



COLLEGE OF
CHIROPRACTORS
— OF ALBERTA —

Hearing Tribunal Written Decision and Orders for the Hearing of:

Dr. Paul McConnell

On:

March 10, 2020

Posting expiration date:

July 24, 2030

IN THE MATTER OF A HEARING OF THE HEARING TRIBUNAL
Into the Conduct of Dr. Paul McConnell, 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

Hearing

The Hearing was conducted at 11203 70 Street, Edmonton, AB T5B 1T1 on March 10, 2020 with the following individuals present:

Hearing Tribunal:

R. Colistro, Tribunal Chair
Dr. D. Smith, ACAC Member
Dr. M. Harris, ACAC Member
Dr. R. Tenhove, ACAC Member (via teleconference)
A. Chaudhary, Public Member
W. Pavlic, Q.C., Independent Tribunal Legal Counsel

Alberta College & Association of Chiropractors:

Dr. T. Halowski, Acting Complaints Director
B.E. Maxston, Legal Counsel

Regulated Member:

Dr. Paul McConnell
A.S. Rudakoff, Q.C., Legal Counsel









Background

1. On October 26, 2018, the Alberta College and Association of Chiropractors (the "College") received a letter of complaint dated October 22, 2018 from [REDACTED] concerning Dr. McConnell (the "Complaint").
2. In response to the Complaint, the then Acting Complaints Director of the College (Ms. Sheila Steger) appointed [REDACTED] to investigate the Complaint.
3. The investigator provided the College's then Acting Complaints Director with an investigation report (the "Investigation Report"), which included information outlining serious concerns about Dr. McConnell's practice as chiropractor.

4. After reviewing the Investigation Report, pursuant to section 66(3)(a) of the HPA, the then Acting Complaints Director referred the Complaint to a hearing.
5. The hearing was originally scheduled to occur on June 23, 2019 but was adjourned with the consent of both parties and was re-scheduled to proceed on March 10, 2020.
6. The Hearing was conducted by way of an Agreed Statement of Facts and a Joint Submission on Penalty. The Agreed Statement of Facts was entered as Exhibit #2 and the Joint Submission on Penalty was entered as Exhibit #4.




Allegations

The allegations that appear in the Notice of Hearing (Exhibit #1] are as follows:

7. On or about dates to be determined at the hearing of this matter, you dated, engaged in sexual relationships with and/or engaged in actions of a sexual nature with one or more of the following persons who were your past and/or current patients:
 - (a) 
 - (b) 
 - (c) 
 - (d) 
 - (e) 
 - (f) 
8. On or about dates to be determined at the hearing of this matter, you engaged in inappropriate actions of a sexual nature concerning the following person who was your past and/or current patient:
 - (a) 
9. On or about dates to be determined at the hearing of this matter, you used marijuana at your clinic premises.
10. On or about dates to be determined at the hearing of this matter, you inadvertently failed to keep and maintain accurate and complete patient records for the College's self-submission practice review by creating chart entries after the fact that were not contemporaneous for one or more of the following patients:
 - (a) 

- (b)
- (c)
- (d)



11. On or about dates to be determined at the hearing of this matter, you inadvertently failed to make accurate chart entries concerning 64 daily treatment notes regarding a patient chart requested by legal counsel for your patient [REDACTED] in the matter of injuries sustained by [REDACTED] in a motor vehicle accident [REDACTED]
12. On or about dates to be determined at the hearing of this matter, you failed to record necessary chart information for one or more of the following patients:
 - (a) The absence of Registration Information for:
 - (i)
 - (ii)
 - (iii)
 - (iv)
 - (v)
and/or
 - (b) The absence of health history for:
 - (i)
 - (ii)
 - (iii)
 - (iv)
 - (v)
and/or
 - (c) The absence of Physical Examination findings for:
 - (i)
 - (ii)
 - (iii)
 - (iv)
 - (v)
 - (vi)
 - (vii)
 - (viii)
 - (ix)
 - (x)
 - (xi)
 - (xii)
 - (xiii)
 - (xiv)

- (xv)
- (xvi)
- (xvii)
- (xviii)
- (xix)



and/or

(d) The absence of Written Diagnosis for:

- (i)
- (ii)
- (iii)
- (iv)
- (v)
- (vi)
- (vii)
- (viii)
- (ix)
- (x)
- (xi)
- (xii)
- (xiii)
- (xiv)
- (xv)
- (xvi)
- (xvii)
- (xviii)
- (xix)



and/or

(e) The absence of a Written Treatment Plan for:

- (i)
- (ii)
- (iii)
- (iv)
- (v)
- (vi)
- (vii)
- (viii)
- (ix)
- (x)
- (xi)
- (xii)
- (xiii)
- (xiv)
- (xv)



- (xvi)
- (xvii)
- (xviii)
- (xix)



and/or

(f) The absence of Progress Notes for:

- (i)
- (ii)
- (iii)
- (iv)
- (v)
- (vi)
- (vii)
- (viii)
- (ix)
- (x)
- (xi)
- (xii)
- (xiii)
- (xiv)
- (xv)
- (xvi)
- (xvii)
- (xviii)



and/or

(g) The absence of patient signed informed consent form for:

- (i)
- (ii)
- (iii)
- (iv)
- (v)
- (vi)



and/or

(h) The absence of witnessed informed consent for:

- (i)
- (ii)
- (iii)
- (iv)
- (v)
- (vi)



- (vii)
- (viii)
- (ix)
- (x)
- (xi)
- (xii)



13. On or about dates to be determined at the hearing of this matter, you initiated a breach of privacy of personal health records information, by providing a copy of a plain film radiograph belonging to [REDACTED] to [REDACTED] without [REDACTED] consent.

Evidence

14. The evidence was adduced by way of Agreed Statement of Facts, and no witnesses were called to give *viva voce* testimony. The Hearing Tribunal accepts the evidence set out in the Agreed Statement of Facts. The Agreed Statement of Facts, which was admitted as Exhibit #2, is appended to this decision as Appendix 1.

Admission of Unprofessional Conduct

15. Dr. McConnell admitted all the Allegations set out in the Notice of Hearing.

Decision of the Hearing Tribunal

16. The Hearing Tribunal accepts Dr. McConnell's admission of unprofessional conduct based on the evidence set out in the Agreed Statement of Facts. The Hearing Tribunal finds that the conduct admitted to amounts to unprofessional conduct as defined in s. 1(1)(pp) of the *Health Professions Act*.

Joint Submission on Penalty

17. The Complaints Director and Dr. McConnell made a joint submission with respect to penalty, which was entered as Exhibit #4. The parties jointly submitted the following proposal to the Hearing Tribunal for consideration:
- (a) Dr. McConnell's registration and practice permit will be cancelled for a period of two (2) years from (i) the date of the Hearing Tribunal Hearing (if the Tribunal can verbally advise of acceptance of the joint penalty proposals at the hearing) or (ii) the date the Hearing Tribunal's written decision (the "Cancellation Period").
 - (b) Prior to any application(s) by Dr. McConnell to have his registration reinstated and his practice permit reissued after the Cancellation Period, Dr. McConnell must participate in a multi-disciplinary assessment by the Comprehensive Occupational Assessment Program ("COAP") not less

than six (6) months prior to the date of any reinstatement application provided that:

- (i) Dr. McConnell is responsible for the costs of the COAP assessment;
- (ii) Before the assessment takes place, the Complaints Director will provide the assessor with a copy of the investigation report and a copy of the decision of the Hearing Tribunal in this matter;
- (iii) Once the COAP assessment is complete, the assessor will provide a written report which will be sent to the Registrar to be considered by the Registrar in conjunction with a reinstatement application;
- (iv) If the COAP assessor makes any treatment, education or any other type of recommendations, Dr. McConnell must fully and successfully comply with any and all recommendations before and, if applicable, after the date of any reinstatement. Dr McConnell will subsequently provide written proof to the Complaints Director and the Registrar (such proof to be satisfactory to the Complaints Director and the Registrar) that he is complying with or has complied with all previous and ongoing recommendations respectively;
- (v) Dr. McConnell is responsible for any costs associated with complying with the COAP assessor's recommendations and compliance with same;

provided, however, that if a COAP assessor at any time concludes for any reason that Dr. McConnell is not fit to practice as a chiropractor, Dr. McConnell agrees (i) if he has not yet applied for reinstatement, that he will not apply for reinstatement, (ii) that, if he has successfully applied for reinstatement, his registration and practice permit will be immediately and automatically cancelled (the "Cancellation") and (iii) that the Cancellation will continue until a COAP assessor provides a written report to the Complaints Director in a form satisfactory to the Complaints Director indicating that Dr. McConnell is fit to return to practice.

In the event that a COAP assessor is not available at any time for the purposes of giving effect to the above orders then the Complaints Director may, in his or her sole discretion and acting reasonably, select a different assessor.

- (c) Dr. McConnell shall pay \$25,000.00 being a portion of the costs of the investigation and hearing. Those costs will be payable as follows, without interest:
 - (i) \$250.00 each month during the two (2) year Cancellation Period.
 - (ii) \$527.77 per month for the three (3) years immediately following the two (2) year Cancellation Period and regardless of whether Dr. McConnell

is or is not a regulated member of the College.

- (d) If Dr. McConnell defaults with respect to any costs payment his registration and practice permit (if they have been reinstated and reissued) shall be automatically and immediately cancelled. Dr. McConnell shall not be eligible to apply for reinstatement of his registration and reissuance of his practice permit unless and until (i) Dr. McConnell pays the entire balance of costs owing by him to the College and (ii) Dr. McConnell satisfies any other requirements for reinstatement of his registration and/or reissuance of his practice permit.
- (e) Dr. McConnell will, at his cost, undergo monthly drug testing for a period of three (3) years after any reinstatement of his registration and practice permit and shall provide the Complaints Director with monthly written reports concerning that drug testing. If any of the monthly drug testing reports reflect the consumption of any recreational drugs, the Complaints Director is authorized to impose a suspension of Dr. McConnell's registration and practice permit until such time as Dr. McConnell can provide a clear drug test. If Dr. McConnell's registration and practice permit are suspended due to an unsuccessful drug test, then the 3-year time period for drug testing will be held in abeyance and the balance of the 3-year time period will recommence upon the date of the provision of a clear drug test to the Complaints Director.
- (f) As per the College's Bylaws, the decision of the Hearing Tribunal, including Dr. McConnell's name but not including any patient names or identifying information concerning patients, will be published on the College's website.

Decision on Penalty

- 18. The Hearing Tribunal agrees with the Joint Submission on Penalty and accepts the penalties as appropriate in this case.

Reasons

- 19. The Hearing Tribunal recognizes that its orders with respect to penalty must be fair, reasonable and proportionate taking into account the facts of this case. In making its decision on penalty, the Hearing Tribunal considered the following factors:
 - (a) The nature and gravity of the proven allegations,
 - (b) The age and experience of the investigated member,
 - (c) The previous character of the investigated member and in particular the presence or absence of any prior complaints or convictions,
 - (d) The age and mental condition of the victim, if any,
 - (e) The number of times the offending conduct was proven to have occurred,
 - (f) The role of the investigated member in acknowledging what occurred,
 - (g) Whether the investigated member has already suffered other serious financial or other penalties as a result of the allegations having been made,

- (h) The impact of the incident(s) on the victim, and/or
 - (i) The presence or absence of any mitigating circumstances.
20. The Hearing Tribunal believes that the penalty referred to above adequately balances the factors referred to above, and is consistent with the overarching mandate of the Hearing Tribunal, which is to ensure that the public is protected.
21. In this case, the Hearing Tribunal is satisfied that the penalties set out in the joint submission on penalty reflects the serious nature of Dr. McConnell's unprofessional conduct and sees no reason to depart from the joint submission on penalty. The Hearing Tribunal notes the following:
- (a) The cancellation of Dr. McConnell's registration and practice permit is among the most severe penalties the Hearing Tribunal can impose and reflects the serious nature of his unprofessional conduct;
 - (b) While Dr. McConnell's unprofessional conduct is inexcusable, the Hearing Tribunal is cognizant of the representations made by Dr. McConnell at the hearing, which suggested some unfortunate personal circumstances may have contributed to exercising poor judgment;
 - (c) The imposition of a two-year cancellation of Dr. McConnell's registration and practice permit imposes a severe penalty while still allowing Dr. McConnell to take steps to improve himself and ultimately return to practice if he is able to satisfy the stringent requirements set out in the penalties;
 - (d) Proceeding by way of an Agreement Statement of Facts and Joint Submission on Penalty avoided the need for a prolonged hearing and having witnesses subjected to the stress of participating in a hearing.

Orders of the Hearing Tribunal

22. The Hearing Tribunal is authorized under s. 82(1) of the *Health Professions Act* to make orders in response to findings of unprofessional conduct. The Hearing Tribunal makes the following orders pursuant to s. 82 of the *Health Professions Act*:
- (a) Dr. McConnell's registration and practice permit will be cancelled for a period of two (2) years from **March 10, 2020**, being the date on which the Tribunal verbally advised the parties of its acceptance of the joint penalty proposals at the hearing (the "Cancellation Period").
 - (b) Prior to any application(s) by Dr. McConnell to have his registration reinstated and his practice permit reissued after the Cancellation Period, Dr. McConnell must participate in a multi-disciplinary assessment by the Comprehensive Occupational Assessment Program ("COAP") not less than six (6) months prior to the date of any reinstatement application provided that:

- (i) Dr. McConnell is responsible for the costs of the COAP assessment;
- (ii) Prior to the assessment taking place, the Complaints Director will provide the assessor with a copy of the investigation report and a copy of the decision of the Hearing Tribunal in this matter;
- (iii) Once the COAP assessment is complete, the assessor will provide a written report which will be sent to the Registrar to be considered by the Registrar in conjunction with a reinstatement application;
- (iv) If the COAP assessor makes any treatment, education or any other type of recommendations, Dr. McConnell must fully and successfully comply with any and all recommendations before and, if applicable, after the date of any reinstatement and will subsequently provide written proof to the Complaints Director and the Registrar (such proof to be satisfactory to the Complaints Director and the Registrar) that he is complying with or has complied with all previous and ongoing recommendations respectively;
- (v) Dr. McConnell is responsible for any costs associated with complying with the COAP assessor's recommendations and compliance with same;

provided, however, that if a COAP assessor at any time concludes for any reason that Dr. McConnell is not fit to practice as a chiropractor, Dr. McConnell agrees (i) if he has not yet applied for reinstatement, that he will not apply for reinstatement, (ii) that, if he has successfully applied for reinstatement, his registration and practice permit will be immediately and automatically cancelled (the "Cancellation") and (iii) that the Cancellation will continue until a COAP assessor provides a written report to the Complaints Director and satisfactory to the Complaints Director indicating that Dr. McConnell is fit to return to practice.

In the event that a COAP assessor is not available at any time for the purposes of giving effect to the above orders then the Complaints Director may, in his or her sole discretion and acting reasonably, select a different assessor.

- (c) Dr. McConnell shall pay \$25,000.00, being a portion of the costs of the investigation and hearing. Those costs will be payable as follows, without interest:
 - (i) \$250.00 each month during the two (2) year Cancellation Period.
 - (ii) \$527.77 per month for the three (3) years immediately following the two (2) year Cancellation Period and regardless of whether Dr. McConnell is or is not a regulated member of the College.
- (d) If Dr. McConnell defaults with respect to any order 3 costs time payment then Dr. McConnell's registration and practice permit (if they have been reinstated

and reissued) shall be automatically and immediately cancelled and, in any event, Dr. McConnell shall not be eligible to apply for reinstatement of his registration and reissuance of his practice permit unless and until (i) Dr. McConnell pays the entire balance of costs owing by him to the College and (ii) Dr. McConnell satisfies any other requirements for reinstatement of his registration and/or reissuance of his practice permit.

- (e) Dr. McConnell will, at his cost, undergo monthly drug testing for a period of three (3) years after any reinstatement of his registration and practice permit and shall provide the Complaints Director with monthly written reports concerning that drug testing. If any of the monthly drug testing reports reflect the consumption of any recreational drugs, the Complaints Director is authorized to impose a suspension of Dr. McConnell's registration and practice permit until such time as Dr. McConnell can provide a clear drug test. If Dr. McConnell's registration and practice permit are suspended due to an unsuccessful drug test, then the 3-year time period for drug testing will be held in abeyance and the balance of the 3-year time period would recommence upon the provision of a clear drug test to the Complaints Director.
- (f) As per the College's Bylaws, the decision of the Hearing Tribunal, including Dr. McConnell's name but not including any patient names or identifying information concerning patients, will be published on the College's website.
- (g) Dr. McConnell shall be required to provide the ACAC with his current contact information including home mailing address, home phone number and home e-mail address. Should this contact information change at any point prior to the orders of the Hearing Tribunal being completed, Dr. McConnell shall be required to provide the ACAC with his updated contact information.

23. The Hearing Tribunal retains jurisdiction to address any issues arising from non-compliance with its orders.

Dated the 22nd day of June, 2020, in the City of Edmonton, in the Province of Alberta.



Ralph Colistro
Chair, Hearing Tribunal
ACAC