

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Albert Ross Deep, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the name or identity or any information that could disclose the name or identity of the patients whose names are disclosed at the hearing, or in documents 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: Deep, A.R. (Re)

**THE DISCIPLINE COMMITTEE OF THE COLLEGE
OF PHYSICIANS AND SURGEONS OF ONTARIO**

IN THE MATTER OF a Hearing directed
by the Executive Committee
of the College of Physicians and Surgeons of Ontario
pursuant to Section 36(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. ALBERT ROSS DEEP

PANEL MEMBERS:

DR. P. CHART (Chair)

L. McCOOL-PHILBIN

DR. R. WAGMAN

B. FEVREAU

DR. J. WATTS

Hearing Dates: October 18 and 19, 2010
Decision Date: December 14, 2010
Release of Written Reasons: December 14, 2010

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons (the “Committee”) heard this matter at Toronto on October 18 and 19, 2010. At the conclusion of the hearing, the Committee reserved its decision.

ALLEGATIONS

The Notice of Hearing alleged that Dr. Albert Ross Deep committed an act of professional misconduct:

1. under paragraph 1(1)33 (O. Reg. 856/93) in that he 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 ALLEGATION

Dr. Deep did not attend the hearing or send counsel on his behalf. The Committee proceeded on the basis that Dr. Deep denied the allegation as set out in the Notice of Hearing.

PRELIMINARY MATTERS

As a preliminary matter, the Committee considered first the issue of Dr. Deep’s non-attendance at the hearing.

Proceeding *In Absentia*

Prior to the commencement of the hearing, the Committee heard evidence in order to decide whether to proceed with the hearing *in absentia*.

Section 39(1) of the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18 (the “Act”) provides that “[a] notice or decision to be given to a person under this Act ... may be given by mail or fax.” Section 39(2) provides that “[i]f a notice or decision is sent by mail addressed to a person’s last known address, there is a rebuttal presumption that it was received by the person on the fifth day after mailing.”

The *Statutory Powers Procedures Act*, R.S.O. 1990, c. S.22 requires that the parties to a proceeding shall be given reasonable notice of the hearing by the Tribunal (Section 6(1)). Notice of an oral hearing shall include a notice of the time, place and purpose of the hearing

and a statement that if the party notified does not attend at the hearing, the Tribunal may proceed in the party's absence and the party will not be entitled to any further notice in the proceeding (Section 6(3)). Where a party to a proceeding does not attend at the hearing where notice of the oral hearing has been properly given, the Tribunal may proceed in the absence of the party (Section 7(1)).

The Committee therefore considered whether Dr. Deep had been given reasonable notice of the hearing. The Committee heard the evidence of Ms X, Manager of the Hearings Office of the College of Physicians and Surgeons of Ontario (the "College") detailing various items and correspondence between the College and Dr. Deep between December 19, 2006 and October 13, 2010. The Committee accepted the evidence of Ms X and her confirmation of the authenticity of the documents entered into evidence. The cumulative effect of the evidence reviewed by the Committee was that the Committee was left with no doubt that Dr. Deep had been properly served and provided with reasonable notice that the hearing was proceeding.

Specifically, the Committee was provided with a one page summary of the CPSO physician profile listing Dr. Deep's current mailing address, telephone number and fax number which were used in communications from the Hearings Office to Dr. Deep and from which Dr. Deep replied. The Committee was provided with a copy of an Affidavit of Service sworn by Ms Y, Hearings Coordinator at the College, confirming that an Order of the Discipline Committee with respect to the scheduled hearing date and place had been served by sending a letter by regular pre-paid first class mail and by fax to Dr. Deep. The Order of Ms Susan Davis, co-chair of the Discipline Committee, stated that Dr. Deep had been notified of the teleconference to schedule dates for the hearing which took place on March 24, 2010. On March 2, 2010, Dr. Deep had replied to the Hearings Office and to the co-chair stating that he was not obligated to participate in the teleconference and that he would not be attending. The teleconference proceeded in his absence and dates for the hearing were set. The Committee was provided with a copy of Dr. Deep's reply stating that he would not attend the hearing unless it was directly and exclusively related to his reinstatement. An Affidavit of Service sworn by Ms X confirmed that on April 9, 2010 she had notified Dr. Deep by regular first class mail that the hearing would proceed on October 18th to 20th, 2010 and also had informed Dr. Deep of the process for an application for reinstatement. A further Affidavit of

Service sworn by Ms Y confirmed that on May 18, 2010 she served Dr. Deep by mail and by fax with a letter confirming the hearing date and enclosed a memorandum from the Discipline Committee outlining the hearing process for self-represented members. Dr. Deep replied by way of a faxed letter dated May 18, 2010, wherein he confirmed his refusal to attend the hearing and he challenged the jurisdiction of the College over a member whose license to practice had been revoked.

The Committee reviewed a further Affidavit of Service sworn by Ms X on October 13, 2010 which stated that she had served Dr. Deep with a letter dated June 17, 2010 confirming that the hearing would proceed on October 18th to 20th. A further Affidavit of Service sworn by Ms X on October 13, 2010 stating that Ms X had served Dr. Deep with a letter dated October 13, 2010 confirming that the hearing was proceeding on October 18 to 20, 2010.

The Committee noted that the letters from the College to Dr. Deep repeated the following wording: “[a]s indicated in the Notice of Hearing, if Dr. Deep does not attend at the hearing, the Discipline Panel may proceed in his absence and he will not be permitted any further notice of the proceedings.” In his reply by facsimile dated October 13, 2010, Dr. Deep denied issuing any new prescriptions. The Committee noted that the letters from Dr. Deep characterized the actions of the College as being in bad faith due to its carelessness and gross negligence and described the revocation of his license to practice as malicious, unconscionable and dishonourable.

The Committee also received a copy of the Order of the Executive Committee of the College dated December 19, 2006 which directed the Registrar to suspend the certificate of registration of Dr. Albert Ross Deep under Section 37 of the Health Professions Procedural Code, which is Schedule 2 to the *Regulated Health Professions Act, 1991*, (the “Code”) and the Notice of Suspension effective December 21st, 2006 from the Registrar of the College. The Committee was provided with a copy of the Notice of Revocation of Dr. Deep’s certificate of registration ordered July 30th, 2008 by the Discipline Committee of the College.

After hearing and considering the evidence and submission of Counsel for the College on this issue and receiving the advice of independent legal counsel, the Committee concluded that ample notice that the hearing was proceeding had been provided to Dr. Deep and that

Dr. Deep had specifically advised that he did not intend to act and/or participate in the hearing. The Committee concluded that notice had been provided in a reasonable and proper fashion and had been served properly on Dr. Deep. The Committee decided that it was in the public interest to proceed with the hearing.

Second Preliminary Matter – Jurisdiction

The Committee heard submissions from counsel for the College and advice from independent legal counsel regarding Dr. Deep's challenge to the jurisdiction of the College which he had raised in his letters of response to the Hearings Office. The Committee's attention was drawn to sections 14(1) and (2) of the Code, which provide:

(1) A person whose certificate of registration is revoked or expires or who resigns as a member continues to be subject to the jurisdiction of the College for professional misconduct or incompetence referable to the time when the person was a member and may be investigated under section 75.

(2) A person whose certificate of registration is suspended continues to be subject to the jurisdiction of the College for incapacity and for professional misconduct or incompetence referable to the time when the person was a member or to the period of the suspension and may be investigated under section 75.

The Committee concluded that it has jurisdiction to proceed under section 14(1) where a person's certificate is revoked. Furthermore, the allegations in question go back to a period of time when the member was suspended. The Committee agreed that these sections were applicable to the circumstances of Dr. Deep and to this hearing and therefore decided to proceed.

FACTS AND EVIDENCE

Overview of the Issues

On December 19, 2006, the Executive Committee of the College made an Order under Section 37 of the Code suspending Dr. Deep's certificate of registration effective December 21st, 2006. The Notice of Hearing alleged that in contravention of the Order, Dr. Deep continued to practice medicine when he was not permitted to do so by:

- (a) conducting a medical assessment of a Patient “A” on or about April 11, 2007;
- (b) ordering laboratory studies for a Patient “B” on or about July 2007; and
- (c) continuing to prescribe medications for a number of patients.

These allegations raise the following issues:

- A) Did the actions alleged to have occurred take place?
- B) If so, did they constitute the practice of medicine?
- C) Did this occur at a time when Dr. Deep knew that his license to practice had been suspended?
- D) If so, would the conduct of Dr. Deep be reasonably regarded by members of the profession as disgraceful, dishonourable or unprofessional?

Summary of the Witnesses and Evidence

(a) Evidence of conducting a medical assessment of Patient A in April 2007

The Committee heard the evidence of Patient A, a woman who was born and educated in Asia and came to Canada in 2004. She was referred to Dr. Deep by Dr. U following the discovery of a history of a cardiac rhythm abnormality during an examination for the purposes of an application for immigration. Patient A testified that she attended Dr. Deep’s office on April 11, 2007, 3 days before going back to Asia. She attended with her father and recalls Dr. Deep’s office as being a little bit messy and as not having a receptionist or nurse. She recalled Dr. Deep asking questions about her medical history and performing an ECG. She did not however recall any other components of the physical examination. She testified that she provided payment of \$200.00 to Dr. Deep and was able to provide to the Committee a receipt of payment for “CV assessment for immigration purposes”. The receipt was undated but signed by Dr. Deep.

Patient A’s father, Mr. V, gave evidence confirming that he accompanied her to the appointment and saw the ECG being performed.

Patient A’s referral to Dr. Deep was confirmed by the evidence of Dr. U, a general practitioner practicing in Toronto and whose name appeared on the list of physicians

designated to perform medical examinations for Immigration Canada. His file on the patient was admitted into evidence and included the results of the physical assessment by Dr. U, performed on Patient A on March 20, 2007, a request for consultation to Dr. Deep dated March 20, 2007 and a letter signed by Dr. Deep recounting the results of the consultation on April 11, 2007. The letter from Dr. Deep describes Patient A's medical history and the results of a physical examination, including measurement of blood pressure and the presence of a heart murmur. It states that Dr. Deep did four (4) ECG's which revealed an abnormal rhythm which he interpreted as benign. Dr. Deep made recommendations for diet and suggested a repeat echocardiogram, a 24 or 48 hour portable heart monitor and a number of laboratory blood tests. Dr. Deep specifically suggested that antiarrhythmic therapy was not advised but might become advisable if she were to become highly symptomatic.

Dr. U stated that he did not know Dr. Deep personally, although he had previously referred patients to him and that he was unaware that Dr. Deep's license had been suspended. Had he known this, he said, he would not have referred patients to Dr. Deep.

(b) Evidence of ordering lab results for Patient B on or about July 2007

The Committee heard from the Director of Client Relations at a medical laboratory in Brampton, Ms. T. She identified a requisition for a series of blood tests, including hematology and chemistry, for Patient B, which was received by the medical laboratory on August 3, 2007. The requisition form contained a stamp of Dr. Deep's office address and his signature and was dated July 26, 2007. The results of the investigations were included and were addressed to Dr. Deep as well as identifying him as the requesting physician.

(c) Evidence of prescribing medications after December 19, 2006

The Committee heard evidence from a total of nine (9) pharmacists regarding the dispensing of medications authorized by Dr. Deep. Each of the pharmacists stated that certain drugs could only be dispensed on the authorization of, or a prescription from, a physician. This authorization might take the form of a written prescription form carried by a patient or a fax or verbal message from the physician. Such a message sometimes occurred as a result of a request initiated by the pharmacy, and on other occasions would be initiated by the physician. Each of the pharmacists testified that they would not have dispensed medication if

authorized or prescribed by a physician whose license they knew to have been suspended or revoked.

Mr. H, a Pharmacy Manager from Toronto, testified to dispensing the drugs Imovane, Paroxetine, Trazadone, Norvasc, Senekot and Entrophin to a single patient on the basis of a prescription request which had been faxed to Dr. Deep and returned signed by Dr. Deep. The fax was returned and the prescription was filled on June 11, 2007.

Ms I, Pharmacy Manager from Toronto, testified to the dispensing of Lipitor, Glyburide and Acebutolol and of glucose test strips on February 14, March 29, and August 22, 2007 and on January 16, 2008. Three of the prescriptions were filled as a result of verbal requests from Dr. Deep and two as the result of faxed but unsigned requests coming from Dr. Deep's fax number.

Mr. J, a Pharmacy Manager from Pickering, identified a prescription which was written and signed by Dr. Deep for Percocet for Patient B (the same patient who was the subject of the laboratory investigations referred to earlier). The prescription was dated June 17, 2007.

Mr. K, a Pharmacy Manager from Markham, testified to dispensing a nitro spray on February 5, 2007 on the basis of a written and signed prescription faxed from Dr. Deep's office. The prescription was written on January 25, 2007.

Ms L, a Pharmacy Manager from Toronto, testified to dispensing Novopravastatin (with 3 repeats) on the basis of a faxed authorization November 21, 2007 and a prescription for Sotalol on the basis of a signed fax on April 9, 2007.

Mr. M, a pharmacist from Stouffville, testified to the dispensing of Lorezapam on May 8, 2007 as a consequence of a verbal authorization in a telephone call from Dr. Deep.

Mr. N, a pharmacist from Toronto, testified to dispensing Arthrotec and Didrocal (etidronate) on the basis of a verbal request from Dr. Deep on February 23, 2007.

Mr. O, a Pharmacy Manager from Toronto, testified to the dispensing of Aggrenox, Folic acid, Premarin, Atorvastatin and Fenofibrate. The first three were dispensed on July 16, 2007, and the latter two on April 16, 2007. Premarin was dispensed after receipt of a faxed and signed prescription and the remaining 4 drugs were dispensed after verbal authorization. One case was the result of a requested callback to the pharmacy by Dr. Deep.

Mr. P, a Pharmacy Manager from Markham, testified to the dispensing of five drugs (Avapro, Lipitor, Nitro-dur, omeprazole, and Atenalol) on April 10, 2007 following verbal authorization by Dr. Deep. This pharmacist specifically recalled recognizing Dr. Deep's voice. He also testified to a refill of a prescription on April 7, 2007 again the result of a verbal authorization and of the prescription of Digoxin, Lasix, Novasen and Propafenone on February 12, 2007.

(d) Evidence of Service of the Order under Section 37 on Dr. Deep

Mr. Q, a process server at a law clerk service company in Toronto, testified to having met Dr. Deep on the evening of December 20th, 2006 and serving him personally with the Order under Section 37 of the Code and the Notice of Suspension of Dr. Deep's certificate of registration. He testified to being able to recognize Dr. Deep as a result of verbal identification and also as a result of having previously served materials on Dr. Deep.

FINDING

The practice of medicine is defined in the *Medicine Act, 1991*, S.O. 1991, c. 30, (the "Medicine Act") at section 3 as "the assessment of the physical or mental condition of an individual and the diagnosis, treatment and intervention of any disease, disorder or dysfunction". Section 4 of the *Medicine Act* authorizes a physician in the course of the engagement in the practice of medicine to perform a series of acts including (1) communicating a diagnosis identifying the disease or disorder as a cause of a person's symptoms and (2) prescribing, dispensing, selling or compounding a drug.

The Committee carefully reviewed and assessed the evidence presented by testimony of the various witnesses and by means of multiple exhibits. The Committee found on the basis of evidence that met the test of being clear, cogent and convincing, that Dr. Deep had performed a medical assessment on Patient A on April 11, 2007 even though the patient did not recall a physical assessment being part of this consultation. The results were included in the report from Dr. Deep to Dr. U and were confirmed by the notation of a cardiovascular assessment on the receipt for payment. The consultation report included the elements of assessment, diagnosis and recommendations for management.

The Committee found that the ordering of laboratory studies on Patient B in July of 2007 constituted the diagnostic component of the practice of medicine.

Further, the Committee found that Dr. Deep had continued to prescribe and to authorize medications during the year of 2007 and early 2008. The Committee found that he prescribed medicines of a number of different classes, including anti-depressants, analgesics (including an opiate) and sedatives as well as cardiac medications. Furthermore, he prescribed them to a number of different patients by a variety of different methods including signed prescriptions, signed fax authorizations from a fax number known to be that in his office and verbal authorizations made in response to requests by a pharmacist.

Although it might be claimed that most (although not all) of the prescriptions were renewals of previous prescriptions, the Committee's attention was drawn to the College Policy Statement No. 2-07, entitled "Practice management considerations for physicians who cease to practice, take an extended leave of absence or close their practice due to relocation", which states under the heading- "Physicians Under Suspension, Revocation or Voluntary Commitment to Suspend Practice" ... "[p]hysicians who are under suspension or voluntary commitment to suspend practise, or have had their certificate of registration revoked, cannot write prescriptions. The physician should advise all patients taking prescription medication(s) for long-term or chronic conditions, that he/she will not be able to provide renewals or repeats of the medication(s), and that the patient should attend another physician to have the prescription(s) renewed. ... The physician should also advise patients that repeats for prescriptions written prior to the date of suspension or revocation will not be legally valid after the date of suspension or revocation".

The Committee found that Dr. Deep was well aware that his license had been suspended since not only had he received the Order under Section 37 from the process server, but he referred to the fact in his correspondence to the College.

The Committee was aware of the issue of hearing evidence without the witnesses having been cross-examined. However, the wide variety and nature, as well as the number of pieces of evidence, particularly with respect to the prescribing and authorization of drugs, left the Committee with no doubt that the evidence did indeed meet the standard required.

Counsel for the College submitted that the conduct which is set out above, taken together, makes out the allegations that Dr. Deep has committed an act which is disgraceful, dishonourable and unprofessional. The Committee agreed that in accepting requests for prescriptions from both patients and pharmacists, Dr. Deep was performing an act expressly prohibited by the College. Even if a physician or member of the public were unaware of the policy or the wording of the *Medicine Act*, they would understand that accepting a referral from another physician, ordering diagnostic blood tests, diagnosing disease and prescribing medications that could be dispensed only on the order of a physician, constituted components of the practice of medicine. Dr. Deep was fully aware that his license to practice medicine had been suspended. Even though he disagreed with the College's actions, Dr. Deep's actions constituted a deliberate flouting of the College's authority, and can only be described as disgraceful and dishonorable.

The Committee in its deliberations was mindful that the onus of proof was on the College and that the civil standard of proof on a balance of probabilities applied. Having considered all of the evidence, the Committee finds that Dr. Albert Ross Deep, committed an act of professional misconduct under paragraph 1(1)33 O.Reg.856/93 in that he 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 Committee requests that the Hearings Office schedule a penalty hearing pertaining to the finding made at the earliest opportunity.

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Albert Ross Deep, this is notice that the Discipline Committee ordered that there shall be a ban on publication or disclosure of the identity, and any information that would disclose the identity, of the patients who are referred to during the hearing or in any other document 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, in relevant part:

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
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B E T W E E N:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. ALBERT ROSS DEEP

PANEL MEMBERS:

DR. P. CHART (CHAIR)
L. McCOOL-PHILBIN
DR. J. WATTS
DR. R. WAGMAN

Hearing Dates: March 25, 2011
Decision Date: May 24, 2011
Release of Written Reasons: May 24, 2011

PUBLICATION BAN

DECISION AND REASONS ON PENALTY AND COSTS

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on October 18 and 19, 2010. At the conclusion of the hearing, the Committee reserved its decision. On December 14, 2010, the Committee delivered its written decision and reasons and found that Dr. Deep had committed an act of professional misconduct under paragraph 1(1)33 O.Reg.856/93, in that he 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 Committee heard evidence and submissions on penalty on March 25, 2011, and reserved its decision.

PRELIMINARY MATTERS

As a preliminary matter, the Committee considered first the issue of Dr. Deep's non-attendance at the penalty hearing.

The Committee heard the evidence of Ms. X, Manager of the Hearings Office of the College of Physicians and Surgeons of Ontario. Ms. X's evidence was supported by correspondence between the College and Dr. Deep. In its written decision delivered on December 14th, 2010, the Committee requested that the Hearings Office schedule a penalty hearing at the earliest opportunity pertaining to the finding made of professional misconduct. Ms. X provided an affidavit of service from Ms. Y from the Hearings Office of the College, stating that she served Dr. Albert Ross Deep by letter dated January 20th, 2011, confirming the Penalty Hearing date and enclosing a memorandum from the Discipline Committee with respect to the penalty hearing process. This letter was sent by regular prepaid First Class mail to Dr. Deep's preferred mailing address and by facsimile to Dr. Deep's facsimile number. Dr. Deep's response to this letter was dated January 24th, 2011. In his response, Dr. Deep requested clarification of the intent of the hearing and

stated that “[t]here appears to be no obligation or benefit to me for attending self-serving College meetings unless the College expresses remorse for its heinous wrong-doing...”

A letter from the College dated March 4th, 2011, in reply to the above and confirming that the hearing was a penalty hearing pursuant to the Discipline Committee’s decision of December 14th, 2010, was placed before the Committee, as was an additional letter modifying the start time for the hearing from 9:00 am to 10:00am, and a further letter dated January 14th, 2011, notifying Dr. Deep of the resignation of a member of the panel from the College and from the hearing. The Committee noted that Dr. Deep returned a facsimile to the College, written on his copy of the letter of January 14th, 2011, in which he stated that “[y]our penalty hearing and decision will be ignored as you have no jurisdiction over a professional whom you chose to fraudulently suspend and there was no wrong-doing in any event”.

The Committee concluded that reasonable notice had been given to Dr. Deep and had been received by him. The Committee decided that it was in the public interest to proceed in his absence as permitted under section 39 of the *Regulated Health Professions Act 1991* and section 7 of the *Statutory Powers Procedure Act R.S.O 1990, Chapter S 22*.

EVIDENCE AND SUBMISSIONS ON PENALTY AND COSTS

In assessing aggravating and mitigating factors, the Committee was asked to consider Dr. Deep’s failure to pay costs ordered in previous hearings. The Committee heard from Ms Z, a compliance monitor at the College, who stated that she had written a letter requesting payment of \$47,500 in costs pursuant to the decision of the Committee issued on the 30th of July, 2008, and following dismissal of the appeal against this order by the Registrar of Divisional Court. Dr. Deep’s reply dated January 6th, 2010, stated that no cheque would be sent to the CPSO and also indicated that the order was being further appealed.

The Committee also heard from Ms W, a legal assistant in the Legal Office of the College, that the amount owed by Dr. Deep on all outstanding orders was \$142,257.88

(excluding interest accrued). This amount results from 11 orders issued variously by the Discipline Committee, the Divisional Court and the Court of Appeal. The Committee noted the finding of Justice Mesbur dated the 23rd of September, 2010, and the 14th of October, 2010, in which Dr. Deep was declared a vexatious litigant and was prohibited from continuing, commencing or prosecuting any litigation in any court without leave of a judge of the Superior Court of Justice. The Committee heard that none of these decisions are currently under appeal, although Dr. Deep has indicated to the College that he will seek leave to appeal to the Supreme Court.

The College requested that the Committee order costs payable by Dr. Deep of \$3,650, for each day of the three days of hearing.

DECISION AND REASONS ON PENALTY AND COSTS

The Committee took into account that the conduct demonstrated by Dr. Deep was not an isolated incident but rather a repetitive series of actions with more than one patient on different occasions. The Committee noted previous findings and orders of the Discipline Committee, including revocation of Dr. Deep's certificate of registration and the description by a previous Discipline Panel of his behaviour as being a refusal to act reasonably. In correspondence placed before the Committee, Dr. Deep stated that "the decision will be ignored", denied the jurisdiction of the College, and described previous actions of the Committee as fraudulent. Moreover, he has demonstrated a persistent refusal to pay costs, whether ordered by this Committee or by the Courts. There is no evidence that Dr. Deep is likely to cooperate with the College in the future.

Steinecke in *A Complete Guide to the RHPA* (Canada Law Book 2010) suggests that a pattern of conduct which demonstrates the member is unprepared to recognize his or her professional obligations and the regulator's role represents ungovernability, "an aggravating factor in determining the proper sanction to impose (generally resulting in revocation)". The Committee finds that Dr. Deep has demonstrated a total and utter disregard of the College's role to protect the public and the Committee cannot state too

strongly that his behaviour was totally unreasonable and constituted complete ungovernability, demonstrating no possibility of rehabilitation. The Committee found that if Dr. Deep's certificate of registration had not already been revoked, the only way to express the degree of abhorrence that it felt and to protect the public would have been to revoke his certificate of registration. That is the appropriate penalty in this case.

Having considered the evidence and the findings, and considering Dr. Deep's refusal to act reasonably and professionally in respect to the hearing, the Committee agreed that it was appropriate to make an award of costs to the College.

ORDER

The Discipline Committee therefore orders and directs that Dr. Deep pay to the College costs in the amount of \$10,950, to be paid within 30 days of the date of this order.