

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Rakem, this is notice that the Discipline Committee ordered a ban on the publication or broadcasting of the name or any information that could disclose the identity of patients, and any information that could identify them referred to orally or in the exhibits 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*.

Every person who contravenes an order made under ... section 45 ... 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: Ontario (College of Physicians and Surgeons of Ontario) v. Rakem,
2017 ONCPSD 19**

**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(2) or Section 36(1) or o 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. JAMAL ALI MOHAMED H. RAKEM

PANEL MEMBERS:

**DR. P. POLDRE (CHAIR)
MR. P. PIELSTICKER
DR. D. KRAFTCHECK
MR. P. GIROUX
DR. S. YOUNG**

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

**MS E. WIDNER
MS R. AINSWORTH**

COUNSEL FOR DR. RAKEM:

**NOT REPRESENTED BY COUNSEL
APPEARED FOR HIMSELF**

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. R. COSMAN

Hearing Dates: November 4 and 7, 2016
Decision Date: May 9, 2017
Release of Written Reasons: May 9, 2017

PUBLICATION BAN

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 November 4 and 7, 2016. Dr. Rakem is not a member of the College, having resigned in August 2016. Nevertheless, the Discipline Committee proceeded, as a former member continues to be subject to the jurisdiction of the College for professional misconduct or incompetence referable to the time when the person was a member of the College. At the conclusion of the hearing, the Committee reserved its decision.

ALLEGATIONS

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

1. 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;
2. under paragraph 1(1) 30 of O.Reg. 856/93 in that he has failed to respond appropriately or within a reasonable time to a written inquiry from the College; and
3. under paragraph 1(1)33 of O. Reg. 856/93, in that he 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. Rakem 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”).

RESPONSE TO ALLEGATIONS

Dr. Rakem denied the allegations in the Notice of Hearing, that he has failed to maintain the standard of practice of the profession, failed to respond appropriately or within a reasonable time

to a written inquiry from the College, and 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. Dr. Rakem also denied the allegation that he is incompetent.

ISSUES

The issues to be decided by the Committee in this matter are as follows:

1. Did the evidence establish that Dr. Rakem is incompetent, in that he displayed a lack of knowledge, skill or judgment of a nature or to an extent that demonstrates that he is unfit to continue to practise or that his practice should be restricted?
2. Did the evidence establish that Dr. Rakem failed to maintain the standard of practice by:
 - a) inappropriately prescribing medications and/or treatments to six patients;
 - b) failing to maintain records relating to such medications and/or treatments; or
 - c) inappropriately prescribing medications and/or treatments to himself?
3. Did the evidence establish that Dr. Rakem failed to comply with the Discipline Committee's order to complete the Boundary course and that he thereby committed an act of professional misconduct that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional?
4. Did the evidence establish that, between 2014 and 2015, Dr. Rakem failed to respond to the College in an appropriate and timely manner and thus failed to cooperate with the College investigation?

BACKGROUND

Dr. Rakem received his medical training in Libya and practised there for approximately ten years starting in 1990 before emigrating to Canada. After completing orthopedic training at McMaster

University, Dr. Rakem obtained his Royal College fellowship in orthopedic surgery in 2007.

Dr. Rakem practised in the Welland area as an orthopedic surgeon, in an office practice and in the local hospital, from about 2010 to 2014. Dr. Rakem has not practised in Canada since 2014. In August 2016, he resigned from the College.

From about December 2013 to September 2015, Dr. Rakem practised in Libya and returned intermittently to Canada. Dr. Rakem was in Ontario in July 2014 for an unrelated College hearing. Dr. Rakem was also in Ontario to attend a Boundary course on March 27 and 28, 2015.

In April 2016, Dr. Rakem moved back to Canada and has been in Ontario since that time.

In March 2014, the College received a complaint from a pharmacy concerning a patient's narcotic prescription written by Dr. Rakem and a narcotic prescription written for Dr. Rakem. The College commenced a formal investigation under section 75(1)(a) of the Health Professions Procedural Code on June 9, 2014. During the investigation, five other narcotic prescriptions written by Dr. Rakem in early 2014 were obtained and reviewed.

THE EVIDENCE

The College called one expert witness and three fact witnesses. Dr. Rakem was not represented by legal counsel. Dr. Rakem appeared for himself, testified in his own defence and called no other witnesses. Documentary evidence before the Committee included an affidavit of Dr. Kevin Willits, College compliance records, pharmacy records and prescriptions, narcotics monitoring system data ("NMS"), OHIP records, patient charts, Dr. Rakem's physician practice questionnaire, received on July 21, 2014, and a letter to the College from Dr. Rakem, received on March 14, 2015.

TESTIMONY

Witness #1: Dr. Kevin Willits

Dr. Willits was accepted by the Committee as an expert in the field of orthopedic surgery without objection from Dr. Rakem.

Dr. Willits is a practising orthopedic surgeon with a 2001 fellowship from the Royal College of Surgeons of Canada. He has had an appointment with the London Health Sciences Centre since 2003 and an associate professorship with the University of Western Ontario since 2010.

Dr. Willits testified about specialty designation in treatment of upper extremity trauma and foot and ankle trauma, clinical practice in orthopedic surgery, as well as research and teaching of all medical learners, from undergraduate to post-graduate, in the field of orthopedic surgery. Dr. Willits also testified that he prescribes narcotics in his practice.

Dr. Willits obtained and reviewed patient records from the Niagara Health System and Dr. Badawi's office [the physician who took over Dr. Rakem's practice in Welland], pharmacies' prescription records, NMS data, and Ministry of Health and Long Term Care ("MOHLTC") billing records.

Dr. Willits was not cross-examined by Dr. Rakem.

The Committee found that Dr. Willits' testimony was credible and reliable.

Patient A

According to the Niagara Health System records, Dr. Rakem had seen Patient A in August, 2010 after an accident. Dr. Rakem had noted in the record the injury, exam, treatment plan, and prescription for narcotics for this patient. No other clinical records were produced, even though Dr. Rakem provided five prescriptions for long-acting narcotics to Patient A in large quantities

between March 2013 and March 2014. Dr. Willits testified that Dr. Rakem failed to maintain the standard of practice of the profession in his care of Patient A.

Dr. Willits further testified that Dr. Rakem displayed a lack of skill in prescribing large quantities of long-acting narcotics to this patient without diagnosis, assessment and treatment plan. He also testified that Dr. Rakem displayed a lack of judgement in his failure to assess the harmful risk of the narcotics to the patient through overdose and addiction and the risk of diversion of the narcotics to the public.

Patient B

In his affidavit, Dr. Willits had noted some confusion concerning the identity of this patient. It was unclear whether Patient B was the father of Patient A, or whether Patient A and Patient B was actually the same person, as had been noted in a letter from Dr. Badawi's office.

Dr. Willits testified that a record from 2010 appears to reflect a man in his 60's. No further clinical records with diagnosis, assessment, and treatment plan were provided over a three year period. However, NMS records showed that Dr. Rakem wrote narcotic prescriptions for Patient B.

Patient C, Patient D, Patient E, and Patient F

Dr. Willits testified that Dr. Rakem's care of these four patients fell below the standard of practice of the profession. NMS records showed that Dr. Rakem prescribed narcotics and controlled medication to these patients. However, there were no corresponding clinical records to justify a diagnosis, assessment, treatment plan, or use of these medications. Further, Dr. Willits testified that Dr. Rakem's inappropriate prescribing without a proper clinical assessment showed a lack of knowledge, skill and judgement, put the four patients at risk for overdose and addiction and put the public at risk of diversion of the narcotics.

Witness #2: Ms Laurie Reid

Ms Reid testified that as an experienced College compliance manager, she has monitored the completion of orders of the Discipline Committee. Ms Reid testified that, according to the Western University Workshop facilitator's report, Dr. Rakem completed part A, participation in the workshop, of a three part Boundary workshop on March 27 and 28, 2015. However, Dr. Rakem failed to complete as required by the Order of the Discipline Committee both Sections B and C of the workshop, which included the plan for changing his practice pattern and the self-evaluation of the success of the change plan.

Ms Reid testified that no exemption request was received from Dr. Rakem at Western University with respect to the uncompleted Boundaries Course. Ms Reid testified that on May 12, 2015, a letter was mailed by regular mail to Dr. Rakem to indicate his lack of successful completion of the Boundary course. Ms Reid testified further that a subsequent letter was sent to Dr. Rakem's Ancaster home address by regular mail on June 7, 2016. Ms Reid testified that Dr. Rakem did not respond to either the May 12, 2015, or the June 7, 2016 letters.

No evidence was provided to the Committee to indicate that Dr. Rakem failed to receive these two letters.

The Committee accepted Ms Reid's testimony as credible and reliable. Her testimony was based on printed records and she had no interest in the outcome of the proceedings.

Dr. Rakem did not challenge Ms Reid's testimony.

Witness #3: Ms Tammy Baarda, secretary to Dr. A. Badawi

Ms Baarda testified that she did not know Dr. Rakem, but was aware that he had practised in the location that Dr. Badawi now occupies. Ms Baarda testified that Dr. Badawi had done a locum for Dr. Rakem before she became employed by Dr. Badawi.

Ms Baarda further testified that Dr. Rakem's charts were stored in Dr. Badawi's offices, and that she personally located and retrieved the files requested by the College that were available. She said in her testimony that on July 2, 2014, she located the clinical record of Patient A and sent it to the College. Ms Baarda further noted in a letter to the College dated July 2, 2014 that Patient A and Patient B were the same person.

Ms Baarda testified that she could locate no clinical records for the other four patients of Dr. Rakem requested by the College.

The Committee accepted Ms Baarda's testimony as credible and reliable. She had no interest in the outcome of the proceedings and based her evidence on printed materials.

Dr. Rakem did not challenge the testimony of Ms Baarda.

Witness #4: Ms Melanie Carrington, College Investigation Officer

Ms Carrington testified in detail using the record of the complete College investigation that was started in March 2014. She testified that the usual practice in an investigation is that an investigator contacts a member at the telephone number or sends letters to the address indicated in the College's registration database.

Early in the College's investigation, Dr. Rakem had indicated to the College that email was the mode of communication he preferred because he was only physically present intermittently in Ontario. He indicated at the time, that he was not practising in Canada. He said that he preferred to be contacted by email because communication channels are spotty and unreliable in Libya, where he was located.

Ms Carrington testified that the College received an overseas telephone number for Dr. Rakem, which was successfully used for an early communication with Dr. Rakem in April 2014, resulting in a timely response from him.

Ms Carrington testified that the College sent emails to Dr. Rakem on April 7 and 9, 2014, and received no response. When the College telephoned the overseas number on April 11, 2014, an unknown person answered and indicated that Dr. Rakem was not available. The College telephoned back again and the repeat call went to a voicemail, where a message was left.

Ms Carrington testified that emails to Dr. Rakem's preferred g-mail address were sent on April 14, 2014, May 26, 2014, June 9, 2014 June 26, 2014, August 19, 2014 with encrypted attachments, October 15, 2014, April 14, 2015 with secure email, and April 15, 2015 with secure email.

Ms Carrington testified that a letter was sent by regular mail to Dr. Rakem's Welland address on June 4, 2014. She testified that letters were sent by regular mail to Dr. Rakem's Ancaster address on June 9, 2014, October 14, 2014, March 25, 2015, and March 26, 2015. She testified that letters were sent by registered mail to Dr. Rakem's Ancaster address on July 9, 2014 and April 29, 2015.

Ms Carrington testified on the basis of the documentary record that on April 15, 2015, one day after the secure email was sent, Dr. Rakem responded by email that he could not read the email. Dr. Rakem left a voice mail message one week later, on April 21, 2015.

Ms Carrington testified that on July 21, 2014, twelve days after the College sent a registered letter to Dr. Rakem's Ancaster address, the College received Dr. Rakem's physician practice questionnaire. On July 24, 2014, 15 days after the College sent a registered letter to Dr. Rakem, Dr. Rakem provided the requested address of his mother and confirmed that his preferred mode of communication was via his g-mail email address.

Ms Carrington testified that she received no further communications from Dr. Rakem after May 14, 2015.

On May 14, 2015, fifteen days after the College sent another registered letter to Dr. Rakem's Ancaster address, Dr. Rakem provided a letter in response to Dr. Willits' investigation. Dr.

Rakem admitted in that correspondence that he sometimes prescribed to patients when he met them on social occasions, to save them the long trip to his Welland office.

The Committee accepted Ms Carrington's testimony as credible and reliable. She had no interest in the outcome of the proceedings and she based her evidence on the printed records. Dr. Rakem did not cross-examine this witness on her testimony.

Ms Carrington testified that the College requested and received information regarding Dr. Rakem from:

- the NMS, for the period of January 2013 to June 2014;
- various pharmacies for all six patients;
- Dr. Badawi and the Niagara Health System; and
- OHIP records, from November 1, 2010 to June 30, 2014.

Witness #5: Dr. Rakem

Dr. Rakem testified on his own behalf. He said that between February 2014 and April 2016, he practised medicine intermittently in Libya, which posed communications issues, because of spotty and unreliable email and phone reception. He testified that his g-mail account was his preferred mode of communication.

Dr. Rakem's testimony concerning the serious communications difficulties in Libya, a conflict zone, was accepted as credible by the Committee.

Dr. Rakem testified that his Welland office was taken over by Dr. Badawi and that he had left his patient records there. Dr. Rakem did not know Dr. Badawi's secretary, Ms Tammy Baarda, and said he had no reason to disbelieve that she attempted to retrieve the requested records about his patients.

Dr. Rakem testified that it was his usual practice to give his records to the billing clerk for billing purposes. Dr. Rakem testified that the billing clerk lost the four patient records (Patients C, D, E,

and F). The Committee did not believe this testimony. The Committee determined that Dr. Rakem's assertion that the billing clerk lost the records seemed like a conjured self-serving supposition by Dr. Rakem to rationalize why there was a lack of records found for the patient encounters, during which he wrote prescriptions for narcotics or other controlled substances.

Dr. Rakem admitted in testimony that in 2014, he asked Dr. Al Shakman to write a prescription for a large amount of long-acting narcotics so that he could take the medications to Libya. Dr. Rakem testified that this was for his mother's use as well as for humanitarian use. Dr. Rakem testified that war-torn Libya had no available analgesia beyond Celebrex, and that his mother and others needed stronger medications. Dr. Rakem testified that he had not used these narcotics himself.

Dr. Rakem testified that he respected Dr. Willits but disagreed with his expert opinion that Dr. Rakem failed to meet the standard of care and was incompetent. Dr. Rakem testified that he has worked in varied medical contexts in both Libya and Ontario and was able to determine the standard of care in Ontario as a result of his education in McMaster and Toronto. Dr. Rakem testified that he believes his narcotic prescriptions were in keeping with what he learned from his professors in Ontario. The Committee found that Dr. Rakem's attempt to blame his professors for his failure to meet standards was not credible evidence, nor was it supported by other evidence.

Dr. Rakem testified that his caring nature compelled him to wish that all orthopedic patients had relief from pain. He testified that he had taken CME courses on pain relief. Dr. Rakem testified that he did not know that helping people with their pain by completing requests for prescriptions when in social settings, especially for long-time patients, and saving them the inconvenience of having to attend for an appointment was wrong. He said this in a letter received by the College on May 14, 2015 (exhibit #7). Dr. Rakem testified that he recognized his signature and handwriting on all of the prescriptions produced in the College's investigation and he admitted that he had written all of them. Dr. Rakem testified that he remembered only three patients.

Dr. Rakem testified that he did not finish the Boundary course, specifically the last two parts, because he believed from a conversation with an unknown course facilitator that he was not required to complete them as he was not practising. The Committee did not find this evidence credible. There was nothing in evidence or in the compliance document to support Dr. Rakem's assertions. Dr. Rakem testified that he did not request information or an exemption from either the course leaders or the College compliance officer.

LEGAL ISSUES

Burden and Standard of Proof

The Committee accepted that the College has the burden of proving allegations of professional misconduct and incompetence on a balance of probabilities, on the basis of evidence that is clear, cogent and convincing.

Incompetence

To make a finding of incompetence, the Committee must find that the member's professional care of a patient displayed a lack of knowledge, skill or judgment of a nature or to an extent that demonstrates that he is unfit to continue to practise or that his practice should be restricted.

Incompetence differs from professional misconduct in that a finding of professional misconduct will be determined on events that occurred in the past. Incompetence is assessed based on the member's care of patients in the past, but the finding that the Committee must make is a present status determination that the member is incompetent.

Failure to Maintain the Standard of Practice

A failure to maintain the standard of practice of the profession is an act of professional misconduct. The standard is defined as what is reasonably expected of the ordinary, competent practitioner in the member's field of practice. It is not necessary to find that there has been harm in order to find that there has been a failure to maintain the standard of practice of the profession.

FINDINGS

The Committee finds that Dr. Rakem is incompetent as defined by the Code. The Committee also finds that Dr. Rakem committed an act of professional misconduct in that he has failed to maintain the standard of practice of the profession, and in that he 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.

Incompetence

The Committee is satisfied that the College has proven to the required standard the allegation that Dr. Rakem is incompetent, because his professional care of five patients at issue displayed a lack of knowledge, skill or judgement of a nature or to an extent that demonstrates that he is unfit to continue to practise or that his practice should be restricted.

Knowledge

The Committee accepted Dr. Willits' testimony that Dr. Rakem made no attempt to assess Patient A's pain to justify any narcotic or appropriate alternate treatment strategies. The record showed no evaluation of the efficacy of the narcotic treatment strategy. Because there were no additional records for Patient A, other than the one initial assessment in 2010, Dr. Willits testified that Dr. Rakem displayed a lack of knowledge regarding both the necessity to provide ongoing patient assessment to justify ongoing narcotic prescriptions for four years, as well as the necessity to further recognize the inherent risks in prescribing narcotics, of overdose, addiction, and diversion.

With respect to the group of four patients, the Committee accepted Dr. Willits' testimony that Dr. Rakem displayed a lack of knowledge of the requirement to provide documentation of diagnosis, assessment, and a treatment plan for prescriptions and in not prescribing in a social setting for convenience.

Judgment

The Committee finds that Dr. Rakem showed blatant and repeated errors of judgement that speak to his disregard for the welfare of patients, their families and social acquaintances, and the public in general.

When he provided ongoing narcotics prescriptions to Patient A for at least four years without assessment, Dr. Rakem did not consider the risks to which he was exposing this patient. Dr. Rakem did not consider the potential for narcotic overdose and addiction. Dr. Rakem did not reflect on the risk to the public of diversion of narcotics.

When prescribing for Patients C, D, E, and F, as well as when he prescribed for social acquaintances, Dr. Rakem did not consider the risks of harm of his prescriptions. He did not diagnose, assess, or create a planned treatment evaluation for his patients or evaluate the risk of the narcotics prescribed.

When Dr. Rakem prescribed for himself large quantities of narcotics, he failed to consider the risk to the public afforded by transport of large quantities of narcotics to a war torn Libya. The May 2015 letter from Dr. Rakem demonstrates his lack of insight and his poor judgement: “If this practise [is] not permitted, I do not know. I am very sorry for not to follow the Guide for seen [seeing] the patients in their places.”

In summary, the Committee concluded that Dr. Rakem’s care of his patients displayed a lack of knowledge and judgment to an extent that incompetence has been proven.

Standard of Practice

The Committee relied on the expert testimony of Dr. Willits, which was not challenged in cross-examination by Dr. Rakem, in reaching its decision that Dr. Rakem failed to maintain the standard of practice in his treatment of five patients. In addition, Dr. Rakem admitted and the Committee finds that he had a narcotic prescription filled for himself that he should not have requested from a colleague, to use in Libya for his mother and others.

Patient A

The Committee finds that Dr. Rakem failed to maintain the standard of practice of the profession in the following respects:

- In 2010, Dr. Rakem established a doctor-patient relationship with Patient A with a very sparse clinical record, and failed to detail a diagnosis and treatment plan that would justify the large narcotic prescription that he issued and signed.
- Without any further clinical records to indicate assessment and review of narcotic use, Dr. Rakem continued to prescribe large quantities of narcotics from 2010 to 2014 to this patient.
- Dr. Rakem failed to appreciate that ongoing patient assessments were necessary to prevent risks of narcotics addiction, overdose, and diversion, for the repeated prescriptions noted in the NMS records, that Dr. Rakem confirmed he wrote.
- Dr. Rakem failed to appreciate that submitting to the large quantity narcotic requests of a patient in a social setting for convenience, despite not billing as indicated by the OHIP records for this patient, put the patient at risk for overdose and addiction, and put the public at risk of diversion of narcotics.
- Dr. Rakem failed to recognize his responsibility to be knowledgeable of the *Prescribing Drugs* policy of his College and instead dismissed his obligation in his letter (exhibit #7): “If this practise [is] not permitted, I do not know. I am very sorry for not to follow the Guide for seen [seeing] the pts [patients] in their places.”

Patient B

The College did not seek a finding with respect to Dr. Rakem’s care of Patient B, because of insufficient evidence. The Committee noted that Ms. Baarda said to the College in a letter that Patient A was the same person as Patient B.

Patient C, Patient D, Patient E, and Patient F

The Committee finds that Dr. Rakem failed to maintain the standard of practice of the profession with regard to these patients in the following respects:

- Dr. Rakem failed to maintain any clinical records for these four patients to show that he diagnosed or assessed them before writing prescriptions for medications, including opiate-based medications, that NMS records and Dr. Rakem himself confirmed were written by him.
- Dr. Rakem failed to comply with the practice standards of a doctor-patient relationship with these four patients, which is confirmed by his lack of clinical record, and yet he prescribed potentially harmful medications to them.
- Dr. Rakem failed to appreciate that submitting to patients' medication requests, especially narcotic requests, in a social setting for convenience sake, put the patients at risk of overdose and addiction, and the public at risk for diversion of the narcotics.
- Dr. Rakem failed to appreciate the risk to the individuals and public at large when he succumbed to social pressures in family and social settings by fulfilling medication requests of convenience put to him.
- Dr. Rakem failed to recognize his responsibility to be knowledgeable of the *Prescribing Drugs* policy of his College.
- Dr. Rakem failed to recognize his responsibility to be knowledgeable of the *Record Keeping* policy of his College and the necessity of keeping his clinical record secure.

Failure to Comply with Discipline Order to Successfully Complete the Boundary Course

The Committee found that Dr. Rakem violated an order of the Discipline Committee, in that he failed to successfully complete the Boundary Course, conduct which would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

The Committee finds that Dr. Rakem attended Part A of a three-part Boundary course on May 26 and 27, 2015 and received a fair to poor evaluation. The Committee accepted Ms Reid's

testimony and finds that Dr. Rakem did not complete the second and third parts of the Boundary course, Parts B and C.

The Committee did not accept Dr. Rakem's explanation for not completing Part B and C. There was no evidence of a request for exemption in the evaluation document or in any other compliance documents. Dr. Rakem confirmed that he did not request an exemption from the College's compliance monitor in response to letters sent to him on May 12, 2015 and June 7, 2016. The Committee finds that Dr. Rakem could have completed Part B at the time it asked for Dr. Rakem's proposed plan for changes to his practice after participating in Part A of the course. The Committee finds that Dr. Rakem had ample time to request an exemption from Part C, the self-evaluation of his Plan B implemented in practice, before June 7, 2016.

Failure to Respond in a Timely Manner and Cooperate with College Requests

The Committee finds the allegation that Dr. Rakem failed to respond appropriately or within a reasonable time to a written inquiry between 2014 and 2015 from the College is not proven.

In coming to this decision, the Committee relied on the testimony of Ms Carrington and based its findings on the following:

- As noted, Dr. Rakem was in war-torn Libya during much of the time between 2014 and April 2015, when communication was not reliable.
- Despite the communication difficulties in Libya, there was evidence that Dr. Rakem did respond when he was able.
- The usual mode of communications used by College for privacy reasons is letter or telephone. Dr. Rakem requested and received email communications in Libya.
- Ms Carrington testified that a telephone number in Libya to reach Dr. Rakem was used with a timely response in April 2014. On April 11, 2014, someone answered when the telephone number was called and said that Dr. Rakem was not available.
- Registered letters for Dr. Rakem were addressed by him in a timely manner.

- The encrypted secure email sent to Libya received a response from Dr. Rakem that technology in Libya did not support this type of email, a reasonable observation in the communication challenged location of war-torn Libya.
- The Committee accepted that with the long gaps in time between April 14, 2014 and July 21, 2014 and between Aug 19, 2014 and April 15, 2015, Dr. Rakem communicated when he was able, given the spotty and unreliable communications in war-torn Libya. The Committee concludes based on the evidence that Dr. Rakem was not intentionally avoiding and obstructing the College. Proof of emails received was missing. The responsibility to keep in touch with the College is Dr. Rakem's and this finding is not an excuse for a member not doing so. The special circumstances of communication difficulties in a war zone are recognized as exceptional in this case, in the period between April 14, 2014 and April 15, 2015.

In summary, the Committee finds that Dr. Rakem's testimony provided a plausible explanation for the lack of timeliness of his responses in that period.

The Committee directs that the Hearings Office schedule a penalty hearing pertaining to the findings made at the earliest opportunity.

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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 ... 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
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2018 ONCPSD 34**

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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. JAMAL ALI MOHAMED H. RAKEM

PANEL MEMBERS:

**DR. P. POLDRE (CHAIR)
MR. P. PIELSTICKER
DR. D. KRAFTCHECK
MR. P. GIROUX
DR. S. YOUNG**

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS R. AINSWORTH

COUNSEL FOR DR. RAKEM:

**NOT REPRESENTED BY COUNSEL
MEMBER DID NOT APPEAR**

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. R. COSMAN

Penalty Hearing Date: January 4, 2018
Penalty Decision Date: January 4, 2018
Release of Written Reasons: July 4, 2018

PUBLICATION BAN

PENALTY DECISION AND REASONS FOR DECISION

On May 9, 2017, the Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario found that Dr. Rakem is incompetent as defined by the Health Professions Procedural Code (the Code). The Committee also found that Dr. Rakem committed an act of professional misconduct, in that he has failed to maintain the standard of practice of the profession, and in that he 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.

On January 4, 2018, the Committee heard evidence and submissions on penalty and costs, and delivered its penalty and costs order with written reasons to follow.

DR. RAKEM’S NON-ATTENDANCE AT THE HEARING

Dr. Rakem did not attend the penalty hearing and no one attended on his behalf.

The College called Ms Carolyn Gora, Manager of Hearings Office, to testify at the hearing. Ms Gora testified regarding Hearings Office communications to Dr. Rakem’s preferred email address and all other written communication, case teleconference communication, and telephone communication, from the release of the Committee’s decision and reasons on finding on May 9, 2017 until the date of the penalty hearing. Ms Gora testified that on June 11, 2017, Dr. Rakem offered an email address as his sole mode of communication with the College.

The Committee found that the Hearings Office used all reasonable communication strategies to provide Dr. Rakem with proper notice and the schedule for the penalty hearing. The Committee was aware that Dr. Rakem had resigned his certificate of registration to practise in Ontario in 2016. The Committee was also aware of its responsibility to complete the discipline hearing, as Dr. Rakem was still under the jurisdiction of the College. The Committee concluded that it was appropriate and in the public interest to proceed with the penalty hearing, despite Dr. Rakem’s non-attendance, and the Committee proceeded with the penalty hearing.

SUBMISSIONS ON PENALTY AND COSTS

The College sought revocation of Dr. Rakem's certificate of registration, a reprimand, and hearing costs in the amount of \$22,000.00.

PENALTY DECISION AND REASONS

In determining the appropriate penalty and costs order, the Committee was guided by well-established penalty principles:

- protection of the public is the paramount consideration;
- maintenance of public confidence in the integrity of the profession and the College's ability to regulate the profession in the public interest;
- specific deterrence of the member and general deterrence of the members of the profession;
- rehabilitation of the member, where appropriate.

In light of these principles, the Committee found that the proposed penalty was appropriate in this case.

Protecting the Public

Seriousness of the Misconduct and Incompetence

The Committee found that Dr. Rakem is incompetent. Dr. Raken demonstrated a lack of knowledge and judgement in his treatment of five patients and a failure to recognize the risks of his prescribing practices to individual patients and the public at large. Regarding Patient A, he did not conduct an assessment to justify the initiation of narcotic treatment or ongoing prescribing of narcotics over a four year period. Dr. Rakem displayed a lack of knowledge regarding recordkeeping and prescribing standards, including not prescribing in a social setting

for convenience and for social acquaintances. Dr. Rakem did not consider or evaluate the risk of the narcotics prescribed and failed to recognize the risks of overdose, addiction, and diversion. In prescribing large quantities of narcotics to himself to transport to a war torn country, he failed to consider the broader risk to the public. The Committee found that Dr. Rakem showed blatant and repeated errors of judgement that demonstrated a disregard for the welfare of patients, their families and social acquaintances, and the public.

The Committee found that Dr. Rakem failed to maintain the standard of practice of the profession in his care of these five patients. Dr. Rakem prescribed large quantities of long-acting narcotics without diagnosis, assessment or a treatment plan. He failed to recognize the inherent risks in prescribing narcotics, of overdose, addiction and diversion. He failed to maintain adequate records for one patient, and any records for four patients. The Committee determined that Dr. Rakem attempted to justify his prescribing deficiencies and a lack of consideration of the risks inherent in prescribing as being in line with other colleagues and professors. He shifted responsibility for the lack of any patient records for four of the five patients to others in the office, such as his billing personnel. The Committee found that Dr. Rakem's excuses were self-serving and demonstrated that he had little or no insight into what the Committee found to be clear deficiencies in his practice.

The Committee also found that Dr. Rakem engaged in disgraceful, dishonourable and unprofessional conduct, by failing to comply with the previous Discipline Committee order to successfully complete the Boundary Course. Dr. Rakem not only failed to complete Part B and C of the Boundary Course, but tried to shift accountability by testifying that an unknown instructor told him that he need not fully comply.

The Committee concludes that Dr. Rakem does not demonstrate responsibility and accountability for his actions and that to allow him to practise medicine in any capacity would not serve the public interest and, in fact, would pose significant risk of harm to patients and the public in general.

Maintaining Public Confidence

The Committee finds that Dr. Rakem's behaviour and lack of insight demonstrate a lack of governability and call for significant sanction to maintain public confidence in the integrity of the profession and the College's ability to regulate the profession in the public interest.

Dr. Rakem displayed a lack of regard for a Committee order. Dr. Rakem displayed a complete lack of regard for the College's processes, by failing to respond to the College's Hearings Office from May 9, 2017 to the date of the penalty hearing, except with a terse email in June 2017. Dr. Rakem further demonstrated his lack of respect for the College by his failure to attend at the penalty hearing and his failure to provide any reasonable explanation for his non-attendance.

The Committee determines that revocation of Dr. Rakem's certificate of registration is the only penalty that would maintain public confidence in the integrity and regulation of the profession.

General and Specific Deterrence

The Committee recognizes that revocation is a very serious penalty, and concludes that it is justified in this case, given the Committee's findings regarding Dr. Rakem's lack of knowledge and judgment, the deficiencies in his narcotic prescribing and recordkeeping practices, his lack of insight into his deficiencies and his failure to comply with a Committee order.

Revocation of Dr. Rakem's certificate of registration addresses the profession's abhorrence of his behaviour, and the consequences that must follow from the serious professional misconduct and incompetence demonstrated by him.

A reprimand provides the opportunity for the Committee to directly express its denunciation of Dr. Rakem's misconduct in a public forum.

Potential for Rehabilitation

Integrity is a core value of the profession and the willingness to self-evaluate and address areas of weakness in one's medical care is part of an ongoing professional responsibility that is the norm for physicians in this province.

The Committee recognizes that Dr. Rakem had the right to deny the allegations and mount a defence. However, the discrepancy between the objective evidence and Dr. Rakem's rationale for his behaviour was so blatant that the Committee finds that he displays a shocking lack of insight and that there is no potential for remediation.

If a physician has no insight into his deficiencies and no willingness to change, remediation is not possible. The Committee finds that Dr. Rakem showed no willingness to change or plan for change, by failing to complete the Boundary Course, by not recognizing his narcotic prescribing deficiencies, and in failing to offer any remediation plan, in light of the Committee's findings of professional misconduct and incompetence in May 2017.

Prior Discipline Finding

The Committee accepted as an aggravating factor Dr. Rakem's discipline finding in 2014 in relation to sexual abuse of a patient, which took place only two years before the events giving rise to the present discipline hearing.

Mitigating Factors

The Committee found no mitigating factors in this case.

Case Law

The Committee received a Brief of Authorities from the College, including the following cases: *CPSO v. Hill* (2017), *Kamermans, Re* (2016), *CPSO v. Bhardwaj* (2006) and *CPSO v. Liberman*

(2012). The Committee considered these cases in determining the appropriate penalty in this case.

COSTS

The Committee found this to be an appropriate case to order that Dr. Rakem pay to the College its costs for two days of hearing on finding, one day of hearing on penalty, and one day of hearing scheduled for Dr. Rakem's motion to adjourn, which was cancelled without notice, for a total amount of \$22,000.00. The Committee recognizes that this cost amount does not cover all costs incurred by the College to conduct the hearing.

ORDER

In its Order of January 4, 2018, the Committee ordered and directed on the matter of penalty and costs, that:

1. Dr. Rakem appear before the panel to be reprimanded.
2. the Registrar revoke Dr. Rakem's certificate of registration, effective immediately.
3. Dr. Rakem pay to the College its costs of this proceeding in the amount of \$22,000.00, within thirty (30) days from the date of this Order.

TEXT of PUBLIC REPRIMAND
Delivered September 12, 2018
in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
and
DR. JAMAL ALI MOHAMED H. RAKEM

Dr. Rakem,

The Committee must condemn your misconduct with respect to your prescribing significant quantities of narcotic drugs to patients for whom you did not provide ongoing re-assessment of their condition or, even more intolerable, for whom you have no patient records at all. You failed to recognize the risk to patients of addiction and you did not consider the risk that diversion of narcotic prescriptions poses to the public.

Your practice of giving prescriptions in a non-clinical setting, such as a mosque, is a seriously misguided lack of judgment on your part, as is your feeble explanation that such an unprofessional practice would be more convenient for the recipient of the prescription.

Your failure to successfully complete the boundaries issues course demonstrates a careless lack of understanding the principles of continuing education and it displays your poor communications skills when you did not seek to clarify your initial misunderstandings with both the course organizers and your professional regulator.

The Committee is mindful of the personal challenges you and your family have experienced while living and practicing in the unstable circumstances of Libya, but that cannot be an excuse for your behaviour that must be judged by the standards expected in Ontario. All physicians must abide by the professional practice policies as established by your regulator. Prescribing for oneself and family members is clearly against these policies and cannot be tolerated.

The Committee accepts the unchallenged assertions of an expert peer that your clinical practice displayed a lack of knowledge, skills and judgment, thus rendering you incompetent to practice. Protection of the public is the paramount responsibility of the College.

This is not an official transcript