NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Di Paola, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the names or any information that could disclose the identity of Patients A and B, and any information that could identify them, including their relationship with Dr. Di Paola, referred to orally or in the exhibits filed 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.

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 … 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: Ontario (College of Physicians and Surgeons of Ontario) v. Di Paola, 2016 ONCPSD 48

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. FRANCESCA ANNE DI PAOLA

PANEL MEMBERS:

DR. P. POLDRE (CHAIR)
MS. D. DOHERTY
DR. P. GARFINKEL
DR. E. ATTIA (PhD)
DR. M. DAVIE

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS. J. AMEY

COUNSEL FOR DR. DI PAOLA:

MR. J. KOZIEBROCKI

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. R. COSMAN

Hearing Date: October 27, 2016
Decision Date: October 27, 2016
Release of Written Reasons: December 16, 2016

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 October 27, 2016. At the conclusion of the hearing, the Committee delivered a written order stating its finding that Dr. Francesca Anne Di Paola committed an act of professional misconduct and setting out its penalty and costs order, with written reasons to follow.

THE ALLEGATION

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

1. under paragraph 1(1)33 of O. Reg. 856/93, in that she has engaged in 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. Di Paola admitted the allegation in the Notice of Hearing, that she has engaged in an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

THE FACTS

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

PART I - FACTS

1. Dr. Francesca Anne Di Paola ("Dr. Di Paola") is a family physician who received her certificate of registration authorizing independent practice in Ontario in 2011.

2. She practices in the area of addiction medicine at the Centre for Addiction and Mental Health ("CAMH") in Toronto, Ontario.

Background

3. Dr. Di Paola had a close personal connection to Patients A and B. Both Patient A and Patient B have accessed services at CAMH.

4. Patient A was an in-patient at CAMH from April to May 2014.

5. On a date in February 2015, concerned about potential unauthorized access of his medical record by Dr. Di Paola, Patient B requested that a "lockbox" be implemented on his medical record at CAMH. A lockbox is a restriction on access to a patient's medical record, imposed at the request of the patient. In Patient B's case, he requested that access to his medical record be restricted to two specific physicians at CAMH. He also requested a list of all individuals who had accessed his CAMH medical record at any time.

6. On another date in February 2015, also concerned about potential unauthorized access of her medical record by Dr. Di Paola, Patient A requested that a lockbox be implemented on her medical record at CAMH, on similar terms to those requested by Patient B. She also requested a list of all individuals who had accessed her CAMH medical record at any time.

Access of medical records by Dr. Di Paola

7. Pursuant to the requests of Patient A and Patient B, CAMH conducted an internal audit which revealed that Dr. Di Paola had accessed or attempted to access Patient A's medical records on 10 separate dates between May 2012 and August 2014.

8. The audit also revealed that Dr. Di Paola had accessed or attempted to access Patient B's medical records on 9 separate dates between May 2012 and September 2014.

9. Dr. Di Paola did not have consent or any other legal authority to access the medical records of Patient A or Patient B on any occasion.

10. Dr. Di Paola accessed Patient A's medical records at CAMH as follows:

	Patient	**Date of access**	**Patient encounter dates accessed**
1.	**Patient A**	**A date in May 2012**	**Two dates in September 2010 Two dates in October 2010 Two dates in November 2010**
2.	**Patient A**	**A date in January 2013**	**Two dates in September 2010 Two dates in October 2010 Two dates in November 2010**
3.	**Patient A**	**A date in March 2013**	**A date in November 2010**
4.	**Patient A**	**A date in April 2014**	**The same date in April, 2014**
5.	**Patient A**	**A second date in April 2014**	**That same second date in April 2014**
6.	**Patient A**	**A third date in April 2014**	**That same third date in April 2014**
7.	**Patient A**	**A date in May 2014**	**Record accessed but no specific patient encounter dates reviewed**
8.	**Patient A**	**A second date in May 2014**	**That same date in May 2014**
9.	**Patient A**	**A third date in May 2014**	**Those same second and third dates in May 2014**
10.	**Patient A**	**A date in August 2014**	**Access attempted but no treating relationship declared. No access to chart.**

11. Dr. Di Paola accessed Patient B's medical records at CAMH as follows:

	Patient	**Date of access**	**Patient encounter dates accessed**
1.	**Patient B**	**A date in May 2012**	**Two dates in March 2011** **A date in April 2011**
2.	**Patient B**	**A date in January 2013**	**A date in March 2011**
3.	**Patient B**	**A date in March 2013**	**A date in April 2011**
4.	**Patient B**	**A date in June 2013**	**A date in June 2013**
5.	**Patient B**	**A date in July 2013**	**Two dates in June 2013**
6.	**Patient B**	**A date in September 2013**	**A date in June 2013**
7.	**Patient B**	**A date in September 2014**	**Access attempted but no treating relationship declared. No access to chart.**
8.	**Patient B**	**A second date in September 2014**	**That same date in September 2014**
9.	**Patient B**	**A third date in September 2014**	**That same third date in September 2014: viewed summary page only**

12. In CAMH's current database system, iCARE, which was implemented in May 2014, a physician must declare that he or she is in a treating relationship with the patient, and set out the nature of that relationship, in order to be granted permission to access a patient's medical records.

13. Dr. Di Paola attempted to access Patient A's medical records through iCARE on a date in August 2014. She did not declare a treating relationship with Patient A and so was not granted access to Patient A's medical records on that date.

14. Dr. Di Paola attempted to access Patient B's medical records through iCARE on a date in September 2014. She did not declare a treating relationship with Patient B and so was not granted access to Patient B's medical records on that date.

15. When Dr. Di Paola accessed Patient B's medical records through iCARE on a second date in September 2014, she declared herself to be an "Attending Physician" in order to gain access. On that date, Dr. Di Paola was the attending physician on the unit where Patient B was a patient but she did not have his consent or legal authority to access

his medical records. Dr. Di Paola also accessed Patient B's medical records through iCARE on a third date in September 2014.

16. On a fourth date in September 2014, Dr. Di Paola, having previously been the attending physician on Patient B's unit, received an Inbox message sent to all of Patient B's physicians at CAMH. Dr. Di Paola did not access Patient B's medical records through iCARE on that fourth date in September 2014.

17. The medical records of Patient A and Patient B accessed by Dr. Di Paola included personal health information of a very sensitive nature, namely information related to psychiatric and addictions issues. Patient A and Patient B expected that this information would be kept confidential.

Meeting

18. In the summer of 2014, Dr. Di Paola was invited to attend a meeting regarding Patient A's care at a hospital by virtue of Dr Di Paola's close personal relationship with Patient A. This meeting was attended by Patient A's treating physician and by a Children's Aid Society social worker who had been involved with Patient A's family. At that meeting, Dr. Di Paola took a position with respect to Patient A's access to Patient A's child that was adverse to the position taken on this issue by Patient A's treating physician.

CAMH policies and privacy education

19. On December 10, 2012, Dr. Di Paola signed a letter of offer of appointment to the medical staff at CAMH. On April 17, 2013, Dr. Di Paola signed a letter of re-appointment to the medical staff at CAMH. Each letter provided that, by signing the letter, Dr. Di Paola confirmed that she was familiar with the Personal Health Information and Privacy Protection Act and was aware of, and agreed to honour, her obligations set out therein. Each letter also provided that acceptance of the appointment entailed Dr. Di Paola's agreement to govern herself in accordance with all CAMH Policies, which included a Privacy Policy.

20. Dr. Di Paola completed CAMH's e-learning program on Privacy Fundamentals on April 26, 2012 and again on August 31, 2014.

21. Dr. Di Paola was aware each time that she accessed the medical records of Patient A and Patient B that she was doing so without authority or consent.

PART II - ADMISSION

22. Dr. Di Paola admits the facts specified in paragraphs 1 to 21 and admits that the conduct described constitutes an act of professional misconduct. Specifically, by repeatedly accessing confidential and sensitive personal health information of Patients A and B without consent or legal authority, when she knew she had no authority to do so, and by acting in a conflict of interest in relation to Patient A's care, Dr. Di Paola admits that she engaged in 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 contrary to section 1(1)33 of Ontario Regulation 856/93 made under the Medicine Act, 1991.

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 found that Dr. Di Paola committed an act of professional misconduct in that she has engaged in 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 ON PENALTY

The following additional facts were contained in an Agreed Statement of Facts Respecting Penalty which was filed as an exhibit and presented to the Committee:

1. The Medical Advisory Committee at the Centre for Addiction and Mental Health ("CAMH"), where Dr. Di Paola holds privileges and where the breaches of privacy occurred, took disciplinary action against Dr. Di Paola.

2. The disciplinary action consisted of:

a) A two-week unpaid leave of absence;

b) The completion of two courses recommended by the College of Physicians and Surgeons of Ontario addressing issues relating to professional boundaries and privacy and confidentiality; and

c) The drafting of three letters of apology, one to Patient A, one to Patient B and one to CAMH as an organization.

3. In satisfaction of the disciplinary action at paragraph 2(b) above, Dr. Di Paola completed the Boundaries course at the University of Western Ontario, and the Osgoode Hall Law School Professional Development course entitled "Legal Guide to Privacy and Information Management in Health Care".

SUBMISSIONS ON PENALTY

Counsel for the College and counsel for the member made a joint submission as to an appropriate penalty and costs order, which included:

1. a three month suspension;
2. an individualized medical ethics course at Dr. Di Paola's own expense;
3. a reprimand; and

4. costs for the one day hearing.

PENALTY AND REASONS FOR PENALTY

In considering the joint submission, the Committee was mindful of the legal principle that a tribunal or court should not depart from a penalty jointly proposed unless the proposed penalty would bring the administration of justice into disrepute or is otherwise contrary to the public interest. This is a "high hurdle" and has recently been affirmed by the Supreme Court of Canada (*R. v. Anthony-Cook,* 2016 SCC 43).

The Committee also took into account a number of principles in assessing the proposed penalty. Paramount is the protection of the public. Also important is a desire to express the abhorrence of the profession for the member's behavior, and to maintain public confidence in the profession and the College's ability to regulate the profession in the public interest. Deterrence both of the member and other physicians is also an important feature in a penalty. When possible, the penalty should also provide for rehabilitation of the member. The penalty should also be proportionate to the misconduct.

Aggravating Factors

Trust is fundamental to the patient-doctor relationship and the ability to treat. Patients come to the physician with varying levels of ability to trust. But even in the most trustworthy person, trust must be built and is not automatic.

For some patients, it is very difficult to trust others, often based on earlier traumatic experiences. Indeed, the patients had worried about this in advance and had specifically discussed with clinical staff the protection of the confidentiality of their medical records.

A physician must understand firstly the importance of trust to the therapeutic relationship; secondly, know how to build trust with patients; and thirdly, never abuse this trust for personal gain or advantage.

In this case, Dr. Di Paola accessed the confidential medical records of two people with whom she had a close personal connection. Dr. Di Paola improperly accessed the medical records of these two patients willfully for her own purposes, rather than for the wellbeing of the patients.

Privacy is a cornerstone of trust. Privacy refers to an individual having the right to choose what information she shares with others, individually or collectively. Privacy supports or creates feelings of security, and is an important human right. Violating privacy destroys trust, both for the individual physician, but also for the profession as a whole.

The principles of the Hippocratic Oath, dating from antiquity, are held sacred by physicians to this day and include the following concepts: "…to treat the sick to the best of one's ability, preserve patient privacy, teach the secrets of medicine to the next generation "…(Peter Tyson, The Hippocratic Oath Today, Posted March 27, 2001).

Trust is fragile and can be undermined to a very significant degree, even when health records are disclosed through inadvertence. It can be undermined to an even greater degree when access to a patient's confidential records is intentional and unauthorized. Electronic health records are intended to facilitate effective and efficient patient care. But when a physician seeks to gain improper and unauthorized access to sensitive patient information in confidential medical records, public trust in the profession is eroded.

Confidentiality is emphasized to be one of the fundamental pillars within medical education. Patients must feel that their personal medical information is handled in a confidential manner. Medical records contain information about their background, their

experiences, their illnesses and their treatments, and may only be disclosed with the patients' informed consent.

Dr. Di Paola signed annual re-appointment forms at the hospital from July 2013 acknowledging her understanding of confidentiality and handling of clinical records. In spite of this, she acted deliberately and repeatedly to violate the confidentiality of the medical records of the two patients.

Physicians are in a privileged position in hearing confidential personal information, at times the most intimate details of a patient's life. This information is provided to the physician by virtue of being a doctor and is to be used solely for the benefit of the patient. Now that patient records are readily accessed by the touch of a button, privacy safeguards must be rigorously maintained. Records dealing with mental health and addiction problems are among the most confidential of health records.

The conduct of Dr. Di Paola was not a transient, impulsive act; rather, she gained unauthorized access to the patients' medical records on nineteen (19) occasions, and accessed multiple records on some occasions, over a two year period (for Patient A from May 2012 to May 2014; for Patient B from May 2012 to September 2014). Dr. Di Paola had not received consent to access the medical records of the two patients.

Dr. Di Paola's activity only stopped when the Hospital changed its method of accessing health records.

Dr. Di Paola's actions could have had a direct effect on the wellbeing of Patient A's child. Dr. Di Paola was invited to attend a meeting at North York General Hospital and took a position with respect to the child that was adverse to the position taken by Patient A's treating physician.

Accessing health records inappropriately is not a harmless activity. This was demonstrated in the victim impact statement provided by one of the patients. She felt "extremely devastated," humiliated, and helpless. Because she lacked the power to prevent these acts, this patient felt re-traumatized by the breach of confidentiality. She had always guarded her privacy, for example, by discussing confidential material with only one psychiatrist over an 18 year period. It is likely that this breach will affect her trust in the medical profession in the future and could affect her ability to receive optimal care.

Mitigating Factors

Dr. Di Paola admitted to her misconduct from the beginning of the Hospital's investigation. She fully cooperated with the College, and by accepting the joint submission, she spared witnesses the emotional distress of testifying and the College the time and cost of a contested hearing.

Dr. Di Paola has repeatedly expressed remorse for her actions. She has written a letter of apology to both patients and to the Hospital.

Dr. Di Paola was required by the MAC of the Hospital to take two courses – one on professional boundaries and one on legal issues related to privacy and information management in health care. She has already taken these courses.

Dr. Di Paola was also required by the Hospital's MAC as a discipline measure to take a two week unpaid leave of absence.

In supporting letters, Dr. Di Paola has been described by many colleagues as an excellent clinician providing high standards of care, and she is well-regarded as a teacher.

Prior Cases

The Committee accepts as a principle of fairness that like cases should be treated alike. However, the Committee is aware that no two cases are identical, and that this case is in the context of an emerging new area of privacy case law because it relates to electronic medical records. There is one similar case that the Discipline Committee has dealt with, involving a general practitioner who accessed the medical records of two patients with whom he had a close connection multiple times over the course of a decade (*CPSO v. Dr. Brooks* (2016)). The records included sensitive psychiatric information. Dr. Brooks, like Dr. Di Paola, had signed an agreement with the hospital regarding confidentiality of data. Dr. Brooks' improper access of patient information came to light only after the suicide of one of the patients. He was given a five-month suspension because his misconduct extended over a ten year period, not two years as in the subject case, and it involved more records, and two different facilities.

Other Canadian provinces have had experience with only a modest numbers of similar cases. A 2013 discipline hearing in Alberta (*Watrich*) involved three patients' records over one year. Dr. Watrich accessed these records for personal reasons. She was given a 60 day suspension, with 30 days suspended, if she followed through on other requirements imposed as part of the penalty.

A third case from New Brunswick (*College of Physicians and Surgeons of New Brunswick v. Lievano*, 2016) involved privacy breaches that were discovered as a result of a random audit. It involved 350 privacy breaches of 141 female patients, all of whom were women between the ages of 19 and 39. None were Dr. Lievano's patients. Many were women he was acquainted with, and some worked as hospital employees. These breaches occurred over two and a half years. The committee determined that a six month suspension was appropriate, together with ongoing monitoring of his access to health records for 24 months, followed by random monthly audits for 12 months.

Analysis and Conclusion on Joint Submission

Having considered all of the above factors, the Committee was satisfied that the proposed penalty in this case was appropriate. Requiring Dr. Di Paola to take a course in medical ethics, in addition to the two she has already taken on professional boundaries and privacy, helps towards her rehabilitation. The three month suspension serves as a general deterrent to the profession, to remind all Ontario physicians of the obligation to respect the privacy and confidentiality of patient records and of the serious consequences that follow when that is not done. The penalty provides a specific deterrent to Dr. Di Paola against repetition of such misconduct.

In accepting the joint submission on penalty, the Committee reassures the public that it can have confidence in the medical profession and the College's ability to regulate the profession in the public interest.

ORDER

The Committee stated its finding of professional misconduct in paragraph 1 of its written order of October 27, 2016. In that order, the Committee ordered and directed on the matter of penalty and costs that:

2. Dr. Di Paola appear before the panel to be reprimanded.

3. The Registrar suspend Dr. Di Paola's certificate of registration for a period of three (3) months commencing at 12:00 a.m. on October 31, 2016.

4. The Registrar impose the following term, condition and limitation on Dr. Di Paola's certificate of registration:

    a. Dr. Di Paola will participate in and successfully complete, within six (6) months of the date of this Order, five (5) hours of individualized instruction in medical ethics with an instructor approved by the College,

with a report or reports to be provided to the College regarding Dr. Di Paola's progress and compliance.

5. Dr. Di Paola pay costs to the College in the amount of $5,000.00 within 30 days of the date of this Order.

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

TEXT of PUBLIC REPRIMAND
Delivered October 27, 2016
in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
AND
DR. FRANCESCA ANNE DI PAOLA

The Chairperson: The Committee recognizes the intensely challenging circumstances that you and your extended family were experiencing. However, the right of every patient to the privacy of their interactions with their physician is of such paramount sanctity that no breach of that privacy can be tolerated.

Physicians are granted a privileged role in hearing confidential personal information. Patients are entitled to the expectation that such information will only be used in their best interest.

Trust is the foundation of the patient-physician relationship. Privacy is a cornerstone of that trust. Destroying privacy destroys trust, for both the individual physician and the profession.

As the Committee heard from one of the victims, that breach of trust resulted in feelings of humiliation and violation. Indeed, the impact of your actions on the ongoing and future healthcare of the victim is a serious concern. Your behaviour was replicated over time and it was deliberate. Yours was not a transient error. Rather, it represents a severely clouded impairment of your judgment.

The Committee is aware that electronic access to healthcare records is a reality that is ongoing and will increase in the future, and that it is intended for enhancement of patient care. It is for that very reason that our profession must be scrupulously mindful of our responsibility to only access those records to which we are entitled.

The Committee recognizes your remorse, the steps you have taken to date and your contributions to patient care at your hospital.

The Committee sincerely expects that this will be your only appearance before it.