

**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 ANKIT PARIKH
FROM THE DECISION OF THE HEARING TRIBUNAL OF THE ALBERTA
COLLEGE OF PHARMACY DATED NOVEMBER 24, 2023 AND ITS
SANCTIONS DECISION DATED APRIL 4, 2024**

DECISION OF A PANEL OF COUNCIL ON COSTS

November 27, 2024

I. INTRODUCTION

- [1] A Panel of Council (the “**Panel**”) of the Alberta College of Pharmacy (“**ACP**”) rendered its decision on the appeal of this matter by written decision dated October 3, 2024 (“the **Appeal Decision**”).
- [2] At the conclusion of the Appeal Decision, the Panel ordered that the parties could make submissions on costs, and the Panel convened by videoconference on November 20, 2024, to consider the issue of costs for the appeal.

The members of the Panel were:

Carmen Wyton, public member, Chair
Patrick Thomson, Pharmacist
Nina Dueck, Pharmacy Technician
Jason West, public member

- [3] Also in attendance was Maya Claire Gordon, independent legal counsel to the Panel. Margaret Morley, Hearing Director, convened the videoconference meeting but departed once the Panel and Ms. Gordon were all in attendance.

II. PRELIMINARY MATTERS

- [4] In the Appeal Decision, the Panel dismissed the appeal by Mr. Ankit Parikh (“**Mr. Parikh**” or the “**Appellant**”).
- [5] The concluding paragraph of the Appeal Decision offered that the parties could make written submissions to the Panel on the costs of the appeal.
- [6] Counsel for the Complaints Director provided written submissions regarding costs. Counsel for Mr. Parikh also provided written submissions on costs. The Panel reviewed both submissions in the consideration of this decision.
- [7] The Panel reviewed the following:
 - a. Written Submissions of the Complaints Director, enclosing the following authorities:
 - 1. *K.C. v College of Physical Therapists of Alberta*, 1999 ABCA 253; and
 - 2. *Fitzpatrick v Alberta College of Physical Therapists*, 2015 ABCA 95.
 - b. Written Submissions of Mr. Parikh, enclosing the following authorities:
 - 1. *Jinnah v Alberta Dental Association and College*, 2022 ABCA 336; and
 - 2. *Alberta College of Physical Therapists v Fitzpatrick*, 2015 ABCA 95.

III. SUBMISSIONS

Submissions on behalf of the Complaints Director

- [8] Ms. Annabritt Chisholm provided written submissions on behalf of the Complaints Director.
- [9] In her submissions, she identified the authority of the Panel to order costs pursuant to section 89(6) of the *Health Professions Act*, RSA 2000, c. H-7 (“HPA”).
- [10] She also provided an estimated amount of costs to date for the appeal, being \$34,369.40. She advised that there will be additional costs, expenses and fees incurred in respect of the submissions on costs and the Panel’s decision, but called these costs “reasonable”.
- [11] The Complaints Director’s position was that Mr. Parikh should “be ordered to pay 100% of the costs of the appeal over a 24-month period.”
- [12] In support of that request, Ms. Chisholm made the following submissions:
- a. Mr. Parikh was entirely unsuccessful in his appeal;
 - b. This appeal dealt with serious allegations of unprofessional conduct, being allegations of sexual abuse and sexual misconduct;
 - c. The parties’ conduct in the lead up to and during the appeal was not in issue. This should be considered a neutral factor in the assessment of costs in this matter;
 - d. The appeal costs of \$34,639.40 to date were reasonable. The appeal involved preparation of extensive written materials in preparation for the appeal and a half day of oral submissions to the Appeal Panel. It also resulted in a lengthy decision by the Appeal Panel that would have understandably taken time to prepare. In 2015, the Alberta Court of Appeal accepted that \$23,000 was a reasonable cost for a day of hearing. The costs of this appeal are comparably reasonable given the passage of time and the complexity of this matter; and
 - e. The Complaints Director is not aware of any information that would suggest that an order of 100% of the costs of the appeal would impose a “crushing financial blow” to Mr. Parikh. As with the hearing costs the Complaints Director has request that the costs ordered be apportioned over 24 months to make the payment structure more reasonable.
- [13] As such, the Complaints Director was seeking to have 100% of the costs of the appeal paid for by Mr. Parikh.

Submissions on behalf of Mr. Parikh

- [14] Mr. Curtis Wolff made submissions on behalf of Mr. Parikh.
- [15] He wrote that costs were not intended to be a sanction against Mr. Parikh, and that costs in a professional disciplinary context are discretionary.
- [16] Mr. Parikh has already been subject to the permanent revocation of his practice permit and registration, and that is a very severe penalty. His submission is that the costs being requested by the Complaints Director is tantamount to further sanction and the costs “are exorbitant for a member exercising his statutory right to appeal decision that led to a serious and permanent sanction”.

[17] Citing the decision referred to in Ms. Chisholm's submissions, Mr. Wolff noted that she had used a case (*Fitzpatrick*) where \$23,000.00 was deemed by the Alberta Court of Appeal to be a reasonable cost for a day of hearing. In this case, there were written submissions on appeal and a half-day oral hearing.

[18] Accordingly, Mr. Parikh submitted that the same cost of \$23,000.00 would be reasonable in these circumstances.

IV. DECISION AND REASONS

[19] The Panel has carefully considered the written submissions of the Complaints Director and Mr. Parikh. Costs of an appeal to Council can be ordered under section 89(6) of the HPA.

[20] 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.

[21] The current costs of the appeal (to date) are approximately \$34,369.40, according to counsel for the Complaints Director, not including forthcoming costs for these submissions and decision on the appeal costs.

[22] The Panel reviewed the submissions of both parties, including the request of the Complaints Director to order 100% of the costs of the appeal, and the submission of Mr. Parikh that he pay a capped amount of \$23,000.00 in costs of the appeal.

[23] In addition, the Panel did a thorough review of the jurisprudence provided by both parties. In that review, the Panel took special note of the *Jinnah v Alberta Dental Association and College*, 2022 ABCA 336 decision ("*Jinnah*").

[24] In *Jinnah*, the Court of Appeal identified that when considering costs in a disciplinary context, the starting point should be the presumption that in most cases, the profession as a whole should bear the costs of unprofessional conduct (*Jinnah*, para. 145).

[25] This was the starting point for the Panel in considering the appropriate costs order for Mr. Parikh in the appeal.

[26] That being said, the Court of Appeal in the *Jinnah* decision went on to identify four instances where a substantial portion or all of its expenses can be ordered against a member. Those four exemptions to the presumption are:

- a. When a Member Has Committed Serious Unprofessional Conduct;
- b. When a Member is a Serial Offender;

- c. When a Member has Failed to Cooperate with Investigators; or
- d. When a Member has Engaged in Hearing Misconduct.

Jinnah, paras 131 – 154.

- [27] In this case, Mr. Parikh has committed serious unprofessional conduct. The Disciplinary Tribunal found that he had committed the following conduct on a balance of probabilities:
- a. Engaged in sexual abuse of your employee and patient, Individual A, including when you:
 - i. Used your body to block Individual A against the fridge;
 - ii. Threatened to rape Individual A if she didn't have sexual intercourse with you;
 - iii. Engaged in sexual intercourse with Individual A in the Pharmacy on multiple occasions between October 2018 and September 2019 without her consent.
 - b. Engaged in sexual misconduct towards your employee and patient, Individual A, including when you:
 - i. approached Individual A and told her you had just brushed your teeth and wanted a kiss;
 - ii. told Individual A that you masturbated to the thought of her.
 - c. Engaged in sexual abuse of your employee and patient, Individual B, between approximately 2015 and 2016, when you:
 - i. Asked Individual B to perform oral sex on you in relation to providing her a \$50.00 advance on her paycheque;
 - ii. Engaged in sexual intercourse with Individual B in the Pharmacy on multiple occasions without her consent.
 - d. Breached your duties as a licensee when you caused your employee and patient, Individual C, to feel uncomfortable, including when you:
 - i. Repeatedly stared at the nametag on Individual C's chest such that she stopped wearing a nametag;
 - e. Repeatedly consumed alcohol on the Pharmacy premises, including when the Pharmacy was open to patients and you were the pharmacist in charge.
- [28] These allegations, found on a balance of probabilities, include both sexual abuse and sexual misconduct, some of the most serious unprofessional conduct that can occur in the regulation of a profession.
- [29] In *Jinnah*, "sexual assault on a patient" is given as the first example of "serious unprofessional conduct" which would justify a costs award of "a substantial portion or all of its expenses in prosecuting a complaint" (*Jinnah*, para. 141).
- [30] Here, the Panel considers the allegations proven by the Complaints Director to be some of the most serious allegations facing a professional, and therefore finds itself clearly within the first exemption listed in *Jinnah*.
- [31] Accordingly, the Panel went on to consider whether a substantial portion or all of the appeal costs should be borne by Mr. Parikh.

[32] In this case, the following factors were considered as material to that consideration by the Panel:

- a. The fact that Mr. Parikh chose to launch an appeal, as he was entitled to do, but was completely unsuccessful in his appeal, not succeeding on a single ground of appeal;
- b. As noted above, the severity of this conduct is at the gravest end of the spectrum of misconduct and cannot be understated. As the Court of Appeal wrote in *Jinnah*, “A [professional] guilty of breaches of this magnitude *must have known* that such behavior is completely unacceptable and constitutes unprofessional conduct. It is not unfair or unprincipled to require a dentist who knowingly commits serious unprofessional conduct to pay a substantial portion or all the costs the regulator incurs in prosecuting a complaint” (*Jinnah*, para. 141);
- c. Mr. Parikh did not provide the Panel with evidence that would demonstrate that a costs award would be a “crushing financial blow” on Mr. Parikh, which is a factor that the Court of Appeal considered relevant to costs awards in the *K.C. v College of Physical Therapists of Alberta*, 1999 ABCA 253 decision; and
- d. That this was a complex appeal, resulting in a Panel decision on the appeal that was 40 pages in length, and requiring the Panel to review and consider a 106 page decision of the Discipline Tribunal on merits, and a 13 page decision on sanction. The costs to date provided by the Complaints Director, given the length and complexity of this appeal, did not seem unreasonable to the Panel.

[33] Following a consideration of those factors, the Panel felt that ordering Mr. Parikh to pay 100% of the costs of the appeal would be reasonable, and would also be in line with the directions of the *Jinnah* and *KC* decisions of the Court of Appeal.

[34] However, the Panel did not want there to be uncertainty on the part of Mr. Parikh as to the maximum amount of costs, or for the costs to go over a certain amount. The Panel decided that a maximum of \$40,000.00 should be established in this case, to provide certainty to all parties as to the costs that Mr. Parikh must pay in relation to this appeal.

[35] As such, the Panel orders:

- a. Mr. Parikh shall pay 100% of the costs of the appeal, up to a maximum of \$40,000.00, within 24 months of receiving the Appeal Panel’s written decision on costs on a schedule satisfactory to the Hearings Director.

DATED this 27th day of November 2024.

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

Carmen Wyton
Carmen Wyton (Nov 27, 2024 11:31 MST)
Carmen Wyton, Chair