COLLEGE OF PHYSICIANS & SURGEONS OF ALBERTA

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

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF DR. NIDAL DARWISH-UHTOMAN

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

February 21, 2023

I. INTRODUCTION

1. The Hearing Tribunal held a hearing into the conduct of Dr. Nidal Darwish-Uhtoman on November 2, 2022. The members of the Hearing Tribunal were:

   Ms. Patricia Matusko, Chair and public member;
   Dr. David Sheppard, physician member;
   Dr. Neelan Pillay, physician member;
   Mr. James Lees, public member.

   Ms. Mary Marshall acted as independent legal counsel for the Hearing Tribunal.

   Also present were:

   Ms. Stacey McPeek, legal counsel for the Complaints Director;
   Ms. Taryn Burnett, legal counsel for Dr. Darwish-Uhtoman;
   Dr. Nidal Darwish-Uhtoman.

II. PRELIMINARY MATTERS

2. Neither party objected to the composition of the Hearing Tribunal or its jurisdiction to proceed with the hearing. There were no matters of a preliminary nature.

3. The hearing was open to the public pursuant to section 78 of the *Health Professions Act*, RSA 2000, c. H-7 ("HPA"). There was no application to close the hearing.

III. CHARGES

4. The Notice of Hearing listed the following allegations:

   1. You did demonstrate a lack of knowledge or lack of skill or judgment in the provision of professional services to your patient, [redacted], particulars of which include one or more of the following;

      a. failing to monitor and record in the patient record your patient's blood pressure given you were monitoring your patient for chronic renal disease.

      b. ordering tests when the patient record did not indicate the reason for ordering the tests.

      c. failing to discuss with your patient the findings of the June 22, 2017 ultrasound report.

      d. failing to discuss with your patient of the findings and recommended investigation reported in the October 27, 2017 ultrasound report.

e. Failing to inform your patient of the findings and recommended investigation reported in the June 25, 2018 chest x-ray report.

f. Failing to follow-up on findings in the October 27, 2017 ultrasound report.

g. Failing to follow-up on the findings in the June 25, 2018 chest x-ray report.

h. Failing to monitor the blood pressure of your patient on a regular basis in light of the patient being on medication for hypertension and having a history of renal failure.

i. Failing to record in the patient record any discussion or examination regarding an aneurysm despite an ultrasound being ordered and completed on June 22, 2017 with noted purpose being to "rule out an aortic aneurysm".

j. Failing to conduct an adequate physical examination and record in your patient record the relevant findings on one or more of the following dates;

    i. October 13, 2013;

    ii. May 20, 2015;

    iii. June 17, 2015;

    iv. October 26, 2015;

    v. November 25, 2015;

    vi. May 26, 2016;

    vii. June 14, 2016;

    viii. January 5, 2017;

    ix. April 12, 2017;

    x. October 18, 2017;

    xi. October 31, 2017;

    xii. May 29, 2018;

    xiii. June 21, 2018;

    xiv. August 20, 2018;

    xv. October 11, 2018;

    xvi. December 13, 2018;

    xvii. May 14, 2019;

    xviii. June 3, 2019; and

    xix. June 11, 2019.

k. Failing to follow your patient's serum creatine/GFR levels in accordance with the recommendation by the specialist, Dr. [redacted], in his October 22, 2015 consult letter.

l. Failing to request a further timely consult by Dr. [redacted] after your October 31, 2017 visit with your patient.

m. Failing to follow the recommendations from the specialist, Dr. [redacted], including one or more of the following:

   i. advising your patient to take iron supplements;

   ii. monitoring your patient's hemoglobin and ferritin to ensure iron replacement was working;

   iii. addressing your patient's progressive and worsening anemia;

   iv. failing to refer your patient back to Dr. [redacted] in follow-up in light of the lab results obtained by you.

n. Failing to consider that your patient's complaints in 2018 and 2019 were not explained by renal dysfunction in light of the ultrasound findings from February 2008 and June 2017.

2. On or about June 9, 2019, you made changes to the record for your patient, [redacted], without clearly noting those changes were late entries contrary to the College of Physicians and Surgeons of Alberta Standard of Practice concerning Patient Record Content for visits on one or both of the following dates:

   a. October 31, 2017; and

   b. June 28, 2018.

3. [Withdrawn].

5. Dr. Darwish-Uhtoman admits the allegations in the Notice of Hearing as being true ("the Allegations") and that such conduct amounts to unprofessional conduct. The hearing proceeded by way of an agreed Exhibit Book, and an Admission and Joint Submission Agreement on the issue of penalty by Dr. Darwish-Uhtoman and the Complaints Director ("Joint Submission").

IV. EVIDENCE

6. The following Exhibits were entered into evidence during the hearing:

Exhibit 1: Exhibit Book, Containing Tabs 1 to 16

Tab 1: Notice of Hearing dated April 4, 2022

Tab 2: Complaint form dated November 24, 2020

Tab 3: Alberta Health Services letter dated December 30, 2020 with hospital records

Tab 4: Dr. [redacted] letter dated January 18, 2022 regarding attendance at Rockyview General Hospital

Tab 5: Dr. Darwish-Uhtoman letter of response dated January 23, 2021

Tab 6: Dr. [redacted] letter dated March 4, 2021 with enclosed chart

Tab 7: Dr. Darwish-Uhtoman letter of response dated July 2021

Tab 8: Dr. [redacted] Memorandum dated July 12, 2021 regarding interview of Ms. [redacted]

Tab 9: Dr. Darwish-Uhtoman letter of response dated August 2021

Tab 10: Dr. [redacted] opinion dated October 6, 2021

Tab 11: Dr. [redacted] letter dated August 29, 2022

Tab 12: Patient chart of Dr. Darwish-Uhtoman for [redacted] [redacted] (25 mg)

Tab 13: Wolf EMR Audit Log of changes to patient record

Tab 14: College of Physicians and Surgeons of Alberta Standard of Practice – Patient Record Content

Tab 15: College of Physicians and Surgeons of Alberta Standard of Practice – Continuity of Care

Tab 16: College of Physicians and Surgeons of Alberta Standard of Practice – Referral Consultation

Exhibit 2: Admission and Joint Submission Agreement

7. Counsel for the Complaints Director also filed the following materials:

   a. Brief of Law Regarding Joint Submissions dated September 12, 2022:

   b. Case law and decisions:

      i. *Mailo (Re)*, 2022, Alberta College of Physicians & Surgeons of Alberta;

      ii. *Srikisson, Re,* 2022 CarswellAlta 393;

      iii. *Timothy Edward Bradley v. Ontario College of Teachers,* 2021 ONSC 2303;

      iv. *Ladak (Re)*, 2021, College of Physicians & Surgeons of Alberta;

v. *McCubbin (Re)*, 2021, College of Physicians & Surgeons of Alberta;

vi. *Lakhani (Re)*, 2018, College of Physicians & Surgeons of Alberta;

vii. *R. v. Anthony-Cook*, 2016 SCC 43;

viii. *Ontario (College of Physicians and Surgeons of Ontario) v. Lo, H.*, 2013 ONCPSD 4

ix. *Friedman, Re*, 2003 CanLII 57469 (AB CPSDC);

x. *Jaswal v. Medical Board (Nfld.)*, 1996 CanLII 11630 (NL SC);

8. Counsel for Dr. Darwish-Uhtoman also filed the following materials:

   a. *Ontario (College of Physicians and Surgeons of Ontario) v. Lowe*, 2015 ONCPSD 21;

   b. *Srikisson, Re,* 2022, College of Physicians & Surgeons of Alberta.

V. SUBMISSIONS ON THE ALLEGATIONS

Submissions by Counsel for the Complaints Director

9. Counsel for the Complaints Director reviewed the documents in the Exhibit Book.

10. Dr. Darwish-Uhtoman admits the Allegations and that they amount to unprofessional conduct. Counsel for the Complaints Director submitted that the proven Allegations show that Dr. Darwish-Uhtoman displayed a lack of knowledge of or lack of skill or judgment in the provision of professional services. He did not monitor blood pressure, failed to follow up on findings and conduct adequate physical examinations, and failed to make a timely referral. The patient records were changed after a significant period of time had passed. The Standards of Practice require certain steps to be taken when records are changed, and the edits do not contain the required documentation.

Submissions by Counsel for Dr. Darwish-Uhtoman

11. Counsel for Dr. Darwish-Uhtoman made brief submissions. Dr. Darwish-Uhtoman has been practising in Calgary since 2005 and he has not previously appeared before any disciplinary body. He received his medical degree in 1990 and practised in Mexico. Dr. Darwish-Uhtoman has taken ownership of the conduct in question and taken steps to ensure that he does not encounter issues going forward.

VI. FINDINGS

12. The evidence shows that the Allegations are factually proven for the reasons set out below. The Hearing Tribunal found that the proven Allegations constituted unprofessional conduct under section 1(1)(pp)(i) and (ii) of the HPA as follows:

> ***1(1)*** *In this Act,*
>
> *(pp) "unprofessional conduct" means one or more of the following, whether or not it is disgraceful or dishonourable:*
>
> *(i) displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services;*
>
> *(ii) contravention of this Act, a code of ethics or standards of practice; and …*

13. Allegations 1a and 1h refer to a failure to monitor and record in the patient record the patient's blood pressure when Dr. Darwish-Uhtoman was monitoring his patient for a chronic renal disease. Dr. Darwish-Uhtoman admits that he failed to record blood pressure findings in the patient's record. The records show that on the patient's initial visit with Dr. Darwish-Uhtoman on Oct 31, 2013 for "mild creatine", his blood pressure was not recorded and Ramipril, a drug used to treat high blood pressure, was prescribed.

14. At a visit on June 17, 2015 for "mildly elevated CR", again blood pressure was not recorded and at the patient's visit on September 15, 2015 a referral was made to a nephrologist and no blood pressure is recorded.

15. On November 25, 2017 the patient is seen for an "R refill" for his elevated blood pressure and no blood pressure is recorded. As noted by the expert reviewer, blood pressure is recorded in 3 out of 27 visits, even though many visits were for the diagnosis of hypertension.

16. Allegations 1b, 1c, 1d, 1e, 1f, 1g and 1i, 1k, 1l, 1m, 1n have all been proven by a careful review of the records and by Dr. Darwish-Uhtoman's admission.

17. Allegation 1j refers to 19 dates when Dr. Darwish-Uhtoman failed to conduct an adequate physical examination and record the relevant findings in the patient record. Dr. Darwish-Uhtoman admits that he failed to conduct an adequate physical examination on those dates, and a review of the records shows that relevant findings were not recorded. The proven particulars in Allegation 1 show that Dr. Darwish-Uhtoman displayed a lack of knowledge or a lack of skill or judgment in the provision of professional services.

18. Allegation 2 relates to changes to the patient record on October 31, 2017, and June 28, 2018.

19. A review of the evidence clearly demonstrates that Dr. Darwish-Uhtoman did alter the record of his patient without noting that these were late entries for either the October 31, 2017 or the June 28, 2018 visit.

20. Each alteration to the records is in violation of the Standard of Practice on Patient Record Content and therefore rises to the level of unprofessional conduct. Specifically the Standard of Practice requires specific steps to be taken when making changes.

VII. SUBMISSIONS ON SANCTION

21. After the Hearing Tribunal advised the parties of its findings in relation to the Allegations, the Hearing Tribunal invited the parties to make submissions with respect to sanction. The parties presented a Joint Submission regarding sanction.

Submissions by Counsel for the Complaints Director

22. The proposed sanction is a reprimand, participation in an Individual Practice Review, the CPEP PROBE course within six months of the decision, and a records-keeping course. Dr. Darwish-Uhtoman will also be responsible for 75 percent of the costs.

23. Counsel for the Complaints Director reviewed the law on joint submissions and the fundamental purpose of sanctions. The decision in *Jaswal* outlines the factors to consider on sanction: the need to promote specific and general deterrence; to protect the public; and to maintain the public's confidence in the integrity of the medical profession. There is always the importance of rehabilitation when dealing with sanction.

24. There are a number of aggravating factors in this situation. The nature and gravity of the proven conduct falls in the middle. It is not a strongly aggravating factor, and remediation will address the conduct and prevent a recurrence. The lack of skill when providing professional services occurred repeatedly. There was a significant impact on the patient who was unaware that he had lung cancer. The patient did not seek out necessary medical care that could have led to an earlier diagnosis. The conduct also caused a great deal of distress for the patient's family, and they do not know if an earlier diagnosis would have led to a different outcome.

25. There are a number of mitigating factors. Dr. Darwish-Uhtoman acknowledged his conduct, cooperated and facilitated the hearing, and admitted the Allegations, all of which reduced costs and the need to call witnesses. This is the first complaint against Dr. Darwish-Uhtoman and there is no history of similar or other conduct. These are significant mitigating factors.

26. The cases suggest a range of penalties would be appropriate. The Joint Submission represents a proportional sanction. There is a clear denunciation

of the conduct and skill development to prevent a recurrence. The reprimand denounces the conduct and sends a message to the profession. The Individual Practice Review is part of the continuing competence program, and is tailored to the requirements for the member. The course on record-keeping will provide support to ensure that records are fulsome. The CPEP PROBE course recognizes the ethical component of the conduct. Dr. Darwish-Uhtoman changed entries after the fact. The CPEP PROBE course will enhance his skills to prevent similar issues in the future.

27. Since Dr. Darwish-Uhtoman has cooperated, less than full costs is appropriate. The Complaints Director is not aware of any particular financial circumstances and will leave it to counsel for Dr. Darwish-Uhtoman to raise any issues. Dr. Darwish-Uhtoman will be responsible for the costs of the courses and that has been taken into account.

Submissions by Counsel for Dr. Darwish-Uhtoman

28. Parties must have confidence that a joint submission on penalty will be accepted, and the bar is high to reject a joint submission. The proposed penalty in the Joint Submission satisfies the goals of remediating the member and protecting the public.

29. The decision in *Ontario (College of Physicians and Surgeons of Ontario) v. Lowe* involved a physician who failed to maintain the standards of practice for multiple patients. The sanction included a reprimand, a practice assessment, and costs.

30. The CPSA decision in *Srikisson, Re,* 2022, involved a failure to arrange for timely diagnostic imaging, inadequate records, and record changes without following the requirements in the Standard of Practice on Patient Record Content. The proposed sanctions are similar to the sanctions in *Srikisson.*

Questions from the Hearing Tribunal

What is the format for the CPEP PROBE course and for the record-keeping course?

31. Counsel for the Complaints Director explained that both courses are online. Counsel for Dr. Darwish-Uhtoman submitted that the CPEP PROBE course requires a paper to be written at the end of the course. The outcome is pass, conditional pass, or fail. A report from the CPEP PROBE course is provided for the purposes of the Individual Practice Review so that there can be a consideration of what steps are required for remediation and an improvement to practice.

What were the factors that were considered when determining the level of costs?

32. Counsel for the Complaints Director submitted that there was a consideration of the nature and number of the Allegations that were found to be proven, along with a consideration of costs awards in similar matters. The parties have come to the conclusion that the costs proposed in the Joint Submission

are fair and reasonable in the circumstances. Counsel for Dr. Darwish-Uhtoman submitted that the costs fall within a reasonable range.

VIII. ORDER AND REASONS FOR ORDER

33. Counsel for the Complaints Director and counsel for Dr. Darwish-Uhtoman made a Joint Submission as to an appropriate penalty. The Hearing Tribunal has discretion to accept or reject a joint submission. However, the law provides that the Hearing Tribunal should not depart from a joint submission unless the proposed penalty would bring the administration of justice into disrepute or is otherwise not in the public interest. The stringent nature of the public interest test when it is applied to discipline panels was explored in *Bradley v. Ontario College of Teachers,* 2021 ONSC 2303:

> *The public interest test in Anthony-Cook applies to disciplinary bodies. Any disciplinary body that rejects a joint submission on penalty must apply the public interest test and must show why the proposed penalty is so 'unhinged' from the circumstances of the case that it must be rejected.*

34. The fundamental principles underlying penalty orders include public protection and maintaining public confidence in the ability of the College to regulate the profession in the public interest. The penalty should act as a deterrent to the member and to the profession as a whole. The penalty should be proportionate to the conduct.

35. The Hearing Tribunal reviewed previous decisions which had some similarities to that of Dr. Darwish-Uhtoman. The Hearing Tribunal recognizes that it can be guided by previous decisions, but each case will have unique facts which must be taken into account when determining the appropriate sanction.

36. Based on the Hearing Tribunal's review of the cases, the Hearing Tribunal finds that the proposed penalty falls within a reasonable range of penalties and is proportionate to the nature of the misconduct. Remediation is an important objective in this situation, and it is appropriate that Dr. Darwish-Uhtoman undertake an Individual Practice Review, and complete course work.

37. The Hearing Tribunal hereby orders pursuant to section 82 of the HPA:

    a. Dr. Darwish-Uhtoman shall receive a reprimand;

    b. Dr. Darwish-Uhtoman shall, at his own expense, participate in an Individual Practice Review, including any recommended remediation that results. Dr. Darwish-Uthoman shall enroll and begin participation in the Individual Practice Review within three months of the issued decision of the Hearing Tribunal, and complete his initial assessment within six months;

c. At his own expense, that Dr. Darwish-Uhtoman shall complete and unconditionally pass the CPEP PROBE course within six months of the date of the issued decision of the Hearing Tribunal (https://www.cpepdoc.org/cpep-courses/probe-ethics-boundariesprogram-canada/). If Dr. Darwish-Uhtoman does not obtain an unconditional pass, that there will be a requirement to complete a more intensive one-on-one program of ethics remediation with an approved ethicist;

d. At his own expense, that Dr. Darwish-Uhtoman shall complete the Records Keeping Course offered at the University of Calgary (the two day program - https://cumming.ucalgary.ca/cme/courses/format/online-self-learning/medical-record-keeping) within six months of the date of the issued decision of the Hearing Tribunal; and

e. Dr. Darwish-Uhtoman shall be responsible for 75% of the costs of the investigation and the hearing before the Hearing Tribunal, payable on terms acceptable to the Complaints Director.

Signed on behalf of the Hearing Tribunal by the Chair:

P.A Matusko

Patricia Matusko

Dated this 21st day of February, 2023.