

IN THE MATTER OF a Hearing of the Hearing Tribunal by  
the Alberta College of Occupational Therapists into the  
conduct of KRIS NELSON, Registration #2850, pursuant to  
the *Health Professions Act*, RSA 2000 c. H-7

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**DECISION  
OF THE HEARING TRIBUNAL OF THE  
ALBERTA COLLEGE OF OCCUPATIONAL THERAPISTS**

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## I. HEARING

1. The hearing was conducted pursuant to the Health Professions Act (“HPA”) and virtually on December 14, 2021, with the following individuals participating:

Hearing Tribunal: (the “**Hearing Tribunal**”)

- James Lees, Public Member, Chair
- Rosemary Koziel, Regulated Member
- David Rolfe, Public Member
- Alexandra Chahley, Regulated Member

Independent Legal Counsel to Hearing Tribunal

- Blair E. Maxston, Q.C.

Alberta College of Occupational Therapists (the “**College**”)

- Anna Yarmon, Complaints Director
- Katrina Haymond, Legal counsel for the Complaints Director

Investigated Member

- Kris Nelson (“**Mr. Nelson**”)

Observer

- Patient LG (“**Patient LG**”)

Court Reporter

- Jessica Young

## II. PRELIMINARY MATTERS AND BACKGROUND FACTS

2. The Chair made opening comments, including introductions of the parties and a brief review of the two (2) allegations in the Notice of Hearing and Notice to Attend as Witness dated November 9, 2021 (the “**Notice of Hearing**”).
3. As reflected in the Agreed Statement of Facts and Acknowledgement of Unprofessional Conduct, the allegations arise from an anonymous email received by the then Complaints Director of the College on February 16, 2021. In the email, the sender advised the College that Mr. Nelson had engaged in a sexual relationship with his client, Patient LG. Based on this information, the Complaints Director initiated a complaint against Mr. Nelson in accordance with s. 56 of the HPA.
4. On April 26, 2021, the Complaints Director received an email from Alberta Health Services (“AHS”) Manager Pauline Andringa, who has as part of her area of responsibility the Healthy Living Centre in Camrose, Alberta (the “**Centre**”) where Mr.

Nelson worked. Ms. Andringa notified the Complaints Director of an internal AHS investigation into an alleged inappropriate relationship between Mr. Nelson, "Occupational Therapist Registration #2820" (Note - Mr. Nelson's verified registration number with the College is 2850). As a result of this investigation, Mr. Nelson was given a letter of warning.

5. Initially both Mr. Nelson and Patient LG denied being in a sexual relationship and the complaint was referred to the College Hearings Director on the basis that there had been a boundary violation. Subsequently the College and AHS learned that the relationship between Mr. Nelson and Patient LG was in fact sexual in nature, and each then re-opened its investigation.
6. On June 11, 2021 Ms. Anna Yarmon was appointed as Complaints Director for the College (the "Complaints Director"). The Complaints Director sought an interim suspension of Mr. Nelson's license pending the outcome of professional conduct proceedings pursuant to s. 65 of the HPA. Mr. Nelson did not object and the interim suspension was imposed effective July 14, 2021.
7. The Complaints Director completed her investigation on September 21, 2021 and determined that there was sufficient evidence that the matter should be referred to the Hearings Director in accordance with s. 66(3)(a) of the HPA. Mr. Nelson was served with a Notice of Hearing and Notice to Attend dated November 9, 2021, and a letter titled "Hearing Schedule & Tribunal Information" also dated November 9, 2021. This letter outlined the allegations against Mr. Nelson, and confirmed that a hearing into these allegations would be held virtually on December 14, 2021 starting at 9:00 AM. Additional information regarding the hearing process was also provided to Mr. Nelson, including his right to have a lawyer represent him at this hearing.
8. The Hearing Tribunal hearing was held virtually on December 14, 2021 starting at 9:00 AM using the Microsoft Teams platform. There were no objections to conducting the hearing virtually or to the composition of the Hearing Tribunal. No Hearing Tribunal members identified a conflict of interest and there were no objections to the jurisdiction of the Hearing Tribunal to proceed.
9. Mr. Nelson advised that he was aware of his right to have legal counsel present but agreed to proceed without legal representation.
10. The hearing proceeded as a consent hearing by way of an Agreed Statement of Facts and Acknowledgment of Unprofessional Conduct document and a Joint Submission on Penalty. Accordingly, no witnesses were called to give evidence during the hearing.
11. Patient LG was informed of the Hearing scheduled for December 14, 2021, and advised of her right to provide a Patient Impact Statement verbally or in writing to the Hearing Tribunal. Patient LG did complete the Patient Impact Statement form and submitted it to the College to be provided to the Hearing Tribunal. Patient LG also attended the hearing as an observer.

### III. EXHIBITS

12. The following exhibits were entered with the consent of both parties at the hearing:

Exhibit 1: Agreed Statement of Facts and Acknowledgment of Unprofessional Conduct;

**Note:** Tab 2 of the Agreed Statement of Facts is the November 9, 2021 Notice of Hearing and Notice to Attend as Witness (the “Notice of Hearing”).

Exhibit 2: Joint Submission on Penalty;

Exhibit 3: Written Patient Impact Statement of LG dated December 7, 2021.

### IV. BACKGROUND

13. The facts in this matter are not in dispute and are set out in detail in the Agreed Statement of Facts; as such, they do not need to be repeated in detail in this Decision.
14. Briefly, and as reflected in the allegations in the Notice of Hearing, while providing services on behalf of the Centre to Patient LG, a client receiving treatment from Mr. Nelson, he failed to maintain appropriate boundaries by exchanging inappropriate text messages and disclosing personal information about himself to the Client. Furthermore, Mr. Nelson failed to meet minimum professional standards when he engaged in sexual abuse toward Patient LG, including commencing a sexual relationship with Patient LG on or about February 20, 2021 when Patient LG was still receiving occupational therapy and treatment from Mr. Nelson. His relationship with Patient LG included sexual intercourse and continued until May 2021 when their relationship ended.
15. Ms. Haymond noted that sexual misconduct and sexual abuse were defined in Bill 21: An Act to Protect Patients (“Bill 21”) which amended the HPA effective April 1, 2019. Bill 21 includes mandatory penalties for regulated members whose conduct is deemed to be sexual misconduct or sexual abuse of a patient. If a health professional’s conduct is deemed to be sexual abuse, the mandatory penalty to be imposed is immediate cancellation of that member’s registration and practice permit with no ability to reapply or be reinstated.
16. Bill 21 also required each College Council to develop Standards of Practice that define who is considered to be a patient for the purposes of the College’s regulated members. In Standard 10 of the College Standards of Practice, a patient is considered to be a patient for a period of one (1) year after treatment ends.

### V. ALLEGATIONS

17. Two (2) allegations are set out in the Notice of Hearing as follows:
1. On or about between February 2021 - May 2021, you failed to maintain appropriate boundaries with client LG, the particulars of which include:
    - a) Engaged in communications with LG of a romantic and personal nature;

- b) Texted with LG and spoke to her for purposes unrelated to treatment;
2. You engaged in sexual abuse toward client LG, the particulars of which include:
- a) You provided occupational therapy treatment to LG on several occasions between February 4, 2021 - February 23, 2021;
  - b) On or about February 20, 2021 you commenced a sexual relationship with LG;
  - c) You continued to engage in conduct of a sexual nature, including sexual intercourse, with LG thereafter until May 2021 when your relationship ended;
  - d) You engaged in the conduct identified above at 2(a), (b) and (c) while LG was still a "patient" as defined under Standard 10 of ACOT's Standards of Practice.

#### VI. **ADMISSION OF UNPROFESSIONAL CONDUCT**

18. Section 70 of the HPA permits an investigated member to make an admission of unprofessional conduct. An admission under section 70 of the HPA must be acceptable in whole or in part to the Hearing Tribunal.
19. In the Agreed Statement of Facts and Acknowledgment of Unprofessional Conduct (Exhibit #1), Mr. Nelson made admissions to both allegations in the Agreed Statement of Facts, and acknowledged that his conduct amounts to unprofessional conduct within the meaning of section 1(1)(pp) of the HPA.

#### VII. **SUBMISSIONS OF THE PARTIES**

##### A. **Submissions from the Complaints Director: Liability Phase of Hearing**

20. Ms. Haymond's submissions on behalf of the Complaints Director can be summarized as follows:
- Ms. Haymond noted that this hearing was proceeding by consent (including agreement to provide the Hearing Tribunal with all materials in advance of the hearing), and thanked Mr. Nelson for being forthcoming and cooperative during the investigation and consent discussions. Ms. Haymond stated that Mr. Nelson's admission and agreement to proceed by way of a consent hearing avoided a potentially lengthy contested hearing with numerous witnesses.
  - Ms. Haymond reviewed the Agreed Statement of Facts and the two allegations in the Notice of Hearing and submitted that even where an Agreed Statement of Facts is submitted, the Hearing Tribunal must still decide whether to accept an admission and must determine whether unprofessional conduct has occurred.



- Ms. Haymond advised that Allegation 1 in the Agreed Statement of Facts refers to Mr. Nelson's failure to maintain appropriate boundaries with client LG. Allegation 2 refers to Mr. Nelson having engaged in sexual abuse toward client LG, including sexual intercourse, while LG was a client and was receiving treatment from Mr. Nelson. Sexual abuse is defined in section 1(1)(nn.1) of the HPA, and subsection (i) refers specifically to "sexual intercourse between a regulated member and a patient of that regulated member".
- Ms. Haymond reviewed information from the Agreed Statement of Facts that confirmed Patient LG was a client of Mr. Nelson's during the period February 4, 2021 to February 23, 2021, and received occupational therapy treatment on four occasions during that period. On or about February 20, 2021 Mr. Nelson commenced a sexual relationship with Patient LG, including sexual intercourse, and their sexual relationship continued until May, 2021 when it ended.
- Ms. Haymond then reviewed a large number of text messages and picture messages included in the Agreed Statement of Facts that were exchanged between Mr. Nelson and Patient LG. Also included was a series of emails between representatives of the AHS and the College regarding their respective investigations. Mr. Nelson has admitted these text messages were not related to patient treatment, instead they were of a romantic and personal nature. With respect to Allegation 1, the graphic nature of these exchanges clearly demonstrates that Mr. Nelson failed to maintain appropriate professional boundaries with Patient LG. Allegation 2 deals with the charge of sexual abuse, including that Mr. Nelson engaged in conduct of a sexual nature with Patient LG, including sexual intercourse, commencing on or about February 20, 2021 when Patient LG was still receiving professional treatment from him.
- Ms. Haymond reviewed the College's Code of Ethics and Standards of Practice and noted that Mr. Nelson's conduct involved sexual abuse and serious boundary issues in the provision of services to a client as defined in Standard 10 of the College's Standards of Practice.
- Mr. Nelson has admitted to unprofessional conduct in the nature of boundary violations and sexual abuse in regard to Patient LG, a client of his.

**B. Submissions from Mr. Nelson: Liability Phase of Hearing**

21. Mr. Nelson had no comments to make to the Hearing Tribunal during the liability phase of the hearing.
22. The Hearing Tribunal had no questions for Ms. Haymond or Mr. Nelson after completion of the liability phase of the hearing.

**C. Findings of the Hearing Tribunal**

23. After private deliberations, the Hearing Tribunal reconvened and advised both parties that it has accepted the admission of unprofessional conduct and has made findings of

unprofessional conduct concerning both Allegations 1 and 2, including a finding of sexual abuse arising from Allegation 2.

**D. Submissions from the Complaints Director: Penalty Phase of Hearing**

24. Ms. Haymond's submissions on behalf of her client concerning penalties can be summarized as follows:

- Ms. Haymond stated that the primary objective of sentencing is for the protection of the public. She reviewed the Joint Submission on Penalty and the very broad range of orders that the Hearing Tribunal could make pursuant to section 82 of the HPA. Ms. Haymond also noted that Bill 21, provides for mandatory penalties for regulated health professionals whose conduct is deemed to be sexual abuse of a patient.
- Ms. Haymond submitted that Allegation 2, sexual abuse, was the most serious type of sexual misconduct covered under Bill 21, and the resulting mandatory penalty is immediate cancellation of Mr. Nelson's registration and practice permit. The Hearing Tribunal has no discretion in determining this penalty under Bill 21. Ms. Haymond noted that while a patient is in treatment, there is a power imbalance that would invalidate any consensual element to a relationship between a patient and a health care provider.
- The Joint Submission On Penalty also requires that Mr. Nelson pay 50% of the costs of the investigation and hearing, to a maximum of \$12,000.00 within a period of 24 months from the date the Hearing Tribunal issues its written decision. The requirement to pay 50% of costs is consistent with the current practice of the College in such matters.
- Ms. Haymond noted that Allegation 1 was also serious in nature, as the onus is on regulated members to maintain professional boundaries with their patients who are receiving treatment. As Mr. Nelson's practice permit is being canceled, the Joint Submission On Penalty did not include additional sanctions to address boundary violations.
- In terms of Mr. Nelson's age and experience, Ms. Haymond noted that he was a regulated member since 2003 and ought to have known better in terms of his conduct. The changes to the HPA brought about through Bill 21 in November, 2018 were widely circulated among health professionals and Colleges.
- The College Standards of Practice has specific and detailed information for members regarding the consequences of engaging in sexual abuse or sexual misconduct with patients, and confirms that a client is considered to still be a client for a one year period following the provision of professional services.
- Although there were no prior findings of unprofessional conduct against Mr. Nelson, Ms. Haymond submitted that the allegations reflect more than one isolated incident and reflect an ongoing relationship of a sexual nature between Mr. Nelson and Patient LG from February 20, 2021 to May, 2021.



- Mr. Nelson's conduct was clearly below the standard expected of members of the occupational therapy profession, and all regulated health professionals.
- Ms. Haymond spoke briefly to the various factors applicable to sentencing adopted from the Jaswal decision. The nature and gravity of the proven allegations is extremely serious, and this is reflected in the sanction requiring cancellation of Mr. Nelson's practice permit. The penalty imposed in this case is consistent with all other cases involving sexual abuse. Mr. Nelson's cooperation throughout this process would be a mitigating factor in his favor in the absence of a mandatory penalty. There is a strong need to promote both specific and general deterrence, to protect the public against future instances of sexual abuse and ensure safe and proper practices are maintained within the profession.
- Ms. Haymond reviewed the caselaw concerning the deference to be given to joint submissions on penalty, and that the test is whether a joint submission on penalty brings the administration of justice into disrepute.
- Ms. Haymond closed her submissions by referring to the requirements of section 81.1(2) of the HPA which requires that the patient be provided with an opportunity to make a statement to the Hearing Tribunal if sexual misconduct has occurred. Ms. Haymond noted that Patient LG chose to provide a written Patient Impact Statement which Patient LG then read aloud to the hearing. Her statement is included as Exhibit 3 and has been redacted to exclude unrelated information.

#### **E. Submissions of Mr. Nelson: Penalty Phase of Hearing**

25. Mr. Nelson had no comments to make to the Hearing Tribunal during the penalty phase of the Hearing.

#### **VI. DECISION OF THE HEARING TRIBUNAL AND REASONS**

26. The Hearing Tribunal is faced with a two-part task in considering whether an investigated member is guilty of unprofessional conduct. First, the Hearing Tribunal must make findings as to whether the facts of the alleged unprofessional conduct occurred. If the Hearing Tribunal finds that the alleged conduct did occur, it must then proceed to determine whether that conduct rises to the level of unprofessional conduct under the circumstances and as defined in the HPA.
27. With respect to the first task, the Hearing Tribunal carefully reviewed all of the exhibits and the verbal submissions of both parties, as well as Mr. Nelson's admission of unprofessional conduct. There is no disputing the facts relating to the events that took place and the Hearing Tribunal finds that the facts do support the allegations admitted to by Mr. Nelson.
28. With respect to the second task, the Hearing Tribunal accepts Mr. Nelson's admission of unprofessional conduct based on the evidence as set out in the Agreed Statement of Facts including the acknowledgment of responsibility by Mr. Nelson.

29. The Hearing Tribunal finds that the conduct admitted to by Mr. Nelson clearly meets the definition of sexual abuse as set out in the HPA s. 1(1)(nn.1)(i) and, for the purposes of charge 2(c), that sexual abuse occurred. The Hearing Tribunal finds that Mr. Nelson's conduct falls within the definition of unprofessional conduct in s. 1(1)(pp) of the HPA, as his actions are a clear violation of Standard 10 in the College's Standards of Practice.
30. The Hearing Tribunal members, when presented with the Agreed Statement of Facts, found there was sufficient evidence to show that Mr. Nelson's actions were unprofessional and harmful to the occupational therapist profession in Alberta. By not meeting his professional obligations, the actions of Mr. Nelson have eroded the trust placed in him by his patients and by extension, the greater public.
31. The College's Code of Ethics guides the conduct of its regulated members. It outlines the need for respect, integrity and competence. Mr. Nelson did not act with integrity when he entered into a sexual relationship with his patient LG while she was still receiving treatment from him, and his conduct harms the integrity of the profession of occupational therapy.
32. The College's Standards of Practice outlines the process that is required for providing occupational therapy services. The evidence clearly shows that Mr. Nelson failed to comply with Standard 10 and maintain appropriate boundaries. Standard 10 states in part "An occupational Therapist shall never engage in sexual abuse of a client or engage in sexual misconduct towards a client". Standard 10 also includes the requirement to have an occupational therapist-client relationship in which the health professional "... maintains appropriate professional boundaries with clients at all times and understands the power imbalance that exists in favor of the occupational therapist". In texting material of a personal and/or sexual nature, Mr. Nelson significantly crossed these boundaries, and has admitted his relationship with Patient LG included sexual intercourse in Allegation 2(c).
33. The Hearing Tribunal acknowledges that Mr. Nelson has been a willing and candid participant in the investigation and hearing process, in providing all materials asked for and providing details when asked for by the College. This has made for a very efficient, open and transparent hearing.
34. **JOINT SUBMISSION ON SANCTION**
35. As reflected in the Joint Submission on Penalty, the Complaints Director and Mr. Nelson jointly submit and agree that the following penalty orders are appropriate:
  - (1) Mr. Nelson shall pay fifty (50%) percent of the costs of the investigation and hearing up to a maximum of \$12,000.00 within a period of twenty-four (24) months from the date the Hearing Tribunal issues its written decision.
  - (2) Mr. Nelson's practice permit shall be cancelled effective immediately
36. After discussions between the Hearing Tribunal and the parties, the Hearing Tribunal confirmed that the Bill 21 changes to the HPA require that where a finding of sexual abuse is made the regulated member's practice permit and registration are required to be cancelled immediately. Mr. Nelson confirmed that was his understanding and expectation

and both parties agreed that the order 2 in the Joint Submission on Penalty was modified accordingly to include cancellation of Mr. Nelson's registration as well.

## **VII. DECISION ON PENALTY AND CONCLUSIONS OF THE HEARING TRIBUNAL**

37. The Hearing Tribunal carefully reviewed the Joint Submission on Penalty from the Complaints Director and Mr. Nelson, keeping in mind the mandatory cancellation of Mr. Nelson's practice permit, and is satisfied that those sanctions meet the public interest test and uphold the integrity of the profession. As such, the Hearing Tribunal accepts the proposed penalty orders as presented in the Joint Submission on Penalty.
38. The Hearing Tribunal agreed with the Complaints Director's submissions concerning the penalty orders and the applicability of selected *Jaswal* factors. In Alberta, occupational therapists are regulated professionals under the HPA and must practice under both the Code of Ethics and the Standards of Practice of the College. Regulated members are asked to reflect on and review their practices yearly to be sure they are practicing within these obligations. The requirements in these documents are in place so that all occupational therapists in Alberta can be trusted by the public as health professionals who are safe and effective in providing assessment and treatment.
39. The order that Mr. Nelson pay fifty (50%) percent of the costs associated with the investigation and hearing to a maximum of \$12,000.00 serves as a deterrent to other members of the College from committing similar acts of unprofessional conduct. In addition, the issuance of that order maintains the integrity of the profession, demonstrates that the College and the Hearing Tribunal are committed to upholding the discipline process contained in the HPA in a responsible manner and establishes that Mr. Nelson shall bear proportionate financial consequences for his actions.
40. The Hearing Tribunal commends Mr. Nelson for his acceptance of responsibility and understanding the implications of his unprofessional conduct. Mr. Nelson has agreed to the proposed sanctions and recognizes that the mandatory cancellation of his practice permit and registration are required under the Bill 21 changes to the HPA and means he is ineligible to reapply for registration or reinstatement with the College in the future.
41. The Hearing Tribunal carefully considered the Patient Impact Statement from Patient LG. and found that her submission expressed the significant and ongoing negative impact Mr. Nelson's unprofessional conduct has had on her life.

## **VIII. ORDERS OF THE HEARING TRIBUNAL**

42. The Hearing Tribunal therefore makes the following orders:
  - (1) Mr. Nelson shall pay fifty (50%) percent of the costs of the investigation and hearing to a maximum of \$12,000.000, within a period of twenty-four (24) months from the date the Hearing Tribunal issues its written decision.

- (2) Mr. Nelson's practice permit and registration shall be cancelled effective immediately as of the December 14, 2021 hearing date.

DATED the 11<sup>th</sup> day of January, 2022 in the City of Edmonton, Alberta.

James Lees.  
James Lees, Chair,  
On behalf of the Hearing Tribunal