

**SUMMARY of the Decision of the Inquiries, Complaints and Reports Committee
(the Committee)**
(Information is available about the complaints process [here](#) and about the Committee [here](#))

**Dr. Dioscoro David Carreon Sarile (CPSO #27178)
(the Respondent)**

INTRODUCTION

The Complainant contacted the College of Physicians and Surgeons of Ontario (the College) on behalf of the Patient, whom he represents as counsel, to relay concerns about his multiple requests for the Patient's medical records from the Respondent. The Complainant included copies of his written requests for the records as well as two invoices from the Respondent for 69 pages of records (the first receipt was for approximately \$1120; the second amended receipt was for approximately \$590).

COMPLAINANT'S CONCERNS

The Complainant's main themes in this complaint were:

- **the timely release of medical records**
- **fees for the release of medical records**
- **the Respondent's conduct and that of his staff member**

COMMITTEE'S DECISION

A Family Practice Panel of the Committee considered this matter at its meeting of September 19, 2019. The Committee required the Respondent to attend at the College to be cautioned in person with respect his failure to adhere to College policies, *Medical Records* and *Uninsured Services: Billing and Block Fees*, in terms of the timely transfer of records and fees charged, and *Physician Behaviour in the Professional Environment*, in terms of his and his staff's communication. The Committee also asked the Respondent to prepare and submit to the College a written report on these policies.

COMMITTEE'S ANALYSIS

The timely release of medical records

Records show the Complainant wrote several times over four months to request the Patient's records. The Complainant ultimately received the records approximately 11 months after his first request, without any charge. He noted that he had served the Respondent with a subpoena to attend court with the records.

The College policy, *Medical Records*, states that in some instances it may be feasible to rely on an external facility or organization to retain records, but physicians must ensure that access to records is possible for authorized parties when necessary. The policy further states that patients have a right of access to their personal health information that is in the custody or under the control of a HIC [Health Information Custodian].

The Respondent did not adhere to the policy: He did not provide a copy of the Patient's chart in a reasonable time frame; and while he explained there were various complexities in accessing the records (making the process longer than normal), he is responsible for his retention arrangements and for making records accessible to patients in a timely way, which he did not do.

Fees for the release of medical records

The College policy, *Medical Records* sets out how physicians may charge patients a reasonable fee for making a record of personal health information, or part of it, available. Fees charged must reflect the cost of the materials used, the time required to prepare the material and the direct cost of sending the material to the requesting physician. Fees charged cannot exceed the amounts prescribed by regulation or the amount of "reasonable cost recovery" [this with reference to the *Personal Health Information Protection Act* (PHIPA) and the OMA's "Physician's Guide to Uninsured Services" (the OMA Guide) and Information and Privacy Commission of Ontario (IPC) Order HO-009]. This requirement applies regardless of whether access is provided directly by a physician or an agent of the physician, such as a record storage company. The policy notes that while prepayment may be requested, physicians must ensure that their practices adhere to the applicable sections of PHIPA and the orders of the IPC. The obligation to pay the account rests with the patient or the party who has requested the records. Fulfilling such a request is an uninsured service.

The College policy, *Uninsured Services: Billing and Block Fees* provides further details around such billing, including that fees for individual uninsured services must be commensurate with the nature of the services provided and the physician's professional costs, giving consideration to the recommended fees set out in the OMA Guide and any recommended fees set out by professional specialty associations.

The Committee noted that patients (or their representatives) should not bear the cost of decisions physicians make around where to store their records. Furthermore, charging several hundred dollars (as the Respondent did, as outlined in his invoices) for time spent on "the project" was inappropriate. Physicians may charge to review a record, but not for working "on the project"; in addition, in this case the Complainant was only asking for a copy of the Patient's chart, so no extended review would have been expected.

The Respondent's conduct and that of his staff member

In the course of the investigation, conduct on the part of the Respondent and his staff member (for whom he is responsible) with the College investigator (a representative of the Respondent's licensing authority) and as reported by the Patient's legal counsel, was unprofessional and not in keeping with the expectations set out in the College policy, *Physician Behaviour in the Professional Environment*, and the College's *Practice Guide: Medical Professionalism and College Policies*.

Caution in person

The Committee is concerned that despite his written response, the Respondent failed to comprehend his obligations in transferring records in a timely fashion for a reasonable fee, or his obligations for his own professionalism and that of his staff. On this basis, the Committee decided to require the Respondent to attend at the College to be cautioned in person in these areas and asked him to prepare and submit a written report on three related College policies.