

COLLEGE OF PHYSICIANS & SURGEONS OF ALBERTA

IN THE MATTER OF
A HEARING UNDER THE *HEALTH PROFESSIONS ACT*,
R.S.A. 2000, c. C-7

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF DR. AUBREY LEVIN

**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. Aubrey Levin. The members of the Hearing Tribunal were:

Dr. John Pasternak of Medicine Hat as Chair; Dr. Jeffrey Harris of Edmonton and, Mr. Brian Popp of Edmonton (public member). Ms Ayla Akgungor acted as independent legal counsel for the Hearing Tribunal.

In attendance at the hearing was Mr. Craig Boyer, legal counsel for the College of Physicians & Surgeons of Alberta (the "College"). Also present was Dr. Owen Heisler, Complaints Director for the College and Mr. Tim Ryan, legal counsel for Dr. Levin.

There were no objections to the composition of the Hearing Tribunal or the jurisdiction of the Hearing Tribunal to proceed with a hearing.

II. ALLEGATIONS

1. That on February 11, 2013 you were convicted of having sexually assault your patient, Patient A, between January 1, 2009 and March 5, 2009;
2. That on February 11, 2013 you were convicted of having sexually assault your patient, Patient B, between September 1, 2002 and March 19, 2010; and
3. That on February 11, 2013 you were convicted of having sexually assault your patient, Patient C, between December 16 2009 and March 16, 2010.

III. PRELIMINARY MATTERS

Dr. Levin was not in attendance as he is currently incarcerated.

No preliminary matters were raised by either party.

IV. EVIDENCE AND FINDINGS OF FACT

The following agreed exhibits were entered by the parties at the outset of the hearing:

Exhibit 1	Notice of Hearing dated January 5, 2015
Exhibit 2	Dr. Trevor Theman's letter dated March 19, 2010 to Dr. Aubrey Levin
Exhibit 3	Certificate of Conviction dated January 31, 2013
Exhibit 4	Court of Appeal decision dated April 23, 2014
Exhibit 5	Supreme Court of Canada decision dated October 23, 2014
Exhibit 6	Dr. Owen Heisler's letter dated October 27, 2014 to Dr. Aubrey Levin.
Exhibit 7	Agreed Statement of Facts

(a) Background

Based on a review of the Agreed Statement of Facts, the Hearing Tribunal finds that Dr. Levin was a regulated member of the College at all material times. A complaint regarding Dr. Levin was received by the Complaints Director of the College from Patient B in March 2010. The complaint alleged that Dr. Levin had inappropriately touched his patient, Patient B.

An investigation was commenced by the College and on March 19, 2010 the College suspended Dr. Levin's practice permit pursuant to s. 65 of the *Health Professions Act*, pending completion of the investigation. Dr. Levin's practice permit has remained suspended to the date of this hearing.

Criminal proceedings were commenced against Dr. Levin with respect to the allegations of sexual assault. Those proceedings ultimately concluded on October 23, 2014. On October 27, 2014, the Complaints Director advised Dr. Levin that these matters would be referred to a Hearing Tribunal. Dr. Levin was served with the Notice of Hearing on January 5, 2015.

(b) Findings of the Hearing Tribunal

The Hearing Tribunal accepts the facts set out in the Agreed Statement of Facts tendered by the parties and finds as follows:

On January 28, 2013, Dr. Levin was found guilty of having sexually assaulted three of his patients: Patient B, Patient A and Patient C.

Dr. Levin appealed those convictions to the Court of Appeal of Alberta. The Court of Appeal of Alberta issued a decision on April 23, 2014 dismissing the appeal and upholding the convictions against Dr. Levin.

On October 23, 2014, the Supreme Court of Canada denied Dr. Levin's application seeking leave to appeal the sexual assault convictions. Accordingly; the three counts of sexual assault against Dr. Levin, as found by the Court of Queen's Bench, continue to stand and the Hearing Tribunal accepts that Dr. Levin did engage in three counts of sexual assault as set out in the allegations stated in the Notice of Hearing.

Dr. Levin is currently incarcerated and serving his sentence for the three criminal convictions of sexual assault against his patients.

V. SUBMISSIONS

Mr. Boyer reviewed the definition of unprofessional conduct as set out in s. 1(1)(pp) of the *Health Professions Act* and indicated that the focus of the Hearing Tribunal should be on s. 1(1)(pp)(iii) which states that unprofessional conduct means a contravention of another enactment that applies to the profession. In this case the relevant enactment is the *Criminal Code*. Mr. Boyer noted that while the *Criminal Code* is a general statute, it would apply to the profession of medicine.

Mr. Boyer noted that the sexual assaults in question were against three patients who were compelled to attend with Dr. Levin because of court orders for treatment. He noted that the patients were a vulnerable sector of the patient population who did not have a choice of practitioners and unfortunately did not have much of a voice in the whole process.

Mr. Boyer submitted that there was no dispute that the conduct in question was serious and that the conduct was clearly below what would be expected of a psychiatrist who has the role of assessing and treating individuals who were directed to see him on an ongoing basis as part of conditions of release or parole. Accordingly, Dr. Levin should be found guilty of unprofessional conduct.

Mr. Ryan did not make any specific submissions on the question of unprofessional conduct but he noted that while the victims were patients of Dr. Levin and while he was convicted of sexual assault it was not clear whether, at the times of the sexual assault, the patients were ordered by the court to be seeing Dr. Levin. He noted that nothing turned on that issue particularly and it was not likely necessary to rule on the issue in these proceedings.

VI. FINDINGS ON UNPROFESSIONAL CONDUCT

The Hearing Tribunal considered the Agreed Statement of Facts and the submissions of the parties and finds that Dr. Levin is guilty of unprofessional conduct.

The Hearing Tribunal agrees with the Complaints Director that Dr. Levin's *Criminal Code* convictions amount to unprofessional conduct as defined in s. 1(1)(pp)(iii) of the *Health Professions Act*.

The Hearing Tribunal also finds that the conduct in question is egregious given the serious breaches of trust committed by Dr. Levin and that the conduct in question involved direct inappropriate touching and assaults on the patients in question.

The Hearing Tribunal agrees with the Complaints Director that there is no question that the conduct is serious and falls well below any accepted standard of conduct for a psychiatrist.

VII. SUBMISSIONS ON PENALTY

In making submissions on penalty, Mr. Boyer presented the case of *Jaswal v. Newfoundland Medical Board* ("*Jaswal*"). *Jaswal* spoke to a list of factors that ought to be considered when deciding on the appropriateness of a penalty for unprofessional conduct. In addressing the relevant *Jaswal* factors, Mr. Boyer noted that Dr. Levin was a senior psychiatrist, someone who was not new and lacking experience as a physician. Mr. Boyer also noted that the Hearing Tribunal should consider the number of times the conduct occurred. They were three convictions of sexual assault involving three separate

patients which occurred over a period of time in each case. Mr. Boyer also argued that, given the highly egregious conduct, the need to protect the public's confidence in the profession was very high.

Mr. Boyer also focused his submissions on the range of sanctions in similar cases and presented three cases to the Hearing Tribunal in that regard. The first case involved Dr. Roberts. Dr. Roberts was a psychiatrist who had a sexual relationship with and ultimately married his patient but the patient was nevertheless vulnerable and suffering from mental health conditions. The penalties ordered against Dr. Roberts were that he was struck from the Register of the College, his name and the particulars of the conduct were ordered to be published (except for any information which could identify the patient in question) and he was ordered to pay costs of the investigation and the hearing.

With respect to the Roberts case, Mr. Boyer also noted paragraph 5 of the College's Sexual Boundary Violations Standard, which provides that a physician who has had a psychotherapeutic relationship with a patient must not have any sexual or intimate involvement with that patient at any time during or after the conclusion of the psychotherapeutic relationship. Mr. Boyer noted that the purpose of this standard was to emphasize that the power imbalance in the psychotherapeutic relationship is so large that it cannot be overcome with the passage of time. He noted that this factor should be considered by the Hearing Tribunal when deliberating on penalty.

The next case presented to the Hearing Tribunal involved Dr. Nqumayo. Dr. Nqumayo was found guilty of charges of sexual assault against his patients. Dr. Nqumayo was struck from the Register of the College and ordered to pay the costs of the investigation and the hearing. The matter was also published without any personally identifying information of the patients.

The third case presented was that of Dr. Cooper. Dr. Cooper was found guilty of murdering another physician, Dr. Snider. He was also struck from the Register of the College and the matter was ordered to be published.

Mr. Boyer submitted that when the relevant *Jaswal* factors are considered, the appropriate penalty in this case was for Dr. Levin to be struck from the Register of the College.

On the issue of costs, Mr. Boyer indicated that the matter could be left at the discretion of the Hearing Tribunal. He noted that Dr. Levin is incarcerated so that there may not be much value in awarding costs.

Mr. Ryan confirmed that he was instructed to take no position with respect to penalty, other than to state that the Dr. Cooper case, being a murder case, was different than the criminal charges before the Hearing Tribunal. Mr. Ryan submitted that no costs order should be made against Dr. Levin as he does not really have any way of paying costs and, if he is struck from the Register, a very significant penalty will have been imposed. Mr. Ryan also submitted that Dr. Levin had been very cooperative throughout these proceedings and this assisted in streamlining matters as much as possible. On this basis, Mr. Ryan submitted that the Hearing Tribunal should be lenient on costs.

The Hearing Tribunal sought clarification from the parties as to the approximate amount of costs incurred by the College in this matter. Mr. Boyer advised that as of the end of December 2014, approximately \$15,500 in costs had been incurred and a few thousand more in costs had likely been incurred since that time in order to prepare for and present at the hearing.

There was further discussion between the Hearing Tribunal and counsel for the parties regarding publication of the decision and whether patient information should be protected in that process. Both parties were in agreement that steps should be taken to protect the privacy of the victims in this case if the decision is published

VIII. DECISION ON PENALTY

The Hearing Tribunal deliberated and found that due to the seriousness of the crimes for which he was convicted that Dr. Levin be struck from the Register of the College.

The Hearing Tribunal arrived at this decision based on the fact of the offences having taken place over a period time and the high level of egregiousness of the conduct. The criminal convictions related to Dr. Levin's role as a physician as the sexual assaults occurred on vulnerable patients. This goes to the very heart of Dr. Levin's position of trust as a physician.

On the issue of costs, the Hearing Tribunal determined that Dr. Levin should bear the full costs of the investigation and hearing in this matter. In coming to this decision the Hearing Tribunal accepted that Dr. Levin was co-operative in every way and, as such, has had kept the costs to a minimum. However, the Hearing Tribunal finds the following reasoning in the Dr. Nqumayo decision persuasive:

“Council sees no reason why costs should not be ordered. The conduct is at the most severe end of the spectrum of unbecoming conduct. There is no reason that the membership should bear the costs of the investigation and proceedings. Whether or not the costs can be recovered is a separate issue for the College to determine. The fact that Dr. Nqumayo has not worked as a physician since 2005 and served a jail term is of his own doing and the basis of the allegation and finding against him. It should not be used to absolve him of his obligation to pay costs.”

The Hearing Tribunal finds that the same comments are applicable in this case and adopt them here.

IX. ORDERS / SANCTIONS

The Hearing Tribunal makes the following orders:

- (1) That Dr. Levin's registration and practice permit with the College be cancelled; and
- (2) That Dr. Levin pay the full costs of the investigation and the hearing.

The Hearing Tribunal further recommends that the Registrar of the College publish these reasons and the name of Dr. Levin, but that any individually identifying information about any of Dr. Levin's patients be omitted from the publication.

Signed on behalf of the Hearing Tribunal
by the Chair

A handwritten signature in black ink, appearing to read "Pasternak", written in a cursive style.

Dated: April 23, 2015

Dr. John Pasternak