

**IN THE MATTER OF THE *HEALTH PROFESSIONS ACT*, being Chapter H-7
of the Revised Statutes of Alberta, 2000**

AND IN THE MATTER OF DR. KRISHNA MUDALIAR

**SANCTIONS AND DECISION OF THE HEARING TRIBUNAL OF THE
COLLEGE OF DENTAL SURGEONS OF ALBERTA**

INTRODUCTION

1. In its Written decision dated June 9, 2025, the Hearing Tribunal made the following findings of unprofessional conduct against Dr. Mudaliar:

Allegation 1: On or about January to March 2023, made comments or sent communications to Complainant, a 17-year-old patient or staff member, or both, including one or more of the following:

- a. Inviting her to dinner, drinks or both;
- b. Inviting her to your home;
- d. Asking "especially" her to attend a pizza party;
- g. Texting her that you will "miss" her;
- h. Commenting that she has "beautiful eyes";
- i. Commenting favourably on her skin;
- j. Commenting favourably on her attire;
- k. Commenting on the "meat" on her "bones".

Allegation 2: On or about January to March 2023, engaged in unwelcome touching of Complainant, or gestures towards Complainant, including one or more of the following:

- a. Placing your hand on the back or her neck and hair;
- d. Placing your hand on her thigh;
- f. Placing your hand on her buttocks.

2. The Hearing Tribunal found that Dr. Mudaliar's conduct in allegation 2(d) constituted sexual misconduct and his conduct in allegation 2(f) was sexual abuse.

3. The Hearing Tribunal suspended Dr. Mudaliar's practice permit on June 11, 2025, as required by section 81.1(1) of the *Health Professions Act*, ("the HPA") but in their Submissions on Sanctions, the Parties have advised that on July 9, 2025, the Court of King's Bench granted a stay of this suspension subject to conditions.

4. As required by section 81.1(2) of the HPA, Complainant was given an opportunity to provide a patient impact statement. The Hearing Tribunal has reviewed the patient impact statement made in video form by Complainant.

Sanctions and Costs Submissions

5. The Complaints Director and Dr. Mudaliar have provided the following Sanctions and Costs Submissions:

Sanctions and Costs Submissions of the Complaints Director of the College of Dental Surgeons of Alberta dated September 2, 2025

Sanctions and Costs Submissions of Dr. Krishna Mudaliar dated September 16, 2025

Reply Sanction and Costs Submissions of the Complaints Director of the College of Dental Surgeons of Alberta dated September 23, 2025

6. In the Submissions and Costs Submissions made by the Parties, the Complaints Director and Dr. Mudaliar agreed that based on the Hearing Tribunal's findings, Dr. Mudaliar's practice permit must be cancelled pursuant to section 82(1.1)(a) of the HPA based on proven Allegation 2(f).

7. The Complaints Director advised in her Submissions on Sanctions and Costs that in the specific circumstances of this case where section 82(1.1)(a) requires the cancellation of Dr. Mudaliar's practice permit, she has elected not to seek any fines or other sanctions orders.

8. Dr. Mudaliar's Submissions agree with the position that no fines or other sanctions should be imposed.

9. Both Parties agree that the Hearing Tribunal has the authority to order that Dr. Mudaliar pay some portion of the expenses costs and fees related to the investigation or hearing or both pursuant to section 82(1)(j) of the HPA. However, the parties disagree on the amount of the award of costs that should be ordered.

10. The Complaints Director submits that \$48,500.00 is a reasonable and proportionate amount of costs to be paid in this case. Dr. Mudaliar submits that a cost award of \$13,750.00 is appropriate.

The Submissions of the Complaints Director

11. The Complaints Director provided a Statement of Costs of the Mudaliar Hearing which indicated that the following costs were incurred:

Investigation

Investigator's fees	\$11,119.06
Transcripts of interviews	\$3,420.38
Total investigation costs	\$14,539.44

Actual Legal Fees/Disbursements,
Counsel for the Complaints Director(Field LLP) to date

(June 2024 to March 2025) \$54,399.47

Actual Legal Fees/Disbursements Independent
Legal Counsel (Shores Jardine LLP) \$29,121.44

Hearing Costs
Per diems and expenses for Hearing Tribunal Members \$6,415.38

TOTAL COSTS TO DATE \$104,475.73

12. The Complaints Director noted that these costs did not include legal fees relating to the interim suspension and responding to Dr. Mudaliar's request for a stay of the interim suspension.

13. The Complaints Director advised that she was not seeking any costs in relation to the Investigation, the Legal Fees and Disbursements of the Independent Legal Counsel or the Hearing Costs.

14. In respect to the Legal Fees and Disbursements of Counsel for the Complaints Director, the Complaints Director provided a Breakdown of Legal Fees for the Complaints Director. This Breakdown of Legal Fees showed a total of 110 hours calculated at a rate of \$441/hour for the entire conduct of the hearing including: preparing allegations for the hearing, hearing preparation, witness communication and preparation, hearing attendance and preparation on the days of hearing and written closing submissions.

15. On this basis the amount claimed by the Complaints Director was \$48,500.00 which the Complaints Director stated was less than one-half of the total costs. The Complaints Director noted the direction from the Alberta Court of Appeal in the case of *Charkhandeh v. College of Dental Surgeons of Alberta*, 2025 ABCA, 258 that costs should generally be calculated as if the work was done by one lawyer of mid-level seniority at appropriate rates. The Complaints Director submitted that a global rate of \$441.00 per hour based on a recent survey of legal rates for lawyers of 10 years of experience in Western Canada would be appropriate in this case.

16. The Complaints Director also noted that while the Court of Appeal in the *Charkhandeh* case did not find it would be inappropriate to recover the Independent Legal Counsel fees, the Complaints Director was not making any claim for the legal fees of Independent Legal Counsel.

17. The Complaints Director submitted that both allegations and the majority of the particulars were proven as unprofessional conduct. The Complaints Director agreed that allegations 1(c), 1(e), 1(f) and 2(b), 2(c) and 2(e) were dismissed but submitted that the

fundamental allegations made (inappropriate comments/behaviour and inappropriate touching) were proven.

18. The Complaints Director submitted that the length, extent and costs of the hearing were reasonable and appropriate given the serious nature of the allegations. The Complaints Director also submitted that the hearing was conducted reasonably and responsibly by both parties and completed within the two scheduled days. The Complaints Director also noted the extensive written submissions, response submissions and reply submissions provided to the Hearing Tribunal after the close of the hearing and the complex legal and factual issues that arose in the hearing.

19. In respect to the conduct of the parties, the Complaints Director noted that Dr. Mudaliar cooperated during the investigation and hearing process and did not delay the proceedings. The Complaints Director also noted that an agreed statement of facts was agreed by the parties on background and non-contentious information and exhibits were agreed in advance. As a result, the Complaints Director submitted that this was a neutral factor.

20. The Complaints Director noted that in respect to the parties' success or failure at the hearing, both allegations and the majority of the particulars were proven. The Complaints Director submitted that in light of the fact that most of the particulars of both allegations were proven, it was appropriate for Dr. Mudaliar to pay a significant portion of the costs of the hearing.

21. The Complaints Director also submitted that there was no evidence presented to establish that a costs order would constitute an undue financial burden on Dr. Mudaliar.

22. The Complaints Director submitted that the amount of \$48,500.00 which was less than one-half of the total investigation and hearing costs was appropriate, reasonable and proportionate for Dr. Mudaliar to pay given that the allegations were substantially proven and submitted that the profession as a whole should not bear the entire cost of determining Dr. Mudaliar's serious unprofessional conduct.

The Submissions of Dr. Mudaliar

23. Mr. Renouf advised that Dr. Mudaliar was appealing the findings of unprofessional conduct made by the Hearing Tribunal. He acknowledged that in light of the Hearing Tribunal's findings, Dr. Mudaliar's practice permit must be cancelled pursuant to section 82(1.1)(a) of the HPA. He also agreed with the Complaints Director that no fines or other additional sanctions should be imposed.

24. Mr. Renouf submitted that a sanction must be proportionate to the conduct involved and must fall within the bounds of the statutorily mandated range of possible outcomes.

25. Mr. Renouf referred the Hearing Tribunal to the recent decision of the Alberta Court of Appeal in the *Charkhandeh v. College of Dental Surgeons of Alberta* referred to by Mr. Sim. He

reviewed the allegations that were found to be proven against Dr. Charkhandeh and noted that the Hearing Tribunal in that case cancelled Dr. Charkhandeh's registration and imposed \$50,000.00 in fines. He noted that the Court of Appeal found these sanctions unfit and substituted a 3-year suspension and no fines. Mr. Renouf noted that the Court of Appeal emphasized that when sanctioning a professional "... proportionality, restraint, and enabling rehabilitation are important."

26. Mr. Renouf noted that the sexual assaults Dr. Charkhandeh was found to have committed were significantly more serious than the single sexual assault the Hearing Tribunal found to be proven in Dr. Mudaliar's case. He also noted that there were no indications of any prior complaints against Dr. Mudaliar. He submitted that in view of the cancellation of Dr. Mudaliar's practice permit, no additional sanctions were warranted.

27. On the issue of costs, Mr. Renouf agreed with the law set out in the submissions of the Complaints Director and submitted that the Court of Appeal had emphasized the following principles:

1. The ability to pay does not make a costs award reasonable;
2. Moral indignation towards the underlying conduct is not a principled basis for awarding costs;
3. Awards of costs have become so large and disconnected from first principles that intervention by the Court was warranted.

28. Mr. Renouf noted that the Complaints Director was seeking \$48,510.00 in costs. He pointed out that in the Charkhandeh case there was a 13-day hearing in which the costs had exceeded \$400,000.00 and the Hearing Tribunal ordered that Dr. Charkhandeh pay 75% of the costs which was approximately \$300,000.00. Mr. Renouf advised that the Court of Appeal reduced these costs to \$50,000.00 which he indicated was approximately 12.5 % of the actual costs of the investigation and hearing.

29. Mr. Renouf stated that Dr. Mudaliar's case was much less complex than the Charkhandeh case. He noted that the Complaints Director called four witnesses and Dr. Mudaliar testified during a hearing that did not take two full days. He noted that three of the eleven particulars of Allegation 1 and three of six particulars of Allegation 2 were not proven. He submitted that despite this, the Complaints Director was seeking almost 50% of the costs of the investigation and hearing.

30. Mr. Renouf suggested that costs should be established by reference to Schedule C of the Alberta Rules of Court based on Column 1 of that Schedule. He provided a worksheet which calculated the appropriate level of costs at \$13,745.00.

Reply Submissions of the Complaints Director

31. The Reply Submissions of the Complaints Director submitted that the Alberta Rules of Court do not apply in these circumstances and that Dr. Mudaliar's suggestion to use Schedule C

should be rejected. Mr. Sim submitted that the use of Schedule C would depart from the process and principles established by the Court of Appeal in the Charkandeh case. He noted that the attempt by Dr. Mudaliar to use terms like "notice to admit facts", "review of opposite party documents" and "preparation for questioning" are disconnected from the facts of the process followed and are not processes recognized in HPA proceedings.

32. Mr. Sim submitted that the approach suggested by Mr. Renouf ignored the approach to costs set out in Section 82(1)(j)(ii) of the HPA which sets out that legal expenses and fees can be included in an order of costs.

33. He also noted that in the Charkhandeh case the Court of Appeal held that except in the most complex cases the Complaints Director's legal expenses should be set at the level of a mid-level seniority lawyer at appropriate rates. He submitted that there was no justification to use the \$125/hour rate suggested by Mr. Renouf.

34. Mr. Sim also noted that Dr. Mudaliar had not presented any particulars of his financial circumstances to the Hearing Tribunal and submitted that in the absence of evidence from Dr. Mudaliar, the Hearing Tribunal should not make any presumptions about Dr. Mudaliar's financial circumstances outside of the evidence accepted at the hearing.

Decision of the Hearing Tribunal on Sanctions and Costs

35. The Hearing Tribunal has had the opportunity to review the submissions made on Sanctions and Costs submitted by the Parties and has reached its decision on the Sanctions and Costs that it considers appropriate in this matter.

36. The Hearing Tribunal does not find references to Schedule C of the Alberta Rules of Court to be helpful or relevant to determining costs in this matter. There is no provision in the HPA which authorizes costs to be determined based on the Alberta Rules of Court and the Hearing Tribunal has not been directed to any discipline case under the HPA in which Schedule C has been applied.

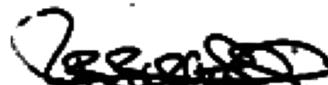
37. The only costs being claimed by the Complaints Director are a portion of the legal costs incurred by the Complaints Director based on the 110 hours spent by the lawyers for the Complaints Director. There was no suggestion that these hours were excessive or otherwise improper.

38. The total costs incurred in the investigation and hearing were \$104,475.73 and the Complaints Director is not claiming costs for the investigation or the hearing costs of the Tribunal or the costs of independent legal counsel.

39. The costs requested are \$48,500.00 which are a significant portion of the costs of legal counsel for the Complaints Director calculated at the rate of \$441/hour based on a rate for lawyers of 10 years experience in Western Canada.

40. In the opinion of the Hearing Tribunal the costs requested are reasonable and appropriate for the two-day hearing and the subsequent written submissions that were presented by the Complaints Director.

41. The Hearing Tribunal orders that Dr. Mudaliar shall pay hearing costs in the amount of \$48,500.00 payable within one year from the date of this Decision.



Dr. Bruce Burgess, Chair