

Indexed as: Sweet, D.C. (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. DANIEL CHARLES SWEET

PANEL MEMBERS:

DR. E. STANTON (CHAIR)
G. DEVLIN
DR. J. WATTS
S. BERI
DR. C. CLAPPERTON

Hearing Date:	February 22, 2012
Decision Date:	February 22, 2012
Release of Written Reasons:	March 7, 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 February 22, 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 ALLEGATION

The Notice of Hearing alleged that Dr. Daniel Charles Sweet 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 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. Sweet admitted the allegation of professional misconduct in the Notice of Hearing, 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.

FACTS AND EVIDENCE

The following facts were set out in an Agreed Statement of Facts and Admission that was filed as an exhibit and presented to the Committee:

PART I – FACTS

1. Dr. Daniel Charles Sweet (“Dr. Sweet”) is a family doctor practising in Ottawa. At all material times he was a member of the College of Physicians and Surgeons of Ontario (the “College”).

2. This is the fourth Discipline hearing concerning Dr. Sweet.
3. Dr. Sweet's first Discipline hearing in August, 2002, concerned his prescribing practices and in particular, instances in which he offered opioid maintenance and withdrawal to opioid dependent individuals.
4. Prior to the hearing, in July 2001, the Executive Committee imposed an interim order under s. 37 of the Health Professions Procedural Code prohibiting Dr. Sweet from prescribing "... narcotics, controlled drugs, stimulants and benzodiazepines." The order went into effect on July 12, 2001, and remained in effect until August 6, 2002, the date of this first hearing.
5. Dr. Sweet's first hearing was held on August 6, 2002 where Dr. Sweet admitted the allegation of incompetence. In addition to an order for Dr. Sweet to pay the College's costs of \$2500, the Committee imposed the following terms, conditions and limitations on Dr. Sweet's certificate of registration:
 - i. that Dr. Sweet be restricted from prescribing any controlled substances as defined by the *Controlled Drugs and Substances Act*, 1996, being any substance included in Schedules I, II, III, IV and V of that Act;
 - ii. that Dr. Sweet display a sign in plain view to patients entering his office waiting room notifying patients that he is restricted from prescribing any controlled substances included in Schedules I, II, III, IV and V of *the Controlled Drugs and Substances Act*, 1996;
 - iii. that the terms, conditions and limitations on Dr. Sweet's certificate of registration, as set out in paragraphs (i) and (ii) above, shall remain in full force and effect unless and until they are removed or varied by a subsequent panel of the Discipline Committee on application for that purpose.
6. Dr. Sweet's second Discipline Committee hearing occurred on June 3, 2004. In this hearing, Dr. Sweet admitted to the allegation of professional misconduct based on evidence that he had written a total of six prescriptions for a three patients in 2002 and

2003, in contravention of the s.37 Order from 2001 and the 2002 discipline committee order that he not prescribe narcotics and controlled substances.

7. Dr. Sweet admitted that by prescribing in contravention of both Orders, he committed acts relevant to the practice of medicine that, having regard to all the circumstances, would be reasonably be regarded by members as disgraceful, dishonourable or unprofessional. The Order dated June 3, 2004 reflecting these admissions resulted in the suspension of Dr. Sweet's certificate of registration for a period of three months to commence on July 1, 2004. In addition, the Discipline Committee directed that:

- i. The terms, conditions and limitations currently on Dr. Sweet's certificate of registration shall remain in full force and effect.
- ii. Dr. Daniel Sweet must successfully complete an ethics course acceptable to the College by October 31, 2004.
- iii. If the Registrar receives information which indicates that there has been a failure to comply with any terms of this Order, the Registrar shall suspend Dr. Sweet's certificate of registration immediately and provide Dr. Sweet with fourteen days' notice that the matter will be reported to the Executive Committee.

8. Dr. Sweet's third Discipline Committee hearing occurred on April 29, 2008. In this hearing, Dr. Sweet admitted he committed acts relevant to the practice of medicine that, having regard to all the circumstances, would be reasonably be regarded by members as disgraceful, dishonourable or unprofessional based on evidence that, contrary to the Order of the Discipline Committee, there was no sign in the waiting area of the Clinic where he was practicing informing patients of the restrictions on Dr. Sweet's prescribing privileges. College investigators spoke with Dr. Sweet about his obligation to have the sign posted in his office. Signs were eventually posted in Dr. Sweet's office locations in early May 2007, ten weeks after receiving notice from the College.

9. The Discipline Committee ordered and directed that:
 - i. The Registrar suspend Dr. Sweet's certificate of registration for a period of two months to commence on May 1, 2008.
 - ii. The terms, conditions and limitations currently on Dr. Sweet's certificate of registration shall remain in full force and effect.
 - iii. Dr. Sweet shall appear before the Discipline Committee to be reprimanded.
 - iv. Dr. Sweet pay costs to the College in the amount of \$3,650 within 60 days of the date of the Order.
 - v. The results of the proceeding be included in the register.
10. In June of 2010 the College received information from a pharmacist in Ottawa that on June 3, 2010 Dr. Sweet had written a prescription for Delatestryl, a controlled substance, to Patient A.
11. On July 27, 2010 an investigation under s.75(1)(a) of the Health Professions Procedural Code was commenced.
12. In November of 2010 the College received further information from the same pharmacist in Ottawa that on October 28, 2010 Dr. Sweet had written a prescription for Cessamet a controlled substance, to Patient B.
13. On January 17, 2011 Dr. Sweet provided a response to the College in which he admitted that he had prescribed Delatestryl and Cessamet.
14. In his response Dr. Sweet indicates that saw Patient A on June 3, 2010. At this appointment, in addition to other problems, the patient complained of Erectile Dysfunction. Dr. Sweet states that he planned to send Patient A to an Erectile Dysfunction Clinic where he could be assessed and treated. Dr. Sweet advised Patient A of the plan. The patient was insistent that he wanted a prescription for Delatestryl immediately and was not content to wait for his referral. Dr. Sweet reports that Patient A

is a large gentleman and that Dr. Sweet felt pressured to provide him with the requested prescription which he provided on a one-time basis.

15. In his response Dr. Sweet indicates that he saw Patient B on October 28, 2010. Patient B was being followed by a psychologist for his Post Traumatic Stress Disorder. Patient B reported feeling anxious and reported that he had heard that Cessamet could help with his anxiety and stress. Patient B requested a prescription for Cessamet. Initially Dr. Sweet advised Patient B that he could not prescribe controlled substance and offered Patient B the alternatives of Seroquel or Olanzapine. Patient B told Dr. Sweet that Cessamet was not a controlled substance. Dr. Sweet provided the prescription with instructions to tell the pharmacist that if this substance was controlled then the prescription should not be filled. The prescription was subsequently returned to the Clinic and Dr. Sweet prescribed Olanzapine instead.

PART II – ADMISSION

16. Dr. Sweet admits the facts in paragraphs 10 to 15 above and admits that prescribing controlled substances in violation of the terms, conditions and limitations upon his certificate of registration constitutes professional misconduct under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, in that he engaged in conduct relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

In their oral submissions on finding, counsel for the College and counsel for Dr. Sweet made it clear for the Committee that Dr. Sweet also admits the facts in paragraphs 1 to 9 above.

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. Sweet's admission and found that he committed an act of professional misconduct, 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.

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 understands that a joint submission made by the parties must be accepted, unless to do so would be contrary to the public interest and bring the administration of justice into disrepute. The Committee accepts the proposed penalty as reasonable for the following reasons.

In assessing the nature of Dr. Sweet's professional misconduct, the Committee notes that he has appeared before this tribunal on three previous occasions. The Agreed Statement of Facts outlines Dr. Sweet's previous history with the Discipline Committee. The Committee considered it to be an aggravating factor that Dr. Sweet continued to prescribe controlled drugs, despite the longstanding restrictions on his certificate of registration that prohibit him from doing so. This is the second time Dr. Sweet has appeared before this Committee for breaching his prescribing restriction. Dr. Sweet did not call the pharmacist or check to see if one of the drugs he prescribed was a controlled substance, but took the patient's word that it was not a controlled drug and told him to tell the pharmacist that if the drug was controlled, then the prescription should not be filled. Given the restrictions on prescribing have been in place for many years, the Committee would have expected that the doctor would be more rigorous in determining for himself if his prescription was in compliance with the conditions on his certificate of registration.

The Committee considered it a mitigating factor that Dr. Sweet admitted his professional misconduct, thus avoiding a lengthy hearing.

The Committee finds it a matter of great concern when a member of the College repeatedly appears before the Discipline Committee as Dr. Sweet has done. A reasonable physician would make absolutely certain that he knew the full and precise nature of any

conditions imposed on their practice and they would ensure that they abided by those conditions. Repeatedly breaching the terms and conditions of an undertaking or order reflects a flagrant disregard for this College's responsibility to govern its members in the public interest. It is important that neither the public nor the profession be misled into thinking that even minor breaches of the Order of the Committee will be tolerated. Dr. Sweet has been given more than one opportunity to demonstrate that he is governable and can comply with orders of his governing body. Any further breach of a College order could result in a harsher penalty in the future.

The four month suspension and reprimand, as jointly proposed by the parties, will serve to act as a specific deterrent to Dr. Sweet. They will also serve as a general deterrent to the membership by underscoring the need to be diligent about the requirements for membership in the College and compliance with the orders of the Committee. The integrity of the profession and the confidence of the public will be preserved with the imposition of the proposed penalty. The harshness of the penalty is commensurate with the seriousness of the breach.

ORDER

Therefore, the Committee ordered and directed that:

1. the Registrar suspend Dr. Sweet's certificate of registration for a period of four (4) months, to commence April 1, 2012.
2. Dr. Sweet appear before the panel to be reprimanded.
3. the terms, conditions and limitations currently on Dr. Sweet's certificate of registration shall remain in full force and effect.
4. Dr. Sweet pay to the College costs in the amount of \$3,650.00, within 90 days of the date of this Order.
5. the results of this proceeding to be included in the register.

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