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. WEQUAR AHMAD

DECISION OF THE HEARING TRIBUNAL OF THE COLLEGE OF PHYSICIANS & SURGEONS OF ALBERTA REGARDING SANCTION

I. INTRODUCTION

1. The hearing on sanction involving Dr. Wequar Ahmad was held by videoconference on November 25 and November 26, 2021, and February 7, 2022. The members of the Hearing Tribunal were:

   Dr. Colm MacCarthy of Edmonton as Chair,
   Dr. Goldees Liaghati-Nasseri of Calgary, and
   Ms. Archana Chaudhary of Edmonton (public member).

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

3. In attendance at the hearing was Mr. Craig Boyer, legal counsel for the Complaints Director of the College of Physicians & Surgeons of Alberta. Also present was Dr. Wequar Ahmad and his legal counsel, Ms. Taryn Burnett, Mr. Kristian Duff and Ms. Shayla Stein.

II. PRELIMINARY MATTERS

4. Neither party objected to the composition of the Hearing Tribunal or its jurisdiction to proceed with the hearing.

5. The hearing was open to the public pursuant to section 78 of the *Health Professions Act* ("HPA").

6. An application was made by counsel for the Complaints Director to close the hearing for testimony from the Complainant. It was not opposed by counsel for the Investigated Member provided that the Investigated Member was able to remain present. Counsel for the Complaints Director submitted that the parties should not be excluded from the hearing for the Complainant's evidence, and that the effect of an order pursuant to section 78 of the HPA is that a member of the public is not able to access that part of the transcript.

7. A decision to close any portion of the hearing would not be made lightly even in situations where there is agreement between the parties. The policy of openness reflects the College's public interest mandate. The College has been given the authority to discipline its members, and must do so in a transparent way. The effect on a third party complainant in a matter involving sexual abuse may lead to harm that could outweigh openness. The Hearing Tribunal was satisfied that the interest of protecting the privacy of the Complainant outweighed the desirability of adhering to the principle that hearings be open to the public. The hearing was closed for the purpose of hearing the testimony from the Complainant.

III. ALLEGATIONS

8. The hearing on the allegations was held on March 5, 2021. The Hearing Tribunal issued its decision on the merits on April 27, 2021 (the "Decision on

Merits”). The Hearing Tribunal found Dr. Ahmad guilty of unprofessional conduct on the following allegations:

1. Between June 2017 and December 2017, you engaged in an inappropriate personal relationship with your patient, [Complainant], which included sexual intercourse.
2. You created a false entry on the chart of your patient, [Complainant], for an appointment on December 5, 2017, which indicated your patient was angry, emotionally unstable and wanted a personal relationship with you which you had declined.
3. You created late entries to the chart of your patient, [Complainant], for an appointment on December 5, 2017 without indicating in the chart note the date and time that the late entries were created.
4. You did fail to disclose to the CPSA when completing your registration information form for renewal of your Practice Permit for 2018 that you had engaged in an inappropriate personal or sexual relationship with your patient, [Complainant].
5. Contrary to your Undertaking dated October 8, 2014, you did see your patient, [Complainant], on multiple occasions between January to December 2017 without a chaperone being present.
6. Contrary to your Undertaking dated October 8, 2014, on March 7, 2017, you did see your patient, [Patient A], and conducted a physical examination without a chaperone present even though you recorded in your chart that “Chaperone ███ present”.
7. Contrary to your Undertaking dated October 8, 2014, on September 13, 2017, you did see your patient, [Patient B], and conducted a physical examination without a chaperone present, even though you recorded in your chart that “Chaperone ███ present”.
8. Contrary to your Undertaking dated October 8, 2014, on November 9, 2017, you did see your patient, [Patient C], without a chaperone present, even though you recorded in your chart that “Chaperone ███ present”.
9. Contrary to your Undertaking dated October 8, 2014, on November 16, 2017, you did see your patient, [Patient D], and conducted a physical examination without a chaperone present, even though you recorded in your chart that “Chaperone ███ present”.
10. Contrary to your Undertaking dated October 8, 2014, on November 21, 2017, you did see your patient, [Patient E], without a chaperone present, even though you recorded in your chart that “Chaperone ███ present”.
11. Contrary to your Undertaking dated October 8, 2014, on November 29, 2017, you did see your patient, [Patient F], without a chaperone present, even though you recorded in your chart that “Chaperone ███ present”.

12. Contrary to your Undertaking dated October 8, 2014, on December 6, 2017, you did see your patient, [Patient G], and conducted a physical examination without a chaperone present, even though you recorded in your chart that "Chaperone ████ present".

13. Contrary to your Undertaking dated October 8, 2014, on December 7, 2017, you did see your patient, [Patient H], and conducted a physical examination without a chaperone present, even though you recorded in your chart that "Chaperone ████ present".

14. Contrary to your Undertaking dated October 8, 2014, on December 28, 2017, you did see your patient, [Patient I], and conducted a physical examination without a chaperone present, even though you recorded in your chart that "Chaperone ████ present".

15. Contrary to your Undertaking dated October 8, 2014, on January 2, 2018, you did see your patient, [Patient J], and conducted a physical examination without a chaperone present, even though you recorded in your chart that "Chaperone ████ present".

16. Contrary to your Undertaking dated October 8, 2014, on January 22, 2018, you did see your patient, [Patient K], and conducted a physical examination without a chaperone present, even though you recorded in your chart that "Chaperone ████ present".

17. Contrary to your Undertaking dated October 8, 2014, on January 23, 2018, you did see your patient, [Patient L], without a chaperone present, even though you recorded in your chart that "Chaperone ████ present".

18. Contrary to your Undertaking dated October 8, 2014, on January 23, 2018, you did see your patient, [Patient M], and conducted a physical examination without a chaperone present, even though you recorded in your chart that "Chaperone ████ present".

19. Contrary to your Undertaking dated October 8, 2014, on January 20, 2018, you did see your patient, [Patient N], and conducted a physical examination without a chaperone present, even though you recorded in your chart that "Chaperone ████ present".

III. EXHIBITS

9. The following were entered as exhibits during the sanctions hearing:

Exhibit 3: Sanction Exhibit Book Containing Tabs 1 to 8

Tab 1: Text messages (WhatsApp) between Dr. Ahmad and [Complainant]

Tab 2: Report from Dr. Thomas Dalby dated August 10, 2021

Tab 3: Report from Dr. William Friend dated November 1,

2021

Tab 4: Report from Dr. Thomas Dalby dated November 11, 2021

Tab 5: Report from Mr. Steven Harbourne, RN, dated November 14, 2021

Tab 6: CPSA Investigation report dated August 27, 2014 regarding complaint file 140018.1

Tab 7: Memorandum by Dr. Owen Heisler regarding meeting with Dr. Ahmad and his legal counsel on October 3, 2014

Tab 8: Letter from Dr. Heisler to complainant, ███ dated October 6, 2014

Exhibit 4: Curriculum Vitae of Steven Harbourne

Exhibit 5: Letter from Ms. Taryn Burnett to Complainant, dated February 23, 2018

IV. WITNESSES

10. The following individuals were called as witnesses for the Complaints Director during the Sanction Hearing:

- Complainant
- Dr. William Friend

11. The following individuals were called as witnesses for Dr. Ahmad during the Sanction Hearing:

- Dr. J. Thomas Dalby
- Steven Harbourne
- Dr. Wequar Ahmad
- Pooja Ahmad

V. DOCUMENTS PROVIDED TO THE HEARING TRIBUNAL

12. The parties agreed to provide written submissions to the Hearing Tribunal following the hearing on November 25 and November 26, 2021.

13. Counsel for the Complaints Director provided written submissions dated December 3, 2021 setting out the position of the Complaints Director on the appropriate sanction, as well as costs of the investigation and hearing. The following authorities were also provided:

    i. *Fang v. College of Physicians and Surgeons (Alta),* [1985] A.J. No. 1080

    ii. *Adams v. Law Society of Alberta*, 2000 ABCA 240

iii. *Litchfield v. College of Physicians and Surgeons of Alberta*, [2008] A.J. No. 482

iv. *Ahluwalia v College of Physicians and Surgeons of Manitoba*, 2017 M.J. No. 25

v. *Jaswal v. Newfoundland Medical Board*, [1996] N.J. No.50

vi. *College of Physicians and Surgeons of Saskatchewan v. Ali*, [2016] S.J. No. 56

vii. Dr. Sanjeev Bhardwaj, Decision of the Hearing Tribunal of The College of Physicians & Surgeons of Alberta

viii. Dr. Johann Maritz, Decision of the Council Review Panel of the College of Physician and Surgeons of Alberta.

14. Counsel for the Complaints Director provided the following additional authorities prior to the resumption of the hearing on February 7, 2022:

i. *Virk v. Law Society of Alberta*, [2022] A.J. No. 10, 2022 ABCA 2

ii. CPSA Standards of Practice, Re-Entering Medical Practice or Changing Scope of Practice, Issued January 1, 2010

15. Counsel for Dr. Ahmad provided written submissions dated December 10, 2021, setting out the position of the Investigated Member on the appropriate sanction, as well as costs of the investigation and hearing. The following authorities were also provided:

i. Bill 21: *An Act to Protect Patients*, SA 2018 C 15

ii. *Health Professions Act*, RSA 2000, c. H-7, s. 82

iii. *Ontario (College of Pharmacists) v Oduro*, 2013 ONCPDC 15

iv. *Ontario (College of Physiotherapists of Ontario) v Trambulo*, 2019 ONCPO 25

v. *Ontario (College of Physicians and Surgeons of Ontario) v Lee*, 2019 ONSC 4294

vi. *Wakeford v College of Physicians of BC*, 1992 CanLII 231

vii. *Jaswal v Newfoundland Medical Board*, [1996] NJ No 50

viii. *Bhardwaj (Re)*, 2020 CanLII 19361 (CPSA)

ix. *Ontario (College of Physicians and Surgeons of Ontario) v Marcin*, 2019 ONCPSD 4

x. *Ontario (College of Physicians and Surgeons of Ontario) v Savic*, 2019 ONCPSD 40

xi. *CPSO v Miller*, 2020 ONCPSD 39

xii. *Lasaleta, (Re)*, 2018 CarswellAlta 2064 (CPSA)

xiii. *Lycka (Re)*, 2020 CarswellAlta 1804 (CPSA)

xiv. *Alarape (Re)*, 2019 CarswellAlta 2926

xv. *Alberta College of Occupational Therapist v Thiessen*, (2019)

xvi. *College of Physicians and Surgeons of Alberta v Maritz*, 2018 CarswellAlta 2318

xvii. *College of Physicians and Surgeons of Saskatchewan v Sayeed*, (2018)

xviii. *College of Physicians and Surgeons of Saskatchewan v Horri*, (2017)

xix. *CK v College of Physical Therapists (Alberta)*, 1999 ABCA 253

VI. EVIDENCE PRESENTED AT THE HEARING

Evidence Adduced by the Complaints Director

Complainant *- Examination*

16. The Complainant stated that she made a complaint for two reasons. First, the entry in her medical records dated December 5, 2017 was false. She wanted that information removed from her medical record. The entry outlined that the Complainant was not in her right mind. Dr. Ahmad recommended that she go and see another doctor because she was crazy. Second, Dr. Ahmad used personal information about her life to pursue her in a relationship.

17. Regarding the false entry in her medical records, the Complainant explained that she was separated from her husband and had custody of her son. She was afraid that the false entry in the medical record could be detrimental and cause damage to her and her family. Potentially it could have impacted custody.

18. The Complainant was Dr. Ahmad's patient starting in 2012 at his first clinic, and she followed him when he moved to another clinic. He was the physician for her family. After the Complainant separated from her husband, Dr. Ahmad romantically pursued her. It was a serious relationship, and they frequently talked about the future. He tried to convince her to sell her home and move closer to him, but the Complainant did not want to move her son.

19. This situation has harmed the Complainant. The invasion of privacy meant that she no longer trusted medical professionals. Dr. Ahmad used the Complainant's information for his gain, leaving her stressed and affecting her life. He put her at risk and created medical records that could harm her. If she had to provide medical records in court proceedings, it could impact those decisions and proceedings.

20. Following the complaint to the College, Dr. Ahmad called her repeatedly, had his son call her, and showed up at her house to ask her to remove the complaint to the College. The Complainant filed a report with the police demanding that he not show up again. Dr. Ahmad offered to pay her off, and she was worried about what he may do when she refused. The Complainant is a very private person, and she did not take this lightly.

21. The College told the Complainant that the December 5, 2017 entry in her medical record was a legal record and could not be removed. The letter from Dr. Ahmad's lawyer stated the chart entry would be removed after the proceedings, depending on the outcome of the proceedings.

22. The Complainant believes that Dr. Ahmad is a predator and that things could have been much worse if she was not stable and strong. He manipulates people, and it is frightening to think of people in power using their power in that way.

Complainant – Cross-Examination

23. In response to questions from counsel for Dr. Ahmad, the Complainant agreed that she had received a letter dated February 23, 2018 from Ms. Burnett stating that the advice from the College was that any steps in relation to the December 5, 2017 entry had to wait until the outcome of the investigation.

Complainant – Hearing Tribunal Questions

24. In response to questions from the Hearing Tribunal, the Complainant stated that she went to see Dr. Ahmad on August 24, 2016 because she had just separated from her ex-husband and she was distressed. The Complainant had a follow-up appointment the following day. She stated that Dr. Ahmad did not complete a physical and has never completed a medical physical examination on her. No chaperone was present on August 25, 2016.

Dr. William Friend *- Examination*

25. Counsel for the Complaints Director called Dr. William Friend to give expert evidence. After reviewing Dr. Friend's qualifications, Mr. Boyer asked that Dr. Friend be qualified to give expert evidence as a psychiatrist with particular experience in forensic psychiatry and assessment of the risk of reoffending. Dr. Friend's expertise was accepted by legal counsel for

Dr. Ahmad, and the Hearing Tribunal therefore qualified Dr. Friend to give the expert evidence proposed.

26. Dr. Friend provided evidence about the materials that he had reviewed when drafting his opinion. He was asked to answer the following four questions:

    (i) For the purposes of assessing the factors that contributed to Dr. Ahmad's unprofessional conduct, and for assessing the risk of re-offending, would you recommend an assessment that is more comprehensive than the assessment undertaken by Dr. Dalby?

    (ii) If the answer to your first question is yes, what would you recommend on the nature and scope of the assessment to be undertaken?

    (iii) If you do recommend a more extensive assessment than the one undertaken by Dr. Dalby, what factors do you see from the information provided to you that demonstrates the need for a more extensive assessment?

    (iv) Based on the information before you, do you have concern regarding any of the conclusions reached by Dr. Dalby? Please explain.

27. Dr. Friend provided a summary of the current complaint, as well as a complaint that was made by a female patient in 2014 ("2014 Complaint"). When one assesses risk, previous behaviours should be considered. Patterns are forming and future behaviour becomes more predictable when assessing the risk of reoffending. Dr. Friend was asked to look at a Forensic Psychological Assessment (Risk Evaluation) prepared by Dr. Dalby dated August 10, 2021 ("Risk Evaluation"). Dr. Friend did not interview Dr. Ahmad. Instead, he answered questions and provided a critique of the Risk Evaluation in his report dated November 1, 2021.

28. The Personality Assessment Inventory ("PAI") is an instrument that asks patients to answer a number of questions and evaluates them on a number of scales. It is a good test that is used frequently in forensic psychiatry. However, it was not developed to predict risk for clinical boundary violations.

29. The 16 Personality Factors Questionnaire – Fifth Edition ("16PF") was developed a long time ago and looks at 16 primary factors that comprise personality. It is one of the old fundamental tests of personality. It has clinical usefulness, but not in the sense of measuring the risk of boundary violations.

30. The Derogatis Sexual Functioning Inventory ("DSFI") is a test of sexual functioning, but it does not measure risk.

31. The Sleep Disturbance Scale from PROMIS item bank v 1.0 ("SDS") shows that Dr. Ahmad is having sleep difficulties, but it is not a risk assessment.

32. The SVR-20 deals with 20 basic questions. The test is primarily for sexual offenders at the federal level. In relation to Dr. Ahmad, the SVR-20 will provide guidance but not accuracy.

33. Dr. Dalby did not give adequate attention to certain things when he scored the SVR-20. A large problem is that Dr. Ahmad saw patients without a chaperone being present, but entered that Chaperone ████ was present. An error may occur one or two times, but when it occurs fifteen times that leads to concerns about deception and that is problematic. Dr. Ahmad saw the Complainant outside of his office, and flew to Vancouver with her over a weekend. These are all supervision failures as Dr. Ahmad broke rules that were set up for him. It is even more problematic when deception occurs. In this situation Dr. Ahmad marked that a chaperone was present. This is a breach of trust that should be considered for an evaluation of future risk.

34. This is a second incident. As a result of the 2014 Complaint, Dr. Ahmad took a physician boundary violation course. Following the course, he fell back into the problem and it was much worse, which indicates a worsening of behaviours. The recurrence needs to be considered in the evaluation of the SVR-20. Dr. Dalby rated the risk of recurrence as low, and Dr. Friend would rate it considerably higher.

35. Dr. Friend would recommend a more extensive assessment. He agrees that Dr. Ahmad needs care, but the Risk Evaluation is not a thorough assessment of risk and the factors that must be controlled in order to return to practise in a safe fashion. Dr. Ahmad has problems with ethics and truth-telling going beyond the sexual boundary violations. Those factors need to be addressed. A false entry in the medical record is very dangerous and harmful to patients. There is a long history going back to the Hippocratic Oath that recognizes that physicians may cause great harm to patients because of the power imbalance. There is duress which affects consent. The doctor is in a position of power, and although the patient may technically have said "yes", the consent is not valid because it was obtained under duress. In this situation the patient's care was comprised. The December 5, 2017 entry in the medical record indicates that the Complainant has a mental illness and that is a real distortion of what was actually occurring. These are all areas that bear on the issue of risk and need be explored, and this was not adequately done by Dr. Dalby.

36. Dr. Friend stated that he had reviewed a supplementary report from Dr. Dalby dated November 11, 2021 and it does not change his assessment. Dr. Friend does not agree with the letter, and it does not address false entries in the medical record or falsifying the attendance of a chaperone.

Dr. Friend – Cross-Examination

37. During cross-examination, Dr. Friend agreed that Dr. Dalby was an accomplished psychologist, and he was not questioning his qualifications.

38. Dr. Friend did not meet with Dr. Ahmad to examine him and conduct tests. There are other factors that must be taken into account including what the physician has done and what brings the individual to the attention of the College. It is important to understand the factors that were brought out in Dr. Friend's report and not brought out in the Risk Evaluation.

39. Dr. Dalby has diagnosed Dr. Ahmad as suffering from anxiety and poor sleep with accompanying depression. Dr. Friend takes no issue with this diagnosis. The PAI assesses personality, but it is not the primary method of assessing a personality disorder. It is not a useful tool for determining the risk of reoffending.

40. The 16PF is not a useful test to assess risk. To show that a particular personality predicts whether a person is likely to reoffend, it is necessary to have information that some personality profiles correlate with boundary violations.

41. The DSFI assesses sexuality, but Dr. Friend is unaware of any research that shows that certain scores correlate with a specific risk of physician boundary violations. It is not a useful test to assess risk.

42. The SVR-20 was developed for sexual offenders in the criminal realm. Dr. Ahmad does not fit into that category. It is important to ensure that any test is appropriate for the situation. There is no one specific test that can be applied for recidivism. What is required is an evaluation of multiple factors based on a holistic approach. On a statistical basis, if you begin by saying that there is not a good test, does applying five poor tests improve accuracy? Dr. Friend does not believe that it does.

43. Examining the patient has limitations. When people are facing sanctions they want to put their best foot forward and be seen in a positive light. It is important to look very carefully at what has happened, and the truthfulness of statements.

44. Dr. Friend does not agree that Dr. Ahmad is at a low risk of reoffending. There are strange omissions in Dr. Dalby's report. There is nothing in the Risk Evaluation regarding the notes in the patients' medical records that the chaperone was present when she was not; the false medical record created by Dr. Ahmad regarding the Complainant; and the statement that he never had sex with the Complainant when he did. These are all pieces of information which arise from a careful review of the file and should have arisen with an assessment of risk. The Risk Evaluation does state that there was laxity in fulfilling College requirements, but there is no discussion of these matters in the Risk Evaluation.

45. Dr. Friend did not reach any conclusion regarding the capacity for rehabilitation. Dr. Friend knows nothing about how Dr. Ahmad is progressing in his psychotherapy.

Dr. Friend – Hearing Tribunal Questions

46. In response to questions from the Hearing Tribunal, Dr. Friend stated that the main personality factors that may predict recurrence if there is a history of sexual boundary violations are Cluster B personality traits: anti-social, borderline, and narcissistic. However, even if an individual does not have those personality traits, it is not reasonable to assume that person would not be at risk. There is very little research regarding who is at risk of boundary violations.

47. Based on Dr. Friend's experience, the best description of characteristics for predicting likelihood to offend is contained in the SVR-20: presence of sexual deviance; being a victim of child abuse correlates with abuse of children; anti-social personality disorder is highly associated with recidivism; major mental illness; substance use and anything that reduces self-control; relationship problems with one's usual conjugal partner; employment problems; history of past non-violent offences; past supervision failures; history of sexual offences; physical harm; weapons or threats; escalation; tendency to deny or minimize; and negative reactions to intervention.

48. It is difficult to provide an answer regarding a future practice that would be successful in mitigating the risk of relapse. Dr. Ahmad could go through a rehabilitation program and have restrictions placed on him to not see female patients for any reason. The question is whether he would abide by that.

49. There are a number of harmful impacts to a patient and the broad categories are psychological and further physical harm. This Complainant felt herself to be tricked, deceived and used. She believed that Dr. Ahmad would divorce his wife and marry her. At the end she felt that she was a "secret" and would remain a "secret". This causes substantial psychological harm. Beyond psychological harm to the patient, this behaviour also places the profession in disrepute. If a patient believes that she was harmed by a physician, she may grow to distrust the entire medical profession and fail to seek timely medical care. This may cause further physical harm if there is a delay in diagnosis or treatment.

50. If Dr. Ahmad was seeing a female patient over telehealth, he would have access to personal information and be able to talk with her and arrange a meeting in person. Dr. Ahmad saw the Complainant outside of the office and away from the watchful eye of the chaperone. There needs to be a substantial distance between Dr. Ahmad and the female patient.

Evidence Adduced by Dr. Ahmad

<u>Dr. J. Thomas Dalby</u> *- <u>Examination</u>*

51. Ms. Taryn Burnett, counsel for Dr. Ahmad, called Dr. J. Thomas Dalby to give expert evidence. After reviewing Dr. Dalby's qualifications, Ms. Burnett asked that Dr. Dalby be qualified to give expert evidence as a forensic psychologist with a special interest in assessment and risk assessment. Dr. Dalby's expertise was accepted by counsel for the Complaints Director, and the Hearing Tribunal therefore qualified Dr. Dalby to give the expert evidence proposed.

52. Dr. Dalby provided evidence about the materials he had reviewed in drafting his Risk Evaluation. In preparing the Risk Evaluation, Dr. Dalby reviewed the complaint to the College, Dr. Ahmad's responses to the complaint, and the investigator's report.

53. Dr. Dalby started his analysis by reviewing Dr. Ahmad's personal history and family life. Dr. Dalby testified about the nature of the tests he conducted with Dr. Ahmad, which were as follows: PAI, 16PF, DSFI, SVR-20, and SDS.

54. Dr. Dalby then testified about the results of the tests, and the conclusions he drew from the results.

55. Dr. Dalby was asked to perform a general psychological assessment and identify treatment needs. He saw Dr. Ahmad in October 2020 and conducted the tests at that time. It is not possible to diagnose someone without seeing them. The information for the Risk Evaluation is taken from diverse sources.

56. The PAI is a personality assessment inventory that answers whether the person has a mental disorder, and whether it is amenable to treatment. Dr. Dalby has the qualifications to administer and interpret the PAI. The findings are subject to computer interpretation and comparison to a large group. In relation to Dr. Ahmad, there are elevations on many scales. There are elements of anxiety, depression, and disturbing traumatic experiences in the past. The PAI also looks at several personality elements: limited social skills, socially isolated, few interpersonal relationships, uncomfortable and passive in social situations, negative self-image, suicidal at times, and interested in getting help for his difficulties.

57. The 16PF measures 16 traits and describes an individual's personality. Dr. Ahmad is submissive, dependent, mild, easily led, has a serious and sober view of life, introspective, shy, withdrawn, emotionally cautious, and lonely and brooding. He does not communicate very well. A personality assessment helps to show whether a person is amenable to treatment, and what is the right treatment. Dr. Ahmad has motivation, intelligence and targets for treatment.

58. The DSFI test looks at what is going on with an individual's sexuality. It has been adapted for risk assessments in order to understand the person and make plans for them. Dr. Ahmad's basic sex education was low, he had a below average range of sexual experience, he holds conservative views about sexuality, and he is not a highly sexual person. His wife confirmed that he was not interested in that area of life.

59. The SVR-20 is not really a test but a set of structured guidelines. There are three basic ways of evaluating risk. The first method is unrestricted clinical judgment. The second method is an actuarial one. The third method is structured professional judgment. Dr. Ahmad is not a sex offender but there is no other test that is available. The SVR-20 can be used in non-criminal settings but it must be understood that it was developed in the criminal context. The clinical findings examine twenty risk factors. Dr. Ahmad does not suffer from a psychopathic personality disorder, major mental disorder, or a substance abuse problem. There are no past non-sexual offences, but he has been lax in following previous limits set by the College. It is not a situation where there is a high density of sex offences. Dr. Ahmad would be considered a low risk based on this assessment.

60. In terms of risk assessment, the 2014 Complaint did not seem very similar to the current one. There is a failure of some sort because the response to the 2014 Complaint did not keep Dr. Ahmad on the right path. However, this does not take him up into the high-risk category.

61. Dr. Ahmad is capable of rehabilitation and there is nothing that prevents him from being fully rehabilitated. There is nothing that Dr. Dalby sees that indicates that this is unlikely. Dr. Dalby has spoken with Dr. Ahmad's wife and his therapist.

62. In response to evidence from Dr. Friend that the PAI, 16PF and DSFI are not relevant, Dr. Dalby stated that these tests are used all the time. Physicians are no different from other health professionals who develop feelings for patients. We do the best with the tests that we have. When addressing the future risk of recidivism, the risk remains low and it is hard to predict a low probability event.

63. Dr. Ahmad has improved substantially since Dr. Dalby saw him. One of the key elements is social isolation, and a highly protective element is support. He needs treatment and is taking cognitive therapy and is doing well. Dr. Dalby tried to get him to try therapy earlier but he was travelling.

<u>*Dr. Dalby – Cross-Examination*</u>

64. In response to questions from counsel for the Complaints Director, Dr. Dalby listed the information that he reviewed prior to preparing the Risk Evaluation in August 2021: the complaint itself and the text messages between the Complainant and Dr. Ahmad. He does not remember whether he saw the

Decision on Merits. Dr. Dalby only addressed the sexual boundary violation because that was all that he was asked to address in his Risk Evaluation.

65. Dr. Dalby did not address the findings of the Hearing Tribunal relating to dishonesty in the Decision on Merits. He agrees that honesty is important for a professional. However, Dr. Dalby was not asked to look beyond the behaviour with the Complainant, and other allegations that were addressed by the Hearing Tribunal are not within his scope.

66. Dr. Dalby sees the value in a multi-disciplinary assessment, but this was not done. Dr. Friend commented on matters that Dr. Dalby knew nothing about. Dr. Dalby confirmed that he differentiated the 2014 Complaint from the current one where there is a full-blown sexual relationship. He agreed that collateral information from the victim can be important to understand why the difference, but it was not obtained here.

Dr. Dalby – Re-Direct Examination

67. In response to questions from counsel for Dr. Ahmad, Dr. Dalby stated that the charges set out in the Notice of Hearing and subsequent admission by Dr. Ahmad would not change his opinion regarding the risk of reoffending. His opinion regarding rehabilitation also remains unchanged.

Dr. Dalby – Hearing Tribunal Questions

68. In response to questions from the Hearing Tribunal regarding the escalation of events and the increasing severity of the boundary breakages from the 2014 Complaint to the current one, Dr. Dalby stated that the penalty applied in response to the 2014 Complaint was not significant enough. As well, the current complaint involved a relationship and was not that similar to the 2014 Complaint. They are two independent things.

69. Regarding lying to the College, Dr. Dalby stated that lying is a defence, and dishonesty does not mean a lot. People lie to Dr. Dalby all the time, and it is a primitive response to a problem.

70. Regarding which factors would place Dr. Ahmad at high risk of repeating boundary violations, Dr. Dalby stated that substance abuse would take him from low risk to high risk. If Dr. Ahmad was under significant stressors, such as a divorce, that might take him to moderate risk.

71. Regarding the incorporation of the previous history of boundary violations into the risk assessment, Dr. Dalby stated that there was not a great deal of similarity between the two situations. The first one was a social situation and not sexual. It was an error of judgment. He should not have been purchasing alcoholic drinks for a patient. As part of the basic principles of learning, Dr. Ahmad needed to know that the College would look at his practice regarding chaperones intermittently and that would have been a deterrent.

72. Professionals have a low level of repeat offences. If Dr. Ahmad sticks with his treatment plan, he should have good success.

73. Regarding the 2014 Complaint, if the concerns set out in the investigation report were true, it could change the risk assessment. There is a pattern of seeking a relationship with another female patient, and when the opportunity arises the relationship flourishes.

74. If a person is abused as a child, sexuality is disturbed in some way because people around the child are violating boundaries. There is not a huge correlation with the person becoming an abuser, but there is a rise in risk.

Dr. Dalby – Re-Direct Examination

75. In response to questions from counsel for Dr. Ahmad, Dr. Dalby stated that Dr. Ahmad did not have any treatment prior to the fall of 2021. The complaints do not present a barrier to treatment. The 2014 Complaint does not change Dr. Dalby's opinion regarding whether treatment would be successful.

Dr. Dalby – Cross-Examination

76. In response to questions from counsel for the Complaints Director, Dr. Dalby stated that the risk is evaluated on a spectrum, but not a percentage. Risk is just low, medium or high. The hypothetical situations that were referred to earlier during questions from the Hearing Tribunal moved the risk into the middle category.

Dr. Dalby – Hearing Tribunal Questions

77. In response to questions from the Hearing Tribunal regarding whether a psychiatric assessment would add potential value in assessing the risk of a future boundary violation, Dr. Dalby responded in the negative. Psychologists have the ability to use extra tools that a psychiatrist does not.

78. Dr. Dalby did not take any steps to ask Dr. Ahmad about the truth of the allegations from the 2014 Complaint. He was aware that there was another incident where Dr. Ahmad was invited to lunch and that was it. He bought drinks for that patient, nothing further happened, and there was no development of the relationship. Other people find facts, and Dr. Dalby incorporates those facts into the opinion. Dr. Dalby is an evaluator and not an investigator.

Mr. Steven Harbourne *- Examination*

79. Mr. Harbourne reviewed his qualifications. He has a nursing degree and extensive clinical experience. He is a therapist who usually sees people with sexual offences. Mr. Harbourne prepared a report dated November 14, 2021.

80. Dr. Ahmad attended for an intake assessment on September 21, 2021. Mr. Harbourne had access to the Risk Evaluation, and was aware of these proceedings. He was aware that one of the key issues relates to dishonesty, and that Dr. Ahmad signed an undertaking with the College and did not comply. He was aware that Dr. Ahmad created a false entry in the medical chart, and that Dr. Ahmad was dishonest in his response to the 2014 Complaint.

81. Since the intake assessment on September 21, 2021, Mr. Harbourne has seen him two more times. The therapy is cognitive behaviourally based and this form of therapy is a way of understanding why we do what we do. Boundary violations come out of dishonesty.

82. Mr. Harbourne treats patients holistically. The root cause of dishonesty is that people are trying to get their emotional needs met in any way that they can. A client must find healthy ways to meet their needs.

83. When Mr. Harbourne first met Dr. Ahmad, it was hard to get him to talk about what happened because of shame. The associated emotions are so negative that he does whatever he can to avoid them. In the second and third sessions, Dr. Ahmad was willing to be more open, and talked about opening a conversation with his son.

84. Dr. Ahmad needs about 20 to 25 sessions. He truly knows that what he did was wrong, and he carries a lot of shame. He can be rehabilitated, and he needs to understand that boundary violations are the symptoms of something else.

Mr. Harbourne – Cross-Examination

85. In response to questions from counsel for the Complaints Director, Mr. Harbourne confirmed that he is a member of CARNA and he would not advise nurses to be dishonest with the regulator. The need for sexual gratification without being observed by chaperones is deviant or predatory behaviour. That is not where Dr. Ahmad is going. Unskilled people seek relationships with patients to meet their relational needs. Mr. Harbourne agreed that physicians have the balance of power.

Mr. Harbourne – Hearing Tribunal Questions

86. In response to questions from the Hearing Tribunal, Mr. Harbourne stated that the recidivism rate drops by half for those in the program. People are less likely to reoffend as they get older. If behaviour is escalating over time, it is more likely that they will reoffend.

87. Therapy sessions should be held every two weeks for about an hour for approximately one year. At that time, Mr. Harbourne would be able to give an updated opinion regarding fitness to resume practice.

88. A sexual offence may be a component of sexual addiction. Sexual addiction is a symptom of a much bigger problem and is usually about avoidance. Sex is used as a coping mechanism. A person may have a very low sex drive within marriage but a very strong one outside.

Dr. Wequar Ahmad - *Examination*

89. Dr. Ahmad is 55 years old, and he has been married for 25 years with two children. His son is 23 and his daughter is 16. He was born in India and is now living in Calgary. He suffered significant trauma as a child. He did his internship in Delhi and met his wife there. Dr. Ahmad married when he was 30. Both families had problems with the marriage because of different religious backgrounds.

90. He received a training job in Northern Ireland and did this for approximately six years. His wife was educated but unable to get a job. She applied for dentistry and got a position in London.

91. The 2014 Complaint was ultimately dealt with by way of collaborative resolution. He attended a boundaries course and signed an undertaking that he would have a chaperone present for female patients during the duration of his practice.

92. He began treating the Complainant in 2012 at his former clinic in Calgary, and she followed him to the new clinic. He also treated her family members from 2012-2017 and it was strictly a doctor / patient relationship. The relationship with the Complainant changed in 2017 and became friendly and sexual. He knew that it was inappropriate.

93. In the spring of 2017 Dr. Ahmad was under a tremendous amount of stress and did not know how to cope. His house burned down in 2016 and the family lost everything. His son had problems returning to school in England because of passport issues. His wife had medical problems.

94. Dr. Ahmad had an inappropriate relationship with the Complainant in 2017 until she ended it. He told her that he would leave his wife.

95. Dr. Ahmad became aware that the Complainant would be making a complaint to the College. He added information to the medical record on January 13, 2018 which was not an accurate reflection of the visit or the Complainant's state of mind. He added information after he found out about the complaint to the College to try and protect himself.

96. Dr. Ahmad breached his 2014 Undertaking with the College to have a chaperone present for female patients and saw them without a chaperone. He breached the 2014 Undertaking because he was embarrassed and felt that having a chaperone was undermining the patient's confidence.

97. His response to the College on February 21, 2018 was not truthful. He knew that it was wrong, but he was scared and did not know what to do in the situation.

98. He has been out of practice since January 2018. His wife is supporting the family through work in the UK. There have been a lot of arguments and problems with trust, but his wife has stuck with him.

99. He saw a psychiatrist during a trip to India and was on medication. Dr. Dalby also recommended someone for treatment. Therapy is helping Dr. Ahmad to identify problems, and his intention is to comply fully with recommendations.

100. Dr. Ahmad would like to practise medicine again. He has acknowledged his actions and the implication of a breach of trust. This is a very hard situation and he has learned from it and will take measures to avoid similar situations and will not do it again. He would like to apologize to the Complainant and tell her that he is sorry for his actions and acknowledges his mistakes. He would like the help of the Canadian Medical Protective Association and College in determining the right way of dealing with inaccurate chart entries. He has had sexual relations with two people – his wife and the Complainant. He is very sorry for his actions and will continue with therapy.

101. He does not consume drugs, and consumes low amounts of alcohol if offered.

Dr. Ahmad – Cross-Examination

102. In cross-examination, Dr. Ahmad was asked about a statement in the Risk Evaluation that the relationship with the Complainant "didn't mean anything". In contrast the Complainant described the relationship as very serious. Dr. Ahmad stated that he would not say that the Complainant described the relationship wrong. He agreed that he was the first person who mentioned love in the text messages and that the Complainant was being cautious.

103. Dr. Dalby's Risk Evaluation stated that the Complainant's brother-in-law acted as a means of intimidation. Dr. Dalby was not aware that Dr. Ahmad had dined with the Complainant and her brother-in-law and that the brother-in-law was a patient.

104. The texts to the Complainant contain graphic information. Dr. Ahmad stated that he was trying to show that he was genuinely in love with the Complainant.

105. Dr. Ahmad confirmed that he conducted intimate examinations without a chaperone present.

106. Regarding the 2014 Complaint, Dr. Ahmad attended lectures regarding the boundaries course. It was either in 2014 or 2015. The course covered boundary violations, what doctors should not do, and how to recognize problems.

107. Dr. Ahmad agreed that he told the College in 2014 that the allegations in the 2014 Complaint were not correct. Later he acknowledged that he had been at lunch with the patient and purchased alcoholic drinks and then denied everything else. Dr. Ahmad gave evidence that he would not say that the patient is lying about everything else.

108. Dr. Ahmad stated that he would follow the rules in the future because he is helping himself and going to therapy to resolve issues. It took until the fall of 2021 to start taking therapy because for a year or so he was in denial. He finds talking very difficult and maybe it was avoidance.

Dr. Ahmad – Hearing Tribunal Questions

109. In response to questions from the Hearing Tribunal, Dr. Ahmad stated that he would take a number of measures to make sure that it would not happen again: hire one person to just be a chaperone; continue with therapy; address weaknesses that led him to this situation; be honest and more open; and if he faces difficulties try and deal with it in a more appropriate manner.

110. Regarding the Complainant's visit on August 25, 2016, Dr. Ahmad recalls doing a physical exam. The Complainant was possibly mistaken when she said that there was no physical exam. The discussion relating to the physical was not documented during the appointment on the previous day.

111. Dr. Ahmad has an inactive licence in the UK, and there have been no complaints or disciplinary action in other jurisdictions.

112. Dr. Ahmad would have to take a number of steps in order to activate his UK licence. He has an option to practise in the UK but is not fully aware of what is required.

Pooja Ahmad *– Examination*

113. The witness has been practising her profession in the UK for the past 1.5 years in order to try and make a living for the family. She is trying to make it the least traumatic for her children even though her husband is not working.

114. She became aware of the Complainant in October 2017 when Dr. Ahmad left his phone at home. She told Dr. Ahmad to cut the ties and not speak with the Complainant. It is not right to be a friend and patient.

115. In December 2017 she received a text message from the Complainant stating that she did not realize that Dr. Ahmad was still her husband, and the Complainant was cutting all ties. She received the complaint and got to know everything.

116. Dr. Ahmad was very disgusted and ashamed of the entire thing. Their relationship was very difficult. It got to the point in 2019 when she believed

that he might harm himself. She wanted Dr. Ahmad to be in a more supportive environment and he went to India to be with his family. He needed a change of environment to become more mentally stable and analyze what went wrong.

117. Dr. Ahmad has changed a lot in the last year and a half. He has become more trustworthy and is taking the responsibility of a father. He is reliable, honest and open. He talks it out if there is a problem. There is a lot of repentance and he wants to fix the problem so that something like this does not happen again.

118. They FaceTime every day and there is a family group call every day of the week. Dr. Ahmad is very much a part of the family and she is not leaving him or divorcing him. She wants to assure the Hearing Tribunal that this will not happen again and it was unacceptable. They are together in this as a family. Dr. Ahmad is an exceptionally good man and he has never done anything like this before.

Pooja Ahmad – Cross-Examination

119. During cross-examination she confirmed that she had read the text messages and the reports prepared by Dr. Dalby and Mr. Harbourne. In reference to the 2014 Complaint, the witness stated that she knew that the patient was upset and called Dr. Ahmad crying, and he went to meet her to make sure that she did not harm herself.

Pooja Ahmad – Hearing Tribunal Questions

120. In response to questions from the Hearing Tribunal, the witness confirmed that she has qualifications for dentistry in the UK. She plans to move back to Canada, and has not seen her children in 1.5 years. Her son is qualified as a doctor, and her daughter is 17.

121. When Dr. Ahmad was in India he had a few sessions with a psychiatrist and was prescribed medication. His first real treatment with the therapist in Calgary was in September 2021. Dr. Ahmad was stuck in India for a long time with no flights. He had constant support in India, and his sister and brother are both doctors.

122. It will not be a problem to cover the costs of Dr. Ahmad's treatment. They can just pay the bills for the bare necessities and tuition, and she will be trying to keep everything afloat to the best of her abilities.

VII. SUBMISSIONS BY THE PARTIES

Submissions on behalf of the Complaints Director on Sanction

123. Mr. Boyer, on behalf of the Complaints Director, asked the Hearing Tribunal to order that Dr. Ahmad's registration and practice permit be cancelled and to order Dr. Ahmad to pay a significant portion of the costs and hearing.

124. Counsel for the Complaints Director submitted that the starting point is the principle that membership in a profession is a privilege and not a right. The Alberta Court of Appeal endorsed the following statement in *Fang v College of Physicians and Surgeons of Alberta* at paragraph 13*:*

> *The practice of a profession is a privilege. The law grants to certain groups a monopoly to carry on certain well-defined activities and imposes upon the members of those groups an obligation to prevent abuse and to ensure that the monopoly will be exercised for the public good.*

125. The duties of the College as set out in section 3 of the HPA make it clear that the focus is on serving the public interest.

126. Mr. Boyer submitted that the relevant factors in determining sanction come from *Jaswal* v *Newfoundland (Medical Board)* and are as follows:

> *36 … the following is a non-exhaustive list of factors that ought to have been considered:*
>
> *1. the nature and gravity of the proven allegations*
>
> *2. the age and experience of the offending physician*
>
> *3. the previous character of the physician and in particular the presence or absence of any prior complaints or convictions*
>
> *4. the age and mental condition of the offended patient*
>
> *5. the number of times the offence was proven to have occurred*
>
> *6. the role of the physician in acknowledging what had occurred*
>
> *7. whether the offending physician had already suffered other serious financial or other penalties as a result of the allegations having been made*
>
> *8. the impact of the incident on the offended patient*
>
> *9. the presence or absence of any mitigating circumstances*

> 10. *the need to promote specific and general deterrence and, thereby, to protect the public and ensure the safe and proper practice of medicine*
>
> 11. *the need to maintain the public's confidence in the integrity of the medical profession*
>
> 12. *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*
>
> 13. *the range of sentence in other similar cases"*

127. Regarding the first factor, counsel for the Complaints Director submitted that the number and nature of the proven allegations set this case at the upper end of the spectrum of unprofessional conduct.

128. Regarding the second and third factors, Dr. Ahmad is an experienced physician who had been given guidance by the College as a result of the 2014 Complaint. There was no lack of understanding that the conduct was unacceptable. Further, Dr. Ahmad attended a multi-day boundaries course.

129. Regarding the fourth factor, the Complainant was an emotionally vulnerable patient whose vulnerability was known to Dr. Ahmad.

130. Regarding the fifth factor, the sexual relationship occurred over a period of six months and the falsifying of patient records occurred over a period of ten months. The intentional deception of the College occurred multiple times starting with the creation of a false entry in the medical record for December 5, 2017. Deception also occurred in relation to the College annual renewal form and the initial response to the complaint where Dr. Ahmad denied the sexual relationship. The 2014 Undertaking was repeatedly breached after it was put in place to protect the public following the 2014 Complaint. Dr. Ahmad violated the 2014 Undertaking to have a chaperone present, and then falsified patient records to avoid detection.

131. Regarding the sixth factor, Dr. Ahmad only admitted the allegations in the Notice of Hearing after considerable investigation effort.

132. Regarding the seventh factor, Dr. Ahmad has been out of practice since February 2018 and has suffered serious financial consequences. His family has been supported by his spouse.

133. Regarding the eighth factor, the Complainant has suffered considerable harm, and she continues to be negatively impacted. Other patients have also suffered harm, although it is not known to them, by not having the benefit of a chaperone present during an examination by Dr. Ahmad.

134. Regarding the ninth factor, Dr. Ahmad cooperated in admitting the allegations in the Notice of Hearing. However, a contested sanction hearing was required to get to the truth about the 2014 Complaint.

135. Regarding the tenth, eleventh and twelfth factors, the public confidence in the ability of the College to regulate Dr. Ahmad is front and centre in this sanction hearing. Dr. Ahmad has called evidence to attempt to prove that he can be rehabilitated. However, as noted in *College of Physicians and Surgeons v Ali* at paragraph 74*,* the guiding principle is the public interest: "protection of the public, and safe and proper practice shall take priority over rehabilitation, treatment and welfare of the member".

136. Regarding the thirteenth factor, counsel for the Complaints Director referred to prior Hearing Tribunal decisions where the totality of the conduct was so significant that the sanction of revocation was imposed. The focus is on whether the physician remains worthy of the privilege to practice medicine and what sanction is in the public interest. The decision of the Hearing Tribunal in *Maritz* explains that a physician does not need to be proven ungovernable for the sanction of cancellation to be imposed. The lack of evidence demonstrating insight or the ability to change and improve conduct is a very relevant factor in determining whether cancellation of registration should be imposed (*Ahluwalia, Ali,* and *Litchfield)*.

137. Dr. Ahmad would have the ability to apply for reinstatement under section 37 of the *Physicians, Surgeons and Osteopaths and Physician Assistants Profession Regulation.* That would be the time for a full multi-disciplinary assessment as part of the Registrar's consideration of fitness to practice and good character.

Submissions on behalf of Dr. Ahmad on Sanction

138. Dr. Ahmad's counsel proposed the following to be an appropriate sanction in this case:

    a. a 48-month suspension, with Dr. Ahmad being credited for time served dating back to his voluntary suspension in January 2018;

    b. prior to being reinstated to the register, Dr. Ahmad would be required to undergo a multi-disciplinary assessment;

    c. requirement of a chaperone, a notice advising of the chaperone condition posted in Dr. Ahmad's clinic, conditions respecting a compliance log and unannounced inspections;

    d. a restriction to working in a clinical setting;

    e. a continuing care agreement for five years;

f. he will continue to receive and actively participate in treatment from his current therapist for a period of one year following reinstatement, or longer, as recommended by his current therapist; and

g. all staff working with Dr. Ahmad must sign a form acknowledging that they are aware of these conditions, will undertake to comply with the same, and will report to the College any breach of the conditions by Dr. Ahmad.

These measures, in the submission of Dr. Ahmad's counsel, would impose significant consequences on Dr. Ahmad, protect the public, promote specific and general deterrence, and maintain the public's confidence in the integrity of the medical profession.

139. This matter is not governed by *Bill 21: An Act to Protect Patients* ("Bill 21") and must be disposed of in accordance with the HPA as it existed prior to April 1, 2019.

140. Counsel for Dr. Ahmad submitted that any sanction must be appropriate, fair, and reasonable in the particular circumstances as well as to the nature of the allegations proved. Counsel for Dr. Ahmad also reviewed the criteria set out in *Jaswal v Newfoundland Medical Board*.

141. Regarding the first and second factors, counsel for Dr. Ahmad submitted that the allegations were serious, but did not fall on the most serious end of the spectrum for sexual boundary violations. Dr. Ahmad is 55 years old. He studied medicine in India and he registered as a physician in Alberta in 2011. Prior to that time he worked as a general practitioner in Northern Ireland and the United Kingdom.

142. Regarding the third factor, Dr. Ahmad was the subject of the 2014 Complaint. A female patient alleged that Dr. Ahmad engaged in boundary violations with her, and the complaint was resolved through a consensual resolution. Dr. Ahmad entered into an undertaking with the College to have a chaperone present for all female patient exams, and he completed a two-day course on professional boundaries. Counsel for Dr. Ahmad submitted that where prior complaints have not been adjudicated and no findings of fact have been made, hearing tribunals cannot accept these prior matters into evidence for the truth of their contents.

143. Regarding the fourth and fifth factors, Dr. Ahmad's counsel noted that the Complainant did not present with any particular vulnerability that might attract a more serious sanction. Repeated offences over a longer period of time would attract a more serious sanction. Dr. Ahmad has admitted to the conduct and takes full responsibility for his actions.

144. Regarding the seventh factor, counsel for Dr. Ahmad submitted that he has suffered serious financial and personal consequences. He voluntarily agreed to a suspension of his licence in January 2018 pending the outcome of the

investigation, and has been unable to earn a living. His wife supports the family by practising dentistry in the United Kingdom. Dr. Ahmad has suffered profound personal consequences, including shame and stress.

145. Regarding the ninth factor, counsel for Dr. Ahmad submitted that the following are mitigating factors: Dr. Ahmad's admission of unprofessional conduct at the merits hearing which reduced the time and cost of the hearing and saved the Complainant from the burden of testifying; his engagement in counselling; and his level of stress when he began the relationship with the Complainant including a house fire and family medical problems. Dr. Ahmad has openly acknowledged his wrongful conduct in breaching the 2014 Undertaking, and falsifying an entry in the Complainant's chart.

146. Regarding the tenth factor and the need to promote specific and general deterrence, counsel for Dr. Ahmad reviewed the evidence given by Dr. Dalby, Mr. Harbourne, and Pooja Ahmad. Where the opinions of Dr. Friend and Dr. Dalby differ regarding the level of risk, the Hearing Tribunal should prefer the evidence of Dr. Dalby. Dr. Friend did not interview Dr. Ahmad or any collateral sources and he is unable to perform his own risk assessment. Dr. Friend is unable to arrive at any conclusions regarding rehabilitation, and Dr. Dalby's and Mr. Harbourne's evidence that Dr. Ahmad is capable of being rehabilitated is unchallenged.

147. Regarding the eleventh factor, counsel for Dr. Ahmad submitted that any sanction must protect the public and signal to the profession that sexual boundary violations must not be tolerated. This can be achieved through a variety of strong sanctions.

148. Regarding the twelfth factor, sexual boundary violations are serious and prohibited conduct.

149. Regarding the thirteenth factor and the range of penalties in similar cases, counsel for Dr. Ahmad submitted that the following cases are instructive regarding sanction: *College of Physicians and Surgeons of Ontario v Lee*; *Lycka (Re)*; *Lasaleta (Re)*; *Alarape (Re)*; *Bhardwaj (Re)*; *Alberta College of Occupational Therapist and Thiessen*; and *College of Physicians and Surgeons of Alberta v Maritz.*

150. The following reinstatement decisions from the College of Physicians and Surgeons of Saskatchewan set out the variety of conditions that may be applied by the Hearing Tribunal to ensure that the goals of sanctioning are met: *College of Physicians and Surgeons of Saskatchewan v Sayeed;* and *College of Physicians and Surgeons v Horri.* In each situation, the physician's licence was revoked as a result of a sexual relationship with a patient.

151. Dr. Sayeed's licence was restored with the following conditions: a) he cannot practice in a solo practice; b) he will see no more than 20 patients per day, and practice no more than 25 hours per week; c) he must have a female chaperone present at all times during female patient encounters; d) he will

have a sign posted in his waiting room as well as examining rooms regarding the requirement to have a female chaperone present when seeing female patients; e) he will also continue to receive treatment from and comply with treatment recommendations of his current psychotherapist, and actively participate in psychotherapeutic treatment; f) he will continue to receive treatment from his psychiatrist; g) he will have repeat cognitive testing in one year; h) he will undergo unannounced inspections of his practice locations and patient charts; i) he will provide monthly updates to the Registrar regarding his practice; and j) he will engage in personal self-care activities.

152. Dr. Horri's licence was restored with the following conditions: a) Dr. Horri will not have any in-person professional encounters with female patients in his office practice, except in the presence of a female chaperone; b) Dr. Horri will post a clearly visible sign in his waiting room and each of his examination rooms in his clinic that states that he will not see female patients without the presence of a female chaperone; c) Dr. Horri will limit his medical practice in Saskatchewan to practice in a medical clinic seeing patients by appointment or on a walk-in basis; and d) Dr. Horri agrees that he will actively participate with the Physician Health Program of the Saskatchewan Medical Association and will follow the recommendations of the Physician Health Program.

Submissions on behalf of the Complaints Director on Costs

153. With respect to costs, counsel for the Complaints Director noted that *Jaswal* sets out a number of factors to consider when determining costs to be imposed:

At paragraph 51 of Jaswal, the Court stated:

> *"51 … the following is a non-exhaustive list of factors which ought to be considered in a given case before deciding to impose an order for payment of expenses:*
>
> 1. *the degree of success, if any, of the physician in resisting any or all of the charges*
> 2. *the necessity for calling all of the witnesses who gave evidence or for incurring other expenses associated with the hearing*
> 3. *whether the persons presenting the case against the doctor could reasonably have anticipated the result based upon what they knew prior to the hearing*
> 4. *whether those presenting the case against the doctor could reasonably have anticipated the lack of need for certain witnesses or incurring certain expenses in light of what they knew prior to the hearing*

5. *whether the doctor cooperated with respect to the investigation and offered to facilitate proof by admissions, etc.*

6. *the financial circumstances of the doctor and the degree to which his financial position has already been affected by other aspects of any penalty that has been imposed."*

154. Counsel for the Complaints Director takes the position that Dr. Ahmad should be responsible for a significant portion of the costs of the investigation and hearing.

Submissions on behalf of Dr. Ahmad on Costs

155. Counsel for Dr. Ahmad submitted that costs are discretionary. In exercising its discretion, the Hearing Tribunal should consider Dr. Ahmad's financial circumstances, the fact that he has not been practising since January 2018, and the fact that he admitted to the conduct. Counsel for Dr. Ahmad takes the position that any order of costs will result in a crushing financial blow Dr. Ahmad cannot afford.

Questions from the Hearing Tribunal

156. During the resumption of the hearing on February 7, 2022, the Hearing Tribunal asked questions relating to the submissions. Dr. Ahmad has been absent from practice since 2018. In response to questions from the Hearing Tribunal, counsel for the Complaints Director submitted that the CPSA Standard of Practice on Re-entering Medical Practice or Changing Scope of Practice (the "Standard") is relevant.

157. Counsel for Dr. Ahmad submitted that the proposed sanction conditions set out in Dr. Ahmad's written submissions can apply in tandem with the Standard. Any suspension would start immediately, and Dr. Ahmad can begin his multi-disciplinary assessment, continuing care agreement, and requirement for therapy per the proposed sanction conditions. Simultaneously, Dr. Ahmad can apply under the Standard to re-enter practice. He can then begin the parallel process of completing any assessment and retraining the College deems necessary under the Standard so that when his suspension is completed, he can re-enter practice with the remaining conditions. Dr. Ahmad would not be required to complete the Standard process first, and be approved to re-enter practice, prior to any suspension beginning. Dr. Ahmad's licence is not cancelled. Procedurally, there is no reason why the suspension would need to start after he is approved to re-enter practice under the Standard.

158. Counsel for the Complaints Director addressed questions related to monitoring. There are situations where a member of the College requires more demanding monitoring to ensure adherence to an order and that has been implemented. It can be done with sufficient resources and it is possible

to build a more demanding monitoring program. Some examples are situations where a chaperone must be a licensed healthcare professional, the chaperone must be fully informed about the member's circumstances and know what they are looking for, and cross referencing to billing information. There have been occasions where members have been restricted from seeing female patients. The Complaints Director submits that cancellation is appropriate in this situation. The recent Alberta Court of Appeal decision in *Virk* shows that there is always a spectrum in any sanction decision and that cancellation or revocation is at the upper end of the spectrum.

159. Counsel for Dr. Ahmad submitted that protection of the public can be achieved without cancellation of the membership. Dr. Ahmad has been out of practice for 48 months, and if his membership is cancelled it will be another 36 months before he is allowed to reapply. He has served this punitive time period already, and there are a number of appropriate safeguards and a path to return to practice. The decision in *Virk* can be distinguished because the facts are not analogous. Mr. Virk did not testify at the hearing. In contrast, Dr. Ahmad gave evidence and was presented for cross-examination.

160. Counsel for the Complaints Director submitted that the *Virk* decision was provided for the principles articulated by the Alberta Court of Appeal. As set out in paragraphs 32 and 40, it is up to the Hearing Tribunal to decide what is required for the protection of the public.

161. Counsel for Dr. Ahmad addressed questions relating to return to practice given the circumstances. Dr. Ahmad will continue to undergo therapy and there will be an assessment of when he is fit to return to practice. The Hearing Tribunal decision in *Lasaleta* is a decision where the Hearing Tribunal ordered a number of conditions assuming that reinstatement was granted. It is possible to separate the two processes involving fitness to practice and conditions placed on a member's practice. It has been done before and is not insurmountable.

162. It would be premature to determine who should be part of the multi-disciplinary assessment. There are places with expertise that do these types of assessments, and this should be left to the discretion of the team to assess who should be performing the assessment. Dr. Ahmad would be open to an in-patient intensive option if that was recommended. A graduated reintroduction to practice would be reasonable. It is within the discretion of the Hearing Tribunal to determine restrictions on practice including number and type of patients.

163. Counsel for the Complaints Director submitted that Dr. Lasaleta remains out of practice and that the Hearing Tribunal order for re-entry to practice has yet to be implemented.

VIII. FINDINGS OF THE HEARING TRIBUNAL ON SANCTION

164. The Hearing Tribunal carefully considered the evidence and submissions of the parties.

165. The Hearing Tribunal considered the factors in *Jaswal* v *Newfoundland Medical Board*. These include the nature and gravity of the proven allegations, the age and experience of the offending member, the previous character of the member and in particular the presence or absence of any prior complaints or convictions, the impact on the offended patient, the number of times the offence was proven to have occurred, the role of the member in acknowledging what had occurred, whether the member has already suffered other serious financial or other penalties, and the presence or absence of any mitigating circumstances.

166. The Hearing Tribunal determined the appropriate sanction in this case is that Dr. Ahmad's registration and practice permit to practice medicine in Alberta be cancelled. In addition, Dr. Ahmad is responsible for 25% of the costs associated with this hearing and the investigation leading to it up to a maximum of $12,500.

Reasons

167. The Hearing Tribunal considered all of the admissions of unprofessional conduct by Dr. Ahmad during the merits component of this hearing to be at the serious end of a spectrum of unprofessional conduct. The charges of unprofessional conduct that Dr. Ahmad admitted to had occurred against a backdrop of a College complaint dating back to 2014. Dr. Ahmad, during cross-examination, also indicated that the complainant in 2014 had not been untruthful when she had made her complaint against him at that time.

168. Following that 2014 Complaint, which had also involved an allegation of a boundary violation, Dr. Ahmad had signed an undertaking with the CPSA, as part of a resolution to the complaint, that he would use a chaperone when seeing female patients for physical examinations. Dr. Ahmad repeatedly breached that undertaking to have a chaperone present when seeing female patients. These breaches occurred on more than 15 occasions. In 2017, he started a six-month personal relationship with a female patient, the Complainant, who was currently under his medical care. The relationship between Dr. Ahmad and the Complainant began while he was treating her during a vulnerable period in her life, the details of which Dr. Ahmad was entirely aware of. Dr. Ahmad continued to engage in an out-of-office relationship, including sexual intercourse and travelled with the Complainant, despite being made aware of the seriousness of such a boundary violation in the past.

169. When the Complainant ended the relationship and threatened Dr. Ahmad with a College complaint, Dr. Ahmad falsified the Complainant's medical record to create the impression that she was mentally unstable and that

Dr. Ahmad had been discouraging any relationship with her. At that time, the Complainant was going through divorce proceedings, including child custody proceedings. The medical records that Dr. Ahmad falsified, attesting to her mental instability, could have negatively impacted a custody hearing if her medical records were requested and required for the child custody proceedings. The Complainant has testified to the harmful effects the relationship has had on her, including feeling vulnerable and violated. The Complainant no longer trusts medical professionals and feels that Dr. Ahmad has used her medical information for his personal gain.

170. The Hearing Tribunal noted that Dr. Ahmad cooperated with the Complaints Director's suggestion to voluntarily withdraw from the practice of medicine in the Province of Alberta until the College resolved the matter. The Complainant, however, had provided the College with text messages between herself and Dr. Ahmad as part of her initial complaint to the College, which strongly supported her allegations. Against this background, Dr. Ahmad voluntarily signed his agreement with the CPSA on January 29, 2018.

171. Since that signed agreement in January 2018, over three years passed before this Hearing Tribunal met to hear arguments concerning the allegations of unprofessional conduct against Dr. Ahmad. The Hearing Tribunal is aware that Dr. Ahmad's ongoing mental health challenges and the onset of the COVID-19 pandemic may have contributed to this delay. Neither the College nor counsel for Dr. Ahmad have brought forward evidence or made submissions as to why it has taken over four years for the College's process to run its course in dealing with this complaint of unprofessional conduct against Dr. Ahmad.

172. The Hearing Tribunal has considered many factors when deciding what sanction to impose. The Hearing Tribunal considered the numerous previous violations Dr. Ahmad had made despite the 2014 Undertaking agreement between himself and the College, which arose from a patient complaint. The Hearing Tribunal then considered the nature and seriousness of the 2017 sexual boundary violation when Dr. Ahmad engaged in an ongoing, six-month sexual relationship with a female patient under his care, the Complainant. It then considered the deliberate alteration of the Complainant's medical records to depict her negatively and portray himself as a victim of a mentally unstable patient. It also considered the potential harm that the alteration of the Complainant's medical record might cause in the context of her divorce proceedings. The Hearing Tribunal also considered that Dr. Ahmad lied to the CPSA when renewing his 2018 licence. He failed to disclose he had been in a sexual relationship with the Complainant, who had been a long-time patient, still under his care during the six-month course of the relationship. The Hearing Tribunal found these facts to be on the most extreme end of the spectrum of unprofessional conduct.

173. During this sanction hearing, the Hearing Tribunal learned that Dr. Ahmad experienced significant trauma in the past. Dr. Ahmad is currently undergoing treatment for this past trauma which may take some time to complete. It was evident to the Hearing Tribunal that the past four years have been especially challenging for Dr. Ahmad while also attempting to work through his past trauma.

174. It is clear to the Hearing Tribunal that the Complainant has also suffered greatly. It was difficult for the Complainant to come forward as she is a private person but did not want others to suffer in the same way she has. The Complainant's vulnerability and violation still affect the trust she once had for the medical profession, putting her in a potentially harmful situation when it comes to medical care. The Complainant continues to worry about the invasion of her privacy, the uninvited stress and how the false entry in her medical could affect her or her family in the future.

175. Expert testimony was provided by qualified experts for both the Complaints Director and Dr. Ahmad as to the likelihood of Dr. Ahmad reoffending once he has completed a multi-disciplinary therapeutic program. Any such program would hopefully mitigate the underlying issues that might lead to Dr. Ahmad acting in a similar unprofessional manner in the future. Dr. Friend was the expert called by the Complaints Director, and while he did not interview Dr. Ahmad, he reviewed the consultations and opinion of Dr. Dalby, the expert called by counsel for Dr. Ahmad, who had done so.

176. Dr. Friend's opinion was that the events of 2014, and the recurring breaches of that 2014 Undertaking, were significant factors predicting a possible recurrence of the behaviour that led to the current complaint and that Dr. Dalby had underappreciated them. During questioning during the hearing, Dr. Dalby was of the opinion that if the events of 2014 had indeed involved more than the consumption of alcoholic drinks with a patient, then it may place Dr. Ahmad into a medium risk of reoffending, especially if he were to be subject to significant life stressors at the same time. The Hearing Tribunal valued the input of both experts. Still, it determined that the testimony of Dr. Friend was more balanced, and therefore it gave his opinion more weight than that of Dr. Dalby when it came to making its decision on the appropriate sanction.

177. The testimony of Dr. Ahmad's therapist, Mr. Harbourne, was reviewed, and the Hearing Tribunal was pleased to hear that Dr. Ahmad had commenced an ongoing relationship with an experienced counsellor. It also noted the financial restraints that Dr. Ahmad expressed he was under regarding paying for this counselling. The Hearing Tribunal also noted the approximate length of time that Mr. Harbourne estimated may be needed for Dr. Ahmad to enter practice again in Alberta safely.

178. Dr. Ahmad’s wife, Dr. Pooja Ahmad, testified on his behalf. The Hearing Tribunal found her to be a reliable witness, and she is currently the main

source of financial security for the family, as she is working as a dentist in the United Kingdom. At this time, she is very supportive of her husband. She did confirm that they would do whatever it takes to ensure that Dr. Ahmad is able to access the counselling he needs, but she also acknowledged that they are also under significant financial constraints to be able to do that due to the needs of their children.

179. Dr. Ahmad testified on his own behalf. He gave evidence about a history of significant trauma as a child and the stress that he was under prior to 2017.

180. Both parties had provided the Hearing Tribunal with a lengthy list of case law to consider in reaching its decision as to an appropriate sanction. Both parties also used the *Jaswal* decision as a basis for what they suggested the appropriate sanction should be.

181. When reviewing the *Jaswal* factors, the Hearing Tribunal gave the following issues the most weight when reaching its decision. The Hearing Tribunal has considered these thirteen factors and how they might be applied to the case at hand:

1. The nature and gravity of the proven allegations:

Dr. Ahmad admitted to 19 charges of unprofessional conduct. These were all serious breaches of professional conduct.

2. The age and experience of the offending physician:

Dr. Ahmad was an experienced physician at the time when these events occurred.

3. The previous character of the physician and in particular the presence or absence of any prior complaints or convictions:

Dr. Ahmad was still under the 2014 Undertaking with the CPSA concerning a previous boundary complaint when these events unfolded.

4. The age and mental condition of the offended patient:

The Complainant was in her 30s and undergoing the stress of a divorce when these events took place.

5. The number of times the offence was proven to have occurred:

The sexual relationship was initiated in June 2017 and ended in December 2017.

The breach of the 2014 Undertaking occurred on more than 15 occasions.

The falsifying of the Complainant's medical records occurred on one occasion. The falsifying of other patients' records to show that a chaperone was present when she was not present occurred on 14 occasions.

The failure to disclose to the CPSA at the time of the 2018 licence renewal occurred on one occasion.

6. *The role of the physician in acknowledging what had occurred*:

Dr. Ahmad signed an agreement to voluntarily suspend his licence to practice medicine in Alberta in January 2018. He admitted that the allegations set out in the Notice of Hearing were true and that they constituted unprofessional conduct.

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

Dr. Ahmad has not practised medicine since January 2018 and has obviously suffered financially because of that decision to voluntarily suspend his licence.

8. *The impact of the incident on the offended patient*:

The Complainant has suffered emotionally since the relationship with Dr. Ahmad ended.

9. *The presence or absence of any mitigating circumstances*:

Dr. Ahmad had been enduring marital problems around the time that the sexual relationship with the Complainant began. He was also still dealing with the fallout of the fire that had destroyed his home the previous year. In addition, his wife had been ill and hospitalized, requiring surgery before the sexual relationship with the Complainant began. It is also likely that the trauma he suffered in his past may have also been a factor.

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

While the Hearing Tribunal considers it important to create a general deterrent in this case to protect the public, it is also aware that the particulars of this case must be the deciding factor in reaching an appropriate sanction.

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

This is particularly important, especially in the context of a self-regulated profession.

However, the nature of any sanction should be appropriate for the facts surrounding the conduct that was proven or admitted to.

12. *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*:

Every witness and even Dr. Ahmad himself agreed that the conduct was unacceptable, unprofessional and that it would fall far outside the range of permitted conduct.

13. *The range of sentences in other similar cases*:

There were a range of sentences in the decisions supplied to the Hearing Tribunal by both parties. At one end were sanctions which involved the sanction being the time that the physician had already been suspended to the full cancellation of a physician's licence and practice permit.

182. The Hearing Tribunal reviewed the case law and relevant decisions in helping it arrive at its sanction decision. It was also aware that the mandatory revocation of a practice permit following the implementation of Bill 21 in 2019 does not apply to the matter at hand as it took place prior to Bill 21 becoming law. Although Bill 21 has no application to the facts here, it is reflective of the very serious nature of the conduct and the damage that can be done to patients through sexual abuse and sexual misconduct.

183. Dr. Ahmad's counsel cited *Ontario (College of Physicians and Surgeons of Ontario) v Lee*, in which a Discipline Committee decision to cancel the physician's practice permit was overturned on appeal as it was felt that the sanction was not in keeping with the severity of the professional misconduct and that a Discipline Committee sanction should, similar to a court of law, be in keeping with the sanctions imposed in similar cases by other Discipline Committees.

184. In a 2018 CPSA Hearing Tribunal decision *Lasaleta (Re)*, the Hearing Tribunal decided a sanction of 12 months' suspension was appropriate. However, since the physician involved had been out of practice for longer than this time period, it determined that should the physician reapply for renewal of his licence, the suspension would be set aside in view of the time that he had already been out of practice.

185. In a 2019 CPSA Hearing Tribunal decision, *Alarape (Re),* the Hearing Tribunal's decision indicated that cancellation of a physician's practice permit should be reserved for egregious cases which involved a breach of trust relating to a vulnerable person or population.

186. In a 2020 CPSA Hearing Tribunal decision, *Bhardwaj (Re)*, the Hearing Tribunal revoked the physician's licence due to the prolonged nature of the physician's sexual misconduct with vulnerable patients, due to his repeated

failure to disclose that misconduct on his annual College renewal form, and to a number of other factors in that case.

187. In a 2019 decision, *Alberta College of Occupational Therapist v Thiessen*, the occupational therapist (OT) took sexual advantage of a vulnerable psychiatric patient over several weeks while she was an inpatient. The OT was given an 18-month suspension with 9 months remitted pending a multi-disciplinary assessment.

188. In a 2018 CPSA Council Review Panel decision, *College of Physicians and Surgeons of Alberta v Maritz*, a physician had sexual relations with two patients while still under obligations to the College arising from a prior sexual misconduct complaint. The Hearing Tribunal gave the physician an 18-month suspension with credit given due to his interim suspension and this was upheld by the Council Review Panel on appeal. He also had a number of other conditions applied to his future practice including the use of a chaperone when seeing female patients.

189. Counsel for Dr. Ahmad provided two additional cases, *College of Physicians and Surgeons of Saskatchewan v Sayeed*, (2018) and *College of Physicians and Surgeons of Saskatchewan v Horri*, (2017), where both physicians had their licences revoked for sexual misconduct but were allowed to re-apply for reinstatement after a 9-month period had elapsed, following the cancellation of their licences, if they fulfilled certain criteria.

190. Counsel for the Complaints Director provided a number of cases for the Hearing Tribunal to review.

191. The Alberta Court of Appeal decision in *Fang v. College of Physicians and Surgeons (Alta)* outlined the important principle that the practice of a profession such as medicine was a privilege and that members of such a profession were subject to a more rigorous discipline than that which applies to ordinary citizens.

192. The Alberta Court of Appeal decision in *Adams v. Law Society of Alberta* stated that it was erroneous to suggest that only the most serious misconduct by the most serious offenders warrants disbarment, and it is but one disciplinary option available from a range of sanctions.

193. In *Litchfield v. College of Physicians and Surgeons of Alberta*, the Hearing Tribunal cancelled the physician's licence due to the recurrent nature of the misconduct and to the fact he was considered ungovernable and this decision was upheld by the Alberta Court of Appeal.

194. In *Ahluwalia v College of Physicians and Surgeons of Manitoba*, the Inquiry Panel found the physician to be ungovernable in that he on several occasions, in writing and orally, misrepresented the truth of his behaviour to the College, indicating that this behaviour was likely to recur in the future. In

this case the physician involved also had a history of similar behaviour from the 1990s.

195. In *Virk v. Law Society of Alberta*, the Alberta Court of Appeal upheld a disciplinary decision and decided that the ultimate sanction of disbarment need not be reserved for the worst case and the worst offender. As noted at paragraph 40 in the *Virk* decision, every case is different and the need to restore public confidence in the profession and protect the public will vary.

> *40 Disbarment is the most severe sanction, but it is not reserved for cases involving dishonest dealing with money, nor is it reserved for the hypothetical "worst case and worst offender". Every case is different, and comparison with other decisions is rarely decisive. The need to restore public confidence in the profession and protect the public will vary. As a result, such comparisons have limited weight in demonstrating that a sanction is demonstrably unfit. The Appeal Panel was not required to identify the most directly comparable prior case and impose a similar sanction.*

196. The Hearing Tribunal has carefully assessed the seriousness of the conduct, as well as the need to protect the public. Dr. Ahmad had completed a two-day course on professional boundaries as a result of the 2014 Complaint. The fact that Dr. Ahmad had already engaged in a course on boundary violations and still engaged in this conduct is a matter of serious concern to the Hearing Tribunal. The deliberate and ongoing pattern of Dr. Ahmad's misconduct, his fundamental breach of trust, his creation of false medical records, and the potential distress and harm to the Complainant from such records are serious aggravating factors.

197. In reviewing the various cases and considering the *Jaswal* factors, the Hearing Tribunal has determined that in some way one of the most egregious and most serious aspects of Dr. Ahmad's behaviour was the falsification of the Complainant's medical record and what that falsified record contained. That deliberate act, done to try and hide his behaviour and discredit the Complainant, could have had significant ramifications for the Complainant and was, in the eyes of the Hearing Tribunal, a reprehensible act and worthy, in and of itself, of the sanction it has imposed. This is in no way meant to condone or minimize the other findings of unprofessional conduct that Dr. Ahmad has admitted to. In the Hearing Tribunal's view, Dr. Ahmad's actions and behaviour demonstrate dishonesty. All of this contributed to the Hearing Tribunal's conclusion that cancellation is the appropriate penalty in this case, with reference to the unique facts of this case and the penalty principles.

198. The Complaints Director has submitted that Dr. Ahmad will not be barred from applying for reinstatement after three years, and that will be the opportunity for a full multi-disciplinary assessment as part of the Registrar's consideration of fitness to practice. The Hearing Tribunal recognizes that the

decision will be the Registrar's and the following recommendations are offered for the Registrar's consideration. If Dr. Ahmad chooses to apply for reinstatement of his licence to practice medicine again in Alberta, the Hearing Tribunal suggests that the Registrar consider the following factors:

a. Dr. Ahmad should have successfully completed a multi-disciplinary therapeutic program that had been recommended by the CPSA. Additionally, he should have a positive recommendation from the head of that multi-disciplinary team regarding his suitability to resume practice as a family physician in Alberta before he has a licence to practice medicine granted to him.

b. Dr. Ahmad needs to be in an ongoing therapeutic relationship with a counsellor recommended by the head of the multi-disciplinary team for a minimum of 5 years after he resumes his practice of medicine.

c. If Dr. Ahmad is allowed to see female patients, he must always have a chaperone in attendance, who is a registered health professional in Alberta. This condition would be a permanent condition under which Dr. Ahmad would practice medicine.

d. The chaperone or chaperones who attend female patients with Dr. Ahmad, for the first 24 months, should report at least 3 times a year, in writing, to the Registrar regarding Dr. Ahmad's compliance with this condition. Thereafter their communication with the CPSA would be on an as-needed basis.

e. Dr. Ahmad for the first 2 years of his renewed practice would be limited to seeing 25 patients a day.

f. Dr. Ahmad would have annual reviews of his billings for the first 2 years after he resumes a medical practice.

g. Dr. Ahmad would only practice in a group practice setting.

h. Dr. Ahmad's practice would be limited to a community setting.

199. In regards to costs, based on the factors set out in *Jaswal,* Dr. Ahmad should be responsible for a significant portion of the costs. These are very serious charges. A significant portion of time in the hearing was spent on sanction. This evidence was important and necessary given that the Complaints Director was seeking cancellation. Although the Complaints Director was successful in her position that cancellation should be ordered, the Hearing Tribunal recognizes Dr. Ahmad's financial circumstances in determining the costs that should be ordered. Granting costs should not deliver a crushing financial blow and extensive oral testimony was presented on financial hardship by Dr. Ahmad and his spouse. The Hearing Tribunal understands the limited resources currently available to Dr. Ahmad and therefore it orders

that he pay 25% of the costs that the investigation and hearing have generated up to a maximum of $12,500.

IX. ORDER OF THE HEARING TRIBUNAL

200. The Hearing Tribunal therefore imposes the following orders pursuant to section 82 of the HPA:

a. Dr. Ahmad's registration and practice permit are cancelled, effective the date of this decision; and

b. Dr. Ahmad shall pay 25% of the costs of the hearing and investigation up to a maximum of $12,500 payable on terms acceptable to the Complaints Director.

Signed on behalf of the Hearing Tribunal by the Chair:

Dr. Colm MacCarthy

Dated this 7th day of April, 2022.