

## **THE COLLEGE OF PHYSICIANS & SURGEONS OF MANITOBA**

**MEMBER: DR. RAJPAL S. AHLUWALIA**

**NOTICE: DR. AHLUWALIA FILED A NOTICE OF APPEAL IN THE MANITOBA COURT OF APPEAL PURSUANT TO S. 59.10 OF *THE MEDICAL ACT* ON MARCH 3, 2016 IN WHICH HE APPEALS THE FINDINGS AND ORDER OF THE INQUIRY PANEL SET OUT BELOW.**

### **REASONS FOR DECISION OF THE INQUIRY PANEL**

#### **INTRODUCTION AND BACKGROUND**

On December 1, 2015, 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 12 counts of misconduct against Dr. Rajpal S. Ahluwalia ("Dr. Ahluwalia") as set forth in a Notice of Inquiry dated March 13, 2015.

At the outset of the hearing on December 1, 2015, a motion to amend the Notice of Inquiry was made by counsel for the Investigation Committee of the College with the consent of counsel for Dr. Ahluwalia. The motion sought to "sever" 7 of the 12 counts from the Notice of Inquiry, so that those counts would be dealt with separately from the remaining counts. The motion to amend was granted and an Amended Notice of Inquiry, also dated March 13, 2015 was filed consisting of the five remaining charges, renumbered as counts 1-5.

The Amended Notice of Inquiry charged Dr. Ahluwalia with committing acts of professional misconduct, contravening various provisions of By-Law #1 of the College, Statements 104 and 805 of the College, displaying a lack of knowledge of or a lack of skill and judgment in the practice of medicine, and of demonstrating an unfitness to practice medicine. The Amended Notice of Inquiry alleged that:

“1. You made false and misleading statements in your written correspondence to the College when you described one or more individuals having reviewed the report of the College’s audit of your practice conducted on or about June 27, 2013 (“Audit Report”) and/or having participated in the preparation of a report dated August 15, 2013 entitled *Peer Group Audit Statement And Analysis Of The Practice Of Dr. Ahluwalia* (“Peer Group Analysis”) thereby committing acts of professional misconduct.

2. On or about November 27, 2013, during the course of an interview with the Investigation Chair of the College, you attempted to mislead the College about the involvement of one or more individuals in reviewing the Audit Report and/or having participated in the preparation of the Peer Group Analysis, thereby committing acts of professional misconduct.

3. After installing computer software which complied with College Statement 104 in November 2000 as required by Order of the Manitoba Court of Appeal dated July 13, 1999, you failed to maintain and/or update and/or use that software and/or your medical computer system in a manner which complies with that Order and/or with Statement 104 and/or in a manner which complies with the requirement of trustees of personal health information as set out in The Personal Health Information Act, C.C.S.M. c. P33.5, thereby breaching Statement 104 and/or committing acts of professional misconduct.

4. In respect to Patients B, C, D, E, F, G, H, I, J, K, L, M, N and O, you failed to create and maintain adequate clinical records and/or did not create an accurate or complete medical record in respect of one or more prescriptions, thereby breaching the record keeping requirements of By-Law #1 of the College in effect at the material time and/or Statement 805 of the College and/or committing acts of professional misconduct.

5. By reason of one or more of the foregoing, you have displayed a lack of knowledge of or a lack of skill and judgment in the practice of medicine and/or an unfitness to practice medicine.”

In addition to the foregoing, the Amended Notice of Inquiry also contained extensive factual particulars, some of which will be referred to elsewhere in these Reasons.

The hearing proceeded before the Panel on December 1, 2015 in the presence of Dr. Ahluwalia and his counsel, and in the presence of counsel for the Investigation Committee of the College. Dr. Ahluwalia entered a plea of guilty to counts 1-4 as outlined in the Amended Notice of Inquiry, thereby acknowledging that the facts alleged in counts 1-4 of the Amended Notice of Inquiry, including the additional factual particulars, were true and also acknowledging that he was guilty of professional misconduct, and of contravening various provisions of By-Law #1 of the College and of contravening Statements 104 and 805 of the College.

With respect to count 5 of the Amended Notice of Inquiry, Dr. Ahluwalia made no admission, and was therefore deemed by the Panel to enter a plea of not guilty to that count.

Counsel for the Investigation Committee also moved for an order under subsection 56(3) of *The Medical Act* for the non-disclosure of the names of any patients or other third parties referred to in the proceedings. Counsel for Dr. Ahluwalia consented to such an Order. The Panel therefore granted an Order for the non-disclosure of the names of any patients or other third parties specifically referred to during the Hearing, or in any documents filed as exhibits at the hearing.

The Panel reviewed and considered the following documents, all of which were filed as exhibits in the proceedings by consent:

1. The Amended Notice of Inquiry (Exhibit 2); and
2. The Statement as to Agreed Documents (Exhibit 3) and all of the documents referred to therein.

Copies of the documents referred to in the Statement as to Agreed Documents were provided to the Panel in two binders, consisting of approximately 50 tabs. The documents were extensive. In reviewing the documents contained in the two binders, the Panel was cognizant of the following statement contained in the Statement as to Agreed Documents:

“...the documents are not to be taken as part of the Member’s or the Investigation Committee’s case. Both the Member and the Investigation Committee may lead evidence to contradict any document in this agreed Book of Documents. The Member and the Investigation Committee may make arguments as to the weight that should be assigned to any document by the Inquiry Panel.”

No oral evidence was introduced at the hearing by either the Investigation Committee or by Dr. Ahluwalia. With respect to count 5 in the Amended Notice of Inquiry, it was the position of the Investigation Committee of the College that the evidence in relation to counts 1-4 was sufficient to establish that Dr. Ahluwalia displayed a lack of knowledge of, or a lack of skill and judgment in the practice of medicine and/or that he was unfit to practice medicine, and that a finding of guilt with respect to the other four counts in the Amended Notice of Inquiry was sufficient to establish Dr. Ahluwalia’s guilt with respect to the other allegations in count 5. It was the position of Dr. Ahluwalia that neither the evidence with respect to the first four counts, or any finding of guilt with respect to the first four counts was sufficient to establish his guilt with respect to the allegations in count 5 of the Amended Notice of Inquiry.

## **BACKGROUND**

The first two counts of the Amended Notice of Inquiry relate to certain communications from Dr. Ahluwalia to the College.

The College had undertaken an investigation of Dr. Ahluwalia’s practice pursuant to Section 45 of *The Medical Act* and had caused a chart audit of Dr. Ahluwalia’s practice to be conducted on June 27, 2013. The College wrote to Dr. Ahluwalia by letter dated July 12, 2013, providing him with a copy of the Audit Report (the “Audit Report”) and requiring him to respond to the Audit Report and all of the concerns raised in the Audit Report within 30 days. Dr. Ahluwalia’s initial written response to the College was dated August 11, 2013. Thereafter an exchange of correspondence occurred between the College and Dr. Ahluwalia, which also included letters from Dr. Ahluwalia dated August 23, 2013, September 6, 2013, November 13,

2013 and November 15, 2013. In the letters written by Dr. Ahluwalia between August 11, 2013 and November 15, 2013 inclusive, he made a series of false and misleading statements to the College, whereby he represented that:

- (i) he had provided a copy of the Audit Report to a group of patients and peers including ethicists, psychiatrists, psychologists, general practitioners, surgeons and para-medicals;
- (ii) he had engaged independent auditors and was in the middle of “an independent chart audit”;
- (iii) a document entitled “PEER GROUP AUDIT STATEMENT AND ANALYSIS OF THE PRACTICE OF DR. AHLUWALIA” (“Peer Group Analysis”) dated August 15, 2013 which he provided to the College was a report from a panel of his peers, providing their comments on all of the charts which had been reviewed and commented upon in the Audit Report.

All of Dr. Ahluwalia’s statements as outlined above were false. He did not provide a copy of the Audit Report to a group of patients and peers, he had not initiated an “independent chart audit” of his practice, and the “Peer Group Analysis” had not been written by a panel of his peers, but in fact had been written entirely by himself. In addition Dr. Ahluwalia in correspondence to the College on November 23, 2013 was non-responsive, evasive and untruthful in responding to requests from the College that he name the purported independent auditors and the authors of the “Peer Group Analysis.

On or about November 27, 2013, Dr. Ahluwalia was interviewed by the Investigation Chair of the College. During that interview Dr. Ahluwalia continued to make false and misleading statements with respect to the involvement of one or more individuals in reviewing the Audit Report and in preparing the “Peer Group Analysis”, before ultimately admitting that he was the sole author of the “Peer Group Analysis” and solely responsible for its contents.

The implausibility of the false statements made by Dr. Ahluwalia, both in his correspondence to the College between August 11, 2013 and November 15, 2013, and in his interview with the Investigation Chair on November 27, 2013, was striking, as was his misguided persistence in attempting to have the College accept his statements as factual and accurate, when they were so obviously false and untruthful.

The third count of the Amended Notice of Inquiry relates to Dr. Ahluwalia's failure to comply with College Statement 104 entitled "Medical Computer Systems: Security and Self-Audit". The preamble to Statement 104 states:

"The Physician is responsible for the safe custody of information contained in the course of patient care in order to fulfill the ethical precept:

"an ethical physician will keep in confidence information derived from the patient, or from a colleague regarding a patient and divulge it only with the permission of the patient, except when the law requires the physician to do so."

The following minimum guidelines are intended to assist the physician in applying this responsibility to the use of computerized records."

One of the General minimum guidelines in Statement 104 provides that:

"... 5. The system must have in place a monitoring system which creates an audit trail which both alerts the physician to any appropriate access and identifies how the system was accessed."

Paragraphs 2, 3 and 4 of the minimum guidelines in Statement 104 with respect to Software stipulate that:

"... 2. All access must be entered onto a permanent file log. The software must be capable of identifying and recording where the access originated and by whom. Where alterations are made to the record, then it must be possible to identify by whom, what was altered, and when the alteration was made.

3. A test of the system's backup and recovery must be made on a regular basis.

4. The inventory of all data files must be regularly reviewed and updated. ...”

By Order of the Manitoba Court of Appeal dated July 13, 1999, Dr. Ahluwalia was required to install a computer software system which complied with Statement 104. He did so, but failed to maintain or update the system or to utilize it in a manner which complied with the Order of the Court of Appeal, or Statement 104, or with the requirements of trustees of personal health information as set out in *The Personal Health Information Act* C.C.S.M.

A forensic audit of Dr. Ahluwalia's computer and any medical computer system in use on that computer conducted on or about January 25, 2014, found that the requirements of Statement 104 were not being met and/or that the personal health information of his patients was not properly protected. Among others, the following deficiencies were found:

- (i) there was no trace of a medical computer system software of any kind on Dr. Ahluwalia's computer;
- (ii) Dr. Ahluwalia's patient records were being recorded and stored in Microsoft Excel files in the local C:/ drive of his computer;
- (iii) there was no audit trail capacity whatsoever for the patient records created by Dr. Ahluwalia;
- (iv) the firewall on his computer was disabled and the anti-virus system was found to be expired and several years out of date;
- (v) Dr. Ahluwalia's computer did not contain any trace of software that would indicate that the data on it was being backed up; and
- (vi) the operating system on his computer was found to be vulnerable to unauthorized and/or inappropriate access.

The non-compliance by Dr. Ahluwalia with College Statement 104 and the deficiencies found in his computer and in any medical computer system in use on that computer were such that the medical records being maintained by Dr. Ahluwalia could not be relied upon as being comprehensive, accurate, or unaltered.

The fourth count of the Amended Notice of Inquiry relates to a failure on the part of Dr. Ahluwalia to create and maintain adequate clinical records and/or a failure to create an accurate or complete record in respect of one or more prescriptions. The failures and deficiencies on the part of Dr. Ahluwalia as outlined in the fourth count involved fourteen patients over a time period from 2002 to 2015. The fourth count in the Amended Notice of Inquiry also relates to a failure on the part of Dr. Ahluwalia to create any clinical record of his assessment, plan and management in respect of various complaints and diagnosis of five patients in 2013, all of whom were among the fourteen patients otherwise referred to in count 4.

Article 24 of the College's By-Law #1 is entitled "Keeping of Medical Records". It contains the following provisions:

"24.1 Clinical Records

Members in practice shall keep:

- (a) Clinical records on every patient which shall include:
  - (i) patient demographic information, including:
    - (A) full name as it appears on the patient's health insurance registration card;
    - (B) current address;
    - (C) personal health identification number or other unique identifier;
    - (D) date of birth;
    - (E) telephone number and any alternate telephone contact numbers; and
    - (F) next of kin.



(ii) all dates on which the patient was seen and for each visit:

(A) an adequate patient history;

(B) particulars of physical examinations, investigation orders and the results of same;

(C) the diagnosis made (if any);

(D) the treatment prescribed; and

(E) ancillary medical or psychological investigations.

(b) daily diary or appointment sheets showing for each day the names of patients seen or treated or in respect of which some professional service is rendered.

#### 24.2 Legible

All records shall be typed or legibly written and kept in suitable systematic permanent forms such as files, cards, folders or computer disk.

#### 24.3 Computerized Records

Records may be retained in a computerized system only if the system is acceptable to the College. The system must be capable of promptly producing the same printed record as required elsewhere in this Article.”

In relation to the fourth count in the Amended Notice of Inquiry, counsel for the Investigation Committee, as part of his submission, made reference to multiple tabs in the two binders comprising the Statement of Agreed Documents, referring to charts and records of particular patients that were generated both before and after the installation by Dr. Ahluwalia of an updated computer program in his computer system. Counsel’s purpose in referring to those charts and records was to demonstrate that in several cases the notations were simply verbatim repetitions of notations which had been made with respect to particular patients on previous visits, or that Dr. Ahluwalia had merely “cut and pasted” previous entries with respect to that patient using the computer system to do so.

By way of examples, in some cases, blood pressure readings and pulse rates were identical for one patient over many visits covering an extended period of time. Identical notations relating to a retinal detachment were noted with respect to one patient over many visits. In several cases, follow up appointments were noted at the end of various entries to occur at specific intervals, which, based on a review of subsequent entries, did not occur at those intervals.

As a result of such deficiencies in the charts and records referred to by counsel for the Investigation Committee, it was clear to the Inquiry Panel that the charts were of limited or no value to Dr. Ahluwalia or any other treating physician in providing an accurate record of the types of examinations and tests which had been performed, the diagnosis or assessments which had been made, the treatments, if any, which had been prescribed, or the results of those treatments.

Such deficiencies were widespread and persisted for extended periods of time. The second element of count 4 in the Amended Notice of Inquiry was equally troubling, namely, a complete absence of any clinical record for specific treatments which had been prescribed and billed for by Dr. Ahluwalia.

Having considered the guilty plea of Dr. Ahluwalia to the first four counts of the Amended Notice of Inquiry, and having reviewed the documentation in the two binders comprising the Statement as to Agreed Documents, within the context of the submissions of Counsel for the Investigation Committee of the College and Counsel for Dr. Ahluwalia, and having read and considered Article 24 of the College's By-Law #1 and Statements 104 and 805 of the College, the Panel is satisfied that counts 1-4 of the Amended Notice of Inquiry have been proven. In the result, the Panel hereby makes a formal finding pursuant to Section 59.5 of *The Medical Act* that Dr. Ahluwalia is guilty of professional misconduct and of contravening Article 24 of the College's By-Law #1 and Statements 104 and 805 of the College.

Count 5 in the Amended Notice of Inquiry, to which Dr. Ahluwalia has not pled guilty, alleges that by virtue of all of the allegations in count 1-4, Dr. Ahluwalia has

displayed a lack of knowledge of, or a lack of skill and judgment in the practice of medicine.

Conduct which is described by phrases such as a “lack of knowledge” or a “lack of skill and judgment” is conduct amounting to incompetence. As noted in Richard Steinecke’s text, *A Complete Guide to the Regulated Health Professions Act*, there are normally 3 requirements necessary in order for a finding of incompetence to be made in a disciplinary context:

- (i) The conduct must be clinical in nature, in the sense of relating to the practitioner’s care of patients;
- (ii) The incompetence must relate to an actual deficiency, i.e. either a lack of knowledge of a particular subject, or a lack of skills in a particular area or failure to apply such knowledge or such skills when it was necessary to do so;
- (iii) The matter must be serious.

Problems associated with managerial activities or administrative errors, unrelated to patient care, will not support a finding of guilt with respect to a “lack of knowledge” or a “lack of skill and judgment”.

However in, *College of Physicians and Surgeons (Ontario) v. Porter, 2002 Carswell Ont. 8816*, a physician was found incompetent, largely as a result of his failure to keep current, complete and accurate patient records. Such a failure was found not to be a mere matter of poor administration, but rather demonstrated a disregard for the welfare of patients.

Notwithstanding the absence of a guilty plea to count 5, the Panel has concluded that the matters alleged in counts 1-4, and particularly the matters alleged in counts 3 and 4 reflect problems which are serious and which relate to proper medical practice and patient care, and not merely managerial or administrative functions.

Therefore the Panel expressly finds that by virtue of the allegations in counts 1-4, which Dr. Ahluwalia has admitted and which have been proven, Dr. Ahluwalia is guilty of displaying a lack of knowledge of, or a lack of skill and judgment in the practice of medicine and of displaying an unfitness to practice medicine.

### **DR. AHLUWALIA'S DISCIPLINARY RECORD**

All of the above-noted findings and conclusions must be considered in the context of Dr. Ahluwalia's previous disciplinary record with the College.

In the 1990s, Dr. Ahluwalia was cited by the College for professional misconduct and for having demonstrated an unfitness to practice medicine. In those proceedings, Dr. Ahluwalia was charged with dishonesty and a lack of candor in his responses to and communications with the College, including submitting documents purporting to be accurate and original medical records with respect to certain patients, which documents were not what they purported to be, and in fact had been rewritten by Dr. Ahluwalia.

The proceedings by the College against Dr. Ahluwalia in the 1990s had a complex procedural history. It is sufficient for the purposes of these Reasons to state that at that time, a properly constituted Inquiry Panel of the College found that Dr. Ahluwalia was guilty of professional misconduct and had demonstrated an unfitness to practice medicine. The finding was made by that Inquiry Panel that the appropriate penalty was "erasure", i.e. the removal of Dr. Ahluwalia's name from the Medical Register. On appeal, the Manitoba Court of Appeal upheld the Inquiry Committee's findings of professional misconduct and unfitness to practice medicine, but set aside the order of erasure, substituting a six month suspension and imposing certain conditions, including the installation, on or before July 29, 1999, of computer software in Dr. Ahluwalia's computer system, complying with the College's Statement 104. The Court of Appeal also ordered Dr. Ahluwalia to undergo a program of psychological assessment and treatment as directed by the Executive of the College.

## **THE OBJECTIVES OF ORDERS UNDER SECTION 59.6 OF *THE MEDICAL ACT***

Pursuant to Section 59 of *The Medical Act*, when an Inquiry Panel of the College has found a member of the College to be guilty of professional misconduct, or of contravening the Code of Conduct or a Statement of the College, or of displaying a lack of knowledge of, or a lack of skill or judgment in the practice of medicine, or of demonstrating an incapacity or unfitness to practice medicine, the Panel may make one or more orders as set forth in Section 59.6(1) of *The Medical Act*. Such orders include, but are not limited to reprimanding the member, suspending the member's license for a specific period of time, suspending the member's license until he or she has completed a specified course of studies or obtained supervised clinical experience, imposing conditions on the member's entitlement to practice medicine, or cancelling one or both of the member's registration and license.

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

- (a) the protection of the public. 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) to protect against the betrayal of the public trust in the sense of preventing a loss of faith on the part of the public and 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 to the public;
- (g) the sentence should be proportionate to the conduct of the physician involved.

### **THE POSITIONS OF THE PARTIES**

The Investigation Committee and Dr. Ahluwalia have starkly different positions as to the type of order which ought to be made pursuant to section 59.6 of *The Medical Act*.

It is the Investigation Committee's position that pursuant to subsection 59.6(1) of *The Medical Act*, Dr. Ahluwalia should be reprimanded (representing a formal denunciation by the College of his conduct) and that both his registration with the College and his license to practice medicine in Manitoba should be cancelled. In addition the Investigation Committee seeks payment from Dr. Ahluwalia in the amount of \$35,000 representing a contribution of the costs of these proceedings. It is the understanding of the Inquiry Panel that Dr. Ahluwalia has paid that sum to the College. Finally, the Investigation Committee asks that the Inquiry Panel order that publication be made of the circumstances relevant to its findings herein, pursuant to section 59.9 of *The Medical Act*.

In contrast, Dr. Ahluwalia submits that an appropriate order pursuant to section 59.6 of *The Medical Act* should not include the cancellation of his registration and license. Instead Dr. Ahluwalia and his counsel suggest the following:

- (a) an order or orders imposing conditions on Dr. Ahluwalia's entitlement to practice medicine such as a requirement that he complete a course of study and/or training in proper charting methods and appropriate electronic record keeping practices;
- (b) an order prohibiting him from practicing alone and requiring him to undergo a period of supervision lasting between six and nine months including a periodic review by his supervisor of a random selection of Dr. Ahluwalia's charts and records and as a further condition, Dr. Ahluwalia should be obliged to maintain legible transcripts of his patient notes to be transmitted to the College and available for examination by the College at any subsequent time;
- (c) a fine in an amount to be determined by the Inquiry Panel;
- (d) publication pursuant to section 59.9 of *The Medical Act*.

## **ANALYSIS**

The College emphasizes that the following factors provide the basis for its position that Dr. Ahluwalia's registration with the College and his licence to practice medicine in Manitoba should be cancelled:

- (i) Dr. Ahluwalia is a "repeat offender". The problems which arose in the 1990s, which resulted in Dr. Ahluwalia being found guilty of professional misconduct and of demonstrating an unfitness to practice medicine, and which caused him to be suspended from practice, involved serious deficiencies in his medical records and dishonesty and a lack of candor in his communications with the College. Both of those elements are also involved in these proceedings. In the words of counsel for the Investigation Committee, Dr. Ahluwalia's misconduct was "inexcusable the first time, and incomprehensible the second time";

- (ii) Dr. Ahluwalia's conduct in relation to counts 1 and 2 of the Amended Notice of Inquiry (namely his communications with the College in response to the audit of his practice) were premeditated and occurred over an extended period of time (from August 11, 2013 to November 15, 2013). He engaged in a deliberate course of conduct and made multiple false statements with the intention of misleading the College and causing the College to discontinue its investigation. According to counsel for the Investigation Committee, whenever Dr. Ahluwalia was asked challenging questions by the College, he would replace "one lie with another lie";
- (iii) The deficiencies in Dr. Ahluwalia's computer software, as outlined in count 3 of the Amended Notice of Inquiry were not only a breach of the College's Statement 104, they were a violation of the Court of Appeal's Order dated July 31, 1999. Therefore Dr. Ahluwalia's conduct demonstrated contempt for both the College's regulatory authority and the Court of Appeal's decision;
- (iv) The failure to create and maintain adequate clinical and medical records as referred to in count 4 of the Amended Notice of Inquiry was a flagrant, unjustifiable contravention of Article 24 of the College's By-Law #1 and represented a fundamental disregard of one of the basic elements of providing competent medical care;
- (v) The seriousness of Dr. Ahluwalia's recent breaches of various professional standards and the similarity between his most recent misconduct and his misconduct in the 1990s require a robust and significant response from the College both to punish Dr. Ahluwalia's unacceptable behaviour and to protect the public;
- (vi) The Orders sought by the Investigation Committee (a reprimand, the cancellation of Dr. Ahluwalia's registration and his license to practice medicine, publication and a payment of costs in the



amount of \$35,000) are necessary in order to fulfill the objectives of orders under s.59.6 of *The Medical Act*. Any type of order allowing Dr. Ahluwalia to practice medicine, even if subject to significant conditions will be inadequate to fulfill those objectives;

In contrast, Dr. Ahluwalia emphasizes other factors, as summarized below, in support of his position that he should be allowed to continue to practice medicine, subject to significant conditions, and upon publication of the background circumstances and the payment of a fine:

- (i) There was no evidence introduced to establish actual harm to any specific patient or patients as a result of the actions of Dr. Ahluwalia;
- (ii) Dr. Ahluwalia's guilty plea does not constitute an admission of inadequate patient care. No evidence was introduced to establish any harm to any specific patients, either as a consequence of deficient record keeping or of any other of his actions or omissions;
- (iii) Dr. Ahluwalia's false statements, although foolish and inappropriate, did not actually mislead the College or cause it to discontinue its investigation. The College placed no reliance on Dr. Ahluwalia's false statements.
- (iv) Immediately upon being provided with the Audit Report by the College in July, 2013, Dr. Ahluwalia indicated a willingness to change his charting and record keeping practices and to work with the College to achieve compliance with the necessary requirements;
- (v) His initial false statements to the College were made, in part, because he felt "terrified and intimidated", as he specifically stated in his letter to the College dated August 22, 2013. His feelings were understandable given the adversarial relationship which had

existed with the College throughout the proceedings in the 1990s. Nonetheless, at the conclusion of his interview on November 27, 2013, Dr. Ahluwalia apologized to the Investigation Chair;

- (vi) The matters referred to in count 3 of the Amended Notice of Inquiry with respect to the computer software system resulted from a lack of computer skills on Dr. Ahluwalia's part, not a willful breach of the requirements of College Statement 104 or the Court of Appeal's Order of July 13, 1999. The computer software which was initially installed had been compliant with the College's requirements but had degraded over time to the point of non-compliance. However, the deficient computer software has since been replaced by Dr. Ahluwalia and his office is now complying with all applicable requirements;
- (vii) There are mitigating circumstances present in this case, including Dr. Ahluwalia's offer to change his charting and record keeping practices, his apology to the Investigation Chair, the replacement of the deficient computer software and computer system, and his guilty plea to the first four counts in the Amended Notice of Inquiry;
- (viii) Cancellation of a licence to practice medicine should be reserved for the most serious cases. This case is not as serious as those outlined in the authorities relied upon by the College. An order placing meaningful and thoughtfully considered conditions on Dr. Ahluwalia's entitlement to practice medicine, combined with a fine and publication of the circumstances of this case will properly fulfill all of the objectives of orders pursuant to s.59.6 of *The Medical Act*, including the protection of the public, the punishment of Dr. Ahluwalia and specific and general deterrence.

The Panel has carefully reviewed all of the authorities on sentencing submitted to it by both the Investigation Committee and by Dr. Ahluwalia. Not

surprisingly, the facts of the cases submitted by the parties are not identical, or substantially similar to the facts of this case. The Panel recognizes that several of the cases submitted by the Investigation Committee involved various types of incompetence which resulted in actual patient harm (including a patient death in one case) or fraud committed with the intention of realizing a financial benefit for the physician, or fraud in order to cover up a serious error in medical practice. Another case involved misrepresentations made at a discipline hearing which were designed to mislead the adjudicative panel itself. The Panel is aware that this case does not involve those elements.

Conversely, the Panel also recognizes that most, if not all of the cases relied upon by Dr. Ahluwalia involved first offences, whereas Dr. Ahluwalia has been previously convicted of unprofessional conduct and of having demonstrated an unfitness to practice medicine. The Panel also notes that most of the cases submitted by Dr. Ahluwalia featured only one type of misconduct (e.g. false or inadequate charting) not various types of misconduct, such as are present in this case.

Although all of the cases submitted by the parties can be distinguished factually from the present case, there are principles contained in many of the cases submitted by each of the parties, which have been useful to the Panel in reaching its decision.

Counsel for Dr. Ahluwalia placed considerable emphasis in his submissions on the absence of proof of specific patient harm. He properly stressed that Dr. Ahluwalia's guilty plea to counts 1 to 4 in the Amended Notice of Inquiry cannot be construed as an admission that any patient harm resulted from Dr. Ahluwalia's actions. He also correctly stated that the Panel should not speculate and presume that the deficiencies in Dr. Ahluwalia's charts and records must have adversely affected some of his patients. Notwithstanding those useful cautions, the Panel has concluded that the actions and behaviours of Dr. Ahluwalia, as referred to and particularized in counts 1 to 4 are extremely serious.

The false statements to the College in Dr. Ahluwalia's letters from mid-August, 2013 to mid-November, 2013 and his false statements in his interview with the Investigation Chair on November 27, 2013 were intentional, premeditated and occurred over an extended period of time (counts 1 and 2). The Panel is dismayed by the number of misrepresentations made by Dr. Ahluwalia and is particularly alarmed by his authorship of the "Peer Group Analysis", a 21-page document submitted by Dr. Ahluwalia to the College which was entirely false and contrived. The Panel is also deeply troubled by the motivation for his deceit, namely to cause the College to cease its investigation or to fundamentally change the focus of its investigation. It matters not that Dr. Ahluwalia's false statements were so plainly untrue that the College was not in fact misled.

Similarly, Dr. Ahluwalia's deficiencies in his charting and record keeping practices, as particularized in count 4 of the Amended Notice of Inquiry are significant and sobering. Creating and maintaining adequate records is an essential element of providing competent medical care. The type of information required in a clinical record, as outlined in Article 24 of the College's By-Law #1, is necessary, not only for the current treating physician so he or she has an accurate record of the diagnoses and treatments being provided over time, but for any specialist who reviews the records, or another physician who subsequently assumes care of the patient. The College's audit of Dr. Ahluwalia's records, conducted on June 27, 2013 disclosed serious deficiencies. The records were found to have insufficient detail, poor follow up and inadequate documentation of the investigations which had been undertaken. In addition, there were five instances in which Dr. Ahluwalia failed to create any clinical record of his assessment, plan and management of various complaints and diagnoses, although bills were submitted to Manitoba Health with respect to Dr. Ahluwalia's services. There is no suggestion or evidence that Dr. Ahluwalia had submitted false bills. Rather the Panel's concern relates to the fact that no clinical record whatsoever was generated with respect to those matters.

Count 3 in the Amended Notice of Inquiry relates to the serious deficiencies in the software in Dr. Ahluwalia's medical computer system and

Dr. Ahluwalia's failure to comply with Statement 104 of the College. Dr. Ahluwalia's counsel sought to minimize the seriousness of this count by pointing out that:

- (i) The software, which was initially installed by Dr. Ahluwalia was compliant with Statement 104 and with the Court of Appeal Order dated July 13, 1999;
- (ii) The system had degraded over time. Dr. Ahluwalia's own limited computer skills were such that once the degradation had occurred, he was not sufficiently adept to properly deal with or rectify the deteriorating situation;
- (iii) When the College intervened, Dr. Ahluwalia promptly took the steps to install new software and/or a new medical computer system in order to comply with all applicable requirements.

The Panel does not regard the significant deficiencies and inadequacies outlined in count 3 as something which can be minimized by reference to Dr. Ahluwalia's limited computer skills. The requirements of Statement 104 are set forth as minimum standards relating to the use of computerized records. The creation and maintenance of medical records are essential features of providing competent medical care. If a physician does not have the requisite computer skills to fulfil the requirements of Statement 104, it is the responsibility of that physician to either acquire those skills personally, or to organize his or her practice in such a way that those skills and resources are available to the practice.

Non-compliance with the requirements of Statement 104 also reflect a seriously inadequate understanding of the reasons underlying those requirements, and the importance of complying with them on a continuous basis.

It is the position of the Investigation Committee that the nature and extent of Dr. Ahluwalia's misconduct is so serious that he is in fact "ungovernable". The Ontario Superior Court of Justice's decision in *Mundulai v. The Law Society of Upper Canada* 2014 OMSC 7208 provides guidance as to the meaning of the concept of

“ungovernability”. A professional person will be considered “ungovernable” if the nature, duration and repetitive character of the person’s misconduct demonstrates an inability on the part of that person to respond appropriately to the authorities who are authorized to regulate the individual’s professional activities.

In this case, there are at least 3 factors present which strongly suggest that Dr. Ahluwalia is ungovernable. Those factors are:

- (i) Dr. Ahluwalia has engaged in several different types of serious misconduct involving multiple written and oral misrepresentations to the College, a breach of the Statement 104 of the College, and a breach of the Order of the Court of Appeal of July 13, 1999 and serious deficiencies in his clinical and medical record keeping practices.
- (ii) His written and oral misrepresentations to the College demonstrate that he is prepared to lie to his governing body in an attempt to avoid the College’s reasonable exercise of its regulatory jurisdiction. His breaches of the College’s Statement 104 and Article 24 of By-Law #1 establish that he will break reasonable rules and disregard appropriate guidelines. The Investigation Committee asserts that Dr. Ahluwalia has lied to the College on many occasions and breached rules and standards repeatedly. The College therefore has no faith that Dr. Ahluwalia will respond truthfully to future inquiries from the College or that he will practice medicine in accordance with appropriate standards.
- (iii) Dr. Ahluwalia committed similar transgressions in the 1990s, which resulted in him being suspended from the practice of medicine after being found guilty of professional misconduct and of demonstrating an unfitness to practice medicine. The similarities between Dr. Ahluwalia’s misconduct in the 1990s and the misconduct which has resulted in these proceedings, are powerful indicators that Dr.

Ahluwalia lacks insight into the seriousness of his own conduct and the importance of adhering to professional standards set or adopted by the College to protect the interests of patients and to otherwise protect the public interest.

As a counterpoint to the College's assertion that Dr. Ahluwalia is ungovernable, counsel for Dr. Ahluwalia submits that cancellation of a licence to practice medicine is only appropriate in the most serious cases. Dr. Ahluwalia says that in this case, a fine, publication, and the placement of appropriate conditions on his licence to practice medicine will be sufficient to achieve the objectives of orders under s.59.6 of *The Medical Act*.

Implicit in the position that Dr. Ahluwalia should be entitled to practice medicine, but subject to conditions, is the proposition that Dr. Ahluwalia has significant rehabilitative potential, meaning that with proper remedial training and adequate supervision he will be able to practice medicine safely and competently in accordance with professional standards. Unfortunately there are several reasons why the Board cannot accept that proposition.

Firstly, the current proceedings are the second time Dr. Ahluwalia has been found guilty of professional misconduct and other serious breaches of the standards of the profession. Rehabilitation requires insight into the underlying causes of the problem and Dr. Ahluwalia's present difficulties indicate that he has no such insight.

Secondly, the Panel recognizes that appropriately drafted conditions on a physician's licence to practice medicine can be effective in certain circumstances. By way of example, if a physician has exhibited a lack of skill or judgment in a particular area, remedial training or problem focused supervision can be effective in correcting specific clinical deficiencies. Similarly conditions on a physician's licence to practice can be effective if that physician is suffering from an addiction, because conditions requiring therapy, counselling, and abstinence enforced by testing can meaningfully address the problems associated with the addiction. Conditions will be less effective when the root problems are many and varied, and those problems include issues relating to integrity

and honesty, as in the case of Dr. Ahluwalia. Furthermore, the imposition of conditions on Dr. Ahluwalia did not work in relation to the proceedings in the late 1990s. The changes required to his computer system, which were part of the proceedings in the 1990s were allowed to degrade over time, and the program of psychological assessment and treatment, which was also ordered as part of those proceedings, failed to produce the desired results as demonstrated by Dr. Ahluwalia's current difficulties.

Thirdly, there was no specific evidence introduced as part of these proceedings relating to Dr. Ahluwalia's rehabilitative potential in the form of psychological or psychiatric assessments. Nor was a specific supervision plan put forward. As a result, there is no evidence or information upon which the Panel is able to rely to satisfy itself that notwithstanding Dr. Ahluwalia's past record and current problems, he has sufficient rehabilitative potential to warrant allowing him to practice medicine subject to conditions. After careful consideration of the issue of a conditional licence, the Panel is simply not satisfied that any conditions will provide reasonable assurances that Dr. Ahluwalia will practice medicine safely, competently and in accordance with the standards set or adopted by the College.

In reaching its decision with respect to the Order or Orders to be made under s.59.6 of *The Medical Act*, the Panel considered each of the 13 factors referred to in *Jaswal v. Newfoundland (Medical Board) (1996) 42 Admin. L.R. (2<sup>nd</sup>) 233 (NFLD. Trial Division)* which include, but are not limited to:

- (a) the nature and gravity of the proven allegations;
- (b) the age and experience of the offending physician;
- (c) the previous character of the physician and in particular the presence or absence of any prior complaints or convictions;
- (d) the presence or absence of any mitigating circumstances;
- (e) the need to maintain the public's confidence in the integrity of the medical profession; and



- (f) the range of sentences in other similar cases.

The Panel also recognized that some of the factors mentioned in *Jaswal* involved a consideration of the circumstances of and the impact on the “offended patient” and that in these proceedings, there was no evidence of an “offended patient”. The absence of any evidence as to specific harm to a patient is a factor of which the Panel has been acutely aware in reaching its decision.

In weighing the factors articulated in *Jaswal* and in considering the objectives of orders under s.59.6 of *The Medical Act*, the Panel must attempt to balance public rights and the private rights of Dr. Ahluwalia. As noted by James Casey in his text *The Regulation of Professions in Canada*:

“Given that the primary purpose of the legislation governing professionals is the protection of the public, it follows that the fundamental purpose of sentencing for professional misconduct is also to ensure that the public is protected from acts of professional misconduct.”

The Panel recognizes its responsibility to ensure the safety of the public and to issue orders pursuant to s.59.6 of *The Medical Act* which will encourage and enforce the safe and competent practice of medicine. The Panel has been particularly mindful of the following factors:

- (i) The seriousness of Dr. Ahluwalia’s conduct and behaviour as outlined in the Amended Notice of Inquiry and as proven in these proceedings;
- (ii) His multiple misrepresentations and false statements to the College, both orally and in writing, made with the intention of misleading the College, including the preparation of an elaborate “Peer Group Analysis”, which was an entirely false and contrived document;

- (iii) The nature and extent of the deficiencies in his clinical and medical records which show an alarming disregard of fundamentally important elements for proper medical practice and patient care;
- (iv) His breaches of the College's Statement 104 and the Court of Appeal Order of July 13, 1999, which indicate both an inadequate understanding of the reasons underlying those requirements and a disrespect for the regulatory jurisdiction of the College and the authority of the Court of Appeal;
- (v) Dr. Ahluwalia's prior disciplinary record;
- (vi) The absence of any reliable evidence or information with respect to Dr. Ahluwalia's rehabilitative potential;
- (vii) While there are some mitigating circumstances in this case, they are insufficient to negate or counterbalance the seriousness of Dr. Ahluwalia's misconduct.

Given the above noted factors, the Panel has concluded that allowing Dr. Ahluwalia to practice medicine, but subject conditions, does not provide an adequate assurance of patient safety or otherwise protect the public interest. Furthermore, such an order would not enhance the public's faith in the medical profession's ability to regulate itself.

Based on all of the foregoing, the decision of this Panel is to issue an Order pursuant to s.59.6 of *The Medical Act*.

- (i) Reprimanding Dr. Ahluwalia;
- (ii) Cancelling Dr. Ahluwalia's registration with the College and his licence to practice medicine in Manitoba, the effective date of the cancellation to be as determined by the College;
- (iii) Requiring payment from Dr. Ahluwalia of the sum of \$35,000 representing a contribution to the costs of the College in relation to

these proceedings, (the Panel recognizes this sum has already been paid to the College).

The Panel also issues an Order pursuant to s.59.9 of *The Medical Act* that there shall be publication of the circumstances relevant to the findings made by the Panel and of the Orders of the Panel, including reference to Dr. Ahluwalia's name. The particulars of the publication shall be as determined by the Investigation Committee of the College.

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

WHEREAS Dr. Rajpal s. Ahluwalia (Dr. Ahluwalia), a member of the College of Physicians and Surgeons of Manitoba (the "College") was charged with professional misconduct and with contravening various provisions of By-Law #1 of the College and with contravening Statements 104 and 805 of the College and with displaying a lack of knowledge of, or a lack of skill and judgment in the practice of medicine, and of demonstrating an unfitness to practice medicine, as more particularly outlined in an Amended Notice of Inquiry dated March 13, 2015;

AND WHEREAS Dr. Ahluwalia was summoned and appeared with counsel before an Inquiry Panel (the "Panel") of the College on December 1, 2015;

AND WHEREAS Dr. Ahluwalia, entered a plea of guilty to counts 1, 2, 3 and 4 in the Amended Notice of Inquiry and was deemed to enter a plea of not-guilty to count 5 in the Amended Notice of Inquiry;

AND WHEREAS, the Panel reviewed all of the exhibits filed, including a Statement as to Agreed Documents and all of the documents referred to therein, and heard submissions from counsel for the Investigation Committee of the College and counsel for Dr. Ahluwalia;

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

1. Pursuant to ss. 56(3) of *The Medical Act*, the identity of all Patients and of other third parties as referred to in the exhibits or otherwise in these proceedings, shall be protected in the record of these proceedings by referring to them in a non-identifying manner.
2. Dr. Ahluwalia is guilty of count 5 in the Amended Notice of Inquiry dated March 13, 2015.
3. Dr. Ahluwalia is hereby reprimanded pursuant to ss. 59.6(1)(a) of *The Medical Act*.
4. Dr. Ahluwalia's registration with the College and his licence to practice medicine in Manitoba is hereby cancelled pursuant to ss. 59.6(1)(g) of *The Medical Act*, the effective date of the cancellation to be as determined by the College.
5. Dr. Ahluwalia shall pay the sum of \$35,000.00 representing a contribution to the costs of the investigation and inquiry pursuant to ss. 59.7(1) of *The Medical Act*.
6. There shall be publication of the circumstances relevant to the findings made by the Panel and of the Orders of this Panel, including reference to Dr. Ahluwalia's name, as may be determined by the Investigation Committee of the College pursuant to ss. 59.9 of *The Medical Act*.

Dated this 27th day of January, 2016.

### **ORDER**

This motion made by the Investigation Committee of the College of Physicians & Surgeons of Manitoba for an Order amending paragraph 4 of the Panel's Order and Resolution and the reasons for same issued on January 27, 2016 to the extent that the paragraph is referenced in the reasons by deleting the words "the effective date of the cancellation to be as determined by the College." was heard this day at the offices of the College of Physicians & Surgeons of Manitoba 1000-1666 Portage Avenue, Winnipeg, Manitoba.

ON READING the Notice of Motion dated February 5, 2016 and on hearing counsel for the Investigation Committee of The College of Physicians & Surgeons of Manitoba and reading the letter from Dr. Ahluwalia's legal counsel to Mr. Blair Graham dated February 10, 2016, Dr. Ahluwalia choosing not to appear at the hearing of this motion:

**THE INQUIRY PANEL HEREBY ORDERS THAT:**

1. The motion made by the Investigation Committee of the College is granted. As a result, paragraph 4 of the Inquiry Panel's Resolution and Order dated January 27, 2016 and subparagraph (ii) on p. 26 of the Reasons for Decision of the Inquiry Panel, also dated January 27, 2016 are hereby amended by deleting the words "the effective date of the cancellation to be as determined by the College."

DATED this 12th day of February, 2016