

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Michael Kaminski, this is notice that the Discipline Committee ordered that there shall be a ban on publication of the names and any information that could disclose the identity of 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 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: Ontario (College of Physicians and Surgeons of Ontario) v. Kaminski,
2018 ONCPSD 15**

**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. MICHAEL KAMINSKI

PANEL MEMBERS:
DR. M. GABEL (CHAIR)
MAJOR A.H. KHALIFA
DR. F. SLIWIN
MR. J. LANGS
DR. B. LENT

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS A. CRANKER

COUNSEL FOR DR. KAMINSKI:

MS J. COLE

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MS J. McALEER

Hearing Date: March 15, 2018
Decision Date: March 15, 2018
Release of Written Reasons: March 21, 2018

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 March 15, 2018. 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 the Committee’s penalty and costs order with written reasons to follow.

THE ALLEGATION

The Notice of Hearing alleged that Dr. Michael Kaminski committed an act of professional misconduct:

1. under paragraph 1(1)33 of O. 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. Kaminski entered a plea of no contest to the allegation in the Notice of Hearing 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.

THE FACTS

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

Background

1. Dr. Michael Kaminski (“Dr. Kaminski”) is an 85-year-old family medicine physician

who practised in Toronto. Dr. Kaminski received his certificate of registration authorizing independent practice from the College of Physicians and Surgeons of Ontario (“the College”) on July 17, 1974.

Cease to Practice Undertaking

2. On June 10 of 2015, Dr. Kaminski executed a Cease to Practice undertaking (“the June 2015 Undertaking”), by which he voluntarily agreed to cease practising medicine in any jurisdiction until particular conditions had been met including:
 - (a) Providing a minimum of forty-five days’ notice to the College of his intent to return to the practice of medicine;
 - (b) Providing the College with proof that he is participating in a program of continuing professional development that meets the requirements for continuing professional development of the College of Family Physicians of Canada; and
 - (c) Approval by the College of Dr. Kaminski’s return to the practice of medicine.
3. Pursuant to the June 2015 Undertaking, Dr. Kaminski also undertook to forward a request to the General Manager of the Ontario Health Insurance Plan (“OHIP”) that his billing number be deactivated for services rendered after the date on which he would cease to practise. He further undertook to abide by the College’s Policy on Practice Management Considerations for Physicians Who Cease to Practice, Take an Extended Leave of Absence or Close Their Practice Due to Relocation, a copy of which is attached at Tab 1 [to the Statement of Uncontested Facts].
4. Dr. Kaminski consented to certain terms of the June 2015 Undertaking being deemed to be specified terms, conditions and limitations imposed upon his certificate of registration. Specifically the following became a term, condition and limitation upon his certificate: “Dr Michael Kaminski has voluntarily ceased to practise medicine in all jurisdictions effective May 30, 2015.”

The Investigation

5. In May of 2016, a Senior Investigative Analyst in Risk Management with Manulife

Financial emailed the College expressing concern that Dr. Michael Kaminski was practising medicine, contrary to the restriction on his certificate. The Analyst identified that Dr. Kaminski was practising at a clinic called "Skin Med Clinic". Enclosed with her email is a copy of a prescription signed by Dr. Kaminski dated March 31, 2016. The prescription is for compression stockings, thigh high and knee high with instructions to wear for daily activities for varicose veins. A copy of the email is attached at Tab 2 [to the Statement of Uncontested Facts].

6. A further complaint about Dr. Kaminski, from a pharmacist, was received in May of 2016. The pharmacist complained that Dr. Kaminski was writing prescriptions even though he is restricted from practising medicine. A copy of the complaint is attached at Tab 3 [to the Statement of Uncontested Facts].
7. In July of 2016, Dr. Kaminski spoke with a College investigator. Dr. Kaminski indicated that he was not aware that he could not practise and apologized.
8. In response to a summons, Manulife Financial provided claim documents related to Dr. Kaminski. Attached at Tab 4 [to the Statement of Uncontested Facts] is a summary document together with prescriptions and consultation notes for 19 patients written by Dr. Kaminski during the time he was restricted from practising. The prescriptions range from May 30, 2015 to April 7, 2016.

Failure to Renew

9. Dr. Kaminski's certificate of registration expired in August of 2016 as a result of a failure to renew.

Plea of No Contest

10. Dr. Kaminski pleads no contest to the facts as set out in paragraphs 2-9 above and does not contest for the purpose College proceedings, that based on these facts, he engaged in professional misconduct, in that:
 - (a) 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, under paragraph 1(1)33 of Ontario Regulation 856/93, made under the *Medicine Act, 1991* (“O/Reg. 856/93”).

RULE 3.02 – 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. Having regard to these facts, the Committee accepted Dr. Kaminski’s plea 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 made a submission as to an appropriate penalty and costs order. The College sought a public reprimand, revocation, a fine in the amount of \$5,500 and costs in the amount of \$5,500. Counsel for Dr. Kaminski did not oppose the penalty requested by the College

and made no submissions with respect to penalty. Dr. Kaminski did not attend the hearing. The Committee was informed by his counsel that this was related to family health issues.

In considering the proposed penalty, the Committee reviewed the Statement of Uncontested Facts and considered the submission of College counsel. The Committee also reviewed the Book of Authorities provided by College counsel. The Committee is cognizant of the fact that it is not bound by prior decisions of this Committee, but that it may be guided by such decisions in its assessment of an appropriate penalty.

The Discipline Committee considers any breach of an undertaking to be a serious matter. In order to uphold the integrity of the profession and public confidence in the integrity of the profession and in the College's ability to regulate the profession in the public interest, the College relies on members to abide by Orders and the Undertakings that they have made with the College. Undertakings are not to be entered into lightly and must be taken seriously.

On June 10, 2015, Dr. Kaminski executed a Cease to Practise Undertaking with the College, by which he agreed to cease practising medicine in any jurisdiction, effective May 30, 2015. Despite his undertaking, Dr. Kaminski continued to practise medicine until May 2016. It strains credulity to believe that Dr. Kaminski was unaware that he could not continue to practise medicine after having signed a Cease to Practise Undertaking.

Dr. Kaminski has cooperated with the College. The fact that he entered a plea of no contest with respect to the allegation and did not oppose the proposed penalty saved the College the time and costs of a contested hearing. This is a mitigating factor.

Dr. Kaminski was the subject of a previous finding of professional misconduct by the Discipline Committee in 1993 in relation to his medical reports regarding a patient purportedly involved in multiple motor vehicle accidents. The fact that he has a prior discipline history is an aggravating factor. The fact that he flagrantly disregarded an undertaking immediately after having entered into it and over a period of a year is also an aggravating factor.

The Committee accepted the penalty proposed by the College as appropriate in light of the penalty principles that apply to discipline cases. The revocation, the fine and the public reprimand should further the goal of general deterrence and will hopefully serve to maintain public confidence in the College's ability to regulate the profession in the public interest. Revocation will also serve to protect the public. The public reprimand also serves to express the Committee's condemnation of Dr. Kaminski's misconduct. Given the particular facts of this case, including the nature of the misconduct, the absence of any evidence of insight and the member's age, specific deterrence and rehabilitation were not principles to which the Committee gave weight in determining an appropriate penalty.

The penalty underscores the fundamental importance of complying with a Cease to Practise Undertaking with the College. Certainly, revocation will not be the appropriate order in every case of a breach of an undertaking. In this case, however, the College had obtained an undertaking from Dr. Kaminski to cease to practise in all jurisdictions, an undertaking to which he paid no regard and breached repeatedly. If the undertaking was not an effective measure to restrain Dr. Kaminski from practice, the Committee expects that an order of revocation will achieve this result.

ORDER

The Committee stated its finding of professional misconduct in paragraph 1 of its written order of March 15, 2018. In that order, the Committee ordered and directed on the matter of penalty and costs that:

2. Dr. Kaminski appear before the panel to be reprimanded.
3. The Registrar revoke Dr. Kaminski's certificate of registration effective immediately.
4. Dr. Kaminski pay costs to the College in the amount of \$5,500 within 30 days of the date of this Order.

5. Dr. Kaminski, within six (6) months, pay a fine to the Minister of Finance in the amount of \$5,500.00, and Dr. Kaminski provide proof of this payment to the Registrar of the College.

The Committee directs the Hearings Office to schedule a date for the public reprimand.