

**Indexed as: Ontario (College of Physicians and Surgeons of Ontario) v. Hyson,
2019 ONCPSD 10**

**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. HARVEY CHRISTOPHER HYSON

PANEL MEMBERS:

**MR. JOHN LANGS
MR. MEHDI KANJI
DR. PAUL CASOLA
DR. PAUL GARFINKEL
DR. ELIZABETH SAMSON**

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS. SIMMY DHAMRAIT

COUNSEL FOR DR. HYSON:

MS. JENNY STEPHENSON

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MS. ZOHAR LEVY

**Hearing Date: January 23, 2019
Decision Date: January 23, 2019
Written Decision Date: March 14, 2019**

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 January 23, 2019. At the conclusion of the hearing, the Committee released a written order stating its finding that Dr. Hyson committed an act of professional misconduct and setting out its penalty and costs order with written reasons to follow.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Harvey Christopher Hyson committed an act of professional misconduct:

1. under clause 51(1)(a) of the Health Professions Procedural Code (the "Code"), Schedule 2 to the Regulated Health Professions Act, 1991, S.O. 1991, c.18 in that he has been found guilty of an offence that is relevant to his suitability to practise;
2. 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;
3. under paragraph 1(1)34 of O. Reg 856/93, in that he has engaged in conduct unbecoming a physician; and
4. under paragraph 1(1)2 of O. Reg 856/93, in that he has failed to maintain the standard of practice of the profession.

RESPONSE TO THE ALLEGATIONS

Dr. Hyson did not contest allegations 1 and 3 in the Notice of Hearing: that he has been found guilty of an offence that is relevant to his suitability to practise, and has engaged in conduct unbecoming a physician.. The College withdrew allegations 2 and 4 in the Notice of Hearing.

PART I - FACTS

The following facts were set out in a Statement of Uncontested Facts on Liability, which was filed as an exhibit and presented to the Committee.

A. BACKGROUND

1. Dr. Harvey Christopher Hyson (“Dr. Hyson”) is a neurologist practising at various office locations in southwestern Ontario. He received his certificate of registration authorizing independent practice in January 2002.
2. At all relevant times, Dr. Hyson practised at the London Health Sciences Centre as a neurologist in London, Ontario, and held a position as an assistant professor in neurology at the University of Western Ontario.

B. THE 2012 LONDON POLICE INVESTIGATION

3. In 2012, working in an undercover capacity, Detective Howe (“Det. Howe”), a member of the London Police Service Cyber Crime Unit, commenced an investigation using a free online classifieds website called “Craigslist”. Craigslist is a website that facilitates contact between people including through e-mail. Once an advertisement is posted on the website, e-mail responses are forwarded directly to the person who posted the advertisement.
4. On April 3rd 2012, Det. Howe, posing as a young girl, posted an advertisement stating, “\$sweet and Petite girl for you” on the Craigslist website. A copy of the advertisement is attached at Tab A [to the Statement of Uncontested Facts on Liability].

5. The advertisement was linked to a fictitious e-mail address, londonontgrrrl@hotmail.com, used by Det. Howe in his communications in an undercover capacity.
6. On the same date, April 3rd, 2012, Det. Howe, received a response from the e-mail address london-dude@live.ca stating, "Interested in hearing more!" The e-mail signed off using the name "Rob".
7. The e-mail address london-dude@live.ca belonged to Dr. Hyson. At all relevant times, Dr. Hyson used the e-mail address london-dude@live.ca to communicate with Det. Howe, who was posing as a young girl. A copy of the relevant e-mails exchanged between Det. Howe [londonontgrrrl@hotmail.com] and Dr. Hyson [london-dude@live.ca] are attached at Tab B [to the Statement of Uncontested Facts on Liability].
8. On April 3rd, 2012, Det. Howe, posing as a young girl named Janice, told Dr. Hyson that she was sixteen (16) years old. Dr. Hyson arranged to meet with Det. Howe, whom Dr. Hyson believed to be a sixteen (16) year old girl, to receive sexual services in exchange for three hundred (300) dollars:

Det. Howe [londonontgrrrl@hotmail.com] sent at 3:16 p.m.:

Kewl what u wanna no

Dr. Hyson [london-dude@live.ca] sent at 3:25 p.m.:

Stats and or pics? How much generosity required? And when are you available to meet?

That should be enough questions ; -)

Rob

Det. Howe [londonontgrrrl@hotmail.com] sent at 3:25 p.m.:

Im 16, 5ft 4, 95 lbs, brown hair, 32A, lookin for good offer

Dr. Hyson [london-dude@live.ca] sent at 3:27 p.m.:

Can you host?

Det. Howe [londonontgrrrl@hotmail.com] sent at 3:29 p.m.:

I can but not until tomorrow afternoon im setting things up for then

Dr. Hyson [london-dude@live.ca] sent at 3:37 p.m.:

Tomorrow evening at all? I'm working all day....

\$250-350 depending on what you're up for.

Det. Howe [londonontgrrrl@hotmail.com] sent at 3:42 p.m.:

Yes but afternoon around 3 is really good, 300 is good as long as u don't hit me or anything like that, is there something special u want

9. Between April 3rd, 2012, and April 12th, 2012, numerous emails were exchanged between Dr. Hyson and Det. Howe, continuing to pose as a young girl, discussing arrangements to meet for sexual services. On April 11th, 2012, Det. Howe, for the second time, told Dr. Hyson that she was sixteen (16) years old. Dr. Hyson responded with "Ok".

10. On more than one occasion, Dr. Hyson asked Det. Howe to send him a photograph of herself. On April 11th, 2011, Det. Howe sent Dr. Hyson a photograph of a young female.

11. On April 12th, 2012, the following e-mail exchange occurred between Det. Howe and Dr. Hyson:

Dr. Hyson [london-dude@live.ca] sent at 9:56 a.m.:

Still for meeting today? How recent is that pic?

Det. Howe [londonontgrrrl@hotmail.com] sent at 10:18 a.m.:

Hi i am ok for this afternoon, what is it u want to do then i want to make sure the \$ is ok

Dr. Hyson [london-dude@live.ca] sent at 10:24 a.m.:

Just some oral and straight up sex. Nothing too exotic. Anything in particular that you like? Have you done this before?

Det. Howe [londonontgrrrl@hotmail.com] sent at 10:32 a.m.:

Ok oral and straight sex is good, don't forget to bring your money. Is 2 or 3 good. I will give u the number to text me soon. I am going to be at the Knights Inn on Dundas.

12. Dr. Hyson then arranged to meet Det. Howe, whom he believed to be a sixteen (16) year old girl, at 3:00 p.m. at the corner of Manitoba Street and Whitney Street in London, Ontario. Det. Howe provided a (police) cell phone number for Dr. Hyson to contact.

13. Dr. Hyson texted the police cell phone number when he was approaching the agreed-upon location saying that he was "Just 10 minutes behind." A copy of the text messages sent by Dr. Hyson (from his cell phone), and received on the police cell phone, are attached at Tab C [to the Statement of Uncontested Facts on Liability].

14. On April 12th, 2012, shortly after 3:00 p.m., police observed Dr. Hyson approach the agreed-upon location in his vehicle. Police initiated a stop and Dr. Hyson was arrested. On arrest, three hundred (300) dollars in cash was seized from Dr. Hyson's front pocket and a cell phone from his car. Three hundred (300) dollars was the price agreed on by Dr. Hyson and Det. Howe, posing as the sixteen (16) year old girl, for the anticipated sexual services that Dr. Hyson would receive.

15. Police conducted an investigation into the Internet Protocol Addresses ("IP address") associated to Dr. Hyson's emails sent from london-dude@live.ca to Det. Howe at londonontgrrrl@hotmail.com. Dr. Hyson sent the e-mails from his personal IP addresses and also from an IP address belonging to the University of Western Ontario, and other IP addresses associated to London Health Sciences Centre.

C. THE CRIMINAL CONVICTION

16. On December 20th, 2016, Dr. Hyson pleaded guilty before Justice Gorman in the Superior Court of Justice in London Ontario, to one count of attempting to stop a motor vehicle

for the purposes of obtaining the sexual services of a prostitute, contrary to section 213(1)(a) of the *Criminal Code of Canada* (as it stood on April 12th 2012).

17. The Crown Attorney and Dr. Hyson's counsel made a joint submission on sentence for a suspended sentence and an order of six (6) months' probation. The joint submission was accepted by Justice Gorman. A copy of the indictment is attached at Tab D [to the Statement of Uncontested Facts on Liability]. A copy of the probation order is attached at Tab E [to the Statement of Uncontested Facts on Liability].

PART II – NO CONTEST

18. Dr. Hyson did not contest the facts set out above in paragraphs 1 to 17, nor did he contest that these facts constitute professional misconduct, in that:

- (a) he has been found guilty of an offence that is relevant to his suitability to practice contrary to clause 51(1)(a) of the Health Professions Procedural Code, which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18; and
- (b) he has engaged in conduct unbecoming a physician contrary to paragraph 1(1)(34) of Ontario Regulation 856/93 made under the *Medicine Act, 1991*.

FINDING

The Committee accepted as correct all of the facts set out in the Statement of Uncontested Facts on Liability. Having regard to these facts, the Committee found that Dr. Hyson committed an act of professional misconduct, in that he has been found guilty of an offence that is relevant to his suitability to practise and he has engaged in conduct unbecoming a physician.

AGREED STATEMENT OF FACTS RELEVANT TO PENALTY

The following Agreed Statement of Facts on Penalty was presented to the Committee:

A. RELEVANT UNDERTAKING

1. On January 14, 2018, Dr. Hyson entered into a voluntary undertaking in lieu of an Order under section 25.4 of the *Health Professions Procedural Code*, Schedule 2 to the *Regulated Health Professions Act*, S.O. 1991, C-18. This superseded an earlier undertaking dated March 12, 2015 that Dr. Hyson had voluntarily entered into as a result of the investigation into the subject matter of these proceedings. A copy of the January 14, 2018 undertaking is attached at Tab 1 [to the Agreed Statement of Facts on Penalty].

2. Section (11)(a) of the undertaking reads as follows:

(11) Notification

- (a) I, **Dr. Hyson**, undertake to notify the staff at each of my Practice Locations which is a nursing home of my practice restriction by providing a copy of this Undertaking to the management of such Practice Locations. I undertake to ensure that the manager or other person in charge during each of my shifts at a Practice Location which is a nursing home is aware of my practice restriction.

B. THE BREACH OF THE JANUARY 14, 2018 UNDERTAKING

3. McCormick Home is a long-term care home in London, Ontario.

4. Dr. Hyson provides care to one resident at McCormick Home. In 2018, Dr. Hyson attended at McCormick Home to provide care to the resident and also provided consultations through the Ontario Telemedicine Network (“OTN”).

5. On January 11, 2019, the College received information that Dr. Hyson had not notified the Administrator or any nursing leader of his practice restrictions. A copy of the e-mail sent to the College by the Administrator of McCormick Home is attached at Tab 2 [to the Agreed Statement of Facts on Penalty].

6. While providing care at McCormick Home, Dr. Hyson did not, at any time, notify any member of the staff of McCormick home of his practice restrictions or provide a copy of the Undertaking to the management as required by the terms of his undertaking.

7. Dr. Hyson breached his January 14, 2018 undertaking with the College.

C. PRIOR HISTORY

8. Dr. Hyson has no prior history with the Discipline Committee.

SUBMISSION ON PENALTY

Counsel for the College made a submission as to an appropriate penalty and costs order which included revocation of Dr. Hyson's certificate of registration, a reprimand and costs in the amount of \$6,000.00. Counsel for Dr. Hyson did not contest the penalty.

PENALTY AND REASONS FOR PENALTY

For the reasons which follow, the Committee accepted the penalty submission. In light of the circumstances of this case, revocation of Dr. Hyson's certificate of registration is required. The Committee also ordered that Dr. Hyson appear before it to be reprimanded and that he pay costs of the proceedings to the College in the amount of \$6,000.00 within 30 days from the date of this Order.

The role of the College is to regulate the practice of medicine, to protect and serve the public interest. One measure of the appropriateness of an order of the Discipline Committee is whether it is adequate to protect the public. Another is whether the order would maintain public confidence in the integrity of the profession and the College's ability to regulate the profession in the public interest. General deterrence of the profession as a whole and specific deterrence of the practitioner from engaging in similar conduct in the future are also important objectives. Where appropriate, consideration is also given to effective rehabilitation of the practitioner; this was not

a factor in this case. The Committee considered the applicable principles in arriving at its decision on penalty.

The Committee also considered the nature of Dr. Hyson's misconduct and the aggravating or mitigating factors in this case.

Aggravating Factors

Nature of the Misconduct

Dr. Hyson communicated with an individual who he believed to be a 16-year-old girl for the purpose of procuring sexual services. Dr. Hyson was immediately made aware at the time of initial contact of the age of the individual, and the detective posing as the 16-year-old girl continued to indicate to Dr. Hyson that Dr. Hyson was communicating with a 16-year old. Dr. Hyson persisted in his attempts to communicate with and requested photographs of this fictitious teenager, "Janice."

It was clear to the Committee that Dr. Hyson was aware of the age of his contact. He was attempting to procure sexual services from someone who was presented to him as a 16-year old girl. Dr. Hyson not only requested a sexual encounter, he also made all the arrangements to carry out the sexual encounter, including making arrangements with respect to the location, date, and time and bringing funds for the transaction. His actions were intentional and planned, involving ongoing correspondence.

Dr. Hyson intended to engage in misconduct of a sexual nature that had the potential to demean and traumatize a young person, in relation to whom he would be in a position of power and control. His failure to recognize that children have inherent vulnerabilities that require extra measures of protection speaks to the self-serving interests he was pursuing. He was aware his actions were immoral and illegal but nonetheless, Dr. Hyson carried on. His conduct in this regard is reprehensible and constitutes an egregious breach of the values of the profession and is a disgrace to the profession. It is conduct totally unbecoming a physician.

The nature of Dr. Hyson's misconduct is an aggravating factor in this case.

Subsequent Conduct

On January 14, 2018, Dr. Hyson entered into a voluntary undertaking to restrict his practice in lieu of an Order under section 25.4 of the Code. That undertaking remained in effect until the Discipline Committee disposes of the allegations in the Notice of Hearing. Dr. Hyson breached his undertaking by not informing management or staff at McCormick nursing home of his practice restrictions.

Dr. Hyson's breach of his College undertaking causes the Committee concern with respect to Dr. Hyson's respect for his regulatory body and governability, and is an aggravating factor.

Mitigating Factors

Dr. Hyson entered a plea of no contest, saving the College the cost and expense of a contested hearing and calling witnesses. This is Dr. Hyson's first appearance before the Discipline Committee and he has no prior history with the Committee. These are mitigating factors.

Conclusion on Penalty

Revocation is the most severe penalty that the Committee can impose. It is reserved for serious cases. This is a most serious case. Dr. Hyson's conduct was immoral and reprehensible. The Committee concluded that revocation was just and appropriate for the findings made.

ORDER

The Committee stated its findings in paragraph 1 of its written order of January 23, 2019. In that order, the Committee ordered and directed on the matter of penalty and costs that:

2. the Registrar revoke Dr. Hyson's certificate of registration effective immediately.
3. Dr. Hyson appear before the panel to be reprimanded
4. Dr. Hyson pay to the College its costs of this proceeding in the amount of \$6000.00 within thirty (30) days from the date of this order.

At the conclusion of the hearing, Dr. Hyson 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 January 23, 2019
in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
and
DR. HARVEY CHRISTOPHER HYSON

Dr. Hyson,

Your conduct was predatory, reprehensible and inexcusable. You deliberately sought out a minor child for your own sexual gratification.

This was not a temporary lapse of judgement but a planned act involving correspondence over a period of time. All the time knowing that you thought you were in contact with a sixteen year old girl. Your persistence in pursuing your personal gratification was very troubling. You knew your actions were immoral and illegal but regardless you carried on.

You also blatantly disregarded your undertaking which you gave to the College. It is essential to the role of self-governance and the maintenance of the public confidence that physicians scrupulously abide by their undertakings.

There is an expectation of moral behaviour by persons granted the privilege to practise medicine. Your actions have demonstrated conduct that is totally unbecoming of a physician.

Doctors are in a position of privilege and you have brought disgrace not only to yourself personally but to the profession as a whole. You are still a relatively young man who has thrown away your career, your integrity and your reputation.

This is not an official transcript