

Indexed as: **Ontario (College of Physicians and Surgeons of Ontario) v. Foote, 2016 ONCPSD 17**

**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. CLARY JEFFERSON FOOTE

PANEL MEMBERS:

**MS. D. DOHERTY (CHAIR)
DR. P. CASOLA
DR. R. MACKENZIE
DR. F. SLIWIN
MR. J. LANGS**

**COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF
ONTARIO:**

MS. J. AMEY

COUNSEL FOR DR. FOOTE:

MS. Y. VENTRESCA

INDEPENDENT LEGAL COUNSEL FOR THE DISCIPLINE COMMITTEE:

MS. J. MCALEER

Hearing Date: **January 7, 2016**
Decision Date on Finding: **January 7, 2016**
Decision Date on Penalty: **July 19, 2016**
Release of Written Reasons: **July 19, 2016**

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 January 7, 2016. At the conclusion of the hearing, the Committee stated its finding that the member committed an act of professional misconduct. The parties also made submissions with respect to penalty; however, as will be discussed below, the Committee reserved on the issue of penalty pending further submissions from the parties and independent legal counsel.

THE ALLEGATION

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

1. 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.

RESPONSE TO THE ALLEGATION

Dr. Foote admitted the allegation in the Notice of Hearing 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 FACTS

The following Agreed Statement of Facts and Admission was filed as an exhibit:

AGREED FACTS

Background

1. Dr. Clary Jefferson Foote ("Dr. Foote") has completed four years of an orthopedic surgery residency at McMaster University in Hamilton ("McMaster"). He held a restricted Postgraduate Education Certificate with the College of Physicians and Surgeons of Ontario (the "College") from July 1, 2009 to September 30, 2015. He does not currently hold an active Certificate of Registration with the College.

Fraudulent letters in support of application for elective

2. In the course of his orthopedic surgery residency at McMaster, Dr. Foote planned to complete an elective offered through Dalhousie University at Valley Regional Hospital in Kentville, Nova Scotia, to begin on October 22, 2013.
3. In order to be accepted for the elective at Valley Regional Hospital, Dr. Foote was required to submit letters of support from his program director and his program chair at McMaster. In addition, he was required to obtain an educational license from the College of Physicians and Surgeons of Nova Scotia (the "CPSNS"), for which he was required to submit a letter to the CPSNS from his program director confirming that the elective had been approved by McMaster.
4. Dr. Foote submitted two letters of support to Valley Regional Hospital, one purportedly signed by his program director Dr. Brad Petrisor, and one purportedly signed by his program chair Dr. Mohit Bhandari. In fact, neither Dr. Petrisor nor Dr. Bhandari had reviewed, approved or signed the letters prior to their submission to Valley Regional Hospital by Dr. Foote. A copy of the letters of support purportedly signed by Dr. Petrisor and Dr. Foote to Valley Regional

Hospital are attached as Appendices "A" and "B" respectively to this Agreed Statement of Facts.

5. Dr. Foote created the letters of support to Valley Regional Hospital purportedly signed by Dr. Petrisor and Dr. Bhandari by modifying letters of recommendation on his behalf previously written by these physicians and affixing their signatures electronically. With respect to the letter of support purportedly signed by Dr. Petrisor, Dr. Foote added the following paragraph to the previously written letter of recommendation:

Although CJ has done a substantial amount of academic work, he has turned back to considering community orthopaedics and has demonstrated interest in living in the east coast. A rotation at your hospital will serve him well in cementing his career aspirations.

6. No substantive changes were made to the previously written letter of recommendation signed by Dr. Bhandari.
7. Dr. Foote submitted drafts of the letters of support to Valley Regional Hospital to each of Dr. Petrisor and Dr. Bhandari prior to affixing their signatures to the letters. However neither Dr. Petrisor nor Dr. Bhandari had approved the letters, provided his consent to have his signature affixed to the letter, or agreed that the letters could be submitted to Valley Regional Hospital prior to Dr. Foote doing so.
8. Dr. Foote also submitted a letter to the CPSNS, purportedly signed by Dr. Petrisor, confirming that the elective had been approved by McMaster. Dr. Petrisor had orally advised Dr. Foote that the elective had been approved, however Dr. Foote created the letter and affixed Dr. Petrisor's signature to the letter without Dr. Petrisor's knowledge, consent or approval. A copy of the letter of confirmation purportedly signed by Dr. Petrisor to the CPSNS is attached as Appendix "C" to this Agreed Statement of Facts.
9. Dr. Foote advised the College that he affixed Dr. Bhandari and Dr. Petrisor's signatures to the three letters and submitted these letters to Valley Regional

Hospital and the CPSNS without the knowledge, consent or approval of Dr. Bhandari or Dr. Petrisor because Dr. Foote had given himself insufficient time to complete the application process for the elective at Valley Regional Hospital and was concerned that he would miss the deadline for application.

ADMISSION

10. Dr. Foote admits the facts set out above, and admits that these facts constitute acts or omissions relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members of the profession as disgraceful, dishonourable or unprofessional under paragraph 1(1)33 of Ontario Regulation 856/93.

FINDING

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. Foote's admission and found 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

Counsel for the College and counsel for Dr. Foote initially made a joint submission as to an appropriate penalty and costs order. The parties proposed the following penalty:

1. Dr. Foote appear before the panel to be reprimanded;
2. The Registrar suspend Dr. Foote's Certificate of Registration for a one month period;
3. The Registrar impose the following as a term, condition and limitation on Dr. Foote's certificate of registration:
 - a. At his own expense, Dr. Foote shall participate in and successfully complete, within 6 months of the date of this Order, 5 hours of individualized instruction in medical ethics with an instructor approved by the College. The instructor shall provide a summative report to the College including his or her conclusion about whether the instruction was completed successfully by Dr. Foote; and
4. Dr. Foote pay to the College its costs of this proceeding in the amount of \$5,000 within thirty (30) days from the date of this Order.

The Committee was aware that a joint submission should be accepted unless to do so would be contrary to the public interest and would bring the disposition of justice into disrepute. The Committee questioned, however, whether it had jurisdiction to impose a suspension of the member, given that he did not hold an active certificate of registration. The committee requested additional written submissions from the parties and ILC on this issue.

In her written submissions, counsel for Dr. Foote departed from her oral submissions, which had been in support of the joint penalty proposal outlined above. She instead submitted that the Committee did not have the jurisdiction to suspend Dr. Foote or

impose any conditions, restrictions or limitations of his certificate of registration, since he did not have an active certificate of registration at that time.

College counsel and the Committee's independent legal counsel took the position that the Committee does have the jurisdiction to order the original terms proposed by the parties, despite Dr. Foote's lack of an active certificate of registration.

Before the Committee had reached a decision on the jurisdiction issue, the Divisional Court released its decision in *Dumchin v. College of Nurses of Ontario* ("CNO"), 2016 ONSC 626. The Committee asked the parties and ILC for additional submissions on the application of *Dumchin* to the case of Dr. Foote.

Upon reviewing these submissions and the Divisional Court's decision in *Dumchin*, the Committee determined that it does have jurisdiction to suspend a member's certificate of registration or impose terms, restrictions, or limitations on the certificate of registration even if the certificate is not active.

In *Dumchin*, the Divisional Court clearly determined that the CNO's Discipline Committee had jurisdiction over former members of that College at all stages of the disciplinary process. This included the ability to impose a suspension on the member's certificate despite the fact that their certificate of registration is not active.

In *Dumchin*, the Divisional Court set out the issue before it as follows:

[28] The question raised on this appeal is whether the College's continuing jurisdiction under s. 14 applies to all of the possible orders that a panel of the Discipline Committee can make under s.51(2) of the Code, including the imposition of conditions, suspension or revocation.

The Court pointed out that the RHPA and the Code must be given a broad and purposive interpretation in keeping with College's duty to act in the public interest (para 33). The Court found that, as a matter of statutory interpretation, the CNO's Discipline Committee was required to read the words of the Code in their entire context and in their

grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of the legislature (para 34).

The Court found that, “when interpreted broadly and purposively, s. 14 makes a former member subject to all stages of the investigation and disciplinary process: investigation, hearing, findings and sanction.” (para 38)

The Court continued:

[39] Section 14 makes a person who has resigned “subject to the jurisdiction of the College for professional misconduct”. The only limitation on the College’s continuing disciplinary jurisdiction is that the alleged misconduct must be “referable to the time when the person was a member.” If the legislature had intended to limit the College’s express continuing disciplinary jurisdiction to restrict the range of available penalties, it would have done so clearly and unambiguously. Absent a clear and unambiguous limitation, the panel should have read s. 51(2) in a manner consistent with the legislative purpose and intent that the College have continuing jurisdiction over former members at all stages of the disciplinary process.

The Court also made the following statement:

[41] Accordingly, in the context of professional regulation, a “certificate of registration” does not mean a piece of paper confirming one’s membership in the profession. In this statutory context, a “certificate of registration” means the entitlement to practice in a regulated profession.

Based on the Court’s findings in *Dumchin*, the Committee concluded that it does have the jurisdiction to impose a suspension on Dr. Foote’s certificate of registration, despite the fact that his certificate of registration has expired. The Committee also has the jurisdiction to impose terms, conditions, or limitations on his certificate of registration,

including a requirement to participate in five hours of individualized instruction in medical ethics.

Dr. Foote engaged in wilful misconduct with a clear agenda. Providing false documentation is a serious error in judgment. This behaviour undermines the values, integrity, and honesty held in high regard by the profession and relied upon by the public. Dr. Foote's behaviour is out of step with the values of the profession he seeks to join.

The Committee was further distressed by the fact that this misconduct occurred so early in Dr. Foote's career. Strong values and good judgment are central to the practice of medicine. The making of fraudulent representations is an affront to the honest physicians who make up the vast majority of the profession and it is an affront to the trust that society places on physicians.

The Committee recognized that Dr. Foote has expressed remorse and acknowledged his error once his actions were discovered, and that he took remedial actions through the PWSP. The Committee also recognized that Dr. Foote's clinical evaluations since this incident have been positive.

The Committee concluded that a reprimand and a suspension in this young physician's record will act as a deterrent to this physician and emphasize the negative impact his actions have on the values of the profession and public confidence in the profession. It is hoped that the rehabilitative measures implemented by Dr. Foote's department will serve to foster change.

ORDER

Therefore, having stated the finding in paragraph 1 of its written order of January 7, 2016, on the matter of penalty and costs, the Committee orders and directs that:

2. Dr. Foote appear before the panel to be reprimanded;

3. The Registrar suspend Dr. Foote's Certificate of Registration for a one month period, to commence at 12:01 a.m. on the date of this Order;
4. The Registrar impose the following as a term, condition and limitation on Dr. Foote's certificate of registration:
 - a. At his own expense, Dr. Foote shall participate in and successfully complete, within 6 months of the date of this Order, 5 hours of individualized instruction in medical ethics with an instructor approved by the College. The instructor shall provide a summative report to the College including his or her conclusion about whether the instruction was completed successfully by Dr. Foote; and
5. Dr. Foote pay to the College its costs of this proceeding in the amount of \$5,000 within thirty (30) days from the date of this Order.