

COLLEGE OF PHYSICIANS AND SURGEONS OF NOVA SCOTIA

IN THE MATTER OF: The *Medical Act*, S.N.S. 2011, c. 38

- and -

IN THE MATTER OF: A Settlement Agreement concerning Dr. Stephen Harley
recommended under Section 51 of the *Medical Act*

DATE HEARD: June 2, 2015

LOCATION: Halifax, Nova Scotia

HEARING COMMITTEE: Mr. Raymond Larkin, QC, Chair
Dr. Al Doucet
Dr. Michael Teehan
Dr. Brian O'Brien
Dr. Ethel Cooper-Rosen

COUNSEL: Mr. Scott Norton, Q.C., Counsel for Dr. Stephen Harley
Ms. Marjorie Hickey, QC, Counsel for the College of Physicians
and Surgeons of Nova Scotia

DECISION

1. Dr. Stephen Harley has been unable to overcome the drug addiction that has resulted in breaches of a series of settlement agreements with the College. He admits his latest breach and acknowledges having engaged in professional misconduct. He consents to the revocation of his license to practice medicine. For the reasons set out below, the Hearing Committee accepts the settlement agreement (“the 2015 Settlement Agreement”) attached to this decision and revokes his license to practice medicine, without costs, effective November 3, 2014, noting that he may apply to the College for reinstatement of his license no earlier than November 3, 2016.
2. The 2015 Settlement Agreement between the College and Dr. Harley has been recommended to us by Investigation Committee “C”. The agreement sets out the history of previous settlement agreements made by Dr. Harley and his breaches of those agreements.
3. In a decision of August 13, 2013, the Hearing Committee, which included three of the five members of this Committee, approved a settlement agreement (“2013 Settlement Agreement”) between Dr. Harley and the College that included the following provisions:

36. (a) **Dr. Harley shall abstain from the consumption of alcohol and from taking any prescription, illegal, or illicit medications, including but not limited to opiates, benzodiazepines, barbiturates, ethyl alcohol, narcotics, THC or other cannadinoids, and cocaine, (the “Prohibited Substances”), but excluding methadone when administered as part of a physician supervised methadone maintenance treatment program and excluding other medications as specifically provided for in subparagraphs (c) or (d);**

...

36. (g) In addition to the Monitoring Program and the breathalyzer tests outlined above, Dr. Harley agrees to provide hair samples for testing of the Prohibited Substances in 6 month intervals, where the method of hair collection and analysis shall be as set out in a letter from the Registrar to Dr. Harley. **In the event a**

hair sample tests positive for any of the Prohibited Substances, or in the event Dr. Harley fails to comply with the requirements for giving a hair sample, he shall be deemed in violation of this Agreement and his license to practice medicine shall be immediately revoked;

...

37. Dr. Harley acknowledges that is the College's position that any relapse or breach of this Agreement, including but not limited to any positive result or breach from the Monitoring Program, breathalyzer tests or hair sample tests will result in the revocation of his license to practice medicine. It is the College's position that this Agreement represents Dr. Harley's final opportunity with the College to obtain and retain a license to practice medicine. In the event of a suspected breach of this Agreement, the matter may be referred as a complaint to the College for determination as to whether a breach occurred. In the event a breach is established either through admission or a hearing process, Dr. Harley acknowledges that it is the College's position that his license to practice shall be revoked.

(Emphasis added.)

4. In the decision of the Hearing Committee approving the 2013 Settlement Agreement, the Committee made it clear that it had reservations about the efficacy of this settlement agreement, but concluded that it was likely that any form of drug abuse would be caught by the web of conditions and restrictions in the settlement agreement. The core of the reasons for accepting the 2013 Settlement Agreement can be found in paragraphs 18 and 19, which provide as follows:

18. The Hearing Committee agrees with the general approach of the College which is to make every effort to permit a member to return to practice so long as the public is protected. In this case, it is difficult to conceive of conditions and restrictions which could be more strict than those accepted by Dr. Harley in this settlement agreement. We have therefore concluded that it is in the public interest to accept the settlement agreement.

19. We acknowledge that Dr. Harley's drug addiction is an illness and that this illness is very difficult to overcome and to manage. It is therefore appropriate and just to give Dr. Harley an opportunity to return to

practice in light of the successful management of his addiction through the methadone maintenance program and his demonstrated competence. We are also aware that his is an illness which can result in a relapse. It is important for Dr. Harley to appreciate the protection of the public will ultimately take precedent over helping him in his struggle with addiction. If Dr. Harley fails to meet the conditions and restrictions in this settlement agreement, it is likely that it will be necessary to revoke his license to practice medicine.

5. Unfortunately, little more than a year passed when Dr. Harley was caught using one of the substances prohibited by paragraph 36(a) of the 2013 Settlement Agreement. The facts agreed to between the College and Dr. Harley are set out in the following paragraphs taken from the proposed 2015 Settlement Agreement:

28. On October 31, 2014, the College received information from East Coast Mobile Medical Inc. indicating a hair sample test taken on October 28, 2014 showed Dr. Harley had tested positive for marijuana.

29. Dr. Harley met with the Registrar of the College on November 3, 2014 and admitted to taking 2 or 3 puffs of marijuana on or about September 13 or 14, 2014. He learned on September 12 or 13, 2014, through his Opioid Treatment Program that his urine was not being tested for THC. In addition, Dr. Harley remembered he had in his possession hair test shampoo that he indicates he purchased in 2009 that could be used to reduce the chance of detection. Dr. Harley believed that, if he was called for a hair test after using THC, he would proceed to use the shampoo.

30. When Dr. Harley was called for the hair test on October 28, 2014, he considered using the shampoo but did not.

6. Dr. Harley has admitted that his use of marijuana was a breach of the 2013 Settlement Agreement and that breach constitutes professional misconduct. He and the College have agreed to the revocation of his license to practice medicine and Investigative Committee "C" has recommended the proposed 2015 Settlement Agreement.

7. This is the first occasion for this Committee to consider the provisions for settlement agreements in the *Medical Act*, S.N.S. 2011, c. 38, which came into force on January 1, 2015 and the Medical Practitioner Regulations, N.S. Reg. 225/2014 adopted in anticipation of the 2011 *Medical Act*.
8. Counsel for Dr. Harley and the College have agreed that the complaint of professional misconduct should be dealt with under the processes established pursuant to the 2011 *Act* and the Regulations.
9. The jurisdiction of the Hearing Committee arises out of Section 51 of the *Act* which provides:

51 Where an investigation committee refers a matter to a hearing committee, the College may, before the commencement of a hearing by the hearing committee, enter into a settlement agreement with the respondent, to be dealt with in accordance with the regulation.

10. The Medical Practitioner Regulations set out in detail the procedures for preparing and adopting a settlement agreement. The Investigation Committee can recommend acceptance of a proposed settlement agreement if it's satisfied of certain conditions. Regulation 102(1) provides as follows:

102 (1) An investigation committee may recommend acceptance of a settlement agreement if it is satisfied that all of the following conditions are met:

- (a) the public is protected;
- (b) the conduct or its causes can be, or have been, successfully remedied or treated, and the respondent is likely to successfully pursue any remediation or treatment required;
- (c) the content of the proposed settlement agreement provides sufficient facts and admissions to support the agreed disposition;

(d) settlement is in the best interests of the public and the profession.

11. Where a settlement agreement is recommended to the Hearing Committee, the Committee has three options. It can accept or reject the proposed agreement or it may suggest amendments to the settlement agreement which would make it acceptable to the Committee.
12. At all times, the Hearing Committee must be mindful of the purposes of the *Medical Act* as stated in Section 5 of the *Act* which provides in part as follows:
 5. In order to
 - (a) Serve and protect the public interest in the practice of medicine; and
 - (b) Subject to clause (a), preserve the integrity of the medical profession and maintain the confidence of the public and the profession in the ability of the College to regulate the practice of medicine;

The College shall

 - (c) Regulate the practice of medicine and govern its members through ...
13. In this case, we have concluded that the proposed settlement agreement will serve and protect the public interest in the practice of medicine.
14. While there is no evidence that Dr. Harley has gone back to using narcotics, his use of marijuana, despite agreeing that he would not do so, confirms our reservations about the efficacy of the 2013 Settlement Agreement. There are no more conditions or promises which can be exacted from Dr. Harley to assure the public that he will not use drugs which could impair his ability to provide medical services safely and competently.

15. We are also mindful of Clause 5(b) of the *Act* which mandates the College to “preserve the integrity of the medical profession and maintain the confidence of the public and the profession in the ability of the College to regulate the practice of medicine”. Although we hope and expect that the public will see the benefit of the College helping medical practitioners to meet the standards of their profession, the confidence of the public would be sorely tested if Dr. Harley were permitted once again to return to practice.
16. The use of conditions and restrictions as a means of protecting the public while permitting a medical practitioner who has been involved in professional misconduct to return to practice would be jeopardized if the College concluded that practitioners could ignore those conditions or restrictions. This would not benefit the public or the profession itself.
17. Although the members of the Committee have considerable sympathy for Dr. Harley personally, the protection of the public must now take precedence over helping him in his struggle with addiction.
18. Dr. Harley has consented to the revocation of his license. He can apply to the College for reinstatement of his license at some future time after November 3, 2016.
19. The Hearing Committee agrees to accept the 2015 Settlement Agreement and adopts as part of this decision the disposition in paragraphs 35 and 36 which provide as follows:

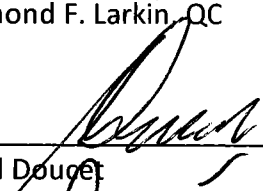
35. Dr. Harley hereby consents to the revocation of his license to practise medicine, effective November 3, 2014, the date of his admitted breach of the Settlement Agreement. He may apply to the College for the reinstatement of his license no earlier than November 3, 2016. In the event Dr. Harley applies for reinstatement of his license, the reinstatement process shall be governed by the provisions of the *Medical Act*, S.N.S. 2011, c. 38 and the Regulations made thereunder.

36. The parties agree that Dr. Harley shall not pay any costs to the College as a result of this Settlement Agreement. In the event that Dr. Harley applies for the reinstatement of his license and is successful, he may be responsible for paying outstanding costs arising from the 2013 Settlement Agreement under such terms as directed by the Reinstatement Committee.

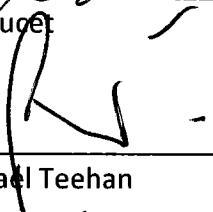
Dated at Halifax, Nova Scotia this 15th day of June, 2015



Raymond F. Larkin, QC



Dr. Al Doucet



Dr. Michael Teehan



Dr. Brian O'Brien



Dr. Ethel Cooper-Rosen