

## NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Emilie Novak Newell, 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 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

- i) 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; and
- ii) 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    Newell (Re)**

**THE DISCIPLINE COMMITTEE OF THE COLLEGE  
OF PHYSICIANS AND SURGEONS OF ONTARIO**

**IN THE MATTER OF** a Hearing directed  
by the Executive Committee of  
the College of Physicians and Surgeons of Ontario  
pursuant to Section 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. EMILIE NOVAK NEWELL**

**PANEL MEMBERS:**

**DR. M. GABEL  
B. TAA (PHD)  
DR. P. HORSHAM  
S. BERI  
DR. M. DAVIE**

**Hearing Date:** August 21, 2008  
**Decision/Release Date:** August 21, 2008  
**Release of Written Reasons Date:** November 12, 2008

**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 August 21, 2008. At the conclusion of the hearing, the Committee delivered its finding that the member committed an act of professional misconduct and its penalty order with written reasons to follow.

### **THE ALLEGATION**

The Notice of Hearing alleged that Dr. Newell committed an act of professional misconduct in that she committed 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 admitted the allegation in the Notice of Hearing.

### **FACTS AND EVIDENCE**

The following facts and admission were contained in an Agreed Statement of Facts and Admission that was filed as an exhibit and presented to the Committee:

#### **PART I – FACTS**

##### **Background**

1. Dr. Emilie Novak Newell (“Dr. Newell”) is a 65-year-old member of the College of Physicians and Surgeons of Ontario (the “College”) who graduated from medical school at the University of Western Ontario in 1966. Dr. Newell currently practices as a psychiatrist and has an office in London, Ontario.

##### **History with the College**

2. Concerns regarding the timeliness of Dr. Newell’s charting were brought to the College’s attention in the early 1990s. In 1995, the College discussed with Dr. Newell the

results of an independent review of her practice and raised with her the problem of her incomplete records. An agreement was reached that involved a chart monitor attending Dr. Newell's office every week to ensure that Dr. Newell's charts for that week were complete, with reporting to the College. A copy of a March 7, 1995 letter setting out the terms of this agreement, sent by the Associate Registrar of the College and signed by Dr. Newell, is attached at [Tab 1 of the Agreed Statement of Facts and Admission].

### **Current Allegations**

3. In May of 2001 Dr. Newell's chart monitor reported that she was seriously deficient in her charting obligations and had an excessive number of outstanding and incomplete records. These included charts from visits in 2000 and 2001 that had not been completed.

4. A medical expert retained by the College conducted a review of Dr. Newell's practice in 2002. In his report, the inspector criticized Dr. Newell's record-keeping practices as repeatedly and consistently failing to meet the expected standard. These criticisms included such things as consultation notes that appear to have been generated more than a year after the patient visit in question, consultation notes that appear to have never been done following a patient visit, and medical reports that were either not completed or completed so late that patients seeking the report for purposes such as insurance or worker's compensation claims missed the deadlines imposed by those third parties. In some cases, the lack of timeliness resulted in the loss of disability benefits for the patients. The expert also concluded that the lack of timely records could result in delay in the diagnosis and treatment of patients, to their detriment. A copy of the report, received by the College on June 18, 2002, is attached at [Tab 2 of the Agreed Statement of Facts and Admission].

5. In September of 2002, Dr. Newell wrote to the College to say that the expert's comments "pertaining to the content of these files and their state of completion, are accurate". She declined to make any further comment.

6. The College's expert met with Dr. Newell for two in-depth meetings after filing his report, and submitted an updated report dated November 18, 2002 reflecting these discussions. A copy of the report is attached at [Tab 3 of the Agreed Statement of Facts and Admission].

7. After being referred to the Discipline Committee on March 28, 2003, Dr. Newell entered into an undertaking with the College requiring the completion of reports and records on a particular schedule, and she has continued to have trouble consistently meeting the terms of her undertaking and completing her reports and records in a timely fashion.

## **PART II – ADMISSION**

8. Dr. Newell admits the facts in paragraphs 1 to 7 above and admits that by failing to complete her charts and reports in a timely manner she has engaged in conduct that constituted professional misconduct under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, 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.

## **FINDING**

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. Newell's admission and found that she committed an act of professional misconduct. The Committee found that, by failing to complete her charts and reports in a timely manner, 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 costs.

It is acknowledged that orders proposed by way of joint submission should not be rejected by the Committee, unless to accept the proposed order would be contrary to the public interest or bring the administration of justice into disrepute. The proposed order in this case was found by the Committee to be appropriate and the joint submission was accepted by the Committee.

The proposed order provides a very restrictive schedule for Dr. Newell to continue practising. Patient encounters and patient charting are to be tightly supervised, and stiff and immediate consequences in the form of an indefinite suspension of Dr. Newell's certificate of registration will occur in the event of any breach of this order. The conditions for reinstatement in such case are specified in the order.

Orders of this Committee must serve to protect the public from harm as well as be punitive to the member and to serve as a deterrent to the membership at large. This carefully crafted order meets these requirements while permitting Dr. Newell to continue to practise medicine.

The Committee acknowledges the important service Dr. Newell provides to her patients. However, appropriate professional patient care includes complete and accurate patient charts and correspondence that are prepared in a timely fashion. The Committee was mindful of mitigating factors in favour of Dr. Newell, namely, her cooperation with the discipline process, the absence of patient complaints and the absence of any prior discipline record. However, the Committee also took into account the long history of Dr. Newell's inability to complete her charts and correspondence in a timely fashion. This order is an appropriate tool to ensure that Dr. Newell properly attend to the duties of a medical professional while allowing this physician to remain in practice and contribute to her patient community.

**ORDER**

Therefore, the Committee ordered and directed that:

1. The Registrar impose the following terms, conditions and limitations on Dr. Newell's certificate of registration:
  - (a) Dr. Newell shall practise only in accordance with a schedule approved by the College;
  - (b) Dr. Newell shall complete all reports by the end of seven days after seeing the patients in the case of OHIP reports and fourteen days after seeing the patients and receiving all relevant records for reports done as independent medical examinations;
  - (c) Dr. Newell shall only practise under the supervision of a practice monitor acceptable to the College who has signed an undertaking in the form attached to the Order as Appendix "A". The practice monitor shall review Dr. Newell's charts on a schedule approved by the College to monitor her completion of reports and will report to the College on a schedule to be approved by the College, and immediately should he/she find that Dr. Newell has failed to comply with any of the terms or conditions in this Order. All of the monitoring and reporting will be at Dr. Newell's expense;
  - (d) Should the College receive a report from Dr. Newell's practice monitor indicating that Dr. Newell is not in compliance with any of the conditions in this Order, the Registrar shall suspend her certificate of registration, such suspension to take effect seven days after Dr. Newell has been provided with notice of the intended suspension unless Dr. Newell has provided the College:

- i. compelling medical evidence to justify the failure to comply;
- ii. compelling personal circumstances to justify the failure to comply;
- or
- iii. evidence that she is in fact in compliance with this Order.

The suspension is to remain in effect until the practice monitor has reported to the College that, to his/her satisfaction, Dr. Newell has become current in her reports and is in compliance with this Order at which time the Registrar shall reinstate her certificate of registration.

- 2. Dr. Newell pay to the College costs in the amount of \$3,650.00, within 30 days of the date of this Order.
- 3. The results of this proceeding to be included in the register.

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.