

Indexed as: Portugal, Francisco Suyat (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. FRANCISCO SUYAT PORTUGAL

PANEL MEMBERS:

**DR. M. GABEL
G. DEVLIN
DR. R. MACKENZIE
DR. B. TAA (PhD)
DR. F. SLIWIN**

Hearing Date:	August 10, 2010
Decision Release Date:	August 10, 2010
Release of Written Reasons:	August 27, 2010

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario (the “Committee”) heard this matter at Toronto on Tuesday, August 10, 2010. 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.

THE ALLEGATION

The Notice of Hearing alleged that Dr. Portugal committed an act of professional misconduct:

1. under paragraph 1(1)33 of 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 ALLEGATION

Dr. Portugal admitted the allegation in the Notice of Hearing.

AGREED STATEMENT OF FACTS

The following Agreed Statement of Facts was filed as an exhibit and presented to the Committee:

1. Dr. Portugal is a general practitioner practising in downtown Toronto.
2. Between June 2007 and June 2009, Patient A, through her authorized representative, sent approximately thirteen requests to Dr. Portugal requesting copies of all of his clinical notes and records from 2002 to present.
3. Dr. Portugal was provided with a duly executed medical authorization instructing him to release this information to Patient A’s authorized representative, and was advised

that reasonable photocopying charges would be honoured.

4. Despite receiving these requests, Dr. Portugal failed to provide Patient A's clinical notes and records to Patient A or her authorized representative.
5. Prior to receiving Patient A's requests, Dr. Portugal had a number of previous complaints relating to his failure to respond to requests for medical records.
6. Dr. Portugal states that the delay in response to Patient A's requests was as a result of failures by his office to either respond to the requests or bring them to his attention.
7. Dr. Portugal states that he has instituted changes in his office in order to avoid similar problems in future.
8. Dr. Portugal agrees that the foregoing conduct constitutes professional misconduct under paragraph 1(1)33 of 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.

FINDING

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts. Having regard to these facts, the Committee accepted Dr. Portugal's admission and found that, by failing to respond to repeated requests to provide Patient A's medical records, 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 under paragraph 1(1)33 of O. Reg. 856/93 of the *Medicine Act*.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and for the member made a joint submission as to an appropriate penalty and costs.

The Committee accepted that, as a matter of law, penalty orders proposed by way of joint submission should not be rejected by the Committee, unless to accept the proposed order would be contrary to the public interest and bring the administration of justice into disrepute. The Committee found the proposed order in this case to be appropriate and accepted the joint submission.

College counsel advised the Committee that Dr. Portugal had demonstrated a pattern of misconduct that had occurred over a period of twelve years. He was counseled by the Complaints Committee in 1998 for failure to provide timely reports when requested and, in 2007, received two cautions for similar concerns. There have also been numerous additional contacts to the College that have not resulted in formal actions. For these reasons, the Committee agreed that a significant penalty was warranted in order to satisfy the principles of both specific and general deterrence. The Committee also agreed that the penalty needed to include sufficient safeguards to protect the public from similar misconduct in the future.

Both counsel acknowledged that Dr. Portugal has acknowledged his misconduct and fully understands its seriousness. The records at issue in this proceeding have been delivered to the satisfaction of the complainant. Dr. Portugal has already taken steps to prevent any further occurrences of a similar nature. As well, the Committee accepts that, by cooperating fully with the College in this matter, he has saved the time and expense of a lengthy hearing.

ORDER

Therefore, the Discipline Committee ordered and directed that:

1. The Registrar suspend Dr. Portugal's certificate of registration for a period of one month, which suspension shall itself be suspending if, within two months of the date of this Order:
 - (i) Dr. Portugal retains the services of a third party organization/efficiency expert (the "TPO") to evaluate his current administrative practices;
 - (ii) Dr. Portugal implements all reasonable recommendations made by the TPO regarding the management and day to day administration of his practice; and
 - (iii) Dr. Portugal provides a letter from the TPO confirming that all reasonable recommendations have been implemented.
2. The Registrar impose the following terms, conditions and limitations on Dr. Portugal's certificate of registration:
 - (a) Dr. Portugal shall provide a report from the TPO twelve months after he implements all of their recommendations, confirming that his organization system remains working and that his practice is running efficiently; and
 - (b) Dr. Portugal shall successfully complete, at his own expense, the College's Medical Ethics and Informed Consent Course within twelve months of the date of this Order.
3. The terms, conditions and limitations in paragraph 2 herein shall be removed by the College after it receives confirmation that those terms, conditions and limitations have been fulfilled.
4. Dr. Portugal appear before the panel to be reprimanded.

5. Dr. Portugal pay to the College costs in the amount of \$3,650 within 30 days of the date of this Order.
6. The results of this proceeding to be included in the register.

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