

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. John Douglas Strang, this is notice that the Discipline Committee ordered that there shall be a ban on publication of the names and any information that could disclose the identity of patients referred to orally or in the exhibits filed 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... 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: Ontario (College of Physicians and Surgeons of Ontario) v. Strang,
2018 ONCPSD 52**

**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. JOHN DOUGLAS STRANG

PANEL MEMBERS: **MR. P. GIROUX (CHAIR)**
 DR. M. GABEL
 DR. W. KING
 MR. M. KANJI
 DR. S. WOODER

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS A. CRANKER

COUNSEL FOR DR. STRANG:

MS C. KUEHL
MR. J. KWON

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MS J. McALEER

Hearing Date: September 10, 2018
Decision Date: September 10, 2018
Release of Written Reasons: October 4, 2018

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 September 10, 2018. At the conclusion of the hearing, the Committee released a written order stating its finding that the member committed an act of professional misconduct. The Order set out the Committee’s penalty and costs order with written reasons to follow.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. John Douglas Strang committed an act of professional misconduct:

1. under paragraph 1(1)33 of Ontario Regulation 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. Strang admitted the allegation in the Notice of Hearing.

THE FACTS

The following facts were set out in the Agreed Statement of Facts and Admissions, which was filed as an exhibit at the hearing and presented to the Committee:

FACTS

1. Dr. John Douglas Strang is a 54 year-old family physician practising in Burlington at the Halton Family Health Centre. Dr. Strang received his Independent Practice Certificate in 1991.

Background: The 2013 SCERP

2. In August of 2013, the Inquiries, Complaints and Reports Committee (the "ICRC") considered two public complaints against Dr. Strang and directed in each case that Dr. Strang complete a specified continuing education or remediation program (SCERP) including:

- attending and successfully completing a Medical Record-Keeping Course; and
- undergoing a reassessment, approximately 6 months following completion of the course, consisting of a chart review of 15 - 20 charts

(A copy of the August 21, 2013 decisions of the ICRC is attached at Tab 1 [to the Agreed Statement of Facts and Admissions]).

3. On March 4, 2015, Dr. Strang provided the College with the certificate of completion of the April 28, 2014 Medical Record-Keeping Course.
4. A Reassessment of Dr. Strang's practice was completed in November 2015. The assessor concluded that Dr. Strang did not meet the standard of practice for medical record-keeping in 15 of the 16 charts reviewed.

The 2016 SCERP

5. In August of 2016, the ICRC considered the results of the reassessment. The ICRC ordered a verbal caution with respect to medical record-keeping, clinical care regarding test results and professionalism in failing repeatedly to respond to the College. The ICRC also issued a SCERP consisting of clinical supervision for a period of 6 months followed by a reassessment. (A copy of the August 17, 2016 decision of the ICRC is attached at Tab 2[to the Agreed Statement of Facts and Admissions]).
6. On October 6, 2016, Dr. Strang was informed of the ICRC's disposition. The decision sets out the requirements that Dr. Strang recruit a Clinical Supervisor acceptable to the College and that the Clinical Supervisor sign an undertaking with the College within 30 days of Dr. Strang's receipt of the decision.
7. On October 13, 2016, Alexander Szabo, Compliance Case Manager, wrote to Dr. Strang setting out Dr. Strang's obligations flowing from the ICRC's decision and requesting that a Clinical Supervisor be proposed immediately.
8. On December 6, 2016, Dr. Strang proposed Dr. Timothy Salter to be his Clinical Supervisor. Dr. Strang was advised by Mr. Szabo that Dr. Salter would need to be approved by the College and to provide Dr. Salter with the SCERP document for his review. Mr. Szabo advised Dr. Strang to ensure that Dr. Salter contact him to discuss the SCERP.
9. On January 6, 2017, Mr. Szabo advised Dr. Strang that Dr. Salter had not contacted the College. Dr. Strang responded the same day indicating that Dr. Salter was away over the holidays and that he would be contacting him.
10. On February 15, 2017, Dr. Salter contacted Mr. Szabo inquiring as to what the clinical supervision would entail.

11. On February 22, 2017, Mr. Szabo responded to Dr. Salter, providing him with the relevant details of the clinical supervision including the SCERP and Individual Education Plan documents for his review. Dr. Salter then declined to be the Clinical Supervisor.
12. On March 15, 2017, Mr. Szabo informed Dr. Strang that Dr. Salter declined to be his Clinical Supervisor. Mr. Szabo advised Dr. Strang that a new supervisor was required for approval by March 31, 2017, or the matter would be returned to ICRC.
13. On March 24, 2017, Mr. Szabo sent a reminder email to Dr. Strang about obtaining a Clinical Supervisor. Dr. Strang responded to the email inquiring as to whether the College has any suggestions for supervisors. Mr. Szabo responded that the College did not maintain a list of clinical supervisors and offered that Dr. Strang speak with one of the College's medical advisors.
14. On April 25, 2017, Mr. Szabo informed Dr. Strang that the ICRC would consider the matter on May 16, 2017.
15. On May 16, 2017 the ICRC met to consider Dr. Strang's non-compliance with the SCERP. The ICRC directed an undertaking be signed in lieu of completion of the SCERP. On May 23, 2017, a registered letter was sent to Dr. Strang containing the draft undertaking for his review. The letter states that the College would return the matter to the ICRC if Dr. Strang was unwilling to sign the undertaking. The letter also specified that the ICRC might refer allegations of professional misconduct to the Discipline Committee with respect to non-compliance with the SCERP.
16. No response to proposed undertaking was received from Dr. Strang.
17. On June 13, 2017, allegations of professional misconduct were referred to the Discipline Committee.
18. Dr. Strang retained counsel in March of 2018.

19. On June 22, 2018, an undertaking executed by Dr. Strang reflective of the terms of the SCERP, together with the Clinical Supervisor's undertaking, was received by the College. (A copy of the undertaking is attached at Tab 3[to the Agreed Statement of Facts and Admissions]).

ADMISSION

20. Dr. Strang admits the facts above and admits that the above conduct described in paragraphs 6-19 constitutes professional misconduct, in that he engaged in act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonorable, or unprofessional, contrary to paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*.

FINDING

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts and Admissions. Having regard to these facts, the Committee accepted Dr. Strang'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.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for Dr. Strang made a joint submission as to an appropriate penalty and costs order, the provisions of which included a reprimand, a one-month suspension of Dr. Strang's certificate of registration, and costs payable to the College, in the amount of \$6,000.00.

The Committee heard from counsel for the parties and independent legal counsel that the Supreme Court of Canada has set a high bar for rejecting a jointly submitted penalty. A joint

submission on penalty must be accepted by the Committee, unless to do so would bring the administration of justice into disrepute, or is otherwise contrary to the public interest (*R v. Anthony-Cook*, 2016 SCC 43).

The Committee also had regard to well-accepted penalty principles. Those principles include protection of the public, specific deterrence of the member, general deterrence of the profession, maintaining the integrity of the profession and public confidence in the College's ability to regulate the profession in the public interest and, where appropriate, the rehabilitation of the physician. Both counsel made submissions with respect to aggravating and mitigating factors in this matter.

Nature of the Misconduct

College counsel emphasized the nature of Dr. Strang's misconduct, in failing to comply with the 2016 SCERP ordered by the ICRC. College counsel submitted that on August 17, 2016, the ICRC ordered a SCERP requiring that Dr. Strang undergo a six-month period of clinical supervision, after a College assessor found on a reassessment of Dr. Strang's practice that he had failed to meet the standard of practice of the profession in medical record-keeping, despite Dr. Strang having taken the medical-record keeping course in 2014 pursuant to a 2013 SCERP. For a variety of reasons, Dr. Strang failed to comply with the 2016 SCERP until he executed an undertaking on June 22, 2018 reflective of the terms of the SCERP ordered by the ICRC nearly two years earlier. Counsel for the College submitted that, while not truly an aggravating factor, this timeline served to underline the extent of the delay.

Aggravating Factors

While this is Dr. Strang's first time before the Discipline Committee, Dr. Strang had been cautioned previously by the ICRC in 2016 with respect to medical record-keeping, clinical care regarding test results and professionalism in failing repeatedly to respond to the College.

Mitigating Factors

Dr. Strang has no previous history before the Discipline Committee.

By admitting to the allegation and coming to an agreement on penalty, Dr. Strang made it unnecessary for the College to call witnesses to testify at the hearing, thereby saving hearing time and costs.

The Committee was satisfied that Dr. Strang's undertaking exceeded the scope of the original SCERP ordered by the ICRC. By entering into an undertaking with the College prior to the hearing, which encompassed and surpassed the terms of the SCERP ordered by the ICRC, Dr. Strang demonstrated his willingness to rectify the failing which led him to appear before the Discipline Committee.

Case Law

Both counsel brought to the attention of the Committee previous decisions of the Discipline Committee on findings of a similar nature demonstrating the range of suspensions ordered to other physicians in similar circumstances.

The Committee is not bound by previous decisions of the Discipline Committee. However, it acknowledges the principle that like matters should be treated in a like fashion.

In *CPSO v. Dr. Achiume*, 2015 ONCPSD 4 (CanLII), Dr. Achiume admitted to engaging in professional misconduct, which involved failing to comply with a SCERP by having significantly delayed completing a medical record-keeping course. The matter proceeded by way of an Agreed Statement of Facts and Admission, an Agreed Statement of Facts on Penalty and a joint proposal on penalty. With respect to aggravating factors, College counsel asked the Committee to consider in its deliberations that this was not Dr. Achiume's first appearance before the Discipline Committee. Dr. Achiume has been disciplined on three previous occasions, all in the 1990s, albeit for serious though unrelated misconduct. With respect to mitigating

factors, College counsel submitted that Dr. Achiume's admission to the allegations obviated the need for a contested hearing with its incumbent time and resources. The Committee accepted the joint proposal on penalty and ordered a reprimand and a period of suspension of the later of one month, or until Dr. Achiume provided to the College proof of his compliance with the SCERP in medical record-keeping previously directed by the ICRC. In addition, Dr. Achiume had agreed to pay costs in the amount of \$4,460.00.

In *CPSO v. Dr. Pinto*, 2017 ONCPSD 5 (CanLII) the parties proceeded by an Agreed Statement of Facts and a joint submission on penalty. Dr. Pinto admitted to having committed professional misconduct by failing to obtain a preceptor in a timely fashion as ordered by the ICRC. The Committee recognized that Dr. Pinto's actions in admitting his misconduct should be considered a mitigating factor. This saved the need for witnesses to testify and saved the College the expense of a fully-contested hearing. In addition, the Committee noted that this was the first time that Dr. Pinto had come before the Discipline Committee. The Committee accepted the joint submission on penalty and ordered a reprimand and that Dr. Pinto pay costs in the amount of \$5,000.00. No suspension of the physician's certificate of registration was ordered in that case.

In *CPSO v. Dr. Botros*, 2015 ONCPSD 16, Dr. Botros contested the allegations of professional misconduct arising from a failure to attend a communications course ordered by the ICRC. There was a complete lack of cooperation with College processes to the extent that the Committee concluded that Dr. Botros had demonstrated contempt for his governing body. Following the contested penalty hearing, during which the Committee found no mitigating factors, the Committee ordered that Dr. Botros' certificate of registration should be suspended for the later of six months or until Dr. Botros confirmed completion of the SCERP ordered by the ICRC. The Committee also ordered a reprimand and that Dr. Botros pay costs in the amount of \$24,656.10. The facts of Dr. Botros's case were more egregious than Dr. Strang's case, and the Committee notes that there were no mitigating factors in the Dr. Botros case.

Conclusion

On the facts of Dr. Strang's case, the Committee concluded that the proposed one-month suspension of Dr. Strang's certificate of registration fell well within the range of outcomes in previous similar cases and, combined with the reprimand, would serve to provide specific deterrence to Dr. Strang and general deterrence to the profession, as well as express the disapproval of the profession for this unacceptable behaviour.

In light of Dr. Strang's undertaking, the Committee was satisfied with and accepted the proposed penalty. The Committee noted that the public is protected by Dr. Strang's undertaking not to practise without a supervisor and to immediately cease practising if the supervisor is unable to continue with the supervision.

Costs

Last, the Committee considered the question of a cost award and determined that it was appropriate for the College to recover a portion of the costs incurred as a result of the hearing. Dr. Strang's admission to the allegation of professional misconduct and agreement to the penalty allowed the hearing to be conducted in half a day. Accordingly, the Committee ordered that Dr. Strang pay costs to the College, in the amount of \$6,000.00, as jointly submitted.

ORDER

The Committee stated its finding of professional misconduct in paragraph 1 of its written order of September 10, 2018. In that order, the Committee ordered and directed on the matter of penalty and costs that:

2. the Registrar suspend Dr. Strang's certificate of registration for a period of one (1) month, commencing immediately.

3. Dr. Strang appear before the panel to be reprimanded.
4. Dr. Strang pay to the College its costs of this proceeding in the amount of \$6,000 within thirty (30) days from the date of this Order.

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

TEXT of PUBLIC REPRIMAND
Delivered September 10, 2018
in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
and
DR. JOHN DOUGLAS STRANG

Dr. Strang,

One of the key underlying principles that is agreed to by any individual who voluntarily registers to practice medicine in the province of Ontario, is that the individual agrees to adhere to the bylaws, rules, regulations and orders of the College.

It is clear that you had chosen to blatantly disregard the College's processes thereby showing contempt for your governing body. This is a very serious matter since you did not provide any credible reason for non-compliance. If the College is continue on its role as the professional self-regulating entity that acts in the public interest, it must have the compliance of members in these matters. You did have a choice to comply in a timely manner, thus preventing the College from spending time and resources to now arrive at this decision.

While you had not been before the College in a prior discipline matter, you nevertheless have been the subject of a prior College caution and orders. We trust that you are now more self-aware and that we will not have you before us in the future.

This is not an official transcript