

IN THE MATTER OF a
Hearing conducted pursuant
to the *Regulated Health*
Professions Act, RSPEI 1988,
c R-10.1, as amended;

BETWEEN:

**THE COLLEGE OF PHYSICIANS AND SURGEONS
OF PRINCE EDWARD ISLAND**

AND

DR. SESHAGIRI BENERI

PENALTY ORDER

Hearing Dates:

January 29, 30, 31, February 1, 2, 2024, and written penalty submissions.

Hearing Panel:

Dr. Margaret Bethune,
Dr. Kathryn Bigsby,
Jeremy R. Coffin

Counsel for the College of Physicians and Surgeons of Prince Edward Island

Douglas R. Drysdale, K.C., and
Melissa D. Trowsdale

Counsel for Dr. Seshagiri Bengeri

Janet M.R. Clark,
Gary G. Demeulenaere, K.C., and
Sean R. Seviour

INTRODUCTION

- [1] In its notice of hearing dated September 21, 2023, the College of Physicians and Surgeons of Prince Edward Island (“the College”) alleged in four charges that Dr. Seshagiri Bengeri (“Dr. Bengeri”) engaged in professional misconduct and was an unfit member in relation to his role as an anesthesiologist during surgical care and treatment provided, to a patient, the late James Richard Kelly (“Mr. Kelly”) on September 30, 2020, more specifically (and as amended),

Allegation A. [Dr. Bengeri] engaged in professional misconduct by failing to maintain accepted professional standards and procedures in the practice of medicine regarding recognition and management of significant bilateral pulmonary aspiration prior to, during, and after a surgical procedure on Patient “A”¹, contrary to paragraph XI, 1(a) of the Regulations and subsection 32(c) of the Act;

Allegation B. [Dr. Bengeri] demonstrated lack of knowledge, skill, or judgment in the recognition and management of significant bilateral pulmonary aspiration while performing his role as anesthesiologist prior to, during, and after a surgical procedure on Patient “A”, and was, therefore, an unfit member as defined in subsection 1(y) of the Act, contrary to subsection 32.1(1) of the Act;

Allegation C. [Dr. Bengeri] engaged in professional misconduct by failing to maintain accepted professional standards and procedures in the practice of medicine prior to, during, and after surgery, in communications with other members of the health care team, including the surgeon who was conducting a surgical procedure on Patient “A”, contrary to paragraph XI, 1(a) of the Regulations and subsection 32(c) of the Act;

- [2] The following charge within the Notice of Hearing was withdrawn by the College at the hearing:

Allegation D. [Dr. Bengeri] engaged in professional misconduct by failing to communicate properly and effectively with other members of the health care team, including the surgeon who was conducting a surgical procedure on Patient “A”, prior to, during and after surgery, while Dr Bengeri’s ability to perform any professional service in accordance with accepted professional standards was impaired by a disability, illness, addiction or condition to wit, poor hearing, contrary to section XI,1(b) of the Regulations referred to above.

¹ Patient “A” – Richard James Kelly

- [3] On May 3, 2024, following a five-day in-person hearing that included testimony from ten witnesses, the hearing committee (“the Committee” or “the Panel”) issued a decision that found Dr. Bengeri guilty of professional misconduct (Allegation A). Conversely, the Hearing Committee also found Dr. Bengeri not guilty of Allegation B & Allegation C. Thereafter the parties submitted written submissions with respect to a Penalty Order arising from the guilty verdict.

LEGAL BACKGROUND

- [4] Having found that Dr. Bengeri engaged in professional misconduct, the Hearing Committee now has the authority to impose an order on Dr. Bengeri, which is set out in section 58(2) of the *Regulated Health Professions Act*, RSPEI 1988, c R-10.1 (“the RHPA”), as follows

Where a hearing committee determines that conduct of the respondent constitutes professional misconduct or incompetence, the hearing committee may make one or more of the following orders:

- a) an order directing the respondent to undergo additional education or training;*
- b) an order directing the respondent to participate in counselling or a rehabilitative treatment program;*
- c) an order reprimanding the respondent;*
- d) an order imposing terms and conditions on the registration of the respondent;*
- e) an order suspending the registration of the respondent for a specified period of time or until the occurrence of a specified future event;*
- f) an order cancelling the registration of the respondent;*
- g) an order requiring the respondent to pay all or part of the costs incurred by the hearing committee to conduct the hearing;*
- h) an order imposing a fine on the respondent in an amount that the hearing committee considers appropriate, up to a maximum of \$50,000;*
- i) an order imposing any other sanction that the hearing committee considers to be appropriate.*

APPLICABLE PRINCIPLES

- [5] The College's statutory mandate is to protect and serve the public interest.²

² *Regulated Health Professions Act*, RSPEI 1988, c R-10.1, s4(1)

- [6] The primary objective of the RHPA is not to penalize or punish health practitioners for professional misconduct, but to focus on remedial actions. Its Act and Regulations require the Hearing Committee to take measures that serve the public interest. This usually involves denouncing the misconduct and imposing conditions or restrictions to ensure public safety, while also demonstrating to both the public and healthcare professionals that effective mechanisms are in place to uphold professional standards.

THE PENALTY ORDER

A. LETTER OF REPRIMAND

- [7] In this case, the College has requested an order granting a reprimand by the Registrar of the College to Dr. Bengeri for engaging in professional misconduct by failing to maintain accepted professional standards and procedures in the practice of medicine regarding recognition and management of a significant bilateral pulmonary aspiration prior to, during, and after a surgical procedure.
- [8] Dr. Bengeri acknowledges that the disposition of this matter should include a reprimand that denounces the misconduct found by the Hearing Committee.
- [9] Section 58(2)(c) of the RHPA authorizes the Panel to issue a reprimand to Dr. Bengeri. We agree that a reprimand for Dr. Bengeri is warranted. As a strictly procedural matter, the Panel notes that it is confined by the RHPA; accordingly, it is the Committee, not the registrar of the College, that is authorized to issue a reprimand to a guilty physician. Thereafter, the College may place this reprimand in its files as an official record.

B. EDUCATION

- [10] The College has also requested pursuant to section 58(2)(a) of the RHPA, that Dr. Bengeri successfully complete a course in pre-surgical assessment which contains aspiration, at his own cost.
- [11] Dr. Bengeri argued that his previous training should be sufficient. We disagree with this premise and find favor with the College that he should be ordered to complete additional training and education in the area of pre-surgical assessment and aspiration.
- [12] If the Committee were to issue an educational and training order, Dr. Bengeri did identify a course offered by the Mayo Clinic titled "*An Overview of Perioperative Medicine 2024: From Outpatient Preoperative Assessment to Inpatient Postoperative Care*" as an appropriate remedy. We reviewed the program for this workshop and noted that there was

no reference to aspiration in any manner. We therefore find the professional development and training submitted by Dr. Bengeri to be inappropriate, since it does not effectively address the underlying issues as sought by the College.

C. FINE

[13] The College in its written submissions sought the imposition of a fine in the amount of \$15,000.00. Dr. Bengeri submitted that a fine of any kind is not warranted, and argued that should a fine be issued, it must be no more than a modest fine at the lower end.

[14] The RHPA mandates that the Hearing Committee shall consider the following factors³ in determining the amount of any fine imposed, specifically,

- (a) the extent of the member's awareness of the fault;*
- (b) the degree of risk or harm to the client;*
- (c) the potential further risk to the public;*
- (d) the potential effect on the member's profession;*
- (e) the potential effect upon the member's ability to earn a livelihood;*
- (f) any restriction or remediation voluntarily undertaken by the member;*
- (g) any other prescribed factor*

[15] The College failed to provide the Hearing Committee with analogous decisions from either local or other jurisdictions to illustrate a comparable range of monetary fines. Dr. Bengeri however made submissions arguing that his conduct did not reach the severity of the kind contemplated in the local case of *Matheson v. College of Physicians and Surgeons of PEI*, 2010 PECA 5. In that case, a \$15,000 fine was imposed for a repeat offense of prescribing narcotics to a patient and then purchasing them for personal use. A \$7,000 fine was previously given for a first offense. The PEI Court of Appeal upheld the \$15,000 fine imposed on Dr. Matheson.

[16] This Committee has reviewed the conduct of Dr. Bengeri, compared it against Dr. Matheson, and considered it to the factors outlined in section 58(2.1) of the RHPA. Based on this review, the Committee deems a fine of \$5,000.00 to be reasonable under the circumstances.

D. COSTS

[17] The College has requested that the Hearing Committee order Dr. Bengeri to pay a "substantial contribution" of costs to the College. We have been provided with a signed

³ Ibid, s. 58(2.1)

letter from the College's Registrar which documents the costs incurred by the College relating to the hearing of this matter in the amount of \$143,736.08, excluding the costs of the Hearing Committee which was estimated at a "minimum of \$20,000.00 to \$30,000.00".

- [18] Dr. Bengeri did not dispute the amount of the actual costs incurred by the College but argued that no costs should be awarded to the College, or in the alternative reduced costs because of the divided success in proving the charges against him.

Authority to Order Costs

- [19] Cost may be awarded to the College pursuant to section 58(2)(g) of the Act which provides,

Where a hearing committee determines that the conduct of the respondent constitutes professional misconduct or incompetence, the hearing committee may make ... an order requiring the respondent to pay all or part of the costs incurred by the hearing committee to conduct the hearing;

- [20] Dr. Bengeri provided fulsome submissions claiming that the RHPA does not allow for the hearing Committee to order a guilty member to pay costs of a hearing to the College. Dr. Bengeri's position is best summarized as a strict and literal interpretation of section 58(2)(g) that limits a cost award to costs incurred by a Hearing Committee.

- [21] Conversely, the College argued that the costs incurred by the Hearing Committee mean the costs incurred on behalf of the Hearing Committee, and that this includes the costs required to prepare for and prosecute the case at the hearing should the member be found to be guilty.

- [22] This Committee found no favour with the theory proffered by Dr. Bengeri. While the text of the statute is important, it must be interpreted in light of its overarching purpose. A strictly literal interpretation, which adheres solely to the plain meaning of the words, may not always be appropriate. In this case, if the College were held responsible for its own costs, the high expenses would undoubtedly deter hearings from being conducted, which would be contrary to the goal of public safety. When a literal interpretation results in an absurd or unjust outcome that contradicts the statute's purpose, it is necessary for the decision makers to depart from the literal meaning.

- [23] We, as decision makers, must interpret the RHPA in a manner that aligns more closely with the legislative intent, ensuring the law is applied in a fair, reasonable, and effective way. By focusing on the statute's intended goals and the context in which it operates, the Committee aimed to deliver outcomes that uphold the true spirit of the law. This purposive

approach respects the text of the RHPA while also honoring the broader context and purpose for which it was enacted, in this instance, public safety.

- [24] In finding that “*costs incurred by the Hearing Committee*” inherently includes “*costs of the College required to prepare and prosecute the case*” the Panel ensures that justice and equity are achieved, avoiding results that would undermine the legislature's objectives or produce unreasonable results.
- [25] This interpretation of section 58(2)(g) by the Hearing Committee is also consistent with the application of analogous legislation sections within the other jurisdictions across the Country.

Costs are Discretionary

- [26] The Committee is not required to order Dr. Bengeri to pay the costs of the College, but it has the discretion to do so, or not to do so. The Committee's discretion extends to whether to order costs in whole, in part, or not at all.
- [27] In deciding whether to order Dr. Bengeri to pay costs and determining whether to order him to pay all of the College's costs or part of them, we are required to exercise our discretion in accordance with the purpose and objects of the College as set out in Section 4 of the *RHPA*. Essentially our discretion on costs should be exercised in such a manner that public interest will be served and protected.
- [28] An order for costs under section 58(2)(g) in light of Section 58(2.1) is not a penalty. The purpose of an order of costs under section 58(2)(g) is to appropriately reimburse the College for its expenses for proving professional misconduct, incompetence, or unfitness. The Hearing Committee must consider whether any public interest factors ought to deprive the College of reimbursement or some or all of its costs.

Quantum

- [29] Although the RHPA is silent on factors applicable to assessing the quantum of costs, this Committee relied on guidance from the jurisprudence of similar jurisdictions including the Nova Scotia Court of Appeal, which identified and addressed the following factors in *Hills v. Nova Scotia (Provincial Dental Board)*, 2009 NSCA 13, at paragraph 61
- a. *The balance between the effect of a cost award on the Appellant and the need for the [regulatory body] to be able to effectively administer the disciplinary process;*
 - b. *The respective degrees of success of the parties;*

- c. *Costs awards ought not to be punitive;*
- d. *The other sanctions imposed and the expenses associated therewith;*
- e. *The relative time and expense of the investigation and hearing associated with each of the charges and in particular those on which guilt were entered and those where the Appellant was found not guilty.*

- [30] The hearing of this matter was extensive, spanning five days, involving ten witnesses, and encompassing a substantial volume of documents. The financial burden on the College is considerable, with expenses estimated in the range of \$170,000.00. This imposes a significant financial burden on the College and its membership. Conversely, imposing a substantial cost order could deter physicians from contesting allegations of professional misconduct and incompetence, potentially pressuring them into accepting unfavorable settlement agreements to avoid the risk of a financially devastating cost order. We believe that while the prospect of a cost award should motivate members to make necessary admissions, it should not hinder physicians from defending themselves against allegations they believe to be unjust.
- [31] While we reviewed the *Hill* factors in their entirety, the paramount factor in exercising our discretion to order costs, whether in whole or in part, was the extent to which the College had succeeded in proving the alleged misconduct and, correspondingly, the degree to which Dr. Bengeri has succeeded in contesting those allegations.
- [32] The Panel's position is that the charges against Dr. Bengeri stem from two core issues: (i) the recognition and management of aspiration, and (ii) his communication thereof. Dr. Bengeri was found guilty of misconduct concerning the former but was exonerated regarding the latter. This case did not involve four distinct issues; instead, the four allegations stemming from the two core issues were so closely connected that a precise and mathematical separation of costs was impractical. Therefore, Dr. Bengeri should be liable for approximately 50% of the College's costs.
- [33] The Hearing Committee recognizes that the ordered costs are substantial. However, per *Hill*, it is cognizant that its imposed fine is on the lower end of the spectrum and that no license suspension is contemplated, thereby permitting Dr. Bengeri to continue earning income without interruption.
- [34] For these reasons, the Panel has determined that a fair and equitable resolution concerning costs is to require Dr. Bengeri to contribute \$80,000.00 toward the expenses of these proceedings.

Offer to Settle

[35] The Panel notes that the College proposed a reasonable costs settlement of \$65,000.00. While cost consequences in civil proceedings have no application to regulatory discipline proceedings, it does not mean offers to settle do not still play an important role. Offers to settle facilitate settlement which in turn often leads to the most just, expeditious, and cost-effective resolution of a matter. In discussing the offer, the Panel noted that by not accepting it, Dr. Bengeri caused the College to incur significant additional costs for a disposition decision, the result of which was ultimately worse for him than the offer.

ORDER

[36] For the above reasons, having determined that Dr. Bengeri has engaged in professional misconduct, the Hearing Committee has determined that the penalty in this matter shall be as follows:

1. The Hearing Committee reprimands Dr. Bengeri for failing to maintain acceptable professional standards and procedures in the practice of medicine regarding recognition and management of significant bilateral pulmonary aspiration prior to, during, and after a surgical procedure;
2. Dr. Bengeri must successfully complete a professional development training program as agreed between himself and the College where pre-surgical assessment is the subject matter and education on aspiration is included, within six (6) months of the date of this order;
3. Dr. Bengeri shall pay to the College, within thirty (30) days of the date of this order, a fine in the amount of \$5,000.00;
4. Dr. Bengeri shall pay to the College costs in the amount of \$80,000.00, payable in equal monthly installments of \$10,000.00 over eight (8) months, commencing within thirty (30) days of his payment of the fine; in the event of any monthly default, the entire remaining balance becomes due and payable forthwith; and
5. The Hearing Committee reserves jurisdiction to address any issues arising out of the implementation of this penalty decision.

DATED at Charlottetown, Prince Edward Island, this 11 th day of August, 2024.

Margaret Bethune

Dr. Margaret Bethune,
Chair

K Bigsby

Dr. Kathryn Bigsby



Jeremy R. Coffin

Signature: 
K Bigsby (Aug 12, 2024 10:25 ADT)

Signature: 
Peggy Bethune (Aug 12, 2024 10:44 ADT)