

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Ian Davidson Graham, this is notice that the Discipline Committee ordered that there shall be a ban on the publication the identity, and any information that would disclose the identity, of patients whose names are disclosed at the hearing or in documents filed at the hearing, under subsection 45(3) of the Health Professions Procedural Code (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended.

Subsection 93(1) of the Code, which is concerned with failure to comply with these orders, reads:

Every person who contravenes an order made under ... section 45 or 47... is guilty of an offence and on conviction is liable,

(a) in the case of an individual to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence; or

(b) in the case of a corporation to a fine of not more than \$50,000 for a first offence and not more than \$200,000 for a second or subsequent offence.

Indexed as: Graham (Re)

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

IN THE MATTER OF a Hearing directed
by the Executive Committee of
the College of Physicians and Surgeons of Ontario
pursuant to Section 36(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. IAN DAVIDSON GRAHAM

PANEL MEMBERS:

**DR. C. CLAPPERTON (CHAIR)
D. EATON-KENT
DR. P. HORSHAM
B. FEVREAU
DR. W. KING**

Hearing Date:	April 16, 2009
Decision Release Date:	April 16, 2009
Release of Written Reasons:	July 2, 2009

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario (the “Committee”) heard this matter at Toronto on April 16, 2009. At the conclusion of the hearing, the Committee delivered a written order stating its finding that the member committed an act of professional misconduct and imposing penalty provisions and a cost order, with written reasons to follow.

THE ALLEGATIONS

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

under paragraph 1(1)2 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”), in that he has failed to maintain the standard of practice of the profession.

The Notice of Hearing also alleged that Dr. Graham is incompetent as defined by subsection 52(1) of the Health Professions Procedural Code, which is Schedule 2 to the *Regulated Health Professions Act, 1991*, (“the Code”), in that his care of patients displayed a lack of knowledge, skill or judgment or disregard for the welfare of his patients of a nature or to an extent that demonstrates that he is unfit to continue to practise or that his practice should be restricted.

RESPONSE TO THE ALLEGATIONS

Dr. Graham admitted to the allegation of professional misconduct, in that he failed to maintain the standard of practice of the profession. Counsel for the College withdrew the allegation of incompetence.

THE EVIDENCE

The following Agreed Statement of Facts and Admission was filed as an exhibit and presented to the Committee:

PART I – FACTS

Background

1. Dr. Ian Davidson Graham (“Dr. Graham”) is a 75-year-old psychiatrist and a member of the College of Physicians and Surgeons of Ontario (the “College”) who received a certificate of registration authorizing independent practice in Ontario in 1970. He graduated from Western University medical school in 1958.

Current Allegations

2. In April of 2007, the College was contacted by a pharmacist who was concerned about the quantities and combinations of medications prescribed by Dr. Graham for a psychiatric patient. Following receipt of this information, the College commenced an investigation into Dr. Graham’s practice and retained an expert to provide an opinion on Dr. Graham’s standard of care. The expert, Dr. A, had concerns regarding the care provided by Dr. Graham to 15 of the 18 patients whose charts he reviewed. A copy of Dr. A’s report dated December 24, 2007 is attached at Tab 1 [to the Agreed Statement of Facts and Admission].

3. Dr. A concluded that Dr. Graham failed to meet the standard of practice in his care of 15 patients in a variety of ways, including:

- prescribing medications in an unsafe manner and at levels far above the usual parameters;
- providing reports for insurance companies and referrals to other physicians that are misleading and lack significant information; and
- condoning patients’ inappropriate use of medication.

4. Dr. A also concluded that Dr. Graham demonstrated a lack of knowledge and judgment in the following areas:

- various areas of prescribing such as appropriate dosing, toxicity, and evaluating potential risks of medications;
- the behaviour of addicts;
- eliciting a history and developing a formulation;
- identifying bipolar 2 disorder;
- the tone of his letters; and
- allowing his patients to exploit his indulgence.

5. Finally, Dr. A concluded that Dr. Graham showed disregard for the welfare of his patients by:

- providing them with excessive quantities of potentially toxic drugs;
- prescribing outside his area of expertise;
- not warning patients of the potential risks of medications; and
- demonstrating minimal evidence of analysis, synthesis or any revelatory interpretation in his clinical psychoanalytic notes.

6. Dr. A concluded that Dr. Graham's clinical practice is likely to expose his patients to harm.

PART II – ADMISSION

7. Dr. Graham admits the facts in paragraphs 1 to 6 above and admits that his care of patients constituted professional misconduct under paragraph 1(1)2 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* ("O. Reg. 856/93") in that he failed to maintain the standard of practice of the profession in his care and treatment of fifteen patients between 2002 and 2007.

FINDING

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. Graham's admission and found that he committed an act of professional misconduct, in that he failed to maintain the standard of practice of the profession in his care and treatment of fifteen patients between 2002 and 2007.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for the member made a joint submission as to an appropriate order on penalty and costs. The following Agreed Statement of Facts on Penalty was filed as an exhibit and presented to the Committee:

1. In 2001, Dr. Graham received an oral caution by the Complaints Committee about the importance of providing unbiased reports to third parties that are worded in a non-judgmental manner.
2. On February 28, 2007, following an investigation into Dr. Graham's practice that raised concerns about his prescribing practices that resulted in a referral to the Discipline Committee, he entered into an undertaking with the College of Physician and Surgeons of Ontario ("the College") in which he agreed not to prescribe or issue new prescriptions for any substances listed in Schedules I-IV of the *Controlled Drugs and Substances Act*, with the exception of Meprobamate, Benzodiazepines, Zolpidem and Pemoline. A copy of the undertaking is attached at Tab 1 [to the Agreed Statement of Facts re: Penalty]. In exchange for this undertaking, the College withdrew the allegations of professional misconduct against Dr. Graham that had been referred to the Discipline Committee.
3. In his current review of Dr. Graham's practice, Dr. A acknowledged that the risk of harm to patients was decreased by the prescribing restrictions in the 2007 undertaking.

He also noted that he found no evidence that Dr. Graham had breached his 2007 undertaking.

Monitoring and Recent Practice

4. After receiving Dr. A's report, Dr. Graham advised the College through his counsel that he "would benefit from receiving further education with respect to the prescription of certain medications" and stated that he had enrolled in and attended sessions of the advanced psycho-pharmacology training course conducted at the Centre for Addiction and Mental Health in Toronto. Dr. Graham also agreed to review the language he uses in reports and letters to insurance companies and referrals to other physicians to be more objective in his handling of these matters. He conceded that he perhaps had failed to be as sceptical and cautious as he ought to be with respect to certain patients, and that he needs to be more objective and less of an advocate for his patients in communications with third parties. A letter from Dr. Graham's counsel to the College dated January 28, 2008 is attached at Tab 2 [to the Agreed Statement of Facts re: Penalty].

5. On February 26, 2008, the College issued an interim order restricting Dr. Graham's certificate of registration pending his discipline hearing. The order included the following elements:

- (i) Dr. Graham shall not prescribe any narcotics or controlled drugs and substances as defined in Schedules I to IV of the *Controlled Drugs and Substances Act*.
- (ii) Dr. Graham shall not engage in the practice of medicine without a practice monitor who will review all charts for bipolar patients together with a random sample of 10 additional charts of patients treated by Dr. Graham on a weekly basis and report regularly to the College.

A copy of the order currently restricting Dr. Graham's practice is attached at Tab 3 [to the Agreed Statement of Facts re: Penalty].

6. Subsequent to the interim order, Dr. Graham has been practising with a monitor,

who has been reporting to the College. His monitor said Dr. Graham's charts vary "from good to fair" and suggested that he take a course in history writing from the College. He has since taken the College's Medical Record-Keeping for Physicians course. Dr. B also suggested Dr. Graham take a course in psychopharmacological management of psychiatric disorders, which he has done. Dr. Graham has now decided not to take on any more patients with bipolar disorders and to concentrate on his psychoanalytic practice. Copies of the monitoring reports are attached at Tab 4 [to the Agreed Statement of Facts re: Penalty].

Penalty Considerations

The Committee accepted that the general principles to be followed in crafting an appropriate penalty include protection of the public, general and specific deterrence and rehabilitation of the physician.

The Committee was very troubled by the seriousness of the concerns expressed in the care of fifteen out of the eighteen patients whose charts were subjected to expert review. Clearly, public protection is the primary concern in this situation.

The Committee is persuaded that the goal of public protection will be served by the jointly-proposed penalty. Dr. Graham will continue to be prohibited from prescribing narcotics and controlled drugs and substances. He is prohibited from accepting in his practice any patients with bipolar disorder. Moreover, he will be subjected to a comprehensive practice assessment by an assessor selected by the College and will be required to comply with any and all recommendations resulting from that assessment. Furthermore, Dr. Graham's practice will continue to be monitored by a clinical supervisor and will be subject to unannounced inspections, with the duration of monitoring and inspections to be at the discretion of the College. The clinical supervisor will report regularly to the College or immediately if the clinical supervisor has concerns regarding public safety or regarding Dr. Graham's compliance with the terms of the penalty order.

The twin goals of public protection and Dr. Graham's professional rehabilitation will also be served by his voluntary undertaking to complete the College's Medical Record-Keeping for Physicians course and the course in advanced psychopharmacology conducted at the Center for Addiction and Mental Health in Toronto. Public protection is achieved by terms and conditions on Dr. Graham's certificate of registration that restricts his practice and through courses and assessment that address the deficits in his practice.

ORDER

The Committee therefore orders and directs that:

1. The Registrar impose immediately the following terms, conditions and limitations on Dr. Graham's Certificate of Registration:
 - (a) Dr. Graham shall not prescribe narcotics or controlled drugs and substances as defined in Schedules I to IV of the *Controlled Drugs and Substances Act*, including but not limited to all narcotic drugs, narcotic preparations, controlled drugs, benzodiazepines and other targeted substances;
 - (b) Dr. Graham shall not accept for treatment any patients with bipolar disorders. If any patients commence treatment and are subsequently identified as suffering from a bipolar disorder he shall attempt to transfer their care to another physician and will cease treating the patient within 30 days;
 - (c) At his own expense, Dr. Graham shall undergo a comprehensive practice assessment (the "CPA"), to be completed within eight months of the date of this order, by an assessor qualified to assess his practice selected by the College, and shall abide by any and all recommendations made as result of the CPA. This CPA will be conducted at Dr. Graham's sole expense;

- (d) Dr. Graham shall practice only under the supervision of a clinical supervisor approved by the College who has signed an undertaking in the form attached as Appendix A [to the order] and who has reviewed the College's expert report dated December 24, 2007. This clinical supervisor will be at Dr. Graham's expense and will report regularly to the College or immediately if the clinical supervisor has concerns regarding patient safety or regarding Dr. Graham's compliance with the terms of this order. The supervision will continue until Dr. Graham receives notice from the College that the report of the CPA has been received and considered by the College; and
 - (e) Dr. Graham shall submit to, and not interfere with, unannounced inspections of his practice(s) and patient charts by College representatives, and other College activities conducted for the purposes of assessing his compliance with these terms, conditions and limitations on his certificate of registration. All such inspections shall be at Dr. Graham's sole expense.
- 2. Dr. Graham pay to the College costs in the amount of \$3,650 within 30 days of the date of this Order.
- 3. The results of this proceeding to be included in the register.