

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. VILIAM MAKIS

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

The Hearing Tribunal held a hearing into the conduct of Dr. William Makis on January 15 and 16, 2018. The members of the Hearing Tribunal were:

Hearing Tribunal	Dr. Ralph Strother of Calgary as Chair Dr. Stacy J. Davies of Calgary Ms. June MacGregor of Edmonton (public member)
Independent Counsel to Hearing Tribunal	Mr. John Carpenter
Complaints Director Counsel	Mr. Craig Boyer
Self-represented	Dr. Viliam Makis

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

### **ALLEGATIONS**

1. On or about April 21, 2017, you did confront [REDACTED] and accuse her of being dishonest in her information provided to the College of Physicians & Surgeons of Alberta ("College") investigator regarding a complaint by [REDACTED] against you as set out in the September 30, 2016 Investigation Report regarding College investigation file number 160003.1.1, and you did tell or imply to [REDACTED] that she would suffer negative consequences for lying to the investigator.

### **PRELIMINARY MATTERS**

There were no preliminary matters that were brought to the attention of the Hearing Tribunal (the "Tribunal").

### **EVIDENCE – EXHIBITS**

Exhibit 1	Notice of Hearing dated October 16, 2017
Exhibit 2	March 2, 2016 letter by Marnie Heberling, College investigator, to [REDACTED]
Exhibit 3	April 21, 2017 email from [REDACTED] to Dr. Karen Mazurek, Deputy Registrar, regarding interaction with Dr. Makis on April 21, 2017
Exhibit 4	May 19, 2017 letter of response by Dr. Makis to Katherine Damron, Complaint Inquiry Coordinator
Exhibit 5	College's The Messenger, Issue 225, dated June 2016

Exhibit 6	September 25, 2017 email from L. Moyles to Dr. John Ritchie regarding confirmation that the June 2016 issue of The Messenger was sent to Dr. William Makis
Exhibit 7	Canadian Medical Association Code of Ethics
Exhibit 8	College's Standard of Practice regarding compliance with the CMA Code of Ethics
Exhibit 9	April 21, 2017 email from Dr. Mazurek to Dr. Caffaro regarding telephone call with [REDACTED]
Exhibit 10	October 16, 2017 Registered Letter to Dr. Viliam Makis with enclosed signed Notice of Hearing dated September 29, 2017
Exhibit 11	October 18, 2017 reply email to Dr. Makis from Craig Boyer
Exhibit 12	May 8, 2017 Memo to File from Dr. John
Exhibit 13	CPSA Investigation Report File No. 160003.1.1 dated September 30, 2016 (Edited and Redacted)
Exhibit 13A	(for Identification) Letter dated October 27, 2017, from Ms. Katherine Damron to Dr. William Makis
Exhibit 13B	(for Identification) Letter dated June 12, 2017, from Ms. Katherine Damron to Dr. William Makis
Exhibit 14	October 7, 2016 Letter from Dr. Caffaro to Dr. Makis re conclusion of investigation on File No. 160003.1 .1
Exhibit 15	Memorandum of Understanding dated December 17, 2016
Exhibit 16	February 1, 2017 Certificate of Completion of Communications Course
Exhibit 17	February 10 and 11, 2017 Certificate of Attendance for Boundaries Course
Exhibit 18	September 8, 2016 AHS letter by [REDACTED] to Dr. Caffaro
Exhibit 19	Amended Statement of Claim Filed in Court of Queen's Bench of Alberta Action Number 1603 18935
Exhibit 20	[REDACTED] dated January 14, 2018 (48 pages)
Exhibit 21	Packet of supporting documents as submitted by Dr. Makis
Exhibit 22	Letter dated October 27, 2017 from Dr. Jeremy Beach to Dr. William Makis
Exhibit 23	Letter dated January 9, 2017, from Craig Boyer to Dr. Viliam Makis (sent via email)
Exhibit 24	Letter dated January 10, 2018, from Craig Boyer to Dr. Viliam Makis (sent via courier)
Exhibit 25	E-mail dated October 18, 2017, 3:00 P.M., from William Makis to Craig Boyer
Exhibit 26	Letter dated October 26, 2017, from Craig Boyer to Dr. Viliam Makis (via courier)
Exhibit 27	Letter dated November 6, 2017 from Craig Boyer to Dr. Viliam Makis

## I. INTRODUCTION

1. Dr. Viliam Makis ("Dr. Makis") is a Nuclear Medicine Physician employed at the Cross Cancer Institute ("CCI") by Alberta Health Services ("AHS") until October 31, 2016.
2. The charge concerns a single allegation of misconduct that Dr. Makis on April 21, 2017 confronted a Colleague accusing her of dishonesty in the information that she had provided to the College of Physicians & Surgeons (the "College") and telling her that she would suffer negative consequences as a result of her lying.
3. Dr. Makis admitted only that he had attended the event where the confrontation was said to occur but denied the confrontation stating that he had only exchanged a brief greeting on one day when passing and otherwise had not interacted with her in any way.

4. Dr. Makis insisted that the Charge was part of a conspiracy to sabotage and destroy his CCI practice. He alleged the conspiracy involved not only some of his former Colleagues, but also his former employer AHS and the College itself in person of the College's Assistant Registrar and Complaints Director.
5. The Tribunal heard and weighed the evidence, reviewed the exhibits and considered the submissions of the Counsel for the College ("Counsel") and of Dr. Makis, on his own behalf. The Tribunal concludes that the incident occurred as alleged and constitutes unprofessional conduct that breaches the obligations expected of a Physician Member of the College.
6. The Tribunal proposes to set out the details of the Hearing, the necessary background, a summary of the evidence heard and the submissions tendered, then to outline the reasons for its decision in this regrettable circumstance.

## **II. HEARING PROCESS**

7. The College pursuant to a Notice dated October 16, 2017 convened a Hearing Tribunal on January 15 and 16, 2017.
8. Mr. Craig Boyer, Counsel for the College provided an opening statement and called four witnesses including [REDACTED], Ms. Marnie Heberling, Dr. John Ritchie and Dr. Michael Caffaro.
9. Dr. Makis advised that he had chosen to represent himself and testified on his own behalf.
10. In addition to the sworn testimony, the Tribunal accepted 27 Exhibits, heard closing submissions and advised that it would consider the evidence and submissions to determine whether the allegation was proven. If proven, there would be a separate sanction phase to conclude the hearing.

## **III. THE CHARGE**

11. Dr. Makis was charged with unprofessional conduct in that on or about April 21, 2017, he did confront [REDACTED] and accuse her of being dishonest in her information provided to the College Investigator in respect to an earlier complaint made against Dr. Makis and investigated by the College. Dr. Makis was accused of telling [REDACTED] that she would suffer negative consequences for lying to the Investigator. The conduct was contrary to his obligations under the Canadian Medical Association Code (the "CMA") of Ethics, sections 46 and 52, the College's Standards of Practice regarding compliance with the CMA Code of Ethics.
12. The College further alleged that conduct was in breach of the express directions of Registrar of the College as set out in an article included in the June 2016 edition of the Messenger. There, the Registrar, emphasized that complainants and witnesses who brought concerns and information forward to the College must be free to do so without fear of retaliation. Any retaliation by a physician subject to such concerns would be considered unprofessional conduct and would be investigated as such.
13. While Counsel in correspondence and during the hearing described [REDACTED] as the Complainant, the Tribunal notes that [REDACTED] provided information to the College but it was the College itself that opened a Complaint pursuant to its powers under Section 56 of the Health Professions Act.

#### **IV. SUMMARY OF THE BACKGROUND CONTEXT**

14. Dr. Makis, a Nuclear Medicine Physician, accepted a position at the CCI in August 2013 that he expected to be permanent and long term. After relocating and commencing work, Dr. Makis was presented with and did execute a Medical Services Agreement (“MSA”) with an initial term of November 1, 2013 to October 31, 2016 with provision for termination on consent, by notice or payment of remuneration.
15. Soon after starting in his position at the CCI, Dr. Makis raised concerns with his employer that he considered impacted the quality of patient care and ongoing cancer research projects. Dr. Makis considered not only that the complaints went unaddressed but that steps had been taken to prevent and suppress his legitimate concerns. Dr. Makis therefore initiated a formal complaint.
16. Dr. Makis also felt that the formal complaint went unaddressed and resulted in further attempts to discredit him. Dr. Makis joined with five physicians in a written concern about the CCI leadership in May 2015. While that resulted in meetings with the involved physicians, Dr. Makis felt that they failed to address the concerns in a meaningful way.
17. In August 2015, Dr. Makis alleged that the Site Leader at CCI began to advocate for Dr. Makis’ dismissal and/or consideration of not renewing the MSA and further encouraging and even directing that concerns discrediting Dr. Makis be brought forward.
18. In December 2015 three support staff initiated a written concern to AHS and subsequently one of the three made a complaint to the College alleging that through texts, emails and social media posts Dr. Makis had engaged in inappropriate and disruptive behaviour.
19. AHS immediately began its own investigation and Dr. Makis was placed, initially with his agreement, on administrative leave. The AHS investigation occurred over five months and, in June 2016, resulted in a finding of six allegations. Dr. Makis promptly agreed to abide by the resulting recommendations and training while advising that he wished to return to practice.
20. The Medical Director of AHS proposed a consensual resolution whereby Dr. Makis would agree to relinquish his hospital privileges, not return to his practice and not request renewal of the MSA.
21. Dr. Makis declined and the Medical Director issued a Decision arising from the AHS investigation that found two of the allegations proven and referred all allegations to the College. In July 2016 Dr. Makis was provided with notice that the MSA would not be renewed he was not allowed to return to his practice.
22. By letter dated September 8, 2016 to Dr. Michael Caffaro in which AHS advised the College of the unresolved concerns with respect to the two allegations that it found substantiated in its own investigations and in referring them to the College asked that it address the issues.
23. The College Report forwarded to Dr. Makis on October 7, 2016 in respect to the single Complaint made and the further allegations forwarded by AHS found, as had the initial

AHS investigation, one supported allegation that Dr. Makis' conduct toward and communication with staff had crossed professional boundaries. The College recommended and, Dr. Makis agreed, to take part in a collaborative quality improvement process.

24. Counsel, in respect to this first Complaint concerning Dr. Makis, Complaint No. 160003.1.1 tendered an excerpt from the Investigation Report dated September 30, 2016 that contained only the information provided by [REDACTED] via telephone on March 15, 2016 and the Investigator's finding confirming inappropriate conduct and communication with staff.
25. Counsel further tendered the formal letter dated October 7, 2016 from Dr. Michael Caffaro communicating the findings. Provided as well was a Memorandum of Understanding executed by the College Complaints Director and by Dr. Makis accepting the findings of inappropriate conduct and providing for remedial action that Dr. Makis undertake at his expense a communications course and a boundaries course acceptable to the Complaints Director. In addition, Counsel tendered Certificates of Completion in February 2017 in respect to two recommended courses.
26. Much of the above material was not tendered by Counsel but was rather cited by Dr. Makis in an *Amended Statement of Claim* filed by him in the Court of Queen's Bench of Alberta on December 11, 2017 naming AHS and the College as Defendants and included as an Exhibit in these proceedings. It is apparent from the amendments that the initial Statement of Claim named only the AHS. Dr. Makis now listing a different address for service had added the College as co-Defendant. The document is Exhibit 19.

## V. APRIL 21, 2017 INCIDENT

27. It was with this background that [REDACTED], allegedly found herself face to face with her former colleague at the Canadian Association of Nuclear Medicine meeting in Toronto. [REDACTED] had been asked to give information to the Investigator concerning the first complaint. She had begun to work with Dr. Makis and the team in July 2015. She enjoys good relationships with all staff, including Dr. Makis. She was not party to the sexually inappropriate behaviour described by others, heard rumblings among them that they were afraid for their jobs if they spoke against him, who they felt to be arrogant and considered himself to be above nursing staff. At one meeting only she noted she had seen the arrogant side of him.
28. As [REDACTED] reported at the time; and confirmed in her sworn testimony, Dr. Makis approached her, stood facing her, stared at her and asked, "Did you really think you could get away with it?" To which she replied that she did not know what he was talking about. "Oh really, you really don't know what I'm talking about?" To which she repeated that she did not know. "So you think you could lie to the College about me and get away with it?" Her response, "I don't lie, I always tell the truth." Facing a further challenge she repeated that she told the truth and was told, "You had better watch out. You are going to be called to testify under oath in front of the College". She also heard something about them being criminals and finally that, "You are going to be looking for a new job".
29. [REDACTED] reported that she felt threatened by his words and demeanour. Shortly after, she participated in a scheduled conference call and communicated the exchange to her Site Leader, [REDACTED]. After the conference call she first called Sandra Plupek at AHS, then Dr. Michael Caffaro at the College who directed her to Dr. Karen Mazurek ("Dr. Mazurek") of the College.

30. Sandra Plupek attended the hearing as an observer but was not called. Dr. Mazurek also had not been called as a witness reported back to Dr. Caffaro in an email on April 21 that repeated ██████ assertions that Dr. Makis had stood in front of her, accused her of lying, made threats including “You better watch out”, “You better look for another job” and that she would be called to testify under oath and would need to tell the truth. Dr. Mazurek advised that ██████ stated that Dr. Makis was not physically aggressive and made no threats to her personal safety. When asked, ██████ said that she had no concerns in bringing this information forward and was willing to speak to an Investigator and testify.
31. Dr. Ritchie testified that as Associate Complaints Director he was responsible for receipt of the information from ██████. Based on that information Dr. Ritchie concluded that there could be unprofessional conduct and on May 8, 2017 he opened a Section 56 complaint concerning Dr. Makis.
32. Dr. Makis was made aware of the complaint and was provided particulars; although not with a copy of the emailed information. Dr. Makis by letter dated May 19, 2017 responded to a letter of the previous day from Katherine Damron the Complaint Inquiry Coordinator. Dr. Makis denied all of the allegations made by ██████, denied making any of the statements claimed, denied threatening ██████ in any way, and denied standing in front of her at any time.
33. Dr. Makis, in his response, did acknowledge seeing ██████. Dr. Makis noted that he observed ██████ spent several hours with ██████ [the physician responsible for the Nuclear Medicine Program at CCI] at a main floor hotel bar near the site of the alleged Incident. Dr. Makis admitted and described passing ██████ in a narrow crowded hallway where he stated that he exchanged a brief greeting with her. This occurred, he stated, on the evening of April 20<sup>th</sup>. On April 21, Dr. Makis reported attending a presentation given by ██████ and on April 22 noticing ██████ at a dinner table next to Dr. Makis, about 3 meters away. Dr. Makis denied interacting with her in any way.

## **VI. THE INVESTIGATION PROCESS**

34. Marnie Heberling (“Investigator Heberling”), testified that she had been appointed to investigate the first complaint (No. 160003.1.1) concerning Dr. Makis and had called ██████ on the phone and included in her report the information provided by ██████. She was later assigned to investigate the second complaint against Dr. Makis, No. 170263.1.1. A letter from the College dated June 12, 2017 advised Dr. Makis of the assignment of Investigator Heberling.
35. Dr. Makis made a series of requests that Investigator Heberling contact him. In cross-examination Investigator Heberling agreed that she had not contacted Dr. Makis. She had completed her investigation toward the end of September relying solely on his written response.
36. Dr. Makis sent further communications to the College, directing these various emails and letters to Dr. Caffaro, to Dr. Trevor Theman, former Registrar of the College, to the Minister of Health, to the Mayor of the City of Edmonton, to the Premier and to the respective Leaders of two of the Opposition Parties. These communications advised of a lawsuit filed on October 27, 2016 against AHS concerning abuse of its staff and threats to and damages inflicted on the medical careers of two CCI physicians who reported these abuses. Dr. Makis referenced the status of the law suit which involved 3800 documents contained in sworn Affidavits. Dr. Makis further alleged the AHS and the College had been in direct communication and raised concerns as to the purpose and subject of those communications, accusing the two entities of coordination regarding the sabotage of his

medical career via the College complaint process. Dr. Makis named additional doctors and officials as being involved in these alleged abuses, in the alleged cover-up and in the sabotage of medical careers. He also named other physicians who were subject to such abuse. Dr. Makis advised that he had communicated and requested the assistance of the AHS CEO, AHS Board Chair and AHS Ethics Compliance Officer to no avail.

37. In an email exchange provided by Dr. Makis, between himself and his former Independent Legal Counsel, on October 16, 2017, Dr. Makis advised that his number one priority was amending the statement of claim to include the College as a co-defendant, that he did not wish to discuss it further and one way or another it was getting filed within a week.
38. By registered letter dated October 16, 2017 addressed to Dr. Makis at his home address Counsel to the Complaints Director wrote to provide a Notice of Hearing and advise that the date had been unilaterally set and could be adjourned should he require additional time to prepare. Dr. Makis was asked to have his Independent Legal Counsel contact Counsel for the Complaints Director and further advised that he might contact the CMPA for assistance. Copies of the investigation reports can be provided to him or his Independent Legal Counsel on their request. Counsel for the Complaints Director provided the same information by email to Dr. Makis
39. Dr. Makis emailed Counsel for the Complaints Director initially requesting copies of the College's investigation records which Counsel replied would be sent via a USB stick. Dr. Makis then asked that Counsel for the Complaints Director to confirm that he was an official representative of the College which was confirmed, although Dr. Makis appeared to consider that a satisfactory reply had not been received.
40. It appears Dr. Makis refused to accept the registered package. Instead, on October 20, 2017, he filed a witness statement with the Edmonton Police Service alleging that forged and fraudulent government documents had been delivered by Mr. Craig Boyer claiming to be legal counsel for the Complaints Director of the College.
41. By letter of the same date, addressed to Dr. Scott McLeod, Registrar of the College ("Dr. McLeod"), Dr. Makis described an "extremely bizarre situation" in respect to the current complaint that he suggested had been open and dormant for 5 months. His concerns included a College Investigator that refused to speak to him about the case, despite repeated attempts, then Dr. Makis received a "Notice of Hearing" that seemed to come from a private lawyer not representing the College, on unofficial documents with forged seals and signatures.
42. By email of the same date Dr. McLeod suggested that Dr. Makis retain legal counsel for advice in these matters and in further response communicated how Dr. Makis could initiate a Complaint against the Investigator Marnie Heberling.
43. By email of October 28, 2017 Dr. Makis requested that Dr. McLeod remove Dr. Caffaro and Investigator Heberling from the College premises, confiscated [sic] their email addresses and computers, and launch an immediate investigation into their activities before the College becomes embroiled in the biggest public corruption scandal in recent College history. Dr. Makis advised further that a report on the corruption at the College was to be provided. Dr. McLeod advised by email of October 30, 2017 that he would not be removing the two officials and that he looked forward to seeing Dr. Makis' report that outlined his perception of corruption at the College.



## VII. THE HEARING TESTIMONY – FOR THE COLLEGE

44. As noted [REDACTED] testified. She is a non-medical doctor with a B.A. [REDACTED] a B.Sc. in [REDACTED], a Masters of Science and a Ph.D. in [REDACTED]. Prior to coming to the CCI in July of 2015 she worked for 18 years with [REDACTED] program. At the CCI she works with the Neuroendocrine Tumour Team.
45. [REDACTED] confirmed that she had been contacted by Investigator Heberling in March of 2016 as her name had been put forward as someone who might be able to give information on Dr. Makis' interactions with the CCI team that she was working with. [REDACTED] confirmed that she had a good working relationship with the team, that she started hearing comments about issues she had no prior knowledge about concerning Dr. Makis that might impact how the team was functioning. She testified that she implemented weekly meetings that Dr. Makis was welcomed to attend. He attended one or two meetings but he tended to communicate by emails. She last saw him in a work setting in December 2015.
46. [REDACTED] identified the email exchange concerning the April 21, 2017 incident. She testified as to the details of the exchange as identified in her email communication. She testified that his tone of voice was threatening, that he was standing very close to her, that she felt that he was trying to intimidate her. She was quite shaken as she walked from the exchange that was described in the email and confirmed in her testimony. She was thinking that this was inappropriate and felt threatened. Immediately afterward she was meeting with her boss, and colleague, to have a conference call. She testified that she recited exactly what had happened and that she was advised to call Sandra Plupek who was, she was told, aware of some of the situation.
47. Initially, Dr. Makis advised that he had no questions for [REDACTED]. However upon receiving a description of the procedure in respect to the presentation of evidence from Independent Counsel for the Tribunal Dr. Makis questioned [REDACTED] as to who was Sandra Plupek. [REDACTED] understood that Ms. Plupek is a representative of AHS who was involved in investigating previous complaints concerning Dr. Makis. Ms. Plupek was the first person she called because Ms. Plupek was familiar with some of the issues preceding the exchange and because [REDACTED] thought it was important for Ms. Plupek to be aware of this exchange that forms the basis of this Hearing. [REDACTED] identified [REDACTED] as the Chair [REDACTED].
- [REDACTED] confirmed that the only written information that she provided the College was the email sent to Dr. Karen Mazurek. In response to whether she had filed a formal complaint, she testified that she had phoned the College, had this discussion with Dr. Mazurek and later received a letter saying that the College was going to pursue a complaint against Dr. Makis.
48. When asked whether 100% of her income came from [REDACTED], [REDACTED] testified that she was a University of Alberta employee, that she is known as [REDACTED] and that the bulk of her employment was currently being funded through AHS dollars through the University of Alberta. She did agree that a portion of her salary is funded through [REDACTED] research funds.
49. When asked whether she was aware of three separate formal investigations that [REDACTED] was the subject of, [REDACTED] confirmed that she was aware there were investigations. She testified that she was also aware that Dr. Makis had taken action against AHS, that the law suit probably implicated [REDACTED] as one of the medical

administrative leaders of AHS. She did not believe that she was implicated in the pleadings of that lawsuit.

50. Dr. Makis, when questioned on the relevance of the questions put to ██████████ concerning ██████████, responded by reading a lengthy statement from a document that he intended to submit. Exhibit 20 contains a letter dated January 14, 2018 addressed to Dr. McLeod, and to the Minister of Health. The letter is said to be a formal College complaint regarding unlawful, improper, unprofessional and unethical actions of ██████████.
51. A statement read into the hearing by Dr. Makis concerns an AHS settlement offer received by Dr. Makis on June 3, 2017 in respect to his lawsuit. The settlement offers a payment of \$400,000 in return for a release and confidentiality provision. The settlement was set to expire on June 9, 2017 at 4:30 p.m. Dr. Makis did not respond to the settlement offer. Dr. Makis was set to begin questioning of two members of the CCI team on June 12, 2017. On the same day, he alleged that ██████████ launched the College investigation to be conducted by Investigator Heberling. Dr. Makis alleged that the investigation was launched to increase pressure on him to settle his lawsuit. The launching of the investigation, he asserted, effectively prevented Dr. Makis from practicing medicine and from obtaining a medical license outside Alberta. Dr. Makis received no further communication until receiving on October 18, 2017 a Notice of Hearing for this Hearing Tribunal.
52. In response to questions from the Tribunal ██████████ confirmed that her daily interactions with Dr. Makis were collegial and that she interacted with him on a clinical trial that took a large portion of a number of co-workers' time. Matters concerning the trial included face to face interactions. ██████████ office was 15 steps from Dr. Makis'. When he attended the weekly meetings he seemed engaged and she felt that he thought they were useful. When Dr. Makis stopped coming to the meetings, he remained engaged with ideas as to what should happen and sent emails making such suggestions. ██████████ repeated that her relationship with Dr. Makis was professional and collegial. ██████████ had only made statements about Dr. Makis when she was contacted by Investigator Heberling concerning the previous complaint to the College. The next time ██████████ made a statement to the College was when she talked to Dr. Mazurek concerning the April 21, 2017 incident.
53. The April 21, 2017 incident occurred in the main room where a meeting was taking place. She described the room as having round tables with four or five straight chairs. Dr. Makis was sitting a few tables away. She was aware he was there but did not particularly want to interact with him. As she was getting up to leave, he approached her; there were a lot of people around, but none that she knew. ██████████ testified that she would have tried to avoid him because she was aware there were other ongoing matters with Dr. Makis and she had been told not to have contact with him. She described Dr. Makis as approaching her then standing with his arms crossed facing her, within her personal space and being quite intense in his tone and threatening in demeanor. The incident lasted only about two minutes, maybe two and a half. She testified she was shaking, she felt, and thought, in her head that this was not an appropriate conversation and that she needed to extract herself from the situation. She did not have a clear memory of the last things that he said because she felt that she just "needed to specifically removal [sic] myself because it was inappropriate and I just felt very uncomfortable."
54. In response to other questions from the Tribunal ██████████ testified that her relationship with ██████████ was professional, that she had met him in 2000 and from 2010 to 2014 worked on a project that was using the PET-CT scanner. In 2015 she moved to the CCI team.

55. ██████ recalled seeing Dr. Makis at two other conferences, one in Halifax in April of 2016, the other Barcelona. She had no interactions with him in Halifax beyond a greeting. She avoided him in Barcelona for which no date was provided. Dr. Makis later testified that he had never been to Spain, let alone Barcelona.
56. Dr. John Ritchie, as Associate Complaints Director of the College, received the information of ██████ Department of Oncology, University of Alberta in respect to an alleged interaction that occurred on April 21, 2017 with Dr. Makis. Dr. Ritchie on May 8, 2017 opened, on behalf of the College, a Section 56 Complaint under the *Health Professions Act*. Dr. Makis, by letter dated May 19, 2017, responded to correspondence stated to be from Katherine P. Damron, Complaint Inquiry Coordinator. The Tribunal did not have a copy of the May 18, 2017 letter in their materials. When questioned by the Tribunal, Dr. Ritchie stated that the College must open a complaint within 30 days upon receipt of the information and then all parties involved are notified. Counsel then pointed the Tribunal to Dr. Makis' response of May 19, 2017.
57. It was confirmed and otherwise was not in dispute that Dr. Makis was a regulated member of the College at the times relevant to the matters before the Tribunal.
58. Dr. Ritchie testified that the College had in *THE MESSENGER*, the College's official publication, Issue 224, dated June 2016, sent to members including Dr. Makis, published an article authored by Dr. Theman, the Registrar at the time, titled *Protecting Complaint Witnesses*. The article concerns a discipline matter where, despite an apparent resolution in respect to an initial bullying charge, a regulated member brought a defamation action against a witness in a complaint. The Registrar outlines the College's view that its witnesses (and potential witnesses) must be able [to] come forward and report behaviour and actions by physicians without fear of retaliation. The alternative is that complainants and witnesses may feel that they cannot be entirely truthful and forthcoming, or may simply choose to remain silent, for fear of retaliation. The Registrar asked, "What could be more disruptive than to retaliate against a witness for raising or validating concern about such [workplace bullying and intimidation] behaviour." The Registrar expressed his opinion on the legal issues surrounding absolute as opposed to qualified privileged and reiterated, "the position of the CPSA is clear: we will not tolerate retribution against complainants or witnesses." The Registrar then cited, with approval, the following from the decision in the matter: "Council expects that members of the profession will govern themselves under the presumption that the College will do everything in its power to protect witnesses and participants involved in College investigations and hearings."
59. Dr. Ritchie reviewed the Complaints procedure of the weekly "Wednesday Meetings" to review the completed investigations and determine the appropriate disposition. Typically, the Committee has the file on the agenda the Wednesday before the meeting in which it is reviewed. The Investigator attends to answer questions and the Investigator's report is part of the shared review. The determination is made by the collective, by mutual agreement, as to the disposition of the file, whether it should be dismissed, dismissed with some advice, sent for resolution, or sent to a hearing. It is only when a decision is made that a copy of the investigation report is provided to the respondent physician. The determination was that the complaint against Dr. Makis should be sent for consideration of a hearing. In response to questions from Dr. Makis, Dr. Ritchie testified that he could not recall whether there was discussion around getting input from Dr. Makis other than the May 19<sup>th</sup> response, nor could he recall whether there was discussion of possibly pursuing any form of resolution process. He stated that the foundation of the meeting is always to be aware of the options. The collective, collaborative decision was for a consideration of hearing which would indicate that an informal resolution process was not considered appropriate.

60. The Tribunal heard testimony from Investigator Heberling who, as noted above, had conducted the investigation in respect a previous complaint against Dr. Makis and had interviewed ██████████ by telephone as part of that investigation. When Dr. John Ritchie, Associate Complaints Director, opened the Section 56 Complaint that forms the basis of this Hearing, she was assigned to the case. Investigator Heberling did not interview either ██████████ or Dr. Makis. She testified that she did a paper review of the evidence, finalized the investigation and wrote her report in September.
61. Investigator Heberling testified that she did not conduct interviews because, on a file like this when the complainant says one thing happened, the respondent says something else happened, and there is no witness identified to corroborate either version, then it is simply a matter of taking each party at their word and coming to a finding that they provide opposing evidence. In those circumstances she often does not interview the parties.
62. Investigator Heberling acknowledged that there were several emails sent by Dr Makis to her, as well as several other College staff. She testified that Dr. Caffaro directed that unless she needed to meet with Dr. Makis about that file, which she testified she did not, then the rest of the communication would be dealt with by other members of the College. In response to a question from the Tribunal, Investigator Heberling testified that her reports contained the details of when the complaint was made, lists who was contacted, what information was reviewed and the issue to be investigated. It further summarizes the documentation or evidence, as well as the summary analysis and findings. In this case because there were conflicting accounts to the events with no direct witnesses she concluded her investigation.
63. Dr. Caffaro testified that he received his undergraduate medical education at the University of Alberta graduating in 1990; he undertook two years of family medicine training from 1990 to 1992, an extra year of surgical training from 1992 to 1993 and entered a rural medicine practice from 1993 to 2015. In March of 2015 he began work as the Complaints Director and Assistant Registrar of the College. Dr. Caffaro reviewed Complaint file 160003.1.1, and identified the Investigator's Report excerpt concerning ██████████. He testified that the concerns and issues of inappropriate communication with staff included the sending of inappropriate images and text messages. He noted that the Complainant at the time did not object to the College meeting with Dr. Makis and having a discussion around possible remediation in the areas particularly of boundaries and communications. Dr. Caffaro testified, there was agreement with Dr. Makis, that the areas of remediation required from Dr. Makis included that of ethics and boundaries and inter-professional communications. This was formalized in a Memorandum of Understanding. With the receipt of the Certificates of completion and attendance in the Communications course and in the Boundaries course in February of 2017, Complaint File 160003.1.1 was deemed suitable for closure in an informal manner.
64. Dr. Caffaro testified that subsequent to the closure of Complaint File 160003.1.1 he received an email from Dr. Karen Mazurek, Deputy Registrar of the College, after a conversation that she had had with ██████████. Dr. John Ritchie performed the role of Complaints Director in the matter, and Marnie Heberling was the Investigator. Dr. Caffaro identified a letter received from ██████████, who was the ██████████ and ██████████ regarding Dr. Makis and an investigation into concerns that AHS had with Dr. Makis. Dr. Caffaro testified that he considered the description of concerns in respect to the Complaint File 160003.1.1 related to the current complaint.
65. Dr. Caffaro testified that, as Complaints Director he was concerned that attempts by regulated members to influence, intimidate or somehow affect the course of an investigation puts the College's legislative role at risk, as a self-regulating profession. If



the College cannot rely on witnesses to assist it with complaints, investigations, or discipline it cannot carry out its role as per the governing legislation, nor its mandate to protect the public and guide the profession.

66. Dr. Caffaro stated further that a regulated member who intimidates, or otherwise tries to influence a witness, is clearly engaging in behaviour that is incongruent with the College Code of Conduct, the Code of Ethics and the Standards of Practice. The expectations are that the professional must be a good communicator, participate in team care and follow the Code of Ethics.
67. Dr. Caffaro confirmed, as suggested by Counsel, that the role of the Complaints Director is to assess complaint investigations and make decisions as to their outcome. The previous history of a member in complaint and investigations can affect the exercise of discretion as to whether something can be resolved informally. Complaints resolved informally do not become part of the formal record and while the Complainant will be aware of an informal resolution, the public at large will not.
68. In response to Dr. Makis' question in cross-examination, Dr. Caffaro stated that a member wishing to obtain a medical license in another jurisdiction, must grant permission for that jurisdiction to have access to the history of informally resolved complaints.
69. Dr. Caffaro confirmed that he was present and would have taken part in the Wednesday Meeting in which Complaint File 170293.1.1 was reviewed. While agreeing that as part of a collaborative decision-making process, the team would have reviewed the investigation and proposals for direction of the complaint, Dr. Caffaro could not recall the exact discussion, nor recall any discussion around consensual resolution, or around dismissal of the complaint. He did not agree that the only discussion would have been about referring the matter to a Hearing Tribunal but admitted he was only guessing that the options for dismissal, informal resolution, and formal discipline would have been reviewed. When challenged by Dr. Makis, Dr. Caffaro agreed that any formal discipline could only be made by a Hearing Tribunal after a finding of guilt.
70. Dr. Caffaro testified that he could not clearly recall whether from June through August 2017 he received communication from Dr. Makis asking to meet to discuss the progress of the CPSA File 1720293. There were a number of emails from Dr. Makis, he testified, over a broad time frame and he could not remember the details.
71. Dr. Caffaro could not clearly recall whether Investigator Heberling had communicated Dr. Makis' requests to meet with her, nor whether or not he had suggested that she not communicate with Dr. Makis. At that point in time, Dr. Makis advised those were all his questions.
72. On re-direct, Counsel reviewed information provided by the College to other regulators with consent and the mechanism used to communicate. Dr. Caffaro testified that all members of the Federation of Medical Regulatory Authorities of Canada ask on applicant for a Certificate of Profession Conduct ("CPC") and for express written consent for the CPC to be provided. In some instances supplementary information to the CPC may be requested, again only with the express written consent of the regulated member. Where no consent was provided, Dr. Caffaro testified that the other authority would be told that a CPC cannot be provided. In all jurisdictions, without a CPC, registration would not proceed.
73. In cross-examination related to the matters in re-direct, Dr. Caffaro testified that the Federation of Medical Regulatory Authorities of Canada policy was that certain information is not necessarily required on a CPC. A CPC can be issued and need not

contain the entire complaint history of the individual. Complaint matters which are dismissed with no findings are not placed on a CPC. Where an investigation has been undertaken, and is ongoing, the CPC would only indicate that there is an investigation, where an investigation has ended in an informal resolution including remediation and education the CPC would indicate that.

74. A CPC, that is certification that a member is in good standing, is the responsibility of the Registrar not the Complaints Director whose role is only to provide the information. It is the Registrar who receives the request and who must make the determination as to good standing and sign off having received the information from the Complaints Director.

### **VIII. THE TESTIMONY OF DR. MAKIS**

75. Dr. Makis is a Nuclear Medicine Physician trained at McGill University. He undertook his MD training from 2001 to 2005 followed by his Nuclear Medicine specialty from 2005 to 2010. He moved with his family to Manitoba where he became Director of Nuclear Medicine at the Brandon Regional Health Centre from 2010 to 2013. In August of 2013 he moved to Edmonton to accept a position at the CCI where he worked until December 30, 2015 when he accepted a voluntary administrative paid leave. He has not worked since then because his AHS contract expired on October 31, 2016.
76. Dr. Makis tendered for exhibit the Amended Statement of Claim for Queen's Bench Action 1603 18935 referenced above. He further tendered the 48 page document dated January 14, 2018; a College Complaint ██████████ filed that morning and also referred to above. Dr. Makis advised that the document would be the source of his prepared statements in sworn testimony. Dr. Makis then tendered for exhibit a bundle of documents that he described as supporting documents to the above Complaint. Counsel identified that a number of those documents appeared to originate from the production of records in the civil litigation and others concerned the Offer of Settlement referenced earlier by Dr. Makis. The documents produced in civil litigation would be subject to an implied undertaking that they be used only for the purpose of that litigation. The documents related to the Offer of Settlement would have been made on a 'without prejudice' basis. Upon review and consideration Dr. Makis agreed to remove the material that was objected to. The Tribunal reminded Dr. Makis that the reason for the Hearing being called, is related to the issues at hand and in front of the College as a result of a complaint process concerning allegations in respect to the incident on April 21, 2017 only. The Tribunal adjourned to the next morning to permit Dr. Makis to re-organize his materials for his presentation to the Tribunal.
77. When the Tribunal reconvened the next morning, Dr. Makis confirmed the removal of documents that had been identified as a concern by Counsel and tendered the remaining bundle that was accordingly marked as Exhibit 21.
78. Dr. Makis then began testimony by reading from his now tendered prepared materials that had also the day before been filed as a complaint against ██████████. Dr. Makis accused ██████████ of an extensive history of unlawful conduct committed on behalf of, in collaboration with or in collusion or conspiracy with members of the current AHS Cancer Control administrative team headed by the current AHS Chief Medical Officer. Dr. Makis then named six physicians and two non-physicians that he stated were part of the conspiracy and were part of what he called the Cancer Control Team.
79. Dr. Makis then provided a chronology of events in respect to the workings, relationships, responsibilities and commercial arrangements in respect to the Cancer Control Team. He alleged controversial terminations, a coup-d'etat staged in respect to others and those

individual's related positions and responsibilities, attempts to seize control of expensive AHS facilities and equipment centre on the Medical Isotope and Cyclotron facility located on the University of Alberta South Campus.

80. Dr. Makis testified that the Cancer Control Team together [REDACTED] and Investigator Heberling targeted him in 2016, 2017 and 2018 in attempt first to separate him from his hospital privileges by framing him with fraudulent AHS and College complaints. He then alleged that by manipulating those complaints the express purpose was to destroy his medical career. Initially the attempt was made to remove [REDACTED] and take over his cyclotron, then instead Dr. Makis' medical practice was attacked as a proxy for an attack on [REDACTED] in the hope that [REDACTED] medical practice would promptly collapse under the unbearable workload, leaving his cyclotron with its revenue potential in the hands of other members of the Cancer Control Team.
81. Dr. Makis testified that the plot to sabotage his medical career was uncovered with the result that he could not be fired as planned requiring AHS to cover up the botched hit-job and pay Dr. Makis' salary to stay home for most of 2016 leaving the CCI radiology department short staffed for the entire year. The attack on Dr. Makis' medical practice became an abysmal failure upon the filing of his lawsuit that in turn resulted in the resignation of a Senior AHS Administrator and later removal of another.
82. Dr. Makis testified that [REDACTED] unlawfully manipulated and covered up complaints to the College to protect the Cancer Control Team by successfully covering up the sabotage and destruction of the medical practices of two radiologists at the CCI who had stood up to the abuse being inflicted on their health care staff. This was accomplished by intercepting complaints filed, by concealing or ignoring supporting documentation, by misrepresenting allegation made, by deflecting College responsibilities and finally by refusing to investigate any incident of unprofessional conduct reported to the College in respect to the Cancer Control Team.
83. Dr. Makis testified that in April of 2017 College officials [REDACTED] and Investigator Heberling with members of the Cancer Control Team desperately needed to undermine his lawsuit. An opportunity presented itself when Dr. Makis attended a conference that was attended by a member of the Cancer Control Team, one of the main saboteurs of his career, [REDACTED], who was accompanied by his close personal friend and research assistant [REDACTED]
84. At this point, Dr. Makis turned to the documentation in respect to the April 21, 2017 incident starting with the letter dated May 18, 2017 stating that the Complaints Director had opened a complaint file under the authority of Section 56 of the HPA. Dr. Makis stated that he had not been provided a copy of the email allegedly sent to a colleague. He noted that he had been provided a number of quotes alleged to have been made by [REDACTED] to an unknown individual. Withholding this email was, Dr. Makis stated, extremely suspicious. The email referenced was identified as Exhibit 3 being the email from [REDACTED] to Ms. Plupek.
85. Dr. Makis testified that he cooperated with the College's May 18, 2017 request for a response to the alleged [REDACTED] complaint. His response, Exhibit 4, he stated included his response to the allegations made by Dr. Ritchie in his May 8 memo quoting from and relying on information that was three intermediaries removed from its source. Dr. Makis asserted that being asked to accept at face value what a College official was quoting from material that was deliberately withheld made him extremely uncomfortable with the bizarre and inexplicable actions of the College. He had still not received any firsthand documentation, nor had [REDACTED] filed a formal written and signed College complaint

against him. [REDACTED] was, he stated from December 30, 2015, no longer his co-worker as he had accepted a paid voluntary administrative leave. "On April 21<sup>st</sup>, 2017, [REDACTED] was neither my colleague nor a co-worker"; she was an individual that he had briefly worked with at the CCI in 2015. [REDACTED] was neither a health care provider nor a health care professional. She is a research assistant under his testimony.

86. Dr. Makis stated that on April 21, 2017 he had no outstanding or unresolved College complaint or investigation. While [REDACTED] had provided a short statement in the CPSA file 160003.1.1, that complaint had been mutually resolved and closed. He had agreed to take two courses suggested by Dr. Caffaro and completed the requirements. [REDACTED] was not a party to the lawsuit QB action 1603 18935, or implicated in any of the pleadings. Dr. Makis offered a concern as to why the College waited for one month after receiving [REDACTED] account before contacting him. On June 1, 2017, Dr. Makis wrote to Dr. Caffaro reporting his belief that [REDACTED] complaint was an act of retaliation by [REDACTED] in regard to College file No. 160616.1.1. In that letter, Dr. Makis asserted that [REDACTED] was also due to be questioned under oath in June or July 2017 in regards to his actions of sabotage of Dr. Makis' medical career.
87. Dr. Makis testified that in addition at the time of the April 21, 2017 incident there was another College Complaint CPSA File No. 160616.1.1. Dr. Makis made reference to his concern about the timing of the November 15, 2016 dismissal letter. While the referenced complaint appeared to concern allegations made by Dr. Makis against [REDACTED], the Complaint was not introduced into evidence. [REDACTED] was at the time, testified Dr. Makis, the subject of three separate formal investigations, an AHS investigation, a University of Alberta investigation and a College investigation by the Complaint Review Committee.
88. Dr. Makis then turned to Sandra Plupek who as noted above attended the hearing as an observer but was not called to testify. Dr. Makis testified that she was alleged to have participated with individuals from the Cancer Control Team in launching an unlawful Investigation Coordination Team (ICT) and executing an unlawful plot to have Dr. Makis removed from CCI in December 2015.
89. The allegations asserted by Dr. Makis included disabling his AHS email account in January 2106, hacking into and scanning his AHS computers, obtaining from [REDACTED] his Manitoba practice documents, discussion of financial settlement with another member of the Team, unlawfully editing the AHS Triggered Investigation Assessment (TIA) Report and misplacing his research computer in December 2016.
90. Dr. Makis then returned to the timing of the Offer of Settlement from AHS in respect to the lawsuit. He testified that there was included releases and confidentiality requirements that he asserted were crucial to the College and necessary for Dr. Caffaro to cover up their own unlawful acts in respect the handling of eight listed College complaints, two of which were the first and the second complaints against Dr. Makis. The settlement would have covered up all the unlawful acts of the Cancer Control Team. Thus repeated Dr. Makis in testimony the above individuals conspired to use the April 21, 2017 incident for the purpose of pressuring him into accepting AHS's settlement offer. With the Offer of Settlement rejected on June 9, 2017 and the lawsuit proceeding, the College launched its investigation on June 12, 2017 less than six business hours later. He testified that that investigation would prevent Dr. Makis from practicing medicine, obtaining a medical license outside Alberta, and impair his ability to earn income to fund the lawsuit.
91. Dr. Makis turned to the Investigation stage of the process. He referred to and outlined each letter to the College and others attempting to secure a meeting with the Investigator,



outlining his concerns as to the true purpose and motivation behind the Complaint and in the end concerns with the authenticity of the Notice and materials provided or attempted to be provided to him by Counsel and filing a police report against the Counsel.

92. Dr. Makis returned to a letter from Dr. Ritchie to him dated October 27, 2017 advising that the College had appointed Ms. Heberling to investigate this complaint. The letter had been subject to objection, was not recognized by Dr. Ritchie and the Tribunal was left without an explanation as to the possible error that may have led to its inadvertent creation. Dr. Makis asserted rather that the document was not a random error but rather meant as intimidation from the College.
93. At this point in the hearing, Dr. Makis tendered a letter Counsel had not seen. Upon review, the Tribunal was advised that the letter expresses a [REDACTED] communicated by letter to Dr. Makis by Dr. Beach who is responsible for the Physician Wellness Program under part 3 of the Health Professions Act which itself provides for confidentially meant to protect the member. Counsel indicated that Dr. Makis could avail himself of protections under the Act that included requesting that the Tribunal hear testimony in camera in respect to the document thereby ensuring that the matter does not become public. After further explanation, Dr. Makis waived his right to confidentiality as it related to the matters raised in the document.
94. The letter dated October 27, 2017, signed by Dr. Jeremy Beach and addressed to Dr. Makis first assured Dr. Makis that Dr. Beach did not have any details as to what may be happening with those processes [referring to processes at the College] ... However, [Dr. Beach went on] I have been asked to talk with you so that any concerns that might arise out of a [REDACTED] can be considered from the perspective of physician health. At present I would simply like to speak with you to understand whether there's a relevant health concern or not. As interpreted by Dr. Makis, the letter was meant as intimidation towards himself from the College.
95. Returning to the failure of the College to disclose what Dr. Makis calls the mysterious email authored by [REDACTED] on April 21<sup>st</sup>, 2017. The email, that formed the basis of the entire College complaint was alleged by Dr. Makis to have been withheld by Drs. Caffaro and Ritchie because it shows that [REDACTED] immediately documented her allegations with Sandra Plupek, who Dr. Makis testified is implicated in extensive unlawful conduct and is one of the central people involved in the sabotage and destruction of his medical career. Further, Dr. Makis, noted that [REDACTED] admits to conspiring with Ms. Sandra Plupek who she quotes "I need this to be documented."
96. To Summarize, Dr. Makis offers in testimony: On May 8, 2017, Dr. Ritchie opens a College complaint but withholds the document that is the basis for the complaint. [REDACTED] April 21 email to an anonymous individual. On May 18, 2017, Dr. Caffaro launches a formal complaint in anticipation of a settlement offer by AHS to Makis. On June 1, AHS makes a settlement offer for the lawsuit to cover up all the unlawful conduct. On June 9, 2017 Dr. Makis rejects the offer by failing to respond. On June 12, 2017, within six business hours Dr. Caffaro launches an investigation and assigns Investigator Heberling to allegedly increase pressure and prevent Dr. Makis from practicing medicine and earning an income to continue the lawsuit. On September 13, 2017, Investigator Heberling completes her investigation though her report is not provided to Dr. Makis. On October 16, 2017, Dr. Makis informs his legal counsel that he intends to add the College as co-defendant to his lawsuit. October 17, 2017, within four hours, Dr. Caffaro, is alleged by Dr. Makis to find out and sends the Complaint to Hearing to discourage Dr. Makis from suing the College and increase pressure to settle. On Oct 27, 2017, Dr. Caffaro realizes that he sent a complaint to Hearing without conducting any investigation and assigns Dr. Ritchie to

conduct one. On January 9, 2018, Dr. Caffaro's lawyer reveals the email that has been withheld for eight months is an email from ██████████ to Ms. Plupek, an AHS Senior official implicated in the lawsuit. The attached list of exhibits contains no investigation report.

97. In response to questions from the Tribunal, Dr. Makis stated that he did not receive the USB stick with the Investigation Report on it and identified his former registered email address with the College and his more recent email address.
98. In Re-direct, Counsel reviewed and tendered documents that outlined the chain of communications to Dr. Makis that were at first accepted, then despite requesting the Investigation materials, refused upon receipt by Dr. Makis. Dr. Makis considered the materials to have been fraudulent and filed a police report. Dr. Makis agreed that his conclusion was wrong but would not agree that he had jumped to the extreme conclusion of fraudulent conduct.
99. Dr. Makis would not agree that he had described a complex conspiracy involving a large number of individuals at AHS, CCI and the College. It was, however, clear that he believed a conspiracy was the basis for all of his trouble. He also would not assert that ██████████ told a complete fabrication of what occurred.
100. In respect to the Investigation Report Dr. Makis was directed to page 2 of the Notice of Hearing that identified that further particulars had been set out in the September 13, 2017 Investigation Report prepared by Investigator Heberling. He acknowledged that he had not noticed that part.
101. Dr. Makis confirmed that he had asked no questions of Dr. Caffaro or Investigator Heberling about his allegations of conspiracy between them and AHS. When asked to explain why he chose not to do so, Dr. Makis replied, because that issue is not before the hearing. He agreed that he had failed to call people who he said witnessed what had occurred at AHS and CCI. He did follow up with Dr. Beach, however, in response to a question from the Tribunal, he advised Dr. Beach that he had no health issues.
102. The Tribunal questioned Dr. Makis for further detail on his May 18, 2017 response on what had happened at the April Conference. He watched ██████████ and ██████████ in the bar as he sat in the bar for hours with a colleague. He testified he passed by her a couple of times, exchanged a brief greeting, but did not recall exactly what it was. Dr. Makis offered it might have been a nod or hello, it was a crowded room and that was the extent of their interactions. He had no private conversation with ██████████. He agreed that her account directly contradicts his.
103. The Tribunal asked why he had asked for the Investigation records on October 18, 2017 and refused the materials sent to his home. Dr. Makis testified that he asked Investigator Heberling three times to meet; he received then the Notice, and was offered the USB and said he would accept the USB with the records. However, he became very concerned about the whole situation, he asked follow-up questions. He then testified that he looked at from the point of view that he had been living through this nightmare for two years and his family had suffered a tremendous amount. Dr. Makis went on to elaborate that he told his wife, I don't want to accept anything from Counsel. I want to get it from the College, confirmation from the College, so he then filed the police report. Dr. Makis then asked Dr. Scott McLeod, Registrar, who confirmed that the Counsel is acting in representation for the College. Then the Notice of Hearing appeared on the College website. Dr. Makis then wanted to meet with the Registrar but this did not occur.

104. Dr. Makis did not follow-up from October to January and even at the hearing had not seen the Investigation Report. He chose self-representation despite his prior matter having with the assistance of legal counsel been brought to a consensual resolution, a satisfactory resolution. He now felt that he had been pressured to give up his hospital privileges in return for a very minor settlement.
105. At that point, the Tribunal provided time for Dr. Makis to review the Investigation Report. He did so and had no questions arise from it. Counsel for the Director asked that he confirm that the Report is as Investigator Heberling describes, simply a review of two emails or letters, one from [REDACTED] and one from Dr. Makis.

## **IX. The Submissions**

106. Counsel to the Complaints Director pointed to the Notice of Hearing and stated that the issue before the Tribunal was relatively narrow being about an event described to have occurred on April 21, 2017. The Tribunal would be required first, to make findings of fact having considered and weighed the evidence before it. Having done so the Tribunal would then have to determine the conduct or standard on which to assess or judge the member charged and finally to apply the facts as found to the standard of conduct expected and reach a conclusion as to whether the proven conduct amounted to unprofessional conduct.
107. Counsel suggested that there was contested evidence and therefore the Tribunal would need to assess and determine the credibility in respect to the evidence of different witnesses. To that end, the Tribunal should test the story of a witness as to its harmony with the preponderance of the probabilities that a practical and informed person would readily recognize as reasonable. A witness may testify as to what he sincerely believes to be true, but he may be quite honestly mistaken.
108. The evidence of [REDACTED] and that of Dr. Makis was diametrically opposed. The evidence was not extensive because the interaction was short. The interaction was neither observed or witnessed by other individuals. The conflicting descriptions should not prevent the Tribunal from being satisfied that the College has met its onus to establish on a balance of probabilities what had occurred as [REDACTED] and description was credible.
109. The evidence of Dr. Makis, who testified that what [REDACTED] described did not happen, in contrast, relied on a description of a conspiracy of a number of actors, who had reason and the intention to harm Dr. Makis, actors that included not only [REDACTED], their immediate supervisor, his former Employer but elements of the College itself. Dr. Makis, Counsel suggested, was quick to jump to conclusions as can be seen in his initial belief that Counsel to the Complaints Director and the Notice of Hearing were fraudulent and reporting Counsel to the police as a result.
110. Counsel suggested that the Tribunal should ask why [REDACTED] would fabricate her version of events. Counsel instead suggested that the threatening interaction as credibly described by [REDACTED] was consistent with the related conduct seen by the Tribunal of a doctor who believed that there was a grand conspiracy to harm him,
111. Counsel asked that the Tribunal recognize that the self-regulation of a profession is a privilege and that each physician has a continuing responsibility to merit this privilege and support its institutions. Uppermost in the duties of the College is the protection of the public interest that includes ensuring that the regulated members are qualified and safe and competent to provide health services and in doing to ensure that their conduct meets the

ethical and professional expectations of the College. The Standard of Practice that incorporates the Canadian Medical Association (CMA) Code of Ethics is mandatory not simply aspirational. The Code requires that physicians treat their colleagues with dignity and as persons worthy of respect. To that end, the College, in *The Messenger* of June 2016 described the importance of ensuring that witnesses and complainants feel safe and feel that they can give their information to the College without fear of retribution. The protection given to witnesses is widely seen in other statutory provisions and is embedded in the broader common-law protection of absolute privilege for witnesses and complainants.

112. So [REDACTED] having participated in an investigation under 160003.1.1, despite her participation being quite narrow, comes forward and expresses a concern that she was confronted and threatened by Dr. Makis for having participated. The Tribunal should similarly ask why Dr. Makis would do that. Counsel suggested that Dr. Makis unfortunately views the world in a very different light than others and sees it as there's a grand conspiracy against him, a conspiracy that he describes at length and that has coloured his impression of [REDACTED] and how he reacted to her.
113. [REDACTED] had nothing to gain and could not be considered, as argued by Dr. Makis, a pawn of her superiors; [REDACTED] is a highly intelligent woman, with a [REDACTED], who has extensive experience in research and clinical trials requiring that she conduct independent and objective research. [REDACTED] description of events, her description of Dr. Makis' reaction to her, was more consistent with the preponderance of evidence and consistent with how Dr. Makis has reacted to others including the filing of a complaint to the Edmonton Police Service after receiving a Notice of Hearing.
114. Pointing to the evidence of Dr. Beach's letter Counsel suggested that the Tribunal if it makes a finding of unprofessional conduct can, under Section 82(d), direct an assessment if there is a concern about [REDACTED]. The Hearing Tribunal may so order where a regulated member before it may need the assistance of the physician wellness program though that member may still be found guilty of unprofessional conduct for failing to meet the standards of the profession.
115. In response to questions from the Tribunal, Counsel suggested that physicians, as members of a privileged profession, are held to a higher standard than the common person. What in other circumstances might be considered as rough language, even in a private setting, where it's by a person known to be a member of the profession, so that it would affect the public perception of the profession generally, then it is no longer private but rather professional conduct [to be judged by the higher standard expected of the professional].
116. Confronting someone who has been a witness in an investigation so as to chill the air and make that person think twice about participating in the future undermines the institution of the College. Here you have a member of the medical profession who goes after someone and suggests she is going to lose her job and she furthermore is going to suffer consequences simply because she participated in the investigation, and because Dr. Makis asserts she lied to the investigator. Counsel suggested that this goes to the very heart of the public having confidence that an investigation process can be effective and efficient.
117. Dr. Makis, opened his Submissions by stating that he was aware of the personal risk of presenting the great amount of background information that he brought to the Tribunal and by doing so in an unrepresented capacity. This background, he suggested, had been

cleverly skewed by Counsel to paint him in a certain way. He knew of the risk and was willing to take it. ██████ could not be considered credible because she had testified that she had seen Dr. Makis at a conference in Barcelona where he had never been.

118. Dr. Makis pointed to the investigation undertaken by Investigator Heberling who over the four months of her investigation could have but did not do a number of things; including speaking to ██████, to Dr. Makis, to Ms. Plupek, to ██████. During this investigation, Dr. Makis, pointed out, he could not work and yet no one cared and that spoke to the intent of the College in his case. Dr. Makis noted that when challenged in cross-examination by Counsel he refused to say that ██████ fabricated her story. This should not be taken as a “gotcha”, as suggested by Counsel. Rather, Dr. Makis simply did not know why she had said what she said and, not knowing, he refused to speculate.
119. Dr. Caffaro, however, Dr. Makis suggested, was honest when he said that the College dismissed all the options out of hand and proceeded straight to disciplinary action. This was, Dr. Makis suggested, the moment of truth, what his case was about, there was no process. There was no due process. The intent was to proceed straight to disciplinary action. There was no excuse for the College to launch a complaint against someone, to quote from a document and not give the complainant the document. In this case, the College withheld the document from him until three days before the hearing.
120. Dr. Makis responded to the suggestion of Counsel that he saw the world differently than others, by calling it a clever way of saying that maybe there’s something wrong with him. Certainly, Dr. Makis suggested, someone who has thrown around the word “conspiracy” and more than a few times in his background may be a bit suspect. Dr. Makis then invited Counsel to say that to his colleagues who had been similarly mistreated, dismissed and were struggling as a result. Or others, who had been left crying or had been harassed and repeatedly hassled into bringing complaints against him against their will or others who had been promised promotion in return for doing so.
121. Dr. Makis stated that he understood that all Counsel had to do was to paint him as having a mental or physical problem. He had come before the Hearing Tribunal without the assistance of the CMPA because their previous assistance had been unpleasant. Dr. Makis submitted that you can’t tell the CMPA the truth for many reasons. They include that it may not be politically convenient or satisfying to someone’s political needs. “Everything must be massaged. Things have to be left out. You don’t want to upset this person or that person.”
122. Dr. Makis closed by advising the Tribunal that he had been dealing with this for over two years, during which time he had been unable to secure a position within AHS, within the province, the nation or internationally. He stated he is still here talking about the stuff that goes on in this province because he is stuck with the truth and is going to keep going with the truth and does not care how unpalatable it is to anyone.

## **X. The Decision**

123. The Tribunal carefully reviewed and weighed the evidence before it and gave due consideration to the submissions of the College and Dr. Viliam Makis. The Tribunal was faced with two diametrically opposed accounts of an incident that

occurred on April 21, 2017. The Tribunal found that the incident, as described by [REDACTED], occurred and further that it constitutes unprofessional conduct as charged by the College. The Tribunal's reasons to those findings follow.

124. It was, firstly, the College, not [REDACTED], that brought the complaint pursuant to its powers under Sec. 56 of the *Health Professions Act*. [REDACTED], when confronted by Dr. Makis, had immediately reported her concern to colleagues. She was directed to an Sandra Plupek of AHS and to the College itself. When contacted by a representative of the College she provided a written record of the incident prepared shortly after it had occurred. She was consistent in her representations as to the place, time, content and tone of the incident.
125. [REDACTED] involvement in a previous case involving Dr. Makis was minor and did not seem to be a major contributor to a consensual agreement with the College and Dr. Makis relating to a previous case. She characterized their work interactions as cordial. There were no representations of previous interpersonal disputes or conflict between [REDACTED] or Makis. There was no substantiated evidence brought forward that [REDACTED] had personal or professional motives to bring forward a spurious complaint against Dr. Makis.
126. Under examination and cross-examination, [REDACTED] sworn testimony was consistent and reasonable. The Tribunal finds that [REDACTED] was a credible witness with no evidence previous discipline, workplace complaints, public misconduct, legal affairs, professional gain, third party concerns or previous actions that would bring her character into question.
127. Dr. Makis, by letter dated May 18, 2017 was advised by the Associate Complaints Director an investigation had been opened. He was provided a memo dated May 8, 2017 outlining the information that gave rise to the complaint. Dr. Makis responded by letter dated May 19, 2017 expressly denying all of the allegations made. He stated that he did not make any of the statements claimed, did not threaten in any way, nor did he stand in front of her at any time. At hearing before the Tribunal, Dr. Makis offered an explanation of why a spurious complaint was brought to the Tribunal. He explained a complex series of events and motives that he alleged involved senior members of AHS, the CCI and the College.
128. Dr. Makis testified he was a victim of a conspiracy of individuals and institutions that sought to discredit him, destroy his reputation and ultimately silence him. He alleged motives of persecution with coordination of actions and ultimate professional gain by several parties. In support of his testimony, he tendered further written submissions, including letters that he authored outlining these submissions to the College and others, and an Amended Statement of Claim filed by him on December 11, 2017 adding the College as Defendant to an earlier claim filed against Alberta Health Services. Dr. Makis further tendered a Complaint to the College filed the morning of the hearing naming [REDACTED]  
[REDACTED]

129. Dr. Makis did not address, through cross-examination of [REDACTED], the existence of or her participation in such a conspiracy. When the College witnesses testified in respect to the receipt of the information, the opening of the Section 56 Complaint, the initiation of the Investigation and the Notice of the Charge and Hearing, Dr. Makis did not challenge those witnesses as to their knowledge of, or participation in such a conspiracy. Among these witnesses was Dr. Michael Caffaro. Dr. Makis similarly had opportunities to, but chose not to, call witnesses that could substantiate or refute under oath, his reasoning for an alleged spurious complaint. He alleged there were other parties who were similarly harmed by actions of the CCI, AHS or College. He chose not to call any of these persons to the Hearing. He named individuals that he alleged would profit from this persecution and false allegations against him but called none of these parties to testify or be examined. Dr. Makis alleged a conspiracy at an institutional level with AHS and the College yet during his defense he did not call representatives from these institutions to testify or be examined. To further his allegations of conspiracy, Dr. Makis did, as noted, bring into evidence a substantial body of materials, predominantly in the form of letters, complaints, pleadings and submissions that were tendered and accepted as Exhibits. However, Dr. Makis offered no third-party verification or other source documents to support those allegations.
130. The Tribunal notes the difficulties that have arisen in Dr. Makis' career in Nuclear Medicine since coming to the CCI. The placement of Dr. Makis on Administrative leave on December 29, 2015, the failure to renew his contract on its expiry on October 31, 2016 and the filing of the initial Statement of Claim by Dr. Makis all pre-date the incident of April 21, 2017. While the earlier complaint was resolved on December 17, 2016 with the provision of supportive counselling that Dr. Makis, with the advice of his then counsel, accepted and promptly completed in February of 2017, it is clear that other matters remained unresolved on April 21, 2017. Dr. Makis saw these matters as constituting a conspiracy against him, which he anticipated would be addressed in other proceedings in which witnesses would be called to testify under oath.
131. In this case where there are two diametrically opposed accounts of an incident. The Tribunal weighed what it was presented with as evidence in testimony either provided directly, in cross examination and/or in documents brought in as Exhibits. [REDACTED] made a direct and sworn account of the incident with no ulterior explanation as to why it occurred. She found the confrontation disturbing at best and threatening at the worst. Dr. Makis denied it ever occurred. He offered his explanation for [REDACTED] alleged fabrication as a part of a conspiracy of regulatory institutions, senior leaders therein and other parties without calling in any corroborating witnesses or substantiating documentation into evidence. By making serious unsubstantiated and unsupported allegations, Dr. Makis' credibility was impaired. On a balance of probabilities, the Tribunal must determine which account is more likely and thereby finds [REDACTED] account to be the most likely.
132. The Incident of April 21, 2017 as alleged in the charges is found to have occurred. Dr. Makis is found to have confronted a former colleague who had previously

provided information to the College in respect to an earlier complaint concerning his conduct. Dr. Makis implied that [REDACTED] had been lying and would suffer negative consequences for doing so. The Tribunal finds that the negative consequences threatened included the placing of her current position in jeopardy. The entire incident, though short and not physically aggressive, was unsettling and extremely unpleasant for an individual who previously had appropriately responded to requests for information from a College Investigator.

133. The Tribunal further notes that Dr. Makis had, prior to the incident, voluntarily resolved a College complaint by accepting the importance of maintaining professional boundaries in any interactions with other healthcare providers and completed a recommended course in Crucial Conversations Training.
134. The Tribunal must now decide whether the conduct of Dr. Makis found to have occurred on April 21, 2017 rose to the level of unprofessional conduct. The rule making power of a self-regulating profession such as the College comes from the *Health Professions Act*. The HPA requires that the College govern its members with the express purpose of protecting the public interest. Pursuant to this power outlined in Section 133 and recognizing this responsibility outlined in Section 3 the College has adopted Codes of Conduct and Ethics that must be adhered to by its members. The College's *Code of Conduct* incorporates and is consistent with that of the Canadian Medical Association (CMA) *Code of Ethics*. Unprofessional Conduct under the HPA is defined as a contravention of these codes of ethics and standards.
135. It is charged that Dr. Makis breached the CMA *Code of Ethics* Sections 46 and 52 that Dr. Makis is charged. Each physician must further collaborate with other physicians and health professionals in the care of patients and in the functioning and improvement of health services. Included in this duty to collaborate is the requirement to treat colleagues with dignity and as persons worthy of respect.
136. The Tribunal turns to the threshold by which a physician's conduct will be reviewed as to whether it reaches a level of unprofessionalism. Past cases have held that the Tribunal must first identify the standard that would be expected of a physician in the circumstance and second determine whether that standard has been breached (*Walsh v. Council for Licensed Practical Nurses* [2010] N.J. No. 61). At issue is the responsibility of a Physician to support its institutions, that is the College itself, and to treat colleagues with dignity and as persons worthy of respect. The College tendered into evidence and cited in its charge a column entitled "*Trevor's Take On*" in the June 2016 edition of its publication to members *The Messenger*. There, the then Registrar of the College stated that, "... its witnesses (and potential witnesses) must be able [to] come forward and report behaviour and actions by physicians without fear of retaliation. The alternative is that complainants and witnesses may feel that they cannot be entirely truthful and forthcoming, or may simply choose to remain silent, for fear of retaliation". Dealing with an unrelated matter the Registrar advised that it was exploring ways, "to absolutely ensure that witnesses can come forward without risk of retaliation ...". While the Tribunal considers it



unnecessary to illicit specific provisions protecting witnesses who cooperate in respect to civil proceedings from retaliation for their good faith cooperation it is none the less relevant that the College has addressed the issue as it pertains to their own processes. Further, the protection given to witnesses is widely seen in other statutory provisions and is embedded in the broader common-law protection of absolute privilege for witnesses and complainants

137. The Tribunal further recognizes that the Courts have accepted that while professionals have private lives and should enjoy, as much as possible, the rights and freedoms of citizens generally, their status in the community at large means that their conduct will be subject to scrutiny and comment. Courts have therefore said that even private behaviour that derogates from the high standards of conduct essential to one's profession cannot be condoned, that such conduct must be above reproach in the view of reasonable, fair-minded and informed persons. (*Erdman v. Institute of Chartered Accountants of Alberta*, [2013] A.J. No. 355).
138. Taking into consideration the incident of April 21, 2017 related to Dr. Makis confronting ██████████ in a public meeting, the Tribunal finds that the charges are proven. He stood close to her in a threatening posture and accused her of lying to a College investigator. He furthermore implied that her livelihood was in jeopardy as a result of her testimony to the College on a previous case. Dr. Makis could not, and did not offer, any mitigating explanation of his behavior in the incident as he denied it ever occurring. There is no other reasonable explanation to understand the proven allegation and Dr. Makis' behavior in this case.
139. It is noted by the Tribunal that ██████████ was called to testify to the College on the previous matter as one of several parties. She did not volunteer to testify but rather was called to do so. She fulfilled her obligation to provide information to a College Investigation. The College, as noted above, takes very seriously the matter of protecting witnesses in College proceeding and investigations. In Submissions, Counsel asked the Tribunal to recognize that self-regulation of a profession is a privilege and that each physician has a continuing responsibility to merit this privilege and support its institutions. Uppermost in the duties of the College is the protection of the public interest, which includes ensuring that the regulated members are qualified and safe and competent to provide health services and in doing so, ensure that their conduct meets the ethical and professional expectations of the College.
140. The standard of a Physician subject to the proceedings of the College is that the Physician must be scrupulous in subsequent dealings with those who offer information to the College in respect to those matters. This does not prevent Physicians from vigorously defending themselves in respect to such matters before the College. However, any personal attack, outside of those processes, admonishing and threatening those who have offered information to the College, unquestionably rises to the level of unprofessional conduct. Taken within this context and as presented in evidence, submissions and exhibits Dr. Makis' behavior

in the incident of April 21, 2017 is found by the Tribunal to have risen to the level of unprofessional conduct.

**XI. CONCLUSION**

The Hearing Tribunal finds that Dr. Viliam Makis is guilty of unprofessional conduct as defined by the *Health Professions Act*.

**IX. SANCTION**

The Tribunal will receive submissions on sanction from counsel for the Complaints Director and from Dr. Makis. If the parties wish to proceed with written submissions on sanction, the Hearing Tribunal suggests that the submissions on behalf of the Complaints Director be provided to Dr. Makis within one month of receipt of this decision and that Dr. Makis have a further two weeks to prepare his submissions on sanction before all of the submissions are provided to the Hearing Tribunal for consideration. These timelines are suggestions only and the parties may agree on different timelines and advise the Tribunal accordingly.

If either party wishes to speak to sanctions in an oral hearing or to call evidence on the issue of sanctions, they may write to the Hearing Tribunal care of Mr. David Kay, Hearings Director of the College and, to the other party setting out that request and the Tribunal will determine the process to be followed.

Signed on behalf of the Hearing Tribunal by  
the Chair



Dated: June 5, 2018

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Dr. Ralph Strother

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. VILIAM MAKIS

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

## **Supplementary Decision of the Hearing Tribunal of the College of Physicians & Surgeons of Alberta Addressing Sanction**

On June 5, 2018 as the Hearing Panel (the “Tribunal) constituted by the College of Physicians & Surgeons (CPSA) pursuant to the *Health Professions Act*, issued its decision concerning the complaint of unprofessional misconduct brought against Dr. Viliam Makis. In that decision we dealt with the merits of the complaint. The Tribunal must now address the question of sanction. In this decision on sanction, the Tribunal will first review the necessary background, then it will summarize the parties’ submissions and then give its decision on the sanction that Hearing Tribunal members, in the circumstances, consider appropriate.

### **Background**

In summary, in respect to the merits of the complaint made against Dr. Viliam Makis, the Tribunal in its decision dated June 5, 2018 found that:

The incident of April 21, 2017 occurred as alleged in the charges occurred. Dr. Makis confronted a former colleague who had previously provided information to the College in respect to an earlier complaint concerning his conduct. Dr. Makis implied that [REDACTED] had been lying and would suffer negative consequences for doing so. The negative consequences he threatened included jeopardizing her current position. The entire incident, though short and not physically aggressive, was unsettling and extremely unpleasant for [REDACTED] who previously had appropriately responded to requests for information from a College Investigator. (Decision, June 05, 2018 [hereafter Decision], Paragraph 132)

The Tribunal accepted that:

The *Health Professions Act* requires that the College, as a self-regulating profession, govern its members with the express purpose of protecting the public interest. The College pursuant to that power and obligation has enacted its own *Code of Ethics* that incorporates that of the *Canadian Medical Association* that must be adhered to by its

members. (Decision, para 134)

In addition, that:

Sections 46 and 52 of the *Canadian Medical Association Code of Ethics* require physicians to collaborate with other physicians and health professionals in the care of patients and in the functioning and improvement of health services. Included in this duty to collaborate is the requirement to treat colleagues with dignity and as persons worthy of respect. (Decision, para 135)

The Tribunal further affirmed that embedded in the Physicians' responsibility to support the Colleges' institutions, is, as communicated by the College in its publications and supported by the cases, a recognition of the importance that witnesses (and potential witnesses) must be able to come forward without fear of retaliation. (Decision, para 136)

The Tribunal thus stated, and in the result found that:

Any personal attack outside of the College's processes that admonishes and threatens those who have offered information to the College, unquestionably rises to the level of unprofessional conduct. In this context, and considering the evidence, submissions and exhibits the Tribunal found that Dr. Makis' behavior in the incident of April 21, 2017, rose to the level of unprofessional conduct. (Decision, para 140)

### **The Question of Sanction**

Following the issuance of its decision, the Tribunal invited the parties to advise as to how they proposed the Tribunal to proceed in respect to sanctions. The parties, both represented by Counsel, chose to provide written submissions. The Complaints Director advised that the College would be able to comply with the Tribunal's initial suggestion to provide the College's submissions on July 5, 2018. Counsel for Dr. Makis was to follow with submissions on July 19, 2018. An extension to July 23, 2018 was later requested by Counsel for Dr. Makis and granted by the Tribunal.

## **Submissions**

The Tribunal received the Complaints Director's submissions on July 5, 2018 by letter of that date. This decision shall address those following the discussion of Dr. Makis' submissions that the Tribunal received on July 18, 2018.

Dr. Makis, on July 18, 2018 provided submissions on his own behalf consisting of 38 pages that incorporated argument, reviews of the hearing transcript, and new documentation. The submissions and new documents were in support of his assertions of errors in the decision of Hearing Tribunal of June 5, 2018 and his request that the Tribunal overturn its decision and dismiss this case. Among the new documents were copies of Dr. Makis' passport with stamps of entry documents.

Dr. Makis provided numerous excerpts from the Hearing Transcripts concerning an ENETS Conference in Barcelona, Spain in March of 2016 that [REDACTED] had attended and who testified that she had seen him in attendance. The documents tendered supported the position of Dr. Makis as stated at the hearing conducted on January 15 and 16, 2018 that Dr. Makis had not been in attendance and had never been to Spain.

Dr. Makis accused the Complaints Director of ignoring [REDACTED] testimony on that point and the Tribunal of wrongfully preventing him from tendering the evidence that he had not been to Spain.

Dr. Makis described [REDACTED] as having visual hallucinations with a level of detail that could be symptomatic of a psychiatric condition or a vascular condition possibly indicative of a brain tumour. Dr. Makis asserted that the Complaints Director and its Counsel ignored these symptoms and used [REDACTED] selfishly and in bad faith as a tool or means to conduct a grossly unethical and openly malicious attack on his medical career and professional reputation, with the purpose of damaging or destroying his medical career and financial well-being.

On July 24, 2018, Counsel for the Tribunal wrote to acknowledge receipt of Dr. Makis' submissions and to note that the submissions both provided and spoke of the gathering of further materials and Dr. Makis' view that his appeal in respect to the Decision of June 5, 2018 should succeed. Through Counsel, the Tribunal expressed concern that Dr. Makis had not addressed the

issue before the Tribunal, namely sanction. Dr. Makis, who was at that time without the assistance of Counsel, had instead written that he would not respond to the submissions of the Complaints Director on sanction.

Through Counsel, the Tribunal further advised Dr. Makis that the Tribunal did not have jurisdiction to deal with an appeal of its own decision. The Tribunal also asked that Dr. Makis confirm that it was his intention not to provide it with submissions in respect to sanction. Finally, the Tribunal cautioned Dr. Makis that, in absence of submissions from him on the question of sanction, the Tribunal had only those of Counsel for the Complaints Director.

Further communications and submissions of Dr. Makis:

- On July 24, 2018, 10:29 a.m. Dr. Makis emailed with attached letter to the Director of Security Westin Harbor Castle, Toronto.
- On July 24, 2018, 11:43 a.m. in an email sent to Counsel for the Tribunal, Dr. Makis told the Tribunal that Dr. Makis and his family had been threatened and pressured by *his* former Counsel just prior to the issuance of his sanctions submissions. Dr. Makis communicated that he had filed a Complaint against his former Counsel to the Law Society of Alberta. A copy of the Complaint was attached. Dr. Makis further asserted that his former Counsel was a former partner and a personal friend of the Counsel who was representing the Complaints Director. Dr. Makis accused his former Counsel of advising him to lie about his health by pretending that he is suffering from stress or depression and that if he did not do this, his former Counsel told him, he may never be allowed to practice medicine again. Dr. Makis finally told the Tribunal that he would be filing a Complaint to the Law Society against [REDACTED]. In addition to the above Law Society complaint Dr. Makis attached the following: CPSA Tribunal Decision of June 05, 2018; The CPSA Tribunal Transcript – 310 pages; the CPSA Submissions on Sanction; the Makis Submission on Sanctions; and the email exchanges with his former Counsel.

- On July 24, 2018, 11:52 a.m. an email from Dr. Makis resending a portion of the above material.
- On July 30, 2018, Dr. Makis emailed the Tribunal repeating that he would be filing a second complaint with the Law Society documenting the unlawful, unprofessional and unethical conduct of Counsel for the Complaints Director and that he would forward that filed complaint on August 6, 2018.

The Tribunal, through its Counsel, on July 30, 2018 acknowledged the series of communications; repeated its earlier communication that it had no jurisdiction to consider an appeal of its own decision, nor did it have jurisdiction in respect to the Law Society complaints. The Tribunal, through its Counsel, informed the parties that the issue now before it is what sanctions, if any, are appropriate. The Tribunal stated that it had before it the submissions of the Complaints Director suggesting among other things that a Reprimand and an Order for an assessment of Dr. Makis' fitness to practice. Final materials, submissions and replies should be received by August 10, 2018.

- On July 31, 2018, Dr. Makis emailed the Tribunal with attachments stated to be relevant to Q.B. Action #1603-18935 and concerning requests for Registration records for the 13<sup>th</sup> ENETS Conference in Barcelona Spain, March 9-11, 2016.
- On August 6, 2017, Dr. Makis copied the Tribunal with his Complaint to the Law Society concerning [REDACTED].
- On August 7, 2018, with a covering letter, Dr. Makis forwarded his sworn Affidavits of that date. Attached were the Law Society Complaint of July 23, 2018, the attachments to which included the CPSA Hearing Tribunal decision of June 5, 2018; the CPSA Hearing Transcripts of 319 pages; the CPSA Submission on sanctions; Dr. Makis' Submissions on Sanction; and a series of emails exchanged between Dr. Makis and his former Counsel.



- A further Affidavit was received from Dr. Makis on August 7, 2018 providing the communications in respect to the ENETS Barcelona Conference of 2016.
- On August 8, 2018, Dr. Makis provided his final submission, this being his response to the Complaints Director reply of August 3, 2018. Dr. Makis expressed his disappointment that the Complaints Director and Counsel for the Complaints Director continue to misrepresent and mischaracterize evidence and further to make false and defamatory statements. Dr. Makis responded that his submission on sanction did not rely in any way on any complaint to the Law Society. Dr. Makis submitted that the Complaints Director cannot erase [REDACTED] sworn testimony and that it was unethical for the Complaints to continue to deceive the Tribunal concerning that testimony.

### **The Submissions of the Complaints Director:**

In its submissions of July 5, 2018, the Complaints Director reviewed comments from the Hearing Tribunal Decision of June 5, 2018 and discussed, with supporting case law, the principles related to a determination as to appropriate sanction that must address rehabilitation and deterrence. The Complaints Director submitted that a reprimand would address deterrence. The Complaints Director noted that Dr. Makis' practice permit remains active without conditions. Given the insistence of Dr. Makis throughout the process of the existence of a conspiracy between the Complaints Director, AHS and other doctors to damage Dr. Makis' reputation and medical career, the Complaints Director submitted that a fitness to practice assessment should be ordered. The Complaints Director submitted that it is appropriate for the Tribunal to have a concern as to the health of a member even when the member does not raise that as an issue. The Complaints Director submitted that question of fitness to practice and the ordering of an assessment falls under the College's public protection mandate.

The Tribunal was asked to order sanctions that include:

- A written reprimand;
- The suspension of Dr. Makis' practice permit with an order that he undergo a multi-disciplinary fitness to practice assessment;
- A direction that, if found fit to practice without conditions, Dr. Makis' practice

permit be reinstated. If found not currently fit to practice, then Dr. Makis remain suspended until found fit with or without conditions;

- A direction that, if the fitness to practice assessment recommends conditions, the Registrar will determine the nature, scope and duration of the conditions. Any dispute regarding the conditions determined by the Registrar will be heard and determined by a Hearing Tribunal.
- An order that Dr. Makis is responsible for the costs of the hearing.

The Tribunal was provided with the following cases:

- *Jaswal v. Newfoundland Medical Board* [1996] NJ No 50;
- *Ponnampalam (Re)*, [1993] OCPSD no. 26;
- *Ahmed v. Ontario (Health Professions Appeal and Review Board)*, [2011] OJ no. 3219;
- *Re Hayes (2016)*, Decision of the Hearing Tribunal of the College of Physicians and Surgeons of Alberta dated August 17, 2016;

In addition to initial submissions in respect to sanction dated July 5, 2018, the Complaints Director provided the Tribunal with a letter dated July 20, 2018 with an attached Affidavit sworn on July 13, 2018, by Dr. Michael Caffaro, Complaints Director. The Affidavit attached an email from Dr. Makis sent on July 10, 2018 to the Complaints Director and his Counsel.

In that email Dr. Makis states:

“Given the corruption scandal that Mr. Boyer and Dr. Caffaro have embroiled the CPSA in, I don’t believe we will be hearing from Mr. Boyer or Dr. Caffaro ever again.

This will most probably be Mr. Boyer’s last case at the College, as the College will have to sever its ties with Mr. Boyer, and the good people of Hinton will happily welcome Dr. Caffaro back into his family practice.

The Alberta public simply cannot find out that the CPSA sabotages physician’s careers at the whim of corrupt AHS officials, I don’t believe

that's a public scandal the CPSA would ever recover from.

So Mr. Boyer and Dr. Caffaro have sabotaged their last Alberta physician, I regret to inform you gentlemen, but you will never do this to any physician ever again.

You will also not be the only ones to have given up your careers protecting corrupt AHS officials who physically assault and abuse their staff and then sabotage the careers of physicians who report it.

Thank you for the lessons in corruption though, this has been quite the learning experience.

I can only hope that you've learned something yourselves and can move on to more honest career endeavours.”

On August 3, 2018, the Complaints Director provided the Tribunal with his response to Dr. Makis' submissions. In his response, the Complaints Director pointed out that Dr. Makis failed to provide substantive submissions on sanction, and that the question of a conference in Barcelona did not arise neither in [REDACTED] examination-in-chief, nor in Dr. Makis' cross-examination, but only in a question from the Tribunal. The Complaints Director submitted that the reasonableness of the Tribunal's findings is an issue to be raised on appeal to the CPSA Council or to the Court of Appeal and cannot be properly addressed by the Tribunal. The Complaints Director submitted that the Tribunal should consider the submissions that are relevant to sanction and that the Affidavit of the Complaints Director dated July 13, 2018 reinforces the basis for the sanction sought.

The Complaints Director provided a further letter submission dated August 08, 2018 that addressed and contested Dr. Makis' allegations of conflict of interest and impropriety between Counsel for the Complaints Director and Dr. Makis' former Counsel.

The Hearing Tribunal was provided the following case:

- *Boardwalk Reit LLP v. Edmonton (City)*, [2008] AJ No 515 (CA)

## **Decision on Sanction**

The Tribunal has reviewed and considered the submissions and materials. Dr. Makis has directed his submissions to the conduct of the hearing and the errors the Tribunal allegedly made in its June 5, 2018 decision. He reminds the Tribunal, as he testified during the hearing, that he was not at the ENETS conference in Barcelona, as ██████████ had testified, nor had he ever been to Spain. (Decision, Para 55) Dr. Makis provides further documentation to support his assertion that he had not been to the conference, including copies of his passport and confirmation from the registrar of the conference.

In doing so, and in his submissions, the Tribunal understands that Dr. Makis believes that the Tribunal's decision cannot be sustained. Dr. Makis considers that the Tribunal prevented him from tendering evidence to support that he had not been to Spain, and that ██████████ was in error on this point. Dr. Makis could have proven that he was not there. He suggests that ██████████ was hallucinating and therefore the entirety of her testimony must be disbelieved.

As the Tribunal cautioned Dr. Makis, and as later submitted by Counsel for the Complaints Director, the Tribunal does not have jurisdiction to consider an appeal of its decision. The Tribunal must therefore leave to others, with appropriate jurisdiction to do so, any determination as to the conduct of the Tribunal, the significance of the new evidence and whether its decision should be sustained.

The second aspect of Dr. Makis' submissions and materials concerns his continued insistence that AHS, the CPSA and others are engaged in corrupt conduct aimed at sabotaging his career and covering-up their own misconduct. In its decision on the merits of the complaint the Tribunal dealt with the same submissions. (See Decision, Paras 128 – 132) Again, the Tribunal does not have jurisdiction to consider an appeal of its decision.

Dr. Makis further tenders materials in respect to the conduct of Counsel for the Complaints Director and his own former Counsel. As Dr. Makis in the end agrees, those complaints are matters for the Law Society to consider and are not under the purview of this Tribunal.

Counsel for the Complaints Director also filed Dr. Caffaro's Affidavit, referenced above, concerning Dr. Makis' subsequent communication to the Complaints Director and his Counsel.

There was no objection to the Tribunal considering that evidence and the Tribunal therefore reviewed the evidence to the extent that it may be relevant to sanction.

The Tribunal would be very concerned should the conduct of Counsel prejudice a member doctor's ability to respond to the charges brought and the issues raised by such charges. However, it do not find that such has occurred here.

Counsel for the Complaints Director has addressed the question of sanction, as required. Noting the importance of ensuring that those called upon to participate in the College's processes do so without fear of retaliation, the Complaints Director asks that the Tribunal issue a reprimand to Dr. Makis. The Tribunal considered that submission.

Should a reprimand represent an appropriate disciplinary response, the Tribunal, has no basis to mitigate that level of discipline. Dr. Makis, as he was entitled to do, refused to address the question of sanction or to reply to the submissions of Counsel for the Complaints Director. The Tribunal was therefore left without Dr. Makis' explanation for the conduct or recognition of the concern that it raises. As a result, the Tribunal has no reasonable confidence that the conduct will not be repeated.

As a result of the hearing the Tribunal has been, and remains, concerned both for Dr. Makis' fitness to practice, and as a result, for the safety of the public.

Rather than addressing the question of sanction, Dr. Makis chose to repeat allegations made and tender his recent complaint to the Law Society concerning the conduct of [REDACTED] who he accuses of attempting to protect the CPSA and its officers from the public exposure of corruption within the system. Alleging that they have conspired to sabotage his career, Dr. Makis has now gone so far as to personally write to the Complaints Director and its Counsel to state that their careers are over. That email and its assertions have an uncomfortable similarity to the threat made to [REDACTED]

At the beginning of the investigation and prior to the hearing in respect to this complaint, Dr. Jeremy Beach contacted Dr. Makis on behalf of the CPSA to invite him to discuss any health concerns. Dr. Makis, waiving confidentiality, tendered that letter to the Tribunal as evidence of CPSA intimidation. Dr. Makis refused Dr. Beach's invitation.

In addition to the Tribunal's concern for Dr. Makis, it cannot ignore its responsibility to protect the public. A simple reprimand, that it consider an appropriate discipline, would however not provide assurance that Dr. Makis can return to practice without concern for his ability to integrate into a respectful and co-operative environment where the health of patients is uppermost in the minds of practitioners.

In *Re Hayes*, the respondent physician's pattern of behavior during the hearing process concerned the Tribunal. The behaviour of concern was the physician's continued failure to respond to the College, behaviour the Tribunal viewed as a possible symptom of a broader wellness or fitness to practice issue.

The Tribunal respects the right of a respondent physician, with or without Counsel, to mount what in their view is the most effective defense to the charges that they face. [REDACTED]

[REDACTED] The Tribunal therefore accepts the Complaints Director's position that a fitness to practice assessment is warranted. As did the Tribunal in *Re Hayes*, the Tribunal considers that patient safety must be of paramount concern and agree that further information needs to be obtained.

Finally, the Complaints Director asks that Dr. Makis be held responsible for the costs of the investigation and hearing. In this circumstance, the Tribunal prefers the position taken by the Tribunal in *Re Hayes*.

### **Orders/Sanctions**

Accordingly, the Hearing Tribunal orders:

1. That Dr. Makis is hereby reprimanded for his unprofessional conduct on April 21, 2017 as found in its June 5, 2018 Decision;
2. That Dr. Makis shall; within forty (40) days of service of this decision, provide evidence satisfactory to the Registrar that he has arranged to undertake an assessment of his fitness

to practice medicine, and shall thereafter undergo that assessment as arranged, and shall disclose to the Registrar or his nominee the results of that assessment. The Registrar or his nominee shall determine what steps will be taken upon receiving the results of the assessment.

3. Should Dr. Makis fail to fulfill any or each of the requirements of paragraph 2 either in failing to provide evidence of arrangements to undertake an assessment within the required time; or in failing to undertake the assessment as arranged; or in receiving the results of the assessment failing to forthwith provide the results to the Registrar; or in failing to comply with the steps determined to be taken upon receiving the results, the following sanction will apply: The practice permit of Dr. Makis will be suspended until such time as the requirement or requirements are fulfilled.
4. For greater certainty, should Dr. Makis refuse to arrange or fail to attend a voluntary assessment of his fitness to practice medicine as described above, the Tribunal hereby orders that the Registrar arrange for an assessment of Dr. Makis in respect to his fitness to practice medicine.
5. Should the assessment find Dr. Makis to be fit to practice medicine without conditions, his permit to practice medicine, if previously suspended, shall be restored. Should the assessment find Dr. Makis fit to practice medicine with conditions, the permit to practice shall be issued subject to compliance with those conditions.

### **Costs**

The Complaints Director asked that Dr. Makis be responsible for the full costs of the investigation and hearing.

Dr. Makis asserted that the two-day CPSA hearing process was set in bad faith and with malicious intent. It was neither warranted nor legally justifiable. It was planned purposely to artificially create an extremely costly process for the purpose of burdening Dr. Makis and his

family with the extraordinary costs in order to cripple Dr. Makis and his family financially. Dr. Makis further asserted that such cost could fatally impair his lawsuit against corrupt AHS and CPSA Officials, QB Action 1603-18935.

The Tribunal has been and remained concerned as to the length, complication and costs of the hearing. Dr. Makis chose to participate without the assistance of Counsel in both the initial hearing and sanction phase. He repeatedly tendered a significant volume of materials that dealt with his lawsuit mentioned above. He understood that due to its limited jurisdiction, these issues could not be determined by the Tribunal. Dr. Makis refused to address the question of sanction. The Tribunal cautioned Dr. Makis about his refusal to address the question of sanction.

The Tribunal understands, as a fact, that the employment contract that Dr. Makis had at the Cross Cancer Institute was not renewed. As a result, Dr. Makis received the salary continuance provided for in that contract. The Tribunal has noted the impassioned concerns expressed by Dr. Makis as to his treatment by AHS and the treatment of others. Those matters however are the subject of an action filed elsewhere.

The conduct that the Tribunal found occurred on April 21, 2017 while unprofessional, as it found, and deserving of sanction, as it found, might not have consumed the hearing and deliberation time and resources expended. The deliberation time and decisions made because of the charges brought, the responses tendered, the defense mounted and the submissions provided were matters in the hands of Dr. Makis.

The Hearing Tribunal orders costs as follows:

6. Should Dr. Makis, as a result of the assessment undertaken either voluntarily or at the direction of the Registrar, be found fit to practice medicine without condition, he shall pay the full costs of the investigation, the hearing and the assessment ordered.
7. Should the fitness to practice assessment reveal a wellness or fitness to practice concern, Dr. Makis shall pay 50% of the costs of the investigation, hearing and assessment.



The Hearing Tribunal recommends that the Registrar not publish any individually identifying information related to the June 5, 2018 decision or this Supplementary decision addressing sanction.

Dated: October 29, 2018

Signed on behalf of the Hearing Tribunal by the Chair

A handwritten signature in black ink, appearing to read "R. Strother". The signature is written in a cursive style with a large, prominent initial "R".

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Dr. Ralph Strother