

IN THE MATTER OF A HEARING OF THE HEARING TRIBUNAL
Into the conduct of Jared Tam, RD, Permit No.: 2872

IN THE MATTER OF THE *HEALTH PROFESSIONS ACT*, being
Chapter H-7 of the Revised Statutes of Alberta

**DECISION OF THE HEARING TRIBUNAL
OF THE COLLEGE OF DIETITIANS OF ALBERTA**

I. HEARING

1. The hearing was conducted pursuant to the Health Professions Act (“HPA”) and virtually on October 10, 2024, with the following individuals participating:

Hearing Tribunal (the “Hearing Tribunal”)

- Holly Knight, RD, Chair
- Danielle Barriault, RD
- Andrew Otway, Public Member
- Sarita Dighe-Bramwell, Public Member

Independent Legal Counsel to Hearing Tribunal

- Blair E. Maxston, K.C.

College of Dietitians of Alberta (the “College”)

- Doug Cook, Complaints Director
- Greg Sim, Legal Counsel for the Complaints Director
- Lisa Omerzu, Hearings Director

Investigated Member

- Jared Tam (“**Mr. Tam**”)
- Andrew Kim, Legal Counsel for Mr. Tam

Court Reporter and four (4) observers

II. PRELIMINARY MATTERS

2. The Hearing Tribunal was held virtually on October 10, 2024 starting at 9:00 AM. The Chair made opening comments, including introductions of the parties and a review of the allegations in the Notice of Hearing, Notice to Attend and Notice to Produce dated July 26, 2024 (the “**Notice of Hearing**”) which is set out as Tab 1 to the Agreed Statement of Facts described below.
3. There were no objections to conducting the hearing virtually or to the composition or jurisdiction of the Hearing Tribunal. However, the Chair noted that Mr. Tam comes from the Northwest Territories (the “NWT”) and that the complaint relates to events that occurred while he was practicing in the NWT. Mr. Sim submitted that Mr. Tam is a regulated member of the College and that the College therefore has jurisdiction over his actions since its jurisdiction is personal and is not based on location. Mr. Sim also advised that there is no equivalent to the College in the NWT and that it is common for NWT dietitians to be registered with a “southern College”. The Hearing Tribunal was satisfied that it had jurisdiction to conduct the hearing.

4. No Hearing Tribunal members identified a conflict of interest and there were no objections to the jurisdiction of the Hearing Tribunal to proceed.
5. The hearing proceeded as a consent hearing by way of an Agreed Statement of Facts and Acknowledgement of Unprofessional Conduct document and a Joint Submission on Sanction. Accordingly, no witnesses were called to give evidence during the hearing.

III. EXHIBITS

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

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

Exhibit 2: Joint Submission on Sanction.

Shortly before the hearing date, the Hearing Tribunal was provided with a revised Joint Submission on Sanction by the parties as a replacement for a Joint Submission on Sanction previously provided to it. For the purposes of this decision, the amended Joint Submission on Sanction will simply be referred to as the “Joint Submission on Sanction”.

7. Also, Mr. Sim advised that in some of the materials before the Hearing Tribunal there was an incorrect reference in the Agreed Statement of Facts concerning allegation 2 and the reference to “SNWET”. That should be changed to “SNWT”. The Hearing Tribunal accepted that change.

IV. BACKGROUND

8. 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.
9. Briefly, on September 5, 2023 the College received a complaint from [REDACTED] regarding Mr. Tam’s access of confidential health records and information (the “Complaint”). An investigation was carried out concerning the Complaint, an Investigation Report was prepared and this matter was referred to a hearing.
10. Allegation 1 relates to 11 instances where Mr. Tam used his access to EMR to access health records and information about [REDACTED], a colleague or acquaintance of his. There was no clinical purpose for Mr. Tam to access the records and information and he had no legal authority or reason to use his EMR access to access the records or information.
11. Mr. Tam did not report his unauthorized accesses to his employer or any other authority. The improper accesses were discovered as part of an audit of [REDACTED]’s EMR on August 3, 2023.
12. Mr. Tam was subject to an internal investigation by his employer as the result of these events. At a September 22, 2023 fact-finding meeting with his employer, Mr. Tam admitted to inappropriately accessing the information and records.

13. Mr. Tam failed to comply with his obligations to his employer and under the NWT *Health Information Act*, SNWT 2014, c.2, by failing to report his unauthorized accesses to his employer, the NWT Health and Social Services Authority or the NWT Information and Privacy Commissioner.

V. ALLEGATIONS

14. Two (2) allegations are set out in the Notice of Hearing as follows:
1. Accessing health information via Electronic Medical Records (EMR), about a colleague or acquaintance, [REDACTED], on one or more occasions without proper authority or reason to do so, particulars of which are set out in Appendix "A".
 2. Failing to report improper access to health information set out in Appendix "A" to appropriate authorities prior to his employer's investigation of such improper access in or around August, 2023.

VI. ADMISSION OF UNPROFESSIONAL CONDUCT

15. 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.
16. In the Agreed Statement of Facts and Admission of Unprofessional Conduct, Mr. Tam made admissions to both allegations in the Notice of Hearing, and acknowledged that his conduct amounts to unprofessional conduct within the meaning of section 1(1)(pp)(ii), (iii) and (xii) of the HPA and acknowledged that his conduct breached one or more of the following College Code of Ethics sections: 2.1 Client Centered Focus, 2.3 Confidentiality, 2.4(4) Professional Boundaries, 3.0 and 3.5 Honesty. Mr. Tam also acknowledged that his conduct breached one or more of the following Standards of Practice of the College: Standard 11(b) Privacy/Confidentiality and Standard 12(c) and/or (d) Professional Practice Obligations.

VII. SUBMISSIONS OF THE PARTIES

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

17. Mr. Sim's submissions on behalf of the Complaints Director can be summarized as follows:
- Mr. Tam's conduct meets the definition of unprofessional conduct in the HPA. The "another enactment" that Mr. Tam breached was the NWT *Health Information Act*.
 - Mr. Sim reviewed the applicable Standards of Practice and Code of Ethics sections.
 - Pursuant to the NWT *Health Information Act* Mr. Tam had an obligation to report a privacy breach.
 - Both allegations are factually true and constitute unprofessional conduct.

B. Submissions from Mr. Kim: Liability Phase of Hearing

18. Mr. Kim's submissions on behalf of Mr. Tam can be summarized as follows:
- As per paragraph 9 of the Agreed Statement of Facts, Mr. Tam admitted to his wrongdoing when his employer investigated these events.
 - Although not mentioned in the Agreed Statement of Facts, Mr. Tam's employer suspended him from August to October of 2023 and he could not ultimately work for 8 months.
19. Mr. Sim had no comments in response.

C. Findings of the Hearing Tribunal

20. After private deliberations, the Hearing Tribunal reconvened and advised both parties that it had accepted the admission of unprofessional conduct and had made findings of unprofessional conduct concerning both allegations. The Hearing Tribunal also asked Mr. Sim to provide the citations for the NWT legislation that he referred to during his submissions. In a 11:24 a.m. October 10, 2024 email, Mr. Sim provided that information.

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

21. Mr. Sim's submissions on behalf of his client concerning penalties can be summarized as follows:
- Mr. Sim reviewed the Joint Submission on Sanction document and orders 1 to 6 that it contains.
 - Mr. Sim reviewed the *R. v. Anthony Cook* Supreme Court of Canada case and the deference that the Hearing Tribunal should show to a joint submission concerning penalty. Mr. Sim referred to the "public interest test" and submitted that the Hearing Tribunal should accept the joint penalty submission unless it is contrary to the public interest or brings the administration of justice into disrepute, which he argued was a high bar.
 - Mr. Sim then reviewed the *Jaswal* factors for penalty orders.
 - In terms of the seriousness of the unprofessional conduct, the unauthorized access to personal health records is of fundamental importance to the healthcare system as providing care depends on patients knowing that their personal health records will be kept confidential.
 - In terms of Mr. Tam's age and experience, he is not brand new to the profession and ought to have understood his confidentiality obligations.
 - In terms of the age and impact on the patient, there is no information that ■■■ was particularly vulnerable but she did make a complaint. This is a neutral factor.

- In terms of the number of times that the unprofessional conduct occurred, there was a pattern of unprofessional conduct and this is an aggravating factor.
- In terms of Mr. Tam's role with regards to his unprofessional conduct, he went to the fact-finding meeting and admitted his actions.
- In terms of other factors impacting Mr. Tam, he was suspended by his employer for a considerable period of time. This is a mitigating factor.
- In terms of specific and general deterrence, the Hearing Tribunal must send a message that patient information and confidentiality is sacrosanct and if that is breached it undermines the ability of healthcare providers to function.
- In terms of the need to maintain the public's confidence in the dietitian profession, when the public reads the penalties they will remain confident in the profession and the College's ability to regulate it.
- In terms of the degree to which the unprofessional conduct was a departure from the profession, this was not a grey area. The Hearing Tribunal should avoid the temptation to characterize this unprofessional conduct as minor.
- In terms of the range of penalty order in other cases, Mr. Sim reviewed two previous College discipline decisions.
- The Joint Submission on Sanction is consistent with the public interest and does not undermine the administration of justice.

E. Submissions of Mr. Tam: Penalty Phase of Hearing

22. Mr. Kim's submissions can be summarized as follows:

- The Hearing Tribunal should defer to the Joint Submission on Sanction as it satisfies the public interest test.
- Mr. Kim reviewed other discipline cases where deference was given to joint submissions. Mr. Kim also reviewed the sanctions from the two other College discipline decisions that Mr. Sim reviewed.
- The sanctions ensure that Mr. Tam's rehabilitation will occur and also establish general and specific deterrence.
- The employer suspension and a costs order of \$5,000.00 also achieve deterrence.
- Mr. Kim agreed with Mr. Sim's review of the *Jaswal* factors.

F. The Hearing Tribunal's Questions

23. After privately deliberating, the Hearing Tribunal reconvened and asked a series of questions. First, the Hearing Tribunal asked for an estimate of the total costs of the investigation and hearing and were advised that they were between \$9,000.00 and \$11,000.00 in total.
24. After asking questions about the selection of the course referenced in the Joint Submission on Sanction and the cost of the course, Mr. Sim advised that Mr. Tam will be allowed to select a course that is acceptable to the Complaints Director and that the course would typically cost between \$300.00 and \$500.00.
25. In response to its question, the Hearing Tribunal was advised that Mr. Tam has been a registered dietitian since 2013. When Mr. Tam was first hired by his employer he completed confidentiality training.

VIII. 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 (including the Agreed Statement of Facts) and the verbal submissions of both parties, as well as Mr. Tam'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. Tam.
28. With respect to the second task, the Hearing Tribunal accepts Mr. Tam's admission of unprofessional conduct based on the evidence as set out in the Agreed Statement of Facts, including the acknowledgement of responsibility by Mr. Tam.
29. The Hearing Tribunal finds that the conduct admitted to by Mr. Tam clearly meets the threshold for unprofessional conduct as defined in the HPA and as reflected in the HPA references immediately after the allegations in the Notice of Hearing.
30. The Hearing Tribunal also accepted the submissions of the Complaints Director and Mr. Tam in terms of the findings of unprofessional conduct.
31. The College's clear legislated mandate is to serve the public interest by regulating dietitians to ensure that they provide safe, competent and ethical care. As healthcare providers, dietitians have a privilege which allows them to access medical records. That privilege comes with an obligation to ensure that privacy is always paramount since healthcare records can contain sensitive information. Each time a healthcare professional inappropriately accesses a person's information that undermines the trust that the public has in terms of the healthcare system safeguarding their information.

32. Patients and clients are in a vulnerable position since intimate and private personal information may be included in their EMR. Mr. Tam's actions were clearly inconsistent with his obligations as a regulated professional.
33. The Hearing Tribunal also acknowledged that Mr. Tam has been a willing and candid participant in the consent hearing process. This has made for a very efficient, open and transparent hearing.

IX. JOINT SUBMISSION ON SANCTION

34. As reflected in the Joint Submission on Penalty, the Complaints Director and Mr. Tam jointly submit and agree that the following penalty orders are appropriate:
 1. The Hearing Tribunal's written decision shall serve as a reprimand.
 2. Mr. Tam shall complete a boundaries and professional ethics course approved in writing in advance by the Registrar, at Mr. Tam's cost within twelve (12) months of the Hearing Tribunal's written decision.
 3. Mr. Tam's practice permit shall be suspended for a period of one (1) month. Mr. Tam's suspension shall be served on dates acceptable to the Complaints Director.
 4. For a period of 18 months from the reinstatement of his practice permit, Mr. Tam must provide the Complaints Director with written confirmation of any dietetic employers and that he has provided his employer with a copy of the Hearing Tribunal's written decision.
 5. Mr. Tam shall pay costs of the investigation and hearing in this matter in the amount of \$5,000 within 6 months of the Hearing Tribunal's written decision. Payments may be made in installments acceptable to the Complaints Director and commencing no later than one month following the Hearing Tribunal's written decision.
 6. If Mr. Tam fails to comply with any of the foregoing, or if disputes arise regarding the implementation of the foregoing, the Complaints Director may take any action pursuant to section 82(3) of the *Health Professions Act*, RSA 2000, c. H-7.

X. DECISION OF THE HEARING TRIBUNAL ON PENALTY

35. The Hearing Tribunal carefully reviewed the Joint Submission on Sanction from the Complaints Director and Mr. Tam 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 Sanction.
36. The Hearing Tribunal agreed with the Complaints Director's and Mr. Tam's submissions concerning the penalty orders and the *Jaswal* factors.

37. Preventing and in this case penalizing unauthorized access to private healthcare records is needed to uphold trust as a key element of the healthcare provider-patient relationship.
38. Mr. Tam has been practicing for over 10 years and should have been well aware of his privacy and confidentiality obligations. The fact that he accessed [REDACTED]'s health record 11 times without any clinical purpose and without any legal authority is extremely serious unprofessional conduct.
39. The penalty orders in the Joint Submission on Sanction are appropriate in terms of both general and specific deterrence and will ensure that the public is aware that the College treats breaches of confidentiality as serious unprofessional conduct.
40. Mr. Tam's actions do not fall within a grey area. Instead, his conduct represents a marked departure from the ethical and professional obligations of registered dietitians.
41. The penalties in the Joint Submission on Sanction are consistent with the discipline cases and caselaw referenced by the parties.
42. The order that Mr. Tam pay \$5,000.00 of the costs associated with the investigation and hearing within 6 months serves as a deterrent to other regulated members of the College from committing similar acts of unprofessional conduct. In addition, 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 ensures that Mr. Tam shall bear proportionate financial consequences for his actions.
43. The Hearing Tribunal did take into account the mitigating factors in this matter including Mr. Tam's cooperation and admissions which resulted in a consent hearing and avoiding a lengthy and costly contested hearing.

XI. ORDERS OF THE HEARING TRIBUNAL

44. The Hearing Tribunal therefore makes the following orders:
 1. The Hearing Tribunal's written decision shall serve as a reprimand.
 2. Mr. Tam shall complete a boundaries and professional ethics course approved in writing in advance by the Registrar, at Mr. Tam's cost within twelve (12) months of the Hearing Tribunal's written decision.
 3. Mr. Tam's practice permit shall be suspended for a period of one (1) month. Mr. Tam's suspension shall be served on dates acceptable to the Complaints Director.
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6. If Mr. Tam fails to comply with any of the foregoing, or if disputes arise regarding the implementation of the foregoing, the Complaints Director may take any action pursuant to section 82(3) of the *Health Professions Act*, RSA 2000, c. H-7.

DATED the 30th day of October 2024 in the City of Edmonton, Alberta.



Holly Knight, Chair,
On behalf of the Hearing Tribunal