

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. David Harold Douglas Jones this is notice that the Discipline Committee ordered that there shall be a ban on publication and broadcasting of the names and any identifying information concerning any patients or former patients whose names are disclosed orally or in written documents or exhibits filed at the third party records motion and 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.

The Committee also ordered that there shall be a ban on the publication, including broadcasting, of the identity of the complainant in this matter, and the identity of any witness who testifies in relation to the allegations in this matter, and of any other information that could identify the complainant or any such witness, under subsection 47(1) of the Code.

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 section 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. Jones,
2018 ONCPSD 62**

**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. DAVID HAROLD DOUGLAS JONES

PANEL MEMBERS:
DR. D. PITT (CHAIR)
MR. P. PIELSTICKER
DR. I. ACKERMAN
MR. J.P. MALETTE
DR. M. GABEL

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS K. HEAP

COUNSEL FOR DR. JONES:

MS Y. VENTRESCA
MS N.E. CARROTHERS

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. R. COSMAN

PUBLICATION BAN

Hearing Date: October 1, 2018
Decision Date: October 1, 2018
Written Decision Date: November 26, 2018

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 1, 2018. At the conclusion of the hearing, the Committee released a written order stating its finding that the member committed an act of professional misconduct, and setting out the Committee’s penalty and costs order, with written reasons to follow.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. David Harold Douglas Jones 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; and
2. 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.

RESPONSE TO THE ALLEGATIONS

Dr. Jones entered a plea of no contest to allegation 2 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 allegation 1.

THE FACTS

The following facts were set out in the Statement of Uncontested Facts and Plea of No Contest, which was filed as an exhibit at the hearing and presented to the Committee:

FACTS

1. Dr. David Harold Douglas Jones (“Dr. Jones”) is a 54 year-old general practitioner, with a practice in London, Ontario. Dr. Jones received his certificate of registration authorizing independent practice in Ontario in 1988.
2. Patient A was a patient of Dr. Jones from 2001 to 2010. During appointments with Patient A, Dr. Jones made inappropriate and unprofessional comments to her as follows:
 - (a) On a date in August, 2009, during an intimate examination, Dr. Jones commented on Patient A’s appearance;
 - (b) During another intimate examination at the same appointment, Dr. Jones inquired about Patient A’s interest in obtaining a tattoo in her vaginal area; and
 - (c) At a prior appointment that Patient A attended with her mother, after seeing a picture of a celebrity on a magazine cover, Dr. Jones made a crude comment indicating that he found the celebrity attractive.
3. Patient A was mortified and in disbelief that Dr. Jones would make such comments. She ended her physician-patient relationship with Dr. Jones in early 2010.
4. Patient A continues to be affected by Dr. Jones’s conduct. In June 2016 she submitted a complaint to the College regarding his inappropriate comments.

NO CONTEST

5. Dr. Jones does not contest the facts set out in paragraphs 1-3 above, and does not contest that the conduct described constitutes acts or omissions relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, pursuant to paragraph 1(1)33 of Ontario regulation 856/93 made under the *Medicine Act, 1991*.

RULE 3.02 OF THE DISCIPLINE COMMITTEE'S RULES OF PROCEDURE

Rule 3.02 of the Discipline Committee's Rules of Procedure regarding a plea of no contest states as follows:

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 College proceedings only;
- (b) that the Discipline Committee can accept that those facts constitute professional misconduct or incompetence or both for the purposes of College proceedings only; and
- (c) that the Discipline Committee can dispose of the issue of what finding ought to be made without hearing evidence.

FINDING

The Committee accepted as correct all of the facts set out in the Statements of Uncontested Facts and Plea of No Contest. Having regard to these facts, the Committee accepted Dr. Jones's plea and found that he committed an act of professional misconduct, in that 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.

AGREED STATEMENT OF FACTS ON PENALTY

The following facts were set out in an Agreed Statement of Facts on Penalty that was filed as an Exhibit at the hearing:

BACKGROUND

1. Dr. Jones is a general practitioner who obtained his Doctor of Medicine from the University of Western Ontario in 1987. Dr. Jones operated a family medicine practice in London, Ontario for a number of years, until its closure in 2013. Dr. Jones currently practices on a part-time basis at a full-service rehabilitation clinic called “Hands on Health”. He no longer practices in the family practice setting in which he practiced in 2009.

RELEVANT COLLEGE HISTORY

2. In March 2009, Dr. Jones was cautioned by the Complaints Committee regarding a breach of boundaries in a physician-patient relationship. The boundaries violations consisted of inappropriate self-disclosure of a personal nature to a patient. In the context of the College investigation into that matter, Dr. Jones reported that he had attended the College’s ‘Boundaries Course’ on October 24-25, 2008. The Decision and Reasons of the Complaints Committee is attached to this Agreed Statement of Facts on Penalty at TAB 1 [to the Agreed Statement of Facts on Penalty].
3. In May 2010, Dr. Jones was cautioned by the Inquiries, Complaints and Reports Committee (“ICR Committee”) regarding inappropriately asking a patient questions of a sexual nature in an occupational setting in which the patient had presented for an unrelated

problem, and the use of a profane word in the context of the same patient encounter. The Decision and Reasons of the ICR Committee is attached to this Agreed Statement of Facts on Penalty at TAB 2 [to the Agreed Statement of Facts on Penalty].

4. In July 2013, Dr. Jones was cautioned by the ICR Committee with respect to his communication to a teenage patient. Dr. Jones's inappropriate communication included comments and jokes that could be construed as sexual in nature, though the patient perceived that his intention in making the remarks was to be humorous. The Decision and Reasons of the ICR Committee is attached to this Agreed Statement of Facts on Penalty at TAB 3 [to the Agreed Statement of Facts on Penalty].
5. Dr. Jones has no previous history before the Discipline Committee.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for Dr. Jones made a joint submission as to an appropriate penalty and costs order, the provisions of which included a reprimand, a two-month suspension of Dr. Jones's certificate of registration, a requirement that Dr. Jones successfully complete the PROBE course in ethics and boundaries, and that Dr. Jones pay costs to the College in the amount of \$10,180.

The Committee heard from counsel for the parties and independent legal counsel that the Supreme Court of Canada has set a high bar for rejecting a jointly submitted penalty proposal. A joint submission on penalty must be accepted by the Committee, unless to do so would bring the administration of justice into disrepute, or is otherwise contrary to the public interest (*R v. Anthony-Cook*, 2016 SCC 43).

In *R v. Druken*, 2006 NLCA 67, at para 29, the court held that a joint submission will bring the administration of justice into disrepute or be contrary to the public interest if, despite the public interest considerations that support imposing it, it is so "markedly out of line with the

expectations of reasonable persons aware of the circumstances of the case that they would view it as a breakdown in the proper functioning of the criminal justice system.”

As stated by the Supreme Court of Canada in *R. v. B.O.2*, 2010 NLCA 19, at para. 56, when assessing a joint submission, trial judges should “avoid rendering a decision that causes an informed and reasonable public to lose confidence in the institution of the courts.” The Court continued in paragraph 34: “In my view, these powerful statements capture the essence of the public interest test developed by the Martin Committee. They emphasize that a joint submission should not be rejected lightly, a conclusion with which I agree. Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down. This is an undeniably high threshold...”

The Discipline Committee accepted that these principles apply in the context of administrative tribunal decision-making as well.

In reviewing the proposed penalty, the Committee had regard to well-accepted penalty principles. Those principles include protection of the public, specific deterrence of the member, general deterrence of the profession, maintaining the integrity of the profession and public confidence in the College’s ability to regulate the profession in the public interest and, where appropriate, the rehabilitation of the physician.

Both counsel made submissions with respect to aggravating and mitigating factors in this matter.

Aggravating Factors

The Committee noted the following as aggravating factors in this case:

1. The inappropriate and unprofessional comments made by Dr. Jones had a strong negative impact on Patient A, and were highly inappropriate in a physician-patient interaction;
2. Two of the comments were made during intimate examinations when Patient A was in a vulnerable position in relation to Dr. Jones;
3. The comments adversely affected Patient A, in that they caused her to end her doctor-patient relationship with Dr. Jones;
4. Dr. Jones has a history of three complaints to the College for similar misconduct. The Committee considered aggravating the complaint and its resolution that preceded Patient A's complaint. Five months before the present complaint, Dr. Jones was cautioned by the ICRC as a result of similar behaviour.
5. The Committee considered that as part of the resolution of that complaint, 10 months prior to Patient A's interaction with him, Dr. Jones had completed the Boundaries course. There can be no question that Dr. Jones was, or should surely have been, well aware of proper communication boundaries with patients. The Committee noted that the pattern of Dr. Jones behaviour appears not to have been affected by his taking of the course or his receipt of an admonishment from the College.

Mitigating Factors

The Committee noted as mitigating that Dr. Jones entered a plea of no contest to the facts and thus reduced the time and cost of the hearing. As a consequence, Patient A, her mother, and other witnesses were spared the stress of having to attend to testify in a contested hearing.

Case Law

The Committee reviewed four prior cases that were put before it that involved similar facts and was satisfied that the proposed penalty was within the range of penalties in those cases.

Analysis

The behaviour of Dr. Jones was inappropriate and demeaning to Patient A. The importance of a respectful level of communication in the doctor-patient relationship is essential in promoting patient confidence and assisting in resolving the issues that a patient brings to a visit with a physician. There is an inherent power imbalance in the doctor-patient relationship. Patients are vulnerable, and inappropriate and demeaning comments from a physician can have major negative effects. While Dr. Jones has not previously appeared before the Discipline Committee, he should well have learned what is required of him by College policies and by his previous educational course in boundaries and the cautions he received from the ICRC. The Committee expects that Dr. Jones' experience from having to undergo this discipline proceeding, a suspension of his certificate of registration, the requirement to complete a rigorous course in boundaries and communication, and the imposition of a public reprimand, will cause Dr. Jones to alter his behaviour and treat all his patients with the respect owed to them. The Committee and the public expect nothing less in the future from Dr. Jones.

The Committee was confident that a two-month suspension would constitute specific deterrence to Dr. Jones and general deterrence to the profession. The requirement that Dr. Jones successfully complete the PROBE course in ethics and boundaries will aid in protecting the public by making plain to Dr. Jones the proper professional way to interact with patients, and also serve to contribute to his rehabilitation. The public reprimand will emphasize the profession's disapproval of the behaviour and send the message to Dr. Jones that any repetition of this type of conduct will not be tolerated. It will also demonstrate to the public that the College will not tolerate inappropriate behaviour by a physician with patients. The penalty will further ensure public confidence in the College's ability to regulate the profession in the public interest.

Costs

Costs are at the discretion of the Committee and the Committee considered the proposed cost order that Dr. Jones pay to the College the costs for a one-day hearing, in the tariff amount of \$10,180, to be appropriate in this case.

ORDER

The Committee stated its finding of professional misconduct in paragraph 1 of its written order of October 1, 2018. In that order, the Committee ordered and directed on the matter of penalty and costs that:

2. the Registrar suspend Dr. Jones's certificate of registration for a period of two (2) months, effective immediately.
3. Dr. Jones attend before the panel to be reprimanded.
4. the Registrar impose the following terms, conditions and limitations on Dr. Jones's certificate of registration:
 - (i) Dr. Jones will successfully complete the PROBE course in ethics and boundaries, at his own expense, by obtaining an unconditional pass, and will provide proof of completion to the College within six (6) months from the date of this Order;
5. Dr. Jones pay costs to the College in the amount of \$10,180 within thirty (30) days from the date of this Order.

At the conclusion of the hearing, Dr. Jones 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 October 1, 2018
in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
AND
DR. DAVID HAROLD DOUGLAS JONES

Dr. Jones,

This Committee found that you engaged in an act that was disgraceful, dishonourable and unprofessional. Your inappropriate comments caused long-lasting harm to your patient. The Committee is disappointed that you did not learn from your prior caution and the College's boundaries course you undertook in 2008, and repeated the same inappropriate action in 2009.

The Committee acknowledges your admission of the facts and the sparing of the stress of testimony by the complainant and other witnesses. We expect and anticipate you will avoid such conduct in the future and not appear before the Discipline Committee again.