

COLLEGE OF ALBERTA DENTAL ASSISTANTS
IN THE MATTER OF THE *HEALTH PROFESSIONS ACT*, RSA 2000, c H-7

AND IN THE MATTER OF
A HEARING TRIBUNAL HEARING
REGARDING THE CONDUCT OF
MADISON HARDY-MACKEIGAN (REGISTRATION NUMBER 016307),
A REGULATED MEMBER OF
THE COLLEGE OF ALBERTA DENTAL ASSISTANTS

**DECISION OF A HEARING TRIBUNAL OF THE
COLLEGE OF ALBERTA DENTAL ASSISTANTS**

Introduction

A Hearing Tribunal of the College of Alberta Dental Assistants (the College), under the authority of the *Health Professions Act* (the Act) met virtually on July 5, 2024.

In attendance on behalf of the Hearing Tribunal were:

| | |
|-----------------------------|---------------|
| Wanda Walker, RDA | Chairperson |
| Emeka Ezike-Dennis | Public Member |
| Amanda (Morgan) Foster, RDA | Member |
| Patricia Hull | Public Member |

In attendance at the hearing were Mr. Blair Maxston, legal counsel for the Complaints Director; Ms. Susan vander Heide, Complaints Director for the College; and Ms. Kimberly Precht, independent legal counsel to the Hearing Tribunal.

Ms. Hardy-MacKeigan, the investigated member, was not in attendance.

Allegations

The Allegations were set out in a Notice of Hearing dated April 23, 2024, alleging Ms. Hardy-MacKeigan engaged in unprofessional conduct with respect to the following matters:

1. On or about November 29, 2023, Madison Hardy-MacKeigan made a false declaration on their practice permit renewal application by declaring they had completed the Patient Relations Module, when in fact, the Patient Relations Module had not been completed.

All of which constitutes unprofessional conduct for the purposes of section 1(1)(pp)(i), (ii), and/or (xii) of the *Health Professions Act* including breaching section 135.7(2)(a) of the *Health Professions Act* and/or Indicator 4.3 of the College's Standards of Practice and/or College's bylaw Article 16(4)(c).

2. On or about December 19, 2023, and up to and including March 15, 2024, Madison Hardy-MacKeigan failed to respond, failed to respond meaningfully and/or failed to respond promptly:
 - a. To multiple attempted communications by College personnel; and/or
 - b. To multiple attempted communications from the Complaints Director as an investigator appointed pursuant to the Part 4 Professional Conduct provisions of the *Health Professions Act*;

All of which constitutes unprofessional conduct for the purposes of section 1(1)(pp)(i), (ii), (vii)(B) and/or (xii) of the *Health Professions Act* including breaching Indicator 6.2(c) of the College's Code of Ethics.

Preliminary Matters

There were no objections to the composition of the Hearing Tribunal or its jurisdiction to proceed with the hearing.

At the outset of the hearing, the Complaints Director made a preliminary application to proceed in Ms. Hardy-MacKeigan's absence. Section 72(1) of the Act states the investigated person must appear at a hearing before the Hearing Tribunal. However, section 79(6) of the Act provides as follows:

79(6) Despite section 72(1), if the investigated person does not appear at a hearing and there is proof that the investigated person has been given a notice to attend the hearing tribunal may

- (a) proceed with the hearing in the absence of the investigated person, and
- (b) act or decide on the matter being heard in the absence of the investigated person.

Also relevant, section 120(3) of the Act provides that if a document or notice is required to be given under Part 4 of the Act by a hearings director to an investigated person, "the document or notice is sufficiently given if it is given by personal service to the person or sent to the person by certified or registered mail at that person's address as shown on the register or record of the registrar."

Evidence

Mr. Maxston called Carol Collison, Hearings Director, as a witness in support of the Complaints Director's application to proceed in Ms. Hardy-MacKeigan's absence.

The Hearings Director testified she is responsible for arranging hearings. Her responsibilities include providing notices as requested by the Hearing Tribunal, the investigated person, or the Complaints Director. The Hearings Director detailed her communications with Ms. Hardy-MacKeigan about this hearing.

The Hearings Director testified that on April 23, 2024, she sent Ms. Hardy-MacKeigan a letter enclosing the Notice of Hearing, Part 4 of the Act, and the Hearing Steps and Procedures document being followed in this hearing by registered mail (Exhibit 1) and by email (Exhibit 3).

The Hearings Director testified that members are required to maintain up-to-date contact information with the College; this is a requirement under the Act, and the College reminds its members to do so. The Hearings Director used the mailing address for Ms. Hardy-MacKeigan in the College's database. However, the email address for Ms. Hardy-MacKeigan in the College's database was no longer current; instead, the Hearings Director used the email address Ms. Hardy-MacKeigan provided when the Hearings Director called her by phone on April 5, 2024. During that call, Ms. Hardy-MacKeigan also confirmed that the PO Box she used as her mailing address belonged to her mother.

The Hearings Director testified that she left a voicemail message for Ms. Hardy-MacKeigan on April 9 and again on April 16, 2024, regarding hearing arrangements, and received no response.

The Hearings Director identified the Canada Post tracking receipt indicating the letter enclosing the Notice of Hearing was sent to Ms. Hardy-MacKeigan on April 23, 2024, by registered mail (Exhibit 2), and the Canada Post delivery progress report indicating the letter was picked up and signed for by someone named "Mark" (Exhibit 4).

With respect to the email the Hearings Director sent on April 23, 2024, she received an Outlook confirmation that the message was delivered with no delivery confirmation from the destination server but received no response from Ms. Hardy-MacKeigan.

The Hearings Director testified that on July 2, 2024, she sent Ms. Hardy-MacKeigan the link for the hearing, via email, and received an Outlook confirmation that the message was delivered with no delivery confirmation from the destination server.

The Hearings Director has had no response from Ms. Hardy-MacKeigan since April 5, 2024.

Submissions

Mr. Maxston submitted that the Hearings Director's evidence supported that the requirements of s. 79(6) of the Act were met and the hearing should proceed in Ms. Hardy-MacKeigan's absence. The Notice of Hearing was sent to Ms. Hardy-MacKeigan's last regular mail address by registered mail and was also sent to the email address Ms. Hardy-MacKeigan provided to the Hearings Director. There were no email bounce-backs, and the registered mail chit establishes that the letter was in fact picked up. Mr. Maxston also submitted that other efforts by the Hearings Director establish that Ms. Hardy-MacKeigan was well aware of the hearing.

Mr. Maxston submitted that under s. 120(3) of the Act, it is not necessary to establish that Ms. Hardy-MacKeigan actually received the documents sent to her, only that the documents have been sent by certified or registered mail to her last known address in the College's database. In support of his submission that confirmation of receipt is not required in these circumstances, Mr. Maxston provided the Hearing Tribunal with two court decisions: *Warner (County) v Waddell*, 2023 ABKB 142, and *EJS Holdings Ltd. v Calgary (City)*, 1982 ABCA 237.

Decision

The Hearing Tribunal considered the evidence and submissions carefully. It was clear that the Hearings Director sent the Notice of Hearing to Ms. Hardy-MacKeigan by registered mail at the address in the College's database, satisfying the requirements of s. 120(3) of the Act. Beyond this, it was evident that the Hearings Director went above and beyond expectations in bringing this hearing to Ms. Hardy-MacKeigan's attention. There is no question that Ms. Hardy-MacKeigan received adequate notice of the hearing, and no information that would explain her failure to attend. As such, the Hearing Tribunal granted the Complaints Director's application to proceed in the absence of the investigated person, in accordance with section 79(6) of the Act.

Evidence

Mr. Maxston entered the following exhibits, which included evidence relevant to the preliminary application to proceed in the member's absence (numbered exhibits) as well as the merits of the charges (lettered exhibits):

- Exhibit 1 April 23, 2024, notice of hearing letter from the Hearings Director to Ms. Hardy-MacKeigan and enclosures: April 23, 2024, Notice of Hearing, Notice to Attend and Notice to Produce, Part 4 of the *Health Professions Act*, and Hearing Steps and Procedures
- Exhibit 2 Registered mail chit for April 23, 2024, notice of hearing letter and enclosures sent to Ms. Hardy-MacKeigan
- Exhibit 3 April 23, 2024, notice of hearing email from the Hearings Director to Ms. Hardy-MacKeigan, and Outlook confirmation of email delivery
- Exhibit 4 Registered mail delivery progress report and envelope showing registered mail sent on April 23, 2024, was delivered on May 24, 2024
- Exhibit A April 23, 2024, notice of hearing letter from the Hearings Director to Ms. Hardy-MacKeigan and enclosed Notice of Hearing, Notice to Attend and Notice to Procedure
- Exhibit B Investigation Report, Madison Hardy-MacKeigan, Registration Number 016307, signed March 15, 2024, by the Complaints Director
- Exhibit C December 19, 2023, email from the Registrar & CEO to Ms. Hardy-MacKeigan with other recipients redacted
- Exhibit D January 9, 2024, letter from the Registration Manager to Ms. Hardy-MacKeigan providing final notice of requirement to complete Patient Relations Learning Module

During the hearing, witnesses identified and spoke to each of the exhibits listed above.

With respect to the merits of the charges set out in the *Notice of Hearing*, the Complaints Director called the following persons as witnesses:

Susan vander Heide, Complaints Director

Jill Bateman, Registration Manager

Evidence of the Registration Manager

Ms. Bateman testified that she had been in the role of Competence and Registration Manager (referred to as “Registration Manager” in this decision) for just over one year. She outlined her responsibilities on the registration side, which included overseeing the annual practice permit renewal process. Except where indicated otherwise, the documents the Registration Manager referenced in her testimony were included as appendices to the Complaints Director’s investigation report (Exhibit B).

The Registration Manager explained the College’s practice permit renewal process. Practice permits are valid from December 1 until November 30 of the following year. Regulated members must submit a renewal application each year before November 30. The Registration Manager testified about the steps a member must take when completing the online renewal application. She explained that the first time a member applies to renew their practice permit, they must complete a declaration that they have completed the Patient Relations Module (PRM). The PRM is a module the College created to address the requirement under the Act that all regulated health professionals complete learning about the identification and prevention of sexual abuse of patients. The declaration in the renewal application is a checkbox; the applicant is not required to upload proof that they have completed the PRM. However, after practice permit renewal applications are completed, the Registration Manager goes in to see if members who selected the declaration checkbox did in fact complete the PRM.

The Registration Manager testified that Ms. Hardy-MacKeigan renewed her practice permit for the December 1, 2023, to November 30, 2024, period, and selected the declaration checkbox indicating she had completed the PRM. The Registration Manager identified the application form completed by Ms. Hardy-MacKeigan, which included the statement:

I have completed the Patient Relations Module. I fully understand that failure to comply may result in cancellation or suspension of my Registration and/or Practice Permit, and subsequent notification pursuant to statutory requirements.

Beneath this statement, an applicant may select “Yes” and “No”. Ms. Hardy-MacKeigan selected “Yes”. However, this was not accurate. The PRM is an online course accessed through the College’s Professional Learning Centre. Although it is administered by a third-party platform, the College has access to see regulated members who completed the PRM and received a completion certificate, and Ms. Hardy-MacKeigan did not complete the PRM and did not receive a completion certificate.

The Registration Manager identified her complaint about Ms. Hardy-MacKeigan dated February 22, 2024. The Registration Manager submitted the complaint after Ms. Hardy-MacKeigan was sent an email on December 19, 2023 (Exhibit C) and a final notice sent by registered mail on January 9, 2024 (Exhibit D), informing her that failure to complete the mandatory PRM could result in referral to the Complaints Director for making a false declaration on her renewal application, and yet she failed to complete the PRM. The Registration Manager confirmed these communications were sent to the email address and mailing address in the College’s database,

which had been provided by Ms. Hardy-MacKeigan, and that she received no response from Ms. Hardy-MacKeigan.

Evidence of the Complaints Director

Ms. vander Heide testified that she has been the College's Complaints Director since 2009. She confirmed that she received and investigated this complaint against Ms. Hardy-MacKeigan, and ultimately referred it to a hearing. Except where indicated otherwise, the documents the Complaints Director referenced in her testimony were included as appendices to her investigation report (Exhibit B).

The Complaints Director testified that in addition to her role as Complaints Director, she conducts audits of the PRM, to ensure members have completed it. She explained the process she follows. First, she pulls a list of everyone registered on the PRM site who has not completed the PRM. Because of occasional technical bugs, she looks at the logs for each individual to determine whether they have completed it. The PRM consists of four units plus a final exam. Regulated members must pass a quiz for each unit as well as the final exam, and then can click a button to get a completion certificate. If a member does not click that button, they may show up as not having completed the PRM. For this reason, the Complaints Director goes through to make sure those who show up as not having completed the PRM did not just fail to click the certificate button. Once confident, the Complaints Director provides the Registrar and the Registration Manager with a list of those who did not complete the PRM.

With respect to Ms. Hardy-MacKeigan, the Complaints Manager testified that she had passed the quiz for the first unit of the PRM, but had not completed the rest. As of the date of the hearing, Ms. Hardy-MacKeigan still had not completed the PRM.

The Complaints Director testified about the importance of the PRM and its mandatory nature. The PRM was introduced after Bill 21 passed in Fall 2018 and came into force in April 2019. As part of that, the Act requires colleges to ensure their regulated members complete education that helps them to identify and prevent sexual misconduct and sexual abuse towards patients by health care providers. The College developed the PRM at that time to meet that purpose for dental assistants.

The Complaints Director confirmed that she received the Registration Manager's letter of complaint about Ms. Hardy-MacKeigan, and described her investigation of the complaint. On February 23, 2024, the Complaints Director sent a Notice of Investigation to Ms. Hardy-MacKeigan by registered mail, using the address Ms. Hardy-MacKeigan had provided to the College. The Notice of Investigation informed Ms. Hardy-MacKeigan that she was under investigation and what the allegations were. In a cover letter, the Complaints Director informed Ms. Hardy-MacKeigan what she needed to do. The Complaints Director requested a written explanation respecting the matters listed in the Notice of Investigation by no later than March 8, 2024, and advised Ms. Hardy-MacKeigan that she also needed to complete the PRM by then. The Complaints Director identified the Canada Post delivery progress report showing that the package was picked up and signed for on February 28, 2024, and confirmed that Ms. Hardy-MacKeigan neither responded nor did she complete the PRM.

The Complaints Director also identified an email she sent to Ms. Hardy-MacKeigan on March 11, 2024, enclosing the materials she had previously sent on February 23, 2024, after she received no response. In this email, the Complaints Director informed Ms. Hardy-MacKeigan that the matter would be referred to a hearing if the PRM was not completed by March 15, 2024.

The Complaints Director also explained that the period of time in Charge 2 (December 19, 2023, to March 15, 2024) was based on Ms. Hardy-MacKeigan not responding to communications from the College starting with the Registrar's December 19, 2023, email to those regulated members who failed to complete the PRM, up to the Complaints Director's March 11, 2024, email in which she imposed a final deadline of March 15, 2024, for Ms. Hardy-MacKeigan to respond.

Submissions

In his submissions, Mr. Maxston emphasized there were two onuses on the Complaints Director in this hearing: first, to establish on a balance of probabilities that the alleged facts are proven, and second, to establish on a balance of probabilities the proven facts rise to the level of unprofessional conduct.

Mr. Maxston emphasized the College's public protection role, to ensure safe, competent, ethical practice, and to ensure members meet their professional obligations as regulated members of the profession. There are higher responsibilities and burdens on regulated members, but in exchange for discharging those responsibilities, members get the benefit of practicing in the profession.

Mr. Maxston referred to the definition of "unprofessional conduct" in the Act, which includes "displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services" (s. 1(1)(pp)(i)); "contravention of this Act, a code of ethics or standard of practice" (s. 1(1)(pp)(ii)); "failure or refusal to comply with a request of or co-operate with an investigator" (s. 1(1)(pp)(vii)(B)); and "conduct that harms the integrity of the regulated member" (s. 1(1)(pp)(xii)).

Mr. Maxston also referred to s. 135.7(2)(a) of the Act, which requires colleges to impose educational requirements for regulated members, aimed at preventing and addressing sexual abuse and sexual misconduct towards patients by regulated members. The College meets this requirement by requiring members to complete the PRM, a requirement set out in Bylaw 16(4)(c) and reinforced by Standard of Practice Indicator 4.3.

Mr. Maxston also highlighted Code of Ethics Indicator 6.2(c), which requires members to give correspondence, communications and requests from the College timely attention and appropriate professional response. This requirement applied to the communications from the Registrar, the Registration Manager, and the Complaints Director.

Mr. Maxston submitted that the Hearing Tribunal could use these sections of the Act as tools to measure Ms. Hardy-MacKeigan's conduct, along with the Code of Ethics and Standards of Practice, the professional knowledge, training and expertise of the regulated members on the Hearing Tribunal, and the Hearing Tribunal members' common sense.

Mr. Maxston submitted that the facts of this case were clearly proven and constitute unprofessional conduct.

With respect to Charge 1, Mr. Maxston recapped the Registration Manager's evidence about what the practice permit renewal process involves, and that Ms. Hardy-MacKeigan falsely checked off a declaration that she completed the PRM. Mr. Maxston referenced the evidence of the Registration Manager and the Complaints Director about the audit that subsequently showed Ms. Hardy-MacKeigan had not completed the PRM. Mr. Maxston submitted the evidence that showed Ms. Hardy-MacKeigan was given many opportunities to complete the requirement and failed to do so. Mr. Maxston emphasized that it was clearly an obligation on Ms. Hardy-MacKeigan to be honest and truthful with the College at all times and submitted that Ms. Hardy-MacKeigan would have deliberately checked the "Yes" box when she knew she had not completed the PRM.

With respect to Charge 2, Mr. Maxston submitted that Ms. Hardy-MacKeigan's lack of response to the College was consistent and repeated, and for reasons that are unclear, Ms. Hardy-MacKeigan abandoned her professional obligations and abandoned this investigation and hearing process. Mr. Maxston submitted that Ms. Hardy-MacKeigan clearly has not met the responsibilities on her with respect to professional obligations to respond to communications from the College in a timely and professional manner.

In summary, Mr. Maxston submitted that the facts in this case were clearly proven and very clearly rose to the serious level of unprofessional conduct.

After hearing Mr. Maxston's submissions on behalf of the Complaints Director, the Hearing Tribunal adjourned to deliberate.

Findings

After carefully reviewing and considering all of the exhibits and testimony, and all of the submissions from legal counsel, the Hearing Tribunal makes the following findings:

Charge 1 – On or about November 29, 2023, Madison Hardy-MacKeigan made a false declaration on their practice permit renewal application by declaring they had completed the Patient Relations Module, when in fact, the Patient Relations Module had not been completed.

The Hearing Tribunal finds that Charge 1 is factually proven and amounts to unprofessional conduct.

The Complaints Director's evidence clearly established that Ms. Hardy-MacKeigan only completed the first unit of the PRM, instead of completing all four units and the final exam. Meanwhile, the Registration Manager's evidence clearly established that when Ms. Hardy-MacKeigan submitted her practice permit renewal application for the December 1, 2023, to November 30, 2024, period, she selected the "Yes" checkbox declaring she had completed the PRM. This was a false declaration, as she had not completed the PRM.

The College requires all its members to pass the PRM final exam before their first practice permit renewal. The PRM is intended to educate members about identifying and preventing sexual misconduct and sexual abuse towards patients by health care providers. By requiring members to complete the PRM, the College is fulfilling its legislated requirements under section 135.7(2)(a) of the Act. The Legislature's decision to introduce this requirement in the Act reflects the high importance of protecting patients from sexual misconduct and sexual abuse. The College's requirement for members to complete the PRM is set out at Indicator 4.3 of the College's Standards of Practice and Article 16(4)(c) of the College's Bylaws. It is also clearly communicated to members in communications from the College throughout the year. In the practice permit renewal application itself, the checkbox declaration is accompanied by an acknowledgement that the member understands that failure to comply may result in cancellation or suspension of their registration and/or practice permit.

Ms. Hardy-MacKeigan's conduct in Charge 1 is concerning to the Hearing Tribunal not only because she did not meet this important requirement to complete the PRM, but also because she made a false declaration on her practice permit renewal application. By failing to complete the PRM, Ms. Hardy-MacKeigan clearly contravened the College's Standards of Practice (s. 1(1)(pp)(ii) of the Act). By falsely declaring she had completed the PRM, Ms. Hardy-MacKeigan displayed a serious lack of judgment (s. 1(1)(pp)(i) of the Act). Practicing a regulated health profession is a privilege. It is a basic expectation that regulated health professionals will not only meet such requirements but be honest about having done so. Both aspects of Ms. Hardy-MacKeigan's conduct harm the integrity of the dental assisting profession (s. 1(1)(pp)(xii)). There is no question that Ms. Hardy-MacKeigan's conduct under Charge 1 amounts to unprofessional conduct.

Charge 2 – On or about December 19, 2023, and up to and including March 15, 2024, Madison Hardy-MacKeigan failed to respond, failed to respond meaningfully and/or failed to respond promptly:

- a. To multiple attempted communications by College personnel; and/or**
- b. To multiple attempted communications from the Complaints Director as an investigator appointed pursuant to the Part 4 Professional Conduct provisions of the Health Professions Act**

The Hearing Tribunal finds that Charge 2 is factually proven and amounts to unprofessional conduct.

The evidence of the Registration Manager and the Complaints Director established that College personnel attempted to communicate with Ms. Hardy-MacKeigan repeatedly between December 19, 2023, and March 15, 2024, without receiving any response. This started with the Registrar's December 19, 2023, email to Ms. Hardy-MacKeigan and other members who had not completed the PRM, giving a deadline of January 8, 2024, to complete the PRM. On January 17, 2024, after Ms. Hardy-MacKeigan neither complied nor responded, she was sent a further letter from the Registration Manager, giving her a new deadline of January 26, 2024. On

February 20, 2024, after Ms. Hardy-MacKeigan again neither complied nor responded, the matter was referred to the Complaints Director.

The Complaints Director sent a Notice of Investigation to Ms. Hardy-MacKeigan by registered mail on February 23, 2024, and by email on March 11, 2024, after receiving no response. The Complaints Director testified as to her expectations when she sends a Notice of Investigation under Part 4 of the Act and requests the investigated member's response in circumstances like this. She testified that if the member responds, she works with them to allow them an opportunity to meet the requirements. However, if they do not respond, there is nothing she can do to help the member and it becomes a matter that has to be dealt with under the disciplinary provisions of the Act. The Complaints Director noted that normally she receives a phone call or letter back in response to a Notice of Investigation, with a request for help so the member can meet the requirement. However, that did not happen in this case. In her March 11, 2024, email to Ms. Hardy-MacKeigan, the Complaints Director advised Ms. Hardy-MacKeigan that the matter would be referred to a hearing if Ms. Hardy-MacKeigan did not bring herself into compliance by March 15, 2024. The Complaints Director confirmed she did not receive any response whatsoever from Ms. Hardy-MacKeigan.

The Hearing Tribunal considered the evidence that the Notice of Investigation sent by registered mail on February 23, 2024, was sent to the mailing address provided by Ms. Hardy-MacKeigan and was picked up. Notably, the Hearings Director testified that on the single occasion she was able to reach Ms. Hardy-MacKeigan by phone on April 5, 2024, Ms. Hardy-MacKeigan confirmed that she continued to use this mailing address, which belonged to her mother. And although the Hearings Director testified that Ms. Hardy-MacKeigan advised her on April 5, 2024, that her email address in the College's database was no longer current, there is no evidence to suggest that Ms. Hardy-MacKeigan had communicated a change in her email address to the College before April 5, 2024. It was Ms. Hardy-MacKeigan's responsibility to provide current contact information to the College.

Considering all the evidence, the Hearing Tribunal is satisfied that Charge 2 is factually proven, and that Ms. Hardy-MacKeigan failed to respond to the many attempts of College personnel, including the Complaints Director acting as an investigator under Part 4 of the Act, to communicate with her.

Further, the Hearing Tribunal is satisfied that Ms. Hardy-MacKeigan's failure to respond amounts to unprofessional conduct. Indicator 6.2(c) of the College's Code of Ethics requires dental assistants to communicate with the College in a professional and timely manner. This includes giving timely attention and appropriate professional response to correspondence, communications and requests from the College. The Hearing Tribunal was struck by the College's repeated efforts to assist Ms. Hardy-MacKeigan in meeting the outstanding requirement to complete the PRM. College personnel went above and beyond in providing Ms. Hardy-MacKeigan with opportunity to meet this requirement and avoid a disciplinary hearing. However, Ms. Hardy-MacKeigan failed to meet the basic expectation of responding in a timely and professional manner to the College's communications. This was a breach of Indicator 6.2(c) of the Code of Ethics, and amounts to unprofessional conduct as defined in s. 1(1)(pp)(ii) of the

Act. Ms. Hardy-MacKeigan's conduct also reflects a serious lack of judgment (s. 1(1)(pp)(i)) and harms the integrity of the profession as a whole (s. 1(1)(pp)(xii)). How can the College properly regulate members who do not respond to communications from the College, especially about serious requirements such as completing the PRM?

Ms. Hardy-MacKeigan's failure to respond to the Complaints Director acting as an investigator under Part 4 of the Act also amounts to unprofessional conduct within the meaning of s. 1(1)(pp)(vii)(B), which provides that unprofessional conduct includes a failure or refusal to comply with a request of or cooperate with an investigator. Not only does an investigator have explicit statutory authority under Part 4 of the Act to require a person to answer relevant questions, but regulated members have a professional obligation to cooperate with their regulatory body. Ms. Hardy-MacKeigan's failure to do so clearly amounts to unprofessional conduct.

Submissions Regarding Penalty

After the Hearing Tribunal indicated that the allegations were proven, Mr. Maxston indicated the Complaints Director was prepared to proceed with submissions on sanction.

Mr. Maxston submitted the Hearing Tribunal has the authority under section 82 of the Act to make three types of orders: (1) general orders; (2) orders requiring payment of the costs of the investigation and hearing; and (3) fines.

Mr. Maxston referred to the Court's decision in *Jaswal v Newfoundland Medical Board*, and the factors relevant in assessing penalty in the professional discipline context. His submissions on the relevant factors from the *Jaswal* decision were as follows:

- **Nature and gravity of proven conduct** – Regarding Charge 1, the testimony of the Registration Manager and the Complaints Director was that the PRM is mandatory and is a vital component of a relatively new initiative in the Act concerning the identification and prevention of sexual abuse and sexual misconduct by health care providers. Failing to comply with this requirement and then advising her regulator that she had complied is serious unprofessional conduct. Mr. Maxston submitted that Ms. Hardy-MacKeigan made a deliberate choice to declare she had completed the PRM, and this must have been so that she could obtain a renewed practice permit when she was not entitled to it. Regarding Charge 2, it is very troubling when a regulated member refuses to communicate with their regulator; this goes to the heart of the benefits and burdens that come with being a regulated member of a health profession.
- **Number of times offence was proven to occur** – Although Charge 1 refers to only a single event of Ms. Hardy-MacKeigan falsely declaring she had completed the PRM when she had not done so, it was very significant. Meanwhile, her failure to communicate with College personnel occurred over a fairly significant period of time, with three different people who attempted to communicate with her. This is an aggravating factor.

- **Member’s role in acknowledging what occurred** – Ms. Hardy-MacKeigan has not acknowledged what occurred. She has not shown any insight into her conduct. In fact, she has done the exact opposite: despite knowing what could happen in this process, she has abandoned the discipline process.
- **The need to promote specific and general deterrence** – The Hearing Tribunal’s orders must deter Ms. Hardy-MacKeigan, specifically, and the profession, generally, from engaging in similar conduct. The goal of deterrence aims at ensuring safe, competent, ethical practice by regulated members. Mr. Maxston emphasized the Complaints Director’s evidence that she had hoped this matter would not need to go to a hearing; the PRM is not overly onerous to complete, and Ms. Hardy-MacKeigan’s failure to do so could have been remedied. A message must be sent to Ms. Hardy-MacKeigan and members of the profession at large that they must comply with requirements, however big or small, or there will be consequences. In this case, the requirement to complete the PRM, though not overly onerous, is a fairly big requirement arising from the Act.
- **The need to maintain the public’s confidence in the regulation of the profession** – The public are entitled to rely on a regulated member’s registration and practice permit as “gold standards” to indicate that the member has met initial and ongoing requirements and can provide safe, competent, ethical practice. Failure to complete such requirements harms the integrity of the profession in the eyes of the profession.

On this basis, Mr. Maxston asked the Hearing Tribunal to reprimand Ms. Hardy-MacKeigan, with the Hearing Tribunal’s written decision serving as the reprimand. Mr. Maxston also asked the Hearing Tribunal to suspend Ms. Hardy-MacKeigan’s practice permit until she meets all outstanding requirements for practice permit renewal, and to direct publication of the written decision on the College’s website for a period of five years, with the written decision naming Ms. Hardy-MacKeigan. Mr. Maxston submitted that publication of the decision with Ms. Hardy-MacKeigan’s name was a significant order, which demonstrated accountability and transparency by the College as well as warning the public about Ms. Hardy-MacKeigan’s conduct, and has a punitive element to it.

In response to questions from the Hearing Tribunal, Mr. Maxston confirmed that the Complaints Director was not asking the Hearing Tribunal to order Ms. Hardy-MacKeigan to pay any of the costs of the investigation or hearing, which Mr. Maxston described as a “fairly generous” position.

In his submissions, Mr. Maxston had referred to difficulties in imposing a remedial order in this case. The Hearing Tribunal also asked Mr. Maxston if, in addition to requiring Ms. Hardy-MacKeigan to fulfil the outstanding requirements for practice permit renewal, there were any courses focused on ethical requirements or communication with the College, that she could also be required to take before her practice permit can be reinstated. Mr. Maxston did not identify any specific courses, and questioned whether a course could remedy something so personal

and internal as ethics, but advised that the Complaints Director would not necessarily be opposed to such a requirement.

Finally, when the Hearing Tribunal expressed concern that Ms. Hardy-MacKeigan continued to hold a valid practice permit despite not having met the requirements for renewal, Mr. Maxston confirmed that the Complaints Director was proposing that the suspension take effect immediately, rather than upon the Hearing Tribunal issuing its written decision.

Orders

The Hearing Tribunal recognizes that any penalty orders it makes must be fair, reasonable and proportionate taking into account the facts of this case.

Decision

The Hearing Tribunal considered the submissions on behalf of the Complaints Director and also carefully reviewed its authority under the *Health Professions Act* concerning the making of penalty orders.

The Hearing Tribunal accepted the submissions of the Complaints Director regarding appropriateness of a reprimand, immediate suspension of Ms. Hardy-MacKeigan's practice permit until she meets all outstanding practice permit renewal requirements, and publication of this decision on the College's website, identifying Ms. Hardy-MacKeigan, for a period of five years. A regulated member who has not met the requirements for practice permit renewal should not continue to hold a valid practice permit; immediate suspension was necessary. In the same vein, a requirement that Ms. Hardy-MacKeigan complete all outstanding practice permit renewal requirements, including the PRM, before her practice permit can be reinstated is basic. In making this order, the Hearing Tribunal also considered that Ms. Hardy-MacKeigan checked off a box on her renewal form acknowledging that failure to complete the Patient Relations Module could result in cancellation or suspension of her registration and/or practice permit.

Completing the PRM is a critical requirement for *all* members of the College and is non-negotiable. Beyond this, the Hearing Tribunal considered it necessary to ensure that before Ms. Hardy-MacKeigan seeks to reinstate her practice permit, she completes some kind of remedial training to help her understand the importance of cooperating with the College. The Hearing Tribunal is aware that regulated members may access a Code of Ethics module through the College's Learning Centre, and considered this to be an appropriate course for Ms. Hardy-MacKeigan to take.

As for publication of this decision on the College's website with Ms. Hardy-MacKeigan's name, the Hearing Tribunal agrees that publication provides accountability and transparency to the public.

Given that the Complaints Director is not seeking an order requiring Ms. Hardy-MacKeigan to pay a portion of investigation and hearing costs, the Hearing Tribunal makes no order as to costs.

Accordingly, the Hearing Tribunal made the following orders:

1. Ms. Hardy-MacKeigan shall receive a reprimand and the Hearing Tribunal's decision shall serve as the reprimand.
2. Ms. Hardy-MacKeigan's practice permit is suspended effective July 5, 2024, and shall remain suspended until she has:
 - a. complied with all outstanding practice permit renewal requirements at the time she seeks to have her practice permit reinstated, including completion of the Patient Relations Module; and
 - b. completed the Code of Ethics module in the College's Learning Centre and provided proof of successful completion to the Complaints Director.


If the Code of Ethics module is no longer available, then Ms. Hardy-MacKeigan may make a written request to the Complaints Director to approve an alternate course, and the Complaints Director will have sole discretion to approve an alternate course that addresses a regulated health professional's ethical obligations towards their regulatory body. If there is a cost to an alternate course, then Ms. Hardy-MacKeigan will be responsible for any such costs.

3. The Hearing Tribunal's decision shall be published on the College's website for a period of five years, and the published decision shall name Ms. Hardy-MacKeigan.

Dated at the City of Edmonton, in the Province of Alberta, on the 21 day of October, 2024.

Signed on Behalf of the Hearing Tribunal

by its Chairperson



Ms. Wanda Walker