

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

and

**IN THE MATTER OF:**            **A Settlement Agreement**

**BETWEEN:**

**The College of Physicians and Surgeons of Nova Scotia**

(the “College”)

-and-

**Dr. Lisa Dearman**

(“Dr. Dearman”)

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**HEARING COMMITTEE DECISION**

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**Hearing Committee:**

Mr. Raymond F. Larkin, QC  
Dr. Erin Awalt  
Ms. Gwen Haliburton  
Dr. Michael Teehan  
Dr. Naeem Khan

**Counsel:**

Ms. Marjorie Hickey, QC, Counsel for the College of  
Physicians and Surgeons of Nova Scotia

Ms. Jillian B. Strugnell, Counsel for Dr. Lisa Dearman

## INTRODUCTION

1. The Hearing Committee has been requested to consider approving a settlement agreement between the College of Physicians and Surgeons of Nova Scotia (the "**College**") and Dr. Lisa Dearman, recommended by the Investigation Committee.
2. The Hearing Committee decided that an in-person hearing is unnecessary for this matter and has made our decision based on the proposed settlement agreement and a written submission from Counsel for the College, which has been adopted by Counsel for Dr. Dearman. We requested Counsel for the College to confirm that Dr. Dearman has not prescribed narcotic medications at the relevant times, and she has provided that confirmation.
3. The Hearing Committee has decided to approve the Settlement Agreement recommended by the Investigation Committee. These are our reasons for that decision.

## FACTS

4. On November 8, 2018, Dr. Lisa Dearman consented to a reprimand related to the prescription of narcotic medications with a condition on her licence to practice that she no longer prescribed those medications. Further, she was required to post a notice in all waiting rooms and examination rooms where she sees patients, advising patients that she would not prescribe narcotic medications. Dr. Dearman has complied with the condition that she does not prescribe narcotic medications. With one exception, she has complied with the posting requirement in all the waiting rooms where she sees patients. However, she has not posted the required notice in the examination rooms where she sees patients.
5. Dr. Dearman explains that she was very upset when she received her reprimand and just skimmed the conditions. As a result, she didn't know she was required to post the notice in the examination rooms where she sees patients. Because of this, Dr. Dearman did not comply with the condition on her licence related to posting in examination rooms. When

this was brought to her attention by the College, she admitted her failure to comply with the required posting in her examination rooms. She cooperated with the College in its investigation. She has now agreed to the proposed Settlement Agreement admitting that her failure to comply with the condition on her licence fully amounted to professional misconduct.

6. The proposed Settlement Agreement provides as follows:

### **SETTLEMENT AGREEMENT**

Dr. Lisa Dearman, a medical practitioner in the Province of Nova Scotia, and a member of the College of Physicians and Surgeons of Nova Scotia (the "**College**"), hereby agrees with, and consents to, the following in accordance with the provisions of the *Medical Act*:

#### **I. OVERVIEW OF THE COMPLAINT**

1. On November 6 2018, Dr. Dearman consented to a reprimand and conditions on her license to practice medicine that included the requirement that she post the following sign in all clinic waiting rooms and examination rooms where she sees patients advising of her prescribing restriction:

#### **Notice of Restriction**

**The College of Physicians and Surgeons of Nova Scotia  
hereby gives notice that Dr. Lisa Dearman is restricted from  
prescribing narcotic medications.**

2. On November 12 2020, a College Compliance Officer attended the Spring Garden Road and Sackville locations of the Family Focus Clinic to conduct sign compliance checks. The officer confirmed that a sign was posted in the waiting room of the Sackville location when Dr. Dearman was working, and that no sign was posted at the Spring Garden Road location. Staff later advised the officer that no sign indicating Dr. Dearman's prescribing restrictions was ever posted at the Spring Garden Road location.
3. In light of the information provided from the Compliance Officer, on November 12 2020, the College's Registrar filed a complaint against Dr. Dearman concerning her apparent non-compliance with the sign-posting term of her 2018 reprimand.

4. Following completion of the investigation, the College's Investigation Committee forwarded the following matters to a hearing:
5. Dr. Dearman violated the College's *Professional Standards Regarding Physician Co-operation with the College* when she failed to abide by the restrictions imposed by her 2018 Consensual Reprimand, in particular:
  - i. she failed to ensure a sign outlining the restriction of her license to practice medicine was displayed in the examination rooms where she was seeing patients; and
  - ii. she failed to ensure a sign outlining the restriction of her license to practice medicine was displayed at the Spring Garden Road walk-in clinic when she was seeing patients at this clinic.

#### **IV. ADMISSIONS**

6. With respect to the November 6 2018 reprimand issued by the College, Dr. Dearman admits that she was extremely upset upon its receipt. In her distress, she only skimmed the reprimand and restrictions imposed upon her, and as such, she did not realize signs were required in examination rooms in addition to the signs in waiting rooms.
7. Dr. Dearman worked in various locations of a walk-in clinic. While she posted the required signs in the waiting rooms of all but one of those locations, she admits she did not post the required signs in the examination rooms of any of the clinic locations where she practiced.
8. In one of the clinics where she practiced, Dr. Dearman admits she neglected to post the required sign in either the waiting room or the examination room.
9. Dr. Dearman admits that she violated the College's Professional Standards Regarding Physician Co-operation with the College when she failed to comply with her November 6, 2018 undertaking with the College to "post a sign in all clinic waiting rooms and examination rooms where she sees patients, advising of her prescribing restriction".
10. Dr. Dearman admits that she had a professional responsibility to abide by the requirements of her restriction. She acknowledges that the violation of a College imposed restriction is a serious matter, and

acknowledges the need for a licensing sanction. She acknowledges her conduct constitutes professional misconduct.

#### **V. DISPOSITION**

11. Dr. Dearman's license to practice medicine is suspended for a two-week period, commencing on such date as agreed upon with the College, which in any event will be no later than two weeks following the issuing of the Decision of the Hearing Panel approving this Agreement.
12. Dr. Dearman agrees that the Committee's November 6, 2018 restriction that she "post a sign in all clinic waiting rooms and examination rooms where she sees patients, advising of her prescribing restriction" shall remain in effect at all times while she is engaging in the practice of medicine .

#### **VI. COSTS**

13. Dr. Dearman agrees to pay costs to the College in the amount of \$5,000 inclusive of H.S.T., representing a portion of the College's costs of investigating this matter. These costs shall be payable by Dr. Dearman in monthly instalments of \$500 commencing on the first day of the month following the acceptance of this Settlement Agreement by the Hearing Committee.

### **SETTLEMENT AGREEMENTS UNDER THE *MEDICAL ACT***

7. The approach taken by the Hearing Committee to consideration of proposed settlement agreements was recently set out in the decision of the Committee in *Re: Damacen, 2021 CanLII 23951 (NSCPS)* in the following paragraphs:
  8. After investigating a complaint against a medical practitioner, an investigation committee may refer the matter involved to a hearing committee. Section 51 of the *Medical Act*, NSNS 2011, c 38 permits the College to enter into a settlement agreement with the medical practitioner instead of conducting a hearing. The *Medical Practitioners Regulations* include the following provisions dealing with settlement agreements:

**Preparing and tendering settlement agreements**

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

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

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

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

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

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

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

**Investigation committee recommendations on settlement agreement**

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.**

(2) If an investigation committee recommends acceptance of a settlement agreement, the investigation committee must refer the settlement agreement to the hearing committee for consideration in accordance with Section 103.

(3) If the investigation committee does not recommend acceptance of a settlement agreement, the investigation committee must do 1 of the following:

- (a) recommend changes to the settlement agreement that:
  - (i) if agreed upon by the Registrar and the respondent will result in acceptance by the investigation committee, or
  - (ii) if not agreed upon by the Registrar and the respondent will result in rejection by the investigation committee;
- (b) reject the settlement agreement and refer the complaint considered by the investigation committee to a hearing committee for a hearing.

#### **Hearing committee acceptance or rejection of settlement agreement**

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

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

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

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

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

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

### **Settlement agreements and hearings**

104 (1) If a settlement agreement is rejected by a hearing committee, a hearing must proceed without reference to the settlement agreement or any admissions contained in the settlement agreement until after the hearing committee has determined whether professional misconduct, conduct unbecoming, incompetence or incapacity has been proven.

(2) Before deciding whether to award costs in a hearing, a hearing committee may be given a copy of any settlement agreements exchanged between the parties.

(3) An admitted breach by a respondent of any term in an accepted settlement agreement must be referred to a hearing committee for a hearing.

(4) An alleged breach by a respondent of any term in an accepted settlement agreement must be referred to an investigation committee as a Registrar's complaint.

[emphasis added]

8. This process permits the College Registrar to agree to a proposed settlement agreement and refer that agreement to an Investigation Committee. If the Investigation Committee is satisfied that the proposed settlement agreement meets the stringent requirements set out in Section 102 of the Regulations, the Committee can recommend acceptance of the settlement agreement by the Hearing Committee. A settlement agreement recommended for approval by an Investigation Committee and accepted by the Hearing



Committee becomes an order of the Hearing Committee and disposes of the matter referred to hearing, and no hearing is required.

9. The Hearing Committee has three options:
  - a) accept the settlement agreement recommended by the Investigation Committee;
  - b) suggest amendments to the settlement agreement, and if the Registrar and the medical practitioner agree, the amended settlement agreement is accepted by the Hearing Committee; or
  - c) reject the settlement agreement, and the matter is referred to a different panel of the Hearing Committee for a hearing.
  
10. In its decision dated June 26, 2019, in *Re Jones*, 2019 CanLII 92700 (NSCPS), the Hearing Committee set out its approach to applying Section 103 of the Medical Practitioners Regulations and deciding whether or not to accept a proposed settlement agreement. The decision included the following:
  30. In its previous decisions, the Hearing Committee has accepted the principle of deference to the Investigation Committee's recommendation for approval of a settlement agreement reached between the Registrar and a practitioner. There are good reasons for this.
  
  31. In most cases, the Investigation Committee will have a much more detailed knowledge of the facts than a hearing committee because of their involvement in investigating a complaint over an extended period of time. Furthermore, the Investigation Committee makes a recommendation of a settlement agreement within a legislative framework in Section 102 of the Medical Practitioners' Regulations which ensures a rigorous and exacting approach to whether a complaint should be settled.
  
  32. In our view, settlement agreements should be encouraged because they permit the Registrar and the Investigation Committee to negotiate the resolution of complaints without the delay and expenses of a formal hearing. As in this case, there may be significant issues of proof that make the outcome of a formal adjudicated hearing uncertain. Likewise for the practitioner subject to a complaint, the prospect of success in a hearing may be uncertain, and the possibility of a significant costs award provide

an incentive to make appropriate admissions and consent to a disposition they can accept. Some agreed dispositions are possible in a settlement agreement that may not be possible in a formal hearing.

33. It is true that the settlement agreement process is not as transparent to the public as a formal hearing but to be acceptable settlement agreements have to include detailed statements of the facts. The decision of a hearing committee to accept a settlement agreement requires the reasons for accepting it. These are made public.

...

**36. The Hearing Committee does not just rubberstamp a settlement agreement recommended by the Investigation Committee. We not only assess the criteria for the recommendation of a Settlement Agreement by the Investigative Committee set out in Section 102 of the Medical Practitioners Regulations, but we examine the settlement agreement closely for its consistency with the purposes of the College, as set out in Section 5 of the *Medical Act* which provides 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,

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

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

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

(d) do such other lawful acts and things as are incidental to the attainment of the purpose and objects of the College. 2011, c. 38, s. 5.

37. In our opinion, the public interest in the practice of medicine is first and foremost the protection of the public. Members of the public as patients depend fundamentally on the assessment, diagnosis and treatment of illness or injury by medical practitioners for life, health and

happiness. The public depends on medical practitioners working in accordance with the accepted standards of the practise of medicine, including high standards of integrity and ethics. The College strives to ensure the protection of the public by regulating the practice of medicine and governing the conduct of its members to the high standards that the public expects.

38. Serving and protecting the public interest in the regulation of professional conduct under the Medical Act also requires fair treatment of medical practitioners who are subject to complaints. There is a strong public interest in ensuring that the process for the investigation and adjudication of complaints, and the substance of decisions made in that process, are fair to the medical practitioners.

39. There is an important public interest in finding appropriate dispositions that keep medical practitioners in practice so they can serve the public in accordance with the standards of the medical profession. There continues to be a shortage of physicians in Nova Scotia. If possible, medical practitioners who engage in professional misconduct should be returned to practice with appropriate conditions and restrictions.

40. There is also a public interest in maintaining the credibility of the College as a regulator of the practice of medicine. It is important that the public is assured that genuine complaints are not swept under the rug, and that the College is effective in protecting the public and in maintaining high standards among medical practitioners.

**41. In our view, in considering whether to accept this Settlement Agreement, the Hearing Committee has to balance all of these aspects of the public interest so that the approval of this Settlement Agreement serves to protect the public, treats Dr. Jones fairly, and maintains the confidence of the public and profession in the College.**

**42. We recognize that there can often be more than one reasonable conclusion about how to balance these aspects of the public interest in assessing a particular settlement agreement. If the Investigation Committee recommends a disposition that falls within a reasonable range of alternative conclusions we will defer to their judgment.[emphasis added]**

11. The Hearing Committee's posture of deference to the recommendation of the Investigation Committee on a proposed settlement agreement is longstanding. For example, see *Re Harley* (unreported decision dated July 9, 2013) at paragraph 5; see also

*Re: Wadden*, 2016 CanLII 153106 (NSCPS) at paragraphs 15-19; *Re: Rivas*, 2019 CanLII 92722 (NSCPS) at paragraphs 9-12; *Re: Jones*, 2019 CanLII 92700 (NSCPS) in the passage cited above.

12. In the submissions from Counsel for the College and Counsel for Dr. Dearman in this matter, Counsel argue that the proper approach to considering whether to accept or reject a joint submission on a proposed settlement agreement is that endorsed by the Ontario Divisional Court in its recent decision in *Thomas Edward Bradley v. Ontario College of Teachers*, 2021 ONSC 2303 (CanLII). The approach taken in that case is that a joint submission on penalty must be accepted unless it is so “unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down”.
13. Arguably, the test for consideration of a joint submission on penalty set out in the *Bradley* decision is significantly different from that taken in the previous decisions of the Hearing Committee considering proposed settlement agreements. Counsel did not make any submissions on why the Hearing Committee should depart from its prior decisions. In any event, it is not necessary to resolve the question of the degree of deference required in considering the recommendation of the Investigation Committee in this case because we completely agree with that recommendation; no question of deference arises.

## **ANALYSIS**

14. Dr. Dearman has admitted that her conduct constitutes professional misconduct. She acknowledges that she violated the College’s *Professional Standards Regarding Physician Co-operation with the College* when she failed to fully comply with her November 6, 2018 undertaking to post a sign in all clinic waiting rooms and examination rooms where she sees patients, advising of her prescribing restriction. She agrees that she had a

professional responsibility to abide by the requirements of her restriction. In our opinion, these admissions are supported by the facts set out in the proposed Settlement Agreement.

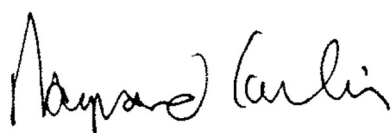
15. Breach of a condition or restriction on a medical practitioner's licence to practice is a serious matter. Perhaps more than any other measure to address professional misconduct, conditions or restrictions on the license to practice of medical practitioners are essential tools for public protection. The purpose of disciplinary sanctions under the *Medical Act* is not to penalize medical practitioners who fail to meet the required standards of conduct but to provide remedies that protect the public and are fair to the practitioner involved. Conditions or restrictions on practice keep the medical professional in practice while ensuring that the public is protected. Should conditions or restrictions on practice be ignored, or if they are not enforced, the public could legitimately lose confidence in the ability of the College to effectively regulate the medical profession in the public interest.
  
16. Dr. Dearman has complied with the condition not to prescribe narcotic medications, and, with one exception, she has posted the required notice in her waiting rooms. She has not tried to avoid the posting condition on her licence to practice or intentionally breached the condition related to examination rooms. However, in all of the circumstances, it is no excuse that Dr. Dearman's failure to comply with conditions on her licence to practice fully was not intended. It is understandable that Dr. Dearman was upset when she consented to the reprimand with conditions in 2018. Still, as a professional faced with a serious sanction, she had a duty to make sure she understood the conditions that applied to her. She should have carefully read the decision of the Investigation Committee, even though she was upset.

17. Given the importance of enforcing conditions or restrictions in undertakings given by medical practitioners or imposed by the College in addressing disciplinary matters, in our opinion, a sanction more significant than a reprimand is required.
18. We were provided with several previous decisions in cases involving breaches of undertakings or imposed conditions that include suspensions from practice in a range from one to three months. The proposed Settlement Agreement recommended by the Investigation Committee calls for a two-week suspension from practice. In our opinion, a two-week suspension from practice is proportionate to the seriousness of Dr. Dearman's professional misconduct in this case. It is consistent with the previous decisions, despite the lengthy suspensions in the cases cited to us.
19. The only similar case decided by the Hearing Committee is *Re Wadden*, 2016 CanLII 153106 (NSCPS). In that case, Dr. Wadden had been suspended for misconduct and was subject to a condition on his licence to practice when he returned from his suspension that he post a sign in his waiting room and examination rooms that he would only see female patients with an attendant present. He was embarrassed when he returned to practice because patients were already in his waiting room, so he didn't post the notice until the end of that first day. When he did post the notice, he posted it in an inconspicuous location close to the ceiling in his waiting room, where it was unlikely to be seen by patients.
20. The Hearing Committee concluded that Dr. Wadden had deliberately sought to avoid the posting requirement by posting the sign where patients would not see it. He did so to avoid advising patients that the College had restricted his practice concerning seeing female patients. The Hearing Committee approved a Settlement Agreement which included a one-month suspension of Dr. Wadden's licence to practice.

21. Dr. Dearman did not deliberately breach the condition that she post the restriction on her practice related to prescribing narcotic medications. She complied with the posting requirement in her waiting rooms. Notably, she did not prescribe any narcotic medications. She welcomed the restriction on prescribing narcotic medications so that patients would not expect her to do so. In our opinion, in contrast to the conduct of Dr. Wadden, she did not seek to avoid the conditions on her practice. This points to a suspension of her licence for less than the one-month suspension in Dr. Wadden's case.
  
22. We were provided with several decisions of the Discipline Committee of the College of Physicians and Surgeons of Ontario where physicians had breached undertakings to the Ontario College or conditions imposed on their practices by the College. These decisions imposed suspensions from practice in the range of one to three months. All of them involved conduct more serious than Dr. Dearman's conduct:
  - a) In *CPSO v. Baranik*, 2019 ONCPSD 13, the physician had breached an undertaking not to prescribe narcotic medication by continuing to renew such prescriptions, thereby exposing his patients to a high risk of harm.
  - b) In *CPSO v. Sweet*, 2008 ONCPSD 13, Dr. Sweet waited ten weeks to post a sign advising of a restriction on prescribing controlled substances despite knowing that it was his responsibility to post the required sign; he had a discipline record that made a two-month suspension necessary to deter him from repeating misconduct.
  - c) In *Re Saul*, 2014 ONCPSD 29, the physician was suspended for two months when he continued to provide medical marijuana authorizations despite an undertaking not to provide such authorizations.
  - d) In *CPSO v. Roy*, 2018 ONCPSD 66, the physician was suspended for three months when he had continued to prescribe narcotics and other monitored drugs despite an undertaking not to do so without a supervisor.

23. Dr. Dearman has not been prescribing any narcotic medications since she consented to reprimand and the restriction on her practice. Her patients were not exposed to a risk of harm because she failed to post the required notice in her examination rooms. The one-month to three-month suspensions from practice in the Ontario cases would be disproportionate to her misconduct.
24. In our opinion, the two-week suspension from practice in the proposed Settlement Agreement is proportionate to the seriousness of Dr. Dearman's misconduct and disciplinary sanctions in previous cases.
25. Considering the proposed Settlement Agreement as a whole, we are satisfied that the proposed Agreement is in the public interest. It reinforces the effectiveness of conditions and restrictions on licences to practice as a means for the College to protect the public in regulating the medical profession. It provides assurance that Dr. Dearman will not repeat her misconduct and sends a message to the medical profession and the public that the College will be diligent in enforcing conditions or restrictions on practice undertaken by medical practitioners or imposed by the College to protect the public. In our opinion, the proposed Settlement Agreement is not unfair to Dr. Dearman, and the two-week suspension of her licence is proportionate to her admitted misconduct.
26. Accordingly, the Hearing Committee approves the Settlement Agreement between the College and Dr. Dearman recommended by the Investigation Committee. The Settlement Agreement is therefore incorporated into this decision, and no Hearing is required.

**THIS DECISION** made at Halifax, Province of Nova Scotia this 23<sup>rd</sup> day of November 2021.



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Raymond F. Larkin, QC



*Erin Awalt*

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Dr. Erin Awalt

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Dr. Michael Teehan

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Ms. Gwen Haliburton

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Dr. Naeem Khan