

**Indexed as: Ontario (College of Physicians and Surgeons of Ontario) v.
Egles, 2015 ONCPSD 18**

**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. DIANE ELIZABETH EGLES

PANEL MEMBERS:

DR. E. STANTON (CHAIR)
D. DOHERTY
DR. P. GARFINKEL
S. BERI
DR. M. DAVIE

Hearing Date:	April 7, 2015
Decision Date:	April 7, 2015
Release of Written Reasons:	April 27, 2015

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 April 7, 2015. 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 ALLEGATIONS

The Notice of Hearing alleged that Dr. Egles committed an act of professional misconduct:

1. under paragraph 1(1)33 of 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.

The Notice of Hearing also alleged that Dr. Egles is incompetent as defined by subsection 52(1) of the Code.

RESPONSE TO THE ALLEGATIONS

Dr. Egles admitted the first allegation of professional misconduct in the Notice of Hearing, 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. Counsel for the College withdrew the allegation of incompetence.

THE FACTS

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

BACKGROUND

1. Dr. Diane Elizabeth Egles (“Dr. Egles”) graduated from McGill University’s medical school in 1980, completed her LMCC examinations in 1981 and was certified by the College of Family Physicians of Canada as a family physician in 1984. She was first granted a certificate of registration authorizing independent practice from the College of Physicians and Surgeons of Ontario (the “College”) in June, 1981. Dr. Egles has practised in south-western Ontario since 1994.
2. Dr. Egles entered into a contract with the Physician Health Program (“PHP Contract”) dated January 8, 2009, which was amended on February 11, 2009, March 5, 2009, August 9, 2009, January 12, 2010, April 13, 2010, January 12, 2011, April 6, 2011 and November 18, 2011. A copy of the PHP Contract is attached at Tab 1 [to the Agreed Statement of Facts and Admission].
3. In about August 2011, in breach of her PHP Contract, Dr. Egles wrote a prescription to herself in a colleague’s name and worked at a nursing home when her PHP contract prohibited her from working. The PHP reported these breaches to the College.
4. This led to Dr. Egles entering into an Undertaking with the College on April 16, 2012 whereby she agreed that if she failed to comply with her PHP Contract “...such action may constitute a breach of this undertaking, and an act of professional misconduct.” A copy of that Undertaking dated April 16, 2012 is attached at Tab 2 [to the Agreed Statement of Facts and Admission].

FACTS LEADING TO THIS REFERRAL TO DISCIPLINE

5. On April 18, 2013, the College received a letter from the PHP reporting that Dr. Egles was in breach of her PHP Contract and as a result, the PHP had suspended

Dr. Egles' PHP monitoring effective immediately. Dr. Egles breached her PHP Contract in the following ways:

- (a) Dr. Egles had been "shadowing" a physician at a hospital, which was a breach of the PHP Contract's occupational plan.
 - (b) Dr. Egles had not been seeing her family physician as required by her PHP Contract.
 - (c) Although Dr. Egles made it appear to her psychiatrist, her addictionologist and the PHP that her medications were being prescribed by her family physician, she ultimately admitted to the PHP, when questioned, that she was self-prescribing. The PHP Medical Director noted that "we are deeply concerned with the dishonesty inherent in this kind of behavior along with the health and safety risks attached."
 - (d) Additionally, Dr. Egles did not attend her Caduceus Group or fulfill her other obligations as frequently or as regularly as was required by the PHP Contract. A copy of the report from the PHP to the College about these breaches with relevant underlying notes is attached at Tab 3 [to the Agreed Statement of Facts and Admission].
6. The PHP Contract was terminated due to these breaches. On October 31, 2014, Dr. Egles entered into a health monitoring undertaking directly with the College which includes restrictions on her hours of work and patient load. A copy of that Undertaking is attached at Tab 4 [to the Agreed Statement of Facts and Admission].

ADMISSION

7. Dr. Egles admits the facts specified above and admits that, based on these facts, 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, contrary to paragraph 1(1)33 of O. Reg. 856/93.

FINDINGS

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts and Admission. Having regard to these facts, the Committee accepted Dr. Egles' 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 understood as a matter of law that where a penalty is proposed by way of joint submission, it should be given great weight and accepted, unless the Committee is of the view that imposing it would be contrary to the public interest and bring the administration of justice into disrepute. The Committee was of the opinion that the penalty as jointly submitted by the parties does not have this effect. The proposed penalty satisfies the principles that must be met in determining the appropriate penalty, including that the public is protected.

The Committee was mindful of the principles which guide the determination of a penalty order. Paramount among these is protection of the public. Another principle is specific deterrence, involving an effort to prevent recurrence of the member's misconduct. Also important is the principle of general deterrence, an indication to the profession of the College's determination to discourage similar misconduct, and the need to maintain public confidence in the integrity of the profession and its process of self-governance. The Committee was also aware of the principle of rehabilitation of the member.

The Committee stressed the seriousness of the misconduct in this instance in that the member contravened her undertaking to the College of April 16, 2012. Dr. Egles did so in several ways: she had been “shadowing” a physician at a hospital when not permitted to do so; she had not been seeing her family physician as required by her PHP contract, and she had made it appear to her psychiatrist and addictions specialist, and to the PHP, that her medications were being prescribed by her family physician when in fact she had been self-prescribing. She also did not attend her Caduceus Group as frequently as was required by her PHP contract.

It is the fundamental responsibility of a member to comply with an undertaking to the College. The privilege of self-regulation and the ability of the profession to self-govern in the public interest, require members to be governable and to comply with undertakings.

The Committee was concerned that this set of actions took place despite an earlier history of entering into a contract with the PHP and then subsequently breaching it. It is very important to the well-being of members to comply with contracts entered into with the PHP.

The Committee felt a significant penalty was in order, that is, a two month suspension, a reprimand, and costs. In arriving at this decision, the Committee reviewed earlier cases that involved a breach of an undertaking. While no two cases are identical, a review of five such cases showed that the penalty in this instance was appropriate. In only one of these earlier instances did the penalty not include a suspension. In that case, *CPSO v. Maytham (2002)*, the behaviour was considered to be inadvertent. The other four cases that were reviewed resulted in penalties that included a suspension, ranging from two to six months, depending on aggravating factors.

The Committee took into account several aggravating factors in this case. First, this was not Dr. Egles’ first breach, as she also did not comply with the contract she had entered into with the PHP. Second, within the undertaking with the College, Dr. Egles breached more than one condition she had agreed to.

The Committee also took into account several mitigating circumstances. This was the first time Dr. Egles had appeared before the Discipline Committee. When confronted about her behaviour, Dr. Egles readily admitted to it and cooperated throughout the investigation. She saved the College costs and the time witnesses would need to testify at a contested hearing. Dr. Egles also has demonstrated good insight into the circumstances of her behaviour. She has expressed significant remorse and it was felt she has learned from her experiences regarding competing priorities and “cutting corners”, which then lead to significant problems.

Taking these factors into account, the Committee concluded that the jointly proposed order as to penalty and costs was appropriate. The goals of specific and general deterrence have been met by the public reprimand and by the seriousness of the new undertaking which Dr. Egles entered into with the College in October 2014. The goal of public protection has been met by recording the findings in the public register. In addition, the Committee considered it appropriate that Dr. Egles pay to the College the tariff cost of \$4,460.00, for one day of hearing.

ORDER

Therefore, having stated its findings in paragraphs 1 of its written order of April 7, 2015, the Committee ordered and directed on the matter of penalty and costs that:

2. the Registrar suspend Dr. Egles’ certificate of registration for a two month period effective May 7, 2015.
3. Dr. Egles appear before the panel to be reprimanded.
4. Dr. Egles pay costs to the College in the amount of \$4,460.00 within 30 days of the date of this Order.

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

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Hearing Date:	April 7, 2015
Decision Date:	April 7, 2015
Reprimand Date:	April 7, 2015
Release of Written Reasons:	April 27, 2015

TEXT of PUBLIC REPRIMAND
Delivered April 7, 2015
in the case of the
COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO
and
DR. DIANE ELIZABETH EGLES

Dr. Egles, it is always unfortunate when a member of our profession appears before this Committee. You have been found to have committed an act of professional misconduct, which would be considered disgraceful, dishonourable or unprofessional by the members of your profession.

We recognize that a suspension is a significant penalty; however a breach of not only a PHP contract, but also an undertaking to this College is also a serious matter and will not be taken lightly. We would bring to your attention the fundamental responsibility of a member of this profession to comply with an undertaking to this College. The privilege of self-regulation and the ability of this profession to self-govern, requires members to be governable and comply with undertakings. In addition, it would have been very important to your well-being to have complied with the PHP contract.

We have reviewed the most recent undertaking that you have signed and are reassured that measures have been put in place to protect the public. Society holds physicians to a high level of responsibility, trust and honesty. You have not lived up to the societal expectation. In failing to do so, you bring disrepute to the entire profession as well as yourself.

We have heard that you have insight into your shortcomings. In moving forward, we hope that you will honour and comply with your current undertaking, and we will not see you before this Committee again. This concludes the reprimand, you may be seated.