

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Bryan William Carroll, this is notice that the Discipline Committee ordered that there shall be a ban on the publication of the identity and any information that would disclose the identity of patients, 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, in relevant part:

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: Carroll (Re)

**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 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. BRYAN WILLIAM CARROLL

PANEL MEMBERS:

**DR. P. CHART
DR. E. ATTIA (Ph.D.)
DR. M. GABEL
S. BERI
DR. P. HORSHAM**

**Hearing Date: December 12, 2008
Decision Release Date: December 12, 2008
Release of Written Reasons: February 12, 2009**

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario (the “Committee”) heard this matter at Toronto on December 12, 2008. At the conclusion of the hearing, the Committee stated its finding that the member committed acts of professional misconduct and delivered its penalty order with written reasons to follow.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Carroll committed acts 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 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.

The Notice of Hearing also alleged that Dr. Carroll is incompetent as defined by subsection 52(1) of the Health Professions Procedural Code, which is Schedule 2 to the *Regulated Health Professions Act, 1991* (“the Code”), in that his care of patients displayed a lack of knowledge, skill or judgment or disregard for the welfare of his patients of a nature or to an extent that demonstrates that he is unfit to continue to practise or that his practice should be restricted.

RESPONSE TO THE ALLEGATIONS

Dr. Carroll admitted the first and second allegations in the Notice of Hearing, that he has failed to maintain the standard of practice of the profession, and that he 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. Counsel for the College withdrew the allegation of incompetence.

FACTS AND EVIDENCE

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

PART I – FACTS

Background

1. Dr. Bryan William Carroll (“Dr. Carroll”) is a 66-year-old member of the College of Physicians and Surgeons of Ontario (the “College”) who has been practicing since 1974 in Leamington. He has a specialty in obstetrics and gynecology.

History with the College

2. In July of 1980, Dr. Carroll admitted that he had been prescribing medications purportedly for the office that he intended to use (and did use) for himself to relieve his tension and migraine headaches. He admitted that he had become concerned about the frequency of his use of Fiorinal, the drug he had been prescribing.

3. The College wrote to Dr. Carroll after learning of this problem and reinforced for him that he should have a physician prescribe any necessary medications for him, and to prescribe narcotics for himself was a breach of the *Narcotic Control Act*. A copy of the October 30, 1980 letter from the College to Dr. Carroll is attached at Tab 1 [to the Agreed Statement of Facts and Admission].

4. Additional concerns regarding a possible substance abuse problem for Dr. Carroll arose in the late 1980s and early 1990s. In an interview with a College investigator in 1990, he openly and candidly admitted that he had developed a substance abuse problem with benzodiazepines in 1986. During the course of his interview with the College investigator, Dr. Carroll quickly asked that terms and conditions be placed on his

certificate of registration to prohibit him from being in possession of any benzodiazepines or their congeners. He did not seek or obtain legal advice prior to making this request. Nor did he discuss the request or restrictions with counsel thereafter. A copy of the request from Dr. Carroll dated March 24, 1990 is attached at Tab 2 [to the Agreed Statement of Facts and Admission]. Dr. Carroll states that he has abstained from using Fiorinal since that time and no longer abuses substances of any kind.

5. On May 2, 1990, the Registration Committee imposed the following restrictions on Dr. Carroll's certificate of registration, which remain in effect:

- i) Dr. Carroll may not prescribe nor possess any Benzodiazepines, or their congeners, as contained in Schedule "F" of the *Food and Drug Act (Canada)* for the purpose of his medical practice;
- ii) Dr. Carroll may possess for his own use, or that of members of his immediate family, Benzodiazepines as may be prescribed by a fully licensed colleague.

A copy of the restrictions is attached at Tab 3 [to the Agreed Statement of Facts and Admission]. A letter sent to Dr. Carroll confirming these restrictions dated May 16, 1990 is attached at Tab 4 [to the Agreed Statement of Facts and Admission].

Current Allegations

1. Disgraceful, Dishonourable or Unprofessional Conduct

6. On December 1, 2006, the College received a call from a pharmacist inquiring about the restrictions on Dr. Carroll's certificate of registration. The pharmacist had received a prescription for a benzodiazepine issued by Dr. Carroll.

7. The College pulled a sample of Dr. Carroll's charts and found that he had regularly and repeatedly been prescribing benzodiazepines since as early as 1994. A copy of a memorandum from a College investigator summarizing Dr. Carroll's benzodiazepine prescriptions on a sample of 11 charts is attached at Tab 5 [to the Agreed Statement of Facts and Admission].

2. Failure to Meet the Standard of the Profession

8. The College retained an expert to review the care and treatment of patients provided by Dr. Carroll. The expert, a community based obstetrician and gynecologist, reviewed 11 charts of Dr. Carroll's and concluded that he failed to meet the standard in all cases and demonstrated a lack of judgment and knowledge in prescribing benzodiazepines. He also expressed concern regarding Dr. Carroll's prescribing of narcotic analgesics for patients with chronic pain. A copy of the expert's report dated September 18, 2007 is attached at Tab 6 [to the Agreed Statement of Facts and Admission].

9. It is agreed that Dr. Carroll:

- (1) overprescribed and inappropriately prescribed benzodiazepines and narcotic analgesics for chronic pain;
- (2) inadequately recorded the benzodiazepines and narcotic analgesics he prescribed;
- (3) did not sufficiently monitor the amounts of benzodiazepines and narcotic analgesics he prescribed;
- (4) did not make efforts to withdraw medications and reduce dependency; and
- (5) demonstrated a lack of judgment and knowledge about the potentially harmful effects of benzodiazepines and narcotic analgesics and their tendency to produce dependency.

10. Dr. Carroll acknowledges that:

- (1) his charting lacked sufficient detail to inform a reader of his patient management;
- (2) there were alternative options to using benzodiazepines for treatment of anxiety and depression that he ought to have considered;
- (3) a reasonable remediation program is indicated, and
- (4) his use of colposcopies and uroflow studies should be reduced.

PART II – ADMISSION

11. Dr. Carroll admits the facts in paragraphs 1 to 10 above and admits that:
- i) by prescribing benzodiazepines in breach of the restriction on his certificate of registration he engaged in conduct that constituted professional misconduct under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, in that he 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; and
 - ii) by failing to maintain the standard of practice of the profession in his care and treatment of 11 patients between 1994 and 2007, he engaged in professional misconduct under paragraph 1(1)2 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*.

FINDINGS

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts and Admission. Having regard to these facts, the Committee accepted Dr. Carroll's admission and found that he committed acts of professional misconduct under paragraph 1(1)2 of O. Reg. 856/93, in that he failed to maintain the standard of practice of the profession and under paragraph 1(1)33 of O. Reg. 856/93, in that he 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.

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.

The Committee recognizes that a joint submission should be accepted unless it is patently unreasonable or would bring the administration of justice into disrepute.

In evaluating the proposed penalty, the Committee reviewed the admitted facts and the documents submitted as part of Exhibit 2, in support of the agreed facts. These included documents relating to Dr. Carroll's agreement to voluntarily surrender his prescribing privileges to benzodiazepam medications, summaries of clinical records that indicated the prescribing of these types medication to eleven patients, and a report from Dr. A reviewing these eleven charts and suggesting that the care provided to Dr. Carroll's patients did not meet the standard of the profession, as reflected in paragraphs 8, 9 and 10 above. We reviewed the details of this inquiry into the care of each of the eleven patients.

With regard to the finding of disgraceful, dishonourable or unprofessional conduct, we must note the seriousness of a physician breaching an agreement with the regulatory body. Members must comply with the terms of any agreement or order to which they are subject. The public expects and must be able to proceed on the expectation that members will comply with the terms of any agreement or order to which they are subject. The important principles of self-governance of the profession also require that members abide by agreements entered into with the governing body. In considering these factors, the Committee is concerned to ensure that the proposed penalty addresses both specific deterrence (to prevent Dr. Carroll from repeating this offence) and general deterrence (to remind the profession of its obligations in matters of this kind). We are satisfied that the proposed penalty meets these objectives.

In the matter of the proposed penalty as it relates to the finding of failure to meet the standards of the profession, the paramount issue is protection of the public. An integral aspect of this duty, where possible, is the remediation and rehabilitation of the physician,

so that service to the public can be restored at a level that meets all the relevant standards of the profession.

Counsel did not provide any precedents for guidance on determining an appropriate penalty, citing the unique nature of the present allegations. Penalty orders for each type of finding made in the present case are known to the Committee, but the current penalty proposed by counsel was unique in appropriately balancing deterrence and rehabilitation under the circumstances of this case.

In sum, the proposed penalty must denounce the conduct in question, achieve specific deterrence, and send a message to the profession concerning the seriousness of Dr. Carroll's conduct. The Committee believes that the imposition of a two-month suspension addresses these areas. As well, the proposed penalty addresses the principles of public protection and the remediation of deficiencies in Dr. Carroll's clinical knowledge and practice, through a combination of supervision, monitoring, education, reassessment, and continued oversight by the College.

The Committee has concluded that, in total, the proposed penalty meets the needs enunciated above in a complete and meaningful manner, and should be accepted by it.

ORDER

Therefore, the Committee ordered and directed that:

1. The Registrar suspend Dr. Carroll's certificate of registration for a period of two months, to commence on January 1, 2009.
2. The Registrar impose immediately the following terms, conditions and limitations on Dr. Carroll's Certificate of Registration:
 - (a) Dr. Carroll shall not prescribe narcotics or controlled drugs and substances as defined in Schedules I to IV of the Controlled Drugs and Substances Act, including but not limited to all narcotic drugs,

narcotic preparations, controlled drugs, benzodiazepines and other targeted substances;

- (b) At his own expense, Dr. Carroll shall undergo a comprehensive practice assessment, to be completed no later than within four months of his return to practice on March 1, 2009, by an assessor approved by the College (the "CPA") and shall abide by any and all recommendations made as result of the CPA;
- (c) Dr. Carroll shall practice only under the supervision of a practice monitor approved by the College who has signed an undertaking in the form attached as Appendix A to this order and who has reviewed the College's expert report dated September 18, 2007 and who will be provided with a copy of the CPA report. This practice monitor will be at Dr. Carroll's expense and will report regularly to the College or immediately if the practice monitor has concerns regarding patient safety or regarding Dr. Carroll's compliance with the terms of this order;
- (d) If there are no recommendations for remediation arising from the CPA, Dr. Carroll's supervision as referred to in subparagraph 3(c) above will terminate following his completion of the CPA. If there are any recommendations for remediation arising from the CPA, Dr. Carroll's supervision shall remain in place until the assessor confirms to the College that the remediation has been successfully completed;
- (e) At his own expense, Dr. Carroll shall undergo a re-assessment of his practice, the results of which are to be provided to the College, to be conducted approximately nine months after his completion of the CPA, if no remediation is required as a result of the CPA, or nine months after the assessor confirms to the College that the

remediation has been successfully completed, if there is a recommendation for remediation following the CPA; and

- (f) Dr. Carroll shall submit to, and not interfere with, unannounced inspections of his practice(s) and patient charts by College representatives for the purposes of assessing his compliance with these terms, conditions and limitations on his certificate of registration.
3. Dr. Carroll pay to the College costs in the amount of \$3,650.00, within 30 days of the date of this Order.
 4. The results of this proceeding be included in the register.