

**SUMMARY of the Decision of the Inquiries, Complaints and Reports Committee
(the Committee)**
(Information is available about the complaints process [here](#) and about the Committee [here](#))

Dr. David George Henry (CPSO# 22752)
Family Medicine
(the Respondent)

INTRODUCTION

The College received information raising concerns about the Respondent's compliance with an undertaking he signed with the College in January 2017, in which, among other things, the Respondent agreed to:

- maintain a log of all prescriptions for narcotic drugs, narcotic preparations, controlled drugs, benzodiazepines and other targeted substances and all other monitored drugs and keep a copy of these prescriptions in the patient chart; and
- limit his prescribing of narcotic drugs and narcotic preparations to patients already receiving narcotic drugs or narcotic preparations for the treatment of non-malignant pain from him (this restriction does not apply to patients the Respondent treats in a nursing home setting.)

Subsequently, the Committee approved the Registrar's appointment of investigators to conduct a broad review of the Respondent's practice.

COMMITTEE'S DECISION

A General Panel of the Committee considered this matter at its meeting of March 9, 2022. The Committee required the Respondent to attend at the College to be cautioned in person with respect to ignoring the College's position about the interpretation of the January 2017 Undertaking and acting unilaterally in the face of the College's position regarding its interpretation.

The Committee also decided that it is appropriate to release the Respondent from the January 2017 Undertaking.

COMMITTEE'S ANALYSIS

As part of the January 2017 Undertaking, the Respondent completed clinical supervision and underwent a practice reassessment.

In March 2019, College Compliance Monitoring and Supervision (CMS) staff notified the Respondent that he had completed his reassessment and that the restrictions on his prescribing as set out in the January 2017 Undertaking remained in effect.

In March 2019, the Respondent's lawyer submitted that he understood the practice restrictions to be temporary and that they would end when the Respondent had successfully completed his remediation. College staff advised in letters dated March 25 and on April 10, 2019 that they disagreed with this position and interpretation of the undertaking, which they noted did not state what the Respondent's lawyer suggested. In addition, College staff further advised that the Respondent could request a variance of the terms of the January 2017 Undertaking or to be released from it. The Respondent and/or his lawyer did not reply to this letter or submit a request for a variance of the undertaking to the College.

In November 2019, CMS staff conducted a compliance visit. At the visit the Respondent expressed concerns about his practice restriction. Staff advised him that he should contact his lawyer to discuss his options.

In April 2020, the Respondent's lawyer advised the College that the Respondent would proceed with an application to the Committee to vary the terms of his undertaking, without prejudice to his position on any subsequent judicial review. However, again neither the Respondent nor his lawyer contacted the College to seek a variance of the undertaking nor was an application for judicial review submitted.

In approximately June 2020, the Respondent started to prescribe narcotics to new patients who were not in a nursing home, contrary to the terms of his January 2017 Undertaking and in spite of College staff advising him multiple times that the practice restrictions were still in place, and thus the Respondent was fully aware that he would be breaching his undertaking by prescribing in this manner.

The Committee is troubled that the Respondent unilaterally stopped following the clear terms of his January 2017 Undertaking and began prescribing narcotics to new patients without first seeking a variance from the College or applying for judicial review.

The College's role is to regulate its members, and it is not open for a member to ignore the regulator's position and act unilaterally. The Respondent should have contacted the College to request a variance of the undertaking or to be released from its terms entirely before prescribing narcotics to new patients not in a nursing home. The breach of his January 2017 Undertaking raises concerns about the Respondent's governability. The Committee further noted the Respondent's prior College history and that in February 2017, the Committee required the Respondent to attend at the College to be cautioned in person for breaching a previous undertaking, from July 2016.

Given these concerns, the Committee requires the Respondent to appear before the Committee to be cautioned with respect to ignoring the College's position about the interpretation of the January 2017 Undertaking and acting unilaterally in the face of the College's position regarding its interpretation.

The Committee notes that separate and apart from its concerns regarding the Respondent's breach of the January 2017 Undertaking, it determined it was appropriate to release the Respondent from the terms of that undertaking as it was satisfied that the Respondent is now prescribing narcotics to patients in a safe and appropriate manner.