

Indexed as: Connolly, B.F. (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. BRIAN FRANCIS CONNOLLY

PANEL MEMBERS:

**DR. R. MACKENZIE
D. DOHERTY
DR. W. KING
DR. B. TAA (PhD)
DR. B. LENT**

Hearing Date:	August 30, 2011
Decision Date:	August 30, 2011
Release of Written Reasons:	October 27, 2011

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 August 30, 2011. At the conclusion of the hearing, the Committee stated its finding that the member committed an act of professional misconduct and delivered its order with written reasons to follow.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Brian Francis Connolly committed an act of professional misconduct:

1. under clause 51(1)(a) of the Health Professions Procedural Code (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, in that he has been found guilty of an offence that is relevant to his suitability to practise; and
2. 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 an act(s) or omission(s) 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. Connolly admitted the first allegation in the Notice of Hearing, that he has committed an act of professional misconduct by reason of having been found guilty of an offence that is relevant to his suitability to practise. Counsel for the College withdrew the second allegation in the Notice of Hearing.

FACTS AND EVIDENCE

The following Agreed Statement of Facts and Admissions was filed as an exhibit:

PART I – FACTS

Background

1. Dr. Brian Francis Connolly was issued a certificate of registration authorizing independent practice by the College in December 1988. Dr. Connolly is a family physician who works for the Department of Corrections in Malone, New York, and also works one day a week at a medical clinic in Quebec.
2. At the time of the events at issue, Dr. Connolly was working part-time at a clinic in Cornwall, Ontario. He left the clinic in January 2008.

The Provincial Offence Proceedings

3. Dr. Connolly was charged under the *Provincial Offences Act* with submitting billings to the Ontario Health Insurance Plan in the amount of \$114,146.92 that did not comply with the requirements of the Schedule of Benefits, thereby committing an offence under the *Health Insurance Act*. The offence was alleged to have occurred between April 1, 2005, and September 15, 2008.
4. The proceedings took place at the Ontario Court of Justice in Cornwall before Justice Renaud on February 17, 2010. Dr. Connolly pleaded guilty to committing an offence under the *Health Insurance Act*, and the parties presented an Agreed Statement of Fact, which is attached [to this Agreed Statement of Facts and Admissions] as Appendix “A” and forms part of this Agreed Statement of Facts and Admissions.
5. The final paragraph in the Agreed Statement of Fact states:

Dr. Connolly was not aware that the clinic owner was overbilling. However, Dr. Connolly’s liability for this regulatory offence lies in his failure to exercise due diligence, that is in his failure to take all available, reasonable steps to ensure that the clinic owner had not overbilled.
6. Justice Renaud found Dr. Connolly guilty of submitting billings to the Ontario Health Insurance Plan in the amount of \$114,146.92 that did not comply with the requirements of the Schedule of Benefits and, thereby, guilty of committing an offence under the *Health Insurance Act*, contrary to section 44(1)(a). A certified copy of the

transcript of the guilty plea and sentencing proceedings held on February 17, 2010, is attached as Appendix “B” [to this Agreed Statement of Facts and Admissions].

7. The Crown and defence presented a joint submission on sentence, which included a fine and an order for restitution, both to be paid within 12 months. Justice Renaud accepted the joint submission and ordered: a fine of \$4,000, which totalled \$5,000 with the 25% victim fine surcharge; and restitution in favour of the Minister of Finance for \$114,146.92. This represented the total amount overbilled, including \$34,000 that was received by the clinic owner. Attached as Appendix “C” [to this Agreed Statement of Facts and Admissions] is the Restitution Order made by Justice Renaud, dated February 17, 2010.

8. Dr. Connolly made restitution in the amount of \$35,000 on the day of his plea. The balance of the restitution was made over the next few months. Attached as Appendix “D” [to this Agreed Statement of Facts and Admissions] is a letter dated July 22, 2010, from the Ministry of Health and Long-Term Care confirming that full restitution had been made.

9. Dr. Connolly has no prior history before the Discipline Committee.

PART II – ADMISSIONS

10. Dr. Connolly admits the facts set out above and admits that he has been found guilty of an offence that is relevant to his suitability to practise.

11. Dr. Connolly admits that this constitutes professional misconduct under clause 51(1)(a) of the Health Professions Procedural Code (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*.

FINDING

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts and Admissions. Having regard to these facts, the Committee accepted Dr. Connolly’s

admission and found that he committed an act of professional misconduct, in that he has been found guilty of an offence that is relevant to his suitability to practise.

ORDER AND REASONS FOR ORDER

Counsel for the College and counsel for the member made a joint submission as to an appropriate order.

In evaluating this proposed order, the Committee recognized that a joint submission should be accepted unless to do so would be contrary to the public interest and would bring the administration of justice into disrepute. In addition, the Committee accepted that the general principles to be followed in determining an appropriate order include specific and general deterrence, protection of the public, and the need to assure the public that the profession recognizes and accepts its responsibility with respect to self-regulation.

The Committee reviewed the Agreed Statement of Facts and Admissions, as well as the mitigating factors as described by Counsel for the College. The Committee noted that Dr. Connolly accepted responsibility, both in the criminal proceedings and in this disciplinary hearing, for the inappropriate billing and for his failure to take all reasonable steps to ensure that claims submitted reflected the work done. Dr. Connolly made full restitution within months of the criminal proceeding. Dr. Connolly has no prior history with the Discipline Committee.

The Committee found the proposed order to be consistent with orders imposed in three other cases referred to by counsel for the College involving similar circumstances. The Committee concluded that the public reprimand would meet the goals of specific and general deterrence, and would demonstrate to the public the profession's commitment to self-regulation.

The Committee appreciated that the joint submission with respect to facts and order minimized the time and resources required to resolve this matter and, therefore, agreed with the submissions with respect to costs.

For these reasons, the Committee accepted the proposed disposition as fair and reasonable.

ORDER

Therefore, the Committee ordered and directed that:

1. Dr. Connolly appear before the panel to be reprimanded.
2. Dr. Connolly pay costs to the College in the amount of \$3,650 within sixty (60) days from the date of this Order.

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