

## NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Kaveri Manian Kaveri Selvan, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the names of the patients, or any information that could identify the patients 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*, 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... 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. Kaveri,  
2017 ONCPSD 55**

**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. KAVERI MANIAN KAVERI SELVAN**

**PANEL MEMBERS:**  
**DR. M. GABEL (Chair)**  
**MS D. GIAMPIETRI**  
**DR. H. SCHIPPER**  
**MR. J. LANGS**  
**DR. P. GARFINKEL**

**COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:**

**MS D. AWAD**  
**MR. P. WARDLE**  
**MR. E. RANKIN**

**COUNSEL FOR DR. KAVERI SELVAN:**

**MS E. GRACE**  
**MS A. MATAS**

**INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:**

**MS J. MCALEER**

**Hearing Date:** November 6, 2017  
**Decision Date:** November 6, 2017  
**Release of Written Reasons:** December 20, 2017

**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 November 6, 2017. At the conclusion of the hearing, the Committee released a written order stating its finding that the member committed an act of professional misconduct and setting out its penalty and costs order with written reasons to follow.

### **THE ALLEGATIONS**

The Notice of Hearing alleged that Dr. Kaveri Manian Kaveri Selvan (“Dr. Kaveri”) 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 ALLEGATIONS**

Dr. Kaveri entered a plea of no contest to the allegation of professional misconduct in the Notice of Hearing.

### **THE FACTS**

The following facts were set out in the Statement of Uncontested Facts and Plea which was filed as an exhibit:

**PART I – FACTS**

1. Dr. Kaveri Manian Kaveri Selvan (“Dr. Kaveri”) is a 39-year old family physician who received his certificate of registration authorizing independent practice from the College of Physicians and Surgeons of Ontario (“the College”) in February of 2011.
2. Between August, 2011 and July 30, 2012, Dr. Kaveri practiced part-time (one shift per week) at a Medical Centre. The Medical Centre is a Markham, Ontario clinic where another physician is the primary physician.
3. On November 12, 2012, Dr. Kaveri returned home from work at approximately 9:30 p.m. to find no one was home. A family member (the “Family Member”) had unexpectedly left the family home with his two young children.
4. Dr. Kaveri received advice that, to secure the return of his children, he would need to bring a motion before family court and provide support for his position that the children should be placed in his care and custody.
5. On the afternoon of November 13, 2012, Dr. Kaveri went to the Medical Centre and showed the assistant on duty photographs on his phone of a consultation report by a specialist at a hospital, who was treating the Family Member. Dr. Kaveri asked if there was a copy of this report in the Family Member’s Medical Centre chart.
6. The Medical Centre assistant reviewed the Family Member’s chart and advised Dr. Kaveri that it did not contain a copy of the report he had shown her on his phone.
7. Dr. Kaveri signed a Medical Centre records requisition form requesting the records of the Family Member. He signed his own name above the line that says “Signature of Patient” (Attached at Schedule “A” [to the Statement of Uncontested Facts and Plea]). He did not have the consent of the Family Member to do so. The requisition was subsequently faxed to the hospital by the Medical Centre.

8. Dr. Kaveri left the Medical Centre with copies of some records from the Family Member's Medical Centre chart containing personal health information about the Family Member (Attached at Schedule "B" [to the Statement of Uncontested Facts and Plea]).
9. On November 13, 2012, Dr. Kaveri did not have the Family Member's consent to receive her records from the hospital or Medical Centre.
10. Dr. Kaveri did not return to the Medical Centre to retrieve copies of the hospital records that were the subject of the requisition he had signed on November 13, 2012.
11. On the afternoon of November 13, 2012, Dr. Kaveri also requested and received a copy of the Family Member's prescription history from a pharmacy (Attached at Schedule "C" [to the Statement of Uncontested Facts and Plea]). Dr. Kaveri did not have the Family Member's consent to receive this.
12. On November 14, 2012, Dr. Kaveri filed an emergency ex-parte motion seeking the return of his children in the Ontario Court of Justice, Family Division in Brampton. Dr. Kaveri was not represented by a lawyer at the time. He attached to his affidavit in support of his motion copies of the Family Member's medical records he received on November 13, 2012, from the Medical Centre and from the pharmacy. He did not have the consent of the Family Member to file these records with the Court.
13. Dr. Kaveri subsequently obtained a letter about the Family Member which was dated November 16, 2012, written on the Medical Centre's primary physician's letterhead, and bearing his stamp and what appears to be the primary physician's signature. He did not have the consent of the Family Member to obtain this letter. A copy of this letter is attached as Schedule "D" [to the Statement of Uncontested Facts and Plea].

14. Dr. Kaveri was initially not successful in securing the return of his children, despite his motion before the Ontario Court of Justice on November 14, 2012, and continued proceedings before the court in November and December, 2012.
15. On January 3, 2013, Dr. Kaveri brought a new motion, without notice, for the return of his children, before the Superior Court of Justice in Brampton. Dr. Kaveri was represented by a lawyer. In support of his motion, Dr. Kaveri swore an affidavit. Copies of the medical and pharmacy records attached as Schedules “B” and “C” and of the November 16, 2012 letter attached as Schedule “D” [to the Statement of Uncontested Facts and Plea] were included as exhibits to Dr. Kaveri’s affidavit in support of this motion. He did not have the consent of the Family Member to file these records with the Court.
16. Pursuant to court orders, custody of Dr. Kaveri’s children alternated between Dr. Kaveri and the Family Member in 2013. In March, 2014, the court granted Dr. Kaveri temporary sole custody of the children. The court’s order remains in force.
17. Dr. Kaveri did not have the Family Member’s consent to request, receive and use her medical records as described above. While Dr. Kaveri’s paramount concern at the time was the safety of his children, he acknowledges his actions should have respected the Family Member’s privacy in her personal health information.

## **PART II – PLEA OF NO CONTEST**

18. Dr. Kaveri does not contest the facts specified above and he does not contest that, based on these facts, he engaged in professional misconduct, in that:
  - a) 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 Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”).

## **THE PLEA OF NO CONTEST**

Rule 3.02 of the Discipline Committee's Rules of Procedure states as follows:

3.02(1) Where a member enters a plea of no contest to an allegation, the member consents to the following:

- (a) that the Discipline Committee can accept as correct the facts alleged against the member on that allegation for the purposes of College proceedings only;
- (b) that the Discipline Committee can accept that those facts constitute professional misconduct or incompetence or both for the purposes of College proceedings only; and
- (c) that the Discipline Committee can dispose of the issue of what finding ought to be made without hearing evidence.

## **FINDING**

The Committee accepted as correct all of the facts set out in the Statement of Uncontested Facts and Plea. Having regard to these facts, the Committee found that Dr. Kaveri committed an act of professional misconduct, in that 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 Dr. Kaveri made a joint submission as to an appropriate penalty and costs order. They requested an Order:

1. that Dr. Kaveri appear before the Panel to be reprimanded;
2. that the Registrar suspend Dr. Kaveri's certificate of registration for a period of two (2) months, commencing December 1, 2017;

3. that the Registrar impose the following as a term, condition and limitation on Dr. Kaveri's certificate of registration: that at his own expense, Dr. Kaveri shall participate in and successfully complete, within 6 months of the date of the Order, an individualized course in Medical Ethics satisfactory to the College, with an instructor selected by the College; and
4. that Dr. Kaveri pay costs to the College for a one-day hearing, in the amount of \$5,500.00.

The Committee is aware that it should not depart from a joint submission as to penalty, unless the proposed disposition would bring the administration of justice into disrepute, or is otherwise contrary to the public interest.

The Committee took into account a number of principles in assessing the proposed penalty. The paramount consideration is the protection of the public. The other principles include maintenance of public confidence in the profession and the College's ability to regulate the profession in the public interest, specific deterrence of the member and general deterrence of the profession. Where appropriate, the penalty should also provide for rehabilitation of the member.

The misconduct in this case was of a serious nature. Dr. Kaveri placed his personal concerns over his professional obligations in his efforts to advance his position in the Family Court proceedings. Dr. Kaveri neglected two fundamental principles of the medical profession: first, personal health information must be kept private; and second, consent is required for disclosure and review of this information. 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. Disregarding and violating a patient's privacy destroys trust, not only for the individual physician, but for the profession as a whole. The principles of the Hippocratic Oath, dating from antiquity, are held sacred by physicians to this day and highlight: "to treat the sick to the best of one's ability, preserve patient privacy, teach the secrets of medicine to the next generation (see. Peter Tyson, *The Hippocratic Oath Today*, March 27, 2001). When health records are used to gain improper and unauthorized access to sensitive patient information, public trust in the profession is eroded.



Confidentiality is one of the fundamental pillars within medical education. Patients must have confidence that their health information is handled in a confidential manner and that information about their background, experiences, illnesses and treatments will be disclosed only with their informed consent. Physicians are in a privileged position to have access to patients' confidential personal information, which, at times, includes the most intimate details of a patient's life. This 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, safeguards of patient privacy must be more tightly held than ever.

When physicians misuse their power, they undermine patient confidence in the confidentiality of medical records which may make people reluctant to seek appropriate treatment and care. In the age of electronic medical record (EMR) databases, which allows for greater access to medical records, it is imperative that physicians recognize and maintain patient confidentiality.

The *Personal Health Information Protection Act*, S.O. 2004, c. 3 ("PHIPA") and CPSO Policy #6-12, provide that a physician, in limited circumstances, will be mandated to or permitted to disclose confidential health information without consent. For example, section 40(1) of PHIPA provides: "A health information custodian may disclose personal health information about an individual if the custodian believes on reasonable grounds that the disclosure is necessary for the purpose of eliminating or reducing a significant risk of serious bodily harm to a person or a group of persons." Both parties agreed, however, that disclosure under the exceptions provided in PHIPA and CPSO Policy #6-12 are not applicable in the present case.

The Committee considered aggravating and mitigating factors in determining the appropriate penalty in this case.

### **Aggravating Factors**

Dr. Kaveri's conduct, while occurring at a time of severe personal distress, was not a single episode of impulsive behaviour. The Committee understands that at times of extreme adversity, people are prone to impulsive acts or lapses in judgment. Dr. Kaveri's misconduct, however, continued for several months. This was an aggravating factor.

The Committee recognizes that Dr. Kaveri's Family Member was extremely vulnerable both because of the nature of her illnesses and because of the circumstances the family was experiencing. This is also an aggravating factor.

### **Mitigating Factors**

By pleading no contest and proposing a joint submission on penalty, Dr Kaveri saved the College the time and cost of a lengthy hearing, thereby also relieving any potential witnesses, including the Family Member, from the inconvenience and stress of having to testify. Dr. Kaveri has no prior discipline history with the College. Dr. Kaveri has expressed remorse for his actions. These are all mitigating factors. The Committee also considered the fact that Dr. Kaveri's misconduct was related to concerns for his children. Although such concerns do not justify misconduct, the Committee did find this to be a mitigating factor in the particular circumstances of this case.

### **Case Law**

No two cases are identical, and the Committee is not bound to follow its own prior decisions. Similar cases, however, may be considered by the Committee in determining the appropriate penalty.

The College provided the Committee with several cases dealing with a breach of confidentiality of health records. In *CPSO v. Brooks* 2016 ONCPSD 29, a general practitioner in Sault Ste. Marie accessed the medical records of two people with whom he had a close personal connection. This conduct occurred over a decade. The records included sensitive psychiatric

information. His case came to light only after the suicide of one of them. The Committee accepted a joint proposal and ordered that: his certificate of registration be suspended for five months, he complete an individual medical ethics course, he be reprimanded, and he pay costs in the amount of \$5,000. It is noted that Dr. Brooks' conduct extended over a ten-year period, involved many records, and involved access from two different facilities.

In *CPSO v. DiPaola* 2016 ONCPSD 48, a general practitioner with a specialty in addiction medicine at CAMH, accessed the confidential medical records of two people who were connected to her in a close personal manner. She did this on almost 20 occasions over a two-year period. She claimed to be the attending physician of one of the patients in order to access the records. This breach was discovered when the hospital did an audit of its EMR. The matter proceeded by way of joint submission. The Committee ordered a three-month suspension, a requirement to take courses in medical ethics and maintaining professional boundaries, a reprimand, and costs of a one day hearing in the amount of \$5,000.

In *CPSO v. Yaghini* 2017 ONCPSD 15, a general practitioner who worked in a group practice in Thornbury and had hospital privileges at Grey Bruce Health Services, used the hospital's EMR on one occasion to access the health records of another physician who he felt had been bullying and harassing him. Dr. Yaghini was concerned about his well-being and questioned whether this physician might have had a health issue that was motivating his behaviour towards him. The Committee found that the poor relationship between Dr. Yaghini and this other doctor did not justify Dr. Yaghini's access to confidential health care information. Following a joint submission on penalty, the Committee ordered a three-month suspension, a course in medical ethics and a reprimand. He was also ordered to pay the costs of a one day hearing.

Having considered all of these factors, the Committee is satisfied that the proposed penalty in this case is appropriate. Physicians cannot leave professional obligations at the door, even when dealing with severe personal stressors. The two-month suspension serves as a general deterrent to the profession, reminding all Ontario physicians that one cannot ignore issues of privacy and confidentiality. The penalty is a specific deterrent to Dr. Kaveri showing him that serious consequences occur when there is a disregard of confidentiality. Requiring Dr. Kaveri to take a

course in medical ethics will help towards his rehabilitation. The public should also be reassured that the Discipline Committee takes such conduct seriously and is prepared to address it and regulate the profession in the public interest.

## **ORDER**

The Committee stated its finding in paragraph 1 of its written order of November 6, 2017. In that order, the Committee ordered and directed on the matter of penalty and costs that:

2. Dr. Kaveri attend before the panel to be reprimanded.
3. The Registrar suspend Dr. Kaveri's certificate of registration for two (2) months commencing December 1, 2017.
4. Dr. Kaveri, at his own expense, participate in and successfully complete, within six (6) months of the date of this Order, the following program:
  - (i) Individualized instruction in medical ethics satisfactory to the College, with an instructor selected by the College.
5. Dr. Kaveri pay to the College costs in the amount of \$5,500.00, within thirty (30) days of the date of this Order.

At the conclusion of the hearing, Dr. Kaveri 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 November 6, 2017**  
**in the case of the**  
**COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO**  
**and**  
**DR. KAVERI MANIAN KAVERI SELVAN**

Dr. Kaveri,

We are a self-regulating profession and the expectation is we personally are responsible to conduct ourselves with integrity, with honesty, and follow a well-known policy and procedure that profession and society have formulated to ensure the highest level of protection of patient's rights.

As physicians, we are often functioning under stressful and uncertain conditions, yet these situations are no excuse for not following our professional obligations. While acknowledging your family stress as a factor in what you did, the fact is you ignored your professional obligation to honour the right to privacy of an individual. You allowed your own perceived concerns to invade a patient's privacy and sanctity of their medical record.

This behaviour is unacceptable. It brings disgrace to the profession as well as to yourself. Patients' trust in physicians is paramount, and that must always be in the forefront of your mind. You knew, or surely should have known, what was proper conduct and ignored it. We condemn that in the name of both the profession and as members of the public.

We expect that you will use this process to change your conduct to bring honour to you and to the profession. We expect nothing less than that, and we expect that you will not be brought before this Committee again in the future.

*This is not an official transcript*