

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. William Warren Hetherington Rudd the Discipline Committee ordered that there shall be a ban on publication of the names and any information that could disclose the identity of patients referred to orally or in the exhibits 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... 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: Ontario (College of Physicians and Surgeons of Ontario) v. Rudd, 2018
ONCPSD 45**

**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. WILLIAM WARREN HETHRINGTON RUDD

PANEL MEMBERS: **DR. B. LENT (CHAIR)**
 MS G. SPARROW
 DR. R. SHEPPARD
 MR. J. LANGS
 DR. P. CHART

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS L. CADER

COUNSEL FOR DR. RUDD:

MS J. MCKENDRY
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INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MS Z. LEVY

Hearing Date: **August 10, 2018**
Decision Release Date: **August 10, 2018**
Release of Written Reasons: **August 22, 2018**

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 August 10, 2018. At the conclusion of the hearing, the Committee released a written order stating its finding that the member committed an act of professional misconduct, and setting out the Committee’s penalty and costs order with written reasons to follow.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. William Warren Hethrington Rudd committed an act of professional misconduct:

1. under clause 51(1)(b.1) of the Health Professions Procedural Code which is schedule 2 to the Regulated Health Professions Act, 1991. S.). 1991, c.18 (“the Code”) in that he engaged in sexual abuse of a patient; and
2. under paragraph 1(1)33 of O. Reg. 856/93, in that he has engaged in 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.

RESPONSE TO THE ALLEGATIONS

Dr. Rudd entered a plea of no contest to the allegation in paragraph 2 in the Notice of Hearing, 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. The College withdrew the allegation in paragraph 1 in the Notice of Hearing.

THE FACTS

The following facts were set out in the Statement of Uncontested Facts and Plea of No Contest, which was filed as an exhibit at the hearing and presented to the Committee:

1. Dr. William Rudd (“Dr. Rudd”) is an 85 year old retired colorectal surgeon. Dr. Rudd received his certificate of registration authorizing independent practice from the College of Physicians and Surgeons of Ontario (“College”) in July 1960. On May 25, 2018 Dr. Rudd permanently retired from the practice of medicine.
2. Prior to his retirement, Dr. Rudd practised in Toronto at an outpatient clinic where he performed anorectal surgery and colonoscopy.

PATIENT A

3. Patient A was first seen by Dr. Rudd in September 2013 for a complete anorectal examination which involved a sigmoidoscopy.
4. Patient A returned to see Dr. Rudd one year later, in September 2014. At that appointment, Dr. Rudd performed a medically-indicated anorectal examination including an anoscopy, which is less invasive than a sigmoidoscopy. When the examination was complete, Dr. Rudd did not take sufficient care to maintain Patient A’s privacy and spatial boundaries. This included touching one side of Patient A’s buttocks indicating the end of the examination, removing the paper drape and helping Patient A pull up her trousers. Dr. Rudd was accompanied by a nurse throughout the patient encounter.
5. Patient A found the appointment distressing and continues to be affected by Dr. Rudd’s conduct. After the appointment, she expressed her concerns to her family doctor. Patient A did not return to see Dr. Rudd following her appointment.

PATIENT B

6. Patient B was seen by Dr. Rudd in November 2017 for an anorectal examination which involved an anoscopy and sigmoidoscopy. Patient B was diagnosed with an anal fissure.
7. On the way to the examination room, Dr. Rudd made an unprofessional comment to Patient B and another patient. During the course of the encounter, Dr. Rudd also made inappropriate comments about Patient B's appearance and inquired about her personal life.
8. During the appointment, Dr. Rudd did not obtain consent in an appropriate manner and did not take sufficient care to ensure privacy and appropriate coverage of Patient B. After his examination, Dr. Rudd instructed her on how to keep the affected area clean and dry and suggested certain treatments. As part of this process Dr. Rudd demonstrated proper anorectal self-care by placing his gloved hand on Patient B's hands to guide her, without first ensuring she consented to him doing so. Dr. Rudd was accompanied by a nurse throughout the patient encounter.
9. Patient B was distraught after the appointment and expressed her concerns to her family member and her family doctor. Patient B did not return to see Dr. Rudd following this appointment.

NO CONTEST

10. Dr. Rudd does not contest the facts set out in paragraphs 1-9 above, and does not contest that the conduct described constitutes acts or omissions relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, pursuant to paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*.

PLEA OF NO CONTEST: RULE 3.02 OF THE DISCIPLINE COMMITTEE'S RULES OF PROCEDURE

Rule 3.02 of the Discipline Committee's Rules of Procedure regarding a plea of no contest states as follows:

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 College proceedings only;
- (b) that the Discipline Committee can accept that those facts constitute professional misconduct or incompetence or both for the purposes of College proceedings only; and
- (c) that the Discipline Committee can dispose of the issue of what finding ought to be made without hearing evidence.

FINDING

The Committee accepted as true all of the facts set out in the Statements of Uncontested Facts and Plea of No Contest. Having regard to these facts, the Committee accepted Dr. Rudd's plea and found that he committed an act of professional misconduct, in that he engaged in 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.

AGREED STATEMENT OF FACTS REGARDING PENALTY

The following Agreed Statement of Facts Regarding Penalty was filed as an Exhibit at the hearing:

1. In response to a public complaint from a patient, Dr. William Rudd (“Dr. Rudd”) signed an undertaking to the College in 1992. His undertaking included the term that Dr. Rudd “must adopt/take all reasonable measures to continue to ensure to the extent practicable the comfort and dignity of his patients”.
2. In January 1995, Dr. Rudd was cautioned by the Complaints Committee regarding sensitivity around assisting patients to pull up their undergarments and trousers following anorectal examinations. Dr. Rudd was directed to ask patients if they want help and, if so, to offer to have his nurse provide assistance. The Decision and Reasons of the Complaints Committee, dated January 1995, is attached to this Agreed Statement of Facts on Penalty at Tab 1 [to the Agreed Statement of Facts on Penalty].
3. In March 2012, after reviewing materials from the investigation of a public complaint, the Inquiries Complaints and Reports Committee (“ICR Committee”) took no further action on the complaint. However, in its Decision and Reasons, the ICR Committee indicated that, “...Dr. Rudd could probably have been a lot more sensitive in his communications with a young and anxious patient who was likely undergoing an anal/rectal examination with a scope for the first time. The [ICR] Committee expects that Dr. Rudd will keep in mind the importance of sensitivity and patience in his communications in the future.” The Decision and Reasons of the ICR Committee, dated September 14, 2012, is attached to this Agreed Statement of Facts on Penalty at Tab 2 [to the Agreed Statement of Facts on Penalty].

UNDERTAKING TO THE COLLEGE

4. Dr. Rudd entered into an undertaking to the College on May 7, 2018, by which he agreed to resign his certificate of registration effective May 25, 2018. The undertaking is attached at Tab 3 [to the Agreed Statement of Facts on Penalty].

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for Dr. Rudd made a joint submission as to an appropriate penalty and costs order. The joint submission included that Dr. Rudd attend before the panel to be reprimanded and that he pay costs to the College, in the amount of \$6000.00, within 30 days of the date the order becomes final.

In addition, the College filed Dr. Rudd's undertaking, dated May 7, 2018, pursuant to which Dr. Rudd resigned from the College, effective May 7, 2018, and undertook not to apply or re-apply for registration to practise medicine in Ontario or any other jurisdiction.

In considering whether the proposed penalty represented an appropriate sanction, the Committee was aware of the general penalty principles which are well accepted. In this matter, protection of the public is the primary consideration. The other general principles considered by the Committee to be of particular importance in this case are denunciation of the misconduct, general deterrence, and maintaining public confidence in the profession and the College's ability to regulate the profession in the public interest.

The Committee was also aware of the direction of the Supreme Court of Canada in *R. v Anthony-Cook*, 2016 SCC 43, that a joint submission should be accepted by the Committee, unless the proposed penalty would bring the administration of justice into disrepute, or would otherwise be contrary to the public interest.

Analysis

Nature of the Misconduct

Both Patient A and B were young women who attended Dr. Rudd for complaints which required an anorectal examination. They were vulnerable patients and justifiably expected to be treated with dignity and respect. Both patients trusted Dr. Rudd to deal with their respective problems. As with any patient, there is a reasonable expectation of privacy and observance of respectful

spatial boundaries. Even though Dr. Rudd was accompanied by a nurse throughout these encounters, he did not take care to behave respectfully or with sensitivity.

In the case of Patient A, Dr. Rudd touched one side of her buttocks indicating the end of the examination, he removed the paper drape, and he helped Patient A pull up her trousers. These actions left her distressed and concerned. The Committee was particularly troubled by this behaviour as Dr. Rudd had been cautioned in January 1995 by the Complaints Committee regarding sensitivity around assisting patients to pull up their undergarments and trousers. In fact, he was directed precisely how to act in such circumstances. Notwithstanding the caution and that Dr. Rudd was fully aware of how the College viewed his behaviour, it is clear from his admission that he continued to practise in the same aberrant manner. Dr. Rudd's actions with Patient A in September 2014 were disrespectful and demonstrated a disregard for the advice previously given to him by the Complaints Committee. This type of attitude speaks to arrogance and insensitivity with respect to the core values of the medical profession.

In the case of Patient B, in addition to failing to provide properly for her privacy, Dr. Rudd made unprofessional and inappropriate comments about her appearance and personal life. He did not obtain consent in an appropriate manner and he demonstrated insensitivity in instructing her in self-care. This left the patient distraught. This behaviour demonstrates that Dr. Rudd lacked the basic communication skills expected of physicians. Indeed, Dr. Rudd's history with the College indicates that this was not the first time his communication skills were an issue. In March 2012, the ICRC stated in its Decision and Reasons that it "expects that Dr. Rudd will keep in mind the importance of sensitivity and patience in his communications in the future."

The public and the profession invest great trust in the medical profession, and in turn, the public expects physicians to place patients' needs before their own and to treat patients with respect and dignity. Dr. Rudd failed in this basic duty. This resulted in significant patient distress as well as complaints to their family physicians and the College. Such behaviour, particularly when repeated, merits significant sanction. The penalty must suffice to clearly condemn such

behaviour; it must demonstrate that physicians are expected to conduct themselves appropriately in the clinical setting, and that disrespectful behaviour will not be tolerated.

Aggravating Factors

The context in which the complaints of Patient A and B came forward is an important aggravating factor. Dr. Rudd demonstrated improper conduct with patients on multiple occasions over many years. He had ample warnings from the College and time to change his behaviour. He demonstrated consistent shortcomings in showing respect for his patients' dignity and privacy and had limited communication skills in ensuring patient understanding and consent. Dr. Rudd's prior history with the College is an aggravating factor in the current matter, as is his demonstration of ongoing behaviour about which he was previously given warnings.

Mitigating Factors

The Committee accepts as a mitigating factor Dr. Rudd's plea of no contest and undertaking to resign from the College and never to reapply to practise medicine in Ontario or any other jurisdiction. This has reduced the time and costs of the hearing and spared the witnesses from the stress of testifying at the hearing.

Case Law

In support of the jointly proposed penalty, College counsel relied on four prior cases. All of these cases broadly deal with lack of respect, insensitivity, and lack of communication skills.

In *CPSO v. Choong* (2018), findings of failure to maintain the standard of practice and disgraceful, dishonourable or unprofessional conduct were made. Dr. Choong was an 81 year old physician who failed to perform a proper rectal examination and did not respect his patient's

dignity or privacy. Dr. Choong resigned from the College and agreed not to reapply in Ontario or any other jurisdiction.

In *CPSO v. Jiaravuthisan* (2016), findings of failure to maintain the standard of practice and disgraceful, dishonourable or unprofessional conduct were made. Dr. Jiaravuthisan was a seasoned and mature specialist physician, who had practised for 34 years. The basis for a finding of professional misconduct in that case was Dr. Jiaravuthisan's lack of communication skills as he failed to ensure patient understanding and obtain proper consent, as well as demonstrated a lack of respect for patient privacy.

In *CPSO v. Wilson* (2016), Dr. Wilson was found to have lacked sensitivity and respect for his patients' privacy and appropriate communication skills. Dr. Wilson had a prior history of being cautioned for a similar matter, as did Dr. Rudd. Dr. Wilson was suspended for four months and his certificate of registration was subject to terms, conditions and limitations.

In *CPSO v. Baird* (2017), the Committee accepted a plea of no contest to sexual abuse (comments) and disgraceful, dishonourable and unprofessional conduct. The issues were a lack of proper and respectful communication with patients and staff. A two-month suspension and terms, conditions and limitations were imposed.

None of these cases are identical to the circumstances in Dr. Rudd's case. However, there are sufficient similarities in the nature of the misconduct and the penalties in these cases to be helpful to the Committee in accepting the joint submission on penalty. These cases all illustrate that the Committee considers physicians' unprofessional behaviour towards patients as serious professional misconduct and attracts significant sanction.

Also, Dr. Rudd is an 85 year old physician and has signed an undertaking to resign and to not re-apply for registration, similar to the undertaking in the *Choong* matter, which the Committee took into account in considering the joint submission on penalty.

Conclusion

The Committee accepts the jointly proposed penalty in this matter as being fair and reasonable in the circumstances.

The Committee is satisfied that protection of the public is achieved, given Dr. Rudd's undertaking to resign and to not reapply to practise medicine in Ontario, or any other jurisdiction.

The penalty ordered, in light of this undertaking, sends a clear message to the membership and the public, including patients, that the Discipline Committee views a physician's lack of respect to patients and failure to behave professionally in a clinical setting as serious issues. The reprimand delivered to Dr. Rudd allowed the Committee to express directly to Dr. Rudd its condemnation of his misconduct.

ORDER

The Committee stated its finding of professional misconduct in paragraphs 1 and 2 of its written order of August 10, 2018. In that order, the Committee ordered and directed on the matter of penalty and costs that:

2. Dr. Rudd attend before the panel to be reprimanded.
3. Dr. Rudd pay costs to the College in the amount of \$6,000.00 within 30 days of the date this Order becomes final.

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

TEXT of PUBLIC REPRIMAND
Delivered August 10, 2018
in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
and
DR. WILLIAM WARREN HETHRINGTON RUDD

Dr. Rudd, the rough and crude behaviour you displayed in the treatment of the patients cited in the allegations has no place in modern medical practice. This Committee, the College and the profession expect more of its members.

Respect for the privacy and dignity of the patients is inherent in the ethical practise of medicine. Dismissal of such core values of the profession speaks to arrogance and insensitivity.

As a mature physician, a well-respected leader in your field, and as a teacher who can be expected to role model good patient care, this should have been readily apparent to you. Instead of inspiring trust, you sent a message of disrespect, ignorance of acceptable behaviour and unacceptable insensitivity. This impacts not only how patients feel about you but also how they view the medical profession as a whole.

The Committee was particularly troubled by the number of complaints going back to 1992, all regarding similar conduct. It is incomprehensible why, knowing how the College regarded your behaviour, that you continued to act in the way you did.

Your ingrained, insensitive and thoughtless conduct is soundly condemned by this Committee. While the penalty in this matter cannot undo the damage to patients and the profession, it does permanently separate you from the profession and by so doing protect the public. It is a sad way to end a long and productive career.