



— COLLEGE OF —
CHIROPRACTORS
— OF ALBERTA —

Hearing Tribunal Written Decision and Orders for the Hearing of:

Dr. Andrew Blonski

On:

May 8, 2024

Posting expiration date:

May 8, 2034

IN THE MATTER OF A HEARING OF *THE* HEARING TRIBUNAL
Into the Conduct of Dr. Andrew Blonski, a Regulated Member of the College of Chiropractors
of Alberta (CCOA), pursuant to the

HEALTH PROFESSIONS ACT, being
Chapter H7 of the Revised Statutes of Alberta

DECISION OF THE HEARING TRIBUNAL

1. Hearing

The hearing was conducted virtually on April 25, 2024. The following individuals were present:

Terry Engen, Public Member (Chair)
Dr. Mecca Fayad, Regulated Member
Dr. Ken Butler, Regulated Member
Sarita Dighe-Bramwell, Public Member
Vivian Stevenson, KC, Independent Legal Counsel

Kerstin Hurd, Complaints Director
Blair Maxston, KC, Legal Counsel for the Complaints Director

Dr. Andrew Blonski, Investigated Person
James McTague, Legal Counsel for the Investigated Person

2. Preliminary Matters

Jurisdiction of the Hearing Tribunal was established. 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. Allegations

The Amended Notice of Hearing was entered as Exhibit 1 at the Hearing. The allegations that appear in the Amended Notice of Hearing are as follows:

1. On or about December 12 to 16, 2022, Dr. Blonski knowingly arranged for a non-regulated individual, who was not in possession of professional liability insurance, to practice at and provide treatment to patients at the “Pulse Health” clinic (including performing restricted activities) owned by Dr. Blonski (the “Clinic”), all of which constitutes unprofessional conduct pursuant to section 1(1)(pp)(ii) and/or (xii) of the *Health Professions Act* including but not limited to breaching section 1.6 of the *Health Professions Act* and/or College Standards of Practice 4.1 and/or 4.2 and/or College Code of Ethics section A1.
2. On or about December 12 to 16, 2022, Dr. Blonski maintained incomplete and/or inaccurate records for treatment, all of which constitutes unprofessional conduct pursuant

to section 1(1)(pp)(ii) and/or (xii) of the *Health Professions Act* including but not limited to breaching College Standards of Practice 3.1 and/or 5.1 and/or College Code of Ethics section A5.

3. On or about December 12 to 16, 2022, Dr. Blonski allowed inaccurate and/or misleading information to be provided to the public on his and the Clinic's social media page, regarding the qualifications of the non-regulated individual who was providing treatment, all of which constitutes unprofessional conduct pursuant to section 1(1)(pp)(ii) and/or (xii) of the *Health Professions Act* including but not limited to breaching College Standard of Practice 1.1 and/or 1.2 and/or College Code of Ethics section B1.
4. On or about December 12 to 16, 2022, Dr. Blonski inappropriately charged third party payers and insurance companies for services by listing himself as the service provider when he was not the service provider, all of which constitutes unprofessional conduct pursuant to section 1(1)(pp)(ii) and/or (xii) of the *Health Professions Act* including but not limited to breaching College Standard of Practice 2.5 and/or College Code of Ethics section B6.

4. Background

On December 19, 2022, the College Registrar was made aware that Dr. Blonski advertised chiropractic services (including restricted activities) at his clinic that were delivered by a chiropractic student while Dr. Blonski was absent from the clinic. The Registrar referred the matter to the Complaints Director for her consideration on January 2, 2023.

The Complaints Director of the College treated the referral as a complaint for the purposes of s. 56 of the *Health Professions Act*, RSA c H-7 (the "HPA") and determined that an investigation should be commenced. Following completion of the investigation, the Complaints Director referred the matter to a hearing.

5. Evidence and Admission of Unprofessional Conduct

The hearing was conducted by way of an Agreed Statement of Facts (Exhibit 2), and Admission of Unprofessional Conduct (Exhibit 3).

Pursuant to the Agreed Statement of Facts, it was agreed that Dr. Blonski was a regulated member of the College and was the owner of the "Pulse Health" chiropractic clinic located at 10504-123 St. NW, Edmonton, Alberta (the "Clinic").

Between December 12 and December 16, 2022, Dr. Blonski arranged for a fourth-year unlicensed chiropractic student ("the "Student") to provide treatment to patients at the Clinic. The Student was a non-regulated individual, who was not licensed by the College and who did not carry professional liability insurance. The Student provided treatment to patients at the Clinic, which treatment included performing restricted activities.

During the same time period, the Clinic's social media page contained inaccurate and misleading information regarding the qualifications of the Student. Furthermore, the records completed during this period of time were incomplete and inaccurate as they were not completed by a licensed chiropractor.

Dr. Blonski also charged third party payers and insurance companies for the services provided by the Student, by listing himself as the service provider when the Student had been the actual service provider.

In the Admission of Unprofessional Conduct Dr. Blonski admitted that by engaging in these activities he is guilty of unprofessional conduct in relation to the four allegations set out in the Amended Notice of Hearing.

6. Submissions

At the hearing Mr. Maxston made oral submissions on behalf of the Complaints Director. Mr. Maxston advised that there was an onus on the Complaints Director to prove the alleged facts and then to prove that the conduct established by the facts rose to the level of "unprofessional conduct" as set out in s.1(1)(pp) of the *HPA*.

Mr. Maxston then summarized the facts set out in the Agreed Statement of Facts and explained the scope of the Admission of Unprofessional Conduct. He explained the relevant provisions of the *HPA*, Standards of Practice and Code of Ethics and how they had been contravened.

Mr. Maxton submitted that based on the Agreed Statement of Facts and the Admission, the Complaints Director had proven the facts to substantiate the allegations in the Amended Notice of Hearing and that the proven conduct constituted unprofessional conduct.

In his concluding submissions Mr. Maxston indicated that from the standpoint of the Complaints Director these were serious allegations. He acknowledged the cooperation of Dr. Blonski throughout the matter including his agreement to proceed based on the Agreed Statement of Facts and Admission of Unprofessional Conduct.

Counsel for Dr. Blonski confirmed that his client was prepared to proceed based on the materials entered into evidence and had no further comments.

7. Findings and Reasons

After hearing submissions from the parties, the Hearing Tribunal adjourned to deliberate on the liability portion of the hearing.

The Hearing Tribunal advised the parties that it accepted Dr. Blonski's Admission of Unprofessional Conduct based on the evidence set out in the Agreed Statement of Facts. The Hearing Tribunal also advised that it agreed that the conduct established by the Agreed Statement of Facts rises to the level of unprofessional conduct as defined in s.1(1)(pp) of the *HPA* in relation to each of the allegations. The Hearing Tribunal confirmed that it would provide written reasons in due course.

With respect to the first allegation, s. 1.6 of the *HPA* prohibits anyone from performing a restricted activity unless the person performing it is a regulated member and authorized to perform it. Standards of Practice 4.1 and 4.2 confirm that only chiropractors may perform restricted activities and that in assigning any activities to unregulated healthcare providers the chiropractor is required to be present and available to provide direction and supervision.

The Hearing Tribunal considered the deliberate decision by Dr. Blonski to allow the Student to provide treatment in his absence and the treatment of patients by an unregulated professional that resulted, to constitute unprofessional conduct. First and foremost, his conduct created a risk to the health and safety of patients attending at the Clinic.

This risk was compounded because the Student did not carry professional liability insurance. The Hearing Tribunal was advised by Dr. Blonski that none of the patients suffered adverse outcomes and there was no evidence of adverse outcomes in the Agreed Statement of Facts. Had a patient suffered an adverse outcome, the patient would not have had recourse to insurance and so might have had no financial recourse at all. Both aspects of the risk are unacceptable to the Hearing Tribunal.

With respect to the second allegation, relating to incomplete or inaccurate records, the Hearing Tribunal was not specifically advised of the nature of the deficiencies, but was satisfied that because records were completed by the Student that they did not comply with Standard of Practice 3.1 relating to informed consent and Standard of Practice 5.1 that requires all services provided by a chiropractor to be documented by the chiropractor and clearly identifiable as having been made by the chiropractor. Given that Dr. Blonski was absent from the Clinic when the records were created by the Student, there was no informed consent, and the records were misleading as to what had occurred.

With respect to the third allegation, the Agreed Statement of Facts did not clearly set out what inaccurate or misleading information was provided to the public on Dr. Blonski's and the Clinic's social media page, other than that it related to the qualifications of the Student. It was sufficient for the Hearing Tribunal that Dr. Blonski admitted that such inaccurate or misleading information had been provided to the public. It was unprofessional for Dr. Blonski to have created a situation where patients attending at the Clinic would believe that they were being treated by a chiropractor who had been licensed by the College and was subject to its regulation, when that was not the case. This was a clear breach of Standards of Practice 1.1 and 1.2 and inconsistent with the obligations of honesty and integrity owed by all chiropractors in Alberta.

With respect to the fourth allegation, the Hearing Tribunal was deeply concerned that Dr. Blonski had represented to third party payers and insurance companies that he had provided the services for which he was seeking compensation when that was not the case. The Hearing Tribunal considered this to be a breach of Standard of Practice 2.5 relating to billing practices and a breach of section B6 of the Code of Ethics.

The Hearing Tribunal accepted Mr. Maxston's submission that the facts as proven constituted unprofessional conduct as conduct contravening the *HPA*, a standard of practice or code of ethics and conduct that harmed the integrity of the profession.

For these reasons, the Hearing Tribunal accepted Dr. Blonski's Admission of Unprofessional Conduct in relation to all four allegations.

8. Joint Submission Regarding Penalty

Following the ruling with respect to the allegations, Mr. Maxston entered as Exhibit 4 the Joint Submission Regarding Penalty which was submitted on behalf of the Complaints Director and Dr. Blonski. The Joint Submission proposed that the Hearing Tribunal impose the following orders:

1. Dr. Blonski be reprimanded for his unprofessional conduct. The Hearing Tribunal's written decision will constitute the reprimand.
2. Dr. Blonski will take the following course which must be successfully completed within 6 months of the date of the Hearing Tribunal's decision:
 - Medical Ethics and Professionalism •ME-15•PBI EducationThe cost for the course is Dr. Blonski's sole responsibility and the course will not count towards his College continuing education requirements.
3. Dr. Blonski will pay the following fines for each of the 4 charges:
 - a. Charge 1- treatment/restricted activities- \$2,000.00;
 - b. Charge 2- record keeping- \$1,000.00;
 - c. Charge 3- advertising- \$1,000.00;
 - d. Charge 4- billing - \$2,000.00.
4. Dr. Blonski will pay \$2,000.00 in costs representing a portion of the costs of the investigation and hearing.
5. The fines and costs in orders 3 and 4 above which total \$8,000.00 are payable by Dr. Blonski in eight equal monthly installments with the first installment being payable thirty (30) days after the date of the April 25, 2024, hearing. Furthermore, if Dr. Blonski defaults with respect to any of the time payments, then the entire balance of the fines and costs shall become immediately payable, and Dr. Blonski's practice shall be automatically suspended until the entire balance of the fines and costs are paid in full.
6. The Hearing Tribunal's written decision will be published with Dr. Blonski's name in accordance with the publication requirements of the College's Bylaws.

On behalf of the Complaints Director, Mr. Maxston outlined the types of orders that the Hearing Tribunal is authorized to make under s.82 of the *HPA*. He explained while the Hearing Tribunal has ultimate jurisdiction to make orders it considers appropriate, the case law is clear that a tribunal must give significant deference to a joint submission. This is because joint submissions have been negotiated by the parties with consideration as to what is fair and reasonable in the circumstances.

If tribunals regularly ignored these types of submissions, it would undermine negotiated resolutions and make it less likely that matters could proceed by way of uncontested hearings. Mr. Maxston urged the Hearing Tribunal to accept the parties' Joint Submission, on Penalty which reflects what both the Complaints Director and Dr. Blonski submit are fair and appropriate penalties in these circumstances.

Mr. McTague on behalf of Dr. Blonski also urged the Hearing Tribunal to adopt the Joint Submission on Penalty.

The Hearing Tribunal also heard from Dr. Blonski on his own behalf. Although this was not sworn evidence, the content of Dr. Blonski's submissions was not objected to by counsel for the Complaints Director and was not controversial. Dr. Blonski explained the circumstances behind the allegations and that he had made arrangements for his practice to be covered in December as he anticipated that he might need to be absent for a brief period of time. Unfortunately, the arrangements fell through and when his absence was required, he panicked and made arrangements with the Student. He recognized that this was a bad decision, expressed his remorse and assured the Hearing Tribunal that this would never occur again.

9. Decision on Penalty

Before adjourning the hearing, the Hearing Tribunal Chair advised the parties that the Hearing Tribunal accepted the Joint Submission Regarding Penalty and was prepared to make the Orders as outlined in the Joint Submission and reproduced in this decision in section 8.

In making the above Orders, the Hearing Tribunal considered the parties' submissions including the factors listed in the Joint Submission as being matters which it could take into account. The Hearing Tribunal also proceeded on the basis that it should not interfere with the penalties proposed by the parties unless it considered them to be unreasonable or otherwise contrary to the public interest.

The Hearing Tribunal was advised that Dr. Blonski had been registered with the College since 2016. Given his experience, the Hearing Tribunal was of the view that he should have known better than to make the decision he made, which called for a more severe sanction. On the other hand, he had no previous discipline history which was a mitigating factor.

Although the conduct in issue occurred over a number of days and related to a number of patients, the Hearing Tribunal accepted that all of the conduct arose over a discrete and fairly brief period of time and had not recurred. While Dr. Blonski's conduct was high risk in terms of its potential impact on the health and safety of patients at the Clinic, the complaint had originated with the Complaints Director and there was no evidence of any impact on the patients involved.

The Hearing Tribunal also took into account the fact that Dr. Blonski recognized his errors, cooperated fully with the College and demonstrated remorse.

Based on all of these considerations, the Hearing Tribunal did not consider the penalties proposed by the parties to be unreasonable or contrary to the public interest, and in fact accepted that the penalties were fair and reasonable in the circumstances of this case.

10. Decision on Costs

The Joint Submission provided for the payment of \$2,000 in costs by Dr. Blonski representing a portion of the costs of the investigation and hearing. The Hearing Tribunal had not been provided with an estimate of the costs incurred to date prior to the hearing and the Hearing Tribunal asked both counsel for some further clarification as to why the Hearing Tribunal should consider this payment to be reasonable and proportionate.

Mr. Maxston provided a summary of the law relating to costs in light of the decisions of the Court of Appeal of Alberta in *Jinnah v Alberta Dental Association and College*, 2022 ABCA 336 and *Tan v Alberta Veterinary Medical Association*, 2022 ABCA 221. The Complaints Director was then able to provide information regarding the costs incurred to date and Mr. Maxston advised that taking into account work that had not been billed, the costs incurred were likely to amount to something in the \$24,000 to \$25,000 range by the conclusion of the proceedings.

Mr. Maxston submitted that the conduct at issue was such that requiring no payment of costs would be inappropriate. He advised that in his view the matter called for a modest costs award, and he considered the proposed amount to fall within this characterization. Counsel for Dr. Blonski concurred with those submissions.

The Hearing Tribunal considered the proposal as to costs in conjunction with the penalties which it had awarded and was satisfied that the amount was consistent with the costs principles as articulated in the case law.

DATED THIS 8th DAY OF MAY IN THE CITY OF EDMONTON, ALBERTA.

COLLEGE OF CHIROPRACTORS OF ALBERTA



Terry Engen
Chair, Hearing Tribunal
CCOA