

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Dubins, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of the complainant patient or any information that could disclose the identity of the complainant patient under subsection 45(3) of the Health Professions Procedural Code (the Code), which is Schedule 2 to the Regulated Health Professions Act, 1991.

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. Dubins, 2016 ONCPSD 34

**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. JACQUES HENRI DUBINS

PANEL MEMBERS:

**DR. E. STANTON (CHAIR)
MR. S. BERI
DR. P. GARFINKEL
MS. D. DOHERTY
DR. J. WATTS**

**COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF
ONTARIO:**

MS. V. WHITE

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MS. M. JONES

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MR. R. COSMAN

Hearing Date: August 29, 2016

Decision Date: August 29, 2016

Release of Written Reasons: September 29, 2016

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 August 29, 2016. 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. Dubins committed an act of professional misconduct:

1. under clause 51(1)(b.1) of the Health Professions Procedural Code, which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18 (the “Code”) in that he engaged in sexual abuse of a patient;
2. under paragraph 1(1)2 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”), in that he has failed to maintain the standard of practice of the profession; and
3. under paragraph 1(1)33 of 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.

The Notice of Hearing also alleged that Dr. Dubins was incompetent as defined by subsection 52(1) of the Code.

RESPONSE TO THE ALLEGATIONS

Dr. Dubins admitted the second and third allegations of professional misconduct in the Notice of Hearing, that he has failed to maintain the standard of practice of the profession

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 College withdrew the first allegation in the Notice of Hearing and also withdrew the allegation of incompetence.

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

Background

1. Dr. Dubins is a 72-year-old family physician with an interest in hypnotherapy who practises in Toronto. Dr. Dubins graduated from the University of Toronto in 1969 and has held an independent practice certificate in Ontario since 1970.

The Current Complaint

2. In March of 2013, the College received a complaint about Dr. Dubins from Patient A, a patient who had attended Dr. Dubins twice in early 2013 for hypnotherapy for smoking cessation. A copy of Dr. Dubins' clinical record for Patient A is attached at Tab 1 of the Agreed Statement of Facts and Admission. A transcript of the handwritten portions of the chart is attached at Tab 2 of the Agreed Statement of Facts and Admission.

3. Patient A complained that:

- Dr. Dubins' office was dirty;
- During the appointment, Dr. Dubins asked unnecessary and inappropriate questions of a sexual nature that made him feel uncomfortable, such as whether he is gay or straight and whether he is sexually active;
- During the hypnotherapy session Dr. Dubins used graphic and offensive sexual images that caused Patient A to be very uncomfortable; and

- During the session, Dr. Dubins told Patient A to unbutton his pants, lower his fly and lower his pants.
4. On March 18, 2013, College investigators attended at Dr. Dubins' office to inspect for cleanliness, where they found the following:
- Garbage cans in examination rooms and common areas were filled with garbage;
 - The radiator in the examination room was peeling paint and the paint chips were lying on the floor around it;
 - Dr. Dubins' office was cluttered with numerous items including soft drink bottles covered in dust;
 - Blinds in the examination room were stained and dusty; paint on the walls was peeling; and
 - A plant pot at the front door was filled with dirt and garbage; there was no plant.

Dr. Dubins' Response

5. Dr. Dubins explained that he uses "Aversive Imagery" techniques in his hypnotherapy practice, and that patients (including Patient A) are informed of and consent to the use of these techniques. He explains that the purpose is to develop strong negative associations with the behaviour that the patient seeks to stop (such as smoking). For example, he states, when he asked Patient A to imagine a cigarette in "fishy-smelling vaginal discharge", his intention was to create a negative association with the taste and smell of cigarettes to assist Patient A in quitting smoking. He also said he asked Patient A to undo his belt and pants button and lower his fly approximately one inch in order to make him more comfortable. He states that he has improved the cleanliness of his office.

The Expert Evidence

6. The College retained Dr. Christopher Bryniak, a psychiatrist who has training in hypnosis and professional affiliation with the National Guild of Hypnotists and uses hypnosis in his treatment of some patients, to provide an opinion on Dr. Dubins' care of

Patient A. A copy of his report dated May 31, 2015 is attached at Tab 3 of the Agreed Statement of Facts and Admission, together with his resume.

7. Dr. Bryniak concluded that although the vast majority of Dr. Dubins' care of Patient A met the standard, in some areas he demonstrated a lack of judgment. Dr. Bryniak concluded:

1. The vast majority of the aspects of care provided by Dr. Dubins, as far as I am able to discern, and based on the information I have, do meet the threshold of standard of clinical practice.
2. However, the reliance upon sexually themed aversive imagery (*extrapolated from questions related to sexual orientation/identity*) for simple and discrete chemical-addiction hypnosis is in my opinion excessive, not specifically required for positive clinical effect and in a minority of cases could render the treatment modality ineffective or even be potentially harmful (*i.e., triggering past traumatic memories / emotions.*) ...
3. Likewise, comments (*particularly during session*) related to having a patient unbutton or otherwise loosen their pants may – even if solely intended for the purposes of increasing patient comfort – cause anxiety and/or unease in a subset of patients...
4. Based on the totality of the material I have reviewed, the aspects of care demonstrated in point #2 and #3 reflect a lack of judgment on the practitioner's part as opposed to a lack of skill or knowledge.

PART II – ADMISSION

8. Dr. Dubins admits the facts set out above and admits that by using graphic sexual imagery in his aversive imagery hypnotherapy for smoking cessation, by making comments inviting a patient to loosen his pants during the session and by failing to maintain a clean office, he engaged in professional misconduct:

- (i) under paragraph 1(1)2 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* in that he failed to maintain the standard of practice of the profession; and
- (ii) under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* 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.

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. Dubins' admission and found that he committed an act of professional misconduct in that he has failed to maintain the standard of practice of the profession 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.

PENALTY AND COSTS

Agreed Statement of Facts on Penalty

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

Dr. Dubins' History with the College

1. In January of 1995, the Complaints Committee cautioned Dr. Dubins in person in relation to a complaint by a patient who complained that Dr. Dubins made inappropriate comments and used inappropriate and unnecessarily intimate images in his smoking cessation therapy. The Committee stated that it was "very concerned" about the use of

extremely graphic and sexual images during the smoking cessation therapy. It said that his approach in his care of this patient was “inappropriate”. It also expressed concern that the patient had not been advised in advance that sexual material and extremely graphic images would be used during the therapy. He was cautioned by the Committee regarding the nature of his treatment of the patient and his failure to provide her with an adequate explanation prior to proceeding with the treatment. A copy of January 1995 decision of the Complaints Committee is attached at Tab 1 of the Agreed Statement of Facts on Penalty.

Dr. Dubins’ Undertaking

2. On August 29, 2016, Dr. Dubins executed an undertaking with the College to resign and never re-apply to practise medicine, effective August 29, 2016. A copy of the undertaking is attached at Tab 2 of the Agreed Statement of Facts on Penalty.

JOINT SUBMISSION

The parties jointly submitted that an order calling for a reprimand and payment of costs was appropriate in the circumstances of this case, in that the physician had signed an undertaking to resign from the practice of medicine effective the date of the hearing and undertook not to re-apply for registration as a physician to practise medicine in Ontario or in any other jurisdiction.

PENALTY AND REASONS FOR PENALTY

The Committee considered the facts related to the finding and accepted the facts set out in the Agreed Statement of Facts on Penalty. The Committee determined that protection of the public from further misconduct by this physician is of the utmost importance in deciding the appropriate penalty. The penalty must also provide specific and general deterrence, communicate the profession’s disapproval of the misconduct, and take into

account any aggravating and mitigating factors. It is vital to maintain the public's confidence in the College's ability to self-govern in the public interest.

Dr. Dubins signed an undertaking that results in his immediate resignation from the College. He undertook to never re-apply to practise medicine in Ontario or elsewhere. This will protect the public from any further misconduct by him as a physician. It will also serve to maintain public confidence in the integrity and reputation of the medical profession, and in its capacity for effective self-governance in the public interest. The public must trust that the College will act to ensure that no physician will misuse his position of trust and authority to take advantage of vulnerable patients.

The Committee accepts that such behaviour as that engaged in by Dr. Dubins brings into disrepute the reputation of the profession as a whole. The penalty proposed in conjunction with the undertaking to resign and never to reapply will convey to the public and the profession that a physician who engages in such misconduct will not be permitted to remain a member of the profession.

Aggravating factors in this case include the following:

1. Dr. Dubins had previously been cautioned in person by the Complaints Committee, in January 1995. The complainant at that time was also treated for smoking cessation therapy and complained of the excessively graphic and sexual images during the aversion therapy. For example, she was told to imagine a toilet bowl containing diarrhea in which was floating a cigarette covered with vaginal secretions and AIDS-infected sperm. Dr. Dubins was cautioned by the Complaints Committee regarding both the nature of his treatment of the patient as well as his failure to provide her with an adequate explanation prior to proceeding with the treatment. The session should not have commenced until she had received an adequate explanation of the proposed technique and had given her full authorization to proceed. The Committee was struck by the similarities of this past example of misconduct to the current case, and was appalled by Dr. Dubins' insensitivity and poor judgment. Dr. Dubins displayed a disregard for the authority of the College as a self-regulatory body by his failure to comply with the

- earlier caution from the College. A physician must accept the authority of his regulatory body. Disregard for that authority is considered very seriously by the Committee. It puts the public at risk and can erode the confidence that the public must have in the College to regulate the profession in the public interest.
2. The context of the treatment in this case is hypnotherapy, where patients relinquish control and are in a very vulnerable state. It is particularly important that physicians recognize and not abuse the vulnerability of their patients under hypnosis (or in any other situation). Particularly concerning was Dr. Dubins' instruction to his patient to undo his belt and pants button and lower his fly while he was undergoing the hypnosis, and not before. The patient would have been most influenced by suggestion during the hypnosis.
 3. Dr. Dubins exposed his patients to unnecessary harm. Dr. Bryniak concluded that the reliance upon sexually-themed aversive imagery was excessive, not specifically required for positive clinical effect, and, in some cases, could render the treatment ineffective. But most importantly, this treatment could be harmful. Patients with a history of anxiety and depression who are known to have difficulty in stopping smoking would be at highest risk for an adverse effect from Dr. Dubins' approach to treatment.

The only mitigating factor in this case is Dr. Dubins' admission of his misconduct. He accepted responsibility for his actions, did not dispute the facts, and his admission saved the time and some of the expense of a lengthy hearing. Most importantly, it spared the patient and other witnesses from the need to testify.

The College put two prior Discipline Committee decisions before the Committee for its consideration. The Committee recognized that no two cases are identical. However, the Committee noted that the two earlier Discipline Committee decisions dealt with a member agreeing to an undertaking to resign, followed by the discipline hearing and the issuing of an order. In *CPSO vs. Laing* (2013), Dr. Laing, a general practitioner whose practice was confined to psychotherapy, admitted that he had failed to maintain the standard of practice of the profession. Two external psychiatrists reported that he

provided substandard care and inadequate record keeping, and that he was involved in boundary violations. He completed an undertaking to resign his membership and to never re-apply for registration as a physician to practice medicine in Ontario or elsewhere. Dr. Laing was then ordered to appear before the Committee for a reprimand and to pay costs. Dr. S. Chung (*CPSO vs. Chung*, 2014), a family physician whose practice was predominantly office gynecology and obstetrics, appeared before the Discipline Committee after a patient complained of excessive and intimate physical examinations and disregard for the patient's sensitivity. There had been two prior Complaints Committee decisions against Dr. Chung. As in the previous case, Dr. Chung completed an undertaking to resign his membership and to never re-apply for registration as a physician to practice medicine in Ontario or elsewhere. The Committee then issued an order for a reprimand and costs. The orders made in these cases are very similar to the undertaking and penalty proposed in this case regarding Dr. Dubins.

The immediate and permanent resignation of Dr. Dubins from the practice of medicine made it unnecessary to consider the imposition of an order of revocation, that otherwise may have been imposed. The departure of Dr. Dubins from the practice of medicine will demonstrate to the profession and the public that the disgraceful behaviours exhibited by Dr. Dubins will not be tolerated. Given the undertaking to resign and never to reapply to practise medicine signed by Dr. Dubins, the Committee concluded that the jointly-proposed penalty of a reprimand was an appropriate penalty in the circumstances.

Regarding costs, the Committee found that having regard to the serious findings made of professional misconduct, it was appropriate that Dr. Dubins should pay \$5,000.00 of the costs incurred by the College in this case.

ORDER

The Committee stated its finding of professional misconduct in paragraph 1 of its written Order of August 29, 2016. On the matter of penalty and costs, the Committee ordered and directed in that Order that:

2. Dr. Dubins appear before the panel to be reprimanded.
3. Dr. Dubins pay to the College costs in the amount of \$5,000 within 30 days of the date of this Order.

At the conclusion of the hearing, Dr. Dubins 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 August 29, 2016****in the case of the COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO****and****DR. JACQUES HENRI DUBINS**

Chairperson: It is always unfortunate when a member of our profession appears before this Committee. You have transgressed the responsibility and duty of a physician to maintain the standard of practise. In addition, you ignored a previous caution from your governing body for similar behaviour that has brought you here today before this Committee. We take that extremely seriously. By doing so, you have disgraced not only yourself but the profession as a whole. Self-regulation is a privilege for our profession.

The public must be reassured and confident that we can govern ourselves in the public interest. Therefore physicians must abide by not only the College policies but also any caution given to the member for unacceptable behavior. Your patients were vulnerable and the techniques you employed in hypnotherapy potentially put your patients at risk of harm.

This cannot and will not be tolerated by the public or the members of our profession. In considering the appropriate penalty in this case the Committee did take note that you have signed an undertaking that you will resign your College Membership effective today and will not re-apply for registration to practise medicine in Ontario or any other jurisdiction.

As a result the Committee is confident that the penalty it has imposed today is appropriate in this case. Dr. Dubins, you will now leave this Hearing room a disgraced physician.

This is not an official transcript