

Indexed as: Fiorillo (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. VICTOR JOSEPH FIORILLO

PANEL MEMBERS:

**DR. W. KING (CHAIR)
E. COLLINS
DR. P. ZITER
DR. B. TAA (PHD)**

**Hearing Date: June 22, 2006
Decision Date: June 22, 2006
Release of Written Reasons Date: August 10, 2006**

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 June 22, 2006. At the conclusion of the hearing, the Committee stated its finding that Dr. Fiorillo committed an act of professional misconduct and delivered its penalty order in writing with written reasons to follow.

ALLEGATIONS

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

1. under paragraph 1(1)(16) of Ontario Regulation 856/93 made under the *Medicine Act, 1991* [S.O. 1991, c. 30] (“O. Reg. 856/93”) in that he falsified a record relating to his practice; 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.

RESPONSE TO ALLEGATIONS

Dr. Fiorillo admitted to the second allegation as set out in the Notice of Hearing. The College withdrew the first allegation.

EVIDENCE

The following facts were contained in an Agreed Statement of Facts filed as an exhibit and presented to the Committee:

1. Dr. Victor Joseph Fiorillo (“Dr. Fiorillo”) is a general practitioner who has held a certificate of registration in Ontario since 1986.

2. In November 2003, Dr. Fiorillo was advised that a former patient (Patient A) had commenced a complaint against him to the College of Physicians and Surgeons of Ontario (the “College”), involving a standard of care issue. The Complaints Committee took no action with respect to the standard of care allegations. The decision of the Complaints Committee dated August 2005 is attached as Tab A [to the Agreed Statement of Facts]. Patient A is now deceased.

3. At the request of the College, Dr. Fiorillo participated in a mediation with Patient A in November 2003.

4. In April 2004, Dr. Fiorillo was formally asked to respond to Patient A’s complaint, and to produce a copy of her chart.

5. Before forwarding Patient A’s chart to the College in August 2004, Dr. Fiorillo made additions to three entries in the chart dated February 17, 1999, February 23, 1999 and September 22, 2000. Tab B [to the Agreed Statement of Facts] is a copy of the progress notes in Patient A’s chart for the dates February 17, 1999, February 23, 1999 and September 22, 2000. Tab C [to the Agreed Statement of Facts] is a transcription of the notes dated February 17, 1999, February 23, 1999 and September 22, 2000. The additions in the entries are:

Progress Note:	17/2/99	O/E A ? cyst L breast
Progress Note:	23/2/99	of breast
Progress Note:	22/9/00	no lumps clear

6. When Dr. Fiorillo provided his response to the College in August 2004 he did not indicate that he had made additions to the chart.

7. The College retained B.L., a forensic document examiner to determine whether alterations had been made to the patient chart. In a report dated May 18, 2005, Mr. L concluded that portions of three entries in the chart were made at a later date.

8. By letter dated June 14, 2005, the College asked Dr. Fiorillo to confirm that the entries in his chart were made contemporaneously with the discussions/examinations, that the entries were made on the dates indicated in the records and at the same time as the other comments included under each date entry, and that the contents of the chart were accurate.

9. On June 15, 2005, Dr. Fiorillo left a voicemail message for the College investigator and stated:

...I would like to confirm that the entries of these discussions or examinations were actually made at the time of the discussions and examinations. And I'd also like to confirm that the dates that are indicated in my records ... oh I'm sorry, the statement says here, 'please confirm if those entries were made on the dates indicated in your records and at the same time as the other comments included under each date-entry'. The answer would be yes to that as well. As far as the accuracy of the contents, that's about as accurate as I can say, I mean, basically some of those entries might not be very verbose or detailed but they are what they are...

10. Dr. Fiorillo restated his assertion that the entries were made contemporaneously with the discussions/examinations, that the entries made on the dates indicated in the records and at the same time as the other comments included under each date entry, and that the contents of the chart were accurate by letter dated July 14, 2005, a copy of which is attached as Tab D [to the Agreed Statement of Facts].

11. Dr. Fiorillo later admitted, in advance of the hearing, and after receiving the report of B.L., that portions of three of the entries made in the chart were added at a later date.

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. Fiorillo's admission and found that he committed an act of professional misconduct 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.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for Dr. Fiorillo made a joint submission as to an appropriate penalty and costs. The jointly submitted penalty included a three-month suspension, two months of which would be suspended upon successful completion of the College's Medical Record Keeping and Medical Ethics Courses, a public reprimand and payment by Dr. Fiorillo of costs in the amount of \$10,000.00.

The Committee accepted the jointly proposed order on penalty and costs after considering a number of aggravating and mitigating factors.

Dr. Fiorillo's dishonest conduct expresses disregard for one of the core values of the profession. This was aggravated by the fact that: (a) the dishonesty was repeated and sustained; (b) Dr. Fiorillo admitted to altering the patient's chart only after the College had obtained a forensic report; (c) Dr. Fiorillo admitted to the misconduct only on the eve of the hearing, after the College's investigative and legal personnel had spent considerable time, energy, and financial resources on the matter; and (d) any chart falsification exposes patients to potential harm.

The Committee also considered the following mitigating factors: (a) Dr. Fiorillo had no previous discipline findings during his 20-year registration with the College; (b) Dr. Fiorillo did admit, that he did make additions to his former patient's records, and by eventually accepting an Agreed Statement of Facts and joint submission on penalty, Dr. Fiorillo spared the College a more-lengthy hearing; and (d) counsel for Dr. Fiorillo submitted that Dr. Fiorillo has learned his lesson and does take the matter seriously.

The College also considered the witness impact statement from the deceased patient's husband, which was read into the record. It indicated that Dr. Fiorillo's conduct had caused a lot of tension in her family. Patient A was profoundly angry and was wholly consumed with ensuring that Dr. Fiorillo be held accountable for tampering with her patient records. As a result, she expended her energy fighting that situation instead of her cancer. She also resorted to taking sleeping pills. The family suffered as a result.

In the Brief of Authorities presented at the hearing by the counsel for the College, four cases were introduced (*C.P.S.O. v. Goldenthal* (2002); *C.P.S.O. v. Zhuk* (2003); *C.P.S.O. v. Cauchi* (2003); and *C.P.S.O. v. Singh*, (1994) & (1995)). The jointly proposed penalty was consistent with the precedents cited.

The jointly proposed penalty addresses the issues of specific deterrence, general deterrence and remediation. The suspension of Dr. Fiorillo's certificate of registration and the hefty costs assessed, which include investigative and forensic costs borne by the College, as well as hearing time, will deter Dr. Fiorillo from re-offending, while sending a message to the profession as a whole that such conduct will not be tolerated. The imposition of the requirement to take courses in record-keeping and medical ethics serve the goal of remediating past errors in Dr. Fiorillo's practice.

ORDER

Therefore, the Discipline Committee ordered and directed that:

1. the Registrar suspend Dr. Fiorillo's certificate of registration for a period of three (3) months, two (2) months of which shall be suspended if Dr. Fiorillo successfully completes, at his own expense, the College's Medical Record-Keeping Course on the next available date and the College's Medical Ethics Course within sixty (60) days from the date of the release of the reasons of the Discipline Committee in this matter and provides proof thereof to the College. The commencement date for the suspension is July 10, 2006;
2. Dr. Fiorillo appear before the panel to be reprimanded;

3. Dr. Fiorillo pay to the College costs in the amount of \$10,000.00 within ninety (90) days of the date of this Order.
4. the results of this proceeding to be included in the register.

At the conclusion of the hearing, Dr. Fiorillo waived his right to an appeal under subsection 70(1) of the *Health Professions Procedural Code*, being Schedule 2 of the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended, and the Committee administered the public reprimand.