

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Hui, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of the patients or any information that could disclose the identity of the patients under subsection 45(3) of the Health Professions Procedural Code (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended.

Subsection 93(1) of the Code, which is concerned with failure to comply with these orders, reads:

Every person who contravenes an order made under ... section 45 or 47... is guilty of an offence and on conviction is liable,

(a) in the case of an individual to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence; or

(b) in the case of a corporation to a fine of not more than \$50,000 for a first offence and not more than \$200,000 for a second or subsequent offence.

Indexed as: **Ontario (College of Physicians and Surgeons of Ontario) v. Hui, 2016
ONCPSD 11**

**THE DISCIPLINE COMMITTEE OF THE COLLEGE
OF PHYSICIANS AND SURGEONS OF ONTARIO**

IN THE MATTER OF a Hearing directed by the Inquiries, Complaints and Reports Committee of the
College of Physicians and Surgeons of Ontario
pursuant to Section 26(1) of the **Health Professions Procedural Code**
being Schedule 2 of the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended.

B E T W E E N:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. CREIGHTON HUI

PANEL MEMBERS:

**DR. E. STANTON
DR. F. SLIWIN
DR. D. KRAFTCHECK
J. LANGS**

Hearing Date: **April 28, 2016**
Decision Date: **April 28, 2016**
Release of Written Reasons: **May 16, 2016**

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on April 28, 2016. At the conclusion of the hearing, the Committee stated its finding that the member committed an act of professional misconduct and made a penalty and costs order with reasons to follow.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Creighton Hui committed an act of professional misconduct:

1. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“Ont. Reg. 856/93”) in that he has engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and
2. under clause 51(1)(b) of the Health Professions Procedural Code, which is schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18 (the “Code”) in that the governing body of a health profession in a jurisdiction other than Ontario has found that Dr. Hui committed an act of professional misconduct that would, in the opinion of the panel, be an act of professional misconduct as defined in Ont. Reg. 856/93.

RESPONSE TO THE ALLEGATIONS

Dr. Hui admitted the second allegation in the Notice of Hearing, that the governing body of a health profession in a jurisdiction other than Ontario has found that Dr. Hui committed an act of professional misconduct that would, in the opinion of the panel, be an act of professional misconduct.

Counsel for the College withdrew the first allegation in the Notice of Hearing.

THE FACTS

AGREED STATEMENT OF FACTS AND ADMISSIONS

The following Agreed Statement of Facts and Admissions was filed as Exhibit 2 and presented to the Committee:

PART I - FACTS

Background

1. Dr. Creighton Hui (“Dr. Hui”) is a 35-year-old physician who received his certificate of registration authorizing independent practice in Ontario in 2011. Dr. Hui currently practices in Emergency Medicine at a hospital in Ontario.
2. From July 1, 2010 to January 2012, Dr. Hui practiced in Winnipeg, Manitoba.

Chronology

3. Dr. Hui obtained his medical degree from the University of British Columbia in 2008. Dr. Hui then moved to Ontario, where he completed his residency in Family Medicine at the University of Toronto from 2008 to 2010.
4. Dr. Hui then moved to Manitoba where he had been offered a Fellowship in Emergency Medicine at a Faculty of Medicine. He began that Fellowship on July 1, 2010.
5. In August 2010, Dr. Hui began seeing patients at Clinic A and providing house calls with a service organized through Clinic A.
6. After completing his Fellowship in Manitoba on June 30, 2011, Dr. Hui continued to work at Clinic A. In February 2012, Dr. Hui returned to practice in Ontario.

Creation of misleading records and inappropriate billing

7. Between April 8, 2011 to on or about January 9, 2012, Dr. Hui entered into an arrangement whereby a nurse practitioner at Clinic A made house call visits to patients and those visits were billed to Manitoba Health in Dr. Hui's name. The nurse practitioner proposed to Dr. Hui that, through the arrangement, Dr. Hui would be able to attend house call visits via live video stream. While Dr. Hui did attend some house call visits by live video stream, he did not attend all of them.

8. The quality of care provided by the nurse practitioner was not an issue, and no patient care or safety issues were identified.

9. The medical records related to the visits in question were made by the nurse practitioner, but were entered using Dr. Hui's user identifier and password in the electronic medical record. As a result, it was not clear from the face of the record that Dr. Hui had not personally attended the patient or made the entry.

10. Dr. Hui provided the nurse practitioner with Dr. Hui's own password for the electronic medical record system, and as a result the nurse practitioner could sign on as Dr. Hui and make chart entries under Dr. Hui's name. This was done in spite of the fact that the nurse practitioner had his own user identifier and password and could have made entries under his own name and written prescriptions under his own name.

11. During the period of April 8, 2011 to January 9, 2012, a total of approximately \$201,223.00 was billed to Manitoba Health for house call services provided by the nurse practitioner and billed in the name of Dr. Hui. The billing to Manitoba Health for house calls was comprised of a house call fee and an assessment fee. The billings were shared by Dr. Hui, Clinic A and the nurse practitioner as follows:

- i. All of the fee for the house call was received by Dr. Hui: Dr. Hui retained 30% of the fee and paid 70% of the fee to the nurse practitioner;
- ii. 20% of the assessment fee was received by Clinic A;
- iii. The remaining 80% of the assessment fee was received by Dr. Hui: Dr. Hui retained 30% of that 80% and paid 70% of that 80% to the nurse practitioner.

12. Dr. Hui ultimately voluntarily repaid the entire \$201,223.00 to Manitoba Health.

Misleading the CPSM

13. The College of Physicians and Surgeons of Manitoba (the “CPSM”) commenced an investigation of Dr. Hui in February 2012. In the course of the investigation, Dr. Hui made a number of statements to the CPSM that he subsequently admitted were not true.

14. In particular, in the course of the investigation, Dr. Hui advised the CPSM of the following facts that he later admitted were untrue:

- i. That he supervised all patient visits by the nurse practitioner via a live video link system; and
- ii. That he reviewed all of the nurse practitioner’s chart entries.

15. The CPSM obtained records of Dr. Hui’s Fellowship in Emergency Medicine which documented that Dr. Hui was required to have been at a tertiary care hospital on dates when he said he was also supervising the nurse practitioner via the live video link system. Dr. Hui initially advised the CPSM that, on these occasions, he would leave the hospital to go to his home to establish the video link.

16. Dr. Hui subsequently admitted that:

- i. He was not always present on the video link system;

- ii. He believed he should be present on the video link system to comply with Manitoba Health's fee guideline;
- iii. He did not always review the chart entries made by the nurse practitioner; and
- iv. He never left the hospital when he may have been required on an urgent basis, including during his rotations in the ICU and when he was carrying the Code pager.

Repayment of Manitoba Health

17. Dr. Hui entered into a voluntary repayment arrangement with Manitoba Health pursuant to which he repaid the sum of \$201,223.00 to Manitoba Health. In making the repayment, Dr. Hui repaid the entire amount billed, including the share of billings retained by Clinic A and the nurse practitioner (approximately \$140,000.00). Dr. Hui entered into the voluntary repayment agreement with Manitoba Health prior to the CPSM discipline hearing described below.

Proceedings before the CPSM

18. Dr. Hui's conduct was the subject of proceedings before an Inquiry Panel of the CPSM. Attached as Appendix A to the Agreed Statement of Facts and Admissions and forming part of the Agreed Statement of Facts and Admissions is the Resolution and Order and the Decision and Reasons of the Inquiry Panel of the CPSM dated May 9, 2014.

19. The findings of the CPSM Inquiry Panel were made on the basis of a Statement of Agreed Facts entered into evidence. Attached as Appendix B to the Agreed Statement of Facts and Admissions and forming part of the Agreed Statement of Facts and Admissions is a copy of the Statement of Agreed Facts and attachments entered into evidence before the CPSM.

20. The Inquiry Panel of the CPSM found that Dr. Hui had committed acts of professional misconduct. Given that Dr. Hui was not licensed to practice in Manitoba at the time of the hearing, the penalty ordered by the Inquiry Panel of the CPSM was a reprimand, a fine of \$10,000.00 *in lieu* of a period of suspension, costs of \$28,160.25 payable to the CPSM, and publication of Dr. Hui's name and the Inquiry Panel's decision.

21. The Inquiry Panel decision was the subject of media coverage in Manitoba.

Proceedings before the Ontario College

22. Dr. Hui cooperated with the Ontario College's investigation into his conduct in Manitoba.

PART II - ADMISSIONS

23. Dr. Hui admits the facts upon which the finding of professional misconduct in Manitoba was based and admits the facts set out in paragraphs 1-22 above.

24. Dr. Hui admits that he has engaged in professional misconduct in that a governing body of a health profession in a jurisdiction other than Ontario, namely the CPSM, has found that Dr. Hui committed an act of professional misconduct that would be an act of professional misconduct in Ontario, contrary to paragraph 1(3) of Ontario Regulation 856/93 made under the *Medicine Act*, S.O. 1991, c.30.

ADDITIONAL AGREED STATEMENT OF FACTS ON PENALTY

The following Additional Agreed Statement of Facts on Penalty was filed as Exhibit 3 and presented to the Committee:

Dr. Hui's Practice in Ontario

1. Dr. Hui currently practices Emergency Medicine at a hospital in Ontario, where he has been practicing since February, 2012. Dr. Hui works approximately 15-17 shifts per week at the hospital, serving approximately 600 to 850 patients per month. Dr. Hui has been assigned his shifts in the Emergency Medicine department at the hospital in Ontario through May 31, 2016.

2. Prior to the death of his father in November 2015, Dr. Hui also performed approximately 3-5 house call shifts per month through a house call service. When his father passed away, Dr. Hui stopped performing house calls. He may return to this portion of practice, although he does not have immediate plans to do so. Dr. Hui does not have any other current practice locations.

3. Dr. Hui submits his billings in respect of the emergency medicine practice (and in respect of the house call practice, when applicable) through a billing agent directly to the Ontario Health Insurance Program ("OHIP").

4. Dr. Hui has discussed the Manitoba proceedings and the ongoing Ontario College proceeding with his Chief of Emergency Medicine at the hospital in Ontario, Dr. B. Dr. B is aware of the facts at issue in this Discipline Proceeding and is fully supportive of Dr. Hui's continued practice. A letter of support provided by Dr. B dated April 25, 2016 is attached as Appendix A to the Additional Agreed Statement of Facts on Penalty.

5. Dr. Hui's former and current colleagues in Manitoba and Ontario are also supportive of his continued practice. Three additional letters of support as filed in the Manitoba proceeding are attached as Appendix B to the Additional Agreed Statement of Facts on Penalty.

FINDINGS

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts and Admissions and the Additional Agreed Statement of Facts regarding Penalty. Having regard to these facts, the Committee accepted Dr. Hui's admission and found that he

committed an act of professional misconduct in that the governing body of a health profession in a jurisdiction other than Ontario has found that Dr. Hui committed an act of professional misconduct that would, in the opinion of the panel, be an act of professional misconduct as defined under Ontario legislation.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for the member made a joint submission as to an appropriate penalty and costs order.

The Committee was cognizant of the fact that a joint submission on penalty should be accepted unless to do so would be contrary to the public interest and would bring the administration of justice into disrepute.

In considering the joint submission, the Committee reviewed the Agreed Statement of Facts and the Additional Agreed Statement of Facts regarding Penalty and considered the submissions of the parties. The Committee also reviewed the Book of Authorities with respect to similar cases of the Discipline Committee of the College of Physicians and Surgeons of Ontario. The Committee was aware that, although previous decisions in similar cases are not binding, similar cases should generally be dealt with in a similar fashion.

There are two issues before the Discipline Committee in this case. The first issue is that of Dr. Hui's fraudulent billing of the province of Manitoba. Dr. Hui participated in a scheme in which he fraudulently billed \$201,223.00 to the province of Manitoba while he was still a medical resident. He provided his billing number and log-in passwords to a nurse practitioner to make it seem as though Dr. Hui was present at house calls and that he wrote the prescriptions at those visits which he, in fact, did not attend. The Committee agreed that it is inexcusable misconduct for a physician to be intentionally dishonest and fraudulent for financial gain.

The second issue is Dr. Hui's deceiving the governing body in Manitoba at the outset of his disciplinary investigation there. The College of Physicians and Surgeons of each province must have the utmost cooperation from the physicians in their jurisdiction in order to maintain public confidence in self-regulation.

The Committee considered at length the fact that Dr. Hui has already gone through the disciplinary process in Manitoba. Although he originally retained \$60,000.00 from his fraudulent billing of that province, he ultimately reimbursed Manitoba for the entire amount billed, which was \$201,223.00.

Dr. Hui was also fined \$10,000.00 by the CPSM, and ordered to pay \$28,160.25 in costs of that proceeding. When these amounts are added to the approximately \$140,000.00 he repaid to Manitoba, Dr. Hui has paid approximately \$180,000.00 as a result of his actions. There was significant media attention to this case in Manitoba, and Dr. Hui has faced public shame and embarrassment.

However, at the time of his Manitoba discipline hearing, Dr. Hui did not have a license to practise medicine in Manitoba and therefore the CPSM could not suspend his license. The CPSM stated in their decision that they believed that the College of Physicians and Surgeons of Ontario "will likely have a significant role to play in determining the status of Dr. Hui's licence to practice in Ontario."

Both counsel for the College and counsel for Dr. Hui agreed that, since Dr. Hui moved to Ontario to practise medicine, it is reasonable for Dr. Hui to expect to be penalized here.

Further, Ontario legislation provides that the College can convene a hearing against a physician with a finding in another jurisdiction. Section 51(1)(b) of the Codes states that "a panel shall find that a member has committed an act of professional misconduct if... the governing body of a health profession in a jurisdiction other than Ontario has found that the member committed an act of professional misconduct that would, in the opinion of the panel, be an act of professional misconduct as defined in the regulations."

Counsel for both the College and Dr. Hui also agreed that the CPSM would have suspended Dr. Hui's license if he had a license to practise in Manitoba at the time of his discipline hearing there.

The Committee also considered the mitigating factors in this case. Dr. Hui has cooperated fully with the College of Physicians and Surgeons of Ontario, thus negating the cost and expense of a full contested hearing. He has taken responsibility for his actions in Manitoba. His misconduct occurred early in his career, and he has worked hard to earn back the trust and respect of the public as well as the profession. His current chief of staff is aware of his history with the CPSM and believes Dr. Hui to be honest and reliable. There have been no further concerns with either Dr. Hui's practice of medicine or his billing of OHIP since he began practising in Ontario in 2012.

The Committee agreed with the parties' submissions that the proposed penalty would uphold the relevant penalty principles of specific and general deterrence, public confidence in self-regulation, rehabilitation, as well as demonstrate the Committee's condemnation of Dr. Hui's fraudulent billing practice and dishonesty with the College of Physicians and Surgeons of Manitoba.

The Committee also determined that this was an appropriate case to order costs at the tariff rate of \$5,000.00 for a one-day hearing.

ORDER

Therefore, having stated the findings in paragraph 1 of its written order of April 28, 2016, the Committee ordered and directed on the matter of penalty and costs that:

2. Dr. Hui attend before the panel to be reprimanded.
3. The Registrar suspend Dr. Hui's certificate of registration for a period of five (5) months, commencing from May 29, 2016 at 12:01 a.m.
4. The Registrar place the following terms, conditions and limitations on Dr. Hui's certificate of registration:
 - a. Dr. Hui will participate in and successfully complete, within 6 months of the date of the Order, individualized instruction in medical ethics with an instructor approved by the College, with a report or reports to be provided to the College regarding Dr. Hui's progress and compliance;
 - b. For a period of one year after he resumes practice following the suspension of his certificate of registration described in paragraph 3, Dr. Hui will, at his own expense, retain a practice monitor approved by the College who will sign an undertaking in the form attached as Schedule "A" to the Order (the "Practice Monitor") to review Dr. Hui's Ontario Health Insurance Plan ("OHIP") billings and the corresponding patient records to ensure his compliance with the Health Insurance Act, as follows:
 - i. In respect of Dr. Hui's Emergency Medicine practice, the Practice Monitor will review once every month Dr. Hui's ER triage records and the associated billings submitted to OHIP for a minimum of ten percent (10%) of Dr. Hui's patient encounters;
 - ii. In respect of any house call practice of Dr. Hui during the one-year period of monitoring, Dr. Hui will notify the College if he

resumes providing house calls, in which case the Practice Monitor will review once every month Dr. Hui's patient records and the associated billings submitted to OHIP for a minimum of twenty-five percent (25%) of Dr. Hui's patient encounters or, if Dr. Hui's house call practice volume is greater than a volume of approximately 30-50 patients per month, a reasonable number or percentage of patient records to be determined by the College based on the volume of Dr. Hui's house call practice when resumed;

iii. In respect of any other practice of Dr. Hui during the one-year period of monitoring, Dr. Hui will notify the College prior to commencing such practice and the Practice Monitor will review once every month a reasonable number or percentage of Dr. Hui's patient records and associated billings submitted to OHIP in respect of this practice, with the number or percentage of patient records to be determined by the College based on the volume of this practice once known;

iv. The Practice Monitor will be solely responsible for randomly selecting the patient records to be reviewed in accordance with paragraph 4b of the Order;

v. Dr. Hui shall provide his Practice Monitor with his monthly OHIP reconciliation from all Practice Locations, as defined below, and the Practice Monitor shall review the reconciliation;

- c. If a Practice Monitor who has given an undertaking in Schedule "A" to the Order is unable or unwilling to continue to fulfill its terms, Dr. Hui shall, within twenty (20) days of receiving notice of same, obtain an executed undertaking in the same form from a similarly qualified person who is acceptable to the College and ensure that it is delivered to the College within that time;

- d. If Dr. Hui is unable to obtain a Practice Monitor in accordance with the terms of the Order, he shall cease to remit billings to OHIP until such time as he has done so;
- e. Dr. Hui shall consent to the disclosure by his Practice Monitor to the College, and by the College to his Practice Monitor, of all information the Practice Monitor or the College deems necessary or desirable in order to fulfill the Practice Monitor's undertaking and to monitor Dr. Hui's compliance with the Order;
- f. For a period of one year after he resumes practice following the suspension of his certificate of registration described in paragraph 3, Dr. Hui shall inform the College of each and every location where he practices including, but not limited to hospitals, clinics, and offices, in any jurisdiction (collectively, his "Practice Location(s)"), within fifteen (15) days of the Order, and shall inform the College of any and all new Practice Locations within 15 days of commencing practice at that location, for the purposes of monitoring his compliance with the Order;
- g. For a period of one year after he resumes practice following the suspension of his certificate of registration described in paragraph 3, Dr. Hui shall submit to, and not interfere with, unannounced inspections of his Practice Location(s) and patient records by a College representative for the purposes of monitoring his compliance with the Order;
- h. Dr. Hui shall provide consent to the College to make appropriate enquiries of OHIP, for a period of one year after he resumes practice following the suspension of his certificate of registration described in paragraph 3, for the purpose of monitoring his compliance with the terms of the Order; and
- i. Dr. Hui shall be responsible for any and all costs associated with implementing the terms of the Order.

5. Dr. Hui pay to the College costs in the amount of \$5,000, within thirty (30) days of the date of the Order.