

COLLEGE OF PHYSICIANS AND SURGEONS OF NOVA SCOTIA
SUMMARY OF DECISION OF INVESTIGATION COMMITTEE A

Dr. Donald Fay
Licence Number: 006262

Investigation Committee A of the College of Physicians and Surgeons of Nova Scotia (“College”) concluded its investigation into a complaint against Dr. Donald Fay by issuing its decision dated August 13, 2019. The Investigation Committee reached agreement with Dr. Fay with respect to the disposition of the complaint. A summary of the complaint and disposition appears below.

OVERVIEW

This matter was initiated by a letter from the complainant received on August 8, 2018. A response from Dr. Donald Fay was received on September 14, 2018.

Investigation Committee A, 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 Dr. Fay, the Committee conducted an interview of Dr. Fay and considered all other documentation provided to it, including the medical record for the complainant.

PARTIES

Dr. Donald Fay is a family physician in Halifax and is licensed to practice medicine in Nova Scotia.

The complainant was a long-time patient of Dr. Fay.

SUMMARY

Key points as reported by the Complainant

Two to three years ago, the complainant began complaining to Dr. Fay about pain in his back. Dr. Fay told the complainant it would take two to three years to get an appointment with a specialist.

In December 2017, the complainant started going to a walk-in clinic, while he was still Dr. Fay’s patient. He saw various doctors at the walk-in clinic; one of whom ordered bloodwork.

A walk-in clinic physician also sent the complainant for a brain CT, which he had done on April 26, 2018. On April 27, 2018, the walk-in clinic physician referred the complainant to a neurologist and he saw him in June 2018. The neurologist referred the complainant for a CT of his neck and pelvis. The results indicated tumours on his kidney, spine, lungs and possibly his lymph nodes.

The complainant states Dr. Fay ignored his complaints and said he was taking up too much of Dr. Fay's time. Dr. Fay would tell the complainant to talk about his complaints at their next visit. The complainant asked if Dr. Fay wanted a list of his complaints. Dr. Fay said he did not, but took a copy of the complainant's list and put it in the medical record.

At one visit Dr. Fay had a timer and set it for 12 minutes. The previous patient had been in with Dr. Fay for 45 minutes. The complainant's spouse told Dr. Fay that every patient is entitled to 15 minutes. Dr. Fay got upset and was going to throw the complainant's file at his spouse, but instead aggressively handed it to her. He told her to take the complainant's file home and "sort it out".

Key points as reported by Dr. Fay

Dr. Fay became the complainant's doctor in November of 2001. The complainant has always been supported by his spouse.

The complainant is a pleasant man. Over the years Dr. Fay made several house calls to the complainant. He had a series of medical challenges.

It has not always been easy providing care to the complainant. It has been difficult obtaining an adequate history. Dr. Fay had problems encouraging the complainant to help himself. The complainant's spouse has been there to provide support and assistance.

The complainant has been plagued by a decline in physical function related to musculoskeletal problems. The severity of his condition was born out by radiological investigations and opinions.

The complainant started going to walk-in clinics in between his visits to Dr. Fay's office. Dr. Fay has always tried to follow the records of the complainant's walk-in clinic visits.

Dr. Fay is disappointed the complainant and his spouse feel he was unresponsive. Dr. Fay made every effort to accommodate them and address the complainant's medical needs. Dr. Fay tried to be patient and understanding.

Dr. Fay wants to apologize for the last visit, when he became upset with the complainant and his spouse. Dr. Fay thinks he is being criticized for not spending enough time with them in that visit. He had just spent an extended period of time with the previous patient. That time must have been absolutely necessary. But, he says, that did not erode the time he spent with the complainant.

Dr. Fay thought the complainant and his spouse were being demanding and he responded to that

criticism. He never accused them of taking up too much time. He does not use a timer to limit patients but rather, to help stay on time. He explains this to patients. Patients generally seem to appreciate his efforts to stay on schedule. He does not cut off patients when the assessment or encounter is ongoing and there are healthcare matters to be addressed.

The use of appointment time may vary according to the patient's medical complaint. If a problem is satisfactorily addressed in 10 minutes, he would not detain the patient for another five minutes to simply fill a 15 minute slot. Most patient visits are longer than 15 minutes and he has started booking fewer patients in the office and extending the duration of appointments. His patient population is getting older.

The complainant and his spouse were upset in the aftermath of his cancer diagnosis. The complainant's spouse accusingly waved her finger. Dr. Fay let them borrow the complainant's paper chart for review. The complainant's more recent medical records are contained in the electronic medical record.

At a follow-up visit the complainant and his spouse respectfully listened as Dr. Fay reviewed the relevant advanced imaging and provided advice concerning cancer and care. The complainant has advanced metastatic disease. The origin is the kidney. Dr. Fay says the complainant never complained about kidney or urinary system difficulty and there was no indication to investigate it. Metastatic renal cell carcinoma is an insidious disease in which patients do not always experience symptoms. When symptoms become noticeable it is frequently a sign the disease has metastasized.

Dr. Fay is sorry this happened to the complainant. He wishes there was something he could do to help him through this difficult time.

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. Fay:

- failed to address any of his health issues;
- ignored his medical complaints;
- told him he was taking up too much of his time; and
- got upset and said, "here, you take this (medical) file home and you sort it out".

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 noted concerns with Dr. Fay's medical record keeping.

DISCUSSION

The Committee reviewed the complaint, the response, and the relevant medical records. The Committee reviewed a CPSNS practice audit. The Committee interviewed Dr. Donald Fay.

2017 Chest x-ray

On January 3, 2017, the complainant presented to the Emergency Department in Halifax with a complaint of rib pain. A January 4, 2017 chest x-ray found the complainant had a widening of the superior mediastinum as well as a deviation of the trachea to the right of the midline. This was noted to be possibly secondary to unfolded vasculature, retrosternal thyroid or masses. The radiologist noted the complainant required a low-dose CT thorax for evaluation of the superior mediastinum in particular.

An August 9, 2018 consult letter from Endocrinology indicated that a July 3, 2018 CT scan revealed the complainant had a large renal mass on his right side, accompanied by lymphadenopathy, rib lesions, and pulmonary nodules.

During his interview Dr. Fay acknowledged to the Committee he had not followed up on the radiologist's recommendation made in January 2017 to book a CT thorax for the complainant and he regrets it. The Committee noted there is also nothing in Dr. Fay's chart to suggest he ever discussed the chest x-ray findings with the complainant. The Committee confirmed a copy of the January 4, 2017 chest x-ray report was in Dr. Fay's chart for the complainant, in the "GWR Radiology" section.

The Committee also noted there was nothing in Dr. Fay's February 2017 progress note regarding the complainant's January 4, 2017 chest x-ray report, an appointment where Dr. Fay should have discussed those findings with the complainant and act on them. The Committee noted Dr. Fay saw the complainant on multiple occasions following the January 4, 2017 chest x-ray.

Dr. Fay acknowledges the complainant has advanced metastatic disease, with the origin in the kidney. Dr. Fay states the complainant never complained about kidney or urinary system difficulties and that is why he did not investigate. However, Dr. Fay's chart notes contain the following:

- 1) the complainant reported he had four episodes of accidents in bed (urine);
- 2) the complainant complained of incontinence at night, and urinary frequency;

- 3) the complainant returned to Dr. Fay complaining of fatigue and urinary incontinence. The plan note was to consider medications for OAB (over active bladder). It is not clear from the notes whether any medications were ever started, or what follow-up, if any, may have been initiated for incontinence concerns as far back as 2015.

Contrary to Dr. Fay's assertion, the complainant did report urinary system difficulty.

The Committee is concerned Dr. Fay failed to comply with accepted standards of the practice of medicine when he did not book a January 2017 CT thorax for the complainant. He also should have discussed the January 4, 2017 chest x-ray report with the complainant. It also appears he did not act on the complainant's urinary system concerns.

Hyperthyroidism

The August 9, 2018 consult report from Endocrinology was copied to Dr. Fay.

The report states the complainant was seen by Endocrinology for thyroid dysfunction, a low to suppressed thyroid stimulating hormone (TSH) for a number of years. The complainant recalled treatment with Synthroid about five years ago for what he thought was hypothyroidism, but that had been discontinued for years.

The complainant was diaphoretic, had a tremor of the bilateral hands, and was tachycardic. He has a low-lying thyroid which felt nodular, particularly on the left side. His thyroid function tests from August 8, 2018 showed a TSH of less than 0.01, and a T4 above the reference range at 22.4. The T3 was within range at 3.64 and anti-TPO antibodies were less than 3. In April 2018, the complainant's TSH was less than 0.01 and T4 was 13.3, and his blood work back until 2009 demonstrated his TSH ranged from <0.01 to 0.03, with a T4 always within reference range at 13-18, demonstrating a subclinical hyperthyroidism for a number of years.

The report states that the complainant is hyperthyroid. He and the endocrinologist discussed the likely etiology of his hyperthyroidism, and how given the appearance on the CT scan, a top differential diagnosis of a toxic multinodular goiter was likely. Endocrinology hoped to sort out the complainant's thyroid issues. The plan was to order an ultrasound to better delineate abnormalities of the thyroid. A functional assessment of the thyroid with thyroid scan was also planned. After discussing the benefits and risks of anti-thyroid medications, Endocrinology started the complainant on a low dose of Tapazole at 5 mg daily, and planned to follow him again in two months with repeat thyroid function testing.

The Committee reviewed Dr. Fay's chart for the complainant. A September 15, 2016 progress note indicates the complainant had thyroid concerns. No plan is noted in the medical record.

On September 26, 2016, the complainant returned to Dr. Fay complaining of fatigue and incontinence. The plan note was to consider medications for OAB (over active bladder), Synthroid. It's not clear whether Synthroid was ever initiated.

On November 28, 2016 there is a progress note in in the record to “re-start thyroid pills”. A type of medication or dosage is not noted. The Committee noted after November 26, 2016 there is no mention in Dr. Fay’s record of the complainant’s thyroid complaints.

The Committee is concerned Dr. Fay failed to comply with accepted standards of the practice of medicine in the management of the complainant’s subclinical hyperthyroidism.

The Committee is also concerned Dr. Fay’s medical record for the complainant is not in keeping with the College’s *Professional Standard Regarding Medical Records*.

Prescriptions

The Committee reviewed two 2018 letters from another physician, Dr. X. In both letters Dr. X expressed concerns because the complainant’s dose of venlafaxine (Effexor) was above the usual therapeutic maximum. Dr. White suggested consideration be given to decreasing this dose, as likely the dosage of 450 mg could be contributing to the complainant’s dizziness and fatigue. It was Dr. X’s impression the complainant did not have consistent primary care follow-up at the time. She was concerned it could take time for the complainant to be able to make the change under the supervision of a family physician. Dr. X elected to begin the dose decrease. The Committee is concerned 450 mg of Effexor is above the therapeutic index and is concerned the dose may have been contributing to the complainant’s complaints of dizziness and fatigue. The Committee could find nothing in Dr. Fay’s chart to indicate medication side effects were considered or discussed.

On February 1, 2017, the complainant’s chief complaint to Dr. Fay was regarding a behavior change and memory change. The complainant was accusing his spouse of taking things out of his wallet. The note queries a “gabapentin effect”, but nothing else is noted about this medication. The Committee is concerned there is no detail provided regarding a “gabapentin effect”.

When the complainant complained on May 2, 2017 of anxiety, the only plan note refers to all medications being reviewed, and then renewed for one year. The Committee is concerned the note does not capture whether medication side effects or interactions were discussed, regarding the anxiety complaint.

On May 8, 2018, the complainant complained of medication side effects but the note does list the side effects. The plan was to taper the Seroquel down and replace gabapentin with 100 mg capsule. The Committee is concerned the side effect is not noted.

During his interview, Dr. Fay agreed he was probably not documenting possible side effects or drug interactions in the chart. He said he often relies on pharmacists to flag possible interactions and communicate those with him. He acknowledged he would like to do more in terms of medication side effects. He acknowledged he needs a “sharp pencil” with respect to patients who are taking an opiate, benzodiazepine and mood stabilizer, and noted every time he sees a patient on multiple medications he must review of those medications.

The Committee is concerned Dr. Fay was providing the complainant with long term (10-12

month) renewals for benzodiazepines and opiates. The Committee is concerned Dr. Fay was not effectively monitoring the complainant's medications and potential side effects.

The Committee is also concerned Dr. Fay's medical record for the complainant is not in keeping with the College's *Professional Standard Regarding Medical Records*.

Referrals

On September 26, 2016 the complainant complained to Dr. Fay of fatigue and incontinence. The plan note was to consider medications for OAB (over active bladder). It is not clear from the record whether Dr. Fay prescribed the complainant any medications for incontinence, or followed-up on this complaint. The Committee observed Dr. X in 2018 noted the complainant had major problems with nocturnal urinary frequency, having to void up to 20 times per night, and this had improved significantly with the prescription of tamsulosin (Flomax).

The Committee noted in February 2017 there was a complaint of change in the complainant's behaviour. The complainant was forgetting things and accusing his spouse of taking things out of his wallet. Dr. Fay's plan noted the complainant was to return to the clinic (RTC) for memory testing, and if his memory was still a problem a referral would be made to the memory clinic. The Committee was unable to find any referral to the memory clinic for the complainant, or any other follow-up with respect to the complainant's memory complaint, and changes in behaviour.

In August 2017 Dr. Fay noted the complainant had other general symptoms of chronic pain. He noted he had dental work, and had lost 55 pounds in two months. Two other notes state, "Refer to pain clinic at the VG", and "CT for back". The Committee could find nothing in the record with regards to a referral to the VG pain clinic after the August 2017 visit. The Committee could not locate a referral for a low back CT in the months following the August 2017 appointment. The Committee noted a physician at the walk-in clinic ordered the January 2018 lumbar x-ray of the complainant's spine, not Dr. Fay.

The Committee is concerned Dr. Fay failed to appropriately refer the complainant for necessary investigations and treatment in a timely manner.

The Committee is also concerned Dr. Fay's medical record for the complainant is not in keeping with the College's *Professional Standard Regarding Medical Records*.

June 13, 2018 encounter

The complainant's spouse recalls how at one visit Dr. Fay had a timer and set it for 12 minutes. The previous patient had been in with Dr. Fay for 45 minutes. The complainant's spouse told Dr. Fay every patient is entitled to 15 minutes. Dr. Fay got upset and was going to throw the medical file at her, but instead aggressively handed it to her. He told her to take the complainant's file home and "sort it out". Dr. Fay acknowledges letting them borrow the complainant's paper chart for review.

Dr. Fay apologizes for the visit when he became upset with the complainant and his spouse. Dr.

Fay thinks he is being criticized for not spending enough time with them in that visit. Dr. Fay thought the complainant and his spouse were being demanding, and he responded to that criticism. He never accused them of taking up too much time. His use of a timer is not done in any way to limit patients. It is his way to better enable him to stay on time.

Dr. Fay acknowledged to the Committee the June 2018 encounter with the complainant and his spouse had been a “stormy session”. He could not recall why the appointment was booked. He can only recall the clinical reason for that appointment would have been concerning the complainant’s recent findings. Dr. Fay acknowledged the complainant’s spouse was angry about him not giving enough attention for many months.

The Committee is concerned Dr. Fay’s exchange with the complainant and his spouse may not have been in keeping with the College’s *Professional Standard Regarding Disruptive Behaviour by Physicians*.

The Committee acknowledges Dr. Fay apologizes for becoming upset with the complainant and his spouse.

Walk-in clinic visits

During his interview Dr. Fay told the Committee he did not recall any changes in the complainant’s chronic pain or circumstances between March and June of 2018.

The Committee reviewed the complainant’s records from the walk-in clinic. The complainant was going to the walk-in clinic while he was still Dr. Fay’s patient.

On January 15, 2018, the complainant complained to a walk-in clinic physician he had noticed his back pain was getting worse. That physician ordered an x-ray of the lumbar spine. On exam the complainant had discomfort on all range of motion on lumbar spine.

On April 9, 2018, a doctor diagnosed a hernia and noted a weight loss of 55 pounds due to diet changes. No nausea or no vomiting were noted.

During an April 24, 2018 visit, it was noted that the complainant was seeing a mental health social worker. The complainant wondered if he needed a CT as he had issues with memory for years, and it was getting worse. The complainant told the walk-in clinic physician his bloodwork had not been done in a long time. On exam it was noted the complainant had some weakness in his hand, and a tremor. The walk-in physician ordered a head CT.

On April 26, 2018, the complainant returned to the walk-in clinic. He noted getting out of bed to be difficult. He felt dizzy and started using a cane in last few months. He fell. On questioning the complainant was not clear, and appeared confused at times. He had a lot of symptoms he and partner did not discuss at previous appointments at the walk-in. An urgent referral was made to neurology for a possible stroke.

On June 4, 2018, an aggressive episode was noted in the complainant’s record. The complainant

had committed assault and the RCMP was called. The complainant's spouse asked whether he should have a follow-up CT exam given the April 26, 2018 CT report noted a lacunar infarct. Another CT scan was ordered by a walk-in physician. Follow-up with Dr. Fay was suggested, with a medication review and adjustment.

On June 27, 2018, the complainant presented with abnormal thyroid lab results ordered by neurology. Dr. Fay could not see the complainant until July 17, 2018. A walk-in physician advised the complainant on the TSH issue should be followed by his family doctor, but sent a referral to Endocrinology in the meantime because of the low TSH.

On July 5, 2018 a walk-in physician reviewed the complainant's July 3, 2018 enhanced chest, abdominal and pelvis CT (ordered June 4, 2018 by the walk-in clinic). This CT suggested the complainant's findings were consistent with renal cell carcinoma.

The Committee accepts the complainant received appropriate and timely care from the walk-in clinic. The Committee accepts the complainant had multiple serious medical issues which required immediate testing, diagnostic imaging, follow-up, and care.

Conclusion

Dr. Fay became the complainant's doctor in November of 2001. The complainant started going to walk-in clinics in between his visits to Dr. Fay's office and Dr. Fay tried to follow these records.

The complainant experienced chronic and increasing back pain and communicated these concerns to Dr. Fay. However, Dr. Fay did not follow-up on a January 2017 radiologist's recommendation that the complainant have a CT-thorax. In 2018 he was diagnosed with renal carcinoma after a walk-in clinic physician ordered a CT. The Committee noted Dr. Fay had multiple opportunities at several appointments between January 2017 and January 2018 to discuss the 2017 chest x-ray and make the necessary CT thorax referral.

The complainant also complained of thyroid issues. It does not appear from the record these complaints were sufficiently addressed by Dr. Fay. In 2018 an endocrinologist, to whom the complainant was referred by a walk-in physician, diagnosed him with hyperthyroidism. Treatment was initiated.

Dr. Fay's failure to address the complainant's medical concerns is serious, and goes to the heart of patient care.

Dr. Fay is experienced in long-term care of patients, and the Committee expected him to display a higher degree of awareness of chronic disease care for the complainant. Dr. Fay acknowledged he held a bias as the complainant had a motivational issue as to what he would want to do. Dr. Fay found it difficult to separate the complainant's pain from physical degeneration to that of a motivational issue. The Committee is concerned Dr. Fay's bias towards the complainant's motivational issues may have influenced his ability to provide appropriate and timely care.

The Committee noted Dr. Fay had to cease his practice in long-term care homes in September of 2018 because he realized he did not have enough time for his patients. He realized he needed to allocate longer times to his own patient visits. Giving up long-term care has allowed him to make more time for patients in his practice, many of whom are geriatric. The Committee is concerned Dr. Fay's busy practice may have negatively impacted his ability to care and follow-up for the complainant.

The Committee reviewed a focused audit of Dr. Fay's practice that was conducted pursuant to a competence assessment. The audit focus was Dr. Fay's medical record documentation and care of elderly patients with chronic disease.

The Committee noted in one case a patient had a thyroid test done in March 2018 showing a TSH 12.32. Despite visits with Dr. Fay after that date, Dr. Fay did not discuss or review the results with the patient. She presented in August 2018 complaining of a neck mass. Dr. Fay arranged an appropriate neck ultrasound, but did not arrange a TSH and again did not review the prior lab. Dr. Fay agreed he missed this and the patient should have been started on Synthroid and referred to endocrinology. The Committee is concerned Dr. Fay is not adequately managing patients with thyroid issues.

The Assessor noted in cases where no physical exam, or a limited and incomplete exam is in the medical record, she had difficulty assessing the clinical care provided. If the medical record accurately reflected Dr. Fay's clinical care, her opinion was the care in several patients was inadequate. The Committee is concerned the audit reflects it concerns Dr. Fay's medical records are not in keeping with the College's *Professional Standard Regarding Medical Records*.

The assessor also had questions about the use of benzodiazepines, Flexeril and Seroquel in a few patients all over the age 70. Two of these medications were not identified by Dr. Fay in the CSR as a concern for a geriatric patient with a significant fall. When discussing the use of benzodiazepines in combination with opioids in this population, Dr. Fay discussed their low risk of overdose as they are on stable doses of both medications. The total daily equivalent doses of morphine for the geriatric chronic pain patients was also reviewed. Dr. Fay explained patients are on long term stable doses and his goal of frequent visits is to monitor side effects and function.

The Committee accepts Dr. Fay is committed to monitoring side effects and function of these drugs going forward, but is concerned the complainant's medical record does not demonstrate this occurred with that patient. The Committee was concerned about the complainant's high dose of Effexor, "gabapentin effect" noted, the fact medications were renewed for 12 months at a time, and it does not appear side effects or interactions were addressed or discussed.

The Committee was concerned Dr. Fay did not refer the complainant to the memory clinic or the pain clinic.

In a letter dated October 29, 2018 Dr. Fay commented he was not thrilled by the assessment. He noted the assessor's experiences in medical practice did not correspond with his. Dr. Fay indicated he did want to try and learn from the experience and was committed to continuous quality improvement.

In his January 8, 2019 interview, Dr. Fay acknowledged to the Committee he was unhappy about his failure to make a January 2017 booking for a CT thorax for the complainant. He also feels bad about his management of the complainant's subclinical hyperthyroidism. Dr. Fay regrets not providing more direct engagement with the complainant in 2018.

Dr. Fay told the Committee he has to acknowledge the complainant received good treatment because of the walk-in clinic staff. He told the Committee the walk-in clinic was very helpful at a time when he was so busy with so many other things. He is very appreciative of everything the clinic did. He is very sad he was not the one that did those things. He was the complainant's family doctor.

While the Committee accepts Dr. Fay regrets not providing more direct engagement with the complainant in 2018, the Committee has determined there is sufficient evidence that, if proven, would constitute professional misconduct, and warrants a licensing sanction.

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 warranting a licensing sanction.

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

- failing to comply with accepted standards of the practice of medicine when he did not book a January 2017 CT thorax for the complainant;
- failing to comply with accepted standards of the practice of medicine in the management of the complainant's subclinical hyperthyroidism; and
- failing to maintain medical records in accordance with the College's *Professional Standard Regarding Medical Records*.

In addition, Dr. Fay agreed to contribute an amount toward the College's costs in this matter.

Dr. Fay consented to the reprimand on August 17, 2019.

For further information related to the Nova Scotia Medical Act & Medical Practitioners Regulations, along with the College's Standards and Guidelines, please visit our website at: www.cpsns.ns.ca