

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Karen Gaye Dockrill, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of any individuals, with the exception of Dr. Dockrill or her counsel, referred to in the Notice of Hearing and Agreed Statement of Facts and Admission, under subsection 45(3) of the Health Professions Procedural Code (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended.

Subsection 93(1) of the Code, which is concerned with failure to comply with these orders, reads:

Every person who contravenes an order made under ... section 45 or 47... is guilty of an offence and on conviction is liable,

- (a) in the case of an individual to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence; or
- (b) in the case of a corporation to a fine of not more than \$50,000 for a first offence and not more than \$200,000 for a second or subsequent offence.

Indexed as: Dockrill, K.G. (Re)

**THE DISCIPLINE COMMITTEE OF THE COLLEGE
OF PHYSICIANS AND SURGEONS OF ONTARIO**

IN THE MATTER OF a Hearing directed
by the Inquiries, Complaints and Reports Committee of
the College of Physicians and Surgeons of Ontario
pursuant to Section 26(1) of the **Health Professions Procedural Code**
being Schedule 2 of the *Regulated Health Professions Act, 1991*,
S.O. 1991, c. 18, as amended.

B E T W E E N:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. KAREN GAYE DOCKRILL

PANEL MEMBERS:

**DR. M. GABEL
S. DAVIS
DR. C. CLAPPERTON
S. BERI
DR. D. PITT**

Hearing Date:	June 18, 2012
Decision Date:	June 18, 2012
Release of Written Reasons:	July 16, 2012

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on June 18, 2012. At the conclusion of the hearing, the Committee stated its finding that the member committed an act of professional misconduct and delivered its penalty and costs order with written reasons to follow.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Dockrill committed an act of professional misconduct:

1. under paragraph 1(1)23 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”), in that she charged a block or annual fee, which is a fee charged for services that are not insured services as defined in section 1 of the *Health Insurance Act* and is a set fee regardless of how many services are rendered to a patient;
2. under paragraph 1(1)23.2 of O. Reg. 856/93, in that she charged a fee for an undertaking to be available to provide services to a patient;
3. under paragraph 1(1)27 of O. Reg. 856/93, in that she contravened a regulation made under the *Medicine Act, 1991*, specifically paragraphs 6(2)(a), 6(2)(b), 6(4)(a) and 6(4)(b) of Ontario Regulation 114/94; and
4. under paragraph 1(1)33 of O. Reg. 856/93, in that she has engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

RESPONSE TO THE ALLEGATIONS

Dr. Dockrill admitted the allegations in paragraphs two and four of the Notice of Hearing. She also admitted the allegation in paragraph three of the Notice of Hearing that she had contravened paragraphs 6(2)(b) of Ontario Regulation 114/94. Counsel for the College

withdrew the allegation in paragraph one of the Notice of Hearing and the remaining allegations in paragraph three of the Notice of Hearing.

FACTS AND EVIDENCE

The following facts were set out in an Agreed Statement of Facts and Admission which was filed as an exhibit and presented to the Committee:

1. Dr. Karen Gaye Dockrill (“Dr. Dockrill”) is a paediatrician who currently practices in Whitby, Ontario. At all material times, she was a member of the College of Physicians and Surgeons of Ontario (the “College”).

“Mom and Baby Depot Ltd.”

2. In 2006, Dr. Dockrill established a business under the name “Mom and Baby Depot Ltd.” (“MBD”). Dr. Dockrill and her husband, Mr. X, were the owners and operators of MBD. Dr. Dockrill acknowledges control of, and professional responsibility for, the acts and omissions of MBD with regard to advertising, block fees, access to care, and her medical practice.

3. From 2007 through 2010 (the “Material Time”), Dr. Dockrill carried out a paediatric practice through MBD that included both the provision of primary care to children as well as paediatric consults on referral from a family physician.

4. Patients were accepted into Dr. Dockrill’s primary care practice at a family’s request, only when parents purchased and maintained a membership in MBD, for which they were charged a fee. For a single child, this fee ranged between \$500 and \$2,200 (the “Fee”) per year during the Material Time.

5. In exchange for the Fee, MBD offered patients uninsured services. As referenced above, MBD members were permitted to receive OHIP-insured primary care from Dr. Dockrill, during their period of MBD membership, which was not open to non-members during the Material Time. Non-member children were permitted only to obtain consults and, if necessary, episodic follow-up care on a referred issue with Dr. Dockrill on referral from a family physician.

6. The uninsured services offered to MBD members (collectively, the “MBD Services”) included the following:

- a) Family education and “developmental surveillance” described by Dr. Dockrill as in addition to OHIP-funded care;
- b) Unlimited access to Registered Dietitians and Nurses;
- c) A telephone line by which members of MBD could access nursing assistance on a 24-hour basis;
- d) Discounted rates for massage therapy, chiropractic care and yoga classes for members;
- e) Child minding for siblings while parents were at the clinic for any other child(ren) or participating in MBD programs;
- f) Dance classes, story circles and other activities for children;
- g) Parenting, nutritional and other workshops for parents; and
- h) Various uninsured services from Dr. Dockrill, such as telephone prescriptions, absence notes, and the like.

7. During the Material Time, parents who wished to have Dr. Dockrill as their child’s primary care physician were not permitted to enter her practice on the basis that they would pay for the MBD Services individually at the time such services were rendered. Rather, patients were required to pay the Fee and become members of MBD in order to join Dr. Dockrill’s primary care practice during the currency of their MBD membership. In this respect, the Fee failed to comply with the College’s policy with regard to Block Fees and Uninsured Services.

Complaint of Ms Z

8. On May 7, 2008, the College received a public complaint from Ms Z pertaining to Dr. Dockrill’s operation of MBD.

9. Ms Z's son was born in May 2007 with an unexplained asymmetrical intrauterine growth restriction as well as a bicuspid aortic valve. An echocardiogram at the Hospital for Sick Children revealed a coarctation of the aorta. On this basis, [Ms Z's son] underwent surgery at two days old for the coarctation.
10. [Ms Z's son] remained in critical care at the Hospital for Sick Children until [the beginning of June] 2007. One of the criteria for [his] discharge from the hospital was that he be followed by a paediatrician in the community who could see him in his first week home so that there would be someone nearby who was fully apprised of [his] condition and could assist with monitoring and responding to complications.
11. Ms Z was given Dr. Dockrill's name, and was told by a nurse practitioner at the Hospital for Sick Children that her son had been referred to her for primary care.
12. Two days later, Ms Z received a call from Dr. Dockrill's office. When attempting to arrange [her son's] first appointment, Ms Z was told that she would have to pay \$1,500 per year for a MBD membership as a condition of receiving primary care from Dr. Dockrill.
13. Ms Z indicated she was not interested in the additional programs and services at MBD – she only wanted basic insured medical care and therefore did not want to pay the \$1,500 fee. As a result, Ms Z's son was not permitted to see Dr. Dockrill for primary paediatric care, and Ms Z was required to find care for him elsewhere.

Call to Dr. Dockrill's office by College staff

14. On July 10, 2009, Dr. Dockrill made the following representation in response to Ms Z's complaint:

I make every effort to see that medical services are provided in a manner that balances the tension between the concept of universality of health care mentioned above, and patients' demands based on the parents' ability to pay. Due to capacity limitations and my consultation practice, it is not my intention to take on primary care patients as was the expectation of Ms Z.

My practice, as mentioned above, focuses on consultation and on-call care. Unfortunately, there appears to have been some miscommunication regarding the nature of the services that were required on behalf of [Ms Z's son].

15. On November 25, 2009, Ms Y, Investigative Assistant at the College, contacted Dr. Dockrill's office to determine if Dr. Dockrill would take on a new patient.

16. Ms Y informed the receptionist that the child was 3 years old with a chronic condition. She indicated she was new to the area and had heard that Dr. Dockrill was a well-respected paediatrician. She said she wanted to have Dr. Dockrill as her child's paediatrician.

17. Ms Y was advised by the receptionist to hold the line and was then transferred to a gentleman who told her the clinic provided membership-based services.

18. In order for her to have paediatric care for her child, Ms Y was told she would need to become a member of Mom and Baby Depot. The program was explained to Ms Y.

19. Ms Y asked if joining the program was the only way Dr. Dockrill would become her child's paediatrician.

20. She was advised that only MBD members or those referred by family doctors could see Dr. Dockrill.

Advertising

21. Between 2008 and 2010, the MBD website, a copy of which is attached [to the Agreed Statement of Facts and Admission] at Tab 1, advertised the benefits of membership in MBD and Dr. Dockrill's professional services. Under the heading, "PAEDIATRIC CARE", the MBD website stated as follows:

... Today's doctor's offices are often difficult to get an appointment when needed let alone speak with the doctor when you need it most. Mom and Baby Depot offers families an elite relationship with their child's paediatrician and her healthcare team. ... Have Dr. Dockrill as your child's primary care paediatrician with our "My First Years" membership. Dr. Dockrill's care involves the whole family and

addresses any and all family needs in the best interest of their child's wellbeing. Dr. Dockrill goes above and beyond what standard OHIP care provides to give families the ultimate healthcare experience of their lives.

22. In addition, during the time referred to in paragraph 21, the advertising on the MBD website included testimonials, as set out in Tab 1 [to the Agreed Statement of Facts and Admission], including the following:

We see MABD as our 'happy place'. When I tell my 2 year old we're going to the doctor's he says 'yay, play with toys, play with [name]?' He says this because when his older or younger brother is having a check-up or developmental assessment, he has a grand time playing and running around the gym. I can tell you that my 4 year old was never that happy to go see our previous G.P., who always had an overcrowded, sterile waiting room ... (and) the care we have received from MABD has been exemplary. I feel, when I walk through the door that we are the only family they have to attend to.

Communications between Dr. Dockrill and the College regarding the establishment of MBD

23. In October of 2005, Dr. Dockrill telephoned the College's Physician Advisory Service. At that time, she informed College staff that she was in the process of establishing a clinic to provide neonatal and prenatal care. Dr. Dockrill indicated that she would like to know whether it would be acceptable to the College for her to charge a block fee for counselling and education provided by non-physician health providers, and alternative care such as massage therapy, and the like.

24. Dr. Dockrill indicated that she had reviewed the CPSO policy concerning Advertising. A copy of the relevant provisions of O.Reg 114/94 is attached [to the Agreed Statement of Facts and Admission] at Tab 2.

25. During this conversation, College staff advised Dr. Dockrill that it would be appropriate for her to contact the Ontario Medical Association for information pertaining

to uninsured services and suggested guidelines for fees. Dr. Dockrill was invited to fax the College information concerning her proposed clinic model.

26. With regard to advertising, College staff advised Dr. Dockrill that she should obtain legal advice concerning any business venture or contractual agreement. It was indicated that Dr. Dockrill should ensure that any advertising for the clinic conformed with the College's policy/regulations concerning advertising. College staff provided Dr. Dockrill with the general principals concerning advertising but again stressed that she should seek a legal opinion.

27. On November 1, 2005, Dr. Dockrill sent a fax to the College dated October 21, 2005, a copy of which is attached [to the Agreed Statement of Facts and Admission] at Tab 3. Dr. Dockrill's letter did not disclose her intention to require patients to pay the Fee as a precondition of receiving primary care, nor did she seek the College's advice with respect to the advertising passages referenced in paragraphs 21 and 22 above, as this advertising was not in place at that time. The College did not send Dr. Dockrill any response to this fax, or make any other representations to Dr. Dockrill concerning the proposed clinic.

28. On May 16, 2007, Dr. Dockrill telephoned the College's Physician Advisory Service again. She indicated that she was planning to "add private services to her practice" which was set up in 2006. Dr. Dockrill indicated that she had obtained feedback from the Ministry of Health and Long Term Care and would like advice from the CPSO. She wanted to discuss the uninsured services she intended to provide.

29. During this conversation, Dr. Dockrill was advised that College staff could speak to her generically about the College's policy on Block Fees and Uninsured Services, but may not be able to comment on the other aspects of her business venture. Dr. Dockrill was advised to obtain an independent legal opinion to ensure that her business venture conformed to applicable legislation and College policies. Dr. Dockrill indicated that she had already reviewed the College's Block Fees and Uninsured Services policy, a copy of which is attached [to the Agreed Statement of Facts and Admission] at Tab 4.

30. At the end of her May 16, 2007 conversation with College staff, Dr. Dockrill indicated that she would like to send her questions in writing to the College. College staff provided her with contact information for this purpose. However, no letter was forthcoming, and the College received no further contact or inquiries from Dr. Dockrill in relation to MBD.

Admission

31. Dr. Dockrill admits all of the facts set out in paragraphs 1-30 above. On the basis of those admissions, Dr. Dockrill admits that she committed professional misconduct as set out in the Notice of Hearing as follows:

- (a) under paragraph 1(1)23.2 of O. Reg. 856/93, in that she charged a fee for an undertaking to be available to provide services to a patient;
- (b) under paragraph 1(1)27 of O. Reg. 856/93, in that she contravened a regulation made under the Medicine Act, 1991, specifically paragraph 6(2)(b), of Ontario Regulation 114/94, in that the MBD website contained testimonials and superlative statements; and
- (c) under paragraph 1(1)33 of O. Reg. 856/93, in that she has engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional in that she failed to comply with the College's Policy on Block Fees and Uninsured Services.

FINDINGS

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts and Admission. Having regard to these facts, the Committee accepted Dr. Dockrill's admission and found that she committed an act of professional misconduct, in that:

- (1) under paragraph 1(1)23.2 of O. Reg 856/93, she charged a fee for an undertaking to be available to provide services to a patient;

(2) under paragraph 1(1)27 of O. Reg 856/93, her website contained testimonials and comparative and superlative statements contrary to paragraph 6(2)(b) of O. Reg 114/94; and

(3) under paragraph 1(1) 33 of O. Reg. 856/93, she engaged an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for the member made a joint submission as to an appropriate penalty and costs. The Committee reviewed the evidence along with the penalty proposed in light of previous cases. In doing so, it was mindful of the fact that a joint submission should not be rejected unless it is contrary to the public interest and its acceptance would bring the administration of justice into disrepute.

The proposed penalty included a reprimand, one-month suspension of Dr. Dockrill's certificate of registration, a requirement that Dr. Dockrill complete the College facilitated ethics course and other terms and conditions, as outlined below, designed to ensure that Dr. Dockrill complies with the College policy regarding Block Fees and Uninsured Services. The joint submission also proposed that Dr. Dockrill pay costs for a one-day hearing at the tariff rate.

The profession of medicine is governed by legislation and regulations that are overseen by the College. In accordance with the privilege of self-regulation, the College is expected to exercise its authority to protect the interests of the public and to maintain public confidence in the profession's ability to self-regulate. As a member of the profession, it is Dr. Dockrill's obligation to know and adhere to the policies of the College designed to serve those public interests, irrespective of her own personal objectives or philosophy. She failed to do so when she charged a fee in order to be available to provide services to a patient. Her website also contained superlatives and testimonials that contravened the College's advertising policy. In failing to comply with

College policies, Dr. Dockrill's conduct was unprofessional and dishonoured the profession.

When considering aggravating factors, the Committee notes that the policy at the time of Dr. Dockrill's infraction was clear. Although Dr. Dockrill made some attempt to communicate and clarify her intentions with the College, she ultimately ignored the policy to pursue her personal interests. She denied access to patients in need of her care unless they agreed to pay a fee. In doing so, she undermined a cornerstone of our public health care system, specifically universal access.

Mitigating factors in this case include the fact that Dr. Dockrill has admitted the misconduct and agreed to a joint submission on penalty, thus saving the time and expense of a contested hearing and sparing witnesses the obligation to testify. She has had no previous findings made against her by the College.

The Committee is satisfied that the penalty that has been jointly proposed is appropriate. Previous cases were presented to the Committee in which similar penalties were imposed for similar policy violations. We expect that the reprimand and suspension will serve to deter Dr. Dockrill from ignoring College policies in the future and provide general deterrence to the members who may be inclined to follow a similar path. It is hoped that Dr. Dockrill's rehabilitation will be enhanced by taking the College's ethics course. The joint proposal on penalty is reasonable. The overall penalty and the ongoing oversight of Dr. Dockrill's practice for a period of time should both protect the public and maintain public confidence in the profession's ability to self-govern.

ORDER

Therefore, the Committee ordered and directed that:

1. the Registrar suspend Dr. Dockrill's certificate of registration for a period of one (1) month, to commence within thirty (30) days of the date of this Order;

2. the Registrar impose the following terms, conditions and limitations on Dr. Dockrill's certificate of registration for an indefinite period of time:
 - a. Dr. Dockrill shall at her own expense, successfully complete College-facilitated instruction in Ethics no later than one (1) year from the date of the Committee's Order;
 - b. Dr. Dockrill shall administer block fees for uninsured services in a manner that is consistent with the College's policy on block fees and uninsured services and, without in any way limiting the generality of that requirement,
 - i. shall not discontinue seeing a patient or refuse to see a new patient because that person chooses not to pay a block fee; and
 - ii. shall not provide, or offer to provide, preferential services to patients who agree to pay a block fee.
 - c. Dr. Dockrill shall cooperate with inspections of her practice by representatives of the College for a period of nine (9) months after the completion of the suspension, solely for the purpose of ensuring compliance with this order. Such inspections shall be conducted with at least 24 hours notice being given to Dr. Dockrill before each visit. If any problems with Dr. Dockrill's block fee practices are discovered within the 9-month time period, the College is entitled to extend the monitoring inspections for a further six (6) months.
3. Dr. Dockrill attend before the panel to be reprimanded;
4. Dr. Dockrill shall pay the College its costs of this proceeding in the amount of \$3,650.00 payable by no later than September 1, 2012.

At the conclusion of the hearing, Dr. Dockrill waived her right to an appeal under subsection 70(1) of the Code and the Committee administered the public reprimand.

**Indexed as: Ontario (College of Physicians and Surgeons of Ontario) v.
Dockrill, 2015 ONCPSD 17**

**THE DISCIPLINE COMMITTEE OF THE COLLEGE
OF PHYSICIANS AND SURGEONS OF ONTARIO**

DR. P. POLDRE (CHAIR))	Hearing Date: April 2, 2015
DR. E. ATTIA (Ph.D.))	Decision Date: April 2, 2015
DR. F. SLIWIN)	Release of Written Reasons: April 24, 2015

B E T W E E N:

DR. KAREN GAYE DOCKRILL

(Moving Party)

- and -

**THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO
(Responding Party)**

**ORDER AND REASONS FOR ORDER
(On a Motion to Vary the Order of the Discipline Committee of June 18, 2012)**

THE MOTION

On April 2, 2015, the Discipline Committee heard a motion brought by Dr. Dockrill for an order varying a term, condition and limitation imposed on her certificate of registration. In particular, the member sought an order that the Registrar remove the indefinite term, condition, and limitation on her certificate of registration which had been imposed pursuant to paragraph 4(b) of the Order of the Discipline Committee dated June 18, 2012 (the “2012 Order”).

After considering the materials filed and the submissions of counsel, and taking into account the fact that the College consented to the relief sought, the Committee granted the Order as requested on April 2, 2015, with written reasons to follow.

BACKGROUND

On June 18, 2012, the Discipline Committee made a finding that Dr. Dockrill committed acts of professional misconduct:

1. in that she charged a fee for an undertaking to be available to provide services to patients;
2. in that she contravened a regulation made under the *Medicine Act, 1991*; and
3. in that she engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

Dr. Dockrill admitted the allegations.

On June 18, 2012, the Discipline Committee ordered, amongst other things, that:

4. The Registrar impose the following terms, conditions and limitations on Dr. Dockrill's certificate of registration for an indefinite period of time:

[...]

- b. Dr. Dockrill shall administer block fees for uninsured services in a manner that is consistent with the College's policy on block fees and uninsured services and, without in any way limiting the generality of that requirement,
 - i. shall not discontinue seeing a patient or refuse to see a new patient because that person chooses not to pay a block fee; and
 - ii. shall not provide, or offer to provide, preferential services to patients who agree to pay a block fee.

DECISION AND REASONS FOR DECISION

Rule 16.01 of the Rules of the Discipline Committee provides that a party may make a motion to the Discipline Committee to have an order varied, suspended, or cancelled, on the grounds of facts arising or discovered after the order was made. The onus is on Dr. Dockrill to show that a change of circumstances has occurred such that it is in the public interest for the terms, conditions and limitations to be removed. The standard of proof to be met is the civil standard of a balance of probabilities.

As previously indicated, the motion was brought on consent of the College.

All other terms of the original 2012 Order have been fulfilled and thus have already been removed from Dr. Dockrill's certificate of registration

Counsel for Dr. Dockrill underlined that paragraph 4(b) of the 2012 Order is a term with which all physicians must comply, and Dr. Dockrill will continue to comply with this term.

Dr. Dockrill states that the ongoing restriction on her certificate is causing hardship in the following manner:

1. Dr. Dockrill has had difficulty obtaining financing with banks due to the confusion about the restriction.
2. Patients may not realize that the restriction is not related to clinical judgment.
3. The restriction will impact Dr. Dockrill's ability to apply in another jurisdiction.
4. Dr. Dockrill would like to mentor other physicians but is limited in doing so by the restriction.

The Committee finds that Dr. Dockrill has had a change of circumstances since the 2012 Order. Dr. Dockrill's practice is now entirely referral and consultation based. She does not require any block fee payments.

Dr. Dockrill has met the burden of proof required to vary the existing conditions placed on her certificate of registration. Dr. Dockrill will be required to follow all College policies, as are all physicians. The original discipline finding will remain on the public register, as will the results of this motion. The Committee agrees with both the College and Dr. Dockrill that a change in circumstances has occurred and that it is in the public interest that the terms, conditions and limitations requested be removed from her certificate of registration.

ORDER

The Committee therefore ordered and directed on April 2, 2015:

1. that the Registrar remove the indefinite term, condition, and limitation on Dr. Dockrill's Certificate of Registration set out at paragraph 4(b) of the Order of the Discipline Committee of the College of Physicians and Surgeons of Ontario dated June 18, 2012.