

Indexed as: Franklin (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(1)
of the **Health Professions Procedural Code** (“the 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. REGINALD BERNARD FRANKLIN

PANEL MEMBERS: **DR. L. THURLING (CHAIR)**
DR. M. DAVIE
B. TAA (Ph.D.)
DR. J. DOHERTY
J. DHAWAN

Hearing Date: August 30, 2007
Decision Date: August 30, 2007
Release of Written Reasons Date: October 1, 2007

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario (the “Committee”) heard this matter at Toronto on August 30, 2007. At the conclusion of the hearing, the Committee stated its finding that the member committed an act of professional misconduct and delivered its order as to penalty, with written reasons to follow.

THE ALLEGATION

The Notice of Hearing alleged that Dr. Franklin 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.

RESPONSE TO THE ALLEGATION

Dr. Franklin admitted to the allegation as set out in the Notice of Hearing.

FACTS AND EVIDENCE

The following Agreed Statement of Facts was filed as an exhibit and presented to the Committee:

1. Dr. Reginald Bernard Franklin (“Dr. Franklin”) was born on October 20, 1939 and currently practices as a general physician at a Medical Centre in Mississauga, Ontario.
2. On April 10, 2003, with the consent of both Dr. Franklin, who was represented by counsel, and the College, the Fitness to Practise Committee determined that he was an incapacitated physician and made an Order. The Order incorporated an undertaking executed by Dr. Franklin and resulted in terms, conditions, and limitations being placed on Dr. Franklin’s Certificate of Registration. Dr. Franklin suffers from an

Affective Disorder and there is evidence of cognitive impairment. The Order and undertaking included the following terms:

- (a) that he practise only in a supervised setting with two physician workplace monitors who are to provide written reports to the College every six (6) months;
- (b) that he see an identified physician for professional education and clinical supervision at least once a week, at either his workplace or the clinical supervisor's workplace, where the clinical supervisor is to observe Dr. Franklin treating patients and engage in chart reviews and other activities. The clinical supervisor is to report to the College every three (3) months;
- (c) that he see a psychiatrist for personal psychiatric treatment at least once per month, who is to report regularly to the College;
- (d) that he see a psychologist for personal psychotherapy treatment at least once per week, and the psychologist is to report regularly to the College;
- (e) that he see a physician for general medical care at least once every three (3) months, which physician is to provide regular reports to the College;
- (f) that he undergo independent psychiatric assessments twice per year, and co-operate with any further assessments or testing ordered by that assessor, and that these reports will be provided to the College; and
- (g) that should any of the people be unable or unwilling to fulfil their obligations outlined above, Dr. Franklin will arrange for a similarly qualified person to take on their obligations and execute the required undertakings.

Attached at Tab A [to the Agreed Statement of Facts] is a copy of the Order of the Fitness to Practise Committee dated April 10, 2003 (the "Order").

- 3. A copy of Dr. Franklin's executed monitoring undertaking is attached at Tab B [to the Agreed Statement of Facts].
- 4. From April 2003 until April 2005, Dr. Franklin abided by the terms of the Undertaking and Order, other than with respect to the frequencies of his sessions with Dr. A [treating psychologist], discussed below. Between April 2005 and July 25, 2005, Dr. Franklin did not see Dr. B [clinical supervisor] weekly. Rather, he saw him five times during that period. Although Dr. B had expressed the opinion both to the College and to Dr. Franklin that weekly attendances were no longer necessary, and

monthly attendances would suffice, no change to the Order or Undertaking had been sought or granted. The College advised Dr. B and Dr. Franklin that until the Fitness to Practise Committee granted a variance, the Order remained in place, and that no such variance had been sought at that time. Dr. B advised the College of his position in a letter dated April 8, 2005, attached at Tab C [to the Agreed Statement of Facts]. From July, 2005 until September, 2006, Dr. Franklin had no contact with Dr. B. Dr. B's reports dated January 27, 2006, March 31, 2006, March 13, 2007 and April 20, 2007 are attached at Tab D [to the Agreed Statement of Facts].

5. In June of 2003, Dr. A advised Dr. Franklin that weekly sessions with her were not necessary. Dr. Franklin stopped seeing Dr. A weekly commencing in about June 2003. Dr. A advised the College of her view in letters dated September 16, 2003, February 6, 2004, and December 14, 2005, attached at Tab E [to the Agreed Statement of Facts]. Dr. C, his treating psychiatrist, advised Dr. Franklin and the College by letter dated December 21, 2005, attached at Tab F [to the Agreed Statement of Facts], that he agreed with Dr. A that psychotherapy was not required. Again, although Dr. A and Dr. C had expressed their opinions that weekly sessions were no longer necessary to the College and to Dr. Franklin, no variation was at that time sought or granted by the Fitness to Practise Committee. Dr. A and Dr. Franklin were advised by the College that until a variation of the Order was granted, the requirements had to be followed. However, Dr. Franklin continued to see Dr. A about once a month.
6. The Fitness to Practise Order and Undertaking required that Dr. Franklin undergo independent psychiatric assessments twice a year, and that he co-operate with any further assessments ordered by the psychiatrist. In fact, Dr. Franklin was assessed by Dr. D only once in 2005 and once in 2006.
7. In January 2006, Dr. Franklin's former counsel served and filed a notice of motion to the Fitness to Practise Committee to modify the terms of the undertaking, but the College was of the view that the outstanding psychiatric assessments should be completed so that the College could have up to date information on Dr. Franklin's

health prior to taking a position on the motion to vary. Accordingly, the motion did not proceed at that time.

8. Dr. Franklin attended an independent psychiatric assessment arranged by the College with Dr. D, who suggested that given Dr. Franklin's current depressive symptoms and potential for cognitive impairment, his clinical performance should continue to be closely monitored. He also recommended further neuropsychological testing.
9. Dr. Franklin admits that he did not have the consent of the College or the Fitness to Practise Committee to reduce the requirements to see Drs. B, A and D and therefore he is in breach of the Undertaking to the College and the Order of the Fitness to Practise Committee.
10. Dr. Franklin admits that the above facts constitute professional misconduct 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.”

FINDING

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts. Having regard to these facts, the Committee accepted Dr. Franklin's admission and found that he committed an act of professional misconduct under paragraph 1(1)33 of 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.

In particular, the Agreed Statement of Facts indicates that there was an ongoing breach of an order and undertaking to the College over a considerable period of time.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for the member made a joint submission on penalty. The Committee heard submissions from both counsel in support of the jointly proposed order.

The Committee is aware of its obligation to accept a joint submission unless it is so unreasonable as to bring the administration of justice into disrepute.

The parties agreed to the facts that Dr. Franklin failed to follow the terms of his undertaking to the College, with respect to frequency of his attendances to see the health care professionals required by his undertaking. Dr. Franklin admitted that this conduct amounted to professional misconduct. There were a number of breaches over a period of time. His counsel did bring forward a motion for a variance to the undertaking in January 2006, following a number of letters from Dr. Franklin's treating physicians and monitors indicating that less frequent monitoring would be adequate. However, the motion did not proceed in January 2006 as the College required the completion of further medical testing before it would formulate a response to Dr. Franklin's motion to vary the undertaking. Accordingly, no change was made to the order and undertaking at the time of Dr. Franklin's motion in January 2006. The Committee was mindful of the fact that the terms and conditions placed on Dr. Franklin's certificate of registration were onerous, detailed and exacting. Nevertheless the order and undertaking should have been followed to the letter. Members of the College must respect the authority of their regulating body and must not flout the terms of an order and undertaking; to do so undermines their governing body and its mandate of regulating the profession and protecting the public.

The Committee agreed that the proposed disposition of a public reprimand, as well as including the results of the proceeding in the register, would serve as an appropriate penalty in this case and as a specific deterrent for the member to ensure his compliance with undertakings in the future and would also provide general deterrence for the membership at large and protection of the public.

ORDER

Therefore, the Discipline Committee ordered and directed that:

1. Dr. Franklin appear before the panel to be reprimanded.
2. The results of this proceeding be included in the register.

Dr. Franklin waived his right to an appeal under subsection 70(1) of the Code and the Committee administered the public reprimand.