

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Erez Tamari, 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 patient whose names is 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: Tamari, E. (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. EREZ TAMARI

PANEL MEMBERS:

DR. P. CHART (Chair)
D. GIAMPIETRI
DR. R. WAGMAN
DR. E. ATTIA (Ph.D.)
DR. D. PITT

Hearing Date:	May 18, 2012
Decision Date:	May 18, 2012
Release of Written Reasons:	June 6, 2012

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 May 18, 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 ALLEGATION

The Notice of Hearing alleged that Dr. Erez Tamari committed an act of professional misconduct:

1. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“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.

RESPONSE TO THE ALLEGATION

Dr. Tamari admitted the allegation of professional misconduct in the Notice of Hearing, 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.

FACTS AND EVIDENCE

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

FACTS

1. Dr. Erez Tamari (“Dr. Tamari”) is a family physician practising in Mississauga, Ontario. The College issued him a certificate of independent practice in 1985.

2. As set out in greater detail below, Dr. Tamari failed to respond in a timely manner to a request for medical records related to his patient made repeatedly by an insurance company in 2009 for the purpose of processing the patient's claim under her travel insurance policy.
3. Dr. Tamari's patient, Patient X, travelled under travel medical emergency insurance issued by Insurance Company A for the period of December 30, 2008 to April 28, 2009. She incurred a claim in this period. Insurance Company A required Patient X's medical records from Dr. Tamari in order to process the claim.
4. On April 2, 2009, Insurance Company A sent a request by fax to Dr. Tamari's office explaining that Insurance Company A was the administrator of an insurance policy pursuant to which Patient X had made a claim. Insurance Company A requested medical records from August 2006 to March 2009 regarding Patient X, and enclosed her authorization. The fax was marked both "urgent" and "please reply." Ms Z of Insurance Company A contacted Dr. Tamari's office the same day, and was advised by the receptionist that she would prepare the chart so that it could be faxed the following week when Dr. Tamari returned to the office. The fax was received by Dr. Tamari's office. Insurance Company A's fax of April 2, 2009 to Dr. Tamari, with proof of receipt by Dr. Tamari's office, is attached [to the Agreed Statement of Facts and Admission] at Tab 1.
5. On July 23, 2009, Dr. Y, Vice President of Health Services at Insurance Company A, sent a fax to Dr. Tamari's attention, stating that since April 2 Insurance Company A had made several requests for Patient X's patient record in order to process her claim, and had advised Patient X on June 10 that Insurance Company A had been unable to process her claim as it had not received Dr. Tamari's records. Dr. Y advised Dr. Tamari that the patient had stated that she had previously asked Dr. Tamari's office directly to fulfill Insurance Company A's request. Dr. Y reminded Dr. Tamari of his obligation to fulfill a request in a timely manner, stating that he had exceeded the acceptable timeframe and that Insurance Company A would be lodging a complaint with the College if it did not receive the information requested by August 10. This fax was

received by Dr. Tamari's office. Dr. Y's fax of July 23, 2009, together with proof of receipt, is attached [to the Agreed Statement of Facts and Admission] at Tab 2.

6. On August 18, 2009, Dr. V of Insurance Company A called Dr. Tamari's office, leaving a message requesting a call-back at an 800-number, and stating that he would call back if no response was received within an hour. When he attempted to call back, the line was busy all the time. Dr. V sent a fax to Dr. Tamari's office stating that it was a follow-up to the request for release of information sent by Dr. Y on July 23, and that repeated attempts to contact his office by phone had been made. This fax was received by Dr. Tamari's office. Dr. V's fax of August 18, 2009, together with proof of receipt, is attached [to the Agreed Statement of Facts and Admission] at Tab 3.

7. On August 31, 2009, Dr. V again called Dr. Tamari's office, but the line was busy. Dr. V sent another request by fax, stating that Insurance Company A "cannot complete the Claim adjudication without your clinical notes," and requesting that Dr. Tamari provide the same. This fax was received by Dr. Tamari's office. Dr. V's fax of August 31, 2009, together with proof of receipt, is attached at Tab 4 [to the Agreed Statement of Facts and Admission].

8. Insurance Company A's records state that between April 8, 2009 and September 30, 2009, Insurance Company A employees placed over two dozen calls to Dr. Tamari's office to follow up on Insurance Company A's request for Patient X's medical records. Insurance Company A's records state that with respect to some calls the line was busy or the office was closed, while in other calls the Insurance Company A representative spoke to an unidentified receptionist at Dr. Tamari's office.

9. On October 5, 2009, Dr. Y of Insurance Company A filed a complaint with the College regarding Dr. Tamari. As set out in Dr. Y's complaint, at that time Patient X's claim remained outstanding as a result of Dr. Tamari's failure to respond to Insurance Company A's request for her records. Dr. Y's letter also stated that Patient X was "ineligible to purchase a travel medical policy in the future with our company as a result." Dr. Y stated that, "We feel that there has been a significant delay in responding to our request for records on behalf of the patient. There will be financial implications for

Patient X and our inability to obtain medical records from Dr. Tamari will prevent her from purchasing future insurance through our company.”

10. Dr. Tamari responded to the complaint to the College on December 15, 2009, and referred to irregularities in the “professional capacity and behaviour” of a medical assistant/secretary who left his employ on May 26, 2009, stating that the request would routinely have been handled by her. He advised that he personally complied with Insurance Company A’s request after Patient X drew it to his attention at her October 5, 2009 appointment. Dr. Tamari recalls that Patient X had also come to his office to speak to him about the request some time in August 2009.

11. Patient X’s medical records were obtained by College investigators. The paper record contained Insurance Company A’s faxed request sent on April 2, 2009 only. The electronic record contained (i) two copies of the April 2 request, sent two minutes apart, (ii) the August 18, 2009 request stating that it was a follow-up to the July 23, 2009 letter, and (iii) the August 31, 2009 request. Patient X’s medical record also contained medical records from her stay in a Florida hospital, which led to her insurance claim with Insurance Company A. Insurance Company A sent these records to Dr. Tamari’s attention on April 14, 2009.

12. Dr. Tamari provided the requested records to Insurance Company A in mid-November 2009. There is no evidence that Dr. Tamari’s failure to provide the records in a timely manner ultimately resulted in financial consequences for Patient X, prevented her from travelling, or prevented her from obtaining a travel insurance policy.

ADMISSION

13. Dr. Tamari admits the facts set out above, and admits that the conduct described above was disgraceful, dishonourable or unprofessional, thereby constituting professional misconduct.

FINDING

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. Tamari's admission and found that he committed an act of professional misconduct, 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. In making this finding the Committee notes, in particular, Dr. Tamari's lack of respect for patient rights and his failure to fulfil his professional duty in an acceptable manner.

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 parties agreed that the penalty should include a four week suspension, terms and conditions addressing the practice shortcomings, a reprimand and the payment of costs. The parties dispute only the timing of the commencement of the suspension. The College has asked for the suspension to start June 18, 2012; Dr. Tamari has asked for the suspension to start July 30, 2012.

Where the parties have come to an agreement to make a joint submission on penalty, as in this matter, the Committee places significant weight on the proposed penalty as representing appropriate censure. As a matter of law, the Committee will only reject such a penalty proposal if it is contrary to the public interest and by accepting it the administration of justice would be brought into disrepute.

In making a penalty determination, the Committee is guided by the need to provide protection to the public, proportionality with the finding, and consistency with existing cases.

In addition, there are commonly held principles in case law which apply to penalty in the discipline setting which include: denunciation of the misconduct, specific and general deterrence, rehabilitation and upholding public confidence in the profession. In this

matter specific deterrence, general deterrence and upholding the public confidence in the profession are particularly important and are reflected in the suspension discussion which follows. Rehabilitation is addressed in the terms imposed on Dr. Tamari's certificate of registration. Taken together, the Committee is satisfied that the public will be protected from such behavior in the future by the jointly proposed penalty order.

In considering the proposed penalty, the Committee was mindful of the seriousness of the finding but also noted significant aggravating circumstances:

- In April 2000, Dr. Tamari was before the Discipline Committee of the College of Physicians and Surgeons of Ontario and was found to have committed acts of professional misconduct for failing to respond to an inquiry from the College and failing to provide a report or certificate when requested. This involved his refusal to provide an insurance company with information it required about one of his patients. At that time, the Committee was of the view that Dr. Tamari demonstrated a "blatant disregard" for his patients and the self governance of the medical profession;
- In another incident in this prior referral, he refused to transfer information on a former patient and her family until she complained to the College. The Complaints Committee of the College requested Dr. Tamari appear before it to be cautioned. Dr. Tamari failed to respond to set up appointments to receive this caution. When a date was set by the Committee, Dr. Tamari did not attend;
- As noted in the Agreed Statement of Facts in the subject referral, there were multiple attempts made by Insurance Company A to receive the needed information as well as repeated requests from the patient. Dr. Tamari had every opportunity to respond and had no good reason for failing to do so;
- Dr. Tamari was or should have been aware of the serious consequences of ignoring such a request;

- While the patient was not harmed in this matter, potential harm could have resulted in her being unable to receive payment for medical expenses she incurred or to obtain travel insurance in the future; and,
- Dr. Tamari's behavior reflects negatively on the reputation of the medical profession.

As to mitigating circumstances, Dr. Tamari has admitted his misconduct and agreed to terms which have saved the patient the stress of having to testify.

While the information was ultimately produced and no harm befell the patient, the Committee did not accept that these were legitimate mitigating circumstances in this matter. That Dr. Tamari was embarrassed by his own conduct and that he has instituted changes to his practice are expected, and are not mitigating circumstances. Producing medical records as legitimately requested is not a time consuming or complex task; it is one of the basic expectations of proper practice management in the interest of patients.

The Committee, after considering the proposed penalty order, the submissions of counsel and advice of independent legal counsel, agreed that the proposed order is appropriate sanction in this matter. In coming to this conclusion, the Committee comments on the individual penalty components:

Suspension:

Dr. Tamari was aware of his obligation to provide the requested information in a timely fashion. His past neglect to attend a caution ordered by the Complaints Committee and his prior finding before the Discipline Committee for strikingly similar actions reflect an unhealthy disregard for his own professional responsibility and for his governing body. These are serious flaws and intolerable in modern medical practice. It is clear from the agreed facts that Dr. Tamari has not learned from past experience. A suspension from practice is fully supported in this case.

This should bring home to Dr. Tamari that his actions were unacceptable and will not be tolerated in future.

The Committee had before it case law which illustrates a four week suspension is consistent with the penalty ordered in similar circumstances.

- *College of Physicians and Surgeons of (Ontario) v. Faulkner*, 2001 CarswellOnt 9787(O.C.P.S.D.)
- *College of Physicians and Surgeons of (Ontario) v. Portugal*, 2010, CarswellOnt 10689 (O.C.P.S.D.)

As to the dispute between the parties regarding when the suspension should commence, after hearing and considering the submissions of counsel, the Committee determined that the suspension should occur at the earliest reasonable time given all the circumstances, on June 18, 2012.

The position of the College was that the suspension should begin June 18, 2012 or one month from the hearing date. The defence was put on notice that the College was seeking a suspension in 2011 and it would have been prudent to plan for such an eventuality.

The position of Dr. Tamari was that his suspension should begin July 30, 2012. His counsel stated that he had nothing to gain personally in requesting this date. Further, she stated that his schedule involves surgically assisting one day a week and that this will be cancelled for three weeks in August when the surgeon is off. She submitted that replacement is not simple. Additionally, she stated that he is the only family physician who does a “lumps and bumps” clinic every Thursday. This clinic closes two weeks in August. She also stated that Dr. Tamari covers obstetrical duties one weekend in five and has a number of patients with chronic conditions in his practice which will be hard to cover.

The Committee was informed that Dr. Tamari had taken vacation early in the year and was further planning to leave the next day on a planned vacation.

In coming to its conclusion, the Committee was of the view that undoubtedly it would be more convenient for Dr. Tamari to serve his suspension at a later date. Convenience of the member is not a justification to delay. Specific and general deterrence, denunciation of his conduct and upholding public respect in the medical profession are the principles to be addressed by the suspension and should not be sacrificed to accommodate the wishes of the member. To suggest that it is not simple to find a replacement surgical assistant or that finding a replacement for other aspects of his practice is difficult is not a reason to delay deserved sanction. Responsibility for finding a replacement surgical assistant ultimately is that of the surgeon. Further, the Committee believes alternatives exist for patients of the “lumps and bumps” clinic. Dr. Tamari was certainly able to make accommodations during his vacation time and should be able to make plans for his suspension. His practice is not isolated in a rural setting and he holds local hospital privileges. While it is true that making arrangements for an earlier start date for the suspension may be embarrassing, asking for more time in the circumstances is in the Committee’s opinion inappropriate. It is consistent with Committee practice and the case law for a suspension to start within a month, if not right away. A commencement date of June 18, 2012 is in keeping with the penalty in similar cases.

The Committee finds no cogent reason to delay the penalty beyond June 18, 2012. The Committee does not accept that patient needs will be affected detrimentally provided that Dr. Tamari acts promptly to make arrangements for his suspension. The Committee further expects Dr. Tamari to adhere to the College Policy on *Practice Management Considerations for Physicians Who Cease to Practise, Take an Extended Leave of Absence or Close Their Practice Due to Relocation*.

Terms, Conditions and Limitations on Dr. Tamari’s Certificate of Registration:

The terms, conditions and limitations imposed are directed to protection of the public. There are aspects of the order which also support rehabilitation of the member. The maintaining of a log of requests for third party reports and medical records along with when they were fulfilled should prevent the circumstances of this case arising in future. Dr. Tamari is required to complete an educational course in practice management with a

preceptor and will be assessed for a minimum of six months. This preceptorship ensures that Dr. Tamari will understand fully his professional obligations and addresses both protection of the public and rehabilitation of the member. Dr. Tamari's practice will be reassessed within twelve months of completing the preceptorship. This reassures that new safeguards are incorporated into practice and sustained. Unannounced inspections of his practice and patient charts by a College representative are needed to reassure compliance with the terms of this order.

The costs incurred in fulfilling these terms are rightly borne by the member.

Reprimand:

The reprimand in this matter affords the Committee an opportunity to clearly express to Dr. Tamari its view of his misconduct. Denunciation of the misconduct is most directly achieved in this manner.

Costs:

Under subsection 53.1 of the Code, the Committee may order all or part of the College's costs of the hearing to be paid by a member who is found to have committed an act of professional misconduct. In ordering Dr. Tamari to pay the cost of one day of hearing, the Committee indicates its view that in a matter such as this, the cost of the hearing is properly the responsibility of the member, at least in part, and not the profession as a whole.

ORDER

Therefore, the Committee ordered and directed that:

1. the Registrar suspend Dr. Tamari's Certificate of Registration for a four week period, to commence at 11:59 p.m. on June 18, 2012;
2. the Registrar impose as terms, conditions and limitations on Dr. Tamari's certificate of registration for an indefinite period or for the specified periods of time set out herein:

- a. Dr. Tamari shall maintain a log of requests for third party reports and medical records, which shall indicate when such requests were made and when they were fulfilled (the “Log”);
 - b. Dr. Tamari shall participate in and successfully complete an educational program in practice management with a preceptor who is to be approved by the College in its sole discretion and who has within forty-five days of the date of this Order signed an Undertaking to the College in the form attached hereto as Schedule “A”. Termination of the preceptorship shall be at the sole discretion of the College, but shall in any case not occur until either six (6) months have passed, or two positive successive reports from the preceptor have been received by the College, whichever occurs later. Dr. Tamari shall abide by all recommendations of his preceptor with respect to practice improvements and/or professional development;
 - c. Within twelve (12) months of completing the preceptorship required by paragraph 2(b) above, Dr. Tamari shall undergo a re-assessment with regard to practice management by a College-appointed Assessor. The assessment will include a review of Dr. Tamari’s Log. Dr. Tamari shall abide by all recommendations with regard to practice management made by the College-appointed Assessor. The Assessor shall report the results of this assessment to the College;
 - d. Dr. Tamari shall cooperate with unannounced inspections of his practice and patient charts by a College representative(s) for the purpose of monitoring and enforcing his compliance with the terms of this Order;
 - e. Dr. Tamari shall be responsible for any and all costs associated with implementing the terms of this Order.
3. Dr. Tamari attend before the panel to be reprimanded;
4. Dr. Tamari shall, within 30 days, pay the College its costs of this proceeding in the amount of \$3,650.00.