

IN THE MATTER OF:

The Medical Act, S.N.S. 2011, c. 38

And

IN THE MATTER OF:

The College of Physicians and Surgeons of
Nova Scotia (“the College”)

And

IN THE MATTER OF:

A proceeding conducted pursuant to the
Medical Act and the *Medical Practitioners
Regulations*, concerning Dr. William R. Vitale

HEARING COMMITTEE DECISION

Meeting of Hearing Committee:

2 November 2018

Date of Written Decision:

6 November 2018

Hearing Committee:

Wayne D. Cochrane, Q.C., Chair

Dr. Ethel Cooper-Rosen

Ms. Mary Hamblin

Dr. Gisele Marier

Dr. Scott Theriault

Counsel:

Daniel M. Campbell, Q.C., Counsel to Dr.
Vitale

Daniel Wallace, Counsel to the College

I **INTRODUCTION**

1. This proceeding of the Hearing Committee of the College of Physicians and Surgeons of Nova Scotia arises from the possession of child pornography, contrary to the *Criminal Code*, by a medical practitioner, Dr. William R. Vitale.
2. Dr. Vitale and the Registrar of the College have agreed to the revocation of his registration as a medical practitioner and of his medical licence. They ask the Hearing Committee to approve their Agreement. Under the applicable legislation, the Agreement can only take effect if the Hearing Committee approves it.
 - **Issue:** Should the Hearing Committee approve the agreement?
 - **Decision:** The Committee considers the answer to this question to be “yes.”

II **FACTS**

3. The facts in this matter are not in dispute. Dr. Vitale, who is now 75 years old, formerly carried on a family practice in Halifax. His practice included paediatrics, i.e., medical care of children.
4. In February 2016 Halifax Regional Police charged Dr. Vitale with several offences under s. 163.1 of the *Criminal Code*, which relates to child pornography. Immediately thereafter, and in direct consequence of the laying of those charges, Dr. D. A. (Gus) Grant, the Registrar of the College, brought a complaint against Dr. Vitale. The College suspended Dr. Vitale’s medical licence, and it has remained suspended ever since.
5. In written submissions to the Hearing Committee, Dr. Vitale’s lawyer asserts, and the lawyer for the College does not disagree, that:
 - no illicit pornographic materials were found on the computers in Dr. Vitale’s office;
 - there is no suggestion of any involvement with Dr. Vitale’s patients;
 - there was no evidence of distribution of illicit materials;
 - most of the material was fictional text, drawings, and “anime” (hand-drawn and computer animation) - not photographs of actual minors.

Agreement between Dr. Vitale and Crown

6. In September 2018, Dr Vitale and the Crown entered into an agreement respecting the *Criminal Code* charges against him.
7. Under s. 163.1, the Crown may proceed by way of indictment (commonly used for more serious offences) or by way of summary conviction. According to the information before us, Dr. Vitale and the Crown agreed that he would plead guilty to two summary conviction offences under s. 163.1 (4) which relate only to possession of pornographic materials. The Crown would withdraw all other charges.
8. The Court is not scheduled to sentence Dr. Vitale until March 2019. However, any conviction under these provisions of the *Criminal Code* carries with it a mandatory minimum period of imprisonment.

Agreement between Dr. Vitale and the College

9. In October 2018, Dr. Vitale and Dr. Grant, the Registrar of the College, both signed a Consent Revocation Agreement (attached to this decision as Appendix "A").
10. Counsel for Dr. Vitale and the College jointly submitted the signed Agreement to the Hearing Committee with the request that it be approved.

Unsworn evidence received by Committee

11. A College hearing committee is not bound by the usual rules of law respecting evidence, but must act in a fair manner: s.113 *Medical Practitioners Regulations*.
12. In this instance, rather than receive evidence through (for example) sworn testimony and filed documentary exhibits, the Committee received evidence primarily in the form of written submissions by the lawyers who represented the parties.

No formal hearing held

13. A Hearing Committee can determine rules of procedure not otherwise covered by the *Act* or the *Regulations*: s. 110 (2) *Medical Practitioners Regulations* [NS Reg 225/2014].
14. Counsel for Dr. Vitale and the College suggested it was unnecessary for the Committee to hold a formal hearing.
15. After due consideration, the Committee decided it agreed that, in the particular circumstances of this proceeding, a formal hearing was indeed unnecessary.
16. The Committee sees its decision as consistent as well with the words of s. 105 (4) of the *Regulations* [quoted in full at paragraph 18, below], which says in part:

A decision to accept a consent revocation agreement must in all respects be treated in the same manner as a revocation ordered by a hearing committee *following a hearing* . . . [emphasis added]

17. In the view of the Committee, it is a reasonable inference from the language of this provision that its intent is that acceptance of an agreement may occur without a hearing.

III ANALYSIS AND DECISION

18. Section 105 of the *Medical Practitioners Regulations* is headed “Consent Revocation”, and states, in its entirety:

105 (1) A respondent who admits or does not contest the allegations set out in either of the following may, with the consent of the Registrar, submit a proposed consent revocation agreement to the hearing committee for approval:

- (a) the complaint; or
- (b) the decision of an investigation committee under subsection 99(7).

(2) A proposed consent revocation agreement must include allegations that, if proven, would result in a revocation of the respondent’s registration and licence.

(3) A hearing committee may accept or refuse a proposed consent revocation agreement submitted under subsection (1), and must provide a written decision with reasons.

(4) A decision to accept a consent revocation agreement must in all respects be treated in the same manner as a revocation ordered by a hearing committee following a hearing, including disclosure and publication in accordance with Section 118.

19. First, the Committee notes in passing, and simply for completeness, a minor point with respect to the use of the words “approval” and “accept” in different parts of s.105. Ss.105 (1) refers to a proposed consent revocation agreement being submitted to the Committee for its “approval.” Ss. 105 (3) and (4) on the other hand, use the word “accept”, rather than “approval.”

20. Differing terminology is sometimes used in legislation to reflect some intended distinction in meaning between the words. However, in the view of the Committee, nothing in the legislation expresses or implies any intended distinction between “approve” and “accept.” In the context of this legislation, the Committee concludes the two words are being used interchangeably, i.e., they are synonymous, and it has so treated them for purposes of this Decision.

Committee approval not automatic

21. More importantly, the Committee observes that the *Regulations* provide that, even if the parties have themselves concurred on the content of the agreement, a hearing committee is not bound to approve the agreement. A committee may, if it chooses, refuse to approve: s. 105 (3), *Medical Practitioners Regulations*.
22. Further, whether a committee decides to approve the agreement or not, it must give reasons for that decision: s. 105 (3).
23. The Committee concludes the legislation does not intend that approval by a committee of an agreement is to be automatic. Instead, a decision to approve, or not, is at the discretion of the Committee. In reaching its decision, the Committee must exercise its authority in a manner consistent with the legislation, and its decision must be a reasoned one.

Criteria to be applied

24. What criteria should a hearing committee apply in making its decision?
25. In the opinion of the Committee, deciding whether to approve a revocation agreement under s. 105 of the *Medical Practitioner Regulations* requires the Committee to refer not just to the *Regulations*, but to the legislation as a whole, including the *Medical Act*.
26. Turning first to the *Regulations*, s. 105 (2) says that

“A proposed consent revocation agreement must include allegations that, if proven, would result in a revocation of the respondent’s registration and licence.”
27. The Committee concludes that the Agreement has been carefully drafted to reflect, at least in part, the requirements of s. 105. Thus, Clause 2 of the Agreement echoes s. 105 (2) when it acknowledges that the Registrar’s complaint alleged Dr. Vitale had been charged criminally in relation to child pornography. It says that this allegation

“. . . if proven, would result in a revocation of Dr. Vitale’s registration and license.”
28. In clause 3, Dr. Vitale admits he has now pleaded guilty to two counts of possession of child pornography. In the closing paragraph of the Agreement, he consents to the revocation of his registration and licence.
29. The Committee concludes the provisions of the Agreement are consistent with the requirements of the *Regulations*.
30. Turning from the *Regulations* to the *Medical Act*, the Committee sees Section 5 of the *Act* as particularly relevant to this proceeding. S. 5 contains provisions explicitly stating important purposes of the *Act*.

31. Ss. 5 (a) and (b) say the purposes of the *Act* include:

- to “. . . serve and protect the public interest in the practice of medicine . . .”
- to “. . . preserve the integrity of the medical profession . . .” and
- to “. . . maintain the confidence of the public and the profession in the ability of the College to regulate the practice of medicine . . .”

32. S. 5 (c)(i) says that, to achieve these purposes, the College is to:

“. . . regulate the practice of medicine and govern its members through . . . registration [and] licensing . . .”

33. Applying these legislative provisions to the circumstances of this proceeding, the Committee notes that Dr. Vitale has pleaded guilty to child pornography charges.

34. Changes in recent years to the *Criminal Code* have meant that child pornography is being treated with greater and greater seriousness. These changes reflect, at least in part, increasing public interest and concern with such offences.

35. As one example of this increasingly serious treatment, the *Code's* child pornography provisions now require that all offenders be given jail sentences.

36. This is true even for offences that are commonly regarded as being at the “lower end” of the range of severity, including (as occurred here) possession of child pornography which is principally text, drawings, or animated images, rather than photographs of actual children.

37. The Committee notes as well that paediatrics was a part of Dr. Vitale’s practice, although it also notes there is no evidence that there was any connection between his possession of child pornography and his medical practice.

38. Taking into account the factual circumstances of this proceeding, and weighing them, in the context of the *Code*, against the legislation specifically applicable to the College (the *Medical Act* and the *Regulations*), the Committee has concluded that it should approve this Consent Revocation Agreement.

39. In the judgment of the Committee, approval of the Agreement can properly be seen as (in the words of s. 5 of the *Act*): serving and protecting “the public interest in the practice of medicine;” preserving “the integrity of the medical profession;” and helping maintain confidence in “the ability of the College to regulate the practice of medicine.”

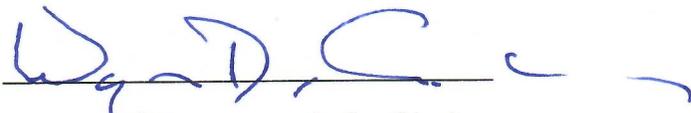
40. Accordingly, the Hearing Committee, exercising its authority under the *Act* and *Regulations*, approves the Consent Revocation Agreement attached to this decision as Appendix “A.”

41. In so doing, the Hearing Committee notes, as the Agreement itself expressly acknowledges, that the legislative provisions for disclosure and publication apply to this Decision.

IV SUMMARY

42. The Committee approves the Consent Revocation Agreement signed by Dr. Vitale and the Registrar. The Committee authorizes the Committee's Chair, Wayne D. Cochrane, Q.C., to sign the Agreement on its behalf, signifying its approval.

DATED at Halifax this 6th day of November 2018.



Wayne D. Cochrane, Q.C., Chair

E. Cooper-Rosen

Dr. Ethel Cooper-Rosen

Mary Hamblin
Mary Hamblin

Gisele Marier

Dr. Gisele Marier



Dr. Scott Theriault

APPENDIX
"A"

PROVINCE OF NOVA SCOTIA)
COUNTY OF HALIFAX)

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

- and-

Dr. William R. Vitale

CONSENT REVOCATION AGREEMENT

Pursuant to section 105(1) of the *Medical Practitioners Regulations*, Dr. Vitale, with the consent of the Registrar of the College of Physicians and Surgeons of Nova Scotia, submits this consent revocation agreement to the Hearing Committee for approval.

1. Dr. Vitale, a physician registered under the *Medical Act, 2011*, has been subject to an interim suspension since March 9, 2016, imposed by the Investigation Committee of the College on the complaint of the Registrar dated February 26, 2016.
2. The complaint of the Registrar alleges that Dr. Vitale has been charged with criminal offences in that he was in possession of child pornography, an allegation that, if proven, would result in a revocation of Dr. Vitale's registration and license.
3. Dr. Vitale admits that he has entered pleas of guilty in Nova Scotia Provincial Court to two counts of offences under s.163.1 (4) of the *Criminal Code* [possession of child pornography], and that all other charges will be withdrawn.
4. A summary of this consent revocation agreement, as prepared by the Registrar, and any decision rendered by a Hearing Committee approving it, shall be published on the College's website.

Dr. Vitale consents to the revocation of his registration and license and acknowledges that the revocation will be treated in all respects in the same manner as a revocation ordered by a Hearing Committee following a hearing.



Dr. William R. Vitale

Dated: October 5, 2018

The Registrar consents to this consent revocation agreement pursuant to section 105(1) of the *Medical Practitioners Regulations*.



Dr. D.A. (Gus) Grant, Registrar
Dated: Oct 10/2018, 2018

The Hearing Committee approves this consent revocation agreement pursuant to section 105(3) of the *Medical Practitioners Regulations*.

Chair
The Hearing Committee, College of
Physicians and Surgeons of Nova Scotia
Dated: _____, 2018