

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

INTO THE CONDUCT OF KIOSH ISELIN, 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 August 24, 2021, via videoconference.

Present were:

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

Mr. T. Wolansky, Chair
Mr. B. Sydenham, Member
Ms. N. Mellick, Public Member
Ms. J. McGregor, Public Member

Ms. M. McAllister, Complaints Director, Physiotherapy Alberta

Ms. K. Haymond, Legal Counsel for the Complaints Director, Physiotherapy Alberta
Ms. C. Field, Legal Counsel for the Complaints Director, Physiotherapy Alberta

Mr. Kiosh Iselin, Member
Ms. T. Burnett, Legal Counsel for Mr. Iselin

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

Ms. Haylee O'Reilly, 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. The members of the Hearing Tribunal were given the password necessary to open the documents that had been provided to the Hearing Tribunal.

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.

No application was made by either party to hold the hearing or part of the hearing in private.

3. By agreement, the parties' two packages were marked as exhibits:

Exhibit 1 – Agreed Statement of Facts and Acknowledgment of Unprofessional Conduct

Exhibit 2 – Redacted Attachments to the Agreed Statement of Facts.

4. Mr. Iselin waived the reading of the allegations in the Agreed Statement of Facts and Acknowledgment of Unprofessional Conduct. He also advised that he admitted the allegations in the Amended Notice of Hearing.

5. The Allegations set out in the Amended Notice of Hearing (TAB 16 of Exhibit 2) were as follows:

Allegation 1: On or about January 15 – April 16, 2019, you failed to perform appropriate assessments in relation to client R.H., the particulars of which include one or more of the following:

- a. Failed to perform a complete initial assessment prior to commencing treatment;
- b. Failed to properly utilize objective assessment tools to assess client R.H.;
- c. Failed to utilize qualitative and/or quantitative assessment measurements;
- d. Failed to assess the adequacy of interventions throughout treatment.

Allegation 2: On or about January 15 – April 16, 2019, you failed to maintain appropriate documentation in relation to client R.H., the particulars of which include one or more of the following:

- a. Failed to maintain complete documentation of initial assessment findings and/or treatment plan;
- b. Failed to document client R.H.'s reassessment findings throughout treatment;
- c. Failed to document goals of intervention and/or expectations for subsequent sessions;
- d. Failed to document a discharge note and/or summary upon ceasing to provide treatment to client R.H.

Allegation 3: On or about January 15 – April 16, 2019 did one or more of the following in relation to client R.H.:

- a. Engaged in Motivational Interviewing without documenting a treatment plan and/or documenting the treatment goal of Motivational Interviewing;
- b. Spent a disproportionate amount of time engaging in Motivational Interviewing and/or client counselling.

Allegation 4: On or about January 15 – April 16, 2019, failed to engage in collaborative practice by doing one or more of the following in relation to client R.H.:

- a. Failed to confirm client R.H.'s weight bearing status;
- b. Failed to refer client R.H. for a chronic pain assessment;
- c. Failed to consult with other health-care team members providing care to client R.H. and/or other stakeholders.

6. Ms. Haymond noted that the parties had been able to provide an Agreed Statement of Facts and an Acknowledgment of Unprofessional Conduct. She advised that this Agreement avoided the need to call witnesses.

7. Ms. Haymond then reviewed the four allegations and the admitted facts that arose out of Mr. Iselin's treatment of one patient, R.H. She noted that there were four different areas of allegations set out in the Amended Notice of Hearing.

8. Ms. Haymond advised that Mr. Iselin worked at InHome Physio as a provisional physiotherapist and then became registered on the General Register on or about January 31, 2019. He started providing physiotherapy to R.H. in mid-January 2019.

9. Ms. Haymond then reviewed the nature of the injuries suffered by R.H. as the result of a motor vehicle collision. She noted that Mr. Iselin provided treatment to R.H. on 29 occasions between mid-January 2019 and April 26, 2019.

10. Ms. Haymond noted that the initial complaint received on May 14, 2019, from R.H.'s mother alleged that Mr. Iselin was spending too much time counselling R.H. rather than addressing his pain. She noted that once the investigation commenced the Complaints Director gave notice that she was expanding the scope of her investigation to determine whether the care provided met a number of the applicable Standards of Practice of Physiotherapy Alberta.

11. Ms. Haymond advised that the investigation by the Complaints Director obtained two reports regarding the care provided by Mr. Iselin and whether the treatment records indicated a reasonable use of motivational training.

12. Ms. Haymond then reviewed the evidence and the specific admissions made by Mr. Iselin in respect to each of the four allegations. She submitted that this evidence supported the admissions of unprofessional conduct made by Mr. Iselin and provided evidence that would enable the Hearing Tribunal to find that Mr. Iselin's conduct in the circumstances constituted unprofessional conduct as defined in the *Health Professions Act*.

13. Ms. Burnett advised that she did not intend to repeat the comments made by Ms. Haymond but wished to highlight certain points. She noted that at the time of the complaint, Mr. Iselin was new to the practice and working in a fairly unique setting of providing home care. She suggested that this impacted some of the issues that arose including the issue on documentation. She stated that Mr. Iselin had taken responsibility for his actions and has reflected on the circumstances to ensure that similar incidents do not occur.

Adjournment

14. The hearing then adjourned to allow the Hearing Tribunal to review the Agreed Statement of Facts and Acknowledgement of Unprofessional Conduct and to consider the submissions of the parties.

Decision of the Hearing Tribunal regarding the Acknowledgment of Unprofessional Conduct

15. When the Hearing Tribunal returned, it advised the parties that the Hearing Tribunal had deliberated and reached a decision to accept Mr. Iselin's Acknowledgment of Unprofessional Conduct in respect to all four allegations in the Notice of Hearing and determined that all four allegations had been proven and constituted unprofessional conduct.

16. The Hearing Tribunal advised that it was prepared to hear submissions from the parties in respect to the sanctions phase of the hearing.

Joint Submission on Sanction

17. The parties advised the Hearing Tribunal that they wished to present a Joint Submission on Sanction. The Hearing Tribunal was presented with an executed Sanction Phase document that was entered as Exhibit 3. The parties also provided the

Hearing Tribunal with a copy of the *Jaswal v Medical Board (Nfld)*, 1996 CanLII 11630 decision.

18. Ms. Haymond reviewed the Joint Submission on Sanction. She advised that the parties proposed the following orders:

1. Mr. Iselin shall receive a reprimand and the Hearing Tribunal's decision shall serve as the reprimand;
2. Mr. Iselin will pay 50% of the costs, capped at \$12,000.00, 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. Mr. Iselin hereby requests that his registration and practice permit as a regulated member of Physiotherapy Alberta, is hereby cancelled pursuant to his voluntary request. A copy of his letter of request is attached at Appendix "A".
4. Mr. Iselin will not be eligible to apply for reinstatement as a regulated member of Physiotherapy Alberta or any physiotherapy regulatory body now or in the future until he has provided the Complaints Director with proof that he has successfully completed the following courses (or an equivalent course approved in advance by the Complaints Director) at his own cost:
 - a. Canadian Physiotherapy Association, Orthopedic Division, Level 1; and
 - b. A course in Critical Thinking offered by John Collins Consulting.
5. If Mr. Iselin completes the requirement in paragraph #4 above, and provided that he is not in default of the costs order set out above at paragraph #2, he may submit his application for reinstatement to the Registrar. Provided that he meets all other requirements for reinstatement and his application for reinstatement is approved by the Registrar, a condition will be placed on his practice permit requiring him to undergo periodic chart audits conducted by the Complaints Director or a reviewer, subject to the following requirements:
 - a. The Complaints Director will determine whether to conduct the chart review herself, or to appoint a designate to act as a reviewer and to conduct the chart audits (the "Reviewer");

- b. If a reviewer is appointed, the Reviewer will be provided with a copy of the Hearing Tribunal's written decision;
 - c. The Complaints Director or Reviewer will conduct three chart audits over a period of approximately 15 months. The first audit will take place approximately three months after Mr. Iselin returns to practice, and the remaining two audits will occur at (approximately) six month intervals.
 - d. Each audit will consist of a review of 10 patient charts.
 - e. At the commencement of each audit, the Complaints Director or Reviewer will advise Mr. Iselin of the date for which files have been selected;
 - f. Mr. Iselin will provide a complete billing summary showing the names of any patients who received physiotherapy services on the selected date, the amounts billed for each patient, a copy of the patient's chart, and all financial records relating to the patient;
 - g. If less than 10 patients received physiotherapy services on the date selected, the Complaints Director or Reviewer will provide Mr. Iselin with an additional date (or dates) until he is able to provide information relating to 10 patients;
 - h. Upon conclusion of each audit, the Complaints Director will, within a reasonable period of time, prepare and provide to Mr. Iselin a written report indicating whether Mr. Iselin's charts demonstrate compliance with Physiotherapy Alberta's Standard of Practice – Documentation and Record Keeping; Client Assessment, Diagnosis and Interventions; Collaborative Practice and Competence.
 - i. Mr. Iselin will be responsible for costs in the amount of \$400.00 for each audit, to be paid to Physiotherapy Alberta within 30 days of receiving the report referred to in paragraph 5(h).
6. Mr. Iselin agrees that he will comply with the terms of the Undertaking attached at Appendix "B", and that unless and until he becomes registered with Physiotherapy Alberta in the future in accordance with the terms set out in paragraphs 4 and 5:
- a. He will not provide "professional services" as defined in s. 3 of Schedule 20 of the *Act*;

- b. He will not engage in any restricted activities that regulated members of Physiotherapy Alberta are authorized to engage in pursuant to the *Physical Therapists Profession Regulation*; and
 - c. He will not represent or imply that he is a regulated member of Physiotherapy Alberta and will not use any of the restricted titles set out in s. 2 of Schedule 20 of the *Act*.
- 7. In the event that Mr. Iselin fails to comply with the audit, or if the Complaints Director/Reviewer determine that the results of one or more audits are unsatisfactory or that the issues identified are not likely to be remediated during the course of subsequent audits, or if new concerns are identified, the Complaints Director may do any or all of the following:
 - a. Treat Mr. Iselin's non-compliance as information for a complaint under s. 56 of the *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 *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 or make available charts to the Reviewer, Mr. Iselin's practice permit will be suspended until he complies;
 - d. In the case of failure to reimburse Physiotherapy Alberta for the costs of the chart audits as referred to in paragraph 5(i), Mr. Iselin's practice permit will be suspended until he has paid the outstanding costs; and/or
 - e. Refer the matter back to a hearing tribunal for further direction.

19. Ms. Haymond reviewed several factors set out in the *Jaswal* decision. She suggested that the allegations were significant because the conduct represented a deviation from the fundamental expectations of the profession. She noted that this was a case involving one complaint concerning multiple treatments of a single patient and that this was the only complaint concerning Mr. Iselin that Physiotherapy Alberta was aware of.

20. Ms. Haymond also noted that Mr. Iselin was acknowledging what had occurred and that this was a mitigating factor. She indicated that there was no direct evidence of impact on the patient. She suggested that these orders would deter Mr. Iselin from similar practice in the future and would educate him on what was unacceptable practice. She noted that the proposed chart audits would ensure that similar conduct did not occur in the future.

21. Ms. Haymond noted that Physiotherapy Alberta's general practice was to seek 50 percent of the costs and submitted that chart audits were a fairly common remedial sanction, and that directed coursework would be tailored to the specific concerns identified in the hearing.

22. Ms. Haymond reviewed with the Hearing Tribunal the direction of the courts that a Joint Submission on Sanction must be given very serious consideration by a Hearing Tribunal and the Hearing Tribunal must only interfere if what is presented could bring the administration of justice into disrepute.

23. Ms. Haymond concluded her remarks. The Hearing Tribunal asked Ms. Burnett if she had any comments. She indicated that she did have some comments and that Mr. Iselin wished to make some comments.

24. Ms. Burnett agreed with Ms. Haymond's submission on the test to be applied by the Hearing Tribunal on a Joint Submission on Sanction. She emphasized that Mr. Iselin was cooperative throughout the process and had come before the Hearing Tribunal with a Joint Submission on Sanction. She noted that Mr. Iselin has accepted his conduct and made significant admissions.

25. Mr. Iselin then spoke about what he had learned as a new Physiotherapist through the discipline process. He indicated that the three areas he saw where he could have made the most improvement were charting, more precision in his standardized measures in terms of what he measured and the scope of the measurements and objective assessment that he could have used, and more engagement with members of the interdisciplinary team. He stated that this process had resulted in a lot of personal reflection.

26. Mr. Iselin also spoke about his interest in taking the required courses and his conclusion that he had accepted an initial job at an in-home environment that was more complex than he expected as a first-time Physiotherapist.

27. The Hearing Tribunal then took a recess to consider the Joint Submission on Sanction. When the Hearing Tribunal returned, it advised that it had some questions and concerns regarding the Joint Submission on Sanction and had been advised by independent legal counsel that they must review those questions and concerns with the parties.

28. Independent legal counsel for the Hearing Tribunal advised that the Hearing Tribunal had instructed him to outline its concerns for the parties. Independent legal counsel advised that the Hearing Tribunal had not reached any decision on sanctions and would not do so until the Hearing Tribunal heard from the parties about its concerns.

29. Independent legal counsel identified the following concerns of the Hearing Tribunal:

- a. This case involved a difficult and complex case where the member had limited support and that the charting issues identified related to only one case;
- b. The expert reports on charting appeared to describe a perfection level of charting as opposed to the normal level of charting;
- c. The sanction requested was being imposed on a very new member, practicing in an unusual situation in the home with limited support;
- d. There was no evidence of previous issues with the member;
- e. This case involved a significant sanction for a very new member involving a single patient;
- f. While the charting was not sufficient, this was a single case in a very complex situation;
- g. The level of monitoring flowing from a single incident; and
- h. The level of chart audits.

30. The Members of the Hearing Tribunal provided additional remarks clarifying their concerns about the course work proposed and the level of monitoring and auditing arising from a matter concerning a single patient.

31. At this point, after discussion with legal counsel for both parties, the Hearing Tribunal adjourned the hearing so both parties could review the situation with their respective legal counsel before addressing the Hearing Tribunal's concerns.

32. When the hearing resumed, Ms. Haymond requested that the Complaints Director, Ms. McAllister be given an opportunity to address the questions of the Hearing Tribunal regarding sanctions. The Hearing Tribunal accepted this request.

33. Ms. McAllister focused her comments on the purpose of the chart audits as part of the sanction and a condition of returning to practice. She emphasized that the chart is a cornerstone of good treatment and allows the reader to see the findings of the physical assessment, the clinical reasoning and how it is effected in the treatment (the how and the why of the treatment).

34. She advised that chart audits are not solely the mechanics of charting but the content of what was done. She noted the statement in training that "if it's not charted, it's not done." She stated that "there should be a path for somebody who is coming along behind that they can tell what was done to the patient and why." Ms. McAllister noted that this was what the investigation report and her review found to be missing.

35. Ms. McAllister gave examples from the charts she had reviewed, she noted that there was content that was not sufficient to give any indication of the clinical reasoning for the treatments provided. She also noted that the intent of a chart audit is to assist the individual being audited in learning the tools necessary to track how a patient is doing and whether or not they are improving.

36. Ms. Haymond then provided some comments. She noted that it was Mr. Iselin who suggested that he did not intend to practise as a Physiotherapist and that he was voluntarily stepping back. Ms. Haymond stated that the College was never seeking cancellation of Mr. Iselin's practice permit but was seeking remedial orders.

37. Ms. Haymond also noted that while the Complaints Director recognized that Mr. Iselin might benefit from direct mentorship or supervised practice, this was a very onerous condition that might limit his ability to get a job. She reviewed the remedial orders being proposed as a substitute for direct mentorship or supervised practice.

38. Ms. Haymond advised that the College routinely uses chart audits for various types of complaints, including matters that do not go to a hearing. She outlined the factors that led the College to conclude that the chart audits proposed were not onerous, emphasized that these audits were intended to be remedial, and submitted that three sets of chart reviews would assist in providing guidance to the member.

39. Ms. Haymond highlighted the significant negotiations that she had engaged in with Ms. Burnett to reach the Agreed Statement of Facts and the Joint Submission on

Sanction. She also reviewed the factors that supported providing significant deference to an agreement reached between the parties.

40. Ms. Haymond concluded by noting that the role of the Hearing Tribunal was not to substitute its opinion for that of the parties but to determine whether the Joint Submission on Sanction would bring the administration of justice into disrepute.

41. In response to a question from the Panel, Ms. Haymond also reviewed the Standard of Practice on documentation and record keeping which required assessment findings, the treatment plan and goals, details of the treatment given and the patient response, including reassessments and advice to patients. She suggested that the records must include sufficient detail to allow a client to be managed by another physiotherapist.

42. After taking time to consider the submissions made by Ms. Haymond, Ms. Burnett asked that Mr. Iselin be allowed to provide some comments.

43. Mr. Iselin noted that he would abide by anything the Hearing Tribunal found and everything that was in the original agreement and joint submission. He explained some of his reasons for his voluntary withdrawal from the profession. He agreed with the comments of Ms. McAllister regarding the importance of charting and the concerns she had identified with some of his notes.

44. Mr. Iselin indicated that he was happy to do the proposed coursework or any other coursework that was proposed. He indicated that the primary reason for his decision to withdraw was his concern that the chart audits would set a standard he was not sure he would be able to live up to given what seemed to be expected. He advised that he was very concerned that these chart audits would lead to another hearing which was very costly, emotionally and in other ways.

45. In response to a question from the Hearing Tribunal, Mr. Iselin outlined the work he had been doing in place of physiotherapy in the period leading up to the hearing.

46. In response to Mr. Iselin's comments, Ms. Haymond pointed out that there had not been any restriction on Mr. Iselin's practice permit since the complaint was raised.

47. Ms. Haymond also noted that the paragraph in the proposed orders regarding chart audits was intended to be remedial and that it was only if Mr. Iselin was unable to

remediate concerns raised in chart audits that a matter might be referred to a hearing tribunal.

48. After these submissions, the Hearing Tribunal concluded the hearing and advised that its decision on sanction, along with its reasons for accepting the admissions and acknowledgment of unprofessional conduct, would be included in its written decision.

Deliberations of the Hearing Tribunal

49. After its deliberations, the Hearing Tribunal instructed its independent legal counsel to forward a document outlining concerns that the Hearing Tribunal had regarding the proposed Joint Submission on Sanction. The document prepared by the Hearing Tribunal set out several concerns:

- a. The Hearing Tribunal found that while elements of the member's assessment, collaboration, use of Motivational Interviewing and particularly record keeping was deficient, the breaches did not pose a significant threat to the Client's health or lead to public distrust in the profession;
- b. While the application and documentation of the techniques used were not up to the standard of an experienced clinician in these areas, there was no evidence of harm to the Client or the public;
- c. The Hearing Tribunal accepted the Agreed Statement of Facts but found that the findings were on the low end of unprofessional conduct and should be handled by remedial rather than punitive means;
- d. The Hearing Tribunal was concerned about the level of expectations for assessment and documentation set out by the expert witnesses and did not rely on the evidence of the expert witnesses as establishing the level of expectation for assessment and documentation;
- e. The Hearing Tribunal found that the level of expectation set by the expert witnesses was unattainable on a regular basis in a clinical practice setting;
- f. The proven unprofessional conduct related to a review of one patient record for a client's care in an extremely challenging case and context; and
- g. The Hearing Tribunal did not agree with the submission of the College that the member's age and experience should not be a mitigating factor.

50. The Hearing Tribunal also determined that there had not been sufficient consideration of the factors set out in the *Jaswal* decision in setting the sanctions. The *Jaswal* factors considered by the Hearing Tribunal were:

- a. The gravity of the conduct and the lack of harm towards the client;
- b. Age and experience of the member;
- c. The complexity of the client, the home-based setting in which the services were performed and the challenging family dynamics which created a very difficult situation for the member;
- d. The lack of any prior issues;
- e. The fact that this was a single episode of care for one patient in a challenging situation;
- f. The cooperation and acknowledgement of deficits in his practice displayed by the member;
- g. The level of unprofessional conduct which was at the low end of unprofessional conduct; and
- h. The steps taken by Mr. Iselin to withdraw voluntarily from the profession.

51. The Hearing Tribunal asked that the parties take time to review and consider the concerns it had set out regarding the proposed sanctions.

Response of the Parties

52. On February 17, 2022, the legal counsel for Mr. Iselin provided a joint response of the parties to the concerns identified by the Hearing Tribunal in respect to the Joint Submission on Sanction that had been submitted. This letter stated:

While the parties were in support of the Joint Submission on Sanction, having regard to the issues raised in your November 1, 2021, correspondence, and in an effort to bring this matter to conclusion, the parties have negotiated an Amended Joint Submission on Sanction. On behalf of Mr. Iselin and the Complaints Director, we are jointly requesting that the Hearing Tribunal accept the enclosed Amended Joint Submission on Sanction and render a decision based on the Amended Joint Submission on Sanction.

53. The new Joint Submission on Sanction proposed the following orders:

1. Mr. Iselin shall receive a reprimand and the Hearing Tribunal's decision shall serve as a reprimand.
2. Mr. Iselin will pay a portion of the costs of the investigation and hearing in the amount of \$12,000.00, to be paid within a period of 12 months from the date that the Hearing Tribunal issues its written decision.

3. Mr. Iselin will provide proof to the Complaints Director within six months of receiving the Hearing Tribunal's written decision that he has successfully completed the following courses at his own expense:
 - a. Medical Record Keeping (MR-17) online
<https://pbieducation.com/courses/m-17/> 2-day
and
 - b. Online Course: Telehealth for Physiotherapy Programme (Physiopedia), 10 hours online.
4. The orders set out above at paragraphs 2-3 will appear as conditions on Mr. Iselin's practice permit and on the public register and will be removed once the orders are completed.
5. Should Mr. Iselin be unable to comply with any of the deadlines for completion of the orders identified above, he may apply to the Complaints Director for an extension, by submitting a written request prior to the deadline. Extensions may be granted in the sole discretion of the Complaints Director, acting reasonably.
6. Should Mr. Iselin fail to comply with any of the orders above within the deadline specified or within the period of extended deadline granted by the Complaints Director, the Complaints Director may do any or all of the following:
 - a. Treat Mr. Iselin's non-compliance as information for a complaint under s. 56 of the *Act*;
 - b. In the case of failure to complete the courses or pay the costs within the timelines referred to above, or within the amended deadline agreed to by the Complaints Director, Mr. Iselin's practice permit will be suspended until he has complied with the outstanding order(s); or
 - c. Refer the matter back to a hearing tribunal for further direction.

54. The Hearing Tribunal has reviewed the new Joint Submission on Sanction submitted by the parties. The Hearing Tribunal finds that the significant changes in the new Joint Submission on Sanction address the concerns raised by the Hearing Tribunal in respect to the previous Joint Submission on Sanction.

55. The Hearing Tribunal appreciates the willingness of the parties to work together to agree to changes that address the concerns raised by the Hearing Tribunal. The

Hearing Tribunal also recognizes that the parties took considerable time and energy to be able to present agreed terms to the Hearing Tribunal.

56. After careful deliberations, the Hearing Tribunal finds that the orders proposed in the new Joint Submission on Sanction are reasonable and appropriate in relation to the unprofessional conduct that has been found in this case.

57. When reviewing the appropriateness of sanctions in this case the Hearing Tribunal felt there were several mitigating factors that should be considered. These include but are not limited to:

- a. The *nature & gravity of the conduct* does not appear to be significant in this case. The conduct appears to be based primarily on issues of documentation. With respect to the gravity of the conduct, no evidence of harm towards the client nor the public at large was provided.
- b. *Age & experience of the investigated member.*
 - a. The complexity of this client, the home-based setting in which the services were delivered, as well as the challenging family dynamics present during this episode of care were all additive factors that created a difficult situation for any clinician to navigate, yet alone a new member of the profession.
 - b. Consequently the Hearing Tribunal feel that age & experience should be a mitigating factor in this case.
- c. No *previous character issues* were submitted in the evidence with respect to Mr. Iselin nor his practice as a physiotherapist.
- d. The *number of times the offense was proven to have occurred.*
 - a. Although the documentation errors occurred repeatedly for the client record in question, we believe this is still a mitigating factor, as the evidence provided to us was based on 1 episode of care for 1 client in an extremely challenging situation.
- e. The *role the therapist had in acknowledging what occurred* was also mitigating. Mr. Islein was cooperative with the investigation, acknowledged deficits in his clinical practice, and remains willing to accept sanctions for his conduct.
- f. *Whether or not the offending therapist has already suffered serious penalties.* Through this investigation and hearing process Mr. Iselin has already suffered ramifications from the hearing and has stopped practicing as a physiotherapist to our knowledge. These consequences would place significant financial and emotional hardship on the investigated member.
- g. The need to promote *specific and general deterrence.*

- a. *Specific deterrence* was achieved as the member has been through a lengthy investigation and appeared genuinely remorseful in acknowledging his unprofessional conduct.
 - i. The Hearing Tribunal's decision has served as a reprimand, along with financial sanctions to cover a portion of the costs of the investigation and the hearing as well as the expectation to complete courses on medical record keeping.
- b. *General Deterrence* – It is the view of the Hearing Tribunal that the standard for assessment and documentation articulated by the expert witnesses in this case are unachievable for therapists in a clinical setting. That being said, it is ultimately the responsibility of practicing physiotherapist to keep records that comply with the College of Physical Therapists' of Alberta's standards of practice. The findings and sanctions in this case will serve to promote General Deterrence.
- h. The *degree with which the conduct described falls outside of the range of permitted conduct* is also mitigating. The evidence presented in the Agreed Statement of Facts and Acknowledgment of Unprofessional Conduct to demonstrate proof of unprofessional conduct was on the low end of serious, and could only be deemed unprofessional conduct through the strictest application of the standards of practice.

Conclusion

58. Based on the Acknowledgment of Unprofessional Conduct, the Agreed Statement of Facts, the documents attached to the Agreed Statement of Facts, and the submissions on the parties, the Hearing Tribunal accepts the Acknowledgment of Unprofessional Conduct made by Mr. Iselin and finds that the following allegations of unprofessional conduct have been proven:

Allegation 1: On or about January 15 – April 16, 2019, you failed to perform appropriate assessments in relation to client R.H., the particulars of which include one or more of the following:

- a. Failed to perform a complete initial assessment prior to commencing treatment;
- b. Failed to properly utilize objective assessment tools to assess client R.H.;
- c. Failed to utilize qualitative and/or quantitative assessment measurements;
- d. Failed to assess the adequacy of interventions throughout treatment.

Allegation 2: On or about January 15 – April 16, 2019, you failed to maintain appropriate documentation in relation to client R.H., the particulars of which include one or more of the following:

- a. Failed to maintain complete documentation of initial assessment findings and/or treatment plan;
- b. Failed to document client R.H.'s reassessment findings throughout the treatment;
- c. Failed to document goals of intervention and/or expectations for subsequent sessions;
- d. Failed to document a discharge note and/or summary upon ceasing to provide treatment to client R.H.

Allegation 3: On or about January 15 – April 16, 2019, did one or more of the following in relation to client R.H.:

- a. Engaged in Motivational Interviewing without documenting a treatment plan and/or documenting the treatment goal of Motivational Interviewing;
- b. Spent a disproportionate amount of time engaging in Motivational Interviewing and/or client counselling.

Allegation 4: On or about January 15 – April 16, 2019, failed to engage in collaborative practice by doing one or more of the following in relation to client R.H.:

- a. Failed to confirm client R.H.'s weight bearing status;
- b. Failed to refer client R.H. for a chronic pain assessment;
- c. Failed to consult with other health-care team members providing care to client R.H. and/or other stakeholders.

59. The Hearing Tribunal has reviewed the documents attached to the Agreed Statement of Facts and Acknowledgment of Unprofessional Conduct as Exhibit 2 and finds that the admissions made are supported by those documents and the proven conduct fails to meet the standards required of a registered physiotherapist. The Hearing Tribunal also considered that Mr. Iselin, with the benefit of the advice of his legal counsel, admitted the allegations and agreed that the allegations constituted unprofessional conduct.

60. Although the Hearing Tribunal is not satisfied that the standard set out by the expert witness in this case is the standard that could be met by the majority of the profession, it accepts that the deficiencies set out in the allegations are significant and

reflect a level of practice that is below that required of a registered physiotherapist. In a range of unprofessional conduct, the Hearing Tribunal finds Mr. Iselin's conduct was on the lower range of serious conduct.

61. As set out above at paragraphs 54 to 57, the Hearing Tribunal has accepted the Revised Joint Submission on Sanction submitted by the parties and therefore makes the following orders:


1. Mr. Iselin shall receive a reprimand and the Hearing Tribunal's decision shall serve as a reprimand.
2. Mr. Iselin will pay a portion of the costs of the investigation and hearing in the amount of \$12,000.00, to be paid within a period of 12 months from the date that the Hearing Tribunal issues its written decision.
3. Mr. Iselin will provide proof to the Complaints Director within six months of receiving the Hearing Tribunal's written decision that he has successfully completed the following courses, at his own expense:
 - a. Medical Record Keeping (MR-17)
<https://pbieducation.com/courses/m-17/> 2-day online, and
 - b. Online Course: Telehealth for Physiotherapy Programme (Physiopedia), 10 hours online.
4. The orders set out above at paragraphs 2-3 will appear as conditions on Mr. Iselin's practice permit and on the public register and will be removed once the orders are completed.
5. Should Mr. Iselin be unable to comply with any of the deadlines for completion of the orders identified above, he may apply to the Complaints Director for an extension, by submitting a written request prior to the deadline. Extensions may be granted in the sole discretion of the Complaints Director, acting reasonably.
6. Should Mr. Iselin fail to comply with any of the orders above within the deadline specified or within the period of extended deadline granted by the Complaints Director, the Complaints Director may do any or all of the following:
 - a. Treat Mr. Iselin's non-compliance as information for a complaint under s. 56 of the *Act*;

- b. In the case of failure to complete the courses or pay the costs within the timelines referred to above, or within the amended deadline agreed to by the Complaints Director, Mr. Iselin's practice permit will be suspended until he has complied with the outstanding order(s); or
- c. Refer the matter back to a hearing tribunal for further direction.

62. The Hearing Tribunal appreciates the efforts of the parties to streamline this hearing through their Agreed Statement of Facts and Joint Submission on Sanction. The Hearing Tribunal also appreciates the efforts of the parties to reach a revised set of proposed orders that addressed the concerns raised by the Hearing Tribunal in relation to the initial orders that were proposed.

Dated this 17 day of June 2022

Signed on Behalf of the Hearing Tribunal



Todd Wolansky, Chair