

**COLLEGE OF PHYSICIANS & SURGEONS OF MANITOBA
INQUIRY PANEL DECISION**

**INQUIRY: IC1914
DR. CREIGHTON HUI**

On April 9, 2014, a hearing was convened before an Inquiry Panel (the "Panel") of the College of Physicians & Surgeons of Manitoba (the "College"), for the purpose of conducting an Inquiry pursuant to Part X of *The Medical Act*, into charges against Dr. Creighton Hui (Dr. Hui), as set forth in a Notice of Inquiry dated December 9, 2013.

The Notice of Inquiry charged Dr. Hui with committing acts of professional misconduct, with contravening By-Law No. 1 of the College and with contravening Statement 104 of the College. The Notice of Inquiry alleged that Dr. Hui:

- a) During the period between April, 2011 and January, 2012 participated in the creation of misleading medical records by allowing a nurse practitioner who performed house calls to record the house calls as if Dr. Hui had seen the patient and created the records when in fact he did not, thereby:
 - i. breaching the record-keeping requirements of By-Law No. 1 of the College in effect at the material time, and/or
 - ii. breaching Statement 104 of the College, and/or
 - iii. committing acts of professional misconduct.
- b) During the period between April, 2011 and January, 2012 caused claims to be submitted to Manitoba Health for house call services as if he had provided the services, when in fact the services were provided by a nurse practitioner, thereby committing acts of professional misconduct.
- c) Attempted to mislead the College with respect to his role in the nurse practitioner's care of the patients seen by the nurse practitioner and billed in his name, by making multiple statements to the College, each of which he subsequently acknowledged were false and were misleading, thereby committing acts of professional misconduct.

The hearing proceeded before the Panel on April 9, 2014 in the presence of Dr. Hui and his counsel, and in the presence of counsel for the Investigation Committee of the College. At the outset of the hearing, Dr. Hui entered a plea of guilty to all of the charges outlined in the Notice of Inquiry thereby acknowledging that the facts alleged in the Notice of Inquiry were true and also acknowledging that he was guilty of multiple acts of professional misconduct and of breaching By-Law No. 1 of the College and of breaching Statement 104 of the College. The Panel reviewed and considered the following documents, all of which were filed as exhibits in the proceedings by consent:

- i) the Notice of Inquiry (Exhibit #1);
- ii) a Statement of Agreed Facts, containing 55 paragraphs (Exhibit #2);
- iii) a Book of Agreed Documents containing 29 documents (Exhibit #3);
- iv) the Joint Recommendation of the parties as to disposition (Exhibit #4).

REASONS FOR DECISION

Having considered the guilty plea of Dr. Hui in the context of the above noted exhibits, and the submissions of counsel for the Investigation Committee of the College and counsel for Dr. Hui, the Panel is satisfied that all of the charges and the particulars recited therein have been proven. The Panel is also satisfied that the Joint Recommendation as to disposition is appropriate and ought to be accepted. The Panel's specific reasons for its decision are outlined below.

BACKGROUND OF DR. HUI:

1. Dr. Hui obtained his medical degree from the University of British Columbia in 2008 and completed his certification in Family Medicine in Ontario in 2010. On July 1, 2010, he began his Fellowship in Emergency Medicine at the Faculty of Medicine, University of Manitoba.
2. To supplement his income, in August 2010, Dr. Hui began seeing patients at a medical clinic and doing house calls through a house call service, which was organized through a Winnipeg medical clinic.
3. After completing his Fellowship on June 30, 2011, Dr. Hui continued to work at the medical clinic.
4. In February, 2012, Dr. Hui moved to Toronto, where he continues to practice Emergency Medicine.

SUMMARY AND OVERVIEW OF EVENTS LEADING TO THE CHARGES AGAINST DR. HUI:

1. Dr. Hui entered into an arrangement whereby a nurse practitioner who worked at a medical clinic made house call visits to patients and those visits were billed to Manitoba Health in Dr. Hui's name. This arrangement continued from on or about April 8, 2011 to on or about January 9, 2012.
2. The medical records related to the visits in question were made by the nurse practitioner, but were entered using Dr. Hui's unique identifier and password in the electronic medical record, so that it appeared as if Dr. Hui had attended the patient and made the entry.

3. Billing records establish that during the period April 8, 2011 to January 9, 2012, a total of approximately \$201,223.00 was billed to Manitoba Health for house call services provided by the nurse practitioner and billed in the name of Dr. Hui. Those billings were shared by Dr. Hui, the medical clinic and the nurse practitioner as follows:

- a) all of the fee for the house call went to Dr. Hui, and was split 70% to the nurse practitioner and 30% to Dr. Hui;
- b) 20% of the assessment fee went to the Clinic;
- c) the remaining 80% of the assessment fee went to Dr. Hui and was split 70% to the nurse practitioner and 30% to Dr. Hui.

4. When the College first contacted Dr. Hui about this matter, Dr. Hui responded advising that the visits occurred through a camera system which established a live link enabling him to participate in the visit from a distance. He maintained that this occurred on each of the visits in question, and that the live feed was maintained for the entire visit. Dr. Hui also maintained that although the nurse practitioner made the chart entry, he checked the records and "signed off" on the notes by the nurse practitioner. He repeated those assertions in two subsequent letters to the College and in an interview with the Investigation Chair of the College.

5. Later, Dr. Hui acknowledged that the live link was not established for each visit as he had initially maintained and that he did not check the records as initially maintained. Dr. Hui was unable to estimate the frequency with which the live link was established.

6. The facts set out in the Statement of Agreed Facts, and the extensive documentation included in the Book of Agreed Documents provide a more detailed examination of the arrangement with the nurse practitioner including the purported use of the Librestream camera system. The Book of Agreed Documents also included patient records, computer printouts, and other documents, many of which were reviewed by counsel for the Investigation Committee of the College in her thorough submissions. Her submissions and the documents which she referred to, provided the Panel with an adequate explanation of Dr. Hui's false and misleading record keeping, Dr. Hui's misuse of his unique identifier and password (which he inappropriately provided to the nurse practitioner), the billings submitted to Manitoba Health and the numerous false statements made by Dr. Hui to the College, which he subsequently acknowledged were not true.

7. On the basis of the foregoing, the Panel is satisfied that Dr. Hui's misconduct and breaches of By-Law No. 1 of the College and Statement 104 of the College were very serious, involving false chart entries, deliberately made for financial gain, and deceitful statements made to the College by Dr. Hui with the intention of covering up his misconduct. The Panel is concerned that Dr. Hui only responded truthfully to the inquiries of the College through its Investigation Chair, when he (Dr. Hui) realized that some of his previous false statements with respect to his whereabouts at certain times could expose him to further risk of more serious penalty through his residency program.

The Panel recognizes, and the Statement of Agreed Facts (Exhibit #2) explicitly states that during the course of the College's investigation, no patient care or patient safety issues were identified and that the quality of the care provided by the nurse practitioner was "not an issue". Nonetheless, the Panel is also concerned that the arrangements between Dr. Hui and the nurse practitioner were such that there was a distinct possibility that patient care could have been compromised.

THE JOINT RECOMMENDATION AS TO DISPOSITION:

On the basis of the above-noted summary of the background facts, it is clear that Dr. Hui's professional misconduct and contravention of By-Law No.1 of the College and his contravention of Statement 104 of the College are very troubling and problematic. Given the seriousness and unacceptability of Dr. Hui's conduct, the Panel must decide upon the appropriate disposition pursuant to Section 59.6 of *The Medical Act*. The Panel has been greatly assisted in its task by the Joint Recommendation as to disposition made by counsel for the Investigation Committee of the College and counsel for Dr. Hui.

In determining the types of orders to be granted pursuant to Section 59.6 of *The Medical Act*, it is useful to carefully consider the several objectives of such orders. In general, those objectives are:

- a) the protection of the public in a broad context. Orders under Section 59.6 of *The Medical Act* are not simply intended to protect the particular patients of the physician involved, but are also intended to protect the public generally by maintaining high standards of competence and professional integrity among physicians;
- b) the punishment of the physician involved;
- c) specific deterrence in the sense of preventing the physician involved from committing similar acts of misconduct in the future;
- d) general deterrence in the sense of informing and educating the

- profession generally as to the serious consequences which will result from breaches of recognized standards of competent and ethical practice;
- e) protection against the betrayal of the public trust in the sense of preventing a loss of faith on the part of the public in the medical profession's ability to regulate itself;
 - f) the rehabilitation of the physician involved in appropriate cases, recognizing that the public good is served by allowing properly trained and educated physicians to provide medical services pursuant to conditions designed to safeguard the interests of the public.

The Joint Recommendation in this case is:

1. A statement that if Dr. Hui were licensed to practice in Manitoba, the conduct is of such a serious nature that the appropriate penalty would be a reprimand, a period of suspension of his license, costs and publication, including his name.
2. Given that Dr. Hui is not licensed to practice in Manitoba, the penalty will be:
 - a) a reprimand;
 - b) a fine in the sum of \$10,000.00, in lieu of the period of suspension;
 - c) costs, payable by Dr. Hui to the College, in the amount of \$28,160.25, payable in full on or before the date of inquiry;
 - d) publication, including Dr. Hui's name, as determined by the Investigation Committee.

ANALYSIS

The Panel has undertaken a review of the objectives of an order pursuant to Section 59.6 of *The Medical Act*, in relation to the Joint Recommendation of the parties in this case, to satisfy itself that those objectives will be fulfilled if the Joint Recommendation is accepted.

The severe and formal rebuke issued to Dr. Hui by way of the reprimand and the publication of the disposition are intended to protect the public in a broad sense and to protect against the betrayal of the public trust. While there was no evidence that patients were medically harmed by Dr. Hui's actions there was a significant inappropriate financial burden placed on the publicly funded health care system. It is important that the public be informed that the College considers this to be wholly unacceptable.

Considering that Dr. Hui's egregious behaviour arose from a desire for financial gain, it is very appropriate that a punishment should include financial penalties.

The fine of \$10,000 is the maximum allowed pursuant to section 59.7(1)(b) of *The Medical Act*. In addition, the Joint Recommendation requires payment to the College of the sum of \$28,160.25, representing the College's costs of these proceedings. Those costs have already been paid in full by Dr. Hui. Furthermore, Dr. Hui encountered a much larger burden with respect to his obligation to Manitoba Health. He has repaid \$201,223.00 of inappropriate billings to Manitoba Health. Approximately \$140,000.00 of this amount was originally paid to the nurse practitioner and the clinic and, as a result, Dr. Hui has not had the benefit of those amounts. Therefore, Dr. Hui's total financial penalty will be almost \$180,000.00 (\$10,000 + \$28,160.25 + \$140,000).

Publication of the background facts and Dr. Hui's name serves several objectives. Publication is a form of punishment and serves as a specific deterrent for Dr. Hui. In the broad context publication serves as a general notice and informs, educates, warns and deters the profession at large.

It was the Panel's impression that Dr. Hui believed that if his original version of events, as related to the College, had been true and accurate (which he knew it was not), namely, that there had been a direct, real time, distance video supervision of each and every patient encounter, and a subsequent "signing off" by him of each chart entry made by the nurse practitioner as if he (Dr. Hui) had made the entry, those practices would have been acceptable. However, those practices would not have been acceptable because, at the very least, such practices would have been breaches of the record-keeping and charting requirements of By-Law No. 1 of the College and Statement 104 of the College. This strongly suggests that Dr. Hui's initial judgment and perceptions with respect to the appropriateness of those arrangements with the nurse practitioner and the clinic were seriously compromised by his desire for financial gain.

That problem was seriously compounded by his repeated misrepresentations to the College in an attempt to cover up his wrongdoing. Evidence was presented during the investigation and before the Inquiry Panel that prior to Dr. Hui's involvement in this billing practice, at least one other physician at the same clinic had been similarly involved and in fact the clinic owner had been warned, in writing, by Manitoba Health, about the "fraudulent" nature of this type of activity. It would therefore appear that general deterrence is required.

When the Panel reviewed the appropriateness of the penalties, both aggravating and mitigating factors were considered. The Panel considered the following factors to be aggravating factors:

1. The fact that the creation of the misleading medical records took place over several months and involved many patients;
2. The deliberate manipulation of the Manitoba Health billing system; and
3. Dr. Hui's persistence in misinforming the College as to his activities, despite several opportunities to be truthful.

In contrast, several mitigating factors were also recognized. Specifically, his repayment to Manitoba Health of the sum of \$201,223.00, which included sums which had been ultimately received by the clinic and the nurse practitioner and not by himself, was regarded as a mitigating factor. Similarly, the fact that these charges were the first blemish on his record, and that the letters of support which were received indicate that he is a competent and respected physician with an impressive work ethic, were also considered to be mitigating factors. It is the hope of the Panel that Dr. Hui can be rehabilitated and will be able to use his training and education for the benefit of his patients and the public generally over the course of a long career. The Panel also recognizes that, as a result of these proceedings, the College of Physicians and Surgeons of Ontario will likely have a significant role to play in determining the status of Dr. Hui's licence to practice in Ontario.

The Panel has therefore decided that the objectives of an Order granted pursuant to section 59.6 of *The Medical Act* will be fulfilled if the Joint Recommendation of the parties is accepted. The Panel's decision is therefore to accept the Joint Recommendation. The Panel's decision will be more particularly set forth in a Resolution and Order being issued concurrently with these Reasons.

IN THE MATTER OF: “*THE MEDICAL ACT*”, R.S.M. 1987, c.M90;

AND IN THE MATTER OF: Dr. Creighton Hui, a member of the College of
Physicians & Surgeons of Manitoba

**RESOLUTION AND ORDER OF AN INQUIRY PANEL OF THE
COLLEGE OF PHYSICIANS AND SURGEONS OF MANITOBA**

WHEREAS Dr. Creighton Hui (Dr. Hui), a member of the College of Physicians & Surgeons of Manitoba (the College) was charged with professional misconduct, and with contravening By-Law No. 1 of the College and Statement 104 of the College and with attempting to mislead the College, as more particularly outlined in a Notice of Inquiry, dated December 9, 2013.

AND WHEREAS Dr. Hui was summoned and appeared before an Inquiry Panel (the Panel) of the College with legal counsel on April 9, 2014.

AND WHEREAS Dr. Hui entered a plea of guilty to all of the counts relating to all of the charges outlined in the Notice of Inquiry.

AND WHEREAS the Panel reviewed the exhibits filed, including a detailed Statement of Agreed Facts and a comprehensive Book of Agreed Documents, heard submissions from counsel for the Investigation Committee of the College and counsel for Dr. Hui, and from Dr. Hui himself, and received a Joint Recommendation as to the Disposition of the charges and the allegations outlined in the Notice of Inquiry.

AND WHEREAS the Panel decided that the Joint Recommendation as to Disposition was appropriate in the circumstances.

NOW THEREFORE BE IT AND IT IS HEREBY RESOLVED AND ORDERED THAT:

1. Pursuant to Section 56(3) of *The Medical Act, R.S.M.*, the identities of third parties, and particularly the patients of Dr. Hui, shall be protected in the record of these proceedings by referring to them in a non-identifying manner.
2. The Panel hereby declares that Dr. Hui's conduct, as particularized in the Notice of Inquiry, and the Statement of Agreed Facts, was of such a serious nature that if Dr. Hui were currently licensed to practice in Manitoba, the appropriate penalty would be a reprimand, a period of suspension of his license, costs and publication, including his name.
3. Given that Dr. Hui is not licensed to practice in Manitoba, the penalty will be:
 - a) a reprimand;
 - b) a fine in the sum of \$10,000.00 *in lieu* of the period of suspension;
 - c) costs, payable by Dr. Hui to the College in the amount of \$28,160.25, payable in full on or before the date of Inquiry;
 - d) publication, including Dr. Hui's name, as determined by the Investigation Committee of the College.

Dated this 9th day of May, 2014.