

**Indexed as: Ontario (College of Physicians and Surgeons of Ontario) v. Goodwin,
2018 ONCPSD 44**

**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 MICHAEL GOODWIN

PANEL MEMBERS:
DR. P. POLDRE (CHAIR)
MS G. SPARROW
DR. J. NICHOLSON
MR. P. PIELSTICKER
DR. F. SLIWIN

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS R. AINSWORTH

COUNSEL FOR DR. GOODWIN:

MS G. BURT
MR. P. GAJOS

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. R. COSMAN

Hearing Date: July 19, 2018
Decision Date: July 19, 2018
Release of Written Reasons: August 16, 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 July 19, 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. David Michael Goodwin committed an act of professional misconduct:

1. 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; and
2. under paragraph 1(1)34 of Ontario Regulation 856/93, made under the Medicine Act, 1991 (“O. Reg. 856/93”), in that he has engaged in conduct unbecoming a physician.

RESPONSE TO THE ALLEGATION

Dr. Goodwin admitted to allegation 1 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 allegation 2.

THE FACTS

The following facts were set out in the Statement of Facts and Admission on Liability, which was filed as an exhibit at the hearing and presented to the Committee:

BACKGROUND

1. Dr. David Michael Goodwin ("Dr. Goodwin") is a 72-year-old physician who received his certificate of registration authorizing independent practice in Ontario in 1975. Dr. Goodwin's certificate of registration with the College expired on May 31, 2018.
2. Dr. Goodwin practiced family medicine in Ontario until November 2015. He also acted as the Medical Director of a long-term care facility in Niagara Falls, Ontario. Dr. Goodwin resigned from this role effective January 1, 2018.
3. At the time of the incidents described below, Dr. Goodwin was a member of the Ontario Medical Association ("OMA"), in addition to being a Council member of the OMA and a member of the Executive of the OMA's Section on General and Family Practice ("SGFP").
4. The OMA is the association that represents the political and economic interests of physicians in Ontario. It is the exclusive representative of Ontario physicians in negotiations with the Province of Ontario.
5. At the relevant times, Dr. Virginia Walley was President of the OMA and the Minister of Health for Ontario was Dr. Eric Hoskins.
6. On July 11, 2016, the OMA and the Ontario government reached a tentative agreement dealing with government funding for physician services and changes to the physician fee schedule, among other issues ("tPSA").
7. The tPSA was endorsed by the OMA's Board, including by Dr. Walley. The OMA promoted the agreement in the weeks leading up to a General Meeting, which took place on August 14, 2016.
8. In the lead-up to the General Meeting, the OMA Board promoted the agreement as

providing "stability" and "predictability". A communication from the OMA to its membership, sent from an OMA email address used to communicate publicly about the tPSA and signed by Dr. Walley, is attached at Tab 1 [to the Agreed Statement of Facts on Liability].

9. On August 14, 2016, the OMA membership voted to reject the tPSA.

EMAILS AND ONLINE POST OF JULY 29, 2016

10. On July 29, 2016, Dr. Goodwin posted a letter to "Virginia" signed by "Santa" on an online forum for the SGFP. The SGFP forum is a physician-only forum which requires registration and a password to access. It is accessible to the approximately 13,000 OMA members who practice general or family medicine.
11. Dr. Goodwin also emailed the letter to approximately 20 colleagues in the Executive of the SGFP and copied it to an editor at the Medical Post. In addition, Dr. Goodwin forwarded the letter directly to Dr. Walley's personal email address.
12. The letter signed by "Santa" was written by Dr. Goodwin. It read, in part:

Dear Virginia

Thank you for writing me with your existential question.

....

So yes, Virginia, you can have STABILITY... if you just bend a little further forward and get those hands firmly on the ground.

You can also have PREDICTABILITY, but you'll have to keep letting that nice Eric have his way with you.

And yes, Virginia, it is ok to vote yes.

But it ' s also ok to vote no

Yours in perpetuity

Santa

13. Dr. Goodwin's email to Dr. Walley, which included the forwarded letter, read:

V

Thought I should share this with you

.... Mike

14. Dr. Goodwin's email to Dr. Walley, including the complete text of the forwarded letter, is attached at Tab 2 [to the Agreed Statement of Facts on Liability].
15. After the letter was posted to the SGFP online forum, the Chair of the SGFP Executive wrote to Dr. Goodwin stating, "There have been some serious concerns brought forward regarding your post. Would appreciate if you can refrain from further private distribution of this message."
16. Dr. Goodwin responded, stating:

I'm sorry that you feel that satire is unacceptable at sgfp.net, and that you saw fit to order [D.B.] to remove my post from the website.

Unfortunately I had already copied the message to Dr. Walley at her personal email and to [R.C.] Editor at the Medical Post, so any attempt at censorship will likely only highlight the issue [...]

17. On the same day, another physician on the SGFP Executive wrote to Dr. Goodwin stating:

"I am surprised and dismayed by the tone of emails from members of this exec [...] I think it would be valuable for all of us to step back and take a moment to reflect:

- 1) How would I feel if I was on the receiving end of one of these emails?
- 2) What am I upset/angry about?
- 3) Who am I upset/angry at?"

18. Dr. Goodwin responded, copying the SGFP Executive, stating:

"Just for the record, I consider Dr. Walley a friend [...] I doubt she would be upset by my now censored post, though she would certainly see the point of the satire [...] The string of emails between Dr. Goodwin and members of the SGFP Executive 1s attached at Tab 3 [to the Agreed Statement of Facts on Liability].

ADMISSION

19. Dr. Goodwin admits the facts set out above, and admits that the conduct described in paragraphs 10-14 constitutes an act of professional misconduct in that he engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all of the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional contrary to section 1(1)33 of O. Reg. 856/93 made under the *Medicine Act, 1991*.

FINDING

The Committee accepted as correct all of the facts set out in the Agreed Statements of Facts and Admission on Liability. Having regard to these facts, the Committee accepted Dr. Goodwin'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.

AGREED STATEMENT OF FACTS ON PENALTY

The following facts were set out in an Agreed Statement of Facts on Penalty that was filed as an Exhibit at the hearing:

1. On June 12, 2017, the College received Dr. Goodwin's response to the investigation into his conduct. Dr. Goodwin's letter of response is attached at Tab 1 [to the Agreed Statement of Facts on Penalty].
2. It is Dr. Goodwin's position that his email of July 29, 2016 was modeled on an 1897 editorial in the New York Sun known as "Yes, Virginia, there is a Santa Claus". A copy of this editorial is attached at Tab 2 [to the Agreed Statement of Facts on Penalty].
3. Dr. Goodwin's certificate of registration with the College expired on May 31, 2018. Dr. Goodwin has advised the College that he does not intend to renew his certificate of registration.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for Dr. Goodwin made a joint submission as to an appropriate penalty and costs order, which included a one-month suspension, the imposition of terms conditions and limitations on Dr. Goodwin's certificate of registration, a reprimand and costs payable to the College. The Committee was cognizant of the law that a joint submission on penalty must be accepted, unless to do so would bring the administration of justice into disrepute, or would otherwise be contrary to the public interest, as set out in *R. v Anthony-Cook*, 2016 SCC 43.

The Committee considered the submissions of the parties, the Agreed Statement of Facts and Admission on Liability and the Agreed Statement of Facts on Penalty. As well, the Committee reviewed similar cases of the Discipline Committee filed in a Brief of Authorities. Although the previous decisions are not binding, the Committee is aware that similar cases should be dealt with in a similar fashion. In assessing the parties proposed penalty, the Committee considered the circumstances of this case, including aggravating and mitigating factors.

Aggravating Factors

The Committee noted that at the time the offensive correspondence was sent and widely distributed by Dr. Goodwin, he was a member of the Executive of the OMA's section on General and Family Practice. As a physician and a member of the Executive, it is expected that he would act in a respectful, courteous and civil manner towards his colleagues. However, he chose to communicate with the leader of his professional association in a manner which was abhorrent and unprofessional. The Discipline Committee will not tolerate this behaviour, which involved sending a sexually insulting letter to a colleague he disagreed with, and distributing it widely by email and by an online posting.

The Committee recognizes that the offensive and derogatory emails were sent at a time of contentious political debate. Vigorous passionate debate is healthy and necessary. Instead of engaging in respectful debate, Dr. Goodwin chose to send and disseminate widely a demeaning sexual insult, which is not acceptable.

The College Policy Statement #3-16 entitled "Physician Behaviour in the Professional Environment" clearly states the College's expectations for appropriate physician behaviour:

"Physicians are expected to act in a respectful, courteous and civil manner towards their patients, colleagues and others involved in the provision of health care. Doing so fosters an atmosphere of trust, shared accountability and collaboration. Conversely, behaviour that is unprofessional and/or disruptive undermines medical professionalism and the trust of the public."

As well, the College has published guidelines for the appropriate use of social media by physicians. As part of the guidelines, it is recommended that physicians "Protect their own reputation, the reputation of the profession, and the public trust by not posting content that could be viewed as unprofessional."

Mitigating Factors

Mitigating factors in this case include the fact that this is Dr. Goodwin's first appearance before the Discipline Committee. Dr. Goodwin has cooperated with the College; he has admitted the allegations and taken responsibility for his actions. By so doing, the time and cost to the College of a contested hearing are decreased and witnesses are spared the stress of testifying.

Conclusion

The Committee emphasizes that physicians cannot escape the consequences of their conduct by resigning or retiring from practice. Section 14 (1) of the Code states:

14 (1) A person whose certificate of registration is revoked or expires or who resigns as a member continues to be subject to the jurisdiction of the College for professional misconduct or incompetence referable to the time when the person was a member and may be investigated under section 75.

The Committee recognizes that Dr. Goodwin has long planned to take his retirement at this point in his career, and the Committee accepts that Dr. Goodwin is not doing so in order to avoid a penalty for his misconduct.

The Committee agreed that the jointly proposed penalty would serve to uphold the relevant penalty principles. The suspension and the public reprimand will affirm the public's confidence in the integrity of the profession and the College's ability to regulate the profession in the public interest, and express the Committee's condemnation of Dr. Goodwin's misconduct. As well, the penalty will serve as a general deterrent to the profession. The proposed penalty sends a clear message to both the public and the members of the College that derogatory insults are unprofessional will not be tolerated.

It is disappointing that at the end of his professional career, Dr. Goodwin chose to act in an offensive manner to a physician colleague. He clearly did not meet the expectations of the College set out in the Policy Statement or the guidelines for social media use.

ORDER

The Committee stated its finding of professional misconduct in paragraph 1 of its written order of July 19, 2018. In that order, the Committee ordered and directed on the matter of penalty and costs that:

2. the Registrar suspend Dr. Goodwin's certificate of registration for a period of one (1) month, commencing at 12:01 a.m. on July 20, 2018.
3. Dr. Goodwin appear before the panel to be reprimanded.
4. the Registrar impose the following as a term, condition and limitation on Dr. Goodwin's certificate of registration:
 - (i) Dr. Goodwin will successfully complete the PROBE course in ethics and professionalism by obtaining an unconditional pass, at his own expense, or any alternate course in ethics and professionalism approved by the College, by January 31, 2019. Dr. Goodwin will agree to abide by any recommendations of the PROBE program and provide proof of completion to the College.
5. Dr. Goodwin pay to the College its costs of this proceeding in the amount of \$10,180 within thirty (30) days from the date of this Order.

At the conclusion of the hearing, Dr. Goodwin 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 July 19, 2018
in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
and
DR. DAVID MICHAEL GOODWIN

Dr. Goodwin,

It is always regrettable when a long-serving physician, at the end of his professional career, has to appear before the Discipline Committee of his regulatory college.

The Committee is well aware of the charged political environment in which the profession has been engaged over the last several years, and especially during the timeframe of the incident that has brought you here today. However, the manner in which you ill-advisedly chose to vent your frustration with the leader of your professional association was totally abhorrent and unprofessional. The sexually demeaning nature of correspondence will not be tolerated.

In your capacity as a leader in your section of the Ontario Medical Association, your colleagues would have expected a role model who could act in a respectful, courteous and civil manner towards one's colleagues who were leading the profession's efforts to provide healthcare.

As a member of one of the learned professions and with your command of the English language, one that has a rich repertoire of ways to positively express dissent, the Committee is dismayed that you chose to author and to distribute widely such negative, pejorative and needlessly sexualized remarks.

Despite your retirement, the Committee strongly encourages you to comply with the rehabilitative ethics course as you may well have an ongoing influence in your community and with your medical colleagues. You have departed the profession with a finding of disgraceful, dishonourable, unprofessional conduct.

This is not an official transcript