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CASE SUMMARY: COLLEGE OF PHYSICIANS OF ALBERTA FAILED TO AFFORD AN INTERNATIONALLY TRAINED PHYSICIAN ADEQUATE PROCEDURAL FAIRNESS

Administrative law – Decisions reviewed – College of Physicians and Surgeons – Professions – Physicians and surgeons – Judicial review – Compliance with legislation – Procedural requirements and fairness – Standard of review – Reasonableness

Mohamed v. College of Physicians and Surgeons of Alberta, [2019] A.J. No. 1134, 2019 ABQB 657, Alberta Court of Queen’s Bench, August 22, 2019, M.H. Hollins J.

The applicant, Dr. Mohamed, is an anesthesiologist who completed his medical training in Egypt with 16 years of clinical experience. The College of Physicians and Surgeons of Alberta (the “College”) required Dr. Mohamed to complete a three-month Practice Review Assessment (“PRA”) before commencing practice in Alberta. The College assigned an assessor who, after several weeks, informed the College that Dr. Mohamed was unlikely to successfully complete the PRA. The College accepted the assessor’s recommendation and terminated the PRA before Dr. Mohamed had an opportunity to complete it.

Dr. Mohamed filed an appeal to the College’s Appeals Committee. The Appeals Committee dismissed Dr. Mohamed’s appeal after accepting a recommendation of the College that Dr. Mohamed complete two additional years of university education before he be permitted to reapply for another PRA (the “Decision”). Dr. Mohamed brought an application for judicial review of the Decision.

The judicial review engaged two separate standards of review. The substance of the Decision was reviewed on a reasonableness standard as it involved the interpretation of the College’s home statute. The College’s process underlining the PRA was reviewed for procedural fairness. After considering the factors described in *Baker*, the Court held that the judicial review required a high degree of procedural fairness.

The Court held that Dr. Mohamed was not afforded procedural fairness in several respects. First, Dr. Mohamed was not provided with a current copy of the College’s PRA Manual. Second, Dr. Mohamed was not provided with an adequate orientation before the PRA, including the opportunity to receive a current copy of the PRA Manual. Third, the Court found that the assessors utilized a different tool to assess Dr. Mohamed, notwithstanding that the Decision held that the assessment tool would not have affected the outcome. The Court rejected the College’s submission in that regard, observing that it specifically informed Dr. Mohamed to prepare for the PRA using assessment tools that were subsequently replaced. Fourth, the Court accepted that Dr. Mohamed was not provided an opportunity for meaningful feedback given the early termination of the PRA and the assessors recommendation to terminate the PRA without consulting with other physicians who observed Dr. Mohamed during the PRA.

In the circumstances, the Court held that the College failed to afford Dr. Mohamed the high degree of procedural fairness required in the circumstances. The Court was not able to assess the substance of the Decision given the lack of sufficient procedural fairness. In the result, the Court quashed the Decision and granted Dr. Mohamed the right to undertake another PRA, to be considered his first attempt, with a different assessor.

This case was digested by [Jackson C. Doyle](#), 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 Jackson C. Doyle at jdoyle@harpergrey.com.