

CENSURE: IC2716
DR. ROMAN ALEXANDER CHUBATY

On December 9, 2016 in accordance with Section 47(1)(c) of *The Medical Act*, the Investigation Committee censured Dr. Chubaty as a record of its disapproval of the deficiencies in his conduct. Censure creates a disciplinary record which may be considered in the future by the Investigation Committee or an Inquiry Panel when determining the action to be taken following an investigation or hearing.

I. PREAMBLE

Physicians are expected to be familiar with and comply with Statements of the College applicable to the physician's practice. At the relevant time, a physician who provided authorizations for the use of medical marijuana had to comply with the requirements of Statement 187 of the College, Marijuana (Cannabis) for Medical Purposes [now replaced by By-Law 11], and with the requirements of Statement 176 of the College, Accounting and Billing Records in relation to the services provided [now replaced by By-Law 11].

Physicians are entitled to charge patients a fee for uninsured services, but the fee must be reasonable in the circumstances. Where a physician submits a claim to Manitoba Health in relation to a patient visit, the physician has been paid for the time and effort expended in relation to the visit, and any charge to the patient in relation to documentation required, such as the completion of forms, must meet the requirement of reasonableness in the circumstances.

The physician/patient relationship is a fiduciary one, which requires the physician to place the interests of the patient above his or her own interests and which requires good faith and candour on the part of the physician in dealing with his or her patient. For these reasons, requiring a patient to sign a release of legal action and of the right to complain before providing care to the patient is inappropriate and outside of the standards of the profession.

Physicians are required to maintain medical records in relation to each patient seen, in accordance with the requirements of Article 24 of By-Law No. 1 [now replaced by By-Law 11] of the College.

II. THE RELEVANT FACTS ARE:

1. In March, 2014, the College published Statement 187, Marijuana (Cannabis) for Medical Purposes, which specified several requirements of physicians who chose to issue authorizations for the use of medical marijuana.
2. In May, 2014 the College published Statement 176, Accounting and Billing, which permits a member to charge a reasonable fee for an uninsured service and which requires members to keep an accounting record of every health service rendered by the member to a patient, the type of service and the charge made.
3. Commencing in or about July 2014 and continuing until in or about July 2015, Dr. Chubaty

provided one or more patients, the identities of whom are known to him, with authorizations for the use of medical marijuana. Dr. Chubaty's process in relation to a patient request for an authorization to use medical marijuana included the use of the following forms:

- a. The completion of an assessment form by the patient in advance of the patient visit. In this form, the patient was required to identify:
 - i. the primary condition for which the patient sought the authorization for use of medical marijuana;
 - ii. the treatments attempted in relation to this condition;
 - iii. addiction assessment questionnaires.
 - b. A release form, whereby the patient released any right to complain against Dr. Chubaty and to commence legal action against Dr. Chubaty.
 - c. A patient agreement for the use of medical marijuana, which was intended to provide information regarding the general use of marijuana.
 - d. A treatment contract, whereby the patient agreed to abide by the daily dosage authorized and agreed not to sell or give the marijuana to anyone else.
4. Although Dr. Chubaty's appointments with these patients were booked every 10 minutes, he estimated that he spent approximately 20 minutes per patient, in which time he verified the existence of a condition to ascertain whether a medical marijuana authorization would be justified.
5. Dr. Chubaty estimated that 99% of the patients he saw in relation to a request for the authorization for the use of medical marijuana were already using marijuana recreationally or through a previous authorization, and, in Dr. Chubaty's view, the patient's report of assistance with the patient's medical condition by this use was sufficient for him to issue an authorization for the use of medical marijuana.
6. Although the patient acknowledged in the treatment contract that Dr. Chubaty was their primary treating physician for the condition for which the medical marijuana was authorized, Dr. Chubaty stated that this was not his intent. Dr. Chubaty stated that it was not his intention to treat the condition for which the medical marijuana was sought; rather it was his intent that he be the patient's primary physician for the limited purpose of obtaining authorization for the use of medical marijuana.
7. Dr. Chubaty has acknowledged that in his practice as outlined above, he did not comply with several of the requirements of Statement 187, namely:
- a. He issued authorizations for the use of medical marijuana to one or more patients without first ensuring that all other conventional therapies had been tried for the patient's condition;
 - b. He did not discuss with one or more patients the potential risks and benefits and the lack of clear scientific evidence for the efficacy of the proposed treatment;
 - c. He did not document his discussions with one or more patients about the medical reasons for which the medical marijuana was authorized;
 - d. He issued authorizations for the use of medical marijuana to one or more patients for whom he was not the primary treating physician for the condition for which the medical marijuana was authorized.
 - e. He did not keep a separate log of all authorizations for the use of medical marijuana

issued by him, including the patient's name, patient's PHIN, the condition for which the medical marijuana was authorized and the quantity and dosages of medical marijuana authorized.

8. Dr. Chubaty's failure to follow the requirements of Statement 187 resulted in patients receiving authorization for the use of medical marijuana without proper assessment of its potential therapeutic value for the patient.
9. Dr. Chubaty billed Manitoba Health in relation to the visits of one or more patients, the identities of whom are known to him, when the sole purpose of the patient visit was to request an authorization for the use of medical marijuana. For some of these patients Dr. Chubaty charged the sum of \$200.00 for uninsured services and for others he charged the sum of \$300.00 for uninsured services, which he stated was for the completion of documentation related to the authorization.
10. Manitoba Health's payment to Dr. Chubaty was payment for his assessment of the patient's medical condition, including his review of patient history through the patient's completed forms as outlined above which he required for the visit, and the examination performed by him, if any examination was done.
11. Given Manitoba Health's payment to Dr. Chubaty, his \$200.00 or \$300.00 charged in relation to uninsured services pertained solely to his completion of the forms for submission authorizing the use of medical marijuana, which required minimal time and effort on his part.
12. Before providing patients with an authorization for the use of medical marijuana, Dr. Chubaty required the patient to provide him with a release of the patient's rights of complaint and of legal action against him.
13. Dr. Chubaty has stated that he used the form of release believing it to be a current form in use, and that on learning that it was not current, he immediately ceased to use that form.
14. Dr. Chubaty saw some patients at the location of a marijuana compassion club, and medical records related to the care he provided to these patients were left in the custody of a marijuana compassion club. Medical records in relation to the care he provided to these patients were destroyed, with the result that he has no record of the care of each patient he saw at this location.
15. In July, 2015 when the College contacted Dr. Chubaty in relation to the concerns about his authorizations for the use of medical marijuana, he ceased issuing authorizations, excepting for two patients who see him as their family physician.

III. ON THESE FACTS, THE INVESTIGATION COMMITTEE RECORDS ITS DISAPPROVAL OF DR. CHUBATY'S CONDUCT IN:

1. Issuing authorizations for the use of medical marijuana in contravention of the requirements of Statement 187 of the College;
2. Charging a fee to patients for an uninsured service which was not reasonable in the circumstances in contravention of Statement 176 of the College;
3. Requiring patients to sign a release of the patient's right of complaint and of legal action against him in advance of providing service to the patients;

4. Failing to maintain patient records with respect to patients whom Dr. Chubaty saw at the location of a marijuana compassion club in contravention of By-Law No. 1 of the College.

Dr. Chubaty paid the costs of the investigation in the amount of \$3,803.80.