

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. James Mundy Hardwick, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the name and any information that could disclose the identity of the patient 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. Hardwick,
2019 ONCPSD 21**

**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. JAMES MUNDY HARDWICK

PANEL MEMBERS:

**MR. P. GIROUX
DR. P. CASOLA
MR. M. KANJI
DR. M. DAVIE
DR. R. SMITH**

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS. E. GRAHAM

COUNSEL FOR DR. HARDWICK:

MS. C. BRANDOW

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. GIDEON FORREST

**Hearing Date: March 27, 2019
Decision Date: March 27, 2019
Written Decision Date: May 17, 2019**

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 March 27th, 2019. At the conclusion of the hearing, the Committee released a written order stating its finding that the member committed an act of professional misconduct, and setting out its penalty and costs order with written reasons to follow.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Hardwick committed an act of professional misconduct:

1. under clause 51(1)(b.1) of the Health Professions Procedural Code which is schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18 (the “Code”) in that he engaged in sexual abuse of a patient; and
2. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“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.

RESPONSE TO THE ALLEGATIONS

Dr. Hardwick admitted the second allegation in the Notice of Hearing, that he engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional. Counsel for the College withdrew the first allegation in the Notice of Hearing.

THE FACTS

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

A. Background

1. Dr. Hardwick received his certificate of registration authorizing independent practice in

1975. On April 11, 2017, during the College's investigation, he resigned his membership in the College. Prior to his resignation, Dr. Hardwick was a general surgeon practicing in Stratford, Ontario.

2 In 2016, Dr. Hardwick's practice included providing services in the Stratford General Hospital's Surgical Ambulatory Care outpatient clinic ("SAC"), and surgical assisting in the operating room. The Stratford General Hospital is one hospital in the Huron Perth Healthcare Alliance ("HPHA").

3 On July 22, 2016, the College received a mandatory report from the President and CEO of HPHA, about Dr. Hardwick's behaviour and comments towards Patient A in May and June 2016.

B. May 2016

4 Patient A was a teenager. She developed a pilonidal abscess, located near the tailbone at the top of the cleft of her buttocks.

5 Patient A attended at the Stratford General Hospital's SAC on referral from a family physician for an excision by Dr. Hardwick because an earlier excision had not been successful. Patient A was accompanied on this visit by a coordinator. Dr. Hardwick explained that he was going to open the patient's abscess to take the pressure off.

6 When Dr. Hardwick made the incision, he commented on the unusual severity of the infection, including stating that she was a teenager and the smell was worse than he expected. Dr. Hardwick failed to explain that he was making the comment with respect to the severity of her condition. His comment caused the patient distress.

C. June 2016

7 Patient A returned to the SAC for follow-up with Dr. Hardwick to have her dressings changed, and to have her wound examined to ensure that it was healing properly.

8 Patient A was accompanied on this appointment by the coordinator. Throughout this

appointment, the patient was lying prone on the examination table with her buttocks exposed.

9. Dr. Hardwick instructed the nurse to remove the bandage residue from the patient's buttocks. He made statements purporting to compliment the patient on her physical appearance. He also made inappropriate comments about the standards for cosmetic appearance in her culture, adding that because the patient was from her country of origin, she was probably accustomed to getting compliments on her appearance.

10. The coordinator told Dr. Hardwick that it was not appropriate for him to be commenting on the patient's physical appearance. In response, Dr. Hardwick stated that he was only joking, and said "These government types are so uptight. They don't know a good joke when they hear one."

11. After the June 2016 appointment, Dr. Hardwick telephoned the coordinator to apologize for how he had acted and for the way he had spoken about the patient. He stated that he thought the patient was mature enough to handle jokes of that nature, and that it was his fault for not recognizing her lack of maturity.

ADMISSION

12. Dr. Hardwick admits the facts at paragraphs 1 to 11 above, and admits that, based on these facts, he engaged in professional misconduct under paragraph 1(1)33 of O Reg. 856/93, in that he engaged in conduct or acts or omissions relevant to the practice of medicine that would be regarded by members as disgraceful, dishonourable or unprofessional.

FINDING

The Committee accepted as correct all of the facts set out in the Agreed Statement of Facts and Admission (Liability). Having regard to these facts, the Committee accepted Dr. Hardwick's admission and found that he committed an act of professional misconduct in that he 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.

AGREED STATEMENT OF FACTS ON PENALTY

The following Agreed Statement of Facts (Penalty) was presented to the Committee:

FACTS

1. Dr. Hardwick entered into an undertaking to the College on March 20, 2019, by which he agreed not to apply or re-apply for registration as a physician to practise medicine in Ontario or any other jurisdiction effective March 27, 2019. The undertaking is attached at Tab 1 [to the Agreed Statement of Facts (Penalty)].

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for the member made a joint submission as to an appropriate penalty and costs order. The parties jointly proposed that Dr. Hardwick appear before the panel to be reprimanded, and pay costs to the College in the amount of \$6000.00 within thirty days of the order.

As found by the Supreme Court of Canada in *R. v. Anthony-Cook* (2016 SCC 43), the Committee should not depart from a joint submission on penalty unless the proposed penalty would bring the administration of justice into disrepute, or is otherwise contrary to the public interest.

The Committee considered the principles underlying penalty orders. First and foremost, a fair and just penalty must protect the public. It must maintain the integrity of the profession and public confidence in the College's ability to regulate the profession in the public interest. The penalty should reflect the Committee's disapproval of the misconduct, act as a specific deterrent to the member against such misconduct in the future, and as a general deterrent to the membership as a whole.

Aggravating Factors

Nature of the Misconduct

It is vital that in all patient encounters, members of the College conduct themselves in a respectful manner. Patients are vulnerable by virtue of the power imbalance in the doctor-patient relationship. It is paramount that patients are able to trust that a doctor will act in their best interests and treat them with dignity.

Significant in this case is the fact that Dr. Hardwick behaved in a disrespectful manner towards Patient A during both patient encounters.

During Dr. Hardwick's first patient encounter with Patient A, Dr. Hardwick commented on the unusual severity of the infection and stated that the smell was worse than he had expected. It is certainly possible that the patient's infection in this case was a severe one, particularly considering that it had already been treated yet remained unresolved. But to embarrass this young, vulnerable patient, for whom the nuances of the English language may not have been well understood, was particularly objectifying, insensitive and rude. A patient's feelings and sensitivities must always be considered.

During Dr. Hardwick's follow-up appointment with Patient A, Dr. Hardwick commented on Patient A's appearance, using stereotypical assumptions related to her culture. Personal comments regarding a patient's appearance are never appropriate. Further, Dr. Hardwick made an inappropriate "joke" regarding "government types". These comments underscored for the Committee that Dr. Hardwick's behaviour was not confined to an isolated incident, but rather part of an insensitive communication style. Again, this was wholly inappropriate.

It is clear from Dr. Hardwick's subsequent apology to the coordinator that he understood he had transgressed after the fact.

Mitigating Factors

Dr. Hardwick has had a very long career with no discipline history with the College. In addition, Dr. Hardwick was cooperative during the discipline process. By admitting to the misconduct, Dr.

Hardwick saved the time and expense of a contested hearing. His cooperation spared witnesses from having to attend the hearing and testify.

Dr. Hardwick resigned his membership with the College on April 11, 2017. On March 20, 2019, Dr. Hardwick entered into an undertaking not to apply or re-apply for registration as a physician to practise medicine in Ontario or any other jurisdiction effective March 27, 2019.

Prior Cases

The parties submitted to the Committee for consideration a brief Book of Authorities of recent cases: *Jiaravuthisan*, 2016; *Choong*, 2018; *Rudd* 2018; *Mossanen*, 2018; and *Laity*, 2018. While no two cases are alike and each case must be considered on its own facts, it is helpful for the Committee to find that the proposed penalty is in keeping with the range of penalties in prior similar discipline cases. In all of the cases provided for consideration, the subject physician resigned, the penalty consisted of a reprimand, and there was a requirement to pay costs, as was proposed in this case.

Conclusion

For these above reasons, the Committee accepted the parties' joint submission on penalty as an appropriate penalty in the circumstances of this case. A public reprimand provides the Committee with the opportunity to publicly denounce Dr. Hardwick's misconduct and serves as a general deterrent to the membership. It also demonstrates to the public that this type of misconduct is not tolerated. Dr. Hardwick's resignation and undertaking will serve to protect the public in the most effective way possible, as Dr. Hardwick will no longer be in practice and will not be able to reapply.

It is within the Committee's jurisdiction to award costs in appropriate cases. Given the finding of misconduct against Dr. Hardwick, the Committee is of the opinion that this is a suitable case to award costs to the College, in the amount of \$6000.00, for a half day hearing.

ORDER

The Committee stated its finding in paragraph 1 of its written order of March 27th, 2019. In that order, the Committee ordered and directed on the matter of penalty and costs that:

1. Dr. Hardwick attend before the panel to be reprimanded.
2. Dr. Hardwick pay costs to the College in the amount of \$6,000.00 within thirty (30) days from the date of this Order.

At the conclusion of the hearing, Dr. Hardwick 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 March 27th, 2019
in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
and
DR. JAMES MUNDY HARDWICK

Dr. Hardwick,

It is unfortunate that you are appearing before us today. As a physician of long standing, you should have known that making any comment regarding the physical appearance of a vulnerable young woman was not appropriate. During any professional encounter, a physician must maintain their professional obligations towards their patients as well as towards their governing body.

All patients have a right to be treated with respect and dignity by medical professionals. Failure to do so frequently results in patients being distraught and can cause them harm.

You have agreed that your behaviour breached boundaries and was inappropriate. And clearly you understood this was so, as you called the coordinator to apologize. Your behaviour reflects badly on the medical profession and also undermines the public confidence in the profession. Regrettably, all this has resulted in a blemish on your long career.

Thank you, you may be seated.