IN THE MATTER OF:	*The Regulated Health Professions Act,* C.C.S.M., c. R117, Part 8 (the "Act")
AND IN THE MATTER OF:	DR. SHAMOON HASHAM DIN, a member of the College of Physicians and Surgeons of Manitoba
AND IN THE MATTER OF:	an Amended Notice of Inquiry dated September 17, 2021

INQUIRY PANEL:

Alan Scramstad, Chairperson and Public Representative

Dr. Carry Martens-Barnes

Dr. James Price

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

RE ORDERS UNDER SECTIONS 126 and 127 OF THE ACT

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REASONS FOR DECISION OF THE INQUIRY PANEL
RE: SECTIONS 126 and 127 OF THE ACT

INTRODUCTION

On March 10, 2022, following a hearing which took place on January 31 and February 1, 2022, the Inquiry Panel issued a Resolution and Order and its Reasons for Decision having regard to the charges as set out in an Amended Notice of Inquiry dated September 17, 2021.

As set out in the Reasons for Decision, the Panel accepted Dr. Din's guilty plea with respect to Counts 1, 2 and 3 in the Amended Notice of Inquiry, which provided:

1. Between in or about October 2020 and April 2021, Dr. Din engaged in professional misconduct, conduct unbecoming a member, and/or contravened the Code of Ethics and/or the Practice of Medicine Regulation in that Dr. Din breached an undertaking he made to the CPSM and breached orders imposed by an Inquiry Panel.

2. During the course of Dr. Din's practice of medicine, from in or about October 1, 2020 until April 1, 2021, he contravened the Code of Ethics of the CPSM in that he created false and misleading medical records relating to the presence of a chaperone for 36 female patients to whom Dr. Din provided care.

3. During the course of Dr. Din's practice of medicine, from in or about October 1, 2020, until in or about April 1, 2021, Dr. Din contravened the Practice of Medicine Regulation and/or Code of Ethics in that he practiced beyond the boundaries of his certificate of practice in Family Medicine, which excludes providing medical care to paediatric patients and thereby

committed acts of professional misconduct and/or engaged in conduct unbecoming a member. Dr. Din provided medical care to patients under 18 years of age whose identities were known to him.

As further set out in the Reasons for Decision, the Panel found Dr. Din guilty under Counts 4 and 5, of the Amended Notice of Inquiry, as follows:

4. During the course of Dr. Din's practice of medicine, from in or about January 2021 until in or about March 2021, he contravened the Code of Ethics of the CPSM in that Dr. Din failed to maintain professional boundaries with Patient A.

5. Dr. Din has displayed an unwillingness or inability to comply with the standards and meet the requirements of and/or be governed by the CPSM and has thereby demonstrated an incapacity or unfitness to practice medicine

Having made the foregoing findings under subsection 124(2) of the Act, the Panel reconvened on March 16 and 17, 2022 for the purposes of determining what order or orders should be issued by the Panel pursuant to section 126 of the Act and what costs, if any, should be ordered pursuant to section 127 of the Act.

The Panel received the following documents, which were filed by consent as additional exhibits in the proceeding:

1. Amended Notice of Inquiry dated September 13, 2017 (Exhibit 5);

2. Reasons for Decision of an Inquiry Panel of the College of Physicians and Surgeons of Manitoba (Exhibit 6);

3. Resolution and Order of an Inquiry Panel of the College of Physicians and Surgeons of Manitoba (Exhibit 7);

4. A compilation of letters from the CPSM to Dr. Din re: chart audits and corresponding responses from Dr. Din (Exhibit 8);

5. Various correspondence to and from Dr. Peter Czaplinski, from January 17, 2018 to January 20, 2021 (Exhibit 9);

6. Letter from Dr. Czaplinski dated July 13, 2021 (Exhibit 10);

7. Letter from Dr. Czaplinski dated October 19, 2021 (Exhibit 11);

8. Letter from Dr. Din to the CPSM dated November 15, 2020 (Exhibit 12);

9. Letter from the CPSM to Dr. Din dated March 22, 2020 (Exhibit 13);

10. Without prejudice cost proposal by CPSM, dated March 14, 2022 (Exhibit 14).

In addition to receiving the foregoing documentary evidence, the Panel heard oral evidence from Dr. Din as well as from Dr. Din's treating psychiatric physician, Dr. Czaplinski.

Dr. Din's evidence can be summarized as follows:

- He is currently living in Brampton, Ontario, having moved with his wife in with his parents, who have effectively become dependent on Dr. Din due to ailing health.

- His financial situation was described as "quite bad", having been unable to earn an income for over a year.

- Dr. Din graduated from the Grace University of Medicine in Belize in 2001. He returned to Canada in January 2002 and passed the Medical Council of Canada Evaluating Examination in 2003, but did not apply for residency in Canada.

- Dr. Din received his family medicine training in the United States, at Wayne State University in Michigan, which was completed in 2009. He then practiced family medicine in Mississauga, Ontario until his licence expired as a result of having not written the College of Family Physicians of Canada Certification ("CFPC") Examinations.

- In July 2015, Dr. Din became a conditional (later provisional) registrant with the CPSM. Although he completed the American Board Examinations in April 2017, Dr. Din has not yet completed the CFPC examinations.

- As set out in the Reasons for Decision and Resolution and Order found at Exhibits 6 and 7 respectively (the "2018 Decision"), Dr. Din was suspended from practice for one year starting in 2018 and was subject to a number of restrictions in order to return to practice. To that end, on July 30, 2019, Dr. Din signed an undertaking to abide by those restrictions to permit his return to practice (the "Undertaking").

- Prior to Dr. Din's suspension and the requirement to have a female chaperone present when attending to a female patient, Dr. Din had personally employed a male chaperone. Dr. Din states that having a chaperone dedicated to him and available to him at all times of the day for every encounter was "excellent".

- Dr. Din's evidence was that following his return to practice, a female chaperone was present until the start of the Covid-19 pandemic and "then there were times that there was not a chaperone present for all female encounters".

- Dr. Din's evidence was that the requirement to have a chaperone present, and the associated signage advising patients of the requirement, was "embarrassing" and had been used to "intimidate/extort me for gain";

- Dr. Din also gave evidence regarding his requirement to attend for psychiatric counselling. That counselling occurred with Dr. Czaplinski and had continued up to the date of the hearing. Dr. Din advised that Dr. Czaplinski had "helped him deal with multiple issues with the College, and just peripherally in life as well".

- Dr. Din stated that he understood his diagnosis to be an "anti-social personality trait" and that, by definition, a personality trait is not amenable to change "so you build coping mechanisms and identify risks and pitfalls where you could fall between the cracks".

- On cross-examination, Dr. Din's evidence was that prior to COVID-19, there were no breaches of his Undertaking and that he was doing well. He stated that Covid-19 created "multiple restrictions that I had to deal with every single day just in order to practice and it created an environment where it was easier to fall through the trap and committed some of these breaches".

- On his ability to pay any cost award imposed on him, Dr. Din advised that he would not have the ability to pay any costs up front but he would like to once he is able to work and earn an income at the same time.

Dr. Din was taken by his counsel through Exhibit 8 in detail. Exhibit 8 contained the audit reports regarding charts randomly selected by the CPSM to ensure compliance with the requirement for the presence of a female chaperone. His evidence on direct examination was that upon receiving the requested charts from the CPSM, "he would retrieve the charts and print them out and prepare a package for the College".

The first request for charts came from the CPSM by letter dated May 25, 2020 and Dr. Din responded by letter dated June 30, 2020.

Dr. Din, on direct examination, was asked why the chaperone's confirmed presence was noted in an addendum, signed months after the patient's visit. In response, Dr. Din stated:

> A. So when I received the request for all these charts I obviously went through them all before I submitted them, and I noted that there were places where the chaperones had not signed off after seeing the patient, so I asked the chaperones to sign off appropriately where they should have so I could submit the charts to the College.
>
> Q. And so what does that tell us about whether or not [Witness 1] or [Witness 2] were present when these encounters took place?
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> A. If [Witness 1] signed off on them it would tell you that she was present during that encounter.

The second request for charts came from the CPSM by letter dated October 14, 2020 and was sent November 19, 2020.[1]

The Panel has significant concerns with the evidence of Dr. Din having regard to Exhibit 8 and the audited patient charts. While the evidence was presented to the Panel to show a period of compliance prior to Covid-19, a thorough review of Exhibit 8 suggests otherwise.

Referring back to Patient 1, who was seen by Dr. Din on January 6, 2020, less than 6 months after Dr. Din executed the Undertaking, the original chart note itself notes that the chaperone who was previously identified as Witness 2 by this Panel, was present. Yet, the chaperone who was previously identified as Witness 1 by this Panel, is being asked to sign an addendum as to her presence the day before Dr. Din submits his response to the CPSM. In addition, this is months after the patient visit and the Panel

[1] Exhibit 8 notes that the response was sent by Dr. Din on November 24, 2020 but close review of Exhibit 8 shows Dr. Din sent the response on November 19, 2020 and it was “archived” on November 24, 2020.

finds it difficult to accept that the chaperone would be in a position to properly recall her attendance[2].

At the first hearing, the evidence of Witnesses 1 and 2 was that they signed their presence in the addendum portion of the chart when they had acted as chaperone. Their evidence was that they were not always present when a female patient was seen by Dr. Din and that there were instances when their name had been signed on a chart despite the chaperones not being present. While the evidence of Witness 1 and 2 was of limited use having regard to the relevant time frames set out within the particular counts of the Amended Notice of Inquiry, the Panel is now being asked to accept and consider Dr. Din's evidence of compliance before the start of Covid-19. Having regard to the information contained in Exhibit 8 and the evidence of Dr. Din, the Panel cannot do so.

The chart of Patient 1 is not the only chart within Exhibit 8 showing inconsistencies:

- Patient 2 was seen on January 27, 2020 but the presence of a chaperone is not signed off by Witness 1 until June 29, 2020;
- Patient 3 was seen on January 2, 2020 but the presence of a chaperone is not signed off by Witness 1 until June 29, 2020;
- Patient 4 was seen on January 7, 2020 but the presence of a chaperone is not signed off by Witness 1 until June 29, 2020;
- Patient 5 was seen on February 7, 2020 but the presence of a chaperone is not signed off by Witness 1 until June 29, 2020;

[2] Although Exhibit 8 was not put to Witness 1, when asked when she would usually sign the chart with her addendum, she responded "Sometimes right after the patient and sometimes at the end of day, depending on how busy it was". Likewise, Exhibit 8 was not put to Witness 2, but when asked when she would typically mark her presence in a patient's chart, she responded "Usually at the end of the appointment when I went back to my desk".

- Patient 6 was seen on January 14, 2020 and the encounter note states Witness 2 was present. However, the presence of a chaperone is signed off by Witness 1 on June 29, 2020;

- Patient 7 was seen on March 22, 2020 but the presence of a chaperone is not signed off by Witness 1 until June 29, 2020;

- Patient 8 was seen on February 4, 2020 and the encounter note states Witness 2 was present. However, the presence of a chaperone is signed off by Witness 1 on June 29, 2020;

- Patient 9 was seen on January 6, 2020 and Witness 1 in an addendum created on January 6, 2020 indicates her presence. Despite this, a second addendum is created on June 29, 2020 noting her presence[3];

- Patient 10 was seen on January 6, 2020 but the presence of a chaperone is not signed off by Witness 1 until June 29, 2020;

- Patient 11 was seen on July 6, 2020 but the presence of a chaperone is not signed off by Witness 1 until November 16, 2020;

- Patient 12 was seen on June 21, 2020 but the presence of a chaperone is not signed off by Witness 1 until November 19, 2020;

- Patient 13 was seen on July 30, 2020 but the presence of a chaperone is not signed off by Witness 1 until November 19, 2020;

- Patient 14 was seen on June 21, 2020 but the presence of a chaperone is not signed off by Witness 1 until November 18, 2020;

- Patient 15 was seen on June 21, 2020 and the presence of a chaperone is signed off by Witness 1 on November 19, 2020. However, this was a

[3] The Panel notes that the addendum entered on January 6, 2020 states "[Witness 1] present for encounter" whereas the addendum entered on June 29, 2020 states "I [Witness 1] was a chaperone for Dr. Din". Dr. Din on cross-examination admitted to writing the addendum on January 6, 2020.

virtual patient visit. The evidence before the Panel, which was admitted to on cross-examination by Dr. Din, is that chaperones were never present for virtual patient visits;

- Patient 16 was seen on June 22, 2020 but the presence of a chaperone is not signed off by Witness 1 until November 19, 2020;
- Patient 17 was seen on June 21, 2020 but the presence of a chaperone is not signed off by Witness 1 until November 19, 2020;
- Patient 18 was seen on July 22, 2020. The chart note states this was a virtual patient visit. The chart note says Witness 2 was present. The chart note has Witness 2 signing off as being present on November 19, 2020;
- Patient 19 was seen on July 22, 2020. The chart note states this was a virtual patient visit. The chart note says Witness 2 was present. The chart note has Witness 2 signing off as being present on November 19, 2020

It must be kept in mind that the patient charts requested in the two audit letters in Exhibit 8 were randomly selected. Yet, none of the charts are properly completed with the chaperone being properly identified by Dr. Din in his encounter noted and then contemporaneously signed off by the chaperone in an addendum. It is also clear based on the admissions regarding virtual visits that Dr. Din either personally created a false addendum noting a chaperone present or asked his staff to do so. The Panel cannot accept as fact that the charts created prior to Covid-19 show a period of compliance. At worst, Exhibit 8 provides several examples, before and after Covid-19, of Dr. Din misleading the CPSM and at best it shows Dr. Din not taking his undertaking to the CPSM seriously to ensure the presence of a chaperone is recorded at or close to the time of the patient visit such that compliance can be properly monitored.

The Panel also heard from Dr. Czaplinski. Counsel for Dr. Din sought to have Dr. Czaplinski accepted as an expert in psychiatry such that he would be entitled to

give both opinion and fact evidence relating to his experience and treatment of Dr. Din. Counsel for the CPSM raised no objections and the Panel accepted Dr. Czaplinski as an expert in his field.

Dr. Czaplinski's evidence can be summarized as follows:

- Dr. Czaplinski graduated from medicine from the University of Manitoba in 2008 and thereafter specialized in psychiatry.
- Dr. Czaplinski became a Fellow of the Royal College of Physicians in 2013.
- Dr. Czaplinski currently works in private practice, practicing general psychiatry and informally focuses on psychotherapy.
- Dr. Czaplinski started counselling Dr. Din in August 2017. Dr. Czaplinski was aware of the mandated counseling that had been ordered and agreed to by Dr. Din following the 2018 Decision.
- In January 2018, Dr. Czaplinski wrote to counsel for Dr. Din and advised that the reason for the sessions with Dr. Din was to increase his insight into the reasons that he crossed boundaries which led to a Royal College [sic] complaint, and to prevent this type of behaviour from happening again. An additional goal was to support Dr. Din to cope with the ensuing consequences following the complaint.
- However, in direct examination Dr. Czaplinski noted that while the frequency in which he was to see Dr. Din was mandated, the focus of his treatment was not. As such, he described his treatment toward Dr. Din as providing "supportive psychotherapy".
- Dr. Czaplinski was aware that Dr. Din having insight was considered an important aspect of his ability to practice safely. Dr. Czaplinski was further aware that Dr. Din was mandated to undergo counselling as a necessary safety precaution.

- In December 2020, Dr. Czaplinski wrote to the College and, among other things, advised:

    - He understood that Dr. Din was to meet with him on average 3 times per month and that, on average, that was occurring;

    - That he agreed with Dr. Din's previous characterization that "therapy was becoming less productive". Dr. Din's life situation stabilized over the summer of 2020, his main concerns became less acute, and there did not appear to be sufficient clinical material to warrant the amount of time they were spending in session;

    - He was not totally comfortable with Dr. Din's characterization that Dr. Czaplinski had found Dr. Din had good insight into his circumstances. Dr. Czaplinski noted that insight is a fraught issue; and

    - In his opinion, the punishment enacted by the CPSM had significantly and positively shaped Dr. Din's predisposition for future behaviour. It was Dr. Czaplinski's impression, consistently and clearly over time, that Dr. Din's motivation to carefully maintain professional boundaries with patients has been powerfully incentivized.

- In July, 2021, Dr. Czaplinski wrote to a "to whom it may concern letter" outlining the increased restrictions Dr. Din was proposing in order to obtain a valid licence to practice medicine and his support of the "above restrictions as appropriate to allow him to return to practice, while ensuring the safety of the public". The restrictions outlined in the letter were:

    - Dr. Din will only see male patients;

    - Dr. Din will only log into the EMR while he is working in the clinic, during office hours;

- Dr. Din will refrain from any text message communications with patients whatsoever and all communications with patients will be through the clinic;

- Dr. Din will notify all patients through signage that all communications with him will be through the clinic, and not via text message or through his personal cell phone number; and

- The terms outlined in section 1 (a), (b), (d), (e) and 2-11 of the Undertaking will remain.

- In correspondence to counsel for Dr. Din in October 2021, Dr. Czaplinski opined that Dr. Din did not satisfy the criteria for any major mental illness and that there was an impression that there are antisocial personality traits at play.

- In cross-examination, Dr. Czaplinski acknowledged that the restrictions in place due to the Undertaking did not stop Dr. Din from texting Patient A at 1:43 a.m. Dr. Czaplinksi also acknowledged that he was recommending to the CPSM, in his letter of December 11, 2020, to reduce the required counseling when in fact Dr. Din was breaching the Undertaking by treating pediatric patients, seeing female patients without a chaperone, and creating false and misleading records.

- Dr. Czaplinski advised that in January, February and March 2021, sessions with Dr. Din were focusing more on insight and then by October, the focus had shifted to improving stress, anxiety, and depressive symptoms.

Following cross-examination, the Panel asked the following clarification questions of Dr. Czaplinski:

> Q. So during that January to April or thereabouts when you became aware of that situation, are you able to tell the

panel as to whether in your view there had been progress in gaining insight?

A. I would say there was some.

Q. Before you became aware in April of issues with the College had Dr. Din disclosed to you, in that sense that [sic] January 2021 to April 2021, had Dr. Din disclosed to you that he was texting Patient A?

A. No.

Q. With knowing now that there was that communication in January to March with Patient A, do you believe still that there was insight gained during that period of time?

A. Well, that certainly seems to contravene it. But like I said, insight can develop in one area, and it could be, it might be sequestered or compartmentalized.

So the date that I received, if you will, from our clinical sessions leading up to that point, suggested to me that there was some increase in insight, but, clearly, because that texting had been going on, I think that indicates otherwise in that domain.

Q. You had been asked a number of questions with respect to your July 13, 2021 letter, and the panel just wants to make sure that they have your evidence succinctly, which is, based on the information you have currently, so as of today's date, is it your evidence that Dr. Din would be fit to practice if the restrictions as you have set out in the July 13th letter were imposed.

A. I don't know.

Following the evidentiary portion of the hearing, the Panel received oral submissions from counsel for the CPSM and counsel for Dr. Din regarding penalty under section 126 and costs under section 127. The Panel was also provided with, prior to and at the hearing, various legal authorities to guide their decision.

THE POSITIONS OF THE PARTIES

The submissions of the CPSM

Counsel for the CPSM submitted that the following orders should issue pursuant to section 126 of the Act:

- A reprimand pursuant to subsection 126(1)(a)
- An order cancelling Dr. Din's registration with the CPSM pursuant to subsection 126(1)(i)

Counsel for the CPSM submitted that an order for costs pursuant to section 127 of the Act should be ordered in the amount of $60,000 payable over a six (6) year period.

The submissions of the CPSM in support of the orders under section 126 of the Act can be summarized as follows.

1. The CPSM highlighted the governing principles regarding the imposition of penalties, including the protection of the public, the maintenance of the public confidence in the integrity of the profession and general and specific deterrence.

2. Dr. Din has been found guilty of serious acts of professional misconduct by failing to have a chaperone present for encounters with female patients, creating false and misleading medical records, texting Patient A in

contravention of the Code of Conduct, and generally breaching the Undertaking he gave to the CPSM. In addition, Dr. Din has been found to be unfit to practice medicine by displaying an unwillingness or inability to be governed by the CPSM.

3. Dr. Din has a prior disciplinary history involving a failure to maintain appropriate boundaries with a patient. While the facts, as set out in the 2018 Decision, are far more egregious, inappropriate communications with female patients are present in both matters.

4. Dr. Din consistently and over a prolonged period of time demonstrated that he's either unwilling or unable to follow basic rules or conditions, which he himself acknowledges are appropriate.

5. Dr. Din clearly has no insight or appreciation as to why he should be subject to the conditions, nor does he have the ability or commitment to respect them.

6. Only revocation would serve to protect the public from any further misconduct by Dr. Din.

Counsel referred the Panel to a number of authorities in support of its position that a reprimand and cancellation of Dr. Din's licence were the appropriate orders to make under section 126.

In *Ontario (College of Physicians and Surgeons of Ontario) v. Singh*, 2020 ONCPSD 30, Singh had entered into an undertaking that included a condition that prohibited him from having in-person professional encounters, or female parents/caregivers as patients, except in the presence of a female chaperone. The chaperone was required to initial each patient chart for which she was present, and signs were to be placed in waiting and exam rooms.

In breach of his undertaking, Dr. Singh saw Patient A on 7 separate occasions for medical appointments, where a female chaperone was not always present. In further breach, Dr. Singh failed to have appropriate signage in one of his exam rooms and failed to have the chaperone initial each chart.

The panel accepted the joint recommendation before it of a reprimand and costs of $6,000.00. The joint recommendation was made in addition to Dr. Singh resigning from the College and undertaking never to re-apply for registration. In accepting the joint recommendation, the panel found:

> The Committee is cognizant of the well-established guiding principles that must be considered when imposing a penalty. A penalty must first and foremost provide protection of the public, The Committee is aware that when a joint submission is reached it is an agreement between adversarial parties. In this case, Dr. Singh's undertaking to resign from practice and never reapply in Ontario or any other jurisdiction is an extremely important factor in considering whether the penalty of a reprimand and costs is appropriate and just. Given the undertaking, the public is already and will forever be protected.
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> Physicians must take their undertakings with the College seriously and strictly comply with them at all times. Dr. Singh's breaches of his longstanding undertaking must be robustly sanctioned. A public reprimand will serve as a general deterrent and will send the message to the membership at large that such misconduct is not acceptable.
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> It is a significant aggravating factor that this is Dr. Singh's third time before the Discipline Committee, all for very serious transgressions. This case concerned not just one element of non-compliance, but rather multiple terms of his undertaking were breached; the supervisor not attending in the room at all times, the patient chart pages not signed as directed and the lack of a sign posted in one of his exam rooms. It was Dr.

> Singh's responsibility to ensure that none of these breaches occurred.

In *Ontario (College of Physicians and Surgeons of Ontario) v. Derenda*, 2008 ONCPSD 3, Dr. Derenda was found guilty of professional misconduct and her licence was revoked. In reaching this decision, the panel found:

> The Committee unanimously agreed that revocation is necessary in this case as there has been no response to previous efforts by the College to govern Dr. Derenda. She has repeatedly demonstrated her ungovernability through a consistent pattern or inability to follow College orders.
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> Dr. Derenda displayed a disregard for the core values of the profession by transgressing boundaries evidence from her intertwining relationship with patient A and her family. As well, her egregious breach of ethics is evident through repeated self prescribing and prescribing for family members while her certificate of registration was suspended. Dr. Derenda through her testimony regarding patient exams and treatment plans, displayed a remarkable lack of insight into the seriousness of her choice not to comply with College orders.
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> Revocation is the only penalty suitable to uphold the honour and reputation of the College and to protect the public. Revocation will also serve as a deterrent to the general membership by sending a message that flagrant repeated breaches of College orders will not be tolerated.

In *Schwarz v. College of Physicians and Surgeons of Ontario*, 2021 ONSC 3313, the panel had concluded that Dr. Schwarz was ungovernable for his failure to heed a prior caution, his efforts to discredit Patient A to the College, his attempt to cover up his behaviour, him permitting records to be altered and treating a female without a monitor present, as required of him. The panel concluded that revocation was required. The Ontario Superior Court upheld the decision of the panel, and in so doing made the following findings:

> 72 The Committee considered whether imposing conditions or limitations on Dr. Schwarz's ability to practice

would offer sufficient public protection. It found that it would not, given his failure to remediate his behaviour towards women after the caution and prior course. Further, the Committee was given no evidence that Dr. Schwarz could be remediated or had taken any steps towards remediation.

73 The Committee rejected Dr. Schwarz's suggestion that he be permitted to practice with a practice monitor for female patients for a number of reasons. These included the fact that gender-based restrictions suggest to the public that their safety is not at risk because the public trust was only violated with part of the population. This reasoning led the Legislature to prohibit such restrictions in 2017. Further, the Committee found that Dr. Schwarz could not be trusted to abide by the restriction given the violation that occurred while he was under a similar restriction pending his hearing. In addition, part of Dr. Schwarz's misconduct occurred towards female colleagues and the proposed restriction would not provide them with protection.

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84 Dr. Schwarz's submission with respect to the Committee's conclusion regarding ungovernability again challenges the Committee's findings of fact with respect to various issues (the Committee's finding with respect to Dr. Schwarz's attempt to paint Patient A as unreliable and the Committee's rejection of Dr. Schwarz's evidence that the ticks in his records represented physical examinations that he actually conducted). As has already been discussed in these reasons, these findings of fact are entitled to deference. With respect to lack of insight, the Committee acknowledged that Dr. Schwarz had admitted to the behaviour against the nurses, but gave this factor little weight (as it was entitled to do). Of more concern to the Committee on the question of insight was Dr. Schwarz's engaging in the behaviour he did after he had been formally cautioned by the College about such behaviour and had taken a course designed to ensure that this type of behaviour did not occur again. Given this pattern, the Committee found that there was little hope that Dr. Schwarz was capable of learning from his mistakes. Certainly, Dr. Schwarz led no evidence to suggest that something had changed since the last time he was given a chance to remediate his behaviour. Suggesting the implementation of a practice monitor is not a plan for rehabilitation. It is a measure (which the Committee found unacceptable in this case) that is put in place when the

> College is not satisfied that the doctor in question has been rehabilitated.

In *Re: David Corder,* 2014 CarswellMan 854, the applicant sought reinstatement of his licence following revocation due to serious professional misconduct involving two different female patients. As part of his plan for reinstatement, Dr. Corder proposed a condition that he only examine female patients in the presence of a female chaperone. In rejecting Dr. Corder's application for reinstatement, the Executive Committee stated:

> 48 Furthermore, in this case, the Executive Committee directed its attention to whether the conditions proposed by Dr. Corder, or any set of more rigorous conditions (such as an absolute prohibition against Dr. Corder seeing female patients), would adequately protect the public interest.
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> 49 The Executive Committee recognizes that in certain circumstances, it is appropriate that a physician be allowed to practice medicine subject to certain conditions. Such arrangements can work when a physician's fundamental ability to practice medicine safely has been established, and the applicable conditions are designed to prevent circumstances from occurring which would increase the risk of problematic behaviour on the part of the physician. For example, conditions on a physician's right to practice may be effective in circumstances in which a physician is taking positive and constructive steps to deal with an addiction.
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> 50 However, the Executive Committee agrees with the submission of counsel on behalf of the Investigation Committee that the Executive Committee cannot reinstate an individual whose fitness to practice medicine has not been established, in the hope that it can prevent the effect of the unfitness from damaging the public by the imposition of carefully crafted safeguards.

In *Ahuluwalia v. College of Physicians and Surgeons (Man)*, 2017 MBCA 15, Dr. Ahuluwalia, among other things, argued the panel at issue erred in cancelling his registration and licence to practice medicine. The Court of Appeal rejected the appeal and in so doing, concluded:

> 51 In this case, the Panel considered Dr. Ahluwalia's argument that the cancellation of a licence to practice medicine should only be reserved for the most serious cases and that other lesser sanctions should first be considered. It stated that implicit to his position was the proposition that Dr. Ahluwalia had significant rehabilitative potential and that, with proper training and adequate supervision, he would be able to safely and competently practice medicine. However, the Panel found that it could not accept that proposition for the following reasons:
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> > i. Rehabilitation requires insight into the underlying causes of the problem and the counts for which he was convicted indicated that he had no such insight.
> >
> > ii. Recognizing that, while in certain circumstances conditions can be effective, they will be less so when the root problems include issues relating to integrity and honesty. It further noted that the imposition of conditions imposed on him in the 1990s, including changes to his computer system and a program of psychological assessment and treatment, failed to produce the desired results.
> >
> > iii. There was no evidence introduced relating to Dr. Ahluwalia's rehabilitative potential, or a plan of supervision, in light of his past history.
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> 52 After considering all of the appropriate factors, the Panel recognized that it had to balance the public's right to protection with the private rights of Dr. Ahluwalia. It stated:
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> > As noted by James Casey in his text The Regulation of Professions in Canada:
> >
> > Given that the primary purpose of the legislation governing professionals is the protection of the public, it follows that the fundamental purpose of sentencing for professional misconduct is also to ensure that the

> public is protected from acts of professional misconduct.
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> 53 Considering the seriousness of Dr. Ahluwalia's conduct — his multiple misrepresentations intended to mislead the College; that the deficiencies in his records showed an "alarming disregard of fundamentally important elements for proper medical practice and patient care"; his failure to maintain a computer system in compliance with the regulation; his prior disciplinary record; and the absence of any evidence with respect to his rehabilitation — the Panel held that the mitigating factors in this case did not counterbalance his misconduct.
>
> 54 In the end, it concluded that to allow Dr. Ahluwalia to continue to practice medicine, even with conditions, would not protect the public interest nor would it enhance the public's faith in the medical profession's ability to regulate itself.

In *Re: Patel*, 2015 ONCPSD 22, the panel concluded that revocation of Dr. Patel's licence in addition to a reprimand was appropriate, as set out at paragraph 27 of the decision:

> 27 Dr. Patel's actions while under supervision provide the Committee with no confidence at all into his insight and his ability and willingness to take the necessary steps to be rehabilitated. In addition, the observations of the practices of his locum physician while Dr. Patel was under suspension were so similar to the practices of Dr. Patel himself that it is hard for the Committee to avoid the inference that Dr. Patel had a continuing influence on the nature of the practice in his office, even though he was not observed to be communicating with the staff at the time of the observations. That he would be sitting at computer terminals in the office without having an effect on what was going on around him was simply unbelievable and worrisome, having regard to public safety.

With respect to costs, the CPSM filed as Exhibit 14 the estimated costs of this matter up to the hearing date on penalty, which was estimated at just under $100,000. The CPSM argued for an order of costs in the amount of $60,000, payable over 6 years on terms to be negotiated with the CPSM. This reflected a reduction of approximately

40% of the costs to date. This reduction was being proposed, in part, to recognize the testimony of Witness 1 and Witness 2 did not impact the decision of the Panel to any great degree, which is reflected in the Panel's Reasons for Decision. There was, however, recognition that additional costs would be incurred having regard to the penalty hearing and this subsequent decision.

Counsel for the CPSM noted that while it was successful in establishing all 5 Counts under the Amended Notice of Inquiry, mitigating factors to consider in regard to costs are Dr. Din's guilty pleas with respect to Counts 1, 2 and 3 and his cooperation in putting an Agreed Statement of Facts before the Panel.

Counsel for the CPSM referred to *Abrametz v. The Law Society of Saskatchewan*, 2018 SKCA 37 and *Re: Mahdi*, 2017 CanLII 38662 for guidance and support of the costs being sought by the CPSM.

The *Abrametz* decision sets out a number of factors this Panel ought to consider when exercising its discretion to order costs.

The *Mahdi* decision involved a physician who was convicted on two counts and found not guilty on an aspect of one of the charges. Despite the divided success, the Panel imposed an order of costs in the amount of $110,000.00. In doing so, the Panel commented:

> With respect to costs, the panel recognizes that Dr. Mahdi should not be punished for exercising his right to plead not guilty and to have a full hearing into the allegations against him. Conversely, Dr. Mahdi did not have the right to provide false testimony at the hearing. He cannot expect the profession as a whole, to pay for his misconduct or the decisions which he made as to the manner in which he defended the allegations against him.

The submissions of Dr. Din

Counsel for Dr. Din submitted that the following orders should issue pursuant to section 126 of the Act:

- A reprimand pursuant to subsection 126(1)(a);
- A suspension of nine (9) months pursuant to subsection 126(1)(b), which would be deemed served as a result of Dr. Din's voluntary undertaking to withdraw from the practice of medicine in April, 2021;
- The following restrictions to be imposed upon Dr. Din's return to practice:
    - No solo practice;
    - Access to the EMR during office hours only and while in the clinic from which Dr. Din is practicing;
    - A dedicated chaperone should Dr. Din be permitted to see female patients. In the alternative, a restriction on seeing male patients only;
    - Continued counselling on a schedule to be determined by his psychiatrist. This may also include a monitoring psychiatrist to see Dr. Din periodically or to consult with Dr. Din's treating psychiatrist;
    - Audits of Dr. Din's practice as determined by the CPSM;
    - Signage communicating to patients that Dr. Din is not to communicate other than through the clinic's communication system;
    - A ban on Dr. Din from communicating with any patient via text message or though his personal cell phone. Dr. Din will only be able to communicate with patients through the clinic and for the purpose of conveying test results;

- Virtual visits would only be with male patients or, if with a female patient, a system will be put in place so as to monitor the communications; and

- Further courses on professionalism.

Counsel for Dr. Din submitted that an order for costs pursuant to section 127 of the Act should be ordered in the amount of $30,000, payable once Dr. Din returns to practice, as agreed to with the CPSM on a reasonable basis.

The submissions of Dr. Din in support of the orders under the Act can be summarized as follows:

1. While past discipline can be relied upon by the Panel in determining and shaping what's appropriate in this circumstance, it is difficult to build on circumstances where the previous matter is more serious in nature. The 2018 Decision and the present matter must be considered as two stand-alone events as Dr. Din cannot be punished for what he did last time.

2. The penalty imposed by the Panel must be supported by the case law involving similar matters as are before the Panel.

3. A suspension of nine months reflects that the matters giving rise to penalty in the present case were less egregious than those in the 2018 Decision, where a suspension of 1 year was imposed.

4. In addition to the suspension, the proposed restrictions would protect the public.

5. Dr. Din had not demonstrated any disrespect for the CPSM and had responded to concerns and was an active participant for the entirety of the investigation and hearing.

6. There have been no issues raised as to his competence or quality of care.

7. Dr. Din has expressed remorse for his actions and understands that his misconduct was serious. Dr. Din has made efforts to understand his vulnerabilities by consistently attending before his psychiatrist.

8. Cancellation is the ultimate penalty and is not supported by the facts.

Counsel distinguished the cases referred to by the CPSM and in support of its position of reprimand, suspension and restrictions, relied on the following cases.

In *Re: Abdulla*, a decision from the College of Physicians and Surgeons of British Columbia, Dr. Abdulla admitted to engaging in unprofessional conduct in that, following an appointment with a patient, he sent inappropriate text messages, the tone and content of which could be reasonably perceived as demonstrating a personal interest beyond a professional relationship. In addition to a three month suspension, Dr. Abdulla was required to complete an assessment program, undergo counselling, attend at the College for a discussion on ethical, boundary and professional issues in the physician/patient relationship, document the presence of a chaperone for examinations requiring the disrobing by female patients, and other restrictions in order to continue practicing.

In *Re: Sincraian*, a decision of the British Columbia Commissioner for Teacher Regulation, a teacher failed to observe appropriate professional boundaries with students during the school year by instant messaging students on Instagram and taking photographs and videos of mostly female students without their knowledge and consent. The teacher was suspended for two months and required to complete a professional boundaries course as well as work with a mentor.

In *Re: Riva*, 2019 CanLII 92722, a decision from the Nova Scotia College of Physicians and Surgeons, a settlement agreement was reached whereby Dr. Riva admitted to breaching the relevant Code of Ethics and governing legislation by failing to comply with a 2014 undertaking that he have a chaperone present for all female breast examinations and that he provided false and/or incomplete information to the College in his letters to the College.

Dr. Riva had given the undertaking to have a chaperone present for breast examinations following a complaint that was referred to the Investigation Committee of the College in Manitoba. The complaint was of inappropriate touching. While the Investigation Committee was unable to determine what happened, it accepted Dr. Riva's decision to have a chaperone present when performing breast examinations in the future. The Investigation Committee noted that this was generally seen as "good practice" and took no further action.

In accepting the settlement agreement, imposing a three month suspension, the panel concluded:

> 20 In this matter, the Hearing Committee is satisfied that the conduct outlined above, including the admissions of Dr. Rivas, would reasonably be regarded as unprofessional and, having regard to all of the circumstances, constitutes professional misconduct. Dr. Rivas breached his undertaking to the College to have a chaperone present for all female breast examinations. In our view, the breach of his undertaking to the College constitutes serious misconduct. In order to perform its mandate to serve and protect the public interest and practice of medicine the College needs, in appropriate circumstances, to be able to accept the undertaking of a medical practitioner as the best way to protect the public. Breaches of those undertakings by a medical practitioner not only undermines the College's protection of the public but it risks undermining the confidence of the public in the medical profession and in the College's ability to regulate the practice of medicine.

In *Ontario (College of Physicians and Surgeons of Ontario), v. Li.*, 2007 ONCPSD 24, Dr. Li had a history of misconduct that had resulted in an undertaking to examine female patients aged 10 years and over in the company of a chaperone qualified by the College. Dr. Li breached his undertaking by having individuals present that were not qualified by the College to act as chaperones. Regarding the facts before it, the panel noted:

> In particular, the facts described in the Agreed Statement of facts demonstrated a significant breach of Dr. Li of an

> important undertaking to the College to practice only with a monitor approved by the College in the circumstances as set out in the undertaking.

The panel accepted the joint recommendation on penalty, the terms of which were a three-month suspension of Dr. Li's certificate of registration, a reprimand and an order for costs in the amount of $2,500.

In *Ontario (College of Physicians and Surgeons of Ontario) v. Noriega*, 2013 ONCPSDN, Dr. Noriega had been referred to the Discipline Committee in 2009 for allegations including sexual abuse and sexual impropriety. On July 22, 2009, Dr. Noriega entered into an undertaking with the College, which included a prohibition from engaging in any professional encounters with female patients except in the presence of his practice monitor, and a requirement to post a sign in his waiting room and examination rooms advising of his practice restrictions.

In breach of this undertaking, the panel found that Dr. Noriega had failed to post the required signage, had failed to ensure his practice monitor was present with him in the consultation room when he had encounters with female patients and had mislead the College when he told the investigator that he did not see female patients in the consultation room.

While counsel were in agreement that a reprimand and suspension was warranted, counsel differed on the length of the suspension. In concluding that a six month suspension was appropriate, the panel stated:

> Both the reprimand and a six month suspension of Dr. Noriega's certificate of registration address the principles of specific and general deterrence. This penalty will demonstrate to the member and the membership that disregard for an undertaking given by a member to the College will be dealt with severely. The public will be protected by the strong and clear message that disregard of a College undertaking is a serious act of professional misconduct which calls for a significant penalty.

In *Ontario (College of Physicians and Surgeons of Ontario) v. Deluco,* 2005 ONCPSD 8, Dr. Deluco was subject to an order restricting him from examining any female patient except in the presence of a female third party who is acceptable to the College and that he display a sign in his office waiting room notifying patients of the restriction. In breach of the order, Dr. Deluco treated two patients without a female third party present. In ordering a suspension of six months, the panel was of the view that a blatant disregard of the College order required a significant penalty to deter the member from future behaviour of this nature and to deter like conduct from another member of the College.

In *Ontario (College of Physicians and Surgeons of Ontario) v. Gray,* 2005 ONCPSD, following an assessment, Dr. Gray signed an undertaking agreeing to cease primary care practice. Despite this, he continued to provide primary care to patients and carried out minor surgical procedures on patients for whom he was the primary care physician in breach of his undertaking. The panel accepted a joint resolution imposing a two month suspension.

Counsel also referred the panel to the *Law Society of Upper Canada v. Shifman*, 2014 ONLSTA 21 and *Alsaadi v. Alberta College of Pharmacy*, 2021 ABCA 313 on principles to be considered on the issue of ungovernability. It was argued that the College has not proven ungovernability and, as such, a higher penalty is not warranted.

With respect to costs, Counsel highlighted that the following must be kept in mind when assessing costs. In particular, costs, are to be reasonable, are to reflect the balance between the member bearing cost and the institution bearing them as part of a regulatory function, are not to be an indemnity, should reflect divided success, must be fully explained, must not be so high as to prevent a member from defending themselves, should consider the member's financial status, overall should be reasonable, should not penalize, and should consider the ability to pay.

In addition to the *Abrametz* case, counsel referred the Panel to *Re: Ames*, a recent decision of an Inquiry Panel of the College of Physicians and Surgeons of Manitoba, a matter in which there was divided success. The CPSM sought costs in the amount of $100,000 whereas Ames argued costs should not be ordered as he

successfully defended the counts that required a hearing. In ordering costs in the amount of $65,000, the Panel concluded:

> The Panel is of the view that the investigation of these matters was clearly necessary and that, in the absence of a guilty plea to Counts 1 and 2 of the Amended Notice of Inquiry, it was reasonable for the College to proceed to hearing.
>
> Nonetheless, the Panel has concluded that a reduction in the amount of costs is warranted to account for the mixed result of the hearing (Dr. Ames was successful in defending some of the serious allegations against him) and the fact that the Investigation Committee's cost for legal counsel was a salary cost, a portion of which can be regarded as part of the necessary overheard of a professional regulator.

Counsel, relying on *Ames*, argued that Dr. Din was successful in defending some of the serious allegations against him. Further, costs related to the Investigation Committee should not be borne solely by Dr. Din in that a portion of those costs ought to be regarded as part of overhead of a professional regulator.

Counsel also highlighted that Dr. Din had admitted Counts 1, 2 and 3 and had further admitted the particulars of Count 4, while agreeing to an Agreed Statement of Facts and Book of Documents.

Relying *on Saskatchewan College of Pharmacy Professionals v. Hesse*, 2021 SKCPPDC 7, where the Discipline Committee took into account the member's ability to pay, Counsel submitted that the appropriate level of costs is $30,000.00, to be paid if and when Dr. Din seeks registration with the CPSM, a schedule of repayment to be determined based on his income and responsibilities and expenses at that time.

ANALYSIS

ORDER UNDER SECTION 126

The objectives to be accomplished with respect to any orders issued under section 126 of the Act were summarized in *Re: Krause*, 2019 CanLII 36945, at page 55 of the decision. These objectives include:

(a) the protection of the public. This is the primary purpose of orders under section 126 of the Act. They 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 a loss of faith on the part of the public in the medical profession's ability to regulate itself;

(f) the rehabilitation of the physician involved in appropriate cases, recognizing that the public good is served by allowing properly trained and educated physicians to provide medical services to the public;

(g) proportionality between the conduct of the physician and the orders granted under section 126 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 the 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. Numerous authorities have referred to other factors which should also be considered or which may be particularly applicable in specific cases. Additional factors which may be relevant in this case are:

(a) the nature of the misconduct and the circumstances in which the misconduct occurred;

(b) the impact of the misconduct on those affected by it;

(c) the vulnerability of those affected by the misconduct;

(d) the role of the physician in acknowledging or failing to acknowledge what has occurred;

(e) The disciplinary record of the physician; and

(d) the presence or absence of mitigating or aggravating circumstances.

With these objectives in mind, the Panel is of the view that a reprimand and cancellation of Dr. Din's registration are the appropriate orders under section 126.

Reprimand

Dr. Din and the CPSM are in agreement that a reprimand, pursuant to Subsection 126(1)(a) is appropriate in this case.

The reprimand is not a mere admonishment of Dr. Din's behaviour and specific actions. Rather it is a condemnation of Dr. Din's misconduct.

The Panel concludes that a reprimand under subsection 126(1)(a) is appropriate.

Cancellation

The Panel acknowledges that cancellation under subsection 126(1)(i) of the Act is the most significant penalty that can be issued. After careful and detailed consideration of the findings made previously by this Panel, as well as the evidence heard at the penalty hearing from Dr. Din and Dr. Czaplinski, as well as hearing the submissions and considering the relevant case law, the Panel is left with no choice but to conclude that cancellation of Dr. Din's licence is required in order to protect the public.

The Panel accepts that Dr. Din must not be judged on the facts that gave rise to the 2018 Decision. However, the penalty imposed pursuant to the 2018 Decision must be considered by this Panel. It is not only important to consider the duration of the suspension imposed, as argued by counsel, but also the restrictions that were placed in order for Dr. Din to resume practice. It is the restrictions that were intended to protect the public going forward from the 2018 Decision.

In the 2018 Decision, the Panel accepted a joint recommendation and in doing so stated:

> The fundamental purpose of Orders made under subsection 59.6 of the *Act* is the protection of the public, both in the sense of protecting the patients and others with whom the physician will come into contact, and in the sense of protecting the public generally by the maintenance of high standards of competence and integrity among physicians.
>
> This fundamentally important objective of public protection will be fulfilled by Dr. Din's compliance with the extensive conditions set forth in the Joint Recommendation, which include:
>
> > (a) his participation in psychiatric counselling pursuant to strict specific conditions; and
> >
> > (b) a return to practice, subject to a set of rigorous and very specific conditions designed to address the types of circumstances which resulted in Dr. Din's boundary violations and breaches of professional standards in relation to Patient A. The conditions

> contemplated by the Joint Recommendation are restrictive. For example, the conditions prevent Dr. Din from engaging in solo practice, stipulate that he is to practice under supervision, require a chaperone to be present for any interactions with female patients, restrict his prescribing practices and involve Dr. Din's supervisor submitting progress reports to the Investigation Chair.

It is clear from the evidence before this Panel that Dr. Din was unable or unwilling to abide by the restrictions imposed in the 2018 Decision and as set out in his Undertaking, executed in July 2019. It is also clear that practice supervision and audits by the CPSM did not prevent Dr. Din from breaching his Undertaking.

There is insufficient evidence before the Panel to be satisfied that Dr. Din will adhere to any restrictions imposed by this Panel, whether old, new, or revised. While the Panel was limited to certain time frames to make certain factual findings, it does not accept that Covid-19 created such a unique situation that Dr. Din would have complied with his undertakings but for the pandemic. In any event, the Panel does not accept that Covid-19, and the stressors created as result, justifies in any manner a departure from strict adherence to the restrictions imposed. Those restrictions were put in place to protect the public. Without strict adherence, the public is not protected, which is evident by the facts as found by this Panel.

The Panel is also particularly troubled that Dr. Din's own treating physician, who felt he was in a position to opine in his July 13, 2021 letter that if certain restrictions were in place Dr. Din could practice safely, can no longer say that restrictions imposed on Dr. Din will protect the public. Again, participation in psychiatric counselling was in place to avoid further misconduct on the part of Dr. Din.

Dr. Din was specifically asked by his counsel, if he were permitted to return to practice, "what assurance would you give the CPSM that these breaches would not occur again", to which Dr. Din stated:

> So definitely this has been some time of reflection but, you know, I continue to learn and talk to Dr. Czaplinski. I think the final, the understanding is that regardless of my reasons or

> why any of these breaches occurred, I simply just have to understand and say no, and not put myself in any position where there's a possibility to breach the undertakings, I was, truthfully, I was acting in what I thought was the best interest of the patients, this was not self-serving, but I understand that at some point I just have to say no, and this is the final word.
>
> …I definitely want to express some, express apology not only to the panel, but to everybody that was affected by this.
>
> I understand this is very time consuming and not pleasant, but I do understand the issue here, I understand about governability and about breaching undertakings, but I want to let you know that this was not self-serving, there was no motivation for me to breach these undertakings, and I didn't just haphazardly abandon my undertakings.

The Panel is not satisfied, having regard to Dr. Din's own words, that Dr. Din has gained insight into his conduct and the facts as found by this Panel. There is no remedial plan suggesting changed behaviour can be reasonably expected. The Panel is not assured that breaches would not occur should Dr. Din be permitted to return to practice.

This Panel accepts and relies on the comments made in *Re: Madhi*:

> In considering the submissions of both the Investigation Committee and Dr. Mahdi with respect to penalty and costs, the Panel has been mindful that once findings of professional misconduct have been made against a physician, the primary purpose of orders under ss. 59.6 and 59.7 of the Act is to protect the public interest. The Panel accepts the proposition that the phrase "public interest" should be construed broadly, to not only mean the protection of the individual interests of specific patients, but also to encompass the protection of the health, safety and well-being of the public generally, by maintaining proper standards of conduct and behaviour by physicians.

It is the Panel's view that protection of the public generally can only be done by cancellation of Dr. Din's licence. In support of this decision, the Panel relies and accepts the findings as set out in the *Singh* and *Derenda* decision, where revocation or an undertaking not to practice medicine was found to be the only appropriate remedy to

address repeated behaviour and an unwillingness or inability to follow previous orders or undertakings to the college.

The Panel also accepts the principles set out in *Schwarz* and *Corder*, that restrictions limited to a gender are not appropriate. The concerns are two-fold. The Panel is concerned that there will not be compliance with the requirement for a chaperone even if Dr. Din had in place a dedicated chaperone. While Dr. Din's evidence was that he had no issues when he had a male chaperone in place, the Panel heard no evidence of why Witness 1 or Witness 2 would have not been available to him. The evidence that was before the Panel was that, on occasion, Dr. Din would advise that their presence was not required.

The alternative restriction of simply allowing Dr. Din to treat only male patients is also problematic. A similar restriction was imposed on Dr. Din having regard to pediatric patients and was not adhered to. The Panel is not satisfied that Dr. Din would strictly adhere to any restriction permitting him to only attend before a male patient. Further, a restriction permitting Dr. Din to treat only male patients leads to other issues having regard to gender identity. Such a restriction can not only cause uncertainty to Dr. Din, but will cause uncertainty and potential harm to the public.

Finally, as discussed in *Schwarz*, imposing restrictions that only allow Dr. Din to treat adult males, leaving out women and children, sends a troubling message to the public as a whole regarding patient safety.

Many of the case law relied upon by Dr. Din dealt with penalty imposed after inappropriate text messaging had occurred, which is but one aspect of the present case. The *Li*, *Noreiga* and *Deluco* decisions are also distinguishable in that while there were certainly breaches of undertakings regarding having a chaperon in place during examinations of females, none of the cases involved conduct found to be inappropriate with respect to a female patient, as was found in the present case.

The circumstances of the present case are more serious and varied than the facts giving rise to the authorities relied upon by Dr. Din. In particular, the case law

simply did not address issues where significant undertakings had been breached so soon after being *imposed by* a discipline panel and agreed to by the member in order to resume practice.

This, compounded with Dr. Czaplinski's own uncertainty and no real plan for compliance being offered by Dr. Din, demonstrates that the lesser penalties in these decisions simply do not protect the public.

COSTS UNDER SECTION 127

Subsections 127(1) and (2) of the Act provide:

> **Costs and fines**
>
> 127(1) In addition to or instead of dealing with the investigated member's conduct under section 126, the panel may order the member to pay to the college, within the time period set in the order,
>
> (a) all or part of the costs of the investigation, hearing and appeal;
>
> (b) a fine not exceeding
>
> (i) the amount that is set out in the column of the table of professional misconduct fines in Schedule 1 that is specified for the college, by regulation, for each finding of professional misconduct, or
>
> (ii) the aggregate amount set out in that column for all of the findings arising out of the hearing; or
>
> (c) both the costs under clause (a) and the fine under clause (b).
>
> **Nature of costs**
>
> 127(2) The costs referred to in subsection (1) may include, but are not limited to,
>
> (a) all disbursements incurred by the college, including

> (i) fees and reasonable expenses for experts, investigators and auditors whose reports or attendance were reasonably necessary for the investigation or hearing,
>
> (ii) fees, travel costs and reasonable expenses of witnesses required to appear at the hearing,
>
> (iii) fees for retaining a reporter and preparing transcripts of the proceedings, and
>
> (iv) costs for serving documents, long distance telephone and facsimile charges, courier delivery charges and similar miscellaneous expenses;
>
> (b) payment of remuneration and reasonable expenses to members of the panel or the complaints investigation committee; and
>
> (c) costs incurred by the college in providing counsel for the college and the panel, whether or not counsel is employed by the college.

As noted above, the CPSM is seeking $60,000 in costs, reflecting a portion of the costs associated with bringing this matter through to this hearing. Counsel for the member argued that $30,000 was more appropriate in the circumstances to be paid if and when he seeks registration on a schedule to be determined based on Dr. Din's income, responsibilities and expenses at that time.

The Panel was referred to a number of authorities with respect to the issue of costs.

The Saskatchewan Court of Appeal in *Abrametz* outlined the following principles in considering costs in a professional disciplinary matter:

1. A member of a profession who is found to have committed an act of professional misconduct or to have breached a standard of conduct of his or her profession should bear a substantial portion of the costs of the investigative and disciplinary process. The membership of the profession as a whole should not be responsible for bearing those costs.

2. The nature and extent of proven versus unproven allegations in reference to the factual findings of a panel must be considered. This involves consideration of the relative time and expense of the investigation and hearing relating to each of the charges and the results of each of the charges.

3. The extent to which the conduct of each of the parties resulted in costs either being incurred or being saved.

4. The impact of other penalties imposed upon the member.

5. The costs to the member should not be punitive. Furthermore, costs should not be so prohibitive as to prevent a member from advancing a full answer and defence.

The Panel accepts the findings and principles on costs as set out in *Ames* and *Hesse*. The Discipline Committee noted in *Hesse* that she had elaborated on her personal and financial circumstances in support of her argument for reduced costs. In the present case, the Panel was unclear as to how much Dr. Din was working since he voluntarily ceased practicing in April 2021 and doesn't have sufficient evidence before it that Dr. Din cannot pay costs unless practicing.

Having regard to the case law and the submissions made by counsel, the Panel is of the view that the following order of costs is fair and reasonable in the circumstances:

(i) The sum of $40,000 to be paid by Dr. Din over four (4) years from the date of the attached Resolution and Order; and

(ii) An additional $20,000 to be paid by Dr. Din should he be reinstated to practice medicine, payable over a two (2) year period from the time of reinstatement to practice.

The Panel was not satisfied that Dr. Din's present circumstances are such that no costs should be paid unless and until Dr. Din seeks registration with the CPSM.

Such an order would not be in line with the principles as set out in *Abrametz*. An award of costs must reflect the seriousness of the findings that have been made by this Panel and the seriousness of the penalty imposed, namely cancellation of Dr. Din's licence.

The Panel's order on costs reflects the fact that the CPSM was successful on all Counts under the Amended Notice of Inquiry and that it was required to call evidence to address Counts 4 and 5. Despite this, as acknowledged by the CPSM, limited facts were gleaned from Witness 1 and 2 and Dr. Din mitigated the costs that may have otherwise been incurred by pleading guilty to Counts 1 – 3, admitting the particulars of Count 4 and agreeing to an Agreed Statement of Facts and an Agreed Book of Documents.

The costs as ordered by the Panel strikes a balance between the seriousness of this matter and the cooperation of Dr. Din in this matter.

CONCLUSION

Based on all of the foregoing, the Panel orders

(a) An order of reprimand pursuant to subsection 126(1)(a) of the Act;

(b) An order of cancellation of Dr. Din's registration with the CPSM pursuant to subsection 126(1)(i) of the Act; and

(c) An order of costs pursuant to subsection 127 of the Act as follows:

(iii) The sum of $40,000 to be paid by Dr. Din over four (4) years from the date of the attached Resolution and Order; and

(iv) An additional $20,000 to be paid by Dr. Din should he be reinstated to practice medicine, payable over a two (2) year period from the time of reinstatement to practice.

DATED this 2nd day of June, 2022.

IN THE MATTER OF:	*The Regulated Health Professions Act*, C.C.S.M. c. R117, Part 8 (the "Act")
AND IN THE MATTER OF:	DR. SHAMOON HASHAM DIN, a member of the College of Physicians and Surgeons of Manitoba
AND IN THE MATTER OF:	an Amended Notice of Inquiry dated September 17, 2021

INQUIRY PANEL:

Alan Scramstad, Chairperson and Public Representative

Dr. Carry Martens-Barnes

Dr. James Price

RESOLUTION AND ORDER OF AN INQUIRY PANEL OF THE COLLEGE OF PHYSICIANS AND SURGEONS OF MANITOBA RE: ORDERS UNDER SECTION 126 and 127 OF THE ACT

COUNSEL FOR THE COMPLAINTS INVESTIGATION COMMITTEE OF THE COLLEGE OF PHYSICIANS AND SURGEONS OF MANITOBA

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COUNSEL FOR THE INQUIRY PANEL

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RESOLUTION AND ORDER OF THE INQUIRY PANEL

WHEREAS Dr. Shamoon Hasham Din ("Din") a member of the College of Physicians and Surgeons of Manitoba (the "CPSM"), was charged with professional misconduct, with contravening the Act or a Regulation, the Standards of Practice of Medicine and/or the Code of Ethics, with demonstrating an unfitness to practice medicine and conduct unbecoming a member, as more particularly outlined in a Notice of Inquiry dated September 17, 2021;

AND WHEREAS Dr. Din was summoned and appeared before an Inquiry Panel (the "Panel") of the CPSM with legal counsel on January 31, 2022 for the purpose of conducting an inquiry pursuant to Part 8 of the Act into the allegations against Dr. Din as set out in the Notice of Inquiry;

AND WHEREAS an inquiry proceeded before the Panel on January 31 and February 1, 2022, by video conference, in the presence of Dr. Din and his counsel, and in the presence of counsel for the Complaints Investigation Committee of the CPSM, and counsel for the Panel;

AND WHEREAS and Amended Notice of Inquiry dated September 17, 2021, outlining the charges and particularizing the allegations against Dr. Din, was filed as an Exhibit before the Panel;

AND WHEREAS Dr. Din entered a plea of not guilty to counts 4 and 5 of the charges outlined in the Amended Notice of Inquiry and a plea of guilty to counts 1, 2 and 3 of the said charges;

AND WHEREAS Dr. Din admitted to all of the particulars of counts 1 to 4 as set out in the Amended Notice of Inquiry;

AND WHEREAS the Panel considered the evidence introduced at the Inquiry and considered the oral submissions of the parties and the authorities that were provided to the Panel;

AND WHEREAS on March 10, 2022, the Panel issued a Resolution and Order and Reasons for Decision, pursuant to which the Panel made the following findings with respect to Dr. Din:

(i) Pursuant to subsection 124(2)(a),(b) and (h) of the Act, Dr. Din is guilty of committing acts of professional misconduct, contravened the Code of Ethics, contravened the Practice of Medicine Regulation, and is guilty of conduct unbecoming a member by breaching undertakings given to the CPSM on July 30, 2019 and orders imposed by an Inquiry Panel on September 12, 2018, as particularized in Count 1.1 to 1.5 of the Amended Notice of Inquiry.

(ii) Pursuant to subsection 124(2)(b) of the Act, Dr. Din is guilty of contravening the Code of Ethics of the CPSM by creating false and misleading medical records related to the presence of a chaperone for 36 female patients to whom Dr. Din provided care, as particularized in Count 2.1 and 2.2 of the Amended Notice of Inquiry.

(iii) Pursuant to subsection 124(2)(b) of the Act, Dr. Din has contravened the Practice of Medicine Regulation and has contravened the Code of Ethics of the CPSM by practicing beyond the boundaries of his certificate of practice in Family Medicine, which excluded providing medical care to paediatric patients.

(iv) Pursuant to subsection 124(2)(b) of the Act, Dr. Din has contravened the Code of Ethics of the CPSM, in particular Part B and the Commitment to the well-being of the Patient, by failing to maintain

professional boundaries, as particularized in Count 4.1 to 4.6 of the Amended Notice of Inquiry.

(v) Pursuant to subsection 124(2)(e) of the Act, Dr. Din has demonstrated he is unfit to practice medicine by displaying an unwillingness or inability to by governed by the CPSM.

(vi) A further hearing before this Panel will be convened as soon as reasonably practical for the purpose of receiving the parties' evidence and submissions with respect to the order or orders which should be issued by the Panel pursuant to sections 126 and 127 of the Act.

AND WHEREAS the Panel reconvened on March 16 and 17, 2022 for the purposes of hearing evidence and submissions regarding what orders should be made by the Panel under sections 126 and 127 of the Act;

AND WHEREAS the Panel has considered the evidence received and the submissions made by the parties with respect to sections 126 and 127 of the Act;

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

1. An order of reprimand pursuant to subsection 126(1)(a) of the Act;

2. An order of cancellation of Dr. Din's registration with the CPSM pursuant to subsection 126(1)(i) of the Act; and

3. An order of costs pursuant to subsection 127 of the Act as follows:

   (a) The sum of $40,000 to be paid by Dr. Din over four (4) years from the date of the attached Resolution and Order; and

(b) An additional $20,000 to be paid by Dr. Din should he be reinstated to practice medicine, payable over a two (2) year period from the time of reinstatement to practice.

DATED this 2nd day of June, 2022.