

COLLEGE OF PHYSICIANS AND SURGEONS OF NOVA SCOTIA

DECISION OF INVESTIGATION COMMITTEE D

Dr. Jalal Hosein
Licence Number: 004075

Investigation Committee D of the College of Physicians and Surgeons of Nova Scotia (“College”) concluded its investigation into a complaint against Dr. Jalal Hosein by issuing its decision dated July 10, 2019. The Investigation Committee reached agreement with Dr. Hosein with respect to the disposition of the complaint. A summary of the complaint and disposition appears below.

PROCESS

A letter received on June 29, 2018 from the complainant, an Adult Protection Worker, Department of Health and Wellness, (“Complainant”) initiated this matter. The College received Dr. Hosein's response on July 4, 2018.

Investigation Committee D, formed in accordance with the *Medical Act* of Nova Scotia, 2011, was responsible for the investigation of this complaint.

In addition to correspondence from the complainant and respondent, the Committee considered the following:

- Dr. Hosein's medical record for Ms. X;
- Statement from Ms. X's parents' social worker;
- Adult Protection file for Ms. X;
- Probate Court file regarding the estate of Ms. X's father (Mr. X);
- Interview of Dr. Jalal Hosein, November 20, 2018;
- Interview of Mr. X's Estate Proctor, December 18, 2018;
- January 18, 2019 letter from Mr. X's Estate Proctor to the Supreme Court of Nova Scotia; and
- Comments from Dr. Hosein's wife, received January 21, 2019.

PARTIES

Dr. Jalal Hosein is a family physician licensed to practice medicine in Nova Scotia.

The Complainant is an Adult Protection Worker with the Department of Health and Wellness in Halifax, Nova Scotia.

The complaint relates to the last will and testament of Mr. X and the care of his daughter, Ms. X, a person who has been found to be an adult in need of protection.

SUMMARY

Key points as reported by the Complainant

The Complainant brought this complaint in his capacity as an Adult Protection Worker with the Department of Health and Wellness. The complaint alleges that Dr. Hosein, as Mr. X's family physician, was in a conflict of interest when he held a Power of Attorney ("POA") for and later acted as executor and trustee for the estate of Mr. X. Dr. Hosein was also the trustee of the estate funds set aside to care for Mr. X's daughter Ms. X, also his patient, who was intellectually disabled and cognitively delayed. The complaint further alleges that Dr. Hosein left Ms. X to live in a neglected state and failed to report her as an adult in need of protection.

Ms. X has a significant medical condition and is cognitively delayed with intellectual disabilities. The medical condition, if untreated, including not adhering to a special diet, may result in deterioration of intellectual ability, seizures, behavioural problems and psychiatric disorders.

After Ms. X's parents moved to a nursing home, Ms. X lived in an apartment owned by Dr. Hosein's friend. Dr. Hosein, at first with a POA and after her parents' deaths as executor and trustee of Mr. X's estate, managed Ms. X's expenses and arranged for groceries to be delivered from a corner store owned by Ms. X's landlord.

In April 2018, Adult Protection Services ("APS") received an anonymous referral with concerns about Ms. X's living conditions and mental health. Under the Adult Protection Act, APS may intervene when a person lacks capacity to appreciate and protect themselves from significant risk of neglect or self-neglect.

Ms. X had been referred to APS in 2014 and in 2016, both times with concerns about her living conditions. On both occasions, Dr. Hosein told APS that Ms. X did not lack capacity and that her living conditions were sufficient. APS closed its files in 2014 and 2016 without further action as they did not have enough evidence that Ms. X met the criteria for APS intervention.

This complaint describes Ms. X's living conditions as extremely poor. Police, the mental health mobile crisis team and APS all visited Ms. X's apartment. All described it as unfit. The apartment had a foul odour, there were dead rodents and feces throughout, the sinks and toilet were plugged, it was full of cobwebs, the mattress was stained, the kitchen unsanitary and there was dried human feces on the furniture. Ms. X did not have a proper diet, had not bathed in a long time, and she did not have proper or clean clothing.

After the visits by police and the mobile crisis team but before APS visited Ms. X, Dr. Hosein hired someone to clean the apartment. When APS did visit Ms. X to investigate the April 2018 referral, some but not all of the apartment had been cleaned. On subsequent visits, the state of the apartment had deteriorated. APS noted that in addition to the living conditions, Ms. X had poor personal hygiene, an unsuitable diet and appeared to lack capacity.

Key points as reported by the Respondent

In response to the complaint, Dr. Hosein explained that he had been friends with Ms. X's parents since they came to Canada many years ago.

As Mr. and Mrs. X's health deteriorated, they asked Dr. Hosein to act as their executor and trustee of their estate that would be left to care for their daughter, Ms. X.

Ms. X and her parents were also Dr. Hosein's patients. Dr. Hosein says he reluctantly agreed to act as executor and trustee because he knew Mr. and Mrs. X well and he felt there was no one else they could rely on. When Mr. and Mrs. X entered a nursing home, Dr. Hosein used a POA to access Mr. X's bank account to pay for Ms. X's living expenses. Mrs. X died in 2017, followed by Mr. X in March 2018. After Mr. X's death, Dr. Hosein acted as executor and trustee of Mr. X's estate and looked after Ms. X's finances. Dr. Hosein was not Ms. X's legal guardian and did not have a POA for her.

Dr. Hosein says that since Mr. X's death, he has used funds from the estate to pay Ms. X's living expenses. There is an estate Proctor and Dr. Hosein expects that at some point accounts will be passed in Probate Court.

While he was never her guardian and felt no obligation to routinely assess her living premises, Dr. Hosein says that he visited periodically and tried to ensure that cleaners attended regularly. He recognizes that the condition of Ms. X's apartment had deteriorated quite significantly by early June 2018 and says that he took it upon himself to have the cleaners increase their efforts with more frequent and better cleaning.

Dr. Hosein says he is pleased APS has become involved. Dr. Hosein had previously tried in vain to get Ms. X into a seniors' facility, but she refused. He is pleased with APS's efforts and any assistance the Court might provide. If the Public Trustee is assigned responsibility for her care and management of her assets, then Dr. Hosein will of course cooperate entirely.

Dr. Hosein says that all he ever tried to do is help fulfill Mr. X's wishes by tending to his daughter's expenses. Dr. Hosein has conducted himself in a responsible manner throughout. He adds that the Probate Court will see every dollar is accounted for in his role as executor and trustee.

Preliminary Investigation

Pursuant to Section 88 (1) of the *Medical Practitioners Regulations*, an Investigator was appointed to conduct a preliminary investigation of this complaint.

CONCERNS/ALLEGATIONS OF COMPLAINANT

The Complainant alleges Dr. Hosein:

- breached the College's *Professional Standards Regarding Conflict of Interest* when he acted in the capacity of executor for his patient Mr. X and as trustee of the estate meant to benefit his patient, Ms. X.; and
- knew his patient Ms. X was living in a significant state of neglect and failed to refer her to Adult Protection Services.

CONCERNS OF COMMITTEE

As with all complaints, the Investigation Committee is not limited to investigating only the concerns set out in the complaint. The Committee has the responsibility to look into all aspects of a physician's conduct, capacity or fitness to practise medicine that arise in the course of the investigation.

In this matter, after reviewing all available information, the Committee identified Dr. Hosein's medical records are not in keeping with the College's *Professional Standard Regarding Medical Records*. It also appears Dr. Hosein did not act on recommended follow-up treatment and investigations for Ms. X. In

addition to being the executor and trustee of Mr. X's estate, Dr. Hosein's wife is named as a contingent beneficiary in a codicil to Mr. X's will executed in 2014, after he moved to the nursing home.

DISCUSSION

Duty to Report

Dr. Hosein is Ms. X's family physician. Despite concerns raised by her other healthcare providers directly with Dr. Hosein and despite obvious signs there were concerns with Ms. X's capacity and her living conditions, Dr. Hosein did not report to APS that Ms. X may be an adult in need of protection.

In his interview, Dr. Hosein told the Committee when he visited Ms. X; he went into the apartment but did not "mosey around". He admitted it was "not pristine". He says that he did not notice any foul odours and that Ms. X did not appear to be unkempt.

The Committee reviewed the Complainant's affidavit dated June 29, 2018 filed in the Supreme Court of Nova Scotia in support of an Order that Ms. X is an adult in need of protection.

The Complainant states that in 2014, Ms. X was reported to APS as she was at risk of being evicted from her apartment due to her failure to pay rent and complaints of a foul smell coming from the apartment. By that time, Mr. and Mrs. X were in a nursing home and Dr. Hosein took responsibility for paying Ms. X's expenses from Mr. X's funds. At that time, Dr. Hosein denied Ms. X had any capacity issues and addressed the issue of her back rent. APS did not have sufficient evidence to demonstrate Ms. X lacked capacity, or that she was living at significant risk. APS closed the file.

APS received another referral in 2016. A social worker reported that when she went for a scheduled visit, the apartment was unkempt with dirty dishes, mousetraps and feces and Ms. X was not properly dressed. APS consulted with Dr. Hosein and he gave the opinion that Ms. X had capacity but agreed to visit her to determine whether she was able to prepare her own meals and keep her apartment clean.

Dr. Hosein visited Ms. X on March 12, 2016 and reported that the apartment was clean, Ms. X was suitably dressed and there was food in the fridge. Again, APS did not have sufficient information to demonstrate that Ms. X met the criteria for intervention and closed its file.

The third referral to APS came on April 23, 2018. The source described Ms. X as having mental health problems and noted her living conditions were disgusting (cobwebs, feces, rodents and clogged pipes). He said that Ms. X never left the building and had food delivered from the corner store. The police and later the mental health mobile crisis team visited Ms. X. Each confirmed her living conditions were unfit.

The Complainant then visited Ms. X on April 26, 2018. An upstairs neighbour, recently hired by the landlord, had been cleaning the apartment for three days. The cleaner told the Complainant the apartment was, "really, really, really bad" before she started cleaning. There was rodent feces throughout the apartment and sticky strips in every corner with approximately ten dead mice on them. She was a cleaner for a living and said that the apartment is the worst she had ever seen. The toilet was filthy; the tub stained dark, there were several tiles missing from the shower wall and insulation was showing through. Dried human feces covered Ms. X's computer chair.

Ms. X told the Complainant she had not had a shower or bath in "a long long time". She could not get into the bathtub because she was afraid of falling and could not sit down while having a shower. Ms. X also said that she had only one set of clothes to wear.

The Complainant administered a Mini-Mental State Examination and Montreal Cognitive Assessment on Ms. X and it was clear to him that she lacked capacity. The Complainant contacted Dr. Hosein who said that he was not aware that Ms. X's living conditions were so bad and that he had been at the apartment a week and half previously. During this phone call, the Complainant learned that Dr. Hosein had never conducted any formal capacity tests with Ms. X, despite having stated in 2014 and 2016 that, in his opinion, she had capacity to care for herself.

The Complainant visited Ms. X again on May 2, 2018 and May 8, 2018. It was clear to him that the apartment had not been fully cleaned, was again deteriorating and that rodent feces continued to accumulate. The Complainant spoke with Dr. Hosein on May 9, 2018. Dr. Hosein said that he had been in to see Ms. X the previous week and that he did not think the apartment was too bad. Dr. Hosein promised to make sure that the cleaners "cleaned better".

On May 23, 2018, Dr. Hosein was told a form needed to be filled out by him to access services for Ms. X. He agreed to provide it "asap". By June 1, 2018, Dr. Hosein had still not provided the information required.

On June 1, 2018, the Complainant again visited Ms. X's apartment. The apartment had deteriorated since his last visit, with more rodent feces, feces on the toilet seat and a cushion over the dried feces on her computer chair.

That same day, the Complainant left Dr. Hosein a voicemail explaining that the apartment was not clean and that he had not provided the information needed. By June 5, 2018, Dr. Hosein had provided the form but it was not complete, not signed and not dated.

The Complainant arranged a formal capacity assessment for Ms. X, which was done on June 21, 2018. The assessor concluded that Ms. X permanently lacked capacity and recommended that she be hospitalized until a placement could be found. She was taken to hospital.

On July 4, 2018, the Nova Scotia Supreme Court issued an Order declaring that Ms. X is an adult in need of protection.

The Committee reviewed the relevant documents, including Mr. X's will and power of attorney documents. The Committee also reviewed Dr. Hosein's medical records. Dr. Hosein says that he made house calls to Ms. X and called her regularly to discuss her care but that he did not document it. Dr. Hosein's medical records do not show any patient visits for Ms. X in 2017. He did document two medical visits in 2016 and two in May and June 2018.

The Committee accepts Dr. Hosein is not Ms. X's guardian. Dr. Hosein was the trusted family friend of Ms. X's parents. He told the Committee while he had no obligation to monitor Ms. X's living premises, he did make periodic visits. Dr. Hosein told the Committee he looked after Ms. X after Mr. X's death to the best of his ability.

The Committee is concerned there was no distinct line between when Dr. Hosein was seeing Ms. X clinically, and when he was seeing her to bring her things, pursuant to the obligation he felt to care for her, stemming from family friendship and his position as trustee.

The Committee accepts Dr. Hosein likely regularly attended at Ms. X's apartment to bring her things, or visit her for medical reasons. It is not possible to know the exact number of times Dr. Hosein visited the apartment in his capacity of family friend, or family doctor, but it is clear he was at her apartment on many occasions.

The evidence from APS, the neighbour hired to clean the apartment and the social worker suggests Ms. X and her apartment were severely neglected over an extended period. Dr. Hosein visited the apartment often but told the Committee he did not notice anything off and that Ms. X did not appear unkempt.

The Committee determined there is sufficient evidence that, if proven, would amount to professional misconduct and that there is ample evidence upon which a Hearing Committee could make this finding. Dr. Hosein acknowledges having been at the apartment on numerous occasions. The overwhelming evidence from APS is Ms. X's living conditions and personal hygiene were unacceptable and unsafe and that she could not care for herself. As her family physician, Dr. Hosein had a positive duty to report Ms. X's living conditions and mental capacity to APS.

Dr. Hosein's failure to report is exacerbated by the fact that he controlled Ms. X's finances and was the person who had taken responsibility for her well-being. Regardless of whether he was her formal guardian, Dr. Hosein took the responsibility of ensuring that Ms. X had proper care and living conditions. He was not obligated to do it but when he was not doing it, he was required to engage APS.

Pursuant to the College's *Guidelines Regarding Reporting Requirements for Nova Scotia Physicians and Adult Protection Act*, R.S. c.2, s. 1, "physicians who have information, whether or not it is confidential or privileged, indicating that an adult is in need of protection shall report that information to the Minister". An adult in need of protection means "an adult who, in the premises where he resides, is not receiving adequate care and attention, is incapable of caring for himself by reason of physical disability or mental infirmity, and refuses, delays, or is unable to make provision for his adequate care and attention". Ms. X met that definition.

Care and Referrals

There is also evidence upon which a Hearing Committee could find that Dr. Hosein failed to act on referrals regarding Ms. X's health and living conditions.

Ms. X's specialist healthcare team was concerned that Ms. X was not coping well with her mother's death, was suffering from depression and was not following a proper diet. Ms. X was eating foods that would exacerbate her condition, like fast food hamburgers and fried chicken, delivered to her by Dr. Hosein.

Ms. X had a specialist appointment in October 2017. The healthcare team sent Dr. Hosein a letter questioning Ms. X's capacity to cope at home, noting that she was not doing well and was struggling with mobility. The letter stated that Ms. X's condition was essentially untreated as she was eating meat twice a day, drinking coke and would forget to take her formula. The clinic was clearly concerned about Ms. X's welfare. The clinic suggested she see Dr. Hosein to discuss housing and other issues.

On December 3, 2017, the Clinic sent a follow-up letter to Dr. Hosein. The team met to discuss Ms. X after another member of the team reached out to Dr. Hosein to alert him about Ms. X's overall welfare. Ms. X may have been heading for some sort of crisis, and unlike many patients with cognitive difficulties, there could be a potential improvement for her with active treatment and diet modification.

Because Dr. Hosein does not have any medical records for Ms. X for 2017, the Committee is concerned Dr. Hosein failed to follow-up on the numerous recommendations and concerns identified by Ms. X's specialists.

The Committee is also concerned Dr. Hosein's records are not at all in keeping with the College's *Professional Standard Regarding Medical Records*.

Conflict of Interest

There is also sufficient evidence upon which the Hearing Committee could find that Dr. Hosein breached the College's *Professional Standards Regarding Conflict of Interest* when he acted as executor and trustee for Mr. X's estate. As trustee, he was responsible for overseeing the estate funds left for Ms. X's care, who was also his patient. Further, a fourth codicil to Mr. X's will names Dr. Hosein's spouse as a contingent residual beneficiary.

The Committee is concerned Dr. Hosein, while acting as Ms. X's family doctor, was also responsible for the disbursement of funds from Mr. X's estate to provide for her care. There is evidence upon which a Hearing Committee could conclude that Dr. Hosein, as Ms. X's physician, knew about her deplorable living conditions, but as trustee and executor, was the very person failing to care for her. The funds left to care for her are the very funds over which his spouse may have a residual claim.

The College's *Guidelines Regarding Conflict of Interest* states a conflict of interest refers to the clash between the physician's duty to act in the patient's best interests and the personal interests of the physician. The Committee is concerned that there is a conflict between Dr. Hosein's duty to act in Ms. X's best interests and his wife's potential residual interest in the estate. On the evidence before the Committee, the estate is valued at over \$300,000.

Professionalism in medicine requires a physician to serve the best interests of a patient above his or her self-interest. Dr. Hosein was Ms. X's doctor, and the trustee/executor of her father's estate. She relied on him exclusively to manage her finances. It does not appear that he was disbursing sufficient funds to provide for Ms. X's care, which obviously includes healthy and appropriate food, adequate clothing, cleaning services and other supports.

Dr. Hosein told APS on multiple occasions in 2014 and 2016 that Ms. X had capacity to care for herself, indicating he would take steps to remediate her condition. It is clear Ms. X was not at all able to care for herself and was not having her needs appropriately addressed. Dr. Hosein held the estate's purse strings, and Ms. X was living in a state of absolute filth and disrepair.

The Committee understands that as of January 18, 2019 Dr. Hosein resolved to resign from his role as executor for Mr. X's estate.

Conclusion

The Committee concluded the nature of the allegations are serious and go to the core of patient care, physician responsibility, and professional ethics.

Dr. Hosein is an experienced physician with an entire career spent focused on family practice. The Committee would expect Dr. Hosein to exhibit a high degree of knowledge and action in Ms. X's case. He had been her family physician for many years. He knew she required a special diet to mitigate negative effects of her condition. In his role as either family physician or family friend, Dr. Hosein had to know Ms. X was not doing well when her parents were no longer able to assist with her daily care. As her family physician, Dr. Hosein had a duty to ensure that Ms. X was cared for if she could not care for herself. Instead, Dr. Hosein, without having done any tests, insisted that Ms. X had capacity to care for herself and that he would oversee her care to ensure it was adequate. Clearly, he did not do so. While Dr. Hosein did not have a legal obligation to care for Ms. X, his role as a physician mandates that he report inadequate care to APS.

Dr. Hosein does not appear willing to take any responsibility for his role in the deterioration of Ms. X's quality of life, either as trustee of her funds or her family physician. He told the Committee he did his best. If Ms. X is an example of Dr. Hosein's best, the Committee is gravely concerned about the health and welfare of Dr. Hosein's vulnerable patient population. Ms. X's living conditions were abhorrent with foul odours, rotting food, rodent feces and broken plumbing. She was consuming low quality food, not at all in line with her recommended diet. She lacked capacity to care for herself, her home or her personal hygiene. Dr. Hosein's failure to act directly affected Ms. X's quality of life. The Committee is thankful the Complainant brought these concerns to the Committee's attention. The Committee is pleased to see Ms. X is now in the care of APS and the Public Trustee is overseeing Ms. X's finances.

The Committee is concerned Dr. Hosein's role as executor and trustee, for an estate in which his wife is a named beneficiary and the requirement to disburse sufficient funds to care for Ms. X are in direct conflict. The situation created by Dr. Hosein and its effect on Ms. X could shake the public's confidence in the integrity of the medical profession.

DECISION

In accordance with clause 99(5)(f) of the *Medical Practitioners Regulations*, the Committee has determined there is sufficient evidence that, if proven, would constitute professional misconduct, incompetence, or conduct unbecoming, warranting a licensing sanction.

Pursuant to clause 99(7)(a)(i) of the *Medical Practitioners Regulations*, and with Dr. Hosein's consent:

Dr. Hosein is Reprimanded for failing to act in a prompt and timely manner on recommendations by Adult Protection and the Clinic, and for failing to report Ms. X as an adult in need of protection, pursuant to the College's *Guidelines Regarding Reporting Requirements for Nova Scotia Physicians* (2015).

Dr. Hosein is Reprimanded for failing to adhere to the College's *Professional Standard Regarding Medical Records*.

Dr. Hosein is Reprimanded for failing to adhere to the College's *Professional Standards Regarding Conflict of Interest*