

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. John Anthony Paolone, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity and any information that would disclose the name or identity of the patients 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: Paolone, J. A. (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. JOHN ANTHONY PAOLONE

PANEL MEMBERS:

DR. M. GABEL (Chair)
D. DOHERTY
DR. R. WAGMAN
DR. E. ATTIA (Ph.D.)
DR. J. KIRSH

Hearing Date: September 14, 2012

Decision Date: September 14, 2012

Release of Written Reasons: December 19, 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 September 14, 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. John Anthony Paolone committed an act of professional misconduct:

1. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, 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. Paolone admitted the allegation in the Notice of Hearing 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.

FACTS AND EVIDENCE

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

1. In 2008, the College received a complaint regarding Dr. Paolone’s care of a patient (the “Complaint”).
2. By letter dated October 31, 2008, the College wrote to Dr. Paolone and requested that he provide the College with a complete and legible photocopy of all original

- office records pertaining to the patient for the relevant time period, and advised Dr. Paolone that “no changes, additions, deletions or corrections may be made to the records. Any changes or additions which are required should be done in a separate document.”
3. In response to the College’s request and unbeknownst to the College, rather than providing the original patient record as requested, Dr. Paolone re-wrote and revised the patient’s record and provided it to the College without providing the original record or advising the College that what he was providing was not the original patient record and without advising the College that he had made changes, additions, deletions and corrections. Attached at Tab 1 [to the Agreed Statement of Facts] is the revised patient record.
 4. On March 4, 2009, the Complaints Committee disposed of the Complaint by directing a caution in person and requiring Dr. Paolone to submit homework. The caution was scheduled for May 26, 2010. A copy of the Complaints Committee Decision is attached at Tab 2 [to the Agreed Statement of Facts].
 5. In May 2010, the College received a letter from Dr. Paolone’s counsel indicating that the patient record that Dr. Paolone submitted during the investigation of the Complaint had been re-written and revised by Dr. Paolone. In that letter, Dr. Paolone’s counsel provided to the College, for the first time, the original patient record, a copy of which is attached at Tab 3 [to the Agreed Statement of Facts].
 6. The College did a comparison of the original patient record and the rewritten/ revised record, a copy of which is attached at Tab 4 [to the Agreed Statement of Facts], which demonstrated numerous substantial revisions by Dr. Paolone to the patient record.

FINDING

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts. Having regard to these facts, the Committee accepted Dr. Paolone’s 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 Committee has the discretion to accept or reject a joint submission on penalty. The Committee appreciates, however, that the case law provides that a tribunal should accept a joint submission unless the penalty proposed is so disproportionate to the findings that acceptance of the proposed penalty would be contrary to the public interest and bring the administration of justice into disrepute.

The fact that Dr. Paolone had previously been cautioned by the College's Inquiries Complaints and Reports Committee for similar behaviour was an aggravating factor on penalty.

As a mitigating factor, Dr. Paolone did admit the allegation in the Notice of Hearing and agreed to the facts in the Agreed Statement of Facts, thereby saving the College the time and costs associated with a contested hearing. The Committee notes, however, that Dr. Paolone only admitted late in the complaints process that the patient record he had submitted during the investigation of the complaint had been rewritten.

Additional mitigating factors include the fact that Dr. Paolone did not destroy the original record, and there is no evidence that he intended to deceive the Complaints Committee.

A public reprimand is consistent with the penalty principles of both general deterrence to the medical profession and specific deterrence to Dr. Paolone.

The one month suspension sends a strong message to the profession that altering patient records will not be tolerated.

Dr. Paolone will be required to successfully complete, at his own expense, the College facilitated instruction in record-keeping within 12 months and then cooperate with a re-assessment within 6 to 12 months of the completion of the record-keeping course. The record-keeping course should assist Dr. Paolone to maintain the standard of practice of the profession in the future and is consistent with the penalty principle of rehabilitation. The reassessment of his practice is designed to ensure that the misconduct is not repeated. The Committee was satisfied that the penalty proposed by the parties will serve to protect the public and maintain confidence in the profession's ability to self-regulate.

Furthermore, the costs associated with the record keeping course and the reassessment will be borne by Dr. Paolone personally, rather than the profession at large, which should be further specific deterrence for Dr. Paolone.

The Committee reviewed the precedent cases provided by the parties and concluded that the proposed penalty was in keeping with the range provided for in similar cases.

Costs of the hearing in the amount agreed upon are appropriate in the circumstances of this case.

The Committee, therefore, decided that the penalty proposed is both fair and reasonable.

ORDER

Therefore, having stated the finding in paragraph 1 of its written order of September 14, 2012, on the matter of penalty and costs, the Committee ordered and directed that:

2. Dr. Paolone attend before this panel to be reprimanded.
3. the Registrar suspend Dr. Paolone's certificate of registration for a period of one (1) month, to commence Monday, September 17, 2012.
4. the Registrar impose the following terms, conditions and limitations on Dr. Paolone's certificate of registration:

- (i) Dr. Paolone shall, at his own expense, successfully complete College-facilitated instruction in Ethics within 12 months of this Order; and
 - (ii) Dr. Paolone shall, at his own expense, successfully complete College-facilitated instruction in Record-Keeping within 12 months of this Order, and shall cooperate with a re-assessment of his medical records by representatives of the College within 6-12 months of his completion of the record-keeping course.
5. Dr. Paolone pay costs to the College in the amount of \$3,650.00 within 60 days of the date of this order.

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