

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
REGARDING SANCTIONS
OCTOBER 26, 2022**

I. INTRODUCTION

1. The Hearing Tribunal held a hearing into the conduct of Dr. Hasan Hafiz on September 19, 2022. The members of the Hearing Tribunal were:

Ms. Anita Warnick of Calgary as 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 present was:

Ms. Annabritt Chisholm, legal counsel for the Complaints Director.

Dr. Hasan Hafiz did not attend the hearing.

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. The hearing on the merits was held on March 8, 2022 and a decision was issued by the Hearing Tribunal on April 27, 2022. The Hearing Tribunal determined that the Allegation as set out in the Notice of Hearing was proven and that it constituted unprofessional conduct. A hearing was arranged for September 19, 2022 to determine sanctions.
4. Counsel for the Complaints Director made an application to proceed with the hearing in the absence of Dr. Hafiz. 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.
5. 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.*
6. Counsel for the Complaints Director called Ms. Jennifer White as a witness for the section 79(6) application. Ms. White is the Hearings Coordinator for the

College. Ms. White reviewed the information received from the process server, which showed that Dr. Hafiz was personally served with the information about the sanction hearing. 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 Hearings Coordinator and the documentary evidence, including the evidence that Dr. Hafiz was served personally with confirmation of the September 19, 2022 hearing date. Dr. Hafiz was properly served with documentation of the time, place, and purpose of the hearing. In these circumstances, the Hearing Tribunal finds that the relevant 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. EVIDENCE

9. The following Exhibit was entered into evidence during the hearing:

Exhibit 1: Declaration of Service of S. Fucile dated August 22, 2022
10. Counsel for the Complaints Director also filed the following materials:
 - a. Requested Orders and Authorities of the Complaints Director:
 - i. Orders Requested by the Complaints Director;
 - ii. *Health Professions Act*, RSA 2000, c H-7;
 - iii. Casey, J. Regulation of Professions in Canada;
 - iv. *Jaswal v Newfoundland (Medical Board)*, 1996 CarswellNfld 32
 - v. Discipline Report regarding Dr. Moises Lasaleta, published September 13, 2018;
 - vi. Decision of the Hearing Tribunal regarding Dr. Susanne Mausolf, dated October 29, 2018;
 - vii. Decision of the Hearing Tribunal regarding Dr. Kevin Mowbrey, dated 27-36 October 13, 2020;
 - viii. *Alberta College of Physical Therapists v Fitzpatrick*, 2015 ABCA 95;
 - ix. *Dr. Ignacio Tan III v Alberta Veterinary Association*, 2022 ABCA 221;
 - x. *KC v College of Physical Therapists of Alberta*, 1999 ABCA 253.

IV. SUBMISSIONS

11. Counsel for the Complaints Director outlined the various orders the Hearing Tribunal can impose as set out in section 82 of the HPA.
12. Ms. Chisholm outlined four primary purposes of a disciplinary hearing in a self-regulating profession, those being:
 - a. **The protection of the public.** It is paramount that the College regulates its members in a manner that protects the public. When a member's conduct is found to be unprofessional, the Hearing Tribunal must consider what orders are necessary to protect the public and ensure that the unprofessional conduct is not repeated.
 - b. **Maintain the integrity of the profession.** The integrity of the profession depends on individual members meeting the standards of practice, code of conduct and ethics as outlined by the College.
When a member has failed to meet these standards, the Hearing Tribunal must make clear in its orders to the member, the profession and public that such conduct is not acceptable.
 - c. **Ensure fairness to the member.** The Hearing Tribunal when issuing its orders must consider any relevant factors that are favourable to the member. However, the duty of fairness must also be balanced against the obligations the Hearing Tribunal has to the public and other members of the profession.
 - d. **Specific and general deterrence.** The orders of the Hearing Tribunal should be designed to ensure the member does not repeat similar conduct in the future. As well the orders should reflect general deterrence for the membership at large so that they understand the proven conduct was unprofessional and would not be tolerated by the College.
13. Dr. Hafiz was found to be unprofessional in his conduct in respect to one allegation containing 14 particulars of failing to respond in a timely manner or at all to the College.
14. Counsel for the Complaints Director reviewed the factors in the decision of *Jaswal v. Medical Board (Nfld.)*, 1996 CanLII 11630 (NL SC) ("*Jaswal*") and how those factors applied to the present case:
 - i. *The nature and gravity of the proven allegations:*
Dr. Hafiz's conduct was found to be unprofessional with respect to the single allegation of failure to respond in a timely manner or at all to the College. The Hearing Tribunal found this to be serious, harming the integrity of the profession and demonstrating a failure of Dr. Hafiz to cooperate or respond to his regulator.

- ii. *The age and experience of the member:*
Dr. Hafiz is an experienced member of the college and has been registered since 2002. While Dr. Hafiz has not continuously been registered during this time due to failure to meet deadlines or payments imposed by the College, inexperience is not a mitigating factor.
- iii. *The previous character of the member:*
While there have been seven complaints in the past, there were no prior findings of unprofessional conduct against Dr. Hafiz. Due to a prior complaint file, Dr. Hafiz had an undertaking to respond to the College in a timely manner.
- iv. *The age and mental condition of the offended patient:*
This factor is not applicable.
- v. *The number of times the offence was proven to have occurred:*
Dr. Hafiz failed to respond to the College on 14 separate occasions.
- vi. *The role of the physician in acknowledging what occurred:*
Acknowledgement of the conduct is not a mitigating factor in this situation. Due to the lack of response on behalf of the member, the Hearing Tribunal had to assume that Dr. Hafiz had contested the allegation against him.
- vii. *Whether the member has already suffered other serious financial or other penalties:*
Dr. Hafiz's practice permit was suspended under section 65 of the HPA based on his initial failure to respond and the concerns of the Registrar and the Complaints Director had regarding his competency. However, this is a neutral factor due to his continued failure to respond.
- viii. *The impact on the offended patient:*
The Complaints Director is not aware of any evidence of patient harm. Dr. Hafiz's failure to respond commenced when issues regarding his practice and competency were brought to his attention by the College. By failing to respond to the College, he has undermined patient safety and harmed the integrity of the profession.
- ix. *The presence or absence of any mitigating factors:*
The Complaints Director is not aware of any mitigating factors.
- x. *The need to promote specific and general deterrence:*
In terms of specific deterrence, Dr. Hafiz should understand his conduct was unacceptable and unprofessional and the orders should reflect the importance of upholding the expected obligation to respond to the College.

In terms of general deterrence, it is vital that other members of the profession see that the College does not tolerate this proven conduct and that sanctions imposed would be appropriate and serious.

xi. *The need to maintain public confidence:*

The proven conduct of Dr. Hafiz has the potential to decrease the trust in the profession by the public. Regulated members cannot disregard their regulatory body or professional obligations.

One of the primary responsibilities of a self-regulating profession is maintaining the integrity of the profession. The College must demonstrate to the public that it is willing and able to regulate and govern the conduct of each of its members.

The public must see that the College takes seriously the failure of a regulated member to respond, and that this failure will not be tolerated.

The public must also see that appropriate steps have been taken by the College to sanction the regulated member and ensure that such conduct will not reoccur in the future.

xii. *Degree to which offensive conduct is outside the range of permitted conduct:*

The conduct of Dr. Hafiz is clearly outside the range of permitted conduct.

xiii. *Range of sanctions in other similar cases:*

There are three cases between 2018 and 2020 that are similar and have comparable sanctions to what the Complaints Director is proposing for Dr. Hafiz. These cases are:

- Dr. Moises Lasaleta
- Dr. Susanne Mausolf
- Dr. Kevin Mowbrey

There are, however, some differences in each of the cases in comparison to the sanctions being ordered against Dr. Hafiz due to the specific facts of each case.

Of note, the Complaints Director is not asking for a suspension of Dr. Hafiz's practice permit which was ordered for Dr. Lasaleta. Dr. Hafiz is not practising or suggesting that he is going to be returning to practice and so a suspension may not be appropriate.

15. Counsel for the Complaints Director has proposed the following orders:

1. Dr. Hafiz shall receive a reprimand of which the Hearing Tribunal's written decision will serve.

2. Dr. Hafiz shall undertake and successfully complete a professionalism course acceptable to the Complaints Director prior to being permitted to reinstate his practice permit.
 3. Dr. Hafiz shall, at his own cost, undertake a competence assessment prior to being permitted to reinstate his practice permit.
 4. Following completion of Orders 2 and 3 and upon reinstatement of his practice permit, Dr. Hafiz shall, at his own cost, engage and fully cooperate with the Continuing Competency Department, including the Continuing Competence Rules for Member Participation and any remedial directions provided to him.
 5. Dr. Hafiz shall pay the full costs of the investigation and hearing within 12 months of being served with a copy of the Hearing Tribunal's decision in this matter on a monthly schedule satisfactory to the Complaints Director.
16. A reprimand will be a serious sanction and in the eyes of the public will denounce the conduct of the regulated member. The course requirement will allow Dr. Hafiz to understand that his conduct was unprofessional and provide an opportunity for remediation. The continuing competence requirement is important because Dr. Hafiz has been out of practice for a couple of years and initially concerns were brought to the College regarding his competency.
 17. The purpose of this proposed order is to highlight the importance of the requirement to engage with the College's continuing competence department in a timely manner. Dr. Hafiz has failed to do so in the past.
 18. If Dr. Hafiz fails to uphold any of the orders of the Hearing Tribunal, that in itself would be unprofessional conduct. This would be a method of specific deterrence for Dr. Hafiz and an assurance to the public that the College takes a requirement to respond and engage with the College seriously.
 19. Under section 82 of the HPA, the Hearing Tribunal can direct that Dr. Hafiz pay all or part of the costs of the investigation and the hearing.
 20. The Complaints Director proposes that the College and its members should not be forced to bear the full cost of these proceedings as they arose as a direct result of Dr. Hafiz's unprofessional conduct.
 21. Counsel for the Complaints Director has estimated that the College has incurred approximately \$16,754 as of September 15, 2022, for the investigation and hearing. However, these costs do not reflect the costs of the submissions on sanction or the costs of the Hearing Tribunal's hearing to deal with sanctions. The anticipated final costs of this matter could exceed \$20,000.

22. Ms. Chisholm cited the following cases regarding the issue of costs in disciplinary hearings:
- (a) *Alberta College of Physical Therapists v Fitzpatrick*, 2015 ABCA 95
This is a case whereby the costs of a disciplinary hearing in 2013 could be as high as \$23,000 per day.
 - (b) *Dr. Ignacio Tan III v Alberta Veterinary Association*, 2022 ABCA 221
The Court of Appeal noted in this case that one purpose of cost awards is to serve to indemnify the party that has incurred the costs, and to recognize this could be shifted to the member that has been found guilty of unprofessional conduct.
 - (c) *KC v College of Physical Therapists of Alberta*, 1999 ABCA 253
provides a non-exhaustive list of factors on whether to assign costs to a regulated member, these being:
 1. **Degree of success or failure in proving the charges.** The Complaints Director did prove unprofessional conduct in a single charge and the 14 particulars against Dr. Hafiz.
 2. **The seriousness of the charges.** The allegation against Dr. Hafiz was proven and serious in nature as it was a failure to respond to a regulatory body.
 3. **Conduct of the parties.** As Dr. Hafiz did not respond or appear before the Hearing Tribunal, the hearing was considered contested.
 4. **Reasonableness of costs.** The costs of a hearing in 2013 could have been \$23,000, so the approximate costs of \$20,000 for a one-day hearing or two half days of hearing is not unreasonable.
23. Counsel for the Complaints Director submitted that the costs should not be punitive in that they would deliver a crushing financial blow to the regulated member. The Complaints Director is not aware that these costs would provide a financial hardship to Dr. Hafiz and has recommended the costs be apportioned over 12 months.

Questions from the Hearing Tribunal:

24. The Hearing Tribunal requested clarification regarding Order #2 proposed by the Complaints Director: What timeline is proposed for the professional course to be acceptable, and would there be a cost associated to Dr. Hafiz for this course?
25. Counsel for the Complaints Director replied that it is expected Dr. Hafiz would take the professionalism course prior to his practice permit being reinstated. Dr. Hafiz would undertake and complete the course at his own expense.

26. Regarding Order #3, the Hearing Tribunal requested further clarification on the competency assessment: What does the assessment involve and how detailed would it be?
27. Counsel for the Complaints Director stated that the order should read: Dr. Hafiz, at his own cost, undertake a competence assessment suitable to the Complaints Director prior to being permitted to reinstate his practice permit.
28. It is unclear to the Complaints Director if or when Dr. Hafiz would want to be reinstated as a practising member of the college. The Complaints Director would have latitude to consider what competency program would be best for Dr. Hafiz if he chooses to be reinstated. The competence assessment may be best placed within a practice assessment which the College would require Dr. Hafiz to undertake to reinstate his practice permit. The usual cost of these assessments would be at a minimum \$10,000.
29. The Hearing Tribunal questioned what efforts have been made to assess Dr. Hafiz's mental health in relation to the presence or absence of any mitigating circumstances as outlined in the *Jaswal* factors?
30. Counsel for the Complaints Director stated that the Complaints Director is not aware of any efforts to assess Dr. Hafiz's mental status, and believes that mental health and suitability to practice would be part of the competence assessment.
31. The Hearing Tribunal questioned the matter of costs, referencing that costs should not deliver a financial burden and as Dr. Hafiz is not practising, what submissions could be given on full costs versus partial costs?
32. Counsel for the Complaints Director submitted that the costs are within a reasonable range of a one-day or two-day hearing that has arisen before a Hearing Tribunal. Dr. Hafiz has not appeared before the Hearing Tribunal or provided any evidence on his behalf. Counsel for the Complaints Director referred the Hearing Tribunal to the factors in *KC v College of Physical Therapists of Alberta*, 1999 ABCA 253, and noted that these are the appropriate factors to determine costs.
33. The Hearing Tribunal further asked whether the Complaints Director would ask Dr. Hafiz to start paying costs immediately or after successful completion of all the orders and reinstatement of his practice permit?
34. Ms. Chisholm stated that the Complaints Director would be in support of commencing payment now as the College has incurred these costs to date regardless of whether or not Dr. Hafiz has been in practice. Ms. Chisholm suggested that the timeline for payment from 12 months to 24 months would be appropriate if the Hearing Tribunal so determined. It would be a good indication if Dr. Hafiz is willing to comply with the orders to pay costs, as failure to pay them becomes a debt to the College.

V. DECISION ON SANCTION

35. The Hearing Tribunal considered the principles of sentencing and the factors in *Jaswal*, in particular the following:

1. **Nature and gravity of the proven allegations:** The Hearing Tribunal finds the conduct to be very serious. A physician must respond to communications of the College. Failure to do so undermines the integrity of the profession and impacts the College's ability to self-regulate.
2. **Age and experience of the offending physician:** Dr. Hafiz has been registered with the College since 2002. Although not continuously on the register, Dr. Hafiz would be expected to know the importance of complying and responding promptly to communications from his regulatory body. The Hearing Tribunal agrees with the Complaints Director that inexperience is not a mitigating factor in this case.
3. **The presence or absence of any prior complaints or convictions:** Although Dr. Hafiz had prior complaints against him, there were no prior findings of unprofessional conduct. However, failure of the member to respond to requirements from the College undermines the integrity of the profession and impacts the public's confidence in the ability of the College to self-regulate.
4. **The number of times the offence was proven to have occurred:** Dr. Hafiz failed to communicate to the College on 14 separate occasions. There were multiple instances of correspondence and communications from the College to Dr. Hafiz where Dr. Hafiz did not reply or engage with the College.
5. **The role of the physician in acknowledging what has occurred:** The Hearing Tribunal agrees with the Complaints Director that there was no acknowledgement by Dr. Hafiz on his conduct, which if he had done could have been viewed as a mitigating factor.
6. **The impact on the offended patient:** While there was no direct evidence of harm to patients, Dr. Hafiz's conduct undermined patient safety by his failure to engage with College. A regulated member must comply with College directions in order to protect the public interest and ensure patient safety.
7. **The need to promote specific and general deterrence:** The Hearing Tribunal wishes to emphasize to Dr. Hafiz and the membership at large the importance of communicating with and responding to the College in a timely manner. It is vital that Dr. Hafiz understands that his conduct was unprofessional and that the College will not tolerate this conduct from any regulated members.
8. **The need to maintain the public's confidence in the integrity of the medical profession:** The Hearing Tribunal places a high degree of emphasis on this factor. Dr. Hafiz's failure to respond to the College

in a timely manner on numerous occasions undermines the public's confidence in the integrity of the profession and the ability of the College to self-regulate.

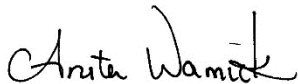
9. **The degree to which the conduct is clearly regarded as being outside the range of permitted conduct:** Dr. Hafiz's conduct is clearly outside of what is permitted.
36. The Hearing Tribunal considered the factors submitted in determining the appropriate sanction and the order for costs.
37. Protection of the public is paramount in considering the appropriate sanction. The Hearing Tribunal must ensure the public is protected and the integrity of the medical profession is maintained. Being granted a license to practice medicine is a privilege not a right. If the College is unable to regulate its members, the public will lose confidence in the integrity of the profession, and this will jeopardize the College's ability to maintain self-regulation.
38. The Hearing Tribunal wishes to indicate to Dr. Hafiz and the members of the College the importance of communication and responding to the College in a timely manner. A reprimand will serve as a specific deterrent to Dr. Hafiz and show that the College will not tolerate this conduct from any regulated members.
39. It is important that the College maintains the public's confidence in the profession. Dr. Hafiz has not been practising, and the knowledge, skills and judgment required in his profession is now inadequate. The Hearing Tribunal finds that the lack of response from Dr. Hafiz regarding his practice and his competency worrisome and could potentially harm the public in the future if he so chooses to return to practice. Therefore, the Hearing Tribunal agrees with the Complaints Director that Dr. Hafiz be directed at his own cost to complete a professionalism course and undertake at his own cost a full competence assessment to ensure protection of the public.
40. Regarding costs, the Hearing Tribunal finds that it is important to send a strong message to Dr. Hafiz that this type of conduct will not be tolerated. The Hearing Tribunal views this is an appropriate case to order full costs of the hearing to a maximum of \$10,000 to be paid within 24 months of being served with the Hearing Tribunal's decision. Failure to comply with this order will result in further evidence of unprofessional conduct. Dr. Hafiz failed on multiple occasions to respond to his ethical and professional obligations to the College. He failed to comply with the request of or cooperate with an investigator. The Hearing Tribunal is mindful that this matter could have been avoided if Dr. Hafiz had communicated with the College. No specific evidence was given regarding the financial circumstances of Dr. Hafiz. In reaching its decision on costs, the Tribunal weighed the factors and case law regarding costs and, in fairness to Dr. Hafiz, capped the cost at \$10,000 with a timeline of repayment to the College within 24 months, noting that further

costs would be incurred at his own expense in completing the professionalism course and competency assessment should he wish to return to practice.

VI. ORDERS

41. The Hearing Tribunal hereby orders pursuant to section 82 of the HPA:
1. Dr. Hafiz shall receive a reprimand of which the Hearing Tribunal's written decision shall serve.
 2. Dr. Hafiz shall undertake and successfully complete a professionalism course at his own cost acceptable to the Complaints Director prior to being permitted to reinstate his practice permit.
 3. Dr. Hafiz shall, at his own cost, undertake a competence assessment suitable to the Complaints Director prior to being permitted to reinstate his practice permit.
 4. Following completion of Orders 2 and 3 and upon reinstatement of his practice permit, Dr. Hafiz shall, at his own cost, engage and fully cooperate with the Continuing Competency Department, including the Continuing Competence Rules for Member Participation and any remedial directions provided to him.
 5. Dr. Hafiz shall pay the full costs of the investigation and hearing to a maximum of \$10,000 within 24 months of being served with a copy of the Hearing Tribunal's decision in this matter on a schedule satisfactory to the Complaints Director.

Signed on behalf of the Hearing Tribunal by the Chair:



Anita Warnick

Dated this 26th day of October, 2022.