

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. IAN POSTNIKOFF

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

I. INTRODUCTION

- [1] The Hearing Tribunal held a hearing into the conduct of Dr. Ian Postnikoff on May 27, 2021. The members of the Hearing Tribunal were:
- [2] Dr. Neelam Mahil of Edmonton as Chair, Dr. Don Yee of Edmonton, Ms. Archana Chaudhary (public member) of Edmonton and Ms. June MacGregor of Edmonton (public member). Mr. Fred Kozak acted as independent legal counsel for the Hearing Tribunal.
- [3] In attendance at the hearing was Mr. Craig Boyer, legal counsel for the Complaints Director of the College of Physicians and Surgeons of Alberta. Also present was Dr. Ian Postnikoff and Ms. Megan McMahon, legal counsel for Dr. Postnikoff.

II. PRELIMINARY MATTERS

- [4] Neither party objected to the composition of the Hearing Tribunal or its jurisdiction to proceed with the hearing. On behalf of Dr. Postnikoff, Ms. McMahon applied to the Hearing Tribunal pursuant to section 78 of the *Health Professions Act* ("HPA") to close the hearing to members of the public. After hearing submissions from counsel to the parties and deliberating on the issue, the Hearing Tribunal reconvened to advise the parties of its decision to close the hearing to the public. The Hearing Tribunal indicated that it was mindful of the importance of openness and transparency in conduct proceedings in order to foster and maintain the trust of the public. However, in this case, after hearing submissions from the parties, the Hearing Tribunal agreed that the privacy interests of protecting the identity and personal circumstances of the patient, and the personal healthcare information of the patient outweigh the need for complete openness. The Hearing Tribunal noted that the public would have access to the written decision once it became available.

III. CHARGES

- [5] The Notice of Hearing listed the following allegations:
 - 1. Between [REDACTED] you did have an inappropriate sexual relationship with your patient, "X", contrary to the College's Standard of Practice on Sexual Boundary Violations;
 - 2. From [REDACTED] you failed to report your sexual boundary violation with your patient, "X", to the College as required by the College's Standard of Practice on Self-Reporting to the College;
 - 3. On your annual renewal form for a [REDACTED] practice permit you reported to the College that you had not engaged in a sexual or inappropriate personal relationship with a patient when you knew that such answer was false.

IV. EVIDENCE

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

EXHIBIT 1: AGREED EXHIBIT BOOK CONTAINING TABS 1 - 13

- 1 NOTICE OF HEARING, DATED MARCH 29, 2021
 - 2 DR. CAFFARO'S MEMO TO FILE DATED SEPTEMBER 28, 2017
REGARDING DISCLOSURE BY DR. POSTNIKOFF
 - 3 UNDERTAKING SIGNED BY DR. POSTNIKOFF DATED OCTOBER 2, 2017
 - 4 DR. POSTNIKOFF'S LETTER TO K. DAMRON DATED NOVEMBER 16,
2017
 - 5 M. MCMAHON'S LETTER TO DR. CAFFARO DATED JULY 5, 2018
 - 6 DR. CAFFARO'S LETTER TO M. MCMAHON DATED JULY 11, 2018
 - 7 M. MCMAHON'S LETTER TO DR. CAFFARO DATED JULY 23, 2018
 - 8 PATIENT CHART FOR PATIENT "X"
- [REDACTED]
- 12 COLLEGE OF PHYSICIANS & SURGEONS OF ALBERTA STANDARD OF
PRACTICE - SEXUAL BOUNDARY VIOLATIONS
 - 13 COLLEGE OF PHYSICIANS & SURGEONS OF ALBERTA STANDARD OF
PRACTICE -SELF-REPORTING TO THE COLLEGE

EXHIBIT 2: ADMISSION AND JOINT SUBMISSION AGREEMENT

EXHIBIT 3: UNDERTAKING SIGNED BY DR. POSTNIKOFF DATED MAY 10,
2021

- [7] The parties provided an Agreed Statement of Facts which set out the following facts. Dr. Postnikoff is a psychiatrist who entered into a sexual relationship with his patient. The relationship occurred over a period of several years. In his annual license and practice permit renewal forms for the years [REDACTED] [REDACTED], Dr. Postnikoff falsely denied having a sexual relationship with the patient, before finally self-reporting the relationship to CPSA in late 2017. Through his counsel, he admitted the conduct alleged in the Notice of Hearing, and acknowledged that the admitted conduct violated the Standards of Practice and constituted unprofessional conduct as defined under the HPA.
- [8] After a brief adjournment and deliberations by the Hearing Tribunal, the Chair confirmed that the Hearing Tribunal agreed that the evidence contained in the Agreed Statement of Facts supported the three allegations in the Notice of Hearing, that the allegations had been proven, and that the proven allegations amounted to unprofessional conduct. The Chair then invited submissions from the parties on the joint sanction agreement proposed by them.

V. SUBMISSIONS

- [9] On behalf of the Complaints Director, Mr. Boyer indicated that had Dr. Postnikoff not resigned and also undertaken never to reapply, the Complaints Director would have been seeking revocation of his license based on the *Roberts* decision. *Roberts* was also a case where a psychiatrist entered into a sexual relationship with his patient, resulting in the revocation of his license and practice permit. Mr. Boyer reviewed the relevant factors from the *Jaswal* case, noting the gravity of the misconduct, the [REDACTED], the significant power imbalance because of the psychotherapeutic relationship, the vulnerability of the patient because of her [REDACTED], all of which demonstrated that Dr. Postnikoff was guilty of a very egregious error in judgment over a prolonged period of time. Mr. Boyer noted that there were mitigating factors, including Dr. Postnikoff's self-reporting the conduct to the College, and [REDACTED]
- [10] Mr. Boyer noted that the proposed sanction would serve to protect public, given that the conduct could never again be repeated, given the retirement and undertaking never to reapply. There was also a requirement to pay costs and a fine, intended to deliver a message to the profession and the public that the conduct in question was not only serious, but would give rise to serious consequences.
- [11] On behalf of Dr. Postnikoff, Ms. McMahon submitted that accepting the joint submission was in the public interest. It served to avoid a lengthy discipline hearing, reduce the costs to the profession of lengthy proceedings, and allowed for certainty. She confirmed that Dr. Postnikoff had fully accepted that his actions were inappropriate, that he made an unqualified admission of unprofessional conduct, he self-reported the relationship, and acknowledged that there was no excuse for his actions. Shortly after his conduct was disclosed, he voluntarily entered into an undertaking imposing a condition requiring a chaperone in his medical practice, pending the conclusion of these proceedings. Ms. McMahon noted that Dr. Postnikoff is now 70 years of age and that he had never before been the subject of any prior boundary complaint. She acknowledged that his transgression was significant, but submitted that it was completely out of character. She described the penalty and costs as being financially significant, given Dr. Postnikoff's retirement and undertaking.

VI. FINDINGS

- [12] The Hearing Tribunal notes that sexual boundary violations constitute serious and egregious unprofessional conduct. A regulated member can never have a sexual relationship with a patient who has received psychotherapeutic treatment from the physician. Protection of the public is a paramount consideration in circumstances such as these. The joint sanction proposal

achieves that objective, given that Dr. Postnikoff will never return to practice. The joint sanction proposal in its totality (withdrawal from practice and his undertaking to never reapply, payment of two thirds of the costs of the investigation and hearing, and a fine of \$5000) falls within a range of reasonable outcomes for the described conduct, and is therefore accepted by the Hearing Tribunal.

VII. ORDERS

- [13] Dr. Postnikoff's unprofessional conduct would be worthy of significant sanction had he not elected to retire effective January 2018;
- [14] Dr. Postnikoff shall be responsible for two-thirds of the costs of the investigation and the hearing before the Hearing Tribunal payable on terms acceptable to the Complaints Director; and
- [15] Dr. Postnikoff shall be responsible for paying a fine in the amount of \$5,000.00 payable on terms acceptable to the Complaints Director.

Signed on behalf of the Hearing
Tribunal by the Chair



Dated this 6th day of July, 2021

Dr. Neelam Mahil