

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. John Justin Chrozy Kitakufe, this is notice that the Discipline Committee ordered that there shall be a ban on the publication of the name or identity and any information that could disclose the name or identity of the patients whose names or identities are disclosed at the hearing or in any documents 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: Kitakufe, J.J.C. (Re)

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

IN THE MATTER OF a Hearing directed
by the Executive Committee of
the College of Physicians and Surgeons of Ontario
pursuant Section 36(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. JOHN JUSTIN CHROZY KITAKUFE

PANEL MEMBERS:

DR. C. CLAPPERTON (CHAIR)
DR. E. ATTIA (Ph.D.)
DR. M. GABEL
G. DEVLIN
DR. E. STANTON

Hearing Dates:	February 8 to 12, March 3, 2010
Decision Release Date:	September 3, 2010
Release of Written Reasons:	September 3, 2010

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario (the “Committee”) heard this matter at Toronto on February 8 through 12 and on March 3, 2010. On February 8, 2010, the Committee found that Dr. Kitakufe engaged in acts of professional misconduct and proceeded to hear submissions and evidence regarding an appropriate penalty. At the conclusion of the hearing, the Committee reserved its decision on penalty.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Kitakufe committed acts 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; and
2. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, (“O. Reg. 856/93”), in that he 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.

RESPONSE TO THE ALLEGATIONS

Dr. Kitakufe admitted the allegations in the Notice of Hearing.

FACTS AND EVIDENCE

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

1. On August 28, 2007, Dr. John Justin Chrozy Kitakufe (“Dr. Kitakufe”) pleaded

guilty to, and was convicted of, the following charges (the “Guilty Plea”):

- a) between the 18th day of February 2005 and the 6th day of September 2006, unlawfully conspired to commit the indictable offence of Fraud exceeding five thousand dollars (\$5000), by participation in a scheme to defraud the Ministry of Health and Long-Term Care through the use of fraudulent prescriptions for oxycodone, contrary to Section 465(1)(c) of the *Criminal Code of Canada*;
 - b) between the 18th day of February 2005 and the 6th day of September 2006, unlawfully conspired to commit the indictable offence of Trafficking in a controlled substance, to wit: Oxycodone, contrary to Section 465(1)(c) of the *Criminal Code of Canada*;
 - c) between the 18th day of February 2005 and the 6th day of September 2006, unlawfully by deceit, falsehood or other fraudulent means, defrauded the Ministry of Health and Long-Term Care of money of a value exceeding five thousand dollars (\$5000) by submitting fraudulent claims for medical services, for which the Ministry of Health and Long-Term Care remitted payment, contrary to Section 380(1) of the *Criminal Code of Canada*.
2. At the hearing of his Guilty Plea on August 28, 2007, Dr. Kitakufe agreed to the truth of an Agreed Statement of Facts, which was entered as Exhibit 1 to Dr. Kitakufe’s Guilty Plea proceeding and was read into the Court record (the “Guilty Plea ASF”). A true copy of the transcript of Dr. Kitakufe’s Guilty Plea, including the full text of the Guilty Plea ASF, is attached to this Agreed Statement of Facts at Tab 1 [to the Agreed Statement of Facts]. Dr. Kitakufe reaffirms the truth of the Guilty Plea ASF and adopts the full text thereof into this Agreed Statement of Facts by reference.
3. Dr. Kitakufe admits that his actions as set out herein constitute professional misconduct in that,
 - a) Dr. Kitakufe has been found guilty of an offence that is relevant to his suitability to practise, contrary to 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; and
 - b) Dr. Kitakufe has committed 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,

contrary to paragraph 1(1)33 of O. Reg. 856/93 made under the *Medicine Act, 1991*.

FINDINGS

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts save that the Committee noted that the transcript of the guilty plea indicates this proceeding was on August 29 and not August 28, 2007. Having regard to these facts, the Committee accepted Dr. Kitakufe's admission and found that he 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 that he has committed 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.

EVIDENCE AND SUBMISSIONS ON PENALTY

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

1. Following Dr. Kitakufe's Guilty Plea as set out in the Agreed Statement of Facts, on November 13, 2007, the Honourable Justice P. Harris of the Ontario Court of Justice sentenced Dr. Kitakufe to 32 months in custody and ordered him to pay restitution in the amount of \$50,000 to the Ministry of Health. A copy of the Reasons for Sentence is attached as Exhibit A [to the Agreed Statement of Facts Re: Penalty].
2. Dr. Kitakufe served 14 months of pre-trial custody. After his sentencing he served an additional 6 months of custody. Dr. Kitakufe was released on Parole at the earliest eligible date, namely May 13, 2008.
3. On May 1, 2008 the College imposed an interim suspension of Dr. Kitakufe's certificate of registration. The interim suspension remains in effect to date.

Previous CPSO Discipline History

4. On January 22, 1986, Dr. Kitakufe was found guilty in United States District Court, Northern District of Illinois of Racketeering, Conspiracy to commit racketeering, illegal drug distribution, and one count of mail fraud; he was acquitted of one count of mail fraud.
5. On February 12, 2001, before the Discipline Committee of the College, Dr. Kitakufe pleaded guilty to professional misconduct for having been found guilty of an offence relevant to his suitability to practice by another jurisdiction.
6. As a result of his conviction in the United States and his subsequent plea of professional misconduct, Dr. Kitakufe's certificate of registration was ordered suspended for six months, with the six months ordered to have been served concurrently with Dr. Kitakufe's custodial sentence in the United States, namely October 1, 1999 to April 1, 2000. The Registrar imposed additional terms, conditions and limitations on Dr. Kitakufe's licence which are set out in the attached copy the College Discipline Committee's Decision and Reasons for Decision dated February 12, 2001 (Exhibit B) [to the Agreed Statement of Facts Re: Penalty].

A Joint Book of Documents was entered as an exhibit at the hearing. College counsel and counsel for Dr. Kitakufe also filed closing submissions on penalty with the Committee.

The Committee heard *viva voce* evidence from Dr. Kitakufe, Dr. X and Dr. Y.

Dr. Kitakufe

Dr. John Kitakufe arrived in Canada in 1967 from Uganda to attend the pre-medical Bachelor of Science program at the University of British Columbia. He attended the University of Ottawa Medical School from 1968 until 1972, where he received his M.D. Following the completion of a rotating internship at the Toronto General Hospital and Hospital for Sick Children, he returned to Ottawa to enter the General Surgery Residency Program. During this period, Idi Amin's regime was in power in Uganda. Several of Dr.

Kitakufe's relatives were killed in Uganda during this time. Dr. Kitakufe testified that he was experiencing significant emotional stress related to the deaths of his family members. He testified that his performance in the residency program deteriorated and that he dropped out of the General Surgery program in Ottawa. He moved to Toronto where he worked as a locum (a General Medical Practitioner locum).

Between 1976 and 1978, Dr. Kitakufe moved to Kapuskasing to do an extended locum. During this period, he married his first wife and they had their first of three children. He reapplied for a surgical residency position and was accepted at the Metropolitan Group Hospitals in Chicago, which was affiliated with the University of Illinois.

Initially, he was told he would receive credit for the time he had done in his surgical residency program at the University of Ottawa. However, when he arrived in Chicago, he was informed that he would be required to start as a first year resident, which he agreed to. The Surgical Residency program was a "pyramid program" where there were not sufficient senior residency positions available for all the residents accepted in their first year. Dr. Kitakufe was told in his third year of his residency that he would not be offered a position in the fourth year. He attributed racial prejudice as a major factor in his not receiving a fourth year position. He testified that he initiated a legal action against the Hospital Residency Program, the University of Illinois, and the Residency Program Director. He received a Temporary Restraining Order to prevent his termination from the program, but elected not to continue in the program. The legal matter was subsequently dismissed for want of prosecution.

On the recommendation of a mentor, he was accepted to his final residency years at Providence Hospital in Detroit, which was affiliated with Wayne State University. However, there was a period of several months between completing his third year in Chicago and commencing his fourth year in Detroit. In order to support his family, he sought temporary employment. He answered an advertisement in a Chicago Medical Journal and began working in the fall of 1982 at the ORA Health Center on the south side of Chicago. He testified that he worked at the clinic for approximately three months until the end of December 1982, after which he moved to Detroit to enter the surgical residency program.

Dr. Kitakufe completed his General Surgery Residency and entered the cardiovascular surgical program at Wayne State University in 1985. During the spring of 1985, he was notified he had been indicted in a conspiracy related to fraud against Medicaid and trafficking in narcotic-based drugs, which was alleged to have occurred while Dr. Kitakufe was working at the ORA Health Center in Chicago. Although Dr. Kitakufe pleaded not guilty, he was found guilty by a jury for racketeering, conspiracy to commit racketeering, illegal drug distribution and mail fraud.

While he awaited sentencing, he was allowed to return on bail to Altona, Manitoba, where he was working as a general surgeon. He travelled to Chicago for a presentencing hearing. When he returned to Manitoba, he was very distressed, and he contacted Jack Epp, federal Minister of Health, as well as Joe Clarke, Minister of External Affairs, for assistance, but to no avail. He testified that, although he was working as a surgeon in Manitoba at the time, he did not appeal the conviction in Chicago because he could not afford it. He also testified he did not contact Legal Aid, or make any effort to obtain a loan from his family in Africa to hire a lawyer.

Dr. Kitakufe testified that, when awaiting the sentencing hearing, he panicked and took his family to Nigeria where he worked in a hospital. He remained in Nigeria for over six months. Rather than returning to Manitoba, he returned to Toronto. Initially, he worked for a house-call service and later joined a walk-in clinic. He received privileges at the Humber River Regional Hospital. Eventually, his practice evolved into a busy general practice. His family returned from Nigeria in 1988.

Dr. Kitakufe testified under cross-examination that, between 1986 and 1989, he did not hire a Canadian or American counsel to act on his behalf regarding the U.S. conviction, despite being one of the busiest physicians in the neighbourhood.

Between 1992 and 1993, Dr. Kitakufe moved his office to Keele and Finch Streets in Toronto. He testified he had approximately 10,000 patient files, of which approximately 7,000 were active. He testified that he had to declare bankruptcy in 1997 as a result of his involvement in a failed venture involving a walk-in clinic in Pickering. In the same year, he was arrested and subsequently extradited to the United States for sentencing in

connection with the Chicago incident. He received a sentence of 18 months, after which he returned to Canada.

Dr. Kitakufe testified he had no money on his return to Canada. He appeared before the CPSO Discipline Committee on February 12, 2001, and admitted to allegations of professional misconduct. During that hearing, there was a joint submission as to penalty, which was accepted by the Committee. The penalty included a reprimand, as well as a six-month suspension, which was deemed to have been served during his incarceration in the United States.

Dr. Kitakufe testified that he attended Dr. Z, a psychiatrist, on approximately six occasions between April and May, 2001. Dr. Kitakufe indicated that he was seeing Dr. Z during this period primarily for depression and also for issues related to shame and anger. After the May 30, 2001 appointment, he did not follow-up with Dr. Z.

Dr. Kitakufe testified that, between 2000 and 2006, following his return to practice, he was under significant financial pressures and, as a result, worked long hours. Dr. Kitakufe testified that he provided financial support to several family and extended family members, which created significant personal financial stress. In addition to supporting his wife, himself, and the household expenses, he was supporting his daughter while she attended a private school in Toronto, then McGill University and, finally, medical school in the United States. Dr. Kitakufe had two sons, one of whom has Asperger's Syndrome, and he supported them at a private school. He had sponsored his brother in Ottawa and provided him with some financial support. After his father passed away, he also supported his mother until her death in Uganda. In addition, he supported two nephews, one attending school in the Ukraine and the other attending school in Canada. After his divorce from his first wife, he remarried in 2003, and supported his step-daughter as well.

Dr. Kitakufe testified that, between February 18, 2005 and September 6, 2006, he engaged in a conspiracy to defraud the Ontario Drug Benefits Plan and the Ministry of Health. His involvement with his co-conspirators, who were paralegals, began while they were his patients. He gave them money to buy two cars for him, which he never received. The conspiracy involved prescribing Oxycodone to “fake” patients who presented with

“fake” symptoms. His co-conspirators would send between thirty and forty “fake” patients a week to him for an “assessment” after which they received a prescription for 90 doses of 80 milligram Oxycontin pills. Dr. Kitakufe testified that initially he did not realize that the patients were “fake”. Dr. Kitakufe testified that “at some point” one of his co-conspirators told him that the pills were being taken from the “patients” and being diverted to the “street”. At the point Dr. Kitakufe became aware of the illegal activity, he did not call the police. However, he expressed his discomfort to his co-conspirators, indicating to them that he wanted them to stop sending patients to him. When it appeared that Dr. Kitakufe might not continue to cooperate with the co-conspirators, he was offered “kickbacks” up to \$200 per patient, which he accepted up until his arrest.

In addition to receiving “kickbacks”, he billed the Ministry of Health for illegitimate claims for providing medical services to the “fake” patients, estimated to be at least \$97,000. In addition, approximately \$285,000 was billed fraudulently to the Ontario Drug Benefits Program for illegitimate Oxycodone prescriptions. He was subsequently charged with fraud and drug trafficking. He pleaded guilty and was incarcerated between September 2006 and May 2008. The College suspended his certificate of registration following his release. As indicated in paragraph 3 of the Agreed Statement of Facts Re: Penalty, the Committee is aware that Dr. Kitakufe’s certificate of registration was suspended under s.37 of the Code effective May 1, 2008.

Dr. Kitakufe’s explanation for engaging in such activity was that he should have received treatment after his incarceration in the United States. He let his anger overtake him, blinding him and resulting in him becoming morally weak and making terrible decisions.

Dr. Kitakufe further testified that he was aware of the CPSO policy on drugs and prescribing and that he was aware that, “Physicians should be on the alert for behaviours that suggest patients are seeking drugs for illicit purposes”. Dr. Kitakufe admitted under cross-examination that addiction to narcotics is a serious matter and addiction can perpetuate crime and violence in some cases. He also agreed that addiction is detrimental to the physical, mental and spiritual health of a patient. He acknowledged that he was aware of the precautions in prescribing Oxycodone, including the requirement of obtaining an appropriate history and performing an appropriate physical examination to

ensure that pain relief was legitimately required. He also acknowledged that drug-seeking behaviour had to be ruled out.

Dr. Kitakufe resumed treatment with Dr. Z on May 30, 2008. While Dr. Kitakufe testified that he could not recall any specifics of conversations during the treatment sessions since May 30, 2008, he acknowledged being treated for depression and being prescribed antidepressants. He also testified on cross-examination that he had discussions with Dr. Z in reference to the role that anger played in the offence. Dr. Kitakufe testified that currently he is seeing Dr. Z every three to four weeks.

Dr. Kitakufe also testified that, following his release, he has become more involved in the church and has received pastoral counseling.

Dr. X

Dr. X's *Curriculum Vitae* was presented and reviewed. Dr. X is an Assistant Professor in the Department of Psychiatry at the University of Toronto and a staff psychiatrist at the Law and Mental Health Program at the Centre for Addiction and Mental Health. He testified that he has performed thousands of forensic assessments. He has appeared as an expert witness for civil tribunals, criminal courts, regulatory bodies and other agencies. Dr. X was qualified as an expert witness without objection.

Dr. X outlined his approach to a forensic assessment. He indicated that a forensic assessment is an evolutionary process, but at the same time is a cynical, questioning and a probing one. He stressed the importance of truthfulness on the part of the subject being assessed. In addition, to obtain a poly-dimensional picture of the subject, Dr. X would include information that was obtained from interviewing other "collaterals" which might include family members, work contacts, supervisors, clergy, friends and others. In Dr. Kitakufe's case, Dr. X interviewed several individuals listed in his report, which included medical colleagues and associates, former staff and employees, Dr. Kitakufe's present and former wives as well as Dr. Kitakufe's daughter and psychiatrist.

Dr. X testified that the information received from collateral interviewees was of some importance in his assessment of Dr. Kitakufe. Dr. X testified that Dr. Kitakufe was not

perceived as dishonest or manipulative. He was dedicated to his patients and there did not appear to be an issue with work ethic or clinical competence. He was described as nice, likeable and caring. There was no evidence to suggest anti-social exploitive traits. Dr. Kitakufe's image within the community was important to him and was described by his daughter as "material orientated". Dr. X did not believe that Dr. Kitakufe had talked to anyone in depth about his criminal conduct in Canada. However, Dr. X did testify that everyone he interviewed was surprised at the misconduct in question, especially considering Dr. Kitakufe's previous experience and incarceration in the United States for the Chicago incident. Dr. X testified that he also shared the same reaction. He described it as a "puzzling and curious feature of the case". Dr. X stated that he still puzzles over it. Dr. X testified that having gone through the Chicago experience, that it would have had such an indelible and traumatic effect on Dr. Kitakufe that "when he smelled anything amiss in the air, he would run the other way". In an attempt to reconcile why Dr. Kitakufe had not appeared to have learned a lesson from the Chicago experience, he testified that Dr. Kitakufe perceived the Chicago and Toronto matters as completely different.

Dr. X testified that he would also review any other documentation available to him that he deemed relevant. In Dr. Kitakufe's case, the various documents reviewed are listed in Dr. X's report and include the reasons of the Discipline Committee in Dr. Kitakufe's prior appearance in connection with the Chicago conviction. He also reviewed character support letters, and Dr. Kitakufe's plea and reasons for sentence in the Toronto criminal matter. He testified that the documentation provided in this case was adequate to form a foundation for his opinion. Dr. X testified that, depending upon the situation, he may receive input from a psychologist, as he did in this case, who would perform formal psychological testing that provides an "objective layer" of information about the subject of the assessment. He testified that Dr. Y performed a psychological assessment of Dr. Kitakufe and that her independent conclusion was consistent with his assessment.

Dr. X reviewed his initial and supplementary reports of his forensic assessment of Dr. Kitakufe that had been prepared for the defence.

In reviewing his reports, he addressed five general areas. The first area was diagnostic. He testified that he diagnosed Dr. Kitakufe as suffering from a major depressive disorder

which, in the opinion of Dr. X, was in a fair degree of remission as a result of treatment with anti-depressive medication. Dr. X testified that Dr. Kitakufe did not have a personality disorder which would include personality pathology associated with inherent criminality.

The second area was related to psychiatric formulation which would involve assigning an explanation as to how and why Dr. Kitakufe participated in the criminal activity in Toronto. Dr. X testified that it was probably multifactorial and would include financial stress and need, vulnerability to the influence of others, opportunism and naïveté. Dr. X indicated that being vulnerable to the influence of others could also make Dr. Kitakufe vulnerable to boundary violations. Dr. X testified that Dr. Kitakufe told him that he initially trusted that the patients brought to him by his co-conspirators were there for legitimate medical reasons, but that in a very short time, it became clear to Dr. Kitakufe that he was part of a scheme of writing illegitimate prescriptions for the purpose of trafficking narcotics. Dr. X testified under cross-examination that it was his understanding that Dr. Kitakufe never received any threats of physical violence by his co-conspirators.

Dr. X also considered unresolved feelings of loss and anger related to Dr. Kitakufe's perception of being wrongfully convicted in Chicago as psychological factors that could have played a role in impairing Dr. Kitakufe's judgment in the Toronto matter. In addition, Dr. X testified that shame, stigma, inconvenience and other loss of life opportunities might have contributed to his misconduct. Dr. X also felt that anti-systemic sentiments as well as the sense of being betrayed and frustrated played a role in his misconduct. Dr. X also noted that Dr. Kitakufe's image in his community was important, and appearing successful and having "made it" was an important variable. Dr. X indicated that Dr. Kitakufe has difficulty expressing anger and that an unexpressed emotion such as anger has the ability to impair judgment later on, especially when combined with emotional stress. On cross-examination, Dr. X acknowledged that Dr. Kitakufe's anger must be dealt with to mitigate the risk for recidivism.

The third area Dr. X considered was to assess risk of reoffending. Dr. X testified that Dr. Kitakufe's risk for reoffending was mild to moderate. Dr. X also testified that in terms of

risk assessment, individuals in a stable relationship do better with regard to criminal recidivism.

The fourth and fifth areas considered by Dr. X related to risk reduction recommendations and determining what kind of program and plan would need to be implemented to help Dr. Kitakufe to return to practice while at the same time manage risk considerations. Dr. X testified that a risk reduction plan would need to include ongoing psychotherapy treatment at a more intense level and at an increased frequency than had occurred up to date. It was Dr. X's opinion that this would help Dr. Kitakufe deal with his anger. This was an issue that Dr. X testified had never been addressed in the past.

During cross-examination, Dr. X acknowledged that Dr. Kitakufe's journey to developing insight is not complete and that Dr. Z has not engaged in insight-orientated psychotherapy with Dr. Kitakufe. Dr. X added that psychotherapy would provide some measure of insight and contemplation about what Dr. Kitakufe had done and its impact on his family and world.

Dr. X recommended that if Dr. Kitakufe returned to practice, it should be a staged process with the initial step being the least oppressive, stressful and challenging one possible. Dr. X suggested that initially returning to practice as a surgical assistant might serve as a first step. Dr. X testified that the second step would involve practising under a practice supervisor and in a practice in which Dr. Kitakufe had no administrative responsibilities. The final step would be for Dr. Kitakufe to return to solo practice. Dr. Kitakufe would also need to address areas that had been problematic for him including boundaries, record-keeping, and relationships with patients, billing, and prescribing practices. Dr. X recommended that these areas be monitored by an external monitor who would report back to the College on a regular basis. However, Dr. X did not recommend narcotics prescribing privileges for the foreseeable future.

Dr. X also testified that while Dr. Kitakufe was an intelligent man, he has not been the most psychologically-minded individual, in that he didn't learn from his experience in Chicago, and he went on to engage in similar behaviour in Toronto. Dr. X opined that the Chicago experience did not have much value to Dr. Kitakufe as a deterrent for the

Toronto incident. Dr. X testified that Dr. Kitakufe has made some progress with regard to psychological openness, in that there was some evidence of improvement in his preparedness to embrace the role of psychotherapy for his offending behaviour. However, Dr. X acknowledged that Dr. Kitakufe has failed to address issues of defensiveness, lack of insight and fear of rejection. On cross-examination, Dr. X acknowledged that Dr. Kitakufe is not a particularly accessible person, and that makes the prospect of psychotherapy or insight-based therapy more challenging. In addition, Dr. X acknowledged that culture and background are additional factors that would make psychotherapy more challenging.

Under cross-examination, Dr. X also acknowledged that he did not have a discussion with Dr. Kitakufe as to why he did not appeal the Chicago conviction, despite Dr. Kitakufe's belief that he was wrongfully convicted. Dr. X agreed that it was "odd" that Dr. Kitakufe did not appeal his Chicago conviction. Dr. X also acknowledged that during his interviews, Dr. Kitakufe had not told him that he had taken his family to Nigeria after his conviction in Chicago. Dr. X acknowledged that his departure to Nigeria was consistent with a number of theories, including that Dr. Kitakufe was rightfully convicted and fled the jurisdiction to avoid a sentencing hearing.

Dr. X testified, on cross-examination, that Dr. Kitakufe's response to having paid for and not receiving a car from his patients, who later became Dr. Kitakufe's co-conspirators, was puzzling in that he did not contact the police or seek other legal remedies. Dr. X also acknowledged that Dr. Kitakufe, whether wrongfully convicted in Chicago or not, would have been aware of how a scheme of drug trafficking involving the writing of illegitimate prescriptions would operate, and that there was money to be made from such a scheme.

While Dr. X testified that Dr. Kitakufe acknowledged responsibility for the Canadian conduct, he indicated that initially he was more defensive about the depth and scope of his culpability, which Dr. X did not believe was entirely unexpected. Dr. X also testified on cross-examination that he had identified cognitive deficits based upon serial-sevens testing, a clinical test to test mental function. Dr. X testified that Dr. Kitakufe had more errors than one would expect to see in a person functioning well. Dr. X hypothesized that Dr. Kitakufe's cognitive deficit might be related to his depression at the time of testing.

However, Dr. X acknowledged on cross-examination that, despite Dr. Kitakufe's depression being in a fair degree of remission, he had not conducted any follow-up cognitive testing of Dr. Kitakufe.

Dr. Y

The *Curriculum Vitae* of Dr. Y was submitted and reviewed. Dr. Y was qualified as an expert witness without objection. Dr. Y is a psychologist who specializes in forensic correctional psychology. Dr. Y has previously been qualified as an expert witness in criminal and family court. Dr. Kitakufe was referred to Dr. Y by Dr. X. Dr. Kitakufe was administered a battery of psychological tests which Dr. Y testified provides objective information with regard to an individual's behaviour, personality and other areas of function. In addition to formal testing, she did receive additional documentation to review. Dr. Y testified that Dr. Kitakufe was co-operative, engaged easily, and was forthright and straightforward in answering questions. Based upon her assessment, she testified that she was able to provide a psychological opinion.

Dr. Y testified that based upon her assessment, there was no indication of a thought disorder, mental illness or disorganization. Dr. Y also noted that the test scores indicated that Dr. Kitakufe was experiencing moderate depression and was pessimistic about his future. It was Dr. Y's opinion that Dr. Kitakufe was not intentionally being deceptive and that there was no indication of any serious Axis I or II psychopathology. Dr. Y administered the Level of Service Inventory which is an actuarial tool to predict recidivism in the criminal population. Dr. Y indicated that based upon her assessment, Dr. Kitakufe was in a low risk group to reoffend in a general manner. Dr. Y indicated that Dr. Kitakufe took full responsibility for his actions and was remorseful. Dr. Y testified that Dr. Kitakufe was overly trusting of the individuals that became his co-conspirators and demonstrated poor judgment by participating in the scheme. However, Dr. Y acknowledged that Dr. Kitakufe had never indicated that his co-conspirators had ever threatened harm if he did not continue to participate in the scheme. Dr. Y testified that Dr. Kitakufe indicated that the money blinded him to what he was doing. It was Dr. Y's opinion that financial pressures were, in part, responsible for his actions.

Dr. Y testified that it was her understanding that Dr. Kitakufe was being treated by Dr. Z for depression but not receiving psychotherapy or insight-orientated therapy with regard to his criminal issues. Dr. Y acknowledged that psychiatric treatment can be important in addressing issues of anger, shame and wrong-doing and that dealing with those issues can have a beneficial effect on one's future conduct.

Character witnesses

The Committee also heard from a number of character witnesses, including Ms A (former wife), Pastor B, Bishop C, Dr. D (physician colleague and church group member), his wife, and his daughter.

The evidence of Ms A, his wife and his daughter was consistent with Dr. X's account of his interviews with them. All character witnesses were very supportive of Dr. Kitakufe. They all acknowledged that Dr. Kitakufe had not spoken to them in any depth, nor did he provide details related to the Toronto incident. They all expressed surprise that Dr. Kitakufe would engage in the criminal activity in Toronto, especially after his Chicago experience. Dr. Kitakufe was described as dedicated to his family and work. He was also described as emotionally and spiritually changed since his incarceration for the Toronto incident, and that he had expressed remorse for his criminal activity. In addition, he was embarrassed and humiliated by the experience. It was also noted that he has become more involved in his church and has received pastoral counselling since his incarceration.

The Committee also reviewed a Brief of Character References that was filed for Dr. Kitakufe. These letters were all supportive of Dr. Kitakufe.

DECISION AND REASONS ON PENALTY

In imposing a penalty, the Committee had regard to the following principles:

- protection of the public;
- specific deterrence;
- general deterrence;

- rehabilitation;
- maintenance of the integrity of the profession and the College's ability to govern the profession in the eyes of the public; and
- maintenance of public trust.

The Committee also considered the following aggravating and mitigating factors:

Aggravating Factors

1. The fraud and diversion of narcotics to the drug trafficking industry spanned a period from February 2005 until September 2006 and was only terminated as a result of Dr. Kitakufe's arrest.
2. The fraud was estimated to be in excess of \$382,000 and involved two separate divisions of the Ministry of Health including OHIP and the Ontario Drug Benefits Plan. While Dr. Kitakufe did not benefit directly in the fraud against the Ontario Drug Benefits Program, it transpired as a direct result of his involvement in the scheme.
3. The fraud and drug trafficking represented a most serious breach of trust and victimized not only society as a whole but also individuals who were addicted to narcotics that were diverted to the street as a result of Dr. Kitakufe's involvement in the conspiracy.
4. The magnitude of the diversion of Oxycontin to the street was significant. It is estimated that a large portion of the 137,000 Oxycontin pills (representing 10.7 kg) prescribed during the period flowed to the drug trafficking industry.
5. The street value of the diverted Oxycontin tablets was estimated to be several million dollars.
6. It is estimated that 500 illegitimate patients with drug cards, many of whom were vulnerable indigent people, were recruited to participate in the scheme.
7. This is the second appearance for Dr. Kitakufe before the Discipline Committee

for misconduct involving fraud and narcotic drug trafficking. The current misconduct occurred within forty-nine months of his first appearance before the Committee.

8. Dr. Kitakufe's misconduct was motivated, to a significant degree, by financial greed.

Mitigating Factors

1. Several character witnesses and a brief of 22 character reference letters from physicians, community members, patients and the pastoral community provided support for Dr. Kitakufe.
2. Dr. Kitakufe has committed to receiving professional psychotherapy related to his criminal activity.
3. Dr. Kitakufe has admitted to and accepts full responsibility for the criminal acts he was convicted of in Toronto.
4. Dr. Kitakufe has expressed remorse for his actions.
5. Dr. Kitakufe has engaged in pastoral counselling.

As stated previously, the Committee is also aware that Dr. Kitakufe's certificate of registration has been suspended pursuant to s.37 since May 1, 2008.

Counsel for the College submits that, in the circumstances, the only appropriate penalty would be revocation of Dr. Kitakufe's certificate of registration and a reprimand. College counsel also submits that this is an appropriate case for costs.

Counsel for Dr. Kitakufe submits that revocation should be reserved for those cases where it is the only effective way to ensure protection of the public.

After careful consideration of the evidence and submissions of counsel for both parties, the Committee concludes that Dr. Kitakufe's conduct constitutes a most egregious breach of professional trust.

In the Committee's view, while public protection is an important factor to be considered, it is not the only factor which the Committee should rely on when considering a penalty of revocation. The penalty must also address the principles of specific and general deterrence and maintaining the public's confidence and trust in the profession's ability to regulate itself.

In considering the need for public protection and for general deterrence, the Committee had regard to the multiple issues of public safety that were raised by this case. There is the potential physical and emotional harm that can be inflicted on members of our society through the use narcotics that have been diverted to the "street" by members of the medical profession. In addition, narcotics trafficking is often associated with an increase in violent crime in our society. Finally, the friends and family members of addicted individuals also often become unintended victims.

The Committee also considers fraud involving the Ministry of Health and Long Term Care a very serious breach of public trust. The impact that fraud has on the health care system was articulated in the decision of *CPSO v. Bogart* (2001):

Every person living in Ontario is a victim of OHIP fraud. Fraud affects hospitals, which do not get needed equipment. Fraud affects physicians, who have limits on what they can accomplish because of restrictions on resources. Most importantly, fraud affects patients, who may not get all the help they need or who have to wait because of limits on health resources. The fraudulent unethical doctor who cheats OHIP commits a breach of trust against the profession, patients and society at large.

And also:

Fraud is a crime that does affect a physician's suitability to practice medicine as trust and integrity are fundamental to the agreement between the physician and OHIP in the fee-for-service arrangement and are fundamental to the relationship between physicians and their patients.

The profession, and the public, will not tolerate members of the medical profession participating in fraud involving the Ministry of Health as well as narcotic drug trafficking.

The Committee considered what weight to place on general deterrence in determining a

penalty in this case. The Committee finds the decision of the Divisional Court in *Tse and the CPSO* (1979) to be of assistance. Henry J. wrote:

The Discipline Committee must consider the seriousness of the offence, the need to deter the offender from committing such an offence again, the need to rehabilitate the offender and the need to deter others from committing similar offences. In a case such as this, the last element of deterrence is one to be given considerable weight.

The Committee considers the *Tse* case relevant in that Dr. Kitakufe's professional misconduct not only involved fraud against the Ontario Drug Benefits Plan and the Ministry of Health, but also drug trafficking, which together are very serious offences and require significant sanction to act as a general deterrent.

Regarding the principle of specific deterrence, this is not the first appearance of Dr. Kitakufe before the Discipline Committee for defrauding a government health care system and participating in narcotic drug trafficking. Dr. Kitakufe reoffended approximately four years after his first appearance before the Discipline Committee in 2001 for similar misconduct.

The Committee considered evidence from a number of character witnesses and reviewed a Brief of character support letters submitted by Dr. Kitakufe. While these indicate that there have been positive changes in Dr. Kitakufe and are commendable, they cannot and do not entirely obviate the need for an appropriate penalty to act as a general and specific deterrent.

In considering the principle of mitigation and assigning weight to character references, the Committee finds the following excerpt from the decision in *Bolton v. Law Society*, cited in *CPSO v. Moore* (2002), helpful:

It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. The reputation of the profession is more important than the fortunes of any individual member.

The Committee is of the opinion that these principles are equally applicable to the medical profession. Therefore, while the Committee did consider the oral testimony of all the character witnesses including Dr. Kitakufe's daughter and present and former wives, as well as the letters of character reference submitted, the Committee accords limited weight to this evidence

The Committee considered the expert evidence from Dr. X and Dr. Y. Dr. X reviewed his report which included the findings and opinions of Dr. Y. Dr. X indicated that Dr. Kitakufe's risk for reoffending was low to moderate. Dr. X noted that Dr. Kitakufe has not completed his course of psychotherapy and therefore could not attest to the success of a therapy that has not yet been completed. Dr. X also testified that Dr. Kitakufe demonstrated cognitive deficits which he hypothesized were related to his depression at the time of testing. However, he acknowledged on cross-examination that he has not tested his hypothesis by repeating the cognitive testing on Dr. Kitakufe since his depression has improved. Dr. X also acknowledged, based upon information from other sources, that during his interviews with Dr. Kitakufe, Dr. Kitakufe had not been fully candid with him in regard to past events. While the Committee finds Dr. X's report and testimony helpful, notwithstanding the terms and conditions Dr. X proposed be placed on Dr. Kitakufe's certificate of registration, the Committee is provided with no assurance from Dr. X's reports or testimony that there would be no recurrence of the behaviour that resulted in Dr. Kitakufe's admission of professional misconduct made before this Committee.

After careful consideration of all of the evidence and the submissions of counsel, the Committee determines that revocation is warranted in this case. Dr. Kitakufe's misconduct constitutes a serious breach of professional trust and has brought the reputation of the profession into disrepute. The circumstances of this case, which involved not only defrauding the Ministry of Health and the Ontario Drug Benefit Plan of substantial amounts of money, but also the diversion of narcotics having several million dollars of street value to the drug trafficking industry, are so egregious that only the penalty of revocation will adequately address the principles of public protection and the maintenance of the public trust in the ability of the profession to regulate itself. It will

also serve as a specific and general deterrent, which the Committee must articulate to all those who practice medicine in Ontario. The significant aggravating factors, in the opinion of the Committee, outweigh the mitigating factors, and underscore the need for the penalty of revocation.

With respect to the principle of maintaining the public trust and confidence in the profession to self-govern and self-regulate, the Committee finds the decision of the Alberta Court of Appeal in *Adams v. Law Society of Alberta* (2000) to be of some assistance:

Self-regulation is based on the legitimate expectation of both the government and public that those members of a profession who are found guilty of conduct deserving of sanction will be regulated - and disciplined - on an administrative law basis by the profession's statutorily prescribed regulatory bodies. Thus, a professional disciplinary hearing is not a criminal hearing; it is an administrative hearing. Admission or proof of the alleged professional misconduct (or incompetence) is not the same as a plea or finding of guilt in a criminal matter. Rather, it is a finding of conduct deserving of sanction or incompetent practice based on administrative principles, including applicable evidentiary rules. A professional misconduct hearing involves not only the individual and all the factors that relate to that individual, both favourably and unfavourably, but also the effect of the individual's misconduct on both the individual client and generally on the profession in question. This public dimension is of critical significance to the mandate of professional disciplinary bodies.

And also:

Every member is or ought to be aware that not only one's professional conduct, but also one's personal conduct may be subject to scrutiny when that conduct may likely affect one's professional reputation, integrity and trustworthiness....

While it may be difficult to measure with precision the harm that a lawyer's misconduct may have on the reputation of the profession, there can be little doubt that public confidence in the administration of justice and trust in the legal profession will be eroded by disreputable conduct of an individual lawyer.

The Committee considers the *Adams* case relevant. The penalty imposed in this case is

not intended to “re-punish” Dr. Kitakufe for the criminal conviction, as he has already been punished by a court of law, but rather considers the importance of maintaining the integrity of the profession and the College’s ability to govern the profession in the eyes of the public.

Dr. Kitakufe’s incarceration is not a mitigating factor, but rather underlines the severity of the offences which the Committee must consider. Further, the fact that that Dr. Kitakufe has served a criminal sentence does not displace the facts as found and does not address the fact that the Committee’s obligation is to fashion an appropriate penalty for conduct that erodes public confidence by bringing the reputation of the profession into disrepute. The Committee considered the true gravity of Dr. Kitakufe’s misconduct which involved not only substantial fraud but also narcotic drug trafficking. The Committee expresses its abhorrence for such actions.

In Dr. Kitakufe’s counsel’s submissions, revocation was described as “professional capital punishment”. The Committee disagrees. There is provision in our governing legislation for Dr. Kitakufe to apply for reinstatement of his certificate of registration after twelve months.

Counsel for Dr. Kitakufe submitted that “given the extreme gravity of revocation, it should only be imposed where there is no other penalty that appropriately addresses the College’s mandate to protect the public”. When considering the gravity of revocation and the comparison of revocation to a penal sentence the Committee again finds the decision in *Adams* to be of some assistance:

It is therefore erroneous to suggest that in professional disciplinary matters, the range of sanctions may be compared to penal sentences and to suggest that only the most serious misconduct by the most serious offenders warrants disbarment.... Disbarment is but one disciplinary option available from a range of sanctions and as such, it is not reserved for only the very worst conduct engaged in by the very worst lawyers.

The Committee is of the opinion that the principles espoused in *Adams* apply equally to the medical profession. However, the Committee is of the view that Dr. Kitakufe’s misconduct is the most serious of professional misconduct. After considering the range

of sanctions available and having regard to the principles to be considered in determining the appropriate penalty, the Committee concludes that the most appropriate sanction in this case is revocation of Dr. Kitakufe's certificate of registration. The Committee also orders a reprimand to express directly to Dr. Kitakufe the sentiments of the public and the profession concerning his professional misconduct.

With respect to costs, the Committee determines that this is an appropriate case for costs. It is the general practice of the Committee to assess the quantum of costs at \$3,650 per day of hearing pursuant to the tariff in the Committee's Rules of Procedure. In this case there were six (6) hearing days, one of which was necessitated by the need to schedule an extra day to accommodate one of the expert witnesses. In the circumstances, costs of that day should not be payable and, therefore, the Committee orders that Dr. Kitakufe shall pay to the College the sum of \$18,250 being the costs of five (5) days.

ORDER

Therefore, the Committee orders and directs that:

1. Dr. Kitakufe appear before the Discipline Committee to be reprimanded.
2. The Registrar revoke Dr. Kitakufe's certificate of registration effective immediately.

The Committee further orders that Dr. Kitakufe shall pay to the College its costs fixed at \$18,250.00 within six (6) months of the date of this order.