

Indexed as: Miller (Re)

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

IN THE MATTER OF a Hearing directed
by the Executive Committee of
the College of Physicians and Surgeons of Ontario
pursuant to Section 36(1) of the *Health Professional 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. MARK LEE MILLER

PANEL MEMBERS: DR. O. KOFMAN (CHAIR)
DR. M. LYVER
P. BEECHAM
A. VANSTONE

Hearing Date: June 4, 2002

Decision/Released Date: June 4, 2002

DECISION AND REASON FOR DECISIONS

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on June 4, 2002. The Committee made a finding that the member was guilty of professional misconduct and pronounced its penalty order. The Committee further indicated that its Reasons for Decision would be delivered subsequently in writing.

ALLEGATIONS

The Notice of Hearing alleged that Dr. Mark Lee Miller committed an act of professional misconduct as defined in paragraphs 1(1).16 and 1(1).33 of Ontario Regulation 856/93, by falsifying a record relating to the member's practice and by 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.

PLEA

There was no plea entered. However, Dr. Miller accepted the findings as listed in paragraph 15 of the Consent Disposition as outlined below.

EVIDENCE

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

STATEMENT OF AGREED FACTS AND CONSENT DISPOSITION

"The parties to this proceeding, the College of Physicians and Surgeons of Ontario and Dr. Mark Lee Miller, a member of the College, agree that the facts in Part 1 of this document are true for the purposes of this proceeding, agree to the actions in Part 2 of this document and consent to the disposition of this proceeding by the decision in Part 3 of this document. This document is a consent disposition under section 4.1 of the Statutory Powers Procedure Act.

Part 1. Agreed Facts

1. Dr. Miller graduated in medicine from the University of Toronto in 1986, and interned at Toronto Western Hospital.
2. Dr. Miller is a general practitioner in Jarvis, Ontario, a small under-serviced community. He is the only physician in that town. He also serves the surrounding area and in total he has approximately 3,000 people under his care. Dr. Miller set up a laboratory and ultra sound facilities and attracted a pharmacy to the area.
3. Ms X was a patient of Dr. Miller's until about May 2, 1997. Prior to her departure from Dr. Miller's practice, Ms. X was being treated for a ganglion on her foot.
4. At the time he was treating Ms. X, Dr. Miller was coping with a dramatically increased caseload, caused by the departure of two other physicians who had been practising in Jarvis.
5. After Ms. X left Dr. Miller's practice, she requested him to forward her medical records to her new family physician.
6. Dr. Miller was under the misapprehension that his only obligation to honour Ms. X's request was to deliver a summary of her medical history to her new family physician, which he did, together with copies of the test results and other information in his file.
7. Not content with this, Ms. X asked for and obtained a copy of her full chart from a member of Dr. Miller's staff. At the time the chart was given to Ms. X, the staff member was not aware that it was incomplete and neither was Ms. X.

8. When Ms. X made a complaint about Dr. Miller to the College, she forwarded to the College the chart that she had obtained from Dr. Miller's office.
9. Upon reviewing Ms. X's complaint when the College communicated it to him, Dr. Miller realized that her chart was incomplete. He completed the chart by adding entries to the chart to ensure accuracy and completion. Information was added to the entries between January 31, 1997 and May 2, 1997. Dr. Miller then sent the completed chart to the College in response to Ms. X's complaint. When the College compared the chart received from Ms. X to the chart received from Dr. Miller, there were certain appreciable differences.
10. These additional notes were Dr. Miller's best efforts at reconstructing the progress and development of Ms. X's foot condition and treatment, albeit after the fact. The information added is as accurate as the circumstances allow.
11. Dr. Miller also made one deletion from the chart. The February 13th deletion of "infected foot rx cloxacillin" was done because Dr. Miller was trying to clean up his entry but forgot to rerecord his note. This deletion was medically insignificant because the nurse's note for the same entry reads, "swelling on left foot. Draining and painful".
12. Dr. Miller recognizes that his record keeping was not of a high calibre and that he needs to improve in this area.
13. Although he made late entries in Ms. X's medical records, Dr. Miller did not attempt to mislead, fabricate or deny the history of his treatment of Ms. X.
14. Dr. Miller is prepared to participate in educational programs at his own expense to ensure that he improves his record keeping and becomes more familiar with his professional obligations in the area of continuity of care.

Part 2. Consent to Findings

15. Dr. Miller accepts that the chart alterations specified in paragraphs 9 and 11 constitute an act of professional misconduct as defined in paragraph 1(1).33 of Ontario Regulation 856/93, as 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 consents to such a finding by the Discipline Committee.
16. The College withdraws the allegation that Dr. Miller has committed an act of professional misconduct as defined in paragraph 1(1).16, by falsifying a record relating to the member's practice.

Part 3. Consent Order

17. The College and Dr. Miller consent to an order of the Discipline Committee panel:
 - (1) directing the Registrar to suspend Dr. Miller's certificate of registration for six (6) months and suspending the effect of this part of the order in perpetuity if Dr. Miller successfully completes the College's record-keeping and communications courses at his own expense by February 15, 2003 and makes the costs payment in paragraph 18 within 30 days of this date and otherwise to impose the suspension on February 15, 2003; and
 - (2) requiring Dr. Miller to appear before the panel to be reprimanded.
18. The College and Dr. Miller also consent to an order of the Discipline Committee panel requiring Dr. Miller to pay part of the College's costs incurred in conducting the hearing, fixed in the amount of \$500 payable within 30 days of this date."

FINDINGS

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts. Having regard to these facts, and the allegations against the member, the Committee accepted the Consent to Findings and finds Dr. Miller guilty of professional misconduct under paragraph 1(1)33 of Ontario Regulation 856/93, in that he committed 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

A consent order with respect to penalty and costs was presented to the Committee by counsel for the College and the member, as specified above. The Committee accepted the consent order as an appropriate disposition in this case for the following reasons.

Dr. Miller accepted that his chart alterations as specified constitute an act of professional misconduct. He clearly had insight into the nature of his error and the Committee was aware of the full cooperation that he offered to the College in attempting to resolve these matters. He recognized that his record keeping needed improvement. The Committee accepted the fact that his late entries and altering of the record, done after the fact without being dated, was an attempt to remedy the incompleteness of the patient record rather than an attempt to be mislead, fabricate or deny the history of his treatment. However, the late entries should have been dated appropriately.

The Committee believes that the record-keeping and communications courses are an appropriate mechanism towards rehabilitation in these circumstances and will enhance Dr. Miller's performance as a physician to further ensure protection of the public and the integrity of the profession. The Committee also believes that this order addresses both general and specific deterrence.

ORDER

The Discipline Committee therefore ordered and directed that:

1. Dr. Miller appear before the panel to be reprimanded;
2. The Registrar suspend Dr. Miller's certificate of registration for six (6) months and suspend the effect of this part of the order in perpetuity if Dr. Miller successfully completes the College's record-keeping and communications courses at his own expense by February 15, 2003 and makes the costs payment in paragraph 3 of this Order within 30 days of this date and otherwise to impose the suspension on February 15, 2003;
3. Dr. Miller pay part of the College's costs incurred in conducting the hearing, fixed in the amount of \$500 payable within 30 days of this date.

The Committee administered the reprimand following the conclusion of the hearing.