

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Bryon Marshall Hyde, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of patients or any information that could disclose the identity of 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 ... 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. Hyde,
2019 ONCPSD 48**

**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. BRYON MARSHALL HYDE

PANEL MEMBERS:

**MR. P. GIROUX
DR. S. BODLEY
MR. J. P. MALETTE, QC
DR. P. CHART
DR. E. SAMSON**

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS. EMILY GRAHAM

COUNSEL FOR DR. HYDE:

MR. JEFFREY MUTTER

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. GIDEON FORREST

**Hearing Date: August 14, 2019
Decision Date: August 14, 2019
Release of Reasons Date: October 2, 2019**

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 August 14, 2019. At the conclusion of the hearing, the Committee released a written order stating its finding that Dr. Hyde committed an act of professional misconduct and setting out its penalty and costs order with written reasons to follow.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Hyde committed an act of professional misconduct:

1. under paragraph 1(1)2 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”), in that he has failed to maintain the standard of practice of the profession; and
2. 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.

It was also alleged that Dr. Hyde is incompetent as defined by subsection 52(1) of the Health Professions Procedural Code (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*.

RESPONSE TO THE ALLEGATIONS

Dr. Hyde admitted the allegations in the Notice of Hearing, that he has failed to maintain the standard of practice of the profession, and has engaged in an act or omission relevant to the practice of medicine that, having regard to all circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional. Counsel for the College withdrew the allegation of incompetence in the Notice of Hearing.

THE FACTS

The following facts were set out in an Agreed Statement of Facts and Admission (Liability):

A. Background

1. Dr. Hyde is 82 years old. Until July 9, 2019, he was a general practitioner in Ottawa, Ontario. He held a certificate of independent practice with the College of Physicians and Surgeons of Ontario since 1968.

B. Failure to Maintain the Standard of Practice of the Profession

2. The College retained Dr. Mark Nassim to provide an opinion with respect to Dr. Hyde's care and treatment of patients. In his reports, attached at Tabs 1 and 2 to the Agreed Statement of Facts and Admission (Liability), Dr. Nassim opined that:

- a) Dr. Hyde failed to maintain the standard of practice with respect to his medical record-keeping in that:
 - (i) His patient charts are not clearly written, are disorganized and often lack an easily identifiable patient record;
 - (ii) He fails to maintain chronological SOAP (Subjective Objective Assessment Plan) notes or other clearly delineated summaries of patients' investigations and medical condition(s), such as a Cumulative Patient Profile, and does not include pertinent positive or negative findings, rationale for ordering investigations or discussions with patients about the results;
 - (iii) Dr. Hyde uses unprofessional language in his charts to describe his patients;
- b) Dr. Hyde states that he practices "complex disease management" primarily involving Myalgic Encephalomyelitis and Chronic Fatigue Syndrome, which is outside the conventionally-recognized scope of general or primary care practice;

- c) Dr. Hyde takes diagnostic approaches that are not supported or corroborated by conventional practice, and orders investigations the results of which are nonspecific and yield no discernible constructive findings;
- d) Dr. Hyde failed to follow currently accepted guidelines for the detection of prostate cancer, including in ordering PSA (prostate-specific antigen) testing;
- e) Dr. Hyde lacked knowledge of opioid or benzodiazepine treatment contracts, despite prescribing long-term benzodiazepines to patients;
- f) Dr. Hyde lacked knowledge as to whether his electronic correspondence and patient files are encrypted or stored in a secure fashion, despite the fact that he purported to conduct an extensive telemedicine practice from Italy for several months each year.

3. Dr. Melvin Borins was retained to provide an opinion specifically with respect to Dr. Hyde's psychotherapy practice. In his reports, attached at Tabs 3 and 4 to the Agreed Statement of Facts and Admission (Liability), Dr. Borins opined that:

- a) Dr. Hyde failed to record what is required of a practitioner providing psychotherapy, such as a mental status exam, diagnosis, his psychotherapeutic treatment plans, his interventions and the patient's response to treatment;
- b) In one case, where Dr. Hyde billed OHIP for providing psychotherapy 49 times between 2006 and 2016, Dr. Borins found only one adequate psychotherapy note;
- c) In five cases, Dr. Borins could find no evidence in the charts that Dr. Hyde performed any psychotherapy, despite Dr. Hyde's numerous billings between 2005 and 2016, as set out in the chart at Tab 5 to the Agreed Statement of Facts and Admission (Liability);

- d) In one case, Dr. Hyde prescribed addictive medications and opioids, including Dilaudid, quietapine, clonazepam, and hydromorphone, without documenting the patient's progress, and how the psychotherapy he was providing was assisting the patient. He failed to properly monitor the patient for risk of addiction, overdose and suicide. This displayed a lack of judgment.

C. Dr. Hyde's inappropriate care and treatment of his employee

4. Individual B was employed by Dr. Hyde between approximately 2008 and 2011. While Individual B was Dr. Hyde's employee, Dr. Hyde:

- a) prescribed medication to Individual B on six occasions, including a prescription for a tricyclic antidepressant; and
- b) billed OHIP for providing treatment to Individual B on eight occasions, including for psychotherapy on seven of those occasions, between April 2009 and August 2010.

5. Despite prescribing to Individual B, and billing OHIP for treating Individual B, Dr. Hyde did not maintain a patient chart for Individual B.

D. Unprofessional communications, boundary violations, and conflict of interest

6. Dr. Hyde is the founder of a charitable foundation. Dr. Hyde wrote newsletters for his charitable foundation, which he mailed to the patients in his medical practice.

7. In these newsletters, as attached at Tabs 6, 7, 8 and 9 to the Agreed Statement of Facts and Admission (Liability), Dr. Hyde provided his personal opinions that the compensation of physicians in Canada is inadequate, complained about the College's requirements of physicians, solicited patients to make donations to his charitable foundation, and disclosed inappropriate personal information about himself and of his patients.

8. Patient A was a patient of Dr. Hyde's between approximately 2008 and 2014. In appointments with Patient A, he disclosed his and other patients' health information, questioned the competency of other physicians, and complained about physicians' remuneration and about the College, including the College's record-keeping requirements.

E. Block Fee for Uninsured Services

9. When Patient A first became a patient of Dr. Hyde's in July 2008, Dr. Hyde charged her \$1,500, purportedly as a block fee for services that are not covered by OHIP. In doing so, Dr. Hyde failed to comply with the OHIP Schedule of Benefits, and the College's policy on *Block Fees and Uninsured Services* by:

- a) improperly charging Patient A a block fee to cover the constituent elements of one or more insured services;
- b) failing to provide her with the alternative of paying for each service individually at the time that it was provided; and
- c) failing to offer the block fee in writing indicating the services that were and were not covered by the block fee, and failing to provide her with a copy of the policy to ensure that she was fully informed of her payment options.

F. Delay in Responding to Request for Patient Chart and Inappropriate Fee

10. In September 2013, Patient A's lawyer wrote to Dr. Hyde, requesting a copy of her chart, which Patient A was required to produce for the purpose of motor vehicle litigation, enclosing a direction authorizing Dr. Hyde to release it to the lawyer.

11. Patient A did not obtain any portion of her chart from Dr. Hyde until July 2014, despite having made multiple requests for it both directly to Dr. Hyde and to his secretary, and despite attending at Dr. Hyde's office numerous times specifically for this purpose.

12. In July 2014, Dr. Hyde’s assistant informed Patient A that her chart was available to be picked up, and that the fee would be \$825. Dr. Hyde’s first invoice to Patient A, attached at Tab 10 to the Agreed Statement of Facts and Admission (Liability), indicated that the \$825 fee was for “medical-legal work”. When Patient A raised a concern with Dr. Hyde that his fee was excessive, and that she had not requested that he do any medical-legal work, he provided a revised invoice attached at Tab 11 to the Agreed Statement of Facts and Admission (Liability), indicating that he had charged her \$825 “to organize all patient data into a comprehensive chart and copy the entire file at the request of [Patient A]’s lawyer”, and that this had taken him four hours.

PART II – ADMISSION

13. Dr. Hyde admits the facts at paragraphs 1 to 12 above, and admits that, based on these facts, he engaged in professional misconduct under:

- a) paragraph 1(1)2 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, in that he failed to maintain the standard of practice of the profession; and
- b) paragraph 1(1)33 of O Reg. 856/93, in that he engaged in acts or omissions relevant to the practice of medicine that would be regarded by members as disgraceful, dishonourable or unprofessional.

FINDING

The Committee accepted as correct all of the facts set out in the Agreed Statement of Facts and Admission. Having regard to these facts, the Committee accepted Dr. Hyde’s admission and found that he committed an act of professional misconduct in that he failed to maintain the standard of practice of the profession, and engaged in an act or omission relevant to the practice of medicine that would be regarded by members as disgraceful, dishonourable, or unprofessional.

AGREED STATEMENT OF FACTS RELEVANT TO PENALTY

The following Agreed Statement of Facts Relevant to Penalty was presented to the Committee:

1. Dr. Hyde entered into an undertaking to the College on July 5, 2019, by which he agreed to resign from the College, and not to apply or re-apply for registration as a physician to practise medicine in Ontario or any other jurisdiction, effective July 9, 2019. The undertaking is attached at Tab 1 to the Agreed Statement of Facts Relevant to Penalty.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for Dr. Hyde made a joint submission as to an appropriate penalty and costs order which included: a reprimand and the payment of costs to the College in the amount of \$10,370.00.

The Committee is aware that a joint submission should be accepted unless to do so would be contrary to the public interest or bring the administration of justice into disrepute (*R. v. Anthony-Cook* 2016 SCC 43).

The Committee must also be assured that the joint submission on penalty satisfies the basic principles underlying penalty orders. These principles are public protection and the maintenance of public confidence in the College's ability to regulate the profession in the public interest. The penalty must express the Committee's denunciation of the misconduct and the penalty must act as a deterrent, specifically to the member and more widely to the profession as a whole. As the member has resigned his certificate of registration to practise medicine, rehabilitation of the member is not applicable to this matter.

Nature of the Misconduct

Expert reports with respect to Dr. Hyde's practice revealed troubling clinical deficiencies in care wherein he ordered tests that were not indicated and failed to institute and follow treatment plans which would be generally accepted as appropriate care. There were multiple billings for OHIP claims with no documentation apart from the date of the visit.

Further, Dr. Hyde engaged in multiple instances of unprofessional behaviour directed towards his patients, his staff, and the general public. Dr. Hyde prescribed medication and provided therapy to a staff member, a clear failure to maintain appropriate professional boundaries.

Dr. Hyde's statements in his charitable foundation newsletters criticizing the College and the medical community in general were unprofessional, inflammatory and could serve to frighten and misinform his patients and the general public. He inappropriately disclosed personal information about himself and his patients. His further attempts to garner financial support for himself from his patients and the wider public make the misconduct even more egregious.

Aggravating Factors

The Committee was deeply disturbed by the widespread scope of the misconduct, the length of time over which it had occurred and the number of patients affected and viewed these as aggravating factors. The Committee also viewed as significant aggravating factors Dr. Hyde's cavalier attitude towards standards of practice and his profound lack of insight into the damage his unprofessional behaviour could have on his patients and the general public.

Mitigating Factors

The Committee noted that this was Dr. Hyde's first appearance before the Committee and he had no prior involvement with the College. Dr. Hyde's admission to the misconduct reduced the time and costs of a contested hearing and saved witnesses from having to testify at a hearing.

Prior Cases

The Committee was provided with a Joint Book of Authorities with similar cases that this Committee has previously decided. Although prior Committee decisions are not binding as precedent, the Committee accepts as a principle of fairness that like cases should be treated alike.

The Joint Book of Authorities included the following cases: *CPSO v. Dr. Sim*, 2015 ONCPSD 28; *CPSO v. Dr. Cameron*, 2018 ONCPSD 25; *CPSO v. Dr. Laity*, 2018 ONCPSD 55; and *CPSO v. Dr. Hardwick*, 2019 ONCPSD 21.

Similar to the matter at hand, each of these cases proceeded on the basis of an agreed statement of facts. Although the nature of the misconduct differed in the above-cited matters, the subject physicians voluntarily entered into an undertaking to resign from the College, as did Dr. Hyde. In each of these cases where the subject physician resigned, the penalty consisted of a reprimand, and there was a requirement to pay costs to the College, as has been proposed in this case.

Having reviewed the cases provided by the parties, the Committee was of the view that the penalty proposed fell within the range of penalties imposed in the cases provided.

Conclusion

For the above reasons, the Committee accepted the joint submission on penalty as appropriate in the circumstances of this case. Public protection is ensured with Dr. Hyde's resignation and his undertaking never to reapply for a certificate of registration to practise medicine in Ontario or in any other jurisdiction. The public reprimand provides the Committee the opportunity to denounce Dr. Hyde's behaviour and will serve as a general deterrent to the profession. It is also a demonstration to the public that this type of misconduct will not be tolerated by the College.

Dr. Hyde did not attend the hearing and was not present to be reprimanded. The Committee feels strongly that physicians should attend in person to receive their reprimand. Dr. Hyde's hearing was scheduled for a half-day and another matter was scheduled for the other half of the day; thus, the Hyde matter was potentially eligible for a costs award at the half-day rate of \$6,000.00. The parties, however, agreed that Dr. Hyde should pay the costs of a full day hearing at the tariff rate of \$10,370.00. The Committee agreed that this was appropriate, as the Committee will reconvene to deliver the reprimand. The Committee notes that it would expect, in all but the most exceptional circumstances, that in the case of an agreed statement of facts or plea of no contest

members would attend in person so that the reprimand may be delivered immediately after the hearing.

ORDER

The Committee stated its findings in paragraph 1 of its written order of August 14, 2019. In that order, the Committee ordered and directed on the matter of penalty and costs that:

2. Dr. Hyde attend before the panel to be reprimanded
3. Dr. Hyde pay costs to the College in the amount of \$10,370.00 within thirty (30) days from the date of this Order.