

Indexed as: Cohen, E.S. (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. ELLIOTT SAUL COHEN

PANEL MEMBERS:

DR. R. MACKENZIE (Chair)
D. DOHERTY
DR. K. BRACKEN
S. BERI
DR. W. KING

Hearing Date:	May 18, 2012
Decision Date:	May 18, 2012
Release of Written Reasons:	July 11, 2012

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 May 18, 2012. 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. Elliott Saul Cohen committed an act of professional misconduct:

1. 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;
2. under paragraph 1(1)2 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, in that he has failed to maintain the standard of practice of the profession; and
3. under clause 51(1)(b) of the Health Professions Procedural Code which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18 in that the governing body of a health profession in a jurisdiction other than Ontario has found that the member committed an act of professional misconduct that would, in the opinion of the panel, be an act of misconduct as defined in the regulations.

RESPONSE TO THE ALLEGATIONS

Dr. Cohen admitted the third allegation of professional misconduct in the Notice of Hearing, that the governing body of a health profession in a jurisdiction other than Ontario has found that the member committed an act of professional misconduct that would, in the opinion of the panel, be an act of misconduct as defined in the regulations. Counsel for the College withdrew the first and second allegations.

FACTS AND EVIDENCE

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

PART 1 - FACTS

1. Dr. Cohen is a 64 year old obstetrician/gynaecologist who practises part time in Ottawa with hospital privileges at Almonte General Hospital. His primary practice is in Watertown, New York.
2. Dr. Cohen's CPSO Independent Practice Certificate was issued in 1981. Dr. Cohen is also licensed to practise in the Provinces of Saskatchewan and Alberta and in the States of Tennessee and New York.
3. Dr. Cohen was licensed to practise medicine in the State of New York pursuant to the issuance of a 3 year limited license issued on December 17, 2003. A new 6-year limited license was issued on January 3, 2007.
4. The limitation imposed was that he was authorized to practise medicine only in the medically underserved area of Watertown, New York, as an obstetrician/gynaecologist having privileges at the Samaritan Medical Center.

2008 Hearing

5. A Hearing was held by the State of New York, Department of Health, State Board for Professional Medical Conduct ("the New York State Board") in 2008 pertaining to allegations of misconduct against Dr. Cohen. On August 15, 2008 a decision was released.

Findings of the New York State Board

6. Between approximately February 2005 through March 2007, Dr. Cohen prescribed certain non-controlled prescription drugs to customers of a pharmacy for a fee. The contract Dr. Cohen signed with the pharmacy indicated that he would provide the service of reviewing patient profiles and issuing prescriptions for individuals who, in Dr. Cohen's opinion, required the prescription drugs as requested by the patient.

7. Dr. Cohen reviewed online requests from approximately 400 members of the general nationwide public. The drugs prescribed included: analgesics safe to prescribe to pregnant women, such as Tramadol, Floricet and Ultracet; erectile dysfunction medications including Viagra, Cialis and Levitra; muscle relaxants including Soma and Flexeril; and Amoxicilin, an antibiotic.
8. Dr. Cohen's issuance of prescriptions to online patients did not meet the minimally accepted standard of care because he failed to: have a sufficient physician-patient relationship with the patients; take a history and perform examinations; formulate a reasonable diagnosis; and maintain adequate medical records.
9. The hearing Committee found that Dr. Cohen acted with negligence on more than one occasion; that he failed to issue the prescriptions in good faith; that his records were inadequate and that he violated the spirit of his limited license.
10. The hearing Committee noted that the drugs involved were drugs that did not have a high abuse potential but rather had safety profiles similar to many over the counter drugs.

Order and Penalty

11. Based on its findings, the New York State Board reprimanded Dr. Cohen and ordered him to pay a fine of \$10,000. Attached as Schedule A [to the Statement of Agreed Facts and Admission] is a copy of the decision of the New York State Board.
12. Upon request for review by the New York State Department of Health, the Administrative Review Board added a suspension of Dr. Cohen's medical license for three years, which was stayed except for three months, and a fine was set at \$30,000. Attached as Schedule B [to the Statement of Agreed Facts and Admission] is a copy of the decision of the Administrative Review Board.
13. Dr. Cohen's appeal to the Supreme Court of the State of New York Appellate Division was denied.

PART 2- ADMISSION

Dr. Cohen agrees that the findings of the New York State Board are accurately set out in paragraphs six through eleven above. Dr. Cohen admits that as a result of these findings, the governing body of a health profession in a jurisdiction other than Ontario found that he committed an act of professional misconduct that would be an act of professional misconduct as defined in the regulations, and as such, admits that the New York State Board findings against him amount to professional misconduct as set out in s.51(1)(b) of the Health Professions Procedural Code.

FINDING

The Committee accepted as true all of the facts set out in the Statement of Agreed Facts and Admission. Having regard to these facts, the Committee accepted Dr. Cohen's admission and found that he committed an act of professional misconduct, in that the governing body of a health profession in a jurisdiction other than Ontario has found that he committed an act of professional misconduct that would, in the opinion of the panel, be an act of misconduct as defined in s.51(1)(b) of the Health Professions Procedural Code.

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 mindful of the legal standard that a jointly proposed penalty should be accepted unless to do so would be contrary to the public interest and would bring the administration of justice into disrepute.

The Committee considered carefully the submissions of both parties in support of the appropriateness of the jointly proposed penalty. It also considered aggravating and mitigating factors asserted by both sides.

Aggravating factors included the fact that the offence for which Dr. Cohen was convicted in New York was a serious one involving repeated poor judgment, negligence and failure to meet the standards of practice of the profession.

In mitigation, his admission of the prior misconduct shortened and simplified the process of this hearing and demonstrated insight into his prior errors of judgment. Further, it was submitted that Dr. Cohen had suffered significant professional and financial penalty as a result of the prior finding and that his record of many years of service was otherwise unblemished.

The Committee was reminded of the principles underlying the crafting of a penalty order, which include: protection of the public, the expression of abhorrence or disapproval of the profession for the conduct of the member, the maintenance of public confidence in professional self-regulation, specific and general deterrence and, where appropriate, rehabilitation of the member.

The Committee was also reminded of the principle that like offences should attract like penalties. In this regard, the panel was provided with four prior decisions of the Discipline Committee (*Gore, Robinson, Belda and Katz*) in which similar offences had been treated similarly.

The Committee was confident that the reprimand, a public act, would serve to express the disapproval of the profession for Dr. Cohen's conduct and bolster public confidence in the integrity of the process. Further, it would serve to deter Dr. Cohen, and through him the profession at large, from similar misconduct. The specifically tailored ethics course should help Dr. Cohen to learn from past mistakes.

Lastly, the Committee considered the order for costs of \$3,650 to be appropriate as the tariff amount for a single-day hearing.

Therefore, the Committee accepted the jointly proposed penalty and costs order and made the following order:

ORDER

The Committee ordered and directed that:

1. the Registrar impose the following term, condition and limitation on the certificate of registration of Dr. Cohen:

- a) Dr. Elliott Saul Cohen must successfully complete, at his own expense, College-facilitated instruction in Ethics.
2. Dr. Cohen attend before this panel to be reprimanded.
3. Dr. Cohen pay costs to the College in the amount of \$3650.00 within 60 days of the date of this order.

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