NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Eddie Kingstone, this is notice that the Discipline Committee ordered that no person shall publish the identity of the patients or their family members or any information that could disclose the identity of the patients or their family members pursuant to subsection 45(3) of the Health Professions Procedural Code (the "Code"), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, as amended.

Subsection 93(1) of the Code, which is concerned with failure to comply with these orders, reads:

93(1) 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: Kingstone (Re)

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

IN THE MATTER OF a Hearing directed by the Complaints Committee and the Executive Committee of the College of Physicians and Surgeons of Ontario pursuant to Section 26(2) and Section 36(1), respectively, 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. EDDIE KINGSTONE

PANEL MEMBERS: **DR. W. KING (Chair)**
E. COLLINS
DR. L. THURLING
DR. B. TAA (PHD)
DR. P. ZITER

Hearing Date: **April 24, 2006**
Decision Date: **April 24, 2006**
Release of Written Reasons Date: **June 5, 2006**

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 April 24, 2006. At the conclusion of the hearing, the Committee stated its finding that Dr. Eddie Kingstone committed professional misconduct and delivered its penalty order with written reasons to follow.

PUBLICATION BAN

The Committee ordered that no person shall publish the identity of the patients or their family members or any information that could disclose the identity of the patients or their family members pursuant to subsection 45(3) of the Health Professions Procedural Code (the "Code"), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, as amended, having been satisfied that the desirability of avoiding public disclosure outweighs the desirability of adhering to the principle that the information should be available to the public. The Committee delivered in writing its order and reasons for this order.

ALLEGATIONS

The Notice of Hearing alleged that Dr. Eddie Kingstone committed 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 meet the standard 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 acts 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. Kingstone is incompetent as defined by subsection 52(1) of 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. Kingstone entered a plea of no contest to allegation 1 in the Notice of Hearing. College counsel withdrew allegation 2 and the allegation of incompetence.

THE FACTS

A Statement of Facts was filed as an exhibit and presented to the Committee. The facts were not opposed by Dr. Kingstone, and provided as follows:

1. Dr. Eddie Kingstone is a 75 year old psychiatrist practising in Toronto.

2. Dr. X provided two expert reports for the College regarding Dr. Kingstone's psychiatric practice. Dr. X is a psychiatrist. He is a member of the staff of the Centre for Addiction and Mental Health and an Associate Professor of Psychiatry and Pharmacy at the University of Toronto. A copy of Dr. X's curriculum vitae is attached to the Statement of Facts at Tab 1.

3. Dr. X's first report examines 26 of Dr. Kingstone's patient files. The second report examines Dr. Kingstone's treatment of Patient A. Copies of the reports are attached [to the Statement of Facts] as Tabs 2 and 3**.**

26 PATIENTS

4. Dr. X reviewed the charts of 26 patients of Dr. Kingstone, as well as related OHIP billing information and Dr. Kingstone's prescribing profile from the Main Drug Mart. Dr. X's report with respect to these 26 patients is attached to the Statement of Facts as Tab 2.

5. Dr. X was of the opinion that Dr. Kingstone fell below the standard of care in 22 of the 26 cases reviewed, primarily relating to the prescription of narcotics and controlled drugs and substances, including benzodiazepines. Dr. X's opinion included the following conclusions:

> While not all the files have histories done by Dr. Kingstone those that do are reasonably comprehensive except that they usually lack a mental status examination, which is essential to a psychiatric history and there is usually no clearly stated diagnosis, also a prerequisite for a treatment plan.
>
> The lack of a clear diagnosis limits one's capacity to comment here but there were occasions when Dr. Kingstone seemed to overlook evidence of bipolarity.
>
> The progress notes are generally helpful and are better than many psychiatrists. Unfortunately, they never pay attention to the amounts of medication that are prescribed and when there are reviews of what the patient are on they are often incomplete.
>
> In his relationships with patients Dr. Kingstone comes across as kind, well intentioned and flexible. He is unfortunately often generous to a fault. He shows remarkable gullibility; this is particularly noteworthy because he was seeing narcotic addicts and physicians are frequently warned this is a population that will try to exploit the physician.
>
> His prescribing of the regular psychiatric medications is fine except for some polypharmacy with the antidepressants.
>
> Where Dr. Kingstone can be most obviously criticized is his prescribing of narcotics. Not only did he prescribe for people who were known addicts, who should have been referred to methadone programs, he also prescribed a couple of narcotics, Percocet and Dilaudid, which are well known to be intensely addictive. He would increase doses and indeed would even increase doses where his notes would be indicating the plan was to wean the patient. Most worrying is that he would renew the prescriptions prematurely, obviously keeping no account at all of how much the patient was using. He was unacceptably credulous with the paltry excuses that

were given to him for why they wanted their medication early though often he renewed drugs with no excuses given at all.

The prescribing of benzodiazepines was also excessive, sometimes because the dose was beyond the upper limit but usually because he would renew the medication long before it was due. He was thereby promoting addiction and was of course often giving these drugs to the same people who were abusing narcotics. He allowed himself to be exploited as with the narcotics.

It appears that the police claim that on one occasion he may have been prescribing narcotics when being blackmailed.

There are instances, which indicate that he was aware that he was prescribing excessively because his communications about the doses were deceptive.

There were some significant boundary issues in these cases where he was seeing more than one member of the family including couples who were both addicted or even seeing together two addicts who were friends.

Answering these specific questions that you have put to me, I would have to say that:

1. Dr. Kingstone does not meet the standard of practice of the profession and I have noted above specific instances.

2. You asked whether his care displays a lack of knowledge and the answer is that he clearly is, seriously lacking knowledge of addiction and its management.

3. You asked if there is a lack of skill and to a small extent this is true in that the histories that he prepares do not contain an adequate mental status of diagnosis or diagnoses.

4. You asked if he shows a lack of judgment and the answer is most certainly “yes” in his acceptance of what should have been obvious lies which were given to him to get him to continue to prescribe excessive amounts of narcotics.

5. You asked if he showed disregard for the welfare of his patients. My answer would be "no", other than that he was, if anything, overly indulgent.

6. You wanted my opinion whether his clinical practice, behaviour or conduct could expose his patients to harm or injury and my answer is that his prescribing of narcotics and of benzodiazepines would certainly do that.

6. The defence experts, like Dr. X, had significant concerns with the adequacy of the record-keeping, although one expert pointed out that in a supportive therapy practice like Dr. Kingstone's, it is not uncommon to find less detail in the charts. He noted that a mental status examination did not have to be recorded in all cases.

7. The other defence expert disagreed with Dr. X that there had been a boundaries violation in seeing two family members together. This expert also felt that Dr. Kingstone's use of Ritalin in two patients did not fall below standard, and was not unusual. The same expert observed that Dr. Kingstone demonstrated experience and considerable skill in dealing with difficult patients, and that he exhibited care and regard for the welfare of his patients.

8. The defence experts did not provide opinions on the narcotics prescribing.

PATIENT A

9. Patient A was a patient of Dr. Kingstone's from March 2003 until his death in June, 2004.

10. Dr. X reviewed Dr. Kingstone's file with respect to Patient A as well as records relating to prescriptions filled by a pharmacy for Patient A. Dr. X's report with respect to Dr. Kingstone's care of Patient A is attached to the Statement of Facts at Tab 3.

11. Dr. X was of the opinion that Dr. Kingstone fell below the standard of care in his treatment of Patient A, primarily relating to the prescription of narcotics and controlled drugs and substances. Dr. X's opinion included the following summary and conclusion regarding Dr. Kingstone's care for Patient A:

> It appears that from Dr. Kingstone's notes that he was trying to prevent [Patient A] from reverting to alcoholism by providing him with Percocet. I do not believe that this is an acceptable approach and falls below the standard of care. Also below the standard of care is the provision of large amounts of narcotics with no monitoring so that the patient would come back long before his medication should have run out and was given a new prescription without a comment, without need for explanation, and most notably without any notation by Dr. Kingstone that he was aware of this abusive process. Even in the presence of expression of concern from the pharmacy there is nothing in the notes that suggests that he understood that the patient was exploiting him.
>
> The prescribing of 2 highly addicting narcotics at the same time falls below the standard of care. The total dose of narcotic for someone who does not have terminal illness is way beyond the acceptable dose range and falls below the standard of care.
>
> Ritalin was given because the man was sleepy; this is not actually an indication for the use of Ritalin though I can't say if it falls below the standard of care because many of my colleagues use it in that way. Usually however, they do it in lower amounts and usually they do not combine it with high doses of Valium (diazepam), which counteracts the effect of Ritalin. Dr. Kingstone at no point made the rather obvious connection between the sleepiness and the use of high doses of diazepam and narcotics, and in this way falls below the standard of care.
>
> The use of Paxil is quite problematic. There seems to be a rapid escalation in dosage with no thought that the increasing depression might be substance induced. In particular, there is a known rebound effect of Ritalin where it precipitates depression and therefore the use of this drug in this context may fall below the standard of care though one would like to have an explanation form Dr. Kingstone and how he understood what was going on. The use of risperidone is not understandable.

Benzodiazepines were prescribed excessively both in terms of the absolute daily amount and in that two very similar drugs were prescribed at the same time.

As well as the narcotic oxycodone, 12 Percocet a day contain 3900mg of acetaminophen. This is potentially hepatotoxic.

Conclusions

The progress notes are generally helpful and are better than many psychiatrists. Unfortunately, they never pay attention to the amounts of medication that are prescribed and when there are reviews of what the patients are on they are often incomplete.

In his relationship with the patient Dr. Kingstone comes across as kind, well intentioned and flexible. He is unfortunately often generous to a fault. He shows remarkable gullibility; this is particularly noteworthy because he was seeing a narcotics addict and physicians are frequently warned this is a population that will try to exploit the physician.

Where Dr. Kingstone can be most obviously criticized is his prescribing of narcotics. Not only was he prescribing for a person who was a known addict and who should have been referred to a methadone program, he also prescribed narcotics, Percocet, Oxycocet and Dilaudid, which are well known to be intensely addictive. He would increase doses and indeed would even increase doses where his notes would be indicating the plan was to wean the patient. Most worrying is that he would renew the prescriptions prematurely, seemingly keeping no account at all of how much the patient was using. He was unacceptably credulous with the paltry rationalizations that were given to him for why they wanted their medication early though often he renewed drugs with no excuses given at all.

The prescribing of benzodiazepines was also excessive, sometimes because the dose was beyond the upper limit but usually because he would renew the medication long before it was due. He was thereby promoting addiction and was of course often giving these drugs to the same people who were abusing narcotics. He allowed himself to be exploited as with the narcotics.

His prescribing of other psychiatric medications, Ritalin and Paxil is problematic as I have described.

Answering these specific questions that you have put to me, I would have to say that

1. Dr. Kingstone does not meet the standard of practice of the profession and I have noted above specific instances.
2. You asked whether his care displays a lack of knowledge and the answer is that he clearly is seriously lacking knowledge of addiction and its management.
3. You asked if there is a lack of skill and to a small extent this is true in his use of medication and his knowledge of the artifices of addicts.
4. You asked if he shows a lack of judgment and the answer is most certainly "yes" in his acceptance of what should have been obvious deceptions that were used to get him to continue to prescribe excessive amounts of narcotics.
5. You asked if showed disregard for the welfare of his patient. My answer would be "no", other than that he was, if anything, overly indulgent.
6. You wanted my opinion whether his clinical practice, behaviour or conduct could expose his patients to harm or injury and my answer is that his prescribing of narcotics and of benzodiazepines would certainly do that.

12. Patient A saw Dr. Kingstone on June 9, 2004. Dr. X's opinion provides the following summary with respect to that visit:

> **"**On June 9th Dr. Kingstone's note states, "he is not involved with illegal substances. He feels that what is happening is legitimate, and he has expressed an agreement to start reducing medication as soon as he returns to work. He feels at the moment, that things are very much on an even keel and life extremely good." This note does not mention two big changes in the prescription of narcotics. (see Main Drug Mart print-out). Firstly there were another 275 tablets of Percocet prescribed just 10 days after the last 31 day supply but this time the prescription said that the patient could use up to 3 four times a day or 12 tablets daily and secondly a 2nd narcotic was added, Dilaudid (hydromorphone) 8mg and he was given 150 tablets of this with the prescription stating that he can take 1 or 2 three or 4 times a day indicating between 3 and 8 tablets."

13. On the morning of June X, 2004, Patient A was found dead in his bed. The directions on the prescription of Dilaudid provided to Patient A on June 9, 2004, by Dr. Kingstone, if followed, would have permitted Patient A to take between three to eight Dilaudid in a 24-hour period. Approximately nineteen Dilaudid pills were found missing from the bottle. The directions on the prescription of Percocet provided to Patient A on June 9, 2004 by Dr. Kingstone, if followed, would have permitted Patient A to take up to twelve Percocet tablets in a 24-hour period. Approximately nineteen Percocet pills were found missing from the bottle. The coroner's report concluded that the cause of death was hydromorphone intoxication, based in part on a forensic toxicology report from the Centre of Forensic Sciences which concluded that "the detected concentrations of hydromorphone could cause death." The defence toxicologist provided an opinion that although the detected concentration of hydromorphone could cause death, the forensic toxicological analysis done was "significantly incomplete." The defence toxicologist was of the opinion that it was premature to conclude that hydromorphone did cause death, without further toxicological analysis. The College's expert, Dr. X, opined that Dr. Kingstone's prescribing of large amounts of the drugs at issue created a risk of overdose.

FINDING

The legal effect of a "no contest" plea is that the Committee can accept as correct the facts as presented and that those facts constitute professional misconduct, for the purposes of the proceeding only. Thus, the Committee can make a finding without hearing evidence.

Accordingly, after deliberation, the Committee accepted as accurate the facts in the Statement of Facts and found that Dr. Kingstone had committed an act of professional misconduct, under paragraph 1(1)2 of O.Reg. 856/93, in that he had failed to meet the standard of the profession in regards to his prescribing of narcotics, controlled drugs and substances, including benzodiazepines, and with respect to record-keeping.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for Dr. Kingstone made a joint submission regarding the appropriate penalty and costs.

Counsel for the College presented the Joint Submission on Penalty ("Joint Submission") under which it was proposed that Dr. Kingstone would be permanently prohibited from prescribing narcotics and that he shall not prescribe other Schedule I to IV drugs, including benzodiazepines except when such prescription was co-signed by a physician acceptable to the College who had signed an appropriate undertaking with the College. Further, Dr. Kingstone would be required to keep a copy of such prescriptions and a separate log for all such prescriptions. The requirement for a co-signer would remain in place indefinitely. The obligations of the co-signer were specified in Appendix 1 to the Joint Submission.

It was further jointly proposed that Dr. Kingstone would be suspended from practice for six months, with three months suspended if he successfully completes the College's prescribing course. A clinical supervisor would oversee his practice with regular reports to the College. The details of this undertaking arrangement were explained in Appendix 2 to the Joint Submission. If the reports were satisfactory, this supervision might end after one year.

The Committee considered Victim Impact Statements that were filed with the Committee and read into the record. One was from the deceased patient's mother who described her pain and the loss of meaning for her in life as a result of her son's death. She expressed how her life had become a quest to bring about changes to avoid similar tragedies. Another, from this man's stepfather, was presented describing the effect of the young man's death on the family and his loss of faith and trust in the medical system.

In support of the jointly proposed penalty, College counsel reiterated the objectives of the penalty. The public must be protected. The penalty must also be a specific deterrent to the individual physician as well as a general deterrent exerting influence on the profession as a whole. To these ends, Dr. Kingstone would be permanently prohibited

from prescribing narcotics, a co-signer would take responsibility for the prescribing of other controlled drugs and substances, including benzodiazepines, and a clinical supervisor would oversee his practice and provide regular reports to the College for one year.

At the end of the year, there would be an assessment of Dr. Kingstone's practice. In addition, Dr. Kingstone was directed to take the prescribing course. At the end of the year, the goal of changing his practice methods ought to have been completed.

As a specific deterrent, the suspension of his practice for six months was significant and in line with other orders made in similar cases. Two such cases were presented to the Committee for its consideration.

The giving up of prescribing privileges and the requirement of a co-signer would also address the matter of specific deterrence. As a measure of general deterrence, the suspension would also be significant, as well as its terms. These measures would be brought to the attention of physicians through *Dialogue*, a publication of the College.

A case, *Tilley*, with a similar order was presented as analogous to the Dr. Kingstone matter. The finding and penalty were in line with the matter before the Committee. In the *Tilley* case, the physician was required to do the PREP assessment. Dr. Kingstone would also undergo an assessment at the end of one year.

In another case provided, *Davis*, there had been a breach of the terms of a previous order but the issue of excessive prescribing of narcotics contributing to dependence and addiction was similar. The physician was prohibited from Schedule 1 prescribing (except for codeine). Dr. Kingstone has already given up prescribing narcotics with Health Canada.

The submission of College counsel was that this penalty would meet all three objectives: public protection, specific deterrence and general deterrence. The Committee was reminded that case law from the Court of Appeal directed that a tribunal ought to accept a joint submission unless, by accepting it, the administration of justice would be brought into disrepute or the decision would not be in the public interest.

Counsel for Dr. Kingstone supported the submissions of College counsel and made reference to further evidence that was presented.

Dr. Kingstone was said to have had a "distinguished career". He graduated from McGill and was awarded a McLaughlin Fellowship which took him to London. He then was at the Allen Memorial (in Montreal) as an associate professor from 1960 to 1970.

In 1970, he was invited to be head of psychiatry at Sunnybrook, where he had administrative responsibilities and remained for seven years. At that time, it was changing from a veterans' hospital to a teaching hospital. He then went to the University of Toronto to be Vice Provost but still carried on a clinical practice.

In 1984, he went to McMaster to be Chairman of the Department of Psychiatry. In 1996, he came back to Toronto to St. Michael's Hospital to be on staff on the psychiatry consultation-liaison team. In clinics, he saw outpatients. Academically, he participates in rounds and scientific meetings and teaches. For eighteen years (1977-95), he was editor of the Canadian Journal of Psychiatry.

Defence counsel directed the Committee to the specifics of Dr. X's reports. He submitted that Dr. X was not critical of everything he reviewed. He found Dr. Kingstone a "supportive, committed physician". There were prescribing problems, which would be dealt with by the co-signing requirement. Since December 2004, Dr. Kingstone had voluntarily given up his narcotic-prescribing privileges. He had taken the narcotics prescribing course. The earlier chart audit had focused on narcotic prescribing.

Counsel for Dr. Kingstone stated that Dr. Kingstone extended sincere condolences to the family. She said that Dr. Kingstone had been very upset and the sad event had caused him "extensive self-evaluation…He has looked at all aspects of his practice."

Two letters from colleagues, the Chair of the department at St. Michael's Hospital and the Clinical Director of Psychiatry, spoke highly of Dr. Kingstone's contribution to the profession as clinician, teacher and leader. They said that he had taken an interest in particularly demanding patients. In an "otherwise distinguished career", this was

"anomalous". With the College, he had been fully cooperative and had admitted his mistakes.

The Committee considered carefully the appropriateness of the penalty. The length of the suspension, six months, was significant. Dependent on a successful outcome of the prescribing course, it could be thus lessened to three months, still a significant suspension. The Committee agreed that a suspension was necessary in view of the dire consequences of over-prescribing and combining powerful psychotropic substances.

It is important that Dr. Kingstone would be permanently unable to prescribe narcotics or, unless a prescription was co-signed, other controlled drugs or substances. Thus, he will not be treating drug-seeking individuals for whom he might misguidedly prescribe large amounts of addictive medications as he has done in the past rather than treating them for addiction or referring them to appropriate programs, like the Methadone harm-reduction program. The public would be protected and the physician himself would be deterred from further errors in this regard.

A co-signer would necessitate a close clinical liaison with the College-approved physician who would serve as a check on prescribing practices and would provide ongoing collegial discussion of case-related rational prescribing of psychotropic medications, particularly those with addictive potential. The required log would be a specific deterrent to inadequate recording of medication prescribed. Physicians in general would receive clearly the message that the standard of the profession demands that such substances must be prescribed with caution and careful clinical judgment and that meticulous records must be kept.

The clinical supervisor would provide ongoing collegial support and monitoring with reports to the College serving as insurance that past over-prescribing and what Dr. X termed "gullibility" and "indulgence" with regard to opportuning and distressed patients would not recur. Thus, the public would be duly protected.

Before he could resume independent practice, Dr. Kingstone's practice would be assessed to ensure that appropriate standards were upheld. The Committee took note of the

mitigating factor of Dr. Kingstone's long years of honourable service to the profession and to his speciality. We also noted the emphasis in Dr. X's reports on Dr. Kingstone's kindness and genuine caring for his patients. Thus, his skills and value were recognized in allowing him a path back to independent practice.

In summary, the Committee was satisfied that the penalty met the requirements of public protection, and served the objectives of specific and general deterrence.

ORDER

Therefore, the Discipline Committee ordered and directed that:

1. The Registrar suspend Dr. Kingstone's certificate of registration for a period of six (6) months commencing on May 24, 2006. Three (3) months of the suspension will be suspended if Dr. Kingstone successfully completes the College's prescribing course and provides proof of such completion to the College. The cost of taking the prescribing course is at Dr. Kingstone's expense.

2. The Registrar impose the following terms, conditions and limitations on Dr. Kingstone's certificate of registration:

   (i) That Dr. Kingstone be permanently prohibited from prescribing narcotics. For greater certainty, this includes "verbal prescription narcotics" as defined in the Controlled Drugs and Substances Regulations;

   (ii) That Dr. Kingstone shall not prescribe other controlled drugs or substances as defined in Schedules I to IV of the *Controlled Drugs and Substances Act*, including benzodiazepines, unless the prescription has been co-signed by a physician acceptable to the College, who has signed the undertaking attached as Appendix 1 to this Order. Dr. Kingstone shall keep a copy of all prescriptions for controlled drugs and substances, including benzodiazepines, in each patient chart. In addition, Dr. Kingstone shall keep a log of all prescriptions for controlled drugs and substances,

including benzodiazepines. The requirement of a co-signer for prescriptions for controlled drugs and substances, including benzodiazepines shall continue indefinitely.

(iii) That immediately following the suspension, Dr. Kingstone shall be required to practice under the supervision of a clinical supervisor acceptable to the College, who has signed the undertaking attached as Appendix 2 to this Order, for one year. The supervision shall include that Dr. Kingstone is required to meet with the supervisor every other week, at which time the supervisor will review a representative sample of Dr. Kingstone's patient charts (to be chosen by the supervisor), and discuss them with Dr. Kingstone. Dr. Kingstone is required to follow any recommendations of the clinical supervisor. The supervisor shall submit reports to the College as outlined in the Undertaking.

(iv) That at the end of the one year of supervision, Dr. Kingstone's practice will be re-assessed by an assessor chosen by the College. If the assessment is satisfactory to the College, the supervision outlined in paragraph 3 (iii) above will end. Dr. Kingstone is required to abide by any recommendations of the assessor;

(v) That Dr. Kingstone shall pay all expenses associated with the co-signing requirement set out in paragraph 3 (ii) above, the supervision set out in paragraph 3 (iii), and the re-assessment set out in paragraph 3 (iv) above;

3. Dr. Kingstone pay costs to the College in the amount of $2,500; and

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

APPENDIX 1

DISCIPLINE COMMITTEE OF
THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

B E T W E E N:

COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. EDDIE KINGSTONE

UNDERTAKING OF _____TO THE
COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

1. I am a practising member of the College of Physicians and Surgeons of Ontario ("the College").

2. I have read the reports of Dr. X dated April 8, 2005 regarding Dr. Kingstone's practice. I have also read the Statement of Facts placed before the Discipline Committee in this matter.

3. I understand that Dr. Kingstone is prohibited from prescribing narcotics. I understand that Dr. Kingstone cannot prescribe other controlled drugs and substances, including benzodiazepines, without having another physician co-sign his prescription. I agree that commencing from the date I sign this undertaking, I shall:

(i) review all of Dr. Eddie Kingstone's prescriptions for controlled drugs and substances, including benzodiazepines, and discuss with him the clinical indications for such prescriptions;

(ii) raise any concerns I have with Dr. Eddie Kingstone regarding any of the prescriptions I have reviewed; and

(iii) co-sign those prescriptions which I believe are appropriate in the circumstances of that patient.

4. I agree that if I am concerned that Dr. Eddie Kingstone's prescribing may expose his patients to risk of harm or injury, I shall immediately notify the College. I also agree to report to the College every three months confirming that I have been and continue to comply with the terms of this undertaking and provide any other information I believe is relevant to Dr. Kingstone's compliance with the Order of the Discipline Committee.

5. I acknowledge that Dr. Eddie Kingstone has consented to my disclosure to the College of all information necessary to fulfil my undertaking.

6. I agree to immediately inform the College in writing if Dr. Kingstone and I have terminated this relationship, or if I otherwise cannot fulfil the terms of my undertaking.

Dated this day of , 2006.

_____ _____

Witness

APPENDIX 2

DISCIPLINE COMMITTEE OF
THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

B E T W E E N:

COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. EDDIE KINGSTONE

UNDERTAKING OF _____TO THE
COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

1. I am a practising member of the College of Physicians and Surgeons of Ontario ("the College").

2. I have read the reports of Dr. X dated April 8, 2005 regarding Dr. Kingstone's practice. I have also read the Statement of Facts placed before the Discipline Committee in this matter.

3. I agree that commencing from the date I sign this undertaking, I shall act as clinical supervisor for Dr. Kingstone, which obligations shall include, at minimum:

(i) Reviewing a representative sample of Dr. Kingstone's patient charts every second week. The charts to be reviewed shall be chosen by me;

(ii) Discussing any concerns arising from such chart reviews with Dr. Kingstone;

(iii) Making recommendations to Dr. Kingstone for practice improvements; and

(iv) If appropriate, making recommendations for ongoing professional development.

4. I agree to submit a written report to the College on the first day of every second month, commencing in October, 2006**.** Such report shall contain any information I believe might assist the College in assessing Dr. Kingstone's compliance with the Order of the Discipline Committee and competence in his practice.

5. I agree that if I am concerned that Dr. Kingstone may not be in compliance with the Order of the Discipline Committee and/or that his patients may be exposed to risk of harm or injury, I shall immediately notify the College.

6. I acknowledge that Dr. Eddie Kingstone has consented to my disclosure to the College of all information necessary to fulfil my undertaking.

7. I agree to immediately inform the College in writing if Dr. Kingstone and I have terminated our clinical supervision relationship, or if I otherwise cannot fulfil the terms of my undertaking.

Dated this day of , 2006.

_____ _____

Witness

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Edward Kingstone, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity and any information that would disclose the identity of the patients and the patients' family members whose names are disclosed 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 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: Kingstone, E (Re)

DISCIPLINE COMMITTEE OF
THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

DR. E. STANTON (CHAIR)	)	**Hearing date:**
S. BERI	)	Thursday, April 19th, 2012
DR. F. SLIWIN	)	

B E T W E E N:

DR. EDWARD KINGSTONE

(Moving Party)

- and -

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

(Responding Party)

ORDER AND REASONS FOR ORDER
(On a Motion to Vary the Order of the Discipline Committee of June 5, 2006)

INTRODUCTION

On April 19, 2012, the Discipline Committee heard a motion brought by Dr. Kingstone for an order seeking to vary the Order of the Discipline Committee made on June 5, 2006. At the conclusion of the hearing, the Committee reserved its decision.

THE MOTION

The member's Notice of Motion sought an order to vary the 2006 Order as follows:

1. An order eliminating the co-signer requirement contained in paragraph 2 (ii) of the June 5, 2006 Order of the Discipline Committee of the College of Physicians and Surgeons;

2. An order eliminating the supervision requirement contained in paragraph 2 (iii) of the Order;

3. In the alternative, an order reducing the frequency of supervision as required by paragraph 2 (iii) of the Order to four times a year (quarterly) rather than biweekly;

4. Such further and other relief as counsel may advise.

BACKGROUND

On April 24, 2006 the Discipline Committee found that Dr. Kingstone had committed an act of professional misconduct under paragraph 1(1)2 of O.Reg. 856/93, in that he had failed to meet the standard of the profession in regards to his prescribing of narcotics, controlled drugs and substances, including benzodiazepines, and with respect to record keeping.

The following uncontested facts were set out in a Statement of Facts filed at the 2006 hearing and accepted by the Committee hearing the matter, upon a plea of "no contest" by Dr. Kingstone:

1. Dr. Kingstone is a 75 year old psychiatrist practising in Toronto.

2. Dr. X provided two expert reports for the College regarding Dr. Kingstone's psychiatric practice.

3. Dr. X's first report examined 26 of Dr. Kingstone's patient files. The second report examined Dr. Kingstone's treatment of Patient A.

4. Dr. X reviewed the charts of 26 patients of Dr. Kingstone, as well as related OHIP billing information, and Dr. Kingstone's prescribing profile from Drug Mart "A".

5. Dr. X was of the opinion that Dr. Kingstone fell below the standard of care in 22 of the 26 cases reviewed, primarily relating to the prescription of narcotics and controlled drugs and substances, including benzodiazepines.

6. The defence experts, like Dr. X, had significant concerns with the adequacy of the record-keeping, although one expert pointed out that in a supportive therapy practice like Dr. Kingstone's, it is not uncommon to find less detail in the charts. He noted that a mental status examination did not have to be recorded in all cases.

7. The other defence expert disagreed with Dr. X that there had been a boundary violation in seeing two family members together. This expert also felt that Dr. Kingstone's use of Ritalin in two patients did not fall below the standard, and was not unusual. The same expert observed that Dr. Kingstone demonstrated experience and considerable skill in dealing with difficult patients, and that he exhibited care and regard for the welfare of his patients.

8. The defence experts did not provide opinions on the narcotics prescribing.

Patient A

9. Patient A was a patient of Dr. Kingstone's from March 2003 until his death in June 2004.

10. Dr. X reviewed Dr. Kingstone's file with respect to Patient A as well as records relating to prescriptions filled by a pharmacy for Patient A.

11. Dr. X was of the opinion that Dr. Kingstone fell below the standard of care in his treatment of Patient A, primarily relating to the prescription of narcotics and controlled drugs and substances.

12. Patient A saw Dr. Kingstone on June 9, 2004. Dr. X's opinion provides the following summary with respect to that visit:

> "On June 9th Dr. Kingstone's note states, "he is not involved with illegal substances. He feels that what is happening is legitimate, and he has expressed an agreement to start reducing medication as soon as he returns to work. He feels at the moment, that things are very much on an even keel and life extremely good." This note does not mention two big changes in the prescription of narcotics. Firstly there were another 275 tablets of Percocet prescribed just 10 days after the last 31 day supply but this time the prescriptions said that that the patient could

use up to 3 four times a day or 12 tablets daily and secondly a 2nd narcotic was added, Dilaudid (hydromorphone) 8mg and he was given 150 tablets of this with the prescription stating that he can take 1 or 2 three or 4 times a day indicating between 3 and 8 tablets."

13. On the morning of June 10, 2004, Patient A was found dead in his bed. The directions on the prescription of Dilaudid provided to Patient A on June 9, 2004, by Dr. Kingstone, if followed, would have permitted Patient A to take between three to eight Dilaudid in a 24 hour period. Approximately nineteen Dilaudid pills were found missing from the bottle. The directions on the prescription of Percocet provided to Patient A on June 9, 2004 by Dr. Kingstone, if followed, would have permitted Patient A to take up to twelve Percocet tablets in a 24 hour period. Approximately 19 percocet pills were found missing from the bottle. The coroner's report concluded that the cause of death was hydromorphone intoxication, based in part on a forensic toxicology report from the Centre of Forensic Sciences, which concluded that "the detected concentrations of hydromorphone could cause death." The defense toxicologist provided an opinion that although the detected concentration of hydromorphone could cause death, the forensic toxicological analysis done was "significantly incomplete." The defence toxicologist was of the opinion that it was premature to conclude that hydromorphone did cause death, without further toxicological analysis. The College's expert, Dr. X, opined that Dr. Kingstone's prescribing of large amounts of the drugs at issue created a risk of overdose.

At the 2006 hearing, Dr. Kingstone's counsel and College counsel made a joint submission on penalty. The Committee accepted the joint submission and made the requested 2006 Order. Terms, conditions and limitations were placed on Dr. Kingstone's certificate of registration. Dr. Kingstone was permanently prohibited from prescribing narcotics. All other prescriptions for controlled drugs or substances, including benzodiazepines, required co-signing by a physician acceptable to the College. As well, Dr. Kingstone was required to keep a copy of prescriptions for all controlled substances, including benzodiazepines, in each patient chart, and keep a log of all such prescriptions. Dr. Kingstone was required to practise under the supervision of a clinical supervisor and to meet with the supervisor every other week for one year. At the end of the one

year supervision, Dr. Kingstone's practice was to be re-assessed by an assessor chosen by the College.

Dr. Kingstone was also given a 6 month suspension of his certificate of registration, 3 months of which would be suspended if he successfully completed the College prescribing course.

EVIDENCE ON THE MOTION TO VARY

The evidence on the motion to vary the order of June 5, 2006 was contained in a Motion Record and supplementary Motion Record filed on behalf of Dr. Kingstone. The following facts pertinent to the motion were established:

1. Dr. Kingstone successfully completed the College prescribing course and served a net suspension of 3 months. Dr. Kingstone returned to practice on June 23, 2006, under supervision.

2. Dr. Kingstone has complied fully with all aspects of the Order.

3. Dr. Kingstone's first College-approved supervisor was Dr. Y. Dr. Y advised of his intention to retire from practice in the summer of 2011 and conducted his last meeting with Dr. Kingstone on July 21, 2011. The responsibility for supervising Dr. Kingstone was assumed by Dr. Z. Dr. Z has continued to supervise Dr. Kingstone's practice every two weeks pursuant to the Order.

4. As of December 9, 2011, Dr. Kingstone has completed over five years of supervision at a frequency of every two weeks.

5. No unfavourable reports have ever been provided by either of Dr. Kingstone's supervisors to the College. Dr. Y has expressed full confidence in Dr Kingstone's prescribing practices and indicates that Dr. Kingstone has provided good, careful, conscientious care to all of his patients. Neither supervisor has expressed any criticisms of Dr. Kingstone's practice.

6. No problems have been detected by either Dr. Y or Dr. Z in Dr. Kingstone's practice.

7. Dr. Kingstone has further indicated through his counsel that he is not seeking to reduce his clinical supervision from biweekly to quarterly, as set out in the notice of motion to vary, but is instead seeking to reduce the supervisory meetings to monthly.

8. College counsel informed the Committee that the College consents to the variations sought by Dr. Kingstone.

THIRD PARTY SUBMISSIONS

Ms Q made oral submissions as a third party participant. She submitted that it would be contrary to the public interest to vary the original Order of 2006. The original Order was put in place because Dr. Kingstone fell below the standard of care in prescribing narcotics and controlled substances including benzodiazepines in 22 of 26 cases reviewed. She submitted that having a co-signer of prescriptions and clinical supervision are pro-active safeguards, which are still needed to continue to protect the public.

DECISION AND REASON FOR DECISION

The onus is on the moving party, Dr. Kingstone, to show that a change in circumstances has occurred such that it is in the public interest to vary the Order of 2006. As stated in *CPSO v. Wesley* (2008):

> *Counsel for both parties agreed that the onus was upon Dr. Wesley to show that a change in circumstances has occurred such that it is in the public interest for the terms, conditions and limitations to be removed. The burden of proof to be met is the civil standard or a balance of probabilities.*

The Committee has taken into account the submissions of the non-party participant, Ms Q, as well as the submissions of the parties. It is important to note that the test on whether to vary the Order is based on a change of circumstances from the time of the original Decision in 2006.

Dr. Kingstone has complied with terms, conditions and limitations restricting his certificate of registration for six years. It is clear from the letters provided by the College approved supervisors

that there are no ongoing concerns with Dr. Kingstone's prescribing practice and both supervisors are in support of the variation.

College counsel consents to the variation sought and agrees that a change in circumstance has occurred since the original 2006 Order to justify the variance sought. College counsel also points out that Dr. Kingstone will be subject to an age targeted peer assessment in 2012.

ORDER

The first variation being sought in the order is to remove the requirement for co-signing of prescriptions for controlled substances including benzodiazepines. Dr. Kingstone will still be required to keep a copy of all prescriptions for controlled drugs and substances, including benzodiazepines, in each patient's chart, and he will still be required to keep a log of all such prescriptions.

The Committee orders and directs that 2(ii) of the June 5, 2006 Order shall be varied, to read as follows:

2(ii) That Dr. Kingstone shall keep a copy of all prescriptions for controlled drugs and substances including benzodiazepines in each patient chart. In addition, Dr. Kingstone shall keep a log of all prescriptions for controlled drugs and substances, including benzodiazepines.

The second variation being sought is to change the supervision requirements from every other week to once monthly.

The Committee further orders and directs that 2(iii) of the 2006 Order shall be varied, to read as follows:

2(iii) That Dr. Kingstone shall be required to practice under the supervision of a clinical supervisor acceptable to the College, who has signed the undertaking attached as Appendix 2 to the June 5, 2006 Order. The supervision shall include that Dr. Kingstone is required to meet with the supervisor once monthly at which time the supervisor will

> *review a representative sample of Dr. Kingstone's patient charts (to be chosen by the supervisor), and discuss them with Dr. Kingstone. Dr. Kingstone is required to follow any recommendations of the clinical supervisor. The supervisor shall submit reports to the College as outlined in the Undertaking.*

Dr. Kingstone will still be prohibited from prescribing narcotics. He will meet with a clinical supervisor monthly. Copies of all prescriptions for controlled substances, including benzodiazepines, will be kept in patient charts and a log of all such prescriptions will be kept. The supervisor will review patient charts and thus will monitor the appropriateness of Dr. Kingstone's prescriptions on an ongoing basis. The Committee has concluded that the varied Order will continue to have the safeguards necessary for public protection.