



— COLLEGE OF —
CHIROPRACTORS
— OF ALBERTA —

Hearing Tribunal Written Decision and Orders for the Hearing of:

Dr. William Bowd

On:

September 18, 2023

Posting expiration date:

December 12, 2033

IN THE MATTER OF A HEARING OF THE HEARING TRIBUNAL
Into the Conduct of Dr. William Bowd, a Regulated Member of the College of Chiropractors of
Alberta (the “College”), 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 on September 18, 2023. The following individuals were present:

Dr. Moe Gebara, Regulated Member (Chair)
Shelly Flint, Public Member
Dr. Mecca Fayad, Regulated Member
Andrew Otway, Public Member
Kimberly Precht, Independent Legal Counsel

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

Dr. William Bowd, Investigated Person
Simon Renouf, KC, Legal Counsel for the 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 Notice of Hearing, Notice to Attend and Notice to Produce (the “Notice of Hearing”) included three allegations which are reproduced below:

1. On, or about July 1, 2022, Dr. William Bowd provided direct chiropractic treatment (including the restricted activity of spinal manipulation to certain patients) to patients at Village Chiropractic while his practice permit was suspended.
2. On or about July 1, 2022, Dr. William Bowd practiced chiropractic without the required professional liability protection.

3. On or about July of 2022, Dr. William Bowd billed third party payers and/or insurers for chiropractic services he provided on or about July 1, 2022, while his practice permit was suspended.

The Notice of Hearing was entered as Exhibit 1.

4. Background

On November 23, 2022, the Complaints Director (the "Complaints Director") of the College received information from the College's Registrar that indicated that Dr. Bowd had treated patients while his practice permit was not in force and without the required professional liability insurance. Pursuant to section 56 of the *Health Professions Act* ("HPA"), the Complaints Director treated this information as a complaint (the "Complaint").

The Complaints Director determined that an investigation of the Complaint should be commenced pursuant to section 55(2)(d) of the HPA. The investigation was completed, and this matter was referred by the Complaints Director to a hearing pursuant to Part 4 of the HPA.

5. Evidence and Admission of Unprofessional Conduct

The hearing was conducted by way of an Agreed Statement of Facts (Exhibit 3), Admission of Unprofessional Conduct (Exhibit 2), and Joint Submission Regarding Penalty (Exhibit 4). No witnesses were called to testify.

Pursuant to the Agreed Statement of Facts, it was agreed that Dr. Bowd was at all times a regulated member of the College.

The agreed facts relating to the allegations against Dr. Bowd read, in full, as follows:

9. On or about July 1, 2022, Dr. Bowd provided direct chiropractic treatment (including the restricted activity of spinal manipulation to certain patients) to 23 patients at the "Village Chiropractic" clinic located in Red Deer, Alberta, while his practice permit was suspended by operation of section 39 of the HPA. Dr. Bowd did not practice after July 1, 2022, until his practice permit was properly renewed.
10. On or about July 1, 2022, Dr. Bowd practiced chiropractic without the required professional liability protection.
11. On or about July of 2022, Dr. Bowd billed third party payers and/or insurers for chiropractic services he provided on or about July 1, 2022, while his practice permit was suspended.

12. Once Dr. Bowd became aware of the deemed suspension of his practice permit, he completed his application for renewal in proper form and paid the requisite fees before resuming his practice.

In the Admission of Unprofessional Conduct, Dr. Bowd admitted he is guilty of unprofessional conduct with respect to the allegations set out in the Notice of Hearing.

6. Submissions

Mr. Maxston made submissions on behalf of the Complaints Director. He advised that there are two onuses on the Complaints Director. The first onus on the Complaints Director is to prove the facts in support of the allegations, applying a “balance of probabilities” as the standard of proof. He advised that in light of the Agreed Statement of Facts, the Complaints Director’s onus to prove the facts on a balance of probabilities was unquestionably satisfied.

Mr. Maxston advised that the second onus on the Complaints Director is to prove that the proven factual conduct rises to a level of unprofessional conduct. He referred the Hearing Tribunal to the definition of “unprofessional conduct” in s. 1(1)(pp) of the HPA, which includes conduct that breaches the Act, the Code of Ethics or Standards of Practice, or conduct that harms the integrity of the profession. Mr. Maxston specifically referred the Hearing Tribunal to Articles B.1 and C.1 of the Code of Ethics. Article B.1 states: “A chiropractor must not represent their education, qualifications or competence in any way that would be false or misleading”, while Article C.1 focuses on the privilege of self-regulation and the corresponding obligation a chiropractor holds to “participate in the protection of the public and act in the public interest with the [College], thereby increasing the public trust of chiropractors and strengthening the profession.” Mr. Maxston described these as “motherhood statements”, which he submitted were relevant to the allegations against Dr. Bowd.

Mr. Maxston then summarized the facts set out in the Agreed Statement of Facts and emphasized the importance of the acknowledgements and admissions set out of the Admission of Unprofessional Conduct. Mr. Maxston urged the Hearing Tribunal not to confuse the brevity of the Agreed Statement of Facts or his submissions with a lack of seriousness on behalf of the Complaints Director. Mr. Maxston submitted that the allegations against Dr. Bowd involved serious unprofessional conduct, although not at the higher end of the spectrum of unprofessional conduct. Mr. Maxton concluded by reiterating that both the Complaints Director’s onuses were met.

Mr. Renouf then made submissions on behalf of Dr. Bowd. He noted his submissions were perhaps more relevant to the issue of sanction. Mr. Renouf provided an explanation for Dr. Bowd’s error, which was not part of the Agreed Statement of Facts. Mr. Renouf explained that Dr. Bowd had been distracted from completing his practice permit registration because his son was playing for the Canadian national rugby team and he was travelling on July 1, 2022, to view the game. Mr. Renouf submitted that that in Dr. Bowd’s excitement he had neglected to complete his practice permit renewal application before the June 30, 2022, deadline. Dr. Bowd

saw some patients before travelling on July 1, and did bill for this. While he was away watching his son compete, Dr. Bowd was made aware that his failure to complete his practice permit renewal had resulted in a deemed suspension. Dr. Bowd made sure he paid his fees and submitted his practice permit renewal before seeing any patients upon his return. In response to a question from the Hearing Tribunal, Mr. Renouf emphasized that it was Dr. Bowd's responsibility to renew his practice permit, and that Dr. Bowd was taking responsibility for his error.

In response to a further question from the Hearing Tribunal, the Complaints Director clarified that Dr. Bowd's professional liability insurance lapsed on July 1, 2022, as an automatic result of his failure to renew his practice permit.

7. Findings and Reasons

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

The Hearing Tribunal then advised the parties that it accepts Dr. Bowd's admission of unprofessional conduct based on the evidence set out in the Agreed Statement of Facts. Further, the Hearing Tribunal advised that it agrees 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 three allegations.

In reaching this determination, the Hearing Tribunal carefully considered each of the allegations set out in the Notice of Hearing and the relevant provisions in the HPA and the Code of Ethics.

The Hearing Tribunal recognized that all three allegations against Dr. Bowd stemmed from his failure to renew his practice permit on time. This resulted in the suspension of Dr. Bowd's practice permit and the lapse of his professional liability insurance on July 1, 2022, and Dr. Bowd admitted he had treated patients and billed for those services on July 1, 2022, without a valid practice permit or professional liability insurance. The factual allegations against Dr. Bowd were clearly proven.

In considering whether the factual conduct constituted unprofessional conduct, the Hearing Tribunal considered section 39 of the HPA, which states that if a regulated member does not provide the Registrar of the College with practice permit renewal application by the date set out in the College's Bylaws (i.e., June 30), then the regulated member's practice permit is automatically suspended and may be cancelled. The Hearing Tribunal also considered section 40(1)(c) of the HPA, which specifies that as part of a complete practice permit application, a regulated member must provide evidence of having the amount and type of professional liability insurance required by the College's Bylaws.

The purpose of requiring chiropractors to have a valid practice permit and professional liability insurance is to protect the public when they receive chiropractic services. The Hearing Tribunal

noted it was extremely fortunate that none of Dr. Bowd's patients were injured while he was providing chiropractic services on July 1, 2022, without a valid practice permit or professional liability insurance.

The Hearing Tribunal also accepted Mr. Maxston's submission that Dr. Bowd's conduct was contrary to Articles B.1 and C.1 of the Code of Ethics. Although Dr. Bowd did not intentionally misrepresent the status of his practice permit or professional liability insurance to patients on July 1, 2022, it was Mr. Bowd's responsibility to ensure he renewed his practice permit so that his practice permit would not be suspended, and his professional liability insurance would not lapse. The public can reasonably expect that a regulated member of the College—especially an experienced professional of 28 years—does not forget to do so.

In the circumstances, the Hearing Tribunal had no difficulty accepting Dr. Bowd's admission and concluding that the proven factual conduct constituted unprofessional conduct.

8. Joint Submission Regarding Penalty

The Complaints Director and Dr. Bowd made a Joint Submission Regarding Penalty (Exhibit 4) in which they proposed that the Hearing Tribunal impose the following orders:

1. Dr. Bowd shall be formally cautioned for his unprofessional conduct pursuant to section 82(1)(a) of the HPA. The Hearing Tribunal's written decision will constitute the caution.
2. Payment of a fine of \$1,500 with respect to each finding of unprofessional conduct, resulting in total fines of \$4,500. The fines are payable within six (6) months of the date of the Hearing Tribunal's written decision failing which the Registrar of the College can immediately and without the necessity of any further steps suspend Dr. Bowd's practice permit until the balance of the fines are paid in full.
3. Pursuant to the requirements of the College's Bylaws, the Hearing Tribunal's written decision will be published on the College website with Dr. Bowd's name for a period of 10 years.

On behalf of the Complaints Director, Mr. Maxston outlined the types of orders that the Hearing Tribunal is authorized to make under section 82 of the HPA and urged the Hearing Tribunal to accept the parties' carefully crafted joint submission.

Mr. Maxston submitted that while the Hearing Tribunal has ultimate jurisdiction to make orders it considers appropriate, the caselaw is clear that a tribunal must give a great deal of deference to a joint submission. Mr. Maxston explained that this is because joint submissions are the product of careful negotiation and are beneficial both to the regulatory body and to the member. As such, a tribunal should not depart from a joint submission on sanction unless the proposed sanction would bring the administration into disrepute or otherwise be contrary to the public interest. Further, Mr. Maxston noted that if the Hearing Tribunal was thinking of varying the

penalty, it was required to come back and let the parties know what it was thinking, and allow the parties to make submissions before the Hearing Tribunal proceeded.

Mr. Maxston took the Hearing Tribunal through the Joint Submission Regarding Penalty, which also outlined criteria that courts have identified that should be considered on sanction. Mr. Maxston submitted that the proposed orders were appropriate because, while Dr. Bowd's conduct represented a breach of the practice requirements set out in the Act and the recognized and accepted ethical standards for the chiropractic profession in Alberta, Dr. Bowd had admitted his unprofessional conduct, which demonstrated acceptance of responsibility for his actions.

On behalf of Dr. Bowd, Mr. Renouf confirmed that Dr. Bowd agreed with the proposed penalties. Mr. Renouf made submissions on relevance of several of the criteria identified in the Joint Submission Regarding Penalty, as follows:

- **Nature and gravity of the proven allegations:** Dr. Bowd practiced without a valid practice permit or professional liability insurance for one day, when he should have known his practice permit and professional liability insurance had expired.
- **Age and experience:** Dr. Bowd is 68 years old and has practiced in Alberta for 25 years. This is not a mitigating factor.
- **Disciplinary history:** This is the first disciplinary finding against Dr. Bowd.
- **Number of times conduct occurred:** The conduct occurred on only one day, although Dr. Bowd saw multiple patients on that day.
- **Other serious impacts on the member:** Mr. Renouf was not aware of any other serious impacts on Dr. Bowd as a result of the allegations being made against him.
- **Impact on patients:** Mr. Renouf was not aware of any impact on the affected patients.
- **Mitigating circumstances:** Dr. Bowd has acknowledged it is solely his responsibility to make sure his practice permit renewal application is in order before June 30 each year. He has taken responsibility for his mistake.
- **The need to promote specific and general deterrence:** Mr. Renouf submitted there was probably no need whatsoever for specific deterrence, as Dr. Bowd would not make this mistake again. However, Mr. Renouf submitted the proposed fine would more than adequately address any need for deterrence, along with the finding of unprofessional conduct itself.
- **Degree to which conduct falls outside range of permitted conduct:** Mr. Renouf submitted that all chiropractors know they need to make sure their practice permit is in order, so this was clearly outside the range of permitted contract. Mr. Renouf also noted he was not aware of any similar prior decisions involving other members of the College.

Following the parties' submissions on sanction, Ms. Precht, in her role as independent legal counsel to the Hearing Tribunal, asked the parties to clarify whether they had intended that the Hearing Tribunal give the Registrar discretion to suspend Dr. Bowd's practice permit if he failed

to pay the fine within the required time. Ms. Precht noted that section 82(3)(c) of the HPA already specifically gives the Complaints Director discretion to suspend the practice permit of an investigated person who fails to pay a fine ordered by a Hearing Tribunal. Ms. Precht provided her opinion that the Hearing Tribunal could not remove this power from the Complaints Director, such that if the Hearing Tribunal accepted the Joint Submission Regarding Penalty as drafted, both the Complaints Director and the Registrar would have discretion to suspend Dr. Bowd's practice permit should he fail to pay the fine in time, which could cause confusion.

Mr. Maxston and Mr. Renouf clarified that they *did* intend to provide this discretion to the Registrar in paragraph 2 of the proposed orders, to create some distance between Dr. Bowd and the Complaints Director. However, both parties indicated that they did not see it is a problem if the Hearing Tribunal ordered that the Complaints Director retain discretion to suspend Dr. Bowd's practice permit instead of the Registrar.

9. Decision on Penalty

Before adjourning the hearing, the Chair informed the parties that the Hearing Tribunal accepted the Joint Submission Regarding Penalty and would impose the orders proposed by the parties. However, before issuing this written decision, the Hearing Tribunal decided it was appropriate to make one small variation to the orders proposed by the parties: specifically, that if Dr. Bowd does not pay the fines in time, the Complaints Director rather than the Registrar may suspend his practice permit. In making this decision, the Hearing Tribunal considered Mr. Maxston and Mr. Renouf's submissions during the hearing that they did not consider it a problem if the Hearing Tribunal made this variation. The Hearing Tribunal made this variation to avoid a scenario in which both the Complaints Director and the Registrar have discretion over the same decision (whether to suspend the member's practice permit if he fails to pay his fines on time), but may wish to exercise their discretion differently. Notably, the Hearing Tribunal has no reason to believe Dr. Bowd will not pay the fines on time.

Accordingly, the Hearing Tribunal makes the following orders pursuant to section 82 of the HPA:

1. Dr. Bowd shall be formally cautioned for his unprofessional conduct pursuant to section 82(1)(a) of the HPA. The Hearing Tribunal's written decision will constitute the caution.
2. Dr. Bowd will pay a fine of \$1,500 for each finding of unprofessional conduct, resulting in total fines of \$4,500. The fines are payable within six (6) months of the date of the Hearing Tribunal's written decision failing which the Complaints Director can immediately and without the necessity of any further steps suspend Dr. Bowd's practice permit until the balance of the fines are paid in full, consistent with section 82(3)(c) of the HPA.
3. Pursuant to the requirements of the College's Bylaws, the Hearing Tribunal's written decision will be published on the College website with Dr. Bowd's name for a period of 10 years.

Aside from the small variation to paragraph 2 of the above orders, the Hearing Tribunal found that the orders proposed by the parties were appropriate in the circumstances and there was no basis to deviate from them, having regard for the high deference owed to joint submissions.

In reaching this decision, the Hearing Tribunal considered the parties' submissions, including the criteria identified in the Joint Submission Regarding Penalty as being relevant when determining appropriate penalty orders.

The Hearing Tribunal considered it a serious matter for Dr. Bowd to have treated patients without a valid practice permit or professional liability insurance, and to have billed third parties for those services. At the same time, the Hearing Tribunal took into account that all three of the allegations against Dr. Bowd arose from a single mistake – his failure to renew his practice permit on time. Further, the Hearing Tribunal put some weight on the fact that this only occurred once, on one day, and that Dr. Bowd does not have a prior discipline history despite a long career. The Hearing Tribunal also recognized that Dr. Bowd had taken responsibility for his actions by admitting he engaged in unprofessional conduct and entering an agreed statement of facts and joint submission on penalty. Finally, the Hearing Tribunal considered Dr. Bowd's explanation of how this mistake occurred, and the fact that he rectified the situation as soon as he realized he had not renewed his practice permit.

The Hearing Tribunal recognized that for an experienced professional, going through a public discipline process, being cautioned by the Hearing Tribunal, and having the discipline decision published on the College website likely carries a greater sting than a financial penalty. Nevertheless, the Hearing Tribunal was satisfied that the fines proposed by the parties were also appropriate given the importance of chiropractors ensuring they do not practice unless their practice permit and professional liability insurance are in order.

The Hearing Tribunal is satisfied that the orders jointly proposed achieve the goal of public protection and will deter other members of the profession from making the same mistake that Dr. Bowd made.

DATED THIS 12th DAY OF DECEMBER 2023, IN THE CITY OF EDMONTON, ALBERTA.

COLLEGE OF CHIROPRACTORS OF ALBERTA



Dr. Moe Gebara
Chair, Hearing Tribunal
CCOA

cc. Hearing Tribunal members