

**PROVINCE OF NOVA SCOTIA
HALIFAX REGIONAL
MUNICIPALITY**

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

-and-

Dr. Manivasan Moodley

DECISION ON IMPLEMENTATION

Date of Decision: October 27, 2021

Hearing Panel:

Ms. Gwen Haliburton

Dr. M. Naeem Khan

Dr. Gisele Marier

Dr. Erin Awalt

Raymond Larkin, QC

Counsel for the College of Physicians and Surgeons of Nova Scotia:

Ms. Marjorie Hickey, QC.

Counsel for Dr. Manivasan Moodley:

Mr. Robin Cook

1. An issue has arisen from the implementation of the Hearing Committee’s decision on disposition issued on May 20, 2021. In our Disposition Order, we include the following paragraph:

3 Dr. Moodley must complete an ethics training program as agreed between himself and the College before his return to practice after his suspension.

2. Completing an ethics program was an essential part of our Order because, in our opinion, protecting the public from a repetition of sexual boundary violations requires that Dr. Moodley gain insight into his conduct and its effect on patients.

3. Dr. Moodley and the College agreed to the ethics program required by our Order in email correspondence on June 14 and 15, 2021. They agreed that he would take the PROBE Program (Professional/Problem- Based Ethics – Canada). In the email correspondence, there is a link providing information on the PROBE Program, which describes it as follows:

THE PROBE PROGRAM: PROFESSIONAL/PROBLEM-BASED ETHICS – Canada

PROBE Canada is an ethics and boundaries course specifically designed to meet the unique needs of Canadian healthcare professionals. Like its U.S. counterpart, *PROBE* Canada (Professional, Problem-Based Ethics) is a non-adversarial ethics and boundaries program for **all** healthcare professionals – not just physicians.

Intensive small group sessions target participants’ unprofessional or unethical behavior, such as:

- Misrepresentations
- Boundary crossings
- Financial improprieties, and other lapses

Discussions and case analyses facilitate participant “probing” into why they went astray and recommitting to professional ideals. After the seminar, participants submit a final essay that shows understanding of the Program content and the ability to apply the content to the reasons for referral. Guidance and support for completing this assignment are provided through detailed written

instructions and verbal advice from faculty. **Participants receive a certificate of completion and a final grade at the conclusion of the Program.**

[emphasis added]

4. The description of the PROBE Program includes three possible outcomes. These are the following:

There are three possible outcomes for participants in the *PROBE* program:

1. Unconditional Pass: Participant has demonstrated the ability to think ethically about their reasons for referral
2. Conditional Pass: Participant has largely demonstrated the ability to think ethically about their reasons for referral, but the faculty believe there are still certain areas that could benefit from additional work.
3. Fail: Participant has not demonstrated the ability to think ethically about their reasons for referral

Note: Many licensing boards and credentialing bodies will require a grade of Unconditional Pass in order to fulfill the requirements of their orders.

5. On October 7, 2021, the Program Director of PROBE provided the College their Evaluation and Assessment Report, which included the following:

I am enclosing the Evaluation and Assessment Report for Manivasan Moodley, M.D., who attended the PROBE Program held via live video on September 9-11, 2020.

The Report has three parts: (1) a paragraph characterizing the involvement of the participant during the seminar portion of the Program; (2) a summary of the faculty's review of the final essay, which addresses explicit expectations for the essay as outlined in the syllabus; and (3) the overall assessment of the participant's capacities for ethical reasoning and insight, based on the participant's work in all phases of the Program.

We have enclosed a copy of the participant's essay and an explanation of the assessment categories. For information about the Program's agenda, please visit our web site at <https://www.cpepdoc.org/cpep-courses/>.

Participants who unconditionally or conditionally pass the Program will receive a certificate of completion. Participants who do not pass will not receive a certificate of completion.

6. Attached to the PROBE report is a "*Certificate of Completion*" of the Program by Dr. Moodley. Also attached is an explanation of the evaluation and assessment categories used by PROBE in determining a participant's final grade. This document includes the following:

Evaluation and Assessment Categories

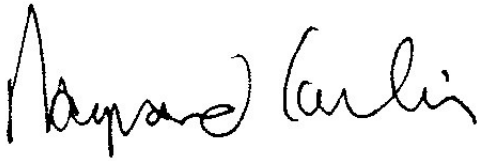
Following are the three categories of evaluation and assessment that are possible based on the participant's participation in all phases of the Program, including the essay.

- **Unconditionally Passed**: The participant made an unqualified success of the effort and should be thought of as remediated. He/She is likely to recognize an ethical issue and likely to avoid transgression. In our opinion, such a candidate "got it".
- **Conditionally Passed**: **The participant's overall success is qualified by some particular aspect of his/her performance in the PROBE Program. The participant may have demonstrated partial comprehension or involvement in the PROBE Program. Our reasoning for this assessment is included in the Report. In our opinion, such a candidate "got most of it".**
- **Failed**: The participant demonstrated little sincere effort and/or ability to engage in the PROBE Program, or the candidate exhibited limited capacity or concern for the ethical and social obligations of his/her healthcare profession and his/her practice of that profession. In our opinion, such a candidate did not "get it", is unlikely to intellectually grasp an ethical issue or conflict in the future.

[Emphasis added]

7. As reported in the Evaluation and Assessment Report, Dr. Moodley was given a "Conditional Pass" grade. The reasoning behind the grade of "Conditional Pass" is set out in the Report.
8. The College argues that Dr. Moodley did not comply with our Decision on Disposition requirement that he "complete" an ethics program agreed between himself and the College.
9. Dr. Moodley responds that he agreed on the PROBE Program with the College, and he provided email correspondence between himself and the College on June 14 and 15, 2021. Nowhere in the email correspondence is there any requirement to complete the PROBE Program with an Unconditional Pass. Dr. Moodley says he completed the Program agreed to between himself and the College.
10. Our jurisdiction over the implementation of the Order is a limited one. We need to decide what ethics training program was agreed between the College and Dr. Moodley and whether he completed the agreed Program.
11. In our opinion, Dr. Moodley did complete the ethics training program as agreed between himself and the College. PROBE issued a Certificate of Completion. There was no requirement in the agreement between Dr. Moodley and the College that he receive an Unconditional Pass. He passed. As referred to the assessment criteria used by PROBE, Dr. Moodley "got most of it."
12. The College says that when it requires a physician to participate in the PROBE Program, it consistently requires that the person obtain an Unconditional Pass. There are good reasons for this policy, but an Unconditional Pass was not required in the agreement between Dr. Moodley and the College on an ethics training program.
13. In our opinion, it is beyond our jurisdiction, and it would be unfair to add a requirement to our Disposition Decision at this stage. We are satisfied that Dr. Moodley has complied with paragraph 3 of our Disposition Order.

This Decision made by the Hearing Committee this 27th day of October 2021.



Raymond Larkin, Q.C.



Gwen Haliburton



Dr. Gisele Marier



Dr. Erin Awalt



Dr. Naeem Khan