

**IN THE MATTER OF A HEARING TRIBUNAL OF PHYSIOTHERAPY ALBERTA
COLLEGE + ASSOCIATION**

INTO THE CONDUCT OF KYLEY MOHRENBURGER, A REGULATED MEMBER

Pursuant to the *Health Professions Act, R.S.A. 2000, c. H-7*

**DECISION OF THE HEARING TRIBUNAL OF PHYSIOTHERAPY ALBERTA
COLLEGE + ASSOCIATION**

The hearing of the Hearing Tribunal was held on March 3, 2022, via videoconference.

Present were:

The members of the Hearing Tribunal of Physiotherapy Alberta College + Association (referred to herein as "Physiotherapy Alberta")

Ms. S. Butler, Chair
Mr. T. Wolansky, Member
Mr. J. Lees, Public Member
Ms. A. Chaudhary, Public Member

Ms. M. McAllister, Complaints Director, Physiotherapy Alberta
Ms. K. Haymond, Legal Counsel for the Complaints Director, Physiotherapy Alberta

Ms. Kiley Mohrenberger, Member
Mr. D. McGarvey, QC, Legal Counsel for Ms. Mohrenberger

Mr. D. Jardine, Independent Legal Counsel for the Hearing Tribunal

Ms. Jamie-Rose Mutrey, Hearings Administrator

Opening of the Hearing

1. The hearing opened and all persons present introduced themselves for the record. The hearing was recorded by a Court Reporter, who was also online.
2. The Hearing Tribunal was advised that there were no objections to the members of the Hearing Tribunal and that no preliminary or jurisdictional issues were being raised.

3. The hearing began with an application by Mr. McGarvey to hold the entire hearing in private pursuant to section 78(1)(a) of the *Health Professions Act* (the HPA"). He identified the following reasons for the application:

- a. he submitted that the materials and exhibits that would be entered and referred to contained personal health and financial information of Ms. Mohrenberger and the patient in question;
- b. he noted that Ms. Mohrenberger and the patient lived [...] which would increase the risk of personal health information of the patient becoming known;
- c. he suggested that there was a risk that personal and financial information disclosed in the hearing could have detrimental potentially dangerous impacts on Ms. Mohrenberger and her two young children given [...].

4. Ms. Haymond responded to the application and made the following submissions:

- a. there would be a limited impact of such an order because the only potential member of the public who wished to attend was an employee of Physiotherapy Alberta and because Exhibits would not be available to members of the public;
- b. while the Complaints Director does not agree that serious hearings should be closed to the public these concerns did not really arise in this case;
- c. as a result, the Complaints Director was not taking a position on the application to close the hearing;
- d. that if the Hearing Tribunal closed the hearing, it should make clear that this decision did not impact considerations regarding publication which was a separate matter to be considered by the Registrar under section 119 of the HPA.

5. Mr. McGarvey acknowledged that the Hearing Tribunal did not have jurisdiction to make orders concerning publication.

6. There was an extended discussion between legal counsel regarding section 85(3) and 85(4) of the HPA and what portion of the transcript of the hearing could be obtained by a member of the public as part of the "testimony" of the hearing. This was particularly relevant in the present case because no witnesses would be testifying but there would be statements by legal counsel, references by legal counsel to exhibits and a personal statement from the member. It was acknowledged by all legal counsel that there was some ambiguity on this last point.

7. The Hearing Tribunal then adjourned to consider the application to close the hearing. When it returned the Hearing Tribunal advised that it was prepared to make an order under section 78(1)(a) of the HPA ordering that the hearing be held in private. The Hearing Tribunal advised that it placed particular emphasis on subsection 78(1)(a)(iii) relating to not disclosing a person's confidential personal, health, property or financial information and found that these concerns outweighed the need to have the hearing open to the public.

8. The Hearing Tribunal advised that it reserved the right to revisit the matter as the hearing proceeded to determine if portions of the hearing could be open to the public. The Hearing Tribunal also advised that this decision did not place any restrictions on what the Hearing Tribunal might state in its written decision and that the Hearing Tribunal acknowledged that the question of publication of the decision was not within its jurisdiction.

9. The Hearing proceeded and the parties agreed to enter the Agreed Statement of Facts and Acknowledgement of unprofessional conduct as Exhibit 1. This document consisted of 219 pages including a series 18 Tabs. The Notice of Hearing which set out the two allegations in this matter was Tab 13 of Exhibit 1.

Submissions by Ms. Haymond

10. Ms. Haymond reviewed Ms. Mohrenberger's registration history with Physiotherapy Alberta and noted that she was a member of Physiotherapy Alberta at the material time pertaining to the two allegations in the Notice of Hearing.

11. She noted that Ms. Mohrenberger operated her own clinic in [...] and carried on business in [...]. Ms. Haymond advised that Ms. Mohrenberger voluntarily closed her physiotherapy practice on June 30, 2021, has not renewed her practice permit in the Province of Alberta, and has effectively left the practice of physiotherapy.

12. Ms. Haymond described the circumstances in which Physiotherapy Alberta became aware of concerns regarding Ms. Mohrenberger's conduct. The first information arose through a telephone message from Ms. Mohrenberger to the Registrar in March 2021 advising that she had a sexual relationship with a patient and expected the patient's ex-wife to submit a complaint to Physiotherapy Alberta. The Registrar advised Ms. Mohrenberger to contact Physiotherapy's Conduct Coordinator. Ms. Mohrenberger left a voicemail message with the Conduct Coordinator who returned her call and left a voicemail message. Ms. Mohrenberger did not return this call.

13. During this period, the Conduct Coordinator also received voicemail message from a registered massage therapist who worked at the same premises where Ms. Mohrenberger operated her clinic. This registered massage therapist then sent an email to Physiotherapy Alberta advising that there was a physical therapist at the clinic who

engaged in sexual acts with a patient. In subsequent emails, the registered massage therapist identified the physiotherapist as Ms. Mohrenberger.

14. At approximately the same time, Physiotherapy Alberta's Deputy Registrar received a call from a patient's ex-wife who reported that her ex-husband was having an affair with an unnamed physiotherapist.

15. Ms. Haymond advised that this chronology of events was reported to Ms. McAllister, the Complaints Director, who initiated a complaint under section 56 of the HPA. An investigation was conducted by an external investigator and the matter was referred to a hearing. Ms. Haymond identified the relevant documents attached to the Agreed Statement of Facts.

16. Ms. Haymond advised that a Notice of Hearing was served on Ms. Mohrenberger's legal counsel on January 18, 2022 and referred to the Notice of Hearing at Tab 13 of the Agreed Statement of Facts.

17. Ms. Haymond noted that there were two allegations contained in the Notice of Hearing:

1. On or between August 2020 and September 2020, you failed to maintain appropriate boundaries with the client, [...], the particulars of which include:
 - a. Texted him that you "really liked" him and "would miss talking to him" or words to that effect;
 - b. Texted with [...] and spoke to him on the phone for purposes unrelated to treatment.
2. You engaged in sexual abuse toward patient [...] the particulars of which include:
 - a. You provided physiotherapy treatment to [...] on a number of occasions on or between January 14, 2020 – October 15, 2020;
 - b. On or about September 24, 2020, you engaged in sexual intercourse with [...];
 - c. You continued to engage in conduct of a sexual nature with [...] thereafter until December 2020, which conduct included kissing, oral sex and sexual intercourse;
 - d. You engaged in the conduct identified at 2(a) – (c) while [...] was still a "patient" as defined in Physiotherapy Alberta's Standard of Practice for Physiotherapists in Alberta; Sexual Abuse and Sexual Misconduct.

18. Ms. Haymond noted that the facts related to both Allegations were set out in greater detail in the Agreed Statement of Facts. The Hearing Tribunal has reviewed these facts which appear at paragraphs 24 to 43 of the Agreed Statement of Facts.

19. Ms. Haymond submitted that the Hearing Tribunal's task was first to determine whether the allegations in the Notice of Hearing were factually proven, and second, to determine whether the proven facts constitute unprofessional conduct. She submitted that the facts were straightforward, and that the allegations were clearly proven on a balance of probabilities and were candidly admitted to by Ms. Mohrenberger.

20. Ms. Haymond then submitted that the proven conduct clearly constituted unprofessional conduct as defined in section 1(1)(pp) of the HPA. She noted that the definition included conduct that breached the Code of Ethics or Standards of Practice or harmed the integrity of the profession. Ms. Haymond suggested that both types of unprofessional conduct were proven in regard to Ms. Mohrenberger's conduct.

21. Ms. Haymond noted that at paragraphs 47 and 48 of the Agreed Statement of Facts and Acknowledgment of Unprofessional Conduct, Ms. Mohrenberger admits to the conduct set out in the Notice of Hearing and acknowledges that her conduct constitutes unprofessional conduct involving contravention of the HPA, a code of ethics or standards of practice and conduct that harms the integrity of the regulated profession.

22. Ms. Haymond also advised that in paragraph 49 to the Agreed Statement of Facts and Acknowledgement of Unprofessional Conduct, Ms. Mohrenberger acknowledges that her conduct breaches one of more of the following requirements in Physiotherapy Alberta's Code of Ethical conduct:

- a. Responsibilities to the Client – Members of the physiotherapy profession have an ethical responsibility to:
 4. Maintain professional boundaries that honour and respect the therapeutic relationship with clients.
 18. Comply with all legislation, guidelines, and regulatory requirements that pertain to the profession of physiotherapy.
- b. Responsibilities to the Public – Members of the physiotherapy profession have an ethical responsibility to:
 1. Conduct and present themselves with integrity and professionalism.
- c. Responsibilities to Self and the Profession – Members of the physiotherapy profession have an ethical responsibility to:
 1. Commit to maintaining and enhancing the reputation and standing of the physiotherapy profession, and to inspiring

public trust and confidence by treating everyone with dignity and respect in all interactions.

6. Refrain from harassment, abuse or discrimination of colleagues, employees, or students.

23. Ms. Haymond also noted that in paragraph 51 of the Agreed Statement of Facts and Acknowledgment of Unprofessional Conduct, Ms. Mohrenberger acknowledged that her conduct breached the following Standards of Practice:

- a. Professional Boundaries; and
- b. Sexual Abuse and Sexual Misconduct.

24. Ms. Haymond suggested that the Standards of Practice concerning Professional Boundaries made clear that it is the physiotherapist who is responsible to set limitations around relationships with patients. She noted that it is not the patient's responsibility to enforce a boundary - it is the physiotherapist's responsibility to enforce that boundary.

25. Ms. Haymond noted that the first allegation in the Notice of Hearing relates to professional boundaries that were not maintained and that the second allegation relates to sexual abuse which is defined in the HPA to include sexual intercourse between a regulated member and a patient of that regulated member and oral to genital contact between a regulated member and a patient. Ms. Haymond pointed out that Ms. Mohrenberger has admitted to both sexual intercourse and oral to genital contact with her patient.

26. Ms. Haymond suggested that in this case there was no question that a sexual relationship occurred simultaneously with Ms. Mohrenberger's provision of treatment to the patient and that in these circumstances it was clear that the sexual relationship between Ms. Mohrenberger and the patient constituted sexual abuse as defined in the HPA.

27. Ms. Haymond concluded by stating that the Agreed Statement of Facts and Acknowledgment of Unprofessional Conduct clearly sets out the facts that prove both allegations, which are confirmed by Ms. Mohrenberger's admissions.

Submissions by Mr. McGarvey

28. Mr. McGarvey noted that with the Agreed Statement of Facts and the comments from Ms. Haymond he would have only a limited number of comments.

29. He noted that the report from [...] [...] was not submitted for proof of the truth of its contents but did contain opinions that would be helpful in considering this matter, particularly at the sanctioning phase of the hearing. He also noted some letters of reference contained in the materials.

30. Mr. McGarvey also submitted that while it was not a major point, his understanding from the Agreed Statement of Facts was that the call received by the Deputy Registrar on March 30, 2021, was from the patient's wife and not his ex-wife.

31. Mr. McGarvey emphasized that Ms. Mohrenberger self-reported the matter and responded promptly to the complaint by way of a letter that took full responsibility for the matters at issue including acknowledging that the text messages were admittedly of a flirtatious nature and contain sexual innuendo. He noted that upon the appointment of an investigator, Ms. Mohrenberger was candid and admitted the conduct reiterating the admission she had made in her self-report and in her letter.

32. Mr. McGarvey noted that Ms. Mohrenberger was now coming before the Hearing Panel with a signed admission of her conduct and an acknowledgment that she has violated both the code of ethics and the standards of practice.

Decision of the Hearing Panel Regarding the Admission of Unprofessional Conduct

33. At this point the Hearing Panel adjourned to consider the Agreed Statement of Facts and Admission of Unprofessional conduct and the submissions of the parties.

34. When the Hearing Panel returned it advised the Parties that the Hearing Tribunal had accepted Ms. Mohrenberger's Admission of Unprofessional Conduct and had determined that based on this Admission of Unprofessional Conduct and the Agreed Statement of Facts and the submissions of the Parties, the allegations in the Notice of Hearing had been proven and constituted unprofessional conduct.

The Partial Joint Submission on Sanction

Submissions by Ms. Haymond

35. Ms. Haymond advised that the parties had entered into a Partial Joint Submission on Sanction. This document was entered as Exhibit 2.

36. Before reviewing the Partial Joint Submission on Sanction, Ms. Haymond advised that, as required by section 81.1(2) of the HPA, the Complaints Director contacted the patient and advised him of his right to make an impact statement. She stated that the patient advised that he did not want to make an impact statement and did not wish to be involved in the hearing in any way.

37. Ms. Haymond indicated that the Partial Joint Submission on Sanction was short because the sanction that was being jointly proposed was that Ms. Mohrenberger's registration and practice permit shall be cancelled effective immediately. She noted that this sanction was taken directly from section 81.1(1) of the HPA which requires a mandatory penalty of cancellation for a finding of sexual abuse of cancellation.

38. Ms. Haymond stated that this mandatory penalty of cancellation removed any discretion from the Hearing Tribunal in terms of the required order for a finding of

sexual abuse. She also noted that because Ms. Mohrenberger's registration and practice permit were cancelled and she was precluded from reapplying as a regulated member, any other sanctions would not serve a remedial purpose and were not being requested.

39. Ms. Haymond briefly reviewed a few of the factors in the *Jaswal* case. She began by noting that the proven allegation of having a sexual relationship with a patient was very serious. She also noted that it was even more serious given the heightened importance created by the legislature when they introduced these mandatory provisions to the HPA in 2019.

40. Ms. Haymond pointed out that Ms. Mohrenberger was a senior member of the profession when the sexual relationship occurred, so this was not the case of a new and inexperienced member.

41. Ms. Haymond acknowledged that Ms. Mohrenberger was candid in responding to the complaint and has admitted her conduct throughout the investigation and hearing and has taken responsibility for her actions. She suggested this was a significant factor.

42. Ms. Haymond stated that there had been significant consequences for Ms. Mohrenberger as she is not a member of the profession anymore. She advised that she anticipated that Mr. McGarvey would make submissions on this point.

43. As a last point in respect to the *Jaswal* factors, Ms. Haymond referred to the need to promote deterrence. She noted that the mandatory penalty provisions clearly achieve specific deterrence because Ms. Mohrenberger will no longer be a member of the profession. In terms of general deterrence, she noted that the legislature had determined that there would be an absolute prohibition on having a sexual relationship with a patient and a mandatory penalty of cancellation.

44. Ms. Haymond then referred to the issue of an order for costs and noted that there was no joint submission on costs. She provided a Statement of Anticipated Costs which was entered as Exhibit 3. Ms. Haymond noted that these anticipated costs were an estimate and that the total amount of the costs would not be determined until after the hearing and the preparation of the written decision of the Hearing Tribunal. Ms. Haymond then advised that the Complaints Director estimated that the costs would be in the range of \$29,000 or possibly higher.

45. Ms. Haymond advised that normally the Complaints Director would seek an order requiring 50% of the costs where a matter was proceeding by agreement and joint submission on penalty. She advised that in this case, the Complaints Director was made aware that Ms. Mohrenberger had [...] including [...] that she assumed would be reviewed in greater detail by Mr. McGarvey.

46. Ms. Haymond stated that given these circumstances and given Ms. Mohrenberger's [...] and her [...], it was unlikely that Physiotherapy Alberta would be able to [...]. As a result, Physiotherapy was not seeking a specific order with respect to costs.

47. Ms. Haymond suggested that it was more appropriate for the Hearing Tribunal to hear from Mr. McGarvey and Ms. Mohrenberger and for the Hearing Tribunal to then decide whether it should order all the costs, the usual order of 50 percent of the costs, a fixed amount of costs or no costs. She noted that orders for costs are discretionary and that any of these options were open to the Hearing Tribunal.

48. Ms. Haymond advised that if the Hearing Tribunal determined that it would not order any costs, it was very important to explain that this was an exceptional order and explain the reasons it was made. She submitted that this was important to ensure that this order would not become a precedent to be relied upon as the standard order to be made in future cases where a registered member was being cancelled or [...]. She suggested that it would be important for the Hearing Tribunal to tailor its reasons very carefully so that the order would not become a binding precedent in other cases.

Submissions by Mr. McGarvey

49. Mr. McGarvey began by confirming that the partial joint submission on penalty was entered into because, given the fact that the allegations have been proven and accepted by the Hearing Tribunal, the immediate cancellation of the registration and practice permit of Ms. Mohrenberger is mandatory. He noted that Ms. Mohrenberger has understood this fact throughout the discussions concerning this matter and that she understands the implications of the findings that have been made.

50. Mr. McGarvey stated that at this point he thought it would be instructive and helpful for the Hearing Tribunal to hear from Ms. Mohrenberger about the reflections she has had, the process she has gone through and the journey that she has been on.

Statement from Ms. Mohrenberger

51. In her address to the Hearing Tribunal, Ms. Mohrenberger advised that she fully acknowledged the seriousness of her conduct and was deeply remorseful for what had happened. She also acknowledged that she accepted that her conduct had resulted in the permanent loss of her right to practice as a physiotherapist.

52. Ms. Mohrenberger also provided the Hearing Tribunal with background concerning [...]. She stated that she understood that she should have stopped the relationship that was developing and should have terminated the therapeutic relationship.

53. Ms. Mohrenberger also described the impact of [...] and [...] and the impact it had on [...]. She also described her concern about the potential impact on her children.

54. Ms. Mohrenberger also described the [...] and having to find employment outside of the physiotherapy profession.

55. Ms. Mohrenberger also acknowledged the impact her actions had on her patient and her patient's wife and her guilt concerning these impacts.

56. Ms. Mohrenberger also shared her reflections on [...] where she allowed the relationship to develop when she knew it was wrong and breached her professional duties. She stated that she felt she had gained insight about why she failed to maintain professional boundaries and impacted her life and the lives of her patient and his family.

Further Comments from Mr. McGarvey

57. Mr. McGarvey then provided the Hearing Tribunal with details about Ms. Mohrenberger's professional background and her work in the profession. He also reviewed three letters of reference that were provided to the Hearing Tribunal. He also spoke of the challenges of continuing to work [...] where she had her practice and the potential impact on her children and her new employment.

58. Mr. McGarvey also reviewed the [...] provided by Ms. Mohrenberger including [...] which was entered as an Exhibit. He noted that [...].

59. Mr. McGarvey advised that if an order of costs were made in this hearing, it [...].

60. Mr. McGarvey submitted that given the mandatory permanent cancellation of Ms. Mohrenberger's registration and practice permit, [...] would serve no purpose for general or specific deterrence. He also suggested that since the [...].

61. In respect to Ms. Haymond's reference to certain *Jaswal* factors, Mr. McGarvey asked the Hearing Tribunal to consider Ms. Mohrenberger's previous character and noted that until this incident, she had practiced for over 11 years with an unblemished record. He also pointed out that Ms. Mohrenberger made early and consistent admissions of the conduct and took responsibility for them.

62. In respect to specific and general deterrence, Mr. McGarvey acknowledged that the legislation required mandatory cancellation and noted this served for both specific and general deterrence.

63. Mr. McGarvey then addressed the issue of costs. He acknowledged that the Hearing Tribunal had full discretion as to costs. Mr. McGarvey submitted that the Hearing Tribunal should balance the effect of a cost order on the investigated person with the need for the professional association to effectively administer the disciplinary process; the fact that costs should not be punitive; and the relative time and expense of the investigation and hearing associated with each of the charges.

64. Mr. McGarvey responded to Ms. Haymond's concern that a decision to award no costs would establish a bad precedent for future cases by stating that every case is unique and determined on its own facts.

65. Mr. McGarvey submitted that any order to pay costs would be nothing but excessive and unnecessary. He referred to the decision of *K.C. v The College of Physical Therapists of Alberta* where the Court of Appeal stated at paragraph 94 that:

When the magnitude of a costs award delivers a crushing financial blow, it deserves careful scrutiny. ... If cost awarded routinely are exorbitant, they may deny an investigated person a fair chance to dispute allegations of professional misconduct.

66. Mr. McGarvey also referred to the comments of Madam Justice Khullar in the case of *Alsaadi v. Alberta College of Pharmacy* at paragraph 102 of the decision where she stated:

A more deliberate approach calculating the expenses that will be payable is necessary. Factor such as those described in *KC* should be kept in mind. A hearing tribunal should first consider whether a costs award is warranted at all. If so, then the next step is to consider how to calculate the amount. What expenses should be included? Should it be the full or partial amount of the included expenses? Is the final amount a reasonable number? In other words, a hearing tribunal should be considering all the factors set out in *KC*, in exercising its discretion whether to award costs, and on what basis.

67. Mr. McGarvey also noted that Justice Khullar mentioned the ability to pay as a relevant factor. He suggested that this was an important factor in this case with its “[...].”

68. Mr. McGarvey suggested these [...] should be considered. He also submitted that there was nothing to be gained by way of general or specific deterrence by imposing a costs award that “[...].”

69. Mr. McGarvey also submitted that delaying payment of costs [...] as suggested by Ms. Haymond, might constitute a [...]. He advised that Ms. Mohrenberger had to [...].

Reply by Ms. Haymond

70. Ms. Haymond clarified that she believed that making an order for costs that was [...] or [...] proceedings would mean that there was [...] until it was actually [...].

71. In respect to the comments by Madame Justice Khullar referred to by Mr. McGarvey, she noted that this commentary was not binding as it was not part of the majority decision. She suggested that this issue should not arise in this case unless the Hearing Tribunal was thinking about ordering extensive costs.

Comments by Independent Legal Counsel on Costs

72. Independent Legal Counsel noted that in the *Alsaadi* case, the actual costs were over \$250,000, the College of Pharmacy was asking for about \$130,000 and the Court of Appeal decision reduced the costs to \$100,000.

73. At this point, the Hearing ended, and the Hearing Tribunal advised that it would issue its decision in writing to the parties.

Reasons for Decision for Accepting the Admission of Unprofessional Conduct

74. The Hearing Tribunal has reviewed the Agreed Statement of Facts and Acknowledgment of Unprofessional Conduct entered as Exhibit 1 in this hearing.

75. At paragraphs 43 to 51 Ms. Mohrenberger provided a full admission in respect to the conduct set out in the Notice of Hearing. She also acknowledged that this conduct was unprofessional conduct as defined in section 1(1)(pp) of the *HPA*.

76. At paragraph 49 of the Agreed Statement of Facts and Admission of Unprofessional Conduct, Ms. Mohrenberger admitted that her conduct breached one of more of the following requirements in Physiotherapy Alberta's Code of Ethical Conduct:

- a. Responsibilities to Client
 4. Maintain professional boundaries that honour and respect the therapeutic relationship with clients.
 18. Comply with all legislation, guidelines, and regulatory requirements that pertain to the profession of physiotherapy.
- b. Responsibilities to the Public – Members of the physiotherapy profession have an ethical responsibility to:
 1. Conduct and present themselves with integrity and professionalism.
- c. Responsibilities to Self and the Profession – Members of the physiotherapy profession have an ethical responsibility to:
 1. Commit to maintaining and enhancing the reputation and standing of the physiotherapy profession, and to inspiring public trust and confidence by treating everyone with dignity and respect in all interactions.
 6. Refrain from harassment, abuse or discrimination of colleagues, employees or students.

77. At paragraph 51 of the Agreed Statement of Facts and Admission of Unprofessional Conduct, Ms. Mohrenberger acknowledges that the conduct breached the Standards of Practice concerning: Professional Boundaries; and Sexual Abuse and Sexual Misconduct.

78. These admissions are clear and fully supported by the Agreed Statement of Facts and the documents attached to the Agreed Statement of Facts. There is no doubt that the appropriate boundaries with the patient were not maintained and that the admitted sexual abuse is fully supported by the evidence reviewed by the Hearing Tribunal. This was acknowledged at the hearing by Ms. Mohrenberger and by her legal counsel.

79. The Hearing Tribunal therefore determines that all the allegations in the Notice of Hearing have been proven and that the proven allegations constitute sexual abuse and unprofessional conduct.

Reasons for Decision Regarding the Partial Joint Submission on Sanctions

80. The Partial Joint Submission on Sanctions submitted by the parties jointly recommended that the following order should be made:

1. Ms. Mohrenberger's registration and practice permit be cancelled immediately.

81. In their submissions, both Ms. Haymond and Mr. McGarvey agreed that section 82(1.1)(a) of the *HPA* requires that upon a finding of sexual abuse, the Hearing Tribunal must order the cancellation of the investigated person's practice permit and registration. The Hearing Tribunal agrees that having found that the allegation of sexual abuse made in the Notice of Hearing has been proven, it is required by section 82(1.1)(a) to order that Ms. Mohrenberger's registration and practice permit be cancelled immediately.

82. The Hearing Tribunal therefore accepts the Partial Joint Submission on Sanctions and orders that Ms. Mohrenberger's registration and practice permit be cancelled immediately upon receipt of this decision.

Reasons for Decision Regarding the Issue of Costs

83. On the issue of costs, Ms. Haymond advised that the total costs were estimated to be \$29,000 or higher. She noted that normally the starting point for the Complaints Director would have been 50% of the costs incurred. She indicated that the Hearing Director was not taking a position that asked for a specific amount of costs in view of Ms. Mohrenberger's [...].

84. However, Ms. Haymond expressed concern that an order for no costs or very limited costs could be referred to in future cases as a precedent for ordering no costs or very limited costs. She requested that the Hearing Tribunal provide detailed reasons for any order on costs that made clear that the order was based on the very specific circumstances of this case.

84. Ms. Haymond also raised the possibility that an order for costs could [...].

85. Mr. McGarvey's position was that no costs order should be made. He submitted that [...]. He also submitted that an order for delayed payment of costs might constitute a [...] to Physiotherapy Alberta.

86. Mr. McGarvey also suggested that an order for costs served no purpose because it [...]. He submitted that this lack of purpose had to be balanced against the [...].

87. In reaching its decision on whether an order requiring payment of a portion of the costs of this investigation and hearing should be made, the Hearing Tribunal notes that both parties recognized that the [...] faced by Ms. Mohrenberger was a significant factor. The parties also recognized the impact of the order permanently cancelling Ms. Mohrenberger's registration and practice permit.

88. In considering the submissions of the parties, the Hearing Tribunal has determined that it is not prepared to make a delayed order for costs as mentioned by Ms. Haymond. While the Hearing Tribunal makes no decision whether such an order could be a [...] as suggested by Mr. McGarvey, it does not believe that it is appropriate to make an order for costs that [...].

89. However, the Hearing Tribunal does not agree with Mr. McGarvey's suggestion that an order to pay costs serves no purpose because [...]. This hearing arose because of very serious unprofessional conduct on the part of Ms. Mohrenberger. While the length and the costs of the hearing were substantially reduced by the cooperation of the parties and by Ms. Mohrenberger's frank and full acknowledgment of the unprofessional conduct, the hearing costs were necessary and not excessive.

90. This is not a case like the *Alsaadi* case referred to by Mr. McGarvey where the actual costs were over \$250,000 and the costs confirmed by the Court of Appeal were \$100,000. In this case the estimate of costs is \$30,000 and considering the general position of the Complaints Director in starting at a request of 50% of the costs, the amount in issue is approximately \$15,000 or somewhat more if the costs exceed \$30,000.

91. The Hearing Tribunal recognizes the [...] faced by Ms. Mohrenberger and the [...]. However, the Hearing Tribunal also recognizes that the costs of the hearing are reasonable and were properly incurred to deal with serious unprofessional conduct that is admitted by Ms. Mohrenberger. In this situation, the Hearing Tribunal believes that it is appropriate that some portion of the costs be paid by Ms. Mohrenberger.


92. The Hearing Tribunal has decided to order that Ms. Mohrenberger pay costs in the amount of \$5000 to be paid by installments of \$100 per month for a period of 50 months, with the option for Ms. Mohrenberger to request adjustments in these payments on alternate terms satisfactory to Physiotherapy Alberta or on such other arrangements as are satisfactory to both Ms. Mohrenberger and Physiotherapy Alberta.

93. The intent of this order is to have Ms. Mohrenberger assume responsibility for some of the costs of the hearing but to do so [...].

94. The Hearing Tribunal wishes to emphasize that this decision is made on the specific facts of this case. It depends upon those specific facts and the particular [...] of Ms. Mohrenberger and the fact that her practice permit and registration have been permanently cancelled. [...], the Hearing Tribunal would have ordered that Ms. Mohrenberger pay a larger proportion of the costs of the hearing.

95. The Hearing Tribunal appreciates the combined efforts of the parties to present this case efficiently and cooperatively.

Signed on behalf of the Hearing Tribunal on this 26 day of May, 2022

A handwritten signature in black ink, appearing to read "Sharla Butler", written over a light grey rectangular background.

Sharla Butler, Chair