

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Richard Alexander Irvine, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the names and identifying information of persons identified in the Agreed Statement of Facts and at the hearing, other than Dr. Irvine, 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: Irvine, R.A. (Re)

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

IN THE MATTER OF a Hearing directed
by the Complaints Committee and the Inquiries, Complaints and Reports Committee of
the College of Physicians and Surgeons of Ontario
pursuant to Section 26(2) and 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. RICHARD ALEXANDER IRVINE

PANEL MEMBERS:

DR. M. GABEL (CHAIR)
DR. E. ATTIA (Ph.D.)
DR. C. CLAPPERTON
D. DOHERTY
DR. R. MACKENZIE

Hearing Date: November 15, 2011
Decision Date: November 15, 2011
Release of Written Reasons: November 22, 2011

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 November 15, 2011. 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. Richard Alexander Irvine committed an act of professional misconduct:

1. under clause 51(1)(b.1) of the Health Professions Procedural Code (the “Code”), Schedule 2 to the *Regulated Health Professions Act*, 1991, S.O. 1991, c.18, in that he sexually abused 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 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.

The Notice of Hearing also alleged that Dr. Irvine is incompetent as defined by subsection 52(1) of the Code, which is Schedule 2 to the *Regulated Health Professions Act*, 1991.

RESPONSE TO THE ALLEGATIONS

Dr. Irvine admitted the third allegation of professional misconduct in the Notice of Hearing 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. Counsel for the College withdrew the first and second allegations in the Notice of Hearing and the allegation of incompetence.

FACTS AND EVIDENCE

The following Agreed Statement of Facts and Admission was filed as an exhibit and presented to the Committee:

FACTS

Background

1. Dr. Richard Alexander Irvine (“Dr. Irvine”) is a general practitioner practising in New Hamburg, Ontario.
2. In the fall of 2005, Dr. Irvine married Ms X. Dr. Irvine and Ms X separated in the summer of 2007.
3. Since approximately 2000, Ms X has been under the care of a family physician, Dr. A. She continued to be under the care of Dr. A throughout her marriage to Dr. Irvine and after the marriage dissolved.
4. YZ is Ms X’s son from a prior marriage. YZ is also a patient of Dr. A’s.

Prescribing to Family Members Contrary to College Policy

(A) Ms X

5. Commencing in the spring of 2005 continuing until their marriage breakdown in the summer of 2007, Dr. Irvine issued numerous prescriptions to his wife, Ms X. The prescriptions included, but were not limited to, medications to treat Ms X’s complaints of: asthma, episodic pain, the flu, and menopausal symptoms. A copy of the record of

prescriptions is attached at Appendix “A” [to the Agreed Statement of Facts and Admission].

6. Dr. Irvine issued multiple prescriptions to Ms X in circumstances which did not constitute an emergency or require urgent care.

7. Throughout the time she received prescriptions from Dr. Irvine, Ms X was under the care of her family doctor, Dr. A.

8. None of the medications prescribed by Dr. Irvine to Ms X were narcotics or controlled drugs or substances.

9. Dr. Irvine did not have any medical records in respect of Ms X, nor did he bill OHIP in respect of the prescriptions issued.

(B) YZ

10. Commencing in 2005, Dr. Irvine also prescribed medication to Ms X’s son, YZ, to treat indigestion and other non-urgent conditions. A copy of the record of prescriptions is attached at Appendix “B” [to the Agreed Statement of Facts and Admission].

11. Dr. Irvine issued these prescriptions to YZ in circumstances which did not constitute an emergency or require urgent care.

12. Dr. Irvine took no steps to refer YZ to another physician for treatment of the conditions referred to above and did not transfer care to another physician in respect of the conditions referred to above.

13. None of the medications prescribed by Dr. Irvine to YZ were narcotics or controlled drugs or substances.

14. Dr. Irvine did not have any medical records in respect of YZ, nor did he bill OHIP in respect of the prescriptions issued.

15. The College’s Policy entitled “Treating Self and Family Members” provides that physicians should not treat their family members except for minor conditions or in an

emergency situation, and only when other qualified health professions are not readily available. Where it is necessary to treat family members, physicians must transfer care to another qualified health professional as soon as is practical. The policy warns:

...whenever a physician treats someone with whom the physician has a personal relationship, there is a risk that the personal relationship will affect the physician's ability to provide good quality care....

A copy of the policy is attached at Appendix "C" [to the Agreed Statement of Facts and Admission].

16. Upon learning of Ms X and YZ's complaints, Dr. Irvine enrolled in the College's Boundaries Course and completed it on April 17 and 18, 2009.

ADMISSION

17. Dr. Irvine admits the facts set out above and admits that by:

- (a) treating family members for conditions which were not urgent;
- (b) treating family members where other health care professionals were available; and,
- (c) treating family members and not taking steps to transfer their care to other physicians,

he contravened the College policy "Treating Self and Family Members" and, moreover, that he engaged in conduct that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

18. Dr. Irvine admits the conduct particularized herein constitutes professional misconduct under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act*, 1991.

FINDING

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. Irvine's admission and found that he committed an act of professional misconduct, 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.

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 penalty included a four month suspension, a reprimand, and costs for a one day hearing.

In considering the appropriate penalty, the Committee took into account that Dr. Irvine prescribed medication for his wife and her son over a period of two and a half years. His prescriptions, for various medications, were done repeatedly, in the order of over 100 prescriptions. Moreover, the medications were initiated by him for his wife and her son and were not repeats of what their family doctor had prescribed. Although none of the prescriptions were for narcotics, they were for medication that had the potential to produce serious side effects.

Besides the above aggravating factors, the Committee considered that Dr. Irvine prescribed the medications in utter disregard for the College's policy on "Treating Self and Family Members", which is very clear on this issue. The situations in which he prescribed the medications were not urgent, nor did they constitute emergencies. In one instance, he prescribed a medication for his wife's son for a non-urgent condition, and did so for almost a year. At no time did he refer the son to another specialist or seek another consultation. When a doctor treats family members, a serious conflict arises as emotional and dependency issues may cloud the dynamics of the situation and lead to difficulties.

The Committee considered mitigating factors, including Dr. Irvine's admission from the outset about his inappropriate prescribing. Through his admission, he has significantly reduced the time and costs involved in the disciplinary process. He accepts responsibility and recognizes that he has engaged in a serious breach of policy. It was noted that he has no prior disciplinary history with the College.

The principles to be taken into account in assessing an appropriate penalty include the protection of the public, and the maintenance of the integrity of the profession and its ability to govern itself in the eyes of the public. The Committee believes the proposed penalty will satisfy these principles. It will serve to protect the public by providing specific deterrence to Dr. Irvine. The reprimand, four month suspension and payment of costs will deter repetition of this behaviour in the future. The penalty provides general deterrence as it informs members of the profession about what can happen when College policies are flagrantly ignored. Dr. Irvine has already completed a boundaries course which speaks to his ability to be rehabilitated.

The Committee accepted the penalty as jointly proposed by the College and Dr. Irvine. It is fair and appropriate in the circumstances of this case. Although the Committee had before it two other precedents to consider, those cases involved different circumstances and did not involve such extensive, repeated prescribing for family members. The Committee is also aware that a joint submission on penalty should be accepted unless to do so would be contrary to the public interest and bring the administration of justice into disrepute.

ORDER

Therefore, the Committee ordered and directed that:

1. The Registrar suspend Dr. Irvine's certificate of registration for a period of four (4) months, to commence December 1st, 2011.
2. Dr. Irvine appear before the panel to be reprimanded.

3. Dr. Irvine pay to the College costs in the amount of \$3,650.00, within 30 days of the date of this Order.

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