

IN THE MATTER OF *THE MEDICAL PROFESSION ACT, 1981*

**AND IN THE MATTER OF THE SENTENCING OF DR. MARY NAGAI FOLLOWING
AN ADMISSION OF GUILT OF THE CHARGE OF UNPROFESSIONAL CONDUCT**

Ms. Heather McMillan-Brown for the Member, Dr. Mary Nagai
Mr. Bryan Salte, Q.C. for the College of Physicians and Surgeons of Saskatchewan

REASONS FOR DECISION

1. BACKGROUND

[1] In 2008 Dr. Mary Nagai was accepted into the residency training program in Rehabilitative Medicine in the University of Saskatchewan.

[2] After Dr. Nagai began her program, questions arose about the validity of Dr. Nagai's claim that she had obtained a Fellowship in Orthopedic Surgery from the Royal College of Physicians and Surgeons of Canada, and about the document she provided to support this claim. Dr. Nagai was the subject of an investigation conducted by the College of Medicine. The findings of the investigation concluded that Dr. Nagai's conduct did not meet the required standards, and she was placed on probation with the program for twelve months. In accordance with College of Medicine policy, the findings were forwarded to the College of Physicians and Surgeons of Saskatchewan (CPSS).

[3] After the College of Medicine investigation submitted its findings, CPSS became aware of additional facts which indicated that Dr. Nagai had been involved in the falsification of the document and that she had provided false information to the Investigation Committee of the College of Medicine and to CPSS.

[4] Subsequently, CPSS charged Dr. Nagai with unprofessional conduct. The specific charge against her read as follows:

1. *You Dr. Mary Nagai are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of Section 46(o) of **The Medical Profession Act, 1981 s.s. 1980-81 c. M-10.1**. The evidence that will be lead in support of this particular will include some or all of the following:*
 - a) *On or about the 31st day of December, 2009, you presented to Dr. Li Pi Shan an electronic copy of a document purporting to be a letter from the Royal College of Physicians and Surgeons of Canada dated June 9, 2009;*
 - b) *That letter stated that "Your specialty certification in ORTHOPAEDIC SURGERY will now be conferred as you have satisfied all the credentials, training and examination requirements";*
 - c) *The letter of which you presented what purported to be an electronic copy was not a genuine document and was not prepared by the Royal College of Physicians and Surgeons of Canada;*

- d) *You were the subject of an investigation by an Investigation Committee of the College of Medicine;*
- e) *At the investigation by the Investigation committee, you told the committee that:*
 - i. *You had retrieved the letter dated June 9, 2009 from a storage unit in Toronto; and*
 - ii. *You had scanned that letter to produce the pdf copy of the letter which was submitted to Dr. Li Pi Shan.*
- f) *Your statements to the Investigation Committee were untrue;*
- g) *You provided a written response to the College of Physicians and Surgeons in which you stated the following:*
 - i. *“With respect to my final attempt at the Royal College Examination in 2008, I do not recall receiving any correspondence from the Royal College with respect to my results.”*
 - ii. *“It was only with some reluctance that I sat for the 2008 Royal College Examination in the first place.”*
- h) *Those statements to the College of Physicians and Surgeons were misleading;*
- i) *in your written response to the College of Physicians and Surgeons you stated the following:*
 - i. *“I travelled to Toronto again at the end of December, scanned the Letter and saved it to a USB stick, which I provided to Dr. Li Pi Shan on December 31, 2009”.*
- j) *Your statement to the College of Physicians and Surgeons was untrue.*

[5] Legal counsel for Dr. Nagai and for CPSS discussed the evidence which led to an agreement to facts and documents, a written admission by Dr. Nagai that she is guilty of the charge, and a joint penalty recommendation.

[6] Council was informed that Dr. Nagai is currently residing in Ontario, and was unable due to illness to attend the penalty hearing.

2. AGREEMENT TO FACTS AND DOCUMENTS

[7] Dr. Mary Nagai and CPSS agreed to the following facts and documents with respect to the investigation of unbecoming, improper, unprofessional or discreditable conduct by Dr. Mary Nagai:

- 1) *Dr. Nagai was previously in a residency training program in orthopaedic surgery. She was unsuccessful in passing the examinations, having failed the fellowship examinations in 2003, 2005, 2006 and 2007.*
- 2) *Dr. Nagai registered for the Royal College examination in orthopedic surgery in 2008 but withdrew her application.*
- 3) *In 2008 Dr. Nagai was accepted into the residency training program in Rehabilitative Medicine at the University of Saskatchewan. Dr. Nagai could not begin her residency training until 2009 as a result of illness.*
- 4) *In November, 2009 Dr. Nagai advised Dr. Catherine [sic] Knox that she had obtained her Fellowship in Orthopedic Surgery from the Royal College of Physicians and Surgeons of Canada.*

- 5) *Dr. Li Pi Shan asked Dr. Nagai to provide documentation confirming that she had obtained Fellowship in Orthopedic Surgery from the Royal College of Physicians and Surgeons of Canada.*
- 6) *Approximately December 31, 2009 Dr. Nagai provided a memory stick to Dr. Li Pi Shin [sic] which contained what she represented was a pdf scan of a letter dated June 9, 2009 from the Royal College of Physicians and Surgeons of Canada confirming that she had met the requirements for specialty certification in orthopedic surgery.*
- 7) *A copy of the letter is attached to this document.*
- 8) *The electronic document which is the letter dated June 9 was created by superimposing text over a previous letter sent to Dr. Nagai from the Royal College of Physicians and Surgeons, dated May 10, 2002.*
- 9) *A copy of the letter to Dr. Nagai from the Royal College of Physicians and Surgeons dated May 10, 2002 is attached to this document.*
- 10) *Dr. Nagai was the subject of an investigation by an Investigation Committee of the College of Medicine.*
- 11) *At the investigation by the Investigation committee, Dr. Nagai advised the committee that:*
 - a) *She had retrieved the letter dated June 9, 2009 from a storage unit in Toronto; and*
 - b) *She had scanned that letter to produce the pdf copy of the letter which was submitted to Dr. Li Pi Shan.*
- 12) *Dr. Nagai's statements to the Investigation Committee were untrue.*
- 13) *Dr Nagai provided a response to the College of Physicians and Surgeons in which she explained the events which lead to her providing a pdf copy of the letter dated June 9, 2009 to Dr. Li Pi Shan.*
- 14) *In the response to the College of Physicians and Surgeons, she stated the following:*
 - a) *"With respect to my final attempt at the Royal College Examination in 2008, I do not recall receiving any correspondence from the Royal College with respect to my results."*
 - b) *"It was only with some reluctance that I sat for the 2008 Royal College Examination in the first place."*
- 15) *Those statements were misleading, as Dr. Nagai had not challenged the 2008 Royal College examinations.*
- 16) *In the response to the College of Physicians and Surgeons, Dr. Nagai stated the following:*
 - a) *"I travelled to Toronto again at the end of December, scanned the Letter and saved it to a USB stick, which I provided to Dr. Li Pi Shan on December 31, 2009".*
- 17) *That statement was untrue, as Dr. Nagai did not scan "the Letter" in order to produce the electronic document provided to Dr. Li Pi Shan.*
- 18) *Copies of the letter from the College of Physicians and Surgeons to which Dr. Nagai responded, and the response by Dr. Nagai are attached to this document. The response by Dr. Nagai does not include the appendices to the response other than what was purported to be the letter received from the Royal College.*

3. ANALYSIS AND CONCLUSIONS

[8] The joint penalty recommendation is as follows:

*Following Dr. Nagai's admission of unbecoming, improper, unprofessional or discreditable conduct pursuant to section 49 of **The Medical Profession Act, 1981**, the Council makes the following orders under section 54 of that Act:*

- 1) Pursuant to section 54(1)(b) of **The Medical Profession Act, 1981**, Dr. Nagai is suspended from the privileges of a duly qualified medical practitioner under **The Medical Profession Act, 1981** for a period of one month, commencing immediately*
- 2) Pursuant to section 54(1)(g) of **The Medical Profession Act, 1981**, Dr. Nagai is required, at her expense, to attend and complete the course in Medical Ethics offered through the College of Physicians and Surgeons of Ontario at the first opportunity.*

[9] Council was informed that the College of Physicians and Surgeons of Ontario has agreed to offer the required course in Medical Ethics to Dr. Nagai.

[10] The Registrar's office recommended the following factors to assist Council in evaluating the joint penalty recommendation for Dr. Nagai:

Aggravating Factors:

- 1) The falsification of the document and providing false information involved planning and deliberation. It was more than one month from the time that she was asked for the document until she produced it. It was months later that she provided the false information to the College of Medicine and the false information to the College of Physicians and Surgeons;*
- 2) In addition to falsifying the document Dr. Nagai then appeared before the investigation committee and lied about the circumstances pertaining to the document.*

Mitigating Factors:

- 1) Dr. Nagai obtained no significant benefit by providing the false document and information;*
- 2) These events have caused a significant negative effect on Dr. Nagai and her health. The events have been the primary cause for Dr. Nagai being required to take medical leave from her residency program for several months. One of the relevant factors in determining the appropriate penalty for unprofessional conduct is the extent to which the person has already suffered consequences from the conduct;*
- 3) Dr. Nagai entered a guilty plea to the charge, meaning that there was no need for a hearing;*
- 4) Dr. Nagai also faces potential action by the College of Medicine.*

[11] Council reviewed the evidence and the joint penalty recommendation, considering the aggravating factors and the penalties in similar cases in Saskatchewan and Ontario that were provided by Mr. Salte.

[12] Council agreed to impose the penalty jointly recommended by legal counsel for Dr. Nagai and CPSS, set out at [8] above.

[13] Council concluded that an order of costs was not warranted for three reasons. Dr. Nagai is in a residency program and is earning the income of a resident. Dr. Nagai has agreed to enter a guilty plea thereby limiting the costs. There will be a significant cost to Dr. Nagai to take the prescribed ethics course.

[14] For the record, Council also wanted to emphasize that:

1. Intentional deceit through falsification of a document is a serious breach of the values and ethics expected of a CPSS member.
2. Making untruthful and misleading statements is a serious breach of the values and ethics expected of a CPSS member.
3. The serious nature of the offence warrants a suspension of at least three months; however, in view of Dr. Nagai's health which prevented her from practising medicine, the Council agreed reluctantly to the joint recommendation of a one month suspension.
4. Except for the mitigating factor of illness that prevented Dr. Nagai from appearing at the penalty hearing, Council would have preferred that Dr. Nagai appear at the penalty hearing to better understand and address the serious nature of her offenses.
5. Except for lack of legal requirement or requirement by CPSS counsel, Council would have preferred that Dr. Nagai personally sign the agreement to facts and documents and her admission of guilt (both signed by her legal counsel on her behalf).
6. Due to the lack of evidence or testimony that Dr. Nagai understands or regrets her actions and to the serious nature of the offenses, Council was dismayed at their limited ability to impress upon Dr. Nagai the high value the profession places on the integrity of physicians and surgeons.

Dated the 16th day of April, 2011 at Saskatoon, Saskatchewan.