

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Biagio Iannantuono, this is notice that the Discipline Committee ordered that no person shall publish the identity or any information that could disclose the identity of the witnesses who are referred to in the hearing as “Ms. X” and “Ms. Y”, under subsection 47(1) of the *Code*.

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: Iannantuono (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. BIAGIO IANNANTUONO

PANEL MEMBERS:

DR. P. CHART (Chair)
DR. E. ATTIA (Ph.D.)
DR. M. DAVIE
S. BERI
DR. M. GABEL

Hearing Date:	December 8, 2009
Decision Release Date:	December 8, 2009
Release of Written Reasons:	January 18, 2010

PUBLICATION BAN

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 December 8, 2009. 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 ALLEGATIONS

The Notice of Hearing alleged that Dr. Iannantuono committed acts 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 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; and
2. under paragraph 1(1)34 of O. Reg. 856/93 in that he engaged in conduct unbecoming a physician.

RESPONSE TO THE ALLEGATIONS

Dr. Iannantuono admitted the first 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 second allegation in the Notice of Hearing.

FACTS AND EVIDENCE

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

1. Dr. Iannantuono is a general surgeon practicing in a small town in Ontario.
2. Between 2004 and 2008, Dr. Iannantuono introduced into his practice the use of

his office nurse to do post-operative examinations on patients following surgery, including hernia repair patients.

3. Ms. X was employed as a nurse in Dr. Iannantuono's office from 2006 to 2008. In early 2008, Dr. Iannantuono performed a medical procedure on Ms. X.
4. In mid-2008, Dr. Iannantuono spoke to Ms. X about her scrotal examinations and offered to assist her in learning proper examination techniques by doing a scrotal examination on him. Ms. X rejected the idea and was clearly uncomfortable with it.
5. Dr. Iannantuono told Ms. X that no one needed to know about the incident.
6. Previous to this incident, Ms. Y, another nurse employed by Dr. Iannantuono, prior to Ms. X, had performed a practice scrotal examination on Dr. Iannantuono.

FINDING

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts. The Committee concluded that the behaviour described was relevant to the practice of medicine and would be seen as unprofessional by members of the profession. Having regard to these facts, the Committee accepted Dr. Iannantuono's admission 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. The joint submission was that Dr. Iannantuono's certificate of registration be suspended for one month, that he pay costs to the College of \$3,650, and that the results of the proceeding be included in the register.

The Committee is aware that a joint submission is to be accepted unless it is contrary to the public interest and would bring the administration of justice into disrepute.

The Committee considered whether the proposed penalty met the goals of protection of the public, maintaining public confidence in the medical profession and its ability to self-govern, general and specific deterrence and, where possible, rehabilitation of the member. The penalty should also express the profession's condemnation of the conduct that Dr. Iannantuono admitted to in the Agreed Statement of Facts.

The Committee took into account the following aggravating and mitigating factors:

Aggravating Factors:

The conduct as described was inappropriate and unacceptable. The Committee notes that Dr. Iannantuono was in a position of authority in relationship to his nurse. His request to have Ms. X perform an intimate examination on him placed her in a difficult quandary, and was uncomfortable for her.

Mitigating Factors:

The fact that Dr. Iannantuono has no previous discipline record with the College was duly noted. As well, his cooperation in coming to an Agreed Statement of Facts and joint submission on penalty spared the witnesses from having to testify and repeat their stories, and spared the expense of a full hearing.

The Committee also took note of the statement by the member's counsel that the member has become aware that his offer to have his nurses perform this examination on him was "totally misguided."

Prior Authorities:

The prior authorities that were presented to the Committee were based on facts that were different enough from the unique circumstances of this case that the Committee felt that they did not present useful guidance as to an appropriate penalty in this matter.

Other Factors:

The proposed penalty reflects the fact that the profession takes this transgression seriously, and sends that message to Dr. Iannantuono. Such unprofessional use of a power imbalance is not acceptable, and the penalty will let the public and fellow members of the profession know that the Committee does not accept such behaviour from members. The penalty also serves to remind the profession to be aware of the presence of power and relational imbalance issues with respect to employees, colleagues and the public it serves.

Having regard to all these factors, the Committee accepted the joint submission. The Committee also concluded that, pursuant to s. 53.1 of the Code, this is an appropriate case for the imposition of costs, as proposed in the joint submission.

ORDER

Therefore, the Committee ordered and directed that:

1. The Registrar suspend Dr. Iannantuono's certificate of registration for a period of one (1) month commencing on the date of the Order.
2. Dr. Iannantuono pay costs to the College in the amount of \$3,650 within thirty (30) days from the date of the Order.
3. The results of this proceeding be included in the register.