

COLLEGE OF ACUPUNCTURISTS OF ALBERTA

IN THE MATTER OF
A HEARING UNDER THE *HEALTH PROFESSIONS ACT*,
RSA 2000, CH-7

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF MR. TROY FOREST

**DECISION OF THE HEARING TRIBUNAL
OF THE COLLEGE OF ACUPUNCTURISTS
OF ALBERTA**

I. INTRODUCTION

1. The Hearing Tribunal held a hearing into the conduct of Troy Forest on October 10, 2023. The members of the Hearing Tribunal of the College of Acupuncturists of Alberta (the “CAA”) were:

Douglas Dawson, Public Member and Tribunal Chair
Lacey Wigness, Regulated Member
Sarah Gingrich, Public Member
Sarah Shen, Regulated Member

Annabritt Chisholm acted as independent legal counsel for the Hearing Tribunal.

Also present were:

Andrea Snow, Complaints Director for the CAA
Julie Gagnon and Justine Fay, Legal counsel for the Complaints Director

Troy Forest, Registrant

The complainant attended as an observer and the hearing was recorded by a court reporter.

II. PRELIMINARY MATTERS

2. The hearing was held via videoconference. The hearing opened and all participants introduced themselves for the record.
3. Neither party objected to Hearing Tribunal’s composition or jurisdiction.
4. Pursuant to section 78 of the *Health Professions Act*, RSA 2000, c H-7 (the “HPA”), the hearing was open to the public. While there was no application to close the hearing, the Hearing Tribunal accepted the Complaints Director’s request that the complainant be anonymized in the transcript of these proceedings and referred to as the “Patient” or “Complainant”.
5. Mr. Forest was aware of his right to be represented by legal counsel. He indicated he had spoken with his legal counsel prior to the hearing and wanted to proceed with the hearing in the absence of legal counsel.
6. The parties confirmed that the matter was proceeding by agreement. Although no witnesses were called, the Complainant/Patient provided a verbal impact statement at the hearing.

III. CHARGES

7. The hearing concerned three allegations (the “Allegations”) against Mr. Forest:
 1. On or between December 2020 and August 2021, you failed to ensure accurate and/or adequate information was on the patient file in accordance with the Patient Records Standards, particulars of which include one or more of the following:
 - A. Not adequately documenting how menstrual issues related to [the Patient’s] chronic pain or failing to adequately document the pain experienced by [the Patient] on the full menstrual cycle;
 - B. Not documenting all information for treatment provided in the treatment notes, including Gua Sha or electro-stim treatment;
 - C. Not adequately documenting the prognosis, number of treatments, reassessment, or effectiveness of treatments.
 2. On or between December 2020 and August 2021, you failed to obtain appropriate informed consent for treatment from [the Patient], particulars of which include one or more of the following:
 - A. Not obtaining written informed consent to treatment from [the Patient].
 3. On or between February 2021 to January 2022, you engaged in inappropriate conduct with [the Patient], which constitutes harassment, unwelcome contact, and/or sexual misconduct, particulars of which include one or more of the following:
 - A. Texting [the Patient] about matters outside of treatment and of a personal nature while she was a patient and/or after treatments ceased;
 - B. Contacting [the Patient] to go for coffee, to get together or hang out, or indicating that you could bring her dinner;
 - C. Continuing to text [the Patient] after she specifically indicated that she was uncomfortable with meeting outside the clinic;
 - D. Attempting to pursue a personal relationship with [the Patient] while she was a patient and/or after treatments ceased;
 - E. Hugging [the Patient] after treatments;
 - F. Offering to provide treatments to [the Patient] outside clinic hours and/or providing longer treatment sessions than what was billed for;

- G. Not removing yourself from the situation to avoid the ongoing conflict of interest even after being advised by [the Patient] that she was uncomfortable meeting outside the clinic;
- H. Abusing your position of trust and/or failing to recognize the power imbalance with [the Patient].

8. During the hearing, counsel for the Complaints Director noted that the Allegations were slightly different from what was charged in the Notice of Hearing. However, she stated that these were the charges being brought forward by the Complaints Director and admitted to by Mr. Forest.

IV. EVIDENCE

9. Exhibit 1 included an Agreed Statement of Facts and Admission of Unprofessional Conduct enclosing 13 tabs of documents:

- Tab 1:** Amended Notice of Hearing and Notice to Attend and Produce dated June 27, 2023
- Tab 2:** Complaint Reporting Form dated April 24, 2022
- Tab 3:** Human Integrated Performance Electronic Notes
- Tab 4:** Email from SB dated June 1, 2022 and Jane Application print out of appointment dates
- Tab 5:** Hand Written Treatment Notes of Mr. Forest for [the Patient]
- Tab 6:** Email exchange between Mr. Forest and SB dated May 31, 2022 and June 1, 2022
- Tab 7:** Screen Captures of Text Messages between [the Patient] and Mr. Forest
- Tab 8:** Screen Captures of Mr. Forest's phone records of text messages between Mr. Forest and [the Patient]
- Tab 9:** CAA Code of Professional Conduct
- Tab 10:** CAA Patient Records Standards
- Tab 11:** CAA Standards of Competency and Practice
- Tab 12:** CAA Standards of Practice – Protecting Patients from Sexual Abuse/Misconduct
- Tab 13:** *Health Professions Act, RSA 2000, C H-7*

10. The Hearing Tribunal also received a Joint Submission on Sanction signed October 4, 2023 and a Book of Authorities enclosing four tabs:

- Tab 1:** *Health Professions Act, RSA 2000, c H-7, section 82*
- Tab 2:** *Jaswal v Newfoundland Medical Board, 1996 CanLII 11630 (NL SC)*
- Tab 3:** *R v Anthony Cook, 2016 SCC 43*
- Tab 4:** *Bradley v Ontario College of Teachers, 2021 ONSC 2303*

V. SUBMISSIONS ON THE ALLEGATIONS

Submissions by Counsel for the Complaints Director

11. Ms. Gagnon began her submissions by advising that the parties had entered an Agreed Statement of Facts and Admission of Unprofessional Conduct, which had been provided to the Hearing Tribunal in advance of the hearing (Exhibit 1). She thanked Mr. Forest for his cooperation, which made it possible for the hearing to proceed by agreement.

12. Ms. Gagnon noted that Mr. Forest was represented by legal counsel while the Agreed Statement of Facts and Admission of Unprofessional Conduct was being negotiated and signed.

13. Ms. Gagnon submitted that the Allegations against Mr. Forest related to record-keeping, Mr. Forest's failure to obtain or to document informed consent in accordance with the CAA Standards and Code, and inappropriate conduct between Mr. Forest and the Patient that constituted harassment, unwelcome contact, and sexual misconduct as defined in the HPA.

14. Ms. Gagnon noted that Mr. Forest's Admission of Unprofessional Conduct was being made under section 70 of the HPA.

15. Ms. Gagnon pointed out slight variations between Mr. Forest's admissions in Allegations 1 and 2 and how those Allegations were set out in the Notice of Hearing. She confirmed that the Complaints Director was only proceeding with the particulars set out in the Admission of Unprofessional Conduct.

16. Ms. Gagnon referred the Hearing Tribunal to paragraphs 11 – 20 of the Agreed Statement of Facts and Admission of Unprofessional Conduct in relation to Allegation 1, in which Mr. Forest admitted to Allegation 1 and acknowledged that he:

- a. failed to ensure that accurate and adequate information was kept on [the Patient's] patient file.
- b. discussed issues relating to [the Patient's] menstrual cycle with her.
- c. provided Gua Sha and electro-stim treatment to [the Patient], which was not documented.

17. The Agreed Statement of Facts set out the obligations of an acupuncturist with respect to patient records and diagnostic processes:

- a. Articles 5.2 and 5.3 of the CAA Code of Professional Conduct (the "Code of Conduct") state:

5.2 All information acquired during intake, including medical history or other professional referral, diagnosis, treatment plan shall be placed in patient's file.

5.3 For each treatment session, the selection of acupuncture points, use of other permitted mode of practice, as well as subjective/objective responses to treatment shall be noted in patient's record.

- b. Articles 2 and 3 of the Patient Records Standards set out the requirements for record keeping (the "Patient Records Standards"). The Patients Records Standards require acupuncturists to keep accurate and complete patient records of all patient visits and professional services, detailed records with the prescribed patient information, and records of the acupuncture points used in the treatment.
- c. The Standards of Competency and Practice set out the standards for Diagnostic Processes (the "Standards of Competency and Practice"). Acupuncturists are required to collect patient information using prescribed methods, summarize that information into prescribed groups, make determinations based on symptoms and syndromes, and make diagnoses.

18. Mr. Forest acknowledged and agreed that his conduct displayed a lack of knowledge, skill, or judgment and contravened the above-noted Articles of the Code of Ethics and Standards of Practice. He admitted that his conduct with respect to Allegation 1 constituted unprofessional conduct as defined in sections 1(1)(pp)(i) and (ii) of the HPA.

19. Ms. Gagnon submitted that Mr. Forest's conduct in relation to Allegation 1 is proven based on his admissions, the Patient's charts, the text messages evidencing treatment that was provided but not documented. She submitted and that the proven conduct is sufficiently serious to constitute unprofessional conduct.

20. Ms. Gagnon reviewed the Agreed Statement of Facts and Admission of Unprofessional Conduct in reference to Allegation 2. She submitted that Allegation 2 was proven by Mr. Forest's admission that he failed to obtain written informed consent for treatment from the Patient. The Patient's charts also do not show evidence of written informed consent.

21. Allegation 2 constitutes unprofessional conduct as it displayed a lack of knowledge, skill, or judgment; contravened Article 4.1 of the Code of Conduct, Article 3(b) of the Patient Records Standards, and the sections of the Standards of Competency and Practice relating to Patient Information and Informed Patient Choice and Patient Records.

22. Ms. Gagnon then referred the Hearing Tribunal to paragraphs 28-37 of the Agreed Statement of Facts and Admission of Unprofessional Conduct in relation to Allegation 3.

23. As part of this document, Mr. Forest admitted to engaging in the conduct set out in Allegation 3 and acknowledged and agreed that this conduct constituted harassment, unwelcome contact, and sexual misconduct.

24. As part of his admission, Mr. Forest agreed that his conduct contravened:

a. Article 2.3 of the Code of Conduct, which sets out requirements for ethical practice:

2.3 Registrants shall conduct themselves in a manner that enhances the integrity and reputation of, and inspires public confidence in the profession.

b. Article 9.1 and 9.2 of the Code of Conduct, which prohibit harassment and abuse:

9.1 Registrants must refrain from any conduct that does or could result in the harassment and abuse, including physical, emotional, verbal, sexual or financial, of patients. For the purposes of the foregoing, “emotional abuse” includes any verbal or non-verbal behaviour which demonstrates disrespect for the patient. Such verbal and non-verbal behaviours can include: (i) sarcasm, retaliation, intimidation, manipulation, teasing or taunting; (ii) consciously deciding to withhold information which could contribute to the patient’s well-being.

For the purposes of the foregoing, “sexual abuse” includes: (i) sexual intercourse or other forms of physical sexual relations between the registrant and the patient, (ii) touching of a sexual nature, and (iii) behaviour or remarks of a sexual nature. It does not include touching, behaviour or remarks of a clinical nature appropriate to the service provided and the setting.

For the purposes of the foregoing, “verbal abuse” includes remarks that are rude, sarcastic demeaning, sexually or otherwise, seductive, exploitive, insulting, derogatory or humiliating that tend to demoralize the patient.

9.2 Registrants are obligated to become familiar with the signs of harassment and abuse, and shall at all times act professionally in dealing with patients.

c. Article 10.1, 10.2, and 10.3 of the Code of Conduct, which define conflicts of interest and require registrants to avoid situations that give rise to conflicts of interest, whether in appearance or fact. When a registrant finds themselves in a conflict of interest, they must take immediate steps to remove themselves.

d. The Standards of Practice – Protecting Patients from Sexual Abuse/Misconduct, which require acupuncturists to establish appropriate boundaries and prohibits the pursuit of sexual relationships with patients during the practitioner/patient relationship. These Standards also prohibit acupuncturists from developing a sexual relationship with a former patient where a power imbalance exists.

e. Section 1(1)(nn.2) of the HPA, which defines sexual misconduct:

“sexual misconduct” means any incident or repeated incidents of objectionable or unwelcome conduct, behaviour or remarks of a sexual nature by a regulated member towards a patient that the regulated member knows or ought reasonably to know will or would cause offence or humiliation to the patient or adversely affect the patient’s health and well-being but does not include sexual abuse.

25. Mr. Forest also acknowledged and admitted that his conduct harmed the integrity of the profession, all of which constituted unprofessional conduct as defined in sections 1(1)(pp)(ii) and (xii) of the HPA.

26. Ms. Gagnon noted the Patient suffered from chronic health issues and was vulnerable from that perspective. There was also a significant age gap between the Patient and Mr. Forest.

27. Ms. Gagnon submitted that there were sufficient facts for the Hearing Tribunal to find that Allegation 3 is proven and constitutes unprofessional conduct and sexual misconduct.

Submissions by the Registrant

28. Mr. Forest submitted he had nothing to add to the Agreed Statement of Facts and Admission of Unprofessional Conduct. He reviewed it with his legal counsel before the hearing.

VI. FINDINGS REGARDING ALLEGATIONS OF UNPROFESSIONAL CONDUCT

29. The Hearing Tribunal adjourned to consider the parties’ submissions and to review the Agreed Statement of Facts and Admission of Unprofessional Conduct. Upon return, it advised the parties that it accepted Mr. Forest’s admissions and found the Allegations were proven.

Reasons for Findings of Unprofessional Conduct

30. The Hearing Tribunal reviewed the Agreed Statement of Facts and Admission of Unprofessional Conduct and found that the facts alleged in Allegations 1, 2 and 3 were proven and rose to the level of unprofessional conduct. The Hearing Tribunal’s reasons with respect to each of the Allegations are described below.

Allegation 1

31. The Hearing Tribunal accepted Mr. Forest’s admissions as proof of the particulars of Allegation 1. It also accepts the admitted breaches of the HPA, the Code of Conduct and the Standards.

32. Mr. Forest admitted that his conduct displayed a lack of knowledge, skill, or judgment and breached Articles 5.2 and 5.3 of the Code of Conduct, Articles 2 and 3 of the Patient Records Standards, and the sections of the Standards of Competency and Practice relating to Diagnostic Processes.

33. The Hearing Tribunal finds that the proven conduct clearly rises to a level of unprofessional conduct. Mr. Forest should have known that his record keeping practices in respect to the Patient did not demonstrate the expected skill and judgment of an acupuncturist. Regulated members must understand that patient records are an important foundation for creating an environment of patient safety. Failure to adhere to the required standards can have a negative impact on patient care.

Allegation 2

34. The Hearing Tribunal accepted Mr. Forest's admission that he failed to obtain written informed consent for treatment from the Patient. It also accepted the admitted breaches of the HPA, the Code of Conduct and the Standards.

35. In failing to obtain written consent for treatment of the Patient, the Hearing Tribunal finds Mr. Forest breached Article 4.1 of the Code of Conduct, which requires regulated members to:

discuss treatment plans with patients including diagnosis, prognosis and significant risks, as well as reasonable alternatives and associated costs to allow patients to make informed treatment decisions unless the condition of the patient makes it impossible to do so and the need for consent is otherwise addressed. Registrants must not, either by statement or implication, make unsupportable statements as to the effect of any treatment. The written consent to treatment shall be placed in patient's file.

36. The Hearing Tribunal also finds that the proven conduct breached section 3 of the Patient Records Standards. Section 3 requires acupuncturists to obtain and document consent in the patient record. Mr. Forest admitted he failed to do so when he treated the Patient.

37. The Hearing Tribunal further finds that the proven conduct breached the Standards of Competency and Practice pertaining to Patient Information and Informed Patient Choice and Patient Records set out the standards for Patient Records:

An acupuncturist shall obtain informed consent for any treatment by having the patient sign a consent form confirming understanding of the risks and benefits of treatment and shall obtain the patient's written consent to any significant changes to the treatment.

...

An acupuncturist shall retain any and all informed consent forms for each patient as part of the patient record.

38. Acupuncturists are required to obtain and document informed consent to protect patients and demonstrate that patients understand available choices, the risks and benefits of the choices they are making, and within that context, accept the treatments offered to them.

Allegation 3

39. The Hearing Tribunal accepted Mr. Forest's admission with respect to Allegation 3 as well as his acknowledgement and agreement that his conduct contravened Articles 2.3, 9.1, 9.2, 10.1, 10.2, and 10.3 of the Code of Conduct, and the Standards of Practice – Protecting Patients from Sexual Abuse/Misconduct.

40. The Hearing Tribunal finds Mr. Forest's conduct with respect to Allegation 3 constitutes sexual misconduct as defined in section 1(1)(nn.2) of the HPA.

41. Mr. Forest took advantage of his professional relationship with the Patient and exploited the inherent power imbalance between a patient and an acupuncturist.

42. It is concerning to the Tribunal that Mr. Forest not only pursued initially, but continued to pursue a relationship with the Patient outside of a professional setting after she indicated she was not comfortable with his advances.

43. He used his position as an acupuncturist to attempt to gain favour with the Patient by inappropriately offering her treatments outside of clinic hours and providing her with longer sessions than what was billed for.

44. As health professionals, acupuncturists should understand that this behaviour, coupled with hugging a patient after treatments as Mr. Forest did in this case, is unacceptable.

45. Given that the Patient had expressed her discomfort with the situation, Mr. Forest must have known or ought to have known that his conduct was unwelcome and considered to be of a sexual nature. It crossed the boundaries of what was acceptable and amounts to sexual misconduct under the HPA. It is also unprofessional conduct that harms the integrity of the profession and thus must be dealt with in sanctions.

VII. SUBMISSIONS REGARDING SANCTIONS

Impact Statement by the Complainant

46. The Patient provided an impact statement per section 81.1(2) of the HPA. The Patient noted that she was in a vulnerable position when she went to Mr. Forest for relief from her chronic pain. The Patient trusted Mr. Forest to provide her with the health services she needed and was deeply affected by Mr. Forest's conduct and abuse of that trust. The Patient described her experience with Mr. Forest and the effect it has had on her in terms of her refusal to

believe people, especially in professional settings. She stated that what happened to her should never happen to anyone else.

Submissions by Counsel for the Complaints Director

47. The Complaints Director and Mr. Forest presented a Joint Submission on Sanction for the Hearing Tribunal's consideration.

48. The Joint Submission on Sanction included the following orders:

- a. A reprimand (with the decision of the Hearing Tribunal serving as the reprimand);
- b. A two month suspension, one month of which would be served immediately following the hearing. The second month of suspension would be held in abeyance for a period of one year from the date of the hearing. So long as no other complaints of a similar nature are made during that time, the second month would not be served. However, if a complaint alleging sexual abuse, sexual misconduct or boundary violations is made within the one year period, which is not dismissed by the Complaints Director under section 55(2)(e) within 2 months of receipt of the complaint, then the second one month suspension would be served;
- c. Payment of a fine of \$500 for Allegation 1, a fine of \$500 for Allegation 2 and a fine of \$1,000 for Allegation 3, for a total fine of \$2,000, to be paid within one year of the date of the hearing;
- d. Mr. Forest will retake the course on Bill 21 offered through the Alberta Federation of Regulated Health Professions within 4 months of the date of the hearing. The course is free and would not count towards his continuing competence credits. Notice of successful completion of the course would be required to be provided to the Complaints Director;
- e. Within 4 months of the hearing date, Mr. Forest shall prepare a reflection paper in English of a minimum of 1000 words, acceptable to the Complaints Director, describing the situation, what should have been done, and how Mr. Forest will change his practice going forward; and
- f. Payment of 10% of the investigation and hearing costs, to be paid on a schedule agreeable to the Complaints Director within 24 months of the hearing date.

49. Ms. Gagnon submitted that the Joint Submission on Sanction satisfied the general principles of sanctions. Sanctions should focus on the need for deterrence, both specific to the investigated member and general to the membership at large, the need to protect the public, and the need to maintain the public's confidence in the integrity of the profession.

50. Ms. Gagnon submitted that the Joint Submission on Sanction included a reprimand and fine to appropriately denounce Mr. Forest's conduct and serve the purpose of deterrence. The course and paper are opportunities for remediation to educate the member and protect the public.

51. Ms. Gagnon noted the suspension requirement under section 82(1.1)(b) of the HPA, which requires a suspension to be ordered where findings of sexual misconduct are made. Ms. Gagnon clarified that the HPA does not dictate the period of suspension and that it is within the purview of the Hearing Tribunal.

52. Ms. Gagnon submitted that the proposed suspension in the Joint Submission on Sanction meets the mandatory suspension required under the HPA and serves the purposes of sanctions.

53. Ms. Gagnon referred the Hearing Tribunal to the case of *Jaswal v Newfoundland Medical Board*, 1996 CanLII 11630 (NL SC) ("*Jaswal*"), which describes factors for discipline tribunals to consider when deciding appropriate sanctions orders. Ms. Gagnon's submissions on the *Jaswal* factors were as follows:

- a. Nature and gravity of the proven allegations: Mr. Forest's allegations are serious and fundamental to the practice of acupuncture. Record keeping and informed consent are basic requirements and expectations from all members of the profession. Allegation 3 is particularly serious, involving boundary violations and sexual misconduct, and while sexual misconduct is serious and should attract appropriate sanction, it is recognized that it is not on the most serious end of the scale.
- b. Age and experience of the regulated member: Mr. Forest first registered with the CAA in 2017, and the conduct occurred in 2021. The conduct at issue is foundational to practice. This is not a case where Mr. Forest's inexperience might mitigate the conduct.
- c. Previous character of the regulated member and in particular the presence or absence of any prior complaints or convictions: There are no previous findings of unprofessional conduct against Mr. Forest, so this factor is mitigating.
- d. Number of times the offence was proven to have occurred: Mr. Forest's proven conduct involved one patient, where a series of communications and actions took place over several months.
- e. Role of the regulated member in acknowledging what had occurred: Mr. Forest acknowledged that his conduct was unprofessional and apologized very early in the process. Doing so saved the CAA the time and expense of holding a contested hearing and the need to call witnesses. Mr. Forest's acknowledgment should be weighed in his favour when considering sanctions.

- f. Whether the regulated member had already suffered other serious financial or other penalties as a result of the allegations having been made: The Complaints Director was not aware of any other serious financial or other penalties Mr. Forest experienced as a result of the allegations.
- g. Impact of the incident on the offended patient: Ms. Gagnon referred the Hearing Tribunal to the Patient's complaint reporting form dated April 24, 2022 (Exhibit 1, Tab 2) and the impact statement read out by the Patient at the hearing. Both demonstrated that Mr. Forest's conduct had a serious impact on the Patient.
- h. Presence or absence of any mitigating circumstances: Ms. Gagnon noted that she was not aware of any further mitigating circumstances.
- i. Need to promote specific and general deterrence and, thereby, to protect the public and ensure the safe and proper practice of the profession: The proposed orders would deter Mr. Forest and the profession generally from engaging in similar unprofessional conduct in the future.
- j. Need to maintain the public's confidence in the integrity of the profession: To promote public confidence in the integrity of the profession the Hearing Tribunal's sanctions need to send a message to the public at large that these types of matters are taken seriously.
- k. 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: Mr. Forest's conduct is clearly outside the range of permitted conduct. Record keeping and informed consent are addressed in CAA's Code of Professional Conduct and Standards of Conduct, and are basic requirements and skills expected of any member of the professions. Sexual misconduct is always considered to be the type of conduct that would fall outside the range of permitted conduct.
- l. Range of sentence in other similar cases: Ms. Gagnon advised that previous cases of conduct concerning recordkeeping and informed consent usually involved a small fine and reprimand. This case differs because the HPA requires a suspension for findings of sexual misconduct. The Joint Submission on Sanction aligns with previous decisions of the CAA.

54. Ms. Gagnon briefly addressed that 10% of costs of the investigation and hearing sought are lower than what might otherwise have been requested by the Complaints Director. She noted the reason for lower costs involved the agreement with Mr. Forest and information about Mr. Forest's financial circumstances and personal circumstances, including care for his two elderly parents that is affecting his ability to earn income.

55. Ms. Gagnon referred the Hearing Tribunal to the case of *Jinnah v Alberta Dental Association and College*, 2022 ABCA 336 (“*Jinnah*”), where the Court of Appeal of Alberta held that colleges bear the responsibility of the costs of hearings and that substantial costs should not be ordered against a member unless there are compelling factors that exist, including:

- a. where the member engages in serious unprofessional conduct,
- b. where the member is a serial offender,
- c. where the member fails to cooperate in the college’s investigation, or
- d. where the member engaged in hearing misconduct.

56. Ms. Gagnon submitted that the first factor applies to Mr. Forest’s conduct as it was serious and that sexual misconduct, by its very nature, will always be viewed as being serious.

57. Ms. Gagnon noted that the Joint Submission on Sanction is not binding on the Hearing Tribunal. However, the Hearing Tribunal should not depart from a joint submission on sanction unless there are compelling reasons to do so. Ms. Gagnon continued to state the Hearing Tribunal would have the find that the proposed sanctions are completely unreasonable in the circumstances of the case and would bring the administration of justice into disrepute before rejecting a joint submission of sanction.

58. Ms. Gagnon referred the Hearing Tribunal to the case of *R v Anthony Cook*, 2016 SCC 43 (“*Anthony Cook*”) for the high threshold to reject a joint submission on sanction, as well as the case of *Bradley v Ontario College of Teachers*, 2021 ONSC 2303, which reiterates the *Anthony Cook* threshold in the professional discipline context.

Submissions by the Registrant

59. Mr. Forest did not object to Ms. Gagnon’s submissions on sanctions. He also noted that his mother’s poor health was one of the mitigating circumstances.

VIII. DECISION AND REASONS OF THE HEARING TRIBUNAL ON SANCTION

60. The Hearing Tribunal adjourned to consider the Joint Submission on Sanction. When the hearing reconvened, the Hearing Tribunal advised the parties that it accepted the orders proposed in the Joint Submission on Sanction.

Reasons for the Decision of the Hearing Tribunal

61. The Hearing Tribunal carefully considered the Joint Submission on Sanction, the submissions of the parties and the impact statement provided by the Patient.

62. The Hearing Tribunal recognizes that it owes deference to the parties' proposed orders and that a joint submission should only be rejected if it fails the public interest test outlined in *Anthony-Cook* and *Bradley*. It accepts this is a high bar and that parties rely on the certainty of a joint submission on sanction when they enter into negotiations.

63. In this case, the Hearing Tribunal is satisfied that the proposed sanctions satisfy the public interest test. The range of orders proposed are designed to protect the public and enhance public confidence in the ability of the CAA to regulate acupuncturists.

64. The Hearing Tribunal has considered the factors noted in *Jaswal* and finds that the recommended sanctions appropriately consider the factors in *Jaswal*. The joint recommendations consider the serious nature of the findings of the Hearing Tribunal, including the finding of sexual misconduct.

65. A reprimand is an appropriate order for all the proven Allegations. Mr. Forest's conduct in respect to record keeping, obtaining and documenting informed consent, and his failure to uphold boundaries with the Patient leading to a finding of sexual misconduct are all serious issues that are foundational to acceptable acupuncturist practice in Alberta.

66. Due to the finding of sexual misconduct in respect to Allegation 3, the Hearing Tribunal is required to order a suspension of some period under section 82(1.1)(b) of the HPA.

67. Sexual misconduct will not be tolerated by the CAA. Members must understand and maintain appropriate boundaries with patients to protect the patients they serve as well as the integrity of the profession. The Patient's impact statement provided verbally at the hearing made clear that Mr. Forest's conduct may have a lasting effect on the Patient's ability to trust health care professionals moving forward.

68. In the context of this hearing, with Mr. Forest's admission and recognition of his conduct as unprofessional, the Hearing Tribunal accepts that a two month suspension meets the public interest test.

69. However, the Hearing Tribunal finds that a one month served suspension, with another month held in abeyance is at the lower end of what is acceptable. If another member comes before the Hearing Tribunal with similar conduct, a more severe suspension is not out of the question.

70. One month is a significant amount of time for an acupuncturist to be out of practice, and as such, that time will serve as specific deterrence to Mr. Forest as well as general deterrence to other members of the profession.

71. The Hearing Tribunal also considered that the fines jointly proposed by the parties were appropriate given the proven conduct. The Hearing Tribunal may award a maximum fine of up to \$1000 per Allegation.

72. Record keeping and obtaining informed consent are fundamental to acupuncturist practice. A fine of \$500 for each of Allegation 1 and 2, which is in the mid-range of what could be awarded sends an appropriate message to Mr. Forest and others in the profession to make sure they are meeting the expected standards of the profession. A maximum fine of \$1000 for Allegation 3 makes clear sexual misconduct is at the more egregious end of unprofessional conduct.

73. The Hearing Tribunal anticipates that in addition to the suspension and fines, which are more punitive in nature, the coursework and reflection paper will provide Mr. Forest with remedial opportunities to directly address the issues that brought him to this hearing. The Hearing Tribunal recognizes the importance of these order in reiterating Mr. Forest's professional and ethical obligations.

74. The Hearing Tribunal also recognizes that sanctions orders should broadly deter Mr. Forest and the profession from engaging in similar conduct in the future. Suspensions and fines are serious sanctions and will communicate to both Mr. Forest and the profession the gravity of the proven conduct. Members of the profession should understand that if they act similarly to Mr. Forest, they will receive serious sanctions, including suspensions. These proposed sanctions also serve to protect the public.

75. The Hearing Tribunal also accepts that Mr. Forest's conduct is serious unprofessional conduct which could warrant a substantial order for costs under the *Jinnah* decision reviewed by legal counsel for the Complaints Director. Given the agreement on costs, the mitigating factors referenced by both parties and the public interest test, the Hearing Tribunal accepts that an order that Mr. Forest pay 10% of the costs of the investigation and hearing is appropriate in this case.

76. For all the above reasons, the Hearing Tribunal decided to accept the Joint Submission on Sanction and to make the orders proposed by the parties.

IX. ORDER OF THE HEARING TRIBUNAL

77. For the reasons set out above, the Hearing Tribunal finds that Allegations 1, 2 and 3 are proven on a balance of probabilities and amount to unprofessional conduct, including sexual misconduct in relation to Allegation 3.

78. The Hearing Tribunal makes the following orders pursuant to section 82 of the HPA:

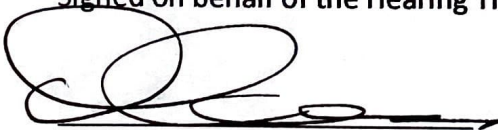
- a. A reprimand (with the decision of the Hearing Tribunal serving as the reprimand);

- b. A two month suspension, one month of which would be served immediately following the hearing. The second month of suspension would be held in abeyance for a period of one year from the date of the hearing. So long as no other complaints of a similar nature are made during that time, the second month would not be served. However, if a complaint alleging sexual abuse, sexual misconduct or boundary violations is made within the one year period, which is not dismissed by the Complaints Director under section 55(2)(e) within 2 months of receipt of the complaint, then the second one month suspension would be served;
- c. Payment of a fine of \$500 for Allegation 1, a fine of \$500 for Allegation 2 and a fine of \$1,000 for Allegation 3, for a total fine of \$2,000, to be paid within one year of the date of the hearing;
- d. Mr. Forest will retake the course on Bill 21 offered through the Alberta Federation of Regulated Health Professions within 4 months of the date of the hearing. The course is free and would not count towards his continuing competence credits. Notice of successful completion of the course would be required to be provided to the Complaints Director;
- e. Within 4 months of the hearing date, Mr. Forest shall prepare a reflection paper in English of a minimum of 1000 words, acceptable to the Complaints Director, describing the situation, what should have been done, and how Mr. Forest will change his practice going forward; and
- f. Payment of 10% of the investigation and hearing costs, to be paid on a schedule agreeable to the Complaints Director within 24 months of the hearing date.

79. The Hearing Tribunal thanks the parties for their cooperation in efficiently bringing this matter to a hearing in a manner that protected the public interest.

Dated this 16 day of January 2024.

Signed on behalf of the Hearing Tribunal of the College of Acupuncturists of Alberta.



D. Dawson, Chair