

**Indexed as: Ontario (College of Physicians and Surgeons of Ontario) v. Drone.
2018 ONCPSD 38**

**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. TROY CHRISTIE DRONE

PANEL MEMBERS:
MR. P. GIROUX (CHAIR)
DR. M. GABEL
DR. P. HENDRY
MR. P. PIELSTICKER
DR. M. DAVIE

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS R. AINSWORTH

COUNSEL FOR DR. DRONE:

MR. P. LEIGH
MS K. A. McKENDRY

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MS Z. LEVY

Hearing Date: June 25, 2018
Decision Date: June 25, 2018
Release of Written Reasons: July 25, 2018

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 25, 2018. 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 the Committee’s penalty and costs order with written reasons to follow.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Troy Christie Drone committed an act of professional misconduct:

1. 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; and
2. under paragraph 1(1)34 of Ontario Regulation 856/93, made under the Medicine Act, 1991 ("O. Reg. 856/93"), in that he has engaged in conduct unbecoming a physician.

RESPONSE TO THE ALLEGATION

Dr. Drone admitted to allegation 1 in the Notice of Hearing, 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. Counsel for the College withdrew allegation 2.

THE FACTS

The following facts were set out in the Statement of Facts and Admission on Liability, which was filed as an exhibit at the hearing and presented to the Committee:

BACKGROUND

1. Dr. Drone is a 50-year-old physician who currently practices as an anesthetist in Kitchener, Ontario. He received his certificate of registration authorizing independent practice in Ontario in 1994.
2. At the time of the incidents described below, Dr. Drone was a member of the Ontario Medical Association (“OMA”).
3. The OMA is the association that represents the political and economic interests of physicians in Ontario. It is the exclusive representative of Ontario physicians in negotiations with the Province of Ontario.
4. On July 11 2016, the OMA and the Ontario government reached a tentative agreement dealing with government funding for physician services and changes to the physician fee schedule, among other issues. This tentative Physician Services Agreement (“tPSA”) was to have a term of four years, and would have replaced a previous agreement, which terminated in 2014.
5. The tPSA was endorsed by the OMA’s Board, including by Dr. Virginia Walley, who was President of the OMA at the time. The OMA promoted the agreement in the weeks leading up to a General Meeting, which took place on August 14, 2016.
6. On August 14, 2016, the OMA membership voted to reject the tPSA.

EMAILS OF JUNE AND AUGUST, 2016

7. Between June 21 and August 11, 2016, Dr. Drone sent a series of emails in response to the OMA’s support of the tPSA. These emails were sent to Dr. Walley’s personal email address, as well as to an email address used by OMA staff, including Dr. Walley, to communicate publicly about the tPSA.

8. The following are excerpts from the emails:

June 21, 2016: "... do your paid job and stop letting this horrible government fuck us around!!! Enough already!! Listen to everyone!! Holy fuck. For fucks sake??? Fuck!!!"

June 28, 2016 "... You suck!!! SUCK!!!"

August 1, 2016 "Dr. Walley, you are a cunt. Crash and burn as you deserve to do!! ... Sincerely, FUCK YOU and the OMA!!! Dr. Drone"

August 10, 2016 "Fuck you!"

August 11, 2016: 6:06 pm: "Fuck-off Virginia"
 6:08 pm: "Fuck-off!"
 6:09 pm: "Fuck-off!"

The emails sent by Dr. Drone are attached at Tab 1 [to the Agreed Statement of Facts and Admission on Liability].

9. The emails sent by Dr. Drone were viewed by Dr. Walley as well as OMA staff who monitored the tPSA email address.

ADMISSION

10. Dr. Drone admits the facts set out above, and admits that the conduct described constitutes an act of professional misconduct in that he engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all of the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional contrary to section 1(1)33 of O. Reg. 856/93 made under the *Medicine Act*, 1991.

FINDING

The Committee accepted as true all of the facts set out in the Statements of Facts and Admission on Liability. Having regard to these facts, the Committee accepted Dr. Drone's admission and

found that he committed an act of 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.

AGREED STATEMENT OF FACTS ON PENALTY

The following Agreed Statement of Facts on Penalty was filed as an Exhibit at the hearing:

1. Dr. Drone has no prior disciplinary history before the Discipline Committee.
2. Dr. Drone provided two responses during the investigation in which he apologized to Dr. Walley and acknowledged that his conduct was unacceptable. Dr. Drone's responses are attached at Tab 1 [to the Agreed Statement of Facts on Penalty].
3. Dr. Drone undertook Professional Communication coaching with Dawn Martin, Communications Specialist and Educational Consultant, to develop skills related to professional communication in challenging scenarios, specifically with colleagues. Dr. Drone and Dr. Martin met on six occasions between July 2017 and June 2018. Dr. Martin's final report, dated June 10, 2018, is attached at Tab 2 [to the Agreed Statement of Facts on Penalty].
4. In October 2017, Dr. Drone successfully completed the PROBE Ethics and Boundaries Course for physicians. The PROBE Evaluation and Assessment Report for Dr. Drone is attached at Tab 3 [to the Agreed Statement of Facts on Penalty].

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for Dr. Drone made a joint submission as to an appropriate penalty and costs order. The jointly proposed order included a reprimand, a one-month suspension of Dr. Drone's certificate of registration, and costs payable to the College by Dr. Drone in the amount of \$6,000.00.

It is a matter of common law as laid out most recently in *R. v Anthony-Cook*, 2016 SCC 43, that when adversarial parties make a joint submission as to penalty, such a penalty should be accepted, unless to do so would bring the administration of justice into disrepute, or would otherwise be contrary to the public interest.

Also, in determining the appropriateness of the proposed penalty, the Committee was guided by the relevant penalty principles. The penalty must serve to maintain the reputation and integrity of the profession and public confidence in the College's ability to regulate the profession in the public interest, as well as serve as a specific deterrent for the member and a general deterrent for the profession. It must serve to protect the public. Where appropriate, the penalty should also serve to rehabilitate the member.

In our democratic society, people are free to express themselves and their opinions, but the College policies with respect to the members' behaviour in professional settings demand a certain level of civility and decorum in these expressions. Respectful debate and criticism are welcome. Targeted, demeaning, gendered slurs are not.

In civil society, it should not be necessary to outline for professionals what behaviour is expected of them, regardless of how heated a disagreement may be. In an effort to protect the public and educate its members, the College published and circulated a policy statement in 2007 titled: "Physician Behaviour in the Professional Environment." Bullying behaviour has a detrimental effect on the public's trust in the profession. It reflects poorly on Dr. Drone and the profession as whole; it cannot be tolerated, and must lead to serious sanctions.

The Committee considered the aggravating and mitigating factors with respect to penalty in this case.

Aggravating Factors

Dr. Drone deliberately, on several occasions, wrote and sent repugnant tirades with abusive language to two different email addresses for the OMA president, exposing not just the intended

recipient to his vitriol, but also her staff. No one deserves to be on the receiving end of this conduct. Moreover, this was not an isolated one time action. In fact, Dr. Drone repeatedly sent abusive emails on seven occasions over the course of a month to two different email addresses. Dr. Drone should have known that his behaviour was entirely unacceptable and would be seriously sanctioned.

Mitigating Factors

This is Dr. Drone's first appearance before the Discipline Committee and he did accept responsibility for his actions and cooperated with the College's investigation. By agreeing to a joint statement of the facts, admitting his misconduct, and agreeing to a joint submission on penalty, Dr. Drone saved the College time and expense of a contested hearing, and spared the witnesses from the inconvenience of having to testify at the hearing.

Case Law

The parties presented a brief of authorities illustrating some similar past decisions of the Discipline Committee: *CPSO v. Koren* (2003), *CPSO v. Amer* (2011), *CPSO v. Wright* (2018) and *CPSO v. Lad* (2005). No two cases are alike in their specifics but in general, like cases should be treated alike.

Some cases presented to the Committee have included educational components in their penalties. The Committee noted that Dr. Drone did, on his own volition, complete instruction in Professional Communication and the PROBE Ethics and Boundaries course prior to this discipline hearing. The Committee finds that having completed these educational components, Dr. Drone now has learned from his misconduct and the penalty in this case does not require an educational component to be consistent with prior cases.

Conclusion

In light of the case law and the factors set out above, the Committee found that the penalty of a reprimand and a one-month suspension of Dr. Drone's certificate of registration is reasonable and fair in the circumstances of this case. The public reprimand will serve to express publicly the Committee's abhorrence of Dr. Drone's misconduct and will send a strong message to the membership that such behaviour will not be tolerated. A one-month suspension, which is a significant penalty, will also serve as a specific deterrent to Dr. Drone and a general deterrent to the membership.

Costs

Pursuant to the *Regulated Health Professions Act, 1991*, S.O. 1991 c. 18, the Committee has the jurisdiction, in appropriate cases, to award costs. The Committee considered this to be such a case. The current daily tariff rate for a one-day hearing is \$10,180.00. The parties have agreed to a costs order in the amount of \$6,000.00, for a half day hearing and the time required for the Committee to review the relevant documents provided by the parties prior to the hearing. The Committee accepts this as a reasonable costs order.

ORDER

The Committee stated its finding of professional misconduct in paragraph 1 of its written order of June 25, 2018. In that order, the Committee ordered and directed on the matter of penalty and costs that:

2. the Registrar suspend Dr. Drone's certificate of registration for a period of one (1) month, commencing at 12:01 a.m. on July 2, 2018.
3. Dr. Drone appear before the panel to be reprimanded.
4. Dr. Drone pay to the College its costs of this proceeding in the amount of \$6,000 within thirty (30) days from the date of this Order.

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