

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Mathieu Bélanger, this is notice that the Discipline Committee ordered that no person shall publish the name and any information that could disclose the identity of Dr. X, a physician whose identity was disclosed to the Discipline Committee, 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. Bélanger,
2018 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. MATHIEU BÉLANGER

PANEL MEMBERS:
DR. D. PITT (Chair)
MAJOR A.H. KHALIFA
DR. H. SCHIPPER
MR. J. LANGS
DR. P. POLDRE

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS E. WIDNER

COUNSEL FOR DR. BÉLANGER:

MS P.T.V. NGO

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MS J. McALEER

Hearing Date: February 15, 2018
Decision Date: February 15, 2018
Release of Written Reasons: April 16, 2018

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 February 15, 2018. At the conclusion of the hearing, the Committee released a written order stating its finding that Dr. Bélanger 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. In that order, the Committee also set out its penalty and costs order with written reasons to follow.

THE ALLEGATION

The Notice of Hearing dated February 8, 2017 alleged that Dr. Mathieu Bélanger committed an act of professional misconduct:

1. under paragraph 1(1)33 of O. Reg. 856/93 in that he has engaged in conduct or 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. Bélanger admitted to the allegation in the Notice of Hearing, that he has engaged in conduct or 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 FACTS

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

BACKGROUND

1. Dr. Mathieu Bélanger (“Dr. Bélanger”) is a 40 year old family physician practising medicine in Ottawa, Ontario. Dr. Bélanger practises in the area of interventional pain management.
2. Dr. Bélanger received his medical degree in Quebec in 2007 and his specialist qualification in family medicine from the College of Family Physicians of Canada in 2010. He received his certificate of registration authorizing independent practice in Ontario in 2011.
3. Dr. Bélanger currently works at, and owns, the Inovo Medical clinic in Ottawa, a clinic that provides interventional pain management procedures. Dr. Bélanger was the Medical Director of Inovo. Following referral of this matter to Discipline and at the request of the College, Dr. Bélanger appointed an acting Medical Director, effective August 22, 2017.

OVERVIEW OF THE CASE

4. Nerve blocks which are categorized as Level 2 Interventional Pain Management procedures are only authorized to be performed in an Out-of-Hospital premises (“OHP”) that is approved by the College. Between October 15 and January 2016, Dr. Bélanger provided interventional pain treatments to patients, including Level 2 nerve blocks, while working in a clinic that was not an approved OHP.

OUT OF HOSPITAL PREMISES INSPECTION PROGRAM (“OHPIP”)

5. The OHPIP, administered by the College, applies to all settings or premises outside a hospital (“OHP premises”) that perform procedures involving the use of anesthesia as defined in O.Reg. 114/94, made under the *Medicine Act*, 1991, (“the Regulation”), attached at TAB A [to the Agreed Statement of Facts]. Part XI of the Regulation sets out the definition of “procedure” for the purposes of the OHPIP.
6. Mandatory standards for OHP premises are set out in Program Standards (“the Standards”), authorized under the Regulation and attached at TAB B [to the Agreed Statement of Facts]. The Medical Director of an OHP is responsible for the duties outlined in the Standards, including notification to the College of plans to open a new OHP.

7. As set out in the Standards, Level 2 procedures include procedures performed using IV sedation, regional anesthesia and tumescent anesthesia. Nerve blocks used in interventional pain management are almost all Level 2 procedures that can only be performed in an OHP setting or a hospital. Attached at TAB C [to the Agreed Statement of Facts] is the College document titled, “Applying the Out-of-Hospital Inspection Program (OHPIP) Standards in Interventional Pain Premises”.

8. The OHPIP is overseen by the College’s Premises Inspection Committee (“PIC”) and by Program Staff.

9. The OHP program is based on trust and relies on self-reporting from Medical Directors and physicians. As mandated in the Standards, a Medical Director is required to notify the program before opening an OHP so that the premises can be inspected. In order to ensure patient safety and quality of care, strict adherence is required to the detailed requirements set out in the Standards. PIC must approve the premises following an inspection before any patient procedures can be performed.

10. As set out in Standards 2.1.2 and 2.2.1, any member planning to operate a new OHP must notify the College and the premises must be inspected and assessed prior to receiving approval and providing services to patients.

DISGRACEFUL, DISHONOURABLE OR UNPROFESSIONAL CONDUCT

11. Beginning in 2011, Dr. Bélanger worked at an approved OHP in Ottawa, (“CPM”). During the time he worked at CPM, Dr. Bélanger was engaged in a change of scope process with the College so that he could change his scope from family medicine to interventional pain management. As part of the process, Dr. Bélanger was involved in training and supervision in the area of interventional pain management at CPM.

12. On March 12, 2013, the College approved Dr. Bélanger’s change in scope of practice to include interventional pain management.

13. In August 2015, Dr. Bélanger informed CPM that he was planning on leaving in or around February 2016 to open his own clinic. Dr. Bélanger was asked by CPM to leave within

30 days, which was sooner than he expected.

14. On October 1, 2015, Dr. Bélanger provided a Staff Affiliation Online Submission Report to the OHP program advising that he was withdrawing from performing procedures at CPM. The request was approved by the OHP program on October 2, 2015. On October 19, 2015, Dr. Bélanger provided another withdrawal request that was approved on October 20, 2015.

15. Dr. Bélanger had approximately 200 patients to whom he was providing Level 2 interventional pain management procedures at CPM. He needed to find a new location in which to provide the procedures. Initially, he approached another physician in Ottawa, Dr. X, and another pain management OHP in Ottawa, before finally finding an OHP that had been approved for Level 2 plastic surgery procedures, (“plastic surgery OHP”), and was prepared to provide Dr. Bélanger with space to perform Level 2 interventional pain management procedures.

16. Notification was provided by the plastic surgery OHP to the College’s Program Staff, as required by the Standards. The notification was in regards to Dr. Bélanger’s request to add interventional pain management procedures at the plastic surgery OHP.

17. Following receipt of the request to add procedures, the College’s Program Staff informed Dr. Bélanger and the plastic surgery OHP that the premises would have to be inspected prior to Dr. Bélanger receiving authorization to perform interventional pain management procedures. Dr. Bélanger was informed that the process could take several months. Dr. Bélanger was not prepared to wait. He decided not to pursue working at the plastic surgery OHP.

18. Instead, Dr. Bélanger returned to speak to Dr. X to see if Dr. X could help him out. Dr. X told Dr. Bélanger that he could help him out. Dr. X informed Dr. Bélanger that his clinic was not approved for Level 2 procedures but, despite this, Dr. X had carried out many Level 2 procedures over the years, including nerve blocks.

19. Beginning in mid-October 2015, Dr. Bélanger began providing Level 2 procedures at Dr. X’s clinic. Dr. Bélanger provided his own staff and paid rent to Dr. X. No notification was provided to the College’s OHP program and no inspection was conducted of Dr. X’s clinic.

20. In the same period, the College’s OHP Program received notification from an approved

OHP, Seekers Centre for Integrative Medicine (“Seekers”) in Ottawa, to add Dr. Bélanger. Beginning October 20, 2015 to the present, Dr. Bélanger has been authorized to provide interventional pain management procedures at Seekers and has provided Level 2 procedures in that OHP.

21. Meanwhile, Dr. Bélanger had started a process with the College’s OHP program to open his own approved clinic. Although he initiated the application process in February 2015, Dr. Bélanger did not complete the application process until December 2015.

22. During the time period that he was communicating with the OHP program regarding his application to open his own OHP premises, Dr. Bélanger never advised the OHP program that he was providing Level 2 procedures at an unapproved clinic.

23. On January 20, 2016, PIC approved Dr. Bélanger’s clinic, Inovo Medical, to become operational as an OHP providing Level 2 interventional pain management procedures.

24. On May 19, 2016, Program Staff received information from an anonymous source that Dr. Bélanger had performed Level 2 OHP interventional pain management procedures in a non-OHP premises, (Dr. X’s clinic), contrary to the Regulation and OHP Standards.

25. An inspection of Dr. X’s clinic by the OHP program revealed multiple deficiencies. The location did not meet requirements for an OHP as set out in the Standards. Dr. X’s clinic did not have required equipment, did not meet general physical standards including electrical issues, did not meet medication standards, did not have policy and procedural manuals and did not meet staffing requirements, as set out in the Assessment report, June 1, 2017, attached at TAB D [to the Agreed Statement of Facts], pp. 16 and 21.

26. Dr. Bélanger was aware of the requirement that Level 2 procedures can only be performed in an OHP that has been approved by PIC and that responsibility for notifying the OHP program is on the physician. He was aware that Dr. X’s clinic where he was performing Level 2 procedures was not an approved OHP, had never been inspected under the OHPIP, did not meet program requirements and that he was not authorized to provide Level 2 procedures in that location.

27. There is no evidence that Dr. Bélanger's performance of any of these procedures caused any harm to any patients.

28. As part of the College investigation, information was obtained from the Ontario Health Insurance Plan ("OHIP"). The information from OHIP confirms that Dr. Bélanger submitted claims to OHIP between October 21, 2015 and January 13, 2016, for Level 2 procedures, particularly nerve blocks, that were performed by Dr. Bélanger at Dr. X's clinic.

29. Information from OHIP indicates that between October 21, 2015 and January 13, 2016, Dr. Bélanger billed approximately \$103,428.00 for performing Level 2 procedures in Dr. X's office that are only authorized to be performed in an OHP.

ADMISSION

30. Dr. Bélanger admits the facts specified above, and admits that, based on these facts, he engaged in 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 conduct or 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.

FINDING

The Committee accepted as correct all of the facts set out in the Agreed Statement of Facts on Liability. Having regard to these facts, the Committee found that Dr. Bélanger committed an act of professional misconduct, in that he has engaged in conduct or 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.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for the member made a joint submission as to appropriate

penalty and costs order.

In *R. v. Anthony-Cook*, 2016 SCC 43, the Supreme Court of Canada set out the test against which to measure the acceptability of a joint submission. The bar is high to reject a joint submission on penalty. The Committee must accept a jointly proposed penalty, unless the proposed penalty would bring the administration of justice into disrepute or is otherwise contrary to the public interest. The Committee considered the jointly proposed penalty against that test, and after thorough deliberation, accepted the joint submission as appropriate.

Dr. Bélanger found himself in a difficult position when he was asked by the approved OHP, CPM, to leave within 30 days. There was a prospect that he would be unable to deliver care to approximately 200 of his patients with significant pain problems. Dr. Bélanger chose to treat these patients at a clinic that he knew was not approved for Level 2 procedures. Between October 15 and January 2016, Dr. Bélanger provided interventional pain treatments to patients, including Level 2 nerve blocks, while working in a clinic that was not an approved OHP. Dr. Bélanger had other options. He could have referred all of his patients to an approved OHP clinic, at least temporarily, until the requisite approvals were in place for him to provide the Level 2 care in his own facility. In the alternative, he could have continued to see his patients at another approved facility, “Seekers”, where he had been authorized to provide Level 2 care as of October 20, 2015. Instead, he knowingly provided care in an unapproved facility upon the invitation of a supervising physician, who made clear that he, Dr. X, had been, for some time, providing care in express violation of the applicable regulations.

The Committee finds this to be an egregious abrogation of professional duty that could have compromised the care of his patients (in the event of a life threatening complication) and imperiled public confidence in professional standards and the regulatory process.

The health care system is changing from one where all but the simplest procedures were done in hospitals to a devolved system where more care is provided in smaller clinics and private facilities. It is in the public interest, and that of physicians, that there be no question that wherever that care is provided the requisite standards are established, monitored and maintained.

The average Ontarian does not know the nuances of OHP approval, nor should they need to. That responsibility rests with physicians and facility management. A physician must be held accountable if he or she attempts to circumvent the applicable regulations.

There is little precedent for professional misconduct in relation to OHP approvals. In *CPSO v. Dr. Kesarwani*, the physician did not follow regulations related to notification of the relocation of an approved facility. In that case, the Committee ordered that the physician's certificate of registration be suspended for three months, in addition to a requirement that he successfully complete a PROBE (ethics) course, and pay costs. It is important to note that this was a case in which an approved clinic was relocated. In the case of Dr. Bélanger, he was treating patients at a non-approved clinic, which is a more serious violation. The Committee finds that the proposed suspension of five months is appropriate, given the nature of the misconduct in this case.

The reprimand should serve to specifically deter Dr. Bélanger and demonstrate the Committee's abhorrence for the misconduct. The suspension should also specifically deter Dr. Bélanger from engaging in any further misconduct and remind the profession that the OHP regulatory process is to be strictly complied with. The terms, conditions and limitations on Dr. Bélanger's certificate of registration should both protect the public and assist with Dr. Bélanger's rehabilitation. Finally, the Committee's view is that the penalty as a whole assists to maintain the integrity of the profession and public confidence in the College's ability to regulate in the public interest.

ORDER

The Committee stated its finding of professional misconduct in paragraph 1 of its written order of February 15, 2018. In that order, the Committee ordered and directed on the matter of penalty and costs that:

2. The Registrar suspend Dr. Bélanger's Certificate of Registration for a five (5) month period, effective February 17, 2018 at 12:01 a.m.
3. Dr. Bélanger appear before the panel to be reprimanded.

4. The Registrar impose the following terms, conditions and limitations on Dr. Bélanger's Certificate of Registration:

- (i) Dr. Bélanger will successfully complete the PROBE course in ethics and professionalism, at his own expense, within (twelve) 12 months of the date of this Order, or any alternate course in ethics and professionalism approved by the College. Dr. Bélanger will agree to abide by any recommendations of the PROBE program and provide proof of completion to the College; and
- (ii) Approval of the College's Out of Hospital Premises program is required before Dr. Bélanger resumes the Medical Director role in an Out of Hospital Premises.

5. Dr. Bélanger pay to the College its costs of this proceeding in the amount of \$5,500 within ninety (90) days from the date of this Order.

At the conclusion of the hearing, Dr. Bélanger 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 February 15, 2018
in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
and
DR. MATHIEU BÉLANGER

Dr. Bélanger,

Your decision to knowingly provide procedures in an unapproved facility was a major error in judgement and a flagrant violation of the regulations. Moreover you were also aware of the long term provision of unapproved services in that facility. That should have been a red flag. The Committee carefully considered your action and is most concerned that you put your patients at significant risk of harm, from procedures done under conditions that were not inspected an approved.

Considering your expertise and experience in out of hospital premises for pain management, you must have been fully aware of the CPSO Standards for these premises. We understand the challenge you faced with the termination of access to the chronic pain management clinic and the necessity of providing ongoing care to your patients. Regulation of Ontario physicians is essential for the maintenance of high quality healthcare for the people of this province. As one of your patients wrote, patients expect procedures to be performed in “official medical clinics” by which is meant a facility that fully adheres to the law and the standards provided by your regulator.

These Standards are not negotiable. They are not optional. The Committee believes your penalty is appropriate and serves to protect the public, maintains public confidence in our profession, and deters you and other physicians from making this error. We expect and anticipate you will be more diligent in the future and not repeat this conduct.

This is not an official transcript