



Summary of Decision of Hearing Committee re Settlement Agreement

Dr. Stephen Harley

Halifax Regional Municipality, Nova Scotia

By Decision dated August 13, 2013, a Hearing Committee of the College of Physicians and Surgeons of Nova Scotia ("College") accepted a Settlement Agreement advanced by the College and Dr. Stephen Harley, and recommended by Investigation Committee "C" of the College pursuant to section 57 of the *Medical Act*.

The Settlement Agreement contained agreed facts, the allegations against Dr. Harley, the admissions of the Dr. Harley, and the agreed disposition.

Agreed Facts

Dr. Harley has been practicing medicine as a family practitioner since 1998. Commencing in 2004 Dr. Harley began to abuse drugs. To obtain these drugs, he wrote fraudulent narcotics prescriptions for family and friends which he diverted to his personal use.

This conduct resulted in a complaint to the College in July of 2008, and Dr. Harley removed himself from practice. A Settlement Agreement was approved by a Hearing Committee of the College on December 19, 2008. As part of the Settlement Agreement, Dr. Harley underwent a number of treatment programs and assessments. He was reprimanded by the College and permitted to return to practice under a series of restrictions and conditions, including a requirement for regular urine screening for drugs.

Dr. Harley returned to practice in early 2009, but was prohibited from issuing narcotic prescriptions until such time as the College reinstated these privileges in accordance with the terms of the 2008 Settlement Agreement.

In late 2009 Dr. Harley obtained narcotics through non-prescription means for his own use. He failed to provide a urine sample when requested to do so by the College, and circumvented the random monitoring urine testing process outlined in the 2008 Settlement Agreement.

When these matters were brought to the College's attention in the fall of 2009 Dr. Harley agreed not to engage in the practice of medicine until matters with the College were resolved.

Dr. Harley underwent treatment from a variety of treatment providers, all of whom provided information to the College in late 2010 to the effect that Dr. Harley was fit to return to practice at that time.

The Hearing Committee of the College approved a second Settlement Agreement dated December 16, 2010, where Dr. Harley's licence was suspended for a period of six months, and he was required to abide by a series of conditions and restrictions including the abstinence from a list of various prohibited substances.

In early 2011 as the result of the urine screening process in place under the provisions of the 2010 Settlement Agreement, the College received a report that Dr. Harley had tested positive for one of the prohibited substances. As Dr. Harley's licence to practice medicine had not been reinstated following the 2010 Settlement Agreement, there was no suspension of his licence imposed at that time.

Following discovery of Dr. Harley's violation of the 2010 Settlement Agreement, he provided detailed information to the College advising of his previous use of drugs, and acknowledged prior deception in his dealings with the College. There were a number of personal circumstances that he indicated were relevant to his relapses and he was now prepared to fully address those circumstances and commit to recovery.

Dr. Harley attended for treatment through a variety of treatment providers from 2011 to the present. He underwent different forms of treatment and counselling than he had undertaken on earlier occasions.

The College obtained a variety of independent assessments regarding Dr. Harley's recovery and fitness to return to practice.

In addition to the concerns respecting Dr. Harley's fitness to practice, because Dr. Harley had been out of medical practice for a period in excess of three years (since November 2009), Dr. Harley initiated a request to undergo a competence assessment, which was conducted through a facility in British Columbia. Results of the competence assessment were favourable toward Dr. Harley.

In summary, Dr. Harley had appeared before the College on two earlier occasions to address issues arising from his drug addiction. Previous attempts at recovery were unsuccessful. Dr. Harley provided evidence of the new form of treatment he was undergoing, which from the accounts of both Dr. Harley's treatment providers and the College's independent assessors, had resulted in greater promise of sustained recovery. Evidence from these assessors and treatment providers unanimously concluded Dr. Harley was fit to return to the practice of medicine, with appropriate conditions and restrictions in place.

Allegations referred to Hearing Committee

In the context of these facts, the following allegations were referred by the Investigation Committee to the Hearing Committee at the College:

- (a) Dr. Harley breached the terms of the December, 2010 Settlement Agreement with the College by failing to abstain from opiates;

- (b) On several occasions between 2008 and early January, 2011, Dr. Harley circumvented the requirements for random drug screening outlined in the 2008 and 2010 Settlement Agreements by using a device with urine samples that were not his own;
- (c) On several occasions prior to 2011, Dr. Harley used the prescription pads of his physician colleagues to write prescriptions for narcotics using patient health care data that he subsequently obtained for his own use;
- (d) On several occasions prior to 2011, Dr. Harley misappropriated narcotics from the medical clinic where he was engaged in the practice of medicine;
- (e) On several occasions prior to 2011, Dr. Harley obtained narcotics from individuals who had these narcotics for distribution and/or use that was not medically indicated; and
- (f) On several occasions prior to 2011, Dr. Harley misled members of the Investigation and Hearing Committees of the College, and several of his treatment providers, by actively using opiates that were fraudulently obtained, and advising members of these Committees and his treatment advisors that he was maintaining abstinence.

Agreed Upon Disposition

In the Settlement Agreement Dr. Harley admitted the allegations set out in the Notice of Hearing and admitted these allegations constituted a disciplinary matter within the meaning of the *Medical Act*. He consented to a reprimand for his professional misconduct, a retroactive suspension since January 2011, conditions to be met prior to the lifting of the suspension, and significant conditions and restrictions upon return to practice. The conditions and restrictions included:

- (a) An agreement to maintain abstinence from alcohol and non-prescribed drugs;
- (b) Restrictions on the use of prescription medication;
- (c) A requirement to continue with regular treatment from a variety of named treatment providers;
- (d) Ongoing participation in a program of random urine monitoring, hair sample monitoring, and breathalyser testing;
- (e) A permanent prohibition against prescribing drugs under Schedule I of the *Controlled Drugs and Substances Act*;
- (f) A requirement that he not accept any return medications from patients;
- (g) A requirement that he not take on any patients who require controlled drugs;
- (h) A requirement that he shall only practice medicine in a location where other physicians are engaged in practice, to be approved by the Registrar;
- (i) A requirement for a graduated return to practice;

- (j) A prohibition against engaging in primary care obstetrics, emergency room work or hospital based practice;
- (k) A requirement to have a mentor approved by the Registrar of the College;
- (l) A requirement to complete certain courses and to maintain membership with the College of Family Physicians of Canada, including participation in continuing medical education requirements required by this membership;
- (m) A requirement that he participate in a random audit of his charts;
- (n) Payment of costs in an amount agreed upon with the College.

Decision of Hearing Committee

The Hearing Committee reviewed the Settlement Agreement in detail and determined to accept the Settlement Agreement. The Hearing Committee observed that Dr. Harley had made good progress in his recovery; that no impediments to return to medical practice had been identified; that he had been abstinent from drugs since early 2011; that he had a new treatment program that seemed to be effective; and that a series of stringent conditions had been put in place to safeguard patients. The Hearing Committee concluded:

“The Hearing Committee agrees with the general approach of the College which is to make every effort to permit a member to return to practice so long as the public is protected. In this case, it is difficult to conceive of conditions and restrictions which could be more strict than those accepted by Dr. Harley in the Settlement Agreement. We have therefore concluded that it is in the public interest to accept the Settlement Agreement.

We acknowledge that Dr. Harley’s drug addiction is an illness and that this illness is very difficult to overcome and manage. It is therefore appropriate and just to give Dr. Harley an opportunity to return to practice in light of the successful management of his addiction ... and his demonstrated competence. We are also aware that this is an illness which can result in a relapse. It is important for Dr. Harley to appreciate the protection of the public will ultimately take precedence over helping him in his struggle with addiction. If Dr. Harley fails to meet the conditions and restrictions in this Settlement Agreement, it is likely that it will be necessary to revoke his licence to practice medicine.”

Accordingly, the Hearing Committee of the College approved the Settlement Agreement by Decision dated August 13, 2013.

MAH/dp