

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. SHAHRAM JABBARI-ZADEH

**DECISION OF THE HEARING TRIBUNAL OF
THE COLLEGE OF PHYSICIANS
& SURGEONS OF ALBERTA
December 16, 2022**

I. INTRODUCTION

1. The Hearing Tribunal held a hearing into the conduct of Dr. Shahram Jabbari-Zadeh on June 28, 2022. The members of the Hearing Tribunal were:

Dr. Goldees Liaghathi-Nasseri of Rocky View as Chair;
Dr. Debakanta Jena of Medicine Hat;
Mr. David Rolfe of Red Deer (public member);
Ms. Sheri Epp of Calgary (public member).

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

Also present were:

Ms. Stacey McPeck, legal counsel for the Complaints Director;
Dr. Shahram Jabbari-Zadeh;
Mr. James Heelan, legal counsel for Dr. Jabbari-Zadeh.

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 allegation:
 1. On or about December 27, 2018, you did display a lack of skill or judgment in the provision of professional services to your patient, [REDACTED], when she presented with gastric complaints and requested further investigation of her symptoms, particulars of which include one or more of the following:
 - a. Failing to question the patient regarding the presence or absence of alarm features,
 - b. Failing to conduct an adequate physical examination, and
 - c. Failing to create an adequate patient record given the patient's presenting history and complaints.
5. Dr. Shahram Jabbari-Zadeh admits the allegation in the Notice of Hearing as being true ("the Allegation") and that such conduct amounts to unprofessional conduct. The hearing proceeded by way of an Agreed Exhibit Book and Joint Submission on the issue of penalty by Dr. Shahram Jabbari-Zadeh and the Complaints Director ("Joint Submission").

IV. EVIDENCE

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

- Exhibit 1:** Agreed Exhibit Book
- Tab 1:** Notice of Hearing dated November 25, 2021
 - Tab 2:** Letter of Complaint from [REDACTED], dated February 24, 2019
 - Tab 3:** Letter of Response from Dr. Jabbari-Zadeh, dated May 6, 2019
 - Tab 4:** Letter from [REDACTED], dated March 30, 2020
 - Tab 5:** Patient records from Fox Creek Healthcare Centre, between December 22, 2018 and December 24, 2018
 - Tab 6:** Patient record from ConnectCare Medical Clinic – Spruce Grove, dated December 27, 2018
 - Tab 7:** Patient records from Misericordia Community Hospital for emergency attendance on January 21, 2019
 - Tab 8:** Patient records from University of Alberta Hospital
 - Tab 9:** Patient records from Westview Health Centre
 - Tab 10:** Complaint Review Committee decision, dated April 27, 2021
 - Tab 11:** Analysis Section of the Investigation Report of Dr. Overli-Domes, dated June 21, 2020
 - Tab 12:** Standards of Practice: Patient Record Content
- Exhibit 2:** 2020-07-31 Appendix A to Investigation Report - Literature Review
- Exhibit 3:** Signed Admission and Joint Submission Agreement

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

- a. Brief of Law Regarding Joint Submissions dated May 17, 2022:
- b. Case Law:
 - i. *Lakhani (Re)*, Decision of the Hearing Tribunal of the College of Physicians & Surgeons of Alberta, June 20, 2018
 - ii. *Henning (Re)*, 2017 CanLII 141842 (AB CPSDC);
 - iii. *Alshawabkeh (Re)*, 2017 CanLII 85387 (AB CPSDC);

- iv. *Tlhape (Re)*, 2016 CanLII 74172 (AB CPSDC);
- v. *Jaswal v. Medical Board (Nfld.)*, 1996 CanLII 11630 (NL SC).

V. SUBMISSIONS REGARDING THE ALLEGATION

Submission by Counsel for the Complaints Director

8. The Allegation relates to December 27, 2018, when the patient presented with gastrointestinal complaints and requested a scope, as recommended to her after two visits to the Emergency Department on December 19, 2018 and December 24, 2018, for gastrointestinal concerns. A decision of the Complaint Review Committee dated April 27, 2021, determined that there was sufficient evidence of unprofessional conduct to warrant a hearing.
9. Dr. Jabbari-Zadeh faces a single charge that he displayed a lack of skill or judgment with three particulars: that he failed to question the patient about the presence or absence of alarm features; that he failed to conduct an adequate physical examination; and that he failed to create an adequate record.
10. The analysis section of the Investigation Report (Tab 11) identifies concerns with the patient record.
11. Specifically, a review of Dr. Jabbari-Zadeh's December 27, 2018, patient record documentation shows:
 - a. Insufficient relevant history;
 - b. No review of the ED records of the two recent Emergency Department presentations;
 - c. No questioning regarding the presence/absence of alarm features;
 - d. Insufficient relevant examination;
 - e. Insufficient assessment to support Dr. Jabbari-Zadeh's diagnosis/differential diagnosis;
 - f. Insufficient assessment to support Dr. Jabbari-Zadeh's documented plan; and
 - g. Insufficient follow-up advice.
12. Counsel for the Complaints Director submitted that the Standard of Practice for Patient Record Content is applicable. A regulated member must ensure that the patient record is an accurate and complete reflection of the patient encounter to facilitate continuity in patient care and comply with legislation and institutional expectations. Clinical notes for each patient encounter must include presenting concerns, relevant physical examination findings, assessment and follow-up plan. A cumulative patient profile must be contextual to the physician-patient relationship and interaction.
13. Dr. Jabbari-Zadeh has admitted to the conduct, and the Hearing Tribunal's obligations are contained in section 70 of the HPA. The evidence supports the

conclusion that the behaviour occurred and amounts to unprofessional conduct.

14. Counsel for the Complaints Director highlighted key portions of the Exhibit Book. The analysis section of the Investigation Report (Tab 11) identifies concerns with the patient record. There were no notes about alarm features like rectal bleeding. This is important information when considering the need for an endoscopy. There was no comprehensive review of the presence or absence of other gastrointestinal symptoms. The patient record did not include a medical history. There were no behavioural factors, no mention of diet, dietary fibre, fluid intake, dehydration or physical activity. There was no digital or visual rectal examination. No further management was documented, and no advice for follow-up for new, recurrent or worsening symptoms.
15. Counsel for the Complaints Director submitted that the Standard of Practice for Patient Record Content is applicable. A regulated member must ensure that the patient record is an accurate and complete reflection of the patient encounter to facilitate continuity in patient care, and be compliant with legislation and institutional expectations. There must be clinical notes for each patient encounter including presenting concern, relevant findings, assessment and follow-up when indicated. There must be a cumulative patient profile contextual to the physician-patient relationship and interaction.
16. Dr. Jabbari-Zadeh has admitted to the conduct and the Hearing Tribunal's obligations are contained in section 70 of the HPA. The evidence supports the conclusion that that the behaviour occurred and that this amounts to unprofessional conduct.
17. As noted in the Investigation Report, the presenting symptoms called for further investigation and a more thorough physical examination, which showed a lack of knowledge, skill or judgment on the part of Dr. Jabbari-Zadeh.
18. Dr. Jabbari-Zadeh did not comply with the Standard of Practice for Patient Record Content.
19. When seeking medical care, the public expects an accurate account of their medical history, presenting complaint, and physical examination followed by a plan for their concern. When a physician fails to do so, they risk harm to the medical profession's reputation.

Submissions by Counsel for Dr. Jabbari-Zadeh

20. Dr. Jabbari-Zadeh acknowledges that his assessment was inadequate and that he failed to question the patient regarding alarm features, conduct an adequate exam and create an adequate patient medical record. All displayed a lack of skill and judgment in providing professional medical services.

21. The Investigation Report concludes that it is unlikely that a referral on December 27, 2018, would have resulted in a GI consultation/endoscopy before January 21, 2019, when the patient entered the hospital.

VI. FINDINGS REGARDING THE ALLEGATION

22. The evidence shows that the Allegation is factually proven. The patient had an appointment with Dr. Jabbari-Zadeh on December 27, 2018. The Investigation Report and the patient records provide sufficient information to show that Dr. Jabbari-Zadeh failed to question the patient regarding the presence of alarm features, failed to conduct an adequate physical examination, and failed to create an adequate patient record given the patient's presenting history and complaints.
23. On January 20, 2019 the patient started to have blood with bowel movements. By 9:00 p.m. that night the patient was continually passing blood and clots and passed out in the bathroom. The patient was taken to hospital where she had a four-day stay in the ICU, three more days on the ward and 17 units of blood. She was eventually diagnosed with a dieulafoy lesion.
24. The Investigation Report ultimately concluded that it was unlikely that a colonoscopy referral given on December 27, 2018 would have changed the outcome of this case.
25. The Hearing Tribunal found that the proven Allegation constitutes 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

...

26. When Dr. Jabbari-Zadeh failed to question the patient regarding the presence alarm features and failed to conduct an adequate physical examination, he displayed a lack of skill or judgment in the provision of professional services. The inadequate patient record contravened the Standard of Practice on Patient Record Content. The Hearing Tribunal concluded that section 1(1)(pp)(xii) of the HPA did not apply in this situation. Although the conduct constitutes professional misconduct, it did not rise to the level of conduct that harms the integrity of the regulated profession.

27. The conclusion that no harm may have been done to the patient because of the likely delay in receiving an endoscopy does not affect the finding of unprofessional conduct. The College complaint and discipline process do not require proof of harm. Instead, the focus is on protection of the public and regulation of the profession in the public interest.

VII. SUBMISSIONS REGARDING SANCTION

28. After the Hearing Tribunal advised the parties of its findings in relation to the Allegation, the Hearing Tribunal invited the parties to make submissions with respect to sanction. The parties presented a Joint Submission Agreement regarding sanction ("Joint Submission").

Submissions by Counsel for the Complaints Director

29. 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.
30. There are few aggravating factors in this particular situation. The patient believes that Dr. Jabbari-Zadeh's conduct has had a great impact on her.
31. There are several mitigating factors. There is no prior disciplinary history. The conduct in issue occurred a single time and is not part of a larger pattern of conduct. Dr. Jabbari-Zadeh acknowledged the conduct and allowed the hearing to proceed by way of joint submission.
32. Dr. Jabbari-Zadeh took a course on patient records before the investigation was complete, and this shows an acknowledgment of his conduct and a commitment to improving.
33. The proven conduct falls on the lower end of the spectrum regarding nature and gravity. There is no element of intention or unethical conduct. The failure to inquire about alarm features and the inadequate physical exam are the most concerning aspects of this complaint. They relate to the medical profession's purpose: to diagnose and treat illness.
34. Dr. Jabbari-Zadeh has been on the register for 12 years. The age and mental condition of the patient is not an aggravating factor. The Complaints Director is unaware of any serious financial or other penalties that Dr. Jabbari-Zadeh has suffered.
35. Four cases provide the Hearing Tribunal with a range of reasonable sanctions. In *Tlhape*, the member failed to perform an admission history and a physical examination. They received a reprimand, a practice review at their own cost, and the costs of the investigation and hearing. *Tlhape* involved the care of a single patient over the course of five months and the failure to perform an adequate physical examination. In contrast the situation before this Hearing Tribunal involves a single isolated patient encounter.

36. In *Henning*, there were deficiencies with medical records and the coordination of follow up care. The member received a caution as well as 50 percent of the costs of the investigation and hearing. *Henning* involved a referral from the Complaint Review Committee, and the breach of the Standard of Practice on Patient Record Content was the primary concern.
37. In *Alshawabkeh*, the member created an inadequate patient chart which was incongruent with the presenting complaints. The member received a reprimand as well as 40 percent of the costs of the investigation and hearing, was required to complete a course which included medical record keeping, and was monitored by the Continuing Competence Program. With complaints that involve a lack of skill or judgment, this decision shows the importance of education and monitoring.
38. In *Lakhani*, the member ordered an echocardiogram but the results were never reviewed and were simply placed on the patient record. The patient was never informed of an incidental finding on the ECG. The member received a reprimand and 50 percent of the investigation and hearing costs.
39. The *Jaswal* factors emphasize the importance of specific and general deterrence and the need to promote rehabilitation. The reprimand satisfies the need for both specific and general deterrence. It demonstrates to Dr. Jabbari-Zadeh that his conduct fell below the standard, and signals to the profession that such deficiencies will be taken seriously. It reinforces the requirement to meet the standard of care and the Standards of Practice.
40. The Individual Practice Review promotes rehabilitation. Dr. Jabbari-Zadeh can thoroughly review his practice and implement recommended changes. The proposed sanction is proportional to the conduct and in line with previous cases.
41. Regarding costs, Dr. Jabbari-Zadeh will bear the costs of the Individual Practice Review and this weighs against a significant costs award. The agreed costs of 60 percent are appropriate and proportional.

Submissions by Counsel for Dr. Jabbari-Zadeh

42. Counsel for Dr. Jabbari-Zadeh submitted that this matter was initially resolved informally with the Complaints Director and there has been cooperation from the outset of this matter. As part of that informal resolution Dr. Jabbari-Zadeh undertook a charting course and some education with respect to gastrointestinal concerns.
43. The Joint Submission is an appropriate one. The cases submitted by counsel for the Complaints Director provide helpful guidance and show that a reprimand and payment of a portion of the costs would be appropriate. Dr. Jabbari-Zadeh has also agreed to undergo an Independent Practice Review. This will be a significant undertaking with high costs and will protect the public interest.
44. There are a few factors in *Jaswal* that should be highlighted. Regarding the nature and gravity of the proven allegations, they are on the less serious

scale in relation to matters that end up before a Hearing Tribunal. Initially the Complaints Director determined that this Allegation did not require a hearing. Regarding the previous character of the physician, there are no prior College sanctions. Dr. Jabbari-Zadeh has acknowledged from the outset his failings here.

45. The proposed penalty in the Joint Submission is a reasonable one and should be accepted.

Question from the Hearing Tribunal

46. The Hearing Tribunal asked about how the reprimand will be delivered. Counsel for the Complaints Director stated that what has been done previously is that the written decision serves as the reprimand, and that is what is anticipated here. Counsel for Dr. Jabbari-Zadeh submitted that it was appropriate for the written decision to serve as the reprimand.

VIII. ORDER AND REASONS FOR ORDER

47. The Hearing Tribunal carefully considered the Joint Submission and the submissions of the parties. After considering the factors noted in *Jaswal*, the Hearing Tribunal accepted the joint recommended sanction. The Joint Submission takes into account the nature of the findings of the Hearing Tribunal. It also addresses the issues that brought Dr. Jabbari-Zadeh before the Hearing Tribunal. The Hearing Tribunal finds that this recommended sanction appropriately considers the factors in *Jaswal*. The Hearing Tribunal also considered the penalty in light of the principle that joint submissions should not be interfered with lightly.
48. The Hearing Tribunal understands that the penalty ordered should protect the public and enhance public confidence in the ability of the College to regulate the profession. This is achieved through a penalty that addresses specific deterrence, general deterrence and, where appropriate, rehabilitation and remediation. These factors are addressed through the Independent Practice Review and reprimand. Dr. Jabbari-Zadeh will also be responsible for a significant portion of the costs. Dr. Jabbari-Zadeh should take the comments in the written decision as his reprimand.
49. The Hearing Tribunal hereby orders pursuant to section 82 of the HPA:
 - a. Dr. Jabbari-Zadeh shall receive a reprimand;
 - b. Dr. Jabbari-Zadeh shall, at his own expense, participate in an Individual Practice Review, including any recommended remediation that results.
 - i. Dr. Jabbari-Zadeh 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; and

- c. Dr. Jabbari-Zadeh shall be responsible for 60% of the costs of the investigation and the hearing before the Hearing Tribunal.

Signed on behalf of the Hearing Tribunal by the Chair:



Dr. Goldees Liaghati-Nasseri

Dated this 16th day of December, 2022.