

Indexed as: Piatek (Re)

**THE DISCIPLINE COMMITTEE OF THE COLLEGE
OF PHYSICIANS AND SURGEONS OF ONTARIO**

IN THE MATTER OF a Hearing directed
by the Executive Committee of the College of Physicians
and Surgeons of Ontario, pursuant to Section 36(1)
of the **Health Professions Procedural Code**,
being Schedule 2 to 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. DARIUSZ PIOTR PIATEK

PANEL MEMBERS:

DR. C. CLAPPERTON (CHAIR)
S. BERI
DR. T. MORIARITY
DR. P. HORSHAM
B. TAA (PHD)

Hearing Date: August 12, 2008
Decision/Release Date: August 12, 2008
Release of Written Reasons Date: November 13, 2008

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario (the “Committee”) heard this matter at Toronto on August 12, 2008. At the conclusion of the hearing, the Committee stated its finding that the member committed an act of professional misconduct and delivered its penalty order with written reasons to follow.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Piatek 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*, S.O. 1993 (“O. Reg. 856/93”), in that he 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 ALLEGATIONS

Dr. Piatek admitted to the allegations as set out in the Notice of Hearing.

FACTS AND EVIDENCE

The following Statement of Facts was filed as an exhibit and presented to the Committee. Counsel advised the Committee that the parties had agreed to the facts set out in the Statement of Facts.

1. Dr. Dariusz Piotr Piatek (“Dr. Piatek”) is a 45 year old general practitioner who has been practicing in Mississauga, Ontario since 1989.

The Criminal Conviction

2. On or about June 28, 2002, Dr. Piatek was charged with eight (8) counts of unlawfully evading taxes and providing false documents and information to the Canada Customs and Revenue Agency contrary to section 239(1) of the *Income Tax Act*, R.S.C. 1985 Chapter 1 (5th Supp.), as amended. These offences were alleged to have occurred between December 31, 1995 and February 2, 2001.
3. The criminal trial took place in the Ontario Court of Justice in Brampton before Justice Morten over five days between August 9, 2004 and August 17, 2004.
4. The Reasons for Judgment were delivered orally by Justice Morten on November 3, 2004. Justice Morten found Dr. Piatek guilty of the following four counts:
 - (a) between the 31st day of December, 1995 and the 2nd day of February, 2001, unlawfully willfully evading the payment of previously assessed taxes for taxation year 1996, in the amount of \$13,542.31 imposed by the *Income Tax Act*, R.S.C. 1985 Chapter 1 (5th Supp.), as amended, by providing false documents and information indicating that the taxes imposed have been paid in full, thereby committing an offence under Paragraph 239(1)(d) of the said *Act*;
 - (b) between the 31st day of December, 1996 and the 16th day of June, 1998, unlawfully willfully evading the payment of taxes in the amount of \$58,725.87 imposed by the *Income Tax Act*, R.S.C. 1985, Chapter 1 (5th Supp.), as amended, by failing to file a T1 Individual Income Tax Return for taxation year 1997 and failing to report taxable income in the amount of \$233,010.00, thereby committing an offence under Paragraph 239(1)(d) of the said *Act*;
 - (c) between the 31st day of December, 1997 and the 16th day of June, 1999, unlawfully willfully evading the payment of taxes in the amount of \$64,346.23 imposed by the *Income Tax Act*, R.S.C. 1985 Chapter 1 (5th Supp.), as amended, by failing to file a T1 Individual Income Tax Return for taxation year 1998 and failing to report taxable income in the amount of \$242,264.00, thereby committing an offence under Paragraph 239(1)(d) of the said *Act*;

- (d) between the 31st day of December, 1998 and the 2nd day of February, 2001, unlawfully willfully evading the payment of previously assessed taxes for taxation year 1999, in the amount of \$14,788.85 imposed by the *Income Tax Act*, R.S.C. 1985, Chapter 1 (5th Supp.), as amended, by providing false information indicating that the taxes imposed have been paid in full, thereby committing an offence under Paragraph 239(1)(d) of the said *Act*.

Attached as Schedule “A” [to the Statement of Facts] is a transcription of the Reasons for Judgment.

5. On February 16, 2005, a Sentencing Hearing was held before Justice Morten. The submissions on sentence made on behalf of Dr. Piatek and the Crown are attached as Schedule “B” [to the Statement of Facts].
6. On May 16, 2005, Justice Morten orally delivered his Reasons for Sentence. Dr. Piatek was ordered to pay 50% of the total taxes evaded as a fine and was awarded 10 years to pay on two counts and 11 years to pay on the other two counts. Attached as Schedule “C” [to the Statement of Facts] is a transcription of the Reasons for Sentence.

The Discipline Proceedings

7. Dr. Piatek agrees that the conduct that is the subject of the above-noted counts is relevant to Dr. Piatek’s suitability to practise medicine as per clause 51(1)(a) of the *Health Professions Procedural Code* (“the *Code*”), which is Schedule 2 to the *Regulated Health Professions Act 1991*.
8. Dr. Piatek further agrees that the conduct captured by the above counts is also conduct that would reasonably be regarded by members of the College of Physicians and Surgeons of Ontario as disgraceful, dishonourable and unprofessional as per

paragraph 1(i) 33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, S.O. 1993 (“O. Reg. 856/93”).

9. At page 14 of the Reasons for Judgment the trial judge stated that he found Dr. Piatek to be “a man who’s relatively youthful in age, and obviously of some degree of talent and education, who suffers a very severe neurological incident which set him back in the pursuit of his career goals”.

10. Though the trial judge acknowledged the severity of Dr. Piatek’s neurological problem, he found that it did not negate the intent required to prove the commission of the offences listed above in paragraph 4.

11. Dr. Piatek has no prior history of Discipline with the College.

FINDING

The Committee accepts as true all of the facts set out in the Agreed Statement of Facts. Having regard to these facts, the Committee accepts Dr. Piatek’s admission and finds 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; and in that he 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.

JOINT SUBMISSION ON PENALTY AND COSTS

The parties proposed a joint submission with respect to penalty and costs, as follows:

- (a) Dr. Piatek shall appear before the panel to be reprimanded;

- (b) Dr. Piatek shall successfully complete, at his own expense, the College's Medical Ethics and Informed Consent course on the next available date and provide proof thereof to the College;
- (c) Dr. Piatek shall pay to the College costs in the amount of \$1,825.00 within ninety (90) days of the date of the Order; and
- (d) The results of the proceeding shall be included in the register.

Counsel for the College submitted that the penalty to be imposed by the Discipline Committee should express the profession's abhorrence of the behaviour in question and uphold the honour of the profession, protect the public, act as a specific deterrent to the member and a general deterrent to other members, and serve to rehabilitate the member.

College counsel noted that Dr. Piatek's conduct was serious in that it involved a large amount of money and it continued over four consecutive years. She noted that income tax evasion and filing false documents constitute fraud. Counsel also asked the Committee to consider the following mitigating factors:

1. Dr. Piatek admitted the allegations against him, thus avoiding the need for a full hearing;
2. he has no previous findings of misconduct;
3. while it does not excuse his behaviour, Dr. Piatek's state of health was acknowledged by the trial judge as an issue at the time the offences occurred;
4. the penalty imposed by the judge in the criminal trial did not include imprisonment, and the fine that he imposed was at the bottom of the range of possible fines; and
5. he is in the process of paying his fines.

Three previous cases involving similar conduct were presented by counsel for the College to support the proposed penalty.

The first case, *CPSO v. Dr. Galdino Pontarini*, was similar to the case at hand in that there was an agreed statement of facts and a joint submission on penalty based on a finding of tax evasion in the courts. Dr. Pontarini had a prior criminal record and prior discipline findings. The doctor's state of health was considered a mitigating factor in the case. The Committee imposed a penalty of a reprimand, a two-month suspension, costs and a term, condition and limitation on the doctor's certificate that the completeness and accuracy of his income tax records be verified for two years by an accountant who would report to the College on his/her findings.

College counsel noted that unlike Dr. Pontarini, Dr. Piatek has had no prior criminal record or discipline findings. She also noted that the Discipline Committee in the case of Dr. Pontarini considered his health to be a mitigating factor but not an acceptable excuse for his criminal actions or unprofessional behaviour.

In the second case presented, *Qureshi v. Provincial Medical Board*, [1984] N.S.J. No. 345 (C.A.), Dr. Qureshi was found to have committed tax evasion over a four year period. He was also convicted of having defrauded the Nova Scotia Health Insurance Plan, which makes the case different from the case at hand. The Provincial Medical Board found Dr. Qureshi guilty of professional misconduct, and it revoked his licence. Dr. Qureshi appealed the conviction and punishment to the Nova Scotia Supreme Court. The judge in the case felt that the tax evasion alone may have warranted a penalty of a reprimand or a short suspension. However, she felt that the additional defrauding of the provincial health plan constituted a true discredit and taint to the profession and warranted revocation of the doctor's licence. The decision was upheld by the Court of Appeal.

The third case, *Davies v. Ontario College of Pharmacists*, [2003] O.J. No. 91 (Div. Ct.) also involved members who had been convicted criminally of tax evasion. The Court upheld a finding by the Discipline Committee of the College of Pharmacists that the members' conduct was professional misconduct as being conduct that reflected adversely on the profession as well as on themselves, that would reasonably be regarded by

members as disgraceful, dishonourable and/or unprofessional. In that case, the Discipline Committee imposed a penalty of a reprimand and a suspension of three weeks.

It was College counsel's submission that the proposed penalty was in line with the penalties in these cases, and also that it would express abhorrence for Dr. Piatek's conduct. She submitted that recording the results of the proceeding in the register would serve as a general deterrent to the profession at large as well as a specific deterrent to the member. The reprimand and the requirement that the member take the ethics course would also serve as a specific deterrent to the member, and the ethics course would serve to rehabilitate the member.

Counsel for Dr. Piatek agreed that the penalty proposed in the joint submission was reasonable and reflected the seriousness of the conduct. He advised the Committee that the ethics course would be important to Dr. Piatek and his patient population as he moves forward. He submitted that while it was not a defence, Dr. Piatek's health should be considered a mitigating factor with respect to penalty. While counsel for Dr. Piatek agreed that the *Pontarini* case should be considered, he noted that unlike Dr. Pontarini, Dr. Piatek has no prior criminal convictions nor prior findings before the Discipline Committee. He also noted that Dr. Pontarini had entered a plea of no contest, whereas Dr. Piatek admitted the allegations against him.

Counsel for Dr. Piatek also noted that Dr. Piatek received a certificate from the Government of Canada in 2001, during the time frame of the conduct at issue, recognizing him as an outstanding volunteer in the community.

Counsel for Dr. Piatek submitted that, given Dr. Piatek's cooperation with the College in reaching an agreed statement of facts and joint submission on penalty, the proposed penalty was appropriate.

PENALTY AND REASONS FOR PENALTY

The Discipline Committee finds that Dr. Piatek's behaviour fell far short of the level of honesty and integrity that is expected of a member of the profession and that the repetitive nature of the misconduct is a serious matter.

In determining penalty in this case the Committee considered and was governed by the following:

1. The penalty was jointly proposed by counsel for the College and counsel for the defence;
2. The Committee accepted the oral submissions made by both counsel and found nothing in either submission to suggest that accepting the jointly proposed penalty would be contrary to the interests of justice or bring the administration of justice into disrepute; and
3. The Committee considered the previous cases that were put before it. It found the jointly proposed penalty in this case to be consistent with the penalties in those cases, having regard to the differing factual circumstances in those cases from the case at hand.

The Committee finds that the jointly proposed penalty is appropriate in that it upholds the honour of the profession and protects the public. It will act as a specific deterrent to Dr. Piatek and a general deterrent to other members by demonstrating that conduct of this nature will not be tolerated. The requirement that Dr. Piatek take the Medical Ethics and Informed Consent course will serve to rehabilitate the member. The proposed penalty also properly takes into account the mitigating factors that were referred to by counsel.

ORDER

The Committee ordered and directed that:

1. Dr. Piatek appear before the panel to be reprimanded.
2. The Registrar impose the following term, condition and limitation on Dr. Piatek's certificate of registration:

- (1) Dr. Piatek shall successfully complete, at his own expense, the College's Medical Ethics and Informed Consent course on the next available date and provide proof thereof to the College;
3. Dr. Piatek pay to the College costs in the amount of \$1,825.00 within ninety (90) days of the date of this Order.
4. The results of this proceeding to be included in the register.

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