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## CASE SUMMARY: PROFESSIONAL'S PATTERN OF DISRUPTIVE CONDUCT CAN CONSTITUTE UNPROFESSIONAL CONDUCT

**Administrative law – Decisions reviewed – College of Physicians and Surgeons – Suspension – Judicial review – Appeals – Standard of review – Correctness – Physicians and surgeons – Professional misconduct or conduct unbecoming**

*Al-Ghamdi v. College of Physicians and Surgeons of Alberta*, [2020] A.J. No. 207, 2020 ABCA 71, Alberta Court of Appeal, February 19, 2020, F.F. Slatter, M.B. Bielby and B.K. O'Ferrall JJ.A.

The appellant orthopedic surgeon was charged with unprofessional conduct by the College of Physicians and Surgeons of Alberta in relation to an 11-year period of disruptive conduct at Queen Elizabeth II Hospital in Grand Prairie, Alberta.

After a 47 day hearing, the Hearing Tribunal found eight allegations of unprofessional conduct were proven and found an allegation of disruptive conduct was made out. The Hearing Tribunal imposed a suspension and conditions.

The appellant appealed the Hearing Tribunal's decision to the Review Panel. The Review Panel dismissed the appeal. The appellant then appealed to the Court of Appeal under s. 90 of the *Health Professions Act*, R.S.A. 2000, c. H-7.

The appellant raised various grounds of appeal in relation to the findings of unprofessional and disruptive conduct. The Court of Appeal dismissed the appeal. It made the following findings in support of that dismissal.

The Court found workplace conduct that has a serious detrimental effect on the provision of patient care, and the efficient and sustainable operation of a healthcare facility, can fall within the definition of unprofessional conduct if it is "sufficiently egregious to be what could reasonably be called 'misconduct.'"

The Court found conduct could be unprofessional conduct if the conduct relates to "outcomes," i.e., cultivating a culture of fear and distrust, rather than "behaviour." Certain types of conduct, if done intentionally, to deliberately create a particular outcome could be described as unprofessional. The Court found the Hearing Tribunal was entitled to base its findings of unprofessional conduct on the fact the appellant was a significant contributing cause of the culture at the hospital.

The Court found it was not necessary to consider whether a three-year suspension, that could be reduced to two years if certain conditions were met, was disproportionate in the circumstances because it was effectively moot. The appellant never applied for a stay, over two years had elapsed, and the appellant had taken no steps to complete the conditions to reduce the length of the suspension.

While the Hearing Tribunal and Review Panel made several errors in their treatment of the evidence, in the context of all of the other evidence on the allegation of "disruptive conduct," those errors were not sufficient to undermine the overall finding of unprofessional conduct. There was no reviewable error. The appeal was dismissed.

This case was digested by [Joel A. Morris](#), and first published in the LexisNexis® Harper Grey Administrative Law Netletter and the Harper Grey Administrative Law Newsletter. If you would like to discuss this case further, please contact Joel A. Morris at [jmorris@harpergrey.com](mailto:jmorris@harpergrey.com).