

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. AASIM MALIK

**DECISION OF THE HEARING TRIBUNAL OF  
THE COLLEGE OF PHYSICIANS  
& SURGEONS OF ALBERTA  
July 11, 2022**

## **I. INTRODUCTION**

1. The Hearing Tribunal held a hearing into the conduct of Dr. Aasim Malik on May 26, 2022. The hearing was conducted virtually via Zoom.
2. The members of the Hearing Tribunal were:
  - Dr. Don Yee of Edmonton as Chair;
  - Dr. Neelam Mahil of Edmonton;
  - Ms. Archana Chaudhary of Edmonton (public member); and
  - Ms. Sheri Epp of Calgary (public member).
3. Mr. Jason Kully acted as independent legal counsel for the Hearing Tribunal.
4. Also in attendance at the hearing were:
  - Mr. Craig Boyer, legal counsel for the Complaints Director of the College of Physicians and Surgeons of Alberta (the "College");
  - Dr. Aasim Malik;
  - Mr. James Heelan and Ms. Elizabeth Hyndman, legal counsel for Dr. Malik.

## **II. PRELIMINARY MATTERS**

5. 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.
6. The hearing was open to the public pursuant to section 78 of the *Health Professions Act* ("HPA"). There was no application to close the hearing.

## **III. CHARGES**

7. The Notice of Hearing listed the following allegations:<sup>1</sup>
  - 1) While working as a member of the medical staff of the Ponoka Hospital – Centennial Center for Mental Health and Brain Injury, you did demonstrate conduct that harms the integrity of the medical profession, particulars of which include one or more of the following:
    - a) On or about December 2, 2016, you did ask [REDACTED] about her sex life and sexual preferences, and you told her about your sexual preferences;
    - b) On or about December 2, 2016, you did hug [REDACTED] without her consent;

---

<sup>1</sup> Although the Notice of Hearing referred to the individuals by their full name, for the purposes of its decision, the Hearing Tribunal has referred to each of the individuals by their initials.

- c) On or about September 28, 2015, you did tell [REDACTED] about your personal sex life and you asked [REDACTED] as to when she had last had sex;
  - d) On or about February 3, 2016, you did tell [REDACTED] details about your personal sex life and asked her what you should do to fulfill your sexual needs;
  - e) On or about December 19, 2016, you did tell [REDACTED] that she should have sex with as many different people as she could while she was young;
  - f) On or about December 19, 2016, you did tell [REDACTED] that you were a very sexual person and enjoyed all types of sex;
  - g) On or about December 19, 2016, you did tell [REDACTED] details about your personal sex life;
  - h) In late December 2016 or early January 2017, you did ask [REDACTED] if she was sexually active and how many sexual partners she had been with;
  - i) You made comments to one or more of [REDACTED], [REDACTED], [REDACTED], and [REDACTED] which were understood by them as being a proposition to have sex with you; and
  - j) In or about September 2015 you did hug [REDACTED] without her consent.
- 2) In or about October 2015, you did demonstrate a lack of knowledge of or lack of skill or judgment in the provision of professional services by providing a prescription for amoxicillin to [REDACTED] for her child, [REDACTED], without you having seen and assessed the child.

#### **IV. EVIDENCE**

8. By agreement, the following Exhibits were entered into evidence during the hearing:

**Exhibit 1:** Agreed Exhibit Book containing Tabs 1 to 18

**Tab 1:** Notice of Hearing dated September 22, 2021

**Tab 2:** Mr. James Heelan letter to Dr. Caffaro re investigation by Alberta Health Services dated April 20, 2017

**Tab 3:** Dr. Michael Caffaro, Assistant Registrar and Complaints Director, memo to file dated May 5, 2017

- Tab 4:** Undertaking of Dr. Aasim Malik dated May 23, 2017
- Tab 5:** Mr. James Heelan letter to K. Ivans, investigator, dated August 29, 2017 with original letters of complaint and letter of response of Dr. Malik in the AHS proceedings.
- Tab 6:** Shoppers Drug Mart facsimile to Ms. Kristy Ivans with attached prescriptions dated March 20, 2018.
- Tab 7:** Mr. James Heelan to Ms. Kristy Ivans with further information from Dr. Malik dated March 28, 2018.
- Tab 8:** Dr. Aasim Malik letter of response to Ms. Kristy Ivans dated October 31, 2018.
- Tab 9:** Alberta Health Services Triggered Initial Assessment report dated June 29, 2017.

### **Exhibits relevant to the Sanction phase**

- Tab 10:** The Alliance Assessment Center, Dr. Gabrielle Hobday, report dated 2019.
- Tab 11:** College of Physicians and Surgeons of British Columbia Certificate of Continuing Medical Education Certificate of Attendance – Professionalism in Medical Practice: Avoiding the Pitfalls dated November 2 and 3, 2018.
- Tab 12:** Dr. Dawn Hartfield, Assistant Registrar and Complaints Director, meeting memorandum regarding interviews of ■■■, ■■■■, ■■■ and ■■■ dated June 3, 2021.
- Tab 13:** Dr. Dawn Hartfield memo regarding interview of Dr. Balouch dated May 26, 2021.
- Tab 14:** Dr. Dawn Hartfield memo regarding interview of Dr. Batool dated May 26, 2021.
- Tab 15:** Curriculum Vitae of Dr. Aasim N. Malik received from Alberta Health Services.
- Tab 16:** Schulich Medicine & Dentistry Certificate of Attendance – Understanding boundaries and Managing the Risks Inherent in Doctor-Patient relationships dated June 3, 2017.
- Tab 17:** College of Physicians and Surgeons of Saskatchewan, Mr. Bryan Salte, Associate Registrar, letter to Dr. Dawn Hartfield dated May 3, 2021.
- Tab 18:** College of Physicians and Surgeons of Saskatchewan documents:
- Certificate of Standing dated October 31, 2011

- Certificate of Standing dated October 31, 2011
- Policy – disclosure of information in Certificates of Status
- Certificate of Standing dated April 10, 2014
- Policy – disclosure of information in Certificates of Status
- Certificate of Standing dated April 10, 2014
- Dr. Bryan Salte letter to College of Physician and Surgeons of Alberta dated May 15, 2014
- Dr. Bryan Salte letter to College of Physician and Surgeons of Alberta dated April 1, 2015

**Exhibit 2:** Signed Admission and Joint Submission Agreement

**Exhibit 3:** Impact statement from [REDACTED]

**Exhibit 4:** Impact statement from [REDACTED]

## V. SUBMISSIONS REGARDING ALLEGATION

### Submissions on Behalf of the Complaints Director

9. Mr. Boyer summarized the contents of Exhibit 1. He stated the allegations set out in the Notice of Hearing originate from a series of events occurring from late 2015 to early 2017 involving interactions between Dr. Malik and five female allied health professionals he worked with at the Centennial Centre in Ponoka. Four of the individuals were [REDACTED] and one was a [REDACTED].
10. Mr. Boyer stated the matter originally came from an internal complaint to Alberta Health Services and pointed out when the initial complaints were received internally to Alberta Health Services regarding Dr. Malik's behavior towards these 5 individuals a Triggered Initial Assessment investigation process was initiated as per Alberta Health Services Bylaws. Subsequently the complaints were reported to the College.
11. Mr. Boyer highlighted the original complaints made against Dr. Malik (p 24, exhibit 1), the response from Dr. Malik's legal counsel (p 42, exhibit 1), Dr. Malik's response to the complaints (p 44, exhibit 1) and the Triggered Initial Assessment report (p 46, exhibit 1).
12. Mr. Boyer stated that for today's hearing, there was an admission from Dr. Malik to the allegations in the Notice of Hearing and that his admitted conduct does constitute unprofessional conduct.
13. Mr. Boyer advised that under section 70 of the HPA, a Hearing Tribunal can accept an admission but in doing so it must be satisfied that there is an evidentiary basis which supports the admission. He submitted that the evidence in Exhibit 1 supported Dr. Malik's admission to the allegations and

provided a basis for the Tribunal to accept that as an admission of unprofessional conduct.

14. With respect to Allegation 2, Mr. Boyer stated that this involved Dr. Malik prescribing treatment to a child of one of the complainants without medical documentation or a chart and that the prescribing information was provided in Exhibit 1 (p 36). He stated Dr. Malik admitted to this allegation.
15. Mr. Boyer reiterated that the evidence in the Agreed Exhibit Book supported Dr. Malik's admission to the Allegations and that the Hearing Tribunal should therefore accept Dr. Malik's admission and find that his conduct does constitute unprofessional conduct.

### **Submissions on Behalf of Dr. Malik**

16. Mr. Heelan acknowledged Mr. Boyer's submissions and confirmed that Dr. Malik admitted to the Allegations in the Notice of Hearing and that the admitted conduct does amount to unprofessional conduct as defined in the HPA.

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

17. The Hearing Tribunal carefully reviewed and considered the evidence in the Exhibits and submissions of the parties. The Hearing Tribunal finds that the Allegations in the Notice of Hearing are factually proven and that the evidence does support Dr. Malik's admission. The Tribunal also finds that Dr. Malik's conduct constitutes unprofessional conduct.

## **VII. FINDINGS AND REASONS**

18. The Hearing Tribunal heard verification from Mr. Heelan that Dr. Malik does admit to the Allegations in the Notice of Hearing.
19. The Hearing Tribunal found there was sufficient evidence to support Dr. Malik's admission and that the allegations were proven on a balance of probabilities. The Hearing Tribunal also found that the admitted conduct does constitute unprofessional conduct.
20. The Allegations in the Notice of Hearing state that in a period of time spanning September 2015-January 2017 Dr. Malik engaged in several conversations with 4 female healthcare professionals he worked with at the Centennial Centre in Ponoka where he used inappropriate sexual language, asked them detailed questions about their sex lives, disclosed details of his personal and sex life to them, hugged one [REDACTED] and one [REDACTED] without their consent and provided an antibiotic prescription for a child of one of the [REDACTED] without assessing the child or creating a medical record of the care provided.

21. Evidence in Exhibit 1 shows a Triggered Initial Assessment investigation was performed where the allegations from the 4 [REDACTED] were founded. As part of the investigation, Dr. Malik admitted to having inappropriate conversations of a sexual nature with the four [REDACTED], specifically about their sex life and to a lesser degree his own sex life, but provided that his motivations for engaging in these conversations were misunderstood.
22. The College became aware of the AHS investigation and a complaint file was opened. Dr. Malik signed an undertaking with the College in May 2017 (p 20, exhibit 1).
23. The Tribunal reviewed evidence of a reply to the College from Dr. Malik's legal counsel documenting Dr. Malik's acknowledgement of having conversations with his work colleagues that were sexual in nature where they discussed details of their sex lives and he disclosed details of his sex life (p 42, exhibit 1).
24. In his own reply to the College, Dr. Malik acknowledged he did have conversations with his co-workers which included discussion of personal sexual details and admitted his behavior was inappropriate (p 44, exhibit 1).
25. The Tribunal was also provided a copy of the prescription Dr. Malik wrote for Amoxicillin for [REDACTED]'s daughter dated November 18, 2015. There was no evidence presented of any formal medical chart Dr. Malik kept for the child, and Dr. Malik acknowledged he did not personally assess the child but instead relied on [REDACTED]'s verbalized description of the scenario to make a clinical decision. In reply to the College on his behalf, Dr. Malik's legal counsel explained that Dr. Malik was approached on an evening he was on call and the child's mother could not get her in to see their family physician, so Dr. Malik provided the prescription as a professional courtesy. Dr. Malik did not bill for this encounter (p 43, exhibit 1). In his reply to the College, it was stated that Dr. Malik recognized this was an error and that it was ill-advised for him to proceed in this manner.
26. In the process of undergoing his Alliance Center Assessment, Dr. Malik acknowledged he had conversations with the four [REDACTED] that may have included sexualized comments (p 62, exhibit 1). While he stated he never meant to proposition or offend them by his comments, he took responsibility for the distress his comments caused.
27. The Hearing Tribunal reviewed the impact statements from two of the individuals who complained about Dr. Malik. Both speak to the significant distress they experienced because of Dr. Malik's comments to them and his unwanted hug and both provided similar commentary about how uncomfortable they felt in the workplace and around Dr. Malik after the events occurred.

28. In light of the evidence, including the Triggered Initial Assessment investigation report and Dr. Malik's repeated admissions, the Tribunal finds that in a period of time spanning September 2015-January 2017 Dr. Malik engaged in several conversations with 4 female healthcare professionals he worked with at the Centennial Centre in Ponoka where he used inappropriate sexual language, asked them detailed questions about their sex lives, disclosed details of his personal and sex life to them, made comments which were understood by them as being a proposition to have sex with Dr. Malik, hugged one [REDACTED] and one [REDACTED] without their consent, and provided an antibiotic prescription for a child of one of the complainants without assessing or seeing the child.
29. The Hearing Tribunal finds that the evidence in Exhibit 1, 3, and 4 does factually prove Allegation 1 (and all its subparts) and Allegation 2 to be true.
30. Additionally, the Tribunal finds that Dr. Malik's admitted conduct does constitute unprofessional conduct.
31. The Tribunal considered the different sections of the definition of unprofessional conduct under the HPA, including:
  - a. lack of knowledge, skill or judgment in the provision of professional services [section 1(1)(pp)(i)];
  - b. contravention of the HPA, the code of ethics, or standards of practice [section 1(1)(pp)(ii)]; and
  - c. conduct that harms the integrity of the medical profession [section 1(1)(pp)(xii)].
32. In this case, the Tribunal found that Dr. Malik's admitted conduct satisfied all of the above sections of the definition of unprofessional conduct found in the HPA.
33. Dr. Malik provided a prescription for an antibiotic to a child he had not personally assessed, showing a lack of judgement in the provision of professional services. Dr. Malik's actions fell below the expectations of a physician as a physician exercising adequate skill and judgement would always assess a patient in person prior to prescribing treatment and keep a proper medical record of such an encounter. Prescribing treatment without assessing a patient raises the potential of providing improper care.
34. Dr. Malik's sexualized comments and unwanted touching made towards his 4 [REDACTED] and 1 [REDACTED] co-workers contravene section 31 of the CMA Code of Ethics and Professionalism, which imposes a requirement on physicians to treat colleagues with dignity and as persons worthy of respect. Dr. Malik's actions crossed professional and personal boundaries and were inappropriate. There was an unequal power dynamic between himself and his co-workers, and as a professional, Dr. Malik should have been aware of his position of



authority and should have recognized that his actions were not appropriate in the workplace. As a result of his interactions, Dr. Malik's co-workers were uncomfortable and questioned themselves. Dr. Malik was responsible for the significant impact his behaviors and interactions had on his co-workers.

35. Additionally, for the above reasons, Dr. Malik's conduct also brought harm to the integrity of the medical profession. Members of the public would be rightfully concerned if they learned about Dr. Malik's actions towards his co-workers, particularly given his position of power and privilege as a physician. As a member of a regulated profession, Dr. Malik has an obligation to treat all co-workers with dignity and respect.
36. For these reasons, Dr. Malik's admitted conduct constitutes unprofessional conduct.

## **VIII. SUBMISSIONS ON SANCTION**

### **Submissions on Behalf of the Complaints Director**

37. Mr. Boyer advised that the parties were proceeding by way of a sanction agreement. The Joint Submission Agreement outlined the sanction jointly proposed by the parties, which requested a 6-month suspension for Dr. Malik starting on a date and served in a manner as determined by the Complaints Director, that Dr. Malik undergo a multi-disciplinary assessment, that Dr. Malik take a course on boundaries, professionalism and ethics, that Dr. Malik prepare and submit a letter summarizing his understanding of the effect of his conduct on the 5 co-workers who complained about him, that the current practice conditions on Dr. Malik's practice permit to continue for 6 months following completion of his suspension, and that Dr. Malik be responsible for payment of two thirds of the costs of the investigation and hearing.
38. Mr. Boyer presented a Brief of Law on Joint Submissions which focused on the Supreme Court of Canada case of *R v Anthony Cook*. He reviewed the law on joint submissions and stated that the law is clear that a decision maker such as the Tribunal should take the joint submission with considerable gravity and only reject it if it is manifestly unjust and would not be in the public interest to accept the joint submission.
39. Mr. Boyer stated he believes the Tribunal would be satisfied that the parties considered the relevant factors to determine an appropriate sanction and that the proposed sanctions addressed the elements of sanction and would not be contrary to the public interest.
40. Mr. Boyer summarized documents relevant to the issue of sanction, including the assessment Dr. Malik underwent at the Alliance Assessment Center (p 61, exhibit 1) and courses Dr. Malik completed related to boundaries and professionalism (p 75, exhibit 1).

41. Mr. Boyer advised that the parties agreed the assessment and courses already undertaken by Dr. Malik met the requirements to undergo a multi-disciplinary assessment and to complete a course on boundaries, professionalism, and ethics.
42. Mr. Boyer explained that as part of the process of coming to the Joint Submission on Sanction, the Complaints Director interviewed some of the five female complainants for their input regarding their expectations for Dr. Malik's sanction. Because there was a belief raised that Dr. Malik's behaviors occurred before he worked in Ponoka, two of his previous physician co-workers were also interviewed (p 77, exhibit 1). These physicians worked with Dr. Malik in Saskatchewan and neither observed Dr. Malik's to behave inappropriately with female co-workers. Therefore, the College found no evidence of a broader pattern or earlier history of similar conduct.
43. Mr. Boyer pointed out that the complainants interviewed by the Complaints Director all felt a 6–12-month suspension for Dr. Malik was not sufficient and two complainants indicated they would be satisfied with revocation of Dr. Malik's practice permit. He suggested that this expectation may have come from the belief that Dr. Malik's conduct with them pre-dated the events. He stated the evidence does not support this assumption.
44. Mr. Boyer explained the general principles of sanction including the need to provide rehabilitation and deterrence for the individual and the profession at large. He submitted that the joint sanction agreement does satisfy both concerns.
45. Mr. Boyer summarized several cases from the CPSA and College of Physicians and Surgeons of Ontario (CPSO) involving similar conduct which he submitted demonstrated that the proposed sanctions were appropriate. These included the following cases from the CPSA:
  - a. Dr. Alarape pleaded guilty to a criminal charge of sexual assault against a clinic co-worker and was subsequently found guilty of unprofessional conduct for the same conduct by a CPSA Hearing Tribunal. His sanction included a 15-month suspension and Mr. Boyer indicated this would be the high-water mark for length of suspension.
  - b. Dr. Chakravarty admitted to a CPSA Hearing Tribunal to inappropriately touching a medical student learner and requesting that she sleep with him. His sanction included a 6-month suspension of his practice permit.
  - c. Dr. Ovueni admitted to a CPSA Hearing Tribunal to hugging and air-kissing one of his medical office staff without her consent. His sanction included a 3-month suspension of his practice permit with the bulk of it held in abeyance.

46. Mr. Boyer stated the other cited cases from the CPSO involving Drs. Baird, Bhatt, Cameron and Carll show a range of suspension for this type of conduct between 2-15 months.
47. He indicated the agreed sanction for Dr. Malik of 6 months falls in the center ground of the cited cases. He stated a 6-month suspension is significant and longer suspensions would be reserved for cases where there is conduct such as criminal conduct or sexual intercourse with a patient. He submitted the proposed 6-month suspension aligns with the cited case law and the totality of Dr. Malik's admitted and proven conduct.
48. Mr. Boyer submitted that the agreed sanctions are more than adequate to address and satisfy the principles of deterrence and rehabilitation in this case. The proposed multidisciplinary assessment has been performed at the Alliance Center. The required professional development courses have been satisfied as Dr. Malik has completed a course on understanding boundaries in Doctor – Patient relationships at the Schulich School of Medicine and Dentistry (p 90, exhibit 1) from June 2017 and another on professionalism in medical practice through the University of British Columbia (p 75, exhibit 1) completed in November 2018.
49. Mr. Boyer pointed out that the current restrictions on Dr. Malik's practice that were put into place when Dr. Malik signed an undertaking with the College in May 2017 will remain in place for 6 months following completion of his suspension assuming there are no further complaints of a similar nature against Dr. Malik. These conditions include Dr. Malik is not allowed to treat clinic workers where he works and to have at least 2 employees always present in his clinic.
50. Mr. Boyer also pointed out that Dr. Malik will be responsible for paying two thirds of the costs of the investigation and hearing.
51. Mr. Boyer concluded that the agreed sanctions are consistent with outcomes from previous cases of similar physician conduct and that they satisfy the principles of deterrence and rehabilitation.

### **Submissions on Behalf of Dr. Malik**

52. Mr. Heelan stated his agreement with Mr. Boyer regarding the law of joint submissions. He explained the Joint Sanction agreement was the result of much deliberation and negotiation between Dr. Malik and the Complaints Director. He stated the most significant part of the Joint Sanction agreement is the 6-month suspension. He indicated that the work to come to a Joint Sanction agreement avoided a lengthy hearing and that the Tribunal should show great deference to the negotiated sanction. He stated the Tribunal should accept the sanction agreement unless it feels the sanctions are contrary to the public interest or would bring the administration of justice into disrepute.

53. Mr. Heelan stated that Dr. Malik's behavior was clearly unprofessional, harmful, and deserving of punishment. He confirmed that Dr. Malik is ashamed of his conduct and sorry for it. He explained that Dr. Malik has shown remorse and acknowledged his guilt in this matter and is prepared to reflect on the impact of his actions as he is required to write a letter summarizing his assessment of the effect of his conduct on his affected co-workers.
54. Mr. Heelan agreed that a 6-month suspension is a serious and significant penalty and that the cited case law is useful to inform the appropriateness of the length of suspension. He pointed out that in the case of Dr. Chakravarty, a 6-month suspension was ordered for inappropriate touching of a medical student learner and proposition to sleep together. Mr. Heelan argued that Dr. Malik's conduct was less severe but similar in theme with the existence of a power differential between the offending physician and their victim. He stated the Dr. Chakravarty case should represent the high-water mark for suspension length for this theme of conduct.
55. Mr. Heelan stated Dr. Alarape's conduct is the highest water mark given the criminal conviction but when dealing with the nuance of the current complaint, he suggested Dr. Chakravarty's case represents the high-water mark in terms of sanction.
56. Mr. Heelan pointed out Dr. Cameron received a 3-month suspension for unwelcome sexual comments. He advised this case is from 2013, and Mr. Heelan stated that since then societal tolerance for this kind of behavior has changed greatly and that if this case came before a panel today, the sanction would likely be higher than 3 months.
57. Dr. Ovueni was given a 3-month suspension for inappropriately hugging and air-kissing a medical office worker. Dr. Baird pleaded no contest to an allegation of making inappropriate sexualized comments to a patient by a Discipline Committee of the CPSO. Part of his sanction included a 2-month suspension. Dr. Carll was found guilty by a CPSO Discipline Committee of making inappropriate sexualized comments and inappropriately touching six female [REDACTED] co-workers over the span of approximately a decade. His sanction included a 12-month suspension with 6 months held in abeyance if a boundary course was attended.
58. Mr. Heelan stated the range of penalty in complaints similar in nature to Dr. Malik's case is 3-6 months based on the available case law. He submitted the circumstances in the present case lean towards the higher end of the 3-6-month range of sanction and concluded the proposed 6-month sanction was highly reasonable.
59. Mr. Heelan also submitted that Dr. Malik has taken serious and meaningful steps to address his conduct and demonstrate his commitment to address his

failure before the matter found its way through the CPSA process. He attended and completed 2 boundaries and professionalism courses, one at the Schulich School of Medicine in Ontario and another through the College of Physicians and Surgeons of British Columbia.

60. Mr. Heelan advised that Dr. Malik attended and participated in the assessment at the Alliance Center in Texas. This is a highly regarded physician assessment center where assessments are done to try to understand the reasons for such behaviors and ensure similar behaviors do not happen again. The assessments are a significant undertaking as they are done in-person over the course of several days.
61. Mr. Heelan summarized portions of the Alliance Assessment authored by Dr. Gabrielle Hobday. In it, she documents that Dr. Malik had high regard for the multi-disciplinary process. He expressed much shame and failure over his conduct. Dr. Malik described that his behavior is not his view of himself and felt shaken and shocked that he may have behaved in this manner. He did not deny the alleged conversations occurred and stated his motivations for them were to feel accepted and this vulnerability may have led to his eventual failure in his personal interactions with his female co-workers. She stated that Dr. Malik's participation in the Ontario boundaries course provided him insight into the underlying roots of his behavior as he was acting on a desire to be accepted and to please people. This desire for acceptance leads Dr. Malik into situations where he is overly familiar and personal in his interactions with coworkers. This desire to please people may have led to him engaging in informal consults on people he had never met or had as patients.
62. Dr. Hobday's report noted that at the time Dr. Malik believed his comments to his co-workers were contextualized and made to people he saw as equals and team members. Dr. Malik was able to think through the different ways in which his behaviors occurred and was able to talk about the reality that people do not view him as an equal team member since as the physician he is the team leader. Dr. Malik expressed he always wanted to feel accepted because he knows that he sounds different and looks different than other team members.
63. The Assessment informed that Dr. Malik found the boundaries course in Ontario to be very helpful. He was not given boundaries and professionalism teaching in his training and through the assessment process he gained a better self-awareness of his underlying desire to gain acceptance. Dr. Hobday writes that Dr. Malik now can recognize the dangers of being overly personal with colleagues and co-workers. Through the boundaries course, Dr. Malik was acutely aware of the delicate balance of relationships in the workplace and the dangers of curbside consultations and viewing oneself as friends with health-care team members especially when there is a power imbalance inherent in that work relationship.

64. Dr. Hobday wrote that to his credit, Dr. Malik has read extensively on the topic of professionalism and boundaries and has a very clear intellectual understanding of these issues. She stated that Dr. Malik has attained significant awareness of himself and his vulnerabilities and that he is now more cautious and conscious of his interactions with others. He now knows he does not need to focus on being accepted but rather to focus on being there for his patients. He feels the past year and a half has been an enlightening experience and that he now asks himself each day, "What do I need to do to be better?"
65. Dr. Hobday stated that Dr. Malik outlines the importance of boundaries by describing the potential for abuse that could occur. He can point out the problem of losing objectivity in managing medical problems of individuals who are not one's actual patients and the slippery slope of becoming more personal in the professional setting over time. Dr. Malik described his behaviors as his work life and social life essentially collapsing into one.
66. As part of her conclusions, Dr. Hobday described Dr. Malik's behaviors are best described as boundary crossings as opposed to frank boundary violations. His behaviors did not occur towards patients and were not based in deviant or predatory motives. She points out the root of his behavior is a vulnerable need to be accepted and liked. In his own words, Dr. Malik described his conduct as a 'collapse of professional and personal worlds'. Dr. Hobday wrote that the occurrence of this phenomenon is highly correlated with a lack of balance in a person's life such that all interpersonal interactions are garnered from the workplace due to long hours worked over an extended period.
67. Mr. Heelan pointed out that the assessment informed that Dr. Malik was fully cooperative and engaged with the assessment. Rather than focusing on defending himself, Dr. Malik spent his evaluation process engaged in a self-reflective manner where he openly spoke about his shame and regret over his behaviors. The clinical assessment team felt this to be true remorse and not simply narcissistic mortification, which is a significant risk factor when assessing risk for future behavioral transgressions. Mr. Heelan indicated that he specifically asked Dr. Hobday who indicated she felt that Dr. Malik is at very low risk for recurrence of similar boundary crossing or violation behaviors in the future.
68. Mr. Heelan then submitted that the Alliance Assessment report is informative. It demonstrated Dr. Malik's remorse for his conduct and that he is at low risk for re-offending in the future.
69. Mr. Heelan also considered the proposed sanctions with respect to the 13 factors from *Jaswal v Newfoundland Medical Board* that are useful to determine if a penalty is appropriate:
  - a) *The nature and gravity of the proven allegations.*

Dr. Malik's admitted conduct is a serious boundary violation involving multiple co-workers in the workplace.

b) *The age and experience of the offending physician.*

Dr. Malik is an experienced senior physician and therefore there is no argument that he made a foolish error out of being young and inexperienced.

c) *The previous character of the physician and in particular the presence or absence of any prior complaints or convictions.*

Dr. Malik has no prior CPSA convictions. There was a previous disciplinary matter with the CPSS relating to his responsiveness to that College. A pharmacist had complained to the College that Dr. Malik was not responsive to a request for information relating to prescriptions he issued (p 92, exhibit 1). Mr. Heelan pointed out Mr. Boyer's submission that when the CPSA investigated they found no evidence that Dr. Malik's behaviors are part of an overall pattern of behavior pre-dating his time at the Centennial Center.

d) *The age and mental condition of the offended patient.*

No patients were involved in Dr. Malik's conduct, but the victims were females who were vulnerable given the workplace power imbalance between physicians and other allied health professionals like [REDACTED] and [REDACTED].

e) *The number of times the offence was proven to have occurred.*

Dr. Malik's actions were repeated and occurred over a period of approximately 15 months.

f) *The role of the physician in acknowledging what had occurred.*

Dr. Malik acknowledged his role in the matter and provided an admission to the allegations. Mr. Heelan stated that Dr. Malik also has gained insight into understanding the root of his behaviors.

g) *Whether the offending physician had already suffered other serious financial or other penalties as a result of the allegations having been made.*

Dr. Malik no longer works at the Centennial Centre as he resigned from his position there when the complaints came forward.

h) *The impact of the incident on the offended patient.*

Impact statements from two of Dr. Malik's affected co-workers had been provided and it is clear from these that Dr. Malik's behaviors had a very negative effect on his co-workers.

i) *The presence or absence of any mitigating circumstances.*

Dr. Malik admitted to the allegations and was fully cooperative with the CPSA in this matter. He signed an undertaking and attended and fully participated in 2 courses about boundaries and professionalism and a multi-disciplinary assessment.

j) *The need to promote specific and general deterrence and, thereby, to protect the public and ensure the safe and proper practice of medicine.*

Mr. Heelan stated the Joint Sanction agreement does send a message to the profession and Dr. Malik that this type of behavior will not be tolerated. A 6-month suspension is significant given Dr. Malik's career stage.

k) *The need to maintain the public's confidence in the integrity of the medical profession.*

Mr. Heelan submitted the right-thinking members of the public would feel that the Joint Sanction agreement is a fair one given the circumstances of the case and relevant case law. He stated the sanction will maintain the public's confidence in the College's role in regulating its members.

l) *The degree to which the offensive conduct that was found to have occurred was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct.*

Dr. Malik's admitted conduct clearly falls outside of what is considered acceptable behavior around co-workers.

m) *The range of sentence in other similar cases.*

As demonstrated in the cited case law, the range of suspension in similar previous cases is 3-6 months. In this case the Joint Sanction agreement calls for a 6-month suspension for Dr. Malik.

70. Mr. Heelan concluded by saying Dr. Malik acknowledges his conduct, is remorseful and has taken steps to address his failure in this matter. He submitted that the Joint Sanction Agreement is fair and addresses the general and specific needs of a proper sanction and respectfully asked that the Tribunal



accept it.

### **Reply from Counsel for the Hearings Director**

71. Mr. Boyer replied that the Alliance Assessment Center was known previously as the Gabbard Center and that the CPSA has used both extensively in the past and is very familiar with this institute and their work to inform in these types of cases.

### **Questions from the Hearing Tribunal**

72. The Hearing Tribunal noted that the Alliance Center assessment made a recommendation for ongoing monitoring for Dr. Malik and asked the parties if it was discussed when arriving at the joint sanction.
73. Mr. Boyer stated the 360° workplace evaluations alluded to in the Alliance Center report were noted but not seen as a requirement in the negotiations over the Joint Sanction agreement. He stated this aspect is more for Dr. Malik's own personal awareness.
74. Mr. Heelan agreed with Mr. Boyer's comments regarding the 360° workplace evaluations and that they are not a requirement as part of Dr. Malik's sanction agreement. He pointed out that Dr. Malik no longer works in a hospital-based setting like the Centennial Centre and questioned the value of interviewing a handful of office co-workers. He mentioned that there is importance of Dr. Malik being mindful of self-care and monitoring his work hours to minimize his vulnerability in collapsing his professional and personal frameworks again. He stated that Dr. Malik is now engaged in this. He stated that Dr. Hobday's recommendations are now either done or are no longer applicable.
75. The Hearing Tribunal also asked for clarification surrounding the wording of the proposal for the 6-month suspension and what was being referred to regarding the Complaints Director determining the manner of the suspension.
76. Mr. Boyer stated there is potential issue of patient coverage for Dr. Malik's practice during his 6-month suspension. He advised that Dr. Malik is trying to secure locum coverage but may have to arrange two separate 3-month periods of locum coverage where he can serve his suspension, separated by a period of one month.
77. Mr. Heelan agreed to leave the issue of continuity of the 6-month suspension to the discretion of the Complaints Director. The commencement of the suspension would be determined between the Complaints Director and Dr. Malik to ensure continuity of care for Dr. Malik's patients but affirmed that Dr. Malik would serve the totality of his 6-month suspension.

## IX. DECISION

78. After adjourning to consider the submissions from the parties and the answers to its questions, the Hearing Tribunal determined that the proposed sanction order was appropriate considering the relevant factors in *Jaswal v Newfoundland Medical Board*, (1996), 42 Admin L.R.(2d)233. The Hearing Tribunal was also mindful that significant deference should be given to Joint Submissions.
79. The Hearing Tribunal accepted the Joint Submission agreement as appropriate and was satisfied that the proposed sanctions are in proportion to Dr. Malik's admitted conduct and do serve as an appropriate deterrent to Dr. Malik and the profession at large and protect the public interest. The Hearing Tribunal did not find the agreed sanctions to be contrary to the public interest and did not find that the proposed sanctions would bring the administration of justice into disrepute.
80. The Tribunal was mindful of the deference that a decision maker should give to a joint submission on sanction and found that the proposed suspension, payment of investigation and hearing fees, course work, practice restrictions and multi-disciplinary assessment were in range of the prior relevant case law.
81. The Tribunal took into consideration the cited case law cited to justify the agreed upon sanctions and in particular the proposed 6-month suspension. In addition to the cases presented in the parties' submissions above, the Tribunal also considered these cases in the parties' materials:
  - a. Dr. Bhatt admitted to allegations of inappropriate, demeaning, and unprofessional behavior directed to hospital co-workers which occurred over span of approximately 7 years at a Discipline Committee of the CPSO. Part of his sanction included a 4-month suspension.
  - b. Dr. Cameron faced allegations of inappropriate touching and making inappropriate sexualized and threatening comments to more than one co-worker at the emergency room he worked in. In one instance he was convicted of criminal sexual assault against one of his complainants. He admitted to the allegations at a CPSO Discipline Committee. Part of his sanction included a 3-month suspension.
  - c. Dr. Schwarz was found guilty by a CPSO Discipline Committee of sexual abuse of a patient and directing unwanted sexualized comments to and non-consensual sexualized touching and massaging of three [REDACTED] co-workers. Part of his sanction was revocation of his registration with the CPSO.

82. The Tribunal appreciated the fact that Dr. Malik eventually took full responsibility for his actions and took meaningful steps before the hearing to address his behavior by completing the UBC and Schulich courses on professionalism and boundaries and fully participating in the multi-disciplinary Alliance Assessment.
83. While the Tribunal found these to be positive steps towards providing insight, self-awareness, and rehabilitation for Dr. Malik, they do not minimize the gravity of his behavior. Dr. Malik demonstrated extremely poor judgement in his comments and physical actions towards multiple female co-workers and his behaviors were severely damaging as outlined in the impact statements provided in the Exhibits. The Tribunal found the existence of a professional power imbalance between Dr. Malik and his 5 victims only amplified the inappropriateness of his behaviors.
84. While no patients were directly involved, the Tribunal found patient care may have been potentially affected as one victim indicated that because of how uncomfortable she was around Dr. Malik she started to avoid him which interfered with her collaboration with the Unit physician to provide appropriate therapies to inpatients.
85. The Tribunal considered and acknowledged the findings from the Alliance Assessment pertaining to Dr. Malik's behaviors not being predatory in nature but instead rooted in an underlying desire for acceptance. However, this in no way excuses the behavior. As noted in the submissions from his counsel, Dr. Malik is an experienced senior physician, and he ought to have known better as to what is and is not accepted behavior around colleagues and co-workers. Dr. Malik's actions to try gain acceptance from his co-workers were very problematic, and the Tribunal wishes to point out that current societal attitudes towards such behavior has changed greatly.
86. In this regard, the Tribunal is cognizant of the amendments to the HPA introduced by Bill 21 and the indication of how serious sexual abuse and sexual violence against patients is. While there is no evidence that Dr. Malik engaged in any sexual abuse or violence against a patient, he did engage in unwelcome conduct, behavior or remarks of a sexual nature towards several co-workers. The seriousness of this conduct must be addressed, even in light of the other mitigating circumstances involved.
87. While the College notes that Dr. Malik's admission to the allegations helped to avoid a full potentially lengthy hearing and that this was a mitigating factor, his unprofessional conduct brought significant harm to his victims and to the integrity and reputation of the medical profession.
88. With respect to Allegation 2, the Tribunal found Dr. Malik's issuing a prescription to be poor judgement on his part. While there are instances such as emergencies where it is acceptable to provide medical services without

creation of a formal patient chart, the Tribunal found that in this specific instance it was not acceptable. Dr. Malik also showed poor judgement in prescribing a medication without ever assessing a patient.

89. The Tribunal agreed that the Joint Agreement on Sanction and the proposed sanctions were appropriate and consistent with sanctions ordered in previous similar cases outlined above. The proposed penalties are sufficient to deter Dr. Malik from repeating the conduct in the future. The period of suspension, and other measures such as the ongoing conditions and the assessment and educational work already completed, will contribute to specific deterrence. The penalties will also serve to remind the profession that boundary violations against co-workers will be treated very seriously by the College and should deter other regulated members from engaging in similar conduct.
90. The Tribunal is also mindful of the duty the College has to protect the public and ensure the public's trust in the ability of the profession to self-regulate and provide appropriate direction to its members and from that perspective is also in agreement with the Joint Sanction agreement as it was appropriate in the circumstances.
91. The sanctions jointly proposed and accepted by the Tribunal will protect the public, maintain the integrity of the profession, and ensure general and specific deterrence. They will send a message to Dr. Malik, members of the profession, and the public that boundary violations are not acceptable and will be met with appropriate sanction. The assessment, education, and reflection will promote specific deterrence and will provide appropriate rehabilitation.
92. The costs amount is appropriate as other members of the profession should not be responsible for the costs of these proceedings. At the same time, the orders are reasonable as they account for the mitigating factors.
93. Finally, while the Tribunal is mindful of the importance of ensuring continuity of care for Dr. Malik's patients during his 6-month suspension, the Tribunal also believes that the deterrent effect of a suspension is greatest when a suspension is consecutive. Accordingly, while the timing of the suspension will be determined by the Complaints Director, the Tribunal encourages the Complaints Director to pursue as long a consecutive suspension as possible for Dr. Malik.

## **X. ORDERS**

94. Accordingly, the Hearing Tribunal accepts the Joint Submission Agreement and makes the following orders pursuant to s. 82 of the HPA:
  - a) Dr. Malik's practice permit shall be suspended for six months starting on a date and served in a manner as determined by the Complaints Director.

- b) Dr. Malik shall be required to undergo an assessment to determine fitness to practice and risk. The assessment undertaken by the Alliance Assessment Center in 2019 satisfies this requirement.
- c) Dr. Malik shall be required to take a course on boundaries, professionalism, and ethics. The Schulich Boundaries course taken in June 2017 and the CPSBC professionalism course taken in November 2018 satisfies this requirement.
- d) Dr. Malik shall prepare and submit to the Hearing Tribunal a letter outlining his understanding of how his conduct has affected the five complainants after having heard their testimony at the hearing. A copy of the letter shall be provided to the five complainants.
- e) Dr. Malik shall continue to have the conditions currently on his practice permit for a period ending six months after the end suspension to be served under this sanction order, and if there have been no further complaints to the CPSA by that date that are similar to the conduct described in the Notice of Hearing, Dr. Malik may request that the Registrar remove those practice conditions from his practice permit.
- f) Dr. Malik shall be responsible for two-thirds of the costs of the investigation and hearing.

Signed on behalf of the Hearing Tribunal by the Chair:



Dr. Don Yee

Dated this 11<sup>th</sup> day of July, 2022.