

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. JOHANNES BOTHA

**DECISION OF THE HEARING TRIBUNAL OF  
THE COLLEGE OF PHYSICIANS  
& SURGEONS OF ALBERTA  
October 2, 2025**

## I. INTRODUCTION

1. The Hearing Tribunal of the College of Physicians and Surgeons of Alberta (“CPSA”) held a hearing into the conduct of Dr. Johannes Botha on August 19, 2025. The members of the Hearing Tribunal were:

Mr. Andrew Otway (Chair and public member);  
 Dr. Kim Myers;  
 Dr. Don Yee; and  
 Mr. Geoffrey Coombs (public member).

2. Appearances and observers:

Ms. Elizabeth Ulmer and Mr. Zachary Gerard, legal counsel for the Complaints Director;  
 and  
 Mr. Matthew Woodley acted as independent legal counsel for the Hearing Tribunal.

Dr. G [REDACTED] G [REDACTED] (Complaints Director, CPSA);  
 Mr. D [REDACTED] B [REDACTED] (Director of Professional Conduct, CPSA); and  
 Mr. C [REDACTED] B [REDACTED] (Program Manager, Hearings/Legal Referrals, CPSA)

3. Neither Dr. Botha nor legal counsel on his behalf attended the hearing.

## II. PRELIMINARY MATTERS

4. There were no objections to composition of the Hearing Tribunal nor the jurisdiction of the Hearing Tribunal to proceed with the hearing. The hearing was presumptively open to the public, and there was no application to close all or part of the hearing to the public.
5. However, as a preliminary matter, legal counsel noted that Dr. Botha was not in attendance, and that the Complaints Director would apply to the Hearing Tribunal to hold the hearing in the absence of the member, pursuant to section 79(6) of the *Health Professions Act, RSA 2000, c H-7* (“HPA”). In support of his application, the Complaints Director called two witnesses to speak to the issue of service of the Notice of Hearing.

C [REDACTED] B [REDACTED]

6. First, Mr. C [REDACTED] B [REDACTED], Associate Complaints Director for the CPSA testified. Mr. B [REDACTED] testified that Dr. Botha is an active member of CPSA, and that the current physician profile of Dr. Botha on the CPSA physician profile page indicates Dr. Botha’s registration number, and the mailing address provided by Dr. Botha (Exhibit 1). He testified that members provide an annual registration form with a due date of December 31 each year wherein a member provides CPSA with their current mailing address.

7. Mr. B [REDACTED] testified that the CPSA registration records show Dr. Botha on their special register for the period of August 2000 until July 2004 (Exhibit 2). He was then listed on another special register for the period of July 2005 to December 2009. Effective from January 2010 to the present, Dr. Botha is listed on the general register of CPSA.
8. A letter addressed to Dr. Botha that included a Notice of Hearing dated May 2, 2025 (Exhibit 3) was both emailed and sent by registered mail to the mail address provided by Dr. Botha as recorded on the CPSA physician profile page. The Notice of Hearing (Exhibit 4) set out the time, date and virtual location of the hearing. Also included in the Notice of Hearing are the allegations to be addressed and the composition of the Hearing Tribunal. The Notice of Hearing requested a reply from Dr. Botha to confirm that he takes no issue with the composition of the Hearing Tribunal and to confirm service. Mr. B [REDACTED] testified that this information was uploaded into the physician portal, and that as a result, Dr. Botha would have received an email advising him about important correspondence from the CPSA on the CPSA physician portal.
9. Mr. B [REDACTED] further testified with respect to a July 23, 2025 email from Ms. J [REDACTED] W [REDACTED], CPSA Hearing Coordinator to Mr. Craig Boyer, legal counsel for the Complaints Director (Exhibit 5). This email consists of the May 2, 2025 letter to Dr. Botha which included the Notice to Attend as well as confirmation (Exhibit 6) from Canada Post that confirmed the May 2, 2025 letter was set out on May 4, 2025 and delivered on May 7, 2025. The email states that somebody signed for the registered letter, although the CPSA cannot confirm who signed for the letter specifically.
10. Mr. B [REDACTED] testified about previous efforts to advise Dr. Botha about the fact of the complaint. He gave evidence about correspondence to Dr. Botha dated May 6, 2024, which was sent through the CPSA physician portal, which would have generated an email to Dr. Botha advising him that CPSA correspondence in his portal required his attention (Exhibit 7). This letter was from Ms. K [REDACTED] D [REDACTED] with the Professional Conduct Department at CPSA. The content of the letter was a CPSA standard form letter requesting Dr. Botha's initial response to the complaint received by the CPSA. It stipulated a deadline for reply of June 3, 2024, instructions on how to submit the response, encouragement to reach out to Canadian Medical Protective Association, and information on next steps in the process.
11. Further, Mr. B [REDACTED] described a June 6, 2025 letter to Dr. Botha (Exhibit 8) from Ms. K [REDACTED] D [REDACTED], delivered by email through the physician portal and through registered mail. The letter indicated that CPSA has tried unsuccessfully to contact Dr. Botha. It references the May 6, 2024, letter (Exhibit 7) and requests a response from Dr. Botha. Exhibit 8 further indicates that a telephone call and voice message dated June 3, 2025 were made by CPSA to the contact information listed on Dr. Botha's CPSA profile. A response deadline of June 27, 2024 is listed in the letter.
12. Mr. B [REDACTED] testified about a July 12, 2024 letter by CPSA to Dr. Botha delivered both by email and registered mail (Exhibit 9). This letter states that as a result of his refusal to

respond, the Complaints Director was adding a further allegation to the complaint file relating to that issue.

13. Mr. B [REDACTED] testified about a December 13, 2024 letter to Dr. Botha from Ms. B [REDACTED] W [REDACTED], Program Manager for the Hearing and Legal Referral Program, CPSA delivered through the CPSA physician portal (Exhibit 10). The letter indicates that CPSA has preliminary investigation findings and advises Dr. Botha that CPSA will be consulting with legal counsel in terms of next steps. The letter requests a response by Dr. Botha to the preliminary investigation findings by January 19, 2025. Enclosed with the letter is a summary of the preliminary investigation.
14. Mr. B [REDACTED] testified about a January 22, 2025 letter from B [REDACTED] W [REDACTED], CPSA, to Dr. Botha delivered through the CPSA physician portal (Exhibit 11). The letter included two enclosures for a total of fourteen pages. This letter advises Dr. Botha that the Professional Conduct department of CPSA has sent a draft Notice of Hearing to the Hearings Director's office to be finalized and to set a date for a Hearing. It also indicates that the Hearing Director would reach out to Dr. Botha for scheduling dates for the Hearing. The enclosures set out the draft Notice of Hearing and an information document outlining the hearing process.
15. In response to questions from the Hearing Tribunal, Mr. B [REDACTED] stated that based on his review of the file, including notes and activity logs, there was no written communication or engagement received back to CPSA from Dr. Botha to any of the CPSA's letters. Mr. B [REDACTED] notes that the file did indicate an October 25, 2024 voicemail from Dr. Botha to a CPSA investigator, Mr. M [REDACTED] H [REDACTED]. The voicemail was a message from Dr. Botha indicating he would call Mr. H [REDACTED] back. It is evident to the Hearing Tribunal that Dr. Botha was aware of the investigation, although nothing on the file indicated that Mr. H [REDACTED] and Dr. Botha spoke on telephone about those matters.

B [REDACTED] L [REDACTED]

16. Mr. B [REDACTED] L [REDACTED], the Director of Registration for the CPSA, also provided evidence on the preliminary matter. Mr. L [REDACTED] testified that a CPSA annual renewal notification was sent to members through a communication program called Mailchimp. Annual renewals are required to be filed by physicians no later than December 31 each year. The Mailchimp program allows the CPSA to track when the notices are opened by members.
17. He testified that an initial renewal notice was sent to Dr. Botha on November 5, 2024. This email was opened by Dr. Botha on November 7, 2024. A second notice was sent out to CPSA membership on November 26, 2024. This message was opened on Dr. Botha's email on November 26, 2024. A third notice was sent out to membership on December 17, 2024. Dr. Botha's email was opened on December 17, 2024. The fourth and last notice to membership was sent out on December 23, 2024. Dr. Botha's email was opened on December 23, 2024. Mr. L [REDACTED] testified that Dr. Botha had accessed the physician portal during this time period

in order to review the messages noted above. A summary of the renewal process communications and email activity to Dr. Botha in 2024 was prepared by Mr. L [REDACTED] as a memo to CPSA Complaints Director Dr. G [REDACTED] (Exhibit 12).

18. Mr. L [REDACTED] noted that the registration process involves two steps. One is completing the registration information form and the second is the payment of renewal fees. Dr. Botha's renewal information form was completed on December 29, 2024, and the payment of fees took place on January 6, 2025. Mr. L [REDACTED] confirmed that the email address for Dr. Botha that they used for the renewal process was the same email address on the CPSA physician profile page for Dr. Botha; he also testified about a January 6, 2025 email that he sent to the Complaints Director (Exhibit 13) stating that Dr. Botha's physician portal had been accessed on September 13, 2024 and on December 29, 2024.
19. In response to questions from the Hearing Tribunal, Mr. L [REDACTED] stated that he was unaware of any access to the physician portal by Dr. Botha after December 29, 2024, and that he would check on that issue and provide information to the Hearing Tribunal. Second, Mr. L [REDACTED] testified that he was not aware what a member would see when the physician logged into the physician portal, nor how long older messages would be retained in the system. Mr. L [REDACTED] again indicated that he would seek that information and provide it to the Hearing Tribunal.
20. Following the completion of the evidence on the preliminary issue, the Hearing Tribunal received submissions on proceeding with the hearing in the absence of Dr. Botha. Ms. Ulmer submitted that both Mr. B [REDACTED] and Mr. L [REDACTED] outlined in great detail the efforts made by CPSA to notify Dr. Botha of these proceedings. Mr. B [REDACTED] spoke to the processes used to effect service, which were consistent with CPSA's practices. Mr. L [REDACTED]'s testimony with respect to registration status confirmed the Dr. Botha did engage with the CPSA physician portal. That is, the evidence suggests that Dr. Botha would have seen the messages relating to the complaint and the investigation of it.
21. Section 79(6) of the HPA provides that if proof of notice was given, the Hearing Tribunal may proceed in the absence of the investigated member. Section 120(3) confirms that service of a Notice to Attend by registered mail to the member's address on the register is sufficient. Counsel submitted that the evidence before the Hearing Tribunal satisfies the requirements of the HPA with respect to notice, and as such the Hearing Tribunal is entitled to proceed in Dr. Botha's absence.
22. In reviewing the application to proceed with the hearing in the absence of Dr. Botha, the Hearing Tribunal carefully reviewed the testimony and exhibits provided with respect to the issue. The evidence of the Notice to Attend delivered by registered mail to the address on file by CPSA is, by itself, sufficient evidence to permit the Hearing Tribunal to proceed pursuant to section 120(3) of the HPA. The additional evidence of the Notice to Attend and broader and multiple invitations to Dr. Botha to respond to the allegations communicated through the physician portal demonstrates further (in additional to the minimum

requirement) efforts by the CPSA to engage Dr. Botha. The outreach by the CPSA investigator, which included testimony of a voice message left by Dr. Botha to the CPSA provides additional comfort to the Hearing Tribunal that the CPSA made every effort to communicate with Dr. Botha and that Dr. Botha was, at a minimum, aware of the complaint and investigation.

23. A member of a regulated profession cannot frustrate the disciplinary process set out in legislation designed to protect the public by simply refusing to participate. It is incumbent upon each member to participate in disciplinary proceedings, and the HPA has created a specific discretion for a Hearing Tribunal to proceed in the absence of the member. The evidence before the Hearing Tribunal confirms that Dr. Botha was served in accordance with the HPA. Therefore, the Hearing Tribunal directed that the hearing may proceed in the absence of Dr. Botha.
24. Legal counsel for the Complaints Director requested that the evidence adduced on the preliminary application be made evidence in the hearing relating to the allegations given the fact that they evidence related to one of the allegations before the Hearing Tribunal. In order to increase efficiency, the Hearing Tribunal directed that the evidence of Mr. B. [REDACTED] and of Mr. L. [REDACTED] would be evidence in the hearing relating to the allegations.

### III. ALLEGATIONS

25. The Notice of Hearing listed the following allegations:
  1. During the period of 2007 to 2022, you did fail to create an adequate record for your patient, [REDACTED] (DOB – [redacted]), particulars of which include one or more of the following:
    - a. History of presenting concern often not recorded;
    - b. Absence of details regarding duration and severity of symptoms, relieving or exacerbating factors or associated symptoms;
    - c. Multiple encounters for behavioral disturbances, depression, anxiety or ADHD which lacked appropriate rating scale tools;
    - d. Lack of notes regarding early childhood developmental milestones;
    - e. Lack of details on asthma severity or inhaler use;
    - f. Systemic examination findings from physical examinations generally not recorded;
    - g. No documentation of any complete physical examination having been undertaken;
    - h. Neurological examinations were missing when patient had been evaluated for suspected tic disorder;
    - i. Surgical and allergy histories were not recorded in chart; and

- j. Inadequate information to justify diagnosis and treatment on multiple occasions.
2. You did fail or refuse to comply with a request or cooperate with a CPSA investigator, particulars of which include one or more of the following:
- a. Initial letter to you requesting your response dated May 6, 2024;
  - b. Further letter to you requesting your response dated June 6, 2024;
  - c. Further letter to you regarding requested response dated July 12, 2024;
  - d. Further letter to you regarding requested response dated September 4, 2024;
  - e. Further letter to you regarding requested response dated September 23, 2024;
  - f. Further letter to you with request to respond to expanded scope of investigation dated October 2, 2024;
  - g. Further letter to you regarding request for response to expanded scope of investigation dated October 21, 2024;
  - h. Further letter to you regarding initial request for response and response to expanded scope of investigation dated November 7, 2024; and
  - i. Further letter to you regarding further expansion of scope to include your failure to respond to a request by an investigator dated November 26, 2024; and
  - j. Further letter to you dated December 13, 2024 regarding the findings of the investigation and a request for your response by January 10, 2025.
26. Despite the fact that Dr. Botha did not attend the hearing, the Hearing Tribunal was attentive to the fact that the Complaints Director bore the burden of establishing the facts underlying the Allegations on a balance of probabilities and that, if proven, the facts constituted unprofessional conduct as defined in the HPA.

#### IV. EVIDENCE

27. The following Exhibits were entered into evidence during the hearing:
- 1. 2025-08-14 Physician details from physician profile on CPSA online physician directory for Dr. Johannes Botha;
  - 2. 2025-08-14 Register history from physician profile on CPSA online physician directory for Dr. Johannes Botha;
  - 3. 2025-05-02 CPSA cover letter to Dr. Botha with notice of hearing;
  - 4. 2025-05-02 Notice of Hearing;
  - 5. 2024-07-23 emails exchanged between J. W. [REDACTED] and C. Boyer re: serving Notice of Hearing (4 pages);
  - 6. 2025-05-08 Canada Post registered mail delivery confirmation;
  - 7. 2024-05-06 CPSA letter to Dr. Botha re: complaint;
  - 8. 2024-06-06 CPSA letter to Dr. Botha re: response deadline;
  - 9. 2024-07-12 CPSA letter to Dr. Botha re: failure to respond;

10. 2024-12-13 CPSA letter to Dr. Botha re: investigation report (12 pages);
  11. 2025-01-22 CPSA letter to Dr. Botha re: notice to physician (14 pages);
  12. 2025-01-03 Memo from B. L. [REDACTED] re: Dr. Johannes Botha;
  13. 2025-01-06 Email from B. L. [REDACTED] to Dr. Giddings;
  14. Dr. Botha - Clinical notes (71 pages);
  15. 2024-04-02 Dr. Botha letter with chart notes (69 pages);
  16. 2024-03-21 Complaint Form;
  17. 2024-09-04 CPSA letter to Dr. Botha re: request for interview;
  18. 2024-09-23 CPSA letter to Dr. Botha re: no response
  19. 2024-10-02 CPSA letter - expansion re: completeness of patient record;
  20. 2024-10-21 CPSA letter to Dr. Botha re: response to expansion;
  21. 2024-11-07 CPSA letter to Dr. Botha re: response;
  22. 2024-11-26 CPSA letter to Dr Botha re: failure to respond;
  23. Curriculum vitae of Dr. G. [REDACTED] B. [REDACTED];
  24. 2024-10-15 CPSA letter to Expert - Dr. B. [REDACTED];
  25. 2024-11-08 Expert Opinion from Dr. B. [REDACTED];
  26. 2024-12-05 CPSA letter to Expert re: clarification;
  27. 2024-12-08 Expert Addendum by Dr. B. [REDACTED].
28. In relation to the allegations set out in the Notice of Hearing, the Complaints Director called three witnesses.

*The Complainant, [REDACTED]*

29. First, the complainant, [REDACTED], provided evidence about the care received by her son (the "Patient") from Dr. Botha. During the period covered by the complaint, the Patient was a minor. At the time of the hearing, the Patient was 18 years old and is no longer under the care of Dr. Botha.
30. [REDACTED] described health issues with the Patient that were first noticed when the Patient was two years old. By the time the Patient was in grade 2, anger and behavioral issues were noted. When the Patient was in grade 5, the school system arranged for medical testing of the Patient, and the diagnoses were "IED, ODD, ADHD, depression [and] Tourette's" (Transcript at 47, lines 5-6). [REDACTED] testified that Dr. Botha was the family physician for the Patient and was involved in the care of the Patient and his conditions as well as any physical ailments. On average, [REDACTED] estimated that she would take the Patient to see Dr. Botha four or five times a year. Dr. Botha would also refer the Patient to other specialists throughout his time as Dr. Botha's patient. [REDACTED] described trusting Dr. Botha wholeheartedly.
31. [REDACTED] was required to seek another family doctor after experiencing issues with Dr. Botha's secretary, in particular challenges with arranging sleep tests and a prescription for a CPAP machine. [REDACTED] was told she needed to travel to Calgary for the sleep test after being on a

waiting list for two years. After the test, █████ waited for Dr. Botha to reach out to discuss the results of the sleep test. When █████ did not hear from Dr. Botha, █████ called Dr. Botha's office approximately six weeks later and was told by Dr. Botha's receptionist that Dr. Botha had not received the results. After confirming with the sleep clinic that the results were on Netcare and so accessible to Dr. Botha, █████ called Dr. Botha's office again. During this second call, █████ and Dr. Botha's secretary got into a heated discussion. A week after this call █████ received a letter from Dr. Botha's office indicating that Dr. Botha could no longer be █████'s family physician.

32. █████ contacted a family physician in Bon Accord, who agreed to take her family on as patients. The clinic in Bon Accord advised █████ that they would contact Dr. Botha's office to obtain the Patient's medical records. After two attempts to get these records by the clinic, █████ contacted Dr. Botha's office herself to expedite the record transfer. Dr. Botha's office advised that they required a fee of \$85 before doing so. █████'s husband paid this fee in person at Dr. Botha's office and received an envelope with the Patient's medical records.
33. Upon review of the contents of the records in the envelope provided, █████ testified that the contents consisted of test results, x-rays and referrals but did not include any doctor's notes (Exhibit 14) arising from visits by the Patient with Dr. Botha. █████ provided the contents of Exhibit 14 to her new family physician, who advised █████ that they would attempt again to contact Dr. Botha's office for the missing doctor's notes. The new family physician's office in Bon Accord also suggested that █████ consider filing a complaint with the CPSA. Fearful that she would need Dr. Botha's notes on the Patient as supporting documentation for government disability tax credits, █████ filed her complaint with CPSA on March 21, 2025 (Exhibit 15).
34. Following her complaint to CPSA, █████ received in the mail an envelope from Dr. Botha's office (Exhibit 14.1) with more documentation with respect to the Patient's care. █████ in turn provided these records to her new family physician. █████ described that the complaint to the CPSA was motivated by her concern that █████'s son would receive the disability supports he needed, including post-secondary supports, and that these would require medical record verification.
35. The Hearing Tribunal asked █████ as to whether, in her opinion, the medical records she received from Dr. Botha were complete. █████ advised she was not certain given the passage of time, but she does not feel that the medical records are complete.

M █████ H █████

36. The Complaints Director also called Mr. M █████ H █████, the CPSA Investigator assigned to the complaint against Dr. Botha, to give evidence to the Hearing Tribunal. Mr. H █████ testified that he was assigned to investigate the complaint about Dr. Botha by the Associate Complaints Director, on September 4, 2024. On that date, Mr. H █████'s office sent out interview requests to █████ and to Dr. Botha (Exhibit 16). Dr. Botha did not respond to the

initial interview request, so a reminder message was sent to Dr. Botha on September 23, 2024 (Exhibit 17).

37. Mr. H [REDACTED] interviewed [REDACTED] on September 24, 2024, and the details provided during the video interview were consistent with the initial complaint. Mr. H [REDACTED] testified that [REDACTED] confirmed that she received the second set of medical records from Dr. Botha after [REDACTED] had made her complaint to CPSA.
38. On September 24, 2024, Mr. H [REDACTED] attempted to contact Dr. Botha by telephone. This call was to Dr. Botha's clinic. The clinic did not pick up this call, and Mr. H [REDACTED] did not recall leaving a voice message. On September 25, 2024, [REDACTED] provided Mr. H [REDACTED] with the patient records she had received from Dr. Botha for the Patient. On review of these documents through the lens of Standards of Practice, Mr. H [REDACTED] felt these records were very limited. Mr. H [REDACTED] testified that histories of presenting concerns, assessments, plans, and previous visit information were missing from the records. Based on this review, Mr. H [REDACTED] made the determination on October 2, 2024 to expand the scope of his investigation to include the accuracy of the patient record for the Patient. Dr. Botha was advised through the physician portal and related automated email of the expanded scope of the investigation (Exhibit 18).
39. On October 17, 2024, Mr. H [REDACTED] telephoned Dr. Botha on his personal phone and on his office phone line at numbers listed on Dr. Botha's CPSA member database entry. There was no answer on his personal phone line, so Mr. H [REDACTED] left a voicemail requesting Dr. Botha call him back. Mr. H [REDACTED] testified that his standard practice was to identify himself, his role with CPSA, and his phone number. For the phone call to Dr. Botha's office, Mr. H [REDACTED] was able to speak with a staff member named M [REDACTED]. Mr. H [REDACTED] identified himself and asked that a message and his phone number be left for Dr. Botha to contact him.
40. On October 21, 2024, correspondence was sent to Dr. Botha both through registered mail and through the physician portal. The letter was a reminder to Dr. Botha of his duty to respond to the Investigator and gave a specific deadline of November 4, 2024 for Dr. Botha to respond (Exhibit 19). On October 22, 2024, Mr. H [REDACTED] received a phone call from a staff member of Dr. Botha named M [REDACTED] to inquire as what would be a good time for Dr. Botha to contact Mr. H [REDACTED]. While Mr. H [REDACTED] could not remember the exact wording of his response, his standard practice was to provide his office hours as his availability for such a call.
41. On October 25, 2024 Dr. Botha called Mr. H [REDACTED] at approximately 12:00pm. Mr. H [REDACTED] was not at his desk and as such Dr. Botha left a voice message stating he would call Mr. H [REDACTED] back later that day. Mr. H [REDACTED] did not receive this follow-up call from Dr. Botha. On November 1, 2024, Mr. H [REDACTED] called Dr. Botha on his personal phone line. Mr. H [REDACTED] left a voicemail asking Dr. Botha to contact him Mr. H [REDACTED] at his office number. There was no response.
42. On November 7, 2024, a final reminder was sent out to Dr. Botha regarding the expansion of the scope of the investigation and his duty to respond. This was sent out by registered

mail and through the physician portal (Exhibit 20). On November 8, 2024, Mr. H [REDACTED] received the expert opinion he had requested from Dr. B [REDACTED] relating to the adequacy of the medical records for the Patient.

43. On November 26, 2024, Mr. H [REDACTED] sent a notification to Dr. Botha advising him of the final expansion of the scope of the investigation arising from the failure to respond an investigator's request by Dr. Botha (Exhibit 21).
44. On review of the expert opinion, Mr. H [REDACTED] called Dr. B [REDACTED] on December 3, 2025 requesting further clarification on the expert opinion. A letter from Mr. H [REDACTED] to Dr. B [REDACTED] outlining the areas for clarification was sent on December 5, 2024. Dr. B [REDACTED] responded to this request for clarification in writing on December 9, 2024.
45. Mr. H [REDACTED] completed his investigation and presented his findings to the Complaints Director on December 12, 2024. The Hearing Tribunal asked Mr. H [REDACTED] as to whether he knew if Dr. Botha had accessed the correspondence sent to him via the CPSA physician portal. Mr. H [REDACTED] could confirm that Dr. Botha's portal account was accessed on September 4, 2024 and in May 2024 to view the initial complaint by [REDACTED]

Dr. [REDACTED]

46. Dr. [REDACTED] was called to give opinion evidence as an expert witness. Dr. [REDACTED]'s CV was presented to the Hearing Tribunal (Exhibit 22). Legal counsel for the Complaints Director requested that the Hearing Tribunal recognize Dr. [REDACTED] as being qualified to give expert evidence on the practice of family medicine. The Hearing Tribunal questioned Dr. [REDACTED] in relation to his level of expertise in family medicine, including whether he had supervised medical learners in his rural practice, had been involved in the examination process for the College of Family Physicians of Canada, or had taken specific courses relating to medical record keeping and charting. In response, Dr. [REDACTED] indicated that he had some limited experience in supervising medical learners, that he had no involvement in the exam process, and that he had taken a recordkeeping course through the CPSA as a result of being subject to a peer review process.
47. Despite some reservations in relation to whether Dr. [REDACTED] had materially more expertise than the physician members of the Hearing Tribunal in relation to medical records and charting, the Hearing Tribunal ultimately accepted Dr. [REDACTED] as an expert witness qualified to give opinion evidence relating to family medicine practice.
48. Dr. [REDACTED] testified that in a letter dated October 15, 2024, the CPSA requested him to assess the medical records for the Patient to ascertain as to whether these records complied with the CPSA Standard of Practice – Patient Record Content (“Standard of Practice”) and adhered to the CMA *Code of Ethics and Professionalism* (Exhibit 23). Included with this engagement letter were a copy of the complaint by DH as well as the clinical records released to [REDACTED] for the Patient.

49. In reviewing the patient records for the Patient, Dr. [REDACTED] found the records to be fairly chaotic with regard to presentation. Some of the records were not very legible and most of the record was handwritten. There was no sign of a cumulative patient profile recording the patient's medical history, social history, allergies, or treatments. There was no record of who was present with the patient at appointments and weights. There were very few entries regarding presenting symptoms, history, vital signs, physical examinations or percentiles. Dr. [REDACTED] noted that percentile entries are of particular importance for pediatric patients.
50. Dr. [REDACTED] did not see much evidence of differential diagnosis or a thorough treatment plan or diagnostic considerations. There was very little record of virtual visits with [REDACTED] when documenting telephone calls. Dr. [REDACTED] was of the opinion that there was not adequate note taking and recordkeeping with respect to the care of the Patient. Dr. [REDACTED] pointed to specific deficiencies in the record keeping with respect to the mental health records for the Patient. There was little documentation with regards to symptoms of mental health. There were no scales to assess the severity of the Patient's depression, which was especially important with regard to changes in medication and an episode of suicidal ideation. There was no documentation with respect to developmental milestones, no Rourke charts or percentile charts.
51. Dr. [REDACTED] also noted that with respect to the diagnosis of asthma, there was no mention of asthma severity, if the Patient experienced any acute exacerbations, inhalers he was using and how frequent his use of rescue treatment. There was also no record of checking the Patient's vitals, peak flows, any auscultation of his lungs, or any signs of atopic symptoms.
52. Dr. [REDACTED] testified that clinical decision making was poorly documented. Medications were prescribed however the weight, the dosages and reason for prescribing those medications was not clearly present in Dr. Botha's notes. In reviewing EMR documentation in the later part of the Patient's records, the notes were also sparsely populated with data. Dr. [REDACTED] did not see adequate documentation regarding consent process for adjusting medications.
53. Dr. [REDACTED]'s original opinion was dated November 8, 2024 and was submitted to the CPA (Exhibit 24). On December 5, 2025, the CPSA wrote to Dr. [REDACTED] seeking clarification with respect to his expert opinion (Exhibit 25). This letter requests Dr. [REDACTED] to provide an expert opinion as to whether, based on his chart review, he could opine as to whether Dr. Botha met the Standard of Practice or if he performed any actions that were inappropriate.
54. In reply to this letter, Dr. [REDACTED] provided a December 8, 2024 addendum to his expert opinion (Exhibit 26), indicating that he could not come to any definitive conclusions with respect to whether Dr. Botha engaged in malpractice or dangerous care based on the patient chart.

55. Ultimately, with respect to the Patient, Dr. ██████ was of the opinion that Dr. Botha did not meet the Standard of Practice.

## V. SUBMISSIONS

56. Following the completion of the evidence, legal counsel was invited to make submissions to the Hearing Tribunal in relation to the allegations. Legal counsel for the Complaints Director submitted that there is sufficient evidence for the Hearing Tribunal to find, on a balance of probabilities, that Dr. Botha engaged in unprofessional conduct as defined in section 1(1)(pp) of the HPA on both of the allegations in the Notice of Hearing.
57. First, legal counsel for the Complaints Director indicated that the evidence demonstrated that Dr. Botha contravened the HPA by failing to meet the Standard of Practice with respect to the Patient between 2007 and 2022 as set out in the allegation. He stated that the failure was clear and ongoing, and the patient records did not include significant information which is required by the Standard of Practice.
58. The Complaints Director's counsel noted that the Standard of Practice sets out the minimum requirements for patient recordkeeping. As set out in *Re Afridi*, 2023 CanLII 116910, these standards are not aspirational but rather a required minimum. As highlighted in the expert evidence of Dr. ██████ the integrity of the patient record is fundamental to the provision and continuity of care, patient safety, and professional accountability. Dr. Botha's recordkeeping was fundamentally lacking in the present matter and he was of the opinion that Dr. Botha's recordkeeping did not meet the required standards.
59. The Complaints Director's counsel submitted that in *Re McMahon*, 2024 CanLII 84902, a hearing tribunal summarized the expectation that physicians must document each encounter, including presenting concerns, relevant findings, assessment, plan, prescription, cumulative profiles and risk factors. In that case, the failure to do so was found to be unprofessional conduct pursuant to section 1(1)(pp)(ii) of the HPA. Further, in *Re Afridi*, a hearing tribunal clarified that perfection is not required, nor is a finding of negligence required to meet the threshold of unprofessional conduct. Rather, the issue is whether the records are consistently lacking in fundamental elements. Counsel submitted that the evidence of Dr. ██████ confirmed that Dr. Botha's charts were repeatedly deficient. This was not an isolated lapse but a systemic failure over many years to meet the required standards for recordkeeping.
60. Second, legal counsel stated that Dr. Botha had clearly refused to comply with a request or to cooperate with an investigator, which is part of the definition of unprofessional conduct (s 1(1)(pp)(vii)(B)) in the HPA. Counsel for the Complaints Director submitted that the evidence before the Hearing Tribunal establishes a pattern of non-response by Dr. Botha. Dr. Botha repeatedly refused to cooperate, respond and comply with CPSA throughout the investigation process regarding the complaint and the issues identified in the Notice of Hearing.

61. Legal counsel for the Complaints Director submitted that, on the balance of probabilities, Dr. Botha engaged in unprofessional conduct by failing to comply with the Standard of Practice and by failing to cooperate with the CPSA investigator. As such, the Complaints Director asked the Tribunal to make the findings of unprofessional conduct pursuant the HPA on those two allegations.

## **VI. DECISION WITH REASONS**

62. The Hearing Tribunal carefully considered the evidence, testimony and submissions before it.

### *Allegation 1*

63. In relation to allegation 1, the Hearing Tribunal finds on a balance of probabilities that the essential facts are proven. The Hearing Tribunal finds that all of the medical records that were created by Dr. Botha for the Patient are before it given the process followed by the Complainant in obtaining them. Further, the Hearing Tribunal has no hesitation in concluding that the records created by Dr. Botha are clearly inadequate, and that the particulars set out in allegation 1 are true:
- a. History of presenting concern often not recorded;
  - b. Absence of details regarding duration and severity of symptoms, relieving or exacerbating factors or associated symptoms;
  - c. Multiple encounters for behavioral disturbances, depression, anxiety or ADHD which lacked appropriate rating scale tools;
  - d. Lack of notes regarding early childhood developmental milestones;
  - e. Lack of details on asthma severity or inhaler use;
  - f. Systemic examination findings from physical examinations generally not recorded;
  - g. No documentation of any complete physical examination having been undertaken;
  - h. Neurological examinations were missing when patient had been evaluated for suspected tic disorder;
  - i. Surgical and allergy histories were not recorded in chart; and
  - j. Inadequate information to justify diagnosis and treatment on multiple occasions.
64. The testimony of the expert witness with respect to deficiencies in the creation and maintenance of an appropriate patient record was compelling and thorough. The fundamental charting requirements of adolescent development milestones were absent. Also missing were any appropriate rating tools or scales for treatment of ongoing mental

health issues and records of medical histories and complete and/or systemic physical examination findings.

65. In addition to these fundamental charting guides, where treatment was provided by Dr. Botha, the Patient's record was deficient with respect to information justifying the diagnoses and treatments provided. Fundamental surgical histories were missing, and allergy treatments were not supported by the chart history. Also absent from the chart were neurological examination information regarding a suspected tic disorder. Furthering the challenges with Dr. Botha's patient recordkeeping were the significant illegibility of the sparse hand-written notes that were present.
66. The Standard of Practice requires that, at a minimum, a regulated member must properly document encounters in a patient record. A regulated member must ensure that the clinical notes for each patient encounter contain information on presenting concerns, relevant findings, assessment and plans, and follow up where indicated. The Standard of Practice further requires that a cumulative patient profile is maintained that details elements including allergies, medical history, social history, and health maintenance plans.
67. The failure of Dr. Botha to maintain an accurate patient record for the Patient is a breach of the Standard of Practice. Failing to meet the minimum requirement of the Standard of Practice is a breach of section 1(1)(pp)(ii) of the HPA. This failure was longstanding and does not reflect intermittent errors or omissions. They reflect a systemic failure by Dr. Botha to comply with the minimum requirements relating to recordkeeping for a patient with significant and complicated health conditions.
68. For those reasons, the Hearing Tribunal finds Dr. Botha guilty of unprofessional conduct in relation to allegation 1.

#### *Allegation 2*

69. In relation to allegation 2, the Hearing Tribunal also finds on a balance of probabilities that the essential facts are proven.
70. The Complaints Director provided a comprehensive and throughout accounting of the efforts by the CPSA to engage Dr. Botha at the earliest notice of this complaint. The efforts of the Complaints Director include multiple requests for Dr. Botha to respond to the complaint, to participate in the ensuing investigations, and to respond to all allegations.
71. Over the period of May 2024 to December 2024, the evidence proves that CPSA Complaints Director and the CPSA Investigator reached out to Dr. Botha on ten occasions as noted in the particulars to allegation 2. These attempts by the CPSA to contact and engage Dr. Botha included registered mail, telephone, and the CPSA physician portal/email. The contact information for the mail, personal phone, business phone, and email were the exact contact information provided by Dr. Botha himself to the CPSA.

72. There can be no doubt that Dr. Botha was aware of the complaint to the CPSA and the subsequent investigation as demonstrated by the records of delivery of registered mail and by the voice mail left to the CPSA investigator by Dr. Botha on October 25, 2024.
73. Dr. Botha was provided every reasonable opportunity to participate in the investigation and that Dr. Botha refused to avail himself of these opportunities. This represents a failure of refusal to cooperate with an investigator and meets the definition of unprofessional conduct.
74. As noted, it is incumbent upon members of a regulated profession to fully participate in and cooperate with a regulatory investigation. The medical profession has been granted the privilege of self-regulation, and such a privilege also comes with responsibilities upon each member of the profession to comply with complaint, investigation and disciplinary proceedings. A failure by a member to do so is inconsistent with the public interest. Dr. Botha's failures to reply were repeated and are sufficiently serious to amount to unprofessional conduct.

## VII. ORDERS

75. As a result of the findings of unprofessional conduct in relation to allegations 1 and 2, the Hearing Tribunal seeks submissions on appropriate sanctions under section 82 of the HPA. The Hearing Tribunal requests that the Complaints Director provide it with a copy of any previous decision of unprofessional conduct relating to Dr. Botha (if any) pursuant to section 81 of the HPA.
76. Further, the Hearing Tribunal directs that the Hearings Director serve a copy of this decision on Dr. Botha in accordance with the service provisions in the HPA, by email to any email address provided by Dr. Botha to the CPSA, and that reasonable efforts be made to notify Dr. Botha by telephone about the fact of the decision and how he may access it.
77. If Dr. Botha wishes to participate in the sanction phase of the hearing, he may do so. However, if Dr. Botha continues to fail to respond and participate, legal counsel for the Complaints Director may arrange for the delivery of written submissions on sanction to the Hearing Tribunal.

Signed on behalf of the Hearing Tribunal by the Chair:



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Mr. Andrew Otway

Dated this 2<sup>nd</sup> day of October, 2025.