

**IN THE MATTER OF THE MEDICAL PROFESSION ACT, 1981,  
R.S.S. 1980-81, C.M-10.1, AND**

**DR. REYNALDO CARDOSO-MEDINILLA  
MEDICAL PRACTITIONER OF  
REGINA, SASKATCHEWAN**

**HEARING OF THE DISCIPLINARY HEARING COMMITTEE  
OF THE COLLEGE OF PHYSICIANS AND SURGEONS OF SASKATCHEWAN**

**Saskatoon, Saskatchewan  
January 23, 24 and 25, 2019**

**Before: Walter Matkowski, Q.C. Deputy Chair  
Dr. Louis Coertze  
Dr. Lorne Rabuka**

**Counsel: Karen Prisciak, Q.C. for the College of Physicians and Surgeons  
David Thera, Q.C. and Brendan Campbell (Student-at-Law) for Dr.  
Reynaldo Cardoso-Medinilla**

## DECISION

[1] The Counsel of the College of Physicians and Surgeons (hereinafter “the College”) had directed that the Disciplinary Committee (hereinafter “the Committee”) hear and determine the following disciplinary charges (hereinafter “the Charges”) brought against Dr. Reynaldo Cardoso-Medinilla (hereinafter “Dr. Cardoso”).

### CHARGE NO. 1

*1. You Dr. Reynaldo Cardoso-Medinilla 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 led in support of this charge will include one or more of the following:*

*a) You breached the undertaking which you provided to the College of Physicians and Surgeons that you would not perform obstetrical and pelvic ultrasounds until you received the permission of the College to do so.*

*b) By letter dated April 27, 2012 you provided an undertaking to the College which stated:*

Enclosed please find the signed statement by the College, undertaking to cease performing obstetrical and pelvic ultrasounds, as of April 30, 2012, until I receive the approval of the College of Physicians and Surgeons.

*c) You signed an undertaking dated April 30, 2012 which stated the following:*

1. I will immediately cease performing obstetrical and pelvic ultrasound and will not perform obstetrical or pelvic ultrasound until I receive the approval of the College of Physicians and Surgeons to do so;

2. I may withdraw from this undertaking at any time by providing 10 days’ notice in writing to the College of Physicians and Surgeons of Saskatchewan to allow the College of

Physicians and Surgeons of Saskatchewan to take what action they may think advisable in the public interest.

*d) The undertakings that you provided in your letter dated April 27, 2012 and your signed undertaking dated April 30, 2012 remained in effect until January 11, 2013.*

*e) By letter dated January 11, 2013 the College relieved you of the undertaking not to perform obstetrical and pelvic ultrasounds. The relevant portions of the letter stated:*

1. You previously provided an undertaking that you would immediately cease performing obstetrical and pelvic ultrasounds and that you would not resume doing so until you received the College's permission to do so.

2. The result of this is that the College releases you from your undertaking, thereby permitting you to return to practising obstetrical and pelvic ultrasound.

*f) In the period between approximately September 4, 2012 and January 11, 2013 you performed pelvic and/or obstetrical ultrasounds in breach of your undertaking.*

## **CHARGE NO. 2**

2. *You Dr. Reynaldo Cardoso-Medinilla 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 and/or 46(p) of **The Medical Profession Act, 1981** s.s. 1980-81 c. M-10.1 and bylaw 8.1(b)(iii) of the bylaws of the College of Physicians and Surgeons of Saskatchewan.*

*The evidence that will be led in support of this charge will include one or more of the following:*

*a) You caused or permitted billings to be made to Medical Services Branch in connection with obstetrical and/or pelvic ultrasound when you had not performed the necessary services for those billings;*

b) *You failed to exercise due diligence in relation to your billings to Medical Services Branch for obstetrical and/or pelvic ultrasound;*

c) *In the period between approximately September 4, 2012 and November 21, 2012 your clinic performed ultrasound scans for obstetrical and/or pelvic ultrasounds;*

d) *You billed MSB for performing pelvic and/or obstetrical ultrasounds during the period between approximately September 4, 2012 and November 21, 2012. The fee codes for which you billed included some or all of 40W, 43W, 46W, 47W and 50W;*

e) *You had not performed some or all of the services in order to bill for the interpretation component of these fee codes;*

f) *By letter dated December 12, 2012 [AUTHOR'S NOTE: Date should read December 16, 2012] you wrote to a radiologist, Dr. Wells. The relevant portions of the letter stated:*

1. Enclosed please find the information regarding the interpretation fees\*\* for all the ultrasounds that were done in from September 18, 2012 through November 21, 2012 that still require reading and interpretation and the fees that were paid.

2. Please let me know exactly the name to make the cheque out to so that I can send the cheque as soon as possible and if the amount of **\$16,486.15** is what you require or there is some other fee that you will also require.

g) *Your letter of December 12, 2012 [AUTHOR'S NOTE: Date should read December 16, 2012] constituted an admission that you had billed the sum of \$16,486.15 but had not performed the services necessary to bill that amount.*

### **CHARGE NO. 3**

3. *You Dr. Reynaldo Cardoso-Medinilla are guilty of unbecoming, improper, unprofessional or discreditable conduct contrary to the provisions of section 46(o) and/or section 46(p) of **The Medical Profession Act, 1981** s.s. 1980-81 c. M-10.1 and/or bylaw 8.1(b)(ix) and/or bylaw 16.1 and/or bylaw 16.2 of the bylaws of the College of Physicians and Surgeons.*

*The evidence that will be led in support of this charge will include one or more of the following:*

*a) You caused or permitted your clinic to perform ultrasound scans without appropriate arrangements in place to interpret those scans;*

*b) You failed to respond accurately and appropriately to inquiries from the College about who would interpret ultrasound scans generated from your clinic;*

*c) Dr. Karen Shaw, Registrar of the College of Physicians and Surgeons, wrote to you in a letter dated August 1, 2012. The relevant portions of that letter stated:*

*One of the things I forgot to ask of you the other day when I asked you to find an alternative person to read your films was to provide the name(s) of the physician(s) that you asked. It would be helpful to have some comments from that person(s) regarding the quality of the scans in addition to the assessor' comments.*

*d) You did not respond to the letter dated August 1, 2012.*

*e) On or about August 16, 2012 Dr. Karen Shaw spoke to you and advised you that the technologist who was performing ultrasound scans had been successful in the assessment of her ability to perform ultrasound scans.*

*f) In the conversation on or about August 16, 2012 Dr. Karen Shaw advised you that you were not able to interpret scans as you had not yet been successful in an assessment of your ability to interpret ultrasounds.*

*g) In the conversation on or about August 16, 2012 Dr. Karen Shaw stated that you would need to make arrangements with another physician to interpret the ultrasound scans performed by your clinic.*

*h) Your clinic performed obstetrical and/or pelvic ultrasounds in the period from approximately September 4, 2012 to November 21, 2012;*

- i) *Some or all of the ultrasound scans performed in your clinic were not interpreted by someone qualified to do so within a reasonable time;*
- j) *You failed to exercise due diligence to ensure that ultrasound scans performed in your clinic would be interpreted by someone qualified to do so within a reasonable time;*
- k) *You did not advise the College that your clinic had been, and continued to, generate scans which were not being interpreted by other physicians until a telephone conversation with Dr. Karen Shaw on or about November 7<sup>th</sup>, 2012.*

[2] Dr. Cardoso pled not guilty to the Charges.

### **RELEVANT STATUTORY PROVISIONS**

[3] Sections 46(o) and 46(p) of *The Medical Profession Act*, 1981 s.s.1980-81 c. M-10.1 (hereinafter “the *Act*”), Bylaws 8.1(b)(iii) and (ix) and Bylaws 16.1 and 16.2 of the Bylaws of the College provide as follows:

46 Without restricting the generality of “unbecoming, improper, unprofessional or discreditable conduct”, a person whose name is entered on a register is guilty of unbecoming, improper, unprofessional or discreditable conduct, if he or she:

(o) does or fails to do any act or thing where the discipline hearing committee considers that action or failure to be unbecoming, improper, unprofessional or discreditable;

(p) does or fails to do any act or thing where the council has, by bylaw, defined that act or failure to be unbecoming, improper, unprofessional or discreditable.

8.1 Bylaws Defining Unbecoming, Improper, Unprofessional or Discreditable Conduct

(b) The following acts or failures are defined to be unbecoming, improper, unprofessional or discreditable conduct for the purpose of Section 46(p) of the *Act*. The enumeration of this conduct does not limit the ability of

Discipline Hearing Committees to determine that conduct of a physician is unbecoming, improper, unprofessional or discreditable pursuant to Section 46(o):

(iii) Charging a fee that is excessive in relation to the services performed.

(ix) Failing to maintain the standard of practice of the profession.

16.1 College Requests for Information

(a) The Registrar, the Deputy Registrar, the Executive Committee, the Council and the Standing Committees referred to in the bylaws of the College frequently request information and explanations from physicians. Prompt response to such requests is required if the College is to expeditiously and effectively regulate the practice of medicine and comply with the objects of the *Act*.

16.2 Response to College Requests for Information

(a) Upon receipt of a written request from the Registrar, the Deputy Registrar, the Executive Committee, the Council or a standing committee for information a physician shall:

(i) respond substantially to the request;

(ii) provide the information or explanation requested to the best of the physician's ability to do so;

(iii) provide originals of documents requested, if originals are requested, or legible copies of documents if copies are requested;

(iv) provide a printed record if the requested information or documents are stored in an electronic computer storage form or similar form.

(b) A physician shall provide the requested information, as referred to in the paragraph (a) within 14 days of receipt of the request, or such additional time as may be granted by the Registrar or Deputy Registrar for the response.

(c) A physician who is requested to provide information to the College of Physicians and Surgeons or to any individual or committees associated with the College of Physicians and Surgeons under paragraph (a), or under any other provision of the *Act* or these bylaws relating to the provision of information and documents including, without limiting the generality of the foregoing, the Administrative bylaws establishing the standing committees, 4.1, 16.1, 18.1, 19.1, 21.1, 22.1, or 25.1 of the bylaws and Section 55.3 of the *Act*, shall provide the information, explanation or documents contemplated by the request whether the consent of any person with an interest in the information, explanation or documents has, or has not, been sought or obtained.

(d) Information obtained pursuant to this paragraph or under any other provision of the *Act* or these bylaws relating to the provision of information and documents shall be treated confidentially and, unless otherwise directed by the Executive Committee, or the Council, shall not be used except for the purpose of complying with the objects of the *Act* or the duties of the committee or individual which obtains such information or documents.

(e) It is unbecoming, improper, unprofessional or discreditable conduct for a physician to fail to comply with paragraph 16.1 or 16.2.

## **INTRODUCTION AND BACKGROUND**

[4] In 2012, Dr. Cardoso was a longstanding obstetrician and gynecologist (hereinafter “OBGYN”) who was practicing in Regina. He completed his maternal-fetal training in 1987 and practiced maternal-fetal and gynecology in Regina until he semi-retired at the end of 2017. In 2012, approximately seventy-five percent (75%) of his practice was obstetrical while the other



twenty-five percent (25%) was gynecological. As a Maternal-Fetal Specialist, he dealt with a large number of high-risk pregnancy cases and was tasked with ensuring the safety of the mothers and their fetuses/babies. One of his duties was to interpret ultrasounds and provide a diagnosis to various entities, such as referring family doctors, physicians, OBGYNs, midwives and patients (hereinafter “the Referring Entities”).

[5] It was accepted there are two billing components associated with an ultrasound scan; namely a Technical Component and an Interpretive Component.

[6] In 2012, Dr. Cardoso was running a private clinic, Regina Perinatal and Gynecological Ultrasound Inc. (hereinafter either “Dr. Cardoso’s Clinic” or “his Clinic” or “the Clinic”), and interpreting ultrasounds using his own ultrasound machine. He employed a technologist, Ms. Labatte, to assist him with the technical component of performing an ultrasound.

[7] In 2012, Dr. Cardoso also worked in a hospital setting interpreting ultrasounds in the Fetal Assessment Unit at Regina General Hospital (hereinafter either “the Hospital” or “the Hospital Setting”). His supervisor and colleague was Dr. George Carson.

[8] Counsel for the College and Dr. Cardoso filed an Agreed Statement of Facts and Documents (hereinafter “the Agreed Statement of Facts”) with the Committee. In addition, Dr. Karen Shaw, the College’s Registrar; Dr. Carson, an OBGYN and Maternal-Fetal Specialist who worked with Dr. Cardoso; Dr. Holly Wells, a radiologist who Dr. Cardoso asked to assist him; Brent Molnar, a former employee with Medical Services Branch (hereinafter “MSB”); and Dr. Cardoso, provided testimony to the Committee.

[9] The Agreed Statement of Facts and the testimony of the witnesses primarily focused on what occurred following an audit conducted by the Advisory Committee on Medical Imaging (hereinafter “the ACMI”) Diagnostic Imaging Quality Assurance (DIQA) process which revealed concerns in regard to ultrasound interpretations conducted by Dr. Cardoso. The ACMI also reported concerns in regard to the technical component of the ultrasounds performed by Ms. Labatte.

[10] As a result of the ACMI audit, on April 30, 2012, Dr. Cardoso provided the College with an undertaking (hereinafter either “Dr. Cardoso’s Undertaking” or “his Undertaking” or “the Undertaking”) that he would not perform obstetrical and pelvic ultrasounds. The Charges advanced by the College allege Dr. Cardoso breached his Undertaking, performed obstetrical and pelvic ultrasounds, billed MSB for the obstetrical and pelvic ultrasounds, did not respond to the College in a timely manner and did not have patient ultrasounds performed at his Clinic interpreted by a qualified individual within a reasonable period of time. The College alleged Dr. Cardoso breached his Undertaking and performed obstetrical and/or pelvic ultrasounds from September 4, 2012 until his Undertaking was removed in January 2013.

[11] Oral argument was heard on January 25, 2019. Counsel jointly agreed to a process whereby written Briefs of Law and Replies would be filed with the Committee by February 8, 2019. The Committee advised Counsel that either the Committee or Counsel could request further oral argument as a result of the written Briefs. No one requested additional oral argument.

[12] The Committee advised the parties that it would endeavor to provide its written Decision within 60 days from receipt of the last submission from Counsel. The Committee then advised the parties it would render its decision before the end of April 2019.

[13] It was agreed the Committee, in its Decision, would use initials from patient charts.

[14] The Committee will set out why we agree with the College’s Charges, relying significantly on Dr. Cardoso’s April 27, 2012 letter to the College, his December 16, 2012 letter to Dr. Wells, and the Agreed Statement of Facts as a whole, but primarily on Agreed Statement of Fact No. 22.

### **BURDEN OF PROOF FOR DISCIPLINARY CHARGES**

[15] Counsel for the College accepted that the onus of proof rested on the College to prove its case on a balance of probabilities.

### **STRICT LIABILITY OFFENCES**

[16] Counsel both addressed the concept of whether or not the Charges were strict liability offences. We agree with Counsel for the College's assertion, relying on the Saskatchewan Court of Appeal decision, *Merchant v. Law Society of Saskatchewan, 2014 SKCA 56 (CanLII)*, that the Charges are strict liability offence charges. As such, there is no requirement on the College to prove an intentional component to Dr. Cardoso's conduct.

### **DUE DILIGENCE DEFENSE**

[17] We also agree with the proposition, set out in both Briefs of Law, that once the conduct alleged in the Charges has been proven, the onus shifts to Dr. Cardoso to establish a due diligence defense by providing:

- (a) he reasonably believed in a mistaken set of facts that, if true, would have rendered his act innocent, or
- (b) he took all reasonable steps to avoid the particular event, based on an objective standard.

### **CREDIBILITY OF DR. CARDOSO**

[18] In the Saskatchewan Court of Appeal decision *Shamsuzzaman v. College of Physicians and Surgeons of Saskatchewan*, [2011] S.J. No. 213, the Court set aside a Committee's decision on the basis the Committee "made no explicit finding regarding Dr. Shamsuzzaman's credibility". This Committee will provide clear reasoning why we did not find Dr. Cardoso to be a credible witness.

### **DELAY**

[19] In his Brief of Law, Counsel for Dr. Cardoso raised the concept of Delay, given that the Charges dealt with the period of time from April 2012 to November 2012, and the Notice of Hearing was issued November 24, 2018.

[20] Counsel accepted he did not bring an application to quash the Charges due to Delay. He asked the Committee to consider whether the Delay had prejudiced Dr. Cardoso's ability to have a fair hearing. He also asked the Committee to consider whether the Delay affected Dr. Cardoso's ability to recall and establish due diligence defenses. Finally, Counsel asked if the Committee found evidence had faded or disappeared, given the passage of time, any shortcomings in the evidence be construed against the College.

[21] Counsel for the College countered in her Rebuttal Brief that there was no application to quash due to Delay and that there was no evidence that Dr. Cardoso's ability to have a full hearing was prejudiced.

[22] We agree with Counsel for the College. It is difficult to allege unfairness when the vast majority of salient facts are agreed to through an Agreed Statement of Facts. Dr. Cardoso provided his reasoning why he did not believe he breached his Undertaking, why he billed MSB for the ultrasounds performed at his Clinic and how he attempted to retain individuals to interpret ultrasounds performed at his Clinic. We saw no prejudice to Dr. Cardoso's ability to have a fair hearing or to accurately present his case.

### **RELEVANT EVIDENCE**

[23] In her testimony, Dr. Karen Shaw provided some background in regard to how one of the purposes of the College was to maintain the standards of the profession. She explained how committees are established to conduct peer-reviewed audits to ensure physicians maintain certain standards.

[24] Agreed Statement of Fact No. 2 provided:

In April of 2012, the CPSS received information about Dr. Cardoso as a result of a referral from the Advisory Committee of Medical Imaging ("ACMI") Diagnostic Imaging Quality Assurance ("DIQA") process. The concerns conveyed related to the quality of the ultrasound interpretations done by Dr. Cardoso, as well as the quality of the images done by a technologist employed by Dr. Cardoso (Ms. Labatte).

[25] The ACMI conducts audits in regard to physicians and assistants who perform diagnostic imaging. Dr. Shaw's understanding was that the ACMI would attempt to ensure that the individuals who conduct an audit were familiar with what they were reviewing and that members of the ACMI would not have a conflict. Dr. Shaw testified physicians performing obstetrical ultrasounds would be a subspecialty group and that when obstetricians were being audited; the ACMI would only look at obstetrical, pelvic and gynecological ultrasounds. The ACMI is a committee of the College.

[26] In approximately April 2012, the College received the results of an audit conducted by the ACMI in regard to Dr. Cardoso's ability to interpret ultrasounds. The ACMI concluded Dr. Cardoso had not passed the audit and that he had certain deficiencies that had to be addressed. The ACMI informed the College of the findings from their audit.

[27] In a letter to Dr. Cardoso dated April 5, 2012, Dr. Shaw provided him with the ACMI Report. The Report was not filed with the Committee, however, based on Dr. Shaw's testimony, it was at least 20 pages because, in her testimony, she referenced that "at page 19 of the ACMI Report, concerns were listed in regard to Dr. Cardoso's abilities" and that "at page 20 of the ACMI Report, concerns were listed in regard to Dr. Cardoso's stenographer, who performed the technical aspect of the ultrasound".

[28] Dr. Shaw testified the ACMI Report revealed Dr. Cardoso had not passed the audit and that deficiencies were identified in regard to both the Technical and Interpretational Components. Dr. Shaw testified the ACMI Report recommendations were as follows:

*(a) the provision of ultrasound to patients has not met the expected standard. Dr. Cardoso's Clinic should not be operating in its current state and that the ACMI Report would be referred to the Registrar of the College;*

*(b) the ultrasonographer needed to upgrade her scanning skills and be evaluated prior to resuming her ultrasound scanning;*

*(c) the ACMI audit Committee was "concerned Dr. Cardoso lacks an understanding of the quality of imaging required in order to make the proper diagnosis". Dr. Cardoso must also upgrade his interpretation skills as he is passing the images as acceptable and they are not."*

[29] Dr. Shaw indicated the ACMI Report provided detailed information on the audit and in regard to how the auditors believed Dr. Cardoso's Clinic/Dr. Cardoso fell below the standard expected in regard to performing and interpreting obstetrical ultrasounds.

[30] Upon receiving the ACMI Report, Dr. Shaw reviewed it and disclosed it to Dr. Cardoso. Her concern, as Registrar of the College, was that, because Dr. Cardoso's standard of practice fell below the expected standard, there was a risk of harm associated to patients and, therefore, it was necessary for the College to take steps to minimize any potential risk.

[31] Dr. Shaw advised Dr. Cardoso that the College intended to obtain his "voluntary withdrawal from the provisions of obstetrical and pelvic ultrasound services until otherwise agreeable by the College".

[32] The April 5, 2012 letter set out some options for Dr. Cardoso; he could voluntarily withdraw from performing ultrasounds, remediate and then be reassessed or he could proceed with a Competency Hearing. Dr. Shaw testified that a Competency Hearing could have resulted in Dr. Cardoso being unable to carry on as an OBGYN. A Suspension Hearing could also have been a possibility.

[33] Dr. Shaw testified that the College met with Dr. Cardoso and his lawyer after she sent the April 5, 2012 letter and that the end result arising from the April 5, 2012 letter and the subsequent meeting was that Dr. Cardoso signed the following Undertaking:

*I, Reynaldo Cardoso-Medinilla, undertake to the College of Physicians and Surgeons of Saskatchewan as follows:*

- 1. I will immediately cease performing obstetrical and pelvic ultrasound and will not perform obstetrical or pelvic ultrasound until I receive the approval of the College of Physicians and Surgeons to do so;*
- 2. I may withdraw from this undertaking at any time by providing 10 days' notice in writing to the College of Physicians and Surgeons of Saskatchewan to allow the College of Physicians and Surgeons of Saskatchewan to take what action they may think advisable in the public interest;*

*Dated this 30<sup>th</sup> day of April, 2012.*

Signed by: Reynaldo Cardoso-Medinilla

[34] The Undertaking was enclosed with an April 27, 2012 letter from Dr. Cardoso to the College, which provided in part:

*... I shall continue to operate Dr. Reynaldo Cardoso Maternal-Fetal and Gynecology PC Inc. without one of the major tools usually available to Maternal-Fetal Specialists in today's obstetrics, which is real time ultrasound...*

*Please have the Imaging Committee chose the remedial training necessary for myself and my sonographer as I am certain that anything I would chose would be inadequate and not passed by the Committee.*

*I have every confidence that both my sonographer and myself will pass any fair course regarding Maternal-Fetal Medicine Ultrasound that is required and on the positive side one always learns from every situation and learning tool.*

*(AUTHOR'S NOTE: Emphasis added)*

[35] Dr. Shaw sent a follow-up letter to Dr. Cardoso dated May 1, 2012, in regard to the extent or parameters of Dr. Cardoso's Undertaking. The May 1, 2012 letter provided:

*Dear Dr. Cardoso:*

*Thank you for your letter dated April 27, 2012, indicating that you will agree to the voluntary withdrawal from the provision of obstetrical and pelvic ultrasound services, and that you will continue to cease performing these services until you receive the approval of the College of Physicians and Surgeons to do so.*

*At the time of our interaction, Mr. Brad Hunter, your legal counsel, asked for clarification of whether you would continue to do limited ultrasound interpretation, such as localization of placenta or determining the lie and presentation of a fetus. I indicated during that meeting that I would be seeking the advice of the ACMI. I have done so, and would advise that this limited use of ultrasound interpretation to perform such things as localization of the placenta or determining of the lie and presentation of a fetus would be considered to be within your practice of obstetrics and would not be considered a formal part of ultrasound interpretation, which includes biometry or assessment of fetal anatomy.*

*I am also concerned by your second paragraph where you believe that your decision to close your Regina Perinatal and Gynecological Ultrasound Inc. and terminate the employees has damaged your reputation. This matter is at present confidential within the processes of the College of Physicians and Surgeons. The only additional person I have informed is the VP of Medicine at the Regina-Qu'Appelle Health Region to have them assist in the matter concerning the Fetal Assessment Unit.*

*I believe Mr. Salte responded to Mr. Hunter's letter requesting confirmation of whether acceptance of the voluntary undertaking would be reported publicly. At the present time, as the College does not have a policy with respect to this particular matter, we are of the opinion that this matter will remain confidential unless the College goes forward with a competency assessment and/or other more formal processes which require reporting publicly. I understand Mr. Salte responded directly to Mr. Hunter, and you may wish to have Mr. Hunter provide you with a copy of that letter.*

*I do understand this is a difficult time for you, and do appreciate your voluntary withdrawal while you seek remedial training. The College requires approval of the remedial training; however, as we have no expertise within the administration of the College, I will rely on any additional information that the ACMI Committee can provide.*

*With respect to your sonographer, I would recommend that she review the CARDUP training tool. My understanding is that the information regarding this tool is accessible on line.*

*Sincerely,  
Karen Shaw, M.D.  
Registrar*

*(AUTHOR'S NOTE: Emphasis added)*

[36] Dr. Shaw accepted Dr. Cardoso's Undertaking. To her, it meant Dr. Cardoso "would voluntarily cease performing and interpreting obstetrical and pelvic ultrasounds".

[37] Later, during cross-examination, she explained one of the goals was to have Dr. Cardoso withdraw from the area or domain that the ACMI had found deficient. There were no global concerns in regard to Dr. Cardoso's practice; rather, there were specific deficiency concerns in regard to interpreting ultrasounds as identified by the ACMI.

[38] As a result, while Dr. Cardoso could not interpret ultrasounds pursuant to his Undertaking, he could, as set out in her May 1, 2012 letter, do limited ultrasound interpretations within the scope of his practice of obstetrics.

[39] During cross-examination, Dr. Shaw explained the College provided guidance to Dr. Cardoso, through the ACMI, which allowed him "to continue with his obstetrical practice in such a fashion that he would not be able to do the full obstetrical scan and interpretation, but that what he was being allowed to do was considered part of obstetrical practice, which is kind of the point-of-care stuff".



[40] Dr. Shaw testified at length in regard to what a point-of-care ultrasound entailed. She indicated a point-of-care ultrasound was very limited and would usually answer a clinical question. She stated some physicians consider this “as an extension of their stethoscope”. A point-of-care ultrasound would look at where the baby was lying, its position. There tended to be no archived pictures.

[41] Dr. Shaw explained that a full-service or comprehensive ultrasound had the provider considering, among other things, the biometric measurements and fetal anatomy. Pictures are archived in the context of trimesters.

[42] During cross-examination, Dr. Shaw agreed that Dr. Cardoso could be observing or looking at the scans, generated by Ms. Labatte at the Clinic, while the patient was being scanned. She agreed this was within Dr. Cardoso’s obstetrical scope of practice.

[43] Dr. Cardoso testified he was extremely disappointed in the findings from the ACMI audit. Throughout his testimony, he expressed some level of unhappiness and frustration with the ACMI report. Nonetheless, he provided the College with his Undertaking and acted upon it. Dr. Cardoso shut down his Clinic and advised Dr. Carson of his Undertaking. Both Dr. Carson and Dr. Cardoso testified that Dr. Cardoso was removed from the hospital schedule in regard to interpreting ultrasounds.

[44] Dr. Cardoso sent Dr. Shaw a May 16, 2012 letter, which indicated, in part:

*May 16, 2012*

*Dear Dr. Shaw:*

*Thank you for your letter dated May 1, 2012.*

*Thank you for the advice provided regarding the type of ultrasounds that I would be allowed to interpret. I will consider it, however I require considerably more information and with the limitations that you suggest, it would in most cases not be very useful to me.*

*I happily do Obstetrics but since I spent 2 years in Vancouver, studying Maternal-Fetal Medicine, I have also been practicing this specialty. This means that much of my work involves very high-risk pregnancies and I must make very difficult decisions in order to provide the best care for my patients.*

*Just as an example, I am currently caring for eight twin pregnancies and one triplet pregnancy, not to mention alloimmunizations and congenital malformations.*

*A quick survey of Maternal-Fetal Specialists can show that access to full ultrasound is an essential tool today. A resolution of this problem needs to be addressed as soon as possible if I am to continue to provide service to high-risk patients...*

[45] Dr. Shaw testified she sent a response letter to Dr. Cardoso dated June 12, 2012, addressing remediation opportunities for Dr. Cardoso. During cross-examination, Dr. Shaw provided that she may have had a conversation with Dr. Cardoso that she didn't document and she later expanded it to include telephone calls.

[46] Both Dr. Cardoso and Ms. Labatte received training/guidance from a number of sources. Dr. Cardoso advised Dr. Shaw in a June 12, 2012 telephone conversation that he was ready to be assessed by the College. Dr. Shaw testified the College "did not have the tool developed so as to test Dr. Cardoso". Ms. Labatte was to be tested in regard to her technical skill in the provision of obstetrical and pelvic ultrasounds on July 26, 2012. As a result, the College sent a July 24, 2012 letter (with an attached agreement) to Dr. Cardoso; the purpose of which was to deal with Dr. Cardoso's Undertaking so as to allow Ms. Labatte to be tested. Portions of the letter provided:

*Dear Dr. Cardoso:*

*As previously discussed with you, the College has found an appropriate assessor to review your ultrasonographer's technical skill in the provision of obstetrical and pelvic ultrasounds. This assessment is arranged for **Thursday, July 26, 2012** at your clinic starting at **9:30 a.m.***

*The reviewer is Ms. Kulbida, an experienced ultrasonographer familiar with the CARDUP tool which she will use to assess your ultrasonographer. In order to perform the review, she will need patients for ultrasound for both gynecological and obstetrical reasons.*

***Please arrange for two gynecological patients where your ultrasonographer can demonstrate her skill in the provision of a pelvic ultrasound and the use of endovaginal technique. You should also book two first trimester obstetrical patients, three second trimester obstetrical patients, and if possible, and one third trimester obstetrical patient; however, if that is not possible, an additional late second trimester would be reasonable. Cord Doppler will also be assessed...***

***... Please advise in writing whether you are agreeable to these terms. (See attached agreement.)***

*In addition, as discussed, I have released you from your voluntary withdrawal from practice at the present time in order to book patients for this review. No further ultrasound patients should be booked until your ultrasonographer has been apprised of her review results. Please be advised that the reviewer will not provide any feedback to the ultrasonographer at the end of the assessment as*

*the reviewer's report must be delivered to the College. The College will inform you of the outcome at the earliest opportunity.*

*Please advise when you feel you are ready for your assessment. I have made some preliminary inquiries for possible reviewers, but would require confirmation with your remedial training that you are in a position to undergo this review.*

*Sincerely,  
Karen Shaw, M.D.  
Registrar*

*[AUTHOR'S NOTE: Emphasis supplied]*

[47] Dr. Cardoso faxed an executed agreement to the College, which was included with the July 24, 2012 letter. Portions of the agreement provided:

*... I acknowledge the College has released me, Dr. R. Cardoso, of my voluntary undertaking in order to book patients involved in the review of the ultrasonographer. No further patients will be booked until the ultrasonographer has been apprised of her review results. I also acknowledge that I have made arrangements to have the ultrasound scans that are performed on the day of review sent to an appropriate specialist to be interpreted and reported.*

*I agree to arrange for two gynecological patients where the ultrasonographer can demonstrate her skill in the provision of a pelvic ultrasound and the use of endovaginal technique. I will also book two first trimester obstetrical patients, three second trimester obstetrical patients, and, if possible, and one third trimester obstetrical patient; however if that is not possible, as additional late second trimester would be reasonable. Cord Doppler will also be assessed.*

*I agree that the review will occur at my office on July 26, 2012 with a start time of 9:30 a.m. unless otherwise mutually agreed upon...*

*... I acknowledge that the reviewer will not provide any feedback with respect to the outcome of the review on the day of the review, and that the report will be delivered to the College. The College will then provide the outcome of the report to the ultrasonographer and me.*

*(AUTHOR'S NOTE: Emphasis added)*

[48] Dr. Shaw testified she forgot to obtain the name of the physician who would be interpreting the ultrasounds forming part of Ms. Labatte's test. Dr. Shaw testified there would be real patients involved and that the ultrasounds had to be read by someone qualified to read them. As a result, she sent Dr. Cardoso an August 1, 2012 letter, which indicated:

*Dear Dr. Cardoso:*

*One of the things I forgot to ask of you the other day when I asked you to find an alternative person to read your films was to provide the name(s) of the physician(s) that you asked. It would be helpful to have some comments from that person(s) regarding the quality of the scans in addition to the assessor's comments.*

*At present I have not received the assessor's report but hopefully will have it soon.*

*Thank you for providing this information.*

*Karen Shaw, M.D.  
Registrar*

[49] Agreed Statement of Fact No. 8 provided:

*Dr. Shaw did not receive a response to this letter.*

[50] Dr. Cardoso testified he did not remember receiving the August 1, 2012 letter from Dr. Shaw. He didn't remember if he responded to the August 1, 2012 letter. He indicated at that time he was busy and "very stressed" about the situation in which he found himself. He also stated, "Unfortunately, for some reason or another, I didn't respond to that letter." Though he had no records from that period of time, he thought Dr. Carson would have read the ultrasounds when Ms. Labatte was tested.

[51] Dr. Shaw provided an August 20, 2012 letter to both Dr. Cardoso and Ms. Labatte advising that Ms. Labatte had passed her assessment and met the current ultrasound scanning standards. Dr. Shaw also indicated any ultrasounds performed by Ms. Labatte would have to be interpreted by someone other than Dr. Cardoso because he had not yet taken and passed his assessment in regard to interpreting ultrasounds. Relevant portions of the August 20, 2012 letter are as follows:

*I also would like to summarize my conversation with you today, Dr. Cardoso. Ms. Labatte may return to provide ultrasound scanning in your clinic; **however, until you have been assessed and have been advised that you have been successful in that assessment, scans will have to be sent out of the clinic to be interpreted.***

*As indicated to you, **I will attempt to set up an assessment for you with respect to interpretation of scans, and I will be in contact with you at the earliest opportunity to provide you the option of dates.***

*(AUTHOR'S NOTE: Emphasis added)*

[52] Dr. Shaw agreed during her testimony that as at August 20, 2012, Dr. Cardoso wanted to be assessed as quickly as possible by the College and she indicated the College was trying to set up an assessment process as quickly as possible. She agreed Dr. Cardoso wanted his evaluation to be completed before his Clinic was re-opened.

[53] Dr. Cardoso re-opened his Clinic on September 4, 2012, and Ms. Labatte performed ultrasounds at his Clinic. Dr. Shaw retained notes from a September 5, 2012 telephone conversation she had with Dr. Cardoso, which indicated Dr. Cardoso advised her Dr. Carson would be interpreting the ultrasounds performed at his Clinic.

[54] During the September 5, 2012 telephone conversation, Dr. Shaw indicated while the assessment was being arranged by Dr. Loewen and the ACMI, she had some dealings with trying to get individuals involved to assess Dr. Cardoso. As a result of previous audits, physicians, including those suggested by Dr. Cardoso in the September 5, 2012 telephone conversation declined to become involved in the process. In addition, if Dr. Shaw concluded a conflict existed, she would not utilize the individual in the assessment process.

[55] Dr. Carson is also a Maternal-Fetal Specialist practicing in the Department of Obstetrics and Gynecology for the Saskatchewan Health Authority, currently working at Regina General Hospital. He is also a Clinical Professor of Obstetrics and Gynecology at the University of Saskatchewan. He has previously held the position of Head of the Maternal-Fetal Medicine Department at Regina General Hospital. As an employee, he has never billed MSB for performing an ultrasound. As at 2012, he was on the ACMI but excused himself in regard to Dr. Cardoso's case.

[56] Dr. Carson testified that he and Dr. Cardoso have been colleagues and friends for approximately 30 years. They have worked together, relied on each other and trained residents in regard to ultrasound interpretations. They both dealt with high-risk pregnancy cases and Dr. Carson indicated Dr. Cardoso was recognized as having a level of expertise in regard to complicated pregnancy cases.

[57] Dr. Carson testified that an OBGYN would have a basic understanding in regard to ultrasounds. They would be able to do such things as: determining the lie and presentation of the fetus; the localization of the placenta; assessing the wellbeing of the fetus with a biophysical profile; determine fetal viability and perform basic measurements of the fetus.

[58] Dr. Carson indicated that both he and Dr. Cardoso obtained additional training, given their specialty was not diagnostic imaging, so as to be able to interpret obstetrical and gynecological imaging.

[59] Dr. Carson testified that an OBGYN would not be expected to perform an anatomy ultrasound evaluating the structure of the fetus. He called this the “morphology of the fetus”. Dr. Carson and Dr. Cardoso, given their advance training, would perform these fetal anatomy ultrasounds.

[60] Dr. Carson indicated this would include, among other things, looking at the brain and making sure that the expected anatomical landmarks are present; looking at the four chambers of the heart, determining if kidneys are present and working; and looking to see if the bowel looked normal. Amniotic fluid amounts would be commented on and there would be an examination of maternal anatomy such as the uterus, ovaries and cervix.

[61] Dr. Carson testified that when dealing with high-risk pregnancies, and or multiple fetuses, ultrasounds were essential for the management of the fetal patient(s) and the mother.

[62] In 2012, both Dr. Carson and Dr. Cardoso interpreted ultrasounds produced at the Fetal Assessment Unit at Regina General Hospital. When Dr. Cardoso advised Dr. Carson that he wasn't allowed to interpret advanced ultrasounds, Dr. Carson removed him from the schedule. Dr. Carson confirmed that the word “advanced” meant an assessment of fetal anatomy.

[63] In 2012, Dr. Cardoso also interpreted ultrasounds at his Clinic. Given his restriction, Dr. Cardoso asked Dr. Carson to interpret ultrasounds generated at his Clinic. Dr. Carson acknowledged his memory of the events which occurred over 6 years ago was limited, however, he believed he agreed to interpret ultrasounds generated at the Clinic for approximately three to

four weeks and that he was dealing with patients that were already booked. He advised Dr. Cardoso he couldn't commit to interpreting the Clinic's ultrasounds "on an ongoing-basis", in spite of being asked to reconsider. Dr. Carson testified his workload was too great at that time. One reason for his increased work load was that he had to interpret more ultrasounds at Regina General Hospital because Dr. Cardoso was unable to do so.

[64] Dr. Carson explained that though he had no specific recollection, he would have interpreted the Clinic's ultrasounds in a number of ways. Depending on the circumstances, if an abnormal fetus was expected, Dr. Carson would have been present at the time of the ultrasound scan to see and review the images as they were being generated. He would have probably produced a written report that day. He called this a "real-time ultrasound", as the patient's scan is being interpreted as the scan is happening.

[65] Dr. Carson stated that he could also have been called when the technician recognized that something didn't look right on the scan. In that case, Dr. Carson would attend and assess the problem through the real-time ultrasound method.

[66] Finally, Dr. Carson attended at the Clinic to review "routine scans" which would be interpreted within a few days. Dr. Carson indicated that a couple-days turnaround from the ultrasound to the report to the Referring Entities was necessary so that the Referring Entities would have the required information for the management of their patient.

[67] Dr. Carson testified when interpreting the Clinic's ultrasounds, he made handwritten notes then signed the report. He did not recall if there were or were not comments made on the reports by Dr. Cardoso, prior to Dr. Carson signing the report.

[68] Dr. Cardoso paid Dr. Carson for the scans that he interpreted. He had no recollection if there were any concerns and/or problems in regard to the scans or reports generated at the Clinic. Once he was advised Dr. Cardoso had passed his assessment, he returned Dr. Cardoso to the schedule to interpret scans at the Fetal Assessment Unit at Regina General Hospital.

[69] Agreed Statement of Fact No. 11 provided:

*In September 2012, ultrasound images were generated at the Clinic from the 4<sup>th</sup> to the 21<sup>st</sup>. Dr. Cardoso read these images and made clinical decisions based on his interpretation, but did not formally sign reports relating to his interpretations. Dr. George Carson signed 64 reports for scans generated in September.*

[70] Agreed Statement of Fact No. 13 and No. 14 provided:

*13. Dr. Carson read and reported on 12 studies in October. Dr. Tina Stryker read and reported on 13 studies.*

*14. By the second week of October, Dr. Cardoso was aware that Dr. Carson was not going to review more images generated at the Clinic.*

[71] Dr. Cardoso testified he attempted to have the ultrasounds generated at the Clinic read by other qualified physicians. As per Agreed Statement of Fact No. 13, he was able to have Dr. Tina Stryker interpret some ultrasounds generated at the Clinic. Thereafter, as per Agreed Statement of Fact No. 15, Dr. Cardoso was unable to secure a physician to interpret any more than a small number of ultrasounds generated at the Clinic.

[72] As per Agreed Statement of Fact No. 12, from October 5<sup>th</sup> to 31<sup>st</sup>, 2012, Dr. Cardoso read ultrasounds generated at his Clinic and made clinical decisions based on his interpretations.

[73] As per Agreed Statement of Fact No. 16, Dr. Cardoso's Clinic continued to generate ultrasounds without having retained anyone to interpret them.

[74] Dr. Shaw testified she had a November 7, 2012 telephone attendance with Dr. Cardoso that dealt with a number of issues, including Dr. Cardoso's remediation process and who was interpreting the Clinic's ultrasounds. Dr. Shaw followed up the telephone conversation with a November 8, 2012 letter, which indicated:

*Dear Dr. Cardoso,*

*I am writing this letter in follow up to our conversation of the 7<sup>th</sup> November to ensure that you fully understand your responsibilities with respect to the ultrasounds that are generated in your clinic.*



*You acknowledge that you are aware that at the present time you are not currently able to provide a clinical interpretation of the ultrasounds generated in your clinic. You also acknowledge that in a previous discussion you advised me Dr. Carson would provide the clinical interpretation and I indicated to you at that time that I had been advised by Dr. Carson that he would not do so. You were advised to find a radiologist who would provide that service for you in a timely fashion.*

*Yesterday I requested some clarification on the information contained in Dr. Lange's letter pertaining to his comment of his review of you recent "consultations". I asked you for confirmation that you were not providing formal readings. You indicated that you were not and that you were having some difficulty finding someone to read your scans. I asked for clarification as to whether that meant you had not had any of the scans generated read and from what I understand of your response your clinic is generating ultrasounds which have not been formally read to date. This is unacceptable. I advised you to make immediate arrangements to have these studies formally read. It was an expectation and still is that if your clinic is generating ultrasounds you are responsible for having them appropriately read by someone approved by the College in a timely fashion.*

***Having failed to put appropriate arrangements in place to have these ultrasounds read in a timely fashion, places you at risk of being charged with unprofessional conduct...***

***I would ask that you provide me confirmation that you have made appropriate arrangements to have your ultrasounds images immediately read by advising me as to what person/persons have accepted this responsibility. I would also like further confirmation when all outstanding ultrasounds have been formally read.***

*Sincerely,*

*Karen Shaw, MD  
Registrar*

*cc. Mr. Brad Hunter*

*(AUTHOR'S NOTE: Emphasis added)*

[75] As per Agreed Statement of Fact No. 18, from November 1<sup>st</sup> to 21<sup>st</sup>, 2012, the Clinic generated 139 ultrasounds. During this time period, 62 ultrasounds were reported by Dr. Cardoso with Dr. Cardoso reading the images and making clinical decisions based on his interpretations.

[76] On November 21, 2012, Dr. Cardoso closed his Clinic.

[77] Agreed Statement of Fact No. 20 provided:

*On or about December 10, 2012, Dr. Shaw spoke to Dr. Cardoso by telephone. He advised that he had not yet managed to have the outstanding ultrasound films read. Dr. Shaw offered some suggestions in this regard. By email dated December 11, 2012, Dr. Cardoso advised Dr. Shaw that*

*the number of outstanding films was 184 on 140 patients. A copy of this email is attached at **Appendix H**.*

(AUTHOR'S NOTE: Agreed Statement of Fact No. 20 identified 184 outstanding films while the attached document to **Appendix H** identified 185 outstanding films. The inconsistency does not affect our decision in any way.)

[78] Agreed Statement of Fact No. 21 provided:

*On or about December 16, 2012, Dr. Cardoso wrote a letter to Dr. Holly Wells, a radiologist in Prince Albert, Saskatchewan. With the letter, he sent charts and scans to be reviewed and reported. With the letter, he also sent a document regarding the interpretation fees to all unread ultrasounds that were done in the Clinic between September 18 and November 21, 2012 and which still required interpretation. A copy of this letter and document is attached at **Appendix I**.*

[79] The December 16, 2012 letter to Dr. Wells (**Appendix I**) provided:

*Dear Dr. Wells:*

*Enclosed please find the information regarding the interpretation fees\*\* for all the ultrasounds that were done in from September 18, 2012 through November 21, 2012 that still require reading and interpretation and the fees that were paid.*

*Please let me know exactly the name to make the cheque out to so that I can send the cheque as soon as possible and if the amount of **\$16,486.15** is what you require or there is some other fee that you will also require. Please send an email to ... and a cheque will be sent immediately.*

*If possible, the charts can be returned to my office C.O.D. or I can add that cost to the interpretation fee cheque or send a second cheque to cover the cost of returning these charts.*

*The charts can be returned in any order as they will be reviewed for information and then filed under my alphabetical system.*

*The entire chart is being sent that includes:*

- 1. The REQUISITION that includes all patient information plus the sonographer's notes and billings\*\*.*
- 2. The preliminary reports to be read and signed.*
- 3. Relevant letters that were sent to the referring doctor.*

*All these charts are organized chronologically with the disks of images for that day plus instructions for the next day the chart will be required when more than one ultrasound was done on the same patient but on a different day.*

*For your convenience, post-its with u/s dates are on each individual ultrasound as well as on the reports.*

*Sincerely and thank you so much for doing this for me,*

*R. Cardoso*

*Cc: Mr. Brad Hunter*

[80] Dr. Wells is a radiologist who has served in some capacity with the ACMI. She vaguely recalled receiving a phone call from Dr. Cardoso prior to receiving the December 16, 2012 letter. As a result of the phone call, she agreed to try and help Dr. Cardoso by interpreting ultrasounds that had been generated at Dr. Cardoso's Clinic and already billed to MSB (hereinafter either "the Outstanding Ultrasounds" or "the Outstanding Ultrasound Materials").

[81] Dr. Wells recalled receiving "a box of stuff" including ultrasound CDs and reports from Dr. Cardoso. She spent a considerable period of time attempting to sort through and organize the materials. She indicated she was unable to do so, primarily, due to difficulties associated with locating/organizing multiple scans for certain patients.

[82] Dr. Wells sent the Outstanding Ultrasound Materials Dr. Cardoso had sent her to Dr. Shaw. She did not recall contacting Dr. Cardoso and asking him to reorganize the materials for her.

[83] Dr. Wells indicated that she performs both technical and interpretative components in regard to ultrasounds. She interprets an ultrasound and provides the report on the same day because the scan results could change the management of the patient.

[84] Dr. Wells relied on an employee to enter the billing codes for work performed to MSB. She indicated a complete ultrasound deals with looking at, and evaluating, "every structure that is required by the guidance of the Canadian Radiology Association". She indicated this would include: a four-chamber heart view, looking at the brain structures, looking at the spine, the limbs, the face, the kidneys, the bladder, and a number of vessels in the umbilical cord.

[85] Agreed Statement of Fact No. 22 provided:

*On or about December 17, 2012, Dr. Shaw received information from Mr. Brent Molnar at Medical Services Branch regarding Dr. Cardoso's billings for diagnostic ultrasound between September 4 and November 21, 2012. In all of the cases, Dr. Cardoso billed Medical Services Branch for the technical and professional components of the ultrasounds. The email from Mr. Molnar and billing information that he provided is attached at Appendix J. [AUTHOR'S NOTE: Emphasis added, other than for Appendix J]*

[86] **Appendix J** indicated Dr. Cardoso billed MSB for the following Diagnostic Codes:

50W  
47W  
46W  
40W  
45W  
43W  
44W  
41W  
446W  
51W  
49W

[87] Agreed Statement of Fact No. 24, attached as **Appendix M**, provided the relevant excerpts from the Saskatchewan Ministry of Health Payment Schedule.

[88] **Appendix M** contained the Diagnostic Ultrasound Section (Section W), which described the procedure, together with a code, and the payable fee for the Technical Component, the Interpretation Component, and the fee for both Components.

[89] We will provide the following three examples from **Appendix M**:

	<i>Technical Component</i>	<i>Interpretation Component</i>	<i>Technical Interpretation Component</i>
<i>40W Obstetrical scan – complete (includes pregnancy diagnosis, foetal age determination and placenta localization)</i>	\$83.80	\$49.20	\$133.00
<i>47W - for twins – not to be billed before 16 weeks</i>	\$81.50	\$49.25	\$130.75
<i>44W Ultrasonically guided amniocentesis</i>	\$42.10	\$29.30	\$71.40

[90] Diagnostic Ultrasound (Section W), for both the periods April 1, 2012 and October 1, 2012, taken from the Agreed Statement of Facts, provided:

*Classification: Diagnostic*

*Ultrasound is an insured service where:*

*(a) it is provided outside a hospital and it is not provided to a hospital in-patient or a patient in the Emergency Department, and*

*(b) it is provided by a physician who is listed by the College of Physicians and Surgeons of Saskatchewan as having qualified to receive payments, and*

*(c) a hard copy of the diagnostic ultrasound examination(s) plus a written signed interpretation or report of that examination is retained by the physician providing the services.*

*Multiple Procedures – are paid at 100% of the listed payment for each procedure.*

[91] As per Agreed Statement of Fact No. 22, Brent Molnar was the MSB employee who provided information to the College about Dr. Cardoso's ultrasound billings from September 4 to November 21, 2012.

[92] Mr. Molnar worked for the Government of Saskatchewan, MSB at the Ministry of Health from 2005 to 2013. He indicated his position was manager of the payments and audit areas. He was responsible for physician payments for services provided as per a set payment schedule. He indicated the payment schedule, which covered the payment of insured services provided by physicians in Saskatchewan, as at April 1, 2012, was several hundred pages long.

[93] The Diagnostic Ultrasound Section (Section W) for the period of time starting October 1, 2012, was added as part of the Agreed Statement of Facts as a result of Mr. Molnar testimony.

[94] Mr. Molnar testified there is no set norm as to when physicians submit their bills for services performed to MSB. While most physicians submit their billing codes every two weeks, some submit monthly and some submit after three or four months.

[95] Mr. Molnar agreed the three requirements listed under Section W, Diagnostic Ultrasound Section had to be met. However, Mr. Molnar testified it was not MSB's responsibility to supervise

or ensure a written signed interpretation of the ultrasound occurred. Rather, it was the physician's responsibility to ensure the requirements in the physician's payment schedule had been met.

[96] Mr. Molnar indicated that by 2012, most physicians billed MSB electronically and that it was the physician's responsibility, using their unique billing number, to ensure the proper billing code was utilized.

[97] Mr. Molnar indicated that Dr. Shaw contacted MSB and asked for information dealing with Dr. Cardoso's ultrasound billings. He then accessed MSB's payment system and did a query on Dr. Cardoso's billing number using the appropriate diagnostic ultrasound codes.

[98] Mr. Molnar confirmed that Dr. Cardoso billed MSB for both the Technical and Interpretative Components associated with an ultrasound scan from September to November 21, 2012. He indicated either the Technical or Interpretative Code could be entered separately. During cross-examination, Mr. Molnar agreed both the Technical and Interpretative Components associated with an ultrasound would be commonly billed together. He agreed most physicians use a software program to assist them in their billing submissions and that some contract physicians wouldn't submit billings to MSB.

[99] Mr. Molnar agreed MSB never asked Dr. Cardoso to repay any monies in regard to the Interpretative Component of ultrasounds from Dr. Cardoso's Clinic for the period of time in question.

[100] Dr. Cardoso was assessed by the College in December 2012.

[101] On January 11, 2013, Dr. Shaw sent two letters to Dr. Cardoso. The first letter indicated Dr. Cardoso had passed his assessment and that the College was releasing him from his Undertaking. The letter indicated:

*Dear Mr. Cardoso-Medinilla:*

*You previously provided an undertaking that you would immediately cease performing obstetrical and pelvic ultrasound and that you would not resume doing so until you received that College's permission to do so.*

*We agreed that in order to receive the College's permission, you would need to challenge an evaluation of your ability to interpret ultrasound images. You subsequently challenged that evaluation and the results were sent to an independent physician for evaluation.*

*The evaluation of that physician is that your performance is borderline. It was difficult for the reviewer to determine if you fell into a "borderline pass" or a "borderline fail" category in respect of your ability to interpret ultrasound images. The reviewer concluded that your performance was a "borderline pass". The reviewer expressed concerns that you misinterpreted images which the reviewer would not expect that you would misinterpret. However, the reviewer noted, in that person's experience other competent practitioners occasionally make similar errors.*

*The result of this is that the College releases you from your undertaking, thereby permitting you to return to practicing obstetrical and pelvic ultrasound.*

*The reviewer did express concern about one additional issue. The errors which you made were made in the context of a high stakes evaluation, where you were fully focused on the images and the interpretations, and you took 20 to 30 minutes to review each of the cases and develop an interpretation. The reviewer expressed concerns that if these errors occurred in the context of the evaluation, similar and more significant errors would likely occur if you engaged in a high volume of obstetrical ultrasound where you are less focused and take less time than in the high stakes evaluation.*

*That is an issue which I suggest that you reflect on as you resume your practice of obstetrical ultrasound.*

*Frequently, when the ACMI identifies performance problems with a physician, and the physician has undertaken remediation, it will re-audit the physician in a three to six month period. That will be an ACMI decision, but I anticipate that may occur.*

*Sincerely,*

*Karen Shaw, M.D.  
Registrar*

*cc. Mr. Brad Hunter*

[102] The second January 11, 2013 letter sent by Dr. Shaw dealt with the Outstanding Ultrasounds. The second letter indicated:

*Dr. Mr. Cardoso-Medinilla:*

***Re: Undertaking – Interpretation of Ultrasound Images***

*Dr. Cardoso:*

*In a separate letter I advised you that you were released from your undertaking to cease performing obstetrical and pelvic ultrasound and not resume doing so until you received the College's permission to do so.*

*During that period of time, your facility performed a number of ultrasound studies. Those studies were sent to Dr. Wells for interpretation. Due to a number of factors, Dr. Wells was able to provide interpretations for only a small number of those ultrasound studies.*

***I am concerned that some of these ultrasound studies may not have been interpreted in a timely fashion. It seems that you may have done interpretations of the ultrasound studies in contravention of your undertaking, but that is not the focus of this letter. That is a matter which will be addressed separately.***

***I believe that you have a legal and an ethical responsibility to ensure that any ultrasound studies which your [sic] have arranged are interpreted by someone who has the authority to do so without delay. It is my expectation that any studies which have not been interpreted should be immediately interpreted. As you have been released from your undertaking, you are able to perform that interpretation.***

*I enclose the material which Dr. Wells provided to our office.*

*Sincerely,*

*Karen Shaw, M.D.  
Registrar*

*cc. Mr. Brad Hunter*

[103] Dr. Shaw also testified that upon the College becoming aware Dr. Cardoso had billed MSB for interpretative ultrasounds, the College did not ask Dr. Cardoso to refund the monies. Dr. Shaw indicated at this time, her primary concern was to have the Outstanding Ultrasounds interpreted by a qualified physician. She had no knowledge that any ultrasounds conducted at the Clinic from September to November 2012 had been interpreted incorrectly in regard to patient management.

[104] Dr. Shaw testified that if an ultrasound is obtained, the physician would want or need the information as soon as possible to assist him/her in considering a clinical decision and how to manage the patient.



[105] Dr. Shaw agreed during cross-examination that sometimes, as Registrar, when she writes a letter to a physician, she includes a reference to the bylaw requiring a response within 14 days, and that sometimes she sends a reminder letter to a physician to comply.

[106] She indicated there can be an urgent nature associated with a ultrasound and that Dr. Cardoso should have had a physician in place to interpret the ultrasounds generated at his Clinic. Dr. Shaw testified she was disappointed when Dr. Cardoso advised her, in a December 10, 2012 telephone conversation that a qualified physician had still not interpreted the outstanding ultrasounds. Once she found out that Dr. Cardoso had actually billed MSB for the Interpretative Component for the Clinic's ultrasounds, she indicated she was dismayed and shocked.

[107] Dr. Cardoso testified at length before the Committee. His testimony was, to a large extent, consistent with Dr. Shaw's testimony and the Agreed Statement of Facts.

[108] Dr. Cardoso agreed he was audited by the ACMI and that his ultrasound interpretative skills were found lacking. He accepted (though perhaps he did not agree) that he had to do remediation in order to bring his ultrasound interpretative skills up to standard. He agreed that his job, as a Maternal-Fetal Specialist, was to interpret ultrasounds. He accepted that after he completed his remediation, the College would do a formal assessment of his ultrasound interpretative skills. He accepted that prior to providing his Undertaking, he received legal advice and was given the option of referring his case to a Competency Hearing. Dr. Cardoso agreed that from September 4, 2012 to November 21, 2012, he looked at patient ultrasounds and billed for the interpretation of the ultrasounds. He agreed he dealt with high-risk pregnancy cases where his responsibility was to ensure the safety of both the mothers and the unborn babies; and that the Referring Entities and patients relied on him. He agreed ultrasounds were a very important diagnostic tool and that it was important to be accurate when reading ultrasounds. Dr. Cardoso agreed a large number of the ultrasounds generated at his Clinic were not read in a timely manner in that there was up to a four-month delay in having them formally interpreted.

[109] However, Dr. Cardoso testified that he did not breach his Undertaking. He explained why he billed MSB for the interpretation or professional component for diagnostic ultrasounds between

September 4, 2012 and November 21, 2012, when the interpretation component had not yet been completed.

[110] Dr. Cardoso explained that he didn't breach his Undertaking because he did not formally sign any reports. He simply looked at the ultrasound scans and acted accordingly.

[111] Throughout his testimony, Dr. Cardoso used wording to advance the following concepts:

- i) I signed the Undertaking not to do ultrasounds but there were restrictions that were difficult to understand;
- ii) I was able to look at the ultrasounds like any other obstetrician and gynecologist;
- iii) I was hoping to be released from my Undertaking and take over my practice;
- iv) I reported to the attending physician so that the attending physician would know what is going on. This was point-of-care because I only looked at the ultrasound;
- v) The reports sent to the attending physicians were an initial or preliminary report. The referring physician and the patient had to know what was going on;
- vi) I thought I was complying with the Undertaking; I wasn't signing anything;
- vii) The Undertaking was that I wasn't going to perform any ultrasounds and I didn't. I looked at the ultrasound as point-of-care. I didn't breach the Undertaking;
- viii) The Undertaking meant I couldn't put my signature on a report as having formally interpreted the ultrasound;
- ix) My Undertaking meant I could not sign off on a report. I know I couldn't interpret or report but I could look at the film;
- x) Point-of-care meant I would be there watching the ultrasound. This is point-of-care and non-billable;
- xi) I looked at the ultrasounds and read the ultrasounds for the purpose of diagnostic and management of the patient. That's what I'm trained to do;
- xii) I know it was my responsibility to have the ultrasound formally read. I could look at the ultrasound to help me manage the patient's clinical problems. I could assess the patient;
- xiii) I used ultrasound imaging to assess fetal wellbeing. Every obstetrician does this;
- xiv) Referring physicians would expect a document so they received a preliminary report;
- xv) The preliminary reports were sent to referring physicians before Dr. Carson formally signed the report;

xvi) My clinical diagnosis for a patient was based in part on my interpretation of the ultrasound imaging.

[112] Dr. Cardoso testified he/his Clinic billed MSB for ultrasound scans in the same manner both pre-undertaking and post-undertaking. He explained that because Dr. Carson worked solely in a Hospital Setting, he did not have the necessary process established to bill MSB when he interpreted scans from Dr. Cardoso's Clinic.

[113] Dr. Cardoso testified during cross-examination that he billed MSB for scans performed, received payment from MSB, then paid both Dr. Carson and Dr. Stryker the applicable fee. We note in examination-in-chief Dr. Cardoso testified as to a different order when he stated, "Dr. Carson read them, I charged for them, and I gave him the cheque for what was billed." (Based on Dr. Cardoso's full testimony and the documents filed, it is evident that was an inadvertent, inaccurate statement.)

[114] Dr. Cardoso testified he was unable to retain anyone to read a number of his Clinic's ultrasounds and that it was his intent "to pay whoever was going to finally read the ultrasounds". He agreed it was his responsibility to have the ultrasounds formally read. He agreed he billed MSB for ultrasound services even though the ultrasounds had not been formally read. Once his Undertaking was lifted, Dr. Cardoso formally interpreted the Outstanding Ultrasounds.

[115] Dr. Cardoso provided the College's Preliminary Inquiry Committee with a letter dated May 6, 2016. In it, Dr. Cardoso indicated:

*Upon hindsight, I would not have agreed to open my clinic under the conditions imposed by Dr. Shaw when she contacted me in August 2012.*

[116] Dr. Cardoso agreed, during cross-examination that he didn't produce one document with the words "preliminary report" on it.

[AUTHOR'S NOTE: We took this to mean on the reports sent to the Referring Entities. We say this because Dr. Cardoso refers to the "preliminary reports" in his December 16, 2012 letter to Dr. Wells.]

[117] Dr. Cardoso agreed he did not tell the Referring Entities or patients, or put in the preliminary report sent to the Referring Entities that he could not formally interpret the ultrasounds.

[118] A number of reports that were sent by Dr. Cardoso to Referring Entities were filed. Taking the report for Patient AA, her ultrasound taken on September 13, 2012 provided the following:

1. TAS/TVS;
2. Anteverted uterus;
3. Uterus and endometrium appear regular;
4. No evidence of fibroids;
5. No adnexal masses.

[119] Patient AA's Report listed the sonographer's name as well as Dr. Cardoso's in two locations on the letterhead portion of the report. Following Dr. Cardoso's name, in both areas, is the wording "Maternal-Fetal Medicine & Gynecology".

### **ANALYSIS**

[120] As set out earlier herein, the College must prove each Charge on a balance of probabilities.

### **CHARGE NO. 1**

**DID DR. CARDOSO BREACH HIS UNDERTAKING THAT HE WOULD NOT PERFORM OBSTETRICAL AND PELVIC ULTRASOUNDS FROM SEPTEMBER 4, 2012 TO NOVEMBER 21, 2012?**

[121] The Committee provided a significant amount of evidence in our Relevant Evidence section as a result of Dr. Cardoso's testimony that he thought he was complying with his

Undertaking; his interpretation of his Undertaking that he could, in essence, do everything he did prior to the audit/his ensuing Undertaking except formally sign ultrasound reports generated at his Clinic; the concept Dr. Cardoso was confused as to what his Undertaking meant. In addition, Counsel for Dr. Cardoso asked the Committee to consider the circumstances in which Dr. Cardoso's Undertaking arose as well as the wording of the Undertaking and the testimony of each party with respect to the appropriate interpretation of the Undertaking.

[122] As indicated, most facts in this case are not in issue. Dr. Cardoso was audited by the ACMI in 2012 and his ultrasound interpretation skills were found lacking. Dr. Cardoso received legal advice prior to making the difficult decision to provide the College with his Undertaking not to perform obstetrical and pelvic ultrasounds.

[123] Dr. Cardoso did not perform obstetrical and pelvic ultrasounds from April 30, 2012 until he re-opened his Clinic on September 4, 2012. (We made no findings as to who interpreted Ms. Labatte's assessment ultrasounds.)

[124] Dr. Cardoso advised Dr. Carson he was unable to perform obstetrical and pelvic ultrasounds upon providing his Undertaking to the College. Dr. Carson removed Dr. Cardoso from the list of physicians able to interpret obstetrical and pelvic ultrasounds in a Hospital Setting. Dr. Cardoso did not interpret obstetrical and pelvic ultrasounds in a Hospital Setting until he was relieved of his Undertaking by the College.

[125] Ms. Labatte and Dr. Cardoso received additional training and Ms. Labatte passed her technical test by August 2012, while Dr. Cardoso passed his interpretation test in January 2013.

[126] Dr. Cardoso billed MSB for the interpretation component of ultrasounds performed at his Clinic from September 4, 2012 to November 21, 2012.

[127] When sending ultrasound reports to Referring Entities, Dr. Cardoso did not tell either the Referring Entities or the patients that he was unable to interpret obstetrical or pelvic ultrasounds.

[128] Given this accepted sequence of events, it is difficult to understand how Dr. Cardoso could argue he did not breach his Undertaking not to perform obstetrical and pelvic ultrasounds.

[129] Dr. Cardoso provided evidence he didn't breach his Undertaking; he tried to comply with the Undertaking; that the restrictions contained in the May 1, 2012 letter were difficult to understand. Dr. Cardoso testified he sent a preliminary ultrasound report and suggested by not signing any report he was not breaching his Undertaking.

[130] We will start with Dr. Cardoso's testimony and argument that he didn't understand what his Undertaking meant, which also ties into his argument that he was simply doing point-of-care ultrasound interpretations. We found Dr. Cardoso's testimony on this point to be unbelievable.

[131] We agree there were many ultrasound concepts discussed during the Hearing. However, there was a distinction drawn between two general classifications of ultrasounds. There are advanced ultrasounds performed by Maternal-Fetal Specialists, such as Dr. Cardoso and Dr. Carson. Dr. Cardoso and Dr. Carson obtained additional training prior to being able to interpret ultrasounds. Advanced ultrasounds dealt with the structure of the fetus, the anatomy of the fetus and the morphology of the fetus. Dr. Cardoso called this a "full ultrasound" in his May 16, 2012 letter to Dr. Shaw.

[132] As per Dr. Cardoso's May 16, 2012 letter to Dr. Shaw, he required the ability to utilize a full ultrasound so as to deal with his high-risk pregnancy cases. He called a full ultrasound an "essential tool" to his practice. In his April 27, 2012 letter to the College, Dr. Cardoso indicated he would be left without a major tool necessary for a Maternal-Fetal Specialist, namely a real-time ultrasound.

[133] We accept Dr. Carson's testimony that a real-time ultrasound was simply an advanced ultrasound that dealt with a patient with an expected abnormal fetus. This allowed the Maternal-Fetal Specialist to be present at the time of the ultrasound to see and review the images as they were generated.

[134] In regard to an advanced ultrasound, a written report was generated and the physician billed MSB for his/her services.

[135] The second category of ultrasound was a limited or point-of-case ultrasound. We accept Dr. Carson's testimony that an OBGYN could perform this type of ultrasound. We accept Dr. Carson's and Dr. Shaw's testimony that this type of ultrasound dealt with such things as determining the lie and the presentation of the fetus. No additional training was required for an OBGYN to perform this limited ultrasound.

[136] The ACMI conducted an audit in regard to Dr. Cardoso's abilities to interpret ultrasounds in early 2012 and found his interpretation skills fell below the accepted standards. We accept Dr. Shaw's testimony that the ACMI Report and Dr. Cardoso's ensuing Undertaking only dealt with Dr. Cardoso's abilities to perform advanced ultrasounds. The ACMI Report and Dr. Cardoso's Undertaking did not interfere with Dr. Cardoso's ability to perform limited ultrasounds as an OBGYN as part of his obstetrical practice.

[137] We do not accept either Dr. Cardoso's testimony or the concept that Dr. Cardoso, as a senior, experienced Maternal-Fetal Specialist, who at one time trained interns with Dr. Carson or any Maternal-Fetal Specialist would not know the difference between advanced and limited ultrasounds. Therefore, we do not find a mistaken set of facts and a due diligence defense pursuant to either an objective or subjective standard.

[138] Likewise, we do not accept the argument that the May 16, 2012 letter sent by Dr. Cardoso to Dr. Shaw is evidence Dr. Cardoso was unsure of the parameters of his Undertaking. The document speaks for itself. Dr. Cardoso referred to the limitation being placed on him as a Maternal-Fetal Medicine Specialist, in not having access to performing a full, advanced ultrasound. He also acknowledged, how in his practice, a limited ultrasound would not be useful to him. This letter does not change our determination that Dr. Cardoso or any other Maternal-Fetal Specialist would be aware of the difference between a billable, advanced ultrasound and a non-billable limited ultrasound.

[139] In addition, Dr. Cardoso did not interpret advanced ultrasounds in a Hospital Setting until the College relieved him of his Undertaking. Dr. Cardoso's confusion argument or his argument that his Undertaking did not restrict him from interpreting ultrasounds may have had some semblance of credibility if he continued to interpret advanced ultrasounds at the Hospital after his Undertaking. This could have provided him with evidence to bolster a mistaken set of facts/ due diligence defense.

[140] We also reject Dr. Cardoso's argument that his Undertaking was somehow only tied to his ultrasound machine. This made no sense given Dr. Cardoso's Undertaking and his actions not to interpret ultrasounds in a Hospital Setting.

[141] Dr. Cardoso suggested that because he sent a report to the Referring Entities, prior to a formal interpretation actually having been completed, he did not breach his Undertaking. He called this report a "preliminary report". Once again, we found Dr. Cardoso's testimony to be unbelievable.

[142] Dr. Cardoso continued to accept referrals. He continued to bill MSB for interpreting ultrasounds. He sent reports to Referring Entities in his capacity as a "Maternal-Fetal Medicine Specialist". Referring Entities and patients were relying on these ultrasound interpretative reports. To now say, "I didn't do anything wrong because I didn't sign the interpretative reports," defies logic.

[143] Dr. Cardoso did not write on the reports to the Referring Entities that they were "preliminary reports" and that a follow up full interpretation report would follow. Dr. Cardoso attempted to redefine the reports he sent to Referring Entities as "preliminary reports". Given the ACMI Report, his Undertaking and the fact that he billed MSB for the ultrasounds, Dr. Cardoso's testimony was unbelievable, illogical and unacceptable.

[144] We therefore conclude the evidence is overwhelming that Dr. Cardoso breached his Undertaking of April 30, 2012 not to perform obstetrical and pelvic ultrasounds between the period of time from at least the second week of October 2012 to November 21, 2012. We use the second week of October 2012 relying on Agreed Statement of Fact No. 14.



[145] We also agree Dr. Cardoso's actions, in breaching his Undertaking, amounted to unbecoming, improper, unprofessional and discreditable conduct contrary to section 46(o) of the *Act*.

[146] As indicated, Dr. Cardoso did not demonstrate a due diligence defense in regard to Charge No. 1.

[147] As a result, we find Dr. Cardoso Guilty in regard to Charge No. 1.

### **INTRODUCTION TO CHARGES NO. 2 AND 3**

[148] We have found Dr. Cardoso guilty in regard to Charge No. 1. We have rejected his testimony that he did not breach his Undertaking and that he did not understand his Undertaking.

[149] Nonetheless, in regard to Charges No. 2 and 3, we must now consider Dr. Cardoso's testimony that he thought he was complying with his Undertaking or that he tried to comply with his Undertaking. In doing so, we will consider the evidence that Dr. Cardoso retained physicians to interpret his Clinic's ultrasounds, that at least one of these physicians could not bill MSB, that Dr. Cardoso continued to attempt to retain a physician to interpret his Clinic's ultrasounds and that Dr. Cardoso was hopeful he would be assessed by the College in a timely fashion.

### **CHARGE NO. 2**

#### **DID DR. CARDOSO BILL MSB FOR OBSTETRICAL AND/OR PELVIC ULTRASOUNDS THAT HAD NOT BEEN PERFORMED?**

[150] We will confine our analysis to the period of time from September 18, 2012 to November 21, 2012 as per Dr. Cardoso's December 16, 2012 letter to Dr. Wells. We agree with the College's position that this letter amounted to an admission, on the part of Dr. Cardoso, that he billed MSB for ultrasound interpretative fees, and received those fees from MSB, when in fact the ultrasounds had not been interpreted.

[151] A number of physicians, including Dr. Carson, had been retained by Dr. Cardoso to assist him to interpret ultrasounds performed prior to the ultrasounds referred to in the December 16, 2012 letter. However, in regard to the ultrasounds referred to in the December 16, 2012 letter, no one was retained to interpret them and in fact no one interpreted these ultrasounds until after January 11, 2013, when Dr. Cardoso's Undertaking was rescinded.

[152] Any due diligence defense available to Dr. Cardoso would have ended, as per Agreed Statement of Fact No. 14, by the second week of October 2012, as at that time, Dr. Cardoso knew he had no one retained to interpret his Clinic's ultrasounds.

[153] We accept Mr. Molnar's testimony that it is the responsibility of Dr. Cardoso to bill MSB for services performed. We accept in order to bill MSB for interpreted ultrasounds, a signed, written report had to be generated. All witnesses agreed a point-of-care ultrasound was non-billable. As such, we conclude Dr. Cardoso improperly billed MSB for services he did not perform.

[154] Counsel for Dr. Cardoso, in his Brief of Law, suggested that because of what Dr. Cardoso called a "preliminary report", the only act or service that remained was the formal sign off or interpretation of the report.

[155] In essence, Dr. Cardoso's argument was that in spite of the ACMI Report and his Undertaking, he was entitled to carry on "business-as-usual" so long as he did not sign the formal interpretative report. We have rejected this proposition in our Analysis of Change No. 1.

[156] Given our conclusion Dr. Cardoso's December 16, 2012 letter amounted to an admission of wrongdoing and based on our acceptance of Mr. Molnar's evidence that the Diagnostic Ultrasound Billing Requirements called for a written report, we agree Dr. Cardoso's actions in billing MSB when the ultrasounds had not been interpreted amounted to unbecoming, improper, unprofessional and discreditable conduct pursuant to sections 46 (o) and (p) of the *Act* and Bylaw 8.1(b)(iii).

[157] Dr. Cardoso did not demonstrate a due diligence defense in regard to this Charge as we did not accept the convoluted proposition that a preliminary report somehow justified Dr. Cardoso's actions in billing MSB for interpretations not performed.

[158] In addition, any due diligence defense in regard to reasonable steps taken by Dr. Cardoso to avoid a particular event would have ended by the second week of October 2012, as per Agreed Statement of Fact No. 14.

[159] As a result, we find Dr. Cardoso Guilty in regard to Charge No. 2.

### **CHARGE NO. 3**

[160] We saw three concepts associated with Charge No. 3, namely:

- (i) Did Dr. Cardoso/his Clinic perform ultrasound scans without having made appropriate arrangements for those scans to be interpreted?
- (ii) Were some or all of the ultrasound scans performed in Dr. Cardoso's Clinic not interpreted by a qualified physician within a reasonable period of time?
- (iii) Did Dr. Cardoso fail to respond to an August 1, 2012 letter from Dr. Shaw asking who would interpret Ms. Labatte's test ultrasounds?

[161] As per Agreed Statement of Fact No. 20, on or about December 10, 2012, there were either 184 or 185 outstanding films taken at Dr. Cardoso's Clinic that had to be interpreted. Dr. Cardoso had billed MSB as if the ultrasound scans had been interpreted, when in reality they had not. As per Agreed Statement of Fact No. 21, these ultrasounds were performed at the Clinic from September 18, 2012 to November 21, 2012. As per Agreed Statement of Fact No. 16, ultrasounds were generated without a physician in place to interpret them. These ultrasounds were not read by anyone qualified to read them until sometime after January 11, 2013, when Dr. Cardoso interpreted them after he passed his assessment and the College removed his Undertaking.

[162] This meant that some of the Clinic's ultrasounds were read approximately 50 days after they were taken and some were read approximately 110 days after they were taken.

[163] Dr. Cardoso was being referred high-risk pregnancy cases. Dr. Cardoso agreed he was responsible for the safety of his patients and their unborn babies. Dr. Cardoso agreed he was responsible to have the ultrasounds generate at his Clinic read in a timely fashion. This was consistent with the testimony of Dr. Carson, Dr. Shaw and Dr. Wells.

[164] Given that Dr. Cardoso's practice dealt with a large number of high-risk pregnancy cases, we agree with the consistent testimony that it was incumbent upon Dr. Cardoso to ensure the ultrasound scans taken at his Clinic were interpreted in a timely manner. It is evident that he did not either make arrangements for the ultrasound scans to be interpreted or have them interpreted within a reasonable period of time. As such, Concepts (i) and (ii) have been proven. Therefore, we find Dr. Cardoso failed to maintain the necessary standard of practice in regard to having retained someone qualified to interpret his Clinic's ultrasounds and having his Clinic's ultrasounds interpreted in a timely manner.

[165] Counsel for Dr. Cardoso argued Dr. Cardoso had a due diligence defense in that he took reasonable efforts to find someone to interpret his Clinic's ultrasounds. Counsel suggested, "It was reasonable for Dr. Cardoso to continue performing ultrasounds while he continued searching for someone to do the formal interpretation". Dr. Cardoso suggested he attempted to have physicians interpret the ultrasounds. With respect, we reject this proposition. Given the evidence of Dr. Cardoso, Dr. Carson, Dr. Shaw and Dr. Wells, ultrasounds had to be interpreted in a timely matter given that the Referring Entities require the information to help them manage their patients. To somehow suggest that it was acceptable to interpret ultrasounds weeks or months later is completely unacceptable. Certainly, Dr. Carson agreed to read ultrasounds up to September 17, 2012. However, once Dr. Carson was unable to interpret Dr. Cardoso's Clinic ultrasounds, for a significant period of time, Dr. Cardoso had no one to interpret his Clinic's ultrasounds. Nonetheless, he kept seeing patients, billing MSB and sending reports to Referring Entities. He continued on "business-as-usual", ignoring the findings of the ACMI Report and his Undertaking. We have already addressed how inappropriate Dr. Cardoso's actions were.

[166] Dr. Cardoso seemed to recognize his wrongful actions when, in his May 6, 2016 letter to the Preliminary Inquiry Committee; he indicated in hindsight he should not have re-opened his Clinic in September 2012. Rather than accepting the limitations brought on by his Undertaking, Dr. Cardoso seemed to blame Dr. Shaw for his predicament.

[167] Dr. Cardoso's due diligence defense was also that he continued to attempt to retain a physician to interpret his Clinic's Ultrasounds while he waited for his assessment, which he hoped would be imminent. Implicit in Dr. Cardoso's position was that his assessment would be successful.

[168] We agree with Counsel for the College that once Dr. Cardoso had no one available to read his Clinic's ultrasounds, he should have stopped scanning at his Clinic. It did not matter that he hoped he would soon get an assessment date from the College or that he was confident he would pass the assessment. What was key was that for a period of time, Dr. Cardoso continued to see patients, conduct ultrasounds and bill for ultrasounds while he had no qualified physicians retained to interpret the ultrasounds and no actual assessment date from the College. As indicated, we found this to be unacceptable. It was improper to continue scanning ultrasounds, for a number of high-risk pregnancy cases, without having someone qualified to interpret the ultrasounds and provide timely interpretations to the Referring Entities to assist the Referring Entities in the management of patients.

[169] As further evidence of Dr. Cardoso's improper conduct, as per Dr. Shaw's November 7, 2012 telephone conversation with Dr. Cardoso, and the November 8, 2012 letter to him, Dr. Shaw clearly gave Dr. Cardoso notice that his actions in not having his Clinic's ultrasounds interpreted in a timely fashion placed him at risk of being charged with unprofessional conduct. In spite of the warning, Dr. Cardoso's Clinic continued to generate un-interpreted ultrasounds until November 21, 2012.

[170] The final component in Charge No. 3 was that Dr. Cardoso failed to respond to an August 1, 2012 letter from Dr. Shaw asking who would interpret Ms. Labatte's test ultrasounds.

[171] Based on Agreed Statement of Fact No. 8, we have no choice but to agree with this allegation. Dr. Cardoso did not offer an explanation as to why he did not respond to the August 1, 2012 letter. Therefore, no due diligence defense argument exists.

[172] We agree with Counsel for the College's assertion that Bylaws 16.1 and 16.2 were breached and that, as per Bylaw 16.2(e), Dr. Cardoso's failure to respond is deemed unbecoming, improper, unprofessional and/or discreditable conduct.

[173] To recap, as per Dr. Cardoso's December 16, 2012 letter to Dr. Wells, Dr. Cardoso/his Clinic performed ultrasounds without having made arrangements for someone to interpret them. The Outstanding Ultrasounds were not interpreted by a qualified physician within a reasonable period of time. Dr. Cardoso did not respond to Dr. Shaw's August 1, 2012 letter.

[174] As a result, we have concluded Dr. Cardoso's actions amounted to unbecoming, improper, unprofessional and discreditable conduct contrary to Sections 46(o) and 46(p) of the *Act*, as well as Bylaws 8.1(b)(ix), 16.1 and 16.2.

[175] As indicated, any due diligence defense Dr. Cardoso had in regard to Charge No. 3 ended when he no longer had a physician retained to interpret his Clinic's ultrasounds.

[176] As a result, we find Dr. Cardoso guilty of Charge No. 3.

### **SENTENCING RECOMMENDATIONS**

[177] The Committee struggled in deciding whether to make Sentencing Recommendations in regard to the Charges. We had some level of sympathy toward Dr. Cardoso's predicament brought on, to some extent, by the lengthy delay in the College assessing his interpretative ultrasound skills. The evidence was clear that after Dr. Cardoso provided his Undertaking, he let the College know on June 19, 2012 that he was ready to be assessed by the College. He continued to let the College know he was ready to be assessed and was finally assessed in December 2012, some 6 months later.

[178] As we understood the evidence, at least part of the reason for the delay in assessing Dr. Cardoso was because of conflicts within Dr. Cardoso's peer group subspecialty due to either previous audits or friendships. Nonetheless, the unfortunate reality was that Dr. Cardoso had to wait approximately six months for the College to assess him.

[179] The Committee also accepted that Dr. Cardoso did not profit unjustly by billing MSB for interpretative ultrasounds that he had not performed. No one asked for Dr. Cardoso to pay any monies back and, in fact, Dr. Cardoso, once his Undertaking was removed, did formally interpret the ultrasounds from his Clinic that had not yet been interpreted.

[180] In addition, though the College advanced the concept Dr. Cardoso's conduct placed patient safety at risk, there was no actual evidence any specific patient's safety had been compromised.

[181] In fairness, Charge No. 3 dealt with the allegation Dr. Cardoso's Clinic performed ultrasounds which were not interpreted by someone qualified to do so within a reasonable period of time. There were no charges in regard to a specific case where patient safety was an issue.

[182] Committee Members also had varying degrees of concern in regard to Dr. Cardoso's failure to respond to Dr. Shaw's August 1, 2012 letter. As indicated, based on Agreed Statement of Fact No. 8, we had to accept Dr. Cardoso did not respond to the letter. However, we note Dr. Cardoso informed Dr. Shaw on September 5, 2012 that Dr. Carson would be interpreting Dr. Cardoso's Clinic ultrasounds. If there was a concern about who had interpreted Ms. Labatte's assessment ultrasounds, one would have thought Dr. Shaw would have raised this issue with Dr. Cardoso during this call. Another possibility would have been for Dr. Shaw to have sent a follow-up letter to Dr. Cardoso providing him with reference to the bylaw requiring a response within 14 days. Neither of these two possibilities occurred.

[183] However, as indicated in our decision, we found Dr. Cardoso ignored the findings of the ACMI Report and his Undertaking, and continued to interpret ultrasounds in his specialized area of expertise as a Maternal-Fetal Specialist. Dr. Cardoso's actions were unacceptable.

[184] After much deliberation, the Committee makes no recommendations in regard to the Charges.

DATED this 15<sup>th</sup> day of April, 2019.



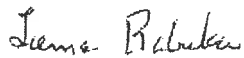
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Walter Matkowski, Q.C. Deputy Chair



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Dr. Louis Coertze



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Dr. Lorne Rabuka