

PROVINCE OF NOVA SCOTIA)
COUNTY OF HALIFAX)

IN THE MATTER OF: The *Canada Evidence Act*

- and –

IN THE MATTER OF: The *Medical Act*, R.S.N.S. 1995-96, c.10

- and –

IN THE MATTER OF: Dr. David Russell

SETTLEMENT AGREEMENT

N.B. THOSE ITEMS THAT ARE BOLDED AND UNDERLINED IN THE BODY OF THIS AGREEMENT ARE SUBJECT TO A PUBLICATION BAN AND ARE NOT TO BE DISCLOSED TO THE PUBLIC

Dr. David Russell, a medical practitioner in the Province of Nova Scotia, and a member of the College of Physicians and Surgeons of the Province of Nova Scotia (the "College"), hereby agrees with and consents to the following in accordance with the provisions of the *Medical Act*, R.S.N.S. 1995-96, c. 10.

I. STATEMENT OF FACTS

1. Dr. David Russell is a 43-year-old physician, who has practiced medicine as a family practitioner in Nova Scotia since 1993.
2. Dr. Russell used marijuana regularly from approximately 1985 until 2003. His consumption increased from time to time during periods of anxiety or depression. His use of marijuana occurred during the evenings and never during office hours.
3. In the fall of 2003, patients of Dr. Russell returned unused medications to his office, including some Percocet and Demerol. Dr. Russell initially tried the Percocet, with no effect. After trying the Percocet, he then started using MS Contin, beginning with smaller doses and increasing to larger doses.

4. He progressed from these medications to IV Demerol, and began giving himself injections of IV Demerol, increasing his doses to 100 mgm, accompanied by either Benadryl or Gravol. This took place in his office, after office hours. In early January 2004, he began to give himself these IV Demerol injections during office hours in his office.
5. Following his use of Percocet, MS Contin and IV Demerol, Dr. Russell then began experimenting with different methods of drug injection. **(publication ban)** Over the course of the fall of 2003, his usage increased to one to two shots per day, three to four times per week. He engaged in this practice while in his office, and never at home.
6. In January 2004, a patient returned some unused Tuinal 200 mgm tablets to Dr. Russell. On January 14, 2004, Dr. Russell injected **(publication ban)** morphine, and approximately one to two hours after doing this, he then ingested the Tuinal. The self-injection of morphine and the ingestion of Tuinal took place in Dr. Russell's office, following which Dr. Russell saw patients in his office.
7. Dr. Russell's wife took him to the Emergency Department of the QEII Health Sciences Centre at 1:52 pm on January 14, 2004. The Emergency Department Record documents that Dr. Russell fell asleep while seeing two patients earlier that day. At the QEII Emergency Department, a toxic screen was done which came up positive for marijuana, barbiturates, and opiates.
8. On January 15, 2004, Dr. Russell contacted the Professionals' Support Program, provided through the Medical Society of Nova Scotia (now Doctors Nova Scotia). On February 3, 2004, Dr. Russell contacted the College for advice and assistance. He indicated he had voluntarily stopped working on January 24, 2004. Dr. Russell then had a number of meetings with physicians at the Professionals' Support Program.
9. On February 10, 2004, Dr. Russell was referred to the College, as he was unwilling to comply with the recommendation of the Professionals' Support Program that he undergo an intensive inpatient program without a full psychiatric assessment, which was scheduled for February 13, 2004, in order to determine if inpatient admission was necessary. On February 10, 2004, before Dr. Russell was aware that a letter of complaint had gone to the College, he advised the Professionals' Support Program that he was willing to undergo the inpatient program.
10. On February 10, 2004, the Investigation Committee of the College issued a temporary suspension of Dr. Russell's license to practice, to become effective February 11, 2004. The temporary suspension was ordered to continue in effect until final resolution of the matter by a Hearing Committee.

11. On February 11, 2004, Dr. Russell confirmed to the College that he was willing to attend an inpatient treatment facility with respect to his substance dependence.
12. On February 13, 2004, Dr. Russell commenced treatment at Homewood Health Centre Inc. in Guelph, Ontario (“Homewood”), and remained at Homewood until March 18, 2004. The Discharge Report from Homewood advised that Dr. Russell’s prognosis was “good, if discharge plans are followed through”. Homewood then provided several discharge recommendations, including abstinence from all mood-altering substances; continuing contact with his psychiatrist; maintaining a connection with Narcotics Anonymous; following through with a program of after-care to be arranged through his addictions counsellor; enrolment for after-care with the Physician Health Program in Nova Scotia; attendance at a Health Professionals’ Support Group; participation in a random urine monitoring program for a minimum of five (5) years; and a condition that he should only return to work after all recovery supports were in place, and when he did return to work, it should be on a graduated basis.
13. Dr. Russell returned to Nova Scotia from Homewood on March 19, 2004, following which he attended appointments with his family physician, a psychiatrist, a psychologist and an addictions counsellor. He also attended Narcotics Anonymous meetings.
14. On March 26, 2004, Dr. Russell wrote to the College advising “I have a firm commitment to my recovery, including total abstinence from all proscribed substances”
15. Arrangements were then made between the College and Dr. Russell for Dr. Russell to be evaluated by an assessor approved by the College in order to determine the required elements of a monitoring program, as recommended by Homewood. A report from this assessor (the “Assessor”) was prepared dated May 13, 2004, and a copy of the report was provided to the Investigation Committee. The Investigation Committee then met on May 20, 2004 to review the report, following which the Investigation Committee indicated they would agree to Dr. Russell’s return to practice subject to Dr. Russell complying with recommendations put forward by the Assessor. These recommendations included, among others, that Dr. Russell participate in a random urine monitoring program, maintain negative readings from such program, and relinquish his prescription privileges for controlled substances.
16. On June 21, 2004, Dr. Russell agreed to comply with the conditions recommended by the Assessor. The temporary suspension of his license was lifted at that time, subject to Dr. Russell’s ongoing compliance with the monitoring program.
17. After the monitoring program was put in place, Dr. Russell violated the terms of the monitoring program by testing positive for marijuana in a test on August 19,

2004. Further, the test conducted as part of the monitoring program on October 4, 2004 showed a positive result for the presence of cocaine. The College arranged for the October 4, 2004 sample to be checked at a second independent laboratory, which also confirmed the positive result for the presence of cocaine.
18. A hair sample arranged to be provided by Dr. Russell and taken on November 23, 2004, including hair growth representative of the previous six months, showed no presence of cocaine.
 19. Following receipt of the results of the October 4, 2004 test, the Investigation Committee of the College again suspended Dr. Russell's license to practice medicine. That suspension has remained in effect pending the resolution of this matter by the Hearing Committee.
 20. Since the re-imposition of a suspension of Dr. Russell's license on October 14, 2004, Dr. Russell has taken the following steps toward recovery:
 - He has had consultations with his psychiatrist on Oct. 19, 2004 and Feb. 1, April 19, May 17, July 27, Aug. 29, Sept. 26, and Oct. 24 2005 (and scheduled for Nov. 21, 2005) ;
 - He has followed his family physician's and his psychiatrist's prescriptions for treatment of his illness;
 - He has attended with his psychologist for cognitive behavioural therapy on Feb. 21, Feb. 28, Mar. 30, May 9, Aug. 3, Sept. 19, Sept. 26, Nov. 10, and Nov. 17, 2005;
 21. In 2005, the parties agreed that an independent psychiatric and substance abuse assessment should be conducted of Dr. Russell prior to the disposition of this matter by a Hearing Committee of the College. Arrangements were made for the conduct of an independent psychiatric and substance abuse assessment by a specialist in psychiatry and addiction medicine (the "Specialist"). The Specialist's report dated November 7, 2005 is attached as Schedule "A" to this Settlement Agreement, **the entirety of which is subject to a publication ban.**
 22. The Specialist concluded in his assessment that Dr. Russell has cannabinoid dependence and opioid abuse/sub-threshold opioid dependence, in addition to a social anxiety disorder and major depressive disorder. The Specialist noted that Dr. Russell "is not working a program of recovery as set out by the Homewood Drug and Alcohol Service. He does not believe that he is dependent, and therefore does not believe that he needs to work such a program." The Specialist concluded, "Given that he does not feel that he needs to work a full program of recovery, his prognosis for maintaining that recovery is guarded at best. However, it must be emphasized that in the end the individual must determine the path of recovery, and that if recovery is maintained, he should not be penalized."

II. COMPLAINT

23. In the Notice of Hearing issued by the College, Dr. Russell was charged with the following:

On behalf of the College of Physicians and Surgeons of Nova Scotia, notice is hereby given to you that in consequence of a complaint made against you, a Hearing is to be held into the following charges:

1. That being registered under the *Medical Act*, S.N.S. 1995-96, c. 10, and being a medical practitioner in the Province of Nova Scotia, it is alleged that you did one or more of the following:

- (i) Commencing in or about September 2003, you used narcotics or other controlled substances by taking oral doses of Demerol, Percocet and MS Contin from office supplies of these medications intended for patients, and/or from medications that had been returned to your office by patients;
- (ii) In or about the fall of 2003, you began using other opiates, including injectable Demerol and MS Contin, (publication ban);
- (iii) On or about January 14, 2004, following a self-injection of morphine, you took a barbiturate that had been returned by a patient, causing you to be impaired while seeing patients, and causing you to be taken to the Emergency Department of a hospital;
- (iv) Following an agreement you reached with the College to refrain from taking narcotics or other controlled substances, and to attend random urine monitoring to prove such abstinence, you breached such agreement in that on or about August 19, 2004, you tested positive for cannabinoids;
- (v) You are substance dependant which adversely impacts your ability to practice medicine.

And in relation to any or all of the above allegations, you are alleged to be guilty of professional misconduct and/or professional incompetence arising out of physical or mental incapacity.

III. ADMISSION

24. Dr. Russell admits the above allegations and agrees that the allegations amount to professional incompetence arising out of physical or mental incapacity.

IV. DISPOSITION

25. Dr. Russell hereby agrees to the following:
- (a) The continuation of the suspension of his license to practice medicine until compliance with the remaining terms of this paragraph 25.
 - (b) Subject to subparagraph (e), Dr. Russell shall abstain from all cannabinoids, opioids, benzodiazepines, barbiturates, cocaine and all other illicit mood-altering substances, and all prescription or non-prescription medications, except as specifically prescribed by his family physician or treating psychiatrist. (the "Prohibited Substances"), both of whom shall be made aware by Dr. Russell of the terms of this Settlement Agreement, including Schedule "A" attached hereto. Without limiting the generality of the foregoing, Dr. Russell specifically agrees that he shall not self-prescribe any medication, and also shall not prescribe medication to any family members.
 - (c) He shall attend regular visits with his psychiatrist, or such other psychiatrist as may be approved by the College. Dr. Russell agrees that he consents to the preparation and disclosure of quarterly reports from his psychiatrist to the College, in accordance with subparagraph (d) herein, during the first twelve (12)-month period following the approval of this Settlement Agreement, and thereafter semi-annual reports continuing for a period of five (5) years. The reports from the psychiatrist shall document Dr. Russell's ongoing compliance with recommended treatment, and shall contain a regular review of Dr. Russell's alcohol consumption and gambling. The College shall provide the psychiatrist with a copy of this full Settlement Agreement, including those items subject to a publication ban.
 - (d) Dr. Russell shall continue to have regular visits with his family physician and such psychologists as may be recommended by his psychiatrist. The College shall provide a copy of this Settlement Agreement to his

psychologist(s) and his family physician, and Dr. Russell hereby consents to, and requests his psychologist(s) and family physician to provide reports to his psychiatrist documenting compliance with any recommended treatment, and outlining his participation in such treatment since the date of the last report. The reports from the family physician and psychologist(s) shall be provided to the psychiatrist in sufficient time for the psychiatrist to incorporate reference to these reports in his quarterly and then semi-annual reports to the College, as outlined above in subparagraph (c).

- (e) In the event Dr. Russell becomes an inpatient in a health facility, use of benzodiazepines or opioids may be done only under close supervision while remaining in the facility. If required, in the opinion of Dr. Russell's treating physician, while an inpatient, only SSRI's should be used to treat anxiety and depression, and sleep aids shall be confined to trazodone or amitriptyline or such other medication (excluding Zopiclone) as may be prescribed by the treating physician. Such treating physician shall be provided with a full copy of this Settlement Agreement by Dr. Russell.
- (f) Dr. Russell agrees to commence a program of random body fluid monitoring for the detection of the Prohibited Substances, and agrees that he must maintain negative readings for such testing. If Dr. Russell maintains negative readings for a period of three (3) months following the commencement of such testing, the suspension of his license to practice medicine shall be lifted, and he shall be entitled to apply for a current license to practise medicine.
- (g) During the three (3)-month period outlined in subparagraph (f), no less than six (6) samples are to be taken. These samples are to be drawn on a random basis by East Coast Mobile (or such other entity as approved by the College), with the expense to be borne by Dr. Russell. A failure to attend for the request for random testing without an excuse approved by the College will be deemed to be a positive result. Dr. Russell agrees to be available to be contacted by East Coast Mobile between 8:00 am and 9:00 am seven (7) days per week during the time the random testing is in place. Copies of the test results are to be sent by East Coast Mobile to the Investigation Department of the College, which shall then forward copies of the results to Dr. Russell.
- (h) The random body fluid testing for detection of the Prohibited Substances shall continue for a period of five (5) years following the execution of this Settlement Agreement. During that period, Dr. Russell agrees to be bound by the terms of the random body fluid monitoring as outlined in subparagraph (g) above, with the sole exception being that the number of tests shall be determined by the tester, but shall not exceed one hundred and twenty (120) in total. In the event of any positive result from the

random body fluid monitoring test, or any violation of the terms of this Settlement Agreement, Dr. Russell's license to practice medicine shall be immediately suspended, and the matter shall be referred to a Hearing Committee of the College for determination with respect to further disposition.

- (i) The Hearing Committee of the College retains jurisdiction over this matter until satisfaction of all terms of this Settlement Agreement. In the event there are insufficient numbers of the Hearing Committee who are signatories to this Settlement Agreement to constitute a quorum, the College may appoint other members to a Hearing Committee in order to constitute a quorum to deal with any matter arising from the interpretation or implementation of this Agreement.
- (j) Dr. Russell shall be prohibited from prescribing controlled substances to anyone. He shall sign the necessary documents required by Health Canada, or other appropriate agencies, to ensure he has no authority to prescribe controlled substances. Further, he agrees that he shall not accept the practice of having patients return unused medication to him. A sign to this effect (incorporating the two provisions of this subparagraph) shall be posted in any office in which Dr. Russell is practising.
- (k) Once Dr. Russell has satisfied the requirement for three (3) months of negative random body fluid monitoring tests and otherwise meets the conditions for the issuing of a license to practise medicine, he shall return to work gradually, starting with half days. He shall continue working half days for the first four (4) weeks following the reinstatement of his license, and thereafter he shall abide by the opinion of his psychiatrist with respect to the timing of the gradual return to work on a full-time basis.

V. COSTS

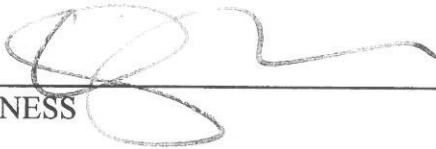
26. Dr. Russell agrees to pay \$25,000.00 as a contribution towards the costs of the College in its investigation and resolution of this matter. Such amount shall be paid by Dr. Russell in monthly instalments of \$1,562.50, commencing no later than three (3) months following the acceptance of this Settlement Agreement and continuing for a period of sixteen (16) months thereafter, or earlier if paid in full. In the event Dr. Russell defaults in any monthly payment, his license to practice medicine shall be immediately suspended, and the full amount of outstanding costs, plus interest calculated at the rate of 5%, shall fall immediately due and payable, and shall form a civil debt for which Judgment may be entered. In the event Dr. Russell otherwise breaches this Settlement Agreement, the full amount of outstanding costs shall be immediately due and payable and subject to the provisions of the preceding sentence.

VI. EFFECTIVE DATE

27. This Settlement Agreement shall only become effective and binding when it has been recommended for acceptance by the Investigation Committee of the College, and accepted by the Hearing Committee appointed to hear this matter.

DATED at Halifax, Nova Scotia, this 18th day of November, 2005.

WITNESS



DR. DAVID RUSSELL



WITNESS



MARJORIE A. HICKEY, Q.C.
Counsel for the College of Physicians
and Surgeons of Nova Scotia



CHAIR,

The Investigation Committee of the
College of Physicians and Surgeons
of Nova Scotia



CHAIR,

The Hearing Committee of the
College of Physicians and Surgeons
of Nova Scotia



This day of November, 2005.

This 24th day of November, 2005.

SCHEDULE "A"

[Specialist's November 7, 2005 report]

subject to publication ban