

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. EFE MICHAEL OUVENI

**DECISION OF THE HEARING TRIBUNAL OF
THE COLLEGE OF PHYSICIANS
& SURGEONS OF ALBERTA**

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Dr. Efe Michael Ovueni on October 28, 2021. The members of the Hearing Tribunal were:

Dr. Robin Cox of Calgary as Chair, Dr. Alasdair Drummond of Stettler, Ms. Archana Chaudhary of Edmonton (public member) and Ms. Naz Mellick of Edmonton (public member). Mr. Jason Kully acted as independent legal counsel for the Hearing Tribunal.

In attendance at the hearing was Ms. Annabritt Chisholm, legal counsel for the Complaints Director of the College of Physicians & Surgeons of Alberta (the "College"). Also present was Dr. Efe Michael Ovueni and Mr. William Katz, legal counsel for Dr. Ovueni.

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. There was no request to close the meeting, but it was agreed to respect the complainant's privacy by not using her full name.

III. CHARGE

The Notice of Hearing, dated July 2, 2021, listed the following allegation:

That on or about January 21, 2020, you did demonstrate conduct that harms the integrity of the medical profession, in that you hugged and kissed ██████████, one of the medical office staff, without her consent.

The Complaints Director and Dr. Ovueni agreed to amend the allegation in the Notice of Hearing to state:

That on or about January 21, 2020, you did demonstrate conduct that harms the integrity of the medical profession, in that you hugged and air-kissed ██████████, one of the medical office staff, without her consent.

The Hearing Tribunal accepted this amendment.

IV. EVIDENCE

The following Exhibits were entered into evidence during the hearing:

1. Combined Admission and Joint Submission Agreement and Agreed Exhibit Book;
2. Sanction Exhibit Book.

The parties did not introduce any other evidence. No witnesses were called to testify.

V. SUBMISSIONS ON THE ALLEGATION

For the College

Ms. Chisholm, for the College, made the following submissions:

The matter was being dealt with by an agreement, including an admission of unprofessional conduct and a joint submission on penalty. Dr. Ovueni had, in this agreement, made an admission of unprofessional conduct and, as part of the agreement, the allegation was amended as noted above.

The complainant, [REDACTED], was not a patient of Dr. Ovueni, therefore the conduct did not fall under the definition of sexual misconduct under the *Health Professions Act*. Rather, this was a case of a boundary violation between a physician and a co-worker, demonstrating unprofessional conduct that was wholly unacceptable.

To determine that the allegation was proven on a balance of probabilities, the Hearing Tribunal must be satisfied that the conduct took place and that said conduct was unprofessional, as defined in the *Health Professions Act*.

Dr. Ovueni made a written admission of unprofessional conduct to the Complaints Director, as allowed in section 70 of the *Health Professions Act*, and the Hearing Tribunal must decide on whether or not to accept the admission.

Evidence that the conduct took place, and provided in Exhibit 1, included the following: The original complaint from [REDACTED]; a further complaint about the same events from Dr. Odewole, the clinic's lead physician; an undertaking requested by the College, signed by Dr. Ovueni, that he not work with singular female office staff and that he have a chaperone for female patients; responses to the complaint by Dr. Ovueni; and the Investigation Report authored by Ms. Marnie Heberling, College Investigator. Part of the Investigation Report included interviews with Dr. Ovueni and the complainant.

The Complaints Director's position was that there was ample evidence to prove that on a balance of probabilities, on or about January the 21st of 2020, Dr. Ovueni demonstrated conduct that harms the integrity of the medical profession, in that he hugged and air-kissed [REDACTED], one of the medical office staff, without her consent.

Dr. Ovueni also breached the Code of Ethics, section 31, which states that a physician must treat their colleagues with dignity and as persons worthy of respect. Therefore, Dr. Ovueni's conduct constituted unprofessional conduct

under section 1(1)(pp)(ii) of the *Health Professions Act*, which is a contravention of the Code of Ethics, and section 1(1)(pp)(xii), which is conduct that harms the integrity of the profession.

In summary, the documentation provided in the Combined Admission and Joint Submission Agreement and Agreed Exhibit Book provides ample evidence that the allegation was proven and amounted to unprofessional conduct.

For Dr. Ovueni

Mr. Katz, for Dr. Ovueni, made the following submissions:

Dr. Ovueni had shown repeatedly his willingness and desire to cooperate fulsomely with this process and his desire to ensure that this conduct is never a reoccurrence. He agreed to conditions requested by the College and complied with them. He engaged a therapist, as well as a psychiatrist, to understand the appropriate boundaries in the workplace, and to ensure that this conduct would never take place again.

Dr. Ovueni admitted fulsomely to the allegation, as amended, and hopes that the Hearing Tribunal will accept the joint submission. He was involved heavily in the process of determining the appropriate sanctions and both counsel have come to those sanctions proposed in the agreed and joint submissions.

The Alberta Court of Appeal decision *R. v. G.W.C.* emphasizes the importance of allowing parties to proceed through this process. Joint submissions are to be encouraged and not ignored.

VI. FINDINGS ON THE ALLEGATION

The Hearing Tribunal found that the allegation was proven on a balance of probabilities for the following reasons:

Dr. Ovueni admitted that the amended allegation was true and that he hugged and air-kissed ██████, one of the medical office staff, without her consent on January 21, 2020.

The College conducted a thorough investigation into the complaint, and the evidence provided demonstrated that the conduct had occurred. This evidence included ██████'s description of the incident in which she described Dr. Ovueni calling her into his office, hugging her, and then air-kissing her. It also included texts between Dr. Ovueni and ██████ on January 21, 2020 in which Dr. Ovueni stated "Hope you are not mad with me?", "I got too excited" and to which ██████ replied "That's ok, but it was going too far". Dr. Ovueni then stated, "I am sorry", and "Thank you for ... your smile." ██████ reported the incident to other physicians at the clinic on January 21, 2020 and her description of the incident was consistent throughout the

investigation. The evidence also demonstrated that Dr. Ovueni acknowledged that he had hugged and air-kissed [REDACTED] and Dr. Ovueni stated, in retrospect, he understood how his actions made [REDACTED] feel uncomfortable and that he regretted his conduct.

The Hearing Tribunal agreed with the submission of the College that Dr. Ovueni's conduct constitutes unprofessional conduct under section 1(1)(pp)(ii) of the *Health Professions Act*, which includes a contravention of the Code of Ethics, and section (1)(1)(pp)(xii), which is conduct that harms the integrity of the profession.

Dr. Ovueni's conduct contravenes section 31 of the CMA Code of Ethics and Professionalism, which imposes a requirement on physicians to treat colleagues with dignity and as persons worthy of respect. Dr. Ovueni's hugging and air-kissing of [REDACTED] was done without her consent. Unwanted hugs and air-kisses do not align with the expectations imposed by section 31 of the Code of Ethics. Dr. Ovueni's conduct crossed the appropriate boundaries between colleagues and resulted in [REDACTED] feeling uncomfortable and disrespected. These actions were suggestive of escalation towards increasingly intimate contact. As a professional, Dr. Ovueni should have been aware of his position of authority over [REDACTED] and should have recognized that his actions were not appropriate in the workplace, particularly with someone who was in a vulnerable position like [REDACTED]. For these same reasons, Dr. Ovueni's conduct harms the integrity of the profession.

VII. SUBMISSIONS ON PENALTY

The parties were informed that the allegation was found to be proven and were then invited to make submissions on penalty.

For the College

Ms. Chisholm, for the College, made the following submissions:

Sanctions are understood to serve four purposes. The first is protection of the public. The second is maintaining the integrity of the profession. The third is the fairness to the member, and the fourth is deterrence.

In ensuring that these four purposes are served, the Hearing Tribunal was referred to the thirteen non-exhaustive factors listed in *Jaswal v Newfoundland Medical Board* (1996), 42 Admin LR (2d) 233 ("*Jaswal*").

When reviewing the factors in *Jaswal*, the College submitted that the conduct should be considered as a serious boundary violation. The victim in this case would have had negative effects on her day-to-day life. The sanctions should provide appropriate deterrence to Dr. Ovueni, as well as the profession as a whole.

Mitigating *Jaswal* factors would include Dr. Ovueni's acknowledgement of what had occurred, his cooperation with the College, and his admission of the amended allegation being true. There was no evidence of this being a repeated pattern of conduct and there was no evidence of prior complaints. Dr. Ovueni had sought counselling and signed the undertaking requested by the Complaints Director.

The case of *Ontario (College of Physicians and Surgeons of Ontario) v Abawi, W.*, 2014 ONCPSD 10 ("*Abawi*"), had similar facts. This led to a reprimand, suspension for a period of 4 months, workplace monitoring for a period of 18 months, a professionalism course, and full costs.

The sanctions proposed in Dr. Ovueni's case included a reprimand, serving as specific deterrence, and are consistent with *Abawi*. Dr. Ovueni would also be required to obtain an unconditional pass on the Center for Personalized Education for Physicians (CPEP) Probe Course. This is a weekend-long intensive seminar that is individually tailored to review the specifics of an individual's conduct and ensure that they understand what happened and why their conduct was unprofessional. Participants are required to submit a final essay, which is then graded. Failure to pass this course within 12 months would result in suspension of Dr. Ovueni's practice permit. This serves the purpose of remediation, specific deterrence, and protection of the public.

Other proposed sanctions included a 3-month suspension, a fine of \$3,000, and full costs. 2.5 months of the suspension would be held in abeyance, for a period of 5 years, if there are no further boundary concerns brought to the attention of the Complaints Director. This was somewhat shorter than the suspension in the *Abawi* case, but, together with the fine and the requirement to receive an unconditional pass on the CPEP Probe Course, an appropriate balance of what is fair to the member and what will protect the public has been struck. Full costs are appropriate, as the hearing had arisen as a direct result of Dr. Ovueni's conduct, and it is not fair to expect the membership of the profession as a whole to be responsible for them. The costs will also be lessened by the agreement process, and no witnesses were called.

The cases of *Rault v. Law Society (Saskatchewan)*, 2009 SKCA 81, and *R. v. Anthony-Cook*, 2016 SCC 43, stand for the principles that a joint submission on sanction should be given deference by a tribunal to reflect the time that the parties have spent arriving at the agreement, as well as the fact that a member should have some degree of certainty that a joint submission on sanction would be accepted.

The Complaints Director submitted that the joint submission on sanction meets the sentencing principles, as well as the public interest test set out in *Anthony-Cook*. It would ensure specific deterrence with respect to Dr. Ovueni, and it met the principles of general deterrence, telling the profession

that this conduct was serious and would attract serious consequences. It protects the public and the integrity of the profession by having conditions on the period of abeyance, as well as imposing a suspension if the CPEP Probe Course is not passed.

For Dr. Ovueni

Mr. Katz, for Dr. Ovueni, made the following submissions:

The question for the Hearing Tribunal was whether or not the sanctions proposed fell within an acceptable range. The jurisprudence provided and jointly submitted by both parties would suggest that it did, addressing significant elements of many of the sanctions in previous sanctions provided.

The proposed period of abeyance would lead to Dr. Ovueni being under some probational elements for a period of the next 5 years, emphasizing the importance of deterrence and protection of the public.

Dr. Ovueni, since the very start of these proceedings, and since the complaint was first brought to his attention, had done everything to demonstrate that this conduct would not happen again and had now agreed to these sanctions.

This level of sanctions, in addition to the fine and the courses that are required, would fall within the acceptable range of sanctions found in previous cases.

In response to a question from the Hearing Tribunal, both counsel confirmed that Dr. Ovueni would be responsible for the costs of the proposed CPEP Probe Course.

VIII. DECISION ON PENALTY

The Hearing Tribunal considered the Joint Submission on Penalty and found that, although the period of suspension not held in abeyance was on the shorter side, the overall combination of orders proposed fell within a reasonable range of sanctions. The proposed period of abeyance would lead to Dr. Ovueni being under some probational elements for a period of the next 5 years, emphasizing the importance of deterrence and protection of the public.

The Hearing Tribunal acknowledged that deference was owed to the Joint Submission and did not find that the Joint Submission would bring the administration of justice into disrepute, and therefore accepted the Joint Submission on Penalty.

In coming to this conclusion, the Hearing Tribunal considered the proposed sanctions in light of the thirteen, non-exhaustive factors listed in *Jaswal*. These are:

1. *The nature and gravity of the proven allegations.*

The proven conduct was a serious boundary violation, involving a co-worker, occurring in the workplace. The Hearing Tribunal took the view that the amended allegation was still serious conduct as it involved hugging and air-kissing without consent and involved a boundary violation.

2. *The age and experience of the offending physician.*

Dr. Ovueni is mid-career, obtaining his medical degree in 2002. He has practised in Alberta since 2019, and previously practised in Saskatchewan from 2013-2019. This is not a mitigating factor as Dr. Ovueni has sufficient experience to be aware of the expectations of the profession.

3. *The previous character of the physician and in particular the presence or absence of any prior complaints or convictions.*

The Hearing Tribunal was not made aware of any prior complaints or convictions.

4. *The age and mental condition of the offended patient.*

The victim was not a patient, however she, [REDACTED] was in a less powerful position than Dr. Ovueni in the hierarchy of a medical office, and vulnerable as a result.

5. *The number of times the offence was proven to have occurred.*

The events took place on one afternoon, and there was no evidence that there was similar conduct at other times. However, according to the evidence presented to the Tribunal, Dr. Ovueni hugged the victim four times over a period of 30 minutes and gave her an air-kiss with the last hug.

6. *The role of the physician in acknowledging what had occurred.*

In Dr. Ovueni's initial response to the complaint, while he disagreed with some of the details provided by the complainant, he generally acknowledged the incident and the impact it had on the complainant. Dr. Ovueni then admitted to the conduct as alleged at the hearing and took responsibility for his action.

7. *Whether the offending physician had already suffered other serious financial or other penalties as a result of the allegations having been made.*

No evidence was submitted on this point.

8. *The impact of the incident on the offended patient.*

Although not a patient, the victim in this case was a co-worker in the medical office. She described feeling shocked at the time of the incident, she was upset and required some time off work. She stated that she would be very uncomfortable working with Dr. Ovueni in the future and wished never to assist or see him again. Schedules had to be arranged so that they would not be in the office at the same time, disrupting her day-to-day life.

9. *The presence or absence of any mitigating circumstances.*

Dr. Ovueni admitted the amended allegation, cooperated with the College, signed the undertaking asked for by the College prior to the hearing, and sought counselling.

10. *The need to promote specific and general deterrence and, thereby, to protect the public and ensure the safe and proper practice of medicine.*

The proposed penalties, combined with the disciplinary experience, should be sufficient to deter Dr. Ovueni from repeating the conduct in the future. The period of suspension being held in abeyance for 5 years on the condition that there are no further boundary concerns, and other measures such as the required CPEP Probe Course, will contribute to specific deterrence. The penalties will also serve to remind the profession that boundary violations against co-workers will be treated very seriously by the College.

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

The medical profession is self-regulating, and for the public's confidence to be maintained, it must uphold its ethical and professional standards, and impose appropriate sanctions when these standards are breached. The Tribunal viewed these as appropriate sanctions.

12. *The degree to which the offensive conduct that was found to have occurred was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct.*

The conduct admitted to clearly falls outside the range of permitted conduct, even though it might not be the most serious of breaches.

13. *The range of sentence in other similar cases.*

The Hearing Tribunal considered the case of *Ontario (College of Physicians and Surgeons of Ontario) v Abawi, W.*, 2014 ONCPSD 10. The physician in that case tried to hug and kiss a nurse, confining her briefly in a bathroom, and asking her if she wanted to have an affair. The physician was found to have committed professional misconduct and he was reprimanded, suspended for a period of 4 months, monitored for a period of 18 months, required to undergo education, and was responsible for full costs.

The Hearing Tribunal determined that this case had some similarities with Dr. Ovueni's conduct, but that Abawi's conduct was more serious as it involved confining the nurse in a bathroom and asking if she wanted to have an affair. Further, Dr. Ovueni had a number of mitigating circumstances that needed to be considered by the Tribunal. Nonetheless, the general penalties imposed against Abawi were consistent with the sanctions proposed for Dr. Ovueni in the Joint Submission.

In conclusion, the reprimand, fine, and suspension will protect the public, maintain the integrity of the profession, and ensure general and specific deterrence. These orders will send a message to Dr. Ovueni, members of the profession, and the public that boundary violations like the one committed by Dr. Ovueni are not acceptable and will be met with appropriate sanction. The CPEP Probe Course will promote specific deterrence and will provide appropriate rehabilitation for Dr. Ovueni. The costs amount is appropriate as other members of the profession should not be responsible for the costs of these proceedings. At the same time, the orders are fair and appropriate as they account for the mitigating factors and are not disproportionate to the conduct.

IX. ORDERS

The Hearing Tribunal makes the following orders pursuant to s. 82 of the *Health Professions Act*:

- a) Dr. Ovueni shall receive a reprimand, which the Hearing Tribunal's decision shall serve as.
- b) Dr. Ovueni shall, within 12 months from the date the Hearing Tribunal issues its written decision, provide evidence to satisfy the Complaints Director that he has received an unconditional pass on the Center for Personalized Education for Physicians (CPEP) Probe Course. If Dr. Ovueni fails to satisfy the Complaints Director that he has received an unconditional pass on the CPEP Probe Course within 12 months from the date the Hearing Tribunal issues its written decision, his practice permit

will be suspended until such time as the Complaints Director is satisfied that an unconditional pass has been received.

- c) Dr. Ovueni shall pay a fine of \$3,000 within 6 months of the date the Hearing Tribunal issues its written decision. Payment will occur in accordance with a payment schedule satisfactory to the Complaints Director.
- d) Dr. Ovueni's practice permit shall be suspended for a period of 3 months, with
 - i. 2 weeks to be served on dates acceptable to the Complaints Director and completed within 6 months of the date the Hearing Tribunal issues its written decision; and
 - ii. 2.5 months held in abeyance on the condition that no further boundary concerns come to the attention of the Complaints Director and are referred to an investigation for a period of 5 years after the date the Hearing Tribunal issues its written decision.

If further boundary concerns come to the attention of the Complaints Director and are referred to an investigation within 5 years from the date the Hearing Tribunal issues its written decision, the Complaints Director shall be at liberty to impose the remaining 2.5 months suspension on Dr. Ovueni's practice permit. If no further boundary concerns come to the attention of the Complaints Director and are referred to an investigation within 5 years from the date the Hearing Tribunal issues its written decision, the remaining 2.5-month suspension shall expire.

- e) Dr. Ovueni shall be responsible for all costs of the investigation and hearing. Payment will occur in accordance with a payment schedule satisfactory to the Complaints Director. The costs shall be paid in full within 24 months of the date the Hearing Tribunal issues its written decision.

Signed on behalf of the Hearing Tribunal by the Chair:



Dr. Robin G. Cox

Dated this 20th day of December 2021.