

Indexed as: Buckley, J. (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. JOYCE BERYL REJEANNE WONG BUCKLEY

PANEL MEMBERS:

DR. M. GABEL (Chair)
S. BERI
DR. S. KAPOOR
DR. E. ATTIA (Ph.D.)
DR. F. SLIWIN

Hearing Date: August 30, 2012
Decision Date: August 30, 2012
Release of Written Reasons: October 1, 2012

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 August 30, 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. Joyce B.R.W. Buckley committed an act of professional misconduct:

1. under paragraph 1(1)33 of O. Reg. 856/93, in that she has engaged in conduct or 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;
2. under paragraph 1(1)2 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, in that she has failed to maintain the standard of practice of the profession; and
3. under clause 51(1)(b) of the Health Professions Procedural Code (the “Code”) which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18 in that the governing body of a health profession in a jurisdiction other than Ontario has found that the member committed an act of professional misconduct that would, in the opinion of the panel, be an act of misconduct as defined in the regulations.

RESPONSE TO THE ALLEGATIONS

Dr. Buckley admitted allegation 3 in the Notice of Hearing that the governing body of a health profession in a jurisdiction other than Ontario has found that the member committed an act of professional misconduct that would, in the opinion of the Committee,

be an act of misconduct as defined in the regulations. Counsel for the College withdrew allegations 1 and 2.

THE FACTS

The following Statement of Agreed Facts and Admission was filed as an exhibit and presented to the Committee:

PART I - FACTS

1. Dr. Buckley is a 62 year old obstetrician/gynaecologist who practises in Ottawa.
2. Dr. Buckley's CPSO Independent Practice Certificate was issued in 1978.
3. Dr. Buckley was licensed to practice medicine in the State of New York pursuant to the issuance of a 3 year limited license issued on April 28, 2004. A new 6-year limited license was issued on April 19, 2007.
4. The limitation imposed was that she was authorized to practice obstetrics and gynaecology only in the medically under-serviced area of Watertown, New York.

2008 Hearing

5. On January 14, 2008 the State of New York, Department of Health, State Board for Professional Medical Conduct ("the New York State Board") issued a statement of charges against Dr. Buckley. Nineteen patients were referenced in this statement.
6. A Hearing was held in 2008 pertaining to allegations of misconduct against Dr. Buckley. On September 12, 2008, a decision was released.

Findings of the New York State Board

7. Between approximately 2005 through 2007, Dr. Buckley reviewed information submitted online and authorized the dispensing of prescriptions for non-controlled

prescription drugs to persons located throughout the United States. Dr. Buckley did not retain copies of the patient surveys.

8. Dr. Buckley's prescribing decisions were based solely on the information contained in the on-line survey. She was compensated \$2.00 per determination about whether a drug should be dispensed. Approximately 75,000 prescribing determinations were made in Dr. Buckley's name.
9. The Hearing Committee found that Dr. Buckley's conduct was well below acceptable standards of care and constituted negligence on more than one occasion, gross negligence, practising the profession beyond its authorized scope, failure to maintain patient records and failure to make requested records available to the Department.
10. The Hearing Committee noted that the patient information provided in the online surveys was grossly insufficient to make an informed decision about whether the drug should ultimately be dispensed.

Order and Penalty

11. Based on its findings, the New York State Board revoked Dr. Buckley's medical license and ordered her to pay a fine of \$40,000. Attached at Schedule A [to the Statement of Agreed Facts and Admission] is a copy of the determination and order of the New York State Board.

PART II- ADMISSION

12. Dr. Buckley admits the facts as set out in paragraphs one through six above and agrees that the findings, order and penalty of the New York State Board are accurately set out in paragraphs seven through eleven above. Dr. Buckley admits that as a result of these findings, the governing body of a health profession in a jurisdiction other than Ontario found that she committed an act of professional misconduct that would be an act of professional misconduct as defined in the

regulations, and as such, admits that the New York State Board findings against her amount to professional misconduct as set out in s.51(1)(b) of the Health Professions Procedural Code.

FINDING

The Committee accepted as true all of the facts set out in the Statement of Agreed Facts and Admission. The New York State Board found that Dr. Buckley committed acts of misconduct that would, in the opinion of the Committee, be an act of professional misconduct as defined in the regulations. Having regard to this, the Committee accepted Dr. Buckley's admission and found that she has committed an act of professional misconduct under clause 51(1)(b) of the Code.

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. The Committee was mindful of the legal standard that a joint submission on penalty should not be interfered with unless it would be contrary to the public interest and would bring the administration of justice into disrepute.

The Committee carefully considered the submissions in support of the joint penalty, as well as the aggravating and mitigating factors referred to by counsel for both parties.

Aggravating factors included the fact that the misconduct for which Dr. Buckley was convicted in New York was serious. The New York State Board sustained 59 specifications of misconduct against Dr. Buckley. It found that Dr. Buckley's conduct constituted negligence on more than one occasion, gross negligence, practising medicine beyond the scope of her license, as well as failure to maintain patient records and to make requested records available to the regulator. It concluded that Dr. Buckley made prescribing decisions about whether a medication should be dispensed based only on reviews of information submitted online. It found that the information on which Dr. Buckley relied to have been "grossly insufficient" for her to have made an informed

decision about whether or not the medication should be dispensed. It concluded, among other things, that she “displayed utter disregard for the potential and unknown consequences of her online prescribing practices.”

A mitigating factor is that Dr. Buckley admitted to professional misconduct in this proceeding, thereby negating the need for a full hearing. As well, Dr. Buckley has had no prior disciplinary findings against her with this College.

The Committee agrees that the principles that should govern a penalty order will be upheld by the penalty order that is proposed in the joint submission. The reprimand will serve to express the profession’s disapproval of Dr. Buckley’s conduct. This will help to maintain public confidence in the profession and in its ability to regulate itself. The reprimand will also act as a general deterrent to the profession and a specific deterrent to Dr. Buckley. The ethics course is a one-to-one course that will be tailored specifically to Dr. Buckley’s misconduct and, therefore, will have a remedial function. Last, it is appropriate to order that Dr. Buckley pay part of the College’s costs of conducting the hearing; the sum of \$3,650.00 is appropriate as the tariff amount for a single day hearing.

The Committee reviewed the cases provided by both parties and agreed that the proposed penalty is in line with that imposed in previous cases involving similar misconduct. The Committee had particular regard to the decision in the Dr. Cohen case, [2012] O.C.P.S.D. No. 21. The Committee was advised that Dr. Cohen practised with Dr. Buckley in New York. The New York State Board also made findings against Dr. Cohen that related to his prescribing of drugs to online patients, including that he acted with negligence on more than one occasion and had inadequate records. Based on those findings, Dr. Cohen admitted to professional misconduct under clause 51(1)(b) of the Code. The joint submission in Dr. Cohen’s case, which was accepted by another panel of this Committee, proposed the same penalty as was proposed in this case.

The Committee therefore concluded that the proposed penalty set out in the joint submission was appropriate.

ORDER

Therefore, having stated the finding in paragraph 1 of its written order of August 30, 2012, on the matter of penalty and costs, the Committee ordered and directed that:

2. Dr. Buckley attend before this panel to be reprimanded.
3. The Registrar impose the following term, condition and limitation on the certificate of registration of Dr. Buckley:
 - (i) Dr. Buckley must successfully complete, at her own expense, College-facilitated instruction in Ethics.
4. Dr. Buckley pay costs to the College in the amount of \$3,650.00 within 60 days of the date of this order.

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