

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. ALI NSAIR

**DECISION OF THE HEARING TRIBUNAL OF
THE COLLEGE OF PHYSICIANS
& SURGEONS OF ALBERTA
June 23, 2023**

I. INTRODUCTION

1. The Hearing Tribunal held a hearing into the conduct of Dr. Ali Nsair on May 2, 2023. The members of the Hearing Tribunal were:
 - Dr. Neelam Mahil of Edmonton as Chair;
 - Dr. Fraulein Morales of Edmonton;
 - Ms. Shelly Flint of Okotoks (public member);
 - Mr. Douglas Dawson of Edmonton (public member).

Mr. Fred Kozak acted as independent legal counsel for the Hearing Tribunal.

2. Appearances:

Ms. Tracy Zimmer, legal counsel for the Complaints Director.

II. PRELIMINARY MATTERS

3. As Dr. Nsair was absent from the proceedings, Ms. Zimmer on behalf of the Complaints Director made an application to proceed with the hearing in his absence.
4. In her application, Ms. Zimmer first reviewed the relevant sections of the Health Professions Act (HPA) which include the following:

Section 72(1): an investigated person must appear before the Hearing Tribunal.

Section 79(6)(a): if an investigated person does not appear at a hearing and there is proof the investigated person has been given a Notice to Attend, the Hearing Tribunal may proceed with the hearing in the absence of the investigated person.

Section 77(a): the Hearings Director must, at least 30 days before a hearing, give the investigated person a Notice to Attend and give reasonable particulars of the subject matter of the hearing.

Section 120(3): the notice is sufficiently given if it is given by personal service to the person or sent to the person by certified or registered mail at the person's address as shown on the register or record of the Registrar.

5. Ms. Zimmer reviewed that the first Notice of Hearing (Exhibit 1) stated the hearing was Feb 7, 2023, and was dated and signed by the Hearings Director on November 28, 2022. The revised Notice of Hearing (Exhibit 2) dated May 2, 2023, had the exact same charges, and was dated and signed by the Hearings Director on January 6, 2023. Both Notices of Hearing notified Dr. Nsair of the charges against him, the dates of the hearings more than 30 days in advance of them occurring, that Dr. Nsair was entitled to attend in person and with legal counsel, and that in the event he did not attend, the Hearing Tribunal may proceed in his absence.

6. A Commissioned Statutory Declaration dated April 27, 2023 signed by the Hearings Coordinator Ms. J [REDACTED] W [REDACTED] (Exhibit 3) outlined the numerous attempts made by her and others at the College of Physicians and Surgeons of Alberta ("CPSA") to contact Dr. Nsair including by email (October 2022); registered mail to the address shown on the CPSA register (November 4, 2022; returned undelivered); process server (December 1, 2022; attempts unsuccessful); courier (Jan 9, 2023; undeliverable) and via Canada Post to a clinic address in Los Angeles where Dr. Nsair apparently now works (February 14, 2023; successfully delivered).
7. Ms. Zimmer submitted that CPSA had taken all effective steps to provide sufficient notice of the hearing to Dr. Nsair and that the hearing should proceed in his absence, due to his failure to respond. She also stated that a regulated member has a duty to update his current contact information on the CPSA register so that the CPSA can contact them.
8. The Hearing Tribunal adjourned briefly to deliberate and consider Ms. Zimmer's submissions and found that the requirements of HPA section 79(6) and 77(a) had been met, and were prepared to proceed in the absence of Dr. Nsair.

III. CHARGES

9. The Notice of Hearing listed the following allegations:
 1. You did fail or refuse to complete by December 31, 2021 or the extension of March 22, 2022 the Patient Relations education module as required for regulated members by the Council of the College of Physicians and Surgeons of Alberta pursuant to section 135.7(2) of the *Health Professions Act*;
 2. You did fail or refuse to respond to correspondence from the Complaints Department of the College of Physicians and Surgeons of Alberta regarding your outstanding obligation to complete the Patient Relations education module and the failure to respond investigation opened under section 56 of the *Health Professions Act*; particulars of which include one or more of the following;
 - a. Letter dated July 14, 2021,
 - b. Letter dated November 22, 2021,
 - c. Email dated January 21, 2022,
 - d. Letter dated March 22, 2022,
 - e. Letter dated May 17, 2022,
 - f. Email dated May 18, 2022,
 - g. Letter dated May 19, 2022,
 - h. Letter dated June 16, 2022,
 - i. Email dated July 26, 2022, and
 - j. Letter dated August 25, 2022.

IV. EVIDENCE

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

Tab	DOCUMENT DESCRIPTION
1.	2022-11-28 Notice of Hearing
2.	2023-01-06 Revised Notice of Hearing
3.	2023-04-27 Commissioned Statutory Declaration – J. W. [REDACTED]
4.	Patients Relations Training – Touch Points
5.	2019-08-07 & 15 Email re: Complete the mandatory bill 21 training module
6.	2020-09-08 Email re: Action required please complete your patient relations
7.	2021-01-20 Email re: Action required please complete your patient relations
8.	2021-02-08 Email re: Immediate action required please complete your patient relations
9.	2021-02-25 Email re: Our records show you have not completed your mandatory patient relations part 1 training
10.	2021-03-23 CPSA email to Dr. Nsair re March 22 deadline
11.	2021-06-15 Quest physician profile
12.	2021-06-16 Dr. C. [REDACTED] memo to Dr. H. [REDACTED]
13.	2021-07-14 K. D. [REDACTED] letter to Dr. Nsair re section 56 complaint
14.	2021-11-22 K. D. [REDACTED] letter to Dr. Nsair re non-response
15.	2022-01-21 K. D. [REDACTED] email to Dr. Nsair
16.	2022-03-23 Dr. H. [REDACTED] letter to Dr. Nsair
17.	2022-03-29 Canada Post – receipt signed by Dr. Nsajur Nsair
18.	2022-05-18 C. P. [REDACTED] email to Dr. Nsair with May 17, 2022 attachment
19.	2022-05-18 C. P. [REDACTED] email to Dr. H. [REDACTED] re contact attempts
20.	2022-05-19 Dr. H. [REDACTED] letter to Dr. Nsair
21.	2022-06-16 K. D. [REDACTED] letter to Dr. Nsair re new complaint
22.	CPSA – Communications Log
23.	2022-07-26 T. D. [REDACTED] email to Dr. Nsair with June 16, 2022 attachment
24.	2022-08-25 B. G. [REDACTED] letter to Dr. Nsair
25.	2022-09-09 N. B. [REDACTED] email to B. G. [REDACTED] with highlighted excel sheet

11. In her opening statement, Ms. Zimmer submitted that this hearing involved a charge of unprofessional conduct for the failure of Dr. Nasir to complete the Patient Relations module as required by section 135.7(2) of the HPA and for his repeated failure to respond in a timely manner or at all to the CPSA regarding investigations into his conduct. Specifically, Ms. Zimmer referenced the HPA section 1(1)(pp) definition of unprofessional conduct, including one or more of the following, whether or not it is disgraceful or dishonourable: subsection (ii) contravention of this Act, code of ethics or standards of practice as well as subsection (vii)(b) failure or refusal to comply with a request of or co-operate with an investigator.

Witness Dr. M [REDACTED] C [REDACTED]

12. Ms. Zimmer called Dr. C [REDACTED] as the first witness for the Complaints Director. Dr. C [REDACTED] is currently the Assistant Registrar for Registration with the CPSA. He came to the CPSA in April 2015 at which point he was the Complaints Director and Assistant Registrar for Professional Conduct. He held that role until the end of calendar 2020 and became the Assistant Registrar for Registration on January 1, 2021.
13. Ms. Zimmer asked Dr. C [REDACTED] to provide some background regarding Bill 21, An Act to Protect Patients, that took effect on April 1, 2019, and how it pertains to the issues in the hearing today. Dr. C [REDACTED] reviewed how the Act mandated expectations that regulated health professions would identify unprofessional conduct defined as either sexual abuse or sexual misconduct and specifically for the possible penalty of loss of practice permit and cancellation of registration.
14. Pertinent to today's hearing, Dr. C [REDACTED] stated that the Act also mandated that each regulated health profession have education around sexual misconduct and sexual abuse for the protection of patients and also the consequences for those behaviours.
15. The CPSA planned two distinct modules to meet the requirements and educate its members. These modules were created in partnership with the University of Calgary and the Cummings School of Medicine. The matter before the Hearing Tribunal pertains to the first of the two modules, as the second module could only be accessed once the first module was completed. Dr. C [REDACTED] reviewed that each module was typically less than one hour of a person's time and that the modules were accessible via a web-based interface and did not require any in person attendance or unusual scheduling to complete.
16. In terms of how the CPSA notified physicians of the mandatory course, it began with notification prior to the Act being proclaimed that the Act was coming. This communication would have been via direct email, the CPSA's monthly newsletter The Messenger, and postings on the College's website.

17. Ms. Zimmer then referenced the Patient Relations Training Touch-Points (Exhibit 4) which showed the original emails sent out pertaining to this training on August 7 and 15, 2019 (Exhibit 5). Dr. C [REDACTED] confirmed that the time to complete the training was by the annual renewal for that calendar year 2020, which is an approximate 10-week time frame from mid-October until December 31.
18. Dr. C [REDACTED] confirmed that a subsequent email was sent out on September 8, 2020 (Exhibit 6), to members that had not yet completed the mandatory Patient Relations training, indicating that it was to be completed by the end of calendar year 2020 for the 2021 annual practice permit. Another email was then sent on January 20, 2021 (Exhibit 7), to those members that had not completed it, stating that the mandatory Patient Relations Part 1 training was required for all physicians and must be completed by February 14, 2021, to avoid cancellation of one's practice permit.
19. Dr. C [REDACTED] stated that there were some issues in the reporting from the University of Calgary, as there were a very small number of members that reported they had received this email, yet they had completed the work and downloaded a certificate of completion. In the spirit of fairness, Dr. C [REDACTED] stated the College extended the original December 31 deadline.
20. Two additional emails dated February 8, 2021 (Exhibit 8) "Immediate Action Required: Please complete your Patient Relations Training" and February 25, 2021 (Exhibit 9) "Our records show that you have not completed your mandatory Patient Relations Part 1 training; this training is required for all physicians as per the HPA Section 135.7 (2)(a) and a failure to complete this training will result in the cancellation of your CPSA practice permit". This email referenced a March 5, 2021, deadline. Dr. C [REDACTED] stated it was only a handful, around 50 regulated members, who had yet to complete the training by that point.
21. Ms. Zimmer asked Dr. C [REDACTED] to review next steps (Exhibit 10), pertaining to Dr. Nsair. He noted that Ms. N [REDACTED] D [REDACTED], a registration administrator employee, spoke with Dr. Nsair by telephone on or about the morning of March 11, 2021, to remind him that he had yet to complete the module, next steps required, and a deadline for doing so. On March 23, 2021, Mr. J [REDACTED] M [REDACTED], a member services agent in the Registration Department, was assigned the last task of reaching out via email to the very few people who had not responded to the earlier phone calls. Finally, Ms. Zimmer entered the Quest Physician Profile (Exhibit 11) which identified Dr. Nsair's contact information and efforts made by the various CPSA staff to contact him.
22. Dr. C [REDACTED] stated that Dr. Nsair's practice permit was cancelled, but in this case, it was cancelled because he did not complete a renewal information form (RIF) and for non-payment of his annual renewal fees. Dr. C [REDACTED] then wrote a memo to Complaints Director Dr. D [REDACTED] H [REDACTED] on June 16, 2021 (Exhibit 12) and referred Dr. Nsair to the Complaints Process under Part 4 of the HPA, given his failure to complete the mandatory training and extensive history of nonresponse.

Witness Ms. B [REDACTED] G [REDACTED]

23. Ms. Zimmer next called Ms. G [REDACTED] as a witness for the Complaints Director. Ms. G [REDACTED] outlined her role with the CPSA as an Associate Complaints Director, as well as program manager for the hearing/legal referral process. She has been in this role since starting with the CPSA in September 2021. In terms of her involvement the matter before the tribunal today, Ms. G [REDACTED] stated the Complaints Director delegated this matter to her to manage and move forward with in the summer of 2022.
24. Ms. G [REDACTED] reviewed the typical process when a complaint is first submitted. It goes through the intake team, is triaged through various processes, and then the complaint submission is sent to the respondent physician informing them of the complaint and requesting their response.
25. Ms. G [REDACTED] then reviewed the initial letter dated July 14, 2021 (Exhibit 13), that Ms. K [REDACTED] D [REDACTED], physician response coordinator, sent to Dr. Nsair requesting his response to the complaint by August 11, 2021. It was delivered to him by the Portal, which is a centralized and secure website portal that enables the CPSA to send correspondence directly to physicians.
26. A subsequent letter dated November 22, 2021 (Exhibit 14), from Ms. D [REDACTED] to Dr. Nsair, also delivered via the Portal was an escalation letter noting that she had not received a response and requesting one by December 6, 2021. Finally, an email from Ms. D [REDACTED] dated January 21, 2022 (Exhibit 15), sent to the personal email address that the CPSA had on file for him stated that there was correspondence waiting for him in his portal. Ms. G [REDACTED] confirmed that Dr. Nsair did not respond to any of this correspondence. It was also confirmed that in follow up, Ms. D [REDACTED] left a voicemail and a contact phone number for Dr. Nsair to call.
27. On March 23, 2022, a letter (Exhibit 16) from the Complaints Director to Dr. Nsair outlining the next steps that would be taken if he continued to fail to respond. The letter noted the requirement under the HPA that physicians respond to their regulatory authority when requested and a failure to do so amounts to unprofessional conduct. The Complaints Director outlined that a second complaint would be opened for not responding to CPSA unless Dr. Nsair's full and complete reply to the complaint was received by March 30, 2022. This letter was delivered via registered mail and via physician Portal. The letter was delivered and signed for on March 26, 2022 (Exhibit 17) by a Dr. Nsair but the first name could not be confirmed.
28. On May 18, 2022 (Exhibit 18) the Complaints Director's executive assistant Ms. C [REDACTED] P [REDACTED] sent an email to Dr. Nsair with a letter dated May 17, 2022, as an attachment. In this letter, the Complaints Director communicated that as Dr. Nsair remained unresponsive to all communications from the CPSA's professional conduct department, she was opening a new complaint under the HPA.

In addition, Ms. P [REDACTED] notified the Complaints Director via email (Exhibit 19) that she had sent Dr. Nsair a text message using the BizConnect platform on May 18, 2022, which informed him he had correspondence waiting to be reviewed and provided him contact information to get the password to review it.

29. With regards to this second complaint, Ms. Zimmer also submitted a May 19, 2022, letter from the Complaints Director to Dr. Nsair (Exhibit 20) informing him that due to his failure to respond to the initial complaint of failure to complete the Patient relations training, she was referring the matter to CPSA legal counsel for a possible hearing before a Hearing Tribunal.
30. On June 16, 2022, Ms. D [REDACTED] sent a letter (Exhibit 21) to Dr. Nsair once again informing him of the new complaint and requested his response by a deadline of July 14, 2022.
31. Ms. G [REDACTED] confirmed the above attempts and stated that to her knowledge, Dr. Nsair did not respond to any of these attempts to contact him.
32. Ms. Zimmer then reviewed with Ms. G [REDACTED] a screen shot of a CPSA communications diary (Exhibit 22) that is used to log when an individual involved in a complaints file has been contacted. Two entries in July and one in August 2022 were made by Ms. G [REDACTED]. On July 25, 2022, Ms. G [REDACTED] called a UCLA office where she found Dr. Nsair was working, after doing an online search; she left a message for him with an assistant. On July 26, 2022, Dr. Nsair called her back. In this conversation, she explained to him the gravity of the situation and that one of the matters had been referred to a hearing and his response to the second complaint was outstanding. Dr. Nsair told her that he had been dealing with personal matters over the last year and wasn't able to provide a response but that he was working in Dubai that week, would be back in Edmonton in the next nine to ten days and would address all the concerns then.
33. Ms. G [REDACTED] also confirmed Dr. Nsair's contact information including his email address and confirmed that he had been receiving CPSA communications to his personal email. She also obtained his cell number and he confirmed that he still held the mailing address that the CPSA had on file for him. After that conversation, the deadline for Dr. Nsair's response was extended again to August 9, 2023 (Exhibit 23); that deadline came and went with no response.
34. Finally on August 23, 2022, Ms. G [REDACTED] attempted to call Dr. Nsair's cell phone number to follow up on why he had not responded; the number indicated the customer was unavailable and there was no option for voicemail.
35. Ms. Zimmer also entered a letter from Ms. G [REDACTED] to Dr. Nsair dated August 25, 2022 (Exhibit 24), which stated that both matters were now being sent to a hearing.

Finally, there was an email dated September 9, 2022 (Exhibit 25) from Ms. N [REDACTED] B [REDACTED], communication advisor, to Ms. G [REDACTED] which showed an Excel spreadsheet of all the Mailchimp campaigns that were sent to Dr. Nsair and highlighting the ones specifically related to the Patient Relations training.

V. SUBMISSIONS

36. In closing arguments made by counsel for the Complaints Director, Ms. Zimmer reviewed the evidence provided by Dr. C [REDACTED] who outlined the numerous attempts made by the CPSA to contact Dr. Nsair about completing the mandatory Patient Relations module as required under section 135.7 (2) of the HPA. Evidence was entered of at least five emails sent to Dr. Nsair's physician Portal, two emails sent to his email account in the register, and two phone calls made to Dr. Nsair. One of the phone calls resulted in contact with Dr. Nsair who stated he was aware that the Patient Relations module needed to be completed.
37. Ms. Zimmer then reviewed the evidence provided by Ms. G [REDACTED] of the attempts made by the CPSA to contact Dr. Nsair regarding two different complaints and investigations. Evidence was entered of at least 11 attempts to contact Dr. Nsair through numerous outlets, including via his physician Portal, email, registered mail, text, and phone calls. Ms. G [REDACTED] outlined one successful phone attempt where Dr. Nsair confirmed his email and mailing address on the CPSA's register were correct, that he knew of attempts being made to contact him, and that he would respond but again failed to do so.
38. Ms. Zimmer stated that the evidence before the Hearing Tribunal of Dr. Nsair's failures to respond to the CPSA was undisputed, and that this history of non-response began in November of 2018 and had continued for almost five years. She stated this pattern was punctuated by Dr. Nsair's failure to respond to the Notices of Hearing and failure to attend the hearing.
39. Ms. Zimmer submitted that the courts have long upheld the fundamental importance of a professional to cooperate with their regulator (*Al-Naami v. the CPSA, 2021* and *Artinian v. CPSO, 1990*). As a self-regulating profession, physicians have a responsibility to their regulatory body which is why the HPA specifically defines at subsection (vii)(B) under 1(1)(pp) that a failure or refusal to comply with a request of or cooperate with an investigator as unprofessional conduct. Furthermore, failure to comply with the Act itself under subsection (ii) is also included in the definition of unprofessional conduct. Dr. Nsair as a regulated member of the CPSA had a duty to cooperate with the College and this included responding in a timely manner to his regulator and complying with the requirements under the Act, both of which he failed to do.

VI. FINDINGS

40. The Hearing Tribunal found that the two Allegations in the Notice of Hearing had been factually proven on a balance of probabilities and that the proven facts pertaining to both allegations constitute unprofessional conduct.

VII. REASONS

41. The Hearing Tribunal is satisfied that the evidence demonstrates that significant time and effort was made by the CPSA to contact, engage, and follow up with Dr. Nsair over a five-year period and that despite these efforts, Dr. Nsair continually failed to respond to the College.
42. The Hearing Tribunal found that evidence proves that Dr. Nsair failed in his duty to complete the mandatory Patient Relations module; failed in his duty to respond to the College on multiple occasions; and failed to cooperate with subsequent investigations into his conduct. These findings amount to unprofessional conduct under the HPA.
43. The Hearing Tribunal found that the proven Allegations constitute unprofessional conduct as per the HPA and specifically sections 1(1)(pp) (ii), (vii)(b) (xii) of the Act which outlines:
- 1(1) In this Act,
- (pp)“ unprofessional conduct” means one or more of the following, whether or not it is disgraceful or dishonourable:
- (ii) contravention of this Act, a code of ethics or standards of practice; and
- (vii) failure or refusal
- (B) to comply with a request of or co-operate with an investigator
- (xii) conduct that harms the integrity of the regulated profession.
44. A regulated member of a professional body is expected to respond to communications from their College in a timely manner and to cooperate with investigations. This duty is fundamental to the very principle of self-regulation. Regulatory bodies rely on their members to engage in and respond to regulatory processes. A failure to do so, undermines the system of self-regulation and can ultimately erode public trust and confidence in the profession.

VIII. CONCLUSION

45. In conclusion, the Hearing Tribunal finds the Allegations have been proven and these proven allegations amount to unprofessional conduct.
46. The Hearing Tribunal will consider submissions with respect to appropriate orders or sanctions at a future date, to be arranged by the Hearings Director.

Signed on behalf of the Hearing Tribunal by the Chair:



Dr. Neelam Mahil

Dated this 23rd day of June, 2023.