

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Israel Shoel Rosenhek, 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. Rosenhek,
2017 ONCPSD 51**

**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. P. POLDRE (Chair)
MR. A. RONALD
DR. H. SCHIPPER
MAJOR A.H. KHALIFA
DR. W. MCCREADY

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS E. GRAHAM

COUNSEL FOR DR. ROSENHEK:

MR. R. SHEKTER

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. R. COSMAN

Hearing Date: October 11, 2017
Decision Date: December 11, 2017
Release of Written Reasons: December 11, 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 October 11, 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 and setting out its penalty and costs order with written reasons to follow.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Israel Shoel Rosenhek committed an act of professional misconduct:

1. under paragraph 1(1)2 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”), in that he has failed to maintain the standard of practice of the profession; and
2. 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.

The Notice of Hearing also alleged that Dr. Rosenhek is incompetent as defined by subsection 52(1) of the Health Professions Procedural Code (the Code), which is Schedule 2 to the *Regulated Health Professions Act, 1991*.

RESPONSE TO THE ALLEGATIONS

Dr. Rosenhek entered a plea of no contest to allegation 2, 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. Counsel for the College withdrew allegation 1 and the allegation of incompetence.

THE FACTS

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

PART I – FACTS

BACKGROUND

1. Dr. Rosenhek is a 66-year-old cardiologist with a practice in Toronto, Ontario. Prior to 2016, he also had a practice in Windsor, Ontario. Dr. Rosenhek received his specialist qualification in cardiology in 1983, and certificate of independent practice from the College of Physicians and Surgeons of Ontario in 1984.

OVERVIEW OF THE CASE

2010 Discipline Committee Order

2. On November 8, 2010, the Discipline Committee found that Dr. Rosenhek had committed an act of professional misconduct in that he failed to maintain the standard of practice of the profession in cardiology between 2005 and 2007 in his care of multiple patients by:
 - a) failing to appropriately manage cardiac risk factors, such as dyslipidemia, and to prescribe appropriate therapy to reduce such risk;
 - b) failing to perform indicated investigations;
 - c) failing to diagnose medical conditions appropriately and in a sufficiently timely manner;
 - d) failing to appropriately monitor and/or ensure monitoring of complications of medications;
 - e) failing to monitor and act upon test results in an appropriate and sufficiently timely manner;
 - f) failing to engage in appropriate discharge planning for patients in the hospital, including failing to make appropriate and necessary arrangements for care and follow-up; and/or

- g) failing to maintain legible and sufficiently detailed records of his care and treatment of patients.

A copy of the Decision and Reasons for Decision of the Discipline Committee, released on December 21, 2010 is attached at Tab 1 [to the Statement of Uncontested Facts on Liability].

3. The Discipline Committee's Order, as attached at Tab 2 [to the Statement of Uncontested Facts on Liability], required, among other things:
 - (a) The Registrar to impose the following terms, conditions and limitations on Dr. Rosenhek's certificate of registration for an indefinite period of time:
 - i) Dr. Rosenhek shall practise only under the supervision of a Clinical Supervisor retained at his own expense and approved by the College, and will abide at his own expense by all recommendations of his supervisor with respect to his practice, including with respect to any practice improvements and/or ongoing professional development and/or education;
 - ii) If, at any time after 24 months have passed since the commencement of the clinical supervision of his practice, Dr. Rosenhek's clinical supervisor is of the opinion that Dr. Rosenhek is ready to practice without clinical supervision, such clinical supervision shall be discontinued only upon:
 - a. an assessment of Dr. Rosenhek's practice, undertaken by a College-appointed assessor at Dr. Rosenhek's expense, the results of which are satisfactory to the College; and
 - b. the approval of the College [emphasis added].
4. Attached as Schedule "A" to the Discipline Committee's Decision and Reasons for Decision was the undertaking to be required of any physician who agreed to be Dr. Rosenhek's clinical supervisor.

Clinical Supervision by Dr. Kostuk

5. As a result of the November 8, 2010 Discipline Committee Order, Dr. Rosenhek engaged Dr. William Kostuk as his Clinical Supervisor. In his undertaking to the College, as attached at Tab 3 [to the Statement of Uncontested Facts on Liability], Dr. Kostuk undertook, among other things, as follows:

4. I agree that, commencing from the date I sign this undertaking, I shall act as Clinical Supervisor for Dr. Rosenhek, for the duration of at least twenty-four (24) months. My obligations as Clinical Supervisor shall include, at a minimum:

- (a) conducting an initial in-person meeting with Dr. Rosenhek at his office;
- (b) for a minimum of three (3) months thereafter, reviewing ten (10) of Dr. Rosenhek's charts per week [...];
- (c) discussing with Dr. Rosenhek my review of the charts above, including any concerns arising from such chart reviews, at least every two weeks, such discussion to be held in-person, by telephone, or by other appropriate means, at my option;

[...]

5. I understand that, after three (3) months of clinical supervision as outlined above, the level of supervision can be varied at my discretion and with the approval of the College, provided that clinical supervision continues for at least twenty-four (24) months in total [...].

6. I agree to submit a written report to the College on a monthly basis for the duration of the clinical supervision.

[...]

8. I understand that, at any time after twenty-four (24) months, if I am of the opinion that Dr. Rosenhek is ready to practice without clinical supervision, I shall advise the College of this so that the College may arrange for a practice reassessment to be conducted by an assessor of its choice. In such a case, my clinical supervision of Dr. Rosenhek's practice will not terminate unless and until: (i) the College receives, evaluates, and is satisfied by the results of the

practice reassessment; and (ii) the College provides its approval for the termination of clinical supervision of Dr. Rosenhek's practice [emphasis added].

6. As Dr. Rosenhek's Clinical Supervisor, Dr. Kostuk provided the College with supervision reports between January 14, 2011 and August 15, 2014, attached at Tabs 4 to 6, 9 to 13, 15 to 19, 21, 23 to 25, 28, 29, 34, 36 and 38 [to the Statement of Uncontested Facts on Liability].
7. In a letter received by the College on May 16, 2011, as attached at Tab 7 [to the Statement of Uncontested Facts on Liability], Dr. Kostuk recommended that the number of patient charts reviewed per week be reduced from ten (10) to five (5). On May 31, 2011, the College agreed to this change, as attached at Tab 8 [to the Statement of Uncontested Facts on Liability]. This was the only variation of the terms of Dr. Rosenhek's clinical supervision for which permission was sought from the College, and the only variation approved by the College.
8. On December 8, 2011, the College wrote to Dr. Kostuk at Cardiac Investigation Unit, London Health Sciences Centre, University Hospital, P.O. Box 5339, London Ontario, N6A 5A5, as attached at Tab 14 [to the Statement of Uncontested Facts on Liability], that his most recent report did not contain enough information to determine whether Dr. Rosenhek was practising within the standard of practice, and requested that his future reports contain more fulsome information.
9. Again on June 20, 2012, the College wrote to Dr. Kostuk at Cardiac Investigation Unit, London Health Sciences Centre, University Hospital, P.O. Box 5339, London Ontario, N6A 5A5, as attached at Tab 20 [to the Statement of Uncontested Facts on Liability] to advise that it would be helpful if he could provide more fulsome reports.
10. In his report received September 6, 2012 (Tab 21 [to the Statement of Uncontested Facts on Liability]), Dr. Kostuk wrote "Dr. Rosenhek has made tremendous improvement during

these past 21 months. I believe that he is at the point to practice without clinical supervision”.

11. The College wrote to Dr. Kostuk on October 15, 2012 at Cardiac Investigation Unit, London Health Sciences Centre, University Hospital, P.O. Box 5339, London Ontario, N6A 5A5, attached at Tab 22 [to the Statement of Uncontested Facts on Liability], and advised that:

In your report [of September 6, 2012], you opined that Dr. Rosenhek is at the point of practising without supervision. Please note that Dr. Rosenhek’s order stipulates that a recommendation to cease supervision will be considered 24 months after commencement of clinical supervision. Hence, the earliest date on which Dr. Rosenhek’s supervision could potentially end is on a date after November, 2012.

12. In his report received November 8, 2012 (Tab 23 [to the Statement of Uncontested Facts on Liability]), Dr. Kostuk responded that he had spoken to Dr. Rosenhek “informing him of the need to continue with this chart review until the end of November”.
13. In his report received January 10, 2013 (Tab 24 [to the Statement of Uncontested Facts on Liability]), Dr. Kostuk wrote “All in all there has been marked improvement over the past 2 years. I have no hesitation in saying that this chart review could be eliminated”.
14. In his report received April 11, 2013 (Tab 25 [to the Statement of Uncontested Facts on Liability]), Dr. Kostuk wrote “I believe it would be appropriate to end this ongoing review”.
15. On June 17, 2013, the College wrote to Dr. Kostuk at Cardiac Investigation Unit, London Health Sciences Centre, University Hospital, London Ontario, N6A 5A5 as follows, as attached at Tab 26 [to the Statement of Uncontested Facts on Liability]:

We received your April 2013 report. My apologies that a letter acknowledging receipt was not sent.

In your report, you inquired whether the supervision meetings may end. The Discipline Committee order states that the supervision must continue until Dr. Rosenhek undergoes a reassessment by the College and the discontinuation of supervision is approved by the College following a review of the assessor's report [emphasis added].

I am currently in the process of arranging the review. The process may take six months to complete. Please continue to provide supervision to Dr. Rosenhek until the College approves discontinuation of supervision.

16. On July 8, 2013, the College wrote to Dr. Rosenhek as attached at Tab 27 [to the Statement of Uncontested Facts on Liability], at the mailing address it had on file for him, namely, 623 Lake Trail, Windsor Ontario, N9G 2M3, as follows:

Re: Practice Reassessment pursuant to Discipline Order

I write to advise that I am the Compliance Case Manager assigned to carry out a reassessment of your practice in accordance with your Discipline Order dated November 8th, 2010 (copy appended).

Please contact me upon receipt of this letter so that we may discuss a mutually suitable date for my attendance at your office to review and obtain patient records and any materials relative to the reassessment process. May I suggest a day during the week of July 29, 2013?

An Assessor physician will be retained to review the materials obtained in this reassessment; you will be kept apprised in this regard.

Also enclosed are two questionnaires: "Physician Practice Questionnaire" and "Electronic Medical Records Questionnaire". Please complete these forms and forward them to my attention at the College no later than Friday, July 19, 2013.

17. Dr. Rosenhek did not respond to the College's letter of July 8, 2013. In a letter received by the College on March 31, 2014, attached at Tab 32 [to the Statement of Uncontested Facts

on Liability], Dr. Rosenhek stated that that he had not received the College's letter of July 8, 2013.

18. In his report received November 4, 2013 (Tab 29 [to the Statement of Uncontested Facts on Liability]), Dr. Kostuk wrote "Initially, I was informed that 2 years of review were to be done. This has now been extended to the end of three years. What is the reason for prolonging this review?"
19. The College did not inform either Dr. Kostuk or Dr. Rosenhek that only two years of clinical supervision were to be done. The 2010 Discipline Committee Order, and Dr. Kostuk's undertaking to the College, stipulated that Dr. Rosenhek was to practise under clinical supervision for at least 24 months, and that the period of clinical supervision could only be terminated after both a satisfactory reassessment of Dr. Rosenhek's practice, and the approval of the College.
20. On March 18, 2014, the College wrote again to Dr. Rosenhek at the mailing address it had on file for him, namely, 623 Lake Trail, Windsor Ontario, N9G 2M3, as attached at Tab 30 [to the Statement of Uncontested Facts on Liability], as follows:

Re: Practice Reassessment pursuant to Discipline Order – Activity #281061

On July 8, 2013, I sent a letter notifying you that we are ready to commence your practice re-assessment pursuant to your Discipline Committee Order. I requested a confirmation of a date to attend your office to retrieve your medical records for your practice re-assessment. I also requested that you complete and send to the College the questionnaires I attached to the letter.

The letter was to your mailing address on file. To date, I have not received your response.

Attached is a copy of my original correspondence. Also enclosed are two questionnaires: "Physician Practice Questionnaire" and "Electronic Medical Records Questionnaire". Please complete and return these questionnaires to my attention no later than March 31, 2014.

Please consider today's letter as a final notification of your practice re-assessment and my final request for the above-noted information. Should I not receive your response by the date noted above, the matter will be taken back to the Inquiries, Complaints and Reports Committee.

21. On March 27, 2014, the College received a letter from Dr. Rosenhek as follows, as attached at Tab 31 [to the Statement of Uncontested Facts on Liability]:

Pursuant to my Discipline Order dated 8 November 2010, at Paragraph 4, section (d) and sub-section (i) and (ii), given that the 24 month period of clinical supervision by my clinical supervisor, Dr. William Kostuk, ended on November 8, 2012 and given that I am currently now well into the fourth year of said supervision, and given that Dr. Kostuk has indicated to me again most recently that he has no concerns whatsoever with my clinical care and judgment since the outset of his clinical supervision, Dr. Kostuk has again recently indicated to me that he is of the opinion that I am ready to practice without further clinical supervision and that he feels that such clinical supervision can be discontinued, I am writing to seek guidance from you as to moving forward the process of discontinuing clinical supervision. I am therefore inquiring whether the College appointed assessor, with a view towards, pending a satisfactory result, pursuant to sub-section (ii), obtaining the approval of the College to forego further clinical supervision.

22. In a letter received March 31, 2014, attached at Tab 32 [to the Statement of Uncontested Facts on Liability], Dr. Rosenhek wrote to the College in response to its letter of March 18, 2014 and enclosing the completed "Physician Practice Questionnaire" and "Electronic Medical Records Questionnaire". Dr. Rosenhek stated that he had not received the College's letter of July 8, 2013, and that the first notification that he had received of his practice reassessment was the College's letter dated March 18, 2014. Dr. Rosenhek's March 31, 2014 letter bore the address of 623 Lake Trail, Windsor Ontario, N9G 2M3. He requested

the College to direct its future correspondence to him at 234 Rose Green Drive in Thornhill Ontario, to “ensure more timely receipt”.

23. On March 31, 2014, the College wrote to Dr. Rosenhek as follows, as attached at Tab 33 [to the Statement of Uncontested Facts on Liability]:

Thank you for your Physician Practice Questionnaire and Electronic Medical Records Questionnaire received by the College on March 31, 2014.

The next step will be a retrieval of records from your practices. Please provide me with your schedule at the two practice addresses for the month of April and May, 2014. I look forward to receiving your reply by April 11, 2014.

24. In his report received April 9, 2014, and again on April 11, 2014 (Tab 34 [to the Statement of Uncontested Facts on Liability]), Dr. Kostuk wrote:

I have been doing clinical supervision since November 2010. After the first 8-12 months, the letter that Dr. Rosenhek provides to the referring physicians have improved considerably and are quite appropriate and thorough as noted above.

My understanding when I agreed to do the clinical supervision is that this would be for 24 months i.e. until November 2013. I have made clear to the College that for the past 2 years or more that I have no major concerns whatsoever.

In my opinion, there is no further value in continuing to do reviews of Dr. Rosenhek’s records. I believe that I have more than completed my initial agreement with the College.

25. On April 9, 2014, the College wrote to Dr. Kostuk at Cardiac Investigation Unit, London Health Sciences Centre, University Hospital, P.O. Box 5339, London Ontario, N6A 5A5, as follows, as attached at Tab 35 [to the Statement of Uncontested Facts on Liability]:

I appreciate the concerns raised in your letter regarding the length of supervision. As per the College's Discipline Order, Dr. Rosenhek is expected to practise under supervision until his practice re-assessment is complete, and the College approves the discontinuation of supervision. The supervision was to last for *at least* 24 months.

Dr. Rosenhek is currently in the process of submitting the information required for the re-assessment. Under the circumstances, please continue to provide supervision as per your undertaking until the re-assessment is completed and the College communicates approval for its discontinuation [emphasis added].

26. On July 30, 2014, the College wrote to Dr. Kostuk at Cardiac Investigation Unit, London Health Sciences Centre, University Hospital, P.O. Box 5339, London Ontario, N6A 5A5, as attached at Tab 37 [to the Statement of Uncontested Facts on Liability], to provide him with templates for his future reports regarding Dr. Rosenhek, and requesting that they be "fully completed for each report, and submitted each month".
27. Dr. Kostuk's last supervision report was dated July 16, 2014, and was received by the College on August 15, 2014 (Tab 38 [to the Statement of Uncontested Facts on Liability]). In it, Dr. Kostuk wrote "I hope that the review by the College will be completed in the near future".
28. On August 25, 2014, the College wrote to Dr. Kostuk at Cardiac Investigation Unit, London Health Sciences Centre, University Hospital, P.O. Box 5339, London Ontario, N6A 5A5, as follows, as attached at Tab 39 [to the Statement of Uncontested Facts on Liability]:

[...] Thank you for your July report received by the College on August 15, 2014.

I look forward to the receipt of your August report by the end of this month. Please use the reporting templates that had been provided to you by Mr. Cirak on July 30, 2014. Please also comment on Dr. Rosenhek's compliance with his Order, and the number of charts reviewed after each meeting, with patient

identifiers, for each and every report. Please refer to the Decision and Reasons for Decision, dated December 21, 2010 for your next report.

The reassessment for Dr. Rosenhek is underway, however please be reminded that Dr. Rosenhek is expected to practise under supervision until his practice re-assessment is complete, and the College approves the discontinuation of supervision [emphasis added].

Dr. Rosenhek's Reassessment

29. Dr. Rosenhek's reassessment proceeded as of March 2014, including as follows:

- (a) On March 31, 2014, the College received Dr. Rosenhek's completed "Physician Practice Questionnaire" and "Electronic Medical Records Questionnaire";
- (b) On April 11, 2014, as attached at Tab 40 [to the Statement of Uncontested Facts on Liability], Dr. Rosenhek advised of anticipated changes to his office location in Windsor, and the anticipated impact this would have on his clinic schedule in Windsor. He also advised of his upcoming clinic schedule in Toronto;
- (c) On June 18, 2014, as attached at Tab 41 [to the Statement of Uncontested Facts on Liability], the College requested that Dr. Rosenhek provide the list of patients he saw at his Windsor and Toronto clinics between January and May, 2014, and to indicate which patients had had two or more appointments in that timeframe. On June 20, 2014, June 27, 2014, June 30, 2014, July 16, 2014 and August 14, 2014, Dr. Rosenhek provided a series of lists of patients he had seen, as attached at Tabs 42 to 47 [to the Statement of Uncontested Facts on Liability];
- (d) On August 19, 2014 and September 24, 2014, the College wrote to Dr. Rosenhek as attached at Tabs 48 and 49 [to the Statement of Uncontested Facts on Liability] to request that he provide the original complete patient records for fifteen (15) identified patients. Dr. Rosenhek provided these records on October 22, 2014, as attached at Tab 50 [to the Statement of Uncontested Facts on Liability]; and
- (e) In September 2014, the College retained Dr. Arvinder Grover as Dr. Rosenhek's assessor, as attached at Tabs 52 and 53 [to the Statement of Uncontested Facts on Liability];

- (f) On February 26, 2015, Dr. Grover conducted an interview of Dr. Rosenhek;
 - (g) On March 10, 2015, the College wrote to Dr. Rosenhek as attached at Tab 51 [to the Statement of Uncontested Facts on Liability] to request that he provide his day sheets from both of his clinic locations for certain weeks in September, October and November 2014. Dr. Rosenhek provided these day sheets to the College on March 17, 2015, as attached at Tab 54 [to the Statement of Uncontested Facts on Liability];
 - (h) On April 21, 2015, Dr. Grover submitted his reassessment report. It was provided to Dr. Rosenhek on April 23, 2015, and to Dr. Kostuk on May 8, 2015;
 - (i) On July 9, 2015, Dr. Rosenhek provided the College with a report of Dr. Robert Myers, responding to the reassessment report of Dr. Grover;
 - (j) On July 15, 2015, Dr. Rosenhek provided the College with a report of Dr. Kostuk, responding to the reassessment report of Dr. Grover; and
 - (k) On August 8, 2015, the College received Dr. Grover's comments on the reports of Drs. Myers and Kostuk.
30. On September 15, 2015, the College wrote to Dr. Rosenhek's counsel at the time, as attached at Tab 55 [to the Statement of Uncontested Facts on Liability], as follows:

The College has not had a supervision report regarding Dr. Rosenhek's practice since August 15, 2014. Please advise whether Dr. Rosenhek's practice is still under the Clinical Supervision of Dr. William Kostuk, in accordance with the Discipline Committee Order of November 8, 2010.

[...]

The ICRC will consider Dr. Rosenhek's report of reassessment in addition to his compliance with the Discipline Committee Order. I invite you to provide submissions on this issue by September 30, 2015.

31. In a letter dated October 8, 2015, attached at Tab 56 [to the Statement of Uncontested Facts on Liability], Dr. Rosenhek's counsel at the time wrote to the College as follows:

Dr. Kostuk was of the understanding, following his July 17, 2014 report to the CPSO, that no further reports were required from him. Dr. Kostuk has advised that he did not, at the time, receive your letter to him dated August 25, 2014. He states he first received the letter when he received your letter dated September 15, 2015 enclosing the August 25, 2014 letter. Dr. Kostuk also denies receiving any letters from the CPSO regarding the ongoing supervision of Dr. Rosenhek's practice between August, 2014 and September 15, 2015. Dr. Kostuk has advised that his Undertaking required supervision of Dr. Rosenhek's practice for at least 24 months. He commenced his supervision of Dr. Rosenhek's practice in November, 2010 and continued with that supervision for almost 4 years, with his last report being July 17, 2014. He has advised that, in his reports respecting Dr. Rosenhek, he had, over the last several years of his supervision, repeatedly advised the CPSO that he had no significant concerns regarding Dr. Rosenhek's practice and that continuing supervision of Dr. Rosenhek's practice was, in his view, not necessary. As such, when he received no further correspondence from the CPSO requesting reports from him, he concluded that ongoing supervision of Dr. Rosenhek's practice was not required.

Dr. Kostuk further advised, after reviewing your letter to him dated September 15, 2015, that he wrongly interpreted his obligations under his Undertaking. He now recognizes that he was expected to continue his supervision of Dr. Rosenhek's practice until conditions 8(i) and (ii) were met. He is extremely apologetic and regrets his error.

Dr. Rosenhek was advised by Dr. Kostuk that ongoing supervision was not required as he had fulfilled his Undertaking.

32. The College's letter of August 25, 2014 is the only letter sent to Dr. Kostuk by the College that he claimed not to have received.

33. Dr. Rosenhek advised the College on October 3, 2017 that, after he received the College's letter of September 15, 2015, Dr. Rosenhek sent copies of patient charts to Dr. Kostuk from between August 2014 and August 2015. After September 2015, Dr. Rosenhek continued to periodically provide Dr. Kostuk with his current records, until approximately March 2016. An email from Dr. Kostuk dated October 4, 2017 is attached at Tab 58 [to the Statement of Uncontested Facts on Liability].
34. Dr. Rosenhek did not meet with Dr. Kostuk after July 2014. Dr. Kostuk did not submit any further clinical supervision reports after August 2014. Dr. Rosenhek did not follow-up with Dr. Kostuk to determine if Dr. Kostuk was reviewing the patient charts Dr. Rosenhek resumed sending to him after September 2015.

PART II – DISGRACEFUL, DISHONOURABLE OR UNPROFESSIONAL CONDUCT

BREACH OF 2010 DISCIPLINE COMMITTEE ORDER

35. After July 2014, Dr. Rosenhek continued to practice medicine without supervision, in breach of the requirements in the 2010 Discipline Committee Order that he have both a satisfactory practice reassessment and the approval of the College prior to the termination of the supervision. In doing so, he also failed to abide by the terms, conditions, and limitations on his certificate of registration.
36. In a letter from Dr. Rosenhek's former lawyer dated January 21, 2016, attached at Tab 57 [to the Statement of Uncontested Facts on Liability], Dr. Rosenhek's counsel at the time confirmed that Dr. Rosenhek had not met with Dr. Kostuk between August 2014 and at least January 2016.
37. In the letter dated October 8, 2015, attached at Tab 56 [to the Statement of Uncontested Facts on Liability], Dr. Rosenhek's counsel at the time stated that Dr. Rosenhek had resumed unsupervised practice because, notwithstanding the 2010 Discipline Committee Order and the clinical supervisor's undertaking, Dr. Rosenhek stated that he had been

advised by Dr. Kostuk that ongoing supervision was not required as Dr. Kostuk had “fulfilled his undertaking”.

38. The College did not advise either Dr. Kostuk or Dr. Rosenhek that supervision was no longer required. The College repeatedly advised Dr. Kostuk that his clinical supervision of Dr. Rosenhek was to continue until he was advised by the College that it approved of the discontinuation of supervision. The College never approved the discontinuation of Dr. Rosenhek’s supervision.
39. Dr. Rosenhek did not attempt to confirm with the College whether his apparent understanding, or Dr. Kostuk’s apparent advice, that supervision was no longer required, were correct. Similarly, at no time did Dr. Rosenhek bring a motion to vary the terms of the 2010 Discipline Committee Order to permit him to return to unsupervised practice.

PART III – PLEA OF NO CONTEST

40. Dr. Rosenhek does not contest the facts specified above and he does not contest that, based on these facts, he engaged in professional misconduct, in that:
 - (a) 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, under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”).

DISCIPLINE COMMITTEE RULE 3.02

Rule 3.02 of the Discipline Committee’s Rules of Procedure regarding a plea of no contest 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 on Liability. Having regard to these facts, the Committee accepted Dr. Rosenhek's plea and made an order finding 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 of the circumstances, would reasonably be regarded by members as unprofessional by practising medicine without clinical supervision in breach of a 2010 Order of the Discipline Committee and contrary to the terms, conditions, and limitations on his certificate of registration.

AGREED STATEMENT OF FACTS ON PENALTY

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

PAST HISTORY

Prior Dispositions by the Complaints Committee

1. In November 2003, the Complaints Committee of the College required Dr. Rosenhek to attend at the College to be cautioned when aspects of his practice, and his response to a College complaint, were found to be concerning. Dr. Rosenhek was cautioned with regard to, among other things, the intemperate nature of his response to the patient complaint, the “threatening and intimidating tone” of which the Committee found to be “unnecessarily belligerent in the extreme”. The Committee’s November 2003 decision is attached at Tab 1 [to the Agreed Statement of Facts on Penalty].
2. In June 2004, the Complaints Committee of the College required Dr. Rosenhek to attend at the College to be cautioned regarding his professional communications. The Committee’s June 2004 decision is attached at Tab 2 [to the Agreed Statement of Facts on Penalty].
3. In October 2006, the Complaints Committee of the College cautioned Dr. Rosenhek regarding his communications with patients and the importance of maintaining a professional and courteous demeanour. The Committee’s October 2006 decision is attached at Tab 3 [to the Agreed Statement of Facts on Penalty].
4. In December 2008, the Complaints Committee of the College required Dr. Rosenhek to attend at the College to be cautioned regarding his professional attitude and demeanour in interacting with a patient, and the importance of understanding the fundamental nature of positive and effective communications with patients. The Committee’s December 2008 decision is attached at Tab 4 [to the Agreed Statement of Facts on Penalty].

2013 Discipline Committee decision

5. On October 21, 2013, the Discipline Committee released its Decision and Reasons for Decision in a discipline proceeding involving Dr. Rosenhek, held on August 6, 2013. A copy of the 2013 Decision and Reasons for Decision is attached at Tab 5 [to the Agreed Statement of Facts on Penalty].

6. In the 2013 Discipline proceeding, Dr. Rosenhek was found to have 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 for:
 - (a) falsely representing himself as a member of the Royal College of Physicians and Surgeons of Canada and using the “FRCPC(C)” designation 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 Maintenance of Competence (“MOC”) program, between December 1986 when was removed from the register of Fellows in good standing with the Royal College because of his failure to pay annual dues and November 2008 when he paid his dues; and
 - (b) providing incomplete and inaccurate information to the Windsor Regional Hospital (where he held privileges) as part of its credentialing/re-appointment process regarding his compliance with a program of continuing medical education between 2006 and 2008.
7. As a result, Dr. Rosenhek was required to appear before the panel to be reprimanded, and to pay costs to the College.

Undertaking in lieu of s. 37 Order

8. On March 23, 2016, Dr. Rosenhek entered into an interim undertaking with the College in lieu of an Order under the former section 37 of the Health Professions Procedural Code, which is Schedule 2 to the *Regulated Health Professions Act, 1991*, as attached at Tab 6 [to the Agreed Statement of Facts on Penalty]. A second interim undertaking was entered into on July 21, 2016, as attached at Tab 7 [to the Agreed Statement of Facts on Penalty]. It remains in effect until the final disposition of this discipline case.
9. Dr. Rosenhek undertook, among other things, to limit his practice to an initial maximum of the equivalent of two days per month, which limit was later raised to three days per month.

He also agreed to practice under the supervision of a Clinical Supervisor acceptable to the College, who was required to meet with Dr. Rosenhek once per month to review at least ten patient charts from the equivalent of each full day of patient care provided by Dr. Rosenhek, and to submit written reports to the College at least once every two months.

10. As a result of the interim undertakings, Dr. Rosenhek practised under the supervision of Dr. Patrick Teefy, beginning March 23, 2016. The supervision reports delivered by Dr. Teefy, dated June 8, 2016, June 23, 2016, August 26, 2016, October 27, 2016, November 16, 2016, January 9, 2017, February 20, 2017, March 20, 2017, April 4, 2017, and April 24, 2017 are attached at Tabs 8 to 17 [to the Agreed Statement of Facts on Penalty].
11. In early 2017, Dr. Teefy advised that he would be discontinuing his supervision of Dr. Rosenhek's practice as of April 30, 2017. Dr. Rosenhek was not able to locate a replacement supervisor. Dr. Rosenhek has not practiced medicine since May 1, 2017.
12. No concerns regarding Dr. Rosenhek's compliance with the interim undertakings have been identified by either the Clinical Supervisor or the College's compliance monitor.

Dr. Rosenhek's Undertaking

13. Dr. Rosenhek has entered into an undertaking to the College, dated October 11, 2017, attached at Tab 18 [to the Agreed Statement of Facts on Penalty], by which he has agreed, among other things, that he shall see a maximum of three patients per hour.

PENALTY AND REASONS FOR PENALTY

Legal Principles

Counsel for the College and counsel for Dr. Rosenhek made a joint submission as to an appropriate penalty and costs order.

In examining the proposed penalty, the Committee considered well-established principles; an appropriate penalty should include protection of the public as a paramount consideration,

maintenance of public confidence in the College's ability to regulate the profession in the public interest, specific deterrence of the member and general deterrence of the profession, as well as rehabilitation of the member where appropriate. Denunciation of the professional misconduct was also considered.

The Committee also considered and accepted the Supreme Court of Canada's decision in *R v. Anthony-Cook*, 2016 SCC 43 that held that a joint submission on penalty should be accepted unless the proposed penalty would bring the administration of justice into disrepute, or is otherwise not in the public interest.

The Committee found that the proposed penalty was appropriate and proportional to the misconduct for the reasons given below, and therefore should be accepted.

Aggravating Factors

The Committee considered Dr. Rosenhek's failure to comply with an order of the Discipline Committee to be a serious act of misconduct, in that such failure has the potential to undermine the public's confidence in the College's ability to govern the profession in the public interest. Discipline Committee's orders must be complied with by members of the profession.

The Committee also considered Dr. Rosenhek's previous record with the College to be an aggravating factor. Dr. Rosenhek is well aware of the processes employed by the College and should have ensured that he followed the order of the Discipline Committee diligently and have checked with the College before instituting any changes to his practice monitoring.

Mitigating Factors

The Committee accepted that Dr. Rosenhek's cooperation and the agreement on penalty were a mitigating factor. This spared witnesses from having to testify and saved the associated expense of a contested hearing.

Dr. Rosenhek's decision to stop practising medicine after May 1, 2017, due to not being able to locate a replacement supervisor, was considered as a mitigating factor. It demonstrated that Dr.

Rosenhek had developed an understanding of the serious nature of the previous Discipline Committee's order and the need to respect and comply with the terms of that order.

The Committee was presented with twenty-two (22) letters of support for Dr. Rosenhek. Three of these letters were from colleagues. These letters did not refer to Dr. Rosenhek's College discipline proceedings, but spoke to Dr. Rosenhek's conscientious and competent consulting skills. The remaining letters were from nineteen (19) different patients. While many of these letters referred to Dr. Rosenhek's College discipline hearings, none made any specific reference to the issue of the breach of a Committee's order. The letters of support from the patients spoke to the caring and compassionate nature of the care they had received from Dr. Rosenhek and to his availability when care was required. The latest clinical encounters mentioned in the letters dated from 2007 and some referred to medical care Dr. Rosenhek delivered back to about twenty years ago.

The Committee considered the letters of support as a mitigating factor in determining the penalty as they spoke to the fact that Dr. Rosenhek was capable of providing compassionate and timely care.

Case Law

The Committee reviewed a number of previous Discipline Committee cases put before it by the parties, and noted that the penalties ordered in those cases were consistent with the penalty proposed by the parties in the present case. The following cases were considered by the Committee to be particularly pertinent in determining whether the jointly proposed penalty was appropriate.

In *CPSO v. Syan*, 2016 ONCPSD 16, the member admitted and was found to have breached an order of the Discipline Committee. It was noted that she had previously breached two undertakings with the College. The Committee views that a breach of an order or an undertaking to the College is a serious transgression. The Committee ordered that Dr. Syan's certificate of registration be suspended for a period of two months, that she appear before the panel to be reprimanded, that the Registrar impose terms and conditions on her certificate of registration,

requiring her to successfully complete individualized instruction in medical ethics, and that she pay hearing costs to the College.

In *CPSO v. Egles*, 2015 ONCPSD 18, the member admitted and was found to have breached an undertaking with the College. The Committee stated: “It is a fundamental responsibility of a member to comply with an undertaking to the College. The privilege of self-regulation and the ability of the profession to self-govern in the public interest, require members to be governable and to comply with undertakings.” The Committee ordered a two-month suspension of the member’s certificate of registration, a reprimand, and that she pay hearing costs to the College.

In *CPSO v. Achiume*, 2015 ONCPSD 4, the member admitted and was found to have breached an order of the Inquiries, Complaints and Reports Committee of the College (ICRC). The Discipline Committee stated in its decision: “The Committee feels strongly that, in order to maintain public trust, it must insist on strict compliance with orders from any and all College committees.” The Committee ordered that Dr. Achiume’s certificate of registration be suspended for a period of one month or until he has provided to the College proof of his compliance with the order of the ICRC, that he appear before the panel to be reprimanded, and that he pay hearing costs to the College.

The other cases presented in the Joint Book of Authorities contained similar factual circumstances and ranges of penalty.

Conclusion

The Committee concluded that a one-month suspension as proposed would satisfy the requirement for specific deterrence. Dr. Rosenhek had already demonstrated his acceptance of the College’s authority by suspending his practice, after he was no longer able to obtain a suitable supervisor.

A one-month suspension will also give a clear signal to both Dr. Rosenhek and the profession at large, that the Committee feels strongly that it is the duty of the members of the profession to

comply with the Orders of the College's Committees. This is necessary to maintain public confidence in the College's ability to regulate the profession in the public interest.

The public reprimand administered to Dr. Rosenhek allowed the Committee to express its dismay at his unprofessional behaviour in not complying with the order of the Committee.

Finally, the costs order is in keeping with the College's tariff for a one-day hearing and is also appropriate.

ORDER

The Committee stated its finding of professional misconduct in paragraph 1 of its written order of October 11, 2017. In that order, the Committee ordered and directed on the matter of penalty and costs that:

2. Dr. Rosenhek appear before the panel to be reprimanded.
3. the Registrar suspend Dr. Rosenhek's certificate of registration for a period of one (1) month commencing on October 12, 2017.
4. Dr. Rosenhek pay costs to the College in the amount of \$5,500 within thirty (30) days from the date of this Order.
5. the results of this proceeding be included in the register.

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.

TEXT of PUBLIC REPRIMAND
Delivered October 11, 2017
in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
and
DR. ISRAEL SHOEL ROSENHEK

Dr. Rosenhek, it is regrettable that you are before the Discipline Committee of your regulatory College because of a serious communications matter. A regulatory authority such as the College of Physicians and Surgeons, only fulfils its function with the compliance and cooperation of its members.

In 2010, a panel of this Committee issued a very detailed and specific Order to you that had as its purpose, the protection of the public. It was your responsibility as a professional, to adhere to every single aspect of that Order.

Notwithstanding any mitigating factors in your case, it was ultimately your professional responsibility to seek any and all clarifications related to that Order directly from the College. Your negligence in fulfilling that responsibility is profoundly unprofessional and risked bringing the reputation of the entire profession into disrepute.

This Committee sincerely expects that you have learned from your experience, and that this will be your final appearance before the Discipline Committee.

This is not an official transcript