

## NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Clowater, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of the patients or any information that could disclose the identity of the patients 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: **Ontario (College of Physicians and Surgeons of Ontario) v. Clowater, 2016 ONCPSD 19**

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

**IN THE MATTER OF 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. JULIE LEE CLOWATER**

**PANEL MEMBERS:**

**DR. P. TADROS  
MR. J. LANGS  
DR. P. CHART  
MS. D. DOHERTY  
DR. C. LEVITT**

**COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF  
ONTARIO:**

**MS. E. GRAHAM**

**COUNSEL FOR DR. CLOWATER:**

**MR. A. MATHESON  
MS. K. GRACE**

**INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:**

**MR. G. FORREST**

**PUBLICATION BAN**

Hearing Date: **May 19, 2016**

Decision Date on Finding: **May 19, 2016**

Decision Date on Penalty: **July 22, 2016**

Release of Written Reasons on Finding and Penalty: **July 22, 2016**

## **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 May 19, 2016. At the conclusion of the hearing, the Committee stated its finding that member committed an act of professional misconduct and reserved its finding on penalty and costs.

## **THE ALLEGATION**

The Notice of Hearing alleged that Dr. Clowater committed an act of professional misconduct:

1. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, in that she 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 ALLEGATION**

Dr. Clowater admitted the allegation in the Notice of Hearing, that she 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 an Agreed Statement of Facts and Admission that was filed as an exhibit and presented to the Committee:

## **BACKGROUND**

1. Dr. Clowater is a pediatrician who has held a certificate of registration authorising independent practice from the College of Physicians and Surgeons of Ontario since June 15, 2007.

2. Prior to 2007, Dr. Clowater practised in Nova Scotia. She currently has a community-based pediatric practice in Chatham, Ontario.

#### FACTS LEADING TO THIS REFERRAL TO DISCIPLINE

(i) Practising under suspension – September 2011

3. On April 5, 2011, the College mailed Dr. Clowater her 2011 annual renewal package and membership fee invoice with respect to renewing her certificate of registration. The membership fee and completed form were due to the College on June 1, 2011.

4. On April 5, 2011, the College also sent Dr. Clowater a Membership Renewal Notice, as follows:

This notice is being sent to you in conjunction with the mailing of your 2011 annual membership renewal package. [...]

The due date for receiving your completed renewal information and the annual fee at the College is 5:00 p.m. EDT on Wednesday, June 1 2011. If you miss the due date, there will be a \$371.25 late payment penalty fee. If you do not receive your renewal package by mid-April or if you have any questions or need help, you can email us at [feedback@cpsy.on.ca](mailto:feedback@cpsy.on.ca) or call the Physician Advisory Service at one of the phone numbers below.

Thank you very much.

College of Physicians and Surgeons of Ontario  
80 College Street  
Toronto ON M5G 2E2  
Physician Advisory Service:  
Telephone: 416-967-2603  
Toll-Free: (Ontario only): 1-800-268-7096 ext. 603

A copy of the reminder sent to Dr. Clowater on April 5, 2011 is attached at Tab 1 of the Agreed Statement of Facts and Admission.

5. On May 9, 2011, the College sent Dr. Clowater a second reminder about the upcoming renewal deadline, as follows:

REMINDER - CPSO Membership Renewal Due June 1<sup>st</sup>

The deadline for your membership renewal is 5:00 p.m. EDT on Wednesday, June 1, 2011. If you have already submitted your renewal, please disregard this notice.

[...]

If you miss the Wednesday, June 1 2011 due date, there will be a \$371.25 late payment penalty fee.

If you need help or have questions, you can email us at [feedback@cpsy.on.ca](mailto:feedback@cpsy.on.ca) or call the Physician Advisory Service at one of the phone numbers below.

Physician Advisory Service:  
Telephone: 416-967-2603  
Toll-Free: (Ontario only): 1-800-268-7096 ext. 603

A copy of the reminder sent to Dr. Clowater on May 9, 2011 at is attached at Tab 2 of the Agreed Statement of Facts and Admission.

6. On May 13, 2011, the College sent Dr. Clowater a third reminder of the upcoming renewal deadline and a possible upcoming mail strike, as follows:

CPSO Membership Renewal Due June 1st and possible Mail Strike  
Advisory - May 24th

The deadline for your membership renewal is 5:00 p.m. EDT on Wednesday, June 1, 2011. If you have already submitted your renewal, please disregard this notice.

Canada Post will be in a legal strike position on May 24th. We want to make sure that you know of the options available to you for submitting your annual fee and completing the CPSO Annual Renewal on time as NO extensions will be granted.

Option 1

Complete your renewal online. To access online renewal go to:  
<https://www.cpsy.on.ca/membersonly/login.aspx>.

Option 2

If you are in the vicinity of 80 College Street, you can drop off a completed form and payment at our office at any time prior to the deadline.

Option 3

Courier your Annual Renewal and/or your annual fee to 80 College Street, Toronto ON M5G 2E2.

Option 4 (Highest risk)

Complete paper form and submit form and payment by mail as soon as possible. If the form and payment are not received by June 1st, you will be charged the late payment penalty fee (\$371.25). We are NOT able to accept faxed forms.

There is HELP available – call the Physician Advisory Service at one of the numbers below:

Telephone: 416-967-2603

Toll-Free: (Ontario only): 1-800-268-7096 ext. 603

Or email us at [feedback@cpsy.on.ca](mailto:feedback@cpsy.on.ca)

A copy of the reminder sent to Dr. Clowater on May 13, 2011 is attached at Tab 3 of the Agreed Statement of Facts and Admission.

7. On May 26, 2011, the College sent Dr. Clowater a reminder of the upcoming renewal deadline, as follows:

CPSO Membership Renewal Due June 1st

The deadline for your membership renewal is 5:00 p.m. EDT on Wednesday, June 1, 2011. If you have already submitted your renewal, please disregard this notice.

June 1 is right around the corner. To avoid paying the late fee, we want to make sure that you know of the options available to you for submitting your annual fee and completing the CPSO Annual Renewal on time. If you haven't tried it, we encourage you to complete your renewal online. With only a few days left until the deadline, we don't recommend mailing – you could easily miss the deadline.

Option 1

Complete your renewal online. To access online renewal go to:  
<https://www.cpsy.on.ca/membersonly/login.aspx>.

- your initial access code is your CPSO number and your password is your date of birth (DDMMYYYY). Once you enter that

information, you can create your own secure password and start the process.

#### Option 2

If you are in the vicinity of 80 College Street, you can drop off a completed form and payment at our office at any time prior to the deadline.

#### Option 3

Courier your Annual Renewal and/or your annual fee to 80 College Street, Toronto ON M5G 2E2.

#### Option 4

We do not recommend sending your form and payment by mail as it may not reach the College in time to avoid the late payment penalty fee (\$371.25). We are NOT able to accept faxed forms.

Your best choices to avoid the late fee are using one of the first three options above as soon as possible.

As always, there is HELP available – call our Physician Advisory Service at one of the numbers below:

Telephone: 416-967-2603

Toll-Free: (Ontario only): 1-800-268-7096 ext. 603

Or email us at [feedback@cpsso.on.ca](mailto:feedback@cpsso.on.ca)

A copy of the reminder sent to Dr. Clowater on May 26, 2011 is attached at Tab 4 of the Agreed Statement of Facts and Admission.

8. The College did not receive the payment of Dr. Clowater's membership fee by the June 1, 2011 deadline. She was given until September 6, 2011 to pay, failing which her certificate of registration would be suspended.

9. On June 15, 2011, the College advised Dr. Clowater that her membership renewal was past due, and that the College was issuing her a notice of intention to suspend her certificate of registration, as follows:

CPSO Membership Renewal – Past Due

As of close of business on Wednesday, June 1, 2011, the College had not received payment of your membership fee and/or the completed annual renewal form, both of which are required to renew your certificate of registration. If you have since submitted your renewal, please disregard this notice.

As per College by-law, a Notice of Intention to suspend (and, if applicable, an invoice for the membership and penalty fee) will be issued and mailed to your mailing address. The Notice will give you sixty days in which to complete your renewal and avoid suspension of your certificate of registration. Under normal circumstances the Notice would have already been mailed, but mailing has been delayed by the ongoing labour dispute at Canada Post.

You do not have to wait until you receive your notice in the mail to take action. We would strongly encourage you to complete the survey and remit payment through our website. To access online renewal go to: <https://www.cpsso.on.ca/membersonly/login.aspx>. Your initial access code is your CPSO number and your password is your date of birth (DDMMYYYY). Once you enter that information, you can create your own secure password and start the process. All information pertaining to your outstanding fee can be found online once you sign in.

As always, there is HELP available – call our Physician Advisory Service at one of the numbers below:

Telephone: 416-967-2603

Toll-Free: (Ontario only): 1-800-268-7096 ext. 603

Or email us at [feedback@cpsso.on.ca](mailto:feedback@cpsso.on.ca)

A copy of the notice sent to Dr. Clowater on June 15, 2011 is attached at Tab 5 of the Agreed Statement of Facts and Admission.

10. On June 29, 2011, the College mailed Dr. Clowater a notice of the College's intention to suspend her certificate of registration as of September 7, 2011 for non-payment.

11. On August 8, 2011, the College mailed Dr. Clowater a final reminder of the College's notice of intention to suspend her certificate of registration as of September 7, 2011, to ensure that she was aware of the pending suspension of her certificate.

12. On August 15, 2011, the College left a voicemail for Dr. Clowater to remind her that her membership fee had not yet been paid and that the deadline was September 6, 2011. The College spoke to Dr. Clowater, and subsequently her husband, on August 16, 2011. Dr. Clowater's husband advised that he would fax the credit card information to the College that afternoon. Handwritten notes of the telephone communications between Elora Beal of Membership Services and Dr. Clowater and her husband are attached at Tab 6 of the Agreed Statement of Facts and Admission.
13. On August 22, 2011, the College left another voicemail for Dr. Clowater to remind her again that her membership fee had not yet been paid.
14. On August 24, 2011, Dr. Clowater called the College and advised that she would fax the credit card payment form again, since it had not yet been received.
15. On August 29, 2011, the College telephoned Dr. Clowater's husband, who advised that the payment form would be faxed on August 31, 2011.
16. On September 2 and 6, 2011, the College attempted to contact Dr. Clowater by telephone. There was no answer and no ability to leave a voicemail message.
17. On September 6, 2011 at 6:16 pm, Dr. Clowater wrote an email to the College, stating that:
- “I am aware that I have missed the 2011 renewal deadline. unfortunately i was unable to obtain the funds in time for today's deadline. I will have the funds by September 15th at the latest. what is the protocol for obtaining my membership now? [...]”
- A copy of Dr. Clowater's email dated September 6, 2011 is attached at Tab 7 of the Agreed Statement of Facts and Admission.
18. On September 7, 2011, the College sent Dr. Clowater a Notice of Suspension of Certificate of Registration advising her that her certificate of registration was suspended for non-payment of fees. The Notice advised that:

- if Dr. Clowater wished to resume medical practice in Ontario, she would have to apply to the College for reinstatement of her certificate of registration;
- upon reapplication, reinstatement would not be automatic, that time would be required for review and processing of her application; and
- she must not resume practice until the College had advised her that her certificate had been issued.

A copy of an email from Membership Services to Dr. Clowater, dated September 7, 2011, attaching the Notice of Suspension of Certificate of Registration, is attached at Tab 8 of the Agreed Statement of Facts and Admission.

19. Dr. Clowater applied for reinstatement. Her payment in the amount of \$1,856.25 was received at the College on September 19, 2011. An email from Betty Wong to Fiona Teape of the College's Registration Department dated September 19, 2011 confirming receipt of Dr. Clowater's payment is attached at Tab 9 of the Agreed Statement of Facts and Admission.

20. On September 27, 2011, the College received a letter from Dr. Gary Tithecott, Chief of Staff at Chatham-Kent Health Alliance, advising that Dr. Clowater's privileges had been suspended to reflect the status of the licence restrictions imposed on Dr. Clowater by the College. A copy of Dr. Tithecott's letter dated September 27, 2011 is attached at Tab 10 of the Agreed Statement of Facts and Admission.

21. On September 28, 2011, Ms. Teape emailed Dr. Clowater to advise that Dr. Clowater's application for reinstatement remained incomplete, and that she was still not authorized to practise medicine in Ontario. Ms. Teape asked Dr. Clowater to confirm whether she had practised medicine after September 7, 2011. Ms. Teape also advised Dr. Clowater that the College had received Dr. Tithecott's letter advising of the suspension of her privileges, and that this matter would also require further review. A copy of Ms. Teape's email to Dr. Clowater dated September 28, 2011 is attached at Tab 11 of the Agreed Statement of Facts and Admission.

22. The response to Ms. Teape's email on September 28, 2011 indicated "I have not been practicing since september (sic.) 7th 2011. I am awaiting your email to resume practice". Dr. Clowater acknowledges that the statement that she had not practiced since September 7, 2011 was untrue. A copy of the email to Ms. Teape dated September 28, 2011 is attached at Tab 12 of the Agreed Statement of Facts and Admission.

23. On September 29, 2011, Dr. Clowater called Ms. Teape and advised that either she or her husband had called the College on September 14, 2011 and confirmed that her licence had been reinstated, and that she had gone back to work the next day. They also discussed a phone call the College received from Dr. Clowater's husband on September 16, 2011 about Dr. Clowater's payment still not going through. Dr. Clowater was advised to confirm in writing the exact dates she had been practicing, and to explain how she thought she was able to return to work. A copy of Ms. Teape's memorandum to file, dated September 29, 2011 is attached at Tab 13 of the Agreed Statement of Facts and Admission.

24. In a subsequent email to Ms. Teape on September 29, 2011, Dr. Clowater claimed:

"As per our conversation there was a terrible misunderstanding. On monday September 12 I was notified of the suspension .my clinics were immediately cancelled .Wednesday the 14 my husband checked to make sure everything was ok as we were advised that it took 24 to 48 hours . So we understood that meant that I could work the 15 .I have been working since .The 15, 16, the 19, 20, 21, 22, 23, 26, 27 and 28th. I would never have worked if I had known there was a problem. [...]"

A copy of Dr. Clowater's email dated September 29, 2011 from [jpclowater@hotmail.com](mailto:jpclowater@hotmail.com) is attached as Tab 14 of the Agreed Statement of Facts and Admission.

25. When asked to explain the discrepancies between her emails of September 28 and September 29, 2011, Dr. Clowater claimed that the email of September 28 had been sent "in error". A copy of Dr. Clowater's explanation, in a letter dated September 26, 2014 from her counsel, is attached at Tab 15 of the Agreed Statement of Facts and Admission.

26. Dr. Clowater did not submit claims to OHIP for the period during which her certificate of registration was suspended. A copy of Dr. Clowater's Billing Day Sheets for September 16, 19, 20, 21, 22, 23, 26, 27 and 28, 2011 and related correspondence between the College and OHIP are attached at Tab 16 of the Agreed Statement of Facts and Admission.

27. Dr. Clowater's Certificate of Registration was reinstated on October 7, 2011. A copy of correspondence from the College dated October 31, 2011 confirming reinstatement effective October 7, 2011 is attached at Tab 17 of the Agreed Statement of Facts and Admission.

28. Dr. Clowater was asked to provide further details to the College surrounding her practicing without a certificate of registration in September 2011. In her response to the College, Dr. Clowater stated:

"I didn't know that my certificate was suspended until September the 9th, when I was notified by the secretary at the Children's Treatment Centre in Chatham. I arrive to do my clinic and she notified me that the CKHA had faxed a letter stating that my certificate was suspended. I called the CPSO right away and I was told that we needed to fax the payment form into the CPSO to bring my account up to date. There was no mention of any letters required at this time, only the payment form. My office manager, Patrick, faxed the payment for with the credit card information that day, Sept. 9th. I was told that it could take up to 48 hours to processed so I waited until Sept. 15th and returned to work, thinking that everything was straightened away. It gets a bit confusing at this point, because apparently the fax machine must have been disconnected for the entire week, and when it was reconnected on Sept. 16th, the fax was sent automatically. I was unaware of this until I spoke to the CPSO agent on Sept. 28th and she told me that the credit card payment had not been processed until Sept. 21st.

I was unaware that my certificate was still under suspension until, one of my patients (sic.) went to pick up a prescription and it was denied by the Pharmacy on Sept. 28th. I again called the CPSO to see what was happening and then I was notified that my certificate was still suspended because they needed the letters explaining why I was no longer doing call at the hospital [...].I worked approximately 70 hours while my licence was suspended, saw 90 patients and I worked at my private office, at 40 Centre Street, Chatham, Ontario.

I am so sorry for all the confusion. I have been practicing medicine since 1998, and have never had this problem before. I realise the seriousness of this entire ordeal, and will assure you that I will never let it happen again in the future. It is way too stressful on my patients and me.

A copy of Dr. Clowater's letter dated January 26, 2012 is attached at Tab 18 of the Agreed Statement of Facts and Admission.

(ii) Lapse in CMPA coverage – November 2010 to June 2011

29. In the fall of 2010, Dr. Clowater's CMPA fees fell into arrears. Her membership had only been paid to October 31, 2010. A copy of the CMPA's letter to Dr. Clowater dated December 30, 2010, advising that she was in arrears is attached at Tab 19 of the Agreed Statement of Facts and Admission.

30. On January 28, 2011, the CMPA advised Dr. Clowater that:

- her membership was in arrears;
- she needed to make payment to maintain her CMPA membership, and
- if her payment was not received by February 16, 2011, her membership may be ended as of October 31, 2010.

A copy of the CMPA's letter to Dr. Clowater dated January 28, 2011 is attached at Tab 20 of the Agreed Statement of Facts and Admission.

31. On February 23, 2011, the CMPA advised Dr. Clowater that her membership had ended October 31, 2010. She was advised that there were a number of circumstances in which she was recommended to reactivate her CMPA membership without delay, including if she wanted to maintain her medical licence, and if her provincial billing number would continue to be used. A copy of the CMPA's letter to Dr. Clowater dated February 23, 2011 is attached at Tab 21 of the Agreed Statement of Facts and Admission.

32. On March 7, 2011, Dr. Clowater sent the CMPA a cheque for two months' worth of fees to cover "a portion of the outstanding balance on her account". She also indicated that she would be sending a void cheque the following month for all future

payments. A copy of Dr. Clowater's letter dated March 7, 2011 is attached at Tab 22 of the Agreed Statement of Facts and Admission.

33. The CMPA left a voicemail for Dr. Clowater at her office on March 10, 2011. It followed up with her by email on March 15, 2011, confirming receipt of her letter and payment, and advising that it wished to speak to her as soon as possible regarding her membership reactivation. The CMPA left a further voicemail for Dr. Clowater on March 24, 2011. A copy of the CMPA's notes to file dated March 10, 15, and 24, 2011 are attached at Tabs 23, 24 and 25 of the Agreed Statement of Facts and Admission.

34. Dr. Clowater telephoned the CMPA on March 24, 2011 and explained that:

- she was looking for continuous membership in the CMPA effective November 1, 2010 and going forward;
- the cheque already provided was meant to cover the arrears from November and December 2010; and
- she would be submitting a request for backdated membership, along with a void cheque for the remaining outstanding balance and future monthly payments going forward.

The CMPA advised Dr. Clowater that her request for backdated membership would be processed after it had been received, and that she would be contacted with a response thereafter. A copy of the CMPA's note to file dated March 24, 2011 is attached at Tab 26 of the Agreed Statement of Facts and Admission.

35. The CMPA advised Dr. Clowater in writing on April 27, 2011 that it was unable to process her March 2011 payment towards November and December 2010 as she did not have CMPA membership during those months. It also advised Dr. Clowater that, to that date, she had not yet provided a new void cheque for all payments going forward, nor a backdated membership request. The CMPA's letter dated April 27, 2011 is attached at Tab 27 of the Agreed Statement of Facts and Admission.

36. On June 17, 2011 Dr. Clowater's membership in the CMPA was ultimately reactivated. A copy of the text of the CMPA's letter to Dr. Clowater dated June 17, 2011 is attached at Tab 28 of the Agreed Statement of Facts and Admission.

37. Dr. Clowater practised medicine without CMPA coverage between November 1, 2010 and June 17, 2011. She submitted claims to OHIP for the period during which she did not have membership in the CMPA. A copy of Dr. Clowater's Billing Day Sheets between October 1, 2010 and June 30, 2011 and related correspondence between the College and OHIP are attached at Tab 29 of the Agreed Statement of Facts and Admission.

38. In connection with the lapse in Dr. Clowater's certificate of registration with the College, the College made enquiries of the Chatham-Kent Health Alliance on October 7, 2011 seeking clarification of the basis for the suspension or restriction on Dr. Clowater's hospital privileges. On November 4, 2011, Dr. Tithecott advised the College that, at the June 2011 meetings of the Credentials and Medical Advisory Committee, Dr. Clowater's appointment as Courtesy Staff was deferred because she had allowed her CMPA membership to lapse. A copy of the College's letter to Dr. Tithecott dated October 7, 2011 is attached at Tab 30 of the Agreed Statement of Facts and Admission. A copy of Dr. Tithecott's letter dated November 4, 2011 is attached at Tab 31 of the Agreed Statement of Facts and Admission.

39. In October 2013, the College enquired of Dr. Clowater as to the lapse in her CMPA coverage. A copy of the College's letter to Dr. Clowater, via her counsel, is attached at Tab 32 of the Agreed Statement of Facts and Admission.

40. In her response to the College dated November 11, 2013, Dr. Clowater claimed that she first became aware that there had been a period of time during which her CMPA membership had not been in good stead after she received the College's October 2013 letter. This was not true. A copy of Dr. Clowater's response to the College dated November 11, 2013 is attached at Tab 33 of the Agreed Statement of Facts and Admission.

41. After receiving the College's October 2013 letter, Dr. Clowater requested and received backdated CMPA membership for the period of November 1, 2010 through June 16, 2011. Dr. Clowater's further responses to the College dated November 20, 2013 and July 9 and September 9, 2014 respecting the lapse in CMPA coverage are attached at Tabs 34, 35 and 36 of the Agreed Statement of Facts and Admission.

#### **ADMISSION**

42. Dr. Clowater admits the facts specified above and admits that, based on these facts, she 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, contrary to paragraph 1(1)33 of O. Reg. 856/93.

#### **FINDING**

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts and Admission. Having regard to these facts, the Committee accepted Dr. Clowater's admission and found that she committed an act of professional misconduct in that she 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.

#### **PENALTY AND REASONS FOR PENALTY**

Counsel for the College and counsel for Dr. Clowater agreed that certain penalty elements were appropriate in the circumstances, namely that Dr. Clowater should be reprimanded, complete a course in medical ethics, and pay the costs of the one-day hearing at the tariff rate of \$5,000.

The parties, however, did not agree on whether a suspension of Dr. Clowater's certificate of registration was appropriate. Counsel for the College submitted that a four month suspension was appropriate while counsel for Dr. Clowater submitted that she should not be suspended.

On the issue of penalty, in addition to the Agreed Statement of Facts and Admission, the Committee also received four character reference letters in evidence.

It is the duty of the Committee to examine the extent, nature, and the circumstances of the misconduct, including mitigating and aggravating circumstances, and then to determine a fair, reasonable, and principled penalty. Following the submissions of counsel and having regard to the facts and considerations above and to the case law presented, the Committee has determined that a three month suspension of Dr. Clowater's certificate of registration is appropriate in this matter.

The Committee sets out its reasons on penalty as follows:

## **NATURE AND EXTENT OF THE MISCONDUCT**

### **Practicing while her certificate of registration was suspended**

Dr. Clowater admitted that she practised without a certificate of registration, which is contrary to the *Regulated Health Professions Act, 1991*. Dr. Clowater admitted to seeing 90 patients at her private office between September 15 and 28, 2011 while her certificate of registration was suspended.

The Committee understands that the penalty overall must be proportional to the misconduct. In the view of the Committee, the act of practising while her certificate of registration was suspended is sufficiently serious that a suspension is required.

Dr. Clowater was fully aware of the pending suspension of her certificate of registration, as illustrated by the College's repeated attempts to have her comply with paying her membership fee, clearly outlining her options, and repeatedly giving her notice that she would be suspended if she did not pay her fee. This included repeated letters, emails and telephone calls/voice mails from June 1, 2011, when her membership fees were due, up

until the date of suspension of her certificate of registration, on September 7, 2011. During this period, Dr. Clowater was either unresponsive or would indicate that payment was forthcoming.

Dr. Clowater made untrue statements in delaying and deferring paying for her annual dues in her responses to the College's attempts to have her comply. On August 16, 2011, the College spoke to Dr. Clowater as well as her husband. Her husband advised the College that he would fax the credit card information to the College that afternoon. When no information was received, the College again telephoned Dr. Clowater on August 22, 2011, leaving a voicemail reminding her that her membership fee had not been paid. Dr. Clowater responded on August 24, 2011, advising she would fax the credit card information again. On August 29, 2011, Dr. Clowater's husband advised that the credit card payment form would be faxed August 31, 2011. Despite these efforts, payment information was never received. The College phoned Dr. Clowater on September 2 and 6, 2011 but there was no answer and no ability to leave a voice mail. There was no suggestion that Dr. Clowater's husband acted without her authority. There is no explanation offered in the record as to why these promises were made and not fulfilled. Indeed, in her email of September 6, 2011, Dr. Clowater acknowledged that she was fully aware of the deadline for impending suspension and offered a lack of funds and a family death as excuses. Accordingly, based on the facts before the Committee, the Committee infers that these promises of payment were made with knowledge that they would not be complied with.

Given the above, the Committee concluded that Dr. Clowater knowingly and intentionally disregarded her professional duty to pay her annual membership dues to the College. Furthermore, the Committee concluded Dr. Clowater was deceptive when she informed the College that she was forwarding payment when in fact she did not do so.

Dr. Clowater was clearly notified of her suspension and that she was no longer authorized to practise medicine in Ontario as of 12:01 a.m. September 7, 2011 in a Notice of Suspension sent by email and by letter. The Notice of Suspension further noted that Dr. Clowater's billings to OHIP during her suspension would be rejected and would not be

recoverable. Indeed, Dr. Clowater did not submit bills to OHIP during the time she was suspended, which reinforces the conclusion that she had an understanding of her suspension. The measures required to have her certificate reinstated were set out in writing and she was informed that she must not resume practice until the College had advised that her certificate of registration has been issued. Dr. Clowater paid her membership fees September 19, 2011 and applied for reinstatement.

On September 28, 2011, the College informed Dr. Clowater by email that she was still not authorized to practise medicine in Ontario. In that email, the College asked Dr. Clowater to confirm in writing that she had not been practising since September 7, 2011. Dr. Clowater replied by email that she had not been practising since September 7, 2011. However, she sent a further email the next day where she admitted that she had in fact been practising from September 15 to 28, 2011. In explanation, Dr. Clowater offered a somewhat confusing story that this was a “terrible misunderstanding.” She indicated that she or her husband communicated with the College on September 14, 2011 and was advised that it could take 24 to 48 hours for her payment to be processed. Dr. Clowater stated that she took from this that she could resume practice after September 15, 2011.

The Committee did not find this to be a reasonable assumption given the College’s explicit direction that Dr. Clowater was not to resume practice until she applied for and was issued a new certificate of registration. Furthermore, as of September 14, 2011, Dr. Clowater’s membership payment had not yet been received by the College.

Dr. Clowater’s certificate of registration was reinstated October 7, 2011.

Dr. Clowater’s alleged confusion regarding her suspension came to the forefront again in her January 26, 2012 response to the College, in which she said that she was unaware that her certificate of registration had been suspended until she was notified by the secretary at the Children’s Treatment Centre in Chatham on September 9, 2011. Dr. Clowater further wrote that payment was faxed that day but she thought the problem may be that the fax machine was disconnected for the entire week. These claims makes no sense in light of her long history of correspondence with the College, which included the warnings, notification of suspension, and responses that payments were not received by

the College. Dr. Clowater herself contacted the College on September 6, 2011 acknowledging she failed to meet the deadline. The Committee rejected Dr. Clowater's excuses as implausible and misleading.

### **Lapse of CMPA Membership**

Dr. Clowater admitted to allowing a lapse in her CMPA coverage from November 2010 to June 2011. This occurred because her bank refused to pay a preauthorized debit to the CMPA because Dr. Clowater's account lacked sufficient funds. Again, Dr. Clowater was notified on several occasions that her CMPA coverage had lapsed. She attempted to pay the outstanding retroactive balance by a letter dated February 10, 2011 which was received on March 7, 2011. The CMPA responded by returning her cheque because Dr. Clowater had not complied with the proper procedure for resuming CMPA membership or with filing a request for backdating.

On several occasions during Dr. Clowater's lapsed coverage period, the CMPA attempted to contact her. She was not responsive. The Committee was struck with the similarity of Dr. Clowater's non-responsiveness with the CMPA and how she conducted herself in her interactions with the College. In the Committee's view, her pattern of repeatedly failing to respond to important requests related to her ability to practise medicine demonstrate that Dr. Clowater either fails to understand or is ignorant of her professional responsibilities.

The Committee was particularly troubled by the fact that Dr. Clowater practised for a significant period of time without liability coverage. Practising medicine without coverage poses a major risk to patients. It is true but fortuitous that no actual harm befell these patients and that Dr. Clowater eventually received backdated coverage in 2013. However, the public, and specifically the patients Dr. Clowater saw, were not protected at the time she saw the patients. The public, the profession, and the College all expect that physicians will practise with liability coverage. The Committee considered Dr. Clowater's failure to do so to be serious and reprehensible behaviour. The Committee concluded that this behaviour also merits a suspension.

The CMPA confirmed that Dr. Clowater's membership was reactivated on June 17, 2011.

### **Dishonesty**

On September 27, 2011, the Chatham-Kent Health Alliance informed the College that Dr. Clowater's appointment to Courtesy Staff was deferred because she had allowed her CMPA coverage to lapse. In October 2013, the College asked Dr. Clowater about the lapse in her CMPA coverage. Dr. Clowater responded that she only became aware that her CMPA membership had lapsed after receiving the October 2013 letter from the College. This was untrue.

In her response to the College, Dr. Clowater sought to avoid the blame for her rejected CMPA debit, claiming her failure to pay was either due to the fact that she was changing banks or because of her office manager. Dr. Clowater stated that "arrangements were made to immediately bring her account [with the] CMPA current" once she was notified of her lapse. In fact, the CMPA had contacted Dr. Clowater in December 2010, January 2011, and February 2011 before receiving a response from Dr. Clowater in March 2011.

Dr. Clowater also was not honest with the College in her September 28, 2011 email response when she stated that she had not been practising since September 7, 2011. While the Committee accepted that Dr. Clowater advised the College on September 29, 2011 that she had seen 90 patients from September 15 to 28, 2011, the Committee did not find her attempt to explain why she thought she could practise during that period to be credible.

Dr. Clowater once again misled the College in her January 26, 2012 letter, writing that, "I didn't know my certificate was suspended until September 9" when she said she was notified by the secretary at the Children's Treatment Centre in Chatham. The evidence before the Committee demonstrates the College's repeated efforts to have Dr. Clowater comply by paying her annual dues. The College issued multiple warnings of her impending suspension, and the College notified Dr. Clowater once her suspension was in effect.

Dr. Clowater was repeatedly and intentionally untruthful when she assured the College that payment of her membership fees was forthcoming by fax. Despite the importance of renewing her license, she repeatedly deferred payment and offered excuses.

The Committee found that her actions overall have seriously undermined her integrity, which is one of the core values of the profession.

***Mitigating and aggravating factors***

Counsel for Dr. Clowater submitted that she is a dedicated physician. While no actual harm befell patients as a consequence of Dr. Clowater's misconduct, patient care was not an issue before the Committee.

The Committee concluded, however, that Dr. Clowater was not acting in her patients' interests when she allowed her CMPA coverage to lapse. She was also not considering the need for her patients to receive continuity of service when she allowed her license to be suspended for lack of payment of membership dues.

The letters of reference received by the Committee indicate that Dr. Clowater fills an important need in the community and that her services are highly valued. Colleagues who refer patients to Dr. Clowater express support for her care of complex behavioural and psychiatric issues in children. While laudable, these commendations have little bearing on Dr. Clowater's misconduct.

Dr. Clowater has no disciplinary history with the College, which the Committee accepts as mitigating factor. As well, in admitting to the allegations early, Dr. Clowater has saved the College the time and expense of a contested hearing and witnesses the need to testify.

Dr. Clowater's counsel submitted that Dr. Clowater's admission showed insight, remorse and demonstrate her full acceptance of responsibility, and that these are powerful mitigating factors. The Committee disagrees.

Although there was no evidence of continued misconduct after 2011, the Committee has real concerns regarding whether Dr. Clowater has gained insight into her professional responsibilities. In the course of the events at issue, Dr. Clowater was repeatedly

dishonest in her replies to the College. Rather than recognizing her professional responsibilities and acting reasonably and responsibly, she offered many excuses which were not convincing. After the ordeal, Dr. Clowater stated that “I will never let it happen again in the future. It is way too stressful on my patients and me.” Her own words illustrate her lack of insight into her professional obligations. Other than complying with her membership requirements in the subsequent years, the Committee was left with no assurance that Dr. Clowater truly accepts responsibility for her actions.

The Committee accepts, to a limited extent, that Dr. Clowater’s presence at the hearing demonstrates her respect for the College and its role in governing the profession. However, the laissez-faire attitude toward governance that Dr. Clowater demonstrated reveals a lack of fundamental understanding of the gravity of professional responsibility.

Counsel for Dr. Clowater submitted that Dr. Clowater was dealing with a number of personal and family issues around the time of her professional misconduct, including financial problems, the death of her father, and difficulties with office management. While acknowledging these as valid issues, they are not excuses for failing to act professionally. The Committee concluded that Dr. Clowater had ample time and repeated warnings to come into compliance. The allegations against her arose solely from her own inaction and her subsequent conduct as a result of that inaction.

Counsel for Dr. Clowater says she deeply regrets what has happened and that it has been traumatic for her. Remorse is understandable. However, remorse is not acceptance of responsibility – which requires insight – and the extent to which Dr. Clowater has gained insight into her professional responsibility remains questionable

The aggravating factors which the Committee accepted include Dr. Clowater’s repeated untruths to the College as well her deception by assuring prompt payment when none was forthcoming.

In addition, the Committee considered Dr. Clowater’s multiple inconsistent explanations offered at various times as an aggravating factor.

## **Penalty Principles**

The Committee considered the accepted principles of penalty in determining what was appropriate in this case. Of paramount importance is protection of the public. Other important principles include maintenance of public confidence in the integrity of the profession as well as the profession's ability to govern itself in the public interest; denunciation of the conduct; specific deterrence of the member; general deterrence of the entire membership; and rehabilitation of the member, where relevant.

The Agreed Statement of Facts demonstrated behaviour that the Committee concluded was sufficiently egregious to require a suspension of Dr. Clowater's certificate of registration. After considering the submissions of counsel and noting the aggravating and mitigating circumstances, the Committee was of the view that nothing short of a substantial suspension would reflect the gravity of Dr. Clowater's misconduct. A suspension of three months will provide both specific and general deterrence and will clearly send a strong message to the profession that such behaviour will not be tolerated. A public reprimand also addresses specific and general deterrence.

Dr. Clowater's rehabilitation will be addressed by an ethics course which will provide guidance on appropriate relationships with authoritative bodies as well as on professional responsibility and integrity.

## **Case law**

The College referred the Committee to prior discipline cases where there were some factual similarities to the facts found in Dr. Clowater's case. There was no completely analogous set of facts.

In *CPSO v. Garry* (2000), the Committee ordered a two-month suspension in addition to a reprimand and costs of \$5,000.00. The hearing proceeded with an Agreed Statement of Fact and Penalty. The Committee in that case found that Dr. Garry had misrepresented to his hospital that he maintained CMPA coverage over a period of nine years when he did not. While Dr. Garry's was serious deceptive behaviour, and extended for a longer period of time, the Committee viewed it as less egregious than Dr. Clowater's conduct – in

addition to permitting her liability coverage to lapse, she practised without a license and lied to the College.

In *CPSO v. Vasic* (2007), the Committee ordered a 12-month suspension, three of which would be suspended if Dr. Vasic were to complete an ethics course. Dr. Vasic's misconduct involved repeated acts of dishonesty, including providing false information to the College on his registration renewal and being found guilty in two U.S. jurisdictions for similar acts of dishonesty. Since the *Vasic* case differed substantially from the present case, the Committee did not find it to be helpful in its analysis.

In the *CPSO v. Newell* (2012), the Committee ordered a three-month suspension after finding that Dr. Newell represented herself as a Fellow of the Royal College after her fellowship was removed. Dr. Newell was also found to have breached an Order of the Discipline Committee when she was not fully compliant with terms, limitations, and conditions on her certificate of registration. While constituting serious misconduct, Dr. Newell's actions were not found to be deliberate or willful. She voluntarily notified the College of what had occurred and was forthright with her information.

The Committee also considered the case of *Law Society of Upper Canada v. MacGregor* (1993) where that tribunal ordered a five-month suspension of a member. That tribunal found that Mr. MacGregor's practised while suspended from the Bar for failure of payment of insurance premiums and annual fees, which occurred on three separate occasions during a period of eight months. The *MacGregor* matter differs from Dr. Clowater's case because Mr. MacGregor demonstrated a clear, repetitious pattern of misconduct.

Counsel for Dr. Clowater also referred the Committee to cases which bore some similarities to the facts in Clowater to assist the Committee in reaching a decision.

In *CPSO v. McGowan* (2004), the Committee found that Dr. McGowan had practised for 12 years without any medical insurance. No suspension was ordered. The hearing proceeded by way of an agreed statement and penalty. There were a number of mitigating factors which included voluntary disclosure of his misrepresentation, his cooperation

during the investigation, a voluntary relinquishing of his hospital responsibilities and surgical services for six months, and his participation in a psychiatric evaluation.

In *CPSO v. Gagliano* (2004), the Committee did not order a suspension after finding that Dr. Gagliano, an anesthesiologist, had misrepresented his age on his reapplication to his hospital because he wished to continue to see patients. Dr. Gagliano admitted his misrepresentation readily when questioned and resigned his privileges.

The misconduct in *CPSO v. Abdal-Malek* (2010), *CPSO v. Hennes* (2009), *CPSO v. Attia* (2009), *CPSO v. Eskander* (2009), and *CPSO v. Beshay* (2009), involved errors in answering questions on applications for CPSO registration. No suspensions were ordered in those cases. The penalty focus in those cases was on remediation by means of an ethics course and a reprimand. None of those cases were sufficiently analogous to Dr. Clowater's case to be helpful to the Committee.

None of the above cases were exactly analogous to Dr. Clowater's circumstances. However, the Committee was able appreciate a range of appropriate penalty with respect to suspension duration. The Committee concluded that a three month suspension falls within that range and is the appropriate penalty in all the circumstances.

### **Summary and conclusion**

The Committee concluded that appropriate sanction in this matter will be a three month suspension, successful completion of an ethics course, a reprimand, and costs of a one day hearing.

### **ORDER**

Therefore, the Committee orders and directs:

1. Dr. Clowater to appear before the Committee to be reprimanded and the fact of the reprimand shall be recorded on the Register.

2. The Registrar to suspend Dr. Clowater's certificate of registration for a period of three months, to commence on September 1, 2016.
  
3. The Registrar to impose the following term, condition and limitations on Dr. Clowater's certificate of registration: Dr. Clowater shall complete a course in medical ethics approved by the College within six months of release of this decision and shall provide evidence of completion of this course to the College.
  
4. Dr. Clowater shall pay to the College costs in the amount of \$5,000.00 within 60 days of the date of this Order.