

## NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Duaine Arlene Clements, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of the patient or any information that could disclose the identity of the patient, under subsection 47(1) of the *Health Professions Procedural Code* (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act*, S.O. 1991, c. 18, as amended.

Subsection 93(1) of the *Code*, which is concerned with failure to comply with this order, reads:

93(1) Every person who contravenes an order made under section 45 or 47 is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 for a first offence and not more than \$20,000 for a subsequent offence.



## 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 June 5, 2006. At the conclusion of the hearing, the Committee stated its finding that the member committed acts of professional misconduct, and delivered its penalty order, with written reasons to follow.

### PUBLICATION BAN

In response to a request by counsel for the College on behalf of the complainant, the Committee ordered that no person shall publish the identity of the patient or the patient’s family members, nor any information that could disclose the identity of the patient or the patient’s family members, pursuant to subsection 47(1) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act*, S.O. 1991, c. 18 (the “Code”).

### ALLEGATIONS

The Notice of Hearing, dated April 7, 2004, amended September 7, 2005, alleged that Dr. Duaine Arlene Clements committed acts of professional misconduct:

1. under subsection 1(1)(33) of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, [S.O. 1991, c. 30], (“O. Reg. 856/93”), in that she committed acts or omissions relevant to the practice of medicine that would reasonably be regarded by members as disgraceful, dishonourable or unprofessional;
2. under paragraph 27.32 of Ontario Regulation 448/80 made under the *Health Disciplines Act*, [R.S.O. 1980, c. 196], (“O. Reg. 448/80”) and paragraph 29.33 of Ontario Regulation 548/90 made under the *Health Disciplines Act*, [R.S.O. 1990, c. H.4], (“O. Reg. 548/90”) by conduct or an act relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional;

3. under paragraph 27.29 of O. Reg. 448/80 and paragraph 29.30 of O. Reg. 548/90 in that she engaged in sexual impropriety with a patient; and
4. under paragraph 27.21 of O. Reg. 448/80 and paragraph 29.22 of O. Reg. 548/90 in that she failed to maintain the standard of practice of the profession.

The Notice of Hearing also alleged that Dr. Clements is incompetent as defined by subsection 61(4) of the *Health Disciplines Act*, R.S.O. 1990 c. H.4 and subsection 60(4) of the *Health Disciplines Act*, R.S.O. 1980, c.196, in that her care of patients displayed a lack of knowledge, skill or judgment or disregard for the welfare of her patients of a nature or to an extent that demonstrates that she is unfit to continue practise.

### **RESPONSE TO THE ALLEGATIONS**

At the outset of the hearing, the College withdrew allegations 3 and 4 as set out in the Notice of Hearing, and the allegation of incompetence. Dr. Clements admitted allegations 1 and 2 as set out in the Notice of Hearing.

### **EVIDENCE**

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

#### **PART I – AGREED STATEMENT OF FACTS**

1. Dr. Clements is a 73 year old general practitioner who practises psychotherapy. Dr. Clements received an independent practice certificate from this College in 1957.

Patient A

2. Patient A sought treatment from Dr. Clements for anxiety, panic attacks and agoraphobia.

3. Dr. Clements was Patient A's physician from January 1986 until September 2, 1993. During that period of time, the physician-patient relationship was psychotherapeutic. Patient A's appointments with Dr. Clements were increased from once or twice a week at the outset to up to five times a week. Attached at Tab A [to the Agreed Statement of Facts and Admission] were Dr. Clements' medical records for Patient A.
4. During that time, Dr. Clements engaged in unprofessional behaviour, including the following:
  - (a) Socialized with Patient A and her family, including at Dr. Clements' cottage;
  - (b) Vacationed with Patient A and her family;
  - (c) Loaned Patient A one of her dresses;
  - (d) Engaged in regular hugging with Patient A in the course of therapy, which Patient A reported evoked sexual feelings in her; and
  - (e) Used the legal services of Patient A's husband (who was also her patient) without payment.
5. In her response to the College investigation, Dr. Clements initially denied that the hugging had occurred.
6. During the physician-patient relationship, Patient A repeatedly expressed concern about her increasing feelings of dependence on Dr. Clements.

#### Billing

7. Dr. Clements had patients sign a contract for uninsured services. The contract did not comply fully with the College policy on block fee billing for uninsured services.
8. Dr. Clements charged most of her patients a fee in respect of each appointment they attended with her, in addition to the fee that was billed to OHIP.

9. Although the fees were said to be for uninsured services, Dr. Clements sometimes also billed the patients additional amounts for uninsured services.
10. Dr. Clements has repaid some of those amounts in full and in some instances by deducting these amounts from the outstanding account.
11. Dr. Clements has made revisions to her uninsured services contract. OHIP has reviewed the revised contract and has closed its review of Dr. Clements' billing practices.
12. Dr. Clements re-wrote a portion of one of her patient's chart sometime after some of the patient's visits. Dr. Clements did not indicate that these notes were added at a later date.

## **PART II - ADMISSION**

13. Dr. Clements admits that the conduct set out above is professional misconduct:
  - (a) under subsection 1(1)(33) of Ontario Regulation 856/93 made under the Medicine Act, 1991 ("O. Reg. 856/93"), in that she committed acts or omissions relevant to the practice of medicine that would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and
  - (b) under paragraph 27.32 of Ontario Regulation 448/80 made under the Health Disciplines Act ("O. Reg. 448/80") and paragraph 29.33 of Ontario Regulation 548/90 made under the Health Disciplines Act ("O. Reg. 548/90") by conduct or an act relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

**FINDINGS**

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts and Admission. Having regard to these facts, and the submissions of counsel for the parties, the Committee accepted Dr. Clements' admission and found that she committed professional misconduct:

- a) under subsection 1(1)(33) of O. Reg. 856/93 in that she committed acts or omissions relevant to the practice of medicine that would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and
- b) under paragraph 27.32 of O. Reg. 448/80 and paragraph 29.33 of Ontario O. Reg. 548/90, by conduct or an act relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

**PENALTY AND REASONS FOR PENALTY**

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

As part of the joint submission, an Undertaking, signed by Dr. Clements, was presented to the Committee, pursuant to which Dr. Clements undertook to resign from the College, no later than 11:59 p.m. on June 30, 2006. Dr. Clements also agreed to not apply or re-apply for registration as a physician or for a licence to practise medicine in any jurisdiction. The Undertaking also provided that its terms be entered on the Register as information that is available to the public. Should the College become aware that Dr. Clements has applied, re-applied or attempted to apply for registration as a physician or for a licence to practise medicine in any jurisdiction, the College shall have the right to proceed with a disciplinary proceeding on the basis of a breach of the Undertaking.

Together with the Undertaking, counsel for the College and counsel for Dr. Clements jointly proposed a recorded reprimand.

There were mitigating circumstances in this case. Dr. Clements admitted her misconduct. In so doing, she spared the complainant from testifying and saved the time and expense of a contested hearing. Dr. Clements has been a physician in Ontario for almost fifty years and had no previous history of misconduct. She also repaid at least a portion of the money inappropriately collected from her patients, and had revised her contract for uninsured services.

Counsel made reference to a number of analogous prior decisions of this Committee, including *C.P.S.O. v. Bergstrom* (2000), *C.P.S.O. v. Kambites* (2001), *C.P.S.O. v. Zhuk* (2003), and *C.P.S.O. v. Pollock* (2003).

Having carefully considered the evidence and all of the circumstances, and particularly having regard to Dr. Clements' binding Undertaking, the Committee concluded that the penalty jointly proposed by both counsel was appropriate. In considering the circumstances of the case, the Committee had regard to the mitigating factors as well as the similar cases that were presented. The Committee concluded that, absent the Undertaking, this would certainly be a case calling for a meaningful suspension of Dr. Clements' certificate of registration. However, in view of the Undertaking that Dr. Clements will resign and not reapply in Ontario or another jurisdiction, the reprimand was found to be an appropriate penalty. Among the primary aims of an appropriate penalty are the protection of the public and general deterrence. These aims are served by the proposed penalty. In this case, the aims of specific deterrence and of denunciation of the impugned conduct are also fulfilled by the proposed penalty, having regard to the Undertaking. The Committee concluded that these objectives are well served by the recorded reprimand, and the resignation of Dr. Clements and her agreement to not practise again.

**ORDER**

By Order in writing delivered on June 5, 2006, the Discipline Committee ordered and directed that:

1. Dr. Clements be required to appear before the Panel to be reprimanded; and
2. the results of this proceeding be included in the Register.

At the conclusion of the hearing, Dr. Clements waived her right to an appeal and the Committee administered a public reprimand.