

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Charles Nicholas Rathé, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of the patients or any information that could disclose the identity of the patients under subsection 45(3) of the *Health Professions Procedural Code* (the Code), which is Schedule 2 to the *Regulated Health Professions Act, 1991*.

Subsection 93 of the Code, which is concerned with failure to comply with these orders, reads:

93(1) Every person who contravenes an order made under section 45 or 47 is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 for a first offence and not more than \$20,000 for a subsequent offence.

Indexed as: Rathe (Re)

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

IN THE MATTER OF a Hearing directed
by the Executive Committee and the Complaints Committee of
the College of Physicians and Surgeons of Ontario
pursuant to Section 36(1) and 26(2) of the *Health Professional 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. CHARLES NICHOLAS RATHÉ

PANEL MEMBERS:

DR. J. SCHILLINGER (CHAIR)
J. DHAWAN
DR. C.J. CLAPPERTON
M. POWER
DR. P. HORSHAM

Hearing Dates: August 30-September 1, 2005
Decision/ Release Date: February 1, 2006

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on August 30 to September 1, 2005. At the conclusion of the hearing, the Committee reserved its decision.

PUBLICATION BAN

On August 30, 2005, the Discipline Committee made an order pursuant to subsection 45(3) of the Health Professions Procedural Code (the “Code”) which is Schedule 2 to the *Regulated Health Professions Act, 1991*, prohibiting the publication or broadcasting of the names of complainants or any information that could tend to disclose the names or identities of such complainants. The Committee provided written reasons for this order.

ALLEGATIONS

The Notice of Hearing alleged that Dr. Charles Nicholas Rathé committed acts of professional misconduct in that:

1. He committed 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.
2. He displayed conduct unbecoming a physician.

The Notice of Hearing set out fifteen (15) specifications with respect to Allegation 1 and six (6) specifications with respect to Allegation 2.

RESPONSE TO THE ALLEGATIONS

Dr. Rathé did not contest the allegations as set out in the Notice of Hearing with the exception of the second sentence of Specification 13 and all of Specification 15 of Allegation 1, which were denied.

Where a member enters a plea of no contest to an allegation, the member consents to the following: (Rule 3.02(1) of the Rules and Procedures of the Discipline Committee)

- (a) that the Discipline Committee can accept as correct the facts alleged against the member on that allegation for the purposes of the proceeding only;
- (b) that the Discipline Committee can accept that those facts constitute professional misconduct or incompetence or both for the purposes of the proceeding only; and
- (c) that the Discipline Committee can dispose of the issue of what finding ought to be made without hearing evidence.

THE FACTS ALLEGED AGAINST DR. RATHÉ

The Notice of Hearing was filed as Exhibit # 1, and presented to the Committee. The Specifications in the Notice of Hearing were read into evidence and set out the factual allegations made against Dr. Rathé. The original date given in Specification 11 was amended, with the consent of both parties, to the date as it appears below.

Specifications

Allegation 1

1. On February 3, 2002, at your office you spoke rudely to the daughter of a patient and referred to the patient and his daughter as “assholes.” The patient and his daughter have been identified to you.
2. On February 21, 2002, at your office you spoke rudely to a patient who has been identified to you.
3. On June 13, 2002, at your office you yelled and spoke rudely to the daughter of a patient and discharged the patient from your practice in an unprofessional manner. The patient and her daughter have been identified to you.
4. On December 4, 2002, you telephoned the patient mentioned in the preceding paragraph and sought to have her withdraw her complaint against you.

5. On July 16, 2002, at your office you spoke to an almost 70-year-old patient angrily, swore and talked in a manner that needlessly frightened her. The patient has been identified to you.
6. On August 1, 2002, you rudely said of the patient in the preceding paragraph words to the effect that she needed to show more respect to doctors and not ask the same questions 5 or 6 times.
7. On August 1, 2002, you asked a person who delivered medication to you to listen surreptitiously to a conversation between the patient's child in the preceding paragraph and you, despite the possibility that the health information about the patient would be disclosed.
8. On October 5, 2002, at your office you yelled, spoke angrily and swore at a patient who has been identified to you.
9. On August 13, 2002, at your office when a patient who has been identified to you mentioned that you had not returned her telephone call about her test results, you spoke to her in an unprofessional tone and discharged her from your practice.
10. On August 31, 2002, at your office when the mother of a patient asked for a written prescription for Tylenol #2, you told her you did not have time to write the prescription and later discharged her as a patient from your practice. The patient and her mother have been identified to you.
11. In November 2002, after a patient had written a cheque to the pharmacy that was dishonoured, you discharged the patient and refused to see her daughter, who was also a patient, when she broke her leg. The patient and her daughter, who was also a patient, have been identified to you.

12. You recorded in the medical chart of the patient mentioned in the preceding paragraph words to the effect that she had written a cheque to the pharmacy that was dishonoured.

13. On October 21, 2002, when a patient requested a certificate on official letterhead containing the results of his tuberculosis test, you became rude and angry, calling him an “idiot” and an “imbecile”. You also called the patient a “nigger” and a “macaque”. The patient has been identified to you.

14. On September 9, 2003, you were rude to the daughter of a patient who questioned whether thyroid medication you recommended for her mother would mask the symptoms rather than identifying the root cause of the problem. For example, you interrupted the patient’s daughter repeatedly, demanded an apology for what you characterized as her “abominable” behaviour, and accused her of being “small-minded.”

15. You insisted to patients that they have their prescriptions dispensed at the pharmacy or that they not have their prescriptions dispensed at another pharmacy or refused to provide them with a written prescription or arbitrarily discharged them from your practice for asking for a written prescription or for taking a prescription to another pharmacy. Further details are provided in schedule 1 to this notice, which also identify the patients to you.

Allegation 2

1. You failed to appear before a panel of the Complaints Committee on November 6, 2002, to be cautioned under paragraph 26(2).3 of the Health Professions Procedural Code despite being required to so appear.

2. On October 8, 2002, you said to Ms. A, of the College’s Investigations and Resolutions unit, in a loud and aggressive tone, words to the effect of “You don’t scare me,” “Don’t think you can intimidate me,” “I hold licensure in the States,” “I no longer fear you,” “Get off your pedestal,” “I know my rights,” and “Get off your high horse”.

3. On November 14, 2002, you said to Mr. B, of the College's Investigations and Resolutions unit, "You are in foreign territory, my friend," "I no longer fear you, now leave," "I call the shots here," "I have no respect for the College," and referred to him or the College as "jackasses," slammed doors in his presence, ripped a letter from his hand and threw the letter on the ground.

4. You wrote letters to Mr. B or Ms. A, or both, of the College's Investigations and Resolutions unit, that were disdainful, uncooperative and unprofessional and that indicated, among other things,

- (a) in a letter dated December 23, 2002, that one or both of them had been soliciting complaints,
- (b) in a letter dated January 8, 2003, that you would not inform the College why you discharged patients from your practice,
- (c) in a letter dated February 18, 2003, that you would not respond to Ms. A unless she rephrased the concern in a grammatically correct and comprehensible manner and until she had obtained from the complainant a precise written account of what you were alleged to have said to her,
- (d) in a letter dated February 28, 2003, that you would not respond to a complaint unless it was in a properly signed letter and you made other unprofessional statements, and
- (e) in a letter dated March 14, 2003, that Ms. A had related a complainant's statement to you falsely.

Reference will be made at the hearing to the full content of your letters to the College.

5. On May 17, 2004 between approximately 11:00 a.m. and 12:30 p.m. you made a series of telephone calls to the College in which you made threats to College staff, used profanity toward College staff and made insulting remarks to the Registrar and the President including:

- (a) you telephoned Ms. C of the College's communications department to inquire about a news release, accused her of lying and yelled at her,

- (b) you left Ms. C a voice mail message stating, “this is Dr. Rathé. I just wanted to let you know that your name will be appearing in big letters on the front page of a newspaper tomorrow as well as all the other jerks at the College. Just thought you should know that and I’ll be sending you a copy”,
- (c) you telephoned Ms. D of the College’s Executive Office, asking to speak with the Registrar. You said that Ms. C would regret hanging up on you and that Ms. D had better get someone on the line immediately or she would regret it too. When Ms. D advised you that she could take a message you told her that she “would regret it for the rest of your life”.
- (d) you telephoned Ms. E of the College’s Executive Office demanding to speak to the Registrar, whom you referred to as a “mafia man”. When Ms. E indicated that she would give the Registrar the message you stated, “you do that bitch”, and hung up,
- (e) you left Ms. C a further voice mail message stating, “you can run but you can’t hide”,
- (f) you telephoned Ms. F of the College’s communications department. After being put on hold, you left a voicemail message stating, “fuck you”, and
- (g) you left Ms. C a further voice mail message stating, “I’m just gonna keep calling until I find who was responsible for this news release. You can bet your life on it.”

6. You failed to appear before a panel of the Complaints Committee on May 26, 2004, to be cautioned under paragraph 26(2).3 of the Health Professions Procedural Code despite being required to so appear.

THE ISSUES

The allegations of this case fall into three categories.

First, there are complaints related to rude or abusive behaviour or inappropriate conduct with patients. These complaints are contained under Allegation 1, Specifications 1 to 12, and 14 and were not contested by Dr. Rathé. The first sentence of Specification 13 was accepted, but not the second sentence. The College did not proceed with respect to the second sentence of Specification 13. The Panel was presented with written material for most of the Specifications 1 to 14 as is commented on below.

The second set of allegations were contained in Allegation 1, Specification 15 and related to improperly pressuring patients to use a specific pharmacy located in the same building as Dr. Rathé's clinic. This allegation was contested and the Panel heard from several witnesses.

The third set of complaints relate to Dr. Rathé's interactions with the College. The specifications under Allegation 2 state that he was rude and abusive to College staff both verbally and in writing. The Panel heard tapes of the former. In addition, he twice failed to appear before the Complaints Committee when required to do so. These specifications were uncontested.

FINDINGS: ISSUE #1

As noted above, Dr. Rathé did not contest most of the specifications relating to the complaints of rude, abusive behaviour, or inappropriate conduct. During the course of the hearing, the Panel did hear evidence directly from some patients with respect to the allegation that Dr. Rathé improperly pressured patients to use a specific pharmacy. Where the Panel heard *viva voce* evidence or received written evidence relating to the uncontested allegations, the Panel took it into account in its deliberations as set out below.

Allegation 1, Specification 1 - Ms. G

No direct evidence was presented for this specification. Insofar as the patient said Dr. Rathé spoke rudely to the daughter of the patient and referred to the patient and his daughter as

“assholes”, the Panel accepts that this specification was proved under Rule 3.02. The Panel finds that Dr. Rathé’s behaviour was disgraceful, dishonourable and unprofessional.

Allegation 1, Specification 2 - Mr. & Ms. H

The Panel accepts as fact under Rule 3.02 the allegation as specified, that Dr. Rathé spoke rudely to a patient. Further evidence was presented in the form of a letter written by former patients of Dr. Rathé to the College. In the letter, Mr. & Ms. H, one of whom was 73, described Dr. Rathé speaking rudely to them. They reported that he said, “If you don’t like how I practice get out, in fact, I never want to see you again.” When one of them attempted to retrieve a bill from the lab that Dr. Rathé’s nurse had, Dr. Rathé “came at me” (the wife) and said, “I said get out”. “He then crossed his wrists and pushed me on my right shoulder out of his office”. The patients went to the police to complain, but the complaint was not pursued after preliminary inquiries. The nurse said the doctor did not push Mrs. H, although the patient said the nurse’s view would have been obstructed at the time. Other patients in the waiting room were reluctant to get involved as they said they needed a doctor. Mrs. H reportedly had discomfort in her shoulder weeks later and spoke to her former doctor in another town, who allegedly did not encourage her to pursue the matter due to the doctor shortage in the area. The Panel finds that Dr. Rathé did commit an act relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable and unprofessional.

Allegation 1, Specification 3 – Ms. I

In a letter to the College, Ms. I, a 77-yr-old patient of Dr. Rathé, went to see him regarding dizziness. As she needed assistance walking, her daughter came with her. After Dr. Rathé examined her, he told her he was sending her for some tests. When her daughter asked questions about what kind of tests he was proposing, “...he got real agitated and hollered, ”This is my domain!” You don’t ask me questions in my domain. I ask the questions.” He proceeded to tell her, “You owe me an apology.” The daughter then asked, “For what? For caring for my mother?” He then proceeded to tell the patient that she was fired, to go and don’t come back. The Panel finds that this was behaviour that would reasonably be regarded by members as disgraceful, dishonourable and unprofessional.

Allegation 1, Specification 4

This incident concerned a phone call that Dr. Rathé made to the patient in the complaint in Specification 3. Dr. Rathé did not contest that this occurred and, under Rule 3.02 of the Rules and Procedures of the Discipline Committee, the Panel accepts the allegation as fact. The Panel finds that he committed an act that would be reasonably regarded by members as disgraceful, dishonourable and unprofessional.

Allegation 1, Specification 5 - Ms. J

Dr. Rathé did not contest that he spoke to this 70-yr-old female patient angrily, swore at her, and talked to her in a manner that needlessly frightened her, as alleged in a letter by her son to the Essex County Medical Association dated August 9, 2002. The Panel therefore accepts this as fact and finds that his behaviour would reasonably be regarded by members as disgraceful, dishonourable and unprofessional.

Allegation 1, Specification 6 - Mr. K

The son of the patient in the preceding incident visited Dr. Rathé in order to obtain the results of his mother's lab tests. He reported in a letter that Dr. Rathé told him, "Patients around here need to show more respect to doctors and to not ask the same questions 5 or 6 times." When the son reminded Dr. Rathé that it was only his mother's second visit to see him, so how could she have asked the question 5 or 6 times, Dr. Rathé told him that if his mother wanted to go to another doctor she could and he would have no hard feelings. The Panel finds Dr. Rathé's conduct to be unprofessional.

Allegation 1, Specification 7

Dr. Rathé did not contest the allegations regarding this incident and, although the Panel did not hear more details than those contained in the specification, the Panel finds the physician's behaviour to be disgraceful, dishonourable and unprofessional. It is unacceptable to ask a person who delivered medication to him to listen surreptitiously to a conversation between the patient's child and Dr. Rathé. It was doubly so given the possibility that health information about the patient would be disclosed.

Allegation 1, Specification 8 - Ms. L

The allegations involved Dr. Rathé yelling, speaking angrily, and swearing at a patient. The patient, Ms. L, reported in a letter to the College, that she had a work-related injury and had seen the doctor about it and was given three days off work. As she didn't receive a form for WSIB, she returned to the office for a form, which he filled out. He instructed her to have his secretary fax it for her. As she was at the secretary's desk, Dr. Rathé approached her again and said, "I have to tell you something." He then proceeded to tell her with a raised voice, "I don't like your attitude you don't come in here and be rude and tell me that I was supposed to fill out that paper it is a privilege to you for me to fill that paper out, I don't have to do it" (sic). The patient reported that she said she didn't have an attitude and that she didn't know much about WSIB and that her workplace had told her that the doctor was supposed to have filled in the form when she came in. She said that he started yelling louder and said, "you can tell your work to go to hell and if they don't like it they can call me. I don't have to do anything and you can't come in here with an attitude and tell me that I have to, you could have asked me politely if I would mind filling out the paper, like that girl just did back there and tell me that you would appreciate it. And if you don't like it you don't have to come here anymore."

As the patient asked him to let her explain as he was walking away from her, he returned and said "no I will not listen to you because I don't have to, I don't have to do anything,"

As she was leaving, she heard the doctor yelling something else, and that was, "Fuck you". She reported that she stopped and asked those in the waiting room "did he just say fuck you?" and "they shook there [sic] heads yes with extremely shocked looks on there [sic] faces".

This incident was also uncontested by Dr. Rathé. The Panel finds that Dr. Rathé engaged in behaviour that was disgraceful, dishonourable and unprofessional in his interaction with this patient.

Allegation 1, Specification 9 - Ms. M

Mrs. M called Dr. Rathé's office regarding continuing taking Cortef. She had felt that Dr. Rathé was upset when he spoke to her as he said he would call her but he did not. Mrs. M went in for a doctor's appointment to discuss her medications with Dr. Rathé and mentioned to him that he did not return her telephone call regarding her test results. Dr. Rathé became very upset and said that he had numerous patients and had not time to call every patient regarding their results. He also threw his pen on the floor and asked her to leave. She later got a termination letter from Dr. Rathé. These allegations were uncontested. The Panel finds that the behaviour of the physician is disgraceful, dishonourable and unprofessional.

Allegation 1, Specification 10 - Ms. N

A mother of a patient asked for a written prescription for Tylenol # 2 and Dr. Rathé told her that he did not have time to write the prescription and later discharged her from his practice. This allegation was uncontested. The Panel finds that the behaviour of the physician is disgraceful, dishonourable and unprofessional.

Allegation 1, Specification 11 - Ms. O

The date of August 2002, contained in the original Notice of Hearing was amended to November 2002. In this case, Dr. Rathé noted in the chart that the patient had written a cheque to the pharmacy that was dishonoured. He discharged the patient from his practice and refused to see her daughter who was also a patient when she broke her leg. The Panel received no information about the reason that the patient was discharged from his practice and there was no admission or proof that the NSF cheque was the reason. The Panel reviewed the doctor's termination letter to the patient and found it to be done appropriately. The Panel found it troublesome that further details about the refusal to see the daughter with a broken leg were not specified or otherwise provided. Although refusing medical services in an emergency situation is a serious allegation, neither the specification nor supporting documentation gives any indication of the situation or circumstances. Furthermore, in Ontario, a fractured leg would normally be treated at the nearest hospital rather than the doctor's office. As it was unclear from the specification why the patient and her daughter were discharged from the practice and because the specification is vague as to the

circumstances and situation at the time of the daughter's leg fracture, the Panel was unable to conclude that Dr. Rathé's behaviour was disgraceful, dishonourable or unprofessional in respect of this specification.

Allegation 1, Specification 12 - Ms. P

The Panel did not find that the fact that Dr. Rathé wrote in his office chart for this patient that her cheque to the pharmacy was NSF constituted behaviour that was disgraceful, dishonourable or unprofessional.

Allegation 1, Specification 13 - Mr. Q

In this case, the patient wrote a letter to the College complaining that, when he returned to Dr. Rathé's office to ask for the results of his tuberculosis test to be written as a certificate on official letterhead, the doctor became rude, angry and called him an "idiot" and an "imbecile. Dr. Rathé did not contest this allegation and the Panel concluded that this allegation was proved (with regard to the first sentence of Specification 13). The Panel finds that the behaviour of Dr. Rathé was dishonourable, disgraceful and unprofessional. The letter from this patient also describes physical abuse that is of concern to the Panel. The letter states that Dr. Rathé pushed the patient to the door. The patient reportedly left the department to call the police. The doctor grabbed the phone and pushed him towards the exit. The police were called and wrote a report. While physical abuse was not alleged in the specification (and no finding is made with respect to it), the Panel wishes to make clear that such conduct is entirely unacceptable.

Dr. Rathé did not accept and the College chose not to proceed with the allegation in the second sentence of Specification 13. Accordingly, the Panel made no finding with respect to this point of the allegations.

Allegation 1, Specification 14 - Ms. R and Ms. S

This supporting letter of complaint was written in a very factual way and outlines Dr. Rathé's angry comments to the mother and daughter complainants. In the course of a visit with the

89-yr-old mother of the writer, Dr. Rathé proposed prescribing more medication for her mother. When the daughter asked if it wouldn't be better to find the root cause rather than mask the symptoms with medication, she reported that he became angry and said "if you think you can find a cure, why don't you take that brain power of yours and join the university, I'm sure they'd love to have you". The patient's daughter reported that she tried to explain but that the doctor cut off every effort she made to speak. He then demanded an apology for her behaviour and she told him that it was he who owed her an apology. He said "you will sit down right now and give me a heartfelt apology for your abominable behaviour and use the word abominable in your apology if we are to continue care for your very sick mother." The patient's daughter began to apologize and did not feel comfortable or sincere in doing so. He then made other comments and told her, "You need me as a doctor more than I need you as a patient!" He then berated small-minded, small town people and Canadians. This specification was uncontested. The Panel finds that the emotional abuse of this patient's daughter was dishonourable, disgraceful and unprofessional.

Summary of Findings on Issue #1

In summary, the Panel finds that, under Allegation 1, Specifications 1 to 10, and 14 were proved. The Panel also finds that the first sentence of Specification 13 was proved; the second sentence was withdrawn. The Panel did not find that Specifications 11 and 12 constituted disgraceful, dishonourable and unprofessional behaviour.

FINDINGS: ISSUE #2**Allegation 1, Specification 15**

The College alleged that Dr. Rathé pressured patients in various ways to have their prescriptions filled at the pharmacy in his clinic and, by doing so, committed acts that would be regarded by members as disgraceful, dishonourable or unprofessional.

It was alleged that Dr. Rathé:

- 1) insisted patients have their prescriptions filled at the pharmacy;
- 2) required that they not have their prescriptions dispensed at another pharmacy;
- 3) refused to provide them with a written prescription;
- 4) arbitrarily discharged them from his practice for asking for a written prescription;
- 5) arbitrarily discharged them from his practice for taking a prescription to another pharmacy.

Dr. Rathé denied these allegations. The Panel heard testimony from a number of witnesses, including Dr Rathé, and was presented with several exhibits.

Ms. T

Ms. T and her mother, Ms. U, saw Dr. Rathé for the first time in November 2002, after they moved to the town. Both of them required medication for medical problems and were given the prescriptions they needed. In the course of their appointment, Ms. T said that Dr. Rathé suggested that they have their prescriptions filled at the pharmacy in his building. According to the witness, they discussed the fact that the doctor told her that the clinic pharmacy could match the price of other area pharmacies, although this fact was missing from the investigator's notes. Following this appointment, both Ms. T and her mother were notified in a letter from Dr. Rathé that they were discharged from his practice. No reason was given, and as there were ongoing ads in the local paper, Ms. T understood that he was still accepting patients at the time. Although the patient may have felt some subtle pressure, there was no evidence that Dr. Rathé pressured her overtly to use the clinic pharmacy or that he discharged

her and her mother from his practice for not doing so. The Panel finds none of the five elements of specification 15 was proved.

Ms. V

The next witness was not a regular patient of Dr. Rathé, but was a “walk-in”. She had been given an appointment for her daughter and herself and after going home to get her daughter, she returned and waited for two hours to see the doctor. After he examined her and gave her a prescription, Mrs. V said she asked if she was required to get her prescription filled at the pharmacy in the clinic. She alleges that he told her that he hated the other pharmacy and told her she shouldn’t go there. The witness alleged that Dr. Rathé then refused to look at her young daughter because they used the other pharmacy. Mrs. V denied that she was demanding of the office staff, or that she was rude and hostile to the doctor because of her lengthy wait to see him. She does admit to making several loud comments in the waiting room after her daughter was not seen and to being upset and crying when she was at the other pharmacy having her prescription filled.

Dr. Rathé completely denied the interchange regarding the comments about the other pharmacy. His contemporaneous notes, on the daughter’s file, revealed the beginnings of a history being taken, as well as notes about Mrs. V’s demeanour. The patient’s husband later called the clinic asking for an explanation of the physician’s refusal to see his daughter and Dr. Rathé wrote a note to him, a copy of which was available on the file. The note attested to the rudeness of Mrs. V to him and witnessed by those in the waiting room. Dr. Rathé’s secretary, Ms. W, corroborated his version of events regarding Mrs. V’s demanding and rude demeanour, and the Panel found the secretary’s testimony credible.

Dr. Rathé testified that he was in the throes of a relapse into opioid abuse when this incident of February 2003 occurred. Dr. Rathé told the Panel about how his use of drugs increased as the day wore on, and as the appointment with Mrs. V was at the end of the day, it could be inferred that he would be impaired during this time frame. Notwithstanding the impairment, the Panel had contemporaneous notes that were clear and explanatory. The evidence of the witness Ms. W did not support the version presented by the patient. The Panel had questions

regarding the credibility of the testimony of Ms. V, as there were disparities between her testimony with that of the doctor's secretary regarding what transpired in the waiting room. There was evidence presented by Ms. W that Ms. V was hostile before going in to see the doctor, thereby corroborating the physician's version that she was rude and hostile about her wait while she was being seen by him. The Panel also heard evidence about the doctor's practice of phoning in prescriptions to the pharmacy in his building. In this case, the witness told the Panel that he had already given her a written prescription, when the discussion about not using another pharmacy ensued. This point raised questions regarding the credibility of the witness's testimony, as Dr. Rathé is not likely to have given her a written prescription if he were putting pressure on her not to use the other pharmacy. On balance, the Panel was not able to conclude that the doctor told the patient not to use the other pharmacy or that he refused to see her daughter because she was using the other pharmacy. None of the elements of specification 15 were found.

Ms. X

The next witness gave testimony that Dr. Rathé would usually pick up the phone in his office to call the pharmacy in the building, rather than write out a prescription. Dr. Rathé also testified that this was his practice. Ms. X claimed that, in her initial appointments, she didn't say anything but, in subsequent appointments, she asked to have her prescriptions written, as she wanted to use her pharmacy close to home. She claimed that the doctor asked her why and whether the prices were better. She also reported that the pharmacy at the clinic refused to renew her prescriptions and she had to see the doctor for renewals. On cross examination, the patient admitted that she was addicted to benzodiazepines and that the doctor was working with her to reduce her daily dosage of Lorazepam from 12 mg a day to 2 mg a day. The defence presented evidence of several requests from the pharmacy close to home for renewals of some of the medication the patient was taking. Some of those appear to have been authorized by Dr. Rathé, while one for Lorazepam was not. A request for a refill of Lorazepam from the pharmacy in the clinic was written in 2002, while another faxed request for Lorazepam refill from the pharmacy close to home was sent in November 2002. Evidence was presented suggesting that the patient was, in fact, having many of her prescriptions filled near her home. Dr. Rathé testified about his attempts to taper her

Lorazepam and some difficulties he had with her attempts on a couple of occasions to have a TID (three times a day) dose of Lorazepam issued, rather than a BID (two times a day) dosage as he had written. He also denied that he ever insisted that she use the pharmacy in his building. Because of the doctor's practice of phoning in prescriptions to the pharmacy in the building, the patient may have felt some subtle pressure to have her medication issued there, especially in her initial visits to the doctor. However, the Panel did not find that the doctor insisted she have her prescriptions filled at the pharmacy in the clinic. He appropriately did require her to attend in person for renewals of her addicting medication. This patient decided to seek alternate care near her home and was not discharged from his practice. In this case, none of the elements of specification 15 were proven.

Ms. Y

This witness was not a patient of Dr. Rathé, but came to his office one day in order to pick up prescriptions for her parents. She claimed that her mother called ahead to tell the receptionist that her daughter would be coming for the prescriptions although, in the testimony of Ms. W, the doctor's receptionist, she showed up unannounced. The witness said that her parents wanted their prescriptions to be filled at the other pharmacy and that, when her parents had their appointments with Dr. Rathé two days previously, their prescriptions had been filled at the pharmacy in the clinic building. According to testimony of the receptionist, Ms. Y insisted on seeing the doctor for written prescriptions despite being told by her that the pharmacy would transfer the prescriptions. Ms. Y denied that the receptionist told her the pharmacy would transfer their prescriptions. During the course of the meeting with Dr. Rathé in his office, Ms. Y said that he made several derogatory comments about her and her parents and these were dealt with in Allegation 1, Specification 1. Dr. Rathé wrote out the requested prescriptions and proceeded to tell the witness that her parents were dismissed from his care and that he would transfer their records without charge.

In his testimony, Dr. Rathé said that Ms. Y complained to him of his bad care of her parents and that it was a disgrace. He said that it was clear to him that she was very hostile. At the time of this incident, Dr. Rathé admitted that he was on a lot of opioids himself. His recollection is that he wrote the prescriptions she wanted in the receptionist's area and flung

the prescriptions at the witness. However, it was the testimony of the witness that he saw her in an examining room. Ms. W corroborated the doctor's version that she was seen at the receptionist's desk. The receptionist also reported that Ms. Y's demeanour was overbearing and that she didn't feel comfortable with her.

The Panel had concerns with regard to the credibility of this witness. Her version was that she was seen in an examining room while the receptionist had a clear recall of her being seen at the receptionist's desk for the prescriptions. Ms. Y denied in cross-examination that she made any complaints about her parents care while at the office that day. However, she also admitted that she did write to the College with complaints about the doctor's care of her parents. This admission supports Dr. Rathé's testimony that she was hostile and complaining about her parents' care. In addition, the testimony of Ms. W was that Ms. Y was not happy with her parents' care, was aggressive and not pleasant. The allegations were not proved, in the Panel's view, due to problems with credibility of this witness, combined with the lack of evidence that Dr. Rathé discharged the witness's parents from his practice for using another pharmacy. In this instance as well, the Panel finds none of the elements of specification 15 were proved.

Mr. & Ms. Z

These witnesses had been patients of Dr. Rathé's for several months and, although they had initially received their prescriptions from the pharmacy in the clinic building, they asked for and were given written prescriptions to have their prescriptions filled elsewhere. The pharmacy's dispensing fee was four dollars more than elsewhere, according to Mr. Z, and both parties said that the fee was the reason that they wanted to use a different pharmacy. After being patients of Dr. Rathé for several months, they received a letter from him discharging them from his practice and they never understood why they were being discharged. Mr. Z said he called the receptionist and was told that the doctor had taken on too many patients and was "weeding" some out. Mr. Z said he wanted to know how the doctor decided whom to weed out. They also complained to the College about not being provided a reason for being discharged from Dr. Rathé's practice. The Panel did not find that any of the elements in the allegations under specification 15 were proven. There was no

evidence that Dr. Rathé pressured them to use the pharmacy in his building or that they were discharged from his practice for not doing so.

Ms. AA

The Panel found Ms. AA to be a credible witness. She testified that she had several medical problems and that she had been a patient of Dr. Rathé's for about three years before she and her extended family were discharged from his practice. She had received prescriptions, which she filled at another pharmacy, during this time and admitted that her father usually used the pharmacy in the clinic building and he was discharged from Dr. Rathé's practice as well. Ms. AA testified that at the appointment just a few days prior to being discharged from the practice, Dr. Rathé asked her if she wanted a written prescription, or if she wanted her prescription phoned into the pharmacy in the clinic. She said that Dr. Rathé then drew a line on the floor with his foot and made comments about having prescriptions filled "there" and about not sitting on fence about where to fill prescriptions. Ms. AA said she was 'awestruck' and surprised by his comments.

In his testimony, Dr. Rathé denied discharging Ms. AA from his practice because she used a pharmacy other than the one in his building. He said that he discharged her because she was non-compliant. He testified that she continued to smoke, wanted a particular diet pill when he would have preferred to use another one that was safer, and also refused a change in her medication for diabetes, a change he thought would better control her blood sugars. His contemporaneous notes in the chart supported his testimony. Although the Panel had no reason to disbelieve the testimony of Ms. AA, we had to consider that she had received her medication at another pharmacy for years. If he discharged her from his practice because she used another pharmacy, as she said, then he also terminated at least one other family member who did use the pharmacy in the clinic. Given the evidence in the note from her last clinic visit, which occurred after Dr. Rathé had returned from treatment for his drug addiction, the Panel concluded that the discussion in his office that day more likely related to treatment issues related to her medical problems. The Panel did not find clear evidence that Ms. AA was discharged due to her unwillingness to use the clinic pharmacy or that she faced undue pressure to use that pharmacy. None of the elements of specification 15 were found.

Mr. BB

The Panel found this witness very credible. He described that, at every appointment, Dr. Rathé would physically reach for the phone in his examining room to call in his prescription to the pharmacy in the clinic building, and after telling the doctor that he preferred not to go there, Dr. Rathé would reluctantly write out his prescription. The dispensing fee was higher at the pharmacy in the clinic building and as he had to pay the difference in the dispensing fee, he didn't want to go there, he said.

He testified that one day he had a severe pain in his Achilles tendon and he had taken two of his wife's Talwin medication that she received from her own doctor. He also had a prostate problem, and the day he took the Talwin, he developed severe urinary retention that necessitated treatment at a hospital. Dr. Rathé saw him for follow-up of this problem, as his urologist was on vacation, and he ordered a test as well as medication for haemorrhoids. According to Mr. BB, Dr. Rathé did not say anything about his use of Talwin, but indicated his displeasure by his demeanour.

Dr. Rathé said that he spoke to Mr. BB about the fact that he should not use his wife's Talwin, and explained the complications that could arise, including urinary retention. He stated that Mr. BB did not seem to accept this and said that that he didn't see anything wrong with using his wife's Talwin and that he would continue. Although there was no note in the chart entry about this comment, Dr. Rathé said that the patient's assertion "triggered" him, as this was his favourite way of using drugs, that is, using someone else's. The Panel had a copy of Dr. Rathé's office note from the last visit with mention of the patient using his wife's Talwin as well as the letter to Mr. BB discharging him from his practice because he was self-prescribing his wife's medication against his advice.

The Panel did not conclude that Dr. Rathé insisted that Mr. BB use the pharmacy in the clinic. There may have been a subtle pressure to do so because of the doctor's practice of calling in prescriptions from the examining room, but the fact remains that Mr. BB filled his prescriptions at another pharmacy for years, and it was only when he was discharged from

Dr. Rathé's practice, for other reasons, that he complained. None of the elements of specification 15 were proved.

Other Evidence

The Panel heard testimony from Dr. Rathé that the owners of the pharmacy were friends of his dating from when he practiced in Toronto. Dr. Rathé testified that the pharmacy had paid for all the leasehold arrangements when they rented the building and Dr. Rathé repaid them for thirty percent of the costs within the first few months of his practice. No evidence was presented to show a continuing financial relationship with the pharmacy and the Panel was unable to come to any conclusions with regard to financial motives for the allegations. The physician and the pharmacy did share a very close physical space, however, with a common waiting area. As they were located just across the hall, refill medications or questions about medications could be dealt with expeditiously. Dr. Rathé did have the pharmacy entered on speed dial on the phones in his examining rooms and would call them exclusively with prescriptions, as he said he found it faster than writing out the prescription. However, the Panel also heard from the nurse practitioner that has worked with the doctor for about two years. She reported that she was never pressured to use the pharmacy for the patients for whom she prescribed medication. The Panel accepted her testimony.

Dr. Rathé presented a list of patients who had been terminated from his practice and the pharmacies that they used. The Panel was unable to put any weight on this evidence. The method of collection of this data was not verifiable as being accurate and unbiased.

A few patients testified that Mr. CC, the owner-pharmacist of the other pharmacy, listened to their complaints about Dr. Rathé and informed them about the complaints process with the CPSO. There was evidence presented that he actually faxed the complaint of one patient to the CPSO for her. The Panel heard from two patients about Mr. CC's visit to see Dr. Rathé prior to his setting up his clinic in Belle River, at a time when he was practicing in the cramped quarters of the community centre. Ms. DD, a woman who worked in the community centre at the time, recalled a visit by Mr. CC to Dr. Rathé. She overheard him welcome Dr. Rathé and invite him to set up his clinic in his new building and told him he

would give him free rent and other perks in return for sending prescriptions his way. Dr. Rathé also testified about this visit and his testimony was similar to that of Ms. DD. Mr. CC, in his testimony, denied offering free rent for sending prescriptions his way and said that he simply went to welcome Dr. Rathé to the community and to tell him that his franchiser was finalizing construction of a new drug mart that would have a clinic next door. He said he offered to put Dr. Rathé in touch with the doctor who would own space in this clinic. He maintained that it would be impossible for him to offer free rent as he did not have any connections in business to do that as the head office of his franchise takes care of all lease arrangements and the clinic next door was a completely separate business. In terms of perks, he said that he offered Dr. Rathé what he provides for all doctors, that is, no dispensing fee, no co-pay fee, and office medication supplies at cost. Mr. CC said he did not request any quid pro quo.

With regard to this meeting, the Panel also heard from a patient, Mr. DD, who said he was there that day and overheard the meeting, but his testimony was discounted, as he had sat through much of the testimony in the preceding days before he gave his, which may have tainted his responses. The Panel was unable to come to any conclusion with regard to the veracity of the witnesses in the context of this meeting between Mr. CC from the other pharmacy and Dr. Rathé. The testimony about this meeting did not factor into our findings.

Counsel for Dr. Rathé submitted in his closing arguments that there was no evidence of a financial link between the doctor and the pharmacy located in his building and, without that financial motive, there was no reason for Dr. Rathé to put his career in jeopardy by pressuring patients to use that pharmacy.

With regard to evidence presented from his former patients, the Panel did not conclude that Dr. Rathé insisted that they have their prescriptions dispensed at the pharmacy, or that they not use another pharmacy or refused to provide a written prescription or arbitrarily discharged them from the practice for asking for a written prescription. In conclusion, the Panel dismisses this allegation in that the Bernstein standard of proof calling for clear, cogent and convincing evidence was not met.

FINDINGS: ISSUE #3**Allegation 2**

This allegation, that Dr. Rathé displayed conduct unbecoming a physician was contained in Specifications 1 to 6.

Allegation 2, Specification 1

Dr. Rathé failed to appear before a Panel of the Complaints Committee on November 6, 2002, to be cautioned under paragraph 26(2).3 of the Health Professions Procedural Code despite being required to appear. Dr. Rathé did not contest this allegation and the Panel accepts it as fact. In his failure to appear, the Panel finds that Dr. Rathé displayed conduct unbecoming a physician.

Allegation 2, Specification 2

It was alleged that Dr. Rathé said several things in a loud and aggressive tone to Ms. A, of the College's Investigations and Resolutions unit. Dr. Rathé did not contest these allegations and the Panel accepts them as fact and finds that he did act in a manner that is unbecoming a physician.

Allegation 2, Specification 3

In this case, it was alleged that Dr. Rathé made comments about a College investigator, and the College calling them "jackasses". It was also alleged that Dr. Rathé slammed doors in the investigator's presence, ripped a letter from his hand and threw the letter on the ground. He also allegedly said the "I no longer fear you, now leave," and "I call the shots here" as well as other aggressive comments. Dr. Rathé did not contest these allegations and the Panel accepts them as fact. In his testimony, Dr. Rathé admitted that he yelled and swore at the investigators and called them jackasses. He said he did not behave well at all. The Panel finds that the doctor engaged in behaviour that is unbecoming a physician.

Allegation 2, Specification 4

It was alleged that Dr. Rathé wrote letters to Mr. B and Ms. A, or both, of the College's Investigations and Resolutions unit, that were disdainful, uncooperative, and unprofessional. Dr. Rathé did not contest these allegations. The Panel accepts them as fact and finds that he acted in a way that is unbecoming a physician.

Allegation 2, Specification 5

It was alleged that on May 17, 2004 between 11:00 a.m. and 12:30 p.m., Dr. Rathé made a series of phone calls to various members of the College in which he made threats to the staff, used profanity toward College staff, and made insulting remarks to the Registrar and the President. These included the following factual allegations:

- a) In a telephone call to Ms. C, Dr Rathé accused her of lying and yelled at her. Dr. Rathé has not contested this allegation and the Panel accepts it as fact and found that his behaviour is unbecoming a physician.
- b) The Panel heard a tape regarding this allegation. The taped message was: "This is Dr. Rathé. I just wanted to let you know that your name will be appearing in big letters on the front page of a newspaper tomorrow as well as all the other jerks at the College. Just thought you should know that and I'll be sending you a copy". Dr. Rathé did not contest this allegation and the Panel finds that he acted in a manner that is unbecoming a physician.
- c) In a call to Ms. D of the College's Executive Office, asking to speak with the Registrar, it was alleged that Dr. Rathé said that Ms. C would regret hanging up on him and that Ms. D had better get someone on the line immediately or she would regret it too. When Ms. D advised Dr. Rathé that she could take a message he allegedly told her that she "would regret it for the rest of your life". Dr. Rathé did not contest this allegation and the Panel therefore accepts it as fact and finds that he displayed behaviour that is unbecoming a physician.

- d) Dr. Rathé telephoned Ms. E of the College's Executive Office demanding to speak to the Registrar whom he referred to as a "mafia man". When Ms. E indicated that she would give the Registrar the message, Dr. Rathé stated " You do that bitch" and hung up. Dr. Rathé did not contest this allegation and he also corroborated the allegation in his own testimony with the "mafia man" comment as well as in his letter of apology to the College. The Panel accepts this allegation and finds that he displayed conduct unbecoming a physician.
- e) The Panel heard a tape on Ms. C's voice mail of Dr. Rathé stating "You can run but you can't hide". Dr. Rathé did not contest this allegation. The Panel finds that Dr. Rathé displayed conduct unbecoming a physician.
- f) In another message on the voice mail of Ms. F, Dr. Rathé left a message after being put on hold, stating "Fuck you." This allegation was not contested and the Panel accepts it as fact. The Panel finds that Dr. Rathé demonstrated behaviour that is unbecoming a physician.
- g) Dr. Rathé also left a further voice mail message for Ms. C stating "I'm gonna keep calling until I find who was responsible for this news release. You can bet your life on it." Dr. Rathé did contest this allegation or dispute the tape. The Panel accepts that he said these words. The Panel finds that Dr. Rathé displayed conduct that is unbecoming a physician.

Allegation 2, Specification 6

On May 26, 2004, Dr. Rathé failed to appear before a panel of the Complaints Committee to be cautioned under Paragraph 26(2).3 of the Health Professions Procedural Code despite being required to so appear. The Panel notes that Dr. Rathé mentioned in his testimony that he didn't show up but was not clear whether he was referring to the May 26, 2004 or the November 6, 2002 date. Nonetheless, he did not contest this allegation. The Panel accepts it as fact and finds Dr. Rathé's behaviour to be conduct unbecoming a physician.

In summary, the Panel finds Dr. Rathé acted in a manner unbecoming a physician with respect to all of the facts established under Allegation #2.

Dr. Rathé

Dr. Rathé testified on his own behalf. He reported that he had graduated from the University of Toronto and was licensed in 1989. He also received certification in the U.S. in Family Medicine and Sports Medicine. In 2000 to 2001, he became a certified specialist in Addiction Medicine in the U.S. He also recently re-certified in Family Medicine in the U.S.

After practising for years in Toronto, he moved to Belle River, as his wife was doing her MBA in Detroit and he wanted to work in an under-served area as well as the United States. He worked in the U.S. and his clinic in Belle River until he went into treatment for drug addiction in 2003.

His drug addiction began with the use of IV drugs for the first time the day he celebrated the end of his clinical clerkship with friends. Later he tried Demerol after a stressful day and his use escalated within a short period. Although he tried to stop many times, he was not successful until February 1992, when a couple of friends of his nearly died and helped him after they received treatment. He then reports that he was abstinent for ten years and had a good recovery network in Toronto that kept him “clean”.

By 2002, Dr. Rathé said he was working six days a week from 9 a.m. to 7 p.m. with no lunch break and seeing seventy to eighty patients a day. Since treatment in 2003, his work schedule was and is currently much less demanding and he has added nurse practitioners to his office and they have lightened the burden. Patients in his practice are much sicker than he was used to in Toronto and he commented that he found his practice challenging and still does.

Dr. Rathé testified that he was angry with the CPSO for various reasons as he felt he had been unfairly treated and harassed by the College over the years. He said that three days after an unannounced visit by the College’s inspectors to his office in November 2002, he

took a Tylenol # 3 and he was “on my merry way.” Within two to three weeks, he was taking narcotics at the same level he had been ten years previously. At times during his testimony, Dr. Rathé’s tone was sarcastic with an edge of hostility.

Dr. Rathé acknowledged a problem with anger and with those in authority. He also admitted swearing at patients at times. This has been a problem since his medical training days. He is currently taking antidepressants as well as Lithium to stabilize his mood. In 1995, the College’s Complaints Committee counseled him regarding his anger.

Other Evidence

Various medical reports were received as exhibits relating to Dr. Rathé’s medical conditions. The Panel also heard from Dr. EE and received a written assessment regarding Dr. Rathé, which was entered as an exhibit. Dr. EE is a psychiatrist with a special interest in Disruptive Physician Behaviour. In the course of his comprehensive assessment of Dr. Rathé, he had a psychologist, Dr. FF, complete an assessment that he used. He presented an analysis of the psychodynamics in Dr. Rathé’s family background contributing to his anger problem. Patients who question Dr. Rathé’s knowledge or authority or frustrate him, are more likely to lead him to becoming “narcissistically enraged.” Once he is on the course to becoming angry, he cannot take himself off it. According to Dr. EE, he has an explosion and becomes out of control. Dr. EE said the physician is hypersensitive when confronted, misunderstood or treated badly. He described two instances of “road rage” that Dr. Rathé was involved in, with one of them leading to a fistfight. He also noted that the physician is motivated for treatment and has been pursuing treatment.

The Panel heard testimony from patients who are very pleased with Dr. Rathé’s care and have no difficulties with his demeanour. Other reports were submitted that supported Dr. Rathé’s version of his ongoing treatment.

SUMMARY OF FINDINGS

For the reasons given above, the Panel finds that Dr. Rathé committed acts of professional misconduct with respect to Allegation #1, Specifications 1 to 10, the first (but not the second) sentence of Specification 13, and Specification 14.

The Panel did not find professional misconduct with respect to the factual allegations in Allegation #1, Specifications 11 and 12. The Panel also did not find that Dr. Rathé committed acts of professional misconduct as alleged in Specification 15 of Allegation #1.

The Panel further finds that Dr. Rathé did act in a rude and abusive way towards the College and its staff as they carried out their duties, in the public interest, as alleged in Allegation #2, Specifications 2 to 5. In addition, Dr. Rathé failed to appear as required for two separate meetings with the Complaints Committee as outlined in Specifications 1 and 6 of Allegation #2. The Panel finds that, in all instances as alleged, he displayed conduct unbecoming a physician.

The Panel wishes to address directly the argument made by Dr. Rathé's counsel that his relapse into drug abuse in the fall of 2002 and his longstanding anger management problem were the context in which the Panel must consider Dr. Rathé's behaviour towards patients and College staff. The Panel notes that some of the incidents of inappropriate conduct did not occur in the timeframe of Dr. Rathé's relapse into narcotic use. Dr. Rathé's problem with anger management and/or drug abuse may be used to explain his behaviour or account for his attitude. It does not, however, excuse his actions or behaviour.

The Panel directs the Hearings Office to schedule the penalty phase of this hearing.

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Charles Nicholas Rathé, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of the patients or any information that could disclose the identity of the patients under subsection 45(3) of the *Health Professions Procedural Code* (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*.

Subsection 93(1) of the Code, which is concerned with failure to comply with these orders, reads:

93(1) Every person who contravenes an order made under section 45 or 47 is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 for a first offence and not more than \$20,000 for a subsequent offence.

Indexed as: Rathé (Re)

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

IN THE MATTER OF a Hearing directed
by the Executive Committee and the Complaints Committee of
the College of Physicians and Surgeons of Ontario
pursuant to Section 36(1) and 26(2) 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. CHARLES NICHOLAS RATHÉ

PANEL MEMBERS:

DR. J. SCHILLINGER (CHAIR)
J. DHAWAN
DR. C.J. CLAPPERTON
M. POWER
DR. P. HORSHAM

Penalty Hearing Date:	April 11, 2006
Penalty Decision Date:	August 22, 2006
Release of Written Reasons on Penalty Date:	August 22, 2006

PUBLICATION BAN

DECISION AND REASONS FOR DECISION ON PENALTY

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on August 30 to September 1, 2005. At the conclusion of the hearing, the Committee reserved its decision.

On February 1, 2006, the Committee found that Dr. Rathé committed acts of professional misconduct in that:

1. He committed 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 as alleged in Allegation #1, Specifications 1 to 10, the first (but not the second) sentence of Specification 13, and Specification 14.
2. He displayed conduct unbecoming a physician in that he acted in a rude and abusive way towards the College and its staff as they carried out their duties, in the public interest, as alleged in Allegation #2, Specifications 2 to 5. In addition, he failed to appear as required for two separate meetings with the Complaints Committee as outlined in Specifications 1 and 6 of Allegation #2.

The Committee heard evidence and submissions on penalty on April 11, 2006 and reserved its penalty decision.

PUBLICATION BAN

On August 30, 2005, the Discipline Committee made an order pursuant to subsection 45(3) of the *Health Professions Procedural Code* (the “Code”) which is Schedule 2 to the *Regulated Health Professions Act, 1991*, prohibiting the publication or broadcasting of the names of complainants or any information that could tend to disclose the names or identities of such complainants. The Committee provided written reasons for this order.

EVIDENCE AND SUBMISSIONS ON PENALTY

At the outset of the penalty hearing, College counsel presented the College's view of an appropriate penalty. He submitted that Dr. Rathé has had angry episodes previously with patients and had been reported and cautioned by the College a few years ago. Counsel for the College referred to the uncontested evidence in this hearing that in the current series of complaints, Dr. Rathé was not only rude to several patients, but he physically pushed a senior woman, Mrs. A. He was also physically abusive to another patient, Mr. B. In addition to the rudeness and the two incidents of physical aggression, some of the episodes with patients involved emotional abuse. He pointed out that none of the incidents occurred while Dr. Rathé was in relapse into substance abuse.

College counsel submitted that Dr. Rathé carried on his practice while impaired and, although the College had no reports of any deficiencies in his medical care, lives could have been put at risk.

College counsel proposed that, to send a message of general deterrence, Dr. Rathé should not be allowed to practice for at least one year, and following a return to practice, he must satisfy the College that he no longer poses a threat. While revocation of his certificate of registration is submitted as the appropriate course, a fall-back option presented by College counsel would be to suspend Dr. Rathé's certificate of registration for at least one year with conditions after that time, to practice under another physician acceptable to the College to ensure the safety of his patients.

Counsel for Dr. Rathé submitted that Dr. Rathé's case cries out for a remedial, rather than a punitive approach. Dr. X, the expert witness presented by the defence, completed a thorough assessment of the source and effect of Dr. Rathé's disorders. Dr. X diagnosed an Impulse Control Disorder as contributing to his anger management problem, along with a Substance Abuse problem. Defence counsel pointed out that the College did not present any other expert evidence and the several medical reports presented by the defence were uncontested. He submitted that there was uncontradicted evidence presented that Dr. Rathé is ill. He argues that

while the College puts forth a penalty proposal that suggests that Dr. Rathé has control over his behaviour, the medical evidence is to the contrary.

Counsel for Dr. Rathé noted that the day Dr. Rathé called the College and made rude and derogatory statements to several staff, he was suffering from renal colic as confirmed in a report from his family physician. This condition exacerbated a situation that was already stressful for Dr. Rathé, as his case with the College had been written up extensively in the Windsor newspaper.

Defence counsel also pointed out that Dr. Rathé has demonstrated an extraordinary willingness to deal with his problem and has been seeing several clinicians regularly, as well as participating in the Physician Health Program (“PHP”). Dr. Rathé’s patients hold him in high esteem. The Panel received approximately 200 support letters from his patients. His counsel reported that Dr. Rathé has written a letter of apology to the College staff as he knows his behaviour was unacceptable.

Counsel for Dr. Rathé proposed that the penalty implement the recommendations of Dr. X. He said that Dr. Rathé’s case should never have been in the realm of the Discipline Committee but would more appropriately have been dealt with in the Fitness to Practise Committee stream. As such, the penalty should be tailored more in line with a Fitness to Practise remedy. This would entail Dr. Rathé continuing in the PHP Program, perhaps for life. He would also be required to continue the anger management counselling that he is currently involved in with the psychologist. He would also continue to see the psychiatrist to deal with anger management. At the penalty hearing on April 11, 2006, defence counsel proposed that Dr. Rathé would complete the recently developed program for disruptive physicians in Atlanta Georgia at the Talbott Recovery Campus. Subsequent to the hearing, the Panel invited further written submissions from both counsel. In those written submissions, defence counsel indicated that the PHP Program now recommended the Pinegrove Program for Anger Management as well as the 10 to 12 week follow-up “Professionals at Risk” program in Elmhurst, Illinois. Counsel for the College indicated that the College accepted that those programs were reputable, worthwhile and acceptable if the Panel was inclined to order that they be completed by Dr. Rathé.

Counsel for Dr. Rathé also submitted that Dr. Rathé is amenable to the interventions proposed, as well as having a mentor who would coach and monitor him on a regular basis. The proposals would have the effect of protecting the public, by decreasing the risk of recurrence of the offending behaviour. He also pointed out that, since Dr. Rathé had hired two nurse practitioners and decreased his workload, there have been no further outbursts with his patients.

DECISION AND REASONS ON PENALTY

In considering the appropriate penalty, the Panel reviewed the evidence. Dr. Rathé had been rude, derogatory and emotionally abusive to some of his patients. He had been physically abusive to two of them, one of the incidents being serious enough that the patient contacted the police, although no charges were proceeded with after an investigation. Dr. Rathé did not appear for two meetings scheduled with the Complaints Committee to administer a caution to him. His reason for not appearing was that he was not allowed to bring his lawyer. However, the Panel notes that the Code allows the Complaints Committee to require him to appear and makes no provision for the appearance with counsel. Dr. Rathé did not have the option of not appearing.

Despite the complaints about him, there was never any question about Dr. Rathé's ability as a clinician and no harm appears to have come to patients as a result of his practise.

In the incidents with the College staff, Dr. Rathé was rude and derogatory. Evidence was presented that Dr. Rathé was suffering from renal colic that day and under a lot of stress. A letter from his family physician comments on his condition. However, the panel noted that Dr. Rathé failed to mention this fact when Dr. X assessed him. Nor did he mention it to the psychiatrist, or in his letter of apology. He did mention it in his testimony in chief. The Panel was unable to put any significant weight on renal colic as a mitigating factor in the incidents involving the College staff. In the Panel's view, if Dr. Rathé had renal colic to the degree that he required a visit with his doctor and medication, then this would have been a noteworthy event that he would have remembered and reported to those assessing him subsequently.

The Panel also reviewed the letters from Dr. Rathé's patients. While the letters were supportive of the doctor, in the Panel's view relatively little weight could be given to them in light of the uncontested evidence regarding the treatment of the patients involved in this proceeding

The Panel also reviewed the Brief of Authorities presented by counsel for the College. These cases were quite dissimilar to the facts of this case and therefore offer little guidance to an appropriate penalty in the unique circumstances here.

Defence counsel presented several reports from clinicians involved with Dr. Rathé. Dr. X's report was the most thorough and compelling and incorporated an assessment by a psychologist. The Panel notes that Dr. X postulated an Intermittent Explosive Disorder in his written report but, when he gave his testimony, he thought the diagnosis was more in line with Impulse Control Disorder in this case. The College presented no clinical evidence contesting these findings regarding Dr. Rathé.

The Panel accepted that Dr. Rathé has a diagnosis of: 1) Opiate Abuse and Dependence, in remission; 2) Benzodiazepine Abuse (historic diagnosis), in remission; 3) Impulse Control Disorder Not Otherwise Specified; and, 4) Major Depressive Episode (historic diagnosis), resolved. The Panel also accepts that he has no personality disorder, but that narcissistic features play a role in his behaviour under certain circumstances and that work-related stress contributed to his actions.

Defence counsel argued that, due to Dr. Rathé's illness, he should be remediated rather than penalized. The Panel agreed that some remediation is required and has put in place conditions that would manage his risk for these behaviours in the future. These will serve to protect the public from being subjected to abuse, or to the potential harm posed by a relapse into substance abuse. There will be a requirement for Dr. Rathé to be assessed by an independent psychiatrist, acceptable to the College, and at the doctor's expense not before 18 months and not later than 24 months from the date of the Penalty. The psychiatrist is to report to the College with

respect to the doctor's anger management situation and his risks at that time for reoffending conduct.

The Panel considered this assessment as necessary for several reasons. Dr. Rathé has relapsed into substance abuse after years of being "clean" and he was able to continue practising for months while impaired. He has practised during at least two periods of time while impaired. While the Panel has confidence in the PHP program, closer scrutiny and follow-up with the clinicians, and/or independent assessors will help to ensure the public is protected from incidents of inappropriate aggression. There were numerous complaints about Dr. Rathé's abusive behaviour and this series of complaints followed on earlier ones where he was cautioned. Due to the repeat nature of his difficulties, a future review will better protect the public. Dr. Rathé's skills as a physician are not in question and the structure and support put in place along with the assessment by an independent psychiatrist at a future date, will reduce the risk posed to patients in the future.

However, Dr. X also noted that Dr. Rathé's behaviour is in his control. In considering whether Dr. Rathé had an Intermittent Explosive Disorder or the more "dilute" version of the condition, Impulse Control Disorder (Not Otherwise Specified), Dr. X said that Dr. Rathé did not quite meet the first criterion of that disorder, as his failures to resist aggressive impulses have not resulted in serious assaultive acts or destruction of property. Dr. X said this was likely because he is able to exert enough control and has enough wherewithal to inhibit any form of physical aggression. Dr. X also commented that Dr. Rathé attributed the reduction in his angry feelings and blow-ups to the deterrent effect of the current proceedings against him by the College, to his abstinence from opiates and other illicit psychoactive substances, and to having discharged a number of problematic patients from his practice. The Panel took these comments into consideration when deciding on the appropriate penalty.

Dr. X also reported that Dr. Rathé said the proceedings against him by the College have had a deterrent effect on his repeating his behaviour. When external factors modify behaviour, the Panel must conclude that his actions are under his control. A penalty will provide a specific deterrent to a repeat of this harmful behaviour in the future. Thus, in addition to conditions to

manage the risk that he poses due to his substance abuse problem, in remission, and the difficulties he has in managing his anger, the Panel decided to suspend Dr. Rathé's certificate of registration for six months some of which will be suspended upon the completion of certain things.

Some of the mitigating factors taken into account by the Panel are the indications in the clinical reports that Dr. Rathé is motivated and has taken steps to deal with his anger and addiction problem. Dr. Rathé has reduced his work-load, and hired two nurse practitioners who spoke positively about him and his behaviour. In the intervening months between his initial hearing and the penalty hearing, Dr. Rathé has seen the psychologist, psychiatrist, and addictions specialists regularly. There have been no further complaints about his behaviour. For these reasons, the Panel does not view a longer suspension as proposed by the College as appropriate.

The finding in this case relating to Dr. Rathé asking a third-party to listen in on an interview with a patient, does not appear to be an act related to uncontrollable anger. It is viewed as totally unacceptable by the Panel as patient confidentiality could easily be breached. In addition, Dr. Rathé failed to appear twice before the Complaints Committee to be cautioned. These acts appear to be calculated over time, as opposed to being an outburst of temper. Indeed, the last event, according to the evidence was planned well before the "rage episode" occasioned by the publication of the Notice of Hearing. Such actions where a member refuses to abide by the legislation, causes the College to lose credibility with the public in its mandate to protect the public. The panel therefore levied a significant fine to underscore the seriousness with which these infractions are viewed. Not only will the fine serve as a specific deterrent to Dr. Rathé, it also highlights for the membership the importance of being compliant with requirements of the College if it is to function as a self-governing body charged with protection of the public. A minority of the Panel, for reasons separately set out [below], are of the view that a greater fine should be ordered.

ORDER

Therefore, the Discipline Committee ordered and directed that:

1. Dr. Rathé appear before the Committee to be reprimanded and the fact of the reprimand to be recorded in the register.
2. Dr. Rathé pay a fine of \$5000 to the Minister of Finance of Ontario within ninety days of the date of this order.
3. The Registrar suspend Dr. Rathé's certificate of registration for a period of six months:
 - (a) four months of which will be suspended upon: i) completion at his own expense of the Pinegrove Program for Anger Management; and, ii) enrollment within 2 months from the date of this order at his own expense of the ten to twelve week follow-up Professionals at Risk Program in Elmhurst, Illinois. Full reports from both programs are to be provided to the College and Dr. Rathé shall provide to the College proof of completion of the Professionals at Risk Program not later than December 31, 2006; and
 - (b) however, the full six months of the suspension will be served by Dr. Rathé unless the fine imposed under paragraph 2 is paid and proof of payment provided to the Registrar within 90 days of this order.
4. The Registrar impose the following terms, conditions and limitations on Dr. Rathé's certificate of registration:
 - i) Dr. Rathé will continue with regular counselling in anger management with the Psychologist, Dr. Y , in Toronto and follow direction specific to his problems. The counselling is to continue for at least two years and, thereafter, for so long as the Psychologist deems necessary. A report with regard to his progress must be provided to the College promptly every six

months. If for any reason, there is an inability to continue with this Psychologist, then another Psychologist, acceptable to the College will be substituted. Dr. Rathé shall ensure that the Psychologist is aware of the reporting requirement and executes an undertaking in a form acceptable to the College.

- ii) Dr. Rathé will continue with treatment with his Psychiatrist, or failing him another Psychiatrist acceptable to the College, and follow his medical advice. The treatment is to continue for at least two years and, thereafter, for so long as the Psychiatrist indicates is required. A report with regard to his progress must be provided to the College promptly every six months. Dr. Rathé's treating Psychiatrist is to report immediately to the College any failure by Dr. Rathé to follow medical advice. Dr. Rathé shall ensure that the Psychiatrist is aware of the reporting requirements and executes an undertaking in a form acceptable to the College.
- iii) Dr. Rathé will continue in the PHP Program and with the addictions interventions that they recommend. In addition, Dr. Rathé will enroll in the PHP Behaviour Monitoring Program. Reporting to the College will be according to the protocols of the PHP addictions and behaviour monitoring programs.
- iv) Dr. Rathé shall appoint a practice management monitor, acceptable to the College, who will meet at least monthly with Dr. Rathé, at his expense, to discuss and monitor Dr. Rathé's patient load, hours of work, commitments, and other obligations relating to work, family, community and self-care. The monitor is to assist Dr. Rathé in managing his practice and related aspects of his life to manage his stress levels and also to assist in his anger management efforts. The monitor will report to the College every six months. Dr. Rathé shall cause the monitor to execute an undertaking in a form acceptable to the College.

- v) At least one Nurse Practitioner, acceptable to the College, must be employed in the practice on a regular basis.
- vi) An independent Psychiatrist, acceptable to the College and at Dr. Rathé's expense, shall assess Dr. Rathé's anger management situation and his risk for re-offending conduct no earlier than 18 months and no later than 24 months from the date of this order and report to the College.

The Discipline Committee orders that any variance from this Order is to be requested through a Panel of the Discipline Committee as then constituted.

MINORITY PENALTY OPINION AND REASONS FOR PENALTY OPINION

A minority of the Panel agrees with the Penalty and Reasons set out by the majority of the Panel with the sole exception of paragraph 2 of the Order, that is, the quantum of the fine. The majority of the Panel were of the view that a lesser fine was appropriate in light of Dr. Rathé's amenability to addressing his problems in a comprehensive way.

We strongly feel that the fine should be in the amount of \$10,000 with failure to pay resulting (as is the case with the majority decision) in a total suspension of 6 months.

In order to give a sufficient penalty which reflects the Panel's abhorrence of Dr. Rathé's actions, the Panel felt that a combination of suspension and fine was appropriate. If the Panel had decided to impose a lengthier suspension but not a fine, the penalty would have had an adverse affect on patient access and impede retention of the Nurse Practitioner(s) (paragraph 4(v) of the Order) employed in his practice. Furthermore, there were no allegations of any improper medical care so that a shorter suspension cannot be construed as putting the public at further risk.

Although some part of his behaviour is affected by his Impulse Disorder, some of Dr. Rathé's behaviour is less affected or not affected at all by it. His disdain for the College, expressed in his testimony at the hearing and by his refusal to appear for cautions by the Complaints Committee on two widely separate occasions is particularly worrisome in this case as he will require varying degrees of monitoring by the College indefinitely. It is imperative that Dr. Rathé understand that his actions will have consequences even if he has no respect for the College. Furthermore, if the public is to have any confidence in the complaints process at the College and the wider view of the College's mandate to protect the public interest, then the penalty for ignoring the directives of the College (most especially those backed by legislation) must be, and be seen to be, firm. Anything else undermines the profession's claim to self regulation.

A fine of \$5,000 is insufficient, in our view, to claim the attention of Dr. Rathé given his ongoing view of the College. A doubling of the fine to \$10,000 gives it greater parity with the length of the suspension and in our view would better express the egregious nature of the proven allegations.