

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Thomas Albert Botly Bell, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of any patient or any identifying features of any patient referred to orally at the hearing or in the exhibits filed under subsection 45(3) of the Health Professions Procedural Code (the Code), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, SO 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.

**DISCIPLINE COMMITTEE
COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO**

Citation: *College of Physicians and Surgeons of Ontario v. Bell*, 2021 ONCPSD 35

Date: July 26, 2021

BETWEEN:

College of Physicians and Surgeons of Ontario

- and -

Dr. Thomas Albert Botly Bell

FINDING AND PENALTY REASONS

Heard: June 7, 2021, by videoconference

Panel:

Mr. J. Paul Malette, Q.C. (chair)
Dr. Stephen Hucker
Dr. Peeter Poldre
Dr. Ian Preyra
Ms. Shannon Weber

Appearances:

Ms. Penny Ng, for the College
Mr. Colin Johnston, Mr. Scott Azzopardi and Ms. Emma Williams, Student-at-Law, for Dr. Bell
Ms. Kimberly Potter, Independent Legal Counsel to the Discipline Committee

Introduction

- [1] Dr. Bell prescribed narcotics, benzodiazepines and opioid analgesics to his wife, contrary to the College's Policy on *Physician Treatment of Self, Family Members or Others Close to Them* (the Policy). Most prescriptions were for emergency situations and were episodic treatments for the same disease or condition for which he provided ongoing management over two 14-month periods. Following the provision of emergency treatment, Dr. Bell failed to transfer his wife's care to another qualified health-care professional as soon as practicable. This, again, was an act inconsistent with the Policy.
- [2] After considering the Agreed Statement of Facts and Admission, we found Dr. Bell committed an act of professional misconduct under:
- a. paragraph 1(1)33 of Ontario Regulation 856/93 in that he 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.
 - b. paragraph 1(1)2 of O. Reg. 856/93 in that he failed to maintain the standard of practice of the profession in his care of patients.
- [3] These are the reasons for our decision.

The Agreed Facts

- [4] Between March 2015 and August 2018 Dr. Bell wrote 11 prescriptions for his wife including prescriptions for narcotics, benzodiazepines and opioid analgesics. When investigated by the College he asserted that he wrote them in emergencies and when his wife had experienced acute pain and anxiety and her usual treating physicians were not available. Although he did not bill OHIP he also did not complete a medical record regarding the prescriptions.
- [5] The College obtained an independent opinion from a family physician, Dr. Marcus Law. Dr. Law concluded Dr. Bell failed to meet the standard of practice of the profession and breached the Policy as set out below.

- Dr. Bell prescribed hydrocodone to his wife in a situation that was not an emergency.
- Eight prescriptions were not limited to emergency situations.
- Ten prescriptions provided recurring episodic treatments for the same disease or condition and provided ongoing management of his wife's disease or condition.
- Narcotics, controlled drugs and any drugs that are addicting or habituating should not have been prescribed to his spouse
- After the first episode of providing treatment for an emergency situation, Dr. Bell failed to transfer ongoing care of his wife to another qualified health-care professional as soon as practical. Instead, he continued to prescribe for ten emergency situations of the same condition over two 14-month periods.

[6] Dr. Bell admits the breach.

Conclusion

[7] Given the agreed facts and Dr. Bell's admission, we found he had committed an act of professional misconduct. By treating a member of his family contrary to the Policy, he failed to maintain the standard of practice of the profession, and engaged in acts 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

[8] The parties provided us with an Agreed Statement of Facts (Penalty) and made a joint submission on penalty. They proposed Dr. Bell receive a public reprimand, a three-month suspension of his certificate of registration, that he comply with the College's Policy on Closing a Medical Practice, and, at his own cost, complete the PROBE Ethics and Boundaries Program. They also agreed Dr. Bell would pay costs associated with a half-day hearing.

Penalty Principles

- [9] Although we have the discretion to accept or reject a joint submission on penalty, the law requires that we not depart from a joint submission unless the proposed penalty would bring the administration of justice into disrepute or is otherwise not in the public interest. *R. v. Anthony-Cook*, 2016 SCC 43.
- [10] The joint submission must also satisfy well-established fundamental principles underlying penalty orders which include protection of the public and maintaining confidence in the College's ability to regulate the profession in the public interest. The penalty should express our denunciation of the misconduct and act as a deterrent, both to the member and to the profession as a whole. Moreover, we need to consider the Committee's decisions in prior cases to the extent that they are similar to the matter before us. The penalty should also be proportionate to the misconduct.

Evidence on Penalty

Aggravating Factors

- [11] Aggravating factors are those that increase the seriousness of or culpability for misconduct. The most significant aggravating factor was that Dr. Bell treated his spouse for her chronic conditions over three years during which time he prescribed controlled substances and drugs that are addicting or habituating.
- [12] Although Dr. Bell has been subject to two previous proceedings before the College's Inquiries, Complaints and Reports Committee, the issues on those two occasions were insufficiently similar to the present situation to be relevant to our decision.

Mitigating Factors

- [13] Mitigating factors are factors that lessen the seriousness of or culpability for misconduct. This was Dr. Bell's first appearance before the Discipline Committee and he admitted the College's allegations. He completed a remediation course before the Notice of Hearing was issued. By so doing, and by admitting to his misconduct, he showed insight and obviated the need for a disputed hearing. This

reduced the time and expense which would otherwise have been involved and avoided the need for witness testimony.

Prior Cases

[14] Although prior Committee decisions are not binding as precedent, we accept that, as a principle of fairness, like cases should be treated alike. Four cases were provided by the parties and were helpful to our deliberations.

- *College of Physicians and Surgeons of Ontario v. Irvine*, 2011 ONCPSD 39
- *College of Physicians and Surgeons of Ontario v. Vasovich*, 2015 ONCPSD 32
- *College of Physicians and Surgeons of Ontario v. Hurmatov*, 2019 ONCPSD 42
- *College of Physicians and Surgeons of Ontario v. Adams*, 2021 ONCPSD 11

[15] The cases differ somewhat in the details of the misconduct: it is more serious in some respects and less so in others. All four cases involved, at least in part, prescriptions for family members or other close individuals. Dr. Hurmatov also prescribed for himself. He wrote extensive prescriptions for narcotics and other controlled or restricted substances. Dr. Adams and Dr. Vasovich provided medical care contrary to the Policy over many years. Dr. Adams billed OHIP for the services he provided and had been before the Discipline Committee previously.

[16] Dr. Bell prescribed solely for his spouse and not to other patients. His misconduct did not last as long as that of either Dr. Adams or Dr. Vasovich. Dr. Bell did not bill OHIP for his services. He has not appeared before the Discipline Committee before. We note as well that Dr. Hurmatov, who wrote multiple prescriptions over a long period of time, received a three-month suspension.

[17] The penalty jointly proposed for Dr. Bell is consistent with the penalties ordered in the other cases.

Conclusion on penalty

[18] Penalties must demonstrate to both the public and the profession that the College will enforce regulations enacted and policies adopted for the protection of the public and that it will apply a sanction when there is non-compliance. The three-month suspension will serve as a specific deterrent to Dr. Bell, a general deterrent to the profession, and will protect the public, while maintaining the integrity of the profession and the College's ability to regulate in the public interest. The requirement that Dr. Bell participate in the PROBE ethics and boundaries program offers rehabilitation to the physician and further protection of the public. In accepting the joint submission, we were persuaded through our review of prior cases that the proposed penalty is within a reasonable range and is appropriate in the circumstances.

Order

[19] We ordered and directed:

1. Dr. Bell to attend before the panel to be reprimanded.
2. The Registrar to suspend Dr. Bell's certificate of registration for 3 months commencing June 8, 2021 at 12:01 am.
3. The Registrar to place the following terms, conditions and limitations on Dr. Bell's certificate of registration effective immediately:
 - a. Dr. Bell shall comply with the College Policy, "[Closing a Medical Practice](#)".
 - b. Dr. Bell shall, at his own cost, participate in the PROBE ethics and boundaries program offered by the Centre for Personalized Education for Professionals, by receiving a passing evaluation or grade, without any condition or qualification. Dr. Bell will complete the PROBE program within 6 months of the date of this Order and will provide proof to the College of his completion, including proof of registration and attendance and participant assessment reports, within one month of completing it.

4. Dr. Bell to pay the College costs in the amount of \$6,000 by no later than July 17, 2021.

[20] At the conclusion of the hearing, Dr. Bell waived his right to an appeal under subsection 70(1) of the Code and we administered the public reprimand by videoconference.

**DISCIPLINE COMMITTEE
COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO**

In the matter of:

College of Physicians and Surgeons of Ontario

- and -

Thomas Albert Botly Bell

Reprimand delivered by the Discipline Committee
by videoconference on Monday, June 7, 2021.

*****NOT AN OFFICIAL TRANSCRIPT*****

Dr. Bell, it is always sad to see a physician with such a long professional career run afoul of the College at a time when you should have known better.

For a period of over three years, Dr. Bell, you chose, contrary to College policy, to prescribe various medications, including narcotics, benzodiazepines, and opioids for your wife. In one instance, you prescribed when there was clearly no emergency. Other prescriptions were not limited to the immediate medical needs of an emergency but were intended to be used over an extended period of time.

Other physicians should have been involved. Some of these prescriptions were for drugs that a physician must never prescribe for a family member.

Personal or close relationships can compromise a physician's emotional and clinical objectivity. This makes it difficult for a physician to provide treatment for family members which meets the standard of care. You chose to willfully ignore this policy.

This is not your first encounter with the College. You were previously cautioned for failing to respond within a reasonable time to a written inquiry from the College.

The conduct which is the subject matter of this hearing and the conduct resulting in the caution tends to identify a physician who is dismissive and disrespectful of the College and its regulatory function. You would do well to reflect on your disappointing conduct. Practising medicine in Ontario is a privilege, not a right.

That is the end of the reprimand.