

**PURSUANT TO THE *HEALTH PROFESSIONS ACT*, BEING CHAPTER H-7 OF THE
REVISED STATUTES OF ALBERTA, 2000**

**IN THE MATTER OF THE HEARING TRIBUNAL OF THE
PHYSIOTHERAPY ALBERTA COLLEGE AND ASSOCIATION INTO THE CONDUCT OF
HEMANT PANDIA, A REGULATED MEMBER**

DECISION OF THE HEARING TRIBUNAL

The hearing was held virtually via videoconference on December 3, 2020.

Present were:

The members of the Hearing Tribunal of the Physiotherapy Alberta College + Association ("Physiotherapy Alberta"):

Todd Wolansky, Chairperson
Simone Hunter, Physiotherapist
Sharla Butler, Physiotherapist
Archana Chaudhary, Public Member

David Jardine and Annabritt Chisholm, Independent Legal Counsel for the Hearing Tribunal

Moyra McAllister, Complaints Director
Katrina Haymond, Legal Counsel for the Complaints Director
Caitlyn Field, Legal Counsel for the Complaints Director

Hemant Pandia, Member

Opening of the Hearing

1. The hearing opened and all persons present introduced themselves for the record.
2. The hearing was open to members of the public, and three members of the public, who were not identified for the record, were present. Physiotherapy Alberta's Hearing Administrator, Ms. Haylee O'Reilly was also present on the videoconference to manage the technical procedures related to the hearing.
3. Neither Ms. Haymond nor Mr. Pandia presented any objections to the jurisdiction or composition of the Hearing Tribunal or made an application to close the hearing to the public. However, both parties agreed if Mr. Pandia wished to raise an objection regarding the hearing

being open to the public later on in the proceedings, the Complaints Director could address his objections at that time.

4. The Hearing Tribunal provided the parties with an opportunity to raise any additional preliminary matters. The parties indicated they were ready to proceed.

5. Prior to the hearing, the Hearing Tribunal was given a password protected electronic package containing an Agreed Statement of Facts and an Acknowledgement of Unprofessional Conduct with attached documents marked as Tabs 1-18. Once the hearing commenced, the Hearing Tribunal was provided with the password for the document package, which was entered as Exhibit 1 to the hearing.

6. The Notice of Hearing was attached as Tab 15 to Exhibit 1 and indicated the following allegation was before the Hearing Tribunal:

TAKE NOTICE THAT on December 3, 2020, commencing at 9:00 a.m. by Zoom Video Conference, a Hearing Tribunal of Physiotherapy Alberta - College + Association ("Physiotherapy Alberta") will conduct a hearing into allegations that you engaged in unprofessional conduct in that:

1. Despite being advised by your employers on numerous occasions that your patient charts do not meet required standards, you failed to maintain timely, adequate and/or any records in relation to the treatment provided to client J.L. from April 17, 2019 – May 22, 2019.

7. The Chair reviewed the Notice of Hearing and asked Mr. Pandia if he admitted or denied the allegation. Mr. Pandia stated that he admitted to the allegation.

Submissions of the Complaints Director

8. Ms. Haymond reviewed that Mr. Pandia had been a registered member of Physiotherapy Alberta on its general register since 2005 and on its provisional register since 2003. She explained that Mr. Pandia worked at Lifemark Stony Plain beginning in 2003 and ending when he started working full-time at Lifemark Millwoods in 2011. In addition, in 2015, he started working part-time at PT Health Belmead ("PT Health") and he remained there part-time until May 23, 2019, when his contract was terminating following the complaint to Physiotherapy Alberta that resulted in this hearing.

9. In respect to the details of the complaint, Ms. Haymond stated that the complaint was made by J.L. on October 3, 2019. The complaint described that J.L. was in a motor vehicle accident in September, 2018 and she attended physiotherapy at PT Health with Mr. Pandia.

When J.L.'s lawyer subsequently requested a copy of J.L.'s chart notes for a concurrent civil claim, it was noted that Mr. Pandia's initial assessment and notes were not included in her file.

10. Ms. Haymond stated that Mr. Pandia's response to the Complaints Director was very candid in acknowledging that he had not kept proper documentation and that he had been terminated by his employer, so was unable to rectify the situation. In his response, Mr. Pandia provided a copy of J.L.'s billing records, which show that he assessed J.L. on April 17, 2019 and that she was treated at PT Health on six occasions until June 4, 2019. During that time, he made one chart entry relating to J.L. on the date of her assessment, but he failed to make other chart entries at the time he provided treatment. Additional chart entries for the treatments provided in April and May, 2019 were created in October, 2019.

11. Ms. Haymond submitted that Mr. Pandia's employment record from PT Health showed that the issue of incomplete chart notes had been raised in regards to other patients, despite numerous requests from his employers to complete the charts on a timely basis. The issue is raised in his employment file, beginning on July 30, 2018, and in three subsequent letters dated October 22, 2018, February 25, 2019 and May 23, 2019. Ms. Haymond submitted that the information from PT Health indicates that charting was a long-standing issue for Mr. Pandia and that his supervisors brought it to his attention.

12. Ms. Haymond explained that as a result of the employment record from PT Health, the Complaints Director also sought information from Lifemark. Lifemark's response demonstrated a similar pattern of Lifemark bringing the issues to Mr. Pandia's attention as far back as 2013 and that the charting issues led to performance improvement discussions.

13. Ms. Haymond suggested that the evidence attached to the Agreed Statement of Facts demonstrated that the complaint from J.L. regarding Mr. Pandia's charting was not an isolated incident. She submitted that the evidence before the Hearing Tribunal should be sufficient for it to find that the allegation in the Notice of Hearing is proven on a balance of probabilities and that it constitutes unprofessional conduct as defined in the *Health Professions Act*.

14. Finally, she noted Mr. Pandia admitted to the allegation and agreed his conduct breached the Code of Ethical Conduct, including responsibilities to the client to practice in a safe, competent, accountability and responsible manner and to comply with all legislative guidelines and regulatory requirements. Mr. Pandia's admission also acknowledged he breached the Standards of Practice: Documentation and Record Keeping that apply to the profession.

15. Based on this evidence, Ms. Haymond submitted that Mr. Pandia had failed to meet the minimum requirements expected in relation to his patient J.L. and that the evidence shows his documentation practices were in issue for a lengthy period of time, beginning in 2013.

Submissions of Mr. Pandia

16. Mr. Pandia agreed that he did not finish his charting regularly and that this behaviour warranted a finding of unprofessional conduct. He stated that he had difficulty finishing his charting as he was working two jobs and was taking care of his two young children alone. He also submitted that he struggled with typing his notes into the new electronic system in 2018, all of which contributed to his inability to complete his charting in a timely matter.

17. Mr. Pandia stated that his earlier issues dating back to 2013 were not regarding daily charting but instead were reports that he had failed to complete in a timely matter.

18. In conclusion, Mr. Pandia submitted that, while he was making his best effort, his conduct did not meet the standards of Physiotherapy Alberta.

Further Submissions of the Parties

19. The Hearing Tribunal adjourned to review Exhibit 1 and consider the parties' submissions. When the hearing resumed, Mr. Pandia clarified that his issues with daily charting began in 2018 and that the documentation issues dating to 2013 were in respect to internal company requirements.

20. Ms. Haymond submitted that, in the Agreed Statement of Facts, Mr. Pandia acknowledged that he received numerous warnings from employers dating back to 2013 regarding his failure to keep documentation, and that these prior warnings and issues were relevant to the sanctions portion of the hearing. She submitted that it was open to the Hearing Tribunal to review Mr. Pandia's employment records from 2013, but that the facts agreed to were in support of a finding that his charting and documentation was a long-standing issue raised by his employers.

Questions from the Hearing Tribunal

21. The Hearing Tribunal asked Mr. Pandia if he had considered taking additional courses or programs to improve his charting.

22. Mr. Pandia stated that he had not taken any courses but that it was not his charting that he struggled with but his time restrictions and difficulty typing into the electronic system. He also submitted that he was facing mounting financial pressure and struggled to focus. He stated that his chart notes were not getting done as a result of the entirety of his circumstances.

23. He submitted that he did try and explain his circumstances to his employers, and while they were cooperative and did try to make allowances to an extent, they were limited. The new software for electronic notes compounded his issues.

24. The Hearing Tribunal next asked Mr. Pandia if he was changing his agreement to the facts submitted in Exhibit 1. Mr. Pandia replied that he was not changing his agreement or his admission, he merely wanted to clarify his circumstances.

Decision of the Panel on the Issue of Unprofessional Conduct

25. After briefly adjourning to review the Agreed Statement of Facts and Acknowledgment of Unprofessional Conduct and appendices and to consider the submissions of both parties, the Hearing Tribunal returned and advised that it accepted the acknowledgment of unprofessional conduct and found that the alleged conduct is proven and constitutes unprofessional conduct.

26. The Hearing Tribunal next invited submissions on sanctions.

The Joint Submission on Sanctions

Submissions of the Complaints Director

27. Ms. Haymond submitted that the parties were prepared to present a partial Joint Submission on Sanctions. She provided the Hearing Tribunal with the password for three documents provided to it in advance of the hearing: the partial Joint Submission on Sanctions, the case of *Jaswal v Newfoundland Medical Board*, and information relating to two medical documentation courses. The partial Joint Submission on Sanctions was marked as Exhibit 2 and the information relating to courses was marked as Exhibit 3.

28. Ms. Haymond submitted that as set out in the partial Joint Submissions on Sanctions, the Complaints Director and Mr. Pandia were requesting that the Hearing Tribunal make the following orders under section 82 of the *Health Professions Act*:

1. Mr. Pandia shall receive a reprimand and the Hearing Tribunal's decision shall serve as a reprimand.
2. Mr. Pandia will pay 50% of the costs of the investigation and hearing, to be paid within a period of 12 months from the date Physiotherapy Alberta sends him a letter advising him of the final amount of costs, in accordance with a payment schedule agreed to by the Complaints Director.
3. The following conditions will be placed on Mr. Pandia's practice permit:
 - (a) Mr. Pandia will provide the Complaints Director with written confirmation that he has read and reviewed the following documents, within 30 days of being sent a copy of the Hearing Tribunal's written decision:

- (i) Code of Ethical Conduct; and
 - (ii) Standard of Practice – Documentation and Record Keeping.
 - (b) Mr. Pandia will be required to undergo periodic chart audits conducted by the Complaints Director or a reviewer appointed by the Complaints Director, subject to the following:
 - (i) The Complaints Director will determine whether to conduct the practice review herself, or to appoint a regulated member of Physiotherapy Alberta to act as a reviewer and to conduct the chart audits (the “Reviewer”);
 - (ii) If a Reviewer is appointed, the reviewer will be provided with a copy of the Hearing Tribunal’s written decision;
 - (iii) The Complaints Director or Reviewer will conduct three chart audits over a period of 18 months, at (approximately) six month intervals;
 - (iv) Mr. Pandia will provide the Complaints Director or Reviewer with access to or complete copies of a random sample of 10 patient charts, to be selected by the Complaints Director or the Reviewer, containing all treatment and financial records relating to the patient, per audit;
 - (v) The first audit will commence within a period of time to be decided by the Complaints Director, commencing no later than 16 weeks after the date of the Decision of the Hearing Tribunal;
 - (vi) Upon conclusion of each audit, the reviewer will provide a written report to the Complaints Director indicating whether Mr. Pandia’s charts demonstrate compliance with Physiotherapy Alberta’s Standard of Practice – Documentation and Record Keeping, and any areas for improvement; and
 - (vii) Mr. Pandia will be responsible for the costs of the audit, to a maximum of \$400.00 per audit, to be paid to Physiotherapy Alberta within 30 days of receiving the invoice.
4. The orders set out above at paragraphs 2-3 will appear as conditions on Mr. Pandia’s practice permit and on the public register, and each of the conditions will be removed once each order has been completed.
5. Should Mr. Pandia be unable to comply with any of the above deadlines for completion of the orders identified above, he may apply to the Complaints Director for an extension, by submitting a written request and the reason for his

request at least 7 days prior to the deadline. Extensions may be granted in the sole discretion of the Complaints Director.

6. Should Mr. Pandia fail to comply with any of the above orders, or should the Complaints Director/Reviewer determine that the results of one or more audits are unsatisfactory and the issues identified are not likely to be remediated during the course of the subsequent audits, the Complaints Director may do any or all of the following:

- (a) Treat Mr. Pandia's non-compliance as information for a complaint under s. 5 of the *Health Professions Act*;

- (b) In the event that the Complaints Director determines that the results of one or more audits are unsatisfactory and the issues identified are not likely to be remediated, treat the information as a complaint under s. 56 of the *Health Professions Act*, in which case any remaining audits may be suspended in the discretion of the Complaints Director;

- (c) In the case of failure to provide proof of completion of the orders set out in paragraphs 3(a), or of failure to provide or make available charts to the reviewer as outlined in paragraph 3(b), Mr. Pandia's practice permit will be suspended until he complies;

- (d) In the case of non-payment of the costs referred to in paragraph 2, or the failure to pay costs in accordance with the schedule agreed upon, or the failure to reimburse Physiotherapy Alberta for the costs of the chart audits as referred to in paragraph (3)(b)(vii), Mr. Pandia's practice permit will be suspended until he has paid outstanding costs; and/or;

- (e) Refer the matter back to a hearing tribunal for further direction.

29. Ms. Haymond also submitted an order requested by the Complaints Director but not agreed on by Mr. Pandia: that within three months of being sent the written decision, he will provide proof to the Complaints Director that he has successfully completed either the PBI education course on medical recordkeeping or the CPEP medical recordkeeping seminar, at his own expense.

30. Ms. Haymond stated that the Hearing Tribunal was tasked first, with determining whether to accept the partial joint submission on sanctions and then, whether it to order the record keeping course as requested by the Complaints Director. She noted that when the Hearing Tribunal considered the orders that had been jointly proposed, it was important to understand that the purpose of sentencing in the context of professional discipline is to ensure that the public is protected from similar conduct in the future.

31. She indicated that from the Complaints Director's perspective, the requested orders would hopefully improve Mr. Pandia's performance and mitigate the risk of him coming before the Hearing Tribunal on a future occasion and ensure that his recordkeeping practice comes up to the expected standards of the profession.

32. Ms. Haymond submitted that some of the factors the Hearing Tribunal could consider in assessing penalty are set out in the case of *Jaswal v Newfoundland Medical Board*, which is a case that is often considered in deciding whether to accept submissions on penalty or whether orders are appropriate. She reviewed the factors as they applied to this case:

- a. *The nature and gravity of the proven allegations*: while not the most serious of allegations, the requirements to maintain accurate and timely charts are a cornerstone of physiotherapy practice; not an add-on. Charting is critical to the treatment that is provided because it contains previous assessments, rationale for treatment and allows the physiotherapist to track the progress made by the patient and determine whether the interventions being applied are appropriate. The fact that this was brought to Mr. Pandia's attention on numerous occasions and persisted through to his treatment of J.L. in 2019 makes it a more serious issue.
- b. *The age and experience of the member*: Mr. Pandia has been registered with Physiotherapy Alberta since 2003, at first on the provisional register, but since 2005 on the general register. He is not a new member of the profession and he should understand the fundamental importance of charting and be able to implement it no matter what is going on in his life.
- c. *The previous character of the member and whether there are prior complaints or convictions*: Mr. Pandia has not been the subject of any prior complaints to the Physiotherapy Alberta and so this is a mitigating factor.
- d. *The number of times the offence occurred*: the evidence is specific to the charting deficiency with respect to J.L.'s chart. However, Allegation 1 is worded to capture the fact that Mr. Pandia received warnings previously and that this was a long-standing issue. Ms. Haymond referred to page 220 of the Agreed Statement of Facts to note the evidence that on August 19, 2019, Mr. Pandia's employer noted he had chart notes overdue for up to two years (dating back to August, 2017). She also referred to page 238 of the Agreed Statement of Facts which stated that there were concerns dating back to 2013 that Mr. Pandia was not completing documentation in a timely way. Finally she referred to Mr. Pandia's performance evaluation agreement on page 236 of the Agreed Statement of Facts that set out that Mr. Pandia struggled with paperwork and required multiple reminders to complete forms.

- e. *The role of the member in acknowledging what occurred:* This is a significant and mitigating factor as Mr. Pandia has acknowledged his conduct and admitted to Allegation 1 in the Notice of Hearing.
 - f. *Whether the member has suffered other consequences as a result of the allegations:* In this case, Mr. Pandia's agreement with PT Health was terminated as a result of his charting issues.
 - g. *The impact on the patient:* In J.L.'s letter of complaint she indicated she had been in a motor vehicle accident, retained a lawyer and needed her records for her civil claim. It is clear that Mr. Pandia's failure to chart in a timely way had a negative impact on those proceedings.
 - h. *The need for specific and general deterrence:* There is a need for specific deterrence in this case so that Mr. Pandia does not engage in similar conduct in the future. Having Mr. Pandia attend at the hearing and then be ordered to participate in the chart review and audit for 18 months is how the Complaints Director hopes to achieve the goal of specific deterrence. The Complaints Director also views the conduct as serious enough that a message needs to be sent to the other members of the profession, through the sanction orders made in this case, to deter them from engaging in similar conduct in the future.
 - i. *The range of sentence in similar cases:* It's very rare for a charting issue to come to a hearing, as often they are resolved informally. However, in this case, the conduct was serious enough that a hearing was warranted.
33. Ms. Haymond noted that with respect to the reprimand, the Hearing Tribunal could use its decision to send whatever message it felt was important to send to Mr. Pandia and to the other members of the profession.
34. With respect to costs, Ms. Haymond stated that the partial Joint Submission on Sanctions sought an order for Mr. Pandia to pay 50% of the costs of the investigation and hearing over a period of time. She estimated that costs would be in the range of \$18,500 by the time the hearing was completed, but that it could be more. She submitted that costs are not intended to be a penalty but instead are intended to indemnify Physiotherapy Alberta for costs associated with the discipline process. In this case, Ms. Haymond suggested that request for Mr. Pandia to pay 50% of the costs strikes a balance that reflects that a member who is guilty should bear a portion of the costs and that the rest of those costs ultimately get absorbed by members of the profession through their membership fees.

35. She submitted that the order for the chart audits is appropriate because it will determine whether Mr. Pandia can implement changes to his practices over time and, if there are further concerns, there is a mechanism to refer back to the Hearing Tribunal for further consideration.

36. Ms. Haymond also reviewed Exhibit 3, which included descriptions of the two courses that the Complaints Director proposed that Mr. Pandia be required to take. Ms. Haymond submitted, that despite Mr. Pandia's statements that his charting issues arose as the result of stressors in his life, the history of concerns raised by his employers suggests that a course may be useful to ensure that he has the tools and skills he needs to be able to implement the required changes to his practice and understand the importance of charting going forward.

37. Finally, Ms. Haymond referenced the case of *R v Anthony Cook* to submit that while the Hearing Tribunal is not obligated to accept the Joint Submission on Sanctions, the courts have said there is a high degree of deference unless the joint submission would bring the administration of justice into disrepute. She suggested that if the Hearing Tribunal did have serious concerns about what is proposed then as a matter of fairness, it should advise the parties of its concerns and give them a chance to respond before issuing the final order.

38. Ms. Haymond noted that this deference did not apply to the Complaints Director's request for an order that Mr. Pandia complete the recordkeeping course, because there was no joint submission on that issue. In respect to this request, the Hearing Tribunal must determine whether it is an appropriate sanction to order.

Submissions of Mr. Pandia

39. Mr. Pandia submitted that he was not against the course, but that he did not think a course would correct the issues that had arisen that prevented him from charting in a timely manner. He indicated that at the time he had these issues, he was mentally stressed and in the role of a single parent. Since the beginning of 2020 he has gotten his life back so his charts are up to date for this year. He noted that he had been meeting with the clinic director where he is currently employed and that charting is not an issue.

40. He stated that he recognized that he should not have let his situation in life put his charting aside. He submitted that he did not think the courses would help him now but that he was not against taking one if that is what the Hearing Tribunal ordered him to do.

Questions from the Hearing Tribunal

41. In response from a question from the Hearing Tribunal, Mr. Pandia suggested that before ordering the course it may be more beneficial for someone to review his current charting first to see if he needs the course. He stated that now that the other stressors are no longer

present, he personally feels that the course would only reiterate what he already knows about charting.

42. In response to another question from the Hearing Tribunal, Mr. Pandia agreed that his failures were not due to his lack of knowledge on how to chart but the logistical constraints of getting things done.

43. Before the Hearing Tribunal adjourned to deliberate on the sanction submissions, Ms. Haymond reviewed the course summaries in Exhibit 3 and submitted that one of the points of the coursework is to gain skills to develop habits to incorporate charting practices in regular and routine habits.

Decision of the Hearing Tribunal on the Joint Submission on Sanctions

44. The Hearing Tribunal adjourned again and when it returned, it advised the parties that it was prepared to accept the partial Joint Submissions on Sanctions. It also advised that it was prepared to order that Mr. Pandia provide proof to the Complaints Director that he has successfully completed either the PBI education course on medical recordkeeping or the CPEP medical recordkeeping seminar, at his own expense, within three months of receiving the Hearing Tribunal's written decision.

Reasons of the Hearing Tribunal on the Issue of Unprofessional Conduct

45. The Hearing Tribunal considered the admission of unprofessional conduct made by Mr. Pandia at paragraphs 29 to 32 of the Agreed Statement of Facts and Acknowledgement of Unprofessional Conduct marked as Exhibit 1.

46. In assessing Mr. Pandia's admissions the Hearing Tribunal considered paragraphs 1 to 28 of the Agreed Statement of Facts and the documents marked as Tabs 1 to 18 of Exhibit 1, including the letter of complaint from J.L., Mr. Pandia's written response, treatment records for J.L., and employment records for Mr. Pandia from Lifemark Physiotherapy and PT Health.

47. Based on the Agreed Statement of Facts, the supporting documents in Tabs 1-18 and Mr. Pandia's admission of unprofessional conduct in paragraphs 29 to 32 of the Agreed Statement of Facts and Acknowledgement of Unprofessional Conduct (Exhibit 1), the Hearing Tribunal finds Allegation 1 in the Notice of Hearing is proven and constitutes unprofessional conduct. J.L. was the patient impacted by Mr. Pandia's charting failures. However, the evidence before the Hearing Tribunal is also that Mr. Pandia has experienced issues with charting for a number of years and has received feedback from his employers to that effect on multiple occasions.

48. The Hearing Tribunal also accepts Mr. Pandia's admission of unprofessional conduct concerning the alleged breaches of the Code of Ethical Conduct and the Standards of Practice: Documentation and Record Keeping. Based on the evidence presented and Mr. Pandia's admissions, the Hearing Tribunal finds that these breaches constituted unprofessional conduct.

49. The Hearing Tribunal acknowledges that Mr. Pandia was dealing with a significant amount of responsibility and stress during at least a portion of the events leading to this hearing. However, as a regulated member on the general register of Physiotherapy Alberta, Mr. Pandia had an obligation to complete his patient's charts in a timely and accurate manner. In this case, he failed to do so and his patient, J.L., was impacted when she required her chart for a civil claim related to her reason for seeking treatment.

50. Mr. Pandia's conduct breached the Standards of Practice and the Code of Ethical Conduct and he failed to practice in a manner that demonstrated accountability and responsibility for the care he provided to J.L. Overall, this is conduct that harms the integrity of the profession in the eyes of the public because it suggests that a physiotherapist cannot be counted on to maintain the Standards of Practice the Code of Ethical Conduct required by the profession.

51. The Hearing Tribunal finds that the proven conduct set out in Allegation 1 demonstrates a lack of skill or judgment in the provision of professional services, a failure by Mr. Pandia to meet the Code of Ethical Conduct and the Standards of Practice for Physiotherapists in Alberta: Documentation and Record Keeping and is conduct that harms the integrity of the profession, all of which is unprofessional conduct as defined by sections 1(1)(pp)(i), (ii) and (xii) of the *Health Professions Act*.

Reasons of the Hearing Tribunal on the Issue of Sanctions

52. The Hearing Tribunal has the authority under section 82 of the *Health Professions Act* to order sanctions after making findings of unprofessional conduct. The Hearing Tribunal finds that the proposed sanctions in the partial Joint Submission on Sanctions fall within that order, as does the order requested by the Complaints Director for Mr. Pandia to complete an educational course on record keeping.

53. The Hearing Tribunal accepts that it has a duty to give careful consideration to a partial Joint Submission on Sanctions made by a member and the Complaints Director. The Hearing Tribunal considered the Agreed Statement of Facts and Acknowledgement of Unprofessional Conduct and its Tabs 1-18 (Exhibit 1), the partial Joint Submission on Sanctions (Exhibit 2), the information on the record keeping courses (Exhibit 3) and the submissions made on behalf of both parties. The Hearing Tribunal also considered the factors in *Jaswal*, including the seriousness of the conduct, the fact that the conduct was a single instance of conduct that

occurred after numerous warnings to Mr. Pandia from multiple employers, the need for specific and general deterrence and Mr. Pandia's cooperation and admission of unprofessional conduct.

54. The Hearing Tribunal first addressed the proposed sanctions in the partial Joint Submission on Sanctions and finds that they are reasonable having regard to the evidence presented in this case and based on the admitted conduct. The Hearing Tribunal finds that the orders set out in the partial Joint Submission on Sanctions are appropriate and will not bring the administration of justice into disrepute.

55. In reviewing the evidence before it and after hearing the submissions of the parties, the Hearing Tribunal is confident that Mr. Pandia recognizes that his conduct fell below the expected standard of a physiotherapist on the general register and that he has made attempts to improve his practice and avoid a recurrence of this conduct. He has candidly acknowledged these facts and taken responsibility for his actions.

56. The Hearing Tribunal accepts that the reprimand and chart audit process outlined in the partial Joint Submission on Sanctions are appropriate orders in the circumstances of this case. The sanctions ordered in this case must send a message of general deterrence to the members of Physiotherapy Alberta and a message to the public that, as a self-regulatory body, Physiotherapy Alberta takes the requirements of the Standards of Practice and the role of charting as a fundamental role and necessity of professional practice.

57. This Hearing Tribunal is satisfied that these messages of deterrence can in part be conveyed by this decision serving as a reprimand to Mr. Pandia. Patients must be able to expect that their charts are completed accurately and in a timely manner. This is vitally important not only in the event that a patient needs to retrieve a copy of their record, as was the case with J.L., but also to ensure that the physiotherapist has a record of the care provided to guide future interventions.

58. Given the evidence that charting was a long-standing issue for Mr. Pandia across places of employment, the Hearing Tribunal also finds it is appropriate for Mr. Pandia to have to review the Code of Ethical Conduct and the Standards of Practice: Documentation and Record Keeping and then undergo three charting audits over a period of 18 months. The charting audits will serve to ensure that Mr. Pandia's charting issues are resolved and sustained over time and to protect the public by ensuring that charting is being done on a timely basis. The Hearing Tribunal also finds it is appropriate for Mr. Pandia to have to pay for the costs of the audit, as the audits are required as a result of his conduct.

59. The Hearing Tribunal reviewed the submissions made on behalf of the Complaints Director with respect to why Mr. Pandia would benefit from a recordkeeping course in addition to the reprimand and the chart audits. The Hearing Tribunal also considered Mr. Pandia's submissions that a course may not assist him because his charting failures were not the result

of him not understanding how to chart properly, but how to deal with the demands of charting in addition to his the stress in his life.

60. The Hearing Tribunal believes that successful completion of a recordkeeping course will underscore to Mr. Pandia, the fundamental importance of charting, regardless of the stress in his life. Furthermore, the Hearing Tribunal notes that either of the courses proposed offer “improved skills for maintaining electronic medical records” and “strategies for overcoming barriers to effective record keeping;” and so should provide Mr. Pandia with tools to ensure he can continue to keep up with his charting in times of stress or unexpected pressure.

61. The Hearing Tribunal also accepts the proposed orders 4 to 6, which are administrative in nature are appropriate and provide certainty for Physiotherapy Alberta as well as Mr. Pandia with respect to what would happen if he cannot complete the sanctions as ordered or there are further deficiencies noted in his practice during the chart audit process.

62. Finally, the Hearing Tribunal finds it is appropriate to order Mr. Pandia to pay 50% of the costs of the investigation and hearing within 12 months from the date Physiotherapy Alberta sends him a letter advising him of the final amount of costs. As submitted by the Complaints Director, the Hearing Tribunal accepts that when a hearing results in findings of unprofessional conduct, it is reasonable and proper for the investigated member to pay the costs or a portion of the costs so that Physiotherapy Alberta and its members are not forced to bear the full expense of the hearing.

63. In this case, while the costs accrued as a direct result of Mr. Pandia's conduct, his cooperation and admissions shortened the hearing and avoided the need to call witnesses. Therefore, the Hearing Tribunal accepts the proposed order in the partial Joint Submission on Sanctions that Mr. Pandia pay 50% of the costs as reasonable.

64. As a result, the Hearing Tribunal accepts the partial Joint Submissions on Sanctions. It also orders that Mr. Pandia must provide proof to the Complaints Director that he has successfully completed either the PBI education course on medical recordkeeping or the CPEP medical recordkeeping seminar, at his own expense, within three months of receiving the Hearing Tribunal's written decision.

Conclusion

65. For the reasons set out above, the Hearing Tribunal finds that the allegations of unprofessional conduct against Mr. Pandia have been proven on a balance of probabilities and constitute unprofessional conduct that:

- a. Displayed a lack of knowledge or a lack of skill or judgment in the provision of professional services;

- b. Contravened the code of ethics and the standards of practice; and
- c. Harms the integrity of the profession

(as defined by section 1(1)(pp)(i), (ii) and (xii) of the *Health Professions Act*).

66. The Hearing Tribunal makes the following orders on sanction under section 82 of the *Health Professions Act*:

1. Mr. Pandia shall receive a reprimand and the Hearing Tribunal's decision shall serve as a reprimand.
2. Mr. Pandia will pay 50% of the costs of the investigation and hearing, to be paid within a period of 12 months from the date Physiotherapy Alberta sends him a letter advising him of the final amount of costs, in accordance with a payment schedule agreed to by the Complaints Director.
3. The following conditions will be placed on Mr. Pandia's practice permit:
 - (a) Mr. Pandia will provide the Complaints Director with written confirmation that he has read and reviewed the following documents, within 30 days of being sent a copy of the Hearing Tribunal's written decision:
 - (i) Code of Ethical Conduct; and
 - (ii) Standard of Practice – Documentation and Record Keeping.
 - (b) Mr. Pandia will be required to undergo periodic chart audits conducted by the Complaints Director or a reviewer appointed by the Complaints Director, subject to the following:
 - (i) The Complaints Director will determine whether to conduct the practice review herself, or to appoint a regulated member of Physiotherapy Alberta to act as a reviewer and to conduct the chart audits (the "Reviewer");
 - (ii) If a Reviewer is appointed, the reviewer will be provided with a copy of the Hearing Tribunal's written decision;
 - (iii) The Complaints Director or Reviewer will conduct three chart audits over a period of 18 months, at (approximately) six month intervals;

(iv) Mr. Pandia will provide the Complaints Director or Reviewer with access to or complete copies of a random sample of 10 patient charts, to be selected by the Complaints Director or the Reviewer, containing all treatment and financial records relating to the patient, per audit;

(v) The first audit will commence within a period of time to be decided by the Complaints Director, commencing no later than 16 weeks after the date of the Decision of the Hearing Tribunal;

(vi) Upon conclusion of each audit, the reviewer will provide a written report to the Complaints Director indicating whether Mr. Pandia's charts demonstrate compliance with Physiotherapy Alberta's Standard of Practice – Documentation and Record Keeping, and any areas for improvement; and

(vii) Mr. Pandia will be responsible for the costs of the audit, to a maximum of \$400.00 per audit, to be paid to Physiotherapy Alberta within 30 days of receiving the invoice.

(c) Mr. Pandia shall provide proof to the Complaints Director that he has successfully completed either the PBI education course on medical recordkeeping or the CPEP medical recordkeeping seminar, at his own expense, within three months of receiving the Hearing Tribunal's written decision.

4. The orders set out above at paragraphs 2-3 will appear as conditions on Mr. Pandia's practice permit and on the public register, and each of the conditions will be removed once each order has been completed.
5. Should Mr. Pandia be unable to comply with any of the above deadlines for completion of the orders identified above, he may apply to the Complaints Director for an extension, by submitting a written request and the reason for his request at least 7 days prior to the deadline. Extensions may be granted in the sole discretion of the Complaints Director.
6. Should Mr. Pandia fail to comply with any of the above orders, or should the Complaints Director/Reviewer determine that the results of one of more audits are unsatisfactory and the issues identified are not likely to be remediated during the course of the subsequent audits, the Complaints Director may do any or all of the following:
 - (a) Treat Mr. Pandia's non-compliance as information for a complaint under s. 56 of the *Health Professions Act*;

(b) In the event that the Complaints Director determines that the results of one or more audits are unsatisfactory and the issues identified are not likely to be remediated, treat the information as a complaint under s. 56 of the *Health Professions Act*, in which case any remaining audits may be suspended in the discretion of the Complaints Director;

(c) In the case of failure to provide proof of completion of the orders set out in paragraphs 3(a), or of failure to provide or make available charts to the reviewer as outlined in paragraph 3(b), Mr. Pandia's practice permit will be suspended until he complies;

(d) In the case of non-payment of the costs referred to in paragraph 2, or the failure to pay costs in accordance with the schedule agreed upon, or the failure to reimburse Physiotherapy Alberta for the costs of the chart audits as referred to in paragraph (3)(b)(vii), Mr. Pandia's practice permit will be suspended until he has paid outstanding costs; and/or;

(e) Refer the matter back to a hearing tribunal for further direction.

67. The Hearing Tribunal thanks the parties for their cooperative efforts in developing the agreements and admissions that were provided to the Hearing Tribunal and in the manner in which the parties conducted themselves at the hearing.

Dated January 5, 2021

For the Hearing Tribunal of the Physiotherapy Alberta College + Association



Todd Wolansky, Chair