

COLLEGE OF PHYSICIANS & SURGEONS OF ALBERTA

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

AND IN THE MATTER OF A HEARING REGARDING  
THE CONDUCT OF DR. GAYLORD WARDELL

**DECISION OF THE HEARING TRIBUNAL OF  
THE COLLEGE OF PHYSICIANS  
& SURGEONS OF ALBERTA  
REGARDING SANCTIONS  
OCTOBER 31, 2022**

## I. INTRODUCTION

1. The Hearing Tribunal held a hearing into the conduct of Dr. Gaylord Wardell on October 13 and 14, 2021. The Hearing Tribunal issued a written decision dated February 16, 2022, finding Dr. Wardell to have committed unprofessional conduct. On October 4, 2022, the same members of the Hearing Tribunal reconvened to receive submissions on sanctions. The hearing proceeded virtually through Zoom.
2. The members of the Hearing Tribunal were:
  - Dr. Erica Dance of Edmonton as Chair,
  - Dr. Robin Cox of Calgary (physician member),
  - Ms. Anita Warnick of Calgary (public member), and
  - Mr. James Lees of Edmonton (public member).
3. Ms. Mary Marshall acted as independent legal counsel for the Hearing Tribunal.
4. In attendance at the hearing were:
  - Ms. Stacey McPeek, legal counsel for the Complaints Director;
  - Ms. Andrea Stempien and Ms. Ellen Forsyth, legal counsel for Dr. Gaylord Wardell; and
  - Dr. Gaylord Wardell, Investigated Member.

## II. PRELIMINARY MATTERS

5. There were no objections to the composition of the Hearing Tribunal or to the jurisdiction of the Hearing Tribunal to proceed with a hearing nor were there any other matters of a preliminary nature. Pursuant to section 78 of the *Health Professions Act*, RSA 2000, c. H-7 (the "HPA"), the hearing was open to the public.

## III. UNPROFESSIONAL CONDUCT FINDINGS

6. In its decision dated February 16, 2022, after considering the evidence and submissions presented at the hearing, the Hearing Tribunal found Dr. Wardell to have committed unprofessional conduct.
7. The Notice of Hearing listed the following allegations:
  1. You did fail to comply with the Standard of Practice regarding Referral Consultation, in particular you failed to provide a written consultation report to the physician who referred the patient to you following your assessment of the patient on March 16, 2017, in particular, one or more of the following patients:
    - Patient A;
    - Patient B;
    - Patient C;
    - Patient D;
    - Patient E;
    - Patient F;

- Patient G;
  - Patient H;
  - Patient I;
2. You did fail to comply with the Standard of Practice regarding Telemedicine in that you did issue a prescription by electronic means to one or more of your patients listed below, when having only consulted with your patient via electronic communication on or about March 16, 2017;
  3. You did fail to comply with the requirements of the Standard of Practice for Cannabis for Medical Purposes in the care you provided a medical authorization for cannabis on or about March 16, 2017 to one or more of your patients listed below, particulars of which include one or more of the following:
    - a. Fail to attempt and find conventional therapies ineffective in treating the patient's medical condition or symptoms;
    - b. Fail to see your patient at least once every three months; and
    - c. Fail to determine from available prescription databases the current medication history of your patient and determine if cannabis was contraindicated given any existing prescription or non-prescription medications being utilized by the patient;

The patients noted in allegation #2 and #3, being seen via Skype on March 16, 2017, are:

- Patient J;
- Patient K;
- Patient L;
- Patient M;
- Patient N;
- Patient O;
- Patient P;
- Patient Q;
- Patient R;
- Patient S;
- Patient A;
- Patient B;
- Patient C;
- Patient D;
- Patient E;
- Patient F;
- Patient G;
- Patient T;
- Patient H;
- Patient I;
- Patient U;
- Patient V;
- Patient W;
- Patient X;
- Patient Y;

- Patient Z;
- Patient AA;
- Patient AB;
- Patient AC;
- Patient AD

8. In the merit hearing and as outlined in the decision dated February 16, 2022, the Hearing Tribunal found as follows in relation to the charges: charge 1 was not proven; charge 2 was not proven; charge 3a was not proven; charge 3b was proven and it amounted to unprofessional conduct; and charge 3c was proven in part, and it amounted to unprofessional conduct.

#### IV. EVIDENCE

9. Neither party called any witnesses to testify on the issue of sanctions.
10. The Hearing Tribunal was provided with a signed Joint Submission Agreement between the College and Dr. Wardell. This document was marked as **Exhibit 5**. In this Joint Submission Agreement, Dr. Wardell and the Complaints Director requested that the Hearing Tribunal impose the following orders:
- a. Dr. Wardell will receive a reprimand, with the Hearing Tribunal decision serving as the reprimand;
  - b. Dr. Wardell will be monitored by the Physician Health Monitoring Program (“PHMP”) of the College of Physicians and Surgeons of Alberta in respect of authorizations for cannabis for medical purposes only, on a quarterly basis for 12 months, to ensure where a medical document has been provided, Dr. Wardell has:
    - i. obtained medical history from available prescription databases for each patient; and
    - ii. followed-up with each patient at an appropriate interval as indicated in the Standard of Practice Cannabis for Medical Purposes, as amended;
  - c. The procedure for the monitoring outlined in b. above will be determined collaboratively by the Assistant Registrar for the PHMP and Dr. Wardell. If the Assistant Registrar and Dr. Wardell are not able to agree on a procedure, the matter will be brought back to the Hearing Tribunal for direction; and
  - d. Dr. Wardell will be responsible for 20% of the costs of the investigation and the hearing before the Hearing Tribunal.
11. Additionally, a Brief of Law regarding Joint Submissions dated September 1, 2022, was presented by Ms. McPeck, including the following authorities:
- a. *Timothy Edward Bradley v. Ontario College of Teachers*, 2021 ONSC 2303;
  - b. *Ontario (College of Physicians and Surgeons of Ontario) v. Gale*, 2020 ONCPSD 41;
  - c. *CPSS v Zwane*, 2020;

- d. *R. v. Anthony-Cook*, 2016 SCC 43 (CanLII), [2016] 2 SCR 204;
- e. *Friedman, Re*, 2003 CanLII 57469 (AB CPSDC);
- f. *Jaswal v. Medical Board (Nfld.)*, 1996 CanLII 11630 (NL SC).

## V. SUBMISSIONS

### *Counsel for the Complaints Director*

12. Ms. McPeck offered the following submissions on behalf of the Complaints Director:
- a. Parties involved in creating a joint submission are in the best position to know the circumstances of the relevant standard(s) of practice, the behavior that is at issue, and the strengths and weaknesses of their positions.
  - b. As such, a high degree of deference should be given to a joint submission. A panel should not depart from a joint submission unless the proposed penalty would bring the administration of justice into disrepute or would otherwise be contrary to public interest.
  - c. The legal test when considering a joint submission is referred to as a ‘public interest test’ and is from *R. v. Anthony-Cook*, a 2016 Supreme Court of Canada decision. Other cases, which are highlighted in the Brief of Law supplied to the Hearing Tribunal, confirm the importance of joint submissions.
  - d. If the Hearing Tribunal were to reject this joint submission or seek changes to it, fairness would require that the parties be allowed to make further submissions. This may include a withdrawal of the joint submission and proceeding with a contested hearing.
  - e. Looking to the reasons for this joint submission, the fundamental purpose of sanction in the professional regulatory context is to ensure the public is protected from any potential unprofessional conduct and that the public has confidence in the profession and its regulation. The Hearing Tribunal must also consider general deterrence and the message it sends other members of the profession, as well as specific deterrence for the Investigated Member. In this case, a focus on rehabilitation of Dr. Wardell is most appropriate.
  - f. The 13 factors extracted from *Jaswal v. Newfoundland Medical Board* were reviewed.
  - g. The main aggravating factor was the number of times the conduct was shown to be proven, specifically that charges 3b and 3c were shown to have occurred at least 30 times.
  - h. As far as mitigating factors, it was noted that Dr. Wardell had not received any prior complaints over the course of his long career.
  - i. Neutral factors included the nature and gravity of the conduct, which was serious but not egregious, and Dr. Wardell is not young or naïve. Also, a neutral factor is that Dr. Wardell did not acknowledge the conduct, but he has the right to defend himself and was successful in defending some of the charges.

- j. The remaining are non-factors in this case, including that there was no patient affected in this matter, and that the Complaints Director is not aware of any serious financial or other penalties that Dr. Wardell has suffered.
- k. The last, or thirteenth, *Jaswal* factor is to consider other sanctions in similar cases. While there were no cases which dealt with the same specific conduct, a number of related cases were reviewed including *College of Physicians and Surgeons of Ontario v. Gale*, *College of Physicians and Surgeons of Saskatchewan v. Zwane*, and the *College of Physicians and Surgeons of Alberta v. Friedman*. The similarities and differences of each case, along with the sanctions in each were reviewed to highlight that the sanctions being considered in this case are within the range of sanctions in other similar cases.
- l. Details of the sanction were reviewed including highlighting that the reprimand is appropriate in this case, and that it addresses the need for both specific and general deterrence. The monitoring aspect protects the public and ensures changes are made in Dr. Wardell's practice, and reinforces that rehabilitation is possible and appropriate in this case.
- m. The relevant standard to which Dr. Wardell will be held has been updated so that the need for follow up in these cases is now every six months, where it was every three months at the time of the charges.
- n. Relating to costs, the parties felt that 20 percent was appropriate and supported by the relevant *Jaswal* factor in that the Complaints Director is not aware of financial circumstance which would make this inappropriate. It also takes into consideration that while Dr. Wardell pursued a contested hearing, he was successful in resisting some of the charges.
- o. In summary, Ms. McPeck requested the Hearing Tribunal to accept the Joint Submission. Dr. Wardell will receive a reprimand and be monitored on a quarterly basis for 12 months to ensure that when a medical document has been provided to a patient, that Dr. Wardell is obtaining a medical history from available prescription databases and that he is following up with each patient at an appropriate interval. Additionally, Dr. Wardell will pay 20 percent of the costs of these proceedings.

***Counsel for Dr. Wardell***

- 13. Ms. Stempien offered the following submissions on behalf of Dr. Wardell:
  - a. On the three charges laid against Dr. Wardell, the majority were not proven.
  - b. The Standard of Practice relating to prescribing cannabis has been updated every three years since it was initially issued in 2014 so this is an evolving area of medicine. One of the proven charges was with respect to follow-up, and this standard has now been amended to require follow-up every six months, where it was three months before.
  - c. The importance of deference to joint submissions was reiterated. The parties considered all relevant factors in determining a fair sanction given the specific circumstances of this case. The threshold for a hearing panel to reject a joint submission is high. The Hearing Tribunal should accept the submission unless it is found to be unfit, unreasonable, or contrary to public interest.

- d. With respect to the *Jaswal* factors, the conduct which was proven unprofessional in this case is lower in severity and Dr. Wardell is an experienced physician without prior involvement with the College.
- e. The Complaints Director was the complainant in this case, not a patient, and there is no evidence of harm to any patients in this case. Regarding the number of times the unprofessional conduct occurred, while there were several patient cases involved in the charges, they were all scheduled on one day of treatment.
- f. Dr. Wardell was forthcoming and cooperative with these proceedings and did not deny his practice or the substance of the charges. The denial was only that his practice was in breach of the Standard of Practice or that it was unprofessional conduct.
- g. Dr. Wardell is agreeing to pay 20 percent of the costs so there will be a financial consequence for him.
- h. Dr. Wardell testified at the merits portion of this hearing that there has been about an 85 percent reduction in requests for authorization to grow medicinal cannabis in his practice which is an additional mitigating factor.
- i. The agreed sanction is adequate to ensure the public's confidence and integrity in the medical profession and its ability to self-govern.
- j. It is important to note that the conduct in the cases referenced with respect to the range of penalty in similar cases was far more severe than the nature of the proven conduct in this case. The Joint Submission presented recognizes the lower severity of Dr. Wardell's conduct and focuses on practice improvement.
- k. In summary, the penalty proposed in the Joint Submission is reasonable and in the public interest. The reprimand is appropriate to achieve the goal of general and specific deterrence and maintains public confidence in the medical profession. The monitoring is specifically tailored to the proven charges and is in the public interest. The consequence to Dr. Wardell is proportionate to the proven charges and further provides a measure of specific deterrence.

### ***Questions of the Hearing Tribunal***

14. The Hearing Tribunal questioned the parties, and the following key points were made:
  - a. There has been an increasing responsibility of hearing tribunals to fully understand what is represented in terms of costs imposed in sanction. The parties reported that the cost to date is just over \$51,000 plus the cost of the discussions to create the Joint Submission on Sanction and the cost incurred as part of this hearing. The parties are comfortable that 20 percent of this would be a reasonable financial cost to Dr. Wardell.
  - b. Section 2b of the proposed sanction refers to the planned monitoring which is meant ensure that Dr. Wardell obtains a medical history from available prescription databases and that he follows up with the patients at an appropriate interval as per the amended Standard of Practice Cannabis for Medical Purposes. It was clarified that Dr. Wardell would be expected,

and that he intends, to follow all aspects of the current standard relating to cannabis, as well as other standards which govern his practice, even if these two aspects are the only ones being monitored in the Joint Submission.

- c. The Physician Health Monitoring Program will provide the monitoring outlined in this agreement even though there is no evidence of concern relating to Dr. Wardell's health. It was clarified that the Physician Health Monitoring Program now oversees all practice conditions at the College which have been imposed in the context of a hearing, even if no health condition is involved.

## **VI. DECISION AND REASONS FOR DECISION**

15. The Hearing Tribunal adjourned and, when the hearing resumed, confirmed to the parties that it accepted the Joint Submission on Sanction as presented. For clarity, the Hearing Tribunal advised the parties that, with regards to the monitoring component of the sanction, the Complaints Director could start making arrangements and did not have to wait for a written decision from the Hearing Tribunal.
16. The Hearing Tribunal carefully considered the submissions of both parties with specific regard to the deference a panel should have for joint submissions on sanction as outlined in *Anthony-Cook*.
17. Specifically, the Hearing Tribunal did not find evidence that accepting this Joint Submission would bring the administration of justice into disrepute or would otherwise be contrary to public interest.
18. The Hearing Tribunal appreciated the work that was done by both parties to come to this joint submission.
19. The Hearing Tribunal agreed that the parties would be in the best place to understand the specifics of the conduct in question, the relevant standards of practice, and the strengths and weaknesses of their respective positions.
20. Further, the Hearing Tribunal agreed that the conduct in this case was not egregious and could be mitigated by practice improvement as outlined in this Joint Submission. The Hearing Tribunal appreciated that Dr. Wardell would be monitored to ensure compliance with the amended Standard of Practice regarding Cannabis for Medical Purposes.
21. The reprimand and costs serve as both a specific deterrent for Dr. Wardell as well as general deterrent to others in the profession.
22. The costs were felt to be reasonable and considered the fact that, while Dr. Wardell proceeded with a contested hearing, he was successful in defending a portion of the charges. No evidence was presented that Dr. Wardell would find this financial penalty to cause undue financial hardship.
23. The sanctions as presented also help ensure the public has confidence in the profession and its ability to regulate its members.



24. For these reasons, the Hearing Tribunal makes the following orders pursuant to section 82 of the HPA:
- a. Dr. Wardell will receive a reprimand, with the Hearing Tribunal decision serving as the reprimand;
  - b. Dr. Wardell will be monitored by the Physician Health Monitoring Program (“PHMP”) of the College of Physicians and Surgeons of Alberta in respect of authorizations for cannabis for medical purposes only, on a quarterly basis for 12 months, to ensure where a medical document has been provided, Dr. Wardell has:
    - i. obtained medical history from available prescription databases for each patient; and
    - ii. followed up with each patient at an appropriate interval as indicated in the Standard of Practice Cannabis for Medical Purposes, as amended;
  - c. The procedure for the monitoring outlined in b. above will be determined collaboratively by the Assistant Registrar for the PHMP and Dr. Wardell. If the Assistant Registrar and Dr. Wardell are not able to agree on a procedure, the matter will be brought back to the Hearing Tribunal for direction; and
  - d. Dr. Wardell will be responsible for 20% of the costs of the investigation and the hearing before the Hearing Tribunal.

Signed on behalf of the Hearing Tribunal by the Chair:



Dr. Erica Dance

Dated this 31<sup>st</sup> day of October, 2022.