

IN THE MATTER OF A HEARING UNDER THE *HEALTH PROFESSIONS ACT*,
R.S.A. 2000, c. H-7

AND IN THE MATTER OF AN INVESTIGATION
INTO A COMPLAINT AGAINST
DR. SUSANNE MAUSOLF A REGULATED MEMBER
OF THE COLLEGE OF PHYSICIANS AND SURGEONS OF ALBERTA

**DECISION OF THE HEARING TRIBUNAL OF
THE COLLEGE OF PHYSICIANS AND SURGEONS OF ALBERTA**

I. INTRODUCTION

1. The Hearing Tribunal held a hearing into the conduct of Dr. Susanne Mausolf, a regulated member of the College of Physicians and Surgeons of Alberta (“the College”) on October 12, 2018. The hearing was held at the offices of the College in Edmonton, Alberta.

2. In attendance at the hearing were:

Members of the Hearing Tribunal:

Dr. Randall Sargent, Chair
Dr. John Pasternak, member
Mr. Michael Kozielec, public member

Also in attendance were:

Ms. Julie Gagnon, independent legal counsel for the Hearing Tribunal
Ms. Aman Athwal, legal counsel for the Complaints Director
Dr. Susanne Mausolf, investigated person
Mr. Daniel Morrow, legal counsel for Dr. Mausolf

II. PRELIMINARY MATTERS

3. There were no objections to the composition of the Hearing Tribunal or the jurisdiction of the Hearing Tribunal to proceed with the hearing.
4. The hearing was open to the public pursuant to section 78 of the *Health Professions Act*, RSA 2000, c. H-7 (the “HPA”).
5. The hearing proceeded by way of an agreed statement of facts and admission of unprofessional conduct.

III. ALLEGATION:

6. The Allegation in the Notice of Hearing is that:
 1. You did fail to respond to the College of Physicians & Surgeons of Alberta as requested and in accordance with the provisions of the Terms of Resolution dated April 24, 2017, and further Terms of Resolution dated August 11, 2017, particulars of which include:
 - a. Email dated March 14, 2018 from Kim Horricks-Bender, Individual Practice Review Administrator Continuing Competence;

- b. Email dated March 21, 2018 from Natasha Bonnett, Individual Practice Review Administrator Continuing Competence;
 - c. Second email dated March 21, 2018 from Natasha Bonnett, Individual Practice Review Administrator Continuing Competence;
 - d. Telephone message on March 26, 2018 from Natasha Bonnett, Program Administer, Individual Practice Review Administrator Continuing Competence;
 - e. Telephone message on March 29, 2018 from Natasha Bonnett, Program Administer, Individual Practice Review Administrator Continuing Competence;
 - f. Telephone message on April 10, 2018 from Natasha Bonnett, Program Administer, Individual Practice Review Administrator Continuing Competence;
 - g. Letter dated April 13, 2018 from Natasha Bonnett, Program Administer, Individual Practice Review Administrator Continuing Competence;
 - h. Registered letter dated April 13, 2018 from Dr. Karen Mazurek, Deputy Registrar;
 - i. Telephone message on April 18, 2018 from Kim Horricks-Bender, Individual Practice Review Administrator Continuing Competence;
 - j. Telephone message on April 20, 2018 from Kim Horricks-Bender, Individual Practice Review Administrator Continuing Competence.
7. Ms. Athwal noted an error in the Notice of Hearing for allegation 1 (b) and (c), which should have the name of Natasha Bonnett rather than Kim Horricks-Bender. As such, the Notice of Hearing was amended accordingly during the hearing and the change has been reflected in the paragraph above.

IV. EVIDENCE

8. The following documents were entered as Exhibits during the hearing:

Exhibit 1 – Notice of Hearing

Exhibit 2 – Agreed Statement of Facts and Admission of Unprofessional Conduct

Exhibit 3 – Exhibit Book containing:

Tab 1 Terms of Resolution executed by Dr. Susanne Mausolf dated April 24, 2017

Tab 2 Terms of Resolution executed by Dr. Susanne Mausolf dated August 11, 2017

- Tab 3 Email exchange between Kim Horricks-Bender and Dr. Susanne Mausolf dated March 14, 2018
- Tab 4 Email exchange between Natasha Bonnett and Dr. Susanne Mausolf dated March 21, 2018
- Tab 5 Dr. Karen Mazurek letter to Dr. Susanne Mausolf dated April 13, 2018 regarding Final Notice – Adherence with Requirements of Continuing Competence Program
- Tab 6 Canada Post delivery confirmation dated April 17, 2018
- Tab 7 Dr. Nigel Flook letter to Dr. Michael Caffaro dated May 2, 2018 regarding Individual Practice Review
- Tab 8 Email exchange between Sharon Ladan and Dr. Michael Caffaro dated May 28, 2018
- Tab 9 Dr. Michael Caffaro Memorandum to file dated May 30, 2018
- Tab 10 Aman Athwal letter to Dr. Susanne Mausolf dated August 3, 2018 enclosing Notice of Hearing
- Tab 11 Statutory Declaration executed by Process Server – Greg Biamonte serving Notice of Hearing dated August 7, 2018
- Tab 12 Aman Athwal letter to Dr. Susanne Mausolf dated September 5, 2018 enclosing Disclosure Package
- Tab 13 Wheels Confirmation of delivery of disclosure package dated September 5, 2018

Exhibit 4 – Joint Submission on Penalty

Exhibit 5 – Cases on Sanction

V. SUBMISSIONS

9. Ms. Athwal noted that the parties had entered into an agreement and had put together an agreed Exhibit Book. Ms. Athwal reviewed the Exhibit Book and specifically the documents in support of the allegations.
10. Ms. Athwal reviewed the Agreed Statement of Facts and Admission of Unprofessional Conduct (Exhibit 2). The agreed facts are noted below.
11. At all material times, Dr. Mausolf was a regulated member of the College.
12. Dr. Mausolf entered into two Terms of Resolution with the College.
13. The first Terms of Resolution was dated April 24, 2017 (“Terms of Resolution #1”). It required Dr. Mausolf to promptly reply to all future correspondence from the College by the date stated on the correspondence or in the event that the College correspondence did not contain a specific response date, respond within two weeks from the date of her receipt of the correspondence.

14. The second Terms of Resolution was dated August 11, 2017 (“Terms of Resolution #2”). It referred Dr. Mausolf to the Individual Practice Review (“IPR”) Program, as a matter of informal resolution for College File No. 160133.1.1, and provided that Dr. Mausolf will cooperate with all reasonable recommendations and requests arising from the IPR.
15. The Complaints Director of the College received a referral from Dr. Flook, Senior Medical Advisor for Continuing Competence Department, referring Dr. Susanne Mausolf to the Professional Conduct Department of the College in accordance with section 5 of the Terms of Resolution #2.
16. The Complaints Director of the College determined that there was sufficient evidence of a failure to respond by Dr. Mausolf in accordance with section 5 of the Terms of Resolution #2 and referred those issues to the Hearings Director of the College for a hearing before the Hearing Tribunal.
17. Dr. Mausolf is in violation of section 3 of the Terms of Resolution #1, which indicates that she will promptly reply to all correspondence from the College.
18. The College made numerous efforts to contact Dr. Mausolf by registered letter, email, by office telephone and by cellphone without a response during the months of March and April 2018. More specifically by:
 - a. email dated March 14, 2018 from Kim Horricks-Bender, Individual Practice Review Administrator Continuing Competence;
 - b. email dated March 21, 2018 from Natasha Bonnett, Individual Practice Review Administrator Continuing Competence;
 - c. second email dated March 21, 2018 from Natasha Bonnett, Individual Practice Review Administrator Continuing Competence;
 - d. telephone message on March 26, 2018 from Natasha Bonnett, Program Administer, Individual Practice Review Administrator Continuing Competence;
 - e. telephone message on March 29, 2018 from Natasha Bonnett, Program Administer, Individual Practice Review Administrator Continuing Competence;
 - f. telephone message on April 10, 2018 from Natasha Bonnett, Program Administer, Individual Practice Review Administrator Continuing Competence;
 - g. letter dated April 13, 2018 from Natasha Bonnett, Program Administer, Individual Practice Review Administrator Continuing Competence;
 - h. registered letter dated April 13, 2018 from Dr. Karen Mazurek, Deputy Registrar;

- i. telephone message on April 18, 2018 from Kim Horricks-Bender, Individual Practice Review Administrator Continuing Competence;
 - j. telephone message on April 20, 2018 from Kim Horricks-Bender, Individual Practice Review Administrator Continuing Competence.
- 19. Dr. Mausolf failed to respond to the College as requested and in accordance with the provisions of the Terms of Resolution #1 and Terms of Resolution #2.
- 20. The matter was referred to a hearing before the Hearing Tribunal.
- 21. Mr. Morrow, counsel for the member, noted that Dr. Mausolf admitted to the conduct in the allegation and Dr. Mausolf admitted that her conduct constitutes unprofessional conduct.

VI. DECISION OF THE HEARING TRIBUNAL ON THE ALLEGATION

- 22. The Hearing Tribunal adjourned to review the evidence and consider the submissions of the parties. The Hearing Tribunal found that the allegation was proven and that the conduct constitutes unprofessional conduct for the reasons set out below.
- 23. The Hearing Tribunal accepts the evidence in the Agreed Statement of Facts and Admission of Unprofessional Conduct (Exhibit 2) as supported by the documents in the Exhibit Book (Exhibit 3). The Hearing Tribunal notes that there were several instances of a failure by Dr. Mausolf to respond to the College.
- 24. A member of the College has an obligation to respond to requests from the College. Although this obligation exists regardless of having entered into an agreement with the College, in this case, the obligation was specifically recognized by Dr. Mausolf in entering into the Terms of Resolution. Dr. Mausolf had entered into two Terms of Resolution that specifically addressed the obligation for her to respond to the College in a timely manner and cooperate in the IPR Program.
- 25. Dr. Mausolf's failure to respond to the College between the dates of March 14, 2018 and April 20, 2018 is unacceptable conduct. Where a member fails or refuses to respond to the College, the College loses the ability to effectively regulate its members. The public is protected only where a College can effectively regulate its members. This is why the obligation on members to respond to the College in a timely fashion is so important. It is an essential component on the privilege of self-regulation. This conduct harms the integrity of the profession.
- 26. The Hearing Tribunal considered the definition of unprofessional conduct under s. 1(1)(pp) of the HPA. Dr. Mausolf failed to cooperate with the Terms of Resolution #1 and Terms of Resolution #2. The failure or refusal to cooperate with College processes, including the failure or refusal to co-operate with a competence committee or a person undertaking a practice visit can constitute unprofessional conduct. The failure to

cooperate with the College is also conduct that harms the integrity of the profession. The Hearing Tribunal finds that Dr. Mausolf's conduct is serious and constitutes unprofessional conduct pursuant to section 1(1)(pp) of the HPA.

VII. SUBMISSIONS ON SANCTION

27. The Hearing Tribunal advised the parties during the hearing that it accepted the admission by Dr. Mausolf and found that the conduct in the allegation was proven and constitutes unprofessional conduct. The Hearing Tribunal then heard submissions on sanction from the parties. Ms. Athwal and Mr. Morrow presented a joint submission on sanction. They proposed that the following was appropriate in this case:
 - a. Dr. Mausolf shall receive a reprimand;
 - b. Dr. Mausolf should receive a suspension of her practice permit for a period of 7 days, to be served within 90 days following the written decision of the Hearing Tribunal and served starting on a date approved in advance by the Complaints Director;
 - c. Dr. Mausolf shall be responsible for the full costs of the hearing before the Hearing Tribunal, with such costs to be paid in full within 90 days of the date of the Order of the Hearing Tribunal.
28. Ms. Athwal also presented a Brief of Law, containing excerpts of cases to support the proposition that where there is a joint submission, a decision-maker should only depart from the joint submission where the decision-maker finds that the proposed penalty is contrary to the public interest or would bring the administration of justice into disrepute.
29. Ms. Athwal also reviewed the sentencing factors in *Jaswal v. Newfoundland Medical Board (1996)*. The relevant factors noted by Ms. Athwal for this case are:
 - a. The nature and gravity of the proven allegation: the conduct was serious as Dr. Mausolf failed to respond to the College on 10 occasions after having signed two Terms of Resolution.
 - b. The age and experience of the member: Dr. Mausolf was first registered in 1984. She is currently 64 years old.
 - c. The previous character of the physician: Dr. Mausolf had four previous complaints not including this matter.
 - d. The number of times the offence was proven to have occurred: there are 10 noted failures to respond in the allegation.
 - e. The role of the physician in acknowledging what had occurred: Dr. Mausolf has been cooperative in reaching an agreement and making an admission of unprofessional conduct.

- f. The need to promote specific and general deterrence: the proposed penalty reflects the seriousness of the matter. A reprimand and suspension are serious blemishes on a member's professional record. The proposed penalty will serve as a deterrent specifically to Dr. Mausolf and to regulated members generally.
 - g. The need to maintain the public's confidence in the integrity of the profession: Dr. Mausolf's conduct harmed the integrity of the profession.
 - h. The degree to which the offensive conduct was clearly regarded as conduct that would fall outside the range of permitted conduct: Dr. Mausolf's conduct was clearly outside of the range of acceptable conduct.
 - i. The range of sentence in other similar cases: Ms. Athwal reviewed cases at Tabs 3 to 5 of Exhibit 5 to demonstrate that the proposed penalty was within the range in similar cases.
30. Ms. Athwal noted that the proposed sanction was consistent with other cases and that it satisfies the factors in *Jaswal* and is in the public interest.
 31. Mr. Morrow agreed that the proposed penalty falls within the range of prior cases and noted that the factors in *Jaswal* reviewed by Ms. Athwal were appropriate factors to consider.
 32. Mr. Morrow then read a statement prepared by Dr. Mausolf. Dr. Mausolf noted that she has practiced for 31 years in Alberta. She had only had a single complaint up to 2015, which was dismissed. She noted several personal issues that she was experiencing starting in 2014. She was dealing with certain health issues, as well as very difficult personal issues. She noted that these were not being raised as an excuse for her failures to respond and that this process has reminded her of her professional obligations. She apologized to the Hearing Tribunal, the College and the profession.
 33. Mr. Morrow noted that Dr. Mausolf had clearly acknowledged the misconduct and expressed a sincere apology to the Hearing Tribunal, the College and the profession. He reiterated the importance regarding deference to be given to a joint submission. He stated that the joint submission on penalty represented a fair and reasonable resolution. He noted that Dr. Mausolf was a senior physician whose issues with the College started only relatively recently. Dr. Mausolf attempted to navigate the complaint and discipline process without the assistance of legal counsel. Her role in acknowledging the conduct is important and should be considered by the Hearing Tribunal.
 34. Mr. Morrow noted that Dr. Mausolf had not been subject to other financial consequences, but will be responsible for the costs of the hearing, which are expected to be in the range of \$15,000.
 35. Mr. Morrow noted that the admission of unprofessional conduct and the personal circumstances she was experiencing should be considered by the Hearing Tribunal. While the personal stresses do not excuse the conduct, the Hearing Tribunal can consider these in making its determination.

VIII. DECISION OF THE HEARING TRIBUNAL ON SANCTION

36. The Hearing Tribunal adjourned to consider the joint submission on sanction. The Hearing Tribunal accepts the joint submission on sanction for the reasons that follow.
37. The Hearing Tribunal considered the factors in the *Jaswal* case. The Hearing Tribunal finds that Dr. Mausolf's conduct is very serious. It is a member's obligation to respond to, and cooperate with, his or her College. Where a member fails or refuses to do so, the College's ability to regulate the profession is placed in jeopardy. Membership in the College is a privilege and not a right, as is the ability to self-regulate. A physician is granted certain privileges as a member of the College and has corresponding obligations, which include the obligation to respond to the College.
38. The Hearing Tribunal considered Dr. Mausolf's statement and noted the personal stressors affecting her during the relevant time frame. However, the Hearing Tribunal did not view these as mitigating factors. In the view of the Hearing Tribunal, all members will experience personal stressors at some point in their career. This does not absolve a member from the member's obligations to the College. If a member is capable of carrying on her practice, then the member is expected to meet her obligations to the College.
39. The Hearing Tribunal notes that had this matter not proceeded by way of a joint submission on penalty, it would have considered imposing a more serious penalty. However, the Hearing Tribunal recognizes the principle of deference to be given to a joint submission on sanction. The case law indicates that a joint submission on sanction should not be rejected unless it is unfit, unreasonable or contrary to the public interest. The Hearing Tribunal finds that the proposed sanction in this case is appropriate, reasonable and is in the public interest.
40. The Hearing Tribunal considered the principles in the *Jaswal* case and the submissions of the parties on penalty. The Hearing Tribunal finds that the joint submission meets the test for deference as set out in the case law. The Hearing Tribunal is prepared to accept the joint submission on penalty. The Hearing Tribunal accepts that a reprimand and suspension are serious penalties that will remain on the member's record. In addition, the Hearing Tribunal accepts the submission of the parties that the payment of full costs of the hearing are appropriate in this case. The Hearing Tribunal believes that Dr. Mausolf has taken this process seriously and has learned from this experience and that this decision of the Hearing Tribunal will act as a specific deterrent with respect to her future conduct.

IX. ORDERS OF THE HEARING TRIBUNAL

41. The Hearing Tribunal orders that:

- a. Dr. Mausolf shall receive a reprimand;
- b. Dr. Mausolf should receive a suspension of her practice permit for a period of 7 days, to be served within 90 days following the written decision of the Hearing Tribunal and served starting on a date approved in advance by the Complaints Director;
- c. Dr. Mausolf shall be responsible for the full costs of the hearing before the Hearing Tribunal, with such costs to be paid in full within 90 days of the date of the Order of the Hearing Tribunal.

Signed on behalf of the Hearing Tribunal by the Chair



Dated: October 29, 2018

Dr. Randall Sargent