

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. PETRUS KROG

**DECISION OF THE HEARING TRIBUNAL OF  
THE COLLEGE OF PHYSICIANS  
& SURGEONS OF ALBERTA  
AUGUST 18, 2022**

## **I. INTRODUCTION**

1. The Hearing Tribunal held a hearing into the conduct of Dr. Petrus Krog on June 15, 2022. The members of the Hearing Tribunal were:

Dr. John Pasternak of Medicine Hat as Chair;  
Dr. Kim Loeffler of Edmonton;  
Ms. Sheri Epp of Calgary (public member); and  
Ms. Anita Warnick of Calgary (public member).

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

Also in attendance at the hearing were:

Mr. Craig Boyer, legal counsel for the Complaints Director of the College of Physicians and Surgeons of Alberta (the "College");  
Dr. Petrus Krog;  
Mr. Philip Nykyforuk, legal counsel for Dr. Krog.

## **II. PRELIMINARY MATTERS**

2. 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.
3. 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**

4. The Notice of Hearing listed the following Allegation:
  1. In or about early 2019 you did exchange text messages with your patient, [Patient A], which were inappropriate and failed to maintain a proper doctor and patient relationship in accordance with the College of Physicians and Surgeons of Alberta Standard of Practice on Sexual Boundary Violations.
5. Dr. Krog admits the Allegation in the Notice of Hearing as being true and that such conduct amounts to unprofessional conduct. The hearing proceeded by way of an Agreed Exhibit Book and Joint Submission on the issue of penalty by Dr. Krog and the Complaints Director ("Joint Submission").

## **IV. EVIDENCE**

6. The following Exhibits were entered into evidence during the hearing:

- Exhibit 1:** Agreed Exhibit Book
- Tab 1:** Notice of Hearing dated October 28, 2021
  - Tab 2:** Complaint Form from [Complainant] dated March 19, 2019
  - Tab 3:** Email from [Patient A] to Dr. Caffaro dated April 4, 2019
  - Tab 4:** Letter of Response from Dr. Krog dated April 16, 2019
  - Tab 5:** Undertaking by Dr. Krog dated May 22, 2019
  - Tab 6:** Text messages between Dr. Krog and [Patient A]
  - Tab 7:** Additional Letter of Response from Dr. Krog dated September 6, 2019
  - Tab 8:** Memorandum of interview of Dr. Krog dated November 29, 2019
  - Tab 9:** Alberta Health billing information for visits by [Patient A] with Dr. Krog
  - Tab 10:** Alberta Health billing summaries regarding billings by Dr. Krog for services rendered in Alberta Health Services facilities from January 1, 2017 to September 7, 2021
  - Tab 11:** Alberta Health billings by Dr. Krog from October 1, 2020 to March 31, 2021
  - Tab 12:** Report from Comprehensive Occupational Assessment Program dated October 20, 2021
  - Tab 13:** Certificate of Participation by Dr. Krog at the University of California, Irvine - Navigating Professional Boundaries in Medicine dated November 24, 2019
  - Tab 14:** Certificate of Completion by Dr. Krog at University of Calgary Professionalism and Medical Ethics online module dated June 27, 2021
  - Tab 15:** College of Physicians and Surgeons of Alberta Standard of Practice regarding Sexual Boundary Violations
  - Tab 16:** Canadian Medical Association Code of Ethics and Professionalism – adopted December 2018
- Exhibit 2:** Admission and Joint Submission Agreement

7. Counsel for the Complaints Director also filed the following materials:
  - a. Brief of Law Regarding Joint Submissions dated May 6, 2022;

- b. Case Law:
  - i. *Gupta (Re)*, 2018 CanLII 76401 (AB CPSDC);
  - ii. *Vargas (Re)*, 2014 CanLII 54338 (BC CPS);
  - iii. *Ontario (College of Physicians and Surgeons of Ontario) v. Muhammad, N. H.*, 2013 ONCPSD 23.

## **V. SUBMISSIONS REGARDING ALLEGATION**

### ***Submissions on behalf of the Complaints Director***

- 8. Counsel for the Complaints Director began by thanking counsel for Dr. Krog for his efforts in reaching an agreement. He then summarized the contents of Exhibit 1. There was a doctor-patient relationship at the time that the text messages were sent.
- 9. The Standard of Practice regarding Sexual Boundary Violations deals with the impropriety of making sexualized comments to a patient. The Canadian Medical Association Code of Ethics and Professionalism states that a fundamental commitment of the medical profession is to consider first the well-being of the patient; always act to benefit the patient and promote the good of the patient.
- 10. Counsel for the Complaints Director stated that the Hearing Tribunal must be satisfied that there is an evidentiary basis to support an admission pursuant to section 70 of the HPA. He concluded that the evidence in Exhibit 1 is more than sufficient to support the admission.
- 11. The decisions in *Gupta*, *Vargas*, and *Ontario (College of Physicians and Surgeons of Ontario) v Muhammad* support the concept that sexualized comments are inappropriate and constitute unprofessional conduct. Text messaging is a means of communication in this particular situation.

### ***Submissions on behalf of Dr. Krog***

- 12. Counsel for Dr. Krog stated that Dr. Krog admits the Allegation in the Notice of Hearing, and that there will be further submissions at the penalty phase of the hearing.

## **VI. FINDINGS REGARDING ALLEGATION**

- 13. The Hearing Tribunal carefully reviewed and considered the evidence in Exhibit 1 and the submissions of the parties. The Hearing Tribunal finds that the Allegation in the Notice of Hearing is proven and that the evidence supports Dr. Krog's admission. The Hearing Tribunal also finds that Dr. Krog's conduct constitutes unprofessional conduct.
- 14. The Hearing Tribunal reviewed the messages that were sent by Dr. Krog to his patient and found that they were clearly of a sexual nature.

15. The Hearing Tribunal found that the proven Allegation constituted unprofessional conduct under section 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:*

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

16. The Standard of Practice on Sexual Boundary Violations states that a physician must maintain professional boundaries and must not sexualize any interaction with a patient through conduct including, but not limited to, sexualizing comments. Dr. Krog breached the Standard of Practice on Sexual Boundary Violations by sending the text messages to Patient A. Similarly, he breached the Canadian Medical Association Code of Ethics and Professionalism requirement to consider first the well-being of the patient.
17. Accordingly the Hearing Tribunal accepted Dr. Krog's admission and determined that he had engaged in unprofessional conduct.

## **VII. SUBMISSIONS REGARDING SANCTION**

### ***Submissions on behalf of the Complaints Director***

18. Counsel for the Complaints Director submitted that the chaperone condition that was required by the College has impacted Dr. Krog and his ability to practise in the hospital emergency room. Dr. Krog worked in the Milk River Medical Clinic and the Milk River Health Centre. Dr. Krog moved from Milk River to Taber. The billing information in Exhibit 1 shows that there has been a financial impact on Dr. Krog.
19. Dr. Krog has cooperated with a multi-disciplinary assessment, and there is a report from the Comprehensive Occupational Assessment Program ("COAP"). He has completed two courses in professional ethics and boundaries and received certificates.
20. Dr. Krog's conduct is clearly unprofessional, and part of deterrence is delivering a message broadly to achieve general deterrence.
21. The Joint Submission proposes a three-month suspension of which two months would be served and one month held in abeyance. The 22 days that he was out of practice in his move from Milk River to Taber will be given credit against the period of active suspension.
22. Counsel for the Complaints Director summarized three decisions that were provided to the Hearing Tribunal in *Vargas, Ontario (College of Physicians and Surgeons of Ontario) v Muhammad*, and *Gupta*.

23. *Vargas* is a decision of the College of Physicians and Surgeons of British Columbia. *Vargas* is about violation of professional boundaries by taking a patient out to dinner and making sexualized comments. There was a three-month suspension with two months held in abeyance with conditions, a multi-disciplinary assessment, education on boundaries and professionalism, and a practice mentor with regular reporting.
24. *Muhammad* is a decision of the Discipline Committee of the College of Physicians and Surgeons of Ontario. *Muhammad* involves inappropriate comments, asking for pictures of a patient in a bikini, applying cream and hugging and kissing. There was a two-month suspension, an individualized education plan, and funding for the patient counselling program plus payment of costs.
25. *Gupta* is an Alberta decision. Dr. Gupta moved to Medicine Hat and was new to the community. He was texting with someone who he believed was 15 years of age and invited her to a private meeting at a hotel. It was actually an individual who was with a private group called "Creep Catchers". The Medicine Hat police did not prosecute. The sanction was a 12-month suspension, a continuing care program, a chaperone requirement and costs. This is a more severe set of facts than the one before the Hearing Tribunal.
26. Counsel for the Complaints Director submitted that the cases show that a suspension is an appropriate sanction. The three-month suspension that is proposed for Dr. Krog is consistent with the cases and the principles relating to deterrence. The proposed sanction also addresses rehabilitation through COAP and the educational components. There is also a requirement to pay costs.
27. The proposed sanction is one that meets the elements of what a sanction is to achieve: deterrence and rehabilitation. It is a sanction that demonstrates to the public that the conduct is unacceptable and there will be serious consequences. The decision will be available on the College website for a number of years. The proposed sanction meets the public interest test established in *R. v. Anthony-Cook* 2016 SCC 43 ("*Anthony-Cook*") and set out in the Brief of Law Regarding Joint Submissions. A joint submission should only be rejected if it is manifestly unjust and it would be inappropriate to accept the submission.

### ***Submissions on behalf of Dr. Krog***

28. Counsel for Dr. Krog submitted that the Brief of Law Regarding Joint Submissions is very helpful. In *Anthony-Cook*, the Supreme Court of Canada made it clear that the public interest test should be applied. Subsequent case law shows that this test should be applied to disciplinary panels, and Hearing Tribunals have followed this direction. The important principles are that joint submissions are to be encouraged and that they are in the public interest. They help avoid lengthy discipline hearings and increased costs which are

borne by members of the profession. Certainty is required in order to induce a member to waive their right to a contested hearing.

29. Dr. Krog fully accepts that his actions were inappropriate and constitute unprofessional conduct. He has made an unqualified admission. This has avoided the need for witness testimony. The role of Dr. Krog in acknowledging what has occurred is a factor to be considered pursuant to *Jaswal v. Medical Board (Nfld.)*, 1996 CanLII 11630 (NL SC) ("*Jaswal*").
30. Shortly after being informed of the complaint, Dr. Krog voluntarily entered into an undertaking with the College, and this undertaking remains in effect. The undertaking has resulted in the imposition of a practice permit condition.
31. Dr. Krog graduated from medical school in South Africa in 2009. He came to Canada in 2015, and completed a three-month supervised practice readiness assessment in Hanna. Dr. Krog began his practice in Milk River in August 2015. He did not have any family, friends or acquaintances in Milk River when he began his practice. He was the only full-time physician practising in Milk River from October 2018 until March 2020. Dr. Krog worked at the Milk River Health Clinic and the local hospital, the Milk River Health Centre. He had some responsibility for the long-term care patients who resided in the Milk River Health Centre, and he made weekly visits to the seniors lodge.
32. Dr. Krog voluntarily attended for a COAP assessment on September 30 and October 1, 2021. The assessors noted that he took responsibility for his actions, was willing to accept the consequences, and knew that his actions were inappropriate. He was found fit to practise medicine.
33. Dr. Krog undertook a number of remediation steps of his own volition. He completed a course entitled Navigating Professional Boundaries in Medicine. He also completed online modules relating to professionalism and medical ethics. These courses increased his awareness regarding communications and patient interactions. He has also been participating in regular counselling sessions with a registered psychologist. These steps demonstrate Dr. Krog's commitment to self-improvement and are appropriately considered as a mitigating factor pursuant to *Jaswal*.
34. Dr. Krog made a difficult decision to leave Milk River in December 2020 in order to create a safe practice environment, and a better work-life balance.
35. The complaint was received by the College on March 19, 2019. Dr. Krog has not been the subject of any additional complaints. This demonstrates the effectiveness of the steps he has taken for improvement and his commitment to change. This is appropriately considered as a mitigating factor pursuant to *Jaswal*.
36. Dr. Krog's undertaking to the College and practice permit conditions have been in effect for more than three years. There is a requirement to have a chaperone present for sensitive areas exams with female patients. He has

demonstrated compliance with the requirements, and there have been no breaches. He now practises at a clinic in Taber with another physician and many other staff members. As a general rule, if there is a chaperone condition present, it takes extremely unusual circumstances for Alberta Health Services to allow that physician to work at that facility. The inability to work at an AHS facility in Taber has resulted in a significant decline in Dr. Krog's billings and income. Financial consequences that have been suffered by the member are appropriately considered as a relevant factor pursuant to *Jaswal*.

37. The proposed penalty imposes significant consequences on Dr. Krog. It promotes specific and general deterrence, protects the public, and maintains the public's confidence in the integrity of the profession. The period of active suspension that remains to be served is one month and eight days. Dr. Krog requests that his period of active suspension be served from July 1, 2022 to August 8, 2022. He has made arrangements for patient care at his clinic.
38. Counsel for Dr. Krog submitted that an allocation of two-thirds of the costs is reasonable. Dr. Krog has cooperated and admitted the Allegation. He has already suffered significant financial consequences, and he will have a complete loss of income during his period of active suspension.

#### ***Submissions on behalf of the Complaints Director***

39. The proposed start date for the suspension is acceptable to the Complaints Director. There would be two weeks for Dr. Krog to plan for the suspension.

#### ***Questions from the Hearing Tribunal***

40. The first question deals with the proposed penalty in the Joint Submission, and the provision that the Complaints Director will not oppose a request by Dr. Krog that the loss of AHS facility-based practice in Taber be considered as having fulfilled the remaining period of active suspension. Does that mean that Dr. Krog no longer has an active suspension?
41. Counsel for the Complaints Director submitted that the Joint Submission was completed when this was still a point of consideration, but this is no longer being pursued by Dr. Krog.
42. Counsel for Dr. Krog confirmed that this was not being requested, and that this provision in the proposed penalty may be removed.
43. The second question from the Hearing Tribunal dealt with the requirement in the proposed sanction relating to removal of the condition to have a chaperone present for sensitive exams. Is this a current requirement for all physicians?
44. Counsel for the Complaints Director submitted that this was a practice condition that arose out of the undertaking. It will continue until the



Assistant Registrar responsible for the Physician Health Monitoring Program is satisfied that there is no longer a need for the condition.

45. Counsel for Dr. Krog submitted that it would still be important to have the undertaking extinguished and the practice condition removed even if it is a requirement under the Standards of Practice because these factors impact Dr. Krog's ability to work at AHS facilities.
46. The third question relates to the timing for completion of the psychological counselling. Dr. Krog commenced therapy on November of 2021. Would his course of therapy be completed in November of 2022?
47. Counsel for the Complaints Director submitted that the Physician Health Monitoring Program is in the best position to have that ongoing dialogue with the treating therapist to determine whether the goals of therapy have been reached.
48. Counsel for Dr. Krog submitted that there should be as much clarity as possible around the timing of the removal of the undertaking and practice permit condition to help avoid future misunderstandings. Two things need to happen. First, Dr. Krog must complete a period of at least one year of psychological counselling. His first session began on November 20, 2021 and would continue until November 20, 2022. At that time, the Assistant Registrar responsible for the Physician Health Monitoring Program would exercise discretion to determine whether the condition is still required.
49. Counsel for the Complaints Director submitted that there is a mechanism in place if there is disagreement between the College and Dr. Krog regarding the removal of the practice permit condition, and it may be brought back to the Hearing Tribunal.

### **VIII. FINDINGS REGARDING SANCTION**

50. The Hearing Tribunal adjourned to consider the submissions from the parties and determined that the proposed sanction order was appropriate, and balances remediation and discipline. The Hearing Tribunal is satisfied that the proposed sanctions serve the dual goals of protecting the public interest and the remediation of Dr. Krog. The Hearing Tribunal was also mindful that much deference should be given to joint submissions. The Hearing Tribunal finds that the agreed sanctions address the factors outlined in *Jaswal* and are not unfit or unjust.
51. Dr. Krog made an unqualified admission and acknowledged what had occurred. He took a number of steps related to self-improvement including the completion of courses related to professional boundaries and ethics. There have been no further complaints to the College. Dr. Krog has suffered a significant loss of income.

52. The Hearing Tribunal has decided that suspension, practice conditions and responsibility for two-thirds of the costs are appropriate for the clear and admitted unprofessional conduct. Suspension is a significant penalty, but balanced by the significant opportunity given Dr. Krog to demonstrate rehabilitation and remediation of his conduct.
53. The proposed Order was amended to state that the suspension will start on July 1, 2022, resulting in the period of active suspension being completed on August 8, 2022.

**IX. ORDERS**

54. The Hearing Tribunal hereby orders pursuant to section 82 of the HPA:
  - a. That Dr. Krog's practice permit be suspended for a period of three months of which two months shall be served by Dr. Krog and one month held in abeyance pending fulfillment of the remaining orders of the Hearing Tribunal commencing on July 1, 2022;
  - b. That Dr. Krog be given credit against the period of active suspension for the time out of practice for 22 days in December 2020 and January 2021;
  - c. Dr. Krog's practice permit shall continue to be subject to a practice condition on the same terms as outlined in the Undertaking and this condition shall remain in place until the completion of the period of treatment outlined in the report from COAP and the Assistant Registrar responsible for the Physician Health Program is satisfied that the chaperone condition is no longer required;
  - d. If there is disagreement between the CPSA and Dr. Krog on amendment or removal of the practice permit condition, the Hearing Tribunal shall retain authority to make that determination;
  - e. That Dr. Krog shall be responsible for two-thirds of the costs of the investigation and hearing, payable on terms acceptable to the Complaints Director. The Complaints Director is agreeable to the payment of costs by 16 equal monthly installments by post-dated cheques or pre-authorized payment beginning one month after the date the CPSA notifies Dr. Krog in writing of the amount of costs to be paid.

Signed on behalf of the Hearing Tribunal by the Chair:



Dr. John Pasternak

Dated this 18<sup>th</sup> day of August, 2022.