

Indexed as: Ontario (College of Physicians and Surgeons of Ontario) v. Maciver,
2020 ONCPSD 10

**DISCIPLINE COMMITTEE
COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO**

IN THE MATTER OF a Hearing directed by
the Inquiries, Complaints and Reports Committee of the College of Physicians and Surgeons of Ontario
pursuant to Section 26(1) of the **Health Professions Procedural Code**
which is Schedule 2 of the ***Regulated Health Professions Act, 1991***,
S.O. 1991, c. 18, as amended.

B E T W E E N:

COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. ANGUS GRAHAM MACIVER

PANEL MEMBERS:

**DR. R. SHEPPARD
MR. M. KANJI
DR. Y. VERBEETEN**

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS RUTH AINSWORTH

COUNSEL FOR DR. MACIVER:

MS JENNIFER MCKENDRY

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MS KIMBERLY POTTER

Hearing date:
Decision Date:
Release of Reasons Date:

January 24, 2020
January 24, 2020
March 10, 2020

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 January 24, 2020. At the conclusion of the hearing, the Committee released a written order stating its finding that Dr. Maciver has committed an act of professional misconduct and setting out its penalty and costs order, with written reasons to follow.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Maciver 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)34 of O. Reg. 856/93, in that he engaged in conduct unbecoming a physician.

RESPONSE TO THE ALLEGATIONS

Dr. Maciver admitted to the first allegation in the Notice of Hearing, that he engaged in an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful dishonourable or unprofessional.

Counsel for the College withdrew the second allegation in the Notice of Hearing, that Dr. Maciver engaged in conduct unbecoming a physician.

THE FACTS

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

PART I - FACTS

1. Dr. Angus Maciver is a 70-year-old general surgeon practising in St. Mary's, Ontario. He has held a certificate of registration authorizing independent practice since 1979.
2. At the time of the incidents described below, Dr. Maciver held the position of Past President of the Perth County Medical Society, a section of the Ontario Medical Association ("OMA"). He has also acted as an Assessor for the College of Physicians and Surgeons' Quality Assurance and Out of Hospital Premises programs.
3. The OMA is the association that represents the political and economic interests of physicians in Ontario. This includes representing Ontario physicians in negotiations with the Province of Ontario.
4. Concerned Ontario Doctors ("COD") is a physician advocacy organization that has taken positions critical of the OMA. At the relevant times, Dr. Kulvinder Kaur Gill ("Dr. Gill") and Dr. Ashvinder Kaur Lamba ("Dr. Lamba") were Board Directors of COD.

Twitter Posts of September 2018

5. On September 4, 2018, Dr. Maciver engaged in an exchange on Twitter relating to COD's advocacy regarding the OMA. In the course of this exchange, Dr. Maciver tweeted the following, referring specifically to Dr. Gill and Dr. Lamba: "The effing

best is that these overpaid but whining corksoakers still have me on their list but have effing blocked me...the Ash and Kulvinder twats...". [10:04PM]

6. A copy of the tweet is attached at Tab 1 [to the Agreed Statement of Facts and Admission]. The tweet was later deleted by Dr. Maciver.
7. After posting this, Dr. Maciver posted further tweets referring to Dr. Gill and Dr. Lamba, including the following:

"I think [F], that I'm dead to them. I'm ok debating, but the blocking shit showcases their histrionic selfishness." [10:26PM]

"and BTFW, this also showcases their lack of the qualities we all expect in a physician, let alone a colleague" [10:29PM]

"Never said anything at all against either of them personally until this last tweet. They are intolerant, or why would they block a colleague?"
[11:03PM]

"I'm not holding my breath, [P]. Saw them perform at OMA council. They are an intolerant bunch..." [11:11PM]

8. A copy of this twitter thread is attached at Tab 2 [to the Agreed Statement of Facts and Admission].
9. Also on September 4, in an exchange discussing OMA fee negotiations and relativity between specialties, Dr. Maciver tweeted that a coalition of physician specialities should be named "Poor Sluts". This was in reply to a message from another user who joked that the coalition should be named Poor-Sod, for "Pissed Off Over-Regulated Shortchanged Ontario Doctors". Dr. Maciver replied:

"Or Poor Sluts, as they'd say in Cape Breton

..... Serially Leftbehind Underpaid Trench Slaves” [7:24PM]

10. A copy of this twitter thread is attached at Tab 3 [to the Agreed Statement of Facts and Admission].

11. On September 7 and 8, 2018, Dr. Maciver posted further tweets regarding Dr. Gill and Dr. Lamba. He mentioned an attempt to apologize, but in so doing criticized Dr. Gill and Dr. Lamba for blocking him on Twitter and preventing constructive discussion: “Hi [T]. I specified that the phrase was not gender focused in an immediate follow up. The phrase itself is succinct. Google it. These people had previously blocked me when I had objected to their lack of constructivity in their complaints.” [September 7]

“Again, I’m quite happy to apologize to Drs. Kaur, and gender issues were not intended. Their attitude with blocking everyone who disagrees with them prevents constructive discussion.” [September 8, 10:17AM]

“I apologized to them unconditionally earlier today but I don’t know if they received the email as I am blocked by them.” [September 8, 6:25PM]

“I again apologize for the poor choice of words used in a recent tweet, despite clarification and deleting the tweet with 2 subsequent apologies.” [September 8, 11:05PM]

12. A copy of these tweets is attached at Tab 4 [to the Agreed Statement of Facts and Admission].

13. Dr. Gill and Dr. Lamba indicated that prior to these tweets being posted by Dr. Maciver, they had never spoken to or interacted with him in their personal or professional lives, either in person or on any social media platform.

FINDINGS

The Committee accepted as correct all of the facts set out in the Agreed Statement of Facts and Admission. Having regard to these facts, the Committee accepted Dr. Maciver's admission and found that he committed an act of professional misconduct under Paragraph 1(1)33 of 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.

PENALTY AND REASONS FOR PENALTY

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

On March 21-23, 2019, Dr. Maciver completed the PROBE Program on Professional and Problem-Based Ethics. Dr. Maciver's PROBE Essay is attached at Tab 1 [to the Agreed Statement of Facts on Penalty]. The PROBE Evaluation and Assessment Report is attached at Tab 2 [to the Agreed Statement of Facts on Penalty]. The Certificate of Completion is attached at Tab 3 [to the Agreed Statement of Facts on Penalty.]

JOINT SUBMISSION

College counsel and counsel for Dr. Maciver jointly submitted that the appropriate penalty would be a public reprimand, a one-month suspension of Dr. Maciver's certificate of registration, and that Dr. Maciver pay costs to the College in the amount of \$6,000.00. Although the Committee has discretion to accept or reject a joint submission on penalty, the law provides that the Committee should not depart from a joint submission, unless the proposed penalty would bring the administration of justice into disrepute, or is otherwise not in the public interest (*R. v. Anthony-Cook*, 2016 SCC 43).

Penalty principles

In making a decision respecting penalty, the Committee applies penalty principles including public protection; maintaining the integrity of the profession and public confidence in the College's ability to regulate the profession in the public interest; specific deterrence; general deterrence; and where applicable or appropriate, rehabilitation. Other principles include denunciation of the misconduct and proportionality.

Aggravating Factors

- The public nature of Dr. Maciver's comments would have amplified the impact on the recipients, both personally and professionally.
- Dr. Maciver displayed a repeated, sustained online pattern of abuse, eventually capped by an incomplete apology.
- Dr. Maciver used sexist, lewd and derisive language in his verbal abuse of two female physicians with whom he had never had any prior communication.
- Dr. Maciver's behaviour grossly contravenes the College's guidelines for physicians using social media.

Mitigating Factors

- Dr. Maciver voluntarily and successfully completed a PROBE program on Professional and Problem-Based Ethics.
- Dr. Maciver admitted to professional misconduct, saving the College cost, by reducing the length of proceedings, and saving witnesses from testifying.

Analysis

Two female physicians on the Board of COD (a physician advocacy organization) were the recipients of Dr. Maciver's inappropriate, explicitly sexualized, and abusive comments. The physicians had never been in communication with Dr. Maciver prior to his online tirade. His online attack was sent because he had been blocked from the two physicians' Twitter account and had disagreed with their stance on the policies of the OMA.

Though Dr. Maciver finally attempted to apologize to these physicians, he persisted with his victim blaming as part of his apology. The fact that his tirade was on a public forum would have magnified the impact on the recipients. The public nature of the remarks significantly undermined the medical profession, and damaged the public's trust in its members and the ability of the College to regulate its membership. As outlined in the Agreed Statement of Facts and Admission, paragraph 9, both of the female COD Board members had a public online presence. Their online presence was not a license for any physician to harass them and subject them to coarse insults, including explicit derogatory sexual language (tab 1, exhibit 2).

The College's Practice Guide outlines the legal and professional expectations that govern medical practice. It includes maintaining courteous and respectful relationships with patients, colleagues, and others involved in the provision of health care.

In addition, the College has published guidelines for the appropriate use of social media by physicians. These guidelines recommend that physicians protect their own reputation, the reputation of the profession, and the public trust by not posting content that could be viewed as unprofessional.

Physicians are expected to conduct themselves with civility when dealing with their colleagues.

Prior Cases

Counsel provided the Committee with a Joint Book of Authorities to demonstrate that the proposed penalty lay within the range of penalties ordered in previous decisions in similar matters. The Discipline Committee reviewed the following cases: CPSO v. Tjandrawidjaja (2018), CPSO v. Drone (2018), CPSO v. Goodwin (2018), and CPSO v. Lad (2005). All but the last of those decisions bore considerable resemblance to Dr. Maciver's case and involved similar penalties to that which was jointly proposed for Dr. Maciver. With respect to CPSO v. Lad (2005), the College agrees with Dr. Maciver's counsel's submission that the case is not on point, because Lad involved comments made in-person to a patient, who was a minor.

This review confirms that a one-month suspension and a public reprimand, along with payment of the College's half-day costs, represent an appropriate penalty and cost order for Dr. Maciver.

In accepting the joint submission, the Committee acknowledges that Dr. Maciver has recently completed the PROBE course.

COSTS

The Committee has the power pursuant to section 53.1 of the Code to award costs. Costs are always in the discretion of the Committee. Any costs order must be reasonable, and based on the costs actually incurred, or pursuant to Tariff A.

The Committee finds that the amount agreed by the parties, \$6,000.00, is an appropriate costs order in this case.

CONCLUSION

Dr. Maciver engaged in conduct online which would be regarded by members as disgraceful, dishonourable or unprofessional.

The suspension falls within the range for similar cases. The public reprimand demonstrates how abhorrent the Committee found Dr. Maciver's language online and how his behaviour reflected a serious lapse in professionalism on his part.

The Committee finds that the penalty imposed on Dr. Maciver supports the maintenance of the profession's integrity and public confidence in the ability of the College to regulate its members in the public interest. It also clearly provides for specific and general deterrence.

Therefore, the Committee accepts the jointly-proposed penalty as reasonable, falling within the range of penalties in similar cases as reviewed above, and being consistent with the relevant penalty principles.

ORDER

The Committee stated its findings in paragraph 1 of its written order of January 24, 2020. In that order, the Committee ordered and directed on the matter of penalty and costs that:

2. Dr. Maciver attend before the panel to be reprimanded.
3. The Registrar suspend Dr. Maciver's certificate of registration for a period of one (1) month, commencing from January 25, 2020 at 12:01 a.m.
4. Dr. Maciver pay costs to the College in the amount \$6,000.00 within 30 days of the date of this Order.

At the conclusion of the hearing, Dr. Maciver 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 January 24, 2020
in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
and
DR. ANGUS GRAHAM MACIVER

Dr. MacIver:

You have committed an act of professional misconduct. This is always a very serious matter.

The actions which bring you before this Committee reflect a serious lapse in professionalism on your part. Every physician has a responsibility to uphold the values of the profession, which include respect for one's colleagues and civility towards others, including those with whom you might disagree. The use of insulting, demeaning, and abusive language undermines these values and reflects poorly on the profession. The Committee finds your use of sexist language particularly abhorrent. Physicians are rightly held to a high standard of decorum in all their communications, including those on social media platforms, which are readily accessible to the public.

The Committee is disappointed in your actions. We hope and expect that you will take this opportunity to reflect on your misconduct, and to learn from this unfortunate experience.