

**IN THE MATTER OF THE *HEALTH PROFESSIONS ACT*,
BEING CHAPTER H-7 OF THE REVISED STATUTES OF ALBERTA, 2000**

**AND IN THE MATTER OF AN APPEAL BY BASEL ALSAADI¹
FROM THE DECISIONS OF THE HEARING TRIBUNAL OF THE ALBERTA
COLLEGE OF PHARMACY DATED AUGUST 3, 2018 AND ITS SANCTIONS
DECISION DATED MAY 14, 2019**

DECISION OF A PANEL OF COUNCIL

¹ Issa Al-Mahdi (aka Basel Alsaadi)

I. INTRODUCTION

- [1] A Panel of Council (the “Panel”) of the Alberta College of Pharmacy (“ACP”) convened to hear an appeal on January 29, 2020, at the second floor conference centre, 8215 – 112 Street NW, Edmonton, Alberta. The appeal was convened pursuant to sections 87 to 89 of the *Health Professions Act*, R.S.A., 2000, c. H-7 (the “HPA”).

Members of the Panel:

Brad Couldwell, Chair
Don Ridley
Peter Macek
Christine Maligec, Public Member

Also in attendance were:

James Krempien, Complaints Director
David Jardine, legal counsel for the Complaints Director
Annabritt Chisholm, legal counsel for the Complaints Director
Basel Alsaadi, Investigated Person
Simon Renouf, legal counsel for Mr. Alsaadi
Julie Gagnon, independent legal counsel to the Panel
Jenna Chamberlain, attending with Ms. Gagnon, as an observer

II. PRELIMINARY MATTERS

- [2] The parties confirmed there were no objections to the composition of the Panel present to hear the appeal or the jurisdiction of the Panel to proceed with the appeal.

- [3] The following documents were entered as exhibits:

Exhibit 1 USB containing the following documents:

1. Decision of the Hearing Tribunal on Merits dated August 3, 2018;
2. Decision of the Hearing Tribunal on Sanctions dated May 14, 2019;
3. Transcripts of the hearing before the Hearing Tribunal from July 18, 19 and 20, November 6, 7, an 8, and December 11, 12, 2017;
4. Exhibits entered in the hearing before the Hearing Tribunal in the matter on appeal.

Exhibit 2 Notice of Appeal of Basel Alsaadi

- [4] The following written submission and case authorities were reviewed and considered by the Panel:

Submissions of Basel Alsaadi, enclosing the following authorities:

- A. *Heath Professions Act*, RSA 2000, c. H-7.
1. *K.C. v College of Physical Therapists of Alberta*, 1999 ABCA 253.

2. *Henderson v The College of Physicians and Surgeons of Ontario*, 65 ORD (3d) 146 (CA).
3. *MacLeod v Alberta College of Social Workers*, 2018 ABCA 13.
4. *Nowoselsky v Alberta College of Social Workers (Appeal Panel)*, 2011 ABCA 58.
5. *Meier v Saskatchewan Institute of Agrolgists*, 2016 SKCA 116.
6. *Nguyen v Chartered Professional Accountants of British Columbia*, 2018 BCCA 299, aff'g 2018 BCSC 62.
7. *Visconti v College of Physicians and Surgeons of Alberta*, 2010 ABCA 250.
8. *M.M. v College of Alberta Psychologists*, 2011 ACA 110.
9. *Mondesir v Manitoba Assn of Optometrists*, 2001 MBCA 183.
10. *Matheson v College of Physicians and Surgeons of Prince Edward Island*, 2010 PECA 5.
11. *McKee v College of Psychologists (British Columbia)*, [1994] 9 WWR 374 (BCCA).
12. *Swart v College of Physicians and Surgeons of PEI*, 2014 PECA 20.
13. *Stasiulis v Nova Scotia Veterinary Medical Assn*, [1994] NSJ No 432.
14. *Nair v College of Physicians and Surgeons of Alberta*, [1988] AJ No 820 (CA).
15. *Jones (Re)*, 2019 CanLII 92700 (NS CPS).
16. *Marianne Songgadan*, Decision of the Hearing Tribunal of the Alberta College of Pharmacists.
17. *Kolodenko (Re)*, 2018 CanLII 31994 (AB CPSDC).
18. *College of Physical Therapists of Alberta v 162351*, 2013 ABPACA 1.
19. *College of Nurses of Ontario v Oliveira*, 2015 CanLII 100721 (ON CNO).
20. *College of Nurses of Ontario v Trudel*, 2018 CanLII 62040 (ON CNO).
21. *College of Nurses of Ontario v Vaughan*, 2017 CanLII 70679 (ON CNO).
22. *College of Nurses of Ontario v Brutzki*, 2016 CanLII 104252 (ON CNO).
23. *College of Nurses of Ontario v Edgerton*, 2016 CanLII 102075 (ON CNO).
24. *College of Nurses of Ontario v Calvano*, 2015 CanLII 89633 (ON CNO).
25. *College of Physicians and Surgeons of Alberta v Dr Karen Zakhary* (January 31, 2012).
26. *Presta (Re)*, 2009 LNICAO 23.
27. *In the Matter of an Investigation Regarding the Conduct of Tuyen Huynh and Calgary Medical Pharmacy and Loi Nguyen and Saigon Pharmacy* (Joint Submission submitted July 28, 2018 by David Jardine).
28. *Ontario (College of Pharmacists) v Ng*, 2017 ONCPDC 6.
29. *Colin Porozni*, Decision of the Hearing Tribunal of the Alberta College of Pharmacists (January 27, 2015).
30. *Ontario (College of Physicians and Surgeons of Ontario) v McArthur*, 2018 ONCPSD 58.
31. *Law Society of British Columbia v Rea*, [2012] LSDD No 91.
32. *Wachtler v College of Physicians and Surgeons of Alberta*, 2009 ABCA 130.
33. *Zuk v Alberta Dental Association & College*, 2018 ABCA 270.
34. *Ruffo v Conseil de la magistrature*, [1995] 4 SCR 267.

Written Submissions of the Complaints Director, enclosing the following authorities:

1. *Zuk v Alberta Dental Association & College*, 2018 ABCA 270.
2. *Nelson v Alberta Association of Registered Nurses*, [2005] AJ No 821.

3. *Hesje v Law Society of Saskatchewan*, 2015 SKCA 2.
4. *Ahluwalia v College of Physicians and Surgeons (Man)*, 2017 MBCA 15.

Additional case authorities referred to or provided at the hearing:

1. *Alberta Securities Commission v Brost*, 2008 ABCA 326.
2. *Canada (Minister of Citizenship and Immigration v Vavilov*, 2019 SCC 65.
3. *Canada Trustco Mortgage Co v Canada*, 2005 SCC 54.
4. *Hung v Gardiner*, 2003 BCCA 257.
5. *McDaniel v McDaniel*, 2009 BCCA 53.
6. *Nova Scotia Government and General Employees Union v Nova Scotia Health Authority (Witness Immunity Grievance)*, [2019] NSLAA No 2.
7. *Ontario (College of Pharmacists) v Attalla*, 2016 ONCPDC 23.
8. *Pharmascience Inc v Binet*, 2006 SCC 48.
9. *Rizzo & Rizzo Shoes Ltd. (Re)*, 36 OR (3d) 418, 154 DLR (4th) 193.
10. *Si Huu Nguyen*, Decision of the Hearing Tribunal of the Alberta College of Pharmacy dated December 18, 2019.
11. *Toy v Edmonton (Police Service)*, 2018 ABCA 37.
12. *Yazdanfar v The College of Physicians and Surgeons*, 2013 ONSC 6420.
13. *Zakhary v College of Physicians and Surgeons of Alberta*, 2012 ABQB 623.
14. *Zakhary v College of Physicians and Surgeons of Alberta*, 2013 ABCA 336.

III. HISTORY

[5] The Hearing Tribunal held a hearing into the conduct of Mr. Basel Alsaadi on July 18, 19, and 20, November 6, 7, and 8, and December 11 and 12, 2017. The Hearing Tribunal considered eight allegations made against Mr. Alsaadi. The allegations are set out in pages 2 to 4 of the Decision of the Hearing Tribunal dated August 3, 2018 (the “Merits Decision”). The nature of the allegations included that Mr. Alsaadi misused private health information, failed to keep proper records, and misused his Netcare access to health information.

[6] At issue in this appeal is Allegation 7. In the Notice of Hearing, Allegation 7 states:

7. Displayed conduct not consistent with the ethical requirement of honesty and the duty to comply with and cooperate with an investigator as displayed in your reported conversation with [REDACTED] and your text messages with [REDACTED] in which you sought to have both individuals sign letters indicating that you had provided pharmacy services to them;

[7] Mr. Alsaadi gave evidence at the hearing. During his testimony, Mr. Alsaadi presented new information regarding issues in the hearing, in particular, the involvement of an individual identified as [REDACTED], in the events of April 19, 2014.

[8] Mr. Alsaadi’s evidence is set out in pages 15 to 20 of the Merits Decision. The following are excerpts of Mr. Alsaadi’s evidence relevant to this appeal:

- Mr. Alsaadi also testified that he was not responsible for accessing the personal health information of some of the individuals named in allegations 1

and 2. Mr. Alsaadi said that on April 19, 2014, a former friend of his, ■■■, visited him at his pharmacy at approximately 9:40 pm. Mr. Alsaadi said that he left ■■■ alone in a consultation room where his Netcare login was open on the computer. Mr. Alsaadi said that ■■■ accessed the personal health information of several individuals while Mr. Alsaadi was out of the room. Mr. Alsaadi said he believes ■■■ looked at records of ■■■, ■■■ and ■■■.

- Mr. Alsaadi also testified that he had a November 1, 2014 recording of a telephone call with ■■■ in which he admitted to this. Mr. Alsaadi played the recording for the Hearing Tribunal. On the recording a male voice states that he looked at personal health information but the voice does not say that it was at Mr. Alsaadi's pharmacy while Mr. Alsaadi was out of the room.
- Mr. Alsaadi indicated he did not previously mention what happened on April 19, 2014 or the recording to Mr. Krempien because ■■■ had been threatening Mr. Alsaadi. Mr. Alsaadi said he filed a police complaint about this but he did not produce a copy of any police complaint.
- In cross-examination, Mr. Jardine asked Mr. Alsaadi about April 19, 2014 and his testimony that ■■■ had actually accessed Netcare using Mr. Alsaadi's Netcare login that evening.
- Mr. Jardine put to Mr. Alsaadi his responses during the investigation about what happened on April 19, 2014. Mr. Alsaadi first indicated he did not remember what he had previously said occurred on that date.
- Mr. Alsaadi then agreed that he had told Mr. Raisbeck he was working alone on April 19, 2014 and he was the only person who could have accessed Netcare at the pharmacy.
- When Mr. Alsaadi suggested that there was another individual who was not a pharmacy employee in the counselling room that evening, Mr. Jardine put to him that he never mentioned this before. Mr. Alsaadi's response was that no one ever asked him.
- Mr. Jardine asked Mr. Alsaadi about his April 26, 2015 letter to Mr. Krempien. In that letter Mr. Alsaadi had written that patients accessed using his Netcare access may have been accessed by individuals other than himself. Mr. Alsaadi said that when he wrote that letter he knew there were other people in the pharmacy that evening but he hadn't considered that one of them may have gone into the counselling room and used his Netcare login without him being aware.
- Mr. Jardine then asked Mr. Alsaadi about the date of the recording of the call with ■■■. Mr. Alsaadi said the call had been in November 2014.
- Mr. Jardine also asked Mr. Alsaadi about his July 15, 2015 meeting with Mr. Raisbeck. Mr. Raisbeck's memorandum of the meeting explained that when

he asked Mr. Alsaadi about April 19, 2014 Mr. Alsaadi said that all of the individuals accessed were work related although they may not have been patients of the drug store. Mr. Raisbeck then asked Mr. Alsaadi about his letter to Mr. Krempien which said that some patients may have been accessed by another person using Mr. Alsaadi's access. Mr. Alsaadi told Mr. Raisbeck that someone else couldn't have accessed Netcare using his access.

- Mr. Alsaadi confirmed he knew about the recording with [REDACTED] when he was talking with Mr. Raisbeck in July 2015. Mr. Alsaadi said it never occurred to him to tell Mr. Raisbeck about the recording because that individual had made threats to Mr. Alsaadi and his family. Mr. Alsaadi did offer that he made a police report and wrote to the OIPC about the threats.
- The letter to the OIPC was dated October 22, 2015 and was in evidence. Mr. Alsaadi acknowledged that his letter to the OIPC did not mention any details about who was threatening him. In response to a question from the Hearing Tribunal Mr. Alsaadi confirmed it was [REDACTED] and [REDACTED]'s cousin.
- Mr. Alsaadi did not produce a copy of any police report.
- Mr. Jardine also asked Mr. Alsaadi about his Admission of Unprofessional Conduct dated July 17, 2017 and his Admission of Unprofessional Conduct dated July 27, 2017. Neither of these documents made any reference to [REDACTED] accessing Netcare on April 19, 2014. In the July 17, 2017 admission document Mr. Alsaadi said he accepted responsibility for accessing all of the patient files listed in allegation 1. In the July 27, 2017 document Mr. Alsaadi said he accepted responsibility for accessing all of the patient files in allegation 1 and he said he was admitting accessing [REDACTED]'s records without an authorized purpose. At the hearing, Mr. Alsaadi said it was [REDACTED] who accessed [REDACTED]'s health information, not him.
- Mr. Jardine then asked Mr. Alsaadi about his April 26, 2015 response to the letters that Mr. Alsaadi attached to his response indicating that various individuals were his patients and had authorized him to use their electronic health records as he saw fit.
- Mr. Alsaadi had included a letter from [REDACTED], who was the individual he said was responsible for accessing Netcare using his login on April 19, 2014, and later threatening him. Mr. Alsaadi also included a letter from individual [REDACTED].
- Mr. Alsaadi agreed that at the time he requested these letters from [REDACTED] and from [REDACTED] he knew that [REDACTED] was responsible for accessing Netcare on April 19, 2014, including accessing [REDACTED]'s health information using Mr. Alsaadi's Netcare login.
- When he was asked whether he understood that he had an obligation to respond to the College's investigation fully and accurately Mr. Alsaadi said

- c. By responding to the Complaints Director in his response letter of April 26, 2015 and stating:

4) *Patients accessed under any Netcare access sites may have been accessed by individuals other than myself.*

- a. *Patients' files could have been accessed using my Netcare login without my knowledge by other individuals who have access to my computer terminal on which I am logged into Netcare*
- b. *In some instances, it is possible that I had forgotten to log out of Netcare after the completion of my shift at a certain site, and other pharmacy staff may have had access to my Netcare login.*

These scenarios would result in a log that shows patients being accessed at a particular site where they are not receiving treatment. This would rightfully be alarming to the Network Administrator of that site. I can assure you, however, that all of the patients I have access under any of the access site listed on my Netcare ID are indeed my patients, and I have cared for them within my scope of practice.

For the patients listed in the March 6th, 2016 letter addressed to me, I have attempted to contact some of the names I recognize, explain the situation, and have obtained letter from these patients. There are a few patients however, that I have not been able to contact:

█ (I do not recognize this name)

█ (A patient of mine, unable to contact, no records available)

█ (A patient at SDM 346)

█ (A patient at SDM 346)

█ (I do not recognize this name)

█ (I do not recognize this name)

█ (A patient at SDM 346)

█ (I do not recognize this name)

█ (A patient of mine, unable to contact, no records available)

Although I may have a personal relationship with some of the patients listed in the letter (i.e. Family members, friends, acquaintances), I have always attempted to maintain a professional relationship when providing services to these patients.

(Exhibit 3, Tab 22, p. 211-212)

- d. By providing the Complaints Director a letter from █ stating that he had been her pharmacist since July 13, 2013 and had been providing her with pharmacy services to the full scope of his practice. (Exhibit 3, Tab 22, p. 221)

- e. The admission made on July 27, 2017 regarding [REDACTED] on the admission of unprofessional conduct (Exhibit 23), made after the hearings on July 18-20, 2017.
(the “Particulars”).

[12] In the Merits Decision, the Hearing Tribunal found Allegations 1, 2, 3, 5, 6, 7, and 8 proven and that the conduct constitutes unprofessional conduct. The Hearing Tribunal addressed each of the Particulars. The Hearing Tribunal found that Mr. Alsaadi had not mentioned [REDACTED] visiting the pharmacy on April 19, 2014 prior to his testimony on November 6, 2017. The Hearing Tribunal also found that it was implausible that [REDACTED] acted alone to access individuals’ private health information on Netcare. The Hearing Tribunal held, at pages 45 to 48:

For these reasons, the Hearing Tribunal places little weight on Mr. Alsaadi’s testimony with respect to the events of the evening of April 19, 2014. Given the evidence available, it is more probable than not, that Mr. Alsaadi accessed these records, whether in concert with [REDACTED] or not.

Mr. Alsaadi’s testimony at the hearing on November 6, 2017 was the first time Mr. Alsaadi put forward any suggestion that [REDACTED] had accessed those individuals’ Netcare records on April 19, 2014 which Mr. Alsaadi had been alleged to have accessed. As noted in particular b. of this allegation and as shown in Exhibit 3 (pages 264-265), Mr. Alsaadi failed to tell Mr. Raisbeck about his suspicions of [REDACTED] during his interview on July 16, 2015, even though he had recorded [REDACTED] on November 1, 2014 and had suspicions of him dating back to at least then. In his responses to Mr. Raisbeck, Mr. Alsaadi says, “all of these people were work related” and “someone else couldn’t have accessed Netcare using his code during his shifts.”

...

Mr. Alsaadi has not been forthright about his knowledge and understanding of the events of April 19, 2014 since the beginning of the investigation, and only after being pressed during cross-examination did he admit that he did not tell the investigators about [REDACTED], allegedly because of the fear of threats.

...

The Hearing Tribunal therefore rejects Mr. Alsaadi’s suggestion that these alleged threats precluded his ethical and legal obligations to fully comply with investigators and the Complaints process and be fully forthright with them regarding his suspicions of [REDACTED] during the investigation. The Hearing Tribunal therefore finds particulars a. through c. proven on a balance of probabilities and further finds that this conduct constitutes unprofessional conduct.

...

Regarding particular d., during cross-examination of Mr. Alsaadi (Transcript, December 11-12, 2017, pages 52-55), it was elucidated that Mr. Alsaadi claims to have provided pharmacy consulting services to [REDACTED] ([REDACTED]'s girlfriend at the time) but does not remember what services, when or where. However, he claims to not have accessed her Netcare records and that the only access to her Netcare under his login credentials (April 19, 2014) were done by [REDACTED], her boyfriend at the time. In response to the Complaints Director's letter to him dated March 6, 2015, Mr. Alsaadi submitted a patient letter to the Complaints Director on April 21, 2015 signed by [REDACTED], claiming that Mr. Alsaadi was her pharmacist and that he had her consent to access her health information if needed (this was the same templated letter signed by other patients of Mr. Alsaadi's and also submitted to the Complaints Director). This patient letter was submitted in response to being asked about Mr. Alsaadi's reason for accessing [REDACTED]'s Netcare records on April 19, 2014. When sending in this letter to the Complaints Director, he did not mention that he believed [REDACTED] had accessed [REDACTED]'s health information on Netcare on April 19, 2014. He also did not disclose to [REDACTED] that he believed [REDACTED] had accessed her health information using his login credentials. In fact, Mr. Alsaadi used [REDACTED] to get [REDACTED] to sign the patient letter. As previously discussed, there is a duty to comply with and cooperate with the Complaints Director, investigators, and the complaints process, and this entails disclosure of relevant information. Holding back such critical information is not only an act of omission, but in this case it actively misled the investigation by implying that the Netcare access was appropriately done by Mr. Alsaadi when in fact he believed it to have been inappropriately done by [REDACTED]. The Hearing Tribunal finds this particular proven and finds the conduct to constitute unprofessional conduct.

...

Mr. Alsaadi submitted an admission to allegation 1 related to patient [REDACTED] dated July 27, 2017, and he affirmed this admission when he entered it on November 7, 2017. Even though when later cross-examined by Mr. Jardine, Mr. Alsaadi notes that "this should not be included in any admission, because that would be an instance of me admitting something I didn't do", he ultimately "[accepts] responsibility of inappropriate access of her record solely based on her statement that [he] never acted as her pharmacist or provided pharmaceutical services to her and the recorded logs indicating [his] credentials." Mr. Alsaadi had an ethical duty of honesty, and the Hearing Tribunal finds this was breached by Mr. Alsaadi by entering the Admission of Unprofessional Conduct dated July 27, 2017 (Exhibit 23) and admitting to allegation 1 with respect to patient [REDACTED] when he believed that [REDACTED] had accessed [REDACTED]'s Netcare records and not him, and when he had already adduced evidence through his testimony and the November 1, 2014 telephone recording (Exhibit 21). Mr. Alsaadi flip-flopped during the hearing, giving evidence and making admissions that were irreconcilable. Mr. Alsaadi's ethical duty of honesty with his professional regulators during the investigation extends to his conduct during the hearing. Mr. Alsaadi's

irreconcilable evidence and admissions about the events of April 19, 2014 fly in the face of his obligations as a regulated member of the College. The Hearing Tribunal finds this conduct serious and that it constitutes unprofessional conduct.

[13] The Hearing Tribunal found the Particulars were proven.

[14] In the Decision of the Hearing Tribunal on Sanctions dated May 14, 2019 (the “Sanctions Decision”), the Hearing Tribunal ordered:

1. Mr. Alsaadi’s practice permit is suspended for three years from the date the written decision on sanctions is received;
2. Mr. Alsaadi is ordered to pay a \$10,000 fine for his unprofessional conduct related to the inappropriate access of Netcare information proven in Allegations 1, 2, 5, 6, and 8;
3. Mr. Alsaadi is ordered to pay a \$2,000 fine for his unprofessional conduct related to failure to create records of care proven in Allegations 2 and 3;
4. Mr. Alsaadi is ordered to pay a \$10,000 fine for his unprofessional conduct related to failure to cooperate with the investigation proven in Allegation 7 including the additional particulars;
5. Before Mr. Alsaadi can apply for reinstatement of his practice permit after completing his period of suspension, he must, at his expense, complete and receive an unconditional pass in the PROBE: Ethics & Boundaries Program – Canada course, and this course will not count towards Mr. Alsaadi’s required continuing education credits;
6. Mr. Alsaadi must provide notice to the Alberta College of Pharmacy when he commences work at any pharmacy in Alberta commencing on the date the Sanctions Decision is received and extending for a period of five years from the expiry of his suspension;
7. Mr. Alsaadi must provide a copy of the Hearing Tribunal’s Findings Decision and the Sanctions Decision to any employer where Mr. Alsaadi has access to health information and to any licenses in any pharmacy where he works, commencing on the date the Sanctions Decision is received and extending for a period of five years from the expiry of his suspension, and he must provide confirmation to the Alberta College of Pharmacy that he has done so;
8. Mr. Alsaadi is prohibited from serving as a licenses of a pharmacy in Alberta for a period of five years after the expiry of his suspension;
9. Upon reinstatement of his practice permit, Mr. Alsaadi’s practice permit will be subject to a condition requiring that he practice under direct supervision for a period of 500 hours and indirect supervision for a further period of 500 hours with

a supervisor or supervisors who are aware of the Findings Decision and the Sanctions Decision and who agree:

- a. To review Mr. Alsaadi's Netcare access log every two months during the period of supervision and to provide a copy of the log to the Complaints Director, along with any noted concerns, including access by Mr. Alsaadi to individuals who are not patients of the pharmacy or who are his immediate family members;
 - b. To report to the Complaints Director at the end of the period of supervision and advise the Complaints Director whether any incidents of inappropriate access to Netcare have occurred;
10. Mr. Alsaadi shall be required to pay the fines imposed above within 180 days after the Sanctions Decision and the schedule of costs are provided to Mr. Alsaadi by the Hearings Director; and
11. Mr. Alsaadi shall pay the costs of the investigation and hearing of this matter to a maximum of \$120,000, to be paid within 10 years from the date the Sanctions Decision and schedule of costs are provided to Mr. Alsaadi, pursuant to a payment schedule satisfactory to the Hearings Director.

IV. ISSUES APPEALED

[15] A Notice of Appeal was issued by counsel for Mr. Alsaadi on June 11, 2019 stating:

TAKE NOTICE that Mr. Basel Alsaadi does hereby appeal the Merits Decision (August 3, 2018) and the Sanctions Decision (May 14, 2019) of the Hearing Tribunal of the Alberta College of Pharmacy in accordance with section 87 of the *Health Professions Act*, RSA 2000, c H-7.

THE REASONS FOR APPEAL (MERITS) ARE:

1. The Hearing Tribunal erred when it considered and found proven particulars unrelated to allegations made against Mr. Alsaadi.
2. The Hearing Tribunal erred when it found Mr. Alsaadi failed to cooperate or comply with the Investigator and the Complaints Director.
3. Such other grounds as counsel may advise.

THE REASONS FOR APPEAL (SANCTION) ARE:

1. The sanctions imposed by the Hearing Tribunal were disproportionate to the nature and gravity of the proven allegations.
2. The Hearing Tribunal failed to take into account mitigating factors.
3. The sanctions imposed by the Hearing Tribunal were unduly harsh.

4. The sanctions imposed by the Hearing Tribunal were inconsistent with precedent, and were unreasonable.
5. Such other grounds as counsel may advise.

V. STANDARD OF REVIEW

[16] The Complaints Director's written submissions note that there are two standards of review developed by the courts to guide appeal bodies in decision making:

- a. Correctness – no deference is given and the appeal body can substitute its view if it considers that the Hearing Tribunal made an error; and
- b. Reasonableness – a deferential standard, which recognizes that there may not be a single correct answer to a question but a range of acceptable outcomes in terms of the facts and the law.

[17] Mr. Renouf and Mr. Jardine both submitted that the appropriate standard of review was reasonableness for all issues in the appeal.

[18] The parties addressed the recent Supreme Court of Canada decision in *Canada (Minister of Citizenship and Immigration v Vavilov*. Each provided submissions on the test for reasonableness under *Vavilov*. Both parties took the position that *Vavilov* applies to an appeal to a court from an administrative tribunal, rather than to an internal appeal to a panel of council. Both parties agreed that the Panel is not bound by *Vavilov* in terms of departing from the standard of review of reasonableness.

[19] Given the position taken by both parties on the appropriate standard of review, the Panel agrees with the submissions of counsel that the appropriate standard of review for the issues on appeal in this case is “reasonableness”.

[20] As noted by the Alberta Court of Appeal in *Lichfield v. College of Physicians and Surgeons of Alberta*:

A “reasonable” decision must be justifiable, transparent and intelligible, and must fall within a range of possible outcomes which are defensible in respect of the facts and the law: *Dunsmuir* at para. 47. Where a decision is reviewed for reasonableness, the court will not conduct its own analysis of the question and substitute its view for that of the Council.

VI. SUBMISSIONS

Submissions on behalf of Mr. Alsaadi

[21] Mr. Renouf argued the Panel has broad powers under the HPA. Under section 89(5) of the HPA, the Panel can make any finding that should have been made by the Hearing Tribunal. Section 89(5) provides the Panel with broad remedial powers if it finds the decision was unreasonable.

- [22] Mr. Renouf's first argument was that the Hearing Tribunal made an illogical decision and had inconsistent findings. The Hearing Tribunal found █████ was not involved on April 19, 2014 but held that Mr. Alsaadi was required to disclose information regarding █████'s involvement. Mr. Renouf claims these are contradictory conclusions.
- [23] During the original hearing, Mr. Alsaadi testified that he inadvertently allowed another person to have access to his Netcare account. Mr. Alsaadi provided a recording to the Hearing Tribunal of a person admitting to accessing personal information.
- [24] The Hearing Tribunal held that "Mr. Alsaadi's testimony with respect to the events of April 19, 2014 was not consistent, the details were vague, and his ability to recall was self-admittedly poor" (page 44 of the Merits Decision). The Hearing Tribunal found the evidence was implausible.
- [25] Mr. Renouf pointed to the transcript of the initial hearing, in particular, a portion where Mr. Jardine states that if the Hearing Tribunal believes Mr. Alsaadi's testimony that another person accessed Mr. Alsaadi's Netcare account, then there is another instance of a failure to comply. Mr. Renouf argued the testimony only demonstrates a failure to comply if the evidence of Mr. Alsaadi is accepted by the Hearing Tribunal. If the Hearing Tribunal believed that another person accessed Mr. Alsaadi's Netcare account, then Mr. Alsaadi had an obligation to disclose this information. However, the Hearing Tribunal did not find another person accessed Mr. Alsaadi's Netcare account. It was illogical for the Hearing Tribunal to hold that Mr. Alsaadi should have shared information about an event it does not believe occurred.
- [26] Mr. Renouf argued the Particulars did not allege that Mr. Alsaadi provided inconsistent or incorrect evidence. The Particulars alleged that Mr. Alsaadi failed to provide relevant information. Mr. Renouf argued that, because the Hearing Tribunal found no other person was involved in the incident on April 19, 2014, there is no additional information that Mr. Alsaadi failed to provide.
- [27] Mr. Renouf's second argument was the Hearing Tribunal did not have authority to hear the Particulars added during the hearing. The Hearing Tribunal must exercise its powers in accordance with the HPA. Particulars are details that narrow the allegations and help the member know the allegations against them. Mr. Renouf argued the Particulars are not true particulars, they are additional and distinct allegations.
- [28] Mr. Renouf argued that, under the HPA, there are six distinct steps leading to allegations of professional misconduct before a Hearing Tribunal:
1. The Complaints Director receives a complaint, which must be made in writing and signed (s 54), or treats information, notice or non-compliance as a complaint (s 56).
 2. The Complaints Director may conduct, or appoint an investigator to conduct, an investigation (s 55(2)(c)).
 3. The member is given the name of the investigator and reasonable particulars of the complaint to be investigated (s 61(1)).

4. The investigator must make a report and submit it to the Complaints Director (s 66).
5. The Complaints Director refers the matter to the Hearings Director for a hearing (s 66).
6. The Hearings Director sets a date for the hearing (s 69) and gives the investigated person a notice to attend and gives reasonable particulars of the subject-matter of the hearing (s 77).

[29] Mr. Renouf cited *Henderson v The College of Physicians and Surgeons of Ontario* for the principle that if one step is missed, then the Hearing Tribunal lacks jurisdiction to hear the matter.

[30] At pages 21 and 22 of the Merits Decision, the Hearing Tribunal held it had jurisdiction to hear additional particulars under section 79(3) of the HPA, which states:

79(3) The hearing tribunal may hear evidence on any other matter that arises in the course of a hearing, but the hearing tribunal must give the investigated person notice of its intention to hear the evidence and on the request of the investigated person must grant an adjournment before hearing the evidence.

[31] Mr. Renouf argued that, if an investigator wants to conduct an investigation that goes beyond the complaint, the investigator must provide the particulars of the investigation (*MacLeod v Alberta College of School Workers*). The HPA states that a Hearing Tribunal does not have the discretion to hear new complaints that have not been investigated. Mr. Renouf cited *Henderson v The College of Physicians and Surgeons of Ontario* for the principle that a member is entitled to know the particulars of the complaint before the hearing begins, and if the relevant information was not known to the College before the hearing, that does not relieve the College of its obligation under the governing legislation.

[32] Mr. Renouf argued that, originally, Allegation 7 was very specific and related to the letter signed by [REDACTED]. The Hearing Tribunal was to consider conduct related to this allegation, not to consider any conduct inconsistent with Mr. Alsaadi's ethical requirements and duty to comply with an investigator. It is a fundamental principle of professional disciplinary proceedings that a Hearing Tribunal cannot find a member guilty of matters that were not in the allegations. Mr. Renouf cited *Nowoselsky v Alberta College of Social Workers* at paragraph 19: "The tribunal is not entitled to make findings of culpability just because the evidence reveals something the tribunal feels is misconduct." Mr. Renouf cited *Meier v Saskatchewan Institute of Agrologists* for the principle that the formal charge must set out the offence and a Hearing Tribunal cannot find there was other conduct that was unprofessional conduct that is not set out in the formal charge.

[33] Mr. Renouf argued that the Hearing Tribunal acted without jurisdiction when it allowed the Particulars to be heard and found they were proven. Mr. Renouf argued the Panel on appeal should quash the order to grant the application to add the Particulars pursuant to its authority in section 89(5)(b) of the HPA. In the alternative, the Panel can deny the Complaints Director's application to add particulars under its authority in section 89(4)(c).

[34] Mr. Renouf's third argument was the testimony a person gives in a proceeding is privileged and, therefore, the Hearing Tribunal should not have used the information in Mr. Alsaadi's testimony to add the Particulars.

[35] Under section 76(1) of the HPA, an investigated person cannot refuse to answer a question. However, section 76(2) creates some protection for the investigated person:

76(2) If an answer given under subsection (1) by a witness could

- (a) establish the witness's liability in a court proceeding or proceedings under any enactment, or
- (b) incriminate the witness,

that answer may not be used or received against the witness in a civil proceeding, a prosecution under this Act or proceedings under any other Act, but that answer may be used or received against the witness in proceedings in respect of perjury or giving contradictory evidence under this Act.

[36] Mr. Renouf cited *Hung v Gardiner* for the principle that no action lies against a witness if the action arises from evidence given in a proceeding. Mr. Renouf argued that this principle has been applied consistently in Canadian courts. Mr. Renouf cited *Nova Scotia Government and General Employees Union v Nova Scotia Health Authority*, in which the Arbitrator found the absolute immunity rule applies to arbitration. Mr. Renouf cited *McDaniel v McDaniel* for the principle that witnesses are immune from civil liability for statements made in judicial or quasi-judicial proceedings.

[37] Mr. Renouf summarized his arguments on the appeal of the merits decision as follows:

1. The decision does not hold up logically, considering the conditional nature of the information provided by Mr. Alsaadi;
2. The HPA limits the powers of the Hearing Tribunal and it acted outside its jurisdiction in allowing the particulars to be added to Allegation 7;
3. Testimonial immunity applies in this case, and the Hearing Tribunal did not have the power to judge Mr. Alsaadi based on his testimony.

[38] Mr. Renouf then addressed his argument regarding the Sanctions Decision. Mr. Renouf argued that, if the Panel finds the additional particulars were heard or proven improperly, then the sanctions must be reconsidered. Mr. Renouf argued that, regardless of the decision on appeal of the merits, the sanctions imposed on the member were overly harsh. Mr. Renouf argued that the sanctions should be varied by the Panel.

[39] Mr. Renouf first raised the issue of proportionality. The sanction must be proportionate to the impugned conduct. Mr. Renouf argued that the emphasis must be on protecting the public interest. The Hearing Tribunal did not find that Mr. Alsaadi posed a risk to the public, but it suspended him for three years, ordered him to pay \$22,000.00 in fines and \$120,000.00 in costs.

- [40] Mr. Renouf argues Mr. Alsaadi received an extraordinary sentence. Mr. Renouf cited *Nair v College of Physicians and Surgeons of Alberta* for the idea that a suspension will “wreak havoc” on a professional’s practice. Mr. Renouf cited *Matheson v College of Physicians and Surgeons of PEI* for the principle that a 3.5 year suspension could effectively end a professional’s career. Mr. Renouf cited *Jones (Re)*, which stated that “generally speaking, it is hard to see how a 36 month suspension on a go forward basis would ever be an appropriate disposition” (paragraph 61). In that case, the suspension was reduced to one year. Mr. Renouf argued the conduct at issue in *Jones (Re)* was much more morally egregious than the conduct of Mr. Alsaadi.
- [41] Mr. Renouf argued Mr. Alsaadi will continue to be affected by this sanction until 2027, even though much of the conduct occurred in 2014. The sanction was disproportionately harsh and, therefore, unreasonable.
- [42] Mr. Renouf compared the sanction ordered against Mr. Alsaadi to previous cases where access to personal information had occurred, where a member failed to cooperate with their College, and where a member failed to keep records.
- [43] Mr. Renouf also referred to a number of cases in which a long suspension had been ordered. Mr. Renouf argued that long suspensions are typically only ordered if the member is found to have been convicted of criminal activity, acted fraudulently, endangered patients, or engaged in sexual misconduct.
- [44] Mr. Renouf argued that, based on the previous case law, the sanction imposed on Mr. Alsaadi was unprecedented and unreasonable.
- [45] Mr. Renouf argued that the mitigating factors affecting Mr. Alsaadi were not considered by the Hearing Tribunal. The Hearing Tribunal is required to consider mitigating factors. Mr. Renouf argued that, although the Hearing Tribunal listed a number of mitigating factors in the Sanctions Decision, it is almost impossible to conclude those factors were given any weight. Mr. Renouf argued the Hearing Tribunal failed to address additional mitigating factors. One additional mitigating factor was Mr. Alsaadi suffered disproportional punishment during the prosecution by the Information and Privacy Commissioner and was mistakenly given a period of house arrest. Additionally, Mr. Alsaadi was not malicious, voluntarily withdrew from practice, admitted to many of the allegations, did not profit or gain from his conduct, did not harm any individuals, and a significant amount of time has passed since the unprofessional conduct occurred.
- [46] Mr. Renouf cited *Si Huu Nguyen* to compare the sanction imposed on Mr. Nguyen and the sanction imposed on Mr. Alsaadi by the ACP. Mr. Renouf argued the conduct of Mr. Nguyen was morally problematic and worse than Mr. Alsaadi’s conduct. Additionally, Mr. Nguyen was a senior pharmacist who acted unprofessionally to obtain a profit. Mr. Nguyen was suspended for 24 months (following a 1 year suspension previously ordered by a different Hearing Tribunal), ordered to pay a fine of \$20,000 and costs, and was subject to a number of conditions upon returning to practice. Comparing Mr. Nguyen’s conduct to Mr. Alsaadi’s conduct, Mr. Renouf argued the sanction imposed on Mr. Alsaadi was unreasonable.

- [47] Mr. Renouf submitted that the appropriate sanctions in this case are:
- a. A suspension of one month in respect of the findings of unprofessional conduct in Allegations 1, 2, 5, 6, and 8;
 - b. A reprimand in respect of the finding of unprofessional conduct in Allegation 7 including the additional particulars;
 - c. A reprimand in respect of the findings of unprofessional conduct in Allegations 2 and 3;
 - d. A reprimand in respect of the finding of unprofessional conduct in Allegation 6.

Submissions on behalf of the Complaints Director

- [48] Mr. Jardine started his submissions with an overview of the issues on appeal. In the appeal on the merits, the crucial issue is the Particulars. The Hearing Tribunal found the Particulars were proven and were very influential to the sanction imposed. With respect to sanction, governability is an important factor which Mr. Renouf failed to address. A member of a college must be willing to subject themselves to the governance of the college.
- [49] Mr. Jardine addressed the principles of statutory interpretation. The basic fundamental principle of statutory interpretation comes from the Supreme Court of Canada in *Rizzo & Rizzo Shoes Ltd.* which says that words of an enactment must be read in the context of the legislation. The most important factor is the purpose and intent of the statute. A provision in a statute must be read as a whole, in the context of the entire statute.
- [50] Mr. Jardine argued that section 79 of the HPA must be interpreted considering the purpose and intent of the entire statute. Section 3 of the HPA states that the public interest is an important overriding factor. The other sections of the HPA must be interpreted considering the public interest. In *Pharmascience Inc v Binet*, the Supreme Court of Canada held that professional regulatory statutes are created for the public interest. The Supreme Court of Canada in that case interpreted the inspection section of the governing legislation as providing the regulator power for the purpose of ensuring the public interest.
- [51] Mr. Jardine gave an overview of the background facts of the case. A complaint was received from the Grey Nuns Hospital about Mr. Alsaadi accessing Netcare without authorization on April 19, 2014. The Complaints Director asked for a review of Mr. Alsaadi's Netcare access since 2013. After investigating, the Complaints Director referred the matter to a hearing. There was an 8 day hearing on the matter. During Mr. Alsaadi's testimony on November 6, 2017, Mr. Alsaadi brought up the involvement of an individual [REDACTED]. There were four individuals whose access was relevant on April 19, 2014. Those individuals were [REDACTED], [REDACTED] ([REDACTED]'s [REDACTED]), [REDACTED] ([REDACTED]), and [REDACTED] (employee of [REDACTED]). All these individuals were connected to [REDACTED]. During the hearing, Mr. Alsaadi played a recording and suggested it was [REDACTED] admitting to

accessing personal information. Based on this testimony, a request was made to add new particulars to the allegations.

- [52] The Hearing Tribunal heard submissions from legal counsel for the Complaints Director and Mr. Alsaadi, and obtained advice from independent legal counsel. The Hearing Tribunal determined that it could hear and consider new matters. The Hearing Tribunal directed legal counsel for the Complaints Director to draft the Particulars. The hearing was adjourned.
- [53] Mr. Jardine argued that all the conduct in the Particulars relate to a failure to cooperate with the College, which was the subject of Allegation 7 as it was originally drafted. Mr. Jardine addressed Mr. Renouf's argument that the Hearing Tribunal did not have the authority under section 79 of the HPA to add the Particulars to Allegation 7.
- [54] Mr. Jardine argued that the Hearing Tribunal was in full compliance with section 79(3) which allows a Hearing Tribunal to hear evidence on any matter that arises in the course of a hearing. Notice was provided to Mr. Alsaadi before the Particulars were added and the Hearing Tribunal adjourned the hearing for more than 1 month. The notice and adjournment were before Mr. Alsaadi was finished his direct examination.
- [55] Mr. Jardine argued that, under section 79(4), the Hearing Tribunal can refer the matter to the Hearing Director or to the Complaints Director if a new matter arises and the Hearing Tribunal is of the opinion that a separate hearing is required. If Mr. Renouf's argument that all new issues that arise must go through the complaints process is correct, then section 79(3) is irrelevant. The relevant sections must be read considering the HPA as a whole. If sections 79(3) and 79(4) are read together, the Hearing Tribunal has three options when new evidence arises: provide notice under section 79(3) of its intention to hear the evidence and, on request, grant an adjournment, or if the Hearing Tribunal is of the opinion that a separate hearing is required, then under section 79(4) it can refer the matter to the Complaints Director under section 54 or to the Hearings Director under section 69. The purpose and intent of the legislation is that complaints should be dealt with in a manner that furthers the public interest.
- [56] Mr. Jardine submitted that Mr. Renouf's argument that the Hearing Tribunal did not have the authority to hear the Particulars is incorrect. The Hearing Tribunal had the power to hear additional particulars of an allegation already set out. The Hearing Tribunal was reasonable in its decision to hear and consider the Particulars.
- [57] Mr. Jardine further submitted that the Particulars defined the scope of Allegation 7, and they were connected to the alleged breach of the duty of honesty. The new matters were directly related to the original Allegation 7.
- [58] Mr. Jardine cited *Hesje v Law Society of Saskatchewan*, arguing that the Hearing Tribunal met the principle for considering additional particulars. In that case, the Saskatchewan Court of Appeal held procedural fairness is only violated if the member is deprived of the knowledge of the facts alleged to constitute misconduct.
- [59] Mr. Jardine responded to a number of cases cited by Mr. Renouf. Mr. Jardine argued the Hearing Tribunal properly exercised its powers under section 79(3) to add the Particulars.

[60] Mr. Jardine then responded to Mr. Renouf’s argument regarding witness immunity. Mr. Jardine argued that this case was distinct from the cases raised by Mr. Renouf. The cases cited by Mr. Renouf involved a witness who was not under investigation. Mr. Jardine agreed that a witness or complainant cannot be sued or incriminated for statements made in a hearing or trial (Mr. Jardine cited *Hung v Gardiner*). However, in the present case, Mr. Alsaadi made the statements at issue during his testimony. Mr. Jardine noted that section 76 of the HPA applied to this case, but also noted that section 6 of the *Alberta Evidence Act*, R.S.A. 2000, c A-18 has a similar provision which provides protection to a witness giving incriminating evidence.

[61] Mr. Jardine cited three cases in support of his argument. In *Alberta Securities Commission v Brost*, there were investigative interviews of Brost and they intended to use that evidence in a hearing regarding misconduct. The Alberta Court of Appeal found the proceedings before the Alberta Securities Commission were regulatory, not penal or prosecutorial in nature . The Court held that section 6 of the *Alberta Evidence Act* does not apply because “it prohibits the use of a witness’s testimony to incriminate the witness in other proceedings... the interviews were used in the same regulatory proceedings in which they were obtained” (paragraph 37). In Mr. Alsaadi’s case, the Particulars were added based on interviews between Mr. Alsaadi and the Complaints Director, and evidence given by Mr. Alsaadi at the hearing. If Mr. Renouf’s argument is adopted, then information from an investigation cannot be used at a hearing. This is an unreasonable position. All information considered at the hearing was generated either during the investigation or given as evidence at the hearing.

[62] In *Toy v Edmonton (Police Service)*, Constable Toy denied looking at materials on legal counsel’s table during a break in an appeal hearing in which he was a witness. Constable Toy provided a written involuntary sworn statement in which he denied looking at the materials. At a hearing, his evidence was not believed and he was found to have looked at the materials. A new complaint was filed alleging that he lied in his sworn statement. Constable Toy argued it was unfair to consider a statement from a different hearing. The Alberta Court of Appeal held the “*Police Act* and Regulation allowed for the admission of Cst Toy’s previous sworn statement and testimony in the disciplinary hearing related to the allegations that those statements were deceitful” (paragraph 32). The Court held the immunity provision in the *Police Act* does not extend to disciplinary proceedings conducted under the *Police Act*. The Court considered the scheme and object of the *Police Act* in interpreting the wording of the relevant provisions. The Court held:

If the immunity created in s 6(2) of the *Alberta Evidence Act* is interpreted to apply to disciplinary proceedings against police officers who lie under oath, so that such conduct can never be prosecuted or found to constitute deceit or disreputable conduct under the *Police Act*, the goal of achieving adequate and effective policing is thereby blunted.

...

The legislative purpose of the *Police Act* would not insulate a police officer from the consequences of a most serious type of disreputable conduct, lying under oath. This bears on the scope of s 6(3) of the *Alberta Evidence Act*,

suggesting that it does not operate to exclude Cst Toy's sworn statement or testimony from admission into evidence at his discipline hearing.
(Paragraphs 39, 43)

- [63] Mr. Jardine argued this is the most analogous case to Mr. Alsaadi's situation. The Particulars arose intrinsically under the same matter. Either Mr. Alsaadi failed to disclose BM's involvement to the Complaints Director at the beginning, or he later lied under oath. The provisions in the HPA and the *Alberta Evidence Act* cannot be interpreted in a way that provides Mr. Alsaadi immunity in this case.
- [64] In *Yazdanfar v The College of Physicians and Surgeons*, Dr. Yazdanfar was compelled to attend an interview. The interview was used at the hearing. The issue before the Ontario Supreme Court was whether the use of the transcript from the interview was an error or unreasonable. The Court held the interviews do not constitute separate proceedings from the resulting hearing. The Court held "legislation governing self-regulating professions must be interpreted broadly in the context of its statutory duty to protect and serve the public interest" (paragraph 67).
- [65] Mr. Jardine argued Mr. Alsaadi's case involved the same regulatory process, the same people, and the Particulars related to the same matter. Interpreting the exclusion provisions in the HPA and the *Alberta Evidence Act* to apply to conduct related to the same hearing is unreasonable.
- [66] Mr. Jardine then responded to Mr. Renouf's argument that Mr. Alsaadi's requirement to disclose information regarding █████ was conditional on the Hearing Tribunal accepting Mr. Alsaadi's evidence regarding █████'s involvement on April 19, 2014.
- [67] Mr. Jardine argued that the Hearing Tribunal weighed Mr. Alsaadi's evidence that █████ acted alone to access the individuals' personal health information using his Netcare login and found his evidence on this point to be implausible. The Hearing Tribunal found it implausible that █████ acted alone. The first time Mr. Alsaadi put forward any suggestion that █████ had accessed those individuals' Netcare records was on November 6, 2017. The Hearing Tribunal found that it was more probable than not that Mr. Alsaadi accessed these records, whether in concert with █████ or not.
- [68] The Particulars address the duty of honesty and duty to cooperate. Particulars 7.a and 7.b relate to responses provided by Mr. Alsaadi throughout the investigation and up to November 6, 2017 and the responses he provided to the investigator on July 15, 2015.
- [69] During the hearing in July 2017, after █████ said in her testimony that she did not know Mr. Alsaadi, Mr. Alsaadi asked her if she knew █████. Mr. Jardine argued this suggests Mr. Alsaadi had considered █████'s involvement in July 2017. Mr. Alsaadi had a theory that █████ was involved but did not disclose this to the Complaints Director at the time of the investigation or even after.
- [70] Later in the hearing, during his testimony, Mr. Alsaadi produced a recording of a conversation he stated was with █████. In his testimony, Mr. Alsaadi confirmed that he made the recording in November 2014, before he had responded to the Complaints

Director. At this time of the investigation and when answering questions of the investigator, Mr. Alsaadi failed to disclose any information about ██████'s involvement. ██████'s role in accessing the information was not disclosed by Mr. Alsaadi until November 6, 2017.

- [71] Allegation 7.c refers to a list of individuals Mr. Alsaadi claimed he did not recognize. This includes the name of ██████. Allegation 7.d refers to a letter from ██████ that states she was a patient. Mr. Alsaadi only accessed ██████'s information one time and knew she had a relationship with ██████. None of the information about ██████ was volunteered or brought forward. The duty to cooperate does not mean you keep information to yourself. If Mr. Alsaadi had a theory about what happened on April 19, 2014, he should have told the Complaints Director. Allegation 7.e refers to an admission made that he accessed ██████'s information without authorization. He made the admission in July 2017 after ██████ gave evidence that she knew ██████. After making this admission, Mr. Alsaadi then testified about his theory that ██████ had accessed ██████'s information.
- [72] Mr. Jardine argued Mr. Alsaadi did not provide full disclosure and cooperation. He had a theory about ██████'s involvement and failed to disclose this theory. This was not cooperation. This applies regardless of whether the Hearing Tribunal believes his evidence regarding the events involving ██████ on April 19, 2014. Mr. Jardine argued Mr. Alsaadi was playing "cute" with the system and there was a clear lack of candour and disclosure. This was a member who tried to avoid answering and failed to disclose relevant information.
- [73] Mr. Jardine pointed to relevant provisions in the Merits Decision. The Complaints Director gave evidence that Mr. Alsaadi claimed all the people accessed were his patients in a written statement dated April 26, 2015 (page 7). ██████ gave evidence that she did not know Mr. Alsaadi, has never been a patient, and has never dealt with Mr. Alsaadi for pharmacy matters to her knowledge (page 11). In response to questions from Mr. Alsaadi about whether she knew ██████, ██████ testified that she used to work with ██████ and ██████'s brother.
- [74] The Pharmacy Manager at the Grey Nuns Hospital testified that she looked at Mr. Alsaadi's Netcare access on April 19, 2014 and multiple individuals were accessed that day, some were not patients at Grey Nuns, some were accessed after his shift ended, and many had the same last name as Mr. Alsaadi (page 14). Mr. Alsaadi gave evidence that ██████ was involved in the Netcare accesses on April 19, 2014 (page 16). In cross-examination, Mr. Alsaadi testified that ██████ accessed Netcare using Mr. Alsaadi's login that evening (page 17). The Hearing Tribunal found, at page 42:

Even after synthesizing all of the evidence available to it, the Hearing Tribunal is unclear on exactly what transpired on the evening of April 19, 2014. The Hearing Tribunal, however, does not have to ascertain the precise events of that evening. The Hearing Tribunal needs only to determine whether, on a balance of probabilities, the allegations Mr. Alsaadi faces are proven or not.

- [75] The first time Mr. Alsaadi mentioned █████ was on November 6, 2017. The Hearing Tribunal found that “it is more probable than not, that Mr. Alsaadi accessed these records, whether in concert with █████ or not” (page 45). Mr. Jardine argues, the Hearing Tribunal did not find █████ was not involved, it just had doubts about the evidence provided.
- [76] Mr. Jardine argues the reasons of the Hearing Tribunal are internally consistent. Mr. Alsaadi had a recording of █████ from 2014, Mr. Alsaadi was suspicious that █████ was involved and he failed to disclose this information to the Complaints Director. The Merits Decision should stand. Reasonableness goes to the reasons provided. The Hearing Tribunal never said Mr. Alsaadi only had a duty to disclose if it believed his evidence. The Hearing Tribunal held that he had relevant information and he failed to disclose that information. The Hearing Tribunal chose not to determine the extent of █████’s involvement, but found that regardless of █████’s involvement on April 19, 2014, Mr. Alsaadi had accessed the information. This is not inconsistent with finding the Particulars were proven.
- [77] Mr. Jardine then provided submissions on the appeal of the Sanctions Decision. Mr. Jardine submitted that the Complaints Director supports the Order made by the Hearing Tribunal in the Sanctions Decision. Mr. Jardine referenced section 82 of the HPA, which sets out the powers of the Hearing Tribunals to make orders. Mr. Jardine argued sanctions are on a spectrum. At one end of the spectrum are cautions and reprimands. At the other end of the spectrum, the most onerous sanction is cancellation.
- [78] Mr. Jardine agreed with Mr. Renouf’s submission that, if Allegations 7.a to 7.e are removed, then the sanction must be changed. However, if Allegations 7.a to 7.e are not removed, then the ungovernable conduct of Mr. Alsaadi is the starting point and the order must stand.
- [79] The Hearing Tribunal listed a number of factors for the Order on sanctions (page 24 of the Sanctions Decision). The Hearing Tribunal held some of Mr. Alsaadi’s conduct indicated ungovernability. The Hearing Tribunal noted that it “seriously considered ordering cancellation of Mr. Alsaadi’s registration, as there were aspects of his conduct that could have warranted cancellation, including indicia of ungovernability” (page 25 of the Sanctions Decision). The Hearing Tribunal held that cancellation was not appropriate because of the mitigating factors raised by Mr. Alsaadi. The Hearing Tribunal concluded this discussion of cancellation, finding:

...What was also concerning was that Mr. Alsaadi’s inappropriate Netcare accesses continued during the investigation which started on October 1, 2014, and even after Mr. Alsaadi’s response to the Complaints Director, which was dated April 26, 2015.

Mr. Alsaadi also tried to coerce █████ to give a false statement to the College indicating that he had provided pharmacy services to her. Mr. Alsaadi was dishonest with and actively misled the Complaints Director and investigator. He also attempted to mislead the Hearing Tribunal by submitting admissions regarding █████ and █████ that he believed to be false and that he later testified

were false. The Ahluwalia case from the Manitoba Court of Appeal cited by the Complaints Director confirms that this type of conduct is an indicator of ungovernability. It is also conduct of an extremely serious nature and must be severely sanctioned in order to deter it. Self-regulation and the College's ability to protect the public depends on a complaints process in which regulated members have a legal and ethical obligation to cooperate, and that is why these responsibilities are codified in the *Health Professions Act*. What is particularly troubling to the Hearing Tribunal is that Mr. Alsaadi did not seem to understand the gravity of his conduct. There were numerous times when Mr. Alsaadi seemed to believe that he had a "right to remain silent" or a right to withhold important information during the investigation, and he seemed to confuse professional complaints and discipline proceedings which are governed under the *Health Professions Act* with criminal proceedings.

The need to promote both specific and general deterrence for the ultimate protection and safety of the public and the need to maintain the public's confidence in the integrity of the profession is significant, particularly due to the inappropriate accesses of individuals' personal health information and failure to cooperate with the Complaints Director and the investigation. While there are mitigating factors, they do not excuse the conduct or its severity. On balancing the factors, the Hearing tribunal landed just "below the line" to warrant cancellation. Had there been a pattern of similar, prior behaviour (i.e. a prior finding of unprofessional conduct) or lack of active participation in the process, the Hearing Tribunal would likely have ordered cancellation.

(Page 24, line 938 to Page 25, line 956 and Page 25, lines 987 to 995 of the Sanctions Decision).

- [80] Mr. Jardine argued that the Hearing Tribunal considered Mr. Alsaadi's conduct very serious and was close to determining Mr. Alsaadi was ungovernable and should have his registration cancelled.
- [81] Mr. Jardine responded to Mr. Renouf's argument that the Hearing Tribunal failed to consider mitigating factors. The Sanctions Decision demonstrates that the Hearing Tribunal did consider the mitigating factors and they influenced its decision. Without the mitigating factors, it appears the Hearing Tribunal would have cancelled Mr. Alsaadi's registration.
- [82] Mr. Jardine responded to Mr. Renouf's argument that the sanction is disproportionate to the allegations and unduly harsh. Mr. Jardine argued that a finding of ungovernability typically leads to cancellation. The Hearing Tribunal held Mr. Alsaadi was close to ungovernable, but not quite there due to the mitigating factors. In this case, it was necessary to have a severe sanction. The Hearing Tribunal recognized the need for specific and general deterrence for public safety and confidence in the integrity of the profession. The sanction imposed on Mr. Alsaadi was intended to protect the public and the profession.

- [83] Mr. Jardine submitted that, if the Panel on appeal reduces or eliminates the suspension, it should keep the other sanctions imposed. Those sanctions are intended to ensure Mr. Alsaadi continues learning and is fit for practice.
- [84] Mr. Jardine responded to Mr. Renouf's argument that the sanction was inconsistent with precedent. Mr. Jardine agreed that if the only issue was access to personal information, the range of suspensions in previous cases is one to six months. However, Mr. Alsaadi's case included a lack of cooperation and dishonesty. These issues brought this case outside the scope of the access to information cases. Mr. Jardine also distinguished between two kinds of lack of cooperation: failure to respond and actively misleading. Mr. Renouf cited the *College of Physicians and Surgeons of Alberta v Dr. Kristina Zakhary*. In that case, the member failed to respond to letters and phone calls and received a five month suspension. Mr. Jardine argued that there is a difference between a failure to respond and misleading or attempting to mislead the Complaints Director and the Hearing Tribunal. Mr. Jardine agreed that a three year suspension would be improper if the only issue was improper record keeping. Mr. Jardine argued that Mr. Renouf failed to consider cases in which ungovernability was an issue.
- [85] Mr. Jardine responded to a number of Mr. Renouf's comments. Mr. Renouf argued a suspension could impact a professional's practice. However, Mr. Alsaadi did not have an established practice and, therefore, this is not an important factor. Mr. Renouf argued no individuals were harmed. No person was actually harmed, but the witnesses who testified were clearly upset and concerned. Mr. Renouf argued time fixes improper conduct. This is true for professionals who continue practicing, have learned from their mistakes, and have not conducted themselves unprofessionally since the incident under investigation. Mr. Alsaadi had not been practicing since the incident and has not demonstrated he learned from his unprofessional conduct. Mr. Jardine agrees that the three year suspension should be reduced by the eight months Mr. Alsaadi has already served. Mr. Jardine took the position that the Sanctions Decision is reasonable.

Reply on behalf of Mr. Alsaadi

- [86] In reply, Mr. Renouf submitted that an investigated person has no input into the wording of the charges against them, including the Particulars added in this case. Mr. Renouf summarized his position by restating his three arguments.

VII. DECISION

- [87] The Panel has carefully considered the written submissions of the parties, exhibits presented and the oral submissions made. The Panel dismisses Mr. Alsaadi's appeal for the reasons set out below.

VIII. REASONS FOR DECISION

- [88] With respect to the issue of the Hearing Tribunal's decision to add the Particulars, the Panel finds that the Hearing Tribunal had the authority under section 79(3) of the HPA to add the Particulars. Section 79 of the HPA, when read as a whole, clearly provides that where something new arises during a hearing, the Hearing Tribunal may hear evidence on

the matter provided the investigated person has notice of its intention to do so and that an adjournment is granted if requested by the investigated person.

[89] Section 79(3) and (4) of the HPA states:

79(3) The hearing tribunal may hear evidence on any other matter that arises in the course of a hearing, but the hearing tribunal must give the investigated person notice of its intention to hear the evidence and on the request of the investigated person must grant an adjournment before hearing the evidence.

(4) If the hearing tribunal is of the opinion that a separate hearing is required with respect to a matter described in subsection (3), the hearing tribunal may

- (a) refer the matter as a complaint to the complaints director under section 54, or
- (b) refer the matter to the hearings director under section 69 for a hearing.

[90] Section 79 provides three options for addressing new information that arises in the course of a hearing. The Hearing Tribunal may: 1) hear evidence on the new information provided it gives notice to the investigated person of its intention to hear the evidence, and on request of the investigated person, grants an adjournment before hearing the evidence; 2) refer the matter as a complaint to the Complaints Director; or 3) refer the matter to the Hearings Director for a hearing.

[91] The Hearing Tribunal in this case heard submissions on whether the Particulars should be added, it directed the Complaints Director to prepare the Particulars, these were provided to Mr. Alsaadi and an adjournment of over one month was granted. The adjournment was made prior to the conclusion of Mr. Alsaadi's direct examination. Mr. Alsaadi knew the case to be met and had time to prepare to address the new Particulars. Mr. Alsaadi was able to address the new information in his direct evidence, prior to being cross-examined.

[92] Mr. Renouf is suggesting that a separate investigation or hearing needed to be held. The Panel rejects this interpretation of the HPA, which would render section 79(3) of the HPA meaningless. The Hearing Tribunal had the clear authority under section 79(3) to hear evidence on the additional information and the Hearing Tribunal's decision to add the Particulars and address them as part of the hearing was reasonable.

[93] With respect to the argument that the Particulars broaden the scope of Allegation 7, rather than narrow it, the Panel finds that this argument is without merit. The test for fairness is met if the investigated person knows the case to be met. Mr. Alsaadi knew the case to be met and had an opportunity to prepare his response to the new Particulars.

[94] The next issue raised is whether section 76 of the HPA creates a privilege over an individual's testimony which cannot be used to incriminate the individual in the hearing. The Panel rejects Mr. Alsaadi's interpretation of section 76 of the HPA and accepts the interpretation advanced by the Complaints Director. Clearly an investigated person's

evidence given in a hearing can be used to make findings against them in that same proceeding.

- [95] The Panel accepts the cases provided by the Complaints Director on this point, in particular *Toy v Edmonton (Police Service)*. As noted by Mr. Jardine, the Particulars arose based on the evidence given by Mr. Alsaadi during the hearing. The HPA allows a Hearing Tribunal to hear evidence on any new matter that arises during the hearing (section 79(3)). This procedure was followed by the Hearing Tribunal.
- [96] The Panel finds that an investigated person's evidence in a hearing under the HPA is not privileged with respect to comments that can be used against the investigated person in a discipline hearing under the HPA. To interpret section 76 of the HPA in the manner suggested by Mr. Alsaadi does not accord with the purpose of the act to regulate members and does not serve the public interest.
- [97] The Panel next considered the issue of whether the Hearing Tribunal's findings on the Particulars are illogical. Both counsel in their oral submissions carefully reviewed the Hearing Tribunal's decision and the transcripts. At issue are the findings of the Hearing Tribunal regarding the Particulars, and in particular, Mr. Alsaadi's evidence regarding the involvement of BM.
- [98] The Hearing Tribunal found that it was unclear on exactly what transpired on the evening of April 19, 2014 but that it did not have to ascertain the precise events of that evening (Merits Decision, page 42). The Hearing Tribunal found, at pages 43 to 45:

Prior to November 6, 2017, Mr. Alsaadi made no mention of [REDACTED] visiting his pharmacy on April 19, 2014 or using his Netcare access while waiting for Mr. Alsaadi. On November 6, 2017 during the hearing, Mr. Alsaadi testified and stated for the first time that it was [REDACTED] who accessed the Netcare records of those patients on the evening of April 19, 2014 and not Mr. Alsaadi (Transcript, November 6-8, 2017, page 117). Mr. Alsaadi testified that he figured out that [REDACTED] had accessed these patients' Netcare records on that evening on November 1, 2014 based on a phone conversation with him (Transcript, November 6-8, 2017, pages 120-121 and 215). Mr. Alsaadi entered into evidence an audio recording of this November 1, 2014 telephone conversation between himself and [REDACTED] regarding [REDACTED] (who was [REDACTED]'s girlfriend), in which [REDACTED] tells Mr. Alsaadi that he ([REDACTED]) told [REDACTED] that he had accessed her private health information (Exhibit 21). According to Mr. Alsaadi, [REDACTED] was not aware he was being recorded during the conversation (Transcript, November 6-8, 2017, page 125). While Mr. Alsaadi testified that the recording is a conversation between himself and [REDACTED] regarding [REDACTED] and that the conversation occurred on November 1, 2014, it has not otherwise been authenticated. The content of the recording also does not specifically prove that [REDACTED] accessed either [REDACTED], [REDACTED], or [REDACTED]'s Netcare records on April 19, 2014 or that he utilized Mr. Alsaadi's Netcare login credentials. There is no specific mention of [REDACTED], [REDACTED], or [REDACTED], no mention of that date, or use of Mr. Alsaadi's Netcare login credentials by [REDACTED].

...

The Hearing Tribunal weighed Mr. Alsaadi's evidence that [REDACTED] acted alone to access individuals' private personal health information using Mr. Alsaadi's Netcare login on April 19, 2014 and found Mr. Alsaadi's evidence on this point to be implausible. Mr. Alsaadi's testimony with respect to the events of April 19, 2014 was not consistent, the details were vague, and his ability to recall was self-admittedly poor. Furthermore, other than the recording which Mr. Alsaadi said was of his conversation with [REDACTED] on November 1, 2014, Mr. Alsaadi did not provide any supporting evidence of his story. Multiple contradictory times and timelines were given; text messages were mentioned, yet nothing was entered into evidence. No additional evidence was provided to further the contention that [REDACTED] could have accessed the Netcare records in question on the evening of April 19, 2014.

In fact, if Mr. Alsaadi became convinced on November 1, 2014 that [REDACTED] had accessed [REDACTED]'s Netcare records using Mr. Alsaadi's login on April 19, 2014, it makes little sense why he would have such a poor recollection of the events of that evening and no additional evidence to support his story.

...

Mr. Jardine has put forward an assertion that Mr. Alsaadi may have assisted [REDACTED] in accessing the four patients' Netcare records that evening versus [REDACTED] accessing them alone. As previously discussed under allegation 1, there are multiple instances in which Mr. Alsaadi accessed the personal health information of patients without their prior knowledge, consent or an authorized purpose. In fact, Mr. Alsaadi has admitted to this for a number of patients, and in many cases has used the term "curiosity" (p. 259, Exhibit 3; p. 2, Exhibit 23) to justify or explain his inappropriate accesses of patients' private health information.

For these reasons, the Hearing Tribunal places little weight on Mr. Alsaadi's testimony with respect to the events of the evening of April 19, 2014. Given the evidence available, it is more probable than not, that Mr. Alsaadi accessed these records, whether in concert with [REDACTED] or not.

- [99] The Panel does not agree with the position put forward by Mr. Alsaadi that the Hearing Tribunal made an illogical decision and had inconsistent findings. Mr. Renouf stated that the Hearing Tribunal found [REDACTED] was not involved on April 19, 2014. However, that is not the finding made. The Hearing Tribunal found that it was more probable than not that Mr. Alsaadi accessed the records and made no finding of whether or not [REDACTED] was involved.
- [100] The findings of the Hearing Tribunal with respect to Mr. Alsaadi's evidence of [REDACTED]'s involvement support the findings it made regarding the Particulars. The Panel does not accept that the findings of the Hearing Tribunal are illogical or inconsistent.
- [101] The Panel looked at the Hearing Tribunal decision as a whole in determining whether the findings on the Particulars are reasonable. The findings of the Hearing Tribunal support a finding on each of Particulars 7a. to 7e. Mr. Alsaadi advanced a theory of [REDACTED]'s involvement during the hearing in November 2017, which theory he had at the time he recorded the telephone call with [REDACTED] on November 1, 2014. Despite having this

information as of November 1, 2014, Mr. Alsaadi did not advise the Complaints Director or the investigator or otherwise provide this information during his interview or his written responses to the Complaints Director (Particulars 7.a, 7.b, and 7.c). He further provided the Complaints Director with a letter from ██████ that stated he was her pharmacist when this was not the case (Particular 7.d) and an admission regarding ██████ which he later contradicted in his evidence (Particular 7.e).

[102] The conduct in the Particulars relates to Allegation 7 in that Mr. Alsaadi did not display conduct that was consistent with the ethical requirement of honesty and the duty to comply with and cooperate with an investigator. The findings of fact made by the Hearing Tribunal are reasonable. The Hearing Tribunal's findings of fact are logical and consistent with its finding that the Particulars were proven. The Hearing Tribunal's decision on the Particulars is reasonable.

[103] The Panel also considered the sanction ordered by the Hearing Tribunal. The Panel accepts the position of the Complaints Director that the Hearing Tribunal was concerned with Mr. Alsaadi's governability. The Hearing Tribunal held, at page 25 of the Sanctions Decision:

The Hearing Tribunal seriously considered ordering cancellation of Mr. Alsaadi's registration, as there were aspects of his conduct that could have warranted cancellation, including indicia of ungovernability. The Hearing Tribunal ultimately concluded that there was insufficient evidence that Mr. Alsaadi is ungovernable.

Recognizing that cancellation could still be ordered without a finding of ungovernability, the Hearing Tribunal determined that it was not prepared to order cancellation of Mr. Alsaadi's registration and to conclude that he should not have a "second chance". Assessing the factors from *Jaswal v. Newfoundland Medical Board*, supra, there were a number of mitigating factors, including Mr. Alsaadi being a young, relatively new practitioner, the absence of any prior findings of unprofessional conduct, the penalties Mr. Alsaadi has already suffered in the *Health Information Act* proceedings, the fact that he lost his employment at Grey Nuns Hospital, and the lack of evidence of any malicious intent or of any particular purpose or use that Mr. Alsaadi made of the personal health information that he accessed. There was also some information suggesting that Mr. Alsaadi was suffering from depression and anxiety. The Hearing Tribunal has taken this into account as a mitigating factor but notes there was no evidence that Mr. Alsaadi's condition caused his proven unprofessional conduct.

[104] The Hearing Tribunal considered cancellation, but also considered a number of mitigating factors in determining that it would not order cancellation. The Hearing Tribunal found Mr. Alsaadi's conduct to be extremely serious.

[105] The Panel agrees with the Hearing Tribunal that Mr. Alsaadi's conduct is extremely serious. The Panel also shares the Hearing Tribunal's concerns regarding whether Mr. Alsaadi is governable.

- [106] The Panel finds that the Hearing Tribunal considered the appropriate factors and that its decision is reasonable. The Sanctions Decision clearly sets out the factors considered by the Hearing Tribunal and explains how it came to its conclusion on sanction.
- [107] For the reasons given above, the Panel dismisses the appeal by Mr. Alsaadi in its entirety.
- [108] The parties may provide written submissions on costs within three weeks of receiving the Panel's decision, following which the Panel will issue its decision on the costs of the appeal.

DATED this 20th day of April, 2020.

Signed by the Chair on behalf of the Panel of Council of the Alberta College of Pharmacy.


Brad Couldwell (Apr 20 2020)
Brad Couldwell, Chair

**IN THE MATTER OF THE *HEALTH PROFESSIONS ACT*,
BEING CHAPTER H-7 OF THE REVISED STATUTES OF ALBERTA, 2000**

**AND IN THE MATTER OF AN APPEAL BY BASEL ALSAADI
FROM THE DECISIONS OF THE HEARING TRIBUNAL OF THE ALBERTA
COLLEGE OF PHARMACY DATED AUGUST 3, 2018 AND ITS SANCTIONS
DECISION DATED MAY 14, 2019**

DECISION OF A PANEL OF COUNCIL ON COSTS

June 9, 2020

I. INTRODUCTION

[1] A Panel of Council (the “Panel”) of the Alberta College of Pharmacy (“ACP”) convened by telephone conference on May 29, 2020, to consider the issue of costs.

Members of the Panel:

Brad Couldwell, Chair
Don Ridley
Peter Macek
Christine Maligec, Public Member

[2] Also in attendance were:

Julie Gagnon, independent legal counsel to the Panel
Jenna Chamberlain, attending with Ms. Gagnon, as an observer

II. PRELIMINARY MATTERS

[3] The Panel issued a written decision in the Appeal of this matter dated April 20, 2020. The Panel dismissed the appeal by Mr. Alsaadi. In its written decision, the Panel provided direction for the parties to provide written submissions on costs.

[4] Counsel for the Complaints Director provided written submissions regarding costs. Counsel for Mr. Alsaadi advised the Hearings Director that he was not providing written submissions and that he was in agreement with the Complaint Director’s submissions on costs.

[5] The Panel reviewed the following:

a. Written Submissions of the Complaints Director, enclosing the following authorities:

1. *Lysons v Council of the Alberta Land Surveyors Association*, 2017 ABCA 7;
2. *Erdmann v Complaint Inquiry Committee*, 2016 ABCA 145;
3. *Zuk v Alberta Dental Association & College*, 2018 ABCA 270;
4. *Zuk v Alberta Dental Association and College*, 2020 ABCA 162;
5. *Al-Ghamdi v College of Physicians and Surgeons of Alberta*, 2020 ABCA 71.

III. SUBMISSIONS

Submissions on behalf of the Complaints Director

[6] Mr. Jardine provided a summary of costs of the hearing and appeal to date, as follows:

- a. the total costs of the hearing before the Hearing Tribunal was approximately \$237,000. Mr. Alsaadi was ordered to pay \$120,000 in costs over a period of ten years;

- b. the costs of the appeal to date are approximately \$64,000. There will be additional costs arising from the preparation of the written submissions by counsel for the Complaints Director and from the Panel's decision on costs; and
- c. therefore, the total costs, expenses and legal fees incurred by the ACP in respect of the hearing and appeal are approximately \$301,000 prior to the submissions on costs of the appeal.

[7] Mr. Jardine notes that the Alberta Court of Appeal has recognized that costs of an appeal to a Council are appropriate costs to be paid by the investigated person.

[8] The Complaints Director requests that the Panel order Mr. Alsaadi to pay \$15,000 in costs of the appeal. This would represent slightly less than 25% of the costs of the appeal incurred to date. The total costs to be paid by Mr. Alsaadi in respect to the investigation and hearing before the Hearing Tribunal and this appeal would be \$135,000, which is less than 40% of the total costs.

[9] Mr. Jardine notes that the basis for this limited request for costs of the appeal is based on the fact that Mr. Alsaadi has not been practicing since 2017 and is facing an extended suspension before he can return to practice. While the Complaints Director would normally request full costs of an appeal where all the grounds of appeal are dismissed, the Complaints Director recognizes that would take the costs to over \$180,000 in addition to the fines and payments of costs for the PROBE course. As a result, the Complaints Director is therefore prepared to request costs limited to \$15,000.

Submissions on behalf of Mr. Alsaadi

[10] Mr. Renouf advised the Hearings Director that he was not providing written submissions and that he was in agreement with the Complaint Director's submission on costs.

IV. DECISION AND REASONS

[11] The Panel has carefully considered the written submissions of the Complaints Director and the position of Mr. Alsaadi. Costs of an appeal to Council can be ordered under section 89(6) of the *Health Professions Act*, RSA 2000, c. H-7 ("HPA").

[12] Section 89(6) of the HPA states:

89(6) Subject to any regulations under section 134(a), the council may direct the investigated person to pay, within the time set by the council, in addition to expenses, costs and fees referred to in section 82(1)(j), all or part of the expenses of, costs of and fees related to the appeal, including

- (a) legal expenses and legal fees for legal services provided to the college, complaints director and council,
- (b) travelling expenses and a daily allowance, as determined by the council, for the complaints director and the members of the council who are not public members,
- (c) the costs of creating a record of the proceedings and transcripts and of serving notices and documents, and
- (d) any other expenses of the college directly attributable to the appeal.

- [13] The costs to date of the investigation, hearing and appeal exceed \$301,000, as follows:
- a. the costs of the investigation and hearing are \$237,000;
 - b. current costs of the appeal are approximately \$64,000 (without the cost of written submissions by the Complaints Director on costs and of the Panel's decision on costs).
- [14] To date, Mr. Alsaadi has been ordered to pay \$142,000 in fines and costs, as follows:
- a. fines of \$22,000 and the cost of the PROBE course;
 - b. costs of the investigation and hearing in the amount of \$120,000.
- [15] The Complaints Director seeks costs of the appeal in the amount of \$15,000. Mr. Alsaadi does not dispute this amount. This would bring the total fines and costs to \$157,000.
- [16] The Panel agrees with the legal authorities provided by the Complaints Director that costs of an appeal can be ordered. Where an appellant is unsuccessful in the appeal, costs may be awarded against the appellant. Mr. Alsaadi's appeal was dismissed in its entirety. In addition, as the Panel noted in the decision of April 20, 2020, the Panel is concerned about Mr. Alsaadi's conduct and finds it extremely serious. The Panel also shares the Hearing Tribunal's concerns about whether Mr. Alsaadi is governable.
- [17] However, the Panel has considered the submissions of the Complaints Director and the reasons for ordering only a portion of the costs of the appeal. The Panel has also considered that Mr. Alsaadi does not dispute this amount. The Panel finds that the proposed costs are reasonable in the circumstances of the case.
- [18] Therefore, the Panel orders Mr. Alsaadi to pay \$15,000 for the costs of the appeal. The costs will be payable within the same timeframe as the costs ordered by the Hearing Tribunal.

DATED this 9th day of June, 2020.

Signed by the Chair on behalf of the Panel of Council of the Alberta College of Pharmacy


Brad Couldwell (Jun 9, 2020 14:10 MDT)
Brad Couldwell, Chair