

**Indexed as: Ontario (College of Physicians and Surgeons of Ontario) v.
Otto, 2015 ONCPSD 38**

**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. GEORGE WILLIAMS OTTO

PANEL MEMBERS:

**DR. S. BODLEY (CHAIR)
D. DOHERTY
DR. A. SIMPSON
P. GIROUX
DR. D. WALKER**

Hearing Date:	October 5, 2015
Decision Date:	October 5, 2015
Release of Written Reasons:	October 29, 2015

DECISION AND REASONS FOR DECISION

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on October 5, 2015. At the conclusion of the hearing, the Committee stated its finding that the member committed an act of professional misconduct and delivered its penalty and costs order with written reasons to follow.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Otto 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; and
2. under paragraph 1(1) 33 of O. Reg. 856/93, 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.

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

RESPONSE TO THE ALLEGATIONS

Dr. Otto admitted the first and second allegations in the Notice of Hearing, that he has failed to maintain the standard of practice of the profession and 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. Counsel for the College withdrew the allegation of incompetence.

THE FACTS

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

PART I - FACTS

Background

1. George Williams Otto (“Dr. Otto”) is a general practitioner who received his certificate of registration authorizing independent practice in Ontario on August 8, 1988. At all material times, Dr. Otto was practising in a busy medical practice in North York, Ontario, providing ongoing medical care to his family practice patients as well as providing medical care to numerous “walk in” patients. Many of the patients seen by Dr. Otto receive social assistance.

College’s Investigation Regarding Special Diet Allowance Forms

2. In March 2012, the Ministry of Health and Long Term Care (the “Ministry”) expressed concerns to the College of Physicians and Surgeons of Ontario (the “College”) regarding Dr. Otto’s completion of special diet allowance (“SDA”) applications. The Ministry reviewed 25 patient records which were selected based on claim submissions of an assessment code and a code for completing an application for a SDA. The records submitted were for families where all of the patients within the family were billed on the same service date. Fifteen of the records were for patients age 18 and under. The Ministry’s review revealed that of those fifteen records, thirteen records included the phrase ‘anceiform rash all over body’ and also noted an opinion of lactose intolerance or milk allergy. A copy of the letter from the Ministry to the College, dated March 8, 2013, is attached as Schedule “A” [to the Agreed Statement of Facts and Admissions].

3. Based on the information received from the Ministry, the College commenced an investigation under s. 75(1)(a) of the Health Professions Procedural Code. In the course of its investigation, the College received billings for the 25 patients reviewed by the Ministry.

4. Under the Schedule of Benefits, the billing code for completing a SDA form is K055 and the OHIP service fee for completing a SDA form is \$20. As part of its investigation, the College also received a summary of the total number of times that Dr. Otto billed code K055 from January 1, 2005 to December 31, 2012.

Fiscal Service Year	Number of Services	<i>College's Calculations of Code K055 Billings</i>
2005 Total	1,318	\$ 26,360
2006 Total	875	\$ 17,500
2007 Total	261	\$ 5,220
2008 Total	192	\$ 3,840
2009 Total	1,916	\$ 38,320
2010 Total	3,274	\$ 65,480
2011 Total	3,170	\$ 63,400
2012 Total	1,978	\$ 39,560

5. The College retained the services of an expert, Dr. X. Dr. X reviewed the 25 patient charts identified by the Ministry, the corresponding SDA forms completed by Dr. Otto and the OHIP billings from January 1, 2009 to August 1, 2012 for each of the 25 patients. Dr. X also conducted an interview with Dr. Otto and, following the interview, provided a report to the College, dated November 2, 2012, a copy of which is attached as Schedule "B" [to the Agreed Statement of Facts and Admissions]. Dr. X opined, in part, as follows:

Of the 24 charts reviewed, only three met the standard of care with respect to the completion of the SDA application forms. In general, documentation and investigations to support the indications in the SDA forms was lacking.

It was noted during the course of this review that many patients had frequent assessments over a very short period of time prior to the completion of the SDA forms and that many of the clinical entries for those repeat assessments were identical. It is unclear as to why so many repeat assessments in a short period of time would need to be made for the same condition. It was also noted that many patients had two different clinical entries for March 31, 2011.

Dr. Otto acknowledged the lack of documentation and investigations to support the indications in the SDA forms. Dr. Otto acknowledged that using the same clinical template for repeat visits did not accurately reflect the clinical encounter and did not provide reasoning to support the SDA indications in this challenging patient population. Dr. Otto also acknowledged that he failed to include corroborating information to support the patients claim and indications in the SDA forms.

6. During the College's investigation, on November 22, 2012, Dr. Otto participated in the University of Toronto's Medical Record-Keeping course and submitted proof of completion to the College.

7. In May 2014, the College provided Dr. X with ten additional charts for review and, after her review, Dr. X provided a report to the College, dated May 19, 2014. Dr. Otto responded to Dr. X's report and, after reviewing his response, Dr. X provided a revised report to the College, dated July 14, 2014, a copy of which is attached as Schedule "C" [to the Agreed Statement of Facts and Admissions].

8. Dr. X found that Dr. Otto's care in four out of ten patients did not meet the standard of care of the profession in relation to his completion of SDA forms, in that there was no documentation of the symptoms, investigations or treatment recommendations to support the condition(s) reported on the SDA form. However, Dr. X did opine as follows:

Overall there was a marked improvement with regards to the charting and patient assessments that were conducted to support the clinical conditions indicated in the Special Diet Allowance and to satisfy the requirements of the Ministry of Health and Long Term Care when completing the SDA forms.

Dr. Otto provided sound rationale for supporting dietary and lifestyle modifications for the management of hypercholesterolemia and hypertension for his patients and for supporting the Special Diet Allowance claim for his patients.

Some of the charts lacked appropriate documentation and evidence to support the claim of lactose intolerance while others had appropriate documentation of symptoms, treatment strategies and follow up.

Dr. Otto acknowledged that he needed to better document the symptoms and treatment options of lactose intolerance for each patient in order to better support the claim of lactose intolerance.

PART II – ADMISSION

9. Dr. Otto admits that his record-keeping for both children and adult patients did not meet the standard of practice in that his patient charts did not support the conditions reported in the SDA forms. Dr. Otto further admits that he did not conduct investigations for children with respect to completing their SDA forms, but rather relied only on information received from parents.

10. Dr. Otto admits that all of the conduct described above constitutes professional misconduct and admits he has engaged in professional misconduct in that:

- (a) he has failed to maintain the standard of practice of the profession, contrary to paragraph 1(1)(2) of Ontario Regulation 856/93 made under the *Medicine Act*, 1991 (“O. Reg. 856/93”); and
- (b) he has engaged in an act or omission relevant to the practice medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, contrary to paragraph 1(1)33 of O. Reg. 856/93.

FINDINGS

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts and Admissions. Having regard to these facts, the Committee accepted Dr. Otto’s admissions and found that he committed an act of professional misconduct in that he has failed to maintain the standard of practice of the profession and 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.

PENALTY AND REASONS FOR PENALTY

Through counsel, the College and Dr. Otto made a joint submission as to an appropriate penalty and costs order.

After consideration, the Committee concluded that the jointly proposed order was appropriate in the circumstances of this case. In considering the proposed penalty, the Committee concluded that it properly expresses approbation of Dr. Otto's behaviour in this matter; that its requirements address the need to maintain public confidence in the profession and its ability to self-regulate; that it protects the public; that it acts both generally and specifically as a deterrent; and that it affords an opportunity for rehabilitation of the member.

More specifically, in regards to maintaining the confidence of the public in the profession and its self-regulation, the fact of an open and transparent public hearing and the significant penalty proposed, reflect and communicate the seriousness with which the profession views this matter.

With the goal of protecting the public, the Committee notes that Dr. Otto's transgression related only to the issue of Special Diet Allowance (SDA) applications. In this regard, the requirement for monitoring and co-signing such applications as a condition on Dr. Otto's certificate of registration provides permanent oversight and accountability.

The fine imposed and the suspension of Dr. Otto's certificate of registration for two months is an appropriate response to the seriousness of the misconduct and acts as both specific deterrence for Dr. Otto and general deterrence for the profession.

The Committee determined that the completion of an educational program in ethics and the medical record-keeping course, the latter of which has already been completed by Dr. Otto, combined with the requirement to consult the assigned monitor on each occasion an SDA is considered, provide significant opportunity for rehabilitation and learning as well as public protection.

The Committee took into account a number of aggravating and mitigating factors identified as pertinent to the jointly proposed penalty. Aggravating factors included the seriousness of the matter, the demonstrated lack of integrity, personal financial gain and persistence, to some degree, after the matter had been addressed by a Ministry review and the findings of an expert retained by the College. With respect to mitigating factors, the Committee took into account that Dr. Otto has no prior disciplinary history; he admitted to professional misconduct; has accepted responsibility for his poor judgment and breach of professional standards; has assisted the College in avoiding a prolonged and contested hearing; and has cooperated with the College throughout. The Committee also notes that Dr. Otto's career involves serving a significantly disadvantaged population.

The Committee was provided with a book of authorities describing previous disciplinary matters before the College with similar elements (*Wong, Kaminski, Metcalfe, Lo*). These cases informed the Committee that the jointly proposed penalty order fell reasonably within, and was consistent with, like cases.

Thus, the Committee accepted the joint submission on penalty and costs and delivered the following order in writing:

ORDER

Having stated the findings of professional misconduct, the Committee ordered and directed in its order of October 5, 2015, on the matter of penalty and costs, that:

2. Dr. Otto appear before the panel to be reprimanded.
3. the Registrar suspend Dr. Otto's certificate of registration for a period of two (2) months, commencing at 12:01 a.m. on October 6, 2015.
4. the Registrar place the following terms, conditions and limitations on Dr. Otto's certificate of registration:
 - (i) Dr. Otto shall participate in and successfully complete an educational program satisfactory to the College in Ethics, with a report or reports to be provided to the College regarding Dr. Otto's progress and compliance. Dr. Otto shall complete this requirement by December 31, 2015 or, if no

satisfactory program is available by that time, by the first possible opportunity thereafter;

- (ii) Dr. Otto shall not complete any Special Diet Allowance forms unless he has submitted the Special Diet Allowance form, along with the corresponding patient chart, to a physician approved by the College in its sole discretion (the “Monitor”), and that Monitor has reviewed, approved and co-signed every Special Diet Allowance form prior to Dr. Otto providing this form to his patient(s). The Monitor shall sign an undertaking to the College in the form attached [to the order] as Schedule “A”, will agree to maintain a log of all Special Diet Allowance forms that have been approved and co-signed, and to report any irregularity to the College;
- (iii) Dr. Otto shall retain a copy of all Special Diet Allowance forms in the patient chart. Dr. Otto shall also maintain a log of all Special Diet Allowance forms that he has completed which he will submit to the College along with the corresponding patient chart upon request.
- (iv) Dr. Otto shall inform the College of each and every location where he practises including, but not limited to hospitals, clinics, and offices, in any jurisdiction (collectively, his “Practice Location(s)”), within fifteen (15) days of this Order, and shall inform the College of any and all new Practice Locations within fifteen (15) days of commencing practice at that location, for the purposes of monitoring his compliance with this Order;
- (v) Dr. Otto shall submit to, and not interfere with, unannounced inspections of his Practice Location(s) and patient records by a College representative for the purposes of monitoring his compliance with this Order;
- (vi) Dr. Otto shall consent to the monitoring of his OHIP billings and cooperate with inspections of his practice and patient charts by the Monitor and College representatives for the purpose of monitoring and enforcing his compliance with the terms of this Order. Monitoring this Order shall include making inquiries of the Ministry of Community and Social Services and/or the Ministry of Health and Long Term Care

regarding Dr. Otto's completion of, and billing for, special diet allowance forms; and

(vii) Dr. Otto shall be responsible for any and all costs associated with implementing the terms of this Order.

5. Dr. Otto shall, within six (6) months, pay a fine to the Minister of Finance in the amount of \$10,000.00, and that Dr. Otto shall provide proof of this payment to the Registrar of the College.
6. Dr. Otto pay to the College costs in the amount of \$4,460, within sixty (60) days of the date of this Order.

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

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Hearing Date:	October 5, 2015
Decision Date:	October 5, 2015
Reprimand Date:	October 5, 2015
Release of Written Reasons:	October 29, 2015

TEXT of PUBLIC REPRIMAND
Delivered October 5, 2015
in the case of the
COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO
and
DR. GEORGE WILLIAMS OTTO

Dr. George Williams Otto, it's always regrettable to be in a position of having to deliver a reprimand to any member of the profession. The Committee has heard evidence of a long record of service to a disadvantaged community, and is particularly troubling to hear that you've dishonoured the profession after such a long and dedicated history of service.

The medical system is based on trust, both in discharging your obligations to your patients, and in your role as a health-system advocate. You have failed to uphold the Standards of the Profession. To label this conduct as unprofessional significantly understates its severity. By billing inappropriately and improperly you have disgraced yourself and the profession.

It is hoped by understanding and accepting this censure by the profession and from your colleagues; you will conscientiously discharge the conditions of your penalty and not be seen again in this chamber. Thank you.