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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 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. GALDINO PONTARINI

PANEL MEMBERS:

DR. J. WATTS (Chair)
E. COLLINS
DR. L. THURLING
DR. B. TAA (PHD)
DR. P. ZITER

Hearing Date: April 24, 2006
Decision Date: April 24, 2006
Release of Written Reasons Date: May 29, 2006

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on April 24, 2006. At the conclusion of the hearing, the Committee stated its finding that Dr. Galdino Pontarini committed professional misconduct and delivered its penalty order with written reasons to follow.

ALLEGATION

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

1. under clause 51(1)(a) of the *Health Professions Procedural Code*, which is Schedule 2 to the *Regulated Health Professions Act, 1991*, (“the Code”) in that he has been found guilty of an offence that is relevant to his suitability to practise.

RESPONSE TO THE ALLEGATION

Dr. Pontarini was alleged to have committed an act of professional misconduct in that he was found guilty of an offence relevant to his suitability to practise. Under the *Income Tax Act*, he had been found guilty by a Judge of the Ontario Court of Justice of four counts of evading income taxes related to income and expenses from his medical practice for the taxation years 1997 to 2000. He had been sentenced to pay a total of \$200,000 in fines. Dr. Pontarini responded to the allegation of professional misconduct in the Notice of Hearing with a plea of no contest to the allegation.

THE FACTS

Counsel for the College presented a Statement of Facts to the Committee. The Committee was advised that they were agreed facts for the purpose of the discipline proceeding. This Statement of Facts provided as follows:

PART 1 – FACTS

1. Dr. Galdino E. Pontarini is a family physician who has been practising medicine since 1977. He practises at the Medical Place Primary Care Centre, located at 170 Queensway West, Suite 202, Mississauga, Ontario.
2. In or around March, 2002, Dr. Pontarini's personal income tax returns for the taxation years 1997 to 2000 were audited by Canada Revenue Agency ("CRA"). Following the auditing, CRA alleged under-reporting of professional income, inflated personal expenses, and that a home office for which expenses were claimed, did not exist. On June 4, 2004, Dr. Pontarini was charged with ten counts of unlawfully evading tax.
3. On January 7, 2005, Dr. Pontarini entered a plea of guilty in the Ontario Court of Justice to four counts of tax evasion pursuant to section 239(1)(d) of the *Income Tax Act*. The total amount of federal tax evaded was \$221,342.00. Fines, totalling \$200,000.00, were imposed as a penalty following Dr. Pontarini's plea of guilty. The remaining counts were then withdrawn by the Crown. Dr. Pontarini paid the fine imposed in January, 2005.
4. Dr. Pontarini's counsel in the civil re-assessment of his taxes has challenged the factual assertions made by the CRA which also formed the basis of the criminal prosecution of Dr. Pontarini.
5. In the College of Physicians and Surgeons of Ontario ("CPSO") proceeding, Dr. Galdino Pontarini is alleged to have committed acts of professional misconduct in that he has been found guilty of offences that are relevant to his suitability to practise medicine. Those allegations are based on the fact that Dr. Pontarini pled guilty to four counts of evading tax on January 7, 2005.
6. Dr. Pontarini has a previous conviction for trafficking in a narcotic, namely, Oxycodone, and was convicted of that charge on February 24, 1999 in the Ontario Superior Court.

7. At the CPSO, Dr. Pontarini pled guilty to professional misconduct on June 26, 2000 based on the fact that he had been found guilty of an offence relevant to his suitability to practise medicine, namely the trafficking offence of which he was convicted on February 24, 1999.
8. Consequently, pursuant to the Discipline Committee's order dated June 27, 2000, Dr. Pontarini was reprimanded. His Certificate of Registration was suspended for nine months, three months of which was suspended following Dr. Pontarini undertaking never to reapply for narcotics prescribing privileges, agreeing to undergo the PREP program at his own expense, and agreeing that if he failed to receive a result better than 4 at PREP, he would immediately cease the practise of medicine until he achieved a result of Category 3 or better. Dr. Pontarini was also prohibited from practising emergency medicine until he satisfied the Registrar that he was fit to do so.
9. Dr. Pontarini diligently complied with all directives and cooperated with the CPSO throughout, and the CPSO's file in the prior discipline matter was closed on December 17, 2001. Dr. Pontarini took the PREP program in January, 2001, and received a Category 1, with a special commendation.

FINDING

The Committee accepted as true all of the facts set out in the Statement of Facts. Having regard to these facts and Dr. Pontarini's plea, the Committee found that Dr. Pontarini committed professional misconduct under clause 51(1)(a) of the Code, in that he has been found guilty of an offence that is relevant to his suitability to practice.

JOINT SUBMISSION ON PENALTY AND COSTS

The Committee heard a joint submission of counsel for the College and counsel for Dr. Pontarini as to penalty and costs.

The Joint Submission filed with the Committee proposed an order under which Dr. Pontarini's certificate of registration would be suspended for two months, his income tax returns would be verified by an accountant approved by the College for a period of two years at his expense and the accountant would report back to the College, and that he would receive a reprimand and would pay costs to the College of \$2,500.00 by May 24, 2006. It also provided that results of the discipline proceeding would be recorded on the register.

Counsel for the College submitted that the proposed penalty was necessary to express the abhorrence of the profession of Dr. Pontarini's behaviour and to protect the public. She submitted that Dr. Pontarini had displayed "dishonesty and a lack of integrity". She further submitted as aggravating factors that a significant amount of money was at issue and the duration of the aberrant conduct was four consecutive years. An additional aggravating factor was a previous criminal narcotics conviction resulting in a finding of professional misconduct by the Discipline Committee and a permanent loss of narcotics prescribing privileges.

Counsel for the College submitted as mitigating factors that: 1) the judge had imposed only a fine on Dr. Pontarini, he was not sentenced to incarceration; 2) Dr. Pontarini had paid the fine imposed; and, 3) Dr. Pontarini had cooperated fully with the College process.

There were other factors presented by counsel for the College as mitigating factors. A diagnosis of Bipolar Disorder had been made in the relevant time period. An undertaking had been executed and a two-year contract negotiated with the Physician Health Program ("PHP").

Counsel for Dr. Pontarini supported the joint submission on penalty in her oral submissions. She further reviewed Dr. Pontarini's professional record. He is age 53, graduated in 1977 and has been a family doctor doing primary care since 1978 in Mississauga. She submitted that he has a busy Italian practice and is a dedicated physician. Seventy-five percent of his patients are Italian and he does much community work in charitable matters. For example, he has served on the Board of Directors of the

Canadian-Italian Benevolent Association which has built nursing homes and subsidized housing in Mississauga to support the elderly. He has been medical director for ten years doing fundraising, planning and making donations. He has also been involved in the Caritas organization, a charitable drug rehabilitation centre. Dr. Pontarini was medical advisor of this centre from 1999 to 2005.

Counsel for Dr. Pontarini presented as a mitigating factor that, although it is not his first criminal conviction or Discipline Committee finding, the diagnosis of Bipolar Disorder is recent. Dr. X made this diagnosis in 2001 and Dr. Y again diagnosed this condition in 2002. Dr. Pontarini has had bouts of depression since age 18. He has always sought psychiatric help. Counsel submitted that Bipolar Disorder is a difficult disorder to diagnose and that Dr. Pontarini had been on no medications until Dr. X's diagnosis in 2001. He has been on a mood stabilizer since that time.

At the time of his prior conviction of trafficking (1999), Dr. Pontarini was working long hours, sometimes five emergency shifts a week, as well as regular office hours. He worked one hundred hours a week for fifteen years. His personal and professional life had both deteriorated. In 1994, he cut back and quit the emergency room work.

Counsel submitted that, working fifty hours in the office, Dr. Pontarini had difficulties in the period 1997 to 2000 and his judgment was impaired with regard to financial matters.

Counsel submitted that, in 2001, Dr. Pontarini saw Dr. X and has been on Lithium and Seroquel for four years. He is assessed monthly. In November 2005, he signed up with the PHP who are "happy with his progress" and he has signed an undertaking with the College. Although he is "profoundly affected by this disorder", he did well at PREP. Now he is not overworking and is committed to his patients.

ORDER AND REASONS FOR ORDER

The Committee deliberated on the jointly proposed penalty with care. Counsel presented no similar findings against other physicians, and hence there were no like cases for the panel to weigh and consider. The Committee did consider that the present conviction and finding and the prior conviction and finding took place in the same time period.

The Committee took this contemporaneity of the aberrant behaviours to be a mitigating factor. If this had been a subsequent event, the Committee considered that the jointly proposed penalty would not have been sufficient. Dr. Pontarini had received a reprimand for his prior misconduct in 2000. The current misconduct took place in the same overlapping time period, a troubled time of his life.

The Committee unanimously agreed that the behaviour of Dr. Pontarini was disgraceful and unacceptable. It did not accept that his illness was an acceptable excuse for this criminal and unprofessional behaviour. Dr. Pontarini was apparently able to exercise adequate judgment in other areas of his life, including in his medical treatment of patients. The Committee noted the confirmation of his excellent skills by his high achievement on the PREP assessment in January 2001, which occurred during the time in question.

The public need to feel confident that their physicians will act honourably and with integrity in all their dealings with society relevant to their suitability to practise medicine. The profession is held to high standards of conduct and all physicians should take heed that such misconduct will not be tolerated. The fact that there were no prior cases of this nature demonstrates amply that this is recognized by the majority of honest physicians who practise in Ontario.

The proposed monitoring by a College-approved accountant of Dr. Pontarini's tax returns for two years was thought to be an adequate safeguard against filing dishonest returns. Such scrutiny will serve to remind Dr. Pontarini that any future misconduct of this sort will be quickly discovered and disclosed.

The proposed two-month suspension was specifically a matter of concern for panel members. It was not unanimously agreed that the time period was adequate. One member dissented in favour of a lengthier suspension in order to reinforce the gravity with which the panel looked on Dr. Pontarini's transgressions. The majority accepted the agreed upon penalty including a two-month suspension. The majority was mindful of the fact that the adversaries in this matter had agreed upon the penalty in its entirety and the applicable legal principle that we must follow in considering a joint submission is that we

should accept it unless it would bring the administration of justice into disrepute and fail to protect the public interest.

The Committee, by majority decision, accepted the proposed penalty as appropriate and properly protective of the public.

ORDER

By order in writing delivered at the conclusion of the hearing, the Discipline Committee ordered and directed that:

1. The Registrar suspend Dr. Pontarini's certificate of registration for a period of two (2) months effective May 1, 2006.
2. The Registrar impose the following term, condition and limitation on Dr. Pontarini's certificate of registration:
 - (a) Dr. Pontarini shall ensure that the completeness and accuracy of his income tax returns be verified by an accountant annually for a period of two years (at Dr. Pontarini's expense) and that the accountant should be identified in advance and pre-approved by the CPSO and that the accountant report back to the CPSO with his/her findings after each review.
3. Dr. Pontarini appear before the panel to be reprimanded.
4. Dr. Pontarini pay to the College costs in the amount of \$2,500.00 by May 24, 2006.

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 a public reprimand.