

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. HASAN HAFIZ

**DECISION OF THE HEARING TRIBUNAL OF
THE COLLEGE OF PHYSICIANS
& SURGEONS OF ALBERTA**
April 27, 2022

I. INTRODUCTION

1. The Hearing Tribunal held a hearing into the conduct of Dr. Hasan Hafiz on March 8, 2022. The members of the Hearing Tribunal were:

Ms. Anita Warnick of Calgary (Chair and public member);
Dr. Goldees Liaghati-Nasseri of Rocky View;
Dr. Neelam Mahil of Edmonton;
Ms. Juane Priest of Calgary (public member).

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

Also in attendance at the hearing were:

Ms. Annabritt Chisholm, legal counsel for the Complaints Director;
Dr. Dawn Hartfield, Complaints Director.

II. PRELIMINARY MATTERS

2. Counsel for the Complaints Director had no objections to the composition of the Hearing Tribunal or its jurisdiction to proceed with the hearing. There was no application to close the hearing.
3. Counsel for the Complaints Director made an application to proceed with the hearing in the absence of the Investigated Member. The application was made pursuant to section 79(6) of the *Health Professions Act* ("HPA"). The application was granted by the Hearing Tribunal and the hearing proceeded in the absence of Dr. Hafiz for the following reasons.
4. Section 79(6) of the HPA provides as follows:

79(6) *Despite [section 72\(1\)](#), if the investigated person does not appear at a hearing and there is proof that the investigated person has been given a notice to attend the hearing tribunal may*

 - (a) *proceed with the hearing in the absence of the investigated person, and*
 - (b) *act or decide on the matter being heard in the absence of the investigated person.*
5. Counsel for the Complaints Director called Dr. Dawn Hartfield as a witness for the section 79(6) application. Dr. Hartfield is the Complaints Director and Assistant Registrar in Professional Conduct.
6. Dr. Hartfield stated that the College served the Notice of Hearing personally on Dr. Hafiz via a process server which was confirmed in an affidavit of service dated October 15, 2021. The College served a disclosure package via a process server which was confirmed in an affidavit of service dated

February 16, 2022. Both times Dr. Hafiz was served personally, and by the date of this hearing, Dr. Hafiz had not contacted the College.

7. The Hearing Tribunal found that reasonable and proper notice of the hearing was provided to Dr. Hafiz, based on the testimony of the Complaints Director and the documentary evidence, including the evidence that Dr. Hafiz was served personally with the Notice of Hearing confirming the March 8, 2022 hearing date. Dr. Hafiz was properly served with documentation of the time, place, and purpose of the hearing. The Notice of Hearing stated that if he did not attend, the hearing may proceed in his absence. In these circumstances, the Hearing Tribunal finds that the relevant statutory notice requirements have been met.
8. Dr. Hafiz received reasonable notice of this proceeding. He did not request an adjournment to allow him or his counsel, should he elect to be represented, to attend. There was no suggestion that Dr. Hafiz or his counsel would attend if the hearing were held on an alternate date. Accordingly, the Hearing Tribunal determined that it was in the public interest that the hearing proceed in his absence.

III. CHARGES

9. The Notice of Hearing listed the following allegation and particulars:
 1. That you did fail to respond in a timely manner or at all, to correspondence from the College of Physicians & Surgeons of Alberta regarding a complaint against you and an investigation into your conduct, particulars of which include one or more of the following:
 - a. Letter from Dr. Michael Caffaro dated July 9, 2020;
 - b. Letter from Katherine Damron dated July 9, 2020;
 - c. Email from Christine Bullen dated July 15, 2020;
 - d. Telephone Call and Voicemail from Christine Bullen on July 17, 2020;
 - e. Email from Sarah Ink dated August 14, 2020;
 - f. Letter from Katherine Damron dated August 17, 2020;
 - g. Telephone Call and Voicemail from Dr. Michael Caffaro on August 31, 2020;
 - h. Letter from Dr. Michael Caffaro dated September 2, 2020;
 - i. Letter from Marnie Heberling dated December 1, 2020;
 - j. Letter from Dr. Dawn Hartfield dated February 17, 2021;
 - k. Letter from Dawn Sunde dated March 11, 2021;
 - l. Letter from James West dated March 30, 2021;
 - m. Letter from Dawn Sunde dated March 31, 2021;

n. Email from Dawn Sunde dated April 6, 2021.

10. Because Dr. Hafiz was not present for the hearing, it was assumed that he denied the allegation of professional misconduct against him (the "Allegation").

IV. EVIDENCE

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

Exhibit 1: Exhibit Book

Tab 1: Notice of Hearing dated September 10, 2021

Tab 2: Affidavit of Service (Notice of Hearing) dated October 15, 2021

Tab 3: Affidavit of Service (Disclosure Package) dated February 16, 2022

Tab 4: Investigation Records 200375.1.1 (Tabs a to r)

a. Quest Physician Profile – Dr. Hafiz

b. Letter from Dr. Hartfield to Dr. Caffaro dated June 4, 2020 regarding complaint referral enclosing:

- Letter from Dr. Flook to Dr. Hafiz dated January 23, 2020 enclosing the Individual Practice Review Report of Dr. Hafiz dated December 11, 2019
- Letter from Dr. Flook to Dr. Hafiz dated February 12, 2020 enclosing:
 - Teleconference Summary
 - 3 Agreements – Transition, CAPE, Volume
 - CAPE Info Sheet
 - 2019 Guide for Referred Physicians
 - Practice Visit Overview Summary

c. Memo from Dr. Caffaro dated June 8, 2020 regarding decision to initiate investigation enclosing Terms of Resolution of Dr. Hafiz dated September 12, 2016

d. Letter from Dr. Caffaro to Dr. Hafiz dated July 9, 2020 enclosing Draft Undertaking

e. Email from S. Ink to Dr. Hafiz dated July 9, 2020 regarding documents uploaded to Physician Portal

- f.** Letter from K. Damron to Dr. Hafiz dated July 9, 2020 requesting response to complaint
- g.** Email from C. Bullen to Dr. Hafiz dated July 15, 2020 regarding time sensitive documents uploaded to Physician Portal
- h.** Email from S. Ink to Dr. Hafiz dated August 14, 2020 regarding time sensitive documents uploaded to Physician Portal
- i.** Letter from Ms. Damron to Dr. Hafiz dated August 17, 2020 regarding follow-up to request for response
- j.** Letter from Dr. Caffaro to Dr. Hafiz dated September 2, 2020 regarding failure to respond to complaint
- k.** Email from S. Ink to Dr. McLeod dated September 8, 2020 enclosing
 - Memo from Dr. Caffaro to Dr. McLeod dated September 8, 2020 regarding request for the suspension of Dr. Hafiz including:
 - Memo from Dr. Caffaro dated June 8, 2020 with enclosed Terms of Resolution dated September 12, 2016;

Letter from Dr. Hartfield to Dr. Caffaro dated June 4, 2020 [as detailed in Tab 2];
- l.** Affidavit of Service dated September 21, 2020 regarding service of letter from Dr. McLeod to Dr. Hafiz regarding request for suspension and enclosures [as detailed in Tab 10]
- m.** Email from G. Jones to Dr. McLeod, Dr. Ulan, Dr. Hartfield and Dr. Caffaro dated October 15, 2020 confirming service to Dr. Hafiz
- n.** Emails between R. Carter and Dr. Caffaro dated October 19, 2020
- o.** Letter from M. Heberling to Dr. Hafiz dated December 1, 2020 regarding request for virtual meeting
- p.** Letter from Dr. Hartfield to Dr. Hafiz dated February 17, 2021 regarding assignment of file to J. West
- q.** Letter from J. West to Dr. Hafiz dated March 30, 2021 regarding investigation update

r. Record of attempted contact by CPSA staff

Tab 5: Investigation Records 210128.1.1 (Tabs a to e)

a. Letter from D. Sunde, CPSA Resolution Advisor, to Dr. Hafiz dated March 11, 2021 enclosing copy of complaint from [Patient A]

b. Letter from D. Sunde to [Patient A] dated March 11, 2021 regarding receipt of complaint

c. Letter from D. Sunde to Dr. Hafiz dated March 31, 2021 regarding failure to respond to complaint

d. Email from Ms. Sunde to Dr. Hafiz dated April 6, 2021 regarding failure to respond to patient complaint

e. Record of phone contacts with complainant and attempts to contact Dr. Hafiz by CPSA staff

Tab 6: CPSA Code of Conduct

Tab 7: *Health Professions Act, RSA 2000, c H-7*

Exhibit 2: Letter to A. Chisholm from R. Carter dated July 13, 2021

12. Ms. Chisholm called one witness, Dr. Dawn Hartfield. Dr. Hartfield was the Assistant Registrar of the Continuing Competence department at the time Dr. Hafiz began to fail to respond to the College. Dr. Hartfield reviewed the exhibits and provided evidence regarding the attempts that were made to contact Dr. Hafiz.

V. SUBMISSIONS

Counsel for the Complaints Director

13. Counsel for the Complaints Director submitted that the onus rests with the Complaints Director to prove the case on a balance of probabilities. The Complaints Director must prove the facts and then prove that the Allegation against Dr. Hafiz has risen to the level of unprofessional conduct.
14. The Notice of Hearing sets out 14 instances when Dr. Hafiz did not respond to the College over a period of two years beginning February 12, 2020, when he failed to respond to the Continuing Competence department for an engagement in an individual practice review. In the Notice of Hearing, Dr. Hafiz's failure to respond spans from July 9, 2020, to April 6, 2021, when the matter was referred to a hearing. The Allegation itself is that Dr. Hafiz failed to respond in a timely manner or not at all to a complaint against him and an investigation into his conduct.

15. Ms. Chisholm stated that, other than Dr. Hafiz retaining counsel for a short period of time, he provided no response to the correspondence that was sent to him from the College. Dr. Hafiz being personally served with the Notice of Hearing and Disclosure Package containing the investigation records still failed to elicit a response.
16. Ms. Chisholm submitted that there is clear evidence to support a finding of unprofessional conduct. It is important that members of a self-regulating profession cooperate and respond to their college. In support of this, Ms. Chisholm referred the Hearing Tribunal to two cases: *Kaburda v. The Dental College of British Columbia*, 2001 BCSC 1326, and *Artinian v. The College of Physicians and Surgeons of Ontario*, [1990] O.J. No. 1116.
17. Ms. Chisholm cited specific governing documents that guide the regulated member of the College. In the Code of Conduct, Ms. Chisholm stated that Dr. Hafiz failed to respect the authority of the College as set out in the HPA and understand professional and ethical obligations.
18. Ms. Chisholm further submitted that according to the HPA, Dr. Hafiz engaged in unprofessional conduct by failing to comply or cooperate with an investigator and that his conduct throughout this entire matter has harmed the integrity of the profession.

VI. FINDINGS

19. The Hearing Tribunal finds that the Allegation has been factually proven on a balance of probabilities, and that the proven facts constitute unprofessional conduct.

Reasons

20. The evidence before the Hearing Tribunal demonstrates that the College attempted to contact Dr. Hafiz numerous times in writing and by phone. These attempts included the following:
 - On January 23, 2020, Dr. Hafiz was sent a summary of his Individual Practice Review from December 2019 via the College's physician portal. This review outlined significant requirements for improvement to his practice and the recommendations needed for implementation of these improvements.
 - On June 4, 2020, Dr. Caffaro, Complaints Director, received a letter from Dr. Hartfield, Assistant Registrar, Continuing Competence, requesting a referral to fast-track Dr. Hafiz's file under section 51.1(2)(a)(c) of the HPA. Dr. Hafiz had agreed pursuant Terms of Resolution dated September 12, 2016 to respond to all dated correspondence by the College within two weeks unless explicitly granted an exemption for same and he was not in compliance with the agreement. As well, the Individual

Practice Review for competency in December 2019 revealed significant concerns and findings to put patient safety at risk.

- On June 8, 2020, Dr. Caffaro indicated that he had received information from Dr. Hartfield regarding failure to respond to multiple inquiries by the Continuing Competence department of the College as per Dr. Hafiz's Terms of Resolution Agreement (File No. 160111.1.1) from June 2016. Under section 56 of the HPA, Dr. Hafiz's conduct may meet the definition of "unprofessional conduct" with a complaint investigation to be opened.
- On July 9, 2020, a letter from Dr. Caffaro to Dr. Hafiz delivered via the Physician Portal of the College outlined the opening of a complaint file and the investigations required to investigate the complaint. An undertaking was attached to this letter requesting that Dr. Hafiz withdraw from active practice immediately until such times that Dr. Hafiz was deemed safe and compliant by the College to return to active practice. Dr. Hafiz was asked for a response by July 15, 2020.
- On July 9, 2020, an email was sent from Sarah Ink, Dr. Caffaro's executive assistant, to Dr. Hafiz explaining the use of the Physician Portal at the College.
- On July 9, 2020, Ms. Katherine Damron, Complaint Inquiry Coordinator, sent a letter to Dr. Hafiz via the Physician Portal explaining the importance of responding to the complaint in a timely manner and the steps involved in an investigation. Ms. Damron requested a response by Thursday August 6, 2020.
- On July 15, 2020, Christine Bullen, Assistant at the College, emailed Dr. Hafiz requesting that he access the Physician Portal to open the document sent to him on July 9, 2020.
- On July 17, 2020, Christine Bullen called Dr. Hafiz on his office and cell phone number to request a follow-up on the need for a response. A voicemail was left on his cell phone requesting Dr. Hafiz check his Physician Portal.
- On August 14, 2020, Sarah Ink emailed Dr. Hafiz as another reminder to check the Physician Portal to retrieve the uploaded documents from July 9, 2020.
- On August 17, 2020, Ms. Damron sent a letter via the Physician Portal to Dr. Hafiz requesting a response to the July 9, 2020 uploaded documents and that an extension on the deadline was given until August 31, 2020.
- On August 31, 2020, Dr. Caffaro called the clinic phone number and Dr. Hafiz's personal cell phone number, leaving a voicemail. No response was received. On September 2, 2020, Dr. Caffaro delivered by registered mail a letter to Dr. Hafiz to his office address regarding the consequences

of a “non-response” to the complaint filed against him. Dr. Caffaro indicated that a second complaint would be opened for “unprofessional conduct” due to non-response by September 8, 2020, unless Dr. Hafiz replied in the interim.

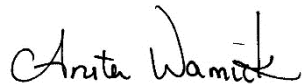
- On September 8, 2020, Sarah Ink sent an email to Dr. Scott McLeod, Registrar of the College, enclosing a memorandum from Dr. Caffaro requesting the suspension of Dr. Hafiz under section 65(1)(b) of the HPA effective immediately. All correspondence regarding the complaint was submitted as an attachment.
- On September 17, 2020, Dr. Scott McLeod sent a letter to Dr. Hafiz imposing a suspension on his practice permit under section 65 (1) of the HPA. Page 111 of the Exhibit Book is the Affidavit of Service of this letter being personally served upon Dr. Hafiz on September 17, 2020 at 9:48 a.m. There was no response to this letter from Dr. Hafiz.
- On October 15, 2020, Gail Jones, Senior Executive Assistant to Dr. Scott McLeod, sent an email to Dr. Scott McLeod, Dr. Susan Ulan, Dr. Dawn Hartfield, and Dr. Caffaro stating that Dr. Hafiz was served by a process server at his home address in Calgary regarding a complaint.
- On October 19, 2020, Dr. Caffaro sent an email to Rose Carter confirming that she would be representing Dr. Hafiz as legal counsel and that all documents and correspondence regarding the complaint would be forwarded to Ms. Carter’s office.
- On December 1, 2020, a letter from Marnie Heberling, Investigator, was sent to Dr. Hafiz via the Physician Portal indicating that she was the investigator assigned to complete the file. Ms. Heberling asked for a date and time that would be mutually agreed to for a conversation by December 15, 2020. There was no response from Dr. Hafiz.
- On February 17, 2021, a letter from Dr. Dawn Hartfield to Dr. Hafiz was sent via the Physician Portal stating that the file had now been assigned to James West, Associate Complaints Director. There was no response from Dr. Hafiz to this letter.
- On March 11, 2021, a letter was sent to Dr. Hafiz via the Physician Portal from Dawn Sunde, Resolution Advisor, stating there was a complaint from [Patient A] who was unable to receive his medical records from Dr. Hafiz. Ms. Sunde requested that Dr. Hafiz resolve the complaint directly with [Patient A] with a deadline of March 25, 2021 given to contact the patient. Dr. Hafiz did not respond to the College or [Patient A].
- On March 11, 2021, Ms. Sunde sent a letter by mail to [Patient A] confirming receipt of the complaint and indicating that she asked Dr. Hafiz to work directly with him to resolve this matter.

- On March 30, 2021, Mr. West sent a letter to Dr. Hafiz via the Physician Portal stating that the investigation was ongoing, and information was still being collected. There was no response from Dr. Hafiz to this letter.
 - On March 31, 2021, Ms. Sunde sent a letter to Dr. Hafiz via the Physician Portal indicating that she was still awaiting a response and that the deadline would be extended to April 14, 2021 to receive a reply. No response was received from Dr. Hafiz.
 - On April 6, 2021, Ms. Sunde sent an email to Dr. Hafiz at his home email address regarding the complaint from [Patient A] and requesting a response so that the matter could be resolved. There was no response from Dr. Hafiz.
 - A record of communication log shows that [Patient A] was advised that Dr. Talika Karan would be taking over the Tuscany Medical Clinic and may have the patient files.
 - On July 13, 2021, Ms. Rose Carter sent a letter via email to Ms. Annabritt Chisholm, counsel for the Complaints Director, stating that she is no longer acting on behalf of Dr. Hasan Hafiz regarding the College matter (Exhibit 2).
21. Based on the evidence, there were attempts to contact Dr. Hafiz by a variety of means. The Hearing Tribunal is satisfied that Dr. Hafiz did fail to respond to any of the correspondence from the College as set out in the Allegation. As such, the Hearing Tribunal is satisfied that the Allegation is factually proven.
22. The Hearing Tribunal found that the proven Allegation constitutes unprofessional conduct. Sections 1(1)(pp)(ii), (vii), and (xii) of the HPA provide 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:*
- (ii) *contravention of this Act, a code of ethics or standards of practice; and*
- (vii) *failure or refusal*
- (B) *to comply with a request of or co-operate with an investigator,*
- (xii) *conduct that harms the integrity of the regulated profession.*
23. A regulated member of a professional body is expected to respond to communications from their college in a timely manner, and cooperate with

investigations. This duty is the fundamental principle that supports the privilege of self-regulation. Regulatory bodies rely on their members to engage in and respond to the regulatory processes. Dr. Hafiz failed in his duty to respond to the College on multiple occasions.

24. The College's Code of Conduct states that regulated members are expected to respect the authority of the law and understand professional and ethical obligations. The Hearing Tribunal finds that Dr. Hafiz failed in this obligation by not responding to the College on numerous occasions. This failure constitutes unprofessional conduct pursuant to section 1(1)(pp)(ii) of the HPA.
25. Further, the Hearing Tribunal notes that section 1(1)(pp)(vii)(B) of the HPA defines unprofessional conduct as the failure or refusal by a member to comply with the request of or co-operate with an investigator. By not responding to the College's request for cooperation with an investigator and by not responding to other members of the College, Dr. Hafiz's conduct constitutes unprofessional conduct pursuant to section 1(1)(pp)(vii)(B) of the HPA.
26. In addition, the Hearing Tribunal is concerned that Dr. Hafiz had practice issues of competency, which were brought to his attention. By failing to respond to this issue or even further engage with College, this conduct undermines patient safety and the public trust of this profession. Dr. Hafiz has shown a pattern of behavior that has demonstrated his refusal to acknowledge and respond to the obligations to comply with the regulatory authority of the College. The conduct of Dr. Hafiz harms the integrity of the regulated profession and constitutes unprofessional conduct under section 1(1)(pp)(xii) of the HPA.
27. In conclusion, the Hearing Tribunal finds the Allegation to have been proven and that this amounts to unprofessional conduct.
28. The Hearing Tribunal will consider submissions with respect to appropriate orders or sanctions at a later date, to be arranged by the Hearings Director.

Signed on behalf of the Hearing Tribunal by the Chair:



Anita Warnick

Dated this 27th day of April, 2022.