

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Bertram Wing King, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the name of the complainant or any information that could disclose the name of the complainant 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.
Wing King, 2015 ONCPSD 39**

**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. BERTRAM WING KING

PANEL MEMBERS:

**DR. M. GABEL (CHAIR)
D. DOHERTY
DR. C. LEVITT
J. LANGS
DR. D. WALKER**

Hearing Date: October 14, 2015
Decision Date: October 14, 2015
Release of Written Reasons: October 29, 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 October 14, 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. Wing King committed an act of professional misconduct:

1. under clause 51(1)(b.1) of the Health Professions Procedural Code (the "Code"), which is Schedule 2 to the Regulated Health Professions Act, 1991, S.O. 1991, c.18, in that he has engaged in the sexual abuse of a patient; and
2. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the Medicine Act, 1991, 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. Wing King pleaded no contest to the second allegation in the Notice of Hearing, that he had 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. Counsel for the College withdrew the first allegation in the Notice of Hearing.

THE FACTS

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

1. Dr. Wing King is a 72 year old general practitioner who has held a Certificate of

Independent Practice with the College of Physicians and Surgeons of Ontario since 1970. He practices in Toronto.

2. Patient A first attended Dr. Wing King's medical practice in 2012 and returned for a total of five medical appointments between 2012 and 2013.
3. Patient A attended on Dr. Wing King in the fall of 2013 for treatment of a facial rash. Dr. Wing King prescribed a cream for treatment of the rash. Patient A was anxious about the facial rash and follow up appointments were scheduled.
4. Patient A returned for her scheduled follow up appointment one week later. During that appointment, Dr. Wing King noted that the patient's facial rash was resolving and he provided reassurance in this regard. Patient A was concerned about the possibility of permanent scarring on her face. At the conclusion of the appointment, Dr. Wing King kissed the patient on the forehead and commented, "You look pretty now." His conduct was at all times intended to be supportive of Patient A. Patient A reported that the kiss was "fatherly" but that it was inappropriate in the context of a medical appointment.
5. Patient A did not return to see Dr. Wing King.
6. Dr. Wing King does not contest the facts set out in paragraphs 1 to 5 above, and admits that the conduct described constitutes an act of professional misconduct in that he engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all of the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional contrary to section 1(1)33 of O.Reg. 856/93 made under the *Medicine Act, 1991*.

FINDING

On pleading no contest to the allegation of disgraceful, dishonourable or unprofessional conduct, there are certain legal consequences that follow by reason of the Rules of the Discipline Committee. Rule 3.02 of the Discipline Committee's Rules of Procedure provides:

3.02(1) Where a member enters a plea of no contest to an allegation, the member consents to the following:

- a) that the Discipline Committee can accept as correct the facts alleged against the member on that allegation for the purposes of the proceeding only;
- b) that the Discipline Committee can accept that those facts constitute professional misconduct or incompetence or both for the purposes of the proceeding only; and
- c) that the Discipline Committee can dispose of the issue of what finding ought to be made without hearing evidence.

The Committee accepted as correct all of the facts set out in the Statement of Facts and found that these facts constituted professional misconduct, in that Dr. Wing King 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, dishonorable 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 as a matter of law that a joint submission should be accepted unless to do so would be contrary to the public interest and would bring the administration of justice into disrepute.

The Committee considered the joint submission and determined that the proposed penalty order was appropriate. It satisfied the elements of: specific and general deterrence, denunciation of the misconduct, protection of the public, maintenance of public confidence in the profession's ability to self-regulate in the public interest, and rehabilitation of the physician.

The reprimand reinforces the profession's values and standards, and expresses the need of members to observe and respect behavioural boundaries in the doctor-patient relationship. The penalty serves as specific deterrence to Dr. Wing King and as general deterrence to

members of the profession generally by sending the message that making a comment about the appearance of a patient and kissing her is not acceptable.

The requirement to participate in a boundaries course and the reprimand serve to protect the public.

The hearing itself, the reprimand, and the term, condition and limitation imposed on Dr. Wing King's certificate of registration, all serve to uphold the principle of self-regulation and the values of the profession and meet the need for appropriate remediation.

The Committee considered a number of mitigating factors in this matter; Dr. Wing King has practised for over four decades with an unblemished record; his pleading no contest saved the complainant from testifying and the College the expense of a lengthier hearing; and he voluntarily registered for the boundaries course. The Committee took into account that a number of colleagues provided powerful testimonials; and through counsel, Dr. Wing King expressed his embarrassment and contrition, indicating he looked upon the hearing and its consequences as an opportunity for him to learn to be vigilant in observing boundaries in his relationship with his patients.

Counsel for the College provided the panel with a brief of authorities. The Committee accepted that the joint submission on penalty is consistent with like penalties in similar cases.

The Committee also decided that this was an appropriate case to order that Dr. Wing King pay costs for a single day of hearing at the tariff rate.

ORDER

Therefore, in its written order of October 14, 2015, the Committee ordered and directed on the matter of penalty and costs that:

1. Dr. Wing King appear before the panel to be reprimanded.

2. the Registrar impose the following term, condition and limitation on Dr. Wing King's certificate of registration, to be removed forthwith once Dr. Wing King provides proof of completion of the course to the College:
 - a. Dr. Wing King shall successfully complete the next available course in Understanding Boundaries, at his own expense.
3. Dr. Wing King pay the College its 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. Wing King waived his right to an appeal under subsection 70(1) of the Code and the Committee administered the public reprimand.

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PANEL MEMBERS:

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Hearing Date: October 14, 2015
Decision Date: October 14, 2015
Reprimand Date: October 14, 2015
Release of Written Reasons: October 29, 2015

PUBLICATION BAN

TEXT of PUBLIC REPRIMAND
Delivered October 14, 2015
in the case of the
COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO
and
DR. BERTRAM WING KING

Dr. Wing King, the practice of medicine not only medical competence, but the trust of our patients and the trust of the public. The ability to express compassion and empathy is an integral part of our patient care. How this is expressed requires an understanding of how communication, verbal or physical, is received by the patient. As is often said, communication is what is received, not what is sent. Physicians must understand this concept. You exceeded the appropriate boundaries of this patient. This is unprofessional behaviour.

Hopefully this appearance in front of your self-governing regulator will enhance your understanding of appropriate boundaries. We expect there will be no reason for you to appear before us again. You may be seated.