

COLLEGE OF PHYSICIANS & SURGEONS OF ALBERTA

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

AND IN THE MATTER OF A HEARING REGARDING  
THE CONDUCT OF DR. JOANNE SUK-WAH TSE

**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. Joanne Suk-Wah Tse on January 21 and 22, 2021. The members of the Hearing Tribunal were Dr. David Sheppard of Edmonton as Chair, Dr. Eric Wasylenko of Okotoks and Mr. James Clover of Sherwood Park as the public member.

Mr. Gregory Sim acted as independent legal counsel for the Hearing Tribunal.

In attendance at the hearing were Mr. Craig Boyer, legal counsel for the Complaints Director and Dr. Joanne Suk-Wah Tse. Dr. Tse elected not to engage legal counsel for the hearing.

## **II. PRELIMINARY MATTERS**

Neither party objected to the composition of the Hearing Tribunal or its jurisdiction to proceed with the hearing.

Dr. Tse made a preliminary application to close the hearing to the public. Dr. Tse submitted that her witnesses would be from the Chinese community and they would not like their testimony to be made public either at the hearing, or through the hearing transcript. Dr. Tse submitted that this would lead to damaging gossip.

Mr. Boyer submitted that there are circumstances in which the Hearing Tribunal can close the hearing to the public, such as to protect a witnesses' ability to testify, but the Tribunal should wait to hear why a particular witness would be uncomfortable testifying before making a decision. Without any information about what a witness is likely to say, the Tribunal would be unable to weigh whether to close the hearing to the public.

The Hearing Tribunal declined to close the whole hearing to the public. Dr. Tse's general concern about gossip and damage to individuals' reputations is not sufficient to close the whole hearing to the public pursuant to the Tribunal's power in section 78(1) of the *Health Professions Act*, RSA 2000, c. H-7 ("HPA"). The value of open and transparent College discipline hearings outweighs the general concern that publicly available information will lead to gossip and reputational harm. Open and transparent discipline proceedings are necessary so that the public maintains confidence in the proper regulation of the medical profession and the Hearing Tribunal process. The Hearing

Tribunal will consider whether to close parts of the hearing to the public if necessary to avoid compromising the ability of particular witnesses to testify. In paying heed to Dr. Tse's concern for her witnesses, the Hearing Tribunal's decision will not identify third parties, as publication of third party names is not necessary in this decision.

### **III. CHARGES**

The Notice of Hearing listed the following allegations:

- 1. You did fail to comply with your Undertaking to the College of Physicians & Surgeons of Alberta dated October 19, 2017, in that you did not respond to the May 7, 2019 letter from Katherine Damron of the College regarding your reported lack of cooperation with the Compliance and Monitoring Branch of Alberta Health, despite multiple reminders from the College, until your letter of October 31, 2019.**
- 2. Between October 2017 and August 2019, you did fail to comply with your Terms of Resolution dated October 27, 2017, in that you failed to comply with the Alberta Health processes for audit and review of claims paid for the period of September 1, 2011 to August 31, 2013, including the provision of multiple patient records requested by Alberta Health.**

### **IV. EVIDENCE**

The following Exhibits were entered into evidence during the hearing:

1. Notice of Hearing;
2. Undertaking, October 19, 2017;
3. Terms of Resolution Agreement, October 27, 2017;
4. April 9, 2019 letter from Mr. Lesyk to Dr. Tse;
5. July 19, 2019 letter from Ms. Damron to Dr. Tse enclosing July 9, 2019 memorandum by Dr. Caffaro;
6. October 31, 2019 letter from Dr. Tse to Dr. Caffaro and Ms. Damron re Complaint Response to File 190280.1.1
7. April 9, 2019 letter from Mr. Lesyk to Dr. Mazurek re Dr. Tse
8. Email chain ending September 5, 2019 between Dr. Tse, Dr. Caffaro and others (2 pages);

9. Email chain ending October 16, 2019 between Dr. Tse, Dr. Caffaro and others (2 pages);
10. Email chain ending October 31, 2019 between Dr. Tse, Dr. Caffaro and others (3 pages);

Mr. Boyer first called Dr. Michael Caffaro to testify. Dr. Caffaro served as the College's Complaints Director between April 8, 2015 and December 31, 2020. During that time he had dealings with Dr. Tse.

Dr. Caffaro identified an Undertaking that Dr. Tse entered into with the College on October 19, 2017 ("Undertaking"). The Undertaking provided, in part that Dr. Tse would respond to requests from the College within 30 days unless otherwise instructed. Dr. Tse's Undertaking also provided that if circumstances arose in which she could not meet these deadlines she would contact the Complaints Director or his delegate to seek permission for an extension. Finally the Undertaking provided that if Dr. Tse contravened the Undertaking the Complaints Director could consider further action, including the right to schedule a hearing for such issues.

Dr. Caffaro also identified a Terms of Resolution agreement that Dr. Tse entered into with the College dated October 27, 2017 ("TORA"). The TORA provided that it was used to resolve three open complaint files against Dr. Tse without the necessity for a hearing. This included complaint file 150455.1.1, which was a complaint from Alberta Health about Dr. Tse's cooperation with Alberta Health's requests for copies of patient records to conduct a billing audit. In response to a question from the Tribunal Dr. Caffaro clarified that this complaint was received in 2015. The TORA provided in part that Dr. Tse would comply with all Alberta Health Processes involving management of the Schedule of Medical Benefits and fees/payments to her as per the appropriate regulation, including re-engaging with the Medical Investigations Branch of Alberta Health over its audit requests that led to complaint 150455.1.1.

Dr. Caffaro testified that Dr. Tse was non-compliant with the Undertaking and with the TORA.

In cross-examination Dr. Caffaro was asked if he recalled Dr. Tse's email interactions with him, including a long email indicating that she was volunteering in rural China and unable to access the College's physician portal. Dr. Caffaro was also asked if he recalled writing to Dr. Tse and advising her that he expected her response by October 31, 2019. Dr. Caffaro said he did recall exchanging emails with Dr. Tse

and receiving Dr. Tse's long email but it was received many months after her response had been due.

Dr. Caffaro was also asked if he recalled advising Dr. Tse in 2017 to cancel all of her patients but never telling her she could resume practice. Dr. Caffaro responded that he recalled cautioning Dr. Tse that a suspension of her permit was possible due to her non-cooperation. Regarding the resumption of her practice Dr. Caffaro said that there had been a referral to the College's Physician Health Monitoring program and he was not involved in that process. The Complaints Director is essentially "walled off" from the Physician Health Monitoring Program.

Mr. Boyer next called Mr. Russell Lesyk of Alberta Health. Mr. Lesyk is an Audit Manager in the Audit and Compliance Review Services department of Alberta Health. He deals with billing compliance reviews, or audits for fee-for-service physicians. Mr. Lesyk explained that since December of 2013 he has been involved with an audit of Dr. Tse's billings for the period from 2011 to 2013.

Mr. Lesyk confirmed that Dr. Tse's non-cooperation with Alberta Health's requests for patient records for its audit was the subject of a complaint to the College in 2015. Mr. Lesyk then identified a letter he wrote to Dr. Tse on April 9, 2019, advising her that Alberta Health still had not received the patient records requested for the audit initiated in 2013. Mr. Lesyk's letter stated that Dr. Tse had been requested to produce the patient records on three occasions: December 23, 2013, September 9, 2014 and March 2, 2015, but she had failed or neglected to provide them. Mr. Lesyk's letter made a final request for the records to be provided by May 10, 2019. The letter stated that if Dr. Tse did not comply by May 10, 2019, then all of the fee for service claims Dr. Tse had submitted over the audit period would be reassessed as eligible for recovery. This would result in Dr. Tse being required to re-pay \$500,671 to Alberta Health.

Mr. Lesyk testified that Dr. Tse had not responded to Alberta Health's requests for patient records as of the date he sent the April 9, 2019 letter, nor by the deadline response date of May 10, 2019. Dr. Tse finally responded on August 2, 2019. On that date Dr. Tse confirmed she had received a notice of the reassessment of her claims. On August 8, 2019 she sent an email indicating that her staff would provide the patient records. The patient records were all sent to Alberta Health by November 27, 2019. Mr. Lesyk confirmed that Alberta Health had been seeking 373 sets of patient records from Dr.

Tse. They were not received until 6 years after the end of the audit period.

In cross examination Mr. Lesyk was asked if he was aware of Dr. Tse's communications with others at Alberta Health. Mr. Lesyk confirmed he was aware that in August 2019 Dr. Tse advised Alberta Health that she had been unable to comply earlier due to her personal circumstances. Mr. Lesyk was also asked to confirm that Dr. Tse provided the requested patient charts over a period of 2-3 months after August 2, 2019. Mr. Lesyk said it was over 3-4 months. He also confirmed that Dr. Tse provided an additional set of patients' charts over a period of less than one month.

Mr. Boyer next called Ms. Katherine Damron to testify. Ms. Damron is the College's Complaints Inquiry Coordinator and oversees the intake of new complaints and requests responses from the named physicians to those complaints. Ms. Damron identified a July 19, 2019 letter she sent to Dr. Tse.

Ms. Damron's July 19, 2019 letter enclosed a July 9, 2019 memorandum from Dr. Caffaro. Dr. Caffaro's memorandum indicated he was commencing a new complaint file 190414.1.1. This new 190414.1.1 complaint was based on Dr. Tse's failure to respond to Ms. Damron's letter of May 7, 2019 which sought Dr. Tse's response to the 190280.1.1 complaint. The 190280.1.1 complaint was based on Dr. Tse's continued failure to comply with the Alberta Health audit that led to complaint 150455.1.1. The memorandum indicated Dr. Tse had also failed to respond to reminder letters from Ms. Damron on the 190280.1.1 complaint dated June 6, 2019, and June 28, 2019 and a further letter which was delivered by registered mail on July 12, 2019, and despite attempts to reach Dr. Tse by telephone on July 8, 2019. Ms. Damron's July 19, 2019 letter identified that Dr. Tse was alleged to be non-compliant with her Undertaking and it requested her response to the new 190414.1.1 complaint by August 16, 2019.

Ms. Damron confirmed the details of Dr. Caffaro's memorandum. She also said that Dr. Caffaro had sent an email to Dr. Tse in August 2019 requesting her response to the 190280.1.1 and 190414.1.1 complaints by October 15, 2019, but the College did not receive a response other than an unsigned letter from Dr. Tse dated October 31, 2019. Ms. Damron identified a three page letter received from Dr. Tse by email on October 31, 2019 entitled "File No. 190280.1.1 Complaint Response".

In cross-examination Ms. Damron acknowledged she was unaware of who signed for the registered mail reminder letter delivered to Dr. Tse's mailing address on July 12, 2019. Ms. Damron confirmed that when the College sends correspondence to its members using the physician portal, an email is automatically sent to the physician's email address on file with the College notifying them to access the portal and read the correspondence.

Mr. Boyer then closed the Complaints Director's case.

Dr. Tse's first witness testified she had known Dr. Tse for many years and ultimately worked for her. She said she would not describe Dr. Tse as someone who procrastinates. She also said that she helped Dr. Tse prepare copies of patient charts to respond to Alberta Health's requests. She said Dr. Tse was pushing her and the clinic's receptionist to accomplish this task quickly and it was completed within a few weeks of Dr. Tse asking them to prepare the charts. In cross-examination this witness said she didn't know anything about Alberta Health requesting patient charts from Dr. Tse until August of 2019. She also said that she could only prepare the charts once Dr. Tse provided them to her.

Dr. Tse's second witness also said she had known Dr. Tse for many years before working for her. This witness described Dr. Tse as very hardworking, diligent and detail oriented, and a very good doctor. The witness said that Dr. Tse does not procrastinate. She prioritizes what needs to be done. The witness also said that when Dr. Tse's estranged husband, who is also a physician, is in the office there is palpable tension between them. Dr. Tse's husband does not offer any assistance to her. On cross-examination this witness acknowledged that she worked for Dr. Tse for several years, but left between the years 2008 and 2020, returning for a year or so in 2013.

Dr. Tse's third witness began by saying that she wanted the hearing to be closed to the public for her testimony. The witness explained that she was just there to answer questions and she had no information as to what the hearing was about. Dr. Tse again submitted that gossip in the Chinese community is rampant and she did not want to put the witness through that. Mr. Boyer responded that this was not a sufficient justification to close the hearing to the public under section 78(1) of the HPA. He submitted it would be sufficient for the decision to omit the witnesses' name.

The Hearing Tribunal considered the application to close this portion of the hearing to the public and section 78(1) of the HPA. The Tribunal declined to close this portion of the hearing. The witness was concerned that she did not know what the hearing was about. This would not compromise her ability to testify, nor outweigh the value of open and transparent proceedings. Dr. Tse chose to call this witness and it was open to Dr. Tse to explain to her what the hearing was about. Dr. Tse was generally concerned that gossip would lead to reputational harm. The value of open and transparent discipline proceedings outweighs those concerns. The Tribunal determined that it would be sufficient for its decision not to identify the witness by name.

Dr. Tse's third witness testified that she was hired to work in Dr. Tse's clinic but ceased working there in 2006 when she became a patient. The witness testified that now, as compared to before, Dr. Tse spends a lot more time with her patients. The witness also said that when she has a medical appointment with Dr. Tse it usually ends up being around 3am. This is because Dr. Tse always runs late and by the time it is her turn to see Dr. Tse it could be 3am. On cross-examination the witness said that Dr. Tse has appointments with other patients around these hours as well.

Dr. Tse then made an application to recall her second witness. Dr. Tse said she wanted to ask the witness more questions about why Dr. Tse took so long to respond to Alberta Health's request for patient records. Dr. Tse said she wanted to ask for details about the conduct of her husband. Mr. Boyer responded that an application to recall a witness is unusual. The rules of evidence applicable in Court do not apply before the Hearing Tribunal, but the Tribunal should still consider whether the proposed additional evidence would be relevant. Mr. Boyer then pointed out that the second witness said she did not work at Dr. Tse's clinic at the material time. The witness said she had not worked at Dr. Tse's clinic between 2008 and 2020, except for a year or so in 2013. She was therefore unlikely to be able to testify to what was happening at the clinic while Alberta Health was waiting for patient records.

The Hearing Tribunal considered Dr. Tse's request to recall her second witness. The Tribunal decided to deny the request. Dr. Tse had the opportunity to examine the second witness and obtain relevant evidence. Dr. Tse also had the opportunity to re-examine the witness after Mr. Boyer's cross-examination. Dr. Tse said that she would like to ask the witness more questions about the response to Alberta



Health and Dr. Tse's husband's conduct and their personal interactions, but the witness said she did not work in the clinic during the relevant timeframe, except for one year or so in 2013. The Alberta Health audit commenced in December of 2013. The proposed additional evidence would not be relevant or probative to the issues in the Notice of Hearing.

Dr. Tse then testified herself. Dr. Tse testified that Alberta Health's decision to audit her billing claims was because her husband had some complaints against him. They work in the same clinic and Alberta Health was also auditing his billing claims. She said that she was a traditional Chinese wife and she put her husband's needs first. She said he took the patient charts to prepare his audit response, and this required her to defer responding to Alberta Health until her husband had finished responding to his audit. Dr. Tse's husband took 5 to 6 years to respond to Alberta Health. He finished in 2019 and Dr. Tse then pushed her staff to prepare the patient charts to send on her behalf. She said she did not want to tell anyone what her husband had been doing and she said that is why "the blame falls on me." Dr. Tse also explained that her patient charts were not simply ready to copy and send to Alberta Health on request. They required preparation. Dr. Tse said that she had been writing notes on scrap paper because she had been planning to implement an electronic medical record system, but she had not yet found a suitable system.

Dr. Tse also testified that around 2019 she learned that her husband was cheating on her. His presence in the clinic that they shared made her work very difficult. She wanted to build a partition system for patient charts at the office but her husband refused to communicate with her about it. She decided to go to China for volunteer work to get away from the situation. She said she had poor internet access in China. She also acknowledged she was bad at checking her email, and she never accessed the College's physician portal where correspondence was stored. She said that once she became aware of the correspondence from College in 2019 she wrote to Dr. Caffaro, explained her circumstances and requested an extension.

Dr. Tse said she felt betrayed by the College. She said Dr. Caffaro was initially focused on her hours of work, and suggested she had poor time management. She said physicians are supposed to put their patients first and that is why she spends as much time with her patients as they need. This why she works until 3, 4 or 5am.

Dr. Tse also explained that she has been ill for 10 years. She suffered high blood pressure and had an aneurysm. She was eventually diagnosed with parathyroid adenoma which was surgically removed. It was during this time that she received complaint after complaint about not responding to the College.

Dr. Tse said that she has not been paid by Alberta Health for 6 or 7 years. She said Alberta Health withheld payments while they were waiting for her to provide the requested patients charts. She also said that she chose not to engage a lawyer to assist her with this hearing because a lawyer would just try to negotiate for the best deal, and that was not how she wanted to proceed.

Regarding her compliance with her Undertaking, Dr. Tse asked "what is so magical about 30 days?" She said that responding is not life or death, so she could not understand why responding in 30 days would be acceptable but 35 days would not. She said that in her practice she has to prioritize. Her loyalties were first to her husband and then to her patients. She said she does all of her husband's administrative work such as billing and tax returns. She had no time left over for herself. She knows she should respond to the College in a timely way if she has time, but she believes in the Hippocratic Oath, prioritizes her patients, and this means that if something has to give then she would not respond to the College within the allotted timeframe.

In cross-examination Dr. Tse confirmed that her email address on the letters from the College was correct. She denied receiving the letters from Ms. Damron, suggesting that the email notifications about letters to be accessed through the College's physician portal may have gone to her spam filter. Dr. Tse said the letter sent by registered mail may have been taken by someone at her house who picked it up and did not give it to her. There was another person at her house who could have done this.

Dr. Tse acknowledged she had signed the Undertaking. She identified several emails she exchanged with Dr. Caffaro between August 22 and October 31, 2019. When asked whether she had ever obtained an extension to the 30 day timeframe to respond to the College in her Undertaking, Dr. Tse said that on August 22, 2019 Dr. Caffaro gave her an extension until October 15, 2019.

Dr. Tse also acknowledged she had signed the TORA with the College to resolve three complaints, including Alberta Health's complaint about cooperation with its audit. Dr. Tse said that the Alberta Health

complaint was really about patient charts and they were her husband's charts, not hers. She nevertheless agreed that she has her own Alberta Health billing number and she billed separately from her husband. She also agreed that Alberta Health's audit letter was addressed to her and not to her husband. She agreed that in the TORA she committed to reengage with Alberta Health over its previous requests for patient charts. When asked whether Alberta Health had continued to seek her response up until April of 2019, she again said that she and her husband were both being audited and she let him respond to the audit first. She acknowledged that it took her 6 years to finally respond to Alberta Health's requests and it was only after Alberta Health had complained to the College that she complied. She said that she would have gotten it done earlier if her husband hadn't taken the charts.

## **V. SUBMISSIONS**

Mr. Boyer first addressed allegation 1. He reviewed complaint 190280.1.1 and how Dr. Tse failed to respond to Ms. Damron's May 7, 2019 and subsequent letters seeking a response to complaint 190280.1.1 within 30 days as required by the Undertaking. This led Dr. Caffaro to initiate a new complaint, 190414.1.1. Mr. Boyer said that Dr. Tse only began corresponding with the College in response to Ms. Damron's letters regarding complaint 190280.1.1 in August of 2019, after the new complaint 190414.1.1 had been initiated.

While Dr. Tse maintained that she had not received emails and did not receive Ms. Damron's registered letter, Mr. Boyer pointed to Dr. Caffaro's August 22, 2019 email which was part of exhibit 10. Dr. Caffaro wrote to Dr. Tse, in part:

I have received your voice message regarding that you have received the registered letter at home regarding the new complaint. You identified that you are leaving for China for perhaps several months.

Dr. Tse sent several further emails to Dr. Caffaro but never disputed that she had received a registered letter from the College as he indicated she had said. Mr. Boyer said it was also evident from this email exchange that as of August 22, 2019, Dr. Tse was aware before she left for China that there were two complaints requiring her response.

Mr. Boyer said that Dr. Tse's assertion that she was not receiving emails, letters or telephone messages from the College should not be viewed as credible. It is clear that Dr. Tse's email address was working and she verified it was correct. Dr. Tse provided her addresses and telephone number to the College and she had an obligation to monitor them for correspondence from the College. Dr. Tse had been dealing with the College to resolve previous complaints since 2015. She was also well aware that she had not responded to the Alberta Health audit since 2013. It is not credible for her to suggest that she did not receive these messages.

Dr. Tse had suggested she did not read the Undertaking her previous lawyer had negotiated for her, but Mr. Boyer said she should have been alive to her obligations to respond to the College's requests within 30 days. Mr. Boyer also said Dr. Tse tried to assign blame to others, but it was her responsibility as a physician to respond according to the Undertaking that she gave.

In response to a question from the Hearing Tribunal Mr. Boyer explained that Dr. Caffaro did give Dr. Tse until October 15 and then until October 31, 2019 to provide her responses to the College, but that did not negate Dr. Tse's failure to meet the obligation she had committed to in the first place. The College was continually generous with Dr. Tse but had to pursue and pursue her. Mr. Boyer said that Dr. Tse put a low priority on responding to the College as she viewed it as administrative work.

Mr. Boyer also referred to section 120(3) of the HPA in response to a question from the Hearing Tribunal about the proof of receipt of correspondence from the College. Mr. Boyer submitted that section 120(3) provides an obligation on physicians to monitor the methods of correspondence they provide to the College.

Mr. Boyer also addressed allegation 2 which arose from Dr. Tse's failure to comply with the TORA. The TORA was dated October 27, 2017 and required Dr. Tse to re-engage with Alberta Health over its audit requests. Mr. Lesyk's evidence confirmed that Dr. Tse failed to engage with Alberta Health until after he notified her that Alberta Health would reassess her claims. Mr. Lesyk wrote to Dr. Tse on April 9, 2019 notifying her that if she did not provide the patient records required for the audit she would have to re-pay \$500,671.

Dr. Tse suggested she did not read the TORA that her previous lawyer negotiated either. Mr. Boyer argued that Dr. Tse had an obligation to

be aware of her obligations. Written commitments given by physicians to the College are important, particularly when they are used as alternatives to formal discipline proceedings. Dr. Tse failed to abide by her Undertaking and the TORA and this was serious.

Mr. Boyer concluded by suggesting that on the balance of probabilities Dr. Tse breached her Undertaking and the TORA and her conduct amounts to unprofessional conduct for a physician.

Dr. Tse then presented her arguments. Dr. Tse said that she regularly checks her email but she does not check the spam filter so emails from the College could have been erased. She also said she had changed her telephone number sometime around 2019 and she now uses her eldest son's telephone number. Although Dr. Tse had testified that she does all of the administrative work for both her and her husband's medical practices, in argument she said that her husband took care of updating her registration with the College. Dr. Tse said she did not know whether he had updated her contact information. She emphasized that she did not blame her husband for this. She acknowledged that she is bad with voice mail messages. She is not sure that she always retrieves them.

Dr. Tse then said that she may have received letters from the College. She said that when she got letters she would briefly look at them but she found them confusing. The letters mention complaint numbers and she thought they were referring to previous complaints that were resolved in 2017. She acknowledged she was mistaken about this. She said that once she started getting messages from Dr. Caffaro she tried to respond promptly. Dr. Tse also reiterated that she was ill for 10 years. She had surgery to remove her tumor in 2016, but her energy levels remained low. She said she has a lot of work that she still hasn't done.

Dr. Tse said she was unaware she would have to prove she went to China so she did not bring any evidence such as the airline ticket. She said there is no stamp in her passport because she used a Hong Kong citizenship card to gain entry to China. Dr. Tse said that there were riots in Hong Kong in 2019. She stayed there longer than expected to make sure her family members were ok.

Dr. Tse said that she did give the Undertaking to the College in 2017 and if she did not respond to the College within 30 days then it was her fault, but she said she does not understand the "magic" of 30 days just because she agreed to it. Dr. Tse also argued that the

Undertaking says that in extenuating circumstances she could request extensions. She requested an extension and Dr. Caffaro ultimately gave her until October 31, 2019 to provide her response, which she did.

Regarding her interactions with Alberta Health, Dr. Tse said that in Chinese culture women put their husbands first. So when Alberta Health asked for copies of her patient records she let her husband respond to his audit first. Dr. Tse said she spoke with Alberta Health in 2014 and learned that they would withhold payment if she did not provide the charts. She said she was relieved because she knew she hadn't done anything wrong. Her patient records were all kept on scrap paper and she was intending to transcribe them into an electronic medical record. Dr. Tse figured that as long as Alberta Health wasn't paying her, they wouldn't be chasing her for the patient charts. She acknowledged this was a misunderstanding on her part.

Dr. Tse disagreed with Mr. Boyer's suggestion that she only started to cooperate with Alberta Health after Mr. Lesyk's April 9, 2019 reassessment letter. She said she did not care if Alberta Health reassessed her billing claims.

Dr. Tse concluded that she feels the medical profession has lost sight of what is important. She said there are so many restrictions on physicians and some of them contradict her ability to serve as a healer. Dr. Tse questioned how physicians can put their patients first if they are always worried about responding immediately to the College. Dr. Tse said she has at least 1000 patients. She asked how she could help them out of their suffering if she has to look at letters from the College and respond immediately. Dr. Tse added that she has been paying to work for the last few years. She hasn't been billing for her services even though she is allowed to. She said she tries to fulfill her obligations to her patients even if she doesn't ask for payment.

Dr. Tse then closed her case.

## **VI. FINDINGS**

At the commencement of the second day of the hearing Dr. Tse circulated an email with an image of her computer screen showing a list of email messages. In argument she suggested this was evidence that she had not received certain emails. Mr. Boyer said the evidence stage of the hearing had ended and a screen shot has little evidentiary

value as proof of what Dr. Tse received or did not receive. Mr. Boyer said the image should not be admitted as evidence.

The Hearing Tribunal declined to admit the email with the image of Dr. Tse's computer screen. Dr. Tse had concluded her testimony and the evidence stage of the hearing the day before. In addition, a list of email messages showing on a computer is of very little value to demonstrate that other emails were not received.

Allegation 1 alleged that Dr. Tse failed to comply with her Undertaking in that she did not respond to the May 7, 2019 letter from Ms. Damron regarding her reported lack of cooperation with Alberta Health's Compliance and Monitoring Branch, despite multiple reminders from the College, until her letter of October 31, 2019.

The College made multiple attempts using multiple methods to contact Dr. Tse to request her response to the complaint referenced in Ms. Damron's May 7, 2019 letter. The Hearing Tribunal rejected Dr. Tse's evidence that she did not receive Ms. Damron's letter or her follow-up correspondence. In argument, Dr. Tse acknowledged that she may have received the correspondence, but she found the complaint numbers confusing and believed they related to previously resolved complaints.

An undertaking given by a regulated health professional to her professional regulatory College is a serious matter. This is apparent from the terms of Dr. Tse's Undertaking in exhibit 2. Dr. Tse acknowledged in writing that self-regulation of the profession is a privilege and she has a continuing responsibility to merit that privilege and support its institutions. She also acknowledged that a failure or refusal to comply with the Undertaking would be unprofessional conduct, and that the College has a duty to govern its regulated members in a manner that serves and protects the public interest. Compliance with undertakings such as the one given by Dr. Tse is important. Compliance provides the assurance that the regulated health professional respects the regulator's role to regulate the profession in the public interest.

In order for the Hearing Tribunal to find that Dr. Tse breached her Undertaking it must be clear and unequivocal. It is therefore necessary to examine the terms of the Undertaking. The Undertaking states that when any department of the College makes a request of Dr. Tse for a response, she agrees to respond to that request within 30 days, unless otherwise instructed. Paragraph 3 of the Undertaking

says that if circumstances arise where Dr. Tse cannot meet those deadlines, she will contact the Complaints Director or his delegate to seek their permission for an extension.

Dr. Tse's evidence was that once she became aware of Ms. Damron's letters she contacted Dr. Caffaro to seek an extension. Exhibit 10 included an email from Dr. Caffaro to Dr. Tse sent August 22, 2019. Dr. Caffaro wrote that he had received a voice message from Dr. Tse indicating that she had received a registered letter regarding the new complaint. Dr. Caffaro also wrote that Dr. Tse's message identified that she would be leaving for China for perhaps several months. Dr. Caffaro said he would require her response to the 190280.1.1 and 190414.1.1 complaints and he would allow her until October 15, 2019 to provide them.

Exhibit 8 included an email reply from Dr. Tse to Dr. Caffaro dated September 5, 2019. Dr. Tse explained she was in rural mainland China and would be there for another 3 weeks. She said she had no internet connection except when in town so she would "look into the matters immediately" once she returned to Canada.

Exhibit 9 included a further email reply from Dr. Tse to Dr. Caffaro dated October 16, 2019. Dr. Tse explained that due to public unrest in Hong Kong her return to Canada had been delayed and she had just returned a few days prior. Dr. Tse advised Dr. Caffaro that her staff had been sending patient records to Alberta Health while she was away. Dr. Tse said she would send a more detailed reply by the next day, October 17 once she had read the letters from the College.

Exhibit 10 included a further email from Dr. Tse to Dr. Caffaro dated October 17, 2019. Dr. Tse explained that since returning to Canada she had sent "over 1/3" of the requested patient charts to Alberta Health and the rest were being photocopied. She said she had obtained an extension from Alberta Health to November 5, 2019. She also said she was having a difficult time locating all of the required charts. Dr. Tse indicated that she had been unable to review the College's letters regarding the complaints against her as a lot of her emails had been deleted. She asked if Dr. Caffaro could re-send the complaints and give her more time to respond.

Exhibit 10 also included Dr. Caffaro's email response to Dr. Tse on October 18, 2019. Dr. Caffaro directed Dr. Tse to access the physician portal to see the complaint letters immediately. He then said that he



expected Dr. Tse's response to each complaint no later than October 31, 2019 at 5pm.

Exhibit 6 was Dr. Tse's letter to Dr. Caffaro and Ms. Damron dated October 31, 2019 with the subject "File No. 190280.1.1 Complaint Response". Dr. Tse wrote that she was responding to the request initially made on May 7, 2019. She then detailed reasons why she had delayed providing patient charts to Alberta Health for its audit.

In argument, Mr. Boyer suggested that Dr. Tse had breached her Undertaking by not responding to Ms. Damron's May 7, 2019 letter or any of the follow-up attempts to reach her. Dr. Tse's letter of October 31, 2019 was received well-beyond the 30 day deadline in the Undertaking. In response to a question from the Hearing Tribunal Mr. Boyer submitted that Dr. Caffaro's emails extending the deadline for Dr. Tse's responses to October 15 and then October 31, 2019 did not negate her earlier failures to comply with the Undertaking.

The Hearing Tribunal carefully considered Dr. Tse's Undertaking. Paragraphs 1 and 2 require Dr. Tse to respond to requests from the College within 30 days, "unless otherwise instructed." Paragraph 3 permits Dr. Tse to seek permission for an extension of the deadlines if circumstances arise where she cannot meet the deadlines. The Undertaking does not state that Dr. Tse can only seek permission for an extension before the deadline expires. The Undertaking does not clearly and unequivocally prohibit extensions to be permitted after the fact.

In this case Dr. Tse did contact the Complaints Director prior to October 31, 2019. Dr. Tse wrote to the Complaints Director on September 5, October 16, and October 17, 2019. In these emails Dr. Tse provided some information in response to the complaint referenced in Ms. Damron's May 7, 2019 letter, but she also indicated she would prepare an appropriate response and she requested additional time. This occurred after the 30 day deadline in the Undertaking had expired but the Undertaking did not require that extensions be requested in advance. Dr. Caffaro granted Dr. Tse's request for an extension and gave her until October 31, 2019. Dr. Tse then met this deadline.

The Hearing Tribunal wishes to make clear that it does not condone Dr. Tse's delay in responding to the College's correspondence. Physicians have an obligation to respond to the College, and to comply with the terms of any undertaking they enter into with the College. In

this case the evidence fell short of demonstrating that Dr. Tse breached a clear and unequivocal undertaking. Allegation 1 is dismissed.

Allegation 2 alleged that between October 2017 and August 2019 Dr. Tse failed to comply with the TORA in that she failed to comply with Alberta Health processes for the audit and review of claims for the audit period, including the provision of multiple patient records requested by Alberta Health.

The TORA was dated October 27, 2017 and required Dr. Tse to “comply with all Alberta Health processes involving management of the Schedule of Medical Benefits and fees/payments to her as per the appropriate regulation, including re-engaging with the Medical Investigations Branch of Alberta Health over the previous audit request that led to complaint 154455.1.1.”

Alberta Health had been seeking copies of 373 patient charts from Dr. Tse for its audit since December of 2013. There was no dispute that Dr. Tse failed to re-engage and provide the requested patient records between signing the TORA in 2017 and August 2019. Mr. Lesyk testified that Dr. Tse had not responded to Alberta Health’s several requests for patient records when he sent his April 9, 2019 letter to her. He said Dr. Tse did not respond until August of 2019.

Dr. Tse explained that she put her husband’s needs first, so she deferred responding to the Alberta Health audit until 2019, after her husband had finished responding to his audit. Dr. Tse also said that when Alberta Health told her they would withhold payment until the charts were received she was relieved. She assumed Alberta Health would no longer pursue her for the charts, and this would allow her time to transcribe her patient records from her notes of scrap paper into a format suitable for submission. She acknowledged this was a mistake.

The Hearing Tribunal did not accept Dr. Tse’s explanations for her failure to comply with the TORA. Just as an undertaking given by a physician to the College is a serious matter, so is an agreement to resolve complaints. An agreement between a physician and the College to resolve a complaint is part of the College’s discipline process by which it protects the public.

The preamble to the TORA states that Dr. Tse had three open complaints against her and that there was sufficient evidence of

unprofessional conduct to refer her conduct to a hearing. Dr. Tse and the Complaints Director entered into the TORA instead of proceeding with a hearing. The College must be able to expect that physicians who resolve complaints against them by undertaking or agreement with the College will abide by those undertakings and agreements.

Having entered into the TORA with the College to resolve the complaints against her, it was not acceptable for Dr. Tse to put off complying in favour of her loyalties to her husband. The Hearing Tribunal was also unable to accept Dr. Tse's explanation that her husband required the charts first, for nearly 6 years, to respond to his audit. Dr. Tse called several witnesses but she provided no corroborating evidence of this. Her evidence on this point was also contradictory. She said her husband required the patient charts first, but she also said her charts consisted of scraps of note paper she had been intending to transcribe into an electronic medical record. Dr. Tse provided no evidence that she re-engaged with Alberta Health at all between signing the TORA in 2017 and August of 2019.

Dr. Tse's disregard for her obligations in the TORA undermines the College's discipline process and its ability to regulate her conduct in order to protect the public. This harms the integrity of the medical profession and is unprofessional conduct. Allegation 2 is proven.

## **VII. ORDERS**

The Hearing Tribunal requests the parties to provide submissions on sanction. The Tribunal will receive written submissions on sanction, but either party may also request an oral hearing on sanctions. The Hearing Tribunal requests that if written submissions are to be provided the Complaints Director's written submissions be provided within 30 days of this decision, and that Dr. Tse's submissions be provided within a further 15 days.

Signed on behalf of the Hearing  
Tribunal by the Chair

Dated:

January 30, 2021



---

Dr. David Sheppard