

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. SAURABH GUPTA

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

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Dr. Saurabh Gupta on April 12, 2018. The members of the Hearing Tribunal were:

Dr. Ralph Strother, Chair
Dr. Gregory Charrois
Ms. Marg Hayne, Public Member.

Mr. Jason Kully acted as independent legal counsel for the Hearing Tribunal.

In attendance at the hearing was Mr. Craig Boyer, legal counsel for the Complaints Director of the College of Physicians & Surgeons of Alberta (the “College”). Dr. Gupta and his legal counsel, Mr. Tim Ryan, were also present.

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

II. ALLEGATIONS

The allegation to be considered by the Hearing Tribunal (the “Tribunal”) was set out in the Notice of Hearing, dated February 9, 2018, which was as follows:

1. On August 28, 2016, you did inappropriately communicate by electronic means with a person you were told was a 15 year old female high school student, particulars of which conversation included:
 - a) Asking that she come to your hotel alone that evening,
 - b) Comments that a reasonable person would infer meant you were suggesting that you listen to music together in your hotel room,
 - c) Comments that a reasonable person would infer meant there could be alcohol to consume or items to be smoked,
 - d) Inviting her to bring her bathing suit to go swimming in the hotel pool,
 - e) Asking her if she will wear something pretty, and
 - f) Comments that a reasonable personable would infer constituted an attempt to facilitate a meeting alone with a minor without consent or approval of her parent or guardian in circumstances potentially leading to sexual invitation.

At the hearing, Dr. Gupta admitted that the allegation was true and acknowledged that the conduct amounted to unprofessional conduct.

III. PRELIMINARY MATTERS

There were no preliminary matters presented by the parties.

IV. EVIDENCE

Exhibits

By agreement the Parties entered an Exhibit Book, containing 13 items. The Exhibit Book was marked as Exhibit 1.

The Exhibit Book contained the following items:

- Tab 1: Notice of Hearing dated February 9, 2018
- Tab 2: Dr. Saurabh Gupta letter dated August 31, 2016 to the College of Physicians & Surgeons of Alberta
- Tab 3: Medicine Hat Police Service letter dated June 23, 2017 with investigation file
- Tab 4: Dr. Susan Ulan memo dated September 1, 2016 to Dr. Michael Caffaro
- Tab 5: Dr. Michael Caffaro memo dated September 7, 2016 to file
- Tab 6: Dr. Saurabh Gupta letter dated November 3, 2016 to the College of Physicians & Surgeons of Alberta, Ms. Katherine Jarvis
- Tab 7: The Gabbard Centre report dated November 9, 2016
- Tab 8: Dr. Bashir Brebesh report dated January 17, 2017
- Tab 9: Dr. Nancy Fisher neuropsychological report dated January 27, 2017
- Tab 10: Dr. Brian Forbes report dated March 14, 2017
- Tab 11: Dr. Brian Forbes report dated September 25, 2017
- Tab 12: Undertaking of Dr. Saurabh Gupta dated May 1, 2017
- Tab 13: Dr. Michael Caffaro memo dated May 17, 2017 regarding meeting with Dr. Saurabh Gupta

An Agreed Statement of Facts was entered as Exhibit 2.

The hearing proceeded based on the Exhibit Book and the Agreed Statement of Facts and no witnesses were called to testify.

V. SUBMISSIONS

Mr. Boyer made a brief opening statement, in which he summarized the contents of the Exhibit Book and the Agreement Statement of Facts. Mr. Boyer explained that Dr. Gupta admitted the allegation in the Notice of Hearing, and acknowledged that his conduct constituted unprofessional conduct.

Mr. Boyer explained that the matter arose at the end of August 2016 when Dr. Gupta was working away from home in Medicine Hat. Dr. Gupta was engaged in online communications with a person that he thought was a 19 year old female. Dr. Gupta was subsequently informed during the communications that the female he was talking to was 15 years old. However, in reality, the person Dr. Gupta was speaking to was an adult male who was the member of a group known as “Creep Catchers”.

Mr. Boyer indicated the Exhibit Book contained a summary of the incident prepared by the Medicine Hat Police Service, as well as copies of the online communications. Mr. Boyer advised that Dr. Gupta had inappropriate communications with the person he thought was an underage female and that he sought to meet with the person he was talking to at his hotel. However, he was

subsequently confronted by individuals from Creep Catchers when he went out to meet the person. Mr. Boyer indicated that the matter was reported to the police but that while the conduct in question could have been the matter of criminal charges, no criminal charges were laid against Dr. Gupta.

Mr. Boyer advised that Dr. Gupta reported himself to the College and that information also came to the College through Alberta Health Services shortly thereafter. He indicated that Dr. Gupta voluntarily withdrew from practice at the end of August 2016. He advised Dr. Gupta only returned to practice on May 1, 2017 and that he was subject to an undertaking to the College as part of the return and that the undertaking was in the Exhibit Book.

Mr. Boyer indicated the Exhibit Book contained reports regarding assessments of Dr. Gupta in regard to what led to the conduct, as well as assessments regarding Dr. Gupta's ability to return to practice as a physician.

Mr. Boyer advised that the allegations against Dr. Gupta were similar to other conduct that has come before regulators and the College. He provided the Tribunal with a copy of the "Decision of the Hearing Tribunal of the College of Physician & Surgeons of Alberta – Dr. Michael Graff". Mr. Boyer advised that Dr. Graff was found to have committed unprofessional conduct for similar conduct.

Mr. Boyer highlighted that Dr. Gupta represented himself as a physician during the communications and that this was certainly conduct involving a physician. He also submitted that Dr. Gupta acknowledged the allegation as true and that Dr. Gupta acknowledges his conduct was unprofessional and completely acceptable. Mr. Boyer stated the facts support the admission and a finding of unprofessional conduct.

Mr. Ryan also made brief submissions on behalf of Dr. Gupta. He stated that Dr. Gupta's conduct did not result in criminal charges and that the Medicine Hat Police Service came to the conclusion it was not a criminal offence and that no charges would be laid. Mr. Ryan acknowledged that, for the purpose of unprofessional conduct, it did not matter if the matter was criminal. He stated that Dr. Gupta admits that the conduct was unprofessional.

VI. FINDINGS

After hearing from the parties and reviewing the evidence compiled in the Exhibit Book and the Agreed Statement of Facts, the Tribunal concluded there was sufficient evidence to support Dr. Gupta's admission of the allegation, and determined that the conduct constitutes "unprofessional conduct" in accordance with s. 1(1)(pp) of the *Health Professions Act* ("HPA").

The Tribunal took into account the entire proceedings with attention to the following in rendering their decision:

- Beginning at page 34 of the Exhibit Book there is a record of the chat that Dr. Gupta had on "Plenty of Fish" with an individual he believed to be named Sophia. During this chat:
 - Dr. Gupta asks how old she is and she responds "I'm still in high school 15 years old"
 - Dr. Gupta responds "we can still hang out"

- After learning of her age, Dr. Gupta asks her to come to the Hampton Inn to listen to some music
- Dr. Gupta tells her that there is a pool and that they can go swimming. She says she'll bring her bathing suit
- Dr. Gupta tells Sophia that he's in school and that he "will be a surgeon"
- Dr. Gupta asks Sophia "will you wear something pretty"
- Dr. Gupta asks her to "bring a lighter or matches"

These types of electronic communications with an individual who is believed to be 15 years old are inappropriate and, when taken together, suggest an attempt to facilitate a meeting with a minor alone and that could lead to sexual invitation.

Dr. Gupta's conduct, including his statements and requests to an individual who he believed to be 15 years of age and his use of his status of training to be a surgeon during his conversations, harms the integrity of the profession and meets the definition of unprofessional conduct found at section 1(1)(pp)(xii) of the HPA.

This conduct is offensive to members of the public and members of the public. Dr. Gupta's status in the community as a physician means that his conduct will be the subject of scrutiny and conduct at times. Behavior that derogates from the high standards of conduct essential to the reputation of one's profession cannot be condoned.

In addition, as a physician, Dr. Gupta holds a position of prestige and respect. Individuals who are underage are vulnerable and this vulnerability is increased when dealing with an authority figure such as a physician. His remark that he was training to be a surgeon and in the medical profession afforded him a level of immediate credibility and status and his actions tarnished the reputation of the medical profession. Dr. Gupta's conduct with an underage female is highly concerning and harms the standing of the profession as a whole.

The Tribunal also observed that in the Graff decision, a different Hearing Tribunal found that Dr. Graff's convictions for online luring to facilitate sexual contact with a child and one count of online luring to facilitate the making of child pornography amounted to unprofessional conduct. The charges arose as a result of an online chat exchange and Dr. Graff sending inappropriate messages and photos to an undercover police officer posing as a 14 year old female. While Dr. Gupta did not send inappropriate photos and was not convicted of a criminal offence, his inappropriate messages with an underage female are similar conduct.

VII. ORDERS / SANCTIONS

The Tribunal heard submissions from both Mr. Boyer and Mr. Ryan regarding sanctions for Dr. Gupta. A Joint Submission and Admission Agreement were entered as Exhibit 3.

The parties jointly-submitted that the following Orders should be imposed:

1. Dr. Gupta shall receive a suspension of his practice permit for a period of 18 months, of which 12 months shall be an active suspension and 6 months held in abeyance pending fulfillment of the conditions imposed on his practice permit and the terms of his Continuing Care Agreement;

2. Dr. Gupta shall receive credit for the time that he has been out of practice between August 29, 2016 and May 1, 2017 such that 8 months of the 12 months of the active suspension shall be considered fulfilled;
3. Dr. Gupta shall, at his own costs, enter into and fulfill a Continuing Care Agreement with the Assistant Registrar responsible for the College's Physician Monitoring Program for Boundary Violators, for a period of at least five years after the date the Agreement is signed and Dr. Gupta shall not be discharged from that Agreement without the agreement of the Assistant Registrar and having regarding to any further assessment of Dr. Gupta;
4. Dr. Gupta's practice permit shall be subject to the condition that he must have a chaperone present when seeing any female patient under 18 years of age. If the chaperone practice condition remains in place after the Continuing Care Agreement has expired, the condition shall be reviewed by the Registrar, in consultation with the Complaints Director, annually when an application for renewal of the practice permit is submitted by Dr. Gupta.
5. The chaperone shall be acceptable to the Complaints Director, and shall have completed a chaperone training course acceptable to the Complaints Director. A chaperone is not required if the female patient is a minor and the patient's parent or guardian is present throughout the encounter.
6. In the event the Complaints Director believes that Dr. Gupta has not been compliant with the conditions of his practice permit or the terms of the Continuing Care Agreement, the Complaints Director, on notice to Dr. Gupta, may bring the matter back before a Hearing Tribunal to determine if all or some of the 6 months of suspension held in abeyance should be served by Dr. Gupta; and
7. Dr. Gupta shall be responsible for the costs of the investigation and the hearing before the Hearing Tribunal payable on terms acceptable to the Complaints Director.

Mr. Boyer started with reference to the factors referenced in *Jaswal v. Newfoundland Medical Board*, (1996), 42 Admin L.R. (2d) 233. He submitted that the allegation against Dr. Gupta is one that is socially and professionally unacceptable and that the degree of the offence was clearly one outside of the range of permitted conduct. He indicated that Dr. Gupta, being 31 years of age, is a younger physician but not a new graduate. Mr. Boyer acknowledged there were no prior findings or complaints against Dr. Gupta. He also noted the incident occurred once. Mr. Boyer submitted that Dr. Gupta had acknowledged what occurred and that his withdrawal from practice and cooperation with the College in the assessment process had a negative effect on him.

Mr. Boyer submitted that the need to promote general and specific deterrence were very important factors. He stated the public's confidence in the integrity of the medical profession was also important.

With regards to similar cases, Mr. Boyer referred to the decision of Dr. Graff previously provided. He advised Dr. Graff received an 18 month suspension and that Dr. Graff's conduct was arguably more egregious than Dr. Gupta's. Mr. Boyer also provided the Tribunal with a copy of *Ontario (College of Physicians and Surgeons of Ontario) v Sandejas*, 2001 ONCPSD 30, which involved inappropriate conduct towards patients and the imposition of an 18 month suspension.

Mr. Boyer advised the joint submission provided an 18 month suspension, of which 12 months would be served while 6 months were held in abeyance pending the other conditions. He indicated it gave Dr. Gupta credit for time he was already out of practice and that Dr. Gupta had 4 months remaining to serve as a suspension.

Mr. Boyer submitted that there is much in the media about the concern of young people and luring via social media and other online communications. He advised that recognizing the importance of that conduct in the sanction is important. He stated the 18 month suspension was significant as often cases involving sexual boundary violations between adults result in suspensions of around a year, depending on the circumstances. Mr. Boyer advised the proposed suspension sends a message to the public, to the profession at large, and to Dr. Gupta, that the conduct is not condoned or accepted.

Mr. Boyer indicated it was also important to balance deterrence with remediation. He stated that with guidance, therapy, and monitoring, Dr. Gupta could be a contributing member of the profession. He stated Dr. Gupta had undergone therapy that helped him develop insight and awareness into the error in his decisions. He indicated that Dr. Gupta was involved in a bad set of circumstances that led to some bad decisions but Dr. Gupta could be rehabilitated and that he should not be cast out of the profession.

Mr. Boyer referred to the assessments by the Gabbard Centre that found Dr. Gupta fit to return to work with conditions, including a chaperone for vulnerable patients. He indicated that Dr. Forbes was of the opinion that a chaperone was not needed but that Dr. Forbes was looking at the therapeutic needs of his client and not the public interest. Mr. Boyer stated the joint submission included a chaperone requirement to satisfy the public protection requirement and to satisfy the public that the member was not a risk.

Mr. Boyer stated that had Dr. Gupta not cooperated and not self-reported, the sanction could be more serious. Mr. Boyer stated the penalty being proposed was a heavy price and submitted that the law states that a Joint Submission should be taken seriously by the Tribunal and given deference by the Tribunal. Mr. Boyer submitted that the Tribunal should only reject the joint submission if it is clearly and manifestly unjust.

Mr. Ryan began by stating that he would reiterate Mr. Boyer's comments. He submitted that Dr. Gupta had done everything the College had asked of him and that he did so because he recognizes the bad choices he made. He also stated that the conduct only involved one day and there were no prior or repeat offences.

He indicated that there was a confluence of factors that led to Dr. Gupta not making appropriate decisions and that the medical professional involved stated that with appropriate therapy, mentoring, and monitoring, the conduct would not likely occur again. Mr. Ryan advised this does not excuse the behavior and that Dr. Gupta never attempted to say it was not wrong.

Mr. Ryan indicated that Dr. Gupta is now conducting medicine in a family practice and plans to work only in Edmonton during the course of the five years discussed in the orders. He stated that reports from Dr. Gupta's colleagues indicated it is working out well with respect to the family medicine practice. He also indicated that Dr. Gupta wishes to return to emergency medicine if the chaperone requirement is removed.

Mr. Ryan advised that since the incident Dr. Gupta has married and that he and his wife are expecting their first child. He indicated Dr. Gupta's family situation is much more stable and that the bad decision is unlikely to occur again so long as Dr. Gupta is not isolated in a foreign city and overworked.

Mr. Ryan submitted that Dr. Gupta is well on the way to rehabilitation and that monitoring and mentoring are appropriate. He advised five years is very workable and the suspension of 18 months recognizes the severity of the bad decision and takes into account Dr. Gupta's ability to contribute going forward.

Mr. Boyer subsequently advised that Dr. Gupta had made arrangements to withdraw from practice at the beginning of April in the hopes that the Tribunal would accept the joint submission.

Mr. Ryan added that Dr. Gupta last worked in the family clinic on April 1st. As a result, he requested that the Tribunal consider allowing the 4 month suspension to start on April 2, 2018. He requested the suspension would be in place from April 2 until August 2 and that Dr. Gupta be permitted to return to work on August 3.

Mr. Boyer advised the request was not unreasonable.

The Tribunal asked both parties to address the requirement that Dr. Gupta have a chaperone for a female under 18 years of age when the recommendation in one of the assessments in the Exhibit Book was to use a chaperone for all vulnerable populations.

Mr. Ryan advised that the chaperone is intended to protect the public and that it was considered reasonable to strike a balance of having a chaperone for female patients under 18 years of age. Mr. Boyer indicated that "vulnerable populations" is not a precise term and that a number of factors went into the chaperone requirement, including the different recommendations of medical professionals, the criticisms of some of the assessments, and the timing of the assessments. Mr. Boyer also indicated the female patient chaperone was consistent with the facts as the event involved an underage female.

The Tribunal advised the parties that the concern was related to the gender-specific chaperone requirement and that the requirement did not recognize sexual orientation, sexual preference, transgender issues or other preferences within an underage population.

Mr. Boyer advised that the evidence indicated Dr. Gupta was heterosexual and that the evidence identified a concern regarding a woman he believed to be 15 years of age. He submitted the chaperone requirement was being responsive to the risk identified and that there was no evidence of a risk to a 15 year old boy. Mr. Boyer submitted that the chaperone requirement could be for any female patient or patient who identifies as being female.

The Tribunal carefully considered the seriousness of Dr. Gupta's conduct in this matter, the evidence in the Exhibit Book, Agreed Statement of Facts, and the Joint Submission and Admission Agreement, and submissions from both parties on sanctions.

The Tribunal recognized that deference should be given to joint submissions. Nonetheless, given the discussions with the parties, the Tribunal proposed amending paragraph d. of the joint submission to state that a chaperone was required when seeing any female patient or individual who identifies as female under the age of 18. Both parties agreed to this proposed amendment.

With that amendment to the orders sought, the Tribunal found that the joint submission with respect to sanction was appropriate and was not clearly and manifestly unjust or contrary to the public interest.

The Tribunal also found that Dr. Gupta withdrew from practice as of April 2, 2018 and ordered that Dr. Gupta's remaining four (4) month suspension commenced as of April 2, 2018.

The Tribunal took into account the entire proceedings with attention to the following in rendering its decision on sanction:

- Dr. Gupta's decision to communicate with a minor on-line and to ask to meet with the minor after a series of inappropriate questions was not acceptable.
- Inviting an unknown teenage girl, who he had met on a dating website, over to his hotel, is inappropriate. His agreement to her suggestion of them going swimming in the pool, his remark that she should "wear something pretty", and the suggestion that there may be things to drink or smoke, were inappropriate.
- His remark that he was a doctor and in the medical profession afforded him a level of immediate credibility and status and tarnished the reputation of the medical profession.
- Dr. Gupta took full accountability and responsibility for his actions as he self-reported and voluntarily withdrew from practice. The Agreed Statement of Facts indicates Dr. Gupta withdrew from practice on August 29, 2016 and that he did not return until permitted by the College on May 1, 2017.
- Dr. Gupta was cooperative with the College and demonstrated insight into what he did. The Joint Submission and Admission Agreement indicates Dr. Gupta cooperated with the College and underwent assessments to determine his fitness to practice and remained out of practice until his return of May 1, 2017 after having signed a Written Undertaking to the College to practice subject to certain conditions.
- Dr. Gupta apologized for the conduct and indicated that he went for a counselling session. He indicated that he had many stressors in his personal life and that he felt sad and lonely and needed to talk to someone. He advised he took full responsibility for his error in judgment. He stated he was ashamed of his decision to try to meet the "girl".
- The Tribunal placed significant weight on Dr. Gupta's rehabilitation efforts and willingness to take responsibility. If not for this and the joint submission on penalty, the Tribunal may have been inclined to impose more serious penalties.
- Dr. Gupta will face ongoing scrutiny and numerous restrictions. These will serve the purpose of general and specific deterrence.
- The College found that Dr. Gupta could return to practice with a chaperone because:
 - At page 82 of the Exhibit Book, the Gabbard Center report concludes that Dr. Gupta can return to practice but strongly recommends that Dr. Gupta needs to have a chaperone with all vulnerable populations. The report also recommends a monitoring program with the College. It states it was unlikely that Dr. Gupta would engage in the specific behavior again.

- At page 93 of the Exhibit Book, the Fisher Report indicates that Dr. Gupta is fit to practice and that a referral to a clinical psychologist would be supported. No chaperone was mentioned.
- At page 96 of the Exhibit Book, the Forbes Report indicates that since there is no evidence of any psychiatric disorder, neurocognitive disorder or personality disorder, Dr. Gupta does not require a chaperone.
- At page 99 of the Exhibit Book, Dr. Forbes states a chaperone is not needed because it is his opinion that Dr. Gupta is not at risk to repeat his behavior. The reasoning is partly that throughout his medical training and practice of medicine, Dr. Gupta did not demonstrate impaired judgment and functioned in an appropriate, professional, and effective fashion.
- While some medical professionals indicated that a chaperone was not needed, the Tribunal agreed that a chaperone was necessary to satisfy the public protection requirement and to satisfy the public that Dr. Gupta was not a risk.
- The 18 month suspension and conditions imposed are a significant sanction and are within the range of sanctions imposed in other similar cases.
 - In the Graff decision, the Tribunal found that Dr. Graff's convictions for online luring to facilitate sexual contact with a child and one count of online luring to facilitate the making of child pornography amounted to unprofessional conduct. The charges arose as a result of an online chat exchange and Dr. Graff sending inappropriate messages and photos to an undercover police officer posing as a 14 year old female. Dr. Graff received an 18 month suspension, of which 15 months were active suspension and 3 months were held in abeyance. Dr. Graff was also subject to restrictions, including entering a Continuing Care Agreement for at least 5 years and a limitation that he was only allowed to provide surgical assist in an operating room when other staff are present and not see patients alone.
 - In the Sandejas decision, the Discipline Committee found that a physician was guilty of unprofessional conduct as a result of being found guilty of a charge of sexual interference of a minor related female. The physician received an 18 month suspension, of which 6 months could be suspended if the physician provided proof of continuing psychiatrist care, and a restriction that he only seen patients over 16 years of age.

The Tribunal must balance Dr. Gupta's return to practice with the public's safety and the public's interest in the integrity of the profession. The Tribunal accepted that the joint submission accomplishes this.

For these reasons, the Tribunal makes the following orders pursuant to section 82 of the HPA:

1. Dr. Gupta shall receive a suspension of his practice permit for a period of eighteen (18) months, of which twelve (12) months shall be an active suspension and six (6) months held in abeyance pending fulfillment of the conditions imposed on his practice permit and the terms of his Continuing Care Agreement;
2. Dr. Gupta shall receive credit for the time that he has been out of practice between August 29, 2016 and May 1, 2017 such that eight (8) months of the twelve (12) months of the active suspension shall be considered fulfilled;

3. The remaining four (4) months of Dr. Gupta's suspension shall be deemed to have begun on April 2, 2018;
4. Dr. Gupta shall, at his own costs, enter into and fulfill a Continuing Care Agreement with the Assistant Registrar responsible for the College's Physician Monitoring Program for Boundary Violators, for a period of at least five (5) years after the date the Agreement is signed and Dr. Gupta shall not be discharged from that Agreement without the agreement of the Assistant Registrar and having regarding to any further assessment of Dr. Gupta;
5. Dr. Gupta's practice permit shall be subject to the condition that he must have a chaperone present when seeing any female patient or individual who identifies as female under 18 years of age. If the chaperone practice condition remains in place after the Continuing Care Agreement has expired, the condition shall be reviewed by the Registrar, in consultation with the Complaints Director, annually when an application for renewal of the practice permit is submitted by Dr. Gupta.
6. The chaperone shall be acceptable to the Complaints Director, and shall have completed a chaperone training course acceptable to the Complaints Director. A chaperone is not required if the female patient or individual who identifies as female is a minor and the patient's parent or guardian is also present throughout any encounter with Dr. Gupta.
7. In the event the Complaints Director believes that Dr. Gupta has not been compliant with the conditions of his practice permit or the terms of the Continuing Care Agreement, the Complaints Director, on notice to Dr. Gupta, may bring the matter back before a Hearing Tribunal to determine if all or some of the six (6) months of suspension held in abeyance should be served by Dr. Gupta; and
8. Dr. Gupta shall be responsible for the costs of the investigation and the hearing before the Hearing Tribunal payable on terms acceptable to the Complaints Director.

Signed on behalf of the Hearing Tribunal by
the Chair



Dated: June 20, 2018

Dr. Ralph Strother