



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

**DECISION AND REASONS
ON AN APPLICATION BY**

DR. PHILIP KERNERMAN (CPSO # 66372)

**MADE UNDER SECTION 74 OF THE
HEALTH PROFESSIONS PROCEDURAL CODE
(the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991***

INTRODUCTION

Background information for this matter includes the following:

- In 2004, the Discipline Committee of the College of Physicians and Surgeons of Ontario (“the College”) revoked Dr. Kernerman’s certificate of registration.
- In 2010, Dr. Kernerman applied for reinstatement of his certificate of registration. After a full hearing, the Discipline Committee dismissed Dr. Kernerman’s application in a decision dated September 8, 2010.
- In 2013, Dr. Kernerman applied under section 74(1) of the Code for an order directing the Registrar to issue a new certificate of registration to him.
- On October 8, 2013, the Executive Committee (“the Committee”) met to consider this matter. At that time the Committee denied Dr. Kernerman’s application because:
 - There was no independent expert opinion about Dr. Kernerman’s risk of reoffending, once in a potentially stressful work situation; and
 - Dr. Kernerman had not provided a plan for his re-entry to practice specifying the proposed scope, structure and setting of any future practice he may be involved in. The Committee felt this was essential in order to craft the terms, conditions and limitations that would attach to his certificate of registration if it were reinstated.



- On April 30 and May 26, 2014, the Committee met to consider this matter and deferred its decision until it had obtained additional information to determine the amount of re-training Dr. Kernerman would require to re-enter practice after a 10 year absence.

The Committee met to consider this matter on June 24, 2014.

ANALYSIS

Information before the Committee

At its meeting of June 24, 2014, the Committee considered the following:

- Discipline Committee decision respecting Dr. Kernerman, dated February 9, 2004
- Discipline Committee decision respecting Dr. Kernerman's application for reinstatement, dated September 8, 2010
- Various prior decisions of the Discipline Committee
- Executive Committee decision, dated October 8, 2013
- Independent Psychiatric Assessment Report of Dr. Lisa Ramshaw dated January 16, 2014 and Curriculum Vitae
- Proposed undertaking
- Dr. Kernerman's submissions, including:
 - Correspondence from counsel, dated July 3, 2013
 - Expressions of gratitude from previous patients and their family members
 - Report dated June 10, 2013, from Dr. John Bradford
 - Reports dated March 11, 2012 and June 30, 2013 from Dr. Nathan Pollock
 - Information regarding Dr. Kernerman's job search efforts since 2010
 - Information regarding Dr. Kernerman's volunteer activities
 - Information from Ms S.M., Dr. Kernerman's romantic partner
 - Information from Ms E.K., Dr. Kernerman's sister
 - Information from Ms V., Dr. Kernerman's sister-in-law
 - Information from Mr. H., Dr. Kernerman's friend and colleague at the Centre for Inquiry
 - Information from Mr. M., a member of Dr. Kernerman's addiction therapy group
 - Information from Mr. H., an employee of a Starbucks which Dr. Kernerman attends
 - Reports dated January 26, 2012 and June 18, 2013 from Dr. Mayer Hoffer
 - Apology letters from Dr. Kernerman, written in 2010 to various people
 - Letter dated October 30, 2010 to the Discipline Committee



- Information regarding Dr. Kernerman's continuing medical education (CME) activities
- A victim impact statement from the 2010 Discipline hearing
- Correspondence from counsel, dated September 30, 2013
- Correspondence from counsel, dated October 7, 2013
- Correspondence from counsel, dated March 10, 2014
- Correspondence from counsel, dated April 28, 2014 including an attachment, Guidelines for College-directed Supervision
- Correspondence from counsel, dated June 12, 2014

Conclusions/Reasons

After consideration of all the information before it, the Committee makes an order under s.74(1) of the Code directing the Registrar to issue a new certificate of registration with certain specified terms, conditions and limitations to take effect upon receipt of Dr. Kernerman's executed Undertaking.

The Committee noted the following key points in reaching its decision:

- Section 74(1) of the Code provides:

74. (1) The Council or Executive Committee may, without a hearing, with respect to a person whose certificate of registration has been revoked or suspended as a result of disciplinary or incapacity proceedings, make an order doing any one or more of the following:

1. Directing the Registrar to issue a new certificate of registration to the applicant.
2. Directing the Registrar to remove the suspension of the applicant's certificate of registration.
3. Directing the Registrar to impose specified terms, conditions and limitations on the applicant's certificate of registration if an order is made under paragraph 1 or 2.

It is unusual for the Committee to receive an application under section 74 of the Code. Having said that, we are of the view that it was appropriate, in the very particular circumstances of this case, for Dr. Kernerman to bring an application under this section.

- The question of Dr. Kernerman's reinstatement was the subject of a full hearing in 2010. While the Discipline Committee at that time noted improvements he had made since his certificate of registration was revoked in 2004, it identified



particular areas where it believed that Dr. Kernerman still had to demonstrate that he no longer poses a risk to the public, or that any such risk is manageable with the imposition of terms, conditions or limitations on his certificate of registration.

- In launching his application under section 74, Dr. Kernerman essentially attempts to demonstrate how, since 2010, he has worked on improving the areas of deficiency which the Discipline Committee identified. This seems to us to be an appropriate scenario for the use of section 74.
- We echo the 2010 Discipline Committee in noting that Dr. Kernerman has made significant efforts to improve his mental health. The updated reports from experts before us are supportive of Dr. Kernerman's rehabilitation. He is willing to continue monitoring and therapy.
- Since 2010, he has made significant efforts in undertaking CME, in showing remorse and apologizing to those he may have injured in the past, in engaging in volunteer work, and in attempting to find employment.
- Dr. Kernerman responded to the Discipline Committee's concern that "There was no testimony from his wife, girlfriend, family or friends" by providing supportive evidence from such sources in the course of this application.
- Further, we are satisfied that Dr. Kernerman has attended for MRI examinations which have ruled out frontal lobe syndrome, has undergone further diagnostic psychometric tests as medically indicated, and has undergone chemical and drug screening to corroborate that he does not use non-prescribed drugs and that his hypersexuality is in remission. We accept evidence from his treating physicians that his current medication regime is the correct combination for him.
- The Committee is satisfied that Dr. Kernerman has fulfilled the outstanding concerns raised by the Discipline Committee in 2010.
- Dr. Kernerman has also now addressed the concerns raised by this Committee in its October 2013 decision.
 - Dr. Ramshaw has completed an independent psychiatric assessment of Dr. Kernerman. According to that assessment, Dr. Kernerman's risk to women in a stressful environment, including a medical one, is likely low with ongoing treatment and supervision.
 - Dr. Kernerman has also provided the Committee with information regarding the practice setting he intends to work in, including his



willingness to participate in a re-training program similar to that of a post-graduate medical trainee. Dr. Kernerman also recognizes the need to undergo specialized training to practice in his former area of expertise (internal medicine and critical care).

- Though clinical issues were not a concern when Dr. Kernerman previously held a license with the College, given that Dr. Kernerman has not been in practice for 10 years, Dr. Kernerman will undergo a period of supervised re-training to update his skills.
- The College and Dr. Kernerman have negotiated an undertaking that addresses these practice concerns (including regarding Dr. Kernerman's interactions with women as well as the fact he has not been practicing for 10 years), and includes that Dr. Kernerman:
 - will not be the Most Responsible Physician ("MRP") until approved by the College to do so in writing; and
 - will only practice in a setting approved by the College and in accordance with the Re-entering Practice Plan outlined in the undertaking.
- The undertaking also includes the following terms:
 - Dr. Kernerman is restricted from acting as MRP for an 18-month period and during this time he is under high supervision of a Clinical Supervisor, who will provide monthly reports to the College. The Clinical Supervisor must have experience supervising in a post-graduate medical setting. After this 18-month period, upon receiving satisfactory reports and at the College's sole discretion, the College may allow Dr. Kernerman to be MRP under moderate-level supervision for a minimum of six months. Upon receiving satisfactory reports and with the College's approval, the level of supervision may be reduced to a low level, and this shall continue for a period of 12 months. The Clinical Supervisor is to provide regular reports to the College.
 - Dr. Kernerman will have a Workplace Monitor for at least three years. This monitor will observe Dr. Kernerman's interactions with females (including patients, fellow health professionals, hospital/clinic staff and members of the public) during the course of his professional duties. This monitor is to meet with Dr. Kernerman monthly for the first year, and quarterly thereafter. The monitor is also to obtain feedback from colleagues, allied health staff, and patients. The Workplace Monitor is to provide regular reports to the College.



- Dr. Kernerman will continue to receive treatment from his treating physician and/or similarly qualified physician(s) acceptable to the College who will act as Health Monitor. Dr. Kernerman is to meet with the Health Monitor not less than quarterly each year for three years and shall comply with treatment recommendations. The Health Monitor is to provide regular reports to the College.
- Dr. Kernerman will submit to an assessment of his practice as outlined in the undertaking.

Based on all of the above, the Committee makes an order under s.74(1) of the Health Professions Procedural Code directing the Registrar to issue a new certificate of registration with certain specified terms, conditions and limitations to take effect upon receipt of Dr. Kernerman's executed undertaking.

DIRECTION

The Committee makes an order under s.74(1) of the Health Professions Procedural Code directing the Registrar to issue a new certificate of registration with certain specified terms, conditions and limitations to take effect upon receipt of Dr. Kernerman's executed undertaking.

The College has received Dr. Kernerman's executed undertaking, dated June 25, 2014.

PANEL MEMBERS: June 24, 2014

C. LEET, MD – Chair
J. KIRSCH, MD
E. STANTON, MD
R. PRATT – Public Member