

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Syan, this is notice that the Discipline Committee ordered a ban on publication 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. Syan,**
2016 ONCPSD 16

**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. SWARAN KAUR SYAN

PANEL MEMBERS:

**DR. P. CHART
MS. D. DOHERTY
DR. F. SLIWIN
MS. D. GIAMPIETRI
DR. D. PITT**

**COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF
ONTARIO:**

**MS. R. AINSWORTH
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COUNSEL FOR DR. SYAN:

MS. S. GOMERY

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. G. FORREST

PUBLICATION BAN

Hearing Date: **May 16, 2016**
Decision Date: **May 16, 2016**
Release of Written Reasons: **July 8, 2016**

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 May 16, 2016. At the conclusion of the hearing, the Committee stated its finding that the member committed an act of professional misconduct and delivered its penalty and costs order with written reasons to follow.

THE ALLEGATION

The Notice of Hearing alleged that Dr. Syan 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 she 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. Syan admitted the first allegation in the Notice of Hearing, that she 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 Agreed Statement of Facts and Admission was filed as an exhibit and presented to the Committee:

PART I – AGREED FACTS

Background

1. Dr. Swaran Kaur Syan (“Dr. Syan”) is a family physician who graduated from medical school at Punjabi University in 1978. She obtained a certificate of registration authorizing independent practice from the College of Physicians and Surgeons of Ontario (the “College”) on January 15, 1997.

2. At the relevant times with respect to the facts described below, Dr. Syan maintained a family and cosmetic practice in Sudbury, Ontario. In the past, she also took shifts at walk-in clinics owned by other physicians.

Prior Referral to the Discipline Committee

3. On October 8, 2014, following a s. 75(1)(a) investigation into clinical care issues in Dr. Syan’s family medicine and walk-in practice and two patient complaints, the Inquiries, Complaints and Reports Committee (the “ICRC”) referred to the Discipline Committee allegations that Dr. Syan had committed acts of professional misconduct in that she failed to maintain the standard of practice of the profession. It also referred the allegation that she was incompetent. A copy of the Notice of Hearing is attached at Tab 1 of the Agreed Statement of Facts and Admission.

Section 37 Order

4. Following the referral of allegations to the Discipline Committee on October 8, 2014, on October 28, 2014, the ICRC directed the Registrar to impose terms, conditions and limitations on Dr. Syan’s certificate of registration pursuant to s. 37 of the Health Professions Procedural Code (the “Initial s. 37 Order”). The Initial Section 37 Order was subsequently amended by the ICRC on November 11, 2014 (the “Amended Section 37 Order”). The Amended Section 37 Order is attached at Tab 2 of the Agreed Statement of Facts and Admission.

5. The Amended Section 37 Order provided that Dr. Syan could not see any patients in her family or walk-in clinic practice except in the presence of a clinical supervisor. It also required Dr. Syan's clinical supervisor to review all patient charts following patient encounters in Dr. Syan's family practice and walk-in practice by the end of each day and to meet with Dr. Syan every week. The Amended Section 37 Order did not impact Dr. Syan's cosmetic practice.

Decision of the Discipline Committee

6. On April 14, 2015, the Discipline Committee found that Dr. Syan had committed an act of professional misconduct in that she had failed to maintain the standard of practice of the profession in respect of twenty patients. The Order of the Discipline Committee is attached at Tab 3 of the Agreed Statement of Facts and Admission. The reasons of the Discipline Committee, released June 10, 2015, are attached at Tab 4 of the Agreed Statement of Facts and Admission.

7. In its Order the Discipline Committee, *inter alia*, directed the Registrar to suspend Dr. Syan's certificate of registration for a period of two months, commencing from April 14, 2015.

Breach of the Order of the Discipline Committee

8. On May 4, 2015, Dr. Syan saw four patients in her cosmetic practice and on May 5, 2015, Dr. Syan saw seven patients in her cosmetic practice, all in breach of the Order of the Discipline Committee suspending her certificate of registration.

PART II – ADMISSION

9. Dr. Syan admits the facts set out above and admits that, based on these facts, she 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 following Agreed Statement of Facts Regarding Penalty was also filed as an exhibit and presented to the Committee:

1. Dr. Syan's relevant history with the College includes the following facts:
2. On January 5, 2009, Dr. Syan entered into an undertaking with the College (the "2009 Undertaking") whereby she agreed to cease practising mesotherapy.
3. In the context of a reassessment of her practice, the College discovered that after entering into the 2009 Undertaking with the College, Dr. Syan had provided "Lipodissolve" treatments until March 2011. Dr. Syan agreed that Lipodissolve was constitutionally similar to mesotherapy and differed only in minor respects.
4. On July 25, 2012, the Inquiries, Complaints and Reports Committee found that Dr. Syan's provision of Lipodissolve constituted a breach of her 2009 Undertaking not to practise mesotherapy. The Committee required Dr. Syan to attend at the College to receive a verbal caution for this breach, to enter into an additional Undertaking with the College and to undergo a preceptorship in cosmetic record-keeping for one year.
5. Dr. Syan completed five months of her preceptorship in cosmetic record-keeping in 2013, after which Dr. Syan and her preceptor stopped meeting. Dr. Syan did not notify the College that she had stopped meeting with her preceptor.
6. Dr. Syan resumed her preceptorship in cosmetic record-keeping on December 23, 2014, upon being advised she must do so by the College. Dr. Syan disclosed that she had seen patients in her cosmetic practice May 4 and 5, 2015 to Dr. Fredette, the preceptor of her cosmetic practice, in the normal course of her preceptorship.

7. On May 20 or 21, 2015, Dr. Syan's counsel at the time, who is not counsel in this matter, advised Dr. Syan that she had noticed from her review of Dr. Fredette's most recent report that Dr. Syan had seen patients in her cosmetic practice while under suspension. Dr. Syan's counsel at the time advised Dr. Syan that the Discipline Order prohibited her from engaging in her cosmetic practice.

8. Dr. Syan immediately ceased to engage in her cosmetic practice and instructed her counsel to disclose the breach of the Discipline Order to the College.

Status of Dr. Syan's remediation

9. Dr. Syan's preceptorship with Dr. Fredette concerning her cosmetic record-keeping consists of two components. The first component involved monthly meetings during which Dr. Fredette reviewed 10 of Dr. Syan's patient charts per month and provided monthly reports to the College. Dr. Syan successfully completed this component in September 2015. The final component involves a reassessment that was scheduled to take place in or around March 2016.

10. The clinical supervision of Dr. Syan's family medicine and walk-in medicine practice, as ordered by the Discipline Committee in its Order dated April 14, 2015, involves a remediation program and two reassessments. In November 2015, the College authorized Dr. Syan to progress to the third phase of the four-phase remediation program based on reports from the supervising physician. Phase 3 will last a minimum of three months, and Phase 4 will last a minimum of six months. Once Phase 4 is complete, Dr. Syan will undergo two reassessments.

FINDING

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts and Admission as well as the Agreed Statement of Facts Regarding Penalty. Having

regard to these facts, the Committee accepted Dr. Syan's admission and found that she committed an act of professional misconduct in that she 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 an appropriate penalty and costs order.

The Committee was cognizant of the fact that a joint submission on penalty should be accepted unless to do so would be contrary to the public interest and would bring the administration of justice into disrepute.

In considering the proposal, the Committee reviewed the Agreed Statement of Facts and considered the submissions of the parties. The Committee also reviewed the Book of Authorities with respect to similar cases of the Discipline Committee. The Committee is aware that, although previous decisions in similar cases are not binding, similar cases should generally be dealt with in a similar fashion.

The Committee concluded that a breach of an order of – or an undertaking to – the College is a serious transgression. Viewed through the lens of protecting both the public and the profession, this misconduct undermines the ability of the profession to self-regulate in the public interest.

The Committee was particularly concerned that this was the third time Dr. Syan had breached an undertaking or order. Dr. Syan's three breaches were as follows:

1. In 2009, Dr. Syan entered into an undertaking with the College to cease practicing mesotherapy. On July 25, 2012, the ICRC found that Dr. Syan had breached her undertaking by providing Lipodissolve, which is constitutionally similar to mesotherapy, from the time of her undertaking in 2009 until 2011.

2. Dr. Syan's second breach of an undertaking occurred in 2013, after she had entered into an undertaking to undergo a preceptorship in cosmetic record-keeping for 12 months. Dr. Syan ceased meeting with her preceptor after only five months and did not notify the College. Dr. Syan resumed her preceptorship only after the College advised her that she must do so.
3. Dr. Syan disclosed that she had seen seven patients in her cosmetic practice on May 4 and May 5, 2015 while her certificate of registration was suspended, which constitutes a breach of a College order.

Both counsel for the College and counsel for Dr. Syan agreed that her May 2015 breach of the suspension order of her certificate of registration may have been unintentional. Dr. Syan was subject to a Section 37 order for her family practice and walk-in clinics. It is plausible that Dr. Syan thought the discipline order did not include her cosmetic practice. Although her breach may have been unintentional, this does not negate the gravity of breaching an order of the Discipline Committee.

The Committee considered the mitigating factors in this case. Dr. Syan voluntarily disclosed her breach to her preceptor. After being informed that she could not see patients in her cosmetic practice, she ceased doing so, and instructed her counsel to inform the College. Dr. Syan has admitted to and taken responsibility for her misconduct.

The Committee agreed that the proposed penalty would uphold the relevant penalty principles of public confidence in self-regulation, specific and general deterrence, rehabilitation, as well as demonstrating the Committee's condemnation of Dr. Syan's behavior in breaching an order of the Discipline Committee.

ORDER

Therefore, having stated the findings in paragraph 1 of its written Order of May 16, 2016, on the matter of penalty and costs, the Committee ordered and directed that:

2. Dr. Syan to appear before the panel to be reprimanded.

3. the Registrar to suspend Dr. Syan's certificate of registration for a two month period, to commence at 12:01 a.m. on May 17, 2016.
4. the Registrar to impose the following as a term, condition and limitation on Dr. Syan's certificate of registration:
5. At her own expense, Dr. Syan shall participate in and successfully complete, within 6 months of the date of the Order, individualized instruction in medical ethics satisfactory to the College, with an instructor approved by the College. The instructor shall provide a summative report to the College including his or her conclusion about whether the instruction was completed successfully by Dr. Syan.
6. Dr. Syan to pay to the College its costs of this proceeding in the amount of \$5,000 within thirty (30) days from the date of the Order.

At the conclusion of the hearing, Dr. Syan waived her right to an appeal under subsection 70(1) of the Code and the Committee administered the public reprimand.

TEXT of PUBLIC REPRIMAND

Delivered May 16, 2016

in the case of the

COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO

and

DR. SWARAN KAUR SYAN

THE CHAIRPERSON: Breach of undertaking is considered by this Panel as very serious, not only by the Committee itself, but by the profession and the public. Such misconduct in the eye of the public undermines the ability of the profession to self-govern.

We were very troubled that you indicated that you were unaware of the extent of the suspension order. Suspension of your Certificate of Registration is exactly that; it is clear and you should have known.

While ordering a further suspension, the Panel accompanies this with a warning. It has not gone unnoticed that this is the third time that you have breached an order or undertaking of this College. Given that history, we are extremely concerned about this pattern of behaviour. It must not continue.

This is not an official transcript