

COLLEGE OF PHYSICIANS & SURGEONS OF ALBERTA

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

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF DR. JAY QUAN

**DECISION OF THE HEARING TRIBUNAL OF
THE COLLEGE OF PHYSICIANS
& SURGEONS OF ALBERTA
February 12, 2025**

I. INTRODUCTION

1. The Hearing Tribunal held a hearing into the conduct of Dr. Jay Quan on May 9, 2024.
2. The members of the Hearing Tribunal were:
 - Dr. Neelan Pillay, Chair;
 - Dr. Timothy Chan;
 - Ms. Patricia Hull, public member;
 - Ms. Sarah Gingrich, public member.
3. Appearances:
 - Ms. Stacey McPeck, legal counsel for the Complaints Director;
 - Mr. Amin Ben Khaled, student-at-law.

Neither the investigated member Dr. Quan, nor any representative appeared on his behalf.

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

II. PRELIMINARY MATTERS

4. There were no objections to the Hearing Tribunal's composition or jurisdiction. Counsel for the Complaints Director made a preliminary application to proceed with the hearing in Dr. Quan's absence.

Application to Proceed in the absence of Dr. Quan

5. Counsel for the Complaints Director produced a statutory declaration from Ms. J. W., Hearings Coordinator for the College of Physicians and Surgeons of Alberta (the "College").
6. Ms. W.'s statutory declaration stated that she first sent a letter from the College's Hearings Director to Dr. Quan about scheduling this hearing on November 8, 2023, by email. The letter advised Dr. Quan of the charge against him. The email was sent to Dr. Quan's email as recorded on the College's register. Dr. Quan did not respond.
7. Ms. W. then sent a letter from the College's Hearings Director to Dr. Quan by registered mail to his mailing address recorded on the College's register on January 5, 2024. The January 5, 2024 letter enclosed a Notice of Hearing advising Dr. Quan of the May 9, 2024 hearing date and the charge against him. The January 5, 2024 letter was delivered to Dr. Quan's address and signed for by someone at the address.
8. Ms. W. sent a further letter from the College's Hearings Director to Dr. Quan by registered mail to his registered mailing address and by email to his

registered email address on April 4, 2024. The letter provided further notice of the May 9, 2024 hearing date, the names of the Hearing Tribunal members and Zoom meeting log-in information. This letter was delivered on April 5, 2024.

9. Counsel for the Complaints Director submitted that the evidence in the statutory declaration was sufficient for the Hearing Tribunal to proceed with the hearing in Dr. Quan's absence, pursuant to sections 79(6) and 120(3) of the *Health Professions Act*, RSA 2000, c. H-7 ("HPA").
10. Section 79(6) of the HPA states that if the investigated person does not appear at a hearing and there is proof that the investigated person has been given a notice to attend, the hearing tribunal may proceed with the hearing in the absence of that person and act or decide on the matter. Section 120(3) states that if a notice is required to be given under Part 4 of the HPA, it is sufficiently given if it is sent by registered mail to the person's address as shown on the register of the registrar.
11. The Notice of Hearing for the May 9, 2024 hearing was sent to Dr. Quan's mailing address on record with the College on January 5, 2024 and delivered and signed for on January 9, 2024, providing four months of advance notice. The Hearing Tribunal was satisfied that the Notice of Hearing was properly given to Dr. Quan. It was appropriate to proceed with the hearing and decide on the charge before us.

III. CHARGE

12. The Notice of Hearing listed the following charge against Dr. Quan:

IT IS CHARGED:

1. Since March 2022, you have failed to respond to correspondence from the College of Physicians and Surgeons of Alberta (CPSA) regarding the CPSA complaint file number 210330, including multiple letters, emails and phone messages requesting your response.

ALL OF WHICH is contrary to your duty to cooperate with the CPSA, and the Terms of Resolution signed by you on April 6, 2014, all of which constitutes unprofessional conduct under the Health Professions Act, RSA 2000, c. H-7.

IV. EVIDENCE

13. Counsel for the Complaints Director called Ms. B [REDACTED] G [REDACTED] as their only witness. Ms. G [REDACTED] testified that she has been an Associate Complaints Director and Program Manager for the College's hearing referral team for the

last three years. Ms. G■■■■'s testimony reviewed the exhibits in the Exhibit Book.

14. Dr. Quan is a member of the College with active registration. Dr. Quan was the subject of a previous complaint in 2014 by the College's Competence Committee. That complaint concerned his participation in the College's Physician Achievement Review Program. Dr. Quan had failed to respond to correspondence from the College about the Program. The complaint was ultimately resolved when Dr. Quan entered into a Terms of Resolution Agreement on April 6, 2014. The Terms of Resolution Agreement provided that Dr. Quan agreed to promptly reply to all further correspondence from the College by the date stated in the correspondence.
15. Dr. Quan was the subject of a new complaint filed by a member of the public in 2021. It was this complaint and the investigation of it that led to this hearing.
16. Dr. Quan provided a written response to the new complaint, but he did not respond to a number of requests and follow-up requests from the College for additional information. These requests were sent to Dr. Quan to his registered email address. Some of the requests were also sent by registered mail and attempts were made to contact Dr. Quan by phone.
17. On March 31, 2022, the College's Complaints Inquiries Coordinator Ms. K■■■■ D■■■■ wrote to Dr. Quan by email. Ms. D■■■■'s letter referenced the new complaint file 210330 and requested a copy of the response that Dr. Quan and his colleagues had provided to the complainant in April 2021. Ms. D■■■■ requested Dr. Quan's response by April 21, 2022. Dr. Quan did not respond.
18. Ms. D■■■■ sent a follow-up request on May 27, 2022 and provided a new deadline for Dr. Quan to respond by June 10, 2022. Ms. D■■■■ wrote to Dr. Quan again on June 15, 2022 when Dr. Quan had not responded. She stated that he had missed the deadline to provide the requested information. She cautioned Dr. Quan that failing to cooperate with the College would result in additional professional conduct violations and offered him an extension to June 22, 2022. Dr. Quan again did not respond.
19. The Associate Complaints Director, Ms. D■■■■ A■■■■ then wrote to Dr. Quan on July 12, 2022 cautioning him that failing to cooperate with the College would result in additional professional conduct violations. The Associate Complaints Director's letter also stated that she had left Dr. Quan a voice message that same day. Dr. Quan again failed to respond.
20. Ms. D■■■■ wrote to Dr. Quan again on August 2, 2022 providing a final extension of the deadline to August 9, 2022. The Complaints Director, Dr. H■■■■ then attempted to contact Dr. Quan on August 22, 2022 by telephone and by email. He did not respond. Ms. D■■■■ wrote to Dr. Quan again by

email on August 23, 2022, advising that the matter would be referred back to the Complaints Director to consider next steps.

21. On September 16, 2022 the Complaints Director wrote to Dr. Quan advising that she was expanding the investigation of the new complaint to include whether he had failed to respond to the College. The Complaints Director included a list of all of the College's attempts to contact Dr. Quan and noted that he had accessed several of the College's pieces of correspondence using the College's physician portal on August 2, 2022.
22. On March 8, 2023 the College's investigator Dr. J. R. contacted Dr. Quan by email and by telephone. Dr. R. pointed out that Dr. Quan had still not responded to the College's requests for information. Dr. R. advised Dr. Quan that it was essential that he contact him by March 15, 2023.
23. Dr. R. wrote to Dr. Quan again on May 26, 2023 requesting to meet. Dr. R. recommended that Dr. Quan have legal counsel with him and asked that he contact the College by June 9, 2023 to schedule the meeting. Dr. Quan again failed to respond.
24. Ms. G. then described her efforts to contact Dr. Quan. She was assigned the file at the end of July 2023. She called the clinic where he works on August 1, 2023. Ms. G. left a message with the clinic staff for Dr. Quan to call her, which he did on August 3, 2023. Dr. Quan left a voice message for Ms. G. confirming that she could reach him at the cell phone number that the College has on its register. Ms. G. then called Dr. Quan on his cell phone. He answered and confirmed that he had received the College's correspondence, but he said he is registered in multiple jurisdictions and did not realize he was obligated to reply.
25. On August 8, 2023 Ms. G. sent a follow-up letter to Dr. Quan. She enclosed a summary of the preliminary investigation report and findings. Her letter also referred to her telephone discussion with Dr. Quan on August 3, 2023. Ms. G. asked Dr. Quan to provide a written response to the concern about his failure to reply to the College by August 18, 2023. Dr. Quan did not respond to this request.

V. SUBMISSIONS

26. Counsel for the Complaints Director submitted that Dr. Quan's conduct was a clear breach of his obligation to respond promptly to the College. The Complaints Director reviewed the 2014 Terms of Resolution Agreement in which Dr. Quan agreed to promptly reply to all further correspondence from the College by the date stated in the correspondence. The evidence demonstrates that since March 2022 Dr. Quan has failed to meet these obligations.

27. The Complaints Director submitted that Dr. Quan's conduct was unprofessional conduct pursuant to section 1(1)(pp)(vii)(B) of the HPA since he had failed to comply with a request of or cooperate with an investigator. Dr. Quan had failed to respond to correspondence from Dr. R [REDACTED] who had identified himself to Dr. Quan as the College's investigator. Dr. Quan's conduct was also unprofessional conduct pursuant to section 1(1)(pp)(xii) because it was conduct that harms the integrity of the medical profession. Physicians have a general duty to cooperate with the College as part of the privilege to practice medicine. Dr. Quan's failures to reply to multiple pieces of correspondence complicated and delayed the complaints process and the profession's ability to regulate itself.
28. The Complaints Director also submitted that Dr. Quan's conduct was unprofessional conduct pursuant to section 1(1)(pp)(vii)(A) of the HPA, since he failed to comply with an agreement that was part of a ratified settlement.

VI. DECISION with REASONS

29. The Hearing Tribunal finds the allegation proven. Since March 2022, Dr. Quan failed to respond to correspondence from the College regarding complaint file number 201330, including multiple letters, emails and phone messages requesting his response.
30. Ms. G [REDACTED] evidence was uncontradicted. Dr. Quan failed to reply to letters about complaint file 201330 sent to him by email or registered mail on March 31, May 27, June 15, August 2, August 23, and September 16, 2022, and May 26 and August 8, 2023. Dr. Quan failed to reply to emails about complaint file number 201330 sent to him from the College on July 12, 2022, August 22, 2022, and March 8, 2023. He failed to respond to phone messages about the matter left for him on July 12, August 22, 2022 and March 8, 2023. Dr. Quan provided no indication as to why he persistently failed to respond to the College, other than a belief that he didn't have to respond.
31. Physicians have a general duty to cooperate and respond to correspondence from the College that requires a response. The College's ability to regulate the medical profession for the benefit of the public depends on this duty to cooperate. Dr. Quan initially responded to the complaint, but he then failed to respond to the College's numerous attempts to obtain additional information from him. He failed to respond to numerous requests from numerous representatives of the College, including the Complaints Director and the College's investigator. Dr. Quan's conduct was troubling, but it was especially concerning since in 2014 he entered into an agreement with the College to promptly reply to all further correspondence from the College by the date stated in the correspondence. Dr. Quan was aware that responding to the College's correspondence was mandatory.
32. Dr. Quan's failures to respond to correspondence from Dr. R [REDACTED], the College's investigator, meet the definition of unprofessional conduct in s.

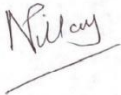
1(1)(pp)(vii)(B) of the HPA. Dr. Quan failed to comply with a request of or cooperate with an investigator. Dr. Quan's conduct also meets the definition of unprofessional conduct in s. 1(1)(pp)(xii) of the HPA. He repeatedly ignored correspondence of a regulatory nature from multiple College representatives. This undermines the College's ability to regulate the medical profession in the public interest and harms the integrity of the medical profession.

33. The Hearing Tribunal did not consider that Dr. Quan's conduct was unprofessional for contravening an agreement that was part of a ratified settlement, contrary to section 1(1)(pp)(vii)(A) of the HPA. The charge before us did not allege a breach of an agreement, so we have not made a finding that Dr. Quan breached an agreement with the College.

VII. SUBMISSIONS on SANCTIONS and COSTS

34. The Hearing Tribunal will accept submissions on sanctions and costs. Dr. Quan will be provided with a copy of this decision and an opportunity to make submissions.
35. The Hearing Tribunal requests that the Complaints Director provide their submissions on sanctions and costs to Dr. Quan within 30 days and that Dr. Quan have a further 30 days to respond. The Tribunal anticipates that these submissions can be done in writing, but either party may request an oral hearing on sanctions and costs and the Tribunal will consider that request.

Signed on behalf of the Hearing Tribunal by the Chair:



Dr. Neelan Pillay

Dated this 12th day of February, 2025.