

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. AIMEN FATEIS

**DECISION OF THE HEARING TRIBUNAL OF
THE COLLEGE OF PHYSICIANS
& SURGEONS OF ALBERTA
MAY 30, 2022**

I. INTRODUCTION

1. The Hearing Tribunal held a hearing into the conduct of Dr. Aimen Fateis on May 30, 2022. The members of the Hearing Tribunal were:

Mr. David Rolfe of Red Deer as Chair (public member);
Dr. John Pasternak of Medicine Hat;
Dr. Neelam Mahil of Edmonton;
Mr. Douglas Dawson of Edmonton (public member).

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

Appearances:

Mr. Craig Boyer, legal counsel for the Complaints Director;
Dr. Aimen Fateis;
Mr. Mathieu LaFleche, legal counsel for Dr. Fateis.

II. PRELIMINARY MATTERS

2. Neither party objected to the composition of the Hearing Tribunal or its jurisdiction to proceed with the hearing. There were no matters of a preliminary nature.
3. The hearing was open to the public pursuant to section 78 of the *Health Professions Act*, RSA 2000, c. H-7 ("HPA"). Neither party made an application to close the hearing to the public.

III. CHARGES

4. The Amended Notice of Hearing lists the following allegations:
 1. On January 24, 2019 you did display a lack of knowledge of or lack of skill and judgment in the provision of professional services to your patient, [REDACTED] by failing to detect and remove a foreign body in your patient's eye.
 2. You did demonstrate conduct that harms the integrity of the profession in that on May 2, 2019 you did fail to be candid with the College of Physicians and Surgeons of Alberta (CPSA) by one or more of the following;
 - a. providing a letter of response dated April 25, 2019 with a description of the visit with [REDACTED] on January 24, 2019 in which you described the patient having attended with his mother and having complained about having an eye infection,

- b. providing a medical record of the encounter with your patient on January 24, 2019 representing it to be a contemporaneous and accurate record of the visit with you(r) patient,
 - c. failing to disclose that you had substantially amended the patient chart on or about March 13, 2019, after having been advised of the complaint to the CPSA;
3. On or about March 13, 2019, you did make changes to the medical record for your patient, [REDACTED] without noting on the record the date the changes were made contrary to the CPSA Standard of Practice on Patient Record Content.
5. Dr. Fateis admits the allegations in the Amended Notice of Hearing (the "Allegations") as being true and that such conduct amounts to unprofessional conduct.

IV. EVIDENCE

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

Exhibit 1: Exhibit Book

- Tab 1:** Notice of Hearing dated September 20, 2021
- Tab 2:** Affidavit of Service dated October 14, 2021
- Tab 3:** Amended Notice of Hearing
- Tab 4:** Complaint Form from [REDACTED] dated January 19, 2019
- Tab 5:** Letter of response from Dr. Fateis dated April 25, 2019 with patient record
- Tab 6:** Vision Gallery record for [REDACTED] for visit on January 28, 2019
- Tab 7:** Employer report of injury dated January 30, 2019
- Tab 8:** Memo by Dr. Howard-Tripp regarding interview of [REDACTED] dated April 24, 2020
- Tab 9:** Memo by Dr. Howard-Tripp regarding interview of [REDACTED] [REDACTED] dated April 15, 2021
- Tab 10:** Audit log for Dr. Fateis' patient electronic medical record
- Tab 11:** CPSA Standard of Practice – Patient Record Content

Exhibit 2: Admission and Joint Submission Agreement

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

- a. Brief of Law Regarding Joint Submissions dated May 25, 2022,
- b. Case Law:
 - i. *Srikisson (Re)*, 2022 CanLII 16827 (AB CPSDC);
 - ii. *Ng (Re)*, 2019 CanLII 94837 (AB CPSDC);
 - iii. *Fu (Re)*, 2018 CanLII 32000 (AB CPSDC);
 - iv. *Khadher (Re)*, 2017 CanLII 85385 (AB CPSDC);
 - v. *Ontario (College of Physicians and Surgeons of Ontario) v. Metcalfe*, 2007 ONCPSD 18; and
 - vi. *Malhotra, Re*, 2005 CanLII 60058 (AB CPSDC).

V. SUBMISSIONS REGARDING THE ALLEGATIONS

Submissions by Counsel for the Complaints Director

- 8. The complaint was made by the mother of the patient concerning care that was provided in January 2019. The patient had an object in his eye as a result of a workplace injury. Dr. Fateis responded to the College, and his response raised additional issues.
- 9. When dealing with an admission under section 70 of the HPA, there must be sufficient basis for the Hearing Tribunal to accept the admission. Dr. Fateis admitted that he failed to provide appropriate care, failed to be candid and accurate in his response to the College, and failed to note that a late entry to the medical records was a late entry.
- 10. The evidence put before the Hearing Tribunal is more than adequate to demonstrate on a balance of probabilities that the three charges are supported and that the admission should be accepted and there should be a finding of unprofessional conduct.

Submissions by Counsel for Dr. Fateis

- 11. Counsel for Dr. Fateis agreed with the submissions made by counsel for the Complaints Director and acknowledged that Dr. Fateis admitted to the Allegations as well agreed that the Allegations amount to unprofessional conduct. The Amended Notice of Hearing has taken the intentionality out of some of the Allegations and that should be considered by the Hearing Tribunal during deliberations.

Questions from the Hearing Tribunal

- 12. The Hearing Tribunal requested further submissions regarding the removal of intentionality in the Amended Notice of Hearing.

13. Counsel for Dr. Fateis submitted that there is no longer an allegation that Dr. Fateis intended to deceive the College, or that he submitted materials to the College knowing them to be false.
14. Counsel for the Complaints Director submitted that Dr. Fateis acknowledged that he failed to be candid in his response to the College in the course of the investigation. It was only through an EMR audit that it was identified that there was a late entry and a substantial amendment to the chart. These changes failed to comply with the late entry requirements in the Standard of Practice - Patient Record Content.

VI. FINDINGS REGARDING THE ALLEGATIONS

15. Section 70 of the HPA permits an investigated member to make an admission of unprofessional conduct. An admission under section 70 of the HPA must be acceptable in whole or in part to the Hearing Tribunal.
16. The Hearing Tribunal found that the proven Allegations constituted unprofessional conduct under section 1(1)(pp)(i),(ii), and (xii) of the HPA as follows:

1(1) In this Act,

(pp) "unprofessional conduct" means one or more of the following, whether or not it is disgraceful or dishonourable:

- (i) displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services;*
- (ii) contravention of this Act, a code of ethics or standards of practice; and*
- (xii) conduct that harms the integrity of the regulated profession;*

Allegation 1: On January 24, 2019 you did display a lack of knowledge of or lack of skill and judgment in the provision of professional services to your patient, [REDACTED] by failing to detect and remove a foreign body in your patient's eye.

17. The Hearing Tribunal finds this allegation to be true and that it rises to the level of unprofessional conduct both in terms of Dr Fateis admitting to such but also in the facts as presented. Following Dr. Fateis' failure to locate and remove the foreign body as noted, an optometrist contacted by the patient a few days later was able to diagnose and resolve the issue successfully. In failing to properly diagnose and treat the presenting condition, Dr. Fateis displayed a lack of knowledge or lack of skill or judgment in the provision of professional services as per section 1(1)(pp)(i) of the HPA.

Allegation 2: You did demonstrate conduct that harms the integrity of the profession in that on May 2, 2019 you did fail to be candid with the College of Physicians and Surgeons of Alberta (CPSA) by one or more of the following:

- a. **providing a letter of response dated April 25, 2019 with a description of the visit with [REDACTED] on January 24, 2019 in which you described the patient having attended with his mother and having complained about having an eye infection.**
 - b. **providing a medical record of the encounter with your patient on January 24, 2019 representing it to be a contemporaneous and accurate record of the visit with your patient.**
 - c. **failing to disclose that you had substantially amended the patient chart on or about March 13, 2019, after having been advised of the complaint to the CPSA.**
18. The Hearing Tribunal carefully considered the evidence before it, specifically the letter written and signed by Dr. Fateis dated April 25, 2019 in which he admittedly falsely states the circumstances of his patient's visit and reason for his patient's complaints. Further, the Hearing Tribunal reviewed a memo to the College from Dr. Michael Howard-Tripp, Senior Medical Advisor/ Investigator, dated April 24, 2020 indicating that he had interviewed by telephone that day both the patient and his mother. Both disputed Dr. Fateis' claims that the mother had accompanied her son to the appointment or that he had complained of "goop" in his eye. The patient further advised that he had told Dr. Fateis that he felt a foreign body enter his eye at work. The Hearing Tribunal finds the evidence in addition to Dr. Fateis' admission to be sufficiently compelling to support the admission and be in contravention of section 1(1)(pp)(xii) of the HPA.

Allegation 3: On or about March 13, 2019 you did make changes to the medical record for your patient, [REDACTED] without noting on the record the date the changes were made contrary to the CPSA Standard of Practice on Patient Record Content.

19. Based on the evidence the Hearing Tribunal finds Dr. Fateis in contravention of the CPSA Standard of Practice - Patient Record Content which provides as follows:
1. **A regulated member who provides assessment, advice and/or treatment to a patient *must*:**
 - a. *document the encounter in a patient record;*
 - b. *ensure the patient record is:*
 - i. *an accurate and complete reflection of the patient encounter*
 2. **A regulated member *must* ensure the patient record contains:**

- a. *clinical notes for each patient including:*
 - i. *presenting concern, relevant findings and assessment plan,...*
 3. *A regulated member **may** amend or correct a patient record in accordance with the Health Information Act (HIA) through an initialed and dated addendum or tracked change...*
20. The Hearing Tribunal finds this allegation to be true. In addition to acknowledging Dr. Fateis' agreement that the allegation is true and does rise to the level of unprofessional conduct, the Hearing Tribunal carefully examined the evidence presented. The evidence shows that Dr. Fateis accessed the patient record and updated same without the benefit of following proper procedure as outlined in the CPSA Standard of Practice - Patient Record Content. Dr. Fateis changed the patient's chart without initialing and dating the changes as required.

VII. SUBMISSIONS ON SANCTION

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

Submissions by Counsel for the Complaints Director

22. Counsel for the Complaints Director provided an overview of the proposed sanctions and presented a Brief of Law regarding Joint Submissions. Although the parties have agreed on a Joint Submission as to penalty, the Hearing Tribunal is not bound by that submission. Nonetheless, as the decision-maker, a Hearing Tribunal should defer to a joint submission unless the proposed sanction is unfit, unreasonable or contrary to public interest.
23. Counsel for the Complaints Director submitted to the Hearing Tribunal for consideration some of the factors in the decision of *Jaswal v. Medical Board (Nfld.)*, 1996 CanLII 11630 (NL SC) and how those factors applied to the present case:
- **The previous character of the member:** Dr. Fateis does not have a prior history of discipline.
 - **The number of times the offense was proven to have occurred:** The conduct occurred on one occasion.
 - **The role of the physician in acknowledging what occurred:** Dr. Fateis made an admission to the Allegations and that is a mitigating factor.
 - **The impact on the offended patient:** The gravity of the situation is serious but the patient did not suffer any egregious or irreversible harm as a result of the conduct.

- **The range of sentences in other similar cases.**

24. Counsel for the Complaints Director reviewed five Alberta decisions. *Fu (Re)* involved poor care, poor recordkeeping, and a failure to be candid during an investigation. The penalty involved a suspension and the payment of costs.
25. *Khadher (Re)* involved poor care, poor recordkeeping, and late changes to the records without the changes being properly recorded. The penalty involved a reprimand, training for skill deficiencies, and the payment of costs.
26. *Srikisson (Re)* involved poor care, poor recordkeeping, and late changes to the records without the changes being properly recorded. There was a requirement to undergo an individual practice review because of the totality of the concerns. The present case can be distinguished because there is not that degree of concern here.
27. *Malhotra (Re)* involved falsified records and revocation was ordered. It was an intentionally deceptive situation.
28. *Ng (Re)* involved falsified records where the physician created a certificate of professional conduct for his registration requirements in England. The penalty involved a suspension, a requirement to complete an ethics course, and the payment of costs.
29. Counsel for the Complaints Director also referred to a decision from Ontario in *Ontario (College of Physicians and Surgeons of Ontario) v. Metcalfe*. The penalty involved a suspension, a requirement to complete an ethics course, and the payment of costs.
30. These decisions provide information about the range of sanctions. The proposed suspension set out in the Joint Submission is in keeping with the deterrence component in these decisions. The proposed sanction is appropriate, reasonable, and within the range of the decisions that have been provided to the Hearing Tribunal.

Submissions by Counsel for Dr. Fateis

31. Legal counsel for Dr. Fateis submitted that there was agreement with the sanctions as proposed in the Joint Submission. The "intentionality" of Dr. Fateis' actions should not be considered as a factor, although Dr. Fateis acknowledged that he did not meet the standard expected by the College. Dr. Fateis did not intentionally deceive anyone, and he is remorseful and reflective of his behavior. Dr. Fateis attempted to use his memory to provide a response that he believed was truthful, and failed to itemize how he got there.
32. The decisions regarding Dr. Ng, Dr. Srikisson, and Dr. Metcalfe provide reasonable boundaries for sanctions in these circumstances. The courses will

provide Dr. Fateis with a further opportunity to reflect on his conduct and identify areas that need to be addressed.

Questions from the Hearing Tribunal

33. The Hearing Tribunal asked two questions directed to counsel for the Complaints Director:
 - a. How does the College follow up on the sanctions that are set out in the order; and
 - b. How does the Complaints Director determine when it is appropriate to trigger the second month of the suspension?
34. Counsel for the Complaints Director submitted that the Complaints Director monitors compliance, and if there are problems the Complaints Director deals directly with the physician and his counsel. If there was a disagreement over whether or not there is sufficient compliance, the matter could be brought back to the Hearing Tribunal.
35. Counsel for Dr. Fateis submitted the Complaints Director has expertise as far as monitoring compliance, and if there was a dispute the appropriate way to deal with that would be to come back and seek further direction from the Hearing Tribunal.

VIII. ORDERS

36. The Hearing Tribunal is aware, while the parties have agreed on a Joint Submission as to penalty, the Hearing Tribunal is not bound by that submission. Nonetheless, as the decision-maker, the Hearing Tribunal should defer to a joint submission unless the proposed sanction is unfit, unreasonable or contrary to public interest. Joint submissions make for a better process and engage the member in considering the outcome. A rejection of a carefully crafted agreement would undermine the goal of fostering cooperation through joint submissions and may significantly impair the ability of the Complaints Director to enter into such agreements. If the Hearing Tribunal had concerns with the proposed sanctions, the proper process is to notify the parties, articulate the reasons for concern, and give the parties an opportunity to address the concerns through further submissions to the Hearing Tribunal.
37. The Hearing Tribunal therefore considered the Joint Submission put forward by counsel for the Complaints Director and counsel for Dr. Fateis. After considering the proposed orders for penalty, the Hearing Tribunal finds the Joint Submission is appropriate, reasonable and serves the public interest and therefore accepts the proposed penalties.
38. Accurate recordkeeping is important for public protection and maintaining the integrity of the profession. Third parties - including but not limited to other health care providers - may need to refer to patient records. The Hearing

Tribunal is accordingly satisfied that the completion of the PROBE course and the recordkeeping course combined with the other terms, conditions and limitations imposed are proportionate in the circumstances and sufficient to protect the public, deter this conduct in the future and maintain the integrity of the profession. Dr. Fateis will be required to take a professional development course on ophthalmological emergencies, which will provide for remediation of his conduct and protect the public.

39. The Hearing Tribunal considered the cases presented by counsel for the Complaints Director with similar underlying misconduct to determine whether the proposed sanction in this case falls within the range of reasonable dispositions when compared to other decisions. The Hearing Tribunal accepts that no two cases are ever exactly alike but the case law presented is similar enough to provide assurance that the proposed sanction is not contrary to the public interest.
40. The Hearing Tribunal hereby orders pursuant to section 82 of the HPA:
 - a. A two-month suspension of his practice permit with one month to be served starting on a date being no later than October 15, 2022 and the second month held in abeyance pending fulfillment of the orders of the Hearing Tribunal,
 - b. At his own expense, that Dr. Fateis complete and unconditionally pass the CPEP PROBE course by a set date (<https://www.cpepdoc.org/cpep-courses/probeethics-boundaries-program-canada/>). If he does not obtain an unconditional pass, that there will be a requirement to complete a more intensive one on one program of ethics remediation with an approved ethicist.
 - c. At his own expense, that Dr. Fateis complete the Records Keeping Course offered at the U of C (the 2 day program <https://cumming.ucalgary.ca/cme/courses/format/online-self-learning/medicalrecord-keeping>) by a specified date.
 - d. At his own expense, that Dr. Fateis take a professional development course acceptable to the Complaints Director on ophthalmological emergencies for family physicians by a specified date.
 - e. That Dr. Fateis be responsible for payment of 75% of the costs of the investigation and hearing, payable on terms acceptable to the Complaints Director.

Signed on behalf of the Tribunal by the Chair:



Mr. David Rolfe

Dated this 17th day of June, 2022.