

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Galdino Pontarini, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity and any information that would disclose the identity of the patients whose names are disclosed 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 or 47... 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: Pontarini, G. (Re)

**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. GALDINO PONTARINI

PANEL MEMBERS:

DR. C. CLAPPERTON (Chair)
M. THOMPSON
DR. R. WAGMAN
DR. E. ATTIA (Ph.D.)
DR. S. BODLEY

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| Hearing Date: | June 26, 2012 |
| Decision Date: | June 26, 2012 |
| Release of Written Reason: | August 2, 2012 |

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 June 26, 2012. At the conclusion of the hearing, the Committee stated its finding that the member committed an act of professional misconduct and delivered its penalty and costs order with written reasons to follow.

THE ALLEGATIONS

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

1. under paragraph 1(1)2 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”), in that he has failed to maintain the standard of practice of the profession; and
2. under paragraph 1(1)33 of O. Reg. 856/93, in that he has engaged in an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

The Notice of Hearing also alleged that Dr. Pontarini is incompetent as defined by subsection 52(1) of the Code.

RESPONSE TO THE ALLEGATIONS

Dr. Pontarini pleaded no contest to the allegations of professional misconduct 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 the allegation of incompetence.

PLEA OF NO CONTEST

When a plea of no contest is entered, Rule 3.02 of the Rules of the Discipline Committee provides as follows:

- a) that the Discipline Committee can accept as correct the facts alleged against the member on that allegation for the purposes of that proceeding only
- b) that the Discipline Committee can accept that those facts constitute professional misconduct or incompetence 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.

FACTS AND EVIDENCE

The following facts were set out in a Statement of Uncontested Facts which was filed as an exhibit and presented to the Committee:

1. Dr. Galdino Pontarini (“Dr. Pontarini”) is a family physician practising in Mississauga, Ontario. He received his certificate of registration in 1978.

Patient Care

2. Dr. X was retained by the College as a Medical Inspector, and reviewed twenty-one (21) of Dr. Pontarini’s patient charts. In his review, Dr. X primarily focused on the manner in which Dr. Pontarini treated patients with stimulants such as methylphenidate (Ritalin, Adderall and Strattera) and amphetamine for attention deficit disorder (ADD).
3. Dr. X’s report to the College, dated May 18, 2011, is attached at Schedule 1 [to the Statement of Uncontested Facts], and forms part of this Statement of Uncontested Facts.
4. Dr. Pontarini persistently failed to meet the standard of practice in respect of record-keeping in the charts reviewed. Dr. Pontarini’s clinical notes were deficient in at

least 50% of the entries in all of the twenty-one (21) patient charts reviewed. Before 2010, none followed the “SOAP” format either formally or informally. Many were extremely brief to the point that it was not possible to determine whether the patient was adequately assessed.

5. Eight of the patient charts reviewed by Dr. X involved the prescribing of stimulants. Dr. Pontarini failed to maintain the standard of practice of the profession in regard to his prescribing of stimulants to all eight patients. In particular, the deficiencies included treating patients with stimulants without a supporting diagnosis and/or appropriate assessment, failing to appropriately monitor compliance or the effects of the stimulants prescribed, and failing to take appropriate precautions for the safe prescribing of stimulants.

Prescribing to a Dog

6. A veterinarian wrote to the College expressing concern that Dr. Pontarini had prescribed for a dog under the veterinarian’s care, though not a veterinarian. The veterinarian expressed concern that Dr. Pontarini had apparently not assessed the pet and had not done the requisite laboratory testing.

7. The dog belonged to a patient of Dr. Pontarini. Dr. Pontarini communicated to the College through counsel about the matter, referring to the particular prescription identified by the veterinarian, and stated that he had considered it to be an “act of compassion.”

8. The College obtained pharmacy records. The pharmacy records showed that between August 13, 2009 and September 16, 2010, Dr. Pontarini wrote ten prescriptions for the dog in question. The prescriptions were for phenobarbital and for potassium bromide.

9. Dr. Pontarini is not licensed to practice veterinary medicine.

Plea of No Contest

10. The facts as set out above are not contested for the purposes of this proceeding. It is not contested for the purpose of this proceeding that the facts as set out in paragraphs 2 through 5 constitute a failure to maintain the standard of practice of the profession. Nor is it contested for the purposes of this proceeding that the facts as set out in paragraphs 6 through 9 constitute disgraceful, dishonourable and unprofessional conduct. It is not contested for the purposes of this proceeding that the facts as set out above therefore constitute professional misconduct.

FINDINGS

The Committee accepted as true all of the facts set out in the Statement of Uncontested Facts. Having regard to these facts, the Committee found that Dr. Pontarini committed an act of professional misconduct, in that he has failed to maintain the standard of practice of the profession, and in that he has engaged in an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for the member made a joint submission as to an appropriate penalty and costs order. The following facts were set out in an Agreed Statement of Facts Regarding Penalty, which was filed as an exhibit and presented to the Committee:

1. Dr. Galdino Pontarini ("Dr. Pontarini") has been the subject of two prior decisions of the Discipline Committee of the College.
2. A Discipline Committee Decision and Reasons dated September 25, 2000 (the "2000 Decision") are attached to the Agreed Statement of Facts at Schedule 1. Dr. Pontarini was found to have committed professional misconduct in relation to having

failed to maintain the standard of record-keeping in his emergency practice and in his office practice, including charting of narcotic medications; having failed to maintain the standard of practice of the profession in respect of his care and treatment of several patients; and having been found guilty of an offence relevant to his suitability to practise and having prescribed, dispensed or sold drugs for an improper purposes, both in relation to a finding of criminal guilt for trafficking in a narcotic.

3. In its 2000 Decision, the Discipline Committee cited the Agreed Statement of Facts and Admission, which stated that Dr. Pontarini had voluntarily resigned his narcotics prescribing privileges and had no intention to seek reinstatement of those privileges. Dr. Pontarini resigned his narcotics prescribing privileges in May 1996 by way of a voluntary letter to Health Canada, attached to the Agreed Statement of Facts at Schedule 2. His resignation of prescribing privileges did not extend to controlled substances, and he did not execute an undertaking never to reapply for narcotics prescribing privileges, as had been anticipated in the 2000 Decision.

4. Dr. Pontarini was the subject of a Decision and Reasons of the Discipline Committee dated May 29, 2006, in which he was found to have been found guilty of an offence relevant to the practice of medicine and thereby to have committed an act of professional misconduct (the “2006 Decision”). The offence in question resulted from Dr. Pontarini having been found guilty of four counts of evading income taxes relating to his medical practice. The 2006 Decision is attached at Schedule 3 to the Agreed Statement of Facts.

5. On July 7, 2011, Dr. Pontarini executed an undertaking to the College voluntarily relinquishing his prescribing privileges for narcotic drugs, narcotic preparations, controlled drugs and benzodiazepines and other targeted substances. Dr. Pontarini has now executed an undertaking to the College that he will never reapply for such privileges, which is attached at Schedule 4 to the Agreed Statement and which incorporates his undertaking relinquishing the prescribing privileges in question.

Counsel for the College and counsel for Dr. Pontarini made a joint submission as to an appropriate penalty and costs order for this matter. The Committee appreciates that the

law requires the acceptance of a joint submission, unless its acceptance would be contrary to the public interest and bring the administration of justice into disrepute.

The statement of uncontested facts included an expert report from Dr. X, who was accepted by the College as a Medical Inspector. In that report, Dr. X documented a number of deficiencies in Dr. Pontarini's care, including inadequate record keeping. He also opined that Dr. Pontarini failed to meet the expected standard of care in managing a number of patients to whom he prescribed stimulants including methylphenidate. Not only were patients inadequately assessed and followed, but Dr. X also raised concerns that prescriptions for these controlled medications were so poorly monitored that they could have been abused or diverted to be sold on the street. This Committee accepts the independent assessor's opinions and agrees with his expressed concerns.

It was also before the Committee in this referral that although Dr. Pontarini is not licensed to practise veterinary medicine, he had nonetheless prescribed phenobarbital for a dog. The dog belonged to a patient of Dr. Pontarini's, and the veterinarian who brought this to the attention of the College expressed concern that Dr. Pontarini had apparently not assessed the animal and had not done the requisite laboratory testing. Dr. Pontarini exhibits a certain cavalier attitude in his willingness to prescribe to a dog. In fact, there is a cavalier attitude demonstrated by his inadequate management of patients who were prescribed stimulants.

An aggravating factor on the matter of penalty included the fact that Dr. Pontarini has been found to have committed acts of professional misconduct as reflected in prior decisions of the Discipline Committee. In 2000, he was found to have committed an act of professional misconduct in the prescribing of narcotic medications. Then, as now, record keeping was found to be inadequate and he was found to have failed to maintain the standard of practice in his care and treatment of several patients. Also, he has a prior finding of having been found guilty of an offence relevant to his suitability to practice and for having prescribed, dispensed or sold drugs for an improper purpose, both in relation to a finding of criminal guilt in trafficking in a narcotic. At that time, Dr.

Pontarini resigned his narcotics prescribing privileges but continued to have the ability to prescribe other controlled substances, including the stimulants which were the subject of this referral to discipline.

Mitigating factors were considered. These included the fact that Dr. Pontarini did not contest the allegations of professional misconduct or the underlying facts. He has also voluntarily relinquished his prescribing privileges for narcotic drugs, narcotic preparations, controlled drugs and benzodiazepines and other targeted substances and has signed an agreement never to reapply to have these privileges reinstated. As well, even before being served with the College's Notice of Hearing, Dr. Pontarini had engaged and begun working with a physician mentor to help him develop and maintain adequate record keeping skills.

In accepting the joint recommendations for penalty, the Committee reviewed a number of previous cases presented with similar issues and was satisfied that the proposed penalty was in keeping with penalties levied in similar circumstances. The Committee was also satisfied that the penalty proposed will serve the purpose of securing the protection of the public and maintaining confidence in the profession's ability to self-regulate. Dr. Pontarini will no longer prescribe controlled substances and this will be made clear to the public through a notice displayed in his waiting room. The standard of practice is maintained in that Dr. Pontarini will work with a College approved preceptor on his record keeping and this will be followed by a reassessment with a College appointed assessor, the results of which shall be reported to the College. These steps were considered necessary as previous participation in a record keeping course had failed to make a lasting change in his practice. Finally, the penalty of a reprimand and suspension of his certificate of registration will serve the purpose of general deterrence to the profession. Costs of the hearing and follow-up practice improvements and/or professional development are to be borne by Dr. Pontarini, rather than the profession at large.

Dr. Pontarini submitted as an exhibit a brief of letters from patients who portrayed him as a compassionate and dedicated physician. While the Committee accepted these views,

they did not serve to absolve Dr. Pontarini of his responsibility for his behavior, nor do they lessen the penalty that is warranted in this case. The Committee was particularly concerned with the fact Dr. Pontarini had appeared before the Discipline Committee for similar conduct previously and this fact was reinforced in the reprimand administered.

ORDER

Therefore, having stated the findings in paragraphs 1 and 2 of its written order of June 26, 2012, on the matter of penalty and costs, the Committee ordered and directed that:

3. The Registrar suspend Dr. Pontarini's certificate of registration for a period of one (1) month, to commence on June 30, 2012 at 11:59 p.m.;
4. Dr. Pontarini attend before the panel to be reprimanded;
5. The Registrar impose the following terms, conditions and limitations on Dr. Pontarini's certificate of registration until the reassessment referred to in paragraph 5(b) below has been completed, with the exception that paragraph 5(d) shall remain in effect:
 - a. Dr. Pontarini shall participate in and successfully complete an educational program in medical record-keeping with a preceptor who is to be approved by the College in its sole discretion and who has within forty-five (45) days of the date of this Order signed an undertaking to the College in the form attached hereto as "Schedule A." The preceptorship shall be terminated after twelve (12) months, with Dr. Pontarini meeting to review and discuss charts monthly with the preceptor, decreasing to bi-monthly meetings after three (3) months if approved by the preceptor and the College. Dr. Pontarini shall abide by all recommendations of his preceptor with respect to practice improvements and/or professional development;
 - b. Within twelve (12) months of completing the preceptorship required by paragraph 5(a) above, Dr. Pontarini shall undergo a reassessment with regard to medical record-keeping by a College-appointed assessor. Dr.

Pontarini shall abide by all recommendations with regard to medical record-keeping made by the assessor, and the results of the reassessment shall be reported to the College;

- c. Dr. Pontarini shall cooperate with unannounced inspections of his practice and patient charts by a College representative(s) for the purpose of monitoring and enforcing his compliance with the terms of this Order; and
 - d. Dr. Pontarini shall be responsible for any and all costs associated with implementing the terms of this Order.
6. Dr. Pontarini shall within thirty (30) days pay the College its costs of this proceeding in the amount of \$3,650.00.

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