

COLLEGE OF PHYSICIANS & SURGEONS OF ALBERTA

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

AND IN THE MATTER OF A HEARING REGARDING  
THE CONDUCT OF DR. RICHARD BARR

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

## **I. INTRODUCTION**

The Hearing Tribunal held a hearing into the conduct of Dr. Richard Barr on April 11, 2019. The members of the Hearing Tribunal were:

Dr. Vonda Bobart of St. Albert as Chair, Dr. Betty Ross of Edmonton and Mr. Hugh Campbell of St. Albert (public member). Mr. Jason Kully acted as independent legal counsel for the Hearing Tribunal.

In attendance at the hearing was Ms. Aman Athwal and Leah Macklin, student-at-law, legal counsel for the Complaints Director of the College of Physicians & Surgeons of Alberta (the "College"). Also present was Dr. Richard Barr and Mr. Matthew Riskin and Mr. David McKinnon, legal counsel for Dr. Barr.

There were no objections to the composition of the Hearing Tribunal or the jurisdiction of the Hearing Tribunal to proceed with a hearing. There were no matters of a preliminary nature.

## **II. CHARGES**

The allegation to be considered by the Hearing Tribunal (the "Tribunal") was set out in the Amended Notice of Hearing, dated March 18, 2019, which was as follows:

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 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) Registered letter dated April 30, 2018 from Dr. Michael Caffaro, Assistant Registrar and Complaints Director;
  - e) Letter dated July 12, 2018 from Dr. Gordon Giddings, Senior Medical Advisor;
  - f) Email dated August 2, 2018 from Jennifer Tsen, Senior Medical Advisor Assistant; and
  - g) Registered letter dated August 9, 2018 from Dr. Gordon Giddings, Senior Medical Advisor.

At the hearing, Ms. Athwal advised that particular d) was withdrawn as the registered letter from Dr. Caffaro requested a response from Dr. Barr by May 10<sup>th</sup> 2018 and Dr. Barr did respond by that deadline.

Dr. Barr admitted that the allegation was true and acknowledged that the conduct amounted to unprofessional conduct under the *Health Professions Act* (the “HPA”).

### III. EVIDENCE

#### Exhibits

The Exhibit Book contained the following items:

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| Exhibit 1 | Notice of Hearing dated November 22, 2018   |
| Exhibit 2 | Amended Notice of Hearing dated March 18, 2019  |
| Exhibit 3 | By agreement the parties entered an Exhibit Book, containing 23 items. The Exhibit Book was marked as Exhibit 3 and contained the following tabs: <ol style="list-style-type: none"><li>1 Terms of Resolution dated December 31, 2014</li><li>2 Letter From Katherine P. Damron, Complaint Inquiry Coordinator, to Dr. Barr, dated January 31, 2018</li><li>3 E-Mail from Portal to Dr. Barr dated March 8, 2018</li><li>4 Letter from Katherine P. Damron, Complaint Inquiry Coordinator, to Dr. Barr, dated March 8, 2018</li><li>5 Memo from Dr. Gordon Giddings, Senior Medical Advisor, to Dr. Michael Caffaro, Assistant Registrar and Complaints Director, dated March 23, 2018</li><li>6 Letter from Dr. Michael Caffaro, Assistant Registrar and Complaints Director, to Dr. Barr, dated March 29, 2018, enclosing Canada Post Delivery Confirmation</li><li>7 Memo from Dr. Gordon Giddings, Senior Medical Advisor, to Dr. Michael Caffaro, Assistant Registrar and Complaints Director, dated April 13, 2018</li><li>8 E-mail from Kristy Tkachuk, Software Project Manager, to Dr. Michael Caffaro, Assistant Registrar and Complaints Director, dated April 26, 2018</li><li>9 Letter from Dr. Michael Caffaro, Assistant Registrar and Complaints Director, to Dr. Barr, dated April 30, 2018, enclosing Canada Post Delivery Confirmation</li><li>10 E-mail from Dr. Michael Caffaro, Assistant Registrar and Complaints Director, to Katherine P. Damron, Complaint Inquiry Coordinator, dated May 8, 2018</li><li>11 Memo from Dr. Michael Caffaro, Assistant Registrar and Complaints Director, to file, dated May 8, 2018</li><li>12 Letter from Katherine P. Damron, Complaint Inquiry Coordinator, to Dr. Barr, dated May 23, 2018</li><li>13 Letter from Dr. Gordon Giddings, Senior Medical Advisor, to Dr. Barr, dated June 12, 2018</li><li>14 Letter from Dr. Gordon Giddings, Senior Medical Advisor, to Dr. Barr, dated July 12, 2018</li><li>15 Letter from Dr. Gordon Giddings, Senior Medical Advisor, to Dr. Barr, dated July 27, 2018</li><li>16 E-mail from Jennifer Tsen, Senior Medical Advisor, to Dr. Barr, dated August 2, 2018</li></ol> |

- 17 Letter from Dr. Gordon Giddings, Senior Medical Advisor, to Dr. Barr, dated August 9, 2018, enclosing Canada Post Delivery Confirmation
- 18 Memo from Dr. Gordon Giddings, Senior Medical Advisor, to file, dated August 23, 2018
- 19 E-mail from Dr. Gordon Giddings, Senior Medical Advisor, to Dr. Barr, dated August 30, 2018
- 20 Letter from Aman Athwal to Dr. Richard Barr dated November 23, 2018, enclosing Notice of Hearing
- 21 Affidavit of Service executed by Process Server Larry Robson, serving Notice of Hearing dated December 3, 2018
- 22 Letter from Aman Athwal to Dr. Richard Barr dated December 5, 2018, serving Investigation Records
- 23 FedEx Confirmation of delivery of Investigation Records dated December 6, 2018

Exhibit 4 An Agreed Statement of Facts and Admission of Unprofessional Conduct was entered as Exhibit 4. It contained the following facts:

Agreed Statement of Facts

1. At all material times, Dr. Barr has been a regulated member of the College and maintains a Urology practice.
2. Dr. Barr entered into Terms of Resolution with the College, dated December 31, 2014 (“Terms of Resolution”) which stated at Section 3 that “Dr. Barr shall promptly respond to all correspondence, written or electronic, from the College within 10 business days, or such later date as may be set out in the correspondence.” Section 2 of the Terms of Resolution states that “Dr. Barr acknowledges that he has [a] duty to co-operate with the College and that includes responding to any communication from the College, be it written, electronic or telephone, in a timely manner.
3. In or about July 2017, the College received a complaint against Dr. Barr which was dismissed by the Complaints Director (the “Complaint” and File No. 170413.1.1). Dr. Barr was advised of the dismissal by letter dated August 1, 2017.
4. The Complainant in File No. 170413.1.1 applied to the Complaints Review Committee (the “CRC”) for a review of the dismissal of the Complaint. Upon review, the CRC ordered that the Complaint be further investigated (the “Investigation”).
5. Pursuant to the Investigation, the College sent correspondence to Dr. Barr. Specifically, the College communicated with Dr. Barr requesting his response to the Complaint from January 31, 2018 to April 30, 2018 and requesting his Medical Office Assistant’s contact information from July 12, 2018 to August 9, 2018.
6. This communication consisted of the following:
  - a. January 31, 2018 letter from Katherine Damron via the physician portal, requesting a response by February 28, 2018;

- b. March 8, 2018 letter from Katherine Damron via the physician portal, requesting a response by March 22, 2018;
  - c. March 29, 2018 letter from Dr. Michael Caffaro, Assistant Registrar and Complaints Director, via registered mail (signed for on April 3, 2018), requesting a response by April 12, 2018;
  - d. April 30, 2018 letter from Dr. Caffaro via registered mail (signed for on May 1, 2018), requesting a response by May 10, 2018;
  - e. May 8, 2018 telephone call between Dr. Caffaro and Dr. Barr;
  - f. July 12, 2018 letter from Dr. Giddings via the physician portal, requesting a response by July 26, 2018;
  - g. August 2, 2018 email from Jennifer Tsen, requesting a response as soon as possible; and
  - h. August 9, 2018 letter from Dr. Giddings via the physician portal and registered mail (delivered on August 14, 2018), requesting a response by August 23, 2018.
7. Other than the April 30, 2018 letter from Dr. Caffaro sent via registered mail requesting a response by May 10, 2018 (to which Dr. Barr responded on May 10, 2018), Dr. Barr did not respond to the College's correspondence within 10 business days in accordance with section 3 of the Terms of Resolution, or such date as may have been set out in the correspondence.
  8. The matter was referred to a hearing before the Hearing Tribunal.
  9. Dr. Barr was served by process server on December 3, 2018 with the Notice of Hearing issued by the Hearings Director of the College.
  10. The College's investigation record was delivered via courier to Dr. Barr's clinic on December 6, 2018.

Admission of Unprofessional Conduct

11. Dr. Barr admits to allegations 1a), 1b), 1c), 1e), 1f), and 1g), as set out in the Amended Notice of Hearing as being true and that such conduct amounts to unprofessional conduct. Dr. Barr makes this admission in accordance with Section 70 of the *Health Professions Act*.
12. Dr. Barr and the College agree to the presentation of a joint Exhibit Book to the Hearing Tribunal.

- Exhibit 5 Written Submissions of Complaints Director on Sanction
- Exhibit 6 Statutory Declaration of Dr. Richard Barr dated April 10, 2019
- Exhibit 7 Letter from Katherine Damron, Complaint Inquiry Coordinator, to [REDACTED], dated January 31, 2018
- Exhibit 8 Letter from Dr. Gordon Giddings, Senior Medical Advisor, to [REDACTED], dated October 24, 2018
- Exhibit 9 E-mail from Marg Raimondi to Dr. Michael Caffaro, Assistant Registrar and Complaints Director, dated December 31, 2015, together with attached letter from Valerie Prather to Dr. Michael Caffaro dated December 30, 2015

Exhibit 10 Statement of Dr. Richard Barr

Exhibit 11 Written Submissions of Dr. Richard Barr

The liability phase of the hearing proceeded based on the Exhibit Book and Agreed Statement of Facts and Admission of Unprofessional Conduct and no witnesses were called to testify with respect to whether the allegation was proven.

#### **IV. SUBMISSIONS**

##### Complaints Director

Ms. Athwal made an opening statement in which she summarized the contents of the Agreed Statements of Facts and Admission of Unprofessional Conduct, as well as the Exhibit Book. Ms. Athwal advised that Dr. Barr admitted the allegations in the Amended Notice of Hearing, other than allegation 1d) that was withdrawn, and acknowledged that his conduct constituted unprofessional conduct. She submitted that the admissions should be accepted in accordance with s. 70 of the HPA.

Ms. Athwal explained that the Terms of Resolution arose as a result of Dr. Barr's failures to respond to inquiries from the College's investigator with respect to two complaints that arose in 2013. A complaint was referred to hearing but the hearing was adjourned and resolved by way of the Terms of Resolution.

The Terms of Resolution was dated December 31, 2014. In the Terms of Resolution, Dr. Barr agreed to respond promptly to all correspondence, that the deadline for response could be extended by agreement with the College prior to the expiry of the initial deadline, and that a Hearing Tribunal could consider the Terms of Resolution when determining a sanction if Dr. Barr failed to fulfil its terms.

Ms. Athwal advised that the January 31, 2018 letter delivered via the physician portal was a notification to Dr. Barr that the Complaints Director or his designate would be investigating if or how Dr. Barr displayed a lack of knowledge, skill, or judgment and that it would be collecting information, including Dr. Barr's response to the complaint. The complaint involved Dr. Barr's management of a patient's blood thinners at the time of a lithotripsy procedure. The patient, [REDACTED], subsequently suffered a stroke. The complaint was initially dismissed but was directed to investigation by the CRC.

The deadline for the response was February 28, 2018. Ms. Athwal indicated no response was received by this date and that a follow up letter was delivered to Dr. Barr by the physician portal on March 8, 2018 requesting a response by March 22, 2018. She advised that Dr. Barr also received an email on March 8, 2018 indicating that he had a "time sensitive document" to review in the physician portal.

Ms. Athwal stated that the records in the Exhibit Book indicated that Dr. Barr successfully signed into the physician portal on March 19, 2018 at 1638 hours. She advised that the College followed up with a letter dated March 29, 2018, sent via registered mail, advising Dr. Barr that he had a duty to respond and that a second complaint against him for non-response could

result. This letter also referenced the Terms of Resolution and Dr. Barr's commitment to respond to the College. Another letter was sent April 30, 2018 indicating that a complete response was required no later than May 10, 2018.

Ms. Athwal explained that Dr. Caffaro had a conversation with Dr. Barr on May 8, 2018 and that Dr. Barr committed to a response "sometime this week". Dr. Caffaro reiterated the deadline for the response was May 10, 2018. The College received the documents it needed to continue its investigation and assigned Dr. Gordon Giddings to complete it. On July 12, 2018, Dr. Giddings wrote to Dr. Barr asking for the contact information for Dr. Barr's Medical Office Assistant by July 26, 2018. Dr. Barr did not respond. Jennifer Tsen followed up on August 2, 2018 and Dr. Giddings followed up on August 9, 2018, seeking a response by August 23, 2018. Dr. Giddings' letter was sent by registered mail and the physician portal. It was signed for on August 14, 2018. However, no response was received. Ms. Athwal advised Dr. Barr's failure to provide the contact information was referred for consideration of a complaint for a failure to respond on August 23, 2018.

Ms. Athwal indicated that Dr. Barr provided the contact information by voice message on August 27, 2018.

Dr. Barr

Mr. Riskin made brief submissions on behalf of Dr. Barr. He reiterated that Dr. Barr acknowledged the allegation and admitted to unprofessional conduct.

**V. FINDINGS**

After hearing from the parties and reviewing the evidence compiled in the Exhibit Book and the Agreed Statement of Facts, the Tribunal concludes there was sufficient evidence to support Dr. Barr's admission of the allegation, and determined that the conduct constitutes "unprofessional conduct" in accordance with s. 1(1)(pp) of the HPA.

In particular, the Tribunal found:

- a) The Agreed Statement of Facts and Exhibit Book provided credible evidence. The Tribunal accepted all the evidence tendered by the parties. On review of the evidence, the Hearing Tribunal found that the evidence proved the allegation brought against Dr. Barr.
- b) Dr. Barr failed to respond to the College about an investigation into a complaint against him in a timely manner six times in 2018. He failed to respond within ten business days or within the deadline for a response as set out in the correspondence. In particular he failed to respond to a January 31, 2018 letter from Katherine Damron via the physician portal, requesting a response by February 28, 2018; a March 8, 2018 letter from Katherine Damron via the physician portal, requesting a response by March 22, 2018; a March 29, 2018 letter from Dr. Caffaro, via registered mail (signed for on April 3, 2018), requesting a response by April 12, 2018; a July 12, 2018 letter from Dr. Giddings via the physician portal, requesting a response by July 26, 2018; an August 2, 2018 email from Jennifer Tsen, requesting a response as soon as possible; and an August 9, 2018 letter from Dr. Giddings via the physician portal and registered mail (delivered on August 14, 2018), requesting a response by August 23, 2018.

- c) This was a direct breach of his Terms of Resolution from 2014 that was, and is, still in effect. Dr. Barr 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.
- d) The College communicated with Dr. Barr by way of the physician portal, email, and registered mail. The evidence demonstrated that Dr. Barr accessed his 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 Tribunal had no doubts that Dr. Barr received the College's communications prior to the expiry of the deadlines.
- e) There were numerous delays over a prolonged period of time.
- f) There is a duty for members of the College to cooperate with their regulator. Dr. Barr, as a long-standing member of the College and additionally who had a Terms of Resolution, knew he had this duty to cooperate with the College and he failed in doing so. The College "must carry out its activities and govern its regulated members in a manner that protects and serves public interest". Dr. Barr failed to cooperate promptly, restricting the College's ability to fulfill its duties and preserve the public confidence in the profession.

The Tribunal is satisfied that the conduct set out in Allegation 1a), b), c), e), f), and g) amounts to unprofessional conduct.

The definition of unprofessional conduct, found in s. 1(1)(pp)(vii) of the HPA, includes 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 co-operate with, an investigator. Dr. Barr failed to comply with the Terms of Resolution, an agreement that is part of a ratified settlement, and failed to comply with the requests of the investigator.

Section 1(1)(pp)(xii) also defines unprofessional conduct as conduct that harms the integrity of the regulation profession. Dr. Barr's conduct harmed the integrity of the profession.

Dr. Barr admits that the allegation is proven and that his behavior was unprofessional. The evidence supports this. Accordingly, the Hearing Tribunal is satisfied that the allegation was proven and that the conduct constitutes "unprofessional conduct" as defined in the HPA.

## **VI. ORDERS / SANCTIONS**

The parties were not in agreement on the sanction that should be imposed. The Tribunal heard submissions from both Ms. Athwal and Mr. Riskin regarding sanctions for Dr. Barr.

### Complaints Director

Ms. Athwal, on behalf of the Complaints Director, submitted that the following orders were appropriate:

- a) Dr. Barr should receive a reprimand.
- b) Dr. Barr should receive a suspension of his practice permit for a period of sixty days, of which thirty of those days shall be held in abeyance and be served at the discretion of the



Complaints Director and commence on a date approved in advance by the Complaints Director. The remaining thirty days should be held in abeyance for a period of three years, commencing from the date the Hearing Tribunal issues its decision. The Complaints Director shall impose the remaining thirty day suspension if Dr. Barr fails to respond to any correspondence from the College, either:

- a. by the date stated on the correspondence or in the event that it does not contain a specific response date within ten business days or another deadline agreed to in writing by the College prior to the expiry of the initial deadline, or
  - b. by another response timeline the Hearing Tribunal deems appropriate.
- c) Dr. Barr should be responsible for full costs of the investigation and hearing, with such costs to be paid in full within ninety days from the date the Tribunal issues its decision.

Ms. Athwal provided the Tribunal with the Complaints Director's Written Submissions on Sanction, entered as Exhibit 5. A Statutory Declaration from Dr. Barr, dated April 10, 2019 was entered as Exhibit 6.

The Statutory Declaration from Dr. Barr stated:

1. I am a 64 year old Urologist, with a practice in Calgary. I have been practicing since 1988.
2. My urology practice is very busy, with patients who wait more than eight months to get a new appointment. I work long hours, at multiple locations. I regularly work 10-12 hours every work day, do a full share of city-wide urology call which includes evening and weekends, and performing evening emergency surgeries to accommodate patients.
3. I practiced for most of my career using paper. I only checked my personal email periodically.
4. On January 31, 2018, my 95 year old mother was admitted into the Rocky View Hospital for emergency surgery for a bleeding rectal prolapse, and I was the primary caregiver for her until the end of April 2018. I was engaging in her care team and visiting her daily, while maintaining long working hours. It was a physically and emotionally demanding time for me.
5. It was made more challenging in March when I fell ill myself. I was bedridden for approximately a week, although I did check my physician portal, which is when I recall becoming aware of the investigation into [REDACTED] complaint.

Ms. Athwal called Dr. Caffaro, Assistant Registrar for Professional Conduct, as a witness to provide evidence in the sanction phase of the hearing. Dr. Caffaro 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 Terms of Resolution resolved one of the patient complaints and the College's complaint while the other patient complaint was dismissed.

Dr. Caffaro testified that Dr. Barr did not advise him of his personal circumstances regarding his illness or the illness of his mother.

On cross-examination, Dr. Caffaro advised the two previous patient complaints preceded his time as Complaints Director and that his knowledge was based only on his review of the files. He confirmed that the three previous complaints did not result in any finding of unprofessional conduct.

During cross-examination, a letter dated January 31, 2018 from Katherine Damron to [REDACTED] was entered as Exhibit 7. The letter advised [REDACTED] it would take on average six to twelve months to complete a complaint investigation. A letter dated October 24, 2018 from Dr. Giddings to [REDACTED] was entered as Exhibit 8. This letter advised [REDACTED] that the investigation into the complaint was completed and that a report had been forwarded to the Complaint Review Committee for review.

A letter from Valerie Prather, a lawyer at Bennett Jones LLP, dated December 30, 2015, and an email from Marg Raimondi, Ms. Prather's assistant, dated December 31, 2015, were entered as Exhibit 9. In the letter, Ms. Prather confirmed that Dr. Barr acknowledged the undertaking contained within the Terms of Resolution with the College remained in force. Ms. Prather confirmed that she was counsel of record for Dr. Barr on all matters that he has with the College and asked that Dr. Caffaro continue to copy her on all correspondence to Dr. Barr. Dr. Caffaro had no reason to believe he did not receive this correspondence. He had no recollection of any response to Ms. Prather. Dr. Caffaro confirmed no correspondence relating to the conduct at issue in the current hearing was copied to any legal counsel.

Ms. Athwal made submissions with respect to the factors referenced in *Jaswal v Newfoundland Medical Board* (1996), 42 Admin LR 2(d) 233.

She submitted this was Dr. Barr's third time failing to respond to the College's investigation after a complaint, that Dr. Barr failed to respond on six occasions, and that Dr. Barr failed to comply with the Terms of Resolution, something the Tribunal should consider. She submitted Dr. Barr's conduct was a complete disregard of the privilege of self-regulation. Ms. Athwal submitted that Dr. Barr's age and experience was an aggravating factor and that the three previous complaints should weigh heavily against Dr. Barr. She submitted Dr. Barr's conduct impaired the College's ability to investigate the complaint from [REDACTED].

Ms. Athwal submitted the penalty was appropriate as a mechanism for both specific and general deterrence. She stated the orders imposed must ensure that Dr. Barr does not repeat the conduct and that other members of the profession do not act in the same way.

Ms. Athwal provided decisions of other decision makers to support the proposed sanction, including:

- a) Dr. Moises Lasaleta – Dr. Lasaleta's second appearance before a tribunal for failing to respond to the College; between September 2016 to February 2017, resulted in a one month suspension and costs of the hearing and investigation.
- b) Dr. Susanne Mausolf – Dr. Mausolf failed to respond to the College between March 14, 2019 and April 20, 2018 in breach of two Terms of Resolution. That Tribunal accepted a joint submission and imposed a seven day suspension and full hearing and investigation costs.

- c) Dr. Larry Serelo – A Discipline Committee of the College of Physicians and Surgeons of British Columbia suspended Dr. Serelo from practice for one month, ordered him to pay a fine of \$5,000, and ordered him to pay costs in the amount of \$10,336 as a result of his failure to respond.
- d) Dr. Jeannine Olszewski - A Discipline Committee of the College of Physicians and Surgeons of British Columbia suspended Dr. Olszewski for three months and ordered her to pay a fine of \$3,500 and costs of \$20,941.40 as a result of her failure to respond to multiple correspondences, by failing to attend a scheduled meeting, and by refusing to allow an investigation into her medical practice.

In conclusion, she stated that this was the third time Dr. Barr failed to respond to the College's investigation process and that it was significant the Terms of Resolution previously addressed his obligation to respond to the College. Given the seriousness of his conduct and the pattern, the Complaints Director sought a sixty day suspension where thirty days were held in abeyance. These thirty days were intended to act as a specific deterrent to Dr. Barr and was a way for the College to obtain a response from Dr. Barr in the future.

The Complaints Director sought full costs of the investigation and the hearing. Ms. Athwal submitted that the College and its members should not bear the expense of the hearing when the need for it arose as a result of Dr. Barr's unprofessional conduct.

In response to Exhibit 9, Ms. Athwal submitted it was unreasonable to expect, based on a letter from 2015, the College to automatically copy Bennett Jones on any correspondence relating to Dr. Barr. She submitted that the physician has the responsibility and obligation to engage with correspondence from the College.

#### Dr. Barr

Mr. Riskin, on behalf of Dr. Barr, submitted that the following orders should be imposed:

- a) Dr. Barr should receive a reprimand.
- b) Dr. Barr should receive a suspension of his practice permit for a period of four days, such suspension to be taken at a time mutually agreeable between Dr. Barr and the Complaints Director.
- c) Dr. Barr should be responsible for the necessary costs of the investigation and hearing.

Dr. Barr delivered an oral statement to Tribunal. He apologized to the College, Dr. Caffaro, Dr. Giddings, and Ms. Damron. He acknowledged he was late in responding to communications from them and that he breached the Terms of Resolution in doing so. He cited that he had a very busy practice and how during the time he got correspondence about the complaint in January 2018, his mother had been hospitalized and then he fell ill himself. He acknowledged that the administrative side of his practice was second to patient care and he was working at improving. He stated the process was a reminder of his obligations to the profession, in particular the duty to respond to the College in a timely fashion. He stated 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.

A written copy of Dr. Barr's statement was marked as Exhibit 10.

Mr. Riskin provided the Tribunal with Written Submissions of Dr. Barr with respect to sanction, entered as Exhibit 11. Mr. Riskin also went through the *Jaswal* factors.

Mr. Riskin's submissions acknowledged that a failure to respond to a governing body is serious and that the violation of the Terms of Reference increased the gravity. However, he submitted that the conduct was on the lower end of the spectrum of seriousness as this was not a case of complete neglect as Dr. Barr belatedly responded, the late response did not cause any unusual delay in the investigation as it took 9 months and he was advised it would take between six and twelve months, and there was no disregard for the well-being of a patient.

Mr. Riskin stated that while there were three previous complaints involving responsiveness, they were resolved without any finding of unprofessional conduct. He also submitted there was no impact on a patient as the complaint was initiated by the College and that Dr. Barr did not suffer any other penalties as a result of the allegations.

Mr. Riskin submitted that Dr. Barr acknowledged what occurred, admitted his failing, and acknowledged it is unacceptable and apologized. He also submitted the health of Dr. Barr's mother and the fact that none of the correspondence at issue was sent to Dr. Barr's counsel, despite the 2015 request to do so, were both mitigating factors.

Mr. Riskin also made submissions on the range of sentences in other cases:

- a) He referred to Dr. Olszewski case and advised this three month suspension was the longest suspension for a failure to respond. He submitted Dr. Barr's conduct was not as severe as it did not show serious disregard of the College and its process.
- b) He submitted Dr. Lasaleta's conduct was more severe than Dr. Barr because it would be Dr. Barr's first finding of unprofessional conduct (whereas Dr. Lasaleta's was his second) and Dr. Barr only failed to respond to 6 pieces of correspondence (whereas Dr. Lasaleta failed to respond to eighteen).
- c) He stated that the facts of Dr. Serelo's matter were unknown.
- d) Mr. Riskin referred to the case involving Dr. Mausolf and advised the member received a seven day suspension for breaching two different undertakings and failing to respond to ten pieces of correspondence.
- e) He advised Dr. Howey received a one day suspension for failing to respond to several communications from the College.
- f) He also referred to the case of Dr. Zakhary, in which a member was found guilty of failing to respond to eleven communications. The member acknowledged his wrongdoing and took a cooperative approach. The member received a reprimand and was ordered to pay costs. No suspension was imposed.

Mr. Riskin advised Dr. Barr was remorseful. He also stated that while Dr. Barr was late in responding, he did eventually engage in the process. Mr. Riskin submitted the Dr. Barr's case was most similar to that of Dr. Howey and Dr. Zakhary, but that the breach of the Terms of Resolution should result in a suspension longer than one day. He stated that a four day

suspension would be in keeping with precedent established by the College and others, and that a longer suspension would be disproportionate to the circumstances of the case and inconsistent with precedent sanctions.

Mr. Riskin submitted that the proposal to hold a portion of the suspension in abeyance was a duplication of the Terms of Resolution, which remained in effect.

### Tribunal's Decision

The Tribunal carefully considered Dr. Barr's conduct in this matter, all of the evidence, and the submissions from both parties on sanctions. The Tribunal also considered the factors in *Jaswal*.

The Tribunal concludes that Dr. Barr's practice permit shall be suspended for a period of thirty (30) days, such suspension beginning on a date approved by the Complaints Director within ninety (90) days of Dr. Barr receiving this decision.

Dr. Barr shall also receive a reprimand.

With respect to costs, Dr. Barr shall be responsible for the full costs of the investigation and hearing, with such costs to be paid in full within ninety (90) days from the date of receipt of this decision.

The Tribunal took the following into account in coming to this conclusion:

**1. The nature and gravity of the proven allegations, the presence or absence of prior complaints or convictions, the number of times the offences were proven to have occurred.**

In 2018, Dr. Barr failed to respond to College communication six times between January 31, 2018 and August, 2018. This conduct is serious. Where a member fails or refuses to respond and cooperate with the College, the College's ability to regulate the profession is put in jeopardy. Membership in the College is a privilege, not a right. A physician is granted certain privileges as a member and has corresponding obligations, including the obligation to respond to the College in a timely manner.

While Dr. Barr does not have any prior convictions of acting unprofessionally, Dr. Barr has a pattern of behavior of not responding to the College in a timely manner. This is Dr. Barr's fourth time failing to respond to either patient concerns or the College's investigation process and is the fourth complaint against him that concerns his lack of responsiveness. This is an aggravating factor.

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.

Mr. Riskin argued that Dr. Barr did eventually respond but late and the circumstance did not involve any disregard for the well-being of a patient. The Tribunal disagrees as the patient who made the complaint had his investigation delayed because of Dr. Barr's failure to respond. While the investigation may have been completed in the estimated time period, Dr. Barr's conduct certainly resulted in a period of time where the College was waiting for information from Dr. Barr.

**2. The age and experience of the member**

Dr. Barr has been a regulated member of the College since 1988. His conduct cannot be excused and his age and experience suggests a firmer sanction given his significant experience.

**3. The role of the member in acknowledging what has occurred**

Dr. Barr acknowledged his failure to respond and admitted to the allegations put forth as above. He acknowledged it is unacceptable, apologized and is remorseful. This is a mitigating factor.

**4. Whether the offending member has already suffered any other serious financial or other penalties as a result of the allegations having been made**

There is no evidence that Dr. Barr has suffered any other consequences as a result of the allegations.

**5. The impact of the incident on the offended patient**

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.

**6. The presence or absence of any mitigating circumstances.**

Dr. Barr's statutory declaration that his mother was sick and that he then fell ill, while providing additional information, does not excuse his failure to respond. Dr. Barr also stated he had a very busy practice and call schedule. If a member is working as a regulated professional, this member is expected to meet their obligations to the College.

The Tribunal does not accept that the personal stressors affecting him during the investigation period is a mitigating factor, particularly given that there is no evidence Dr. Barr took any steps to inform anyone at the College of his personal circumstances. All members have stressors and they do not absolve a member from their professional obligations. This Tribunal suggests that if Dr. Barr's practice is so busy that he cannot adhere

to College expectations and meet his personal duties, he should consider his work balance and consider reducing it so all of his obligations can be met.

**7. The need to impose specific and general deterrence and degree to which the conduct is clearly outside the permitted range of conduct.**

Dr. Barr's conduct is unacceptable and unprofessional. His conduct has also been repeated on several occasions. His conduct falls outside the range of permitted conduct.

The sanction imposed should serve as a mechanism for general deterrence to other members of the profession. Self-regulated members of the College must be aware that the College will not accept nor tolerate this type of conduct. As a self-regulating profession, the College depends on its members to be willing to cooperate, with and respond to, the College. The College has a duty to maintain the public's confidence in the integrity of the profession. The College must be able to demonstrate to the public that it is willing and able to regulate and govern the conduct of each member of the profession. Dr. Barr's conduct undermined this. The sanction is intended to ensure that this conduct does not recur in the future.

In addition, the Tribunal believed that a four day suspension was not a sufficient sanction as it concluded that this would not act as a sufficient deterrent of this conduct in the future.

**8. The range of sentences in other similar cases.**

While previous decisions of other hearing tribunals and other regulators are not binding with respect to this matter, they are informative as to what other decision makers have determined to be appropriate sanctions in light of the facts of a case.

The Tribunal examined the cases provided by the parties in support of their proposed sanction. These cases had a sanction that ranged from no suspension to a 3-month suspension.

While none of the cases were directly analogous, the Tribunal found that Dr. Barr's situation was more similar to that of Dr. Lasaleta and Dr. Mausolf than it was to Dr. Howey or Dr. Visconti.

The Tribunal decided a thirty day suspension is a reasonable amount of time and that this suspension is necessary to protect the public and preserve the integrity of the profession. This suspension is appropriate in light of the seriousness of the conduct, the breach of the existing Terms of Resolution, Dr. Barr's experience, Dr. Barr's admission of guilt, and Dr. Barr's personal circumstances. This suspension will serve as a deterrent to Dr. Barr and to other members of the profession and will be a message to the public that such conduct will not be tolerated.

The Tribunal concluded that an extra thirty days held in abeyance was not necessary nor would it be a deterrent. The Tribunal recognizes that the existing Terms of Resolution will continue and that Dr. Barr will be required to comply with its terms moving forward. The Tribunal is not of the view that an additional thirty days of suspension is required to ensure compliance given the thirty day suspension already imposed and the continuation of the Terms of Reference.

The Tribunal concluded that all costs of the investigation and hearing into this matter should be paid by Dr. Barr within ninety days from the date of receipt of this decision.

The College's members should not be forced to bear the expenses of the hearing when the need for the hearing arose as a direct result of Dr. Barr's unprofessional conduct to which he admitted. In *Lysons v. Alberta Land Surveyors Association*, 2017 ABCA 7 at para 13, the Alberta Court of Appeal confirmed that "...requiring a professional to pay all or part of hearing and investigation costs is a common part of professional disciplinary sanctions." The Tribunal is of the opinion that all costs associated with the investigation and hearing were necessary given Dr. Barr's conduct.

In conclusion, the Tribunal makes the following orders:

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.

Signed on behalf of the Hearing Tribunal by  
the Chair



Dated: July 3, 2019

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Dr. Vonda Bobart