

IN THE MATTER OF:

“THE MEDICAL ACT” C.C.S.M.

AND IN THE MATTER OF:

DR. POOVENTHRAN GOPAL PILLAY, a member of the College of Physicians and Surgeons of Manitoba

REASONS FOR DECISION OF THE INQUIRY PANEL

INTRODUCTION

On February 9, 2018, 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, C.C.S.M. c.M90* into charges against Dr. Pooventhuran Gopal Pillay (Dr. Pillay) as set forth in an Amended Notice of Inquiry dated September 13, 2017.

The Amended Notice of Inquiry charged Dr. Pillay with committing acts of professional misconduct, contravening Article 41 of the Code of Conduct or Article 50 of the Code of Ethics of the College (with respect to the self-regulation of the profession being a privilege and that individual physicians have a continuing obligation to merit this privilege), contravening By-Law No. 1 or By-Law No. 11 of the College (relating to patient records) and with displaying a lack of knowledge, skill or judgment in the practice of medicine.

Among other things, the Amended Notice of Inquiry alleged that Dr. Pillay:

1. Breached an undertaking to the College dated January 27, 2014, and/or failed to meet the standard of the profession and/or the record-keeping requirements Article 24 of By-Law No. 1 and/or Articles 27 and 33 of By-Law No. 11 of the College, whichever was in effect at the material time, and thereby committed acts of professional misconduct and/or displayed a lack of knowledge of, or a lack of skill and judgment in the practice of medicine.
2. Failed to create and maintain adequate clinical records, thereby breaching the record-keeping requirements of Article 24 of By-Law No. 1 and/or of Articles 27 and 33 of By-Law No. 11 of the College, whichever was in effect at the material time, in respect to patients B, C, D and E.
3. Failed to reply in a responsive manner to written correspondence from the College and/or failed to provide documents and/or information requested by the College, thereby breaching Article 25 of By-Law No. 1 of the College (entitled Response to College Correspondence) and/or committing acts of professional misconduct.
4. Provided false or misleading information to the College, thereby committing acts of professional misconduct.

5. Breached an undertaking to the College dated January 20, 2016, not to practice medicine, by continuing to practice medicine contrary to that undertaking and/or inappropriately prescribing narcotics to several patients, thereby committing acts of professional misconduct.
6. By reason of the foregoing, demonstrated he has been either unwilling or unable to fulfill the requirements of the College or displayed a lack of knowledge of, or a lack of skill and judgment in the practice of medicine.

The Amended Notice of Inquiry also contained additional and extensive factual particulars with respect to allegations 1 to 5 outlined above.

The hearing proceeded before the Panel on February 9, 2018, in the presence of Dr. Pillay and his counsel and in the presence of counsel for the Investigation Committee of the College. Dr. Pillay, through his counsel, admitted his membership in the College, acknowledged that the Panel had been properly constituted and acknowledged that the Panel had jurisdiction over the matters at issue. Dr. Pillay, through his counsel, also acknowledged service upon him of the Notice of Inquiry and the Amended Notice of Inquiry. At the commencement of the hearing, counsel for the Investigation Committee made a motion pursuant to subsections 56(2) and 56(3) of *The Medical Act*, for an order of nondisclosure with respect to the names of any patients or other third parties referred to in the proceedings, or in any of the exhibits filed in the proceedings. Dr. Pillay, through his counsel, consented to such an order. The Panel, being satisfied that the desirability of avoiding public disclosure of those names outweighed the desirability of the names being made public, granted the order of nondisclosure with respect to the names of patients and other third parties referred to during the hearing and in any documents filed as exhibits at the hearings.

Dr. Pillay waived the reading of the Amended Notice of Inquiry and entered a plea of guilty to each of the six charges outlined therein. He thereby admitted the truth of all of the allegations and of the factual particulars in support of the allegations in the Amended Notice of Inquiry and also admitted that the facts and matters outlined therein constituted professional misconduct, and a breach of specific Articles in the By-Laws of the College, and of the professional standards of the medical profession in Manitoba. By pleading guilty to each of the charges outlined in the Amended Notice of Inquiry, Dr. Pillay also acknowledged that the cumulative effect of his actions and omissions was that he displayed a lack of knowledge of, or a lack of skill and judgment in the practice of medicine.

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

1. The original Notice of Inquiry dated September 13, 2017 (Exhibit 1);
2. The Amended Notice of Inquiry dated September 13, 2017 (Exhibit 2);
3. A Statement of Agreed Facts (Exhibit 3);
4. A Book of Documents, consisting of Tabs 1 to 33 (Exhibit 4);
5. A calculation of the costs of the hearing payable by Dr. Pillay (Exhibit 5);
6. A Joint Recommendation as to Disposition (Exhibit 6).

Having considered the guilty plea of Dr. Pillay in context of the above noted exhibits and the submissions of counsel for the Investigation Committee of the College and counsel for Dr.

Pillay, the Panel is satisfied that all of the charges set forth in the Amended Notice of Inquiry and the particulars contained therein have been proven. The Panel is also satisfied that the Joint Recommendation as to Disposition is sound and appropriate and is accepted by the Panel. The Panel's specific reasons for its decision are outlined below.

BACKGROUND

1. Dr. Pillay graduated from the medical school at the University of Natal in South Africa in 1981. Upon graduation, and for approximately 10 years thereafter, Dr. Pillay practiced medicine in a teaching hospital in Durban, South Africa, at which he underwent additional training and instruction in various areas of medicine including pediatrics, intensive care, obstetrics and gynaecology. Thereafter he practiced medicine for another 10 years in South Africa as a general practitioner. Dr. Pillay came to Canada in 2001, became a registered member of the College and practiced medicine as a family physician in various rural locations in Manitoba.
2. On January 27, 2014, in the context of inquiries being made by the Investigation Committee of the College with respect to concerns expressed by the Standards Committee of the College about Dr. Pillay's record-keeping and his failure to respond to correspondence from the College, Dr. Pillay provided an undertaking which, among other things, outlined requirements which Dr. Pillay was to fulfill with respect to the completion of medical records for each of his hospital patients, additional requirements with respect to actions required for each patient seen in his office, and additional requirements relating to office records. The undertaking also contained a specific acknowledgement by Dr. Pillay that a breach of the undertaking would be deemed to constitute an act of professional misconduct and grounds for disciplinary action, and a provision stipulating that the undertaking would remain in effect until modified or rescinded in writing, by the College.
3. On January 4, 2014, the Investigation Committee issued its Notice of Decision, whereby, among other things, the Committee accepted Dr. Pillay's undertaking dated January 27, 2014, criticized him for his inappropriate handling of records in his office and his failure to respond to the College and others in a timely way, stipulated that the Investigation Chair "will be responsible to monitor compliance with the undertaking", and referred Dr. Pillay to the Standards Committee "for a re-audit and such ongoing monitoring of his medical record-keeping as the Standards Committee deems appropriate".
4. In the spring of 2015, the Regional Health Authority ("RHA") in which Dr. Pillay was then practicing provided information to the College about concerns regarding Dr. Pillay's practice and advised the College that Dr. Pillay's privileges in the Region had been suspended as of March 5, 2015, in part because of his ongoing deficiencies in maintaining medical records. At approximately the same time, the Standards Committee of the College reported to the Registrar of the College that it had concerns about Dr. Pillay's record-keeping in his office practice arising from an audit conducted on October 10, 2014.
5. By letter dated June 2, 2015, the College required Dr. Pillay to respond to the concerns of the Standards Committee, the concerns raised by the RHA and the concern that Dr. Pillay had breached his January 27, 2014, undertaking. The College required a response within 30 days.
6. Dr. Pillay failed to respond within the 30 days and requested repeated extensions. The College ultimately required Dr. Pillay to attend an interview with the Chair of the College's Investigation Committee on August 25, 2015. At the interview the College sought explanations

from Dr. Pillay with respect to various issues including his failure to complete hospital charts and his failure to respond to the College.

7. By letter dated October 7, 2015, Dr. Pillay was advised that the investigator had ordered an audit of his practice and that he would be contacted in due course with respect to the audit arrangements. By letter dated December 4, 2015, Dr. Pillay was provided with a list of charts to be audited, which would be picked up by courier on December 9, 2015, relating to an audit of the charts which would be conducted on December 10, 2015.

8. Difficulties were encountered with respect to the pickup of the charts which had been requested for the audit. On December 10, 2015, the day of the audit, Dr. Pillay arrived at the College offices, bringing with him only 19 of the 30 charts requested. The auditor identified numerous concerns which were outlined in a report to the Investigation Chair dated December 10, 2015. A summary of the auditor's concerns are outlined below:

- a. The records audited contained no problem lists or medication lists;
- b. There were no growth charts in the charts of children being treated by Dr. Pillay;
- c. The auditor was unable to determine current medications or when medications were started or when they were discontinued;
- d. The records provided did not identify medications which were renewed at each visit;
- e. Allergies were not flagged in the records;
- f. Some of the encounter notes were very detailed with some of the detail being irrelevant to the issues under consideration;
- g. Notes often did not provide enough information about the presenting complaint. (for example, if somebody was being followed up for depression or anxiety there was not a clear picture of their status);
- h. The prescribing of narcotics did not appear to meet the standard of practice;
- i. Histories were on a scanned form which was not being consistently completed;
- j. Abnormal tests were not consistently followed up;
- k. Several of the records raised questions related to the appropriateness of the care provided;
- l. Several visits were identified for which Dr. Pillay did not bill Manitoba Health, which raised further concerns about his overall record-keeping.

9. By letter dated December 17, 2015, the College required Dr. Pillay to respond to the auditor's report and to produce the remaining charts which had been requested, but not provided. Dr. Pillay responded by letter dated January 6, 2016. However in a letter to Dr. Pillay dated January 8, 2016, the College advised Dr. Pillay, among other things, that it did not accept his explanation as to why complete charts were not provided, that his responses to the auditor's concerns were overly general and that he was required to provide substantive responses, specific to the concerns identified by the auditor without further delay, and that based on his inadequate compliance with the chart audit, an inter-active audit of his practice would occur on January 18, 2016.

10. An onsite interactive audit of Dr. Pillay's practice was conducted on January 18, 2016, by the same auditor who conducted the audit on December 10, in the presence of the College's Investigator. The observations of the auditor included the following:

- a. physical space was cluttered and disorganized;
- b. expired medications and immunizations were found on site;
- c. a patient's medication was found in open view;

- d. medications and immunizations were stored in a refrigerator that did not have a temperature monitor;
- e. triplicate prescription pads were not stored securely;
- f. hazardous overfilling of sharps container;
- g. inadequate systems of maintaining patient records - a very poor, disorganized paper system and an EMR that is haphazard at best; and
- h. quality of care difficult to assess due to lack of charting.

11. The Auditor and the College's Investigator observed that handwritten notes taken by Dr. Pillay in relation to encounters with patients were on numerous sheets of paper stored in plastic shopping bags. Dr. Pillay advised that it was his intent to eventually amplify and transcribe these notes and save the transcription in each patient's EMR. Dr. Pillay was using the Med Access EMR. Patient charts on the EMR system were often not updated. The Auditor was generally unable to assess patient care due to the unacceptable state of Dr. Pillay's records.

12. In relation to Dr. Pillay's failure to produce the charts required for the December 10, 2015, audit, Dr. Pillay stated that he created computerized patient chart records from his notes specifically for the College's review after the request for the charts was made in early December. His explanation was confirmed by the audit trail for the charts, which included, by way of example, that June 2015 patient encounters were recorded as EMR entries that were created December 9 and 10, 2015.

13. By letter dated January 20, 2016, Dr. Pillay was asked to respond to the concerns identified during the interactive audit and asked to sign an undertaking to cease practice. Dr. Pillay executed and returned the undertaking not to practice to the College on January 20, 2016.

14. By letter dated February 12, 2016, from the College, Dr. Pillay was reminded of his obligation to provide notice to patients about his absence from practice, to facilitate the transfer of patient files, to ensure mail and test results related to patients are appropriately forwarded, and to assist where reasonably necessary in making alternative care arrangements.

15. In January and February 2016, Dr. Pillay continued to engage in certain activities which constituted practicing medicine, contrary to his undertaking dated January 20, 2016. For example, he provided not less than eighteen prescriptions between January 29 and February 20, 2016, involving various medications including hydromorphone, morphine, oxycocet, zopiclone and Percocet. The voicemail at his office indicated that Dr. Pillay was away on sabbatical until April 2016 and directed callers that if they required a prescription, they should ask their "pharmacy to send us the request" by faxing a certain number.

16. By letters dated February 22 and 24, 2016, the College required Dr. Pillay to respond in writing to concerns that he was practicing medicine contrary to his undertaking. Dr. Pillay responded in writing by letter dated March 1, 2016, in which he acknowledged that he had provided the prescriptions and that he had misunderstood his obligations regarding continuity of care while his undertaking not to practice medicine was in effect.

17. Dr. Pillay was suspended on an interim basis by the Investigation Chair on March 2, 2016, pending the outcome of the College's investigation.

18. By letter from the College to Dr. Pillay dated March 15, 2016, Dr. Pillay was again asked to respond to the concerns arising from the December 10, 2015, audit and the January 18,

2016, audit. The missing charts and records were also demanded. Dr. Pillay was instructed to attend at the College for an interview and produce, at that time, the missing charts and the handwritten notes that he would have used in creating those charts.

19. Following several attempts on the part of the College to arrange for an interview with Dr. Pillay between March and May 2016, in a letter to the College dated May 17, 2016, Dr. Pillay advised that he was suffering from “burnout” and that he had not been able to address the College’s outstanding requests. He advised he still intended to provide the charts not provided for the December 10, 2015, audit and that he would endeavour to create proper medical charts with the handwritten notes he had in his possession. He acknowledged that he had not been able to facilitate the transfer of many patient files after he left practice in January 2016 as the charts had not been kept up-to-date.

20. As of the date of the hearing before the Panel (February 9, 2018), the College had not been provided with the outstanding records or a substantive response to the concerns raised in the December 10, 2015, audit or the subsequent letters to Dr. Pillay about his records.

21. Dr. Pillay has stated that he has sought to address his “burnout” by focusing on nutrition and exercise, sleep recovery to address disrupted sleep which he developed during his practice, a commitment to mindfulness and meditation, increased time with extended family in South Africa and spending time on spiritual practice and discipline. He has neither obtained nor sought conventional medical care in relation to his “burnout”.

THE JOINT RECOMMENDATION

22. Within the above noted factual context, and given Dr. Pillay’s guilty plea and his acknowledgments that he has committed acts of professional misconduct, has contravened the Code of Ethics of the College, the By-Laws of the College, and has displayed a lack of knowledge of, or a lack of skill or judgment in the practice of medicine, the Panel’s task is to determine the appropriate disposition pursuant to subsection 59.6 of *The Medical Act*. The Panel has had the benefit of a Joint Recommendation as to Disposition made by counsel for the Investigation Committee and counsel for Dr. Pillay.

23. 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 include:

- a. The protection of the public. Orders under subsection 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 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 to the public;

- g. Proportionality between the conduct of the physician and the orders granted under subsection 59.6 of *The Medical Act*.

24. The Joint Recommendation as to Disposition is detailed and has been thoughtfully prepared in order to address the unique circumstances of this case. The Joint Recommendation is that:

1. Pursuant to section 59.6(1)(a) of *The Medical Act*, Dr. Pillay shall be reprimanded.
2. Pursuant to section 59.6(1)(c) of *The Medical Act*, Dr. Pillay shall be suspended until he has, at his own cost, completed both a recordkeeping course and a professionalism course which focuses on the importance of the responsibilities of members of a self-governing profession, both of which must be acceptable to the Investigation Chair.
3. Further, and pursuant to Section 59.6(1)(d) of *The Medical Act*, Dr. Pillay shall be suspended until such time as Dr. Pillay has demonstrated to the satisfaction of the Chair of the Physician Health Program of the College (“the Physician Health Chair”) that he has overcome any mental health issues, including, but not limited to, what Dr. Pillay has described as “burnout”, that caused or contributed to the matters to which he pleaded guilty in the Amended Notice of Inquiry. In considering whether to allow Dr. Pillay to return to work and, if so, on what conditions, the Physician Health Chair may:
 - a. require a mental health assessment by a physician acceptable to the Physician Health Chair (“the Assessor”);
 - b. consider any reasonable alternatives presented by Dr. Pillay as to who might be a reasonable Assessor, and if any dispute arises, the Physician Health Chair has the final decision on who will be the Assessor;
 - c. provide the Assessor with any documentation or information the Physician Health Chair believes to be relevant to the assessment and provide a copy of that information to Dr. Pillay; and
 - d. require Dr. Pillay to provide a return to practice plan which would address any concerns which may be identified in the assessment.
4. Pursuant to Section 59.6(1)(e) and 59.6(2) of *The Medical Act*, the following conditions are imposed upon Dr. Pillay’s entitlement to practice medicine:
 - a. Dr. Pillay must not engage in a solo practice;
 - b. Dr. Pillay’s return to work must be graduated, with specific limits on the hours Dr. Pillay works each day/week and the number of patients who Dr. Pillay sees each day/week as determined by the Physician Health Chair and until such time that Physician Health Chair is satisfied limitations are no longer necessary to ensure that Dr. Pillay is providing safe care and able to meet his obligations, including keeping his medical records up to date;
 - c. In respect to his clinical records, Dr. Pillay must:
 - i. On the same date of each patient encounter, create a complete and accurate record of each patient encounter, regardless of the setting in which he provides care to the patient, in accordance with the record-keeping requirements of the College which are in force at the time. Without limiting the foregoing for each patient encounter, he must document on the patient’s chart:
 1. an adequate patient history;
 2. particulars of the physical examinations;

3. investigations ordered and the results of same;
 4. any diagnosis made;
 5. any treatment prescribed;
 - ii. maintain a problem list in each of his patient's charts;
 - iii. maintain a flow sheet of prescribed drugs in each of his patient's charts, including drugs prescribed by him and drugs known to be prescribed by others;
 - iv. maintain a chronic disease flowsheet in the chart of each of his patients with one or more chronic diseases;
 - v. for each medication he prescribes, document on the patient chart the indication for the medication and his monitoring plan for that medication, where relevant;
 - vi. establish and maintain a tracking system in his office practice to ensure that:
 1. he conveys to the patient all abnormal results received by him respecting that patient;
 2. he recommends appropriate follow-up care to the patient; and
 3. subject to the patient's right to decline recommended care, he notifies the patient of the arrangements he has made for follow-up care for the patient on abnormal results received by him.
- e. Dr. Pillay must comply with the supervision and monitoring of his clinical practice established by and acceptable to both the Chair of Physician Health Program and the investigation Chair. Such supervision and monitoring must include:
- i. approval of the supervisor of Dr. Pillay's practice by the Investigation Chair;
 - ii. review by the supervisor of Dr. Pillay's charts on a schedule determined by the Investigation Chair to ensure that Dr. Pillay is complying with the conditions on his practice, but no less frequently and for no less duration than the following:
 1. daily for the first month after Dr. Pillay resumes practice; and
 2. weekly for the following three months after Dr. Pillay resumes practice.
 - iii. attendance at interviews with the Chair of the Physician Health Program and/or Investigation Chair or their nominee upon request;
 - iv. providing the Investigation Committee with access to both the premises at which Dr. Pillay is practicing and his medical records for periodic inspections and/or audits, and
 - v. any other conditions which are objectively and rationally connected to the admitted misconduct and/or any health condition identified in the mental health assessment and which the Investigation Chair and/or the Chair of the Physician Health Program determines necessary based on the recommendations, if any, arising from the mental health assessment and/or the professionalism course.

5. Dr. Pillay must pay for all costs related to the conditions on his licence, including the costs of any continuing medical education, any reports, any supervising, mentoring and any monitoring.
6. If there is any disagreement between the parties respecting any aspect of The Inquiry Panel Order, the matter may be remitted by either party to a Panel of the Inquiry Committee for further consideration, and the Inquiry Committee hereby expressly reserves jurisdiction for the purpose of resolving any such disagreement.
7. Pursuant to s. 59.7(1)(a) of *The Medical Act*, Dr. Pillay shall pay to the College, costs of the investigation and inquiry in the sum of \$19,307.50, such payment to be made as mutually agreed over time between Dr. Pillay and the College.
8. There will be publication, including Dr. Pillay's name, as determined by the Investigation Committee Chair. The College, at its sole discretion, may provide information regarding this disposition to such person(s) or bodies as it considers appropriate.

ANALYSIS

On the basis of the guilty plea of Dr. Pillay to all of the allegations in the Amended Notice of Inquiry, the Statement of Agreed Facts, the documents in the Book of Documents, and the submissions of counsel for the Investigation Committee and counsel for Dr. Pillay, the Panel has determined that Dr. Pillay:

- (a) breached his undertaking to the College dated January 27, 2014 and was thereby guilty of professional misconduct and failed to meet the standards of the profession and/or the record-keeping requirements of Article 24 of By-Law No. 1 and/or Articles 27 and 33 of By-Law No. 11 of the College;
- (b) failed to create and maintain adequate clinical records, thereby breaching Article 24 of By-Law No. 1 and/or Articles 27 and 33 of By-Law No. 11 of the College;
- (c) failed to reply in a responsive manner to written correspondence from the College and/or failed to produce documents and/or information requested by the College, thereby breaching Article 25 of By-Law No. 1 of the College;
- (d) provided false or misleading information to the College thereby committing further acts of professional misconduct;
- (e) breached his undertaking dated January 20, 2016 not to practice medicine;
- (f) demonstrated that he has been unwilling or unable to fulfill the requirements of the College and displayed a lack of knowledge of, or a lack of skill and judgment in the practice of medicine.

Dr. Pillay's conduct and deficiencies are serious and concerning. They require a robust response from the College, under subsection 59.6 of *The Medical Act*. It is important that the orders to be granted by the Panel fulfill the objectives of such orders as set forth earlier in these Reasons.

The Panel has carefully reviewed the terms of the Joint Recommendation as to Disposition made by counsel for the Investigation Committee and counsel for Dr. Pillay to ensure that the terms of the Joint Recommendation will fulfill those objectives. It is clear that much thought and effort were devoted to developing the Joint Recommendation, and that its

terms were specifically designed to address Dr. Pillay's circumstances and some of his unique problematic behaviours.

After asking counsel for the Investigation Committee and counsel for Dr. Pillay certain questions relating to the Joint Recommendation, and receiving their responses, the Panel is satisfied that the Joint Recommendation is sound and ought to be accepted by the Panel. The Panel has concluded that in addition to Dr. Pillay's conduct and deficiencies being serious, much of his professional misconduct (such as his breach of the Code and his breach of the College's By-Laws) was likely willful and deliberate. Significant punishment is therefore warranted.

The Joint Recommendation provides for significant punishment by way of:

- (a) A reprimand, which is a serious and formal denunciation of Dr. Pillay's misconduct by the Panel, after a thorough review of the background facts;
- (b) A suspension which will continue until two courses, acceptable to the Investigation Chair of the College, are completed. This suspension, in combination with the fact that Dr. Pillay has not been practicing medicine since early 2016 will have had, and will continue to have, major negative financial impacts upon Dr. Pillay in the form of a significant loss of income;
- (c) Pursuant to the Joint Recommendation, Dr. Pillay will be responsible for all costs related to the conditions of his licence, including costs related to continuing medical education, supervision, mentoring and monitoring, and the costs of the investigation and inquiry in the sum of \$19,307.50. Dr. Pillay's responsibility for those costs is an additional punitive element of the Joint Recommendation;
- (d) Publication, including Dr. Pillay's name, as determined by the Investigation Committee Chair, with its attendant embarrassment and disgrace.

In addition to punishment, a critically important objective of orders under subsection 59.6 of *The Medical Act* is the protection of the public. As noted earlier, this protection is not limited to the particular patients of the physician involved, but also encompasses the protection of the public generally, by the maintenance of high standards of competence and professional integrity among physicians.

The public protection purpose will be fulfilled, in part, by the suspension imposed on Dr. Pillay, pending both the completion of the record-keeping course and professionalism course, and meeting the requirement of satisfying the Chair of the Physician Health Program of the College that he has overcome any mental health issues. To satisfy that requirement the Physician Health Chair may require a mental health assessment by a physician acceptable to the Physician Health Chair.

Equally importantly, the public protection purpose will be fulfilled by the extensive, rigorous and detailed conditions to be imposed upon Dr. Pillay's entitlement to practice medicine, as outlined in paragraph 4 of the Joint Recommendation. In addition to the inherently rigorous nature of those conditions, they have been specifically designed to address and remediate the unique deficiencies in Dr. Pillay's conduct and practices which were of grave concern to the College, and to ensure that patients who attend upon Dr. Pillay in the future, will receive competent treatment in conformity with the standards of the profession.

Counsel for the Investigation Committee also addressed an alternate potential penalty, namely the revocation of Dr. Pillay's licence to practice medicine and his erasure from the

Register, and explained why the College was not seeking revocation and/or erasure in this case.

Firstly, the conditions of Dr. Pillay's suspension and the strict and rigorous conditions which he must meet if he is to resume the practice of medicine, place the onus on him to undertake significant initiatives before he will be entitled to return to the practice of medicine. It is not certain that Dr. Pillay will ever return to the practice of medicine. If he does, the requirements set forth in paragraphs 3 and 4 of the Joint Recommendation will operate to ensure that he will practice competently and safely.

Secondly, a revocation of Dr. Pillay's licence cannot preclude him from applying to be reinstated at some point in the future. The current Panel, in the specific context of these proceedings, is uniquely well placed to assess the Joint Recommendation and whether it is appropriate in the circumstances. The Panel has carefully considered the Joint Recommendation and has concluded that it is appropriate and fulfills the objectives of orders under subsection 59.6 of *The Medical Act*, and in particular the protection of the public.

Thirdly, although the College has concerns with respect to issues related to medical care and potential patient harm, the evidence available to the College is insufficient to enable either the Investigation Committee or this Panel to reach definitive conclusions relating to the overall adequacy of the care which Dr. Pillay provided to patients.

Fourthly, there are mitigating circumstances in this case. For example, there is a possibility (which has not been conclusively established) that there may be a mental health component to some of Dr. Pillay's behaviours. In addition, although Dr. Pillay was initially uncooperative with the College's investigative processes, he ultimately agreed to cease practicing medicine and to plead guilty to the charges in the Amended Notice of Inquiry. The College also frequently adopts a rehabilitative approach in physician misconduct cases, recognizing that the public good will often be served by allowing a properly trained and educated physician to provide medical services to the public. While in this case it is clear that a disciplinary and punitive response was required, the Joint Recommendation contains a significant disciplinary and punitive component. Nevertheless, it also provides for rehabilitation and sets forth a path by which Dr. Pillay may return to the practice of medicine. The path will be a challenging one, and if Dr. Pillay decides to return to the practice of medicine it will require him to significantly elevate his level of practice.

With respect to the remainder of the objectives, specific deterrence will be fulfilled by both the punitive aspects of the Joint Recommendation and by the conditions set forth in paragraphs 3 and 4 of the Joint Recommendation. General deterrence, by way of informing and educating the profession generally as to the serious consequences that will result from breaches of standards of competent and ethical practice, will be realized by publication of the outcome of these proceedings, as determined by the Investigation Committee Chair.

In reaching the decision to accept the Joint Recommendation of the parties, the Panel has also been mindful of the Supreme Court of Canada's 2016 decision in *R v. Anthony-Cook* [2016] 2SCR 2004, which emphasized the high threshold for departing from Joint Recommendations from counsel. The Supreme Court approved of the "public interest test" and determined that a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.

In this case the Panel recognizes that counsel for the Investigation Committee and counsel for Dr. Pillay are well placed to arrive at a Joint Recommendation that reflects the interests of both the public, and Dr. Pillay. There is nothing in the Joint Recommendation which would bring the administration of justice into disrepute or is otherwise contrary to the public interest. A properly informed and reasonable member of the public would recognize that the Joint Recommendation of the parties fulfills the objectives of orders under section 59.6 of *The Medical Act*.

Accordingly, the Inquiry Panel orders that:

1. Dr. Pillay is hereby reprimanded.
2. Dr. Pillay shall be suspended until he has, at his own cost, completed both a record-keeping course and a professionalism course which focuses on the importance of the responsibilities of members of a self-governing profession, both of which must be acceptable to the Investigation Chair.
3. Further, Dr. Pillay shall be suspended until such time as he has demonstrated to the satisfaction of the Chair of the Physician Health Program of the College that he has overcome any mental health issues that caused or contributed to the matters to which he pleaded guilty in the Amended Notice of Inquiry, in the manner more particularly set forth in the Resolution and Order of this Panel, issued concurrently herewith and attached hereto.
4. Conditions are imposed upon Dr. Pillay's entitlement to practice medicine as more particularly set forth in the Resolution and Order of this Panel, issued concurrently herewith and attached hereto.
5. Dr. Pillay shall pay all costs related to the conditions on his licence, including the costs of any continuing medical education, any reports, any supervising, mentoring and any monitoring.
6. If there is any disagreement between the parties respecting any aspect of the Inquiry Panel Order, the matter may be remitted by either party to a Panel of the Inquiry Committee for further consideration, and the Inquiry Committee hereby expressly reserves jurisdiction for the purpose of resolving any such disagreement.
7. Dr. Pillay shall pay costs to the College of the investigation and inquiry in the sum of \$19,307.50, such payments to be made as mutually agreed over time between Dr. Pillay and the College.
8. There will be publication, including Dr. Pillay's name, as determined by the Investigation Committee Chair. The College, at its sole discretion, may provide information regarding this disposition to such person(s) or bodies as it considers appropriate.

DATED this 17th day of April 2018.

IN THE MATTER OF:

“*THE MEDICAL ACT, C.C.S.M.*”

AND IN THE MATTER OF:

Dr. Pooventhran Gopal Pillay, a member of the
College of Physicians and Surgeons of Manitoba

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

WHEREAS Dr. Pooventhran Gopal Pillay (Dr. Pillay), a member of the College of Physicians and Surgeons of Manitoba (the College) was charged with professional misconduct and with contravening Article 41 of the Code of Conduct or Article 50 of the Code of Ethics of the College, whichever was in effect at the material time, and with contravening By-Law No. 1 or By-Law No. 11 of the College, whichever was in effect at the material time, and with displaying a lack of knowledge, skill or judgment in the practice of medicine, as more particularly outlined in a Notice of Inquiry dated September 13, 2017;

AND WHEREAS Dr. Pillay was summoned and appeared before an Inquiry Panel (the Panel) of the College with legal counsel on February 9, 2018;

AND WHEREAS an Amended Notice of Inquiry dated September 13, 2017, outlining the charges and particularizing the allegations against Dr. Pillay was filed as an exhibit in the hearing before the Panel;

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

AND WHEREAS the Panel reviewed the exhibits filed, including a detailed Statement of Agreed Facts and the contents of a Book of Documents, heard submissions for the Investigation Committee of the College and submissions from counsel for Dr. Pillay, and received a Joint Recommendation as to Disposition of the charges and allegations outlined in the Amended 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 subsection 56(3) of *The Medical Act*, R.S.M., there shall be no disclosure of the names or other identifying information of any patients or other third parties referred to in the hearing, or in any of the documents filed as exhibits in the proceedings.
2. Pursuant to section 59.6(1)(a) of *The Medical Act*, Dr. Pillay shall be reprimanded.
3. Pursuant to section 59.6(1)(c) of *The Medical Act*, Dr. Pillay shall be suspended until he has, at his own cost, completed both a record-keeping course and a professionalism course which focuses on the importance of the responsibilities of

members of a self-governing profession, both of which must be acceptable to the Investigation Chair.

4. Further, and pursuant to Section 59.6(1)(d) of *The Medical Act*, Dr. Pillay shall be suspended until such time as Dr. Pillay has demonstrated to the satisfaction of the Chair of the Physician Health Program of the College (“the Physician Health Chair”) that he has overcome any mental health issues, including, but not limited to what Dr. Pillay has described as “burnout”, that caused or contributed to the matters to which he pleaded guilty in the Amended Notice of Inquiry. In considering whether to allow Dr. Pillay to return to work and, if so, on what conditions, the Physician Health Chair may:

- (a) require a mental health assessment by a physician acceptable to the Physician Health Chair (“the Assessor”);
- (b) consider any reasonable alternatives presented by Dr. Pillay as to who might be a reasonable Assessor, and if any dispute arises, the Physician Health Chair has the final decision on who will be the Assessor;
- (c) provide the Assessor with any documentation or information the Physician Health Chair believes to be relevant to the assessment and provide a copy of that information to Dr. Pillay; and
- (d) require Dr. Pillay to provide a return to practice plan which would address any concerns which may be identified in the assessment.

5. Pursuant to Section 59.6(1)(e) and 59.6(2) of *The Medical Act*, the following conditions are imposed upon Dr. Pillay’s entitlement to practice medicine:

- (a) Dr. Pillay must not engage in a solo practice;
- (b) Dr. Pillay’s return to work must be graduated, with specific limits on the hours Dr. Pillay works each day/week and the number of patients who Dr. Pillay sees each day/week as determined by the Physician Health Chair and until such time that Physician Health Chair is satisfied limitations are no longer necessary to ensure that Dr. Pillay is providing safe care and is able to meet his obligations, including keeping his medical records up to date;
- (c) In respect to his clinical records, Dr. Pillay must:
 - (i) On the same date of each patient encounter, create a complete and accurate record of each patient encounter, regardless of the setting in which he provides care to the patient, in accordance with the record-keeping requirements of the College which are in force at the time. Without limiting the foregoing:, for each patient encounter, he must document on the patient’s chart:
 - (1) an adequate patient history;
 - (2) particulars of the physical examinations, investigations ordered and the results of same;
 - (3) any diagnosis made;
 - (4) any treatment prescribed.
 - (ii) maintain a problem list in each of his patient’s charts;
 - (iii) maintain a flow sheet of prescribed drugs in each of his patient’s charts, including drugs prescribed by him and drugs known to be prescribed by others;
 - (iv) maintain a chronic disease flowsheet in the chart of each of his patients with one or more chronic diseases;
 - (v) for each medication he prescribes, document on the patient chart

- the indication for the medication and his monitoring plan for that medication, where relevant;
- (vi) establish and maintain a tracking system in his office practice to ensure that:
 - (1) he conveys to the patient all abnormal results received by him respecting that patient;
 - (2) he recommends appropriate follow-up care to the patient; and
 - (3) subject to the patient's right to decline recommended care, he notifies the patient of the arrangements he has made for follow-up care for the patient on abnormal results received by him.
 - (d) Dr. Pillay must comply with the supervision and monitoring of his clinical practice established by and acceptable to both the Chair of Physician Health Program and the Investigation Chair. Such supervision and monitoring must include:
 - (i) approval of the supervisor of Dr. Pillay's practice by the Investigation Chair;
 - (ii) review by the supervisor of Dr. Pillay's charts on a schedule determined by the Investigation Chair to ensure that Dr. Pillay is complying with the conditions on his practice, but no less frequently and for no less duration than the following:
 - (1) daily for the first month after Dr. Pillay resumes practice; and
 - (2) weekly for the following three months after Dr. Pillay resumes practice.
 - (iii) attendance at interviews with the Chair of the Physician Health Program and/or Investigation Chair or their nominee upon request;
 - (iv) providing the Investigation Committee with access to both the premises at which Dr. Pillay is practicing and his medical records for periodic inspections and/or audits, and
 - (v) any other conditions which are objectively and rationally connected to the admitted misconduct and/or any health condition identified in the mental health assessment and which the Investigation Chair and/or the Chair of the Physician Health Program determines

necessary based on the recommendations, if any, arising from the mental health assessment and/or the professionalism course.

6. Dr. Pillay must pay for all costs related to the conditions on his licence, including the costs of any continuing medical education, any reports, any supervising, mentoring and any monitoring.

7. If there is any disagreement between the parties respecting any aspect of The Inquiry Panel Order, the matter may be remitted by either party to a Panel of the Inquiry Committee for further consideration, and the Inquiry Committee hereby expressly reserves jurisdiction for the purpose of resolving any such disagreement.

8. Pursuant to s. 59.7(1)(a) of *The Medical Act*, Dr. Pillay shall pay to the College costs of the investigation and inquiry in the sum of \$19,307.50, such payment to be made as mutually agreed over time between Dr. Pillay and the College.

9. There will be publication, including Dr. Pillay's name, as determined by the Investigation Committee Chair. The College, at its sole discretion, may provide information regarding this disposition to such person(s) or bodies as it considers appropriate.

DATED this 17th day of April 2018.