

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Felipe Eduardo Allendes, this is notice that the Discipline Committee ordered that there shall be a ban on publication and broadcasting of the names and any identifying information of the patients whose names are disclosed orally or in written documents or 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 ... 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. Allendes,
2018 ONCPSD 71**

**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. FELIPE EDUARDO ALLENDES

PANEL MEMBERS:
MR. J. LANGS (CHAIR)
DR. C. CLAPPERTON
DR. J. RAPIN
MR. J.P. MALETTE
DR. S-M. YOUNG

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MR. K. MAIJALA

COUNSEL FOR DR. ALLENDES:

MR. C. JOHNSTON

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. D. ROSENBAUM

PUBLICATION BAN

Hearing Date: October 16, 2018
Decision Date: October 16, 2018
Written Decision Date: December 13, 2018

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 October 16, 2018. At the conclusion of the hearing, the Committee released a written order stating its finding that the member committed an act of professional misconduct, and setting out the Committee’s penalty and costs order with written reasons to follow.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Felipe Eduardo Allendes 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)1 O Reg.856/93 in that he has breached a term, condition or limitation on a member’s certificate of registration; and
3. under paragraph 1(1)34 of O. Reg. 856/93, in that he has engaged in conduct unbecoming a physician.

RESPONSE TO THE ALLEGATIONS

Dr. Allendes entered a plea of no contest to the allegations in the Notice of Hearing.

THE FACTS

The following facts were set out in the Statement of Uncontested Facts and Plea of No Contest, which was filed as an exhibit at the hearing and presented to the Committee:

PART I: FACTS

Background

1. Dr. Felipe Eduardo Allendes ("Dr. Allendes") received his certificate of registration authorizing postgraduate education from the College of Physicians and Surgeons of Ontario ("the College") on July 1, 2010, at which time he commenced his residency in Emergency Medicine at McMaster University.
2. Dr. Allendes' certificate of registration expired on June 30, 2014 in his fourth year of his postgraduate program. He did not complete his residency training.

Terms, Conditions and Limitations on Dr. Allendes Certificate of Registration

3. As a postgraduate trainee, Dr. Allendes' certificate of registration was subject to the following terms, conditions and limitations:
 - a. Dr. Allendes was to practice medicine only as required by the postgraduate medical education program in which he was enrolled at McMaster University; and,
 - b. Dr. Allendes was to prescribe drugs only for inpatients or outpatients of a clinical teaching unit that was formally affiliated with the Emergency Medicine department and as part of his postgraduate medical education program.
4. Effective September 1, 2013, until May 2014, Dr. Allendes' terms, conditions and limitations were modified to permit him to practise medicine in the Intensive Care Unit at Hamilton Health Sciences Corporation under supervision.

Prescribing in Breach of Terms, Conditions and Limitations and Diverting Drugs to Himself

5. In or around 2013, Dr. Allendes commenced an intimate personal relationship with Mr. X.
6. On May 28, 2014, the College received a call from Mr. X, who identified himself as the former partner of Dr. Allendes.
7. Mr. X advised the College that, during their relationship, Dr. Allendes would write prescriptions to Mr. X, including for sleeping pills (Zopiclone) and Lorazepam. Dr. Allendes would direct Mr. X to fill the prescription and then give Dr. Allendes the medication.
8. Mr. X advised that Dr. Allendes was using Lorazepam and sleeping pills on a daily basis to counter the effects of cocaine which he was using at the time.
9. Mr. X reported that Dr. Allendes directed him to attend smaller independent pharmacies to have these prescriptions filled, hoping these pharmacies would not check whether Mr. X had been prescribed multiple prescriptions for the same medication. In order to avoid detection, Dr. Allendes also directed Mr. X to fill out the prescriptions himself, in Dr. Allendes name, so he could later deny having written them.
10. Dr. Allendes wrote or directed Mr. X to write the following prescriptions, for the purposes of diverting the drugs to himself:

Date	Prescription
September 1, 2013	Imovane 7.5 mg
November 23, 2013	Zopiclone 7.5 mg
March 2, 2014	Zopiclone 7.5 mg
March 27, 2014	Cialis 5 mg

Date	Prescription
March 29, 2014	Zopiclone 7.5 mg
April 3, 2014	Zopiclone 7.5 mg
February 5, 2014	Imovane 7.5 mg
March 25, 2014	Lorazepam 2 mg
April 4, 2014	Lorazepam (faxed to Family Care Pharmacy)
March 6, 2014	Methylphenidate 20 mg (aka Ritalin)
March 10, 2014	Zopiclone 7.5 mg Methylphenidate 20 mg (aka Ritalin)
February 8, 2014	Zopiclone 7.5 mg

11. Dr. Allendes' conduct regarding these prescriptions to Mr. X was inappropriate and unprofessional. Moreover, Dr. Allendes issued or authorized these prescriptions in breach of his terms, conditions and limitations which permitted him to prescribe only as required for his postgraduate program or his supervised practice in the Intensive Care Unit.
12. Dr. Allendes also directed Mr. X to write prescriptions for Lorazepam using Dr. Y's name and CPSO number, rather than his own. Dr. Y was Dr. Allendes' friend and also a postgraduate medical student at McMaster University. Dr. Allendes directed Mr. X to write the prescriptions using Dr. Y's name as the issuing physician, fill the prescription and give Dr. Allendes the medication. One prescription written by Mr. X in Dr. Y's name bears the cellular phone number of Dr. Allendes, so that if any questions were asked of the prescribing physician (Dr. Y), the pharmacist would be directed to Dr. Allendes, not Dr. Y.

Prescribing in Breach of Terms, Conditions and Limitations

13. In addition to prescribing to Mr. X, Dr. Allendes also engaged in professional misconduct by prescribing to Dr. Y.

14. Dr. Allendes issued the following prescriptions to Dr. Y:

Date	Prescription
February 26, 2014	Symbicort 200 mg
February 26, 2014	Diazepam 10 mg (15)
April 4, 2014	Diazepam, 10 mg (15)
April 10, 2014	Diazepam, 10 mg (30) Hydromorphone (2 mg)
March 26, 2014	Clavalin Prednisone

15. Dr. Allendes issued these prescriptions in breach of his terms, conditions and limitations which permitted him to prescribe only as required for his postgraduate program or his supervised practice in the Intensive Care Unit.

March 2014 Nightclub Incident

16. In the early morning of March 16, 2014, Dr. Allendes placed a call to 911 while outside the "Fly Nightclub" located in downtown Toronto. Dr. Allendes called 911 alleging that a person was having a medical emergency. He claimed he was performing CPR and that he required Emergency Medical Services on an urgent basis. Dr. Allendes told the 911 operator:

There is a gentleman with a GCS sign. He may potentially need to be intubated. I'm a physician... I just happen to be on scene....there's a gentleman... who has overdosed on I don't know exactly what but he's GCS sign right now. He's convulsing... I'm sure he needs EMS support right now...Do you know what the Glasgow Coma Scale means... He is not awake... He has shallow breath.

17. In a subsequent call, Dr. Allendes claimed "ineffective CPR in progress". A copy of the transcript of the 911 calls on March 16, 2014 is attached as Exhibit A [to the Statement of Facts and Plea of No Contest].

18. As a result of Dr. Allendes' 911 call, Emergency Medical Services along with police were dispatched to the scene. When police arrived, it was determined that there was no person in medical distress, and that there was no basis for the 911 call. The police determined that the call had been a fake and that Dr. Allendes had placed the phone call to 911 as he was waiting in line to enter the club and was being denied access. Dr. Allendes was observed to be intoxicated and acting aggressively toward the police officers. Accordingly, he was placed under arrest and charged with being intoxicated in a public place.
19. Upon arrest, Dr. Allendes was found to be in possession of cocaine. Dr. Allendes was also charged with possession for the purposes of trafficking.
20. None of these criminal charges resulted in a conviction. The possession of cocaine charge was stayed and the public intoxication charge was withdrawn on November 20, 2014.
21. Dr. Allendes' conduct during the incident described above was disgraceful, dishonourable or unprofessional and conduct unbecoming a physician.

Dr. Allendes' Leave from the Postgraduate Program and Participation in the PHP

22. On May 12, 2014, McMaster University placed Dr. Allendes on a leave of absence from his postgraduate program. As set out above, his certificate of registration expired on June 30, 2014. His certificate of registration was not renewed by the College.
23. Dr. Allendes acknowledged early in the College investigation that he suffers from addiction, and sought assistance from the Physician Health Program (the "PHP"). Dr. Allendes completed an inpatient admission at Homewood Health Centre to address his addiction issues, and continued in their after program for 9 months.
24. On August 15, 2014, Dr. Allendes entered into a Substance Dependence Monitoring Contract with the Physician Health Program (the "PHP"). One year later, on August 18,

2015, the PHP provided the College with a report indicating that Dr. Allendes continued to be compliant with the his PHP contract and was maintaining a comprehensive recovery program.

25. In or around September 2015, Dr. Allendes decided to leave the country. He informed PHP and on September 20, 2015, the PHP advised the College that it had suspended Dr. Allendes' monitoring contract because of his departure.

PART II: PLEA OF NO CONTEST

26. Dr. Allendes pleads no contest to the facts set out in paragraphs 1- 25 above, and does not contest, for the purposes of College proceedings, that he engaged in professional misconduct, in that:

- (a) he engaged in an act or omission relevant to the practise of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, under paragraph 1(1)33 of O. Reg. 856/93, made under the *Medicine Act, 1991* (“O/Reg. 856/93”)
- (b) he breached the terms, conditions and limitations on his certificate of registration, under paragraph 1(1)1 O Reg.856/93; and
- (c) he engaged in conduct unbecoming a physician under paragraph 1(1)34 of O. Reg. 856/93.

RULE 3.02 – DISCIPLINE COMMITTEE’S RULES OF PROCEDURE

Rule 3.02 of the Committee’s Rules of Procedure regarding a plea of no contest states:

3.02(1) Where a member enters a plea of no contest to an allegation, the member consents to the following:

- (a) that the Discipline Committee can accept as correct the facts alleged against the member on that allegation for the purposes of College proceedings only;

- (b) that the Discipline Committee can accept that those facts constitute professional misconduct or incompetence or both for the purposes of College proceedings only; and
- (c) that the Discipline Committee can dispose of the issue of what finding ought to be made without hearing evidence.

FINDING

The Committee accepted as correct all of the facts set out in the Statement of Uncontested Facts and Plea of No Contest. The Committee accepted that these facts constitute professional misconduct, and therefore found that Dr. Allendes committed an act of professional misconduct, in that: 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; he breached a term, condition or limitation on his certificate of registration; and he engaged in conduct unbecoming a physician.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for Dr. Allendes made a joint submission as to an appropriate penalty and costs order.

The Committee accepts that although Dr. Allendes has not held a certificate of registration since June 30, 2014, he remains subject to the continuing jurisdiction of the College for his professional misconduct during the time he was a member, pursuant to section 14 of the Code.

The Committee is mindful of the fact that although it has the discretion to accept or reject a jointly submitted penalty and costs order, there is a high threshold for rejecting a jointly submitted penalty. The Committee must accept a joint proposal unless to do so would bring the administration of justice into disrepute, or otherwise is contrary to the public interest.

Penalty Principles

The principles governing the imposition of penalty following a finding of professional misconduct are well established. Protection of the public is the paramount consideration. Other principles include maintenance of public confidence in the integrity of the profession and in the College's ability to regulate the profession effectively in the public interest, denunciation of wrongful conduct, specific deterrence as it applies to the member, general deterrence as it applies to the membership of the profession as a whole, and, where applicable, the rehabilitation of the member. Aggravating and mitigating factors specific to the case should be considered. The penalty imposed should be proportional to the nature of the misconduct committed. The Committee is also guided by previous decisions of the Discipline Committee in similar cases, although it is not bound by these decisions.

Aggravating Factors

The Committee found a number of significant aggravating factors in this case. Dr. Allendes abused his position as a doctor in multiple settings very early in his career, in fact, during his educational membership and before he had qualified for a certificate of registration authorizing independent practice. He engaged in misconduct that was serious, significant and concerning. He manipulated his partner and a physician colleague in diverting a substantial amount of controlled drugs in a cunning, deceitful and deliberate manner for his own use over multiple months; he disrespected his governing body by breaching terms of his certificate of registration; he abused community resources and his emergency co-workers through his fraudulent use of the 911 system with potential harm to the public; and finally, he demonstrated a repeated lack of judgement and integrity where his self-interests were paramount.

Mitigating Factors

The Committee accepted as mitigating factors Dr. Allendes' early acknowledgement in the course of the College investigation that he suffered from a chronic addiction disease and Dr.

Allendes' measures to obtain treatment for his addiction through the Physician Health Program (PHP) and services at Homewood Health Centre. The Committee also accepted as mitigating that Dr. Allendes through his plea of no contest, shortened the proceedings substantially with a resulting reduction in costs, and has spared any witnesses the stress of having to testify.

Case Law

The Committee considered three previous cases that counsel placed before it: *CPSO v. Gill*, 2016 ONCPSD 49, *CPSO v. Sogbein*, 2013 ONCPSD 25 , and *CPSO v. Yu*, 2017 ONCPSD 54. Each of these decisions involved some aspect of misconduct that was similar to Dr. Allendes' misconduct. Each resulted in a reprimand, suspension and costs.

Similar to Dr. Allendes, Dr. Gill had chronic addiction disease and diverted narcotics and other controlled substances to himself through prescribing. However, Dr. Allendes enlisted his partner and another colleague in his diversion whereas Dr. Gill forged other physicians' signatures. There was no finding in the Dr. Gill case of conduct unbecoming a physician. Dr. Allendes admitted his addiction early on in the course of College proceedings against him whereas Dr. Gill was uncooperative with the orders of the ICRC and continued to write prescriptions while he was under suspension. Dr. Gill's penalty included, among other provisions, a suspension of five months.

Dr. Sogbein, like Dr. Allendes, held a certificate of registration authorizing postgraduate education at the time of his misconduct. Dr. Sogbein engaged in disrespectful and unprofessional conduct and inappropriately abused his position as a physician in various public settings. He also made inappropriate comments while he was driving, during an altercation with passengers in another vehicle; on another occasion, he was arrested and charged with causing a disturbance arising from a traffic stop; and he pleaded guilty to and was convicted of two motor vehicle offences. Dr. Sogbein's penalty included among other provisions, a suspension of four months. Although Dr. Allendes was not convicted of any offence resulting from his behaviour, the Committee was of the view that his fraudulently calling 911 to a nightclub for his own personal

gratification was behaviour of a more serious nature than that of Dr. Sogbein given the potential harm to the public through diverting emergency services and personnel.

In the Dr. Yu case, the doctor, like Dr. Allendes, prescribed medications when he was not allowed to do so. Dr. Yu's penalty included a suspension of three months. Dr. Yu was in an established practice and he repeatedly breached his undertaking not to prescribe controlled substances, but unlike Dr. Allendes he did not prescribe for his own use, nor did he involve other persons in obtaining prescriptions for his personal use. In addition Dr. Allendes' misconduct was more serious as it occurred at an early stage of his career, while he was still engaged in postgraduate medical education.

Although the suspensions in these three cases were all shorter than the nine months proposed in the joint submission in this case, this case involved three types of professional misconduct. The Committee was satisfied that the total length of the suspensions in the three prior cases should be viewed cumulatively when comparing them to the proposed penalty in this case. Having done so, the Committee was satisfied that the proposed penalty in this case was in line with that ordered by the Committee in the prior cases.

Finding

The Committee accepted the joint submission on penalty as just and appropriate.

The Committee considered Dr. Allendes' misconduct to be serious. In each aspect of Dr. Allendes' misconduct, he gave thought only to his self-interest and gratification, and he betrayed the honesty and integrity that the profession and the public have a right to expect from a physician.

Dr. Allendes' abuse of his position as a physician in various settings included:

- a) in his hospital work, when he unethically prescribed controlled drugs for himself by deceit and fraud involving his partner and another physician colleague over at least a

five-month period, and in breach of the term, condition and limitation on his certificate of registration, which permitted him to practise medicine only as required by the postgraduate medical program in which he was enrolled or his supervised practice in the intensive care unit; and

- b) in the community when he fraudulently abused his position of physician by calling 911 at a nightclub where he was waiting in line to enter and was being denied access. He knew full well that as an emergency physician in training, he was utilizing public resources in a fraudulent manner and was potentially putting the public at risk by having emergency services out of reach for a true emergency.

The lengthy suspension protects the public and effectively signals to both Dr. Allendes and the profession that such misconduct will not be tolerated. The suspension and the Committee's severe denunciation of Dr. Allendes' misconduct expressed through the reprimand should act as both a specific deterrent to Dr. Allendes and as a general deterrent to the profession, and should serve to maintain public confidence in the integrity of the profession and the Committee's ability to regulate the profession in the public interest.

Although the penalty does not contain remediation terms, the public is protected because before Dr. Allendes can re-apply to the College, he will have to fulfil the requirements of the Registration Committee for any person holding a degree of medicine who has not completed postgraduate studies. Further, the proposed suspension means that Dr. Allendes will have to wait for nine months before he is in a position to re-apply, and at such time as does re-apply, the details of this case will be fully known to the Registration Committee.

COSTS

The Committee considered the question of a cost award and determined that it was an appropriate case to require Dr. Allendes to pay a portion of the College's costs and expenses incurred in conducting the hearing. Accordingly, the Committee ordered that Dr. Allendes pay

costs to the College, in the amount of \$10,180.00, pursuant to the tariff for a day of hearing, as jointly submitted.

ORDER

The Committee stated its finding of professional misconduct in paragraph 1 of its written order of October 16, 2018. In that order, the Committee ordered and directed on the matter of penalty and costs that:

2. Dr. Allendes attend before the panel to be reprimanded.
3. the Registrar suspend Dr. Allendes' certificate of registration for a period of nine (9) months, effective immediately.
4. Dr. Allendes pay to the College costs in the amount of \$10,180.00, within thirty (30) days of the date of this Order.

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

TEXT of PUBLIC REPRIMAND
Delivered October 16, 2018
in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
and
DR. FELIPE EDUARDO ALLENDES

Dr. Allendes

You have demonstrated by your conduct complete lack of a moral compass. Your conduct was unprofessional in the extreme. You abused your relationships with Mr. X and Dr. Y to fraudulently obtain prescription for your own personal use. You abused the health system by fraudulently calling 911 to a nightclub in order to gain entrance for your own personal gratification Your actions were cunning and deliberate.

The profession and the public expect and are entitled to honesty, integrity and ethical behaviour from doctors, none of which has been demonstrated by your abhorrent behaviour.