

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Mayer Hoffer, this is notice that the Discipline Committee ordered a ban on publication or disclosure of the identity of the complainants and of those individuals, and the personal medical information of those individuals, who provided letters of support on behalf of the doctor to the hearing and that no person shall publish or broadcast the identity of the complainants or any information that could disclose the identity of the complainants and those individuals who provided letters of support on behalf of the doctor 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 to a fine of not more than \$10,000 for a first offence and not more than \$20,000 for a subsequent offence.

Indexed as: Hoffer (Re)

**THE DISCIPLINE COMMITTEE OF THE COLLEGE
OF PHYSICIANS AND SURGEONS OF ONTARIO**

IN THE MATTER OF a Hearing directed
by the Complaints Committee of
the College of Physicians and Surgeons of Ontario
pursuant to Section 26(2) 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. MAYER HOFFER

PANEL MEMBERS:

**DR. M. GABEL (CHAIR)
S. BERI
DR. P. CHART
S. DAVIS
DR. P. HORSHAM**

Hearing Date: May 26, 2008
Decision/Release Date: May 26, 2008
Release of Written Reasons Date: June 30, 2008

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 May 26, 2008. At the conclusion of the hearing, the Committee stated its finding that the member committed an act of professional misconduct and delivered its penalty order with written reasons to follow.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Hoffer 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.

The Notice of Hearing also alleged that Dr. Hoffer is incompetent as defined by subsection 52(1) of the Health Professions Procedural Code (the “Code”), which is schedule 2 to the *Regulated Health Professions Act, 1991*, 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 practise or that his practice should be restricted.

RESPONSE TO THE ALLEGATIONS

Dr. Hoffer admitted to the first allegation as set out in the Notice of Hearing, in that he has failed to maintain the standard of practice of the profession. The College withdrew the allegation of incompetence.

FACTS AND EVIDENCE

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

FACTS

Background

1. Dr. Mayer Hoffer (“Dr. Hoffer”) is a member of the College of Physicians and Surgeons of Ontario (the “College”) who received a certificate of registration authorizing independent practice on June 29, 1979. Dr. Hoffer obtained his medical degree in 1978 and is a member of the Royal College of Physicians and Surgeons of Canada, specialized in psychiatry.
2. Over the past 15 years, Dr. Hoffer has focused his practice in the assessment and treatment of Attention Deficit Disorder (“ADD”) and Attention Deficit Hyperactivity Disorder (“ADHD”) both in children and adults.

Patient A

3. In 1998, Patient A was referred to Dr. Hoffer by a psychologist and psychometrist whose psychological testing suggested evidence of ADD. Dr. Hoffer diagnosed Patient A as meeting the criteria for ADD and instituted treatment with education and psychostimulants. A copy of Dr. Hoffer’s complete medical chart for Patient A is attached as Appendix “A” [to the Agreed Statement of Facts].
4. Patient A was not seen by Dr. Hoffer alone in his office between October 16, 2000 and September 29, 2004 and there are no clinical notes for this period. Patient A’s mother was also a patient of Dr. Hoffer and on occasion Patient A came with his mother to appointments between 2000 and 2002. Between October, 2000 and September, 2004, Dr. Hoffer continued to prescribe psychostimulants for treating Patient A’s ADD. In 2004, Patient A was again assessed in person by Dr. Hoffer.
5. Dr. Z provided an opinion to the College regarding Dr. Hoffer’s care and treatment of Patient A. Dr. Z reviewed Patient A’s chart and concluded that Dr. Hoffer failed to maintain the standard of practice of the profession in his record-keeping for Patient A. Specifically, he noted the absence of clinical notes for the period from

October, 2000 to September, 2004 and found the medication records to be inadequate and, at times, non-existent. Dr. Z also opined that Dr. Hoffer's follow-up and monitoring of Patient A fell below the standard of care.

Patient B

6. In January of 2005, Patient B was referred to Dr. Hoffer by a social worker who suggested a possible diagnosis of ADD. Dr. Hoffer assessed Patient B and diagnosed him as meeting the criteria of DSMIV for ADD. Psychostimulant medication was proposed and accepted by Patient B.

7. Dr. Z provided an opinion to the College regarding Dr. Hoffer's care and treatment of Patient B. Dr. Z reviewed Patient B's chart and concluded that Dr. Hoffer's medication records were inadequate. A copy of Dr. Hoffer's complete medical chart for Patient B is attached as Appendix "B" [to the Agreed Statement of Facts].

ADMISSION

8. Dr. Hoffer admits the facts set out above and admits that he failed to maintain the standard of practice of the profession in his record-keeping for Patient A (including the absence of clinical notes and inadequate medication records from October 2000 to September 2004) and Patient B (specifically, deficiencies in documentation of the medications prescribed, changes in dosage, reasons for medication and dosage changes and follow-up plans). Dr. Hoffer further admits that his failure to assess Patient A in person between 2002 and 2004 constitutes a failure to maintain the standard of practice of the profession.

FINDING

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts. Having regard to these facts, the Committee accepted Dr. Hoffer's admission and found that he committed an act of professional misconduct under O. Reg. 856/93, in that he has failed to maintain the standard of practice of the profession.

In making this finding, the Committee had particular regard for the following:

- Accurate and reliable health records are of critical importance in safe patient care. Documentation of medications and dosage is necessary to ensure appropriate office monitoring and is essential in the event of transfer of care. In both of the patients whose records were placed in evidence, Dr. Hoffer's record-keeping was deficient and did not meet the expected standard.
- Failure to assess an individual patient and absence of clinical notes for in excess of two years while prescribing psychostimulant medication is clearly unacceptable practice and has the potential for harm.

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. They propose that the appropriate penalty in this case be as follows:

1. Dr. Hoffer appear before the panel to be reprimanded, with the fact of the reprimand to be recorded on the register.
2. The Registrar impose the following terms, conditions and limitations on Dr. Hoffer's certificate of registration:
 - 1) Dr. Hoffer shall successfully complete, at his own expense:
 - a. the College's Medical Record-Keeping for Physicians course (attendance at the instructional portion of the course by July 31, 2008 and complete the follow-up portion by September 30, 2008); and
 - b. the Physicians' Prescribing Skills course on or before October 16, 2008 and provide proof thereof to the College;

- 2) Dr. Hoffer shall maintain a detailed prescription log during the monitoring period (as defined in paragraph 3), which will be available for review by the monitor, an expert in Attention Deficit Disorder, acceptable to the College (the “Monitor”);
 - 3) Dr. Hoffer is required to undergo bi-weekly clinical monitoring at his own expense by the Monitor for a period of six months or, at the discretion of the Monitor, monthly clinical monitoring (instead of bi-weekly) for the second half of the monitoring period. The monitoring period shall commence no later than 30 days from the date of this Order;
 - 4) The Monitor’s review shall include the following:
 - a. A review of a representative sample of Dr. Hoffer’s charts;
 - b. Discussion and review with Dr. Hoffer of his prescribing and charting; and
 - c. A review of the prescription log (including verification of corresponding chart entries);
 - 5) The Monitor will provide reports to the College after one month of monitoring, at the end of the monitoring period, and at any time during the monitoring period if the monitor has concerns regarding Dr. Hoffer’s practice;
 - 6) Dr. Hoffer shall undergo, at his own expense, a re-assessment of his practice six months after the end of the monitoring period by an assessor acceptable to the College (the “Assessor”). The Assessor shall report in writing to the College and to Dr. Hoffer; and
 - 7) Dr. Hoffer shall abide by any reasonable recommendations provided by the Assessor.
3. Dr. Hoffer pay costs to the College in the amount of \$3,650.00 within 60 days of the date of this Order.

4. The results of this proceeding be included on the register.

The Committee reviewed the evidence, submissions of counsel, letters of support, advice of ILC and the case law put forth. The Committee is also aware that the law requires that the joint submission be accepted unless to do so would be contrary to the public interest or bring the administration of justice into disrepute.

The Committee agreed with counsel that the principles of penalty that apply, given the behaviour and circumstances of the findings, are protection of the public, specific and general deterrence, denunciation of the conduct and rehabilitation.

In considering the proposed penalty in this matter, the Committee was mindful of the seriousness of the finding but also had regard for the following:

- Dr. Hoffer has had no prior discipline.
- Dr. Hoffer has admitted to the facts. As a result hearing time has been saved and witnesses have been spared giving testimony.
- The Medical Record-Keeping course and the Prescribing Skills course directly address the deficits noted in the findings.
- Protection of the public is further assured by a considerable period of monitoring and reassessment of his practice.
- The Committee was impressed with the letters of support that describe a caring, kind and highly experienced physician, well thought of by colleagues and a mentor to some.

In conclusion, the Committee believes the proposed penalty to be fair and reasonable and to represent appropriate censure given the particular circumstances of this case.

ORDER

Therefore, the Committee ordered and directed that:

1. Dr. Hoffer appear before the panel to be reprimanded, with the fact of the reprimand to be recorded on the register.
2. The Registrar impose the following terms, conditions and limitations on Dr. Hoffer's certificate of registration:
 - 1) Dr. Hoffer shall successfully complete, at his own expense:
 - a. the College's Medical Record-Keeping for Physicians course (attendance at the instructional portion of the course by July 31, 2008 and complete the follow-up portion by September 30, 2008); and
 - b. the Physicians' Prescribing Skills course on or before October 16, 2008 and provide proof thereof to the College;
 - 2) Dr. Hoffer shall maintain a detailed prescription log during the monitoring period (as defined in paragraph 3), which will be available for review by the monitor, an expert in Attention Deficit Disorder, acceptable to the College (the "Monitor");
 - 3) Dr. Hoffer is required to undergo bi-weekly clinical monitoring at his own expense by the Monitor for a period of six months or, at the discretion of the Monitor, monthly clinical monitoring (instead of bi-weekly) for the second half of the monitoring period. The monitoring period shall commence no later than 30 days from the date of this Order;
 - 4) The Monitor's review shall include the following:
 - a. A review of a representative sample of Dr. Hoffer's charts;
 - b. Discussion and review with Dr. Hoffer of his prescribing and charting; and
 - c. A review of the prescription log (including verification of corresponding chart entries);

- 5) The Monitor will provide reports to the College after one month of monitoring, at the end of the monitoring period, and at any time during the monitoring period if the monitor has concerns regarding Dr. Hoffer's practice;
 - 6) Dr. Hoffer shall undergo, at his own expense, a re-assessment of his practice six months after the end of the monitoring period by an assessor acceptable to the College (the "Assessor"). The Assessor shall report in writing to the College and to Dr. Hoffer; and
 - 7) Dr. Hoffer shall abide by any reasonable recommendations provided by the Assessor.
3. Dr. Hoffer pay costs to the College in the amount of \$3,650.00 within 60 days of the date of this Order.
 4. The results of this proceeding be included on the register.

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