

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Norton Hertz Lithwick, this is notice that the Discipline Committee ordered that there shall be a ban on publication or disclosure of the identity, and any information that would disclose the identity, of Patient A 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: Lithwick (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 amen

B E T W E E N:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. NORTON HERTZ LITHWICK

PANEL MEMBERS:

DR. M. DAVIE (CHAIR)
E. COLLINS
DR. N. DE
D. EATON-KENT

Hearing Date: October 30, 2007
Decision Release Date: October 30, 2007
Release of Written Reasons Date: November 27, 2007

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 October 30, 2007. At the conclusion of the hearing, the Committee stated its finding that the member committed an act of professional misconduct and delivered its order as to penalty and costs with written reasons to follow.

THE ALLEGATIONS

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

1. in that he has failed to maintain the standard of practice of the profession, under paragraph 1(1)2 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”), and
2. 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, under paragraph 1(1)33 of O. Reg. 856/93.

RESPONSE TO THE ALLEGATIONS

Dr. Lithwick admitted to the second allegation in the Notice of Hearing, that he 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 College withdrew the first allegation in the Notice of Hearing.

FACTS AND EVIDENCE

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

PART I – FACTS

1. Dr. Norton Hertz Lithwick (“Dr. Lithwick”) is a member of the College of Physicians and Surgeons of Ontario (the “College”), and has held a certificate of registration in Ontario since 1968.
2. Until September, 2007, Dr. Lithwick practised in Toronto. Dr. Lithwick retired from practice in September, 2007.
3. In February, 2006, Patient “A” attended with Dr. Lithwick. During her appointment, Dr. Lithwick appropriately performed a rectal examination on Patient “A”. Dr. Lithwick then diagnosed Patient “A” with coccydynia and recommended a coccygectomy.
4. During the following week, Patient “A” and Dr. Lithwick had a telephone conversation regarding the upcoming surgery. At the end of their conversation, Dr. Lithwick made an inappropriate personal comment to Patient “A”, in that he made a complimentary comment about her undergarment. Dr. Lithwick has since apologized for this remark.

PART II – ADMISSION

5. Dr. Lithwick admits the facts set out in paragraphs 1 to 4 above and admits that his inappropriate comment constitutes 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.

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. Lithwick’s

admission and found that he committed an act of professional misconduct under paragraph 1(1)33 of O. Reg. 856/93, in that he 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.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for the member made a joint submission as to an appropriate penalty. They submitted that the penalty order should be a reprimand and inclusion of the results of the proceeding in the register.

College counsel submitted that there were a number of mitigating factors that were considered, which were outlined for the Committee:

1. Dr. Lithwick has had no previous disciplinary findings in the 39 years since his Ontario registration in 1968.
2. He admitted the facts.
3. He has apologized to the patient.
4. He has since retired.
5. He has also signed an undertaking to take both a boundaries and a communication course should he decide to resume practice.

In addition to the mitigating factors, College counsel cited similar cases to demonstrate that the recommended penalty falls within the range of penalties set by precedents.

College counsel submitted that the proposed penalty was appropriate as Dr. Lithwick's breach is less egregious than those in the precedents cited. The proposed penalty provides specific and general deterrence. It protects the public.

Defence counsel supported the submissions made by College counsel. In addition, she highlighted that Dr. Lithwick, by agreeing to the Statement of Facts and Admission, had avoided a lengthy hearing, that the incident was an isolated act, and that the doctor had apologised to the patient.

The panel accepted the joint submission. Uppermost in the minds of panel members were the principles that (a) joint submissions in an adversarial process must be accepted, unless doing so would bring the administration of justice into disrepute; (b) like cases should attract like penalty; (c) there must be general and specific deterrence; and (d) the public must be protected. The Committee concluded that the jointly proposed penalty accomplishes these objectives.

ORDER

Therefore, the Discipline Committee ordered and directed that:

1. Dr. Lithwick appear before the panel to be reprimanded.
2. The results of this proceeding be included in the register.

Dr. Lithwick waived his right to an appeal under subsection 70(1) of the Code and the Committee administered the public reprimand.