

COLLEGE OF PHYSICIANS & SURGEONS OF ALBERTA

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

AND IN THE MATTER OF A HEARING REGARDING  
THE CONDUCT OF DR. MORGAN OSBORNE

**DECISION OF THE HEARING TRIBUNAL OF  
THE COLLEGE OF PHYSICIANS  
& SURGEONS OF ALBERTA  
MAY 15, 2023**

## **I. INTRODUCTION**

1. The Hearing Tribunal held a hearing into the conduct of Dr. Morgan Osborne on April 17, 2023. The members of the Hearing Tribunal were:

Dr. Robin Cox of Calgary as Chair;  
Dr. Neelan Pillay of Calgary;  
Mr. Terry Engen of Eckville (public member);  
Ms. Lillian (Patricia) Hull of Calgary (public member).

Ms. Mary Marshall acted as independent legal counsel for the Hearing Tribunal.

2. Also present were:

Mr. Craig Boyer, legal counsel for the Complaints Director;  
Dr. Morgan Osborne;  
Ms. Karen Pirie, legal counsel for Dr. Osborne.

## **II. PRELIMINARY MATTERS**

3. 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.
4. The hearing was open to the public pursuant to section 78 of the *Health Professions Act*, RSA 2000, c. H-7 ("HPA"). There was no application to close the hearing.

## **III. CHARGES**

5. The Amended Notice of Hearing listed the following allegations (the "Allegations"):
  1. That you did demonstrate a lack of knowledge or lack of skill or judgment in the provision of professional services to your patient, [REDACTED], as required under the CPSA Standard of Practice regarding Prescribing: Drugs Associated with Substance Use Disorders or Substance-Related Harms, particulars of which include one or more of the following:
    - a. Failing to create an adequate patient record to support your prescribing of Hydromorphone 4 mg during the period of November 2017 to November 2018, particulars of which include:
      - i. No record of the goals that were established and measured for function and pain of your patient;
      - ii. No record of the risk factors for opioid-related harms discussed with your patient and the strategies to mitigate those risks;

- iii. No record of the justification for prescribing a long-term opioid and prescribing a dose that exceeded the daily maximum dose recommended in the 2017 Canadian Guideline for Opioids for Chronic Non-Cancer Pain;
  - b. Failing to check or failing to record that you had checked the Pharmaceutical Information Network (PIN)/Netcare, or other available independent source, to confirm what prescriptions had been dispensed to your patient before you commenced and when you renewed your prescriptions for Hydromorphone 4 mg.
- 2. You did fail to create an adequate record of the assessment and treatment you provided to your patient, [REDACTED], as required by the CPSA Standard of Practice regarding Patient Record Content, for visits on one or more of the following dates;
  - a. August 15, 2016;
  - b. January 27, 2017;
  - c. March 15, 2017;
  - d. May 25, 2017;
  - e. July 24, 2017;
  - f. August 1, 2017;
  - g. September 6, 2017;
  - h. November 21, 2017;
  - i. February 6, 2018;
  - j. May 10, 2018;
  - k. June 18, 2018;
  - l. August 15, 2018;
  - m. September 24, 2018; and
  - n. November 3, 2018.

#### **IV. EVIDENCE**

- 6. The following Exhibits were entered into evidence during the hearing:
  - Exhibit 1:** Agreed Exhibit Book
    - Tab 1:** Notice of Hearing dated September 26, 2022
    - Tab 2:** Amended Notice of Hearing
    - Tab 3:** Complaint from [REDACTED] dated July 25, 2019
    - Tab 4:** Letter of Response from Dr. Osborne dated September 18, 2019

- Tab 5:** Dr. Osborne's chart for [REDACTED]
- Tab 6:** Letter from AHS dated September 26, 2019 with copy of Medicine Hat Hospital records for [REDACTED]
- Tab 7:** Alberta Health billings for [REDACTED] visits with Dr. Osborne
- Tab 8:** Pharmacy Information Network data for [REDACTED] – January 1, 2016 to December 31, 2018
- Tab 9:** Letter of opinion from Dr. L. Beamish dated January 16, 2020
- Tab 10:** Terms of Resolution between the Complaints Director and Dr. Osborne dated June 9, 2020
- Tab 11:** Letter from Dr. Caffaro to [REDACTED] dated September 18, 2020
- Tab 12:** Certificate of Attendance at Safe Opioid Prescribing course
- Tab 13:** Certificate of Completion of Records Keeping course
- Tab 14:** Letter from Dr. Howk, CPSA Continuing Competence department dated January 6, 2021 confirming completion of Individual Practice Review
- Tab 15:** Letter from Dr. Ulan to Dr. Hartfield dated January 7, 2021
- Tab 16:** Letter from Dr. Caffaro to [REDACTED] dated January 19, 2021
- Tab 17:** Complaints Review Committee decision dated October 26, 2021
- Tab 18:** Records from Safeway Pharmacy re prescriptions dispensed to [REDACTED]
- Tab 19:** Letter of Opinion from Dr. Beamish dated July 18, 2022
- Tab 20:** CPSA Standard of Practice on Prescribing Drugs Associated with Substance Use Disorders
- Tab 21:** CPSA Standard of Practice on Patient Record Content
- Exhibit 2:** Signed Admission and Joint Submission Agreement

7. Counsel for the Complaints Director also filed the following materials:
  - a. Brief of Law Regarding Joint Submissions dated April 11, 2023:
  - b. Case Law:
    - i. *Datar (Re)*, 2016 CanLII 74173 (AB CPSDC);
    - ii. *Jeh (Re)*, 2013 CanLII 51859 (AB CPSDC);
    - iii. *Tsujikawa (Re)*, 2013 CanLII 34544 (AB CPSDC);
    - iv. *Jaswal v. Medical Board (Nfld.)*, [1996] N.J. No. 50, 1996 CanLII 11630 (NL SC).

## **V. SUBMISSIONS ON THE ALLEGATIONS**

8. Counsel for the Complaints Director began submissions by thanking counsel for the Investigated Member for their cooperation in reaching an agreement. The hearing concerns the prescribing of opioids and charting. The patient was a young man and the son of the complainant. The matter was originally resolved through Terms of Resolution which were acceptable to the Complaints Director. This was not acceptable to the complainant who applied for a review, and the Complaint Review Committee directed that the matter come to a hearing. The Investigated Member acknowledges that the Allegations are true and amount to unprofessional conduct. In accordance with section 70 of the HPA, the Hearing Tribunal can accept the admission of unprofessional conduct if there is sufficient evidence to support the admission. Counsel for the Complaints Director submitted that there was more than sufficient evidence to support the admission.
9. Counsel for the Investigated Member confirmed that he had agreed to the admission, and that there would be more specific comments in relation to the penalty phase.

## **VI. FINDINGS ON THE ALLEGATIONS**

10. The Hearing Tribunal deliberated on whether, on a balance of probabilities, the Investigated Member is guilty of allegations 1(a), 1(b), and 2, as set out in the Amended Notice of Hearing. The Hearing Tribunal carefully reviewed and considered the documents contained in Exhibit 1 and the submissions of both parties.
11. As set out above, the Investigated Member has admitted to these allegations and that his conduct represents unprofessional conduct under section 70(1) of the HPA.
12. The Hearing Tribunal finds that the Allegations in the Amended Notice of Hearing are factually proven and that the evidence does support the Investigated Member's admissions on a balance of probabilities. The Hearing Tribunal also finds that the Investigated Member's conduct constitutes

unprofessional conduct under s.1(1)(pp)(i) and s.1(1)(pp)(ii) of the HPA as follows:

**1(1)** *In this Act,*

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

- (i) *displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services;*
- (ii) *contravention of this Act, a code of ethics or standards of practice; and ...*

13. Allegation 1 states that the Investigated Member demonstrated a lack of knowledge or lack of skill or judgment in the provision of professional services to his patient, [REDACTED], as required under the CPSA's Standard of Practice regarding Prescribing: Drugs Associated with Substance Use Disorders or Substance-Related Harms.
14. Allegation 1(a) states that the Investigated Member failed to create an adequate patient record to support his prescribing of Hydromorphone 4 mg during the period of November 2017 to November 2018. Allegation 1(b) concerned the failure to check and record prescribing information of [REDACTED] in PIN/Netcare or equivalent source. The Hearing Tribunal reviewed the evidence provided in Exhibit 1, particularly the patient chart for [REDACTED] and the Expert Opinion of Dr. Leigh Beamish.
15. Dr. Beamish concluded that the Investigated Member failed to meet an acceptable standard of care for a general practitioner practicing in Alberta in 2018, in regard to his management of [REDACTED]. This included inappropriate prescribing of opiates and consistently inadequate documentation. Dr. Beamish cited the CPSA's Standard of Practice regarding Prescribing: Drugs Associated with Substance Use Disorders or Substance-Related Harms and opined that the Investigated Member had failed to abide by these guidelines. Dr. Beamish also referred to the *2017 Canadian Guideline for Opioids for Chronic Non-Cancer Pain* (Busse et al.) and found that the Investigated Member's prescribing to [REDACTED] was not consistent with those guidelines.
16. Given this evidence, and the fact that the Investigated Member is not denying that allegations 1(a) and 1(b) are true, the Hearing Tribunal has determined that these allegations are proven on a balance of probabilities.
17. Allegation 2 concerned the patient record. It was alleged that the Investigated member failed to create an adequate patient record for [REDACTED] on 14 occasions between 2016 and 2018, in contravention of the CPSA's Standard of Practice on Patient Record Content. The Investigated Member has admitted that this allegation is true. On the basis of the patient

records of [REDACTED], the CPSA's Standard of Practice, and the opinion of Dr. Beamish that a pattern of poor documentation was evident throughout his review, the Hearing Tribunal determined that this allegation was proven on a balance of probabilities.

18. The Hearing Tribunal took note that the admission by the Investigated Member formed part of a Joint Submission Agreement between the Complaints Director and the Investigated Member. The Hearing Tribunal is mindful that such agreements should be respected and found no reason to interfere with the admission.
19. The Hearing Tribunal then considered whether the conduct admitted to was unprofessional. The HPA, in section 1(1)(pp)(i), includes displaying a lack of knowledge or skill in the provision of professional services as being unprofessional. This deficiency has been proven. In addition, section 1(1)(pp)(ii) of the HPA includes conduct that contravenes standards of practice and as detailed above, it has been proven that the Investigated Member's conduct breached two of the CPSA's Standards of Practice. The Hearing Tribunal therefore finds that the conduct admitted to constitutes professional misconduct.
20. The parties were informed that the Hearing Tribunal accepted the Allegations as proven and agreed that the conduct constituted unprofessional conduct. The parties were invited to make submissions on sanctions. The parties presented a Joint Submission regarding sanction.

## **VII. SUBMISSIONS ON SANCTIONS**

21. Counsel for the Complaints Director reviewed the brief of law on joint submissions. The sanction proposed in the joint submission addresses both deterrence and rehabilitation. The sanction will promote both general deterrence for the profession at large, and specific deterrence for the Investigated Member. Counsel for the Complaints Director reviewed three CPSA decisions dealing with prescribing and submitted that the proposed sanction is consistent with earlier decisions. The Investigated Member participated in and cooperated with the CPSA process from the very beginning, and this is a mitigating factor.
22. Counsel for the Investigated Member reviewed his background. He entered practice in South Africa in 2010 and began family practice in Medicine Hat in 2014. The patient aged out of pediatric practice and had known depression and anxiety. Over the years these issues became more complex, and the patient had severe lower back pain. This resulted in complicated physical and mental health challenges. Between 2016 and 2018 the medical profession was grappling with how to help chronic pain patients. Best practices were evolving. The Investigated Member started to implement new practices in 2018, including extending the time for visits, and pill counts. In reflecting on these patients, the Investigated Member recognized that there was a time

when his charting had fallen below his usual standard. He enrolled in a medical record-keeping course, and a safe prescribing course.

23. The Independent Practice Review completed by the College shows that the Investigated Member had absorbed the learnings and had made practice improvements. The proposed sanction more than adequately addresses the purposes of sanctions and is in the public interest.
24. The Hearing Tribunal asked a question regarding how costs were assessed for the purpose of the agreed submission on penalty. Counsel for the Complaints Director submitted that court decisions set a guide to determining the right level of costs. In this circumstance there is a lower level of costs and a capped amount. Counsel for the Investigated Member submitted that the decision was made not to contest the hearing on the basis of costs alone.

### **VIII. DECISION AND REASONS REGARDING SANCTION**

25. The Hearing Tribunal adjourned to carefully consider the submissions of the parties and the factors that are typically considered when determining sanction in the professional regulatory area. Sanctions must be in the public interest and are designed to protect the public from unprofessional conduct by regulated members. Both deterrence and rehabilitation are relevant factors to consider in determining whether a proposed sanction is appropriate and in the public interest.
26. The Hearing Tribunal was also mindful that significant deference is to be given to the Joint Submissions. It is the view of the Tribunal that the sanctions proposed will not bring the administration of justice in the professional regulatory context into disrepute.
27. The Hearing Tribunal considered the factors set out in *Jaswal v. Newfoundland Medical Board*, (1996), 42 Admin L.R. (2d) 233, when determining an appropriate penalty. The Hearing Tribunal determined that the allegations were serious in nature. The physician was relatively early in his career but had been in independent practice since 2010. There were no previous complaints brought to the attention of the Hearing Tribunal. The Allegations involved one patient over a period of some years.
28. The Hearing Tribunal considered that there is a definite need to promote specific and general deterrence in this case. The Hearing Tribunal noted that the Investigated Member had already received considerable feedback on his practice and that he would now be able to provide a high quality of care, delivered in a professional manner. The profession at large needs to be reminded that they have a duty to practice according to the CPSA's Standards of Practice. The public needs to be reassured that the CPSA will strive to ensure the safe and proper practice of medicine.
29. There were a considerable number of mitigating factors in this case. The Investigated Member had cooperated with the College throughout, and



- agreed with the Joint Submission, thereby avoiding the need to call witnesses. He had fully admitted that the allegations were true.
30. The Hearing Tribunal noted that, at the time of the conduct in question, the issue of how best to manage complex patients with chronic pain was evolving. In particular, the advice and direction relating to opiate prescribing was not published until 2017 — both the CPSA's Standard and the Canadian Guidelines.
  31. The Investigated Member had, starting in April 2018, taken several appropriate steps to improve his management of patients receiving opiate prescriptions. Even prior to entering the Terms of Resolution in June 2020, he had already completed recordkeeping and safe opiate prescribing courses. The Terms of Resolution state that Dr. Osborne completed the Saegis Safer Opioid Prescribing course offered by the University of Toronto consisting of 3 webinars and 1 one-day workshop offered from January 2020 to March 2020. There are no details about the course and Alberta specific content. The Complaints Director accepted that this course fulfilled the second sanction: "Dr. Osborne shall, at his own expense, complete a prescribing course acceptable to the Complaints Director".
  32. The Hearing Tribunal considered the three previous cases provided by counsel for the Complaints Director. In the case of Dr. Datar, in a contested hearing, he was found guilty of inappropriate prescribing and record keeping. The conduct took place between 2009 and 2012. The physician was suspended for three months, held in abeyance, pending other conditions related to remediation and monitoring.
  33. In the case of Dr. Jeh, also in a contested hearing, he was found guilty of inappropriate prescribing of opiates and poor charting between 2002 and 2008. He was reprimanded and ordered to undertake remediation.
  34. The case of Dr. Tsujikawa was more egregious, as it involved a boundary violation. He was suspended for six months, three held in abeyance, and had to undergo a multi-disciplinary assessment and monitoring. There was a prescribing issue, but most of the penalties likely related to the boundary violation.
  35. The Hearing Tribunal is of the view that the sanctions proposed fall within the range of acceptable sanctions having regard to the factors set out in *Jaswal*, the relevant Standards of Practice, the case law provided and the Investigated Member's admitted conduct.
  36. The proposed sanctions can be summarized as a reprimand, several remedial measures (all completed), and payment of 25% of costs of the investigation and hearing to a maximum of \$2,500. The Hearing Tribunal agreed with this approach, with the emphasis being on rehabilitation of the Investigated Member.

37. The Hearing Tribunal considered the issue of costs. The Hearing Tribunal considered the various mitigating factors set out by both parties with regards to costs, including that the Investigated Member had cooperated with the College, agreed with the Joint Submission, and had not introduced witnesses to the hearing.
38. The Hearing Tribunal also considered a recent Court of Appeal decision in *Jinnah v Alberta Dental Association and College*, 2022 ABCA 336. In light of that decision, the proposed amount of costs is capped and very modest in comparison with past sanctions. The proposal on costs was agreed to by both parties in the Joint Submission.
39. The reprimand and costs proposed are appropriate in these circumstances as a consequence for the Investigated Member's unprofessional conduct. The reprimand will also serve to remind the profession that such conduct will be treated seriously by the CPSA.
40. For the above reasons, and in light of the recognized purposes of a sanction, the Hearing Tribunal accepts the sanctions proposed in the Joint Submission.

#### **IX. ORDERS**

41. The Hearing Tribunal hereby orders, pursuant to section 82 of the HPA, that:
  - a. Dr. Osborne shall receive a reprimand;
  - b. Dr. Osborne shall, at his own expense, complete a prescribing course acceptable to the Complaints Director (this requirement has already been completed);
  - c. Dr. Osborne shall, at his own expense, complete a medical records keeping course acceptable to the Complaints Director (this requirement has already been completed);
  - d. Dr. Osborne shall, at his own expense, participate in an Individual Practice Review conducted by the CPSA's Continuing Competence Department (this requirement has already been completed);
  - e. Dr. Osborne shall be responsible for 25% of the costs of the investigation and the hearing before the Hearing Tribunal to a maximum of \$2500.00.

Signed on behalf of the Hearing Tribunal by the Chair:



Dr. Robin Cox

Dated this 15<sup>th</sup> day of May, 2023.