

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Ranjit Kumar Chandra, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the names or any information, including personal health information and financial information, that could disclose the identity of the patients referred to orally or in the exhibits filed at the hearing 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.

The Committee further ordered that no person shall publish or broadcast the name and any information that could disclose the identity of Dr. X, a physician whose identity was disclosed to the Discipline Committee.

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... 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. Chandra,
2018 ONCPSD 28**

**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. RANJIT KUMAR CHANDRA

PANEL MEMBERS:

**DR. E. STANTON (CHAIR)
MS D. GIAMPIETRI
DR. J. RAPIN
MAJOR A.H. KHALIFA
DR. P. GARFINKEL**

**COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF
ONTARIO:**

MS E. WIDNER

COUNSEL FOR DR. CHANDRA:

**SELF-REPRESENTED
(DID NOT ATTEND)**

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. G. FORREST

Hearing Dates:	December 6, 7 and 14, 2017
Finding Decision Date:	December 8, 2017
Penalty Decision Date:	June 18, 2018
Release of Written Reasons:	June 18, 2018

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 December 6 to 7, 2017. At the conclusion of the hearing, the Committee reserved its decision. On December 8, 2017, the Committee issued an order finding that Dr. Chandra has committed an act of professional misconduct in that:

- i) Dr. Chandra has failed to respond appropriately or within a reasonable time to a written inquiry from the College under paragraph 1(1)30 of Ontario Regulation 856/93 made under the Medicine Act, 1991(“O. Reg. 856/93”), and
- ii) Dr. Chandra 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 under paragraph 1(1)33 of Ontario Regulation 856/93 made under the Medicine Act, 1991(“O. Reg. 856/93”).

In its December 8, 2017 order, the Committee also ordered that the matter of penalty be heard on December 14, 2017. The penalty hearing proceeded on December 14, 2017, with the Committee reserving its decision. What follows are the Committee’s reasons for its December 8, 2017 order and its decision and reasons on penalty.

ALLEGATIONS

The Notice of Hearing alleged that Dr. Ranjit Kumar Chandra committed an act of professional misconduct:

1. under paragraph 1(1)30 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*(“O. Reg. 856/93”), in that he failed to respond appropriately or within a reasonable time to a written inquiry from the College; and

2. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act*, 1991 (“O. 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.

RESPONSE TO ALLEGATIONS

Dr. Chandra did not attend the hearing, nor did counsel attend on his behalf. However, communications from Dr. Chandra’s counsel prior to the hearing indicated that Dr. Chandra denied the allegations in the Notice of Hearing and the Committee proceeded on that basis.

BACKGROUND

Dr. Ranjit Chandra is a 79-year-old pediatrician who graduated from Punjab University in 1960; he has been a member of the College since 1994. He has been practising in the field of allergy in six locations in Mississauga, Etobicoke, Scarborough and Brampton. Neither Dr. Chandra nor his counsel appeared at the hearing, although given appropriate notice.

In March 2016, while investigating another physician, College investigators noted unusual billing patterns and referral sources regarding Dr. Chandra’s billings. Several weeks later, the College received a complaint from a patient who had seen Dr. Chandra on one occasion. The complainant stated that Dr. Chandra asked her to participate in a fraudulent billing scheme using her health card number and those of her family for services he had not provided. The complainant also heard Dr. Chandra approach other patients to the same effect. She contacted the police and then notified the College.

At the hearing, the College called four of Dr. Chandra’s patients, and presented detailed documentary evidence including OHIP records, Dr. Chandra’s banking records from the Royal Bank of Canada (“RBC”), Dr. Chandra’s records from Rogers Communications

and Bell Canada, as well as e-mail correspondence from computers that were seized by the College. It is alleged that Dr. Chandra recruited approximately 300 people to this scheme and \$2,056,342 in OHIP fees were paid to Dr. Chandra over four years.

During the investigation of the suspected OHIP fraud, it is alleged that Dr. Chandra failed to respond appropriately or within a reasonable time to a written inquiry from the College, by failing to participate in a College interview and failing to provide records, material and information requested by the College in its investigation.

THE ISSUES

This case raises two issues:

- (i) Did Dr. Chandra fail to respond appropriately or within a reasonable time to a written inquiry from the College, including a request for an interview and to provide materials and information to the College?
- (ii) Did Dr. Chandra engage in conduct that that would be reasonably regarded by members as disgraceful, dishonourable or unprofessional, by a scheme to defraud OHIP and by failing to respond appropriately or within a reasonable time to a written inquiry from the College?

Law and Legal Principles

The onus is on the College to prove the allegations on a balance of probabilities. Proof must be based on clear, convincing, and cogent evidence. There is no legal onus on Dr. Chandra to disprove the allegations. The Committee recognizes that non-attendance by the member and/or his counsel does not relieve the College of meeting its burden.

In *R v. Sanichar*, 2012 ONCA 117, the Court explains the difference between the concepts of credibility and reliability. The credibility of a witness speaks to the honesty

and veracity of the witness and her willingness to speak the truth as she believes it to be. The reliability of evidence speaks to its accuracy. This distinction is critical and is addressed by Justice Doherty of the Court of Appeal of Ontario in *R. v. Morrissey*, [1995] O.J. 639 (C.A.) at paragraph 33:

“Testimonial evidence can raise veracity and accuracy concerns. The former relates to the witness’s sincerity, that is, his or her willingness to speak the truth as the witness believes it to be. The latter concerns relate to the actual accuracy of the witness’s testimony. The accuracy of a witness’s testimony involves considerations of the witness’s ability to accurately observe, recall and recount the events in issue. When one is concerned with a witness’s veracity, one speaks of the witness’s credibility. When one is concerned with the accuracy of a witness’s testimony, one speaks of the reliability of that testimony. Obviously a witness whose evidence on a point is not credible cannot give reliable evidence on that point. The evidence of a credible, that is, honest witness, may, however, still be unreliable.”

Proceeding in the Member’s Absence

At the outset of the hearing, the Committee had to consider whether it should proceed with the hearing, given that Dr. Chandra did not attend, nor did he have counsel attend on his behalf.

The process for determining whether the proceeding may occur in the member’s absence is governed by sections 6 and 7 of the *Statutory Powers and Procedure Act* (the “SPPA”). The College has to establish that reasonable notice was provided to the member and that such notice contained a statement of the time, place and purpose of the hearing and a statement that if the party did not attend at the hearing, the tribunal may proceed in the party’s absence and the party will not be entitled to any further notice of the proceeding. Section 7(1) of the SPPA provides that where notice of an oral hearing has been given in

accordance with the SPPA and the member does not attend at the hearing, the tribunal may proceed in the absence of the party and the party is not entitled to any further notice of the proceeding.

The Committee also had regard to section 39 of the *Regulated Health Professions Act, 1991* (“the RHPA”), which provides that notice may be given by mail, or by facsimile, and provides for a rebuttable presumption as to receipt of notice when given by those means.

The College called evidence from the staff of the hearings office and the College’s legal office regarding these issues.

Ms Anita Smith

Ms Anita Smith, Hearings Coordinator, Hearings Office, testified that she has been in this role for 12 years and has been employed by the College for 28 years. She testified regarding the correspondence with Dr. Chandra and his counsel both in Toronto and in India, reviewing the documents in a brief of Hearings Office Documents (Exhibit 2). This evidence demonstrated that:

- a) the Notice of Hearing was served by fax on Dr. Chandra’s counsel on January 25, 2017;
- b) an introductory letter explaining the hearings process was sent to Dr. Chandra’s counsel on January 26, 2017;
- c) on May 10, 2017, Dr. Chandra’s counsel was sent a letter indicating that a pre-hearing conference was set for June 26, 2017;
- d) on June 15, 2017, counsel for Dr. Chandra filed a supplementary pre-hearing conference memorandum containing a letter from counsel stating that Dr. Chandra

denies the allegations made against him and that he is “currently out of the country and due to health and age reasons, he will not be returning to the practice of medicine in Ontario. Dr. Chandra will accordingly not be participating at any hearing before the Discipline Committee in connection with this matter.” Counsel also advised that they were no longer counsel of record;

- e) the pre-hearing conference took place as scheduled on June 26, 2017 in Dr. Chandra’s absence. At that time, Dr. King, the pre-hearing and case management chair, ordered that the hearing be fixed for December 6 to 8 and 12 to 15, 2017, that if Dr. Chandra did not attend at the hearing, the Discipline Committee may proceed in his absence and he will not be entitled to any further notice of the proceeding, and that service of the order may be effected by mailing a copy to Dr. Chandra at his last address on the register of the College, by sending a copy by email to Dr. Chandra at his last email address known to the College, and by delivering a copy to his counsel, with a direction that they forward it to Dr. Chandra;
- f) copies of the June 26, 2017 order and the reporting letter from Independent Legal Counsel to the Discipline Committee were sent to Dr. Chandra’s counsel and to Dr. Chandra directly by email and mail in accordance with the order;
- g) on August 15, 2017, the Hearings Office emailed and mailed Dr. Chandra a letter confirming that the hearing would proceed on December 6 to 8 and 12 to 15, 2017;
- h) on November 8 and 12, 2017, the Hearings Office received emails from Dr. Chandra’s email account indicating it was being written by Rahul Singh, attorney for Dr. Chandra. The November 8 email indicated that Dr. Chandra was aware “that a Hearing may be scheduled for December 2017” and that Dr. Chandra “is unable to attend because of his health and age.” The letter also made submissions regarding the substance of the allegations and indicated that Dr. Chandra would be sending further information;

- i) on November 11, 2017, the Hearings Office replied to Dr. Chandra, reminding him of the hearing dates, enclosing copies of the reporting letter, scheduling order and confirmation letter noted above and a memorandum regarding the Discipline Committee's procedure. The email reminded Dr. Chandra that the scheduling order advised that if he did not attend the hearing, the Discipline Committee may proceed in his absence and advised that emails, letters and packages will not be received by the Discipline Committee, unless Dr. Chandra or a representative properly submits the material to the panel of the Discipline Committee in person at the hearing. Finally, the email asked whether Mr. Singh would attend the hearing on Dr. Chandra's behalf or whether Dr. Chandra remained self-represented; and
- j) further emails were exchanged between Dr. Chandra and the Hearings Office from December 2, 2017 to December 5, 2017, in which Dr. Chandra was again reminded of the hearing dates and that the hearing panel does not receive emails or other correspondence, unless he or his representative properly submit the material to the hearing panel in-person at the hearing.

The Committee notes that it considered the emails from Dr. Chandra solely as evidence to demonstrate that he was aware of the hearing and that it may proceed in his absence. As Dr. Chandra was advised by the Hearings Office, the Committee does not consider emails or other correspondence, unless properly admitted at the hearing. The correspondence was therefore not admitted for the truth of the content of Dr. Chandra's submissions.

Ms Sandy Palhinha

The Committee also heard from Ms Sandy Palhinha, a legal assistant in the legal office of the College. She reviewed the College's physician profile for Dr. Chandra, which is based on information reported by members, indicating that the profile at the time the Notice of Hearing was served on Dr. Chandra listed his practice address and mailing

address on Hensall Circle in Mississauga, but that as of June 7, 2017 the address was changed to refer to an address in India.

Ms Palhinha confirmed that the January 25, 2017 letter to Dr. Chandra's counsel serving the Notice of Hearing (referred to above) was sent. She also testified that Dr. Chandra's counsel was sent a copy of the index to the College's disclosure brief on June 12, 2017. Ms Palhinha testified that a letter was sent to Dr. Chandra's counsel on June 15, 2017 (in response to the letter advising that they would no longer be acting for Dr. Chandra) asking whether counsel had provided the index of the College's disclosure to Dr. Chandra and asking for Dr. Chandra's current contact information. Ms Palhinha advised that no response was received to this correspondence. Ms Palhinha also testified that on November 13, 2017, the College wrote to Dr. Chandra, using the same email address he had been using to communicate with the College, reminding Dr. Chandra of the hearing dates and asking for contact information for Dr. Chandra and Mr. Singh. No such information was ever received. Finally, Ms Palhinha testified that in response to the emails from Dr. Chandra to the Hearings Office referred to above, on December 5, 2017, the College wrote to Dr. Chandra advising that if he wished to contest or challenge the College's case, or put in any evidence, he would have to do so by attending at the hearing.

Based on evidence of Ms Smith and Ms Palhinha and the detailed correspondence described above, the Committee concluded that reasonable notice of the hearing had been provided to Dr. Chandra, that the notice advised Dr. Chandra that if he did not attend, the hearing may proceed in his absence, and that he would not be entitled to any further notice in the proceeding. Indeed, Dr. Chandra's responses indicate he was fully aware of the hearing and the hearing dates, and he elected not to attend. No request was made for an adjournment to allow Dr. Chandra or his counsel to attend, nor was there any suggestion that Dr. Chandra or his counsel would attend the hearing if it was held on an alternate date. The Committee considered it appropriate to proceed with the hearing in the absence of Dr. Chandra and his Counsel.

THE EVIDENCE

The Committee heard the testimony of four patients of Dr. Chandra, Mr. Martin Musters, a forensic computer expert, and Mr. George Reed, a College investigator, and considered the voluminous documentary evidence filed at the hearing.

Patient A

Patient A is a woman in her 20s. She works part-time; prior to that, she worked as an assistant. Patient A testified that in early March 2016 she attended a walk-in clinic and the doctor there told her that she would benefit from allergy tests. She was booked into the same clinic the following week to see Dr. Chandra. She testified that she saw Dr. Chandra on only one occasion. He performed allergy tests on her arm and took her medical history. Dr. Chandra also asked her about her marital status, her housing situation, her income and how many children she had, questions which seemed to Patient A as irrelevant to her medical history. When Dr. Chandra left the examining room for about 15 minutes, the door remained open. He later returned to see the response to the allergy tests on her arm.

Patient A testified that while she was alone in the examining room, she was able to hear Dr. Chandra speak to people in other rooms. She indicated that she heard Dr. Chandra discussing with a patient that she had two children on the file and that she wanted to add more. She heard Dr. Chandra reply that he was going to be out of the country for a while but would add them upon his return.

Patient A testified that when he came back to her examining room, Dr. Chandra examined her arm and noted the results of the allergy testing. Dr. Chandra then told her that as she was a single mother with low income, he could help her make extra money (\$500 to \$800), without her having to do anything. He advised that if she added her children, it would be more, and if her relative (who lived with her) also joined with her child, they could both make between \$500 and \$800. Dr. Chandra explained that he

wanted them to provide him with their OHIP numbers and that he would then tell OHIP that they had come in for testing or other procedures and collect money from OHIP, without actually having provided any services. Dr. Chandra said that he would then give her and her relative a portion of the money he received. He said they would either be paid by personal cheque from him (not a clinic or company) or by cash, but if they wanted cash he would pay them less. All he required was health card information from them and their families. Patient A testified that Dr. Chandra told her that if she is contacted by OHIP, she should ignore the inquiries completely. Patient A testified that she told Dr. Chandra she would talk to her sister and get back to him. She never saw him again as a patient.

Patient A also indicated that after Dr. Chandra had made his proposal to her, she was able to understand the conversations she overheard while she was left alone in the examination room waiting for the test. She understood that Dr. Chandra's other patient was asking about adding additional children's OHIP numbers, so that the patient could get more money.

Patient A testified that she had told Dr. Chandra that she would talk to her relative about it because she does not like saying no to people, but that she was outraged by Dr. Chandra's request. Patient A called the OPP to report Dr. Chandra. Patient A advised that the OPP suggested that she call the College. Patient A submitted a written complaint to the College on March 16, 2016 stating in part: "Yes, I'm not losing anything, but he is ripping the system off and taking money that could be put to use. I know that he does in fact already do this with other patients as I overheard him talking to three different patients while I was waiting for my test."

On review of the evidence as a whole, the Committee found Patient A to be a credible witness and her evidence reliable. She testified in a forthright manner. She had no reason not to tell the truth; she had nothing to gain in speaking to the OPP or the College and there is no evidence of any reason why she would make up allegations against Dr. Chandra. Patient A had a good memory of the events and testified in a clear and

forthright manner. Patient A's testimony was consistent with the College investigator's documentation of OHIP billing. There was also confirmatory evidence in the form of a handwritten note on her chart: "talked about extra", which, as noted below, the evidence establishes is the term Dr. Chandra used to describe billing patients for services not provided and paying them.

Patient B

Patient B is a woman in her 40s. She has worked at a clinic for many years. Patient B testified that she met Dr. Chandra in the fall of 2008. Dr. Chandra had started at the clinic part-time doing allergy testing. Patient B saw Dr. Chandra for allergies on referral from another doctor at the clinic. She saw Dr. Chandra two or three times as a patient.

Patient B testified that she often saw Dr. Chandra at the clinic; they were friendly. She testified that sometime after the middle of the year, she asked Dr. Chandra to lend her money as she and her family member were buying a home. Dr. Chandra did help her with an initial cheque of \$5,000.00 as a loan. She testified that Dr. Chandra then provided more cheques - two in 2014, and four in 2015 - after asking her about her financial problems and then asking her for names and OHIP numbers of people she knew. She started with her family's names, and then her relative's, and then later asked if she was permitted to give information derived from her family member's co-workers. Dr. Chandra said this would be fine. The Committee was presented with a list of names, with dates of birth and OHIP cards in Patient B's own handwriting. The names included two of Patient B's relatives, her husband's co-worker, and extended family. The evidence of the College investigator, Mr. Reed, would later establish that nine of these 10 names appeared on the desktop computer in Dr. Chandra's office.

In 2016, College investigator, Mr. Reed, interviewed Patient B. Mr. Reed presented data regarding services billed in Patient B's name: in 2012, Dr. Chandra billed for 16 services; in 2014, he billed for 53 services; and in 2015, he billed for 34 services. Patient B testified that she saw Dr. Chandra only two or three times and that she never had

pulmonary function or audiometry tests which had been billed for by Dr. Chandra in her name. The total billed in her name was for over \$8,300.00. Mr. Reed also presented copies of seven (7) cheques made out to Patient B from Dr. Chandra's medical corporation, which Patient B identified and were marked as exhibits at the hearing.

The Committee noted that Patient B was a reluctant witness. She was testifying under summons by the College and was therefore compelled to answer the questions. She was very anxious and at times teary. She described feeling exploited by Dr. Chandra and was too embarrassed to tell anybody about this situation, or even about where she was on the day of the hearing. She acknowledged her mistake and appeared to be very sorry for it.

On considering the evidence as a whole, the Committee found Patient B to be a credible witness and noted that she had nothing to gain from her testimony. Although use of her testimony in other proceedings is protected by the *Charter of Rights and Freedoms*, the *Canada Evidence Act* and the *Ontario Evidence Act*, it was certainly not in her interest to admit having received these funds in this fashion. Her testimony was supported by her handwritten list of names, the RBC cheques and the OHIP billings. The Committee accepted her evidence as reliable.

Patient C

Patient C also testified under summons from the College. Patient C works at a medical clinic. She met Dr. Chandra at this clinic where he was providing allergy services. She saw Dr. Chandra as a patient for allergy testing and some skin concerns for a total of approximately 10 to 15 appointments.

College investigators met with Patient C in July 2016, and she was presented with the documentation of OHIP claims that had been paid to Dr. Chandra for her care from February 2014 to March 2016. This data indicated a total of 954 procedures, which included a variety of billing codes, including "bundling" of several codes together. Patient C testified that she told the College investigators that she did not see Dr. Chandra

the number of times reflected in those records, and that the OHIP printout was definitely not accurate in terms of the number of times she saw Dr. Chandra.

Patient C testified that on several occasions in 2014 and 2015, she provided Dr. Chandra with labels containing patient names, addresses and OHIP numbers. Four lists with six to 10 names in each list were provided. Patient C testified that these were derived from the practice of Dr. Y at the clinic. These were provided to Dr. Chandra without Dr. Y's knowledge. Patient C testified that she provided them because Dr. Chandra told her that the patients had missed their appointments with him and he wanted to see if they would go and see him in another location. It was not clear to the Committee whether billing under these latter names ever occurred or whether these patients did go and see Dr. Chandra.

Cheques from the Royal Bank of Canada from Dr. Chandra's medical professional corporation were entered as evidence. Patient C received 10 cheques totaling almost \$12,000.00 between August 2014 and January 2016.

On considering the evidence, the Committee found Patient C to be a credible witness and her evidence reliable. As with Patient B, it was not in her interest to give the evidence that she did, even with the statutory protections of the *Evidence Act* and the *Charter*. Patient C testified as to her honest recollection of events; she was consistent in the details of her testimony, and her evidence was consistent with the evidentiary documents. She acknowledged receiving funds from Dr. Chandra.

Patient D

Patient D knows Dr. Chandra through a travel agency which Dr. Chandra has frequently used to arrange trips. On one occasion, Patient D saw Dr. Chandra as a patient. This occurred in 2015. In 2016, College investigators showed Patient D a list of OHIP billings in his name. There were about 90 billing days involving five different OHIP codes, totaling \$7,924.00. Patient D testified that he was shocked by this, because he had seen

Dr. Chandra only once. Dr. Chandra's billing described a variety of diagnoses - conjunctivitis, acute bronchitis, common cold, eczema, sprains and annual health examination. It also included a wide variety of procedures, including laboratory tests, hearing tests, pulmonary function tests and diagnostic radiology of finger and thumb. Claims were paid for several after-hours premiums and pediatric intermediate assessments.

Patient D described being outraged at seeing these data, given that he had seen Dr. Chandra on only one occasion. He therefore contacted OHIP on November 8, 2016 to notify them about what had happened, identified all of the instances Dr. Chandra had billed for services he had not received, and requested that the fraudulent visits be removed from his health records. Patient D received a reply from OHIP indicating that the claims submitted by Dr. Chandra would remain on his health record until Dr. Chandra advised that they should be removed. Accordingly, the claims remain on his OHIP record. Patient D noted that he had also contacted the College.

Patient D also testified with respect to travel documents from nine trips taken by Dr. Chandra between 2014 and March 2016. The travel company provided travel arrangement for Dr. Chandra's travel. These trips included trips to India, Edmonton, Washington, Orlando, Boston, Singapore and Hong Kong.

Patient D presented as a straightforward witness. He at times expressed anger that he had been exploited through the use of his health card number. He was a credible witness who had nothing to gain by his testimony. His testimony about Dr. Chandra's travel was consistent with the information on Dr. Chandra's expired passport. The Committee accepted his evidence as reliable.

As noted below, when College investigators seized documents from Dr. Chandra's office and computers, they learned he had classified people whose health cards he had been using into two categories: "leaders" and "extras." The "leaders" were those who provided a greater number of names. There appears to be a third group - neither "leaders" nor

“extras” - as exemplified by Patient D. These were regular patients who were not paid for the use of their other OHIP number, or for getting additional names and OHIP numbers, but for whom numerous billings occurred without visits. It is not possible to accurately know how many of the third group existed. The leaders and extras totaled approximately 300 people.

Mr. Martin Musters

Mr. Martin Musters, a forensic computer expert, was qualified as an expert in computer forensics based on his extensive experience and history of providing testimony in these matters, most recently at the Superior Court of Justice in May 2017. He has worked on some 30 or 40 College investigations in the past. His company, Computer Forensics, has been in existence since 2002.

Mr. Musters testified that he received a number of laptop and desktop computers, as well as a camera, from College investigator, Mr. Reed. Mr. Reed advised him that these were seized by College investigators from Dr. Chandra’s office. Mr. Musters described the well accepted processes to create forensic images of each of the computers. These images can then no longer be altered. He provided a list of documents on these devices.

Following this, he used FTK (Forensic Toolkit) software that enables a search for any keyword. Five of the computers had “activity” on the keywords searched. A copy of the data files retrieved from the computers was presented to the Committee. The electronic evidence he obtained from Dr. Chandra’s computers was then used by Mr. Reed in his investigation and excerpts from that data were presented in evidence before the Committee.

Mr. Musters presented as a straightforward and experienced credible expert. He demonstrated he knew how to obtain the necessary information from the hard drives. The Committee accepted his evidence as reliable.

Mr. George Reed

Mr. Reed, a registered nurse since 2003, has been an investigator at the College for seven years. He has specialized in dealing with OHIP data for the last three years. It is his major role and, at one level or another, he has been involved in the assessment of over 500 doctors. He has been the lead investigator in Dr. Chandra's matter. Mr. Reed also serves as liaison to the Ministry of Health and Long Term Care and to the OHIP Fraud Unit.

Mr. Reed described how he examines an OHIP data set in general. He examines the number of patients seen, the frequency of visits, and types of codes, including whether there are other people in the same household clustering with this doctor. He inquires whether the clustering is logical and whether the code fits the patient. He then is able to distill data in a variety of ways. He also compares the doctor's OHIP billings against OHIP billing norms for similar physicians.

Alleged Scheme to Defraud OHIP

Mr. Reed described learning of Dr. Chandra's billing patterns as part of an investigation of Dr. X. He noted that Dr. X had referred many patients to Dr. Chandra since 2012 (5,644 patients). This highly unusual volume of referrals was compared with the next most frequent referrer, a physician in internal medicine, who referred 572 people, 1/10th the number of patients referred by Dr. Chandra. The unusual referral pattern stimulated a closer look at the data from OHIP.

Mr. Reed requested and received a full OHIP data file. An affidavit regarding its authenticity was provided by Ms Delia D'Amore. As Mr. Reed was working with the OHIP data set, about one week later, the letter to the College from Patient A arrived, describing her single experience as a patient of Dr. Chandra's, which provided an idea of the type of billing practice that was occurring. Two months later, on June 17, 2016, Mr. Reed and a team of investigators went to Dr. Chandra's various practice locations simultaneously and seized data in hard copy and computers from these offices.

While Dr. Chandra practised out of six locations, his primary office was at 470 Hensall Circle. Mr. Reed described it as a three-story medical arts building in a semi-industrial area of Mississauga. Dr. Chandra worked on the third floor independently. His suite of offices included two examining rooms which appeared to contain many stored items, a boardroom, an office, and a supply room. Dr. Chandra was the only doctor working out of this suite of offices. There was no pulmonary function equipment or audiometry equipment in this, or any location.

Mr. Reed presented information from the records the College obtained. The records were from 2012 to 2016. Mr. Reed indicated that the College had received over 30,000 pages of material. The material presented to the Committee was not intended to be comprehensive – the data provided included samples of the materials, not the entire listings.

Mr. Reed testified that based on the review of the OHIP billing data, the investigators sought to examine the charts of 133 patients who were the subject of extremely unusual billing submissions to verify whether there was medical documentation to support the OHIP claims. After a thorough investigation at all locations, 58 patient charts were found; 75 of the 133 patients had no medical records at all. The records that the investigators were able to locate at Dr. Chandra's offices contained a large number of documents related to OHIP billing procedures, descriptions of "leaders" versus "extras", but little in the way of organized patient medical records. Individuals marked as "leaders" or "extras" were correlated to health cards that had been subjected to OHIP claim submissions at a high frequency and an unusual pattern of billing.

Mr. Reed described various aspects of the distilled data from OHIP. For example, of the 5,640 patients listed as being referred by Dr. X, Dr. X never submitted a claim for 2,921 of these patients, leading the investigator to question if she had ever seen them. Even more unusual was the fact that while Dr. Chandra's paid OHIP fees averaged \$1.5 million per year over four years, and his fees were not decreasing, although based on an ever-smaller number of patients. In 2012, he billed \$1,562,125.54 in respect of 5,247 patients

and 50% of the billings related to 1,498 patients. In 2015, he billed \$1,746,464.08 in respect of 2,051 patients and 50% of the billings related to only 137 patients. Although the number of patients billed for had decreased by 2015, Dr. Chandra's income increased by over \$200,000.

A further unusual finding was the presence of bundling of codes for the same day of service – “5-code bundles” – when OHIP fee codes were claimed for the same date of service for the same individual. The codes indicated several pulmonary function tests and several audiology tests as well as a consult. These bundles increased each year over the four years studied. In 2012, there were 99 bundles submitted based on 55 health card numbers, but by 2015, there were 13,536 bundles submitted based on 447 health card numbers. For the 2015 year, the 13,536 5-code bundles accounted for claims of \$1,185,753.60, whereas in 2012 the 99 bundles accounted for \$8,672.40. A very large number of bundles involved pulmonary function and audiology testing, despite the fact that equipment for these tests was never found in Dr. Chandra's offices.

In addition to the bundling by codes, Mr. Reed described clustering by household. Up to nine people in one house were seen by Dr. Chandra in the same year. The Committee heard evidence that this was a very unusual practice according to the OHIP data set overall.

Mr. Reed also described “back billing.” Mr. Reed testified that OHIP will permit physicians to submit bills for services up to six months after a service is performed. In this case, Dr. Chandra submitted numerous OHIP claims in bulk relating to services allegedly performed during the previous six months. Dr. Chandra's back billing was extraordinarily high, involving many patients and claims submitted on the last date permitted. Mr. Reed described this as very rare in his experience.

Mr. Reed testified that when the investigators seized material from Dr. Chandra's office, they took hard copies of lists from his boardroom – these included typed names of “leaders” with their recruits listed as “extras” under the leaders' names, and their health

cards data. These notes also described how often a person should be billed (each new “extra” was assigned a category from A to D indicating differing frequencies). These lists indicated when individuals were signed up as new, the dates they signed and when they received cheques from his corporation.

A summary page from one computer indicated billings submitted for a month by numbers of people in a household, and total billings (\$91,114.82 for that month). A separate page described “leaders” by numbers of people involved and their frequency for billing. For example, for Patient B’s group, 27 people were in the subgroup – 23 were billed twice per week and four were billed once per week. Patient C’s group included seven people all billed twice per week. Dr. Chandra divided the year into five-week cycles and in early 2016, calculated \$205,000 (net of tax) for each five-week cycle. Over six cycles, he noted \$1,230,000 which he had converted into rupees: INR 639,60,000.

Expense budgets were also presented in evidence. With costs in 2016 of about \$25,000 per month, Dr. Chandra calculated his taxable income at \$1,350,000.

To-do lists were also found in Dr. Chandra’s office. Review of these indicated mundane activities, but also dealt with “money for extras.”

Mr. Reed testified that the College obtained copies of cheques provided to “leaders” and “extras” from Dr. Chandra’s RBC account. These were signed by Dr. Chandra and were from his medical corporation. An affidavit from the bank attested to the accuracy of these records. Mr. Reed collated the cheques “leaders” and “extras” received and summarized these for the Committee. For example, one person received 130 cheques for a total of \$245,687; a second person received 133 cheques for \$190,289 and a third person received 43 cheques for \$98,726. These three individuals were current or former employees of Dr. Chandra and received the largest amounts of money. Patient B received seven cheques, totaling \$36,000. Patient C received 10 cheques for just under \$12,000. A total of 494 cheques were reviewed and these totaled \$769,871.

The records suggested that each “leader” had a number of people they recruited. For example, Patient B had 26 names listed under her account; Ms E 10; and Ms F 9. The references to “extras” increased in number each year – from 56 in 2012 (billings: \$35,072) to 301 in 2015 (billings: \$1,162,915). Adding the “leaders” and their “extras” resulted in a total of \$2,056,342 in OHIP fees paid to Dr. Chandra for services billed for these people.

As noted earlier, most patients did not have a chart; 58 patients did have a chart. Several had two or more charts indicating they were seen at several of Dr. Chandra’s offices. Mr. Reed testified that the investigators examined a random subgroup of 12 of 58 charts to determine whether chart entries corresponded to OHIP billing codes. This line-by-line audit revealed over 1,000 billings with only 17 chart notes, and on many of the dates, there are large numbers of bundled codes. For example, Ms H had one chart with 138 distinct service dates with an OHIP claim and 135 5-code cluster claims. There were no medical notations on her chart by Dr. Chandra. Ms I had 122 distinct service dates with 117 5-code cluster claims. She had one note on her chart. Four of the 12 people in this part of the review had no notations on their charts; three had one; one had two; two had three; and there was one person with 4 and one with 5. The Committee observes that while a physician can on occasion not write a note on a chart, these numbers defy credulity.

Mr. Reed also produced a table compiled from data on cell phone communications between “leaders” and Dr. Chandra. This demonstrated frequent cross-communications. For example, Patient B received 27 calls from Dr. Chandra’s cell phone and phoned his number 42 times. Twenty-four “leaders” were noted to be in phone contact with Dr. Chandra, most to a lesser degree than Patient B. Similarly, e-mails derived from the computers in Dr. Chandra’s office and using his Gmail account corroborated the other information collected. There were e-mails from him to Mr. J, for example, regarding a list of new “extras.” Others addressed to “leaders” list the names and health information of new “extras” and dates for billing.

Mr. Reed also testified that the College investigators were able to seize Dr. Chandra's expired passport. The evidence of the travel agent, Patient D, and Dr. Chandra's passport indicated that Dr. Chandra had nine trips between March 9, 2014 and April 25, 2016. During this time, many health card numbers were used to bill for Dr. Chandra's services performed while he was out of the country. OHIP paid a total of \$197,971 for treatments allegedly performed during Dr. Chandra's absences from Canada.

Mr. Reed testified that the total amount billed to OHIP in respect of the approximately 300 patients Dr. Chandra listed as "leaders" totaled \$2,056,342 over four years.

Alleged Failure to Respond to Inquiries

Mr. Reed was also asked about the College's attempts to interview Dr. Chandra and to obtain some materials from him and testified to the following.

By letter dated July 5, 2016, shortly after removal of the files from Dr. Chandra's office in June 2016, the College requested a meeting with Dr. Chandra. In response, Dr. Chandra's then lawyer, Ms. Rebecca Jones, noted that consideration for this interview would be given when she and Dr. Chandra were in possession of the documents and items seized by the College.

On July 18, 2016, the College responded, indicating that it understood that Dr. Chandra was abroad and inquired about his expected date of return and at least two dates when he would be available for an interview within ten business days of his return. The College advised that it would provide a copy of the materials removed from 470 Hensall Circle.

On July 22, 2016, counsel for Dr. Chandra responded, reiterating that Dr. Chandra would consider the College's interview request once they had been provided with a complete copy of the documents in the College's possession. Dr. Chandra's counsel noted that they had not received copies of the electronic files seized. Dr. Chandra's counsel also asked

the purpose of the College's requests for Dr. Chandra's passports, his lung function equipment and audiometer.

On August 11, 2016, the College indicated that Dr. Chandra's geographical location does not diminish his obligation to cooperate fully with the College's investigation and asked for at least three dates between September 1 and September 30, 2016 when Dr. Chandra would be available for a telephone or video conference interview.

On August 12, 2016, Dr. Chandra's counsel replied, indicating that their position regarding an interview request had not changed.

On August 16, 2016, the College reminded Dr. Chandra that section 76(1.1) of the Code provides that an investigator may make reasonable inquiries of any person, including the member who is subject of the investigation, on matters relevant to the investigation and section 76(3.1) provides that a member shall cooperate fully with an investigator. The College stated that its position was that it had no outstanding obligations with respect to disclosure that would impede Dr. Chandra's obligation to attend or be available for an interview. The College further noted that in this case, the College has determined that an interview is the best method of investigation to determine and clarify the facts and that additional disclosure of materials may compromise the investigatory process.

On August 17, 2016, Dr. Chandra's counsel stated that their position had not changed.

On September 1, 2016, the College summarized the outstanding requests of Dr. Chandra, and advised that the level of co-operation received has been inadequate to meet the needs of the investigation, promoted needless delay or obstruction of the investigatory process, or prevented the College from fulfilling its duty to the public. The College advised that this was unacceptable and inconsistent with a member's general duty to cooperate with the College and Dr. Chandra's specific obligations under section 76 of the Code. The College stated that Dr. Chandra's position that he would "consider" the College's request for an interview once he has received a complete copy of the documents in the College's position was an overt challenge to the authority and power conferred on it and

undermines the College's ability to safeguard the public. The College also pointed out that Dr. Chandra had been provided with a copy of all materials removed from 470 Hensall Circle location which would reasonably be copied, that the College had agreed to facilitate the return of all computer equipment removed from the 470 Hensall Circle location and returned the original address book and agenda book removed from 470 Hensall Circle location. The College again requested the following information without delay: (1) three dates prior to September 16, 2016 on which Dr. Chandra would be available for an interview, either in person or by teleconference; (2) confirmation of his present geographical location; (3) confirmation of his expected return date to Canada; (4) confirmation of all dates on which Dr. Chandra was outside of Canada for more than 48 hours from January 1, 2014 to present; and (5) a copy of each page of the passport that Dr. Chandra is currently using to traveling. The College also advised that these matters had already been brought to the attention of the College's Registrar and the ICRC and advised that if any further lack of co-operation should occur, the matter will be immediately returned to the ICRC for review and/or disposition.

On September 7, 2016, Dr. Chandra's counsel replied reiterating that Dr. Chandra's position was reasonable. Further, Dr. Chandra's counsel indicated that it was reported in the media that a warrant for Dr. Chandra's arrest had been issued and that, in view of the commencement of criminal proceedings, Dr. Chandra was not in a position to provide an interview.

On October 17 and November 10, 2016, the College asked Dr. Chandra to provide a typed verbatim transcript of three pages of notes regarding a specific patient and an explanation for the notation "Talked about EXTRA." On November 18, 2016, Dr. Chandra's counsel indicated that given the commencement of a criminal proceeding, as well as the allegations being made, Dr. Chandra could not respond to the College's request.

On December 12, 2016, the College wrote to advise that the ICRC would consider matters in relation to his practice, as detailed in the letter, and that it would consider

matters concurrently with the allegation of Dr. Chandra's failure to co-operate with the College's investigation.

On January 23, 2017, Dr. Chandra's counsel responded, indicating that a warrant had been issued for Dr. Chandra's arrest asserting that, in the circumstances, Dr. Chandra could not provide a substantive response, neither written nor in an interview, until the criminal matters were resolved. Dr. Chandra's counsel further suggested that requiring Dr. Chandra to respond would arguably be a violation of his constitutionally protected right to be silent and noted that Dr. Chandra was provided with an opportunity to make submissions to the ICRC. The letter indicated that Dr. Chandra understood his obligation to co-operate, but was unable to do so.

The Committee found Mr. Reed to be a credible witness and his evidence reliable. He was thorough and clear in his description of his methodology. He was very familiar with the data. The data he obtained from OHIP and the RBC cheques and the other documentation, as well as the other witnesses, supported his testimony.

FINDING

On December 8, 2017, the Committee delivered an order finding that Dr. Chandra has committed an act of professional misconduct in that:

- i) Dr. Chandra has failed to respond appropriately or within a reasonable time to a written inquiry from the College under paragraph 1(1)30 of Ontario Regulation 856/93 made under the Medicine Act, 1991("O. Reg. 856/93"), and
- ii) Dr. Chandra 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 under paragraph 1(1)33 of Ontario Regulation 856/93 made under the Medicine Act, 1991("O. Reg. 856/93").

ANALYSIS

Issue 1 - Dr. Chandra's failure to respond appropriately or within a reasonable time to a written inquiry from the College

The Committee accepted Mr. Reed's evidence, supported by documentary evidence, that the College wrote to Dr. Chandra over a six-month period from July 5 to December 12, 2016 requesting that he attend for an interview, either in person or by telephone, and provide certain information and reminded him of his duty to cooperate with the College's inquiries. Dr. Chandra declined to attend an interview and to provide the requested materials.

Counsel for the College referred to a number of authorities with respect to the duty to co-operate with the College. In *D'Mello v. The Law Society of Upper Canada*, 2015 ONSC 5841, the Divisional Court noted there were very powerful public policy reasons for requiring the members of self-governing professions to co-operate in an investigation by their regulator. The Court quoted the following with approval:

6. It is of paramount importance that members of the Law Society co-operate with investigations and promptly and substantively respond to communications from the Law Society in order that it may fulfill its statutory mandate of governing the profession in the public interest. Members' failure to do so delays investigations, jeopardizes the collection of evidence including the recollection of witnesses, results in a backlog of investigations and can lead to an erosion of public confidence in the self-regulatory authority of the Law Society.

7. Members must be aware that their failure to co-operate and/or respond in a prompt and substantive fashion results in the implementation of a second investigative process to compel the member's compliance. This diverts attention from the primary complaint or investigation at a cost of time and Law Society resources funded by all members of the Society. Members who choose to not co-

operate or respond promptly and substantively interfere with the proper functioning of the Law Society, diminish the public's respect for the profession and the self-regulatory process of the Law Society and cause otherwise avoidable expense to be incurred.

In this case, the College had requested a meeting with Dr. Chandra (in person or by teleconference) and some materials (his expired passports, details of his audiometry and pulmonary function equipment) shortly after removal of the files from his office in June 2016. His then lawyer, Ms Rebecca Jones, noted consideration for this interview would be given when she and Dr. Chandra were in possession of the documents and items seized by the College. The College provided many of the documents, but not the complete material.

Paragraph 1(1) 30 of O. Reg. 856/93 provides that failing to respond appropriately or within a reasonable time to a written inquiry from the College is an act of professional misconduct for the purposes of clause 51(1)(c) of the Code. Subsection 76 (1.1) of the Code states that an investigator may make reasonable inquiries of any person, including the member who is the subject of the investigation, on matters relevant to the investigation. In addition, subsection 76 (3.1) of the Code provides that a member shall cooperate fully with an investigator.

The Committee found that Dr. Chandra's willingness to "consider" the College's request only after he received a complete copy of the documents in the College's possession is a position which overtly challenges the authority conferred upon the College and undermines the College's ability to safeguard the public. It is not for the subject of the investigation to dictate the manner in which the College gathers information or to otherwise control the sequence or timing of the investigatory process. The College has a duty to serve and protect the public interest, and in doing so, to choose the timing and means of investigation that are most likely to determine the truth and protect the public.

The duty of members to respond is a statutory one and there are no exceptions. It is an essential tool for the College to fulfill its primary objective of protecting the public interest. Counsel for the College indicated that the College will take a cooperative approach in dealing with release of information at the interview stage but submitted there is no requirement to share material at that stage. The Committee notes that by the time the interview was being requested, there was a high degree of suspicion of fraudulent behaviour and the investigator needed to be able to address specific questions at an interview. The Committee concluded that it was reasonable for the College to refuse further disclosure before conducting an interview with Dr. Chandra.

Accordingly, the Committee did not accept the position advanced by Dr. Chandra's counsel at the time in correspondence that Dr. Chandra was entitled to refuse to be interviewed by the College until his demands for full disclosure were met. The Committee found that Dr. Chandra was required to meet with the College investigator and provide the information requested, and that his failure to do was a breach of his obligation to respond appropriately or within a reasonable period of time to a written inquiry of the College.

With respect to the period of time after Dr. Chandra learned that criminal proceedings had been commenced against him and the argument that compelling Dr. Chandra to provide information or submit to an interview would violate Dr. Chandra's *Charter* rights, counsel for the College referred the Committee to the decision of *Her Majesty the Queen v. Jones* (2017). In that case, a Nova Scotia physician had provided a statement to her College under compulsion of the Nova Scotia statute. The Crown sought to introduce that statement into evidence at a criminal trial and the defence objected. The Court found that to admit the statement would breach the accused's *Charter* rights. The Court relied on the Supreme Court of Canada's decision in *R v. White*, 1999 2 SCR 417, which held that a statement required to be given under the British Columbia Motor Vehicle Act could not be admitted into evidence at a criminal trial. Accordingly, the College submitted that Dr. Chandra was free to comply with his obligations to the College and that any concerns

with respect to his *Charter* rights would be addressed by objecting to the admission of such evidence at the criminal trial.

The Committee concluded that a pending criminal proceeding is no basis for a member to refuse to be interviewed or to otherwise refuse to co-operate with the College's investigation. The *Jones* case demonstrates that the criminal courts are sensitive to the fact that members of a regulated health profession are required to provide statements to their regulators and can and do protect the member's *Charter* rights.

For these reasons, the Committee found that Dr. Chandra failed to respond appropriately or within a reasonable time to a written inquiry from the College under paragraph 1(1)30 of Ontario Regulation 856/93 made under the *Medicine Act*.

Issue 2 – Disgraceful, dishonourable or unprofessional conduct by a scheme to defraud OHIP and by failing to cooperate with the investigation

Alleged Scheme to Defraud OHIP

The evidence with respect to this allegation is both direct and circumstantial. Counsel for the College submitted that at times there may be hesitancy to find allegations proven based on circumstantial evidence but there are times when courts and this Committee have used circumstantial evidence to weigh heavily in their decisions.

In *CPSO v. Liberman* (2013), Dr. Liberman, an anesthetist, was clinically involved in a case of a woman who died following liposuction. The Discipline Committee determined that Dr. Liberman exhibited deficiencies in his judgment and knowledge and a lack of insight into these deficiencies. The Committee revoked Dr. Liberman's certificate of registration. Dr. Liberman did not give evidence before the Discipline Committee. The Discipline Committee was therefore not provided with any other evidence that would explain the events in this case. In dismissing Dr. Liberman's appeal, the Divisional Court noted: "If circumstantial evidence points to a particular conclusion, the person who is the

subject of that conclusion ought not to be surprised that it is reached if he fails to provide any explanation to the contrary.” (see *Bruce Liberman v. College of Physicians*, 2013 ONSC 4066 (CanLII)). In other words, under certain circumstances, circumstantial evidence can be quite powerful when no other evidence can be found and when it points to one conclusion.

In *Law Society of Upper Canada v. Talarico*, 2014 ONSC 3423 (CanLII), the Divisional Court overturned the Law Society’s Hearing Panel’s decision on the grounds that it had misdirected itself as to how fraud must be proven as a result of two interrelated legal errors. First, the Hearing Panel erroneously believed a mortgage fraud could not be proved in the absence of evidence from the participants. Second, the Hearing Panel erroneously believed that it was not open to it to infer the element of fraud from circumstantial evidence.

A similar conclusion was reached in *Law Society of Upper Canada v. Chin*, 2017 ONLSTA 20. In that case, the Law Society Tribunal Appeal Division noted that the Law Society is not required to prove by direct evidence that a transaction is not genuine in order to prove that a transaction is fraudulent. It is open to the Hearing Panel to infer fraud from circumstantial evidence.

In this case, the Committee had ample evidence from which to conclude that Dr. Chandra had engaged in a fraudulent scheme to defraud OHIP. It had direct evidence from a patient (Patient A) who had been approached by Dr. Chandra to participate in the scheme and had been offered money to allow the fraudulent use of her OHIP card and that of her family members. The Committee also had direct evidence from two patients (Patients B and C) who had received payments from Dr. Chandra for their participation in this scheme, both of whom testified that they had received no treatment at all for the vast majority of the services for which Dr. Chandra billed OHIP. The Committee also heard from Patient D, who testified that Dr. Chandra had billed OHIP for many services for which he received no treatment. The Committee, having found the patient witnesses credible and their evidence reliable, accepted their evidence.

The Committee also accepted Mr. Reed's evidence and the documentary evidence he had gathered. While that evidence may be circumstantial evidence rather than direct evidence, the documents presented by Mr. Reed demonstrated that these incidents were part of a pattern of conduct by Dr. Chandra, over at least a four-year period, with significant sums of money being paid by Dr. Chandra to patients he designated as "leaders" or as receiving "extras." The Committee finds that the evidence demonstrates that Dr. Chandra used these terms to refer to patients who permitted the use of their health cards in return for a portion of Dr. Chandra's OHIP billings. The evidence indicates that the largest payments were made to employees or former employees of Dr. Chandra. The evidence also demonstrated that Dr. Chandra billed for audiometry and pulmonary function tests, despite there being no such equipment in his offices. There were no charts for multiple patients for whom he billed, and even for those patients with charts, the medical notes did not support the vast majority of the billings. There were suspicious bundling of billing codes of increasing frequency, an unusual pattern of billing for services in bulk going back up to six months, and an unusual cluster of billings by household. Mr. Reed's evidence further demonstrated that Dr. Chandra had billed OHIP for services ostensibly performed on dates when Dr. Chandra was not in the country. The documents included the Royal Bank of Canada's records and cheques made out to specific individuals from Dr. Chandra's medical professional corporation, who were participating in the recruitment of individuals who were to be billed as patients. These individuals were classified as "leaders", who were to bring in others, or they were classified as "extras", with lower levels of recruits. There were also regular patients who were unaware that their OHIP numbers were used to bill for multiple services that did not take place. While much of the evidence in this regard was circumstantial, the Committee was satisfied that it demonstrated a fraudulent scheme by Dr. Chandra to defraud OHIP, a conclusion amply supported by the direct evidence of Patients A to D and the documentary evidence.

The Committee therefore concluded that Dr. Chandra engaged in a systematic scheme to defraud OHIP by submitting false claims and that he enlisted some of his patients in this scheme. The Committee found that such conduct constitutes an act relevant to the

practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

Failure to Respond

As noted above, the Committee found that Dr. Chandra failed to respond within a reasonable time to the College's inquiry.

The Committee found that Dr. Chandra's failure to respond within a reasonable time to the College's written inquiry is an abrogation of his professional duty and constitutes an act relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

PENALTY

The Committee's order of December 8, 2017 ordered that the matter of penalty would be heard on December 14, 2017.

Proceeding with the Penalty Hearing

Prior to hearing submissions on penalty, counsel for the College called Ms Carolyn Gora, Manager of the Hearings Office. She has held this position since 2002. She described her communication with Dr. Chandra since the conclusion of the first part of the hearing.

Ms. Gora sent an email to Dr. Chandra's email address on file on December 8, 2017. She informed him that the Committee would be proceeding with the penalty hearing on a date that had previously been set aside for the hearing, December 14, 2017. She enclosed a copy of the Committee's December 8, 2017 Order and specified the date of the penalty hearing. Ms Gora's email also advised that if, in light of the order, Dr. Chandra would like to attend and participate in the penalty hearing, he may make submissions in writing seeking to adjourn the hearing for that purpose. Later that same day, Ms Gora sent a

second e-mail and confirmation letter by prepaid first-class mail to Dr. Chandra's mailing address in Gargaon, India.

Dr. Chandra responded on December 11, 2017. He enclosed a summary of a variety of items and advised that "after consultation with the medical consultants I am unable to travel to Toronto...earliest may be several months." Ms Gora acknowledged receipt of his e-mail on December 12, 2017 and reiterated that the penalty hearing is scheduled on December 14, 2017.

The Committee found that Dr. Chandra had been well informed of the date of the penalty hearing he had responded confirming that he will not attend. Dr. Chandra was given an opportunity to make written submissions seeking to adjourn the penalty hearing but did not do so. The Committee determined that it was appropriate to proceed with the penalty hearing in his absence.

SUBMISSIONS ON PENALTY

Counsel for the College submitted that revocation of Dr. Chandra's certificate of registration was the only appropriate penalty in this case given the severity of the misconduct, that it was fitting Dr. Chandra be required to pay a fine to the Minister of Finance given his fraud against OHIP, and that the Committee order a reprimand. Counsel for the College also submitted that it was appropriate for Dr. Chandra to be required to pay costs of the three days of hearing to the College.

DECISION AND REASONS ON PENALTY

The principles relevant to the imposition of penalty are well known. Protection of the public is of paramount consideration. Other principles include maintenance of public confidence in the reputation and integrity of the profession, and in the College's ability to regulate the profession in the public interest. General deterrence as it applies to the

members as a whole, specific deterrence as applies to the member in question, and the potential for rehabilitation of the member where appropriate, are also considered.

Further, the penalty must be proportionate to the professional misconduct. The Committee considered the facts and circumstances of the in light of these principles when determining the appropriate penalty in this case.

The Committee found that Dr. Chandra failed to respond appropriately or within a reasonable time to a written inquiry from the College. The Committee found that this was also conduct that members would reasonably regard as disgraceful, dishonourable or unprofessional.

The Committee also found that Dr. Chandra engaged in a blatant scheme to defraud OHIP and that this constituted disgraceful, dishonourable and unprofessional conduct.

Aggravating factors

The Committee noted the following aggravating factors in this case:

1. Dr. Chandra concocted and applied a devious scheme to cheat the Ontario public, at a time when health care funds are stretched. He displayed a blatant disregard of anyone but himself.
2. Many of the enticements were to patients –using people he is intended to serve – for his own gain.
3. Some of the meetings took place in Dr. Chandra's medical offices, in the course of, or following a clinical encounter – this is an aggravating factor which demonstrates Dr. Chandra's misuse of power and authority.

4. Based on the evidence of Patients A, B and C, the patients Dr. Chandra sought to involve were carefully selected for being vulnerable and financially needy. Dr. Chandra's selection and enticement of vulnerable people is disgraceful.
5. Lending money to a patient, as Dr. Chandra did on one occasion is a further erosion of the doctor- patient relationship; it adds an extra element of power and control and is a significant boundary violation.
6. This was not an impulsive act. The behaviours occurred over four years; the plan was carefully thought through and executed.
7. Vast amounts of money were misappropriated.
8. Refusing to co-operate with the College in its investigation – both to attend an interview and to provide them data – calls into question whether Dr. Chandra is governable.
9. The nature and extent of the scheme puts the public's trust in the medical profession in jeopardy.

Mitigating factors

Dr. Chandra has no discipline history. There are no other mitigating factors. Notably, unlike other cases in which a lesser penalty has been imposed, such as in the *Bogart* and *Tolentino* cases outlined below, Dr. Chandra has not demonstrated any understanding or sympathy for the patients who feel exploited by him nor has he demonstrated any remorse. The Committee notes that absence of remorse is not an aggravating factor, but simply notes that its presence was a mitigating factor in other cases, a factor not present in this case.

Case Law

The Committee is not bound by prior decisions of the Discipline Committee but notes that general principles from earlier cases can and should inform the Committee's reasoning.

Public Protection and Maintaining Public Confidence

In prior cases where a physician engaged in egregious professional misconduct that jeopardized public confidence in the profession and the College's ability to regulate the profession in the public interest if not adequately sanctioned, the Committee ordered revocation.

For example, in *CPSO vs. Minnes* (2014), a pediatrician who worked as a camp doctor engaged in "very intrusive and coercive sexual activities" with a 17-year-old girl who was not his patient. His behaviour was "manipulative" and "predatory." The College noted that the Committee ordered revocation of Dr. Minnes' certificate of registration for this egregious behavior and other misconduct, based the principles of public protection and the importance of maintaining public confidence in the integrity and reputation of the medical profession and in the College's ability to regulate the profession in the public interest. The decision was upheld on appeal by the Divisional Court. The Committee agrees that this is a case, like *Minnes*, in which the public confidence in the profession and in the ability to regulate the profession in the public interest is of paramount concern.

In *CPSO vs. McIntyre* (2016), the Committee found that Dr. McIntyre failed to maintain the standard of practice of the profession, engaged in disgraceful, dishonourable or unprofessional conduct, and engaged in sexual abuse with respect to one patient. Given the seriousness and multiplicity of findings, Dr. McIntyre's certificate of registration was revoked. On appeal, the Divisional Court considered the decision in *Adams vs. Law Society of Alberta*, 2000), and noted, "we do not accept the proposition still often invoked in criminal cases that the most serious disciplinary sanction - disbarment - should be

reserved for the most serious misconduct by the most serious offender.” The Committee notes that based on the reasoning in both *McIntyre* and *Adams*, it is not required to consider the “least restrictive” option or that revocation must be reserved for only the most serious of cases (although the Committee’s comment in that regard should not be interpreted as suggesting Dr. Chandra’s conduct was anything short of extremely serious). Instead, the Committee’s decision in this case should be based on the guiding principle of protection of the public.

OHIP Fraud

The Committee also reviewed previous Discipline Committee cases involving OHIP fraud. The penalties in those cases varied from a four-month suspension to revocation of a physician’s certificate of registration, often depending on the aggravating and mitigating factors.

For example, in *CPSO vs. Bogart*, (2001) Dr. Bogart defrauded OHIP of over \$900,000 over six years. He displayed remorse, was convicted of criminal fraud, and was providing restitution. The Committee noted that OHIP fraud puts public health at jeopardy and is detrimental to the reputation of the medical profession. The Committee also commented that “In the context of the cases evidencing OHIP fraud, the recognition that we have limited resources in our health care system, and the serious impact on society and the health care system of OHIP fraud, the Committee believes that revocation is ordinarily the appropriate penalty where physicians are criminally convicted of OHIP fraud.” Given the particular facts of the case, Dr. Bogart’s certificate of registration was suspended for eighteen (18) months.

In *CPSO v. Tolentino* (2002), the Committee ordered a four-month suspension of Dr. Tolentino’s certificate of registration for defrauding OHIP of over \$58,000. In that case, the Committee found that the member was remorseful and the member was taking steps to reimburse OHIP.

In *CPSO v. Moore* (2002), the Committee ordered a 12-month suspension of Dr. Moore's certificate of registration for defrauding OHIP of \$75,000. Dr. Moore pleaded guilty to professional misconduct, was providing restitution, and had been convicted of criminal fraud. In *Moore*, the Committee also warned that its decision in that case should serve as notice that future cases of OHIP fraud should expect stiffer penalties including revocation in cases of substantial fraud.

In *CPSO v. Dr. Scott* (2002), Dr. Scott defrauded OHIP of close to \$600,000. In that case, there were virtually no mitigating factors. Dr. Scott's certificate of registration was revoked.

In *CPSO v. Sinclair* (2014), Dr. Sinclair defrauded the Ministry of Health and Long-Term Care and various insurers of approximately \$200,000. He was convicted of fraud in criminal proceedings as well as drug offences. Dr. Sinclair's certificate of registration was revoked.

In *CPSO v. Marcin* (2016), Dr. Marcin was found among other things to have committed OHIP fraud of just over \$100,000, as well as other acts of professional misconduct. Her certificate of registration was revoked. The Committee noted that "by repeatedly billing for services that she did not provide, Dr. Marcin was purposely dishonest and demonstrated a profound disregard of her professional responsibility. Such misconduct is extremely serious."

In this case, the College has also sought a fine. The maximum penalty that can be imposed in terms of a fine is \$35,000 payable to the Minister of Finance.

Two cases were reviewed where such a fine was imposed. *CPSO v. Wong* (2014), involved improper OHIP billing and special diet allowance forms; Dr. Wong was ordered to pay a \$35,000 fine, in addition to the imposition of a six-month suspension and the imposition of restrictions on his certificate of registration. In *CPSO v. Powell* (2017) Dr. Powell was found among other things, to have engaged in inappropriate OHIP billings;

the Committee ordered a fine of \$20,000, in addition to the imposition of a four-month suspension and the imposition of restrictions on his certificate of registration.

Failure to Cooperate

The Committee reviewed several cases dealing with a member's failure to respond to the regulator.

In *CPSO v. Aziz* (2014), College investigators repeatedly requested Dr. Aziz to complete a particular questionnaire and provide a typed transcript of thirty (30) emergency medical records. He was advised that if he did not respond he was obstructing the investigation and was failing to cooperate contrary to section 76 (1) of the Code. When Dr. Aziz repeatedly failed to respond, his case was referred to the Discipline Committee. Dr. Aziz was ordered, among other things, to engage in clinical supervision, professional education, and practice reassessment. Dr. Aziz's certificate of registration was also suspended for three months.

In *D'Mello vs. the Law Society of Upper Canada* (2015), a lawyer practising in real estate was disciplined by the Law Society for failing to co-operate in with a Law Society investigation of a complaint by the Canadian Imperial Bank of Commerce about a mortgage transaction. Mr. D'Mello's appeal to the Divisional court was dismissed. The court noted that there are very powerful public policy reasons for requiring members of self-governing professions to cooperate with an investigation by their regulator.

In *CPSO v. Botros* (2015) the Discipline Committee noted, "the College must be diligent and rigorous in fulfilling its covenant to protect the public. In order to maintain the privilege of membership in the professional regulatory body, physicians must also be cognizant of the role and obligations. They likewise have a duty to cooperate with the College." The penalty included a six-month suspension, a reprimand and practice restrictions, although it should be noted that the failure to co-operate was only one aspect of the member's conduct at issue.

Conclusion

When a physician such as Dr. Chandra abuses his power by defrauding the public health care system, he has breached the trust of his patients, his professional colleagues and society at large. Such a breach of trust serves to undermine the relationship that is a necessary part of an effective doctor-patient relationship. In the public's perception, trust is fostered by the honesty and integrity of every physician. The medical profession, as a whole, places considerable value on preserving the public trust and must condemn any members who willingly compromise it. In the circumstances of this case, revocation is the only outcome - there is simply no place in the medical profession for such reprehensible conduct.

Further, the Committee agrees that it is appropriate to impose a fine in this case. This Committee has imposed a fine in other cases where the misconduct relates to financial gain, such as *Powell* (2017) and *Wong* (2014). In this case, Dr. Chandra's conduct directly impacted the public purse and a fine is required for general deterrence so that members are aware that conduct of this nature will have direct financial consequences in addition to any revocation or suspension that may be ordered.

The Committee further considered that this was an appropriate case in which to order that Dr. Chandra pay costs to the College for three days of hearing, at the then tariff rate, in the amount of \$16,500.

ORDER

Therefore, the Committee orders and directs that:

1. The Registrar revoke Dr. Chandra's certificate of registration, effective immediately.
2. Dr. Chandra pay a fine to the Minister of Finance in the amount of \$35,000.

3. Dr. Chandra shall appear before the Committee to be reprimanded;
4. Dr. Chandra pay to the College costs in the amount of \$16,500 within 30 days of the date of this Order.