

COLLEGE OF PHYSICIANS & SURGEONS OF ALBERTA

IN THE MATTER OF
A HEARING UNDER THE *HEALTH PROFESSIONS ACT*,
R.S.A. 2000, c. C-7

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF DR. MOISES LASALETA

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

I. INTRODUCTION

A hearing was scheduled on March 23, 2018 to hear matters concerning the allegations as written below. The College of Physicians and Surgeons of Alberta had received an email notification from Dr. Lasaleta in early March explaining that he was detained in the Philippines due to family matters of a serious nature. This information was referred to the Complaints Director, who notified the Hearing Tribunal that an adjournment would be acceptable only if certain conditions were agreed to by Dr. Lasaleta.

Given that the charges relate to failure to respond and Dr. Lasaleta had been aware of the March 23rd dates since December 22, 2017, and had at that point failed to contact the College Complaints Director or legal counsel in nearly the last three months, the Hearing Tribunal granted the adjournment subject to the following conditions:

1. He must immediately notify the Complaints Director of dates within the next 90 days when he is available for the hearing;
2. He must immediately advise the Complaints Director of the date that he will be back in Calgary;
3. He must immediately provide to the Complaints Director a current mailing address and phone number where he can be reached in Calgary;
4. He must confirm for the Complaints Director that his Email address drlasaleta@gmail.com is the one he expects to receive correspondence from the College;
5. He agrees to check his Email on a regular basis, while he is either in and out of Canada, and to respond to email communications from the College within 72 hours of when the email is sent;
6. He must provide the Complaints Director and the name of Dr. Lasaleta's appointed legal counsel his legal counsel within two weeks of the date that the adjournment is granted.

If Dr. Lasaleta does not retain legal counsel or does not provide his availability for the hearing pursuant to the conditions noted above, the Hearings Director may proceed to schedule the hearing on dates when the Complaints Director and his legal counsel are available.

A new hearing date was arranged for June 22, 2018. The members of the Hearing Tribunal were:

Dr. John Pasternak of Medicine Hat as Chair, Dr. Don Yee of Edmonton and Mr. Michael Kozielec of Canmore (public member), Ms. Katrina acted as independent legal counsel for the Hearing Tribunal.

In attendance at the hearing was Mr. Craig Boyer, legal counsel for the College of Physicians & Surgeons of Alberta. Also present was Dr. Moises Lasaleta and Mr. Joe Brar, legal counsel for Dr. Lasaleta.

There were no objections to the composition of the Hearing Tribunal or the jurisdiction of the Hearing Tribunal to proceed with a hearing.

II. CHARGES

The charges were set out in the Notice of Hearing, dated December 21, 2017, and were as follows:

It is charged:

1. that you did fail to respond to the College of Physicians & Surgeons of Alberta regarding the investigation into your relationship with a patient, N.P.¹ particulars of which include:
 - a) Letter from Katherine Jarvis, Complaints Inquiry Director, dated September 30, 2016;
 - b) Email from Sharon Barron, Director, Professional Conduct, on October 7, 2016;
 - c) Letter from Katherine Damron, Complaint Inquiry Coordinator, dated November 15, 2016;
 - d) E-mail from Dr. Michael Caffaro, Complaints Director, dated December 20, 2016;
2. that you did fail to respond in a timely manner to the College of Physicians & Surgeons of Alberta regarding a request that you complete an Undertaking to have a chaperone present for all sensitive female examinations, particulars of which include:
 - a) Letter from Dr. Michael Caffaro, Complaints Director, dated September 30, 2016;
 - b) Email from Sharon Barron, Director, Professional Conduct, dated October 7, 2016;
 - c) Voicemail left by Katherine Jarvis, Complaints Inquiry Director, on October 28, 2016; and
 - d) Letter (sent by email) from Dr. Michael Caffaro, Complaints Director, on November 7, 2016.
3. that you did fail to respond to the College of Physicians & Surgeons of Alberta regarding a request that you complete your Notification of Conditions on Practice Permit and Notification of Additional Entities, particulars of which include:
 - a) Letter from Dr. Susan Ulan, Assistant Registrar, dated November 16, 2016;
 - b) Letter from Dr. Susan Ulan, Assistant Registrar, dated December 12, 2016; and
 - c) Letter from Dr. Susan Ulan, Assistant Registrar, dated February 9, 2017.

¹ The Notice of Hearing refers to N.P. by her full name. For the purposes of this decision, the Hearing Tribunal has referred to the patient using her initials. The Hearing Tribunal has also used initials instead of full names in other parts of the decision.

4. that you did fail to respond to the College of Physicians & Surgeons of Alberta regarding the investigation into a complaint from the Workers' Compensation Board about release of medical records, particulars of which include:
 - a) Letter from Katherine Damron, Complaint Inquiry Coordinator, dated July 20, 2017;
 - b) Letter from Katherine Damron, Complaint Inquiry Coordinator, dated August 21, 2017;
 - c) E-mail from Katherine Damron, , Complaint Inquiry Coordinator, on September 13, 2017;
 - d) Letter from Katherine Damron, Complaint Inquiry Coordinator, dated September 22, 2017;
 - e) E-mail from Dr. John Ritchie, Associate Complaints Director, on September 26, 2017; and
 - f) Two e-mails from Dr. John Ritchie, Associate Complaints Director, on October 20, 2017.

III. PRELIMINARY MATTERS

The Hearing Tribunal (the "Tribunal") was notified by the parties that they had negotiated an Agreed Statement of Facts which was admitted as Exhibit #2. Subsequently, the parties also entered an Admission and Joint Submission Agreement (Exhibit #8) in which Dr Lasaleta admitted each of the charges.

IV. EVIDENCE

The hearing proceeded based on Agreed Exhibits and an Agreed Statement of Facts, and no witnesses were called to testify.

The parties entered an Exhibit Book by agreement (Exhibit 1) which contained the following items:

Tab 1	Notice of Hearing dated December 21, 2017
Tab 2	Katherine Jarvis, Complaint Inquiry Coordinator, letter to Dr. Moises Lasaleta dated September 30, 2016 regarding complaint and investigation
Tab 3	Dr. Michael Caffaro, Assistant Registrar and Complaints Director, letter to Dr. Moises Lasaleta enclosing form of Undertaking
Tab 4	Sharon Barron email to Dr. Moises Lasaleta dated October 6, 2016 requesting permission to email sensitive documents
Tab 5	Sharon Barron email to Dr. Moises Lasaleta dated October 7, 2016 at 10:08 am confirming agreement to email sensitive document
Tab 6	Sharon Barron email to Dr. Moises Lasaleta dated October 7, 2016 at 10:23 am attaching password protected documents

Tab 7	Dr. Moises Lasaleta email to Sharon Barron dated October 7, 2016 acknowledging receipt of password protected documents
Tab 8	Sharon Barron email to Dr. Moises Lasaleta dated October 17, 2016 regarding difficulties obtaining password for protected documents
Tab 9	Dr. Trevor Theman, Registrar, letter to Dr. Moises Lasaleta dated November 10, 2016 regarding condition on Practice Permit
Tab 10	Dr. Michael Caffaro memo to Dr. Trevor Theman dated November 10, 2016 regarding steps taken to date and request for condition on Practice Permit
Tab 11	Katherine Damron letter to Dr. Moises Lasaleta dated November 15, 2016 requesting reply to previous letter and setting deadline of November 29, 2016 for response
Tab 12	Dr. Michael Caffaro email to Alison Gray dated November 15, 2016 regarding Undertakings
Tab 13	Dr. Susan Ulan, Assistant Registrar, to Dr. Moises Lasaleta dated November 16, 2016 regarding Condition placed on Practice Permit
Tab 14	Alison Gray email to Dr. Michael Caffaro dated November 16, 2016 attaching signed Undertaking
Tab 15	Undertaking of Dr. Moises Lasaleta dated November 16, 2016
Tab 16	Dr. Susan Ulan letter to Dr, Moises Lasaleta dated December 12, 2016 requesting completed Notification on Conditions of a Practice Permit Contract Form and providing deadline of December 19, 2016 for response
Tab 17	Alison Gray email to Dr. Michael Caffaro dated December 15, 2016 advising she has been unable to contact Dr. Moises Lasaleta
Tab 18	Dr. Michael Caffaro email to Dr. Moises Lasaleta dated December 20, 2016 regarding possible second complaint being opened for nonresponse to the College
Tab 19	Dr. Susan Ulan letter to Dr. Moises Lasaleta dated February 9, 2017 regarding final notice for receipt of Notification on Conditions of a Practice Permit Contract Form and providing deadline of February 16, 2017 for response
Tab 20	Dr. Catharine Lopaschuk letter to Sharon Barron dated July 10, 2017 requesting assistance with obtaining medical chart notes from Dr. Moises Lasaleta
Tab 21	Katherine Damron letter to Dr. Moises Lasaleta dated July 20, 2017 regarding complaint from Dr. Catherine Lopaschuk
Tab 22	Katherine Damron letter to Dr. Moises Lasaleta dated August 21, 2017 requesting response to the complaint by Catherine Lopaschuk and providing deadline of September 4, 2017 for response
Tab 23	Katherine Damron email to Dr. Moises Lasaleta dated September 13, 2017 reminder of time sensitive document on Physician Portal
Tab 24	Katherine Damron letter to Dr. Moises Lasaleta dated September 22, 2017 regarding no response to the complaint by Dr. Catherine Lopaschuk and providing deadline of October 6, 2017 for response
Tab 25	Dr. John Ritchie email to Dr. Moises Lasaleta dated September 26, 2017 regarding no response and request for contact by noon on September 27

Tab 26	Dr. Moises Lasaleta email to Dr. John Ritchie dated October 3, 2017 confirming extension for response to November 1, 2017
Tab 27	Dr. John Ritchie email to Dr. Moises Lasaleta dated October 20, 2017
Tab 27	Dr. John Ritchie email to Dr. Moises Lasaleta dated October 20, 2017 requesting confirmation of receipt of emails dated October 3, 2017
Tab 28	College of Physicians & Surgeons of Alberta letter to Dr. Moises Lasaleta dated February 14, 2018 cancelling 2018 Practice Permit and Registration

The parties entered the following additional exhibits by agreement:

Exhibit 2	Agreed Statement of Facts dated June 22, 2018
Exhibit 3	800 Memo Dr. John Ritchie to Dr. M. Lasaleta file dated October 2, 2016
Exhibit 4	Email from Adele Gendron to Dr. Lasaleta dated November 17, 2016 indicating that a completed of Notification of Change form was needed
Exhibit 5	Certificate of Death of Mr. J.L. dated September 28, 2017
Exhibit 6	Certificate of Death of Ms. N.S.L. dated February 12, 2018
Exhibit 7	Email from Adele Gendron to Fiona Vance dated March 23, 2018 with Dr. Lasaleta's request for an adjournment of the March 23, 2018 hearing
Exhibit 8	Admission and Joint Submission Agreement dated June 22, 2018
Exhibit 9	Undertaking of Dr. Moises Lasaleta to the College of Physicians & Surgeons of Alberta dated June 20, 2018

V. SUBMISSIONS

Mr. Boyer asserted to the Tribunal that such an Agreed Statement of Facts should be given significant deference by the Tribunal and he provided case law to demonstrate that. Mr. Boyer provided an overview of the allegations and the time sequence beginning in June of 2016 when an allegation had been registered with the College of Physicians & Surgeons of Alberta (the "College") that Dr. Lasaleta had had an inappropriate sexual relationship with his wife. This resulted in Dr. Lasaleta voluntarily withdrawing from practice and returning to his home village in the Philippines to be with, and assist in the care of his terminally ill brother, and to address other personal family matters.

From that point forward numerous communications from the College to Dr. Lasaleta remained unanswered and these included requests for response to the boundary violation as well as failing to respond when the College requested him to provide an undertaking to have a chaperone present for all female patients undergoing sensitive examinations. Dr. Lasaleta also failed to respond to notifications from the College regarding notification of conditions on his practice permit.

A further complaint was registered with the College in July of 2017 by the Workers' Compensation Board alleging that Dr. Lasaleta had been failing to respond to their request for release of medical records since March of 2017. After this time numerous letters from the College requesting Dr. Lasaleta's response on this matter remained unanswered until October of 2017.

Mr. Brar explained to the Tribunal that there were numerous mitigating circumstances which prevent, or hampered, Dr. Lasaleta from responding adequately to the College. These included difficulties with internet connections where Dr. Lasaleta was staying in his home village with his brother and a fourteen hour time difference between the two countries which made it difficult for Dr. Lasaleta to phone members of the College directly.

It was established that Dr. Lasaleta had returned periodically for short periods of time to Calgary. Dr. Lasaleta's brother unfortunately passed away from his terminal illness in late September 2017. Dr. Lasaleta's mother, who was ailing and elderly, travelled to the Philippines and from that point suffered worsening health problems necessitating that Dr. Lasaleta was unable to return until after her ultimate death in February 2018.

VI. FINDINGS

The Tribunal reviewed all of the evidence and the exhibits 1 through 7, which detailed all of the efforts that the College made in contacting and notifying Dr. Lasaleta throughout the period of time between September 2016 and February 2017.

The evidence that was submitted by Agreement established that Dr. Lasaleta was admitting to the allegations, and also admitted that his conduct constituted unprofessional conduct.

The Tribunal determined that Dr. Lasaleta's admission was appropriate, given the evidence.

In particular, the College received a written complaint from a patient's husband, alleging that Dr. Lasaleta had been involved in a sexual relationship with his wife, N.P. (the "Boundary Complaint"). The Complaints Director initiated an investigation into the Boundary Complaint. Subsequently, Dr. Lasaleta left Canada to return to his home village in the Philippines, and to assist and care for his terminally ill brother.

After he left, the College requested that Dr. Lasaleta provide a response to the Boundary Complaint. The College communicated with Dr. Lasaleta about the Boundary Complaint on a number of occasions. Despite being granted an extension until December 30, 2016, Dr. Lasaleta did not provide a response until May 31, 2018.

Following initiation of the Boundary Complaint, on September 30, 2016, the College also requested that Dr. Lasaleta complete an undertaking to have a chaperone present for all sensitive examinations with female patients. Dr. Lasaleta did not provide an executed undertaking until November 16, 2016.

In addition, on November 16, 2016, the College requested that Dr. Lasaleta complete the Notification of Conditions on Practice Permit and Notification of Additional Entities Form. Despite the College sending further correspondence requesting that Dr. Lasaleta complete the form, he failed to do so until February 16, 2017.

In addition, in July of 2017, the College received a further complaint from the Workers' Compensation Board (the "WCB Complaint") alleging that Dr. Lasaleta failed to reply to numerous requests for a copy of a patient chart. The Complaints Director initiated an investigation, and requested that he provide a response to the WCB Complaint by August 17, 2017. Despite being provided with further extensions, Dr. Lasaleta did not respond until May 31, 2018.

The Tribunal noted that Dr. Lasaleta was away in the Philippines providing care to his brother, who was terminally ill, for a period of time. Although he returned to Canada in October of 2016, he returned to the Philippines sometime after November 16, 2016 and remained there until his brother passed away in September of 2017. Dr. Lasaleta remained in the Philippines thereafter, to care for his mother who had become ill, until she passed away on February 9, 2018. Dr. Lasaleta returned to Calgary on April 17, 2018.

While the evidence established that Dr. Lasaleta was away from Canada for a period of time and that he was having personal difficulties that affected his ability to comply with the deadlines provided, he did have access to email and did return to Canada for a period of time. While delays in communicating with the College may have been expected, there were numerous delays in this case, over a prolonged period of time. Given the seriousness of the Boundary Complaint, and the importance of responding to communications from the College, the Tribunal therefore felt that there was sufficient evidence to support Dr. Lasaleta's admissions in relation to all four of the allegations and determined that the conduct constituted unprofessional conduct in accordance of section 1(1)(pp) of the *Health Professions Act*.

VII. ORDERS / SANCTION – SUBMISSIONS OF THE PARTIES

The parties entered an Admission and Joint Submission Agreement (Exhibit 8). The parties jointly submitted that the following orders ought to be imposed:

- a) Dr. Lasaleta shall receive a one month suspension of his practice permit;
- b) Dr. Lasaleta shall be responsible for the costs of the investigation and the hearing before the Hearing Tribunal; and
- c) Dr. Lasaleta has signed a further Undertaking to the College committing him to provide a timely response to all future correspondence and inquiries from the College in the form attached as Schedule C.

Counsel for the College submitted that the law states that a joint submission should be taken seriously, and should be given deference by the Tribunal, and provided a brief of law regarding the circumstances in which a discipline tribunal may reject a joint submission. Counsel for the College also made submissions with respect to factors referenced in *Jaswal v. Newfoundland Medical Board* that were relevant from the Complaints Director's perspective. Mr. Boyer referred to a previous order against Dr. Lasaleta, dating back to 2010. He also indicated that Dr. Lasaleta was prepared to execute an Undertaking agreeing to respond to correspondence from the College within 20 days.

Counsel for Dr. Lasaleta also made submissions with respect to penalty. He submitted that the Tribunal should exercise deference regarding the Joint Submission Agreement. He also addressed the *Jaswal* factors, emphasizing that Dr. Lasaleta's conduct did not result in any patient harm. He also submitted that Dr. Lasaleta was dealing with a number of stressors during the relevant period of time, including the illness and death of his brother and mother. Mr. Brar referred to several previous decisions, including *Visconti*, where the member's personal circumstances were a factor that was taken into account when determining penalty.

The Tribunal agreed with the submissions of the parties that there are strong public policy reasons why a hearing tribunal should exercise deference when presented with a joint submission on sanction. The Tribunal found that the Joint Submission was appropriate in this case, and served to adequately protect the public.

The Tribunal also considered the *Jaswal* factors, and found that the pertinent factors with respect to this case included the following:

1. The previous character of the physician and the presence or absence of prior complaints or convictions.

The Tribunal was made aware of a previous complaint, and hearing held in 2010 in which Dr. Lasaleta was found guilty of failing to respond to the College between the dates of November 2009 and March 2010. Dr. Lasaleta was given a reprimand and ordered to pay costs of the hearing. At that time he was not requested to sign an Undertaking with the College for future response times for requests by the College.

2. The number of times the offence occurred

The number of times was proven to have occurred was a factor given the length of time between first request from the College and Dr. Lasaleta's eventual responses.

3. Mitigating factors

The Tribunal noted that Dr. Lasaleta was encountering personal stresses due to his marital breakup following allegations of sexual misconduct and the significant illness in his brother which culminated in his death after one year of suffering followed by the death of his mother in early 2018.

4. Deterrence

The Tribunal found that there was a need to promote specific and general deterrence for members of the medical profession who are requested to respond expediently to their regulatory body, but fail to do so, and to maintain the public's confidence in the integrity of the medical profession with regards to its interactions with its members.

5. Degree to which Conduct is Unacceptable

The Tribunal found that failing to respond to requests from the regulatory body was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct.

6. Range of Sentences in Similar Cases

The range of sentences in similar cases was presented by both Mr. Boyer and Mr. Brar in which failure to respond was punished by reprimands and payments costs. In two cases presented by Mr. Brar, the members had been found guilty of failing to respond, reprimanded and appeared again with allegations of failure to respond. One month suspensions, costs of the hearing and a signed Undertaking to promise to respond expediently to the regulatory body in the future, were the outcomes in those cases.

The Tribunal found that the factors referred to above all support the Joint Submission presented by the parties.

In addition, the Tribunal was presented with a signed Undertaking of Dr. Moises Lasaleta to the College of Physicians & Surgeons of Alberta stating that Dr. Lasaleta shall respond to all correspondence; written or electronic, from the College by the deadline set out in that correspondence which shall be reasonable in the circumstances, subject to any extension which may be granted by the College. If no deadline is set by the College then Dr. Lasaleta shall respond within twenty days of the date of correspondence, unless granted an extension for reply by the College.

VIII. ORDERS / SANCTIONS

The Tribunal advised both parties that it accepted the Admission and Joint Submission Agreement on penalty.

The Hearing Tribunal hereby makes the following orders pursuant to section 82 of the HPA:

1. Dr. Lasaleta shall receive a one (1) month suspension of his practice permit. The period of suspension will commence on the date when Dr. Lasaleta has been issued a new active practice permit from the College.
2. Dr. Lasaleta shall be responsible for the costs of the investigation and the hearing before the Hearing Tribunal. The costs will be made payable in accordance with a payment schedule agreed to by the Complaints Director. If any dispute arises regarding payment of costs, the matter may be remitted to a Hearing Tribunal for further consideration.

Signed on behalf of the Hearing Tribunal by
the Chair



Dated: August 21, 2018

Dr. John Pasternak