

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.TREVOR HOFFMAN, A REGULATED MEMBER

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

INTRODUCTION

On May 28, 2019, a Hearing Tribunal held a hearing into the conduct of Dr. Trevor Hoffman N.D. The members of the Hearing Tribunal were: Hugh Campbell as Chair and Public Member, Dr. Farheen Madatali ND, and Dr. Antonin Kodet ND, Paed Dr. Ms. Eleanor Olszewski QC 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. Trevor Hoffman, the investigated member, and Mr. Matthew LaFleche, legal counsel for Dr. Hoffman and CNDA Registrar Ms Cherie Baruss BA, LLB.

There was one member of the public in attendance as an observer and a summary of the rules of behavior for public observers was read by the Chair.

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

ALLEGATIONS

The allegations against Dr. Hoffman contained in 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At the hearing, the Complaints Director advised that allegation 2 had been withdrawn.

The matter proceeded by way of an Agreed Statement of Facts and Acknowledgement of Unprofessional Conduct. As part of that Agreement, Dr. Hoffman admitted that Allegation 1 was

true and that his conduct represented unprofessional conduct within the meaning of the *Health Professions Act*.

EVIDENCE

The following exhibits were entered by agreement of the parties:

- | | |
|-----------|---|
| 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 May 28, 2019 ("Agreed Facts") |
| Exhibit 3 | Joint Submission on Sanction dated May 28, 2019 |

FACTUAL BACKGROUND

The Exhibits establish the factual background to this matter.

The Complaint

On December 12, 2016, Dr. [REDACTED], also a Naturopathic Doctor ("Complainant"), made a formal complaint to the CNDA alleging that Dr. Hoffman 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 ("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 ("Act").

The investigation concluded that Dr. Hoffman 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. Hoffman'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 – Allegation 1

At all material times, Dr. Hoffman practiced with Paradigm Health Group. He has been a regulated member of the CNDA since 2012 and continuously registered as a member in good standing since that time. He has not been involved in any prior complaints, investigations or disciplinary hearings with the CNDA. Dr. Hoffman fully cooperated with the investigation and Hearing into this matter.

In October 2016, Dr. Hoffman began providing patients with AdiPrep treatments, which involve extracting 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 are required.

According to the Agreed Facts, Dr. Hoffman performed approximately 25 procedures using AdiPrep between October 2016 and January 10, 2017. He believed that the performance of this procedure was in a "grey zone" because a) Health Canada did not expressly regulate stem cell procedures at the time; b) the machine used in the procedure was approved by Health Canada for the purpose of separating stem cells from fat for reinjection; c) the AdiPrep procedure could be done without exposing the patient to any material risk of infection; and d) the CDNA had not published a standard of practice or issued any definitive guidance specifically prohibiting the AdiPrep procedure.

Dr. Hoffman 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, such as prolotherapy.

Dr. Hoffman 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. Health Canada has taken the position that stem cells are considered "drugs" and are not authorized 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 was licensed for use, the stem cells themselves were not. This was communicated to the CNDA on March 14, 2017, but not to Dr. Hoffman. The Hearing Tribunal notes this communication came to the CNDA more than three months after Dr. Hoffman ceased performing the impugned procedures.

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

FINDINGS OF THE HEARING TRIBUNAL ON UNPROFESSIONAL CONDUCT

The Hearing Tribunal accepts that the facts 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

The Joint Submissions on Sanction agreed to by the Complaints Director and Dr. Hoffman proposed the following sanctions:

1. Dr. Hoffman shall receive a reprimand and the Hearing Tribunal's decision shall serve as the reprimand.
2. Dr. Hoffman will successfully complete the Ethics for Naturopathic Physicians course subject to the following requirement:
 - a. Dr. Hoffman 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. Hoffman 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) which references the factors to be considered by a Hearing Tribunal when sanctioning for unprofessional conduct:

1. *The nature and gravity of the proven allegations.* Mr. Kully stated that Dr. Hoffman 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. Hoffman had 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. Hoffman 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 25 procedures over the span of approximately 4 months.

4. *The role of Investigated Member in acknowledging what occurred.* Dr. Hoffman fully cooperated with the investigation, stopped the impugned treatments on receipt of the Complaint, and admitted unprofessional conduct.
5. *Impact of the incident on the offended patient.* The Complaint was not brought forward by a patient and, indeed, there was no evidence of actual harm.
6. *Specific and general deterrence.* Mr. Kully noted that specific deterrence has been achieved because Dr. Hoffman is no longer performing the procedure, while general deterrence will be achieved by showing the profession that 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 it. 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 stated that interference with a joint submission requires a high threshold and ought not be considered lightly.

Mr. LaFleche, on behalf of Dr. Hoffman, urged the Hearing Tribunal to consider the Agreed Facts relating to the poor communication by the CNDA relating to stem cell procedure. He rightly contended that this would not absolve Dr. Hoffman of wrongdoing, but was a mitigating factor on sanction. He also emphasized the fact that Dr. Hoffman fully cooperated with the investigation and Hearing, which culminated in agreed facts and an acknowledgment of unprofessional conduct, thus saving the time and expense of running a full contested hearing. He reiterated Dr. Hoffman's unblemished record with the CNDA and noted that Dr. Hoffman could have challenged the Complaint, and even continued performing the impugned procedure until the day of the Hearing. He added that the fact that Dr. Hoffman did not do either of these things should be a mitigating factor when considering appropriateness of the proposed sanction.

Mr. LaFleche further stated that Dr. Hoffman believed the procedures were permissible because, among other things, the machines used in the procedure were approved by Health Canada. He reiterated that Dr. Hoffman had undergone a long complaint process and had not challenged the CNDA.

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. Hoffman stopped performing the procedure. At all material times, the machine by which the stem cells were extracted was approved by Health Canada. 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 23 of the Agreed Facts). The Hearing Tribunal accepts that Dr. Hoffman 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. Hoffman (25) 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 that this Complaint was not raised by a patient nor was there any evidence of actual harm to any patient. The Hearing Tribunal also considered that actual deterrence was achieved because Dr. Hoffman stopped performing the procedure upon receipt of the Complaint.

The Hearing Tribunal concludes that general deterrence will be achieved with the proposed sanction. Although the sanction is personal to Dr. Hoffman, the decision will be made public and there are relatively few regulated members under the CNDA. 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. Hoffman's cooperation throughout the Complaint process is also a mitigating factor. He never challenged the CNDA, he admitted facts and unprofessional conduct thus saving the CNDA time and expense, he apologized for his actions, and recognized the important role the Complaints process brings to ensure the integrity of the profession.

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

1. Dr. Hoffman shall receive a reprimand and the Hearing Tribunal's decision shall serve as the reprimand.
2. Dr. Hoffman will successfully complete the Ethics for Naturopathic Physicians course subject to the following requirement:
 - a. Dr. Hoffman 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. Hoffman 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: 06-08-2019



Hugh Campbell