

Indexed as: Rosenhek, I. S. (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. ISRAEL SHOEL ROSENHEK

PANEL MEMBERS:

DR. M. DAVIE (Chair)
D. GIAMPIETRI
DR. B. LENT
P. GIROUX
DR. R. SHEPPARD

Hearing Date:	August 6, 2013
Decision Date:	August 6, 2013
Release of Written Reasons:	October 21, 2013

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 6, 2013. At the conclusion of the hearing, the Committee stated its finding that the member committed an act of professional misconduct and delivered its penalty and costs order with written reasons to follow.

THE ALLEGATION

The Notice of Hearing alleged that Dr. Rosenhek 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 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. Rosenhek did not contest the allegation in the Notice of Hearing.

FACTS AND EVIDENCE

The following Statement of Uncontested Facts was filed as an exhibit and presented to the Committee [The Committee notes that despite the title of this document, Dr. Rosenhek did in fact admit the facts in paragraphs 1 to 15, as stipulated in paragraph 16 below]:

1. Dr. Rosenhek is a cardiologist and specialist in internal medicine practising in Windsor, Ontario.
2. Dr. Rosenhek was certified as a specialist in cardiology by the Royal College of Physicians and Surgeons of Canada (the “Royal College”) effective December 7,

1983. Dr. Rosenhek was also recognized as a specialist in internal medicine by the Royal College effective June 12, 1984. Dr. Rosenhek continues to hold these qualifications.

3. In January 1984, Dr. Rosenhek became a Fellow of the Royal College. This entitled him to use the designation of “FRCP(C)” after his name, on his letterhead and in his communications with hospital administration, patients, physician colleagues and the public.
4. Effective December 1, 1986, Dr. Rosenhek was removed from the register of Fellows in good standing with the Royal College solely because of his failure to pay annual dues. As a result, he was not entitled to use the designation FRCP(C). He was not reinstated as a Fellow until November 5, 2008 when the dues were paid.
5. From 1986 to 2008, Dr. Rosenhek routinely represented himself as a Fellow of the Royal College by using the designation FRCP(C) in his professional communications with hospital administration, patients, physician colleagues and the public.
6. Dr. Rosenhek held privileges at the Windsor Regional Hospital in the Department of Medicine in 2006. He was bound by the hospital’s credentialing/ re-appointment process.
7. At a meeting of the Windsor Regional Hospital’s Department of Medicine on September 8, 2006 that was attended by Dr. Rosenhek, the Department of Medicine decided that all members of its department should hold valid fellowship credentials with the Royal College. It also made a policy requiring department members applying for reappointment to either submit certificates demonstrating their compliance with the Royal College’s Maintenance of Competence Program (“MOC program”) or documentation of adequate attendance at a major Continuing Medical Education (“CME”) event related to the specialist’s field of practice.
8. The Royal College’s MOC program is a mandatory medical continuing education program for Fellows of the Royal College which requires Fellows to complete a

minimum of forty credits of professional development each year and a minimum of four hundred credits in each five year cycle, with the first cycle beginning on January 1 of the year following admission to fellowship.

9. On Dr. Rosenhek's application for reappointment to the professional staff of the Windsor Regional Hospital for 2007/2008, which he completed on March 16, 2007, he indicated, that he was a member of the Royal College and was fulfilling the requirement of the MOC program. He did not provide a certificate demonstrating his compliance with the program or any documentation of his CME for the relevant time period.
10. On July 13, 2007, Dr. X, Chief of the Department of Medicine of the hospital, wrote to Dr. Rosenhek notifying him that his application for reappointment to the professional staff of the hospital was incomplete, as it failed to include proof of his continuing medical education, as required. He asked that Dr. Rosenhek submit this information on or before July 31, 2007.
11. On September 18, 2007, the Medical Advisory Committee of the Windsor Regional Hospital considered a recommendation from the Ethics and Credentials Committee regarding Dr. Rosenhek's application for re-application. It passed a motion requiring (amongst other things) that "Dr. Rosenhek comply with the Department of Medicine's September 8, 2006 policy by providing proof to the Medical Advisory Committee of his CME activities from January 2006 – September 18, 2007 by October 1, 2007."
12. Dr. Rosenhek did not provide any additional information to the hospital in connection with his application for re-appointment in 2007-2008.
13. Dr. Rosenhek submitted another application for re-appointment to the professional staff of the Windsor Regional Hospital for the 2008-2009 year, which he completed on February 22, 2008. He failed to check "yes" or "no" to the questions regarding whether he was a member of the Royal College and whether he was fulfilling the

requirements of the MOC program. He also failed to provide a certificate demonstrating his compliance with the MOC program or provide proof of his CME.

14. On March 3, 2008, Dr. X wrote to Dr. Rosenhek to advise that his application was incomplete, as he had not responded to the questions regarding his membership with the Royal College and his compliance with the requirements of the MOC program, amongst other things. In addition, he noted that while Dr. Rosenhek had listed the continuing medical education programs he had attended in the past year, he had not provided proof of his CME as required. On June 3, 2008, Dr. X followed up on his letter and again asked for Dr. Rosenhek to complete his application and submit it by June 17, 2008.
15. On August 21, 2008, Dr. Rosenhek wrote to Dr. X in response to his March 3 letter and attached a certificate indicating he had attended the American College of Cardiology's 57th Annual Scientific Session on March 29-April 1, 2008. On August 25, 2008, Dr. Rosenhek wrote to provide certificates indicating he had attended additional CME programs.
16. Dr. Rosenhek admits the facts set out in paragraphs 1 to 15 and pleads no contest to the allegation that he engaged in unprofessional conduct by failing to provide accurate and comprehensive information in circumstances when he was under a professional duty to do so, including the following:
 - a. failing to provide accurate information to the Windsor Regional Hospital regarding his participation in and compliance with the Maintenance of Competence Program of the Royal College
 - b. failing to provide the Windsor Regional Hospital with comprehensive information and evidence regarding his participation in all forms of continuing medical education; and
 - c. used the designation FRCP(C) when in fact he was not in good standing with the Royal College because of his failure to pay fees and his failure to

report his continuing medical education hours pursuant to the Royal College's MOC program.

FINDING

The Committee accepted as true all of the facts set out in Statement of Uncontested Facts. Having regard to these facts, the Committee found that he committed an act of professional misconduct, in 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.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for the member made a joint submission regarding penalty. It was submitted that the suitable penalty was an order directing that Dr. Rosenhek appear before the panel to be reprimanded, and that he pay costs to the College in the amount of \$15,000.00.

The Committee carefully considered the joint submission in light of the principles which guide the imposition of penalty, namely, the protection of the public, specific and general deterrence, maintenance of public confidence in the integrity of the profession and its ability to govern itself and, where applicable, the rehabilitation of the member.

The Committee is aware that a joint submission must be accepted unless to do so would be contrary to the public interest and would bring the administration of justice into disrepute.

The Committee was provided with four previous decisions of the Discipline Committee to assist in its deliberations. Each of these were in some respects factually similar to the findings in Dr. Rosenhek's case, as they pertained to issues of the honesty of the member; with hospitals, the College, and the public. While not bound by previous decisions, the Committee is aware that similar cases ought to be dealt with in a similar fashion. The penalties imposed in these four previous decisions ranged from a public reprimand to a

reprimand accompanied by a three month suspension of the member's certificate of registration and applicable costs.

The Committee views the professional misconduct committed by Dr. Rosenhek to be a serious matter. He misrepresented himself as a Fellow of the Royal College of Physicians and Surgeons of Canada for many years, when he would have known that this was not the case; he also failed to provide complete and accurate information to the Windsor Regional Hospital regarding the status of his Continuing Medical Education activities. While the Committee did not hear evidence with respect to Dr. Rosenhek's motivation in acting as he did, or the specific circumstances leading to this unprofessional behaviour, it finds it difficult to accept the defence submission that his actions were merely an administrative oversight. Some degree of willful deception would appear to have been involved.

The defence also submitted that Dr. Rosenhek's failure to provide complete and accurate information to the Windsor Regional Hospital should be considered in the context of his relationship with the Hospital, which was described as difficult and acrimonious. Again, however, the Committee heard no evidence in this regard, and does not consider this to have been a true mitigating factor. Difficulties of this nature do not excuse unprofessional behaviour on the part of the physician.

The Committee considered also that Dr. Rosenhek does have a history with the Discipline Committee; a previous Discipline decision, dated December 21, 2010, was provided. The Committee notes that the events pertaining to Dr. Rosenhek's current professional misconduct pre-dated this earlier decision, and he therefore cannot be considered to be a repeat offender. Moreover, the facts of the earlier decision, which pertained to a standard of care issue, are different from the current circumstances. The previous decision therefore does not imply a pattern of concerning behaviour on the part of Dr. Rosenhek, and is therefore not considered an aggravating factor.

Physicians have an obligation to act with scrupulous honesty in all areas of their professional lives. Dr. Rosenhek misrepresented himself, over a lengthy period of time, to his colleagues, the Hospital, and the public, thus failing in his obligation. He misled his

patients, his professional community and the public, and compromised the credentialing process of the hospital. Public confidence in the integrity of the profession requires that this sort of behaviour be sanctioned.

The Committee accepts the joint position of the College and the member, and agrees that the proposed order is reasonable and appropriate in the circumstances. A public reprimand is a serious penalty, and will adequately express the Committee's disappointment in Dr. Rosenhek's conduct, while serving the goals of specific and general deterrence. The proposed order for costs was negotiated by counsel for the College and Dr. Rosenhek, and is accepted as reasonable by the Committee.

The Committee therefore approved the jointly submitted penalty and delivered its written order on August 6, 2013.

An order in the amount of \$15,000 in costs was jointly proposed by the parties. Although the amount of \$15,000 is in excess of the tariff amount for what was effectively a one day hearing, the Committee recognizes that a resolution in this case was reached only shortly prior to the commencement of the hearing, and the actual costs to the College would have greatly exceeded the amount agreed upon by the parties. Given these circumstances, the Committee orders costs in the amount proposed by the parties.

ORDER

Therefore, having stated its finding in paragraph 1 of its written order of August 6, 2013, on the matter of penalty and costs, the Committee ordered and directed that:

2. Dr. Rosenhek appear before the panel to be reprimanded.
3. Dr. Rosenhek pay costs to the College in the amount of \$15,000 within thirty (30) days of the date of this Order.

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