

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Paul Michael Porter, 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: Porter, P.M. (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. PAUL MICHAEL PORTER

PANEL MEMBERS:

**S. DAVIS (CHAIR)
DR. C. CLAPPERTON
DR. P. TADROS
DR. E. ATTIA (Ph.D.)
DR. S.-M. YOUNG**

Hearing Date: April 16, 2012
Decision Date: April 16, 2012
Release of Written Reasons: May 9, 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 April 16, 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. Paul Michael Porter 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.

RESPONSE TO THE ALLEGATIONS

Dr. Porter admitted the second allegation in the Notice of Hearing, 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 College withdrew the first allegation in the Notice of Hearing.

FACTS AND EVIDENCE

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

FACTS

1. Dr. Paul Michael Porter (“Dr. Porter”) is a psychiatrist practising in Hamilton, Ontario.

Dr. Porter’s Previous Discipline Hearing and Previous Suspension of His Certificate of Registration

2. Dr. Porter has previously been the subject of a proceeding before the Discipline Committee of the College, in which he was alleged, among other things, to have sexually abused a patient and to have failed to meet the standard of practice. In connection with the proceeding, for some time his Certificate of Registration was suspended. Dr. Porter’s Certificate of Registration was subject to an interim suspension pursuant to section 37 of the Health Professions Procedural Code between December 13, 2000 and November 29, 2002. Thereafter, he continued to be subject to a suspension until it was set aside on an interim basis by the Divisional Court on February 13, 2003. The suspension was ultimately set aside by the Divisional Court. Dr. Porter returned to work in September 2003, when he had retained a practice monitor and clinical supervisor as required by terms, conditions and limitations on his Certificate of Registration.

3. In the discipline proceeding, Dr. Porter’s care between 1992 and 1998 of two patients with complex psychiatric issues, including dissociative identity disorder (DID) was in issue. Dr. Porter was not found to have sexually abused patients. However, it was found that he was incompetent and had committed professional misconduct in respect of the patients in issue. Dr. Porter’s practice was made subject to conditions, including retaining a practice monitor and clinical supervisor, and discontinuing treating dissociative identity disorder or borderline personality disorder patients for at least five years. Dr. Porter’s Certificate of Registration continues to be subject to these conditions, and Dr. Porter continues at this time to be supervised by Dr. X, who has provided reports to the College. Dr. Porter has not been the subject of any other findings of the Discipline Committee, nor of any action by the Inquiries, Complaints and Reports Committee. The terms, conditions and limitations on Dr. Porter’s Certificate of Registration are attached at Tab 1 [to the Statement of Agreed Facts and Admission].

Dr. Porter's Failure to Maintain Boundaries with Patients A and B

4. Dr. Porter began treating Patient A during his residency at McMaster University in 1989, initially in conjunction with a more senior psychiatrist and then on his own from in or around 1998 onwards. Dr. Porter diagnosed Patient A with dissociative identity disorder. Dr. Porter continued to treat Patient A until his Certificate of Registration was suspended as described above.

5. While treating Patient A, Dr. Porter developed a close personal relationship with her, and failed to maintain therapeutic boundaries. Dr. Porter was regarded by Patient A as being akin to a member of her family, and he and Patient A spent time at each other's homes and with each other's families. [Dr. Porter also commenced treating Patient A's husband, Patient B, after they were married]. Patient A and B and their family socialized at holidays with Dr. Porter and his wife, and dined at their home. Both Patient A and Patient B felt highly dependent on Dr. Porter.

6. The close personal relationship between Dr. Porter and Patients A and B continued during the time when Dr. Porter's Certificate of Registration was suspended, and Patient A also received counselling from Dr. Porter during that period.

7. While Dr. Porter's Certificate of Registration was suspended, Patients A and B began to provide significant sums of money to Dr. Porter. Patients A and B maintain that the sums were loans, asked for by Dr. Porter because he said he required financial assistance in view of the suspension of his Certificate of Registration. Dr. Porter maintains that the sums were gifts, offered by Patients A and B. The following sums have been documented as flowing from Patients A and B to Dr. Porter and his family during and following the period of his suspension:

- (a) A draft dated April 19, 2001 in the amount of \$4,900, made out to Ms Z, Dr. Porter's wife;
- (b) A draft dated April 24, 2001 in the amount of \$8,000, made out to Ms Z;
and

- (c) A cheque payable to Mike Porter (i.e. Dr. Porter) and Ms Z, dated April 2, 2004, in the amount of \$12,000.

Copies of the drafts dated April 19, 2001 and April 24, 2001, and the cheque dated April 2, 2004 are attached at Tab 2 [to the Statement of Agreed Facts and Admission].

8. Patients A and B maintain that the amount was much more than the sums documented above, and that some amounts were provided in cash in envelopes. Dr. Porter states that he does not recall the total amount.

9. Patients A and B asked Dr. Porter for a number of years to return the money in question. Dr. Porter has returned a portion of the money, between approximately \$5000 and \$7000.

10. Dr. Porter has undertaken to the College to pay a total of \$17,400 to Patient A in instalments of not less than \$1,500, made not less than monthly, such payments to commence no later than October 16, 2012. The undertaking executed by Dr. Porter is in the form attached at Tab 3 [to the Statement of Agreed Facts and Admission].

ADMISSION

11. Dr. Porter admits the facts set out above, and admits that the conduct described was disgraceful, dishonourable or unprofessional, thereby constituting professional misconduct.

FINDING

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

Counsel for the College withdrew the allegation of professional misconduct relating to failure to maintain the standard of practice of the profession.

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, which proposed that:

- 1) Dr. Porter appear before the Committee to be reprimanded.
- 2) the Registrar suspend Dr. Porter's certificate of registration for a one month period, to commence at 11:59 pm on July 16, 2012.
- 3) Dr. Porter pay costs to the College in the amount of \$3,650.00 within 180 days (180) from the date of the order.

In determining an appropriate penalty order, the Committee considered the circumstances of the misconduct, the aggravating and mitigating factors, the relevant penalty principles and the case law submitted by the parties. The Committee also recognized the legal requirement that a joint submission on penalty must be accepted unless to do so would be contrary to the public interest and bring the administration of justice into disrepute. The Committee accepted that the penalty as jointly proposed is appropriate for the reasons which follow.

Dr. Porter had a significant psychiatric therapeutic relationship with Patient A from 1989 to 2000, until the time of Dr. Porter's suspension in 2000. During the extensive therapeutic relationship period, Dr. Porter developed a close personal relationship with Patient A, and he and Patient A and their families spent time socializing at each other's homes and at holidays. When Patient A married Patient B, Dr. Porter commenced to treat Patient B and extended the socialization of Dr. Porter's family to Patient A and B's family. Both Patient A and Patient B felt highly dependent on Dr. Porter in this period. The potentially harmful consequences of these boundary crossings in such a context should have been clear to Dr. Porter.

The dimension of monetary gain was added during the time of Dr. Porter's suspension from 2000 to 2003. Patients A and B provided a significant amount of money, on multiple occasions and over a lengthy period of time, as a loan to Dr. Porter and his family. Although the patients requested repayment of the loaned funds over several years

they did not receive repayment, as Dr. Porter maintained that the funds were gifts. The actions of Dr. Porter in taking funds from his patients constitute serious boundary violations. Because of the nature of the professional relationship he had with Patient A and Patient B as emotionally vulnerable patients, such conduct disrupts the professional relationship and has the potential to significantly harm patients.

Dr. Porter had been previously subject to an interim s.37 order suspending his practice. During the time of Dr. Porter's interim suspension, he continued to provide counselling to Patient A. It is expected that a physician will uphold professional standards, including during a period of suspension, and Dr. Porter did not by reasons of these continuing boundary violations.

The Committee took into account a number of mitigating factors:

- a) Dr. Porter has recognized his boundary violations, cooperated with the College and thus saved the patients the emotional stress of a hearing.
- b) Dr. Porter has recognized his inappropriate behaviour and poor judgement and has signed an undertaking to repay the patients' loans.
- c) Dr. Porter continues to be subject to the terms, conditions and limitations which were imposed on his certificate of registration following his previous discipline proceeding.
- d) Since recommencing practice in September 2003, Dr. Porter has retained a practice monitor and clinical supervisor as required by the terms, conditions and limitations on his certificate of registration. Dr. Porter continues to comply with these conditions.

The penalty principles of importance in this matter include protection of the public, specific and general deterrence, maintaining public confidence in the College's ability to self-govern in the public interest, and rehabilitation. The Committee believes the previous and ongoing terms, conditions and limitations on Dr. Porter's certificate of registration continue to provide public protection. The current undertaking which provides for

repayment of money owed to his patients will ensure a fair and just result and will allow Dr. Porter to demonstrate his rehabilitation. The reprimand and suspension will serve as a specific deterrent to Dr. Porter and will emphasise for the profession its obligations regarding boundaries with patients. The maintenance of the profession's integrity and public trust will be served by the penalty ordered.

The Committee reviewed three submitted case decisions filed in order to assess the appropriateness of the proposed penalty in relation to other penalties ordered in similar cases. The Committee viewed the length of the suspension and the reprimand as commensurate with the seriousness of the boundary violations in comparison with these cases.

The Committee considered that this was an appropriate case for costs to be awarded. Given the need for expeditious repayment of money owed to the patients, Dr. Porter was given 180 days to pay costs to the College.

ORDER

Therefore, the Committee ordered and directed that:

1. the Registrar suspend Dr. Porter's certificate of registration for a one month period, to commence at 11:59 p.m. on July 16, 2012.
2. Dr. Porter appear before the panel to be reprimanded.
3. Dr. Porter shall within 180 days pay the College its costs of this proceeding in the amount of \$3,650.00.

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