



COLLEGE OF
CHIROPRACTORS
— OF ALBERTA —

Hearing Tribunal Written Decision and Orders for the Hearing of:

Dr. Pardip Athwal

On:

February 23, 2021

Posting expiration date:

April 23, 2031

IN THE MATTER OF A HEARING OF THE HEARING TRIBUNAL
Into the Conduct of Dr. Pardip Athwal, a Regulated Member of the Alberta College and
Association of Chiropractors, pursuant to

THE HEALTH PROFESSIONS ACT, being
Chapter H-7 of the Revised Statutes of Alberta

DECISION OF THE HEARING TRIBUNAL

1. Hearing

The Hearing was conducted virtually using the Zoom application on February 23, 2021.
The following individuals participated in the virtual hearing:

James Lees, Public Member, Chair
Sheri Epp, Public Member
Dr. Gordon Burns, ACAC Registered Member
Dr. Darrell Smith, ACAC Registered Member
Craig Boyer, Independent Legal Counsel

David Lawrence, ACAC Complaints Director
Blair Maxston, Legal Counsel to Complaints Director

Dr. Pardip Athwal, Investigated Member

Claire Forster, Court Reporter

2. Preliminary Matters

There were no objections to the jurisdiction or composition of the Hearing Tribunal to proceed with the hearing, and no objections to using Zoom to hold this hearing. There were no preliminary matters raised by either party. Dr. Athwal was aware of her right to legal representation and chose to represent herself during the hearing.

Dr. Athwal confirmed that she had waived the thirty (30) day notice of the said hearing required by section 77(a) of the Health Professions Act.

3. Allegations

The allegations that appear in the amended Notice of Hearing are as follows:

1. On or about October 2014, until December 2017, Dr. Athwal failed to meet the minimum acceptable standards concerning the creation and maintenance of patient records constituting a breach of ACAC Standard of Practice 5.1 – Recordkeeping Requirements.
2. On or about February 2016, Dr. Athwal altered certain patient files provided to the ACAC for the purpose of satisfying a required practice review self-submission which harmed the integrity of the profession and/or which constitutes breach of ACAC Code of Ethics Principle 5 – Veracity, Article A1

Service to Patient, Article C1 Support of Self-Regulation, and/or Article C2 Cooperation with the ACAC.

3. On or about October 2014 until December 2017, Dr. Athwal failed to use appropriate infection prevention and control standards in her treatment of patients at her clinic in breach of ACAC Standards of Practice 4.3 – Infection Prevention and Control, by not having hand sanitizer accessible for staff and patients.
4. On or about July 2019, and during the period prior to Dr. Athwal's return to her clinic, an auditor attended at the clinic and on that day approximately 25 patient files could not be located by Clinic staff in breach of ACAC Standard of Practice 5.3 – Custodianship of Health Records and Standard of Practice 5.4 – Health Record Retention.

It is further alleged that the conduct described above constitutes unprofessional conduct as defined in s. 1(1)(pp) of the *Health Professions Act (the "Act")*, and/or constitutes a contravention of one or more of the following (in force at the relevant time): Principle #5, Article A1, Article C1 and Article C2 of the ACAC Code of Ethics; and Standards of Practice 4.3, 5.1 and 5.3.

4. Evidence

The Hearing Tribunal was conducted by way of a consent hearing. No witnesses were called to provide evidence. Blair Maxston, counsel for the Complaints Director, entered the following documents into evidence as exhibits:

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|------------|--|
| Exhibit #1 | Amended Notice of Hearing, Notice to Attend and Notice to Produce |
| Exhibit #2 | Admission of Unprofessional Conduct |
| Exhibit #3 | Agreed Statement of Facts with Appendix A: Agreement and Undertaking between Pardip Athwal and the College dated March 28, 2018 and Appendix B: Letter from Dr. Brian Gushaty to Dr. Pardip Athwal dated July 5, 2018. |
| Exhibit #4 | Joint Submission Regarding Penalty |

At the outset of the hearing, Dr. Athwal confirmed that she had received all of the documents noted above and had no additional documents to submit during the hearing.

A) Background:

At all times, Dr. Athwal was a regulated member of the College and was the owner of "Back in Balance Wellness Centre" 1315-3rd avenue South, Lethbridge Alberta. Pursuant to the Health Professions Act of Alberta, R.S.A. 2000, c. H 7 (the "Act"), the College is the regulatory body for the profession of chiropractic in Alberta.

B) Complaint & Investigation Report:

On October 17, 2017, pursuant to section 56 of the *Act*, information concerning Dr. Pardip Athwal was treated as a complaint (the "Complaint") by the then Complaints Director of the College. In response to the Complaint, pursuant to part 4 of the *Act*, an investigator (the "Investigator") was appointed to investigate the Complaint. The Investigator provided the Complaints Director with an investigation report (the "Investigation Report"). After reviewing the Investigation Report, and pursuant to s. 55(2)(a.1) of the *Act* a resolution with consent was signed in March, 2018 by the Complaints Director and Dr. Athwal in the form of an Agreement and Undertaking (Exhibit #2, Appendix A). On August 9, 2019, the Complaints Director referred this matter to a Hearing Tribunal due to Dr. Athwal's non-compliance with the Agreement and Undertaking.

C) Facts Relating to the Current Complaint

- On or about June 28, 2018 Dr. Athwal provided an Infection Prevention and Control policy and procedure document congruent with the ACAC Standard of Practice 4.3 Infection Prevention and Control.
- The then Complaints Director sent Dr. Athwal a letter dated July 5, 2018 indicating concern following the onsite review that had been conducted by the Investigator. This letter indicated that significant changes to the inadequate patient record keeping activity had not been made and that this was identified as a major concern in the initial complaint investigation. This letter also noted that an Agreement and Undertaking is a binding document and that, in the event that Dr. Athwal failed to comply with the terms of the Agreement and Undertaking, Dr. Athwal agreed and acknowledged that the Complaints Director may refer the Complaint to a hearing before a Hearing Tribunal.
- The College's Professional Conduct and Competence Administrator provided an email to Dr. Athwal on November 22, 2018 indicating that it was good to see that Dr. Athwal was continuing to make positive changes in her record keeping and infection control practices. This was followed by the feedback in areas to continue to work on improving.
- In terms of the requirements of the Agreement and Undertaking:
 - a) On or about February 2019, Dr. Athwal provided the required practice self-submission, and it was found to be complete.
 - b) On or about March 2019, Dr. Athwal completed the ProBe Professional/Problem Based Ethics remediation course.
 - c) As an ongoing matter, Dr. Athwal has permitted and facilitated unannounced patient file audits to be carried out, all at her cost.
 - d) Dr. Athwal paid the costs of the College's investigation.
- On June 3, 2019, the Complaints Director provided an approval to and extension request by Dr. Athwal to postpone any file audits until after June 15, 2019 due to a family illness. On June 8, 2019 Dr. Athwal's mother passed away and Dr.

Athwal communicated this to the Complaints Director. The Complaints Director then informed Dr. Athwal that the audits would recommence 30 calendar days after Dr. Athwal returned to the Clinic, that being sometime after August 8, 2019.

- On July 12, 2019 the Complaints Director received an email from Dr. Athwal regarding concerns raised from an unannounced Clinic visit that had recently occurred. Dr. Athwal explained that she did not realize an audit would happen that week and had left town for a couple of days. Dr. Athwal explained that she thought the next audit would be after she returned, and so Dr. Athwal and her staff were not prepared. As a result, files requested were not available in the Clinic.
- On July 13, 2019, the Complaints Director advised Dr. Athwal that as per the Agreement and Undertaking the site visits were unannounced and that patient files must be available at the Clinic. Dr. Athwal provided an apology for the missing files and committed to addressing this issue moving forward.
- On or about September 2019, conditions were placed on Dr. Athwal's practice permit under section 65 of the *Act*. The conditions included:
 1. Dr. Athwal must practice with a practice monitor approved by the ACAC Complaints Director.
 2. Dr. Athwal must perform all of her clinical record keeping requirements at her clinic site and is not to remove any files or documents containing confidential patient information from her clinic.
 3. Dr. Athwal must complete and record all clinical record keeping requirements for each patient she sees on the same day of each patient visit.
 4. On or before the expiry of the conditions period Dr. Athwal shall provide a signed letter attesting to Dr. Athwal's fitness to practice chiropractic for a health care professional actively licensed to practice in the Province of Alberta in the field of mental health and agreed upon by the Complaints Director.
 5. All costs associated with compliance shall be paid by Dr. Athwal.
 6. If in the sole opinion of the Complaints Director Dr. Athwal has not satisfactorily completed any of the above conditions, then the conditions may be extended for a further 90-day period at the written direction of the Complaints Director and/or the Complaints Director may request further orders pursuant to section 65 of the *Act* including but not limited to an interim suspension of Dr. Athwal's practice permit.
- On or about November 2019 the College received a written report from Prairie Sage Counselling and Consulting outlining an opinion that Dr. Athwal's fitness to practice and patient interactions were at no time compromised.

- On or about December, 2019 the College received a written report from the College's daily Practice Monitor confirming her attendance at Dr. Athwal's Clinic each day for the required 90-day period, and providing an opinion that Dr. Athwal's patient files were complete and reflected compliance with College Record Keeping Standard of Practice 5.1.
- On or about March 2020, an unannounced file audit was conducted at the Clinic and the College received a report that Dr. Athwal's patient files were complete and reflected compliance with College Record Keeping Standard of Practice 5.1.
- In total, Dr. Athwal has paid approximately \$7,000 since March 2018 for this Complaint and in order to comply with the Agreement and Undertaking, not including her own lawyer fees required since August 2020.

During the hearing, the Hearing Tribunal asked the parties to clarify whether the conduct covered by the 2018 Agreement and Undertaking was the same, or different, from the conduct described in the allegations in Exhibit #1, Notice of Hearing. Counsel for the Complaints Director Mr. Maxston stated that his understanding is that the allegations are reflective of new conduct that occurred potentially during the same time period addressed in the Agreement and Undertaking, adding that the College is not piggybacking on previous charges, although there is some overlap. The College Complaints Director stated that the Agreement and Undertaking was a resolution with consent, there was no hearing, as such this is the first hearing on these matters.

Dr. Athwal stated that she understood that Allegations #1, #2 & #3 are just being brought forward, and that she was not accused of having failed to perform her obligations under the Agreement and Undertaking. Dr. Athwal added that she did not feel she was being penalized twice for Allegations #1, #2 & #3 because the College was not asking her to take the ethics course again or to rewrite her sanitizing infection protocols. At this point the Hearing Tribunal called a short recess to consider the responses provided by the parties.

The Hearing Tribunal reconvened and advised the parties that the Hearing Tribunal still has questions, and possibly concerns, that some of the allegations in the Notice of Hearing are allegations for which Dr. Athwal has already admitted were unprofessional conduct and has been sanctioned for in the past, giving rise to a concern over double jeopardy. The Hearing Tribunal asked the College for further clarification on whether Allegations #1, #2 & #3 related to conduct that occurred after the Agreement and Undertaking was signed by Dr. Athwal on March 27, 2018 and if not, should these three allegations result in further sanction from this hearing. Mr. Maxston reiterated that there was no prior hearing, and the Agreement and Undertaking states that the Complaints Director has the ability to refer all of the matters in the Agreement and Undertaking to a hearing. He further stated the College alleges there has been non-compliance with the Agreement and Undertaking at various points by Dr. Athwal, and these charges should be considered as new allegations for this hearing. Mr. Maxston noted there are some crossover facts, and facts that carry over from some of the charges in the Agreement and Undertaking.

The Hearing Tribunal asked the College to confirm whether Dr. Athwal has satisfied all of the terms in the previous Agreement and Undertaking; both Mr. Maxston and Dr. Athwal replied that is correct. Mr. Maxston was then asked if the sanctions in the

Agreement and Undertaking relate to the same facts as those in Allegations #1, #2 & #3 in the Notice of Hearing. Mr. Maxston replied 'that's fair', noting that the previous sanctions did not arise from a hearing, rather there was a consent Agreement and Undertaking between the parties. Mr. Maxston was then asked by the Hearing Tribunal whether Allegation #4 is what is being referred to as not following the Agreement and Undertaking, to which he responded 'that is largely correct'.

Further to Mr. Maxston's earlier comments, no additional facts or information regarding the allegations were submitted to the Hearing Tribunal other than those in the Agreed Statement of Facts.

6. Submissions by the Parties

a) By Counsel for the Complaints Director

Mr. Maxston addressed the hearing, noting that the Complaints Director has responsibility for firstly, proving the facts in this matter, and secondly proving that these facts rise to the level of unprofessional conduct as defined in s. 1(1(pp) of the *Act*.

The Agreed Statement of Facts states the facts in Exhibit #3 are uncontested by the parties and can be accepted by the Hearing Tribunal as evidence. Mr. Maxston spoke specifically to specific sections of the Agreed Statement of Facts:

Paragraph 9 – addresses infection prevention and control policies;
Paragraph 10 – speaks to on site reviews by the College's investigator;
Paragraph 11 – states in an email the progress, requirements and compliance;
Paragraph 12 – identifies 4 requirements in the Agreement and Undertaking;
Paragraphs 13 & 14 – addresses delays and approval for time extension for on site file audits until after August 8, 2019;
Paragraph 15 – confirms for Dr. Athwal that patient files must always be available;
Paragraph 16 – lists 6 conditions placed on Dr. Athwal's practice permit;

Mr. Maxston again stated that the key to the facts in Exhibit #3 is that they are uncontested. Exhibit #3 describes deficiencies that occurred, conduct that led to the Agreement and Undertaking, and non-compliance with the Agreement and Undertaking. The Complaints Director's perspective is that Dr. Athwal's conduct fell below the standards for the profession and the Code of Ethics, and is evidence of non-compliance with the Agreement and Understanding. Mr. Maxston stated that the College Code of Ethics and Standards of Practice are appropriate tools to use in assessing whether the conduct under review rises to the level of being unprofessional.

Mr. Maxston referred to Exhibit #2, the Admission of Unprofessional Conduct, and submitted that in combination with Exhibit #3, the Agreed Statement of Facts, these clearly outline that there was unprofessional conduct by Dr. Athwal, and the Hearing Tribunal should confirm that finding.

b) By Dr. Athwal

Dr. Athwal stated that she agreed with the Agreement and Undertaking from 2018. She noted that she always communicated with the College when she would be away from the clinic to assist in scheduling file audits, in particular the file audit referred to in Allegation #4. Dr. Athwal stated she did what the College needed her to do and completed all of the sanctions imposed on her after the passing of her mother, adding that grief is a factor that should be considered in all of this. Dr. Athwal concluded by stating that she is agreeing to what is stated – there were files that were not found in the clinic during the period before she returned in August, 2019

At this point, the Hearing Tribunal called a recess to allow panel members to consider all information submitted. The hearing was reconvened at 11:10 AM.

7. Findings and Reasons

The Hearing Tribunal finds that Dr. Athwal's conduct in Allegation #4 has been proven and it accepts the admission by Dr. Athwal that her conduct was unprofessional. However the Hearing Tribunal does not accept the admission of unprofessional conduct for Allegations #1, #2 and #3 from the Notice of Hearing. The Hearing Tribunal is not satisfied that it should accept Dr. Athwal's admissions of Allegations #1, #2, and #3.

The reasons for the Hearing Tribunal's findings are as follows:

With respect to Allegations #1, #2 and #3, the Hearing Tribunal noted that Dr. Athwal entered into an Agreement and Undertaking with the College in March 2018 which identified several concerns with her conduct in the practice of chiropractic. The Agreement and Undertaking included admission by Dr. Athwal that her conduct was unprofessional conduct deserving of sanction. The Agreement and Undertaking also imposed several penalties on Dr. Athwal similar in nature to those provided for in section 82 of the *Act*, including:

- A letter of reprimand;
- A requirement to participate in the ProBe remediation program;
- Agreement to permit unannounced patient file audits for 2 years;
- Agreement to prepare and present an Infection Prevention and Control Policy and submit another practice visit self-submission at her cost;
- Agreement to pay costs to the College;
- Agree that the Complaints Director may advance this matter to a Hearing Tribunal in the event of non-compliance with the Agreement and Undertaking.

The Hearing Tribunal agrees with the Complaints Director that the Agreement and Undertaking did not arise from a hearing, rather it was a consent agreement arrived at to resolve the College's concerns over Dr. Athwal's conduct. However, the Agreement and Undertaking did contain penalties comparable to those found under s. 82 of the *Act*, including a reprimand for unprofessional conduct placed on her ACAC file. The Hearing Tribunal found that the concerns noted in the Agreement and Undertaking, #1.a, b, and c are based on the same conduct as outlined in Allegations #1, #2 and #3 in the Notice of Hearing, including the same time frames specified for her conduct. Further, Dr. Athwal did agree to penalties in the Agreement and Undertaking as listed above, and complied with the requirements outlined in the Agreement and Understanding with the exception

of file audits. The Hearing Tribunal concluded that should Dr. Athwal incur sanctions a second time for the same allegations, this would constitute 'double jeopardy' on her part. That would be unfair and improper. For this reason, the Hearing Tribunal does not accept Dr. Athwal's admission to Allegations #1, #2 and #3 in the Notice of Hearing, as Dr. Athwal should not be penalized a second time for the same or very similar concerns over her conduct during the same time period identified by the College.

With respect to Allegation #4, this arose from an unannounced file audit conducted on or about July 2019 when 25 patient files were unable to be located on site at the clinic. The Hearing Tribunal accepts Dr. Athwal's explanation of events that occurred at this time, and accepts the admission of Dr. Athwal to this allegation. The Hearing Tribunal finds that Dr. Athwal's conduct does rise to the level of unprofessional conduct found in the *Act*, s. 1(1)(pp):

- (ii) contravention of this Act, a code of ethics or standards of practice;

Dr. Athwal's conduct in this regard does not meet the College Standards of Practice 5.3 – Custodianship of Health Records, and 5.4 – Health Records Retention, and is therefore unprofessional conduct as defined in s 1(1)(pp)(ii).

The Hearing Tribunal advised both parties that in view of the decision to only find Allegation #4 as meeting the definition of unprofessional conduct, the parties may wish to review and discuss possible changes to Exhibit #4 – Joint Submission Regarding Penalty – before continuing. Mr. Maxston spoke, noting the time, effort and commitment that went into the creation of the original agreement, and the benefits of reaching a consent agreement rather than holding a contested hearing. Reference was made to case law on the area of joint submissions, and the need for giving deference to joint submissions. Mr. Maxston reaffirmed the position of the College that there have never been Section 82 penalties assessed for unprofessional conduct against Dr. Athwal throughout this matter, and today would represent a first conviction for Dr. Athwal. There were penalties for Dr. Athwal that arose from the Agreement and Undertaking, however these were not assessed under s. 82 of the *Act*. Mr. Maxston requested that the Hearing Tribunal reconsider its decision and come to a different decision on Allegations #1, #2 and #3, as this may have a significant impact on the ability to consider sanctions during this hearing. The Complaints Director will want to consider options and next steps if the decision of the Hearing Tribunal stands following reconsideration, including but not limited to the option of an appeal to Council.

In response to Mr. Maxston's request for reconsideration, the Hearing Chair noted that from the outset of this hearing, the Hearing Tribunal has expressed concerns over the possibility of double jeopardy for Dr. Athwal, given that the facts outlined in the Allegations from the Notice of Hearing are very similar to those in the original Agreement and Undertaking. When this was first raised by the Chair, Mr. Maxston advised that new information would be submitted that would clarify the differences in facts between the Notice of Hearing and the Agreement and Undertaking. In this regard, there was no new information or facts submitted during the hearing that would suggest that the charges in Allegations #1, #2 and #3 were not the same as those addressed in the original Agreement and Undertaking. The Hearing Tribunal also heard no evidence of Dr. Athwal's non-compliance in terms of the original agreement other than Allegation #4.

In regard to s. 82, Point #2 in the Agreement and Undertaking states: "a. A letter of reprimand referencing this act of unprofessional conduct will be placed on Dr. Athwal's ACAC member file and provided to the ACAC Council." To the Hearing Tribunal, this confirms that Dr. Athwal does have a finding of unprofessional conduct on her ACAC member record, and although the sanctions imposed do not arise from s. 82, there are clear similarities, and these are still sanctions. In addition, there was no evidence of non-compliance by Dr. Athwal with the original sanctions that would justify imposing the same or similar sanctions again.

Before taking a recess to consider Mr. Maxston's request, the Chair asked Dr. Athwal if she wished to comment. Dr. Athwal stated that the issue of double jeopardy is not something that she has brought up. She noted that a contested hearing is not something she wishes to go through, and that she "okayed" these three allegations but would rather have not done so. Dr. Athwal suggested that the concerns over the provisions in the Joint Submission Regarding Penalties could easily be dealt with by adjusting the number of fines in point. 2 from four fines to one fine for one finding of unprofessional conduct in Allegation #4.

Mr. Maxston expressed his desire to meet with the Complaints Director to discuss a possible revision to the Joint Submission Regarding Penalties, followed by a meeting with Dr. Athwal, to determine if there is agreement on how the joint submission might be revised to the satisfaction of both parties. The Chair called a recess to allow the Hearing Tribunal to consider Mr. Maxston's request for reconsideration of the findings on Allegations 1, 2, and 3, and to allow the parties to explore possible revisions to the Joint Submission Regarding Sanction that might be mutually agreeable.

The hearing was recessed at 10:50 AM to allow these discussions to take place. The Hearing Tribunal considered the request by Mr. Maxton, but remained convinced in its decision that it would be unfair to convict and punish Dr. Athwal twice for the same conduct. The Agreement and Undertaking states that Dr. Athwal received a letter of reprimand for the acts of unprofessional conduct admitted in addition to the other sanctions imposed. The proposed Joint Submission Regarding Penalties (Exhibit #4) would have Dr. Athwal pay a fine of \$1000 for each admission. She would be receiving further punishment for the same conduct already covered by the Agreement and Undertaking.

At 11:10 AM the hearing was reconvened. The Chair advised Mr. Maxston that in the absence of any new information or direction regarding an error, the decision of the Hearing Tribunal stands, and the Hearing Tribunal does not accept Dr. Athwal's admission regarding Allegations #1, #2 or #3. There is a finding of unprofessional conduct arising from the finding for Allegation #4.

Mr. Maxston advised the Hearing Tribunal that their discussions with Dr. Athwal have resulted in agreement on a revised Joint Submission Regarding Penalties, and he would now present the Complaints Director's submission regarding the penalty phase of the hearing, including the revised joint submission.

8. Sanctions

Mr. Maxston noted that the Hearing Tribunal has three types of order-making authority under the *Act*, which are as follows:

1. General order – which includes every option from a reprimand or caution to restrictions on practice, all the way up to suspension and cancellation.
2. Order for Fines – s. 158 of the *Act* contains a table which sets out the maximum amount of a single fine, and the total amount of all aggregate fines; column 3 of this table applies to the chiropractic profession.
3. Order for Costs – which requires a member to pay all or a portion of the costs of the investigation and the hearing, with no fixed limits.

Once a Hearing Tribunal makes a finding that a member's conduct amounts to unprofessional conduct, the Hearing Tribunal must then determine the appropriate sanction, or order(s).

The primary purpose of legislation governing professionals is the protection of the public. The fundamental purpose of penalty orders for unprofessional conduct is (i) to ensure that the public is protected from acts of unprofessional conduct, and (ii) to ensure the integrity of the profession in the eyes of the public is maintained. Other purposes include procedural fairness, and rehabilitation/remediation of the investigated member.

Case law has set out a number of factors (the “*Jaswal*” factors”) that can be taken into account by a Hearing Tribunal when determining appropriate penalty orders. These factors are as follows:

- The nature and gravity of the proven allegations – one incident of file mismanagement involving 25 patient files removed from the clinic;
- The age and experience of the member – Dr. Athwal is a mature, experienced practitioner in the chiropractic profession;
- The previous character of the member and in particular the presence or absence of any prior complaints or findings of unprofessional conduct – one previous matter resulting in an Agreement and Understanding with the College and a reprimand for unprofessional conduct placed on her ACAC file;
- The number of times the unprofessional conduct was proven to have occurred – one incident involving 25 patient files removed from the clinic;
- The role of the member in acknowledging what had occurred – Dr. Athwal has admitted to her conduct and recognized her responsibilities;
- Whether the member has already suffered serious financial or other penalties as a result of the allegations having been made – in the Agreement and Undertaking, Dr. Athwal was subject to a number of penalties including costs, site audits, education and other orders;
- The impact of the incident(s) on the complainant – not a factor in this matter;
- The presence or absence of any mitigating circumstances – see below;
- The need to promote specific and general deterrence and, thereby, to protect the public and ensure safe and proper practice – both are important for other members and the general public;
- The need to maintain the public's confidence in the integrity of the profession
- The degree to which the offensive conduct that was found to have occurred was clearly regarded, by consensus, as being the type of conduct that would fall

outside the range of permitted conduct – a violation of the College Standards of Practice;

- The range of sentences in other similar cases – no similar or other cases were submitted.

Mr. Maxston outlined three mitigating factors which should also be considered in determining a sanction for Dr. Athwal; these are:

- Attitude since the unprofessional conduct occurred. There was no evidence of non-compliance with the Agreement and Undertaking, which dates back to March 2018. Dr. Athwal described extenuating circumstances due to a death in the family which placed considerable strain on her at the time of the unannounced audit when the patient files were found to not be in the clinic.
- First offense or a pattern of repeated behavior – this is the first complaint leading to a hearing, although Dr. Athwal was assessed penalties in the Agreement and Undertaking and reprimanded for unprofessional conduct.
- Admission to unprofessional conduct – Dr. Athwal has admitted to her conduct, which is taken as showing responsibility for one's actions.

With these concepts in mind, both parties agree that the joint submission to the Hearing Tribunal in these proceedings represents fair, reasonable, and proportionate consequences and penalties to be imposed upon Dr. Athwal in consideration of the decision of the Hearing Tribunal, Dr. Athwal's conduct, and all the relevant facts.

A. Revised Joint Submission Regarding Penalties:

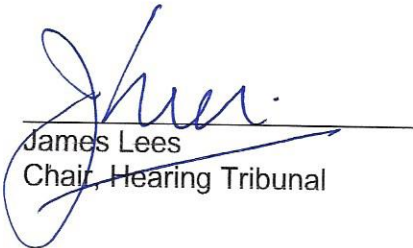
Mr. Maxton confirmed to the Hearing Tribunal that the sanctions originally proposed in Exhibit #4 were revised. The Hearing Tribunal has considered the revised Joint Submission Regarding Penalty, and accepts the revised Joint Submission Regarding Penalty. Accordingly, the Hearing Tribunal issues the following orders:

1. Dr. Athwal will pay a portion of the investigation and hearing costs up to a maximum of \$15,000.00. These costs can be paid in equal monthly installments (without interest) of \$1,000.00 per month, commencing on a date agreed upon by the Complaints Director and Dr. Athwal.
2. Dr. Athwal will pay a fine of \$1,000.00. Payment of the fine shall be within one (1) month after the costs in order 1 have been paid.
3. Dr. Athwal will submit written practice self-submissions at her cost as directed by the Complaints Director, or his delegate, to a maximum of two (2) practice self-submissions within one (1) year of the date of the Hearing Tribunal's written decision. The timing of the self-submissions will be in the sole discretion of the Complaints Director, or his delegate.

4. Dr. Athwal must successfully complete courses on the Custodianship of Records, Mitigating Privacy Risks, and appropriate file management (the "Courses"). The Courses must be pre-approved by the Complaints Director and will be at Dr. Athwal's cost. A recommended course can be found at <https://www.ualberta.ca/extension/continuing-education/courses/EXIAPP-8177>. If a particular Course is unavailable, the Complaints Director may, acting reasonably, direct that a substitute course or courses be successfully completed. Completion of these courses will take place within 12 months of the date of the Hearing Tribunal's written decision and will not count toward the Completion of Dr. Athwal's required continuing competency credits.
5. If Dr. Athwal is unable to comply with order 1, 2, 4 and 5 above within the stipulated time periods, then the College can immediately and without the necessity of any other steps cancel Dr. Athwal's practice permit until such time as all of those orders are complied with.
6. The College shall publish the Hearing Tribunal's written decision, with Dr. Athwal's name, pursuant to ACAC Bylaw 13.0 Publication of Conduct Hearings, Appeals & Agreements and Undertakings.

DATED THIS 31 DAY OF March, 2021 IN THE CITY OF EDMONTON ALBERTA

ALBERTA COLLEGE AND ASSOCIATION OF CHIROPRACTORS


James Lees
Chair, Hearing Tribunal