

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. HAROON IMTIAZ, A REGULATED MEMBER
OF THE COLLEGE OF PHYSICIANS AND SURGEONS OF ALBERTA

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

I. INTRODUCTION

1. The Hearing Tribunal held a hearing into the conduct of Dr. Haroon Imtiaz, a regulated member of the College of Physicians and Surgeons of Alberta ("the College") on June 23, 2020. The hearing was held by videoconference.
2. In attendance at the hearing were:

Members of the Hearing Tribunal:

Dr. John Pasternak, Chair
Dr. Alasdair Drummond, member
Ms. June McGregor, public member

Also in attendance were:

Ms. Julie Gagnon, independent legal counsel for the Hearing Tribunal
Mr. Taylor Thiesen, student-at-law

Mr. Craig Boyer, legal counsel for the Complaints Director
Mr. Raymond Chen, student-at-law

Dr. Haroon Imtiaz, investigated person
Mr. Phil Nykyforuk, legal counsel for Dr. Imtiaz
Ms. Shayla Stein, associate lawyer

Members of the public were also in attendance.

PRELIMINARY MATTERS

3. There were no objections to the composition of the Hearing Tribunal or its jurisdiction to proceed with the hearing.
4. The hearing was open to the public pursuant to section 78 of the *Health Professions Act*, RSA 2000, c. H-7 (the "HPA").
5. The hearing proceeded by way of an agreed statement of facts and admission of unprofessional conduct.

II. ALLEGATIONS

6. The Notice of Hearing listed the following allegations:
 1. You did fail to maintain an appropriate professional boundary with your patient, [Complainant 1], during one or more of her appointments on September 1, September 2, November 3 and November 4, 2015, by doing one or more of the following;

- a. Complimenting your patient about the beauty of her eyes;
 - b. Complimenting your patient on her beauty;
 - c. Failing to allow your patient to remove her clothing, including her sports bra, in private;
 - d. Commenting to your patient to the effect of "wow, you took that off fast" in reference to her removal of her sports bra;
 - e. asking your patient to bend over at the waist while she was naked on the pretense of examining her range of motion;
 - f. Failing to allow your patient to put on her clothes in private; and
 - g. Undertaking a sensitive physical examination of your patient without offering the presence of a chaperone.
2. You did fail to meet the minimum standard care for a family physician in your assessment and treatment of your patient, [Complainant 1], particulars of which include one or more of the following;
- a. Failing to obtain and record a complete and detailed history from your patient that would be expected given the laboratory tests ordered and treatment provided;
 - b. Failing to create adequate notes of the findings from the physical examinations of your patient;
 - c. Failing to record a differential diagnosis;
 - d. Ordering an x-ray of both hips without consideration or failing to record any consideration of whether your patient was pregnant;
 - e. Recommending to your patient on more than one occasion that she should have you undertake a complete physical examination when such an extensive examination was not medically required given your patient's presenting history;
 - f. Recommending to your patient that she should undergo a pap smear despite your patient having told you that she had recently had one performed by another physician and there being no medical reason for you to recommend to your patient that she should undergo a pap smear; and
 - g. Failing to check or failing to record if you checked Netcare to find the results of the pap smear performed by Dr. Rattan on August 24, 2015.
3. You did fail to maintain an appropriate professional boundary with your patient, [Complainant 2], by doing one or more of the following;
- a. During the visit with you on November 14, 2016, failing to have a chaperone present during the breast examination in contravention of your Undertaking to the College dated December 30, 2015;

- b. During the visit with you on November 14, 2016, grabbing your patient and pulling her onto your lap and telling her that you liked her;
 - c. During the visit with you on December 8, 2016, kissing or attempting to kiss your patient;
 - d. During the visit with you on December 8, 2016, asking your patient to hug you; and
 - e. During the visit with you on December 8, 2016, wrapping your arms around your patient when she was not seeking or needing emotional support from you.
- 4. You did inappropriately claim payment for three units of Health Service Code 08.19G (psychiatric evaluation and interview) from the Alberta Health Care Insurance Plan for your patient, [Complainant 1], for visits on September 3 and November 3, 2015.
 - 5. You did inappropriately claim payment for two units of Health Service Code 08.19G (psychiatric evaluation and interview) from the Alberta Health Care Insurance Plan for your patient, [Complainant 2], for visits on November 14 and December 8, 2016.

III. EVIDENCE

- 7. The following documents were entered as evidence during the hearing:

Exhibit 1 – Exhibit Book containing:

- Tab 1 Notice of Hearing, dated May 1, 2020
- Tab 2 Complaint Form from Complainant 1 dated November 11, 2015
- Tab 3 Letter of Response from Dr. Imtiaz dated December 22, 2015
- Tab 4 Undertaking for Chaperone requirement from Dr. Imtiaz dated December 30, 2015
- Tab 5 Memorandum by K. Ivans regarding interview with Complainant 1 dated April 15, 2016
- Tab 6 Memorandum by K. Ivans regarding interview of Dr. Imtiaz dated June 17, 2016
- Tab 7 Patient chart for Complainant 1
- Tab 8 Complaint Form from Complainant 2 dated December 14, 2016
- Tab 9 Undertaking for enhanced Chaperone requirement for Dr. Imtiaz dated January 23, 2017
- Tab 10 Letter of Response from Dr. Imtiaz dated January 30, 2017
- Tab 11 Memorandum by M. Heberling regarding interview of Complainant 2 dated March 21, 2017

- Tab 12 Additional Letter of Response from Dr. Imtiaz dated April 3, 2017
- Tab 13 Memorandum by M. Heberling regarding interview of Dr. Imtiaz dated May 24, 2017
- Tab 14 Memorandum by M. Heberling regarding interview of Dr. Abuhamed and memo prepared by Dr. Abuhamed regarding his interview of clinic staff
- Tab 15 Expert opinion from Dr. Shmoorkoff regarding care provided to Complainant 1 by Dr. Imtiaz
- Tab 16 Certificate of Attendance at PBI Professional Boundaries Course on February 10 to 12, 2017
- Tab 17 Certificate of Completion of online Principles of Medical Record Keeping course dated November 5, 2019
- Tab 18 Certificate of Completion of online Charting Medical Records course dated November 6, 2019
- Tab 19 Certificate of Completion of online Medical Certificates, Forms, Notes and Legal Reports course dated November 7, 2019
- Tab 20 CPSA Standard of Practice on Sexual Boundary Violations
- Tab 21 CPSA Standard of Practice on Patient Record Content

Exhibit 2 – Admission and Joint Submission Agreement

8. The Hearing Tribunal also received a brief of law on Joint Submissions.

IV. SUBMISSIONS

9. The Hearing Tribunal was provided with a written Admission and Joint Submission Agreement. The admissions include:
 - Complainant 1 was a patient of Dr. Imtiaz and alleged improper conduct by Dr. Imtiaz;
 - The College requested and on December 30, 2015 Dr. Imtiaz gave his written undertaking to the College that he would have a chaperone present for all pelvic, rectal and breast examinations of female patients;
 - Complainant 2 was a clinic employee and received medical care from Dr. Imtiaz, and alleged improper conduct by Dr. Imtiaz;
 - The College requested and on January 23, 2017 Dr. Imtiaz gave a further written undertaking to the College that he would have a chaperone present for all visits with female patients;
 - Dr. Imtiaz was served with a Notice of Hearing on May 1, 2020;

- The allegations in the Notice of Hearing are true and amount to unprofessional conduct.
10. Mr. Boyer noted that under section 70 of the HPA, if there is an admission of unprofessional conduct, a Hearing Tribunal must still satisfy itself that there is enough evidence to support that admission.
 11. Mr. Boyer then noted the charges in the Notice of Hearing, including:
 - Charge #1 – there was an inappropriate boundary violation with Complainant 1;
 - Charge #2 – failure to meet the expected standard of care for a family physician seeing a patient, Complainant 1, who presented with the complaints as were recorded for the appointment. These criticisms arise from an independent expert report obtained by the Complaints Director, which is contained in the Exhibit Book;
 - Charge #3 – failure to maintain an appropriate professional relationship with Complainant 2;
 - Charges #4 and #5 – inappropriate use of the psychotherapy billing code for Complainant 1 and Complainant 2 when the chart does not show psychotherapy being used or required.
 12. Mr. Boyer submitted that the evidence before the Hearing Tribunal (as contained in the Exhibit Book) addressed the issue of boundary violations, the quality of care provided to Complainant 1, and the fact that psychotherapy was not engaged in, nor appropriate for the billing. He proposed that this evidence was sufficient to support Dr. Imtiaz's admissions and for the Hearing Tribunal to find that the charges are proven and amount to unprofessional conduct.
 13. Mr. Nykyforuk confirmed that Dr. Imtiaz admitted the allegations as set forth in the Notice of Hearing.

V. DECISION OF THE HEARING TRIBUNAL ON THE ALLEGATIONS

14. The Hearing Tribunal adjourned to review the evidence and consider the submissions of the parties. The Hearing Tribunal found that the allegations were proven and that Dr. Imtiaz's conduct constitutes unprofessional conduct for the reasons set out below.
15. The Hearing Tribunal accepts the evidence in the Admission and Joint Submission Agreement (Exhibit 2), as supported by the documents in the Exhibit Book (Exhibit 1).
16. The Hearing Tribunal notes that the behaviour detailed in Allegation #1 with the patient Complainant 1, which Dr. Imtiaz admits, including inappropriate comments to the patient, failure to give the patient privacy while undressing,

and undertaking a sensitive physical examination without a chaperone, is deeply concerning and unacceptable.

17. This is especially so when coupled with Dr. Imtiaz's failure to create adequate notes of the findings from the physical examination, recommending and ordering procedures of a sensitive nature that were not required, and failure to check medical records which would have showed that such procedures were not required. Such conduct represents a breach of the College's Standard of Practice: Patient Record Content (2010), which mandates that the regulated member must ensure that the patient record is an accurate and complete reflection of the patient encounter to facilitate continuity in patient care, and contains clinical notes for each patient encounter including presenting concern, relevant findings, assessment and plan.
18. The Hearing Tribunal's concern is heightened further by the fact that, after giving an undertaking to have a chaperone present during pelvic, rectal and breast examinations in response to the complaint by Complainant 1, Dr. Imtiaz subsequently contravened this undertaking in a patient visit with Complainant 2, a staff member from his own clinic.
19. The boundary violations with Complainant 2 detailed in Allegation #3, particularly pulling her onto his lap, and attempting to kiss her, must be strongly condemned. Our society now recognizes (as set out in various human rights legislation) that people have the right to work in an environment free of sexual harassment and assault. These behaviours are unacceptable in any case; and all the more so when the behaviour simultaneously occurs in the physician-patient context.
20. Regulated members of the College maintain a position of trust and responsibility in relation to their patients, and the public relies on them not to breach this trust by improperly sexualizing the physician-patient relationship. The College's Standard of Practice: Sexual Boundary Violations (2010) states that the physician must not sexualize any interaction with the patient – sexualized comments, sexualized body contact including kissing and hugging, and failure to provide privacy while undressing or dressing are specifically prohibited. A regulated member's breach of this obligation significantly harms the integrity of the profession.
21. Further, Dr. Imtiaz admits that he submitted inappropriate claims for payment under Health Service Code 08.19G (psychiatric evaluation and interview) on multiple occasions. The system whereby regulated members are paid out of the public purse relies on members' honesty and accuracy in submitting payment claims. Failure to submit accurate payment claims harms the integrity of the profession.
22. Under section 1(1)(pp) of the HPA, contravention of standards of practice and conduct that harms the integrity of the profession are included in the definition of unprofessional conduct. The Hearing Tribunal finds that Dr.

Imtiaz's conduct is very serious and constitutes unprofessional conduct pursuant to section 1(1)(pp) of the HPA.

VI. SUBMISSIONS ON SANCTION

23. The Hearing Tribunal advised the parties during the hearing that it accepted the admissions by Dr. Imtiaz and found that the conduct in the allegations was proven and constitutes unprofessional conduct. The Hearing Tribunal then heard submissions on sanction by the parties. Mr. Boyer and Mr. Nykyforuk presented a joint submission on sanction. They proposed that the following was appropriate:
 - a. Dr. Imtiaz's unprofessional conduct is worthy of a six month suspension of his practice permit, with two months of the suspension to be served starting on a date determined by the Complaints Director and the remaining four months held in abeyance on the condition that Dr. Imtiaz demonstrates good character for twelve months following the date of the hearing. The Complaints Director is agreeable to the suspension commencing at 12:01 am on June 24, 2020 and expiring at midnight on August 23, 2020;
 - b. If the Complaints Director becomes aware of information during the twelve month period following the date of the hearing to show a failure to demonstrate good behaviour by Dr. Imtiaz, that the remaining four months of suspension shall then be served by Dr. Imtiaz on a date determined by the Complaints Director;
 - c. In the event Dr. Imtiaz disputes the Complaints Director's determination that the four months of suspension held in abeyance should be served by Dr. Imtiaz, the Hearing Tribunal shall retain final authority to make that determination;
 - d. The 2017 Undertaking signed by Dr. Imtiaz will continue in effect until December 31, 2021 if no further boundary complaint is received by the College by December 31, 2021.
 - e. If a further boundary complaint is received by the College on or before December 31, 2021, the 2017 Undertaking will continue in effect until further agreement to end its effect;
 - f. Dr. Imtiaz shall be responsible for 50% of the costs of the investigations and the hearing before the Hearing Tribunal. The Complaints Director is agreeable to payment of the costs by 12 equal monthly instalments by post-dated cheques or pre-authorized payment beginning on September 25, 2020 and ending on August 25, 2021.

24. Mr. Boyer provided a Brief of Law containing excerpts of cases to support the proposition that where there is a joint submission, a decision-maker should only depart from the joint submission where the decision-maker finds that the proposed penalty is contrary to the public interest or would bring the administration of justice into disrepute. Mr. Boyer noted that *R v Anthony-Cook*, 2016 SCC 43, which confirms the principle that a joint submission should not be rejected unless it is manifestly unjust and it would be inappropriate to accept it, has frequently been followed by Hearing Tribunals of the College in previous decisions.
25. Mr. Boyer drew the Hearing Tribunal's attention to the principle of proportionality in *Jaswal v Medical Board (Newfoundland)* (1996), 138 Nfld & PEIR 181 (NL SC), which sets out the guiding principles for tribunals when dealing with sanction. This principle is dealt with in *College of Physicians and Surgeons (Ontario) v Lambert* (1992), 1992 CanLII 7679 (Ont SC).
26. Mr. Boyer noted that Dr. Imtiaz practiced medicine for a number of years outside Canada and became licensed in Canada in mid-2015. The first complaint arose a few months into his Canadian practice experience, and the second complaint arose shortly after one year of Canadian practice. He noted that Dr. Imtiaz's relative inexperience with Canadian practice when the complained-of events occurred was one of the factors that was considered when reaching a joint submission on sanction.
27. He further noted that with a six month suspension where two months would be served, with the balance held in abeyance pending good conduct for twelve months from the date of the hearing, the full suspension could be imposed if any new issues arise after the hearing. Mr. Boyer also pointed out that Dr. Imtiaz's undertaking to have a chaperone present for any all appointments with female patients would continue to the end of 2021, thereby addressing the protection of the public.
28. Mr. Boyer submitted that there is evidence of rehabilitation undertaken by Dr. Imtiaz, including a multi-day in-person course on boundaries and a number of additional courses on charting.
29. He also drew the Hearing Tribunal's attention to the cases of *Delacruz (Re)*, 2012 CanLII 68734 (AB CPSDC), *College of Physicians and Surgeons (Saskatchewan) v Dudley* (2017), *College of Physicians and Surgeons of Ontario v El-Tatari*, 2019 ONCPSD 26, and *College of Physicians and Surgeons of Ontario v Peirovy*, 2018 ONCA 420, medical disciplinary cases dealing with allegations similar to the ones against Dr. Imtiaz. The suspensions administered in these cases range from four to six months.
30. Mr. Boyer noted that the agreed-upon sanction balances rehabilitation and deterrence and is a reasonable sanction that meets the test in *Anthony-Cook*.

31. Mr. Nykyforuk reiterated that Hearing Tribunals of the College have consistently followed *Anthony-Cook*, and highlighted the value of joint submissions in avoiding lengthy and costly discipline hearings.
32. He noted that Dr. Imtiaz made an unqualified admission of unprofessional conduct, and voluntarily entered into two separate undertakings with respect to his practice. Mr. Nykyforuk submitted that Dr. Imtiaz's role in acknowledging what occurred by means of an admission is a specific factor to be considered by the Hearing Tribunal according to *Jaswal*.
33. Mr. Nykyforuk went on to give some information on Dr. Imtiaz's background, which includes 30 years of practice as a family physician in Pakistan, two years of work in various non-physician roles in New York, and the subsequent completion of a supervised practice assessment before beginning work as a family physician in Edmonton in 2015.
34. Mr. Nykyforuk submitted that Dr. Imtiaz had informed him that he had never previously utilized electronic medical records prior to beginning his practice in Edmonton in 2015, that charting looked much different in Pakistan than what is expected in Alberta, and that Alberta's billing codes were new and somewhat confusing to him. Mr. Nykyforuk stated that Dr. Imtiaz also told him that he initially encountered various cultural differences relating to communication and boundaries after relocating to Edmonton.
35. Mr. Nykyforuk then submitted that Dr. Imtiaz's recent arrival in Alberta, lack of experience with electronic medical records and Alberta billing codes, and cultural differences should be considered specific mitigating factors in his case.
36. Mr. Nykyforuk also noted that Dr. Imtiaz travelled to the United States in 2017 of his own volition and expense to take a three day comprehensive professional boundaries course, which he said was a fantastic learning opportunity that spurred him to make many changes in his manner of communication and the nature of his interaction with patients. He also completed three separate online learning activities related to medical record keeping and charting. All of this, Mr. Nykyforuk submitted, is evidence of his commitment to self-improvement and should be considered a mitigating circumstance.
37. Finally, Mr. Nykyforuk submitted that Dr. Imtiaz's practice with no additional complaints since the second complaint in 2016 demonstrates a willingness to improve, and success in implementing the learning that he engaged in, and should also be considered a mitigating factor. Mr. Nykyforuk noted that Dr. Imtiaz completed the College's Multi-Source Feedback evaluation in 2018 with generally positive results.
38. As to the agreement that Dr. Imtiaz would be responsible for 50% of the costs of this hearing, Mr. Nykyforuk opined that this is a significant financial

consequence, and that case law suggests that the payment of costs should not in itself be punitive; and that other sanctions imposed, including the period of suspension, should be taken into account when making a decision on costs.

VII. DECISION OF THE HEARING TRIBUNAL ON SANCTION

39. The Hearing Tribunal adjourned to consider the joint submission on sanction. The Hearing Tribunal accepts the joint submission on sanction for the reasons that follow.
40. Having considered the relevant factors in the *Jaswal*, the Hearing Tribunal finds that Dr. Imtiaz's conduct is very serious. As noted above, Dr. Imtiaz's inappropriate comments, failure to give a patient privacy when undressing and dressing, and sexualized, unwelcome physical interactions are unacceptable actions that must be strongly condemned. It is imperative that patients and colleagues are able to trust physicians not to subject them to sexualized verbal and physical interactions.
41. The Legislature has recognized the seriousness of such conduct by enacting provisions requiring, among other things, that a Hearing Tribunal order that a regulated member's practice permit be suspended for a specified period of time upon a finding of unprofessional conduct based on sexual misconduct. Though these provisions do not apply to this case, as they were not in effect at the time the complaints were made, they are worth noting.
42. Improper record-keeping, ordering of unnecessary procedures, and improper billing are also damaging to the profession. They put both patient care and public funds at risk, and undermine the integrity of Alberta's medical system.
43. The Hearing Tribunal considered mitigating factors, including:
 - Since 2017, Dr. Imtiaz has consistently incorporated the use of a chaperone with all female patients as per his undertaking to the College, and he has further agreed to sign an undertaking with the College to continue this practice until the end of 2021;
 - Dr. Imtiaz completed at his own initiative and expense College-recommended courses that address professional boundaries and proper medical charting;
 - By his admission of guilt, Dr. Imtiaz has allowed the College to avoid an expensive and prolonged hearing process and the stress of testifying for the Complainants.
44. It was also noted that Dr. Imtiaz was new to electronic medical record-keeping, the Canadian medical system and cultural norms at the time of the unprofessional conduct.

45. Having reviewed the case law, which demonstrates that the sanction in the Joint Submission Agreement is within the range of sanctions for similar boundary violations, the Hearing Tribunal is satisfied that it would not be manifestly unjust and inappropriate to accept the joint submission of the parties. The sanction is reasonable, and appropriately promotes the objectives of specific and general deterrence, safeguarding patients and protecting the public interest, and maintaining public confidence in the medical profession.

VIII. ORDERS OF THE HEARING TRIBUNAL

46. The Hearing Tribunal orders that:

- a. Dr. Imtiaz's unprofessional conduct is worthy of a six month suspension of his practice permit, with two months of the suspension to be served starting on a date determined by the Complaints Director and the remaining four months held in abeyance on the condition that Dr. Imtiaz demonstrates good character for twelve months following the date of the hearing. The Complaints Director is agreeable to the suspension commencing at 12:01 am on June 24, 2020 and expiring at midnight on August 23, 2020;
- b. If the Complaints Director becomes aware of information during the twelve month period following the date of the hearing to show a failure to demonstrate good behaviour by Dr. Imtiaz, that the remaining four months of suspension shall then be served by Dr. Imtiaz on a date determined by the Complaints Director;
- c. In the event Dr. Imtiaz disputes the Complaints Director's determination that the four months of suspension held in abeyance should be served by Dr. Imtiaz, the Hearing Tribunal shall retain final authority to make that determination;
- d. The 2017 Undertaking signed by Dr. Imtiaz will continue in effect until December 31, 2021 if no further boundary complaint is received by the College by December 31, 2021;
- e. If a further boundary complaint is received by the College on or before December 31, 2021, the 2017 Undertaking will continue in effect until further agreement to end its effect;
- f. Dr. Imtiaz shall be responsible for 50% of the costs of the investigations and the hearing before the Hearing Tribunal. The Complaints Director is agreeable to payment of the costs by 12 equal monthly instalments by post-dated cheques or pre-authorized payment beginning on September 25, 2020 and ending on August 25, 2021.

Signed on behalf of the Hearing Tribunal by the Chair this 11 day of August, 2020.

A handwritten signature in black ink, appearing to read 'Pasternak', written in a cursive style.

Dr. John Pasternak