

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. Rafid Sabah Al-Nassar

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, QC
Dr. Erin Awalt
Dr. Michael Teehan
Ms. Gwen Haliburton
Dr. Naeem Khan

Counsel:

Mr. Daniel Wallace
Counsel for the College of Physicians and Surgeons of Nova Scotia

Mr. Colin Clarke, QC
Counsel for Dr. Rafid Sabah Al-Nassar

Introduction

1. The Hearing Committee has decided to accept a Consent Revocation Agreement proposed by Dr. Rafid Al-Nassar with the consent of the Registrar. Our decision to accept the Consent Revocation Agreement has the same effect as a revocation of Dr. Al-Nassar's registration and licence following a Hearing. Dr. Al-Nassar's registration and licence are hereby revoked.
2. We are satisfied that the proposed Consent Revocation Agreement includes allegations and admissions which would result in the revocation of Dr. Al-Nassar's registration and licence if the process of investigation and public hearing under the *Medical Act* and *Medical Act Practitioners Regulations* had been followed.

Background

3. An Investigation Committee of the College has referred a disciplinary matter with allegations of professional misconduct and conduct unbecoming by Dr. Al-Nassar to the Hearing Committee. A Notice of Hearing was issued on June 14, 2021, which included the following:

The Hearing Committee will consider the following matters.

That being registered under the *Medical Act, 2011* and being a physician in the Province of Nova Scotia, it is alleged that:

1. On or about March 21, 2016, you installed a camera in the staff washroom at the Westside Medical Clinic in New Glasgow, Nova Scotia. In doing so, you:
 - a. acted in a manner that would bring discredit upon the medical profession;
 - b. violated accepted standards of practice;
 - c. acted in a manner that would reasonably be regarded as disgraceful, dishonourable and unprofessional;
 - d. violated the *Canadian Medical Association's Code of Ethics* (2004);

- e. violated the College's *Professional Standard regarding Disruptive Behaviour by Physicians* (2013); and
- f. violated the College's Professional Standard regarding *Sexual Misconduct in the Physician-Patient Relationship* (2010).

AND THAT THE ABOVE ALLEGATIONS CONSTITUTE PROFESSIONAL MISCONDUCT, AND/OR CONDUCT UNBECOMING.

“Conduct unbecoming” is defined in the *Medical Act, 2011* to mean “conduct outside the practice of medicine that tends to bring discredit upon the medical profession”;

“Professional Misconduct” is defined in the *Medical Act, 2011* to include:

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) the *Medical Act*, the regulations and policies approved by the Council.

4. The Hearing Committee has scheduled a hearing to begin on November 22, 2021, to consider the allegations in the Notice of Hearing.

5. On September 27, 2021, Dr. Al-Nassar, with the consent of the Registrar of the College, submitted a Consent Revocation Agreement to the Hearing Committee for approval. The Consent Revocation Agreement provides as follows:

CONSENT REVOCATION AGREEMENT

Pursuant to section 105(1) of the *Medical Practitioners' Regulations*, O.I.C. 2014-530 (December 22, 2014), N.S. Reg. 225/2014 as amended to O.I.C. 2015-26 (February 3, 2015), N.S. Reg. 18/2015, Dr. Rafid Sabah Al-Nassar, 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. On the morning of March 21, 2016, a staff member at the Westside Medical Clinic in New Glasgow found a hook containing a hidden camera on the wall of the staff washroom and pointed towards the toilet.
2. The SD card found inside the hook containing a hidden camera contained a video recording of a Westside Medical Clinic staff member using the washroom.
3. The SD card found inside the hook containing a hidden camera belonged to Dr. Al-Nassar.
4. Dr. Al-Nassar practiced at the Westside Medical Clinic when the hidden camera was found. The staff member who found the hook containing a hidden camera was also a patient of Dr. Al-Nassar.
5. On November 29, 2016, Dr. Al-Nassar was charged with voyeurism by the New Glasgow Police Department.
6. On November 29, 2016, the Registrar, after learning of the criminal charges of voyeurism against Dr. Al-Nassar, filed a Registrar's complaint against Dr. Al-Nasser.
7. The Nova Scotia Supreme Court ultimately stayed the criminal charges against Dr. Al-Nasser due to its finding that Dr. Al-Nassar had been denied his constitutional right to have a trial within a reasonable time pursuant to section 11(b) of the Canadian Charter of Rights and Freedoms.
8. It is alleged that:
 - a. Dr. Al-Nassar ordered the hook containing a hidden camera from Amazon.com and placed it on the wall of the staff washroom at the Westside Medical Clinic;
 - b. Dr. Al-Nassar was dishonest with the New Glasgow Police Department during its investigation of who placed the hook containing a hidden camera in the staff washroom at the Westside Medical Clinic; and
 - c. the placement of a surreptitious recording device in a staff washroom constitutes professional misconduct and conduct unbecoming.

9. Dr. Al-Nassar does not contest the allegations set out in paragraph 8 above.
10. Dr. Al-Nassar admits that the allegations set out in paragraph 8 above, if proven, would result in a revocation of Dr. Al-Nassar's registration and license.
11. Dr. Al-Nassar consents to 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 hearing.
12. Dr. Al-Nassar is permitted to apply for reinstatement two years from the date of the Hearing Committee's Decision approving this Consent Revocation Agreement.
13. There shall be no costs awarded to either party as part of this Consent Revocation Agreement.
14. 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.

Consent Revocation Agreements

6. 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.

7. 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...

8. In *Re Hosein*, 2020 CanLII 31686 (NSCPS), the Hearing Committee set out its approach to the consideration of proposed consent revocation agreements under Section 105 of the *Medical Practitioners Regulations*. It summarized that approach in the following paragraphs:

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 respondent's registration and license.

...

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 respondent'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, the preservation 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.** [emphasis added]

9. As noted in paragraph 28 of *Re Hosein*, where a medical practitioner admits that the allegations against them, if proven, would result in revocation of their licence, the Hearing Committee must assess the allegations in the proposed revocation agreement and decide whether or not to accept that admission.

10. The College submits that the Hearing Committee should accept a proposed revocation agreement "unless it is so 'unhinged' from the circumstances of the case that it must be rejected". We are not convinced that this is the proper approach to the application of Section 105.

11. Regulation 105 requires the approval of a Consent Revocation Agreement by the Hearing Committee. The majority of members of the Hearing Committee are medical practitioners. Peer evaluation of allegations against medical practitioners is an essential feature of addressing allegations of professional misconduct and conduct unbecoming in the *Medical Act*. In our view, it is inconsistent with peer evaluation under the *Medical Act* to require the Hearing Committee to accept a proposed revocation agreement with the consent of the Registrar only unless it is so "unhinged" that proper functioning of the professional responsibility system under

the *Medical Act* had broken down. Accordingly, we will take the approach that we set out in *Re Hosein*, and assess the seriousness of the allegations against Dr. Al-Nassar, whether the alleged conduct is proportionate to the revocation of his registration and licence and the other relevant considerations.

12. We have concluded that the uncontested allegations against Dr. Al-Nassar, if proven, would constitute conduct unbecoming, which is defined in s. 2(f) of the *Medical Act* as follows:

(f) “conduct unbecoming” means conduct outside the practice of medicine that tends to bring discredit upon the medical profession.

13. The definition of "conduct unbecoming" contrasts with the definition of "professional misconduct" in s. 2(aj), which provides:

(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.

14. “Practice of medicine” referred to in both the definition of “conduct unbecoming” and “professional misconduct” is defined in s. 2(af) as follows:

(af) “practice of medicine” means the practices and procedures usually performed by a medical practitioner and includes (i) the art and science of the assessment, diagnosis or treatment of an individual, (ii) the related promotion of health and prevention of illness, and (iii) such other practices and procedures as taught in universities or schools approved by the Council for licensing purposes under this Act and regulations.

15. Placing a hidden camera in a medical practitioner's staff washroom, pointed towards the toilet, is conduct unbecoming of a medical practitioner. In our opinion, the allegation that

Dr. Al-Nassar arranged to place a camera in the staff washroom at the Westside Medical Clinic, if proven, would tend to bring discredit upon the medical profession and, in the circumstances, would constitute conduct unbecoming. Dr. Al-Nassar does not contest those allegations. His alleged conduct, if proven, would amount to an extreme invasion of the privacy of the employees of Westside Medical and a substantial affront to their dignity. There is no doubt that such conduct would tend to discredit the medical profession in the eyes of the public.

16. We agree with the following passage from the decision of the College of Physicians and Surgeons of Ontario in *Re Ontario (College of Physicians and Surgeons of Ontario) v. Hwang*, 2019 ONCPSD 33, in which the Discipline Committee concluded as follows:

Physicians, by the very nature of the practice of medicine, have access to their patients' most private selves and concerns. Physicians observe patients in disrobed states as part of physical examinations and examine body areas of great sensitivity, privacy, and vulnerability. Members of the public expect to be able to trust their physicians to utilize their position, knowledge and skills for their patients' benefit in a respectful and non-prurient manner. Further, for a physician to engage in criminal conduct, such as voyeurism, outside of the practice of medicine reflects negatively on the reputation of the profession as a whole and must be denounced as conduct unbecoming a member of the profession.

17. In *Hwang*, the physician was criminally charged and convicted of voyeurism and then pleaded no contest to allegations of professional misconduct. Voyeurism is an offense under s.162 of the *Criminal Code*.

162 (1) Every one commits an offence who, surreptitiously, observes — including by mechanical or electronic means — or makes a visual recording of a person who is in circumstances that give rise to a reasonable expectation of privacy, if

(a) the person is in a place in which a person can reasonably be expected to be nude, to expose his or her genital organs or anal region or her breasts, or to be engaged in explicit sexual activity;

- (b) the person is nude, is exposing his or her genital organs or anal region or her breasts, or is engaged in explicit sexual activity, and the observation or recording is done for the purpose of observing or recording a person in such a state or engaged in such an activity; or
- (c) the observation or recording is done for a sexual purpose.

[Emphasis added]

18. Dr. Al-Nassar has not been convicted of any offence. However, the prohibition of voyeurism in the *Criminal Code* indicates the serious nature of conduct similar to the conduct which has been alleged and constitutes a strong denunciation of such conduct by Canadian society.

19. Further, in our opinion, revocation of Dr. Al-Nassar's registration and licence is proportionate to the serious nature of the conduct unbecoming which has been alleged and which he does not contest.

20. In *Ontario (College of Chiropractors of Ontario) v. Bassaragh*, 2020 ONSOCOO 3, a physician placed a hidden camera in the staff washroom at a clinic where he worked. In concluding that revocation of his licence was necessary, the Discipline Committee stated as follows:

[38] The Member engaged in a significant breach of trust of the most significant type, involving multiple victims. The conduct calls into question public safety and public confidence in the College's ability to regulate its members. As such, the penalty imposed must reflect the Discipline Committee's condemnation of the conduct and overarching concern for public safety.

...

[42] The panel concludes that revocation is necessary and is consistent with other cases. This penalty provides for specific deterrence to the Member. It sends a strong message to the profession that this conduct will not be tolerated. It protects the public because the Member will be unable to practise for the foreseeable future.

21. The proposed Consent Revocation Agreement contains no facts to mitigate the penalty of revocation of Dr. Al-Nassar's registration and licence. There are no facts in the proposed Agreement that show that he has the potential for correction and rehabilitation or would be deterred from repeating this conduct if measures, such as a suspension or conditions and restrictions on practice, were imposed instead of revocation. In addition, it is alleged that Dr. Al-Nassar was dishonest with the New Glasgow Police Department during its investigation of who placed the hook containing a hidden camera in the staff washroom at the Westside Medical Clinic. Dishonesty about who put a hidden camera in the staff washroom is an aggravating circumstance.

22. We do not accept that proposing a Consent Revocation Agreement rather than proceeding with the hearing scheduled for November 22 is a mitigating factor. His offer not to contest the allegations referred to hearing comes very late in the process, well after the investigation of the allegations against him and the referral of those allegations to hearing.

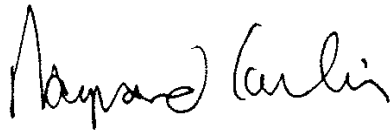
23. Revocation of Dr. Al-Nassar's registration and licence will ensure that, for the foreseeable future, he will not engage in similar conduct. Publication of the Revocation Agreement and these reasons will send a message to medical practitioners and the public that the College firmly denounces such behaviour and that such conduct by a medical practitioner may result in revocation of their licence and registration. To some degree, the approval of the proposed Agreement should mitigate the damage to the medical profession's reputation from public awareness of the allegations against Dr. Al-Nassar. In our opinion, revocation of Dr. Al-Nassar's licence and registration is necessary to maintain public confidence in the ability of the College to regulate the medical profession in Nova Scotia in the public interest.

24. Having concluded that revocation of his licence is proportionate to the seriousness of the wrongdoing alleged against Dr. Al-Nassar, we, therefore, accept his admission in the proposed Consent Revocation Agreement that the allegations against him, if proven, would result in a revocation of his registration and licence.

25. For these reasons, the Hearing Committee accepts the proposed Consent Revocation Agreement submitted by Dr. Al-Nassar 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 a hearing.

26. We reserve jurisdiction in the event there are issues in the implementation of the Consent Revocation Agreement approved by the Committee. The Referral to Hearing of the allegations against Dr. Al-Nassar is rendered moot by our approval of the Consent Revocation Agreement. The hearing scheduled to begin on November 22, 2021, will not proceed.

This Decision made at Halifax, Province of Nova Scotia this 18th day of October, 2021.



Raymond F. Larkin, QC



Dr. Erin Awalt



Dr. Michael Teehan



Ms. Gwen Haliburton



Dr. Naeem Khan