

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. BENJAMIN CAVILLA

**DECISION OF THE HEARING TRIBUNAL OF
THE COLLEGE OF PHYSICIANS
& SURGEONS OF ALBERTA
January 27, 2025**

I. INTRODUCTION

1. The Hearing Tribunal held a hearing into the conduct of Dr. Benjamin Cavilla on November 28, 2023. The members of the Hearing Tribunal were:

Ms. Naz Mellick as Chair (public member);
 Dr. John Pasternak;
 Dr. Thilinie Rajapakse;
 Mr. Darwin Durnie (public member).

2. Appearances:

Mr. Craig Boyer, legal counsel for the Complaints Director;
 Dr. Benjamin Cavilla;
 Mr. Bruce Mellett, legal counsel for Dr. Cavilla;
 Mr. Jason Kully acted as independent legal counsel for the Hearing Tribunal.

II. PRELIMINARY MATTERS

3. Neither party objected to the composition of the Tribunal or its jurisdiction to proceed with the hearing. There were no matters of a preliminary nature raised by either party.
4. Pursuant to section 78 of the *Health Professions Act* ("HPA"), the hearing was open to the public. There was no application to close the hearing.

III. CHARGES

5. The Amended Notice of Hearing listed the following allegations:
 1. That on or about March 18, 2021, you did consume an edible cannabis product that rendered you unfit for a planned virtual meeting with your patient, [REDACTED] scheduled for 3 p.m. on that date.
 2. That on or about April 9, 2021, you did fail to maintain a proper physician and patient boundary with your patient, [REDACTED] particulars of which included one or more of the following;
 - a. Renting a motel room for a meeting with your patient for a non-medical purpose,
 - b. Ingesting or inhaling cocaine brought by your patient to the motel and becoming intoxicated in the presence of your patient,
 3. That you did fail to report to the College of Physicians and Surgeons of Alberta that you had consumed an edible cannabis product on

March 18, 2021 and cocaine on April 9, 2021 contrary to the Standard of Practice regarding the Duty to Report Self.

IV. EVIDENCE

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

Exhibit 1: Agreed Exhibit Book, containing Tabs 1 to 15:

Tab 1: Notice of Hearing dated June 14, 2022

Tab 2: Amended Notice of Hearing dated November 16, 2023

Tab 3: Complaint Form dated March 31, 2021

Tab 4: Undertaking to withdraw dated May 21, 2021

Tab 5: Patient Chart for ■■■

Tab 6: Letter from B. Mellett to Dr. H■■■ dated July 9, 2021 requesting return to practice

Tab 7: Letter from Dr. H■■■ to B. Mellett dated July 12, 2021 regarding return to practice

Tab 8: Undertaking to practice with a chaperone dated July 15, 2021

Tab 9: Letter from Physician Health Monitoring Program (PHMP) dated April 28, 2021 with a copy of the Continuing Care Agreement dated February 3, 2017

Tab 10: Econo Lodge Motel Village receipt dated April 10, 2021

Tab 11: Extract of Transcript of Interview of ■■■ on November 5, 2021

Tab 12: Alberta Health Billings by Dr. Cavilla for visits by ■■■

Tab 13: CPSA Standard of Practice on Boundary Violations - Personal

Tab 14: CPSA Standard of Practice on Duty to Report Self

Tab 15: CPSA Profile for Dr. Cavilla on November 8, that he is currently withdrawn from practice

Exhibit 2: Admission and Joint Submission Agreement, dated November 17, 2023

Exhibit 3: Patient Impact Statement

V. SUBMISSIONS

Submissions on behalf of the Complaints Director

7. Mr. Boyer began by providing a brief overview of the allegations set out in the Notice of Hearing and the evidence in Exhibit 1. Mr. Boyer reviewed and summarized the materials and highlighted the significant sections of Exhibits as they pertained to Dr. Cavilla's admissions.

8. After summarizing the numerous documents in Exhibit 1, Mr. Boyer submitted that there was sufficient evidence to prove the allegations in the Notice of Hearing. Further, he submitted that Dr. Cavilla admitted that the allegations set out in the Notice of Hearing are true and that his conduct amounts to unprofessional conduct.

Submissions on behalf of Dr. Cavilla

9. Mr. Mellett confirmed that the evidence substantiated the allegations and Dr. Cavilla's admissions regarding this matter.

Questions from the Hearing Tribunal

10. The Tribunal sought an explanation from the parties about the significant difference between the original Notice of Hearing (dated June 14, 2022) and the Amended Notice of Hearing (dated November 16, 2023).
11. The parties requested the hearing proceed *in camera* for discussion pertaining to the Tribunal's question. Mr. Boyer advised that the differences in question involved issues of prosecutorial discretion, and as such were not an appropriate matter to review as part of the open hearing process.

VI. DECISION AND REASONS OF THE HEARING TRIBUNAL

12. The Tribunal carefully reviewed and considered the evidence and the parties' submissions. The Tribunal found the charges in the Amended Notice of Hearing to be factually proven on a balance of probabilities. The Tribunal also found Dr. Cavilla's conduct constitutes unprofessional conduct pursuant to section 1(1)(pp) of the HPA. The reasons are set out below.

Background

13. Dr. Cavilla practices family medicine in Calgary. The Tribunal reviewed Dr. Cavilla's Alberta Health billing records in Exhibit 1, Tab 12 and the extensive billings related to the medical services concerning ■■■. Based on these records, a clear physician-patient relationship existed between Dr. Cavilla and ■■■ when the incidents pertaining to the allegations took place. A summary of the medical services Dr. Cavilla provided to ■■■ between June 2019 and March 2021 include but are not limited to the following: psychiatric evaluations and assessments; psychiatric treatment including medical psychotherapy and prescribing medications; general psychiatric counselling; patient education; and group therapy.
14. ■■■'s patient chart from 2019 to March 2021 shows ■■■ had complex mental health issues, problems related to psychosocial circumstances, attention

deficit hyperactivity disorder and severe stimulant use disorder. The Tribunal notes in Dr. Cavilla's chart summaries of ■■■ that he indicates various diagnoses including addiction, anxiety and acute reaction to stress. He also notes addiction involving cocaine and medical conditions secondary to cocaine use (Exhibit 1, Tab 5). Based on the above, it is clear ■■■ had challenging and severe mental health and addiction issues, and as such was a vulnerable individual.

15. The record shows that on March 3, 2021, ■■■'s psychologist submitted a complaint to the CPSA alleging unprofessional conduct by Dr. Cavilla toward ■■■. Following the complaint, on May 21, 2021 Dr. Cavilla signed an undertaking to withdraw from practice. At the request of his legal counsel, the CPSA reinstated Dr. Cavilla to clinical practice pending the completion of the investigation into the complaint and subject to the conditions outlined in a further undertaking. Dr. Cavilla signed the second undertaking on July 15, 2021, wherein he agreed, in addition to other terms, to the following:
 - The presence of a chaperone continuously for all of Dr Cavilla's attendances with female patients;
 - The maintenance of a daily list of all female patients attended and the reason for the attendance;
 - A 3-month period of biological monitoring; and
 - The conditions were to remain in place until the complaint was adjudicated or otherwise resolved.

Allegations

16. In Dr. Cavilla's Admission and Joint Submission Agreement, he agreed that all of the allegations in the Amended Notice of Hearing are true. Dr. Cavilla also agreed that the allegations constituted unprofessional conduct as defined in the HPA.
17. The Tribunal found that the evidence supported these admissions.
18. Regarding Allegation 1, the Tribunal reviewed and relied upon the evidence in Exhibit 1, Tab 3, specifically the screenshots of text messages that were exchanged between Dr. Cavilla and ■■■ on March 18, 2021.
19. The records indicate that ■■■ was expecting to meet Dr. Cavilla for a Zoom call appointment on March 18, 2021. He called his patient earlier than scheduled and appeared unclothed for the call. The call ended before Dr. Cavilla provided medical advice to ■■■. In a series of subsequent text messages, Dr. Cavilla wrote, "Sorry. No idea why you wann a see that. Chatltr" [SIC] and "I used a bit today. Between you and me. I'm sorry". On the same day, Dr. Cavilla appears to offer an explanation for his

behavior and an apology in the following text message to ■■■: "Yeah Just horny as fucj Please Please Please don't say anything to anybody" [SIC].

20. Dr. Cavilla's appearance, his inappropriate disclosures, and the nature of the disclosures to his patient demonstrate Dr. Cavilla's unfitness for his virtual meeting with ■■■. Dr. Cavilla also acknowledged that the unfitness was caused by consumption of an edible cannabis product.
21. The Tribunal is satisfied Allegation 1 is proven on a balance of probabilities.
22. Allegation 2 relates to a meeting with ■■■ in a motel room on April 9, 2021 at which Dr. Cavilla inhaled or ingested cocaine and became intoxicated in the presence of ■■■.
23. The record shows the CPSA conducted an interview with ■■■ as part of its investigation into the complaint. During the interview ■■■ confirmed that on April 9, 2021 Dr. Cavilla contacted ■■■ early in the morning. Later in the day they met and proceeded to the Econo Lodge Motel Village ("the Motel") in Calgary where Dr. Cavilla ingested cocaine.
24. Further, at Exhibit 1, Tab 10, the Motel records provide reservation information showing Dr. Cavilla's name with an additional adult; a paid invoice accurately disclosing Dr. Cavilla's personal information; and the Motel arrival and departure dates of April 9, 2021 and April 10, 2021 respectively.
25. Given the above and Dr. Cavilla's admissions, the Tribunal finds, on a balance of probabilities, that Dr. Cavilla rented a motel room to meet with ■■■ for a non-medical purpose and then ingested cocaine and became intoxicated in the presence of ■■■.
26. Allegation 3 deals with Dr. Cavilla's failure to report to the CPSA that he consumed edible cannabis on March 18, 2021 and cocaine on April 9, 2021.
27. The Tribunal relies on Dr. Cavilla's admission regarding Allegation 3, and finds the allegation proven on a balance of probabilities.
28. In light of the above evidence and Dr. Cavilla's admission as set out in Exhibit 2, the Tribunal has determined the allegations in the Amended Notice of Hearing are proven on a balance of probabilities.
29. To determine whether Dr Cavilla's conduct is unprofessional, the Tribunal considered the meaning of unprofessional conduct under the HPA.
30. Sections 1(1)(pp)(i)(ii) and (xii) of the HPA provide as follows:

1(1) In this Act,

(pp) “Unprofessional conduct” means one or more of the following, whether or not it is disgraceful or dishonorable:

- (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;
- (xii) Conduct that harms the integrity of the profession.

31. Allegation 1 refers to Dr. Cavilla’s failure to be competent and fit to provide medical services to his patient. Dr. Cavilla was treating his patient for mental health issues including addiction. Prior to the scheduled appointment with ■■■, he consumed edible cannabis which rendered him unfit to provide medical services.
32. The Tribunal finds Dr. Cavilla’s conduct fell far short of what is expected from a physician. As a regulated professional, Dr. Cavilla is expected to show up for appointments sober, properly attired, and focused on the patient’s medical issues. Communications should be carried out in a respectful manner and relate to the patient’s medical issues.
33. Instead, Dr. Cavilla appeared on a Zoom call inappropriately attired and intoxicated. He later admitted in a text message to ■■■ that he “used a bit”. Dr. Cavilla did not provide medical services to ■■■ that day but continued to communicate with his patient through several text messages to explain his behavior, apologize, seek reassurances, and further disclose personal and inappropriate information without regard for his patient’s medical needs, boundaries, privacy, or time.
34. Accordingly, the Tribunal found Dr. Cavilla clearly demonstrated a lack of judgment in the provision of professional services and engaged in conduct that harms the integrity of the profession that amounted to unprofessional conduct.
35. Allegation 2 engages the CPSA Standard of Practice on Personal Boundaries. Based on the evidence, the Tribunal found Dr. Cavilla contravened Standards 2 and 3 which provide as follows:
 2. A regulated member **must** consider and minimize any potential conflict of interest or risk of coercion when engaging with the patient in a non-clinical context (i.e., in a personal, social, financial or business relationship).
 3. A regulated member **must not**:
 - a. Enter into a close personal relationship with the patient...

- b. Socialize or communicate with a patient for the purpose of pursuing a close personal relationship.
36. The evidence clearly demonstrates that Dr. Cavilla and ■ had an ongoing patient-physician relationship when the conduct referred to in the allegations occurred. The evidence and the admissions also demonstrate that Dr. Cavilla's interactions with ■ were highly personal. The interactions included a motel stay together during which time Dr. Cavilla consumed cocaine, and the text message exchange on March 18, 2021 and March 19, 2021 wherein Dr. Cavilla disclosed inappropriate personal information and sought reassurances from ■.
37. Additionally, Dr. Cavilla, as ■'s treating physician for her substance abuse disorder, had unequivocal knowledge of ■'s struggles with cocaine addiction. Given that he also has a cocaine addiction, he had a clear duty to act in accordance with his patient's best interests by refraining from any personalized contact. Dr. Cavilla's actions were a conflict of interest in the context of personalizing his interactions with ■; he failed to resolve this very real and significant conflict of interest which had the dangerous and disruptive potential of aggravating ■'s substance disorder and causing her to relapse. Dr. Cavilla clearly failed to act in a manner consistent with the best interests of his patient and, accordingly, breached the Standard of Practice on Personal Boundary violations.
38. Dr. Cavilla's conduct also harmed the integrity of the profession. Such conduct decreases the public's trust in the profession. Dr. Cavilla's conduct demonstrated that he allowed his professional judgment to be impaired and compromised by his self-interest. The public should be entitled to expect that physicians will not allow their own interests to take precedence over their professional obligations and judgment.
39. Regarding Allegation 3, Dr. Cavilla failed to report his consumption of cocaine and cannabis to the CPSA. This failure contravened the CPSA Standards of Practice, Duty to Report, which states, "It is the responsibility of every member of the profession to notify the CPSA of incidents or circumstances that may impact their ability to provide safe care".
40. The evidence shows Dr. Cavilla consumed cocaine and edible cannabis. His cannabis consumption affected his ability to provide medical services to ■ on March 18, 2021, and his cocaine consumption with his patient contravened his professional obligations as discussed above.
41. The evidence also shows Dr. Cavilla violated the February 3, 2017 Agreement with the College's Physician Health Monitoring Program to which he was still subject at the time. The Agreement stipulated Dr. Cavilla "abstain from alcohol benzodiazepines and all other mood-altering substances, and illicit drugs", and to promptly notify the Assistant Registrar of any changes to his health status. (Exhibit 1, Tab 9). The

monitoring agreement was in effect for a minimum of 5 years from November 21, 2016.

42. Based on the above, Dr. Cavilla had a duty to report his March and April 2021 drug use, which he admitted he did not. The evidence clearly demonstrated Dr. Cavilla's drug consumption affected his ability to provide safe care to ■■■, therefore the Tribunal found this conduct violated Standards 1b, and 2 of the Duty to Report Standard of Practice which provide as follows:
 1. A regulated member **must** notify the Registrar, or delegate of the CPSA of the following personal circumstances as soon as reasonably possible once they become aware thereafter:
 - b. Presently has a physical cognitive mental or emotional condition that negatively impacts or is likely to negatively impact the regulated members work.
 2. A regulated member who breaches practice restrictions, limitations or conditions imposed by CPSA or any other authority **must** notify CPSA.
43. The wording of the Standard makes clear that the provisions contained therein are mandatory requirements. Dr. Cavilla had an obligation to strictly comply, and his failure to comply was amply demonstrated by the evidence. Dr. Cavilla's drug consumption and his attendant conduct in relation to his patient was unacceptable and violated professional norms of safe practice. The Standards of Practice directed at reporting are designed and intended to protect the public interest in the safe and effective practice of medicine. Dr. Cavilla's failure to abide by the standards was contrary to the public interest and constitutes unprofessional conduct.
44. In addition to breaching the College's standards of practice, Dr. Cavilla's conduct harmed the integrity of the profession by damaging the public's expectations and perception of physicians.
45. Patients are necessarily vulnerable during physician-patient interactions. In the present matter, ■■■ was diagnosed with an array of mental health issues that included substance abuse involving cocaine. She sought medical care from Dr. Cavilla for precisely these issues and rightfully expected Dr. Cavilla to conduct himself in a manner consistent with the HPA and the CPSA's Standards of Practice and Code of Ethics.
46. As ■■■'s physician, Dr. Cavilla was obligated to assess and address his patient's complex medical issues and to provide safe care, not to pursue a private agenda. He instead used his position of privilege and trust to engage in self-seeking behavior. Such self-seeking behavior on the part of one physician not only damages the patients exposed to this type of conduct, but it also damages patient trust in the entire system. ■■■ spoke directly to this personal damage in her patient impact statement where

she "...expresses the profound impact of Dr. Cavilla's actions on [her] well-being". (Exhibit 3)

47. Further in her impact statement at Exhibit 3, ■ describes the following:

"[Dr Cavilla's] actions have breached my trust and inflicted mental and physical harm but also disrupted my personal recovery journey. The lack of responsibility and ownership on his part has perpetuated a damaging narrative, instilling fear and eroding my trust in those in positions of power. The consequences extend beyond the immediate harm, triggering setbacks in my recovery and threatening the potential for relapse. It is my hope that the CPSA recognized the gravity of these consequences and takes appropriate measures for accountability."

48. The Tribunal found that Dr. Cavilla violated his patient's dignity and exploited her vulnerability for his own personal ends. ■ directly and personally experienced Dr. Cavilla's blatant collapse of his professional and ethical obligations when he aided his patient in harming herself further and facilitated her relapse rather than treating and helping with recovery, as Mr. Boyer aptly stated in his submissions.
49. As outlined above, the evidence clearly shows Dr. Cavilla would not or could not meet standards of conduct to which he agreed to be bound. The CPSA relies on its members to uphold the integrity of the profession as a fundamental component of professional conduct. Dr. Cavilla's failure to do so undermines the public's confidence in the CPSA's ability to govern its members and carry out its public protection mandate. Thus, Dr. Cavilla's conduct harmed the integrity of the profession.
50. For these reasons, Dr. Cavilla's admitted conduct constitutes unprofessional conduct. The Tribunal found the conduct to be very serious for the reasons set out above.

VII. SUBMISSIONS ON SANCTIONS

Submissions on behalf of the Complaints Director

51. Mr. Boyer began by reading ■'s impact statement regarding Dr. Cavilla's conduct. This statement was entered into evidence as Exhibit 3 without objection from Mr. Mellett.
52. Mr. Boyer referred to the Admission and Joint Submission Agreement which provided that Dr. Cavilla and the Complaints Director agreed to make the following joint submission on penalty and asked the Tribunal to order the following:
- a. Dr. Cavilla shall have his practice permit suspended for a period of 6 months, of which two months shall be considered as served already

given the period of time that Dr. Cavilla was out of practice for May 21 to July 16, 2021. Dr Cavilla shall also receive credit against the suspension to be served for the time he remains out of practice since October 6, 2023;

- b. Dr Cavilla shall undergo, at his cost, a multi-disciplinary assessment such as is offered by the Comprehensive Occupational Assessment Program, to determine his current fitness to practice. If a return to practice is recommended, be it with or without conditions, and the Complaints Director shall be provided with a full copy of the report resulting from that assessment;
 - c. If and when Dr. Cavilla is found fit to return to practice, in addition to any conditions recommended by the multidisciplinary assessment team, Dr. Cavilla shall continue to have the practice condition of having, at his cost, a CPSA approved chaperone present for all attendances, both in-person or virtual, with female patients. Dr. Cavilla shall maintain a daily log of all female patients attended, the reason for the attendance and the name of the chaperone who was present. The chaperone requirement does not apply to group therapy sessions and the daily log shall be promptly produced by the CPSA upon request;
 - d. The chaperone condition may be removed by the Registrar when the Registrar or his delegate is satisfied that the chaperone condition is no longer needed to ensure patient safety;
 - e. Dr. Cavilla shall participate as at his own cost in the CPSA's Physician Health Monitoring Program, including random biological monitoring as determined by the Assistant Registrar responsible for the physician Health Monitoring Program for a minimum of 5 years; and
 - f. Dr. Cavilla shall be responsible for one-half of the cost of the investigation and the hearing before the Hearing Tribunal payable on terms acceptable to Dr. Cavilla and the CPSA.
53. Mr. Boyer then referred to the Complaints Director's Brief of Law on Joint Submission on Sanctions and reviewed the principles in *R. v. Anthony-Cook* to which the Tribunal had to apply.
54. Mr. Boyer submitted that the applicable *Jaswal* factors pertaining to this matter included the impact on the patient, the nature of the transgression and the number of times the transgression occurred.
55. Regarding the range of sanctions in similar cases, Mr. Boyer summarized four prior CPSA discipline decisions that offered general guidance to the Tribunal for evaluating the proposed sanction. Mr. Boyer submitted:

- a. In the *Dr. McAlpine* decision, the physician had a prior history of substance use disorder and used his patient's triplicate prescriptions to access and use those drugs. The Tribunal ordered a COAP assessment and a 12-month suspension, but credited Dr. Alpine with time served while he was out of practice to deal with his disorder which was relevant to his unprofessional conduct.
 - b. In the *Dr. Idahosa* decision, the physician forged prescriptions in the names of other physicians to obtain drugs for his own use. The Tribunal ordered a six-month suspension, a multi-disciplinary assessment, and full costs.
 - c. In the *Dr. McKennitt* matter, the physician violated the Standards of Practice related to Boundaries, breached his CPSA agreement involving prescription drugs, and lied to an investigator. As a result, the Tribunal ordered full costs and a 24-month suspension with credit for the time he was out of practice and conditions on his practice permit once reinstated.
 - d. In the *Dr. Lohlun* matter, while the physician was engaged in a treatment and assessment program for his drug/substance abuse, he failed to report his ongoing relationship with a patient. The Tribunal ordered a suspension of 9 months and the payment of costs.
56. Regarding the chaperone condition in the proposed sanction, Mr. Boyer advised that it is based on conditions already in place as outlined in the Undertaking of July 15, 2021 (Exhibit 1, Tab 8). Further, the specifics of the chaperone condition reflect a desire to minimize unnecessary impact on the practice and the administrative obligations of a physician and the CPSA in order to meet relevant concerns. Mr. Boyer added that there is a robust mechanism to look into the current situation and decide if something more is needed.
57. Mr. Boyer submitted that the proposed sanctions balanced deterrence and rehabilitation, while supporting a safe return to practice.

Submissions on behalf of Dr. Cavilla

58. Mr. Mellett concurred with the Complaints Director's submissions regarding the proposed sanction. He submitted that the sanction strikes a balance between the objectives of remediation, rehabilitation and deterrence.
59. Mr. Mellett stated there are a number of mitigating factors to consider when assessing the Joint Submission on Sanction. Dr. Cavilla acknowledged his unprofessional conduct was serious and warranted a meaningful sanction. His admission and agreement on sanction were

intended to minimize stress, time and cost of a full hearing, to benefit potential witnesses and to respect the public interest.

60. Mr. Mellett submitted the proposed suspension recognizes the nature of the conduct but also accounts for the relatively confined period over which Dr. Cavilla's conduct occurred. Mr. Mellett indicated that Dr. Cavilla's health related issues affected his unprofessional conduct and he maintains his involvement in the CPSA's Physician Monitoring Program. Furthermore, when the complaint arose, Dr. Cavilla cooperated with the CPSA as he withdrew from practice and agreed to conditions placed on his license during the investigation.
61. Mr. Mellett submitted the provisions in the Admission and Joint Sanction Agreement that require Dr. Cavilla to undergo a multi-disciplinary assessment before he returns to practice, and to participate in the Physician Health Monitoring Program for 5 years upon his return to practice, address public interest concerns. He added that Dr. Cavilla was currently not practicing and was uncertain about when he will return.
62. Mr. Mellett submitted that while some of the cases referenced by the Complaints Director are distinguishable from the matter before the Tribunal, the proposed sanction generally falls within the range with the conduct at issue in previous orders of hearing tribunals.
63. After concluding his submissions on sanction, Mr. Mellett proceeded to make further submissions regarding how the Tribunal's ultimate reasons and order may be drafted and communicated.
64. On behalf of Dr. Cavilla Mr. Mellett asked the Tribunal, in its written decision, to consider not stating the specific drugs referred to in the Amended Notice of Hearing. On Dr. Cavilla's behalf, Mr. Mellett suggested the following, more generic phrases be used: "addictive substance"; "a non-prescribed substance"; or, "a non-prescribed drug". Mr. Mellett submitted that these phrases would be less identifying and stigmatizing.
65. In response, Mr. Boyer acknowledged that individuals who struggle with substance use disorder may face stigmatization. He agreed the Tribunal could exercise its discretion to change the terms but the written decision should refer to Dr. Cavilla's disorder as involving an illicit drug. As possible alternatives, he offered "non-prescribed addictive substance" or "illicit substance". Mr. Mellett stated that "illicit drugs" was the phrase used in the past in the Physician Monitoring Agreement between Dr. Cavilla and the College.

VIII. DECISION AND REASONS OF THE HEARING TRIBUNAL ON SANCTIONS

66. The Tribunal is aware that significant deference is owed to joint submissions on sanctions and that it should not reject the agreed sanction unless the sanction is demonstrably unfit and brings the administration of justice into disrepute.
67. The Tribunal carefully considered the parties' submissions and reviewed the evidence and the case law. It found the sanctions were reasonable and appropriate in the circumstances of the case and in the context of the *Jaswal* factors. The proposed sanction serves as an appropriate deterrent to Dr. Cavilla and to the profession at large. The sanction protects the public while providing an appropriate pathway for Dr. Cavilla to return to practice.

Suspension

68. The Tribunal reviewed the previous decisions described above which had some similarities to that of Dr. Cavilla. While it considered the unique facts of the matter before it to assess the jointly submitted sanctions, the Tribunal found that the prior CPSA decisions provided general guidance regarding the penalty and found that a suspension was appropriate.
69. The Tribunal found the degree of Dr. Cavilla's boundary violations, his lack of fitness, and his failure to report his drug use represents very serious unprofessional conduct. It also considered ■■■'s statement and the impact of Dr. Cavilla's conduct on her.
70. It is clear from the Alberta Health billing records (Exhibit 1, Tab 12) that Dr. Cavilla had a well-established physician-patient relationship with ■■■. ■■■ was struggling with several mental health challenges including severe substance abuse involving cocaine. ■■■ sought medical care for these issues from Dr. Cavilla. Dr. Cavilla used the proximity of this physician-patient relationship in an opportunistic manner to carry out his offending conduct. According to ■■■, Dr. Cavilla's actions violated her trust "and inflicted mental and physical harm but also disrupted my personal recovery journey. The lack of responsibility and ownership on his part has perpetuated a damaging narrative instilling fear and eroding my trust in those in positions of power. The consequences extend beyond the immediate harm, triggering setbacks in my recovery and threatening the potential for relapse". (Exhibit 3)
71. Dr. Cavilla abused his privilege as a physician by engaging in self-serving conduct. Dr. Cavilla failed to consider the well-being of his patient, breached her trust, and caused significant harm to his patient as outlined in ■■■'s impact statement. The Tribunal agrees with counsel for the Complaints Director when he submitted that the physician by his actions

aided the patient in harming herself further rather than treating and helping with recovery.

72. Based on the above, Dr. Cavilla's conduct clearly harmed the integrity of the profession and warrants a strong sanction. In the Tribunal's view, a six-month suspension as jointly proposed demonstrates to Dr. Cavilla and the membership generally that such unprofessional conduct will not be tolerated.
73. Dr. Cavilla is presently not practicing. Consistent with previous discipline matters and given his own health issues were a salient factor in his unprofessional conduct, the Tribunal agrees that Dr. Cavilla shall receive credit for time that he remains out of practice since October 6, 2023 and that this time will be applied against the suspension period, according to the proposed joint sanction.

COAP Assessment

74. Dr. Cavilla's conduct clearly fell outside the range of permitted conduct and is not acceptable. Given the circumstances of the case, remediation is an important objective which is served by Dr. Cavilla undergoing an independent assessment at his own expense.
75. The Comprehensive Occupational Assessment Program (COAP), as jointly proposed by the parties, is a multi-disciplinary assessment designed to evaluate a physician's current fitness to practice and to recommend conditions on practice if appropriate.
76. The Tribunal acknowledges rehabilitation measures undertaken by the physician address protection of the public which is of paramount importance in considering an appropriate sanction. Given the nature of Dr. Cavilla's unprofessional conduct and his own substance abuse disorder involving cocaine, the path back to practice would necessarily entail robust remediation measures, which in the Tribunal's view is addressed by COAP. This measure will maintain public confidence in the medical profession, and therefore, the Tribunal agrees with the parties that it should be imposed.

Practice Conditions

77. The parties jointly submitted that the practice conditions on Dr. Cavilla's permit that were in effect on the date of the hearing remain in place, as well as any conditions recommended by the multi-disciplinary assessment team.
78. The Tribunal has reviewed the practice conditions as set out in the joint sanction proposal. It agrees the measures are sufficiently comprehensive and detailed, not overly restrictive, and relate directly to the nature of Dr. Cavilla's unprofessional conduct.

79. The practice conditions as set out in the joint sanction proposal are proportionate and reflect an appropriate balance between the impact on Dr. Cavilla's practice and the CPSA's ability to govern its members in a manner that ensures protection of the public.

Participation in the PHMP

80. In the period during which Dr Cavilla engaged in his unprofessional conduct, he was obligated "to abstain from alcohol, benzodiazepines, and all other mood-altering substances and all illicit drugs" (Exhibit 1, Tab 9). As discussed above, the evidence clearly demonstrated Dr. Cavilla consumed cannabis and cocaine in breach of his obligations. He further failed to report his consumption of the drugs to the CPSA in accordance with the February 3, 2017 agreement.
81. Accordingly, Dr. Cavilla's issues with substance abuse involving cocaine and other mood-altering substances justify his continued participation in CPSA's PHMP, which includes random biological monitoring for at least five years. The Tribunal finds that this is a reasonable measure that protects the public and is appropriate based on the circumstances in this case.

50% of Costs of the Investigation and Hearing

82. The parties jointly submitted that Dr. Cavilla shall be responsible to pay 50% of the costs of the investigation and hearing. The Tribunal agrees.
83. The Alberta Court of Appeal in *Jinnah v Alberta Dental Association and College*, 2022 ABCA 336 provided guidance to tribunals on the issue of costs. The Court of Appeal indicated that costs should not be ordered against a regulated member by default, and the college should bear the significant costs of an investigation and hearing unless a compelling reason to do so otherwise exists.
84. However, since Dr. Cavilla's behavior constituted serious unprofessional conduct, we agree that he should be responsible for a significant portion of the costs of the proceedings. The proposed cost order is in line with the factors set out in the *Jinnah* decision. The nature of Dr. Cavilla's conduct entailed obvious and blatant contraventions of provisions in the HPA, and explicit and clear Standards of Practice and Code of Ethics which govern the profession.
85. In order to govern its members and protect the public, the CPSA's standards and code of ethics clearly outline the appropriate arrangement, commitments, and priorities for a physician. More narrowly, the straightforward terms of the February 3, 2017 agreement laid out very specific conditions for Dr. Cavilla's continuing practice. Dr. Cavilla failed to abide by these conditions and he failed to self-report his breaches to the

CPSA. That is, he again failed to show a commitment to upholding the standards of his profession. What's more, in the context of this case, Dr. Cavilla pursued his own self-interests at the expense of the best interests of his patient, thereby, once again, actively thwarting the CPSA's role to govern its members and protect the public. As such, holding Dr. Cavilla responsible for a significant portion of the cost is appropriate.

86. The Tribunal recognizes that Dr. Cavilla admitted to the allegations and confirmed that his conduct amounted to unprofessional conduct. Dr. Cavilla's admission prevented a potentially lengthy and contentious hearing requiring witness evidence. The Tribunal took this factor into consideration when determining costs.
87. In light of all the considerations, the Tribunal agrees that Dr. Cavilla should pay 50% of the costs.

Substitution of Terms

88. The Tribunal carefully considered the parties' submissions and determined that the specificity of the term "cocaine" is appropriate for its written decision. The Tribunal saw no reason to alter the information found in the Amended Notice of Hearing, which was jointly agreed to as an exhibit. Additionally, neither party provided evidence that sufficiently demonstrated the lesser stigmatizing effect of "illicit substance" over the use of the term "cocaine", except by merely stating it to be the case.
89. In the Tribunal's view, it sees little difference between the terms "illicit substance" and "cocaine", and the suggested terms and phrases create qualifications that do not reflect the facts; facts that Dr. Cavilla has admitted to and from which Dr. Cavilla ought not to be shielded. The objectives of accountability, transparency, and deterrence are served by using accurate terminology that reflects just how far over the line from acceptable conduct Dr. Cavilla stepped.

Conclusion

90. In conclusion, the Tribunal is satisfied that the jointly proposed sanctions are reasonable and proportionate to the nature of the proven unprofessional conduct. They will deter Dr. Cavilla and other members of the medical profession from similar behavior and encourage them to obtain assistance before such unprofessional conduct occurs in the future. Overall, the sanctions are not demonstrably unfit and they serve the public interest and uphold the integrity of the profession.

IX. ORDERS

91. Based on the above the Tribunal hereby orders the following pursuant to section 82 of the HPA:

- a. Dr. Cavilla shall have his practice permit suspended for a period of six months, of which two months shall be considered as served already given the period of time that Dr. Cavilla was out of practice for May 21 to July 16, 2021. Dr Cavilla shall also receive credit against the suspension to be served for the time he remains out of practice since October 6, 2023;
- b. Dr. Cavilla shall undergo, at his cost, a multi-disciplinary assessment such as is offered by the Comprehensive Occupational Assessment Program, to determine his current fitness to practice and if a return to practice is recommended, be it with or without conditions, and the Complaints Director shall be provided with a full copy of the report resulting from that assessment;
- c. If and when Dr. Cavilla is found fit to return to practice, in addition to any conditions recommended by the multi-disciplinary assessment team, Dr. Cavilla shall continue to have the practice condition of having, at his cost, a CPSA approved chaperone present for all attendances, both in-person or virtual, with female patients and Dr Cavilla shall maintain a daily log of all female patients attended, the reason for the attendance and the name of the chaperone who was present. The chaperone requirement does not apply to group therapy sessions and the daily log shall be promptly produced by the CPSA upon request;
- d. The chaperone condition may be removed by the Registrar when the Registrar or his delegate is satisfied that the chaperone condition is no longer needed to ensure patient safety;
- e. Dr. Cavilla shall participate at his own cost in the CPSA's Physician Health Monitoring Program, including random biological monitoring as determined by the Assistant Registrar responsible for the physician Health Monitoring Program for a minimum of 5 years; and
- f. Dr. Cavilla shall be responsible for one-half of the cost of the investigation and the hearing before the Hearing Tribunal payable on terms acceptable to Dr. Cavilla and the CPSA.

Signed on behalf of the Hearing Tribunal by the Chair:



Ms. Naz Mellick

Dated this 27th day of January, 2025.