

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Raymond Hon Chuen Wu, this is notice that the Discipline Committee ordered that there shall be a ban on publication of the names and any information that could disclose the identity of patients referred to orally or in the exhibits 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... 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. Wu,
2018 ONCPSD 32**

**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. RAYMOND HON CHUEN WU

PANEL MEMBERS: **MR. P. PIELSTICKER (CHAIR)**
DR. M. DAVIE
DR. E. STANTON
MR. P. GIROUX
DR. E. SAMSON

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS. J. AMEY

COUNSEL FOR DR. WU:

MR. J. FREEDLANDER
MR. E. MOGIL

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. R. COSMAN

Hearing Date: May 1, 2018
Decision Date: May 1, 2018
Release of Written Reasons: June 28, 2018

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 May 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. Raymond Hon Chuen Wu 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; 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. Wu entered a plea of no contest to the allegations in the Notice of Hearing, that he has failed to maintain the standard of practice of the profession, and 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 FACTS

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

PART I - FACTS

A. Dr. Raymond Hon Chuen Wu

1. Dr. Raymond Hon Chuen Wu is a 64-year-old general physician who received his certificate of registration authorizing independent practice in 1987.
2. At the relevant time, Dr. Raymond Wu was acting as a locum at a family medicine practice in Markham, Ontario. In addition, Dr. Raymond Wu has his own family medicine practice in Markham, Ontario.

B. BACKGROUND

(i) Initiating information

3. The College's investigation was commenced after it was contacted by an insurance company with concerns about medical device claims arising from prescriptions by Dr. Raymond Wu. In particular, the insurance company expressed concern that Dr. Raymond Wu had been inappropriately completing medical device claims and prescribing medical devices for patients where there was no medical necessity. Based on the information obtained from the insurance company, the Inquiries, Complaints and Reports Committee approved an Appointment of Investigators under Section 75(1)(a) of the Health Professions Procedural Code.

(ii) Dr. Raymond Wu's locum in Dr. Howard Wu's practice

4. Dr. Raymond Wu acted as a locum in the practice of his nephew, Dr. Howard Wu, for a period of 6 months in 2013, where he practised two days a week, seeing 60-70 patients per day, while Dr. Howard Wu's certificate of registration was suspended.
5. In his capacity as a locum in Dr. Howard Wu's practice, Dr. Raymond Wu supervised employees of Dr. Howard Wu who were international medical graduates (the "IMGs"). In accordance with the office procedures established by Dr. Howard Wu, the IMGs saw patients on their own and discussed their findings, assessments and management plans with Dr. Raymond Wu. Dr. Raymond Wu then signed prescriptions and any notes the patients required.
6. Some patients seen by the IMGs and for whom Dr. Raymond Wu completed medical device claims and prescribed medical devices were referred by the physiotherapy clinic next door for assessment of their musculoskeletal complaints.

(iii) Report of Dr. Moore

7. The College retained Dr. Beryl Moore, a family physician from Burlington, Ontario, to provide an opinion on Dr. Raymond Wu's standard of practice. Dr. Moore reviewed the charts of six patients for whom Dr. Raymond Wu prescribed medical devices while he was acting as a locum in Dr. Howard Wu's office. (These were the only six patients identified by the insurance company as having prescriptions signed by Dr. Raymond Wu.)
8. In her review of these six patient charts, Dr. Moore opined:

Dr. RW's documentation falls below the standard of care expected of a family physician in the six charts I reviewed. In general, the concerns are that there is a lack

of detailed history of the patients' presenting complaints, relevant past medical history, lack of a detailed and clinical exam relevant to the patients' presenting complaints and lack of assessments and diagnoses.

The following is a list of specific concerns regarding Dr. RW's documentation and patient care that I have identified:

- 1. The history of the presenting complaint is similar in all six charts reviewed: "pain in the low back and neck (off and on chronic)". No further details specific to each patient is documented.*
- 2. The clinical exam findings are similar on all six charts reviewed: "paravertebrae tenderness reduce ROM, Neuro Neg" and in some patents a comment that a particular joint "was tender to palpation".*
- 3. No exam findings documented of other joints that the patient's were complaining of as being painful.*
- 4. No investigations were ordered to aid in the diagnoses of the patient complaint (x-ray, ultrasound, MRI or EMG).*
- 5. Lack of documented assessment or diagnoses.*
- 6. Recommendations for treatment are similar: "RICE Posture Better Support Shoes Strengthening, PT and meds as needed".*
- 7. For a patient that Dr. RW has counselled there are four phrases that he uses. There is no information documented that is specific to the patient who was seen.*
- 8. Dr. RW documents "and meds as needed". There is no information regarding the name and dosage of the medications or the duration of the treatment.*
- 9. The documentation for follow-up visits lacks information regarding the patients response to treatments recommended.*
- 10. No documentation to support the use of support stockings, TENS machine, back brace, knee braces, ankle braces, elbow braces and wrist braces.*
- 11. Concern regarding the use of multiple braces per patient.*

12. Inappropriate use of braces for pain control and that the duration of brace use is for one year.

9. Dr. Moore further opined:

Bracing can be used as an adjunct to other treatment modalities for patients presenting with musculoskeletal complaints. However, for these six patients there was insufficient documentation of history, clinical examination and investigations to support their use. It is also not the standard of clinical practice to use multiple bracing at one time and for the duration of one year. These patients did not receive follow-up care to assess if the bracing was of clinical benefit in reducing their pain. During the six months Dr. Raymond Wu was a locum of Dr. H.W. he showed a lack of skill and knowledge with respect to his documentation of patient encounters. He lacked judgement in that he either saw patients or supervised the International Medical Graduates seeing patients sent from the physio clinic next door for the purpose of receiving prescriptions for bracing, support stockings and TENS machines.

10. Dr. Moore also reviewed five further patient charts received from Dr. Raymond Wu's own family practice clinic. In her review of these five patient charts, Dr. Moore opined:

In the review of the five charts from Dr. Raymond Wu's family practice clinic in Markham, Ontario I have no concerns with regard to his documentation and patient care; and felt he met the standard of care expected of a family physician in a busy urban setting.

PART II - PLEA OF NO CONTEST

11. Dr. Raymond Wu does not contest the facts set out at paragraphs 1 – 10 above and does not contest that, based on these facts, he engaged in professional misconduct in that:

- a) He failed to maintain the standard of practice of the profession in his care and treatment of six patients; and
- b) He engaged in acts or omissions relevant to the practice of medicine that would reasonably be regarded by members as disgraceful, dishonourable or unprofessional by inadequately supervising the IMGs, who documented inadequate assessments and examinations of the six patients, and by then prescribing medical devices based on those inadequate assessments and examinations.

PLEA OF NO CONTEST: RULE 3.02 OF THE DISCIPLINE COMMITTEE'S RULES OF PROCEDURE

Rule 3.02(1) 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 Facts and Plea of No Contest. Having regard to these facts, the Committee found that Dr. Wu committed an act of professional misconduct, in that he has failed to maintain the standard of practice of the profession, and 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.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for Dr. Wu made a joint submission as to an appropriate penalty and costs order. The proposed order, which the Committee accepted, included a one-month suspension of Dr. Wu's certificate of registration, a reprimand, and costs in the amount of \$6,000.00 to be paid to the College within 30 days of the date of this Order.

The Committee is aware that pursuant to the Supreme Court of Canada decision in *R. v. Anthony-Cook*, SCC 43 (2016), a joint submission on penalty must be accepted, unless to do so would bring the administration of justice into disrepute, or is otherwise not in the public interest.

The Committee's determination on penalty is based, first and most importantly, on the guiding principle of protection of the public. The College protects the public by ensuring that physicians maintain the standards of practice of the profession, and demonstrating to the public that it takes its responsibility of regulating the profession very seriously by disciplining members who transgress those standards.

The penalty should also serve as a general deterrent to the profession and a specific deterrent to the member; express the profession's denunciation of the misconduct; uphold the integrity and reputation of the profession; maintain public confidence in the College's ability to regulate the profession in the public interest; and where appropriate, serve to rehabilitate the member. In addition, the penalty must be proportionate to the misconduct.

Case Law

The Committee was provided with books of authorities containing previous decisions of the Discipline Committee (*CPSO v. Otto* (2015), *CPSO v. Mohan* (2015), *CPSO v. Rahman* (2007)). The Committee accepted that as a general principle, like cases should be treated alike. While the Committee appreciates that prior decisions of the Discipline Committee may be of assistance in its determination of an appropriate penalty, the Committee is not bound by those decisions, as each case before it is unique, and the Committee must carefully consider the specific facts of the case before it, as well as any mitigating and aggravating factors.

Analysis

While there are no previous decisions of the Discipline Committee which are directly comparable to the case before it, the Committee accepted the parties' joint submission that a suspension and a public reprimand were appropriate, fair, proportionate and just for the finding of professional misconduct in this case.

The jointly proposed penalty satisfies the guiding principles to be considered in the determination of an appropriate penalty. A suspension of Dr. Wu's certificate of registration serves as a specific deterrent to him and as a general deterrent to the profession at large. The public reprimand provided the opportunity for the Committee to denounce Dr. Wu's professional misconduct.

The Committee found that Dr. Wu failed to maintain the standard of practice of the profession in his treatment of six patients while working as a locum in his nephew, Dr. Howard Wu's, practice.

An accurate and complete medical record of a patient encounter is a critical component of providing quality patient care. It is essential in ensuring that there is continuity of patient care between the physician who is providing locum coverage and the colleague for whom the locum physician is covering. Dr. Wu is accountable for ensuring the documentation of the patient encounters maintains the standard of practice, whether it is entered into the medical record by him personally, or delegated to an international medical graduate (IMG).

Dr. Wu failed to comply with the standard of practice in relation to his treatment and medical recordkeeping in the six charts reviewed. Dr. Moore, who provided an expert opinion on behalf of the College, indicated that Dr. Wu failed to ensure that the medical record included a detailed history of the patient's presenting complaints, relevant past history, a relevant detailed clinical exam, an assessment and diagnosis. As a result, documentation was incomplete and insufficient to support the prescribing of medical devices. She also stated that there was an inappropriate use of braces for pain control.

The Committee also found that Dr. Wu engaged in disgraceful, dishonourable or unprofessional conduct by inadequately supervising the IMGs, who documented inadequate assessments and examinations of the six patients, and then prescribed medical devices based on those inadequate assessments and examinations.

Dr. Wu failed to discharge his responsibilities in regard to his supervision of the IMGs who were employed in Dr. Howard Wu's practice. As the supervising physician, Dr. Wu was ultimately responsible for the patient care delegated to them. It was Dr. Wu's responsibility to ensure that their care maintained the standard of practice of the profession. Dr. Wu signed prescriptions without seeing patients and personally assessing the need for medical devices.

The inappropriate use of medical devices does not serve a patient's best interest. In addition, prescribing medical devices without a medical indication results in unnecessary expenditures for the patient and/or the insurance company that provides coverage for the medical device. This practice is deplorable, unacceptable and unprofessional.

The public and the profession cannot and, indeed, will not tolerate a physician who fails to maintain the standard of practice of the profession, whether it is in their own practice, or while acting as a locum in a colleague's practice, nor will it tolerate a physician who does not comply with College policies, which exist to protect the public.

Mitigating Factors

While there were shortcomings found in Dr. Wu's locum practice, the Committee notes that a review of Dr. Wu's own family practice in Markham by Dr. Moore did not reveal any concerns in regard to his documentation or patient care. In that review, Dr. Moore opined that Dr. Wu met the standard of practice expected of a family physician in a busy urban setting.

Dr. Wu has no previous discipline history with the College. He cooperated with the College investigation, entered a plea of no contest and agreed to a joint submission on penalty, thus sparing witnesses from having to testify and saving the time and resources required for a contested hearing.

Costs

The Committee has the jurisdiction to award costs in an appropriate case, and the Committee considers this to be such a case. The current daily tariff rate for a one-day hearing is \$10,180.00. The Committee accepted the joint submission that Dr. Wu pay costs, in the amount of \$6,000.00, for a half day of hearing and the time required for the Committee to review relevant documents provided by the parties prior to the hearing.

ORDER

The Committee stated its finding of professional misconduct in paragraphs 1 and 2 of its written order of May 1, 2018. In that order, the Committee ordered and directed on the matter of penalty and costs that:

3. Dr. Wu attend before the panel to be reprimanded.
4. The Registrar suspend Dr. Wu's certificate of registration for a period of one (1) month, commencing May 4, 2018 at 11:59 p.m.
5. Dr. Wu pay costs to the College, in the amount of \$6,000.00, within 30 days of the date this Order becomes final.

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