



Decision of the Hearings Tribunal ACMDTT Member #9831



**IN THE MATTER OF A HEARING into the conduct of [REDACTED]
pursuant to the *Health Professions Act*, R.S.A. 2000, c. H-7**

DECISION OF THE HEARING TRIBUNAL

A hearing of the Hearing Tribunal was held on May 10, 2017 at the offices of the Alberta College of Medical Diagnostic & Therapeutic Technologists (the "College") at Suite #800, 4445 Calgary Trail, Edmonton, Alberta.

Present were:

Christy McIntyre, MRT (NM), panel chair and registered member
Marlene Chambers, MRT (R), panel member and registered member
Leah Fitzgerald, public member

Julie Gagnon, independent legal counsel for the Hearing Tribunal
Jenna Chamberlain, student attending with independent legal counsel for the Hearing Tribunal

Karen Stone, Complaints Director
Ayla Akgungor, Legal Counsel for the Complaints Director

[REDACTED], ENP, investigated member (by telephone)

I. Preliminary Issues

- [1] It was noted on the record that the public member, Leah Fitzgerald, worked at Field LLP (where Ms. Akgungor practices) about ten years prior to the date of the hearing. Ms. [REDACTED] was advised of this in writing prior to the hearing and confirmed at the hearing that she had no concerns with Ms. Fitzgerald acting as a member of the Hearing Tribunal.
- [2] It was also noted on the record that the panel chair, Christy McIntyre, has a work-related relationship with one of the witnesses, [REDACTED]. The Complaints Director and Ms. [REDACTED] were made aware of this relationship by Ms. McIntyre and both parties confirmed that there were no concerns with Ms. McIntyre acting as a member of the Hearing Tribunal.
- [3] The investigated member, [REDACTED], was advised of her right to attend the hearing in person. She chose to waive this right and attended the hearing by telephone.
- [4] The investigated member, [REDACTED], confirmed at the hearing that she understood her right to obtain legal counsel. She confirmed at the hearing that she was waiving this right. Ms. [REDACTED] confirmed that she had received the Notice of Hearing and raised no issues regarding the notice.

II. Allegations

[5] The Allegations in the Notice of Hearing (Exhibit 1) are:

1. On or about August 5, 2016, during the course of performing an electroencephalogram (EEG), you made one or more of the following comments, or comments to the following effect, to the parents of an eighteen-month old patient, who had brought their daughter to Edmonton from Grande Prairie for an EEG:
 - a. I can tell this is your first child because you don't know how to control her;
 - b. Can't you make her be still?;
 - c. This was a waste of time;
 - d. You drove all this way for nothing; and
 - e. The physician was wrong for ordering the test.
2. On or about August 9, 2016, during the course of performing an electroencephalogram (EEG), you made one or more of the following comments, or comments to the following effect, to the foster mother of an eight-year old patient with [REDACTED]:
 - a. His brain is so crazy he should have been dead by now;
 - b. Can't you get him to behave normally?; and
 - c. When asking where his parents were, "They [the parents] couldn't stand him [the patient]".

III. Exhibits

[6] The following were entered as Exhibits at the hearing:

1. Notice of Hearing dated March 20, 2017;
2. Chain of emails from [REDACTED], [REDACTED], [REDACTED] and [REDACTED] dated August 10, 2016;
3. Notes from the diary of [REDACTED], 1 page undated and 1 page dated August 9, 2016;
4. Complaint Reporting Form created by [REDACTED] dated October 4, 2016;
5. Emails from [REDACTED] dated August 19, 2016 and August 23, 2016;

6. Notes made by [REDACTED] of a call with [REDACTED] dated August 23, 2016;
7. Letter of Suspension from [REDACTED] to [REDACTED] dated September 23, 2016;
8. List of courses taken by [REDACTED] since 2012 created by [REDACTED]; and
9. Notes made by [REDACTED] of a call with [REDACTED] dated September 12, 2016.

IV. Evidence

[7] The following individuals were called as witnesses by the Complaints Director:

1. [REDACTED];
2. [REDACTED] (attended by Skype);
3. [REDACTED]; and
4. [REDACTED].

[8] [REDACTED] gave evidence on her own behalf. Ms. [REDACTED] did not call any other witnesses.

Evidence from [REDACTED]

- [9] Ms. [REDACTED] is the legal guardian of [REDACTED]. She has known him since he was 2 years old. He is now 10 years old.
- [10] She attended the EEG lab at the University of Alberta Hospital on August 9, 2016 with [REDACTED], who required an EEG. [REDACTED]'s disabilities include: [REDACTED]
[REDACTED]
[REDACTED].
- [11] Ms. [REDACTED]' experience at the EEG lab was negative. [REDACTED] was agitated. She explained to the technician, Ms. [REDACTED], that he cannot follow directions and will move continuously. After placing the wires on his head, [REDACTED] pushed them off with his left arm. Ms. [REDACTED] suggested trying a cap. Ms. [REDACTED] was vocal about her inability to get a reading. Ms. [REDACTED] said "can't you get him to behave normally" to which Ms. [REDACTED] replied that this was his normal. Ms. [REDACTED] said a few things which Ms. [REDACTED] could not hear and ignored. Ms. [REDACTED] asked her "where are his parents?" which Ms. [REDACTED] felt was an inappropriate and unprofessional question. Ms. [REDACTED] replied that he was an abandoned child. Ms. [REDACTED] responded to this by saying "they couldn't stand him either". After the appointment was finished, Ms. [REDACTED] said to Ms. [REDACTED] that she expects the left side of his brain seizes. Ms. [REDACTED] replied "his brain is so crazy he should have been dead by now". Although the room was noisy and busy, Ms. [REDACTED] stated that she clearly heard these comments.

- [12] As a foster parent, she is required to keep a written record of the events of each day. Immediately after the appointment, Ms. [REDACTED] wrote down the comments that Ms. [REDACTED] said (Exhibit 3, first page). Later that evening, she wrote about the appointment in more detail (Exhibit 3, second page).
- [13] Ms. [REDACTED] was upset by the comments made by Ms. [REDACTED]. She told her eldest daughter, a nurse, about the comments and her daughter told her to inform a charge nurse. Ms. [REDACTED] told a charge nurse about the appointment, who asked her to write an email describing the incident. The email (Exhibit 2) was sent on to [REDACTED], Ms. [REDACTED]'s supervisor. Ms. [REDACTED] called Ms. [REDACTED] to discuss the incident. Ms. [REDACTED] told her about the comments and mentioned that she did not want a similar situation to happen to anyone else.
- [14] Ms. [REDACTED] testified that she had not met Ms. [REDACTED] prior to the appointment and that she did not know [REDACTED].

Evidence from [REDACTED]

- [15] Ms. [REDACTED] is the mother of [REDACTED]. They currently reside in Grande Prairie, and did so in August, 2016.
- [16] Ms. [REDACTED], her husband, and [REDACTED] traveled from Grand Prairie to Edmonton to attend an EEG appointment at the University of Alberta Hospital on August 5, 2016. The appointment was ordered for [REDACTED] by her neurologist. [REDACTED] fell asleep in the car on the way to Edmonton.
- [17] When they arrived in the waiting room, [REDACTED] tripped and began to cry. Ms. [REDACTED] came into the waiting room and asked if they saw the quiet sign and then told them to be quiet. When the appointment started, [REDACTED] was crying and would not sleep. Ms. [REDACTED] repeatedly asked Ms. [REDACTED] to hold her still and keep her quiet. Ms. [REDACTED] asked Ms. [REDACTED] and her husband if they had other kids, to which they replied no. Ms. [REDACTED] said she could tell [REDACTED] was their first child because they could not control her. Ms. [REDACTED] said the appointment was a waste of time because they could not get her to sleep. Ms. [REDACTED] said the doctor should not have ordered this test. [REDACTED] was crying during the appointment, but was not moving. Ms. [REDACTED] thought Ms. [REDACTED] was rude.
- [18] Due to Ms. [REDACTED]'s comment that their doctor was wrong for ordering the test, Ms. [REDACTED] called her doctor after the appointment to ask why the test was ordered. She talked to the receptionist at her doctor's office who told Ms. [REDACTED] that she should report the comments made by Ms. [REDACTED]. The receptionist reported the incident. A few weeks after the appointment, [REDACTED] called Ms. [REDACTED] to discuss the incident.
- [19] Ms. [REDACTED] testified that she had not met Ms. [REDACTED] prior to the appointment and that she did not know Ms. [REDACTED].

Evidence from [REDACTED]

- [20] Ms. [REDACTED] is a Patient Care Manager at the University of Alberta Hospital in the neuroscience program. She has been Ms. [REDACTED]'s manager for 5 years. Ms. [REDACTED] is unionized with HSAA and subject to the terms of a collective agreement. She was working full time in August 2016 and had been there over 10 years.
- [21] In the EEG labs there is always access to help, whether it is for an emergency or help with a patient. The patient population is diverse and includes about 60% pediatric patients, both in- and out-patients, and patients with a wide variety of disabilities. Most technicians will have an average of 4-5 patients per day and alternate being on-call during evenings and weekends.
- [22] On August 19, 2016, Ms. [REDACTED] received an email from [REDACTED] (Exhibit 5) regarding the incident on August 5. The email said that a secretary from Dr. [REDACTED]'s office was complaining about comments made by a technician during Ms. [REDACTED]'s appointment. Through the email, Ms. [REDACTED] connected with Ms. [REDACTED]. From there, [REDACTED] continued the process following the complaint, as Ms. [REDACTED] was away on vacation.
- [23] Ms. [REDACTED] became aware of the August 9 incident on August 10 after Ms. [REDACTED] forwarded her the email from Ms. [REDACTED] (Exhibit 2). After receiving the email, she called Ms. [REDACTED] to obtain additional information. She took notes during the phone call (Exhibit 6). On the phone, Ms. [REDACTED] expressed that she was very concerned about the interaction and did not want a similar situation to happen to someone else. Ms. [REDACTED] told her about the comments made by Ms. [REDACTED], the extent of [REDACTED]'s condition, and how upset she was about the incident. Ms. [REDACTED] told her that she was happy this situation happened to her, and not someone with less experience.
- [24] For both incidents, Ms. [REDACTED] was able to identify the technician as Ms. [REDACTED] by looking at the patient's report. Ms. [REDACTED] submitted a complaint form regarding the comments made by Ms. [REDACTED] on October 4, 2016 (Exhibit 4).
- [25] Ms. [REDACTED] started an investigation into the August 9 incident. She met with Ms. [REDACTED], her union representative, and human resources to obtain more information about the situation. During the investigation, Ms. [REDACTED] suggested that she did not make the comments alleged by Ms. [REDACTED]. She also questioned Ms. [REDACTED]'s motive in making the complaint and made comments about Ms. [REDACTED]'s lack of care as a foster mother, rather than a biological mother. Ms. [REDACTED] appeared less concerned about the patients and more concerned about obtaining good EEG results. Ms. [REDACTED] asked Ms. [REDACTED] if anything contributed to her behavior, but Ms. [REDACTED] did not indicate there was anything to help explain her behavior.
- [26] The outcome of the investigation was to suspend Ms. [REDACTED] for one day. Mr. [REDACTED], Ms. [REDACTED], and human resources decided on a suspension because there were two separate but similar complaints, there was nothing found in the investigation that justified Ms. [REDACTED]'s comments, and Ms. [REDACTED] had a history of communication issues. The Letter of

Suspension (Exhibit 7) was received by Ms. [REDACTED] on September 23, 2016. Ms. [REDACTED] did not grieve the suspension with her union.

- [27] Ms. [REDACTED] had provided Ms. [REDACTED] with multiple supports to resolve her previous communication issues. These included informal and formal training. Some of the training was mandatory for all technicians, but some was provided specifically for Ms. [REDACTED]. A summary of the education Ms. [REDACTED] has received since 2012 was created by Ms. [REDACTED] (Exhibit 8).

Evidence from [REDACTED]

- [28] Mr. [REDACTED] is a Patient Care Manager at the University of Alberta Hospital in the neuroscience program.
- [29] Mr. [REDACTED] handled the complaint submitted by Ms. [REDACTED]. After receiving the complaint, Mr. [REDACTED] called Ms. [REDACTED]. She indicated concerns about Ms. [REDACTED]'s communication and told him about the comments Ms. [REDACTED] made during the August 5 appointment. Ms. [REDACTED] also commented that their staff should be able to deal with children. Mr. [REDACTED] made notes about the phone call (Exhibit 9). Ms. [REDACTED] was very calm when she retold the story over the phone. She was upset about the incident, but not impassioned.
- [30] Mr. [REDACTED] started an investigation. He booked a meeting with Ms. [REDACTED], her union representative and human resources. Initially, Ms. [REDACTED] was unclear about the incident and could not remember details. After she had reviewed the file, she said she would not have made the comments alleged. Ms. [REDACTED] indicated that she wanted additional training on communication and working with children.
- [31] Mr. [REDACTED], Ms. [REDACTED], and human resources met to review the investigation and decided to suspend Ms. [REDACTED] for one day.

Evidence from [REDACTED]

- [32] Both incidents involved challenging pediatric patients. In both instances she was able to obtain a successful reading.
- [33] The August 5 incident involved an eighteen-month-old patient who had three seizures in the context of a fever. The patient had previously done two EEG tests in Grande Prairie and both tests had normal results. The test on August 5 was a sleep-deprived EEG test. Ms. [REDACTED] asked Ms. [REDACTED] and her husband about the patient's history, the test the doctor ordered, and the reason for repeating the same test done in Grande Prairie. These questions are normal for any appointment, and she was not questioning the doctor's order. She would not say that the physician was wrong for ordering the test. She asked the parents if the patient had fallen asleep, and they told her she fell asleep on the drive to Edmonton. The patient was moving, crying, and pulling off the electrodes which made it difficult to perform the test. Ms. [REDACTED] asked the parents if they wanted her to continue with the test, even though the patient could not be calmed. They gave her consent to proceed.

- [34] Ms. ■■■ felt pressure to obtain good EEG results and asked Ms. ■■■ and her husband “can you make her be still”. The parents mentioned that this was their first child, but Ms. ■■■ made no comment in return about their ability to control her. Ms. ■■■ asked about the patient’s previous EEG tests and Ms. ■■■ said a cap was used. A cap was only meant to be used in certain instances, but Ms. ■■■ followed Ms. ■■■’s advice and used a cap. Ms. ■■■ managed to obtain good results. Therefore, she did not say and had no reason to say “you drove all this way for nothing”. Ms. ■■■ admitted that she said the “test was a waste of time”, but only because the patient was not cooperating.
- [35] The August 9, 2016 incident involved an ■■■ child with global developmental delays. Ms. ■■■ started the appointment by introducing herself and describing the procedure. She said he will have to be as still as possible to get the best quality EEG results. Ms. ■■■ responded to this saying “good luck”, because he was not going to stay still, but agreed to help. The patient continually hit his head, and Ms. ■■■ asked Ms. ■■■ if she could stop him. Ms. ■■■ said that was just him. She would not have said anything about him acting normally. He continued to move which made it difficult to get a recording. Ms. ■■■ said she could tell that his brain was abnormal, but did not make any comment about it to Ms. ■■■. She would never say that a child should be dead. She asked Ms. ■■■ about the patient’s history, and Ms. ■■■ said he was an abandoned child. They had a conversation about this, but she would not have said that his parents did not want him.
- [36] Ms. ■■■ has dealt with many different patients, including children under the age of eighteen-months. With challenging patients she feels pressure to complete the test for the benefit of the patients. She feels there is no one to help her when there is a difficult appointment, and there is no excuse for her appointments to be longer than scheduled. It is difficult when the patients are continually ruining the set-up of the test because it wastes a lot of time. It is especially difficult when parents do not help hold a child, because Ms. ■■■ is unable to hold patients.
- [37] Ms. ■■■ was having personal problems at the time of the two incidents. She had ■■■. Her family doctor had referred her to a specialist, but she was unable to get time to see him. Her appointment was continually postponed. She was ■■■ in her daily life. Despite her personal issues, she continued to go to work to help her co-workers. She always put the patients first, and she wanted to make sure she collected good test results. At work she usually had 5 patients scheduled per day and often worked without time for lunch or breaks. These personal problems were not raised in the investigation.
- [38] When Ms. ■■■ was called in for the investigation, she could not recall which patients they were referring to until she reviewed their documents. She claimed that those words would not have come from her mouth. Since English is her second language, she tries saying standard language during an appointment in order to be professional. Ms. ■■■ did not grieve the suspension because she was feeling sick and felt very bad about the situation.

- [39] Ms. ■ wants to improve her skills for handling these situations by watching a co-worker who is excellent with children. Her managers said this was unnecessary since she should already be able to deal with children.

V. Submissions of the Parties

Complaints Director

- [40] The Complaints Director submits that Ms. ■ said all of the alleged statements.
- [41] The evidence from Ms. ■ and Mr. ■ is contradictory to the evidence given by Ms. ■ about the August 5 incident. The conflicting evidence raises a question of credibility. The Regulations of Professions in Canada (James T Casey, Toronto: Carswell, 1994, loose-leaf revision 2015) suggests factors to be considered when determining the credibility of a witness: demeanour of witness, memory, plausibility, internal consistency, external consistency, motivation, and ability to perceive.
- [42] Considering the credibility of Ms. ■'s evidence:
1. Demeanour: she was very calm when she talked to Mr. ■ about the incident, and when she presented evidence at the hearing;
 2. Memory: her evidence was consistent and was recorded by Mr. ■;
 3. Plausibility: there is nothing to suggest these comments are not plausible and "you drove all this way" is understandable in the context. In addition, Ms. ■ states she contacted her physician's office as a result of the statements made by Ms. ■;
 4. Internal consistency: each time she told the story it was consistent;
 5. External consistency: the only external evidence was Mr. ■'s notes, which were consistent with her story;
 6. Motivation: there was no motivation for Ms. ■ to complain other than her being upset about the comments;
 7. Ability to perceive: the events happened to her directly.
- [43] Considering the credibility of Ms. ■'s evidence regarding the August 5 incident:
1. Demeanour: she was upset about the allegations;
 2. Memory: she sees hundreds of patients, therefore, her recall may not be as precise for this situation;
 3. Plausibility: she was disciplined, but did not grieve the suspension, which creates a lack of plausibility.

- [44] The Complaints Director submits that the evidence from Ms. [REDACTED] should be given more weight than the evidence from Ms. [REDACTED] because Ms. [REDACTED] is more credible.
- [45] There is an issue of credibility regarding the evidence from Ms. [REDACTED] and Ms. [REDACTED], and the evidence from Ms. [REDACTED] regarding the August 9 incident.
- [46] Considering the credibility of Ms. [REDACTED]'s evidence:
1. Demeanour: she was very straightforward when discussing the incident;
 2. Memory: she wrote down the comments directly after the incident occurred;
 3. Plausibility: there is no evidence to suggest the comments are not plausible, she writes notes daily, and she was upset enough about the comments to complain;
 4. Internal consistency: each time she told the story it was consistent;
 5. External consistency: her retelling of the story is consistent with her diary notes and Ms. [REDACTED]'s notes;
 6. Motivation: she did not know Ms. [REDACTED] before the incident and does not know Ms. [REDACTED], and there is no other motivation other than being upset;
 7. Ability to perceive: the events happened directly to her.
- [47] The credibility of Ms. [REDACTED]'s evidence regarding the August 9 incident concerns the same issues as the credibility of her evidence regarding the August 5 incident.
- [48] The Complaints Director submits that the evidence from Ms. [REDACTED] should be given more weight than the evidence from Ms. [REDACTED] because Ms. [REDACTED] is more credible.
- [49] The Complaints Director submits that the statements amount to unprofessional conduct and/or contravenes the Standards of Practice or the Code of Ethics of the ACMDTT.
1. "Unprofessional conduct" is defined in the *Health Professions Act*, and it is alleged that Ms. [REDACTED]'s comment contravene at least one of sections 1(1)(pp)(i), (ii), or (xxii).
 2. It is alleged that Ms. [REDACTED]'s conduct contravenes Standard 1.1 Patient-Centered Care and Standard 2.6 Communication of the Standards of Practice.
 3. It is alleged that Ms. [REDACTED]'s conduct contravenes Principle 1(c) Dignity of the Code of Ethics.
- [50] The Complaints Director submits that, based on the evidence, the alleged comments were inappropriate, disrespectful and rude. Ms. [REDACTED] failed to appreciate the parent's situations and did not adapt her communication to fit these difficult situations. Her comments failed to respect the dignity of the patients and their parents. Although the situations were difficult, that is no excuse for Ms. [REDACTED]'s conduct to fall below the standard, especially

when difficult situations are common in her job. These comments harm the dignity of the profession, because everyone should expect to be treated respectfully.

- [51] The Complaints Director submits that any mitigating factors, such as Ms. [REDACTED]'s personal problems, may be relevant when determining a penalty if there is a finding of unprofessional conduct, but should not be considered when determining whether the allegations occurred.

[REDACTED]

- [52] Ms. [REDACTED] provided evidence on her own behalf and made no formal submissions. The Hearing Tribunal carefully considered her evidence when making their decision.

VI. Decision

- [53] The Hearing Tribunal finds that all of the allegations have been proven and that the conduct constitutes unprofessional conduct.

VII. Findings

Allegation 1

- [54] The Hearing Tribunal finds that the first allegation is proven. The Hearing Tribunal carefully considered the Complaints Director's submissions regarding credibility in making its findings.
- [55] The Hearing Tribunal placed more weight on Ms. [REDACTED]'s evidence than on Ms. [REDACTED]'s evidence. The Hearing Tribunal found Ms. [REDACTED] to be a credible witness and agreed with the factors regarding credibility as outlined by counsel for the Complaints Director. Her evidence is also supported by Mr. [REDACTED]'s evidence.
- [56] Statement 1. "I can tell this is your first child because you don't know how to control her". Ms. [REDACTED] testified that this comment was made. Ms. [REDACTED] testified that they did have a conversation about the patient being their first child, but denied saying anything about the parents' ability to control her. The alleged statement is plausible because the conversation did arise, and the child was not cooperating.
- [57] Statement 2. "Can't you make her be still?" Ms. [REDACTED] admitted to making this comment.
- [58] Statement 3. "This was a waste of time". Ms. [REDACTED] admitted to making this comment. However, she claims that she was referring to the child's inability to cooperate.
- [59] Statement 4. "You drove all this way for nothing". Ms. [REDACTED] denied making this comment. However, the comment appears to be closely linked to statement 3. It is plausible that the two were said together.
- [60] Statement 5. "The physician was wrong for ordering the test". Ms. [REDACTED] testified that this comment was made. Ms. [REDACTED] testified that she thought the doctor was wrong, but that

she would not have talked about the doctor's decision. However, strong weight is placed on Ms. [REDACTED]'s testimony regarding the statement because it was the main motivating factor in her decision to contact her doctor following the appointment.

- [61] The Hearing Tribunal accepted the evidence of Ms. [REDACTED] that the statements were made and finds that, on a balance of probabilities, the first allegation is proven.

Allegation 2

- [62] The Hearing Tribunal finds that the second allegation is proven. The Hearing Tribunal accepts the Complaints Director's submissions regarding credibility, and placed more weight on the evidence of Ms. [REDACTED] than on Ms. [REDACTED]'s evidence, particularly because Ms. [REDACTED] recorded each of the statements immediately after the appointment. In addition, Ms. [REDACTED]'s evidence supported the evidence of Ms. [REDACTED].
- [63] Statement 1. "His brain is so crazy he should have been dead by now". Ms. [REDACTED] testified that she thought that his brain was crazy, but would not have said anything to a patient. It is plausible that because her thoughts reflected the statement, they came across in her language.
- [64] Statement 2. "Can't you get him to behave normally?". Ms. [REDACTED] testified that this comment was made, and she mentioned that she responded to the comment also using the word "normal". Ms. [REDACTED] testified that she would not have commented on him acting normally.
- [65] Statement 3. "They couldn't stand him". Ms. [REDACTED] testified that this comment was made. Ms. [REDACTED] testified that there was a discussion of the patient's history, but she would never say that the patient's parents did not want him.
- [66] The Hearing Tribunal finds that, on a balance of probabilities, the second allegation is proven.

Unprofessional Conduct

- [67] The Hearing Tribunal finds that the statements amount to unprofessional conduct by Ms. [REDACTED]. The statements contravene Standard 1.1 Patient-Centered Care, particularly Indicator a. "assess the patient's level of understanding of the procedure and adapt communication and assessment accordingly". The statements and Ms. [REDACTED]'s evidence show that she failed to adapt her communication to the situation. The two appointments were high stress situations, and Ms. [REDACTED] failed to communicate effectively based on this stress and the level of expertise of the patient's parents. Ms. [REDACTED] testified that she always uses standard language, which indicate a failure to adapt to situations such as these in this case.
- [68] The statements contravene Standard 2.6 Communication, particularly Indicators a. "utilize appropriate strategies to communicate with intended audience" and c. "adhere to principles of professionalism regardless of the type of communication". Ms. [REDACTED]'s audience in the two appointments were the patient's parents. She did not use appropriate

strategies because she did not adapt her language to the parent's situation. The comments made were inappropriate and unprofessional in or out of the context they were said.

[69] The statements contravene the Code of Ethics principle 1(c) "Dignity: a regulated member provides care with full regard for the autonomy and dignity of all persons". Autonomy is less relevant in this situation, but dignity applies. Ms. [REDACTED] testified that she felt Ms. [REDACTED] was rude. This suggests there was a lack of respect, and that Ms. [REDACTED] did not treat Ms. [REDACTED] with dignity. Ms. [REDACTED] was upset by the statements, despite her immense experience with the medical system. This suggests Ms. [REDACTED] failed to treat Ms. [REDACTED] with the level of dignity she usually receives from professionals.

[70] Unprofessional conduct is defined in the *Health Professions Act*, section 1(1)(pp) and include:

(i) "displaying a lack of knowledge of or lack of skill or judgement in the provision of professional services" and

(ii) "contravention of this Act, a code of ethics or standards of practice".

[71] The statements showed a lack of judgement by Ms. [REDACTED] to act professionally in a difficult situation. As shown above, the statements contravene the Code of Ethics and the Standards of Practice. Members must be able to adapt their communication for difficult or challenging situations. Members must also be able to understand how their comments will affect patients, or the parent/guardian of the patient. The statements made by Ms. [REDACTED] were understandably upsetting to both Ms. [REDACTED] and Ms. [REDACTED] and were clearly not appropriate.

[72] The statements made by Ms. [REDACTED] are serious and constitute unprofessional conduct on the basis of a lack of judgment and contravention of the Code of Ethics and the Standards of Practice.

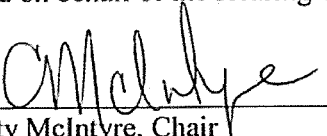
[73] The Hearing Tribunal did not find that the statements constitute "conduct that harms the integrity of the regulated profession" (section 1(1)(pp)(xii)). The Hearing Tribunal finds that in this context, the harm arises out of one member's communication and did not rise to the level of affecting the integrity of the profession as a whole.

VIII. Conclusion

[74] The Hearing Tribunal finds that both allegations against [REDACTED] have been proven and these statements amounts to unprofessional conduct.

- [75] The Hearing Tribunal directs the parties to arrange for written submissions regarding penalty to be provided to the Hearing Tribunal. However, either party may seek further direction from the Hearing Tribunal if they are unable to agree on a timeline for written submissions or if either party wishes to reconvene the Hearing Tribunal to make oral submissions.

Signed on behalf of the Hearing Tribunal this 14 day of June, 2017.



Christy McIntyre, Chair



Decision of the Hearings Tribunal Regarding Penalty ACMDTT Member #9831



IN THE MATTER OF A HEARING into the conduct of [REDACTED]
pursuant to the *Health Professions Act*, R.S.A. 2000, c. H-7

DECISION OF THE HEARING TRIBUNAL

A hearing of the Hearing Tribunal was held on May 10, 2017 at the offices of the Alberta College of Medical Diagnostic and Therapeutic Technologists (the "College") at Suite #800, 4445 Calgary Trail, Edmonton, Alberta.

The Hearing Tribunal issued a decision in relation to the allegations against the Investigated Member. The Hearing Tribunal received written submission from the College and the Investigated Member in relation to sanction arising from its decision.

Following receipt of written submissions, the Hearing Tribunal deliberated by teleconference. In attendance at the deliberations were:

Christy McIntyre, MRT (NM), panel chair and registered member
Marlene Chambers, MRT (R), panel member and registered member
Leah Fitzgerald, public member

The Hearing Tribunal issues the following decision in relation to sanction.

Complaints Director's Submissions

[1] In correspondence dated July 14, 2017 on behalf of the College, legal counsel provided submissions on sanction. She notes that the primary purpose of any sanction order must be to protect the public. She referred the Hearing Tribunal to factors which should be considered when evaluating the appropriateness of sanctions, many arising from the case of *Jaswal v. Newfoundland (Medical Board)*. Legal counsel for the College provided the following submissions:

- *The nature and gravity of the proven allegation: where members of the public are being treated in a rude and disrespectful manner that falls below the expected level of conduct required of technologists, then there is no question that the conduct is serious in nature.*
- *Age and Experience: Ms. [REDACTED] is a very experienced technologist and this should mean that she is that much more cognizant of treating patients and/or their parents in a professional and courteous manner.*
- *Previous character of the technologist and any prior complaints or convictions: Ms. [REDACTED] has had no prior findings of unprofessional conduct while registered with the ACMDTT.*

- *Age and mental condition of affected patient: the patients in this case were minor patients and have not been directly affected by the comments made by Ms. [REDACTED]. The affected individuals were the parents of the patients of whom Ms. [REDACTED] made her comments to. While the parents in this case were not made vulnerable by a mental condition or by young age, it is important to note that all members of the public likely feel vulnerable to a certain extent in a medical care setting, where procedures and terminology may be unfamiliar and they are dependent on the advice and direction of the medical professional. This vulnerability may be exacerbated for parents when a medical treatment is being provided to their children.*
- *Number of times the offence was proven to have occurred: there were two separate and distinct occurrences of Ms. [REDACTED] behaving in a rude and disrespectful manner toward patients. The fact that this type of conduct occurred more than once suggests to the Hearing Tribunal that there is a need for a penalty significant enough to drive home the point to Ms. [REDACTED] that her conduct was unacceptable.*
- *Role of the technologist in acknowledging the conduct occurred: Ms. [REDACTED] chose to fully contest the allegations against her. Members are entitled to contest the allegations against them in a full hearing and members cannot be subject to increased penalties beyond what would have otherwise be ordered as a result of simply choosing to exercise their right to contest the allegations.*
- *Previous financial or other penalties: Ms. [REDACTED] was suspended from her employment for one day as a result of her conduct with respect to these two minor patients so she did suffer from some loss of wages. However, the Complaints Director submits that this is not a particularly significant financial penalty.*
- *Presence or absence of any mitigating circumstances: in her testimony at the hearing, Ms. [REDACTED] described that she was going through a difficult time in her life around the time of the allegations and that she had [REDACTED]. Ms. [REDACTED] also indicated that there was a workplace issue and she was not well at the time of the conduct set out in the allegations.*
- *Impact of the conduct on the affected individuals: Ms. [REDACTED] (the foster parent of the child with [REDACTED] in Allegation 2) testified about how taken aback she was by the treatment she received by Ms. [REDACTED], noting that she had had experience with many different types of health care providers over the years and could not recall being treated in the same manor by anyone else as she did by Ms. [REDACTED]. Ms. [REDACTED] was so upset by the events that she took the time to record what had happened in a notebook shortly after her foster child's appointment with Ms. [REDACTED] and took the time to consult with her nurse daughter as to what steps she should take as a result of her interaction with Ms. [REDACTED]. Ms. [REDACTED] (the Parent of the child referred to in Allegation 1) also testified to the feeling that she had been treated quite rudely.*

- *Specific and general deterrence: the need for penalties which will achieve specific deterrence (i.e. deter Ms. ■■■ from engaging in similar conduct in the future) is particularly acute here as Ms. ■■■ does not appear to fully understand or appreciate the way that she comes across to patients.*
- *Need to maintain the public's confidence in the medical profession: Ms. ■■■, Ms. ■■■ and all members of the public have a right to expect that they will be treated in a respectful and courteous manner by technologists. Where, as here, Ms. ■■■'s conduct fell below that standard.*

[2] Legal counsel attached to her submissions the orders sought by the Complaints Director arising out of the Hearing Tribunal's decision on unprofessional conduct. The orders sought are:

1. *Ms. ■■■ shall provide written confirmation to the Complaints Director, within thirty (30) days of receiving the written reasons for decision of the Hearing Tribunal on penalty, confirming that she has reviewed and understood the following:*
 - i. *The College's Code of Ethics;*
 - ii. *The College's Standards of Practice;*
and has completed
 - iii. *The College's Regulation Education Module.*
2. *Within thirty (30) days of receiving the written reasons for decision of the Hearing Tribunal on penalty, Ms. ■■■ will submit a 1000 – 1500 word (typed) paper to the Complaints Director which illustrates self-reflection on the importance of adaptive practice and communication as a health professional in light of the College's Standards of Practice.*
3. *Prior to July 31, 2018 (or subject to timelines at the discretion of the Northern Alberta Institute of Technology (NAIT) who will be requested to grant special dispensation for Ms. ■■■ to undertake certain courses in professional conduct), Ms. ■■■ will undertake, at her own cost and participate to the satisfaction of the instructor, the following course at NAIT.*
 - a. *Professional Practice course (inclusive of a simulation), in one of the NAIT School of Health and Life Science's programs, as determined and finalized by the Complaints Director who will liaise with NAIT and agree to the specifics of the course at NAIT's discretion, and provide evidence of successful completion of the course to the Complaints Director.*
4. *Within ninety (90) days of receiving the written reasons for decision of the Hearing Tribunal on penalty, Ms. ■■■ will complete the readings on emotional intelligence provided by a member of the Faculty of the School of Medicine and Dentistry at the University of Alberta, and participate in a tutorial discussion session on these readings, to the satisfaction of the instructor. Ms. ■■■ will provide evidence to the Hearings Director of having satisfactorily completed the readings and tutorial discussion session.*

5. Ms. ■ will share the decisions of this Hearing Tribunal with her employer and provide written confirmation to the Hearings Director of having done so within thirty (30) days of receiving the written reasons for decision on penalty. For the period of one (1) year following the receipt of the written reasons for decision of the Hearing Tribunal on penalty, Ms. ■ will provide a report from her employer to the Complaints Director, at three month intervals, which comments on Ms. ■'s communication skills and whether Ms. ■ is meeting the employer's expectations in terms of professional communication.
6. Subject to paragraph 7 below, Ms. ■ will be responsible for a portion of:
 - a. The cost of legal expenses and legal services provided to the College, Complaints Director and Hearing Tribunal;
 - b. The costs of creating the record of the proceedings;
 - c. The costs of the investigation as attributed by the College;

With such portion not to exceed \$5,500.00.

7. Ms. ■ must advise the Hearings Director within thirty (30) days of being provided with a copy of the Hearing Tribunal's decision whether she wishes to pay the costs in a lump sum or whether she wishes to pay installments;
 - a. If she elects to pay the costs in a lump sum:
 - i. The costs will be due and owing sixty (60) days after Ms. ■ is provided with a copy of the Hearing Tribunal's written decision on penalty.
 - b. If Ms. ■ elects to pay the costs in installments:
 - i. The costs shall be paid in equal monthly instalments over a period of eighteen (18) months;
 - ii. Ms. ■ must provide the Hearings Director with eighteen (18) post-dated cheques made out to the ACMDTT for each monthly installment; and
 - iii. The first installment must be paid within sixty (60) days after the Hearing Tribunal's decision on penalty is provided to Ms. ■ and the remaining post-dated cheques must be provided at that time.
8. The deadlines referred to in paragraphs 1, 2, 3, 4, 5 and 7 may be extended for a reasonable period of time, in the sole discretion of the Hearings Director. If Ms. ■ is seeking an extension, Ms. ■ must contact the Hearings Director to request an extension in advance of the deadline, must indicate why she cannot comply, and must confirm the date of the newly proposed deadline.
9. In the event that the Ms. ■ fails to successfully comply with the orders by the deadlines set out above, or by such other date agreed to by the Hearings Director, her permit to practice will be automatically suspended pending compliance.

- [3] The Complaints Director submits that the orders are primarily remedial and will assist the Investigated Member in improving her communication skills and reflecting on the need for respectful communication when dealing with her patients or their parents. Further, she states that the monitoring provision in paragraph 5 will allow regular assessments of the Investigated Member's communication skills.
- [4] With respect to costs, the Complaints Director states that it is generally appropriate that members who have engaged in unprofessional conduct bear the costs relating to the investigation and hearing. Here, legal counsel advises that the costs are less than one quarter of the actual costs incurred.

Investigated Member's Submissions

- [5] The Investigated Member provided written submissions. The relevant portions of which are:

I take a lot of pride in my work as a Medical Diagnostic and Therapeutic Technologist and try very hard to ensure that I provide our patients with skillful and high quality work. These particular exams were difficult and challenging. I acknowledge that I let my desire to achieve the best exam results overshadow my personal interactions and behavior with the guardians of these 2 children. I never intended to be rude nor disrespectful, but I acknowledge that is how my actions were perceived and, with the benefit of hindsight, I can see why the comments I made to the guardians were inappropriate. I regret my behavior.

In terms of penalty, I respectfully ask the Hearing Tribunal to consider some important mitigating factors which I appreciate Ms. Akgungor raised in her letter. I was under tremendous stress in early August, 2016 and again, with the benefit of hindsight and time passed, I can now see that I did not manage myself or my stress very well. There were workplace issues

[REDACTED]. I frequently felt pressured or rushed especially when staff left or quit the department. New staff regularly required training or from scratch. This meant it was not uncommon for me to skip or shorten my breaks, or to postpone lunch or take no lunch in order to meet the patient and work demands.

At the same time

[REDACTED]. This is a source of significant pain and regret for me and I have had a lot of trouble managing that.

I was very tired, exhausted and unwell, but as a senior technologist, felt obligated to keep up my work.

[REDACTED]. Obviously, this was when these 2 incidents occurred. Without excusing my behavior during these 2 events, I would point out that they happened only days apart. Further, I would submit that they do not show a pattern of behavior; but rather the result of an accumulation of

circumstances I faced in my life at that time. On this point, I disagree with Ms. Akgungor; I do believe these events can be construed as an aberration in my practice. I have had no prior findings of unprofessional conduct with the College.

I have reviewed the College's proposed penalties as listed in Appendix "A" of attached to Ms. Akgungor's letter of July 14, 2017. I can see that the proposed penalties numbered 1 to 5 are focused on making me a better technologist and in particular how to better communicate with patients and reflect on my practices and behavior. I am in agreement with those proposed penalties. I promise I will do my best to redeem myself and learn better approaches for serving my patients. I love this profession and want to be a better technologist.

As you know, I could not afford my own lawyer or legal counsel to assist me in the investigation or the hearing. This long process has been very difficult on me as I have always taken pride in my work and it is very distressing for me to learn and, importantly realize, that my conduct was unprofessional. [REDACTED]

The College's proposed NAIT course and University of Alberta readings and tutorial will have a cost associated with them and as I said, I am agreeable to the College's proposed penalties in this regard. Between those courses, [REDACTED] and other financial obligations, I cannot agree to the College's proposal number 6 regarding costs. I am grateful my technical skills and judgment are not an issue and am willing to work very hard to improve my communication and self-reflection skills. I am hopeful the Hearing Tribunal will consider no award for costs; but in the alternative, at most, an amount of \$550.00 with time to pay in monthly installments over a 12 to 18 month period.

Decision

- [6] The Hearing Tribunal carefully considered the submissions from both the Complaints Director and the Investigated Member and made the decision to impose the sanctions proposed by the Complaints Director.
- [7] Bearing in mind the applicable *Jaswal* factors, the Hearing Tribunal concludes that as a regulated member of the College it was the Investigated Member's responsibility to communicate with patients and their parents in a professional and respectful manner. Technologists have an obligation to represent their profession in such a way as to impart confidence to the public, thus ensuring a safe and comfortable environment for patients. The orders sought achieve the goal of promoting the protection of the public.
- [8] The Hearing Tribunal notes that the parties agree on the majority of the orders sought by the Complaints Director. In relation to the issue of costs, the Hearing Tribunal has considered the hardships raised by the Investigated Member.
- [9] Also, the Hearing Tribunal has taken in consideration that the Investigated Member is [REDACTED]. We recognize that the costs requested by the Complaints Director will be a challenge for the Investigated

Member to pay. However, the Hearing Tribunal finds that the costs requested for are not unreasonable as they represent only 25% of the total estimated costs. The circumstances of the Investigated Member have been taken into consideration by the Complaints Director, and the Hearing Tribunal finds that the amount requested are appropriate and proportionate. The Hearing Tribunal also notes that the Investigated Member may request an extension of payments from the Complaints Director if the amounts are too onerous.

[10] In light of the foregoing, the Hearing Tribunal hereby makes the following orders pursuant to section 82 of the *Health Professions Act* (HPA):

1. Ms. ■ shall provide written confirmation to the Complaints Director, within thirty (30) days of receiving the written reasons for decision of the Hearing Tribunal on penalty, confirming that she has reviewed and understood the following:
 - i. The College's Code of Ethics;
 - ii. The College's Standards of Practice;and has completed
 - iv. The College's Regulation Education Module.
2. Within thirty (30) days of receiving the written reasons for decision of the Hearing Tribunal on penalty, Ms. ■ will submit a 1000 – 1500 word (typed) paper to the Complaints Director which illustrates self-reflection on the importance of adaptive practice and communication as a health professional in light of the College's Standards of Practice.
3. Prior to July 31, 2018 (or subject to timelines at the discretion of NAIT who will be requested to grant special dispensation for Ms. ■ to undertake certain courses in professional conduct), Ms. ■ will undertake, at her own cost and participate to the satisfaction of the instructor the following course at NAIT.
 - a. Professional Practice course (inclusive of a simulation), in one of the NAIT School of Health and Life Sciences programs, as determined and finalized by the Complaints Director who will liaise with NAIT and agree to the specifics of the course at NAIT's discretion, and provide evidence of successful completion of the course to the Complaints Director.
4. Within ninety (90) days of receiving the written reasons for decision of the Hearing Tribunal on penalty, Ms. ■ will complete the readings on emotional intelligence provided by a member of the Faculty of the School of Medicine and Dentistry at the University of Alberta, and participate in a tutorial discussion session on these readings, to the satisfaction of the instructor. Ms. ■ will provide evidence to the Hearings Director of having satisfactorily completed the readings and tutorial discussion session.

5. Ms. ■ will share the decisions of this Hearing Tribunal with her employer and provide written confirmation to the Hearings Director of having done so within thirty (30) days of receiving the written reasons for decision on penalty. For the period of one (1) year following the receipt of the written reasons for decision of the Hearing Tribunal on penalty, Ms. ■ will provide a report from her employer to the Complaints Director at three month intervals which comments on Ms. ■'s communication skills and whether Ms. ■ is meeting the employer's expectations in terms of professional communication.
6. Subject to paragraph 7 below, Ms. ■ will be responsible for a portion of:
 - a. The cost of legal expenses and legal services provided to the College, Complaints Director and Hearing Tribunal;
 - b. The costs of creating the record of the proceedings;
 - c. The costs of the investigation as attributed by the College;

With such portion not to exceed \$5,500.00.

7. Ms. ■ must advise the Hearings Director within thirty (30) days of being provided with a copy of the Hearing Tribunal's decision whether she wishes to pay the costs in a lump sum or whether she wishes to pay installments;
 - a. If she elects to pay the costs in a lump sum:
 - i. The costs will be due and owing sixty (60) days after Ms. ■ is provided with a copy of the Hearing Tribunal's written decision on penalty.
 - b. If Ms. ■ elects to pay the costs in installments:
 - i. The costs shall be paid in equal monthly instalments over a period of eighteen (18) months;
 - ii. Ms. ■ must provide the Hearings Director with eighteen (18) postdated cheques made out to the ACMDTT for each monthly installment; and
 - iii. The first installment must be paid within sixty (60) days after the Hearing Tribunal's decision on penalty is provided to Ms. ■ and the remaining post-dated cheques must be provided at that time.
8. The deadlines referred to in paragraphs 1, 2, 3, 4, 5 and 7 may be extended for a reasonable period of time, in the sole discretion of the Hearings Director. If Ms. ■ is seeking an extension, Ms. ■ must contact the Hearings Director to request an extension in advance of the deadline, must indicate why she cannot comply, and must confirm the date of the newly proposed deadline.

9. In the event that the Ms. ■ fails to successfully comply with the orders by the deadlines set out above, or by such other date is agreed to by the Hearings Director, her permit to practice will be automatically suspended pending compliance.

Signed on behalf of the Hearing Tribunal this 22 day of September, 2017.

A handwritten signature in black ink, appearing to read 'C McIntyre', written over a horizontal line.

Christy McIntyre, Chair