

IN MATTER OF: *THE MEDICAL ACT, C.C.S.M. c. M90*

AND IN THE MATTER OF: DR. NASEER AHMED WARRAICH, a member of the
College of Physicians and Surgeons of Manitoba

AND IN THE MATTER OF: An Amended Notice of Inquiry dated December 7,
2018

INQUIRY PANEL:

Dr. Carry Martens-Barnes, Chairperson

Dr. Valerie St. John

Russ Toews, Public Representative

**REASONS FOR DECISION OF AN INQUIRY PANEL OF THE
COLLEGE OF PHYSICIANS AND SURGEONS OF MANITOBA
RE: ORDERS UNDER S.59.6 AND S.59.7 OF *THE MEDICAL ACT***

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RE: ORDERS UNDER S.59.6 AND S.59.7 OF THE MEDICAL ACT

INTRODUCTION

A hearing into allegations against Dr. Warraich outlined in an Amended Notice of Inquiry dated December 7, 2018 proceeded before this Inquiry Panel (the “Panel”) over a four day period in January, 2020. There were six counts in the Amended Notice of Inquiry. Dr. Warraich, through his counsel, had pleaded guilty to Counts 1, 4, 5, and 6 of the Amended Notice of Inquiry and had pleaded not guilty to Counts 2 and 3 in the Amended Notice of Inquiry.

On October 1, 2020, following completion of the hearing and the receipt of written submissions from the Investigation Committee of the College (the “Investigation Committee”) and from Dr. Warraich, the Panel issued a Resolution and Order and Reasons for Decision in these proceedings. Pursuant to the Resolution and Order the Panel decided that Dr. Warraich was guilty of:

- (i) Failing to demonstrate that he had provided adequate care to his patients and/or failed to create and maintain adequate medical records, such that his records did not allow for a comprehensive assessment of the nature and extent of the care he was providing to his patients. Dr. Warraich had thereby failed to meet the standards of the profession and breached the record keeping requirements of By-Law 1 and By-Law 11 of the College and displayed a lack of knowledge, skill and/or judgment in the practice of medicine.
- (ii) Failing to meet the standard of care in his management and treatment of a specific patient between in or about November, 2017 and March, 2018 in that he had failed to adequately diagnose, manage and treat that patient’s tuberculosis and had failed to create and maintain adequate medical records. Dr. Warraich thereby

breached the record keeping requirements of By-Law 1 and By-Law 11 of the College.

- (iii) Displaying a lack of knowledge, skill and/or judgment in the practice of medicine and/or creating false and/or misleading medical records. Dr. Warraich had thereby breached the record keeping requirements of By-Law 1 of the College and had committed acts of professional misconduct between on or about May 7 and May 15, 2015, when he was the most responsible physician for the care and management of another patient in his capacity as a hospitalist as particularized in Count 3 of the Amended Notice of Inquiry dated December 7, 2018.
- (iv) Engaging in unethical and inappropriate billing practices between in or about September, 2013 and September, 2016. During that period Dr. Warraich had arranged for claims for services purportedly provided by him to residents in personal care homes to be routinely submitted to Manitoba Health as visits to those patients, when he had not, in fact seen or examined the patients for whom he billed a visit. Dr. Warraich thereby committed acts of professional misconduct.
- (v) Breaching the record keeping requirements of the College's by-laws and of committing acts of professional misconduct in that, between in or about September, 2013 and September, 2016, in relation to his attendance at one of the personal care homes to which he attended weekly, Dr. Warraich had created medical records which were misleading by routinely documenting information in charts which suggested he had conducted assessments, examinations and/or provided care to various patients when, in fact he had not.
- (vi) Displaying a lack of knowledge of or a lack of skill and judgment in the practice of medicine by reason of the findings of guilt in relation to various of the matters referred to in the Amended Notice of Inquiry.

Thereafter, between late January, 2021 and March, 2021, the Panel received detailed written submissions from both the Investigation Committee and from Dr. Warraich and additional evidence (an affidavit sworn February 12, 2021 by the Coordinator for the Complaints and Investigation Department of the College) with respect to the orders which should be made by the Panel under s.59.6 and 59.7 of *The Medical Act* (the "Act").

As part of their written submissions, both the Investigation Committee and Dr. Warraich included submissions with respect to the costs, if any, which should be payable by Dr. Warraich in relation to these proceedings.

Based on the decision of, and the findings made by the Panel, as set forth in its Reasons for Decision dated October 1, 2020, the Investigation Committee submitted that the following orders should be granted under s.59.6 and s.59.7 of the Act:

- (i) A reprimand under ss.59.6(1)(a);
- (ii) Cancellation of Dr. Warraich's registration under ss.59.6(c)(g);
- (iii) A fine to be paid by Dr. Warraich in the amount of \$10,000 under ss.59.7(1)(b);
- (iv) An order requiring Dr. Warraich to pay the cost of the investigation and hearing in the amount of \$245,000, including the cost of the penalty phase of the proceedings under ss.59.7(1)(a).

In contrast, Dr. Warraich submitted that an appropriate disposition under s.59.6 and s.59.7 of the Act, would consist of:

- (i) A reprimand under ss.59.6(1);
- (ii) A suspension for a period of 4 - 6 months under ss.59.6(1)(b);
- (iii) A remedial education plan under ss.59.6(1)(e);

- (iv) An order of costs in the range of \$40,000 to \$50,000 under ss.59.7(1)(a);
- (v) Attendant publication of the Panel's Reasons.

THE OBJECTIVES OF S.59.6 ORDERS

Before outlining and commenting on the positions of the parties with respect to the order or orders which would be appropriate in this case, it is useful to consider the objectives and purposes of orders under s.59.6 of the Act. Those objectives include:

- (a) The protection of the public. This is the primary purpose of orders under s.59.6 of the Act. Such orders 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) Preserving the public trust, in the sense of preventing the 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 s.59.6 of the Act, meaning that the penalty must be proportionate to the specific misconduct involved in the case in question; and
- (h) Consistency in sentencing, meaning that imposition of similar penalties for similar misconduct. However, it also must be recognized that each case must be decided on the basis of its own unique facts.

The above noted objectives do not constitute an exhaustive list. There are other factors which may be applicable in specific cases. Factors which may be relevant in this case are:

- (a) The nature of the misconduct and the circumstances in which the misconduct occurred;
- (b) Whether or not Dr. Warraich has acknowledged the seriousness of what occurred.

THE POSITIONS OF THE PARTIES

The written submissions of both the Investigation Committee and Dr. Warraich were lengthy and detailed. It is not necessary to outline all of the arguments which were presented. Nonetheless a summary of the primary arguments of both parties will provide a useful context for the Panel's decision.

The Positions of the Investigation Committee

The submissions of the Investigation Committee were based, to a significant extent, on the numerous deficiencies in Dr. Warraich's practice and multiple instances of misconduct by Dr. Warraich as found by the Panel, and the fact that the nature of the proven deficiencies and misconduct were diverse and variable. As a result, the Investigation Committee argued that:

"143. From a public protection perspective, the disposition must address the full nature and extent of Dr. Warraich's proven deficiencies and misconduct. From what can be gleaned about Dr. Warraich's patient management despite his

deficient record keeping, there are clear patient safety concerns. This context is further aggravated by Dr. Warraich's lack of integrity as evidenced by his unreliable testimony, inappropriate billing practices and often misleading record keeping. The Panel's findings reflect:

- (a) widespread, persistent, pervasive and intractable deficiencies in Dr. Warraich's skill, knowledge and judgment;
- (b) additional concerns regarding his skills, knowledge and judgment that could not be comprehensively assessed by the Investigation Committee due to the poor quality of Dr. Warraich's record keeping;
- (c) integrity concerns related to Dr. Warraich's proven misconduct, including the profound unreliability of his records and his misguided and problematic response to this inquiry; and
- (d) dishonesty in his dealings with the College (his governing body) and providing false testimony to the Panel."

Dr. Warraich participated in an assessment by the Clinical Assessment Program Continuing Competency and Assessment ("CAPE") conducted through the Rady Faculty of Health Sciences at the University of Manitoba in November, 2019. The Investigation Committee has pointed out that this was approximately four years after he had been requested to do so by the College. The report from that assessment was issued on January 29, 2020 and provided to the Panel on February 21, 2020 after the four-day hearing of the contested charges had concluded. The Assessment Summary contained the following comments:

"ASSESSMENT SUMMARY

Performance on tests of general medical knowledge (PLAS and Therapeutics) indicate a reasonable base of knowledge for a practicing physician. Identified areas of weakness in health maintenance and risk assessment, behavioural health, obesity, physical examinations and pharmaceutical safety are recommended targets for ongoing professional development. Reviews of current practice guidelines for chronic disease prevention and management are encouraged.

Performance in the Knowledge - in - Action components of the assessment (SOI and CCE) identified several areas of performance that do not meet expectations for a physician in practice. Assessors in the Structured Oral Interview noted that general medical knowledge appeared appropriate; however, the approach to data collection was disorganized and lacked a logical structure. This resulted in missed information for history and physical examinations. While initial hypotheses were sufficiently broad to consider most important conditions, the data collection did not explore the potential diagnoses as expected. Data presented from laboratory findings or other investigations were not always integrated fully into the clinical picture of the patient. Management plans were insufficient.

...

Results of the CAPE indicate that while medical knowledge is within acceptable limits, difficulties in the clinical reasoning process, and selectivity may be effecting performance. Difficulties in identifying cues and directing data gathering effected both the SOI and the CCE, with disorganized interviews, lack of a clear, logical approach and lack of use of differential diagnoses to guide the encounters. While history taking scored in acceptable limits, the challenges with focus and directed questioning resulted in longer than expected interviews. When combined with abbreviated physical examinations, there is increased potential to miss key features of a diagnosis or condition. Management plans lacked key details to sufficiently investigate the differential diagnoses or ensure ongoing patient safety.”

In its written submissions, the Investigation Committee made the following comments, among others, relating to the CAPE Assessment:

“135. One of the noted limitations of CAPE of great significance in this context is that it measures the physician’s competence under assessment, rather than in their usual practice (e.g. the observer effect):

Please note that CAPE assesses demonstrated competence i.e. what you “can do”, it does not assess performance or what you “actually do” in every day practice.”

CAPE provided a plan for remediation based on the findings of its assessment. The Investigation Committee outlined its position with respect to the remediation plan based on the CAPE assessment in its written submissions, wherein it stated:

“144. In terms of CAPE, it is clear that the remediation program proposed by the Clinician Assessment Programs at the University of Manitoba does not and was not intended to comprehensively address all of the Panel’s findings in the circumstances of this case. While the program does address clinical skills, knowledge and judgment concerns arising from its independent assessment process, which is noted to be of particular relevance to Count 1, it does not go far enough. Most significantly, it does not address the problematic interplay between the totality of Dr. Warraich’s deficiencies in practice and his lack of integrity.

145. It suffices to say that Ms Macleod Schroeder is not in a position to opine on the issue of Dr. Warraich’s actual prospects of successfully improving his practice, particularly in the context of the additional findings of the Panel and his discipline history. The Investigation Committee’s position is that his past history and the findings of the Panel established that his remedial prospects are very low. As such and in the context of the Panel’s findings, his registration must be cancelled. In this regard the Panel must consider the following in determining Dr. Warraich’s remedial prospects as they relate to CAPE:

- (a) respecting PEARLS, Ms Macleod Schroeder commented that, “this activity does require self-direction; self-directed learning as required of all health professionals in order to stay current in practice once training is completed.” She further wrote:

Ultimately, changing practice is up to the physician. The program can provide the education and chance to practice skills; however, the physician must work to integrate these into practice, and be committed to changing practice based on new knowledge.

The Panel's findings reflect that Dr. Warraich's self-directed outcomes have been poor. He has had multiple chances to improve such that he is practicing in accordance with prevailing standards.

- (b) neither CAPE nor the remediation plan address serious integrity concerns that permeate Dr. Warraich's practice, and which manifested in his participation in College proceedings.

146. The appropriateness of revocation in this case is chiefly based on the cumulative effect of the conduct underlying this matter, which reveals long standing deficiencies, many of which have proved to be resistant to remediation. Much of Dr. Warraich's misconduct occurred while he was subject to an undertaking to the College that required supervision by another member and compliance with record keeping standards. Other serious factors include Dr. Warraich's troubling approach to the hearing and his disciplinary record. His prior disciplinary history is another of the many factors in support of revocation."

The Investigation Committee also included in their written submissions a section entitled "Unethical and Inappropriate Billing Practices". The Investigation Committee submitted that:

"89. Unethical and inappropriate billing practices, including billing fraud, which result in depriving government funded health programs are considered very serious offences. This conduct is an insult to honest physicians who make up the vast majority of the profession and to the trust that society places in physicians. The penalty for such misconduct ranges from significant periods of suspension to revocation and the focus is denunciation and deterrence."

In further support of its position that Dr. Warraich's registration should be cancelled, the Investigation Committee argued that:

"153. Attempting to find a penalty less than revocation that would appropriately ensure public confidence in the profession's ability to self-regulate and a framework within which Dr. Warraich could safely practice medicine in the long term would not be an appropriate pursuit. Such a course of

action is inconsistent with the Panel's overriding public interest mandate.

154. In summary, Dr. Warraich's conduct is not consistent with the privilege of continuing membership in the medical profession. The public should not be expected to tolerate the College granting Dr. Warraich the continued privilege to practice medicine in the face of clear and convincing evidence that he cannot comply with core standards, even after remediation and while under supervision."

In support of its request for a fine in the amount of \$10,000, the Investigation Committee pointed to the "substantial financial gain to Dr. Warraich from his unethical and inappropriate billing practices.

With respect to the issue of costs, the Investigation Committee urged the Panel to give effect to the principle that a member of the medical profession who is found to have committed any act of professional misconduct and/or other conduct listed in s.59.5 of the Act should bear the costs of the process as opposed to the membership of the profession as a whole.

The Investigation Committee also submitted that:

"179. A very important factor in relation to the nature and extent of the costs which should be ordered as against Dr. Warraich is his deficient charting and the extent to which it and Dr. Warraich's approach to his oral testimony made it extremely difficult for the Panel to determine what care he actually provided to Patients 1 and 2. In terms of all of the Counts, Dr. Warraich's inadequate documentation had a direct and profound negative impact on the efforts required on the part of all concerned throughout both the investigation and the hearing, including auditors, expert witnesses and the Panel to identify and address the issues.

180. In terms of facilitating an efficient hearing:

- (a) Dr. Warraich requested and was granted numerous adjournments.
- (b) He brought an unsuccessful severance motion.
- (c) A Statement of Agreed Facts was submitted.

- (d) Agreed Documents were filed.
- (e) The Panel has found Dr. Warraich guilty of the vast majority of allegations contained in the Notice of Inquiry, including those that were contested.
- (f) There is a significant financial aspect to Dr. Warraich's misconduct which involved him being paid very large sums for services he did not provide.
- (g) Dr. Warraich's failure to keep appropriate medical records greatly impeded the investigation and hearing of this matter.
- (h) The profession should not bear the cost of the investigation and hearing."

In its written submissions, the Investigation Committee also addressed the eventuality that the Panel may not accept its position on revocation. While making it very clear that it considered revocation to be the appropriate penalty, the Investigation Committee felt "compelled to address what would be essential remedial and public protection orders in the event Dr. Warraich is allowed to practice". It did so as follows:

"157. Should the Panel determine revocation is not warranted, the Investigation Committee submits the following orders are required:

- (a) Reprimand [ss.59.6(1)(a)];
- (b) Suspension for a fixed period of at least eighteen (18) months to commence on a date to be set by the Chair following issuance of the Panel's order [ss.59.6(1)(b)];
- (c) Imposition of conditions on Dr. Warraich's Certificate of Practice as permitted under The Medical Act under these subsections:
 - (i) limit his practice [ss.59.6(1)(e)(i)];
 - (ii) practice under supervision [ss.59.6(1)(e)(ii)];

- (iii) not engage in solo practice [ss.59.6(1)(e)(iii)];
 - (iv) permit periodic audit of records [ss.59.6(1)(e)(v)];
 - (v) report to the Investigation Committee on certain matters [ss.59.6(1)(e)(vi)];
 - (vi) complete a particular course of studies or obtain supervised clinical experience, or both to the satisfaction of the Chair [ss.59.6(1)(e)(vii)];
- (d) Dr. Warraich will pay all costs incurred by the College in monitoring conditions imposed on his Certificate of Practice [ss.59.6(2)];
 - (e) Dr. Warraich will pay for the full cost of the investigation and hearing [ss.59.7(1)];
 - (f) Dr. Warraich will be fined in the amount of \$10,000.”

The Submissions of Dr. Warraich

Paragraphs 1 - 4 of Dr. Warraich’s written submissions provided a useful overview of his position with respect to the sanctions which should be imposed upon him as a result of the findings which the Panel has previously made in these proceedings:

“1. Following a complaint process that began in 2015, a motion for severance, a motion to adjourn and a 4 day hearing in January 2020, Dr. Warraich was found guilty of a number of charges issued pursuant to the Medical Act. Dr. Warraich plead guilty to most of the charges in the Notice of Inquiry and was successful in defending some of them. He was cooperative with the College investigation, including requests for limits on his practice and with respect to requests he undergo education. As evidenced by an affidavit he swore in October 2019 which was submitted to the Panel when he was seeking an adjournment, his behavior before the Panel at the hearing and in subsequent communications he made directly to the Panel, he found the process and allegations distressing.

2. The level of punishment that the “Investigation Committee” now seeks as consequence of the Panel findings is disproportionate to the nature of the charges and the facts. The bulk of the charges and subsequent findings relate to allegations of “lack of knowledge, skill and judgement” to practice medicine. Dr. Warraich participated in a Clinical Assessment and Professional Enhancement at the University of Manitoba, and while improvements to his practice were recommended, he “passed”. As such while this Panel may have concerns about his charting and billing, together with concerns about the ethical lapses which were found, neither the findings of the Panel do not warrant cancellation of his registration and licence to practice as requested by the Investigation Committee.

3. The Investigation Committee seeks costs in an amount which is disproportionate to the allegations made and the amount requested is in itself further punishment. It is hardly surprising that a physician already under stress would respond to such a penalty submission with further distress. This does not excuse his behavior post charge. However, it is our submission that the stress imposed by the process should not be used to further punish the physician. Moreover, the submission by the Investigation Committee in putting post hearing behaviour to the Panel in an affidavit and then seeking additional costs as a result of it, and pointing to that behavior to support their request for cancellation of his licence is not merited and is unduly punitive. Dr. Warraich acknowledges that how he expressed those concerns to the Panel was nevertheless not appropriate.

4. Dr. Warraich has from the outset of the investigation admitted to a number of errors including the ethical and documentation issues. He offered to plead guilty to 4 of the 6 charges as soon as the Notice of Inquiry issued. He was entitled to dispute those charges with which he disagreed. He was in fact successful in demonstrating that the Investigation Committee selection of an expert who had previously audited his was not best practice and gave rise to a concern about partiality, independence and bias, and was successful in defending some of the charges, specifically those relating to his care of Patient 1. He was not found guilty with respect to deficiencies in his medical decision making with respect to Patient 2 other than as it related to a finding that he failed to physically examine the patient. That he was unsuccessful on some of the charges is deserving of penalty but is not

deserving of loss of his licence to practice as is submitted by the Investigation Committee.”

Dr. Warraich addressed issues relating to public protection and rehabilitation by referring to the CAPE assessment, his willingness to participate in a proposed education plan based on that assessment, and the current limits on his practice, at paragraphs 81 through 87 of his written submissions. Those paragraphs stated:

“81. Dr. Warraich has made it clear to both Ms. Macleod Schroeder and counsel for the Investigation Committee that he is agreeable to the remediation plan proposed, and he wishes to commence the program as soon as possible.

82. The CAPE findings make it clear that Dr. Warraich met the minimum standard in most areas of the assessment, and the remediation plan, which Dr. Warraich has consented to undergoing, is intended to improve Dr. Warraich’s skills in the areas in which he could improve.

83. Dr. Warraich has admitted his deficiencies in charting, and while taking steps to remedy this, also recognizes that it is a process to change long ingrained habits. The Investigation Committee has conducted numerous investigations into Dr. Warraich’s charting and Dr. Warraich agreed to an undertaking dated September 30, 2016. The additional orders sought by the Investigation Committee mimic the terms of this undertaking already agreed to by Dr. Warraich.

84. Moreover, Dr. Warraich signed an undertaking dated October 14, 2019 to undergo the CAPE assessment, which he did in November of 2019. Following the CAPE assessment, Dr. Warraich has agreed to complete the remediation plan proposed by the CAPE director, Ms. Macleod Schroeder. Including these conditions in an order from this Panel would be redundant and unnecessary, given Dr. Warraich’s previous agreement.

85. The Education he has undertaken, and which he is prepared to continue, address the two factors the Panel is to consider regarding the prospect for rehabilitation and the safety of the Public. The safety of the public is a key factor for the Panel to consider. The findings of the Panel that there was a lack of care, skill and judgment needs to be addressed. In considering how to address it, the Panel is urged to consider

the findings of the CAPE assessment and the subsequent educational plan. The assessment did not find a lack of general competency which might have triggered an immediate removal from practice, in order to address public safety concerns. In fact he has continued to practice since the CAPE assessment in 2019. He has continued to practice since 2015 when the Investigation Committee first learned of concerns. He has continued to practice over the course of five audits. If the public safety concerns were such that he should not practice, the College would have chosen to interim suspended him. Instead, they asked that he agree to supervision and to education. These were appropriate steps to protect the public. As such, the Panel can be reassured that they can address public safety by requiring him to continue with education and supervision.

86. This also recognizes that Dr. Warraich is a candidate for rehabilitation and that the rehabilitative measures proposed will serve to keep the public safe.

87. Dr. Warraich has been practicing with limits on his practice since January 2016 and further limits since September 30, 2016, and as such has already been penalized by these conditions. The terms of this undertaking have been and are more than sufficient to protect the public. There were no complaints about his practice between January 2016 and December 2020. In essence Dr. Warraich has been punished by this undertaking. At the same time any order of this Panel should reflect the evidence it heard at the Hearing and should be tailored to address the issues before it, and not simply follow a past imposition of limitations which were imposed while the investigation continued.”

In his written submissions, Dr. Warraich specifically disagreed with the College’s position that his registration ought to be cancelled. Paragraphs 101, 102 and 108 articulated his position:

“101. Cancellation or revocation of Dr. Warraich’s certificate of registration to practice medicine is the most extreme order that can be sought against a physician. This type of penalty is only warranted in the most serious of infractions, which are not present in this case. Other lesser penalties, which will preserve the Investigation Committee’s public protection mandate, need to be considered first.

102. Dr. Warraich strongly disagrees with counsel for the Investigation Committee's submission that there is not a penalty less than revocation that would be appropriate to ensure public confidence in the profession.

...

108. The suggestion by the Investigation Committee that Dr. Warraich is unamenable or resistant to remediation, in support of revocation of his registration, is simply untrue. Dr. Warraich has continuously attended all educational remedial programs that have been requested of him, he has subjected himself to numerous audits conducted on his practice, and he has been practicing under the conditions imposed pursuant to the September 30, 2016 undertaking."

Dr. Warraich's position on costs was outlined in paragraphs 143, 144, 150, 157 and 160 of his written submissions:

"143. The awarding of costs to an investigating body is discretionary. It is well established in the jurisprudence that administrative decision makers are to exercise that discretion in a judicial manner. In other words, administrative decision makers should order costs in a manner that is fair and reasonable, and does not use the imposition of costs as a means to penalize the member.

144. It has also been stressed that costs should not be so prohibitive as to prevent a member from defending his or her right to practice in a chosen profession, or from being able to dispute misconduct charges.

...

150. As noted, one of the salient factors in considering an order for costs is the success of the parties in relation to the charges. Following Dr. Warraich's guilty plea on Counts 1, 4, 5 and 6, this Panel dismissed the allegations that Dr. Warraich failed to meet an acceptable standard of care in the management and treatment of Patient 1's congestive heart failure, and that Dr. Warraich displayed a lack of knowledge, skill and judgment in the practice of medicine. As such, Dr. Warraich should not bear the costs related to the allegations which were rightfully found to be not proven.

...

157. It is Dr. Warraich's position that the following considerations ought to apply in determining a reasonable quantum of costs in the present case:

- a. The costs claimed are excessive and disproportionate for a severance motion and a 4-day hearing;
- b. That from as early as December 2013, and throughout the course of this matter, Dr. Warraich has admitted his charting is poor and recognizes there is room for improvement;
- c. Dr. Warraich pleaded guilty to Counts 1, 4, 5 and 6, which significantly expedited the hearing;
- d. Dr. Warraich was successful in defending allegations relating to Count 2; and
- e. The financial consequences of revocation or suspension of Dr. Warraich's licence, whichever is awarded by this Panel.

...

160. A costs award for full indemnity would be inappropriate and strictly punitive, given the foregoing. Dr. Warraich requests that this Panel award costs in the range of \$40,000 - \$50,000, which would take into consideration all of the factors outlined above and would therefore be in accordance with the principles of cost awards as set out in the case law."

Dr. Warraich summarized his overall position relating to the sanctions which should be imposed upon him in the concluding paragraph of his written submissions:

"161. For all of the above reasons, Dr. Warraich submits that there can be no doubt that the appropriate penalty is a reprimand, a 4-6 month suspension, and a period of education and supervision. There can also be no doubt that Dr. Warraich has taken the issues seriously, and his actions demonstrate the profound impact this investigation and these findings have had on him. There can be no doubt that punishment has been felt by him from the findings of the Panel and the threat of punishment as outlined in the College submission. This Panel therefore does not need to take the extreme penalty that the Investigation Committee seeks."

ANALYSIS

The additional evidence which was filed by the Investigation Committee (an affidavit sworn on February 12, 2021 by the Coordinator for the Complaints and Investigation Department of the College) attached several e-mail communications sent by Dr. Warraich in late January, 2021 to various individuals, some of whom were associated with the College. Although those communications were undoubtedly significant and important to the College in relation to steps which the College took in late January, 2021 which have impacted and will continue to impact Dr. Warraich's eligibility to practice medicine, the Panel has chosen not to rely on those communications in making its decisions with respect to the orders which it should grant under S.59.6 and S.59.7 of the Act. Instead the Panel has relied on the factual findings which it made as outlined in its Reasons for Decision dated October 1, 2020 and has attempted to apply the principles which were referred to by the parties in their written submissions, to the facts so found.

An extremely concerning feature of this case is the significant number of deficiencies in Dr. Warraich's practice coupled with multiple examples of misconduct. Moreover, the nature and character of the deficiencies and misconduct were diverse and variable.

Dr. Warraich's charting and record keeping remains seriously substandard, notwithstanding the College's efforts and his own efforts to have him improve in that area. The Panel wishes to emphasize that Dr. Warraich's deficiencies in record keeping, including but not limited to his misuse of "macros" is not simply a technical, easily remedied shortcoming. Record keeping and charting pursuant to the standards set forth in the applicable College By-Laws are essential components of adequate medical care. Non-compliance with those standards by Dr. Warraich, particularly for extended periods after he has become aware of his deficiencies is a very serious matter.

Dr. Warraich failed to meet the standard of care in his management and treatment of a patient with tuberculosis between November, 2017 and March, 2018. He also failed or neglected to conduct a physical examination of a patient in May, 2015, when he was the most responsible physician for the care and management of that patient. In

addition, he also created a false and misleading medical record relating to his attendances on that patient.

Furthermore Dr. Warraich engaged in unethical and inappropriate billing practices relating to residents in personal care homes over a period of approximately three years between September, 2013 and September, 2016. Over that same three-year period he created misleading medical records suggesting he had conducted assessments and examinations of various residents, when he had not.

The diverse nature of the deficiencies in his practice and of his misconduct raise serious questions as to whether Dr. Warraich can be rehabilitated to the degree necessary to ensure that he will be able to practice in compliance with current professional standards.

Dr. Warraich has argued that there are two very important factors present in this case which mean that cancellation of his registration is not necessary, namely the results of the CAPE assessment and his willingness to participate in a remedial education plan based on the CAPE assessment.

The Panel does not accept the arguments of Dr. Warraich which rely on the CAPE assessment and the remedial education plan based on that assessment. The Panel's reasons are outlined below.

1. The results of Dr. Warraich's CAPE assessment were not stellar. Significant deficiencies in his practice were identified.
2. The CAPE assessment is subject to explicitly stated limitations, including that such assessments attempt to measure a physician's competence in an assessment setting, not in that physician's practice setting. CAPE assesses what a physician "can do", not what a physician actually does in his or her practice.
3. The remediation plan based on the CAPE assessment understandably address the problem areas identified during the assessment. The

remediation plan does not address or purport to address all of the shortcomings and misconduct which had been established in these proceedings.

4. Portions of the remedial plan based on the CAPE assessment require self directed learning. However Dr. Warraich's self directed education efforts in the past (such as taking courses relating to charting and medical record keeping) have not resulted in Dr. Warraich being able to meet the applicable standards of practice. Moreover, although Dr. Warraich has been practicing with limits on his practice (including supervision) as outlined in the terms of an undertaking which has been in effect since September 30, 2016, those limits have not been sufficient to prevent ongoing deficiencies in his charting and medical record keeping and did not prevent him from failing to adequately diagnose, manage and treat the patient with tuberculosis between March, 2017 and March, 2018.
5. The Panel also agrees with the Investigation Committee's comments that the rehabilitation plan based on the CAPE assessment "does not address the problematic interplay between the totality of Dr. Warraich's deficiencies in practice and his lack of integrity."

A lack of integrity on the part of Dr. Warraich is also of profound concern to the Panel. The lack of integrity was evident in some stark and obvious ways. His guilty pleas relating to the counts in the Amended Notice of Inquiry relating to engaging in unethical and inappropriate billing practices, involving claims for services to residents in personal care homes and his creation of misleading medical records suggesting assessments and examinations had been conducted when they had not, are conspicuous examples of dishonesty.

Also troubling was Dr. Warraich's adamant insistence, when testifying at the hearing, that he could remember precise details of many of his interactions with the tuberculosis patient which had occurred over two years prior to his

testimony, although such interactions were not recorded in the applicable medical charts. Those assertions by Dr. Warraich were dubious and were specifically rejected by the Panel. Similarly Dr. Warraich's testimony relating to conducting several physical examinations of the patient under his care in his capacity as a hospitalist between May 8 and May 15, 2015, was not accepted as credible by the Panel.

All of the above noted factors have formed the basis for the Panel's conclusion that a remedial education plan based on the CAPE assessment would be inadequate to ensure that Dr. Warraich would be able to practice safely and competently and in conformity with the prevailing standards of the medical profession.

Several of those factors (1, 3, 4 and 5) also compel the Panel to conclude that a suspension, followed by a return to practice under strict conditions, including rigorous supervision, would be inadequate to properly protect the public. A suspension and a return to practice under strict conditions would also not fulfil some of the other objectives of orders under S.59.6 of the Act, including specific deterrence, and preserving the public's trust in the medical profession's ability to regulate itself.

With specific reference to the issue of supervision, the Panel has concluded that the deficiencies in Dr. Warraich's practice, and his misconduct extend beyond the type of shortcomings which can be reasonably remedied by a period of supervision, regardless of the length of the supervision or the strictness of any conditions to be imposed.

The Panel has carefully considered whether there is a reasonable prospect that Dr. Warraich can be rehabilitated in the sense of being able to practice medicine safely, in conformity with the current standards of the profession.

Based on its detailed Reasons for Decision dated October 1, 2020 and its findings and conclusions in relation to all of the counts in the Amended Notice of Inquiry and its consideration of the submissions with respect to sanctions submitted by both

parties, the Panel has concluded that it is very unlikely that Dr. Warraich can be so rehabilitated.

In reaching that conclusion, the Panel has been mindful that between September 30, 2016 and January, 2021, Dr. Warraich had been practicing pursuant to an undertaking, which imposed significant restrictions on his practice, including among other things:

- (i) limits in relation to his office practice on the number of patients to be seen per hour and the number of patients to be seen per day;
- (ii) limits in relation to his office practice on the number of days per week he could practice;
- (iii) limits relating to his attendances at a personal care home on the number of patients to be seen per hour and per day;
- (iv) extensive and specific requirements relating to record keeping;
- (v) the establishment of a tracking system in his office with specifically enumerated requirements;
- (vi) on site practice supervision by a designated "Practice Supervisor" with specifically enumerated requirements relating to supervision;
- (vii) monitoring of Dr. Warraich's compliance with the undertaking by the Investigation Chair of the College.

Notwithstanding the restrictions and requirements of the undertaking, and the opportunity for Dr. Warraich to regularly communicate with and seek guidance from the Practice Supervisor, Dr. Warraich's record keeping (although demonstrating some improvement) remained substandard, and Dr. Warraich failed to properly diagnose, manage and treat the tuberculosis patient between November, 2017 to March, 2018.

Accordingly the Panel has concluded that placing restrictions on his practice, including a requirement of supervision, will be inadequate to ensure that Dr. Warraich practices safely and in conformity with the current standards of the profession.

This conclusion is reinforced by a consideration of Dr. Warraich's professional conduct history. In 2006 Dr. Warraich was convicted of professional misconduct for countersigning prescriptions for patients in the United States, without seeing the patients. Dr. Warraich attempted to mislead the College regarding his involvement. He ultimately pleaded guilty and was suspended from practice for two months and ordered to pay costs.

The Panel recognizes that the 2006 conviction occurred approximately fifteen years ago, and that the nature of Dr. Warraich's misconduct at that time was different from any of the conduct referred to in these proceedings. Nonetheless the 2006 conviction, coupled with the fact that Dr. Warraich has again been found guilty of multiple acts of misconduct and of breaching various standards and by-laws, is either indicative of a persistent disregard for the standards of the profession or an alarming lack of insight into the fundamental importance of complying with such standards. Those factors are relevant considerations with respect to whether Dr. Warraich can be rehabilitated at this stage of his career.

Based on the foregoing, the Panel has concluded that it is very unlikely that Dr. Warraich can be rehabilitated. The Panel has also concluded that given the diverse nature of the findings which have been made against him, this is not a case which the public good will be served by allowing Dr. Warraich to provide medical services to the public.

The orders which are required in this case to fulfil the objectives of orders under S.59.6 of the Act include a reprimand, the cancellation of Dr. Warraich's registration and a fine in the amount of \$10,000. There are elements of punishment and specific and general deterrence in the above noted disposition, but the overriding objective of the Panel in reaching its decision has been the protection of the public.

COSTS

Insofar as costs are concerned, the costs of the investigation and hearing were significant. The deficiencies in Dr. Warraich's practice were varied and his misconduct substantial. He should personally bear a substantial portion of the costs associated with these proceedings, as opposed to the membership of the College as a whole. Dr. Warraich's own deficient charting practices lengthened the hearing as it related to the specific patient care issues to which Dr. Warraich pleaded not guilty. The Investigation Committee was substantially successful in proving the allegations relating to the deficiencies in the care which Dr. Warraich provided to the two specific patients referred to in the Amended Notice of Inquiry.

Conversely, Dr. Warraich agreed to a detailed Statement of Agreed Facts, pleaded guilty to four of the Counts in the Amended Notice of Inquiry and did achieve some limited success in defending portions of the Counts which he did contest.

Balancing these competing considerations, the Panel has decided that Dr. Warraich should make a contribution to the costs of the College in the amount of \$90,000.

DECISION AND ORDER

The Panel hereby orders that:

1. Pursuant to ss.59.6(1)(a) of *The Medical Act*, Dr. Warraich is hereby reprimanded with respect to the matters of which he has been found guilty as more specifically enumerated in the Resolution and Order of this Panel dated October 1, 2020;
2. Pursuant to ss.59.6(c)(g) of *The Medical Act*, Dr. Warraich's registration with the College is cancelled.
3. Pursuant to ss.59.7(1)(b) Dr. Warraich shall pay a fine to the College in the amount of \$10,000.
4. There will be publication in the usual course as set out in *The Medical Act*, including Dr. Warraich's name, as determined by the College.

5. Pursuant to ss.59.7(1)(a) Dr. Warraich will make a payment to the College representing a contribution to the costs of the investigation and hearing in the amount of \$90,000.

DATED this 29 day of April, 2021.

Dr. Carry Martens-Barnes, Chairperson

Dr. Valerie St. John

Russ Toews, Public Representative

IN MATTER OF: *THE MEDICAL ACT, C.C.S.M. c. M90*

AND IN THE MATTER OF: DR. NASSER AHMED WARRAICH, a member of the
College of Physicians and Surgeons of Manitoba

AND IN THE MATTER OF: An Amended Notice of Inquiry dated December 7,
2018

INQUIRY PANEL:

Dr. Carry Martens-Barnes, Chairperson

Dr. Valerie St. John

Russ Toews, Public Representative

**RESOLUTION AND ORDER OF AN INQUIRY PANEL OF THE
COLLEGE OF PHYSICIANS AND SURGEONS OF MANITOBA
RE: ORDERS UNDER S.59.6 AND S.59.7 OF *THE MEDICAL ACT***

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COUNSEL FOR THE INQUIRY PANEL

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RESOLUTION AND ORDER OF AN INQUIRY PANEL
RE: ORDERS UNDER S.59.6 AND S.59.7 OF THE MEDICAL ACT

WHEREAS Dr. Nassar Ahmed Warraich (“Dr. Warraich”), a member of the College of Physicians and Surgeons of Manitoba (the “College”) was charged with displaying a lack of knowledge of, or a lack of skill and judgment in the practice of medicine, and of being guilty of professional misconduct, and with contravening By-Law 1 and By-Law 11 of the By-Laws of the College, as more particularly outlined in six counts of a Notice of Inquiry dated December 7, 2018;

AND WHEREAS on May 16, 2019, the Investigation Committee of the College made a motion to be heard by the Panel for an order amending Count 1 in the Notice of Inquiry;

AND WHEREAS an order granting the amendment to Count 1 in the Notice of Inquiry was issued by the Panel on June 3, 2019 on consent;

AND WHEREAS on June 3, 2019, Dr. Warraich, through his counsel, entered a plea of guilty to Counts 1, 4, and 5 in the Amended Notice of Inquiry and also to Count 6, but on the understanding that his plea of guilty to Count 6 (displaying a lack of knowledge of or a lack of skill and judgment in the practice of medicine) was in specific relation to the allegation in Counts 1, 4, and 5 of the Amended Notice of Inquiry;

AND WHEREAS the Panel reconvened on January 14, 2020 in the presence of Dr. Warraich and his counsel and in the presence of counsel for the Investigation Committee, for the purpose of conducting an inquiry pursuant to Part X of *The Medical Act*;

AND WHEREAS on January 14, 2020, Dr. Warraich, through his counsel, confirmed his plea of guilty to Counts 1, 4, 5, and 6, and entered a plea of not guilty to Counts 2 and 3 in the Amended Notice of Inquiry;

AND WHEREAS the inquiry pursuant to Part X of *The Medical Act* proceeded before the Panel on January 14, 15, 16, and 17, 2020, in the presence of Dr.

Warraich and his counsel and in the presence of counsel for the Investigation Committee and counsel for the Panel;

AND WHEREAS thereafter the Panel received detailed written submissions from the counsel for the Investigation Committee and counsel for Dr. Warraich, and a rebuttal submission from counsel for the Investigation Committee, which written submissions were received in February, March, and April, 2020;

AND WHEREAS on October 1, 2020, the Panel issued a Resolution and Order and Reasons for Decision, pursuant to which the Panel determined that Dr. Warraich was guilty of:

- (i) Failing to demonstrate that he had provided adequate care to his patients and/or failed to create and maintain adequate medical records, such that his records did not allow for a comprehensive assessment of the nature and extent of the care he was providing to his patients. Dr. Warraich had thereby failed to meet the standards of the profession and breached the record keeping requirements of By-Law 1 and By-Law 11 of the College and displayed a lack of knowledge, skill and/or judgment in the practice of medicine.
- (ii) Failing to meet the standard of care in his management and treatment of a specific patient between in or about November, 2017 and March, 2018 in that he had failed to adequately diagnose, manage and treat that patient's tuberculosis and had failed to create and maintain adequate medical records. Dr. Warraich thereby breached the record keeping requirements of By-Law 1 and By-Law 11 of the College.
- (iii) Displaying a lack of knowledge, skill and/or judgment in the practice of medicine and/or creating false and/or misleading medical records. Dr. Warraich had thereby breached the record keeping requirements of By-Law 1 of the College and had committed acts of professional

misconduct between on or about May 7 and May 15, 2015, when he was the most responsible physician for the care and management of another patient in his capacity as a hospitalist as particularized in Count 3 of the Amended Notice of Inquiry dated December 7, 2018.

- (iv) Engaging in unethical and inappropriate billing practices between in or about September, 2013 and September, 2016. During that period Dr. Warraich had arranged for claims for services purportedly provided by him to residents in personal care homes to be routinely submitted to Manitoba Health as visits to those patients, when he had not, in fact seen or examined the patients for whom he billed a visit. Dr. Warraich thereby committed acts of professional misconduct.
- (v) Breaching the record keeping requirements of the College's by-laws and of committing acts of professional misconduct in that, between in or about September, 2013 and September, 2016, in relation to his attendance at one of the personal care homes to which he attended weekly, Dr. Warraich had created medical records which were misleading by routinely documenting information in charts which suggested he had conducted assessments, examinations and/or provided care to various patients when, in fact he had not.
- (vi) Displaying a lack of knowledge of or a lack of skill and judgment in the practice of medicine by reason of the findings of guilt in relation to various of the matters referred to in the Amended Notice of Inquiry.

AND WHEREAS, between late January 2021 and March 2021, the Panel received detailed written submissions from both the Investigation Committee and from Dr. Warraich with respect to the orders which should be made by the Panel under s.59.6 and s.59.7 of *The Medical Act* (the "Act").

AND WHEREAS the Panel has considered the written submissions of the parties relating to s.59.6 and s.59.7 of the Act.

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

1. Pursuant to ss.59.6(1)(a) of *The Medical Act*, Dr. Warraich is hereby reprimanded with respect to the matters of which he has been found guilty as more specifically enumerated in the Resolution and Order of this Panel dated October 1, 2020.
2. Pursuant to ss.59.6(c)(g) of *The Medical Act*, Dr. Warraich's registration with the College is cancelled.
3. Pursuant to ss.59.7(1)(b) Dr. Warraich shall pay a fine to the College in the amount of \$10,000.
4. Pursuant to ss.59.7(1)(a) Dr. Warraich will make a payment to the College representing a contribution to the costs of the investigation and hearing in the amount of \$90,000.
5. There will be publication in the usual course as set out in *The Medical Act*, including Dr. Warraich's name, as determined by the College.

DATED this 29 day of April, 2021.

Dr. Carry Martens-Barnes, Chairperson

Dr. Valerie St. John

Russ Toews, Public Representative