

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

IN THE MATTER OF AN APPEAL FROM THE DECISION OF THE HEARING
TRIBUNAL OF THE COLLEGE OF PHYSICIANS AND SURGEONS OF ALBERTA
REGARDING DR. RICHARD BARR

DECISION OF THE COUNCIL REVIEW PANEL OF
THE COLLEGE OF PHYSICIANS AND SURGEONS OF ALBERTA

[1] An appeal was held before a panel of the Council Review Panel (“the Panel”) of the College of Physicians & Surgeons of Alberta (“CPSA” or the “College”) by telephone conference on November 18, 2019.

[2] In attendance by telephone conference were the members of the Panel:

Dr. Pauline Alakija, Chair
Dr. Tarek Motan
Dr. John O’Connor
Ms. Levonne Louie, public member
Ms. Laurie Steinbach, public member

Also in attendance by telephone conference were:

Ms. Aman Athwal, legal counsel for the Complaints Director
Ms. Leah Macklin, legal counsel for the Complaints Director
Dr. Richard Barr, Investigated Person, unrepresented
Ms. Julie Gagnon, independent legal counsel to the Panel

[3] The appeal is with respect to the Hearing Tribunal’s decision dated July 3, 2019. The appeal was conducted in accordance with sections 87 and 89 of the *Health Professions Act* (“HPA”).

I. PRELIMINARY MATTERS

[4] There were no objections to the composition of the Panel hearing the appeal or the jurisdiction of the Panel to proceed with the appeal.

[5] The parties confirmed that there were no preliminary or jurisdictional issues.

[6] The appeal is open to the public and no application was made to close the appeal hearing.

[7] Dr. Richard Barr appeared without legal counsel. He confirmed his understanding that he has a right to be represented by legal counsel but was waiving that right.

[8] Documents, submissions and case authorities reviewed and considered by the Panel included:

1. Letter dated August 2, 2019 and Notice of Appeal;
2. Complaints Director’s Written Submissions;
3. Hearing Tribunal decision dated July 3, 2019;
4. Transcript of hearing held April 11, 2019;
5. Exhibits 1 to 11 entered at hearing held April 11, 2019; and

6. *Visconti v. College of Physicians and Surgeons of Alberta* 2012 ABCA 46 (provided by legal counsel for the Complaints Director following the appeal).

II. BACKGROUND

- [9] A Hearing Tribunal issued a conduct and sanction decision dated July 3, 2019, with respect to a complaint involving Dr. Richard Barr. The hearing proceeded by way of an admission by Dr. Barr that the allegation was true and that the conduct amounted to unprofessional conduct. Dr. Barr was represented by legal counsel at the hearing.
- [10] The Hearing Tribunal found Dr. Barr guilty of unprofessional conduct on the following allegation:

Dr. Barr 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 December 31, 2014, particulars of which include:

- a) Letter dated January 31, 2018 from Katherine P. Damron, Complaint Inquiry Coordinator;
 - b) Letter dated March 8, 2018 from Katherine P. Damron, Complaint Inquiry Coordinator;
 - c) Registered letter dated March 29, 2018 from Dr. Michael Caffaro, Assistant Registrar and Complaints Director;
 - d) [*withdrawn*];
 - e) Letter dated July 12, 2018 from Dr. Gordon Giddings, Senior Medical Advisor;
 - f) Email dated August 2, 2018 from Jennifer Tsen, Senior Medical Assistant; and
 - g) Registered letter dated August 9, 2018 from Dr. Gordon Giddings, Senior Medical Advisor.
- [11] The Hearing Tribunal found that in 2018, Dr. Barr failed on six occasions to respond to the College about an investigation into a complaint against him in a timely manner. The Hearing Tribunal found that this was a direct breach of his Terms of Resolution (“TOR”) from 2014 that was, and is, still in effect. Dr. Barr had committed to responding promptly to all correspondence from the College and acknowledged he had a duty to cooperate with the College in a timely manner. He failed to do so.
- [12] The Hearing Tribunal found that the College communicated with Dr. Barr by way of the Physician Portal, by email and by registered mail. The evidence demonstrated that Dr. Barr accessed the Physician Portal after some of the communications were sent but prior to the expiry of the deadline. It also demonstrated that some of the registered mail was signed for prior to the expiry of the response deadline. The Hearing Tribunal found it had no doubt that Dr. Barr received the College’s communications prior to the expiry of the deadlines.

- [13] The Hearing Tribunal found that the conduct constituted unprofessional conduct under s. 1(1)(pp)(vii) of the HPA for a failure or refusal to comply with an agreement that is part of a ratified settlement and a failure or refusal to comply with a request of or cooperate with an investigator. The Hearing Tribunal also found that the conduct was unprofessional pursuant to s. 1(1)(pp)(xii) of the HPA as conduct that harms the integrity of the regulated profession.
- [14] The parties did not agree on sanction. Evidence was presented by the Complaints Director and Dr. Barr made a statement (which was entered as an Exhibit in the hearing) and submissions made by the parties to the Hearing Tribunal regarding the sanctions to be ordered by the Hearing Tribunal.
- [15] The Complaints Director submitted that Dr. Barr should receive a reprimand; that he should be suspended for a period of 60 days, of which 30 should be held in abeyance and be served if Dr. Barr failed to respond to correspondence from the College in accordance with certain timelines; and that Dr. Barr be responsible for the full costs of the investigation and hearing, to be paid within 90 days from the date of the Hearing Tribunal decision.
- [16] Dr. Barr submitted that the Hearing Tribunal should order a reprimand; a 4 day suspension; and that Dr. Barr be responsible for the necessary costs of the investigation and hearing.
- [17] In its decision dated July 3, 2019, the Hearing Tribunal ordered:
1. Dr. Barr shall receive a reprimand.
 2. Dr. Barr's practice permit shall be suspended for a period of thirty (30) days, such suspension starting on a date approved by the Complaints Director within ninety (90) days of Dr. Barr receiving this decision.
 3. Dr. Barr shall be responsible for the full costs of the investigation and hearing before the Hearing Tribunal, with such costs to be paid in full within ninety (90) days from the date that Dr. Barr receives this decision.

III. GROUNDS OF APPEAL

- [18] In his Notice of Appeal, Dr. Barr raises the following grounds of appeal:
1. The Hearing Tribunal erred in finding that Dr. Barr was guilty of unprofessional conduct pursuant to section 1(1)(pp)(vii) of the HPA by failing to "comply with the agreement that is part of a ratified settlement", as the TOR do not constitute a ratified settlement as defined in the HPA.
 2. The Hearing Tribunal erred by finding that a 2014 TOR agreement entered into by Dr. Barr and the College is "akin to a finding by a Tribunal", and treating as such in its reasons for the sanction decision.

3. The Hearing Tribunal erred in its consideration and application of the *Jaswal v. Newfoundland Medical Board (1996)*, 42 Admin LR (2d) 233, factors in support of the sanction decision, for reasons including but not limited to:
 - a) The Hearing Tribunal's failure to consider the following as mitigating factors:
 - (i) The fact that Dr. Barr did not see certain communications until after the deadline for a response, making the Hearing Tribunal's finding that it had "no doubts that Dr. Barr received the College's communications prior to the expiry of the deadlines" incorrect;
 - (ii) The fact that Dr. Barr ultimately responded to the College's two requests for information comprising the six communications at issue;
 - (iii) Dr. Barr's admissions regarding conduct; and
 - (iv) Dr. Barr's lack of prior convictions of unprofessional conduct.
 - b) The Hearing Tribunal's finding that Dr. Barr's delay impacted a patient, and that this was an aggravating factor, without any evidence for this finding, and in the face of evidence to the contrary that the complaint was, in fact, processed in a timely manner and within the expected timeframe.
 - c) The Hearing Tribunal's finding that Dr. Barr's situation was more similar to the *Lasaleta (Re)*, 2018 CanLii 85973 (AB CPSDC) and *Mausolf (Re)*, 2018 CanLii 119633 (AB CPSDC) cases than others, in addition to ignoring the sanction in the *Mausolf* case, and ignoring the distinguishing facts from the *Lasaleta* case.
4. The Hearing Tribunal erred in issuing the Costs Award as it:
 - a) Failed to take into account relevant factors, including but not limited to:
 - (i) Dr. Barr's admission with respect to all of the citations against him brought to hearing; and
 - (ii) The fact that the Complaints Director sought but did not succeed in obtaining the 60 day suspension; and
 - b) Failed to assess the quantum of the Costs Award in rendering its decision and, as a result, failed to consider the overall reasonableness of the Costs Award in all of the circumstances.

IV. PARTIES' SUBMISSIONS

Submissions of the Appellant: Dr. Richard Barr

- [19] Dr. Richard Barr did not provide written submissions in advance of the appeal although he was provided an opportunity to do so. Dr. Barr indicated during the appeal that the hearing was not at all what he was expecting. His impression was that he was there purely to negotiate penalty. He stated that the background to the matter was not brought up in the hearing.
- [20] Dr. Barr noted that the real issue was the attempt to communicate through the Physician Portal. He is 65 years old and works 10 hours per day. He has an unblemished record. His work does not involve the internet and he does not access email during work hours. There is nothing in his professional life that has to do with email.
- [21] There was a change in policy for the CPSA to communicate important communications through the Physician Portal. During this time, his mother was ill and he was even busier than normal.
- [22] He noted that he does not care about the costs of the hearing, although he stated they are obscene. He noted that the one month suspension is obscene. He stated that the suspension would damage his ability to look after his patients properly. While he works in a group of urologists, they work separately. The suspension is unfair to him, his patients and other physicians who will need to see his patients during a period of suspension.
- [23] Dr. Barr noted he has suspicions about how the CPSA has been treating him. He feels persecuted based on previous interactions with the CPSA. Dr. Barr provided information regarding these previous matters. He stated that he feels considerable angst when he receives communications from the CPSA.
- [24] Dr. Barr apologized for not opening the communications from the College. He noted that the CPSA policy changed at some point to have communications through the Physician Portal. He had problems communicating in the summer, but these were addressed. He also noted he does not look at his email frequently. He recognizes he did something wrong, but it does not warrant a one month suspension.
- [25] Following a request for clarification by the Chair, Dr. Barr confirmed that his grounds of appeal in the Notice of Appeal were accurate.

Submissions of the Respondent: Complaints Director

- [26] Counsel for the Complaints Director submitted that the Panel should apply the standard of review of reasonableness to the decision of the Hearing Tribunal and sanctions imposed by the Hearing Tribunal.

- [27] Counsel for the Complaints Director noted that much of the background provided by Dr. Barr was before the Hearing Tribunal, including his personal circumstances. These were considered by the Hearing Tribunal.
- [28] With respect to the first ground of appeal, counsel for the Complaints Director noted that the Hearing Tribunal's finding that Dr. Barr's comment constituted unprofessional conduct as defined in the HPA was reasonable. The Complaints Director acknowledged that the TOR was not a ratified agreement under section 1(1)(pp)(vii)(A) of the HPA and that the College no longer uses ratified settlements under section 60 of the HPA when resolving complaints, as this process is not practicable. Instead, the College uses a process under section 55(2)(a.1) of the HPA which results in a TOR between the College and the investigated member. Although the TOR was not a ratified agreement, the Hearing Tribunal's finding of unprofessional conduct was reasonable.
- [29] With respect to the section ground of appeal, counsel for the Complaints Director noted that the Hearing Tribunal stated:
- “In 2014, Dr. Barr signed a Terms of Resolution with the College for similar conduct (failing to respond to the College). In signing this Resolution, he understood and agreed to timely communication with the College. This Terms of Resolution states that failure to adhere to it meant the Complaints Director could refer the issue to a Hearing Tribunal and in event there was a finding of unprofessional conduct, a Hearing Tribunal could consider the Terms of Resolution when determining sanction. This Tribunal has considered the Terms of Resolution and has determined it is also an aggravating factor. The Terms of Resolution was an agreement entered into by the College so as to promote Dr. Barr's responsiveness without the need for a discipline hearing. It is akin to a finding by a Tribunal as it was the means by which a complaint was concluded. [emphasis added]”
- [30] Counsel for the Complaints Director noted that this statement, when read in context, emphasizes the seriousness and importance of undertakings to the College. The TOR was such an undertaking, executed to resolve two complaints after the hearing was scheduled and ultimately it resulted in the hearing being cancelled. Counsel for the Complaints Director noted that the amount of weight the Hearing Tribunal attributed to the TOR was left to the discretion of the Hearing Tribunal after it considered all the evidence. Counsel for the Complaints Director takes the position that this ground of appeal is without merit and should be dismissed.
- [31] With respect to the third ground of appeal, counsel for the Complaints Director noted that the Hearing Tribunal applied the factors in the decision of *Jaswal v. Newfoundland Medical Board* to determine the appropriate sanction and that the decision was reasonable. The Hearing Tribunal found that some of the factors were aggravating and others were mitigating based on the evidence submitted and the oral testimony of the Complaints Director.

- [32] Dr. Barr takes the position that the Hearing Tribunal failed to consider four mitigating factors. He also argues that the Hearing Tribunal made a finding without any evidence that his delay impacted a patient and that this was an aggravating factor. Counsel for the Complaints Director noted that the Hearing Tribunal did consider Dr. Barr's admission of unprofessional conduct (at page 13) and found this was a mitigating factor. The Hearing Tribunal also noted in its decision that Dr. Barr did not have any prior convictions of acting unprofessionally (at page 14).
- [33] The Complaints Director takes the position that Dr. Barr's appeal on the basis that he did not see certain communications until after the deadline for a response highlights the fact that he still does not appreciate the seriousness of his conduct. Dr. Barr's position that he ultimately responded to two of the College's requests for information also misses the point of the allegation he admitted to.
- [34] With respect to the argument that the Hearing Tribunal erred in finding that the delay impacted his patient, and considered this to be an aggravating factor, the Complaints Director takes the position that Dr. Barr has mischaracterized the reasons of the Hearing Tribunal. The Hearing Tribunal wrote at page 14:

“Although the complaint was commenced by the College, Dr. Barr's actions did impact a patient. Dr. Barr's failure to respond to the College resulted in a period of time where the College was awaiting information from Dr. Barr as part of its investigation. A member of the public has the right to have their complaint processed in a timely manner and Dr. Barr showed disregard to this by not responding in a timely manner.”

- [35] The Complaints Director takes the position that this ground of appeal is without merit and should be dismissed.
- [36] With respect to the fourth ground of appeal, the Complaints Director takes the position that the decision of the Hearing Tribunal on costs is reasonable. In prior Hearing Tribunal decisions in cases of failing to respond, the Hearing Tribunal has ordered full costs against the investigated member. The costs imposed in this case were reasonable and this ground of appeal should be dismissed.

Reply Submissions of the Appellant: Dr. Richard Barr

- [37] In his reply, Dr. Barr reiterated some of his prior submissions regarding his personal circumstances, that he was not aware of the communications and that once he was aware, he responded.
- [38] Dr. Barr also advised the Panel that he has [REDACTED] and is having [REDACTED] in December 2019.

V. SUMMARY OF THE PANEL'S DECISION

[39] The Panel carefully reviewed and considered the Hearing Tribunal decision, exhibits, transcripts, written submissions and case authorities of the Complaints Director and the oral submissions made by counsel for the Complaints Director and Dr. Barr at the appeal.

[40] The Panel has reviewed all the material and considered the submissions of the parties. The Panel has the jurisdiction under section 89(5) of the HPA to:

- a. make any finding that, in its opinion, should have been made by the hearing tribunal,
- b. quash, confirm or vary any finding or order of the hearing tribunal or substitute or make a finding or order of its own,
- c. refer the matter back to the hearing tribunal to receive additional evidence for further consideration in accordance with any direction that the council may make, or
- d. refer the matter to the hearings director to schedule it for rehearing before another hearing tribunal composed of persons who were not members of the hearing tribunal that heard the matter, to rehear the matter.

[41] The Complaints Director submits that the standard of review to be applied to this appeal is reasonableness. Dr. Barr's oral submissions did not address the standard of review.

[42] The Panel finds that the appropriate standard of review is reasonableness. A decision will be reasonable if it is justifiable, transparent and intelligible.

[43] The decision of the Hearing Tribunal finding that Dr. Barr was guilty of unprofessional conduct is reasonable. The Panel also considered the sanctions imposed by the Hearing Tribunal, in particular the thirty (30) day suspension and the order for costs. The Hearing Tribunal finds that the decision of the Hearing Tribunal with respect to sanction is reasonable. The decision is justifiable on the facts and the law before the Hearing Tribunal and is transparent and intelligible.

[44] However, the Panel also carefully considered Dr. Barr's submissions made during the appeal. The Panel finds that this would have been an appropriate case to provide Dr. Barr with an opportunity for remediation through courses.

[45] On this basis, the Panel is prepared to vary the suspension ordered by the Hearing Tribunal, as follows:

Dr. Barr's practice permit shall be suspended for a period of thirty (30) days, such suspension starting on a date approved by the Complaints Director within ninety (90) days of Dr. Barr receiving this decision. However, upon Dr. Barr providing proof to the Complaints Director of having completed a course on each of the following:

- (i) email management; and

- (ii) communication for physicians.

within sixty (60) days of the date of this decision, the thirty (30) day suspension will be deemed to have been served. The Complaints Director must approve such courses in advance.

- [46] The Panel finds that the Hearing Tribunal's decision to order Dr. Barr to pay 100% of the costs of the investigation and hearing to be reasonable. Dr. Barr's appeal with respect to costs is denied.

- [47] The reasons of the Panel are set out below.

VI. FINDINGS AND REASONS

- [48] The Panel considered each of the grounds of appeal of Dr. Barr from the Notice of Appeal. Each is addressed below.

Ground #1: The Hearing Tribunal erred in finding that Dr. Barr was guilty of unprofessional conduct pursuant to section 1(1)(pp)(vii) of the HPA by failing to "comply with an agreement that is part of a ratified settlement," as the TOR do not constitute a ratified settlement as defined in the HPA

- [49] The Panel heard that the CPSA no longer uses ratified settlements under section 60 of the HPA to resolve complaints. Rather, the Complaints Director attempts to resolve complaints between a complainant and the investigated person using section 55(2)(a.1) of the HPA. With the consent of the complainant and the investigated person, this results in a TOR between the CPSA and the investigated person.
- [50] Whether the resolution is achieved under section 60 or section 55(2)(a.1) is moot because there was an agreement reached between the CPSA and Dr. Barr. Dr. Barr signed a TOR in 2014.
- [51] The Hearing Tribunal heard evidence that provided the history leading up to the TOR being signed. The Complaints Director "testified that Dr. Barr had previously faced three separate complaints, all of which had been resolved without a hearing. He gave evidence that two of the complaints involved Dr. Barr failing to respond to patients and that the third complaint was opened by the College as a result of Dr. Barr's failure to respond to the College's requests for information. He testified that the TOR resolved one of the patient complaints and the College's complaint while the other patient complaint was dismissed." (Hearing Tribunal decision, page 8)
- [52] In the TOR, Dr. Barr agreed to respond promptly to all correspondence from the CPSA and acknowledged he had a duty to cooperate with the CPSA in a timely manner.
- [53] The Complaints Director acknowledges the TOR was not a ratified settlement as this term is defined in the HPA. However, the Complaints Director takes the position that the Hearing Tribunal's finding of unprofessional conduct was reasonable.

[54] The Panel agrees with the position taken by the Complaints Director. There is sufficient evidence to find that Dr. Barr's conduct is unprofessional. Importantly, Dr. Barr admitted at the hearing that the conduct occurred and acknowledged it was unprofessional conduct. In addition, Dr. Barr did not retract this admission as part of the appeal. Although the TOR is not a ratified settlement, the finding of unprofessional conduct by the Hearing Tribunal is reasonable. This ground of appeal is dismissed.

Ground #2: The Hearing Tribunal erred by finding that a 2014 TOR agreement entered into by Dr. Barr and the College is "akin to a finding by a Tribunal", and treating as such in its reasons for the sanction decision

[55] As described above, the signing of the TOR resulted in three separate complaints being resolved without a hearing. Just because there was not a hearing convened does not mean that the complaints that were centered on a failure to respond in a timely manner were less serious. Failure to respond to requests in a timely manner from a professional's governing regulatory body is a serious matter. Dr. Barr was able to avoid a hearing and any potential findings by signing the TOR. The finding of the Hearing Tribunal, when read in context of the decision, is reasonable.

[56] The Panel finds that this finding by the Hearing Tribunal is reasonable. This ground of appeal is dismissed.

Ground #3: The Hearing Tribunal erred in its consideration and application of the *Jaswal v. Newfoundland Medical Board (1996)*, 42 Admin LR 2(d) 233, factors in support of the sanction decision, for reasons including but not limited to:

- a. **The Hearing Tribunal's failure to consider the following as mitigating factors:**
 - (i) **The fact that Dr. Barr did not see certain communications until after the deadline for a response, making the Hearing Tribunal's finding that it had "no doubt that Dr. Barr received the College's communications prior to the expiry of the deadlines" incorrect;**
 - (ii) **The fact that Dr. Barr ultimately responded to the College's two requests for information comprising the six communications at issue;**
 - (iii) **Dr. Barr's admissions regarding conduct; and**
 - (iv) **Dr. Barr's lack of prior convictions of unprofessional conduct.**
- b. **The Hearing Tribunal's finding that Dr. Barr's delay impacted a patient, and that this was an aggravating factor, without any evidence of this finding, and in the face of evidence to the contrary that the complaint was, in fact, processed in a timely manner and within the expected timeframe.**
- c. **The Hearing Tribunal's finding that Dr. Barr's situation was more similar to the *Lasaleta (Re)*, 2018 CanLii 85973 (AB CPSDC) and *Mausolf (Re)*, 2018 CanLii 119633 (AB CPSDC) cases than others, in addition to ignoring the**

sanction in the *Mausolf* case, and ignoring the distinguishing factors from the *Lasaleta* case.

- [57] The Panel acknowledges that the admission of unprofessional conduct in this case is a mitigating factor. The Hearing Tribunal found this as well.
- [58] The Panel finds that it was reasonable for the Hearing Tribunal to consider and apply a number of the factors addressed in the *Jaswal* case to Dr. Barr's situation. Pages 12 through 14 of the Hearing Tribunal's decision detail the Hearing Tribunal's findings on each of the factors considered.
- [59] Whether Dr. Barr saw certain communications or not in a timely manner was considered by the Panel. The Panel noted that attempts to communicate with Dr. Barr through emails and the Physician Portal did not appear to be effective. However, it appears that correspondence sent by registered mail was received and responded to. This information was also before the Hearing Tribunal and considered by the Hearing Tribunal.
- [60] When regulated members complete their annual registrations, they are required to provide an email address to the CPSA through which they can be reached. By providing this information, one would reasonably expect that this email account would be checked on a regular basis. The Panel understands that emails were sent advising Dr. Barr that correspondence was waiting for him in his Physician Portal. It is then Dr. Barr's responsibility to check his Physician Portal for the correspondence.
- [61] It is not known how often Dr. Barr checks the email address that he provided to the CPSA. However, if it is an email address that he has provided to the CPSA, it is reasonable to expect that the email address would be checked on a regular basis. It was noted in the Panel's deliberations that the CPSA could see that Dr. Barr's Physician Portal had not been accessed.
- [62] On page 10 of the Hearing Tribunal's decision, it is noted that in Dr. Barr's oral statement, "that going forward, he would work to ensure that emails, voicemails, letters, and other correspondence from the College was promptly responded to in a timely fashion in accordance with the Terms of Resolution."
- [63] The Hearing Tribunal acknowledged on page 13 of their decision that Dr. Barr ultimately responded to the CPSA's requests for information and also acknowledged Dr. Barr's admission of unprofessional conduct as a mitigating factor.
- [64] While Dr. Barr has a lack of conviction of prior cases of unprofessional conduct, he has had prior complaints filed against him of a similar nature. He entered into a TOR in 2014 thereby avoiding a hearing into similar allegations. Since similar complaints have been made in the past that resulted in the signing of the TOR, it would be reasonable to expect a heightened awareness to the need to respond to the CPSA in a timely manner.
- [65] The question of whether there was a direct impact on an offended patient is difficult to assess. The investigation may have been completed within the "average" time for an

investigation but Dr. Barr delayed in responding to the CPSA. If Dr. Barr had responded in a timely fashion, the complaint may well have been resolved sooner, thereby giving the complainant closure more quickly.

- [66] It was reasonable for the Hearing Tribunal to find that Dr. Barr's case was more similar to the *Lasaleta* case and the *Mausolf* case than to other cases.
- [67] While *Lasaleta* resulted in a one month suspension for unprofessional conduct resulting from 17 instances of non-responsiveness, *Mausolf* resulted in a 7 day suspension for unprofessional conduct resulting from 10 instances of non-responsiveness. *Mausolf* also involved two TOR agreements; one with the CPSA and one with the Independent Practice Review section of the CPSA.
- [68] An aggravating factor in Dr. Barr's situation is that he appears to neglect some important tasks in the administrative aspects of his practice. He failed to check his email and his Physician Portal on a regular basis notwithstanding that he provided the email address he wished to be contacted at. All registered members were notified that the Physician Portal would be used by the CPSA to communicate with them.
- [69] Taking into consideration the legal precedents and the mitigating and aggravating factors, the Panel finds that the Hearing Tribunal's decision was reasonable.
- [70] As part of his oral submission at the appeal, Dr. Barr submitted that a 30 day suspension would inconvenience his patients and overburden his colleagues. Following the hearing, counsel for the Complaints Director submitted the case of *Visconti v. College of Physicians and Surgeons of Alberta*, in response to this argument. The case was submitted to the Panel by email and to Dr. Barr by email and by courier. No response or further information was received from Dr. Barr. Although provided after the appeal, the case is directly related to an issue raised by Dr. Barr and as such, was considered by the Panel.
- [71] While patients may be inconvenienced as they may need to be rescheduled, the Panel notes that Dr. Barr indicated there were 14 other urologists in the same office. While the Panel acknowledges that Dr. Barr has a busy practice, this is also a choice that he has made.
- [72] The *Visconti* case rejects the proposition advanced by Dr. Barr. The Court of Appeal held (at paragraph 13): "To accept this submission is to accept the proposition that a physician who practices in an area where physicians are in high demand and short-staffed should be held to a lower standard of accountability than other physicians. This proposition is unacceptable; patients are not disentitled to good quality care by reason of the fact their physician has a busy practice."
- [73] The Panel finds that a busy practice is not an excuse to disentitle patients to good quality care. It is important to note that self-regulated professions are held to a high standard by the profession and the public. Unprofessional conduct, as was admitted in this case, impacts the public's perception and trust of the entire profession.

[74] The Hearing Tribunal applied appropriate factors in considering sanction. This ground of appeal is dismissed.

Ground #4: The Hearing Tribunal erred in issuing the Costs Award as it:

- a. **Failed to take into account relevant factors, including but not limited to:**
 - i. **Dr. Barr's admission with respect to all of the citations against him brought to hearing; and**
 - ii. **The fact that the Complaints Director sought but did not succeed in obtaining the 60 day suspension; and**
- b. **Failed to assess the quantum of the Costs Award in rendering its decision and, as a result, failed to consider the overall reasonableness of the Costs Award in all of the circumstances.**

[75] The Panel considered submissions from the parties and the Hearing Tribunal's decision. Given the seriousness of the pattern of unprofessional behavior, there is a need for the cost award to reflect that the CPSA does take this matter seriously. Further, the regulated member should also take the matter seriously.

[76] In both *Lasaleta* and *Mausolf*, the regulated professional was responsible for full costs of the investigation and the hearing.

[77] The Panel finds that it is reasonable for Dr. Barr to be responsible for the full costs of the investigation and the hearing and upholds the Hearing Tribunal's decision on costs.

Variation of Order for Suspension

[78] The Panel carefully considered Dr. Barr's submissions made during the appeal. The Panel did have compassion and empathy for Dr. Barr's circumstances. The Panel finds that this would have been an appropriate case to provide Dr. Barr with an opportunity for remediation through courses. In determining this, the Panel considered Dr. Barr's stated anxiety in dealing with the CPSA and his views that he is being persecuted by the CPSA.

[79] The Panel also considered Dr. Barr's age and the fact that he does not use email communications in his practice. Dr. Barr would be well served by taking courses to assist him with email management and with communication. This was not discussed at the hearing or considered by the Hearing Tribunal. The Panel finds that this would have been appropriate to consider in terms of sanction.

[80] The Panel finds that it would be beneficial for Dr. Barr to enroll and complete an email management course and a communication for physicians course. These may assist him in managing his electronic correspondence and improve his communication skills. As a member of a self-regulated profession, it is reasonable to expect professionals to be knowledgeable in email management in the current environment in which physicians

operate. In addition, completion of a communication for physicians course may allow Dr. Barr to be more responsive to requests from the CPSA (and others). Communication is a core skill expected of all physicians.

- [81] In addition, while not addressed in the Hearing Tribunal's findings or by the parties in the appeal, Dr. Barr is strongly encouraged by the Panel to look at the [REDACTED] [REDACTED] offered through the Alberta Medical Association (AMA). This program may offer resources to assist Dr. Barr [REDACTED].

VII. ORDERS OF THE PANEL

- [82] For all the above reasons, the Panel finds the decision of the Hearing Tribunal to be reasonable, but is prepared to vary the order regarding the suspension for the reasons set out above.

- [83] The Panel upholds the finding of unprofessional conduct and orders:

- a) Dr. Barr shall receive a reprimand;
- b) Dr. Barr's practice permit shall be suspended for a period of thirty (30) days, such suspension starting on a date approved by the Complaints Director within ninety (90) days of Dr. Barr receiving this decision. However, upon Dr. Barr providing proof to the Complaints Director of having completed a course on each of the following:
 - (i) email management; and
 - (ii) communication for physicians.

within sixty (60) days of the date of this decision, the thirty (30) day suspension will be deemed to have been served. The Complaints Director must approve such courses in advance.

- c) Dr. Barr will pay the full costs of the investigation and hearing.

- [84] As noted above, the Panel strongly encourages Dr. Barr to seek [REDACTED] support from the AMA [REDACTED].

- [85] There will be no costs of the appeal awarded in this matter.

Signed on behalf of the Panel this 21 day of Jan., 2020.



Dr. Pauline Alakija, Chair