

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Allyson Enid Koffman, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the names or any information that could disclose the identity of 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. Koffman,
2017 ONCPSD 41**

**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. ALLYSON ENID KOFFMAN

PANEL MEMBERS:
DR. C. CLAPPERTON (Chair)
MS G. SPARROW
DR. J. RAPIN
MR. P. GIROUX
DR. S-M. YOUNG

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS A. CRANKER

COUNSEL FOR DR. KOFFMAN:

MS K. GRACE

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. B. SELLS

Hearing Date: August 15, 2017
Decision Date: August 15, 2017
Release of Written Reasons: September 13, 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 August 15, 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, in that she 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. The Committee also set out its penalty and costs order with written reasons to follow.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Allyson Enid Koffman 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 she 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. Koffman admitted to the allegation in the Notice of Hearing that she 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 Agreed Statement of Facts and Admission, which was filed as an exhibit and presented to the Committee:

PART 1 – FACTS

A. Background

1. Dr. Allyson Enid Koffman (“Dr. Koffman”) is a family physician who received her certificate of registration authorizing independent practice in June of 2000.
2. Dr. Koffman provided episodic walk-in care and primary care at the Bathurst Walk-in Clinic and Family practice between January 2004 and December 2010.
3. Dr. Koffman currently works at the Earl Bales Walk-in Clinic where she provides episodic walk-in care and primary care. Dr. Koffman began working at Earl Bales in 2011.

B. The College Received Three Patient Complaints: Unwanted Rostering

i) Patient A

4. Patient A first attended at the Bathurst Walk-In Clinic in March of 2008. She indicated in the Clinic registration form that Dr. 1 was her Family Physician.
5. In August of 2008 when Patient A attended at the Bathurst Walk-In, she was seen by Dr. Koffman. Patient A understood from Dr. Koffman that in order for Dr. Koffman to make a referral to a specialist she had to fill out the “Patient Enrolment and Consent to Release Personal Health Information” form (Patient Enrolment Form). Patient A completed the form.
6. Patient A was not informed that by completing the Patient Enrollment Form she would be changing her family physician to Dr. Koffman. It was not Patient A’s intention to de-roster from her family physician’s practice.

ii) Patient B

7. In June of 2011 Patient B attended the Earl Bales Walk-in Clinic. He indicated in the Clinic registration form that he had a “previous” family physician.
8. Patient B completed a Patient Enrolment Form.
9. In October of 2011, Patient B submitted a letter of complaint to the College indicating that he was surprised and upset to find out that his care had been switched from his family doctor to Dr. Koffman.

iii) Patient C

10. Patient C first attended at the Bathurst Walk-in Clinic in June of 2006. She received episodic care from physicians other than Dr. Koffman.
11. In January of 2008 she attended at the Clinic with respect to a severe pain in her leg and was treated by Dr. Koffman.
12. Patient C recollects that during this appointment, Dr. Koffman requested that she sign a Patient Enrollment Form. Patient C did not understand that in doing so she would be rostered to Dr. Koffman's practice.
13. In June of 2011, Patient C contacted the Ministry of Health and Long Term Care with respect to the availability of a specialist physician. She was advised that she was listed as Dr. Koffman's patient and that Dr. Koffman would be required to sign a referral for her.
14. Patient C never intended to roster herself with Dr. Koffman. She describes the process of being rostered without her knowledge and the subsequent need to undo the rostering as a stressful experience.

C. Section 75(1)(a) Investigation

15. Further to the receipt of information including the three complaints above, the College commenced an investigation in September of 2011 focusing on Dr. Koffman's office practices. During the investigation, the information about the inappropriate rostering of Patients E-O, set out in paragraphs 16-53 below, was gathered.

iv) Patient E

16. Patient E attended at the Bathurst Walk In Clinic with her daughter Patient F in August of 2009. Patient F was an infant and was ill at that time.
17. Patient E recalls signing the Patient Enrollment Form.
18. At the time of signing the consent form, she was relatively new to Canada from another country, and already had a family physician, Dr. 3.
19. Patient E does not recall whether the form was explained to her, stating that at that time she did not understand the health care system and that she was willing to sign any form that would help her daughter to get medical attention.
20. When interviewed, Patient E expressed confusion about why she would be asked to sign a Patient Enrollment Form when she already had a family physician.

v) Patient F

21. Patient F signed a Patient Enrollment Form for herself and her daughter, Patient G in February of 2008. Patient F recognized her signature on the form. The remainder of the data in the form was completed by someone other than herself.
22. Patient F does not recall any details around completing the forms.
23. At the time the consent forms were signed, she had a family physician (Dr. 4) and her daughter, Patient G, had a pediatrician (Dr. 5).
24. Patient F took her daughter, Patient G and her son to the Bathurst Walk In Clinic on multiple occasions when the children needed to be seen quickly or when it was off-hours for her children's pediatrician.
25. Had Patient F known the purpose of the Patient Enrollment Form, she would not have signed it.

vi) Patient H

26. Patient H signed a Patient Enrollment Form for herself and her son, Patient I, in September, 2009.
27. Patient H does not recall any details related to completing the consent form. The only item on the consent form in her handwriting is her signature.
28. Patient H brought her son, Patient I to Bathurst Walk-In Clinic in September, 2009 because he had swallowed something. He was seen by Dr. Koffman on that date.
29. At the time the Patient Enrollment Form was completed, Dr. 6 was her family physician. Dr. 7 was her son, Patient I's pediatrician. At the time the consent form was completed, she had no intention of switching family physicians or to roster with Dr. Koffman.
30. Patient H and I only attended the Bathurst Walk-In Clinic when their family physician was unavailable.

vii) Patient J

31. Patient J signed a Patient Enrollment Form for herself and her son, Patient K, dated in November, 2009.
32. Patient J does not recall any details related to completing the consent form. The only item on the consent form in her handwriting is her signature.

- 33. Dr. 8 is her and Patient K's family physician. They only attended the Bathurst Walk-In Clinic when it was more convenient to do so.
- 34. She has never had any intention of switching family physicians.
- 35. She has attended Bathurst Walk-In Clinic on multiple occasions but only saw Dr. Koffman twice.
- 36. She recalls being asked at Bathurst Walk-In Clinic if she had intended to switch to another family physician when she had signed the consent form.
- 37. She replied that she had not intended to roster with any physician other than Dr 8.
- 38. She was then provided with paperwork to de-roster from Dr. Koffman's practice, which she completed.

viii) Patient L

- 39. Patient L signed a Patient Enrollment Form in December, 2010.
- 40. Patient L does not recall any details related to completing the consent form. The only item on the consent form in her handwriting is her signature.
- 41. Patient L was not looking to switch doctors at the time the form was signed. She went to the Bathurst Walk In on a few occasions, when her doctor wasn't available or she needed something urgently. She wouldn't switch to a new family doctor unless someone referred her from good experience, and she had never heard of Dr. Koffman.

ix) Patient M

- 42. Patient M was seen by Dr. Koffman at the Bathurst Walk In in September of 2009. She does not recognize the handwriting in the Patient Enrollment Form containing her information and Dr. Koffman's signature.
- 43. She does not recall completing the consent form.
- 44. Dr. 9 has been her family physician since approximately the mid-1980s. She has never had any intention of changing to another family physician.
- 45. Patient M does not recall anybody at the Bathurst Walk-In Clinic ever asking her to switch family physicians. Had that happened she would have declined.
- 46. Patient M only attends walk-in clinics when it is more convenient to do so.

x) Patient N

47. Patient N signed a Patient Enrollment Form in June, 2009 for herself and her son, Patient O.
48. Patient N does not recall any details related to completing the consent form. The only item on the consent form in her handwriting is her signature.
49. Dr. 10 is her family physician and has been since the early 2000s.
50. Dr. 11 is her son's pediatrician and has been for the past 11 years.
51. She only attended the Bathurst Walk-In Clinic for very minor things, when she knew what the diagnoses would be, and/or when it would be faster than getting in with her family physician.
52. In 2009, she had no intention of switching family physicians for her son or herself.
53. Her son has special needs and therefore she wanted continuity of care with his pediatrician, Dr. 11.

PART II - ADMISSION

54. Dr. Koffman admits the facts above and admits that in executing Patient Enrollment Forms for patients who had not expressed a desire to be rostered and to whom the Forms had not been explained, she 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, contrary to paragraph 1(1)33 of O. Reg. 856/93.

FINDING

The Committee accepted as correct all of the facts set out in the Statement of Facts and Admission. Having regard to these facts, the Committee found that Dr. Koffman committed an act of professional misconduct in that she 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.

PENALTY AND REASONS FOR PENALTY

Submissions on Penalty

Counsel for the College and counsel for Dr. Koffman made a joint submission as to an appropriate penalty and costs order. That joint submission was to the effect that:

- (a) Dr. Koffman appear before the panel to be reprimanded.
- (b) The Registrar suspend Dr. Koffman's certificate of registration for a four month period, to commence at 12:01 a.m. on September 1, 2017.
- (c) The Registrar impose the following as a term, condition and limitation on Dr. Koffman's certificate of registration:
 - (i) At her own expense, Dr. Koffman shall participate in and successfully complete, within 4 months of the date of this Order, individualized instruction in medical ethics with an instructor approved by the College. The instructor shall provide a summative report to the College including his or her conclusion about whether the instruction was completed successfully by Dr. Koffman.
 - (ii) At her own expense, Dr. Koffman shall participate in and successfully complete, within 4 months of the date of this Order, individualized instruction with respect to OHIP billing with an instructor approved by the College. The instructor shall provide a summative report to the College including his or her conclusion about whether the instruction was completed successfully by Dr. Koffman.
- (d) Dr. Koffman pay to the College its costs of this proceeding in the amount of \$5,500 within thirty (30) days from the date of this Order.

The Committee was mindful 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.

Mitigating Factors

The Committee noted that by admitting to all of the allegations, Dr. Koffman spared a multitude of patients, and possibly other witnesses, from the need to testify at the hearing, which reduced the time and costs that would have been associated with a contested hearing.

More significantly, the Committee noted that Dr. Koffman's professional misconduct had not reoccurred since 2011.

Aggravating Factors

The Committee also considered the aggravating factors when reviewing the joint submission on penalty.

The Committee was exceedingly troubled that, so early in Dr. Koffman's career, this was her second appearance before the Discipline Committee where, yet again, lack of professionalism and judgement were the focus of her professional misconduct. Dr. Koffman's unethical behaviour, in failing to obtain informed consent from patients thus depriving them of the opportunity to select a physician of their choice, was yet another example of the multiple forms of misconduct that Dr. Koffman has engaged in to date, which include her inappropriate billing and boundary violations that were subject to the Discipline Committee proceeding in 2003.

The Committee noted that Dr. Koffman's professional misconduct in de-rostering patients from their existing family physicians and rostering them to her own practice, without obtaining the patients' proper and informed consent, occurred repeatedly from 2008 to 2011. The Committee found no evidence in the Agreed Statement of Facts and Admission to support the submission made by Dr. Koffman's counsel that Dr. Koffman's behaviour constituted merely a lack of due diligence. Indeed, the Committee concluded that Dr. Koffman's shameful conduct was intentional deceit, which is disgraceful to the medical profession. Dr. Koffman's admission that her behaviour constituted disgraceful, dishonourable and unprofessional conduct supports the Committee's finding.

Although no clinical harm was suffered by the patients, there was surprise, stress and upset inflicted on them. Dr. Koffman deprived patients of the opportunity to engage the physician of their choice and remain with that physician for ongoing care.

Case Law

Both the College counsel and counsel for Dr. Koffman referenced a Brief of Authorities with five cases. The College referred to three of these cases: *CPSO v. Dr. Metcalfe* (2007); *CPSO v. Dr. Barabtarlo* (2003); and *CPSO v. Dr. Wong* (2014). Counsel for Dr. Koffman referred to two of them: *CPSO v. Dr. Paikin* (2002); and, *CPSO v. Dr. Price* (2016). In four of the five cases referred to by counsel, the Committee ordered three to six month suspensions of the physicians' certificates of registration. Other penalties included a reprimand, and the requirement to satisfactorily complete education to address professional deficiencies. The physicians were also ordered to pay hearing costs to the College. The Committee found that the joint submission on penalty was in line with these five previous cases.

Conclusion

The Committee considered the principles related to determination of an appropriate penalty and found that they were addressed by the parties' joint submission on penalty. Those principles include: protection of the public, maintenance of the public confidence in the integrity and reputation of the profession and the College's ability to govern the profession in the public interest, general and specific deterrence, and rehabilitation of a member where appropriate.

Protection of the public was the uppermost consideration in the Committee's mind when determining the appropriate penalty. The Committee expressed its condemnation for Dr. Koffman's misconduct by ordering a four-month suspension of her certificate of registration, a public reprimand, and the requirement that Dr. Koffman complete relevant education before she is able to practise medicine again.

The penalty will serve to maintain public confidence in the integrity and reputation of the profession and the College's ability to govern the profession in the public interest and demonstrate that the Committee considered Dr. Koffman's behaviour to be completely unacceptable and lacking in ethical judgement.

The penalty will serve as general deterrence to the medical profession by emphasizing the serious consequences when a physician fails to demonstrate the ethical judgement that is, quite properly, required of members of the profession in their interactions with the public and professional colleagues.

The penalty will also serve as specific deterrence to Dr. Koffman. A four-month suspension of her certificate of registration and the reprimand convey the seriousness of the misconduct she had engaged in.

The penalty also provides Dr. Koffman with a rehabilitative opportunity through the requirement to complete the ethics and OHIP billing courses. The ethics training in particular provides Dr. Koffman with the opportunity to turn her practice around. It is a formal means to reset the framework for her future practice in medicine and demonstrate that her past errors in judgement need not be repeated.

ORDER

The Committee stated its finding of professional misconduct in paragraph 1 of its written order of August 15, 2017. In that order, the Committee ordered and directed on the matter of penalty and costs that:

2. Dr. Koffman appear before the panel to be reprimanded.
3. The Registrar suspend Dr. Koffman's certificate of registration for a four month period, to commence at 12:01 a.m. on September 1, 2017.
4. The Registrar impose the following as a term, condition and limitation on Dr. Koffman's certificate of registration:

- i) At her own expense, Dr. Koffman shall participate in and successfully complete, within 4 months of the date of this Order, individualized instruction in medical ethics with an instructor approved by the College. The instructor shall provide a summative report to the College including his or her conclusion about whether the instruction was completed successfully by Dr. Koffman.
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5. Dr. Koffman pay to the College its costs of this proceeding in the amount of \$5,500 within thirty (30) days from the date of this Order.

TEXT of PUBLIC REPRIMAND
Delivered August 15, 2017
in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
and
DR. ALLYSON ENID KOFFMAN

Dr. Koffman, we are distressed to see you here before the Discipline Committee at the College for the second time. You need to seriously take stock of yourself.

We are further dismayed that the patients in this case were de-rostered and rostered to you without being informed properly, and consenting to the process. Although your counsel describes your behaviour as having a lack of due diligence, this Committee does not see that submission supported clearly in the Agreed Statement of Facts. We do think your actions in this regard constitute disgraceful, dishonourable and unprofessional conduct.

In light of your past history at the College, you are further demonstrating multiple forms of misconduct. In the past you have billed inappropriately, and engaged in boundary violations. Your judgment was called into question then, and it is now too. To your credit, there is no evidence in the last six years of judgment, boundary violations or unprofessional conduct. We hope the penalty will serve to hone your behaviour in the future, so we do not see you again.

This is not an official transcript