

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Robert John Ghali, this is notice that the Discipline Committee ordered a ban on the publication, including broadcasting, of the names of patients, or any information that would identify patients, referred to orally or in the exhibits filed at the hearing, 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: Ontario (College of Physicians and Surgeons of Ontario) v. Ghali, 2020 ONCPSD 17

**DISCIPLINE COMMITTEE
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**
which is Schedule 2 of the ***Regulated Health Professions Act, 1991***,
S.O. 1991, c. 18, as amended.

B E T W E E N:

COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. ROBERT JOHN GHALI

PANEL MEMBERS:
DR. ERIC STANTON (CHAIR)
DR. ANDREW TURNER
MR. J.P. MALETTE, Q.C.
MS ELLEN MARY MILLS
DR. KRISTEN HALLETT

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS CAROLYN SILVER
MS PENNY NG

COUNSEL FOR DR. GHALI:

MS KEARY GRACE
MR. HAKIM KASSAM

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MS JENNIFER MCALEER

Hearing Date: February 19, 2020
Decision Date: February 19, 2020
Release of Reasons Date: April 15, 2020

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 February 19, 2020. At the conclusion of the hearing, the Committee released a written order stating its finding that the member committed an act of professional misconduct, and setting out its penalty and costs order with written reasons to follow.

THE ALLEGATION

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

1. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”), in that he has engaged in 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.

FACTS AND ADMISSION (LIABILITY)

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

PART I - FACTS

A. Background

1. Dr. Robert John Ghali (“Dr. Ghali”) is a 50-year-old family physician practising in Kitchener. He received his first certificate of registration authorizing independent practice from the College of Physicians and Surgeons of Ontario (the “College”) in 1998.

B. Capacity Investigations

(i) *The College's First Incapacity Investigation - 2002*

2. In January of 2002, the College received information regarding Dr. Ghali from a pharmacist. The pharmacist reported her understanding that: Dr. Ghali had written 13 prescriptions in the last 11 months for injectable Demerol; that he wrote on the prescriptions that they were for "office use/home visit use"; but that Dr. Ghali was actually using the prescriptions for his own personal use. The pharmacist also reported her understanding that Dr. Ghali had told another pharmacist that he was using the injectable Demerol for palliative care patients, but that pharmacist had learned that Dr. Ghali was no longer working at the address he had provided and was not part of the palliative care network. A capacity investigation was initiated by the College.

3. On June 28, 2002, Dr. Ghali signed an Undertaking with the College that he would not practise medicine in any jurisdiction unless and until he provided 45 days' notice to the College, his return to work was in accordance with an executed Physician Health Program ("PHP") monitoring contract, and the College Registrar approved his return to practice.

4. On November 4, 2002, Dr. Ghali signed an amendment to his PHP contract. The College accepted Dr. Ghali's amended PHP contract in resolution of the College's incapacity investigation.

(ii) *The College's Second Incapacity Investigation - 2008*

5. In September of 2008, the College received information from a pharmacist that Dr. Ghali had been filling prescriptions for meperidine injectables for office use with multiple pharmacies, that he had told pharmacy staff that the injectables were being used in a palliative setting for nursing home patients, and that when a pharmacist

confronted Dr. Ghali about one such prescription, Dr. Ghali admitted that he was using the medication for personal use. A capacity investigation was initiated by the College.

6. On November 5, 2008, Dr. Ghali signed an Undertaking with the College pursuant to which he voluntarily relinquished his prescribing privileges with respect to narcotic drugs, narcotic preparations, and controlled drugs ("Dr. Ghali's November 5, 2008 Undertaking").

7. On January 11, 2009, Dr. Ghali signed a Substance Dependence Monitoring Contract with the PHP. The College accepted Dr. Ghali's PHP contract as a resolution of the incapacity investigation.

(iii) Dr. Ghali's June 4, 2014 Undertaking

On June 4, 2014, Dr. Ghali signed an Undertaking with the College that superseded Dr. Ghali's November 5, 2008 Undertaking. Pursuant to the Undertaking signed by Dr. Ghali on June 4, 2014, Dr. Ghali was required to, among other things:

- (a) Renew his current monitoring contract with the PHP for an additional year to end in January 2016;
- (b) Keep a log of all prescriptions for controlled substances;
- (c) Practice under the guidance of a clinical supervisor for one year; and
- (d) Submit to a reassessment of his prescribing approximately one year after the completion of his clinical supervision.

A copy of Dr. Ghali's June 4, 2014 Undertaking is attached at Tab A to the Agreed Statement of Facts and Admission (Liability) ("Dr. Ghali's June 4, 2014 Undertaking").

8. On January 20, 2016, the PHP endorsed the completion of Dr. Ghali's monitoring contract.

(iv) *Initiating Information and College’s Third Incapacity Investigation – September 2017*

9. On September 11, 2017, the College received information regarding Dr. Ghali from a physician who worked in a group practice with Dr. Ghali. That physician reported his belief that Dr. Ghali was writing prescriptions for hydromorphone for personal use using the signature of another physician, Dr. A, and that he understood that Dr. Ghali had filled 50 prescriptions for hydromorphone under Dr. A’s name since November 2016. The physician also provided a copy of a “forged prescription” and a copy of Dr. Ghali’s Patient Medical History Report from the Pharmacy on King, St. Abraham Pharmacy Inc., Kitchener (the “Pharmacy on King”).

10. On the basis of the information reported, among other things, the Inquiries, Complaints and Reports Committee (the “ICRC”) of the College approved the appointment of investigators under section 75(1)(a) of the Health Professions Procedural Code in order to conduct an investigation into Dr. Ghali’s conduct, including his self-prescribing.

C. Registrar’s Investigation

(i) *Information from Dr. B*

11. On December 20, 2017, the College’s Advisory Services received a call from Dr. B. Dr. B reported that he was a retired physician who periodically provided locum coverage for Dr. Ghali. Dr. B further reported that, early in the fall of 2017, he had been contacted by a pharmacy to verify a narcotics prescription he allegedly wrote for Dr. Ghali. Dr. B advised that he did not write the prescription, he has never been in a physician-patient relationship with Dr. Ghali, and he has never prescribed medication for Dr. Ghali.

(ii) Dr. Ghali's Initial Response to Investigation

12. In March of 2018, a College investigator spoke with Dr. Ghali's counsel and asked if Dr. Ghali would agree to advise if he had written prescriptions in the name of any other physicians and/or had prescriptions filled at any pharmacies other than the Pharmacy on King. Dr. Ghali's counsel provided Dr. Ghali's written response that he only wrote scripts in Dr. A's name and he had scripts filled at one other pharmacy: Walmart Pharmacy, 336 Farmers Market Rd., Waterloo, Ontario (the "Walmart Pharmacy").

(iii) Information from Dr. A

13. Dr. A advised that:

- a) he provided locum coverage for Dr. Ghali in 2016;
- b) he has never been engaged in a physician-patient relationship with Dr. Ghali; and
- c) he has never written a prescription for Dr. Ghali.

(iv) Further Information from Dr. Ghali

14. On May 10, 2018, after being provided with a copy of his Patient Medical History Report from the Pharmacy on King, Dr. Ghali acknowledged that he had previously advised the College that he had only written prescriptions in Dr. A's name but that after receiving the College's letter and reviewing the prescription list, he recalled that he had also written prescriptions in Dr. B's name.

D. Disgraceful, Dishonourable or Unprofessional Conduct

15. Between December 23, 2015 and September 12, 2016, without Dr. B's knowledge or consent, Dr. Ghali used Dr. B's name and CPSO number to issue 18 prescriptions to

himself for Ratio-Oxycocet and Dilaudid/Hydromorphone. These prescriptions were filled by Dr. Ghali.

16. Between October 6, 2016 and September 8, 2017, without Dr. A's knowledge or consent, Dr. Ghali used Dr. A's name and CPSO number to issue 71 prescriptions to himself for Hydromorphone. These prescriptions were filled by Dr. Ghali. A summary of these prescriptions written by Dr. Ghali is attached at Tab B to the Agreed Statement of Facts and Admission (Liability).

17. On July 23, 2017, a person from the Walmart Pharmacy sent a letter addressed to Dr. A inquiring about a prescription that Dr. Ghali had written to himself using Dr. A's name. The letter summarized the details of four previous prescriptions that Dr. Ghali had written for himself using Dr. A's name and requested information about dosage and release dates for the latest (July 23, 2017) prescription. Dr. Ghali wrote a responding letter to the Walmart Pharmacy, dated July 24, 2017, purporting to be Dr. A and using Dr. A's name and signature.

E. Other Information

(a) *Dr. Ghali's December 8, 2017 Undertaking*

18. On December 8, 2017, Dr. Ghali entered into an Undertaking with the College, pursuant to which he agreed to cease to practice medicine (the "December 8, 2017 Undertaking").

19. On February 21, 2018, Dr. Ghali signed a Moderate to Severe Substance Use Disorder Monitoring Contract with the PHP. On June 21, 2018, Dr. Ghali's Clinical Coordinator at the PHP informed the College that Dr. Ghali's Addiction Medicine Physician approved Dr. Ghali's return to practice with a gradual return to work up to a

maximum of 20 hours a week. Dr. Ghali's Addiction Medicine Physician also recommended that Dr. Ghali have his narcotic license restricted.

(b) Dr. Ghali's November 30, 2018 Undertakings

20. On November 30, 2018, Dr. Ghali entered into two Undertakings with the College, which replaced and superseded the December 8, 2017 Undertaking. First, Dr. Ghali entered into an Undertaking that he will not issue new prescriptions or renew existing prescriptions for narcotics, controlled drugs, or benzodiazepines and other targeted substances. A copy of this Undertaking, dated November 30, 2018, is attached at Tab C to the Agreed Statement of Facts and Admission (Liability).

21. Second, Dr. Ghali entered into an Undertaking that he will remain a participant in his PHP and that he will abide by the terms of his current PHP Monitoring Contract, effective February 21, 2018. A copy of this Undertaking, dated November 30, 2018, is attached at Tab D to the Agreed Statement of Facts and Admission (Liability).

(c) Dr. Ghali's January 29, 2020 Undertaking

22. On January 29, 2020, Dr. Ghali entered into an Undertaking with the College that requires Dr. Ghali, for as long as he holds a Certificate of Registration from the College, to remain a participant in the PHP and to abide by the terms of an active monitoring contract with the PHP. A copy of this Undertaking dated January 29, 2020, is attached at Tab E to the Agreed Statement of Facts and Admission (Liability).

PART II – ADMISSION

23. Dr. Ghali admits the facts at paragraphs 1 to 22 above, and admits that, based on these facts, he engaged in professional misconduct under paragraph 1(1)33 of O Reg. 856/93 made under the *Medicine Act, 1991*, in that he has engaged in 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.

FINDING

The Committee accepted as correct all of the facts set out in the Agreed Statement of Facts and Admission (Liability). Having regard to these facts, the Committee accepted Dr. Ghali's admission and found that he committed an act of professional misconduct under paragraph 1(1)33 of O. Reg. 856/93, in that he has engaged in 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

FACTS ON PENALTY

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

1. Dr. Ghali has no prior history with the Discipline Committee of the College.
2. Dr. Ghali is currently subject to a Moderate to Severe Substance Use Disorder Monitoring Contract (effective February 21, 2018 to February 21, 2023) with the Physician Health Program ("PHP") of the Ontario Medical Association ("PHP Monitoring Contract"). Pursuant to the PHP Monitoring Contract, among other things:

- (i) Dr. Ghali authorizes and provides his consent to the PHP to provide progress and advocacy reports on his behalf to the College during the duration of his PHP Monitoring Contract;
- (ii) Dr. Ghali is required to maintain contact with, and respond promptly to any requests from, the PHP;
- (iii) Dr. Ghali is required to attend scheduled appointments with his addiction medicine physician, Dr. Gary Veenman;
- (iv) Dr. Ghali has enlisted “workplace monitors” to assist in monitoring Dr. Ghali’s behaviour in the workplace;
- (v) Dr. Ghali authorizes and provides his consent to Dr. Veenman, Dr. Ghali’s workplace monitors, Dr. Ghali’s family doctor, and other individuals involved in Dr. Ghali’s care, to contact the Medical Director of the PHP at any time if he/she has any concerns during the duration of the PHP Monitoring Contract;
- (vi) Dr. Ghali is required to regularly attend a mutual help group and a Caduceus Group;
- (vii) Dr. Ghali is required to abstain completely from the consumption of alcohol and from the use of any other unauthorized substances of abuse; and
- (viii) Dr. Ghali agrees to participate in random drug and alcohol screening.

3. Pursuant to his PHP Monitoring Contract, Dr. Ghali's Clinical Coordinator at the PHP, Jordanna Graves, prepared an annual report to the College dated March 20, 2019. In this report, Ms. Graves noted that Dr. Ghali "continues to be very compliant with his PHP contract and maintains a comprehensive recovery program". Ms. Graves also writes that she has consistently noted that Dr. Ghali "appears well in regards to his emotional stability, attitude, insight and progress in recovery".

4. In a letter dated November 8, 2019, Dr. Veenman provided an update on Dr. Ghali's progress in his recovery. In his November 8, 2019 letter, Dr. Veenman notes that Dr. Ghali:

- (i) has a substance free date of September 11, 2017;
- (ii) has a sponsor, a home group, and has worked the steps of recovery with his sponsor;
- (iii) attends Caduceus regularly and participates actively in the group;
- (iv) has a PHP contract where he is monitored with urine monitoring and regular meetings with his case worker;
- (v) is monitored by meeting with Dr. Veenman with office visits every four weeks;
- (vi) is following all treatment recommendations;
- (vii) is observed to be better in terms of following his recovery program than before;

(viii) is doing what he is told; and

(ix) is in a much better place in his spiritual recovery.

5. Dr. Veenman concludes that he is “quite happy” with Dr. Ghali’s recovery program and his progression in the program.

6. On November 8, 2019, Ms. Graves wrote a letter to Dr. Ghali’s counsel regarding Dr. Ghali’s stated intention to continue to be monitored by the PHP as long as he continues to remain in clinical practice. In her letter, Ms. Graves confirmed that the PHP “would be willing to continue to offer Dr. Ghali enrollment as long as he continues to meet the criteria for PHP monitoring.”

7. As set out in the Agreed Statement of Facts and Admission, Dr. Ghali has entered into an Undertaking with the College dated January 29, 2020 requiring Dr. Ghali to remain enrolled as a participant in the PHP and to abide by the terms of an active monitoring contract with the PHP for as long as he holds a Certificate of Registration with the College.

JOINT SUBMISSION OF COUNSEL ON PENALTY

Counsel for the College and counsel for Dr. Ghali made a joint submission as to an appropriate penalty and costs order.

Although the Committee has discretion to accept or reject a joint submission on penalty, the law provides that the Committee should not depart from a joint submission,

unless the proposed penalty would bring the administration of justice into disrepute, or is otherwise not in the public interest (*R. v. Anthony-Cook*, 2016 SCC 43).

The joint submission included a reprimand, a six month suspension of Dr. Ghali's certificate of registration, terms, conditions, and limitations on Dr. Ghali's certificate of registration, and costs of \$6,000.

The Committee considered the joint submission as to penalty as proposed by counsel.

Penalty principles

Principles applicable to penalty determination include public protection; maintaining the integrity of the profession and public confidence in the College's ability to regulate the profession in the public interest; specific deterrence; general deterrence; and where applicable or appropriate, rehabilitation. Other principles include denunciation of the misconduct, and proportionality.

Aggravating Factors

The Committee noted that Dr. Ghali's misconduct in falsifying and forging prescriptions for narcotics for his personal use was not an isolated incident. It involved repeated episodes occurring over a 15 year period from 2002 to 2017.

The College's first incapacity investigation regarding Dr. Ghali, in 2002, related to 13 prescriptions for injectable Demerol, which Dr. Ghali asserted were to be used for office use/home visits, including for palliative patients. That investigation resulted in a Physician Health Program (PHP) monitoring contract as ordered by the College.

Six years later, a second incapacity investigation resulted from information provided by a pharmacist that Dr. Ghali was filing prescriptions for injectable Meperidine with

multiple pharmacies, allegedly for palliative care nursing home patients. When confronted by a pharmacist, he admitted to obtaining the medication for personal use.

Dr. Ghali subsequently signed an undertaking with the College to voluntarily relinquish prescribing privileges with respect to narcotic drugs and controlled drugs.

In September 2017, a third incapacity investigation was launched in response to a complaint from Dr. A that Dr Ghali had forged Dr. A's signature on 50 prescriptions for hydromorphone for Dr. Ghali's own use. In December 2017, a similar complaint was received from Dr. B, that included 18 prescriptions written between October 2016 and September 2017.

A further aggravating factor was Dr. Ghali's obstruction of the investigation by not initially being up front about forging Dr. B's signature and CPSO number on prescriptions. It was only after reviewing the prescription list provided by the College that Dr. Ghali admitted to recalling having written such prescriptions, despite having done so 18 times.

Mitigating Factors

The Committee noted that in admitting that he engaged in professional misconduct, in that he has engaged in 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. Ghali showed some insight and accepted responsibility for his actions. He has been demonstrating progress in his rehabilitation.

His admission reduced time, commitment and cost to the College, and avoided the need to call witnesses.

Prior Cases

Although prior Committee decisions are not binding as precedent, the Committee has accepted as a principle of fairness that generally, like cases should be treated alike.

The Committee reviewed two such cases jointly submitted by counsel:

1. *CPSO vs. Guirguis* (2018) involved an act of professional misconduct on the basis of disgraceful, dishonorable or unprofessional conduct. The Committee found that Dr. Guirguis had forged Percocet and other prescriptions for himself using the registration numbers and signatures of two colleagues. He was not forthcoming in admitting to using the second physician's signature and registration number.

The case was dissimilar to the current one, in that Dr. Guirguis also prescribed for family members and billed OHIP for that, without having supporting medical records. It was also dissimilar in that an assessor found that Dr. Guirguis did not have any disorder related to substance use or substance abuse.

The penalty order for Dr. Guirguis was a six month suspension, terms, conditions, and limitations on his certificate of registration, a medical ethics course, routine drug screening and a reprimand. The Committee ordered Dr. Guirguis to pay costs of \$5,500.00.

2. *CPSO v. Gill* (2016) involved a recurring pattern of acts to obtain narcotics and controlled substances for personal use over a five year period. Dr. Gill was found to have written prescriptions for family members to obtain medications then used by Dr. Gill himself, to have forged prescriptions of three other physicians and to have falsified signatures and registration numbers, and to have solicited

prescriptions for himself from colleagues. This continued even after a suspension of Dr. Gill's certificate of registration on December 22, 2014.

Dr. Gill was found guilty of one count of fraud and one count of uttering a forged document in proceedings in the Ontario Court of Justice.

The Committee found that Dr. Gill had committed an act of professional misconduct, had been found guilty of an offense relevant to his suitability to practise, and had contravened a term, condition, and limitation on his certificate of registration.

The penalty for Dr. Gill was a five month suspension of his certificate of registration, and terms, conditions, and limitations were imposed on his certificate relating to his prescribing privileges. Dr. Gill was ordered to pay costs of \$5,000.

Dr. Gill's case was similar to the current one, in that it involved repeated fraudulent prescriptions written over an extended period of years, including forged signatures and registration numbers of other physicians. It was also similar in that Dr. Gill had been treated for alcohol addiction and that he had entered into the PHP and was participating successfully in it. Dr. Gill's case, however, differed in that there was a criminal finding against him, which is not true of Dr. Ghali.

CONCLUSION

In assessing the order for penalty proposed by the parties, the Committee was satisfied that it included an appropriate balance of public protection, specific and general deterrence, and rehabilitation of the member, while expressing the profession's abhorrence of Dr. Ghali's misconduct, and instilling public confidence in the profession

and in the College's ability to regulate the profession in the public interest. The imposition of a six month suspension is in keeping with the similar cases reviewed. It achieves specific deterrence and sends a strong message to the profession concerning the seriousness of Dr. Ghali's misconduct, by way of general deterrence.

While patients and the public were not directly harmed by Dr. Ghali's misconduct, additional protection is provided by Dr. Ghali having entered into a undertaking with the College dated January 29, 2020, requiring him to remain enrolled as a participant in the PHP and to abide by the terms of an active monitoring contract with the PHP for as long as he holds a Certificate of Registration with the College. This PHP involvement will assist as well in his professional rehabilitation.

The public reprimand, by expressing a strong condemnation of Dr. Ghali's misconduct, will serve as denunciation and will have a deterrent effect on Dr. Ghali's future conduct.

In regards to costs, the Committee ordered Dr. Ghali to pay \$6,000.00 to the College for the cost of a half-day hearing, as agreed upon by the parties.

ORDER

The Committee stated its findings in paragraph 1 of its written order of February 19, 2020. In that order, the Committee ordered and directed on the matter of penalty and costs:

2. Dr. Ghali to attend before the panel to be reprimanded.
3. The Registrar to suspend Dr. Ghali's certificate of registration for a period of six (6) months, commencing at 12:01 a.m. on February 20, 2020.

4. The Registrar to place the following terms, conditions and limitations on Dr. Ghali's certificate of registration, effective immediately.

(i) Dr. Ghali shall comply with the College Policy "Closing a Medical Practice":

5. Dr. Ghali to pay costs to the College in the amount of \$6,000.00 within sixty (60) days from the date of the Order.

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

TEXT of PUBLIC REPRIMAND
Delivered February 19, 2020
in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
and
DR. ROBERT JOHN GHALI

Dr. Ghali:

While we understand that your serious misconduct did not put the public in harm's way, it did tarnish the reputation of the profession and undermined its integrity.

While we understand the role addiction played in your long-term and repeated misconduct, it does not in any way excuse it. You engaged in a pattern of deceit and dishonesty by forging your colleagues' signatures on narcotic prescriptions for personal use. You also forged a letter to Walmart under Dr. A's signature.

In addition, you obstructed the College's investigation by not admitting initially that you forged Dr. B's signature on 18 narcotic prescriptions. This type of misconduct cannot and will not be tolerated by the profession or the public.

We are, however, encouraged by your progress to date in your rehabilitation journey and we sincerely hope that this will continue and that you will not appear before this Committee again.

This is not an official transcript