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

IN THE MATTER OF a Hearing directed
by the Executive Committee of the
College of Physicians and Surgeons of Ontario,
pursuant to Section 36(1) of the
Health Professions Procedural Code, being Schedule 2
to the *Regulated Health Professions Act*, 1991,
S.O. 1991, c.18, as amended

BETWEEN:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. GALDINO PONTARINI

PANEL MEMBERS:

Dr. B. ADAMS (CHAIR)
Dr. R. MACKENZIE
R.J. SANDERS
J. FREDERICK

Hearing date: June 26, 2000

Decision/Released date: June 26, 2000

DECISION AND REASONS FOR DECISION

This matter was heard by the Discipline Committee of the College of Physicians and Surgeons of Ontario at Toronto on June 26, 2000.

Counsel for the College filed the Notice of Hearing with the Discipline Committee and indicated that the College was proceeding with paragraphs 1, 3 and 6 as follows:

Dr. Galdino Pontarini, a member of the College of Physicians and Surgeons of Ontario, has committed an act of professional misconduct:

1. Under subsection 51(1)(a) of the *Health Professions Procedural Code* (“the Code”), which is Schedule 2 to the *Regulated Health Professions Act*, 1991, in that he has been found guilty of an offence relevant to his suitability to practise;
3. under clause 1(1)27 of Ontario Regulation 856/93, paragraph 29.3 of O.Reg. 548 and paragraph 27.3 of O.Reg. 448, in that he failed to maintain the records that are required to be kept pursuant to paragraph 18 of Part V of O.Reg. 114/94 made under the *Medicine Act*, 1991;
6. under clause 1(1)6 of O. Reg. 856/93, in that he prescribed, dispensed or sold drugs for an improper purpose.

The balance of the allegations (paragraphs 2, 4, 5 and 7) were withdrawn. Dr. Pontarini entered a plea of guilty. Counsel for the College and Dr. Pontarini presented an Agreed Statement of Facts which read as follows:

AGREED STATEMENT OF FACTS

Background

1. Dr. Pontarini is 47 years of age. He is married and has two daughters.
2. Dr. Pontarini graduated from the University of Toronto Medical School in 1977 with honours.

3. Dr. Pontarini established his practice in Mississauga in 1978.
4. Dr. Pontarini had a busy obstetrical caseload in which he delivered 72-100 babies per year and took all of his own calls and his own rounds. Dr. Pontarini also assumed duties and responsibilities in the Emergency Room of the Mississauga General Hospital where he worked 40-60 hours per week. By the early 1990s, Dr. Pontarini was working upwards of 120 hours per week. He worked seven days a week, including Christmas and New Years, and never took vacations.

Conduct at the Mississauga General Hospital

5. In 1993, Dr. Pontarini encountered difficulties in his personal life. He had an extramarital affair. He began seeing a psychiatrist in December, 1994 for anxiety, stress and overwork.
6. At about that time, Dr. Pontarini came into conflict with professional staff at the Mississauga General Hospital. This conflict stemmed from Dr. Pontarini's extramarital affair which was conducted with a female physician also on staff at the hospital and which led to irritability and erratic behaviour.
7. The circumstances giving rise to Dr. Pontarini's conflicts are now behind him. His extra-marital affair is at an end. He has reconciled with his wife, and resumed living with her. Their relationship is again a happy one, and Dr. Pontarini has achieved a better balance of his work and personal life.

Failure to Maintain the Standard of Record-keeping in his Emergency Practice

8. Dr. Pontarini acknowledges that his Emergency charting fell below the standard of practice of the profession. Dr. Pontarini's inadequate charting included:
 - (a) illegible chart entries;
 - (b) failure to record some important information about the care and management of particular patients, including
 - (i) incomplete patient histories;
 - (ii) incomplete or inappropriate findings on examination; and
 - (iii) missing information concerning treatments administered;
 - (c) lack of clear indication of the patient's discharge therapy or follow-up plan;
 - (d) failure to record all medications or dosages administered; and
 - (e) some indications of inappropriate patterning of particular charts.

9. Dr. Pontarini acknowledges that his Emergency charting in the period 1993 - 1994 fell below the standard of care, and that in some cases it included a failure to maintain the records that are required to be kept pursuant to paragraph 18 of Part V of O.Reg 114/94 made under the *Medicine Act, 1991*.

Failure to Maintain the Standards of Record-keeping in his Office Practice

10. Dr. Pontarini acknowledges that his standards of charting in his office practice, including charting of narcotic medications prescribed, were also inadequate and below the standard during the period 1995 - 1996.
11. The inadequacies respecting charting of narcotic medications include:
 - (a) failure to record complete or sufficient history, examination or diagnosis to support the medications prescribed or the amount prescribed;
 - (b) failure to record the amounts, and in some cases the nature, of the medications prescribed;
 - (c) failure to record the dosing instructions;
 - (d) authorizing renewals of medications over the telephone, without recording the nature of the symptoms report or dosing instructions;
 - (e) failure to record renewals of prescriptions;
 - (f) illegible records;
 - (g) disorganization of notes within charts, and poor identification of notes.
12. The inadequacies respecting Dr. Pontarini's office charting include:
 - (a) failure to maintain a Cumulative Patient Profile or similar summary sheet for each patient;
 - (b) misfiling of patient notes;
 - (c) failure to obtain or retain office copies of material hospital visits, HIV test reports and other relevant records;
 - (d) failure to record 'walk-in' patient visits in some cases;

- (e) failure to record complete or sufficient history, examination or diagnosis to support the medications prescribed or the amount prescribed;
 - (f) failure to record the amounts, and in some cases the nature, of the medications prescribed;
 - (g) failure to record the dosing instructions;
 - (h) authorizing renewals of medications over the telephone, without recording the nature of the symptoms report or dosing instructions; and
 - (i) failure to record renewals of prescriptions.
13. Dr. Pontarini acknowledges that his office charting, including his charting of narcotic medications, in the period 1995-1996 fell below the standard of care, and that in some cases, it included a failure to maintain the records that are required to be kept pursuant to paragraph 18 of Part V of O.Reg.114/94 made under the *Medications Act, 1991*.

Failing to Maintain the Standard of Practice of the Profession

14. The College had three experts review Dr. Pontarini's standard of practice in respect of several cases both in the Hospital and at his private practice. The three experts concluded that Dr. Pontarini failed to maintain the standard of practice of the profession in respect of his care and treatment of several patients. Dr. Pontarini contests the conclusions of the College experts.
15. A defence expert, Dr. Hopkins, has reviewed Dr. Pontarini's present practice and has concluded that he generally maintains the standard of practice of the profession. Dr. Hopkins did not review or provide an opinion on all of the files reviewed by the College experts.
16. Dr. Feferman reviewed the Hospital charts at issue in this hearing and concluded that although Dr. Pontarini's charting is substandard, the care provided to his patient's was adequate.
17. In order to address the concerns raised in the investigation and to satisfy the College that Dr. Pontarini is presently maintaining the standard of practice of the profession, he has agreed to undertake to undergo the Physician Review Program (PREP) at his own expense and abide by any recommendations. He further has agreed that if he fails to obtain a result of better than Category 4 in PREP, he will immediately cease the practice of medicine until he achieves a result of Category 3 or better.

The Criminal Proceedings Against Dr. Pontarini

18. On March 25, 1996, Dr. Pontarini was arrested and charged with trafficking in a narcotic. Following his arrest, Dr. Pontarini voluntarily resigned his narcotic prescribing privileges, again to remove this source of conflict in his practice. Dr. Pontarini assisted the police during the execution of search warrants and was cooperative with the investigation.
19. On February 24, 1999, Dr. Pontarini pleaded guilty to, and was convicted of the criminal charge of trafficking in a narcotic, namely oxycodone, contrary to s. 4(3) of the *Narcotic Control Act*. Dr. Pontarini received a sentence of 18 months in the community, subject to certain terms and conditions as set out in the Reasons on Sentence of the Honourable Madam Justice Caswell. A copy of those Reasons is attached hereto as **Schedule A**. The facts giving rise to the conviction are contained in the Agreed Statement of Facts at **Schedule B**.
20. Justice Caswell also made the following statutory conditions during the course of her sentence:
 - (a) that he not prescribe narcotics;
 - (b) that he continue his medical treatment under the care of his treating psychiatrist, Dr. Pohlman;
 - (c) that he donate \$20,000 to Caritas, a registered charitable foundation;
 - (d) that he perform 180 hours of voluntary community service at the Mississauga Italian Canadian Benevolent Association; and
 - (e) that he forfeit all items received as gifts from N, F, and CS.
21. Dr. Pontarini has complied with all of the conditions of his sentence. Dr. Pontarini is still serving the sentence of 18 months, which he is serving in the community under the conditional sentence provisions of the Criminal Code. He now has a criminal record and the associated stigma.
22. On the basis of these facts and proceedings, Dr. Pontarini admits the allegations in paragraph 1 the Notice of Hearing.
23. Dr. Pontarini also admits, on the basis of these facts and proceedings, that he continued to acquiesce to the threats and demands by these patients for prescriptions of oxycodone, even after he had become aware that they were not necessary for proper therapeutic purposes. Accordingly, Dr. Pontarini admits the allegation in paragraph 6 of the Notice of Hearing.

24. Dr. Pontarini also became aware that one or more of these patients were forging his signature on additional prescription forms. However, as a result of the threats and intimidation to which he was subjected, Dr. Pontarini did not report these activities to the authorities.

Dr. Pontarini's Conduct Since His Arrest

25. Dr. Pontarini has scaled back his practice and has made a number of other changes in his life since 1995. He works fewer hours and spends considerably more time with his family.
26. Today, Dr. Pontarini works full-time (9:00 a.m. to 5:30 p.m.) only Monday to Wednesday. He works 9 a.m. to 1 p.m. on Thursday. His office is closed Friday, Saturday and Sunday.
27. Shortly before his arrest, Dr. Pontarini voluntarily resigned his narcotics prescribing practices. A copy of Dr. Pontarini's voluntary withdrawal of his privileges is attached hereto as **Schedule C**. Dr. Pontarini has no intention to seek reinstatement of those privileges.

Counsel for the College submitted that the finding of guilt against Dr. Pontarini in the criminal proceedings in relation to that charge of trafficking in a narcotic established an act of professional misconduct, in that he has been found guilty of an offence relevant to his suitability to practice as alleged in paragraph 1 of the Notice of Hearing.

It was also submitted that Dr. Pontarini's guilty plea on this proceeding before the Committee and the facts as set out in the Agreed Statement of Facts under Failure to Maintain the Standard of Record Keeping in his Emergency Practice and Failure to Maintain the Standards of Record Keeping in his Office Practice establish the allegations in paragraph 3 of the Notice of Hearing. Further, the admission by Dr. Pontarini of his acquiescence in prescribing oxycodone, even after he became aware that such prescriptions were not necessary for proper therapeutic purposes, as set out in the Agreed Statement of Facts substantiates the allegation in paragraph 6 of the Notice of Hearing.

Counsel for Dr. Pontarini called no evidence in relation to the allegations and relied on the facts

outlined in the Agreed Statement of Facts, counsel did indicate that mitigating circumstances, character reference letters and testimonials would be dealt with in the context of addressing the penalty submissions.

The Committee, after deliberation, was satisfied that the allegations in paragraphs 1, 3 and 6 of the Notice of Hearing had been established based on the Agreed Statement of Facts. The Committee accepted Dr. Pontarini's plea of guilty, and found him guilty of professional misconduct.

The Committee then heard submissions as to the penalty. Counsel for the College and Dr. Pontarini presented a joint submission as to penalty. The Committee was advised that the suggested penalty, with a significant suspension of Dr. Pontarini's certificate of registration, would address the serious nature of his wrongdoing. Dr. Pontarini knew that what he was doing was wrong even though he was threatened or intimidated at the time.

This suspension should deter Dr. Pontarini from considering any further activity such as this and will also serve as a warning to the profession to not let themselves fall into a similar situation, even if threatened or intimidated.

The fact that Dr. Pontarini has voluntarily given up his privilege to prescribe all narcotics and agreed not to reapply for that privilege will protect the public from potential abuse of his prescribing privileges. Also, outside pressures will be unable to influence his controlled drug prescribing.

Although the allegation of falling below the standard of care was withdrawn, Dr. Pontarini's agreement to undergo a PREP evaluation and to an assessment of his practice will allow for a proper evaluation of his clinical care and will provide that his patients are being well cared for by a competent physician if the assessment is favourable. If the assessment by PREP is unfavourable, we have Dr. Pontarini's agreement not to close his medical practice until he achieves an appropriate evaluation. Dr. Pontarini has also agreed to a restriction on his practise of Emergency medicine until he has been properly retrained in Emergency medicine to the satisfaction of the Registrar. Both of the requirements will serve to protect the public interest.

By pleading guilty, Dr. Pontarini has saved the College the expense of a lengthy hearing. As indicated, the recommended penalty will serve to protect the public based on the provisions, assessment and remediation, if required, and for retraining if Dr. Pontarini wishes to resume emergency room practices.

Several additional factors were taken into account by the Committee in considering the joint submission as to penalty:

1. Dr. Pontarini has done substantially more community service than that ordered by his sentence in the criminal action.
2. Dr. Pontarini has reduced his hours of work.
3. Dr. Pontarini continues in therapy with his psychiatrist.
4. Dr. Pontarini is actively pursuing a 'locum' to provide orderly transfer of care for his patients during the period of his certificate of registration being suspended.
5. On his own initiative, Dr. Pontarini has taken a course in medical record keeping.
6. Dr. Pontarini has enrolled in the CFPC Self-Learning Review program and plans on sitting the CFPC exam in September, 2000.

Also considered was an evaluation by the Medical Review Committee of Dr. Pontarini's records between 1992-1996. His records were, for the most part, found to be satisfactory. A large number of character references and testimonials were also reviewed. It was noted, however, that many of these were written in 1994, at the time Dr. Pontarini was having personal difficulties at his hospital, and many of the writers were not aware of the allegations in the Notice of Hearing.

Given the joint submission as to penalty and the arrangements made for the continuing care of Dr. Pontarini's patients, and taking all the information presented into consideration, the Committee determined that specific and general deterrence, as well as safety of the public will be achieved by the following Order which the Committee has made:

ORDER

The Discipline Committee, having found Dr. Galdino Pontarini guilty of professional misconduct, orders and directs that:

1. Dr. Pontarini be reprimanded and the fact of the reprimand be recorded on the register;
2. The Registrar suspend Dr. Pontarini's certificate of registration for a period of nine months, three months of which will be suspended on the following conditions (the "suspension"):
 - (a) Dr. Pontarini undertakes to the College of Physicians and Surgeons of Ontario (the "College") never to re-apply for narcotics prescribing privileges;
 - (b) Dr. Pontarini undertakes to the College to undergo Physician Review Program ("PREP") and a practice assessment at his own expense and abide by any recommendations and file proof to the satisfaction of the Registrar of having taken PREP and having implemented any recommendations made; and
 - (c) Dr. Pontarini undertakes that if he fails to obtain a result of higher than Category 4 in PREP, he will immediately cease the practice of medicine until such time as he achieves a result of Category 3 or lower.
3. The suspension may be served in two three-month intervals to commence on dates to be fixed by the Registrar as follows:
 - (a) the first three-month suspension period shall commence on or before December 1, 2000; and
 - (b) the second three-month suspension period shall commence within six months of the termination of the first suspension period.
4. The Registrar to impose the following term, condition and limitation on Dr. Pontarini's certificate of registration:

- (a) Dr. Pontarini be prohibited from practicing emergency medicine until such time as he satisfies the Registrar, at his sole discretion, that he is fit to return to the practice of emergency medicine, and until he has been properly retrained in the practice of emergency medicine.
- 5. Any breach of the undertakings will be cause for the immediate institution of the remaining three-month suspension period and could be cause for further disciplinary proceedings.
- 6. Dr. Pontarini to pay the costs of these proceedings fixed in the sum of \$15,000.00, said costs to be paid within five months of the date of this Order.

Dr. Pontarini waived his right of appeal and the reprimand was administered on the Committee.