

Indexed as: Sogbein, O. O. (Re)

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

IN THE MATTER OF a Hearing directed
by the Inquiries, Complaints and Reports Committee of
the College of Physicians and Surgeons of Ontario
pursuant to Section 26(1) of the **Health Professions Procedural Code**
being Schedule 2 of the *Regulated Health Professions Act, 1991*,
S.O. 1991, c. 18, as amended.

B E T W E E N:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. OLUSOLA OLUFEMI SOGBEIN

PANEL MEMBERS:

DR. S. BODLEY (Chair)
D. GIAMPIETRI
DR. D. WALKER
DR. E. ATTIA (Ph.D.)
DR. C. LEVITT

Hearing Date:	May 13, 2013
Decision Date:	May 13, 2013
Release of Written Reasons:	July 16, 2013

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 13, 2013. At the conclusion of the hearing, the Committee stated its finding that the member committed an act of professional misconduct and delivered its penalty and costs order with written reasons to follow.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Sogbein 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 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;
2. under paragraph 1(1)34 of O. Reg. 856/93 in that he engaged in conduct unbecoming a physician; and
3. under clause 51(1)(a) of the Health Professions Procedural Code (“the Code”) which is Schedule 2 to the *Regulated Health Professions Act, 1991*, in that he has been found guilty of an offence that is relevant to his suitability to practise.

RESPONSE TO THE ALLEGATIONS

Dr. Sogbein admitted the first and second allegations of professional misconduct in the Notice of Hearing: that he has engaged in an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and that he engaged in conduct unbecoming a physician. Counsel for the College withdrew the third allegation.

FACTS AND EVIDENCE

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:

PART I – FACTS

1. Dr. Sogbein is a postgraduate medical student enrolled at the University of Ottawa who holds a certificate of registration authorizing postgraduate education, issued on July 1, 2007.
2. On August 31, 2007, police were notified about a concern with respect to concerns about Dr. Sogbein's driving. Dr. Sogbein was stopped. He was very agitated. He was issued a caution for passing off the roadway. Dr. Sogbein pulled his car beside that of the complainants and made a comment to the effect of wanting to get a good look at their faces so if they ever come into an emergency room where he is working he won't help them.
3. On August 16, 2008 Dr. Sogbein was arrested and charged with causing a disturbance arising from a traffic stop. Dr. Sogbein was rude, made derogatory comments and was intimidating towards the female officer who stopped him.
4. The Cause Disturbance Charge was ultimately withdrawn.
5. On April 16, 2009, at Hospital A, Dr. Sogbein was involved in an incident involving Nurse A and Patient A. Nurse A made an unintentional comment related to Dr. Sogbein's skin colour in the context of a clinical inquiry. Dr. Sogbein became angry further to Nurse A's comment. In reaction, he opened a curtain surrounding Patient A's bed, thereby potentially exposing Patient A to the hall and to any passersby, including exposing her groin wound and vaginal area.
6. Nurse A provided an apology to Dr. Sogbein which he did not accept. Nurse A was sent to Emotional Intelligent Training.

7. As a result of the incident with Nurse A, Dr. Sogbein's privileges to continue his postgraduate education at Hospital A were terminated on April 30, 2009. Dr. Sogbein was required to participate in a remediation program which focused upon anger management; communication skills; medical content knowledge and professionalism. After a successful remediation period, in December 2009, Dr. Sogbein's privileges were re-instated.

8. On September 15, 2010 at the Ontario Court of Justice in Town E, Dr. Sogbein plead guilty and was convicted of driving a motor vehicle on a highway while his driver's license was under suspension on February 11, 2010. He received a \$1000 fine and a further six months driving suspension.

9. On October 10, 2010 at the Ontario Court of Justice in Town F, Ontario Dr. Sogbein plead guilty and was convicted of operating a motor vehicle on a highway in a manner that was dangerous to the public on September 20, 2009. He received a \$1000 fine and a one year driving prohibition.

10. Dr. Sogbein began a residency program at Hospital B in April of 2012. During his Internal Care Unit rotation:

- i) Dr. Sogbein was disrespectful and unprofessional in his interactions with an ICU Pharmacist. Subsequently and unprompted he admitted to her that he had been wrong.
- ii) Dr. Sogbein was disrespectful and unprofessional in his interactions with an ICU Ward Clerk.
- iii) Dr. Sogbein was disrespectful, intimidating and unprofessional in his interactions with an ICU nurse further to the ICU nurse inquiring about pacer pads.
- iv) On or about June 24, 2012, Dr. Sogbein was disrespectful and unprofessional in his interactions with the nursing staff.
- v) On or about June 19, 2012, Dr. Sogbein discontinued orders for a patient issued by the Chief of Medicine and Critical Care without reviewing the issue with the ordering physician or the attending physician.

- vi) On or about June 27, 2012, Dr. Sogbein was rude and unprofessional in his interactions with a cable installer working on-site at Hospital B.

11. University C suspended Dr. Sogbein from clinical duties effective July 9, 2012 for unprofessional behaviour.

PART II - ADMISSION

12. Dr. Sogbein admits the facts set out in paragraphs 1 through 11 above, and specifically acknowledges that:

- i) through his conduct described in paragraphs 5 and 10, he engaged in an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, or unprofessional, contrary to paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act*, 1991.
- ii) through his conduct described in paragraphs 2,3,8 and 9, he engaged in conduct unbecoming a physician under paragraph 1(1)34 of O. Reg. 856/93.

FINDINGS

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. Sogbein's admission and found that he committed an act of professional misconduct, in that he has engaged in an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and in that he engaged in conduct unbecoming a physician.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for the member agreed on most of the elements of what would be an appropriate penalty and costs order. They agreed that Dr. Sogbein should be reprimanded, and that terms, conditions and limitations should be imposed on his certificate of registration. They agreed that he should be ordered to pay costs of

\$3,650.00. They also agreed that he should serve a period of suspension; however they differed on what the length of the suspension should be. The College asked for a four-month suspension. Dr. Sogbein submitted that his suspension should be for one month.

Where a finding of professional misconduct is made, the Committee must impose the penalty that it considers to be appropriate based on the circumstances of the misconduct that is before it. The Committee is guided by the need to provide protection to the public and to impose a penalty that is proportionate to the misconduct and that fits within the range of penalties imposed in similar cases. In addition, there are commonly accepted principles in the case law that apply to penalty in the discipline setting, which include: protection of the public, denunciation of the misconduct, specific and general deterrence, rehabilitation and upholding public confidence in the profession and its ability to regulate itself.

In assessing the proposed penalty, as well as what would be an appropriate length of suspension, the Committee considered aggravating and mitigating factors.

With respect to aggravating factors, the Committee considered that Dr. Sogbein is at a very early stage of his career, and yet has already had eleven incidents involving his inappropriate behavior. He has engaged in conduct unbecoming a physician both with members of the public and with a police officer. He has been found guilty on separate occasions of driving while his licence was suspended and operating a motor vehicle on a highway in a manner that was dangerous to the public. Dr. Sogbein has engaged in disgraceful, dishonourable and unprofessional behaviour during his residency that impacted, or could have impacted, on patient care. He has lost his temper, violated a patient's personal privacy and dignity, and changed orders of his attending physician. The Committee was especially troubled by the fact that even after losing his privileges at Hospital A, undergoing remedial training focused on anger management, communication skills, medical knowledge and professionalism, and being referred to the College's Discipline Committee, Dr. Sogbein still proceeded to commit six more acts of unprofessional behaviour in 2012 at Hospital B, which he must have known would have severe repercussions for his career.

Mitigating factors included the fact that Dr. Sogbein saved the College the cost and time of a contested hearing, by admitting to his misconduct and agreeing to the facts. He has come to an agreement with respect to most elements of his penalty. He has taken responsibility for his actions, by expressing remorse and apologizing. Further, Dr. Sogbein has been cooperative throughout this process. Finally, Dr. Sogbein has become involved with the Physician Workplace Support Program (PWSP), undertaking rehabilitative measures on his own accord, as well as participating in its three-party agreement program, which will monitor his workplace behaviour and support him throughout his residency program when he returns to work.

The Committee reviewed the cases presented in the Brief of Authorities by counsel for the College in support of a four-month suspension (*Rathe (Re)*, [2006] O.C.P.S.D No.15, *Amer (Re)*, [2001] O.C.P.S.D No. 28, and *Lad (Re)*, [2011] O.C.P.S.D No.27). These cases involved conduct that had some similarity to aspects of Dr. Sogbein's misconduct, such as making rude, derogatory or inappropriate comments and engaging in inappropriate interactions with staff and third party personnel. In none of the cases was the net suspension as long as four months (the suspension in the *Rathe* case was for six months, but four months of that were to be lifted upon the member's compliance with various conditions). However, Dr. Sogbein's misconduct was more egregious than that exhibited in these cases given its cumulative and repeated nature, and the fact that it took place at such an early stage in his career, before he had even fully qualified as a physician. Accordingly, the Committee was satisfied that a four-month suspension was in line with the penalties in these cases.

The Committee also reviewed the three cases provided by the member's counsel in support of a one month suspension (*Ponnampalam (Re)*, [1993] O.C.P.S.D No.26, *Wesley (Re)*, [2002] O.C.P.S.D No.18, *Georgantopoulos (Re)*, [2007] O.C.P.S.D No.4). The *Ponnampalam* case involved multiple incidents of rude and abusive language and behaviour over a four-year period. However, unlike Dr. Sogbein, the physician had many years of experience and there was no evidence that he continued to engage in misconduct after going through remediation or being referred to the Discipline Committee. Even so, the physician was fined \$5,000 as well as being ordered to receive a reprimand, failing

which he was to be suspended for three months. *Georgantopoulos* involved a physician who admitted to having engaged in conduct unbecoming a physician, after being found guilty of four criminal charges involving conduct against his wife. He was suspended for three months, all of which was to be suspended if he completed certain courses. The Committee concluded that this case was not a good comparator as the facts were very different. The *Wesley* case involved a resident who was found to have made inappropriate comments and engaged in inappropriate conduct toward a patient. He was reprimanded and not suspended. The Committee concluded that Dr. Sogbein's misconduct was more serious than that in the *Wesley* case given the number of incidents of misconduct and the seeming intractability of his behaviour.

The Committee agreed with counsel for the College that the length of the suspension needed to reflect the frequent and cumulatively egregious nature of Dr. Sogbein's offences. The Committee concluded that four months is proportionate and appropriate to Dr. Sogbein's eleven incidents at issue, his pattern of disregard for other professionals, and his persistent and recurrent unprofessional behaviour that has occurred over a long period of time – even following a period of remediation – so early in his career, before he has completed his residency and applied for independent practice registration. A suspension of this length also demonstrates that behaviour of the type exhibited by Dr. Sogbein will not be tolerated by the profession.

The Committee did not agree with the submission of counsel for Dr. Sogbein that the fact that Dr. Sogbein has been suspended from his clinical duties by his hospital for almost a year (and thus has been unable to practise), and that he will be unable to return to practise until his PWSP has been completed, should be a mitigating factor in support of a shorter suspension. The fact that Dr. Sogbein has been sanctioned by his hospital does not detract from this Committee's duty to express the abhorrence of the profession toward his conduct, and to send a message that the profession will not tolerate behaviour of this kind.

The reprimand will also express the profession's abhorrence for Dr. Sogbein's conduct as well as act as a specific deterrent to Dr. Sogbein. The proposed terms, conditions and

limitations on Dr. Sogbein's certificate of registration are appropriate in that they allow for his potential remediation while ensuring that there are sufficient safeguards in place to protect the public and his non-physician colleagues.

The Committee agrees that the proposed penalty, including a suspension of four months, is appropriate, fair and reasonable, and addresses the totality of the facts and circumstances of the case. The penalty upholds the honour and reputation of the profession, fulfils the goals of specific and general deterrence, protects the public and aims to rehabilitate Dr. Sogbein.

The Committee accepted as appropriate that Dr. Sogbein should pay costs to the College at the tariff rate of \$3,650.00 for the one day hearing.

ORDER

Therefore, having stated its finding in paragraph 1 of its written order of May 13, 2013, that Dr. Sogbein committed an act of professional misconduct as set out above, on the matter of penalty and costs the Committee ordered and directed that:

2. the Registrar suspend Dr. Sogbein's certificate of registration for a period of four months commencing June 1, 2013.
3. the following terms, conditions and limitations be imposed on Dr. Sogbein's certificate of registration authorizing postgraduate education:
 - a) Dr. Olusola Olufemi Sogbein shall practice in a group setting (that includes other physicians) only;
 - b) Dr. Olusola Olufemi Sogbein shall advise the College in writing, immediately, if he is charged with any provincial or criminal offense;
 - c) Dr. Olusola Olufemi Sogbein shall, at his own expense:
 - (i) practise under a workplace monitoring arrangement approved by the College, with quarterly reports to the College;
 - (ii) participate in individual or group counselling sessions as approved by the College, with quarterly reports to the College and

- (iii) enter into an agreement with the Physician Workplace Support Program (PWSP), with quarterly reports to the College and shall comply with the PWSP recommendations.
 - d) Dr. Sogbein shall consent to information-sharing/reporting between the College and the workplace monitors, the counsellors and the PWSP, as well as any other persons necessary in order for the College to receive information relevant to his compliance with these or any other terms of the order.
- 4. Dr. Sogbein appear before the panel to be reprimanded.
- 5. Dr. Sogbein pay costs to the College in the amount of \$3,650.00 by August 13, 2013.

At the conclusion of the hearing, Dr. Sogbein waived his right to an appeal under subsection 70(1) of the Code and the Committee administered the public reprimand.