

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. David Brian Opper, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the names and any information that could disclose the identity of patients referred to orally or in the exhibits filed 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: Ontario (College of Physicians and Surgeons of Ontario) v.
Opper, 2015 ONCPSD 15**

**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. DAVID BRIAN OPPER

PANEL MEMBERS:

DR. M. GABEL (CHAIR)
D. GIAMPIETRI
DR. M. DAVIE
S. BERI
DR. P. CHART

Hearing Date:	February 24, 2015
Decision Date:	February 24, 2015
Release of Written Reasons:	April 15, 2015

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 February 24, 2015. 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 ALLEGATIONS

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

1. under clause 51(1)(a) of the Health Professions Procedural Code (“the Code”) which is Schedule 2 to the *Regulated Health Professions Act, 1991*, in that he has been found guilty of an offence that is relevant to his suitability to practice; and
2. 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 ALLEGATIONS

Dr. Oppen admitted the allegations of professional misconduct in the Notice of Hearing, that he has been found guilty of an offence that is relevant to his suitability to practise; and 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.

THE FACTS

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. David Brian Oppen ("Dr. Oppen") is a physician who, at the relevant time, was practising at Hospital 1 in Brantford, Ontario as a Medical Hospitalist in the Department of Psychiatry.
2. On August 9, 2011, Dr. Oppen was charged as follows under the Health Insurance Act, R.S.O. 1990, c. H.6 (the "HIA"):
 - (a) Between 1 April 2009 and 31 March 2010, at Brantford, ON, failing to maintain records as may be necessary to demonstrate that a service for which he prepares or submits an account is the service that he provided, contrary to ss. 37.1(2). According to the agreed facts, Dr. Oppen was compensated for improper billings in the amount of \$29,767.50.
 - (b) Between 29 December 2006 and 31 August 2009, at Brantford, ON, knowingly obtaining or attempting to obtain payment for any insured service that he was not entitled to obtain, contrary to ss. 43(1). According to the agreed facts, Dr. Oppen billed OHIP for services purportedly provided to a patient on December 29, 2006 and July 4, 2009. The patient denied having seen Dr. Oppen at any time after June 2006, and Dr. Oppen later admitted to not having provided the services to the patient for which he billed OHIP. Dr. Oppen received \$265.30 for these billings.
 - (c) Between 4 July 2009 and 6 July 2009, at Brantford, ON, knowingly giving false information in an application, return or statement made to the Plan or to the General Manager, contrary to ss. 43(3). According to the agreed facts, Dr. Oppen billed OHIP for services purportedly provided to a patient on July 4, 2009. The patient denied having received services from Dr. Oppen at any time after 2006, and Dr. Oppen later admitted to knowingly giving false information to OHIP regarding the provision of insured services to this patient. Dr. Oppen received \$206.90 for this billing.

Attached at Tab 1 (to the Agreed Statement of Facts and Admission) is a certified copy of the Information regarding the above-noted charges.

3. On October 25, 2012 Dr. Opper pleaded guilty in the Ontario Court of Justice and was found guilty of the three charges described above. Dr. Opper thereby committed offences contrary to section 44(1)(a) of the Health Insurance Act.

4. In addition, Dr. Opper agreed to the following facts, though he did not plead guilty to the associated counts:

- (a) Dr. Opper billed OHIP for 17 “Special Visit Premiums” in relation to discussions with a colleague, regarding their personal medical issues. The colleague indicated that he had only 1-2 contacts with Dr. Opper regarding his personal medical issues, was unaware that Dr. Opper had billed OHIP with respect to the contact, and did not provide his OHIP card to Dr. Opper. While Dr. Opper maintained that he had 17 discussions with his colleague regarding personal medical issues, he admitted that he had no medical records regarding the encounters.
- (b) Dr. Opper billed OHIP for 11 “Special Visit Premiums” in relation to discussions with a member of his church, citing Fee Schedule Code Q994. Code Q994 permits a physician to bill OHIP, “if an assessment is provided at the request of the patient or his representative in a non-professional setting; evenings from 5:00 pm to midnight.” Dr. Opper admitted that he had no medical records to support the discussions and that he did not attend church at the church member’s request for the discussions. In addition, the church member indicated that he did not know how Dr. Opper obtained his health card number.

5. In relation to the three charges to which he plead guilty, Dr. Opper was sentenced to a fine of \$30,000 (\$10,000 per count), plus court costs and victim surcharge. On October 25, 2012, prior to the hearing on the charges, Dr. Opper paid restitution in the amount of \$29,816.20. Attached at Tab 2 (to the Agreed Statement of Facts and

Admission) is the Agreed Facts submitted to the court and attached at Tab 3 (to the Agreed Statement of Facts and Admission) is a certified copy of the transcript of the guilty plea proceedings held in Brantford at the Ontario Court of Justice on October 25, 2012.

PART II - ADMISSION

6. Dr. Opper admits the facts upon which his HIA convictions were based and admits the facts set out in paragraphs 1-5 above.

7. Dr. Opper admits that the conduct described above constitutes professional misconduct and admits he has engaged in professional misconduct in that:

- (a) he has been found guilty of an offence relevant to his suitability of practice contrary to clause 51(1)(a) of the Health Professions Procedural Code, which is Schedule 2 to the Regulated Health Professions Act, 1991 S.O. 1991 c.18; and,
- (b) he has engaged in an act or omission relevant to the practice medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable and unprofessional, contrary to paragraph 1(1)33 of Ontario Regulation 856/93 made under the Medicine Act, 1991, S.O. 1991, c.30.

FINDINGS

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. Opper's admission and found that he committed an act of professional misconduct in that he has been found guilty of an offence relevant to his suitability to practise; and 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 and 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 law is clear that where the parties make a joint submission, the Committee should accept such a proposal unless the proposed order is not in the public interest and would bring the administration of justice into disrepute. In assessing a joint submission, the Committee must ensure that the proposed order will satisfy the principles governing penalty: protection of the public, denunciation of the misconduct, specific and general deterrence, maintenance of public confidence in the profession's ability to self-regulate in the public interest, and where possible, rehabilitation of the physician.

The Committee was provided with a brief of authorities which illustrated that the jointly proposed penalty was in the range of like cases. However, the Committee is aware that each case must be considered on its own specific facts in light of the misconduct and the principles to be achieved on the imposition of penalty.

The Committee, after careful consideration, accepted the joint submission.

The Committee was dismayed by Dr. Oppen's misconduct which displayed a flagrant disregard for the privileged position of trust in society which physicians hold. The Ontario Hospital Insurance Plan (OHIP) relies on the honesty and integrity of billing physicians to bill accurately and in accordance with the criteria for payment set out in the *Health Insurance Act* and Regulations, including the Schedule of Benefits.

When funds are deflected to fictitious billings, there is less funding available for the real needs of patients in the health care system. By his misconduct, Dr. Oppen violated core values of our profession. Dishonesty and disregard for the medical services payment system hurts patients. Dr. Oppen was found guilty of offences contrary to the *Health Insurance Act*. His misconduct involved repeated offences and occurred over a significant period of time. The Committee must impose a serious sanction for such serious misconduct. His misconduct reflects not only on himself but also on the profession as a whole and may erode the public's trust in self-regulation by the profession.

Dr. Oppen maintains that his record keeping was a significant problem in these billing irregularities. The Committee emphasizes that record keeping is a fundamental part of patient care. The fact that there were no records for so many patient encounters cannot be explained away by poor record keeping alone. The Committee is reassured that Dr. Oppen has already taken, and successfully completed, the College approved record keeping course and expects this will not be a problem in the future. It is the Committee's hope that with the successful completion of an educational program in Ethics specifically designed for Dr. Oppen, he will gain a greater understanding of why such misconduct is particularly abhorrent. However, for the further protection of the public, there will be significant terms, conditions and limitations imposed indefinitely on Dr. Oppen's certificate of registration in the form of chart and billing monitoring with regular reports to the College, and ongoing unannounced inspections of his practice charts and billings.

This type of misconduct cannot be tolerated. In addition to the failures in record keeping to justify his billings, Dr. Oppen, in certain cases, knowingly gave false information to OHIP regarding the provision of uninsured services and admitted to not having provided services to patients, for which he billed OHIP. A three month suspension of Dr. Oppen's certificate of registration will serve as a specific deterrent and a general deterrent to the profession. It is a privilege to have an honour system for the payment for one's professional services, and it must not be abused.

The Committee did consider mitigating factors in this case. Dr. Oppen cooperated throughout the discipline process, he has already made restitution in the full amount according to OHIP and he has paid a significant fine as ordered by the Ontario Court of Justice. He has expressed his embarrassment and regret for his misconduct, and by admitting to the allegations, he saved resources for the College in both time and money. However, the Committee does have the discretion to award costs in an appropriate case and agrees with the joint submission that this is such a case. The Committee ordered Dr. Oppen to pay to the College the tariff cost of \$4,460.00, for one day of hearing.

ORDER

Therefore, having stated its findings in paragraph 1 of its written order of February 24, 2015, the Committee ordered and directed on the matter of penalty and costs that:

2. Dr. Opper appear before the panel to be reprimanded.
3. the Registrar suspend Dr. Opper's certificate of registration for a period of three (3) months, commencing at 12:01 a.m. on February 25, 2015.
4. the Registrar place the following terms, conditions and limitations on Dr. Opper's certificate of registration:
 - (i) Dr. Opper shall participate in and successfully complete an educational program satisfactory to the College in Ethics, with a report or reports to be provided to the College regarding Dr. Opper's progress and compliance. Dr. Opper shall complete this requirement by August 1, 2015 or, if no satisfactory program is available by that time, by the first possible opportunity thereafter;
 - (ii) Within thirty (30) days of the date of this Order, Dr. Opper shall obtain a physician practice monitor acceptable to the College, who will review his Ontario Health Insurance Plan ("OHIP") billings and corresponding patient charts to ensure his compliance with the Health Insurance Act and who will sign an undertaking in the form attached [to the Order] as Schedule "A" (the "Practice Monitor");
 - (iii) The Practice Monitor will review, at minimum, 25 of Dr. Opper's patient charts for which he has billed OHIP once every three (3) months for a minimum of one year. If Dr. Opper bills OHIP for fewer than 25 patients in any given three-month period, the Practice Monitor will review all of the patient charts for which Dr. Opper billed OHIP. In the event that Dr. Opper has billed OHIP for fewer than 100 patients during the one-year period of monitoring, the monitoring will continue until a minimum of 100 charts have been reviewed;

- (iv) If a Practice Monitor who has given an undertaking in Schedule “A” to this Order is unable or unwilling to continue to fulfill its terms, Dr. Oppen shall, within twenty (20) days of receiving notice of same, obtain an executed undertaking in the same form from a similarly qualified person who is acceptable to the College and ensure that it is delivered to the College within that time;
- (v) If Dr. Oppen is unable to obtain a Practice Monitor in accordance with paragraphs 4(ii), 4(iii) and 4(iv) of this Order, he shall cease to submit bills to OHIP until such time as he has done so;
- (vi) Dr. Oppen shall consent to the disclosure by his Practice Monitor to the College, and by the College to his Practice Monitor, of all information the Practice Monitor or the College deems necessary or desirable in order to fulfill the Practice Monitor’s undertaking and to monitor Dr. Oppen’s compliance with this Order;
- (vii) For an indefinite period of time, Dr. Oppen shall inform the College of each and every location where he practices including, but not limited to hospitals, clinics, and offices, in any jurisdiction (collectively, his “Practice Location(s)”), within fifteen (15) days of this Order, and shall inform the College of any and all new Practice Locations within 15 days of commencing practice at that location;
- (viii) For an indefinite period of time, Dr. Oppen shall submit to, and not interfere with, unannounced inspections of his Practice Location(s) and patient records by a College representative for the purposes of monitoring his compliance with this Order;
- (ix) Dr. Oppen shall consent to the monitoring of his OHIP billings and cooperate with inspections of his practice and patient charts by his Practice Monitor and College representatives for the purpose of monitoring and enforcing his compliance with the terms of this Order; and

- (x) Dr. Oppen shall be responsible for any and all costs associated with implementing the terms of this Order.

5. Dr. Oppen pay to the College costs of this proceeding in the amount of \$4,460.00, within thirty (30) days of the date of this Order.

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

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- and -

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PANEL MEMBERS:

**DR. M. GABEL (CHAIR)
D. GIAMPIETRI
DR. M. DAVIE
S. BERI
DR. P. CHART**

Hearing Date:	February 24, 2015
Decision Date:	February 24, 2015
Reprimand Date:	February 24, 2015
Release of Written Reasons:	April 15, 2015

PUBLICATION BAN

TEXT of PUBLIC REPRIMAND
Delivered February 24, 2015
in the case of the
COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO
and
DR. DAVID BRIAN OPPER

Dr. Opper, physicians are in a position of trust in this society. This trust extends to their billing as part of their professional responsibilities. To betray this trust is not only shocking, as to your conduct, but also undermines the work of honest, diligent fellow physicians in the public eye.

We expect good conduct and character of physicians, including areas where their conduct is self-monitored. We are frankly shocked at what we consider shameful behaviour. You strayed from the moral compass expected of you by your community and by your colleagues. On a larger society basis, money needed for necessary care is not available when siphoned off by billings that have no basis in fact.

Hopefully, your taking an ethics course will reset your understanding of what is expected of you as an honest physician of high morals and ethics. We expect that your conduct will be such that you will not have any reason to appear before us or before any other panel in the future. You may be seated.