

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. ALTAF KHUMREE

**DECISION OF THE HEARING TRIBUNAL OF
THE COLLEGE OF PHYSICIANS
& SURGEONS OF ALBERTA - ADDENDUM**

I. INTRODUCTION

1. The Hearing Tribunal issued its decision on sanctions in this matter on March 2, 2022. The Hearing Tribunal imposed sanctions orders including a suspension of Dr. Khumree's practice permit for a period of six months, with three months commencing on a date acceptable to the Complaints Director and with the balance to be held in abeyance provided Dr. Khumree complies with the Tribunal's other orders.
2. Dr. Khumree's practice permit was also made subject to conditions and he was ordered to pay a \$5,000 fine and 50% of the investigation and hearing costs. The Hearing Tribunal directed that the fine and costs may be paid in installments acceptable to the Complaints Director commencing on a date acceptable to the Complaints Director.
3. The Hearing Tribunal wrote that we would retain jurisdiction to address any issues with the implementation of the sanction orders.
4. On June 21, 2022, more than three months after issuing the sanctions decision, the Hearing Tribunal learned that Dr. Khumree wished to seek a delayed start to the active period of the suspension. The parties appeared before the Tribunal on July 12, 2022 for Dr. Khumree to make his request and for the Complaints Director to respond. The Tribunal was advised on July 12, 2022 that Dr. Khumree would be testifying in support of his request. The Complaints Director did not object to this procedure.

II. EVIDENCE

Evidence of Dr. Khumree

5. Dr. Khumree began by explaining that in January of 2020 when the hearing was originally set to commence, he was working about 35 hours each week and seeing between 30-35 patients each day. Dr. Khumree had previously worked harder than this, but he chose to limit himself in order to protect his focus and well-being. He had savings of approximately \$28,000. He had intended to use those funds to sustain himself in the event he was suspended by the Hearing Tribunal. Dr. Khumree speculated that if the Hearing Tribunal had issued a decision on sanctions by October of 2020, he would have been in a position to pay a \$5,000 fine, start a suspension and then commence installment payments towards the investigation and hearing costs once he had returned to practice. Dr. Khumree said that at the time he expected the issue of sanctions would be addressed within a few months. He said he was instead asked to submit to a multi-disciplinary assessment.
6. When the COVID-19 pandemic hit it impacted Dr. Khumree's practice and his revenue. He practiced mainly telehealth for a couple of months. He had to use some of his savings to manage his monthly expenses. By late 2020 Dr. Khumree said his finances had recovered such that he was saving \$1500 each month to pay for any financial penalties and to cover his expenses during any suspension.

7. Dr. Khumree said that after the hearing in August 2021 he was feeling frequently tired and his physician suggested he take time off. Dr. Khumree said he was suffering from burn out. Dr. Khumree took a leave from work between the last week of September and the first week of November 2021. He said he discussed this with Dr. Beach of the College's Physician Health Monitoring Program and Dr. Beach was supportive.
8. Dr. Khumree said he did not have insurance coverage with short-term disability leave benefits. When he returned to work it was at reduced hours and his income wasn't enough to cover his expenses. By November of 2021 Dr. Khumree was having to use his savings to cover his expenses. By early January 2022 he was missing mortgage and other payments.
9. Dr. Khumree continued to work on a part-time basis until January of 2022 when he resumed his full-time hours. Dr. Khumree continued to struggle financially. He no longer had any significant savings. He said he was directed not to see walk-in patients at his clinic in Strathmore. He also said that two of the physicians who worked at his clinic announced they were moving to British Columbia and he was terminated from his position one week later.
10. Dr. Khumree was unable to locate a new position in Strathmore so he accepted a position in Calgary beginning in April 2022. His patient load and his income were initially low. He said he had only reached a full patient load as of approximately July 2022. Dr. Khumree was also required to commute to and from Calgary each day dealing with high gasoline prices. The commute and his need to care for his two dogs limited his ability to see patients. Dr. Khumree also had to borrow money from a colleague to set up his practice in Calgary. These expenses were partly related to the clinic's electronic medical record system.
11. Dr. Khumree then decided to relocate his residence to Calgary to be closer to work. Rather than sell his Strathmore home, Dr. Khumree rented the home to a tenant and he rented a residence in Calgary for \$2,200 per month for himself and his dogs, who are like his family. He explained he would be unable to access the equity in his Strathmore residence since his mortgage and utility accounts are in arrears. Dr. Khumree said his \$3,300 per month mortgage payments for his Strathmore house exceed the \$1,800 in monthly rental income he has been able to obtain for it.
12. Dr. Khumree concluded that taking time off in the fall of 2021 meant that there was no way he could serve the active period of his suspension now. His debt would continue to pile up and he would lose his house. He said he has no one who would help him. He said that if the suspension was deferred to July of 2023 it would not be easy for him, but he would try to get himself into a position to put this behind him. He hopes that by that time he will be able to sustain himself financially as well as have savings to use during his suspension. He said he would intend to pay the \$5,000 fine in July of 2023 and he would pay the costs in installments when he returns to work. Dr. Khumree also offered to provide any financial documents the Hearing Tribunal would wish to see.

13. Dr. Khumree marked four letters as additional exhibits with the agreement of the Complaints Director. The first was an April 5, 2022 letter from the Complaints Director, Dr. Hartfield to Ms. Prather. The Complaints Director's letter requested a proposed date for Dr. Khumree to commence his suspension prior to the end of June 2022. This gave Dr. Khumree from March 2, 2022 when the Hearing Tribunal sanctions decision was issued until the end of June 2022 to arrange his affairs before serving the active period of his suspension. The Complaints Director also asked for Dr. Khumree's intentions for paying the fine and the costs, and addressed other matters related to the sanctions order.
14. On May 19, 2022 Ms. Prather wrote to the Complaints Director. Ms. Prather recounted Dr. Khumree's challenges since coming to Canada and asked if the College would consider Dr. Khumree's leave of absence from work in the fall of 2021 to be part of the active period of his suspension. Ms. Prather also asked whether the active period of suspension could be deferred to July 1, 2023 to allow Dr. Khumree to recover professionally and financially.
15. On June 8, 2022 the Complaints Director replied to Ms. Prather. The Complaints Director said she could not agree to change the Hearing Tribunal's decision or defer the start date for the suspension to an exceptionally distant future date. She suggested that Ms. Prather's request should be taken to the Hearing Tribunal.
16. On June 17, 2022 Ms. Prather responded to the Complaints Director. Ms. Prather confirmed she would be making the request directly to the Hearing Tribunal.

III. SUBMISSIONS

Submissions on behalf of Dr. Khumree

17. Ms. Prather submitted that Dr. Khumree accepts the Hearing Tribunal's decision on sanctions as fair, but he was seeking to defer the start of the active period of his suspension and the commencement of payment of the fine and costs until July of 2023. Ms. Prather explained that the Tribunal had retained jurisdiction to address the implementation of its sanctions orders and this would permit us to make the requested direction.
18. Ms. Prather submitted that Dr. Khumree's unprofessional conduct happened years ago. The Tribunal's decisions have already been published. In addition, the changes to the *Health Professions Act* incorporating mandatory cancellation for engaging in a sexual relationship with a patient would provide the needed deterrence. There would be no prejudice to the College or the public by deferring the start of Dr. Khumree's suspension to next July. On the other hand, Dr. Khumree is not currently in a position to withstand the hardship of a suspension. Imposing the suspension now would be personally and professionally devastating for Dr. Khumree. Ms. Prather submitted that suspensions are meant to "hurt but not devastate". In light of Dr. Khumree's health and the financial consequences of a suspension it would be just and fair to defer the start of his suspension.

Submissions on behalf of the Complaints Director

19. On behalf of the Complaints Director, Mr. Boyer acknowledged the Tribunal's jurisdiction to address the implementation of our sanctions orders. He confirmed the Tribunal was not *functus officio* on this issue. Mr. Boyer said the question for the Hearing Tribunal is whether deferring the start of Dr. Khumree's suspension to July of 2023 would be reasonable.
20. Mr. Boyer referred the Hearing Tribunal to the Complaints Director's letter of April 5, 2022. The Complaints Director offered Dr. Khumree to the end of June 2022 before he would have to commence the active three-month period of his suspension. Dr. Khumree has already had from March 2, 2022 when the sanction decision was issued until June 30, 2022, nearly four months, to arrange his affairs before his suspension. Mr. Boyer noted that Dr. Khumree was asking for a period of 15 to 16 months, to July of 2023. Mr. Boyer said the process had already gone on for years and such a long deferral of Dr. Khumree's suspension would not be in the public interest. He compared the criminal law, where Courts do not defer incarceration just because it would cause a hardship for the accused.
21. In response to a question from the Hearing Tribunal, Mr. Boyer said that it would be reasonable to require that Dr. Khumree commence his suspension now, as he has already had more than four months to prepare for it. Mr. Boyer also said that the Tribunal has discretion to provide directions for the implementation of its sanctions orders, including directions as to the start date of the suspension. Mr. Boyer explained that the Complaints Director has already exhausted the scope of her discretion to agree to a reasonable start date.

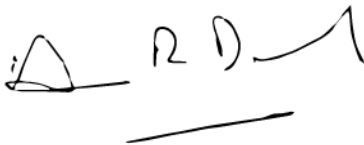
IV. DECISION

22. The Hearing Tribunal carefully considered Dr. Khumree's testimony and the additional exhibits and the parties' submissions. The Hearing Tribunal directs:
 - a. Dr. Khumree shall commence the active, three-month period of the suspension ordered in the Hearing Tribunal's March 2, 2022 decision on sanctions by no later than November 1, 2022;
 - b. Dr. Khumree shall pay, or commence paying installments acceptable to the Complaints Director towards the fine and investigation and hearing costs by no later than February 28, 2023.
23. It is very important that sanctions orders of a Hearing Tribunal be promptly enforced and that the public see that they are enforced. Delaying enforcement for a significant period of time would undermine the public's perception of the College's integrity and its ability to properly regulate the medical profession. Sanctions could become meaningless if physicians and the public have to wonder whether they will be enforced or when it will happen. The Tribunal was referred to the case of *Dr. Dicken and the College of Physicians and Surgeons of Alberta*, in which the physician made a similar request to defer his suspension for several months. In that case the Hearing Tribunal rejected the

request, which was based on a concern about the pediatric surgery service being short-staffed during Dr. Dicken's suspension. The Tribunal held that workforce issues were beyond its scope and role.

24. In another case, *Discipline Committee of the College of Nurses of Ontario v. Carter*, 2021 CanLII 39065, the Discipline Committee did defer the start of a Registered Nurse's two-month suspension for approximately six months. In *Carter*, the sanctions decision was made during the COVID-19 pandemic and the nurse was the only infection control and occupational health nurse for two locations of the Manitoulin Island Health Centre. The nurse, her employer and the College all supported the requested deferral. The Discipline Committee agreed to the deferral because of the strain on the health care system and the public's interest in the availability of nursing care.
25. Dr. Khumree's case is unlike Dr. Dicken's and Nurse Carter's in that his request is based on his own personal and financial circumstances, and not on the interests of the public. The Hearing Tribunal took Dr. Khumree's history of struggles with depression and substance use disorder into account in the sanctions decision. The Tribunal has also considered Dr. Khumree's health and financial difficulties in this decision.
26. The Tribunal believes this decision is reasonable but wishes to emphasize that this is a very unique case. It should be confined to its unique facts. In most cases physicians who are ordered to complete a suspension and pay, or to commence paying fines or costs should expect to commence immediately, or within a short period of time to arrange their affairs. The deferral of Dr. Khumree's suspension start date and the payments of his fines and costs for seven months from March 2, 2022 is an extremely long and unusual deferral. The Tribunal must balance the need to protect public confidence in the medical profession and its proper regulation with fairness to Dr. Khumree and his unique circumstances.

Signed on behalf of the Hearing Tribunal by its Chair:

A handwritten signature in black ink, appearing to read 'A. D.' followed by a stylized flourish. Below the signature is a horizontal line.

Dr. Alasdair Drummond

Dated this 19th day of July, 2022.