

**IN THE MATTER OF A HEARING BEFORE THE HEARING TRIBUNAL
OF THE COLLEGE OF PHYSIOTHERAPISTS OF ALBERTA
(ALSO KNOWN AS PHYSIOTHERAPY ALBERTA COLLEGE + ASSOCIATION)
INTO THE CONDUCT OF DALE THOMAS DEIS
PURSUANT TO THE *HEALTH PROFESSIONS ACT, RSA 2000, c. H-7***

DECISION OF THE HEARING TRIBUNAL ON SANCTION

I. Introduction

- [1] The Hearing Tribunal of the College of Physiotherapists of Alberta (also known as Physiotherapy Alberta College + Association) (the “College”) convened on October 24, 2022 to consider a Joint Written Submission Regarding Penalty (the “Joint Submission”). Present were:

Hearing Tribunal:

Mark Hall, PT, Tribunal Member, Chair
Simone Hunter, PT, Tribunal Member
James Lees, Tribunal Public Member
David Rolfe, Tribunal Public Member

Also present was:

Julie Gagnon, Independent Legal Counsel for the Hearing Tribunal

II. Background

- [2] A hearing was held on April 5, 6 and 8, 2022 involving allegations on unprofessional conduct against Mr. Deis arising from a physiotherapy session with [...] on or about November 5, 2020. It was alleged that Mr. Deis made inappropriate comments to [...] during the session. It was further alleged that Mr. Deis failed to adequately explain the treatment and obtain appropriate ongoing informed consent from [...].
- [3] It was alleged that Mr. Deis’s comments to [...] constituted sexual misconduct as defined in the HPA and that his conduct contravened the Standard of Practice for Physiotherapists in Alberta: Sexual Abuse and Sexual Misconduct, as well as the Code of Ethical Conduct for Alberta Physiotherapists and the Standards of Practice for Physiotherapists in Alberta: Professional Boundaries; Communication; Consent.
- [4] In its decision dated June 1, 2022, the Tribunal found that comments made by Mr. Deis on or about November 5, 2020 collectively amounted to unprofessional conduct. The Tribunal found that Mr. Deis’s comment in Allegation 1(a) was unprofessional and breached the Standard: Communication. The Tribunal found that the comments in Allegation 1(b) and 1(c) were unprofessional and breached the Standard: Sexual Abuse and Sexual Misconduct and constitute sexual misconduct under the HPA.

[5] The Tribunal found that the conduct in Allegation 2(a) was proven but did not rise to the level of unprofessional conduct. The Tribunal found that Allegation 2(b) was not proven.

III. Joint Submission on Penalty

[6] Section 82 of the *Health Professions Act* (the “HPA”) sets out the range of orders that can be made by the Hearing Tribunal following a finding of unprofessional conduct.

[7] The parties provided a Joint Submission, for consideration of the Hearing Tribunal. The parties propose the following orders:

- a) The Hearing Tribunal's written reasons for decision (“the Decision”) shall serve as a reprimand.
- b) Mr. Deis’s practice permit will be suspended for a period of two (2) months, to be served within 30 days of the date when the Hearing Tribunal’s decision is issued, or within such other period of time as agreed to by the Complaints Director.
- c) Upon completion of the two (2) month period of suspension referred to in paragraph (b), Mr. Deis will be eligible for reinstatement of his practice permit, provided that he provides proof of successful completion to the Complaints Director of PBI Education’s Professional Boundaries and Ethics (PB-24) course (to be taken at his own cost).
- d) Mr. Deis will pay 30% of the costs of the investigation and hearing. The first payment will be due 30 days after Mr. Deis’s practice permit is reinstated, or within 4 months of the date that his practice permit is suspended, whichever is sooner, and will be payable in equal monthly payments over a period of 24 months thereafter.

[8] Under s. 82(1.1)(b) of the HPA, in respect of a decision of unprofessional conduct based in whole or in part on sexual misconduct, the Hearing Tribunal must order the suspension of the investigated person’s practice permit for a specified period of time.

[9] The Joint Submission outlines the factors to be considered when determining sanction, chief of those being that the public is protected from unprofessional conduct. Protection of the public is achieved through ensuring

- a. the public is not at risk of harm from continuing conduct of a member
- b. the public has confidence in the profession
- c. an appropriate message is sent to other members of the profession through the College’s response to unacceptable conduct.

- [10] The Joint Submission referenced *Jaswal v. Newfoundland (Medical Board)*, 1996 CanLII 11630 at para 35 (NL SCTD), and applied the factors outlined in the *Jaswal* decision with respect to the proven charge against Mr. Deis.
- [11] With respect to the factor of the nature and gravity of the proven allegations, the comments made by Mr. Deis in Allegation 1(b) and 1(c) were found to be unprofessional conduct and to have met the definition of sexual misconduct under the HPA. Mr. Deis's conduct demonstrated a clear lack of judgment and professionalism.
- [12] With respect to Mr. Deis's experience, he had been a physiotherapist in Alberta for approximately 25 years at the time of the incident and should have been aware of the importance of professional conduct and his ethical obligations. Regardless of experience, all physiotherapists should be aware of respectful and appropriate boundaries with their patients and should refrain from engaging in sexual misconduct.
- [13] Mr. Deis had no previous finding of unprofessional conduct or complaints against him.
- [14] As to the age and condition of the affected person, [...] was pregnant and in pain from an injury at the time of the incident. The incident has had an impact on her that has affected her sleep, caused anxiety and she reported that the incident was triggering for her.
- [15] As to the number of times the offence was proven to have occurred, the unprofessional conduct occurred during one appointment on November 5, 2020 with no evidence of a pattern of unprofessional conduct.
- [16] Mr. Deis has acknowledged making the comments in charge 1 and that his comments were insensitive and unprofessional, but he did not agree they constituted sexual misconduct.
- [17] With respect to the presence or absence of mitigating factors, Mr. Deis has undergone an assessment with a forensic psychologist and attended a behaviour change exercise to address behaviours that resulted in the complaint. Mr. Deis has also participated in an anti-sexual harassment sensitivity training workshop on January 8, 2021.
- [18] As a result of the allegations Mr. Deis was terminated from [...] where he worked as an independent contractor.
- [19] The College needs to maintain the public's confidence in the integrity of the profession and promote deterrence. A serious sanction is required to denounce Mr. Deis's behaviour and deter other members of the profession from engaging in similar conduct, as well as demonstrating to the public that the College has taken this conduct seriously.
- [20] Both parties agree that Mr. Deis's conduct is a departure from the conduct expected of a physiotherapist.

[21] The parties note that Mr. Deis's case is the first published case in Alberta to make a finding of sexual misconduct under the HPA. However, the parties submitted cases of similar conduct and a range of sanction including a suspension of the practice permit of at least 2 months.

[22] The parties submit that the proposed sum of 30% of the total investigation and hearing costs imposed on Mr. Deis is justified given the seriousness of the charge, the conduct of the parties, and is reasonable in this case.

IV. Decision of the Hearing Tribunal on Sanction

[23] The Hearing Tribunal agrees with and has accepted the sanction as submitted in the Joint Submission.

V. Reasons for the Decision on Sanction

[24] The Hearing Tribunal recognizes that its orders with respect to penalty must be fair, reasonable, and proportionate, taking into account the facts of the case. In this matter, the parties have agreed to the proposed Orders in the Joint Submission. The Hearing Tribunal considered that it is not strictly bound by a joint submission. Nevertheless, in accordance with the Supreme Court of Canada case in *R v Anthony-Cook*, 2016 SCC 43, the Hearing Tribunal should defer to a joint submission unless the proposed sanction is contrary to the public interest or brings the administration of justice into disrepute. Joint submissions engage the member in considering the outcome and should be encouraged. A rejection of a carefully crafted agreement would undermine the goal of fostering cooperation through joint submissions and may significantly impact the ability of parties to enter into such agreements.

[25] The Hearing Tribunal considered the objectives of sanction, including protection of the public, deterrence of the member specifically and the membership generally, and maintaining the integrity of the profession. The Hearing Tribunal also considered the requirement in the applicable legislation for a period of suspension in cases of sexual misconduct.

[26] The Tribunal feels that the sanction is appropriate and will contribute to the protection of the public and ensure the public's ongoing confidence in the integrity of the profession. The sanction of a 2-month suspension of the practice permit is significant and will send an appropriate message to the public and to members of the profession.

[27] The Tribunal feels that the orders sought, while significant, are not just punitive. Mr. Deis must complete a course on professional boundaries and ethics; the sanction therefore has a rehabilitation and remediation component.

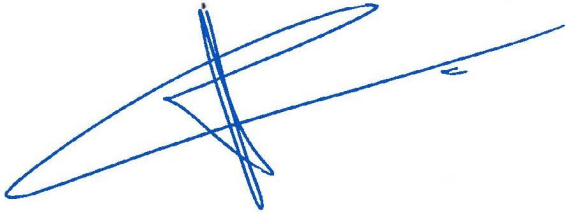
- [28] The Tribunal reviewed and considered the *Jaswal* factors in arriving at its decision. The Tribunal believes there is significant penalty in the sanction and associated costs. The sanction will act as a deterrent to other members of the profession, is in line with sanction in similar cases, and that the public confidence in the integrity of the profession will be maintained.
- [29] This was a single incident that has not been repeated. Mr. Deis exercised poor judgement and displayed unprofessional communication based on a misconception of his assumed friendship with [...] and [...] [...].
- [30] The Hearing Tribunal was advised by the parties that, as stated in 81.1(2) of the HPA, the patient was afforded an opportunity to provide a patient impact statement but has declined to do so.
- [31] The costs in this case appear to be fair. The costs are not intended to be a penalty but are justified given the circumstances and seriousness of this case.
- [32] The Hearing Tribunal varied slightly the wording of the orders sought in relation to the suspension. The parties submitted that the suspension be served within 30 days of the Hearing Tribunal's decision. However, given that the suspension is for a period of 2 months, the Hearing Tribunal changed this wording to note that it must be commenced within 30 days.

VI. ORDERS

- [33] The Hearing Tribunal makes the following orders:
- a) Mr. Deis shall receive a reprimand. The Hearing Tribunal's written reasons for decision ("the Decision") shall serve as a reprimand.
 - b) Mr. Deis's practice permit will be suspended for a period of two (2) months, to be commenced within 30 days of the date when the Hearing Tribunal's decision is issued, or within such other period of time as agreed to by the Complaints Director.
 - c) Upon completion of the two (2) month period of suspension referred to in paragraph (b), Mr. Deis will be eligible for reinstatement of his practice permit, provided that he provides proof of successful completion to the Complaints Director of PBI Education's Professional Boundaries and Ethics (PB-24) course (to be taken at his own cost).
 - d) Mr. Deis will pay 30% of the costs of the investigation and hearing. The first payment will be due 30 days after Mr. Deis's practice permit is reinstated, or within 4 months of the date that his practice permit is suspended, whichever is sooner, and will be payable in equal monthly payments over a period of 24 months thereafter.

Dated this 7th day of November, 2022.

Signed on behalf of the Hearing Tribunal

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Mark Hall, PT, Chair