

IN THE MATTER OF THE *VETERINARY PROFESSION ACT*, RSA 2000, c V-2, AS AMENDED;

AND IN THE MATTER OF A HEARING INTO THE CONDUCT OF DR. BIKRAMJIT SAHI, A MEMBER OF THE ALBERTA VETERINARY MEDICAL ASSOCIATION;

AND IN THE MATTER OF A PROFESSIONAL CONDUCT HEARING REGARDING THE CONDUCT OF DR. BIKRAMJIT SAHI UNDERTAKEN VIRTUALLY (COVID 19);

AND INTO THE MATTER OF A REFFERAL BY THE ALBERTA VETERINARY MEDICAL ASSOCIATION COMPLAINTS DIRECTOR IN ACCORDANCE WITH S. 27.1 OF THE *VETERINARY PROFESSION ACT* AND INTO THE MATTER OF A REFFERAL BY THE ALBERTA VETERINARY MEDICAL ASSOCIATION COMPLAINTS DIRECTOR IN ACCORDANCE WITH S. 41.1(3)(b) OF THE *VETERINARY PROFESSION ACT*

### **REASONS FOR DECISION**

**Take Notice** a public hearing into the conduct of Dr. Bikramhit Sahi (“Dr. Sahi”) was held on June 23-24, August 20 and October 14-15, 2020, via the online platform, WebEx, pursuant to the *Veterinary Profession Act*, R.S.A 2000, c.V-2 as amended (the “Act”). The hearing was heard virtually due to the COVID-19 pandemic.

**FURTHER TAKE NOTICE** that the Hearing Tribunal has made the decision set out below with respect to the allegations of unprofessional conduct noted below.

### **ATTENDEES**

The following individuals attended the hearing:

#### **The Hearing Tribunal:**

Dr. Troy Bourque, Chair

Dr. Greg Evans

Dr. Navjot Gosal

Mr. Brian Marcotte

Mr. Matthew Woodley attended as independent legal counsel for the Hearing Tribunal.

For the ABVMA: Dr. Phil Buote, Complaints Director

Ms. Karen Smith Q.C., and Ms. Frydenlund, legal counsel for the Complaints Director

Mr. David Girard, legal counsel for Dr. Sahi

The hearing was a public hearing pursuant to section 35 of the Act.

**Witnesses:**

Dr. Phil Boute  
Dr. Lynn Gratz  
Ms. Lynn Bussey  
Mr. Greg Hall  
Dr. Peter Martin  
Dr. Bikramjit Sahi  
Mr. Kenneth John Davies  
Dr. Omar Rahaman  
Dr. Robert Lim

**EXHIBITS**

The following exhibits were entered at the hearing:

- Exhibit 1: Notice of Hearing regarding the PIPS matter
- Exhibit 2: Notice of Hearing on the Hydromorphone matter
- Exhibit 3: Notice to Attend on the PIPS matter
- Exhibit 4: Notice to Attend on the Hydromorphone matter
- Exhibit 5: Statutory Declaration serving the PIPS materials
- Exhibit 6: Statutory Declaration on the Hydromorphone materials
- Exhibit 7: Binder of materials regarding the PIPS matter reference as disclosure documents.
- Exhibit 8: Investigation Report Dated December 19, 2019 and Submitted by Dr. Peter Martin on the Hydromorphone matter
- Exhibit 9: ABVMA Letter Dated January 25, 2018
- Exhibit 10: Index to Education Certificates of Dr. Sahi with attached certificates
- Exhibit 11: Series of E-mails from July 28 through to August 7 regarding request for zip file
- Exhibit 12: Hydromorphone Purchase Summary
- Exhibit 13: Summary Forensic Report Prepared by Mr. Kenneth Davies, Dated August 18, 2020
- Exhibit 14: CV of Dr. Omar S. Rahaman
- Exhibit 15: Report of Dr. Omar Rahaman Dated September 15, 2020
- Exhibit 16: Report of Dr. Ronald Lim Dated October 8, 2020

## PROCEDURAL MATTERS

### Application regarding reasonable apprehension of bias

At the commencement of the Hearing, legal counsel for Dr. Sahi raised an objection to the composition of the Hearing Tribunal. Specifically, he stated that the public member originally scheduled to attend, John de Jong, had participated on the Hearing Tribunal which found Dr. Sahi guilty of unprofessional conduct in December of 2015. Dr. Sahi's position is that this results in a conflict and that Mr. de Jong should not participate in this hearing. Further, he submitted that Dr. Sahi is not prepared to proceed without a public member pursuant to section 9.6(2) of the Act.

In response, counsel for the Complaints Director submits that the real issue is an allegation of a reasonable apprehension of bias, and that the law does not support a finding that involvement by a hearing tribunal member in a previous hearing dealing with the same investigated member results in a finding of a reasonable apprehension of bias. In support, legal counsel cited cases relating to this issue. Those cases indicate that there is a presumption that members reach their decisions by relying solely on the evidence before them in the record and that they are able to ignore any other evidence from other files (see eg *Lopez v Canada (Citizenship and Immigration)*, 2011 FC 908 at para 5).

The Hearing Tribunal deliberated on this issue. As a result of those deliberations, Mr. de Jong has decided that, out of an abundance of caution, he would step down as the Hearing Tribunal's public member. To be clear, this was not a reflection that Mr. de Jong concluded that he had an actual bias in this matter. Nor had the Hearing Tribunal concluded that the legal test for reasonable apprehension of bias was met. This reflected a decision that was made out of an abundance of caution by Mr. de Jong.

Mr. de Jong therefore stepped down as a member of the Hearing Tribunal. The Hearings Director appointed Brian Marcotte as the public member and Mr. Marcotte was available to join the hearing immediately.

### Application to split a witness's evidence

This issue arose during the evidence of Dr. Sahi. For scheduling reasons, legal counsel for Dr. Sahi requested that an expert witness be permitted to give evidence during the ongoing evidence in chief of Dr. Sahi. Legal counsel for the Complaints Director objected to this, indicating that it would not be appropriate to have a witness's evidence interrupted. The Hearing Tribunal deliberated on the issue and agreed with legal counsel for the Complaints Director. The scheduling issue could be overcome through evidence of the expert being given remotely, and it would not be appropriate for another witness to provide evidence when a material witness's evidence was incomplete.

### Rebuttal Evidence

Following the conclusion of Dr. Sahi's case, legal counsel for the Complaints Director applied to call rebuttal evidence. She stated that the evidence given by Dr. Sahi was the first time that the Complaints Director had learned that Dr. Sahi claimed to have used the hydromorphone for personal use, rather than having sold it. She stated that expert evidence was needed with respect to Dr. Sahi's evidence on the use of the drug, the quantities used and the likelihood of Dr. Sahi's explanation.

That request was objected to by legal counsel for Dr. Sahi due to the fact that the necessary adjournment would unduly delay the matter.

The Hearing Tribunal granted the adjournment and the request for rebuttal evidence. The Hearing Tribunal agreed that the Complaints Director heard substantial evidence from Dr. Sahi in relation to the issue of use of the hydromorphone for the first time on cross-examination and it was not possible for the Complaints Director to have anticipated that evidence based on the written response from Dr. Sahi to the allegations. The proposed evidence was directly related to the evidence from Dr. Sahi, and the Hearing Tribunal concluded that it would benefit from medical evidence regarding the use of substantial quantities of that drug by one person. It was clarified that Dr. Sahi would be given access to the proposed report in order to determine whether he wished to call his own medical evidence in reply.

### **BACKGROUND**

Two Notices of Hearings involving two matters were examined in this hearing. The first matter was referred to as the "PIPS matter" (referring to the ABVMA Practice Inspection and Practice Standards Bylaw). This matter arose pursuant to section 41.1 (3)(b) of the Act. The second matter was identified as the "Hydromorphone matter" and was initiated as a result of a section 27.1 complaint by the Complaints Director.

The PIPS matter relates to a decision from a Hearing Tribunal of December 2, 2015 (the "2015 Decision") and specifically a responsibility to pass two PIPS practice inspections and complete continuation education orders of the Hearing Tribunal. In addition, the Notice of Hearing in the PIPS matter included allegations of failing to cooperate with an ABVMA inspector or ABVMA investigation.

On the Hydromorphone matter there were a number of allegations. Namely, that Dr. Sahi purchased disproportionate amounts of Hydromorphone from Western Drug and Distribution Centre ("WDDC"); prescribed and/or dispensed hydromorphone in a manner that was not compliant with the ABVMA Council Guidelines; and, distributed and/or sold controlled drugs (hydromorphone) in amounts and/or in a manner that was not in accordance with the provisions of the Controlled Drugs and Substances Act and/or the provisions of the Narcotic Control Regulations.

Dr. Sahi has been suspended since December 16, 2019 pursuant to a conditions imposed pursuant to section 33 of the Act.

Both parties conceded that Hearing Tribunal had the jurisdiction over both the PIPS and Hydromorphone matters, and there was no objection to the members of the Hearing Tribunal following Mr. Marcotte's appointment.

The allegations in the two Notices of Hearing are as follows:

#### **Contravening an Order of the Hearing Tribunal**

1. That you failed to successfully satisfy the Practice Inspection Practice Standards inspections of February 20, 2018 and August 15, 2018.
2. That in failing to meet the minimum standards for practice inspections, you failed to maintain the appropriate minimum PIPS standards.
3. That you failed to complete the continuing education ordered by the Hearing Tribunal on December 2, 2015 in accordance with the terms of the Order.

#### **Failing to Cooperate with the Inspector**

4. That in the inspection of February 20, 2018, you were inappropriate in your interactions with the inspector and misleading with respect to the information you provided to the inspector.

Such conduct constitutes unprofessional conduct pursuant to s. 1(n.1)(i), (ii), (x) and/or (xi) of the *Veterinary Profession Act*, R.S.A. 2000, c. V-2, as amended.

#### **Controlled Drugs**

1. You purchased amounts of Hydromorphone from Western Drug and Distribution Centre ("WDDC") in a manner that was disproportionate to the use at Fauna Animal Hospital for the period of 2014 through to 2019 inclusive.
2. That you inappropriately prescribed and/or dispensed Hydromorphone during the period of 2014 through to 2019, specifically in a manner that is not compliant with the ABVMA Council Guidelines regarding Prescribing, Dispensing, Compounding and Selling Pharmaceuticals.
3. That you distributed and/or sold controlled drugs, namely Hydromorphone in amounts and/or in a manner that was not in accordance with the provisions of the Controlled

Drugs and Substances Act, SC 1996, c 19, as amended and/or the provisions of the Narcotic Control Regulations.

4.

Such conduct constitutes unprofessional conduct pursuant to s. 1(n.1) of the *Veterinary Profession Act*, R.S.A. 2000, c. V-2, as amended.

#### **Failure to Cooperate with an Investigation**

5. That you failed to comply with the requests of the ABVMA investigator to provide a written response to the complaint.
6. That you failed to respond to the investigator's emails and telephone calls to you with respect to the investigation.

Such conduct constitutes unprofessional conduct pursuant to s. 1(n.1) of the *Veterinary Profession Act*, R.S.A. 2000, c. V-2, as amended.

#### **REASONS FOR THE DECISION OF THE HEARING TRIBUNAL**

##### **PIPS Matter**

1. Failure to successfully satisfy the Practice Inspection Practice Standards (PIPS) inspections of February 20, 2018 and August 15, 2018.

With respect to allegation number one, the Hearing Tribunal finds Dr. Sahi guilty of unprofessional conduct.

##### **Reason for finding**

Dr. Lynn Gratz attended Dr. Sahi's practice, Fauna Animal Hospital on February 20, 2018, to conduct a directed PIPS inspection arising from the 2015 Decision. Dr. Gratz's worksheet and findings are set out in Exhibit 7. She identified sixteen areas requiring improvement in Universal Standards and Service Categories. Additionally, Dr. Gratz reported concerns regarding medical records and the use of unregistered individuals in the practice of veterinary medicine. The ABVMA PIPS Committee met on April 5, 2018 and determined that the Dr. Sahi's clinic did not meet minimum standards.

The Complaints Director testified that although this was a violation of the Orders of the Hearing Tribunal, he did not exercise his discretion to treat the failure as a complaint or refer the matter for a hearing at that time. He gave Dr. Sahi the opportunity to correct the deficiencies as outlined in the letter to Dr. Sahi from the Complaints Director dated May 18, 2018. He further

indicated in that letter an inspection would occur prior to August 31, 2018 to verify that deficiencies had been corrected.

The inspection on August 15, 2018 was conducted by Dr. Gratz. In attendance was the Complaints Director. The Complaints Director decided to attend this inspection due to the information received from Dr. Gratz that the first inspection had been difficult to conduct given Dr. Sahi's behaviour.

The testimony of Dr. Lynn Gratz and the Complaints Director indicated that the August PIPS inspection arising from the 2015 Decision failed to demonstrate that Dr. Sahi met the minimum practice standards in several key areas including controlled drug logs and medical records. The findings from the second PIPS inspection are also set out in Exhibit 7. Those records disclose significant failings, including on issues that had been identified by Dr. Gratz as serious issues following the February 2018 practice inspection.

Counsel for Dr. Sahi argued that previous PIPS inspections had been satisfactory to the ABVMA and that Fauna Animal Hospital had not significantly changed since those earlier inspections. He therefore asked the Hearing Tribunal to conclude that it was more likely that the minimum standards, in fact, had been met in 2018 and that the "yardstick" against which Dr. Sahi was being assessed had changed.

Dr. Sahi in his evidence indicated that he believed that Dr. Gratz was biased in her inspection and that the inspection did not accurately reflect the state of his clinic at the time. He stated that Dr. Gratz came to the inspection with an agenda to find problems with his clinic rather than to conduct an objective review in accordance with the PIPS Bylaw standards.

Dr. Sahi also adduced expert testimony (Exhibit 13) that Dr. Sahi's signature's on the PIPS Requirement Verification of VPE Compliance was in fact not his signature. Legal counsel for the Complaints Director did not challenge the admission of the expert report nor the qualifications of the expert. The expert evidence indicated that the signature failed a positive correlation test with the signature writing habit of Dr. Sahi. Furthermore, the expert stated that irregularities in the signed documents provided to him calls into question the authenticity of the signatures of Dr. Sahi on these documents. In response, counsel for the Complaints Director noted that the signature had been done electronically which might have had an impact on the comparison, and that in any event the suggestion that someone involved in the PIPS inspection process forged Dr. Sahi's signature is simply not believable and is not otherwise supported by the evidence. In any event, the real issue is whether Dr. Sahi failed to satisfy the PIPS inspections as required by the 2015 Decision, and the evidence indicates that he did not.

The Hearing Tribunal finds that the specific signature of Dr. Sahi is not relevant to this issue of whether or not he satisfied the PIPS inspection. Dr. Gratz's evidence was clear that he did not satisfy those requirements in several important areas. In fact, Dr. Gratz's testimony was clear: she stated that out of the 75-80 veterinary practices inspections that she had conducted, Dr. Sahi's clinic was the worst. She stated that the files were in disorder, including some parts of

the file being housed electronically, with other parts in a large stack of paper apparently ordered chronologically (that is, not in a particular patient's file). She testified both in chief and in cross-examination that the clinic was dirty and disorganized. The Hearing Tribunal rejects Dr. Sahi's suggestion that Dr. Gratz came to the PIPS inspections with an agenda or with a bias against him. There is no credible evidence other than the suspicions raised by Dr. Sahi that this is the case, and the evidence from Dr. Gratz was credible, particularly given her long experience with veterinary medicine, acting as a locum in various practices, and her specific experience with practice inspections. Dr. Gratz was clearly very concerned about the state of Dr. Sahi's clinic, and the Hearing Tribunal accepts that her findings reflected in Exhibit 7 for both the February and August 2018 practice inspections represented an accurate portrayal of the state of Dr. Sahi's clinic. There is no evidence that the "yardstick" had changed as suggested by Dr. Sahi. The Hearing Tribunal agrees with Complaints Director that Dr. Sahi failed both PIPS inspections, which represents a breach of the orders set out in the 2015 Decision. This represents unprofessional conduct pursuant to section 1(n.1)(vii) and (xi) of the Act.

2. Failure to meet the minimum standards for practice inspections, you failed to maintain the appropriate minimum PIPS standards.

With respect to allegation two, the Hearing Tribunal finds Dr. Sahi guilty of unprofessional conduct.

### **Reason for finding**

The ABVMA, as a self-governing profession, establishes a minimum set of standards that all Veterinary Practice Entities (VPE's) are held to. The authority to do so is set out in the *Veterinary Profession General Regulations*. These standards are set out in the ABVMA bylaws. The PIPS Bylaws are developed to meet the requirements of the *Veterinary Profession General Regulation* (Part 4). The PIPS Bylaws consist of eight Universal Standards and fifteen Service Categories. All VPE's must be compliant with the Universal Standards (see PIPS Bylaws, November 2014, page 3).

Legal counsel for the Complaints Director presented evidence of deficiencies in PIPS standards through the two directed inspections undertaken by Dr. Gratz, and the Hearing Tribunal accepts that evidence for the reasons set out above. The Hearing Tribunal notes that the Complaints Director provided Dr. Sahi a reasonably amount of time after the February PIPS inspection to correct the deficiencies noted, and the evidence is clear that he failed to do so. Major deficiencies in maintaining retrievable medical records and controlled substances logs were particularly concerning to the Hearing Tribunal, although the evidence of Dr. Gratz set out Exhibit 7 and in her evidence supports a number of other instances where Dr. Sahi failed to meet the minimum standards in the PIPS Bylaws.

Dr. Sahi provided no evidence to the Hearing Tribunal to suggest the he met minimum PIPS standards other than his suggestion that the inspections from previous years, combined with his evidence that nothing at his practice had changed, indicate that Dr. Gratz's findings are not



accurate. The Hearing Tribunal does not accept that evidence. It is entirely possible that Dr. Sahi met standards in the past, but then failed to meet them in 2018. The relevant evidence arises from Dr. Gratz's evidence, the opportunity given to Dr. Sahi to address the concerns after February of 2018, and his clear failure to do so. This is conduct that is clearly contrary to the best interests of the profession, and amounts to unprofessional conduct pursuant to section 1(n.1)(ii) and (xi) of the Act.

The Hearing Tribunal questioned both legal counsel with respect to whether or not the allegations set out in allegations 1 and 2 are duplicative. Both legal counsel agreed that they were not duplicative, and legal counsel for Dr. Sahi specifically acknowledged that there was a distinction between the two. As indicated by legal counsel for the Complaints Director, this distinction relates to allegation 1 relating to the failure to abide by the terms of the 2015 Decision, and allegation 2 relating to the fact that Dr. Sahi failed to abide by the minimum standards required for all VPEs. Having regard to the submissions of counsel, the Hearing Tribunal confirms findings of unprofessional conduct in relation to both allegations 1 and 2.

3. Failure to complete the continuing education ordered by the Hearing Tribunal on December 2, 2015 in accordance with the terms of the Order.

With respect to allegation number three, the Hearing Tribunal finds Dr. Sahi guilty of unprofessional conduct.

### **Reason for finding**

The orders arising from the 2015 Decision required Dr. Sahi to undergo forty hours of continuing education, in addition to the annual twenty hours required by a Registered Veterinarian. The 2015 Decision also stipulated that ten of those forty hours were required to be on the subject of radiology. The Complaints Director testified that the order from the 2015 Decision were not met. Specifically, Dr. Sahi did not complete the required radiology continuing education requirement and was five hours deficient. The Complaints Director conceded that Dr. Sahi had met a substantial amount of the continuing education orders; but, in addition to the deficient radiology continuing education the ordered hours were also to on top of the required 20 hours. Dr. Sahi failed to meet this requirement.

Dr. Sahi argued that he was not able to complete the ordered radiology continuing education due to the inability to find continuing education on that topic. He testified that he contacted the Complaints Director for guidance. The Complaints Director testified that generally the ABVMA only advises if the continuing education meets a standard that would be approved by the ABVMA. They do not provide or direct the member to that education. It is the responsibility of the regulated member to seek out and complete the continuing education.

The Hearing Tribunal finds that Dr. Sahi failed to satisfy the orders of the Hearing Tribunal with respect to the number of required education hours and with respect to the radiology requirement. While it appreciates the fact that Dr. Sahi testified that he had difficulty in

satisfying the requirement, the onus is squarely on a regulated member to ensure that he or she satisfies any orders of a hearing tribunal constituted pursuant to the Act. This is a central requirement to maintain a self-governing profession, and members of the profession must take seriously the requirements established by a hearing tribunal for rehabilitation following a finding of unprofessional conduct. The requirement that Dr. Sahi engage in a certain number of hours of education relating to radiology arises from the findings of the hearing tribunal in the 2015 Decision. Such orders are made to ensure the protection of the public through the education and rehabilitation of a member. It is simply not sufficient for a member to state that he or she tried to comply, but did not. It was incumbent upon Dr. Sahi to take steps to address the issue with a hearing tribunal if he concluded that he would not be able to satisfy the condition. Dr. Sahi testified that it was difficult to do so, but did not lead evidence indicating that it was impossible to comply. For those reasons, the Hearing Tribunal finds that Dr. Sahi failed to comply with the orders set out in the 2015 Decision relating to education requirements, and such conduct is unprofessional conduct as set out in section 1(n.1)(vii) of the Act.

4. That in the inspection of February 20, 2018, you were inappropriate in your interactions with the inspector and misleading with respect to the information you provided to the inspector.

With respect to this allegation, the Hearing Tribunal finds Dr. Sahi guilty of unprofessional conduct.

### **Reason for finding**

The Hearing Tribunal's finding on this allegation requires it to assess the credibility of both Dr. Gratz and Dr. Sahi because the factual basis of the allegation relates to the interaction between those witnesses in February of 2018. Whether or not Dr. Sahi was inappropriate and misleading with respect to the information provided to Dr. Gratz must be assessed based on the conflicting evidence and any other evidence which tends to corroborate one witness's version of events. In making this assessment, the Hearing Tribunal is cognizant of the difficulties inherent in making assessments of credibility, and looks to each witnesses' power of observation, memory, the plausibility of each version of events, the ability to clearly recall the relevant issues, and the extent to which the version of events corresponds with the preponderance of the other evidence lead in the hearing.

Dr. Gratz's evidence in relation to this allegation was that the practice inspection on February 10, 2018 was the most difficult that she had experienced. She stated that after the customary tour of the facility, things started to go sideways. She said that when she went to the pharmacy, Dr. Sahi began to pull vials off of the shelf and put them in the pockets of his laboratory coat. She found that some of the medicine was out of date, and some significantly out of date. She states that Dr. Sahi seemed very distracted during the inspection and that it was difficult to get him to answer her questions. She stated that he would change the subject, circle around issues, and was distracting to her in conducting the inspection. She stated that she felt that Dr. Sahi

was trying to not allow her to focus on what she was supposed to be doing. She stated that although Dr. Sahi was polite to her, by the end of the inspection she felt manipulated by him. She also testified that Dr. Sahi changed what he had told her regarding the use of isolation for animals in the clinic. She said that she did not feel that Dr. Sahi was being honest with her regarding the questions posed by her, and that he told her that he found the inspection process insulting.

In cross-examination, Dr. Gratz was asked for examples of behavior of Dr. Sahi. She testified that an example of him attempting to distract her was when she was taking a picture of an oxygen tank which was not compliant, and an example of him interfering with her inspection was his removal of expired medicine from the pharmacy and putting them in his pocket. She testified that Dr. Sahi was very pointedly not cooperative and would change the topic in the middle of a discussion. She confirmed that she believed that he was well aware of what she was saying to him and rejected the suggestion put to her that there could have been a cultural or language barrier based on her observations. She stated that she had no reason to believe that his behavior arose from any mental health or any intoxication or incapacitation. She noted that she was so exasperated with the February inspection that she asked for help from the Complaints Director for the August 2018 inspection. She also indicated that she has not had other situations with similar difficulties liaising with a veterinarian, and that given her experience as a locum she deals with many people and many cultures without difficulty.

Dr. Sahi's evidence in relation to the February inspection was markedly different. He testified that from the time he first spoke to Dr. Gratz on the phone, he thought that he was in trouble and that she had a dictatorial tone. He stated repeatedly that whatever Dr. Gratz asked for, he provided. When asked to describe how the inspection unfolded, he asked his legal counsel to ask him specific questions. When asked about Dr. Gratz's evidence about manipulation and interference, Dr. Sahi's stated that he did not know what that related to. He stated that he had a moral duty to cooperate and he did it. His evidence on these issues was confusing and he did not provide specific evidence about interactions with Dr. Gratz in the same detail as Dr. Gratz did in her evidence. He stated that he was not attempting to hide anything from Dr. Gratz, and that this was her perception. He admitted, however, that there was expired medicine in the pharmacy, but denied that he put them in his pocket. Dr. Sahi also testified that he did not believe that there were any cultural or other reasons that he was not able to communicate with Dr. Gratz and that his perception was that she hated him.

First, the evidence given Dr. Gratz was clear and consistent with the findings set out in her reports (Exhibit 7). The Hearing Tribunal has accepted the Dr. Gratz's record of her visits to Dr. Sahi's clinic accurately record the state of the clinic at the relevant times. Dr. Gratz gave her evidence about the interactions with Dr. Sahi in a clear manner, and she provided examples of the specific difficulties which she had with Dr. Sahi. Dr. Sahi's evidence was very general and did not provide specific examples of interactions, other than statements that when he was asked for something he provided it to Dr. Gratz. In relation to memory, the Hearing Tribunal finds that the evidence indicates that Dr. Gratz's recollection of the events at issue was clearer, more consistent, and plausible than Dr. Sahi's evidence. The fact that Dr. Gratz faced unusual

difficulties in the February inspection is supported by the fact that the Complaints Director attended the second inspection. There is no indication that Dr. Gratz had any motivation to be dishonest about her findings. Further and importantly, the evidence adduced by Dr. Sahi in relation to the Hydromorphone matter causes the Hearing Tribunal to have concerns about Dr. Sahi's ability to accurately recall events in that timeframe. The evidence about his use of Hydromorphone, the impact that such use would likely have on his ability to function, and the evidence of the experts on those issues, cause the Hearing Tribunal to approach Dr. Sahi's recollection of those events with extreme caution.

For all of those reasons, the Hearing Tribunal prefers the evidence of Dr. Gratz over the evidence of Dr. Sahi in relation to the issue of what occurred during the February 2018 inspection. The description of Dr. Sahi's behavior at that time indicates that while he was providing Dr. Gratz with material as requested, his conduct had the impact of distracting Dr. Gratz from her assigned task, and that his conduct was inappropriate. It is important to recall that this inspection resulted from an order of a hearing tribunal, was scheduled, and was clearly an important aspect of rehabilitating Dr. Sahi's practice. His conduct was either designed to frustrate, or had the foreseeable effect of frustrating the PIPS inspection process. For those reasons, the Hearing Tribunal accepts that the factual basis for allegation 4 has been proven, and that such conduct is unprofessional conduct pursuant to section 1(n.1)(xi) of the Act. Interference with practice inspections in a serious matter and relates to the ability of the profession to self-govern.

### **Hydromorphone Matter**

1. You purchased amounts of Hydromorphone from Western Drug and Distribution Centre ("WDDC") in a manner that was disproportionate to the use at Fauna Animal Hospital for the period of 2014 through to 2019 inclusive

With respect to allegation one, the Hearing Tribunal finds Dr. Sahi guilty of unprofessional conduct.

### **Reason for finding**

Legal counsel for the Complaints Director presented evidence of the purchase orders for Fauna Animal Hospital of Hydromorphone from WDDC. Purchase records for the period from 2014 to 2019 showed Dr. Sahi ordered 79,050 mg of hydromorphone. Fauna Animal Hospital is a single Veterinarian practice. The Complaints Director testified that even the busiest large emergency and speciality hospitals in the province would not typically order that amount of hydromorphone. Although the Hearing Tribunal accepts this evidence, it notes that such a finding is also within the knowledge of the veterinary members of the Hearing Tribunal. That is, the amount of hydromorphone ordered by Dr. Sahi in that time frame was wholly disproportionate to what would be expected for a small clinic.

Dr. Sahi testified that originally the large quantities were ordered because he was planning on expanding to large animals. Other than his statement on this issue, he provided no evidence to indicate that this was, in fact, his intention at the time. It is also non-sensical for a veterinarian to order such massive amounts of this drug for future use when the drug can be obtained on relatively short notice. Dr. Sahi's evidence, examined in more detail below, was then that he was using the hydromorphone personally, which explained the large quantities ordered by him.

The Hearing Tribunal finds the amount of hydromorphone purchased by Dr. Sahi shocking. His explanation that the original purpose for the purchases is not credible. The purchase of this amount of a controlled substance, particularly one as dangerous and addictive as hydromorphone, is conduct that must be condemned in the strongest possible terms. Dr. Sahi had no legitimate basis for orders such amounts, and it was clearly disproportionate for the use to be made of it at his clinic. The factual allegation is proven, and there is no question that this conduct amounts to unprofessional conduct. It is conduct that harms the integrity of the profession (s. 1(n.1)(xi)), and creates real and substantial risks for the public at large.

2. That you inappropriately prescribed and/or dispensed Hydromorphone during the period of 2014 through to 2019, specifically in a manner that is not compliant with the ABVMA Council Guidelines regarding Prescribing, Dispensing, Compounding and Selling Pharmaceuticals.

With respect to allegation two, the Hearing Tribunal finds Dr. Sahi guilty.

### **Reason for findings**

Legal counsel for the Complaints Director presented evidence in Exhibit 8 and 12 that showed Dr. Sahi's control drug logs accounted for only approximately 2 percent of the total amount of Hydromorphone purchased by him in the relevant timeframe. The remaining 98 percent of the hydromorphone purchased between 2014 and 2019 was not accounted for in any way by Dr. Sahi. Keeping accurate records of the purchase and distribution of controlled narcotics is essential to protect the public from the harm that this medication can cause. The ABVMA Bylaws and Council Guidelines are in place to guide members in their professional obligations and compliance with Act and Regulations. Dr. Sahi's testimony was that he was aware of the Guidelines, that he tried to follow them, but he admitted that he consumed the missing hydromorphone. This was very clearly not in accordance with the Guidelines in place at the time, and this conduct is a clear "dispensation" of the drug other than in accordance with the Guidelines. The Hearing Tribunal notes the following excerpts from the Guidelines:

Veterinarians are unique in that they are defined in Federal legislation as a practitioner who has the authority to prescribe and are entitled through Alberta legislation (the *Veterinary Profession Act*) to dispense. With this privilege comes significant risks with regards to the accessibility of narcotic controlled and targeted substances. The nature of these pharmaceuticals in these categories

carry a risk of diversion and addiction. This risk extends well beyond the patient being treated and can impact the patient's owner and general public as well as veterinary practitioner, allied professionals and staff.

Incidents of addiction, self-medication, drug diversion, theft, fraud and other illegal activities are all too common. It is the veterinary profession's responsibility to ensure that continued access to these necessary products is maintained through processes that guarantee their safe use in all situations.

The Alberta Veterinary Medical Association is committed to protection of public and member wellness. Accordingly, the Council directive for prescribing narcotic, controlled and other targeted substances is that the ABVMA participates fully in the College of Physicians and Surgeons of Alberta Triplicate Prescription Program (TPP).

**Council directs that it is mandatory for veterinary practitioners to record all prescribing and dispensing of narcotic, controlled and other targeted medications through the use of a triplicate prescription form.<sup>1</sup>**

The Guideline also specifically refers to hydromorphone as a "TPP medication" (at 23), and specifically requires that a "TPP form must be used to prescribe all TPP medications" (with exceptions that do not apply here).

Regardless to the final use of the hydromorphone, Dr. Sahi was not compliant with the Guidelines, and the factual basis for the allegation is proven. Again, this is entirely inconsistent with Dr. Sahi's professional obligations and harms the integrity of the profession (s. 1(n.1)(xi)). The ability to obtain and prescribe a controlled drug is a privilege given to members of the veterinary profession; conduct such as Dr. Sahi's presents a risk that the privilege extended to the profession could be withdrawn. Dr. Sahi testified that he was aware of the Guidelines, but he failed to follow them over the course of several years.

3. That you distributed and/or sold controlled drugs, namely Hydromorphone in amounts and/or in a manner that was not in accordance with the provisions of the Controlled Drugs and Substances Act, SC 1996, c 19, as amended and/or the provisions of the Narcotic Control Regulations.

With respect to allegation three, the Hearing Tribunal finds Dr. Sahi guilty of unprofessional conduct.

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<sup>1</sup> Guidelines at 22 (emphasis in original).

## Reason for findings

First, the Hearing Tribunal notes that it is beyond dispute that Dr. Sahi's behavior with respect to the hydromorphone is not compliant with provisions of the *Controlled Drugs and Substances Act* or the *Narcotics Control Regulation*. Those pieces of legislation create tight controls on the use of controlled substances such as hydromorphone, and Dr. Sahi's behaviour in obtaining the substance, using it for himself and not keeping accurate records and logs of the use and disposition of hydromorphone is contrary to the law. It is clear that Dr. Sahi obtained the vast majority of the hydromorphone for the purpose of his personal use, even based on his own evidence; that is, the purpose for which Dr. Sahi obtained the hydromorphone was not for the legitimate use of it in his clinic; over the course of several years he placed multiple orders which he says were for his own use (see section 4 of the *Controlled Drugs and Substances Act*; see sections 3, 53, 54 and 55 of the *Narcotics Control Regulations*).

The central issue is whether Dr. Sahi's conduct constitutes "distribution" or "selling" of the hydromorphone as alleged. In his testimony, Dr. Sahi testified that he consumed the majority of the unaccounted hydromorphone. He stated that he used the hydromorphone to help him sleep and started due to the stress of the complaint against him in 2014. He testified he used an average of 5 to 7 ml of 10 mg formulation orally per day. He also testified that he did not suffer any side effects and was not impaired while practicing veterinary medicine in his practice. He also indicated that he stopped using hydromorphone when Dr. Peter Martin removed his supply from the clinic in October of 2019. In his testimony Dr. Sahi stated that he was not incapacitated when Dr. Martin asked him if he was. Dr. Sahi testified that he did not experience withdrawal symptoms when he stopped using Hydromorphone.

Legal counsel for the Complaints Director presented an expert witness, Dr. Rahaman (Exhibit 15) that it would be highly unlikely that an individual would only take that much hydromorphone and not have side effects. Also, he testified that it is unlikely that a person taking that amount of the drug could stop without professional support and treatment. Counsel for Dr. Sahi presented an expert witness Dr. Lim (Exhibit 16) who testified that it is possible for some individuals to have minimal side effects and no withdrawal symptoms.

The Hearing Tribunal examined both expert opinions and came to the conclusion that there is a high degree of skepticism that Dr. Sahi, in fact, consumed all of the hydromorphone that was unaccounted for over the course of several years. Dr. Martin's report and testimony indicated that Dr. Sahi confessed to him that he has sold some of the hydromorphone. Dr. Sahi vehemently denied selling any hydromorphone, and suggested that Dr. Martin was lying about that part of his evidence. The Hearing Tribunal does not conclude that Dr. Martin was lying about that matter, but it has concluded that without any additional evidence is not possible to conclude on a balance of probabilities that Dr. Sahi was "selling" the hydromorphone or giving it to someone else. To be clear, the Hearing Tribunal is not making a finding that this did not occur, only that it is not able to draw that inference based on the evidence record before it. It is very skeptical of Dr. Sahi's evidence given the fact that Dr. Sahi refused to answer questions in relation to his use (frequency, commencement, cessation), the impact of it on his practice, and

the process around cessation including withdrawal symptoms. While the Hearing Tribunal accepts that based on Dr. Lim's evidence it may be possible for an individual to use those amounts and not to suffer from withdrawal symptoms, it is unlikely that this was the case. Dr. Sahi's evidence on this point was not credible, was evasive and self-serving.

Despite the Hearing Tribunal's inability to make a specific finding that Dr. Sahi sold the hydromorphone, it does conclude that Dr. Sahi's admission that he used the hydromorphone for his own purposes constitutes a "distribution" of that drug in a manner not contemplated by the legislation noted above. The Hearing Tribunal finds that "distribution" is not limited to the provision of a controlled substance to a third party; rather, the hydromorphone was obtained under false pretenses that it would, in fact, be used in accordance with the law for the purpose of administering the drug to animal patients. The use of the drug otherwise than in accordance with that purpose is a "distribution", even where the veterinarian is administering it to him- or herself.

The factual basis for this allegation is proven. As with the other allegations set out above, this is a clear instance of unprofessional conduct, and it is conduct which harms the integrity of the profession in a significant way (s. 1(n.1)(xii)). Further, the Hearing Tribunal is of the opinion that there are reasonable and probable grounds to believe that Dr. Sahi has committed a criminal offence, and the Hearing Tribunal therefore directs the Hearings Director to send a copy of this written decision to the Minister of Justice and the Solicitor General of Alberta and, if a request is made by the Minister of Justice and Solicitor-General, to send a copy of the record of the hearing, all pursuant to section 40.1(1) of the Act.

The Hearing Tribunal also notes that, during Dr. Sahi's evidence, he also admitted to using two other drugs that he had in his possession as a result of the practice of veterinary medicine, benzodiazepine and buprenorphine, which did not form part of the allegations before the Hearing Tribunal. The Hearing Tribunal refers that issue to the Complaints Director as a complaint for consideration pursuant to section 40(4)(a) of the Act.

4. Failure to comply with the requests of the ABVMA investigator to provide a written response to the complaint.

With respect to allegation four, the Hearing Tribunal finds Dr. Sahi not guilty of unprofessional conduct.

### **Reason for finding**

Legal counsel for the Complaints Director argued that the written response from Dr. Sahi to Dr. Martin was not sufficient to amount to a written response. Legal counsel for the Complaints Director stated that the Complaints Director's expectation of the response to a complaint is a detailed explanation of the member's actions in response to the matters being investigated. The majority of professionals, when presented with a letter of complaint from their regulatory body, would respond with a comprehensive explanation. Legal counsel for Dr. Sahi argued that



his very brief response in which he states that he is sorry for the discrepancy was a written response. Either way, it is clear that this response was received by the ABVMA on November 12, 2019.

While the Hearing Tribunal agrees that the substance of the response was deficient, it is not able to conclude that the deficiencies rise to the level of unprofessional conduct in this case. Dr. Sahi did provide a response in writing which addressed to a very limited extent the issue that was put to him. While it is clearly incumbent on a member to cooperate with an investigation and to provide an accurate and complete response, the Hearing Tribunal is not able to conclude that this represents unprofessional conduct pursuant to the definition set out in the Act.

5. Failure to respond to the investigator's emails and telephone calls to you with respect to the investigation.

With respect to allegation five, the Hearing Tribunal finds Dr. Sahi guilty of unprofessional conduct.

### **Reason for findings**

Legal counsel for the Complaints Director presented evidence and testimony that Dr. Martin attempted to contact Dr. Sahi on several occasions and was unable to elicit a response. Dr. Martin testified that he tried multiple times to contact Dr. Sahi. He stated that he left messages and emailed him at an email address provided. He testified that he also dropped by Dr. Sahi's clinic on November 23, 2019. He testified that there was an "open" sign in the window and a note on the door with numbers for Dr. Sahi. Dr. Martin tried those numbers but no one answered.

Dr. Sahi did not offer any plausible explanation on why he did not respond to Dr. Martin, other than suggesting that those efforts to contact him were perhaps not made. It ought to have been abundantly clear to Dr. Sahi at that time that his full cooperation with the investigator was essential given his evidence that he had been using hydromorphone for an extended period of time, and that Dr. Martin was involved in an investigation into those matters. The Hearing Tribunal considered the fact that Dr. Sahi did eventually cooperate with respect to the court order for access to the records of WWDC, but this single act of compliance in the face of a court application does not absolve Dr. Sahi of his failure to cooperate with Dr. Martin in his investigation.

The Hearing Tribunal is satisfied that Dr. Sahi failed to respond to Dr. Martin as the assigned investigator in this matter, and the lack of response to an investigator is unprofessional conduct as defined in the Act (s. 1(n.1)(vi)(B)).

**ORDERS OF THE HEARING TRIBUNAL**

Pursuant to section 40.1(1) of the Act, the Hearing Tribunal finds Dr. Sahi guilty of unprofessional conduct on Allegations 1-5 in the PIPS matter, and Allegations 1-3 and 5 of the Hydromorphone matter.

The Hearing Tribunal directs the parties to contact the office of the Hearings Director to arrange for submissions on what would constitute appropriate orders pursuant to section 41.1 of the Act having regard to the conclusions set out above.

**THE HEARING TRIBUNAL OF THE ALBERTA VETERINARY MEDICAL ASSOCIATION**

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Dr. Troy Bourque, Chair

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Mr. Brian Marcotte, Public Member

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Dr. Greg Evans

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Dr. Navjot Gosal

January 13, 2021