

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Sean McHugh, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of the patient with whom Dr. McHugh engaged in sexual abuse, leading to the revocation of his certificate of registration, or any information that could disclose the identity of the patient, under subsection 47(1) of the *Health Professions Procedural Code* (the Code), which is Schedule 2 to the *Regulated Health Professions Act, 1991*.

Subsection 93 of the Code, which is concerned with failure to comply with these orders, reads:

93(1) Every person who contravenes an order made under section 45 or 47 is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 for a first offence and not more than \$20,000 for a subsequent offence.

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

IN THE MATTER OF a Hearing directed
by the Registrar to the Discipline Committee of
the College of Physicians and Surgeons
of Ontario, pursuant to Section 73
of the **Health Professions Procedural Code**, which
is Schedule 2 to the *Regulated Health Professions Act, 1991*

BETWEEN:

DR. SEAN MICHAEL McHUGH

- and -

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

PANEL MEMBERS:

DR. M. GABEL (Chair)
DR. F. SLIWIN
H. WALKER
DR. O. KOFMAN
J. DHAWAN

Hearing Date: **August 16, 2005**

Decision/ Release Date: **August 16, 2005**

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

Dr. Sean Michael McHugh made an application to the College of Physicians and Surgeons of Ontario (the "College") for reinstatement of his certificate of registration. Dr. McHugh's certificate was revoked in 2000 when he admitted to sexual abuse of a patient, as defined in the *Health Professions Procedural Code* (the "Code"), which is Schedule 2 to the *Regulated Health Professions Act, 1991*. Dr. McHugh's application for reinstatement was referred by the Registrar to the Discipline Committee (the "Committee"), and was heard on August 16, 2005. The College did not contest the application, subject to the imposition of specified terms and conditions. At the conclusion of the hearing, the Committee delivered a written order, with written reasons to follow, directing the Registrar to issue to Dr. McHugh a certificate of registration subject to specified terms, conditions and limitations.

PUBLICATION BAN

On August 16, 2005, the Committee ordered that no person shall publish the identity of the patient with whom Dr. McHugh engaged in sexual abuse, leading to the revocation in 2000 of his certificate of registration, or any information that could disclose that patient's identity. The Order was made pursuant to s. 47 of the Code.

EVIDENCE

Dr. McHugh's counsel filed a statement of facts, which was not contested by counsel for the College. It provided as follows:

Background

1. Dr. McHugh is 57-years old and resides in Toronto. He obtained a BSc in Zoology from the University of British Columbia in 1971 and his medical degree from McMaster University in 1975.
2. Following medical school, Dr. McHugh entered the residency programme at Chedoke – McMaster Hospitals in internal medicine. He was Chief Medical Resident at

the Hamilton General Hospital in 1979. He received his Fellowship in Internal Medicine in 1979.

3. Dr. McHugh then focused his training in the area of Gastroenterology. He trained at Chedoke – McMaster between 1979 and 1980, and at the Ottawa Civic Hospital in 1981-1982. Dr. McHugh was appointed Research Fellow (Gastroenterology) at Toronto Western Hospital in 1982-1983. Between 1981 and 1983, Dr. McHugh was a consultant in Internal Medicine and Gastroenterology in Prince George, British Columbia. Dr. McHugh was Director of the Gut Behaviour Unit at Toronto Western Hospital between 1983 and 1986.

4. In 1986, Dr. McHugh entered the psychiatry programme at the University of Toronto. During the course of his residency, he worked at the Toronto General Hospital, Queen Street Mental Health Centre, Thistletown Regional Centre and at Mount Sinai Hospital. He received his Fellowship in Psychiatry in 1989. Between 1989 and 1999, Dr. McHugh engaged in private psychiatric practice, specializing in individual, couple and group psychotherapy and consultation and also served as a consultant to the Canadian Mental Health Association.

5. Dr. McHugh has received, among other professional qualifications, multiple specialist certifications, numerous research grants, and is credited with a number of publications and presentations in psychiatry and internal medicine.

6. In addition to his achievements in the medical field, Dr. McHugh has devoted considerable time to community activities, particularly in the visual arts. Dr. McHugh's own artistic work has been featured in many art exhibits. Attached [to the statement of facts was] a copy of Dr. McHugh's Curriculum Vitae which summarizes Dr. McHugh's professional history.

Revocation of Dr. McHugh's Certificate of Registration

7. On July 28, 2000, the Discipline Committee of the College of Physicians and Surgeons of Ontario (the "College") found that Dr. McHugh had committed an act of professional misconduct in that he sexually abused a patient. The Discipline Committee directed that his certificate of registration for Independent Practice in the Province of Ontario be revoked. Attached [to the statement of facts was] a copy of the reasons of the

Discipline Committee of the College. The facts, which were not in dispute, surrounded Dr. McHugh's romantic and sexual relationship with a patient for a five-week period during 1998.

8. As noted by the Discipline Committee in its reasons, the complainant prepared a victim impact statement which the Discipline Committee considered and reproduced in its decision. In addition, Dr. McHugh filed a statement with the panel apologizing to his former patient for any distress that his personal relationship may have caused, as well an apology to the medical community and the College for his behaviour (a copy of which [was attached to the statement of facts]).

9. Following the Discipline Committee's decision and on the advice of his then counsel, Dr. McHugh sought to have the order of the Discipline Committee reviewed by the Divisional Court. That application was dismissed.

Dr. McHugh's Medical Condition and Course of Treatment

10. The misconduct resulting in Dr. McHugh's revocation occurred during a period in which Dr. McHugh was suffering from a mental illness. Dr. McHugh sought treatment with Dr. A in January 1998, as he was experiencing feelings of depression and anxiety. He continued to see Dr. A until March, 1998. Attached [to the statement of facts was] a copy of Dr. A's clinical notes relating to his treatment of Dr. McHugh.

11. In May, 1998 Dr. McHugh sought treatment from Dr. B. Dr. B remains his current psychiatrist. Attached [to the statement of facts was] a copy of Dr. B's clinical notes from 1998 to the present.

12. A precise diagnosis and suitable treatment regime for Dr. McHugh has taken some time to achieve. Originally diagnosed with major depression, this was later revised to Bipolar Mood Disorder, Type II. In 1999, Dr. B also consulted with Dr. C, a specialist in mood disorders, with respect to Dr. McHugh's treatment. Attached [to the statement of facts was] a copy of a letter from Dr. C to Dr. B providing his treatment recommendations for Dr. McHugh.

13. Dr. B reports that, since 2001, Dr. McHugh's mood has stabilized. Dr. B has been in monthly contact with Dr. McHugh for the past four years, and reports that there has been no dysphoria or hypomania of clinical significance during that time. His

medication has not changed for several years, being lamotrigine and low dose clonazepam.

14. Attached [to the statement of facts was] a letter from Dr. B [dated May 11, 2005] summarizing his treatment progression. In his report, Dr. B states:

In nearly seven years I have gotten to know this man quite well. I have always believed that his involvement with his patient was an aberration, totally inconsistent with his previous behaviour and character...

Dr. McHugh has responded well to treatment and in spite of much stress associated with his loss of practice and livelihood has shown no sign of decompensation. I know he will continue to have his medication and emotional state monitored by a psychiatrist.

15. Dr. B is of the view that there will not be a repeat of Dr. McHugh's unprofessional behaviour. He states in his letter:

Even were Dr. McHugh to become ill in the future, I am of the confident opinion that there would not be a repetition of unprofessional behaviour. At the time he did get into trouble he did not anticipate it as a possibility. In the future he will always be vigilant.

I have no doubt that Dr. McHugh can return to practise responsibly and safely. He has taken great pains to keep abreast of his field by attending hospital rounds, communicating with colleagues and reading.

16. Dr. McHugh has recently undergone an assessment by Dr. D, Forensic Psychiatrist with the Law and Mental Health Program. Attached [to the statement of facts was] a copy of his report. Dr. D observes that Dr. McHugh's misconduct arose at a time when he was suffering a mood disorder and states that "in my professional opinion the mood disorder made him susceptible to conduct that ordinarily would not have been displayed."

17. Dr. D reports that Dr. McHugh has significant insight in regards to his illness. He states "This insight coupled with continued treatment, makes reoccurrence of the behaviour highly unlikely."

18. Dr. McHugh has also been enrolled since 2004 with the Physician Health Program ("PHP") for a two-year psychiatric monitoring. Attached [to the statement of facts was] a report from Mr. E, the case manager and primary monitor working with Dr. McHugh. The program involves monthly monitoring sessions at the PHP offices. Mr. E reports that, in his sessions with Dr. McHugh, he appears normal and relaxed, and has not observed remarkable behavioural evidence of depression, anxiety or psychological stress. The PHP supports Dr. McHugh's return to practice.

Professional Development Since 2000

19. Dr. McHugh has remained dedicated to professional development and continuing education. In 2002, Dr. McHugh obtained an MBA degree at Wilfrid Laurier University. His studies there were tailored to follow the Canadian Medical Association Physician Leadership Program, and undertook projects involving health policy analysis and recommendations of governance, funding and services structures for community health providers, agencies and long-term care facilities, among other projects.

20. Since the completion of his MBA, Dr. McHugh has undertaken professional development activities including weekly university Grand Rounds at the Centre for Addiction and Mental Health (CAMH) and McMaster University Department of Psychiatry and Neurosciences, and has been involved in specialized workshops at CAMH and University of Toronto Health Communications Unit oriented to treatment of depressive illness and addiction.

21. Dr. McHugh has also developed and undertaken structured learning projects (as defined by the Royal College of Physicians and Surgeons of Canada) to explore, among other things, an internet based portal to assist youth coping with physical and/or mental illness, the feasibility of suicide barriers for Toronto's subway system, and programs for the Canadian Association of Physicians with Disabilities ("CAPD"). Dr. McHugh has also continued to maintain up-to-date knowledge including current clinical guidelines for major psychiatric disorders over the past five years. Between October 2000 and January 2005, Dr. McHugh has dedicated over 1500 hours to Continuing Medical Education. A physician in practice is only required to complete 400 hours during the same period. Attached [to the statement of facts was] a detailed summary of Dr. McHugh's professional development activities since 2000, and attached [to the statement of facts was] a copy of his personal learning diary for that period.

22. Dr. McHugh has also been an active member of CAPD since 2003, and has been responsible for developing advocacy and mentoring policies for the association, and also presented a detailed submission for the review of the Ontarians with Disabilities Act. Aside from his continuing medical studies, Dr. McHugh has also been responsible for the maintenance of a website featuring electronic portfolios of Canadian artists, and has had his own work showcased at three group art shows and three solo exhibits. Attached [to the statement of facts was] a personal statement of Dr. McHugh outlining his general activities since 2000.

Character References

23. Included in support of this application are character references from colleagues, friends and former patients of Dr. McHugh. Attached [to the statement of facts were] reference letters from six professionals.

24. Attached [to the statement of facts were] copies of letters of reference from eight former patients of Dr. McHugh's.

Current Competence of Dr. McHugh

25. Dr. McHugh continues to regularly pursue continuing education and professional development in order to keep his current skills up-to-date and to expand his knowledge base. Over the past five years, Dr. McHugh has achieved over 1500 credit hours of Continuing Professional Development (as defined by the Royal College of Physicians and Surgeons).

26. Dr. McHugh's clinical skills were recently assessed by Dr. F, M.B., B.S., Dip. Psych., F.R.C.P. Psychiatrist. Dr. F served as Chief Examiner at the Royal College of Physicians and Surgeons, and as Chair of the Specialty Committee in Psychiatry. Attached [to the statement of facts was] a copy of Dr. F's report, together with a copy of Dr. F's brief Curriculum Vitae.

27. Dr. McHugh's assessment was based on the Final In Training Evaluation Report (FITER) required of the Royal College of Physicians and Surgeons for candidates proceeding to the specialties examination in psychiatry, which evaluates core competencies in determining the readiness of residents to undertake a safe, competent and independent practice. The FITER assesses the specific competencies of the

candidate in his or her role as medical expert, communicator, collaborator, manager, health advocate, scholar and professional.

28. Dr. F employed a variety of approaches in assessing Dr. McHugh, including discussions on general psychiatric knowledge issues and trends in psychiatry, as well as clinical vignettes to assess Dr. McHugh's abilities. Dr. F's findings are summarized at pages 5-7 of his report. Notwithstanding the stated limitation of being unable to assess Dr. McHugh in a clinical setting, Dr. F states:

I was satisfied that in all of the areas which we covered, Dr. McHugh's basic knowledge as well as the breadth and depth of such knowledge were not only adequate but above average. Dr. McHugh impressed me as an individual who has kept in close touch with continuous learning. He demonstrated an academic approach in assessing interventions as well as historical developments.

...

I can confidently conclude from my interaction with Dr. McHugh that I could detect no reason based on this kind of assessment to be concerned about his return to clinical practice...I believe that having done this assessment I can predict that Dr. McHugh would function adequately in a clinical setting and with patients.

The Committee had careful regard to the attachments to the statement of facts. The Committee observed, among other things, that Dr. D, the independent assessor, wrote in his report:

Dr. McHugh remains extremely remorseful and embarrassed by the behaviour that led to the revocation of his registration. During the assessment period he never blamed [the patient] or spoke of [the patient] in a disparaging manner. Over the past 5 years Dr. McHugh has received a combination of cognitive psychotherapy and pharmacological therapy. His illness is now well controlled and he has insight in regards to the illness. This insight, coupled with continued treatment, makes a reoccurrence of the behaviour highly unlikely.

APPLICATION FOR REINSTATEMENT

Section 72 of the Code provides that a physician whose registration is revoked as a result of a discipline finding of sexual abuse has the right to apply for reinstatement, but not earlier than five (5) years from the date of revocation.

The Registrar is required to refer the reinstatement application to the Discipline Committee. After the conclusion of the hearing, the Discipline Committee may dismiss the application or make an order doing any one or more of the following:

1. Directing the Registrar to issue a certificate of registration to the applicant.
2. Directing the Registrar to remove the suspension of the applicant's certificate of registration.
3. Directing the Registrar to impose specified terms, conditions and limitations on the applicant's certificate of registration.

The burden of proof rests on the applicant. The standard of proof is the balance of probabilities. The statute is silent on the criteria that the Committee should apply on an application for reinstatement. However, other panels of this Committee have reviewed the considerations that may be applicable on such an application: see *Kulkarni v. C.P.S.O.* (2004) at pp. 31-32, and *Miller v. C.P.S.O.* (2004) at p. 3. These considerations include: (i) the facts giving rise to the revocation; (ii) changes in the physician's circumstances since the time of revocation; (iii) the success of the physician's rehabilitation, including insight into the past misconduct; (iv) the physician's current mental health and future prognosis; (v) the physician's current competency, skill and fitness to practice; (vi) the physician's present character; and (vii), most significantly, the public interest, particularly the protection of public. The Committee must be satisfied that the public would be adequately protected if the physician were re-admitted to practice.

Significantly, the College did not oppose this application for reinstatement, provided that a number of specified terms and conditions formed part of the Committee's order, as discussed below.

The Committee also received an impact statement written by the complainant whose complaint led to the revocation of Dr. McHugh's certificate in 2000. The Committee took note of the complainant's perspective on matters and had regard to his statement in coming to its conclusions. The Committee observed, however, that the complainant has not had any contact with Dr. McHugh for many years.

FINDINGS AND DECISION

The Committee accepted as true the filed statement of facts. Based on the evidence before the Committee, and all of the circumstances of this case, the Committee concluded that Dr. McHugh had satisfied the burden of demonstrating to the satisfaction of the Committee that he could safely be returned to the practice of medicine, subject to the imposition of specified terms, conditions and limitations on his certificate of registration, as proposed by the parties. The Committee concluded that the proposed terms and conditions provide a careful and safe framework for Dr. McHugh's re-entry to practice in a supervised manner.

It is notable that the proposed terms, conditions and limitations were largely agreed upon by both the College and Dr. McHugh. From the Committee's perspective, the terms and conditions provide safeguards to ensure that Dr. McHugh is appropriately supported, monitored and assessed in his practice, and treated for his condition. They also provide the Registrar with authority to intervene if any problems arise. The Committee concluded that these terms and conditions were appropriate in all the circumstances.

ORDER

The Committee therefore directed the Registrar to issue a certificate of registration to the applicant, Dr. McHugh, subject to the following terms, conditions and limitations:

1. Dr. McHugh will limit his practice to clinical settings that are either team-based or in which other physicians also practice. In non-team based setting, there shall be

either a physician or an administrative staff person in the same office setting while Dr. McHugh sees patients;

2. Dr. McHugh will cause workplace monitor(s) acceptable to the College, in each setting in which he practices, to execute an undertaking in the form attached to the Order as Schedule "A", prior to commencing work in any such setting;
3. At least once per month, Dr. McHugh shall see a psychiatrist who is acceptable to the College, for treatment as required. Dr. McHugh shall comply with all treatment recommendations of his psychiatrist;
4. Dr. McHugh shall cause his treating psychiatrist to execute an undertaking, in the form attached to the Order as Schedule "B", within thirty (30) days of the date of the Order;
5. If a person who has given an undertaking in the form of a Schedule to the Order is unable or unwilling to continue to fulfill its terms, Dr. McHugh shall, within 30 days, obtain an undertaking in the same form from a similarly qualified person who is acceptable to the College;
6. If any of the reports of the workplace monitor(s) or psychiatrist are not delivered or are unsatisfactory to the College, the Registrar may suspend Dr. McHugh's certificate of registration;

7. Dr. McHugh shall undergo and successfully complete to the satisfaction of the College an assessment under the direction of the College in each of his practice settings within twelve (12) months of his return to practice. The assessment will be at Dr. McHugh's expense and may include, among other things, an observation component, consultation with his workplace monitor(s) and his treating psychiatrist, and a chart review. Dr. McHugh shall comply with any recommendations of the College that result from the assessment;
8. In the event that Dr. McHugh is unsuccessful in the completion of the assessment or in complying with any recommendations that result from the assessment as determined by the College, the Registrar may suspend Dr. McHugh's certificate of registration until he successfully completes the assessment or complies with the recommendations;
9. Dr. McHugh shall pay to the College \$2,750.00 to satisfy an outstanding costs order. Such amount shall be paid within six months of the date of this order; and;
10. Dr. McHugh shall not apply to vary any of the terms of this order until at least two (2) years have passed from the date of this order.

SCHEDULE “A”**UNDERTAKING OF WORKPLACE MONITOR**

1. I am a physician and a member of the College and practice in the same setting as Dr. Sean McHugh, [or a Program Director of a Community Mental Health Team and have a close working relationship in proximity with Dr. Sean McHugh].
2. I have read the Decision and Reasons for Decision of the Discipline Committee dated July 28, 2000 in the matter of Dr. Sean McHugh. I have also read the terms, conditions and limitations imposed on Dr. Sean McHugh's Certificate of Registration as of August 16, 2005. I am also aware that Dr. Sean McHugh is being monitored to ensure that a mood disorder that has been stable for the past several years does not re-emerge to pose a risk in his practice of medicine or to his patients.
3. Upon signing this undertaking, I agree to act as a Workplace Monitor for Dr. Sean McHugh. I agree to the following:
 - (a) I will have regular (at least once per month) meetings with Dr. Sean McHugh to discuss his clinical activities and any concerns identified, which may include, at my discretion, chart reviews. I will also have regular (at least once per month) discussions with a selection of other staff members with whom Dr. Sean McHugh is involved; and
 - (b) If I notice any behaviour that has the potential to interfere with his clinical activities or the care of his patients, or if I learn that Dr. Sean McHugh is not complying with the terms, conditions and limitations on his license to practice, I will report these concerns:
 - (i) to Dr. Sean McHugh's treating psychiatrist identified under the terms of his re-licensure; and

(ii) to the College of Physicians of Surgeons of Ontario ("College").

4. I acknowledge that Dr. Sean McHugh has consented to my disclosure to his treating psychiatrist and to the College of all information necessary to fulfill my undertaking.
5. I agree to immediately inform the College in writing if Dr. Sean McHugh and I have terminated our practice relationship, or if I otherwise cannot fulfill the terms of my undertaking.

Dated at _____, this _____ day of _____, 2005.

Please print name

Signature

Witness (*print name*)

Signature

SCHEDULE "B"**UNDERTAKING OF PSYCHIATRIST FOR DR. SEAN MCHUGH
TO COLLEGE OF PHYSICIANS & SURGEONS OF ONTARIO**

1. I, _____, am a member of the College of Physicians and Surgeons of Ontario (the "College") and a psychiatrist certified by the Royal College of Physicians and Surgeons who is actively engaged in psychiatric practice.
2. I have read the Decision and Reasons for Decision of the Discipline Committee dated July 28, 2000 in the matter of Dr. McHugh. I am also aware of the terms, conditions and limitations on Dr. McHugh's certificate of registration that have been imposed by the College in response to Dr. McHugh's application for reinstatement.
3. Dr. McHugh is a patient of mine.
4. I agree to see and treat Dr. McHugh on a regular basis as his condition warrants, and in any event not less than once per month, unless one of us is on vacation in which case we will arrange for the necessary health care to continue to be provided to him.
5. If I notice anything unusual in Dr. McHugh's condition or practice or if I discover that Dr. McHugh is acting in a manner that suggests he may not be capable of practising medicine or may not be in compliance with the restrictions on Dr. McHugh's certificate of registration, referred to in paragraph 2 above, I will discuss my concerns with him and I shall immediately notify the College.
6. I agree to submit a written report to the College every six months, commencing on February 1, 2006. The reports shall contain:
 - (a) the dates that I have seen Dr. McHugh since the last report;

- (b) my evaluation of Dr. McHugh's psychiatric status and condition;
 - (c) any significant occurrences in the course of Dr. McHugh's condition;
 - (d) the maximum total weekly practice hours that I feel is appropriate for Dr. McHugh at the time of each report, taking into account all of the circumstances;
 - (e) any other information relevant to Dr. McHugh's health, or his practice of medicine, or his ability to practise medicine.
7. Dr. McHugh has consented to my disclosure to the College of all information necessary to fulfil my undertaking.
8. I agree to immediately inform in writing the College if I am unwilling or unable to fulfill any of the terms of my undertaking.

Dated at _____, this _____ day of _____, 2005.

<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> Psychiatrist (<i>Print Name</i>)	<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> Signature
<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> Witness (Print Name)	<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> Signature