

**Indexed as: Ontario (College of Physicians and Surgeons of Ontario) v.
Nicol, 2015 ONCPSD 11**

**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. OLU KAYODE LOUIS VICTOR NICOL

PANEL MEMBERS:

**DR. E. STANTON (CHAIR)
D. DOHERTY
DR. P. GARFINKEL
S. BERI
DR. C. CLAPPERTON**

Hearing Date: December 12, 2014
Decision Date: December 12, 2014
Release of Written Reasons: March 31, 2015

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 December 12, 2014. 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. Nicol committed an act of professional misconduct:

1. 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.

The Notice of Hearing also alleged that Dr. Nicol is incompetent as defined by subsection 52(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”).

RESPONSE TO THE ALLEGATIONS

Dr. Nicol admitted the first allegation in the Notice of Hearing, that he failed to maintain the standard of practice of the profession. Counsel for the College withdrew the allegation of incompetence in the Notice of Hearing.

THE FACTS

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

PART 1 – FACTS

Background

1. Dr. Olu Kayode Louis Victor Nicol (“Dr. Nicol”) is a general practitioner. Dr. Nicol practises family medicine in Mississauga, Ontario. Dr. Nicol received his medical degree from the University of London in 1982. In 1988, he received a diploma in Occupational Health and Safety from McMaster University after completing his thesis on “Counselling for Post-Traumatic Stress Disorder and Workplace Stress”. He has been practising in Port Credit, Mississauga since 1986. Dr. Nicol has been a member of the College of Physicians and Surgeons (the “College”) since January 2, 1986.
2. Dr. Nicol has been in solo practice for his entire career and does not have privileges at any hospital. His practice has focused on supportive psychotherapy for treatment of depression, anxiety and other mood disorders. He also provides general family medicine services, with the exception of antenatal care.

Complaint and Investigation under Section 75(1)(c) of the Health Professions Procedural Code (the “Code”) Regarding Patient A

3. On July 13, 2011, the College received a letter of complaint from a member of the public regarding Dr. Nicol’s care and treatment of her daughter, Patient A. In particular, concern was expressed over the quantity of pain medication being prescribed to Patient A by Dr. Nicol.
4. The complaint led to the initiation of an investigation by the College into Dr. Nicol’s care and treatment relating to Patient A.
5. As part of the College’s investigation, Dr. X was retained to opine on Dr. Nicol’s care and treatment of Patient A.
6. In his report dated January 29, 2012, Dr. X opined that Dr. Nicol failed to meet the standard of practice expected of a general practitioner in the manner in which he prescribed narcotics to Patient A and in dealing with her underlying substance abuse problem and mood disorder. Dr. X also opined that the overall care of Patient A fell

below the expected standard of practice, including in the absences of history taking and physical exam as well as failing to ensure that proper screening protocols were undertaken, such as a PAP test, colon cancer screening and diabetes screening.

Broader Investigation under Section 75(1)(a) of the Code

7. On July 4, 2012, the College commenced a broader investigation into Dr. Nicol's practice under s. 75(1)(a) of the Health Professions Procedural Code. Dr. Y was retained by the College to opine on Dr. Nicol's care and treatment of 25 patients, based on a chart review, and an interview of Dr. Nicol.

8. Dr. Y provided two reports, the first dated May 21, 2013, and the second dated July 25, 2013, which was prepared after his interview of Dr. Nicol. Dr. Y opined that Dr. Nicol's record-keeping fell below the standard of practice of medicine in each case. In particular, he noted that Dr. Nicol's documentation was deficient in failing to maintain up-to-date cumulative patient profiles, and inadequately recording patient history and medication details.

9. Dr. Y also opined that Dr. Nicol's care and treatment of multiple patients fell below the standard of practice of the profession. His concerns included:

- Dr. Nicol did not acknowledge test results and some results were not followed up;
- Dr. Nicol seemed hesitant in making the diagnosis of diabetes when the diagnostic criteria were met and seemed hesitant to manage these patients in an effective manner;
- With respect to pain management, Dr. Nicol started patients on high-doses of narcotics and, in some cases, mixed varieties, without employing a slower, more cautious approach to the initiation of therapy. Initial screening steps and a clearer recording of functional abilities was lacking. Dr. Nicol did not consider drug interactions in his prescribing of medications;
- Dr. Nicol was not diligent in minimizing the use of benzodiazepines;

- Dr. Nicol was inconsistent in his lipid assessment and management;
- Dr. Nicol needlessly treated what seemed to be viral respiratory infections with antibiotics;
- Dr. Nicol displayed some lack of knowledge in the area of vaccines; and
- Dr. Nicol displayed a lack of knowledge with respect to screening recommendations for mammography, PAP smears, colorectal screening and has not kept up to date with current concepts in osteoporosis.

PART 2 – ADMISSION

10. Dr. Nicol admits the facts in paragraphs 1 to 9 above and acknowledges that these deficiencies amount to a failure to maintain the standard of practice of the profession.

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. Nicol's 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.

PENALTY

The following facts were set out in an Agreed Statement of Facts Regarding Penalty and presented to the Committee:

1. On or about January 22, 2014, in lieu of an order made pursuant to section 37 of the Health Professions Procedural Code, Dr. Nicol entered into an undertaking with the College. A copy of this undertaking is attached as Schedule "A" [to the Agreed Statement of Facts].
2. In accordance with the undertaking, Dr. Nicol has practiced under supervision. The College has received regular reports from Dr. Nicol's supervisor.

3. The reports received from Dr. Nicol's supervisor indicate improvements in Dr. Nicol's practice. Some improvements in Dr. Nicol's practice were also noted by Dr. Y, the Medical Inspector who opined on Dr. Nicol's care in the section 75(1)(a) investigation that led to the referral to discipline of allegations pertaining to Dr. Nicol's standard of practice.

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 Committee was mindful of the high threshold that must be met before it can reject a joint submission. The law indicates that a joint submission should be accepted unless to do so would be contrary to the public interest and bring the administration of justice into disrepute.

The Committee carefully considered the facts and findings supporting the proposed penalty. Dr. Nicol's failure to maintain the standard of practice of the profession with regard to his record-keeping was demonstrated clearly in the review of 25 charts by the College's investigator. His documentation was deficient in that he failed to maintain up-to-date cumulative patient profiles, and he inadequately recorded patient history and medication details. Accurate medical records are essential to the proper management of a physician's practice and also form the basis upon which others may judge the quality of medical care that a physician provides.

The chart review also revealed that Dr. Nicol was deficient in making the diagnosis of diabetes when the diagnostic criteria were met, and he did not manage diabetic patients effectively. There was evidence of Dr. Nicol's mismanagement of narcotics in high doses for patients with pain; he was not diligent in minimizing use of benzodiazepines; and he did not take drug interactions into account. He was deficient in other aspects of his medical care and treatment of patients, including in the needless use of antibiotics for viral infections, his lack of knowledge of vaccination criteria, inconsistency in lipid assessment and treatment, and lack of knowledge of screening recommendations for various diagnostic tests.

These deficiencies were aggravating factors, which the Committee felt required a serious penalty. Poor record-keeping can have serious repercussions for patient care. In addition, Dr. Nicol did not just engage in a single instance of misconduct, but rather he displayed a prolonged pattern of failing to recognize and manage properly his patients' medical problems and to record properly his patients' states of health and illness.

Of considerable concern to the panel was the fact that this was not Dr. Nicol's first appearance before the Discipline Committee. In 2007, he appeared before a panel of the Committee and pleaded no contest to allegations that he displayed serious deficiencies in his medical record-keeping, and in prescribing medication to a patient who was allergic to it. In addition to a reprimand and an order of costs, Dr. Nicol was ordered to practise under the supervision and monitoring of a monitor, as well as to participate in a program of professional education and mentoring. He was also required to complete a Physician Review Program (PREP) and abide by its recommendations, and to take courses on medical record-keeping, and medical ethics and informed consent. The 2007 decision of the Committee stated that Dr. Nicol would be "deterred from further misconduct by the exigencies of this penalty". The fact that Dr. Nicol was back before the Committee admitting to similar allegations caused the Committee to be concerned that specific deterrence had not been achieved.

The Committee recognized that the consideration of an appropriate penalty involves balancing various factors, with the protection of the public being the key consideration. These factors include general and specific deterrence, as well as the need to maintain the confidence of the public in the profession's ability to self-regulate. The Committee was most concerned to ensure that any penalty would have a specific deterrent effect given the apparent lack of improvement in Dr. Nicol's practice since 2007. The Committee was not satisfied that the penalty as originally proposed would achieve specific deterrence. Although the proposed penalty imposed certain restrictions on Dr. Nicol's practice, it otherwise provided for Dr. Nicol to practise without supervision after twelve months, subject only to a re-assessment within three months. The Committee expressed its concern about the possibility of recidivism given that the remediation that was prepared for Dr. Nicol in 2007 did not achieve its purpose, and that he appeared not to have

learned from the medical record-keeping course that he had been required to take. The Committee indicated to counsel that it wanted to see more monitoring after the re-assessment, to ensure that the improvements to Dr. Nicol's practice that were noted in the Agreed Statements of Facts Regarding Penalty continued. In response to this, counsel added a term to the proposed order, which provided for a further assessment of Dr. Nicol's practice after two years. In addition, College counsel advised the Committee that the College now uses individualized education plans (IEPs), which will measure Dr. Nicol's progress in his remediation.

The Committee recognized several mitigating factors. First, as it was explained to the Committee, inadequacies in the previous monitoring of Dr. Nicol may have given him the wrong impression that his remediation plan was working, and that he was improving, when he was not. Second, since January 2014, Dr. Nicol has displayed significant improvements in his practice and record-keeping, including the adoption of an electronic medical record, which the Committee was advised has been very helpful in dealing with Dr. Nicol's medical record-keeping. Also, by admitting to the allegation, Dr. Nicol avoided the stress to witnesses and the cost and time expenditures that would be exacted by a contested hearing.

The Committee was satisfied that Dr. Nicol's patients would be adequately protected by the restrictions that are to be imposed on his practice. Specific deterrence has been achieved through the remediation plan that requires Dr. Nicol to practise only under the supervision of a clinical preceptor (whose recommendations he must follow) and clinical supervisor, followed by re-assessments of his practice at three months and a further two years after the conclusion of his preceptorship and period of supervision. The use of an IEP will allow the College to measure his progress in his remediation. These restrictions will also act as a general deterrent to other members of the profession against engaging in similar misconduct.

In conclusion, the Committee was satisfied that the proposed penalty as revised served all of the relevant penalty principles. The Committee also concluded that this was an

appropriate case in which to order that the member pay a portion of the College's costs of conducting the hearing.

ORDER

Therefore, as indicated in the written order of December 12, 2014, the Committee ordered and directed that:

1. the Registrar place the following terms, conditions and limitations on Dr. Nicol's certificate of registration:
 - (a) Dr. Nicol shall not issue new prescriptions or renew existing prescriptions for any of the following substances:
 - (i) Narcotic Drugs (from the Narcotic Control Regulations made under the *Controlled Drugs and Substances Act*, S.C., 1996, c. 19);
 - (ii) Narcotic Preparations (from the Narcotic Control Regulations made under the *Controlled Drugs and Substances Act*, S.C., 1996, c. 19);
 - (iii) Controlled Drugs (from Schedule G of the Regulations under the *Food and Drugs Act*, S.C., 1985, c. F-27);
 - (iv) Benzodiazepines/Other Targeted Substances (from the Benzodiazepines and Other Targeted Substances Regulations made under the *Controlled Drugs and Substances Act*, S.C., 1996, c. 19);

(collectively referred to as the "Restricted Substances")

(A summary of the above-named drugs [from Appendix I to the Compendium of Pharmaceuticals and Specialties] is attached [to the Order] as Schedule "A"; and the current regulatory lists are attached [to the Order] as Schedule "B")

- (v) All other Monitored Drugs (as defined under the *Narcotic Safety and Awareness Act*, S.O. 2010, c. 22 as noted in Schedule “C” [to the Order]) and as amended from time to time;
- (b) Dr. Nicol shall not take on any new chronic pain patients;
- (c) Dr. Nicol shall refer patients who are diabetic or who have impaired glucose tolerance to a specialty clinic for assessment and treatment recommendations;
- (d) Dr. Nicol shall post a clearly visible sign in his waiting room in the form set out at Schedule “D” [to the Order];
- (e) Dr. Nicol shall, within 30 days from the date of this Order, retain a College-approved clinical preceptor, who will sign an undertaking in the form attached [to the Order] as Schedule “E” (the “Clinical Preceptor”). For a period of twelve (12) months commencing on the day the Clinical Preceptor is retained, Dr. Nicol may practice only under the supervision of the Clinical Preceptor and will abide at his own expense by all recommendations of his Clinical Preceptor with respect to his practice;
- (f) If Dr. Nicol is unable to obtain a Clinical Preceptor on the terms set out under 1(e) above, he shall cease practicing medicine until such time as he has obtained a Clinical Preceptor acceptable to the College. If he [is] required to cease practice as a result of this paragraph, this will constitute a term, condition and limitation on his Certificate of Registration and such term, condition and limitation shall be included on the public register;
- (g) For a period of twelve (12) months, Dr. Nicol may practice only with a College- appointed clinical supervisor, who will sign an undertaking in the form attached [to the Order] as Schedule “F”;
- (h) Upon completion of this twelve (12) month period, as described in paragraphs 1(e) and 1(g), within three (3) months, Dr. Nicol shall undergo

a re-assessment of his clinical practice by a College-appointed Assessor. This re-assessment by the Assessor will include a review of Dr. Nicol's office charts and an interview with Dr. Nicol. Dr. Nicol shall abide by all recommendations made by the College-appointed Assessor. The Assessor shall report the results of this re-assessment to the College;

- (i) Two years after the completion of the re-assessment referred to above in paragraph 1(h), Dr. Nicol shall undergo a further re-assessment of his clinical practice by a College-appointed assessor, in addition to the re-assessment referred to in paragraph 1(h) above and, regardless of that re-assessor's recommendations. Dr. Nicol shall abide by all recommendations made by the College-appointed assessor. The assessor shall report the results of this re-assessment to the College;
- (j) On an annual basis, Dr. Nicol shall meet and demonstrate to the College that he has met the annual continuing medical education requirements expected of members of the College of Family Physicians of Canada;
- (k) Dr. Nicol shall be responsible for any and all costs associated with implementing the terms of this Order;
- (l) Dr. Nicol shall consent to the sharing of information between the Preceptors, Supervisors, Assessor(s) and the College as any of them deem necessary or desirable in order to fulfill their respective obligation; and
- (m) Dr. Nicol shall co-operate with unannounced inspections of his office practice and patient charts by the College for the purpose of monitoring and enforcing his compliance with the terms of this Order and shall provide his irrevocable consent to the College to make appropriate enquiries of the Ontario Health Insurance Plan, the Narcotic Monitoring Database and/or any person or institution who may have relevant information for the purposes of monitoring and enforcing his compliance with the terms of this Order.

2. Dr. Nicol appear before the panel to be reprimanded.
3. Dr. Nicol pay costs to the College in the amount of \$4,460.00 by January 12, 2015.

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

**Indexed as: Ontario (College of Physicians and Surgeons of Ontario) v.
Nicol, 2015 ONCPSD 11**

**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. OLU KAYODE LOUIS VICTOR NICOL

PANEL MEMBERS:

DR. E. STANTON (CHAIR)
D. DOHERTY
DR. P. GARFINKEL
S. BERI
DR. C. CLAPPERTON

Hearing Date: December 12, 2014
Decision Date: December 12, 2014
Reprimand Date: December 12, 2014
Release of Written Reasons: March 31, 2015

TEXT of PUBLIC REPRIMAND
Delivered December 12, 2014
in the case of the
COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO
and
DR. OLU KAYODE LOUIS VICTOR NICOL

Dr. Nicol, it's always unfortunate when a member of our profession appears before this Committee, particularly for the second time. You have failed to maintain the Standard of Practice of your profession. This is despite the number of years you've spent in medical practice, the opportunities you've had to change your ways in the past.

We were alarmed to hear of your failure to live up to the standard of your profession, thus subjecting your patients to possible harm. Your deficiencies included inappropriate prescribing of narcotics and controlled drugs. Your responsibility as a physician is to have proper knowledge of all the medications you prescribe. We were concerned to hear that several other clinical deficiencies including the management of the diabetic patient were identified.

You also have the responsibility to keep up to date with the current assessment and treatment of the medical conditions for which you are treating your patients. In addition, despite previous supervision and having taken the medical records course, your medical records remain below the standard that we would expect.

Going forward we will expect you to exercise more diligence in ensuring accuracy over your medical records, keeping in mind that this is not only essential to the proper management of your practice, but also forms the basis upon which others may judge the quality of your medical care. We expect this time you will have learned from the penalty that has been imposed today and you'll mend your ways, for not only the sake of the

safety of your patients but also for the honour of the profession.

Dr. Nicol, we sincerely hope that you will never appear before this Committee again. You may be seated.