

SUMMARY

DR. ARTHUR BARRY DEATH (CPSO# 21469)

1. Disposition

On June 20, 2018, the Inquiries, Complaints and Reports Committee (the Committee) ordered Dr. Death (Physical Medicine and Rehabilitation) to complete a specified continuing education and remediation program (SCERP). The SCERP requires Dr. Death to:

- Engage in one-to-one instruction in Communications with a College-approved instructor, with areas to enhance including, but not being limited to: appropriate explanation of all aspects of physical examination technique, with particular emphasis on any “hands-on” components; explicitly requesting patients to signal if they are uncomfortable with any aspect of the examination; and having an understanding of boundaries/personal space from a patient perspective during physical examination.

2. Introduction

A patient who attended Dr. Death for an independent medical examination (IME) complained to the College that Dr. Death touched her buttocks in a sexual manner and without asking for consent, and he failed to listen during the examination.

Dr. Death responded by outlining his approach to consent, including his use of patient consent forms that detail how he performs his examination, and that he asks for verbal consent from patients. He stated that his examinations require close proximity, but he never places himself in closer proximity than is clinically required. Dr. Death explained that he places his hand on the low back, but he does not run his hand down a patient’s buttocks during any stage of the investigation. He asserts he did not have any contact with the patient that was not required as part of the examination process, and if he did accidentally come into contact with the patient’s

buttocks, he would have addressed it and apologized.

3. Committee Process

A General 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

Noting that Dr. Death's IME report was detailed and was suggestive of a careful and comprehensive review, the Committee indicated there was nothing before it to support the Patient's concerns that Dr. Death was not listening to her or obtaining correct information. The Committee took no action on this area of concern.

With respect to the concern about the touching of the patient's buttocks, the Committee noted that information before it (including from an interview of the patient with College investigators, and from the police, who took no further action when the patient attended with concerns about the examination) indicated that the patient was not clear whether Dr. Death's actions were of a sexual nature. The Committee noted the examination, as Dr. Death described it, would be in keeping with a medical examination relevant to the clinical issues at hand; the Committee accepted that Dr. Death conducted an examination that was medically indicated.

The Committee noted that physicians' examinations can differ from one another. The Committee was satisfied that the information in Dr. Death's consent form was reasonable.

However, based on the patient's experience, the Committee observed that Dr. Death's communication with patients must be clearer as to what guiding the direction of a patient's

movement means, specifically that his hand or hands may be touching a patient's body as the patient changes positions, in an effort to help with his assessment. While the Committee could not know exactly what Dr. Death said at the time, it was concerned about this overall aspect of his interactions with patients because in a previous case it had cautioned him to be respectful of patients' boundaries and had noted the importance of asking permission to assist patients in preparing for examinations and to offer help if needed, noting that to do otherwise is an invasion of a patient's personal space. The Committee concluded that Dr. Death would benefit from the SCERP set out above.