

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

**HEARING TRIBUNAL OF THE COLLEGE OF  
PHYSICIANS & SURGEONS OF ALBERTA  
DECISION ON SANCTION  
December 11, 2023**

## **I. INTRODUCTION**

1. The Hearing Tribunal of the College of Physicians & Surgeons of Alberta (the "College") met by video conference on December 1, 2023 to consider written submissions on sanction.
2. Prior to meeting, Dr. Neelam Mahil recused herself and did not participate in deliberations on vote on sanctions to be imposed.
3. The remaining members of the Hearing Tribunal carried out their duties pursuant to Section 16(3) of the Health Professions Act ("HPA"). The members of the Hearing Tribunal were:
  - Mr. Douglas Dawson (Acting Chair and Public Member);
  - Dr. Fraulein Morales (Physician Member);
  - Ms. Shelly Flint (Public Member).
4. Mr. Fred Kozak of Edmonton was also present and acted as independent legal counsel for the Hearing Tribunal.

## **II. BACKGROUND**

5. In its decision dated June 23, 2023, the Hearing Tribunal found that the charges were proven on a balance of probabilities. The Hearing Tribunal found that the proven Allegations constituted unprofessional conduct as per the HPA and specifically sections 1(1)(pp) (ii), (vii)(b) (xii) of the HPA 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.
6. The unprofessional conduct demonstrated by Dr. Nsair was his failure 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 College regarding investigations into his conduct. The Hearing Tribunal directed it would receive written submissions on sanction and provided timelines for the parties to provide their written submissions. The Complaints Director provided written submissions on sanction. Dr. Nsair did not provide any written submissions.

### **III. DOCUMENTS PROVIDED**

7. The Hearing Tribunal received the following written submissions from the parties:
  - a) Written Submissions on Sanction of the Complaints Director dated September 14, 2023.

### **IV. SUBMISSIONS ON SANCTION**

#### ***Submissions of the Complaints Director***

8. The Complaints Director submitted that, given the finding of unprofessional conduct relating to two separate charges, the appropriate sanction to impose on Dr. Nsair should include:
  - a) a reprimand;
  - b) a fine of \$5000; and
  - c) full costs for the investigation and hearing of this matter.

### **V. DECISION OF THE HEARING TRIBUNAL**

9. Having reviewed the evidence and the submissions on sanction, the Hearing Tribunal finds that the Submissions of the Complaints Director are reasonable and appropriate. Accordingly, the Hearing Tribunal makes the following orders:
  - a) Dr. Nsair is hereby reprimanded;
  - b) Dr. Nsair is ordered to pay a fine of \$5,000.00; and
  - c) Dr. Nsair is ordered to pay the full costs of the investigation and hearings of this matter, not to exceed \$20,000.00.

### **VI. REASONS OF THE HEARING TRIBUNAL**

10. The unprofessional conduct exhibited by Dr. Nsair harms the integrity of the profession and demonstrates a failure to meet minimum standards of professional and ethical judgment and required communication and cooperation with investigators, all of which is expected of all Alberta physicians. Dr. Nsair failed to meet his obligations as a regulated member by not completing a mandatory course, by not responding to the College, and by not cooperating with an investigation following a complaint. Moreover, he repeatedly failed to do so for almost five years and continues to engage in this same unprofessional conduct to this day.
11. The imposition of a fine of \$5,000.00 is consistent with previous cases with similar facts, and will serve as a specific deterrent to Dr. Nsair and as a

general deterrent to physician members regarding the importance of compliance and cooperation with their regulating body – beyond a general reprimand.

12. The Order to pay the investigation and hearing costs is warranted and appropriate in this case. In *Jinnah*, the Alberta Court of Appeal specifically recognized that when a professional fails to cooperate with College investigators and forces the College to spend more resources than is necessary to ascertain certain facts related to a complaint, the professional can be ordered to pay those costs.

## **VII. CONCLUSION**

For the reasons set out above, the Hearing Tribunal makes the following orders pursuant to section 82 of the HPA:

- a) Dr. Nsair is hereby reprimanded;
- b) Dr. Nsair is ordered to pay a fine of \$5,000.00; and
- c) Dr. Nsair is ordered to pay the full costs of the investigation and hearings of this matter, not to exceed \$20,000.00.

Signed on behalf of the Hearing Tribunal:

X 

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Mr. Douglas Dawson, Acting Chair

Signed by: Jennifer White (Hearings Coordinator)

Dated this 11<sup>th</sup> day of December, 2023.