

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Peter Paul Baranick, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of the witnesses or any information that could disclose the identity of the witnesses 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 ... 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: Ontario (College of Physicians and Surgeons of Ontario) v. Baranick,
2019 ONCPSD 13**

**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. PETER PAUL BARANICK

PANEL MEMBERS:

**DR. E. STANTON
MS. E.M. MILLS
DR. A. TURNER
MR. M. KANJI
DR. M. DAVIE**

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MR. K. MAIJALA

COUNSEL FOR DR. BARANICK:

MR. J. MUTTER

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. R.W. COSMAN

**Hearing Date: January 30, 2019
Decision Date: January 30, 2019
Written Decision Date: March 25, 2019**

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 January 30, 2019. At the conclusion of the hearing, the Committee released a written order stating its finding that the member committed an act of professional misconduct and setting out its penalty and costs order with written reasons to follow.

THE ALLEGATION

The Notice of Hearing alleged that Dr. Baranick 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. Baranick admitted the allegation of professional misconduct in the Notice of Hearing.

THE FACTS

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

PART I – FACTS

A. Dr. Peter Paul Baranick

1. Dr. Peter Paul Baranick (“Dr. Baranick”) is a 73 year-old physician who received his certificate of registration authorizing independent practice from the College of Physicians and Surgeons of Ontario (“the College”) on August 3, 1979.
2. At the relevant time, Dr. Baranick practised in Ottawa, Ontario.

B. Background

3. On May 14, 2015, the Inquiries, Complaints and Reports Committee considered a report of a Registrar's Investigation into Dr. Baranick's practice relating to his prescribing. On September 23, 2015, Dr. Baranick signed an undertaking stating, among other things, that he:

- Will not issue new prescriptions or renew existing prescriptions for narcotic drugs, narcotic preparations, controlled drugs, benzodiazepines and other targeted substances, and all other monitored drugs; and
- Shall post a sign in the waiting rooms of all of his practice locations advising of his prescribing restriction.

A copy of the September 2015 Undertaking is attached at Tab 1[to the Agreed Statement of Facts and Admission].

C. Failure to Post Sign

4. Dr. Baranick practises at various locations of the Appletree Medical Clinics in Ottawa.

5. In October 2017, College staff attended Appletree Clinic A and noted that the signs were not posted. Clinic staff advised that Dr. Baranick was not working there currently and that the sign was posted whenever Dr. Baranick was working there.

6. College staff were advised that Dr. Baranick was currently working at Appletree Clinic B. College staff then proceeded to Appletree Clinic B and noted that signs were posted. Dr. Baranick was working at this location and spoke with College staff. He advised that signs were posted when he came into the office to work. A memorandum regarding this compliance visit is attached at Tab 2 [to the Agreed Statement of Facts and Admission].

7. In December 2017, the College sent a letter to Dr. Baranick's counsel requesting that Dr. Baranick post his prescribing restriction signs in the waiting rooms of all practice locations. A copy of the College's letter to Dr. Baranick, dated December 2017, is attached at Tab 3 [to the Agreed Statement of Facts and Admission].

8. By letter dated December 2017, Dr. Baranick's counsel indicated that having the signs posted when Dr. Baranick is not working at a particular location, "falls outside the spirit and

intent of his undertaking” and that there is no value in posting the signs if he is not present as it would cause confusion amongst patients. A copy of Dr. Baranick’s counsel’s letter, dated December 2017, is attached at Tab 4 [to the Agreed Statement of Facts and Admission].

9. In December 2017, the College sent a letter to Dr. Baranick’s counsel requesting that he comply with his undertaking and post the required signage at all locations regardless of whether he is working there that day or not. A copy of the College’s letter, dated December 2017, is attached at Tab 5 [to the Agreed Statement of Facts and Admission].

10. In January 2018, Dr. Baranick’s counsel advised that Dr. Baranick had posted his prescribing restriction signs at all practice locations. Dr. Baranick’s counsel’s letter, dated January 2018, is attached at Tab 6 [to the Agreed Statement of Facts and Admission]. In January 2018, Dr. Baranick’s counsel was advised that no further action would be taken as the College was advised that the signs were posted at all locations. A copy of the College’s letter, dated January 2018, is attached at Tab 7 [to the Agreed Statement of Facts and Admission].

11. In February 2018, College staff attended Appletree Clinic C. Clinic staff advised that Dr. Baranick did not work there and therefore the sign was not posted. College staff were told that Dr. Baranick was working at Appletree Clinic A. College staff attended Appletree Clinic A and did not see the required sign posted. Appletree Clinic A staff advised that Dr. Baranick would be working later that day and that the sign would be posted when he starts to work. College staff advised the clinic staff that the sign was required to be posted at all times and the clinic staff person said she would post the sign. A memorandum regarding this compliance visit is attached at Tab 8 [to the Agreed Statement of Facts and Admission].

12. In February 2018, College staff attended Appletree Clinic A and Appletree Clinic D. The required signs were posted at both these locations. College staff also attended Appletree Clinic B, where signs were not posted. A memorandum regarding this compliance visit is attached at Tab 9 [to the Agreed Statement of Facts and Admission].

13. By letter dated March 2018, Dr. Baranick’s counsel requested a variance of section 5(a) of his undertaking, stating that Dr. Baranick should only be required to post his sign where he is physically present on any given day. A copy of Dr. Baranick’s counsel’s letter, dated March 2018, is attached at Tab 10 [to the Agreed Statement of Facts and Admission].

14. In April 2018, the College sent a letter to Dr. Baranick's counsel advising that despite previous reassurances, recent compliance visits in February showed inconsistent practices at the various Appletree Clinics where the required signage was not posted. The College reiterated that the signs are expected to be up at all of Dr. Baranick's practice locations at all times. The College also advised that if the ICRC accepted the proposed wording, an amended undertaking would be provided for signature. A copy of the College's letter, dated April 2018, is attached at Tab 11 [to the Agreed Statement of Facts and Admission].

15. The variance to the undertaking requested by Dr. Baranick was not granted by the College.

D. Narcotics Monitoring

16. In January 2018, the College received data from the Narcotics Monitoring System for the period from June 2016 to December 2017 related to Dr. Baranick's prescribing. A copy of a letter from the Ministry of Health and Long-Term Care attaching Dr. Baranick's Narcotics Monitoring System data is attached at Tab 12 [to the Agreed Statement of Facts and Admission].

17. In January 2018, the College contacted the pharmacies identified in Dr. Baranick's Narcotics Monitoring System data. The College requested copies of four prescriptions from the pharmacies where the pharmacist advised that Dr. Baranick wrote the prescription after he had signed his undertaking. A memo to file dated January 2018 is attached at Tab 13 [to the Agreed Statement of Facts and Admission].

18. The College received three prescriptions signed by Dr. Baranick and dated November 2015, January 2017, and December 2017. Each of the prescriptions was for a testosterone medication that Dr. Baranick was prohibited from prescribing pursuant to the September 2015 Undertaking. Copies of the prescriptions are attached at Tabs 14-16 [to the Agreed Statement of Facts and Admission].

19. In February 2018, Dr. Baranick's counsel advised that Dr. Baranick did not initiate the prescriptions, but did refill them. He wanted to reassure the College that this was an honest mistake and that he never intended to breach his undertaking. To prevent this from occurring again, he had reviewed his undertaking and the lists of drugs and substances he is restricted from prescribing. A copy of Dr. Baranick's counsel's letter, dated February 2018 is attached at Tab 17

[to the Agreed Statement of Facts and Admission].

Part II – ADMISSION

20. Dr. Baranick admits the facts specified above and admits that, based on these facts, 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, contrary to paragraph 1(1)33 of O. Reg. 856/93.

FINDING

The Committee accepted as correct all of the facts set out in the Agreed Statement of Facts and Admission. Having regard to these facts, the Committee accepted Dr. Baranick'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.

AGREED STATEMENT OF FACTS ON PENALTY

The following additional facts were set out in an Agreed Statement of Facts on Penalty that was presented to the Committee:

A. Background

1. Dr. Baranick entered into the September 2015 Undertaking as a result of a College investigation into his prescribing practices.
2. As a result of the investigation, the Inquiries, Complaints and Reports Committee of the College ("the ICRC") accepted Dr. Baranick's September 2015 Undertaking to give up his narcotics prescribing privileges and required Dr. Baranick to attend at the College to be cautioned in person. A copy of the ICRC's Decision and Reasons, dated June 9, 2016, is attached at Tab 1 [to the agreed Statement of Facts on Penalty].

B. Dr. Baranick's Discipline History

3. On June 12, 2017, the Discipline Committee found that Dr. Baranick had failed to meet the standard of practice of the profession. The discipline hearing arose out of a reassessment of

Dr. Baranick's practice pursuant to an Undertaking with the College that Dr. Baranick signed on July 10, 2013 (the "July 2013 Undertaking"). The College's assessor opined that Dr. Baranick failed to meet the standard of practice of the profession with respect to his record-keeping, assessment and management of community acquired infections, infant care, and chronic illness such as arthritis, diabetes and hypercholesterolemia. Dr. Baranick admitted the allegations.

4. The Discipline Committee accepted a joint submission on penalty and ordered a reprimand, a 2-month suspension of Dr. Baranick's certificate of registration, and terms, conditions and limitations on Dr. Baranick's certificate of registration, including that he complete a comprehensive Continuing Medical Education program focusing on the areas of concern raised by the assessor, that he continue to limit his practice to no more than six patients per hour, and that he undergo a six-month period of clinical supervision followed by a re-assessment of his practice. The Discipline Committee also ordered that Dr. Baranick pay costs to the College at the tariff rate. The Discipline Committee's Decision and Reasons for Decision, dated August 1, 2017, are attached at Tab 2 [to the agreed Statement of Facts on Penalty].

5. The reassessment of Dr. Baranick's practice took place in November and December 2018. The College's assessor reviewed twenty patient charts and conducted a telephone interview with Dr. Baranick. The College's assessor concluded that for all twenty patient charts reviewed, Dr. Baranick had met the standard of care of the profession and had displayed appropriate knowledge, skills and judgment.

JOINT SUBMISSION ON PENALTY

Counsel for the College and counsel for the member made a joint submission as to an appropriate penalty and costs order, which included: a one-month suspension of Dr. Baranick's certificate of registration; a reprimand; and costs payable to the College in the amount of \$6000.00 within 30 days of the Order.

The Committee is aware that there is a high legal threshold for rejecting the parties' joint submission on penalty. The Committee must accept such a submission unless doing so would bring the administration of justice into disrepute, or is otherwise contrary to the public interest.

PENALTY AND REASONS FOR PENALTY

For the reasons that follow, the Committee determined that the proposed penalty and costs order, jointly submitted by the parties, was appropriate in the circumstances of the case. In considering an appropriate penalty, the Committee considered the well-established principles regarding penalty orders. They include public protection, specific deterrence of the member, general deterrence of the profession, and maintenance of public confidence in the integrity of the profession and the College's ability to regulate the profession in the public interest. Rehabilitation is another principle guiding the determination of an appropriate penalty.

Nature of the Misconduct

As set out in the Agreed Statement of Facts and Admission, in September 2015, Dr. Baranick signed an undertaking stating that he would not issue new or renew existing prescriptions for narcotic drugs and preparations, controlled drugs, benzodiazepines and other targeted substances, and all other monitored drugs. Further, the undertaking required that Dr. Baranick post a sign in the waiting rooms of all of his practice locations advising of his prescribing restrictions.

Dr. Baranick breached both terms of the September 2015 undertaking. The Committee found that Dr. Baranick failed repeatedly to post signs advising of his prescribing restrictions in the waiting rooms of his practice locations. The Committee also found that Dr. Baranick refilled three prescriptions for a Testosterone medication that he was prohibited from prescribing pursuant to the undertaking.

Aggravating and Mitigating Factors

Dr. Baranick's prior discipline history with the College was considered an aggravating factor on penalty in this case.

Mitigating factors included Dr. Baranick's cooperation with the College and admission to the misconduct, which saved the College the time and expense of a fully contested hearing, and spared witnesses the need to testify.

Prior Cases

The Committee is aware that its decisions are not binding as precedent on it. While each case on its facts is unique, the Committee accepts as a principle of fairness that like cases should be treated alike.

The Committee considered two cases where a finding of disgraceful, dishonourable, or unprofessional conduct was made for the breach of an undertaking. In *CPSO v. Arora* (2019), an ophthalmologist entered into an undertaking whereby he agreed to restrict his number of daily patient encounters to 80 patients, and to maintain a call log verifying all patients seen above the ordinary 80 patient maximum. Dr. Arora admitted to breaching both terms of the undertaking. The Committee ordered a one-month suspension, terms, conditions and limitations on his certificate of registration requiring completion of an ethics and boundaries education program, a reprimand, and costs in the amount of \$6000.00

In *CPSO v. Saul* (2014), Dr. Saul entered into an undertaking with the College that required, among other restrictions, that he not provide medical declarations for medical marijuana authorizations. Dr. Saul breached the undertaking by providing medical marijuana authorizations on 43 occasions for patients. The Committee's order included a two-month suspension, a reprimand, and costs in the amount of \$4,460.00.

Conclusion

The Committee accepts the penalty proposed jointly by the parties. The penalty provides specific and general deterrence. It protects patient safety. It supports public confidence in the regulation of the profession by ensuring that an undertaking entered into with the College is strictly adhered to and that any breach of it is regarded seriously. The one-month suspension proposed is within the range of suspensions ordered in the prior cases presented, and in the view of the Committee, is reasonable in the circumstances of this case.

ORDER

The Committee stated its finding of professional misconduct in paragraph 1 of its written order of January 23, 2019. In that order, the Committee ordered and directed on the matter of penalty and costs that:

2. The Registrar suspend Dr. Baranick's certificate of registration for a period of one (1) month, commencing immediately.
3. Dr. Baranick appear before the panel to be reprimanded.
4. Dr. Baranick pay costs to the College in the amount of \$6,000.00 within thirty (30) days of the date of this Order.

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

TEXT of PUBLIC REPRIMAND
Delivered January 30, 2019
in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
And
DR. PETER PAUL BARANICK

Dr. Baranick,

It is regrettable that you are appearing before this Committee again. You have breached an undertaking. An undertaking is intended to protect the public, and therefore must be strictly adhered to.

In regard to the signage, the terms of the undertaking you signed were made very clear to you on more than one occasion. Despite that, there continued to be breaches.

In regard to prescribing breaches, it was your responsibility to know which drugs were on the prohibited list. You failed to familiarize yourself with that list, and that resulted in your non-compliance. Non-compliance with an undertaking cannot and, indeed, will not be tolerated by the public or the profession.

Self-regulation is a privilege. The public must be reassured and trust that the profession can govern itself in the public interest. Your misconduct has jeopardized that trust.

In the future, we expect that you will abide scrupulously to the authority of the College and comply with your undertaking. You may be seated.