COLLEGE OF CHIROPRACTORS OF ALBERTA

Hearing Tribunal Written Decision and Orders for the Hearing of:

Dr. Robert Kariatsumari

On:

January 16, 2021

Posting expiration date:

April 6, 2031

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IN THE MATTER OF A HEARING OF THE HEARING TRIBUNAL
Into the Conduct of Dr. Robert Kariatsumari, Regulated Member of the
Alberta College and Association of Chiropractors ("the College"), pursuant to

THE HEALTH PROFESSIONS ACT, being
Chapter H-7 of the Revised Statutes of Alberta

DECISION OF THE HEARING TRIBUNAL OF THE ALBERTA COLLEGE AND ASSOCIATION OF CHIROPRACTORS

1. Hearing

The Hearing was conducted virtually via the Zoom video application on Tuesday, January 16, 2021.

Present via Zoom video application were:

Dr. Hugh Campbell, Chair
Dr. Dianna Martens, ACAC Member of the Tribunal
Dr. Gordon Burns, ACAC Member of the Tribunal
Mr. James Clover, Public Member
Ms. Archana Chaudhary, Public Member
Mr. David Jardine, Independent Legal Counsel for the Hearing Tribunal

Dr. Robert Kariatsumari, Investigated Member
Mr. Michael Hokanson, Legal Counsel for Dr. Kariatsumari

Mr. David Lawrence, ACAC Complaints Director
Mr. Blair Maxston, Legal Counsel for the Complaints Director

Ms. Sarah Howden, Court Reporter

2. Preliminary Matters

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

Both parties also consented to the hearing proceeding by videoconference via the Zoom video application. All parties were visible on the application. The parties confirmed that the hearing was proceeding on a consent basis.

It was noted that, with the consent of the parties, the members of the Hearing Tribunal had been provided with the Amended Notice of Hearing, Admission of Unprofessional Conduct, Agreed Statement of Facts and Joint Submission Regarding Penalty in advance of the hearing.

Prior to presenting the Amended Notice of Hearing and the Agreed Statement of Facts, Mr. Maxston made an application pursuant to section 78(1)(a)(iii) of the *Health Professions Act* ("the HPA") requesting the Hearing Tribunal to make an order that the hearing be held in private. He noted that the documents to be entered as exhibits to the hearing included very private and sensitive health and patient information of the complainant, [redacted] and that the order requested would ensure that there would be no public observers and that the private and sensitive information presented would remain private and would not be disclosable. Mr. Hokanson confirmed that he consented to the application.

After considering the application and noting that the information that had been provided to the Hearing Tribunal as part of the Agreed Statement of Facts did contain very sensitive and private health and patient information of [redacted] the Hearing Tribunal ordered that the hearing would be held in private. In making this order the Hearing Tribunal finds that the importance of not disclosing [redacted] confidential health and patient information outweighs the normal desirability of having the hearing open to the public.

Mr. Maxston then made some brief preliminary remarks and then requested that the following exhibits be entered by consent:

Exhibit 1 – Amended Notice of Hearing;
Exhibit 2 – Admission of Unprofessional Conduct
Exhibit 3 – Agreed Statement of Facts (including Appendix 1 and 2); and
Exhibit 4 – Joint Submission Regarding Penalty

3. Allegations

The allegations that appeared in the Amended Notice of Hearing entered as Exhibit 1 were as follows:

1. On or about [redacted] while treating your [redacted] you failed to obtain informed consent from [redacted] prior to performing Neuro Emotional Technique ("NET") treatment including by failing to disclose to Patient [redacted]

    a. The diagnosis for [redacted] that day which required NET treatment;

    b. The purpose of the NET treatment that day; and/or

    c. The nature of the examination that day to provide the NET treatment.

2. On or about [redacted] while treating [redacted] you engaged in unprofessional conduct by inadvertently failing to maintain professional boundaries by the following:

    a. You proceeded with NET protocol with [redacted] including the use of the bladder contact point (located halfway between the umbilicus and the pubic bone), notwithstanding your failure to explicitly and sufficiently

advise [redacted] as outlined in Charge #1 above, resulting in an unintentional and inadvertent boundary violation with your patient due to the insufficiency of [redacted] informed consent for that treatment.

b. You proceeded with NET protocol with [redacted] including the use of the bladder contact point, relying on insufficient implied informed consent, resulting in an unintentional and inadvertent boundary violation with your patient due to the insufficiency of [redacted] informed consent for that treatment.

c. You proceeded with NET protocol with [redacted] including the use of the bladder contact point, without specifically asking permission to touch [redacted] resulting in an unintentional and inadvertent boundary violation with your patient due to the insufficiency of [redacted] informed consent for that treatment.

d. You proceeded with Net protocol with [redacted] including the use of the bladder contact point, relying on implied informed consent, without specifically requesting permission to do so, resulting in an unintentional and inadvertent boundary violation with your patient due to the insufficiency of [redacted] informed consent for that treatment.

e. You failed to attempt to elicit an ongoing sufficient case history prior to the [redacted] NET protocol treatment which informed the unintentional and inadvertent boundary violation with your patient due to the insufficiency of [redacted] informed consent for that treatment.

And that the unintentional and inadvertent boundary violations listed above represent a lack of judgement on your part in the provision of professional services.

3. With respect to [redacted] you failed to keep sufficient chart notes that specifically and explicitly documented the nature of the NET treatment from [redacted] which identified the case history, the diagnosis, the proposed treatment plan, and the expected health benefit associated with the treatment.

[redacted]

4. Background

[redacted], a patient of Dr. Kariatsumari, submitted a written complaint to the College dated June 12, 2019 concerning a failure of Dr. Kariatsumari to obtain informed consent from [redacted] prior to performing NET treatment.

The Complaints Director informed Dr. Kariatsumari that he was initiating an investigation into the Complaint.

The investigation was completed, and this matter was referred to a hearing pursuant to Part 4 of the *Health Professions Act*.

5. Evidence

The evidence was adduced by way of an Agreed Statement of Facts, and no witnesses were called to give *viva voce* testimony. The Hearing Tribunal accepts the evidence set out in the Agreed Statement of Facts, which was admitted as Exhibit 3. Included as Appendices to the Agreed Statement of Facts were the patient chart of [redacted] and a second copy of the patient chart with highlighting made by the investigator. The Hearing Tribunal has reviewed the Agreed Statement of Facts including the Charts.

In summary, these facts were as follows:

Background Matters

- Dr. Kariatsumari treats patients with either "structural/myofascial" chiropractic care for musculoskeletal complaints or with Neuro Emotional Technique ("NET") for emotional stress and tension.

- Dr. Kariatsumari's practice consists of approximately 90% regular chiropractic care and the remaining 10% of his patients are treated with NET for emotional stress. NET treatments consist of holding points to release tension.

- For both types of care, Dr. Kariatsumari uses a technique called Applied Kinesiology to assess where he will perform his treatments and what those treatments will be. Dr. Kariatsumari's NET training was in 2003 and consisted of two (2) weekend seminars for post-graduates.

- [redacted] first presented to the Clinic for treatment with Dr. Kariatsumari on [redacted] and generally received treatment approximately every one-to-two months. Dr. Kariatsumari was [redacted] primary chiropractor.

Facts Relating to the Charges

- On [redacted] patient [redacted] presented to Dr. Kariatsumari with pain on the left side of [redacted] upper back. Dr. Kariatsumari performed muscle testing using the Applied Kinesiology technique.

- During the [redacted] treatment, Dr. Kariatsumari also performed NET treatment, including touching and hold the bladder point.

- Dr. Kariatsumari unintentionally touched [redacted] under [redacted] clothes during the [redacted] treatment.

- On [redacted] while treating [redacted] Dr. Kariatsumari failed to obtain informed consent from [redacted] prior to performing NET treatment including by failing to disclose to [redacted]

    - The diagnosis for [redacted] that day which required NET treatment;

- The purpose of the NET treatment that day; and/or
- The nature of the examination required that day to provide the NET treatment.

- On [redacted] while treating [redacted] Dr. Kariatsumari inadvertently failed to maintain professional boundaries when:
  - Dr. Kariatsumari proceeded with NET protocol with [redacted] including the use of the bladder contact point (located halfway between the umbilicus and the pubic bone), notwithstanding his failure to explicitly and sufficiently advise [redacted] as outlined above, resulting in an unintentional and inadvertent boundary violation with [redacted] due to the insufficiency of [redacted] informed consent for that treatment;
  - Dr. Kariatsumari proceeded with NET protocol with [redacted], including the use of the bladder contact point, relying on insufficient implied informed consent, resulting in an unintentional and inadvertent boundary violation with [redacted] due to the insufficiency of [redacted]informed consent for that treatment;
  - Dr. Kariatsumari proceeded with NET protocol with [redacted] including the use of the bladder contact point, relying on implied informed consent, without specifically requesting permission to do so, resulting in an unintentional and inadvertent boundary violation with[redacted] due to the insufficiency of [redacted]informed consent for that treatment;
  - Dr. Kariatsumari failed to attempt to elicit an ongoing sufficient case history prior to the [redacted] NET protocol treatment which informed the unintentional and inadvertent boundary violation with [redacted]due to the insufficiency of [redacted] informed consent for that treatment.

  and the unintentional and inadvertent boundary violations listed above represent a lack of judgement on Dr. Kariatsumari's part in the provision of professional services.

- With respect to [redacted] Dr. Kariatsumari failed to keep sufficient chart notes that specifically and explicitly documented the nature of the NET treatment on [redacted] and which should have identified the case history, the diagnosis, the proposed treatment plan, and the expected health benefit associated with the treatment.

- Dr. Kariatsumari behaved in a manner contrary to Standard of Practice 3.1 "Informed Consent", Standard of Practice 6.1 "Professional Boundaries with Patients", and the ACAC Code of Ethics Article 5 "Informed Choice and Consent for Treatment".

6. Admission of Unprofessional Conduct

The parties presented the Hearing Tribunal with an Admission of Unprofessional Conduct, which was admitted as Exhibit 2. In the Admission of Unprofessional Conduct, Dr. Kariatsumari stated that "I hereby admit and acknowledge that I am guilty of unprofessional conduct with respect to charges 1, 2, and 3 described in the Notice of Hearing."

Dr. Kariatsumari also stated that "I am aware of my right pursuant to Section 72(1) of the *Health Professions Act,* to be represented by legal counsel regarding this matter, that I have had the opportunity to seek independent legal counsel regarding this matter and that I am voluntarily executing this Admission of Unprofessional Conduct."

The parties requested that the Hearing Tribunal accept the Admission of Unprofessional Conduct and find that Dr. Kariatsumari had admitted all the Allegations set out in the Amended Notice of Hearing.

Mr. Maxston asked the Hearing Tribunal to note that the charges related to inadvertent actions by Dr. Kariatsumari and that there were no allegations or evidence that Dr. Kariatsumari deliberately breached the patient boundaries of [redacted]

In final brief comments, both Mr. Maxston and Mr. Hokanson emphasized that the agreed upon admissions were the result of extensive work by the parties to reach admissions that were appropriate to the circumstances.

The Hearing Tribunal then retired to deliberate in respect to whether to accept the Admission of Unprofessional Conduct made by Dr. Kariatsumari.

7. Decision of the Hearing Tribunal

When the Hearing Tribunal returned it asked the parties if [redacted] was aware of the hearing. The parties confirmed that [redacted] was aware of the hearing, the charges and the Joint Submission on Penalty and was not objecting to the proposed resolution of this hearing. They also advised that [redacted] lawyer had confirmed that [redacted] would not be attending the hearing. The parties also advised the Hearing Tribunal that the Agreed Statement of Facts had been prepared with input from [redacted] and her lawyer and had sought to give enough facts to the Hearing Tribunal without revealing very sensitive and personal details concerning [redacted]

The Hearing Tribunal then advised that it accepted Dr. Kariatsumari's admission of unprofessional conduct based on the evidence set out in the Agreed Statement of Facts. The Hearing Tribunal also advised that it agreed that the conduct admitted to amounts to unprofessional conduct as defined in section 1(1)(pp) of the *Health Professions Act*.

The Hearing Tribunal accepted the admission of unprofessional conduct and found that all the allegations in the Amended Notice of Hearing had been proven. This decision was based on the admissions made by Dr. Kariatsumari, the agreed facts set out in the Agreed Statement of Facts and the review by the Hearing Tribunal of [redacted] patient file, the

Standard of Practice 3.1 "Informed Consent", the Standard of Practice 6.1 "Professional Boundaries with Patients" and the ACAC Code of Ethics Article 5 "Informed Choice and Consent for Treatment".

In the opinion of the Hearing Tribunal the allegations of lack of informed consent, inadvertent boundary violations and failure to create adequate chart notes were clearly proven and these proven allegations were serious matters that displayed a lack of knowledge or lack of skill or judgment in the practice of the profession and thereby constituted unprofessional conduct under section 1(1)(pp)(i) of the HPA.

The Hearing Tribunal also found that the evidence established breaches of Standard of Practice 3.1 "Informed Consent", Standard of Practice 6.1 "Professional Boundaries with Patients and ACAC Code of Ethics Article 5 "Informed Choice and Consent for Treatment" and that these breaches of the Standards of Practice and the Code of Ethics constituted unprofessional conduct pursuant to section 1(1)(pp)(ii) of the HPA.

The Hearing Tribunal also found that the proven allegations were conduct that harmed the integrity of the profession and constituted unprofessional conduct pursuant to section 1(1)(pp)(xii) of the HPA. In respect to this finding, the Hearing Tribunal noted that proper informed consent and respect for professional boundaries are essential elements of the relationship between a chiropractor and a patient and conduct that breached these fundamental elements of the patient relationship harmed the integrity of the profession.

8. Joint Submission Regarding Penalty

The Complaints Director and Dr. Kariatsumari provided the Hearing Tribunal with a Joint Submission Regarding Penalty, which was entered as Exhibit 4. As part of the Joint Submission Regarding Penalty, the parties jointly submitted the following proposed penalties to the Hearing Tribunal for consideration:

1. Dr. Kariatsumari will pay Fifteen Thousand ($15,000.00) in costs. The costs will be paid in equal monthly installments (without interest) of $800.00 per month.

2. Within nine (9) months of the date of the Hearing Tribunal's written decision, Dr. Kariatsumari will successfully complete a course on informed consent, such course to be selected by the Complaints Director acting reasonably. All costs associated with the taking of the said course would be paid by Dr. Kariatsumari and would not count towards his ACAC continuing competence requirements.

3. A summary of the Hearing Tribunal's written decision (including the charges, findings and penalties) and Dr. Kariatsumari's name will be published on the ACAC's website and in the ACAC's annual report to the ACAC membership.

4. Within three (3) months of the date of the Hearing Tribunal's written decision, Dr. Kariatsumari will provide documentation and information to the Complaints Director, to the satisfaction of the Complaints Director acting reasonably, outlining the charges in processes and policies undertaken by Dr. Kariatsumari to avoid future informed consent and professional boundary issues.

5. Dr. Kariatsumari's practice permit will be suspended for twenty-one (21) consecutive days, such suspension to occur within six (6) months of the date of the Hearing Tribunal's written decision provided that the Complaints Director will independently determine the commencement of the said suspension after consultation with Dr. Kariatsumari to ensure continuity of patient care.

6. If Dr. Kariatsumari is unable to comply with order 1, 2, 3, and/or 4 above within the stipulated time periods, then the College can immediately and without the necessity of any other steps cancel Dr. Kariatsumari's practice permit until such time as all of those order are complied with.

The parties submitted that once a Hearing Tribunal makes a finding that a member's conduct amounts to unprofessional conduct, then the Hearing Tribunal must determine the appropriate penalty. They submitted that although a Hearing Tribunal is not bound by the submissions and recommendations in a joint submission on penalty and retains the jurisdiction to make whatever penalty orders it determines are appropriate, their joint submission sets out what both the Complaints Director and Dr. Kariatsumari submit are fair and appropriate penalties in light of his conduct and the relevant facts.

The parties noted that the primary purpose of legislation governing professionals is the protection of the public. They suggested that this meant that the fundamental purpose of penalty orders for unprofessional conduct is (i) to ensure that the public is protected from acts of unprofessional conduct and (ii) to ensure the integrity of the profession in the eyes of the public is maintained.

The parties submitted that case law has established a list of factors that can be considered by a Hearing Tribunal when determining appropriate penalty orders and that those factors were as follows:

1. The nature and gravity of the proven allegations;
2. The age and experience of the member;
3. The previous character of the member and in particular the presence or absence of any prior complaints or findings of unprofessional conduct;
4. The number of times the unprofessional conduct was proven to have occurred;
5. The role of the member in acknowledging what had occurred;
6. Whether the member had already suffered serious financial or other penalties as a result of the allegations having be made;
7. The impact of the incident on the complainant;
8. The presence or absence of any mitigating circumstances;
9. The need to promote specific and general deterrence and, thereby, to protect the public and ensure safe and proper practice;
10. The need to maintain the public's confidence in the integrity of the profession;
11. The degree to which the offensive conduct that was found to have

occurred was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct; and

12. The range of sentence in other similar cases.

The parties also noted a number of potential mitigating factors that should also be considered in determining the proper penalty, including:

1. Whether Dr. Kariatsumari's unprofessional conduct was the member's first discipline finding or represents repeated behaviour or a pattern of unprofessional conduct.

2. Whether the member has admitted to the unprofessional conduct (which is generally taken as showing acceptance of responsibility for one's actions).

After considering the submissions, the Hearing Tribunal agreed with the Joint Submission Regarding Penalty and finds the proposed penalties to be appropriate in this case.

9. Reasons

The Hearing Tribunal recognizes that its orders with respect to penalty must be fair, reasonable and proportionate taking into account the facts of this case. In making its decision on penalty, the Hearing Tribunal considered the following factors:

- The nature and gravity of the proven allegations – The member's conduct constituted a significant breach of the duties of disclosure, communication, and consent, which could have been avoided. Although his actions were inadvertent, his conduct resulted in consequences for [redacted] that were serious.

- The age and experience of the investigated member - The member completed NET training in 2003 and had been treating the patient since 2007. This is not a case where inexperience is a mitigating factor.

- The previous character of the investigated member and the presence or absence of any prior complaints or convictions - The member has no previous findings of unprofessional conduct and this is a mitigating factor.

- The age and mental condition of the victim, if any - No evidence of these factors was presented to the Hearing Tribunal.

- The number of times the offending conduct was proven to have occurred - The conduct was a onetime occurrence, not a pattern of behaviour.

- The role of the investigated member in acknowledging what occurred - The member cooperated with the investigation and participated in the Agreed Statement of Facts and Joint Submission Regarding Penalty, which eliminated the need for witnesses. This was a significant mitigating factor.

- Whether the investigated member has already suffered other serious financial or other penalties as a result of the allegations having been made - No direct evidence

was presented of Dr. Kariatsumari suffering financial consequences as a result of the allegations.

- The impact of the incident(s) on the victim - There was a significant violation of patient's boundaries and a breach of the patient's right to informed consent. While parties did not present details of the impact on the patient in order to respect [redacted] concerns, they did acknowledge that there was a significant impact on [redacted]

- The presence or absence of any mitigating circumstances - The cooperation of the member showed his recognition of the seriousness of the matter and the consequences to the patient. The settlement of this matter involved consultation with [redacted] and her legal counsel in recognition of the seriousness of his conduct and in an attempt to respect [redacted] concerns. Dr. Kariatsumari's cooperation with the investigation and willingness to participate in the Agreed Statement of Facts helped to streamline the process and avoided the need for further sensitive details regarding [redacted] to be brought forward in the hearing.

The Hearing Tribunal believes that the penalties proposed by the parties adequately balance the factors referred to above and are consistent with the overarching mandate of the Hearing Tribunal, which is to ensure that the public is protected.

The payment of costs of $15,000.00 is justified based on the findings of unprofessional conduct. The hearing arose as a result of the actions of Dr. Kariatsumari and it is appropriate that he pay a significant portion of the costs. The Hearing Tribunal does recognize that the potential costs were significantly reduced by the co-operation of Dr. Kariatsumari.

The orders requiring Dr. Kariatsumari to successfully complete a course on informed consent selected by the Complaints Director and to provide documentation and information to the Complaints Director outlining, to the satisfaction of the Complaints Director, changes in processes and policies to avoid future informed consent and professional boundary issues arise out of the unprofessional conduct in this case and will help to protect the public by reducing the risk of future similar lack of informed consent or boundary issues.

The publication of a summary of the decision including the charges, findings and penalty on the ACAC website and the ACAC annual report will inform the profession and the public regarding the conduct found in this case and demonstrate to the profession and the public that the ACAC has taken appropriate action in this matter.

The suspension of 21 consecutive days to occur within six (6) months, is a suitable penalty that recognizes the seriousness of the unprofessional conduct that has been found but also gives some credit to Dr. Kariatsumari's cooperation and recognition of his unprofessional conduct. Without this cooperation and Dr. Kariatsumari's admissions, the Hearing Tribunal would have been willing to consider a longer suspension.

Finally, the agreed order that if Dr. Kariatsumari fails to comply with orders 1, 2, 3, and 4 within the stipulated time periods, then the College can immediately cancel Dr.

Kariatsumari's practice permit until all the orders are complied with, provides a means for protecting the public if there is a failure to comply with these orders.

10. Orders of the Hearing Tribunal

The Hearing Tribunal is authorized under section 82(1) of the *Health Professions Act* to make orders in response to findings of unprofessional conduct. The Hearing Tribunal makes the following orders pursuant to section 82 of the *Health Professions Act*:

1. Dr. Kariatsumari will pay Fifteen Thousand ($15,000.00) in costs. The costs will be paid in equal monthly installments (without interest) of $800.00 per month as arranged with the Complaints Director.

2. Within nine (9) months of the date of the Hearing Tribunal's written decision, Dr. Kariatsumari will successfully complete a course on informed consent, such course to be selected by the Complaints Director acting reasonably. All costs associated with the taking of the said course would be paid by Dr. Kariatsumari and would not count towards his ACAC continuing competence requirements.

3. A summary of the Hearing Tribunal's written decision (including the charges, findings and penalties) and Dr. Kariatsumari's name will be published on the ACAC's website and in the ACAC's annual report to the ACAC membership.

4. Within three (3) months of the date of the Hearing Tribunal's written decision, Dr. Kariatsumari will provide documentation and information to the Complaints Director, to the satisfaction of the Complaints Director acting reasonably, outlining the charges in processes and policies undertaken by Dr. Kariatsumari to avoid future informed consent and professional boundary issues.

5. Dr. Kariatsumari's practice permit will be suspended for twenty-one (21) consecutive days, such suspension to occur within six (6) months of the date of the Hearing Tribunal's written decision provided that the Complaints Director will independently determine the commencement of the said suspension after consultation with Dr. Kariatsumari to ensure continuity of patient care.

6. If Dr. Kariatsumari is unable to comply with order 1, 2, 3, and/or 4 above within the stipulated time periods, then the College can immediately and without the necessity of any other steps cancel Dr. Kariatsumari's practice permit until such time as all of those order are complied with.

Dr. Robert Kariatsumari shall be required to provide the ACAC with his current contact information (including home mailing address, home phone number and home e-mail address). Should this contact information change at any point prior to the orders of the Hearing Tribunal being completed, Dr. Kariatsumari shall be required to provide the ACAC with his updated contact information.

The Hearing Tribunal retains jurisdiction to address any issues arising from non-compliance with its orders.

Dated the 25th day of March, 2021 in the City of Edmonton in the Province of Alberta.

Hugh Campbell
Chair, Hearing Tribunal
ACAC