

Indexed as: Gore (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 to Section 36(2)
of the *Health Professions Procedural Code*,
being Schedule 2 to 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. STANLEY LARRY GORE

PANEL MEMBERS: DR. O. KOFMAN (CHAIR)
DR. C.J. CLAPPERTON
J. ASHMAN
DR. N. DE
G. DEGROOT

Hearing Dates: October 4-8, 2004
October 25-28, 2004

Decision/ Release Date: January 19, 2005

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on October 4, 5, 6, 7, 8, 25, 26, 27 and 28, 2004. At the conclusion of the hearing, the Committee reserved its decision.

ALLEGATION

The Notice of Hearing alleged that Dr. Gore 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 acts relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

Schedule A to the Notice of Hearing outlines the following particulars:

1. Dr. Gore has signed or “co-signed” many prescriptions for individuals who are not his patients without following basic medical principles of assessment and diagnosis.
2. Dr. Gore has prescribed to both people and animals on the basis of prescriptions by other physicians or veterinarians in the United States without ever having seen or assessed the patient himself.
3. Dr. Gore has entered into an agreement with the Canadian Drug Store, an Internet prescribing service, that he will prescribe the services set out above and will be remunerated on a “per prescription” basis.
4. Dr. Gore has not advised the consumers of the prescriptions that he is receiving a fee from the pharmacy.
5. Dr. Gore had no patient charts for the persons or animals for whom he prescribed.

RESPONSE TO THE ALLEGATION

Dr. Gore denied the allegation as set out in the Notice of Hearing.

EVIDENCE

(a) Overview of the Issues

The allegations in this case are that Dr. Gore signed or co-signed over 24,000 prescriptions for individuals who are not his patients without following the basic principles of assessment and diagnosis. He was alleged to have prescribed to both people and animals on the basis of prescriptions written by other doctors or veterinarians in the United States without ever having seen or assessed the patient himself. Dr. Gore entered into an agreement with Canadian Drug Store (CDS), an Internet prescribing service, that he would prescribe the services set out above and would be remunerated on a “per prescription” basis. He did not advise the consumers of the prescriptions that he was receiving a fee from the pharmacy and he had no charts for those for whom he prescribed.

This case raises the following issue:

1. Did Dr. Gore’s conduct, in signing prescriptions of patients he had never seen, constitute professional misconduct, such that having regard to all the circumstances would be reasonably be regarded by members as disgraceful, dishonourable, or unprofessional?

(b) Summary of the Evidence

The oral and documentary evidence in this case was extensive. We do not propose to recite it all, but rather will summarize the major elements of the evidence.

An Agreed Statement of Facts was presented to the Panel at the outset of the hearing. (It was actually entitled “Revised Statement of Fact”.)

1. The Canadian Drug Store Inc. (“CDS”), as operating between August, 2001 and March, 2002, was a company that by means of its website acted as a procuring agent of pharmaceuticals from Canada for persons residing in the United States. Clients of CDS in the United States faxed or mailed their U.S. prescriptions to CDS. CDS purchased prescription pharmaceuticals from Canadian pharmacies in a variety of provinces, purchased non-prescription pharmaceuticals from at least one drug wholesaler and delivered the medications to its clients.

2. Dr. Gore entered into a service agreement with CDS in August, 2001. (A copy of the written agreement was provided to the Panel.)
3. In the course of performing services for CDS over a 6 1/2 month period, Dr. Gore affixed his initials or signature in the margins of faxed copies of the original U.S. prescriptions. There were 24,212 such prescriptions.
4. After approximately the first week of performing services for CDS, Dr. Gore did not contact any U.S. physician or patient to discuss or authenticate any of these prescriptions.
5. Many of the copies of prescriptions, which have Dr. Gore's initials or signature in the margins, were filled in Ontario by a licensed Ontario pharmacist and were delivered to CDS clients in the U.S. by CDS.
6. CDS paid Dr. Gore's service company either \$10.00 or \$3.00 for each service rendered, the majority of payments being \$10.00.

These facts were admitted. The substantial difference between the College and the doctor with respect to these facts arises from Dr. Gore's evidence regarding his intention in performing these services and affixing his signature as he did. The Panel's assessment of Dr. Gore's evidence in this regard is dealt with below. The Committee heard testimony from several witnesses: Mr. A, the investigator for the College of Pharmacists of Ontario; Ms. B, a pharmacist from the pharmacy that filled the prescriptions signed by Dr. Gore; Mr. C, an employee of CDS; Mr. D, an experienced pharmacist; and, Dr. Gore.

Numerous exhibits were filed, including the Agreed Statement of Facts referenced above, several binders of documents, many examples of prescriptions or photocopies of prescriptions, the "hard copy" of prescriptions generated by the pharmacy and the examples of "bin sheets" provided to Dr. Gore by CDS. Boxes of all of the original prescriptions signed by Dr. Gore were made available to the Panel as well. In coming to our decision we have had regard to all of this evidence.

Witness #1 - Mr. A

Mr. A, an investigator with the Ontario College of Pharmacists, told the Panel how he came to investigate CDS, a Canadian company that was supplying U.S. citizens with medications. In the search of the CDS premises and the Pharmacy conducted by the College of Pharmacists, he found

prescriptions in various stages of processing, and came to the knowledge that Dr. Gore had signed prescriptions that had been originally mailed or faxed to CDS by American customers. After Dr. Gore signed the faxed prescriptions, the Pharmacy filled them. Neither Dr. Gore's name nor the pharmacy name appeared on the label of the medication bottle. Instead, the label contained the name of the U.S. doctor or clinic where the prescription had originated. This was a requirement of U.S. Customs according to Mr. A's understanding. A "hard copy" of the prescription information was also generated by the pharmacy for its records and this was kept with the pharmacy records. Most of these hard copies did not contain Dr. Gore's name. Mr. A determined that 50 to 300 prescriptions were filled on any given day. He also pointed out that, in Ontario, a prescription must be signed by an Ontario doctor and, only in an emergency situation, will a prescription be filled from an out-of-province doctor. It was Mr. A's evidence that the effect of an Ontario doctor's signature was to allow the prescription to be filled. Mr. A also assumed that, as Dr. Gore's signature was on the prescriptions, Dr. Gore intended the prescription to be filled. We do not give weight to Mr. A's assumption in this regard and separately address below the issue of Dr. Gore's intention. Mr. A also pointed out that the prescriptions were faxed to Dr. Gore and as the drugstore required the original signature on the prescriptions, they had to be physically delivered for processing.

The Panel found Mr. A to be a credible witness.

Witness #2 - Mr. C

Mr. C was an employee of CDS from November 2001 for a period of six or seven months. He was hired to take orders via the Internet and over the telephone as well as to deal with customer requests and questions. Mr. C was also to contact the American doctor if the name or other details on the prescription were illegible but, from his experience, the doctor was almost never called. Because they were so busy and because they had difficulty contacting the U.S. physician, they were told to use their common sense or judgment in interpreting the prescription. If the doctor was not called, they were to just write down that they did call. If the information was illegible, it was passed off to those who were doing the inputting into the computer database. As far as he knew, there was no pharmacist at CDS. However, in talking to clients, he massaged his answers to fit their questions and reassured them that there was a pharmacist present.

The Panel has no reason to disbelieve Mr. C's testimony as it was given in a clear straightforward way and was not contradicted by any evidence from any other employees of CDS.

Witness #3 - Ms. B

Ms. B, a pharmacist at the Pharmacy, testified that she met Dr. Gore two years prior to doing business with CDS while she was working on specific formulations for him. She became familiar with his signature after the CDS business started and was the one responsible for filling the CDS prescriptions. She stated that, if an Ontario doctor had not signed the prescriptions, they would not have been filled. She would have filled the prescriptions no matter where on the 8-1/2 by 11" sheet of paper the doctor's signature was affixed. The American doctor's name was on the "hard copy" as well as the prescription as he was the one prescribing. Ms. B testified that the patient might not have understood if Dr. Gore's name was on the medication label so they used the U.S. doctor's name to prevent any confusion for the U.S. client.

Ms. B was a credible witness.

Witness #4 - Mr. D

Mr. D gave testimony as an expert witness as an experienced pharmacist licensed to practice in Ontario. Although there was some confusion that was clarified on cross-examination about what Mr. D had been shown with respect to Dr. Gore's marks on the prescriptions, he testified that even if the prescription was a photocopy, it could be legally filled if the signature was original. His testimony was useful in that he outlined the requirements for a prescription to be filled under the *Pharmacy Act* and the *Drug and Pharmacies Regulation Act*. Mr. D also pointed out that, under a new policy of July 2003 from the Ontario College of Pharmacists, if the pharmacist does not believe that a patient-doctor relationship exists, the pharmacist should not fill the prescription.

Mr. D was a credible witness.

Witness #5 - Dr. Gore

Dr. Gore's evidence was extensive both in chief and in cross-examination. Dr. Gore received his medical degree in 1973 and worked as a family physician for a few years until he attended law school. He graduated law school in 1979 and was called to the Bar in 1981. In the early 1980's, Dr. Gore studied hair replacement techniques in New Zealand and, subsequently, opened his own hair replacement practice. However, he was forced to quit this practice in 2000-2001 as a cervical radiculopathy affected his ability to do the procedure. From 1998 to the present, he has been

developing trans-dermal and trans-mucosal drug delivery systems, especially as they relate to spot reduction of “cellulite”.

Dr. Gore worked for CDS from August 31, 2001 until mid-March 2002. CDS was in the business of filling prescriptions for clients from the United States as they could provide the drugs more cheaply. The American patient would generally photocopy their prescription and then send it by fax, along with a Power of Attorney and a medical form, to a “CDS number”. This number was actually an Internet company called J-Fax. J-Fax was able to receive multiple faxes at the same time and then digitize the image and upload it to an electronic mailbox. CDS would then download the image and print the prescription on their printer. Several prescriptions would be printed on a page and a junior clerical staff entered the medication information, along with the patient information into a database. This information was then used to generate “bin sheets” that could be used for various purposes. The bin sheets contained the patient information, prescription and patient number as well as the name of the medication, dosage, and directions and other information. Dr. Gore testified about his understanding of how the prescriptions were processed. It was Dr. Gore’s understanding that CDS then used the bin sheets and the database to complete “templates” that would be used by physicians contracted by CDS, to “re-issue” the prescriptions, that is, to sign and thereby authorize the prescription of the American doctor so they could be filled by a Canadian pharmacy. The signed prescriptions were then sent to a pharmacy to be filled and, subsequently, returned to CDS for shipping to the American client. While this was Dr. Gore’s understanding of the process, and was led in evidence as a foundation for other evidence, the Panel did not accept this as direct evidence of how the process of CDS actually unfolded since Dr. Gore was not in a position to testify with respect to what other doctors or CDS actually did.

Dr. Gore testified that Mr. E, the owner of CDS, contacted him to discuss mutual business interests. In the course of their discussions, Mr. E explained that his company provided prescription medication to American customers but they were having a lot of errors for various reasons and he was interested in reducing them. Dr. Gore stressed that one of the problems they encountered was due to illegibility, not just because physicians wrote illegibly, but also because CDS received a “fourth generation” copy of the prescription that had been sent through the electronic mailbox of J-Fax. (Fourth generation because the original handwritten prescription was photocopied by the patient, faxed to J-Fax, transmitted to CDS and then reproduced by CDS.) After considering the problems that CDS was having in its business, a couple of weeks later, Dr. Gore proposed to Mr. E

that his process, “Script-Sure”, serve as a “gatekeeper” for the electronic transmission data. Dr. Gore would look at the image and make sure it was legible and check to see if what was on the prescription was accurate and correct any errors in the prescription. One of the ways to deal with problems on the prescriptions was to contact the U.S. doctors directly by fax and ask for clarification of information. Dr. Gore testified that he developed a standard form fax for this purpose. Dr. Gore told the Panel about his negotiations with CDS and the concern he had that his verification idea would be stolen. He pointed out the exclusivity clause in his contract with CDS that basically said that CDS would not create its own verification business either within or separately from the company.

Dr. Gore testified that he made several recommendations to CDS for changes in their system. He suggested that pharmacy technicians be hired to do the data input as he thought this would reduce the number of errors. He also suggested that there be a pharmacist on staff. Moreover, he recommended changes to the format of the bin sheets to include more information, as he testified that if there were no changes to the bin sheets there was nothing to verify.

Between 5 and 6 p.m. from Monday to Friday, CDS sent faxes to Dr. Gore containing bin sheets as well as the prescriptions. Because the prescriptions had been received electronically, there were usually from one to four printed on an 8-1/2 by 11” sheet of paper. Dr. Gore outlined in considerable detail, in both examination-in-chief and cross-examination, the process he used to verify the prescriptions. He said that he would look at each prescription to see if it was legible and he would not make a check in the refill box on the bin sheet if he could not read the prescription. He told the Panel that these illegible prescriptions were rejected. He testified that it had to be readable or it would not be processed, as there was to be no “second guessing”. He would then write on the front bottom of the bin sheet the number of the prescription that was not legible and if one particular thing was illegible, it was noted.

Dr. Gore said he would then ensure the doctor’s signature matched the name at the top of the prescription and, if it didn’t match, then a note was made on the bin sheet and he would make a mark in the appropriate line on the bin sheet.

After going through the prescriptions, Dr. Gore testified that he would add up the prescriptions verified and subtract the ones that were illegible or over-the-counter medications, that is, those not requiring a prescription in Canada. He was paid \$10.00 for each prescription verified but he didn’t

bill for illegible prescriptions or the over-the-counter ones. When prescriptions had been re-submitted after having information corrected, Dr. Gore charged \$3.00 to CDS.

Dr. Gore also testified that he initially intended to fax the doctors in the U.S. if there was a problem with their prescription. He testified that the “nub” of his business was to have a mechanism to get in touch with a doctor in another country and his invention was a very creative method of getting a fax to a physician. The doctor would get not just a fax but “An Urgent Fax from Dr. Stan Gore”. He testified that no one had ever thought of this concept before and was worried about the proprietary nature of it, as he didn’t want his idea stolen. The purpose of the fax was to check information with the doctor and to also have the physician tick off the form saying they would follow-up with the patient. Dr. Gore noted that drugs were being seized at the border and the best way to ensure that they would get through American Customs was to have the U.S. doctor indicate their intention to follow-up with the patient. Problems with the prescription could be written in the space at the bottom of the fax, as there was no other indication on the form that there was a request for clarification regarding the prescription. He said that the form also told the American doctor that everything was “OK”.

Dr. Gore testified that verification that prescriptions had been issued by physicians had been part of his agreement with CDS. However, his agreement with CDS was “fluid” and didn’t mean that he had to prove that it came from a doctor’s office. By authentic, Dr. Gore said he meant not forged, altered and timely. A technical difficulty with his fax machine impeded Dr. Gore’s ability to do this critical function of his service. CDS agreed to take over this part of his work and, in return, they wanted him to look for drug interactions in the multiple prescriptions he received for the same patient. However, he was able to look at only the multiple prescriptions for the patient that were received on the same day and had no way of knowing if the patient ordered drugs on another day or what other medication they were taking. He testified that he saw it as a “value added” service to be checking for drug interactions on his database, even if the U.S. physician was the prescriber and ultimately responsible. An American attorney could generate a claim against him if there was a problem with drug interactions, he said.

Dr. Gore avowed that he had an ethical responsibility “as a human being” to alert himself as to any risks to the patient and that he was a compulsive person and was always as careful as he could be. Every time he looked at a prescription, he needed to make a mark beside it to verify that he had verified it and he did not want his signature to be considered as “co-signing” the prescription in any

way. After he checked the prescriptions and the bin sheets, he understood CDS then created templates for other Canadian doctors who then downloaded and signed them, thereby authorizing them for filling by the pharmacy.

Dr. Gore frequently reiterated that he was not the doctor who was signing and re-issuing the prescriptions. He wrote "Confirm Sig" outside the margins of the prescription and after the first week or so, he obtained a "Confirm Sig" stamp and then would affix a version of his signature, "Stan Gore MD", under the stamp. He testified that the "Confirm Sig" stamp had a dual meaning and not only noted his signature but also referred to the Latin word indicating the directions for taking a medication. He also stated that it would alert an "unalert" pharmacist that there was something unusual about this prescription, as well as showing CDS that the prescription was appropriately checked by him.

Dr. Gore emphatically pointed out in his testimony that his signature outside the margins of the prescription (i.e. under "confirm sig") was not his usual signature and that the pharmacist could well assume it was a forgery if it was not written "Stan Gore MD LLB". He testified that anything less than that was not his signature, and would raise a flag with the pharmacy.

Dr. Gore faxed to CDS information in the bin sheets and prescriptions that alerted them to problems or errors. After working on the prescriptions and bin sheets all evening, and sometimes late into the night at home, he would arise early in the morning to drive to his office to deposit them in a special box outside his office by 7:00 a.m., for pick-up by the courier.

Dr. Gore also testified that, in the summer of 2001, he was aware of the policy of CPSO that no prescriptions should be signed without a doctor-patient relationship and he thought no Ontario physicians were involved at the time in signing prescriptions for American patients.

Dr. Gore admitted earning over \$220,000.00 in about six and a half months from CDS. He also obtained malpractice insurance through an American insurer and part of the cost was paid by CDS as negotiated in the contract with it.

Dr. Gore testified he had no idea that his signature on the prescriptions was used to fill them. He said he received a communication in November 2001 from the Pharmacy, his neighbourhood pharmacy, asking him where a prescription was. He went to the pharmacy to investigate, but was

told by the pharmacist that they were filling the “overflow” prescriptions for CDS and he looked at several bags containing filled medication bottles and their labels and none bore his name.

In cross-examination, Dr. Gore changed his testimony on several key points. Some of these discrepancies involved his testimony about the steps he went through to check the prescriptions and the information contained in them, including what he did and how he did it and the reasons for his actions. When shown several examples of his work that didn’t conform to what he told the Panel, Dr. Gore provided various explanations for the contradictions.

FINDINGS AND DECISION

The Panel accepted the facts set out in the Agreed Statement of Facts.

Dr. Gore’s Credibility:

Dr. Gore maintained that he was only performing a “verifying” role for CDS and that he had no inkling that his signature on the prescriptions was being used as authorization to fill them. The Panel therefore had to consider closely the credibility of Dr. Gore.

Dr. Gore was very careful in his testimony to point out exactly what his function for CDS was and how he did it. When documentation was produced which did not support his version of his work or, when under pressure, he changed his testimony on a number of occasions.

Illegibility of the prescriptions was a problem for CDS and Dr. Gore carefully pointed out that, by the time the prescription was received by CDS, it was a photocopy of a photocopy and the digitized process of J-Fax led to “generational” difficulties. All of the information on the prescription was to be legible and he would be ensuring the signature on the bottom of the page would match the name at the top. He said many times that, if he could not match the information, he would make a mark on the bin sheet and write the number of the illegible prescription on the front of the bin sheet. However, several examples were put to Dr. Gore in cross-examination where information could not be read or was cut-off. There was no note on the bottom of the bin sheet and he had ticked off the appropriate box on the bin sheet, thereby contradicting his carefully detailed account of what he did.

When these inconsistencies were pointed out to Dr. Gore, he had several explanations and excuses, including the lighting, his eyesight and the fact that he was not looking at the original material that he had seen. After many examples and, after being given the original document he would have

seen, Dr. Gore ultimately agreed that the prescriptions contained information that was not legible and yet he had signed them.

Dr. Gore later changed his evidence when shown multiple examples of illegible prescriptions and said it was not his job to check for illegibility. He then went on to say that the check mark on the bin sheet really was there just for his own billing purposes after saying it was there for CDS to use. Dr. Gore also later said that it didn't matter if the prescriptions could be read, as the "reissuing" doctor was checking as well.

The Panel did not find Dr. Gore's testimony reliable or persuasive with regard to what he was doing for CDS in terms of checking for legibility.

Dr. Gore denied checking to see if the patient's address was on the prescription. Later, he said he didn't know if he did this function, as he didn't know if the patient's address was on the script. He didn't know if comparing addresses was a negotiated role. He went on to deny that it was his job to check whether the patient's address was on the prescription. The uncertainty that Dr. Gore demonstrated around this point raised questions about why he didn't recall this given that he had processed thousands of prescriptions and bin sheets.

Dr. Gore originally testified that his role in checking the accuracy of information on the bin sheet was very important, as the template for the reissuing doctor was being derived from this information. The medication and dosage must match the prescription. When Dr. Gore was shown numerous examples of prescriptions where the medication name couldn't be read, he gave a number of guesses. He then claimed it was unfair as he wasn't given the corresponding bin sheet that he would have had available when working for CDS. When provided with the bin sheet, he deferred to the bin sheet for the information that he had difficulty in reading. In doing so in his work with CDS, Dr. Gore was not doing what he said he was doing. If he were truly checking for accuracy of information, he would not be deferring to what the bin sheet said as this had been generated by a clerk who would have had the same difficulty. In short, there was no point to what Dr. Gore was doing, if he was deferring to the bin sheet.

In our view, it is not credible that Dr. Gore was paid such a large sum of money if his verifying was simply to check the prescription against the bin sheet and if he couldn't read it, to defer to the bin sheet. Dr. Gore admitted that Mr. E, the owner of CDS, was a "shrewd businessman" and, in our view, it does not fit that he would pay Dr. Gore almost a quarter of a million dollars in a little over

half a year to perform a verifying or proof reading role, especially if Dr. Gore was ultimately relying on what the clerk had entered. In addition, Dr. Gore admitted that a pharmacist could have done a better job, given their expertise in reading illegible handwriting.

Dr. Gore also testified that his “Urgent Fax from Dr. Stan Gore” was a “million dollar” idea to the point that it was a worry to him that it would be stolen. It doesn’t seem likely that CDS could not have devised a way of communicating with the physicians in the U.S. had they wished to. If we are to believe Dr. Gore’s response that the fax provided a way for the doctor to indicate their intention to follow-up in their care for their patient and thus satisfy U.S. Customs, then why wasn’t this method used for all of the prescription orders? Dr. Gore said it would not be practical to check all of the prescriptions this way. In that case, his assertions of how useful the fax would be for this purpose are, therefore, not very meaningful either. Mr. C testified that CDS rarely contacted the U.S. doctor and Dr. Gore didn’t either, so, how the fax was a “million dollar” idea was not clear to the Panel.

Dr. Gore drafted his own contract with CDS. Nevertheless, he told the Panel that what he was doing for CDS was “fluid” and changed over time. Although he said he intended to contact doctors in the U.S. to confirm information, he shifted the responsibility to CDS as he had problems with his fax machine. However, he didn’t have a problem in receiving faxes from CDS five days a week with the prescriptions and bin sheets. Nor was there a problem in sending faxes with the notated bin sheets and his invoice every day. He was no longer looking for legibility problems and he was simply checking the prescriptions against the bin sheets. Although he was doing what he termed the “value added” role of checking for drug interactions, in fact, he was only able to do this if there were multiple prescriptions for the same patient on the same day, as he had no access to other information about their medication or prescriptions that were ordered on another day. Again, his statement of the “value added” nature of his work is lacking in credibility when viewed against the backdrop of the reality of the limitations inherent in that function.

Dr. Gore repeated many times that he was aware that there was a risk that his signature could be used as authorization for the filling of the prescriptions, yet he made a point of stamping the prescription and writing his signature on or near the margins of it. He stated many times that he always stamped or wrote “Confirm Sig” outside the margins of the prescription. When shown numerous examples of prescriptions that were signed on the face, he gave various excuses, including: there not being room to sign outside the margins, his hand slipped, he was tired or his problem with cervical radiculopathy led to his loss of motor control. While the Panel was not

judging the accuracy of where his signature actually was, the fact that, in many examples, it was on the face of the prescription, does not support Dr. Gore's credibility. It simply was not the case that he always signed outside the margins as he repeatedly said that he did.

Even when there were four prescriptions to a page, he did the same with each of them. The prescription edges were often not distinct because they were printed on an 8-1/2 x 11" piece of paper. The Panel heard Ms. B testify that she would have filled the prescription no matter where on the page the signature was affixed. The stamp "Confirm Sig" served to highlight his signature to be readily visible to the person filling the prescription. While Dr. Gore would have us believe that the signature on the prescription was simply an indication to CDS that he had done his job, he had many other options for doing that. He could have signed the bin sheet and ticked off the prescription, or any other mark could have been used. Instead, he chose to use a mark, that is, his signature, that allowed for the prescription to be filled. He used a stamp to highlight his name and make it more readily visible to the person filling the prescription.

Dr. Gore's assertion that his legal signature was "Stan Gore MD, LLB" and that a pharmacist would know it was a forgery if his name and MD was not followed by LLB is also not believable.

Finally, Dr. Gore received the prescriptions every weekday from CDS along with the bin sheets on his fax machine. After working on them, often late into the night, he rose early in the morning to drive to his office at 7:00 a.m. so the signed prescriptions and bin sheets could be placed in an outside box for pick-up by a courier. It is the Panel's view that he did this because it was important for the prescriptions to be signed with his signature to authorize their filling by the pharmacy. If the bin sheets were being used to make templates for other doctors to sign the prescriptions as he testified, then there was no need for the prescriptions with the original signature to be sent by courier. They could just as easily have been faxed back to CDS.

In the final result, the Panel simply did not find Dr. Gore's evidence to be credible. It is not simply his demeanour that led us to this conclusion but the many contradictions and discrepancies in his evidence. Dr. Gore contradicted himself in his testimony about what he was doing for CDS and attempted to cover up the different versions by saying his service for them was "fluid". Closer examination of what he was doing revealed that he was not consistently checking for legibility as he said he was. Given that he looked at over 24,000 prescriptions in a few months, it seems remarkable that he was uncertain about whether he was actually checking for the patient's address on the

prescription. He testified about carefully checking the bin sheets and prescriptions for illegibility and errors, but repeated examples were presented showing that he did not note illegible prescriptions and signed the prescriptions anyway. His grandiose comments about the “Urgent Fax” and the lack of use of this method of checking prescriptions further harmed Dr. Gore’s credibility. The comments about his legal signature did not have the ring of truth. The “value added” function of checking for drug interactions could not be done adequately due to the problems inherent in the process. While these are some of the major contradictions and discrepancies, it is not no means all of them but are a sufficient example of the basis for our view.

Dr. Gore’s Intention:

Dr. Gore’s credibility suffered to the point that, after closely examining what he said he did for CDS, the Panel was compelled to conclude that he was not doing what he said he was doing, that is, simply verifying the prescriptions and ensuring legibility. He was paid very handsomely for a job that he admitted a pharmacist could do better. In finding that there were problems with Dr. Gore’s credibility, the Panel had to consider whether or not Dr. Gore intended to sign the prescriptions in order for them to be filled.

The Panel recognized that, in doing so, they must consider the Bernstein standard of whether there is clear, cogent and convincing evidence that Dr. Gore intended to sign the prescriptions to authorize the filling of them, despite having no doctor-patient relationship and in contravention of a policy of the College that he clearly stated he knew about. As stated above, what Dr. Gore was doing for CDS was actually shown to be very little when compared to the amount of money he was paid. He chose to sign the prescriptions, and in fact, used a “Confirm Sig” stamp that served to highlight his signature. Rather than pointing out to the “unalert” pharmacist that there was something unusual about this prescription and that it shouldn’t be filled, as Dr. Gore suggested, the Panel thought it more likely that the stamp actually ensured the pharmacist noticed that he had signed the prescription, especially when there was sometimes more than one script on a page. If Dr. Gore was as concerned as he says about his signature being misused, then he could have used another mark to indicate to CDS that he had done his “verifying “ job, but he chose to use his signature. One of the most compelling points for the Panel, however, was Dr. Gore’s testimony about arising early, even after working late some nights, to ensure the bin sheets and prescriptions were in the box at his office for the courier by 7:00 a.m. He would need to do that only if his original signature on the prescription was vital to the operations of CDS, otherwise he could have faxed the material to CDS.

The Panel has concluded that Dr. Gore knew what his role was in the processing of the prescriptions and that is why he was paid so handsomely for a function that was essential for the business CDS was doing.

Counsel for Dr. Gore noted that the particulars 2 to 4 of the Notice of Hearing refer to Dr. Gore prescribing for people and animals and that he was paid on a per prescription basis. If prescribing is a conscious act of prescribing a medication, or advising the use of a medication, then he did not prescribe in this way. Counsel for Dr. Gore maintained that all the evidence supported Dr. Gore's assertion that he was doing a verifying and not a prescribing service. The Panel disagrees.

Dr. Gore's counsel pointed out several documents that support his testimony of his verification role for CDS. However, given the inconsistencies in his testimony and the documentation to the contrary, the Panel was of the view that, not only was Dr. Gore signing the prescriptions with knowledge that they would be filled, he put in place other documents, such as his contract and the "urgent fax" to deflect attention from what he was truly doing for CDS. Counsel argued that there were several instances where Dr. Gore suggested changes to the operations of CDS that would improve accuracy, thereby supporting his testimony that he was simply verifying for CDS. However, the Panel did not find those changes to the process inconsistent with his role in signing the prescriptions as it was also in his best interest if accuracy was improved as well.

Defence counsel also made note of several aspects of what the pharmacy was doing with the prescriptions but the Panel considered Dr. Gore's actions and his intentions independent from their role in the processing of prescriptions from the U.S.

Evidence was presented to the Panel about two other Ontario physicians who were working for CDS and signing prescriptions from U.S. clients. However, the Panel did not find this information useful as there was no evidence presented that linked Dr. Gore's activities with them. Likewise, defence counsel noted many areas where CDS was less than honest with their clients but, even if this were true, it does not compel the conclusion that they were not honest with Dr. Gore in how they were using his signature.

The particulars in Appendix A to the Notice of Hearing are met in the Panel's view. Dr. Gore did sign or "co-sign" many prescriptions for individuals who are not his patients without following basic medical principles. In the Agreed Statement of Fact, Dr. Gore admitted that he affixed his signature or initials to over 24,000 faxed prescriptions and there was no evidence that Dr. Gore had a

physician-patient relationship with any of those people for whom he signed prescriptions or completed any assessment or diagnosis. While his counsel argued there was no intent for his signature to be used to authorize the filling of the prescriptions, the Panel determined otherwise. The Panel heard and considered submissions from both counsel about the nature of the intent, including further submissions from both counsel in letters dated November 11 to the 19th. While the defence argued that there was no intent for the scripts to be filled when Dr. Gore signed the prescriptions, College counsel maintained that, even if Dr. Gore did not intend his signature to be used this way, what he did would still constitute disgraceful, dishonourable and unprofessional behaviour. The Panel has considered this argument. Dr. Gore, as an experienced physician, knew the requirements for prescriptions to be filled in Ontario and yet he chose to affix his name to over 24,000 prescriptions. He is also a lawyer, and was aware of the College's policy on this issue and clearly recognized the risks that his signature could be misused. Even if Dr. Gore did not intend to sign or co-sign, the Panel considers that his behaviour constitutes professional misconduct as his signing the prescriptions, as he did, led to them being filled with the potential for harm to those patients he hadn't seen and would not be seeing in follow-up. In our view, any physician should recognize that signing these prescriptions, in this fashion, is unacceptable conduct and unprofessional.

After considering all of the evidence, the Panel did not find Dr. Gore credible as a witness. His version of what he was doing was inconsistent and contradictory. In fact, the members were of the view that he knew what he was doing and that the contract and many aspects of his testimony were contrived as a cover-up for his true actions. Dr. Gore signed the prescriptions from U.S. citizens as he intended them to be filled by a pharmacy in Ontario. Despite being aware of the policy of The College of Physicians and Surgeons of Ontario, he chose to devise a scheme to sign the prescriptions and be paid a handsome sum by CDS for so doing. While there was no evidence presented that harm came to those who received prescriptions that Dr. Gore signed, that potential was there in this process. His self-interests over-rode considerations for patient safety and the basic requirements for medical practice. He has committed professional misconduct. Dr. Gore has engaged in conduct or acts relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as being disgraceful, dishonourable and unprofessional.

Indexed as: Gore, S.L. (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 to Section 36(2)
of the *Health Professions Procedural Code*,
being Schedule 2 to 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. STANLEY LARRY GORE

PANEL MEMBERS:

DR. O. KOFMAN (CHAIR)
DR. C.J. CLAPPERTON
J. ASHMAN
DR. N. DE
G. DEGROOT

Penalty Hearing Date:
Decision/Release Date:

March 10, 2005
March 10, 2005

PENALTY DECISION AND REASONS

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on October 4, 5, 6, 7, 8, 25, 26, 27 and 28, 2004. At the conclusion of the hearing, the Committee reserved its decision. On January 19, 2005, the Committee delivering its written decision and found that Dr. Gore committed professional misconduct 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 acts 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 Committee heard evidence and submissions on penalty on March 10, 2005 and delivered its penalty order with written reasons to follow.

DECISION AND REASONS ON PENALTY

The Committee has listened carefully to all submissions by both counsel. In the absence of a joint submission, the Committee would have considered increased penalties such as increased costs and a fine as well as a possible suspension. There is, however, a joint submission in this case and the Committee is mindful that it should not depart from the joint recommendation except in the most exceptional circumstances. We have been persuaded by counsel that the proposed penalty meets the requirements for general and specific deterrence and that the public is properly protected. We therefore impose a recorded reprimand and order costs in the amount of five thousand dollars.

ORDER

The Discipline Committee therefore ordered and directed that:

1. Dr. Gore is to attend before the panel to be reprimanded, with the fact of the reprimand to be recorded on the register.
2. Dr. Gore is to pay costs to the College in the amount of \$5000 to be paid within thirty days.

At the completion of the hearing, Dr. Gore waived his right to appeal and the reprimand was administered.