

**Indexed as: Ontario (College of Physicians and Surgeons of Ontario) v. McArthur,
2018 ONCPSD 58**

**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. SARAH LOUISE ELIZABETH MCARTHUR

PANEL MEMBERS:
DR. J. WATTERS (CHAIR)
MAJOR A. H. KHALIFA
DR. K. HALLETT
MR. J. LANGS
DR. P. POLDRE

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS E. WIDNER

COUNSEL FOR DR. MCARTHUR:

MS C. BRANDOW

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MS Z. LEVY

Hearing Date: September 17, 2018
Decision Date: November 12, 2018
Release of Reasons Date: November 12, 2018

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 September 17, 2018. 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 Committee reserved its decision on penalty and costs.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Sarah Louise Elizabeth McArthur committed an act of professional misconduct:

1. under clause 51(1)(a) of the Health Professions Procedural Code, which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18 in that she has been found guilty of an offence relevant to her suitability to practise;
2. 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; and
3. under paragraph 1(1)1 of O. Reg. 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”), in that she contravened a term, condition or limitation on her certificate of registration.

RESPONSE TO THE ALLEGATIONS

Dr. McArthur admitted the allegations in the Notice of Hearing: that she has been found guilty of an offence relevant to her suitability to practise, that 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, and that she contravened a term, condition or limitation on her certificate of registration.

THE FACTS

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

BACKGROUND

1. Dr. Sarah Louise Elizabeth McArthur ("Dr. McArthur") is a 46 year old physician who is not currently practising medicine and has not practised medicine since 2010 due to ongoing substance abuse issues.
2. Dr. McArthur received her medical degree at McMaster University in 2001. She received her certificate of registration authorizing independent practice in Ontario in 2002. She practised as a family physician in the Brantford area for several years.
3. In 2009, the College received information from the Brantford Police Service pertaining to potential abuse of narcotics and opioids. As a result of the information, College investigations were commenced beginning in 2009 and resulted in terms, conditions and limitations being imposed on Dr. McArthur's certificate of registration as follows:
 - I. Dr. McArthur signed a Voluntary Resignation Form on May 3, 2010, attached at Tab A [to the Agreed Statement of Facts];
 - II. Dr. McArthur signed an undertaking dated June 22, 2010, relinquishing her prescribing privileges for narcotics, narcotic preparations, controlled drugs and benzodiazepines. The undertaking dated June 22, 2010 is attached at Tab B [to the Agreed Statement of Facts];

- III. On January 31, 2011, Dr. McArthur was referred to the College's Fitness to Practise Committee. On February 14, 2011, Dr. McArthur signed a cease to practise undertaking in lieu of an Order under s.62 of the Health Professions Procedural Code. Among other things, the undertaking provides that Dr. McArthur may only resume practice if specified conditions are met, including notice to the College, a fitness assessment conducted by a College assessor or entering into a monitoring agreement with the Physician Health Program ("PHP"). The undertaking dated February 14, 2011 is attached at Tab C [to the Agreed Statement of Facts];
 - IV. Dr. McArthur signed a third undertaking with the College on January 20, 2012, in exchange for the withdrawal of the Notice of Hearing before the Fitness to Practice Committee. In this undertaking, Dr. McArthur agreed to additional conditions on her return to practice, including participating in the College's Change of Scope program. This undertaking replaced the Voluntary Resignation Form dated May 3, 2010 (Tab A [to the Agreed Statement of Facts]). The undertaking dated January 20, 2012 is attached at Tab D [to the Agreed Statement of Facts].
4. All three undertakings remain in effect.
 5. In the course of the health inquiries in 2010, the College requested and received an assessment report from psychiatrist, Dr. Maurice Siu. The report, dated November 7, 2010, is attached at Tab E [to the Agreed Statement of Facts], with redactions of sensitive and personal information. As part of Dr. Siu's assessment, the College received a psychological assessment from Dr. Jason Bacchiochi, dated November 3, 2010, attached at Tab F [to the Agreed Statement of Facts] with redactions of sensitive and personal information.
 6. Dr. McArthur has renewed her membership in the College on an annual basis but has not notified the College of an intended return to practice.

FACTS SUPPORTING THE ALLEGATIONS

7. On May 13, 2014, the Waterloo Regional Police Service laid charges against Dr. McArthur. A copy of the Information is attached at Tab G [to the Agreed Statement of Facts].
8. On December 10, 2014, Dr. McArthur entered a guilty plea before Justice Gary Hearn in the Ontario Court of Justice. Attached at Tab H [to the Agreed Statement of Facts] is a copy of the Agreed Statement of Facts filed as an exhibit at the criminal trial.
9. Following her plea, Dr. McArthur was convicted of the following charges: uttering a forged document, theft, fraud, possession of a controlled substance [hydromorphone] for the purpose of trafficking. Attached at Tab I [to the Agreed Statement of Facts] is a transcript of the guilty plea dated December 10, 2014.
10. On April 27, 2016, Dr. McArthur was sentenced to a total of two years' imprisonment to be followed by three years' probation. Attached at Tab J [to the Agreed Statement of Facts] are the Reasons for Sentence delivered by Justice Hearn. Attached at Tab K [to the Agreed Statement of Facts] is the pre-sentence report, dated March 3, 2015, and an addendum to the pre-sentence report, dated December 21, 2015, which were before Justice Hearn in reaching his decision on sentencing. Attached at Tab L [to the Agreed Statement of Facts] is a copy of the Probation Order.
11. Following her release on parole on December 21, 2016, Dr. McArthur was reincarcerated for a parole breach in February 2017, because she used a narcotic in violation of the terms of her parole. Dr. McArthur was eventually re-released to the North Bay Recovery Centre on May 30, 2017.

ADMISSION

12. Dr. McArthur admits the facts specified above, and admits that, based on these facts, she engaged in professional misconduct in that:

- (a) she 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;
- (b) she has been found guilty of an offence relevant to her suitability to practice; and
- (c) she contravened a term, condition or limitation on her certificate of registration

FINDING

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts. Based on these facts, the Committee accepted Dr. McArthur's admission and found that she committed an act of professional misconduct, in that she has been found guilty of an offence relevant to her suitability to practise, in that 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, and in that she contravened a term, condition or limitation on her certificate of registration.

EVIDENCE ON PENALTY

Counsel for the College did not enter any evidence on penalty.

Counsel for Dr. McArthur submitted a document brief describing various rehabilitative efforts of Dr. McArthur, as well as exhibits regarding Dr. McArthur's current financial status.

A final program performance report from the Grand Valley Institute for Women (September 30, 2016) outlined in detail Dr. McArthur's progress toward the program targets that were identified as follows:

1. Emotions – poor emotions management;
2. Behaviours (substance abuse) – poor ability to recognize and/or address problems;

3. Relationships – relationships with others are harmful and/or ineffective.

The report concluded, “Upon completion of the program, Ms. McArthur demonstrated good knowledge and use of a range of self-management and social skills necessary to address her needs.”

An Addiction/Mental Health counsellor at the Addiction Services of Thames Valley wrote on August 31, 2018 that Dr. McArthur had two treatment entries at the centre starting in 2015. She attended the centre for ten scheduled appointments until her incarceration. In 2017, Dr. McArthur attended one scheduled appointment. Her file was closed on July 5, 2017, after a period of inactivity.

In a letter dated September 25, 2017, the executive director of the North Bay Recovery Centre reported that Dr. McArthur attended a four-month program starting May 30, 2017. Excerpts from the report included:

“Ms. McArthur has been consistently and actively engaged in all levels of the program.”

“Ms. McArthur has demonstrated a commitment in this program to addressing the psychosocial and behavioural aspects of her addiction, as well as the consequences and costs of addiction related behaviours.”

“It is our belief that if Ms. McArthur continually applies and uses all the tools that she was introduced to and continues to attend self-help meetings as well as regularly talks with her sponsor, she could and would expect the quality of life that she so much deserves.”

Dr. McArthur’s parole officer, Siegfried Kiessling, wrote two reports dated September 20, 2017 and September 10, 2018. After Dr. McArthur returned voluntarily to the North Bay Recovery Centre for a six-week “refresher” because she felt she was slipping, Mr. Kiessling opined that:

“Ms. McArthur appears to have grown personally and learned the subtle wisdom that one gains from overcoming life’s trials and personal failures. In addition, she appears to have recognized and addressed her weaknesses and is eager and willing to seek help when she is in trouble.”

Dr. Conrad Sichler from the Sweet Medicine Integrative Health Centre provided an expert report dated July 20, 2018. Counsel for the College agreed that there would be no need to cross-examine Dr. Sichler. Dr. Sichler did not personally assess Dr. McArthur. His report was based on a review of various assessments made by others from 2010 until 2017. Dr. Sichler noted that:

“Dr. McArthur’s diagnosed health conditions would be expected to have an impact on conduct if Dr. McArthur was not clinically stable or in a period of stable recovery.”

Furthermore, Dr. Sichler noted that:

“It should be emphasized that Dr. McArthur actually suffers from concurrent disorders, meaning both an addictive disorder as well as psychiatric conditions. In her case, the latter include the above-mentioned personality disorder, major depressive disorder, and bulimia nervosa. All of these require adequate treatment, since they have had and may in future potentially have an impact on this physician’s conduct in and outside of the workplace. This is especially true of the personality disorder in her case.”

Finally, Dr. Sichler opined that stable recovery/clinical stability in Dr. McArthur’s case is a possibility. However, he cautioned that “both the addictive and psychiatric disorders require adequate treatment” and he suspected “that an important proportion of Dr. McArthur’s mood disturbances may arise out of her personality disorder rather than out of her major depressive disorder”. Dr. Sichler qualified his opinion by noting:

“I have not read any supplied material with clinical opinions by a psychiatrist or an addiction medicine physician on Dr. McArthur in the past eight years, as the more recent materials supplied to me were legal in nature, or the opinions of non-clinicians.”

He concluded that:

“Every clinician who treats addicted health care providers has seen a number of cases of patients who tumble through chaos for many years before finally figuring out how to live as themselves and making solid, supported, and successful choices that allow them to live healthy, productive, and sober lives.”

Dr. McArthur’s Testimony

Dr. McArthur described her family medicine practice in Brantford from 2002 until 2008. She was married, had two young sons and two stepsons to care for. She and her family lived on a series of hobby farms. She was active at a local gym, attended church regularly and involved the children in sports teams and clubs. She then described the deterioration of her marriage and admitted that she was not coping well at the time. She turned to alcohol and narcotics as coping strategies. On May 3, 2010, she gave up her prescribing privileges. She sought help from the Physician Health Program around the same time, but did not enter into a monitoring agreement because she did not feel she was stable enough. On February 14, 2011, Dr. McArthur undertook to cease her practice of medicine. She testified that she has independently maintained her continuing education Mainpro-C credits with Problem Based Individual Learning, journal reading and online courses because she maintains a passion for medicine. Dr. McArthur testified in part: “And when I was healthy prior to ever using substances at all, I loved my practice and my patients, and I believe I did well. And, I would like to maintain at least the opportunity or the option, should I get into stable-enough recovery that I could potentially return to a healthy practice, obviously with safeguards in place.”

Dr. McArthur acknowledged that she has both an addiction disorder as well as psychiatric diagnoses. She struggled for years with an eating disorder, but believes that it is stable. She recounted a diagnosis of depression that was made after the birth of her second son. Most recently, she has also been coping with a generalized anxiety disorder. Dr. McArthur testified about the variety of treatments she has sought since 2009. These included several residential programs, such as Homewood (successfully the first time, not the subsequent times), Tenant House (Brockville) for six months, Turning Point (London), Westover, and Hope Place (Milton).

Dr. McArthur testified that the time between 2012 and 2014 was very challenging as she became involved in a relationship with a male (a former patient) who abused painkillers. In August 2012, she intentionally overdosed. Around this time, she also developed panuveitis, for which she sought the care of Dr. Hooper in London. She admitted that her addiction was poorly controlled during this time. She fraudulently wrote prescriptions with Dr. Hooper's stolen prescription pads. She referred herself to the Westover residential program, but she admitted that, "I didn't have a good follow-up for a plan program and, unfortunately, I relapsed very soon after Westover." In May 2015, she went to Turning Point, a residential program in London, during which she admitted to struggling with severe anxiety, using chemicals and ultimately leaving the program as a result. She was re-admitted, but was again using drugs and had to leave Turning Point for a second time.

During her time at Turning Point, Dr. McArthur also attended a Sexual Assault and Domestic Violence Program at St. Joseph's Hospital, London, and also attended at the Thames Valley Addiction Services.

During her incarceration, Dr. McArthur was enrolled in the Women Offender Moderate Intensity Program, a four-month program (June to September 2016) for emotional management and challenging irrational thinking. She testified that she found the program to be "tremendously helpful." She was able to discontinue her anti-anxiety medications. She was released from penitentiary on full parole, went back to Turning Point in January 2017, but left. She developed a dental abscess and began to use cocaine in addition to narcotics. Because of her breach of parole conditions, she returned to the penitentiary for 90 days, after which the Parole Board released her

to the North Bay Recovery Centre, where she stayed for four months until September 2017. She lived with her mother and father afterwards, but noted that her anxiety returned. She recalled, “I knew my thinking was starting to become dysfunctional. I knew that my perceptions of things was becoming off, and I needed help, because if I didn’t change this and catch it at that point, I do believe I was at a high risk of relapse.”

Dr. McArthur noted that more recent treatments started in June 2018 and included the 12-step program, cognitive behavioural therapy with a social worker and the North Bay Recovery Centre. Dr. McArthur attends Narcotics Anonymous and Alcoholics Anonymous as well as the After Care Program at Simcoe House, Cambridge.

Dr. McArthur reviewed her current financial situation. She has a Retirement Savings Plan of \$11,000 and disability income from an insurance policy that resulted in total payments to her of \$7,818 in 2016. No payments were made under this policy during her incarceration. Dr. McArthur testified that she is pursuing her current claim for disability benefits with the company. She also has a chequing account with a current balance of \$10,000 and a Tax Free Saving Account of \$5,000. Her income tax records for 2015 and 2016 show a total income of \$808.00 and minus \$2,357.75, respectively. Her current rent and hydro costs are \$1,250 per month. She does not own a vehicle.

Counsel for Dr. McArthur asked about why Dr. McArthur valued the chance to return to practice. Dr. McArthur replied: “Part of why is I absolutely loved it, and I was good at it. I loved my relationships with my patients...I believe my patients really enjoyed me. At least, that’s what was communicated to me. I have a passion for the problem solving in the relationships in family medicine, and I would love to be able to go back. And, not only that, the kind of education that I’ve got through this lived experience over the last number of years, you don’t get that in school. I think if I establish and maintain, really, a whole recovery, I have got a heck of a lot to offer people who have trouble with the same things.”

In cross-examination, counsel for the College confirmed with Dr. McArthur that she has not had therapy for the personality disorder that was diagnosed by Dr. Siu in 2010. Although Dr.

McArthur initially insisted that she only had a personality trait, she later admitted that she misspoke and acknowledged that she had a personality disorder. Dr. McArthur also confirmed that she saw Dr. Clarke, a psychiatrist, between 2009 and 2015, but has not sought psychiatric care since. Counsel for the College reviewed the July 2018 report prepared by Dr. Sichler and Dr. McArthur agreed with the assessments and the recommendations for further care that would be required for her.

Counsel for the College asked Dr. McArthur whether her criminal conduct, including trafficking hydromorphone and committing fraud on a government health care plan, would bring the profession into disrepute. Dr. McArthur replied, “I wasn’t practising as a physician at that time. I certainly brought me into disrepute, but I don’t believe I was representing the medical community.” Dr. McArthur eventually admitted that her conduct would possibly undermine public confidence in the medical profession.

SUBMISSIONS ON PENALTY

Counsel for the College and counsel for Dr. McArthur agreed that the penalty should include a reprimand. Counsel for the College submitted that the penalty should also include revocation of Dr. McArthur’s certificate of registration, while counsel for Dr. McArthur submitted that an appropriate penalty would be a two-year suspension of Dr. McArthur’s certificate of registration and that the three undertakings remain in effect.

Regarding the issue of costs, counsel for the College submitted that Dr. McArthur should be ordered to pay costs to the College for a one-day hearing at the tariff rate of \$10,180.00. Counsel for the member submitted that no costs should be awarded.

Submission of the College

Counsel for the College submitted that the egregious conduct of Dr. McArthur, particularly the criminal conviction for trafficking, fraud and forgery, and the lack of any meaningful remediation, especially related to her psychiatric conditions, warranted revocation. The

member's rehabilitation would be best assessed at a reinstatement hearing, for which Dr. McArthur could apply after one year.

In reviewing the penalty principles, counsel for the College submitted that rehabilitation of the member is a factor to consider, but it does not outweigh the other principles, including protection of the public, maintenance of public confidence in the integrity of the profession and the College's ability to regulate the profession in the public interest, as well as general and specific deterrence. Counsel for the College submitted that Dr. McArthur's failure to rehabilitate to date and her serious criminal conviction are sufficient to warrant revocation of her certificate of registration.

Counsel for the College submitted that the College has taken a remedial approach with Dr. McArthur from the beginning, giving rise to the three undertakings currently in place and the fact that Dr. McArthur remained a member of the College during this time. Counsel for the College acknowledged that this case was unique, given that Dr. McArthur has not practised in eight years, and that her criminal conviction occurred in 2014, during the time she was not practising as a physician.

College counsel presented several prior cases to the Committee for consideration:

CPSO v. Kitakufe (2010) involved a physician who did not have an addiction himself, but engaged in organized drug trafficking for significant financial gain. His fraud amounted to \$382,000. He also had a past discipline history as the result of a criminal conviction in the United States for racketeering, illegal drug distribution and mail fraud. Dr. Kitakufe's certificate of registration was revoked.

CPSO v. Sinclair (2014) involved a physician who was criminally convicted of trafficking hydromorphone and defrauding the Ministry of Health and private insurers. At the time of the hearing, Dr. Sinclair was no longer practising medicine, but the Discipline Committee ordered revocation of his certificate of registration.

CPSO v. Gill (2016) involved a physician who was participating in rehabilitation. Dr. Gill had a substance abuse disorder and forged prescriptions for his own use. He was convicted of fraud and forgery. He did not engage in trafficking. He was enrolled for five years with the Physician Health Program and Alcoholics Anonymous. Dr. Gill had resigned his prescribing privileges. He was successfully engaged in the Physician Health Program with an addiction physician at the time of the hearing. Dr. Gill's penalty (jointly submitted) included a five-month suspension and imposition of terms, conditions and limitations.

CPSO v. Wales (2017) involved a physician found to be incompetent. In that case, counsel for the member argued that revocation was not necessary if direct supervision of the practice continued. The Discipline Committee disagreed and ordered revocation noting that, "Revocation in this case denounces Dr. Wales' conduct and is the appropriate means of ensuring public protection, maintaining the integrity of the profession and public confidence in the College's ability to govern the profession in the public interest."

Counsel for the College submitted that, similar to Dr. Wales's case, an order that Dr. McArthur comply with existing undertakings is insufficient to satisfy all the relevant penalty principles.

Submission of Dr. McArthur

Counsel for Dr. McArthur submitted that the facts giving rise to the three admissions of professional misconduct took place while Dr. McArthur was "in the thick of an addiction and substance abuse disorder." Counsel submitted that there was no disagreement with the penalty principles outlined by the College. However, counsel for Dr. McArthur focused on rehabilitation as a critical penalty principle in this matter.

Counsel for Dr. McArthur cited the 2018 Ontario Court of Appeal decision in *CPSO v. Peirovy* to support the submission that rehabilitation does not have to be a *fait accompli* at the time of penalty. The Court of Appeal noted:

The Discipline Committee was quite properly pointing out that revocation is sometimes “demanded” by egregious conduct alone. As it indicated in other parts of the reasons, however, it is tasked with arriving at a fair and just penalty that addresses all of the sentencing principles. Those principles include the paramount consideration of protection of the public, as well as maintenance of public confidence in the reputation and integrity of the profession, effective self-governance, general deterrence, specific deterrence and *the potential for the member’s rehabilitation*. (Emphasis added)

Counsel for Dr. McArthur submitted that a two-year suspension is at the highest end of suspensions ordered by the Discipline Committee and reflects the serious nature of Dr. McArthur’s misconduct.

Dr. McArthur’s counsel submitted that Dr. McArthur has demonstrated honesty. She testified at her criminal hearing and before the Discipline Committee. She pled guilty to the criminal offences and admitted to all three allegations in the current matter. She told her parole officer of her breach and was re-incarcerated. She has accepted personal responsibility for her misconduct, despite her addiction and psychiatric disorders. She has voluntarily not practised for eight years, thus ensuring public protection.

Dr. McArthur’s counsel submitted that Dr. McArthur has demonstrated insight. Her testimony revealed numerous attempts at rehabilitation and showed self-awareness when she was slipping. Dr. McArthur testified that she does not yet consider herself ready to enter the Physician Health Program.

With respect to costs, counsel for Dr. McArthur submitted that the member has no income from her medical practice and is managing with uncertain monthly payments from her disability insurance policy. Dr. McArthur has little savings. She requires money for day-to-day expenses as well as to pay her dental and prescription costs. Therefore, the order should not include an award of costs.

Counsel for the member reminded the Committee that Dr. McArthur has very significant restrictions on her certificate of registration that ensure public protection. Before resuming practice, she would have to prove that she is clinically stable and in recovery from her addiction disorder. She would be subject to ongoing monitoring of her health. Given that she has been out of practice for over eight years already, she would have to prove her knowledge, skills and judgment in the context of the scope of practice policy.

Counsel for Dr. McArthur reviewed three cases that relate to a member's conduct in the midst of a substance abuse disorder.

In *CPSO v. Egles* (2015), the physician prescribed for herself and breached her contract with the Physician Health Program. It was her first appearance before the Discipline Committee. Dr. Egles admitted her misconduct and her certificate of registration was suspended for two months.

In *CPSO v. Guirguis* (2018), the member forged controlled substance prescriptions for himself and family members. He was not addicted himself. Dr. Guirguis' certificate of registration was suspended for six months.

CPSO v. Gill (2016) was cited as a key comparator for this matter. Dr. Gill involved other physicians in his misconduct. He also forged prescriptions in three other physicians' names for his own use. He accepted responsibility for his conduct and pled guilty both in criminal court and in his discipline hearing. Unlike Dr. McArthur, Dr. Gill was being monitored by the Physician Health Program.

PENALTY AND REASONS FOR PENALTY

The Committee carefully considered the submissions of both counsel for the College and counsel for Dr. McArthur and analyzed them using the framework of the penalty principles espoused by the Committee and referenced by both counsel. The penalty principles include protection of the public, maintenance of the integrity of the profession and maintaining public confidence in the College's ability to regulate the profession in the public interest, general deterrence of the

membership of the profession, specific deterrence of the member, and, where appropriate, the potential for the member to be rehabilitated.

Protection of the public is a critical penalty principle. In this case, the Committee finds that both revocation and the two-year suspension, in combination with the continuing force of the three undertakings regarding Dr. McArthur's practice, would provide protection to the public.

Revocation would protect the public as Dr. McArthur would no longer be able to practice.

Equally, the effect of the suspension and the undertakings together would protect the public as Dr. McArthur would not be able to practice medicine until she was in stable recovery with up to date medical knowledge.

The undertakings create this result because with the June 22, 2010 undertaking, Dr. McArthur relinquished her prescribing privileges for narcotics, narcotic preparations, controlled drugs and benzodiazepines. The February 14, 2011 undertaking resulted in a total cessation of her practice. Before she can resume practice, Dr. McArthur must provide notice to the College, and undergo a fitness assessment conducted by a College assessor, or enter into a monitoring agreement with the Physician Health Program. The third undertaking, dated January 20, 2012, requires Dr. McArthur to participate in the College's Change of Scope program and demonstrate the currency of her knowledge as a condition of resuming her medical practice.

While it is not usually the case that a suspension and undertakings will have the same public protection effect as revocation, given the unique circumstances of this case whereby Dr. McArthur has remained a member but pursuant to the undertakings has not been in active practice for the past eight years, both proposed penalties will provide equal protection to the public.

For the same reasons, either penalty would serve to maintain of the integrity of the profession and maintain public confidence in the College's ability to regulate the profession in the public interest.

Specific deterrence of the member and general deterrence of the profession will likewise be achieved with either penalty. The Committee has no doubt that the member is fully aware of the serious nature of her conduct that has already resulted in the loss of her children, loss of her personal freedom during her incarceration, and loss of the ability to practise her profession for the past eight years. The Committee expects that the profession as a whole would regard the two-year suspension with the associated undertakings as a very serious sanction, with significant financial and reputational consequences.

The Committee is of the opinion that as both proposed penalties serve most of the penalty principles equally in this case, the potential for Dr. McArthur's rehabilitation is the determinative factor.

In this regard, the Committee first observes that Dr. McArthur was a credible witness and her evidence reliable. She was able to recount the numerous treatment programs that she attended during the last eight years. She freely acknowledged her responsibility for her misconduct and admitted her failures for completing some of her treatment programs. The Committee noted that Dr. McArthur initially did not accept that she had been diagnosed with a personality *disorder*, preferring instead to label it as a personality *trait*. She did, however, acknowledge that she had misspoken. This did not impair her credibility in the Committee's view as during her examination in chief, she described her "avoidant traits" and their implications for her behaviour. As a result, the Committee did not find that this aspect of her testimony demonstrated a significant or concerning lack of insight.

Instead, the Committee recognizes the considerable effort that Dr. McArthur has made over the past eight years in seeking counseling and support for her addiction disorder. The Committee acknowledges her personal insight by recognizing that she is currently not yet ready to engage with the Physician Health Program and by otherwise seeking counseling and treatment when she felt she was high risk of relapse. Ultimately, the Program would strengthen and monitor the treatment she requires both for her addiction disorder and for the psychiatric and personality disorders that have been identified in her past assessments.

The Committee also considered and relied upon the evidence regarding Dr. McArthur's rehabilitative potential, including the letter from the executive director of the North Bay Recovery Centre regarding Dr. McArthur's commitment to the program and ability to achieve a better quality of life. The Committee also considered the evidence from Dr. McArthur's parole officer and from Dr. Sichler in concluding that Dr. McArthur has the potential to be rehabilitated, even though she is not currently in stable recovery.

The Committee notes that Dr. McArthur has continued to pay for the renewal of her certificate of registration during the last eight years, in the face of significant financial hardship, despite her inability to earn an income as a physician. This underscores to the Committee the importance to Dr. McArthur of maintaining her membership in the profession and the role that her membership plays in her ongoing recovery.

The Committee considered the aggravating and mitigating factors in this matter.

Aggravating Factors

There is no doubt that Dr. McArthur's egregious misconduct is an aggravating factor. Her criminal conviction and subsequent incarceration are indicators of how seriously society views drug trafficking, forgery and fraud. She was also in breach of her undertaking to the College. The Committee also noted her initial lack of insight with respect to how her personal behaviour could bring disrepute to the medical profession.

Mitigating Factors

With respect to mitigating factors, the Committee recognized that this was Dr. McArthur's first appearance before the Discipline Committee. By accepting responsibility for her misconduct, she saved the time and expense of a contested hearing and the need for witnesses to testify. The Committee finds that, on the whole, Dr. McArthur has demonstrated significant insight into her situation, starting with her undertakings to the College from 2010 onward. Furthermore, she has undertaken numerous attempts at remediation of her addiction disorder and has not yet enrolled

in the Physician Health Program because she understands that she is not yet at the stage of recovery that would make the Program potentially useful for her.

The Committee notes that Dr. McArthur's prison term is not a mitigating factor.

Case Law

None of the cases presented by either counsel were directly comparable to Dr. McArthur's circumstances. The Committee analyzed the cases and considered them in arriving at its decision on penalty. For example, the Committee noted some similarities between certain aspects of Dr. McArthur's misconduct and certain aspects of each of the physicians' misconduct in the *Kitakufe* and *Gill* cases. However, because there were few similarities between those two cases, they resulted in very different penalty decisions and were therefore of limited assistance to the Committee.

The case of *CPSO v. Kitakufe* had several aspects that were similar to Dr. McArthur's case, including a period of incarceration for criminal activity related to trafficking and fraud as well as a rehabilitative effort that was described by an expert witness as a "journey to developing insight is incomplete." With respect to differences, the Committee noted that Dr. Kitakufe had a past discipline history with the College and did not seem to have learned from his past criminal conviction in the United States. He did not have an addiction disorder or a personality disorder. He was being treated for major depression. Dr. Kitakufe's misconduct was motivated by financial greed and included very significant fraud, both with respect to the Ontario Drug Benefits Plan and OHIP billing. In addition, he received direct kickbacks from his co-conspirators. Dr. Kitakufe's certificate of registration was revoked.

CPSO v. Gill had several similarities to Dr. McArthur's case. Dr. Gill had both an alcohol as well as a narcotics addiction. He forged prescriptions using other doctors' prescription pads. He was found guilty of both fraud and forgery in the Ontario Court of Justice. Dr. Gill had no prior discipline history with the College. With respect to differences, Dr. Gill directly solicited prescriptions of narcotics from his colleagues. He failed to attend an addiction assessment as

ordered by the College. However, he did not engage in drug trafficking and he was enrolled in the Physician Health Program for five years. As part of a joint submission on penalty, Dr. Gill was suspended for five months. He also had terms, conditions and limitations imposed on his certificate of registration.

On balance, while none of the cases were directly on point, the Committee finds that Dr. McArthur's case is more similar to that of Dr. Gill and that a similar, but more serious, penalty should be ordered here. Unlike Dr. Kitakufe, Dr. McArthur's behaviour was tied to her addiction disorder and personality disorder, whereas Dr. Kitakufe appeared to be motivated by personal gain only. In Dr. Kitakufe's case, revocation was necessary for public protection. More similarly to Dr. McArthur, Dr. Gill also struggled with addiction. While Dr. Gill's conduct was less egregious, his suspension was also shorter than the one being ordered in this case. The case law, in the Committee's view, supports the order of a two year suspension and adherence to the existing undertakings.

Conclusion

The Committee concluded that a two year suspension of Dr. McArthur's certificate of registration is warranted in the circumstances of this case. The two-year suspension is significantly lengthier than the five-month suspension of Dr. Gill and clearly reflects the seriousness of Dr. McArthur's misconduct. Furthermore, while Dr. Gill was able to return to practice with terms, conditions and limitations, Dr. McArthur will not be able to do so, given the undertakings that will remain in effect. Protection of the public will continue.

The Committee is persuaded that Dr. McArthur's continued membership in the College may be a major motivating factor for her rehabilitation, as demonstrated by continued payment of her renewal fees. The Committee expects that the two-year suspension will serve as a defining goalpost for her rehabilitative efforts. In contrast, the Committee is concerned that revocation of her membership would be a significant psychological impediment to any continuation of her attempts at rehabilitation. In this case, the two proposed penalties would have a different impact on the rehabilitation of Dr. McArthur. Revocation would, in the view of the Committee, make

rehabilitation less likely, while a two year suspension with the undertakings would help promote rehabilitation. As such, the penalty principle of rehabilitation weighs in favour of a suspension rather than revocation.

Counsel for the College and counsel for Dr. McArthur agreed that the penalty should include a reprimand and the Committee so orders. The reprimand will provide the opportunity for the Committee to express directly its denunciation of Dr. McArthur's misconduct.

COSTS

Counsel for the College submitted that the penalty should include the tariff cost for one day of hearing of \$10,180.00, while counsel for Dr. McArthur submitted that no costs should be awarded.

The Committee considered the evidence put forward by Dr. McArthur demonstrating her dire financial circumstances, as a result of her inability to practise medicine for the past eight years, which will be compounded for at least the next two years, as a result of the suspension imposed by the Committee's order. Despite her dire circumstances and inability to practice, Dr. McArthur has demonstrated her desire to retain her College membership by continuing to pay her renewal fees. The privilege of membership brings with it the obligation to be accountable. In the Committee's view and in light of the circumstances, the Committee concludes that it is an appropriate case for Dr. McArthur to pay to the College partial costs of the hearing day in the amount of \$5,000.

ORDER

Therefore, the Committee orders and directs on the matter of penalty and costs that

1. The Registrar suspend Dr. McArthur's certificate of registration for two years, effective immediately.

2. Dr. McArthur appear before the panel to be reprimanded.
3. Dr. McArthur pay costs to the College in the amount of \$5,000.00 by January 1, 2019.

Dated this 12th day of November, 2018.