

SUMMARY

DR. ASHWIN MAHARAJ (CPSO #67100)

1. Disposition

On December 14, 2016, the Inquiries, Complaints and Reports Committee (“the Committee”) ordered general surgeon Dr. Maharaj to complete a specified continuing education and remediation program (“SCERP”). The SCERP requires Dr. Maharaj to:

- Complete coaching in communication
- Review and provide a written summary of the CPSO Practice Guide and policy #3-15, *Consent to Treatment*.

2. Introduction

The mother of a patient complained to the College that Dr. Maharaj acted inappropriately during an independent medical examination (IME) Dr. Maharaj conducted on the patient. Specifically, the mother expressed concern that Dr. Maharaj did not offer the patient a chaperone during the examination, used inappropriate language, pressured the patient to consent to a digital rectal examination (DRE) and tried to take a photograph of the patient’s anal area on his cell phone.

Dr. Maharaj responded that he encouraged the patient’s mother to stay throughout the IME but in future he will return to his usual practice of having a nurse present during IMEs, with or without the presence of a family member or support person. In addition, he indicated that he tried to reassure the patient that he would conduct the DRE in a gentle manner and did not pressure her to undergo the examination. He denied that he used inappropriate language in suggesting the DRE. Dr. Maharaj indicated that the patient had a significant mass of hypertrophied skin tags surrounding her anus that did not have the appearance of common skin tags. He reported that he asked the patient and her mother for permission to take a photograph, but they refused so he did not take the photograph. Dr. Maharaj used his cell phone to audio record the IME. A transcript of the IME was prepared from this audio recording.

3. Committee Process

An Internal Medicine Panel of the Committee, consisting of public and physician members, met to review the relevant records and documents related to the complaint. The Committee always has before it applicable legislation and regulations, along with policies that the College has developed, which reflect the College's professional expectations for physicians practising in Ontario. Current versions of these documents are available on the College's website at www.cpso.on.ca, under the heading "Policies & Publications."

4. Committee's Analysis

Given that Dr. Maharaj indicated he would return to his regular practice of having a nurse present during IMEs, the Committee decided to take no action on the concern that Dr. Maharaj failed to have a chaperone present during the IME in this case.

The transcript of the IME demonstrated that Dr. Maharaj did not use the inappropriate language that the patient's mother attributed to him. The Committee took no action on this aspect of the complaint.

With regard to the DRE, the Committee was of the view that the patient should have been aware that a DRE was possible during the IME. She has Crohn's disease, which involves the anal area and rectum, so a rectal examination would be expected. Moreover, the focus of the IME was the patient's claim that motor vehicle accidents in which she had been involved had caused her Crohn's disease, so it was Dr. Maharaj's mandate to examine the patient to gather evidence to support or rule out this claim.

On this basis, the Committee considered it reasonable that Dr. Maharaj asked the patient for consent to conduct a DRE. It appeared to us, however, that he failed to adequately prepare the patient for the examination. Even though she signed the consent form for the IME, it was important for Dr. Maharaj to take time at the outset of the visit, before the patient had disrobed, to explain to her what specific areas he wished to examine and how. Rather than try to lighten the atmosphere with humour, which did not prove to be effective in this case, he should have acknowledged that a DRE can be uncomfortable while ensuring that the patient understood exactly why it was clinically indicated (for example, to determine whether she had a fistula, which could explain her pain).

It was also inappropriate and insensitive for Dr. Maharaj to suggest he would take a photograph of the patient's anal area without obtaining her written consent to do so. He should have clarified that, if there were any findings from his physical examination, he would take a photograph to be kept in the patient's file. Without this explanation, it was understandable that the patient and her mother had concerns about Dr. Maharaj's rationale for taking such a photograph on his cell phone.

In describing his motivation for the IME, Dr. Maharaj indicated that he wanted to conduct a thorough examination and then have a summary discussion with the patient possibly regarding aggressive therapies, as it is difficult "to see significant disease without offering treatment." The Committee stated its expectation that physicians not discuss treatment or care during an IME, as this goes beyond the scope of the examination which is not a consultation for diagnosis or treatment.

In addition, the Committee noted that Dr. Maharaj acknowledged leaving the examination room several times during the IME. While he was attempting to be empathetic on one occasion, by getting a beverage for the patient when she became emotional during the discussion, and had some other patients to attend to, the Committee stated its expectation that physicians keep interruptions to a minimum during patient encounters.

In summary, while there were no significant concerns with Dr. Maharaj's clinical care in this matter, the Committee was concerned that Dr. Maharaj's communication with the patient and her mother was often inappropriate. Not only did he do an inadequate job of explaining the clinical indication for a DRE, he made other comments that were unnecessary and unlikely to inspire confidence in the patient or her mother that he would respect the limits of the consent they had provided.

Dr. Maharaj's history with the College includes other complaints related to his communication with patients, and he was required in 2013 to complete a SCERP involving one-on-one communication coaching. The Committee was of the view that additional coaching was warranted to provide Dr. Maharaj with insight into the inappropriateness of his communication in this matter and therefore decided to require Dr. Maharaj to complete the SCERP as set out above.