

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Mory Maher Gutman, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of the patients or any information that could disclose the identity of the patients whose names are disclosed in the Agreed Statement of Facts or patient records 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: Gutman, M.M. (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. MORY MAHER GUTMAN

PANEL MEMBERS:

DR. P. CHART (Chair)
S. DAVIS
DR. M. DAVIE
S. BERI
DR. J. WATTS

Hearing Date:	January 7, 2011
Decision Date:	January 7, 2011
Release of Written Reasons:	February 7, 2011

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 7, 2011. 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. Mory Maher Gutman committed an act of professional misconduct:

1. under paragraph 1(1)2 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, in that he has failed to maintain the standard of practice of the profession.
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;
3. under paragraph 1(1)34 of O. Reg. 856/93, in that he has engaged in conduct unbecoming a physician and
4. under clause 51(1)(b.1) of the Health Professions Procedural Code which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18 (the “Code”) in that he engaged in the sexual abuse of a patient.

The ICRC has also referred to the Discipline Committee of the College the allegation that Dr. Gutman 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”).

RESPONSE TO THE ALLEGATIONS

Dr. Gutman admitted the first and second 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 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. Counsel for the College withdrew the allegations of conduct unbecoming, sexual abuse and incompetence.

FACTS AND EVIDENCE

The following facts were set out in the Agreed Statement of Facts and Admission that was filed as an exhibit with the Committee:

Failure to Maintain the Standard of Practice of the Profession

1. Dr. Gutman is a 59 year old family physician who has practiced medicine for nearly 34 years.
2. The College retained the services of a family physician, Dr. X, to review 25 charts obtained from Dr. Gutman's office. Dr. X reviewed a selection of patient charts and prepared a report, dated July 5, 2009. A copy of this report is attached at Tab 1 [to the Agreed Statement of Facts and Admission].
3. In his report, Dr. X opined that Dr. Gutman's care and treatment of 18 patients fell below the standard of practice including, but not limited to, his incomplete and inadequate documentation and record-keeping, failure to appropriately manage prescription renewals, the absence of pain rating scales to record the efficacy of his pain management regime, and lack of urine drug screens, treatment agreements and standard screening instruments.

4. Dr. Gutman provided written submissions in response to Dr. X's report. A copy of his submissions is attached at Tab 2 [to the Agreed Statement of Facts and Admission].

Boundary Violation

5. A female became Dr. Gutman's patient in 2003 and was treated by him until approximately 2004.
6. During the physician/patient relationship, Dr. Gutman committed boundary violations by repeatedly hugging the patient and sharing details about his personal life with her.

Admissions

7. Dr. Gutman admits that the conduct set out above constitutes professional misconduct, and admits specifically:
 - a) He failed to meet the standard of practice of the profession; and
 - b) He committed a boundary violation with respect to one of his patients and that his conduct constitutes 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, dishonorable, or unprofessional, contrary to paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act*, 1991.

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. Gutman'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 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.

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. The Committee is mindful of the legal principle that a joint submission should be accepted unless to do so is contrary to the public interest and would bring the administration of justice into disrepute.

The penalty to be imposed should protect the public and uphold public confidence, which has been shaken by the physician's conduct, as well as uphold the honour of the profession. The penalty should also serve as a deterrent against future unprofessional behaviour by the member and send a message to the membership at large that such behaviour is not tolerated. Finally, an appropriate penalty aims to help rehabilitate the member.

It is important to appreciate that each case before the Discipline Committee is unique and all the specific aggravating and mitigating factors must be carefully considered.

An admission of professional misconduct and a joint submission on penalty can be interpreted as an acceptance by Dr. Gutman of responsibility for his misconduct. In mitigation of penalty, the Committee is cognizant there are no previous findings against Dr. Gutman. However, the Agreed Statement of Fact and Admission outlines repeated boundary violations, and several areas in which Dr. Gutman failed to maintain the standard of practice of the profession including record keeping, prescription renewals and urine screening, as well as use of pain scale tools in patient evaluation. These shortcomings were considered seriously by the Committee in assessing the proposed penalty.

A penalty should be fair and just and in keeping with previous penalties imposed by the Committee. Counsel for the College presented four similar cases in its book of authorities to the Committee for consideration. Two cases included in the book of authorities were cases of boundary violations and two cases were standard of care cases. The cases illustrated that the order proposed in the joint submission on penalty is in line with previous recently decided cases, in calling for a 4 month suspension of Dr.

Gutman's Certificate of Registration, a public reprimand, the requirement that Dr. Gutman complete the CPSO Record Keeping course, the imposition of a long list of stringent terms, limitations and conditions on his certificate of registration, the requirement that he undergo reassessment 6 months after he returns to practice, the payment of costs to the College, and the inclusion of the results of the hearing in the public register.

Defence submissions informed the Committee of the rehabilitative steps Dr. Gutman has undertaken to rectify some of his personal health issues, and outlined the active regimented recovery program that he has begun with the Physician Health Program. With respect to the standards issues, he has taken steps to amend his patient care in the ways suggested by the College investigator during the investigations into his practise and he has enrolled in the College's Records Keeping course. This information was very helpful to the Committee in considering the appropriateness of the jointly proposed order. The Committee is confident that the proposed order will ensure the protection of the public when Dr. Gutman resumes his practice.

ORDER

Therefore, the Committee ordered and directed that:

1. the Registrar suspend Dr. Gutman's certificate of registration for four (4) months. This suspension is to take effect if and when Dr. Gutman's Certificate of Registration is reinstated commencing on the day the Certificate is or otherwise would have been reinstated.
2. Dr. Gutman successfully complete, at his own expense, the first available College's Medical Record-Keeping course including the follow-up component and shall provide proof thereof to the College.
3. Dr. Gutman, at his own expense, submit to an assessment of his practice by an assessor selected by the College approximately six months after his return to

practice in accordance with paragraph one. Dr. Gutman shall abide by the recommendations made by the Assessor. If any of the recommendations made by the Assessor limit or in any way restrict Dr. Gutman's practice, Dr. Gutman shall be permitted to make written submissions on his own behalf within 30 days of receipt of the assessment to the Inquiries, Complaints and Reports Committee. The Inquiries, Complaints and Reports Committee may or may not vary the recommendations of the Assessor upon receipt of Dr. Gutman's written submissions. Any recommendations accepted by the Inquiries, Complaints and Reports Committee that are limitation(s) or restriction(s) shall constitute terms, conditions or limitations on Dr. Gutman's Certificate of Registration and may be included on the public register if required by the College in its sole discretion.

4. the Registrar impose the following terms, conditions and limitations on Dr. Gutman's certificate of registration:
 - a) Dr. Gutman shall not engage in professional encounters with any female patients.
 - b) Dr. Gutman shall not prescribe any of the following substances:
 - (i) **Narcotic Drugs** (from the Narcotic Control Regulations made under the *Controlled Drugs and Substances Act*, S.C., 1996, c. 19);
 - (ii) **Narcotic Preparations** (from the Narcotic Control Regulations made under the *Controlled Drugs and Substances Act*, S.C., 1996, c. 19);
 - (iii) **Controlled Drugs** (from Schedule G of the Regulations under the *Food and Drugs Act*, S.C., 1985, c. F-27); or
 - (iv) **Benzodiazepines/Other Targeted Substances** (from the Benzodiazepines and Other Targeted Substances Regulations made under the *Controlled Drugs and Substances Act*, S.C., 1996, c. 19)

(A summary of the above-named drugs [from Appendix I to the Compendium of Pharmaceuticals and Specialties] is attached [to the Order] as Schedule "A"; and the current regulatory lists are attached [to the Order] as Schedule "B")
 - c) Dr. Gutman shall post a clearly visible sign in his waiting room in the form set out at Schedule "C" [to the Order]. For further clarity, this sign shall

state as follows: “Dr. Gutman has relinquished his prescribing privileges with respect to Narcotic Drugs, Narcotic Preparations, Controlled Drugs and Benzodiazepines/Other Targeted Substances.

- d) Dr. Gutman shall cooperate with unannounced inspections of his practice and such other steps as the College may take for the purpose of monitoring and enforcing his compliance with the terms of the Order.
- 5. Dr. Gutman continue to regularly attend 12 step program meetings as well as meetings with his sponsor. For a period of two years following the imposition of the penalty, Dr. Gutman’s sponsor will provide quarterly reports to the College attesting to Dr. Gutman’s attendance at the 12 step meetings.
- 6. Dr. Gutman attend at least two meetings per month at the Caduceus Group at North York General Hospital and will submit urine samples as required for participation in that Group. For a period of two years following the imposition of the penalty, Dr. Z or a member agreeable to the College, will provide quarterly reports to the College attesting to Dr. Gutman’s attendance at the Caduceus Group meetings, and compliance with participation.
- 7. Dr. Gutman attend at least two meetings per month with a psychiatrist. For a period of two years following the imposition of the penalty, Dr. Gutman’s treating psychiatrist will provide quarterly reports attesting to Dr. Gutman’s attendance at these regularly scheduled meetings.
- 8. Dr. Gutman appear before the panel to be reprimanded.
- 9. Dr. Gutman pay costs to the College in the amount of \$3650.00 by March 7, 2011.

At the conclusion of the hearing, Dr Gutman waived his right to an appeal under subsection 70(1) of the Code and the Committee administered the public reprimand.