

IN THE MATTER OF: *The Regulated Health Professions Act,
C.C.S.M., c. R117, Part 8*

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

AND IN THE MATTER OF: a Notice of Inquiry dated December 3, 2021

INQUIRY PANEL:

Dr. Reesa Simmonds, Chairperson

Dr. Keevin Bernstein

Sandra Benavidez, 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 November 8, 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. Naseer Ahmed Warraich (“Dr. Warraich”), a member of the CPSM at the relevant time, as set forth in a Notice of Inquiry dated December 3, 2021.

The Notice of Inquiry charged Dr. Warraich with professional misconduct, with contravening the Code of Ethics, with displaying a lack of skill, knowledge, and judgment in the practice of medicine and with demonstrating an unfitness to practice medicine.

Among other things, the Notice of Inquiry states that:

1. Between in or about January 19 and January 27, 2021, Dr. Warraich engaged in professional misconduct and/or contravened CPSM’s Code of Ethics in that he sent a series of unsolicited, improper, and/or unethical email communications to the lawyer representing a panel of the Inquiry Committee, the Registrar of CPSM, a CPSM Medical Consultant, and the former Chair of the Investigation Committee, all of which communications related to an ongoing hearing.
2. Between in or about August 13, 2020, and March 15, 2021, Dr. Warraich engaged in professional misconduct, displayed a lack of skill, knowledge, and judgment in the practice of medicine and/or contravened CPSM’s Code of Ethics in that he failed to meet the standard of care respecting Patient 1’s vaccinations, failed to accurately document his care of Patient 1, inappropriately altered Patient 1’s patient record, and/or attempted to obstruct and/or mislead the Investigation Committee’s investigation of his care of Patient 1.

3. By reason of one or more of the foregoing allegations, Dr. Warraich demonstrated an unfitness to practice medicine.

The Notice of Inquiry also contained factual particulars with respect to counts 1 and 2 set out above.

The hearing proceeded virtually before the Panel on November 8, 2022, in the absence of Dr. Warraich but in the presence of his legal counsel, who confirmed that Dr. Warraich was aware of the hearing but would not be attending. The hearing also proceeded in the presence of counsel for the Investigation Committee of the CPSM (herein the "CPSM"). Dr. Warraich, through his counsel, admitted his membership in the CPSM at the relevant time, and confirmed that the Panel had jurisdiction over the matters at issue. Dr. Warraich, through his counsel, also acknowledged service upon him of 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. Warraich's counsel.

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.

Through his counsel, Dr. Warraich waived the reading of the Notice of Inquiry. Due to his absence, no plea was entered with respect to the charges. However, his counsel confirmed that Dr. Warraich was not challenging the charges nor the evidence to be submitted by the CPSM.

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 December 3 (Exhibit 1); and
2. Book of Documents (Exhibit 2).

For the reasons set out herein, the Panel is satisfied that the charges set forth in the Notice of Inquiry and the particulars contained therein have been proven on a balance of probabilities.

As discussed below, Dr. Warraich's license with the CPSM was cancelled prior to this hearing. As such, the CPSM sought an order reprimanding Dr. Warraich pursuant to subsection 126(1)(a) of the Act. The CPSM did not seek an order of costs pursuant to section 127(1)(a) of the Act.

The Panel is satisfied the order sought by the CPSM is appropriate having regard to the Panel's findings, as discussed fully below.

BACKGROUND

Dr. Warraich graduated from the Allama Iqbal Medical College University of the Punjab, Pakistan in 1987. He obtained licensure from the Medical Council of Canada in 1988.

On February 28, 2001, Dr. Warraich was licensed and registered as a physician in Manitoba with the CPSM and was a member of the CPSM until his registration was cancelled on April 29, 2021.

In 2006 Dr. Warraich was charged with six counts of professional misconduct that proceeded to a hearing before an inquiry panel, resulting in the suspension of his license for a period of two months

In 2016, Dr. Warraich executed an undertaking to the CPSM (the "Undertaking"), wherein Dr. Warraich undertook to abide by significant restrictions on his practice, including:

- a) Limits in relation to his office practice on the number of patients to be seen per hour and the number of patients to be seen per day;
- b) Limits in relation to his office practice on the number of days per week he could practice;

- c) Limits relating to his attendances at a personal care home on the number of patients to be seen per hour and per day;
- d) Extensive and specific requirements relating to record keeping;
- e) The establishment of a tracking system in his office with specifically enumerated requirements;
- f) On site practice supervision by a designated "Practice Supervisor" with specifically enumerate requirements relating to supervision; and
- g) Monitoring of Dr. Warraich's compliance with the undertaking by the Investigation Chair of the College.

In 2018, a further Notice of Inquiry, dated December 7, 2018 (the "2018 Inquiry") was issued to Dr. Warraich wherein he was charged with contravening By-Laws 1 and 11 of the CPSM, displaying a lack of knowledge of or a lack of skill and judgment in the practice of medicine and professional misconduct.

An Inquiry Panel convened to hear evidence on the charges in the 2018 Inquiry on January 14, 2020. Following the hearing of the 2018 Inquiry and the receipt of written submissions, the Inquiry Panel issued its Reasons for Decision along with a Resolution and Order with respect to its findings on the charges set out in the 2018 Inquiry on October 1, 2020 (the "Liability Order"). The Liability Order found Dr. Warraich guilty of all 6 counts contained within the 2018 Inquiry, including failing to meet the standard of care in his management and treatment of a patient's tuberculosis, failing to create and maintain adequate medical records, displaying a lack of knowledge, skill and judgment in the practice of medicine by creating false or misleading medical records, engaging in unethical and inappropriate billing practices and otherwise displaying a lack of knowledge, skill and judgment in the practice of medicine.

Following issuance of the Liability Order, the panel was to reconvene at a later date for the purpose of receiving the parties' submissions with respect to what orders should be issued having regard to the Liability Order.

Following receipt of written submissions, the Inquiry Panel issued the following orders on April 29, 2021 (the "Penalty Order"):

- a) A reprimand with respect to the matters for which Dr. Warraich had been found guilty of;
- b) An order cancelling Dr. Warraich's registration with the CPSM;
- c) A fine of \$10,000;
- d) Costs in the amount of \$90,000, representing a contribution to the costs of the investigation and the hearing with respect to the 2018 Inquiry.

Dr. Warraich appealed by the Liability Order and the Penalty Order. The Court of Appeal dismissed Dr. Warraich's appeal on August 17, 2022.

EVIDENCE

Investigation IC5511

The Investigation Committee's investigation underlying Count 1 was identified as IC5511 and related to Dr. Warraich's conduct between January 19 and 27, 2021. The conduct occurred after the Liability Order and prior to the Penalty Order. The Panel was advised that Dr. Warraich would have been aware that the CPSM was seeking cancellation of his license following receipt of the Liability Order.

The conduct at issue relates to a series of e-mails sent by Dr. Warraich, which are transcribed below. Spelling and grammar errors have been intentionally kept.

The first e-mail is an e-mail to the former Chair of the Investigation Committee, dated January 20, 2021 at 12:57 p.m., wherein Dr. Warraich wrote:

you are my killer and responsible for my death .You tortured me when i was fasting for eighteen hours.

The second e-mail was to the Registrar of the CPSM, with a copy to counsel for the 2018 Inquiry Panel, dated January 21, 2021 at 7:51 a.m. Excerpts of this e-mail are as follows

I start with the name of Allah who is more Merciful and Beneficient.

I Naseer Warraich is surrendering my license from Feb 12, 2021 because of my [REDACTED] secondary to stress which I have from three individulas.

The next e-mail is only to counsel for the 2018 Inquiry Panel, sent on January 21, 2021 at 1:39 p.m. An except of this e-mail is as follows:

...Those People who made forged/false case against me and those who gave me stress and put me at death spot. All will do justice if in this world then hereafter.

A subsequent e-mail to counsel for the 2018 Inquiry Panel, was sent on January 21, 2021 at 2:26 p.m. Excerpts of this e-mail are as follows:

I have already requested that I am representing myself and no lawyer is representing me. Please do not share myinformatio into any one else at all.

In past in month of June i was fasting for 19 hours when college female lawyer tortured me and mt throat was becoming dry and dry and she was offer water to me.

It was a terrible attack on my religion. I complained about it. She wrote back to some individuals who put influence and wrote application to withdraw complaint. As you know I told you that they are killing me, no body took notice of it. Ignoe it.

[REDACTED]

...

I knew two people...how they were stressed and tortured and now both are dead.

The same will happen me. and you will report to RCMP about my killers.

Another e-mail is sent to counsel for the Inquiry Panel on January 27, 2021 at 1:19 p.m. Excerpts are as follows:

I just to make sure to let you know is mkiller.

[Investigator for CPSM] work in steinbach as anaethetist. I worked with her two years and she was removed from emergency at that times.

[Former Chair, Investigation Committee] is no one racist of the world ,who I worked for at ten years in Family Medicine.

Female College Lawyer ,She tortured mr while I was fasting for 19 to 20 Hours .I complained against her,but she manged and enforce to withdraw complaint against her.

These are my three killers who was threatening and torturing me [REDACTED]

These are my three killers.

...

I am in situation and I have told you that No lawyer is presenting me ,1 f you ask to present I will come I will do Suicide at front of you and you will witness that these three people put me at this stage and i have nothing left in my body that i can survive.

Following this e-mail, the Registrar contacted Dr. Warraich as she was concerned for Dr. Warraich's safety. She further asked him to voluntarily withdraw from practice.

On the same day, in an e-mail to a medical consultant for the CPSM, Dr. Warraich wrote at 4:29 p.m., among other things:

...What ever you did , It was handed over to world biggest Racist [Former Chair, Investigation Committee]/[Investigator]

when i was working with her .She was kicked out from her position .Any work with her he/she knows she is number racist of the world

And This lady lawyerwho and [Former Chair, Investigation Committee] torture me when i was fasting for 19-20 hours ■

■

■

■ I have my three killers...

In response to her e-mail confirming their conversation earlier in the day, the Registrar received an e-mail from Dr. Warraich at 8:03 p.m., which included:

I was fasting for 19 to 20 hours and [Former Chair, Investigation Committee] and Lady Lawyer torture me ,when my throat become s dry she push me to drink water .It is attach on my religion .

I am surgeon train ,It just need a minor cut at Internal artery and All this tortures will resolve .

...Today was my last day at clinic and last patients who were already in room .

But do not forget [Investigator] [Former Chair, Investigation Committee] and Lady Lawyers are my killers. They torture me six years .1 have only one dsire to make my appoitments with these three at college .1 will just cut my internal carotid artery and die Right away at place of college.

Dr. Warraich's e-mails were referred to the Investigation Committee for review, following which Dr. Warraich was interim suspended. When asked for an explanation for the e-mails, Dr. Warraich advised in writing:

- He had been advised on January 14, 2021, following the Liability Order, that the CPSM was going to seek revocation of his registration to practice medicine and he found that distressing;

- He believed the investigation and inquiry proceeding that lead to the Liability Order was biased;
- He wrote the e-mails because he wanted the CPSM to be aware of his distress, displeasure and belief the process was unfair. [REDACTED]
[REDACTED]
[REDACTED]; and
- He acknowledged the communications were inappropriate but denied any attempt to manipulate the 2018 Inquiry into a more favourable result for him.

In addition to his written response, Dr. Warraich provided a report from Dr. Kent Somers, Registered Psychologist dated May 31, 2021, that confirmed Dr. Warraich “does not identify as having a mental health problem that would prevent him from currently returning to practice.”

The evidence before the Panel having regard to the allegations made by Dr. Warraich in his e-mails is as follows:

- The lawyer involved in the investigation who interviewed him in June 2017, did so in the presence of Dr. Warraich’s own legal counsel and apologized a few times after she was advised Dr. Warraich was observing Ramadan and could not have water, which Dr. Warraich acknowledged occurred. In a previous interview that took place in December, 2015, Dr. Warraich specifically asked for water;
- The Investigator had not been “removed from emergency” at the Steinbach Hospital and practiced family medicine;
- Dr. Warraich had complained to the Registrar by e-mail in April 2019 about the former Chair of the Investigation Committee and the lawyer who interviewed him in June 2017 but then withdrew those complaints a few days later, advising he was under a great deal of stress when the complaints were sent;

- Despite being represented by counsel in the 2018 Inquiry, no allegations of bias or discrimination were raised during the course of the hearing that lead to the Liability Order;
- Issues of bias and discrimination were also not raised as a ground of appeal when the Liability Order and Penalty Order were appealed to the Manitoba Court of Appeal.

Investigation IC5408

Patient 1's father brought Patient 1, an infant, to see Dr. Warraich on two occasions in August 2020 for scheduled vaccinations. In particular, Patient 1 was due for Meningococcal (Men-C-C), Measles, Mumps, Rubella, Varicella (MMRV) and Pneumococcal (Pneu-C-13) vaccinations.

Dr. Warraich's original chart entry for August 13, 2020, notes that he provided education respecting all three vaccines and that "Pneumococcal vaccine was given on LT buttocks". Administration of a pneumococcal vaccine was billed to Manitoba Health for this visit.

Dr. Warraich's original chart entry from August 18, 2020 indicates that he provided education respecting the Pneumococcal, Meningococcal and "Tdap-IDV" [sic] vaccines and that "pneumococcal vaccine given on LT buttocks .last times" and "today MEN-C-C Given RT buttocks". While administration of both a Pneumococcal and Meningococcal vaccine were billed in relation to this visit, an audit of Dr. Warraich's clinic found administration of only one vaccine.

Patient 1's father made a complaint to the CPSM when, following a review of vaccine records, it appeared that his daughter received the Pneumococcal vaccine twice and did not receive the MMRV vaccine at all.

Following an audit of Dr. Warraich's chart records for Patient 1, it was found that Dr. Warraich modified the August 18, 2020 chart entry to read "pneumococcal vaccine given on RT buttocks .last times" and "today MMRV".

Dr. Warraich made further modifications to the chart records on January 27, 2021. The August 13, 2020 entry was modified to read "MMRV Vaccine given on LT buttocks" and the August 18, 2020 entry was modified to read "MMRV vaccine given on RT buttocks .last times" and "today MEN-C-C given left buttocks".

In his response to the CPSM Dr. Warraich provided on January 27, 2021, the day the last modifications to the chart records were made, he noted that "I saw her first times on August 13, 2020 and MMRV vaccination was given and on August 18, 2020 Men C-C was given .She did not get her Pneumococcal vaccine from me." While this was consistent with the last chart modifications, it was not consistent with earlier entries, the clinic audit for administration, billing information or information provided to Patient 1's father.

In a further response to the CPSM during the course of its investigation, Dr. Warraich advised on March 15, 2021 "I am to this day uncertain about what immunizations were given" and "All I can rely on is what I initially included in the chart notes for these two days."

ANALYSIS

Count 1

Between in or about January 19 and January 27, 2021, Dr. Warraich engaged in professional misconduct and/or contravened CPSM's Code of Ethics in that he sent a series of unsolicited, improper, and/or unethical email communications to the lawyer representing a panel of the Inquiry Committee, the Registrar of CPSM, a CPSM Medical Consultant, and the former Chair of the Investigation Committee, all of which communications related to an ongoing hearing

Having regard to the unchallenged evidence before the Panel, we are satisfied that Dr. Warraich's conduct as borne out in a series of e-mails sent from January 19 and January 27, 2021 give rise to professional misconduct and are a breach of the governing Code of Ethics.

The CPSM Code of Ethics includes the following a doctor must adhere to:

- An honest physician is forthright, respects the truth, and does their best to seek preserve, and communicate that truth sensitively and respectfully;
- A physician who acts with integrity demonstrates consistency in their intentions and actions and acts in a truthful manner in accordance with professional expectations, even in the face of adversity;
- Participate in establishing and maintaining professional standards and engage in processes that support the institutions involved in the regulation of the profession;
- Take responsibility for promoting civility, and confronting incivility, within and beyond the profession. Avoid impugning the reputation of colleagues for personal motives; however, report to the appropriate authority any unprofessional conduct by colleagues;
- Treat your colleagues with dignity and as persons worthy of respect. Colleagues include all learners, health care partners, and members of the health care team.

The Panel is satisfied that the CPSM has established on a balance of probabilities Dr. Warraich breached these provisions of the Code. Dr. Warraich failed to act with integrity and treat his colleagues and those involved in the 2018 Inquiry with civility and dignity.

The Panel is also satisfied on a balance of probabilities that Dr. Warraich engaged in professional misconduct by engaging in conduct that would be reasonably be regarded as improper.

Dr. Warraich's conduct was inconsistent with the CPSM's statutory public interest mandate, which is to:

1. Protect the health, safety, and wellbeing of the Public;
2. Declare and maintain proper professional standards; and
3. Preserve confidence in the profession's ability to self-regulate.

The Panel was referred to two cases that were particularly apt in establishing that Dr. Warraich's conduct exceeded his professional and ethical boundaries.

In *Groia v. Law Society of Upper Canada*, 2018 SCC 27, the Supreme Court of Canada considered the balance between a regulator's statutory mandate and a member's right to free speech as follows:

111 An administrative decision that engages the Charter by limiting its protections will only be reasonable if it reflects a proportionate balancing of the Charter protections at play with the decision maker's statutory mandate: Doré, at para. 57; Loyola High School v. Quebec (Attorney General), 2015 SCC 12, [2015] 1 S.C.R. 613 (S.C.C.), at para. 39. This Court explained in Loyola High School that a "proportionate balancing is one that gives effect, as fully as possible to the Charter protections at stake given the particular statutory mandate": para. 39.

112 Law society decisions that discipline lawyers for what they say may engage lawyers' expressive freedom under s. 2(b) of the Charter. Doré, at paras. 59, 63 and 65-68. This is true regardless of whether the impugned speech occurs inside or outside a courtroom. Courtroom lawyers are engaged in expressive activity, the method and location of the speech do not remove the expressive activity from the scope of protected expression, and law society decisions sanctioning lawyers for what they say in the courtroom have

the effect of restricting their expression: see *Irwin Toy Ltd. c. Québec (Procureur général)*, [1989] 1 S.C.R. 927 (S.C.C.), at p. 978; *Montreal (Ville) v. 2952-1366 Québec inc.*, 2005 SCC 62, [2005] 3 S.C.R. 141 (S.C.C.), at paras. 56 and 82.

117 That said, speech is not sacrosanct simply because it is uttered by a lawyer. Certain communications will be far removed from the core values s. 2(b) seeks to protect: the search for truth and the common good: *R. v. Keegstra*, [1990] 3 S.C.R. 697 (S.C.C.), at pp. 762 and 765. The protection afforded to expressive freedom diminishes the further the speech lies from the core values of s. 2(b): *Keegstra*, at pp. 760-62; *RJR-Macdonald Inc. c. Canada (Procureur général)*, [1995] 3 S.C.R. 199 (S.C.C.), at paras. 72-73. As such, a finding of professional misconduct is more likely to represent a proportionate balance of the Law Society's statutory objective with the lawyer's expressive rights where the impugned speech lies far from the core values of lawyers' expressive freedom.

118 The flexibility built into the Appeal Panel's context-specific approach to assessing a lawyer's behaviour allows for a proportionate balancing in any given case. Considering the unique circumstances in each case — such as what the lawyer said, the context in which he or she said it and the reason it was said — enables law society disciplinary tribunals to accurately gauge the value of the impugned speech. This, in turn, allows for a decision, both with respect to a finding of professional misconduct and any penalty imposed, that reflects a proportionate balancing of the lawyer's expressive rights and the Law Society's statutory mandate.

119 In addition, the Appeal Panel's reasonable basis standard allows for a proportionate balancing between expressive freedom and the Law Society's statutory mandate. Allegations impugning opposing counsel's integrity that lack a reasonable basis lie far from the core values underpinning lawyers' expressive rights. Reasonable criticism advances the interests of justice by holding other players accountable. Unreasonable attacks do quite the opposite. As I have explained at paras. 63-67, such attacks *frustrate* the interests of justice by undermining trial fairness and public confidence in the justice system. A decision finding a lawyer guilty of professional misconduct for launching unreasonable allegations would therefore be likely to represent a

proportionate balancing of the Law Society's mandate and the lawyer's expressive rights.

120 In contrast, sanctioning a lawyer for good faith, reasonably based allegations that are grounded in legal error does not reflect a proportionate balancing. Advancing good faith, reasonable allegations — even those based on legal error — helps maintain the integrity of the justice system by holding other participants accountable. Well-founded arguments exposing misconduct on the part of opposing counsel thus lie close to the core of the s. 2(b) values underpinning a lawyer's expressive freedom. Discouraging lawyers from bringing forward such allegations does nothing to further the Law Society's statutory mandate of advancing the cause of justice and the rule of law. If anything, silencing lawyers in this manner undercuts the rule of law and the cause of justice by making it more likely that misconduct will go unchecked.

Relying on *Groia*, the Manitoba Court of Appeal in *Histed v. Law Society of Manitoba*, 2021 MBCA 70, found at paragraph 84:

84 *Groia* establishes that misconduct allegations or other challenges to a lawyer's integrity will cross the line into professional misconduct unless they are made in good faith and with a reasonable basis taking all the circumstances into account. As also acknowledged in *Groia*, a lawyer can be found guilty of professional misconduct for challenging opposing counsel's integrity in an inappropriate manner (see para 156). While a single outburst would not usually attract sanction, repetitive personal attacks on opposing counsel using demeaning, sarcastic or otherwise inappropriate language are more likely to warrant disciplinary action (see para 98). As expressed in *Doré*, lawyers "have a right to speak their minds freely, they arguably have a duty to do so. But they are constrained by their profession to do so with dignified restraint" (at para 68).

The Panel finds Dr. Warraich's e-mails were not made in good faith and were without a reasonable basis. If Dr. Warraich was concerned about the 2018 Inquiry, including the investigation or the hearing, there were appropriate and professional ways to have raised concerns of bias or unfairness. No issues were raised at the hearing or

on appeal. Further, complaints made by Dr. Warraich in 2019 were quickly withdrawn with no apparent reason until after it was clear to Dr. Warraich that he was facing the possibility of losing his license to practice medicine following the Liability Order. The allegations made in the e-mails contained false or inaccurate statements.

The Panel was particularly struck by the fact that the Dr. Warraich sent multiple e-mails to different people over the course of a week or so. The content of the e-mails escalated but continued to repeat harmful and untruthful comments.

Dr. Warraich has not challenged the allegations in Count 1. He has provided no counter-evidence or reasons to this Panel. The evidence before the Panel is that Dr. Warraich was not suffering from any medical condition that would explain his conduct. While the Panel accepts that Dr. Warraich may have been stressed and frustrated as a result of the Liability Order, this does not excuse or justify making serious allegations of bias, racism, and infliction of harm against other professionals. Having not acted in good faith and on a reasonable basis, Dr. Warraich engaged in professional misconduct.

Count 2

Between in or about August 13, 2020, and March 15, 2021, Dr. Warraich engaged in professional misconduct, displayed a lack of skill, knowledge, and judgment in the practice of medicine and/or contravened CPSM's Code of Ethics in that he failed to meet the standard of care respecting Patient 1's vaccinations, failed to accurately document his care of Patient 1, inappropriately altered Patient 1's patient record, and/or attempted to obstruct and/or mislead the Investigation Committee's investigation of his care of Patient 1.

At the time Dr. Warraich provided care to Patient 1, he was practising pursuant to the Undertaking he signed on September 30, 2016, wherein he undertook to maintain complete and accurate patient records.

The uncontroverted evidence before the Panel is that Dr. Warraich failed to properly chart which vaccinations were administered and then modified the charts in an effort to conceal his error after a complaint was filed. As a result, neither Dr. Warraich

nor anyone else reviewing the chart records for Patient 1 is able to determine which vaccinations were in fact administered.

The importance of receiving vaccinations on a timely basis were set out for the Panel in a report by Dr. Audrey Javellana, which was entered into evidence without objection by Dr. Warraich and accepted by the Panel. In particular, Dr. Javellana notes:

Confusion regarding what vaccinations were provided and deviations from the recommended schedule for vaccination can lead to significant complications. The patient would be at a higher risk for the morbidity and mortality associated with the infectious diseases they were supposed to be protected from. There would also be an increased risk of transmission of these infections to others.

...if the child was otherwise healthy, it is then the standard of care to follow the recommended schedule set forth by Manitoba Health, which is the concurrent administration of all three PCV-13, Men-C and MMRV vaccinations at the 12 month appointment. Standard of care also includes appropriate documentation.

The CPSM Code of Ethics sets out the following that members are to abide by:

- Honesty – an honest physician is forthright, respects the truth and does their best to seek, preserve, and communicate that truth sensitively and respectfully;
- Integrity – a physician who acts with integrity demonstrates consistency in their intentions and actions and acts in a truthful manner in accordance with professional expectations, even in the face of adversity;
- Commitment to Professional Excellence – participate in establishing and maintaining standards and engage in processes that support the institutions involved in the regulation of the profession.

A physician is also expected to practice medicine competently and safely. They are held to the standard of a prudent and diligent medical practitioner possessed of the level, skill, knowledge, and clinical judgment reasonably expected of professionals in their field of practice. In providing care, physicians are expected to exercise judgment in

a reasonable, honest, and intelligible manner appropriate to the clinical circumstances. Providing appropriate care includes contemporaneous and accurate description of care provided in a patient records.

The evidence with respect to Count 2 goes beyond establishing a mere mistake on the part of Dr. Warraich. Rather, the evidence establishes a chain of events giving rise to the charge. Dr. Warraich, without reason, departed from the typical vaccination schedule and administration of all three vaccinations. He then compounded the error by failing to properly chart the immunization that did take place. When a complaint arose and it became obvious to Dr. Warraich an error had been made, instead of owning to it, he took steps to re-create Patient 1's records for his benefit. This not only further compounded the issue by creating more uncertainty but was an active step taken to deceive the CPSM.

The Panel is satisfied that the CPSM has established on a balance of probabilities that Dr. Warraich breached the Code of Ethics, displayed a lack of skill, knowledge and clinical judgment when he failed to properly administer and record scheduled vaccinations for Patient 1. Dr. Warraich also engaged in professional misconduct by intentionally altering Patient 1's records in an attempt to mislead as to which vaccinations were provided when, as Dr. Warraich later admitted, he did not know which vaccinations were administered.

Count 3

By reason of one or more of the foregoing allegations, Dr. Warraich demonstrated an unfitness to practice medicine.

The Panel is satisfied that the CPSM has established that during the relevant times, Dr. Warraich demonstrated an unfitness to practice medicine. The Manitoba Court of Appeal in *Ahulwalia v. College of Physicians and Surgeons of Manitoba*, 2017MBCA 15 made clear that unfitness to practice medicine goes beyond patient care but the practice of medicine generally. The conduct of Dr. Warraich establishes that he has demonstrated an unfitness to practice.

The relevant time frame is as set out in Counts 1 and 2. The e-mail correspondence set out in detail above in Count 1 make clear that Dr. Warraich was not fit to practice medicine. This is compounded by the fact that at the same time he is sending unethical and unprofessional e-mails, he was intentionally modifying Patient 1's chart records in an attempt to cover up an error he made months prior. While such conduct is in and of itself wrong, it is also contrary to the Undertaking, a promise, made to the CPSM.

There is no evidence before the Panel to suggest that Dr. Warraich was suffering from a medical issue that would explain his conduct. To the contrary, the evidence is that, at least as of May 2021, Dr. Warraich was not suffering from any particular mental health issue that would impact his ability to practice medicine. The Panel is left with no option but to conclude that Dr. Warraich was simply unwilling to act in accordance with his professional obligations and the Undertaking he had previously given to this regulating body.

A doctor unwilling to comply with his professional and ethical obligations, as well as with his regulator, is not fit to practice medicine.

Penalty

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.

Dr. Warraich's license to practice was cancelled by a previous Inquiry Panel, as set out in the Penalty Order discussed above. As a result, the CPSM sought only the imposition of a reprimand under section 126(1) of the Act.

With the above objectives in mind, the Panel is of the view that a reprimand is appropriate in the circumstances. A reprimand is not an insignificant order. It is a formal denunciation of Dr. Warraich's misconduct.

At the hearing, counsel for the CPSM requested the Panel to conclude that it would have ordered the cancellation of Dr. Warraich's license had the Inquiry Panel who issued the Penalty Order not done so. That request was objected to by counsel for Dr. Warraich as being inappropriate. Counsel was requested by the Panel to make written submissions to the Panel as to whether it could, or should, make the finding requested by the CPSM. Counsel for both the CPSM and Dr. Warriach provided submissions.

The case law submitted on behalf of Dr. Warraich cautioned against adjudicating on matters that are moot. In particular, counsel drew the Panel's attention to the Supreme Court of Canada decision of *Borowski v. Canada (Attorney General)*, [1989] 1 SCR 342, wherein the Court makes clear that a court or tribunal should decline to decide an issue that is moot. A matter will be moot where it will not have the effect of resolving some controversy which affects or may affect the rights of the parties. If the decision of the court or tribunal will have no practical effect on such rights, the court will decline to decide the matter.

The case law submitted on behalf of the CPSM, *Ontario College of Teachers v Foucault*, 2015 ONOCT 22 and *Re Kumra*, [2019] OCPD No. 31, provided

examples of inquiry panels who indicated more severe punishment would have been ordered but for intervening acts.

In particular, the case law provided by the CPSM supports an inquiry panel commenting on what it would have done regarding penalty had a member not retired or otherwise undertaken not to practice prior to the panel's disposition. However, the case law does not specifically support the request being made by the CPSM in the present case.

Dr. Warraich's license was cancelled by another Inquiry Panel established under the Act. In determining what is an appropriate penalty under section 126, this Panel is to consider the previous discipline ordered by previous panels. To do what the CPSM is asking this panel to do is to ignore that a previous panel has already cancelled Dr. Warraich's license. Put another way, the request of the CPSM is to comment on what would be an appropriate penalty if this Notice of Inquiry, and the findings made herein, were considered in isolation. This would be inconsistent with established practice.

While the Panel is not prepared to indicate whether it would have cancelled Dr. Warraich's license if it had not already been cancelled by a previous inquiry panel, it wishes to make clear that the conduct of Dr. Warraich as set out herein is serious and warrants serious rebuke. This decision should not be taken as precedent that such conduct should only give rise to a reprimand. Reprimand is appropriate in this case as Dr. Warraich's license has already been cancelled by an inquiry panel and, as a result, the protection of the public has been fully addressed.

CONCLUSION

The Panel hereby issues an Order, as more particularly set forth in the Resolution and Order issued concurrently herewith and attached hereto.

DATED this 30th day of January, 2023.

IN THE MATTER OF: *The Regulated Health Professions Act,*
C.C.S.M., c. R117, Part 8

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

AND IN THE MATTER OF: a Notice of Inquiry dated December 3, 2021

INQUIRY PANEL:

Dr. Reesa Simmonds, Chairperson

Dr. Keevin Bernstein

Sandra Benavidez, Public Representative

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

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RESOLUTION AND ORDER OF THE INQUIRY PANEL

WHEREAS Dr. Naseer Ahmed Warraich (“Warraich”), who at the relevant time was a member of the College of Physicians and Surgeons of Manitoba (the “CPSM”), was charged with professional misconduct, with contravening the Code of Ethics of the CPSM, with displaying a lack of skill, knowledge, and judgment in the practice of medicine and with demonstrating an unfitness to practice medicine, as more particularly outlined in a Notice of Inquiry dated September 17, 2021;

AND WHEREAS Dr. Warraich was summoned before an Inquiry Panel (the “Panel”) of the CPSM on November 8, 2022 for the purpose of conducting an inquiry pursuant to Part 8 of the Act into the allegations against Dr. Warraich as set out in the Notice of Inquiry;

AND WHEREAS Dr. Warraich did not attend before the Panel but was represented by legal counsel in his absence;

AND WHEREAS an inquiry proceeded before the Panel on November 8, 2022, by video conference, in the presence of Dr. Warraich’s counsel, and in the presence of counsel for the Complaints Investigation Committee of the CPSM, and counsel for the Panel;

AND WHEREAS no plea was entered a plea on behalf of Dr. Warraich;

AND WHEREAS counsel for Dr. Warraich advised the Panel that Dr. Warraich was not contesting Counts 1, 2, and 3 contained in the Notice of Inquiry and was not challenging the evidence to be relied upon by the CPSM;

AND WHEREAS counsel for the Investigation Committee for the CPSM made a motion pursuant to section 122(2)(b) for an order protecting the identity of all patients and third parties who may be referred to in the proceedings or in any of the Exhibits filed and Dr. Warraich, through his counsel, consented to the motion

AND WHEREAS the Panel received a Book of Documents, which was received into evidence;

AND WHEREAS the Panel received oral submissions from counsel for the CPSM as well as counsel for Dr. Warraich;

AND WHEREAS the Panel has considered the evidence introduced at the Inquiry and has considered the oral and written submissions of the parties and the authorities that have been provided to the Panel;

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

1. Pursuant to subsection 122(2)(b) of the Act, 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 in any of the exhibits in the proceedings.
2. Pursuant to subsection 124(2)(a) and (b) of the Act, Dr. Warraich is guilty of committing acts of professional misconduct and contravening the Code of Ethics of the CPSM, by sending a series of unsolicited, improper and unethical e-mail communications as particularized in Count 1.1 to 1.2 of the Notice of Inquiry.
3. Pursuant to subsection 124(2) (a), (b), and (d) of the Act, Dr. Warraich is guilty of committing acts of professional misconduct, contravening the Code of Ethics of the CPSM, and displaying a lack of skill, knowledge and judgment by failing to meet the standard of care respecting Patient 1's vaccinations, failing to accurately document his care of Patient 1, inappropriately altering Patient 1's patient record and attempting to obstruct or mislead the Investigation Committee's investigation into the care for Patient 1, as particularized in Count 2.1 to 2.4 of the Notice of Inquiry.

4. Pursuant to subsection 124(2)(e) of the Act, Dr. Warraich, as a result of his conduct as set out in Counts 1 and 2 of the Notice of Inquiry demonstrated an unfitness to practise medicine.
5. An order of reprimand to Dr. Warraich pursuant to subsection 126(1)(a) of the Act.

DATED this 30th day of January, 2023.