

## NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. David Gary Saul, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity or any information that could disclose the identity of the patients referred to orally or in the exhibits filed at the hearing under subsection 45(3) of the Health Professions Procedural Code (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended.

Subsection 93(1) of the Code, which is concerned with failure to comply with these orders, reads:

Every person who contravenes an order made under ... section 45 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: Saul, D. G. (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. DAVID GARY SAUL**

**PANEL MEMBERS:**

**DR. P. POLDRE (CHAIR)**  
**S. BERI**  
**DR. P. CHART**  
**P. GIROUX**

<b>Hearing Date:</b>	September 22, 2014
<b>Decision Date:</b>	September 22, 2014
<b>Release of Written Reasons:</b>	October 9, 2014

**PUBLICATION BAN**

## **DECISION AND REASONS FOR DECISION**

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on September 22, 2014. 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. Saul committed an act of professional misconduct:

1. under paragraph 1(1)16 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”), in that he falsified a record relating to his practice;
2. under paragraph 1(1)18 of O. Reg. 856/93, in that he signed or issued, in his professional capacity, a document that he knew, or ought to have known, is false or misleading;
3. under paragraph 1(1)33 of 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.

### **RESPONSE TO THE ALLEGATIONS**

Dr. Saul admitted the third allegation 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. Counsel for the College withdrew the first and second allegations in the Notice of Hearing.

## 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. David Gary Saul is a general practitioner who has been in private practice since 1976.

#### Undertaking Executed By Dr. Saul on December 8, 2011

2. On December 8, 2011, Dr. Saul entered into an undertaking with the College (the “Undertaking”) as a result of information obtained by the College in the course of an investigation into Dr. Saul’s standard of practice. A copy of the Undertaking is attached at Tab 1 (to the Agreed Statement of Facts and Admission).

3. Among other things, the Undertaking provides as follows:

*(3)(c) I, **Dr. Saul**, undertake and agree that I will no longer provide medical declarations relating to Health Canada medical marijuana authorizations.*

*5(a) I, **Dr. Saul**, undertake to the College that, effective immediately, I shall post a clearly visible sign in the waiting rooms of all my Practice Locations in the form set out at Schedule “D”. For further clarity, this sign shall state as follows: “Dr. Saul has relinquished his prescribing privileges with respect to Narcotic Drugs, Narcotic Preparations, Controlled Drugs, Benzodiazepines and/or Other Targeted Substances.”*

....

*(5)(d) I, **Dr. Saul**, undertake to abide by the terms and conditions of this Undertaking. I acknowledge that a breach of any term or condition of this Undertaking may constitute an act of professional misconduct and/or*

*incompetence and may result in a referral of specified allegations to the Discipline Committee of the College (the “Discipline Committee”).*

4. Paragraph (2) of the Undertaking’s states as follows:  
*I, Dr. Saul, understand and agree that I am bound by the terms of this Undertaking from the date on which I sign it.*
5. Paragraph (9) of the Undertaking states as follows:  
*I, Dr. Saul, acknowledge and confirm that I have read and understand the terms and conditions provided in this Undertaking and that I have obtained independent legal counsel in reviewing and executing this Undertaking, or have waived my right to do so.*
6. Dr. Saul acknowledges that he was represented by experienced legal counsel throughout the negotiation of the Undertaking.

**Declarations for Medicinal Marihuana Authorizations between December 8, 2011 and December 31, 2011**

7. Between December 8, 2011 and December 31, 2011, Dr. Saul breached the Undertaking by providing forty three medical declarations relating to Health Canada medical marihuana authorizations (“Medical Declarations”) for his patients, copies of which are attached at Tab 2 (to the Agreed Statement of Facts and Admission). These declarations related to patients seen by Dr. Saul during six remaining pre-booked clinic days between December 8, 2011 and December 31, 2011, prior to a three month sabbatical from practice, which Dr. Saul took between January 1, 2012 and April 3, 2012.
8. Dr. Saul states that, at the time of signing the Undertaking with the College, he did not fully focus on the fact that, according to its terms, the Undertaking took effect upon execution on December 8, 2011. Dr. Saul states that he assumed he

could continue issuing Medical Declarations until December 31, 2011. He had written to his patients in September 2011, advising them that he would be discontinuing his medical marihuana practice at the end of the year, and a copy of this letter was provided to the College in November 2011.

9. Dr. Saul acknowledges that he did not consult with the College about his obligations pursuant to the Undertaking before continuing to submit Medical Declarations in December 2011 while the Undertaking was in force.
10. As planned since September 2011, Dr. Saul took a three month sabbatical from practice between December 31, 2011 and April 3, 2012. When he resumed practice, he did not authorize marihuana.
11. Dr. Saul admits that he breached the terms of his Undertaking by continuing to submit Medical Declarations from December 8 through December 31, 2011.

#### **Declarations for Medical Marihuana and Authorizations after December 31, 2011**

12. Between the 4<sup>th</sup> and 6<sup>th</sup> of January, 2012, Dr. Saul submitted seven further Medical Authorization Declarations for patients seen at the end of December 2011, copies of which are attached at Tab 3 (to the Agreed Statement of Facts and Admission).
13. Dr. Saul states that he had already consulted with these patients in December 2011, and had been awaiting necessary medical reports from specialists in support of their applications. Upon receiving the specialists' reports in the first few days of January 2012, Dr. Saul signed and submitted these Medical Declarations.
14. Dr. Saul admits that he did not, at any time, consult with the College about his obligations pursuant to the Undertaking before signing and submitting these seven Medical Declarations.

15. Dr. Saul admits that he breached his Undertaking by continuing to sign and submit the seven Medical Declarations at Tab 3 (to the Agreed Statement of Facts and Admission) between January 4<sup>th</sup> and 6<sup>th</sup>, 2012.

### **The Sign**

16. Pursuant to paragraph 5(a) of his Undertaking, Dr. Saul was required to post a clearly visible sign in the waiting rooms of all of his practice locations notifying patients of his prescribing restrictions.
17. In May 2012, an investigator attended at Dr. Saul's office. At that time, the investigator noted there was no sign posted as required by paragraph 5(a) of the Undertaking, and she raised this issue with Dr. Saul.
18. When Dr. Saul had returned from his sabbatical on April 3, 2012, he moved into a new location. Dr. Saul states that his new office (located within a dentistry facility coincidentally belonging to another, unrelated medical professional) did not have a waiting room designated for his patients. Dr. Saul acknowledges that he did not, at any time, consult with the College as to how he should comply with paragraph 5(a) of the Undertaking in light of the fact that his new office did not have a waiting room.
19. Dr. Saul acknowledges that he breached paragraph 5(a) of his Undertaking by failing to post a sign advising of his prescribing restrictions.
20. Once this issue was called to his attention by the College's investigator in May 2012, Dr. Saul immediately posted three signs – one on the door to his office, one on the wall beside the door, and one inside the office directly beside the patient's chair.

### **Dating of Declarations**

21. In the course of issuing Medical Declarations relating to Health Canada medical marihuana authorizations, Dr. Saul admits that he dated some of these Medical Declarations as of December 31, 2011, when he had actually seen the relevant patients and completed these Medical Declarations earlier that month. Dr. Saul's stated reason for post-dating these Medical Declarations was to maximize the timeframe for which the marihuana authorizations obtained by his patients would be valid after December 31, 2011.
22. Dr. Saul admits that he issued Medical Declarations that were inaccurate and misleading in this respect.

### **PART II – ADMISSION**

23. Dr. Saul admits that the aforementioned conduct constitutes acts or omissions relevant to the practice of medicine that, having regard to the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

### **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. Saul'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.

In making this finding, the Committee was particularly mindful of the importance of an undertaking signed with the College. Any breach of an undertaking is serious as it puts patient care at risk and undermines the College's role in governing the profession. In this



matter, the professional misconduct admitted to by Dr. Saul involved repeated violations by providing medical marijuana authorizations to a number of patients and a separate and distinct violation of failing to post the required signage.

## **PENALTY AND REASONS FOR PENALTY**

Counsel for the College and counsel for the member made a joint submission as to an appropriate penalty and costs order. The proposed order includes a suspension, restrictions (terms, conditions and limitations) on Dr. Saul's certificate of registration, a reprimand and education in professional ethics. The Committee has the power under s. 51(2) of the *Health Professions Procedural Code* to order all elements of the proposed penalty. In addition, Dr. Saul will pay costs to the College.

The Committee reviewed the submissions of the parties and their proposed penalty order in detail and accepted the penalty as an appropriate sanction in this matter. In coming to this conclusion, the Committee had regard for the applicable law, relevant penalty principles, the nature and extent of the misconduct, aggravating and/or mitigating factors and the case law submitted jointly by the parties. Each will be addressed in the discussion which follows:

### *Applicable Law*

The Committee is aware of the judicial direction that a joint submission should not be lightly set aside. As noted by the parties and advice of Independent Legal Counsel, the Committee is required to accept a joint submission unless the proposed penalty is so disproportionate to the misconduct that to accept it would be contrary to the public interest and would bring the administration of justice into disrepute.

### *Penalty Principles*

The Committee considered the well-established principles that apply in the College's discipline setting when considering the imposition of a penalty. The overriding principle is protection of the public. In the Committee's view, denunciation of the misconduct, maintaining public confidence in the profession and its ability to regulate itself, specific

and general deterrence, and rehabilitation all apply in this matter. In the discussion which follows, these principles will be applied to the elements of the proposed penalty.

*Nature and Extent of the Misconduct*

Dr. Saul signed the Undertaking on December 8, 2011, following a College investigation into his maintenance of the standard of practice of the profession. The Undertaking is clear and unambiguous. In (3)(c) of the Undertaking, it is stated that Dr. Saul will no longer provide medical declarations to Health Canada relating to medical marijuana authorizations. Further, in the preamble to the Undertaking, Dr. Saul agreed that he was bound by the terms of the Undertaking from the date on which it was signed. In the Committee's view, the Undertaking signed by Dr. Saul was written plainly and could not be misunderstood. His obligation was clear. His duty was to immediately stop providing medical marijuana authorizations to Health Canada.

It is also clear and unambiguous that Dr. Saul had an obligation to post signage informing his patients that he had relinquished prescribing privileges with respect to certain drugs. Specifically, in (5)(a) the wording of such a sign is spelled out: "Dr. Saul has relinquished his prescribing privileges with respect to Narcotic Drugs, Narcotic Preparations, Controlled Drugs, Benzodiazepines and/or Other Targeted Substances". The fact that his patients used a common waiting room or that he lacked a private waiting room in no way diminishes his obligation. The clear intent of the Undertaking is to inform patients that he no longer had prescribing privileges. His obligation under (5)(a) of the Undertaking was to immediately post a clearly visible sign to inform patients that he did not have prescribing privileges for certain drugs.

The Committee noted that Dr. Saul breached the Undertaking he signed with the College in providing medical marijuana authorizations on 43 occasions for patients, after he agreed he would cease this practice. This was not a single event; Dr. Saul continued this unacceptable practice, albeit for a limited period of time. He had written to his patients to provide notice that he would be going on a sabbatical as of December 31, 2011.

Further and separately, in May 2012 at the time of a visit to his office, a College investigator noted that the required signage was not present. Dr. Saul clearly breached the Undertaking he signed with the College when he failed to post the signage.

In the Committee's view, Dr. Saul understood or ought to have understood what his obligations in signing the Undertaking entailed. It can be inferred that he chose to ignore his duty in this respect or dismissed his obligations to the College as lacking importance. At no time did he consult with the College as to his obligations, rather he disregarded the authority of the College and unreasonably substituted his own interpretation of the Undertaking. He acted in a self-serving and convenient manner, and in so doing left his patients with the erroneous impression that he was able to provide medical marijuana authorizations until the end of December 2011. His lax approach to his obligations was further supported by signing and submitting seven medical authorizations declarations after December 31, 2011.

Dr. Saul's professional misconduct in breaching his Undertaking has implications in terms of patient care and professional governance. Both are important. In the Committee's view, any breach of an undertaking is a serious matter. In this case, breaching the Undertaking was repeated many times and in different ways. Serious consequences must follow. As the professional regulator, the College relies on the honesty and integrity of its members. It is the obligation of members to comply with orders of the College Committees and undertakings made to the College. A failure to comply undermines effective self-governance in the public interest. The Committee, in its reprimand, paid particular attention to the importance of the members of the College complying with orders and undertakings.

Suspension of a certificate of registration is a serious consequence. A two month suspension in this matter is fully justified. This serves to denounce the misconduct and serves as both a specific deterrent to Dr. Saul and a general deterrent.

The terms of the order issued effectively prohibit Dr. Saul from all practice related to Cannabis, whether this relates to signing medical documents, counselling, assessment or

treatment of patients, or prescribing, dispensing or administration. As a consequence, the Committee is satisfied that the public will be protected under the jointly proposed order.

It was made clear to the Committee by counsel for both parties that the other terms of the Undertaking signed by Dr. Saul on December 8, 2011 are not affected by this order and remain in force. The Committee notes that this involves but is not limited to a resignation of prescribing privileges for certain classes of drugs. While this did not form part of the allegations in the matter before us, the Committee was comforted that this has been clearly addressed by the parties with Dr. Saul in attendance. This too offers a measure of public protection.

The Committee is of the view that for Dr. Saul to be successfully rehabilitated, professional ethics needs to be addressed. This may be achieved through the requirement in the penalty order that Dr. Saul complete an educational program in ethics.

In addition, the Committee is satisfied that the Order addresses the necessary components for monitoring Dr. Saul's future behaviour. A practice reassessment will ensure that good practice habits are not only acquired but sustained. Both of these measures are necessary and support the object of public protection.

#### *Aggravating/mitigating factors*

The Committee accepted that Dr. Saul's cooperation in the events leading up to this hearing is a mitigating factor. It is also a mitigating factor that Dr. Saul has no disciplinary history with the College. Nevertheless, public protection is the overriding factor in this case and is given most weight by the Committee.

#### *Case law*

The Committee considered the case law placed before it jointly by the parties. While all of the cases are unique on their facts, the terms of the penalty orders as they apply to length of suspension have some relevance when the findings of professional misconduct are similar. The two month suspension proposed is within the range ordered in the case law, and in the view of the Committee, is reasonable.

*Costs*

Payment to the College of \$4,460.00 in costs within 30 days has been agreed to by the parties. It is appropriate in the Committee's view that this cost is borne by Dr. Saul and not the membership at large.

*Conclusion*

In conclusion, the Committee accepted the penalty proposed jointly by the parties. The penalty overall is a serious sanction and is commensurate with the acts of professional misconduct committed by Dr. Saul.

**ORDER**

Therefore, having stated its finding of professional misconduct in paragraph 1 of its written order of September 22, 2014, the Committee ordered and directed on the matter of penalty and costs that:

2. Dr. Saul appear before the panel to be reprimanded.
3. the Registrar suspend Dr. Saul's certificate of registration for a period of two (2) months commencing 12:00 a.m. on November 1, 2014.
4. the Registrar impose the following terms, conditions and limitations on Dr. Saul's certificate of registration:
  - a) Dr. Saul shall, at his own expense, participate in and successfully complete an educational program satisfactory to the College in Ethics, with a report or reports to be provided to the College regarding Dr. Saul's progress and compliance. Dr. Saul shall complete this requirement by April 1, 2015 or, if no satisfactory program is available by that time, by the first possible opportunity thereafter;
  - b) Effective immediately, Dr. Saul shall be prohibited from all practice in relation to Cannabis, as defined by Schedule II to the Controlled Drugs and Substances Act (S.C. 1996, c. 19) ("Cannabis"), including, without in any way limiting the generality of this restriction,

- i. The prescription, dispensing or administration of Cannabis;
  - ii. Signing medical documents pursuant to the Marihuana for Medical Purposes Regulations, SOR/2013-119 or any equivalent documents pursuant to such statutes and/or regulations as may come into force at a future time (collectively, “Marihuana Documents”), or participating in any way in the preparation, issuance or support of Marihuana Documents; or
  - iii. The counselling, assessment or treatment of patients in relation to Cannabis.
- c) Dr. Saul shall inform the College of each and every location where he practices including, but not limited to hospitals, clinics, and offices, in any jurisdiction (collectively, his “Practice Location(s)”), within fifteen (15) days of this Order, and shall inform the College of any and all new Practice Locations within 15 days of commencing practice at that location;
- d) For an indefinite period of time, Dr. Saul shall submit to, and not interfere with, unannounced inspections of his Practice Location(s) and patient records by a College representative for the purposes of monitoring his compliance with this Order; and
- e) Dr. Saul shall consent to the monitoring of his OHIP billings and cooperate with inspections of his practice and patient charts by College representatives for the purpose of monitoring and enforcing his compliance with the terms of this Order.
5. Dr. Saul pay costs to the College in the amount of \$4,460.00, within thirty (30) days of the date of this Order.

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