



COLLEGE OF
CHIROPRACTORS
— OF ALBERTA —

Hearing Tribunal Written Decision and Orders for the Hearing of:

Dr. Corey Graham

On:

October 27, 2019

Posting expiration date:

January 1, 2030

**IN THE MATTER OF A HEARING OF THE HEARING TRIBUNAL
Into the Conduct of Dr. Corey Graham, 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 at the Alberta College and Association of Chiropractors (the "College" or the "ACAC") offices at 11203 70 Street in Edmonton, Alberta on October 27, 2019. The following individuals were present:

Mr. Hugh Campbell, Public Member (Chair)
Ms. Nancy Brook, Public Member
Dr. Megan Harris, Regulated Member
Dr. Darrell Smith, Regulated Member
Dr. Martin Sich, Regulated Member
Mr. David Jardine, Independent Legal Counsel

Mrs. Sheila Steger, Interim Complaints Director
Mr. Blair Maxston, Legal Counsel for the Complaints Director

Dr. Corey Graham, Investigated Person

2. Preliminary Matters

There were no objections to the jurisdiction or composition of the Hearing Tribunal to proceed with the hearing. There were no other preliminary matters raised by either party.

3. Allegation

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

1. On or about the years 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017 and 2018, Dr. Corey Graham operated unregistered class 3b lasers in his clinics located at #50, 17 Boudreau Road, St. Albert, Alberta, (the "St. Albert Clinic") and #204, 10619-100 Avenue, Westlock, Alberta, (the "Westlock Clinic"), which contravened ACAC Standard of Practice 16.0 (from 2006 to 2012), and ACAC Administrative Policy 1.9 (from 2012 to 2018).

2. On or about the years 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017 and 2018, Dr. Corey Graham provided inaccurate information to the ACAC during his annual practice permit renewal responses concerning the state of registration of his class 3b laser equipment at his St. Albert Clinic and/or Westlock Clinic.
3. On or about 2010 to 2018 and at his St. Albert Clinic and/or Westlock Clinic, Dr. Corey Graham:
 - (a) delegated the provision of clinical services, specifically the use of class 3b lasers, to unregulated health providers; and/or
 - (b) allowed unregulated health providers to use class 3b lasers while he was not present to provide supervision;which contravened ACAC Standard of Practice 4.2 (from 2011 to 2018), the *Alberta Radiation Protection Act* and/or the Radiation Protection Regulation enacted thereunder.
4. On or about June 2018 and at his St. Albert Clinic, Dr. Corey Graham failed to:
 - (a) Maintain heat at the said clinic;
 - (b) Maintain hot and cold running water at the said clinic;
 - (c) Ensure that staff members received proper infection prevention and control training;
 - (d) Ensure cloth towels were laundered between uses;
 - (e) Use a suitable surface disinfectant product;
 - (f) Ensure that the manufacturers recommended contact time was achieved for disinfection;
 - (g) Ensure that ABHR and surface disinfectant were available for use in treatment rooms; and/or
 - (h) Ensure that bed cladding was in good repair without rips, cracks or repairs by tape.
5. On or about August 2018 and at his Westlock Clinic, Dr. Corey Graham failed to have a fully equipped paper towel dispenser or holder at the hand sink area.

4. Background

On July 9, 2018, the then Complaints Director of the College received a complaint from [REDACTED] pursuant to s. 54 of the *Health Professions Act* ("the Act"). The complaint detailed concerns with regard to (i) the use of unsafe laser equipment at the clinics by staff without proper training and authorization to operate them, (ii) the clinics' premises not meeting Occupational Health and Safety requirements, and (iii) Dr. Graham's billing practices.

The then Complaints Director, subsequently referred the matter for investigation in accordance with s. 55(2)(d) of the Act. An investigator was appointed to conduct an investigation into the complaint. Dr. Graham received notice of the complaint and the investigation by letter dated August 15, 2018.

Following receipt of the Investigator's report, the Complaints Director determined that the matter should be referred to the Hearings Director in accordance with s. 66(3)(a) of the Act. A Notice of Hearing, Notice to Attend and Notice to Produce were served upon Dr. Graham on May 7, 2019.

The hearing was originally scheduled to take place on July 21, 2019. The hearing was adjourned and subsequently set for October 27, 2019. The Amended Notice of Hearing was sent to Dr. Graham on September 12, 2019.

5. Evidence

The evidence was adduced by way of an Admission of Unprofessional Conduct and an Agreed Statement of Facts, and no witnesses were called. The following exhibits were entered by consent of both parties:

Exhibit 1 – Amended Notice of Hearing

Exhibit 2 – Agreed Statement of Facts

Exhibit 3 – Admission of Unprofessional Conduct

The Hearing Tribunal accepts the evidence set out in the Agreed Statement of Facts which was admitted as Exhibit 2 [REDACTED]

6. Admission of Unprofessional Conduct

In the Admission of Unprofessional Conduct that was entered as Exhibit 3, Dr. Graham admitted Charges 1, 2, and 3 of the Amended Notice of Hearing.

7. Submissions

Closing Argument on Behalf of Complaints Director

Mr. Blair Maxston made submissions on behalf of the Complaints Director. He noted that the Interim Complaints Director was withdrawing Charges 4 and 5 of the Amended Notice of

Hearing and would not be proceeding with those Charges. He advised that the Interim Complaints Director determined there was insufficient evidence to support these charges.

Mr. Maxston also advised that the parties would present a Joint Submission on Penalty.

Mr. Maxston informed the Hearing Tribunal that he advised Dr. Graham that Dr. Graham was entitled to be represented by legal counsel but that Dr. Graham advised he had chosen not to retain legal counsel to represent him at the hearing. Dr. Graham confirmed that he wished to proceed without legal counsel.

Mr. Maxston advised that the Interim Complaints Director submitted that the documents entered as exhibits were sufficient to support the case and that the Interim Complaints Director would not be calling witnesses.

Mr. Maxston then reviewed the Amended Notice of Hearing, the Admission of Unprofessional Conduct and the Agreed Statement of Facts. Dr. Graham confirmed his consent to enter these documents as exhibits.

Mr. Maxston then made the following submissions on behalf of the Interim Complaints Director:

Legal Principles and Evidentiary Principles

Mr. Maxston advised that the onus or burden of proof was borne by the Interim Complaints Director who was required to prove the facts based on the balance of probability test and who was then required to establish that the proven facts were serious enough to rise to the level of unprofessional conduct.

Mr. Maxston referred to the definition of unprofessional conduct in section 1(1)(pp) of the *Health Professions Act*. He submitted that the admitted facts established breaches of the following subsections of section 1(1)(pp):

- i. displaying a lack of knowledge of or a lack of skill or judgment in the provision of professional services;
- ii. contravention of a section of the Act, a code of ethics or standards of practice; and
- iii. contravention of another enactment that applies to the profession.

Mr. Maxston referred the Hearing Panel to the excerpts from the College's *Standards of Practice and Administrative Policies*, the *Radiation Protection Act* and the *Radiation Protection Regulation* that had been given to the Hearing Tribunal. He submitted that in considering this matter the members of the Hearing Tribunal could apply their common sense and good judgment and the professional members could also apply their knowledge of the profession and the requirements for the use of lasers.

Review of the Charges

Mr. Maxston then referred to the three Charges under consideration:

Charge 1

The use of unregistered class 3b lasers at Dr. Graham's clinics during the years 2010 to 2018;

Charge 2

Dr. Graham providing inaccurate information to the College during his annual practice permit responses during the years 2010 to 2018 concerning the state of registration of his class 3b laser equipment; and

Charge 3

Dr. Graham delegating the provision of clinical services, specifically the use of class 3b lasers to unregulated health providers; and/or allowing unregulated health providers to use class 3b lasers while he was not present to provide supervision.

Review of the Agreed Statement of Facts

Mr. Maxston reviewed the Agreed Statement of Facts entered as Exhibit 2 and noted that:

- From 2006 to 2012, Standard of Practice 16.0 required that class 3b and 4 lasers be registered with the College prior to their operation by a regulated member. This Standard of Practice was added to the Colleges Administrative Policies in 2012 as Administrative Policy 1.9 [paragraph 15 of the Agreed Statement of Facts];
- Section 10(2) of the *Radiation Protection Act* establishes a registration requirement for forms of radiation equipment that require a registration certificate including class 3b or 4 lasers [paragraph 16 of the Agreed Statement of Facts];
- During the years 2010 to 2018, the chiropractic services performed at Dr. Graham's clinics included the use of class 3b lasers. Therefore, during the years 2010 to 2018 Dr. Graham breached Standard of Practice 16.0, Administrative Policy 1.9, the *Radiation Protection Act* and the *Radiation Protection Regulation* by operating the class 3b lasers without having registered them [paragraphs 17 and 18 of the Agreed Statement of Facts];
- During the years 2010 to 2018, Dr. Graham failed to provide accurate information on his annual practice permit renewals when he did not disclose to the College that unregistered class 3b lasers were being used at his clinics [paragraph 19 of the Agreed Statement of Facts];

- Standard of Practice 4.2 requires that a chiropractor be present and available to provide direction and supervision to clinical support staff and ensure clinic staff are properly trained and maintain their necessary competencies to perform the assigned activities [paragraph 20 of the Agreed Statement of Facts];
- Sections 7(2) and 7(3) of the *Radiation Protection Act* require employers to ensure that the use and operation of radiation equipment is done by a competent worker or “by a worker who performs the task under the direct supervision of a competent worker”. Section 7(1)(a) of the *Radiation Protection Act* provides definitions of a “competent worker” and defines “direct supervision” as a situation where “(i) there is personal and continual visual supervision by the competent worker ..., and (ii) the 2 workers are able to communicate effectively with each other” [paragraphs 21 and 22 of the Agreed Statement of Facts]; and
- During the years 2010 to 2018, Dr. Graham breached Standard of Practice 4.2, the *Radiation Protection Act*, and the *Radiation Protection Regulation* by delegating the use of class 3b lasers to unregulated health providers and/or allowing unregulated health providers to use class 3b lasers while he was not present to provide supervision [paragraph 23 of the Agreed Statement of Facts].

Review of the Admission of Unprofessional Conduct

Mr. Maxston reviewed the Admission of Unprofessional Conduct by Dr. Graham that was entered as Exhibit 3. He noted that it contained full admissions by Dr. Graham to Charges 1, 2 and 3 of the Amended Notice of Hearing. He also pointed out that in paragraph 4 of the Admission of Unprofessional Conduct, Dr. Graham consented to the use of the Admission of Unprofessional Conduct at the hearing and acknowledged and waived his right to be represented by legal counsel and to seek independent legal advice prior to executing the Admission of Unprofessional Conduct.

Final Submissions

Mr. Maxston submitted that based on the Agreed Statement of Facts and the Admission of Unprofessional Conduct, there was clear and undisputed evidence to satisfy the Interim Complaints Director’s onus of proof on each of Charges 1, 2, and 3. He also submitted that the proven allegations were serious breaches of the Standard of Practice and Administrative Policies of the College and of the *Radiation Protection Act* and the *Radiation Protection Regulation* that warranted and supported Dr. Graham’s Admission of Unprofessional Conduct.

Closing Argument of Dr. Corey Graham

Dr. Graham made brief submissions. He advised that this was his first time in the discipline process and that he hoped it would be his last. He indicated that he recognized he was not professional in how he dealt with his class 3b lasers. Dr. Graham stated that it was not his

intention to mislead the College but he acknowledged his responsibility for failing to complete the registration renewal forms accurately.

Dr. Graham stated that he took responsibility for his actions and noted that the problems went on from 2010 to 2018. He advised that he was now working to come into compliance and wished to ensure there were no more issues.

8. Findings and Reasons

The Hearing Tribunal finds that the allegations have been proven, and that the proven conduct constitutes “unprofessional conduct.”

The Hearing Tribunal accepts Dr. Graham’s admission of unprofessional conduct based on the evidence set out in the Agreed Statement of Facts, the admissions made in the Admission of Unprofessional Conduct, and the submissions made by the parties at the hearing. There is clear evidence and admission that during the period 2010 to 2018, Dr. Graham was using class 3b lasers at his clinics but did not register the lasers with the College. There is also clear evidence and admissions that Dr. Graham allowed unregulated providers to use the class 3b lasers while he was not present to provide supervision. It is also clear that all of these actions breached Standards of Practice 16.0 and 4.2, Administrative Policy 1.9, the *Radiation Protection Act* and the *Radiation Protection Regulation*.

The College depends upon its members providing complete and accurate registration information. Dr. Graham breached this duty on an ongoing basis during the period of 2010 to 2018. In doing so, he failed to live up to the trust placed in him by the College.

The Hearing Tribunal finds that the admitted and proven conduct and breaches of the Standards of Practice, the Administrative Policy and the *Radiation Protection Act* and the *Radiation Protection Regulation* are serious and constitute unprofessional conduct as defined under section 1(1)(pp)(i), (ii) and (iii). The breaches occurred over a period of approximately 10 years. These provisions are for the protection of the public and Dr. Graham’s actions meant that the public was not adequately protected in regard to the use of class 3b lasers in his clinics for this extended period.

As a result, the Hearing Tribunal finds that Charges 1, 2 and 3 have been proven and that each of the proven charges constitute unprofessional conduct.

9. Joint Submission on Penalty

The Interim Complaints Director and Dr. Graham made the following Joint Submission on Penalty, which was entered as Exhibit 4 for the Hearing Tribunal’s consideration:

1. Dr. Graham be required to pay a fine of \$10,000.00 which represents a \$1000.00 fine per each year that Dr. Graham was in contravention of the Act and the ACAC requirements;

2. Dr. Graham will be required to pay \$14,000.00 in terms of the costs of the investigation and hearing;
3. Payment of the fines and costs amounts described in orders 1 and 2 can be made in time payments (without interest) over a period of twenty-four (24) months after the date of the Hearing Tribunal's written decision in equal monthly installments provided that if an installment payment is missed then the ACAC can cancel Dr. Graham's registration and practice permit immediately and without the necessity of a further hearing.
4. Initial Practice Visits
 - a. For a period of twenty-four (24) months after the date of the Hearing Tribunal's written decision, an individual appointed by the Interim Complaints Director (or her successor) from the ACAC's Practice Review Committee (the "Reviewer") will conduct a total of up to three (3) random on-site practice visits and Dr. Graham's clinics every twelve (12) months (the "Initial Practice Visits"). The Reviewer will provide Dr. Graham with not less than forty-eight (48) hours advance notice of a practice visit.
 - b. Dr. Graham will be responsible for the costs of the Initial Practice Visits.
 - c. If the Interim Complaints Director or her successor as Complaints Director, in his or her sole discretion, determines that one or more of the Initial Practice Visits are unsatisfactory then the Interim Complaints Director or her successor can direct the ACAC's Practice Review Committee to conduct a comprehensive on-site practice review of one or both clinics ("the Additional Practice Reviews").
 - d. The costs of any Additional Practice Reviews shall be paid by Dr. Graham.
 - e. If any of the Additional Practice Reviews are, in the sole discretion of the Interim Complaints Director or her successor, unsatisfactory then the Interim Complaints Director or her successor may treat that information as a complaint pursuant to section 56 of the *Health Professions Act* and may refer those matters for investigation and, if appropriate, to a hearing before a Hearing Tribunal of the ACAC.
5. The College shall publish the Hearing Tribunal written decision, with Dr. Graham's name, as allowed by ACAC Bylaw 13.0 Publication of Conduct Hearings, Appeals & Agreements and Undertakings.

Submissions by Mr. Maxston

Mr. Maxston noted that the Joint Submission on Penalty was not binding on the Hearing Tribunal. However, he suggested that Court decisions on joint submissions have made clear that such submissions are to be encouraged and are in the public interest. As a result, the Courts have

held that a Joint Submission on Penalty should receive deference and should only be rejected if it is clearly not in the public interest.

Mr. Maxston submitted that the primary purposes of discipline orders are to protect the public and to preserve the integrity of the profession. He submitted that the proposed orders will accomplish this purpose. He then noted that the parties had agreed that these penalties were appropriate and had acknowledged that Dr. Graham's conduct:

- a. was below the required ethical standards for members of the profession of chiropractic in the Province of Alberta;
- b. occurred repeatedly over a 10-year period and reflected a repetitive pattern of unprofessional conduct where Dr. Graham disregarded his professional regulatory obligations;
- c. involved potential risk of harm to patients;
- d. involved submitting 10 inaccurate practice permit renewal applications to the College that misled the College; and
- e. harmed the integrity of the profession of chiropractic.

Mr. Maxston noted that the parties also took into account the fact that Dr. Graham has admitted his unprofessional conduct and agreed to a consent hearing, all of which demonstrates acceptance of responsibility for his actions.

Mr. Maxston then reviewed the following factors taken from the case of *Jaswal v Newfoundland (Medical Board)*:

- the nature and gravity of the proven allegations;
- the age and experience of the investigated member;
- the previous character of the investigated member and in particular the presence or absence of any prior complaints or convictions;
- the number of times the offending conduct was proven to have occurred;
- the role of the investigated member in acknowledging what occurred;
- whether the investigated member has already suffered other serious financial or other penalties as a result to the allegations being made;
- the presence or absence of any mitigating circumstances;
- the need for specific and general deterrence;
- the need to protect the integrity of the profession; and
- the results of previous similar cases (Mr. Maxston noted that there were no similar cases to refer to the Hearing Tribunal).

Mr. Maxston concluded by noting that while the conduct was extremely significant and involved the risk of public harm, breach of government requirements and misleading the College through

the failure to report, the situation was mitigated somewhat by Dr. Graham's cooperation, his acknowledgment of responsibility for his actions and his admission of unprofessional conduct.

Mr. Maxston therefore requested that the Hearing Tribunal accept the Joint Submission on Penalty submitted by the parties.

Submissions by Dr. Graham

Dr. Graham advised the Hearing Tribunal that he did not have anything to add regarding the submissions. He acknowledged that he felt that Mr. Maxston had been very fair.

Dr. Graham described some factors which had complicated his response involving the potential sale of the practices to an investor and disputes arising from those circumstances. He confirmed his acceptance of responsibility and his willingness to make certain that the lasers were not used until properly registered.

10. Decision on Penalty

The Hearing Tribunal agreed with the Joint Submission on Penalty and was prepared to accept the penalties and orders proposed by the parties. However, the Hearing Tribunal was also concerned that it might take a period of time before the lasers were properly registered. After discussion with the parties the Hearing Tribunal advised that it would make the following order in addition to those agreed by the parties:

There will be no use of any class 3b or higher lasers at either of Dr. Graham's clinics until the lasers are registered with the College.

The Parties advised that they did not object to this additional order.

11. Reasons for the Decision on Penalty

The Hearing Tribunal recognizes that a Joint Submission on Penalty must be given significant weight and that the Hearing Tribunal should only reject a Joint Submission on Penalty if it is clearly contrary to the public interest.

In this case Dr. Graham is required to pay a fine of \$10,000.00 and costs of \$14,000.00. These are significant financial penalties that make clear to Dr. Graham and to other members of the profession that this conduct is unprofessional and will attract significant sanctions. In the view of the Hearing Tribunal, it may have been appropriate to award higher fines and costs if Dr. Graham had not cooperated with the investigation and acknowledged his responsibility in this matter.

The Hearing Tribunal believes that the public is protected by the orders for random on-site practice visits and the further provision of Additional Practice Reviews if the Initial Practice Visits are unsatisfactory. It is also appropriate that Dr. Graham pay the costs of these on-site visits or reviews. The protection of the public is further enhanced by the additional order

suggested by the Hearing Tribunal to ensure that the lasers are not used at the clinics until they have been appropriately registered with the College.

In these circumstances, and after having reviewed the submissions of the parties, the Hearing Tribunal has determined that the Joint Submission on Penalty, with the addition of the additional order proposed by the Hearing Tribunal is reasonable and should be accepted. In the opinion of the Hearing Tribunal, the penalties proposed properly balance the primary needs to protect the public and maintain the integrity of the profession with fairness to the member.

11. Orders of the Hearing Tribunal

The Hearing Tribunal makes the following orders pursuant to section 82(1) of the *Health Professions Act*:

1. Dr. Graham be required to pay a fine of \$10,000.00 which represents a \$1000.00 fine per each year that Dr. Graham was in contravention of the Act and the ACAC requirements;
2. Dr. Graham will be required to pay \$14,000.00 in terms of the costs of the investigation and hearing;
3. Payment of the fines and costs amounts described in orders 1 and 2 can be made in time payments (without interest) over a period of twenty-four (24) months after the date of the Hearing Tribunal's written decision in equal monthly installments provided that if an installment payment is missed then the ACAC can cancel Dr. Graham's registration and practice permit immediately and without the necessity of a further hearing.
4. Initial Practice Visits
 - a. For a period of twenty-four (24) months after the date of the Hearing Tribunal's written decision, an individual appointed by the Interim Complaints Director (or her successor) from the ACAC's Practice Review Committee (the "Reviewer") will conduct a total of up to three (3) random on-site practice visits and Dr. Graham's clinics every twelve (12) months (the "Initial Practice Visits"). The Reviewer will provide Dr. Graham with not less than forty-eight (48) hours advance notice of a practice visit.
 - b. Dr. Graham will be responsible for the costs of the Initial Practice Visits.
 - c. If the Interim Complaints Director or her successor as Complaints Director, in his or her sole discretion, determine that one or more of the Initial Practice Visits are unsatisfactory then the Interim Complaints Director or her successor can direct the ACAC's Practice Review Committee to conduct a comprehensive on-site practice review of one or both clinics ("the Additional Practice Reviews").

- d. The costs of any Additional Practice Reviews shall be paid by Dr. Graham.
 - e. If any of the Additional Practice Reviews are, in the sole discretion of the Interim Complaints Director or her successor, unsatisfactory then the Interim Complaints Director or her successor may treat that information as a complaint pursuant to section 56 of the *Health Professions Act* and may refer those matters for investigation and, if appropriate, to a hearing before a Hearing Tribunal of the ACAC.
5. The College shall publish the Hearing Tribunal written decision, with Dr. Graham's name, as allowed by ACAC Bylaw 13.0 Publication of Conduct Hearings, Appeals & Agreements and Undertakings.
6. There will be no use of any class 3b or higher lasers at either of Dr. Graham's clinics until the lasers are registered with the College.

DATED THIS 29 DAY OF NOVEMBER IN THE CITY OF EDMONTON, ALBERTA.

ALBERTA COLLEGE AND ASSOCIATION OF CHIROPRACTORS



Mr. Hugh Campbell
Chair, Hearing Tribunal
Alberta College and Association of Chiropractors