

Indexed as: Pollack (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 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. SHELDON VICTOR POLLACK

PANEL MEMBERS:

**P. BEECHAM (CHAIR)
DR. P. CHART
DR. M. WOLFISH
H. WALKER
DR. J. DOHERTY**

Hearing Date: September 8/2003

Decision/Released Date: September 8/2003

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on September 8, 2003. At the conclusion of the hearing, the Committee stated its finding that the member committed professional misconduct and delivered its penalty order with written reasons to follow.

ALLEGATION

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

1. under clause 1(1)33 of O/Reg. 856/93, in that he engaged in acts 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 ALLEGATION

Dr. Pollack did not contest the allegation in the Notice of Hearing.

EVIDENCE

The facts were set out in a document filed as an exhibit and presented to the Committee as Stated Facts. Those facts were accepted as true by the Committee, and were as follows:

1. Dr. Pollack is a dermatologist who also performs cosmetic surgery.
2. The complainant, had been receiving care and treatment from Dr. Pollack since approximately 1995. In early 1998, she expressed concerns to Dr. Pollack about facial aging and wrinkles, and requested treatment for lip augmentation.
3. On April 8 and 28, 1998, the complainant received treatment for lip augmentation through injections of injectable grade liquid silicone ("IGLS").

4. In March of 1999, Dr. Pollack was the subject of a previous complaint with the College by GG. GG complained to the College as well as to Health Canada Protection Branch about Dr. Pollack's use of IGLS in treating her facial scarring.
5. In May, 1999 Health Canada advised Dr. Pollack that IGLS was considered to be a medical device and that the intradermal injection of IGLS was considered a "distribution". Health Canada advised Dr. Pollack that since IGLS had not been authorized for sale or distribution in Canada, its use in intradermal injections was prohibited.
6. On May 8, 1999, Dr. Pollack advised Health Canada that he had discontinued the use of IGLS in the treatment of his patients. A copy of his letter to Health Canada is attached at Tab 1 [to the Stated Facts].
7. In November of 2000, the Complaints Committee of the College considered the complaint of GG and decided not to refer it to discipline.
8. GG appealed to the Health Professions Appeal & Review Board ("HPARB") and in a decision dated October 11, 2001 HPARB returned the matter to the Complaints Committee and directed the Committee to issue a reminder to Dr. Pollack to have regard for College Bulletin Articles that relate to his area of practice. HPARB also directed that the Complaints Committee issue a written caution to Dr. Pollack to the effect that he must not treat his patients with substances not clinically approved for use in Canada.
9. In accordance with the direction of HPARB, the Complaints Committee reconsidered the matter and administered the required caution. A copy of the Complaints Committee Decision and Reasons is found at Tab 2 [to the Stated Facts].
10. In February 2001, the complainant again attended at Dr. Pollack's office seeking additional treatment for lip augmentation.
11. Notwithstanding his advice to Health Canada and the caution administered by the Complaints Committee, Dr. Pollack proceeded to treat the complainant with IGLS. In her chart, he

recorded that he had treated her with Artecoll rather than IGLS. Her chart entry is attached at Tab 3 [to the Stated Facts].

12. In the course of investigating the complainant's complaint, the College retained an assessor, Dr. A. Dr. A attended at Dr. Pollack's office on February 1, 2002. On April 5, 2002, Dr. Pollack met with Dr. A at the College in the presence of counsel.
13. At that meeting, Dr. Pollack advised the College that he had approximately 100 patients at the time Health Protection Branch advised him that IGLS was not approved for use in intradermal injections. He advised all of his patients what he had been told by Health Protection Branch and what he had told Health Protection Branch concerning his future use of IGLS. He also told his patients that there was another substance that was a reasonable substitute for IGLS, Artecoll. Approximately 19 patients requested IGLS rather than Artecoll. Dr. Pollack recorded in their charts that these patients received Artecoll rather than IGLS.
14. Dr. Pollack fully understands the seriousness of his actions and deeply regrets his conduct.
15. Dr. Pollack has cooperated fully with the College and wishes to resolve this matter as soon as possible.

FINDING

Having regard to the facts and Dr. Pollack's plea of no contest, the Committee found 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, which is an act of professional misconduct as defined in paragraph 1(1) 33 of the Ontario Regulations 856/93.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and Counsel for Dr. Pollack made a joint submission as to the appropriate penalty, which included a six-month suspension, terms, conditions and limitations to be imposed on Dr. Pollack's certificate of registration and costs in the amount of \$2,500.

The Committee considered the stated facts, the victim impact statement of the complainant and the proposed joint penalty submission from the College and Dr. Pollock. It is the obligation of the Committee to determine if the proposed penalty is appropriate to the finding of professional misconduct.

In view of the serious nature of:

1. The administering of IGLS to patients after being advised by Health Canada that it was unlawful and receiving a caution from the College not to treat patients with substances not clinically approved for use or sale in Canada;
2. The administering of IGLS to patients after certifying that he had discontinued its use to Health Canada;
3. Falsifying health records;

the Committee felt that a substantial suspension was required in order to address the issues of specific and general deterrence and to maintain public confidence in the ability of the profession to regulate itself. The Committee found that Dr. Pollack had committed a serious breach of professional integrity in his intentional wrongdoing.

The Committee was particularly disturbed that Dr. Pollack, by virtue of his academic appointment and his position as Director, Dermatologic Surgery Training, was supposed to be setting an example to medical trainees.

The Committee took under consideration that Dr. Pollack deeply regrets his actions and has cooperated with the College in this prosecution. The Committee also recognized the remedial actions Dr. Pollack has already undertaken. The Committee felt it was important that Dr. Pollack complete the CPSO ethics course at his own expense given the importance of trustworthiness in all professional relationships and that this be a term or condition on his certificate of registration.

The Committee agreed that a chart audit and notification of patients regarding the type of injectable material they received is required to assure and protect the public. The audit must be acceptable to the College, carried out independently and at Dr. Pollack's expense in order to identify all patients injected with IGLS. A letter to all patients who have received either Artecoll or IGLS is necessary in the interest of those patients.

The Committee concluded that the penalty proposed by way of the joint submission was appropriate with the additional requirement that the suspension of Dr. Pollack's certificate of registration be effective immediately.

The Committee considered that the penalty proposed addressed the principles of deterrence, rehabilitation and public protection and that the penalty was appropriate in the interest of justice.

ORDER

Therefore, the Discipline Committee ordered and directed that:

1. The Registrar suspend Dr. Sheldon Victor Pollack's certificate of registration for a period of six months effective immediately.
2. The Registrar impose the following terms, conditions and limitations on Dr. Sheldon Victor Pollack's certificate of registration:
 - (i) Dr. Pollack is to successfully complete the College of Physician and Surgeons of Ontario ("CPSO") ethics course, at his own expense;
 - (ii) Dr. Pollack is to consent to an independent audit of his practice to identify all patients injected with injectable grade liquid silicone ("IGLS") after May 8, 1999. The assessor is to be an individual approved by the College and the cost of the audit and any related activities is to be the responsibility of Dr. Pollack;
 - (iii) Dr. Pollack will send a letter (in a form approved by the College) to all patients who received IGLS after May 8, 1999 advising them of the fact;
 - (iv) Dr. Pollack will send a letter (in a form approved by the College) to all patients who received Artecoll after May 8, 1999 advising them of the fact and reassuring them that they did not receive IGLS;
 - (v) Dr. Pollack is to prepare an addendum or correction notice to his charts (in a form approved by the College) to ensure that the charts accurately reflect that patients received IGLS after May 8, 1999.

3. The Registrar is to remove the above-noted terms and conditions from Dr. Pollack's certificate of registration when the College receives:
 - (i) written confirmation that Dr. Pollack has successfully completed the CPSO ethics course; and
 - (ii) the College receives written confirmation from the assessor that the audit has been completed, that the charts have been corrected as required by paragraph 3(v) above and that Dr. Pollack has written to all patients who received IGLS or Artecoll after May 8, 1999 as required by paragraph 3(iii) and 3(iv).

4. Dr. Pollack pay costs of the proceeding fixed in the amount of \$2500 on or before the completion of his suspension.