

## NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Reza Yaghini, this is notice that the Discipline Committee ordered that no person shall publish or broadcast 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... 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. Yaghini, 2017  
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. REZA YAGHINI**

**PANEL MEMBERS:**

**DR. P. POLDRE  
MAJOR A. KHALIFA  
DR. M. GABEL  
MR. P. PIELSTICKER  
DR. C. LEVITT**

**COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:**

**MS. E. WIDNER**

**COUNSEL FOR DR. YAGHINI:**

**MR. M. SAMMON  
MR. C. HUNTER**

**INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:**

**MS. J. McALEER**

<b>Hearing Date:</b>	<b>February 13, 2017</b>
<b>Decision Date:</b>	<b>February 13, 2017</b>
<b>Release of Reasons Date:</b>	<b>April 5, 2017</b>

## **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 February 13, 2017. At the conclusion of the hearing, the Committee released a written order stating its finding that Dr. Yaghini committed an act of professional misconduct and setting out its penalty and costs order with written reasons to follow.

### **THE ALLEGATION**

The Notice of Hearing alleged that Dr. Reza Yaghini 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 THE ALLEGATION**

Dr. Yaghini admitted to the allegation in the Notice of Hearing.

### **THE FACTS**

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

#### **PART I - FACTS**

1. Dr. Yaghini is a 49 year old physician, who, at all material times, was practicing medicine in Thornbury, Ontario.
2. Dr. Yaghini received his medical degree in Iran in 1992 and his initial certificate of registration authorizing independent practice in Ontario in 2009. He completed the Family

Medicine Residency Program at Queen's University and obtained his designation as a Specialist in Family Medicine from the College of Family Physicians of Canada in 2011.

3. Dr. Yaghini is a family doctor who currently provides *locum* services to emergency departments in various hospitals in Ontario.

### **Background**

4. At the relevant time, Dr. Yaghini practiced in association with a group of physicians in a Family Health Group (the "Group"), in Thornbury, Ontario.
5. The Group was composed of a number of physicians, including Dr. X and Dr. Yaghini.
6. At the relevant time, Dr. Yaghini also had privileges at the Grey Bruce Health Services, ("the hospital"). Dr. Yaghini had access to the hospital's electronic medical records system ("EMR"). Personal medical records pertaining to Dr. X were stored in the hospital's EMR.
7. In the period preceding the events at issue in this hearing, the personal and professional relationship between Dr. X and Dr. Yaghini had deteriorated and become very poor.

### **Breach of Privacy**

8. On September 17, 2014, the Chief of Staff of the hospital contacted the College to advise that the hospital had determined that Dr. Yaghini had accessed Dr. X's personal health records through the hospital's EMR, on June 9, 2013.
9. The access by Dr. Yaghini was in breach of the hospital's policy on access to personal health information. Dr. Yaghini was not authorized to view Dr. X's personal health records.
10. Dr. Yaghini acknowledges that he had no justification for viewing the personal health records of Dr. X.
11. Effective November 29, 2014, Dr. Yaghini agreed to voluntarily resign his privileges at the hospital at the request of the Chief of Staff.

## **PART II – ADMISSION**

12. Dr. Yaghini admits the facts specified above, and admits that, based on these facts, he engaged in professional misconduct, in that:

- (a) He engaged in an act or omission relevant to the practise 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 O. Reg. 856/93, made under the *Medicine Act, 1991* (“O/Reg. 856/93”).

## **FINDING**

The Committee accepted as correct all of the facts set out in the Agreed Statement of Facts on Liability. Having regard to these facts, the Committee accepted Dr. Yaghini’s admission and found that he committed an act of professional misconduct, 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.

## **FACTS ON PENALTY**

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

1. In addition to the facts set out in the Agreed Statement of Facts on Liability, the parties rely on the following additional facts.
2. Dr. Yaghini’s explanation for viewing the personal health records of Dr. X is that, in the context of their deteriorating relationship, Dr. Yaghini accessed the record because of his perception of ongoing bullying and harassing behaviour by Dr. X towards him. This perception caused Dr. Yaghini to be concerned about his well-being and to question whether Dr. X might have a health issue that was motivating Dr. X’s behaviour towards him. For this reason, Dr. Yaghini decided to access Dr. X’s personal health records.

3. On January 29, 2015, Dr. Yaghini completed a course titled, “Patient confidentiality and disclosing information”. A Certificate of Completion is attached at Tab A to the Agreed Statement of Facts on Penalty.

### **JOINT SUBMISSION ON PENALTY**

Counsel for the College and counsel for the member made a joint submission as to an appropriate penalty and costs order, which included: a three (3) month suspension of Dr. Yaghini’s certificate of registration; a term, condition and limitation on his certificate of registration whereby at his own expense he would participate in and successfully complete (within six months) individualized instruction in medical ethics satisfactory to the College, with an instructor selected by the College, who would provide a summative report to the College, including his or her conclusion about the successful completion of such instruction; a reprimand; and, costs.

The Committee took into account the decision of the Supreme Court of Canada in the case of *R. v. Anthony-Cook* regarding the test to be applied when assessing a joint submission on penalty. The Committee recognizes its obligation as stated in that case to accept a joint submission on penalty, unless it would bring the administration of justice into disrepute or would otherwise be contrary to the public interest. The Committee is also cognizant of the basic principles underlying the appropriateness of penalty orders: public protection; general and specific deterrence; maintenance of the integrity of the profession and public confidence in the College’s ability to regulate the profession in the public interest; and, rehabilitation of the member.

### **REASONS ON PENALTY**

In coming to a decision, the Committee reviewed the Agreed Statements of Facts on Liability, the Agreed Statement of Facts on Penalty, aggravating and mitigating factors and the case law.

Dr. Yaghini admitted that he had engaged in professional misconduct. Dr. Yaghini admitted that he had breached the Grey Bruce Health Services hospital policy and accessed the personal medical records of Dr. X through the hospital EMR. Dr. Yaghini was not authorized to view Dr. X’s personal health records and he acknowledged that he had no justification for viewing the

personal health records of Dr. X. The facts related to these issues are set out in the Agreed Statement of Facts on Liability.

### **Aggravating Factors**

The Committee considered the breach of hospital policy and unauthorized access of Dr. X's health records to be a very serious aggravating factor. The privacy of a person's health information is sacrosanct. Individuals have a right to assume that their information is kept private and everyone in the health care system has a profound obligation to protect that information. As a physician, Dr. Yaghini was trained and schooled in the sanctity of that privacy. Only physicians who are inside the circle of care and have a doctor-patient relationship may have access to these private records. Dr. Yaghini is not inside the circle of care with respect to Dr. X, he is a complete stranger to that relationship. Dr. Yaghini abused his status as a physician to access Dr. X's medical records. Dr. Yaghini did not take the rights of Dr. X into account when he accessed his records. Accessing those records was an abuse of power and an abuse of trust.

The parties set out additional facts in the Agreed Statement of Facts on Penalty. That document indicates that Dr. Yaghini accessed the records to ascertain whether there was a medical explanation for alleged bullying and harassing behavior by Dr. X. Dr. Yaghini admitted, however, in the Agreed Statement of Facts on Liability that there was no justification for his decision to access Dr. X's private health care information. Certainly, the poor relationship between Dr. Yaghini and Dr. X cannot, in any way, justify Dr. Yaghini's actions.

Privacy of patient health information is a fundamental rule and universal value.

The Committee notes that Dr. Yaghini completed an on-line ethics course on January 29, 2015. The Committee was not presented with any further details about this course; such as its content, duration, format or assessment mechanisms. In the absence of such information, the Committee placed little weight on the fact that this course had been completed.

The Committee was informed that Dr. Yaghini is involved in another discipline matter, which was heard by a separate panel of the Discipline Committee on July 25 to 27, 2016. That panel

released its written decision and reasons for decision on liability on December 21, 2016 and found that Dr. Yaghini has committed an act of professional misconduct in that he engaged in the sexual abuse of a patient and that he engaged in disgraceful, dishonourable or unprofessional conduct. Dr. Yaghini has appealed that decision and the penalty hearing in relation to it is pending. The Committee agrees that since the other finding was made after the conduct alleged in the current case, it is not truly a prior finding, and consequently was not considered by the Committee as an aggravating factor.

### **Mitigating Factors**

The Committee also considered certain mitigating factors. The Committee took into account that Dr. Yaghini has admitted his professional misconduct, has cooperated with the College in avoiding a prolonged and contested hearing, has spared witnesses from having to appear and testify before the panel, and has given up his right to contest the allegations.

### **Case Law**

The Committee was provided with two prior decisions of this Committee, each of which involved unauthorized access to personal health records. The Committee understood that these cases are not binding on it, but inform the principle that like cases should be treated alike.

*Brooks vs. the College of Physicians and Surgeons* (2016) - In this case, Dr. Brooks, a general practitioner and coroner, admitted and the Committee found that he committed an act of professional misconduct in that he engaged in disgraceful, dishonourable or unprofessional conduct by accessing medical records for two related patients on multiple occasions even though he was not authorized to access these records. The medical records were of individuals that had a close personal relationship with Dr. Brooks and included personal information of a very sensitive nature. His privacy violations took place over a decade. Dr. Brooks had signed a confidentiality agreement with the hospital. The Hospital Confidentiality Policy stated that it was a breach of confidentiality to access patient or health information when not required to provide care to a patient or in the performance of ones duties. Dr. Brook's penalty included a five month



suspension, successful completion of individualized instruction in medical ethics with a College approved instructor, and a reprimand. He was also ordered to pay costs.

*Di Paola vs. the College of Physicians and Surgeons* (2016) - In this case, Dr. Di Paola, a family physician who practises in the area of addictions at CAMH, admitted and the Committee found that she committed an act of professional misconduct in that she engaged in disgraceful, dishonourable or unprofessional conduct. An internal audit found that Dr. Di Paola accessed on multiple occasions over more than two years the medical records of two patients that she was not authorized to see. Dr. Di Paola's penalty included a three month suspension, successful completion of individualized instruction in medical ethics with a College approved instructor, and a reprimand. She was also ordered to pay costs.

## **PENALTY DECISION**

The Committee determined that the proposed sanctions are proportionate to the seriousness of the findings. The three month suspension and the reprimand signal the profession's disapproval of Dr. Yaghini's misconduct. The Committee expects that the instructor selected by the College to provide individualized instruction will ensure that Dr. Yaghini has gained insight into the seriousness of his breach of privacy. Individualized instruction over six months at Dr. Yaghini's own expense, with a summative report of successful completion will protect the public from further misconduct of this nature and maintain public confidence in the College's ability to govern in the public interest. It is also expected that this will assist to rehabilitate Dr. Yaghini.

## **ORDER**

The Committee stated its findings in paragraph 1 of its written order of February 13, 2017. In that order, the Committee ordered and directed on the matter of penalty and costs that:

2. The Registrar suspend Dr. Yaghini's Certificate of Registration for a three (3) month period effective April 2, 2017 at midnight (12:00 a.m.).
3. The Registrar impose the following term, condition and limitation on Dr. Yaghini's certificate of registration:

- a. At his own expense, Dr. Yaghini shall participate in and successfully complete, within six (6) months of the date of this Order, individualized instruction in medical ethics satisfactory to the College, with an instructor selected 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. Yaghini.
4. Dr. Yaghini appear before the panel to be reprimanded.
5. Dr. Yaghini pay costs to the College for a one day hearing in the amount of \$5,000.00 within 30 days of the date of this Order.

At the conclusion of the hearing, Dr. Yaghini 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 February 13, 2017**  
**in the case of the**  
**COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO**  
**and**  
**Dr. Reza Yaghini**

Dr. Yaghini,

Despite whatever challenging personal circumstances led to your misconduct, it was not justified. Every person, in the context of being a patient, is entitled to the expectation that personal health information will only be used and viewed by authorized practitioners.

Patient privacy has paramount sanctity in our health care system. The Committee acknowledges that electronic access is a reality that is intended for the enhancement of patient care. For that very reason, our profession must be scrupulous in protecting access to only those records to which we are entitled.

Your conduct was disgraceful and dishonest.

Your conduct brought dishonour to you and to the entire medical profession.

Your conduct was unprofessional to the core of the public trust that we must maintain, for trust is the foundation upon which we must practise.

We expect that you now understand the implications of your misconduct.

We expect that through personal reflection and through taking the educational program seriously, you will learn from your error and never repeat it.