

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Cynthia Lyn Blair, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the name and any information that would disclose the identity of the patients whose names are disclosed in the evidence 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: Blair, C.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. CYNTHIA LYN BLAIR

PANEL MEMBERS:

**DR. W. KING (CHAIR)
L. McCOOL-PHILBIN
DR. P. TADROS
DR. B. TAA (PhD)
DR. P. CHART**

Hearing Dates: May 31, June 1, 2, 3 and June 20, 2011
Decision Date: June 20, 2011
Release of Written Reasons: August 5, 2011

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 May 31, June 1, 2, 3 and June 20, 2011. At the conclusion of the hearing, the Committee stated its finding that the member committed an act of professional misconduct and is incompetent and delivered its penalty and costs order with written reasons to follow.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Cynthia Lyn Blair committed an act of professional misconduct:

1. under paragraph 1(1)1 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”), in that she contravened a term, condition or limitation on her certificate of registration;
2. under paragraph 1(1)2 of O. Reg. 856/93, in that she has failed to maintain the standard of practice of the profession; and
3. under paragraph 1(1)33 of O. Reg. 856/93, in that she 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.

The Notice of Hearing also alleged that Dr. Blair is incompetent, in that her care of patients displayed a lack of knowledge, skill or judgment or disregard for the welfare of her patients of a nature or to an extent that demonstrates that she is unfit to continue to practise or that her practice should be restricted

RESPONSE TO THE ALLEGATIONS

Dr. Blair initially denied all of the allegations in the Notice of Hearing. On June 20, 2011, Dr. Blair admitted the first and second allegations in the Notice of Hearing, that she contravened a term, condition or limitation on her certificate of registration and that she has failed to maintain the standard of practice of the profession. She also admitted to the allegation of incompetence. Counsel for the College withdrew the third allegation of disgraceful, dishonourable, or unprofessional conduct.

BACKGROUND

Dr. Blair is a Canadian medical graduate who is certified in family medicine. She had a family practice (mainly obstetrical) in Oakville from 1983-1997. After 1997, she introduced cosmetic procedures into her practice. She became interested in liposuction and arranged to take several courses under a dermatologist in the United States to learn how to perform tumescent liposuction. She started with small procedures and by 1999 was feeling very comfortable and actively offered liposuction procedures in her practice. By December 2007, the cosmetic part of her practice had grown to more than 50% of her total practice.

Dr. Blair identified on a College questionnaire regarding cosmetic surgery (December 2007) that she was performing liposuction. The College ordered an assessment of her practice which was carried out by Dr. X. Dr. X identified significant deficiencies in Dr. Blair's liposuction practice. In addition, aspects of record keeping in her cosmetic practice outside of liposuction were also of concern. These deficiencies form the substance of the allegations in this matter.

In November 2009, Dr. Blair signed an undertaking with the College not to perform liposuction. At the present time, Dr. Blair's medical practice is 50% family practice and 50% non-surgical cosmetic practice.

FACTS AND EVIDENCE

In addition to the documentary evidence listed as exhibits, the Committee heard evidence from the following two witnesses:

Dr. X

Dr. X is a medical graduate of the University of Toronto (1989). He completed his plastic surgery residency in 1995. Dr. X obtained his fellowship in plastic surgery in 1995. He subsequently had further training in cranio-facial aesthetic surgery in 1996. He currently has a reconstructive and a cosmetic practice. Dr. X was qualified by the Committee as an expert witness in plastic surgery, cosmetic surgery and non-surgical cosmetic procedures.

Dr. X gave evidence supporting the allegations made by the College. Dr. X's evidence is incorporated in the Joint Summary of Evidence (as discussed below) which was submitted to the Committee.

Dr. Cynthia Blair

The Committee heard the evidence in chief of Dr. Blair and her cross examination in part.

Joint Summary of Evidence

As indicated above, the hearing initially proceeded on a contested basis. The College called one witness, Dr. X, who, as indicated above, was qualified as an expert witness. He was examined in chief and cross-examined. Dr. Blair testified in chief and College counsel began the cross-examination of Dr. Blair but did not complete it. A scheduled break of more than a week occurred in the hearing and, upon resumption of the hearing, Dr. Blair changed her response to the allegations in the Notice of Hearing and admitted to the first two allegations in the Notice of Hearing and the allegation of incompetence. At this point, the parties made a joint submission and provided the Committee with a "Joint Summary of the Evidence" which represented the parties' agreement as to a summary of

the evidence which the Committee had heard from Dr. X and Dr. Blair. The Committee accepted the Joint Summary of the Evidence as accurate.

The Joint Summary of Evidence presented to the Committee was as follows:

1. Dr. Blair failed to maintain the standard of practice of the profession, is incompetent, as defined in s. 52(1) of the Health Professions Procedural Code, and breached a term, condition or limitation on her certificate of registration.

I. Failure to Maintain the Standard of Practice of the Profession

2. Dr. Blair failed to maintain the standard of practice of the profession as provided below:
 - A) Dr. Blair failed to maintain the standard of practice of the profession in her care and treatment of 27 liposuction patients in the following ways:
 - i) She failed to employ appropriate sterile technique:
 - Dr. Blair failed to appropriately drape patients;
 - Dr. Blair's instruments were opened improperly during surgery, rendering them non-sterile; and
 - During the surgery, Dr. Blair repeatedly contaminated the "sterile" areas, including placing instruments in a contaminated field.
 - ii) Her facility is inadequate for the performance of invasive surgical procedures (i.e. liposuction):
 - Dr. Blair's procedure room is too small for an invasive procedure and ought not to be used both as an examination room as well as an operating room;
 - Dr. Blair's HVAC system is inadequate as it compromises the airflow and temperature in the operating room;
 - Dr. Blair's floor, baseboards and ceilings are inadequate to ensure an appropriate level of cleanliness; and

- A crack in Dr. Blair's ceiling light can compromise the room's sterility.
- iii) Her pre-operative care of liposuction patients is substandard:
- Dr. Blair repeatedly failed to obtain patients' histories, including in one case where she failed to obtain a patient's history of DVT;
 - Dr. Blair consistently failed to perform physical examinations on patients or to obtain a record of same from the patients' family doctors; and
 - Dr. Blair failed to obtain appropriate pre-operative blood work for a few of her patients.
- iv) Her intra-operative care of liposuction patients is substandard:
- Dr. Blair consistently administered aggressive doses of lidocaine in patients whose histories had either not been obtained or whose histories indicated that a lower dose of lidocaine was appropriate;
 - Dr. Blair performed liposuction on some patients who were poor candidates for liposuction (i.e. morbidly obese patients); and
 - Dr. Blair failed to consistently monitor patients' oxygen saturation rates during liposuction procedures.
- v) Her discharge of patients is substandard:
- Dr. Blair sometimes failed to monitor patients for an appropriate period of time post-liposuction;
 - Dr. Blair regularly failed to take patients' pre-discharge vitals;
 - Dr. Blair's discharge criteria is deficient as she fails to examine the liposuction sites and dressing post-surgery, and fails to consider patients' post-operative pain levels; and
 - Dr. Blair often discharged patients to their own care.
- vi) Her charting is substandard:
- Dr. Blair consistently failed to include an operative record in her surgical charts;
 - Dr. Blair consistently failed to chart patients' dispositions at discharge;

- Dr. Blair rarely noted follow up appointments with patients, should such appointments have taken place; and
 - Where Dr. Blair performed histories and conducted physical examinations, she failed to chart those encounters.
- B) Dr. Blair failed to maintain the standard of practice of the profession in her charting of patients for whom she administered botox and other injectables.

II. Incompetence

3. With respect to liposuction, Dr. Blair is incompetent in that her professional care of patients displayed a lack of knowledge, skill and judgment of a nature or to an extent that demonstrates that she is unfit to continue to practise or that her practice should be restricted. Her lack of knowledge, skill and judgment is apparent in the following ways:

- Her lack of infection control procedures;
- Her failure to take precautions to guard against risks associated with fluid imbalances;
- Her lack of knowledge in the kinetics of lidocaine dosing;
- The inappropriateness of infusing a tumescent solution containing lidocaine, and the subsequent aspiration of fat from a patient who had not yet been cleared following a cardiac event;
- Her inappropriate selection of liposuction patients;
- Her repeated failure to take appropriate histories or conduct physical examinations of patients pre-operatively;
- Her consistent failure to chart the procedure;
- Her repeated failure to record discharge criteria;
- Her discharge of patients into their own care;
- Her performance of liposuction in a non-sterile manner;
- Her performance of liposuction in a facility unsuitable for an invasive surgical procedure;
- Her charting of lidocaine limitations, which put patients at risk of toxicity; and

- In the amounts removed after infiltration, relative to the amounts infiltrated.

III. Contravention of a Term, Condition or Limitation on Her Certificate of Registration

4. Dr. Blair contravened a term, condition or limitation on her certificate of registration by practising in an area of medicine in which she is not educated and experienced.
 - Dr. Blair has a lack of surgical training. Fluid shifts, patient selection and general principles of surgery were not part of her technical training in liposuction.

FINDINGS

The Committee accepted as true all of the facts set out in the Joint Summary of Evidence and the admissions of Dr. Blair contained in it. Having regard to these facts, the Committee accepted Dr. Blair's admissions and found that she committed an act of professional misconduct, in that she contravened a term, condition or limitation on her certificate of registration, and in that she has failed to maintain the standard of practice of the profession, and found her incompetent under subsection 52(1) of the Code, in that her care of patients in her cosmetic practice displayed a lack of knowledge, skill or judgment or disregard for the welfare of her patients of a nature or to an extent that demonstrates that she is unfit to continue to practise or that her practice should be restricted.

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 is aware that joint submissions as to penalty should be accepted unless it is so unreasonable or contrary to the public interest that its acceptance would bring the administration of justice into disrepute. Current case law sets a high threshold for panels to reject a joint submission.

The penalty proposed in this matter secures protection of the public through restrictions placed on the member's practice, and ensures that the standard of practice in record keeping is maintained. In addition to protection of the public, other important penalty principles in this matter include: denunciation of the misconduct, upholding the public confidence in the profession, specific and general deterrence and rehabilitation.

The Committee accepts the proposed penalty and believes it addresses the principles stated above. In accepting the proposed penalty, the Committee considered and gave weight to the following factors:

- The Committee was particularly concerned with the repeated errors in judgment, leading to a pattern of care in liposuction practice which could have resulted in significant harm to patients. The fact that this did not occur does not lessen the seriousness of the misconduct. Dr. Blair's errors spanned her liposuction practice from patient selection to discharge practice. A complete prohibition of liposuction surgery is appropriate and makes it clear that the profession will not tolerate such behaviour.
- Dr. Blair's lack of knowledge in respect of general surgical principles, sterility and her failure to recognize that her facility was inadequate for the performance of invasive cosmetic procedures such as liposuction speaks to her lack of appropriate training. Her focus on technical performance of a procedure was influenced by an approach learned in a different jurisdiction, which is not accepted practice in Ontario. The Committee accepts that liposuction is an invasive surgical procedure. Dr. Blair has no recognized surgical training. The finding that Dr. Blair contravened a term, condition or limitation on her certificate of registration sends a clear message to the profession that physicians have a legal as well as a professional obligation to practise in keeping with their training and experience.

- The Committee was dismayed by Dr. Blair's overestimation of her ability and her failure to recognize that limited technical competence does not mean safe surgery. The public places great trust in the profession and the evidence shows a clear violation of that trust. The restrictions placed on Dr. Blair's practice serve to protect the public. The sanctions imposed also demonstrate that the profession condemns such behaviour and upholds the role of the College in self governance.
- The Committee had before it many examples of serious record keeping violations. These errors and omissions are serious and have the potential to adversely affect the care of patients. Reliance on memory, regardless of how good, is simply not acceptable. Dr. Blair had a busy practice and the charts reviewed were replete with serious omissions. Medical records can become legal documents and must reflect the professional care of patients. The Committee acknowledges that Dr. Blair has already completed the College's course on Medical Records. The terms of her penalty include oversight of her record keeping, both in her cosmetic and family practice, to ensure that necessary skills are acquired and maintained.
- The review of family practice records (as contemplated by our order below) is justified based on concerns in medical record keeping identified from the review of Dr. Blair's non surgical cosmetic charts, and concerns raised regarding knowledge and judgment.
- A reprimand is a clear and direct statement to Dr. Blair and the public that the profession does not tolerate such behaviour from its members. The Committee believes the reprimand honours the principles of specific and general deterrence.
- The costs assessed are significant; however, they recognize the costs incurred by the College for the hearing and the costs of retaining an expert. These costs are appropriately borne by the member rather than the membership at large.
- The Committee considered Dr. Blair's history of service to her community and her hospital. Furthermore, Dr. Blair has no history of past discipline proceedings with the College.

- Her admission to the allegations was interpreted to be an acknowledgment of her errors and acceptance of responsibility.

The Committee is satisfied with the proposed penalty put forth by the parties and agrees that it represents appropriate censure in this matter.

ORDER

Therefore, the Committee ordered and directed that:

1. Dr. Blair attend before the panel to be reprimanded;
2. The Registrar impose the following terms, conditions and limitations on Dr. Blair's certificate of registration:
 - a. Dr. Blair shall be prohibited from performing or engaging in the performance of liposuction procedures;
 - b. At her own expense, Dr. Blair shall retain a College-approved preceptor on record keeping in relation to her cosmetic practice for a period of six months, and who has signed an undertaking in the form attached [to the Order] as Schedule "A" (the "Cosmetic Practice Preceptor"). The Cosmetic Practice Preceptor shall meet with Dr. Blair monthly and review a minimum of 10 randomly chosen patient records per month with reports to the College every two months. Dr. Blair will abide at her own expense by all recommendations of the Cosmetic Practice Preceptor with respect to her medical record keeping, including with respect to any charting improvements; and

- c. At her own expense, Dr. Blair shall retain a College-approved preceptor for her family practice for a period of six months, and who has signed an undertaking in the form attached [to the Order] as Schedule “B” (the “Family Practice Preceptor”). The Family Practice Preceptor shall meet with Dr. Blair monthly and review a minimum of 10 patient records per month with reports to the College every two months.

3. Dr. Blair shall within 30 days pay the College its costs of this proceeding in the amount of \$30,000.00.

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