PROVINCE OF NOVA SCOTIA)
COUNTY OF HALIFAX)

IN THE MATTER OF: The ***Canada Evidence Act***

- and -

IN THE MATTER OF: The ***Medical Act,*** R.S.N.S. 1995-96, c.10

- and -

IN THE MATTER OF: Dr. Spiro Photopoulos

SETTLEMENT AGREEMENT

(NOTE THE EXISTENCE OF A PUBLICATION BAN SET OUT IN PARAGRAPH 29)

Dr. Spiro Photopoulos, a medical practitioner in the Province of Nova Scotia, and a member of the College of Physicians and Surgeons of the Province of Nova Scotia (the "College"), hereby agrees with and consents to the following in accordance with the provisions of the *Medical Act*, R.S.N.S. 1995-96, c.10.

I. STATEMENT OF FACTS

1. Dr. Spiro Photopoulos is a 45 year old family practitioner. He graduated from the American Medical University of the Caribbean in the British West Indies in 1991, following which he was not able to enter residency training for 10 years due to medical illness. He entered a residency in family medicine at Dalhousie University in 2001, which was successfully completed in 2003. He holds a Defined Licence from the College of Physicians and Surgeons of Nova Scotia.

2. Following completion of his medical residency in Nova Scotia in 2003 Dr. Photopoulos commenced a practice at a walk-in clinic in Halifax and accepted a locum Emergency Room Physician position at the Aberdeen Hospital in New Glasgow, Nova Scotia.

3. At approximately 6:10 a.m. on December 31, 2003 while on duty as the emergency room physician in the Emergency Department of the Aberdeen Hospital, Dr. Photopoulos was asked to attend to a newly arrived patient. The patient, a 59 year old male (Patient X) had been brought by ambulance to the Hospital after having collapsed in his home.

4. After arrival at the hospital, a recorded rhythm strip documented a third degree heart block.

5. Sometime between Patient X's arrival to the Hospital and 6:40 a.m. Dr. Photopoulos requested that the On-Call Internist be paged.

6. The On-Call Internist called the Trauma Room to obtain a status report on Patient X. Upon arrival shortly thereafter the On-Call Internist noted that Patient X had no femoral pulse. Upon an examination of the patient, and the background information provided by the Trauma Room staff, the On-Call Internist pronounced Patient X dead, and left the room with the patient's chart. Dr. Photopoulos had not made any entries on the chart prior to the on-call internist removing the chart, and he did not provide the hospital with a chart note until January 7, 2004.

7. Dr. Photopoulos did not work any shifts at the Aberdeen Hospital after December 31, 2003. Sometime between December 31, 2003 and January 6, 2004, Dr. Photopoulos was advised that his privileges to practice at the Aberdeen Hospital were withdrawn.

8. On January 6, 2004, the College was notified by the Medical Director of the Emergency Department of the Aberdeen Hospital, that the Hospital had withdrawn its sponsorship of Dr. Photopoulos. The withdrawal was directly connected to the care provided by Dr. Photopoulos to Patient X on December 31, 2003.

9. Dr. Photopoulos agrees that deficiencies in his medical skills, knowledge and judgment were demonstrated in his management of Patient X on December 31, 2003.

10. Dr. Photopoulos continued his practice at a walk-in clinic in Halifax, Nova Scotia.

11. On February 10, 2004, the Registrar of the College, referred the alleged actions of Dr. Photopoulos on December 31, 2003, to the College's Investigation Committee for a review of the matter.

12. On March 1, 2004, the College received a letter from Patient X's sister. In her letter she raised several questions and concerns regarding the care of her brother on the morning of December 31, 2003. Patient X's sister specifically cited an alleged failure to properly attend to her brother's medical needs while in the Emergency Department. She formally requested that the College conduct an investigation into the care, and death, of her brother.

13. Upon a review of the matter, the College's Investigation Committee reached agreement with Dr. Photopoulos that he would not work in an emergency room setting pending a further resolution of the matter, and referred Dr. Photopoulos for

a clinical assessment at the Emergency Health Services Atlantic Health Training & Simulation Centre. At this Centre Dr. Photopoulos was provided with three distinct adult emergency scenarios. The results of the assessment (the "EHS Assessment") indicated deficiencies in organization, assessment and treatment.

14. Following receipt of the EHS Assessment, the College's Investigation Committee ordered a further clinical assessment to test Dr. Photopoulos' competence in settings beyond the Emergency Room environment. On October 13-14 2006, Dr. Photopoulos participated in the Clinical Competence Program offered by the University of British Columbia (the "UBC Assessment"). The UBC Assessment had four distinct parts, including a written multiple choice exam, an oral exam, a long answer written exam on patient management problems, and examination of ten standardized patients in a clinical setting. The UBC Assessment is an assessment of clinical skill and knowledge (competence) and is not an assessment of practice performance. The UBC Assessment report states: "While the Clinical Competence Program can make recommendations, we cannot make any judgment as to whether or not a particular physician is suitable for remedial continuing education or training. Remediability is influenced by several factors that the Clinical Competence Program cannot thoroughly assess. They include the physician's degree of insight, cognitive ability to learn, and level of motivation."

15. The UBC assessment indicated below average results on the multiple choice and oral examinations. The results of Dr. Photopoulos' patient management and patient encounters assessment fell generally at the mean.

16. The UBC assessment indicated Dr. Photopoulos had strong communication skills. The results indicated adequate history taking skills where the problems were uncomplicated. The results however indicated that where problems became more complex Dr. Photopoulos had difficulties with history taking, assessment and diagnosis.

17. In summary the assessors indicated that Dr. Photopoulos was at risk for global decline in clinical skill and knowledge over the next five to ten years. The assessors in the oral exam concluded that Dr. Photopoulos would not be safe in an emergency room and further concluded that the 10 year gap between medical school and residency left Dr. Photopoulos with some gaps in skill and knowledge. The assessors recommended educational training and a clinical traineeship to address these gaps.

18. Upon review of the UBC Assessment, the Investigation Committee suspended Dr. Photopoulos' Defined Licence on December 14, 2006 and directed that he undergo an assessment to consider whether he had the appropriate cognitive ability to participate in the remediation suggested by the UBC Assessment.

19. In response to the suspension, Dr. Photopoulos provided the Investigation Committee with reports from his sponsor, and with audits of his practice

performed by two family practitioners in the Province. Both the information from the sponsor, and the information from the Audits indicated that Dr. Photopoulos was competent to engage in family practice.

20. In further response to the suspension, Dr. Photopoulos provided a report ***(publication ban)***. The report ***(publication ban)*** indicated that ***(publication ban)*** likely had a detrimental effect on Dr. Photopoulos' ability to perform sufficiently during both the EHS Assessment and the UBC Assessment. ***(publication ban)***.

21. Following consideration of all information presented to it, the Investigation Committee of the College lifted the interim suspension of Dr. Photopoulos' Defined Licence on March 8, 2007, and imposed a number of conditions requiring ongoing ***(publication ban)***, education, and reporting from his sponsor. The Committee also confirmed the requirement for Dr. Photopoulos to undergo an assessment to determine whether he had the cognitive ability to undergo education to address the issues identified in the UBC Assessment.

22. Dr. Photopoulos underwent the assessment for cognitive ability in late March, 2007. The results of the evaluation indicated a normal profile.

23. Dr. Photopoulos agrees that deficiencies in his medical skills, knowledge and judgment were demonstrated in both the EHS Assessment and the UBC Assessment. Dr. Photopoulos believes that ***(publication ban)*** had a negative effect on his performance at the EHS Assessment and the UBC Assessment.

II. COMPLAINT

24. The Investigation Committee determined that the original complaint against Dr. Spiro Photopoulos, together with the results of the EHS and UBC Assessments should be referred to a Hearing Committee pursuant to Section 53(12) of the Medical Act.

25. A Notice of Hearing issued by the College referred the following allegations to the Hearing Committee:

> THAT being registered under the Medical Act, R.S.N.S., 1995-96, c.10, and being a medical practitioner in the Province of Nova Scotia during the relevant periods listed below, it is alleged:

1. That on December 31, 2003, with respect to your emergency care of Patient X at the Aberdeen Hospital:

   (a) you demonstrated inadequate skill, knowledge and/or judgment in failing to manage an acute cardiac event;
   (b) you failed to provide timely and relevant information to the internist you consulted during an acute cardiac event; and
   (c) you failed to make entries on the chart of Patient X in a timely manner.

2. That with respect to your medical skills, knowledge and judgment as evaluated by the Emergency Health Services Atlantic Health Training & Simulation Centre Assessment conducted on January 5, 2006:

   (a) you failed to demonstrate an acceptable approach to life threatening acute cardiac events; and

   (b) you failed to properly take control of, and lead the emergency care team, in responding to the life threatening acute cardiac syndromes.

3. That you failed to demonstrate appropriate skills, knowledge and judgment with respect to certain areas assessed during the University of British Columbia Clinical Competence Assessment conducted on October 13 and 14, 2006.

III. ADMISSIONS

26. Dr. Spiro Photopoulos admits allegations 1 and 2 set out in the Notice of Hearing, and with respect to allegation 3, admits he failed to demonstrate appropriate skills, knowledge and judgment in areas of history taking, assessment, diagnosis and emergency room practice as set out in paragraphs 16 and 17 herein. Dr. Photopoulos agrees these admissions amount to a disciplinary matter.

IV. DISPOSITION

27. (a) Dr. Photopoulos' Defined Licence is suspended for a period of three (3) months. The period of suspension has been served.

(b) A permanent condition shall be imposed on Dr. Photopoulos' Defined Licence, and any licence issued by the College, limiting his ability to practice only in a primary health care environment, and to specifically not practice medicine in any acute or emergency room practice setting.

(c) Dr. Photopoulos shall enroll in, attend at his cost, and successfully complete in a time-frame acceptable to the College, an on-going educational program as established by the Dalhousie School of Medicine and as approved by the College.

(d) Dr. Photopoulos shall pay a contribution toward the costs associated with the investigation and conclusion of this complaint, totaling $15,000, inclusive of HST. This amount may be paid over the course of three (3) years, commencing January, 2008, without interest, if payments are made in the amount of $5,000 by the end of December in each of 2008, 2009 and 2010. In the event any of the $5,000 installments are not paid by December 31 in each year, Dr. Photopoulos' licence to practice medicine shall be immediately suspended, and the full amount of the remaining balance unpaid, together with interest thereon at the rate of 6% compounded annually shall be immediately due and payable and shall form a debt recoverable by civil action. The suspension shall be lifted only when payment is received in full.

(e) Dr. Photopoulos agrees that any alleged breach of any provision of this Settlement Agreement shall be reviewed by the Hearing Committee. If the Hearing Committee determines that a breach has occurred, Dr. Photopoulos acknowledges that any such breach may amount to professional misconduct and may result in such further disposition as may be determined by the Hearing Committee.

VI. EFFECTIVE DATE

28. This Settlement Agreement shall only become effective and binding when it has been recommended for acceptance by the Investigation Committee of the College, and accepted by the Hearing Committee appointed to hear this matter.

VII. PUBLICATION BAN

29. The parties agree that all matters in this Settlement Agreement that are printed in bold shall be subject to a publication ban, and shall not be disclosed in any release of this Settlement Agreement to the public. The parties acknowledge that those matters subject to a publication ban will be made available to any licensing body in the event Dr. Photopoulos seeks to be licensed in any other jurisdiction.

DATED at HALIFAX, Nova Scotia this 21st day of JANUARY, 2008.

WITNESS

DR. SPIRO PHOTOPOULOS

DATED at Halifax, Nova Scotia this 21st day of January, 2008.

WITNESS

MARJORIE A. HICKEY
COUNSEL FOR THE COLLEGE OF
PHYSICIANS AND SURGEONS
OF NOVA SCOTIA

DATED at Antigonish, Nova Scotia this 25 day of April, 2008.

CHAIR,
Investigation Committee "B"
of the College of Physicians and Surgeons
of Nova Scotia

DATED at Halifax, Nova Scotia this 8th day of May, 2008.

CHAIR,
The Hearing Committee
of the College of Physicians and Surgeons
of Nova Scotia

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