

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Thomas Richard Mayberry, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the names of the patients, or any information that could identify the 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... 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. Mayberry,
2017 ONCPSD 52**

**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. THOMAS RICHARD MAYBERRY

PANEL MEMBERS:
DR. J. WATTS (Chair)
MS G. SPARROW
DR. P. ZITER
MR. J. LANGS
DR. M. GABEL

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS A. CRANKER

COUNSEL FOR DR. MAYBERRY:

MS Y. VENTRESCA
MR. B. FARRER

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. R. COSMAN

Hearing Date: November 15, 2017
Decision Date: December 12, 2017
Release of Written Reasons: December 12, 2017

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 November 15, 2017. 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 ALLEGATIONS

The Notice of Hearing alleged that Dr. Thomas Richard Mayberry 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 conduct or 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. Mayberry admitted to the allegation in the Notice of Hearing that he has engaged in conduct or 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.

THE FACTS

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

Background

1. Dr. Mayberry is a 69 year old family medicine physician practicing in Ingersoll, Ontario. Dr. Mayberry received his certificate of registration authorizing independent practice from the College of Physicians and Surgeons of Ontario (“the College”) in 1975.
2. Dr. Mayberry holds privileges at the Alexandra Hospital, the Tillsonburg District Memorial Hospital and the Woodstock General Hospital.
3. On July 17, 2012, Dr. Mayberry signed an Undertaking, attached at Tab 1 [to the Agreed Statement of Facts and Admission], relinquishing his prescribing privileges with respect to narcotics, narcotic preparations, controlled drugs, and benzodiazepines.

2015 Prescribing of Alprazolam

5. The College obtained Narcotics Monitoring System (“NMS”) data in relation to Dr. Mayberry for the period May 22, 2014 to February 10, 2016. The data revealed that two prescriptions for Alprazolam 0.5 mg, 90 tablets, were issued on April 9, 2015 and on September 29, 2015, respectively, to Patient A. The prescriptions, attached at Tab 2 [to the Agreed Statement of Facts and Admission], were obtained from the pharmacy.
6. Alprazolam is a Benzodiazepine, a category of drugs that Dr. Mayberry is prohibited from prescribing. Accordingly, in prescribing this drug, Dr. Mayberry breached his undertaking with the College.

Admission

7. Dr. Mayberry admits that the conduct set out above in paragraphs 5-6, constitutes professional misconduct, and admits specifically that his conduct constitutes 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, dishonorable, or

unprofessional, contrary to paragraph 1(1)33 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 Agreed Statement of Facts and Admission. Having regard to these facts, the Committee accepted Dr. Mayberry's admission and found that he committed an act of professional misconduct, 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.

AGREED STATEMENT OF FACTS AND ADMISSION IN RELATION TO PENALTY

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

Background

1. In 2014, College staff received Narcotics Monitoring System ("NMS") information which revealed that Dr. Mayberry had prescribed contrary to his undertaking on seven occasions. This included prescribing the following substances: Morphine, Oxycodone, Pentazocine, Ativan, Tylenol 3, Adderall and Concerta.
2. The Inquiries Complaints and Reports Committee ("ICRC") considered the information on September 23, 2015, and required Dr. Mayberry to attend the College to be cautioned in person with respect to this repeated prescribing of controlled substances in breach of his Undertaking with the College. Attached at Tab 1 [to the Agreed Statement of Facts and Admission in Relation to Penalty], is a copy of the ICRC's decision.

2016 Investigation

3. In response to the 2016 Investigation, Dr. Mayberry acknowledged that an error had occurred and that he was disappointed that the error occurred.
4. There is no information before the Discipline Committee with respect to any breaches of Dr. Mayberry's Undertaking between September 29, 2015 and the present.

Closure of Family Practice

5. Dr. Mayberry intends to close his family practice on December 1, 2017. Following that time, Dr. Mayberry intends to provide anaesthetic services 2-3 times per week at a local hospital.
6. Dr. Mayberry has found a physician to take over his family practice effective December 1, 2017.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for Dr. Mayberry made a joint submission as to an appropriate penalty and costs order. Counsel for the College and counsel for Dr. Mayberry agreed that an appropriate penalty should include a two-month suspension of Dr. Mayberry's certificate of registration, a reprimand, and an order that Dr. Mayberry pay costs to the College of a one-day hearing.

In coming to its decision, the Committee considered the aggravating and mitigating factors in this case.

Aggravating Factors

The Committee noted that this was Dr. Mayberry's second breach of an undertaking with the College with respect to restrictions on his certificate of registration to prescribe narcotics and other controlled substances.

When a physician has signed an undertaking with the College, the College relies on the physician to regard this undertaking with utmost seriousness and to educate himself or herself with respect to its scope and conditions and limitations.

Dr. Mayberry signed an undertaking with the College on July 17, 2012, wherein he clearly undertook and agreed not to prescribe narcotics and benzodiazepines.

Dr. Mayberry failed to comply with the terms set out in his undertaking with the College. Dr. Mayberry's actions by failing to comply with the terms of his undertaking represent a clear lack of responsibility on his part. The Committee takes this very seriously.

Mitigating Factors

Dr. Mayberry was remorseful, recognized his error and cooperated with the College to come to an agreement on facts and penalty in this hearing, which was considered by the Committee as a mitigating factor.

It was also noted that Dr. Mayberry agreed to close his community based family practice as of December 1, 2017. His practice will be restricted to anesthesia on a part-time basis in the local community based hospital.

Case Law

Counsel for the College and counsel for Dr. Mayberry referred the Committee to similar cases, dealing with a member's breach of a Committee order or an undertaking with the College.

In two similar cases – *CPSO v. Maythem* (2011) and *CPSO v. Sweet* (2004) – similar penalties were ordered.

In *CPSO v. Maythem* (2011), Dr. Maythem breached his undertaking with the College, in that he failed to maintain the information in his narcotics register as specified in his undertaking. The Committee ordered a four-month suspension of Dr. Maythem's certificate of registration, a reprimand, and that Dr. Maythem pay hearing costs to the College.

In *CPSO v. Sweet* (2004), Dr. Sweet breached the interim Order of the Executive Committee and the Order of the Discipline Committee by prescribing controlled substances. Dr. Sweet's certificate of registration was suspended for three months. The Committee also ordered that the terms, conditions, and limitations that at the time were imposed on Dr. Sweet's certificate of registration remain in full force and effect; that Dr. Sweet complete an ethics course; and that should Dr. Sweet fail to abide by the terms of the Order, his certificate of registration will be suspended immediately and he will be provided with fourteen days' notice that the matter will be reported to the Executive Committee.

Conclusion

The Committee accepted that the proposed joint penalty - a two-month suspension of Dr. Mayberry's certificate of registration, the requirement to complete one-on-one instruction in medical ethics and a reprimand - would serve to protect the public. It is also a specific deterrent to Dr. Mayberry and a general deterrent to other members of the profession for this type of behaviour.

A two-month suspension of Dr. Mayberry's certificate of registration also meets the objectives of maintaining public confidence in the College's ability to regulate the profession in the public interest. In the Committee's view, the joint proposal to delay the effective day of suspension for two months to December 1, 2017 was reasonable, in that it will ensure continuity of care for his patients and will allow a transition time for them to seek a new doctor without disruption of medical care.

The Committee further accepted that the requirement that Dr. Mayberry complete one-on-one instruction in medical ethics serve to rehabilitate and educate Dr. Mayberry.

The Committee concluded that it was appropriate to require that Dr. Mayberry pay costs of a one-day hearing to the College.

ORDER

The Committee stated its finding of professional misconduct in paragraph 1(i) of its written order of November 15, 2017. In that order, the Committee ordered and directed on the matter of penalty and costs that:

2. the Registrar suspend Dr. Mayberry's Certificate of Registration for a two-month period effective December 1, 2017.
3. the Registrar impose the following terms, conditions and limitations on Dr. Mayberry's Certificate of Registration:
 - i. Dr. Mayberry will successfully complete one-on-one instructions in medical ethics with an instructor approved by the College, at his own expense, within six months of the date of this Order.
4. Dr. Mayberry appear before the panel to be reprimanded.
5. Dr. Mayberry pay costs to the College in the amount of \$5,500.00 within thirty (30) days of the date of this Order.

At the conclusion of the hearing, Dr. Mayberry 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 November 15, 2017
in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
and
DR. THOMAS RICHARD MAYBERRY

Dr. Mayberry, you disobeyed a very clear restriction on your practice. There's absolutely no excuse for not knowing that Benzodiazepines were included in the schedule of drugs that you agreed not to prescribe. They're mentioned no fewer than three times in the document you signed, and they're mentioned even in the notice that you had to place in your waiting room.

Not only that, but this is the second time that you've breached that Undertaking. You were fortunate enough to be given a break on the first occasion, and even though on this occasion it affected only a single patient, this Committee must emphasize that we regard repeat professional misconduct of this nature as being extremely serious.

The College relies on the honesty, the integrity and the diligence of doctors in order to maintain its public status and reputation as a self-governing profession. Every physician who commits a misconduct of this nature, and make no mistake it is professional misconduct, every time this happens, you put at risk the ability of your colleagues the ability of your colleagues to govern the profession in the public interest. You put at risk not only your reputation, but that of the rest of the medical profession.

The Committee is glad to see that you've made arrangements to ensure that you're no longer at risk of committing these breaches, and does not expect to see you here again.

This is not an official transcript