

## **SUMMARY**

### **Dr. Andrew Taylor (CPSO# 64009)**

#### 1. Disposition

On December 16, 2016, the Inquiries, Complaints and Reports Committee (“the Committee”) ordered ophthalmologist Dr. Taylor to appear before a panel of the Committee to be cautioned with respect to his communication, including properly explaining the purpose and benefits of testing that is not covered by government health insurance (OHIP) and surgery to patients; and to complete a specified continuing education and remediation program (“SCERP”). The SCERP requires Dr. Taylor to:

- attend and successfully complete the first available session of the ProBE-Canada (boundaries and ethics) course; and
- successfully complete one-to-one instruction in ethics, to be facilitated by the College.

#### 2. Introduction

A patient complained to the College that Dr. Taylor charged her \$800 for bilateral cataract surgery, and then refused to refund \$400 when she cancelled the surgery on her left eye. She advised that when she informed her regular ophthalmologist that Dr. Taylor had scheduled surgery on both eyes, her regular ophthalmologist told her that there would be no benefit to having surgery on the left eye because of the condition of that eye.

Dr. Taylor responded that he counselled the patient on the various refractive measurements that would aid in her surgical planning, intra-ocular lens power calculation and refractive outcomes and explained the fees associated with these measurements. He said that he advised the patient that these tests were optional, not covered by OHIP, were not necessary to completing successful cataract surgery and were non-refundable once completed. He added that the patient provided informed consent for the bilateral cataract surgery and for the additional refractive tests for both eyes. Dr. Taylor stated that they completed the refractive tests on both eyes prior to the patient’s surgery on her right eye, and as such, the \$800 fee she had paid was non-refundable when she cancelled the surgery on the left eye.

### 3. Committee Process

A Surgical 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.cpsso.on.ca](http://www.cpsso.on.ca), under the heading "Policies & Publications."

### 4. Committee's Analysis

The Committee noted that, as the Ministry of Health and Long-Term Care explains in its publication regarding Cataract and Lens Exchange Surgeries ([www.health.gov.on.ca/en/public/publications/ohip](http://www.health.gov.on.ca/en/public/publications/ohip)), cataract and intraocular lens exchange surgeries are insured under OHIP, and physicians must discuss all uninsured services with the patient and give the patient the option of receiving medically necessary tests and lenses without charge.

The Committee acknowledged that it could not know with certainty exactly what Dr. Taylor said to the patient in the pre-operative visit about possible surgery, in terms of the available lenses, necessary and/or optional refractive tests, and the risks, benefits or costs associated with each. Nevertheless, it was clear to the Committee from the patient's complaint that she misunderstood the purpose of the \$400 fee that she paid per eye, and what her options were in terms of insured (OHIP-covered) versus non-insured services related to her cataract extraction.

The Committee noted that although the patient was referred to Dr. Taylor for consideration of cataract surgery regarding her right eye, Dr. Taylor scheduled her for cataract surgery in both eyes, and appeared to "upsell" her on an unnecessary refractive package for both eyes (charging a total fee of \$800, which in the Committee's view was high, but which did fall within the guidelines of the Canadian Ophthalmology Society).

The Committee conceded that there was an argument for possible benefit for the patient's right eye, which had visual potential, but noted that it was not clear why the patient required all of the

tests she underwent, as the Intraocular lens (IOL) master test (which looks for the presence of astigmatism) indicated clearly that the patient did not have any astigmatism. In terms of the left eye, which had a macular scar and very little visual potential, the Committee felt that the “refractive package” that the patient received from Dr. Taylor was entirely inappropriate.

The Committee noted that a physician is expected to have a detailed discussion with the patient about the goals of surgery, which for this patient would have been for her to see more light and colours, rather than to increase her central acuity. The Committee could not see how the refractive package the patient received would have helped to achieve this goal.

A physician is also expected to have a clear and detailed discussion with the patient about the testing that is available, the costs for the various tests, and how each test will change the patient’s management/outcome from surgery. The Committee was of the view that, regardless of what was documented in the formal consent forms the patient signed, it was clear from her complaint that she did not have a proper understanding of the above facts, which suggested that Dr. Taylor’s communications with her were seriously deficient.

The Committee pointed out that its concerns regarding Dr. Taylor’s actions in this case were heightened by the fact that he has a very extensive history of complaints to the College raising concerns regarding his billing practices and his professionalism, including a recent hearing before the College’s Discipline Committee in which Dr. Taylor was found to have engaged in disgraceful, dishonourable, or unprofessional conduct with respect to billing. The Committee felt that this history demonstrated a pattern of failing to provide full and accurate information to patients when recommending uninsured services; as well as issues with “upselling” patients to more expensive procedures, and inaccurate communication with patients about necessary treatment. The Committee was troubled that despite Dr. Taylor’s long history of involvement with the College, this complaint and Dr. Taylor’s response to the complaint suggest that he has not gained any insight into these areas of concern, nor does he appear to be demonstrating, or describing his intention to introduce, any meaningful change in his practice pattern.

Overall, the Committee was left with significant concerns regarding Dr. Taylor’s billing in this case, because of questions regarding the indications for the tests the patient underwent (and for

which she paid a significant fee), and the quality and sufficiency of Dr. Taylor's communications with the patient about the tests and the surgery that he scheduled in her case.