

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Murray Bruce Wilson, this is notice that the Discipline Committee ordered that there shall be a ban on the publication or broadcasting of the name or any information that could disclose the identity of Patient A, and any information that could identify her, 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.

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. Wilson, 2016 ONCPSD 46

**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. MURRAY BRUCE WILSON

PANEL MEMBERS:

**DR. P. POLDRE
MS. D. GIAMPIETRI
DR. P. CHART
MR. S. BERI
DR. W. KING**

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS. J. AMEY

COUNSEL FOR DR. WILSON:

MS. J. STEPHENSON

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. G. FORREST

Hearing Date: November 16, 2016

Decision Date: November 16, 2016

Release of Written Reasons: December 15, 2016

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 November 16, 2016. At the conclusion of the hearing, the Committee stated its finding that the member committed an act of professional misconduct and delivered its penalty and costs order with written reasons to follow.

THE ALLEGATIONS

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

1. under clause 51(1)(b.1) of the Health Professions Procedural Code which is schedule 2 to the Regulated Health Professions Act, 1991, S.O. 1991, c.18 (the “Code”) in that he engaged in sexual abuse of a patient; and,
2. 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 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. Wilson admitted to the second allegation in the Notice of Hearing, 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.

Counsel for the College withdrew the first allegation in the Notice of Hearing.

THE FACTS

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

1. Dr. Murray Bruce Wilson (“Dr. Wilson”) is a family physician practising in Bradford, Ontario since 1985.

2. Patient A was a patient of Dr. Wilson from when she was a young child until 2004, and was treated by Dr. Wilson again in the summer of 2008. Dr. Wilson's medical record in respect of Patient A is attached at Tab 1 to the Agreed Statement of Facts and Admission.
3. On a date in December 2004, when she was a teenager, Patient A attended at Dr. Wilson's office because she was experiencing pain after having had intercourse earlier that day (dyspareunia). Her medical record indicates that on that day she was also complaining of dysmenorrhea and menorrhagia, as well as lower back pain of two months' duration, which was aggravated by bending. At a previous appointment, Dr Wilson had performed a breast examination and identified a lump that should be monitored.
4. At the appointment in question, Dr. Wilson performed a clinically indicated physical examination, including examination of the chest, breasts, cardiovascular system, abdomen and pelvis. Dr. Wilson took a vaginal swab, provided Patient A with a requisition for a urine test, and ordered a pelvic ultrasound. Dr. Wilson documented the examination in the patient chart.
5. Dr. Wilson also assessed Patient A's lower back at the appointment, which included asking that she stand and bend to 90 degrees. This assessment was clinically indicated and documented in the patient chart. Dr. Wilson noted in the chart that his impression was that Patient A had a lumbar strain.
6. The appointment on the date in December 2004 was confusing and distressing to Patient A as a result of Dr. Wilson's conduct during the appointment, which included the following:
 - a. Dr. Wilson did not provide Patient A with a gown, but only with a drape, which was inadequate for the examinations performed. Patient A found it hard to cover herself sufficiently throughout the appointment. This left her feeling exposed and vulnerable.
 - b. Dr. Wilson did not adequately explain the pelvic and breast examinations that he conducted to Patient A to obtain her informed consent, with the result that Patient A did not understand the purpose and steps involved. Patient A had received a pelvic examination from Dr. Wilson before, but with her mother in attendance because she had been very nervous.

- c. Dr. Wilson asked Patient A for sexual information relevant to the pain she was experiencing after intercourse. However, he did not explain the clinical basis for his questions. He asked her whether it hurt and how it felt when her boyfriend “went deep,” and repeated the word “deep” several times. Patient A felt very uncomfortable.
- d. Dr. Wilson directed Patient A to bend over with her back to him, without explaining the clinical reason or seeking her consent. Patient A bent over as directed, but had only the drape to hold in place at her front, while her back (which was towards Dr. Wilson) was fully exposed, including her buttocks. Patient A did not understand the purpose of this examination and felt shocked and violated.

7. As a result, Patient A experienced great discomfort during the appointment. She returned to see Dr. Wilson on a half dozen further occasions but was not comfortable with him, and the experience made her more reluctant to seek medical care in general. In 2013, Patient A considered the continued impact of her experience with Dr. Wilson. Subsequently, Patient A decided to report her experience to the College.

ADMISSION

8. Dr. Wilson admits the facts in paragraph 1-7 above, and admits that the conduct described constitutes an act of professional misconduct in that he 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 disgraceful, dishonourable or unprofessional contrary to section 1(1)33 of O. Reg. 856/93 made under the Medicine Act, 1991.

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. Wilson’s admission and found that he committed an act of professional misconduct 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.

FACTS ON PENALTY

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

1. Dr. Murray Bruce Wilson (“Dr. Wilson”) is subject to an undertaking to the College into which he entered on January 13, 2012. The undertaking is attached at Tab 1 to the Agreed Statement of Facts on Penalty. Among other things, it requires Dr. Wilson to have a practice monitor who is a regulated health professional acceptable to the College, who must carefully observe all of his examinations of female patients and remain in the examination or consulting room at all times during all professional encounters with female patients. The practice monitor is required to report on at least a monthly basis to the College. Dr. Wilson is required to post a sign regarding this restriction in his waiting room and all examination rooms, and there are various provisions to permit compliance monitoring.
2. Dr. Wilson entered into this undertaking at the College’s request after the College received complaints about female patients’ experiences in Dr. Wilson’s office, including two instances in which Dr. Wilson moved the patient’s clothing aside and commenced an examination without adequate explanation or consent.
3. In 2011, Dr. Wilson voluntarily completed a course offered by the University of Western Ontario on *Understanding Boundary Issues and Managing the Risks Inherent in the Doctor-Patient Relationship*.
4. Dr. Wilson’s practice monitor has continued to make reports to the College as required by the undertaking. She has advised that she has not had concerns regarding his respect for female patients’ boundaries and privacy.
5. The College has not received any complaints regarding conduct by Dr. Wilson towards female patients that has taken place since he entered into the undertaking described above.

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. The proposed order included a four month suspension and the continuation of terms of Dr. Wilson's prior undertaking, which included that a monitor be present during any professional encounter with a female patient. The proposed penalty order also included a reprimand and costs payable to the College of \$5,000.00 within 30 days of the order.

In considering the proposed penalty order, the Committee was mindful of the well-established principles applicable to the administration of a penalty. In this matter, the principles which were of particular importance included denunciation of the misconduct, specific deterrence of the member, general deterrence of the profession, and the maintenance of the public confidence in the profession and in the College's ability to regulate the profession in the public interest. The overarching principle, and primary consideration, is protection of the public.

The Committee was also aware of the court's direction that a joint submission should be accepted by the Committee unless the proposed penalty would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.

The Committee accepted the proposed penalty as an appropriate sanction and found that it was proportional to the misconduct as found in this matter. The reasons for its decision are set out below.

Analysis

Nature of the Misconduct

Patient A, the teenage girl who sought Dr. Wilson's care in 2004, was a particularly vulnerable patient. She had a number of gynaecological complaints, as well as back pain. Her interaction with Dr. Wilson left her feeling embarrassed, shocked, and violated.

Patient A was in pain as a result of sexual intercourse with her boyfriend. In failing to explain to Patient A the extent of the examination he was to perform and why it was necessary, Dr. Wilson had no regard for her need to understand and to consent to his examination procedure. Insensitive

repeated questions regarding whether it hurt and how it felt when her boyfriend went deep understandably left Patient A, a teenage girl, very uncomfortable.

Dr. Wilson provided Patient A with only a drape to cover herself. He then asked her to bend over. This only exacerbated Patient A's discomfort and embarrassment. The resulting unnecessary exposure of her body displays Dr. Wilson's failure to sufficiently respect this young girl's privacy. Dr. Wilson demonstrated a lack of sensitivity to this girl's privacy that should have been evident to him in the circumstances.

While Dr. Wilson had a clinical reason to perform both a breast and pelvic examination on Patient A, this was the first time he did so when her mother was not present. By failing to explain his procedures to Patient A, Dr. Wilson dismissed as unimportant simple courtesy and respect for how this young girl might feel while having an intimate examination for the first time without her mother present. A reasonable doctor-patient discussion explaining a physician's planned examination does not have to be lengthy; however, it should be informative. It was simply unacceptable, careless, and unthinking for Dr. Wilson not to discuss what he was about to do with his young and vulnerable patient.

Dr. Wilson's insensitivity and lack of appreciation of how his failure to communicate might be perceived by Patient A is truly regrettable. Such behaviour does not speak to a healthy doctor-patient relationship. This lack of respect for patients results in the reluctance of those patients to seek appropriate care in the future. Patient A was sufficiently traumatized emotionally and physically by Dr. Wilson that she came forward a decade after the interaction.

Dr. Wilson's lack of respect and consideration for Patient A also reflects poorly on the profession. The misconduct admitted to by Dr. Wilson cannot be dismissed lightly. The suspension ordered in this matter is a reflection of the seriousness and gravity that the profession attributes to such misconduct.

Prior Conduct

The Committee was dismayed to learn of a prior Complaints Committee decision regarding an incident in 2000 related to Dr. Wilson's examination technique and communication style, a copy of which was marked as Exhibit 4. That incident left another patient questioning Dr. Wilson's

motives. The Complaints Committee in that case ordered Dr. Wilson to be cautioned and recommended that he enrol in the “Boundaries” course (*Understanding Boundaries-Managing the Risks Inherent in the Doctor-Patient Relationship*).

The Committee understands that Dr. Wilson’s prior conduct is not the subject of the current matter. However, the Committee noted that Dr. Wilson’s misconduct with Patient A occurred in 2004, after he had already been put on notice by the Complaints Committee that his manner of examination and lack of appropriate communication was problematic.

The Committee also notes that in or about 2012, the College had received other complaints regarding Dr. Wilson from female patients that had included issues of privacy and lack of communication, similar to what Patient A had experienced. While this might suggest that Dr. Wilson’s disregard of patient privacy and lack of respect for proper communication was more pervasive, as opposed to being simply an isolated incident with Patient A, the facts regarding those complaints have not been established and, in any event, those incidents took place after the misconduct with Patient A, and thus cannot be properly considered as factors on penalty in this matter.

Mitigating Factors

The Committee agreed that Dr. Wilson’s actions in settlement of this matter should be considered a mitigating factor. This saved the patient the stress of having to testify and saved the College the expense of a fully-contested hearing.

Further, this was the first time that Dr. Wilson has come before the Discipline Committee.

It is of some comfort to the Committee that there have been no further complaints since 2012 while Dr. Wilson’s undertaking has been in effect.

Aggravating Factors

While Dr. Wilson was advised back in 2000 that he should take the Boundaries course, he did not do so until 2011, a full ten years after it was recommended to him. The Committee would have expected a more timely response. Neglecting to promptly complete such a task illustrates that Dr. Wilson deemed such instruction to be of little importance.

The Committee was further troubled that the caution he received from the Complaints Committee for similar misconduct had been unsuccessful in changing Dr. Wilson's pattern of care. The further complaints which culminated in Dr. Wilson's undertaking with the College in 2012 illustrate this fact.

Case Law

The case law cited below illustrates a range of measures of appropriate penalty and is consistent with the penalty proposed by the parties for Dr. Wilson.

In *CPSO v. Choptiany* (2011), the Committee found that Dr. Choptiany's disgraceful, dishonourable, or unprofessional conduct related to his lack of communication, inappropriate comments, and failure to maintain spacial boundaries with patients. The Committee in that case ordered a two-month suspension as well as terms, conditions, and limitations on his certificate of registration, including a chaperone and signage. In Dr. Wilson's case, there were additional facets in determining penalty, including the fact that Dr. Wilson had received prior notice of inappropriate behaviour and his decade-long delay in carrying out recommended remedial training.

In *CPSO v. Anastasio* (2012), the finding of disgraceful, dishonourable or unprofessional misconduct was regarding similar misconduct to Dr. Wilson's, in some respects. A two month suspension was ordered as were terms, conditions, and limitations on Dr. Anastasio's certificate of registration, including a chaperone and office signage. In Dr. Wilson's case, there were additional factors in determining penalty, including the fact that Dr. Wilson had received a prior caution.

In *CPSO v. Chung* (2014), the basis of the finding of disgraceful, dishonourable or unprofessional conduct was more serious. The findings were not sufficiently similar to those in Dr. Wilson's to be helpful to the Committee.

Conclusion

The Committee was satisfied that the penalty proposed by the parties represented an appropriate sanction, given all of the circumstances in this matter.

Having regard to the misconduct described above, the Committee agreed that a four-month suspension would denounce Dr. Wilson's misconduct as well as provide specific and general deterrence.

Protection of the public is achieved going forward by requiring a monitor for Dr Wilson's patient interactions with female patients who must regularly report on and monitor his compliance and the posting of signage.

The reprimand delivered in this matter allowed the Committee to directly address Dr. Wilson to express its abhorrence of his neglect of his professional responsibilities. The need for careful communication and a focus on the needs of patients were particularly emphasized. Such opprobrium addresses specific and general deterrence.

Ordering the partial recovery of costs of the Committee and legal counsel is appropriate, fair, and reasonable in the circumstances.

ORDER

Therefore, having stated the findings in paragraph 1 of its written order of November 16, 2016, the Committee ordered and directed on the matter of penalty and costs that:

2. The Registrar suspend Dr. Wilson's certificate of registration for period of four (4) months, to commence at 12:01 a.m. on November 17, 2016.
3. The Registrar impose the terms of Dr. Wilson's undertaking with the College dated January 13, 2012 (attached hereto as Schedule "A") as terms, conditions and limitations on Dr. Wilson's certificate of registration.
4. Dr. Wilson appear before the panel to be reprimanded.

5. Dr. Wilson pay to the College its costs of this proceeding in the amount of \$5,000 within thirty (30) days from the date of this Order.

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