

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

IN THE MATTER OF
A HEARING UNDER THE *HEALTH PROFESSIONS ACT*,
R.S.A. 2000, c. C-7

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF DR. ISMAIL TAHER

INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Dr. Ismail Taher on July 12, 2017. The members of the Hearing Tribunal were:

Dr. Randall Sargent of Canmore as Chair, Dr. Robert Warren of Sundre and Ms. Nancy Brook of Ryley (public member). Mr. Greg Sim acted as independent legal counsel for the Hearing Tribunal.

In attendance at the hearing were Mr. Craig Boyer, legal counsel for the Complaints Director of the College of Physicians & Surgeons of Alberta, Dr. Ismail Taher and Mr. Patrick Nugent, legal counsel for Dr. Taher.

Accompanying Mr. Nugent was articling student Mr. Mark Wells and accompanying Mr. Boyer was articling Mr. Joey Redman.

There were no objections to the composition of the Hearing Tribunal or the jurisdiction of the Hearing Tribunal to proceed with a hearing.

The Notice of Hearing entered into evidence set out the following allegations:¹

ALLEGATIONS

1. On May 21, 2015, you were convicted of an offence under Section 271 of the Criminal Code of Canada relating to events on August 17, 2013 when you did commit a sexual assault on your patient, J.M.;
2. On July 13, 2016, you were convicted of an offence under Section 271 of the Criminal Code of Canada relating to events on June 6, 2013 and June 29, 2013 when you did commit a sexual assault on M.N., an employee of the medical clinic in which you were working on those dates; and
3. On July 13, 2016 you were convicted of an offense under Section 266 of the Criminal Code of Canada relating to events on August 16, 2013 when you did assault A.G., an employee of the medical clinic in which you were working on that date;

PRELIMINARY MATTERS

No preliminary matters were raised.

¹ Names have been replaced by initials throughout this decision.

EVIDENCE – EXHIBITS

The Complaints Director and Dr. Taher agreed to presentation of a joint Exhibit Book to the Hearing Tribunal. The Complaints Director and Dr. Taher also provided an Agreed Statement of Facts. The agreed exhibits and the Agreed Statement of Facts were entered into evidence as follows:

Exhibit 1	Notice of Hearing dated December 1, 2016	Page 1
Exhibit 2	Certificate of Conviction on May 21, 2015	Page 4
Exhibit 3	Certificate of Conviction on July 13, 2016	Page 5
Exhibit 4	Reasons for Judgement of the Honourable Madam Justice J.H. Goss dated April 22, 2015	Page 10
Exhibit 5	Stay Order granted by Court of Appeal dated June 24, 2015	Page 21
Exhibit 6	Memorandum of Judgment of the Alberta Court of Appeal dated June 13, 2016	Page 23
Exhibit 7	Reasons for Decision by the Honourable Judge S.R. Creagh dated June 2, 2016	Page 29
Exhibit 8	Warrant of Committal on Conviction as varied on August 30, 2016	Page 50
Exhibit 9	Undertaking between Dr. Ismail Taher and the College of Physicians & Surgeons of Alberta dated November 22, 2013	Page 52
Exhibit 10	Undertaking between Dr. Ismail Taher and the College of Physicians & Surgeons of Alberta dated May 11, 2015	Page 54
Exhibit 11	Comprehensive Occupational Assessment Program report dated December 19, 2016	Page 55
Exhibit 12	Comprehensive Occupational Assessment Program report dated June 27, 2017	Page 76
Exhibit 13	Agreed Statement of Facts	

The Chair asked Dr. Taher if he wished to waive the reading of the allegations. Dr. Taher and his counsel Mr. Nugent did request the reading be waived. The Chair then asked Dr. Taher “do you admit or deny the allegations?” Dr. Taher confirmed that he admitted the three allegations.

SUBMISSIONS

The Chair then asked Mr. Boyer to proceed with his submissions on behalf of the Complaints Director.

Mr. Boyer summarized the three allegations of unprofessional conduct and acknowledged Dr. Taher’s admissions. Mr. Boyer also provided the Hearing Tribunal with an overview of the joint exhibits and the agreed facts.

Mr. Nugent provided the Tribunal with submissions confirming that the joint exhibits included a decision from the Alberta Court of Queen's Bench by which Dr. Taher was convicted of sexual assault of a patient as well as a decision of the Alberta Court of Appeal dismissing Dr. Taher's appeal from that conviction. That conviction gives rise to allegation 1 in the Notice of Hearing.

The joint exhibits also included a decision of the Alberta Provincial Court by which Dr. Taher was also convicted of sexual assault of a co-worker and assault of another co-worker. These convictions give rise to allegations 2 and 3 in the Notice of Hearing.

Mr. Nugent explained that the joint exhibits also set out the sentences imposed on Dr. Taher in the criminal proceedings. In relation to his sexual assault of a patient Dr. Taher received a 12 month suspended sentence and he was ordered to pay \$5000 in restitution. In relation to his convictions for sexual assault and assault of co-workers, Dr. Taher received 2 years of probation, 30 days of incarceration served intermittently and he was ordered to pay a victim fine surcharge.

Mr. Nugent also confirmed that Dr. Taher admitted the allegations.

FINDINGS

The Hearing Tribunal has carefully reviewed the joint exhibits which include the decisions in the criminal proceedings in the Alberta Court of Queen's Bench, the Alberta Court of Appeal and the Alberta Provincial Court and Comprehensive Occupational Assessment Program (COAP) reports dated December 19, 2016 and June 27, 2017.

The Tribunal will not conduct a detailed recitation of the facts as found proven in Dr. Taher's criminal proceedings and as related to the authors of the COAP reports, but the Tribunal was satisfied that Dr. Taher's admissions in this hearing were appropriate in light of the Court's fact findings and the information said to have been reported to the COAP report authors. A brief summary of facts is appropriate.

Allegation 1 was based on Dr. Taher's conduct in relation to his patient J.M. on August 17, 2013. Dr. Taher was convicted of sexually assaulting J.M. and specifically that he touched her buttock and touched and massaged her breasts without J.M.'s consent to do so, or at least that Dr. Taher was reckless or willfully blind as to whether J.M. consented.

Dr. Taher's conduct towards J.M. occurred during an unchaperoned patient examination in which Dr. Taher had been asked to assess whether a nose piercing and a tattoo on the patient's hip and thigh may be infected or irritated. Dr. Taher did not suggest he had any medical basis to touch the patient's buttock or breasts.

In the COAP report of December 19, 2016 the report authors wrote that Dr. Taher had acknowledged this conduct towards J.M. and had reported to them that at the time he had believed the patient's attire and behavior had been an indication that she had been giving him "an invitation".

Allegation 2 was based on Dr. Taher's conduct in relation to a co-worker, M.N. on June 6, 2013 and June 29, 2013. Dr. Taher was convicted of sexually assaulting M.N. by placing his hand against M.N.'s body while she was carrying patient charts and pushing up against her breast on June 6, 2013 and by pinching her breast or nipple and by pinching her buttock on June 29, 2013.

In the COAP report of December 19, 2016 the authors reported that Dr. Taher had also admitted this conduct towards M.N. to them.

Allegation 3 was based on Dr. Taher's conduct in relation to another co-worker, A.G. on August 16, 2013. Dr. Taher was convicted of assaulting A.G. by grabbing her by her hips and in a second instance on the same date by grabbing her by her arm.

The Hearing Tribunal was satisfied that Dr. Taher's conduct towards his patient J.M. was unwarranted and unprofessional. The public and the profession would be shocked that a member of the medical profession would behave as Dr. Taher did towards J.M. Dr. Taher's conduct undoubtedly harms the integrity of the medical profession in the eyes of the public and constitutes unprofessional conduct.

The Hearing Tribunal was also satisfied that Dr. Taher's conduct towards M.N. and A.G. was unwarranted and unprofessional. The lack of a physician-patient relationship between Dr. Taher and M.N. and A.G. does not change the fact that physicians are professionals held in high regard by the public. The public confide and trust in their physicians to behave with the utmost integrity in all aspects of their professional lives including interactions with other health care providers. Dr. Taher's conduct towards M.N. and A.G. also undoubtedly harms the integrity of the medical profession in the public's eyes and constitutes unprofessional conduct.

The Hearing Tribunal therefore accepted Dr. Taher's admissions and finds that Dr. Taher committed unprofessional conduct as alleged in allegations 1, 2 and 3.

SUBMISSIONS ON SANCTIONS

The Complaints Director for the College and Dr. Taher agreed upon a joint submission on sanctions to the Hearing Tribunal. The parties jointly submitted that the following orders would be appropriate in this case:

- a. Dr. Taher shall receive a suspension of his practice permit for a period of 18 months, of which 15 months shall be an active suspension and 3 months held in abeyance pending fulfillment of the conditions imposed on his practice permit and the terms of his Continuing Care Agreement;
- b. Dr. Taher shall receive credit for the time he has been out of practice since May 21, 2015 such that the period of active suspension shall be considered fulfilled;
- c. Dr. Taher shall, at his own cost, enter into and fulfill a Continuing Care Agreement with the Assistant Registrar responsible for the College's Physician Health Monitoring Program, the terms of which shall have consideration for the Agreed

Facts and the Exhibit Book, and be for at least a period of five years after the date the Agreement is signed and Dr. Taher should not be discharged from that Agreement without the agreement of the Assistant Registrar having regard to any further assessment of Dr. Taher;

- d. The Complaints Director shall determine the practice condition to impose on Dr. Taher's practice permit in light of the June 27, 2017 assessment report from the Comprehensive Occupational Assessment Program;
- e. In the event Dr. Taher disagrees with the nature, scope or duration determined by the Complaints Director, Dr. Taher, on notice to the Complaints Director, may request the Hearing Tribunal to determine the nature, scope or duration of the conditions to be imposed on Dr. Taher's practice permit;
- f. In the event the Complaints Director believes that Dr. Taher has not been compliant with the conditions on his practice permit or terms of the Continuing Care Agreement, the Complaints Director, on notice to Dr. Taher, may bring the matter back before the Hearing Tribunal to determine if all or some of the 3 months of suspension held in abeyance should be served by Dr. Taher; and
- g. Dr. Taher should be responsible for the costs of the investigation and hearing before the Hearing Tribunal payable on terms acceptable to the Complaints Director.

Mr. Boyer made submissions on the issue of sanctions. Mr. Boyer argued that sanctions fulfill two important purposes in professional discipline matters. They serve to deter unprofessional conduct but they also serve as a means to rehabilitate members of the profession. Mr. Boyer argued that the Hearing Tribunal should feel comfortable that both purposes have been properly considered here.

Mr. Boyer acknowledged that the joint submission presented to the Hearing Tribunal was not binding on the Hearing Tribunal. A Brief of Law was presented by Mr. Boyer to cover what a decision maker should do when presented with a joint submission on sanction in a professional discipline proceeding. Mr. Boyer argued that the brief set out cases such that the law requires the Hearing Tribunal to defer to the joint submission unless the proposed sanctions would bring the administration of justice into disrepute or they would be contrary to the public interest.

Mr. Boyer emphasized that an individual's actions cannot be the only focus of a disciplinary hearing and that the reputation of the profession and the protection of the public as part of that reputation is a matter of high regard in the Hearing Tribunal's mandate. The case of *Jaswal v. Newfoundland Medical Board*, [1996] 42 Admin L.R. (2d) 233 exemplifies that there are several considerations in deciding penalty in professional disciplinary hearings.

Mr. Boyer then cited factors from the *Jaswal* case to be considered in assessing the proposed sanctions. Of these; Mr. Boyer emphasized the fact there are always several factors to consider, sentences in similar cases, the type of conduct that would fall outside the range of permitted conduct, the need to maintain the public's confidence in the integrity of the medical profession,

the need to promote specific and general deterrence and, thereby, to protect the public and ensure the safe and proper practice of medicine, the age and experience and previous character of the physician, the nature and gravity of the proven allegations and in particular the presence or absence of prior complaints or convictions.

Mr. Boyer then highlighted factors relevant to the assessment of the joint submission on sanctions in this case.

Dr. Taher has no prior discipline history to be considered.

Mr. Boyer addressed the appropriate suspension period. Mr. Boyer pointed out that the proposed 15 months of active suspension would be significantly less than the time Dr. Taher has voluntarily remained out of practice.

Mr. Boyer explained that Dr. Taher gave a Written Undertaking to the Complaints Director of the College dated November 22, 2013 that he would practice under certain conditions set out in the Undertaking. This Undertaking addressed the fact that criminal charges had been laid. On May 11, 2015 Dr. Taher gave a further Written Undertaking to the College to withdraw from practice after he was convicted of sexual assault in relation to his patient, J.M. Dr. Taher voluntarily relinquished his Practice Permit effective May 21, 2015. Dr. Taher has remained out of practice since that date.

Mr. Boyer pointed out that Dr. Taher has now remained out of practice for more than two years, but less than three years and he could therefore return to the College's clinical register without upgrading his qualifications.

Mr. Boyer also highlighted that Dr. Taher has already served significant penalties arising from his criminal convictions for the same conduct at issue here. He served a 30 day period of intermittent incarceration and served a significant period of probation.

Mr. Boyer referred to three prior cases to demonstrate the range of appropriate sanctions for findings of unprofessional conduct that could be considered similar to those of Dr. Taher.

In *Ontario (CPSO) v. Kaplan*, 2010 ONCPSD 22 the physician was found to have committed professional misconduct based on a physical assault of a woman who was not his patient. He was criminally convicted. The physician was also found to have failed to disclose the criminal charges against him to the Credentialing Committee of the hospital where he maintained privileges and failed to disclose the charges to the College. Finally, he was found to have failed to maintain the standards of practice of the medical profession. The physician received a public reprimand, medical record keeping course, ethics and informed consent course, a 12 month suspension with 9 months of the suspension to be considered served based on his certificate of registration having been "effectively suspended" and costs.

In *Ontario (College of Physicians and Surgeons of Ontario) v. Sandejas*, 2001 ONCPSD 30, the physician was found to have sexually abused a minor. The Discipline Committee imposed a reprimand, 18 month suspension with 6 months to be suspended provided the physician continue

with a course of psychiatric treatment and the physician was subject to a condition that his practice be limited to patients over the age of 16.

Finally in *Rea (Re)*, 2012 LSBC 22, a lawyer was found to have accessed child pornography. He had been convicted in criminal proceedings and received 14 days incarceration and 2 years of probation including mandatory rehabilitation and a participation in a continuing care program. The Law Society of British Columbia investigation began in March 2009 and the lawyer ceased practicing pursuant to an undertaking at that time. The Discipline Committee imposed a 6 month suspension, noting that the overall period of suspension in this case would be 3 ½ years from March 2009. The Discipline Committee further ordered conditions on the lawyer's practice upon his return, including a condition that he not represent clients under the age of 16, that he could not practice family law and that he was required to continue with a course of psychotherapy and follow the resulting recommendations and pay costs.

In response to questions from the Hearing Tribunal Mr. Boyer explained that the proposed Continuing Care Agreement would be an agreement between Dr. Taher and the College through the Assistant Registrar responsible for the College's Physician Health Monitoring Program. The agreement would last at least five years and it would require the Assistant Registrar's agreement before Dr. Taher could be discharged from the agreement. Mr. Boyer also explained that the agreement would include the continuation of Dr. Taher's psychotherapy and the Assistant Registrar would have regard for any further assessment of Dr. Taher as part of the agreement.

Further, in response to a concern from the Hearing Tribunal. Mr. Boyer explained that the Complaints Director would have no objection if the Hearing Tribunal wished to vary item (d) in the joint submission on sanctions to specify specific conditions as set out in the June 27, 2017 COAP report, provided the order was structured so that the Complaints Director could vary or rescind the conditions once they were no longer required.

The Hearing Tribunal received this information and thanked Mr. Boyer for the comments and direction offered.

Mr. Nugent also made submissions on sanction. Mr. Nugent reiterated the need to find a balance in determining sanctions with a focus on rehabilitation and opportunity to demonstrate that Dr. Taher is fit to return to active practice within the bounds of a continuing care agreement.

Mr. Nugent gave support to the joint submission. He argued that the sanctions proposed are reasonable compared to similar cases. He expressed that he was satisfied that the past penalty cases brought forward to the Tribunal were relevant and appropriate as comparisons for the Tribunal to help make its decision. Mr. Nugent told the Hearing Tribunal that Dr. Taher has taken these proceedings seriously and worked hard to meet the standards expected by the medical profession.

Mr. Nugent also reflected on the 2016 and 2017 assessments of the COAP. He emphasized the apparent improvement in the months between the assessments and credited the conclusion of the criminal justice process and commencement of the probation period for the course work that Dr. Taher has successfully completed. Mr. Nugent pointed out that the nature of the court

proceedings and in particular the appeal process made it difficult for Dr. Taher to attend self-improvement courses while arguing in court that he was competent to practice medicine and innocent of the charges.

Mr. Nugent spoke to the plan of Dr. Taher to continue in counseling with Mr. McKenzie and the reportedly low risk of re-offending in the most recent COAP report. The calculation of such risk was addressed and reference made to the manner in which risk is calculated.

On the matter of suspension time and time away from practice, Mr. Nugent acknowledged the discussion brought forward by Mr. Boyer and noted the total time away from practice in Alberta for Dr. Taher has been more than 18 months and this exceeds the suspension suggested by the joint submission. Mr. Nugent also pointed out that Dr. Taher will not have been out of practice for more than three years and so he would not be required to engage in retraining programs.

In response to the Hearing Tribunal's concern, Mr. Nugent also confirmed Dr. Taher would have no objection to varying item (d) in the joint submission on sanctions to specify the conditions from COAP report.

Finally, Mr. Nugent pointed out that Dr. Taher came to Canada from Libya in 2003 subsequently qualified as a Family Physician and that his experience includes work in Newfoundland and Alberta. The type of work and Dr. Taher's lack of any discipline record before 2013 were reviewed. Dr. Taher's family situation and the stress these past months have brought to his family and himself were described.

DECISION ON SANCTIONS

The Hearing Tribunal accepts the joint submission on sanctions subject to the variation described below. The Tribunal reviewed the joint submission and considered the need to deter unprofessional conduct but also rehabilitate members of the medical profession in order to ensure the safe practice of medicine for the public who rely on physicians. The Tribunal concluded the joint submission as varied would not undermine the administration of justice or be contrary to the public interest and it was therefore entitled to deference.

Dr. Taher's proven conduct was very serious and repugnant for a member of the medical profession. The Tribunal considered that sanctions must be assessed not only based on Dr. Taher's individual circumstances but also based on the need for public confidence in the medical profession.

In this case, Dr. Taher has already endured a significant penalty for his actions. He has been out of medical practice since May 2015, a period that is longer than the period of suspension proposed in the joint submission on sanctions. The joint submission contemplates that Dr. Taher will receive credit for the period of time he has already been out of practice so the active portion of his suspension will be considered satisfied and may return to practice subject to the other sanction orders. The Tribunal notes that in the case law submitted to it, there were instances in which time away from a professional's practice prior to a discipline hearing was not held to be sufficient and a further suspension was ordered. Nevertheless, the Tribunal considered that the

joint submission was not unreasonable in these specific circumstances and so defers to it. The Tribunal notes that in addition to his undertakings to the College, Dr. Taher's conduct received media attention and he was incarcerated for 30 days intermittently which is a very serious consequence and he has been on probation and paid restitution.

In addition, the Tribunal has considered that the most recent COAP report dated June 27, 2017 indicates that Dr. Taher is fit to return to practice and he has been assessed as having a low risk of re-offending. The Tribunal also noted that Dr. Taher has already attended a course titled Understanding Boundaries and Managing the Risks Inherent in Doctor-Patient Relationships in June 2017 at the Schulich School of Medicine & Dentistry as well as three cultural learning sessions at the University of Alberta Department of Family Medicine.

During argument on the sanctions, the Hearing Tribunal expressed a concern to the parties that proposed sanction (d) might be worded in a more prescriptive manner, to provide the Tribunal with assurances that the conditions deemed appropriate by the COAP authors would be put into place. These conditions were requirements that Dr. Taher work within a group practice where his colleagues are aware of his disciplinary matters; that he has chaperones for appointments with all female patients; that a workplace monitor be established who will report to the College with regard to Dr. Taher's adherence to the use of a chaperone; and the establishment of a mentor relationship with a senior colleague who can provide Dr. Taher with the opportunity to review clinical cases, and to continue work on professional boundaries, ethics and cultural competency. Both parties indicated they would have no objection to the Tribunal varying proposed sanction (d) to specify these practice conditions as listed in the COAP report, provided the Complaints Director would have the discretion to modify or rescind the conditions when no longer necessary. The parties also indicated that if the Hearing Tribunal were to prescribe conditions in item (d) then item (e) would no longer be necessary to include.

ORDERS

The Hearing Tribunal therefore makes the following orders with respect to Dr. Taher:

- a. Dr. Taher shall receive a suspension of his practice permit for a period of 18 months, of which 15 months shall be an active suspension and 3 months shall be held in abeyance pending fulfillment of the conditions imposed on his practice permit and the terms of his Continuing Care Agreement;
- b. Dr. Taher shall receive credit for the time he has been out of practice since May 21, 2015 such that the period of active suspension shall be considered fulfilled;
- c. Dr. Taher shall, at his own cost, enter into and fulfill a Continuing Care Agreement with the Assistant Registrar responsible for the College's Physician Health Monitoring Program, the terms of which shall have consideration for the Agreed Facts and the Exhibit Book, and be for at least a period of five years after the date the Agreement is signed and Dr. Taher should not be discharged from that Agreement without the agreement of the Assistant Registrar having regard to any further assessment of Dr. Taher;

- d. Upon reinstatement, Dr. Taher's practice permit shall be subject to the following conditions as specified in the Comprehensive Occupational Assessment Program report dated June 27, 2017, until such time as the Complaints Director determines that the conditions may be varied or rescinded:
- I. Dr. Taher must practice in a group setting with physician colleagues who have confirmed in writing their awareness of his discipline history;
 - II. Dr. Taher may only see female patients in the presence of a chaperone acceptable to the College's Complaints Director;
 - III. Dr. Taher shall appoint a workplace monitor acceptable to the Complaints Director who will report to the College on an interval acceptable to the Complaints Director with regards to Dr. Taher's adherence to the use of a chaperone;
 - IV. Dr. Taher will establish a mentor relationship with a senior colleague acceptable to the Complaints Director who can provide Dr. Taher with the opportunity to review clinical cases, and to continue work on professional boundaries, ethics and cultural competency.
- e. In the event the Complaints Director believes that Dr. Taher has not been compliant with the conditions on his practice permit or terms of the Continuing Care Agreement, the Complaints Director, on notice to Dr. Taher, may bring the matter back before the Hearing Tribunal to determine if all or some of the 3 months of suspension held in abeyance should be served by Dr. Taher; and
- f. Dr. Taher should be responsible for the costs of the investigation and hearing before the Hearing Tribunal payable on terms acceptable to the Complaints Director.

The Hearing Tribunal also strongly recommends that Dr. Taher continue the current plan of psychotherapy and continue his current plan of professional rehabilitation courses

Signed on behalf of the Hearing Tribunal by
the Chair



Dated: October 10, 2017

Dr. Randall Sargent

