

PROVINCE OF NOVA SCOTIA )  
COUNTY OF HALIFAX )

IN THE MATTER OF: The **Medical Act**, S.N.S. 2011, c.38

- and -

IN THE MATTER OF: **Dr. Bradley Charles Atkinson**

### SETTLEMENT AGREEMENT

Dr. Bradley Charles Atkinson, a medical practitioner in the Province of Nova Scotia, and a member of the College of Physicians and Surgeons of Nova Scotia (the "**College**"), hereby agrees with and consents to the following in accordance with the provisions of the *Medical Act*:

#### I. COMPLAINT TO THE COLLEGE

1. On October 27, 2015, a complainant filed a complaint against Dr. Atkinson. The complainant alleges that Dr. Atkinson's care of her grandmother, Patient X, did not meet the expected standard of an emergency room physician during a visit to the outpatient department at Eastern Shore Memorial Hospital on \_\_\_\_, 2015.
2. Specifically, the complainant alleges the following:
  - a) Dr. Atkinson declined to act on treatment recommendations for initial management of patients with cancer who are febrile despite the card she presented from her hematologist outlining appropriate management of a febrile presentation from Emergency Department staff;
  - b) Dr. Atkinson did not make any changes in Patient X's antibiotic regimen despite clear failure of the initially prescribed therapy;
  - c) Dr. Atkinson did not do an appropriate workup to rule out other causes in the differential diagnosis of her symptoms, given that Patient X was not improving on the original therapy prescribed for a presumptive diagnosis of community acquired pneumonia; and
  - d) Despite the concern of Patient X's family and the nursing staff about her respiratory status, Dr. Atkinson did not:
    - a. Return to the hospital to reassess her;
    - b. Administer IV fluids;
    - c. Change her antibiotic regimen to a broader spectrum; or

- d. Transfer Patient X to a larger center for a more focused workup and therapy.

### **The College's investigation**

3. During the course of the investigation, the Investigation Committee reviewed the following information:
  - a) Medical records from Patient X's admission to the Dartmouth General Hospital from \_\_\_\_, 2015;
  - b) Patient X's medical records from the Eastern Shore Memorial Hospital outpatient department for \_\_\_\_, 2015;
  - c) Results of family practice audit in 2015;
  - d) Comments from the complainant regarding Dr. Atkinson's response to the complaint, dated December 27, 2015;
  - e) An interview with Dr. Atkinson on March 8, 2016;
  - f) An audit report of Dr. Atkinson's ER practice, dated May 5, 2016 and received May 18, 2016;
  - g) Correspondence from Dr. Atkinson to the Investigation Committee, received June 16, 2016;
  - h) An interview with Dr. Atkinson on June 17, 2016;
  - i) Dr. Atkinson's CAPE assessment report;
  - j) An interview with Dr. Atkinson on January 20, 2017;
  - k) Information respecting Continuing Medical Education taken by Dr. Atkinson to comply with the College's requirements for licensure;
  - l) An interview with Dr. Atkinson on May 8, 2018.
  
4. The May 5, 2016 audit report of Dr. Atkinson's ER practice reviewed his management of various specific patients through a chart review, and through chart stimulated recall. There were some positive comments on individual cases, such as the comment that Dr. Atkinson has a good grasp of the overall physical and social aspects of his patients' general history and their current state of health. However, the auditor expressed a number of concerns, including the following:

- a) There were virtually no histories recorded by Dr. Atkinson and he relied heavily on the triage nurse report;
  - b) The medication lists were obtained by the nurse and the investigations appeared to be ordered by the nurses;
  - c) Medications prescribed rarely had dosages or quantities recorded unless noted by the nurse;
  - d) The results of investigations were rarely noted;
  - e) Physical exams recorded appeared to never vary regardless of the presentation and whether the exam was relevant to the presenting complaint;
  - f) When patients were observed overnight, there were no notes by Dr. Atkinson recording change in clinical status;
  - g) There was never any documentation of a differential diagnosis;
  - h) Patients transferred to other facilities never had an accompanying note;
  - i) Dr. Atkinson appeared to rely on the triage nurse's diagnosis and investigations; and
  - j) Legibility was poor, with only 50-60% legibility.
5. There were no other reported adverse outcomes during the investigation apart from the care of Patient X.
6. However, given the extent of concerns in the case of Patient X and the various concerns identified in the May 5, 2016 audit, the Investigation Committee placed an interim suspension on Dr. Atkinson's licence on June 7, 2016.
7. Dr. Atkinson requested the interim suspension to be lifted and appeared before the Committee to make arguments in this regard. By decision dated June 20, 2016 the Investigation Committee upheld the interim suspension based on both the subject matter of the complaint and the results of the ER practice audit. The Committee further ordered Dr. Atkinson to undergo a general competence assessment through the Clinical Assessment and Professional Enhancement (CAPE) program offered through the University of Manitoba.
8. The CAPE assessment was aimed at evaluating Dr. Atkinson's core knowledge, skills, attitude and competence. There were both favorable and unfavorable findings from the CAPE assessment. For example, there were some comments

indicating favorable history assessments, but in one case a notation was made that an incomplete history and/or physical assessment led to an incorrect diagnosis. In the Comprehensive Clinical Science Examination used to evaluate medical residents, Dr. Atkinson's score was low, although it was noted that practicing family physicians generally score below medical residents as it tests many basic science concepts not used in everyday practice. Overall, there were a number of areas identified in the assessment where improvement was desired. The assessment was not a pass/fail assessment and was provided to the Committee for general consideration in the context of their investigation.

9. Dr. Atkinson attended courses in March, 2016 intended to improve his record keeping.
10. Prior to making its decision, the Investigation Committee reviewed the complaints history of Dr. Atkinson, particularly where it involved prior audits of his practice. This history is set out in the following paragraphs.

## **II. DR. ATKINSON'S HISTORY OF COMPLAINTS WITH THE COLLEGE**

11. Between 1995 and present, there were five complaints that were brought to the College's attention that resulted in a disposition other than dismissal. Three of these matters involved issues of clinical competence, two of which resulted in the issuing of reprimands with consent. In each instance of clinical competence concerns the College provided advice to Dr. Atkinson regarding improvements needed in his practice.
12. As part of the resolution of an earlier complaint from 2008 and in light of concerns from that complaint relating to Dr. Atkinson's knowledge and skills respecting the treatment of patients with narcotics, Dr. Atkinson agreed to relinquish his prescribing privileges for a period of time, following which he had to demonstrate competence to the College prior to having the privileges restored. During the period of time when the restriction was in place, the College learned that Dr. Atkinson had prescribed opioids and other controlled substances in violation of the restrictions on his licence. This matter was investigated as a complaint in 2014. While the investigation was underway, it came to the College's attention that Dr. Atkinson had issued a further prescription contrary to his earlier agreement with the College, after the investigation had commenced.
13. In the course of the 2014 investigation the College arranged to have an audit conducted of Dr. Atkinson's family practice. The results of the audit showed that most charts were illegible, documentation was brief, histories, if taken, were not noted and diagnoses were usually absent or illegible. The auditor further found a failure to follow up on significant issues and a failure to refer when appropriate. The audit described quality of care as deficient in 6 out of the 7 areas under audit.

14. As a result of the 2014 audit the College requested that Dr. Atkinson participate in a practice assessment. The assessor concluded that Dr. Atkinson's competence and knowledge were appropriate but he needed to properly document his care.

15. As a result of the concerns:

- a) in the case involving Patient X;
- b) the audit of his ER practice in 2016; and
- c) the CAPE assessment results in late 2016;

all in the context of the previous concerns identified through earlier audits, the Investigation Committee determined that there was sufficient evidence that could reasonably be believed, that if proven to be true, would amount to one or more findings of professional misconduct or incompetence.

16. The Investigation Committee referred its concerns to a hearing by letter dated February 2, 2017.

### III. ALLEGATIONS IN THE AMENDED NOTICE OF HEARING

17. In the Amended Notice of Hearing, the College made the following allegations of professional misconduct and/or incompetence against Dr. Atkinson:

1. That being registered under the *Medical Act* and being a physician in the Province of Nova Scotia, in connection with his assessment and treatment of Patient X in or around \_\_\_\_, 2015, Dr. Atkinson failed to provide care in accordance with the standards of the profession for one or more of the following reasons:
  - a. He declined to act on treatment recommendations for the initial management of a patient with cancer who was febrile, despite the card she presented from her haematologist outlining appropriate management of a febrile presentation for Emergency Department Staff;
  - b. He did not make any changes in Patient X's antibiotic regime despite failure of the initial prescribed therapy;
  - c. He did not do an appropriate workup to rule out other causes in the differential diagnosis of her symptoms, given that Patient X was not improving on the original therapy;

- d. Despite the concerns of Patient X's family and the nursing staff about her respiratory status, he did not:
  - (i) return to the hospital to assess her;
  - (ii) administer IV fluids;
  - (iii) change her antibiotic regimen to a broader spectrum;  
or
  - (iv) transfer Patient X to a larger centre for a more focused workup and therapy.
2. He failed generally to maintain appropriate patient records, as demonstrated by a review of his records conducted by an auditor appointed by the College.
3. He failed generally to competently perform assessments, order appropriate investigations, and/or to consider broad differential diagnoses, as demonstrated in the audit conducted by the auditor appointed by the College in May of 2016.
4. He failed to demonstrate appropriate knowledge of the practice of medicine as documented in the assessment conducted by the Clinician Assessment Program of the University of Manitoba, in an assessment conducted November 28, 2016.

#### **IV. EVENTS SINCE REFERRAL TO HEARING**

18. Following referral of matters to a hearing in February, 2017, a hearing was scheduled to commence in July 2017. Through legal counsel both Dr. Atkinson and the College commenced negotiations to determine whether a suitable remediation program could be put in place to address the deficiencies identified by the College.
19. Dr. Atkinson appeared before the Investigation Committee in July to request a remediation program as part of a resolution of the outstanding issues. The Investigation Committee reiterated its concerns arising from the audits and assessments and also noted Dr. Atkinson's lack of insight into the College's concerns. When asked what he needed to improve, he focused only on record keeping, rather than on clinical care. He maintained that his care provided to Patient X was appropriate and he did not recognize the concerns identified through the assessments.
20. The Committee noted these concerns but also noted there were some positive comments in the various audits and assessments conducted by the College. As a result the Committee agreed to work with Dr. Atkinson to

come up with a remediation program that would address his deficiencies to permit him to return to family practice.

21. It was determined that there was no "ready made" program that could address the deficiencies, such that the parties needed to develop a program customized to the identified issues. By agreement of Dr. Atkinson and the College, hearing dates were put on hold while these negotiations progressed.
22. Throughout the summer and into the fall of 2017, the parties exchanged drafts of a proposed remediation plan which would form a key component of a Settlement Agreement that would resolve the outstanding complaint and the concerns identified during the investigation. A Settlement Agreement requires approval by the Investigation Committee and by the College's Hearing Committee.
23. The plan involved various phases that saw Dr. Atkinson initially required to observe a senior and experienced family physician for a period of 4 weeks. If that phase was successful, Dr. Atkinson would then be permitted to return to family practice under a form of graduated supervision over a period of several months, and on completion of the period of supervision, he would then be subject to a series of follow up audits to ensure the deficiencies had been appropriately addressed.
24. In the late fall of 2017 arrangements were confirmed for the various physicians who would be involved in the different phases of the remediation plan. The Investigation Committee agreed to permit Dr. Atkinson to start the remediation plan although the Hearing Committee had not met to review the proposed Settlement Agreement that incorporated the remediation plan. Agreement was reached that Dr. Atkinson could not commence Phase 2 of the remediation plan until the Hearing Committee had approved the Settlement Agreement.
25. The physician who had agreed to be observed by Dr. Atkinson during Phase 1 of the program was tentatively lined up for December, 2017. The start date for the first phase was delayed for a short time due to the requirement for Dr. Atkinson to regain his privileges through the Nova Scotia Health Authority. Unfortunately, after the privileges were granted a family emergency arose for the physician, such that Phase 1 could not commence until early February, 2018.
26. Dr. Atkinson successfully completed Phase 1 of the proposed remediation plan, where he was noted to be engaged in the supervision process, and he proceeded throughout the period of observation to act more and more autonomously. Based on the positive feedback, the matter was set down to have a Hearing Committee of the College approve the Settlement

Agreement and have Dr. Atkinson begin Phase 2 of the remediation plan during the week of March 12, 2018. Dr. Atkinson had been advised by the College that he could not book appointments nor begin his supervised practice until the Settlement Agreement had final approval of the College's Hearing Committee. The *Medical Act* provides that a Settlement Agreement does not take effect until a Hearing Committee has accepted it.

27. In order to engage in supervised practice, Dr. Atkinson was required to satisfy all requirements for a licence to practice medicine in Nova Scotia. One of the licensing requirements for every physician in Nova Scotia is compliance with the College's continuing professional development ("CPD") program. It came to the College's attention on or about March 8, 2018 while in the process of verifying Dr. Atkinson's licensing status, that he had not complied with the College's CPD requirements, which involves a physician taking specified continuing education and reporting it to the College of Family Physicians of Canada. The College of Family Physicians of Canada then verifies to the College of Physicians and Surgeons of Nova Scotia that a physician has met the requirements.
28. It also came to the College's attention that Dr. Atkinson had indicated on his annual renewal applications for a licence over the past five year period that he had complied with the College's requirements, when he had not.
29. As a result of Dr. Atkinson failing to meet the requirements for a licence, the remediation plan was placed on hold, and the anticipated meeting of the Hearing Committee once again postponed.
30. Since March, 2018 Dr. Atkinson has been reconstructing the continuing education he has taken over the past 5 year period and submitting it to the College of Family Physicians of Canada.
31. Dr. Atkinson met with the Investigation Committee on May 8, at which time the Committee determined it would permit Dr. Atkinson to continue with the remediation plan, despite the deficiencies in his continuing professional development. As part of this Settlement Agreement he would be mandated to comply on an ongoing basis with the continuing professional development program through the College of Family Physicians of Canada, and would require his submissions to be monitored by the College of Physicians and Surgeons of Nova Scotia.

## **V. ADMISSIONS**

32. Dr. Atkinson admits the allegations set out in the Amended Notice of Hearing above and agrees they constitute professional misconduct and incompetence.



## VI. DISPOSITION

33. Dr. Atkinson was suspended from practice effective June 7, 2016.

34. Dr. Atkinson's suspension will be lifted effective the date this Settlement Agreement is approved by the Hearing Committee, and replaced with restrictions on his licence permitting him to practice only in accordance with the terms of the Remediation Plan attached as Schedule "A" ("Remediation Plan").

35. Dr. Atkinson is reprimanded for misconduct and incompetence as outlined above.

36. Dr. Atkinson agrees to a return to practice under the following conditions and restrictions:

- a) Dr. Atkinson will abide by the terms of the Remediation Plan, in which he agrees to a graduated return to practice, starting with observing the practice of another experienced physician, and working toward independent practice over a 16 week duration;
- b) If there are any concerns regarding patient safety during the period of the Remediation Plan, the Plan will be immediately halted and a new complaint filed against Dr. Atkinson;
- c) If Dr. Atkinson fails to pay the costs in accordance with the Remediation Plan, Dr. Atkinson will be suspended;
- d) At the end of the 16 week Remediation Plan, Dr. Atkinson agrees to participate in monthly audits of his practice for a period of 3 months. Ninety days after completing the last monthly audit, Dr. Atkinson shall have a final follow up audit;
- e) If the monthly audits show any deficiencies, the Registrar of the College may order additional audits to determine if the deficiencies have been addressed;
- f) The costs of the Remediation Plan shall be payable by Dr. Atkinson on such terms as set out in the Remediation Plan;
- g) Upon completion of the Remediation Plan Dr. Atkinson's practice shall be restricted to office-based family medicine. He shall not be permitted to practice in the Emergency Room, hospital clinic, nursing home or in-patient setting unless he has applied for and been granted a lifting of these restrictions as set out herein. Dr. Atkinson may apply to have his Emergency Room, hospital clinic, nursing home or in-patient privileges reinstated no sooner than one year after the commencement of Phase 2

of the Remediation Plan. Given Dr. Atkinson's complaints history with the College and the serious deficiencies identified in the May, 2016 practice audit, it is imperative that he have sufficient time to consolidate his practice skills in the family practice setting and learn how to implement an Electronic Records system before being permitted to apply to practice in other settings where the acuity of the patients is higher. In the event Dr. Atkinson applies to lift the restriction regarding Emergency Room, hospital clinic, nursing home or in-patient practice, the College through its Physician Performance Department will attempt to reach agreement with Dr. Atkinson regarding whether the restriction should be lifted, the extent of further remediation that may be required, and any conditions or restrictions required. In the event of no agreement, the matter shall be returned to the Hearing Committee for decision;

- h) Throughout the period of the Remediation Plan, including the three months of follow up audits, Dr. Atkinson shall not implement an Electronic Medical Records system;
- i) Dr. Atkinson agrees to comply with the College of Family Physicians of Canada's MainPro program for continuing professional development, and agrees that his CPD submissions will be monitored by the College of Physicians and Surgeons of Nova Scotia for such period of time as he holds a licence to practice medicine;
- j) This Settlement Agreement and Remediation Plan shall not have any effect on Dr. Atkinson's existing prescription restrictions. Dr. Atkinson may apply to have his prescription restrictions lifted only after a period of two years in practice (commencing with Phase 2 of the Remediation Plan) with no concerns identified. As part of his application, Dr. Atkinson must provide a proposed remediation plan for the safe prescribing of monitored drugs to be approved by the College through its Physician Performance Department. In the event of no agreement, the matter shall be returned to the Hearing Committee for decision.

37. Dr. Atkinson acknowledges that any breach of this Agreement, or any failure to comply with its terms, may result in an immediate suspension of his licence, and the matter will be referred as a complaint to the Investigation Committee of the day for consideration in accordance with the Act.

38. The Hearing Committee of the College, in its present or successor form, retains jurisdiction to deal with any issues of interpretation or implementation of this Agreement.

## **VI. COSTS**

39. In addition to the costs and expenses of the Remediation Plan, Dr. Atkinson agrees to pay costs to the College in the amount of \$15,000, inclusive of HST,

representing a portion of the College's costs of investigating this matter, including the costs of the ER audit and the CAPE assessment. These costs shall be payable by Dr. Atkinson in monthly amounts of \$1,000 commencing January 1, 2019. Failure to pay any monthly amount will result in the immediate suspension of Dr. Atkinson's licence to practice medicine until such costs are brought up to date.

40. The costs are a debt due to the College, recoverable by way of civil action in the event Dr. Atkinson does not fulfill the costs obligations of this agreement. Dr. Atkinson agrees that in the event he defaults on his obligations pursuant to this Agreement, judgment shall be entered against him for the balance of the costs remaining unpaid together with interest compounded at the rate of six percent (6%) per annum.

#### **VII. PUBLICATION**

41. This Settlement Agreement and any decision rendered by a Hearing Committee approving it, shall be published on the College's website.

#### **VIII. EFFECTIVE DATE**

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

DATED at Sweet Home, Nova Scotia this 23 day of May, 2018.

Meryl Atkinson  
WITNESS MERYL ATKINSON

Bradley C. Atkinson  
DR. BRADLEY CHARLES ATKINSON

DATED at Halifax, Nova Scotia this 24 day of May, 2018.

Marjorie A. Hickey  
WITNESS

Marjorie Hickey  
MARJORIE A. HICKEY  
COUNSEL FOR THE COLLEGE OF  
PHYSICIANS AND SURGEONS  
OF NOVA SCOTIA

DATED at Halifax, Nova Scotia this 31<sup>st</sup> day of May, 2018.

Ken McLeod  
WITNESS

Ken McLeod  
CHAIR  
Investigation Committee "B" of the College of  
Physicians and Surgeons of Nova Scotia

DATED at Halifax, Nova Scotia this 1<sup>st</sup> day of Jun, 2018.

David Cull  
WITNESS

David Cull  
CHAIR,  
The Hearing Committee of the College of  
Physicians and Surgeons of Nova Scotia

## Schedule "A" – Remediation Plan for Dr. Atkinson

### Phase One:

Duration: 4 weeks full time attendance by Dr. Atkinson

MRP: Supervisor, Dr. X

Supervisor's Time Commitment: 10 Supervisor hours each week – conversation, feedback, planning, etc.

Setting: Supervisor's Family Practice Office

Costs: 10 hours per week x 4 weeks = \$6000  
(\$3000 paid in advance, and \$3000 paid before starting Phase Two)

Notes: Dr. Atkinson's interim suspension will be lifted and replaced with an interim restriction (i.e. the remediation Phase One activities) only once a start date is confirmed by his practice supervisor and the initial \$3000 is paid.

Dr. Atkinson may not move on to Phase Two until the Settlement Agreement is signed and all costs related to Phase One are paid.

If Dr. Atkinson does not move on to Phase Two, the interim suspension will be re-imposed.

### Activities:

- Weeks 1-2, emphasis on Dr. Atkinson observing an experienced physician conduct clinical assessments, counselling and management of patients.
- Weeks 3-4, emphasis on Dr. Atkinson conducting selected clinical assessments under direct observation by supervisor, week 4 report on and discuss unobserved assessments (indirect supervision with review).
- Review and demonstration of good record-keeping practices: including individual patient visits, procedures and overall record management.
- Review and demonstration of best practices with respect to information management, preventive and chronic care.
- Identification of specific learning needs, point-of-care references.
- Identification of important clinical practice guidelines, point-of-care calculators / risk scoring systems, assessment and record-keeping templates.

**Phase Two:**

Duration: 4 weeks (weeks 5-8 of Remediation Plan)

MRP: Dr. Atkinson

Supervisor's Time Commitment: 10 hours per week, Dr. Y, or other physician approved by College

Setting: Dr. Atkinson's Family Practice Office. Limit to 20 patients per day.

Cost: 10 hours per week x 4 weeks = \$6000  
Travel expenses of the supervisors in accordance with College travel policy (\$3000 at end of week 6, and \$3000 at end of week 8, plus payment of supervisors' travel expenses within 21 days of receipt of invoice)

**Activities:**

- Direct observation of Dr. Atkinson performing clinical assessments and providing care (3-4 hours per week). Case discussion. Review of related record-keeping.
- Record review for selected visits each clinic day. Focus on quality of record keeping, diagnosis formulation, appropriateness of care (3-4 hours per week)
- Information management and file review. Focus on updating clinical records (CPPs, incorporating care templates etc) and office processes (Objective 7)
- Review progress on learning plan.

### Phase Three:

Duration: 8 weeks (weeks 9-16 of Remediation Plan)

MRP: Dr. Atkinson

Supervisor's Time Commitment: 4 hours per week, Dr. Y, or other physician approved by the College

Setting: Dr. Atkinson's Family Practice Office. Limit to 24 patients per day.

Costs: 4 hours per week x 8 weeks = \$4800  
Travel expenses of the supervisors in accordance with College travel policy  
(\$2400 at end of week 10 and \$2400 at end of week 14, plus payment of supervisors' travel expenses within 21 days of receipt of invoice)

#### Activities:

- Record review for selected patient visits. Case discussion. Focus on quality of record keeping, diagnostic formulation, and appropriateness of care. (2 – 3 hours per week)
- Information management and file review. Focus on updating clinical records (CPPs, incorporating care templates etc) and office processes (every two weeks)
- Review progress on learning plan. (Every two weeks)

**Follow-up: (after week 16)**

Monthly review of documentation and care of individual patient visits (approximately 20 records per session) x 3 months (4 hours per month) by supervisor. Frequency of audits after 3 months will be reassessed by Physician Performance Department depending on results of audit. Final audit 90 days after last monthly review.

Cost: 4 hours per month x 3 months = \$1800 (\$600 payable at end of each month)

Final audit cost to be determined

Dr. Atkinson is responsible for payment of supervisors' travel expenses for audits within 21 days of receipt of invoice

If further monthly audits needed, cost of audit plus travel expenses will be in addition to above