NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Brooks, this is notice that the Discipline Committee ordered a ban on publication or broadcast of the names and any information that could disclose the identities of Patient A, Patient B, or the complainant, Patient A's father, referred to orally or in the exhibits filed at the hearing, including but not limited to the nature of their relationship with Dr. Brooks, 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. Brooks, 2016 ONCPSD 29**

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. DOUGLAS EARL BROOKS

PANEL MEMBERS:

DR. M. GABEL (CHAIR)
MS. D. GIAMPIETRI
DR. P. TADROS
MR. P. PIELSTICKER
DR. J. WATTS

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS. A. CRANKER

COUNSEL FOR DR. BROOKS:

MS. M. K. O'BRIEN

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MS. J. MCALEER

PUBLICATION BAN

Hearing Dates: July 4, 2016
Decision Date: July 4, 2016
Release of Written Reasons: August 26, 2016

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 July 4, 2016**.** 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. Douglas Earl Brooks committed an act of professional misconduct:

1. under paragraph 1(1)33 of 0. Reg. 856/93, in that he 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. Brooks admitted the allegation that he 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 Agreed Statement of Facts and Admission was marked as an exhibit:

PART 1 - FACTS

1. Dr. Douglas Earl Brooks ("Dr. Brooks") is a 68 year-old physician who received his certificate of registration authorizing independent practice in Ontario in 1974.

2. Dr. Brooks is a general practitioner in Sault Ste Marie where he maintains a family practice at the Group Health Centre ("GHC") and hospital privileges at the Sault Area Hospital ("the Hospital"). Dr. Brooks has also worked as an investigating coroner since 1976.

Background

3. Patients A and B had a close personal connection to Dr. Brooks and his wife.

4. Patient A and Patient B had family physicians who practised at the GHC. These medical records were maintained in the GHC's electronic medical records system.

5. Patient A and Patient B also had medical records from visits to the Hospital, that were maintained in the Hospital's electronic medical records system.

6. Patient A suffered from mental health and addictions issues. She died by suicide in August 2014.

7. Dr. Brooks was the investigating coroner on call at the time of Patient A's suicide. Further to receipt of a call from a dispatcher in the early morning, at approximately 1:00a.m., Dr. Brooks attended at the house where the death took place. Due to his connection to Patient A, arrangements were made to have the case transferred to another coroner at approximately 2:00a.m. and Dr. Brooks did not act as the coroner in the investigation of Patient A's death.

8. After Patient A's death, her relatives, concerned about potential unauthorized access to their records by Dr. Brooks, requested audit reports of access to Patient A and Patient B's electronic medical records from both the GHC and the Hospital.

Privacy Breaches

9. The GHC audit reports confirm that Dr. Brooks accessed Patient A's electronic medical records on six dates: on one date in September 2005, on one date in April 2006, on one date in June 2011, twice in August 2011, and on one date in March 2014. Multiple records were accessed on each of these dates.

10. The GHC audit reports confirm that Dr. Brooks accessed Patient B's electronic medical records on eight dates: on one date in April 2003, on one date in September 2005, on one date in April 2006, on one date in May 2006, on one date in June 2006, on one date in August 2006, on one date in September 2006 and on one date in October 2006. Multiple records were accessed on each of these dates.

11. The Hospital audit reports confirm that Dr. Brooks accessed Patient A's electronic medical on eight dates: on six separate dates in August 2011, on one date in September 2011, and on one date in August 2014. Multiple records were accessed on each of these dates.

12. A summary of these audit reports together with a copy of the audit reports and, where available, the corresponding medical records that were accessed is attached as Tab A of the Agreed Statement of Facts and Admission.

13. Dr. Brooks' access to the electronic records was unauthorized as he did not have the consent of Patient A and Patient B to access their respective medical records nor was there any medical reason for Dr. Brooks to access the records.

14. The medical records that were accessed by Dr. Brooks included information related to general family medicine care, as well as highly personal information of a very sensitive nature, namely information related to psychiatric care, addictions-related issues and obstetrical care.

Patient B's Pregnancy

15. In 2006, after a period of estrangement, during the first trimester of Patient B's pregnancy, Patient B initiated contact with Dr. Brooks' wife. The attempt at reconciliation was unsuccessful. Subsequent to this contact, Dr. Brooks accessed Patient B's electronic medical records at the GHC six times during the remainder of her pregnancy.

Patient A's Hospitalization

16. In 2011, Patient A was admitted to the Mental Health Inpatient Unit at the

Hospital. During this time, Dr. Brooks accessed Patient A's records almost daily over a period of seven days, with additional access during the week after her discharge.

Patient A's father sought Dr. Brooks' and his wife's assistance

17. In March 2014, Patient A was struggling and refusing access to crisis care. Patient A's father reports that when he asked her if there was anything he could do to help, Patient A requested that he seek out Dr. Brooks' wife to meet with her. Patient A's father went to Dr. Brooks' home, requesting Dr. Brooks and his wife join him in an intensified effort to help Patient A. At that time, he also asked Dr. Brooks' wife if she would meet with Patient A the next day.

18. Later that day, Dr. Brooks' wife discussed this with Dr. Brooks. He expressed concern to her that it was not safe to meet Patient A where she was living. Dr. Brooks' wife called Patient A's father in the evening and told him that she would not be able to meet Patient A the next day.

19. Dr. Brooks accessed Patient A's records that same evening.

20. Dr. Brooks and his wife did not have any further contact with Patient A from this point forward.

Confidentiality Agreement with the Hospital

21. On November 24, 2003, Dr. Brooks signed a Confidentiality Agreement with the Hospital, attached at Tab B of the Agreed Statement of Facts and Admission**,** confirming that except where he was legally authorized or required to do so, he would not inspect or receive paper or electronic patient-related information from Health Records or from notes, charts, and other material related to patient care.

22. The Confidentiality Agreement that Dr. Brooks signed also confirmed that he had reviewed the Hospital's Confidentiality Policy, dated October 2003, attached at

Tab C of the Agreed Statement of Facts and Admission**,** and understood that it was his responsibility to be familiar with the requirements outlined in this Policy. The Hospital's Confidentiality Policy stated that it was a breach of confidentiality to access patient or health information when not required to provide care to a patient or in the performance of duties.

ADMISSION

23. Dr. Brooks admits the facts in paragraph 1-24 above and admits that the conduct described constitutes an act of professional misconduct in that he engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all of the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional contrary to section 1(1)33 of O. Reg. 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 accepted Dr. Brooks' admission and found that he committed an act of professional misconduct in that he 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.

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 submission proposed a reprimand, a suspension of Dr. Brock's certificate of registration for five months, a requirement that Dr. Brock complete an ethics course, and the payment of $5,000.00 in costs.

Patient B and Patient A's father both read victim impact statements to the Committee. In her statement, Patient B described how Dr. Brooks' breaches of her privacy have affected her life. She described how the resulting loss of trust in the medical community as well as in Dr. Brooks resulted in her delay in seeking medical treatment during her pregnancy. She also stated that her loss of faith in the medical community extended to her fearing for the well-being of her child and her husband. Patient B stated that she believed that Patient A would have been lost in grief and embarrassment to learn of the breach of her patient records had she lived. Patient B also believed that the breach of her privacy compounded the severe grief felt by someone dealing with loss of a loved one by suicide, like herself.

Patient A's father also speculated that his late daughter would have been devastated, angry, and betrayed by the violation of her medical records. He described the feelings of fear and suspicion that repeatedly occupied his mind after Dr. Brooks' intrusion into Patient A's and Patient B's medical records.

The Committee was provided with evidence of Dr. Brooks' suspension of privileges at his hospital for three months, together with enhanced monitoring of his access to medical records. The hospital also required Dr. Brooks to present at quarterly meetings on the topic of privacy to the medical staff for one year after reinstatement. The hospital also required Dr. Brooks to lead hospital-wide Grand Rounds on the topic of patient privacy.

The Committee also received evidence of Dr. Brooks' completion of an online course on privacy and confidentiality, as well as his completion of a preceptorship in ethics and privacy with the vice-president of medical professionalism of the Canadian Medical Association. A report from the Canadian Medical Association's vice president stated that Dr. Brooks readily acknowledged his mistakes and errors in judgment. Dr. Brooks' preceptor was impressed by Dr. Brooks' sincere desire to learn and believed that the likelihood of repeating his past mistakes was exceedingly low.

The Committee was also provided with a brief of 27 letters of support from Dr. Brooks' colleagues. Several of his colleagues wrote about attending Dr. Brooks' sessions on privacy and confidentiality. The letters also refer to Dr. Brooks' support for colleagues

with substance abuse and other impairments. Seven of the letters refer to Dr. Brooks' remorse and learning that have resulted from his misconduct.

The Committee was aware that a joint submission on penalty should be accepted unless to do so would be contrary to the public interest and would bring the administration of justice into disrepute. The Committee also took into consideration aggravating and mitigating factors in Dr. Brooks' case.

Aggravating factors included the fact that Dr. Brooks abused his status as a physician. Only a regulated health care professional would be able to improperly access electronic medical records in the way that he did. Dr. Brooks allowed his curiosity to overcome respect for patients' rights; in particular, he disregarded the rights of Patient A at a time when she was especially vulnerable.

Dr. Brooks had signed an agreement not to access unauthorised patient records. However, his behaviour would have constituted misconduct even if he had not signed such an agreement. Dr. Brooks' violations of patient privacy were recurring in that he accessed one Family Medicine record on five occasions, a second Family Medicine record on eight occasions, and the hospital record on two occasions. Dr. Brooks accessed the hospital record at a time when the patient was hospitalised for mental health concerns. His privacy violations took place over a significant length of time – almost a decade – and had a significant impact on the patients and their families. This impact was described in victim impact statements and included a loss of trust, compounding grief, and suspicion of physicians in general.

Mitigating factors included Dr. Brooks' agreement to an Agreed Statement of Facts and Admission and a joint submission on penalty, which saved all parties the costs and burden of a contested hearing. Additionally, Dr. Brooks has a previously unblemished record and has apologized to the patients involved. Dr. Brooks has undergone both a self-directed and a separate preceptorship-directed educational program. He has addressed his colleagues about the issue and his colleagues have shown a strong support for him. Finally, Dr. Brooks' misconduct was prompted by circumstances of challenging family dynamics.

There are no previous decisions of the Discipline Committee which are directly comparable, to which this Committee can refer.

In New Brunswick, a physician accessing unauthorised records was suspended by the hospital for 6 months, which was considered by his College in not imposing further suspension (CPSNB vs. Lievano). In Alberta, a suspension of 60 days was imposed for a similar offence (CPSA vs. Watrich).

Similar cases involving unauthorised access by nurses (CNO vs. Oliveira, McLellan and Edgerton) resulted in suspensions of four to five months, although all three cases involved very large numbers of charts being accessed.

The Committee agreed that a suspension of five months should achieve the goals of both individual and general deterrence and of sending a clear message to both the public and the profession of the Committee's denunciation of this misconduct. Rehabilitation is addressed by Dr. Brooks' past and proposed educational activities. The individual deterrence of Dr. Brooks is further addressed by a public reprimand. Finally, the belief that Dr. Brooks is at low risk of re-offending gives grounds to believe that the public is suitably protected.

In imposing this penalty, the Committee recognizes the importance of public trust in physicians. This trust is fragile and easily undermined by intrusion into health records which, by their very nature, incorporate highly sensitive and personal information. The Committee recognizes that electronic health and medical records offer a means of access that is much easier than that afforded by conventional hard copy records, and for this reason, protection must be very secure. Breaches of medical data privacy must be condemned and met with significant penalties.

The Committee agrees that this is a suitable case in which to order that the costs of a one-day hearing be met by Dr. Brooks, at the tariff set by the College.

ORDER

Therefore, having stated the findings in paragraph 1 of its written order of July 4, 2016, on the matter of penalty and costs, the Committee ordered and directed that:

2. Dr. Brooks appear before the panel to be reprimanded, with the fact of the reprimand to be recorded on the register.

3. The Registrar suspend Dr. Brooks' certificate of registration for a period of five (5) months commencing from the date of this Order.

4. The Registrar impose the following term, condition and limitation on Dr. Brooks certificate of registration:

    a. Dr. Brooks will participate in and successfully complete, within 6 (six) months of the date of this Order, 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. Brooks' progress and compliance.

5. Dr. Brooks pay to the College costs in the amount of $5,000.00 within 30 (thirty) days of the date of this Order.

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

TEXT of PUBLIC REPRIMAND
Delivered July 4, 2016 in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
And
DR. DOUGLAS EARL BROOKS

THE CHAIRPERSON: Dr. Brooks, a single ethical breach can discolour an entire career. Privacy and confidentiality have been basic principles of the practice of medicine. Foundational ideas, such as the Hippocratic oath, inform this basic principle.

Prying is an intrusion into patient's privacy. Whatever the motivation, it is simply an ugly practice and reprehensible to everyone. It is extremely upsetting to have this happen to one of our members.

We have said that your behaviour is disgraceful, dishonourable and unprofessional. Yes, it was disgraceful, and to put simply, dishonest. Dishonourable in that the trust in you and the profession is breached. Unprofessional in that you fell below any conceivable standard a physician behaviour is related to privacy.

You placed your own interest and curiosity above those of your patient's, and let your private life bleed into your professional life. This we condemn. This deliberate action has caused severe emotional distress to those who are involved. This caused distress to the profession as well. We strive to keep our patient's trust, and you make that all the more difficult.

You have seen today the results of your interventions. Hopefully you know understand the ramification of your action and will do the hard, necessary work to understand your behaviour and change it in the future.