

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 ON SANCTIONS**

I. INTRODUCTION

The Hearing Tribunal consisting of Dr. Don Yee of Edmonton as Chair, Dr. Vonda Bobart of St. Albert and Ms. Archana Chaudhary of Edmonton (public member), held a hearing into the conduct of Dr. John Slanina on February 10, 2020. The Hearing Tribunal issued a written decision dated April 28, 2020, finding Dr. Slanina to have committed unprofessional conduct.

On August 5, 2020, the same members of the Hearing Tribunal reconvened to receive submissions on sanctions. The hearing proceeded by way of videoconference.

In attendance at the continuation of the hearing before the Hearing Tribunal on August 5, 2020, was Mr. Craig Boyer, legal counsel for the Complaints Director of the College of Physicians & Surgeons of Alberta ("the College"). Also present was Dr. John Slanina and Mr. Karen Pirie and Ms. Sydni Kind, legal counsel for Dr. John Slanina.

II. PRELIMINARY MATTERS

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

III. UNPROFESSIONAL CONDUCT FINDINGS

In its decision dated April 28, 2020, after considering the evidence and submissions presented at the February 10, 2020 hearing, the Hearing Tribunal found Dr. Slanina to have committed the following unprofessional conduct as alleged in allegations 1 through 8 in the Notice of Hearing:

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 AND SUBMISSIONS REGARDING SANCTIONS

Neither party called any witnesses to testify on the issue of sanctions.

The Hearing Tribunal was provided with a signed Joint Submission Agreement between the College and Dr. Slanina. This document was marked as Exhibit 4. The Hearing Tribunal was also provided with a Brief of Law on Joint Submissions.

In this Joint Submission Agreement, Dr. Slanina and the Complaints Directors requested that the Hearing Tribunal impose the following orders:

1. Dr. Slanina's practice permit shall be suspended for a period of 12 months, of which 6 months are to be served starting on a

date determined by the Complaints Director, with the remaining 6 months of suspension to be held in abeyance pending fulfillment of the remaining terms of the sanction order.

2. Dr. Slanina shall attend at his own cost and unconditionally pass the Probe: Ethics & Boundaries Program -Canada course offered by CPEP by a date determined by the Complaints Director.
3. In the event Dr. Slanina does not unconditionally pass the Probe: Ethics & Boundaries Program -Canada course, the Complaints Director may, with notice to Dr. Slanina, request the Hearing Tribunal to determine whether Dr. Slanina should undergo at his cost a multi-disciplinary assessment and be required to comply with any conditions on practice arising out of the assessment report.
4. Dr. Slanina shall be responsible for two-thirds of the costs of the investigation and hearing, payable on terms acceptable to the Complaints Director, with the first installment due within 30 days following the date of the written sanction decision.

On behalf of the Complaints Director, Mr. Boyer stated that the two general and guiding principles to apply when it comes to sanction are aimed at 1) deterrence and 2) rehabilitation. He stated that the Brief of Law on Joint Submissions indicates that when an agreement is reached between parties on what sanction should be imposed, the Tribunal should give it considerable deference and only refuse the joint submission if it is clearly not in the public interest.

Mr. Boyer stated that the Joint Submission on Sanction aligns with the principles of sanction and of deterrence and rehabilitation. Specifically, it included a punitive element as well as a rehabilitation process. The punitive aspect of the sanction was provided by the suspension and imposition of costs for Dr. Slanina. The rehabilitation aspect was provided by the requirement to complete the Probe course. This course has been used by the College in the past and is comprehensive and thorough for addressing ethics and boundaries. If Dr. Slanina did not pass the course the matter could be revisited by consideration of a more comprehensive multidisciplinary course such as an assessment at the Gabbard Centre or Sante.

Mr. Boyer outlined the four categories of Dr. Slanina's proven conduct which included:

1. Five different elements of poor charting;
2. Initiation of a defamation action against a patient who complained about him to the College;
3. A boundary violation with a patient; and
4. Failing to disclose the boundary violation to the College on the annual renewal form.

Mr. Boyer submitted the common theme throughout this conduct was that Dr. Slanina did not see himself as [REDACTED]'s physician, but the Tribunal found the contrary.

Mr. Boyer stated the deterrence component of the Joint Submission was comprised of the 12 month suspension with 6 months held in abeyance, on a date set by the Complaints Director. He referred to four previous decisions from the College involving physicians who were found guilty of conduct similar to Dr. Slanina and the suspensions that were imposed as part of the sanctions:

1. Dr. Healley: This was a decision from 2012. This was a boundary violation which was a contested hearing. Dr. Healley was found to have had an intimate sexual relationship with a patient which began after the patient stopped seeing him as her physician. The Tribunal found that despite this, the physician-patient relationship continued concurrent with the intimate sexual relationship. Dr. Healley also treated the patient's two minor children during this time. Dr. Healley was required to serve a 10 month suspension, with 6 months held in abeyance.
2. Dr. Anderson: This was a decision from 2013. Dr. Anderson was found to have engaged in an inappropriate sexual relationship with a patient. He was given a 12 month suspension with 6 months to be served and 6 held in abeyance.
3. Dr. Forestall: This was a 2005 decision where Dr. Forestall was found to have engaged in an intimate sexual relationship with a patient. Dr. Forestall was required to serve a 9 month suspension with 3 months in abeyance and 6 months served.
4. Dr. Ferrari: Dr. Ferrari was found to have engaged in an inappropriate sexual relationship with a patient and failed to make arrangements for continuation of care for the same patient when he decided he would not continue as her physician. He was given a 6 month suspension with 6 months held in abeyance.

Mr. Boyer submitted that the agreed upon suspension in the Joint Submission was within range with these previous decisions of the College. He stated that Dr. Slanina's proven conduct was serious and required a serious sanction.

Mr. Boyer stated the signed Joint Submission addressed the need for deterrence and rehabilitation that are emphasized in the *Jaswal* decision and that it aligned with the principles regarding when a joint submission should be accepted by a decision maker. He submitted that the Tribunal should therefor accept and adopt it the Joint Submission on Sanction.

Ms. Pirie stated that significant deference should be given to Joint Submissions that are worked out between parties and the Tribunal should satisfy themselves that the Joint Submission presented does meet the public interest. She examined the *Jaswal* factors with respect to Dr. Slanina's case to demonstrate the agreed upon sanction met the public interest:

1) Nature / gravity of proven conduct

The proven conduct was serious but not at the most egregious end of the spectrum.

2) Age / experience of the physician

Dr. Slanina was now in his 60's and was near the end of his medical career.

3) Previous character of the physician and prior convictions.

Dr. Slanina had no prior convictions.

4) Age and mental condition

The charges came from the College and not a patient complaint. [REDACTED] was a mature adult at the time of her cohabitation and intimate relationship with Dr. Slanina.

5) Number of times the proven offences occurred

There were different components to the proven offenses but Dr. Slanina and [REDACTED] started with a consensual intimate

relationship. The Tribunal concluded the totality of the medical care he subsequently provided [REDACTED] altered the dynamics of the relationship as opposed to a single event. The defamation claim was a one-time event. Ms. Pirie submitted that the offence of an inappropriate relationship with a patient was a singular event in this case.

6) Role of physician in acknowledging what occurred

Dr. Slanina had always been forthright and honest about the facts of the case including the referrals made and medical tests ordered for [REDACTED]. The confusion was over at what point did [REDACTED] become his patient. Dr. Slanina admitted to initiating the defamation action. Ms. Pirie stated at the time of the events that there was no official code guiding physicians as to where the line is when a family member becomes a patient when providing incidental care to a family member. There were also no previous cases to guide Dr. Slanina in this respect. Dr. Slanina was always of the view that [REDACTED] was a family member.

7) If the physician has suffered serious financial repercussions

Ms. Pirie stated that this is relevant in cases where there are sexual assault charges and other criminal implications or where a physician is required to give up their license during a time of an investigation and she stated that none of these factors applied to Dr. Slanina's case.

8) Impact on the patient

There was no evidence that there was any negative impact on [REDACTED] through the care she received from Dr. Slanina.

9) Presence or absence of mitigating factors

Ms. Pirie submitted it was a mitigating factor that Dr. Slanina's failure to report his relationship with [REDACTED] occurred in the absence of any kind of guidance for physicians who provide incidental care to family members and when they need to report an inappropriate relationship with a patient. Ms. Pirie stated that with regards to the defamation action, Dr. Slanina initiated this claim upon the advice from his

lawyer and immediately dropped the claim when the Complaints Director expressed his concern over this.

10) Need to promote specific and general deterrence

Ms. Pirie stated charges 7 and 8 may lead other physicians to conclude that the relationship between Dr. Slanina and [REDACTED] started in clinic which was not the case. She stated that Dr. Slanina's suspension should not be longer than other physicians who started intimate relationships with patients in a clinic. She submitted that Dr. Slanina has already learned a lot from this experience and that he would not be engaging in similar conduct given the stage of his career.

11) The need to maintain the public's confidence in the integrity of the medical profession

The Tribunal concluded that Dr. Slanina's actions harmed the integrity of the profession. Ms. Pirie stated that the Tribunal should realize that removing Dr. Slanina from his other patients for 6-12 months needs to be balanced by the need for a punitive aspect to the sanction.

12) How much the proven offense falls outside of the range of permitted conduct

Ms. Pirie stated that she was not sure all physicians will understand there is a point past which providing a certain amount of care to a spouse becomes a sexual boundary violation. She pointed out there are no previous cases guiding physicians in this regard as previous College decisions regarding sexual boundary violations involve physicians who started relationships in clinic with established patients. She stated she did not think that Dr. Slanina would have known the College would consider him treating [REDACTED] as a patient.

13) Range of sentences in previous similar cases

Ms. Pirie stated that there are no guiding cases for scenarios such as this one. She stated that physicians who start relationships with patients do not apply to this case. She submitted that Dr. Slanina did not deserve a longer suspension than the physicians whose cases Mr. Boyer

presented in his submissions. She submitted that it would be disproportionate to impose a longer suspension than 12 months with 6 months in abeyance which is what was being proposed jointly by the parties.

Ms. Pirie stated that given the unique circumstances of this case and that Dr. Slanina never denied any of the facts, that no new facts or issues came out of the hearing that needed to be proven or resolved, that Dr. Slanina was near the end of his career where a 6-12 month absence would be difficult to recover from, that a longer suspension than the one being proposed by the parties would be inappropriate. She also stated that participation in the PROBE program was logical and consistent with the events of the case and with the *Jaswal* factors. The requirement to pay less than the full costs appropriately recognized that the Hearing did not clarify any of the facts but instead clarified the expectations of the College.

In reply, Mr. Boyer re-iterated that the parties agreed on the Joint Submission.

V. DECISION AND ORDERS

The Tribunal adjourned and, when the Hearing resumed, confirmed to the parties that it accepted the Joint Submission on Sanction as presented. For clarity, the Tribunal advised the parties that with regards to the suspension imposed, the Complaints Director could determine when the suspension started anytime as the Tribunal had made the suspension order and that the Complaints Director did not have to wait for a written decision from the Tribunal.

After the Tribunal advised of its decision, Dr. Slanina briefly apologized to the College for his mistake and stated he has learned that he should contact the College in the future if there are any unusual issues occurring in his practice. He apologized to his patients who will be without his care during the time of his suspension.

In arriving at its decision, the Hearing Tribunal took into consideration the Joint Submission, the relevant facts, the well-established set of criterion derived from *Jaswal v. Newfoundland (Medical Board)* (1996) and the submissions from the parties.

The Hearing Tribunal agreed that a suspension of twelve (12) months with six (6) months in abeyance was an appropriate suspension time and was in proportion to the severity of Dr. Salina's transgressions. Additionally, a suspension of twelve (12) months was appropriate in light of the previous College disciplinary decisions presented for similar conduct where the investigated members received suspensions in this range of time.

The Tribunal noted that the circumstances in Dr. Slanina's case differed significantly from the previous College decisions as Dr. Slanina and [REDACTED] started by having a consensual intimate relationship which evolved to include a patient-physician relationship as opposed to an intimate relationship starting after a patient-physician relationship had been established.

While not as egregious as targeting and preying on a vulnerable patient in clinic, the Tribunal found that Dr. Slanina's conduct in this regard to be serious. Even though in his mind Dr. Slanina felt all along he was providing incidental medical care to a family member, the totality of his medical services provided for [REDACTED] clearly established a physician-patient relationship. The Tribunal felt that this new dimension to their previously established intimate relationship came with the power imbalance typical of any physician-patient relationship and the potential for harm to [REDACTED] due to the power imbalance. Given his age and experience, Dr. Slanina should have been aware of this issue.

The Tribunal recognized that the College does find it acceptable in certain circumstances for regulated members to, on occasion, provide incidental care to a family member. However in this specific case, the Tribunal found that the care Dr. Slanina provided [REDACTED] was not incidental in nature. There was a pattern of ongoing care including tests ordered, referrals to specialists upon receipt of test results to further investigate issues and multiple prescriptions provided. Despite this ongoing care, Dr. Slanina did not chart the care being provided. Dr. Slanina testified that during all of this he felt all along that he was providing incidental care to a family member. The Tribunal found otherwise and felt this was a serious lapse in Dr. Slanina's professional judgement. As such, the Tribunal felt the requirement to pass the Probe Ethics and Boundaries course an appropriate aspect of the sanction for Dr. Slanina from the point of view of rehabilitation.

The Tribunal recognized there is no specific guiding document for Alberta physicians in terms of defining when incidental care to a family

member becomes a formal physician-patient relationship. However in this case, there were clear signs of a physician-patient relationship including referrals to multiple specialists, arrangement of multiple laboratory and radiologic investigations and provision of multiple prescriptions which all indicated an ongoing pattern of longitudinal care and follow-up typical of how a physician would provide care for a patient. The Tribunal found it is important for Alberta physicians to reflect on this case if they themselves are providing incidental care for a family member to ensure that if they are providing care to a family member that it is truly incidental in nature.

Dr. Slanina's conduct also involved five different elements of poor charting, the initiation of a defamation action after [REDACTED] made a complaint to the College, and the failure to disclose the boundary violation to the College. These are all serious concerns that require a sanction that ensures the integrity of the profession is maintained.

Given the severity of Dr. Slanina's conduct, the Tribunal felt a twelve (12) month suspension with six (6) months held in abeyance and the completion of the Probe Ethics and Boundaries course would serve as an appropriate deterrent to Dr. Slanina and the profession at large. It also serves the purpose of rehabilitation as the Probe Ethics and Boundaries course will serve as remedial education and provide Dr. Slanina an opportunity to reflect on his conduct and to learn from it. The sanction imposed will serve as a message to the public that this type of conduct will not be tolerated.

Overall, the Tribunal acknowledges that this penalty is significant, but the Tribunal found it is in proportion to the severity of the proven unprofessional conduct and that it is supported by the sentencing considerations.

The Tribunal agreed that responsibility for two thirds of the cost of the investigation and Hearing was appropriate. While Dr. Slanina was cooperative throughout the investigation and Hearing, the Allegations against him were contested, which required proceeding with a full Hearing. While members have the right to contest allegations made against them, they may be required to pay costs associated with this process as other College members should not be required to bear the expenses of a hearing that arose as a result of Dr. Slanina's unprofessional conduct. Further, all of the witnesses gave relevant and useful evidence. The Tribunal also felt that all of the hearing time was used effectively.

The Tribunal recognized that deference should be given to joint submissions. The Tribunal found that the joint submission with respect to sanction was appropriate and it was not clearly and manifestly unjust. The Tribunal found that the proposed Joint Submission on sanction serves the public interest.

For these reasons, the Hearing Tribunal makes the following orders pursuant to s. 82 of the HPA:

1. Dr. Slanina's practice permit shall be suspended for a period of 12 months, of which 6 months are to be served starting on a date determined by the Complaints Director, with the remaining 6 months of suspension to be held in abeyance pending fulfillment of the remaining terms of the sanction order.
2. Dr. Slanina shall attend at his own cost and unconditionally pass the Probe: Ethics & Boundaries Program -Canada course offered by CPEP by a date determined by the Complaints Director.
3. In the event Dr. Slanina does not unconditionally pass the Probe: Ethics & Boundaries Program -Canada course, the Complaints Director may, with notice to Dr. Slanina, request the Hearing Tribunal to determine whether Dr. Slanina should undergo at his cost a multi-disciplinary assessment and be required to comply with any conditions on practice arising out of the assessment report.
4. Dr. Slanina shall be responsible for two-thirds of the costs of the investigation and hearing, payable on terms acceptable to the Complaints Director, with the first installment due within 30 days following the date of the written sanction decision.

Signed on behalf of the Hearing
Tribunal by the Chair



Dated: September 23, 2020

Dr. Don Yee