

## NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Israel Shoel Rosenhek, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the name or identity or any information that could disclose the name or identity of the patients of Dr. Rosenhek identified in the hearing record 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:   Rosenhek, I.S. (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 Sections 26(2) and 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. ISRAEL SHOEL ROSENHEK**

**PANEL MEMBERS:**

**DR. W. KING (CHAIR)  
D. DOHERTY  
DR. J. WATTS  
S. BERI**

<b>Hearing Date:</b>	<b>November 8, 2010</b>
<b>Decision Date:</b>	<b>November 8, 2010</b>
<b>Release of Written Reasons</b>	<b>December 21, 2010</b>

**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 November 8, 2010. 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. Israel Shoel Rosenhek 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 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; and
3. under paragraph 1(1)27 of O. Reg. 856/93, by contravening a regulation made under the *Medicine Act, 1991*.

The Notice of Hearing also alleged that Dr. Rosenhek 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”) 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. Rosenhek admitted the first allegation in the Notice of Hearing, that he failed to maintain the standard of practice of the profession. Counsel for the College withdrew the second and third allegations of professional misconduct and the allegation of incompetence in the Notice of Hearing.

## **FACTS AND EVIDENCE**

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

1. Dr. Rosenhek is a cardiologist who practises in Windsor, Ontario. He currently has an office practice only.
2. In March 2007 the College received a complaint in relation to Dr. Rosenhek's care of Patient A. This triggered an investigation into his practice in which the College obtained reports from an expert outlining serious deficiencies in Dr. Rosenhek's practice. These reports dated May 21, 2008, April 14, 2010 and September 24, 2010 are attached as Schedule 1 [to the Agreed Statement] and form part of the Agreed Statement of Facts and Admission. Dr. Rosenhek also obtained reports from experts regarding his practice, and provided such reports to the College in support of his position.
3. Dr. Rosenhek failed to maintain the standard of practice of the profession of cardiology in Ontario between 2005 and 2007. In particular, in his care of multiple patients:
  - a) Dr. Rosenhek failed to appropriately manage cardiac risk factors, such as dyslipidemia, and to prescribe appropriate therapy to reduce such risk;
  - b) Dr. Rosenhek failed to perform indicated investigations;
  - c) Dr. Rosenhek failed to diagnose medical conditions appropriately and in a sufficiently timely manner;

- d) Dr. Rosenhek failed to appropriately monitor and/or ensure monitoring of complications of medications;
- e) Dr. Rosenhek failed to monitor and act upon test results in an appropriate and sufficiently timely manner;
- f) Dr. Rosenhek failed to engage in appropriate discharge planning for patients in the hospital, including failing to make appropriate and necessary arrangements for care and follow-up; and/or
- g) Dr. Rosenhek failed to maintain legible and sufficiently detailed records of his care and treatment of patients.

4. Dr. Rosenhek admits the facts set out above and admits that he failed to maintain the standard of practice of the profession in the practice of cardiology.

## **FINDING**

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts and Admission. The Committee accepted Dr. Rosenhek's admission and found that he committed an act of professional misconduct under paragraph 1(1)2 of O. Reg. 856/93, in that he has failed to maintain the standard of practice of the profession.

## **REASONS FOR FINDING**

In making this finding, the Committee had regard to the facts in the Agreed Statement and took note of the expert reports, describing the review of 21 charts of combined in-patient and out-patient care, and 10 charts of in-patient care only. The expert opined that the overall level of knowledge shown by Dr. Rosenhek in these cases was adequate.

However, he found there to be deficits in the application of knowledge and in judgement in the care of 13 of the 31 patients. These deficiencies were judged to be severe and to put the patients at risk of harm. The expert described Dr. Rosenhek's patient load as high when compared to an appropriate comparator group of seven cardiologists.

The Committee also noted that certain deficiencies appeared to recur, for example, the failure to prescribe medications for the management of dyslipidemia, failure to monitor

renal function in patients on diuretics, and failure to perform echocardiography when indicated.

### **JOINT SUBMISSION ON PENALTY AND COSTS**

Counsel for the College and counsel for the member made a joint submission as to an appropriate penalty and costs order. In considering the submission, the Committee was mindful of the legal requirement that a joint submission should be accepted unless to do so would be contrary to the public interest and would bring the administration of justice into disrepute.

The penalty submitted jointly included;

1. A four week period of suspension.
2. A reprimand.
3. The imposition of terms, conditions and limitations on Dr. Rosenhek's certificate of registration that would require that he: a) limit himself to office practice for no less than 9 months; b) complete a program of continuing education; c) complete the College record-keeping course; d) be supervised in his practice for no less than two years; and, d) be restricted in the number of patients he can see in any 24 hour period.
4. The payment of costs of \$10,000.

The Committee considered that the proposed penalty met the goal of maintaining public confidence in the medical profession. The period of suspension provides deterrence to both the profession at large and to Dr. Rosenhek and is a reminder to all physicians of the importance of maintaining not merely an acceptable knowledge base but the ability to implement patient care with knowledge, skill, and good judgement. The goal of ensuring rehabilitation is achieved by the requirements for ongoing education and also by the expectation that the supervisor will make recommendations for Dr. Rosenhek's practice improvement and his continuing professional development and education that

Dr. Rosenhek has agreed to implement. Most importantly, the Committee believed that the restrictions on his practice, both in terms of the number of patients seen and the restriction to ambulatory practice, together with the requirement for supervision, will provide effective protection for the public.

Counsel for the College presented three cases as guidance for the Committee in assessing the penalty. In *CPSO vs Kingstone* and *CPSO vs Price*, a somewhat longer period of suspension was ordered; both, however, involved failures to meet the standard of practice in the prescription of narcotics, a higher proportion of cases were found to be below the standard, and in the case of *Price*; it included violation of a prior order of the College. *CPSO vs Nicol* did not include a suspension but the finding related primarily to deficiencies in the standard of medical record keeping.

The Committee also took into account as aggravating factors that the deficiencies in Dr. Rosenhek's practice were serious, involved multiple patients and potentially put patients' health at significant risk. In mitigation were Dr. Rosenhek's acceptance of responsibility, with a consequent reduction in the time that it would have been taken for a hearing, and his lack of any prior findings. The amount of the costs order imposed reflected the late timing of his admission.

## **ORDER**

Therefore, the Committee ordered and directed:

1. The Registrar to suspend Dr. Rosenhek's certificate of registration for a period of four (4) weeks commencing on December 6, 2010.
2. Dr. Rosenhek to attend before the panel to be reprimanded, with the fact of the reprimand to be recorded on the register.
3. The Registrar to impose the following terms, conditions and limitations on Dr. Rosenhek's certificate of registration for an indefinite period of time:
  - a. Dr. Rosenhek shall practise solely in an office setting and shall not engage in any hospital-based practice. Dr. Rosenhek may bring a motion before a

panel of the Discipline Committee to vary this condition, but not earlier than nine (9) months after the date of this Order;

- b. At his own expense, Dr. Rosenhek shall engage in a program of continuing medical education in cardiology that fulfills all of the Maintenance of Certification requirements of the Royal College of Physicians and Surgeons and shall maintain a record of such activities to be produced to the College upon request;
- c. At his own expense, Dr. Rosenhek shall successfully complete, within approximately 18 months, the following education programs:
  - i. the College's Medical Record-Keeping for Physicians course, including the follow-up component; and
  - ii. an education program in communications acceptable to the College,
 and shall provide proof to the College of his successful completion thereof.
- d. Dr. Rosenhek shall practise only under the supervision of a clinical supervisor retained at his own expense and approved by the College, who has signed an undertaking in the form attached as Schedule A, and will abide at his own expense by all recommendations of his supervisor with respect to his practice, including with respect to any practice improvements and/or ongoing professional development and/or education;
- e. If, at any time after 24 months have passed since the commencement of the clinical supervision of his practice set out at paragraph 4(d) above, Dr. Rosenhek's clinical supervisor is of the opinion that Dr. Rosenhek is ready to practice without clinical supervision, such clinical supervision shall be discontinued only upon:
  - i. an assessment of Dr. Rosenhek's practice, undertaken by a College-appointed assessor at Dr. Rosenhek's expense, the results of which are satisfactory to the College; and
  - ii. the approval of the College.

- f. In any 24-hour period, Dr. Rosenhek will see no more than the lower of (i) 30 patients, and (ii) the number of patients determined by his clinical supervisor.
- 4. Dr. Rosenhek shall within 30 days pay the College its costs of this proceeding in the amount of \$10,000.00.

At the conclusion of the hearing, Dr. Rosenhek 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. \_\_\_\_\_  
TO THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO**

1. I am a practising member of the College of Physicians and Surgeons of Ontario (the "College").
2. I have read the Order of the Discipline Committee of the College of Physicians and Surgeons of Ontario dated November 8, 2010 regarding Dr. Israel Shoel Rosenhek, and have read the Agreed Statement of Facts and Admission dated November 8, 2010 and the Schedule thereto. I understand the terms, conditions and limitations that the Registrar of the College has been directed to impose upon Dr. Rosenhek's certificate of registration by the Order. In particular, and without restricting the foregoing, I understand that Dr. Rosenhek shall practise solely in an office setting and shall not engage in any hospital-based practice.
3. I have read reports of Dr. Gary Newton dated May 21, 2008, July 29, 2008 and April 14, 2010 and the reports of Dr. David Massel dated August 15, 2010 and August 29, 2010 and understand their concerns regarding Dr. Rosenhek's standard of practice. I will review as soon as practicable any additional materials regarding Dr. Rosenhek's practice provided to me by the College as well as the College's Guidelines for College for College-Directed Supervision.
4. I agree that commencing from the date I sign this undertaking, I shall act as Clinical Supervisor for Dr. Rosenhek, for the duration of at least twenty-four (24) months. My obligations as Clinical Supervisor shall include, at a minimum:
  - (a) conducting an initial in-person meeting with Dr. Rosenhek at his office;
  - (b) for a minimum of three (3) months thereafter, reviewing ten (10) of Dr. Rosenhek's charts per week, which selection of charts shall reflect a mix of new patients (if Dr. Rosenhek has seen new patients that week) and ongoing management of existing patients;
  - (c) discussing with Dr. Rosenhek my review of the charts above, including any concerns arising from such chart reviews, at least every two weeks, such discussion to be held in-person, by telephone, or by other appropriate means, at my option;
  - (d) making recommendations to Dr. Rosenhek for practice improvements;
  - (e) following up on any recommended practice improvements to determine Dr. Rosenhek's compliance with the same;
  - (f) making recommendations to Dr. Rosenhek for ongoing professional

development and/or education;

- (g) following up on any recommended ongoing professional development and/or education, to determine Dr. Rosenhek's compliance with the same;
  - (h) determining the maximum number of patients whom Dr. Rosenhek may see in any 24-hour period, with regard to the mix between new patients and ongoing management of existing patients within Dr. Rosenhek's practice, such number in any case not to exceed 30 patients;
  - (i) notifying the College promptly of the maximum number of patients whom Dr. Rosenhek may see in any 24-hour period, as determined under paragraph 4(h) above, and of any changes thereto; and
  - (j) any other activities, such as reviewing other documents or conducting interviews with staff or colleagues, that I deem necessary to Dr. Rosenhek's clinical supervision.
5. I understand that, after three (3) months of clinical supervision as outlined above, the level of supervision can be varied at my discretion and with the approval of the College, provided that clinical supervision continues for at least twenty-four (24) months in total, and that said clinical supervision at all times shall permit me to make recommendations to Dr. Rosenhek regarding practice improvements and/or professional development and/or education, and to follow up with Dr. Rosenhek to determine his compliance with the same.
  6. I agree to submit a written report to the College on a monthly basis for the duration of the clinical supervision. Such reports shall be in reasonable detail, and shall contain all information I believe might assist the College in evaluating Dr. Rosenhek's standard of practice, as well as Dr. Rosenhek's participation in and compliance with the requirements set out in the Order, including my recommendations regarding practice improvements and ongoing professional development and/or education.
  7. I agree that if I am concerned that Dr. Rosenhek's practice may fall below the standard of practice of the profession, or that Dr. Rosenhek may not be in compliance with the Order, including but not limited to the requirement that he comply with my recommendations for practice improvements and ongoing professional development and/or education, and/or that his patients may be exposed to risk of harm or injury, then I shall immediately notify the College.
  8. I understand that, at any time after twenty-four (24) months, if I am of the opinion that Dr. Rosenhek is ready to practice without clinical supervision, I shall advise the College of this so that the College may arrange for a practice assessment to be conducted by an assessor of its choice. In such a case, my clinical supervision of Dr. Rosenhek's practice will not terminate unless and until: (i) the College

receives, evaluates, and is satisfied by the results of the practice assessment, and  
(ii) the College provides its approval for the termination of clinical supervision of  
Dr. Rosenhek's practice.

9. I agree to immediately inform the College in writing if I cannot fulfill the terms of  
my Undertaking.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ ,  
2010

\_\_\_\_\_  
Dr.

\_\_\_\_\_  
Witness signature

(print name: \_\_\_\_\_)