PROVINCE OF NOVA SCOTIA)
COUNTY OF HALIFAX SS)

IN THE MATTER OF: The Nova Scotia Medical Act, R.S.N.S. 1989, c. 278, as amended,

- and -

IN THE MATTER OF: A Complaint of the Provincial Medical Board against DR. KHANDKER S. HOQUE, of Dartmouth, in the County of Halifax, Province of Nova Scotia,

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D E C I S I O N

Counsel: John P. Merrick, Q.C.
for the Provincial Medical Board

George M. Mitchell, Q.C.
Karen A. Fitzner
for Dr. Khandker S. Hoque

Members of Hearing Committee:

Alan J. Stern, Q.C., Chair
Dr. Robert Anderson
Dr. Marjorie Smith
Dr. Lynne Harrigan
Ms. Fiona Chinn-Yee

Date of Hearing: September 7th & 8th, & October 2nd & 21st, 1995

Date of Decision: December 1, 1995

INTRODUCTION

On July 14, 1995, the Provincial Medical Board gave notice to Dr. Khandker S. Hoque that, in consequence of complaints made against him to the Board, a hearing was to be held on the following charges:

THAT being registered under the Medical Act, R.S.N.S., 1993, c. 278, and being a medical practitioner in the Province of Nova Scotia:

(1) **With respect to your patient [redacted] on the 24th day of August, 1994, you diagnosed an estrogen deficiency and commenced estrogen replacement therapy without:**

(a) **taking an adequate medical history from the patient;**

(b) **performing an adequate physical examination of the patient;**

(c) **providing adequate counselling to the patient as to the potential risks and alternatives to estrogen replacement therapy;**

(d) **investigating a differential diagnosis; and**

(e) **planning an adequate follow-up schedule.**

(2) **With respect to treatment of your patient [redacted] on the 24th day of August, 1994, and considering her presenting symptoms, you acted inappropriately in that you compared her condition to a man ejaculating with a low sperm count; you told her that she was a very beautiful woman, you questioned her as to what she did when her husband woke up in the middle of the night; you told her that she would have to have a breast examination, and you attempted to hold her hand.**

(3) **With respect to treatment of your patient [redacted] on the 15th day of August, 1994, you prescribed the medication Amoxicillin and had her take a tablet of Amoxicillin in your presence:**

(a) **after being advised that your patient was allergic to penicillin; or alternatively**

(b) without taking an adequate medical history to determine if your patient had any allergies which would contraindicate the use of Amoxicillin for this patient.

(4) With respect to your medical practice generally, you lack adequate skill and knowledge necessary to carry on the practice of family medicine as a sole practitioner.

AND that in relation to the facts alleged, you have been guilty of professional misconduct as defined in Section 2(d)(ii) of the Medical Act.

At the commencement of the hearing, counsel for Dr. Hoque made two preliminary submissions:

1. That the first charge relating to [redacted] should be withdrawn or dismissed because the particulars of the charge did not reflect the particular complaint of Ms. [redacted]; and

2. That counsel for Dr. Hoque should be provided with a copy of the chart of Dr. [redacted], who saw Ms. [redacted] a short time after she was seen by Dr. Hoque.

Following representations by counsel, the Hearing Committee decided:

1. That there was no basis on which to dismiss Charge #1 prior to consideration of the evidence. The letter of complaint from Ms. [redacted] raised matters for the Provincial Medical Board to investigate and the Board is not restricted to the initial complainant's concerns when determining the particulars for charges for a hearing; and

2. Although Dr. [redacted] was unavailable for the hearing, her chart for Ms. [redacted] could be relevant. The Hearing Committee directed counsel for the

Provincial Medical Board to provide a copy of the chart to counsel for Dr. Hoque.

Counsel for the Provincial Medical Board requested that the Hearing Committee ban publication of the names of witnesses who testified at the Hearing. Section 33B(6) of the Medical Act provides that a hearing committee has all the powers and privileges of a commissioner appointed pursuant to the Public Inquiries Act. Section 5 of the Public Inquiries Act provides that a commissioner has the same privileges as a Judge of the Supreme Court.

In the circumstances of this matter the Hearing Committee determined that it was not necessary for the Committee to decide whether or not it had the authority to order that names of witnesses not be published. The hearing was public and there was no compelling reason to consider whether any part of the evidence should not be published.

STANDARD OF PROOF

The standard of proof required to prove a charge in discipline proceedings is a civil standard rather than the criminal standard of proof beyond a reasonable doubt.

A hearing committee must assess the evidence and in deciding the issues, the Committee must act on a balance of probabilities.

In Coates v. Ontario (Registrar of Motor Vehicle Dealers and Salesmen) (1988) 52 D.L.R. (4th) 272, 65 O.R. (2d) 526 (Div.Ct.), the Court stated at page 282:

> Nothing short of clear and convincing proof based upon cogent evidence will justify an administrative tribunal in revoking a license to practice medicine or to gain a livelihood in business.
>
> The concept that the standard of proof rises with the gravity of the allegation and the seriousness of the consequences has been reaffirmed in the recent decision of

the Supreme Court of Canada in R. v. Oakes (1986), 26 D.L.R. (4th) 200, 24 C.C.C. (3d) 321.

EVIDENCE - Charges #1 and #2

Charge #1:

This charge relates to the diagnosis made by Dr. Hoque with respect to [redacted] on August 24, 1994.

The Board called Ms. [redacted] and Dr. [redacted]

In addition to Dr. Hoque, his counsel called Dr. [redacted] and Dr. [redacted]

In a letter dated August 26, 1994, [redacted] stated that she made an appointment with Dr. Hoque on the morning of August 24, 1994, after she had suffered what she believed to be a mild heart attack. Ms. [redacted] is a grade 9 school teacher and was 43 years old at the time of her visit to Dr. Hoque. Ms. [redacted] said she told Dr. Hoque that she had suffered an attack in the early morning which brought on cold sweats, strong heart palpitations, light headedness and indigestion. She had suffered heart palpitations in the past when she was approaching her menstrual cycle. She stated that Dr. Hoque told her she was suffering from PMS and she responded by informing Dr. Hoque that she took the attack two days into her menstrual cycle. Dr. Hoque's response was that she would have to go on estrogen (Premarin) because she was undergoing the change of life and that she would have to stay on estrogen for the rest of her life. Dr. Hoque gave Ms. [redacted] a glass of water and told her to take an estrogen pill right away and he gave her a package of Premarin. During the course of

the meeting Dr. Hoque discussed a breast examination with Ms. [redacted], took her blood pressure and arranged for blood work at the Multi-Service Centre in Sackville.

In her direct testimony Ms. [redacted] stated Dr. Hoque told her that taking estrogen would change her life and that he did not take her health history before giving her this advice. She described a detailed conversation concerning the breast screening clinic and self-examination. She says she told Dr. Hoque that she was not going through her change of life and that she had not had any hot flashes. He did not discuss any other possible diagnosis with her or ask her about her stress level. She stated that Dr. Hoque told her about many advantages of estrogen and that this therapy changes women. She says he did not address her primary concern, i.e., the possibility she had suffered a heart attack. He told her to return to the office in 25 days.

Ms. [redacted] testified that she was not going through the change of life at the time of the hearing and that she has two sisters and is well versed in the symptoms of change of life.

Within 24 hours of her visit to Dr. Hoque, Ms. [redacted] visited her regular doctor, Dr. [redacted]. She did not have the blood tests but went for an EKG after being examined by Dr. [redacted] The EKG was normal and Dr. [redacted] concluded that the symptoms Ms. [redacted] suffered on August 24, 1994, resulted from the fact that Ms. [redacted] had not been eating very well and that she had been drinking too much coffee. She had not had a heart attack. Ms. [redacted] stated that her periods had always been regular up until August 24, 1994, and that they were irregular in the month following.

Dr. [redacted] was asked to provide an opinion to the Provincial Medical Board on the appropriateness of the treatment rendered by Dr. [redacted] to Ms. [redacted]. She was provided with relevant documentation and provided a report dated August 28, 1995.

The Hearing Committee accepted the qualifications of Dr. [redacted] to give an opinion on the degree of care and skill which could be expected from a prudent general practitioner of the same experience and standing as Dr. Hoque.

Dr. [redacted] expressed several concerns regarding the treatment provided by Dr. Hoque. These concerns included the fact that Dr. Hoque did not appear to have pursued the most threatening symptom, namely, the heart palpitations. She expressed the view that Dr. Hoque did not ask enough questions to provide the basis for a more definitive diagnosis and that he elected to treat Ms. [redacted] with estrogen without ascertaining relevant family history and without giving Ms. [redacted] an ample opportunity to decide whether or not she wanted to accept the risks and benefits of the medication. In her opinion the treatment of Ms. [redacted] by Dr. Hoque was not appropriate or adequate and his treatment displayed a lack of adequate skill and knowledge in his practice.

In his written response to the Board dated September 26, 1994, Dr. Hoque stated that Ms. [redacted] presented on August 24, 1994, with the following complaints:

1. palpitations
2. pain and tightness in her chest
3. hot flashes and sweating
4. insomnia
5. irritability
6. tearful eyes
7. anxious

He stated that his observations during the approximately 15-minute appointment included:

1. The patient was observed to have reddening of the face and neck indicative of a 'hot flush' which lasted for three to four minutes;

2. The patient appeared shakey and emotional.

He stated he told his patient that these symptoms could be related to hormonal changes, specifically estrogen deficiency. He told her that "all these symptoms may constitute Premenstrual Syndrome (PMS) ..." He advised her of several benefits of taking estrogen. In his letter he did not refer to another possible diagnosis or comment on the possibility that Ms. [redacted] had suffered from any kind of heart attack.

Dr. Hoque provided his Curriculum Vitae (Tab 9 - Exhibit 6). He received a Medical Degree from Dacca Medical School in Bangladesh in 1954 and was engaged in general practice in Bangladesh until 1959. He did post-graduate work in Internal Medicine in the United States from 1961 to 1963 and did a third-year residency in Internal Medicine at Camp Hill Hospital in Halifax in 1964. In 1969 he passed the L.M.C.C. exam which qualified him to practice medicine in Canada and he completed studies in radiology. From 1969 until 1979 he was a staff radiologist at St. Martha's Hospital in Antigonish. From 1979 until 1986 he was a part-time radiologist at two hospitals on the Eastern Shore of Nova Scotia and spent the remaining 75 percent of his time in a sole general practice. From 1989 until 1993 Dr. Hoque maintained offices for his real estate development business and continued to see several hundred patients in a room in the same premises although he did not bill M.S.I. for this work nor did he receive money from his patients. Dr. Hoque then took a year off and in 1994 he contacted the Provincial Medical Board, and after completing a program of study, obtained an M.S.I. number and shortly thereafter, in June, 1994, commenced practicing at Enfield, Nova Scotia.

In his testimony Dr. Hoque stated that he had about 1,000 patients, that his practice was well organized and that he has an extensive medical library and reads medical journals each month.

By August, 1994, Dr. Hoque was practising on his own.

When Ms. [redacted] visited Dr. Hoque on August 24, 1994, he had her chart from the practice he had taken over. He stated that she was anxious to know whether she had

suffered a heart attack. He knew she had not suffered a heart attack because she would have needed immediate attention. The palpitations and tightness in the chest did not indicate a heart attack. She did not have angina because she had been at rest when the symptoms occurred. He said Ms. [redacted] appeared to be on edge and in a depressed mood.

When questioned by his counsel, Dr. Hoque described a perimenopausal stage that presents about four to eight years prior to the cessation of menstruation. He stated that he had been studying the benefits of hormone replacement therapy for several years and some of the major benefits included the prevention of coronary artery disease and osteoporosis and that the quality of life for most women who took this therapy was greatly improved.

Dr. Hoque concluded that Ms. [redacted] had perimenopausal syndrome after about a ten-minute discussion with her. He says this was a tentative diagnosis. He states he told Ms. [redacted] that he did not think she had a heart attack. Although he gave estrogen to Ms. [redacted] on this occasion, it was not his normal practice to do so. He thought Ms. [redacted]'s symptoms fit the classic definition of perimenopause.

Dr. Hoque produced a blood test requisition form which he stated was the same kind of form used for Ms. [redacted] and this form had more than 20 items checked off. Ms. [redacted] agreed that such a form was used but far fewer items were checked.

Dr. Hoque testified that Ms. [redacted] had a hot flash while she was in his office. He said her neck got red and then the redness disappeared. Ms. [redacted]'s testimony on this point was that she had never had any hot flashes and that her neck was probably sunburned on August 24, 1994.

When Dr. Hoque was questioned about his use of the words "premenstrual syndrome" in his letter to the Board, he stated that this was a misspelling and that the word should have been "peri-menopausal syndrome".

Dr. Hoque referred to the office chart for Ms. [redacted] She had been treated for PMS in the past.

Dr. [redacted] testified on behalf of Dr. Hoque. He had been provided with relevant materials and the Hearing Committee accepted his qualifications to provide opinions as a gynaecologist.

Dr. [redacted] described the symptoms of perimenopause and the higher risk of heart disease for women as they proceed into the menopause stage. He stated the long-term benefits of estrogen therapy, including reduced risk of heart disease and osteoporosis and he noted the risks and possible side effects.

When asked about a differential diagnosis for Ms. [redacted], he stated that a heart attack would be way down the list when dealing with a healthy athletic female who is still menstruating and age 43 years. One possible diagnosis would be a thyroid disfunction. In a letter dated September 7, 1995, (Exhibit 8), Dr. [redacted] stated:

> Knowing her symptoms, this therapy was not inappropriate and very well may have been beneficial. Of all the medications given, Premarin may have been the safest considering the drug profile and its action and side effects.
>
> If my reading of what information I have available is correct, Dr. K. S. Hoque thought he was dealing with a woman presenting with symptoms and signs of perimenopause, treated with test dose of Premarin, spent 15 minutes discussing HRT (more than most) and was practising appropriate medicine when compared to his peers.

Charge #2:

In her letter to the Provincial Medical Board, Ms. [redacted] said she did not like the fact that Dr. Hoque tried to hold her hand and she made the following statement.

> Dr. Hoque then told me I was bleeding but was probably not producing eggs just like a man ejaculating with a low sperm count. He also informed me of all the

> virtues of Estrogen stating that the wrinkles in my neck would disappear. He told me I was a very beautiful woman. He asked me what I did when my husband woke me in the middle of the night. Dr. Hoque told me I would have to have a breast examination since I was now taking Estrogen.

In her direct testimony Ms. [redacted] confirmed what she had stated in her letter of complaint and pointed out that she did not have a husband at the time.

In his letter of response dated September 26, 1994, Dr. Hoque denied comparing Ms. [redacted]'s situation to a male problem and denied discussing how she would respond to her husband in the middle of the night. He confirmed his denial about making such statements during his testimony.

FINDINGS - Charges #1 and #2

Charge #1:

We have concluded that Dr. Hoque, with respect to his patient [redacted], diagnosed an estrogen deficiency and commenced estrogen replacement therapy without taking the appropriate actions as set out in this charge.

In assessing the evidence of Ms. [redacted] and Dr. Hoque the Committee took into account many factors, including, the circumstances, the date of the initial letter of complaint, the contents of the letter of response and the manner in which these witnesses answered questions during the hearing. Ms. [redacted] had a very clear recollection of the events, in contrast with Dr. Hoque who did not give direct answers to many questions.

In terms of importance, we find that a key fault of Dr. Hoque was his failure to take an adequate history of the specific event that brought Ms. [redacted] to him as well as her previous history. His physical examination of Ms. [redacted] was brief and insufficient.

Do these failures on this particular occasion amount to professional misconduct as defined in Section 2(d)(ii) of the Medical Act? This section reads:

Professional misconduct means that a qualified medical practitioner has

> (ii) been guilty, in the opinion of a hearing committee, of misconduct in a professional respect or of conduct unbecoming a medical practitioner, or of incompetence ...

We have concluded that, although Dr. Hoque did not take the appropriate course of action with regard to diagnosis and treating the problems of Ms. [redacted] this single patient situation did not constitute professional misconduct.

Charge #2:

There is a conflict in the evidence between Dr. Hoque and Ms. [redacted]. We prefer Ms. [redacted]'s version of what was stated by Dr. Hoque for the reasons already stated.

We have concluded that some of the remarks made by Dr. Hoque to Ms. [redacted] were inappropriate. There is no suggestion any remarks were made in the context of sexual harassment. Dr. Hoque may have believed his comments and questions were justified in the context of a discussion of perimenopause and hormone replacement therapy.

In our opinion the statements made by Dr. Hoque fall short of what is required to establish professional misconduct. We are concerned that these events indicate a communications' problem and a failure by Dr. Hoque to evaluate the effect that his comments were having on his patient.

EVIDENCE - Charge #3

By letter to the Provincial Medical Board dated August 15, 1994, (Tab 7, Exhibit #2) [redacted] and [redacted] stated:

... My wife was into the Elmsdale Medical Clinic on Saturday, Aug 13 and was treated by Dr. [redacted] and at this time he prescribed Bioxen - 250 MG for her and advised her that if her condition persisted by the beginning of the week that she should see her family doctor.

Today on Aug 15, my wife made an appointment with Dr. Hoque at the Enfield Medical Centre as she was not getting any better. This doctor is our new family doctor as we just moved here from Moncton, N.B.

I took my wife to her appointment at 9:30 a.m. Monday Aug 15, 1994. At approximately 9:45 I was called into Dr. Hoque's office so that he could consult with me with regards to her allergies to medications. Both my wife and myself told Dr. Hoque, that she was allergic to, Penicillin, Codein, Demerol, Sulphers, Morphine, and metals.

Dr. Hoque proceeded to tell us both about Vitamin "C" and my wife should have pure orange juice and he specifically mentioned the brand name Tropicana. I advised him that I had pure orange juice at home and that it was not from a concentrate. Dr. Hoque looked at the Bioxin that was prescribed and said some doctors either didn't know or were totally ignorant towards vitamins. He told my wife not to take the Bioxin but to keep it as we might need it for something else later?? He then gave us a speel about intestine infections and yeast infections, whatever that has to with anything as my wife was experiencing aches and pains and very persistent coughing.

Dr. Hoque then proceeded to tell us how he didn't believe any one should pay for medicine and that he would give us free samples. At this time the Doctor remembered that he had something in his desk that he could give my wife. He gave my wife three package of Clavulin - 250, Amoxicillin and Clavulanate Potassium Tablets, each package containing three (3) tablets.

My wife said to this doctor three times that anything with "illin" in it she was not to take as she would have a severe reaction to. This doctor insisted that this medication mentioned above had no penicillon in it. He was also very insistent that she take one of these tablets in his office. Well not being doctors ourselves my wife took the tablet at approximately 9:50 a.m., and he also advised her to take one at noon (12:00 p.m.) and another at supper (5:00 p.m.). This would

> have given 750 mg to my wife of a medication that she would have had a severe reaction to. This is a 7 hr. period (read the attached pkg.).
>
> I was very leary of this so called doctor when I left his office, so we went directly across the road to the Enfield Pharmacy and asked the opinion of the pharmacist there what he thought of the prescribed or (sample prescription) or non-prescribed medicine. The pharmacist advised my wife not to take this medicine with her allergies to penicillon.
>
> At this point we went directly to the Elmsdale Medical Clinic and consulted with Dr. [redacted] and advised him about the tablet my wife had just taken. Dr. [redacted] responded immediately by giving my wife an injection of Benadryl in order to counteract what she had been given.
>
> Dr. [redacted] then had me take my wife to the Sackville Emergency Clinic to be observed and also for Xrays, and blood tests. Dr. [redacted] of the Sackville Medical Clinic advised us that [redacted] ad Phenomea on her left lung and also prescribed Salbutamal Inhaler APO. I am pleased to say that my wife's coughing is under control and I can now see an improvement with her.

[redacted] and [redacted] testified and confirmed the facts as outlined in their letter of complaint. They both stated that when they asked if a drug sample Dr. Hoque handed them contained penicillin, he said no and proceeded to look in a large book he had in his office.

In his written response to the Board dated September 26, 1994, Dr. Hoque agreed that he switched Mrs. [redacted] from Biaxin to Clavulin. He went on to state:

> I do not recall whether there was a discussion concerning her allergies to Penicillin. I know that it is my responsibility to ask her if she has any allergies to antibiotics prior to prescribing.

Dr. Hoque's recollection of the events of August 15, 1994, is different than that of [redacted]. On direct examination he stated that [redacted] n came into his office together. He agreed that there was a discussion with [redacted] concerning her allergies but could not recall whether [redacted] talked specifically about her allergy to penicillin. He stated that he knew the drug Clavulin contained penicillin and he would

not have prescribed Clavulin if he knew his patient was allergic to penicillin. Dr. Hoque did not recall looking into a book while he was with [redacted]. He stated that he had a book in the office describing the content of many drugs but that he did not consult this book on this particular occasion. He says he did not need to do so because he knew what Clavulin contained.

On cross examination Dr. Hoque responded to similar questions with different answers. He said that, to the best of his recollection, he must have asked Mrs. [redacted] if she was allergic to penicillin in accordance with his normal practice. When asked if he had a specific recollection of asking the question, he answered affirmatively. When asked if he recalled that he had a discussion about allergies with [redacted], he said that he must have asked. He stated that if [redacted] had mentioned her allergy to penicillin, he would not have prescribed Clavulin. He said that he did not make a mistake and that [redacted] did not tell him about Mrs. [redacted]s allergy to penicillin.

Dr. [redacted] testified and stated that Mrs. [redacted] came to his office at about 11 a.m. on August 15, 1994, for an unscheduled visit. She told him about the Clavulin and her visit to the pharmacy. He did not observe any allergic reactions and gave her an anti-histamine to combat any allergic reaction.

FINDINGS - Charge #3

There were several direct conflicts in the evidence given by [redacted] and Dr. Hoque. On the crucial issue [redacted] both stated they each told Dr. Hoque that Mrs. [redacted] was allergic to penicillin. He denies they gave him this information.

This Committee noted the fact that the letter of complaint from [redacted] was sent on the same date as the events complained of, i.e., August 15, 1994. [redacted] provided clear and convincing evidence about what took place. In contrast, Dr.

Hoque failed to give direct answers to many questions. His statements that he must have acted in a certain manner were not specific recollections. He stated that if he had taken an adequate medical history, he would not have prescribed any medication for Mrs. [redacted] that contained penicillin. The evidence is clear that one of the ingredients of Clavulin is amoxicillin which is one type of penicillin. The immediate visit of [redacted] to the pharmacy and their subsequent visit to Dr. [redacted]'s office support their version of the evidence. Where there is a conflict in the evidence, we accept the version of facts presented by [redacted].

We therefore find that Dr. Hoque prescribed medication to Mrs. [redacted] that contained penicillin after he was advised his patient was allergic to penicillin.

We are unable to conclude why Dr. Hoque prescribed a medication containing penicillin to Mrs. [redacted] One explanation is that Dr. Hoque did not know the drug he prescribed contained penicillin. A second possibility is that he simply did not listen to [redacted]. We are concerned that Dr. Hoque did not admit his mistake or lack of knowledge.

We have concluded Dr. Hoque is guilty of professional misconduct as alleged in Charge #3(a) and (b).

EVIDENCE - Charge #4

Counsel for the Provincial Medical Board submitted that the evidence supporting Charge #4 includes all of the evidence presented on Charges #1, #2 and #3, together with additional evidence from Dr. [redacted] and supporting documents.

Dr. [redacted] has been a family physician in Halifax for 25 years and we accepted his qualifications to give opinions and evidence as to the degree of skill and care which should be expected of a normal, prudent practitioner of the same experience and standing as Dr. Hoque.

On November 1, 1994, Dr. [redacted] and a second doctor, who did not testify at this Hearing, went to Dr. Hoque's office at the request of the Provincial Medical Board. They were asked to look at the physical plant and do a practice review. Dr. Hoque cooperated in this process and Dr. [redacted] completed a document entitled "Peer Assessment Report" (Tab 12, Exhibit #2). As part of the review Dr. [redacted] examined 20 patient charts.

The reports indicated that several elements of Dr. Hoque's practice were satisfactory on the day of the assessment. These include the physical facilities, medical instrumentation, storage of drugs, emergency facilities and availability of laboratory investigations.

With respect to the contents of medical files (the 20 charts), Dr. [redacted] checked off the following items as not being present ever:

(a) The family history, functional inquiry, past history (including significant negative observations) is recorded and maintained

(b) Dates of immunizations (if relevant) are clearly visible

(c) A "cumulative patient profile" (summary sheet) relating to each patient is present

(d) Significant negative physical findings are recorded

(e) Progress notes relating to the management in the office of patients suffering from chronic conditions are noted

(f) There is documented evidence that periodic general assessments are being performed

(g) There is documented evidence that health maintenance is periodically discussed. (e.g., regarding smoking, alcohol consumption, obesity, life style, etc.)

(h) There is documented evidence that an appropriate follow-up has taken place following receipt of abnormal test results

(i) Paediatric growth charts are used

One item that Dr. [redacted] found was sometimes present in charts was "allergies are clearly documented".

In his comments which reflected his interview with Dr. Hoque, Dr. [redacted] stated:

> In discussion, he confirmed that he rarely does PV or pap tests, rectal, breast exams. He does not record family history or personal history, e.g., smoking, allergies. He does not maintain growth charts, immunization records, etc., and does not anti-coagulate patients or manage any who are currently on warfarin. In addition, he does not submit skin lesions excised in office for pathology.
>
> A few other issues are troublesome. He has never met Dr. [redacted] his colleague who practices across the road. It is probable that some patients use both doctors but this has never been discussed....The care rendered to patients for episodic illness is satisfactory and often exemplary. Dr. Hoque is genuinely interested in his patients and tries hard to serve them, often treating them at irregular hours if necessary and spending adequate time with them. But there is less focus on continuity of care. Preventative issues are not stressed; there is no evidence of life-style counselling.
>
> ... Although his knowledge base is reasonable, and his time invested in reading journals is above average, he lacks the "savvy" of family medicine. He is not really negligent but has simply never learned how a full service practice operates.
>
> In my opinion - and now I realize that I am probably exceeding the mandate given to us - Dr. Hoque would function much better in a partnership or group. Where he has competition, he needs colleagues. Where he has text books and journals, he needs mentors.

On the day Dr. [redacted] was in attendance at the office, Dr. Hoque was not seeing people with serious or chronic illnesses. Most of the people were being seen for episodic illness.

Dr. [redacted] elaborated on some of his concerns when he gave evidence at the hearing. He pointed out that the giving of Vitamin B12 injections was no longer acceptable unless a person had a Vitamin B12 deficiency.

In one case the chart kept by Dr. Hoque indicated that a "mole" had been excised from a patient's forehead. Dr. Hoque does not always submit specimens to a pathology lab. Dr. [redacted] stated that lesions, particularly moles, should be submitted for pathology on all occasions.

Dr. [redacted] stated that a basic problem with Dr. Hoque is he practices alone.

Dr. [redacted] testified on behalf of Dr. Hoque. He was contacted in April, 1995, to assist in the defence of Dr. Hoque. He spent the afternoon on May 25, 1995, in Dr. Hoque's office directly observing his interactions with his patients and management of their medical problems. The Committee accepted Dr. [redacted] qualifications to provide expert opinions in relation to family medicine.

Dr. [redacted] provided a detailed evaluation of the medical practice of Dr. Hoque (Tab 14, Exhibit #6). His comments were generally favourable. For example he stated that:

> His medical charts and methods were very complete, easily readable and appropriately documented. They were well organized and demonstrated appropriate use and followup by the doctor....I did have some minor concerns about inadequate documentation of drug allergies, review of medication use or continued use of a "cumulative Patient Profile" (or Patient Problem List).

Dr. [redacted] concluded that:

(1) He is fully competent to practice general practice medicine in Nova Scotia.

(2) I could not identify any dangers or risks for patients that I observed him to assess and manage.

(3) He showed very good general concern for his patients' well being and safety.

(4) He demonstrated very good medical knowledge that was entirely appropriate to his type of medical practice.

(5) He runs a very competent, efficient and safe medical office.

(6) He demonstrated very good concern for his patients' sensitivities, dignity and privacy rights.

(7) He would likely be successful in meeting the requirements for passing the Certification Exam for the College of Family Physicians of Canada (should he ever decide to sit for them) and would easily meet the standards for a competent medical practice for the Atlantic Provinces Medical Peer Review Program.

Dr. [redacted] testified on behalf of Dr. Hoque. The Committee accepted his qualifications to give an opinion regarding the allergic effects of medicine.

Dr. [redacted] described the different kinds of reactions a person could have. There could be a mild allergic reaction or a severe one.

On cross examination Dr. [redacted] agreed that if a patient advised him the patient was allergic to penicillin, it would not be appropriate to prescribe a medication containing penicillin and if this action was taken, it would not provide an acceptable standard of care.

Five patients testified on behalf of Dr. Hoque. They all expressed their satisfaction with Dr. Hoque. Several of these individuals and other patients provided letters of support for Dr. Hoque.

In his response to the report of Dr. [redacted] Dr. Hoque provided an explanation for the negative comments. He stated that he has taken many steps to correct deficiencies brought to his attention.

FINDINGS - Charge #4

We have concluded that Dr. Hoque is not adequately prepared to carry on a family practice. He has no training in family practice, as it is defined at present, has spent most of his professional life in other specialized areas, and the family practice he has carried out has

been as a sole practitioner, preventing him from evaluating his own performance by comparing it with others.

While he was testifying, Dr. Hoque was frequently unresponsive to the questions that were asked. He did not evidence any ability to admit when he was wrong.

We have concluded that Dr. Hoque does not always listen to what his patients tell him and he lacks communication skills.

We therefore find that the allegations in Charge #4 have been proven. Does our finding mean that we have found Dr. Hoque is guilty of incompetence that amounts to professional misconduct?

In The Regulation of Professions in Canada (1994 Carswell), the author James Casey discusses the regulating of incompetent practice and refers to a comment made by the Court in Green v. College of Physicians & Surgeons (Saskatchewan) (1986), 51 Sack, R241 at 258-259 (C.A.):

> There is, however, more than the rights of Dr. Green involved in these proceedings. The medical profession has been granted a status which gives the public the right to expect that it will take reasonable measures to assure that reasonable skills will be exhibited by a doctor who is held out by the profession through the College as possessing the ability to practice medicine. If proceedings such as this produce evidence over a broad range of patients of an absence of these skills, then the factor of penalty becomes subordinated to the more significant issue of public interest.

The author then gives the following analysis at pages 13-12 and 13-13:

> It is a question of degree as to whether a mistake made by a professional will be of such significance so as to constitute 'incompetence'. After an extensive review of American authorities, the British Columbia Supreme Court concluded that the meaning of incompetence was a want of ability suitable to the task, either as regards natural qualities or experience, or a deficiency of disposition to use one's ability and experience properly. The term may include habitual carelessness,

> disposition and temperament. Therefore, the Court concluded that while a nurse may be fully qualified and able, if her conduct demonstrates a pattern of carelessness and her disposition is such that she fails to respond to advice as to her shortcomings, then such a nurse may be found guilty of incompetence. The Ontario Divisional Court has stated that 'incompetence' carries with it connotation that it is self-inflicted or the result of negligence or ignorance.
>
> Incompetence has also been defined as lacking the qualities needed to give effective professional services. However, an exercise of professional judgment which turns out to be incorrect is not necessarily outside of the range of possible courses that a reasonably competent professional might choose to make and as a result is not necessarily professional misconduct. A nurse may make a mistake or even be guilty of malpractice and still not be unfit to continue practising. Such a nurse may not have been fit for his or her particular employment, but it is only where nurses are unfit to practise on the basis of demonstrated disregard for patients or demonstrated lack of knowledge, skill and judgment that they are found to be incompetent and should be denied the opportunity to work anywhere as a nurse.

We are of the view, on the basis of the evidence before us, that the lack of competence demonstrated by Dr. Hoque in these circumstances amounts to professional misconduct as defined in the Medical Act.

DECISION ON PENALTY

At the conclusion of the evidence and after submissions from counsel, the Committee provided a brief oral decision with respect to its findings on the charges. Counsel then made submissions with regard to appropriate disposition.

Section 34 of the Medical Act sets out the powers of a hearing committee after a finding that a practitioner has been guilty of professional misconduct. A hearing committee may suspend the imposition of punishment, reprimand the practitioner, cause the name of the practitioner to be erased from the Medical Register and entered upon the Temporary Medical Register subject to terms or conditions, suspend the practitioner or cause the name of the practitioner to be erased from either Register.

Our Committee concluded that the most appropriate disposition was under Section 34(c) which reads:

> (c) cause the name of the qualified medical practitioner to be erased from the Medical Register and entered upon the Temporary Medical Register subject to whatever terms or conditions the hearing committee may prescribe;

We therefore made the following disposition on October 21, 1995:

1. That the name of Dr. Hoque be removed from the Medical Register immediately.

2. That Dr. Hoque's name be entered on the Temporary Medical Register when he identifies a family practitioner who will serve as his sponsor and who is acceptable to the Executive of the Provincial Medical Board.

3. That Dr. Hoque take part in the McMaster Physician Evaluation Programme to be completed no later than February 29, 1996.

4. That Dr. Hoque take any remedial programme recommended as a result of this evaluation.

5. That Dr. Hoque's name be removed from the Temporary Medical Register and returned to the Medical Register only when he has demonstrated that he has achieved Category II or higher as defined by McMaster University Physician Evaluation Programme.

In our view, providing a temporary license under a sponsor accomplishes several things. Dr. Hoque's patients would be left without medical care in the immediate future if he was not given any opportunity to continue his practice. Our concerns about the quality of his practice in the interim period are looked after, at least to a degree, by assuring that even a temporary license will only be in effect after Dr. Hoque has obtained a sponsor who will take the responsibility to provide reasonable supervision. We are advised that the McMaster Physician Evaluation Programme is as good as any available in Canada to deal with the question as to how qualified Dr. Hoque is for the practice of medicine and what remedial action is required in order to assure that Dr. Hoque's practice complies with acceptable standards.

Under Section 41 of the Medical Act, Dr. Hoque is required to pay costs incurred by the Board for this hearing, such costs to be taxed by a Taxing Master of the Supreme Court of Nova Scotia.

Alan J. Stern, Q.C., Chair

Dr. Lynne Harrigan

Dr. Robert Anderson

Dr. Marjorie Smith

Fiona Chin-yee