

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Olu Kayode Louis Victor Nicol, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity, or any information that could disclose the identity, of patients 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 to a fine of not more than \$10,000 for a first offence and not more than \$20,000 for a subsequent offence.

Indexed as: Nicol (Re)

**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
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. OLU KAYODE LOUIS VICTOR NICOL

PANEL MEMBERS:

DR. M. DAVIE (CHAIR)
S. DAVIS
DR. L. THURLING
DR. J. SCHILLINGER
J. DHAWAN

Hearing Date: October 1, 2007
Decision Date: October 1, 2007
Release of Written Reasons Date: November 14, 2007

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 October 1, 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.

PUBLICATION BAN

On October 1, 2007 the Committee made an order in writing, with reasons, that there shall be a ban on publication or disclosure of the identity, and any information that could disclose the identity, of the patients who are referred to during the hearing or in any document filed at the hearing pursuant to subsection 45(3) of the Code.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Nicol 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 meet the standard of practice of the profession.

The Notice of Hearing also alleged that Dr. Nicol is incompetent as defined by subsection 52(1) of 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

Dr. Nicol entered a plea of no contest to the allegation of professional misconduct under paragraph 1(1)2 of O. Reg. 856/93 in that he failed to meet the standard of practice of the profession. Rule 3.02(1) of the Rules of Procedure of the Discipline Committee states:

3.02(1) Where a member enters a plea of no contest to an allegation, the member consents to the following:

- (a) that the Discipline Committee can accept as correct the facts alleged against the member on that allegation for the purposes of the proceeding only;
- (b) that the Discipline Committee can accept that those facts constitute professional misconduct or incompetence or both for the purposes of the proceeding only; and
- (c) that the Discipline Committee can dispose of the issue of what finding ought to be made without hearing evidence.

The College withdrew the allegation of incompetence.

FACTS AND EVIDENCE

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

PART I – FACTS

1. Dr. Olyu Kayode Louis Nicol (“Dr. Nicol”) is a physician who practises family medicine in Mississauga, Ontario in a solo practice.

Facts Relating to Patient A

2. Patient A, aged 50 years, died unexpectedly in his home in December, 2004, of undetermined causes.

3. Dr. Nicol was Patient A’s family physician from 1997 and followed him for depression, alcohol dependency and occupational problems.

4. Patient A’s sister, Ms. A, last spoke to Patient A by telephone in late December, 2004, and he said he was unwell. Ms. A tried contacting her brother the next day, and

when she was unable to reach him, she drove to his home. She arrived sometime after 3:30 p.m. and found him dead.

5. Ms. A and her sister made an appointment in January, 2005, to see Dr. Nicol in order to seek an understanding of the circumstances leading to Patient A's death.

6. In early January, 2005, Dr. Nicol met with Patient A's sisters in his office. He told them that he saw Patient A at around 3:30 p.m. the same day his sister found him deceased, and that Patient A looked much better and seemed to be doing well. He said it was possible Patient A went home after the appointment, got into bed and died.

7. The Coroner later determined that Patient A had passed away hours before his sister's arrival at his home. The Coroner noted that when he contacted Dr. Nicol, Dr. Nicol initially insisted he saw Patient A the same day his sister found him deceased, and that his notes confirmed this.

8. On March 18, 2005, the College received a letter of complaint from Ms. A.

9. On June 15, 2005, Dr. Nicol responded to the complaint and acknowledged then and acknowledges now that he could not have seen Patient A the same day his sister found him deceased, and that the information he provided to Patient A's sisters was therefore inaccurate. The entry on Patient's A's chart indicating he was seen on the day he passed away was made in error. Dr. Nicol's error was the result of a very busy day, the absence of a secretary and the fact that it was Patient A's regularly scheduled appointment day.

10. Dr. Nicol got behind in his charting, made only perfunctory entries in Patient A's charts, and completed the chart at a later time.

11. After Dr. Nicol had further discussions with the Coroner, he concluded that he had made an error in charting and immediately reversed the OHIP billing. Dr. Nicol expressed his regret about this error and the additional pain caused to Patient A's family. Attached as Schedule "A" [to the Agreed Statement of Facts] is a copy of Patient A's chart for the mistaken appointment in December, 2004.

12. Dr. Nicol failed to maintain the standard of practice of the profession by making a notation in Patient A's chart that he had seen him on the day patient A died in December, 2004, when in fact he had not, by making illegible, disorganized and incomplete chart entries and by failing to adequately record diagnoses in the chart of Patient A.

Facts Relating to Patient B

13. Patient B, born in February, 1962, began seeing Dr. Nicol in August 2004, complaining of insomnia and migraines. Dr. Nicol started prescribing Oxycontin to her in April 2005, for a dislocated shoulder. In February and March 2006 he prescribed additional medication including Bromazepam, Sertraline, Bisoprolol, and Prochlorzine.

14. Patient B last saw Dr. Nicol in late March, 2006.

15. On April 18, 2006, the College received a letter of complaint from Patient B's mother regarding the care Dr. Nicol had provided to Patient B.

16. Dr. Nicol failed to maintain the standard of practice of the profession in relation to Patient B in that his chart was difficult to read, disorganized and incomplete. His chart entry for Patient B's first appointment was inadequate and Patient B's chart insufficiently described her multiple medical problems.

Facts Relating to Registrar's Investigation

17. An investigation pursuant to Section 75(a) of the Health Professions Procedural Code Schedule 2 to the *Regulated Health Professions Act* 1991 S.O. 1991 c. 18 as amended ("HPPC") was ordered into Dr. Nicol's practice and included the review of 25 other patient charts.

18. Dr. Nicol also failed to maintain the standard of practice of the profession in relation to charting as evident in these records in that Comprehensive Physical Examinations were rarely recorded and most charts had no evidence of a complete physical; no chart contained an accurate summary of the patient's medical problems and medications; diagnoses were rarely made or written and when they were made, they were very simple with little explanation. The charts were also difficult to read.

Facts Relating to Patient C

19. In November 2006, the College received a complaint about Dr. Nicol's care of Patient C from her husband. He complained that during an appointment in October 2006, Dr. Nicol prescribed an antibiotic for a chest infection, a drug to which Patient C was allergic.

20. Dr. Nicol failed to maintain the standard of practice of the profession in relation to Patient C in that his charting did not lead him to identify a drug to which Patient C was allergic. Dr. Nicol did not always record diagnoses or differential diagnoses, and treatment rationales, and the charting was generally incomplete.

21. In many of the patient charts mentioned above, there were discrepancies between Dr. Nicol's chart entries and OHIP billing records. At times Dr. Nicol billed OHIP with no corresponding chart entry and at other times Dr. Nicol charted patient appointments not billed to OHIP. In doing so, Dr. Nicol failed to maintain the standard of practice of the profession.

PART II – PLEA OF NO CONTEST

22. Dr. Nicol does not contest the facts set out in paragraphs 1 to 21.

23. Dr. Nicol acknowledges that the Discipline Committee can accept as correct the facts alleged in paragraphs 1 to 21 for the purposes of this proceeding.

24. Dr. Nicol further acknowledges that the Discipline Committee can accept that the facts set out in paragraphs 1 to 21 establish that Dr. Nicol committed professional misconduct in that he failed to meet the standard of practice of the profession, contrary to paragraph 1(1)2 of Ontario Regulation 856/93 made under *the Medicine Act, 1991* ("O. Reg. 856/93").

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. Nicol's plea of no contest and found that he committed an act of professional misconduct under paragraph 1(1)2 of O.

Reg. 856/93 in that he failed to meet the standard of practice of the profession. In particular, the serious level of disorganization and errors in the charts of Patient A, Patient B, Patient C and the patient charts examined during the Registrar's investigation indicate that Dr. Nicol failed to meet the standard of practice of the profession.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for the member presented a joint penalty proposal. College counsel cited *C.P.S.O. v. Metcalfe* in emphasizing the importance of accurate medical records as an essential part of good patient care. Counsel for Dr. Nicol cited *C.P.S.O. v. Yau* in reminding the panel of the high threshold that must be met for the panel to reject a joint submission.

The discipline panel carefully considered the facts and finding supporting the proposed penalty. Dr. Nicol's failure to meet the standard of the profession in regards to charting was demonstrated clearly in the evidence presented pertaining to Patient A, Patient B, Patient C and by the charts examined during the Registrar's investigation. In particular, the facts demonstrate that there was serious disorganization, inaccuracy and haphazard recording in Dr. Nicol's charting, most blatantly revealed by the inaccurate record of Patient A who had died on a day when he supposedly had been seen in the physician's office.

The panel did note, however, that in paragraph 21 ("Facts Relating to Patient C") of the Agreed Statement of Facts it is stated that at times he "charted patient appointments not billed to OHIP". In the opinion of the panel, such charting does not necessarily substantiate the otherwise well-documented failure to maintain the standard of practice of the profession with regard to record-keeping.

There were aggravating factors requiring a severe penalty. Poor medical record-keeping can compromise patient care and have other serious repercussions. In addition, the conduct in this case was not a single isolated error but revealed a prolonged pattern of repeated inaccuracies and omissions in Dr. Nicol's record-keeping. Relying on his own

faulty records he had misled the relatives of Patient A in January 2005 maintaining that he had seen their deceased brother on the day of his death in December, 2004 in the afternoon, when in fact a coroner's investigation later revealed that the man had died earlier that day. The complaint of Patient B in April 2006 and of Patient C in October 2006 revealed illegible, incomplete and disorganized charting. The Registrar's investigation, in a review of 25 patient charts, found frequent omissions of essential information pertaining to clinical history, examinations and treatment.

Importantly, pain and confusion had been caused to members of the public because of these deficiencies and the panel agreed with College counsel that the reputation of the profession had been tarnished.

It was also considered by the panel that, as counsel submitted, there were mitigating factors in assigning a penalty. Dr. Nicol later recognized his error relating to Patient A, charted the correction, and reversed the OHIP billing relating to it. He co-operated with the College by continuing stringent supervisory and remediation agreements at his own expense with colleagues who would report regularly to the College. He agreed to plead no contest to the allegation of professional misconduct; thus, witnesses avoided the stress of appearing at a full hearing and eliminating the cost and time expenditures exacted by such a hearing.

The panel was in agreement that the proposed penalty of a public reprimand, terms, conditions and limitations imposed on his certificate of registration, courses in record-keeping and ethics, and the recording of this proceeding on the public register was appropriate and fair. This penalty would serve to remind the profession that proper charting is a necessary obligation related directly to good patient care. To be remiss in recording accurately may result in disciplinary proceedings and, most importantly, compromises safe patient care, putting in jeopardy the well-being of those whom physicians are entrusted to serve.

Dr. Nicol himself will be deterred from further misconduct by the exigencies of this penalty. The terms on his certificate of registration require that the detailed stipulations regarding monitoring and education continue and that his clinical performance will be further evaluated by the Physician Review Program. The College-endorsed courses in record-keeping and ethics will reinforce high standards for his practice. This considerable penalty will also serve to warn the profession as a whole of the consequences of such behaviour and help preserve the reputation of the profession. Such measures will assure the public that transgressions of this kind are not tolerated by this regulatory body and will be met with severe sanctions.

ORDER

Therefore, the Discipline Committee ordered and directed that:

1. Dr. Nicol attends before the panel to be reprimanded, with the fact of the reprimand to be recorded on the register.
2. The Registrar impose the following terms, conditions and limitations on Dr. Nicol's certificate of registration:
 - a. Dr. Nicol shall practice under the supervision and monitoring of Dr. Z (or such other monitor as the parties may agree to), in accordance with the provisions of the Undertaking dated August 16, 2006, attached at Schedule "A";
 - b. Dr. Nicol shall participate in a program of professional education and mentoring with Dr. Y (or such other monitor as the parties may agree to) in accordance with the provisions of the Undertaking dated August 16, 2006, attached at Schedule "A";
 - c. The terms, conditions and limitations outlined at paragraphs 2a and 2b above shall continue in effect until such time as Dr. Nicol completes, at his own

expense, a Physician Review Program (“PREP”) assessment, at which time Dr. Nicol shall abide by all of the recommendations made as a result of the assessment, subject to any pre-existing right of appeal. The terms, conditions and limitations outlined above at paragraphs 2a and 2b shall continue in effect pending the exhaustion of any such pre-existing right of appeal;

- d. Dr. Nicol is required to successfully complete, at his own expense, the College’s “Medical Record-Keeping for Physicians” course, at the earliest available date, and to provide proof that he has done so to the College; and
 - e. Dr. Nicol is required to successfully complete, at his own expense, the College’s “Medical Ethics and Informed Consent” course, at the earliest available date, and to provide proof that he has done so to the College.
3. The results of this proceeding be included in the register.

Dr. Nicol waived his right to an appeal under subsection 70(1) of the Code and the Committee administered the public reprimand.

Schedule "A"

**Undertaking
Of
Dr. Olu Nicol
To
The College of Physicians and Surgeons of Ontario
(the "College")**

1. **Acknowledgement.**

1.1 I acknowledge that a concern has been raised about whether my conduct exposes or is likely to expose my patients to harm or injury pursuant to section 37 of the *Health Professions Procedural Code*.

1.2 I acknowledge that it is my responsibility to interact with patients in a professional manner.

1.3 I acknowledge that in consequence of the foregoing, clinical supervision and practice monitoring and mentoring (as hereinafer provided) is desirable.

2. **Clinical Supervision and Practice Monitoring**

2.2 I acknowledge that Dr. Z, a member of the College, has agreed to act as my Clinical Supervising Physician and Workplace Monitor and has provided the undertaking at Appendix "A" attached [to the Undertaking].

2.3 I understand and agree that Dr. Z will attend at my practice twice per month to observe my patient encounters and treatment.

2.4 I further understand and agree that Dr. Z will review at least ten (10) of my patient charts on a weekly basis and provide reports to me with respect to same.

2.4 I understand and agree that Dr. Z will provide written reports to the College every January, April, July and October.

2.5 I understand that if Dr. Z determines that my conduct exposes or is likely to expose my patients to harm or injury or that I am not in compliance with my Undertaking, he is required to make an immediate report to the College.

3. **Professional Education and Mentorship Program**

3.1 I agree to meet with Dr. Y on a quarterly basis for the purpose of professional education and mentorship program.

3.2 I understand that the elements of this program will include:

(i) **Record Keeping Practices:** Demonstrations of appropriate record keeping practices and information and advices regarding same;

(ii) **Office set up:** Information, advices and guidance on appropriate office set-up, procedures and maintenance, including disposal of wastage, maintenance of an emergency tray, office policies and dealing with support staff;

(iii) **Chart simulated recall:** A review 20-25 current charts from my practice and an assessment of the charts with a view to using them as a facilitator to discuss history-taking, diagnosis, investigation and management, as well as various aspects of medical record-keeping; and

(iv) **Continuing Education:** The provision of and discussions with respect to current guidelines and literature. Recommendations with respect to conferences and continuing education activities and opportunities.

3.2 I understand that Dr. Y will provide written reports to the College following our meetings.

3.3 I understand that if Dr. Y determines that my conduct exposes or is likely to expose my patients to harm or injury or that I am not in compliance with my Undertaking, she is required to make an immediate report to the College.

4. **Compliance**

4.1. I shall implement the terms and conditions contained in this Undertaking within thirty (30) days of its execution.

4.2 If a person who has given an undertaking in accordance with this Undertaking is unable or unwilling to continue to fulfill its terms, I shall within thirty (30) days obtain an undertaking in the same form from a similarly qualified person who is acceptable to the College. I understand and agree that in the event of the foregoing, the provisions of my Undertaking shall be interpreted to be consistent with the undertaking(s) of such similarly qualified person(s).

5. **Non-Compliance**

5.1 I understand and acknowledge that a breach of this Undertaking is an act of professional misconduct and may result in disciplinary action being taken against me and that the Registrar may immediately impose an interim suspension on my certificate of registration upon receiving information respecting a breach of this Undertaking, pending the outcome of such disciplinary action.

6. General Terms

6.1 If I am dissatisfied with any decision of the Registrar made in the implementation of this Undertaking, I may request, in writing, that the Executive Committee review the decision.

6.2 I give my irrevocable consent to the persons named in the Appendices to this Undertaking to disclose to the College all information necessary to fulfill the terms of this Undertaking and the terms of the undertakings in the Appendices.

6.3 I shall be solely responsible for the payment of all fees, costs, charges, expenses, etc. arising from the implementation of any of the terms of this Undertaking.

6.5 I acknowledge that if a referral to the Discipline Committee is made pursuant to the terms of this Undertaking, the College will be entitled to introduce this Undertaking as evidence at the hearing before the Discipline Committee.

6.6 I hereby consent to certain terms and conditions contained in this Undertaking being deemed to be specified terms, conditions and limitations imposed upon my certificate of registration for the purpose of section 23 of the *Health Professions Procedural Code*, pending the outcome of the hearing of disciplinary charges currently outstanding. I understand that such specified terms, conditions and limitations shall be information on the College's register that is available to the public. Specifically, the following shall be subject to this provision:

- (i) that I have agreed to practice under the clinical supervision and monitoring of Dr. Z (paragraphs 2.2 to 2.5 of the Undertaking), and
- (ii) that I have agreed to participate in a program of professional education and mentoring with Dr. Y (paragraphs 3.1 to 3.3 of the Undertaking),

6.7 In the event of the appeal of any order of the Discipline Committee, I agree that if the Discipline Committee has directed the Registrar to revoke, suspend or impose terms and conditions on my certificate of registration, that order will take effect immediately despite any appeal.