

Indexed as: Newell, E. N. (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. EMILIE NOVAK NEWELL

PANEL MEMBERS:

DR. J. WATTS (Chair)
DR. E. ATTIA (Ph.D.)
DR. S. KAPOOR
S. DAVIS
DR. W. KING

Hearing Date:	September 20, 2012
Decision Date:	September 20, 2012
Release of Written Reasons:	November 15, 2012

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 September 20, 2012. 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 ALLEGATION

The Notice of Hearing alleged that Dr. Newell committed an act of professional misconduct:

1. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”), in that she 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.

RESPONSE TO THE ALLEGATION

Dr. Newell pled no contest to the facts set out in the Statement of Uncontested Facts and Admission and admits that the conduct described therein 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.

FACTS AND EVIDENCE

The following Statement of Uncontested Facts and Admission was filed as an exhibit:

PART I – FACTS

Background

1. Dr. Emilie Novak Newell (“Dr. Newell”) is a physiatrist who first obtained a certificate of independent practice with the College of Physicians and Surgeons of Ontario in 1968. She practises in London, Ontario.

1. Representation as a Fellow of the Royal College after Fellowship Removed

2. In 1973, Dr. Newell obtained certification with the Royal College of Physicians and Surgeons of Canada (the “Royal College”) in Physical Medicine and Rehabilitation.

3. In order to maintain her status as a Fellow, Dr. Newell was required to comply with the Royal College’s Maintenance of Certification program. The Royal College wrote to Dr. Newell on March 2, 2006, March 28, 2007 and July 19, 2007, to indicate that she had not demonstrated that she had completed the required credits in continuing professional development to maintain her status as a Fellow. A copy of these letters is attached at Tab 1 [to the Statement of Uncontested Facts and Admission].

4. On March 25, 2008, the Royal College wrote to Dr. Newell to advise that the final deadline for her to provide proof of the professional development credits required to maintain her status as a Fellow of the Royal College was May 23, 2008. A copy of this letter is attached at Tab 2 [to the Statement of Uncontested Facts and Admission].

5. Dr. Newell has no record of receiving the letters attached at Tabs 1 and 2 [to the Statement of Uncontested Facts and Admission].

6. On June 18, 2008 the Royal College wrote to Dr. Newell to advise that she had not achieved the minimum credits required for her Maintenance of Certification program and that her fellowship was subject to termination unless she immediately took steps to rectify the situation. A copy of this letter is attached at Tab 3 [to the Statement of Uncontested Facts and Admission].

7. On October 15, 2008, the Royal College wrote to Dr. Newell to advise her that her fellowship with the Royal College had been removed because she had not complied with the Maintenance of Certification program. The letter specified that she was no longer permitted to use the designation FRCPC or FRCSC, nor was she to display publicly her diploma recognizing her as a Fellow of the Royal College. The letter included information on how members whose fellowships have been removed due to non-compliance with the Maintenance of Certification program can be reinstated as

members. A copy of the October 15, 2008 letter is attached at Tab 4 [to the Statement of Uncontested Facts and Admission].

8. Dr. Newell advises that the first time she saw the June 18, 2008 and October 15, 2008 letters from the Royal College was on March 27, 2011, while she was going through some personal papers.

9. Dr. Newell mistakenly represented herself as a Fellow of the Royal College between October 15, 2008 and March 27, 2011.

Steps Taken by Dr. Newell after March 27, 2011

10. Dr. Newell ceased her practice as a physiatrist after March 27, 2011 and immediately sought legal advice. She wrote to the Royal College on April 19, 2011 to advise of the situation and to seek direction and advice from the College. A copy of this letter is attached at Tab 5 [to the Statement of Uncontested Facts and Admission].

11. On April 26, 2011, Dr. Newell reported to the College of Physicians and Surgeons of Ontario that she had recently discovered that her fellowship with the Royal College had lapsed in October of 2008 and that she had continued to represent herself as a Fellow of the Royal College in her practice, when performing independent medical exams and providing medical legal opinions. A copy of her letter to the College is attached at Tab 6 [to the Statement of Uncontested Facts and Admission].

12. Dr. Newell's counsel has written to the lawyers, insurers, agencies and firms to whom she provided specialist services as a physiatrist between October 2008 and March 27, 2011, to advise them that Dr. Newell was not recognized as a specialist in that time period. During that time, there was one matter upon which she gave evidence at trial. Both plaintiff's counsel and defence counsel have been notified in that case.

2. Breach of the August 21, 2008 Order of the Discipline Committee

13. On August 21, 2008, Dr. Newell appeared before the Discipline Committee of the College and, on the basis of an Agreed Statement of Facts and Admission, was found to have committed an act of professional misconduct in that she had committed an

act or omission relevant to the practice of medicine that, having regard to all the circumstances, would be regarded by members as disgraceful, dishonourable or unprofessional. The findings related to Dr. Newell's failure to meet the expected standard of charting and record-keeping, including concerns regarding the timeliness of her charting and reports.

14. As a result of this admission and finding, Dr. Newell was required to practise subject to the terms of an order, which required, among other things, the following:

- a. That Dr. Newell practise in accordance with a schedule approved by the College;
- b. That Dr. Newell complete all reports by the end of seven days after seeing the patients in the case of OHIP reports and 14 days after seeing the patients and receiving all relevant records for reports done as independent medical examinations; and
- c. That Dr. Newell practise under the supervision of a practice monitor who was to review Dr. Newell's charts on a schedule approved by the College.

A copy of the Discipline Committee decision is attached at Tab 7 [to the Statement of Uncontested Facts and Admission].

15. On August 27, 2008, the College wrote to Dr. Newell's practice monitor and noted that his reports would be expected every six weeks of each year, commencing on August 29, 2008. A copy of the letter to Dr. X from the College compliance monitor is attached at Tab 8 [to the Statement of Uncontested Facts and Admission].

16. On February 19, 2010, Dr. Newell wrote to the College to notify it that she would be off work for medical reasons, and expected to return to practice in April 2010. She undertook to notify the College upon her return to work. On April 6, 2010, Dr. Newell returned to work, but failed to notify the College or her monitor of this.

17. On January 19, 2011, Dr. Newell received a letter from the College asking that she confirm her absence from work in 2010. Dr. Newell advised the College that she had returned to work on April 6, 2010 but had failed to notify the College.

Steps Taken by Dr. Newell after January 19, 2011

18. After receiving the College's letter of January 19, 2011, Dr. Newell arranged for her monitor to attend and review her charts in accordance with the Discipline Committee order. He did so on February 15, 2011. This was the first time her monitor attended her practice since her return to work on April 6, 2010. The monitor found all of the records which he reviewed to be complete and up to date.

PART II – ADMISSION

19. Dr. Newell pleads no contest to the facts as set out above and admits 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.

FINDING

The Committee accepted as true all of the facts set out in the Statement of Uncontested Facts and Admission. Having regard to these facts, the Committee found that Dr. Newell committed an act of professional misconduct, in that she 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.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for the member made a joint submission as to an appropriate penalty and cost order. The terms of the joint submission included a suspension, continuation of the terms conditions and limitations previously imposed on

Dr. Newell's certificate of registration, a reprimand and costs to the College of one day's hearing at the tariff rate.

The Committee was reminded of the principles which guide the crafting of a penalty order. Paramount among these is protection of the public. Other principles include specific deterrence, in an effort to prevent recurrence of the member's misconduct, general deterrence, as an indication to the profession of the College's determination to discourage similar misconduct, the need to maintain public confidence in the integrity of the profession and the process of self-governance and, where appropriate, rehabilitation of the member.

The Committee heard submissions concerning aggravating and mitigating circumstances from both parties.

There was no evidence that Dr. Newell's actions were willful or fraudulent. The misconduct appears to stem from sloppy paperwork and insufficient attention to correspondence. Dr. Newell has a long history, going back nearly 20 years, of problems with inadequate record-keeping and "communication management," which was the subject of a previous finding by the Discipline Committee and which resulted in the current terms, conditions and limitations on her practice.

With respect to the facts of the present case, Dr. Newell had no record of receiving the first two communications from the Royal College of Physicians and Surgeons of Canada (the "Royal College"). The Committee did not accept, however, that this indicated they were *not* received as the subsequent two communications which *were* found, albeit long after they were sent, bore the same office address. The Committee found particularly egregious the fact that, with respect to the previous order of the Discipline Committee, Dr. Newell failed to notify *either* the College *or* her practice monitor of her return to practice, resulting in an unmonitored practice of several months' duration.

In mitigation, the Committee heard that Dr. Newell acted with alacrity when she realized that she no longer had the credentials to practise as a specialist (although her lack of compliance with her continuing education requirements should *not* have come as a

revelation to her). She voluntarily notified the Royal College of her error and her patients, lawyers, courts, etc. of the fact that her fellowship had been rescinded, at the cost of some personal effort and embarrassment. Likewise, she promptly notified her practice monitor of the resumption of her practice, but only when prompted by an inquiry from the College, several months after she ought to have done so. Further, the Committee heard that no actual, as opposed to potential, harm resulted from her misconduct and that the monitor found no problem with any of the patient charts that he reviewed from the period when her practice was unmonitored.

Counsel for Dr. Newell submitted that the suspension component of the proposed penalty order was at the upper end of the appropriate range. Having reviewed the case law provided by counsel, the Committee was inclined to agree although none of the cases presented by the parties was specifically on point. Nonetheless, the fact that Dr. Newell disregarded, however inadvertently, an undertaking to the College that she would notify both the College and her practice monitor when she resumed her practice, when she must have known that she was "under the microscope" was deserving, in the opinion of the Committee, of a significant penalty, even if taken alone. It is therefore the Committee's view that the three-month suspension is appropriate and should serve notice, to Dr. Newell, to the profession and to the public that it is fundamental to the concept of self-governance that the College should be able to rely implicitly on undertakings made to it.

The continuance of the terms, limitations and conditions on Dr. Newell's practice would appear to be essential for public protection.

With respect to rehabilitation, the Committee expects that the repercussions stemming from her misconduct and this penalty will encourage Dr. Newell to engage in better practice management.

The reprimand represents a personal and very public expression to Dr. Newell of the Committee's and the profession's disappointment in her misconduct.

Lastly, the award of costs of \$3,650 to the College is the standard tariff rate for a one-day hearing and is appropriate in the circumstances.

The Committee therefore approved the jointly submitted penalty and delivered its written order on September 20, 2012.

ORDER

Having stated the finding in paragraph 1 of its written order of September 20, 2012, the Committee ordered and directed on the matter of penalty and costs that:

2. The Registrar suspend Dr. Newell's certificate of registration for a period of three (3) months, to commence at 12:01 a.m. on September 21, 2012.
3. The terms, conditions and limitations currently on Dr. Newell's certificate of registration shall remain in full force and effect.
4. Dr. Newell appear before it to be reprimanded.
5. Dr. Newell pay costs to the College in the amount of \$3,650.00 within one hundred and fifty (150) days from the date of this Order.

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