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

IN THE MATTER OF a Hearing directed
by the Complaints Committee and the Executive Committee of
the College of Physicians and Surgeons of Ontario
pursuant to Section 26(2) and Section 36(1) of the *Health Professions Procedural Code 1991*,
being Schedule 2 of the *Regulated Health Professions Act*,
S.O. 1991, c. 18, as amended.

B E T W E E N:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. JOHN DAVID STEWART

PANEL MEMBERS:

DR. M. DAVIE (CHAIR)
B. TAA (Ph.D.)
DR. P. CHART
E. ATTIA (Ph.D.)
DR. J. BROWN

Hearing Dates: July 11, 2007
Decision Date: July 11, 2007
Release of Written Reasons Date: September 12, 2007

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons (the “Committee”) heard this matter at Toronto on July 11, 2007. 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. Stewart committed an act of professional misconduct:

- (1) under paragraph 1(1)2 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”), 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, 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.

The Notice of Hearing also alleged that Dr. Stewart is incompetent as defined by subsection 52(1) of the Health Professions Procedural Code, which is Schedule 2 to the *Regulated Health Professions Act, 1991*, (“the Code”), in that his care of patients displayed a lack of knowledge, skill or judgment or disregard for the welfare of his patients of a nature or to an extent that demonstrates that he is unfit to continue to practise or that his practice should be restricted.

RESPONSE TO THE ALLEGATIONS

At the outset of the hearing, Dr. Stewart accepted Allegation 1, the allegation of professional misconduct, in that he failed to maintain the standard of practice of the profession under paragraph 1(1)2 of Ontario Regulation 856/93.

Counsel for the College withdrew Allegation 2 and also withdrew the allegation of incompetence under subsection 52(1) of the Code.

SUMMARY

The substance of the allegations relates to events occurring after December 1, 2004 at a time when Dr. Stewart had terms and conditions imposed on his certificate of registration because of prior difficulties with record keeping. On repeated occasions he failed to complete patient charts, renew prescriptions, make referrals and respond to valid inquiries in a timely manner. He changed practice locations and did not ensure patients were notified. He failed to ensure that patients received results of tests performed in a timely fashion.

FACTS AND EVIDENCE

The matter proceeded by means of a jointly submitted Agreed Statement of Facts. The following facts were set out in the Agreed Statement of Facts which was filed as an exhibit with Committee:

1. Dr. Stewart was born in 1941 and was originally issued a certificate of registration authorizing independent practice in 1972. He practised in Ontario for almost thirty years before relocating to the United States, where he practised at the Mayo Clinic. Upon returning to Canada in 2004, he applied for a certificate of registration.

2. On December 1, 2004, the Registration Committee granted him a certificate of registration authorizing independent practice subject to the following terms, conditions and limitations:

- (i) Dr. John David Stewart may practise medicine independently.
- (ii) Dr. Stewart will practise medicine only in the area in which he is educated and experienced.
- (iii) Dr. Stewart will agree to enrol in the Physician Health Program of the Ontario Medical Association.
- (iv) Dr. Stewart will provide a written request and direction to the Medical Director of Physician Health Program, Dr. Z, to submit

annual reports to the College and at any time when Dr. Z has any concern regarding Dr. Stewart's progress.

- (v) Dr. Stewart will agree to take the Medical Record-Keeping Course for Physicians, offered by the College of Physicians and Surgeons of Ontario. The course includes a one-day workshop at the College followed by a post-course chart review in three months;
- (vi) Dr. Stewart will agree that the College may conduct periodic assessments of his practice which are likely to be off-site assessments, for the purpose of reviewing the medical records. Dr. Stewart understands and agrees that he would be responsible for the cost of the assessments.
- (vii) In the event that the Medical Director of the Physician Health Program does not provide the required reports to the College on time or the reports are unsatisfactory to the College, or the College receives information that Dr. Stewart's medical record keeping practice does not meet the standard of practice, the Registration Committee may withdraw the certificate of registration and, before the certificate of registration is issued, Dr. Stewart will agree that, under the foregoing circumstances in this paragraph, the Registration Committee may withdraw the certificate.

3. The reasons for those restrictions included the fact that as he disclosed to the College, Dr. Stewart suffered from a recurrent major depressive disorder and had prior difficulties with medical record keeping.

4. Despite the terms, conditions and limitations on Dr. Stewart's certificate of registration, Dr. Stewart repeatedly failed to complete in a timely manner certain patient charts and failed to make referrals and renew prescriptions for certain patients in a timely fashion. These failures occurred at several clinics where Dr. Stewart worked, including a Medical Centre in Ontario.

5. Dr. Stewart relocated his practice several times between 2005 and 2006 without ensuring that all of his patients were advised of his new coordinates, and left his practice in one location in Ontario in approximately June or July of 2006 without ensuring that all of his patients had a means to contact him or to obtain their medical records.

6. In addition, Dr. Stewart repeatedly failed to respond at all or in a timely fashion to requests by patients for their medical records. When the charts were eventually produced as they were, some were incomplete and did not include notes for all the patients' appointments with Dr. Stewart and often did not include historical medical records the patient had transferred to Dr. Stewart from a previous physician. Dr. Stewart also failed in one case to respond to inquiries from an insurance company regarding a patient. Several patients also complained that Dr. Stewart failed to arrange for patients to receive in a timely fashion or at all results of tests that had been performed, failed to fill out properly or at all forms required by the patients and failed to make appropriate referrals.

ADMISSION

Dr. Stewart agrees with the facts as stated above and admits that he has committed an act of professional misconduct in that he has failed to meet the standard of practice of the profession.

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. Stewart's admission and found that he committed an act of professional misconduct in that he failed to maintain the standard of practice of the profession under paragraph 1(1)2 of Ontario Regulation 856/93.

In making this finding the Committee had particular regard for the following:

- Notwithstanding the knowledge that he had past problems with record keeping and had the benefit of having taken the course on record keeping provided by the College, Dr. Stewart failed to complete patient charts in a timely manner. Dr. Stewart should have been aware that proper, accurate and timely record keeping is essential for safe patient care.
- Dr. Stewart exhibited neglect of his duty to patients repeatedly and at various locations suggesting a disturbing pattern of care. He did not ensure that patients

had access to their health record and on occasion provided incomplete health information. He failed to provide information for insurance purposes and failed to fill out appropriate forms as requested by patients. This lack of action undermines the function of the health care system and places patients at unnecessary risk.

- Failure to make referrals, to inform patients as to results of tests performed, and to renew prescriptions speaks to a failure of patient care and a disregard of his obligations as a physician.

Based on the above, the Committee was satisfied to the requisite legal standard that Dr. Stewart failed to meet the standard of care of the profession as put forth in Allegation 1.

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 as follows:

1. The Registrar suspend Dr. Stewart's certificate of registration for a period of twelve (12) weeks commencing immediately, but giving credit to the period of suspension from June 9, 2007 to July 11, 2007, so that the suspension will cease on September 4, 2007 at 12:01 a.m.;
2. The following terms, conditions and limitations be placed on Dr. Stewart's certificate of registration:
 - (a) Dr. Stewart may not practise more than 2½ days per week divided between his current two locations in Toronto, or other setting approved by the College;
 - (b) Dr. Stewart will not remove any patient charts from the office in which they are located;
 - (c) Dr. Stewart shall complete all patient charts within 24 hours of seeing the patient;

- (d) Dr. Stewart shall follow-up on all laboratory results within 7 days of receiving the results;
 - (e) Dr. Stewart will remain enrolled in the PHP and will abide by its recommendations;
 - (f) Dr. Stewart shall only practise at his current location or other clinical practice setting acceptable to the College under the supervision of a clinical monitor acceptable to the College who has signed an undertaking acceptable to the College. The practice monitor shall review Dr. Stewart's charts at least once a week to ensure that his charts are up to date, his referrals are timely and he is following up on laboratory results within one week of receiving the results. The monitor will report to the College bi-weekly or earlier should he/she find that Dr. Stewart has failed to comply with any of the conditions in this order. All of the monitoring and reporting will be at Dr. Stewart's expense;
 - (g) Should the College receive a report from the practice monitor indicating that Dr. Stewart is not in compliance with any of the conditions in this order, the College may immediately suspend his certificate of registration, such suspension to take effect immediately until the practice monitor shall report to the College that, to his/her satisfaction, Dr. Stewart has become current on his notes, reports and letters and is in compliance with this order at which time the College shall reinstate his certificate of registration; and
 - (h) Dr. Stewart will assist the College in monitoring his compliance with this order by allowing a College representative to interview his staff and inspect his office from time to time, at his expense.
3. Dr. Stewart pay to the College costs in the amount of \$2,500.00, within 60 days of his return to practice following the period of suspension.
4. The results of this proceeding be included in the register.

The Committee heard submissions from both counsel in support of this jointly proposed order.

Due to the serious nature of the findings and taking the behaviour and circumstances under consideration a substantial suspension was felt to be appropriate. A three month suspension expresses condemnation of the behaviour and reflects the degree of misconduct. This should serve as both specific and general deterrence.

Given the impact on patient safety, the Committee agrees that stringent and severe safeguards are necessary to achieve protection of the public. This is to be achieved by limitations to the nature of Dr. Stewart's practice and the close monitoring imposed.

The Committee also took into consideration that Dr. Stewart had no prior history of misconduct or discipline history at the College. He acknowledged his misconduct and accepted responsibility which saved the College the time and expense of a contested hearing and relieved patients from the need to testify. Dr. Stewart has also accepted the financial responsibility imposed.

The Committee also noted that while the misconduct was not isolated and occurred in the presence of earlier terms and conditions, the recommended safeguards are of a severe degree, include active monitoring and are supported by an automatic suspension in the event of future failure.

The penalty proposed was consistent with the general principles expressed in other Discipline Committee decisions which were reviewed with the Committee but which were not directly analogous to the facts of this case.

The Committee received advice from Independent Legal Counsel (ILC) regarding the weight to be given to a joint submission. The Committee was aware that case law sets a high threshold for a committee to reject a joint submission as to penalty. The Committee is obliged to accept a joint submission unless it is so unreasonable or contrary to the public interest that its acceptance would bring the administration of justice into disrepute.

The Committee accepted the proposed penalty order which it found fair and reasonable given the finding of professional misconduct and the circumstances of this case as noted above.

ORDER

Therefore, the Discipline Committee ordered and directed that:

1. The Registrar suspend Dr. Stewart's certificate of registration for a period of twelve (12) weeks commencing immediately, but giving credit to the period of suspension from June 9, 2007 to July 11, 2007, so that the suspension will cease on September 4, 2007 at 12:01 a.m.;

2. The following terms, conditions and limitations be placed on Dr. Stewart's certificate of registration:
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 - (c) Dr. Stewart shall complete all patient charts within 24 hours of seeing the patient;
 - (d) Dr. Stewart shall follow-up on all laboratory results within 7 days of receiving the results;
 - (e) Dr. Stewart will remain enrolled in the PHP and will abide by its recommendations;
 - (f) Dr. Stewart shall only practise at his current location or other clinical practice setting acceptable to the College under the supervision of a clinical monitor acceptable to the College who has signed an undertaking acceptable to the College. The practice monitor shall review Dr. Stewart's charts at least once a week to ensure that his charts are up to date, his referrals are timely and he is following up on laboratory results within one week of receiving the results. The monitor will report to the College bi-weekly or earlier should he/she find that Dr. Stewart has failed to comply with any of the conditions in this order. All of the monitoring and reporting will be at Dr. Stewart's expense;
 - (g) Should the College receive a report from the practice monitor indicating that Dr. Stewart is not in compliance with any of the conditions in this order, the College may immediately suspend his certificate of registration, such suspension to take effect immediately until the practice monitor shall report to the College that, to his/her satisfaction, Dr. Stewart has become current on his notes, reports and letters and is in compliance with this order at which time the College shall reinstate his certificate of registration; and

(h) Dr. Stewart will assist the College in monitoring his compliance with this order by allowing a College representative to interview his staff and inspect his office from time to time, at his expense.

3. Dr. Stewart pay to the College costs in the amount of \$2,500.00, within 60 days of his return to practice following the period of suspension.

4. The results of this proceeding be included in the register.

At the completion of the hearing, Dr. Stewart waived his right to appeal and the order was implemented forthwith.