

CENSURE: IC5092

DR. JOHN IHOR MAYBA

On December 15, 2021, in accordance with Subsection 102(2)(d) of *The Regulated Health Professions Act*, the Investigation Committee censured Dr. Mayba as a record of its disapproval of the deficiencies in his care and management of Patient X in that he:

- displayed a lack of judgment in the practice of medicine and failed to meet the standard of the profession for a period of approximately 2¹/₂ years in that he continued to prescribe high dose opioids and benzodiazepines to X after he moved to another province without seeing and assessing X in person and without creating medical records; and
- failed to meet ethical and professional standards by accepting many payments of cash of approximately \$200.00 each month over a 2 ½ year period, totaling \$6000.00, from X without creating any financial record for or otherwise accounting for the funds, which funds Dr. Mayba did not return to X until after CPSM (College of Physicians & Surgeons of Manitoba) became aware of his conduct.

Censure creates a disciplinary record which may be considered in the future by the Investigation Committee or an Inquiry Panel when determining the action to be taken following an investigation or hearing.

I. PREAMBLE

Physicians are required to demonstrate knowledge, clinical skills and a professional attitude to provide quality care. Their clinical approach must meet expected standards. Physicians must also have excellent communication skills, including their documentation and record keeping. This includes meeting CPSM's requirements and the standard of the profession for the creation and maintenance of adequate records and in respect to prescribing. These standards are particularly important for tracking care of patients who receive large doses of opioids and benzodiazepines where the risk of diversion and/or overdose are increased.

Physicians must also demonstrate a high standard of ethical and professional behaviour. This requires that they not only practice medicine competently, but that they do so with integrity. They must also maintain appropriate personal and financial boundaries with their patients. This includes avoiding any influence that could undermine their professional integrity and compromise their judgment.

II. THE RELEVANT FACTS ARE:

The Committee assessed the facts as follows:

1. Some details underlying this censure have been removed or anonymized to avoid providing identifying information about third parties.
2. In April 2020, the Registrar of CPSM received information that raised concerns about Dr. Mayba's prescribing to X. The allegations included that:
 - a. Dr. Mayba had prescribed high dose opioids to X over the preceding 2¹/₂ years while X was living in another province without assessing him in person; and
 - b. X was selling the medication and was paying Dr. Mayba for the prescriptions.
3. The Committee assessed Dr. Mayba's conduct as it relates to these allegations and his care and conduct in respect to X based on his medical record and the explanations and comments he provided in his written responses to CPSM, in an interview with CPSM's Investigator, and the information he provided from X's pastor, sister and counsellor regarding patient X.
4. In his written responses to CPSM and in his interview with the Investigator, Dr. Mayba described the circumstances leading up to and following CPSM becoming aware of concerns about his care and conduct in respect to X as set out below: :
 - a. Dr. Mayba became X's family physician in 2007 because he had sought Dr. Mayba out as a family physician after being rejected by a colleague at the clinic in which Dr. Mayba practiced because of "the complexity of his case, the unpleasant medications he was taking, the dosages he was on as well as the potential future difficulties regarding management and treatment."
 - b. Dr. Mayba described X's medical conditions and his involvement with his care for multiple longstanding medical conditions between 2007 and 2017, including:
 - i. X's pre-existing orthopedic injury with associated intractable lower back pain; and
 - ii. a description of the extensive opioid and other medications which X was taking at the time Dr. Mayba took over his care.
 - c. Between 2007 and 2017 Dr. Mayba referred X to two different spinal surgeons who both were of the opinion that surgery would not help X. Between 2007 and 2014 Dr. Mayba increased the doses of opioids. In or around 2014, the doses stabilized and he gradually reduced the dosages of opioids and streamlined X's medications over time up to 2017 when he left the province. At that time his opioid doses remained high.

- d. After Dr. Mayba last saw X in his clinic on August 3, 2017 before X moved to another province, Dr. Mayba gave him a one month prescription for Quetiapine, Clonazepam and MS Contin, all of which he had been regularly prescribing to him prior to his departure.
- e. Before X left Manitoba, Dr. Mayba told him to find a family doctor upon his arrival in his new province.
- f. Towards the end of September 2017, X contacted Dr. Mayba from his new home province stating that despite making several attempts, he was unable to find a family doctor who would take him on as a patient.
- g. X asked Dr. Mayba to continue as his family physician and Dr. Mayba faxed prescriptions on a monthly basis to X's pharmacy in his new home province.
- h. Dr. Mayba agreed to do so until he found a local family doctor, and continued to fax prescriptions on a monthly basis to the identified pharmacy, noting that in the early part of 2018 he further reduced his MS Contin by two tablets per day and that the dosage of Quetiapine and Clonazepam were not changed.
- i. In Dr. Mayba's opinion, "Throughout the time [Dr. Mayba] has been involved with this patient's care, there has never been any concerns on [his] part that he has diverted, misdirected or inappropriately been taking his medications in any way other than as prescribed" and that "[t]he allegations that he sells his prescriptions for an income are not believable and are untrue based on [his] lengthy contact with this patient, his symptoms, integrity, character and his prescription history/regime".
- j. Dr. Mayba provided the Committee with recorded phone conversations and/or written documentation between him and X's Pastor, counsellor and sister after they were made aware of the concerns being investigated by the CPSM. This information supported Dr. Mayba's belief that X was not misusing his medications and that he was having considerable difficulty locating a family physician in his new home province.
- k. During the Fall of 2017, X began sending Dr. Mayba money, typically \$200.00 on a monthly basis. With respect to the money he accepted from X, Dr. Mayba stated that:
 - i. Typically, X would send him "a sum of money in this amount for what [Dr. Mayba] believed he viewed as retention for [his] services, including reading his correspondence, speaking on the phone to monitor his condition, managing his prescriptions and faxing his medications to his pharmacy".
 - ii. X voluntarily sent the money without being asked or billed for the services provided by Dr. Mayba in relation to faxing the prescriptions.

- iii. Dr. Mayba believes that X had independently arrived at the amount of \$200.00 based on what Dr. Mayba had informed him would be the cost of him preparing a medical report for X.
- iv. Dr. Mayba "always felt [X] would need to have this money returned to him at some future date when he located a family physician..., however ... that circumstance never presented itself".
- v. During Dr. Mayba's initial communication with CPSM, he advised CPSM that X had been sending him money periodically. As a consequence of the initial discussion with CPSM, a cheque in the amount of \$6,000.00 on account of amounts received was sent by the clinic back to X.
- vi. Dr. Mayba explained that he had not made any use of the money, nor kept any accounting records for it. He "just kept the money secured at home until [he] brought it to [his] Clinic Administrator... who confirmed the sum of money by counting it and suggested the best way to return the money to X was to have the ... Clinic write him a cheque for the total of the monies received".
- vii. "These monies were never declared as income... and were simply passed through the ... Clinic as a means of returning them to [X]".
- viii. Dr. Mayba did not immediately send X's money back or tell him to stop sending the money because of concerns he had about his mental and physical health.
- ix. Dr. Mayba explained that if X was an insured patient he would have been entitled to some compensation if he had been seeing him on a regular basis and if X was an uninsured patient, Dr. Mayba would have charged him \$85-100 per visit.
- x. X "never expressed any concerns or dissatisfaction regarding sending the money on a monthly basis, and in fact, during conversations [Dr. Mayba] had with him, he was very happy to send the money." Dr. Mayba believes this was so he could feel certain that he would remain his physician.
- xi. Dr. Mayba was aware that X gets a disability income from WCB and social assistance totaling about \$1300 per month. He indicated that he felt that X could afford the \$200 a month he was sending him because he has a lot of help from his church with food and transportation and that X also got money from his sister when necessary.
- xii. On four occasions clerical errors occurred with Manitoba Health Services Commission ("MHSC"/other out of province health insurance plan) being billed inadvertently for faxing his prescriptions. This has now been corrected with the billing withdrawn and monies returned.

5. The Committee noted that Dr. Mayba's medical records for X lacked contemporaneous documentation of his assessments of pain, function, side effects of medications, the potential for misuse or diversion and medication safety — including the cumulative effect of multiple sedating medications and the potential for (even inadvertent) overdose if over the counter medications are added.
6. With respect to these deficiencies, Dr. Mayba has stated that:
 - a. He saw X monthly while he was in Manitoba and knew him well and that meant that he did not need to document the information in the chart. Consultants also documented their assessments in their reports and those reports formed part of his record.
 - b. Regarding X not having been assessed by him in person between August 2017 and July 2020, Dr. Mayba considered the monthly contact by letter or telephone as being "consistent with virtual care, not dissimilar to what has been widely accepted since March 2020 during the pandemic and which was used on a more limited basis for the last 10 years or so under Tele-medicine".
7. The Committee does not accept Dr. Mayba's explanations and considered as an aggravating circumstance that there are significant deficiencies in his record keeping in relation to X that preceded his departure to another province. Further, after X left Manitoba, Dr. Mayba created no medical records for any of his telephone or other encounters. Dr. Mayba has stated that he considered it sufficient that the medical record does contain reference to every prescription that was written. The Committee was of the view that these telephone calls and letters were no substitute for documenting a personal assessment of X and otherwise recording his prescriptions to X as required by CPSM standards.
8. A significant mitigating factor that the Committee noted is that Dr. Mayba took X on as a patient in difficult circumstances and that he genuinely believed that he was helping X by continuing to prescribe to him when he left Manitoba. Dr. Mayba has stated that he did not want to abandon the patient and reference the Physicians Professional Responsibilities as set out in the CMA Code of Ethics subparagraphs C(2) and C(3) in support of his conduct. The Committee does not accept Dr. Mayba's interpretation of the standard but does accept that:
 - a. He did so with the intent to help him and that he did contribute to his care in a positive manner during the time he cared for him while he resided in Manitoba; and
 - b. He now recognizes that it was inappropriate to accept money from X and that he should have returned the money he sent to him before CPSM became involved.

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

1. Continuing to prescribe high dosage opioids and benzodiazepines to his patient, X, after he left Manitoba, without personally assessing him and without creating any medical records between August 2017 and July 2020. This represents a significant ongoing and persistent lack of judgment in the practice of medicine and failure to meet the standard of the profession over a period of approximately 3 years; and
2. Failing to meet ethical and professional standards by accepting monthly payments of \$200.00 in cash totaling \$6000.00 from X in the following circumstances:
 - a. Dr. Mayba continued to prescribe to him;
 - b. Patient X was on financial assistance and residing in another province;
 - c. Dr. Mayba did not create any financial record for or otherwise account for the funds; and
 - d. Dr. Mayba did not refund the money to X until after CPSM became involved.

Dr. Mayba's conduct is unacceptable and represents significant breach of ethical and professional standards and reflects very poor judgment.

IV. ORDERS

1. The Committee directed, pursuant to subsection 104(2) of the RHPA, that this censure and a description of the circumstances that led to it be made available to the public.
2. Dr. Mayba paid the costs of the investigation in the amount of \$6,000.00