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**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(2)
of the *Health Professions Procedural Code*,
being Schedule 2 to 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. GEORGE WILLIAM SKOCYLAK

PANEL MEMBERS:

DR. W. KING (CHAIR)
DR. L. THURLING
DR. P. HORSHAM
J. DHAWAN
N. CHUMMAR

Hearing Date: March 24, 2006

Decision/Release Date: March 24, 2006

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on March 24, 2006. At the conclusion of the hearing, the Committee stated its finding that the member committed professional misconduct and delivered its penalty order with written reasons to follow.

ALLEGATIONS

The Notice of Hearing alleged that Dr. Skocylak committed 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 conduct or an act or acts relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and
- (2) under paragraph 1(1)1 of O. Reg. 856/93, in that he contravened a term, condition or limitation on his certificate of registration.

RESPONSE TO THE ALLEGATIONS

The College withdrew particular 3(a) set out in Schedule “A” to the Notice of Hearing. Dr. Skocylak entered a plea of no contest to all remaining allegations.

EVIDENCE

The following Statement of Facts was filed as exhibit #2 and presented to the Committee:

1. Dr. George William Skocylak (“Dr. Skocylak”) is a general practitioner who has held a certificate of registration authorizing independent practice in Ontario since 1973.

January 2005 Discipline Committee Order

2. At a hearing on January 10, 2005, the Discipline Committee of the College of Physicians and Surgeons of Ontario (the “College”) found that Dr. Skocylak had engaged in disgraceful, dishonourable or unprofessional conduct and had failed to maintain the standard of practice of the profession.
3. The Discipline Committee’s decision was in relation to Dr. Skocylak continuing to prescribe medication with either a narcotic or a controlled drug content on numerous occasions to at least 16 patients, despite having voluntarily surrendered his privileges to do so. The Discipline Committee’s decision was also in relation to Dr. Skocylak having continued to prescribe narcotics with an addictive potential to at least two patients after his privileges to do so were terminated.
4. Dr. Skocylak pleaded no contest to the facts as set out above in paragraph 3 and to the allegations that he had engaged in disgraceful, dishonourable or unprofessional conduct and failed to maintain the standard of practice of the profession.
5. In accepting a joint submission on penalty made by Dr. Skocylak and the College, the Discipline Committee ordered, among other things, that:
 - a. The Registrar shall suspend Dr. Skocylak’s certificate of registration for a period of six (6) months, four (4) months of which shall be suspended upon Dr. Skocylak’s successful completion of the College’s Medical Ethics and Informed Consent course by no later than April 14, 2005 and the College’s Physicians’ Prescribing Skills course by no later than April 14, 2005;
 - b. The Registrar shall commence suspension of Dr. Skocylak’s certificate of registration on February 14, 2005; and
 - c. The Registrar shall impose the following term, condition and limitation on Dr. Skocylak’s certificate of registration for an indefinite period of time:
 - (a) Dr. Skocylak’s privileges to prescribe narcotics or controlled drugs be suspended (the “Order”).

6. The Order was effective January 10, 2005. A copy of the Decision and Reasons for Decision released on January 27, 2005 is attached at Schedule 1 [to the Statement of Facts].

Dr. Skocylak's Contravention of the Discipline Committee's Order

7. Dr. Skocylak treated patient A on or about January, 2005. At this appointment, Dr. Skocylak issued to patient A a post-dated prescription for Diazepam, Phenobarb and Flexeril. A copy of the prescription dated March, 2005 is attached at Schedule 2 [to the Statement of Facts].
8. As both Diazepam and Phenobarb are listed as controlled substances in Schedule IV of the *Controlled Drugs and Substances Act*, Dr. Skocylak directly contravened the terms of the Order.
9. Dr. Skocylak treated patient A again in April, 2005. Again, in direct contravention of the Order, Dr. Skocylak prescribed to patient A the controlled substance, Diazepam.
10. Dr. Skocylak's medical charts pertaining to patient A regarding the January and April 2005 appointments are attached at Schedule 3 [to the Statement of Facts].
11. By issuing prescriptions with controlled drug content on 2 occasions after the Discipline Committee prohibited him from doing so, amounts to Dr. Skocylak engaging in professional misconduct by contravening a term, condition and limitation on his certificate of registration and engaging in conduct that would reasonably be regarded by members of the profession as disgraceful, dishonourable or unprofessional.

FINDING

The Committee accepted as true all of the facts set out in the Statement of Facts. Having regard to these uncontested facts, the Committee found that Dr. Skocylak committed professional misconduct 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 acts relevant to the practice of medicine that, having regard to all the

circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and, under paragraph 1(1)1 of O. Reg. 856/93, in that he contravened a term, condition or limitation on his certificate of registration.

PENALTY DECISION AND REASONS

Counsel for the College and counsel for Dr. Skocylak made the following joint submission regarding penalty:

1. Dr. Skocylak's certificate of registration be suspended;
2. Dr. Skocylak be subject to quarterly random chart reviews for two years by a member of the College approved by the Registrar at Dr. Skocylak's expense; and
3. The previously ordered terms, conditions and limitations imposed by the Discipline Committee on January 10, 2005 to remain in effect.

The parties differed on the suggested length of suspension with College counsel asking for a six-month suspension and Dr. Skocylak's counsel asking for a one-month suspension.

In addition to random chart reviews, College counsel requested a six-month suspension of Dr. Skocylak's certificate of registration. The previously ordered terms, conditions and limitations imposed by the Discipline Committee on January 10, 2005 would remain in effect. That is, the doctor's privileges to prescribe narcotics or controlled drugs would remain indefinitely suspended and he would be required to post a sign in his office to advise patients of the suspension of these prescribing privileges. The results of the proceeding would be on the register. The College also requested costs of \$2,500.

Counsel for the College submitted that the penalty ought to be "individually appropriate". Dr. Skocylak's contravention of the Committee's order demanded a penalty that would discourage others from similar behaviour.

At the first hearing, a suspension of six months was imposed, four months of which was suspended upon successful completion, by April 14, 2005, of the Medical Ethics and Informed Consent Course and the Prescribing Skills course. Dr. Skocylak completed these courses and, thus, the suspension was, in effect, reduced to two months.

Paragraph 3(b) of the previous penalty order states that, “in the event that Dr. Skocylak fails to comply with any of the terms of this order, his certificate of registration shall be immediately suspended for the remainder of the six (6) month period.”

Counsel for the College cited the Ontario Court of Appeal case of *Amerato v. Ontario (Motor Vehicle Dealer Act, Registrar)* Docket No. C43000, released September 8, 2005, in which an order had been made like the January 2005 penalty order with respect to Dr. Skocylak such that a breach led directly to further penalty. In that case, the court determined that the appellant had a right to a future hearing in order to determine whether a breach had occurred, the circumstances thereof and the appropriate consequences.

In the case before the Committee, the fact of the breach by Dr. Skocylak was not disputed. Counsel for the College argued for a penalty that would protect the public, express the abhorrence of the membership for the flagrant breaching of its order and deter Dr. Skocylak from further breaches. Other cases of breach were cited in order to compare penalties.

The timing of Dr. Skocylak’s breach of the previous order was significant. His first breach occurred on January 28, 2005, only seventeen days after the order of the Discipline Committee. The second breach occurred on April 25, 2005, after he had completed the Ethics Course and the Prescribing Course that were required by the order. Dr. Skocylak was aware of the stated consequences of a single breach (i.e. his suspension would be extended for the remainder of the six month period), but was not deterred. Therefore, counsel for the College argued that a suspension of six months imposed by the Committee would be “more than reasonable and fair” in the circumstances.

In the first hearing, a mitigating factor was that it was Dr. Skocylak's first discipline hearing. Having breached that order, an aggravating factor in the current hearing was that this was Dr. Skocylak's second appearance before the Committee. Such breach of the orders of the Discipline Committee lowers the reputation of the profession in the eyes of the public and presents doctors as "immune" from sanction.

Counsel for Dr. Skocylak submitted that the drugs prescribed improperly, Diazepam and Phenobarbital, were nonetheless medically indicated. They were appropriately prescribed for treatment of the patient's condition. Counsel for the doctor further submitted that Dr. Skocylak was unaware that these were controlled substances. Thus, his contravention of the order was "not intentional" and stopped when he became aware of this fact as demonstrated in his clinical notes pertaining to the patient. Counsel also pointed out that there was no victim impact statement and that no one had complained. The protection of the public was not at issue. Dr. Skocylak had entered a plea of "no contest" and the only issue was the severity of the penalty. She described him as "contrite, co-operative". Therefore, it was submitted that a one-month suspension was sufficient for a "technical breach".

Counsel for Dr. Skocylak presented two cases as demonstrating "more egregious" breaches with public risk as a factor but with lesser penalties imposed. Counsel also presented Dr. Skocylak's record as "32 years without incident" and proposed a one-month suspension instead of six months, which she characterized as "ruinous" to a professional career.

Counsel for the Skocylak also sought to distinguish the cases cited by the College as involving far more serious transgressions. In one, records had been falsified and a victim impact statement had been given. In the second, there was sexual impropriety.

It was also submitted on behalf of Dr. Skocylak that he had anticipated that a penalty for breach would be four months additional suspension only, in accordance with the terms of the January 2005 order. To prescribe Diazepam and Phenobarbital to an epileptic would

not “outrage the profession” or lower the public opinion of doctors. A reprimand should not be added as it was not suggested before. According to Dr. Skocylak’s counsel, the punishment proposed by the College did not fit the crime and Dr. Skocylak has acknowledged his misconduct.

In rebuttal, College counsel submitted that the appropriate dosage, the selection of the medications and even public protection were not at issue in the two incidents involved here. College counsel submitted that Dr. Skocylak knew or ought to have known what drugs were included on the controlled list. His breach was not merely technical. There had been a previous investigation (referred to in the record) by Health Canada in 1991 and he had given up his prescribing privileges at that time. The other cases were cited as examples of penalties in cases of first breach, not for their underlying facts. This was Dr. Skocylak’s second breach, the first being the breach of the undertaking with Health Canada and, the second, the breach of the order of the Discipline Committee. The penalty has to reflect the seriousness of the breach and ensure his future compliance.

In our view, Dr. Skocylak knew or ought to have known that he was prescribing drugs that he was specifically not privileged to prescribe. Phenobarbital has been so classified since the 1980’s. Dr. Skocylak has been in practice since 1973 with a suspension of these prescribing privileges since 1991. Diazepam has been so listed since 2000. It was Dr. Skocylak’s responsibility as a physician, especially in view of his prescribing restrictions, to be well acquainted with what drugs he could or could not legitimately prescribe.

The Committee determined that a suspension of four months, to begin April 17, 2006, was appropriate in the circumstances. It was the suspension anticipated by Dr. Skocylak if he breached the order of January 2005. A serious deterrent to Dr. Skocylak’s future non-compliance with the Discipline Committee order is required and the Committee is of the view that a four month suspension is warranted.

The Committee wished to express the serious disapproval of the profession at the flagrant breach of the January 2005 order. This physician has now appeared twice within one

year before the Discipline Committee for breaching the suspension of his prescribing privileges despite having now taken the College courses in Ethics and Prescribing Skills. This is an aggravating factor taken into account by the Committee in its penalty decision.

The Committee views quarterly random chart reviews conducted by a member of the College approved by the Registrar and undertaken at Dr. Skocylak's own expense as a necessary monitoring of his prescribing practices. It is hoped that Dr. Skocylak will study carefully the schedule of controlled medications, be vigilant in avoiding future transgressions and attend scrupulously to the constraints of his privileges to prescribe.

The sign in Dr. Skocylak's office must remain as a continuous statement to his patients and a reminder to Dr. Skocylak that he cannot prescribe narcotics or controlled drugs. It is hoped that the sign will alert patients and help to protect Dr. Skocylak from again contravening the terms of his certificate of registration. Both the random chart reviews and the sign serve to protect the public.

Thus, the previously ordered terms of the Discipline Committee will remain in effect in addition to the four-month suspension.

ORDER

Therefore, the Discipline Committee ordered and directed that:

1. Dr. Skocylak's certificate of registration be suspended for four (4) months effective April 17, 2006, at 12:01 am;
2. Dr. Skocylak be subject to quarterly random chart reviews for two years by a member of the College approved by the Registrar at Dr. Skocylak's expense;
3. The previously ordered terms, conditions and limitations imposed by the Discipline Committee on January 10, 2005 will remain in effect as follows:

- i. Dr. Skocylak's privileges to prescribe narcotics or controlled drugs be suspended; and
- ii. Dr. Skocylak prominently display a sign in his office(s) advising his patients of his suspension in privileges to prescribe narcotics and controlled drugs.