

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Brian Clare Bailey, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of the names and 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. Bailey
2019 ONCPSD 18**

**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. BRIAN CLARE BAILEY

PANEL MEMBERS:

**DR. W. KING (CHAIR)
MR. P. PIELSTICKER
DR. P. CHART
MR. J.P. MALETTE
DR. E. SAMSON**

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

**MS. PENNY NG
MS. AMY BLOCK
MS. CAROLYN SILVER**

COUNSEL FOR DR. BAILEY:

MR. JEFF MUTTER

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. ROBERT W. COSMAN

**Hearing Dates: February 11 and 12, 2019
Decision Date: May 6, 2019
Written Decision Date: May 6, 2019**

DECISION AND REASONS FOR DECISION

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario (“CPSO”) heard this matter at Toronto on February 11 and 12, 2019. At the conclusion of the hearing, the Committee reserved its decision on finding.

THE ALLEGATION

The Notice of Hearing alleged that Dr. Brian Clare Bailey (“Dr. Bailey”) 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.

RESPONSE TO THE ALLEGATION

Dr. Bailey denied the allegation in the Notice of Hearing, 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.

BACKGROUND

Dr. Bailey is a 76-year-old general practitioner who received his certificate of registration for independent practice in 1969. Dr. Bailey’s practice is located in Ottawa and consists of group psychotherapy, some individual psychotherapy and acupuncture. He is a short term mental health provider and selects patients referred to him to attend his “AcuDestress Program”.

Dr. Bailey was brought to the attention of the Inquiries, Complaints and Reports Committee (“ICRC”) by the College’s Quality Assurance Committee in 2015. The ICRC determined after investigation and review that there were aspects of Dr. Bailey’s practice that were either

unacceptable or deficient and that failed to maintain the standard of practice. Further, the ICRC was of the view that Dr. Bailey was remediable in these areas. On May 4, 2016, the ICRC ordered that Dr. Bailey undergo a specified continuing education or remediation program (a “SCERP”). The SCERP was intended to address the ICR Committee’s concerns and to protect the public interest.

The allegation of professional misconduct in this matter arises from Dr. Bailey’s response or lack thereof to the May 4, 2016 SCERP.

THE ISSUES

The issues before the Committee in this matter are:

1. Did Dr. Bailey fail to comply with the May 4, 2016 SCERP?
2. If he failed to comply, either fully or in part, does Dr. Bailey’s conduct constitute disgraceful, dishonourable or unprofessional conduct?

THE EVIDENCE

The May 4, 2016 SCERP

The general components of the May 4, 2016 SCERP ordered by the ICRC are set out below.

A. Group Courses

Dr. Bailey shall attend and successfully complete the next available session of the following four courses:

- (i) The Medical Record Keeping Course offered through the University of Toronto;

- (ii) The Canadian Medical Protective Association's ("CMPA") e-modules on medical record keeping (two on-line modules);
- (iii) The Understanding Boundaries Course, offered through the Schulich School of Medicine, at University of Western Ontario;
- (iv) The CMPA module on Privacy and Confidentiality.

Dr. Bailey shall provide proof of the successful completion of these courses.

B. Self-Directed Learning

Dr. Bailey shall review and provide a written summary of the following documents:

- (i) The College's policy on *Complementary Alternative Medicine*;
- (ii) The College's policy on *Telemedicine*;
- (iii) The CMPA Good Practice Guide, section on "e-communication";
- (iv) The College's policy on *Consent to Treatment*;
- (v) The College's policy on the *Confidentiality of Personal Health Information*;
- (vi) The College's policy on *Maintaining Appropriate Boundaries and Preventing Sexual Abuse*;
- (vii) The Ontario advertising regulation (Ontario Regulation 144/94);
- (viii) The College's policy on *Medical Records*.

Dr. Bailey's summary shall reference how they are applicable to his situation as well as how he plans to change his practice.

Dr. Bailey shall submit his summaries to the College to ensure completeness.

C. Clinical Supervision

Dr. Bailey shall engage in focused educational sessions, in person, with a clinical supervisor acceptable to the College (the Clinical Supervisor), in the following topics:

- (i) The use of accepted diagnostic classification, appropriate utilization of acupuncture as a complementary approach;
- (ii) Appropriate size and composition of group therapy sessions;
- (iii) Use of professional language;
- (iv) Appropriate use of telemedicine and electronic media for communication;
- (v) Understanding boundary issues;
- (vi) Understanding informed consent;
- (vii) Understanding confidentiality requirements;
- (viii) Compliance with advertising regulation and avoiding conflicts of interest;
- (ix) Appropriate record keeping.

The Clinical Supervisor is required to sign an undertaking with the College within 30 days of Dr. Bailey's receipt of this decision.

D. Reassessment

Dr. Bailey shall undergo a reassessment, with an assessor selected by the College approximately six months following completion of the educational plan.

Documentary Evidence

The Committee received a number of documents in evidence including a Joint Book of Documents, an e-mail communication of February 9, 2019 to Dr. A. Eyre regarding clinical supervision with an attached letter, a list of possible supervisors, an information sheet and other material for doctors regarding AcuDestress Training, a USB (video and pages of Dr. Bailey's website) and a copy of a recent change Dr. Bailey made to his website.

Witnesses

The Committee heard the testimony of three witnesses: Ms Rachael Rapaport Beck (compliance case manager), Ms Barbara Prikrylova (lawyer Gowlings WLG) and Dr. Brian Bailey. Their evidence and the Committee's view of their evidence are set out below.

Ms Rachael Rapaport Beck – Compliance Case Manager

Ms Beck is a Compliance Case Manager (CCM) with the CPSO. She was assigned Dr. Bailey's case in October 2017. Ms Beck testified that prior to her taking over the case, Michael Weston had been the CCM.

Ms Beck testified that her first communication with counsel for Dr. Bailey was by letter dated October 17, 2017. Ms Beck testified she informed Dr. Bailey's counsel that Dr. Schokking (a physician proposed as supervisor by Dr. Bailey) was not acceptable as a supervisor as he is not registered to practise in Ontario. Ms Beck referred to the College Guidelines for Approval of Clinical Supervisors, which states that a general requirement for a clinical supervisor is a certificate of registration to practise in Ontario. Ms Beck testified she put forward the names of two physicians who had similar scopes of practice as Dr. Bailey (Dr. R Knipping; Dr. J Pearlman). This was done in an attempt to assist Dr. Bailey in finding a suitable supervisor. Ms Beck testified that by e-mail on October 17, 2017, she extended the deadline for Dr. Bailey to obtain a supervisor to October 31, 2017.

Ms Beck testified that having received no satisfactory response, she e-mailed Dr. Bailey's counsel on January 17, 2018, reminding him of the need to engage a supervisor and all the other elements of the SCERP. A further deadline of January 31, 2018 was set to engage a supervisor, failing which the matter would be returned to the ICRC. On February 1, 2018, a voicemail from counsel for Dr. Bailey indicated that a proposed supervisor would be submitted the following week. Ms Beck testified she did not have any communication from Dr. Bailey's counsel until March 9, 2018. Ms Beck testified she sent further e-mails to Dr. Bailey's counsel on February 9

and 28, 2018, informing him the matter was returning to the ICRC on March 20, 2018 and that any submissions were to be made by March 9, 2018.

Ms Beck testified that she received a letter from counsel for Dr. Bailey dated March 9, 2018, reminding her that Dr. Bailey had been in a motor vehicle accident in the late spring of 2016 and was completing a fitness to practise investigation. Ms Beck testified that Dr. Bailey considered neither of the two physicians proposed by the College suitable as his supervisor and he again proposed Dr. Schokking as a supervisor. In addition, Dr. Bailey requested he not be required to take the University of Toronto Medical Record Keeping Course.

Ms Beck testified that on March 9, 2018, she also received an attachment of Dr. Bailey's self-directed learning summaries. Although no specific deadline was set for these self-directed summaries, they were to provide a basis for discussion during Dr. Bailey's supervision and therefore would need to be completed within seven months from the date of the SCERP.

Ms. Beck further testified that during March 2018, she received certificates of completion of the online CMPA e-modules (Charting Medical Records, Principles of Medical Record Keeping and Privacy and Confidentiality) dated March 12, 2018. She also received an updated copy of Dr. Bailey's "self- directed" learning summaries, which she subsequently forwarded to Dr. Prendergast, a CPSO medical advisor.

Ms Beck testified that she again notified Dr. Bailey's counsel that Dr. Schokking was not approved as clinical supervisor for the reasons previously outlined.

After further review by the ICRC and subsequent referral to the Discipline Committee (May 1, 2018), Ms Beck testified that she continued to monitor Dr. Bailey's compliance with the May 4, 2016 SCERP. Between June 4 and August 13, 2018, Ms Beck testified that there were numerous exchanges addressing resubmission of Dr. Bailey's learning summaries, confirmation of enrolment in required courses, continuing efforts to secure an appropriate supervisor and resetting of deadlines.

During the fall of 2018, Ms Beck continued to communicate with Dr. Bailey's counsel regarding a suitable supervisor. Ms Beck testified that in October 2018, Dr. A. S. Abdulla was proposed by Dr. Bailey and was not acceptable to the College given his scope of practice did not align with that of Dr. Bailey. Ms Beck testified that two further physicians were proposed by Dr. Bailey (Dr. Alison Eyre, Dr. Paul Cappon) and both were found suitable to proceed through a subsequent process involving an interview with the College and finalized when a signed undertaking was received.

Ms Beck testified that after the College interview, Dr. Cappon was approved by the College but he reserved his decision to participate until he met and discussed the terms with Dr. Bailey. Ms Beck testified that in January 2019, she was notified that after receiving some correspondence from Dr. Bailey, Dr. Cappon was no longer willing to act as supervisor.

Ms Beck testified that as of February 4, 2019, Dr. Eyre was conditionally approved by the College to be Dr. Bailey's supervisor for aspects of the SCERP that aligned with her scope of practice.

In the week prior to this hearing, Ms Beck testified that she received Dr. Bailey's Certificate of Attendance and Report Card issued by the University of Toronto Medical Record Keeping Course held September 26, 2018. Further, Ms Beck testified that she received notification from Dr. Prendergast that the self-directed learning component of the SCERP was satisfied given that Dr. Bailey would be continuing to discuss the topics going forward with his supervisor.

Ms Beck agreed that as of the date of the hearing, Dr. Bailey had fulfilled all the requirements of the SCERP, except those related to supervision, and subject to confirmation of his completion of the Boundaries Course.

The Committee found Ms Beck to be a credible and reliable witness. She was clear in giving her evidence, which was supported by and consistent with the documentary evidence regarding her role and actions taken in this matter.

Ms Barbara Prikrylova – Lawyer Gowlings WLG

Ms Prikrylova testified that she is a lawyer at Gowlings WLG in Ottawa. In February of 2018, she was asked to review Dr. Bailey's file and assist him going forward. She testified that she reviewed the requirements of the clinical supervisor and contacted a number of physicians, most of whom were too busy or retiring and were not interested.

In June of 2018, Ms Prikrylova looked into Dr. Pearlman and Dr. Knipping, the two physicians suggested by the College as having similar scope with Dr. Bailey. Ms Prikrylova googled Dr. Pearlman's website and found that her focus was women's health and cosmetic procedures. Ms Prikrylova deemed Dr. Pearlman to be unsuitable. Ms Prikrylova had no direct contact with Dr. Pearlman. Ms Prikrylova testified she contacted Dr. Knipping's office and spoke to his staff, who indicated he was busy. She sent him an e-mail requesting his assistance. There was no response and no further action was taken.

Ms Prikrylova testified that Dr. Bailey gave her the names of Dr. Mai and Dr. Leyton to pursue. Dr. Bailey indicated he wanted to have Dr. Leyton pre-approved by the College prior to contacting him. Dr. Mai declined after reviewing the ICRC decision, and the College would not preapprove Dr. Leyton. No further action followed.

Ms Prikrylova testified that on June 19, 2018, she notified the College of confirmation of Dr. Bailey's registration in the Medial Record Keeping Course at the University of Toronto and further confirmed payment for the Understanding Boundaries and Managing Risks Inherent in the Doctor-Patient Relationship Course.

Ms Prikrylova testified that in October/November of 2018, she began to make inquiries to find a clinical supervisor for Dr. Bailey. From colleagues at Gowlings, she obtained three names. Of these, two declined and the third (Dr. Abdulla) agreed to assist and was proposed to the College. The College did not accept Dr. Abdulla based on his scope of practice.

Ms Prilrylova testified she contacted the Medical Psychotherapy Association of Canada and they were unable to assist. In November 2018, Ms Prikrylova began cold calling physicians from a list of physicians (over 30 names) provided by a contact at Gowlings. She eventually obtained the names of Dr. Paul Cappon and Dr. Alison Eyre, who were willing to assist. Both of these physicians were proposed to the College as clinical supervisors for Dr. Bailey.

Dr. Cappon was conditionally approved by the College. After an interview with the CCM, Dr. Cappon wanted to meet with Dr. Bailey before agreeing to act as clinical supervisor. Subsequently, Dr. Cappon declined; he never did meet Dr. Bailey.

Ms Prikrylova testified that as of February 4, 2019, the College conditionally approved Dr. Eyre as a clinical supervisor for Dr. Bailey within her limited scope of practice. Ms Prikrylova testified that the status of this appointment as of this hearing is that Dr. Eyre is conditionally approved as a clinical supervisor for some but not all the elements of concern to the ICRC. She is to meet with Dr. Bailey to discuss the details of how supervision would be arranged. She would then need to sign the undertaking.

The Committee accepted Ms Prikrylova's evidence as credible and reliable. Her evidence was clear, straightforward and succinct.

Dr. Brian Bailey

Dr. Bailey testified that he graduated from Queens University in 1968. He did a residency in Toronto at the Wellesley Hospital and then went into general practice in Smiths Falls. Dr. Bailey testified that that he has had an interest in psychotherapy since early in his practice. He is a member of the Medical Psychotherapy Association of Canada where he is the chair of two committees and a member of the Ottawa Academy of Medicine. Dr. Bailey testified that he currently practises at the South-East Ottawa Community Health Centre

Dr. Bailey testified that he studied various forms of psychotherapy including hypnosis and transpersonal therapy. He developed several group programs. He left general practice in 1979

and moved to Ottawa. Dr. Bailey explained that in 1990, he heard of the use of ear acupuncture in the treatment of addiction. Dr. Bailey introduced this technique into his practice for patients with general problems, such as anxiety and depression. He described his Ottawa practice as a full-time split between acupuncture and psychotherapy

Dr. Bailey described his program (AcuDestress) as being a month long (18 daily sessions) and having a follow-up at six months. Dr. Bailey testified he runs this program with two groups at a time of twelve people each. Each session lasts one and a half hours. At the first session, before signing informed consent, patients view a short video showing how this technique has been used. The program consists of daily sessions of group psychotherapy coupled with ear acupuncture.

Dr. Bailey developed a website, which provides information about his practice. Dr. Bailey described his patients as “only people who the regular system has given up on”. He sees patients with anxiety, depression, personality disorders, and post traumatic stress disorder (PTSD).

Dr. Bailey testified that what he does in terms of therapy is pretty mainstream, although not done everywhere. He feels that this is the direction that medicine is moving and he has contributed to it. Dr. Bailey testified that he has a 75% improvement rate, based on the fact that in every group, 75% of the patients do not need to come back.

Dr. Bailey agreed in cross examination that he had made an alteration in his website the day before the hearing. He testified that for a short period, he had posted confidential patient information, which was not password protected. Dr. Bailey testified he wanted to have this information on hand for the hearing and said it was an innocent error and that he would do what was needed to “fix it”.

Dr. Bailey testified he was in a motor vehicle accident on May 18, 2016. This resulted in a head and neck injury. Although he participated in the group session on June 1, 2016, he was off work from June 27, 2016 until April 1, 2017. After a fitness to practise investigation, he returned to work in a limited way (two to three hours per day). Dr. Bailey testified that at that time, his cognitive ability was better than before the accident but he had problems with locomotion,

incontinence, driving, signing his name and maintaining his stamina (he needed naps during the day).

Dr. Bailey testified that he understood his obligation to complete the terms of the May 4, 2016 SCERP and he intends to comply. He testified that he was aware the SCERP was still in place when he returned to practice April 1, 2017, but at that time, he could not do it right away. However, he testified he did not communicate with the College to say he could not do the courses, saying he left this to his counsel. In April 2017, while agreeing he knew a supervisor was needed, he testified he was not aware of the 30 day period in which he had to comply.

Dr. Bailey testified that he could not complete the courses as he had other things outside of medicine to attend to. He did not sense a deadline. Priorities included chairing a Medical Psychotherapy Association (MPAC) conference and business interests.

Dr. Bailey agreed he thought the ICRC decision was unfair, and opposed it. He testified that he never refused to comply with the terms of the SCERP, just the schedule.

Dr. Bailey testified that he was not sure when he first completed the e-modules, but he repeated them in March 2018, when he reviewed the policies. He did not deliver the certificates of completion until March 12, 2018. He registered for the June 2018 Boundaries Course. He sought relief from the course on Medical Record Keeping as he thought it was unnecessary.

Dr. Bailey testified he looked for someone who understood acupuncture and psychotherapy to be his supervisor. As the MPAC conference chair, he said he talked to a number of people he thought might be suitable. Dr. Bailey testified that most declined saying he knew so much more than they did. He said the MPAC Executive did not want to touch it. Dr. Bailey agreed that he criticized and challenged the necessity of supervision.

The Committee noted that Dr. Bailey gave his evidence in a rambling style and was often evasive, digressing at length when asked a specific question. He frequently had to be returned by his counsel to the question posed. Dr. Bailey made a considerable effort to expound on the

history and virtues of his program and that he was an innovator and leader in his field. The Committee accepted his evidence as truthful though with reservations about its reliability given his perception, imprecise memory and the manner of his testimony.

Law and Legal Principles

The Committee must determine whether Dr. Bailey 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.

The onus is on the College to prove the allegation based upon clear, cogent and convincing evidence. The standard of proof required is the civil standard - on a balance of probabilities.

Issue 1 - Did Dr. Bailey fail to comply with the May 4, 2016 SCERP?

Based on the testimony of the compliance case manager, which was supported by the documentary evidence, the Committee accepted the following as fact.

A. Group Courses

Under the May 4, 2016 SCERP, Dr. Bailey was required to attend, successfully complete and provide proof of completion of the next available session of the following four courses:

- (i) The Medical Record Keeping Course offered through the University of Toronto;
- (ii) The Canadian Medical Protective Association's ("CMPA") e-modules on medical record keeping (two on-line modules);
- (iii) The Understanding Boundaries Course, offered through the Schulich School of Medicine, at University of Western Ontario;
- (iv) The CMPA module on Privacy and Confidentiality.

Dr. Bailey failed to comply with the schedule set out for completion of the courses as required by the SCERP.

Dr. Bailey completed the Medical Record Keeping Course at the University of Toronto on September 26, 2018 and provided the certificate of completion to the College on February 5, 2019. This course was available monthly during 2017 and 2018.

Dr. Bailey completed the two CMPA on-line modules on medical record keeping and provided a certificate of completion to the College on March 13, 2018. These modules were available at all times during 2017 and 2018.

On June 19, 2018, Dr. Bailey provided confirmation of registration in the Understanding Boundaries and Management of the Risks Inherent in the Doctor-Patient Relationships course to be held in October 2018. Dr. Bailey has not yet provided confirmation of completion of this course. This course was available three times a year in 2017 and 2018.

Dr. Bailey completed the CMPA course on Privacy and Confidentiality and provided a certificate of completion to the College on March 13, 2018. The course module was available at all times during 2017 and 2018.

B. Self-directed Learning

Under the May 4, 2016 SCERP, Dr. Bailey was required to undertake self-directed learning. Dr. Bailey was required to review and provide a written summary of the following documents:

- (i) The College's policy on *Complementary Alternative Medicine*;
- (ii) The College's policy on *Telemedicine*;
- (iii) The CMPA Good Practice Guide, section on "e-communication";
- (iv) The College's policy on *Consent to Treatment*;
- (v) The College's policy on the *Confidentiality of Personal Health Information*;

- (vi) The College's policy on *Maintaining Appropriate Boundaries and Preventing Sexual Abuse*;
- (vii) The Ontario advertising regulation (Ontario Regulation 144/94);
- (viii) The College's policy on *Medical Records*.

Dr. Bailey was required to summarize how they are applicable to his situation, as well as how he plans to change his practice. Dr. Bailey was also required to submit his summaries to the College to ensure completeness. While there was no specific deadline set, this material was to be referenced during supervision. Consequently, it would need to be completed within seven months following Dr. Bailey's return to work.

Dr. Bailey provided initial "self-directed" summaries to the College on March 9, 2018, and an updated version on March 12, 2018. On April 4, 2018, Dr. Prendergast, the Medical Advisor for the College, notified Dr. Bailey that the materials provided did not meet the SCERP requirements (Exhibit 2, Tab 21). Dr. Prendergast asked Dr. Bailey to review the ICRC decision and the documents to be summarized and then to resubmit. On February 6, 2019, Dr. Prendergast notified Dr. Bailey that he is satisfied that the self-directed learning summaries met the SCERP, as Dr. Bailey would be continuing to discuss the topics on an ongoing basis with the clinical supervisor.

C. Clinical Supervision

Under the May 4, 2016 SCERP, Dr. Bailey was to engage in focused educational sessions, in person, with a clinical supervisor acceptable to the College (the Clinical Supervisor), on the following topics:

- (i) The use of accepted diagnostic classification, appropriate utilization of acupuncture as a complementary approach;
- (ii) Appropriate size and composition of group therapy sessions;
- (iii) Use of professional language;
- (iv) Appropriate use of telemedicine and electronic media for communication;

- (v) Understanding boundary issues;
- (vi) Understanding informed consent;
- (vii) Understanding confidentiality requirements;
- (viii) Compliance with advertising regulation and avoiding conflicts of interest;
- (ix) Appropriate record keeping.

The Clinical Supervisor was required to sign an undertaking with the College within 30 days of Dr. Bailey's receipt of the ICRC decision of May 4, 2016. Dr. Bailey received the decision May 27, 2016. While there has been some effort made to secure a clinical supervisor, no signed undertaking had been received by the College by the date of this hearing.

Based on the above facts, which were not disputed by Dr. Bailey, the Committee finds that Dr. Bailey failed to comply with the May 4, 2016 SCERP as required by the ICRC.

Issue 2 - Does Dr. Bailey's failure to comply with the May 4, 2016 SCERP constitute disgraceful, dishonourable or unprofessional conduct?

Position of the Parties

Counsel for the College takes the position that Dr. Bailey's failure to comply with the May 4, 2016 SCERP constitutes professional misconduct as alleged. Counsel for Dr. Bailey takes the position that considering all the circumstances, a finding of disgraceful, dishonourable or unprofessional conduct should not be made.

Analysis

The Committee accepted as fact that:

- Dr. Bailey was notified of the ICRC decision by letter dated May 27, 2016.

- Dr. Bailey was in a motor vehicle accident on May 18, 2016 at which time he sustained head and neck injuries.
- Dr. Bailey required time away from practice as a result of his accident.
- Dr. Bailey left practice on June 27, 2016 and returned to practice on April 1, 2017.

The Committee also considered the following.

Delay in Adhering to the Scheduled Timelines for Completion of the SCERP

It was clear to Dr. Bailey that he was obliged to comply with the May 4, 2016 SCERP when he returned to practice on April 1, 2017. It was not until August 9, 2017, that Dr. Bailey proposed Dr. Schokking as a clinical supervisor. Despite requests from Michael Weston, the College CCM at the time, for an update on the other requirements of the SCERP, no further information in respect of the course requirements or self-directed learning was forthcoming in a timely way.

When Ms Beck was assigned Dr. Bailey's file in October 2017, she notified counsel for Dr. Bailey that Dr. Schokking was not approved as a supervisor; she suggested two physicians whom Dr. Bailey could approach. Ms Beck received no response from Dr. Bailey's counsel even though she notified his counsel that, unless a supervisor was in place by January 31, 2018, the matter would be returned to the ICR Committee. On February 1, 2018, she was informed by voicemail that the name of a proposed supervisor would be available the following week. Ms Beck received no meaningful response until March 9, 2018, at which time the matter had been referred back to the ICRC. Only Dr. Schokking was put forward as a potential supervisor and initial summaries of the self-learning requirements were provided at that time. The e-module courses were completed March 12, 2018.

This matter was referred to the Discipline Committee on May 1, 2018. During the summer and fall of 2018, Dr. Bailey completed his self-learning requirements and registered for the remaining courses he was required to attend. Even though Dr. Bailey completed the Medical

Record Keeping course in September of 2018, he did not provide a certificate of completion until the week before this hearing. While he registered for the Understanding Boundaries and Management of the Risks in the Doctor-Patient Relationship held in October 2018, he still has not provided a certificate of completion.

The Committee is cognizant of the efforts to secure a supervisor undertaken by counsel for Dr. Bailey in the fall of 2018. These efforts however were only made after referral to discipline had occurred.

Dr. Bailey offers that he was not able to comply with the SCERP in a timely way as he was suffering from post concussion effects from the motor vehicle accident, which included lingering fatigue. This is difficult to reconcile as some of the courses required were available on-line, could be done at Dr. Bailey's convenience and were not onerous. Dr. Bailey's excuse that he was unable to fulfill his obligations under the SCERP flies in the face of his ability to carry on practice and participate in other activities, such as conferences and business interests.

The CCM had repeatedly set deadlines for Dr. Bailey to meet his obligations, none of which were complied with. The Committee determined that the College had been reasonable in extending timelines for completion of the SCERP given Dr. Bailey's accident. However, once Dr. Bailey returned to practice, he had an obligation to move promptly to comply. In the Committee's view, Dr. Bailey's delay in completing all elements of the SCERP for more than 18 months as noted above is unacceptable and inexcusable.

The Committee finds that Dr. Bailey failed to comply with the May 4, 2016 SCERP by unreasonably delaying the completion of all of its elements once he returned to practice.

Failing to Respond to College Communications

The CCMs in this matter reached out repeatedly to Dr. Bailey, through his counsel and received either no response or notice that information would be forthcoming and was not. Examples of this behavior are found in Exhibit 2 and include:

- An e-mail from Dr. Bailey's counsel on June 9, 2017 indicating he would report back the following Tuesday. This did not happen. (Tab 4)
- On June 21, 2017, the CCM sent an e-mail requesting a response by June 23, 2017. No response was received by June 23, 2017. (Tab 4)
- On July 11, 2017, the CCM wrote to remind Dr. Bailey to forward the name of a proposed supervisor. There was no response. (Tab 28)
- August 4, 2017, the CCM again wrote to remind counsel for Dr. Bailey of SCERP requirements and set a deadline for response of August 8, 2017. A response was received August 9, 2017. (Tabs 7, 8)

In addition, in a letter from Ms Beck on October 17, 2017 to Dr. Bailey's counsel, she reiterates Dr. Bailey's obligation under the May 4, 2016 SCERP. By e-mail later that day, Ms Beck sets October 31, 2017 as the deadline for a response. No response was received and despite a further e-mail in January 2018, the only communication was a voice mail message left by counsel for Dr. Bailey on February 1, 2018, indicating that a name would be put forward the following week. Nothing further was received until a letter dated March 9, 2018 from Dr. Bailey's counsel, in which he again proposed Dr. Schokking as supervisor and requested relief from taking the Medical Record Keeping course.

Dr. Bailey testified he left it in the hands of his counsel to contact the College. The Committee does not accept this as an excuse. The obligation is Dr. Bailey's to respond to his governing body; his counsel responds at his direction. Dr. Bailey cannot distance himself from his obligation in such a manner.

In the circumstances, repeatedly ignoring and failing to address the outstanding issues can only be interpreted as purposeful delay. Indeed once it was clear that the matter had been referred

back to the ICRC and referral to the Discipline Committee had occurred, the completion of most elements of the SCERP occurred with alacrity.

The Committee finds that Dr. Bailey's failure to communicate either in person or through his counsel were an attempt to thwart or delay the process. Such behavior by members of the profession in the view of the Committee is not tolerable.

Unhelpful Attitude to and Obstruction of Efforts to Secure an Appropriate Clinical Supervisor

Dr. Bailey's attempts to find a supervisor were half-hearted until taken over by his counsel. As Dr. Bailey made clear, he did not see any need for a supervisor over and above what was in place at the Community Health Centre where he works. Dr. Bailey's attitude in describing colleagues as not wanting to supervise him as he knew so much more than they did speaks to his sense of superiority, and failure to accept the finding and direction of the ICRC.

Dr. Bailey does not believe the SCERP was fair as it was "tainted by being inspected by a non-peer" who did not understand his methods. The SCERP, however, sets out the need for remediation in basic elements of practice; it is not directed to establishing acceptance or scientific validity of the technique he uses.

The Committee accepts that while it may not have been easy to find a supervisor, the manner in which Dr. Bailey approached securing a supervisor does not reflect an honest or reasonable effort to do so. Even the College's attempt to assist was not fully explored by Dr. Bailey or his counsel. No direct contact with Dr. Pearlman or Dr. Knipping was made to ascertain whether or not they would be prepared to supervise Dr. Bailey.

After Dr. Paul Cappon was conditionally approved by the College, Dr. Bailey wrote a letter to Dr. Cappon which is described by Dr. Cappon as being couched in the most extraordinary and condescending terms. The following excerpts from this letter are illustrative:

“I’d naturally need to know, before meeting you, whether you’d “fit the bill” and why, you’d choose this difficult-to-fill assignment”

“Only I can tell you what your assignment will require, or determine whether you as a candidate could fulfill the requirement of reporting on my practice in a way which would satisfy the College that I practice within professional standards”

Dr. Cappon found this communication to be so offensive, he refused to participate further. The approach to Dr. Eyre appears somewhat similar and speaks to Dr. Bailey’s perception that he is in control of the parameters of the supervision. Exhibit 3 contains a letter to Dr. Eyre in which Dr. Bailey states: “it is oddly like you’re applying for a job, and so I need to start off by telling you what the job is.”

If it is Dr. Bailey’s position that a supervisor must be familiar and endorse the technique he uses, the Committee rejects this. The SCERP sets out certain requirements; the supervisor fills a role in achieving specified objectives. It is Dr. Bailey’s obligation to abide by the SCERP.

Case Law

The Committee notes that panels of the Discipline Committee have made findings of disgraceful, dishonourable or unprofessional conduct in prior cases based on a failure to comply with or breach of orders of College Committees, including the failure to adhere to a SCERP.

In CPSO v Strang, 2018 ONCPSD 52, Dr. Strang was found to have engaged in disgraceful, dishonourable or unprofessional conduct. The ICRC required that Dr. Strang complete a SCERP, which consisted of course work and a reassessment. After reviewing the results of the reassessment, the ICRC further required a period of supervision. Dr. Strang delayed completion of the terms of the SCERP, failed to respond to the College and ignored a proposed undertaking, following which he was referred to the Discipline Committee.

In CPSO v Pinto, 2017 ONCPSD 5, the Committee made a finding of disgraceful, dishonourable or unprofessional conduct subsequent to the failure to comply with a SCERP. Dr. Pinto delayed in engaging a preceptor acceptable to the College in a timely fashion, was unresponsive to the College and failed to maintain a required log.

In CPSO v Lowe, 2015 ONCPSD 21, the Committee made a finding of disgraceful, dishonourable or unprofessional conduct. The ICRC required Dr. Lowe to sign an undertaking to complete specified courses. Dr. Lowe did not comply with the undertaking and was not responsive to the College.

In CPSO v. Achiume, 2015 ONCPSD 4, the Committee made a finding of disgraceful, dishonourable or unprofessional conduct based on Dr. Achiume's failure to comply with a SCERP requiring him to complete a medical record keeping course. He provided no explanation and was not responsive to the College.

The above four cases proceeded by way of an agreed statement of facts and admission.

In the case of *CPSO v. Botros*, 2015 ONCPSD 16, the matter proceeded as a contested hearing. A finding of disgraceful, dishonourable or unprofessional conduct was made based on a failure to comply with an ICRC order to complete a Communications Course. There was no acceptable excuse. The Discipline Committee found a lack of insight and that his actions were deliberate.

Summary

It is clear from Dr. Bailey's testimony that he believed that the SCERP was unfair. His manner of dealing with the situation was to agree to undertake the required remediation, but to thwart the schedule for its completion. Dr. Bailey understood his obligation to comply with the May 4, 2016 SCERP. He delayed complying with the SCERP after his return to practice and to date, has completed it only in part. He failed to communicate in a professional manner with the College staff assigned to his case, despite their repeated efforts to keep the matter moving forward. Dr.

Bailey's actions in securing a supervisor were unhelpful and obstructive. There is no acceptable excuse for this behavior.

Having regard for the facts and for the reasons cited above, the Committee finds that Dr. Bailey engaged in disgraceful, dishonourable, or unprofessional conduct as alleged.

The Committee requests that the Hearings Office schedule a penalty hearing pertaining to the findings made at the earliest opportunity.

Indexed as: Ontario (College of Physicians and Surgeons of Ontario) v. Bailey,
2020 ONCPSD 4

**DISCIPLINE COMMITTEE
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**
which is Schedule 2 of the ***Regulated Health Professions Act, 1991***,
S.O. 1991, c. 18, as amended.

B E T W E E N:

COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. BRIAN CLARE BAILEY

PANEL MEMBERS:

**DR. W. KING (CHAIR)
MR. P. PIELSTICKER
DR. P. CHART
MR. J.P. MALETTE, Q.C.**

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

**MS. P. NG
MS. C. SILVER**

COUNSEL FOR DR. BAILEY:

MR. A. MCKENNA

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. R. COSMAN

Hearing date:	December 12, 2019
Decision date:	February 3, 2020
Release of Reasons Date:	February 3, 2020

PUBLICATION BAN

PENALTY DECISION AND REASONS FOR DECISION

On May 6, 2019, the Discipline Committee (the “Committee”) found that Dr. Bailey committed an act of professional misconduct, in that he engaged in 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.

On December 12, 2019, the Committee heard evidence and submissions on penalty and costs, and reserved its decision. On the consent of the parties, Dr. Bailey participated in and provided evidence in the penalty hearing through a videolink, with him attending at his lawyer’s offices in Ottawa.

SUBMISSIONS ON PENALTY

The College submitted the appropriate penalty is:

1. A reprimand.
2. A suspension effective from December 26, 2019, until the later of six months after the commencement of the suspension, or the date Dr. Bailey provides proof of his successful completion of the Understanding Boundaries course, offered through the Schulich School of Medicine - Western University or an alternate course provider indicated by the College.
3. The Registrar to impose the following terms, conditions and limitations on Dr. Bailey’s certificate of registration:
 - (i) Dr. Bailey shall comply with all outstanding requirements of the Specified Continuing Education or Remediation Plan (SCERP) as set forth by the Inquiries, Complaints and Reports Committee (ICRC) dated May 4, 2016;

- (ii) Dr. Bailey shall comply with the College Policy "Closing a Medical Practice".

- 4. Dr. Bailey shall pay costs to the College of \$31,110.00 within 30 days of the date of the order.

Dr. Bailey submitted the appropriate penalty is:

- 1. A reprimand.
- 2. A suspension for a period of two (2) months, commencing 14 days after the date of the order.
- 3. Dr. Bailey to pay costs to the College in the amount of \$15,555.00 in accordance with a payment plan acceptable to the College.

EVIDENCE ON PENALTY

The Committee heard the testimony of two witnesses, and received in evidence two emails and a Book of Documents filed on consent.

Witness Testimony

Rachel Rapaport Beck

Ms Rapaport Beck testified in regard to communications with Dr. Bailey/his counsel, following the Discipline Committee's findings on May 6, 2019, regarding the progress of the SCERP which the ICRC had, on May 4, 2016, required him to complete.

Ms. Rapaport Beck testified that there were three aspects of the SCERP which Dr. Bailey has not yet completed.

- (i) The Understanding Boundaries course. While Dr. Bailey took this course on October 26 and 27, 2018 (i.e., following the date when the ICRC imposed the SCERP), the College determined that it was not successfully completed. Ms. Rapaport Beck explained that she had concerns after reviewing the Post Workshop Appraisal report, noting that it did not address issues in a meaningful way. She referred this matter to Dr. Prendergast (a medical advisor with the College). Following further consultation with the College's Educational Liaison and Dr. Hay (also a medical advisor with the College), it was concluded that Dr. Bailey had not successfully completed the course.
- (ii) Supervision. Two supervisors were required as there were two areas relevant to Dr. Bailey's scope of practice. Dr. A. Eyre completed her supervision; Dr. Carlos Yu's supervision is not yet complete, but is in process. A final note received on the morning of the hearing had not yet been reviewed by the College.
- (iii) Reassessment. This remains outstanding. The "clock" for scheduling reassessment starts when all other aspects of the SCERP are completed. A reassessment (chart review, interview and direct observation) is done 6 months later.

Dr. Brian Bailey (testimony given by videoconference)

Dr. Bailey testified regarding his numerous health issues and how they have impacted his ability to complete various elements of the SCERP.

In regard to the Understanding Boundaries course, he testified that he was taken aside and told he was verbose and voluminous. He needed to be clear and concise; he testified that this is what he learned, which was of value. He felt initially that the course was for those who committed sexual misconduct and that this did not apply to him.

Dr. Bailey testified that he disagreed with the College's determination that he had not successfully completed the Understanding Boundaries course. He testified that the decision was unfair and that in order to make a decision, the College needed to evaluate his post-course response in light of the assignment he was given. He asks to be able to make a submission to the ICRC or the College's Registrar in this regard.

Dr. Bailey testified that he completed the supervision work with Dr. Eyre and that he has seen a draft report from Dr. Yu.

Dr. Bailey testified that his current practice consists of month long group therapy sessions held five times a year. These are arranged via the Ontario Telemedicine Network (OTN) and involve patients engaging in a late morning and late afternoon video conference session with Dr. Bailey, lasting several hours. Patients are often those from a community health centre who have not succeeded in other, traditional forms of therapy. This therapy generates an income for Dr. Bailey of around \$50,000.00 annually. Dr. Bailey also conducts part-time laser therapy.

Penalty Considerations

Guiding Principles

In arriving at its decision, the Committee had regard for the well-established penalty principles appropriate to the discipline setting. The overarching principle is protection of the public. There are, however, additional principles important in this matter. These include a clear denunciation of the misconduct, specific deterrence to the member and general deterrence to the membership at large. It is also important to recognize the need to maintain the public's confidence in the College's ability to regulate its members. The penalty should demonstrate that public trust in the College to regulate the profession is well placed. Where rehabilitation is ordered, it should be focused and relevant.

It is also essential that the penalty be proportionate to the misconduct, be fair and accord with penalties levied in similar past cases.

In determining the appropriate penalty to order in this matter, the Committee had regard to the evidence at the hearing on liability and additional evidence in the penalty hearing, submissions of counsel, the advice of independent legal counsel and the principles noted above. Our decision and reasons for decision are set out below.

Nature of the misconduct

There were a number of particularly troubling aspects of Dr. Bailey's response to the remedial SCERP ordered by the ICRC on May 4, 2016.

Dr. Bailey understood his obligation to comply and agreed to fulfil the elements ordered in the SCERP. He then undertook what the Committee found can only be described as purposeful delay in completing these elements. That Dr. Bailey had limitations due to the fact he was involved in a motor vehicle accident, and has other unrelated health issues, are not a justification for his purposeful delay in complying with the SCERP, and fly in the face of his actions in carrying on his practice of medicine and his participation in other activities, such as conferences and business interests. The College made repeated adjustments in deadlines to accommodate his limitations. Dr. Bailey's continued resistance to fulfilling his obligations strikes at the heart of effective self-regulation.

Dr. Bailey, even at the time of the penalty hearing, has not yet successfully complied with all elements of the SCERP. In regard to the Understanding Boundaries course, he did not believe that it was appropriate for him, as he had not engaged in sexual misconduct. He found value only in advice to shorten his notes and be more concise. His lack of insight remains of concern to the Committee.

Dr. Bailey's interactions with the College respecting the SCERP were characterized by ignoring deadlines and failing to address outstanding issues. His conduct was found to be purposeful delay. The consequences of such actions undermine the privilege of self-governance and raise significant concern about Dr. Bailey's lack of understanding of his professional obligations. It was of concern to the Committee that Dr. Bailey blamed his lawyers for the lack of positive communication with the College.

It has taken a lengthy period to obtain acceptable supervisors and this was largely due to Dr. Bailey's actions. He repeatedly asked for a supervisor unacceptable to the College. He also framed his communication with a supervisor acceptable to the College in such a manner that the proposed supervisor refused to participate further.

Even at the time of the penalty hearing, Dr. Bailey had not undertaken to re-register for the educational course he failed to complete successfully. Rather, he contested the final decision of the College. The requirement to complete this course successfully remains outstanding.

The findings in this matter are serious and Dr. Bailey's actions undermine the role of the College in regulating the profession in the public interest. In this situation, only a substantial suspension will achieve appropriate denunciation of the misconduct and provide specific deterrence.

In addition, terms imposed on Dr. Bailey's certificate of registration are required to ensure that remedial education is completed. As to the particular course to be taken, the panel has concluded that Dr. Bailey should successfully complete the PROBE Ethics and Boundaries course in place of the course he has not completed successfully. There was evidence that the PROBE course was acceptable to the College, and the Committee determined that the ethics component of this course was appropriate in the circumstances to achieve public protection. We considered ordering Dr. Bailey to retake and successfully complete the Understanding Boundaries course; however, we were of

the view that this was a less desirable alternative than taking the PROBE course. Dr. Bailey needs to understand his professional responsibility in communicating with the College, in addition to being sensitive to the nature of boundary violations with patients, and the consequences of such violations. The added focus of medical ethics that the Committee understands is an element of the PROBE course should be of benefit to Dr. Bailey going forward.

Aggravating Factors

The seriousness of the misconduct is the outstanding aggravating factor. Of specific concern is avoidance of professional responsibility as set out in the Committee's findings. In addition, Dr. Bailey continues to demonstrate a lack of insight as indicated above.

Mitigating factors

This is the first time that Dr. Bailey has been before the Discipline Committee.

On the day of the penalty hearing, Dr. Bailey apologised for his misconduct, which demonstrates a degree of remorse. In addition, it was clear that Dr. Bailey had made some significant effort to comply with the supervision requirement of the SCERP in advance of the penalty hearing.

Case Law

In *CPSO v. Botros* 2015 ONCPSD 16, there was a finding of disgraceful, dishonourable or unprofessional conduct by Dr. Botros for failing to comply with an order of the ICRC. There were no extenuating circumstances such as illness to account for delay. Dr. Botros frustrated College staff by ignoring their efforts to assist him and attempted to control the process. Dr. Botros offered a number of excuses as to why he had not been

compliant, which the panel did not accept. The panel found a lack of insight and his actions deliberate to the extent that he displayed a contempt for the College and its processes. Further, Dr. Botros had been cautioned on two previous occasions for his manner of communication with the College. A six month suspension was ordered. In our view, the conduct of Dr. Bailey, though similar in respect of orchestrated delay and lack of insight, did not reach the level demonstrated by Dr. Botros.

In *CPSO v. Gutman*, 2017 ONCPSD 47, there was a finding of disgraceful, dishonourable or unprofessional conduct against the physician for breaching prescribing restrictions and a prohibition on engaging in professional encounters with female patients. The hearing proceeded by way of an agreed statement of fact and admission. There was dispute as to the length of penalty. The Committee considered a number of mitigating factors and ordered a seven-month suspension. The conduct of Dr. Bailey appeared too dissimilar to that of Dr. Gutman for this precedent to be helpful to the Committee.

The following three cases all involved a breach of a SCERP ordered by the ICRC. They were all resolved by a negotiated settlement, and the nature of the misconduct, in our view, was less egregious than Dr. Bailey's, which distinguishes these cases from his.

In *CPSO v. Strang*, 2018 ONCPSD 52, the finding of disgraceful, dishonourable or unprofessional conduct related to non-compliance with a SCERP order which required a six-month period of supervision. The matter proceeded by way of an agreed statement of fact and a joint submission on penalty. A one month suspension was ordered.

In *CPSO v. Achiume*, 2015 ONCPSD 4, the finding of disgraceful, dishonourable or unprofessional conduct related to a breach of a SCERP imposed by the ICRC. Ignoring the deadlines set by the College and delay were features. At the date of the hearing, Dr. Achiume had partially completed the required course in record keeping. The matter proceeded by way of an agreed statement of facts and a joint submission on penalty. There were three prior discipline findings; these, however, were unrelated to the current

misconduct. A suspension of the later of one month or until the satisfactory completion of the SCERP was ordered.

In *CPSO v. Pinto*, 2017 ONCPSD 5, the finding of disgraceful, dishonourable or unprofessional conduct related to a breach of a SCERP order requiring Dr. Pinto to engage in educational sessions with a preceptor. Delay was a feature. No suspension was ordered.

PENALTY ORDER AND REASONS

The Committee has determined that the appropriate penalty in this matter in consideration of all the circumstances, should include the following elements:

A reprimand. This will allow the Committee to directly address Dr. Bailey in regard to his misconduct. The reprimand will serve to denounce the misconduct and provide specific deterrence of such behaviour in future.

A four-month suspension, which is appropriate given the circumstances. This falls within the range of suspension cited in the case law provided by the parties and discussed above. The suspension will denounce Dr. Bailey's misconduct and will provide specific and general deterrence. The Committee found reasonable the request that the suspension should commence 14 days after the date that the order is released, to permit Dr. Bailey to make appropriate arrangements to transfer or provide coverage for his practice.

Completing remedial education. This requires confirmation that Dr. Bailey has successfully completed the PROBE Ethics and Boundaries course. This is a requirement before Dr. Bailey recommences practice, even if the date the College confirms successful completion is later than the end date of the four-month

suspension. Successful completion of remedial education will ensure both protection of the public and rehabilitation of the member.

The College sought costs in the amount of \$31,110.00. This reflects the tariff rate for hearing days. These costs are a fraction of the costs of a contested hearing. While Dr. Bailey has a limited practice, there is no evidence before the Committee that he is without means or that this costs order would pose a hardship. Dr. Bailey has requested that payments be made over time. The Committee views this request as reasonable and indicative of Dr. Bailey's good faith intention to pay costs during a time when his income is reduced, and the Committee will order payment in instalments.

ORDER

Therefore, the Committee orders and directs:

1. Dr. Bailey shall appear before the Committee to be reprimanded and the fact of the reprimand shall be recorded on the Register;
2. The Registrar to suspend Dr. Bailey's certificate of registration commencing 14 days following the date of release of this order until the later of:
 - (i) Four months after the date the suspension commences; or
 - (ii) The date Dr. Bailey provides to the College proof of his successful completion of the PROBE Ethics and Boundaries course.
3. The Registrar to impose the following terms, conditions and limitations on Dr. Bailey's certificate of registration:

- (i) Dr. Bailey shall comply with all outstanding requirements of the SCERP as set forth in the Decision and Reasons of the ICRC, dated May 4, 2016. The reference to “a boundaries course” will mean the PROBE Ethics and Boundaries Course (rather than the Understanding Boundaries course which Dr. Bailey previously attended).
 - (ii) Dr. Bailey shall comply with the College Policy “Closing a Medical Practice”.
- 4. Dr. Bailey pay to the College costs in the amount of \$31,110.00, in equal quarterly payments over the course of two years, to commence within 30 days from the date of release of this order and to be completed within 24 months.

TEXT of PUBLIC REPRIMAND
Delivered May 11, 2021
in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
and
DR. BRIAN CLARE BAILEY

Dr. Bailey:

Although you have chosen not to attend this reprimand, it is our hope that it will be conveyed to you as well as to the profession and the public.

As you should have learned, the practise of medicine is a privilege - a privilege accorded by the people of Ontario through the College of Physicians and Surgeons of Ontario. In turn, the College is mandated to govern the profession in the public interest. It cannot be worthy of public confidence unless it can demonstrate that its members will follow its directions completely, in a timely manner and to the letter.

Your actions with respect to the orders of the ICRC followed exactly the opposite course. Through a combination of arrogance and disdain for the process, you repeatedly orchestrated delays, disputed the nature and necessity of the SCERP requirements and were completely uncooperative with the difficult process of finding a suitable peer supervisor. You frequently ignored deadlines despite the fact that the College was generous in extending them on multiple occasions.

Faced with this level of ungovernability, the ICRC had little option but to refer the matter to Discipline. Even at the time of the Hearing, over ten months after issuance of the Notice of Hearing, you had not made the effort to complete some elements of the SCERP.

This level of noncompliance is intolerable and unacceptable if the College is to be able to fulfil its mandate.

Your efforts to thwart and delay orders which were intended for your own benefit brought you to this sorry place and to a significant penalty at the hands of the discipline process.

It is my understanding that you resigned your membership in the College in July 2020. Should you at some future point seek to return to the practice of medicine, you will not only have to fulfil the other components of the Committee's order but also do some serious reflecting on your duty, not only to your patients but also to your governing body.