

SUMMARY

DR. MONTE HOWELL BAIL (CPSO# 55031)

1. Disposition

On November 12, 2018, the Inquiries, Complaints and Reports Committee (the Committee) required psychiatrist Dr. Bail to appear before a panel of the Committee to be cautioned with respect to his failure to meet professional and ethical obligations as a court-appointed expert.

The Committee also requested that Dr. Bail submit a written report to the College, approximately 2-4 pages in length, with respect to impartiality, fairness, and balance in psychiatric assessments for any party.

2. Introduction

The College received information raising concerns about Dr. Bail's impartiality as an expert witness in court and regarding the fairness and balance of his independent medical evaluations (IME). Subsequently, the Committee approved the Registrar's appointment of investigators to review Dr. Bail's practice.

Dr. Bail expressed regret that he has been seen as an advocate in the courts. He maintained he never intended to act as "judge and jury" [with respect to the individuals he evaluated].

3. Committee Process

A Mental Health 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.cpso.on.ca, under the heading "Policies & Publications."

4. Committee's Analysis

The Committee reviewed several judgments from court cases in which Dr. Bail had either served as an expert witness or had been proposed as an expert. Commentary by judges in the judgments reviewed raised significant concerns about Dr. Bail's bias on behalf of the insurance companies who retained him to conduct IMEs and then testify in court. The Committee also reviewed an IME report by Dr. Bail that was notable for its advocacy of the insurance company, and neither fair nor balanced.

The Committee was troubled that Dr. Bail had abandoned the principles set out in the College's policies, *Medical Expert: Reports and Testimony* and *Third Party Reports*. These policies make very clear that when providing expert opinions, physicians must embody the principles of trustworthiness, altruism and service that guide the medical profession, and uphold the reputation of the profession by acting with the same high level of integrity and professionalism as they would when delivering health care. The cases the Committee reviewed clearly showed that Dr. Bail's testimony and expert opinions did not embody the above principles.

The level of the Committee's concern about Dr. Bail's actions was so significant that the panel considered referring this matter to the College's Discipline Committee. In his role as a sworn expert witness, Dr. Bail was not only a member of this College but also an officer of the court. As such, his duty was to the court, not to the party who retained him. Yet, this was clearly not the impression of the justices who found Dr. Bail's testimony and reports so troubling. The Committee is aware that it is unusual for the court to make the kinds of comments about expert witnesses that were made about Dr. Bail. That Dr. Bail has been the subject of such commentary and disapprobation is most concerning. His behaviour, in testifying in so biased a manner and in providing such clearly biased IME reports, was unacceptable.