

# COLLEGE OF PHYSICIANS AND SURGEONS OF MANITOBA

## INVESTIGATION COMMITTEE DECISION

### **CENSURE: IC1013**

### **DR. HANDRICK MING-TOK FONG**

On June 11, 2010, in accordance with Section 47(1)(c) of *The Medical Act*, the Investigation Committee of the College censured Dr. Fong with respect to his having failed to make full and adequate disclosure to some of his patients who required elective surgery during the period between in or about May of 2004 and February 2005 regarding the status of his hospital privileges within the Winnipeg Regional Health Authority (“WRHA”), and, in particular, the uncertainty surrounding his surgical privileges which prevented him from performing elective surgery in a timely fashion.

#### **I. PREAMBLE**

The physician/patient relationship is a fiduciary relationship based on trust. The physician is obligated to act in the best interests of the patient and to use the therapeutic relationship to further those interests. It is the physician’s responsibility to ensure that the patient has adequate information to make decisions about his/her treatment.

In the case of a vascular surgeon, timely and candid communication of important information impacting on treatment decisions, including the decision as to if and when to have surgery, are essential components of good medical practice. The failure to communicate appropriate information on a timely basis may result in a significant delay in the treatment of life threatening conditions, potentially putting a patient’s life and/or limbs at risk.

The requirements of the Code of Conduct include:

- Consider first the well-being of the patient;
- Treat all patients with respect; do not exploit them for personal advantage;
- Recognize his limitations and the competence of others and when indicated, recommend that additional opinions and services be sought;
- Provide your patients with the information, alternatives and advice they need to make informed decisions about their medical care, and answer their questions to the best of your ability;
- Make every reasonable effort to communicate with your patients in such a way that information exchanged is understood;
- Collaborate with other physicians and health professionals in the care of patients and the functioning and improvement of health services.

#### **II. THE RELEVANT FACTS ARE:**

1. Dr. Fong had been registered with the College as vascular surgeon since 1983. Prior to 2004, Dr. Fong practiced as a vascular surgeon, initially as a member of the medical staff at the Health Sciences Centre (HSC) and since 1999, with medical staff privileges granted by the WRHA. Dr. Fong’s practice included seeing patients in his vascular

surgery clinic located at the HSC, attending patients and consulting as required as the vascular surgeon on call for the WRHA, performing vascular surgery at the HSC, and other minor vascular procedures at Seven Oaks Hospital.

2. The conduct for which Dr. Fong was censured occurred over a period of several months in 2004 and 2005, during which time his surgical privileges within the WRHA were either suspended or restricted in relation to two separate WRHA Medical Advisory Committee (MAC) matters.
3. On May 29, 2007, following lengthy hearings and proceedings pursuant to the WRHA's by-laws which took place on various dates between 2004 and 2007, the Board of the WRHA placed a permanent restriction on Dr. Fong's privileges within the WRHA, which limited him to providing surgical assistance to the Cardiac Sciences Program.
4. During the period in question (May of 2004 to February of 2005) there was considerable uncertainty regarding the status of Dr. Fong's privileges within the WRHA, particularly regarding whether and under what circumstances he would be able to perform elective surgical cases. This uncertainty resulted from several factors, which included:
  - a. interim decisions made by MAC, including an interim suspension of all of Dr. Fong's privileges pending a hearing pursuant to WRHA by-laws;
  - b. a decision of the Court of Queen's Bench which set aside MAC's suspension. The Court's decision imposed other restrictions pending the outcome of certain proceedings pursuant to WRHA by-laws, which precluded Dr. Fong from performing emergency surgery, but allowed him to perform elective surgery, provided that prior to performing the elective surgery the cases were reviewed by a second physician ... to be coordinated by [the Medical Director of the Surgery Program] or his delegate..."
  - c. differences of opinion between Dr. Fong and the WRHA regarding implementation of the Court's decision; and
  - d. ongoing proceedings/hearings pursuant to WRHA by-laws.

While the Court's decision would have allowed Dr. Fong to perform elective cases if they were first reviewed by another physician, and Dr. Fong expected to be able to perform such cases in a timely fashion, the factors described above ultimately prevented him from being able to do so.

5. In late February of 2005 Dr. Fong was required by the College to address concerns about whether he was making adequate disclosure to patients regarding the status of his privileges and how that might impact on his ability to perform elective surgery on a timely basis and whether Dr. Fong was making appropriate referrals of his surgical patients to other vascular surgeons and whether any such patients who were not being referred were potentially at risk.
6. Dr. Fong took immediate steps to address the College's concerns for patient safety, including:
  - a. referring all of the patients on Dr. Fong's vascular surgery waiting list to another vascular surgeon;

- b. ceasing to see patients in his clinic until the issues regarding his privileges within the WRHA were resolved; and
  - c. directing any further patient referrals Dr. Fong received to another vascular surgeon.
7. In Dr. Fong's written responses to the College about these concerns and/or when he was interviewed by the Investigation Chair:
  - a. Dr. Fong explained that during the time in question he continued to see existing and new patients in clinic, and the patients he saw fell into three categories:
    - Those who did not require surgery and who were seen in consultation for assessment or follow-up. These patients were not told of any restrictions on Dr. Fong's privileges.
    - Patients requiring semi-urgent or urgent surgery. These patients were advised that Dr. Fong could not perform surgery and were referred to another surgeon as and when required.
    - Patients who Dr. Fong felt "could benefit from surgery, which could be done electively". Dr. Fong advised them that they were on his waiting list and would be advised when a time for surgery was secured. Dr. Fong said that regular follow-up appointments were scheduled to allow him to monitor their condition. Dr. Fong did not tell them of the restrictions on his privileges unless they made inquiries.
  - b. Dr. Fong also advised that he did not tell physicians who referred patients to him about the restrictions on his privileges unless they asked direct questions about his status as he felt that his situation was well known in the medical community as it had been the subject of media attention.
  - c. Dr. Fong acknowledged that:
    - He was not referring many of his surgical patients whom he classified as requiring elective surgery and kept track of them on a "waiting list" in the expectation that he would be able to perform their surgery in a timely fashion as soon as the issues surrounding his privileges were clarified;
    - In hindsight, by not referring his patients to another vascular surgeon and/or making clear to them the potential consequences of remaining with him instead of another vascular surgeon, his patients who were on this list were potentially being disadvantaged by his actions, in that they were not put on the waiting list of another vascular surgeon who was in a position to perform their surgery. Dr. Fong should have told all of these patients the specifics of his status and provided them with the option of being referred to another surgeon to be placed on that surgeon's waiting list. Dr. Fong did not do this because he thought that his circumstances would be resolved "any day" and that he would be in a position to perform vascular surgery again and would perform the surgery himself.

- Dr. Fong advised that he was unsure that by referring them to another vascular surgeon they would in fact have been able to have surgery sooner, as this would have depended on the length of the other surgeon's wait list compared to when he might have been able to resume performing the surgery himself, but the likelihood was that they would have had surgery sooner.
- d. Dr. Fong accepted responsibility for his actions, but added that he believed that he was put in an extremely difficult position in that he was not suspended from performing elective surgery and he was making efforts to have the restrictions on his privileges addressed quickly, and was hopeful each day that he would be able to resume performing elective cases through the implementation of the review process contemplated by the decision of the Court of Queen's Bench, or a favourable decision on the WRHA disciplinary proceedings.
  - e. Dr. Fong also explained that the WRHA was at all times aware of his situation and in particular that he was seeing patients who may have required elective surgery on a regular basis and expressed his view that the WRHA should have taken steps to approve his elective cases and/or raised any concerns it may have had about particular patients with him.
8. On March 9, 2005, Dr. Fong voluntarily signed an undertaking with the College that he would:
- a. restrict his practice to surgical assists only,
  - b. no longer see patients for ongoing care or consultations, and
  - c. provide a smooth transition of his current patients to another consultant.

That undertaking remained in force throughout the investigation until June 8, 2010, when Dr. Fong voluntarily surrendered his licence, which the Investigation Committee accepted pursuant to Section 47(1)(e) of the Medical Act, and reinstated Dr. Fong's licence to practice medicine pursuant to Section 50(3)(a), subject to the restriction that Dr. Fong limit his practice to providing surgical assistance.

9. Dr. Fong has been providing surgical assistance for the Cardiac Sciences Program since the spring of 2005. The College received many positive letters of reference from colleagues who are very appreciative of Dr. Fong's work.

### **III. FACTORS CONSIDERED BY THE INVESTIGATION COMMITTEE:**

1. Other matters, including those that led to the uncertainty surrounding Dr. Fong's surgical privileges, which were referred to the College by the WRHA have already been the subject of extensive hearings pursuant to the WRHA by-laws, and resulted in the WRHA Board restricting Dr. Fong's privileges to providing surgical assistance for the Cardiac Sciences Program, as stated in paragraph 3 above. Dr. Fong has restricted his practice accordingly. The Investigation Committee accepted Dr. Fong's voluntary surrender of

licence pursuant to Section 47(1)(e) of *The Medical Act* and immediately reinstated his licence pursuant to Section 50(3)(a) of *The Medical Act*, with his licence being restricted such that Dr. Fong limit his practice to providing surgical assistance. Prior to that, Dr. Fong had no disciplinary record with the College.

2. The circumstances in which the conduct for which Dr. Fong is being censured occurred were unique in that for most of the time:
  - a. Dr. Fong's surgical privileges were either suspended or restricted;
  - b. Dr. Fong was permitted to and did see patients and consult with other physicians as a vascular surgeon within the WRHA;
  - c. the restrictions on Dr. Fong's surgical privileges and the circumstances surrounding his attempts to obtain approval for his elective surgeries were such that he was effectively precluded from performing vascular surgery.
3. In the early days of Dr. Fong's efforts to resolve the issues preventing him from performing elective surgery, it was not entirely unreasonable for him to hold out hope that he would be able to perform the surgery himself in a timely fashion, but over time, Dr. Fong's failure to advise his patients of the limitations on his ability to perform elective surgery and/or refer them to another surgeon was unfair to them and was a breach of his ethical obligations to his patients.
4. Dr. Fong acknowledged wrongdoing and has shown acceptance of responsibility for his actions.
5. Dr. Fong cooperated with the College throughout the investigation and transferred his patients to other vascular surgeons to ensure their vascular surgery needs were met.
6. There have been no complaints to the College from Dr. Fong's patients in relation to these matters.
7. Dr. Fong has had a long record of professional service as a skilled surgeon and continues to have the support of many colleagues and other members of the profession.

**IV. ON THESE FACTS, THE INVESTIGATION COMMITTEE RECORDS ITS DISAPPROVAL OF DR. FONG'S PRACTICE, IN PARTICULAR:**

1. Dr. Fong failed to make full and adequate disclosure to his patients regarding the status of his privileges and the impact that restrictions on his surgical privileges may have had on his ability to perform surgery in a timely fashion during the period between in or about May 2004 and in or about February 2005 in that Dr. Fong:
  - a. failed to consider first the wellbeing of his patients and put his own interests ahead of those patients by failing to provide those patients with the information, alternatives and advice they needed to make informed decisions about their medical care, in particular by failing to inform them of the status and uncertainty regarding his privileges within the WRHA, which effectively prevented him from

performing vascular surgery to address their vascular surgical needs on timely basis.

- b. failed to make timely referrals of patients who were candidates for vascular surgery to another vascular surgeon.

In addition to appearing before the Investigation Committee to accept the censure, Dr. Fong paid the costs of the investigation in the amount of \$10,000.00.

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