

IN THE MATTER OF THE *HEALTH PROFESSIONS Act*, RSA 2000, c C-7  
REGARDING DR. MOHAMMED AL-GHAMDI

IN THE MATTER OF AN APPEAL FROM THE DECISIONS OF THE  
HEARING TRIBUNAL OF THE COLLEGE OF PHYSICIANS AND  
SURGEONS OF ALBERTA DATED APRIL 11, 2017

**DECISION OF THE COUNCIL REVIEW PANEL OF THE  
COLLEGE OF PHYSICIANS AND SURGEONS OF ALBERTA ON  
APPEAL**

An appeal was held before a panel of the Council Review Panel ( “the Panel”) of the College of Physicians & Surgeons of Alberta (the “College”) on September 14, 2018 at the offices of the College in Edmonton, Alberta. In attendance were:

Council members:

Dr. P. Alakija (Chair)	Ms. C. MacDonald
Dr. L. Francescutti	Dr. J. O’Connor
Ms. L. Louie	

Also in attendance were:

Mr. Craig Boyer, legal counsel for the College  
 Dr. Mohammed Al-Ghamdi, self-represented  
 Mr. Fred Kozak, Q.C. and Ms. Tess Layton, independent legal counsel to the Panel

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

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

- Notice of Hearing, dated May 11, 2017.
- Amended Notice of Appeal, dated February 12, 2018.
- Mr. Chak email chain re submission June 7 to 19, 2018.
- Letter from Mr. Chak to Mr. Kay re Appeal Procedure, dated July 9, 2018
- Email from Mr. Boyer to Mr. Chak re July 9, 2018 email from Mr. Chak enclosing Dr. Al-Ghamdi’s submissions with respect to response from College, dated July 11, 2018.
- Dr. Al-Ghamdi’s Written Submission, dated August 3, 2018.
- Dr. Al-Ghamdi’s Book of Authorities, dated August 3, 2018.
  - *Colby v. Ruiz*, 2005 NSSC 287
  - *R. v. Bent*, 2016 ONSC 6388
  - *R v Boyer*, 2018 SKCA 6
  - *Committee for Justice and Liberty et al. v. National Energy Board et al.*, [1978] 1 SCR 369, 1976 CanLII 2 (SCC)
  - *Cooper v. Hospital Privileges Appeal Board*, 1999 ABQB 165
  - *Cressman v. Ontario College of Teachers*, 2005 CanLII 1406 (ON SCDC)
  - *Levac v. James*, 2016 ONSC 7727
  - *Dhillon v. University of Alberta*, 2000 ABQB 77
  - *Ignacio (Re)*, 2018 CanLII 10826 (NS CPS)
  - *Kalin v. Ontario College of Teachers*, 2005 CanLII 18286 (ON SCDC)
  - *Ontario (College of Physicians and Surgeons of Ontario) v. Sogbein, O. O.*, 2013 ONCPSD 25
  - *R. v. Curragh Inc.*, [1997] 1 SCR 537, 1997 CanLII 381 (SCC)
  - *Swanson v. Institute of Chartered Accountants of Saskatchewan (Professional Conduct Committee)*, 2007 SKQB 480
  - *Ironside v. Alberta (Securities Commission)*, 2009 ABCA 134

- *Jackman v. Newfoundland Dental Board*, 1989 CanLII 4936 (NL SC)
- *Bailey v. Saskatchewan Registered Nurses' Association*, 1996 CanLII 6670 (SK QB)
- *Kaburda v. College of Dental Surgeons of British Columbia*, 1997 CanLII 4096 (BC CA)
- *Goad v. Cavanagh*, 1992 CanLII 6129 (AB QB)
- *Sinclair v. March*, 2000 BCCA 459 (CanLII)
- *Steep v. Scott*, 2002 CanLII 53248 (ON SC)
- Alberta Hansard, 27th Legislation, 4th Session (2011)  
<http://www.assembly.ab.ca/net/index.aspx?p=han&section=doc&fid=1>
- *Robertson v. Edmonton (City) Police Service (#10)*, 2004 ABQB 519
- Complaint Director's Written Submission, dated August 16, 2018
- Complaint Director's Book of Authorities, dated August 16, 2018.
  - *Arabian Muslim Association v. The Canadian Islamic Centre*, 2006 ABCA 152
  - *Dechant v. Law Society of Alberta*, 2000 ABCA 265
  - *Hoffinger v. Law Society of Alberta*, 2010 ABCA 302
  - *Dunsmuir v. New Brunswick*, 2008 SCC 9
  - *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61
  - *Nelson v. Alberta Association of Registered Nurses*, 2005 ABCA 229
  - *Moll v. College of Alberta Psychologists*, 2011 ABCA 110
  - *College of Physical Therapists of Alberta v. J.H.*, 2010 ABCA 303
  - *College of Physicians & Surgeons of Alberta v. Ali*, 2017 ABCA 442
  - *Ho v. Alberta Association of Architects*, 2015 ABCA 68
  - *Moreau-Bérubé v. New Brunswick (Judicial Council)*, 2002 SCC 11
  - *Lysons v. Alberta Land Surveyors Assn.*, [2017] A.J. No. 10
  - *Canada (Cdn Human Rights Commission) v. Canada*, 2018 SCC 31
  - *F.H. v. McDougall*, [2018] S.C.J. 54
  - Chapter 2 of the Code of Professional Conduct for the Law Society of B.C., Rule 2.1-2 Duty owed to courts and tribunals
  - *White Burgess Langille Inman v. Abbott and Haliburton Co.*, [2005] S.C.J. No. 23
  - Canadian Medical Association Code of Ethics updated in 2004
  - *Brett v Ontario (Board of Directors of Physiotherapy)*, [1991] O.J. No. 44, appeal to Ont. C.A. dismissed June 7, 1993 - [1993] O.J. No. 1253
  - *Adair v. Health Disciplines Board (Ontario)*, 1993 15 O.R. (3rd) 705
  - Extract of the Complaints Director's Written Submissions on Sanction for Hearing Tribunal and summary of costs incurred by College
- Email from Dr. Al-Ghamdi enclosing additional Authorities, dated September 5, 2018
  - *K. (I. F.) v. College of Physicians and Surgeons of British Columbia*, 1998 CanLII 4713 (BC CA)
  - *Jacobs v. Ottawa (Police Service)*, 2016 ONCA 345
  - *Q v. College of Physicians & Surgeons*, [2003] 1 S.C.R.
  - *Operation of Approved Hospitals Regulation*, Alta Reg 247/1990
  - *Hospitals Act*, RSA 2000, c H-12
  - *Physicians, Surgeons and Osteopaths Regulation*, Alta Reg 350/2009

- Consolidated Standards of Practice of the College of Physicians and Surgeons of Alberta, effective July 1, 2018
- Email from Mr. Boyer enclosing College's Additional Authorities, dated September 5, 2018.
  - *Abdul v. Ontario College of Pharmacists*, 2018 ONCA 699
- Email from Dr. Ah-Ghamdi asking for Panel's decision re Ms. Khullar, dated September 5, 2018
- Email from Mr. Boyer responding to request for declaration, dated September 5, 2018.
- Email from Dr. Al-Ghamdi enclosing 265 pages of references re inappropriate intervention by Ms. Khullar
  - Extracts from the Transcript re Ms. Khullar produced by Dr. Al-Ghamdi
- Transcripts from Proceeding:
  - October 17, 2014
  - January 16, 2015
  - April 20-24, 2015
  - May 11-15, 2015
  - June 15, 2015
  - August 10, 2015 (teleconference call)
  - October 13-16, 2015
  - November 9-13, 2015
  - December 14-18, 2015
  - January 11-14, 2016
  - January 29, 2016 (teleconference call)
  - February 16-19, 2016
  - AMENDED February 16-19, 2016
  - March 7-11, 2016
  - April 11-22, 2016
  - May 24, 2016 (teleconference call)
  - September 19-23, 2016
  - July 28, 2017 (teleconference call)
  - September 5, 2017
- Decisions regarding Proceeding:
  - Decision regarding allegations, dated April 11, 2017
  - Final Sanction Decision, dated December 21, 2017
  - Interim decision, #1, dated October 17, 2014
  - Interim decision, #2, dated January 16, 2015 (teleconference call)
  - Interim decision, #3, dated August 10, 2015
  - Interim decision, #4, dated December 10, 2015
  - Interim decision, #5, dated December 17, 2015
  - Interim decision, #6, dated December 24, 2015
  - Interim decision, #7, dated February 4, 2016
  - Interim decision, #8, dated February 29, 2016
  - Interim decision, #9, dated March 24, 2016
  - Interim decision, #10, dated April 7, 2016
  - Interim decision, #11, dated May 3, 2016

- Interim decision, #12, dated May 4, 2016
- Interim decision, #13, dated June 10, 2016
- Exhibits 1 to 280
- *Health Professions Act*, RSA 2000, c H-7
- *Code of Ethics*, 2004, Canadian Medical Association

[3] In connection to this appeal, Dr. Al-Ghamdi brought three applications.

1. Dr. Al-Ghamdi requested that he be permitted to have 3 individuals speak on his behalf at the appeal hearing, none of whom were qualified to practice law under the *Legal Profession Act*, RSA 2000, c L-8;
2. Dr. Al-Ghamdi requested that he be permitted to adduce new evidence at the appeal hearing that was not before the Hearing Tribunal; and,
3. Dr. Al-Ghamdi requested that he be given more than sixty (60) minutes to present oral submissions as prescribed by s 40(8) of the Bylaws of the College of Physicians & Surgeons of Alberta (May 28, 2018).

[4] With respect to Dr. Al-Ghamdi's request to have 3 individuals speak on his behalf who are not active members of the Law Society of Alberta,, the Panel also reviewed the following:

- Email from Dr. Al-Ghamdi to Mr. Kozak, Mr. Boyer and the College dated August 16, 2018;
- Email from Mr. Kozak to Dr. Al-Ghamdi, Mr. Boyer and the College dated August 24, 2018;
- Email from Mr. Boyer to Mr. Kozak, Dr. Al-Ghamdi and the College dated August 27, 2018;
- Email from Dr. Al-Ghamdi to Mr. Kozak, Mr. Boyer and the College dated August 29, 2018; and,
- Email from Mr. Boyer to Dr. Al-Ghamdi, Mr. Kozak and the College dated August 29, 2018 enclosing additional College Authorities
  - *Zuk v Alberta Dental Association and College*, [2018] A.J. No. 100
  - *Law Society of Alberta v Beaver*, [2016] A.J. No. 994
  - Law Society of Alberta Decision regarding Shawn Beaver
  - LSA Directory for Shawn Beaver

[5] For the purpose of considering Dr. Al-Ghamdi's application to adduce fresh evidence on appeal, the Panel reviewed the following:

- Letter from Mr. Chak (Dr. Al-Ghamdi's prior legal counsel) to the College dated July 9, 2018 including attachments:
  - Addendum to the Assessment of Kenneth Westheus dated March 23, 2018
  - Lawrence R. Huntoon, Editorial: Tactics Characteristic of a Sham Peer Review, *Journal of American Physicians and Surgeons*, Vol 13 No 3, Fall 2009
  - Dr. Felicia Huang, Curriculum Vitae

- Yahoo listing of emails from “Reed”
- Email from “Janet Loseth” to “Mohammed Alghamdi” dated November 23, 2013
- On Call Schedules by month, June 2010 to July 2013
- Yahoo listing of emails to “Reed”
- Email from Kate Reed to Dr. Mohammed Al-Ghamdi dated January 27, 2014
- Email from Kate Reed to Dr. Mohammed Al-Ghamdi dated January 29, 2014
- Email from Kate Reed to Dr. Mohammed Al-Ghamdi dated January 29, 2014
- Glossary of terms
- Case Summary from Review of Patient’s Record
- Case Summary from Review of Patient’s Record (witness #1 report)
- Case Summary from Review of Patient’s Record (witness #2 report)
- Case Summary from Review of Patient’s Record (witness #3 report)
- Email from Mr. Boyer to Mr. Chak, Mr. Kozak and the College dated July 11, 2018;
- Dr. Al-Ghamdi’s Authorities
  - *Groia v Law Society of Upper Canada*, 2018 SCC27
  - *Fitzpatrick v ACPT*, 2010 ABCA 207
- College Authorities
  - *R v Palmer*, [1980] 1 SCR 759
  - Re Dr. Torbey, Decision of Counsel
  - *Torbey v CPSA*, 2018 ABCA 285

[6] With respect to Dr. Al-Ghamdi’s request for additional time to present oral argument, the Panel also reviewed the following:

- Letter from Mr. Chak (Dr. Al-Ghamdi’s prior legal counsel) to the College dated July 9, 2018;
- Email from Mr. Boyer to Mr. Chak, Mr. Kozak and the College dated July 11, 2018;

## **I. BACKGROUND**

[7] These proceedings arise from the breakdown in the working relationship between Dr. Al-Ghamdi and his physician and nursing colleagues at the Queen Elizabeth II Hospital (“QEII”) in Grande Prairie, Alberta.

[8] Dr. Al-Ghamdi began working at the QEII as an orthopedic surgeon with Provisional Medical Staff Privileges after completing his medical training in 2003. Usually, after a defined period of ‘provisional’ privileges (often one year), a surgeon is promoted to ‘active’ privileges.

[9] Dr. Al-Ghamdi was reviewed one year following the commencement of his position at the QEII but he was not promoted to ‘active’ privileges. He renewed his application for ‘active’ privileges again in 2005. This time, on the advice of the Medical Advisory Committee (“MAC”), a committee including the former Registrar of the College and two orthopedic surgeons was convened to conduct a review of Dr. Al-Ghamdi’s performance and behavior. The committee recommended that Dr. Al-Ghamdi not be provided with ‘active’ privileges without an agreement to alter his behavior. Dr. Al-Ghamdi refused to abide by this process and instead took legal action in relation to this decision.

[10] In 2009, the MAC once again reviewed Dr. Al-Ghamdi's privilege status. They considered all of the issues that had been raised against Dr. Al-Ghamdi, and on this basis, did not elevate Dr. Al-Ghamdi to 'active' privileges.

[11] In December of 2012, Dr. Al-Ghamdi was removed from the on-call schedule because the other orthopedic surgeons refused to work with him. This precipitated Dr. Al-Ghamdi's initiation of a "parallel on call" schedule for orthopedic surgery at the QEII. There is some uncertainty as to where the idea for a "parallel on-call" system arose, but it is clear that Dr. Al-Ghamdi did implement a parallel on-call system.

[12] One night in July of 2013, Dr. Al-Ghamdi was involved in a heated and intense phone conversation with Tracy Rice, the in-charge nurse, concerning Dr. Al-Ghamdi's demand to book a patient for surgery and her refusal to comply. Shortly thereafter, Dr. Al-Ghamdi's issues came to a climax. Ms. Rice, in concert with the vast majority of the operating room ("OR") nurses and several physicians, signed a petition stating that they feared for their safety and would no longer work with Dr. Al-Ghamdi. As a result, Alberta Health Services ("AHS") immediately suspended Dr. Al-Ghamdi from the QEII as of August 20, 2013.

[13] Shortly thereafter, the allegations against Dr. Al-Ghamdi were set out in the Notice of Hearing, as follows:

It is charged that:

Since 2003, you have demonstrated a pattern of disruptive conduct in your dealings with a number of your medical colleagues and nursing staff at the Queen Elizabeth II Hospital which has resulted in a breakdown of your professional relationship with those colleagues and staff to the detriment of health services at that hospital, with particular acts being in one or more of the following categories of conduct;

- a. failing to participate in and follow the on-call schedule and procedures for orthopedic surgery at the hospital;
- b. purporting to have a parallel on-call schedule of your own to try to avoid having to deal with the on-call orthopedic surgeon at the hospital when booking a patient for surgery;
- c. failing to cooperate with your medical colleagues and nursing staff to ensure surgical cases were performed on the basis of medical need for urgent care;
- d. failing to finish your surgical case in a timely manner while another surgeon was in need of the same operating room to deal with an urgent case;
- e. failing to replace the safety cap on used needles/sharps and leaving the item for other staff to deal with and putting that staff person at risk of being poked by the uncapped needle /sharp;
- f. cultivating a culture of fear and distrust through making complaints to the Alberta Human Rights Commission, the College and Association of Registered Nurses of Alberta or the College of Physicians & Surgeons of Alberta;

- g. cultivating a culture of fear and distrust through threatening to start or starting legal action;
- h. cultivating a culture of fear and distrust through recording of a conversation without the knowledge of the person in the conversation;
- i. cultivating a culture of fear and distrust through making numerous complaints to administration at the hospital and the health authority;
- j. failing to follow the issue/dispute resolution processes set out in the bylaws and policies applicable to hospital medical staff;
- k. not obtaining consent for the surgery from your patient until immediately before the procedure rather than when booking patient for surgery creating unnecessary stress and delay;
- l. advising patients and other doctors that you were able to book patients at the hospital when you did not have active privileges at the time;
- m. having nursing staff open sterilized packs of surgical instruments which were not reasonably required for the procedure at hand and thereby making these instruments unavailable for other surgeons until the nursing staff had re-sterilized those instrument packs;

ALL OF WHICH is contrary to your obligation under the Canadian Medical Association Code of Ethics, including in particular section 52, and Standards of Practice No. 3 and No. 28 established under the Health Professions Act, and as such constitutes unprofessional conduct.

(the “Charge”).

## **II. SUMMARY OF THE DECISION OF THE HEARING TRIBUNAL**

**[14]** On October 17, 2014, the Hearing Tribunal commenced a hearing into the conduct of Dr. Al-Ghamdi with respect to the Charge. After hearing from 67 witnesses (comprising 50 witnesses called by Dr. Al-Ghamdi and 17 witnesses called by the Complaints Director) and receiving 276 exhibits over 47 hearing days, the hearing concluded on September 23, 2016.

**[15]** On April 11, 2017, the Hearing Tribunal found Dr. Al-Ghamdi guilty of disruptive conduct amounting to unprofessional conduct in his dealings with medical and nursing colleagues at the QEII (the “Conduct Decision”). The Hearing Tribunal found that Dr. Al-Ghamdi’s pattern of disruptive conduct resulted in a breakdown of his professional relationships with those colleagues, to the detriment of the health services at the hospital, all of which was contrary to his obligations under the Canadian Medical Association (“CMA”) *Code of Ethics*, including in particular section 52, and the College’s Standards of Practice, *Collaboration in Patient Care: Standard 3* and *Job Action: Standard 28* established under the Health Professions Act (“HPA”). The Hearing Tribunal also found his conduct harmed the integrity of the profession, and as such constituted unprofessional conduct.

**[16]** The Hearing Tribunal concluded that it had been proven that Dr. Al-Ghamdi had engaged in 8 of the 13 particulars of the Charge being particulars a, b, c, f, g, i, j, and m as outlined above.



[17] The Hearing Tribunal reconvened on September 5, 2017 to hear submissions on the appropriate sanction, having reviewed written materials provided to the Hearing Tribunal in advance of that date.

[18] The College argued that Dr. Al-Ghamdi was ungovernable, and that his license and practice permit should be revoked. While the Hearing Tribunal found Dr. Al-Ghamdi's conduct to be serious, it did not find Dr. Al-Ghamdi ungovernable, and instead imposed a suspension of his license with significant conditions to be met before he could resume the practice of medicine.

[19] The Hearing Tribunal released its 46 page reasons on sanction dated December 21, 2017 (the "Sanction Decision"). The Hearing Tribunal Ordered:

- a. Dr. Al-Ghamdi's license and practice permit are suspended for three (3) years, commencing from the date of this Order. He may apply to have his license and practice permit reinstated after he has met conditions (i) and (ii) below to the satisfaction of the CPSA Registrar. Should Dr. Al-Ghamdi meet the conditions listed in (i) and (ii) below to the satisfaction of the CPSA Registrar, he can apply to have his license and practice permit reinstated after two years.
  - i. Dr. Al-Ghamdi must enroll in, and successfully complete, a comprehensive assessment program (COAP), such as that described by Dr. Janet Wright. Dr. Al-Ghamdi may choose another comparable assessment program but the CPSA Registrar must approve it before he participates. The assessment must involve a component assessing fitness to practice; this assessment must conclude that he is fit to practice medicine before his license will be re-instated. Dr. Al-Ghamdi shall exclusively bear the cost of this program.
  - ii. Dr. Al-Ghamdi must enroll and successfully complete any course of therapy recommended by the above assessment, which may include: ongoing therapy by a psychologist, courses in improving interpersonal relationships; a re-assessment after a period of therapy; and endorsement of a mentorship. The latter should be a senior physician and regulated active member of the CPSA in good standing, to act as a mentor and as a discussant on issues of conduct within the health system and appropriate responses as specific issues arise including the interpretation of health system bylaws. The CPSA Registrar must be consulted and approve any mentor selection and arrangement. Dr. Al-Ghamdi shall exclusively bear the cost of these programs.
- b. Dr. Al-Ghamdi must pay costs of the Investigation and Hearing within three (3) years of the date of this Order. Should Dr. Al-Ghamdi have his license and practice permit re-instated after two years of suspension, but the costs noted above have not been completely paid by the end of the third year, the CPSA may again suspend his license and practice permit.

### III. GROUNDS OF APPEAL

[20] On May 11, 2017, Dr. Al-Ghamdi, through his then counsel, Mr. Chak, filed a Notice of Appeal listing 47 grounds of appeal, attached as **Appendix 1**. He appealed both the Conduct Decision and the Sanction Decision.

[21] On February 12, 2018, Dr. Al-Ghamdi, through Mr. Chak, filed three separate Amended Notices of Appeal based upon the three original College investigation files, attached as **Appendix 2**. The Amended Notices of Appeal list 55 grounds of appeal.

[22] In his written submissions, Dr. Al-Ghamdi identified 11 grounds of appeal, a summary of which asserted that the Hearing Tribunal erred:

- a) in its assessment of Dr. Al-Ghamdi's credibility;
- b) in its assessment of and weight given to the expert opinion evidence of Dr. Westhues;
- c) in its finding that Dr. Al-Ghamdi improperly elevated the urgency rating of his patient;
- d) in its finding that Dr. Al-Ghamdi asserted that there was an approved "parallel on-call system" for himself;
- e) in its finding that Dr. Al-Ghamdi had created a culture of fear and distrust by his threatened or pursued complaints and legal actions;
- f) in its determination of the standard of conduct against which Dr. Al-Ghamdi's conduct was judged;
- g) in fettering its authority and discretion to independent counsel;
- h) in permitting a member to sit on the tribunal whose actions during the hearing created a reasonable apprehension of bias against Dr. Al-Ghamdi;
- i) in proceeding with the hearing without quorum for the Hearing Tribunal;
- j) in ordering an excessively punitive sanction; and
- k) in ordering excessive costs;

[23] These grounds also represent generally the grounds of appeal that Dr. Al-Ghamdi argued before the Panel at the appeal hearing.

[24] The vast number of grounds of appeal raised by Dr. Al-Ghamdi at various points throughout these proceedings became repetitive and unclear. Given that Dr. Al-Ghamdi provided written and oral argument on grounds of appeal enumerated above, the Panel proceeded on the basis that the Panel was to consider Dr. Al-Ghamdi's appeal in relation to those grounds.

#### **IV. PARTIES' SUBMISSIONS**

##### **1. Preliminary Matters**

[25] As part of his Notice of Appeal and Amended Notices of Appeal, Dr. Al-Ghamdi also advised of his intention to bring a number of applications. Dr. Al-Ghamdi proceeded with some of these applications, along with others brought by way of written application prior to the appeal hearing.

##### **a) Application to be Represented by a non-member of the Law Society of Alberta**

[26] The Panel convened by tele-conference on September 5, 2018 to consider this preliminary issue, on the basis that if the Panel was to grant Dr. Al-Ghamdi's request, his chosen representative would need to be advised in advance of the appeal hearing.

[27] After reviewing the documents listed in paragraph 5, the Panel ordered that Dr. Al-Ghamdi would be permitted to make oral submissions on his own behalf, or instead, to choose one representative to speak on his behalf at the appeal hearing, either Ms. McDonnell or Mr. McCosh, but not Mr. Beaver.

[28] Mr. Kozak communicated the Panel's decision to the parties by email on September 5, 2018 (**Appendix 3**), indicating that reasons would be provided as part of this decision. Those reasons are as follows:

[29] On August 16, 2018, Dr. Al-Ghamdi wrote to Mr. Kozak inquiring whether a person other than a member of the Law Society of Alberta could appear to speak on his behalf before the Panel. On August 24, 2018, Mr. Kozak responded to Dr. Al-Ghamdi, copying Mr. Boyer, noting that s 89(1) of the HPA permits an investigated person the right to be represented by counsel at the appeal before the Panel. The term "counsel" is not defined in the HPA. Mr. Kozak suggested that if Dr. Al-Ghamdi wished to have someone other than a lawyer represent him at the appeal, he should advise the Panel, through Mr. Kozak, of the name of the person that he wished to represent him, along with information about that person's background and skill set so that the Panel could respond to his request. Mr. Kozak provided a deadline of August 29, 2018 for Dr. Al-Ghamdi to advise of this information, and for Mr. Boyer to set out his position in response.

[30] On August 27, 2018, Mr. Boyer wrote to Mr. Kozak and Dr. Al-Ghamdi, advising that the College was opposed to Dr. Al-Ghamdi's request. The College's objection was summarized as follows:

- Although neither the HPA and nor the *Interpretation Act*, RSA 2000, c I-8, define the term "counsel", the dictionary definition of "counsel" implies that it means "lawyer";
- Dr. Al-Ghamdi was able to retain legal counsel in the past, first being Mr. Simon Johnson and later Mr. Arman Chak. At one time shortly after Mr. Chak was retained, Dr. Al-Ghamdi requested an adjournment of the Hearing.
- The College has not been provided with sufficient information on who the agent is, what experience or skill set that person has relevant to this type of proceeding, and what degree of familiarity that person has with the extensive record of proceedings such that he or she is able to meaningfully contribute to the appeal.
- The College also noted that Dr. Al-Ghamdi is also a trained lawyer and in fact holds a Masters in Law.

[31] On August 29, 2018, Dr. Al-Ghamdi wrote to Mr. Kozak and Mr. Boyer advising that he proposed to have three individuals assist him and make submissions on his behalf at the appeal hearing: Ms. Arlene McDonnell, Mr. Brian McCosh, and Mr. Shawn Beaver. Dr. Al-Ghamdi provided a summary of the qualifications of the three proposed individuals.

[32] He classified Ms. McDonnell and Mr. McCosh as "public speakers". A review of their summaries as set out by Dr. Al-Ghamdi indicates that their public speaking experience primarily relates to their involvement in the Toastmasters Club. The Panel noted that both individuals have

retired from their careers, Ms. McDonnell as a Registered Dietician, and Mr. McCosh as a Manager of Capital Planning. It was also noted that neither of these two individuals appear to have experience acting as “counsel” for the purposes of a proceeding under the HPA, or any other similar proceeding.

[33] Mr. Shawn Beaver is a disbarred lawyer. Dr. Al-Ghamdi stated that he is his friend and former law professor with over two decades of experience as a trial and appellate lawyer. He believed that Mr. Beaver’s skills would be invaluable to him at the appeal hearing, that Mr. Beaver had already started reviewing the appeal materials so that he could assist Dr. Al-Ghamdi, and that Mr. Beaver was willing to speak without a fee. Dr. Al-Ghamdi specifically noted that Mr. Beaver’s “alleged conduct issues are irrelevant to the matter before Council, and he practiced for 20 plus years without any issues.”

[34] The College responded to Dr. Al-Ghamdi’s email on the same day, maintaining its opposition to Dr. Al-Ghamdi’s request. In noting that the applicable standard of review for an appeal to Council under the HPA is reasonableness (citing *Zuk v Alberta Dental Assn and College*), Mr. Boyer argued that the involvement of Ms. McDonnell and/or Mr. McCosh would be of little to no assistance in focusing Dr. Al-Ghamdi’s submissions on the proper standard of review, given their qualifications. Mr. Boyer’s central concern was that Dr. Al-Ghamdi ought not to treat the appeal as a *de novo* hearing, and ought not to delay the proceedings further.

[35] With respect to Mr. Beaver, Mr. Boyer objected to his involvement as he is a disbarred lawyer, citing the February 15, 2017 decision of the Law Society of Alberta, and a copy of the online directory result for Mr. Beaver on the Law Society of Alberta website noting his status. Mr. Boyer also referred to *Law Society of Alberta v Beaver*, 2016 ABQB 250, which was upheld by the Alberta Court of Appeal at *Law Society of Alberta v Beaver*, 2016 ABCA 290, in which the Court of Queen’s Bench prohibited Mr. Beaver from acting as agent while he was a suspended member of the Law Society of Alberta.

[36] Mr. Boyer argued that the circumstances of Mr. Beaver’s disbarment, which include that Mr. Beaver was found guilty of misappropriating trust funds, falsification of trust entries, and failure to be candid, engaged the reputation and integrity of the College if he was to act as “counsel” at an appeal proceeding. Mr. Boyer also noted that Dr. Al-Ghamdi had not indicated whether the Law Society of Alberta takes a position on Mr. Beaver acting as counsel at the appeal.

[37] Dr. Al-Ghamdi’s application raises the following issues:

1. Can Dr. Al-Ghamdi enlist someone who is not a member of the Law Society of Alberta to speak on his behalf?
2. If the Panel has no objection to #1, should Dr. Al-Ghamdi’s representation be limited to one person?
3. If the Panel allows only one person to speak for Dr. Al-Ghamdi, should limitations be imposed regarding who that individual can be.

[38] Section 89(1) of the HPA provides that “the complaints director and the investigated person may appear and be represented by counsel at the appeal before the council.” “Counsel” is not

defined in the HPA or in the *Interpretation Act*. The Panel finds that Dr. Al-Ghamdi is permitted to have someone speak on his behalf who is not a member of the Law Society of Alberta.

[39] With respect to whether Dr. Al-Ghamdi should be allowed to have three additional people speak on his behalf, the Panel is concerned that permitting more than one person to speak may frustrate the appeal procedure in the Bylaws, particularly the timelines set out for oral argument. It is difficult to see how dividing the responsibility of reviewing and referring extensively to evidence, making submissions and responding to questions from the Panel as Dr. Al-Ghamdi suggests will not considerably lengthen the proceedings.

[40] The Panel agrees with the College that one of the central questions on an appeal to Council relates to what standard of review is to be employed by Council in reviewing the Hearing Tribunal's decision. Allowing three or four people to address the standard of review on each ground of appeal is not likely to be helpful addressing that issue. It is important that Dr. Al-Ghamdi's submissions remain focused on the relevant questions on this appeal within the time he has been allotted. Accordingly, the Panel finds that Dr. Al-Ghamdi is permitted to have one individual speak and make submissions to the Panel on his behalf.

[41] Finally, with respect to whether Council should impose a restriction on who Dr. Al-Ghamdi can appoint to speak on his behalf, the Panel finds it would not be appropriate in the circumstances to permit Mr. Beaver to act as "counsel" at the appeal hearing, given his status as a disbarred member of the Law Society of Alberta. Dr. Al-Ghamdi argues that the allegations against Mr. Beaver are irrelevant to the matter before the Panel.

[42] In fact, the Panel notes that Mr. Beaver was found guilty of seven citations including failing to be candid with the Law Society and failing to act with integrity.

[43] The Panel also agrees with the College that allowing a disbarred member of the legal profession to act as counsel at an appeal hearing impugns the reputation and integrity of the College. It is incumbent on Council to maintain confidence in the appeal process for the benefit of its regulated members and the public it serves. Mr. Beaver's involvement in this matter would only serve to bring the appeal process under the HPA into disrepute, and undermine the public confidence in the College's ability to ensure an appropriate process and procedure in appeals on conduct issues.

[44] The Panel also noted that in the course of reviewing Mr. Beaver's conduct as an agent while suspended from the Law Society of Alberta, the Alberta Court of Appeal found that the *Legal Profession Act* is clear that once disbarred, a former barrister and solicitor cannot act as agent (*Law Society of Alberta v Beaver*, 2016 ABCA 290 at para 19). In the Panel's view, Mr. Beaver is disqualified from appearing before it as Dr. Al-Ghamdi's representative.

#### **b) Application to Adduce Fresh Evidence**

[45] At the outset of the appeal hearing, the Panel advised the parties that it wished to hear oral argument with respect to Dr. Al-Ghamdi's request to adduce new evidence. After hearing the submissions of both parties, the Panel retired to deliberate and determined that the evidence Dr. Al-Ghamdi proposes to submit does not satisfy the *Palmer* test.

[46] The Panel's reasons for the preliminary decision on new evidence follow.

[47] By way of letter dated July 9, 2018 from his former lawyer Mr. Chak, Dr. Al-Ghamdi applied to adduce fresh evidence on appeal. In his letter, Mr. Chak described the fresh evidence as follows:

1. Expert witness Dr. Kenneth Westhues Amendment report about the College of Physicians conduct;
2. Sham peer review article;
3. Dr. Felicia Hugh general surgeon, an expert witness CV, and reports about the management of three unfortunate patients. This is to show the problem in quality of care that Dr. Al-Ghamdi had to report (Doing semi-elective surgery in patient with INR 6 and patient bled to death, doing faciatomy in a patient with Nec Faci instead of extensive debridement or amputation and the patient died; missing management of patient with abdominal pain and air under the diaphragm after endoscopy and label the patient stable, the surgeon misdiagnose the perforation and only the correct diagnose intraoperative after 18 hours of perforation, then the surgeon attempted to blame Dr. Al-Ghamdi for 12 hours delay;
4. An example of mass email sent to a large number of individuals by Carbon Copy by the College that Dr. Al-Ghamdi got a copy of. Email to show vindictiveness, fishing expedition and abuse of process;
5. Example of on call schedule Dr. Al-Ghamdi requested to put full on-call schedule since 2003;
6. Communication with Dr. Reed;
7. Difficulty Dr. Al-Ghamdi faces to get Dr. Reed to provide notice to attend under Rule 73; and,
8. Case Reviews of Alleged Issues of Dr. Al-Ghamdi's surgeries.

[48] Mr. Chak correctly noted that the relevant test for new evidence is the one outlined by the Supreme Court of Canada in *R v Palmer*. Mr. Chak did not make submissions with respect to how the evidence meets the *Palmer* test, except to say that:

“the information and evidence reflects [Dr. Al-Ghamdi's] due diligence, the information is relevant to the 1 charge against him, it is credible information that goes to the expert information required to assess the alleged conduct and this information is decisive as to the nature of the Appeal that is to be heard before council.” (July 9, 2018 letter from Mr. Chak, p 3)

[49] With reference to Mr. Chak's assertion that the College did not prove all elements of the charge, and that it fabricated multiple elements, Mr. Chak also stated that “the additional evidence will go to the general knowledge of that fact and how the College and the Tribunal chose to ignore this in their analysis of the 1 charge against Dr. Al-Ghamdi.”

[50] Dr. Al-Ghamdi argued that he wished to put this evidence before the Hearing Tribunal, but the Hearing Tribunal would not let him call that evidence. Dr. Al-Ghamdi also submitted that in addition to this new evidence, he wanted to call additional witnesses to give evidence at the Hearing Tribunal proceedings, but that request was rejected.

[51] Dr. Al-Ghamdi suggested that the most important new evidence was the on-call schedules. He stated that that evidence was under the control of the physicians at the QEII and therefore it was the responsibility of the College to put those schedules into evidence before the Hearing Tribunal. Dr. Al-Ghamdi asked the Panel to draw a negative inference from the College's failure to produce and admit the on-call schedules as evidence before the Hearing Tribunal.

[52] With respect to the addendum to the report of Dr. Westhues, Dr. Al-Ghamdi argued that it would illustrate that the Hearing Tribunal made fact findings that were not on the record.

[53] Dr. Al-Ghamdi also appeared to argue that additional evidence should be considered by the Panel beyond what was provided through Mr. Chak. First, Dr. Al-Ghamdi argued that Dr. Worry ought to have provided testimony at the hearing. He alleges that Dr. Al-Ghamdi's complaint about Dr. Worry to the College (which Dr. Al-Ghamdi says the College refused to investigate) caused Dr. Worry to attempt to destroy Dr. Al-Ghamdi's career.

[54] Second, Dr. Al-Ghamdi submitted that Dr. Miles made false statements in his testimony and that his patient, Mr. E, died because Dr. Miles failed to diagnose a perforated bowel, and not because of Dr. Al-Ghamdi's refusal to give him surgical time. Dr. Al-Ghamdi suggests phone records exist that will prove his allegations. He argues Dr. Miles should be called back before the Panel so that he can be confronted for perjury.

[55] With respect to the allegation that Dr. Al-Ghamdi prioritized patients, Dr. Al-Ghamdi argued that hospital records ought to have been put into evidence to demonstrate how the emergency room works in the best interests of all patients, including Dr. Al-Ghamdi's patients.

[56] Mr. Boyer set out in his written submissions the test for fresh evidence articulated by the Supreme Court of Canada in *R v Palmer*, [1980] 1 SCR 759 and by the Alberta Court of Appeal in *Arabian Muslim Association v The Canadian Islamic Centre*, 2006 ABCA 152 at para 3; *Dechant v Law Society of Alberta*, 2000 ABCA 265 at para 8; and *Hoffinger v Law Society of Alberta*, 2010 ABCA 302 at para 10:

- a) Evidence should not generally be admitted if by due diligence it could have been adduced at the trial (Hearing Tribunal);
- b) The evidence must bear upon a decisive or potentially decisive issue in the trial;
- c) The evidence must be credible in the sense that it is reasonably capable of belief; and
- d) The evidence if believed could reasonably, when taken with other evidence adduced at trial, be expected to have affected the result.

[57] Mr. Boyer submitted that Dr. Al-Ghamdi's application fails to satisfy each branch of the *Palmer* test and should be rejected. Mr. Boyer noted that all four elements of the test must be met, and that the second and fourth elements of the test are the most difficult hurdles to mount.

[58] During oral argument, Mr. Boyer submitted that Dr. Al-Ghamdi is attempting to reopen the original hearing rather than to make an application for new evidence. Mr. Boyer refers to Council's decision in *College of Physicians and Surgeons of Alberta and Dr. Torbey*, which was recently upheld by the Court of Appeal in *Torbey v College of Physicians and Surgeons of Alberta*, 2018 ABCA 285 (*Torbey*) where Council found that the *Palmer* test is the appropriate framework in which to consider an application to adduce new evidence at an appeal to Council

[59] The Panel agrees that the *Palmer* test applies to Dr. Al-Ghamdi's proposed new evidence put before it in Mr. Chak's July 9, 2018 letter, and to Dr. Al-Ghamdi's request to admit additional hospital emergency records and to hear additional testimony from Dr. Worry and Dr. Miles as referenced in his oral submissions.

[60] The Panel determined that none of the proposed new evidence passes the *Palmer* test. Accordingly, the Panel denies Dr. Al-Ghamdi's application to adduce fresh evidence.

[61] In applying the *Palmer* test to the documents contained in Mr. Chak's July 9, 2018 letter, the Panel finds that almost all of this information could have been adduced at the Hearing Tribunal proceeding with due diligence. The only exception to this is the Addendum to the Report of Dr. Westhues which was generated after the Hearing Tribunal released its decision, and was therefore not in existence at the time of the hearing.

[62] This report cannot be classified as evidence. It is Dr. Westheus' statement of his opinion of the proceedings against Dr. Al-Ghamdi and his disagreement with the Hearing Tribunal's decision. This is precisely what is at issue on this appeal. Dr. Westheus' opinion on whether Dr. Al-Ghamdi is guilty of unprofessional conduct and his opinion about the fairness of the hearing process are irrelevant as those are the central questions to be decided. Therefore, this proposed evidence does not pass the threshold of relevance and therefore shall not be admitted. If it is relevant, it also does not pass any aspect of the *Palmer* test.

[63] The Panel further finds that there is nothing in the proposed new evidence that would have been potentially decisive to an issue.

[64] It bears mentioning that before the Hearing Tribunal, Dr. Al-Ghamdi called 50 witnesses to give evidence. It is clear that Dr. Al-Ghamdi was given wide latitude to present his case. None of the proposed new evidence presented to the Panel could, if reasonably believed when considered with the other evidence adduced at the hearing, reasonably be expected to have an effect on the outcome of the hearing.

### **c) Application for Additional Time to Present Oral Argument**

[65] In a letter dated July 9, 2018 to Mr. David Kay, Assistant Registrar of the College, Mr. Chak suggested that the appeal hearing might take up to three days (July 9 Letter, page 3). In his email to Mr. Kozak and Mr. Boyer on August 29, 2018, Dr. Al-Ghamdi suggested he required a full day to



present the extensive portions of evidence and transcript that he intended to rely upon. Dr. Al-Ghamdi did not suggest that he would require additional time to present oral argument on grounds of appeal not covered in his written submissions.

[66] At the outset of the appeal hearing, the Panel requested that Dr. Al-Ghamdi clarify exactly how much time he required to present his appeal. Dr. Al-Ghamdi requested that he be permitted three (3) hours for oral argument. When Council asked how much time the College would require, Mr. Boyer advised that he intended to complete his argument in one hour (the time allotted under the Bylaws) but if additional time was granted to Dr. Al-Ghamdi, he should be allotted a similar amount of time.

[67] The Panel granted Dr. Al-Ghamdi's request for additional time to present oral argument, to a maximum of 90 minutes, not including time spent making submissions on preliminary issues or his reply to the College's submissions.

## **2. Standard of Review**

### **a) Dr. Al-Ghamdi's Submissions**

[68] Dr. Al-Ghamdi did not make any submissions about the standard of review in his written submissions. On two occasions during oral argument, the Panel urged Dr. Al-Ghamdi to outline his position on standard of review given Mr. Boyer's extensive written submissions on that issue, and given that standard of review is a central question of appeal. In his reply, Dr. Al-Ghamdi addressed standard of review.

[69] Dr. Al-Ghamdi appears to agree that the reasonableness standard applies to most of the issues he has raised. However, Dr. Al-Ghamdi takes a considerably broader view than the College in determining the degree of scrutiny with which to view the evidence accepted by the Hearing Tribunal.

[70] Dr. Al-Ghamdi argued that where reasonableness is the appropriate standard, the decision maker is not prevented from looking at the evidence, and he suggests the decision maker should undertake an analysis of the evidence to determine the reasonableness of a finding. He suggests that the College has conflated two concepts: clear and cogent evidence and reasonableness. His assertion is that the evidence was full of hearsay and extensive gossiping, and was misleading and caught him by surprise. In Dr. Al-Ghamdi's view, the Hearing Tribunal improperly accepted this evidence and failed to give his own evidence proper weight. Essentially, Dr. Al-Ghamdi argues that the evidence relied upon by the Hearing Tribunal did not meet the standard of clear and cogent evidence, therefore the Hearing Tribunal's decision was unreasonable.

[71] For example, Dr. Al-Ghamdi suggested that the College misled the Hearing Tribunal and Dr. Al-Ghamdi by allegedly allowing Rita Young, a nurse called to give evidence by the College, to use a false name of Ms. Erasmus. Dr. Al-Ghamdi concludes that Ms. Young must have used a false name as, according to Dr. Al-Ghamdi, there was no nurse manager by the name of Ms. Erasmus at the QEII.

[72] Dr. Al-Ghamdi effectively suggests that the Panel re-weigh all of the evidence that was before the Hearing Tribunal.

[73] Finally, Dr. Al-Ghamdi also argued that some issues are to be viewed on a standard of correctness. He suggested that the College did not have jurisdiction to investigate Dr. Al-Ghamdi because there was no complaint filed, but rather, the College invited AHS to submit a complaint about Dr. Al-Ghamdi's conduct. Dr. Al-Ghamdi also suggested that a standard of correctness should be applied in reviewing Ms. Khullar's behavior and in considering the composition of the Hearing Tribunal.

#### **b) College's Submissions**

[74] Mr. Boyer argued that Dr. Al-Ghamdi continues to believe that an appeal on the record constitutes an opportunity to re-litigate what the Hearing Tribunal has already decided, and that he fails to recognize that the standard of review is reasonableness. He submits that Dr. Al-Ghamdi is attempting to revisit findings of fact and findings of credibility, which is not consistent with the appropriate standard of review which is reasonableness.

[75] Mr. Boyer suggested that the first step in the decision making process should be to decide the standard of review. He suggests that for the purposes of determining the standard of review, Dr. Al-Ghamdi's grounds of appeal listed in his written materials can be reduced to the following categories:

- a. Grounds a, b, c, d, e and f are challenges to the findings of fact or mixed fact and law,
- b. Ground g is an argument that there has been a lack of procedural fairness in that the statutory decision maker was not the person making the decisions,
- c. Ground i is a challenge to the Hearing Tribunal's interpretation of the home statute, being the *Health Professions Act*, and
- d. Grounds j and k are challenges to the sanction imposed.

Mr. Boyer's written submissions did not deal with ground h.

(Respondent's Brief, p 10)

[76] Mr. Boyer relied on *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 51-64 and *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at para 39, *Canada (Cdn Human Rights Commission) v Canada*, 2018 SCC 31 at paras 27-40) in support of his assertion that the presumption is that the standard of review is reasonableness. Reasonableness also applies to interpretation of the home statute, in this case, the HPA: *Lysons v Alberta Land Surveyors Association*, [2017] AJ No 10 at para 4.

[77] Mr. Boyer further pointed to *Nelson v Alberta Association of Registered Nurses*, 2005 ABCA 229 at paras 4-6, 8, 12 & 15 [*Nelson*], *Moll v College of Alberta Psychologists*, 2011 ABCA 110 at paras 17-21 [*Moll*], *College of Physical Therapists of Alberta v JH*, 2010 ABCA 303 at para 7 [*JH*], and *College of Physicians & Surgeons of Alberta v Ali*, 2017 ABCA 442 at para 86 [*Ali*] as

precedents for the Panel's use of the reasonableness standard on appeal. During oral argument, Mr. Boyer also referred the Panel to *Torbey*, in which the Court of Appeal confirmed that reasonableness applies to the Conduct Decision and the Sanction Decision.

[78] In particular, the College submitted that the following principles arise from these cases:

- a) the role of Council is not to retry the case but to determine whether the Hearing Tribunal's decision was reasonable;
- b) the Hearing Tribunal's conclusions are reasonable if there is some basis for the conclusions in the evidence;
- c) Council should not reweigh and reassess the evidence because weighing and assessing evidence is the role of the Hearing Tribunal;
- d) Council should not substitute its interpretation of practice standards for the interpretation of the Hearing Tribunal unless the Hearing Tribunal's interpretation is untenable;
- e) Council should consider the reasons for a decision in its totality in deciding whether the decision was reasonable;
- f) The sanction and order of costs are also reviewed on the standard of reasonableness.

(Respondent's Brief, para 36)

[79] The College agreed that with respect to issues of procedural fairness, the Hearing Tribunal is to be afforded no deference, having regard to the circumstances set out in *Baker v Canada (Ho v Alberta Association of Architects)*, 2015 ABCA 68 at paras 17-23, *Moreau-Berube v New Brunswick (Judicial Council)*, 2002 SCC 11 at paras 75-83).

### **3. Grounds of Appeal**

#### **a) Dr. Al-Ghamdi's Submissions**

[80] In his written and oral submissions, Dr. Al-Ghamdi described a dysfunctional hospital and surgical staff, workplace bullying, harassment and racism levelled against Dr. Al-Ghamdi by most colleagues and staff at the QEII, the Alberta Medical Association ("AMA") and the College. To emphasize his view that he was victimized, his written submissions included a 'prologue' describing how he was the victim of a targeted attack on his character and that his colleagues at the QEII conspired against him to destroy his career.

[81] All of these issues, according to Dr. Al-Ghamdi, occurred over a period of years and involved Dr. Al-Ghamdi being "booted" from the on-call group, doctors refusing to work with Dr. Al-Ghamdi, senior nurses spreading rumors that Dr. Al-Ghamdi had complained about them, and hospital management convening "illegal" committees with no real authority to look into Dr. Al-Ghamdi's

conduct. He alleges that the conspirers finally had the footing to “get rid of” Dr. Al-Ghamdi after a nurse, Tracy Rice, alleged that Dr. Al-Ghamdi threatened her during a phone conversation.

[82] As a result of Ms. Rice’s allegations, a petition was circulated asking for commitments that nurses and staff refuse to work with Dr. Al-Ghamdi. To buttress Ms. Rice’s allegations, Dr. Al-Ghamdi believes that the College invited its members and others to complain about Dr. Al-Ghamdi.

[83] Dr. Al-Ghamdi points to the double standards applied to others (in regard to complaints made by Dr. Al-Ghamdi about other physicians, and lawsuits that Dr. Al-Ghamdi commenced) versus allegations against Dr. Al-Ghamdi. He draws a distinction in terms of how those complaints were unfairly and maliciously investigated by the College only where he was the subject of the complaint.

[84] Dr. Al-Ghamdi opened his oral argument by playing for the Panel a recording of the heated telephone conversation involving Dr. Al-Ghamdi, Tracy Rice and Dr. Denkema. Dr. Al-Ghamdi highlights that first, in his view, he did not threaten Tracy Rice, and second, this recording is illustrative of the toxic environment that he worked in. He suggests that this phone call represents the climax of the irreconcilable interpersonal problems between Dr. Al-Ghamdi and other surgeons and staff at the QEII.

[85] Dr. Al-Ghamdi then played a recording of an interaction between Dr. McGowan and Dr. Al-Ghamdi to illustrate that he was bullied at the QEII. He alleges that that Dr. McGowan verbally attacked Dr. Al-Ghamdi with obscenities and caused others to gang up on him after Dr. Al-Ghamdi complained about Dr. McGowan’s profanity and his failure to wear a mask in the operating room.

[86] All of this, Dr. Al-Ghamdi states, is workplace “mobbing” which led to his current situation of having been effectively unable to practice medicine for the past 5 years.

[87] Dr. Al-Ghamdi notes that a key issue is the Hearing Tribunal’s assessment of the credibility of Dr. Al-Ghamdi and other witnesses that he called at the hearing. He takes exception to the fact that, in his view, the Hearing Tribunal assessed his credibility, in part, based on his actions at the Hearing Tribunal proceedings, while he was acting in the capacity of a lawyer, rather than only when he took the stand and testified under oath. He complains that it was improper for the Hearing Tribunal to assess his credibility based on his conduct arguing his case, interacting with witnesses, and the types of questions he asked.

[88] Dr. Al-Ghamdi points to *R v Boyer*, 2018 SKCA 6, for the proposition that it is an error in law for the Hearing Tribunal to conflate a self-represented litigant’s trial conduct and strategy with the factors informing credibility.

[89] Another key element of Dr. Al-Ghamdi’s argument is his allegation that the Hearing Tribunal erred in its treatment of expert testimony. He alleges that the Hearing Tribunal failed to recognize that once a witness is accepted as an expert, the Tribunal ought not to substitute its own opinion for that of the expert witness, as the Tribunal does not have the expertise in the subject matter. Dr. Al-Ghamdi suggests that if the Hearing Tribunal disagreed with expert testimony, its only option to dismiss that evidence is to replace it with other expert evidence which would contradict it.

[90] Dr. Al-Ghamdi highlights the testimony of Dr. Joffe in this regard. Dr. Joffe testified about infectious disease and studies he had undertaken regarding the importance of wearing a mask. Dr. Al-Ghamdi concludes that the Hearing Tribunal must have accepted the expert evidence of Dr. Joffe with respect to infectious disease and the importance of wearing a mask because neither the Hearing Tribunal nor the College called expert evidence to the contrary.

[91] The Hearing Tribunal's assessment of credibility of witnesses and the weight afforded to witness testimony is of central concern to Dr. Al-Ghamdi. Many of the grounds of appeal that Dr. Al-Ghamdi has raised relate to his disagreement with the Hearing Tribunal's findings in that regard. Some examples of Dr. Al-Ghamdi's disagreement with the findings of the Hearing Tribunal's conclusions on evidence are as follows:

1. It was improper for the Hearing Tribunal to conclude that Dr. Westheus interviewed Dr. Al-Ghamdi, when neither Dr. Al-Ghamdi nor Dr. Westheus said that Dr. Westheus interviewed Dr. Al-Ghamdi;
2. The Hearing Tribunal erred in failing to conclude that the evidence of Dr. Nichol establishes that Dr. Al-Ghamdi was invited to implement his own parallel on-call schedule;
3. The Hearing Tribunal ought to have found that Dr. Al-Ghamdi had a duty to report Dr. Worry's alleged misconduct and Dr. McGowan's failure to wear a mask, and that as a result of Dr. Al-Ghamdi's complaints to the College, those physicians retaliated against him; and,
4. The Hearing Tribunal failed to make findings that Dr. McGowan and Dr. Watson called Dr. Al-Ghamdi names, and that their toxic behavior in the workplace had an adverse impact on patient care.

[92] With respect to the finding that Dr. Al-Ghamdi neglected to cooperate with his colleagues, Dr. Al-Ghamdi claims that the other orthopedic surgeons in fact had a duty to cooperate with him. He alleges that the other orthopedic surgeons went out of their way to ensure that Dr. Al-Ghamdi was scheduled to be on-call when they knew he would be away. Dr. Al-Ghamdi also alleges that it was management's responsibility (Dr. Al-Ghamdi may be referring to management at AHS or at the QEII) to inform him that there were dispute resolution processes available to him to resolve his interpersonal disputes with the other doctors when he was excluded from the on-call schedule. Instead, Dr. Al-Ghamdi claims that he was blamed for implementing a parallel on-call schedule, which he says he was invited to create.

[93] Dr. Al-Ghamdi also claims that the Hearing Tribunal improperly considered the Guidance Document entitled "Managing Disruptive Behavior in the Healthcare Workplace" published by the College to be a standard of practice under the HPA, and erred in holding his conduct to that standard. Dr. Al-Ghamdi notes that this document is a guide and is not properly adopted by Council as a standard of practice under s 133 of the HPA for the purposes of determining unprofessional conduct.

[94] Dr. Al-Ghamdi alleges that it was inappropriate for the Hearing Tribunal to measure his conduct in relation to the CMA *Code of Ethics* (2004), which was adopted as a Standard of Practice under s 133 of the HPA by Council in 2010. Citing *Cressman v Ontario College of Teachers*, 2005 CanLII 1406 (ON SCDC) and *Kalin v Ontario College of Teachers*, 2005 CanLII 18286 (ON SCDC), Dr. Al-Ghamdi submits that as he is being prosecuted for conduct dating back to 2003, he must be held to the previous applicable Standards of Practice and *Code of Ethics*. Dr. Al-Ghamdi alleges that despite the transitional provisions set out in section 19 of schedule 21 of the HPA, prosecuting him for conduct that occurred before the Standards of Practice were enacted offends the principle that a person ought not to be disciplined for something that was not improper at the time of the incident. According to Dr. Al-Ghamdi, the standards of practice in force before the HPA was enacted in 2009 differ significantly from the College's current (2010) Standards of Practice and the *Code of Ethics* as they currently exist.

[95] Dr. Al-Ghamdi made various complaints about the composition of the Hearing Tribunal. He complains that it was improper for the panel to have a 1:1 ratio of public member to physician member, and that both members of the Hearing Tribunal had a bias against him.

[96] The Panel asked Dr. Al-Ghamdi what steps he took to raise these concerns. Dr. Al-Ghamdi responded that he asked for all three members of the Hearing Tribunal to be disqualified, and only one recused himself, and that he consistently objected to procedures that the Hearing Tribunal had set. When pressed regarding whether he specifically raised an objection to the fact that the Hearing Tribunal continued with only two members, Dr. Al-Ghamdi stated that the Hearing Tribunal did not put that issue to the parties, and did not set out a procedure for him to object. The Panel understands this to mean that Dr. Al-Ghamdi did not specifically object to the Hearing Tribunal proceeding with only two members.

[97] Dr. Al-Ghamdi's concern regarding the composition of the Hearing Tribunal is also closely related to his complaints about Ms. Khullar, who acted as independent counsel to the Hearing Tribunal. He argues that she inappropriately assumed the role of the third tribunal member, or even a prosecutor. Dr. Al-Ghamdi argues that she inappropriately interjected on hundreds of occasions, which interfered with the proceedings. He also takes exception to the fact that Ms. Khullar sat to the left side of the Hearing Tribunal members and claims that any reasonable person would conclude that she was a tribunal member.

[98] Finally, Dr. Al-Ghamdi argued that the sanction imposed was not proportional to the charge for which he was found guilty in relation to both the suspension and costs. He suggests that given that he has effectively not been able to practice surgery since 2013, the retraining requirements that would be required after a 3 year period of suspension effectively means the end of his surgical career. He also points to the significant award of costs.

## **b) The College's Submissions**

[99] The College rejects Dr. Al-Ghamdi's assertions that he was the victim of a conspiracy, that he was the whistleblower, and that he was trying to be an advocate for his patients and improve patient care. Instead, Mr. Boyer urged the Panel to consider that the Hearing Tribunal heard and rejected those same arguments.

[100] Mr. Boyer points to the Hearing Tribunal's findings that very early on in Dr. Al-Ghamdi's career in 2003, friction was developing between himself and others at the QEII. This friction, he alleges, culminated in the final years of his practice when Dr. Al-Ghamdi left to pursue a law degree and complete his articles, while he was also in full time practice as a surgeon.

[101] Dr. Al-Ghamdi's own evidence establishes that between 2008 and 2015, Dr. Al-Ghamdi attended law school, articulated in Dawson Creek, British Columbia, completed an MBA, and completed a Masters in Law. All of this, the Hearing Tribunal found, effectively meant that his colleagues at the QEII had to carry the load of Dr. Al-Ghamdi's surgical and on-call responsibilities while he was engaged in these pursuits.

[102] During that period of time, Dr. Al-Ghamdi was also pursuing various legal challenges including a complaint to the Human Rights Commission, a request for judicial review of that decision at the Court of Queen's Bench, an appeal of the Court of Queen's Bench's dismissal, and an unsuccessful application for leave to the Supreme Court of Canada.

[103] With respect to Dr. Al-Ghamdi's claim that the College improperly used s 56 of the HPA to open the investigation rather than limiting the issues to the letters received from third parties, the College points to *Abdul v Ontario College of Pharmacists*, 2018 ONCA 699. In that case, the Ontario Court of Appeal rejected the argument that the College was wrong or unfair to proceed with a registrar-initiated complaint after a third party complaint had been withdrawn.

[104] Mr. Boyer urged the Panel to be very cautious in accepting Dr. Al-Ghamdi's statements of the facts and of the law. He presented a number of examples of Dr. Al-Ghamdi's alleged attempts to mislead the Hearing Tribunal. Those examples include the following:

- Dr. Al-Ghamdi removed an email from an email chain where he threatened to report Dr. St. Germaine to the College. The missing email was located by Dr. St. Germaine and entered as Exhibit 252;
- Dr. Al-Ghamdi presented an edited document to a witness without advising the witness or the Hearing Tribunal that the document had been edited (Transcript p 3476, Exhibit 120);
- Dr. Al-Ghamdi displayed a lack of candor with the Hearing Tribunal when he excluded the opening pages of a document he attempted to admit as evidence which stated that the report was inadmissible in any proceeding pursuant to s 9 of the *Alberta Evidence Act* (Transcript p 5816);
- Dr. Al-Ghamdi represented to a witness that a previous witness had adopted statements (Transcript page 4634) when in fact she had not (Transcript page 2304).

[105] In response to Dr. Al-Ghamdi's complaints about procedural fairness, Mr. Boyer submitted that most of Dr. Al-Ghamdi's complaints about the Hearing Tribunal and the proceedings heard by it were actually issues caused by Dr. Al-Ghamdi himself. Mr. Boyer states that Dr. Al-Ghamdi called three times the number of witnesses as the College, yet the majority of the witnesses corroborate the College's evidence. He also highlighted that Dr. Al-Ghamdi claimed that his own witnesses lied (see for example, Dr. Campbell).

[106] With respect to Dr. Al-Ghamdi's claims that other surgeons and nurses conspired against him, Mr. Boyer points to *Robertson v Wasylyshen*, 2004 ABQB 519. In that case a police detective felt he was the subject of a conspiracy, however, Justice Slatter found that it was "impossible to conclude that various decisions that were adverse to the career of the Applicant were part of some sort of conspiracy, or reflected any kind of institutional or personal bias against the Applicant" (at para 91).

[107] Mr. Boyer addressed Dr. Al-Ghamdi's assertion that the Hearing Tribunal improperly assessed his credibility on the basis of his conduct as a lawyer. Mr. Boyer highlighted that firstly, the *Boyer* case considered an assessment of the credibility of a self-represented accused person in the criminal context, which does not apply in the civil context. Secondly, Mr. Boyer argued that as in *Boyer*, there was ample evidence based upon Dr. Al-Ghamdi's own testimony to substantiate the Hearing Tribunal's findings on credibility.

[108] Mr. Boyer argues that fairness does not require the most advantageous procedure, citing *Ironsides v Alberta (Securities Commission)*, 2009 ABCA 134. Before the Hearing Tribunal, Dr. Al-Ghamdi argued that the medical staff bylaws and the HPA should be interpreted in the manner most favorable to Dr. Al-Ghamdi. The Hearing Tribunal rejected this approach, and instead preferred an interpretation based on the context of the legislation and the relevant case law.

[109] With respect to the Dr. Al-Ghamdi's concerns about the application of the *Code of Ethics* to his 2003 conduct, Mr. Boyer outlined that the Hearing Tribunal found that the transitional provisions contained in the HPA address this concern.

## **V. SUMMARY OF THE PANEL'S DECISION**

[110] The Panel carefully reviewed and considered the Conduct Decision, the Sanction Decision, the exhibits, the transcripts, the written submissions of the parties, the oral submissions made at the appeal hearing, and the case authorities cited.

[111] The Panel finds that for all but one of the issues that arise in this appeal, the appropriate standard of review is reasonableness. A decision will only be unreasonable if it does not fall within the acceptable range of rational outcomes. Although the evidence must support a decision, findings in relation to the evidence must truly be outside that acceptable range to be overturned.

[112] The issue of whether the Hearing Tribunal erred in fettering or delegating its authority and discretion by deferring to Ms. Khullar (independent counsel to the Hearing Tribunal) Ground (g), is reviewable on a standard of correctness.

[113] With respect to all grounds of appeal except Ground (g), the Panel finds that the Hearing Tribunal's Conduct Decision and Sanction Decision were within an acceptable range of rational outcomes and were therefore reasonable. With respect to Ground (g), the Panel finds nothing improper with the conduct of Ms. Khullar or her involvement in the process.

[114] This appeal is therefore dismissed.



## VI. FINDINGS AND DECISION

### 1. Standard of Review

[115] The Court of Appeal in *Torbey* has recently confirmed the correct approach to standard of review for the purposes of Council's review of a decision of the Hearing Tribunal:

Decisions of the Hearing Tribunal and of the Council arising out of disciplinary hearings in relation to the conduct of a regulated member are reviewable on the reasonableness standard, except for issues of procedural fairness which are reviewed for correctness: *College of Physicians & Surgeons Alberta v Ali*, [2017] AJ No 1419; 2017 ABCA 442 (CanLII) at paras 19, 20 and 39. Discipline sanctions by a professional body are also reviewable on the reasonableness standards set out in this Court's decision: *MM v College of Alberta Psychologists*, 2011 ABCA 110 (CanLII), [2011] AJ No 368; 2011 ABCA 110 at paras 17 – 21.

[116] Council reviews the decisions of Hearing Tribunals on the record and reviews findings of fact and discretion on the standard of reasonableness. For an appeal body like Council to find something unreasonable, it must say that the decision or finding was not within the range of possible outcomes, given the facts and the law. Although the evidence must support a decision, findings in relation to the evidence must truly be outside that acceptable range to be overturned.

[117] The Panel agrees with the College that the Hearing Tribunal's interpretation of the HPA, its findings of fact and inferences of fact, its findings of credibility, its acceptance and weighing of evidence, its identification of the appropriate standard of conduct, the application of the facts against the standard of conduct, and the determination of sanction are all matters to be reviewed by the Panel on the reasonableness standard (College Brief at para 43). Matters of procedural fairness are to be reviewed on a correctness standard.

[118] The default standard is reasonableness. The correctness standard is an exception to the general rule which is only applicable for issues of procedural fairness. Therefore, the standard of review for all but one of the issues arising in this appeal is reasonableness. The standard of review for Ground (g) relating to whether the Hearing Tribunal improperly fettered its authority and discretion by deferring to Ms. Khullar is correctness.

### 2. Grounds of Appeal

[119] In the Notice of Appeal, Dr. Al-Ghamdi enumerated 55 grounds of appeal. However, those grounds were reduced to ten which were set out in his written submissions and raised during oral argument. Mr. Boyer notes that the additional 44 issues listed in Appendix A of Dr. Al-Ghamdi's Written Submissions are largely procedural issues that had already been addressed by the Hearing Tribunal in one of its interim decisions.

[120] To the extent that any grounds of appeal were not specifically addressed or subsumed in Dr. Al-Ghamdi's written or oral argument, the Panel dismisses those grounds.

#### a. The Hearing Tribunal erred in its assessment of the credibility of Dr. Al-Ghamdi

[121] Dr. Al-Ghamdi takes exception to the Hearing Tribunal's findings that Dr. Al-Ghamdi's credibility was an issue, and that he misled the College, some witnesses, and the Hearing Tribunal and lied to some of his surgical colleagues and the nurses at the QEII. This issue is reviewable on a standard of reasonableness.

[122] The Panel agrees with the College that it would be inappropriate to adopt the criminal law principles from *R v Bent*, [201 OJ No 5307] and *W(D) v The Queen* as Dr. Al-Ghamdi suggests to review credibility in the civil law context. The Supreme Court of Canada has also rejected this approach in *FH v McDougall*, [2018] SCJ 54 at paras 83-86.

[123] Dr. Al-Ghamdi points to paras 356 and 365 of the Conduct Decision to conclude that the Hearing Tribunal was unreasonable in its assessment of his credibility. Those passages, in the Panel's view, point to credible evidence which calls into question Dr. Al-Ghamdi's credibility.

[124] In oral argument, Dr. Al-Ghamdi also argued that the Hearing Tribunal improperly considered his conduct while acting as a lawyer representing himself in cross-examining witnesses in its assessment of his credibility. Dr. Al-Ghamdi refers to *R v Boyer* in this regard. In *R v Boyer*, the trial judge was found to have improperly considered the self-represented accused's trial strategy of not cross-examining a witness as a poor reflection on his credibility.

[125] This is not the case here. The Hearing Tribunal heard evidence from witnesses that Dr. Al-Ghamdi lies. It appears that was also displayed to the Hearing Tribunal directly, as set out in paras 365 and 366 of the Conduct Decision, where the Hearing Tribunal describes occasions where Dr. Al-Ghamdi was not frank and candid with the Hearing Tribunal.

[126] Even if the Hearing Tribunal did consider Dr. Al-Ghamdi's conduct as a lawyer in assessing his credibility, which the Panel rejects, the evidence clearly establishes a foundation to support its findings of Dr. Al-Ghamdi's credibility.

[127] In *R v Boyer*, the Saskatchewan Court of Appeal described that even though the trial judge committed a minor error by considering the accused's trial strategy in relation to his credibility, it did not so taint the trial judge's finding on credibility such that appellate intervention was required. At para 65, the Court stated:

I conclude the trial judge's error in considering extraneous factors with respect to Mr. Boyer's credibility was a harmless error of a minor nature having no impact on the verdict given the evidence on credibility as a whole. There was no substantial wrong or miscarriage of justice. The extraneous factors do not form the crux of the trial judge's credibility assessment of Mr. Boyer. There was ample evidence that would support the trial judge's findings of credibility based on the evidence as a whole apart from the trial judge's reference to Mr. Boyer's failure to cross-examine Mr. Moon. I will explain.

[128] Further, when reading the Hearing Tribunal's analysis on credibility in context, it is clear that the Hearing Tribunal considered Dr. Al-Ghamdi's inconsistencies before the Hearing Tribunal in assessing the credibility of other witnesses against Dr. Al-Ghamdi's conspiracy theory, and not simply in assessing Dr. Al-Ghamdi's credibility.

[129] The Panel finds that the Hearing Tribunal's conclusions of Dr. Al-Ghamdi's credibility were reasonable.

**b. The panel erred in its treatment of the expert witness Dr. Westheus, qualified to give evidence on "workplace mobbing"**

[130] In the Panel's view, the Hearing Tribunal set out sufficient reasons for the weight it attributed to the expert report and testimony of Dr. Westheus, and its treatment of Dr. Westheus' evidence is entitled to deference. Some of the Hearing Tribunal's concerns included:

- that Dr. Westheus indicated that he believed Dr. Al-Ghamdi was the victim of workplace mobbing and therefore his evidence was not impartial;
- that Dr. Westheus' experience is primarily in academia, and that he had less experience in the healthcare setting, particularly regulated health professionals; and,
- that Dr. Westheus did not read all of the information available to him before coming to his conclusions (Conduct Decision at paras 100-103, Transcript p 8976).

[131] In coming to these findings, the Hearing Tribunal was informed by the Supreme Court of Canada's decision in *White Burgess Langille Inman v Abbott and Haliburton Co.*

[132] The Panel also agrees with the College that Dr. Westheus' opinions on whether Dr. Al-Ghamdi was guilty of unprofessional conduct are irrelevant as that is the ultimate question for the Hearing Tribunal to decide, and the Panel to review on the reasonableness standard.

**c. The panel erred in taking into account an alleged incident whereby Dr. Al-Ghamdi improperly elevated the urgency of his patient with a spinal tumor in order to maintain his booked O.R. time over an alleged more seriously ill patient requiring surgery.**

[133] Dr. Al-Ghamdi argues that this issue is *res judicata* because Dr. Watson made a complaint to the College regarding this incident, which was dismissed. The College disagrees with Dr. Al-Ghamdi's interpretation of the principle of *res judicata*. Dr. Al-Ghamdi is not being prosecuted on the basis of this incident.

[134] In the Panel's view, the Hearing Tribunal was entitled to consider evidence of whether Dr. Al-Ghamdi elevated the urgency rating on at least one of his patients, independent of a change in clinical status, so that he could have his surgical case proceed first. This finding of fact went to the charge of whether Dr. Al-Ghamdi failed to cooperate with his medical colleagues and nursing staff to ensure surgical cases were performed on the basis of medical need and urgent care and whether Dr. Al-Ghamdi engaged in disruptive behavior.

[135] In assessing Dr. Al-Ghamdi's conduct in relation to these charges, it was reasonable for the Hearing Tribunal to consider incidents where Dr. Al-Ghamdi had conflicts with his colleagues and caused disorder in hospital procedures.

**d. The panel erred in finding that Dr. Al-Ghamdi committed unprofessional conduct in relation to his alleged assertion of a “parallel on-call system”**

[136] Dr. Al-Ghamdi’s arguments on this point are simply a reiteration of the arguments he made before the Hearing Tribunal. Dr. Al-Ghamdi has not demonstrated how the conclusion reached by the Hearing Tribunal was unreasonable.

[137] The evidence established that Dr. Al-Ghamdi did purport to have a parallel on-call system. Dr. Al-Ghamdi told nurse Tracy Rice that there was a double call system, that he was on call, and he implied that Dr. Eagle approved it. Dr. Al-Ghamdi’s assertions that he was invited to implement a parallel on-call system by Dr. Eagle are irrelevant to the ultimate fact that he held himself out to be the orthopedic surgeon on call.

[138] It was reasonable for the Hearing Tribunal to consider this finding in its determination of whether Dr. Al-Ghamdi was guilty of unprofessional conduct given the disruption Dr. Al-Ghamdi’s parallel on-call system caused to the hospital, the other surgeons, and the nursing staff at the QEII.

**e. The panel erred in finding unprofessional conduct for what they call a “culture of fear and distrust” created by the Appellant in reporting doctors to the College, nurses to their College, reporting racism at QEII to the Alberta Human Rights Commission, or even to sue some of those he has worked with at the Court of Queen’s Bench.**

[139] The same reasoning from Ground (d) applies here. Dr. Al-Ghamdi is attempting to re-litigate this issue based upon the evidence rather than demonstrate, on the reasonableness standard, that the Hearing Tribunal erred in its findings.

[140] The Hearing Tribunal heard from many witnesses that Dr. Al-Ghamdi’s complaints about his colleagues caused fear and distrust, and his complaints often went beyond his duty to report. Despite his assertions that he was always trying to advocate for patients and improve patient care, the Hearing Tribunal found, based on the evidence, that Dr. Al-Ghamdi’s practices of recurrent reporting and launching legal proceedings intimidated his colleagues and caused distress in the working environment at the QEII.

**f. The panel erred in considering “disruptive” conduct as equivalent to the prohibited “unprofessional conduct”. Further, the panel erred in considering old allegations/behavior against the present allegations/standards**

[141] The Hearing Tribunal provided extensive reasons regarding its finding that Dr. Al-Ghamdi was guilty of disruptive conduct amounting to unprofessional conduct at pages 106 to 117 of its decision. The Hearing Tribunal noted that there is language in Section 52 of the CMA *Code of Ethics*, the *Standards of Practice*, *Collaboration in Patient Care*; *Standard 3*) and *Job Action*; *Standard 28* that apply to behavior that is consistent with disruptive behavior as described in the College publication “Managing Disruptive Behaviour in the Healthcare Workplace”. The Hearing

Tribunal's analysis clearly explains that these documents inform the applicable expectations of behavior of a regulated physician.

[142] Dr. Al-Ghamdi argues that it is inappropriate for the Hearing Tribunal to equate “disruptive conduct” to “conduct that harms the integrity of the profession” because “disruptive conduct” is not specifically identified and included in the definition of “unprofessional conduct” as set out in s 1(pp) of the HPA.

[143] There can be no doubt that in determining whether conduct is unprofessional, physicians are held to the standards of conduct contained in Section 52 of the CMA *Code of Ethics*, the *Standards of Practice, Collaboration in Patient Care; Standard 3*) and *Job Action; Standard 28*. The definition of “unprofessional conduct” includes contravention of that Code: whether or not “disruptive conduct” is codified, the Panel finds that it was reasonable for the Hearing Tribunal to find that “disruptive conduct” describes behavior that is inconsistent with the provisions contained in the aforementioned documents. The Hearing Tribunal was reasonable in holding that there are aspects of conduct that harms the integrity of the profession, whether or not they are specifically identified in the Code.

[144] The Hearing Tribunal also noted a number of cases dealing with disruptive behavior that are illustrative of the connection between disruptive conduct and unprofessional conduct (Conduct Decision at para 352).

[145] With respect to Dr. Al-Ghamdi's claim that he cannot be held to conduct that took place before the *Standards of Practice* were adopted by the College in 2010, the Panel dismisses this ground of appeal.

[146] Mr. Boyer has correctly highlighted that the CMA *Code of Ethics* was adopted in 2004, thus it applies to Dr. Al-Ghamdi's behavior throughout the relevant time period of the charges. Further, the Panel finds that section 19 of Schedule 21 of the *Health Professions Act* which states that conduct that occurred before Schedule 21 came into force on December 16, 2009 is judged under the HPA is a full answer to this issue.

- g. The panel erred in allowing the tribunal counsel to act as a *de facto* member of the panel, and sometimes effectively as Chair, in making rulings, communicating rulings, cutting off questioning, directing the Appellant to allow the Chair to speak etc. At times, tribunal counsel even showed her extreme displeasure or dislike of the Appellant leading to a reasonable apprehension of bias.**

[147] The standard of review with respect to this issue is correctness as it relates to allegations of procedural fairness.

[148] Dr. Al-Ghamdi took extreme exception to the conduct of Ms. Khullar during the hearing. He referenced 15 examples of her alleged inappropriate interjections in his written submissions. When Mr. Boyer responded to these allegations in writing, Dr. Al-Ghamdi sent an email attaching 265 more pages of transcript references alleging misconduct of Ms. Khullar.

[149] The Panel has carefully reviewed the transcript and Dr. Al-Ghamdi's allegations, the written submissions of the parties, and the case authorities of the parties. The Panel finds that there was nothing improper about Ms. Khullar's participation.

[150] The central question on this ground of appeal is whether Ms. Khullar effectively adopted the role of decision maker.

[151] *Brett v Ontario (Board of Directors of Physiotherapy* [1991] OJ No 44, appeal to ONCA dismissed at [1993] OJ No 1253 [*Brett*]) enumerates a number of improper interventions made by independent counsel in that case. None of Ms. Khullar's actions and none of her comments rise to the level described in *Brett*. Equally, none of the passages referenced in the transcript suggest that Ms. Khullar was making decisions.

[152] What is clear on the record is that Ms. Khullar was trying to facilitate a painstaking and laborious hearing process which took place over the course of 24 months and involved a self-represented litigant and 67 witnesses, all unfamiliar with the tribunal process.

[153] All of Ms. Khullar's comments involved clarification on issues the parties were raising, or direction on the proper procedure to follow to admit expert evidence, enter exhibits, and other procedural matters.

[154] The Panel finds that Ms. Khullar properly assumed her role as independent legal counsel to the Hearing Tribunal. Her actions do not amount to participation in the hearing as a *de facto* member of the Hearing Tribunal, nor as chair of the Hearing Tribunal. Given that the Panel finds nothing incorrect about Ms. Khullar's participation, the Panel finds that Dr. Al-Ghamdi was not deprived of his right to a fair hearing in relation to this ground of appeal, accordingly, this ground of appeal is dismissed.

#### **h. The Chair acted in such a way during the hearing as to create a reasonable apprehension of bias**

[155] Dr. Al-Ghamdi has provided little argument on this point, except to say that in Dr. Al-Ghamdi's view, the Chair did not like him and that dislike colored his view of the evidence, his rulings, and shaped his whole approach to the hearing.

[156] The transcript excerpt provided (Transcript p 7465//24-27) does not establish any reasonable basis to conclude that Dr. Smith had any bias towards Dr. Al-Ghamdi. Accordingly, this ground is dismissed.

#### **i. The panel erred in proceeding with this hearing without quorum, without sufficient membership, when the appointed Chair, Dr. Jamieson recused himself following the first day of the proceeding, and as such the entirety of the proceeding must be set aside**

[157] Section 16(3)(a) of the HPA provides:

**16(1)** The hearings director may establish a hearing tribunal and a complaint review committee consisting of

(a) 2 or more members from the membership list established under section 15, and

(b) the number of public members required by section 12(1),

and if a hearing tribunal or complaint review committee is established, the hearings director must designate a member of that tribunal or committee to act as chair.

(2) Despite section 13(4), a member of a hearing tribunal or of a complaint review committee continues to hold office after the expiry of the member's term until the member is reappointed or a successor is appointed.

(3) Despite section 12(2), if a member of a hearing tribunal or of a complaint review committee is not capable of carrying out the powers and duties of a member,

(a) the hearing tribunal may continue to hold a hearing in which the member was participating and the hearing tribunal may carry out its powers and duties with respect to that hearing, and

(b) the complaint review committee may continue to review and ratify a settlement under section 60 and to conduct a review under section 68 in which the member was participating and the complaint review committee may carry out its powers and duties with respect to that settlement or review.

[emphasis added]

[158] This section addresses Dr. Al-Ghamdi's concern. During oral argument, Dr. Al-Ghamdi also raised an issue relating to the composition of the Hearing Tribunal being composed of one public member and one physician member. Dr. Al-Ghamdi argued that the Hearing Tribunal ought not to be comprised of more than 25% public members. The Panel assumes that Dr. Al-Ghamdi is referencing the following provision of the HPA:

**12(1)** Twenty-five percent of the voting members of a council, a complaint review committee and a hearing tribunal and of a panel of any of them must be public members but with the consent of the council the percentage of the public members may be greater than 25%.

[159] Dr. Al-Ghamdi's argument ignores s 16(3)(a) of the HPA. It is clear that the Hearing Tribunal had already commenced the hearing, and further, that it had already carried out its powers and duties in relation to a number of applications that Dr. Al-Ghamdi brought in advance of the first sitting day.

**j. The panel erred in its decision on sanction which is excessively punitive**

[160] Despite the request of the College to revoke Dr. Al-Ghamdi's practice permit as a result of the Hearing Tribunal's findings on guilt, the Hearing Tribunal instead ordered a three year suspension to commence from the date of the decision (December 21, 2017). The Hearing Tribunal provided extensive reasons in its 47 page Sanction Decision for the sanction it imposed. Dr. Al-Ghamdi has provided no authority for why this sanction is unreasonable, except to say that it will effectively end his surgical career.

[161] The Panel finds that the suspension imposed by the Hearing Tribunal is at the higher end of the range of suspensions for serious disruptive, unprofessional conduct, but not unreasonable.

**k. The costs award was excessive and should be reduced**

[162] The Hearing Tribunal estimated the costs of the entire hearing to be over \$1 million due to its length of 47 days. It reduced the costs award payable by Dr. Al-Ghamdi to 8/13 of the total costs of the hearing in consideration of the fact that not all particulars of the Charge were proven.

[163] Dr. Al-Ghamdi takes exception to the costs award imposed upon him. He argues that because there were three investigation files open against him but only one was pursued by the College (being the AHS complaint), the costs award improperly includes two “hearings” which were dismissed. Dr. Al-Ghamdi also argues that he should get costs awarded to him of the two dismissed complaints.

[164] The College points out that the three different complaint files (which Dr. Al-Ghamdi refers to as three “hearings”) that the College had open in relation to Dr. Al-Ghamdi all culminated under s 56 of the HPA, which resulted in the proceedings before the Hearing Tribunal. According to the College, the costs awarded by the Hearing Tribunal were all in relation to the commencement and continuation of the proceedings before it.

[165] At the appeal hearing, the Panel questioned Mr. Boyer about the costs award, specifically, why the hearing took significantly more time than any previous disciplinary proceeding of the College. Mr. Boyer responded that, under usual circumstances, the College would have been able to close its case within four days. However, Mr. Boyer noted that Dr. Al-Ghamdi’s cross-examinations were repetitive, lengthy, and pursued irrelevant lines of questioning.

[166] With respect to the 5/13 reduction in costs ordered by the Hearing Tribunal in consideration of the dismissed particulars, Mr. Boyer noted that it was unlikely that each allegation took an equal amount of hearing time, and submitted that the reduction was “likely generous” to Dr. Al-Ghamdi.

[167] The costs award is reviewable on a standard of reasonableness.

[168] The Hearing Tribunal found that Dr. Al-Ghamdi was principally responsible for the complexity and length of the hearing, noting that his approach contributed significantly to making resolution of this matter complex and difficult. The Hearing Tribunal considered *Chen v The College of Denturists of Ontario*, 2017 ONSC 530 to support its finding that an investigated member must bear some responsibility for the overall costs, notwithstanding the member’s right to a thorough investigation and the right to a hearing [Sanction Decision at para 137].

[169] The Panel finds that the costs award of the Hearing Tribunal is reasonable. It was reasonable for the Hearing Tribunal to apportion costs in some fashion given that the College was not entirely successful in proving all particulars of the Charge. Where a physician is found to have acted unprofessionally in relation to the one charge before the Hearing Tribunal, ordering Dr. Al-Ghamdi to pay 8/13 of the total costs based on the fact that 8/13 of the particulars were proven is one reasonable mechanism of apportioning costs. The Hearing Tribunal was also cognizant of the fact that the loss of Dr. Al-Ghamdi’s surgical privileges had already had an impact on his income when it made the award of costs. The Panel accepts that all of the items of costs to be paid by Dr. Al-Ghamdi are permitted under s 82(1) of the HPA.



## VII. ORDERS OF THE PANEL

[170] The Panel dismisses this appeal and confirms the Hearing Tribunal's decision, which ordered:

- a. Dr. Al-Ghamdi's license and practice permit are suspended for three (3) years, commencing from the date of this Order. He may apply to have his license and practice permit reinstated after he has met conditions (i) and (ii) below to the satisfaction of the CPSA Registrar. Should Dr. Al-Ghamdi meet the conditions listed in (i) and (ii) below to the satisfaction of the CPSA Registrar, he can apply to have his license and practice permit reinstated after two (2) years.
  - i. Dr. Al-Ghamdi must enroll in, and successfully complete, a comprehensive assessment program (COAP), such as that described by Dr. Janet Wright. Dr. Al-Ghamdi may choose another comparable assessment program but the CPSA Registrar must approve it before he participates. The assessment must involve a component assessing fitness to practice; this assessment must conclude that he is fit to practice medicine before his license will be re-instated. Dr. Al-Ghamdi shall exclusively bear the cost of this program.
  - ii. Dr. Al-Ghamdi must enroll and successfully complete any course of therapy recommended by the above assessment, which may include: ongoing therapy by a psychologist, courses in improving interpersonal relationships; a re-assessment after a period of therapy; and endorsement of a mentorship. The latter should be a senior physician and regulated active member of the CPSA in good standing, to act as a mentor and as a discussant on issues of conduct within the health system and appropriate responses as specific issues arise including the interpretation of health system bylaws. The CPSA Registrar must be consulted and approve any mentor selection and arrangement. Dr. Al-Ghamdi shall exclusively bear the cost of these programs.
- b. Dr. Al-Ghamdi must pay costs of the Investigation and Hearing within three (3) years of the date of this Order. Should Dr. Al-Ghamdi have his license and practice permit re-instated after two years of suspension, but the costs noted above have not been completely paid by the end of the third year, the CPSA may again suspend his license and practice permit.

[171] As Dr. Al-Ghamdi has been unsuccessful in his appeal to the Panel, Dr. Al-Ghamdi shall be responsible for the costs of this appeal, to be paid within three (3) years of the date of this Order, or on such other payment terms as the Registrar may determine, at his discretion.

Signed on behalf of the Panel this 20<sup>th</sup> day of November, 2018



Dr. Pauline Alakija, Chair

# APPENDIX 1

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

AND IN THE MATTER OF A SANCTION HEARING REGARDING  
THE CONDUCT OF DR. MOHAMMED AL-GHAMDI  
a regulated Member of the College of Physicians and Surgeons of Alberta

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## NOTICE OF APPEAL

IN THE MATTER OF AN APPEAL PURSUANT TO 87(1) of IN THE MATTER OF THE  
“HEALTH PROFESSIONS ACT”  
R.S.A. 2000, c. c-7

AND IN THE MATTER OF A SANCTION HEARING REGARDING  
THE CONDUCT OF DR. MOHAMMED AL-GHAMDI  
a regulated Member of the College of Physicians and Surgeons of Alberta

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## NOTICE OF APPEAL

IN THE MATTER OF AN APPEAL PURSUANT TO 87(1) of the  
Health Professions Act

TAKE NOTICE that this Appeal is from a decision of a Hearing Tribunal conducted by  
Dr. Eldon Smith and Mr. Wayne McKendrick and was rendered on April 12, 2017.

Reasons for the Appeal:

The Appeal is based on the errors of law and fact that are throughout the proceedings and the decision:

### Jurisdictional Errors

- 1) The Hearing Tribunal did not have the Jurisdiction to make the alleged conduct of the member as a disciplined conduct.
- 2) The Hearing Tribunal lost jurisdiction when they failed to properly establish the nature of the complaint/charge.
- 3) The Hearing Tribunal lost jurisdiction when they failed to be independent.
- 4) The Hearing Tribunal lost jurisdiction by not properly addressing the preliminary objections.
- 5) The Hearing Tribunal lost jurisdiction by not compelling the College of Physicians and Surgeons to properly address remedy at the outset of the hearing.
- 6) The Hearing Tribunal lost jurisdiction when they went outside of their jurisdiction when they incorporated issues which belonged to the Hospitals Act.

- 7) The Hearing Tribunal and the College of Physicians and Surgeons were in collusion to target the Member therefore they lost jurisdiction as a result of their joint improper (the removal/harm of Dr. Al-Ghmadi as a Member of the College of Physicians and Surgeons of Alberta).
- 8) The Hearing Tribunal was constituted of ineligible members due to personal connections and professional connections which created a conflict of interest. Specifically Section 13 of the Health Professions Act.
- 9) The Hearing Tribunal and the College of Physician and Surgeons are Islamophobes who want to perpetuate systemic discrimination.
- 10) The Hearing Tribunal should have addressed all preliminary applications in a neutral, independent and fair manner considering that the Member was self-representing himself.
- 11) The Hearing Tribunal failed to recognize any element of procedural fairness attached to be being an adjudicator.
- 12) The Hearing Tribunal acted as an advocate for the College of Physicians and Surgeons as well as the complainants, instead of their statutory obligation to be an independent adjudicator.

#### Procedural Fairness

- 1) The Hearing Tribunal failed to address the institutional bias in terms of the procedure to bring the charge, the failure to provide disclosure, the Prosecution team leading evidence which affected the independence of the process.
- 2) The Hearing Tribunal ignored and/or justified the violations of the Health Professions Act. No steps were taken to apply the protections of the Act to the Member as is part of the statutory mandate.
- 3) The Hearing Tribunal did not properly provide the Member the time and ability to respond to the charges. The
- 4) The lack of any procedural manual or established procedure made the process a breach of natural justice and procedurally unfair against the Member.
- 5) The Hearing Tribunal applied differential rules and favoured the College of Physicians and Surgeons rather than create a fair and balanced hearing.
- 6) The Hearing Tribunal had descended into the hearing and worked against the Member.
- 7) The Hearing Tribunal unreasonably and irrationally acted as part of the College of Physicians and Surgeons.

- 8) The Hearing Tribunal had multiple levels of bias in terms of their role, the facts, the law as well as how they made decisions.
- 9) The Hearing Tribunal failed to properly deal with issues from the outset to the final decision.
- 10) The Hearing Tribunal engaged in an abuse of process and utilized their independent Counsel as a decision maker and to cause interference in a proper functioning hearing.
- 11) The independent legal counsel was counsel for some of the complainants/witnesses who were adversarial in interest to the Member
- 12) The Hearing Tribunal and the College must follow the clear statutory provisions that are found in the statute. The Conduct complained of (Charge) was not recognized to exist in the Statute.
- 13) The failure to provide clarity in the process and the charges, no clear dispute resolution process (which is required by the statute), plus the lack of any remedy that was being sought had tarnished the proceedings. In addition, the College of Physicians and Surgeons elected to relitigate the hospital matter to cause unnecessary delay and cause harm to the Member.
- 14) The Hearing Tribunal did not provide a balanced and neutral approach to the evidence, they arbitrarily accepted evidence of speculation and hearsay.
- 15) The animosity that the Hearing Tribunal had for the Member was clear on the record during the procedure with examples of interference, harm and ultimately a disrespect for their independent role. This affected the Member's Right to a Full and Fair Hearing and affected his ability to Defend against the Charge.
- 16) The Hearing Tribunal disregarded the urgency of the main complaint charge and allowed the process to become a selective targeting of the Member. The impact to him financially, emotionally, psychologically and professionally is a result of the biased and unfair process.
- 17) The delay in this matter constitutes an unfair process which contradicts the purpose to have an efficient and fair process.

#### Substantive Legal Errors

- 18) The College did not meet the legal test for unprofessional conduct.
- 19) The Hearing Tribunal created a new definition of unprofessional conduct that was neither disclosed to the Member nor provided an opportunity to respond to.
- 20) The College failed to put forward any Standard that the Member was to be adjudicated against.
- 21) The Hearing Tribunal misapplied the Rules of Evidence and provided opposite rulings on the same issue. The Hearing Tribunal improperly chose a preferential treatment of the College and Physicians and Surgeons.
- 22) The College had not proven the majority or any of the alleged allegations against the CMA's Code of Ethics.
- 23) The Charge – with the specified particulars did not relate to patient care and therefore should not have been considered by the Tribunal.

- 24) The Hearing Tribunal made unreasonable findings of facts against the Appellant.
- 25) The Hearing Tribunal made unreasonable conclusions on the legal test to find that the conduct was subject to sanction.
- 26) The additional findings of facts confirms that the Complainants had contributed to the negative environment and therefore their actions should have been adjudicated as well.
- 27) The decision misinterpreted the statutory criteria under the Health Professions Act.
- 28) The College has breached their Duty to Protect the Public in their actions against the Doctor. The actions of the Doctor were in the best practices for patient care.
- 29) The Tribunal did not consider the Charter Issues and the Charter Values, which needed to be considered in the context of the communications that were subject to the charge.
- 30) The alleged conduct was incorrectly and unreasonably labelled.
- 31) The Hearing Tribunal improperly put the public at risk by the manner in which they conducted themselves and failed to restrain the Hospital (Complainant)/College of Physicians and Surgeons from pursuing this prosecution of expanded self-designed complaints.
- 32) The Hearing Tribunal provided absurd conclusions in their written decisions that have no semblance of rational logical adjudication (in the adjudication of their duties).
- 33) The Hearing Tribunal incorrectly allowed hearsay and double hearsay from the complainant.
- 34) The Hearing Tribunal failed to neutrally look at the credibility issue and specifically targeted the Member.
- 35) The Hearing Tribunal in finding guilt on 8 sub-issues which were under the main charge

**Further Applications under the Health Professions Act**

AND FURTHER TAKE NOTICE that the Appellant at this time will be making the following applications:

- 1) An Application for Dr. Theman not to have any involvement in this Appeal as a result of his conflict of interest.
- 2) An Application to have a fully independent and neutral adjudicators on this Appeal.
- 3) Stay under Section 86(1) of the Health Professions Act
- 4) Application for Additional Evidence under 89(4)(b) – for additional evidence regarding the Dysfunctional Environment in which the Appellant worked.
- 5) Application for Additional Evidence under 89(4)(b) – for additional evidence which provides evidence of the improper purpose of the College of Physicians and Surgeons in pursuing this case as an example of abuse of process and malice from the witnesses.
- 6) Application for Additional Evidence under confirms t – for additional evidence regarding the alleged Charter of Rights and Freedoms breaches as well as a Breach of the Charter Values.
- 7) Application for Additional Evidence under 89(4)(b) – for additional evidence regarding the alleged charges. The Appellant will be calling witnesses to show there was no issue in the workplace until the College brought the charges under the Health Professions Act.
- 8) The College is to be a neutral party and present their objective information based on established terms and conditions. Potential other witnessess should fully explore the issues which led to the finding.
- 9) Further Orders after a full review of the Record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

Dated at Edmonton this 11th day of May, 2017.



Arman Chak  
Barrister & Solicitor  
Counsel for the Appellant (Member)  
To: Hearing Director  
To: College of Physicians and Surgeons

## APPENDIX 2

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

AND IN THE MATTER OF A SANCTION HEARING REGARDING  
THE CONDUCT OF DR. MOHAMMED AL-GHAMDI  
a regulated Member of the College of Physicians and Surgeons of Alberta

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### AMENDED NOTICE OF APPEAL

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IN THE MATTER OF AN APPEAL PURSUANT TO 87(1) of the  
Health Professions Act

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TAKE NOTICE that this Appeal is from a decision of a Hearing Tribunal conducted by Dr. Eldon Smith and Mr. Wayne McKendrick and was rendered on April 12, 2017 and Sanction/Cost Decision of January 16, 2018

File No 120582.1.1 A complaint initiated by complaints director in response to Dr. Wessels and Dr McGowan's letters.

Reasons for the Appeal:

The Appeal is based on the errors of law and fact that are throughout the proceedings and the decision:

#### Jurisdictional Errors

- 1) The Hearing Tribunal did not have the Jurisdiction to make the alleged conduct of the member as a disciplined conduct.
- 2) The Hearing Tribunal lost jurisdiction when they failed to properly establish the nature of the complaint/charge.
- 3) The Hearing Tribunal lost jurisdiction when they failed to be independent.
- 4) The Hearing Tribunal lost jurisdiction by not properly addressing the preliminary objections.
- 5) The Hearing Tribunal lost jurisdiction by not compelling the College of Physicians and Surgeons to properly address remedy at the outset of the hearing.

- 6) The Hearing Tribunal lost jurisdiction when they went outside of their jurisdiction when they incorporated issues which belonged to the Hospitals Act.
- 7) The Hearing Tribunal and the College of Physicians and Surgeons were in collusion to target the Member therefore they lost jurisdiction as a result of their joint purpose (the removal of Dr. Al-Ghmadi as a Member of the College of Physicians and Surgeons of Alberta.
- 8) The Hearing Tribunal was constituted of ineligible members due to personal connections and professional connections which created a conflict of interest. Specifically Section 13 of the Health Professions Act.
- 9) The Hearing Tribunal and the College of Physician and Surgeons are Islamophobes who want to perpetuate systemic discrimination.
- 10) The Hearing Tribunal should have addressed all issues of preliminary concern with an independent lens.
- 11) The Hearing Tribunal failed to recognize any element of procedural fairness attached to being an adjudicator.

#### Procedural Fairness

- 1) The Hearing Tribunal did not properly provide the Member the ability to respond to the charges.
- 2) The Hearing Tribunal applied differential rules and favored the College of Physicians and Surgeons rather than create a fair and balanced hearing.
- 3) The Hearing Tribunal had descended into the hearing and worked against the Member.
- 4) The Hearing Tribunal unreasonably and irrationally acted as part of the College of Physicians and Surgeons.
- 5) The Hearing Tribunal had multiple levels of bias in terms of their role, the facts, the law as well as how they made decisions.



- 6) The Hearing Tribunal failed to properly deal with issues from the outset to the final decision.
- 7) The Hearing Tribunal engaged in an abuse of process and utilized their independent Counsel as a decisionmaker and to cause interference in what should have been a proper functioning hearing.
- 8) The Hearing Tribunal and the College must follow the clear parameters that are found in the statute. The Conduct complained of was recognized not to exist in the Statute.

#### Substantive Legal Errors

- 9) The College did not meet the legal test for unprofessional conduct.
- 10) The Hearing Tribunal created a new definition of unprofessional conduct which was neither disclosed to the Member or provided an opportunity to respond to.
- 11) The College failed to put forward any Standard which the Member was to be adjudicated against.
- 12) The Hearing Tribunal misapplied the Rules of Evidence and provided opposite rulings on the same issue. The Hearing Tribunal improperly chose a preferential treatment of the College and Physicians and Surgeons.
- 13) The College had not proven the majority of the alleged allegations against the CMA's Code of Ethics.
- 14) The Charge – with the subissues did not relate to patient care and therefore should not have been considered by the Tribunal.
- 15) The Hearing Tribunal made unreasonable findings of facts against the Appellant.
- 16) The Hearing Tribunal made unreasonable conclusions on the legal test to find that the conduct was subject to sanction.

- 17) The additional findings of facts confirms that the Complainants had contributed to the negative environment and therefore their actions should have been adjudicated as well.
- 18) The decision misinterpreted the statutory criteria under the Health Professions Act.
- 19) The College has breached their Duty to Protect the Public in their actions against the Doctor. The actions of the Doctor was in the best practices for patient care.
- 20) The Tribunal did not consider the Charter Issues and the Charter Values which needed to be considered in the context of the communications that were subject to the charge.
- 21) The alleged conduct was incorrectly and unreasonably labelled.
- 22) The Hearing Tribunal improperly put the public at risk by the manner in which they conducted themselves and failed restrain the Hospital (Complainant)/College of Physicians and Surgeons from pursuing a prosecution of complaints.
- 23) The Hearing Tribunal provided absurd conclusions in their written decisions that have no semblance of rational logical adjudication (in the adjudication of their duties).
- 24) The Hearing Tribunal incorrectly allowed hearsay and double hearsay from the complainant.
- 25) The Hearing Tribunal failed to neutrally look at the credibility issue and specifically targetted the Member.

26) The Hearing Tribunal in finding guilt on 8 sub-issues which were under the main charge, did not specify how this related to the complaint before them.

#### Evidentiary Errors during the Hearing

27) The disclosure and evidence submitted by the College were introduced only during the hearing, this allowed the Member no time to prepare a response.

28) Evidence was led and attributed to witnesses after they had completed their testimony. The Member was unable to then question the witness as to the additional evidence.

29) Case Law and other precedents being relied on by the College were only presented during the hearing. This allowed the Member, who was self-represented for part of the hearing unable to respond.

30) Evidence led by the College did not adhere to the Alberta Evidence Act in additional exceptions to the rule were applied in an unequal manner which favoured the College of Physicians and Surgeons of Alberta.

31) The evidence led by the College was allowed without the same courtesy or same principle applied to the self-represented Member.

32) Witnesses were led by the College without proper voir dire statements or reference to the complaint.

33) In relation to this complaint, the Tribunal improperly restricted questions to the complainant and did not properly limit the scope of the prosecution. Leading to an abuse of process.

- 34) Certain documentary evidence (voice recordings) were excluded improperly or not given the appropriate weight.
- 35) The Self-represented Member was put through several unnecessary steps in order to even put his evidence before the Tribunal.
- 36) The Tribunal never took any steps to ensure the integrity of the evidence provided by witnesses at the hearing. As this hearing dealt with sensitive issues regarding a hierarchical workplace, the Tribunal was required to protect those witnesses from intimidation and retaliation. The Tribunal took no steps to ensure that those who influenced the workplace would not be able to intimidate witnesses into not appearing or then abusing their power in relation to those witnesses.

#### **Specific Errors in Relation to the Specific Complaint**

- 37) The nature of the complaint was undefined and overbroad.
- 38) Ultimately, it was shown through evidence that the Member had been disciplined through the Hospitals Act.

#### **Specific Appeals in Relation to the Sanction/Cost of this Complaint**

- 1) The Sanction has no relation to the findings of fact.
- 2) The Suspension for 3 years was punitive and not allowed under the Health Professions Act
- 3) The punishment for the “disruptive” behaviour does not follow the findings of fact.
- 4) The Tribunal focused their decision on their specific dislike for the Member and not on the specific issues that were raised in the complaint.
- 5) The Tribunal ignored the specific malice of the College in prosecuting the member.

- 6) The Tribunal ignored that the Member had been not working in the same environment since June 2013. There was no harm to the public whatsoever.
- 7) The Tribunal maintained an antagonistic perspective towards the Member throughout the proceeding.
- 8) The Sanction discusses irrelevant disciplinary cases.
- 9) The Sanction focuses on a finding of “10” years without reference to the actual career of the Member.
- 10) The Sanction of the reprimand and the mentorship was the only reasonable approach to take.

#### Cost

- 11) The cost award was punitive.
- 12) The justification for the cost does not address that the College brought a malicious prosecution in which the Member has successfully opposed the most serious of facts as well as the most serious of the allegations.
- 13) Moreover, the costs award does not take into consideration the public purpose of the hearing and the test case regarding “disruptive” behavior within the professional regulatory context of the medical profession.
- 14) The Member takes issue with the nature of the costs and the fact that it becomes a solicitor-client repayment for the College.
- 15) The Member takes issue with no objective standard being applied to the issue of costs in a public hearing.
- 16) The Member takes issue with the specific costs, which should follow the fee schedule as determined under the Alberta Rules of Court.
- 17) The Costs include reimbursements, which are improper and not indicated in the Health Professions Act.

#### **Further Applications under the Health Professions Act**

AND FURTHER TAKE NOTICE that the Appellant at this time will be making the following applications:

- 1) Stay under Section 86(1) of the Health Professions Act
- 2) Application for Additional Evidence under 89(4)(b) – for additional evidence regarding the Dysfunctional Environment in which the Appellant worked.
- 3) Application for Additional Evidence under 89(4)(b) – for additional evidence which provides evidence of the improper purpose of the College of Physicians and Surgeons in pursuing this case as an example of abuse of process and malice from the witnesses.
- 4) Application for Additional Evidence under 89(4)(b) – for additional evidence regarding the alleged Charter of Rights and Freedoms breaches as well as a Breach of the Charter Values.
- 5) Application for Additional Evidence under 89(4)(b) – for additional evidence regarding the alleged charges. The Appellant would be calling Dr. Whorry and Dr. Felicia Huang.
- 6) The College is to be a neutral party and present their objective information based on established terms and conditions. Potential other witnesses should fully explore the issues which led to the finding.
- 7) Further Orders after a full review of the Record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

Dated at Edmonton this 12<sup>th</sup> day of February, 2018



Arman Chak  
Barrister & Solicitor  
Counsel for the Appellant (Member)  
To: Hearing Director  
To: College of Physicians and Surgeons

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

AND IN THE MATTER OF A  
SANCTION HEARING REGARDING  
THE CONDUCT OF  
DR. MOHAMMED AL-GHAMDI  
a regulated Member of the College of  
Physicians and Surgeons of Alberta

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**AMENDED NOTICE OF APPEAL**

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IN THE MATTER OF AN APPEAL  
PURSUANT TO 87(1) of the  
Health Professions Act

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

AND IN THE MATTER OF A SANCTION HEARING REGARDING  
THE CONDUCT OF DR. MOHAMMED AL-GHAMDI  
a regulated Member of the College of Physicians and Surgeons of Alberta

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**AMEDNED NOTICE OF APPEAL**

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IN THE MATTER OF AN APPEAL PURSUANT TO 87(1) of the  
Health Professions Act

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TAKE NOTICE that this Appeal is from a decision of a Hearing Tribunal conducted by Dr. Eldon Smith and Mr. Wayne McKendrick and was rendered on April 12, 2017 and Sanction/Cost Decision of January 16, 2018

File No. 130471.1.1 A complaint by AHS notifying the college that Dr. Al-Ghamdi was suspended (immediate action).

Reasons for the Appeal:

The Appeal is based on the errors of law and fact that are throughout the proceedings and the decision:

Jurisdictional Errors

- 1) The Hearing Tribunal did not have the Jurisdiction to make the alleged conduct of the member as a disciplined conduct.
- 2) The Hearing Tribunal lost jurisdiction when they failed to properly establish the nature of the complaint/charge.
- 3) The Hearing Tribunal lost jurisdiction when they failed to be independent.
- 4) The Hearing Tribunal lost jurisdiction by not properly addressing the preliminary objections.
- 5) The Hearing Tribunal lost jurisdiction by not compelling the College of Physicians and Surgeons to properly address remedy at the outset of the hearing.



- 6) The Hearing Tribunal lost jurisdiction when they went outside of their jurisdiction when they incorporated issues which belonged to the Hospitals Act.
- 7) The Hearing Tribunal and the College of Physicians and Surgeons were in collusion to target the Member therefore they lost jurisdiction as a result of their joint purpose (the removal of Dr. Al-Ghmadi as a Member of the College of Physicians and Surgeons of Alberta.
- 8) The Hearing Tribunal was constituted of ineligible members due to personal connections and professional connections which created a conflict of interest. Specifically Section 13 of the Health Professions Act.
- 9) The Hearing Tribunal and the College of Physician and Surgeons are Islamophobes who want to perpetuate systemic discrimination.
- 10) The Hearing Tribunal should have addressed all issues of preliminary concern with an independent lens.
- 11) The Hearing Tribunal failed to recognize any element of procedural fairness attached to being an adjudicator.

#### Procedural Fairness

- 1) The Hearing Tribunal did not properly provide the Member the ability to respond to the charges.
- 2) The Hearing Tribunal applied differential rules and favored the College of Physicians and Surgeons rather than create a fair and balanced hearing.
- 3) The Hearing Tribunal had descended into the hearing and worked against the Member.
- 4) The Hearing Tribunal unreasonably and irrationally acted as part of the College of Physicians and Surgeons.
- 5) The Hearing Tribunal had multiple levels of bias in terms of their role, the facts, the law as well as how they made decisions.

- 6) The Hearing Tribunal failed to properly deal with issues from the outset to the final decision.
- 7) The Hearing Tribunal engaged in an abuse of process and utilized their independent Counsel as a decisionmaker and to cause interference in what should have been a proper functioning hearing.
- 8) The Hearing Tribunal and the College must follow the clear parameters that are found in the statute. The Conduct complained of was recognized not to exist in the Statute.

#### Substantive Legal Errors

- 9) The College did not meet the legal test for unprofessional conduct.
- 10) The Hearing Tribunal created a new definition of unprofessional conduct which was neither disclosed to the Member or provided an opportunity to respond to.
- 11) The College failed to put forward any Standard which the Member was to be adjudicated against.
- 12) The Hearing Tribunal misapplied the Rules of Evidence and provided opposite rulings on the same issue. The Hearing Tribunal improperly chose a preferential treatment of the College and Physicians and Surgeons.
- 13) The College had not proven the majority of the alleged allegations against the CMA's Code of Ethics.
- 14) The Charge – with the subissues did not relate to patient care and therefore should not have been considered by the Tribunal.
- 15) The Hearing Tribunal made unreasonable findings of facts against the Appellant.
- 16) The Hearing Tribunal made unreasonable conclusions on the legal test to find that the conduct was subject to sanction.

- 17) The additional findings of facts confirms that the Complainants had contributed to the negative environment and therefore their actions should have been adjudicated as well.
- 18) The decision misinterpreted the statutory criteria under the Health Professions Act.
- 19) The College has breached their Duty to Protect the Public in their actions against the Doctor. The actions of the Doctor was in the best practices for patient care.
- 20) The Tribunal did not consider the Charter Issues and the Charter Values which needed to be considered in the context of the communications that were subject to the charge.
- 21) The alleged conduct was incorrectly and unreasonably labelled.
- 22) The Hearing Tribunal improperly put the public at risk by the manner in which they conducted themselves and failed restrain the Hospital (Complainant)/College of Physicians and Surgeons from pursuing a prosecution of complaints.
- 23) The Hearing Tribunal provided absurd conclusions in their written decisions that have no semblance of rational logical adjudication (in the adjudication of their duties).
- 24) The Hearing Tribunal incorrectly allowed hearsay and double hearsay from the complainant.
- 25) The Hearing Tribunal failed to neutrally look at the credibility issue and specifically targetted the Member.

- 26) The Hearing Tribunal in finding guilt on 8 sub-issues which were under the main charge, did not specify how this related to the complaint before them.

#### Evidentiary Errors during the Hearing

- 27) The disclosure and evidence submitted by the College were introduced only during the hearing, this allowed the Member no time to prepare a response.
- 28) Evidence was led and attributed to witnesses after they had completed their testimony. This did not leave any opportunity to test the evidence.
- 29) Case Law and other precedents being relied on by the College were only presented during the hearing. This allowed the Member, who was self-represented for part of the hearing unable to respond.
- 30) Evidence led by the College did not adhere to the Alberta Evidence Act and when allowed it was not applied in an equal and unbiased manner.
- 31) The evidence led by the College was allowed without the same courtesy or same principle applied to the self-represented Member.
- 32) Witnesses were led by the College without proper voir dire statements or reference to the complaint.
- 33) In relation to this complaint, the Tribunal improperly restricted questions to the complainant and did not properly limit the scope of the prosecution. Leading to an abuse of process.
- 34) Certain documentary evidence (voice recordings) were excluded improperly or not given the appropriate weight.

35) The Self-represented Member was put through several unnecessary steps in order to even put his evidence before the Tribunal.

36) The Tribunal never took any steps to ensure the integrity of the evidence provided by witnesses at the hearing. As this hearing dealt with sensitive issues regarding a hierarchical workplace, the Tribunal was required to protect those witnesses from intimidation and retaliation. The Tribunal took no steps to ensure that those who influenced the workplace would not be able to intimidate witnesses into not appearing or then abusing their power in relation to those witnesses.

### **Specific Errors in Relation to the Specific Complaint**

37) The allegation for the interim suspension was never presented.

38) The witnesses who appeared did not confirm the animosity towards the Member and indicated that there was a bias to support the suspension by the Hospital. There was no objective finding for any basis for the interim suspension.

39) This complaint is essentially an overreach into exaggerating the significance of a hearing under the Health Professions Act. This contradicts the Charter values of the Member being innocent until proven guilty.

### **Specific Appeals in Relation to the Sanction/Cost of this Complaint**

1) The Sanction has no relation to the findings of fact.

2) The Suspension for 3 years was punitive and not allowed under the Health Professions Act

3) The punishment for the “disruptive” behaviour does not follow the findings of fact.

4) The Tribunal focused their decision on their specific dislike for the Member and not on the specific issues that were raised in the complaint.

- 5) The Tribunal ignored the specific malice of the College in prosecuting the member.
- 6) The Tribunal ignored that the Member had been not working in the same environment since June 2013.
- 7) The Tribunal maintained an antagonistic perspective towards the Member throughout the proceeding.
- 8) The Sanction discusses irrelevant disciplinary cases.
- 9) The Sanction focuses on a finding of “10” years without reference to the actual career of the Member.
- 10) The Sanction of the reprimand and the mentorship was the only reasonable approach to take.

#### Cost

- 11) The cost award was punitive.
- 12) The justification for the cost does not address that the College brought a malicious prosecution in which the Member has successfully opposed the most serious of facts as well as the most serious of the allegations.
- 13) Moreover, the costs award does not take into consideration the public purpose of the hearing and the test case regarding “disruptive” behavior within the professional regulatory context of the medical profession.
- 14) The Member takes issue with the nature of the costs and the fact that it becomes a solicitor-client repayment for the College.
- 15) The Member takes issue with no objective standard being applied to the issue of costs in a public hearing.
- 16) The Member takes issue with the specific costs, which should follow the fee schedule as determined under the Alberta Rules of Court.
- 17) The Costs include reimbursements which are improper and not indicated in the Health Professions Act.

#### **Further Applications under the Health Professions Act**

AND FURTHER TAKE NOTICE that the Appellant at this time will be making the following applications:

- 1) Stay under Section 86(1) of the Health Professions Act
- 2) Application for Additional Evidence under 89(4)(b) – for additional evidence regarding the Dysfunctional Environment in which the Appellant worked.
- 3) Application for Additional Evidence under 89(4)(b) – for additional evidence which provides evidence of the improper purpose of the College of Physicians and Surgeons in pursuing this case as an example of abuse of process and malice from the witnesses.
- 4) Application for Additional Evidence under 89(4)(b) – for additional evidence regarding the alleged Charter of Rights and Freedoms breaches as well as a Breach of the Charter Values.
- 5) Application for Additional Evidence under 89(4)(b) – for additional evidence regarding the alleged charges. The Appellant would be calling Dr. Whorry and Dr. Felicia Huang.
- 6) The College is to be a neutral party and present their objective information based on established terms and conditions. Potential other witnesses should fully explore the issues which led to the finding.
- 7) Further Orders after a full review of the Record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

Dated at Edmonton this 12<sup>th</sup> day of February, 2018

A handwritten signature in black ink, appearing to read 'Arman Chak', with a stylized flourish at the end.

Arman Chak  
Barrister & Solicitor  
Counsel for the Appellant (Member)  
To: Hearing Director  
To: College of Physicians and Surgeons





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

AND IN THE MATTER OF A  
SANCTION HEARING REGARDING  
THE CONDUCT OF  
DR. MOHAMMED AL-GHAMDI  
a regulated Member of the College of  
Physicians and Surgeons of Alberta

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**AMENDED NOTICE OF APPEAL**

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IN THE MATTER OF AN APPEAL  
PURSUANT TO 87(1) of the  
Health Professions Act

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

AND IN THE MATTER OF A SANCTION HEARING REGARDING  
THE CONDUCT OF DR. MOHAMMED AL-GHAMDI  
a regulated Member of the College of Physicians and Surgeons of Alberta

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**AMEDNED NOTICE OF APPEAL**

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IN THE MATTER OF AN APPEAL PURSUANT TO 87(1) of the  
Health Professions Act

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TAKE NOTICE that this Appeal is from a decision of a Hearing Tribunal conducted by Dr. Eldon Smith and Mr. Wayne McKendrick and was rendered on April 12, 2017 and Sanction/Cost Decision of January 16, 2018

File No. 130485.1.1 A complaint by Ms. Tracey Rice about claiming that Dr. Al-Ghamdi threatened her in a conversation on July 26, 2013

Reasons for the Appeal:

The Appeal is based on the errors of law and fact that are throughout the proceedings and the decision:

Jurisdictional Errors

- 1) The Hearing Tribunal did not have the Jurisdiction to make the alleged conduct of the member as a disciplined conduct.
- 2) The Hearing Tribunal lost jurisdiction when they failed to properly establish the nature of the complaint/charge.
- 3) The Hearing Tribunal lost jurisdiction when they failed to be independent.
- 4) The Hearing Tribunal lost jurisdiction by not properly addressing the preliminary objections.
- 5) The Hearing Tribunal lost jurisdiction by not compelling the College of Physicians and Surgeons to properly address remedy at the outset of the hearing.

- 6) The Hearing Tribunal lost jurisdiction when they went outside of their jurisdiction when they incorporated issues which belonged to the Hospitals Act.
- 7) The Hearing Tribunal and the College of Physicians and Surgeons were in collusion to target the Member therefore they lost jurisdiction as a result of their joint purpose (the removal of Dr. Al-Ghmadi as a Member of the College of Physicians and Surgeons of Alberta.
- 8) The Hearing Tribunal was constituted of ineligible members due to personal connections and professional connections which created a conflict of interest. Specifically Section 13 of the Health Professions Act.
- 9) The Hearing Tribunal and the College of Physician and Surgeons are Islamophobes who want to perpetuate systemic discrimination.
- 10) The Hearing Tribunal should have addressed all issues of preliminary concern with an independent lens.
- 11) The Hearing Tribunal failed to recognize any element of procedural fairness attached to being an adjudicator.

#### Procedural Fairness

- 1) The Hearing Tribunal did not properly provide the Member the ability to respond to the charges.
- 2) The Hearing Tribunal applied differential rules and favored the College of Physicians and Surgeons rather than create a fair and balanced hearing.
- 3) The Hearing Tribunal had descended into the hearing and worked against the Member.
- 4) The Hearing Tribunal unreasonably and irrationally acted as part of the College of Physicians and Surgeons.
- 5) The Hearing Tribunal had multiple levels of bias in terms of their role, the facts, the law as well as how they made decisions.

- 6) The Hearing Tribunal failed to properly deal with issues from the outset to the final decision.
- 7) The Hearing Tribunal engaged in an abuse of process and utilized their independent Counsel as a decisionmaker and to cause interference in a proper functioning hearing.
- 8) The Hearing Tribunal and the College must follow the clear parameters that are found in the statute. The Conduct complained of was recognized not to exist in the Statute.

#### Substantive Legal Errors

- 9) The College did not meet the legal test for unprofessional conduct.
- 10) The Hearing Tribunal created a new definition of unprofessional conduct which was neither disclosed to the Member or provided an opportunity to respond to.
- 11) The College failed to put forward any Standard which the Member was to be adjudicated against.
- 12) The Hearing Tribunal misapplied the Rules of Evidence and provided opposite rulings on the same issue. The Hearing Tribunal improperly chose a preferential treatment of the College and Physicians and Surgeons.
- 13) The College had not proven the majority of the alleged allegations against the CMA's Code of Ethics.
- 14) The Charge – with the subissues did not relate to patient care and therefore should not have been considered by the Tribunal.
- 15) The Hearing Tribunal made unreasonable findings of facts against the Appellant.
- 16) The Hearing Tribunal made unreasonable conclusions on the legal test to find that the conduct was subject to sanction.
- 17) The additional findings of facts confirms that the Complainants had contributed to the negative environment and therefore their actions should have been adjudicated as well.

- 18) The decision misinterpreted the statutory criteria under the Health Professions Act.
- 19) The College has breached their Duty to Protect the Public in their actions against the Doctor. The actions of the Doctor was in the best practices for patient care.
- 20) The Tribunal did not consider the Charter Issues and the Charter Values which needed to be considered in the context of the communications that were subject to the charge.
- 21) The alleged conduct was incorrectly and unreasonably labelled.
- 22) The Hearing Tribunal improperly put the public at risk by the manner in which they conducted themselves and failed restrain the Hospital (Complainant)/College of Physicians and Surgeons from pursuing a prosecution of complaints.
- 23) The Hearing Tribunal provided absurd conclusions in their written decisions that have no semblance of rational logical adjudication (in the execution of their duties).
- 24) The Hearing Tribunal incorrectly allowed hearsay and double hearsay from the complainant.
- 25) The Hearing Tribunal failed to neutrally look at the credibility issue and specifically targetted the Member.
- 26) The Hearing Tribunal in finding guilt on 8 sub-issues which were under the main charge, did not specify how this related to the complaint before them.

## Evidentiary Errors during the Hearing

- 27) The disclosure and evidence submitted by the College were introduced only during the hearing, this allowed the Member no time to prepare a response.
- 28) Evidence was led and attributed to witnesses after they had completed their testimony. The Member was not able to test the witness or ask the witness about a document which was submitted before the Tribunal.
- 29) Case Law and other precedents being relied on by the College were only presented during the hearing. This allowed the Member, who was self-represented for part of the hearing unable to respond.
- 30) Evidence led by the College did not adhere to the Alberta Evidence Act. Moreover, when there was an exception applied to the introduction of evidence it was not applied equally.
- 31) The evidence led by the College was allowed without the same courtesy or same principle applied to the self-represented Member.
- 32) Witnesses were led by the College without proper voir dire statements or reference to the complaint.
- 33) In relation to this complaint, the Tribunal improperly restricted questions to the complainant and did not properly limit the scope of the prosecution. Leading to an abuse of process.
- 34) Certain documentary evidence (voice recordings) were excluded improperly or not given the appropriate weight.

35) The Self-represented Member was put through several unnecessary steps in order to even put his evidence before the Tribunal.

36) The Tribunal never took any steps to ensure the integrity of the evidence provided by witnesses at the hearing. As this hearing dealt with sensitive issues regarding a hierarchical workplace, the Tribunal was required to protect those witnesses from intimidation and retaliation. The Tribunal took no steps to ensure that those who influenced the workplace would not be able to intimidate witnesses into not appearing or then abusing their power in relation to those witnesses.

### **Specific Errors in Relation to the Specific Complaint**

37) The College withdrew this complaint only at the end of the hearing.

38) This complaint was an example of malicious prosecution, collusion as well as an improper method to raise costs.

### **Specific Appeals in Relation to the Sanction/Cost of this Complaint**

- 1) The Sanction has no relation to the findings of fact.
- 2) The College should have been sanctioned about bringing this complaint forward against a Member

#### **Cost**

- 3) The cost award should have been granted to the Member.
- 4) The costs award should have been applied against the Costs awarded against the Member.
- 5) This and other examples were proof of the malice on the part of the College of Physicians and Surgeons against Dr. Al-Ghamdi.

**Further Applications under the Health Professions Act**

AND FURTHER TAKE NOTICE that the Appellant at this time will be making the following applications:

- 1) Stay under Section 86(1) of the Health Professions Act
- 2) Application for Additional Evidence under 89(4)(b) – for additional evidence regarding the Dysfunctional Environment in which the Appellant worked.
- 3) Application for Additional Evidence under 89(4)(b) – for additional evidence which provides evidence of the improper purpose of the College of Physicians and Surgeons in pursuing this case as an example of abuse of process and malice from the witnesses.
- 4) Application for Additional Evidence under 89(4)(b) – for additional evidence regarding the alleged Charter of Rights and Freedoms breaches as well as a Breach of the Charter Values.
- 5) Application for Additional Evidence under 89(4)(b) – for additional evidence regarding the alleged charges. The Appellant would be calling Dr. Whorry and Dr. Felicia Huang.
- 6) The College is to be a neutral party and present their objective information based on established terms and conditions. Potential other witnesses should fully explore the issues which led to the finding.
- 7) Further Orders after a full review of the Record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

Dated at Edmonton this 12<sup>th</sup> day of February, 2018

A handwritten signature in black ink, appearing to read 'Arman Chak', with a stylized flourish at the end.

Arman Chak  
Barrister & Solicitor



Counsel for the Appellant (Member)  
To: Hearing Director  
To: College of Physicians and Surgeons

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

AND IN THE MATTER OF A  
SANCTION HEARING REGARDING  
THE CONDUCT OF  
DR. MOHAMMED AL-GHAMDI  
a regulated Member of the College of  
Physicians and Surgeons of Alberta

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**AMENDED NOTICE OF APPEAL**

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IN THE MATTER OF AN APPEAL  
PURSUANT TO 87(1) of the  
Health Professions Act

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Arman Chak, Barrister & Solicitor  
SUITE 44, 21-10405 JASPER  
AVENUE  
EDMONTON, ALBERTA T5J3S2  
Phone: 5879372040  
Facsimilie: 18668052505

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**From:** Fred Kozak  
**Sent:** Wednesday, September 05, 2018 5:05 PM  
**To:** Dr Mohammed Al-Ghamdi [REDACTED] Craig Boyer  
**Cc:** Tess C. Layton  
**Subject:** Rrepresentation issue

Dear Dr. Al-Ghamdi;

At your request, the appeal panel has made a decision concerning your request to have someone who is not a practicing member of the Law Society of Alberta speak in your stead at the hearing on September 14. They have asked me to communicate their decision to you, and to Mr. Boyer.

Sincerely

Fred Kozak

#### Decision

Given that the *Health Professions Act* does not define "counsel", the appeal panel has jurisdiction to determine this issue.

You have proposed three individuals: Arlene MacDonnell, Brian McCosh, and Shawn Beaver. In your email, you indicated that there are a significant number of pages of records (over 16,000) and there will be extensive references to evidence and the transcript during oral submissions at the appeal. You also stated that it is important for you to have this matter concluded on September 14, 2018.

Mr. Boyer, on behalf of the Complaints Director, objects to your request. With regard to Ms. MacDonnell and Mr. McCosh, Mr. Boyer objects on the basis that these individuals do not have the prior experience or skills necessary to assist in the presentation of the appeal submissions based on the applicable standard of review.

With respect to Mr. Beaver, Mr. Boyer objects on the basis that he was disbarred by the Law Society on February 15, 2017. Prior to his disbarment but while he was a suspended member of the Law Society, the Alberta Court of Appeal upheld a Court of Queen's Bench order which prohibited Mr. Beaver from acting in the capacity of agent. Mr. Boyer argues that the circumstances of Mr. Beaver's disbarment, which include that Mr. Beaver was found guilty of misappropriating trust funds, falsification of trust entries, and failure to be candid, engage the reputation and integrity of the CPSA if he is to act as "counsel" in a CPSA appeal proceeding. Mr. Boyer also notes that you have not indicated whether the Law Society takes any position with respect to Mr. Beaver acting as your counsel.

#### Based on the parties written representations, the panel has made the following decision:

You will be permitted to make oral submissions on your own behalf, or instead, you are permitted to choose one representative to speak on your behalf on September 14, 2018. That representative can either be Ms. McDonnell or Mr. McCosh, but not Mr. Beaver. The following conditions are imposed:

1. You are directed to advise the panel through its counsel before September 10, 2018 of your choice of representative;
2. Your choice of representative will not give rise to an adjournment of the scheduled appeal date;

3. You (or your chosen representative) will be required to conclude your oral submissions within the allotted time (to be decided by the panel at the beginning of the appeal) and your choice of representative will not be a basis to request an extension of the allotted time for oral submissions.

The panel will include its written reasons on this issue as part of the written reasons for decision of this appeal.

Fred Kozak | Partner  
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