

ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

Citation: *Kayilasanathan v. College of Physicians and Surgeons of Ontario*, 2024
ONPSDT 27

Date: November 19, 2024

Tribunal File No.: 24-007

BETWEEN:

Sugan Kayilasanathan

Applicant

- and -

College of Physicians and Surgeons of Ontario

Respondent

REINSTATEMENT APPLICATION REASONS

Heard: October 17, 2024, by videoconference

Panel:

Sophie Martel (panel chair)

Lucy Becker (public)

Marie-Pierre Carpentier (physician)

Markus de Domenico (public)

James Watters (physician)

Appearances:

Lisa Constantine, for the applicant

Robin Goldberg, for the respondent

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Introduction

[1] Dr. Kayilasanathan applies for reinstatement of his certificate of registration in accordance with s. 72 of the Health Professions Procedural Code, Schedule 2 to the *Regulated Health Professions Act, 1991*, SO 1991, c. 18 (Code). The Discipline Committee (as it was then called) revoked Dr. Kayilasanathan's certificate of registration effective December 11, 2018, after it found that he had engaged in the sexual abuse of a patient.

[2] The College of Physicians and Surgeons of Ontario (College) does not oppose Dr. Kayilasanathan's application for reinstatement.

[3] Relying on Dr. Kayilasanathan's testimony, the written record and the submissions of the parties, we ordered that Dr. Kayilasanathan's certificate of registration be reinstated subject to terms, conditions and limitations. These are our reasons.

Background

[4] Dr. Kayilasanathan obtained his College of Family Physician designation in 2009. After practising as a physician in New Brunswick for about one year, he obtained his certificate of registration authorizing independent practice in Ontario in 2010. Until 2018, he mainly practised at a family medicine and walk-in clinic.

[5] Shortly after he started practising in Ontario, Dr. Kayilasanathan reconnected with Ms. A, someone he had met in the past. During a social evening, Ms. A mentioned an upcoming university examination for which she was not prepared. Dr. Kayilasanathan invited Ms. A to attend the clinic where he worked. Ms. A attended the clinic and during that attendance Dr. Kayilasanathan took a history, examined Ms. A and provided her with a medical note to excuse her from her examination. A few days later, Dr. Kayilasanathan and Ms. A. engaged in sexual relations. Ms. A subsequently returned to see Dr. Kayilasanathan at the clinic where he worked for the purpose of obtaining another medical note to defer another upcoming examination. Dr. Kailasanathan provided her with a medical note. They did not engage in further sexual activity and lost contact.

[6] In summary, Dr. Kayilasanathan engaged in sexual relations with Ms. A in between two clinic visits where he took a history, examined Ms. A, and provided her with medical notes to excuse her from examinations.

[7] At the misconduct hearing, Dr. Kayilasanathan, who did not testify, contested the existence of a physician-patient relationship. The Discipline Committee found that Dr. Kayilasanathan commenced a physician-patient relationship with Ms. A on the date of the first clinic visit, which continued until at least the second clinic visit and that sexual intercourse occurred between the two visits. The Discipline Committee concluded that Dr. Kayilasanathan engaged in the sexual abuse of a patient and in conduct that, having regard to all the circumstances, would reasonably be regarded by members of the profession as disgraceful, dishonourable, or unprofessional.

[8] As is statutorily required following a finding of sexual abuse including sexual intercourse, the Discipline Committee directed the Registrar to revoke Dr. Kayilasanathan's certificate of registration, effective December 11, 2018.

The Test for Reinstatement

[9] Section 72 of the Code provides that a person whose certificate of registration has been revoked because of disciplinary proceedings may apply to have a new certificate issued. An application in relation to a revocation for sexual abuse of a patient cannot be made earlier than five years after the date on which the certificate of registration was revoked.

[10] Following a hearing on the application, the Tribunal may direct the Registrar to issue a certificate of registration to the applicant and may direct the Registrar to impose specified terms, conditions and limitations on the certificate of registration.

[11] Dr. Kayilasanathan bears the burden of proof to establish suitability for reinstatement of his certificate of registration. The standard of proof is the balance of probabilities. In other words, Dr. Kayilasanathan must satisfy the Tribunal that it is more likely than not that he is a suitable candidate for reinstatement having regard to the factors outlined below.

[12] The general requirements for a certificate of registration that are set out in O. Reg. 865/93 under the *Medicine Act, 1991*, SO 1991, c. 30, s. 2 (1) also apply to an application for reinstatement. The Tribunal should be satisfied that Dr. Kayilasanathan:

- (a) is mentally competent to practise medicine,
- (b) will practise medicine with decency, integrity and honesty and in accordance with the law;
- (c) has sufficient knowledge, skill and judgment to engage in the kind of medical practice authorized by the certificate; and
- (d) can communicate effectively and will display an appropriately professional attitude.

[13] In a reinstatement hearing, the Tribunal addresses the following two broad issues:

1. What is the risk of further misconduct, and if there is a risk, is it manageable with terms, conditions and limitations?

2. Is the applicant suitable to practise both in terms of protection of the public and the confidence of the public in the profession's ability to govern itself?

(*College of Physicians and Surgeons of Ontario v. Gillen*, 2010 ONCPSD 14)

[14] In determining these issues, we considered the following factors articulated in *College of Physicians and Surgeons of Ontario v. Manohar*, 2014 ONCPSD 17:

- the facts giving rise to the misconduct that led to revocation, and other past conduct relevant to the physician's suitability to return to practice;
- changes in the physician's circumstances since the time of revocation;
- the success of rehabilitation, including the degree of insight into past inappropriate conduct;
- the physician's current mental health and future prognosis;
- the physician's attempts at restitution, if any;
- the physician's current knowledge, skill and judgement;
- the physician's present character – whether the physician practise medicine with decency, integrity and honesty and in accordance with the law;
- the protection of the public; and
- the impact of the physician's reinstatement on the reputation of the profession.

[15] Rule 13.2 of the Tribunal's Rules of Procedure also specifies procedural requirements in an application for reinstatement. These requirements were met in the present case.

Analysis

Reinstatement following a finding of sexual abuse

[16] There is no dispute that the facts giving rise to the revocation are egregious. Sexual abuse of a patient including sexual intercourse is serious misconduct giving rise to mandatory revocation. Even then, however, the legislation gives the revoked physician a right to reapply for registration, provided at least five years have elapsed since the revocation of a certificate of registration.

[17] Counsel for Dr. Kayilasanathan referred us to prior decisions where the Discipline Committee reinstated physicians' certificates that had been revoked because of sexual abuse. In two of these cases, the physicians had also engaged in dishonesty. In *Manohar*, the family physician not only had sexual intercourse with his patient, he also asked the patient to provide false information to the College, told the patient he would pay some of her legal fees, told her that he would perform free cosmetic treatment on her and lied to the College's investigators. The Discipline Committee nevertheless granted Dr. Manohar's application for reinstatement subject to terms, conditions and limitations. The Discipline Committee found that Dr. Manohar had engaged in self-reflection, had changed, was remorseful and was willing to take responsibility for his actions.

[18] In *Williams v. College of Physicians and Surgeons of Ontario*, 2018 ONCPSD 70, the family physician not only engaged in sexual intercourse with his patient, he also drafted a recantation letter for the complainant. Furthermore, Dr. Williams made a false chart entry. The Discipline Committee held that Dr. Williams's certificate of registration should be reinstated subject to terms, conditions and limitations. The Discipline Committee was of the view that Dr. Williams's circumstances, which included a history of addiction, had changed, that he displayed regret and remorse and that he had taken responsibility for his actions.

[19] *Margaliot v. College of Physicians and Surgeons of Ontario*, 2022 ONPSDT 20 is the most recent reinstatement case of this Tribunal. Dr. Margaliot, a plastic surgeon,

engaged in a romantic and sexual relationship with a patient after having performed wrist surgery on her and during the time that she returned to see him regarding further complaints. The panel accepted that Dr. Margaliot had undergone extensive rehabilitation, understood what had made him vulnerable to a patient boundary violation and made the necessary changes to ensure such violations do not occur in the future. The Tribunal reinstated his certificate of registration subject to terms, conditions and limitations.

[20] The decisions in *Manohar*, *Williams* and *Margaliot* confirm that a previous revocation for sexual abuse is not in itself an unsurmountable barrier to reinstatement, provided the Tribunal is satisfied that change and learning have taken place and that the risk of further misconduct is low.

[21] We now address the requirements of the *Medicine Act* and the risk for recurrence of the misconduct and the applicant's current suitability to practise taking into consideration the factors outlined in *Manohar*.

What is the risk of further misconduct, and if there is a risk, is it manageable with terms, conditions and limitations?

Facts giving rise to the misconduct and other relevant past conduct

[22] Sexual abuse by its nature constitutes serious misconduct. The misconduct that resulted in the revocation of Dr. Kayilasanathan's certificate of registration involved one patient and there were no additional allegations of misconduct such as allegations relating to dishonesty.

[23] Unrelated to the events leading to the revocation of his license, in 2011, Dr. Kayilasanathan was the subject of criminal charges relating to what he described in his testimony before us as consensual sexual activity (not involving Ms. A). He was subsequently acquitted of those charges. Given the acquittal and the absence of any other evidence before us, we have not relied on the criminal charges in respect of Dr. Kayilasanathan's past conduct, his current suitability to practise or whether there is a risk of further misconduct.

Changes in the physician's circumstances since the revocation

[24] Dr. Kayilasanathan testified that alcohol had played a part in the incidents leading to the revocation of his license and the criminal charges. While he never drank while working, he drank excessively while socializing outside work hours. He testified that it became clear to him that the clouded judgment caused by alcohol could alter the course of his life such that he stopped drinking alcohol in 2011 and changed his friend circle.

[25] He met his future wife, a registered nurse, around 2012 and was married in 2018. He testified that she too does not drink alcohol and is very supportive of him.

[26] After the incident that eventually led to the revocation of his certificate, Dr. Kayilasanathan began attending and volunteering at his religious temple more regularly. After 2018, he spoke with his priest multiple times per week discussing virtuous living and other related themes. He also helped coordinate COVID-19 vaccination clinics for the members of his community.

[27] For financial reasons, Dr. Kayilasanathan and his wife had to move in with his parents in 2020. After the initial shame and shock, he described his mother and siblings as being particularly supportive.

[28] Dr. Kayilasanathan found it difficult to obtain employment and eventually, with others including his spouse, founded a company that offered virtual health care and PCR testing for travel, and which now mainly functions as a health care recruitment and staffing agency for allied health professionals. The company also provides access to health care to individuals without OHIP coverage. His wife and partners assume carriage of the day-to-day activities.

[29] Dr. Kayilasanathan has engaged in intensive one-on-one coaching with Gail Siskind, a professional coach, on establishing and maintaining professional boundaries. He completed the PROBE program on professional/problem-based ethics, took a university record-keeping course and has taken multiple continuing medical education (CME) credits related to family medicine.

[30] In summary, Dr. Kayilasanathan testified that after having lost his certificate of registration, which also resulted in financial struggles, shame, isolation and the loss of his professional identity, he underwent a transformative process with the help of his

spouse, family, priest, volunteer activities and education. His lifestyle is different from what it previously was, and he welcomes clinical supervision, ongoing psychotherapy and any Physician Health Program (PHP) monitoring that may be recommended.

The success of rehabilitation including the degree of insight into his past inappropriate conduct

[31] Dr. Kayilasanathan opposed the revocation proceeding in 2018, testifying before us that at the time, he was trapped in a victim mentality. He now accepts responsibility for his actions and regrets having opposed the previous proceeding because it resulted in Ms. A having to testify and relive the events as well as expended College resources. In addition to the harm done to Ms. A, his revocation left many patients previously under his care with no family physician, which affected their continuity of care. Dr. Kayilasanathan recognizes the harm not only to his patients but also to the general public and its trust in the College's ability to regulate the profession. We found Dr. Kayilasanathan's testimony about his insight and remorse to be genuine.

[32] As noted previously, Dr. Kayilasanathan underwent a comprehensive program with Ms. Siskind. In her report of April 30, 2024, Ms. Siskind commented that Dr. Kayilasanathan "was well motivated and astute in his understanding of boundary theory and principles of patient centred care." She concluded her report by setting out Dr. Kayilasanathan's evaluation of the session and his consideration of the social contract concept:

In evaluating the sessions, Dr. Kayilasanathan noted that he learned about his personal circumstances and factors that "contributed to my breach of professional boundaries, particularly the sexual abuse of a patient". Acknowledging the impact of boundary violations on patient care was pivotal for understanding the physician's obligations to act in the best interests of patients. Also, the learner has clarity that "effective boundary management involves setting clear expectations from the outset. I have learned the importance of establishing professional expectations during the initial patient encounter, ensuring that both parties understand the nature and boundaries of the doctor-patient relationship".

I asked Dr. Kayilasanathan to consider the concept of the 'social contract'. His view is that the social contract is a 'privilege' and of benefit to the physician and society. "It is not a right or entitlement. The public and the profession trust you with that contract. Just because you may have the knowledge and skills of the profession, there still has to be the respect, trust, competency and obligation

to uphold the standards of practice. All the rules and regulations must be followed in order to protect the public and the profession, or the privilege may be taken away". The public must have confidence in the medical profession.

[33] As part of his work with Ms. Siskind, Dr. Kayilasanathan created a detailed boundary plan that addresses multiple issues including patient communication, the recognition of biases, the management of disagreements, the structure and management of patient encounters, and the adherence to high ethical standards.

[34] Dr. Kayilasanathan also underwent a comprehensive forensic psychiatric assessment by Dr. Rootenberg who reached the following conclusion as found in his report of June 13, 2024:

Overall, Dr. Kayilasanathan represents a *low risk* to act in a violent or sexually aggressive manner in the future, based on my clinical assessment, risk assessment inventories, as well as the information available to me at the time of preparation of this report...

Regarding his conduct towards Ms. A, from a risk perspective, it is important to note that Dr. Kayilasanathan is not inherently antisocial, does not have any current issues with substance abuse, anger management or impulsivity, and does not have a personality disorder or paraphilic disorder of any kind. I have assessed many professionals, including physicians, and in my opinion Dr. Kayilasanathan is clearly not an individual who is ungovernable.

...

In summary, there is no evidence that Dr. Kayilasanathan has diagnosable psychopathology or that he possesses antisocial personality traits. The absence of psychopathology, particularly the lack of a personality disorder, makes him much more amenable to treatment, as he has recently demonstrated, and Dr. Kayilasanathan appears very willing to avail of any assistance that would increase his understanding of any attitudes or behaviors that have been problematic in the past, in order to prevent a recurrence. He categorically stated that he will comply with any recommendations in this regard. The above factors all increase the likelihood that therapy would be effective in further increasing his already considerable insight into his previous inappropriate behavior. Both of his treating clinicians, namely Dr. Ennis and Ms. Siskind, support his reinstatement application, based on the work they have done with him and the insight he has gained, including

with respect to ethics and boundary issues. Additionally, based on my clinical assessment of Dr. Kayilasanathan, which includes an assessment of his risk to reoffend, there are no contraindications from a forensic psychiatric perspective regarding Dr. Kayilasanathan's application for reinstatement.

[35] The reports of Ms. Siskind and Dr. Rootenberg corroborate the extensive and successful rehabilitation that Dr. Kayilasanathan has undertaken. Furthermore, the opinion of Dr. Rootenberg supports a finding of low risk of future misconduct.

Other rehabilitation and community involvement information

[36] Dr. Kayilasanathan provided several letters from various individuals and organizations in support of his request for reinstatement. Letters from the Secretary of his Hindu Temple and from the Consul General of Sri Lanka attest to Dr. Kayilasanathan's volunteer activities, his care and compassion, and his dedication to serving his community.

Is the applicant suitable to practise both in terms of protection of the public and the confidence of the public in the profession's ability to govern itself?

The physician's mental health and future prognosis

[37] As found in Dr. Rootenberg's report, Dr. Kayilasanathan presents with no diagnosable mental illness or personality disorder.

[38] Dr. Kayilasanathan contacted the Ontario Medical Association's PHP in August 2023. At that time, they connected him to an addiction medicine physician, Dr. D'Agrosa, who diagnosed him with a substance use disorder, currently in remission. As stated in the report dated September 26, 2024, by Dr. Silveira, Associate Medical Director of the PHP, the PHP is in the process of continuing to evaluate Dr. Kayilasanathan's eligibility for a PHP substance use monitoring contract. If he qualifies, Dr. Kayilasanathan testified that he is prepared to enroll in the PHP and to comply with its requirements.

Current knowledge, skill and judgment

[39] There are no allegations that Dr. Kayilasanathan was not a competent physician prior to the revocation of his certificate. Several letters of support from past colleagues

attest to his medical knowledge, competency and communication skills during the time that he practised medicine.

[40] Dr. Kayilasanathan has engaged in CME and has filed a record of his completed credits. He completed approximately 170 of the 250 credits generally required by the College of Family Physicians of Canada over a five-year period.

[41] With the assistance of staff from the College who work with physicians who are either changing their scope of practice or who are re-entering practice after an extended absence, Dr. Kayilasanathan prepared an individualized education plan (IEP) in support of his request for reinstatement. He testified that he will dedicate time on a weekly basis to complete this plan in the next 12 months, as required in the jointly submitted order.

[42] The College staff working with physicians who are re-entering practice are of the view that at least three months of moderate-level supervision would be appropriate for Dr. Kayilasanathan, subject to positive reports from a supervisor acceptable to the College. This recommendation is also reflected in the joint submission on terms, conditions and limitations.

The physician's present character and whether he will practise medicine with decency, integrity, honesty and in accordance with the law

[43] Relying on Dr. Kayilasanathan's testimony regarding his insight into his past misconduct and the letters of support from physicians and other health care professionals, we conclude that he will practise medicine with decency, integrity, honesty and in accordance with the law.

Protection of the public and the impact of the physician's readmission on the reputation of the profession

[44] The public interest is served by the successful return to practice of a physician who is qualified, competent, of good character, who has insight into his past misconduct and who presents no appreciable risk of re-offending (see *Margaliot and Roberts v. College of Physicians and Surgeons of Ontario*, 2018 ONCPSD 2).

Conclusion

[45] For the above reasons, we conclude that the general requirements for a certificate of registration set out in the regulation under the *Medicine Act* are satisfied. Additionally, we are satisfied that Dr. Kayilasanathan has positively satisfied the two main questions we must answer in an application for reinstatement. The risk of misconduct, in our view, is low, and can be managed with terms, conditions and limitations set out below. We are also satisfied that Dr. Kayilasanathan is suitable to practise both in terms of protection of the public and the confidence of the public in the profession's ability to govern itself.

Terms, Conditions and Limitations

[46] The parties jointly submitted a draft order, which we accepted. We outline some of its salient features, which in our view, further support the management of any patient risks.

[47] The order provides for a period of at least three months of moderate-level supervision (in two phases) by a clinical supervisor, followed by a period of low-level supervision until completion of an assessment of Dr. Kayilasanathan's practice by a College-appointed assessor.

[48] During the period of moderate-level supervision, the clinical supervisor will meet at regular specified intervals with Dr. Kayilasanathan, review patient charts, discuss issues and make recommendations for any practice improvements and ongoing professional development. The clinical supervisor is to directly observe Dr. Kayilasanathan's first 10 patient encounters and is to be always immediately available, either on site or by telephone, while Dr. Kayilasanathan is practising. The clinical supervisor must also report to the College at specified intervals.

[49] Provided the clinical supervisor concludes that Dr. Kayilasanathan is ready to transition to low-level supervision, he will practise under low-level supervision until completion of an assessment of his practice. During this time, the clinical supervisor will continue to review patient charts and make recommendations to Dr. Kayilasanathan for any practice improvements and ongoing professional development. The clinical supervisor is to continue to be available but need not be immediately available.

[50] Dr. Kayilasanathan will undergo an assessment of his practice, which may include a review of patient charts, direct observation of his practice, an interview with him, interviews with colleagues and coworkers, feedback from patients and any other types of information deemed necessary by the College. Upon review of the assessor's report, the College will determine whether Dr. Kayilasanathan can enter unsupervised practice.

[51] Throughout the period of supervision, the clinical supervisor is to immediately notify the College of concerns relating to Dr. Kayilasanathan's standard of practice, if he is not in compliance with the provisions of the order or if his patients may be exposed to risk of harm or injury.

[52] The order also makes provision for professional education and Dr. Kayilasanathan's participation in all aspects of the IEP.

[53] Furthermore, the order includes additional monitoring terms. Dr. Kayilasanathan is to inform the College of each location where he practises, is to cooperate with unannounced inspections of his practice by the College and is to provide the College with his consent to make inquiries of the Ontario Health Insurance Plan, for the College to monitor his compliance with the terms of the order.

[54] If Dr. Kayilasanathan meets the enrollment criteria for the PHP, he is to fully comply with the requirements of the program. He is also to continue to undergo psychotherapy at prescribed minimum intervals for at least one year.

[55] Finally, Dr. Kayilasanathan is solely responsible for costs and expenses associated with implementing the terms of the order.

Order

[56] We order the reinstatement of Dr. Kayilasanathan's certificate of registration, subject to the terms, conditions and limitations set out in the appendix to these reasons.

Appendix – Terms, Conditions and Limitations Imposed

Clinical Supervision

- (a) Prior to commencing practice, Dr. Kayilasanathan shall retain at his own expense, a clinical supervisor acceptable to the College (the “**Clinical Supervisor**”) who has executed an undertaking in the form attached at **Schedule “A”**.
- (b) Dr. Kayilasanathan shall only practice under the supervision of the Clinical Supervisor.
- (c) Clinical supervision shall cease only on approval of the College in its sole discretion in accordance with the terms outlined in this Order.
- (d) During Clinical Supervision, Dr. Kayilasanathan shall be the Most Responsible Physician (“**MRP**”).

Moderate Level Supervision

- (d) For a period of no less than three (3) months, Dr. Kayilasanathan shall practice under moderate level supervision (“**Moderate Level Supervision**”) by the Clinical Supervisor in accordance with the College-approved Individualized Educational Plan (the “**IEP**”) attached hereto as **Schedule “B”**.
- (e) During Moderate Level Supervision, the Clinical Supervisor shall be available at all times during which Dr. Kayilasanathan is practicing, either on site or by telephone. For greater clarity, Dr. Kayilasanathan shall not practice unless the Clinical Supervisor is immediately available.
- (f) The Clinical Supervisor shall directly observe Dr. Kayilasanathan’s first 10 patient encounters, or more in the Clinical Supervisor’s sole discretion, and will maintain a log of all patients observed along with patient identifiers. This requirement shall remain in place until Dr. Kayilasanathan has completed 10 patient encounters, or until the Clinical Supervisor is satisfied that no further direct observation is needed.

Moderate Level Supervision - Phase One

- (g) During the first four (4) weeks of Moderate Level Supervision, the Clinical Supervisor shall:
 - (i) meet with Dr. Kayilasanathan at least weekly, at which meetings the Clinical Supervisor will:
 - a. review a minimum of 5 charts, to be selected in the sole discretion of the Clinical Supervisor, review and comment on diagnosis, documentation, and treatment plan, and discuss

any issues or concerns arising from this review with Dr. Kayilasanathan.

- b. make recommendations to Dr. Kayilasanathan for any practice improvements and ongoing professional development, and inquire into Dr. Kayilasanathan's compliance with the recommendations.
 - c. keep a log of all patient charts reviewed along with patient identifiers.
- (ii) provide a report to the College after the completion of the first four (4) weeks of Moderate Level Supervision, and at least every four (4) weeks thereafter if Phase One is extended, which shall include comment on:
 - a. Dr. Kayilasanathan's management of patients;
 - b. clinical presentations that Dr. Kayilasanathan is competent to assess;
 - c. clinical presentations for which Dr. Kayilasanathan needs further education, if any;
 - d. topics reviewed and success in implementing changes in practice;
 - e. review of current practice guidelines;
 - f. quality of documentation;
 - g. whether, in the opinion of the Clinical Supervisor, Dr. Kayilasanathan is ready to transition to Moderate Level Supervision – Phase Two; and
 - h. all information that might assist the College in evaluating Dr. Kayilasanathan's standard of practice, as well as Dr. Kayilasanathan's participation in and compliance with the requirements set out in the Order.
- (h) After a minimum of four (4) weeks of supervision, if the Clinical Supervisor is satisfied that Dr. Kayilasanathan's care and treatment of patients meets the standard of practice of the profession, the Clinical Supervisor may recommend to the College that Dr. Kayilasanathan commence **Moderate Level Supervision - Phase Two**, as set out below. For greater clarity, Moderate Level Supervision - Phase One shall continue until such recommendation is made and the College approves the transition to **Moderate Level Supervision - Phase Two**.

Moderate Level Supervision - Phase Two

- (i) Upon the recommendation of the Clinical Supervisor and the approval of the College, Dr. Kayilasanathan may commence **Moderate Level Supervision - Phase Two**.
- (j) During Moderate Level Supervision – Phase Two, the Clinical Supervisor shall:
 - (i) meet with Dr. Kayilasanathan at least once every two (2) weeks, at which meetings the Clinical Supervisor will:
 - a. review a minimum of 10 charts, to be selected in the sole discretion of the Clinical Supervisor, review and comment on diagnosis, documentation, and treatment plan, and discuss any issues or concerns arising from this review with Dr. Kayilasanathan.
 - b. make recommendations to Dr. Kayilasanathan for any practice improvements and ongoing professional development, and inquire into Dr. Kayilasanathan's compliance with the recommendations.
 - c. keep a log of all patient charts reviewed along with patient identifiers.
 - (ii) provide a report to the College after two (2) months of Moderate Level Supervision - Phase Two, and at least every two (2) months thereafter if Phase Two is extended, which shall include comment on:
 - a. Dr. Kayilasanathan's management of patients;
 - b. clinical presentations that Dr. Kayilasanathan is competent to assess;
 - c. clinical presentations for which Dr. Kayilasanathan needs further education, if any;
 - d. topics reviewed and success in implementing changes in practice;
 - e. review of current practice guidelines;
 - f. quality of documentation;
 - g. whether, in the opinion of the Clinical Supervisor, Dr. Kayilasanathan is ready to transition to Low Level Supervision
 - h. all information that might assist the College in evaluating Dr. Kayilasanathan's standard of practice, as well as Dr. Kayilasanathan's participation in and compliance with the requirements set out in the Order.

- (k) After a minimum of two (2) months of **Moderate Level Supervision - Phase Two**, if the Clinical Supervisor is satisfied that Dr. Kayilasanathan's care and treatment of patients meets the standard of practice of the profession, the Clinical Supervisor may recommend to the College that Dr. Kayilasanathan commence Low Level Supervision, as set out below. For greater clarity, Moderate Level Supervision - Phase Two shall continue until such recommendation is made and the College approves the transition to Low Level Supervision.

Low Level Supervision

- (l) Upon the recommendation of the Clinical Supervisor and the approval of the College, Dr. Kayilasanathan may commence **Low Level Supervision**.
- (m) During Low Level Supervision, Dr. Kayilasanathan shall not practice unless the Clinical Supervisor is available onsite or by telephone, but the Clinical Supervisor need not be immediately available.
- (n) During Low Level Supervision, the Clinical Supervisor shall:
 - (i) Meet with Dr. Kayilasanathan at least once every four (4) weeks, at which meetings the Clinical Supervisor will:
 - a. review a minimum of 15 charts, to be selected in the sole discretion of the Clinical Supervisor, review and comment on diagnosis, documentation, and treatment plan, and discuss any issues or concerns arising from this review with Dr. Kayilasanathan;
 - b. make recommendations to Dr. Kayilasanathan for any practice improvements and ongoing professional development, and inquire into Dr. Kayilasanathan's compliance with the recommendations.
 - c. keep a log of all patient charts reviewed along with patient identifiers.
 - (ii) Provide a report to the College after three (3) months of Low Level Supervision, and at least every three (3) months thereafter so long as Low Level Supervision continues, which shall include comment on:
 - a. Dr. Kayilasanathan's management of patients;
 - b. clinical presentations that Dr. Kayilasanathan is competent to assess;
 - c. clinical presentations for which Dr. Kayilasanathan needs further education, if any;
 - d. topics reviewed and success in implementing changes in practice;

- e. review of current practice guidelines;
 - f. quality of documentation;
 - g. whether, in the opinion of the Clinical Supervisor, Dr. Kayilasanathan is ready to transition to independent practice; and
 - h. all information that might assist the College in evaluating Dr. Kayilasanathan's standard of practice, as well as Dr. Kayilasanathan's participation in and compliance with the requirements set out in the Order.
- (o) Dr. Kayilasanathan shall practice under Low Level Supervision for a minimum of three (3) months, and shall continue to practice under **Low Level Supervision** on the terms outlined above until the College, in its sole discretion, determines it is no longer necessary.
 - (p) After a minimum of three (3) months of **Low Level Supervision**, if the Clinical Supervisor is satisfied that Dr. Kayilasanathan's care and treatment of patients meets the standard of practice of the profession, the Clinical Supervisor may recommend to the College that Dr. Kayilasanathan transition to independent practice.

Assessment of Practice

- (q) After the Clinical Supervisor has provided the recommendation outlined in subparagraph (p) above, and upon the approval of the College, Dr. Kayilasanathan shall undergo an assessment of his practice (the "**Assessment**") by a College-appointed assessor or assessors (the "**Assessor**").
- (r) The Assessment shall include, at the discretion of the College, any one or more of the following: a review of Dr. Kayilasanathan's patient charts, direct observation of Dr. Kayilasanathan's practice, an interview with Dr. Kayilasanathan, interviews with colleagues and coworkers, feedback from patients, and any other tools deemed necessary by the College. Dr. Kayilasanathan shall abide by all recommendations made by the Assessor.
- (s) The Assessor shall be provided with all information the College determines is relevant including this Order, materials related to Dr. Kayilasanathan's application for reinstatement and the Discipline Tribunal's Reasons for Decision regarding reinstatement, copies of the reports of the Clinical Supervisor(s) referred to above, and the decision of the (then called) Discipline Committee of the College of Physicians and Surgeons of Ontario in *Ontario (College of Physicians and Surgeons of Ontario) v. Kayilasanathan* 2018 ONSCPSD 50.
- (t) The Assessor shall submit a written report to the College regarding Dr. Kayilasanathan's standard of practice and this report may form the basis for further action by the College.

- (u) The College shall review the final assessment report of the Assessor and make a determination, in its sole discretion, as to whether Dr. Kayilasanathan can enter independent practice. For clarity, Dr. Kayilasanathan shall continue to practice under supervision and shall not enter independent practice until the College, in its sole discretion, approves him to do so.

Other Elements of Clinical Supervision and Assessment

- (v) Dr. Kayilasanathan shall cooperate fully with the Clinical Supervision and abide by all recommendations of the Clinical Supervisor(s), including but not limited to, any recommended practice improvements and professional development.
- (w) The Clinical Supervisor shall immediately notify the College if they are concerned that Dr. Kayilasanathan's practice may fall below the standard of practice of the profession, Dr. Kayilasanathan may not be in compliance with the provisions of this Order, or Dr. Kayilasanathan's patients may be exposed to risk of harm or injury.
- (x) If a person who has given an undertaking in Schedule "A" to this Order is unable or unwilling to fulfill its provisions during **Moderate Level Supervision**, Phase One or Phase Two, Dr. Kayilasanathan shall cease practicing medicine immediately until he has obtained a Clinical Supervisor acceptable to the College, and this will constitute a term, condition, or limitation on his certificate of registration, which will be included on the College's public register.
- (y) If a person who has given an undertaking in Schedule "A" to this Order is unable or unwilling to fulfill its provisions during **Low Level Supervision**, Dr. Kayilasanathan shall, within fourteen (14) days of receiving notice of the same, ensure that he has delivered to the College an executed undertaking in the same form from a similarly qualified person who is acceptable to the College.
- (z) If Dr. Kayilasanathan is unable to obtain a Clinical Supervisor as set out in subparagraph (y) of this Order within 14 days, he shall cease practicing medicine until he has obtained a Clinical Supervisor acceptable to the College, and this will constitute a term, condition, or limitation on his certificate of registration, which will be included on the College's public register.
- (aa) The patient charts reviewed by the Clinical Supervisor pursuant to this Order shall be selected by the Clinical Supervisor based on the educational needs identified in the IEP and based on any concerns that may arise during the period of Clinical Supervision.
- (bb) Dr. Kayilasanathan shall consent to the disclosure and sharing of information between the Clinical Supervisor(s), the Assessor(s), and the College as the College deems necessary or desirable in order to fulfill their respective obligations.

Professional Education

- (cc) Dr. Kayilasanathan will review and discuss the following literature with his Clinical Supervisor and how these principles apply to his discussions with patients in the clinical setting:

CFPC Parts I, II and III: Patient-Centered Interviewing:

- <https://www.cfpc.ca/uploadedFiles/Education/Patient%20Centred%20Interviewing.pdf>
- <https://www.cfpc.ca/uploadedFiles/Education/Finding%20Common%20Ground.pdf>
- <https://www.cfpc.ca/uploadedFiles/Education/Five%20Provocative%20Questions.pdf>

- (dd) Dr. Kayilasanathan shall participate in, and successfully complete, all aspects of the **IEP**, attached hereto as **Schedule “B”**, including but not limited to professional education stipulated in the IEP, which includes:

- (i) Completion of the continuing professional development (“**CPD**”) program relevant to family medicine approved by the College (the “**Personal CPD Program**”) as specified in Appendix “A” to the IEP (Schedule B);
- (ii) Discuss the Personal CPD Program with the Clinical Supervisor and complete any additional CPD assigned by the Clinical Supervisor, if any;
- (iii) Complete the CPD Program during the twelve (12) months following reinstatement; and

Monitoring and Other Terms

- (ee) Dr. Kayilasanathan shall inform the College of each and every location where he practices, including but not limited to hospitals(s), clinic(s) and office(s), in any jurisdiction, within five (5) days of this Order. Going forward, he shall inform the College of any and all new Practice Locations in any jurisdiction five (5) days in advance of commencing practice at that location.
- (ff) Dr. Kayilasanathan shall cooperate, and shall not interfere with, unannounced inspections of his practice by the College and to any other activity the College deems necessary for the purpose of monitoring Dr. Kayilasanathan’s compliance with the terms of this Order.
- (gg) Dr. Kayilasanathan shall provide the College with his irrevocable consent to make enquiries of the Ontario Health Insurance Plan, and/or any person(s) or institution(s) that may have relevant information, in order for the College to monitor his compliance with the terms of this Order.

- (hh) Dr. Kayilasanathan shall be solely responsible for any and all fees, costs, charges, expenses, etc. associated with implementing the terms of this Order.
- (ii) Dr. Kayilasanathan shall, at his own expense, undergo an assessment by the **Physician Health Program (“PHP”)** and, if recommended, enroll in a **Physician Support Advocacy and Accountability Program (“PSAAP Agreement”)** with the PHP.
- (jj) In the event that Dr. Kayilasanathan meets the enrollment criteria for the PHP, he shall:
 - (i) enroll in the PHP;
 - (ii) ensure that the College is provided with a copy of the PSAAP Agreement, including any amendments thereto, within three (3) weeks of execution;
 - (iii) enter into a concurrent undertaking, as may be required by the College;
 - (iv) fully comply with the requirements of the PSAAP Agreement, including completing the contractual term of the PSAAP Agreement; and
 - (v) ensure that the PHP provides periodic reports to the College in respect of his compliance with the PSAAP Agreement.
- (kk) Dr. Kayilasanathan may commence Supervision in accordance with the terms of this Order notwithstanding the above terms set out in subparagraphs (ii) and (jj).
- (ll) The College shall not approve Dr. K’s return to independent practice in accordance with the terms of this Order until Dr. Kayilasanathan has provided to the College either a) proof that he has satisfied the terms set out in subparagraphs (ii) and (jj), or b) proof that, following its assessment, the PHP did not recommend Dr. Kayilasanathan's enrollment in a PSAAP Agreement.
- (mm) Dr. Kayilasanathan, shall continue to undergo psychotherapy from, and shall comply with all recommendations of his psychiatrist, Dr. J. Ennis, or with another psychotherapist or psychiatrist approved to the College (“Psychotherapist”). Dr. Kayilasanathan shall provide to his Psychotherapist a copy of this Order and the Discipline Tribunal’s Reasons for Decision. Dr. Kayilasanathan shall meet with the Psychotherapist at least once every four (4) months for one (1) year, or longer if the Psychotherapist determines continued treatment is necessary. The Psychotherapist shall submit a minimum of one (1) report to the College at the end of the first year, or more frequently if Dr. Kayilasanathan’s psychotherapist has

concerns that his patients may be at risk of harm or injury and that he has failed to attend for appointments (without sound reason).