

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

**INQUIRY: IC2459
DR. RANDY RAYMOND ALLAN**

On November 10, 2016, a hearing was convened before an Inquiry Panel (the "Panel") of the College of Physicians and Surgeons of Manitoba (the "College") for the purpose of conducting an inquiry pursuant to Part X of *The Medical Act* into a charge against Dr. Randy Raymond Allan (Dr. Allan) as set forth in an Amended Notice of Inquiry dated February 24, 2016.

The Amended Notice of Inquiry charged Dr. Allan with professional misconduct. The specific allegations of misconduct against Dr. Allan in the Amended Notice of Inquiry were expressed as follows:

"1. During the period from in or about June, 2013 to in or about April, 2014, you attempted to mislead the College with respect to your role in the use of your billing number during the summer of 2009 to submit to Manitoba Health bills for services provided to patients by a nurse practitioner by making one or more of the statements particularized below, each of which you subsequently acknowledged to have been false and/or misleading, thereby committing acts of professional misconduct.

Particulars of False and/or Misleading Statements

(i) Before leaving to take a locum position in Ontario for the summer of 2009, you attended Manitoba Health and requested your billings be redirected to a new address.

(ii) Although your billing number was being used in the summer of 2009 to submit bills to Manitoba Health for patient visits by a nurse practitioner:

1. You were not being paid by Four Rivers Medical Clinic for the use of your billing number for the period July and August, 2009.
2. You were not aware of this use of your billing number until September, 2009.

(ii) You did not understand that during the period of time you were doing a locum in Ontario, your billing number had not been transferred by Manitoba Health as you requested.”

A hearing proceeded before the Panel on November 10, 2016 in the presence of Dr. Allan and his counsel, and in the presence of counsel for the Investigation Committee of the College.

At the outset of the hearing, Dr. Allan entered a plea of guilty to all of the charges outlined in the Amended Notice of Inquiry.

The Panel reviewed and considered the following documents, which were filed as exhibits in the proceedings with the consent of Dr. Allan:

The original Notice of Inquiry dated February 24, 2016;

The Amended Notice of Inquiry dated February 24, 2016;

A Statement of Agreed Facts;

Agreed Documents (Tabs 1 through 8);

The Joint Recommendation as to Penalty made by the Investigation Committee of the College and Dr. Allan, through his counsel.

With the consent of Dr. Allan, the Panel also reviewed and considered a Decision of a different Inquiry Panel and the Resolution and Order of that Inquiry Panel dated October 4, 2012, in which findings had been made that Dr. Allan had been guilty of professional misconduct, of contravening By-Law No. 1 of the College and Article 2 of the Code of Conduct of the College and Statement 805 of the College, and of displaying a lack of knowledge of, or a lack of skill and judgment in the practice of medicine.

DECISION

Having considered all of the above noted exhibits and the Decision of the Inquiry Panel dated October 4, 2012, and the submissions of counsel for the Investigation Committee of the College and counsel for Dr. Allan, and the guilty plea of Dr. Allan, the Panel is satisfied that all of the allegations in the Amended Notice of Inquiry have been proven. The Panel is also satisfied that the joint recommendation as to penalty is appropriate and ought to be accepted.

REASONS FOR DECISION

Dr. Allan graduated from the Faculty of Medicine at the University of Manitoba in 1980. He completed a rotating internship in British Columbia in 1981, and returned to Manitoba in that year and practiced in Manitoba until 1983. He then undertook a residency in pathology in British Columbia, obtaining his Royal College certification in 1987. Thereafter he practiced medicine for various periods of time in both British Columbia and Manitoba. Between 2004 and 2010, Dr. Allan was in Winnipeg practicing medicine, except while he engaged in a locum in Kenora, Ontario for approximately two months in 2009.

As a result of the matters referred to in the Decision of the different Inquiry Panel dated October 4, 2012, coming to the attention of the College in 2010, Dr. Allan signed an undertaking, pursuant to which he agreed not to practice medicine without the express written permission of the Chair of the Investigation Committee of the College. Dr. Allan has not practiced medicine in Manitoba or elsewhere since June 18, 2010.

The relevant background facts with respect to the matters referred to in the Amended Notice of Inquiry can be briefly summarized as follows:

1. On April 25, 2014, Dr. Allan accepted a Censure.
2. The Censure was issued following an investigation of Dr. Allan's conduct in permitting the use of his Manitoba Health billing number to bill in Dr. Allan's name for services provided by a nurse practitioner with whom Dr. Allan worked at a medical clinic. The investigation included an exchange of correspondence between the College and Dr. Allan and an interview of Dr. Allan by the Investigation Chair of the College.
3. Dr. Allan left the medical clinic in or about June, 2009 and worked as a physician in Kenora, Ontario for the summer of 2009.
4. Following publication of the Censure, a report was made to the College that Dr. Allan had not been telling the truth when he told the College that he was unaware of the continued use of his billing number over the summer of 2009.
5. The College obtained copies of cheques that Dr. Allan had written to the nurse practitioner during the period July, 2009 to October, 2009.
6. A new investigation was opened with respect to whether Dr. Allan had provided false and/or misleading information to the College during the investigation which lead to issuance of the Censure. In this investigation

there was an exchange of correspondence between the College and Dr. Allan and an interview of Dr. Allan by the Investigation Chair.

7. In a letter from Dr. Allan to the College dated October 3, 2014 and in the interview of Dr. Allan by the Investigation Chair, Dr. Allan has admitted that he did make false and/or misleading statements to the College as set out in the Amended Notice of Inquiry.
8. Dr. Allan admits that his conduct as set out in the Amended Notice of Inquiry was professional misconduct.

The Censure dated April 25, 2014, expressed the Investigation Committee's disapproval of Dr. Allan's conduct in three respects:

1. His failure to exercise due diligence to ensure that billings submitted for patient visits under his billing number met all of Manitoba Health's terms and conditions applicable to billing for those patient visits.
2. Permitting claims to be submitted to Manitoba Health for services as if he had provided the services, when in fact the services had been provided by a nurse practitioner.
3. Failing to maintain patient records with respect to his supervision of a nurse practitioner.

As part of these current proceedings, Dr. Allan has admitted he misled the College with respect to the matters which resulted in the Censure. Misleading the organization which regulates and governs the practice of one's profession is inherently wrong. The false statements made by Dr. Allan to the College as particularized in the Amended Notice of Inquiry detract from the College's ability to govern the profession. They also undermine the faith of the public in the ability of the medical profession to govern itself. They may have also have affected the decision of the College to proceed by way of a Censure in April 2014, as opposed to another type of more punitive sanction. Furthermore, there were significant aggravating factors present in relation to the misleading statements made by Dr. Allan to the College, namely:

The length of time during which Dr. Allan provided and continued to provide misleading information to the College;

Dr. Allan's prior disciplinary record, including the extremely serious matters outlined in the Inquiry Panel's Decision and Resolution and Order of October, 2012.

It is within that factual context that the Joint Recommendation As To Penalty must be considered.

The Joint Recommendation As To Penalty

Given Dr. Allan's admission of guilt to the allegations contained in the Amended Notice of Inquiry and the seriousness of his conduct, this Panel must decide upon the appropriate disposition pursuant to s.59.6 of *The Medical Act*.

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

- (a) The protection of the public in broad context. Orders under s.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 Panel is satisfied that the penalty being recommended jointly by the Investigation Committee and Dr. Allan fulfills the above noted objectives.

As a result of the helpful submissions of counsel for the Investigation Committee and Dr. Allan, the Panel is aware of previous decisions of other

inquiry panels relating to physicians failing to exercise due diligence with respect to the submission of billings to Manitoba Health and to submitting claims to Manitoba Health for services as if the physicians had provided those services, when in fact those services had been provided by a nurse practitioner. One of those cases, which also involved a lack of candor with the College on the part of the physician, resulted in a five-month suspension of the physician involved.

In this case, the Panel is satisfied that another Censure would be an entirely inadequate disciplinary response, and that a suspension, longer than five months is warranted because of the two aggravating factors referred to earlier, namely the length of time during which Dr. Allan misled the College and his prior disciplinary history. The Panel is aware and has considered Dr. Allan's guilty plea and has recognized that his guilty plea is a mitigating factor, but nonetheless believes that a suspension of six months is reasonable and warranted.

The essential elements of the Joint Recommendation As To Penalty are that:

1. Dr. Allan's license to practice medicine will be suspended for a period of six months, which must be a period of active suspension from the practice of medicine in accordance with a prescribed sequence of events, as more particularly set forth in the Resolution and Order of this Panel which is being issued concurrently with this Decision. The prescribed sequence of events will involve the fulfillment by Dr. Allan of the conditions imposed on his entitlement to practice medicine by the Resolution and Order dated October 4, 2012, confirmation by the Physician Health Committee that he is able to practice medicine safely, an application by Dr. Allan for licensure for the purpose of satisfying the requirements for the retraining of inactive physicians, the serving of the six months suspension by Dr. Allan, followed by the successful completion of those retraining requirements. All of the above noted steps must be completed before Dr. Allan will be permitted to return to the practice of medicine.
2. The imposition of conditions relating to the participation in and successful completion of the multi-disciplinary assessment program contemplated in the October, 2012 Inquiry Panel Resolution and Order.
3. Payment by Dr. Allan to the College of the sum of \$11,026 representing the payment of costs for publication, including Dr. Allan's name.
4. Publication, including Dr. Allan's name.

The Panel recognizes that the primary purpose of orders under s.59.6 of *The Medical Act* is not to punish the physician involved (although punishment

can and should be an important element of such orders in appropriate cases), but is rather to protect the public interest. The Panel has concluded that the Joint Recommendation As To Penalty properly reflects the seriousness of Dr. Allan's professional misconduct. The recommended penalty is also designed to protect the public by way of a structured and sequenced process whereby Dr. Allan may be able to return to the practice of medicine, either with or without conditions, but only when and if the rigorous requirements at each stage of the sequenced process are fulfilled.

There are also appropriately punitive elements to the recommended disposition, namely the six-month suspension and the publication of Dr. Allan's name.

The penalty is also proportionate to his misconduct as outlined in the Amended Notice of Inquiry within the context of his prior disciplinary record, and consistent with, but not identical to prior decisions of other Inquiry Panels of the College.

Therefore, it is the decision of the Panel that:

1. Dr. Allan's licensure be suspended for a period of six months, which must be a period of active suspension from the practice of medicine in accordance with a sequenced process more particularly set forth in the Resolution and Order of this Panel issued concurrently herewith.
2. Certain Conditions be imposed upon Dr. Allan's entitlement to practice medicine, as more particularly set forth in the Resolution and Order of this Panel issued concurrently herewith.
3. Dr. Allan shall pay costs to the College in the sum of \$11,026.
4. There will be publication, including Dr. Allan's name, in accordance with s.59.9 of *The Medical Act*.