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. OBAID AFRIDI

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

March 29, 2023

INTRODUCTION

1. The Hearing Tribunal held a hearing into the conduct of Dr. Obaid Afridi on April 20-22 and August 18, 2022. The members of the Hearing Tribunal were:

   Ms. Naz Mellick of Edmonton as Chair (and public member);
   Dr. Vonda Bobart of St. Albert;
   Dr. Kim Loeffler of Edmonton;
   Mr. Douglas Dawson of Edmonton (public member).

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

   Also present were:

   Mr. Craig Boyer, legal counsel for the Complaints Director;
   Dr. Obaid Afridi;
   Ms. Valerie Prather, K.C.; Ms. Andrea Stempien; and Mr. Joseph Koshan, legal counsel for Dr. Afridi

I. 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. There was no application to close the hearing.

II. CHARGES

4. The Notice of Hearing listed the following allegations:

   1. During the period of May 2019 to March 2020, you did display a lack of knowledge of or lack of skill or judgment in the provision of professional services to your patient, [Complainant] particulars of which include one or more of the following:

      a. failure to refer your patient for an audiogram in a timely manner,

      b. failure to obtain a CT scan to investigate patient's complaint of hematuria,

      c. failure to refer your patient to Dr. M[redacted], internist, in a timely manner,

      d. failure to refer your patient to Dr. De[redacted], otolaryngologist, in a timely manner,

      e. prescribing methylphenidate (Concerta) to your patient, including an early renewal of the prescription for a patient who had a history of polysubstance use disorder,

f. prescribing 20 tablets of lorazepam 1 mg to your patient who had a history of polysubstance use disorder.

2. You did fail to create an adequate patient record for visits with your patient, [Complainant], as required by the College of Physicians and Surgeons of Alberta Standard of Practice on Patient Record content, particulars of which include one or more of the following;

   a. Failure to record details of the nature and duration of the complaint of hematuria on May 27, 2019,

   b. Failure to record details of the nature and duration of the complaint of back pain on May 29, 2019,

   c. Failure to record any plan for care or advice provided to the patient on May 29, 2019,

   d. Failure to record details of the nature or duration of abdominal pain reported by the patient on June 12, 2019,

   e. Failure to record details of the nature and location of pain,

   f. Failure to record patient's weight at following visits after June 26, 2019 when patient reported weight loss concern,

   g. Failure to record the findings from an adequate physical examination of your patient in light of presenting complaints of weight loss and excessive sweating reported by the patient on June 26, 2019,

   h. Failure to record the details of a discussion of the medications, Concerta, Abilify and Cipralex, prescribed on August 7, 2019, including any potential side effects, risks or restrictions that may occur,

   i. Failure to record the details of a discussion of the medication, Ativan, prescribed on September 26, 2019, including any potential side effects, risks or restrictions that may occur, and

   j. Failure to record an adequate history for the concerns of gastrointestinal symptoms reported by your patient, including weight loss and sweating.

3. You did inappropriately bill the Alberta Health Care Insurance Plan for 4 units of Health Service Code 08.19G when you saw your patient, [Complainant], on September 26, 2019.

FURTHER PARTICULARS of which are set out in the report from Dr. [redacted] Du[redacted] dated April 14, 2021.

III. EVIDENCE

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

Exhibit 1: Agreed Exhibit Book

- **Tab 1:** Notice of Hearing dated September 16, 2021
- **Tab 2:** Complaint Form from [Complainant] dated March 16, 2020
- **Tab 3:** Letter of Response from Dr. Afridi dated June 3, 2020
- **Tab 4:** Dr. Afridi's office chart for [Complainant]
- **Tab 5:** Transcription of Dr. Afridi's chart notes
- **Tab 6:** Pharmaceutical Information Network report for [Complainant] covering January 2019 to March 2020
- **Tab 7:** Alberta Health billing information re [Complainant] for the period of January 2019 to March 2020
- **Tab 8:** Expert opinion from Dr. Du[redacted] dated April 21, 2021
- **Tab 9:** Curriculum Vitae for Dr. Du[redacted]
- **Tab 10:** Expert report from Dr. K[redacted] dated March 31, 2022 with attached Curriculum Vitae and assumed chronology of events
- **Tab 11:** CPSA Standard of Practice – Patient Record Content
- **Tab 12:** CPSA Standard of Practice – Referral Consultation
- **Tab 13:** CPSA Standard of Practice – Prescribing: Drugs Associated with Substance Use Disorders or Substance Related Harm
- **Tab 14:** CPSA Standard of Practice – Continuity of Care

Exhibit 2: Comprehensive Spine Questionnaire dated August 28, 2020

Exhibit 3: Curriculum Vitae of Dr. Afridi

Exhibit 4: Blank Soundwave Requisition Form

6. Materials filed by counsel for the Complaints Director are:

   a. Written Submissions of the Complaints Director regarding Expert Opinion Evidence dated April 29, 2022 with the following decisions attached:

      i. *Walsh v. Council for Licensed Practical Nurses*, 2010 NLCA 11;

ii. *M.M. v. College of Alberta Psychologists*, 2011 ABCA 110;

iii. *White Burgess Langille Inman v. Abbott and Haliburton Co.*, [2015] 2 S.C.R. 182;

iv. *National Justice Compania Naviera SA v. Prudential Assurance Co. LTD. (the "Ikarian Reefer")*, [1993] 2 Lloyd's Rep 68.

b. The following additional materials were filed by counsel for the Complaints Director:

i. *College of Physicians and Surgeons of Ontario v. Pasternak*, 2021 ONCPSD 8 (CanLII);

ii. *F.H. v. McDougall*, [2008] 3 S.C.R. 41;

iii. *Hunter, Re*, 2012 CarswellAlta 2506;

iv. *Hunter, Re*, 2013 CarswellAlta 3029;

v. *Hunter v College of Physicians And Surgeons of Alberta*, 2014 ABCA 262;

vi. *LSO v. Odeleye*, 2020 ONLSTH 114;

vii. *McInerney v. MacDonald*, [1992] S.C.J. No. 57;

viii. *Reddoch v. Yukon Medical Council*, [1999] Y.J. No. 85;

ix. *Reddoch v. Yukon Medical Council*, 2001 YKCA 13;

x. *Sussman v. College of Psychologists (Alberta)*, 2010 ABCA 300;

7. Materials filed by counsel for Dr. Afridi are:

a. Written Submissions of Dr. Obaid Afridi Regarding Expert Evidence dated April 29, 2022 with the following decisions attached:

i. *Jiwa (Re)*, College of Physicians & Surgeons of Alberta;

ii. *Dehekker v Anderson-Penno*, 2014 ABQB 95;

iii. *Ellwood v. Association of Professional Engineers of Yukon*, 2006 YKSC 42;

iv. *College of Physicians and Surgeons of Saskatchewan v. Huerto*, 1996 CanLII 4920 (SK CA);

v. *Swart v. College of Physicians and Surgeons of P.E.I.*, 2014 PECA 20;

vi. *Skinner v Matheson*, 2017 ABQB 342;

vii. *LR v Semenjuk*, 2021 ABCA 318.

b. The following additional materials were filed by counsel for Dr. Afridi:

i. Salte Law of Professional Regulation;

ii. *Walsh v. Council for Licensed Practical Nurses*, 2010 NJ 61;

iii. *Sussman v. College of Psychologists (Alberta)*, 2010 ABCA 300;

iv. *Reddoch v. Yukon Medical Council*, 2001 YKCA 13;

v. *Hunter, Re*, 2013 CarswellAlta 3029;

vi. *Hunter, Re*, 2012 CarswellAlta 2506;

vii. *Hosseini v. College of Dental Surgeons of Saskatchewan*, 2022 SKQB 13;

viii. *Hodgson, Re*, 2020 CarswellAlta 2395;

ix. *Faryna v. Chorny*, [1951] B.C.J. No. 152.

Evidence Adduced by the Complaints Director

8. The Complaints Director called two witnesses: the Complainant and Dr. [redacted]. A summary of the witness testimony is below.

Complainant – Examination by Counsel for the Complaints Director

9. The Complainant took her daughter to see Dr. Afridi in January 2019, and the Complainant asked if Dr. Afridi could be her doctor as well. The Complainant saw Dr. Afridi in May 2019. She was losing weight very fast and weighed 195 pounds.

10. The Complainant was asking for a referral to Dr. [redacted], an internal medicine specialist that she had seen in the past. She was also requesting a referral to an ear, nose and throat doctor because her ear was bleeding and itchy. The Complainant did not receive a referral from Dr. Afridi. She ultimately received referrals from other physicians. The Complainant has received care from Dr. [redacted] and Dr. [redacted].

11. The Complainant also told Dr. Afridi that she was concerned that she had cancer and there is a family history of cancer. The Complainant had bleeding and itchy ears, back pain, and bone pain.

12. The Complainant had an emergency back discectomy in 2020. Dr. [redacted] asked for some tests and did a referral. The Complainant saw Dr. [redacted] on October 27, 2020 and she had pinched nerves. Two days later she had emergency surgery. The Complainant still has pain because of other bone issues, but she no longer needs to use a walker.

13. The Complainant had other visits with Dr. Afridi. The appointments were 10 minutes maximum. There was no visit that lasted as long as 45 minutes. During a visit in May 2019 there is a diagnosis of paranoia and the Complainant never discussed that with Dr. Afridi.

14. The next visit occurred on August 7, 2019. The medical record says that there were three prescribed medications: Concerta, Abilify and Cipralex. They were prescribed by the Complainant's psychiatrist, Dr. [redacted], and not by

Dr. Afridi. There was no discussion with Dr. Afridi about use, risks or side effects.

15. There was an appointment on September 26, 2019 that was prior to an eye operation with Dr. R[redacted]. The Complainant voiced concerns to Dr. Afridi about that procedure because of stress. Dr. Afridi prescribed Ativan and there was no discussion about the risks or side effects. There was no discussion about psychiatric conditions, or any counselling or therapy.

16. On October 31, 2019 the Complainant was seen by Dr. P[redacted], and there was a referral to Dr. De[redacted].

17. The next appointment occurred on March 12, 2020 and the Complainant asked for the results of an ultrasound that was ordered by Dr. M[redacted] Dr. Afridi told the Complainant that he had shredded the results because he did not order the test. At that time she decided to make a complaint to the College and that was her last visit.

Complainant - Cross-Examination by Counsel for Dr. Afridi

18. French is the Complainant's first language and she learned to speak English in 2016 when she moved to Grande Prairie. Dr. E[redacted] was her family physician in Grande Prairie prior to her pregnancy. During her pregnancy the Complainant saw Dr. C[redacted].

19. The Complainant saw Dr. [redacted] on January 8, 2019 for post-partum care, and on February 21, 2019 for care following a tubal ligation.

20. The public health nurse referred the Complainant's daughter to Dr. Afridi. At first Dr. Afridi said when he met the Complainant at the hospital that he would not take the Complainant as a patient. The Complainant cried and ultimately Dr. Afridi agreed to accept the Complainant as a patient.

21. The Complainant started seeing Dr. B[redacted] for psychiatric care in 2018. In June of 2018 the Complainant was diagnosed with a major depressive disorder recurrent type, and post-traumatic syndrome disorder. A diagnosis of borderline personality disorder was done later by another doctor. The Complainant also had a diagnosis of polysubstance use disorder, but she had been abstinent for a year. The Complainant had used crack, cocaine, meth and other drugs. She continues to be abstinent to the date of the hearing. The Complainant did not have an addiction to prescription drugs.

22. Dr. B[redacted] treated the Complainant with three drugs for her mental health issues, and she had already been receiving treatment in Quebec. Dr. B[redacted] explained the side effects.

23. The Complainant has seen different Alberta Health Services mental health therapists. The Complainant expressed concern that this is about health and

the system, and they are using her past history of addiction or mental health.

24. The Complainant was preparing for a trial that occurred in October or November 2019 and it was a stressful time leading up to the trial.

25. Dr. Afridi ordered a number of tests during the first visit on May 15, 2019. He did not give the Complainant information about an audiologist to book an audiogram.

26. The Complainant returned approximately two weeks later for another appointment with Dr. Afridi. Dr. Afridi did not explain the results and said "It's all good". The Complainant told Dr. Afridi that she was peeing blood. He did not order a CT scan.

27. The Complainant saw Dr. Afridi again for a third appointment in May. She complained of pain. The Complainant did not recall Dr. Afridi examining her and having her lay on the examining table and do leg raises to determine when she experienced pain.

28. The Complainant saw Dr. Afridi for a fourth appointment on June 12, 2019. She complained of abdominal pain. The Complainant did not recall having an abdominal exam on her right lower quadrant to check for hernias.

29. Dr. Afridi did not explain the results of the back x-ray and that it showed degenerative disc disease. The first time that the Complainant heard about degenerative disc disease was from Dr. A[redacted].

30. The Complainant had an ultrasound on June 20, 2019. The Complainant agreed that the ultrasound shows that there is a 9-millimetre non-obstructive stone in the left kidney.

31. Dr. Afridi did not review the results of the ultrasound during her next appointment on June 26, 2019. He said "It's all good". The Complainant did not agree that Dr. Afridi told her to follow up with her psychiatrist to see if the prescribed medications may be causing weight loss or sweating.

32. The Complainant weighed 159 pounds. The Complainant did not agree that Dr. Afridi told her to record her weight monthly so that he could follow her weight loss.

33. The Complainant had an appointment on August 7, 2019. She asked Dr. Afridi for a prescription for Concerta, Abilify and Cipralex. Dr. B[redacted] had prescribed these earlier. Dr. Afridi did not have anything on file about the medications and asked the Complainant to call the pharmacy. He was not in the room when she was calling the pharmacy.

34. The Complainant had an appointment on September 26, 2019. She received a prescription for cream for her back. The Complainant was concerned about future eye surgery and requested Ativan.

35. The Complainant had a CT scan done of her head that was ordered by Dr. [redacted] as a result of a visit to the Emergency Room. She is seeing Dr. [redacted] for the same reasons relating to pressure in her head, eye and ear. The Complainant is having a biopsy on May 30.

36. The Complainant may have taken Ativan in the past, but it was one pill only. She did not agree that Dr. Afridi explained that Ativan would keep her calm during the surgery, and she was surprised when she came out of the pharmacy with a bunch of pills. The Complainant did not agree that Dr. Afridi told her that Ativan may make her sleepy, or that there was a risk of becoming dependent. The Complainant took one and a half pills and did not take the rest.

37. The Complainant was referred by Soundwave to Dr. [redacted] by letter dated September 23, 2019. The Complainant received the results of her CT scan that was ordered by Dr. [redacted] at the hospital.

38. The Complainant had an appointment with Dr. [redacted] on October 31, 2019. Dr. [redacted] looked in her ears and made a referral to Dr. [redacted].

39. Dr. [redacted] was the doctor who figured out that the Complainant has a pulmonary embolism that developed in her lungs. The Complainant did not ask her psychiatrist to take her off Concerta to alleviate weight loss and sweating.

40. The Complainant is not a pill addict, and her addictions related to hard drugs and alcohol. The Ativan was very effective in calming her for surgery.

41. The Complainant did not agree that she never asked Dr. Afridi for a referral to Dr. [redacted]. The Complainant asked Dr. Afridi for a referral because Dr. [redacted] had helped her in the past. She has no recollection of Dr. Al [redacted] giving her a referral to Dr. [redacted]. Dr. [redacted] told the Complainant that he made the referral.

42. The Complainant saw Dr. [redacted] for the first time on November 19, 2019. She does not recall asking Dr. [redacted] for a referral to Dr. [redacted].

43. The Complainant saw Dr. [redacted] on September 18, 2019. She told him that she was asking for a referral to Dr. [redacted] and Dr. [redacted] agreed to the referral. The Complainant saw Dr. [redacted] on February 20, 2020. She told him that she had a lot of weight loss and low back pain.

44. The Complainant completed a comprehensive spine questionnaire on August 28, 2020 and recorded her weight as 142 pounds. The second page of the questionnaire is not related to the first page.

45. The Complainant's last visit with Dr. Afridi was on March 12, 2020. She asked for a referral for heartburn or gastrointestinal reflux disease. The reason why she was at the appointment was to ask for the results of the test done by Dr. M[redacted]. The Complainant did not agree that she was told by Dr. M[redacted] at the end of the appointment that he would follow up with her once he had the results of the tests. When the Complainant saw Dr. M[redacted] she was not using a walker. She was walking against the wall.

46. Dr. M[redacted] ordered an MRI, and that was done in August 2020. The Complainant went to see the orthopedic surgeon, Dr. A[redacted], on October 27, 2020. The Complainant chose to have surgery right away.

47. The date of the complaint to the College is March 16, 2020. The Complainant could not recall receiving a copy of Dr. Afridi's response to the complaint.

48. The Complainant received a letter from counsel for Dr. Afridi and she forwarded the letter to the College. The letter requested that counsel for Dr. Afridi be allowed to speak to the Complainant's treating physicians. The College explained that it was the Complainant's choice, and she did not respond to the letter. The Complainant has lots on the go.

49. The Complainant's current family physician is Dr. O[redacted].

Complainant – Re-examination by Counsel for the Complaints Director

50. Since May 2019, the lowest weight that the Complainant reached was close to 130 pounds. That happened at around the time of her surgery in 2020.

Dr. [redacted] Du[redacted] – Examination by Counsel for the Complaints Director

51. Counsel for the Complaints Director called Dr. [redacted] Du[redacted] to give expert evidence. After reviewing Dr. Du[redacted]'s qualifications, Mr. Boyer asked that Dr. Du[redacted] be qualified to give opinion evidence on family medicine. The Hearing Tribunal therefore qualified Dr. Du[redacted] to give the expert evidence proposed. There were no objections by counsel for Dr. Afridi.

52. Dr. Du[redacted] provided evidence about the materials that he had reviewed when drafting his opinion. Dr. Du[redacted] reviewed Dr. Afridi's chart, the complaint, a timeline, prescriptions, billing information, and Dr. Afridi's response to the complaint.

53. After reviewing the information, Dr. Du[redacted] concluded that there were deficiencies. There was a deficiency in the record content both in terms of legibility and actual content. Significant history and physical findings were missing. There was often no diagnosis or differential diagnosis. It made it very difficult to follow Dr. Afridi's thinking process when he was looking after the Complainant. Dr. Afridi did not refer the Complainant to internal medicine when he should have made the referral because of significant ongoing

complaints for which he had no diagnosis. Dr. Du[redacted] had a concern about billing especially in September of 2019. He also had concerns about prescribing.

54. Dr. Dun[redacted] reviewed Dr. Afridi's chart beginning with the first visit on May 15, 2019. There is a decent amount of history and one of the symptoms is weight loss. There is no weight recorded. The plan did not include a diagnosis or differential diagnosis. A number of tests were ordered. The ultrasound for the suspected node and a mammogram are appropriate tests. There are some puzzling laboratory tests: CA19-9 which is an unusual test for cancer screening, and a Monospot and throat swab despite the normal head and neck exam. The chart says that an audiometry request was given to the Complainant but there is no history for why that particular test was ordered.

55. The next visit was on May 27, 2019 and this was a follow-up visit. Dr. Afridi mentions a complaint of peeing blood, and the bottom entry is "RE CT". It is unclear what this means, and no diagnosis is listed.

56. The next visit was on May 29, 2019. The chart says "lipoma" which is the finding from the ultrasound. This is the first mention of a backache and that is all the history says about the back. There is no other history in terms of timeline, the nature of the pain, where it was, and aggravating or relieving factors. The only two findings are straight leg raises normal, and gait is normal. The diagnosis says paranoia, and it is unclear whether Dr. Afridi was questioning the Complainant's mental state or whether he felt she was anxious about something. There is nothing about mental status or psychiatric symptoms.

57. The next visit is on June 12, 2019. This visit seems to be about abdominal pain and the Complainant came with a friend. Dr. Afridi does not list any other symptoms apart from abdominal pain, such as where or the nature of the pain or any other bowel-related symptoms. He noted that her right lower quadrant was normal and hernias were negative. Dr. Afridi notes that the Complainant is crying out but he does not mention why. Dr. Afridi ordered an ultrasound but there was no history on the requisition, and it was unclear why it was being ordered.

58. The next visit is on June 26, 2019. The Complainant was concerned about weight loss but this is the only time that weight is recorded. Dr. Afridi records that the Complainant was sweating. He cannot explain the reason for pain on her right side.

59. There is a mention of solitary left kidney, which Dr. Du[redacted] assumes that it means the stone that was found in the ultrasound. The record mentions pain and degenerative disc disease but there is no history. The Complainant ultimately had a significant back issue because she just had a discectomy. Dr. Afridi did not have a diagnosis. He notes that he will weigh the Complainant monthly but that is never done. Dr. Afridi provides advice to

discuss her symptoms with her psychiatrist, but it is not clear what symptoms he is referring to.

60. Dr. Afridi should have weighed the Complainant given her complaint of weight loss.

61. The next visit is August 7, 2019. The ear exam is not complete because it does not mention which ear, which tympanic membrane, or which ear canal. Audiometry is recommended which would not necessarily address itchy ears.

62. Dr. Afridi prescribes medications for the first time, and Concerta is a drug of concern, especially in somebody who has a history of polysubstance abuse disorder. There is no mention of the primary provider and whether he checked Netcare.

63. On September 12, 2019 he refilled the Concerta which was early for the refill.

64. On September 26, 2019 a number of lines in the record reference a skin issue. Dr. Afridi prescribes Ativan which is a tranquilizer for a pre-procedural concern. The Complainant received 20 tablets which is too large an amount. Two tablets probably would have sufficed and the Complainant had a documented polysubstance use disorder. More documentation was necessary.

65. Dr. Afridi billed four units of 08.196G which is a psychiatric assessment and counselling code. There is a mention of anxiety, and should be much more to justify this such as a mental status exam and psychiatric symptoms.

66. The last visit was on March 12, 2020 and there is a very brief note.

67. Dr. Du[redacted] has reviewed the expert opinion prepared by Dr. K[redacted]. It does not change Dr. Du[redacted]'s opinion and he has comments that fall into three areas. First, the tone was concerning because there were some significant assumptions about the Complainant's state of mind. Dr. K[redacted] was diagnosing the Complainant without having seen her, rather than assessing the care provided by Dr. Afridi based on the record. He made a number of conclusions that were not supported by the record, for example "she seems unable to accept her diagnosis" and she has a documented anxiety disorder.

68. The second concern is in relation to the referral to Dr. M[redacted]. Dr. K[redacted] refers to the role of gatekeeper and control of referrals. However, the Complainant had already seen Dr. M[redacted] and there is no good reason why she should not have been referred back to him. There should have been documentation as to why a referral was not indicated.

69. The third concern is the comments about documentation. Dr. K[redacted] is dismissive and is saying that because Dr. Afridi was very busy and works in

an underserviced area, it was "unrealistic for him to write down all of the symptoms".

70. Patients with anxiety often require a lot of time and effort. Communication is important, and it takes time to explain why you would or would not do a test.

Dr. [redacted] Du[redacted] – Cross-Examination by Counsel for Dr. Afridi

71. Dr. Du[redacted] understood that he had an obligation to Dr. Afridi, the Complainant and the Hearing Tribunal to carefully review the information and provide an accurate report.

72. When there are language challenges appointments can take longer. The Complainant was seeing different physicians at the same time that she was seeing Dr. Afridi. She had twenty-seven lab tests or diagnostic imaging tests over that period of time. Dr. Du[redacted] is aware of the Canadian Medical Association's campaign about choosing wisely, and it has been adopted through the Alberta Medical Association. When a patient wants a test, it is necessary to have discussions and document why a physician would or would not order a particular test.

73. Dr. Afridi provided an explanation in the course of the hearing as to why he did not refer the Complainant or order particular tests. However, his records do not reflect the discussions with his patient and the reasons for not ordering the test.

74. Dr. Du[redacted] had no issues with the audiology referral on May 15, 2019. There was no history provided as to why that occurred, and he did not understand the rationale. There was an audiological evaluation on July 18, 2019. Dr. Afridi was copied on the result. The complaints that the audiologist had noted were not in Dr. Afridi's chart, and Dr. Du[redacted] is not sure if Dr. Afridi was aware of the complaints because there are no notations about them in the chart. The ear symptoms that Dr. Afridi recorded were itchy ear or earache, and he did not mention which ear.

75. Dr. Afridi ordered the CA19 test on May 15, 2019. It is not a test that Dr. Du[redacted] has ever ordered. There are other things that would be recommended, and there would be other ways to cancer-screen. Dr. Afridi did not mention why he was ordering that test.

76. Dr. Du[redacted] was not sure what the notation "RE CT" meant in the May 27, 2019 chart notes. The only notation about blood in the urine was in the May 27, 2019 chart notes. There does not appear to be a need to order a CT scan. There are some worrisome potential problems and some not so worrisome problems, and none of them would require an immediate CT scan.

77. Regarding the June 26, 2019 appointment, the Complainant had concerns about weight loss, some bowel symptoms, and significant sweats that warranted a referral to internal medicine. In his report Dr. Du[redacted] stated

that none of the recorded medications cause sweating as a significant side effect (i.e. Abilify, Concerta and Cipralex). Cipralex could cause sweating but not weight loss, but that does not change his conclusion about the need for a referral to internal medicine. Concerta can also cause weight loss and sweating. We do not know how much weight loss had occurred. Ditropan can be used for benign sweating such as hyperhidrosis. There was no unifying diagnosis for weight loss and sweats and that is why Ditropan was inappropriate.

78. The Complainant's weight was recorded as 159 pounds on June 26, 2019. Dr. Afridi should have kept track of the Complainant's weight by weighing her.

79. Regarding the August 7, 2019 appointment, Dr. Du[redacted]'s concerns were with not documenting why Concerta was prescribed. Dr. Afridi did not prescribe an excessive amount of Concerta and the refill was not early.

80. Regarding the prescription of Ativan, Dr. Afridi should not have prescribed 20 tablets. Dr. Du[redacted] does not know when Dr. Afridi became aware of the Complainant's polysubstance abuse.

81. Dr. Du[redacted]'s concern is that the wrong billing code was used for the visit on September 26, 2019. The visit does not appear to be about psychiatric consultation and counselling. Dr. Du[redacted] has no idea how long the appointment took.

82. The Complainant told the College that she had a discectomy in 2020 and that information was given to Dr. Du[redacted]. He did not include that information in his report. The record does not give any indication about when the back issue developed.

Dr. [redacted] Du[redacted] – Re-examination by Counsel for the Complaints Director

83. In Dr. Du[redacted]'s experience, it is usually the physician who makes referrals to ENT. Audiology reports will usually recommend referrals, but audiologists do not directly refer.

84. There is nothing in the clinical notes about the amount of Concerta, Abilify and Cipralex and why those drugs were chosen. It was not obvious who the primary prescriber was, and there were no mental status comments.

Dr. [redacted] Du[redacted] – Re-cross-examination by Counsel for Dr. Afridi

85. The College had provided Dr. Du[redacted] with the TPP prescriptions and they showed that the Complainant's psychiatrist had prescribed those medications.

Dr. [redacted] Du[redacted] – Re-re-direct examination by Counsel for the Complaints Director

86. Dr. Du[redacted] would expect the physician to call the pharmacy to confirm a prescription, and not the patient.

Questions from the Hearing Tribunal

What documents are you asked to review when the College requests an expert opinion?

87. Typically he would get the complaint letter, the response, the chart, and extra things such as billing records and prescribing records. He seeks clarity if he cannot read the chart.

How did you conclude that there was a language barrier?

88. The Complainant's written statement showed some problems with English, and she submitted a statement in French.

Evidence Adduced by Dr. Afridi

89. Counsel for Dr. Afridi called five witnesses: Dr. Afridi, Dr. [redacted] M[redacted], Dr. [redacted] P[redacted], Dr. [redacted] E[redacted], and Dr. [redacted] K[redacted]. A summary of the witness testimony is below.

Dr. Obaid Afridi – Examination by Counsel for Dr. Afridi

90. Dr. Afridi reviewed his educational and practice background. He currently practices as a family physician and in emergency care. On average he has up to 14 shifts of emergency work a month, but it may be higher if a colleague is on holidays. Dr. Afridi has privileges to follow his patients when they are admitted to the hospital. He shares his office with Dr. P[redacted] who is also his wife. He has not been accepting new patients for some time but there are exceptions to that for certain requests. He and Dr. P[redacted] cover for each other during absences from the office.

91. As a standard practice in the office there is no one-concern-per-visit policy, no fee charged for a no-show, and patients are seen without an appointment. Dr. Afridi's approach to charting was to focus on the patient, and when the patient leaves the room he will quickly write down what he thinks is important before going to see the next patient. He would typically chart the main concern of the patient, and the examination pertinent to the complaint. To his knowledge, Dr. P[redacted] can read his chart notes although she does not like his handwriting. Since March of 2020 Dr. Afridi has put more time into improving his charting, and has invested in an EMR. He is waiting for approval of the privacy impact assessment so that the EMR can be fully implemented.

92. As a standard practice, Dr. Afridi orders tests which he thinks are useful for a diagnosis or optimum care. When he prescribes a new medication, Dr. Afridi tells the patient the purpose of the medication, the side effects, and how to use the medication. When he is refilling a medication prescribed by another practitioner, he has to be satisfied that the patient needs the medication. Dr. Afridi may not explain the side effects, especially if the patient has been using it for years. When following up on test results, he does not contact patients if he ordered the tests and the results are normal. If Dr. Afridi receives results ordered by a colleague and they are abnormal, he will follow up with the patient as well.

93. As a standard practice, if a patient requests a referral, Dr. Afridi will attempt to divert it if he does not think that it is needed. If he has any doubt, he will refer the patient.

94. Dr. Afridi saw the Complainant's daughter in December 2018 for a tongue and lip tie. In May 2019 he accepted the Complainant as a patient. He saw the Complainant as a patient from May 2019 to March 2020. The Complainant is a complicated case because most of the time she was anxious and had multiple complaints. He explained the results of tests to the Complainant in detail, and answered her questions.

95. The first visit was on May 15, 2019 and the Complainant had multiple concerns. She was very concerned that she may have cancer. Dr. Afridi reviewed his notes for May 15, 2019 and the tests that were ordered. The Complainant had concerns about her ears and he arranged for a test by giving her information about a local audiometry place, Soundwave. Patients can call Soundwave and make their own appointments. There is a short wait time for an appointment. Dr. Afridi does not know why the Complainant did not get an appointment until July 18, 2019.

96. The purpose of the May 27, 2019 visit was to follow up on the test results with the Complainant. During the May 27, 2019 visit, there was a complaint of hematuria or blood in the urine. Dr. Afridi did not document the complaint. Hematuria can be serious, and so he put a note RE CT for a possible future test to find out the cause. A urinalysis was done following the May 15, 2019 visit and the results were normal and reassuring. Dr. Afridi ordered urinalysis following the May 27, 2019 visit and it was completed on June 5, 2019. The lab results state no sample received, and he assumes that they were unable to do the full analysis because there was a very small sample. To the best of Dr. Afridi's knowledge, the Complainant did not report peeing blood in future visits.

97. The next visit was on May 29, 2019, and Dr. Afridi reviewed the results of an ultrasound with the Complainant. During the May 29, 2019 visit, there was a complaint of a backache. He put down SLR which is a straight leg raise test, and N which means normal. He also put down that there was good gait. Dr. Afridi ordered an x-ray and it was done on May 31, 2019. It is a safer

practice to do an x-ray to see if there is anything worrisome. The x-ray showed minor thoracic disc degeneration, and lumbar joint facet degeneration. The results did not warrant doing anything at that time. Dr. Afridi put "paranoia" in the notes because he felt that the Complainant was paranoid about multiple health issues.

98. The next visit was on June 12, 2019, and there was a complaint of a lot of pain. The Complainant asked Dr. Afridi to check her bilirubin, and he agreed. Bilirubin tests can give an idea of the type of pathology and any liver disease. He examined the Complainant and noted in the chart that her abdomen was soft, and that she came with a friend. The chart notes "crying out" because the Complainant was upset and crying because they were not finding the source of her symptoms. Dr. Afridi notes "XRAYs DDD Spine" (i.e. disc degenerative disease) because he discussed the results of the x-rays with the Complainant and told her that discs degenerate with age. Dr. Afridi ordered a full ultrasound to assess the organs and the abdominal pain. The ultrasound was done on June 20, 2019 and shows a 9-millimetre non-obstructive kidney stone.

99. The next visit was on June 26, 2019 and Dr. Afridi reviewed the results of the abdominal ultrasound. The lab test was completed on June 13, 2019 and the bilirubin results were normal. The Complainant was concerned about her weight and excessive sweating. Dr. Afridi explained that the pain could be due to the Complainant's back or disc degeneration, and not caused by the kidney stone. He suggested that the Complainant try Ditropan to reduce sweating. The phrase "Advice ongoing follow up" in the chart means that the Complainant was told to follow up with Dr. Afridi if the problem persists. Dr. Afridi advised the Complainant to weigh monthly and that was his intention with the note in the chart "Weight Monthly". He advised the Complainant to talk with Dr. B[redacted] because excessive sweating and weight loss could be attributed to Concerta.

100. The next visit was on August 7, 2019 and Dr. Afridi left the room to contact the pharmacist to verify the dosage of Concerta. The Complainant was going on vacation and she needed the medication. She was complaining of an itchy ear and earache, and Dr. Afridi examined both ears. The tympanic membrane was normal for both ears although it is not written in the chart. The note "Advice Audiometry" refers to an audiological evaluation dated July 18, 2019. In Grande Prairie audiologists are able to refer directly to an ENT specialist. At the time of the August 7, 2019 appointment Dr. Afridi was not aware of the Complainant having a polysubstance use disorder.

101. The next visit was on September 26, 2019 and the Complainant had multiple concerns. She was stressed about her eye and Dr. Afridi attempted to find records in Meditech to reassure her. He did a CNS exam, which is a complex exam that involves checking the nerves of the patient. The Complainant was concerned about hypopigmentation which is consistent with a type of fungal infection, and Dr. Afridi provided Lamisil spray. The notes in the chart

"Anxiety Going for eye op for calmness re Ativan" refer to a prescription for Ativan. The Complainant was very anxious and an operation on her eye was being done under local anesthesia. The Complainant never appeared to be asking for pills, and Dr. Afridi may have inadvertently given her 20 pills. The Complainant was not a person who was abusing opioids or benzodiazepines. When it is a new medication he tells patients that it may cause drowsiness. The note "CT – ve" refers to a CT that was ordered by another physician. Dr. Afridi obtained it from Meditech and explained that the CT was reassuring and negative. Dr. Afridi cannot remember whether the Complainant asked for a referral to Dr. De[redacted] but his assessment was that this referral was not necessary.

102. Dr. Du[redacted] is right and code 08.19G is specifically for psychiatric services. This was an inadvertent error, and the code should be visit plus with a modifier based on time. He guesses that he did spend 45 minutes to an hour with the Complainant.

103. The next visit was on March 12, 2020, and his staff noted "follow-up". Dr. Afridi must have been called out. Dr. Afridi may have told the Complainant that he shredded test results, and he does not keep the results of tests that are ordered by another physician. He does not recall the Complainant asking for a referral to Dr. M[redacted] and he does not think that the Complainant needs to see an internal medicine specialist.

104. Dr. Afridi did not make fun of the Complainant or her accent. He does not laugh at patients. He understood the Complainant quite well. He tried his best to reassure her.

Dr. Obaid Afridi – Cross-examination by Counsel for the Complaints Director

105. Since March 2020 Dr. Afridi is paying more attention to his charting because his charting was poor. He is putting more information in his chart. Dr. Afridi agrees with Dr. Du[redacted] that information is missing. The motivation for making the changes was that the charts were not good enough. His chart notes do not justify what is being done for the patient and do not explain the services that were provided.

106. When explaining results, Dr. Afridi may use the phrase "was good" but he would have explained in much more detail.

107. During the visit on May 15, 2019 the Complainant voiced concerns about her ears and dizziness, and Dr. Afridi provided an audiometry referral form. There is no reference in the notes to ear complaints or dizziness. An audiometry report is not a pre-requirement for a referral to an ENT like Dr. De[redacted].

108. In the past Dr. Afridi would receive faxed copies of test results. He takes them into the room with the patient and reviews the results from the hard

copies on the chart. If a test is ordered by a different physician and the results are normal, Dr. Afridi will shred the copy of the test results. If they are abnormal results, they will never be destroyed and they will be followed by Dr. Afridi. The normal results are in the computer and they can be retrieved easily. Dr. Afridi does not keep a record of the results that he shreds.

109. The notes on June 12, 2019 refer to the Complainant "crying out". She had no answer to the cause of her symptoms. The notes on June 26, 2019 state "Cannot explain reason for her pain on right side". The Complainant is without answers as to what is causing her symptoms. Dr. Afridi did not make a referral to Dr. M[redacted] or any internist. When Dr. Afridi used the word "paranoia" in the May 29, 2019 notes he was trying to convey that the Complainant is consumed by thoughts that she has cancer.

110. During the August 7, 2019 visit Dr. Afridi prescribed Concerta, Abilify and Cipralex. He was not the one who had originally prescribed these drugs, and there is nothing in the chart that states when these drugs were first prescribed and by whom. Concerta is monitored through the triplicate program. Dr. Afridi phoned the pharmacist to check that he was not writing a duplicate prescription of Concerta and the dosage. There is nothing on the chart about the phone call or information received from the pharmacist.

111. The billing code that was used for the September 26, 2019 visit was the wrong code but the right amount of time. Dr. Afridi had to find records relating to a CT scan, and retrieve the records of Dr. R[redacted] and Dr. De[redacted]. The calculation of time of 46-60 minutes included the time spent on the computer looking for the reports.

112. In his letter of response to the College investigation dated June 30, 2020 there is no mention of ear complaints during the May 15, 2019 appointment.

113. The audiological evaluation is dated July 18, 2019, and it was faxed to Dr. Afridi's office on July 19, 2019. The recommendation from the audiologist is to refer the Complainant to an ENT for investigation. Dr. Afridi did not act on that recommendation, and the Complainant was not referred to Dr. De[redacted]. Dr. Afridi felt that the audiologist may have been pressured into that recommendation. Dr. De[redacted] started seeing the Complainant in the middle of November 2019 after a referral from Dr. P[redacted] on October 31, 2019, and he has seen the Complainant on a number of occasions since that first visit.

114. The audiologist made a referral directly to Dr. De[redacted] on July 18, 2019. Dr. P[redacted] made a referral on October 31, 2019. The Complainant was seen by Dr. De[redacted] in the middle of November 2019 and a number of times since that first visit.

115. Dr. Afridi assessed the Complainant at the hospital on June 5, 2019 and December 1, 2019. There is no copy of the hospital record in the office chart.

116. There is one entry in the office chart of a body weight being recorded. Dr. Afridi asked the Complainant to check her weight every month. He did not ask a staff person to weigh the patient and record it in the chart.

Dr. Obaid Afridi – Re-examination by Counsel for Dr. Afridi

117. A requisition was given to the Complainant for an audiologist because of concerns of reduced hearing.

118. The Complainant was already on Concerta when Dr. Afridi received her as a patient.

Questions from the Hearing Tribunal

When does Dr. Afridi access Netcare for information? Did he access Netcare for information about the Complainant?

119. He can access Netcare, but he prefers to call the pharmacy for up-to-date information. He did not access Netcare to get information about the Complainant for medication.

What is your standard practice for prescribing benzodiazepines or opioids?

120. A key factor would be no history of substance abuse, and the patient is not dependent on opioids or other habit-forming drugs. He was not aware of the Complainant's history before he prescribed benzodiazepines, and he never thought of the Complainant as a drug-seeking patient. Dr. Afridi admits that 20 pills were more than needed, and he does not have a very good explanation for why he did that.

When you shred results from tests, do you have access to them at a later date?

121. The results are available in Meditech and Netcare, as well as Connect Care.

Who is accountable to ensure that your billing is accurate?

122. The accountable person is his office staff, and if she has any questions she can ask him or Dr. P[redacted]. At the end of the day, Dr. Afridi is responsible and he does not know coding very well.

Dr. [redacted] M[redacted] – Examination by Counsel for Dr. Afridi

123. Dr. M[redacted] is a specialist in internal medicine and he has practiced in Grande Prairie since 2015. Dr. M[redacted] has known Dr. Afridi since 2015 through work in the Grande Prairie hospital. He would describe Dr. Afridi as a very capable physician who takes his role as a steward over medical resources quite seriously. He is willing to send people home without more consultations from subspecialists which incurs liability on himself but is also very appropriate medically.

124. Dr. M[redacted] has treated the Complainant at the hospital in an outpatient capacity. The Complainant can be challenging because she has a lot of anxiety around many medical concerns. She asks for additional tests beyond what Dr. M[redacted] would recommend, and her visits take significantly more time.

125. Dr. R[redacted] is an ophthalmologist and he referred the Complainant to Dr. M[redacted] regarding an eyelid biopsy result and whether she had sarcoidosis. Dr. M[redacted] saw the Complainant on February 20, 2020. The Complainant was concerned about weight loss, night sweats, back pain and skin lesions. Dr. M[redacted] described the results of his physical investigations and referrals for an MRI and ultrasound.

126. Dr. M[redacted] did not think that the Complainant should have been referred to him earlier to investigate the complaints of weight loss and night sweats. The original work-up is very much something that can be done within a family physician's office and within the scope of a family doctor's practice. If it was an ongoing process that was unexplainable based on original laboratory work, that would warrant a referral.

Dr. [redacted] M[redacted] – Cross-examination by Counsel for the Complaints Director

127. Dr. M[redacted] received a Notice to Attend the hearing.

128. Dr. M[redacted] called the Complainant to review the results of the tests that he had ordered. He has not seen the Complainant since the February 20, 2020 visit. Dr. M[redacted] agreed that if the family physician has conducted a number of screening examinations and cannot explain the symptoms presented by the patient, then a referral to an internist is reasonable. Dr. M[redacted] may see the patient and then determine that no further testing or treatment is required.

Questions from the Hearing Tribunal

Why did Dr. M[redacted] order an ultrasound?

129. There was a bilateral inguinal lymphadenopathy under a centimetre in size, non-tender. He ordered an ultrasound in this context because of all of the constitutional symptoms. Physicians cannot document everything in a note.

The Standards of Practice state that a regulated member must respect a patient's reasonable request for referral to another healthcare provider for services outside the scope of practice of the regulated member. If Dr. Afridi felt that it was necessary, would he have been able to order the tests that were ordered by Dr. M[redacted]?

130. Dr. M[redacted] confirmed that none of the tests that he ordered were limited to an internal medicine specialist.

Dr. [redacted] P[redacted] – Examination by Counsel for Dr. Afridi

131. Dr. P[redacted] is a family physician who practices in the same clinic as Dr. Afridi, and she is also Dr. Afridi's wife. They have worked together for 21 years in the Grande Prairie clinic, and for six years in a hospital setting and private practice in South Africa. She would describe Dr. Afridi as an excellent physician. He provides a wide variety of services. When dealing with patients, Dr. Afridi is energized and full of compassion, has a sense of humour, relates to patients on all levels, and has the ability to make them feel comfortable. Overall Dr. P[redacted] does not have any difficulties reading his handwriting when she sees his patients. Dr. Afridi is always available by phone if Dr. P[redacted] has any questions. She is able to follow his plan of care for patients. Since they have started the process of implementing an EMR, there has been a big improvement in his chart notes. Dr. P[redacted] has never had any concerns about Dr. Afridi's clinical judgment.

132. Patients do not need a referral from a physician to have an audiogram. They are given information so that the patient can call and make the appointment. When the patient is seen at an audiology clinic, the audiologist is able to make a referral directly to an ear, nose and throat specialist.

133. Dr. P[redacted] saw the Complainant on October 31, 2019 as a patient. Dr. P[redacted] was asked if she would see the Complainant's daughter about an ear infection. At the same appointment the Complainant asked for a referral to Dr. De[redacted] and stated concerns about a chronic itchy right ear. Dr. P[redacted] did an examination and told the Complainant that it was a perfectly normal ear exam. The Complainant also reported weight loss and night sweats, and that she was taking Concerta. Dr. P[redacted] mentioned that Concerta could be a huge cause for weight loss and night sweats. She also gave the Complainant a requisition for blood work to rule out postpartum hyperthyroidism.

134. Dr. P[redacted] referred the Complainant to Dr. De[redacted] and the note says "patient requested assessment". Dr. P[redacted] was not aware that the audiologist had made a referral to Dr. De[redacted] and it would have made no difference because patients may get more than one referral.

135. Regarding billing Code 08.19G, there is no way to separate out that billing code if the whole visit does not relate to a psychiatric concern.

136. Dr. P[redacted] received a Notice to Attend the hearing.

Dr. [redacted] P[redacted] – Cross-examination by Counsel for the Complaints Director

137. Dr. P[redacted] felt that a referral to Dr. De[redacted] was not necessary when she gave one on October 31, 2019.

138. The billing records for the Complainant show that there were seven billed visits for Dr. De[redacted] for 2019 starting on November 19, 2019. Dr. P[redacted] cannot speak for Dr. De[redacted]. She is speaking for herself and there was no purpose for a referral.

139. Dr. Afridi and Dr. P[redacted] have a very busy practice. A typical day would be about 34 or 35 patients. There may be a couple of walk-ins on a busy day. A portion of patients have multiple complaints and require additional time. The Complainant stands out in Dr. P[redacted]'s memory.

Hearing Tribunal Questions for Dr. P[redacted]

Who determines the billing code for a patient?

140. Dr. P[redacted] bills for herself and Dr. Afridi will decide his billing codes.

The Complainant had concerns about her weight loss. Was Dr. P[redacted] able to weigh her on October 31, 2019?

141. Dr. P[redacted] did not weigh the Complainant.

Dr. [redacted] E[redacted] – Examination by Counsel for Dr. Afridi

142. Dr. E[redacted] is a family practitioner who works mostly in the emergency room at the Grande Prairie Regional Hospital. He has worked in Grande Prairie since October 2006. Dr. E[redacted] also had a clinic but he gave up his family practice in 2021. He has known Dr. Afridi since 2006, and he works with him in the hospital emergency room. Dr. E[redacted] would describe Dr. Afridi as skilled and he does his work well. Dr. Afridi is amenable and approachable with patients, and Dr. E[redacted] has not had any concerns about his clinical judgment. Dr. Afridi orders investigations appropriately as to what is needed for patient care.

143. Dr. E[redacted] has seen the Complainant on several occasions in the emergency room. The encounters take more time because there is a language barrier. The Complainant speaks mostly French. The Complainant is also demanding and she will want certain tests to be done. It will take a while to convince her that the test is not needed. Sometimes it is easier to order tests just to reassure the Complainant.

144. The Complainant's behaviour did not impact his ability to chart. Dr. E[redacted] was unable to say whether he was able to capture all of the details without looking at his notes. Dr. E[redacted] ordered a CT scan of the head for the Complainant within the last two months when he did not think that it was necessary. In general, it is easier to do that for patients and avoid complaints to the College.

Dr. [redacted] E[redacted] – Cross-examination by Counsel for the Complaints Director

145. Dr. E[redacted] has only seen the Complainant in the ER. He did not review his hospital records or speak with the Complainant before giving evidence. He received a Notice to Attend.

146. Dr. E[redacted] confirmed that patients remain anxious when they do not have an answer about their symptoms.

Questions from the Hearing Tribunal for Dr. E[redacted]

Is Dr. Ed[redacted] able to read Dr. Afridi's handwritten notes?

147. He is not able to read Dr. Afridi's notes all of the time, and will call Dr. Afridi to clarify what he has written and what needs to be done.

Does the experience in the Emergency Room affect referrals?

148. If a patient needs a referral, Dr. E[redacted]'s experience in the emergency room or clinic does not matter. He comes to a decision with the patient as to when a referral is needed and then refers accordingly.

Dr. [redacted] K[redacted] – Examination by Counsel for Dr. Afridi

149. Counsel for Dr. Afridi called Dr. K[redacted] to give expert evidence. After reviewing Dr. K[redacted]'s qualifications, Ms. Prather asked that Dr. K[redacted] be qualified to give opinion evidence on family medicine. The Hearing Tribunal therefore qualified Dr. K[redacted] to give the expert evidence proposed. There were no objections by counsel for the Complaints Director.

150. Dr. K[redacted] provided evidence about the materials that he had reviewed when drafting his opinion. Dr. K[redacted] reviewed Dr. Afridi's chart, the complaint, Dr. Afridi's response to the complaint, Dr. D[redacted]'s opinion, and the Standards of Practice. It was Dr. K[redacted]'s opinion that Dr. Afridi met the standard of care expected of a family physician between 2019 and 2020 when he treated the Complainant.

151. Dr. K[redacted] explained why it was important to understand the Complainant's state of mind. She was having some stressful times in her life and there were mental health issues. She had depression, post-traumatic stress disorder, borderline personality, and anxiety. She was seeing a psychiatrist on a monthly basis. The Complainant was not getting support from her partner. She had a suicide ideation that developed in 2020. She had to deal with an accused who attacked her when she was younger, and she was going to court in 2019. The Complainant decompensated and was not doing well from a mental health perspective. As a result, she started to develop many symptoms that were unexplained. Many investigations were done and all of them were normal. There did not seem to be a medical cause for the

symptoms. The mental health issues were a very big part in how she presented herself to Dr. Afridi and how she interpreted the interactions.

152. When dealing with patients with mental health issues, it requires time to understand their issues and ask the appropriate questions. It also takes time to note all of the findings, and Alberta Health does not pay for that time. The time to write the notes is time taken away from seeing other patients. It is also difficult to manage the expectations of those patients because they want to be fixed but mental health does not work like that.

153. Dr. K[redacted] explained that the Complainant's weight loss was due to depression and anxiety. The Complainant had a very deep rooted somatization. Somatization is a psychiatric term that refers to inner psychological turmoil manifesting itself as a physical symptom.

154. Regarding charge 1(b) dealing with failure to obtain a CT scan to investigate hematuria, Dr. K[redacted] explained that a urinalysis had been performed within the time frame of the May 27, 2019 visit, and that urinalysis was negative for any bleeding. Dr. Afridi ordered an ultrasound which visualized the kidneys, and found a 9-millimetre non-obstructing stone which could explain the bleeding. That was the diagnosis. There were no more complaints of hematuria. A CT scan was not necessary because it does not necessarily give any more information. Physicians have to be gatekeepers for these tests and there are limited resources.

155. Regarding charge 1(c) dealing with failure to refer the Complainant to see Dr. M[redacted], Dr. K[redacted]'s conclusion was that there was no reason to see an internal medicine specialist for any of her conditions. It is not even clear if that was asked of Dr. Afridi by the Complainant because it was not in his chart. There were a number of complaints that were easily explained by the Complainant's mental health and this is not within the realm of an internal medicine specialist.

156. Concerta is a medicine that can cause weight loss and sweating. In the months just prior to the Complainant's visit with Dr. Afridi for the first time, the Concerta had been slowly titrated upwards. As doses increase, the side effects tend to increase. It would make sense to advise the Complainant to talk with her psychiatrist about the medication and side effects. It would be appropriate for the Complainant to try Ditropan to reduce sweating while she was waiting to talk with her psychiatrist.

157. Regarding charge 1(d) dealing with failure to refer the Complainant to Dr. De[redacted], there were three normal ear exams by three different people which indicates that the apparatus or the machinery of the ear was working fine. The audiologist's report stated that she wanted to refer the Complainant to the ENT for investigation into bleeding from the ears after showering, sensation of pressure in the head and ears, feeling dizzy on a daily basis, and to investigate the appearance of a small lump on her left antihelix.

Dr. K[redacted] stated that bleeding after showering was from using a Q-tip, and the other symptoms were first reported to the audiologist.

158. Two referrals to Dr. De[redacted] were made by the audiologist and Dr. P[redacted]. Dr. Afridi was not in the loop, and the Complainant was presenting to other people for a referral. Dr. Afridi did not fail to refer the Complainant.

159. Regarding charge 1(e) and prescribing Concerta, Dr. K[redacted] was of the opinion that it was appropriate and reasonable in the circumstances. The Complainant was going on a holiday and could not see her psychiatrist in a timely fashion to get a refill of her medications. This prescription prevented her from decompensating so she could enjoy her holiday. Dr. K[redacted] does not agree with Dr. D[redacted]'s opinion that there should have been more discussion about the side effects. The Complainant had been on these medications for months and Dr. Afridi was just refilling them. It is up to the physician who initiates the drugs to tell the patient about side effects.

160. It was a prudent practice for Dr. Afridi to call the pharmacy on August 7, 2019 to confirm the medication, the dosage, and that the Complainant was not seeking the medication too early. Netcare is not always up to date, and in this case calling the pharmacy was just as good, or better, than looking at Netcare. Dr. Afridi wrote the name of the medication, the dosage, and how many pills in the chart and that documentation met the standard.

161. The Complainant had a history of anxiety. A prescription for Ativan is an appropriate way of dealing with her anxiety before the procedure. Regarding the amount, Dr. K[redacted] provides patients with more than they actually need to help them have a safety net. Twenty pills are a low amount. The referral to addiction and mental health services on January 7, 2020 shows that the Complainant found that the Ativan was very effective, and that she did not overuse or abuse the pills.

162. The chart may look to the common eye that it is not very thorough, but the chart as a whole can be used on order to understand what was happening at the time the note was taken. It is not prudent and time-consuming to keep putting the same symptoms over and over in the chart. It is not expected that the physician will document the same explanation for a test each time it is repeated to the patient.

163. Regarding the billing code on September 26, 2019, the fact that anxiety was dealt with and that it was billed as anxiety indicates to Dr. K[redacted] that it was the priority for the Complainant's visit on that day. Dr. K[redacted] was taught to bill the most important diagnosis. The billing code that matches anxiety is a psychiatric code 08.19G. The diagnostic code is anxiety or 300. Alberta Health will not accept a psychiatric code combined with other billing codes. It would be possible to use the billing code 03.03A with modifiers, but there was nothing wrong with what Dr. Afridi did and the billing code that he used. The length of the chart note does not indicate how much time was spent with the patient.

164. The Complainant's diagnoses were not that complex. Dr. Afridi took very good care with the Complainant, and he had patience and clinical knowledge. He met the standard of care as a physician and did a very good job.

Dr. [redacted] K[redacted] – Cross-examination by Counsel for the Complaints Director

165. Dr. K[redacted] obtained information about the Complainant's history of mental health problems and diagnoses from the ICAT report which was sent to Dr. Afridi in January 2020. Dr. Afridi billed the diagnostic code for anxiety and he prescribed Concerta, Abilify and Cipralex which are psychiatric medications. The note for September 26, 2019 states "anxiety". There is no record of any history taking by Dr. Afridi about post-traumatic stress disorder, depression, and borderline personality disorder. There are no records from the treating psychiatrist.

166. Information relating to the increase in the Complainant's medication by Dr. B[redacted] was not contained in Dr. Afridi's chart.

167. When Dr. K[redacted] gave his opinion that there was no need to refer the Complainant to Dr. De[redacted] he was not aware that Dr. De[redacted] had begun seeing the Complainant in November 2019 and saw her on a number of occasions in 2019 and 2020.

Objection to a question by Counsel for Dr. Afridi

168. Counsel for Dr. Afridi objected to the following question: Would that in any way change your opinion on the propriety of a referral to Dr. De[redacted]? The College did not provide the charts for Dr. De[redacted] upon request by counsel for Dr. Afridi. Counsel for the Complaints Director should not be able to ask a question based on the billing records.

169. Counsel for the Complaints Director submitted that case law shows that an investigated member does not have the ability to ask the College to obtain records. In accordance with administrative law, the complaint is received and investigated by the College. When a Notice of Hearing is issued, disclosure of the investigation records is provided. There is no property in a witness and Dr. De[redacted] could have been called as a witness for Dr. Afridi. The care provided by Dr. De[redacted] is not in issue here. The question is whether a referral was required from the perspective of a family physician.

170. Counsel for Dr. Afridi responded that it is within the power of the College to produce records from third parties and they chose not to produce those records. They should not be able to ask questions without producing the patient chart.

171. Counsel for the Complaints Director submitted that the College does not have records from Dr. De[redacted]. Counsel for Dr. Afridi has not provided any case law to support her position, and that can be covered in closing argument.

Dr. K[redacted] is under cross-examination and he has testified that he did not have information that is contained in the billing records when he provided his opinion. Counsel for the Complaints Director is entitled to ask a question about whether that information would change his opinion.

172. The Hearing Tribunal allowed the question. The parties may make submissions regarding the treatment of any evidence arising from the question during closing arguments.

Resumption of Cross-examination by Counsel for the Complaints Director

173. The fact that Dr. De[redacted] billed for seeing the patient does not change his opinion about the need for a referral to Dr. De[redacted].

174. Assuming that the Complainant had concerns about dizziness on May 15, 2019, that would not change Dr. K[redacted]'s opinion about the need for a referral to Dr. De[redacted] because he believes that was caused by the Complainant's medications. Dr. K[redacted] assumed that bleeding from the ears after showering was caused by inserting Q-tips. There was no information in the chart about Q-tips.

175. Dr. K[redacted] checked his patient's medications with the pharmacy, and he had the pharmacy fax the current prescription history. That type of information was not on Dr. Afridi's chart.

176. Regarding the billing, there were four units of 08.19G on September 26, 2019. Billing for previous appointments shows the use of 03.03A with modifiers for additional time. The chart notes for September 26, 2019 mention a number of complaints and all are non-psychiatric except for "anxiety". Billing for four units of 08.19G was appropriate because it is not clear how long the anxiety discussion lasted with the Complainant.

177. In the chart notes for May 15, 2019 there is no mention of mental health or polysubstance abuse concerns, or the period over which the weight loss occurred and the amount of weight that has been lost. There are many complaints on that day, and it would be difficult to address them all in a single visit.

178. In the chart notes for May 29, 2019 there is a diagnosis of "paranoia". There is nothing in the notes to support that diagnosis. It may have been something that Dr. Afridi saw at that visit and he made a note to himself to think about it at future appointments.

179. The chart notes for June 12, 2019 state "abdominal pain". There is nothing in the chart about when the pain started, and the acuity of the pain. Appropriate measures were taken to make sure that the Complainant was safe.

180. Dr. K was told by counsel for Dr. Afridi that he checked the medications with the pharmacy when the prescriptions were renewed on August 7, 2019. Dr. K's opinion was based on that information.

181. He disagrees with Dr. Du's opinion that a referral should have been made to Dr. De following the June 26, 2019 visit when all of the tests conducted did not provide an adequate explanation for the Complainant's symptoms. Dr. K's opinion is that the weight loss and sweating were caused by medications and not an internal problem due to her systems. His opinion is that an internist does not deal with that issue in a psychiatric forum.

182. Dr. K received information about the prescriptions on the Patient Prescription Summary for the Complainant dated November 2020. Dr. Afridi's patient chart does not contain information about the Complainant's medications.

183. When coming to his opinion, Dr. K considered the College's Standards of Practice on Patient Record Content, Referral Consultation, and Prescribing: Drugs Associated with Substance Abuse Disorder.

Dr. K – Re-examination by Counsel for Dr. Afridi

184. The Complainant completed a patient profile which is the first page of the chart. Medications are listed as Abilify, Concerta and Paxil. It is not common for treating psychiatrists to provide their treatment notes to a family physician and Dr. K believes that practice is based on a privacy concern.

Dr. K – Re-cross-examination by Counsel for the Complaints Director

185. The Patient Prescription Summary dated November 2020 does not show that the Complainant's prescription for Concerta was being weaned over the period of time up to January 2020.

Questions from the Hearing Tribunal for Dr. K

When you are prescribing a new opioid or benzodiazepine, what process and what questions do you go through normally?

186. First there is an assessment with the patient to see if they actually need the medication. Then there is a discussion about side effects, proper usage, not interacting with other elements such as alcohol, and using the doses as prescribed.

Are there any points in the patient history you would discern before prescribing?

187. The substance abuse issue would be discussed. He would also complete some of the tools such as risk profiles.

When a patient has symptomatology similar to the Complainant, are additional diagnostic tests or referrals to consultants helpful or harmful?

188. That is a difficult question to answer in general because every patient is different. If Dr. K[redacted] needs help, then he will ask for assistance.

Do you feel that Dr. Afridi's notations met the College's Standards of Practice?

189. Sometimes we tell the patients about side effects but we do not always write that down. Different physicians have a different approach.

What resources did you use when you said that Ditropan was an option for the sweats that the Complainant was suffering from?

190. Dr. K[redacted] knew about this option.

You said that the Concerta dose was increased and that was leading to the Complainant's sweats. Could the sweats and weight loss be attributed to Concerta if the dose was stable?

191. A stable dose of Concerta could still contribute to weight loss and sweats.

Is it reasonable to prescribe something to give comfort to the patient to alleviate those symptoms while the reason for the sweats is being worked up?

192. That is reasonable.

IV. SUBMISSIONS

Submissions by Counsel for the Complaints Director

193. *Walsh v Council of Licensed Practical Nurses* ("*Walsh*") discusses the three functions of the Hearing Tribunal at this stage of the process.

194. The first function of the Hearing Tribunal is to make findings of fact and assessments of credibility. The decision of the British Columbia Court of Appeal in *Faryna v Chorny* provides a summary of the test of credibility. The Hearing Tribunal needs to look at the evidence of any particular witness and see how it fits with the totality of the evidence.

195. The second function of the Hearing Tribunal is to identify the relevant standards against which conduct is to be judged. Standards may be established through written evidence, such as the Standards of Practice. Standards may also be established through the evidence of expert witnesses. The physician members of the Hearing Tribunal may use their clinical

experience and judgment to assess the expert evidence and determine which of the experts is more convincing. The physician members of the panel may also bring that benefit to the Hearing Tribunal as a whole.

196. The third function of the Hearing Tribunal is to apply the facts against the applicable standard to determine whether or not the conduct amounts to unprofessional conduct.

197. There are three general charges against Dr. Afridi: the adequacy of care provided to the Complainant between May 2019 and March 2020; the adequacy of the patient record; and the propriety of Dr. Afridi's billing on September 26, 2019.

198. Allegation 1(a) dealing with a referral to an audiologist is not demonstrated by the evidence. Dr. Afridi did provide a referral form to the Complainant.

199. Dr. Du[redacted] provided the opinion that the care and charting failed to meet the expected standard of care for a family physician. A more complex patient such as the Complainant requires more time and effort. Dr. M[redacted] gave evidence that the Complainant is a complex patient and that she required more time and effort. Dr. E[redacted] also described that he had to spend extra time with the Complainant. There is consistency to the evidence that the Complainant is a complex patient who would need more time than the average patient. The Complainant described typical visits as being ten minutes or less. She also gave evidence that the visit in September 2019 was not one that involved more than 45 minutes or involved psychotherapy or counselling.

200. Dr. P[redacted] gave evidence that they had a very busy practice, and this evidence corroborates the Complainant's description of her experiences. There is nothing on the chart to show that Dr. Afridi contacted the pharmacist to confirm that the drugs that he renewed for the Complainant had been prescribed by Dr. B[redacted].

201. When Dr. Afridi used the phrase "all good" when referring to test results, the Complainant felt that she was not getting any answers as to what was causing her symptoms. When you examine the totality of the evidence, it is more consistent with what the Complainant described than what Dr. Afridi has described.

202. Dr. K[redacted]s opinion was that there were no deficiencies in the charting. Dr. K[redacted] also supported 20 tablets of lorazepam, even when Dr. Afridi acknowledged that it was only for anxiety because of an upcoming procedure. Dr. K[redacted] did not address the Complainant's polysubstance abuse history, which shows that he does not adequately address the totality of the evidence. Dr. K[redacted] was more of an advocate for Dr. Afridi and did not acknowledge limitations on his opinion. Dr. K[redacted]'s opinion is inconsistent with the College's Standards of Practice on Patient Record Content, and the prescribing of lorazepam.

203. Regarding the allegation related to billing, the chart note does not contain any details of any lengthy psychotherapy or counselling session. The chart lacks detail about the psychological concerns, any aggravating or ameliorating factors, or the impact on the Complainant's functioning and health. Dr. P[redacted] gave evidence that she picks the billing codes that she applies to her patients, and Dr. Afridi chooses the billing codes that he would bill for his patients.

204. While the Complainant may not have remembered everything, her testimony is more compelling.

Submissions by Counsel for Dr. Afridi

205. Even if the Hearing Tribunal determines that an allegation is proven, none of the charges are sufficient to result in a finding of unprofessional conduct. Case law supports that it is not just one error that results in a finding of unprofessional conduct and it must be something more than that.

206. The Complainant's evidence is not credible or reliable. She was consistently unable to remember details of her appointments with Dr. Afridi or other healthcare providers. Counsel submitted that they are not accusing the Complainant of being untruthful in her evidence.

207. Dr. Afridi's testimony was both credible and reliable. He took responsibility for the deficiencies in his charting and the use of a potentially incorrect billing code. He relied on his chart and standard practice when he did not recall details of an appointment with the Complainant. Dr. M[redacted], Dr. E[redacted] and Dr. P[redacted] all gave their testimony in a forthright manner.

208. Dr. Du[redacted] made some critical errors in his written opinion which he corrected during cross-examination. Dr. K[redacted] had no such errors in his report. The physician members may use their expertise to assess the expert evidence and determine how much weight to put on the evidence. When there are conflicting expert opinions, it is open to the Hearing Tribunal to decide which expert is most helpful and prefer the evidence of one expert over the other.

209. As noted by Bryan Salte in *The Law of Professional Regulation,* not all errors are unprofessional conduct. The error or breach must be such that the regulated member failed to meet the standards of the profession. The decision of the Yukon Court of Appeal in *Reddoch v The Yukon Medical Council* is good law, and a finding of unprofessional conduct requires some blatancy or cavalier disregard for the patient's care. *Reddoch* has been cited in decisions in different provinces. In *Swart v College of Physicians and Surgeons of Prince Edward Island,* the Prince Edward Island Court of Appeal noted that physicians are not to be held to a standard of perfection. Negligence does not amount to a finding of unfitness to practice under the Prince Edward Island statute in force at the time. There must be a failure amounting to gross negligence or some quality of blatant disregard for the

patient or the patient's well-being. In *Hosseini v College of Dental Surgeons of Saskatchewan,* the Saskatchewan Court of Queen's Bench disagreed with the Prince Edward Island Court of Appeal that gross negligence is required to ground a finding of unprofessional conduct, but determined that something more than ordinary negligence is required to ground a finding of unprofessional conduct.

210. Previous decisions of the College have taken the same approach. In *Re Hunter*, a boundary violation case, the Hearing Tribunal found that the conduct harmed the integrity of the profession. It was a reasonable and common sense finding that the boundary violation brought the profession into disrepute. In *Re Jiwa* the Hearing Tribunal made several comments about whether incomplete charting constitutes unprofessional conduct. In *Re Hodgson* the Hearing Tribunal made comments about whether a failure to meet a Standard of Practice constitutes unprofessional conduct.

211. The main principle coming out of the case law and Hearing Tribunal decisions is that a finding of unprofessional conduct requires something more than mere negligence or a failure to meet the standard of care expected of a reasonable physician or a failure to meet the Standards of Practice set by the College. Courts in some jurisdictions have gone as far to say that gross negligence is required, and others have not gone so far but there is general consensus that ordinary negligence is not unprofessional conduct.

212. Allegation 1(b) has not been proven. Dr. Afridi's standard practice has been to order tests that will be useful and avoid sending patients for unnecessary tests. The allegation that Dr. Afridi failed to obtain a CT scan to investigate hematuria is misguided about what should be done to investigate hematuria. Dr. Afridi ordered urinalysis during two visits (May 15, 2019 and May 27, 2019). The Complainant mentioned concerns about blood in her urine on May 27, 2019 and there were no subsequent complaints. There was no reason for Dr. Afridi to order a CT scan. Dr. Du[redacted] did not express the opinion in his expert report that Dr. Afridi should have ordered a CT scan to investigate hematuria. Dr. Du[redacted] agreed while giving evidence that the results of the urinalysis from the May 15, 2019 visit were normal, and that it made sense to order a repeat urinalysis before ordering a CT scan. Dr. K[redacted] noted in his report that a CT scan was unnecessary. There was no need for a CT scan and this charge has not been proven.

213. Regarding Allegation 1(c), Dr. Afridi gave evidence that he did not recall the Complainant asking for a referral to an internist, and she did not require a referral. If a patient requested a referral that Dr. Afridi did not think was necessary, his standard practice would be to try and talk them out of the referral. He would never outright refuse to provide a referral, and that is a very reasonable approach to a patient's request for a referral. Dr. Du[redacted] stated in his report that it would have been reasonable to seek consultation from an internist after the June 26, 2019 appointment due to the Complainant's unexplained symptoms, including sweating and weight loss.

During cross-examination Dr. Du[redacted] acknowledged that sweating and weight loss were side effects of some of the Complainant's medications. In the circumstances it was reasonable for Dr. Afridi to ask the Complainant to explore the possibility of medication side effects with her psychiatrist before considering a referral to an internist. Dr. P[redacted] also considered whether Concerta could be causing weight loss and night sweats during the Complainant's visit on October 31, 2019. The Complainant was ultimately referred to Dr. M[redacted] by another physician, Dr. R[redacted], because of an issue with her eye. Dr. M[redacted] gave evidence that he did not think that Dr. Afridi should have referred the Complainant earlier for her concerns of weight loss and night sweats. The evidence is clear that there was no need for the Complainant to be referred to an internist in June of 2019. Dr. Afridi had a reasonable explanation for why there might be weight loss or night sweats and it was appropriate for the Complainant to discuss these symptoms with her psychiatrist.

214. Allegation 1(d) is the failure to refer to Dr. De[redacted], an otolaryngologist, in a timely manner. Dr. Afridi gave evidence that he prefers to have his patients see an audiologist before a referral. Dr. Afridi received the report from the audiologist, and did not make a referral for the Complainant because he did not think that it would be helpful. The audiologist did write a letter of referral. Dr. P[redacted] also made a referral and wrote in her note that "patient requested assessment" to indicate that she did not see a reason for the referral based on her examination of the Complainant. Billing records demonstrate that the Complainant was seen a number of times by Dr. De[redacted]. Multiple requests for the patient charts were inappropriately refused. The Complaints Director has not proven that a referral to Dr. De[redacted] was necessary at the time that Dr. Afridi saw the Complainant.

215. Allegation 1(e) is the prescribing of Concerta including an early renewal when the Complainant had a history of polysubstance use disorder. Dr. Afridi gave evidence that when refilling a prescription prescribed by another provider, he would satisfy himself that the patient needs the medication. He would not necessarily explain the side effects if the patient has used the medication for an extended period of time because the patient would already know the side effects. Dr. Afridi knew that the Complainant had been prescribed Concerta. He spoke with her pharmacist to ensure that she was still receiving the prescription and that it was not a duplicate prescription.

216. Dr. K[redacted] gave his opinion that the amounts that were prescribed and the steps that were taken by Dr. Afridi were appropriate. During cross-examination Dr. Du[redacted] stated that he had misinterpreted the medical records and that Dr. Afridi had prescribed the right amount at the proper time. Dr. Du[redacted] did not express any concern about Dr. Afridi prescribing Concerta to a person with a polysubstance use disorder, and the Complainant had been prescribed Concerta by her psychiatrists.

217. Allegation 1(f) is the prescription of 20 tablets of lorazepam or Ativan to the Complainant when she had a history of polysubstance use disorder. Dr. Afridi gave evidence that he prescribed Ativan due to her concerns over an upcoming procedure to her eye. His standard practice for new medications is to discuss the medication including side effects. Dr. K[redacted] gave evidence that prescribing 20 pills was not inappropriate, and it is helpful to provide an anxious patient with a little extra medication as a safety net. Dr. Afridi was not aware that the Complainant had a history of polysubstance use disorder at the time of the prescription. This is not a situation where any harm came to the patient. Dr. Afridi had assessed the patient as not a drug-seeking individual and he was correct in that assessment.

218. Dr. Afridi has put time and significant resources into his charting, and has invested in an EMR for the clinic. Dr. Afridi has admitted that his charting practices for the Complainant could have been better. The important factor is that they did not affect continuity of care, which is the primary goal for the Standard of Practice on Patient Record Content. Dr. P[redacted] gave evidence that she does not have any issues treating Dr. Afridi's patients or following the plans for their care. The charges have not been proven.

219. Allegation 2(a) deals with failing to record details of the nature and duration of the complaint of hematuria on May 27, 2019. There were no complaints of hematuria after the May 27, 2019 appointment. All tests taken prior to May 27, 2019 and on May 27, 2019 came back normal with no signs of blood. Therefore, the nature and duration could not have been medically significant because there was no actual medical evidence of it having occurred. Dr. K[redacted]'s opinion was that Dr. Afridi met the standard when he included the presenting concern and the relevant findings (i.e. no blood in the urine).

220. Allegation 2(b) deals with failing to record details of the complaint of back pain on May 29, 2019. Dr. Afridi documented in the chart a normal straight leg raise and normal gait. He also ordered an x-ray to make sure that he did not miss anything and to reassure the Complainant. Dr. K[redacted]'s opinion was that Dr. Afridi met the standard when he noted the presenting concern and the relevant findings.

221. Allegation 2(c) deals with failing to record any plan for care or advice provided to the patient on May 29, 2019. Dr. Afridi ordered an x-ray to investigate the complaints of back pain. The x-ray was performed two days after the appointment, and Dr. Afridi followed up with the Complainant and recorded the results of the x-ray on the chart. Dr. Du[redacted] did not comment on this aspect of care in his report or in his evidence before the Hearing Tribunal. The logical inference is that Dr. Du[redacted] had no concerns about this aspect of the charting.

222. Allegation 2(d) deals with failing to record details of the nature or duration of abdominal pain reported by the Complainant on June 12, 2019. Dr. Afridi's

chart notes indicate that he examined the Complainant's abdomen and that it was soft. He also examined her right lower quadrant which was noted to be normal. His plan was to order an ultrasound of the Complainant's abdomen, and blood work. The Standard of Practice on Patient Record Content does not mention including the nature or duration of the patient's symptoms in the chart. Dr. K[redacted]'s expert opinion was that Dr. Afridi met the standard.

223. Allegation 2(e) deals with failure to record details of the nature and location of pain. This is repetitive of the previous particular. Dr. Du[redacted] had no comment with respect to this particular. Dr. K[redacted] was of the opinion that what was recorded was appropriate.

224. Allegation 2(f) deals with failure to record the Complainant's weight at visits after June 26, 2019 when she had reported weight loss concerns. Dr. Afridi weighed the Complainant and recorded her weight on the chart on June 26, 2019. He also told her to record her own weight monthly and suggested that she discuss her weight loss and sweating with her psychiatrist and recorded this plan in the chart. Dr. K[redacted] gave the opinion that Dr. Afridi noted the Complainant's presenting concern of weight loss, and that met the Standard of Practice for patient record content. Dr. Du[redacted] did not comment on this.

225. Allegation 2(g) deals with failure to record the findings from an adequate physical examination of the Complainant in light of the presenting symptoms of weight loss and excessive sweating on June 26, 2019. Dr. Afridi suggested that the Complainant try Ditropan, and advised her to discuss her concerns with her psychiatrist. Dr. K[redacted] gave the opinion that Dr. Afridi recorded the Complainant's concerns and a plan which met the College's Standard of Practice for Patient Record Content.

226. Allegation 2(h) concerns a failure to record the details of a discussion of the medications Concerta, Abilify and Cipralex which were prescribed on August 7, 2019. Dr. Afridi was not the primary prescriber of these medications and there was no need to discuss side effects, risks or restriction.

227. Allegation 2(i) concerns the failure to record the details of a discussion of the medication Ativan prescribed on September 26, 2019 including any potential side effects, risks or restrictions that may occur. Dr. Afridi stated that it was his standard practice to review potential side effects and risks before providing new prescriptions. The Complainant was aware that Ativan could cause drowsiness, and no harm came to her as a result of the prescription.

228. Allegation 2(j) concerns the failure to record an adequate history of concerns for gastrointestinal symptoms, including weight loss and sweating. Even if Dr. Afridi could have included more information in his charts, he provided proper care and there is no evidence of any adverse outcome as a result of the charting.

229. The College Standards of Practice are aspirational. If the notes did not comply, it did not affect continuity of care. Therefore, it does not rise to the level of unprofessional conduct.

230. Allegation 3 concerns inappropriate billing. Dr. Du[redacted]'s concerns related to the billing code that was used for the service and not the amount of time that was spent with the patient. Dr. Afridi acknowledged that the billing code may not have been appropriate, but he was clear that four units was an honest assessment of time. Dr. K[redacted] noted at the hearing that the billing code was not inappropriate. He was taught to bill according to what the patient presented with as the most important diagnosis and he does not parse out things in the billing codes. There is no evidence that Alberta Health had any concerns about this billing. If there was an error, that should not be enough to ground any finding of unprofessional conduct.

Questions from the Hearing Tribunal

The Notice of Hearing refers to further particulars which are set out in the report from Dr. [redacted] Du[redacted] dated April 14, 2021. Are those particulars covered in the allegations?

231. Counsel for the Complaints Director submitted that Dr. Du[redacted]'s report provides further information, but the particulars are set out in the charges. Counsel for Dr. Afridi submitted that the Hearing Tribunal should turn its mind to the actual allegations that appear in the Notice of Hearing and not any other details that may have been addressed in Dr. Du[redacted]'s report.

Submissions by Counsel for the Complaints Director

232. The decision in *Reddoch* deals with legislation where it had to be demonstrated that a physician was guilty of infamous conduct or unprofessional conduct. *Reddoch* refers to a British Columbia Court of Appeal decision in *Jory v College of Physicians and Surgeons of British Columbia,* which stood for the proposition that the more serious the allegation, the more preponderance of evidence was required. There was a rising scale of evidence. In *F.H. v McDougall,* the Supreme Court of Canada said that there is no rising standard. There are only two standards: the criminal standard of proof beyond a reasonable doubt, and the civil standard of a balance of probabilities. The Court of Appeal in *Reddoch* also says that it was open to the legislature to define a single error as amounting to unprofessional conduct. The Alberta HPA has distinguishing language. Unprofessional conduct is defined to include a number of things, whether or not they are disgraceful or dishonourable.

233. The Standards of Practice are not aspirational. They are meant to be the minimum expected standards of care and conduct. Cases from other provinces are interpreting differently worded legislation.

234. The decisions in *College of Physicians and Surgeons of Ontario v Pasternak,* and *Law Society of Ontario v. Odeleye* set out the process to bring third-party records before a tribunal. If an investigated person wants a regulator to go out and get records, that is not the duty of the regulator. The regulator investigates a matter, gathers the evidence, and formulates the charges if there is sufficient evidence of unprofessional conduct. The Hearing Tribunal determines whether the evidence presented proves the allegations.

235. There is a process for the investigated person who wants a third party to produce records. It is a two-part test that is based on the decisions of the Supreme Court of Canada in *R v Mills,* and *R v O'Connor*. The investigated person must demonstrate relevance and the need for the information. That was not done here.

236. The Supreme Court of Canada decision in *McInerney v MacDonald* deals with the multiple purposes for medical records, and continuity of care is one of the purposes. One of the purposes is for the patient to be able to look at the records and see that they are accurate and the care provided was appropriate. Records are also an accountability tool.

Submissions by Counsel for Dr. Afridi

237. The decision in *College of Physicians and Surgeons of Ontario v Pasternak* refers to Ontario legislation that has a specific process for applying for third-party documents. The HPA has no such process. It should be enough to request that the Complaints Director produce documents from third parties. There may be a process for applying to the Hearing Tribunal, but that was not done here.

238. The decision in *McInerney v MacDonald* stands for the principle that a patient in entitled to have a copy of their chart. Even if the chart has other purposes at common law, the charge relates to the College Standards of Practice. The Standards of Practice make it clear that continuity of care is the primary goal, and continuity of care was not affected by alleged deficiencies.

Questions from the Hearing Tribunal

What is the process for getting third-party records before the Hearing Tribunal?

239. Counsel for the Complaints Director submitted that the issue is whether an investigated person can direct the regulator to obtain records. There is a whole body of case law in the civil litigation context, but this is about the regulatory environment and whether Dr. Afridi met the standards of the profession. There is no case law to support the proposition that an investigated person has the right to ask the regulator to obtain records from third parties. Under common law, the Hearing Tribunal is the master of its own procedure and there is a process that can be followed to obtain third-party records as shown in the Ontario decisions (*College of Physicians and Surgeons of Ontario v Pasternak,* and *Law Society of Ontario v. Odeleye*).

240. Counsel for Dr. Afridi submitted that there is no specific process under the HPA to allow a physician to access third-party records. It would be reasonable for the Complaints Director to provide records of other treating physicians based on the investigated person's request. The fact that billing records show that the Complainant was seen by Dr. De[redacted] and the orthopedic surgeon should be ignored by the Hearing Tribunal because it was unfair of the Complaints Director to refuse to get their patient records.

241. Counsel for the Complaints Director submitted that any party can ask the Hearings Director to issue a notice to produce to a witness, and that witness is then required to bring records. This is pursuant to section 77 of the HPA.

242. Counsel for Dr. Afridi submitted that the process under the HPA is not useful because the investigated member will have to wait until the hearing to know the evidence.

243. Counsel for the Complaints Director submitted that he referred to the billing records for Dr. De[redacted] when Dr. Afridi gave evidence that there was no need for a referral. The billing records suggest that Dr. De[redacted] thought otherwise.

V. FINDINGS

244. The Hearing Tribunal carefully considered the evidence and submissions of the parties and finds that Allegation 1 is not proven; Allegation 2 is proven with respect to particulars 2(a), 2(b), 2(c), 2(d), 2(e), and 2(i); and Allegation 3 is not proven for the reasons set out below. The Hearing Tribunal further finds that the failure to create an adequate patient record constitutes unprofessional conduct for the reasons set out below.

Allegation #1

245. Allegation 1(a) was withdrawn by the Complaints Director.

246. The Hearing Tribunal finds that Allegation 1(b) is not proven. Dr. Afridi ordered urinalysis following the visits on May 15, 2019 and May 27, 2019. There was no expert evidence that there was a need for a CT scan following the complaint of hematuria on May 27, 2019. While giving evidence, Dr. Du[redacted] agreed that there was no need for an immediate CT scan following the complaint of hematuria on May 27, 2019, and that a repeat urinalysis was a good choice.

247. The Hearing Tribunal finds that Allegation 1(c) is not proven. Dr. Afridi did not refer the Complainant to Dr. M[redacted]. Dr. Afridi gave evidence that he does not recall the Complainant asking for a referral to Dr. M[redacted] and he does not think that she needed to see Dr. M[redacted]u. The Complainant gave evidence that she had seen Dr. M[redacted] in the past, and had asked Dr. Afridi for a referral. The Complainant was ultimately referred by Dr. R[redacted] regarding an eyelid biopsy result and Dr. M[redacted] saw the Complainant on

February 20, 2020. During the appointment with Dr. M[redacted] the Complainant expressed concerns about weight loss, night sweats, back pain and skin lesions. Dr. M[redacted] examined the Complainant relating to these complaints, and ordered some further tests.

248. Dr. M[redacted]'s notes indicate as follows regarding his referral for a MRI:

> *Because of her abnormal MSK exam today, I did order an MRI of her sacroiliac joints to look for evidence of sacroiliitis, and of her lumbar spine, given the abnormalities within the left leg.*

249. Dr. M[redacted]'s notes indicate as follows regarding his referral for an ultrasound:

> *I do agree that since I have seen her last, she probably has lost quite a bit of weight, and she is experiencing drenching night sweats.*
>
> *I think the likelihood of lymphoma would be quite low, but given the inguinal lymphadenopathy, I have arranged an ultrasound, and if this is confirmed, we can sample one of these lymph nodes to exclude a lymphoproliferative process.*

250. There is conflicting evidence concerning whether the Complainant asked Dr. Afridi to make a referral to Dr. M[redacted]. Dr. M[redacted] gave evidence that he did not think that Dr. Afridi should have referred the Complainant earlier for her concerns of weight loss and night sweats. Further, it was reasonable for Dr. Afridi to ask the Complainant to explore the side effects of medication with her psychiatrist. The Hearing Tribunal gave little weight to Dr. Du[redacted]'s opinion regarding Allegation 1(c) because he failed to consider the side effects of medication as a possible explanation for sweating and weight loss in his report.

251. The Hearing Tribunal finds that Allegation 1(d) is not proven. The evidence shows that Dr. Afridi made a referral to an audiologist on May 15, 2019. There is nothing in the clinical record relating to his findings and the reason for the referral. The audiological evaluation occurred on July 18, 2019. Dr. Afridi was copied on the result. The audiologist gave the following recommendation: "Refer to ENT for investigation into bleeding from ears after showering, sensation of pressure in ears and head, feeling dizzy on a daily basis and to investigate the appearance of a small lump on her left anti-helix." The Complainant's next appointment with Dr. Afridi occurred on August 7, 2019. The relevant information in the patient chart is:

> *Itchy ears*
>
> *Ear ache*
>
> *TM*
>
> *ear canal N*
>
> *Advice Audiometry*

252. There is nothing in the patient chart regarding the recommendation from the audiological evaluation that the Complainant should be referred to an ENT, or the concerns of bleeding from her ears after showering, the sensation of pressure in her ears and head, feeling dizzy, or a small lump on her left anti-helix.

253. Dr. Afridi did not make a referral to Dr. De[redacted]. During cross-examination he explained that the audiologist may have been pressured into that recommendation. He did not think that a referral to the ENT was necessary despite the recommendation from the audiologist. However, there is no reference to the results of the audiological evaluation in the chart or his reasons for not making the referral.

254. Ultimately the Complainant was referred to Dr. De[redacted] by the audiologist on September 23, 2019. She was also referred to Dr. De[redacted] by Dr. P[redacted]. She was seen by Dr. De[redacted], and the billing records show that there were a number of appointments in 2019 and 2020.

255. Counsel for Dr. Afridi submitted that the fact that billing records show that the Complainant was seen by Dr. De[redacted] should be ignored by the Hearing Tribunal because it was unfair of the Complaints Director to refuse to get his patient records. Counsel for Dr. Afridi did not refer the Hearing Tribunal to case law to support the argument that the College should produce third-party records on the request of the investigated member.

256. The Hearing Tribunal reviewed the decisions in *College of Physicians and Surgeons of Ontario v Pasternak,* and *Law Society of Ontario v. Odeleye* which were provided by counsel for the Complaints Director. The decisions show the common law process that has been developed to provide access to relevant third-party records and protect the privacy of complainants. The Hearing Tribunal finds that both of these objectives are important. Section 77 of the HPA provides that any party can ask the Hearings Director to issue a notice to produce to a witness and that witness is required to bring records. Counsel for Dr. Afridi submitted that the process under the HPA and the common law process were inadequate because the investigated member will have to wait for the hearing. However, counsel did not refer to case law that supported the argument that the Complaints Director is able to provide records of other treating physicians based on the investigated person's request. The Hearing Tribunal finds that the investigated person does not have the right to direct the College to obtain third-party records. Dr. Afridi was able to use the processes under the HPA and common law to gain access to the records.

257. The Standards of Practice for Referral Consultation stipulate that a regulated member must respect a patient's reasonable request for a referral in certain circumstances (paragraph 2). However, the Standards of Practice provide that "a regulated member is entitled to refuse to make a referral that, in his/her opinion, is unlikely to provide a clinical benefit" (paragraph 3). There

was no information in the chart concerning the reasons for not making the referral. However, Dr. Afridi gave evidence that it was his opinion that a referral was not necessary.

258. Billing records show that the Complainant was seen a number of times by Dr. De following a referral. However, the patient charts were not available. In these circumstances the Hearing Tribunal is unable to come to any conclusion about the type or nature of the care and treatment provided by Dr. De. Specifically the Hearing Tribunal is unable to come to any conclusion concerning the nature of the Complainant's concerns that were treated by Dr. De, and when they occurred. In these circumstances the Hearing Tribunal finds that Dr. Afridi was entitled to refuse to make a referral when he was of the opinion that it was unlikely to provide a clinical benefit.

259. The Hearing Tribunal finds that Allegation 1(e) is not proven. The Complainant had been prescribed Concerta by her psychiatrist and she had been on this medication for some time. The Hearing Tribunal gave little weight to Dr. Du's expert opinion on this matter because it was later qualified while he was giving evidence. During cross-examination, Dr. Du gave evidence that he was in error when he concluded in his report that the medication was excessive and that there was an early renewal. Specifically, he had overlooked the amount required for the afternoon dose (18 milligrams) in addition to the morning one (36 milligrams).The number of pills and the timing were accurate. The Hearing Tribunal also finds that Dr. Afridi took steps to ensure that the Complainant needed the medication and that it was not a duplicate prescription by contacting the pharmacy.

260. The Hearing Tribunal finds that Allegation 1(f) is not proven. There was conflicting evidence regarding whether the number of lorazepam pills was an appropriate number. In response to questions from the Hearing Tribunal, Dr. Afridi stated that 20 pills were more than what was needed in the circumstances, and that he did not have a very good explanation for why he did that. Dr. Du gave evidence that there was no need to prescribe 20 pills given the reason for the prescription. Dr. K gave evidence that prescribing 20 pills was not inappropriate for the reason that some patients need a "safety net". The surgery was more than a month away. Based on the evidence of Dr. Afridi himself and the expert opinion of Dr. Du, the Hearing Tribunal finds that the number prescribed was more than what was necessary in the circumstances. However, Dr. Afridi was not aware of the Complainant's history of polysubstance use disorder. He had correctly identified the Complainant as someone who is not a drug-seeking individual. Further, the Complainant gave evidence that she used the medication appropriately.

Allegation #2

261. The opinion given by Dr. K regarding Allegation 2 was that the records were in compliance with the Standards of Practice. This opinion is in conflict

with the expert opinion given by Dr. Du[redacted], and Dr. Afridi's own evidence. During cross-examination, Dr. Afridi stated that he agreed with Dr. Du[redacted] that information is missing from the charts. He is now putting more information in his chart, and the motivation for making the change was that the charts were not good enough. They do not explain the services that he was providing or justify what is being done for the patient. For this reason the Hearing Tribunal gave Dr. K[redacted]'s opinion little weight when assessing compliance with the Standards of Practice relating to record-keeping.

262. The Hearing Tribunal also notes that Dr. K[redacted]'s opinion was based on information that was not in Dr. Afridi's chart notes. Dr. Ke[redacted] provides a diagnosis of "somatization". There was no information about the history of the Complainant's mental health concerns in Dr. Afridi's chart notes or her history of polysubstance abuse. There was no information from the Complainant's treating psychiatrist. There is a diagnosis of "paranoia" on May 29, 2019; a renewal of Concerta, Abilify and Cipralex on August 7, 2019, and a mention of "anxiety" on September 26, 2019. Dr. K[redacted] was provided with a Referral/Client Update from Addiction and Mental Health Services dated January 7, 2020 which was sent to Dr. Afridi; and a Patient Prescription Summary dated November 2020. The Hearing Tribunal agrees with submissions by counsel for the Complaints Director that Dr. K[redacted] was making a diagnosis in hindsight based on information that was not included in the patient chart.

263. When assessing the expert evidence on patient record content, the Hearing Tribunal rejects the argument put forward by counsel for Dr. Afridi that Dr. Du[redacted]'s failure to comment on a specific particular in Allegation #2 meant that he had no concerns with that aspect of charting. Dr. Du[redacted] provided a number of comments on charting in his opinion dated August 14, 2021 including the following comment: "Dr. Afridi's response, written in June 2020 approximately a year from many of the visits seems more detailed than the chart notes can support. (Example – 'My standard practice is to explain the side effects of any new prescriptions and I did so in this case' – regarding the September 26, 2019 visit). The overall picture seems more complete in his letter of response because he includes reports and visit summaries of other providers. His record, taken on its own, is deficient." Dr. Du[redacted] when giving evidence noted that it is necessary to document why a physician would or would not order a particular test.

264. The Hearing Tribunal carefully reviewed the particulars in Allegation 2 and the findings are noted below.

265. Allegation 2(a) deals with failure to record details of the nature and duration of the complaint of hematuria on May 27, 2019. The clinical record for May 27, 2019 states as follows:

> *Follow up*
>
> *All results explained Advice Follow up on PRN basis*

Complain of peeing blood

RE CT

266. The record does not contain details of the nature and duration of the complaint of hematuria.

267. The Standards of Practice on Patient Record Content state as follows:

> *2. A regulated member **must** ensure the patient record contains:*
>
> *a. clinical notes for each patient encounter including:*
>
> *i. presenting concern, relevant findings, assessment and plan, including follow-up when indicated;*
>
> *ii. prescriptions issued, including drug name, dose, quantity prescribed, direction for use and refills issued;*
>
> *iii. tests, referrals and consultation requisitioned, including those accepted and declined by the patient; and*
>
> *iv. interactions with other databases such as the Alberta Electronic Health Record (Netcare).*

268. The Hearing Tribunal determined that Dr. Afridi was not compliant with the Standards of Practice.

269. Allegation 2(b) deals with failure to record details of the nature and duration of the complaint of back pain on May 29, 2019. Allegation 2(c) deals with failure to record any plan for care or advice provided to the patient on May 29, 2019.

270. The clinical record for May 29, 2019 states as follows:

> *Lipoma*
>
> *Reassured, Explain all results*
>
> *Backache*
>
> *Re SLR N*
>
> *Gait N*
>
> *Diagnosis:*
>
> *Paranoia*
>
> *Results*

271. The record does not contain details of the nature and duration of the complaint of back pain, or a plan for care or advice provided to the patient.

272. The Hearing Tribunal determined that Dr. Afridi was not compliant with the Standards of Practice.

273. Allegation 2(d) deals with failure to record details of the nature or duration of abdominal pain reported by the patient on June 12, 2019. Allegation 2(e) deals with failure to record details of the nature and location of pain.

274. The clinical record for June 12, 2019 states as follows:

> *Abdominal pain*
>
> *Wants her Bilirubin checked*
>
> *Abdomen Soft Came with friend [name of friend]*
>
> *RLQ Normal*
>
> *Hernias –ve.*
>
> *crying out all questions explained again and again*
>
> *XRAYs DDD Spine*

275. The Hearing Tribunal determined that Dr. Afridi was not compliant with the Standards of Practice.

276. Allegation 2(f) deals with failure to record the Complainant's weight at visits following June 26, 2019 when she had reported weight loss concerns. Neither Dr. Afridi nor his staff weighed the Complainant at subsequent visits. Dr. Afridi gave evidence that he had asked the Complainant to weigh herself at home on a monthly basis. The Complainant's weight was not recorded.

277. The Hearing Tribunal determined that Dr. Afridi was compliant with the Standards of Practice and that he was not required to record the Complainant's weight for the following reasons. Dr. Afridi saw the Complainant frequently and was observing her. As such, he had recourse to clinical observation. In these circumstances it was not necessary to record the Complainant's weight.

278. Allegation 2(g) deals with failure to record the findings from an adequate physical examination of the Complainant in light of presenting complaints of weight loss and excessive sweating reported by the patient on June 26, 2019.

279. The clinical record for June 26, 2019 states as follows:

> *Weight loss Weight 159 lbs/72 kg*
>
> *Sweating*
>
> *U/S explain*

Cannot explain reason for her pain on right side

Solitary left kidney

pain DDD

Sweating plus plus plus

Advice ? try Ditropan 5 mg bid

Advice ongoing follow up

Weight Monthly

Advice to discuss with Dr B[redacted] her sypmtoms

280. The Hearing Tribunal determined that Dr. Afridi was compliant with the Standards of Practice for the following reasons. Dr. Afridi noted problems with weight loss and sweating in the chart and advised the patient to try Ditropan and discuss her symptoms with her psychiatrist.

281. Allegation 2(h) deals with failure to record details of a discussion of the medications Concerta, Abilify and Cipralex prescribed on August 7, 2019 including any potential side effects, risks or restrictions that may occur.

282. The clinical record for August 7, 2019 provides the following information:

going for holidays

Concerta 36 18 now

abilify 2.5 mg 90

cipralex 20 90

283. The Hearing Tribunal determined that Dr. Afridi was compliant with the Standards of Practice for the following reasons. Dr. Afridi was not the primary prescriber for these medications, and the Complainant had received earlier prescriptions for these medications from her psychiatrist. Dr. Afridi was renewing these prescriptions for the Complainant because she needed a renewal prior to holidays. In these circumstances it was not necessary to discuss potential side effects, risks or restriction, or record details in the patient chart.

284. Allegation 2(i) deals with a failure to record the details of a discussion of the medication, Ativan, prescribed on September 26, 2019, including any potential side effects, risks or restrictions that may occur.

285. The clinical record for September 26, 2019 provides the following information:

Anxiety Going for eye op for calmness re ativan

Seeing Dr. R[redacted]

286. The Hearing Tribunal determined that Dr. Afridi was not compliant with the Standards of Practice for the following reasons. This was a new prescription and Dr. Afridi prescribed 20 pills of Ativan. Given the nature of the prescription and the fact that Dr. Afridi was the primary prescriber, the notes were not adequate. Dr. Afridi failed to document the reasons for the prescription, the risks and the benefits.

287. Allegation 2(j) deals with failure to record an adequate history for the concerns of gastrointestinal symptoms reported by the Complainant including weight loss and sweating. The Hearing Tribunal determined that Dr. Afridi was compliant with the Standards of Practice for the reasons referred to above in relation to Allegation 2(f) and 2(g).

Allegation #3

288. The Hearing Tribunal finds that this allegation is not proven. Allegation 3 involves inappropriately billing the Alberta Health Care Insurance Plan for 4 units of Health Service Code 08.19G when Dr. Afridi saw the Complainant on September 26, 2019. During direct examination, Dr. Afridi admitted that he used the wrong code for billing on September 26, 2019 and that he should have used another code. He described it as "inadvertent error".

289. Dr. P[redacted] gave evidence that there was no way to separate out billing code 08.19G if the whole visit did not relate to a psychiatric concern. She bills for herself, and Dr. Afridi decides his own billing codes.

290. There was conflicting expert evidence. Dr. Du[redacted] was of the opinion that more was required to justify the use of a psychiatric assessment and counselling code. In the clinical notes for September 26, 2019 there was a reference to "anxiety". Dr. K[redacted] gave evidence that the fact that anxiety was dealt with and that it was billed as anxiety indicates to Dr. K[redacted] that it was the priority for the Complainant's visit on that day. Dr. K[redacted] was taught to bill the most important diagnosis.

291. The Hearing Tribunal finds that there was sufficient evidence to support the use of Health Service Code 08.19G. The visit dealt with the Complainant's anxiety concerning future surgery.

Unprofessional Conduct:

292. Unprofessional conduct is defined in section 1(1)(pp)(ii) of the HPA to include the following:

> ***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*

293. The Hearing Tribunal finds that Dr. Afridi failed to meet the requirements in the Standards of Practice as set out in Allegation 2(a), 2(b), 2(c), 2(d), and 2(e). However, in the circumstances the Hearing Tribunal finds that the failure to comply with the Standards of Practice was a trivial or technical breach and does not constitute unprofessional conduct. Dr. Afridi's partner in practice, Dr. P[redacted], gave evidence that she was able to understand Dr. Afridi's notes, and he was available for further explanations. Dr. Afridi was in frequent contact with the Complainant through office visits, and he also saw her in the hospital emergency room. Dr. Afridi was addressing the concerns presented by the Complainant, and he gave evidence that the failure to document the concerns did not affect the actual care.

294. The Hearing Tribunal finds that Dr. Afridi failed to meet the requirements in the Standards of Practice as set out in Allegation 2(i), and that the proven conduct constitutes unprofessional conduct.

295. Dr. Afridi's conduct contravened the Standards of Practice for Patient Record Content. The contravention was serious and occurred when he was prescribing a drug associated with substance use disorders or substance-related harm.

296. When making this determination, the Hearing Tribunal gave careful consideration to arguments by Dr. Afridi that: the Standards of Practice are aspirational; and it is necessary to find negligence in order to make a finding of unprofessional conduct.

297. The Hearing Tribunal concluded that the Standards of Practice are not aspirational. The Standards of Practice explicitly state that they are the "minimum" standard to be expected of physicians.

298. The Hearing Tribunal was provided with earlier decisions of the College that state that not every breach of the Standards of Practice will give rise to a finding of unprofessional conduct. In those decisions the Hearing Tribunal found that there was a breach of the Standards of Practice and that the breach constitutes unprofessional conduct.

299. The Hearing Tribunal carefully considered the 2020 Hearing Tribunal decision in *Re Hodgson* where there was no finding of unprofessional conduct. Dr. Hodgson momentarily accessed the records of a former patient. There was no evidence of repeated access or multiple records. As noted in the Hearing Tribunal decision, counsel for the Complaints Director asserted that this "was a simple error, and used the analogy of an office with paper files where one might reach for a certain file but pull the wrong one off the shelf, open it, realize that it is the wrong chart and put it back on the shelf." Counsel for the Complaints Director submitted that the evidence was not sufficient to discharge the burden of proof, and to accept the "complaint as amounting to unprofessional conduct would be to create an unreasonable standard of perfection". The Hearing Tribunal accepted the submission that this was an "honest mistake" on the part of Dr. Hodgson and one that could

easily be made by any physician in similar circumstances. The College's burden to prove unprofessional conduct was not met.

300. The Hearing Tribunal in *Re Hodgson* makes a statement about "aspirational" standards to protect the privacy of patients. However, the facts in *Re Hodgson* are easily distinguished from the ones relating to Dr. Afridi. Further, there is no specific statement in *Re Hodgson* that the Standards of Practice are aspirational. This would directly contradict the statement at the beginning of the Standards of Practice that they are the "minimum" standard to be expected of physicians. For the sake of clarity, the Hearing Tribunal does not interpret the Standards of Practice as being "aspirational" and instead finds that they constitute the minimum standard to be expected of physicians.

301. The Hearing Tribunal agrees with the comments in *Re Jiwa* that an expectation of accuracy in record-keeping can co-exist with the recognition that perfection may not be achieved.

302. The Hearing Tribunal further finds that it is not necessary to find negligence in order to make a finding of unprofessional conduct.

303. The Hearing Tribunal considered carefully the arguments relating to whether a decision interpreting the Yukon *Medical Profession Act* is applicable in the Alberta context. Counsel for Dr. Afridi submitted that the decision of the Yukon Court of Appeal in *Reddoch v The Yukon Medical Council* is good law, and a finding of unprofessional conduct requires some blatancy or cavalier disregard for the patient's care. Counsel referred to court decisions from Prince Edward Island (*Swart v. College of Physicians and Surgeons of P.E.I.*) and Saskatchewan (*Hosseini v College of Dental Surgeons of Saskatchewan)* in support of the proposition that more than ordinary negligence is required to ground a finding of unprofessional conduct.

304. The issue in *Reddoch* was whether an Inquiry Committee and the Yukon Medical Council had jurisdiction to discipline a physician for his treatment of one patient over a brief period of time. The Yukon Territory Supreme Court found that the Inquiry Committee and the Yukon Medical Council had jurisdiction and that the findings and penalty were reasonable. The Yukon Court of Appeal overturned the decision of the Supreme Court and concluded that "unprofessional conduct" in the *Medical Profession Act* did not encompass the failure to exercise reasonable care and skill in the management of one patient. The investigation of the physician's conduct should have proceeded under section 22 of the *Medical Profession Act*, dealing with standard of practice of a doctor, rather than under section 24 of the *Medical Profession Act*. Section 24(3) of the *Medical Profession Act* provided that the Yukon Medical Council upon receipt of a report by an Inquiry Committee must consider whether a "… medical professional practicing medicine in the Yukon has been guilty of infamous or unprofessional conduct or that such member is suffering from a mental

ailment, emotional disturbance, or addiction to alcohol or drugs that might, if such member continues to practice medicine, constitute a danger to the public". The Yukon Court of Appeal stated in the final paragraph: "What I do say is that when the issue is one of failure of reasonable care, the conduct of the physician in order to constitute 'unprofessional conduct' must have about it some quality of blatancy – some cavalier disregard for the patient and the patient's well-being."

305. The Hearing Tribunal does not find the 2001 decision of the Yukon Territory Court of Appeal in *Reddoch* helpful or persuasive in the Alberta context.

306. First, the decision deals with legislation that is significantly different than the HPA. The HPA states in section 1(1)(pp) that conduct may be considered unprofessional whether or not it is "disgraceful or dishonourable". Alberta's HPA takes a different approach than Yukon's *Medical Profession Act* at the time of the decision. Second, the focus of the decision of the Yukon Court of Appeal was on jurisdiction and whether the investigation should have proceeded under section 22 of Yukon's *Medical Profession Act* or section 24. The Yukon Court of Appeal determined that there was no jurisdiction for the Yukon Medical Council to make a decision pursuant to section 24 of the *Medical Profession Act*. Given that the basis of the decision was a lack of jurisdiction, there was not a thorough exploration or explanation of why "some cavalier disregard for the patient" was required. Third, the Hearing Tribunal was not referred to any decisions that adopted the requirement that there must be a quality of blatancy or cavalier disregard for the patient in order for a Hearing Tribunal to make a finding of unprofessional conduct.

307. The Hearing Tribunal examined the decisions in *Swart v College of Physicians and Surgeons of P.E.I.* and *Hosseini v College of Dental Surgeons of Saskatchewan*. Both of these decisions determined the level of negligence that was required to support a finding of unfitness or unprofessional conduct.

308. In *Swart v College of Physicians and Surgeons of P.E.I.,* the PEI Court of Appeal stated:

> *[104] It is not every failure of a physician that amounts to a finding of unfitness. Were it so, virtually every physician would, at some time or another over the course of his or her career, be found to be quite unfit as all human beings sooner or later make mistakes. The case law is consistent that mere negligence is not a sufficient basis for a finding of unfitness (**Huerto v. College of Physicians and Surgeons (Saskatchewan)**,* 1999 CarswellSask 40 (SKQB)*, **Huerto v. College of Physicians and Surgeons (Saskatchewan)**,* 2004 CarswellSask 587 (SKQB)*, **Re Adamo**, [2005] OCPSD 22 (Ontario College of Physicians and Surgeons Discipline Committee). There must be a failure amounting to gross negligence (**Complaints and Authorization***

> ***Committee, College of Physicians and Surgeons of Newfoundland Re Carter, February 13, 2006****) or some quality of blatant disregard for the patient or the patient's well-being (***Reddoch ***v.*** Yukon ***Medical Council****,* 2001 YKCA 13 (CanLII), [2001] 161 BCAC 131*).*
>
> *[105] Indeed the very definition of "unfit member" in the* **Medical Act** *makes it abundantly clear that the physician's transgression must be of such a nature and extent to make it desirable to either restrict or terminate the physician's ability to practise (***Act***, s.1(y)). Physicians are not held to a standard of perfection. In order to make a finding that a member is unfit to practise his or her profession, something beyond mere negligence or carelessness is necessary.* (emphasis added)

309. In *Hosseini v College of Dental Surgeons of Saskatchewan,* the Saskatchewan Court of Queen's Bench was interpreting section 26 of the *Dental Disciplines Act* which reads as follows:

> *Professional incompetence*
>
> *26 Professional incompetence is a question of fact, but the display by a member of a lack of knowledge, skill or judgment, or a disregard for the welfare of a member of the public served by the profession of a nature or to an extent that demonstrates that the member is unfit to:*
>
> *(a) continue in the practice of that member's profession; or*
>
> *(b) provide one or more services ordinarily provided as a part of the practice of that member's profession;*
>
> *is professional incompetence within the meaning of this Act.*

310. The decision in *Hosseini* made the following findings regarding the decision in *Swart.*

> *[102] The disciplinary proceedings* in Swart *were conducted pursuant to the* Medical Act, RSPEI 1988 c M-5*. While its findings on procedural fairness and the evidence appear unassailable, I find the court's analysis of that legislation difficult to follow. For example, at paras. 97-98, the court appears primarily concerned about preventing confusion between the concepts of professional misconduct, incapacity and unfitness to practice (the last seeming to involve competence), but the focus then turns largely to incapacity and illness of the physician, which were irrelevant to those proceedings.*

> *In my view, a close reading of Swart makes it difficult to draw from it principles that would be relevant to Dr. Hosseini's appeal.*
>
> *[103] When evaluating jurisprudence, particularly from other jurisdictions decided under different legislation, one must be cautious about taking broad statements and turning them into legal propositions. I can find no instance of a Canadian court applying the broad propositions that Dr. Hosseini attempts to rely on from Swart.*
>
> *[112] That leads to the question of "what severity of conduct can lead to a conviction of professional incompetence under the Act?". In my view, it is reasonable to say that a single act of mere negligence should not lead to a finding of professional incompetence. That does not equate to a finding that only gross negligence or more severe conduct could support a conviction. (emphasis added)*

311. The HPA defines unprofessional conduct to include displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services; contravention of the HPA, a code of ethics or standards of practice; contravention of another enactment that applies to the profession; and conduct that harms the integrity of the regulated profession. There is no mention of negligence in the definition of "unprofessional conduct" and the Hearing Tribunal was not referred to any CPSA Hearing Tribunal decision that stated that negligence was required. The Hearing Tribunal agrees with comments in *Hosseini* that one must be cautious about taking broad statements from other jurisdictions decided under different legislation and "turning them into legal propositions". The Hearing Tribunal finds that it is not necessary to find negligence in order to make a finding of unprofessional conduct.

VI. ORDERS

312. As a result of the Hearing Tribunal's finding of unprofessional conduct against Dr. Afridi, the Hearing Tribunal will need to determine what, if any, orders it will make pursuant to section 82 of the HPA.

313. The Hearing Tribunal will receive submissions on penalty from the parties. The Hearing Tribunal requests that the parties discuss the timing and method of providing submissions on penalty to the Hearing Tribunal and write to the Hearings Director with the proposal for making submissions on sanction.

314. If the parties are unable to agree on a proposed procedure and timing, the Hearing Tribunal will make further directions on this point.

Signed on behalf of the Hearing Tribunal by the Chair:

Naz Mellick

Dated this 29th day of March, 2023.