

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Samuel Josef Wassermann, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the names and any information that could disclose the identity of patients 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*, 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: Wassermann, S. J. (Re)

**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. SAMUEL JOSEF WASSERMANN

PANEL MEMBERS:

**DR. J. WATTS
D. DOHERTY
DR. P. POLDRE
DR. E. ATTIA (Ph.D.)
DR. M. DAVIE**

Hearing Date: January 11, 2013
Decision Date: January 11, 2013
Release of Written Reasons: April 10, 2013

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 January 11, 2013. 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. Wassermann 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;
2. under paragraph 1(1)30 of O. Reg. 856/93, in that he failed to respond appropriately or within a reasonable time to a written inquiry from the College; and
3. 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.

The Notice of Hearing also alleged that Dr. Wassermann is incompetent, as defined by subsection 52(1) of the Code.

RESPONSE TO THE ALLEGATIONS

Dr. Wassermann admitted the first and third allegations of professional misconduct in the Notice of Hearing, that he failed to maintain the standard of practice of the profession, and 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 second allegation of professional misconduct and the allegation of incompetence.

FACTS AND EVIDENCE

The following Agreed Statement of Facts and Admission was filed as an exhibit at the hearing:

FACTS

1. Dr. Wasserman is a family physician who has held a certificate of independent practice with the College of Physicians and Surgeons of Ontario (“College”) since 1986.

The Patient Records Requests

2. As a result of a number of personal challenges, Dr. Wasserman temporarily closed his medical practice located in Brampton, Ontario on or around December 18, 2009.

3. Between November 2008 and March 2011 (the “Material Time”), seventeen patients of Dr. Wasserman, referenced as Patients “A” through “Q” in the Notice of Hearing, made repeated requests of Dr. Wasserman for delivery of their medical records. Dr. Wasserman failed to respond to the requests of Patients “A” through “Q” in a timely manner. As a result of their inability to obtain a satisfactory response from Dr. Wasserman to their requests, Patients “A” through “Q” complained to the College.

4. In June 2011, Dr. Wasserman transferred his medical records to a medical records storage service, Record Storage and Retrieval Services (“RSRS”). By March 21, 2012, after being contacted by College investigators about this matter, Dr. Wasserman arranged for all but one of these patients to receive their records by either sending them copies of their charts or advising them how to obtain a copy of their records. Dr. Wasserman was unable to locate the patient record of Patient Q, informed the College of the missing patient record on March 22, 2012, and has recently advised Patient Q of this fact.

The Clinical Review

5. Based on the patient complaints referenced above, the College commenced a Registrar’s investigation of Dr. Wasserman’s practise, during the course of which the

College's independent expert, Dr. X, reviewed 20 patient charts from Dr. Wasserman's practise and conducted an interview of Dr. Wasserman. In the opinion of Dr. X, Dr. Wasserman failed to maintain the standard of practise in his care and treatment of the 20 patients under review, and exposed his patients to risk of harm. A copy of the report of Dr. X dated December 7, 2010 is attached [to the Agreed Statement of Facts and Admission] at Tab 1.

6. In the course of its investigation of the complaints of Patients F, G and I, the College obtained independent opinions from Dr. X regarding Dr. Wasserman's care and treatment of these patients. In the opinion of Dr. X, Dr. Wasserman failed to maintain the standard of practice in his care and treatment of Patients F, G and I, and exposed his patients to risk of harm. The reports of Dr. X in respect of these patients are attached [to the Agreed Statement of Facts and Admission] at Tabs 2, 3 and 4 respectively.

7. Among other concerns, the full extent and details of which are set out in his reports, Dr. X has expressed the following concerns regarding Dr. Wasserman's standard of practise:

- (a) Inadequate medical record keeping, including absence of a Cumulative Patient Profile, medical history and family history, and failure to record examinations, vital signs, patient complaints and treatment plan;
- (b) Prescription of Benzodiazepines, Viagra, anti-depressants and antibiotics without adequate documentation of a rationale for same;
- (c) Failure to adequately follow up on an elevated diastolic blood pressure reading;
- (d) Failure to comment on elevated lipid results and conduct a Framingham risk assessment;
- (e) Failure to document a rational for ordering a syphilis test and testosterone levels;
- (f) Failure to comment on results showing trace blood in the urine;

- (g) Failure to adequately follow up on decreasing hemoglobin levels, including failure to conduct blood work in a timely manner and failure to conduct fecal occult blood testing; and
- (h) Repeated failure to adequately monitor patients' blood pressure;
- (i) Inappropriate management of a patient's migraine with sedatives;
- (j) Inadequate management of anemia;
- (k) Improper concurrent prescription of Fosinopril and Altace;
- (l) Improper prescription of Novahistex for a child of less than 12 years old;
- (m) Failure to follow up on an abnormal ultrasound result noting fatty liver and borderline splenomegaly;
- (n) Failure to follow up on a fasting glucose result at the diabetic level of 8.3;
- (o) Failure to record a patient's asthmatic status in the Cumulative Patient Profile, and failure to intervene in the contraindicated prescription of beta blockers by a specialist for this patient; and
- (p) Improper prescription of Celebrex for a hypertensive patient.

8. Following the interview with Dr. Wasserman, Dr. X prepared a supplementary report where he agrees that medical care is difficult to judge when records are substandard and that an interview process engenders a lot of anxiety and affects performance. However Dr. X indicated that he maintained the same concerns expressed in his December 7, 2010 report. Attached [to the Agreed Statement of Facts and Admission] at Tab 5 is a copy of Dr. X's report dated March 9, 2011.

Admission

9. Dr. Wasserman admits the facts set out in paragraphs 1 through 8 above, and specifically acknowledges the deficiencies set out in paragraph 7 and the Reports of Dr. X attached [to the Agreed Statement of Facts and Admission].

10. Dr. Wasserman admits that the conduct described above constitutes professional misconduct under paragraphs 1(1)(2) and 1(1)(30) of Ontario Regulation 856/93 made under the *Medicine Act, 1991* in that he failed to maintain the standard of practice of the profession and 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.

FINDINGS

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. Wassermann'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, and 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.

AGREED STATEMENT OF FACTS ON PENALTY

The following Agreed Statement of Facts – Penalty was filed as an exhibit at the hearing:

1. Dr. Wasserman ceased active practice on or about June 1, 2010 owing to the personal difficulties set out in further detail below. As of the date of this Agreed Statement of Facts and Admission, he remains out of practice.
2. Dr. Wasserman has been diagnosed by his psychiatrist, Dr. Z, with an Adjustment Disorder and anxiety. It is the opinion of Dr. Z that Dr. Wasserman was suffering from this condition during the Material Time (as defined in the Agreed Statement of Facts and Admission). It is Dr. Wasserman's position, and the opinion of Dr. Z, that this condition compromised his ability to respond appropriately and professionally to requests from his patients. Attached [to the Agreed Statement of Facts – Penalty] at Tab 1 is a copy of Dr. Z's report dated September 6, 2011.

3. After being notified of the complaints against him, Dr. Wasserman contacted the Physicians Health Program (“PHP”) on June 20, 2010. He was referred by the PHP to Dr. Z, and has undergone treatment with Dr. Z for his condition since that time. On November 2, 2011, Dr. Wasserman signed a 4-year monitoring contract (the “Contract”) with the PHP.
4. By report dated August 29, 2012, Dr. Z issued a report recommending that Dr. Wasserman be permitted to resume the practice of medicine in a group setting. Attached [to the Agreed Statement of Facts – Penalty] at Tab 2 is a copy of Dr. Z’s report dated August 29, 2012.
5. On September 27, 2012, Dr. Wasserman’s case-worker at the PHP reported that Dr. Wasserman has been compliant with all aspects of his monitoring program and confirmed the PHP’s support for Dr. Z’s recommendation that Dr. Wasserman be permitted to return to practice. Attached [to the Agreed Statement of Facts – Penalty] at Tab 3 is a copy of Dr. Wasserman’s case worker’s report dated September 27, 2012.
6. It is the opinion of Dr. Z that, upon returning to practice, Dr. Wasserman should work no more than 3 half-day shifts per week, such shifts to occur on separate days.
7. As of the date of this Agreed Statement of Facts and Admission, Dr. Wasserman has not yet resumed practice.
8. There have been no further complaints to the College made against Dr. Wasserman since his patient records were transferred to RSRS as set out in the Agreed Statement of Facts and Admission.
9. In September 2010, Dr. Wasserman voluntarily enrolled in the Comprehensive Family Practice Review program at the University of Toronto. Dr. Wasserman states that the program included five weekend group learning sessions (total of 15 days) on topics including diabetes, hypertension, prevention in clinical practice, mental health and addictions, pediatric and adolescent medicine, geriatrics and palliative care, prescribing skills and counselling and interviewing techniques. One of the sessions included a record keeping component taught by Dr. Y, who has also taught the Medical Record Keeping

Course offered by the College of Physicians and Surgeons. Attached [to the Agreed Statement of Facts – Penalty] at Tab 4 are copies of an informational circular regarding the Comprehensive Family Practice Review program.

10. On May 1, 2011, Dr. Wasserman completed the Comprehensive Family Practice Review. Attached [to the Agreed Statement of Facts – Penalty] at Tab 5 is a copy of Dr. Wasserman's certificate of completion in respect of same.

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 that was accepted by the Committee. Although the Committee has discretion to reject a jointly proposed penalty order, the Committee is mindful that a jointly proposed penalty should be rejected only if it is found not to be in the public interest and is of such a nature as to bring the administration of justice into disrepute.

An appropriate penalty must uphold the integrity of the profession, and the public's confidence in self-regulation. It must serve to protect the public, and express the profession's abhorrence of the misconduct. It must also provide general deterrence for the profession and specific deterrence for the member and, to as much an extent as possible, aid in rehabilitation of the member.

Dr. Wassermann's misconduct involved a large number of patients and he did expose his patients to harm. Patients need access to their health information in a timely manner. The agreed statement of facts indicates that this lack of timely correspondence related to personal problems which Dr. Wassermann continues to work on improving. The Committee is hopeful that his progress will continue.

The chart review of the Registrar's investigation revealed a failure to maintain the standard of practice in his care and treatment of all 20 patients under review. In particular, there was substandard record keeping in all the charts. As outlined in the Agreed Statement of Facts and Admission, Dr. Wassermann admits to a failure to maintain the standard of practice in many areas, including, but not limited to, prescription

of medications without adequate documentation of a rational for same; inappropriate management of migraine and anemia; and inadequate follow-up of abnormal test results. These inadequacies are serious.

The Committee finds the proposed penalty to be appropriate. The penalty is very stringent with multiple safeguards in the form of quarterly reports by Reporting Director(s), approved by the College, at each location at which Dr. Wasserman practises. In addition, the penalty includes a six month preceptorship with a College acceptable Preceptor, who will conduct monthly chart reviews of 25 charts a month, followed by a further six months of monthly chart reviews of 10 charts a month. Additionally, a Comprehensive Practice Assessment will follow the 12 months of preceptorship. Dr. Wassermann will also be subject to the College's policy on re-entering practice, as he has been out of practice since June 2010.

Dr. Wassermann shall abide by any and all recommendations of his Reporting Director(s), the Preceptor(s), the PHP, and the Assessors. The Committee is reassured that the public will be protected by these safeguards.

The penalty includes a public reprimand which will serve to not only express to Dr. Wassermann the Committee's abhorrence of his misconduct but also relay to the membership at large that such substandard patient care will not be tolerated. The Committee is reassured that these deficiencies occurred at a time when Dr. Wassermann was suffering from significant personal difficulties; he ceased to practise in a timely fashion and engaged in the PHP for assistance.

The Committee is pleased with Dr. Wassermann's involvement and improvement in the PHP and commends him on his commitment to continued health.

Other mitigating factors include Dr. Wassermann's cooperation with the discipline process, his voluntary completion of the Family Practice Review Program and the lack any previous discipline findings.

The Committee has discretion to award costs in cases it finds suitable. The tariff rate proposed assists in indemnifying the College for its costs of a one day hearing. This is an

appropriate case for such an order, and the Committee orders Dr. Wassermann to pay \$3,650.00 toward the College's costs for this one day.

ORDER

Therefore, having stated the findings in paragraphs 1 and 2 of its written order of January 11, 2013, on the matter of penalty and costs, the Committee ordered and directed that:

3. Dr. Wassermann attend before this panel to be reprimanded.
4. the Registrar impose the following terms, conditions and limitations on Dr. Wassermann's certificate of registration:
 - (i) Dr. Wassermann shall practise only in a group practise environment approved by the College.
 - (ii) Dr. Wassermann shall ensure that the Director, Chief of Staff, office manager or other person in a comparable role who is acceptable to the College, at each location at which he practises (the "Reporting Director(s)"), sign an undertaking in the form attached to the Order as Appendix A, and that the Reporting Director(s) report to the College on a quarterly basis in respect of Dr. Wassermann's office and practise management, his administrative and organizational performance and his communication/interactions with patients and colleagues;
 - (iii) If a Reporting Director who has given an Undertaking is unwilling or unable to continue to fulfill its terms, Dr. Wassermann shall, within 30 days, obtain an Undertaking in the same form from a person who is acceptable to the College;
 - (iv) If Dr. Wassermann is unable to obtain a Reporting Director at a location at which he practices as set out in (ii) or (iii) above, Dr. Wassermann shall cease to practise at that location immediately until such time as he has obtained a Reporting Director at that location;
 - (v) Dr. Wassermann shall undergo a preceptorship (the "Preceptorship") under the supervision of a preceptor acceptable to the College (the "Preceptor"), who shall sign an Undertaking in the form attached to the Order as Appendix "B", such Preceptorship to include,
 - a) For the first 6 months, monthly chart reviews of 25 patient charts from all practise locations, selected by the Preceptor in his/her sole discretion, monthly meetings for discussion of any concerns and recommendations of the preceptor, and monthly reports to the College – the first preceptorship meeting to take place within two weeks of the preceptorship commencing;

- b) After the first 6 months of the Preceptorship, if the preceptor believes it appropriate and reports the basis for this belief to the College, the number of charts reviewed may be decreased to 10 charts/month for a further 6 months, with monthly meetings for discussion of any concerns and recommendations of the preceptor, and monthly reports to the College;
 - (vi) If Dr. Wassermann's Preceptor is unwilling or unable to continue to fulfill the terms of the Order and Appendix "B" hereto, Dr. Wassermann shall, within twenty (20) days, obtain an Undertaking in the same form from a person who is acceptable to the College, failing which Dr. Wassermann shall immediately cease practice until this requirement is satisfied;
 - (vii) Dr. Wassermann shall continue his participation in, and full compliance with, the Physician Health Program ("PHP"), and he shall ensure that the PHP provides the College quarterly reports regarding his compliance, progress, and any recommendations regarding his practice (including any changes in recommendation as to the amount of time Dr. Wassermann should spend in practice);
 - (viii) Following the completion of the Preceptorship, Dr. Wassermann shall undergo a Comprehensive Practice Assessment by an assessor or assessors appointed by the College (the "Assessor(s)");
 - (ix) Dr. Wassermann shall abide by any and all recommendations of his Reporting Director(s), the Preceptor(s), the PHP, and the Assessors, including with respect to any practice improvements and/or ongoing professional development and/or education;
 - (x) Nothing in this Order shall alter or detract from Dr. Wassermann's obligations pursuant to the College's policy on Re-entering Practice, or such equivalent policies as may apply to Dr. Wassermann in the future; and
 - (xi) Dr. Wassermann shall be solely responsible for all fees, costs and expenses associated with his compliance with the terms of this Order.
5. Dr. Wassermann pay costs to the College in the amount of \$3,650.00 within 60 days of the date of this Order.

At the conclusion of the hearing, Dr. Wassermann waived his right to an appeal under subsection 70(1) of the Code. Counsel should contact the Hearing Office to schedule a date for the reprimand.