

COLLEGE OF PHYSICIANS & SURGEONS OF ALBERTA

IN THE MATTER OF
A HEARING UNDER THE *HEALTH PROFESSIONS ACT*,
RSA 2000, c H-7

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF DR. BRUCE HOFFMAN

**DECISION OF THE HEARING TRIBUNAL OF
THE COLLEGE OF PHYSICIANS
& SURGEONS OF ALBERTA
REGARDING SANCTION
June 12, 2024**

I. INTRODUCTION

1. The Hearing Tribunal held a hearing into the conduct of Dr. Bruce Hoffman on March 12 and 13, 2024 to hear submissions on sanction. The members of the Hearing Tribunal were:

Mr. Glen Buick (Chair and Public Member);
Dr. Harish Amin (Physician Member);
Dr. William Craig (Physician Member); and
Ms. Naz Mellick (Public Member).
2. Mr. Matthew Woodley acted as independent legal counsel for the Hearing Tribunal.
3. Appearances:

Mr. Craig Boyer, legal counsel for the Complaints Director;
Dr. Bruce Hoffman; and
Ms. Karen Pirie and Ms. Emily McCartney, legal counsel for Dr. Hoffman.

II. PRELIMINARY MATTERS

4. The parties confirmed that there were no objections to the composition of the Hearing Tribunal or its jurisdiction to proceed with the sanction portion of the hearing. Capitalized terms in this decision have the same meaning as those set out in the decision on the merits dated July 25, 2023 ("Merits Decision").
5. As a preliminary matter, legal counsel for Dr. Hoffman noted that legal counsel for the Complaints Director intended to have the Complainant testify for the purpose of the sanction hearing. Legal counsel for Dr. Hoffman indicated that she objected to that, and to the use of an impact statement at this stage of the hearing. The Hearing Tribunal then invited submissions from the parties on that issue.
6. Legal counsel for the Complaints Director indicated that he intended to call the Complainant to provide an update on some previous evidence that he had given to the Hearing Tribunal at the merits stage of the hearing. In response, legal counsel for Dr. Hoffman submitted that the HPA does not contemplate that a hearing tribunal may hear evidence from a witness at the sanction stage of a proceeding, except pursuant to section 81.1(2) which relates to unprofessional conduct involving "sexual abuse". She submitted that the specific inclusion of the ability to hear evidence in that circumstance suggests that it is not permitted in any other circumstance. Further, she submitted that it would be unfair to allow the Complaints Director to adduce new evidence when the Complainant cannot offer anything relevant to the allegations that the Hearing Tribunal found were proven. She stated that allowing the Complainant to repeat evidence already given would be highly prejudicial and contrary to the HPA.

7. In reply, legal counsel for the Complaints Director noted that the “impact of the proven misconduct on the patient” is a recognized factor that tribunals commonly consider in sanction hearings, and that the Complainant is the only one who can offer evidence on the financial impact given the death of the Patient. Further, he noted that section 81.1 of the HPA states that allowing evidence about the impact on a victim is a mandatory provision, and that this does not suggest that a hearing tribunal does not have the discretion to allow evidence at a sanction hearing in other circumstances. He noted again that given the Complainant provided some evidence in relation to this issue before, it was reasonable to allow him to provide an update to that evidence at this stage.
8. The Hearing Tribunal deliberated on this objection and decided that it would allow the proposed evidence from the Complainant. The Hearing Tribunal found that it has the discretion to allow evidence at the sanction stage pursuant to section 79(5) of the HPA; further, while new evidence is not usually called at the sanction stage, it is the Hearing Tribunal’s experience that new evidence is called at the sanction stage from time to time. The language in section 81.1 of the HPA takes away the discretion from a hearing tribunal in the circumstances set out in that section, but it does not indicate an intention by the Legislature to prohibit a hearing tribunal from receiving such evidence in other circumstances. The proposed evidence appeared to relate to one of the recognized factors which the Hearing Tribunal must consider in determining an appropriate sanction. The Hearing Tribunal advised the parties that it was cognizant of the need for such evidence to be relevant to the particular findings of the Hearing Tribunal, and it would hear submissions from the parties on what parts, if any, of the evidence from the Complainant may be used for that purpose.
9. The Hearing Tribunal also noted that it was open to Dr. Hoffman to provide additional information or evidence to the Hearing Tribunal in support of his submissions on sanction if he wished to do so, and that legal counsel for Dr. Hoffman would have an opportunity to cross-examine the Complainant on his evidence. The Hearing Tribunal found that these options adequately dealt with any argument about unfairness.
10. Legal counsel for the Complaints Director then called the Complainant to provide his evidence, which is summarized below.

III. BACKGROUND

11. In its Merits Decision, the Hearing Tribunal found allegations 2, 3 and 4 were not proven but that allegations 1, 5 and 6 were proven on a balance of probabilities and that the conduct constitutes unprofessional conduct under the HPA. The proven allegations are:

Allegation 1:

Between October 2014 and March 2019, [Dr. Hoffman] did provide private laboratory testing for [the] patient, at significant cost to [the] patient and contrary to the College's Sale of Products by Physicians Standard of Practice.

Allegation 5

[Dr. Hoffman] did charge the Alberta Health Care Insurance Plan for services rendered to the patient, while also charging the patient fees for the same visit, contrary to Section 9 and Section 11 of the Alberta Health Care Insurance Act, occurring on or about one or more of the following dates: a. October 8, 2014; b. January 13, 2015; c. March 30, 2015; d. March 31, 2015; e. April 10, 2015; f. May 25, 2015; g. June 3, 2015; h. June 18, 2015; i. October 30, 2015; j. June 9, 2016; k. October 17, 2016; l. October 28, 2016; m. March 17, 2017; n. July 17, 2017; o. July 21, 2017; p. October 26, 2017; q. March 14, 2018; r. March 21, 2018; s. June 4, 2018; t. August 7, 2018; u. November 20, 2018.

Allegation 6

[Dr. Hoffman] did bill the Alberta Health Care Insurance Plan for a visit with the patient, without creating a contemporaneous record of assessment and treatment provided for a visit that occurred on one or more of the following dates: a. July 11, 2018; b. July 18, 2018; c. July 25, 2018; d. August 1, 2018; and e. August 8, 2018.

IV. ADDITIONAL EVIDENCE

12. As noted above, the Complainant provided evidence to the Hearing Tribunal. He testified that since the merits hearing, he had been obliged to sell the family cabin due to a lack of finances, that the expected inheritance that the Patient anticipated prior to her death had not been received, and that he no longer expected to receive it. He testified that he owned some shares in a family business, but that those in control of that business did not believe that he should receive any value from them.
13. He testified that his personal financial prospects were not good and that he was at risk of falling into a poverty situation if matters did not improve. The Complainant was not cross-examined on his evidence.
14. While the Hearing Tribunal acknowledges the Complainant's evidence in relation to the financial struggles that he has, and that the purpose of his evidence was to demonstrate the impact that the unprofessional conduct of Dr. Hoffman had on his family, the Hearing Tribunal assigns very limited weight to it having regard for its findings that the Patient willingly paid for the services of Dr. Hoffman and was aware of the costs associated with them. The impact on the Complainant relates as much to the Patient's

approach to her finances as they do to the fees charged by Dr. Hoffman which underscores the findings set out in allegation 1.

V. SUBMISSIONS ON SANCTION

15. Turning to submissions on sanction, legal counsel for the Complaints Director highlighted the findings made by the Hearing Tribunal in the Merits Decision, including the fact that the Hearing Tribunal noted that patients are often in a vulnerable position when faced with a decision about whether or not to pay for certain products recommended by a physician. He also provided a summary document relating to a total of the fees which were charged to the Patient which represent overcharges set out in Exhibit 20. That amount was \$20,762.47; legal counsel noted that some other evidence suggested that it might have been higher, but that for the purpose of his submissions on sanction he was prepared to rely on the \$20,762.47 figure (entered as Exhibit 24 by consent). Finally, legal counsel provided a summary of costs incurred in relation to the investigation and hearing up to the end of January, totaling approximately \$93,000.00 (having excluded some costs relating to a potential expert witness who was not called to testify).
16. In relation to what the Complaints Director sought regarding sanctions, legal counsel submitted that the following sanctions were appropriate:
 - a. Repayment by Dr. Hoffman of the sum of \$20,762.47 representing charges paid by the Patient for the laboratory tests, pursuant to section 82(1)(i) of the HPA;
 - b. That there be a suspension of Dr. Hoffman's practice permit for a period of between three and six months;
 - c. That Dr. Hoffman be required to complete and unconditionally pass the PROBE course relating to professional ethics and boundaries, and if he fails to pass the test he be required to undertake a personal ethics remediation course; and
 - d. That Dr. Hoffman be required to pay 85 percent of the investigation and hearing costs.
17. Legal counsel referred to the primary purposes behind sanctioning in professional disciplinary cases as being the need to serve the public interest, to regulate the profession and to preserve public confidence in the profession. Legal counsel then summarized his submissions on the factors set out in *Jaswal v Medical Board (Nfld)* (1996), 42 Admin LR (2d) 233 ("*Jaswal*"), which the Hearing Tribunal summarizes below in its reasons for its decision.
18. Legal counsel for Dr. Hoffman provided submissions on sanction. First, legal counsel indicated that Dr. Hoffman accepts that an appropriate sanction

should include the repayment of the \$20,762.47 based on the findings of the Hearing Tribunal. She noted that the Hearing Tribunal found that in general, patients are vulnerable to the risk of overcharging for products or services, but that the Hearing Tribunal did not make a finding that the Patient herself was vulnerable and that the evidence was to the contrary. She stated that a suspension in the circumstances of this case would be outside the bounds of a reasonable sanction, and that the proposed PROBE course was not appropriate for a situation like this one which did not relate to a boundary violation. She reiterated that the Hearing Tribunal made no findings that Dr. Hoffman's conduct was fraudulent, deceptive or that it represented a boundary violation, and that there was no nexus between the proposed sanction and the findings of unprofessional conduct. Legal counsel's specific submissions in relation to the *Jaswal* factors are set out below in the Hearing Tribunal's reasons for its decision.

19. In relation to costs, legal counsel for Dr. Hoffman relied upon the Court of Appeal decision in *Jinnah v Alberta Dental Association and College, 2022 ABCA 336* ("*Jinnah*"), which limits the payment of costs by a member to four particular circumstances. She submitted that none of the exceptions to the general rule that a regulatory college under the HPA should bear the costs of investigations and hearings applied in the circumstances of this case. She also noted that the original Notice of Hearing in this matter contained nine allegations of unprofessional conduct, and that the investigation proceeded on that basis. Three of those charges were then withdrawn prior to the hearing, one was not pursued after the close of the evidence, and the Hearing Tribunal only found Dr. Hoffman guilty of unprofessional conduct on three of the remaining allegations. Based on the principles in *Jinnah*, she submitted that Dr. Hoffman should be responsible for no costs associated with the investigation or hearing.

VI. DECISION

20. The Hearing Tribunal has deliberated on the submissions of the parties. For the reasons set out below, the Hearing Tribunal makes the following orders pursuant to section 82(1) of the HPA:
 - a. Dr. Hoffman shall repay to the estate of the Patient the sum of \$20,762.47 as repayment for fees for professional services (HPA, s 82(1)(i));
 - b. Dr. Hoffman shall serve a period of suspension of one month, commencing within a period of two months from the date of this decision (HPA, s 82(1)(g));
 - c. Dr. Hoffman shall take and unconditionally pass the PROBE course relating to professional ethics and boundaries, and if he fails to unconditionally pass the course he shall be required to undertake a

personal ethics remediation course deemed acceptable to the Complaints Director;

- d. Dr. Hoffman shall pay 30 percent of the total of the expenses, costs and fees related to the investigation and hearing, and such amount shall be paid within 12 months from the date of this decision or such other time as permitted by the Complaints Director; and
- e. The Hearing Tribunal retains the jurisdiction to address any matters arising from these orders.

VII. REASONS

Sanctions

- 21. Given the framework used by the parties in their submissions, the Hearing Tribunal will frame its consideration of sanction based on the factors in *Jaswal*. To avoid duplication, the Hearing Tribunal summarizes the arguments of the parties in relation to these factors below and provides its reasons for each including whether the factor is aggravating, mitigating or neutral.
- 22. **Nature & Gravity of the Unprofessional Conduct.** Legal counsel for the Complaints Director submitted that the conduct at issue here was serious in that it strikes at the heart of the medical profession in relation to taking advantage of a vulnerable patient. He stated that the Patient was vulnerable and that adding significant financial costs to recommended treatment for her condition was serious. He also noted that the evidence from Drs Kneifel and Woolfenden was clear that this was an incurable disease, and that the treatments provided by Dr. Hoffman did not change the course of the disease in any way.
- 23. Legal counsel for Dr. Hoffman submitted that it was very important for the Hearing Tribunal to focus on the specific findings of unprofessional conduct in this matter, and not to conflate the Complainant's views about Dr. Hoffman in relation to the treatment provided when it considers an appropriate sanction. She noted that the proven allegations relate to billing issues, and that the Hearing Tribunal noted in relation to the overbilling allegation that it is appropriate for a physician to charge both the public health care system and a patient privately for one visit, provided that there is a clear delineation between those charges, and that the documentation reflect the fact that the private fee offset the public billing. The final proven allegation related to Dr. Hoffman's failure to appropriately document visits with the Patient; she noted that there were no findings that the visits did not, in fact, occur, meaning that this was an anomalous medical records issue arising on five occasions out of many visits. She characterized these issues as "administrative" and not at the serious end of the scale.

24. The Hearing Tribunal agrees that the nature of the findings made against Dr. Hoffman relate to his billing practices and to record keeping in relation to visits by the Patient; they do not relate to the nature or quality of the care provided to her. Further, the absence of adequate record-keeping for a small number of appointments (while concerning and clearly unprofessional conduct) would not—standing alone—place this at the “serious” end of the scale of unprofessional conduct. However, the Hearing Tribunal disagrees with Dr. Hoffman in relation to whether the proven allegations are serious. The nature of the overcharging for laboratory products here was significant and represented a separate profit centre for Dr. Hoffman. Given that these laboratory services were used by the Patient based on Dr. Hoffman’s recommendations, there was a clear and obvious conflict of interest which had to be managed. That could not be effectively done when the price for the laboratory products was far in excess of what a reasonable overhead charge might be. While it is accurate to say that the Patient herself was not vulnerable in relation to the fact that she knowingly chose to pay for the cost of those services, she was clearly in a vulnerable position where she was desperate to find something to address her progressive illness and would pay for the tests recommended (or most of them, if not all) despite the significant costs. While the Patient was making active and autonomous decisions about her health care, each laboratory test that she agreed to undergo represented more profit for Dr. Hoffman.
25. Further, the Hearing Tribunal finds that Dr. Hoffman’s conduct in billing both the Patient and Alberta Health for the same visits represents serious misconduct. Albertans pay for and benefit from a publicly funded health care system. It is notorious that the costs of health care are high and represent a significant expenditure for the province. Abuse of that system by billing for services that have also been billed directly to a patient is unconscionable. It reduces the money in the system available for other patients in need. Physicians and other health care providers who can bill to that system are placed in a significant position of trust that they will do so in accordance with the rules, and a failure to do so must attract a significant penalty. The Hearing Tribunal considers this to be a significant aggravating factor for those reasons.
26. **Age and Experience of the Physician.** Legal counsel for the Complaints Director submitted that this was an aggravating factor in that Dr. Hoffman is an experienced physician with significant experience, and that he should have an understanding of the relevant standards of practice and the Code of Ethics in the conduct of his practice. Legal counsel for Dr. Hoffman agreed that Dr. Hoffman had been practicing for over thirty years, and that he is considered an expert in functional medicine.
27. The Hearing Tribunal accepts that this factor is aggravating, but only mildly so. Dr. Hoffman’s experience and expertise suggest that he ought to have been alive to the need for particular care in billing practices given the nature of the services he provides. Where patients pay a significant portion of health

care costs directly, it is reasonable to expect an experienced physician to exercise significant caution with respect to billing practices. However, Dr. Hoffman testified that he had relied upon advice from other professionals in relation to the attribution of overhead to his laboratory products pricing; while this does not relieve him of his obligation to ensure compliance with the Standards, it does indicate some due diligence which ought to be recognized in relation to sanction.

28. **Previous Character of the Physician.** Legal counsel for the Complaints Director acknowledged that there was no evidence of any previous complaints or convictions for Dr. Hoffman, and that the Hearing Tribunal can consider this a mitigating factor. Legal counsel for Dr. Hoffman agreed, and so does the Hearing Tribunal. Dr. Hoffman is not a serial offender who has not learned from and adjusted his practice based on previous findings of unprofessional conduct.
29. **Age and Mental Condition of the Victim.** Legal counsel for the Complaints Director submitted that the Patient was vulnerable and that she was terrified of the disease and the fact that it might prematurely end her life. Legal counsel for Dr. Hoffman, on the other hand, noted that the evidence indicated clearly that the Patient was an intelligent person who was making clear, autonomous choices about her health care and the nature of the services that she received from Dr. Hoffman and others.
30. As noted above, the Hearing Tribunal accepts that the Patient was an intelligent person who made her own choices about what services, including laboratory tests, she wished to receive. That is, she knew the costs associated with those tests and willingly paid them despite the Complainant's views. However, this does not answer the concern in its entirety. The Patient was vulnerable in the sense that she was desperate to find some assistance with her progressive disease and was likely to agree with and undergo significant tests which cost her significantly more than the actual costs charged to Dr. Hoffman's clinic by the laboratories. This is an aggravating factor.
31. **Number of Times the Conduct Occurred.** Legal counsel for the Complaints Director noted that with respect to the overcharging for laboratory tests, there were approximately 123 occasions over the course of four or five years, meaning that this conduct was repeated many times. Further, the double billing to Alberta Health took place multiple times and there were five instances of billing without any patient records in support. Legal counsel stated that the fact Dr. Hoffman testified that he relied upon advice of other professionals in relation to the overcharging does not change his responsibility for compliance with the Standards; he submitted that this was therefore an aggravating factor.
32. While legal counsel for Dr. Hoffman did not specifically address the number of times the conduct occurred, she did note that Dr. Hoffman clearly believed

that he was acting in accordance with the Standards, particularly given the fact that laboratory services are not specifically referred to and no previous decision of a Hearing Tribunal had clarified that these were subject to the Standards. She stated that the first time Dr. Hoffman was made aware of the potential for his conduct to be offside the Standard was when he received the allegations from the Complaints Director.

33. The Hearing Tribunal agrees that the conduct in question occurred over a number of years but it also accepts that Dr. Hoffman did not believe that he was engaging in misconduct. While not relevant to the issue of liability, it is relevant regarding an appropriate sanction. Had Dr. Hoffman positively known that his conduct was contrary to the HPA, a much more significant penalty—such as a lengthy suspension—would likely be appropriate. Ultimately, and on balance, the Hearing Tribunal finds that this factor is neither particularly aggravating nor mitigating.
34. **Acknowledgement of the Physician.** Neither legal counsel for the Complaints Director nor legal counsel for Dr. Hoffman made any submissions on this factor specifically. The Hearing Tribunal notes that Dr. Hoffman did not acknowledge the allegations of unprofessional conduct, but he was entitled to defend himself and this factor is therefore neutral.
35. **Existence of Other Consequences.** Legal counsel for the Complaints Director noted that there was no evidence of any other financial consequence or other penalty suffered by Dr. Hoffman in relation to the proven allegations. No other consequence was referred to by legal counsel for Dr. Hoffman, and the Hearing Tribunal finds this factor to be neutral.
36. **Impact on Victim.** The facts relating to this factor were considered above in relation to the vulnerability of the Patient. To the extent that the financial difficulties testified to by the Complainant were meant to provide the Hearing Tribunal with further information about this factor, the Hearing Tribunal did not find the evidence helpful. While the Complainant's financial difficulties are regrettable, it is clear that the Patient agreed to and accepted the total financial costs associated with various treatments. While there was an element of vulnerability at play in relation to her decision-making on that issue for the reasons noted above, the Hearing Tribunal is not prepared to interpret the downstream impact of those choices on the financial wellbeing of family members in considering an appropriate sanction for Dr. Hoffman.
37. **Mitigating or Aggravating Circumstances.** Legal counsel for the Complaints Director did not make further submissions in relation to this factor. Legal counsel for Dr. Hoffman reiterated that the fact Dr. Hoffman was not aware that his billing practices for laboratory services were subject to the Standards should weigh heavily in relation to the degree of his culpability. The Hearing Tribunal agrees that this is a factor which must be considered, as noted above.

38. **General and Specific Deterrence.** Legal counsel for the Complaints Director submitted that both general and specific deterrence were important factors here. First, it was necessary to communicate to Dr. Hoffman that such conduct must not occur in relation to other vulnerable patients of his practice. Second, it was necessary to send a message to other practitioners who bill privately for services that a clear delineation must exist between insured and private services. Legal counsel for Dr. Hoffman did not make specific submissions in relation to this factor.
39. **Maintenance of Public Confidence in the Profession.** Legal counsel for the Complaints Director noted that the public expects that compensation for physicians practicing in the public health care system will come from that system, and that physicians practicing outside of that system will be compensated privately. Public confidence in the profession requires a clear delineation between those two models, and “double-dipping” is contrary to the maintenance of the confidence of the public. The Hearing Tribunal agrees that this factor is relevant to the issue of sanction, and that the maintenance of public confidence in the profession as stewards of the publicly funded health care system requires a more serious sanction.
40. **Degree to which the Conduct Departs from Acceptable Conduct.** Legal counsel for the Complaints Director submitted that this factor is aggravating because physicians are placed in a position of trust in the health care system, and patients and the public cannot determine what happens in an examining room; the trust placed in physicians requires a very clear delineation in relation to services provided and billing for such services. Legal counsel for Dr. Hoffman commented on this factor, noting that this is not a case where the Hearing Tribunal ought to conclude that the findings represent a marked departure from the standard of acceptable conduct. The Hearing Tribunal finds that this factor is neutral given that similar facts have been canvassed in relation to other factors.
41. **Sanctions in Similar Cases.** Legal counsel for the Complaints Director referred the Hearing Tribunal to a number of cases to set out a range of acceptable sanctions. In *Dwyer v College of Physicians and Surgeons of Alberta*, [1986] AJ No 6 (QL), the Alberta Court of Appeal upheld a lengthy suspension of 24 months (21 of which were held in abeyance) for a physician who had engaged in inappropriate billing. In *Nair v College of Physicians and Surgeons of Alberta*, [1988] AJ No 820 (QL), the Alberta Court of Appeal reduced a one-year suspension to a period of six months, in addition to ordering the physician to repay over-billings to Alberta Health and ordered that the physician pay \$50,000 in costs of the proceedings. In *Baird v College of Physicians and Surgeons of Ontario*, [1991] OJ No 1853 (QL), the physician was found guilty of overcharging in relation to two reports, and the reviewing Court upheld a three-month suspension. In *Green v College of Physicians and Surgeons of Saskatchewan*, [1984] SJ No 103 (QL), the physician was found guilty of unprofessional conduct for excessive billing and his license was revoked. In *Stephen v College of Physicians and Surgeons of*

Saskatchewan, [1991] SJ No 436 (QL), the physician was found guilty of a number of allegations including inappropriate billing and was subject to a 12-month suspension and costs. Finally, in *Ontario College of Physicians and Surgeons v Kumar*, 2019 ONCPSD 31, a physician was found guilty of serious inappropriate billing practices and agreed to resign. Legal counsel for the Complaints Director also referred to *McInerney v Macdonald*, [1992] 2 SCR 138, in relation to the fiduciary duty that a physician owes to a patient in relation to care provided and that this is an important principle given that the billing practices here impacted the Patient's financial situation.

42. In response, legal counsel for Dr. Hoffman noted that many of the cases referred by the Complaints Director were outdated and involved findings of deceit or multiple violations of different standards of practice. She noted that the Court in the *Dwyer* case referred to his conduct as involving flagrant manipulations of his practice to allow him to charge for illegitimate fees; she stated that this was distinguishable from the conduct proven in relation to Dr. Hoffman. Similarly, the *Nair* case involved intentionally billing for certain services not performed, and that there was an element of deceit involved in the conduct. She noted that the *Baird* case was also distinguishable as it related to excessive fees for medicolegal reports. The *Green* case involved issues relating to medical judgment and marked departures from acceptable standards, which are both lacking in Dr. Hoffman's case. Finally, she noted that both the *Stephens* and *Kumar* cases related to intentional misconduct based on very different facts from those before the Hearing Tribunal.

43. Dr. Hoffman's legal counsel referred the Hearing Tribunal to cases which she suggested were a closer fit to the facts at issue. In *College of Physicians and Surgeons of Alberta v Adebayo* (CPSA 2022), the proven allegations related to a number of billing-related issues including charging for uninsured services, failing to ensure that patients were aware of fees charged, failing to create records relating to billed services, and other more serious matters. There, the physician received a reprimand, was required to take a course, write a reflection paper and pay costs. She referred to the *College of Physicians and Surgeons of Ontario v Komer* case (CPSO 2020), where the physician incorrectly billed the provincial insurance plan for certain services, and the matter was disposed of based on an educational disposition. In *College of Physicians and Surgeons of Ontario v Mandryk* (CPSO 2009), the physician charged a block fee for uninsured services, but those services were never performed; a caution was issued and the matter was referred to the provincial insurer for further review. A similar outcome arose in relation to *College of Physicians and Surgeons of Ontario v Konigsberg* (CPSO 2006), where a physician charged either an annual or block fee for uninsured services and was required to meet with the College to discuss billing practices and the matter was referred to the provincial insurer. Similar circumstances and outcomes arose in *College of Physicians and Surgeons of Ontario v Hoffer* (CPSO 2007).

44. Legal counsel for Dr. Hoffman urged the Hearing Tribunal to ensure that it was alive to the significant differences between situations where misconduct arises due to a mistake or misunderstanding of the rules, and where misconduct is the result of an intentional action or deceit. She stated that a suspension would be unreasonable in these circumstances, and that the underlying purpose of the PROBE course was not rationally connected with the misconduct that was proven to have occurred.
45. Having considered the submissions of the parties, the Hearing Tribunal agrees that it is appropriate for Dr. Hoffman to repay the sum of \$20,762.47 to the estate of the Patient. These are fees which ought not to have been charged, and the return of these will send a message both to Dr. Hoffman and to other physicians that there are real financial consequences for such behaviour. It will also provide some reassurance to the public that the College is able to manage concerns relating to fees where they were charged to a patient in an inappropriate manner. While the figure is modest in the context of the total fees paid by the Patient to Dr. Hoffman over time, the Hearing Tribunal believes that this will provide some recognition to the Complainant in relation to the financial consequences he is encountering and those that he and the Patient encountered during her lifetime.
46. The Hearing Tribunal is also satisfied that a suspension of Dr. Hoffman's practice permit is required in order to accomplish the objectives of maintaining the public's confidence in the College's ability to regulate its members and to promote the public interest. As noted above, the Hearing Tribunal does find that Dr. Hoffman's actions were serious, and that they cannot be accurately referred to as merely "administrative". The integrity of a publicly funded health care system requires that those who are in a position of trust do not abuse it. Billing the public health care system while billing a patient for private services is unconscionable; while Dr. Hoffman might have been under the impression that his overhead charges were consistent with the Standards, it ought to have been clear to any physician that billing twice for the same block of time was improper. Maintaining the public's confidence in the trustworthiness of physicians as stewards of the health care system is important, and a serious sanction must follow from a violation of that trust. A suspension will also better accomplish the objectives of both general and specific deterrence; members of the profession who bill privately and publicly must be aware that the blurring of these lines will result in serious consequences.
47. However, the Hearing Tribunal disagrees that a period of suspension of between three and six months is proportionate. As rightly noted by legal counsel for Dr. Hoffman, several of the cases referred to by the Complaints Director which impose lengthy suspensions involve clearly intentional or deceitful conduct. Dr. Hoffman's conduct does not fall into the same category. Therefore, having considered the range of sanctions imposed in other cases, the Hearing Tribunal finds that a period of suspension of one month is reasonable and proportionate to the gravity of the proven

allegations. The Hearing Tribunal directs that this suspension be served commencing within two months of the date of its decision.

48. In relation to the proposed course, the Hearing Tribunal agrees that there are not issues of boundary violations on the proven facts. However, the Hearing Tribunal is aware that the PROBE course deals with broader issues, including ethical matters and issues relating to financial irregularities. While the proven allegations here were not specifically violations of the Code of Ethics, the concerns relating to overcharging and to medical record keeping relate to issues of physicians satisfying their duties to the profession and to patients. The PROBE course touches on all of these issues and the Hearing Tribunal finds that it does have a reasonable nexus to the nature of the proven allegations. It finds that such a course is an important remedial and rehabilitative element to the sanctions imposed on Dr. Hoffman, and it will provide him an opportunity to reflect upon the concerns and findings of the Hearing Tribunal in his practice.

Costs

49. In relation to costs, legal counsel for the Complaints Director submitted that the analysis in *Jinnah* does not apply here given its very particular facts in *Jinnah*, and that the Hearing Tribunal should prefer other cases in relation to costs, including those from other jurisdictions which establish a more consistent approach to the issue of costs in a professional regulatory hearing. In the alternative, legal counsel suggested that the facts here fall within the "serious misconduct" exception set out in the *Jinnah* case for the reasons set out above. He noted that the Complaints Director was not seeking an order for the payment of all of the costs of the investigation and hearing, but an order for a significant portion of those costs.
50. In response, legal counsel for Dr. Hoffman referred to the specific language in *Jinnah* which leaves no doubt that the Court of Appeal intended for it to apply as the framework for the assessment of costs in professional regulatory hearings under the HPA. She submitted that none of the exceptions to the *Jinnah* presumption apply here, and that simply characterizing misconduct as "serious" is not sufficient to meet the standard set out by the Court of Appeal. She indicated that the nature of the proven misconduct here was similar to that in *Jinnah*: conduct that the member did not know was inconsistent with the relevant standards, and that the examples of "serious" misconduct in *Jinnah* bear no resemblance to the proven misconduct here. Further, she noted that Dr. Hoffman originally faced nine allegations of unprofessional conduct, and ultimately was only found guilty in relation to three of them. Ultimately, she submitted that no costs ought to be paid by Dr. Hoffman given the framework in *Jinnah*.
51. The Hearing Tribunal finds that it is bound to apply the framework set out by the Court of Appeal in *Jinnah*. The Court was unequivocal in relation to its intention that the framework will apply to all of the professions regulated

under the HPA, despite the fact that such a finding was unnecessary to resolve the specific appeal before it. The Hearing Tribunal agrees with legal counsel for the Complaints Director that the *Jinnah* framework is inconsistent with the general approach to costs reflected in other jurisdictions, and indeed in other (albeit earlier) decisions of the Alberta Court of Appeal relating to health professions, or subsequent decisions of the Court of Appeal relating to other professions. Further, the framework in *Jinnah* appears to limit in a significant way the statutory discretion that is provided to a hearing tribunal pursuant to section 82 to impose orders that are appropriate in the circumstances.

52. Despite these concerns, *Jinnah* applies. The Hearing Tribunal has no concern in concluding, however, that the conduct here qualifies as “serious” misconduct as contemplated in *Jinnah*. While the finding in relation to the lack of records reflecting services provided would not, standing alone, qualify as “serious” misconduct, the reasons above reflect the fact that the over-charging and the billing to both the Patient and to the public health care system at the same time represent significant misconduct over the course of a number of years. Dr. Hoffman ought to have known better when he billed the Patient and the public health care system for the same time spent with the Patient; frankly, any physician ought to be aware that such conduct is entirely unacceptable. In the context of the services provided by Dr. Hoffman, this satisfies the Hearing Tribunal that its findings involve “serious” misconduct.
53. While it is therefore open to the Hearing Tribunal to impose a costs order against Dr. Hoffman, it acknowledges that *Jinnah* represents a reformulation of the approach to costs, and it reflects (in part) a longer-standing principle that a costs award should not be, in effect, a sanction, and that it should not represent a final crushing blow for a member found guilty of unprofessional conduct. Further, the Hearing Tribunal agrees that the degree of success can be a factor to be considered in a costs order, provided that it does not otherwise override the necessary analysis.
54. Taking all of these issues into consideration, the Hearing Tribunal orders Dr. Hoffman to pay 30 percent of the costs of the investigation and hearing; this represents a recognition that the profession is expected to bear a significant portion of the costs of self-regulation, that Dr. Hoffman was originally accused of nine allegations while only three were proven, and that some of the investigation costs relate to matters that were withdrawn. The Hearing Tribunal finds that this amount is not prohibitive and does not represent the primary sanction imposed on Dr. Hoffman. There is no evidence before the Hearing Tribunal that a significant costs award would represent a final crushing blow for Dr. Hoffman.

VIII. ORDERS

55. For the reasons set out above, the Hearing Tribunal makes the orders pursuant to section 82 of the HPA as set out in paragraph 20.

Signed on behalf of the Hearing Tribunal by the Chair:

A handwritten signature in black ink, appearing to read "Glen Buick". The signature is written in a cursive style with a large initial 'G'.

Mr. Glen Buick

Dated this 12th day of June, 2024.