

PROVINCE OF NOVA SCOTIA
Halifax Regional Municipality

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

and

IN THE MATTER OF: The College of Physicians and Surgeons of Nova Scotia

and

IN THE MATTER OF: Dr. Jalal Hosein

and

IN THE MATTER OF: A proposed consent revocation agreement under Section 105 of the
Medical Practitioners Regulations, NS Reg. 225/2014

HEARING COMMITTEE DECISION

Hearing Committee:

Mr. Raymond F. Larkin, Q.C.

Dr. Gisele Marier

Dr. Ian Epstein

Dr. Andrea Rideout

Ms. Gwen Haliburton

Counsel:

Ms. Jill Strugnell, Counsel for Dr. Jalal Hosein

Ms. Jane O'Neill, Q.C., Counsel for the College of
Physicians and Surgeons of Nova Scotia

Introduction

1. The Hearing Committee has decided to accept a consent revocation agreement proposed by Dr. Jalal Hosein with the consent of the Registrar. Our decision to accept the proposed consent revocation agreement has the effect of a revocation of registration and licence following a hearing. Dr. Hosein's registration and licence are now revoked.
2. In reaching this decision, the Committee decided that no hearing was required and that no additional information or submissions from Dr. Hosein or the College were necessary. We were satisfied that the proposed agreement included allegations and admissions, which would result in the revocation of Dr. Hosein's registration and licence if the process of investigation and public hearing in the *Medical Act* and Medical Act Practitioners Regulations had been followed.
3. The proposed consent revocation agreement provides as follows:

CONSENT REVOCATION AGREEMENT

"Pursuant to section 105(1) of the Medical Practitioners' Regulations, Dr. Jalal Hosein, a medical practitioner in the Province of Nova Scotia and a member of the College of Physicians and Surgeons of Nova Scotia (the "College"), with the consent of the Registrar of the College, submits this Consent Revocation Agreement to the Hearing Committee for approval.

1. Dr. Hosein, a physician registered under the *Medical Act*, 2011, since June 12, 1973, has been subject to an interim suspension since February 21, 2019, imposed by the Expedited Investigation Committee of the College as a result of the complaint of Ms. X

dated February 16, 2019.

2. Ms. X's complaint alleges that Dr. Hosein had a sexual relationship with her while she was his patient. Dr. Hosein agrees that given Ms. X's particular vulnerabilities and duration of the sexual relationship, her allegations, if proven, would result in a revocation of Dr. Hosein's registration and licence.

3. Dr. Hosein admits to having a sexual relationship with Ms. X while she was a patient.

4. Dr. Hosein admits he was dishonest with the College by initially denying that he ever had a sexual relationship with a patient.

5. Dr. Hosein admits there is an inherent power imbalance in physician/patient relationships.

6. 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. Hosein 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."

4. Section 105 of the Medical Practitioners Regulations provides for revocation of a physician's registration and licence by consent as follows:

"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."

5. Section 30 of the Medical Act requires us to dispose of a matter of professional misconduct "in accordance with the objects of the College." Those objects are set forth in section 5 of the Act which provides in part as follows:

"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....

6. We can only accept a proposed consent revocation agreement if we are satisfied that doing so would serve and protect the public interest in the practice of medicine and that our decision to accept the proposal would 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.

7. More specifically, Section 105(2) of the Regulations provides that a proposed consent revocation agreement must include allegations that, if proven, would result in the revocation of the physician's registration and licence.

8. To fully understand the interaction between the purposes of the College and the specific requirements of section 105, Section 105 must be interpreted in the context of the generally applicable provisions for investigation of complaints against physicians and the approach usually taken by the Hearing Committee to the disposition of charges by the revocation of a physician's registration and license.

Context – when is revocation appropriate

9. Revocation of a physician's registration and licence is rare in Nova Scotia. The published decisions of the Hearing Committee and the Court of Appeal show only a handful of revocation orders in the past three decades; see *Qureshi v. Nova Scotia (Medical Board)* (1994), 63 N.S.S.R. (d) 74 (CA); *Re Hogue*, 1995 CanLII 10416 (NSCPS); *Re Hingley*, 1999 CanLII 19873 (NSCPS); *Re MacDonald*, 2000 CanLII 28924 (NSCPS) (by settlement agreement); *Re Christie*, 2001 CanLII 38371 (NSCPS); *Re Oluwole*, 2012 CanLII 97114 (NSCPS) (by settlement agreement).

10. All but one of these cases which resulted in the revocation of a physician's licence involved sexual misconduct by the physician. However, not all instances of sexual misconduct by physicians have resulted in the revocation of their licence; see *Fashoranti v College of Physicians and Surgeons of Nova Scotia*, 2015 NSCA 25 and *Re Ezema*, 2018 CanLII 105365 (NSCPS).

11. The Hearing Committee has indicated that, except in cases of egregious misconduct, findings of professional misconduct or incompetence do not justify revocation where alternative measures, which may include disciplinary suspensions, re-education, conditions of license or restrictions placed on the scope of the practice of the physician, have a reasonable chance of success; see *Re Osif*, 2008 CanLII 89674 (NSCPS) upheld on appeal in *Osif v College of Physicians and Surgeons of Nova Scotia* 2009 NSCA 28.

12. The paramount consideration in determining the disposition of the matter of professional misconduct or incompetence is the protection of the public. If the protection of the public can be reasonably assured by measures short of revocation, it is not the appropriate disposition. In the recent decision of the Hearing Committee in *Re Ezema*, the Committee rejected the submissions of the Registrar that revocation of license was the appropriate penalty in that case which involved sexual harassment of health care colleagues by a physician. The

Hearing Committee chose to follow the approach in the decision of the Ontario Court of Appeal in *Ontario v Dr. Javad Peirovy*, 2018 ONCA 420. In that case, the Court stated:

“[63] The Discipline Committee explained that protection of the public is generally taken as the paramount principle of sentencing. It is then that the Discipline Committee stated:

Although the two principles are not identical, and there will be cases where the egregious nature of the misconduct itself will demand revocation even where the risk of re-offence is low, a well-informed public would be expected to maintain confidence in a self-regulating process which results in the public being protected from abusive physicians.

[64] In this passage, the Discipline Committee was quite properly pointing out that revocation is sometimes "demanded" by egregious conduct alone. As it indicated in other parts of its reasons, however, it is tasked with arriving at a fair and just penalty that addresses all of the sentencing principles. Those principles include the paramount consideration of protection of the public, as well as maintenance of public confidence in the reputation and integrity of the profession, effective self-governance, general deterrence, specific deterrence, and the potential for the member's rehabilitation. Proportionality is also an important consideration.

[65] The Discipline Committee's reasons as a whole make clear that it did not erroneously assume that revocation was available only in a narrowly constrained set of circumstances. Rather, it concluded that the suspension and practice restrictions imposed struck the most appropriate balance between the variety of sentencing principles at play in this case.”

[Emphasis added]

13. In its decision in *Re Ezema*, the Hearing Committee accepted that there are cases where the "egregious nature of the misconduct itself will demand revocation", but, in seeking a fair and just penalty, it would apply the principles set out in paragraph 64 of the *Peirovy* decision, with the objective of striking the most appropriate balance between those principles in all of the circumstances of the case. Based on these principles, the Committee considered the protection of the public, maintenance of the confidence of the public in the ability of the College to regulate the medical profession, deterrence of similar conduct by other physicians, deterrence of the individual physician from repeating misconduct, the

potential for the physicians' rehabilitation and proportionality between the penalty of revocation and the misconduct by the physician.

CONTEXT-THOROUGH INVESTIGATION AND TRANSPARENT DISPOSITION OF COMPLAINTS

14. The second part of the context for considering the combined effect of Section 105 and the purposes of the College is the College's approach to conducting thorough investigations of complaints and of requiring the transparent disposition of complaints.

15. The procedures for addressing complaints of misconduct or incompetence by a physician are set out in Sections 87-104 of the Medical Practitioners Regulations. After an initial screening of complaints by the Registrar, a complaint is referred to an investigation committee. The investigation committee conducts an exhaustive process of gathering all the facts that are relevant to the complaint. The committee obtains the relevant medical records. They interview the complainant and the respondent physician as well as third-party witnesses. The committee seeks expert evidence when that is required.

16. An investigation committee is authorized to impose a reprimand or to require conditions or restrictions on a physician's practice with the consent of the physician involved. Reasons for their decision are given, and typically those reasons provide an exhaustive account of the process of the investigation, the position of the complainant, the position of the respondent, summaries of the interviews and the other evidence gathered and the rationale of the investigation committee for imposing a reprimand or restrictions on practice. When a complaint is disposed of it has been thoroughly investigated, all relevant facts are considered and set out, and those facts and the reasons of the investigation committee provide the transparency required to ensure public confidence in the College's ability to act in the public interest.

17. An investigation committee may recommend an acceptance of a settlement

agreement if it is satisfied that certain conditions have been met. Section 102 (1) Medical Practitioners Regulations sets out the criteria used by the investigation committee:

“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.”

18. Settlement agreements include a detailed recitation of the relevant facts that have been determined in the investigation by the investigation committee. A settlement agreement can only be proposed if it provides sufficient facts and admissions to support the agreed disposition. Approval of a settlement committee requires recommendation by the investigation committee and acceptance by the Hearing Committee. The Hearing Committee may accept or reject a proposed settlement agreement and must provide reasons for its decision.

19. Settlement agreements require a process where all relevant facts are known, appropriate admissions have been made by the physician involved, and the reasons for the settlement are transparent.

SECTION 105 – CONSENT REVOCATION AGREEMENTS

20. Section 105 of the Medical Practitioners Regulations permits a physician accused of misconduct or incompetence in a complaint or in a decision of the investigation committee to propose revocation of their registration and license. Consent of the Registrar is required, as is acceptance of the proposed revocation agreement by the Hearing Committee.

21. The requirements in the Medical Practitioners Regulations for a consent revocation agreement contrast significantly with the provisions in the Regulations for a settlement agreement. A consent revocation agreement under Section 105 does not require a recommendation from an investigation committee. It may follow an investigation, but it does not necessarily require any investigation of the complaint. It does not require admissions from the physician accused of misconduct or incompetence. A physician who admits nothing but who does not contest allegations in the complaint may propose a revocation agreement.

22. Where a settlement agreement requires sufficient facts and admissions to support the agreed disposition, a consent revocation agreement is based not on facts but on **allegations**, either in the complaint or in the decision of the investigation committee.

23. The requirement in Section 105 for accepting a revocation agreement is that the proposed consent revocation agreement must include allegations that, if proven, would result in revocation of the physician's registration and license.

24. There are good reasons why the procedure in Section 105 has been included in the Medical Practitioners Regulations, despite its inconsistencies with the usual strict requirements for investigation and disposition of complaints. A physician may accept that their conduct has been egregious and that they are at a stage in their life that they think it would be best to give up their profession. The Registrar may share that same conclusion. Both may wish to avoid the cost of a full investigation and public hearing.

25. Even where the physician is less sure that they deserve to lose their licence, they may conclude that there is a real chance that they will have their license revoked after a hearing. The physician accused of serious misconduct may believe that revocation is likely and see no benefit in contesting allegations that will eventually be accepted by a hearing committee. A physician may wish to avoid some of the public exposure from the settlement

agreement or public hearing process if giving up their profession is better for them than the alternative.

26. Both the Registrar and the physician accused of misconduct or incompetence may be uncertain about the outcome of a hearing. The Registrar may foresee difficulties in proving the allegations in the complaint. Witnesses may not be available to testify. An individual who makes allegations of sexual misconduct by their physician may fear that they will be retraumatized by the hearing process and be unwilling to testify; the Registrar may prefer not to expose them to the rigours of the adversarial process in a public hearing.

27. There is a trade-off in Section 105. The paramount purpose of the *Medical Act* is the protection of the public. Revocation of a physician's registration and licence guarantees that the public is protected from any future harm in the practice of medicine by the physician. For the physician, an acceptable revocation agreement does not require them to admit allegations against them but only to indicate that they do not contest them.

28. However, whatever the reasons of the physician or the Registrar for agreeing to a consent revocation agreement, Section 105(2) requires that the proposed agreement must include allegations that, if proven, would result in a revocation of the physician's registration and licence. Where the proposed agreement contains the admission that the allegations against the physician would result in revocation, the Hearing Committee will assess the allegations in the proposed agreement and decide whether it should accept that admission.

29. Fundamentally, in our opinion, Section 105 requires assessment by the Hearing Committee of the seriousness of the allegations against the physician and whether the alleged misconduct or incompetence is proportionate to the revocation of the physician's registration and license. To the extent that they are relevant, we will consider the protection of the public, maintenance of the confidence of the public in the ability of the College to regulate the medical profession, deterrence of similar conduct by other physicians,

deterrence of the individual physician from repeating misconduct and the potential for the physician's rehabilitation.

ANALYSIS OF THE PROPOSED REVOCATION AGREEMENT

30. In his proposed consent revocation agreement, Dr. Hosein admits to having a sexual relationship with the complainant while she was a patient. He agrees that, given the complainant's vulnerability and the duration of the sexual misconduct that her allegations, if proven, would result in a revocation of his registration and license. He admits that he was dishonest with the College by initially denying that he had a sexual relationship with the patient.

31. There can be no doubt that the allegations of the complainant about Dr. Hosein's conduct, if proven or admitted, would result in a finding of professional misconduct. Professional misconduct is defined in Section 2 (aj) of the *Medical Act* and follows:

“(aj) “professional misconduct” includes such conduct or acts in the practice of medicine that, having regard to all the circumstances, would reasonably be regarded as disgraceful, dishonourable or unprofessional and that, without limiting the generality of the foregoing, may include breaches of

- (i) the Code of Ethics approved by the Council,
- (ii) the accepted standards of the practice of medicine, and
- (iii) this Act, the regulations and policies approved by the Council;

32. In our opinion, the allegations of the complainant and the admissions from Dr. Hosein can reasonably be regarded as disgraceful, dishonourable, and unprofessional. The conduct alleged by the complainant and admitted by Dr. Hosein demonstrate particularly serious misconduct. Dr. Hosein acknowledges the complainant's vulnerability and, without

specifying in detail, he admits an unspecified duration of the sexual relationship while she was a patient.

33. The professional misconduct alleged by the complainant and admitted by Dr. Hosein is very serious misconduct that can be appropriately characterized as egregious.

34. The proposed consent revocation agreement contains no facts which would mitigate the penalty of revocation of Dr. Hosein's registration and license. There are no facts in the proposed agreement that show that he has the potential for rehabilitation or would be deterred from repeating this misconduct if measures such as a period of suspension or conditions and restrictions on practice were imposed instead of revocation. On the other hand, the acknowledgment of the complainant's particular vulnerability and the duration of the sexual relationship, in this case, constitute significant aggravating circumstances beyond just a sexual relationship with a patient. Dr. Hosein's initial denial to the College of the sexual relationship is a further aggravating circumstance.

35. Revocation of Dr. Hosein's registration and license will make it certain that the public is protected from any repetition of his misconduct because he will have no patients. Likewise, revocation will serve the purpose of deterring other physicians from this kind of serious misconduct. In our opinion, revocation of his license is proportionate to the seriousness of the wrongdoing alleged by the complainant and acknowledged by Dr. Hosein.

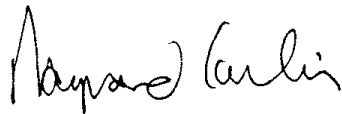
36. The absence of a full investigation and, therefore, the detailed recitation of facts in a settlement agreement and a hearing committee decision could cause some concern about whether this way of addressing the complaint has the transparency needed to maintain public confidence in the College. However, acceptance of this proposed consent revocation agreement certainly does not minimize the professional misconduct described in the agreement. On the contrary, the effect of our acceptance of this agreement is that Dr.

Hosein will immediately suffer a severe denunciation of his conduct and the most significant penalty for misconduct permitted by the *Medical Act*.

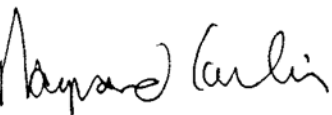
37. For these reasons, the Hearing Committee accepts the proposed consent revocation agreement submitted by Dr. Hosein with the consent of the Registrar. Our decision to accept the consent revocation agreement has the same effect as a revocation ordered by the Hearing Committee following the hearing.

22. We reserve jurisdiction in the event there are issues in the implementation of the consent revocation agreement accepted by the Committee.

This decision made at Halifax, Province of Nova Scotia this 24th day of April, 2020.



Raymond F. Larkin, Q.C.

Per 

Dr. Gisele Marier



Dr. Ian Epstein



Dr. Andrea Rideout



Ms. Gwen Haliburton

