

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Colin Peter Sinclair, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity or any information that could disclose the identity of the patients referred to in 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: Ontario (College of Physicians and Surgeons of Ontario) v.
Sinclair, 2015 ONCPSD 8**

**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. COLIN PETER SINCLAIR

PANEL MEMBERS:

**DR. E. STANTON (CHAIR)
D. GIAMPIETRI
DR. P. GARFINKEL
DR. E. ATTIA (Ph.D.)
DR. H. SCULLY**

Hearing Date: October 15, 2014
Decision Date: October 15, 2014
Release of Written Reasons: March 2, 2015

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 October 15, 2014. 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. Sinclair committed an act of professional misconduct:

1. under clause 51(1)(a) of the Health Professions Procedural Code (“the Code”) which is Schedule 2 to the *Regulated Health Professions Act, 1991*, in that he has been found guilty of an offence that is relevant to his suitability to practice;
2. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“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; and
3. under paragraph 1(1)34 of O. Reg. 856/93, in that he has engaged in conduct unbecoming a physician.

RESPONSE TO THE ALLEGATIONS

Dr. Sinclair admitted the allegations in the Notice of Hearing.

THE FACTS

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

Background

1. Dr. Sinclair was issued a certificate of registration authorizing independent practice in Ontario on June 15, 1976. He practiced medicine in Windsor, Ontario until February 1, 2011.
2. Dr. Sinclair's certificate of registration expired on August 15, 2013.

Criminal Charges under the *Controlled Drug and Substances Act* and the *Criminal Code*

3. On June 20, 2008, Dr. Sinclair was charged with 5 counts of possession of controlled substances for the purposes of trafficking contrary to section 5(2) of the *Controlled Drugs and Substances Act*, S.C. 1996, c.19 (the "*Controlled Drugs and Substances Act*"). The controlled substances were prescription narcotics including oxycodone and hydromorphone. A copy of the indictment dated March 17, 2009 setting out the trafficking charges (the "Trafficking Offences") is attached at Tab 1 (to the Agreed Statement of Facts).
4. On January 22, 2008 Dr. Sinclair was charged in an 89 count indictment under the *Criminal Code of Canada*, R.S.C. 1985, c. C-46 (the "*Criminal Code*") alleging 52 counts of fraud and 37 counts of drawing a document without authority. The allegations related to issuing prescriptions for narcotics for patients who did not receive the prescription and for billing insurers and the Ministry of Health and Long Term Care ("MOHLTC") for such prescriptions. A copy of the indictment setting out the fraud charges dated August 11, 2011 (the "Fraud Offences") is attached at Tab 2 (to the Agreed Statement of Facts).

Criminal Proceedings and Admissions in the Superior Court of Justice

5. A trial of the criminal charges was held before the Honourable Justice S. Campbell in Windsor, Ontario in 2011 and 2012.
6. In the criminal proceedings, Dr. Sinclair admitted that he committed the offences for which he was charged.

7. With respect to the Trafficking Offences, Dr. Sinclair admitted the facts set out in the “Criminal Code Section 655 Admissions” attached at Tab 3 (to the Agreed Statement of Facts). The admitted facts establish, among other things, that:
- (a) On June 19, 2008, Dr. Sinclair had in his medical office 14,092 tablets of controlled drugs (oxycodone and hydromorphone) with a street value of \$462,880.00. The controlled substances were not required for Dr. Sinclair’s medical practice and were in his possession contrary to the *Controlled Drugs and Substances Act*; and,
 - (b) On June 19, 2008, Dr. Sinclair had in his home: (i) cash exceeding \$400,000.00 CAD (the total Canadian funds found in his basement was \$50,470.00 and the total of U.S. funds found in the basement was \$366,560.00); and, (ii) sports memorabilia with an estimated value of \$500,000.00.
8. With respect to the Fraud Offences, Dr. Sinclair admitted the facts set out in the “Agreed Statement of Facts” from the criminal proceedings attached at Tab 4 (to the Agreed Statement of Facts). The admitted facts establish, among other things, that:
- (a) Between January 2005 and April 2008, Dr. Sinclair prepared prescriptions for narcotics for 37 of his patients and presented the prescriptions to Pharmacy 1. Dr. Sinclair had included notations on some of these prescriptions such as “early ok”, “3 months’ vacation Florida”, “gone away three months”;
 - (b) In each case, the patient named in the prescription was not actually seen by Dr. Sinclair in the period in question. The prescriptions written for those patients were later filled by a person other than the named patient at the pharmacy, and the named patient did not receive the prescribed drugs.
 - (c) In the ordinary course, Dr. Sinclair’s patients received drug benefits from services such as Green Shield, Assure, Blue Cross and the MOHTLC. The insurers and/or the MOHLTC paid monies to either or both the patients named in the prescription or the pharmacy issuing the prescription. Both the insurers and the MOHLTC paid the monies believing the prescription for narcotics written by Dr. Sinclair for

his patients were legitimate. Neither the insurers nor MOHLTC would have paid any amount had they known the prescriptions for narcotics were drawn without proper authority.

(d) The following entities were defrauded:

Greenshield:	\$145,951.70
Ministry of Health and Long Term Care:	\$ 62,381.00
Assure:	\$ 4,163.00
Ontario Blue Cross:	\$ 10.90

9. Dr. Sinclair acknowledges his admissions in the criminal proceeding set out in Tab 3 and Tab 4 (to the Agreed Statement of Facts), and his admission in the criminal proceeding that he committed the offences for which he was charged, and adopts these admissions in this proceeding.

Criminal Convictions and Findings of Guilt

10. In the criminal proceeding, Dr. Sinclair admitted that he committed the offences for which he was charged.
11. In reasons for judgment issued on September 7, 2012 Campbell, J. found the accused fully understood the crimes he was committing and their consequences. As set out in the Reasons of Campbell J at Tab 5, Tab 6 and Tab 7 (to the Agreed Statement of Facts), Dr. Sinclair was convicted of the following:
- (a) 5 counts of possessing a substance included in Schedule I of the *Controlled Drugs and Substances Act* for the purposes of trafficking;
 - (b) 25 counts of fraud over \$5000 contrary to section 380(1) of *the Criminal Code*;
 - (c) 27 counts of fraud under \$5000 contrary to section 380(1) of the *Criminal Code* (4 counts of which were subsequently withdrawn);
 - (d) 37 counts of drawing a document without authority contrary to section 374(a) of the *Criminal Code*, (the conviction of which was stayed).

Criminal Sentence

12. In his reasons for sentence released February 8, 2013 (Tab 6 to the Agreed Statement of Facts), Campbell J noted:

...The accused's crimes were ones of opportunity. That is, the accused, because of his medical license and standing in the community had the necessary skills and privileges to commit these offences. He was not a user of these drugs. He was motivated entirely by profit.....

The abuse of prescription medication of the type the accused had in his possession is a serious problem in our community and in our country. The accused had in his possession over 14,000 pills. [The Agreed Facts] demonstrate that over the period of time that the fraud offences were committed, 2 ½ years, the accused acquired over a 100,000 pills..... It is a reasonable inference from these facts to conclude the accused received substantial financial benefit from his criminal activity.

With respect to the [mitigating factors], the accused had no criminal record, was a diligent family physician, suffers from major depressive disorder and expresses regret with respect to the impact the actions have had on his family. At his age this conviction and any sentence will have a very significant impact on the accused. This will include forfeiture of his medical license. The accused has been on a form of bail for a significant period of time. The bail was restrictive and I find contributed to the accused's decision to surrender his medical license. The court has not been made aware of any breaches of the terms of release.

The aggravating factors include the nature and quantity of the substances which were in his possession, the quantity of drugs he required through this scheme, the fact that the scheme perpetrated involved a breach of trust in which he utilized his position as a physician to obtain drugs, and the fact that the purpose of this scheme was entirely for commercial purposes.

13. On February 8, 2013, Dr. Sinclair was sentenced to:
- (a) a period of jail for five years;
 - (b) a restitution order in favour of:
 - (a) Greenshield in the amount of \$145,951.70
 - (b) The Ministry of Health and Long Term Care \$62,819.20
 - (c) Assure \$4,163.39
 - (d) Ontario Blue Cross \$10.90

14. Dr. Sinclair was released from Pittsburgh Penitentiary in or around July 22, 2014 and is presently residing at a half-way house in Windsor, Ontario serving his sentence.

ADMISSION

15. Dr. Sinclair admits the acts upon which his criminal convictions were based and admits the facts set out in paragraphs 1-14 above.
16. Dr. Sinclair admits that the conduct described above constitutes professional misconduct and admits he has engaged in professional misconduct in that:
 - (a) he has been found guilty of an offence relevant to his suitability of practice contrary to clause 51(1)(a) of the *Health Professions Procedural Code*, Schedule 2 to the *Regulated Health Professions Act*, 1991 S.O. 1991 c.18;
 - (b) he has committed an act or an omission relevant to the practice medicine that having regard to all the circumstances would reasonably be regarded by members as disgraceful, dishonourable and unprofessional, contrary to paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”); and
 - (c) under paragraph 1(1)34 of O. Reg. 856/93, in that he has engaged in conduct unbecoming a physician.

FINDINGS

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts. Having regard to these facts, the Committee accepted Dr. Sinclair’s admission and found that he committed an act of professional misconduct in that: (i) he has been found guilty of an offence that is relevant to his suitability to practice; (ii) 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; and, (iii) he has engaged in conduct unbecoming a physician.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for the member made a joint submission as to an appropriate penalty order. In considering the proposal, the Committee reviewed the nature of the misconduct as set out in the Agreed Statement of Facts and its consequences to the public and the profession. The Committee was mindful of the fact that a joint submission should be accepted unless it is contrary to the public interest and its acceptance would bring the administration of justice into disrepute. The Committee also reviewed the Brief of Authorities presented by the counsel for the College (which included the Committee's decisions in *Scott (Re)*, [2002] O.C.P.S.C. No. 4 and *Kitakufe (Re)*, [2010] O.C.P.S.D. No. 17) and is aware that it is desirable that the penalty prescribed by this Committee be consistent with penalties imposed in like cases.

The proposed penalty includes a reprimand and the immediate revocation of Dr. Sinclair's certificate of registration. The Committee was advised that the College was not seeking costs in this matter given a number of factors including but not limited to the fact that Dr. Sinclair has not practised medicine for a number of years, the previous restitution order, Dr. Sinclair's cooperation in negotiating a resolution of this matter without the need for disclosure, a pre-hearing conference or a contested hearing, and the fact that Dr. Sinclair has agreed not to apply for reinstatement.

The Committee viewed very seriously the criminal offences under the *Controlled Drug and Substances Act* and the *Criminal Code* admitted by Dr. Sinclair during the criminal proceedings and the admissions made by Dr. Sinclair in the Superior Court of Justice before the Honourable Justice S. Campbell in 2011 and 2012. As set out in the Agreed Statement of Facts, Dr. Sinclair admitted to trafficking offences in narcotics, placing members of the public at risk of harm or death, and to defrauding Greenshield, Assure, Ontario Blue Cross and the Ontario Ministry of Health and Long Term Care of large amounts of money for personal profit. The Superior Court imposed the severe and significant penalty of incarceration and, in so doing, demonstrated that society will not tolerate such behaviour.

Such professional misconduct by a physician results in serious damage to public trust and confidence in physicians and brings both dishonour and discredit to the medical profession.

Dr. Sinclair is found to have engaged in professional misconduct relevant to his suitability to practise and that he has engaged in conduct and acts of omission relevant to the practice of medicine and public safety that would reasonably be regarded by members and the public as disgraceful, dishonourable and unprofessional, and also conduct unbecoming a physician.

The Committee considered the principles set out in case law with respect to determining the appropriate penalty in the discipline setting, including: protection of the public, the need to maintain the integrity of the medical profession and public confidence in its capability for self-regulation, specific and general deterrence and, where appropriate, rehabilitation of the member. The overall penalty as proposed denounces Dr. Sinclair's behaviour, both from the perspective of the profession and the public and will support public confidence in the ability of the profession to regulate its members appropriately. The revocation of Dr. Sinclair's certificate of registration, the most severe penalty that the Committee is empowered to order, will serve to protect the public.

In summary, the Committee is satisfied that the penalty as jointly proposed is appropriate, reasonable and fair in the circumstances of this case and that it is consistent with penalties imposed in like cases.

ORDER

Therefore, having stated the findings in paragraph 1 of its Order dated October 15, 2014, on the matter of penalty, the Committee ordered and directed that:

2. Dr. Sinclair appear before the panel to be reprimanded on a date to be scheduled within three months of this Order becoming final.
3. the Registrar revoke Dr. Sinclair's certificate of registration as of the date of this Order.

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PANEL MEMBERS:

**DR. E. STANTON (CHAIR)
D. GIAMPIETRI
DR. P. GARFINKEL
DR. E. ATTIA (Ph.D.)
DR. H. SCULLY**

Hearing Date: October 15, 2014
Decision Date: October 15, 2014
Reprimand Date: December 11, 2014
Release of Written Reasons: March 2, 2015

PUBLICATION BAN

TEXT of PUBLIC REPRIMAND
Delivered December 11, 2014
in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
and
DR. COLIN PETER SINCLAIR

Dr. Colin Peter Sinclair, it's always unfortunate when a member of our profession appears before this Committee. The Committee viewed extremely serious the criminal offence that resulted in you being before us. We note that the court has already imposed a very significant penalty, and in doing so, demonstrated that society will not tolerate this behaviour.

Egregious offences of this nature result in serious damage to public trust and confidence in the medical profession. Your actions have brought dishonour and discredit to the profession, to yourself and to your family. The effects of your behaviour have been wide ranging.

The Drug Benefit Plan and other health system entities were defrauded. In addition, your possession and ultimate trafficking of narcotics appears to have been motivated entirely by profit.

In addition, the Panel expresses its abhorrence of your participation in a scheme that put narcotics on the street for the drug trade, and had the potential to cause harm and potential death to those who purchased the drugs on the street.

The reputations of all physicians in the province have been damaged by your behaviour. The trust the public places in the medical profession has been eroded as a result of your nefarious activities. The disgrace you have brought to the profession impacts us all. The Panel wishes to impress upon you our condemnation of your actions.

This will conclude the reprimand and conclude the proceedings for today. Thank you.