NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Robert Louis Reid, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the name or any information that could disclose the identity of the patient 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*, 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: Reid, R. L. (Re)

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. ROBERT LOUIS REID

PANEL MEMBERS:

DR. E. STANTON (CHAIR)
D. GIAMPIETRI
DR. P. GARFINKEL
D. DOHERTY
DR. F. SLIWIN

Hearing Date: September 8, 2014
Decision Date: September 8, 2014
Release of Written Reasons: October 7, 2014

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 September 8, 2014. At the conclusion of the hearing, the Committee stated its finding that the member committed an act of professional misconduct and that the member is incompetent and delivered its penalty and costs order with written reasons to follow.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Reid 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 has engaged in 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. Reid is incompetent as defined by subsection 52(1) of the Code.

RESPONSE TO THE ALLEGATIONS

Dr. Reid admitted to the allegations.

FACTS AND EVIDENCE

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

1. Dr. Reid is an orthopedic surgeon who maintains an office practice in chronic pain management in City 1, Ontario. He has practiced medicine in Ontario since 1966.

Patient A

2. Patient A first saw Dr. Reid in November 2011, having been referred to Dr. Reid by a physician at a walk-in clinic. Patient A had been prescribed opioids since 2009 through at least May 2011, initiated by another physician. There is no documented history of early dispensing of opioid medication for Patient A prior to the commencement of treatment by Dr. Reid. At Patient A's first appointment, Dr. Reid documented Patient A's report of back pain related to a 1992 workplace injury. Dr. Reid began to treat Patient A, including by way of opioid prescribing.

3. In June 2013, a pharmacist contacted the College to voice concerns regarding Dr. Reid's prescribing practices in respect of Patient A. As a result, investigators were appointed. Records were obtained from four pharmacies, indicating that pharmacists had expressed concerns to Dr. Reid on more than one occasion that Patient A was filling prescriptions for opioids at multiple pharmacies and that early dispensing was often authorized by Dr. Reid.

4. Dr. X was retained to provide an independent opinion regarding Dr. Reid's care of Patient A. Dr. X's report, dated October 26, 2013, is attached at Schedule 1 (to the Agreed Statement of Facts and Admission).

5. Dr. Reid had Patient A fill out a Brief Pain Inventory with each office visit, which Dr. X observed was a recommended tool to assist clinicians in assessing the efficacy of opioid therapy. However, "the majority of Dr. Reid's notes detail the myriad reasons why the patient required early releases or replacement scripts for 'stolen' or 'lost' opioids or patches that fell off. Recurrent episodes of these events often signify 'drug seeking behaviours.'" There were approximately two dozen episodes of Patient A obtaining early releases or replacement prescriptions

for ‘stolen’ or ‘lost’ opioids or patches that were said to have fallen off between February 2012 and the end of July 2013.

6. Dr. Reid recognized and was aware of Patient A’s aberrant drug-related behaviours by at least the summer of 2012.

7. Dr. Reid has asserted that he took the following steps, but he failed to document having done so: he instructed Patient A to reinforce the patches with surgical or first aid tape to prevent dislodgement; he discussed with Patient A not using patches, due to the risk of their falling off, but rather other long-acting oral opioid preparations; and he recommended that Patient A obtain a lockbox in which to store his medications, but Patient A reported that after he had obtained one the entire box had been stolen with his medication inside.

8. Dr. Reid failed to:

   (a) seek to arrange with a local pharmacy to prescribe opioids to Patient A on the condition that they be dispensed to him in daily or weekly allotments, to reduce the risk of large amounts of medication being lost should events such as theft occur;
   (b) require Patient A to undergo regular urine drug screens and pill counts to ensure that he was not overusing or selling the medications;
   (c) require Patient A to enter into an opioid agreement that explicitly stated that no early releases or replacement of medications for lost or stolen medications or patches that had fallen off prematurely would be permitted;
   (d) document measures to mitigate the possible diversion, misuse and/or abuse of opioids by Patient A through education, strict monitoring, and changes in prescribing patterns;
   (e) document any re-evaluation to assess whether opioids were the most appropriate choice for Patient A under the circumstances;
   (f) document any consideration of opioid rotation;
   (g) document any exploration of psychological methods of pain control; or

(h) document any discussion with Patient A regarding initiation and titration of other non-opioid analgesics.

9. Dr. Reid lacked judgment when, despite recognizing Patient A's drug-aberrant behaviour, he repeatedly permitted numerous early repeats and provided replacement scripts, contrary to common practices of chronic pain practitioners for dealing with drug-aberrant behaviour in their patient populations. This exposed the patient to risk of harm.

10. Dr. Reid advised the College through counsel on December 6, 2013 that he had discharged Patient A from his practice and that Patient A had ceased to contact him. However, after allegations regarding Patient A were referred to the Discipline Committee on December 11, 2013, Dr. Reid wrote a further prescription for Patient A authorizing early release of medications for what was said to be a trip. When a pharmacist contacted Dr. Reid with concerns about the prescription, Dr. Reid validated the prescription.

11. Dr. Reid violated appropriate professional boundaries with Patient A:

(a) On approximately five occasions in 2013, Dr. Reid accompanied Patient A to the pharmacy to assist him in obtaining medication.

(b) On one occasion when accompanying Patient A to the pharmacy, Dr. Reid withdrew money from an automated teller machine to pay for the medication, and paid for the medication for Patient A;

(c) As documented by Dr. Reid in Patient A's chart, on one occasion in September 2012 when Patient A stated that he was homeless, Dr. Reid drove Patient A to City 2 and took him to a place to stay;

(d) As documented by Dr. Reid in Patient A's chart, on one occasion in May 2012, Dr. Reid attended a meeting of a club held during the evening with Patient A and then drove him home.

Violation of Interim Order

12. On January 7, 2014, the Inquiries, Complaints and Reports Committee made an interim order (the "Interim Order") against Dr. Reid pending disposition of the

allegations against him. It is attached as Schedule 2 (to the Agreed Statement of Facts and Admission). The Interim Order, among other things, prohibited Dr. Reid from issuing new prescriptions or renewing existing prescriptions for Narcotic Drugs, Narcotic Preparations, Controlled Drugs, and Benzodiazepines/Other Targeted Substances, or All Other Monitored Drugs. It came into effect at 12:01 a.m. on January 9, 2014.

13. Dr. Reid violated the Interim Order with respect to a prescription for a patient dated January 9, 2014 for Cesamet and Percocet that was faxed from Dr. Reid's office the morning of January 9, 2014, and a prescription for another patient dated January 9, 2014 for Diazepam, Oxyneo and Percocet that was faxed to a pharmacy the morning of January 9, 2014.

ADMISSION

14. Dr. Reid admits the facts in paragraphs 1 to 13 above, and admits that they show that in his care of Patient A in the manner and way described above, he failed to maintain the standard of practice of the profession under paragraph 1(1)(2) of Ontario Regulation 856/93 made under the *Medicine Act, 1991,* and that he has thereby committed an act or acts of professional misconduct under paragraph 1(1)33 of Ontario Regulation 856/93, and that he was incompetent as defined by s.52(1) of the Health Professions Procedural Code, which is Schedule 2 to the *Regulated Health Professions Act, 1991*.

15. Dr. Reid admits that the facts as described above show that he engaged in disgraceful, dishonourable or unprofessional conduct in respect of his failure to maintain professional boundaries with Patient A and his violation of the Interim Order, and that he has thereby committed an act or acts of professional misconduct under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*.

FINDINGS

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts and Admission. Having regard to these facts, the Committee accepted Dr. Reid's admission and found that he committed acts of professional misconduct in that he has failed to maintain the standard of practice of the profession; and that he has engaged in 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 Committee also found Dr. Reid incompetent under subsection 52(1) of the Code in that his care of Patient A 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.

Dr. Reid's admission of incompetence was supported by the evidence provided in the report by the Independent Assessor.

> "*Unfortunately Dr. Reid's care displays a lack of judgment with respect to patient boundaries and professional behaviour. The two issues of concern are the irregularities in prescribing activities and the violation of appropriate physician-patient boundaries. Despite recognizing the drug-aberrant behaviour, Dr. Reid repeatedly permitted numerous early repeats and provided replacement scripts, ignoring CPSO documentation on this issue, and eschewing common practices of chronic pain practitioners for dealing with drug-aberrant behaviour in this patient population. It is clear that Dr. Reid is not following accepted or recommended practices for dealing with apparent aberrant drug-related behaviour, and is in fact facilitating and/or enabling the behaviour by continually writing new scripts for "lost" or "stolen" medications, or replacement patches for ones that continually "fell off the patient". Dr. Reid is exposing the patient to harm by, either through facilitation of the patient's possible addiction issues…."*

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for the member made a joint submission as to an appropriate penalty and costs order. The Committee was cognizant of the fact that a joint submission on penalty should be accepted unless to do so would bring the administration of justice into disrepute or would be contrary to the public interest.

The joint submission included the successful completion of the Safe Opioid Prescribing program and the course on “Understanding Boundaries in Managing the Risks Inherent in the Doctor-Patient Relationship”, restrictions on prescribing any Narcotics or Restricted substances until he has provided the College with an executed undertaking from an approved Clinical Supervisor, upon which he may issue prescriptions under very structured guidelines as further specified in the Order, an assessment by a College appointed assessor twelve months after the conclusion of the Remediation Program, cooperating with unannounced inspections of his practice and patient charts, and costs of a one day hearing.

The Committee noted that although the prescribing pattern continued over a prolonged time period, it occurred with only one patient.

Aggravating factors in this case include the fact that the conduct took place over a long period of time, continuing after pharmacists had expressed concern to Dr. Reid about his prescribing practices. Dr. Reid also violated an interim order of the College twice on the day that the order had taken effect.

Mitigating factors in this case include the fact that Dr. Reid admitted all of the allegations, thus taking responsibility for his actions, reducing the cost of a full contested hearing, and eliminating the need for witnesses to testify. It is also a mitigating factor that he has been in practice as an orthopedic surgeon since 1970 and has no prior disciplinary history before the Committee.

The Committee considered the cases provided by counsel and agrees that the penalty is in line with penalties imposed in similar cases. The jointly proposed penalty meets the principles of upholding the reputation of the profession, maintaining public confidence in self-regulation in the public interest, public protection, general and specific deterrence, and rehabilitation.

The staged and gradual return to prescribing under supervision will serve to protect the public, as will the inspection by a College appointed Assessor and the unannounced inspections of Dr. Reid's practice. The program in Safe Opioid Prescribing and the Boundaries course will serve to rehabilitate Dr. Reid. The order as a whole including the public reprimand will serve as specific and general deterrence, and the payment of costs at the one day tariff rate of $4,460.00 is appropriate.

ORDER

Therefore, having stated its findings in paragraphs 1 and 2 of its written order of September 8, 2014, the Committee ordered and directed on the matter of penalty and costs that:

3. the Registrar suspend Dr. Reid's certificate of registration for a period of three (3) months, to take effect at 12:01 a.m. on September 9, 2014.

4. Dr. Reid appear before the panel to be reprimanded.

5. the Registrar place the following terms, conditions and limitations on Dr. Reid's certificate of registration:

    (a) Dr. Reid shall participate in and successfully complete all components in the next available series of the Safe Opioid Prescribing program offered by University of Toronto, or an equivalent program acceptable to the College, and shall forthwith thereafter provide proof of completion thereof to the College.

    (b) Dr. Reid shall participate in and successfully complete the next available course on "Understanding Boundaries in Managing the Risks Inherent in the Doctor-Patient Relationship" offered by Western University, or an equivalent program acceptable to the College, and shall forthwith thereafter provide proof of completion thereof to the College.

(c) Until Dr. Reid has delivered to the College an executed undertaking in the form attached to this Order as Schedule "A" ("Undertaking") from a clinical supervisor who has been approved by the College (the "Clinical Supervisor(s)"), or if the Clinical Supervisor(s) resigns or cannot otherwise fulfill his or her Undertaking, Dr. Reid shall not issue new prescriptions or renew existing prescriptions for any of the following (hereinafter referred to as "Narcotics or Restricted Substances"):

(i) Narcotic Drugs (from the Narcotic Control Regulations made under the *Controlled Drugs and Substances Act*, S.C., 1996, c. 19);

(ii) Narcotic Preparations (from the Narcotic Control Regulations made under the *Controlled Drugs and Substances Act*, S.C., 1996, c. 19);

(iii) Controlled Drugs (from Schedule G of the Regulations under the *Food and Drugs Act*, S.C., 1985, c. F-27);

(iv) Benzodiazepines/Other Targeted Substances (from the Benzodiazepines and Other Targeted Substances Regulations made under the *Controlled Drugs and Substances Act*., S.C., 1996, c. 19); or

(A summary of the above-named drugs [from Appendix I to the Compendium of Pharmaceuticals and Specialties] is attached hereto as Schedule "B"; and the current regulatory lists are attached hereto as Schedule "C")

(v) All Other Monitored Drugs (as defined under the *Narcotic Safety and Awareness Act*, S.O. 2010, c. 22 as noted in Schedule "D")

and as amended from time to time.

(d) While Dr. Reid is subject to the restriction regarding Narcotics or Restricted Substances set out above at paragraph 5(c), the following statement shall appear on the public register: <u>Dr. Reid shall not issue new prescriptions or renew existing prescriptions for any of the following ("Narcotics or Restricted Substances"):</u>

(i) <u>Narcotic Drugs (from the Narcotic Control Regulations made under the *Controlled Drugs and Substances Act*, S.C., 1996, c. 19);</u>

(ii) Narcotic Preparations (from the Narcotic Control Regulations made under the *Controlled Drugs and Substances Act*, S.C., 1996, c. 19);

(iii) Controlled Drugs (from Schedule G of the Regulations under the *Food and Drugs Act*, S.C., 1985, c. F-27);

(iv) Benzodiazepines/Other Targeted Substances (from the Benzodiazepines and Other Targeted Substances Regulations made under the *Controlled Drugs and Substances Act*., S.C., 1996, c. 19); or

(v) All Other Monitored Drugs (as defined under the *Narcotic Safety and Awareness Act*, S.O. 2010, c. 22)

and as amended from time to time.

(e) While Dr. Reid is subject to the restriction regarding Narcotics or Restricted Substances set out above at paragraph 5(c), Dr. Reid shall post a clearly visible sign in the waiting room of every location at which he practises in the form set out as Schedule "E". For further clarity, the sign shall state that "Dr. Reid shall not prescribe Narcotic Drugs, Narcotic Preparations, Benzodiazepines, Other Targeted Substances, Controlled Drugs and All Other Monitored Drugs."

(f) After Dr. Reid has delivered an executed Undertaking from an approved Clinical Supervisor(s) to the College as described above at paragraph 5(c), Dr. Reid shall issue new prescriptions or renew existing prescriptions for Narcotics or Restricted Substances only in accordance with the Remediation Program described below at subparagraphs 5(f)(i)-(vi), until the Remediation Program has been completed:

(i) Throughout the Remediation Program, Dr. Reid shall maintain an up-to-date log of all prescriptions issued or renewed for Narcotics or Restricted Substances, in a form approved by the College ("the Narcotics Log").

(ii) In Phase One of the Remediation Program, Dr. Reid shall prescribe Narcotics or Restricted Substances to no more than twenty (20)

patients, who will be selected in cooperation with and approved by the Clinical Supervisor(s). Dr. Reid shall submit an initial treatment plan for each patient to the Clinical Supervisor(s) for review and approval prior to prescribing Narcotics or Restricted Substances to the patient . Thereafter, Dr. Reid shall submit these patients' charts including documentation of the prescriptions and the Narcotics Log to the Clinical Supervisor(s) for review and meet with the Clinical Supervisor(s) every two (2) weeks to discuss the care of these patients and any concerns that the Clinical Supervisor(s) may have.

(iii) If reports from the Clinical Supervisor(s) indicate that it is appropriate to do so and if approved by the College, after a minimum of three (3) months in Phase One of the Remediation Program, Dr. Reid may commence Phase Two of the Remediation Program, during which he shall prescribe Narcotics or Restricted Substances to no more than forty (40) patients, whose charts shall be reviewed at least once a month by his Clinical Supervisor(s) together with the Narcotics Log. During Phase Two of the Remediation Program, Dr. Reid shall meet with his Clinical Supervisor(s) once a month to discuss the care of these patients and any concerns that the Clinical Supervisor(s) may have.

(iv) If reports from the Clinical Supervisor(s) indicate that it is appropriate to do so and if approved by the College, after a minimum of three (3) months in Phase Two of the Remediation Program, Dr. Reid may commence Phase Three of the Remediation Program, which shall include monthly review by the Clinical Supervisor(s) of at least twenty (20) charts of patients to whom Dr. Reid prescribes Narcotics or Restricted Substances, to be randomly selected by the Clinical Supervisor(s), and monthly review of the Narcotics Log.

(v) If reports from the Clinical Supervisor(s) indicate that it is appropriate to do so and if approved by the College, after a minimum of six (6) months in Phase Three of the Remediation Program, Dr. Reid may complete the Remediation Program, but shall continue to maintain a Narcotics Log pending completion of the Assessment described at paragraph 5(g).

(vi) Throughout the Remediation Program, Dr. Reid shall cooperate with the Clinical Supervisor(s) and shall abide by the recommendations of his Clinical Supervisor(s), including with

respect to patient care, practice management, and continuing education.

(g) Dr. Reid shall undergo an assessment by a College-appointed assessor(s) (the "Assessor(s)") approximately twelve (12) months after the conclusion of the Remediation Program, focusing on patients to whom Dr. Reid prescribes Narcotics or Restricted Substances (the "Assessment"). The Assessment may include, but need not be limited to, review of charts, interview(s), and observation. The Assessor(s) shall report the results of the Assessment to the College. Dr. Reid shall cooperate with the Assessment and shall abide by the recommendations of the Assessor(s).

(h) Dr. Reid shall consent to the sharing of information among the Assessor(s), Clinical Supervisor(s) and the College as any of them deem necessary or desirable in order to fulfill their respective obligations.

(i) Dr. Reid shall not post-date prescriptions for Narcotics or Restricted Substances.

(j) Dr. Reid shall cooperate with unannounced inspections of his practice and patient charts by the College for the purpose of monitoring and enforcing his compliance with the terms of this Order and shall consent to the College making appropriate enquiries of the Ontario Health Insurance Plan, Narcotics Monitoring System and/or Ontario Drug Benefit Program, and/or any person or institution who may have relevant information for this purpose.

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

6. Dr. Reid pay the College its costs of this proceeding in the amount of $4,460.00 within sixty (60) days of the date of this Order.

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