

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Edward James Smith, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the name and any information that could disclose the identity of the Complainant referred to orally or in the exhibits filed at the hearing 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: Ontario (College of Physicians and Surgeons of Ontario) v. Smith, 2020 ONCPSD 35

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

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

B E T W E E N:

COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. EDWARD JAMES SMITH

PANEL MEMBERS:

**DR. PAMELA CHART (CHAIR)
MR. JOSE CORDEIRO
DR. STEPHEN HUCKER
MS LINDA ROBBINS
DR. ROBERT SMITH**

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS ELISABETH WIDNER

COUNSEL FOR DR. SMITH:

MR. JAMIE MACDONALD

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MS ZOHAR LEVY

**Hearing date and Decision date:
Release of Reasons Date:**

**July 21, 2020
August 21, 2020**

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario (“the College”) heard this matter via videoconference on July 21, 2020. At the conclusion of the hearing, the Committee released a written order stating its finding that the member committed an act of professional misconduct and setting out its penalty and costs order with written reasons to follow. These are the Committee’s reasons for decision.

THE ALLEGATION

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

1. under paragraph 1(1)34 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, in that he engaged in conduct unbecoming a physician.

RESPONSE TO THE ALLEGATION

As set out below, Dr. Smith admitted that he has committed an act of professional misconduct under paragraph 1(1)34 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, in that he engaged in conduct unbecoming a physician.

THE FACTS

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

BACKGROUND

1. Dr. Smith is a 64-year-old family physician who received his certificate of registration authorizing independent practice in Ontario in 1982.
2. At the relevant times, Dr. Smith practised in a solo practice in Ottawa, Ontario.

FACTS

i. Background to the complaint

3. In January 2018, the Complainant was diagnosed with Stage 4 colon cancer.
4. The Complainant is not a patient of Dr. Smith's and has never met Dr. Smith in a physician-patient capacity. Dr. Smith did not have access to any medical records for the Complainant and had only heard rumours that the Complainant had been diagnosed with colon cancer. The Complainant's only connection to Dr. Smith is that, at the relevant times, the Complainant was Chair of the Board of Directors of a company in which Dr. Smith was a shareholder.
5. Beginning in approximately April 2019, Dr. Smith became dissatisfied with decisions taken by the Board of Directors. He was particularly dissatisfied with what he perceived as the Complainant's role as Chair in various decisions that had a negative effect on Dr. Smith's position as shareholder in the company.

ii. Complaint to the College – May 29, 2019

6. On May 29, 2019, the Complainant contacted the College to complain that Dr. Smith had disclosed personal health information of the Complainant in emails and online posts. The Complainant also complained that Dr. Smith had made veiled threats

to the complainant and his family. Attached at Tab 1 to the Agreed Statement of Facts is a copy of the Complainant's letter dated May 29, 2019, with attachments.

iii. Dr. Smith's email and posts regarding the Complainant

7. On April 24, 2019, Dr. Smith sent an email to the Complainant from his email address edpainaway@gmail.com. The email message was as follows: "If I was dying of stage 4 colon cancer at the end of my life I would do good instead hurting thousands of households", attached at Tab 1 to the Agreed Statement of Facts, p. 3.

8. The email address edpainaway@gmail.com is the email address used by Dr. Smith in his communications with the College. It is the email address listed on Dr. Smith's physician profile.

9. Between April 24, 2019 and May 29, 2019, Dr. Smith authored and posted six online posts on "Stockhouse.com", a website that is publicly accessible. The messages were posted anonymously under the name "edrose", an online name used by Dr. Smith.

10. In the online posts, Dr. Smith referred to the Complainant by name and commented on his colon cancer diagnosis. The posts are attached at Tab 1 to the Agreed Statement of Facts, pp. 4 to 9.

11. The posts include the following comments:

April 24, 2019: "he [the Complainant] will bring [a company] to nasdaq before he dies of cancer" [NOTE: "[redacted]" is the name of a company and "nasdaq" refers to Nasdaq, a stock exchange based in New York].

April 24, 2019: "if its true [the Complainant] as [sic] stage 4 cancer there is justice since this person doesn't care that he destroyed life's [sic] of thousands

of real estate investors you would think when you [sic] dying you would to do good last part of life and not bad”

May 3, 2019: “I hope nobody loses it and starts hurting them or their family that wouldn’t reflect well on investors”

May 7, 2019: “Can someone confirm that [Complainant] as [sic] stage 4 colon cancer”

May 14, 2019: “Can someone confirm that [Complainant] as [sic] stage 4 colon cancer”

May 28, 2019: “Can someone confirm that [Complainant] as [sic] stage 4 colon cancer”

ADMISSION

12. Dr. Smith admits the facts specified above, and admits that, based on these facts, he has committed an act of professional misconduct as follows:

1. under paragraph 1(1)34 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, in that he engaged in conduct unbecoming a physician.

FINDING

The Committee accepted as correct all of the facts set out in the Agreed Statement of Facts. Having regard to these facts, the Committee accepted Dr. Smith’s admission and found that he committed an act of professional misconduct under paragraph 1(1)34 of Ontario Regulation 856/93, in that he engaged in conduct unbecoming a physician.

PENALTY AND REASONS FOR PENALTY

Agreed Facts on Penalty

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

1. On October 4, 2019, the Discipline Committee found that Dr. Smith 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 and that he failed to maintain the standard of practice of the profession. The Decision and Reasons of the Discipline Committee dated October 4, 2019 is attached at Tab 1 to the Agreed Statement of Facts Regarding Penalty.
2. Further to the Discipline Committee's Order, Dr. Smith is registered for the PROBE course on ethics and professionalism on November 12-14, 2020. Completion of the course was delayed, with the approval of the College, due to the current pandemic.

JOINT SUBMISSION

Counsel for the College and counsel for Dr. Smith made a joint submission as to an appropriate penalty and costs order.

The Committee reviewed the evidence and considered the proposed penalty. The Committee is aware that the law requires that the joint submission be accepted unless to do so would be contrary to the public interest or would bring the administration of justice into disrepute (*R. v. Anthony-Cook*, 2016 SCC 43).

Aggravating Factors

Although Dr. Smith made his remarks anonymously and had no professional contact with the Complainant, or actual knowledge of the Complainant's medical condition, as a physician he must have known that the dissemination of unverified personal medical information would have been upsetting to the Complainant. His conduct in this regard was unacceptable. Dr. Smith's reprehensible behaviour damaged his own personal and professional integrity and reflected poorly on the profession as a whole. The Committee therefore considered the nature of the misconduct to be an aggravating factor.

The Committee noted that Dr. Smith had appeared before the Discipline Committee in 2019, on an unrelated matter. Both in general and in this case, a prior history before the Discipline Committee is an aggravating factor. Here, the fact that this was Dr. Smith's second appearance is aggravating, as it shows a persistent lack of judgment, although the conduct was unrelated.

Mitigating Factors

In mitigation, it is noted that Dr. Smith's acknowledgement of his inappropriate behaviour spared the Complainant the additional stress and the inconvenience of testifying before the Committee, and avoided the hearing being prolonged.

Dr. Smith's voluntary commitment to completing the PROBE course as described above is also a mitigating factor.

Penalty Principles

In considering the proposed penalty, the Committee must bear in mind a number of fundamental principles: protection of the public; maintaining the integrity of the profession and public confidence in the College's ability to regulate the profession in the

public interest; specific deterrence; general deterrence; and where applicable or appropriate, rehabilitation. Other principles include denunciation of the misconduct and proportionality.

Previous cases

To assist the Committee in its deliberations, previous cases decided by the Discipline Committee of the College were presented by the parties. Although prior Committee decisions are not binding as precedent, the Committee has accepted as a principle of fairness that, generally, like cases should be treated alike.

Four of the cases presented arose in a similar context to each other: a dispute between the Ontario Medical Association (OMA) and the provincial government over remuneration. Many physicians were very dissatisfied with the situation and a small number made angry responses. A very small number made angry comments on social media that were inappropriate and all four physicians admitted that they had engaged in conduct unbecoming a physician.

Dr. Drone (*CPSO v. Drone*, 2018 ONCPSD 38) was one of those physicians. The jointly submitted penalty in that case was a one month suspension and a reprimand. Before the hearing, Dr. Drone had completed the PROBE Ethics and Boundaries course for physicians, as well as Professional Communication coaching. If he had not already taken those steps, the penalty would likely have included that educational component as well, to be consistent with prior decisions.

Dr. MacIver (*CPSO v MacIver*, 2020 ONCPD 10) also engaged in inappropriate communications on social media. He also completed the PROBE course prior to the hearing. He received a one month suspension and a reprimand.

Dr. Tjandrawidjaja (*CPSO v. Tjandrawidjaja*, 2018 ONCPSD 39) sent four inappropriate emails to the then President of the OMA which were also read by OMA staff. Dr. Tjandrawidjaja completed one-to-one Professional Communications coaching prior to the hearing. The Committee ordered that he receive a reprimand and pay costs.

Dr. Goodwin (*CPSO v. Goodwin*, 2018 ONCPSD 44) similarly sent emails and made other online comments to the then President of the OMA. His comments were described by the Committee as “abhorrent and unprofessional ... sexually insulting”. Dr. Goodwin’s certificate of registration was suspended for one month; further, he was ordered to pay costs, satisfactorily complete a PROBE course on ethics and professionalism, and receive a reprimand.

One further case was provided, which did not involve the dispute with the OMA. In that case, (*CPSO v. Sutherland*, 2007 ONCPSD 2), Dr. Sutherland gave sensitive personal health information about the complainant (who was not his patient) to the police. Some of his comments were found to be disparaging and unverified. The Committee considered this case to be similar to that of Dr. Smith, especially as both doctors’ comments were made in a non-practice setting. While the misconduct in the *Sutherland* case was found to be relevant to the practice of medicine and therefore qualified as dishonourable, disgraceful, or unprofessional conduct, and the misconduct here is that Dr. Smith engaged in conduct unbecoming a physician, the issue of professionalism is the same in both cases, so the penalty in that case is relevant, as the Committee wishes to treat like cases alike. Dr. Sutherland was ordered to attend before the Committee for a reprimand and to pay costs.

CONCLUSION

In light of the case law and the factors set out above, the Committee found that the penalty of a reprimand was appropriate, and further that it was appropriate to impose an order for costs in the amount of \$6,000.00

ORDER

The Committee stated its findings in paragraph 1 of its written order of July 21, 2020. In that order, the Committee ordered and directed on the matter of penalty and costs that:

2. **THE DISCIPLINE COMMITTEE ORDERS** Dr. Smith to attend before the panel to be reprimanded.
3. **THE DISCIPLINE COMMITTEE ORDERS** Dr. Smith to pay costs to the College in the amount of \$6,000 within 30 days of the date of this Order.

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

TEXT of PUBLIC REPRIMAND
Delivered July 21, 2020
in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
and
DR. EDWARD JAMES SMITH

Dr. Smith:

As a physician and member of the College, you hold a privileged position in society; with that there is the expectation that you will demonstrate social responsibility by your words and actions. The public places great trust in the medical profession and we must be worthy of and not abuse that trust. As a mature physician with many years of practice, this should be self-evident.

This panel of the Discipline Committee finds you to be woefully lacking in judgment when you made inappropriate remarks in your emails and on line postings regarding the complainant in this matter. This included personal health information made in a public forum and veiled threats, both of which are offensive and unacceptable. Even though the complainant was not your patient or a professional colleague, your actions bring dishonour on the profession and are inexcusable.

It is of concern that this is not the first time you have appeared before the Discipline Committee. While the nature of the prior misconduct is different than the matter before us, the issue of lack of judgment is a common factor. You must not lose sight of the implications of your words and actions. The panel trusts that the fact you find yourself here and subject to this reprimand will illustrate clearly that unprofessional behavior will not be tolerated.

This is not an official transcript