

IN THE MATTER OF:                    *THE MEDICAL ACT, CCSM C.M90*

AND IN THE MATTER OF:            DR. GARY ALLAN JOSEPH HARDING, A MEMBER  
OF THE COLLEGE OF PHYSICIANS AND  
SURGEONS OF MANITOBA

AND IN THE MATTER OF:            A NOTICE OF INQUIRY DATED JUNE 21, 2017

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

### **INTRODUCTION**

On June 21, 2017, the College of Physicians and Surgeons of Manitoba (the “College”) issued a Notice of Inquiry under Parts IX and X of *The Medical Act, C.C.S.M.*, charging that Dr. Gary Allan Joseph Harding (“Dr. Harding”):

- (a) had been guilty of professional misconduct; and/or
- (b) had contravened By-Law No. 1 of the College (with respect to the requirements for keeping and maintaining medical records); and/or
- (c) had contravened Statement 805 of the College (with respect to the standards of practice relating to the prescribing of medications); and/or
- (d) had displayed a lack of knowledge of or a lack of skill and judgment in the practice of medicine; and/or
- (e) had demonstrated unfitness to practice medicine.

On September 22, 2017, Dr. Harding made a motion to be heard before a Panel of the Inquiry Committee (the “Inquiry Panel”) of the College for an order that certain portions of the Notice of Inquiry be severed and that separate hearings be held for each of the impugned charges, which motion was heard by the Inquiry Panel on October 17, 2017.

At the outset of the hearing on October 17, 2017, certain preliminary matters were also raised and determined. Dr. Harding admitted his membership in the College. The Notice of Inquiry was entered and marked as an exhibit in the proceedings. Dr. Harding waived the reading of the charges/allegations set forth in the Notice of Inquiry and acknowledged that the requirements of Part X of *The Medical Act*, relating to the appointment of the Inquiry Panel, service of the Notice of Inquiry and the timely convening of a hearing, had been fulfilled. The jurisdiction of the Inquiry Panel

was acknowledged by Dr. Harding, and Dr. Harding raised no objections to any of the members of the Inquiry Panel sitting on the Inquiry Panel.

Counsel for the Investigation Committee also made a preliminary motion at the outset of the hearing on October 17, 2017, which was consented to by Dr. Harding, for an order under subsection 56(3) of *The Medical Act*, protecting the identity of the individuals who may be called as witnesses in the proceedings or who may be referred to in the proceedings, including the individuals referred to as X and Y in the Notice of Inquiry.

With respect to the order requested by the Investigation Committee pursuant to subsection 56(3)(b) of *The Medical Act*, the Inquiry Panel was satisfied that such an order was appropriate because some of the personal and other private matters relating to potential witnesses, which might be disclosed at the hearing, would be of such a nature that the disclosure of such matters could adversely affect the interests of those witnesses and outweigh the desirability of adhering to the principle that hearings be open to the public.

On December 12, 2017, the Inquiry Panel issued their Reasons for Decision on Dr. Harding's motion for severance and a Resolution and Order which gave effect to that decision, whereby the Inquiry Panel decided and ordered that:

- (a) pursuant to subsection 56(3) of *The Medical Act*, the identities of third parties who may be witnesses in these proceedings, or who may be referred to in these proceedings shall be protected by referring to them by their initials or in some non-identifying manner; and
- (b) Dr. Harding's motion for an Order that certain portions of the Notice of Inquiry be severed and that separate hearings be held for each of the impugned charges was dismissed.

On May 29, 2018, a hearing was convened before the Inquiry Panel for the purpose of conducting an inquiry pursuant to Part X of *The Medical Act*, into the charges and allegations set forth in the Notice of Inquiry dated June 21, 2017.

Among other things, the Notice of Inquiry specifically alleged that:

- (a) between November 2012 and August 2013, while Dr. Harding was an Assistant Professor with teaching responsibilities and/or the Associate Dean (Accreditation) at the College of Medicine, University of Manitoba and X was a medical student enrolled in the said College of Medicine, Dr. Harding violated his professional and ethical obligations and failed to maintain proper boundaries with X and exploited X in several ways, including:
  - (i) having inappropriate social contacts with X;

- (ii) giving gifts of a personal nature to X;
  - (iii) pursuing an inappropriate intimate relationship with X;
  - (iv) initiating unwanted sexual contact with X;
  - (v) providing medical advice to X; and/or
  - (vi) abusing his position with the College of Medicine and as X's teacher;
- (b) On or about January 7 and 9, 2013, Dr. Harding authorized two separate prescriptions to two separate pharmacies for X and did not create a medical record for either prescription and thereby failed to meet the requirements of Article 24.1 of By-Law No. 1 and/or Statement 805 of the College;
- (c) On or about January 20, 2013, while in the presence of X, Dr. Harding inappropriately accessed and disclosed to X, personal health information of two other individuals, thereby committing an act or acts of professional misconduct;
- (d) On or about November 13, 2014, Dr. Harding inappropriately accessed the personal health information of one of the two other individuals referred to in the preceding paragraph and thereby committed an act or acts of professional misconduct;
- (e) Between November 2013 and December 2014, while Dr. Harding was Assistant Professor with teaching responsibilities and/or the Associate Dean (Accreditation) of the College of Medicine, University of Manitoba and Y was a medical student enrolled in the said College of Medicine, Dr. Harding violated his professional and ethical obligations and failed to maintain proper boundaries with Y and exploited Y in several ways, including:
- (i) having inappropriate social contacts with Y;
  - (ii) giving gifts of a personal nature to Y;
  - (iii) pursuing an inappropriate intimate relationship with Y;

- (iv) initiating unwanted sexual contact with Y;
  - (v) providing medical advice to Y; and/or;
  - (vi) abusing his position with the College of Medicine and as Y's teacher.
- (f) On or about March 31, 2014, Dr. Harding inappropriately prescribed medication to Y and/or failed to create and maintain adequate clinical records respecting the prescription and thereby failed to meet the requirements of Article 24.1 of By-Law No. 1 and/or Statement 805 of the College;
- (g) Dr. Harding made statements and/or provided information to the College which he knew or ought to have known were false and/or misleading, thereby committing acts of professional misconduct, including:
- (i) in a letter to the College dated July 31, 2015 and in a document provided to the College on or about January 24, 2016, he made false or misleading statements with respect to prescribing medications to X; and
  - (ii) in statements during his interviews with the Investigation Chair of the College on January 28, 2016 and February 10, 2016, he made false or misleading statements relating to other topics;
- (h) By reason of one or more of the foregoing, Dr. Harding displayed a lack of knowledge of or a lack of skill and judgment in the practice of medicine;
- (i) By reason of one or more of the foregoing, Dr. Harding displayed an unfitness to practice medicine.

The hearing proceeded before the Inquiry Panel on May 28, 2018 in the presence of Dr. Harding and his counsel, and in the presence of counsel for the Investigation Committee of the College. Counsel for the Investigation Committee, with the concurrence of counsel for Dr. Harding, reviewed and confirmed several of the preliminary matters which had been dealt with at the time of the hearing of the severance motion on October 17, 2017, including that Dr. Harding admitted his membership in the College, that he had been properly served with the Notice of Inquiry, that he was waiving the formal reading of the Notice of Inquiry, and that he was acknowledging that all of the requirements of Part X of *The Medical Act* had been fulfilled. Counsel for the Investigation Committee, with the concurrence of counsel for Dr. Harding also confirmed the existence and continuing effect of the Order which had previously been granted by the Inquiry Panel pursuant to Section 56(3) of *The Medical*

Act, protecting the identities of any third parties in the record of these proceedings, including but not limited to X and Y, by referring to those third parties by their initials or in some other non-identifying manner.

Dr. Harding, through his counsel, entered a plea of no contest to the charges and allegations outlined in the Notice of Inquiry dated June 21, 2017. Counsel for Dr. Harding explained that a Statement of Uncontested Facts would be introduced into evidence, and there would be no evidence called to contradict those uncontested facts, and that none of those uncontested facts would be otherwise disputed by Dr. Harding. Counsel for Dr. Harding also expressed his opinion that the facts as outlined in the Statement of Uncontested Facts would be sufficient to satisfy the Inquiry Panel that the facts and allegations outlined in the Notice of Inquiry have been proven.

Counsel for the Investigation Committee with the concurrence of counsel for Dr. Harding, then introduced the Statement of Uncontested Facts and Joint Recommendation As To Penalty.

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

- (a) the Notice of Inquiry dated June 21, 2017;
- (b) the Statement of Uncontested Facts and Joint Recommendation as to Penalty; and
- (c) a document entitled "Additional Uncontested Facts for Penalty Submission".

## **BACKGROUND**

1. Dr. Harding obtained his medical degree from the University of Manitoba in 2000 and thereafter his internal medicine certification in 2004 and medical oncology certificate in 2005 from the Royal College of Physicians and Surgeons of Canada. He has been registered in the Manitoba Medical Registry as a specialist since July of 2006. He has been a member of the College at all times material to the events referred to in the Notice of Inquiry.
2. The Statement of Uncontested Facts is 50 pages long and consists of 167 paragraphs and multiple subparagraphs. The Uncontested Facts need not be repeated in their entirety in these Reasons. A summary of those uncontested facts will nonetheless be useful in providing a context for the commentary on the Joint Recommendation as to Penalty, and for the analysis which follows.

3. At all times material to the allegations contained in the Notice of Inquiry:
  - (a) Dr. Harding was a medical oncologist with CancerCare Manitoba, and Assistant Professor in the College of Medicine at the University of Manitoba (the “Faculty”) and Associate Dean (Accreditation) in the Faculty;
  - (b) X and Y were medical students in the Faculty; and
  - (c) during the first year of study in the Medical Doctorate Program (the “MD Program”) at the Faculty, a student would normally complete three stages of the curriculum referred to as Blocks 1, 2 and 3. This first year of study is referred to as “Med 1”. At the end of each Block, an examination is administered. During a student’s second year of study in the MD Program, a student would normally complete Blocks 4, 5 and 6. The second year of study is commonly referred to as “Med 2”. In each of Blocks 1 through 6, medical students take a course known as Practical Reasoning (“PR”). This course is made up of 25% of the mark for each Block. Students in PR are separated into small groups of approximately 10 students that would work with one professor for the duration of the Block. The composition of the PR group would change at the start of each Block.
4. An investigation under the Faculty’s Respectful Work and Learning Environment Policy (the “RWLE Investigation”) commenced after X brought various allegations to the attention of certain administrators in the Faculty in December of 2014.
5. Concerns about Dr. Harding that were the subject of the RWLE Investigation were first brought to the attention of the College on June 5, 2015 when the Faculty advised the College of concerns that Dr. Harding had inappropriately prescribed medications, Zopiclone and Ativan to a student, that the College later learned was X and had potentially breached *The Personal Health Information Act* in relation to another third party, Z. Those concerns were referred by the Registrar of the College to the College’s Investigation Committee for further investigation.
6. Dr. Harding was advised on July 29, 2015 that the Investigation Committee was investigating the alleged PHIA violation and inappropriate prescribing of medications to his student. At this point, the Investigation Committee had not been provided any particulars in relation to Dr. Harding’s relationships with X or Y.
7. The Investigation Committee’s medical consultant met with X on December 8, 2015, at which point the full extent of his relationship with Dr. Harding became known. It was at this time that X provided a copy of the statement that he

provided during the RWLE Investigation and advised that a report was produced by the Faculty after its investigation (the "Faculty Report"). The Faculty Report was requested by the medical consultant from both the Faculty and Dr. Harding on December 14, 2015. Dr. Harding was also advised at that time that the Investigation Committee's investigation was being expanded to include potential boundary violations regarding X.

8. During the College's investigation of these matters, Dr. Harding provided a chart containing text messages sent and received as between him and X. The chart of text messages records the contents of 3,897 text messages between December 28, 2012 and March 16, 2014.
9. Dr. Harding was advised on April 27, 2016 that the College was expanding its investigation to include additional PHIA violations related to persons well known to X, A and B. The investigation was also expanded to include an allegation that Dr. Harding misled the Investigation Committee in an interview and in two of his correspondences/responses when he stated that he had not accessed the personal health information of A and B and in understating the extent of medications he prescribed to X.
10. From a review of the Faculty Report, it was determined that Dr. Harding had also engaged in an inappropriate relationship regarding Y. Y was interviewed twice during the RWLE Investigation. Many other students and Faculty members were also interviewed.
11. During the Investigation Committee's investigation, the identity of Y's legal counsel was discovered. Y, through his legal counsel, came forward with information that Dr. Harding had also engaged in an inappropriate relationship with him that involved numerous instances of unwanted sexual touching. Y had been aware of but had not wanted to participate in the Faculty's RWLE Investigation.
12. Dr. Harding was advised on June 20, 2016 that the College was expanding its investigation to include an allegation that he failed to meet his ethical obligation to maintain appropriate boundaries with Y and that he inappropriately prescribed medications to Y.

***FACTS RELATED TO X:***

13. X was admitted into the MD Program in the Faculty and commenced as a medical student in August 2012. X met Dr. Harding at the beginning of the fall term and subsequently at a medical school party in November 2012. At that time, X was experiencing significant challenges in his personal life.

14. In late November 2012, Dr. Harding sent X an e-mail offering a mentorship. This offer was entirely outside of any formal mentorship program administered by the Faculty. In the e-mail, Dr. Harding spoke extensively about X's personal challenges and emotional state. X was initially hesitant to respond to Dr. Harding's offer of mentorship. However, after further communications from Dr. Harding, X accepted the offer of mentorship in early December 2012.
15. Thereafter, Dr. Harding's interactions with X increased. Over the next several months, those interactions consisted of:
  - extensive text messaging (a total of 3,897 text messages, 3,279 of which were exchanged between December 28, 2012 and April 30, 2013);
  - meetings for dinners at various restaurants;
  - personal visits at each other's residences;
  - a trip in January 2013 to New York, with respect to which the travel and hotel accommodations were arranged and paid for by Dr. Harding; and
  - various gifts provided by Dr. Harding to X.
16. While the text messages and other communications touch on all facets of the lives of Dr. Harding and X, personal and professional, several topical themes arise that are salient to these proceedings, including discussions related to:
  - personal relationship issues with third parties regarding X;
  - one-on-one encounters at X's residence, Dr. Harding's residence and various restaurants;
  - Dr. Harding giving X gifts of a personal nature;
  - Dr. Harding's use of nicknames and terms of endearment;
  - Dr. Harding making sexualized comments;
  - Dr. Harding providing medical advice to X;
  - a New York trip taken by Dr. Harding and X;
  - Dr. Harding pursuing an inappropriate intimate relationship with X;



- Dr. Harding abusing his position with the Faculty and as X's professor; and
  - the desirability of secrecy in the relationship.
17. In early January 2013, Dr. Harding began making sexual references, including stating multiple times that X should let Dr. Harding perform oral sex on X.
  18. In January 2013, Dr. Harding prescribed Zopiclone and Ativan to X and both prescriptions were filled by X.
  19. Dr. Harding provided an explanation for these prescriptions during the Investigation Committee's investigation in which he significantly underestimated the quantity of the medication he prescribed.
  20. Two days later, on January 11, 2013, Dr. Harding and X travelled to New York for the trip that Dr. Harding had arranged on or about December 8, 2012 to coincide with a significant date in X's personal life.
  21. On the evening of their first day in New York, Dr. Harding took X for dinner. The discussion over the course of the evening was very emotionally charged and related to X's personal circumstances. On return to the hotel room, X changed into sweatpants and a full-length shirt. He got onto the bed to sleep but remained above the covers. Dr. Harding, without X's permission and without warning, placed his hand under the elastic of both his sweatpants and his underwear and proceeded to touch his penis and testicles. X was in shock for a number of seconds before pushing Dr. Harding's hand away. Dr. Harding then rolled over on his side and said, "You don't have testicular cancer". This incident was profoundly disturbing for X.
  22. X was with Dr. Harding, at Dr. Harding's home on January 20, 2013 when Dr. Harding inappropriately accessed the electronic patient records of A and B. The records he accessed were maintained by CancerCare Manitoba. The reason for accessing the records was to demonstrate to X that he could determine whether people were being treated for cancer with CancerCare Manitoba and in an attempt to support his theory that another third party individual known to X was lying about having a cancer diagnosis.
  23. Whereas Dr. Harding initially denied to the Investigation Committee that he had inappropriately accessed these patient records, a subsequent audit of CancerCare's records revealed that:

- Dr. Harding accessed the electronic patient records maintained by CancerCare Manitoba for both A and B on January 20, 2013 at 12:25 a.m. for less than one minute each; and
  - Dr. Harding accessed A's electronic patient record on November 13, 2014 at 9:40 a.m., for less than two minutes.
24. On January 18, 2013, Dr. Harding played a role in having a PR assignment deferred for X. Further, on January 18, 2013, X was informed by Dr. Harding that four other classmates of his would be deferring the upcoming Block 2 examination. Dr. Harding sent X a message on January 16, 2013 which stated, "I got your PR assignment deferred".
  25. On June 5, 2013, Dr. Harding contacted X stating, "it is very important for you to talk with me before you write the block 2 exam and you can pass it on to (another specifically named medical student). One of the cases might be a bit rare to you both bc you did not have a case on it".
  26. On July 23, 2013, X wrote the Block 3 examination, after which he texted Dr. Harding, writing that he had found it difficult. Dr. Harding provided words of reassurance. On July 24, 2013, Dr. Harding contacted X and told him that he had passed the Block 3 examination, but another named classmate had failed.
  27. On August 8, 2013, Dr. Harding wrote about X's upcoming Block 2 exam: "I didn't hear from you. This weekend we have to talk about one case for prep for the exam".
  28. On August 11, 2013, X met Dr. Harding at a cafe to discuss the Block 2 examination. Dr. Harding brought case maps for the actual examination to help X study.
  29. On August 21, 2013, Dr. Harding wrote to X stating, "off the record, you both passed. PR was the reason you both passed. It was marked with much latitude".
  30. Thereafter, Dr. Harding's and X's relationship steadily deteriorated. Text message exchanges between August 21 and August 25, 2013, reflect arguments between Dr. Harding and X and feelings of resentment towards the other. After August 25, 2013, Dr. Harding and X rarely engaged socially and while their text communications continued until March of 2014, messaging occurred much less frequently.
  31. X completed and passed the Block 2 and the Block 3 examinations. X commenced Med 2 in August 2013. He encountered significant difficulties.

32. X sought counselling at the Faculty and during that counselling made certain disclosures about his relationship with Dr. Harding. One of his counsellors was a Senior Psychiatrist and Director of Counselling Services at the Faculty. The psychiatrist advised X many times to report what had happened to him, through the appropriate channels at the Faculty. X was very reluctant to do so for various reasons, including a significant concern that his own career would be jeopardized by reporting Dr. Harding to the Faculty.
33. In October 2014, the Associate Dean of Student Affairs in the Faculty, upon being advised that X was experiencing significant academic issues, began making inquiries relating to X's circumstances. The Associate Dean of Student Affairs met with X on December 15, 2014, at which time X advised her of multiple boundary violations perpetrated by a yet to be named Faculty member when he was in his first year of medical school.
34. At a subsequent meeting with the Associate Dean of Student Affairs on December 19, 2014, X was asked if the Faculty member was Dr. Harding and X acknowledged that Dr. Harding was the Faculty member involved.
35. Shortly after these meetings, the Faculty RWLE Investigation commenced. Those proceedings led to Dr. Harding resigning from the Faculty in June 2015.
36. As of the date of this hearing (May 29, 2018), X has not completed his MD Program. He remains eligible to return to continue his studies when he can do so. X describes the impact of these events on him as extremely traumatic and that he continues with professional help to deal with the impact that these events have had on his personal, academic and professional life.

***FACTS RELATED TO Y:***

37. Y commenced as a student in the MD Program at the Faculty in August 2013. Y first encountered Dr. Harding at a medical school function. He encountered him frequently at the medical school thereafter.
38. In November 2013, Dr. Harding and Y were both at a Block 1 party for medical students. Dr. Harding and Y had a conversation touching upon various issues, including personal matters. Dr. Harding offered to mentor Y, adding in that context that he only offered a mentorship to certain students. This offer of mentorship was entirely outside of any formal mentorship program administered by the Faculty.
39. On November 14, 2013, Dr. Harding initiated an e-mail exchange with Y in which Dr. Harding reiterated the mentorship proposal and asked Y to contact him via text message to arrange for a first meeting.

40. Y texted Dr. Harding in response to the e-mail exchange and a dinner was arranged at a restaurant. Although Dr. Harding did discuss the medical profession at that dinner, he also asked a lot of questions about Y's personal, family and past relationships.
41. Over time, Y began regularly confiding personal and private information with Dr. Harding.
42. Within a short time, Dr. Harding began texting Y daily. The texts were often about routine topics. Dr. Harding introduced Y to his family and friends and invited him out to various functions and parties, both work and socially related. Y was introduced to Dr. Harding's husband and infant daughter. Dr. Harding was very forthcoming about his family and told Y that he had an "open marriage", meaning that although they were married, they could have sexual relationships with other people.
43. During or around the time of the winter break of 2013, Dr. Harding invited Y to have dinner with him and a few friends at his home. The group were all drinking and socializing. Y and another person, K, both had too much to drink. Dr. Harding offered for them to spend the night, which they both did. This is the first time Y slept at Dr. Harding's residence. Early in the morning, Y woke up to find that Dr. Harding had entered the bed he was sleeping on and cuddled up to him. Y was very uncomfortable, but felt, because not only was Dr. Harding his superior, he was also in a bed at his house, that he could not "kick him out".
44. About a week or two after the last winter gathering, while socializing at Dr. Harding's home, Y had too many alcoholic drinks to drive home, so he spent the night at Dr. Harding's home. This time, Dr. Harding prepared a bed and told Y the two would share it for the night. Dr. Harding said it was not a big deal because they had been in bed together previously.
45. By the end of January 2014, Dr. Harding and Y socialized on a weekly basis. They often watched movies together at Dr. Harding's house.
46. Sleepovers became regular, commonly occurring on Tuesdays after "movie night", Dr. Harding began inappropriately touching Y's genital area while he was sleeping. Y awoke on several occasions to find Dr. Harding's hand on his genitals. Y states that Dr. Harding purposely placed his hand in the same place each time and that the sexual touching was without his consent.
47. Later in the school year, around February 2014, Dr. Harding became Y's PR leader. Dr. Harding told Y that he purposely shuffled the PR group so that another student and Y were in the same small group, led by Dr. Harding.

48. Sometime in February 2014, Y told Dr. Harding that he did not want to sleep over again, but he would still be willing to continue the friendship, meet for dinners, continue movie night and be his mentee. Dr. Harding became angry and began to belittle Y, stating Y was a bad person and a bad friend.
49. In February of 2014, Y wanted to visit a relative, who was ill, in Vancouver. Dr. Harding suggested the two could go together. Y declined. However, Dr. Harding proceeded to arrange flights, without Y's agreement, for February 14 - 17, 2014. Y ultimately accepted the trip.
50. Dr. Harding booked himself and Y on different flights travelling to Vancouver, but the same flight home from Vancouver. When travelling together on the return flight, Dr. Harding was very nervous that he would run into someone he knew at the airport and said that he and Y should have a cover story to the effect that they ran into each other by coincidence.
51. Y found out on arrival at the hotel in Vancouver that Dr. Harding had booked a room with only one bed. Y was surprised and dismayed by that circumstance. In Vancouver, Dr. Harding and Y went sightseeing to the aquarium and Yale Town and went for dinner and drinks. One night after having some drinks, Dr. Harding asked Y if he would engage in oral sex. Y said no. Dr. Harding then tried to convince Y that he should allow him to do it "as a friend". Y continued to refuse. Dr. Harding became angry.
52. At or around March 31, 2014, Dr. Harding prescribed Y a topical corticosteroid cream to treat a scrape on his leg that wasn't healing. He did not create a medical record for that prescription. He prescribed the medication by calling a pharmacy after conferring with a dermatologist colleague.
53. Dr. Harding took Y out frequently to social events and to expensive restaurants. At first the dinners were weekly, but it became even more frequent; often twice a week. Dr. Harding paid for the dinners, refusing to let Y contribute.
54. Until approximately April or May 2014, when it was close to the end of the school year, sleepovers occurred on a weekly basis. At one point, Dr. Harding offered to have Y move into his house and to pay for his tuition because his savings funds were running out. Dr. Harding advised the arrangement would have to be kept confidential. Y declined both offers.
55. In May 2014, when Y's final exam was a few weeks away, he stopped sleeping over and began to distance himself from Dr. Harding. Further, Y went on a placement in family medicine for one week following his exam to a rural town in Manitoba and thus had a reason not to sleep over.

56. On June 10, 2014, Dr. Harding and Y went out for dinner for the last time together. The discussion revolved mainly around Dr. Harding's belief that the friendship was "on the rocks" because Y was not a good friend. Y advised Dr. Harding that he did not appreciate how mean and controlling he (Dr. Harding) was toward him on a regular basis. The dinner ended with no resolution.
57. Thereafter, Dr. Harding and Y exchanged some sporadic e-mails in June and July. On July 1, 2014, Y sent an e-mail in which he apologized for hurting Dr. Harding, thanked him for being a friend and mentor and said goodbye. Dr. Harding responded by e-mail on July 2, 2014, in which he expressed disappointment in the impersonal nature of Y's e-mail.
58. Between August 2014 and December 2014, Dr. Harding made several inappropriate contacts with Y regarding Y's brother, Dr. Harding's husband, Y's father, and another medical student.
59. On December 10, 2014, Dr. Harding approached Y at the medical school while he was walking with friends and pulled him aside. The ensuing conversation lasted 35 minutes. During this conversation, among other things, Dr. Harding threatened to report Y for a "professionalism citation" which he said could ruin Y's career and reputation. Dr. Harding said that one bad report or grade could taint Y's reputation across the country, considering the "tight-knit" nature of the medical profession.
60. On December 11, 2014, Dr. Harding left two voicemail messages for Y. The messages were a follow-up to the discussion which they had the day before. The messages were rambling and filled with irrational comments.
61. In mid-December 2014, Y sought a lawyer to assist in making the harassment stop.

***THE CURRENT CIRCUMSTANCES:***

62. In June 2015, Dr. Harding resigned from the Faculty in anticipation of dismissal subsequent to the Faculty's RWLE Investigation. CancerCare Manitoba, an affiliate of the Faculty, soon thereafter terminated his employment with CancerCare Manitoba. Since then, Dr. Harding has not practiced medicine in Manitoba or in any other jurisdiction.

***PSYCHIATRIC ASSESSMENTS:***

63. At the request of Dr. Harding's legal counsel, Dr. Harding was the subject of an independent psychiatric evaluation by a local psychiatrist involving three 90

minute interviews. The assessment also involved an interview of Dr. Harding's psychiatrist, who Dr. Harding has been seeing since 2004.

64. By agreement between the Investigation Committee and Dr. Harding, he participated in a multi-disciplinary assessment by the Alliance Assessment Centre in Houston, Texas from February 21 - 23, 2017. The Alliance Assessment Centre is known for its expertise in the area of boundary violations and risk assessments in professional settings and was approved by the Investigation Committee to conduct the assessment. The assessment involved extensive interviews with Dr. Harding and collateral interviews with Dr. Harding's husband and other sources and a consideration of the local psychiatrist's assessment. The purpose of that assessment was to opine on whether Dr. Harding poses a risk to patients or students should he re-enter practice.
65. There are limitations as to the value of certain aspects of these assessments. In particular, the impact of the following factors on their opinions and conclusions is unknown:
  - (a) although Dr. Harding acknowledged many of the boundary crossings in relation to his involvement with X and Y, he continued to deny any sexual touching of X and Y throughout these assessments; and
  - (b) Dr. Harding has not been assessed in the context of this plea of no contest to the charges and the facts as stated herein.
66. The Investigation Committee and Dr. Harding have agreed that the following information from those assessments is relevant to the Inquiry Panel's consideration as to whether the Joint Recommendation represents an appropriate disposition:
  - (a) Dr. Harding's conduct does not arise from a lack of understanding of appropriate boundaries as he has significant training in ethics and boundaries in his academic work;
  - (b) Dr. Harding does not appear to have a significant psychiatric disorder that would impede his judgment, but he was clinically depressed when assessed in February 2017 and has experienced periodic episodes of depression for many years;
  - (c) he meets the criteria for personality disorder not otherwise specified as he possesses significant narcissistic, histrionic and obsessive/compulsive personality traits which have led to significant impairments in judgment and his capacity to appreciate the impact his behaviour on the students with whom he had a mentor relationship;

- (d) these traits are the core of his behaviours and contributed to him using his position of authority with medical students to create self-serving relationships that met his narcissistic needs;
- (e) Dr. Harding continued to struggle with what he would do differently, but is remorseful;
- (f) Dr. Harding would benefit from ongoing intensive psychotherapeutic intervention with a focus on appropriate interpersonal boundaries and his narcissistic personality issues;
- (g) Dr. Harding appears to be well motivated to participate in ongoing psychotherapeutic treatment and monitoring;
- (h) whereas Dr. Harding did not address and in fact denied the sexual aspect of his relationships with X and Y, his recognition of his actions as being “horrendous, unprofessional and even harassing” reflect appropriate elements of self-reflection and developing insight which will be useful in future therapeutic work and may be helpful in terms of reducing the risk of this behaviour in the future;
- (i) based on the information available to the assessors at the time, Dr. Harding was considered to be a “low risk to patients and their families”. They opined that any risk Dr. Harding may pose to patients and their families in an oncology practice (as opposed to students and mentees) can and should be managed by him not providing any formal mental health counselling or psychotherapeutic work with patients; and
- (j) Dr. Harding should not engage in one-on-one mentorship relationships with students. The imposition of conditions which limit his contact with residents and students within an institutional/hospital setting are appropriate to manage what continues to be a high risk of boundary problems with students with whom he has more extensive contact.

***FACTUAL FINDINGS:***

67. Having considered the plea of no contest of Dr. Harding, in the context of the allegations and particulars in the Notice of Inquiry dated June 21, 2017, all of the facts outlined in the Statement of Uncontested Facts and Additional Uncontested Facts, and the submissions of counsel, the Inquiry Panel is satisfied that the charges outlined in the Notice of Inquiry dated June 21, 2017, and the particulars contained therein, have been proven. Therefore, the Inquiry Panel finds that Dr. Harding is guilty of professional misconduct, of contravening By-Law No. 1 of the College, of contravening Statement 805 of the College and of displaying a



lack of knowledge of or a lack of skill and judgment in the practice of medicine and that he has demonstrated unfitness to practice medicine.

### **THE JOINT RECOMMENDATION**

Within the above-noted factual context and given Dr. Harding's plea of no contest to the charges and the allegations outlined in the Notice of Inquiry dated June 21, 2017, it is the responsibility of the Inquiry Panel to determine the appropriate disposition pursuant to subsection 59.6 of *The Medical Act*. The Inquiry Panel has been assisted in its task by a "Joint Recommendation As To Penalty", made by the Investigation Committee and by Dr. Harding. The Joint Recommendation is detailed. In summary, it provides that:

1. Dr. Harding will be reprimanded by the Inquiry Panel.
2. Pursuant to subsection 59.6(1)(b) and 59.6(1)(d) of *The Medical Act*.
  - (a) Dr. Harding will be suspended from the practice of medicine commencing at 24:00 on May 29, 2018, continuing for a period of six months.
  - (b) Dr. Harding shall remain suspended indefinitely until such time as he demonstrates to the satisfaction of the Investigation Committee that he has received psychiatric and/or psychological counselling and/or other treatment to overcome any problem(s) that may have caused or contributed to the conduct referred to in the Notice of Inquiry dated June 21, 2017 (the "Underlying Conduct") and is fit to practice medicine.
3. Dr. Harding's participation in ongoing psychiatric and/or psychological counselling and/or other treatment must be in accordance with various terms, requiring Dr. Harding to demonstrate that he has provided sufficient information pertaining to the subject matter of the discipline to the psychiatrist and/or psychologist and, that when attending for counselling, Dr. Harding must have fully and frankly discussed and acknowledged the Underlying Conduct and/or matters in respect to which he had provided false or misleading information to the College during its investigation.
4. In assessing Dr. Harding's fitness to practice, the Investigation Committee will accept a written report from either the Alliance Assessment Centre or the Comprehensive Occupational Assessment Program ("COAP") or another multi-disciplinary assessment program team jointly chosen and approved by the Investigation Committee and Dr. Harding (the "Assessors") stating that, in the opinion of the Assessors, Dr. Harding is fit and safe to practice medicine, provided that the report is in a form acceptable to the Investigation Committee and that the report addresses all issues to the satisfaction of the Investigation

Committee, including any recommendations with respect to any conditions to be placed on Dr. Harding's entitlement to practice medicine.

5. The assessment referred to in paragraph 5 will be at Dr. Harding's cost and his participation in the assessment must be in accordance with six specific conditions outlined more particularly in the Joint Recommendation, to ensure that the assessment is rigorous and comprehensive.
6. Prior to Dr. Harding's return to practice and at Dr. Harding's cost, Dr. Harding must attend an interview with the Investigation Committee Chair or his/her delegate at the College offices for the purposes of:
  - (a) discussing the Underlying Conduct, Dr. Harding's current understanding of ethical, boundary and professional issues and Dr. Harding's proposed plans for return to practice; and
  - (b) allowing the Investigation Committee to further assess and decide the conditions of Dr. Harding's licensure upon return to practice. Pursuant to subsection 59.6(1)(e) of *The Medical Act*, ten specific conditions, as more particularly outlined in paragraph 8 of the Joint Recommendation will be imposed upon Dr. Harding's entitlement to practice medicine, which conditions are intended to prevent a recurrence of the Underlying Conduct and to protect the public interest generally, including the safety and interests of patients, and of medical learners, including residents and medical students. The ten conditions include, the supervision of Dr. Harding's practice, a prohibition against Dr. Harding engaging in solo practice and a monitoring by the Investigation Committee of Dr. Harding's practice, including his compliance with the conditions referred to in the Joint Recommendation.
7. Dr. Harding shall pay any and all costs arising from or incidental to the conditions described herein and the monitoring of those conditions by the Investigation Committee.
8. Disagreements between the parties respecting any Order which may be granted by this Inquiry Panel based on the Joint Recommendation, may be remitted by either party to a Panel of the Inquiry Committee.
9. Dr. Harding must pay to the College the costs of the investigation and inquiry in the amount of \$125,000.00 payable in full by certified cheque or by Dr. Harding's lawyer's trust cheque within six months of the date on which Dr. Harding resumes practice and, in any event, no later than on or before January 31, 2021, whether or not Dr. Harding resumes practice in the interim.

10. There will publication in the usual course as set out in *The Medical Act*, including Dr. Harding's name, as determined by the Investigation Committee.
11. The College, at its sole discretion, may provide information regarding this disposition to such person(s) or bodies as it considers appropriate.

## **ANALYSIS**

In determining the types of Orders to be granted pursuant to subsection 59.6 of *The Medical Act* and whether or not the Joint Recommendation as to Penalty is sound, and ought to be accepted by the Inquiry Panel, 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 or those who are likely to come into contact with the physician, 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; and
- (g) proportionality between the conduct of the physician and the orders granted under subsection 59.6 of *The Medical Act*.

The above-noted objectives do not constitute an exhaustive list. Numerous authorities have referred to other factors which ought to be considered, or which may be particularly applicable in specific cases. Additional factors which are relevant in this case are:

- (a) the nature and gravity of the misconduct;
- (b) the impact of the misconduct on those affected by it;
- (c) the vulnerability of those affected by the misconduct;
- (d) the role of the physician in acknowledging what had occurred; and
- (e) the presence or absence of mitigating circumstances.

As outlined earlier in these Reasons, the Inquiry Panel is satisfied that all of the charges outlined in the Notice of Inquiry dated June 21, 2017 have been proven. Dr. Harding is therefore guilty of professional misconduct, including multiple boundary violations relating to X and Y, abusing his position as an Assistant Professor and Associate Dean in the Faculty of Medicine and making false and misleading statements to the College. Dr. Harding is also guilty of contravening By-Law No. 1 of the College with respect to keeping and maintaining records, contravening Statement 805 of the College relating to prescribing of medications and of displaying a lack of knowledge of and/or a lack of skill and judgment in the practice of medicine and of demonstrating unfitness to practice medicine.

Dr. Harding's misconduct, contraventions of standards, and other professional shortcomings are gravely serious and deeply troubling. His behaviour was self-indulgent, narcissistic and exploitive.

Dr. Harding was in a position of authority in relation to both X and Y. Furthermore, their personal circumstances made them vulnerable. Dr. Harding's behaviour towards X and Y was flagrantly unprofessional, egotistical and caused them significant damage and distress.

The seriousness of Dr. Harding's misconduct must be reflected in any Order granted by the Inquiry Panel.

The Inquiry Panel has carefully reviewed the terms of the Joint Recommendation as to Penalty to ensure that the disposition contemplated by the Joint Recommendation reflects the gravely serious nature of Dr. Harding's conduct and fulfills the other objectives of orders granted under subsection 59.6 of *The Medical Act*.

Much thought and effort have been put into the Joint Recommendation by both the Investigation Committee and Dr. Harding, and their respective counsel. Its terms have been designed to address the specific circumstances referred to in the Notice of Inquiry and the Statement of Uncontested Facts and of Dr. Harding's unique problematic behaviours.

The seriousness of Dr. Harding's misconduct and his contravention of professional standards, most of which related to two vulnerable students with respect to

whom he was in a position of trust and authority, demands and requires substantial punishment.

The Joint Recommendation provides for substantial punishment in the following ways:

- (a) the reprimand pursuant to subsection 59.6(1)(a) of *The Medical Act*, which is a formal denunciation of Dr. Harding's misconduct by the Inquiry Panel;
- (b) a suspension from the practice of medicine which will last for a period of at least six months, and potentially much longer, pending the fulfillment of the rigorous conditions with which Dr. Harding must comply. The suspension, however long it may ultimately be, coupled with the fact that Dr. Harding has not practiced medicine since 2015, will have had and will continue to have a major negative financial impact upon Dr. Harding, in the form of a significant loss of income;
- (c) in terms of additional negative financial impacts, Dr. Harding will be obliged to pay any and all costs arising from or incidental to the conditions contemplated by the Joint Recommendation, and the monitoring of those conditions by the Investigation Committee and the costs of the investigation inquiry in the amount of \$125,000.00. The payment of all of those costs is an additional punitive element of the Joint Recommendation; and
- (d) publication, including Dr. Harding's name, as determined by the Investigation Committee, is also punitive given the embarrassment and disgrace associated with such publication.

A critically important purpose of orders made under subsection 59.6 of *The Medical Act* is the protection of the public, both in the sense of protecting the patients and others with whom the physician will come into contact, and in the sense of protecting the public generally by the maintenance of high standards of competence and integrity among physicians.

This critically important objective of public protection will be fulfilled by Dr. Harding's compliance with the extensive conditions set forth in the Joint Recommendation which includes:

- (a) satisfying the Investigation Committee that he has received psychiatric and/or psychological counselling to overcome the problems that may have caused or contributed to the Underlying Conduct;
- (b) participating in such counselling pursuant to strict and specific conditions;

- (c) the submission of a written assessment of his fitness and safety to practice medicine by a multi-disciplinary assessment team or program, jointly chosen and approved by the Investigation Committee and Dr. Harding, opining that Dr. Harding is fit and safe to practice medicine, which assessment must be conducted in accordance with a set of specific terms.

Furthermore, if a return to practice by Dr. Harding is to occur, his entitlement to practice medicine will be subject to a set of rigorous and specific conditions, including a prohibition against him being directly responsible for the supervision, overseeing or teaching of any medical learners, including residents or medical students from the College of Medicine, the supervision of Dr. Harding's medical practice by a practice supervisor acceptable to the Investigation Committee, and the monitoring of Dr. Harding's practice of medicine by the Investigation Committee.

The above-noted conditions have been deliberately designed to address and remediate the specific problematic behaviours and practice deficiencies of Dr. Harding. They are also intended to fulfill the objective of public protection, both in relation to individuals likely to interact with Dr. Harding in the future, and in the broader sense of maintaining the standards of the medical profession.

In reflecting upon the Joint Recommendation, the Inquiry Panel also considered an alternate potential penalty, namely, the revocation of Dr. Harding's license to practice medicine and his erasure from the Medical Register. Given the nature and extent of Dr. Harding's misconduct and the negative impact of this behaviour on both X and Y, revocation and erasure are within a reasonable range of potential outcomes in this case. However, the Inquiry Panel has concluded that the disposition contemplated by the Joint Recommendation is to be preferred over revocation and erasure for several reasons, which are:

- (a) a revocation of Dr. Harding's license cannot preclude him from applying to be reinstated at some point in the future. The current Inquiry Panel, as part of these proceedings is uniquely well-positioned to assess the Joint Recommendation and whether it is reasonable and appropriate in the circumstances. The Inquiry Panel has carefully considered the Joint Recommendation and has concluded that it is reasonable and appropriate and fulfills the objectives of Orders under subsection 59.6 of *The Medical Act*, with particular emphasis on the protection of the public;
- (b) although the College has serious concerns, specifically relating to the adequacy of Dr. Harding's medical records and his prescribing practices, the evidence giving rise to those concerns relates primarily to Dr. Harding's interactions with the medical students X and Y, and not to patients in his oncology practice. Dr. Harding's deficiencies in record keeping and prescribing reflect less on his general competence and more

on the distortion of his professional judgment, brought about by his serious boundary violations relating to X and Y;

- (c) the College 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. As noted earlier, the Joint Recommendation contains a significant punitive element. However, it also provides for the potential rehabilitation of Dr. Harding and sets forth a path, by which Dr. Harding may return to the practice of medicine, but not to teaching medical learners. Rehabilitation is appropriate in this case because there is a reasonable prospect that, given Dr. Harding's education, training and experience as a physician, he will be able to provide competent medical care to patients in a safe manner, within a properly structured clinical environment; and
- (d) there are also mitigating circumstances in this case. Prior to the matters occurring which have given rise to these proceedings, Dr. Harding had a clean disciplinary record. His ultimate decision to enter a plea of no contest, and not to submit evidence disputing the allegations in the Notice of Inquiry, represent an acceptance of responsibility for his actions and spared both X and Y the anxiety and trauma which would have been associated with contested proceedings.

Specific deterrence will be fulfilled by the punitive aspects of the Joint Recommendation and by the conditions which must be fulfilled before Dr. Harding will be entitled to return to the practice of medicine. General deterrence in the sense of educating the profession about the consequences of misconduct as set forth in the Notice of Inquiry, will be achieved by publication, as determined by the Investigation Chair.

It is therefore the conclusion of the Inquiry Panel that the Joint Recommendation fulfills the purposes and objectives of orders under subsection 59.6 of *The Medical Act*.

The Inquiry Panel also commends X and Y for their participation in the Faculty's and the College's investigative proceedings. Their involvement in those proceedings has been difficult and demanding. Their participation provided a valuable service to the Manitoba medical community, and to the public generally.

## **CONCLUSION**

Based on all of the foregoing, the Inquiry Panel has decided that the Joint Recommendation as to the Penalty made by the Investigation Committee of the College and by Dr. Harding is accepted and hereby issues an order as more fully and

particularly set forth in the Resolution and Order issued concurrently herewith and attached hereto.

DATED this 31<sup>st</sup> day of July 2018.



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

**WHEREAS** Dr. Gary Allan Joseph Harding (Dr. Harding), a member of the College of Physicians and Surgeons of Manitoba (the College), was charged with professional misconduct and with contravening By-Law No. 1 of the College, and with contravening Statement 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 with demonstrating unfitness to practice medicine, as more particularly outlined in a Notice of Inquiry dated June 21, 2017;

**AND WHEREAS** Dr. Harding was summoned and appeared before an Inquiry Panel of the College, with legal counsel, on May 29, 2018;

**AND WHEREAS** Dr. Harding entered a plea of no contest to the charges and allegations outlined in the Notice of Inquiry;

**AND WHEREAS** the Inquiry Panel reviewed and considered the exhibits filed, including a detailed Statement of Uncontested Facts, and heard submissions from the Investigation Committee of the College, and submissions from counsel for Dr. Harding, and received a Joint Recommendation as to Penalty from the Investigation Committee of the College and from Dr. Harding;

**AND WHEREAS** the Inquiry Panel decided that the Joint Recommendation as to Penalty 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*, the identities of any of the medical learners or students or any of the patients or other third parties referred to at the Hearing on May 29, 2018, or in any of the documents filed in these proceedings shall be protected by referring to them by their initials, or in some none-identifying manner.
2. Pursuant to subsection 59.6(1)(a) of *The Medical Act*, Dr. Harding is hereby reprimanded.
3. Pursuant to subsections 59.6(1)(b) of *The Medical Act*, Dr. Harding is suspended from the practice of medicine commencing at 24:00 on May 29, 2018, continuing for a period of six months.

4. Pursuant to subsection 59.6(1)(d) of *The Medical Act*, Dr. Harding shall remain suspended indefinitely, notwithstanding the six month suspension imposed in paragraph 3 hereof, until such time that Dr. Harding has demonstrated to the satisfaction of the Investigation Committee that he has received psychiatric and/or psychological counselling and/or other treatment to overcome any problem(s) that may have caused or contributed to the conduct that led to the findings of this Inquiry Panel in respect to the allegations in the Notice of Inquiry dated June 21, 2017 (the Underlying Conduct), and is fit to practice medicine;

5. Dr. Harding's participation in ongoing psychiatric and/or psychological counselling and/or other treatment must be in accordance with the following terms:

(a) Dr. Harding must demonstrate that the psychiatrist(s) and/or psychologist(s) have been provided with sufficient information pertaining to the subject matter of the discipline and any other information which, in the Investigation Committee's sole discretion, it considers relevant, including information from any other disciplinary action(s) and complaint(s).

(c) In attending for the counselling, Dr. Harding must:

(i) fully and frankly discuss and acknowledge the Underlying Conduct, including any conduct that he did not admit and/or matters in respect to which he provided false or misleading information to the College during its investigation, which is relevant to the proven allegations and findings of guilt; and

(ii) comply with any reasonable recommendations arising from psychiatric and/or psychological counselling.

6. In assessing Dr. Harding's fitness to practice medicine, the Investigation Committee will accept a written report from an assessment of his fitness and safety to practice by either the Alliance Assessment Centre or the Comprehensive Occupational Assessment Program ("COAP") or, if either of them is unwilling or unable to conduct the assessment, another multi-disciplinary assessment program team, jointly chosen and approved by the Investigation Committee and Dr. Harding (the Assessors) stating that, in the opinion of the Assessors, Dr. Harding is fit and safe to practice medicine, provided that the report:

(a) is in a form acceptable to the Investigation Committee; and

(b) addresses all issues to the satisfaction of the Investigation Committee, including, but not limited to, what, if any, conditions on Dr. Harding's entitlement to practice are recommended.

7. The assessment referred to in paragraph 6 hereof, will be at Dr. Harding's cost and his participation in the assessment must be in accordance with the following terms:

- (a) The Investigation Committee must provide to the Assessors any information in the possession of or available to the Investigation Committee pertaining to the Underlying Conduct and the decision of this Inquiry Panel and any other information in the possession of or available to the Investigation Committee which, in the Investigation Committee's sole discretion, it considers relevant, including information from any other disciplinary action(s) and complaint(s) which the Investigation Committee considers relevant;
- (b) The Investigation Committee and Dr. Harding must each provide to the other a list of all information which is provided to the Assessors, and, upon request, copies of any items on the list;
- (c) The Investigation Committee must ask that the Assessors make any requests for clarification or for additional documents or information in writing so that they may be shared with both parties;
- (d) Dr. Harding must acknowledge and fully and frankly discuss with the Assessors all conduct pertaining to the Underlying Conduct, including any conduct that he did not admit and/or matters in respect to which he provided false or misleading information to the College during its investigation which is relevant to the Statement of Uncontested Facts and Plea of No Contest, proven allegations and findings of guilt;
- (e) The Investigation Committee may, at its sole discretion, directly contact the Assessors to discuss any matters pertaining to the assessment(s) and the Assessors may directly contact the Investigation Committee. If such direct contact occurs, Dr. Harding must be invited to participate in the discussion;
- (f) The Assessors may provide to the Investigation Committee all information pertaining to and all reports resulting from the assessment. At the conclusion of the assessment, Dr. Harding or the Assessors must promptly provide to the Investigation Committee a current report from the Assessors in a form that is acceptable to the Investigation Chair. The report must address all issues to the satisfaction of the Investigation Chair, and must include an opinion on the risk of recurrence of misconduct in future practice.

8. Prior to Dr. Harding's return to practice and at Dr. Harding's cost, Dr. Harding must attend an interview with the Investigation Committee Chair or his/her delegate at the College offices for the purposes of:

- (a) discussing the Underlying Conduct, Dr. Harding's current understanding of ethical, boundary and professional issues and Dr. Harding's proposed plans for return to practice; and
- (b) allowing the Investigation Committee to further assess and decide the conditions of Dr. Harding's licensure upon return to practice as described in paragraph 9 below.

9. Pursuant to subsections 59.6(1)(e) of *The Medical Act*, upon Dr. Harding's return to practice, the following conditions are imposed upon Dr. Harding's entitlement to practice medicine:

- (a) Dr. Harding will not, under any circumstance, be directly responsible for the supervision, overseeing or teaching of any medical learners, including residents or medical students from the College of Medicine at any time;
- (b) Dr. Harding's communication with medical learners who are under the supervision of other physicians will be strictly limited to receiving information about specific patients and their care except as follows:
  - (i) If a medical learner initiates communication with Dr. Harding regarding a specific patient, Dr. Harding may interact with that medical learner to receive and clarify the information to allow the patient's medical need(s) to be met;
  - (ii) Communication must be limited to the discussion of specific information about a specific patient in relation to the patient's care;
  - (iii) If Dr. Harding determines that further follow-up communication is needed to best meet the patient's needs, the follow-up communication must be limited to the medical learner's attending physician where possible;
  - (iv) Dr. Harding may similarly receive information about specific patients requiring his attention from learners in other healthcare professions, but any further follow-up communication initiated by Dr. Harding must be limited to the learner's supervisor where possible.

- (c) Dr. Harding will not communicate with patients or patients' families outside of his medical practice or as may be required in relation to urgent on-call medical issues which require input. Dr. Harding will not provide any mental health counselling or psychotherapeutic services to any patients beyond what would reasonably be expected in the context of an oncology practice;
- (d) A practice supervisor acceptable to the Investigation Committee must supervise Dr. Harding's practice as determined by the Investigation Committee in whatever setting in which he is practicing;
- (e) The practice supervisor must agree to provide the Investigation Committee with progress reports on a schedule determined by the Investigation Chair indicating compliance with the practice conditions set out above;
- (f) Dr. Harding will not engage in solo practice and must practice in a group setting with physician colleagues who have confirmed in writing their awareness of his discipline history;
- (g) Dr. Harding must notify all clinical and office staff at Dr. Harding's practice location(s) of the conditions imposed on Dr. Harding's entitlement to practice medicine in a form and with content acceptable to the Investigation Committee;
- (h) Dr. Harding shall obtain treatment or undertake counselling as recommended by the Assessors;
- (i) The Investigation Committee shall monitor Dr. Harding's practice of medicine, including his compliance with the conditions herein, and Dr. Harding shall report to the Investigation committee as reasonably required;
- (j) The Investigation Committee will have full and complete authority to vary these terms and conditions, provided that the onus is on Dr. Harding to prove that variance is in the public interest.

10. Pursuant to subsection 59.6(2) of *The Medical Act*, Dr. Harding shall pay any and all costs arising from or incidental to the conditions described in this Resolution and Order of this Inquiry Panel and the monitoring of those conditions by the Investigation Committee.

11. If there is any disagreement between the parties respecting any aspect of this 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.

12. Pursuant to subsection 59.7 of *The Medical Act*, Dr. Harding must pay to the College the costs of the investigation and inquiry in the amount of \$125,000, payable in full by certified cheque or Dr. Harding's lawyer's firm's trust cheque within six months of the date on which Dr. Harding resumes practice and, in any event, no later than on or before January 31, 2021, whether or not Dr. Harding resumes practice in the interim.

13. There will be publication in the usual course as set out in *The Medical Act*, including Dr. Harding's name, as determined by the Investigation Committee.

14. The College, at its sole discretion, may provide information regarding this disposition to such person(s) or body(ies) as it considers appropriate.

DATED this 31<sup>st</sup> day of July 2018.