

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 ON COSTS**

I. INTRODUCTION

1. The Hearing Tribunal of the College of Physicians and Surgeons of Alberta met by video conference on February 6, 2025, to consider the parties' written submissions on costs. The members of the Tribunal were:

Ms. Naz Mellick (Chair and Public Member);

Dr. Kim Loeffler;

Dr. Vonda Bobart;

Mr. Douglas Dawson (Public Member).

2. Ms. Mary Marshall of Edmonton was also present and acted as independent legal counsel for the Tribunal.
3. Documents, submissions and case authorities reviewed and considered by the Hearing Tribunal included:

- A. Written Submissions of Dr. O. Afridi Re Hearing Costs dated October 11, 2024

Tab 1: *Health Professions Act*, RSA 2000, c H-7

Tab 2: *Jinnah v Dental Association*, 2022 ABCA 336

Tab 3: *Jaswal v Newfoundland (Medical Board)*, 1996 CarswellNfld 32 (Nfld. Trial Div.)

Tab 4: *Dr. Ignacio Tan III v Alberta Veterinary Medical Association*, 2024 ABCA 94

Tab 5: *Nsair (re)*, December 11, 2023 [Hearing Tribunal]

Tab 6: *De Nguyen (re)*, November 6, 2023 [Hearing Tribunal]

Tab 7: *Mowbrey (re)*, June 6, 2023 [Hearing Tribunal]

Tab 8: *Hafiz (re)*, October 26, 2023 [Hearing Tribunal]

Tab 9: January 16, 2024 letter to C. Boyer

- B. Letter to the CPSA Regarding Costs dated October 4, 2024 from the Complaints Director

Charkhandeh v. College of Dental Surgeons of Alberta, [2024] A.J. No. 810 | 2024 ABCA 239

- C. Costs to Date as of September 23, 2024

II. BACKGROUND

4. In its decision dated March 29, 2023, the Hearing Tribunal found Dr. Afridi guilty of unprofessional conduct pertaining to Allegation 2(i). Specifically, Dr. Afridi failed to meet the CPSA Standards of Practice on Patient Record Content by failing to record details regarding any discussion with his patient about the medication Ativan, including side effects, risks or restrictions that may occur.

5. Following the sanction hearing that took place on January 18, 19, and 22, 2024, the Tribunal issued its decision on September 20, 2024, and therein ordered the following: a reprimand with the Tribunal's written decision serving as that reprimand; and a fine of \$6,000 to the college.
6. The Tribunal convened on February 6, 2025, to consider the parties' written submissions respecting costs.

III. SUBMISSIONS

7. On behalf of the Complaints Director, Mr. Boyer indicated that the Complaints Director is seeking an order for Dr. Afridi to pay 10 percent of the total costs for the hearing based on the findings of the Tribunal.
8. Mr. Boyer provided the Statement of Costs to the end of August 2024, which included the cost of independent legal counsel for the Tribunal and the per diems paid to the Panel members. The approximate total figure amounted to \$178,000.00.
9. Mr. Boyer referred the Tribunal to paragraph 51 in the *Jaswal v. Newfoundland (Medical Board)* decision for factors to be considered when determining costs to be assessed in a disciplinary matter. He anticipated that Dr. Afridi may cite the Alberta Court of Appeal decision in *Jinnah v. Alberta Dental College and Association* for the proposition that he should not be responsible for any of the costs of the hearing. However, Mr. Boyer submitted that the Alberta Court of Appeal has granted leave to reargue the law on costs outlined in *Jinnah* in the upcoming appeal in *Charkhandeh v. Alberta Dental College and Association/College of Dental Surgeons of Alberta*.
10. Mr. Boyer submitted that the hearing in this matter has been long and complicated and did result in a finding of unprofessional conduct against Dr. Afridi. As such, Dr. Afridi should bear some responsibility for the costs of the hearing, and that 10 percent of the total cost would be a fair assessment in this matter.
11. On behalf of Dr. Afridi, Ms. Prather submitted that while Dr. Afridi acknowledges he should bear some responsibility for costs incurred by the College, only a modest cost order is appropriate because none of the *Jinnah* factors apply and Dr. Afridi was largely successful in defending almost all of the charges before the Tribunal.
12. Ms. Prather argued that none of the *Jinnah* factors were present in this matter, as:
 - a. The single proven subcharge is related to charting and is not relatively speaking serious unprofessional conduct;
 - b. Dr. Afridi is not a serial offender, with this matter being his first finding of unprofessional conduct;
 - c. Dr. Afridi fully cooperated with the College during the investigation; and
 - d. Dr. Afridi has not engaged in hearing misconduct.

13. Even where *Jinnah* factors were present, hearing tribunals in prior CPSA decisions set low maximums for costs. Ms. Prather cited four 2023 CPSA Hearing Tribunal decisions in *Nsair*, *De Nguyen*, *Mowbrey*, and *Hafiz* as illustrative.
14. Ms. Prather argued that the Complaints Director's position on costs is disproportionate to the severity of Dr. Afridi's unprofessional conduct and is excessive given the relevant factors in this matter. As outlined in Ms. Prather's submissions, those factors include the following:
 - a. The gravity of Dr. Afridi's unprofessional conduct is mitigated by an unproven subcharge in Allegation 1.
 - b. Dr. Afridi has incurred financial consequences as a result of these proceedings.
 - c. The costs order the Complaints Director is seeking is inconsistent with the principles of applicable law.
 - d. The Complaints Director had limited success in proving all the particulars and allegations cited in the Notice of Hearing.
 - e. The high costs of this matter was largely due to the manner in which the Complaints Director conducted the matter without due regard for the lack of evidence in support of the allegations against Dr. Afridi.
15. Ms. Prather submitted that the evidence and findings in this case do not support an exception to the general rule that the profession should bear most if not all of the costs. As such, Ms. Prather requests a cost award not exceeding \$5,000.00, as this amount is more in line with previous CPSA decisions.

IV. DECISION AND REASONS

16. The Tribunal carefully considered the parties' submissions regarding costs.
17. The Alberta Court of Appeal in *Jinnah* provided guidance to hearing tribunals on the issue of costs. While *Jinnah* will ultimately be reconsidered by the Court of Appeal, the guidance provided by the Court remains instructive for the Tribunal at this time. The Court of Appeal indicated that costs should not be ordered by default or on a formulaic basis. Unless a compelling reason to do so otherwise exists, the College should bear a significant amount of the cost of an investigation and hearing.
18. A compelling reason may exist in four different scenarios (*Jinnah*, paras. 139-143):
 - a. serious unprofessional conduct;
 - b. where the regulated professional is a serial offender;
 - c. where the regulated professional fails to cooperate with the College investigators and forces the College to expend more resources than is necessary to ascertain facts related to the complaint;

d. where the professional engages in hearing misconduct.

19. In the context of Dr. Afridi's unprofessional conduct, the Tribunal has determined that some costs are warranted and appropriate but should not amount to "a crushing financial blow". Dr. Afridi was the subject of three prior complaints that pertained to deficiencies related to maintaining adequate patient records, an integral part of patient care. According to the evidence regarding the prior complaints, Dr. Afridi engaged in educational programs and opened his patient records to extensive review and critique.
20. Moreover, the evidence showed that the prior complaints were resolved because Dr. Afridi successfully completed remediation, obtaining a strong level of competence associated with the relevant standard of practice, the same standard of practice at issue in the present proceedings.
21. In the Tribunal's view Dr. Afridi had all the necessary tools to assess his own compliance with the CPSA Standards of Practice related to patient records and avoid complaints and subsequent disciplinary actions. He failed to do so. In the present case Dr. Afridi ought to have discerned that he was once again deficient in his record keeping skills and obligations. As stated in the Tribunal's sanction decision, the resolution of the three previous complaints shows that Dr. Afridi was well-aware of his professional obligations and failed to meet them.
22. The Hearing Tribunal has the authority under the *Health Professions Act* to order regulated members found to have committed unprofessional conduct to pay some or all of the costs of the investigation and hearing into their conduct on a discretionary basis when appropriate. Section 82(1)(j) provides that the Hearing Tribunal can direct an investigated person to pay all or part of the expenses and fees including legal expenses and legal fees and travelling expenses and a daily allowance for members of the Hearing Tribunal.
23. For the reasons set out above, the Tribunal hereby orders Dr. Afridi to pay \$5,000 of the cost of the investigation and the hearing within six months from the date of the Tribunal's written decision on costs.

Signed on behalf of the Hearing Tribunal by the Chair:



Ms. Naz Mellick

Dated this 7th day of July, 2025.