NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Manitoba ("CPSM") and Dr. Robert J. M. Zoppa, this is notice that the Inquiry Committee ordered that, pursuant to subsection 122(2)(b) of *The Regulated Health Professions Act* ("RHPA"), there shall be no disclosure of the names or other identifying information of any patients or other third parties referred to in the proceedings or who are named in any of the exhibits in the proceedings. This includes, Ms A, Ms B, Ms C, Ms D, Ms E, Ms F, Mr. G, Ms H, Ms I, Ms J, Ms K, and Ms L, all of whom were named by initials in the proceedings.

Subsection 122(5) of the RHPA reads:

> *No person, whether or not a member of the news media, shall publish anything else that identifies or may identify a person who, by virtue of an order made under subsection (2), can only be identified by initials.*

Subsection 171(1) of the RHPA reads:

> *A person who contravenes a provision of this Act, other than section 140 (confidentiality of information), or of the regulations is guilty of an offence and is liable on summary conviction to a fine*
>
> *(a) in the case of an individual,*
>
> *(i) for a first offence, to a fine of not more than $10,000, and*
>
> *(ii) for each subsequent offence, to a fine of not more than $50,000; and*
>
> *(b) in the case of a corporation,*
>
> *(i) for a first offence, to a fine of not more than $25,000, and*
>
> *(ii) for each subsequent offence, to a fine of not more than $100,000.*

IN THE MATTER OF:	*The Regulated Health Professions Act,* C.C.S.M., c. R117, Part 8
AND IN THE MATTER OF:	DR. ROBERT J. M. ZOPPA, a member of the College of Physicians and Surgeons of Manitoba
AND IN THE MATTER OF:	An Amended Notice of Inquiry dated January 18, 2022

INQUIRY PANEL:

Dr. Bonnie Cham, Chairperson

Dr. Unni Nair

Diana Yelland, Public Representative

REASONS FOR DECISION OF AN INQUIRY PANEL OF THE COLLEGE OF PHYSICIANS AND SURGEONS OF MANITOBA

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REASONS FOR DECISION OF THE INQUIRY PANEL

INTRODUCTION

On January 25, 2022, a hearing was convened before an Inquiry Panel (the "Panel") of the College of Physicians and Surgeons of Manitoba (the "CPSM") for the purpose of conducting an inquiry pursuant to Part 8 of *The Regulated Health Professions Act* C.C.S.M., c. R117 (the "Act") into charges against Dr. Robert J. M. Zoppa ("Dr. Zoppa"), a member of the CPSM, as set forth in an Amended Notice of Inquiry dated January 18, 2022.

The Amended Notice of Inquiry charged Dr. Zoppa with professional misconduct, with contravening the CPSM's By-laws, the Standards of Practice of Medicine and the Code of Ethics, with displaying a lack of skill, knowledge, and judgment in the practice of medicine, with demonstrating an incapacity or unfitness to practice medicine and from suffering from an ailment, emotional disturbance or addiction that impaired his ability to practice medicine. Finally, Dr. Zoppa was charged with conduct unbecoming a member.

Among other things, the Amended Notice of Inquiry states that:

1. Dr. Zoppa engaged in sexual relationships with two of his patients and thereby committed professional misconduct; contravened the CPSM's By-laws, the Standards of Practice of Medicine and/or the Code of Ethics; and/or displayed a lack of knowledge, skill, and judgment in the practice of medicine.

2. Between in or about the year 2010 and June 2020, Dr. Zoppa engaged in professional misconduct; conduct unbecoming a member; contravened CPSM By-laws, the Standards of Practice of Medicine and/or the Code of Ethics; and/or displayed a lack of knowledge, skill, and judgment in the practice of medicine in respect to his conduct relating to [professional associations] [redacted].

3. Between in or about the year 2016 and June 2020, Dr. Zoppa engaged in professional misconduct; contravened the CPSM By-laws and/or the Standards of Practice of Medicine; and/or displayed a lack of knowledge skill, and judgment in the practice of medicine in that Dr. Zoppa failed in areas of his family practice to maintain expected standards of care and/or to maintain a safe and appropriate practice environment.

4. Between in or about March 2018 and June 2020, Dr. Zoppa engaged in professional misconduct in that he breached one or more of the undertakings he gave to the CPSM and/or attempted to conceal breaches from the CPSM.

5. Dr. Zoppa suffers from an ailment, emotional disturbance or addiction that impairs his ability to practice medicine.

6. Between in or about July 31, 2017 and June 4, 2020, Dr. Zoppa engaged in professional misconduct in that he provided CPSM's Investigation Committee with misleading information regarding his conduct and/or fitness to practice medicine safely and competently and made numerous statements throughout the course of the investigation that, individually or cumulatively, disregarded his professional obligation to cooperate with diligence and be candid in his dealings with CPSM.

7. Dr. Zoppa has demonstrated a lack of skill, knowledge, and judgment in the practice of medicine.

8. Dr. Zoppa has demonstrated an incapacity or unfitness to practice medicine.

The Amended Notice of Inquiry also contained factual particulars with respect to allegations 1 - 6 set out above.

The hearing proceeded before the Panel on January 25, 2022, in the presence of Dr. Zoppa and his counsel, and in the presence of counsel for the Complaints Investigation Committee of the CPSM (herein the "CPSM"). Dr. Zoppa, through his counsel, admitted his membership in the CPSM, and confirmed that the Panel had

jurisdiction over the matters at issue. Dr. Zoppa, through his counsel, also acknowledged service upon him of the Notice of Inquiry and consented to a motion by the Investigation Committee to amend the Notice of Inquiry.

At the commencement of the hearing, counsel for the CPSM made a motion pursuant subsection to 122(2)(b) of the Act, for an order protecting the identity of all patients, and any third parties who may be referred to in the proceedings, or in any of the exhibits filed in the proceedings. This motion was consented to by Dr. Zoppa.

The Panel, being satisfied that the desirability of avoiding public disclosure of the identities of patients and other third parties, outweighed the desirability of the identities of the patients and other third parties being made public, granted the order.

Counsel for Dr. Zoppa made a motion pursuant to subsection 122(2)(a) of the Act for an order that the hearing be held in private and a motion pursuant to subsection 122(2)(b) that Dr. Zoppa be identified only by pseudonym in the proceeding and the in Reasons for Decision and Order issued by the Panel. In response to the Motion, the CPSM took no position with respect to the request that the hearing proceed in private but contested that part of the motion seeking to identify Dr. Zoppa only by pseudonym.

After discussion, the Panel, noting that the CPSM took no position with respect to the motion that the hearing proceed in private and having regard to the practical reality that the hearing was proceeding by Zoom and no member of the public was present, granted that part of the motion. With respect to the remainder of Dr. Zoppa's motion, the Panel requested authorities and written submissions for the Panel to consider after the hearing.

The relevant sections of the Act are as follows:

Hearing open to public

122(1) A hearing must be open to the public unless the panel orders otherwise under this section.

Request for an order that a hearing be private or that a person be identified only by initials

122(2) The investigated member or the college may request the panel to make an order requiring

(a) that the hearing or any part of it be held in private; or

(b) that the investigated member, complainant or any witness be identified only by initials.

When order may be made

122(3) The panel may make an order described in subsection (2) on the request of the investigated member or the college, or on the panel's own initiative, but only if the panel is satisfied that

(a) matters involving public security may be disclosed;

(b) financial, personal or other matters may be disclosed that are of such a nature that the desirability of avoiding public disclosure of those matters outweighs the desirability of adhering to the principle that meetings be open to the public;

(c) a person involved in a civil or criminal proceeding may be prejudiced; or

(d) a person's safety may be jeopardized.

The Panel was directed by Counsel for Dr. Zoppa to the decision of *(V.) v. T. (S.)*, 2010 BCSC 1874. In this case, two doctors filed a petition seeking review of a decision of the Health Professions Review Board in British Columbia and further sought an order permitting them to proceed with the petition under a pseudonym, banning the publication of any document filed in the proceeding, and sealing the court file. The doctors argued the order was necessary to protect their personal and professional reputations. It is noteworthy that the respondents to the application either consented or took no position.

In considering the request, the Court reviewed the law and in particular the Supreme Court of Canada decisions of *R. v. Mentuck,* 2001 SCC 76 and *Dagenais v.*

Canadian Broadcasting Corp., [1994] 3 S.C.R. 835, where the Supreme Court of Canada concluded that a publication ban should only be ordered when:

> (a) such an order is necessary in order to prevent a serious risk to the proper administration of justice because reasonably alternative measures will not prevent the risk; and
>
> (b) the salutary effects of the publication ban outweigh the deleterious effects on the rights and interests of the parties and the public, including the effects on the right to free expression, the right of the accused to a fair and public trial, and the efficacy of the administration of justice.

Having reviewed the law, in particular as it has developed in British Columbia and Ontario, the Court noted at paragraph 19:

> 19. It is clear from the jurisprudence that an order banning publication or allowing a litigant to proceed anonymously by using a pseudonym is an exceptional order. However, the principle of the openness of the court should be restricted where it "is necessary in order to prevent a serious risk for the proper administration of justice because reasonably alternative measures do not prevent the risk (*Mentuck* at para. 34)

The Panel was, in particular, referred to the test as set out at paragraph 21 of the decision, which provides:

> 21 The authorities suggest whether to grant an application to allow a litigant to proceed by way of pseudonym requires the court to consider:
>
> 1. whether there is any extraordinarily sensitive personal information about the physician, the complainant or a third party;
>
> 2. whether the party affected objects to the disclosure; and
>
> 3. whether disclosure of the information would undermine the very purpose of the judicial review application.

The Panel is not satisfied that there is extraordinary sensitive personal information at issue in this matter. While there are issues of addiction and inappropriate sexual relations with patients, among other things, the Panel is not satisfied that such facts give rise to justifying an extraordinary order. No authorities were provided to support such a finding despite the member being provided with an opportunity to do so.

The Panel was advised that the third factor cannot be specifically applied in this case. However, a consideration of whether disclosure would impact the purpose of these Reasons for Decision should, in the Panel's view, be considered.

In the present case, as set out in detail herein, Dr. Zoppa has pled guilty to the charges as set out in the Notice of Inquiry. Unlike in the case referred to the Panel, there are no ongoing issues related to jurisdiction and Dr. Zoppa is no longer challenging the allegations that have been made against him.

As is discussed further below, two key objectives in issuing an order under section 126 of the Act is to instill a specific deterrence against the physician from committing similar acts of misconduct in the future and instilling confidence in the public that the medical profession has the ability to regulate itself. These objectives, among others, require transparency and accountability.

Counsel for both the member and the CPSM made brief arguments with respect to section 129 of the Act. Subsection 129(1) of the Act requires, subject to subsections (2) and (3), that the CPSM must make any finding made under subsection 124(2) and any order made under section 126 or 127, including the name of the investigated member, available to the public. Subsection 129(2) permits the CPSM to edit the decision or order but not the investigated member's name before making it public. Subsection 129(3) provides for a limited basis upon which the CPSM must not make certain information available to the public unless the CPSM is satisfied that the public interest in making the information available to the public substantially outweighs the privacy interests of the investigated member.

The Panel notes that section 122 of the Act is under the section of the Act titled “Is The Hearing Open to the Public?” whereas section 129 of the Act is under the section titled “Decision”. When considering the mandatory language used under section 129, the Panel questions whether it has the authority to identify Dr. Zoppa by pseudonym as requested in these Reasons for Decision. That issue was not fully argued and the Panel is not inclined to make a finding without more fulsome argument. In any event, the Panel, based on the case law submitted to it and for the reasons discussed above, dismisses Dr. Zoppa’s motion that he be referred to in these Reasons for Decision and otherwise by pseudonym.

Following the preliminary motions, Dr. Zoppa waived the reading of the Amended Notice of Inquiry and entered a plea of guilty to each of the eight charges outlined therein. By doing so, he admitted the truth of all of the allegations and of the factual particulars in support of the allegations in the Amended Notice of Inquiry and also admitted that the facts and matters outlined therein constituted professional misconduct, a breach of the Code of Ethics, a breach of the CPSM By-laws, a breach of the Standards of Practice of Medicine, a lack of knowledge, skill and judgment in the practice of medicine, and an incapacity or unfitness to practice medicine, as more particularly referred to in the Amended Notice of Inquiry.

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

1. The Notice of Inquiry dated July 6, 2021 (Exhibit 1);

2. An Amended Notice of Inquiry dated January 18, 2022 (Exhibit 2);

3. Statement of Agreed Facts (Exhibit 3);

4. Book of Agreed Documents (Exhibit 4); and

5. A report of Dr. [R. S.] dated January 16, 2022 (Exhibit 5).

The Panel has considered the guilty plea of Dr. Zoppa having regard to the exhibits, evidence filed, and the submissions of counsel for the CPSM and the submissions of counsel for Dr. Zoppa.

On the basis of their review of the Statement of Agreed Facts and the guilty plea of Dr. Zoppa, the Panel is satisfied that all of the charges set forth in the Amended Notice of Inquiry and the particulars contained therein have been proven on a balance of probabilities.

The CPSM and Dr. Zoppa proceeded by way of a Joint Recommendation as to the disposition of this matter as follows:

- An Order reprimanding Dr. Zoppa pursuant to subsection 126(1)(a) of the Act;
- An Order cancelling Dr. Zoppa's registration with the CPSM pursuant to subsection 126(1)(i) of the Act;
- An Order that Dr. Zoppa pay to the CPSM costs in the amount of $37,000 pursuant to subsection 127(1)(a), to be paid as follows:
    - $18,500 payable to the CPSM over a two-year period following cancellation of Dr. Zoppa's registration; and
    - $18,500 payable should Dr. Zoppa resume the practice of medicine, which would be payable over a one-year period from the time of reinstatement to practice.

The Panel is satisfied that the Joint Recommendation as to Disposition is sound and appropriate and ought to be accepted by the Panel. The Panel's specific reasons for its decision are outlined below.

BACKGROUND

1. Dr. Zoppa completed his undergraduate medical education (2002-2005) and post-graduate medical education in family medicine (2005-2007) at the University of Manitoba, College of Medicine, during which period he was an educational registrant with CPSM

2. Dr. Zoppa became a Licentiate of the Medical Council of Canada ("LMCC") in December of 2006 and a Certificant of the College of Family Physicians of Canada ("CCFP") in June 2007. He has been fully licensed to practice medicine in Manitoba since 2007.

Prior Investigation

3. Dr. Zoppa was the subject of an investigation and remediation of his practice in 2015 and 2016. The issues raised related to his prescribing of opioid and narcotic medications, and practice management. The investigation of this complaint was resolved by Dr. Zoppa participating in remediation through education and support.

4. That investigation (IC2588) raised concerns about Dr. Zoppa's record keeping, including that a significant number of patients had no note for their encounter, and respecting his opioid prescribing. There were also practice management problems that resulted in long workdays. At the time, he had a challenging practice and his work included family practice office visits, inpatient care of his patients, duties as a hospitalist, attendance in a personal care home, work in the dialysis unit, and he did assessments for home oxygen approval. He reported that he was often several hours behind, patients were waiting, and his note taking suffered. Dr. Zoppa was often in the office until 9:00 p.m. or later.

5. In the context of that investigation, Dr. Zoppa recognized his prescribing had escalated to a point where something needed to be done. Dr. Zoppa

acknowledged that many patients were not adequately assessed for ongoing opioid requirements and that monitoring of their prescriptions was not adequate, nor was there good record keeping. He said these processes and discussions were a wake-up call to him to make real changes. He undertook remedial education. DPIN (Drug Program Information Network) follow up in the context of the investigation showed that patients were being weaned to lower doses.

6. The Notice of Decision for the matter (IC2588) included the following:

> *Dr. Zoppa was proactive in acknowledging the errors and apologizing for them. He explained that he planned to write the missing chart notes at the end of the day, a practice which he recognized as not optimal and one which he has now corrected.*
>
> *When asked if he had any idea how widespread this problem might be within his charts, he suggested that these patients are likely the most complicated and the emotional nature of the conversations he has with them suggests to him that these patients' charts were more susceptible to the problems that led to the entries not being made. Dr. Zoppa advised that he has reduced his workload by keeping Fridays for catching up on the week's paperwork and not seeing patients. He is also looking at potentially stopping some of his other medical activities so as not to overextend himself.*
>
> *The Committee noted that there is a long list of missing entries and that many of these related to billings for psychotherapy, which is billed per 15-minute session. Dr. Zoppa provided evidence of the visits, including copies of prescriptions written on those dates and additional documents. The documents provided did not cover every missing visit, nor did they justify a psychotherapy billing. They did provide evidence that the patients were seen on the day in question.*

The failure to keep current, complete, and accurate patient records is not a mere matter of poor administration, but rather is a failure to provide an essential element of good care. The Committee was very concerned that from 10 charts reviewed in relation to the prescribing concerns, there were over 60 visits billed to Manitoba Health for which there was no medical record created for the visit. This is a very serious breach of the College's requirements in relation to record keeping and would normally warrant disciplinary action. However, the Committee was impressed by several factors in relation to Dr. Zoppa's handling of this matter and felt that a different approach was warranted in this case.

The Committee noted that it expects Dr. Zoppa to have learned from this matter and puts him on notice that he will be held to a high standard in the future. It has referred Dr. Zoppa to the Standards Department for follow up to address the risk of Dr. Zoppa returning to his bad habits.

7. The Investigation Committee's referral to the Standards Department arising from IC2588 resulted in an audit of Dr. Zoppa's practice. The Central Standards Committee conducted an audit of Dr. Zoppa's practice with a review of patient charts from June to August 2016, following which a referral was made by the Registrar to the Investigation Committee for follow up on continued concerns regarding opioid and narcotic prescribing, time management and record keeping.

Investigation IC2974

8. Following receipt by the Investigation Committee of the Registrar's referral on December 1, 2016, an audit of Dr. Zoppa's practice was conducted as the initial step of Investigation IC2974. Deficiencies were identified, including respecting record keeping and opioid prescribing. This was followed by a response from Dr. Zoppa dated Jan 20, 2017, and an interview by Dr. Karen Bullock Pries, investigator, on March 15, 2017.

9. Based on explanations provided by Dr. Zoppa, it became evident at the March 15, 2017, interview that he was putting in long workdays, seeing patients until late in the evening and at least one patient was seen after midnight. Dr. Zoppa's attempts to manage the situation had been unsuccessful and he was finishing the days exhausted and panicked, unable to complete the required documentation. He was participating in personal counselling to help him to be more assertive with patients.

10. Information was sought from Dr. Zoppa's treating psychiatrist respecting whether certain health issues may be contributing to Dr. Zoppa's ability to manage his practice and direct patients' assessment within reasonable timeframes. The psychiatrist responded noting difficulty in establishing a definitive diagnosis:

> *In my opinion, Dr. Zoppa's condition is stable at this time. The recommended treatment is ongoing individual insight oriented and supportive psychotherapy in addition to the above mentioned antidepressant medication.*

11. Information was sought from Dr. Zoppa's physician respecting health issues that may be impacting Dr. Zoppa's practice. The family doctor responded noting a history of stress and anxiety, likely stemming from a multitude of personal and professional stressors, including an unmanageable medical practice.

12. On March 2, 2018, Dr. Zoppa agreed to restrictions on his practice including limiting the hours he could practice and agreed to participate in a personalized educational program designed to assist with practice management. These educational initiatives took one year to complete, with confirmed completion on March 29, 2019.

13. On June 27, 2018, the investigation (IC2974) was expanded to include concerns that Dr. Zoppa was not coping with various stresses and was

potentially abusing medications and practicing in a compromised state. Dr. Zoppa provided information and spoke urgently with physicians from CPSM's Physician Health Program. He explained that he was stressed and ill with seasonal allergies and migraine headaches at the referenced time. His explanations were accepted, and no further action was deemed necessary.

14. Dr. Zoppa's response to the concerns raised in the expansion of IC2974 on June 27, 2018, also included an acknowledged breach of the time limits imposed by his March 2, 2018, undertaking. Around June and July 2018, other evidence was identified, through monitoring, that Dr. Zoppa had not been compliant with his March 2, 2018, undertaking regarding time limits and was not consistently making notes contemporaneously with care. Concerns were raised that he had provided misleading information to the CPSM in an attempt to minimize his breaches.

15. The investigator visited Dr. Zoppa's clinic on September 18, 2018. Ongoing practice management concerns were identified as well as instances where Dr. Zoppa had failed to comply with his March 2, 2018, undertaking. Concerns arising from the site inspection and limited chart audit were put to Dr. Zoppa by letter dated September 26, 2018.

16. In January 2019, Dr. Zoppa's undertaking was changed to allow flexibility in his schedule while still limiting his hours of practice. A practice supervisor was identified who could assist with monitoring and accountability. Thereafter, monitoring of his practice was ongoing. A follow-up audit was accomplished in October 2019, particularly to assess the effects of his completed education.

17. The October 17, 2019, audit revealed that Dr. Zoppa was outside of the 10 hours of allowable working time on 3 of the 5 days audited. Delays in starting the day were noted and accumulated over the day such that he was up to 3 hours behind by the end of the day. The care provided was generally felt to be good aside from the prescription of benzodiazepines which the investigator felt should be further reviewed. Some documentation deficiencies were noted.

18. When his initial practice supervisor moved to Winnipeg, a new one assumed responsibility in early 2020. This supervisor began to raise concerns in March 2020 that Dr. Zoppa was potentially not being forthright in reporting his hours of work. While information was being obtained, more concerning information came to light that Dr. Zoppa may be abusing medications and obtaining them from patients or colleagues. There were allegations of boundary violations that were not addressed until a later time given that Dr. Zoppa disclosed a significant health issue that took precedence.

19. On June 3, 2020, Dr. Zoppa self-reported to CPSM's Physician Health Program that he had a substance abuse issue. He advised, "*I have abused Clonazepam and Percocet recently".* He signed an undertaking on June 4, 2020 to cease practice. He obtained treatment for his addiction, including residential treatment, and in February 2021 he re-engaged in the investigation.

20. On March 12, 2021, Dr. Zoppa was interviewed by Dr. Karen Bullock Pries and subsequently provided further written information regarding the concerns about boundary violations

21. This led to a further investigation (IC3163).

Investigation IC3163

22. The following is a summary of the facts and conduct to which Dr. Zoppa has admitted.

23. Since as early as 2010, Dr. Zoppa has suffered from a substance abuse disorder in that he has abused opioid medications, benzodiazepines, and certain over-the-counter medications.

24. On one or more occasions after 2010 and up until June 2020, Dr Zoppa states he has practiced under the influence of opioid medications, benzodiazepines, and certain over the counter medications that had the potential to impair his

ability to practice medicine and, in some circumstances, did impair his ability to practice medicine.

25. Dr. Zoppa failed to cooperate with the CPSM's investigation (IC2974) in that in his July 1, 2018 response to the investigation into concerns about a potential health issue and at his September 10, 2018 interview, Dr. Zoppa denied substance abuse.

26. Between in or about 2010 to 2017, Dr. Zoppa prescribed medications, particularly opioid medications, [to close personal and/or professional relations] [redacted], including Ms. E, Ms. F, and Mr. G, which he then took back for his own personal use.

27. On May 26, 2020[redacted] [CPSM obtained information from a source about] patient scheduling and time management issues and [information that] indicated significant concerns about Dr. Zoppa's well-being. [redacted] [Information was also obtained respecting] significant professionalism issues apart from Dr. Zoppa's compliance with his undertaking.

28. On June 2, 2020, a statement was obtained from another [redacted] [source]:

    a. [redacted] [They] described patient scheduling and time management issues and indicated significant concern of Dr. Zoppa's well-being.

    b. With respect to Dr. Zoppa's January 24, 2019, undertaking to the CPSM, [redacted] [they provided information indicating that Dr. Zoppa was attempting to have changes made] to day sheets in his clinical practice to reflect that he had followed his undertaking when in fact he had not

c. [redacted]. [They] described significant professionalism concerns apart from Dr. Zoppa's compliance with his undertaking.

29. Dr. Zoppa acknowledges that numerous breaches of the January 24, 2019, undertaking occurred over time. Contrary to his January 24, 2019 undertaking, Dr. Zoppa worked more than 10 hours per day on at least three days in September 2019, and more than 10 hours per day on several days in May 2020.

30. Dr. Zoppa cared for Ms. C as a patient in 2018. [redacted] In or about July 2018, Dr. Zoppa prescribed Percocet and Tylenol to Ms. C. on at least one occasion and then obtained these medications from Ms. C. for his own personal use.

31. Dr. Zoppa cared for Ms. D. as a patient from between in or about 2010 through May 2020. On numerous occasions in that period, he prescribed Percocet to and then obtained Percocet from Ms. D. for his own personal use.

32. On June 2, 2020, [redacted][a source], reported to CPSM that Dr. Zoppa had recently asked [redacted] [them] to attend at the home of Ms. D. to complete an errand. [redacted][They] advised that Ms. D. provided [redacted][them] with Percocet to take back to Dr. Zoppa. Dr. Zoppa acknowledges that he has obtained Percocet from Ms. D. on approximately 4 occasions between 2012 and 2020, this medication having been prescribed to Ms. D. by Dr. Zoppa.

33. Between in or about December 2019 and May 2020, Dr. Zoppa obtained benzodiazepines from a colleague, Ms. H., for his personal use. The medication had been prescribed to Ms. H. by another physician.

34. Dr. Zoppa communicated with patients, including Ms. I, Ms. J and Ms. K, in a manner that was inappropriate and unrelated to their medical care. Upon probing by the CPSM investigator these communications were described by Dr. Zoppa as mildly joking flirtations but no sexual or romantic relationships.

35. Dr. Zoppa had a sexual relationship with Ms. A from August 2016 to in or around January or February 2017 while there existed an enduring physician-patient relationship. Respecting the sexual relationship, while Dr. Zoppa does not recall all the specific details, he does not contest Ms. A's evidence that:

    a. In or about August 2016 he recommended or prescribed birth control to Ms. A; and

    b. In or about August 2016 he also commenced a sexual relationship with Ms., A which spanned until in or about January/February of 2017.

36. Dr. Zoppa acknowledges that between January and August 2017, he prescribed Tylenol 3, Effexor and Zopiclone in Ms. A's name for his own personal use and the use of [a close personal relation] [redacted].

37. Ms. B. is a long-term patient of Dr. Zoppa's. He cared for her as a patient in or about 2007 through June 2020. She was prescribed only Losec. Dr. Zoppa self-reported to the CPSM that he engaged in a sexual interaction with Ms. B on one occasion in 2015 in the context of an enduring physician-patient relationship. When contacted by CPSM during its investigation, Ms. B. denied that this sexual interaction occurred.

38. Dr. Zoppa ceased practice after signing an undertaking to do so on June 4, 2020. In the interim he has obtained treatment for his substance abuse issue at Homewood Health Centre in Ontario and has since been followed by a physician practicing in addiction medicine periodically as well as participating with Physicians at Risk, Smart Recovery and a Physicians recovery group in Ontario.

THE JOINT RECOMMENDATION

In assessing whether or not the Joint Recommendation as to Disposition should be accepted and which Order or Orders ought to be granted pursuant to section 126 the Act, it is useful to consider the objectives of such Orders. On the basis of a review of the relevant authorities, those objectives include but are not limited to:

(a) The protection of the public. Orders under section 126 of the 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 or 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 section 126 of the Act.

Additional factors which are relevant in this case are:

(h) The vulnerability of the patients; and

(i) The role of the physician in failing to immediately acknowledge what had occurred during the course of the investigations and, in the present case, failing to be forthright with his regulating body.

As outlined elsewhere in these Reasons, all of the charges outlined in the Amended Notice of Inquiry have been proven. Dr. Zoppa is therefore guilty of professional misconduct, a breach of the Code of Ethics, a breach of the CPSM By-laws, a breach of the Standards of Practice of Medicine, a has demonstrated a lack of knowledge, skill and judgment in the practice of medicine, and has further demonstrated an incapacity or unfitness to practice medicine.

Dr. Zoppa's conduct was antithetical to the fundamental commitment of the medical profession to the well-being of the patient. As outlined in the Code of Ethics and Professionalism, a physician must consider first the well-being of the patient and is always to act to benefit the patient and promote the good of the patient. The fiduciary nature of the patient physician relationship serves to promote trust of the public in physicians and is a basic tenet of the social contract establishing medicine as a self-regulating profession. Without the demonstration by physicians that the patient's needs will be the first consideration of a physician, trust in the profession would be at risk. By prescribing opioids and benzodiazepines to his patients and then taking a portion of them back for personal use, Dr. Zoppa has demonstrated dishonesty and a failure to place his patients need first. The Code of Ethics states that as a responsibility to the patient a physician should not exploit patients for personal advantage.

Serious boundary violations are demonstrated throughout the time period of 2015 to 2020. Dr. Zoppa has admitted to having a sexual relationship with two of his patients. Prohibitions against sexual relationships with patients exist to protect patients from the serious power-imbalance present between a physician and their patient. [redacted]

[redacted] [The power imbalance was accentuated by other circumstances].

Despite agreeing to undertakings that were designed to improve the quality of his medical records, which are an essential component of good medical care, Dr. Zoppa misled the CPSM on several occasions as to his adherence to the undertakings thereby placing his patients at risk. This is a serious breach of the commitment outlined in the Code of Ethics to participate in establishing and maintaining professional standards and engage in processes that support the institutions involved in the regulation of the profession. These actions are not the actions of an ethical physician as exemplified by the virtues of honesty and integrity, again enumerated in the Code of Ethics.

Finally it is a responsibility of a member of the CPSM as outlined under general responsibilities of the Code of Conduct to practise the art and science of medicine competently and without impairment. Dr. Zoppa suffered from a substance abuse disorder and although he self-reported this in 2020, this was 10 years after the onset of his self-admitted substance abuse. This condition existed throughout the period that Dr. Zoppa was being investigated by the CPSM but was hidden from view. The lack of honesty about his compliance with the undertakings which he signed combined with the fact that he was not forthcoming about his substance abuse problem and his boundary violations demonstrate a lack of skill, knowledge and judgement in the practice of medicine.

These breaches of ethical standards and the Code of Conduct result in a determination that Dr. Zoppa has demonstrated an incapacity or unfitness to practice medicine.

The seriousness of Dr. Zoppa's admitted professional misconduct and admitted incapacity and unfitness to practice medicine, among other breaches of professional standards, must be reflected by the Orders granted by the Panel.

The fundamental and primary purpose of Orders made under section 126 of the Act is the protection of the public, including the protection of patients and others

with whom the physician will come into contact, and the protection of the public more generally by the maintenance of high standards of competence and integrity among physicians.

A joint submission on penalty must satisfy the fundamental penalty principles. The penalty should express the Panel's denunciation of the misconduct and act as a deterrent, both to the member and to the profession. The penalty should be proportionate to the misconduct. See *College of Physicians and Surgeons of Ontario v. Khan*, 2021 ONCPSD 32.

The Panel is of the view that the objectives and purpose of an Order under section 126 is satisfied by the Joint Recommendation, in that:

(a) An order of reprimand pursuant to subsection 126(1)(a) of the Act is a formal denunciation of Dr. Zoppa's misconduct;

(b) An order of cancellation of Dr. Zoppa's registration with the CPSM pursuant to subsection 126(1)(i) is the most serious of penalties;

(c) The facts of this matter, as set out in detail above, support a serious penalty.

(d) The fundamental objective of the CPSM, as a self-regulated body, is the protection of the public. The public is protected with an order of cancellation of Dr. Zoppa's registration as, by his own admission, is not currently fit to practice medicine. If and when and under what circumstances Dr. Zoppa may be able to practice medicine again is beyond the current role of the Panel.

(e) The Joint Recommendation proposed and accepted by the Panel will ensure public confidence in the ability of the profession to regulate itself.

(f) The Joint Recommendation acts not only as a specific deterrent to Dr. Zoppa but also as a general deterrent in that it imposes serious punishment for serious misconduct, which serves as a warning and

education to the public and other physicians as to the consequences of such misconduct.

(g) The Joint Recommendation also imposes a significant financial consequence against Dr. Zoppa by being responsible for, at least a significant portion, of the costs associated with the investigation and inquiry of the matters before this Panel.

(h) The Joint Recommendation agreed to by Dr. Zoppa reflects his acceptance of his guilt in these matters, which spared the CPSM the expense of a full inquiry and more importantly spared the patients and staff who have been affected by his behavior the distress and invasion of privacy that appearing before the panel would have involved.

In assessing the appropriateness of the Joint Recommendation in relation to the nature and extent of Dr. Zoppa's misconduct, and the fundamentally important objective of the protection of the public, the Panel reviewed the authorities submitted to it by the parties and specifically considered the penalties imposed in other cases involving somewhat analogous circumstances.

The Panel was also reminded that the Panel should not depart from a Joint Recommendation unless the proposed recommendation would bring the administration into disrepute or is otherwise contrary to the public interest, see *R. v. Anthony-Cook*, 2016 SCC 43.

The Panel is satisfied that a reprimand and cancellation of Dr. Zoppa's registration with the CPSM as contemplated by the Joint Recommendation is within a reasonable range of outcomes as defined by the authorities before the Panel.

The misconduct committed by Dr. Zoppa is, as previously noted, extreme and demonstrates an incapacity, or unfitness to practice medicine which Dr. Zoppa has admitted to as the final charge of the Amended Notice of Inquiry. This misconduct is aggravated in the opinion of the Panel, by Dr. Zoppa's repeated deception regarding undertakings which he had accepted as conditions of practice set by the College in

response to his difficulties managing his practice. Therefore, the recommendation for cancellation of his registration is seen as appropriate and within the range of penalties imposed in other cases involving serious boundary violations, practicing medicine while impaired, and dishonest prescribing practices. There is nothing in the Joint Recommendation that is contrary to the public interest.

CONCLUSION

Based on all of the foregoing, the Panel has determined that the Joint Recommendation as to Disposition made by the CPSM and by Dr. Zoppa will be accepted. The Panel hereby issues an Order, as more particularly set forth in the Resolution and Order issued concurrently herewith and attached hereto.

DATED this 10th day of March, 2022.

DR. BONNIE CHAM
Chairperson of the Inquiry Panel
Member of CPSM

DR. UNNI NAIR
Member of CPSM

DIANA YELLAND
Public Representative