

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 MS. JIAMEI JIN

**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 Jiamei Jin on January 26, 2024. The members of the Hearing Tribunal of the College of Acupuncturists of Alberta (the “CAA”) were:

Kevin Kelly, Public Member and Tribunal Chair
Don Wilson, Public Member
Jiu-Lin Wang, Regulated Member
Lacey Wigness, 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, Legal Counsel for the Complaints Director

Jiamei Jin, Investigated Member
Anika Winn, Legal Counsel for the Investigated Member

An observer from the CAA attended 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 the 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. There was no application by either party to close the hearing.

III. CHARGES

5. The hearing concerned the following allegations (the “Allegations”) against Ms. Jin:
 1. On or about July 25, 2022, when administering acupuncture on the Patient, A.K., you failed to:
 - a. [Withdrawn];
 - b. document the appropriate patient profile and medical history;
 - c. obtain written informed consent to treatment;
 - d. [Withdrawn];

- e. [Withdrawn];
 - f. [Withdrawn];
 - g. further, as part of the investigation of the Patient's complaint, you failed to provide the Patient Record to the Investigator or Complaints Director in a timely manner.
2. On or about July 25, 2022, you did not include your registration number or identify the person receiving services on the receipt for services provided to the Patient.

IV. EVIDENCE

6. The Hearing Tribunal received an Agreed Statement of Facts and Admission of Unprofessional Conduct which was marked as Exhibit 1 and enclosed seven tabs of documents:

- Tab 1:** Complaint Reporting Form dated July 29, 2022, from A.K.
- Tab 2:** Copy of the receipt issued by Ms. Jin to A.K. on or about July 25, 2022
- Tab 3:** Amended Notice to Attend and Produce dated October 19, 2023
- Tab 4:** Copy of A.K.'s patient records prepared by Ms. Jin
- Tab 5:** CAA Code of Professional Conduct
- Tab 6:** CAA Patient Records Standards
- Tab 7:** CAA Standards of Competency and Practice

7. The Hearing Tribunal was also provided with a Joint Submission on Sanction, marked as Exhibit 2.
8. The parties confirmed by agreement typographical errors and technical issues in the Agreed Statement of Facts and Admission of Unprofessional Conduct.

V. SUBMISSIONS ON THE ALLEGATIONS

Submissions by Counsel for the Complaints Director

9. 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).
10. Ms. Gagnon provided an overview of the chronology of events set out in the Agreed Statement of Facts and Admission of Unprofessional Conduct. Ms. Jin was served with an Amended Notice to Attend and Produce dated October 19, 2023, which scheduled the hearing for January 26, 2024. Ms. Gagnon noted that Ms. Jin subsequently retained legal counsel and on January 3, 2024, through her legal counsel, Ms. Jin provided a copy of the chart she prepared for A.K.

11. The Complaints Director and Ms. Jin agreed that due to the late production of the patient record, it was appropriate to revise the particulars in Allegation 1(b) and (g) from what is in the Notice to Attend and Produce. The parties agreed to the revised particulars in Allegation 1(b) and (g) to reflect A.K.'s patient chart and Ms. Jin agreed to waive any timing irregularities regarding notice of the revision of the allegation.
12. The Complaints Director withdrew Allegation 1(a), (d), (e), and (f) following a review of the patient record that Ms. Jin provided on January 3, 2024. The parties did not call evidence with respect to Allegation 1(a), (d), (e), and (f) and asked the Hearing Tribunal to make no findings on those particulars.
13. Ms. Gagnon reviewed the Agreed Statement of Facts and Admission of Unprofessional Conduct for the agreed facts in terms of how this matter came before the Hearing Tribunal:
 - a. On July 25, 2022, A.K. attended Peace Chinese Herbal ("PCH") seeking treatment for undiagnosed medical concerns.
 - b. Ms. Jin was at PCH that day and upon hearing A.K. 's presenting complaints, Ms. Jin offered to provide A.K. with acupuncture services. Ms. Jin normally does not provide acupuncture services at PCH.
 - c. Ms. Jin provided A.K. with acupuncture services. Ms. Jin used twelve acupuncture needles in general points.
 - d. Ms. Jin also provided A.K. with Chinese herbs. However, the Complaints Director and Ms. Jin agreed that the administration of the herbs is not within the CAA's regulatory scope and that herbology is an unregulated practice in the Province of Alberta.
 - e. Ms. Jin provided A.K. with a receipt for the services. The receipt did not identify A.K. as the person receiving the services and did not contain Ms. Jin's CAA registration number.
 - f. On July 27, 2022, A.K. began experiencing shortness of breath and high blood pressure. A.K. called for an ambulance at approximately 3:30 AM. An Emergency Physician assessed A.K. but did not have a conclusion for the symptoms that A.K. was experiencing.
 - g. On July 29, 2022, A.K. submitted a complaint to the CAA.
 - h. Ms. Jin prepared a patient record on or around July 25, 2022, that was provided to the Complaints Director on January 3, 2024.
14. With respect to Allegation 1(b), Ms. Jin admits that she did not document the appropriate patient profile and medical history during A.K.'s appointment.
15. The Agreed Statement of Facts and Admission of Unprofessional Conduct describes the responsibilities of an acupuncturist concerning patient records:

a. *Article 5 of the Code of Conduct describes the responsibilities of an acupuncturist with respect to patient records: [Tab 5]*

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

b. *Section 2.3 of the College of Acupuncturists of Alberta Patient Records Standards (the "Patient Records Standards") outlines the information that acupuncturists must include in patient records: [Tab 6]*

2.3.2 *Specifically, patient records shall also include a cumulative patient profile, which contains a summary of information relevant to the treatment, condition, follow-up, and identification of the patient and more detailed information gathered during the course of consultations. This cumulative patient profile is commonly collected in an intake form during the first patient visit and needs to be updated whenever there is a change in data.*

Patient records shall include the following information:

...

2.3.2.1 *Identification (name, address, phone number, email)*

2.3.2.2 *Name of family physician*

2.3.2.3 *Personal and family information (occupation, relationship status, habits, family medical history, addictions)*

...

2.3.2.5 *Allergies*

2.3.2.6 *Current medication*

2.3.2.7 *Contact person in case of emergencies*

...

16. Concerning Allegation 1(c), Ms. Jin admitted that she did not obtain A.K.'s written informed consent to the acupuncture treatment.

17. The Agreed Statement of Facts and Admission of Unprofessional Conduct describes the responsibilities of an acupuncturist to obtain informed consent to treatment:

a. *Article 4.1 of the Code of Conduct describes the responsibilities of an acupuncturist with respect to informed consent to treatment: [Tab 5]*

- 4.1 *Registrants shall 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. [emphasis added]*
- b. *Section 2.3.2.9 of the Patients Records Standard [Tab 6] states that a record of the patient's consent must be maintained on the patient file:*
- 2.3.2.9 *Intake forms, documentation of consent, procedure explanation, patient comments and responses, observations, diagnostic processes, clinical 5 recommendations, findings, and emails, records of telephone conversations, or text messages directly or indirectly related to the patient's condition or treatment with the date and time.*
- c. *Section 5 of the College of Acupuncturists of Alberta Standards of Competency and Practice: Patient Information and Informed Patient Choice (the "Standards of Competency and Practice") sets out the standards an acupuncturist must meet when obtaining informed consent: [Tab 7]*
- 5.11 *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.*
18. With respect to Allegation 1(g), Ms. Jin admitted that she failed to provide A.K.'s patient record to the Investigator or Complaints Director in a timely manner as part of the investigation of A.K.'s complaint.
19. The Agreed Statement of Facts and Admission of Unprofessional Conduct describes the responsibilities that an acupuncturist has to respond to the CAA:
- a. *Article 12 of the Code of Conduct describes the responsibilities that an acupuncturist has to the CAA: [Tab 5]*
- 12.1 *It is the duty of registrants to comply with all requests of the [CAA], its officials, committees, and other authorized entities to enable them to fulfill their responsibilities.*
- 12.2 *Registrants shall respond promptly to any communication from the [CAA] where a response is requested or otherwise required.*
20. Ms. Jin acknowledged and agreed that her conduct displayed a lack of knowledge, skill, or judgment in the provision of professional services and contravened the above-noted

articles of the CAA Code of Professional Conduct and sections of the CAA Patient Records Standard and Standards of Competency and Practice.

21. Ms. Jin admitted that her conduct in Allegation 1(b), (c), and (g) constitutes unprofessional conduct as defined in sections 1(1)(pp)(i) and (ii) of the HPA.
22. Ms. Gagnon reviewed the Agreed Statement of Facts and Admission of Unprofessional Conduct in reference to Allegation 2.
23. Ms. Jin admitted that on July 25, 2022, she issued a receipt to A.K. that did not include Ms. Jin's registration number and did not identify A.K. as the person receiving services.
24. The Agreed Statement of Facts and Admission of Unprofessional Conduct describes the information that an acupuncturist must include on an invoice to a patient:
 - a. *Article 6 of the Code of Conduct describes the information that an acupuncturist must include on an invoice to a patient: [Tab 5]*
 - 6.1 *Registrants must provide patients with itemized invoices that are accurate and complete. Information provided to patients on an invoice must include:*
 - (a) *business name, address, phone number, name of the person who provided the service and registration number;*
 - ...
 - (d) *identification of the person receiving services from the registrant;*
 - ...
25. Ms. Jin acknowledged and agreed that her conduct: displayed a lack of knowledge, skill or judgment in the provision of professional services; contravened Article 6.1(a) and (d) of the CAA Code of Professional Conduct. She admitted that her conduct with respect to Allegation 2 constitutes unprofessional conduct as defined in sections 1(1)(pp)(i) and (ii) of the HPA.
26. Ms. Gagnon submitted that Ms. Jin's conduct is factually made out and that the proven conduct in relation to Allegation 1(b), (c), (g) and Allegation 2 constituted unprofessional conduct, based on the Agreed Statement of Facts and Admission of Unprofessional Conduct, the receipt for services issued to A.K., and A.K.'s patient records.
27. Ms. Gagnon noted that the Agreed Statement of Facts and Admission of Unprofessional Conduct provides Ms. Jin was aware of her right to retain legal counsel in this matter and has exercised this right.
28. Ms. Gagnon noted Ms. Jin's Admission of Unprofessional Conduct was being made under section 70 of the HPA. However, the Hearing Tribunal must still be satisfied that there

are sufficient facts to show that the Allegations have been proven and that the conduct is unprofessional conduct.

Submissions by Counsel for the Investigated Member

29. Ms. Winn confirmed that the Agreed Statement of Facts accurately stated the facts of this matter that the Hearing Tribunal can rely on. Ms. Winn also confirmed Ms. Jin's admission of unprofessional conduct as it relates to Allegation 1(b), (c), (g) and Allegation 2 in the Admission of Unprofessional Conduct.
30. Ms. Winn provided additional information about Ms. Jin, noting she graduated from medical school in Shanghai, China, in 1995, immigrated to Canada in 1999, and became a member of the CAA in April 2003. Ms. Jin started her own acupuncture practice in 2004 and has practiced continuously since then. In July 2022, she started working at PCH given her knowledge and experience in herbology. The conduct occurred during the first couple of days that Ms. Jin began working at PCH.
31. Ms. Winn noted Ms. Jin is an active and respected member of the Chinese community in Calgary, spending a significant amount of time volunteering in the community, particularly, at the Buddhist temple.
32. Ms. Winn submitted that this is Ms. Jin's first disciplinary proceeding in her 20 years of practice as an acupuncturist in Canada and that she comes before the Hearing Tribunal accepting responsibility for her actions and understanding that her conduct was a breach of the standards of practice and constituted unprofessional conduct.

Question by the Hearing Tribunal

33. In response to the Hearing Tribunal's questions concerning the insufficiency of the documentation in A.K.'s patient records, Ms. Gagnon noted that Article 5 of the CAA Code of Professional Conduct and Section 2.3.2 of the CAA Patient Records Standards, is not permissive or optional. The use of "shall" means the information must be provided.
34. Ms. Gagnon clarified that A.K.'s patient records did not include the required identification information outside the patient's name, the name of A.K.'s family physician, complete personal and family information, allergies, current medication, and the contact person in case of emergencies. Ms. Gagnon also identified in A.K.'s patient records Ms. Jin's notes indicating A.K.'s serious conditions and the importance that all information be included in A.K.'s record.
35. Ms. Winn submitted that the insufficiency of the medical records to meet the CAA Patient Records Standards goes to the circumstances in which the treatment was provided, as it occurred in PCH as opposed to Ms. Jin's own clinic where she normally practices acupuncture. Due to the circumstances, Ms. Jin did not have access to her standard patient intake form, but because of Ms. Jin's experience as an acupuncturist and concerns for A.K.'s well-being at the time, Ms. Jin provided treatment at PCH and later returned to her clinic and completed the patient file on A.K.'s behalf.

36. Ms. Gagnon clarified the insufficiency of the informed consent concerning Allegation 1(c) and the notes in A.K.'s patient records indicating consent was provided orally. Ms. Gagnon noted the informed consent requirements in Article 4.1 of the CAA Code of Professional Conduct require written consent to treatment shall be placed in the patient's file and Section 5.11 of the CAA Standards of Competency and Practice sets out an obligation to obtain a signed consent form. Ms. Gagnon submitted that the conduct in Allegation 1(c) was factually proven and should meet the threshold for unprofessional conduct.
37. Ms. Winn noted that Ms. Jin did not have the consent form with her when she provided acupuncturist services to A.K. and that Ms. Jin completed the consent form after she went back to her clinic. Ms. Winn clarified that it is Ms. Jin's handwriting in the patient documentation and the consent form was not signed by A.K.

VI. FINDINGS REGARDING ALLEGATIONS OF UNPROFESSIONAL CONDUCT

38. The Hearing Tribunal adjourned to consider the parties' submissions and responses to its questions and to review the Agreed Statement of Facts and Admission of Unprofessional Conduct. Upon return, the Hearing Tribunal advised the parties that it accepted Ms. Jin's admissions and found the Allegations were proven and constituted unprofessional conduct.

Reasons for Findings of Unprofessional Conduct

39. The Hearing Tribunal finds that the facts alleged in Allegations 1(b), 1(c), 1(g), and 2 were proven and rose to the level of unprofessional conduct. The Hearing Tribunal's reasons are described below.

Allegation 1(b)

40. The Hearing Tribunal accepted Ms. Jin's admission in relation to Allegation 1(b) that she failed to document the appropriate patient profile and medical history during A.K.'s appointment.
41. The Hearing Tribunal finds that the proven conduct rose to the level of unprofessional conduct as defined by sections 1(1)(pp)(i) and (ii) of the HPA. The documentation of patient records is a critical foundation for an acupuncturist's provision of services as established in the Code of Professional Conduct, and the Patient Records Standards. Ms. Jin should have known that her documentation practices in respect of A.K.'s appointment fell below the expected skill and judgment of an acupuncturist. Failure to adhere to the required standards can have a negative impact on patient care, particularly where the patient demonstrates serious conditions in the appointment.

Allegation 1(c)

42. The Hearing Tribunal accepted Ms. Jin's admission in relation to Allegation 1(c) that she failed to obtain A.K.'s written informed consent to the acupuncture treatment.

43. The Hearing Tribunal finds that the proven conduct rises to the level of unprofessional conduct as defined in sections 1(1)(pp)(i) and (ii) of the HPA. The proven allegation demonstrates a lack of judgment on the part of Ms. Jin. Informed consent is a crucial component in the provision of acupuncture treatment. It is necessary to demonstrate that patients understand the risks and benefits of their treatment, the reasonable alternatives available to them, and the patient's acceptance of the treatments offered to them.
44. The importance of obtaining informed written consent is emphasized in the CAA Code of Professional Conduct explicitly requiring written consent to treatment and in the CAA Standards of Competency and Practice obligating acupuncturists to obtain informed consent by having the patient sign the consent form. The requirement is further outlined in the Patient Records Standards.

Allegation 1(g)

45. The Hearing Tribunal accepted Ms. Jin's admission in relation to Allegation 1(g) that she failed to provide the patient records to the Investigator or Complaints Director in a timely manner as part of the investigation of A.K.'s complaint.
46. The Hearing Tribunal finds that the proven conduct rises to the level of unprofessional conduct as defined in section 1(1)(pp)(ii) of the HPA. An acupuncturist's duties and responsibilities to comply with requests from the CAA and to respond are essential to the CAA's mandate to protect and serve the public interest by conducting investigations to address complaints. This expectation is outlined in the Code of Conduct at Articles 12.1 and 12.2.

Allegation 2

47. The Hearing Tribunal accepted Ms. Jin's admission that she issued a receipt to A.K. that did not include Ms. Jin's registration number and did not identify A.K. as the person receiving services.
48. The Hearing Tribunal finds that the proven conduct rises to the level of unprofessional conduct as defined in sections 1(1)(pp)(i) and (ii) of the HPA. Acupuncturists are expected to follow the guidelines and standards set out in the CAA Code of Professional Conduct, which Ms. Jin did not do in this case. Ms. Jin also displayed a lack of judgment in the provision of professional services when she failed to provide A.K. with an accurate and complete invoice by identifying her registration number or A.K. as the person receiving services.

VII. SUBMISSIONS REGARDING SANCTIONS

Submissions by Counsel for the Complaints Director

49. The Complaints Director and Ms. Jin presented a Joint Submission on Sanction for the Hearing Tribunal's consideration (Exhibit 2) and agreed that all the jurisdictional and procedural requirements of the Joint Submission on Sanction had been met.

50. Ms. Gagnon recognized that Ms. Jin had been cooperative with the CAA throughout the hearing process and had no prior findings of unprofessional conduct with the CAA.
51. The Joint Submission on Sanction included the following orders:
 - a. Ms. Jin shall receive a reprimand and the written decision of the Hearing Tribunal shall serve as the reprimand.
 - b. Within 90 days of service of the Hearing Tribunal's decision on Ms. Jin, Ms. Jin shall successfully complete, at her own cost, the following courses and provide a certificate of completion to the Complaints Director:
 - a. "Protecting yourself through proper charting" through Integrative Medicine Council;
 - b. "Informed Consent" through the Canadian Medical Protective Association;
 - c. "Documentation" through the Canadian Medical Protective Association;
 - d. "Medical letters, forms, and reports" through the Canadian Medical Protective Association.
 - c. If a course is no longer available or if the Complaints Director determines that the course cannot be reasonably completed by Ms. Jin, then Ms. Jin may complete an alternative course, to be approved in writing in advance by the Complaints Director.
 - d. Ms. Jin shall provide a written confirmation to the Complaints Director within 30 days of service of the Hearing Tribunal's decision on Ms. Jin, that she has reviewed the CAA Code of Professional Conduct, Patient Records Standards, and definition section of the HPA section 1(1)(pp)(i) to (xii).
 - e. Within 90 days of service of the Hearing Tribunal's decision on Ms. Jin, Ms. Jin shall prepare a reflection paper in English of a minimum 1000 words, acceptable to the Complaints Director, describing the situation, what should have been done, and how Ms. Jin will change her practice going forward.
 - f. Ms. Jin shall not receive any continuing competence credits for reviewing the CAA Code of Professional Conduct or Patient Records Standards, for any courses taken, or for preparing a reflection paper.
52. Ms. Gagnon requested the Hearing Tribunal consider the general principles of sanctions in arriving at their decision. Sanctions should focus on the need for deterrence, both specific to the investigated member and generally to the profession as a whole, the need to protect the public, and the need to maintain the public's confidence in the integrity of the profession to self-regulate.

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: Ms. Jin's conduct was not conduct on the most serious end of the scale. However, record keeping and obtaining informed consent following the CAA Code of Professional Conduct and Standards of Practice are basic requirements expected of all members and breaches of those requirements should attract an appropriate sanction. The proposed sanctions of a reprimand and education rehabilitation aspects appropriately reflect the nature and gravity of the proven Allegations.
 - b. Age and experience of the regulated member: Ms. Jin became a registered member of the CAA in April 2003. Ms. Jin was an experienced member at the time the conduct occurred and was expected to know the requirements established in the CAA Code of Professional Conduct and Standards of Practice.
 - c. Previous character of the regulated member: There are no previous findings of unprofessional conduct against Ms. Jin, so this mitigating factor weighs in her favour.
 - d. Number of times the offence was proven to have occurred: Ms. Jin's proven conduct arises out of one incident involving one patient and is not the type of conduct where a pattern of behaviour is seen.
 - e. Role of the regulated member in acknowledging what had occurred: Ms. Jin acknowledged her conduct was unprofessional and chose to proceed by way of agreement, shortening the time needed for the hearing. This factor is mitigating and should weigh in Ms. Jin's favour when considering appropriate 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 Ms. Jin experienced as a result of the Allegations.
 - g. Impact of the incident on the offended patient: A.K.'s complaint relates to certain issues that were not referred to a hearing. The Allegations before the Hearing Tribunal concern record keeping issues and issues relating to the information provided on the receipt of services provided by Ms. Jin. Ms. Gagnon submitted that there was limited impact on A.K. because of the proven Allegations.
 - h. Need to maintain the public's confidence in the integrity of the profession: The proposed sanctions will provide confidence in the ability of the profession to self-regulate.
 - i. Presence or absence of any mitigating circumstances: The Complaints Director was not aware of any further mitigating circumstances.

- j. 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 sanctions will serve the function of protecting the public through specific and general deterrence. The proposed sanctions provide Ms. Jin an opportunity to learn from this matter and not to engage in this conduct again. The reprimand is meant to show the profession that Ms. Jin's conduct is inappropriate. Ms. Gagnon submits that the decision of the Hearing Tribunal should provide confidence to the public in the ability of the profession of acupuncturists to self-regulate.
 - k. Degree to which the offensive conduct that was found to have occurred falls outside the range of permitted conduct: Ms. Jin's conduct was a breach of the clear requirements set out in the CAA Code of Professional Conduct and Standards of Practice.
- 54. Ms. Gagnon submitted that the Joint Submission on Sanction is reasonable. The proposed sanctions appropriately reflect the nature of Ms. Jin's conduct and its seriousness.
 - 55. While the Joint Submission on Sanction is not binding on the Hearing Tribunal, it should only depart from the proposed orders if there is a compelling reason to do so. The test for the Hearing Tribunal is not what it would have imposed as a sanction, rather it is whether the sanction proposed by the parties is reasonable to protect the public.
 - 56. Ms. Gagnon referred the Hearing Tribunal to the Supreme Court of Canada decision in *R v Anthony-Cook*, 2016 SCC 43 ("*Anthony-Cook*") for the high level of deference owed to a joint submission on sanction. *Anthony-Cook* addresses the benefit of having matters go by agreement so that matters can be heard more expeditiously and fewer resources are used.
 - 57. Ms. Gagnon also referred the Hearing Tribunal to the case of *Bradley v Ontario College of Teachers*, 2021 ONSC 2303, which reiterates the *Anthony-Cook* threshold in the professional discipline context. In fairness to the parties, the Hearing Tribunal should notify the parties of any concerns on the proposed sanctions and provide an opportunity for further submissions on those concerns.

Submissions by Counsel for the Investigated Member

- 58. Ms. Winn agreed that the Joint Submission on Sanction was appropriate and reasonable and should be accepted by the Hearing Tribunal. Ms. Winn noted it is important that the sanctions are not intended to destroy members of a profession, rather it is only intended to punish and, in most cases, take an educative and rehabilitative approach.
- 59. Ms. Winn emphasized the importance of accepting a joint submission on sanction unless there are concerns that the sanctions are not within the range of sanctions that are reasonable. The Hearing Tribunal would have to find that the proposed sanctions would bring the administration of justice into disrepute before rejecting a joint submission of sanction. She agreed with Ms. Gagnon's submission that if there are concerns with the

proposed sanctions, the Hearing Tribunal should provide the parties an opportunity to remedy the Hearing Tribunal's concerns.

60. Ms. Winn noted that the Supreme Court of Canada in *Anthony-Cook* identified the benefit of joint submissions providing a high degree of certainty for the member and recognizing that the parties are in the best position to reach an agreement that reflects the public interest and that of the investigated member.
61. Ms. Winn submitted that the Hearing Tribunal should approach the Joint Submission on Sanction on an "as-is basis," meaning that if the parties have not asked for a particular order, then the Hearing Tribunal should assume that it was considered and excluded from the Joint Submission on Sanction.
62. Ms. Winn highlighted several *Jaswal* factors in Ms. Jin's case that Ms. Gagnon mentioned. Ms. Winn submitted that the circumstances giving rise to the breach were mitigating as Ms. Jin was assisting a patient who requested medical assistance and that Ms. Jin was concerned for the patient's well-being. The breach was the result of an isolated incident from well-intentioned actions by Ms. Jin, and she has recognized and taken responsibility for her failures in documentation. Ms. Jin was cooperative throughout the disciplinary process, and while failing to produce A.K.'s records in a timely fashion, this was due to Ms. Jin not having the benefit of legal counsel at the time and being inexperienced in the process.
63. Ms. Winn submitted that in addition to the specific deterrence provided by the proposed sanctions as addressed by Ms. Gagnon, Ms. Jin has also found the investigatory process to be extremely stressful, which is sufficient to deter Ms. Jin from repeating the unprofessional conduct and convince members of the CAA to avoid the same.

VIII. DECISION AND REASONS OF THE HEARING TRIBUNAL ON SANCTION

64. 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

65. The Hearing Tribunal carefully considered the Joint Submission on Sanction and the submissions of the parties.
66. 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.
67. In this case, the Hearing Tribunal is satisfied that the proposed sanctions satisfy the public interest test. The range of orders proposed is designed to protect the public and enhance public confidence in the ability of the CAA to regulate acupuncturists. The

proposed sanctions also fall within a range of sentences that the Hearing Tribunal finds reasonable.

68. 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.
69. A reprimand is an appropriate order for all the proven Allegations. Ms. Jin's conduct concerning her record content and obtaining and documenting informed consent are issues that are foundational to acceptable acupuncturist practice in Alberta. However, the Hearing Tribunal finds that this was not conduct involving an egregious charting breach, but rather there were specific aspects of the standards that Ms. Jin failed to comply with.
70. The Hearing Tribunal recognizes that the proposed sanctions should deter Ms. Jin and the profession from engaging in similar conduct in the future. Considering the nature of the conduct, the Hearing Tribunal accepts that Ms. Jin can be rehabilitated through the proposed sanctions and move forward from this matter. The proposed sanctions also serve to maintain the public's confidence in the competence and integrity of the profession.
71. The Hearing Tribunal recognizes the educative and remedial approach to sanctions. Where possible, the goal is to educate and rehabilitate members of the profession to ensure they meet the standards of practice expected of them. The proposed sanctions will require Ms. Jin to complete educational courses, reflect on her conduct, and review the CAA Code of Professional Conduct, Patient Records Standards, and Standards of Competency and Practice. Completion of these orders will serve to educate Ms. Jin on her professional and ethical obligations and ensure safe practice in the future.
72. The Hearing Tribunal recognizes that the investigatory process was stressful on Ms. Jin and that, in addition to the deterrence served by the Joint Submission on Sanction, her participation in this process will serve to deter Ms. Jin and members of the profession generally from repeating the proven conduct.
73. 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. The Hearing Tribunal is satisfied that the sanctions orders will serve the public interest.

IX. ORDER OF THE HEARING TRIBUNAL

74. For the reasons set out above, the Hearing Tribunal finds that the revised Allegations 1(b), 1(c), 1(g), and 2 were proven on a balance of probabilities and amount to unprofessional conduct.
75. The Hearing Tribunal makes the following orders pursuant to section 82 of the HPA:
 - a. Ms. Jin shall receive a reprimand and the written decision of the Hearing Tribunal shall serve as the reprimand.

- b. Within 90 days of service of the Hearing Tribunal's decision on Ms. Jin, Ms. Jin shall successfully complete, at her own cost, the following courses and provide a certificate of completion to the Complaints Director:
 - a. "Protecting yourself through proper charting" through Integrative Medicine Council;
 - b. "Informed Consent" through the Canadian Medical Protective Association;
 - c. "Documentation" through the Canadian Medical Protective Association;
 - d. "Medical letters, forms, and reports" through the Canadian Medical Protective Association.
 - c. If a course is no longer available or if the Complaints Director determines that the course cannot be reasonably completed by Ms. Jin, then Ms. Jin may complete an alternative course, to be approved in writing in advance by the Complaints Director.
 - d. Ms. Jin shall provide a written confirmation to the Complaints Director within 30 days of service of the Hearing Tribunal's decision on Ms. Jin, that she has reviewed the CAA Code of Professional Conduct, Patient Records Standards and definition section of the HPA section 1(1)(pp)(i) to (xii).
 - e. Within 90 days of service of the Hearing Tribunal's decision on Ms. Jin, Ms. Jin shall prepare a reflection paper in English of a minimum 1000 words, acceptable to the Complaints Director, describing the situation, what should have been done, and how Ms. Jin will change her practice going forward.
 - f. Ms. Jin shall not receive any continuing competence credits for reviewing the CAA Code of Professional Conduct or Patient Records Standards, for any courses taken, or for preparing a reflection paper.
76. The Hearing Tribunal commends the parties for their cooperation in efficiently bringing this matter to a hearing through their Agreed Statement of Facts and Joint Submission on Sanction.

Dated this 19th day of March 2024.

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



K. Kelly, Chair