

Indexed as: Gagliano (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(2)
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. ANTHONY GAGLIANO

PANEL MEMBERS:

DR. O. KOFMAN (CHAIR)
J. ASHMAN
DR. M. GABEL
H. WALKER
DR. M. DAVIE

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on May 4, 2004. 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.

ALLEGATIONS

The Notice of Hearing alleged that Dr. Gagliano 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 acts 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 ALLEGATION

As stated in the Statement of Facts and Finding Requested set out below, Dr. Gagliano admitted to the allegation set out in the Notice of Hearing.

EVIDENCE

The following Statement of Facts and Finding Requested was filed as exhibit 2 and presented to the Committee:

PART I - STATEMENT OF FACTS

1. At all material times Dr. Anthony Gagliano ("Dr. Gagliano") was a physician with a certificate of registration in Ontario and had privileges to practise at the William Osler Health Centre.

2. Dr. Gagliano has been practising medicine in Ontario since 1956.
3. Dr. Gagliano has no prior disciplinary findings by the Discipline Committee.
4. Throughout the period 1999 to 2003, inclusive, Dr. Gagliano knowingly misstated his age and date of birth on his application and reapplication forms for a medical appointment at the William Osler Health Centre (the "Hospital") so as to appear ten years younger than his true age.
5. Dr. Gagliano knowingly misstated his age because he wanted to maintain his privileges at the Hospital and wished to continue to care for patients.
6. Dr. Gagliano did readily acknowledge his error when it was raised by the Hospital. When questioned by the Hospital, Dr. Gagliano admitted that he knowingly misstated his age and date of birth on his application and reapplication forms so as to appear younger making it more likely that he would be accepted on Courtesy Staff.
7. Dr. Gagliano is sorry for his error and for any inconvenience it may have caused for the Hospital.
8. Dr. Gagliano admits that, by knowingly misstating his age and date of birth, he committed an act relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as unprofessional.

PART II - FINDING REQUESTED

9. On the basis of the facts above, the College of Physicians and Surgeons requests that the Discipline Committee make the following finding:

that Dr. Gagliano committed an act of professional misconduct under paragraph 1(1)33 of Ontario Regulation 856/93, in that he has engaged in conduct or an act or acts relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

FINDING

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts filed. Having regard to those facts and Dr. Gagliano's admission, the Committee made the finding that Dr. Gagliano committed professional misconduct:

- under paragraph 1(1)33 of Ontario Regulation 856/93 of the *Medicine Act, 1991* (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.

PENALTY DECISION AND REASONS

Counsel for the College and counsel for Dr. Gagliano made a joint submission regarding penalty.

The Committee felt the need for further information beyond that supplied in the Agreed Statement of Facts, in order to proceed in the full interests of justice. Counsel for the College and Dr. Gagliano were forthcoming in answering questions of the Committee that allowed for further background and amplification of the Agreed Statement of Facts. An additional fact of importance to the Committee in considering the seriousness of this prevarication of his age was that Dr. Gagliano practiced as a hospital anesthesiologist. Although his privileges were listed as courtesy staff, the Committee was informed that his practice was in reality full time general anesthesia.

In accepting the joint submission on penalty, the Committee took into account that public trust in hospitals is based, in part, on the assurance that medical staff are competent, trustworthy, and honest in all areas of professional life. Dr. Gagliano's misrepresentation of his age is a first step in breaking that trust. The dishonesty regarding age could have far reaching consequences, especially considering the area of Dr. Gagliano's practice. The public need for trust is even higher in anesthesiology where, as a general rule, the choice of physician caring for patients is not their own. Their trust goes to the hospital to provide assurance of competent care. If any untoward events occur, regardless of cause,

the fact of the age misstatement will colour all that might follow, leaving the family to question care and outcome, the hospital open to liability, and the system in disrepute and embarrassment.

The Committee also took into account the following mitigating factors:

1. Dr. Gagliano resigned his privileges as soon as the issue of the misstated age was raised by the hospital.
2. Dr. Gagliano has never appeared before the Discipline Committee during his long history of practice in Ontario.
3. Dr. Gagliano cooperated fully with the College, obviating the need for a full investigation and hearing.

The Committee is assured that, in the proposed penalty, the prime objective of public protection has been met. The penalty reaffirms the principles of professional ethics, and expresses the disapproval of the profession toward unethical behavior. For Dr. Gagliano, the penalty illustrates the personal need for integrity in his dealings with the public and the profession.

ORDER

Therefore, the Discipline Committee ordered and directed that:

1. Dr. Gagliano attend before the panel to be reprimanded, with the fact of the reprimand to be recorded on the register; and;
2. The results of this proceeding be included in the register.

At the completion of the hearing, Dr. Gagliano waived his right to appeal and the reprimand was administered.