017 from Dr. Caffaro to [redacted]
Tab 4: Letter from [redacted] dated May 4, 2017 enclosing photos of prescription bottles and photos of religious ceremony
Tab 5: Email from [redacted] dated May 23, 2017 enclosing Cohabitation Agreement dated March 2, 2016
Tab 6: Complaints Director Direction Sheet dated June 1, 2017
Tab 7: Letter dated July 19, 2017 from K. Damron to Dr. Slanina
Tab 8: Letter dated August 3, 2017 from Dr. Slanina to K. Damron with enclosed records for [redacted]
Tab 9: Letter date August 21, 2017 from K. Damron to Dr. Slanina
Tab 10: Letter dated October 17, 2017 from M. Heberling to Dr. Slanina
Tab 11: Letter dated October 19, 2017 from M. Heberling to Dr. Slanina
Tab 12: Memorandum of phone call between Marnie Heberling and Dr. Slanina dated October 23, 2017
Tab 13: Statement of Claim filed October 25, 2017
Tab 14: Statement of Defence filed November 27, 2017

Tab 15: Emails exchanged between [redacted] and R. Gaetz, Patient Advocate, dated November 8, 2017
Tab 16: Investigation Report dated February 7, 2018
Tab 17: Letter dated February 8, 2018 from M. Heberling to Dr. Slanina
Tab 18: Letter dated February 13, 2018 from Dr. Caffaro to [redacted]
Tab 19: Letter dated March 4, 2018 from [redacted] to Dr. Caffaro
Tab 20: Letter dated March 8, 2018 from Dr. Caffaro to [redacted]
Tab 21: Letter dated May 31, 2018 from M. Heberling to Dr. Slanina
Tab 22: Letter dated June 27, 2018 from Dr. Caffaro to Dr. Slanina re legal action against a complainant
Tab 23: Letter dated July 6, 2018 from M. Heberling to Dr. Slanina
Tab 24: Letter dated August 2, 2018 from M. Heberling to Rexall Pharmacy
Tab 25: Letter dated August 2, 2018 from M. Heberling to Shoppers Drug Mart pharmacy
Tab 26: Records from Rexall Pharmacy regarding prescriptions by Dr. Slanina dispensed to [redacted]
Tab 27: Records from Shoppers Drug Mart Pharmacy regarding prescriptions by Dr. Slanina dispensed to [redacted]
Tab 28: Discontinuance of Action filed August 29, 2018
Tab 29: Alberta Health billing claim by Dr. Slanina for 03.03A health service provided to [redacted] on January 22, 2016
Tab 30: Answers provided by Dr. Slanina on CPSA Annual Renewal Information Form for 2015, 2016 and 2017
Tab 31: Letter dated May 30, 2019 from C. Boyer to K. Pirie with draft Notice of Hearing and disclosure package
Tab 32: Email dated June 19, 2019 from K. Pirie to C. Boyer and letter dated August 6, 2019 from C. Boyer to K. Pirie regarding disclosure of investigation report to [redacted]
Tab 33: CPSA Standard of Practice on Sexual Boundary Violations
Tab 34: CPSA Standard of Practice on Self-Reporting to the College
Tab 35: CPSA Standard of Practice on Patient Record Content
Tab 36: CMA Code of Ethics

9. In addition, the following documents were entered as exhibits during the hearing:

Exhibit 2: Curriculum Vitae of Dr. John Slanina
Exhibit 3: Letter from Dr. Caffaro to Dr. Slanina dated April 19, 2017

10. The Complaints Director called one witness, [redacted] (the complainant). Dr. John Slanina presented evidence on his own behalf but called no other witnesses.

11. A summary of the witness testimony is below.

[redacted]

12. [redacted]

13. She confirmed that she was the complainant and had prepared the complaint reporting form found in Tab 2 of Exhibit 1, starting at page 4 of the Exhibit Book. She indicated that she filed a complaint with the College because she felt that what Dr. Slanina did was wrong in his position as a doctor. She confirmed that page 10 of the Exhibit Book was a letter she wrote to Dr. Caffaro which included photos of prescription bottles and a religious ceremony involving her and Dr. Slanina.

14. [redacted] confirmed that she had a cohabitation relationship with Dr. Slanina from September 2015 to July 2016 in which they were intimate partners and lived as spouses. They shared a house, had a co-habitation agreement and were sexually intimate.

15. During this time, she received medical care from Dr. Slanina. [redacted] stated Dr. Slanina ordered tests on her and wrote her prescriptions. She testified that when their relationship became heated because of some personal situations, Dr. Slanina told her she was sick and drugged her with pills he prescribed her. She recalled an instance where he gave her a pill that made her sometimes sleep for 2 days. She confirmed that page 13-23 of the Exhibit Book contained photos of the prescriptions for drugs he wrote for her. She testified that Dr. Slanina wrote the prescriptions for her and that Dr. Slanina filled them at a pharmacy.

16. [redacted] confirmed that pages 24-29 of the Exhibit Book contained photos of the religious ceremony she and Dr. Slanina took part in while in travelling in Romania together. She confirmed this ceremony involved a marriage oath between the two of them, which is very important and significant in Romanian culture. She indicated that she initially did not tell the College of this ceremony in her initial complaint. She confirmed this ceremony occurred while Dr. Slanina was still legally married to someone else.

17. [redacted] expressed surprise with the document found at page 63 of the Exhibit Book. This is a letter from an Obstetrician to Dr. Slanina denying a referral request from Dr. Slanina for their expert assessment of [redacted] testified she was not aware that such a referral had been made on her behalf and the hearing was the first time she learned of it.

18. Page 64 of the Exhibit Book contains a report of an abdominal/ pelvic ultrasound performed on [redacted] on May 26, 2016. It also refers to a previous ultrasound performed in October 2015. [redacted] stated that Dr. Slanina arranged for these scans to investigate abdominal pain she was having in her right lower abdomen. She indicated that she told Dr. Slanina she wanted her Ontario family physician to manage this for her but that this request angered him.

19. Page 67 of the Exhibit Book is a report of an x-ray performed on [redacted] right foot, with Dr. Slanina listed as the ordering provider. [redacted] testified that when a friend of Dr. Slanina's went to the Lamont Hospital to be assessed by an orthopedic colleague of Dr. Slanina's, she accompanied them and Dr. Slanina had his orthopedic colleague examine her foot at the same time.

20. Page 68 of the Exhibit Book is a report of an abdominal ultrasound performed on [redacted] on November 5, 2015, ordered by Dr. Slanina. The clinical history provided is '?pancreatic mass'. [redacted] testified she does not remember why this scan was done. She stated she

was not having pain. Similarly she was not sure why the ECG was done on her on October 10, 2015, as indicated by page 69 of the Exhibit Book. She remembered undergoing the ECG but was not sure why it was done. She testified that Dr. Slanina accompanied her to her tests most of the time.

21. [redacted] remembered blood tests being performed on her, as indicated by page 70 of the Exhibit Book. She said she was not sick or complaining of anything when the October 2015 abdominal-pelvic ultrasound was performed on her. She remembered the bone density test being completed, found at page 77 of the Exhibit Book, but stated she did not ask for it.

22. She testified that she came to Alberta with all of her medical records and was happy and did not have any concerns. She indicated that she expressed her preference to Dr. Slanina for her own family doctor to arrange her medical tests. She stated the x-rays he arranged of her neck, chest and right foot were things he did to 'check everything on me'.

23. [redacted] confirmed that page 84 of the Exhibit Book is the Statement of Claim for defamation that Dr. Slanina filed against her when she filed her complaint with the College. She indicated she was disturbed by his comment in the claim that he had to relocate his practice due to the heavy penalties imposed on him by the College. In response to this, she retained a lawyer and filed a Statement of Defence (page 93 of the Exhibit Book) and eventually Dr. Slanina discontinued his action against her (page 144 of the Exhibit Book). Dr. Slanina first filed a Statement of Claim against her October 27, 2017 and then an Amended Statement of Claim on February 3, 2018. While Dr. Slanina had dropped the action, [redacted] testified that he still owes her $4,337 for her court fees. She stated she incurred about $27,000 in legal fees which her family helped her pay. She testified that she felt Dr. Slanina's defamation suit against her was deceitful as she felt there was no defamation because all she did was complain to his regulatory body. She said the Statement of Claim listed her address in Ontario as she moved back to Ontario on July 17, 2016.

24. [redacted] stated she met Dr. Slanina online on a dating site and is ashamed of this. They chatted online for about 3 months and then he started visiting her in Ontario on weekends. He would go to Ontario to visit her and eventually she introduced him to her family.

25. She testified that she lived in her own house independently in Brampton prior to moving in with Dr. Slanina. When she moved to Alberta, Dr. Slanina asked her to contribute to buying a house together.

26. She confirmed that she only lived with Dr. Slanina in Alberta and that she never lived independently in Alberta before moving back to Ontario. She confirmed that she moved back to Ontario on July 17, 2016 and that Dr. Slanina was planning on moving to Vancouver in October 2016.

27. In cross-examination:

    a. [redacted] confirmed that she is Romanian and that the church ceremony she and Dr. Slanina took part in while in Romania was a significant marriage oath to each other. She acknowledged that it was not a legal marriage but

testified that she believed they were married after that ceremony and was told that upon return to Canada they would be legally married. She described the ceremony as an emotional binding.

b. [redacted] testified that she met Dr. Slanina online in February 2015, and they met in person in March 2015. She stated that she considered she and Dr. Slanina were engaged on May 8, 2015 and indicated Dr. Slanina proposed to her with a ring. They took part in the church ceremony in Romania in September 2015. She confirmed that she and Dr. Slanina lived together in Alberta from September 2015 to July 2016.

c. Regarding Dr. Slanina's defamation suit against her, she stated that she did not know what was going through his mind when he filed the claim. [redacted] confirmed that there was more than one legal action between her and Dr. Slanina. Paragraph 15 of the Claim outlines how Dr. Slanina was 'forced to endure an embarrassing and ongoing investigation from the College of Physicians and Surgeons…'. [redacted] clarified that this is the statement she was referring to when she stated that the College was sanctioning him resulting in him having to close his clinic. She testified she was shocked when she was served with the claim and 'probably' read it but did not think she read it very well.

d. [redacted] acknowledged that paragraph 10 of the lawsuit, specifically sections e. through h., listed allegations of her saying things to members of Dr. Slanina's community and that these were not related to her complaint to the College.

e. She confirmed that with the help of her lawyer she filed a Statement of Defence on November 27, 2017 (page 93 of the Exhibit Book) and that as of November 8, 2017 she let the College know of the defamation claim via email to the Patient Advocate (page 103 of the Exhibit Book).

f. [redacted] confirmed that on August 29, 2018, Dr. Slanina discontinued his defamation claim against her. She testified that in July 2018 she sued Dr. Slanina 'for very good reasons'.

28. In response to questions from the Tribunal, [redacted] testified that she underwent tests arranged by Dr. Slanina and took the medicine he prescribed her without raising any issue because she was 'totally in love' and felt Dr. Slanina was acting with good intentions. With time, she realized that his intentions were not good and testified that Dr. Slanina started trying to make her feel 'crazy' and that he called her a 'whore' and that she was 'all kinds of bad things'. She claimed that they fought when she told him she wanted her own physician. She testified that she never tried to find another doctor in Alberta because she felt well. The abdominal pain she initially had went away, and she felt that she was healthy.

29. [redacted] testified that she did have some abdominal pain in October 2015 and underwent some tests at that time pertaining to her pain. She stated she did not feel all of the

investigations Dr. Slanina ordered for her were related to her abdominal pain. She indicated that initially she felt that Dr. Slanina was trying to show goodwill by doing these things for her.

30. [redacted] confirmed she did have an x-ray of her right foot in January 2016 for a bunion but that she did not have a bunion. She confirmed that Dr. Slanina had an orthopedics friend look at her foot in the Lamont emergency room and that Dr. Slanina accompanied her for this assessment. After that assessment there were no further tests for a bunion. She testified she was told she would never need intervention for it as it was almost nothing. [redacted] stated she never asked for any prescriptions or tests and that is why she did not find a physician in Alberta.

31. [redacted] testified that when she lived in Ontario she took Zoplicone once or twice a year. She had a stressful job and would sometimes need help with her sleep. She had a job working as a general manager for large condominium corporations. She stated her use of the medications was very rare and she split the 7.5 mg pills four ways when she used the medication.

Dr. John Slanina

32. Dr. Slanina was born in Romania and moved to Canada in May 1990. His CV was entered into evidence as Exhibit 2. Prior to moving to Canada he worked as a rural family physician. He completed university and his medical training in Romania. Between 1990 and 1997 he worked as a lab assistant in the Calgary General Hospital and the Microbiology Department of the Foothills Hospital.

33. Dr. Slanina became a Canadian citizen 3 years after arriving in Canada. He applied to the Canadian Armed Forces as a Medical Officer and undertook officer training in Quebec. He then completed a family medicine residency in Vancouver/ Victoria, British Columbia in 2000. He worked for 7 years as a medical officer in the Canadian Armed Forces, serving in Wainwright and eventually was appointed the medical doctor of the PPCLI First Battalion in Edmonton between 2000 and 2004. His commitment to the military was completed in 2004.

34. Dr. Slanina then worked as a locum physician in Two Hills, Alberta. He started practicing in Lamont in 2005 while serving as a reservist in the military. He retired from the military three years later.

35. In Lamont, Dr. Slanina had a clinical family medicine practice and served as the Director of the Mundare Nursing Home. He also had a clinic in Mundare. He provided inpatient service and emergency room shifts in the Lamont Hospital. His clinical practice in Lamont ended in December 2017. Since December 2017 he has been doing locums, Emergency room shifts, and surgical assist work in Lamont. He is also practicing occasionally in a British Columbia family medicine clinic.

36. Dr. Slanina testified he has been married since November 2018. He acknowledged he had previous marriages. He first married in 1978 and this marriage ended after one and a half

years. His second marriage was in 1986 and lasted until September 2014 when he and his wife separated. Their divorce was finalized in 2018 and his second wife died in July 2018.

37. Dr. Slanina stated he met [redacted] online in January/ February 2015 on a dating site. They met in person March 2015 when he was in Toronto for a conference. They spoke a lot and their relationship progressed rapidly. He visited her in Toronto once or twice a month and she visited him in Alberta once. They travelled together to Antigua for a one-week vacation in May 2015.

38. Dr. Slanina testified that he felt he and [redacted] became a couple in September 2015 when they travelled to Romania together. There they purchased rings and had them blessed in a monastery. He explained that this meant they were engaged to each other but that he was not able to marry her at the time because he was still married. He said between March and September 2015 they were very happy together. He acknowledged he met her family, that he considered [redacted] his girlfriend, and that she introduced him as her boyfriend.

39. Dr. Slanina stated his parents died and he had to arrange for a ceremony for them in Romania in September 2015. He claimed that [redacted] suggested she accompany him on this trip as she had lost her job in Toronto. Dr. Slanina testified that [redacted] suggested she move to Alberta to be with him after the trip to Romania. He agreed and she moved in with him right away. They lived together from September 2015 to July 2016.

40. Dr. Slanina confirmed the documents on pages 61-79 of the Exhibit Book as investigations and prescriptions pertaining to [redacted] gleaned from his Lamont clinic's Electronic Medical Records ("EMR"). He testified that [redacted] never attended an appointment in his clinic to see him and never had an official scheduled visit but that the document generated in the EMR from October 9, 2015 on page 62 of the Exhibit Book was done to enable him to send [redacted] for tests and provide her prescriptions.

41. He stated he ordered investigations on her because she had complained of right lower quadrant and epigastric pain for many years without ever having any investigations for the pain. He testified that she told him her doctor never investigated her pain and that she asked him to investigate her pain.

42. Dr. Slanina testified that [redacted] asked for the investigations as she was afraid the pain was from cancer. He claimed that he never pushed her to have the investigations, that he advised [redacted] to see another physician to get investigations and that [redacted] kept saying that she would eventually find her own physician. He explained that he did not want her to see a physician in Lamont and was not aware of her ever looking for another physician. He testified that he felt pressured to order the investigations on [redacted] including the blood tests and ultrasound scans. He also stated he ordered the investigations because he cared for her as a wife-to-be.

43. Dr. Slanina confirmed page 142 of the Exhibit Book was a prescription for Ativan he wrote for [redacted] He explained that [redacted] was having difficulty with an application to an MBA program in Australia and was agitated and having sleep problems. He testified that she had been on this medication in Ontario and asked him for the prescription. He stated

again that he told her she had to get her own physician but that she was convincing and used his 'weakness'. He acknowledged he ended up providing her the requested prescription.

44. Dr. Slanina confirmed that page 67 of the Exhibit Book was a report of an x-ray he ordered on [redacted] right foot to rule out a bunion. He testified that she asked him to arrange for her to have this assessed for possible surgery. He stated she was having difficulty fitting into some of her shoes. He ordered the x-ray and arranged for an orthopedics colleague to assess her foot. He recalled that the orthopedic surgeon said it did not require surgery.

45. Dr. Slanina testified he never instructed his staff to bill for any services he provided to [redacted] He confirmed page 145 of the Exhibit Book as a billing made on his behalf for assessing her bunion. He explained that his office staff did all of his billings and he was not aware that this billing had been submitted. He testified that this billing was made in error.

46. Dr. Slanina confirmed page 32 of the Exhibit Book was the first page of the co-habitation agreement between him and [redacted] and that his signature was on page 43 of the Exhibit Book. He stated the agreement was signed March 2, 2016.

47. He confirmed that pages 138 and 139 of the Exhibit Book were copies of prescriptions for Ativan and Xanax he wrote for [redacted] in June 2016. He stated that at this time their relationship was ending and he was 'trying to keep sanity in this'. He stated that, at that time, [redacted] was very anxious and did not have any medications left. When she said the Ativan did not help, he suggested Xanax. She tried the Xanax but said it made her drowsy. He testified that [redacted] told him that she had previous prescriptions for antidepressants in Ontario but these had side effects. He stated she also had sleeping pills such as Ativan.

48. Dr. Slanina stated he was unaware if she ever tried to get her own physician in Alberta.

49. Dr. Slanina confirmed that page 137 of the Exhibit Book as an EMR record of prescriptions for Imovane and Ativan he wrote for [redacted] on July 12, 2016 which was a few days before she moved back to Ontario. He stated that she asked him for the prescriptions and told him she was too ashamed to ask another doctor for them. He confirmed that page 61 of the Exhibit Book is a record of the same July 12, 2016 prescriptions for [redacted] generated from his clinic EMR. He confirmed that [redacted] moved out July 17, 2016.

50. A letter dated April 19, 2017 from Dr. Caffaro to Dr. Slanina was entered as Exhibit 3. It documents the initial dismissal of [redacted] complaint to the College about Dr. Slanina. Dr. Slanina claimed he does not remember ever seeing a copy of the letter from the College to [redacted] explaining the dismissal of her complaint (pages 8-9 of the Exhibit Book). He stated he never saw the summary of the concerns she expressed to the College about him.

51. Dr. Slanina confirmed he remembers seeing the letter on page 55 of the Exhibit Book. This letter is the College informing him that there will be an investigation into [redacted] complaint about his conduct. He testified that his understanding was that the nature of the complaint was pertaining to him having prescribed her medications. He confirmed that

pages 57-60 of the Exhibit Book were his reply to the College regarding [redacted] complaint. He recalled having his secretary fax it to the College and that he had meant to enclose the EMR records regarding [redacted] with the letter (pages 61-69 of the Exhibit Book). He discovered later that the EMR records were not enclosed with his reply letter faxed August 10, 2017. He testified that he first saw that there were no enclosures with his reply letter the day prior to this Hearing. His reply letter stated he prescribed her Ativan and Imovane. He testified that he did not disclose his prescription for Xanax as it was not in his EMR and he did not recall providing her this prescription. He had provided her a handwritten prescription for the Xanax.

52. Dr. Slanina recalled the letters he received from Ms. Heberling regarding her investigation (page 81-82 of the Exhibit Book) from October, 2017. His complete office chart regarding [redacted] was requested and he remembered phoning Ms. Heberling and leaving messages. He explained in his phone message that all of his office EMR regarding [redacted] was sent with his reply letter.

53. Dr. Slanina testified that he did not create an official clinic chart for [redacted] as he did not consider her his patient.

54. Dr. Slanina confirmed page 84 of the Exhibit Book was the Statement of Claim he filed against [redacted] on October 25, 2017. He explained he sought legal advice when he learned of [redacted] complaint to the College about him and that he did not know he could not sue her for filing a complaint to the College. He testified [redacted] wrote emails to his priest and his friends and that he had to tell the CEO of the hospital where he worked about all that was happening. He testified he pursued the Statement of Claim against [redacted] because his lawyer told him he had a strong case.

55. Dr. Slanina testified he received a letter from the College in February 2018 (page 118 of the Exhibit Book) and then did not hear from the College until May 2018. He responded to the request in the May 2018 letter by phoning Ms. Heberling and providing the explanation that is summarized on page 129 of the Exhibit Book, which Dr. Slanina confirmed to be accurate. He confirmed he had left a message with the College indicating that he never created a patient chart for [redacted] because he did not consider her to be a patient of his at the time he provided prescriptions to her. He also confirmed that he told the College that [redacted] orthopedic surgery consult was performed by Dr. Andre Monelesco in the Lamont Hospital Emergency department.

56. Dr. Slanina confirmed page 66 of the Exhibit Book was a consult request he made to a Gynecologist for [redacted] in May 2016. He testified that [redacted] insisted she be seen to make sure her cervical cysts (Nabothian cysts) were not cancerous. Dr. Slanina stated he had told [redacted] that this type of cyst is benign but that [redacted] insisted she be seen by a gynecologist. This consult request was denied, as indicated by page 63 of the Exhibit Book. He stated he did not make any other consult request to Gynecology as [redacted] left Alberta. Dr. Slanina testified he relayed this information to Ms. Heberling at the College via voicemail.

57. Dr. Slanina testified he recalled the letter from Dr. Caffaro on page 128 of the Exhibit Book. His response to this letter was that he dropped his defamation claim against [redacted] right away in August 2018. He testified he was given advice from his lawyer that he had a strong case to win the defamation action. Prior to him discontinuing the defamation action he was served by [redacted] with a legal action for 'other things'.

58. Dr. Slanina stated he received no further communication from the College after he discontinued his defamation claim until he received the Notice of Hearing found at page 148 of the Exhibit Book. He stated he did not hear anything from the College between August 2018 and May 30, 2019.

59. In cross-examination:

a. Dr. Slanina confirmed the ultrasound report from May 2016 performed on [redacted] had been ordered by him. He made a referral on [redacted] behalf to a gynecologist which was denied about a month later and in July 2016 [redacted] moved back to Ontario. He testified the referral to the gynecologist was triggered by the recommendation made by the reporting radiologist for the ultrasound performed on [redacted]

b. Dr. Slanina confirmed he recognized on page 146 of the Exhibit Book as copies of the same question from his annual Practice Permit renewal with the College asking if at any time he engaged in an inappropriate or sexual relationship with a patient that had not been previously reported to the College. The questions were from his 2015, 2016 and 2017 annual renewals and he answered 'no' each time because he did not see [redacted] as his patient. Instead he stated he considered her a family member.

c. Dr. Slanina confirmed that there are copies of medical records of scans, blood tests and prescriptions he provided or ordered for [redacted] on pages 61-79 of the Exhibit Book. He testified he did not electronically document all prescriptions he provided to [redacted] because sometimes he wrote her a physical prescription and that the prescriptions which ended up in his clinic EMR were done that way because of ease. He did not recall providing the March 2016 prescription for Zostivax.

d. Dr. Slanina confirmed page 62 of the Exhibit Book is a page from his EMR record of [redacted] On this, there is an office-generated chart number and her Ontario health insurance plan number is in the 'PHN' section. He confirmed that there is a fee code entered for a standard office visit and diagnostic codes are entered into the EMR.

e. Dr. Slanina confirmed page 145 of the Exhibit Book shows that he billed $72.29 for services provided to [redacted] He explained that the diagnostic code '0303A' is in the range of $30-$35 but when additional diagnostic codes are added on, the fee increases. He testified that he did not intend to

bill for service provided to [redacted] as he did not consider the care he provided her as an office visit.

f. Dr. Slanina acknowledged that page 76 of the Exhibit Book is a report of an x-ray of [redacted] right foot, which he ordered, and that was performed in October 2015. The report has a PHN assigned to [redacted] but Dr. Slanina stated he did not know what this was. He testified she did not pay out of pocket for this x-ray. He confirmed that page 67 of the Exhibit Book is another x-ray report of [redacted] right foot which he ordered. On it is a ULI number assigned to her which is a billing number for Alberta Health. He confirmed that page 66 of the Exhibit Book is a copy of a referral request he faxed to a gynecologist, Dr. Barnes, on [redacted] behalf. There is an identifying patient sticker label on this consult request which was created by his office. The PHN on this patient sticker matches the ULI on the x-ray report and is not the same as the Ontario health number on page 62 of the Exhibit Book. [redacted] ULI number appears again on the abdominal ultrasound report on page 64 of the Exhibit Book. Despite these records, Dr. Slanina testified he never saw [redacted] as his patient. He claimed that he never assessed her in his clinic and that everything was discussed in their home. He stated the mistake he made was creating a computer record to facilitate some of the tests and prescriptions for [redacted]

g. Dr. Slanina confirmed that in his reply to Ms. Damron at the College about [redacted] complaint on page 58 of the Exhibit Book he referred to the March 2016 cohabitation agreement they had. He explained by March 2016, [redacted] began acting strangely and their relationship started to suffer. During this time he was still prescribing medications to her and made a referral to a gynecologist on her behalf. He confirmed that their relationship was sexual when they lived together.

60. In response to a further question from his legal counsel, Dr. Slanina stated his understanding is to order an investigation on a patient, the patient needs a PHN.

61. In response to questions from the Tribunal, Dr. Slanina testified that he did not think there was ever a medical emergency he needed to act on while he was ordering investigations and providing prescriptions to [redacted] He stated when he got his orthopedic colleague to examine [redacted] foot his colleague mentioned he would send him a consult report but that he never saw the report. He testified he never examined [redacted] in clinic but he acknowledged he palpated her in their home.

V. SUBMISSIONS BY THE PARTIES

Submissions on behalf of the Complaints Director

62. Mr. Boyer indicated the role of the Hearing Tribunal was to make findings of fact, to determine the standard against which the facts are to be judged and to apply those findings against those standards to determine whether or not there is unprofessional conduct. He

submitted that section 3(1)(a-c) of Schedule 21 of the *Health Professions Act* ("HPA") pertaining to duties of physicians in the practice of medicine were relevant. These duties include:

a. Assess the physical, mental, psychosocial condition of individuals to establish a diagnosis;

b. Assist individuals to make informed choices about medical and surgical treatments; and

c. Treat physical, mental and psychosocial conditions.

63. Mr. Boyer stated that the central question related to the allegations is whether or not there was a doctor-patient relationship between Dr. Slanina and [redacted] Mr. Boyer argued that the Tribunal must look at all of the pieces of evidence presented and assess whether there was a doctor-patient relationship.

64. Mr. Boyer submitted that the evidence presented included prescriptions issued for [redacted] by Dr. Slanina in October 2015 and June/July 2016, and medical records including x-ray and ultrasound reports, blood tests and specialist referrals all involving Dr. Slanina including his name and holding himself out to others as [redacted] physician. He argued that for all of the prescriptions, tests and referrals that Dr. Slanina made for [redacted] Dr. Slanina put his name on the pertinent documents as her physician and never as the person who [redacted] was living with and in an intimate relationship with.

65. Mr. Boyer argued that the Tribunal must look objectively at the issue of whether there was a doctor-patient relationship. Dr. Slanina's subject belief is not determinative.

66. Mr. Boyer submitted that section 7(2)(b) of the *Adult Interdependent Relationships Act* states that a person cannot enter an adult interdependent arrangement if they are still married and that Dr. Slanina was still married when he entered an intimate sexual relationship with [redacted] Therefore, their cohabitation agreement was not consistent with the statute.

67. Mr. Boyer argued that the evidence clearly demonstrated on more than the balance of probabilities that Dr. Slanina was in two types of relationship with [redacted] during the time period set out in the Notice of Hearing: a doctor-patient relationship and an intimate sexual one. Therefore, this finding supports the allegations about a boundary violation.

68. Mr. Boyer presented authorities in support of his submissions, including:

a. *College of Physicians and Surgeons of Alberta and Dr. Tsujikawa* – In this case, a physician provided medical care and wrote prescriptions for a patient who he then developed a close personal relationship with and eventually cohabited with. The prescribing of medications continued after the physician moved in with the patient. They claimed it was a non-sexual relationship but there were elements that were alleged to be inappropriate, including hugging, kissing and sleeping together. However, the sexual

relationship did not manifest until the physician-patient relationship had ended. The physician acknowledged these actions and that they represented unprofessional conduct as he failed to maintain an appropriate physician-patient boundary with the patient.

b. *College of Physicians and Surgeons of Alberta and Dr. Dicken* – In this case, a pediatric general surgeon was alleged to have been involved in an intimate and inappropriate relationship with the adult teenage mother of an infant patient. He denied the allegation but was found guilty of unprofessional conduct after a hearing. The Tribunal found that an infant is vulnerable and dependent on a parent for care decisions and, if the parent is in a sexual relationship with a treating physician, the vulnerability is accentuated. The Tribunal found there was a boundary violation by the physician.

c. *Hunter v College of Physicians & Surgeons of Alberta*, 2014 ABCA 262 – Dr. Hunter was a physician who had originally been in a personal relationship with a person who eventually became his patient for 18 years. He ended the doctor-patient relationship to marry the patient. He was found guilty of unprofessional conduct as a result of his decision to terminate the physician-patient relationship to pursue a personal relationship.

69. With regards to the defamation lawsuit commenced by Dr. Slanina, Mr. Boyer submitted that section 46 of the CMA Code of Ethics (page 163 of the Exhibit Book) states every physician has a continuing responsibility to merit the privilege of self-regulation and support its institutions. He cited the previous case of the *College of Physicians and Surgeons of Alberta and Dr. Tse*, which involved a physician who was found guilty of unprofessional conduct for commencing a defamation action against a patient who filed a complaint about her to the College. He argued that people who complain to regulators are protected by privilege and should not face the threat of getting sued by the physician they complain about. He argued that a professional who sues a person who complains to their regulator is effectively trying to chill the regulatory environment.

70. Mr. Boyer also submitted a Brief of Law regarding the issue of acting on legal advice and whether following the advice of a lawyer protects an individual from being convicted of an offence. He argued that the defence of 'I was only acting on legal advice and therefore cannot be held accountable by my regulator' is not acceptable. The decision of *Tomaszewska v College of Nurses of Ontario*, [2007] OJ No 1731, was included in the brief of law. In this case, a nurse did not attend a hearing in front of her regulator in accordance with advice she received from her lawyer. Nonetheless, the decision maker proceeded in her absence and she was found accountable and guilty of professional misconduct. The nurse appealed the decision, but the finding of professional misconduct was upheld. Accordingly, Mr. Boyer stated that getting bad advice and acting on it does not insulate a person from consequences vis-à-vis their regulator. Mr. Boyer argued that Dr. Slanina is still responsible for his defamation claim even if he was acting on advice from his lawyer.

71. Mr. Boyer also provided the Tribunal with a discipline report relating to Dr. Sanjeev Bhardwaj, a physician who did not answer questions on his College renewal form honestly like Dr. Slanina was alleged to have done. He submitted that this was not acceptable behavior as it involved misleading the regulator.

72. Mr. Boyer stated the May 2016 ultrasound report on [redacted] suggested clinical follow-up and prompted a referral to a gynecologist, which Dr. Slanina made, and in doing so he acted as [redacted] physician. This referral occurred towards the end of their intimate relationship. He argued that despite the intimate relationship faltering Dr. Slanina was still acting as [redacted] physician even when it was known that she was going to leave him and move back to Ontario. As she was moving Dr. Slanina did not follow through on the potential gynecologic issue seen on ultrasound and did not advise [redacted] she should follow up on this in Ontario.

73. Mr. Boyer submitted that page 155 of the Exhibit Book pertaining to the College's standard of practice relating to sexual boundary violations states when there is doubt about a boundary, a physician should consult with the College. He stated there is also no record of Dr. Slanina consulting the College when he was considering the lawsuit against [redacted] Additionally, the College's standard of practice relating to physician self-reporting guides physicians to self-report to the College when there is a sexual or inappropriate relationship with a patient but that Dr. Slanina did not self-report. Mr. Boyer directed the Tribunal to the College's standard of practice for patient record content on page 158 of the Exhibit Book and stated Dr. Slanina did not keep a proper medical record of the care he provided [redacted]

74. Mr. Boyer submitted that the evidence presented was more than sufficient on the balance of probabilities to establish that every allegation was proven and that Dr. Slanina's actions amount to unprofessional conduct on all charges. He argued that even though the billing that Dr. Slanina made was submitted by his office staff, Dr. Slanina was still responsible for this.

75. In conclusion, Mr. Boyer argued that there was clear and sufficient evidence to prove the allegations on the balance of probabilities.

Submissions on behalf of Dr. Slanina

76. Ms. Pirie submitted that Allegations 1, 2, 3, 4, 5, 7, and 8 are all premised on the College's mischaracterization of the relationship between [redacted] and Dr. Slanina as a doctor-patient relationship. She stated that Dr. Slanina provided care to [redacted] as a loved one or family member equivalent and that their relationship was never premised on her being a patient. She also submitted that Dr. Slanina's actions as alleged in allegation 6 do not rise to the level of unprofessional conduct.

77. Accordingly, she took the position that the College had failed to prove each of the allegations.

78. Ms. Pirie stated that by the time [redacted] moved in with Dr. Slanina in March 2015 they were already in a committed serious relationship where they both saw one another as a

spouse or family. The relationship started with meeting on a dating website sometime around February 2015 and evolved to him visiting her in Ontario one or two weekends a month. Eventually they traveled together to Antigua and then to Romania in September 2015 to participate in a ceremony to designate their commitment to one another.

79. Ms. Pirie submitted that the prescriptions and scans provided by Dr. Slanina do not constitute a physician-patient relationship and that these instances happen all the time without physicians being found unprofessional. She argued that the provision of services to someone who is already a family member does not create a patient relationship. Therefore Dr. Slanina's action did not bring the situation into the context of the Standards of Practice pertaining to a sexual boundary violation.

80. Ms. Pirie stated that Dr. Slanina's incomplete divorce is not relevant to the reality of the relationship between him and [redacted] In addition, she submitted that the fact that their relationship was coming apart in July 2016 does not make [redacted] a patient of Dr. Slanina's.

81. Eight months later [redacted] filed a complaint with the College which was initially dismissed but then she provided further evidence to the College. The complaint was initially dismissed by Dr. Caffaro in his April 19, 2017 letter. In this letter, Dr. Caffaro invited [redacted] to provide more evidence of Dr. Slanina providing medical treatments for other family members. It was then that [redacted] provided photos of the prescriptions Dr. Slanina provided her. One cannot tell when the prescriptions were provided from the photos in [redacted] letter but Dr. Slanina admitted to providing the prescriptions in his response to the College.

82. In her email to the Patient Advocate (page 31 of the Exhibit Book), [redacted] provided the cohabitation agreement. The Complaints Director ordered an investigation regarding Dr. Slanina prescribing to his wife and Dr. Slanina learned of the complaint in July 2017. He responded to the complaint in August 2017 and admitted to providing the prescriptions, ordering the ultrasound and x-rays and referring [redacted] to gynecology and orthopedics. Dr. Slanina meant to provide copies of these records to the College as part of his August 2017 response to the Complaint but it was discovered a day prior to the hearing that the College did not receive these enclosures at the time of Dr. Slanina's initial response to the Complaint.

83. Ms. Pirie submitted that Dr. Slanina consistently stated he never kept a full patient record for [redacted] because he never considered her his patient. She stated the fact that there were no SOAP notes or other patient records demonstrates that [redacted] was never a patient in Dr. Slanina's mind.

84. Ms. Pirie submitted that page 62 of the Exhibit Book is not a chart note but instead was generated to enable booking of x-rays. She submitted what Dr. Slanina did for [redacted] was minor medical assistance and that there is no evidence anywhere that Dr. Slanina held himself out as [redacted] physician. She also argued the evidence indicated that he encouraged her to find her own physician but that she refused and did not make an effort to find her own physician.

85. Ms. Pirie acknowledged that [redacted] stated she attended these investigations and that she did not know why they were arranged. Ms. Pirie contended the more logical explanation is that [redacted] had some concerns, did not want to find her own physician, and asked Dr. Slanina to supply the investigations for her.

86. Ms. Pirie stated that the evidence demonstrated the College investigation concluded in February 2018 and that it suggested that the prescriptions violated the CMA Code of Ethics and that Dr. Slanina failed to create a chart for [redacted] a violation of the College Standards of Practice for Patient Record Content and Patient Record Retention. These findings were conveyed to [redacted] in a letter (page 119 of the Exhibit Book). She expressed concern that the findings of the investigation were relayed to the Complaints Director but not Dr. Slanina.

87. Ms. Pirie indicated the Complaints Director proposed to meet with Dr. Slanina to resolve the issue of prescribing to and treating a family member collaboratively.

88. Dr. Caffaro noted in his letter that he was informed that Dr. Slanina filed a civil claim against [redacted] and asked her to confirm if this was ongoing. [redacted] let the College know that Dr. Slanina filed a civil claim against her (page 121 of the Exhibit Book) and the Complaints Director decided not to meet with Dr. Slanina and informed Dr. Slanina he was also investigating the defamation claim (page 128 of the Exhibit Book). Dr. Slanina subsequently instructed his lawyer to discontinue the defamation claim in June 2018. The Discontinuance of Action was filed August 28, 2018. After that, Dr. Slanina did not hear anything from the College until May 2019 when the Notice of Hearing was issued (page 148 of the Exhibit Book).

89. Ms. Pirie stated the allegations against Dr. Slanina did not include an allegation of providing inappropriate care to family members. She also stated such an allegation would not rise to the level of unprofessional conduct. She submitted that the College suggested the starting relationship between Dr. Slanina and [redacted] was a patient relationship but that this is not how Dr. Slanina characterized it.

90. Ms. Pirie submitted that the facts are that Dr. Slanina and [redacted] entered a committed relationship months before he started providing prescriptions and ordering tests on her. She stated that the notion of still being married precluding Dr. Slanina from entering an interdependent relationship under the *Adult Interdependent Relationships Act* has no bearing because it is the nature of their relationship that made them close enough to be considered family members. The cohabitation agreement was not an attempt to enter into an interdependent relationship.

91. Ms. Pirie submitted the notion of a sexual boundary violation applying to this scenario was not relevant. This was not a situation Dr. Slanina initiated a sexual advance to his patient. Where someone in a close relationship also provides care, it does not create someone who is a patient. She also stated there was no inappropriate sexual relationship for Dr. Slanina to admit to when renewing his license with the College.

92. She stated that Dr. Slanina did not consider [redacted] a patient and therefore did not create an appropriate patient chart for her. She submitted that the investigations he ordered for [redacted] were minor in nature and the prescriptions were few. She stated there was no evidence of ongoing treatment and assessment and argued that Dr. Slanina and [redacted] were not intending to change the fundamental character of their personal relationship.

93. Ms. Pirie submitted that every allegation other than #6 was based on the false premise of a doctor-patient relationship existing between Dr. Slanina and [redacted] With respect to allegation #2, Dr. Slanina billed once admittedly by mistake and never billed again for what he did for [redacted] She stated that Mr. Boyer was incorrect when he was tying the January 22 billing information to the investigation requisitions that were generated on October 9, 2016.

94. Ms. Pirie cited the *College of Physicians and Surgeons of Alberta and Dr. Nunes* decision where Dr. Nunes initiated a defamation suit against a colleague. Dr. Nunes had entered into a Terms of Resolution agreement with the College because of a prior complaint about his behavior in the workplace. Dr. Nunes filed the Statement of Claim against the complainant (his colleague) three months after entering the Terms of Resolution. After the Complaints Director asked him about the Statement of Claim, Dr. Nunes revised the Statement of Claim. The Hearing Tribunal concluded that Dr. Nunes had a right to sue another doctor. The only issue for the College was the reference to the investigation report. The matter was appealed to Council and Council agreed that Dr. Nunes had a legal right to sue a colleague and upheld the dismissal of the complaint about Dr. Nunes.

95. With respect to allegation #6, Ms. Pirie argued that Dr. Slanina followed the advice of legal counsel in filing the claim and that the claim dealt with more issues than just [redacted] complaint to the College. She also stated that the claim was discontinued as soon as Dr. Caffaro raised a concern with the complaint. She submitted that Dr. Slanina's filing of the defamation claim did not rise to unprofessional conduct.

96. Ms. Pirie distinguished the Dr. Tse decision as it was based on an admission of unprofessional conduct.

97. In summary, Ms. Pirie submitted the allegations were not proven.

Reply Submissions

98. Mr. Boyer contended that Dr. Slanina's defence regarding what constitutes a 'patient' requires a narrow interpretation of the term and that his defence also required a very broad interpretation of the term 'immediate family' in the exception under section 20 of the CMA Code of Ethics.

99. He stated that pages 61-79 of the Exhibit Book containing medical records of [redacted] requested by the College were not submitted with Dr. Slanina's reply to the Complaint which meant that the Complaints Director did not have all the relevant information when an informal resolution was discussed. He indicated this context was important. Mr. Boyer also submitted that even a matter amounting to unprofessional conduct can be resolved

without a hearing if there is agreement between the physician and complainant. Without this agreement however, this route cannot be taken.

100. Mr. Boyer referenced the Dr. Nunes decision with respect to the Hearing Tribunal having accepted that the Amended Statement of Claim was sufficient to relieve their concerns and they made a finding of no unprofessional conduct. However, the Hearing Tribunal's interpretation of the Code of Ethics was not the one that the Council felt entirely appropriate. He also submitted the decision in the Dr. Tse matter is indicative of how the claim should be addressed.

101. Finally, Mr. Boyer submitted that the Tribunal did not know anything about [redacted] lawsuit against Dr. Slanina but what is clear is that their relationship ended badly and there is ongoing litigation between them.

102. On questioning from the Tribunal, Mr. Boyer stated it would be acceptable to the College where a physician treated a family member in an emergency with no other physicians available. This scenario does not require a formal medical record, but the Code of Ethics does not state the standard of medical care, including maintenance of adequate medical records, is relaxed if care is being given to a family member. Mr. Boyer stated there was a push years ago to inform doctors that it was unacceptable to treat family members, but he does not know of a case as he only sees these cases if they are referred to him from the Complaints Director.

103. Ms. Pirie stated that there are many situations where physicians treat family members that the College was concerned about but did not come to a hearing. She submitted that while it may be seen as unacceptable, it is not unprofessional conduct. She pointed out that there are no cases where a physician treated a family member that had reached a Hearing Tribunal.

104. Mr. Boyer similarly stated he had never seen a case where a person not related by blood or marriage was considered 'immediate family' under section 20 of the Code of Ethics.

105. Mr. Boyer stated the CMA Code of Ethics does not provide guidance as to exactly when someone becomes a 'patient'. He provided a hypothetical situation where care is given in an emergency situation to a family member. A chart may not be created but the physician likely would provide a transfer of care report to the next practitioner involved. Such an individual might not be a patient. He also noted that the CMA Code of Ethics provides no guidance as to whether or not a person's regular physician be notified if a prescription is given to them by a family member.

106. With respect to the terminology used to define a relationship including 'spouse', legal marriage and common-law, Mr. Boyer acknowledged that there is a spectrum of policy issues in the law that these various terms fit into. On one end of the spectrum there is the legal marriage of two individuals. He stated the scenario in this case is at the other end of the spectrum and section 20 of the CMA Code of Ethics does not apply to the relationship between Dr. Slanina and [redacted]

107. Ms. Pirie stated the best evidence of what the College does in scenarios where there is a close personal relationship and the physician provides medical service of any kind is how the relationship is characterized throughout the investigation. She stated that the fact that the College did not have the clinic records from Dr. Slanina does not change the fact that all of this information had been provided by Dr. Slanina as he admitted to providing prescriptions and organizing medical tests for [redacted] In this scenario, members of the College including Dr. Caffaro termed the relationship between Dr. Slanina and [redacted] as a conjugal relationship, a romantic partnership, and a family member. She stated that she does not believe the College only considers the legal definition when characterizing a personal relationship between patient and doctor.

108. Mr. Boyer argued that Ms. Heberling, the College investigator, does not determine the final characterization of a relationship. He stated just because the College investigator characterized the relationship in a certain way does not mean that that is the most appropriate characterization once all of the evidence is known. He also stated that Ms. Heberling did not have all of the evidence when she wrote her investigation report.

VI. DECISION OF THE HEARING TRIBUNAL ON THE ALLEGATIONS

109. The Hearing Tribunal has reviewed and considered the evidence and the submissions of the parties. The Hearing Tribunal finds that Allegations 1 through 8 are factually proven and finds that the conduct constitutes unprofessional conduct. The Hearing Tribunal's findings and reasons are set out below.

VII. FINDINGS AND REASONS

Evidence from the witnesses and Credibility

110. The evidence of Dr. Slanina and [redacted] was consistent on a number of key issues. Both individuals acknowledged that they met via a dating site in early 2015, that they initially communicated online, that they met in person in March 2015, that Dr. Slanina visited [redacted] in Ontario afterwards, that they went on a vacation in May 2015, that they attended a significant religious ceremony together in Romania in September 2015, and that they were in a romantic relationship from September 2015 to July 2016 and that during this time they lived together and were intimate partners. Both Dr. Slanina and [redacted] testified that they were in an intimate romantic relationship where both considered each other their spouse. They were not legally married, but each testified they intended to marry.

111. Both parties also acknowledged that during the September 2015 to July 2016 when they were co-habiting, Dr. Slanina ordered tests for [redacted] referred her to other medical professionals, and wrote her prescriptions. This was supported by the documents and records found in the Exhibit Book.

112. While many facts were not in dispute, the Tribunal heard some differing testimony regarding the circumstances surrounding the prescriptions Dr. Slanina provided to [redacted]

113. Dr. Slanina testified that the medications he prescribed her were ones she had used in the past when she was living in Ontario. He explained that [redacted] was under a lot of stress related to her application to an MBA program and needed help sleeping and asked him for a prescription. He provided prescriptions to [redacted] for similar medications in 2016 even when their relationship deteriorated and she was in the process of leaving him to move back to Ontario. He also testified that he initially provided prescriptions to her but advised [redacted] to get her own physician. However, he explained that [redacted] exploited his 'weakness' and he acquiesced to her requests for prescriptions and provided them out of his devotion to her. He testified that he wrote her more prescriptions when their relationship deteriorated and she was in the process of moving back to Ontario. At that time, she requested more prescriptions from him and he provided them to 'keep the sanity'.

114. This is contrasted to the evidence of [redacted] testified that she was under some stressors when she moved in with Dr. Slanina and that Dr. Slanina told her she was sick and prescribed her medications. She stated she took the medications because she was 'totally in love' with Dr. Slanina and believed he was acting with good intentions. She testified that she stated her preference to deal with her own physician in Ontario, that this angered Dr. Slanina, and they fought over this. With time she stated she came to believe that Dr. Slanina's intentions were not all good and that with the medications Dr. Slanina was trying to make her feel 'crazy'. She testified that she was so medicated at one point she slept for 2 days straight and that Dr. Slanina called her a 'whore'. She testified that she had a prescription for Imovane in Ontario but very rarely took it and when she used it, she split the tablet four ways.

115. Dr. Slanina and [redacted] also provided some consistent testimony regarding the scans and blood tests that he ordered for her. They gave matching testimony to the fact that she was having some abdominal pains and this is why he ordered an ultrasound of the abdomen. They also gave matching testimony that it was Dr. Slanina who ordered various tests on her while they lived together.

116. However, Dr. Slanina and [redacted] also gave differing testimony with regards to the scans and blood tests he ordered for her.

117. Dr. Slanina testified [redacted] pressured him to order more tests to rule out cancer. He testified that [redacted] asked him to arrange for her foot to be checked to see if she needed surgery for a bunion. He testified that he advised [redacted] that the cysts found on her cervix were benign, but [redacted] insisted that he refer her to a gynecologist for further assessment. He stated he was never aware that [redacted] had ever tried to find another physician in Alberta.

118. [redacted] testified that she initially felt that Dr. Slanina was ordering tests and providing prescriptions as a sign of goodwill towards her. However, she eventually felt that many of the tests he ordered were not related to her abdominal pain such as the bone density test, repeated abdominal-pelvic ultrasound and ECG. She claimed she was not aware of the referral made to a gynecologist. She testified that she felt that Dr. Slanina was ordering these tests to 'check everything on me' and that she did not request any of the tests to be arranged and that she did not know why they were arranged. She claimed that other than

her abdominal pain she was happy and felt good and did not request the other prescriptions and investigations. She testified she never tried to find another physician in Alberta because she was happy and felt well.

119. The Hearing Tribunal considered the credibility of Dr. Slanina and [redacted] Both testified clearly, appeared confident in their recollection of the events, and appeared to have good recall of the events in question.

120. Nonetheless, when comparing the testimony of the parties to the circumstances surrounding the prescriptions Dr. Slanina provided to [redacted] and the investigations he ordered for her, the Tribunal finds that Dr. Slanina's evidence was more credible and that it prefers the testimony of Dr. Slanina where it conflicted with the evidence of [redacted]

121. The Tribunal finds that [redacted] claims that Dr. Slanina provided her prescriptions to control her and make her feel 'crazy' and that he ordered tests on her to 'check everything' on her to were not plausible and that they were unsubstantiated.

122. Further, some of [redacted] evidence was not believable. For example, she testified that she was so medicated at one point that she slept for 2 days straight. The Tribunal finds that this statement is not plausible. The Tribunal also does not find [redacted] testimony that she attended investigations even though she did not know why they were arranged to be plausible. The Tribunal finds it more plausible that she had some concerns, did not want to find her own physician, and asked Dr. Slanina to supply the investigations for her.

123. The Tribunal finds that Dr. Slanina's testimony in this regard was more consistent with the circumstances of their relationship and consistent with the evidence presented, including Dr. Slanina's written response to the College.

124. Dr. Slanina's testimony that he arranged tests and provided prescriptions on [redacted] requests out of his devotion to her was more believable than [redacted] claim that Dr. Slanina was trying to control her and 'check everything on her'. [redacted] testified that she indicated she wanted to deal with her own physician in Ontario but then later contradicted herself by saying she asked for more prescriptions from Dr. Slanina in June 2016 when she was in the process of moving back to Ontario because she did not have a physician in Ontario. The Tribunal finds this testimony negatively impacted [redacted] credibility.

125. In addition, the Tribunal also finds that [redacted] evidence was influenced by the fact that her relationship with Dr. Slanina had ended poorly and by the fact that Dr. Slanina commenced a defamation lawsuit against her. The Tribunal finds that [redacted] was motivated to cast Dr. Slanina in a negative fashion. As such, the Tribunal had concerns with the credibility of some of her statements.

126. Finally, the Tribunal finds that Dr. Slanina was forthcoming and honest in his testimony. He acknowledged that he never created a patient chart for [redacted] that he did not think there was ever a medical emergency he needed to act on while he was ordering investigations and providing prescriptions to [redacted] and that he was unaware if [redacted] ever tried to get her own physician in Alberta.

127. Overall, the Tribunal finds Dr. Slanina had more credibility than [redacted] and prefers his testimony over hers on matters where their evidence was not consistent.

Allegation 1

128. Allegation 1 alleges that Dr. Slanina failed to create a clinical record for his assessment of his patient, [redacted] on or about October 11, 2015 when he issued a prescription for 20 tablets of Ativan 0.5 mg.

129. The Hearing Tribunal carefully reviewed and considered the evidence, including the testimony of the witnesses and the exhibits presented, as well as the submissions of the parties.

130. The Tribunal finds that it is clear Dr. Slanina issued a prescription for 20 tablets of Ativan 0.5 mg to [redacted] on October 11, 2015. Page 142 of the Exhibit Book is a copy of the prescription written for [redacted] for 20 tablets of Ativan on October 11, 2015. The prescription has Dr. Slanina's name and professional address on it and Dr. Slanina testified that he signed the prescription.

131. The Tribunal also finds that the evidence demonstrates Dr. Slanina did not create any clinical record for an assessment of [redacted] in relation to this prescription. He testified he provided all of his records to the College and there is no clinical record of an assessment. Dr. Slanina admitted to never keeping a full patient record with SOAP notes or other information because he never considered [redacted] to be his patient.

132. The key issue is whether or not [redacted] was a "patient" of Dr. Slanina's and whether Dr. Slanina was required to create a clinical record for an assessment when issuing the prescription.

133. In this instance, the evidence is clear that Dr. Slanina and [redacted] were in a romantic intimate relationship where they eventually cohabited. The evidence demonstrates that Dr. Slanina started writing prescriptions for [redacted] after they started their romantic relationship and moved in together.

134. The Tribunal was presented with arguments on behalf of the Complaints Director that Dr. Slanina's actions made [redacted] his patient as well as arguments on behalf of Dr. Slanina stating that writing prescriptions for [redacted] was simply an act of Dr. Slanina providing minor medical assistance to a family member and that he rightfully never considered her to be his patient. The Hearing Tribunal heard arguments that the provision of medical care and services to family members is acceptable in certain instances such as a medical emergency when no other physicians are available. The Tribunal was advised that physicians do sometimes provide occasional medical care and services to family.

135. The issue of whether there is a doctor-patient relationship is a factual inquiry. The determination of whether a doctor-patient relationship existed must be determined by looking objectively at the issue. Dr. Slanina's subjective belief is not determinative. It is up to the Hearing Tribunal to apply its expertise and judgment in considering all the facts and circumstances in order to determine whether an individual, who was having a romantic

relationship with a physician, was also a patient of the physician or whether any medical care that was provided was merely minor medical assistance to a family member.

136. The Tribunal rejects the submission that if care is provided to someone who is already a "family member" than the only relationship between the doctor and the individual is limited to that of a family member. An individual can be both a family member and a patient. If the nature of services provided to someone objectively indicates a patient relationship, then one is created even if the person was first a "family member".

137. Accordingly, the Tribunal finds that it does not need to determine the scope of a "family member" because being a family member does not provide a complete defence to the allegations. Similarly, the issue of Dr. Slanina's incomplete divorce whether [redacted] and Dr. Slanina could be in an interdependent relationship is also not determinative.

138. The issue is whether [redacted] was a patient, not whether she was a family member.

139. The fact that a patient relationship grows out of a romantic or family relationship, as opposed to a romantic or family relationship developing from the doctor-patient relationship, is irrelevant. It is not appropriate for a physician to carry on both types of relationship with the same individual, regardless of which comes first. This is because there is a general power imbalance between a physician and a patient that can lead to exploitation of the relationship by the physician at the risk of considerable harm to a vulnerable patient. The CMA Code of Ethics appears to recognize this power balance by stating that doctors should limit their treatment of member of their immediate family to only minor or emergency services where another physician is not available. Limiting treatment to these situations seeks to prevent harm to an individual.

140. In determining whether [redacted] was a patient of Dr. Slanina's, the Tribunal examined whether the treatment provided by Dr. Slanina and the relationship between the two was of a nature that indicated [redacted] was a patient. In doing so, the Tribunal assessed whether Dr. Slanina carried out the duties of a physician, as identified in s. 3(1) of Schedule 21 of the HPA.

141. The Tribunal recognizes that occasional sporadic advice, especially in times of emergency or with a pre-existing friend or partner or family member, does not necessarily mean there is an established doctor-patient relationship. Accordingly, in conducting the factual inquiry to determine whether [redacted] was a patient of Dr. Slanina's, the Tribunal examined all of the circumstances to determine the care that Dr. Slanina provided to [redacted] and to determine the objective character of the relationship.

142. The Tribunal finds that several factors lead it to the conclusion that [redacted] was a patient of Dr. Slanina's when he prescribed Ativan to her on October 11, 2015.

143. [redacted] underwent a number of tests and examinations prior to being prescribed Ativan. On October 7, 2015, she had a bone mineral density densitometry and X-rays completed. On October 8, 2015, she had an ultrasound completed. On October 10, 2015, [redacted] had blood work and an ECG completed. The results of all of these examinations were sent to Dr. Slanina as the referring physician. Other documentation is even more specific that Dr.

Slanina was the referring physician. The ECG Results (page 69 of the Exhibit Book) identifies Dr. Slanina as the referring physician and the "Bone Densitometry Baseline Study" (page 78 of the Exhibit Book) states "Clinical information provided by the referring physician (SLANINA, JOHN)". The results of the blood test (pages 70 to 73 of the Exhibit Book) refer to Dr. Slanina as being [redacted] "physician".

144. When this evidence is assessed, it indicates that [redacted] underwent a number of tests where Dr. Slanina was identified, by other medical professionals, as the "referring physician". The evidence indicates that Dr. Slanina provided information to these medical professionals and that they all believed he was acting as a "referring physician". The results of the investigations performed on [redacted] were reported back to Dr. Slanina, as they would be for a patient of his. It was not just for one test that this occurred as there were a number of examinations and tests that were ordered by Dr. Slanina.

145. Further, at no time did Dr. Slanina advise anyone that he was not [redacted] physician. He never stated that the requests were being made by him because he was living with [redacted] and in a romantic relationship with her. This information would be unknown to others.

146. Although Dr. Slanina had at best a scant EMR record of the care he provided to [redacted] his records do indicate a patient file with some history, physical examination, diagnosis and plan of treatment. Page 62 of the Exhibit Book is Dr. Slanina's record of a visit with [redacted] on October 9, 2015. It identifies Dr. Slanina as the "Doctor" for [redacted] contains a chart number and documents her complaints, the results of an examination, and a plan. Dr. Slanina testified this was an office-generated chart necessary to allow him to send [redacted] for x-rays and the Tribunal accepts that evidence. Nonetheless, to an objective observer, the document is suggestive of a doctor-patient relationship as it contains the elements that a patient would expect a doctor to complete after a visit.

147. Following the referrals for examinations and the record of the visit with [redacted] Dr. Slanina wrote a prescription for Ativan on October 11, 2015. The Tribunal notes this is a psychoactive medication prescribed to address psychologic stressors and issues.

148. The Tribunal accepts Dr. Slanina's evidence that [redacted] never attended an appointment at his clinic. However, this is not determinative of a doctor-patient relationship, and the entirety of the facts and context must be assessed. When all of the facts are considered, the Tribunal finds that [redacted] was a patient of Dr. Slanina's when he prescribed the Ativan.

149. Dr. Slanina used his name, professional title and professional address to order and make a number of requests for medical assessments for [redacted] and was identified as the referring physician on these assessments. He received the results of medical tests and kept a limited medical record for [redacted] which included his assessment and plan of action for her. He then prescribed psychoactive medication to [redacted]

150. Dr. Slanina was carrying out the duties of a physician as he was involved in assessing and treating [redacted] physical and mental conditions and engaging in the restricted activity of prescribing medication. The Tribunal concludes that, when all of these facts are

considered, an objective observer to this would view the actions as Dr. Slanina acting as [redacted] physician. The level of interaction is demonstrative of what one would see between a patient and doctor, not incidental treatment of a loved one.

151. While the Tribunal recognizes there are circumstances where a physician can provide minor care to a family member informally in an incidental fashion, the Tribunal in this instance felt that in this case the prescription provided was not within that context as Dr. Slanina issued the prescription after referring [redacted] for medical examinations. The prescription was part of this larger context and spectrum of behaviors and was not "incidental". Further, Dr. Slanina admitted there was no medical emergency and that he advised [redacted] to see other physicians, indicating that other physicians were available. He did not need to act in a physician role, but he did.

152. Both Dr. Slanina and [redacted] had matching testimony to the point that during the time they lived together, she was not seeing any other physician. The Tribunal felt that this reinforced the presence of a physician-patient relationship existing between the two as [redacted] was relying on Dr. Slanina for the prescription and the routine non-emergent general medical care that a family physician would provide their patient.

153. For these reasons, the Hearing Tribunal finds that [redacted] was Dr. Slanina's patient and he therefore was required to create a proper clinical record for the Ativan prescription he provided her in October 2015.

154. The Patient Record Content Standard of Practice, at page 158 of the Exhibit Book, states that a regulated member who provides assessment, advice and/or treatment must document the encounter in an accurate patient record that includes but is not limited to:

a. Presenting concern, relevant findings, assessment and plan including follow-up when indicated;

b. Prescriptions issued, including drug name, dose, quantity prescribed, directions for use and refills issued; and

c. Tests, referrals and consultations requisitioned, including those accepted and declined by the patient,

155. In this case, Dr. Slanina provided his patient [redacted] a prescription for 20 tablets of Ativan 0.5 mg on October 11, 2015 without documenting his clinical assessment that led to his decision to issue the prescription. There is no record at all of [redacted] presenting concerns, the assessment, or information relation to the prescription issued.

156. The Hearing Tribunal finds that Allegation 1 is proven and that such failure to document the clinical encounter resulting in issuance of the October 2015 prescription for Ativan is a breach of the Standard of Practice for Patient Record Content.

157. Unprofessional conduct is defined at s. 1(1)(pp) of the HPA, in relevant part, as: (i) conduct displaying a lack of knowledge of or lack of skill or judgment in the provision of

professional services; (ii) a contravention of the HPA, a code of ethics or standards of practice; and (xii) conduct that harms the integrity of the regulated profession.

158. Dr. Slanina's conduct breached the Standard of Practice for Patient Record Content. Dr. Slanina failed to create any patient record that included any information in relation to the prescription issued.

159. An accurate and complete patient record is an essential component in the practice of medicine. Physicians must recognize this and abide by the documentation requirements to ensure a high standard of care, accurate and clear communication between all members of a patient's healthcare team and proper longitudinal continuity of care. Failure to maintain adequate information regarding patient treatment is unprofessional conduct. This is potentially problematic in that the lack of adequate documentation may hamper future care for a patient if the same or other medical professionals are unaware about previous medical/ psychologic issues, previous medications prescribed and the clinical circumstances surrounding them. These are highly relevant details a clinician needs to make competent and appropriate decisions about the provision care to any patient.

160. For these same reasons, Dr. Slanina's failure to create a clinical record for his assessment of [redacted] on October 11, 2015 also demonstrates a lack of judgment in the provision of professional services.

161. Accordingly, Dr. Slanina's conduct rises to the level of unprofessional conduct as defined in the HPA

Allegation 2

162. Allegation 2 alleges that Dr. Slanina failed to create a clinical record for his assessment of his patient, [redacted] on or about January 22, 2016 for which he submitted a claim to the Alberta Health Care Insurance Plan for health service code 03.03A in the amount of $72.29.

163. The evidence demonstrates that Dr. Slanina submitted a claim for health service code 03.03A in the amount of $72.29 for an assessment of [redacted] on January 22, 2016. The billing record on page 145 of the Exhibit Book indicates that a billing was made for an assessment completed by Dr. Slanina of [redacted] bunion. In his testimony, Dr. Slanina confirmed page 145 of the Exhibit Book shows that he billed $72.29 for services provided to [redacted]

164. As identified above, the evidence demonstrates that [redacted] was a patient of Dr. Slanina's by October 11, 2015. This relationship continued between October 11, 2015 and January 22, 2016.

165. On November 5, 2015, [redacted] had an ultrasound of her abdomen completed. The results of the ultrasound (page 68 of the Exhibit Book) were sent to Dr. Slanina and he was thanked for the referral.

166. On January 22, 2016, [redacted] had an x-ray of her right foot completed. The results of the x-ray (page 67 of the Exhibit Book) were sent to Dr. Slanina and he was identified as the "Ordering Provider". [redacted] also testified that in January 2016, when a friend of Dr. Slanina's went to the Lamont Hospital to be assessed by an orthopedic colleague of Dr. Slanina's, she accompanied them and Dr. Slanina had his orthopedic colleague examine her foot at the same time. Dr. Slanina testified that the orthopedic colleague told him that no follow-up was required for the foot and Dr. Slanina stated the colleague mentioned he would send a consult report but that he never received one.

167. The notes made on the billing record on page 145 of the Exhibit Book indicate that a billing was made for an assessment completed by Dr. Slanina of [redacted] bunion. The record identifies Dr. Slanina as the "provider" and [redacted] as the "patient".

168. In the short period of time between October 2015 and January 2016, Dr. Slanina documented two assessments of [redacted] referred her for six separate medical tests, wrote her one prescription, and had her assessed by an orthopedic colleague. This was not simply sporadic or incidental advice given to a family member. This was not a situation where Dr. Slanina informally provided an individual a single piece of advice or assessment to a friend or family member when asked.

169. Objectively, the number and nature of the treatments, the referrals to other professionals and the information sent back to Dr. Slanina from other medical professionals, and fact that [redacted] was not seeing any other physician, demonstrates that there was an established medical relationship. In addition, the fact that Dr. Slanina sought payment for his service to [redacted] demonstrates a more formal relationship that went beyond minor incidental care provided to a family member. It was a doctor-patient relationship.

170. The Tribunal heard Dr. Slanina testify that the billing was made in error as he had instructed his office staff to never bill for any service provided to [redacted] However, the Tribunal concludes that this billing was still Dr. Slanina's responsibility and notes that no evidence was presented to show that Dr. Slanina made any effort to reverse this billing encounter and return the funds.

171. As such, the billing made to the Alberta Health Care Insurance Plan from January 22, 2016 required documentation in a formal patient chart which is requisite of any doctor-patient relationship.

172. The evidence demonstrates that no documentation was made by Dr. Slanina.

173. The College's Patient Record Content Standard of Practice stipulates that regulated members must ensure the patient record contains elements including tests, referrals and consultations requisitioned and a six-year history of patient billing encounter data. The only patient record Dr. Slanina created for [redacted] was the scant EMR notes that he testified were generated for the sole purpose of enabling him to generate the requisitions for the tests he decided to arrange for [redacted] The Tribunal concluded this was not an adequate patient record of the care he provided [redacted] and that his failure to create a

patient record for his assessment of [redacted] on January 22, 2016 that led to the billing he submitted is a breach of the College's Standard of Practice for Patient Record Content.

174. Accordingly, the Hearing Tribunal finds that Allegation 2 is proven and that such conduct is a breach of the Standard of Practice for Patient Record Content and a lack of judgment in the provision of professional services.

175. As discussed above, an accurate and complete patient record is an essential component in the practice of medicine. Physicians must recognize this and abide by the documentation requirements to ensure a high standard of care, accurate and clear communication between all members of a patient's healthcare team and proper longitudinal continuity of care. Failure to maintain adequate information regarding patient treatment is unprofessional conduct. In this instance, a proper medical record surrounding these circumstances would help guide future care if the same or similar clinical issue were to arise again.

176. Accordingly, the Hearing Tribunal finds that Dr. Slanina's failure to document the clinical encounter resulting in the billing made to Alberta Health rises to the level of unprofessional conduct.

Allegations 3, 4, 5

177. Allegations 3, 4 and 5 allege that Dr. Slanina failed to create a clinical record for assessment of his patient, [redacted] on or about June 5, 2016 when he issued a prescription for 30 tablets of Ativan 0.5 mg, on or about June 10, 2016 when he issued a prescription for Xanax 0.25 mg, and on or about July 12, 2016 when he issued a prescription for 30 tablets of Ativan 0.5 mg and 60 tablets of Imovane 7.5 mg.

178. The Tribunal finds that it is clear Dr. Slanina issued these prescriptions to [redacted] The Tribunal was presented evidence of copies of the June 5 and June 10 prescriptions that were from Dr. Slanina's prescription pad and which were signed and stamped by Dr. Slanina (pages 138-139 of the Exhibit Book). With respect to the July 12 prescriptions, page 137 of the Exhibit Book is a record generated from Dr. Slanina's clinic of the prescriptions for Imovane and Ativan issued to [redacted] Dr. Slanina also admitted to issuing these prescriptions.

179. The Tribunal also finds that the evidence demonstrates Dr. Slanina did not create any clinical record for the assessment of [redacted] in relation to these prescriptions. He testified he provided all of his records to the College and there is no clinical record of an assessment for these prescriptions. There is no record at all of [redacted] presenting concerns, the assessment, or information related to the prescription issued.

180. Dr. Slanina testified at the time these prescriptions were issued, his romantic relationship with [redacted] had broken down and was ending and she was in the process of moving back to Ontario. He stated he provided them to her upon her request as she was having difficulty sleeping and in his own words to 'keep the sanity in all of this' as their relationship was ending. Dr. Slanina stated when [redacted] told him the Ativan made her too drowsy he suggested Xanax and wrote her a prescription for it.

181. As identified above, [redacted] was a patient of Dr. Slanina's by October 2015. This doctor-patient relationship continued in 2016 and continued throughout June and July 2016 when their romantic relationship was coming to an end.

182. On May 26, 2016, [redacted] underwent an abdominal ultrasound and a pelvic ultrasound with endovaginal scan. The results of these examinations were sent to Dr. Slanina (page 64-66 of the Exhibit Book).

183. On May 27, 2016, Dr. Slanina made a referral to Dr. Charlene Barnes, a gynecologist, on [redacted] behalf. In his referral note, found at page 66 of the Exhibit Book, Dr. Slanina identified [redacted] as the "Patient" and identified her presenting complaint, her allergies, and made a request for further consultation and assessment based on [redacted] ultrasound. Dr. Barnes wrote back to Dr. Slanina on June 10, 2016 (page 63 of the Exhibit Book). Dr. Barnes thanked Dr. Slanina for the referral of the patient and advised that she was not accepting new patients.

184. Dr. Slanina testified the referral to the gynecologist was triggered by the recommendation made by the reporting radiologist for the ultrasound that was performed on [redacted]

185. This evidence demonstrates that Dr. Slanina went beyond setting up tests for [redacted] He made a specific referral to a specialist on [redacted] behalf and identified her as a "patient" in the referral request. This referral was faxed on Dr. Slanina's office letterhead with his name and professional title at the top. The evidence indicates that Dr. Slanina was seeking specific advice as a result of the ultrasound that he had ordered for [redacted] The ordering of an assessment, reviewing the results, and then making a referral to follow up are all indicative of an ongoing treatment and care relationship. There is nothing incidental or minor about this pattern of behavior. When this pattern of behavior is assessed objectively, there is a clear doctor-patient relationship.

186. The response from Dr. Barnes, which is directed to Dr. Slanina and which thanks him for the referral of the patient, demonstrates how other doctors viewed the relationship. It demonstrates the objective perspective that Dr. Slanina was [redacted] doctor.

187. Following this, Dr. Slanina proceeded to write prescriptions for [redacted] on June 5, June 10, and July 12, 2016.

188. The Tribunal finds these interactions demonstrate that [redacted] continued to be a patient of Dr. Slanina's. He was acting to provide advice and therapeutic intervention in a non-emergent setting and provided more than one prescription for the same type of drug. The exact drug prescribed was changed when [redacted] indicated a certain drug made her too drowsy, indicating follow-up assessment behavior a physician would normally exhibit whilst providing care to their patient. As such, he ought to have kept a proper patient record of his assessment of his patient regarding these clinical encounters.

189. The Hearing Tribunal finds that Allegations 3, 4 and 5 are proven due to Dr. Slanina's failure to document the clinical encounters resulting in issuance of the prescription for Ativan, Imovane and Xanax in June and July 2016 and concludes that such conduct is a

breach of the Standard of Practice for Patient Record Content and a lack of judgment in the provision of professional services.

190. As discussed above, an accurate and complete patient record is an essential component in the practice of medicine. Physicians must recognize this and abide by the documentation requirements to ensure a high standard of care, accurate and clear communication between all members of a patient's healthcare team and proper longitudinal continuity of care. Failure to maintain adequate information regarding patient treatment is unprofessional conduct. In this instance, proper clinical documentation to the circumstances surrounding the issuance of these prescriptions was important, as Dr. Slanina was trying to remedy an ongoing issue ([redacted] poor sleep due to stressors), and he was prescribing multiple psychoactive medications, some of which caused unacceptable side effects for [redacted]

191. Accordingly, the Hearing Tribunal finds that Dr. Slanina's the conduct with respect to Allegations 3, 4 and 5 rises to the level of unprofessional conduct.

Allegation 6

192. Allegation 6 alleges that Dr. Slanina inappropriately commenced a defamation legal action against [redacted] on October 25, 2017 based on her complaint made to the College regarding his conduct.

193. The Tribunal heard Dr. Slanina's testimony that he initiated the defamation claim against [redacted] in response to her complaint to the College about his conduct, as well as other emails she sent to others including his priest and friends. Dr. Slanina stated he dropped his defamation claim against [redacted] in August 2018 after being advised by Dr. Caffaro that it was inappropriate. He testified that he initiated the Statement of Claim acting on advice from his lawyer that he had a strong case in this instance.

194. In reviewing the Statement of Claim filed by Dr. Slanina against [redacted] found at pages 84 to 92 of the Exhibit Book, the Tribunal notes that at paragraph 10(a) through (c), it specifically refers to allegedly "false and defamatory statements" made by [redacted] in her complaint to the College. While the Statement of Claim refers to other statements made by [redacted] the statements she made in her complaint to the College form part of the allegations of the Statement of Claim. At paragraph 15, under a "Damages" heading, Dr. Slanina alleges the "defamation described at paragraphs 10(a)-(c) above" has forced him to endure an embarrassing and ongoing investigation from the College with respect to [redacted] "defamatory allegations".

195. Based on this evidence, while the Statement of Claim filed by Dr. Slanina references other statements, it contains clear allegations that [redacted] complaint to the College was defamatory.

196. The Tribunal finds Allegation 6 is factually proven. Dr. Slanina's claim, commenced on October 25, 2017, was based, at least in part, on [redacted] complaint to the College. He alleged that comments in her complaint were defamatory and pursued a claim for damages as a result of the comments in the complaint.

197. The Tribunal agrees that the statements made in the complaint to the College were protected by privilege and that it was inappropriate for Dr. Slanina to take legal action against [redacted] arising from her complaint to the College.

198. The Tribunal finds that this conduct harms the integrity of the profession and that it is a breach of the College's Standard of Practice regarding the Code of Ethics and Professionalism. Specifically, this Standard stipulates that regulated members must adhere to the CMA Code of Ethics and Professionalism, found at page 160 of the Exhibit Book. Paragraph 46 of this Code of Ethics and Professionalism pertains to a physician's responsibility to recognize that self-regulation of the profession is a privilege and that every physician has an ongoing responsibility to merit this privilege and support its institutions. Taking legal action against a complainant in relation to statements made in a complaint to the College is inconsistent with the privilege of self-regulation.

199. Further, [redacted] like any patient, has a right to file a complaint to the College about her physician. The act of suing a patient in retaliation to a complaint filed about one's professional conduct to their regulatory body undermines the process of self-regulation. Patients should never have to face the threat of a lawsuit if they decide to file a complaint about their physician to the College. A professional who sues a person who complains to their regulator is effectively trying to chill the regulatory environment. The College cannot tolerate acts of retaliation and retribution against a complainant as such action negatively impacts the College's ability to protect members of the public from unprofessional conduct.

200. Dr. Slanina's proven conduct in this regard breaches the College's Standard guiding physicians' responsibility to the profession and harms the integrity of the profession.

201. If Dr. Slanina's claim was based on allegations only related to [redacted] emails to his priest and other friends, the situation may have been different. However, the Statement of Claim is clear that Dr. Slanina is claiming [redacted] complaint to the College was defamatory and that it caused him damage. Such a claim is inappropriate conduct from a member of a regulated profession.

202. The Tribunal considered previous cases presented by the parties related to physicians who sue individuals who complain about them. Dr. Tse sued a patient who filed a complaint about her, and this action was found to be unprofessional conduct. The Tribunal found this case to be analogous to Dr. Slanina's situation. On the other hand, it did not find the Dr. Nunes case to be entirely relevant to this case as Dr. Nunes sued a physician colleague of his and not a patient who had complained to the College.

203. The Tribunal accepts Dr. Slanina's evidence that he received advice from his legal counsel prior to commencing the claim. However, such advice does not excuse Dr. Slanina's conduct and he remains responsible for the defamation claim. Further, the Tribunal recognizes Dr. Slanina withdrew his claim after receiving information from Dr. Caffaro. However, this does not excuse the initial commencement of the claim, its chilling effect, and the initial impact it had on [redacted] These facts may be considered as mitigating factors in sanction but they do not eliminate the fact that Dr. Slanina's actions were unprofessional.

204. In the circumstances, the Hearing Tribunal finds that the conduct with respect to Allegation 6 is proven and that the conduct constitutes unprofessional conduct as defined in the HPA.

Allegation 7

205. Allegation 7 alleges that Dr. Slanina failed to maintain an appropriate professional boundary with his patient, [redacted] during the period of October 2015 to July 2016.

206. Evidence was presented to the Tribunal that during this period of time, Dr. Slanina and [redacted] lived together and by both their accounts, were in a committed intimate relationship that was sexual. There was no dispute on this issue and the Tribunal accepted their consistent testimony to this point.

207. The Tribunal was also presented evidence that during this period of time, Dr. Slanina provided prescriptions, ordered imaging and other tests, and made requests for specialist assessments all on [redacted] behalf. There was one billing episode, four prescriptions written, one x-ray, two ultrasounds, one blood test, one ECG, and two referrals to see specialists during the time they were romantically involved. During this time, [redacted] did not have another family physician and she relied on Dr. Slanina for her medical care. As outlined above, the Tribunal concludes that Dr. Slanina and [redacted] were in a doctor-patient relationship between October 2015 to July 2016.

208. Despite Dr. Slanina's testimony that he never saw [redacted] as his patient, the Tribunal finds the totality of his professional actions made on her behalf were actions a physician would make for their patient. The Tribunal finds that regardless of Dr. Slanina's personal impression of the therapeutic dynamic between him and [redacted] to the average person, their interactions would be interactions typical of a doctor-patient relationship. Further, the Tribunal concludes the pharmacies, imaging centers and gynecologist who received Dr. Slanina's prescriptions and requisitions made on [redacted] behalf would have viewed Dr. Slanina as [redacted] physician.

209. While the Tribunal accepts Dr. Slanina's testimony that he recommended that [redacted] find her own family physician to provide prescriptions and order tests, at the same time, it did not accept that this excused his actions. He repeatedly provided prescriptions and ordered investigations for admittedly non-emergent reasons over the course of almost a year for [redacted] and in doing so, the Tribunal concludes the services he provided [redacted] were not infrequent or minor actions. The repeated prescriptions over a period of time, ordering tests, making referrals to specialists in non-emergent clinical situations, and holding himself out to others as being [redacted] physician made [redacted] a patient of Dr. Slanina's.

210. The Tribunal finds that Dr. Slanina's actions were not incidental in nature and that there is evidence of ongoing treatment and assessment. The prescriptions and tests ordered occurred repeatedly over a period of almost a year. The nature of some of the tests ordered, specifically the abdominal-pelvic ultrasound leading to a pelvic MRI and referral to a gynecologist because of an abnormality on the cervix, displays a continuity of care that a physician would normally provide their patient. Dr. Slanina testified that he never felt he

was acting on any medical emergency when he was providing prescriptions and arranging tests for [redacted] Dr. Slanina testified that in June 2016 he prescribed Xanax for [redacted] after she explained to him the Ativan he previously prescribed made her too drowsy and that he had then advised her to try the Xanax. The Tribunal notes that this is indicative of a continuity of care as well. Further, the medications that Dr. Slanina prescribed to [redacted] are psychoactive medications and were prescribed to address psychologic stressors and issues. This is not providing incidental care to a family member.

211. The Tribunal accepts Dr. Slanina's testimony that he provided [redacted] prescriptions and ordered tests for her because she made requests for investigations and that he wanted to keep her happy. However, this does not excuse his actions.

212. While Dr. Slanina and [redacted] may not have intended to change the fundamental character of their personal relationship, when all of the facts and their actions are viewed objectively, the character of their relationship did change. While Dr. Slanina and [redacted] were still involved in a personal and romantic relationship, a relationship that came first, they also became involved in a doctor-patient relationship. Although this may have not been intentional and Dr. Slanina may have gotten caught in a situation where he did things he regrets because of the romantic relationship, the Tribunal finds that Dr. Slanina was romantically involved with someone who became his patient.

213. Even though Dr. Slanina's stated his actions were that of a romantic partner providing minor medical assistance to prepare for the next doctor, the Tribunal concludes that the added dimension of a doctor-patient situation to their romantic relationship introduced the power-imbalance that comes with a doctor-patient relationship.

214. Dr. Slanina testified that [redacted] asked for some investigations because she was worried about having a cancer. Additionally, he stated [redacted] was under a lot of work-related stress which made her agitated and interrupted her sleep, and he prescribed her specific medications to address this and help her sleep and relax. The Tribunal concludes a power imbalance resulted from [redacted] being in a vulnerable position with her cancer worry and work stress and Dr. Slanina had the power and ability to allay these fears and stresses. This power imbalance and the influence that Dr. Slanina had over [redacted] made a continued romantic relationship problematic.

215. There was a significant risk that Dr. Slanina's clinical judgment could have been compromised due to the personal relationship and that [redacted] could have suffered harm. Dr. Slanina testified that he ordered tests and made referrals based on [redacted] requests and that in doing so, she took advantage of his 'weakness'. He testified in at least one instance a referral was not warranted but only made due to [redacted] request. He had advised her that the cysts on her cervix were completely benign but she insisted on a referral to a gynecologist. This referral was made and ultimately declined but there was the potential for [redacted] to have undergone more investigations which may have been invasive and harmful, for a completely benign and non-threatening issue.

216. Instead of a normal doctor-patient relationship where both sides work collaboratively to ensure proper evidence- based care in the context of a patient's values and goals, [redacted]

received care based on her requests. She is an engineer with no medical training but she was directing her medical care through Dr. Slanina. With respect to the psychoactive drugs, an objective physician may have also considered psychotherapy to address the identified stressors, but Dr. Slanina simply acquiesced to [redacted] requests for the prescriptions to manage the stress. [redacted] also had significant concerns that some of her symptoms were due to cancer and made requests that Dr. Slanina arrange for tests based out of those fears. Normally, an objective physician would provide professional advice and make decisions with a patient based on science and evidence-based guidelines, but in their doctor-patient relationship, Dr. Slanina's clinical judgement was clouded and he made medical decisions for [redacted] based on his emotional attachment to her. This is very problematic, as it exposed [redacted] to unnecessary and potential harmful investigations and interventions.

217. There was also a significant risk [redacted] patient could have developed feelings of dependency due to the nature of their relationship. This risk was exacerbated by the prescribing of psychoactive drugs.

218. The Tribunal has serious concerns about what may occur if a doctor is acting as both a doctor and a romantic partner. It does not matter which of these relationships come first. The concerns arise whenever both occur at the same time and this indicates why the CMA Code of Ethics state that treatment of anyone who a physician has a close relationship with should be limited to minor or emergency interventions when other physicians are not available. The risks and concerns that arise when a dual relationship exists are significant.

219. Dr. Slanina could have refused to make referrals to other doctors, and could have refused to arrange tests, and could have refused to write prescriptions. There was no need for him to prescribe medications so many times or to order so many assessments. As he testified that he told [redacted] to find a family physician, he could have been more forceful in refusing. He testified that there was never a medical emergency that required him to act. However, Dr. Slanina chose not to refuse and his actions were that of a doctor treating a patient. Such actions were inappropriate when they involved a romantic partner.

220. Accordingly, the Tribunal finds that Allegation 7 is proven. While acting as her physician and providing medical care for [redacted] during October 2015 to July 2016, Dr. Slanina was involved in a personal intimate relationship with her and lived with her. In doing so, he failed to maintain an appropriate professional boundary.

221. The Hearing Tribunal finds that the conduct with respect to Allegation 7 constitutes unprofessional conduct. The HPA defines unprofessional conduct to include a breach of the Standards of Practice and in this instance Dr. Slanina breached the Standard of Practice pertaining to Personal Boundary Violations. This Standard stipulates that a regulated member must not enter into a close personal relationship with any patient.

222. In this particular case, Dr. Slanina and [redacted] were already in an intimate romantic relationship with one another before [redacted] became Dr. Slanina's patient too, but the Tribunal finds that the concurrent existence of both the intimate romantic relationship and the doctor-patient relationship was inappropriate. Providing significant medical care to an

individual while also in a romantic relationship is a breach of the Standard of Practice and is incongruent with the expectations of a physician. Any boundary violation with a patient is serious given the power imbalance and the risk of harm to a patient.

223. For these reasons, Dr. Slanina's boundary violation also harms the integrity of the regulated profession and constitutes unprofessional conduct.

224. Further, to the objective public, there can be a perception that [redacted] was receiving preferential care. She never had to book appointments into clinic to be assessed or have prescriptions renewed. Additionally, she did not have to wait to get an Orthoepedic surgery assessment for a non-emergent issue that turned out to be non-surgical and not serious enough to warrant ongoing orthopedic follow-up. This also harms the integrity of the profession.

Allegation 8

225. Allegation 8 alleges that Dr. Slanina failed to disclose to the College when completing his registration information form for renewal of his Practice Permit for 2016 and 2017 that he had engaged in an inappropriate personal or sexual relationship with his patient, [redacted]

226. The Tribunal was presented with copies of a question from Dr. Slanina's Practice Permit renewal questionnaire from 2015, 2016, and 2017 pertaining to whether or not he was or had previously been involved in a sexual or inappropriate personal relationship with a patient that had not been previously reported to the College. For each year, Dr. Slanina replied 'no' to this question.

227. Dr. Slanina testified that he answered 'no' each year because he viewed [redacted] to be a family member as opposed to a patient.

228. The Tribunal accepted the testimony from both Dr. Slanina and [redacted] that they cohabited from October 2015 to July 2016 and that they were in what each felt to be a committed intimate relationship which included sexual relations and a mutual consideration of the other as their spouse. They additionally had mutual plans to legally marry.

229. As outlined above, the Tribunal fiinds that [redacted] became a patient of Dr. Slanina's during this time. While Dr. Slanina may not have subjectively viewed [redacted] as a patient, she was objectively a patient as of October 2015 and throughout 2015 and 2016 and he was required to answer 'yes" to the question on the Practice Permit renewal.

230. Therefore, the Tribunal finds that Allegation 8 is proven as Dr. Slanina failed to disclose to the College when completing his registration information form for renewal of his Practice Permit for 2016 and 2017 that he had engaged in an inappropriate personal or sexual relationship with his patient, [redacted]

231. The Tribunal also finds that the proven conduct is a breach of the College's Standard of Practice pertaining to Self-reporting to the College in that it violates the requirement that a physician must report to the College at the time of registration or whenever the physician

becomes aware thereafter of a sexual or inappropriate personal relationship between the physician and the patient.

232. Specifically, this Standard directs regulated members to report to the College, at the time of registration or whenever the physician becomes aware thereafter, a sexual or inappropriate personal relationship between the physician and the patient. Requiring physicians to report these matters to the College ensures that the College can effectively implement its regulatory functions and protect the public interest. If physicians do not comply with their regulatory obligations to report these matters to the College, the College will be frustrated in its mandate and patients may be harmed. By not self-reporting his intimate personal relationship with his patient [redacted] to the College, Dr. Slanina misled the College and allowed the inappropriate concurrent co-existence of an intimate personal relationship and a doctor-patient relationship with the same individual to continue. This frustrated the College's mandate of protecting the public.

233. For the same reasons, Dr. Slanina's failure to report that he had, or was engaging in a sexual or inappropriate personal relationship with his patient, [redacted] also undermines the College's ability to carry out its public protection mandate and harms the integrity of the medical profession in the public's eye.

234. As Dr. Slanina's relationship with [redacted] became a doctor-patient relationship after their personal relationship started, Dr. Slanina should have reported to the College that he engaged in a relationship with an individual who was also his patient. He failed to do so. Dr. Slanina's conduct in failing to report that he had engaged in a relationship with a patient is similar to the actions of Dr. Sanjeev Bhardwaj who was found to have engaged in unprofessional conduct for not answering questions on his renewal form honestly. The Tribunal acknowledges that Dr. Bhardwaj's exploitation of his vulnerable opioid-addicted patients is not the same as the pre-existing personal relationship that Dr. Slanina and [redacted] had. The Tribunal does, however, find the relevant similarity between the cases is that both members failed to report a sexual or inappropriate personal relationship between the physician and the patient.

235. Accordingly, the Hearing Tribunal finds that Dr. Slanina's conduct with respect to Allegation 8 constitutes unprofessional conduct.

VIII. CONCLUSION

236. As a result of the Hearing Tribunal's findings of unprofessional conduct against Dr. Slanina for allegations 1 through 8, the Hearing Tribunal will need to determine what, if any, orders it will make pursuant to section 82 of the HPA.

237. The Hearing Tribunal will receive submissions on penalty from the parties. The Hearing Tribunal requests that the parties discuss the timing and method of providing submissions on penalty to the Hearing Tribunal and write to the Hearings Director with the prosed proposal for making submissions on sanction.

238. If the parties are unable to agree on a proposed procedure and timing, the Hearing Tribunal will make further directions on this point.

Signed on behalf of the Hearing Tribunal by the Chair this 28 day of April, 2020.

Dated: April 28, 2020

Dr. Don Yee