



## Executive Summary of the Report of the Independent Committee of Inquiry

Into the Situations of  
**Drs. Gabrielle Horne, Michael  
Goodyear & Bassam A. Nassar**  
at the Capital District Health Authority  
& Dalhousie University

January 2016

# Report of the Independent Committee of Inquiry into the Situations of Drs. Gabrielle Horne, Michael Goodyear & Bassam A. Nassar at the Capital District Health Authority & Dalhousie University

Dr. Allan Sharp  
University of New Brunswick

Dr. Bernice Schrank  
Memorial University of Newfoundland

Before the Committee had finalized its work, the third member of the Independent Committee of Inquiry, Dr. David Sackett (McMaster University), became ill and subsequently passed away. Drs. Sharp and Schrank take responsibility for the final version of the report and wish to acknowledge the outstanding contribution to the work of this Committee provided by Dr. Sackett.

## **Executive summary**

This Inquiry began as an examination of the employment-related problems experienced by three physicians practicing in unrelated specialties and holding joint appointments at the Faculty of Medicine of Dalhousie University and the Capital District Health Authority (CDHA) in Halifax, Nova Scotia. These problems involved, among many other matters, (1) the right of these academics to criticize the actions of certain colleagues, (2) their right to advocate for changes in medical treatments despite the resistance of some of their colleagues to such changes, and (3) their right to determine freely with whom they would collaborate in their medical research. These problems remained unresolved for an egregiously long time. The consequences of these events were profoundly damaging to the three physicians both personally and professionally despite the fact that, when their cases eventually received fair impartial hearings much later on, they were exonerated of any wrongdoing. Their stories, and the lessons learned from these case studies, are presented in Chapters 5, 6, and 7 of this Report. This Committee concluded that the problems faced by the three physicians were systemic and require systemic corrections.

In each of these three cases, disciplinary actions were taken against the doctors in a variety of career-threatening ways including a letter of reprimand, a charge of harassment, attempts to terminate a doctor's Dalhousie University appointment, variation of the hospital privileges required to practice medicine, and suspension of hospital privileges, a serious disciplinary measure that disallows a doctor from performing any of the normal activities of an academic physician. Although the disciplinary actions in each case had obvious serious implications for the careers of these doctors, the actions were imposed before proper investigation of the charges. When the issues in dispute were eventually examined, either by the Court or by panels charged with determining the facts and the appropriateness of the discipline imposed, the facts turned out to be different from what had been alleged at the start of the disciplinary process, and the discipline was judged to be inappropriate. Years later, all three doctors were eventually exonerated. Indeed, in the second and the third cases, both involving variation of hospital privileges, the Board of Capital District Health Authority ruled that these doctors should be restored to the status they held immediately before the disciplinary variations were imposed.

The Committee of Inquiry found that each case began, not with some egregious action, but with some interpersonal disagreements with colleagues over matters that appear to be within the bounds of what might reasonably be expected to arise from time to time in an academic tertiary-care medical environment. What sets apart the three cases considered by this Inquiry is the extent to which the available policies and procedures failed to recognize and defend the fundamental importance of academic freedom in academic medical environments and proved incapable of resolving these disputes, and in many ways served to exacerbate and broaden the disputes. In each of the three cases studied the disputes expanded in both scope and intensity and dragged on for an unconscionably long time, spawning a range of other disputes and a torrent of documents on ever-widening matters, leaving an ever-worsening trail of damage to individuals and the institutions.

The Committee also found that the disputes themselves and the escalating damage created by these unresolved disputes resulted from a collective and systemic failure of policy, process,

and academic administrative culture at CDHA/Dalhousie University and cannot fairly be attributed to individual errors of commission, omission, or judgment.

The Committee identified at the heart of these cases a number of fundamental flaws in the bylaws, policies, procedures, academic medical culture, and documents that together provide the foundation on which the Capital District Health Authority and Dalhousie University conduct their joint affairs. In particular, the Committee found that: (1) none of the essential requirements to guarantee the right to academic freedom for academic physicians at Dalhousie University and Capital District Health Authority was met; (2) the important concept of collegiality was misunderstood and misapplied; (3) the high standard of fairness required to protect the rights of physicians facing a variation or suspension of their hospital privileges was not met; (4) formal dispute resolution processes leading to a final and binding decision using fair procedures in a timely manner were lacking. These matters are discussed in Chapter 2 of this Report.

The Committee found that many of these flaws arose from the Bylaws of the Capital District Health Authority and the Affiliation Agreement, a complex, multifaceted document that was intended to establish the parameters of collaboration between Dalhousie University and CDHA. An analysis of these foundational documents is provided in Chapter 3 of this report.

Taken together, these documents require physicians who are members of the Dalhousie University Faculty of Medicine to maintain their academic appointment at Dalhousie University, their clinical appointment and hospital privileges as Medical Staff at CDHA, and their income through the Alternate Funding Plan or similar group practice plans. Each of these three domains is governed by different policies, which the Affiliation Agreement attempts to connect. This multi-layering of policies creates a complex structure of duties and responsibilities that are not always easily understood or consistent with each other. A problem arising in any one of these three domains can be career-threatening, as it was in each of the three cases studied.

One of the many problems the Committee identified in the Affiliation Agreement is the failure to acknowledge academic freedom as a fundamental right of medical faculty. Indeed, the Agreement makes no mention of academic freedom at all. As a result, academic freedom plays no formal role in the relationship between Dalhousie University and Capital District Health Authority.

Medical Staff at CDHA are deemed to be private contractors and the standard practice is for them to derive most or all of their remuneration from the Alternate Funding Plan (AFP) or similar group practice plans. This arrangement places extraordinary power regarding income of individual members of the Medical Staff in the hands of CDHA Division and Department Chiefs. An academic work environment in which academic freedom is not protected, in which formal dispute resolution mechanisms are lacking, and in which remuneration relies on the administration's good will is, on its face, unsatisfactory — at the very least fostering a sense of unease and vulnerability.

That perception of vulnerability is exacerbated by the fact that medical faculty do not have a process for tenuring despite having academic appointments at Dalhousie University. Tenure protects academic freedom by guaranteeing that an appointment can be terminated only for just and sufficient cause. Rather than tenure, medical faculty appointments are subject to periodic

performance evaluations, a process known as Continuing Appointment with Periodic Review (CAPR). In the three cases examined by this Committee, these reviews gave rise to disputes but did not provide any satisfactory means for addressing or resolving disagreements about performance assessments.

One of the criteria for a successful periodic review is collegiality. All three medical doctors were alleged to be deficient in collegiality. Yet “collegiality” is left undefined in the foundational documents, and there was no apparent consistency in the understanding of the term “collegiality.” As used in various documents that the Inquiry examined, the term “collegiality” appears to be most frequently used as a measure of congeniality. It is perceived to be an important attribute for faculty members and active medical staff, leading to effective functioning of the department, although what it is, exactly, is never defined. It is true that, in a clinical environment, teamwork is important. Lack of “collegiality” was seen to threaten that teamwork; but not all clinical environments require that level of teamwork. “Collegiality” as it was used at the start of the disciplinary process in all three cases examined by this Committee was a conveniently vague and undefined term that allowed the three medical doctors whose cases the Inquiry studied to be considered deficient by their Department Chiefs in broad, unspecific, but negative ways that related to perceptions of personality rather than to professional competence.

The Committee of Inquiry also identified serious problems with the Medical Staff Disciplinary Bylaws, both as they existed at the beginning of this Inquiry and in their later iteration. Among other matters, the Disciplinary Bylaws involve the circumstances under which a medical doctor’s hospital privileges may be varied and the procedures that must be followed when a variation of privileges is imposed. The Disciplinary Bylaws played a central role in two of the three cases considered by this Committee. An analysis of these Disciplinary Bylaws is provided in Chapter 4. The Committee found that the Disciplinary Bylaws are in many ways unsuited to productive solutions to disputes about the performance of physicians. Unfortunately, there appear to be no dispute-resolution procedures at CDHA other than these seriously flawed Disciplinary Bylaws.

It needs to be clearly understood that a variation of privileges is an extremely serious matter for a physician, and therefore should require a very high standard of procedural fairness and proof. A summary variation of privileges carries the stigma that some form of egregious behaviour has taken place, and should therefore be reserved for those egregious cases. That high standard was not met in the cases examined by this Inquiry. Despite the fact that the charges had not been proved, the disciplinary actions remained in place until the cases received their final hearing by the Board of CDHA. The length of time it took for the matters in dispute to be heard in a forum that provided procedural fairness and natural justice created a profound injustice for the two medical doctors whose hospital privileges were varied.

Under the Disciplinary Bylaws in place at the time of the variation of hospital privileges of the two medical doctors, the disciplinary action imposed by the Department Chief was first supposed to be considered by the District Medical Advisory Committee (DMAC) within twenty-one days, and subsequently the matter was to be dealt with by the Privileges Review Committee (PRC) within a further twenty days. These time lines were themselves subject to variation as happened in two of the cases examined by this Inquiry. Instead of the forty-one days allowed by the Disciplinary Bylaws, the processes mandated by those Bylaws stretched out for years.

According to the Disciplinary Bylaws in place at the beginning of the events described herein, once the PRC makes a report and recommendations to the Board of CDHA, the Board must then hold a formal hearing to determine whether or not to uphold the variation of privileges. While the Board hearing must be based upon both procedural fairness and natural justice, the Disciplinary Bylaws specify that neither the PRC nor the DMAC is required to observe such constraints, and they did not. The effect was that neither of the two doctors whose privileges had been varied had an opportunity to question the evidence presented against them, carry out cross-examination of witnesses, or provide evidence in their own defence until the CDHA Board hearings took place at a much later time. In one case, procedural fairness and natural justice were denied for almost four years; in the other case, procedural fairness and natural justice were denied for nearly six years.

The allegations made against these two doctors were ultimately found by the Board of CDHA not to be grounds for variation of privileges. Despite this exoneration, irreparable damage was done to the careers of these doctors. In the view of the Committee of Inquiry, this miscarriage of justice is a direct result of serious flaws in the Bylaws and other statutory documents defining the relationship of faculty members in the Dalhousie University Faculty of Medicine with the University, CDHA, and the Alternate Funding Plan.

Chapter 8 of this report provides a summary of the main events, their causes and their consequences. In Chapter 9, the Committee makes a series of recommendations to address the concerns raised throughout the report. In April 2015, the Capital District Health Authority was amalgamated with other health authorities to form the Nova Scotia Health Authority (NS Health). Under the provisions of the legislation establishing NS Health, the bylaws made by the Capital District Health Authority remain in effect and apply to NS Health until such time as they are replaced with new by-laws made by NS Health. This provides an ideal opportunity for the recommendations of this Committee to be reviewed and implemented by the new Nova Scotia Health Authority. These recommendations include:

1. that a new Affiliation Agreement between Dalhousie University and Nova Scotia Health Authority be negotiated to establish an equal partnership as a more appropriate foundation for their joint activities;
2. that a formal Policy on Variation of Privileges be established to deal with the rare occasions when there is an actual or imminent danger of harm to patients, staff, students, and/or the general public;
3. that performance concerns that do not relate directly to such imminent danger of harm should be dealt with according to a newly formulated Discipline Policy that provides the protections of natural justice and procedural fairness;
4. that a formal Grievance Policy be established for prompt, final, and binding resolutions of disputes that arise concerning the application, administration, or interpretation of the Bylaws, policies, rules, and regulations;

5. that medical staff/Dalhousie faculty have contractual protections similar to those of other Dalhousie faculty, and in particular that all Continuing Appointments with Periodic Review (CAPR) be converted into tenure-stream appointments;

6. that medical staff/Dalhousie faculty have representation by an organization that is formally recognized by both Nova Scotia Health Authority and Dalhousie University, and that has enforceable representation rights and the resources to be effective;

7. that new national resources be established to assist with defining and assessing clinical practice standards, to provide active support and training to assist individuals and groups to achieve and maintain these standards, to assist with performing practice audits or establishing appropriate panels to perform effective external independent reviews and assessments of clinical practice, and to help with the management and investigation of cases in which there are disputes about practice standards;

8. that immediate steps be taken to bring reasonable and just closure to the three individual cases that initiated and underpin this Inquiry.