

THE COLLEGE OF NATUROPATHIC DOCTORS OF ALBERTA

IN THE MATTER OF
A HEARING UNDER THE *HEALTH PROFESSIONS ACT*,
R.S.A. 2000, c. C-7

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF DR. JASON AHLAN, A REGULATED MEMBER

**DECISION OF THE HEARING TRIBUNAL OF
THE COLLEGE OF NATUROPATHIC DOCTORS OF ALBERTA**

INTRODUCTION

On April 30, 2019, a Hearing Tribunal held a hearing into the conduct of Dr. Jason Ahlan N.D. The members of the Hearing Tribunal were: Ms. Sheri Epp of Calgary as Chair and Public Member, Dr. Salna Smith N.D., and Dr. Derek Cook N.D. Ms. Sharon Au acted as independent legal counsel for the Hearing Tribunal. Also in attendance at the hearing were: Mr. Jason Kully, legal counsel for the Complaints Director; Kristen Tanaka, Complaints Director of the College of Naturopathic Doctors of Alberta (“CNDA”); Dr. Jason Ahlan, the investigated member; and Mr. Gary SrebroLOW, legal counsel for Dr. Ahlan.

There were no objections to the composition of the Hearing Tribunal or the jurisdiction of the Hearing Tribunal to proceed with a hearing.

ALLEGATIONS

The allegations against Dr. Ahlan from the Notice of Hearing dated September 27, 2018 are as follows:

1. Between October 2016 and January 10, 2017, you provided adipose derived stem cell treatments to patients thereby:
 - a. Working beyond your scope of practice as a Naturopathic Doctor; or,
 - b. Administering a drug not approved by Health Canada to patients.
2. Between October 2016 and January 10, 2017, you engaged in the restricted activity or activities of cutting a body tissue, administering anything by an invasive procure on body tissue, or performing surgical or other invasive procedures on body tissue, below the dermis, without authorization, particulars of which include:
 - a. Performing liposuction to remove fat tissue from patients; or,
 - b. Performing injections of adipose derived stem cells on patients.

At the hearing, the Complaints Director advised that allegation 2 has been withdrawn.

The matter proceeded by way of an Agreed Statement of Facts and Acknowledgement of Unprofessional Conduct. As part of that Agreement, Dr. Ahlan admitted that Allegation 1 is true and that his conduct represented unprofessional conduct within the meaning of the *Health Professions Act*.

There was a Joint Submission on Sanction.

EVIDENCE

The following exhibits were entered by agreement of the parties:

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| Exhibit 1 | Notice of Hearing, Notice to Attend and Notice to Produce dated September 27, 2018 |
| Exhibit 2 | Agreed Statement of Facts and Acknowledgement of Unprofessional Conduct dated April 15, 2019 ("Agreed Facts") |
| Exhibit 3 | Joint Submission on Sanction dated April 15, 2019 |

FACTUAL BACKGROUND

The Exhibits establish the factual background to this matter.

The Complaint

On December 12, 2016, Dr. [REDACTED], also a Naturopathic Doctor (the "Complainant"), made a formal complaint to the CNDA alleging that Dr. Ahlan was providing stem cell therapy treatments in contravention of communications from the CNDA and that such action was outside the scope of the practice of Naturopathic Doctors (the "Complaint"). The Complaints Director opened an investigation and appointed a third-party investigator in accordance with s. 55(2)(d) of the *Health Professions Act*, R.S.A. 2000 c. H-9 (the "Act").

The investigation concluded that Dr. Ahlan was practicing beyond the scope of his practice; however, his actions were the result of poor communications, a lack of direction by the CNDA, and Dr. Ahlan's own interpretation of a complex situation. Accordingly, the Complaints Director dismissed the Complaint on November 21, 2017.

The Complainant requested a review of the dismissal and the matter was referred to the Complaint Review Committee who, on June 27, 2018, referred the matter to a Hearing Tribunal.

Agreed Facts Related to Allegation #1

Dr. Ahlan obtained an undergraduate degree in biochemistry from Trent University in 1998, graduated from the Canadian College of Naturopathic Medicine in 2013, and has additional training in regenerative injection techniques.

Dr. Ahlan became a regulated member of the CNDA in or around April 20, 2005 and has been registered with the CNDA with an active practice permit at all times material to the allegations in this hearing.

At all material times, Dr. Ahlan practiced with Paradigm Health Group. He has not been involved in any prior complaints, investigations or disciplinary hearings with the CNDA. Dr. Ahlan fully cooperated with the investigation and Hearing into this matter.

In October 2016, Dr. Ahlan provided patients with AdiPrep treatments which involves extracting fat, or adipose tissue, from a patient by way of a procedure involving lipoaspirate. The extracted tissue is then centrifuged to create a graft rich in mesenchymal stem cells. The stem cells are then re-injected into the patient. The procedure is autologous – all tissue is taken from and used on the same patient – and no enzymes or incubation is required for the tissue.

According to the Agreed Facts, on or about November 16, 2016, a person posing as a patient (D.V.) consulted with Dr. Ahlan seeking stem cell therapy treatment. D.V. is a friend of the Complainant, Dr. [REDACTED]. During this consultation, D.V. was told about a procedure whereby Dr. Ahlan would remove a small amount of fat from his body, performed under local anesthetic. The fat would be processed and stem cells harvested to be injected into D.V.'s back. Dr. Ahlan told D.V. that the procedure was in a "grey zone" because Health Canada did not regulate stem cell procedures. Dr. Ahlan told D.V. that the machine used in the procedure was approved by Health Canada for the purposes of separating stem cells from fat for reinjection. No treatment took place at this consultation and Dr. Ahlan referred D.V. to an MD if he wanted the procedure.

Although no treatment of D.V. occurred, Dr. Ahlan has admitted to performing 48 procedures using AdiPrep between October 5, 2016 and January 10, 2017. No complaints were made by any of the patients who received this treatment and there is no evidence before this Hearing Tribunal of any harm to any of the patients who received this treatment.

Dr. Ahlan believed that the procedures performed were within a Naturopathic Doctor's scope of practice as the treatment is like other treatments within the scope of practice.

Dr. Ahlan ceased performing AdiPrep procedures on January 10, 2017, immediately following notification of the Complaint.

It is an agreed fact that adipose tissue may be extracted to harvest stem cells, but the stem cells themselves are not reviewed for safety or quality and are considered by Health Canada to be drugs not yet approved for use. Stem cells extracted by AdiPrep can only be used in clinical trials approved by Health Canada.

On or about October 12, 2016, Health Canada notified the College of Naturopathic Physicians of British Columbia that although the AdiPrep kit is licensed for use, the stem cells themselves have not been authorized for use. This was communicated to the CNDA on March 14, 2017, but not to Dr. Ahlan. The Hearing Tribunal notes this communication came to the CNDA more than three months after Dr. Ahlan ceased performing the impugned procedures and 4 months after the consultation by Dr. [REDACTED]'s friend.

Dr. Ahlan admits he practiced beyond the scope of his practice by injecting a drug not approved by Health Canada (the extracted stem cells). He also admits this constitutes unprofessional conduct within the meaning of the Act.

FINDINGS OF THE HEARING TRIBUNAL ON UNPROFESSIONAL CONDUCT

The Hearing Tribunal accepts the facts as set out in the Agreed Facts constitute unprofessional conduct within the meaning of the Act and that such conduct is deserving of sanction.

SUBMISSIONS ON SANCTION

Through the Joint Submissions on Sanction, the Complaints Director and Dr. Ahlan proposed the following sanctions:

1. Dr. Ahlan shall receive a reprimand and the Hearing Tribunal's decision shall serve as the reprimand.
2. Dr. Ahlan will successfully complete the Ethics for Naturopathic Physicians course subject to the following requirement:
 - a. Dr. Ahlan will provide proof to the Complaints Director that he has successfully completed the course within 90 days of receiving the Hearing Tribunal's decision, or within such other period of time agreed to by the Complaints Director.
3. Dr. Ahlan will pay a portion of the costs of the investigation and hearing in the amount of \$2,000.00 due within 12 months of receiving the Hearing Tribunal's decision, or within such other period of time agreed to by the Complaints Director.

Mr. Kully referred the Hearing Tribunal to *Jaswal v. Medical Board* (Nfld) 1996 CanLii 11630 (NL SCTD) and set out some factors to be considered by a Hearing Tribunal when sanctioning for unprofessional conduct:

1. The nature and gravity of the proven allegations. Mr. Kully asserted that Dr. Ahlan admitted to administering a drug not approved by Health Canada. While there is no evidence of actual harm to patients who received the procedure, there was a risk associated with carrying out the procedure. He noted that Dr. Ahlan made a mistake regarding whether the procedure was within his scope of practice, but there was no intention to deceive or cause harm to the public or profession.
2. Age and experience of the Investigated Member / previous character and absence of prior complaints. Mr. Kully noted that Dr. Ahlan is an experienced Naturopathic Doctor with an unblemished record with the CNDA.

3. The number of times the offence was proven to have occurred. Mr. Kully noted that there were 48 impugned procedures over the span of approximately 4 months.
4. The role of Investigated Member in acknowledging what occurred. Dr. Ahlan fully cooperated with the investigation, stopped the impugned treatments on receipt of the Complaint, and has admitted unprofessional conduct.
5. Impact of the incident on the offended patient. This Complaint was not brought forward by a patient and, indeed, there is no evidence of actual harm.
6. Specific and General Deterrence. Mr. Kully notes that specific deterrence has been achieved because Dr. Ahlan is no longer performing the procedure. General deterrence is achieved by showing the profession this conduct is not tolerated.

Mr. Kully argued that a Hearing Tribunal, while not bound by a Joint Submission on Sanction, ought to show deference to the submission. Indeed, a Hearing Tribunal should only interfere with a joint submission on sanction if the sanction would bring the administration of justice into disrepute and / or if it is contrary to the public interest. Mr. Kully argued interference with a joint submission requires a high threshold and ought not be considered lightly.

Mr. Srebrolow, on behalf of Dr. Ahlan and regarding the Joint Submission on Sanction, urged the Hearing Tribunal to consider the agreed facts relating to the poor communication by the CNDA on this procedure. While he rightly contended this does not absolve Dr. Ahlan of wrongdoing, it is a mitigating factor on sanction. He also emphasized the fact that Dr. Ahlan fully cooperated with the investigation and Hearing which culminated in an agreement of facts and acknowledgment of unprofessional conduct, thus saving cost, time, and expense in running a full contested hearing. He reiterated Dr. Ahlan's unblemished record with the CNDA and noted that Dr. Ahlan could have challenged the Complaint and even continued performing the impugned procedure until the day of the Hearing. That Dr. Ahlan did not should be a mitigating factor when considering appropriateness of the proposed sanction.

Mr. Srebrolow argued that Dr. Ahlan believed the procedures were permissible because, among other things, the machine used in the procedure were approved by Health Canada. He reiterated that Dr. Ahlan has been through a long complaint process and never challenged the CNDA in this process.

Dr. Ahlan personally addressed the Hearing Tribunal and said he was proud to be a naturopathic doctor, he apologized for the conduct leading up to this Hearing, and believes the process is necessary and important to protect the public.

FINDINGS OF THE HEARING TRIBUNAL ON SANCTION

In determining the appropriate sanction, the Hearing Tribunal considered a number of factors. Communication regarding the impugned procedure was poor. Indeed, the CNDA did not receive communication from Health Canada until months after Dr. Ahlan stopped performing the procedure. At all material times, the machine by which the stem cells were extracted was approved by Health Canada. Accordingly, the Hearing Tribunal recognizes and appreciates the concession from the CNDA made in the Agreed Facts regarding the lack of communication on this issue (see paragraphs 6 and 24 of the Agreed Facts). The Hearing Tribunal accepts that Dr. Ahlan mistakenly thought he was within his scope of practice and did not intentionally perform any procedures outside of those permitted by regulation. Although these facts establish unprofessional conduct, the lack of intentional wrongdoing is a mitigating factor against a more severe sanction.

The Hearing Tribunal considered the gravity of the offence in terms of the number of procedures performed by Dr. Ahlan (48) in a short period of time (4 months) and the risk associated therewith. This is an aggravating factor in favor of a more severe sanction; however, the Hearing Tribunal balanced that against the fact this Complaint was not raised by a patient nor was there any evidence of actual harm to any patient. The Hearing Tribunal considered that actual deterrence was achieved because Dr. Ahlan has stopped performing the procedures.

The Hearing Tribunal believes that general deterrence will be achieved with the proposed sanction. Although the sanction is personal to Dr. Ahlan, the decision is public and regulated members under the CNDA are relatively few. Members will know that the CNDA does not tolerate out of scope practice. The decision will also serve to caution the CNDA to have better communication to its members on non-approved procedures to avoid similar circumstances from arising in the future and to ensure public safety.

Dr. Ahlan's cooperation throughout the Complaint process is also a mitigating factor against a more severe sanction. He never challenged the CNDA, he admitted facts and unprofessional conduct thus saving the CNDA cost and expense, he apologized for his actions, and recognized the important role the Complaints process brings to ensure the integrity of the profession.

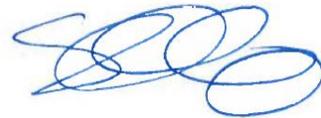
The Hearing Tribunal notes that this matter arose after Dr. Ahlan had a consultation with a person posing as a patient and who was also a friend of the Complainant. While the regulation of Naturopathic Doctors is an important matter to ensure the safety of the public, members of the CNDA should be cautioned from taking such matters into their own hands. A concern could and should have been raised with the CNDA, which has broad powers to investigate and ensure its members are compliant and practicing within the scope of their regulated powers. Members should not be investigating each other, as this is the role and authority of the CNDA.

Considering all aspects of the proposed orders, the Hearing Tribunal concludes that the proposed sanctions are reasonable and meets the objective of protecting the public. Given our conclusions, the Hearing Tribunal accepts the Joint Submission on Sanctions and makes the following orders under section 82 of the Act:

1. Dr. Ahlan shall receive a reprimand and the Hearing Tribunal's decision shall serve as the reprimand.
2. Dr. Ahlan will successfully complete the Ethics for Naturopathic Physicians course subject to the following requirement:
 - a. Dr. Ahlan will provide proof to the Complaints Director that he has successfully completed the course within 90 days of receiving the Hearing Tribunal's decision, or within such other period of time agreed to by the Complaints Director.
3. Dr. Ahlan will pay a portion of the costs of the investigation and hearing in the amount of \$2,000.00 due within 12 months of receiving the Hearing Tribunal's decision, or within such other period of time agreed to by the Complaints Director.

The Hearing Tribunal retains jurisdiction to address any issue arising from non-compliance or enforcement of its orders.

Signed on behalf of the Hearing Tribunal by
the Chair



Dated: May 7, 2019

Sheri Epp