

## NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Nabil Nashat Namis, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity and any information that would disclose the identity of the patient whose name is disclosed in the Agreed Statement of Facts or patient records 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 or 47... 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: Namis, N.N. (Re)**

**THE DISCIPLINE COMMITTEE OF THE COLLEGE  
OF PHYSICIANS AND SURGEONS OF ONTARIO**

**IN THE MATTER OF** a Hearing directed  
by the Complaints Committee of  
the College of Physicians and Surgeons of Ontario  
pursuant to Section 26(2) 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. NABIL NASHAT NAMIS**

**PANEL MEMBERS:**

**DR. E. STANTON (CHAIR)  
D. DOHERTY  
DR. S. BODLEY  
S. BERI  
DR. C. CLAPPERTON**

<b>Hearing Date:</b>	<b>May 2, 2011</b>
<b>Decision Date:</b>	<b>May 2, 2011</b>
<b>Release of Written Reasons:</b>	<b>June 29, 2011</b>

**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 May 2, 2011. At the conclusion of the hearing, the Committee stated its finding that the member committed an act of professional misconduct and delivered its order as to penalty and costs with written reasons to follow.

### **THE ALLEGATIONS**

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

1. under paragraph 1(1)2 of O. Reg. 856/93 made under the *Medicine Act, 1991*, 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 made under the *Medicine Act, 1991*, 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. Namis admitted the second allegation in the Notice of Hearing 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 the first allegation in the Notice of Hearing.

### **FACTS AND EVIDENCE**

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

#### **FACTS**

1. Dr. Namis is an obstetrician/gynaecologist who has been practicing in Guelph, Ontario for 22 years.

2. Patient X first attended Dr. Namis' office on August 6, 2004, after being referred to Dr. Namis by her family physician for issues including menometrorrhagia. At that appointment, Dr. Namis ordered investigations, including ultrasounds, which confirmed a large fibroid.
3. On August 16, 2004, Patient X attended at Dr. Namis' office to discuss the results of the ultrasounds and treatment options. It is Patient X's position that, outside of a hysterectomy, no other treatment options were discussed. Dr. Namis maintains that other treatment options were discussed with Patient X.
4. On August 27, 2004, Patient X attended at Dr. Namis' office. A repeat ultrasound was conducted on this date and confirmed the existence of the large fibroid. It is Dr. Namis' position that he again discussed the ultrasound results and treatment options, including alternatives to a hysterectomy.
5. On September 27, 2004, Patient X attended at Dr. Namis' office for a pre-operative consultation with respect to a hysterectomy. It is Patient X's position that no other treatment options were discussed at this appointment and that, in particular, no reference was made to embolization. It is Dr. Namis' position that he offered at this appointment to refer Patient X for a uterine artery embolization to reduce the size of the fibroid. Dr. Namis dictated a Hospital pre-operative history report on September 28, 2004, which stated that Patient X was not interested in a referral to a centre where embolizations are performed to reduce the size of fibroids [enclosed within the report attached at Schedule 1 (to the Agreed Statement of Facts and Admission)].
6. At the September 27, 2004, appointment, Patient X signed and initialled Dr. Namis' consent form [enclosed within the report attached at Schedule 1 (to the Agreed Statement of Facts and Admission)]. On September 29, 2004, Patient X also signed and initialled a Hospital consent form. Despite having done so, Patient X maintains that she was not informed of alternative treatment options.
7. Dr. Namis performed a hysterectomy on Patient X on September 29, 2004.

8. Patient X continued to see Dr. Namis for post-operative treatment until December 2004. At that time, referencing a recurrent E. Coli infection, he referred Patient X to a urologist for investigation of urinary symptoms.

9. In November 2006, Patient X complained to the College about the medical care she received from Dr. Namis. The College is not pursuing the allegation that Dr. Namis' care and treatment of Patient X failed to meet the standards of practice of the profession, nor that Dr. Namis' charting negatively affected the medical care received by Patient X from Dr. Namis.

10. As Patient X advised the College in a letter dated March 2007:

- (a) during a post-operative appointment with Dr. Namis on October 26, 2004, Patient X reviewed her medical file, at which time the words "not keen on embolization procedure" were not in Dr. Namis' handwritten September 27, 2004, entry;
- (b) in July 2006, Patient X received and reviewed a copy of her medical file from Dr. Namis' office, at which time the words "not keen on embolization procedure" had appeared in Dr. Namis' handwritten September 27, 2004, entry;
- (c) after July 2006, Patient X's daughter spilled liquid on the copy of Patient X's medical file that she had obtained in July 2006, rendering the file illegible; and
- (d) in March 2007, Patient X obtained and reviewed a further copy of her medical file from Dr. Namis' office. Patient X observed that the progress notes dated November 24 and 29 were re-written and, unlike the file she reviewed in July 2006, included the words "no urinary incontinence."

11. After receiving the information above from Patient X about the changes to her medical file, on September 21, 2007, the College asked Dr. Namis to respond to the question, "Have you added to or changed the information for any appointments in the

office records for [Patient X] subsequent to the appointment date?” In a response to the College dated September 25, 2007, Dr. Namis stated that he had not “added or changed the aforementioned information.”

12. The College sent Patient X’s original medical file to a forensic document examiner. His opinion is attached as Schedule 1 [to the Agreed Statement of Facts and Admission]. His conclusions, in part, are as follows and form part of this admission:

- (a) the words “not keen on embolization procedure” were not made at the same time or in the same writing episode as the remainder of the progress notes found in the September 27, 2004, entry;
- (b) the page containing handwritten entries dated November 24 and 29, 2004, is a substitute page, and the progress notes that have been removed are totally or partially indented onto the page next to it.

13. Although Dr. Namis cannot identify exactly when he added the information set out in paragraph 12 above to Patient X’s chart, in view of Mr. Z’s report and the complainant’s letter, he accepts that:

- (a) Dr. Namis added the words “not keen on embolization procedure” to his progress note dated September 27, 2004, on some occasion after October 26, 2004, without dating or signing the change; and
- (b) On some occasion after Dr. Namis was no longer treating the patient, Dr. Namis re-wrote the November 29, 2004, progress note, adding the words “no urinary incontinence,” without dating or signing the change.

### **ADMISSIONS**

14. Dr. Namis admits the facts set out above, and admits that the conduct set out in paragraph 13 above was disgraceful, dishonourable, or unprofessional, thereby constituting professional misconduct.

**FINDING**

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts and Admission. Having regard to these facts, the Committee accepted Dr. Namis' admissions and 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 as to an appropriate penalty and costs order, which was accepted by the Committee. The terms of that order are set out below and include a reprimand and the imposition of terms, conditions and limitations on Dr. Namis' certificate of registration.

Dr. Namis made an addition to his medical record without noting that it was a late addition. He also removed his notes regarding two patient visits and substituted alternate ones. His actions could have resulted in harm to the patient. An aggravating factor is Dr. Namis' denial of doing so until he was faced with the findings of the forensic document examiner.

Both counsel accept that Dr. Namis takes responsibility for his unprofessional actions and his poor judgment. In doing so, he has saved the College the time and costs involved with a lengthy, contested hearing.

The reprimand of Dr. Namis will serve to denounce his actions. The penalty as a whole will achieve public protection. It will act as a specific deterrent to the doctor, discouraging him from engaging in similar behaviour in the future. Conditions in place on his certificate of registration will further his remediation in the area of ethics and proper recordkeeping and will serve to encourage more careful recordkeeping on his part. These requirements will also have a general deterrent effect by reminding the profession as a whole of the need to be scrupulously accurate with respect to patient records.

The Committee is aware that a joint submission on penalty should not be rejected unless it is contrary to the public interest and its acceptance would bring the administration of justice into disrepute. After reviewing previous similar decisions of the Discipline Committee, the Committee is satisfied that the penalty meets the requirement of public protection and provides specific and general deterrence. It is also proportionate to the nature of the misconduct. The requirement that Dr. Namis pay the College the costs of a one-day hearing is also appropriate.

### **ORDER**

Therefore, the Committee ordered and directed that:

1. Dr. Namis attend before the panel to be reprimanded, with the fact of the reprimand to be recorded on the register;
2. The Registrar impose as terms, conditions and limitations on Dr. Namis' certificate of registration:
  - a. that Dr. Namis shall participate in and successfully complete, at his own expense and within five months of the date of this Order, an educational program in medical ethics approved by the College;
  - b. that Dr. Namis, at his own expense, shall participate in and successfully complete an educational program in medical record-keeping for obstetrics and gynecology attached [to the Order] as Schedule "A", with a preceptor, to be approved by the College in its sole discretion and who has within forty-five days of the date of this Order signed an Undertaking to the College in the form attached [to the Order] as Schedule "B", and shall abide by all recommendations of his preceptor with respect to practice improvements and/or professional development related to his fulfillment of the educational need and achievement of the outcome set out in Schedule "A" [to the Order]; and



3. Each of the above-noted terms, conditions and limitations on Dr. Namis' certificate of registration shall be removed upon successful completion of the corresponding educational program, as required by paragraphs 2(a) and (b) above.
4. Dr. Namis shall, within 30 days, pay the College its costs of this proceeding in the amount of \$3,650.00.

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