NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Alan Howard Laity, 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. Laity, 2018 ONCPSD 55

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. ALAN HOWARD LAITY

PANEL MEMBERS: **DR. J. WATTS (CHAIR)**
MR. J. LANGS
DR. P. BERGER
MAJOR A. H. KHALIFA
DR. C. CLAPPERTON

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS K. HEAP

COUNSEL FOR DR. LAITY:

MS C. BRANDOW
MR. A. PATENAUDE

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. R. COSMAN

Hearing Date: July 3, August 20 and October 15, 2018
Decision Date: October 15, 2018
Release of Reasons Date: October 19, 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 July 3, August 20, and October 15, 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. The Order set out the Committee's penalty and costs order with written reasons to follow.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Alan Howard Laity committed an act of professional misconduct:

1. under clause 51(1)(b.1) of the Health Professions Procedural Code which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18 (the "Code") in that he engaged in sexual abuse of a patient;

2. under paragraph 1(1)2 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* ("O. Reg. 856/93"), in that he has failed to maintain the standard of practice of the profession; and

3. under paragraph 1(1)33 of 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.

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

RESPONSE TO THE ALLEGATIONS

Dr. Laity admitted the allegations 2 and 3 in the Notice of Hearing, that he has failed to maintain the standard of practice of the profession, and 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. Counsel for the College withdrew allegation 1, and the allegation of incompetence.

THE FACTS

The following facts were set out in the Agreed Statement of Facts and Admission, which was filed as an exhibit at the hearing and presented to the Committee:

BACKGROUND

1. Dr. Alan Howard Laity ("Dr. Laity") is a 65 year-old family physician who had a practice in London, Ontario until September 30, 2016 when he closed his practice. On June 26, 2017, he resigned his certificate of registration with the College.

FACTS

2. In January 2016, the College received a complaint from Patient A, who had been a patient of Dr. Laity's since July 2007.

3. The College retained the services of Dr. Zubair Lakhani to review Dr. Laity's patient chart for Patient A and provide an opinion with respect to the standard of practice of the profession. Dr. Lakhani's report dated November 25, 2016 is attached at TAB A [to the Agreed Statement of Facts and Admission].

4. Dr. Lakhani identified deficiencies in Dr. Laity's record-keeping and prescribing with respect to Patient A.

Record-keeping Deficiencies

5. Dr. Lakhani noted that the cumulative patient profile in Dr. Laity's chart for Patient A was difficult to read and follow due to Dr. Laity's handwriting and adjustments to the cumulative patient profile. The medication list on Patient A's cumulative patient profile was not current and did not include all medications Patient A was taking, such as methodone.

6. Dr. Lakhani also noted other examples of poor record-keeping. At his first appointment with Patient A in July, 2007, Dr. Laity prescribed clonazepam with no documentation of dosing or the amount of pills prescribed. In January 2008, Dr. Laity started Patient A on an antidepressant medication without documenting any depression anxiety symptoms or risk of self-harm and benzodiazepines were renewed regularly with little documentation.

Prescribing Deficiencies

7. Dr. Laity prescribed escalating doses of benzodiazepines to Patient A throughout the 8.5-year doctor-patient relationship, despite multiple warning signs that Patient A was addicted to and/or abusing the medication he prescribed.

8. Dr. Laity acceded to numerous requests for early refills of benzodiazepines. In the period between December 2007 and August 2009, Patient A claimed she required early refills of medication because she was assaulted and had trouble sleeping, because her pills were stolen on four separate occasions, because her pills were lost on two occasions, because she said she was entering a residential treatment program for post-traumatic stress disorder, amongst other reasons. These requests were warning signs of benzodiazepine abuse. On each occasion, Dr. Laity provided early refills of Patient A's benzodiazepines, on at least one occasion as little as two days after her last prescription.

9. In May 2009, Patient A told Dr. Laity that she was taking extra medications. Dr. Laity continued prescribing clonazepam and other medications to her without properly addressing this.

10. Dr. Laity continued prescribing benzodiazepines and other medications to Patient A. While Dr. Laity first prescribed Patient A clonazepam in 2007 on a dose of 0.5 mg twice a day, by 2014 he was prescribing 2 mg of clonazepam three times a day with 180 tablets every two months. In May 2015, he again increased Patient A's prescription to 300 tablets of clonazepam 2 mg three times a day every two months. In August 2015, Dr. Laity replaced Patient A's pills because she told him she "knocked" two bottles of pills into the toilet.

11. In September 2015, Patient A was admitted to hospital for lithium overdose and remained in hospital for several months for several reasons including severe anxiety and benzodiazepine addiction.

12. In January 4, 2016, Dr. Laity's office received a consultation note of a physician, prepared in the hospital, which indicated that Patient A had been weaned off of diazepam and was no longer taking clonazepam or any benzodiazepines. The physician wrote in the consultation notes:

> Benzodiazepine withdrawal is a significant concern, though not likely to be severe. Her risk for relapse if discharged at this time would be extremely high, and she will need to be monitored to ensure she has been successfully managed through the initial withdrawal symptoms. If she does require a return of benzodiazepine administration, my recommendation is to backtrack a single step (in this case to 2.5 mg of diazepam) and likely would be best administered at right so that she can become accustomed to the lowering blood levels during the day.

13. Three days later, in January 7, 2016, at his first appointment with Patient A since she had been admitted to hospital in September 2015, Dr. Laity prescribed Patient A clonazepam 1 mg three times a day, down from 2 mg three times a day prior to her hospital admission, but much higher than recommended by the hospital physician.

14. Dr. Lakhani opined in his report as follows:

> The first visit post hospital discharge in January 2016 is very concerning. According to the notes from the hospital physician (received by Dr. Laity on January 4, 2016), there was concern for the patient to relapse and return to benzodiazepine use and advised if a drug is needed to use diazepam at 2.5 mg. However, on January 7, 2016 Dr. Laity prescribes clonazepam 1 mg and gives the patient 90 tablets.

15. Overall, in terms of his care of Patient A, Dr. Lakhani concluded in his report:

> This patient presents as a very high risk for abuse, and addiction. The escalating use, and lost prescriptions and withdrawal symptoms, of benzodiazepines and specialist notes indicating abuse raised many red flags that Dr. Laity appeared to miss, or ignore. Dr. Laity ignoring the warnings of the hospital physician, post a three month hospital admission for benzodiazepine abuse, is very concerning. It is my opinion that Dr. Laity has not met the standard of care of the profession for the care provided to this patient... Based on the review of this chart, and the notes provided, it is my opinion that Dr. Laity did expose this patient to harm, and based on the last visit of January, 2016 may have exposed this patient to future harm.

ADMISSION

16. Dr. Laity admits the facts set out above, and admits that, based on these facts, he engaged in professional misconduct:

    (a) 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

    (b) under paragraph 1(1)33 of O. Reg. 856/93, in that he has engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

FINDING

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts and Admission. Having regard to these facts, the Committee accepted Dr. Laity's admission and found that he has 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.

JOINT SUBMISSION ON PENALTY AND COSTS

Counsel for the College and counsel for Dr. Laity made a joint submission as to an appropriate penalty and costs order.

The proposed order called for a reprimand and the payment of costs, taking into account Dr. Laity's Undertaking, Acknowledgment and Consent ("Undertaking") dated October 15, 2018. In his Undertaking, Dr. Laity acknowledged that he had resigned from the College on June 26, 2017. He undertook not to apply or re-apply for registration as a physician to practise medicine in Ontario or any other jurisdiction. Dr. Laity also consented to the Undertaking being posted on the Public Register along with a summary stating that he had resigned and undertaken not to apply or re-apply in the face of the allegations of professional misconduct that had been referred to the Committee.

The Committee recognizes that a joint submission on penalty must be accepted, unless to do so would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

There are a number of principles that guide the Committee in making penalty orders. The most important of these is the protection of the public. As a result of Dr. Laity's resignation and his Undertaking not to re-apply to practise medicine in Ontario or anywhere else, the public will be

protected from any further misconduct by him. Dr. Laity's Undertaking is an even greater means of public protection than the imposition of a penalty such as a revocation or lengthy suspension from practice, which would leave open the possibility of an application for reinstatement after revocation, or a return to practice after the period of suspension.

Dr. Laity's misconduct brings the reputation of the profession into disrepute and erodes the public's trust in the profession and the College's ability to regulate the profession in the public interest. Dr. Laity's resignation and the Undertaking not to reapply to practise medicine serve to convey to the public and the profession that a physician who engages in such serious misconduct will be seriously dealt with. The reprimand allows the Committee to express to Dr. Laity that his behaviour is unacceptable and that he is censured for his professional misconduct. General deterrence is also achieved by the reprimand.

Analysis

The Nature of the Misconduct

The nature and extent of Dr. Laity's professional misconduct are set out in detail in the Agreed Statement of Facts and Admission. As an experienced family physician, he should have been aware of his prescribing and record-keeping deficiencies and remedied them at an earlier stage.

Record-keeping Deficiencies

Dr. Laity's cumulative patient profile was difficult to read and follow. The medication list was not current and did not include all the medications Patient A was taking. Some of his charting was deficient, in that he did not record the dose and amount of medication he prescribed. Medication was prescribed with no history documented.

Prescribing Deficiencies

Despite Patient A's history of addiction, Dr. Laity prescribed escalating doses of benzodiazepines to Patient A throughout the 8.5 year doctor-patient relationship.

Multiple warning signs that Patient A was diverting her medication and not following his medication regime were ignored. Patient A received from Dr. Laity another prescription on multiple occasions when she had various excuses about what happened with her original prescription.

Even after Patient A had been admitted to the hospital for a lithium overdose, anxiety and benzodiazepine addiction, Dr. Laity continued to prescribe benzodiazepines. A specialist's note from the hospital stating that she had been weaned off the Clonazepam she had been taking and making alternate medication recommendations was ignored by Dr. Laity, and he proceeded to prescribe benzodiazepine again.

Aggravating Factors

Patient A was a vulnerable patient on methadone for addiction to opiates. Dr. Laity ignored her addictions and continued to prescribe benzodiazepine in the face of a warning from the hospital physician, indicating concerns about Patient A's substance abuse problems. Prescriptions were written multiple times when Patient A returned to him with stories of what happened to her medication or her prescription, clear warning signs for addictive behaviour. Patient A would receive another prescription from Dr. Laity, enabling her addiction. Dr. Laity continued this behaviour for a lengthy period of years with Patient A.

Mitigating Factors

Dr. Laity has admitted the facts and the allegations of misconduct, and has taken responsibility for them. His admission of professional misconduct has obviated the need to have Patient A testify. By his admission, considerable time and costs to the College have been saved. It is also an

important mitigating factor that he has had no prior discipline cases against him in his long medical career.

Case Authorities

The Committee considered four prior cases in the Book of Authorities filed by the College, with the understanding that each case must be decided on its own facts and that no two cases are exactly the same.

In *Guindon* (2012), the Committee found that there were infection control issues, a failure to abide by an undertaking and a failure to record the dose and strength of injected medications. The physician used cryotherapy and intralesional injections for conditions not permitted under the terms of her undertaking. She saw patients without a supervisor. She had no prior disciplinary history with the College in her lengthy career. The Committee found Dr. Guindon's resignation and agreement not to re-apply for reinstatement to practise medicine in Ontario or any other jurisdiction, along with a reprimand and costs, was found to be an appropriate penalty and costs order.

In *Roche* (2017), the physician engaged in boundary violations of one long-standing patient by employing her in her home, being verbally abusive and not paying her the agreed upon remuneration. Dr. Roche also engaged other patients in boundary violations by having them do errands for her and sharing medical information about them with other patients. She also failed to provide records, engaged in inappropriate OHIP billing, and had documentation deficiencies. Dr. Roche had no prior discipline history with the College. The Committee ordered a reprimand and costs. It was key to the reasoning of the Committee that Dr. Roche resigned her certificate of registration and signed an undertaking not to re-apply.

In *Mossanen* (2018), an 80 year old neurologist failed to explain his examination or obtain consent, and did not properly drape and maintain appropriate boundaries when examining two female patients. He neglected to comply fully with the terms of the interim order made under s. 37 of the Code. Dr. Mossanen resigned from the College and undertook not to re-apply for

registration in Ontario or any other jurisdiction. He too, had no prior discipline history with the College. The Committee ordered a reprimand and costs in its disposition of this case.

In *Jiaravuthisan* (2016), the Committee ordered a reprimand and costs when it was found that the physician failed to maintain the standard of practice of the profession and engaged in unprofessional conduct. His misconduct had consisted of poor communication and failing to obtain informed consent. He demonstrated a lack of sensitivity and respect for the privacy of two patients. Dr. Jiaravuthisan resigned from the College and agreed in an undertaking not to re-apply.

These four cases are similar to the current one, in that the physicians resigned their certificates of registration and undertook not to re-apply to practise medicine. Each received a penalty of a reprimand and was required to pay costs. Some of them had multiple patient encounters involved in the misconduct, while Dr. Laity's professional misconduct involved one patient. All of them had no prior discipline history.

The Committee is satisfied that the penalty order proposed in this case through a joint submission represents an appropriate sanction for the finding of professional misconduct made.

ORDER

The Committee stated its finding of professional misconduct and incompetence in paragraph 1 of its written order of October 15, 2018. In that order, the Committee ordered and directed on the matter of penalty and costs that:

2. Dr. Laity attend before the panel to be reprimanded.

3. Dr. Laity pay costs to the College in the amount of $10,180.00 within thirty (30) days from the date of this Order.

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

TEXT of PUBLIC REPRIMAND
Delivered October 15, 2018
in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
and
DR. ALAN HOWARD LAITY

Dr. Laity,

It is sad to see a professional career come to an end in this fashion, but we are glad to note your undertaking does indeed meet the need to protect the public.

That said, it is essential that this Committee expresses its clear and unequivocal condemnation of your misconduct. You had a patient who was clearly at extremely high risk of addiction. She was, after all, already on methadone. To expose her to increasing doses of Benzodiazepines could not fail to have negative and harmful consequences to her.

You blatantly ignored clear and unequivocal evidence of diversion and in doing so displayed behaviour that not only harmed your patient, but brings the entire medical profession into disrepute. This was behaviour that truly merits the description of being disgraceful, dishonourable and unprofessional. We are glad that there is no likelihood of this behaviour being repeated.