

Appeal Status: CONFIRMED

Physician: Dr. Phu Truong Vu

Date of Hearing: Thursday, August 22, 2024

Time: 9:00 AM

Location: ZOOM

Appeal of Dr Vu:

1. The Hearing Tribunal erred in:
 - (a) Its interpretation of “sexual abuse”, “sexual nature”, “service provided” and “sexualized”;
 - (b) Stating the principles of unprofessional conduct, sexual abuse including sexual nature, service provided, and sexualized;
 - (c) Analyzing the standards of practice and the HPA;
 - (d) Analyzing sexual abuse and sexual boundary standard of practice as defined by failing to apply the correct test or failing to reasonably apply the facts to the test;
 - (e) Failing to consider the difference between error of judgment and unprofessional conduct or sexual abuse;
 - (f) Finding that a breach of the standard of practice amounted to unprofessional conduct;
 - (g) Its assessment of the evidence including undue attribution of weight to evidence from the Complainants or the Complaints Director’s Expert’s Opinion;
 - (h) Finding that Dr. Vu’s dyspareunia counselling of Patient A on February 4, 2020, constituted sexual abuse or unprofessional conduct as defined in the HPA; and
 - (i) Finding that Dr. Vu’s dyspareunia counselling of Patient B on November 1, 2017, constituted a sexual boundary violation under the previous Standard of Practice and unprofessional conduct as defined in the HPA.

2. The Hearing Tribunal erred in making findings of fact or inferences not supported by the evidence including erring in:
 - (a) Whether the conduct was sexualized or sexual in nature;
 - (b) Interpretation of "service provided" and application of the facts to this term;
 - (c) Interpretation of "sexual abuse" and application of facts to this term;
 - (d) Interpretation of "sexual misconduct" and application of the facts to this term; and
 - (e) Failing to distinguish between a breach of the standard of practice and sexual abuse.
3. As a result of the Hearing Tribunal's errors or unreasonable findings, it erred in finding Dr. Vu guilty of sexual abuse or a sexual boundary violation and these findings should be reversed.
4. The Hearing Tribunal erred in:
 - (a) Failing to find it retained the discretion to order Sanction other than cancellation of Dr. Vu's practice permit and registration; and
 - (b) Cancelling Dr. Vu's practice permit and registration despite also finding that the reasonable penalty in the circumstances was suspension; and
 - (c) Cancelling Dr. Vu's practice permit and registration when such a finding is disproportionate, unreasonable, unfair, a violation of procedural fairness and natural justice, and is an unduly punitive sanction which is not in keeping with the legislature's intention.
5. Dr. Vu asks Council to reconsider the Decisions and set aside the Hearing Tribunal's findings of "sexual abuse", sexual boundary violation, cancellation of his practice permit and registration.

Cross-Appeal of Complaints Director:

1. The Hearing Tribunal's determination of costs to be ordered against Dr. Vu was unreasonable having regard to the findings made by the Hearing Tribunal and the body of case law relevant to costs to be ordered in matters involving serious and significant unprofessional conduct.
2. The Hearing Tribunal failed to provide responsive justification for its determination of costs ordered against Dr. Vu having regard to the extensive submissions on costs made by the Complaints Director.
3. The Hearing Tribunal erred in law by failing to consider relevant evidence on the totality of costs of the investigation and hearing or seek clarification and details on costs known to have been incurred before determining the costs ordered against Dr. Vu.

4. The Hearing Tribunal erred in law in relying upon the Hearing Tribunal decision in *Physiotherapy Alberta College + Association v. Sherman* for its determination of costs ordered against Dr. Vu given the conduct of Mr. Sherman was legally, ethically and morally less serious than the gravity of Dr. Vu's conduct as found by the Hearing Tribunal.

Although open to the public, the Council Appeal panel can close a portion or all of the Appeal at any time. When this occurs, all those who registered to attend will be asked to leave.

To attend, please contact Hearings.Director@cpsa.ab.ca.

Please note that this schedule is subject to change.

Inquiries can be directed to:

Hearings.Director@cpsa.ab.ca