

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Patrick Francis Gallagher, this is notice that the Discipline Committee ordered 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, that no person shall publish or broadcast the identity or any information that would disclose the identity of any person named in the Agreed Statement of Facts including, specifically, any of Dr. Gallagher’s victims.

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: Gallagher, P.F. (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 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 to 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. PATRICK FRANCIS GALLAGHER

PANEL MEMBERS:

**DR. M. GABEL (CHAIR)
S. BERI
DR. F. SLIWIN
G. DEVLIN
DR. R. WAGMAN**

Hearing Date:	June 14, 2011
Decision Date	June 14, 2011
Release of Written Reasons:	August 17, 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 June 14, 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. Patrick Francis Gallagher committed an act of professional misconduct:

1. under clause 51(1)(b.1) of the Health Professions Procedural Code (the “Code”), Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18, in that he sexually abused patients;
2. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, 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; and
3. under clause 51(1)(a) of the Health Professions Procedural Code, which is Schedule 2 to the *Regulated Health Professions Act, 1991*, (“the Code”) in that he has been found guilty of an offence that is relevant to his suitability to practise.

RESPONSE TO THE ALLEGATIONS

Dr. Gallagher admitted the first and third allegations in the Notice of Hearing that he sexually abused a patient and that he has been found guilty of an offence that is relevant to his suitability to practise. Counsel for the College withdrew the second allegation in the Notice of Hearing of disgraceful, dishonourable or unprofessional conduct.

FACTS AND EVIDENCE

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

1. On April 4, 2011, Dr. Patrick Francis Gallagher (“Dr. Gallagher”) pleaded guilty to, and was convicted of, sexual assault. Specifically, Dr. Gallagher pleaded guilty to the following four counts:
 - a) PATRICK GALLAGHER STANDS CHARGED THAT, on or between January to April 2007 at the City of Kawartha Lakes in the said region, did sexually assault Patient C, contrary to section 271 of the *Criminal Code of Canada*.
 - b) AND FURTHER PATRICK GALLAGHER STANDS CHARGED THAT HE, on or between October to December 2005 in the City of Kawartha Lakes in the said region, did sexually assault Patient G, contrary to section 271 of the *Criminal Code of Canada*.
 - c) AND FURTHER PATRICK GALLAGHER STANDS CHARGED THAT HE, on or about January 2006 in the City of Kawartha Lakes in the said region, did sexually assault Patient F, contrary to section 271 of the *Criminal Code of Canada*.
 - d) AND FURTHER PATRICK GALLAGHER STANDS CHARGED THAT HE, on or about March 2006, in the City of Kawartha Lakes in the said region, did sexually assault Patient E, contrary to section 271 of the *Criminal Code of Canada*.
2. At the hearing of his Guilty Plea on April 4, 2011, Dr. Gallagher agreed to the truth of an Agreed Statement of Facts, which was entered as an Exhibit to Dr. Gallagher’s Guilty Plea proceeding and was read into the Court record (the “Guilty Plea ASF”). The full text of the Guilty Plea ASF is attached to the Agreed Statement of Facts [at Tab 1]. Dr. Gallagher reaffirms the truth of the Guilty Plea ASF and adopts the full text thereof into this Agreed Statement of Facts by reference.

3. The four women referenced in the Guilty Plea ASF correspond to Patients “G”, “F”, “E” and “C” as set out in the Notice of Hearing.
4. Dr. Gallagher acknowledges and admits that the complainants’ perceptions of his actions as detailed in the Guilty Plea ASF were correct. In particular, Dr. Gallagher admits that he sexually abused each of Patients “G”, “F”, “E” and “C” as described at sections 51(5) 2 (i), 51(5) 2 (ii) and 51(5) 2 (iv) of the Health Professions Procedural Code, Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18 (the “Code”), in that he engaged in sexual intercourse with Patients “F” and “C”, initiated genital-to-genital contact with Patient “E”, inserted his fingers in Patient “G”’s vagina and moved them in and out in what she described as an intercourse movement, and engaged in touching of a sexual nature with Patients “C”, “E”, “F” and “G”.
5. Dr. Gallagher admits that his actions as set out herein constitute professional misconduct in that,
 - a) Dr. Gallagher has been found guilty of an offence that is relevant to his suitability to practise, contrary to clause 51(1)(a) of the Code; and
 - b) Dr. Gallagher sexually abused four patients, contrary to clause 51(1)(b.1) of the Code.

The full text of the Guilty Plea ASF is as follows:

Background

Dr. Gallagher has been a family doctor in the City of Kawartha Lakes area for over 20 years.

Patient G

Patient G was a patient of Dr. Gallagher for at least twelve years. She had been physically examined by him on numerous occasions and he had monitored her conditions. On all previous internal examinations, the female medical secretary, Ms X, had always been in the room.

In December of 2005, Patient G was scheduled to have a surgical procedure. Prior to the surgery, Patient G attended at the medical practice of Dr. Gallagher a week and a half prior for a pre-surgical internal examination.

Patient G was escorted into an exam room. After a few minutes, Dr. Gallagher entered the room. He commented that Patient G had coloured her hair and that it looked very nice. After a short conversation, Patient G was given a sheet to cover herself and Dr. Gallagher left the room while she got undressed. When Dr. Gallagher re-entered the room to perform the physical examination he was not accompanied by Ms X.

Patient G was lying on the examination table with her feet in the stirrups and her vaginal area at the edge of the table. The lower half of her body was covered with a sheet. During her past physical examinations, Dr. Gallagher had stood off to the side of the exam table. On this occasion, however, as he commenced the physical examination, he stood between Patient G's legs. He was so close to her that she could feel his clothing touching her inner thigh area.

After using a speculum to take a swab, Dr. Gallagher started an internal examination with his gloved fingers. While his fingers were inserted in her vagina, Dr. Gallagher began to move his fingers in and out in what Patient G described as an intercourse movement. As he did so, his groin area was pressed up against his hand which was inserted in her vagina. Patient G could continue to feel his clothing rubbing against her inner thighs as he made a "gyrating type of movement" with his hips, like simulated intercourse. The examination took an unusually long time. Patient G did not consent to having simulated intercourse with Dr. Gallagher.

Patient G disclosed what had happened to a friend, within a few months of the appointment, when the friend advised her that his partner, Patient F, had experienced a problem with Dr. Gallagher. Patient G did not return to Dr. Gallagher's office. The incident was reported to the police in March 2006.

Patient F

Patient F was a patient of Dr. Gallagher for approximately fifteen years. She had previously had PAP tests conducted on her by Dr. Gallagher as well as physical examinations. She had never had an internal examination without a female in the room.

In January 2006, Patient F attended at the medical practice of Dr. Gallagher. She was late arriving and as she sat in the waiting room, she overheard the other receptionists saying that Dr. Gallagher's medical secretary had gone home sick.

Dr. Gallagher called Patient F into an examination room. After some brief conversation, Dr. Gallagher decided to do an internal examination to determine her condition. He had not done a urine test or blood work to confirm the condition. Dr. Gallagher retrieved a sheet and instructed Patient F to remove her pants and underwear and lie down on the bed with the sheet on. He then left the room while Patient F removed her clothing.

Dr. Gallagher returned to the room alone and prepared the stirrups. Patient F laid down on the table and he directed her to move down to the very edge of the table as far as she could. Patient F was expecting a nurse to come in but Dr. Gallagher commenced the exam without an assistant.

As Patient F lay on the examination table, Dr. Gallagher applied some gel to her vaginal area and began spreading it around in a "lingering" manner. He then inserted his gloved fingers into her vagina. Patient F could feel his clothing touching the top of her inner thigh and advised that his body was within inches of her. Dr. Gallagher removed his fingers and Patient F felt the round tip of what she believed to be his penis inserted about 1 inch into her vagina. Patient F looked at Dr. Gallagher and he stopped what he was

doing. He physically backed up and then reinserted his fingers into her vagina, making comments about her internal organs. The examination was taking too long. Patient F could feel both Dr. Gallagher's fingers and his penis near the opening of her vagina. When the examination concluded, Dr. Gallagher made a shrugging motion like a man putting his penis back in his pants.

Patient F did not consent to sexual contact with Dr. Gallagher.

While driving home from the doctor's office, Patient F disclosed to her boyfriend what had happened. She attended to the police station the next day to report the incident and was examined afterwards at the hospital.

Patient E

Patient E was a patient of Dr. Gallagher for ten or eleven years. Physical examinations, including internal examinations, had been performed on her by Dr. Gallagher on approximately eight prior occasions. A female family member or medical secretary had been in the room during all prior internal examinations.

In March of 2006, Patient E attended at the office of Dr. Gallagher. She was escorted into an exam room by the medical secretary and Dr. Gallagher entered the room shortly thereafter. Patient E advised Dr. Gallagher of her presenting condition and another concern. Dr. Gallagher provided Patient E with a gown and sheet and left the room while she disrobed.

Dr. Gallagher re-entered the room alone and commenced an examination of Patient E. He first examined her back and then told her to lie down on the examination table and to place her feet in the stirrups. She was directed to shift her buttocks down closer to the edge of the table and she did so. The sheet was draped over Patient E's legs such that she was only able to see Dr. Gallagher upwards from his chest area.

As Dr. Gallagher stood between Patient E's raised legs he inserted a lubricated, gloved finger into her vagina. He commented on Patient E's internal organs and condition. He moved his finger around in a circular motion prior to pulling it out. He then inserted two fingers into Patient E's vagina. She advised that this hurt. The doctor withdrew his fingers but continued to stand very close to Patient E, within a few inches of her vaginal area. There was a lapse of approximately one minute with Dr. Gallagher just standing between Patient E's legs. Patient E then felt skin, as opposed to a gloved hand or instrument, touching her vaginal area. She felt a tapping or poking motion on the outside of her vaginal opening near the bottom on her right side. She described the skin-on-skin contact as an impotent penis touching her. Dr. Gallagher then reinserted his finger into her vagina for no apparent reason. As he partially withdrew his finger, Patient E felt the skin on her vaginal area again.

Patient E did not consent to sexual contact from Dr. Gallagher. She panicked and began to talk nervously to the doctor but did not confront him with what she was feeling. She noticed that Dr. Gallagher's face was red.

The examination, which was much longer than any of her prior examinations by Dr. Gallagher, completed and he stepped out from between her legs, giving her a box of tissues to wipe herself with. At that time, Dr. Gallagher's white lab coat swayed open and Patient E believed that his pant zipper was down. Patient E redressed, got her blood work done, and vacated the office quickly.

Upon leaving the doctor's office, Patient E disclosed what had happened to her sister-in-law. As a result, other family members were consulted for advice and a message was also left at the College of Physicians and Surgeons. Patient E then proceeded to the hospital where she met her husband and disclosed the assault to medical personnel. Police were contacted from the hospital.

Patient C

Patient C was a patient of Dr. Gallagher for approximately eight years. During this period she had previously been internally examined by Dr. Gallagher on more than eight occasions. Dr. Gallagher's medical secretary, Ms X, had been present in the room during all prior internal examinations.

Between January and April 2007, Patient C attended at the office of Dr. Gallagher for an appointment. When she arrived for her appointment the office was empty and it was Dr. Gallagher who called her into the examination room. After some brief discussion about the reason for the appointment, Dr. Gallagher advised that he would do a physical examination to make sure everything was alright. Dr. Gallagher advised that his medical secretary had left for the day and inquired if Patient C was okay doing the exam without the secretary present. Patient C agreed that it was fine to proceed as he was a doctor and so she had no reason to be concerned.

Dr. Gallagher gave Patient C a sheet and left the room. Patient C prepared for the examination by removing the clothing from her lower half, getting on the examination table, and covering herself with the sheet.

When Dr. Gallagher returned to the room, he asked Patient C to lie down and began pressing on her stomach with his hand. He then repositioned himself so that he was standing at the end of the examination table in between Patient C's legs and instructed her to move further down the table.

At this point, Dr. Gallagher began internally examining Patient C. With his finger inserted in Patient C's vagina, Dr. Gallagher described what he was doing during the process and what organs he was feeling. He then stopped what he was doing and removed his finger. Dr. Gallagher started the "examination" a second time. During this second examination, Patient C realized that Dr. Gallagher was not using his hand. The object that was inserted in her felt more solid and there was more of it. Dr. Gallagher was standing right at the edge of the examination table, right up close to Patient C, in between her legs,

facing her straight on. He began sliding the object in and out of Patient C's vagina. He did this in and out motion about four times. In contrast to feeling his finger moving about, she described that this motion was straight in and out and "too even" with no moving around. During this in and out motion, Dr. Gallagher made no comments about any of her organs but instead inquired if there was any discomfort or pain. Patient C identified that the object inside her vagina during the second "examination" was Dr. Gallagher's penis. She did not consent to sexual contact from Dr. Gallagher.

Patient C was crying and upset as she drove home and disclosed what had happened to her fiancée when he arrived home. She reported the incident to the police in March 2008.

FINDINGS

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts. Having regard to these facts, the Committee found that Dr. Gallagher committed an act of professional misconduct, in that he sexually abused patients, and in that he has been found guilty of an offence that is relevant to his suitability to practise.

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 joint penalty proposed the following:

1. The Registrar revoke Dr. Gallagher's certificate of registration, effective immediately.
2. Dr. Gallagher attend before the Panel to be reprimanded.
3. Dr. Gallagher pay costs to the College of \$3,650.
4. The results of the proceeding be recorded on the register.

The Discipline Committee must accept a joint submission on penalty unless the proposed penalty is contrary to the public interest and would bring the administration of justice into

disrepute. Pursuant to the Code, for misconduct involving sexual abuse of a patient of a serious nature, such as the conduct in this case, revocation of the member's certificate of registration is mandatory. In any case of the sexual abuse of a patient, a public reprimand is mandatory.

In reviewing the uncontested facts, the Committee concluded that Dr. Gallagher's behaviour was unacceptable and egregious, particularly having regard to the fact that he sexually abused patients in the course of medical examinations in a medical office. Even if revocation were not mandatory, the Committee would have ordered revocation as the appropriate penalty.

The joint penalty proposed satisfies the objectives of protecting the public, upholding the public's trust in the profession, providing general deterrence to members of the profession and expressing the profession's abhorrence of Dr. Gallagher's conduct.

The Committee concluded that this is an appropriate case to order costs at the tariff rate for a one day hearing of \$3,650.

ORDER

Therefore, the Committee ordered and directed that:

1. The Registrar revoke Dr. Gallagher's certificate of registration, such revocation to take effect immediately.
2. Dr. Gallagher attend before the panel to be reprimanded.
3. Dr. Gallagher shall within 30 days pay the College its costs of this proceeding in the amount of \$3,650.
4. The results of this proceeding be included in the register.