

**THE COLLEGE OF PHYSICIANS AND SURGEONS OF MANITOBA
INVESTIGATION COMMITTEE**

IN THE MATTER OF: *THE REGULATED HEALTH PROFESSIONS ACT, CCSM
c. R117, Part 8 (the “RHPA”)*

AND IN THE MATTER OF: **DR. EMMETT ELVES, a registrant of the College of
Physicians and Surgeons of Manitoba (“CPSM”)**

CENSURE: IC7360

DATE OF CENSURE: May 9, 2023

TAKE NOTICE that, in accordance with subsection 102(2)(d) of the RHPA, the Investigation Committee (“the Committee”) of CPSM hereby censures Dr. Elves with respect to the care Dr. Elves provided to Patient A, aged 12, as his pediatrician at a visit that occurred in the summer of 2022. The concerns are that Dr. Elves failed to meet the standard of the profession and displayed a lack of judgment when he failed to maintain appropriate professional boundaries and failed to respect his patient’s dignity and privacy in his approach to a testicular examination of Patient A. In particular,

- Dr. Elves conducted a testicular examination without first adequately explaining the purpose of the examination and without ensuring that he had obtained consent from either Patient A or his mother, who was present in the examination room during the visit.
- Dr. Elves failed to ensure appropriate covering/draping for Patient A during the examination.
- Dr. Elves did not wear gloves at the time he performed the testicular examination.
- Dr. Elves conducted the examination in a manner that did not respect Patient A’s dignity.
- Dr. Elves failed to document in Patient A’s medical record that he conducted a testicular examination or the results of same.

I. PREAMBLE

All physicians must “consider first the well-being of the patient; always act to benefit the patient and promote the good of the patient”. At all times, it is the physician's professional responsibility to maintain appropriate boundaries with patients.

Patients are by definition vulnerable when seeking medical care because they rely on the specialized training and knowledge of their physicians to diagnose and treat them. This may involve their physicians conducting intimate or sensitive examinations which involve the patient allowing the physician to touch parts of their body that are considered private. Clear communication by a physician with their patient as to what to expect during a clinical encounter, including the physical examination, is the most effective way to avoid misunderstandings regarding the purpose and scope of the clinical encounter. This is particularly so in the context of

an intimate or sensitive examination and where such an examination may not have been expected in the circumstances. In the case of an adolescent, the patient's age and circumstances enhance the importance of sensitive and clear communication to ensure that the patient knows what to expect and consents to the examination. It is also essential that physicians respect their patient's privacy and dignity when conducting or offering to conduct a physical examination. CPSM's Standards of Practice identify the importance of the following in relation to maintaining appropriate professional boundaries during a physical examination:

- providing privacy while a patient undresses or dresses;
- not assisting the patient with undressing or dressing, unless the patient expressly consents;
- explaining the scope of or need for sensitive examinations and obtaining informed consent before conducting intimate or sensitive examinations;
- providing the patient with an opportunity to question or refuse an intimate or sensitive examination or to withdraw consent;
- using gloves when examining genitalia or anus.

Medical care provided must be accurately and adequately documented to ensure continuity of care and follow up by that physician, such that other care providers can rely on the record to inform their care of the patient should the need arise. Details in the record must be sufficient to reasonably allow other health care providers to understand the nature of the care provided. This includes meeting CPSM's requirements and the standard of the profession for the creation and maintenance of adequate records. Record keeping requirements are noted in the Record Keeping document of the CPSM Standards of Practice of Medicine.

II. THE RELEVANT FACTS ARE:

1. Some details underlying this censure have been removed or anonymized to avoid providing identifying information about third parties.
2. At all material times, Dr. Elves practiced as a pediatrician and provided medical care to pediatric patients at the Brandon Clinic in Brandon, Manitoba.
3. In the summer of 2022, when Patient A was 12 years old, he sought care from Dr. Elves in relation to a syncopal episode he experienced the previous evening. Patient A attended the appointment with one of his parents. The following are the relevant details from the encounter:
 - a. When Patient A attended the appointment, one of his parents remained in the room for the entire encounter.
 - b. Following taking a history and conducting a portion of the physical examination while Patient A was sitting on the examination table, Dr. Elves instructed Patient A to lay down, which he did.
 - c. Patient A and his parent have described the following events while Patient A was laying down on the examination table:

- i. Dr. Elves asked Patient A if he knew how to check for testicular cancer. Patient A said no. Dr. Elves then said he would show him. Dr. Elves did not specifically ask permission from Patient A or his parent before proceeding.
 - ii. Dr. Elves then lifted the waistbands of Patient A's sweatpants and underwear. As Dr. Elves did this, Patient A states that Dr. Elves said "*We're gonna say hello.*" While keeping Patient A's waistbands away from his body, with Dr. Elves' right hand, Dr. Elves proceeded to examine Patient A's testicles with his left hand.
 - iii. During this time, Dr. Elves was trying to explain how to check his testicles, but Patient A states that he could not process what Dr. Elves was saying because he was so shocked by Dr. Elves' actions.
 - iv. Dr. Elves was not wearing gloves during the examination.
 - v. Following the examination, Dr. Elves made a comment to indicate that he was aware of patients who died of testicular cancer.
 - vi. Both Patient A and his parent state that they were shocked and confused by the approach taken by Dr. Elves to the examination.
 - d. Dr. Elves documented Patient A's Tanner score in Patient A's medical record, but did not document that he had conducted a testicular examination or the results of same.
4. Dr. Elves has indicated the following about the circumstances surrounding his examination of Patient A's genitals:
- a. Dr. Elves acknowledges that he did not wear gloves, but states that he had washed his hands shortly before the examination.
 - b. Dr. Elves states that he asked Patient A if he was doing testicular self-examination and that he said he had not. Dr. Elves states that he explained that Patient A was at a stage of life where it was something he should be doing regularly. Dr. Elves also states that Patient A said "uh-huh", which Dr. Elves thought meant he understood Dr. Elves would be proceeding with the examination and understood the reasons for it.
 - c. In Dr. Elves' response to the complaint, he stated "I am very sorry that [Patient A and his parent] felt I did not adequately explain the reasons for performing a genital examination, and that I did not obtain [Patient A's] consent to do it. It was my impression he understood I was going to do the examination and the reasons for it."
5. At the request of CPSM, Dr. Elves voluntarily agreed to sign an undertaking imposing conditions on his practice which were made public on his physician profile. The conditions included chaperone requirements, signage requirements and restrictions on the circumstances surrounding Dr. Elves performing genital examinations, including that the following conditions have been met:
- a. Dr. Elves has provided a fulsome explanation to the patient and/or their parent/guardian as to the basis for performing such an examination;

- b. Dr. Elves has obtained the express consent of the patient and/or their parent/guardian to perform said examination;
 - c. Another adult is present in the room at the time of the examination; and
 - d. Adequate draping is provided to the patient and the examination is conducted in a respectful manner.
- 6. Dr. Elves is permanently retiring from the practice of medicine as of June 30, 2023 and has signed an undertaking whereby he has agreed that he will never again practice medicine in Manitoba or any other jurisdiction. In the meantime, Dr. Elves acknowledges that he will continue to be subject to the terms and conditions on his license, which include the presence of a chaperone and other measures.
- 7. The Committee notes the following significant mitigating factors which led to its decision to proceed by way of censure instead of referring its concerns to the Inquiry Committee:
 - a. Since Dr. Elves was advised of the complaint, he has cooperated with CPSM throughout the investigation.
 - b. Dr. Elves signed an undertaking and agreed to conditions on his practice which included chaperone requirements and limitations referenced above.
 - c. Testicular self-examination is a subject that should be discussed with adolescent males, and it is important that testicular examinations be performed as part of health promotion/disease prevention, as long as it is done in accordance with CPSM Standards of Practice and after ensuring informed consent has been obtained.
 - d. Dr. Elves will be permanently retiring from practice as of June 30, 2023, and has signed an undertaking pursuant to which he has voluntarily agreed that from the date of his retirement and forever onward, he will refrain from the practice of medicine in any jurisdiction and will not re-apply for licensure or registration at any time in Manitoba or apply to practice medicine in any other jurisdiction in the future.
 - e. Dr. Elves' willingness to acknowledge his conduct and avoid a contested hearing that would have required Patient A to testify.

III. **ON THESE FACTS, THE INVESTIGATION COMMITTEE RECORDS ITS DISAPPROVAL OF DR. ELVES' CONDUCT IN** displaying a lack of judgment when he failed to maintain appropriate professional boundaries and failed to respect his patient's dignity and privacy in his approach to a genital examination of Patient A. The Committee notes the following prohibited conduct on Dr. Elves' part as it relates to its Standard of Practice in relation to maintaining professional boundaries:

- a. Dr. Elves conducted a testicular examination without first explaining the purpose of the examination and without ensuring he had obtained consent from either Patient A or his parent/guardian who was in the examination room at the time.
- b. Dr. Elves did not provide Patient A with an opportunity to question or refuse an intimate or sensitive examination.

- c. Dr. Elves failed to ensure appropriate covering/draping to Patient A during the examination.
- d. Dr. Elves assisted Patient A with partial undressing when he lifted his pants to facilitate the examination of Patient A's genitals without his consent.
- e. Dr. Elves did not wear gloves at the time he examined Patient A's genitals.
- f. By placing his hands down Patient A's pants to examine his testicles, Dr. Elves did not conduct the examination in a manner that respected Patient A's dignity.
- g. Dr. Elves failed to document the genital examination in Patient A's medical record.

IV. ORDERS

- 1. The Investigation Committee directed, pursuant to subsection 104(2) of the RHPA, that this censure and a description of the circumstances that led to the censure be made available to the public.
- 2. Dr. Elves is ordered to pay the costs of the investigation in the amount of \$4020.00.