

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Mark Jerome Sager, the Discipline Committee ordered that no person shall publish or broadcast the identity of the witnesses or any information that could disclose the identity of the witnesses 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. Sager**
2019 ONCPSD 17

**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. MARK JEROME SAGER

PANEL MEMBERS:

**DR. C. CLAPPERTON
MR. M. KANJI
DR. J. NICHOLSON
MS. C. TEBBUTT
DR. E. SAMSON**

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS. R. AINSWORTH

COUNSEL FOR DR. SAGER:

**MS. GLYNNIS BURT
MS. ERIN CHESNEY**

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MS. ZOHAR LEVY

**Hearing Date: March 4, 2019
Decision Date: March 4, 2019
Written Decision Date: April 23, 2019**

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on March 4, 2019. At the conclusion of the hearing, the Committee released a written order stating its finding that the member committed an act of professional misconduct.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Mark Jerome Sager 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; and
2. under paragraph 1(1)2 of Ontario Regulation 856/93 made under the Medicine Act, 1991 (“O. Reg. 856/83), in that he has failed to maintain the standard of practice of the profession.

RESPONSE TO THE ALLEGATIONS

Dr. Sager admitted the first allegation in the Notice of Hearing, in part, and did not contest the first allegation, in part, 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. Dr. Sager admitted the second allegation, that he has failed to maintain the standard of practice of the profession.

THE FACTS

The following facts were set out in a Statement of Agreed and Uncontested Facts, and Admission and Plea of No Contest on Liability which was filed as an exhibit and presented to the Committee:

I. FACTS

1. Dr. Mark J. Sager is a 74-year-old general physician practising in Toronto. Dr. Sager received his certificate of registration authorizing independent practice from the College of Physicians and Surgeons of Ontario (“the College”) on July 6, 1972. He has practised general medicine since that time.

Communication and Conduct with Patient A

2. Patient A was a patient of Dr. Sager’s for over 40 years. During this period she was treated for two occurrences of breast cancer.

3. During gynecological examinations, Patient A would often cover herself with her hand or her gown out of shyness. On these occasions, in order to perform the examinations, Dr. Sager would move Patient A’s hand or gown out of the way. He did so without asking Patient A to move her hand or gown herself, and without asking if he could move her hand or providing her with an adequate explanation. This left Patient A feeling humiliated.

4. The gynecological examinations were otherwise not inappropriate.

5. In early 2017, Patient A was scheduled for a gynecological surgery. Given her cancer history, she was anxious about the procedure. Her specialist instructed her to insert misoprostol vaginally prior to the surgery.

6. Patient A had an appointment with Dr. Sager in January 2017, prior to the surgery. At this appointment, Patient A asked Dr. Sager to explain medical terms in a lab report. Dr. Sager shouted at Patient A to “come over here, just come over here”.

7. At the same appointment, Patient A asked Dr. Sager to clarify the instructions she had received regarding the insertion of misoprostol. Patient A was unfamiliar with the drug and had questions about the prescription, as the literature accompanying the prescription indicated it was used for stomach ulcers and did not mention gynecological uses.

8. When Patient A asked for clarification regarding the use of misoprostol vaginally, Dr.

Sager flew into a rage and said, “fucking take the pills when a doctor told you”, “fucking do what you’re told” and that she was “fucking annoying” him. He told her to take the pills and “stick those up your pussy”.

9. Patient A told Dr. Sager she had a right to ask questions and that she was intelligent enough to understand. Dr. Sager responded by saying, “You’re not that intelligent.” Patient A repeated that she had a right to ask questions and get clarification, to which Dr. Sager responded, “Ask your goddamn questions.”

Communication with College Investigators

10. Patient A complained to the College in July 2017 regarding Dr. Sager’s conduct.

11. On August 11, 2017, College investigators attended unannounced at Dr. Sager’s office to deliver the complaint notification letter. Dr. Sager was informed of the complaint and given the opportunity to read the letter and comment. He was encouraged to contact the Canadian Medical Protective Association (CMPA) and was informed he was not obliged to speak with the investigators.

12. After briefly reviewing the complaint letter, Dr. Sager said the following to the investigators:

- He had treated Patient A for 25 years and she was a “nut case”. Dr. Sager stated several times that Patient A was mentally unwell and had depression and cancer;
- This was a “fairy tale”; it was “made up”; he didn’t “diddle” her; “diddling people” is not his gig;
- Asked if the incidents in the letter were before or after Patient A had her “breasts mutilated”; and
- Asked that investigators speak with Patient A to “trip her up” and find inconsistency in her story.

13. Dr. Sager has advised the College that when he made these statements to the College investigators, he believed he was being accused of having touched Patient A inappropriately, which he did not do.

Telephone Call to Patient A

14. In September 2017, Dr. Sager telephoned Patient A while she was at work and asked her to discuss her complaint to the College. Patient A said she could speak, but only for a moment as she was working on an urgent task.

15. During this telephone conversation, Dr. Sager asked what Patient A hoped to get out of the complaint. He told Patient A: he had not slept in a month; complained about his health problems; and told Patient A her complaint was causing him misery. During the call, Dr. Sager asked Patient A more than once to drop the complaint. He reminded Patient A that it was before Rosh Hashanah (the time for God's forgiveness of sins) and suggested she should contact the College before Rosh Hashanah to withdraw her complaint.

16. Patient A told Dr. Sager several times during the call that she was at work and could not take a long, personal phone call, but Dr. Sager did not end the call and repeated his request that she drop her complaint. The phone call was difficult, awkward and emotional for Patient A. She felt manipulated by his reference to her religious faith. After the call she was shaken and embarrassed. Her employer was angry at the distraction of a long, personal call during work hours. At the end of the day, Patient A was fired from her job, which was her sole source of income.

Failure to Maintain the Standard of Practice of the Profession re: Record Keeping

17. During the investigation, the College obtained Dr. Sager's chart for Patient A. In providing the chart, Dr. Sager acknowledged that his notes were not legible and provided a transcription of the chart entries.

18. The College retained Dr. Marcus Law to review Dr. Sager's record keeping. Dr. Law noted that of the 11 patient encounters he reviewed, there was not a single encounter note which

was legible. Further, all encounter notes were missing pertinent information that other health professionals would need in order to understand the patient's health issues. He concluded that Dr. Sager's medical record keeping did not meet the standard of practice of the profession.

II. ADMISSION

19. Dr. Sager admits the facts specified above, with the exception of paragraphs 8 and 16.

20. Dr. Sager admits that based on these facts, he engaged in professional misconduct by engaging in an act or omission that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional and failed to maintain the standard of practice.

III. PLEA OF NO CONTEST

21. Dr. Sager does not contest the facts set out in paragraphs 8 and 16.

22. Dr. Sager does not contest that based on these facts, he engaged in professional misconduct by engaging in an act or omission that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

PLEA OF NO CONTEST - DISCIPLINE COMMITTEE'S RULES OF PROCEDURE

Rule 3.02 regarding a plea of no contest states as follows:

3.02(1) Where a member enters a plea of no contest to an allegation, the member consents to the following:

- (a) that the Discipline Committee can accept as correct the facts alleged against the member on that allegation for the purposes of College proceedings only;
- (b) that the Discipline Committee can accept that those facts constitute professional misconduct or incompetence or both for the purposes of College proceedings only; and
- (c) that the Discipline Committee can dispose of the issue of what finding ought to be made without hearing evidence.

FINDING

The Committee accepted as correct all of the facts set out in the Statement of Agreed and Uncontested Facts, and Admission and Plea of No Contest on Liability. Having regard to these facts, the Committee found that Dr. Sager committed an act of professional misconduct in 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 and that he failed to maintain the standard of practice of the profession.

AGREED STATEMENT OF FACTS ON PENALTY

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

Relevant College History

1. In June 2013, the Inquiries, Complaints and Reports Committee of the College (“ICRC”) issued a decision requiring Dr. Mark Jerome Sager (“Dr. Sager”) to be cautioned and to complete a specified continuing education or remediation program in relation to his record keeping. The Decision and Reasons of the ICRC, dated June 20, 2013, is attached to the Agreed Statement of Facts on Penalty at Tab 1.
2. Dr. Sager completed the University of Toronto Medical Record Keeping Course in October 2013.

Undertaking to the College

3. Dr. Mark Jerome Sager entered into an undertaking to the College on January 16, 2019, by which he agreed to resign his certificate of registration effective February 26, 2019. He also undertook not to apply or re-apply for registration as a physician in Ontario or any other jurisdiction. The undertaking is attached at Tab 2 to the Agreed Statement of Facts on Penalty.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for Dr. Sager made a joint submission on penalty and costs. The jointly proposed penalty included a reprimand and costs in the amount of \$6,000.00 to be paid to the College within 30 days of the Order.

In considering whether the jointly proposed penalty was appropriate, the Committee considered the well-recognized penalty principles, which include: protection of the public, specific deterrence of the physician and general deterrence of the profession with respect to this behavior, and maintaining the integrity of the profession and public confidence in the College's ability regulate the profession in the public interest.

The Committee also considered the law that a joint submission should be accepted unless the proposed penalty would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

The Committee accepted the joint submission in light of the fact that Dr. Sager has signed an undertaking to resign from the College as of February 26, 2019, and has agreed not to re-apply for registration in Ontario or any other jurisdiction.

Nature of the Misconduct

Ms. A was a long-standing patient of Dr. Sager. She had a history of recurrent breast cancer and was scheduled to have a major operative procedure. Prior to her final appointment with Dr. Sager in January 2017, she had often felt uncomfortable and humiliated due to his manner and lack of sensitivity in draping during gynecological examinations. At the final clinical encounter, Ms. A asked questions regarding lab reports and a medication prescribed by the surgical specialist. Dr. Sager responded to her very reasonable questions with rude, demeaning language which was laced with profanities. He also directly insulted her intelligence. This degradation of Ms. A continued when Dr. Sager was served with a complaint from the College. He again used profane, rude language and blamed the complaint on the patient, stating to College investigators that Ms.

A was mentally unwell and had depression and cancer. He also suggested that the College try to “trip her up” by further investigating the complaint.

Five weeks after he received the complaint, Dr. Sager called Ms. A at her workplace and demanded that she drop her complaint. He tried to manipulate her by discussing his own health problems, and brought up her religious background as a reason to forgive his behavior. The entirety of these events was very distressing for Ms. A. She felt humiliated, demeaned, and manipulated by her long standing physician.

As a contributing factor, when Ms. A’s chart was requested by the College, it was found to be illegible. This led to further investigation into Dr. Sager’s record keeping, which was found to be well below the accepted standard of practice.

The physician-patient relationship is of paramount importance to the practice of medicine and the delivery of high quality care. Patients look to their physicians for advice, compassion, and knowledge and have the right to expect professionalism at all times. Generally, failure to keep accurate medical records can have a profound impact on the quality and continuity of care, which may negatively affect health outcomes and cause harm to patients. There was no evidence before the Committee that Dr. Sager’s record keeping caused harm to specific patients in this case.

The Committee was made aware that Dr. Sager had a prior history with the College regarding improper storage of charts and incomplete and illegible medical records. He had undergone prior remediation and completed a SCERP with the College in this regard.

Aggravating Factors

The Committee considered the nature of the repeated degradation of this patient as an aggravating factor. Dr. Sager demonstrated a lack of sensitivity to the patient’s modesty with respect to examinations and draping. There was a tirade of verbal abuse, which included profane and demeaning language during the final office encounter. There was further degradation of the patient when discussing her case with the CPSO investigators. Finally, the phone call to the patient after the complaint was made was manipulative and inappropriate.

The Committee also considered the failure to maintain the standard of practice of the profession regarding the illegible medical record, in light of the prior history with the College in this regard, as an aggravating factor.

Mitigating Factors

The Committee considered Dr. Sager's admission in part and plea of no contest as a mitigating factor, in that he has accepted responsibility for his misconduct, as well as spared the patient the time and stress of appearing to testify at a contested hearing.

Counsel for Dr. Sager submitted that his 46 years in practice as well as the fact that the complaint stemmed from a single clinical encounter be considered as a mitigating factor. The Committee rejected this submission in light of the nature of the misconduct as described above and did not find this to be a mitigating factor.

Case Law

To support the jointly proposed penalty, College counsel and counsel for Dr. Sager submitted four discipline cases, all of which dealt with similar acts of disrespect and a lack of boundaries.

In *CPSO v Rudd* (2018), Dr. Rudd was found to be insensitive and lacking in proper communication skills during examinations of patients. Dr. Rudd signed an undertaking to resign from the College and not to reapply. He also received a reprimand and was required to pay costs to the College.

In *CPSO v Martin* (2018), Dr. Martin was found to be incompetent and failed to maintain the standard of the profession in the management and treatment of adolescents with gender dysphoria. Dr. Martin signed an undertaking to resign from the College and not reapply, received a reprimand, and was required to pay costs to the College.

In *CPSO v Drone* (2018), Dr. Drone sent inappropriate and profane emails to the head of the OMA (another physician). There were no concerns regarding patient care. Dr. Drone received a

reprimand, a one-month suspension of his certificate of registration, and was required to pay costs to the College. Of his own volition, Dr. Drone took the PROBE ethics and boundaries course and received professional communication coaching.

In *CPSO v Batt* (2016), Dr. Batt had a history of disruptive, inappropriate and bullying behavior to both staff and patients, occurring over many years. His language was rude and demeaning. Dr. Batt was suspended for four months, received a reprimand, and the Committee imposed several terms, conditions and limitations on his certificate of registration. He was also required to pay hearing costs.

The Committee considered the *Rudd* and *Martin* cases as more similar to this case, as each of these physicians were found to have failed to maintain the standard of practice of the profession and engaged in disgraceful, dishonorable, or unprofessional conduct with respect to patients specifically. In those two cases, the physicians submitted an undertaking to resign and to never reapply for registration, received reprimands and were required to pay hearing costs. The *Drone* and *Batt* cases were similar with respect to the use of profanity towards other professionals and in *Batt*, patients, but are overall less analogous due to the nature of the misconduct. The Committee is satisfied that the penalty jointly submitted by the parties here is reasonable and in line with previous similar cases.

Conclusion

The Committee accepts the joint submission on penalty as appropriate, in light of Dr. Sager's undertaking to resign and to not reapply. The Committee was satisfied that by resigning his certificate of registration, and undertaking not to reapply in any jurisdiction, the integrity of the profession is upheld and the public is protected. The Committee also accepted that a public reprimand will further serve as a specific and general deterrent and allowed the Committee to express its condemnation of this intolerable conduct.

ORDER

The Committee stated its findings in paragraphs 1 and 2 of its written order of March 4, 2019. In that order, the Committee ordered and directed on the matter of penalty and costs that:

3. Dr. Sager appear before the panel to be reprimanded.
4. Dr. Sager pay to the College its costs of the proceeding in the amount of \$6,000.00 within thirty (30) days from the date of the Order.

At the conclusion of the hearing, Dr. Sager 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 March 4, 2019
in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
and
DR. MARK JEROME SAGER

Dr. Sager,

The doctor/patient relationship is of paramount importance to the practice of medicine. You violated that tenant by making derogatory comments and using profane language with your patient. You were far from respectful to her.

Patients look to the medical profession for advice and you let your patient down when she was asking you about her medication. It's shocking that you could be so rude and insensitive to your patient's questions. Your behaviour with the College investigators was unacceptable too. Encouraging them to find a way to trip up the patient was out of line.

Calling the patient at her workplace, and attempting to manipulate her using her religion to encourage her to drop her complaint was remarkably ill-conceived on your part. You seem to have complete insensitivity to how your actions might impact this patient.

Despite having already completed a medical records course, your records have apparently not improved. This is very disconcerting as your failure to keep legible records can have a lasting impact on continuity of patient care. You were cavalier in this regard, and the Panel finds your behaviour here as well as your treatment of your patient shameful.

And that's the end of the reprimand and the end of the hearing. You may sit down.