

Indexed as: Buttoo, K. (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. KENNETH BUTTOO

PANEL MEMBERS:

S. DAVIS (Chair)
DR. F. SLIWIN
DR. E. ATTIA (Ph.D.)
DR. J. KIRSH
DR. W. KING

Hearing Date: February 1, 2013
Decision Date: February 1, 2013
Release of Written Reasons: February 25, 2013

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 February 1, 2013. 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. Buttoo committed an act of professional misconduct:

1. under paragraph 1(1)2 of Ontario Regulation 856/93 made under the *Medicine Act*, 1991, in that he has failed to maintain the standard of practise of the profession.

The Notice of Hearing also alleged that Dr. Buttoo is incompetent as defined by subsection 52(1) of the Health Professions Procedural Code, which is Schedule 2 to the *Regulated Health Professions Act*, 1991 (the “Code”), in that his care of patients has displayed a lack of knowledge, skill or judgment of a nature or to an extent that demonstrates that he is unfit to continue to practise or that his practice should be restricted.

RESPONSE TO THE ALLEGATIONS

Dr. Buttoo admitted the first allegation in the Notice of Hearing, that he committed an act of professional misconduct, in that he failed to maintain the standard of practice of the profession. The College did not proceed with the allegation of incompetence, which was withdrawn.

FACTS AND EVIDENCE

The following Statement of Agreed Facts and Admission was filed as an exhibit and presented to the Committee:

FACTS

Background

1. Dr. Kenneth Buttoo (“Dr. Buttoo”) is a specialist in internal medicine and clinical immunology. He received his Certificate of Independent Practice in 1983. He owns and acts as the medical director of a pulmonary function testing laboratory in Ajax, Ontario and two centres for sleep disorders, in Bowmanville, Ontario and in Whitby, Ontario.

Execution of March 10, 2009 Undertaking

2. In 2005 the College conducted an investigation into Dr. Buttoo’s practice in the area of respiratory assessment and care, after concerns were raised regarding his pulmonary function testing laboratory by a report made under the Independent Health Facilities Act, R.S.O. 1990, c. I.3. As a consequence, the College had concerns about Dr. Buttoo’s practice. Dr. Buttoo executed an undertaking to the College on March 10, 2009 by which he agreed that he would engage in an assessment of his practice within one year.

Practice Assessment and Investigation under Section 75(1)(a) of the Health Professions Procedural Code

3. Dr. Buttoo subsequently underwent a practice assessment as he had agreed to do. As a result of concerns arising from the deficiencies noted in the practice assessment, the Registrar of the College appointed investigators under section 75(1)(a) of the Health Professions Procedural Code (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act*, 1991, S.O. 1991, c. 18.

4. The College retained Dr. X as a Medical Inspector. Dr. X opined on Dr. Buttoo’s care and treatment of patients in a report delivered in June 2010, based on his review of twenty (20) charts, a site visit, an interview with Dr. Buttoo, and five patient visits observed in February 2010. As set out in Dr. X’s report, Dr. Buttoo fell below the standard of practice of the profession in the areas of allergy management and respiratory management. In particular, in the care of multiple patients in 2009-2010:

- (a) Dr. Buttoo inappropriately ordered and/or recommended testing that was unnecessary and/or not indicated;
- (b) Dr. Buttoo inappropriately failed to mention airways resistance findings in his interpretation of pulmonary function test results;
- (c) in circumstances in which Dr. Buttoo made a provisional diagnosis of asthma and then conducted testing which did not support the diagnosis (i.e. the patient's methacholine challenge proved to be negative, ruling out asthma), he inappropriately failed to address the provisional asthma diagnosis in his follow-up consultation letters to referring physicians and did not state that asthma had been ruled out;
- (d) Dr. Buttoo inappropriately presented "hyperresponsive airways" to referring physicians in terms that suggested it represented a final diagnosis of a patient's condition, when in fact no diagnosis had been reached on the basis of the testing conducted and the patient's symptoms remained undiagnosed;
- (e) Dr. Buttoo inappropriately prescribed medications that were unnecessary and not indicated, including:
 - (i) prescribing inhaled corticosteroids and anticholinergic medicine (e.g. inhalers Symbicort and Spiriva) for patients with respiratory symptoms, despite the fact that such medication was not indicated by the results of patients' pulmonary function test results and their negative methacholine challenges, and/or an appropriate assessment;
 - (ii) prescribing both Symbicort and Spiriva at the same time, including to patients for whom neither medication was indicated;
 - (iii) prescribing more than one medication at a time to patients in circumstances in which he had reached only a provisional diagnosis, for example treating both upper and lower airway symptoms at the same time, despite the fact that doing so would make it difficult to attribute improvement and reach a final diagnosis; and

(iv) failing to set out in patient charts the formulation, dose and frequency when prescribing medications such as Symbicort, Spiriva and Advair (for example by prescribing “Symbicort and Spiriva as needed”).

5. In addition, Dr. Buttoo’s sterilization techniques were inappropriate in two respects: he would wipe a reusable nasal speculum with an alcohol swab and place it in a sterilizing solution overnight, which was not appropriate; he also inappropriately used a non-disposable needle on his reflex hammer, which he would sterilize by wiping with an alcohol swab. After Dr. X’s report was delivered to the College, Dr. Buttoo reported to the College that he had ceased these practices, and that he now uses disposable specula and has substituted temperature sensation testing for the reflex hammer needle.

Admission

6. Dr. Buttoo admits the facts set out above, and admits that he failed to maintain the standard of practice of the profession in the manner set out above.

7. Dr. Buttoo further admits that this constitutes professional misconduct under paragraph 1(1)2 of Ontario Regulation 856/93 made under the *Medicine Act*, 1991, S.O. 1991, c. 30.

FINDINGS

The Committee accepted as true all of the facts set out in the Statement of Agreed Facts and Admission. Having regard to these facts, the Committee accepted Dr. Buttoo’s admission and found that he committed an act of professional misconduct, in that he has failed to maintain the standard of practice of the profession.

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 order. Its terms included a public reprimand, the imposition of multiple terms, conditions and limitations on Dr. Buttoo’s certificate of registration, and costs of a one-day hearing at the tariff rate.

The Committee was reminded of the high bar established by judicial authority for rejecting or altering a penalty which is being jointly submitted.

The Committee was also reminded of the principles which underlie an appropriate penalty when there has been a finding of professional misconduct. Paramount among these is the need for public protection. Others include the need to demonstrate the profession's willingness and ability to govern itself, specific deterrence through denunciation or sanction of the member's behavior and, by example, general deterrence to the profession as a whole. Where appropriate, rehabilitation of the member should also be considered.

The Committee was reminded further of the need for an individualized penalty, appropriate to both the act and the circumstances. Three prior decisions of the Discipline Committee were presented. While none of the specific cases was exactly similar to Dr. Buttoo's case, the prior decisions did establish an appropriate range of penalty where multiple acts of substandard clinical practice have been found. The Committee was satisfied that the penalty proposed in this matter falls within that range.

Aggravating factors included the fact that the concerns regarding Dr. Buttoo's practice were longstanding and the deficiencies in his practice were serious. Unnecessary tests and inappropriate sterilization techniques carry the risk of adverse consequences for patients. Mitigating factors included his admission and acceptance of responsibility for his misconduct, his agreement to the terms imposed having as their objective improvements in his practice, and the fact that he had no prior disciplinary record with the College.

The Committee was confident that the terms, conditions and limitations imposed on Dr. Buttoo's practice and the requirement for supervision will ensure protection of the public. Public denunciation through the reprimand should deter Dr. Buttoo from a repetition of the failings which brought him to the attention of the College. The ongoing mentorship of the supervisor will assist in rehabilitation. The awarding of costs for a single day of hearing is appropriate in the circumstances.

The Committee was satisfied that the proposed penalty will achieve the goals for which it was intended.

ORDER

Therefore, having stated the finding of professional misconduct in paragraph 1 of its written order of February 1, 2013, the Committee ordered and directed on the matter of penalty and costs that:

2. Dr. Buttoo attend before the panel to be reprimanded.
3. the Registrar impose the following terms, conditions and limitations on Dr. Buttoo's Certificate of Registration:
 - (a) For an indefinite period of time, Dr. Buttoo shall not prescribe inhaled corticosteroids and/or anticholinergic medication for a patient unless he or she has a diagnosis of asthma, and in any case Dr. Buttoo shall not prescribe such medication in cases in which the patient has had a negative methacholine challenge.
 - (b) While Dr. Buttoo is subject to the term, condition and limitation set out at paragraph 3(a), Dr. Buttoo shall maintain a log (the "Log") listing all patients to whom he has prescribed inhaled corticosteroids and/or anticholinergic medication, their OHIP number, the date on which he saw the patient, whether the patient has a diagnosis of asthma, whether a methacholine challenge has been conducted, and, if so, whether the challenge was positive or negative. Dr. Buttoo shall maintain the original Log and shall send a copy of the Log to the College on a quarterly basis until completion of the re-assessment referred to below in paragraph 3(g), and thereafter shall produce the Log at any time upon request of the College.

- (c) Dr. Buttoo shall, within thirty (30) days from the date of this Order, retain a College-approved clinical supervisor, who will sign an undertaking in the form attached [to the Order] as Schedule “A” (the “Clinical Supervisor”). For a period of at least twelve (12) months commencing on the day the Clinical Supervisor is retained, Dr. Buttoo may practice only under the supervision of the Clinical Supervisor, who will meet with Dr. Buttoo on a monthly basis for the duration of the supervision, except that after three (3) months of supervision, the frequency of meetings may be decreased to every two months if the Clinical Supervisor is of the view that this is appropriate and it has been pre-approved by the College.
- (d) For the duration of the clinical supervision required by paragraph 3(c), Dr. Buttoo shall, within twenty (20) days of receiving notice that his Clinical Supervisor is unwilling or unable to continue to fulfill the terms of his or her undertaking attached [to the Order] as Schedule “A”, obtain an executed undertaking from a similarly qualified person who is acceptable to the College and ensure that it is delivered to the College within that time. If Dr. Buttoo is unable to obtain a Clinical Supervisor on the terms set out under paragraphs 3(c) and 3(d) to this Order, he shall cease to practice until such time as he has obtained a Clinical Supervisor acceptable to the College, and the fact that he has ceased to practice shall be a term, condition and limitation on his Certificate of Registration until that time.
- (e) Dr. Buttoo shall abide by all recommendations of his Clinical Supervisor with respect to practice improvements and education.
- (f) Dr. Buttoo shall consent to the disclosure by his Clinical Supervisor to the College, and by the College to his Clinical Supervisor, of all information the Clinical Supervisor or the College deems necessary or desirable in order to fulfill the Clinical Supervisor’s undertaking and to monitor Dr. Buttoo’s compliance with the Order. This shall include, without limitation,

providing the Clinical Supervisor with the reports of any assessments of Dr. Buttoo's practice in the College's possession.

- (g) Approximately twelve (12) months after the completion of the period of supervision required by paragraph 3(c), Dr. Buttoo shall undergo a re-assessment of his clinical practice by a College-appointed assessor (the "Assessor(s)"). This re-assessment will include determining whether Dr. Buttoo meets the standard of practice of the profession and whether Dr. Buttoo is in compliance with this Order. The Assessor(s) shall make recommendations regarding Dr. Buttoo's practice and shall report the results of the re-assessment to the College.
- (h) Dr. Buttoo shall consent to the disclosure to the Assessor(s) of the reports of the Clinical Supervisor arising from the supervision, and shall consent to the sharing of all information among the Clinical Supervisor, the Assessor(s) and the College, as any of them deem necessary or desirable in order to fulfill their respective obligations.
- (i) For an indefinite period of time, Dr. Buttoo shall inform the College of each and every location where he practices including, but not limited to hospitals, clinics, and offices, in any jurisdiction (collectively, his "Practice Location(s)"), within fifteen (15) days of this Order, and shall inform the College of any and all new Practice Locations within 15 days of commencing practice at that location.
- (j) For an indefinite period of time, Dr. Buttoo shall consent to the College making appropriate enquiries of the Ontario Health Insurance Plan and/or any person or institution who may have relevant information, in order for the College to monitor his compliance with this Order.
- (k) For an indefinite period of time, Dr. Buttoo shall submit to, and not interfere with, unannounced inspections of his Practice Location(s) and

patient records by a College representative for the purposes of monitoring his compliance with this Order.

- (1) Dr. Buttoo shall be responsible for any and all costs associated with implementing the terms of this Order.

4. Dr. Buttoo pay to the College costs in the amount of \$3,650 within thirty (30) days of the date of this Order.

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