

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

and

IN THE MATTER OF: A Settlement Agreement between the College of Physicians and Surgeons of Nova Scotia (“the College”) and Dr. Samuel Chun (“Dr. Chun”)

HEARING COMMITTEE DECISION

Date Heard: March 11, 2019

Location: Halifax, Nova Scotia

Hearing Committee: Mr. Raymond F. Larkin, Q.C.
 Dr. Gisele Marier
 Dr. P. Scott Theriault
 Ms. Gwen Haliburton
 Ms. Mary Hamblin

Counsel: Ms. Jane O’Neill, QC, Counsel for the College of Physicians and Surgeons of Nova Scotia

 Mr. Stewart Hayne, Counsel to Dr. Samuel Chun

1. On March 11, 2019, the Hearing Committee accepted an amended Settlement Agreement between the College and Dr. Chun with reasons to follow. The amended Settlement Agreement is attached to these reasons and is incorporated as Appendix "A".
2. The Settlement Agreement reached between the College and Dr. Chun was recommended for acceptance by the Investigation Committee and referred to the Hearing Committee for consideration in accordance with Section 103 of the Medical Practitioners Regulations, NS Reg. 18/2015.
3. At the hearing of this matter on March 11, 2019, the Hearing Committee questioned whether the content of the proposed Settlement Agreement provided sufficient facts and admissions to support all of the agreed disposition. After discussion, counsel for the College and Dr. Chun agreed on an amendment to the proposed Settlement Agreement, which satisfied the concerns of the Hearing Committee and, therefore, the Hearing Committee approved the Settlement Agreement as amended.

Facts

4. Dr. Samuel Chun is a medical practitioner in Nova Scotia and a member of the College of Physicians and Surgeons of Nova Scotia (the "College"). He was subject to two complaints, which have been referred to hearing by the Investigation Committee of the College.
5. On March 8, 2016, Patient 'G' filed a complaint that Dr. Chun did not perform a physical examination but reported to Patient 'G's family physician that he had performed the examination. Paragraph 13 of the Settlement Agreement indicates the following with respect to Patient 'G's complaint:

13. Dr. Chun does not recall whether he did or did not perform a comprehensive consultation, yet for the purposes of this Settlement Agreement, he is willing to admit that:

- (a) With respect to Patient G, on or about February 1 2016 he:
 - i. Did not perform a comprehensive consultation but reported to Patient G's family physician that he had performed a physical examination;
 - ii. Billed MSI for a comprehensive consultation when the visit was a limited one;
 - iii. Failed to maintain accurate medical records.

6. On March 23, 2017, Patient 'F' filed a complaint against Dr. Chun alleging that the care that he received from Dr. Chun was inadequate and unprofessional. Paragraph 14 of the Settlement Agreement sets out the agreed facts with respect to Patient 'F's' complaint as follows:

14. Dr. Chun admits:

- (a) With respect to Patient F during the period July 2010 through January 2017 he:
 - i. Dictated, signed and entered into the patient's medical record an operative procedure that was aborted and therefore, did not take place;
 - ii. Reported to Patient F's family physician that he had performed the surgery;
 - iv. Failed to take sufficient steps to ensure Patient F was referred to general surgery for possible hernia repair contributing to a delay in diagnosis of liposarcoma ultimately diagnosed in or around January 2017;
 - v. Failed to respond to Patient F's request for information.
- (b) With respect to matters reviewed in the course of the audit performed by a College assessor, Dr. Chun:
 - i. Billed MSI for two examinations that were not documented;
 - ii. Failed to maintain adequate medical records; and
 - iii. Failed to dictate operative reports in a timely manner.

Legislative Context and Principles

7. This matter comes before the Hearing Committee in accordance with Section 51 of the *Medical Act*, which provides:

51 Where an investigation committee refers a matter to a hearing committee, the College may, before the commencement of a hearing by the hearing committee, enter into a settlement agreement with the respondent, to be dealt with in accordance with the regulations.

8. The Medical Practitioners Regulations make provision for the negotiation of a settlement agreement between the Registrar and the physician who is subject to a complaint. Section 101 of the Regulations provides as follows:

101 (1) A proposed settlement agreement may be initiated in writing by the Registrar or the respondent at any time before a hearing begins.

(2) A proposed settlement agreement must include all of the following:

- (a) sufficient facts and admissions to support the agreed disposition;
- (b) an agreement on costs
- (c) the respondent's consent to a specified disposition conditional on the acceptance of the settlement agreement by an investigation committee and a hearing committee.

(3) A settlement agreement may include any disposition that could be ordered by a hearing committee under the Act or these regulations.

(4) If both the Registrar and the respondent agree with the content of a proposed settlement agreement, the Registrar must refer the settlement agreement to an investigation committee for consideration in accordance with Section 102.

(5) The Registrar and the respondent may agree to use a mediator to prepare a settlement agreement, and the costs for the mediator must be divided equally between the College and the respondent unless otherwise agreed.

(6) If the Registrar and the respondent cannot agree on the content of a proposed settlement agreement, the matter must be referred for a hearing.

102 (1) An investigation committee may recommend acceptance of a settlement agreement if it is satisfied that all of the following conditions are met:

- (a) the public is protected;
- (b) the conduct or its causes can be, or have been, successfully remedied or treated, and the respondent is likely to successfully pursue any remediation or treatment required;
- (c) the content of the proposed settlement agreement provides sufficient facts and admissions to support the agreed disposition;
- (d) settlement is in the best interests of the public and the profession.

9. The procedure to be followed by the Hearing Committee in considering a settlement agreement is set out in Section 103 of the Medical Practitioners Regulations as follows:

103 (1) If a hearing committee accepts a settlement agreement, the settlement agreement forms part of the order of a hearing committee disposing of the matter and, except as provided in subsections 104(3) and (4) for breaches of the settlement agreement, there is no hearing.

(2) If a hearing committee does not accept a settlement agreement, it must do 1 of the following:

- (a) suggest amendments to the settlement agreement and return it to the Registrar and the respondent for review;
- (b) reject the settlement agreement, in which case the matter is referred to another panel of a hearing committee for a hearing.

(3) If both the Registrar and the respondent do not agree with the amendments to a settlement agreement suggested under clause (2)(a), the settlement agreement is deemed to be rejected and the matter must be referred to another panel of the hearing committee for a hearing.

(4) If both the Registrar and the respondent agree with the amendments to a settlement agreement suggested under clause (2)(a), the settlement agreement must be approved by a hearing committee.

(5) A person who sits on a panel of a hearing committee that considers a settlement agreement must not sit on a panel of a hearing committee that conducts a hearing related to the same complaint.

10. In considering whether to accept a settlement agreement between a medical practitioner and the College, the Hearing Committee is governed by the purpose of the *Medical Act* and the duties of the College, generally, as set out in Section 5 of the *Medical Act*, which provides:

5 In order to

(a) serve and protect the public interest in the practice of medicine; and

(b) subject to clause (a), preserve the integrity of the medical profession and maintain the confidence of the public and the profession in the ability of the College to regulate the practice of medicine, the College shall

(c) regulate the practice of medicine and govern its members through

(i) the registration, licensing, professional conduct and other processes set out in this Act and the regulations,

(ii) the approval and promotion of a code of ethics,

(iii) the establishment and promotion of standards for the practice of medicine, and

(iv) the establishment and promotion of a continuing professional development program; and

(d) do such other lawful acts and things as are incidental to the attainment of the purpose and objects of the College.

11. In accordance with Section 5, the mandate of the Hearing Committee is to serve and protect the public's interest in the practice of medicine. The public interest is first and foremost the protection of the public.

12. In considering a proposed settlement agreement in this legislative context, the Hearing Committee is generally inclined to defer to the judgement of the Investigation Committee on the specific aspects of a settlement agreement. In most cases, the Investigation Committee will have engaged with the medical practitioner and the issues arising from a particular complaint in considerable detail over a number of meetings. They will have more knowledge of the circumstances than the Hearing Committee.

13. Settlement Agreements are negotiated between the Registrar and the practitioner and will include reasonable compromises acceptable to the Investigation Committee. Resolving complaints reasonably without a formal hearing benefits both the College and the practitioner. If recommendations from the Investigation Committee fall within a reasonable range of dispositions, the Hearing Committee will accept a settlement agreement that is recommended.

Recommended Disposition

14. The Settlement Agreement between Dr. Chun and the College, which has been recommended by the Investigation Committee, includes agreement on the following disposition:

Dispositions

15. Dr. Chun:

- (a) is reprimanded;
- (b) his certificate of registration shall be suspended for a period of one month beginning March 18, 2019;
- (c) is fined \$5,000 for the following:

16. With respect to Patient G, in or about February 1 2016, he:

- (a) Did not perform a comprehensive physical examination but reported to Patient G's family physician that he had performed a physical examination;
- (b) Billed MSI for a comprehensive physical examination when the visit was a limited one;
- (c) Failed to maintain accurate medical records.

17. With respect to Patient F during the period July 2010 through January 2017 he:

- (a) Dictated, signed and entered into the patient's medical record an operative procedure that did not take place;
- (b) Reported to Patient F's family physician that he had performed the surgery;

- (c) Failed to take sufficient steps to ensure Patient F was referred to general surgery for possible hernia repair contributing to a delay in diagnosis of liposarcoma ultimately diagnosed in or around January 2017;
- (d) Failed to respond to Patient F's requests for information.
- (e) With respect to two matters reviewed in the course of the audit performed by a College assessor, Dr. Chun:
 - (i) Billed MSI for examinations that were not documented;
 - (ii) Failed to maintain adequate medical records; and
 - (iii) Failed to dictate operative reports in a timely manner.

Costs

18. Dr. Chun agrees to pay costs to the College in the amount of \$10,000 inclusive of HST, representing a portion of the College's costs of investigating this matter, including the costs of the previously completed practice audit. These costs shall be payable by Dr. Chun by March 11, 2020.

Publication

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

Effective Date

20. 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.

15. The Hearing Committee has approved the Settlement Agreement with this disposition. We are satisfied that the conduct set out in paragraphs 5 and 6 of these reasons constitutes professional misconduct and that a reprimand, a one month suspension and a fine of \$5,000 falls within the reasonable range of dispositions in all the circumstances of this case.

16. While the fine of \$5,000 is unusual, the misconduct includes billing MSI inappropriately. In the case of Patient 'G', Dr. Chun billed MSI for a comprehensive consultation when the visit with Patient 'G' had been a limited one. In the case of Patient 'F', the investigation of this complaint discovered that Dr. Chun had billed for two examinations that were not documented. The penalty of a \$5,000 fine is an appropriate penalty where there are inappropriate billing practices. There is a strong public interest in deterring inappropriate or unjustified billing. The \$5,000 fine is a significant deterrent to Dr. Chun against any repetition of inappropriate billing. Furthermore, the imposition of a fine sends a message to physicians generally that inappropriate billing to MSI is unacceptable and may, in certain circumstances, constitute professional misconduct and attract a financial penalty.

17. The one month suspension is a significant penalty. In our view, this penalty is appropriate, particularly with respect to Patient 'F'. Dr. Chun reported to Patient F's family physician that he had performed surgery when he had not. He failed to take sufficient steps to ensure Patient F was referred to general surgery for possible hernia repair, contributing to a delay in the diagnosis of a liposarcoma, which was ultimately made in or around January, 2017.

18. In our view, Dr. Chun's conduct with respect to Patient 'F' is serious professional misconduct for which a reprimand alone would be inappropriate. A one month suspension of Dr. Chun's Certificate of Registration is a significant penalty but, in our view, proportionate to Dr. Chun's misconduct with respect to Patient 'F'.


19. It seems unlikely to us that Dr. Chun will repeat this type of conduct, given his expression of empathy for Patient 'F' and voluntary attendance at the University of Toronto Medical Record Keeping continuing medical education course, but the one month suspension sends a message to the profession and to the public that harm caused by unacceptable delays in communicating with patients and failure to take appropriate steps without undue delay, will be treated seriously by the College.

20. These failures with respect of Patient 'F' were compounded by the inappropriate billing practices to MSI and the failure to maintain proper records. The combination of Dr. Chun's conduct with respect to Patient 'F' and Patient 'G' supports the conclusion of the Hearing Committee that a one month suspension is an appropriate disposition in this case.

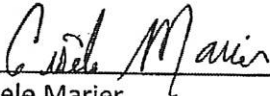
21. The Hearing Committee was satisfied that the other aspects of the proposed disposition in the Settlement Agreement with respect to costs, publication and effective date are appropriate.

22. Accordingly, the Settlement Agreement between the College and Dr. Chun, attached as Appendix 'A' to these reasons, is approved by the Hearing Committee.

Decision issued this 19th ^{March} day of, 2019.



Raymond F. Larkin, Q.C., Chair

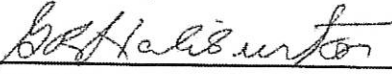


Dr. Gisele Marier

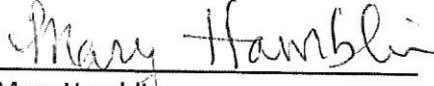
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