

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Timothy Gordon Remillard, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of the witnesses or any information that could disclose the identity of the witnesses 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. Remillard, 2017
ONCPSD 10**

**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. TIMOTHY GORDON REMILLARD

PANEL MEMBERS:

**DR. ERIC STANTON
MS D. GIAMPIETRI
DR. MARC GABEL
MR. SUDERSHEN BERI
DR. SHEILA-MAE YOUNG**

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS SAYRAN SULEVANI

COUNSEL FOR DR. REMILLARD:

**MS KARA SMITH
MS CHRISTINE LONSDALE**

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. BERKLEY SELLS

Hearing Date:	February 27, 2017
Decision Date:	February 27, 2017
Release of Reasons Date:	March 13, 2017

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 February 27, 2017. At the conclusion of the hearing, the Committee released a written order stating its finding that Dr. Remillard committed an act of professional misconduct and setting out its penalty and costs order with written reasons to follow.

THE ALLEGATION

The Notice of Hearing alleged that Dr. Timothy Gordon Remillard 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 he has engaged in conduct or an act or acts 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. Remillard entered a plea of no contest to the allegation in the Notice of Hearing.

THE FACTS

The following facts were set out in a Statement of Uncontested Facts on Liability which was filed as an exhibit and presented to the Committee:

Background

1. Dr. Remillard is a 52 year old physician, practicing medicine in Thornbury, Ontario, who received his initial certificate of registration authorizing independent practice in Ontario in 1991. He became a member of the College of Family Physicians of Canada in 1992.

2. At all material times, Dr. Remillard practiced family medicine in a family health group (the “Group”) in a clinic in Thornbury, Ontario. The Group was composed of a number of physicians, including Dr. Remillard and Dr. X.
3. The Group shared an electronic medical records system (“EMR”). The medical records of all patients of the Group were maintained in the EMR.
4. In the period preceding the events at issue in this hearing, the relationship between Dr. Remillard and Dr. X had become acrimonious, with each physician accusing the other of various types of misbehaviour.

DISGRACEFUL, DISHONOURABLE OR UNPROFESSIONAL CONDUCT

5. In the context of the deteriorating relationship between the two physicians, Dr. Remillard engaged in the following acts in 2014:
 - In transferring patient charts from the Group EMR to Dr. X, for patients who were orphaned or had been patients of Dr. Remillard or other physicians in the Group, but were now patients of Dr. X, Dr. Remillard deleted his entries from the patients’ electronic charts, including family histories, diagnoses, diagnostic results, letters, forms and documents. For example:
 - Patient 1: Dr. Remillard removed, among other things, the patient’s personal/social history, and deleted diagnoses of ventral hernia, prostate hypertrophy, hypertension and hypercholesterolemia;
 - Patient 2: Dr. Remillard deleted, among other things, encounter notes, and removed a family history of Alzheimer’s disease, aneurysms, heart attacks and Waldenstrom disease;
 - Patient 3: Dr. Remillard removed, among other things, the patient’s medical history with respect to cataract extraction and colonoscopy, family history of asthma and cancer, and diagnoses of hypercholesterolemia and hypertension;

- Patient 4: Dr. Remillard deleted, among other things, the patient's medical diagnoses of prostate hypertrophy, allergies, borderline diabetes and SOAP notes, and removed the patient's family history of diabetes and prostate cancer, a colonoscopy procedure, and a tonsillectomy;
 - Patient 5: Dr. Remillard deleted, among other things, this patient's personal/social history, diagnoses of COPD-Chronic Bronchitis, and personal history of nicotine dependence, alcohol dependence, Crohn's disease and polyosteoarthritis;
 - Patient 6: Dr. Remillard deleted, among other things, this patient's diagnoses of psoriasis and hypertension, personal history of nicotine addiction, removed the patient's family history of colon cancer, stroke, and heart attack, and removed the patient's medical history of tonsillectomy and colonoscopy.
6. The record deletion was not in accordance with proper document retention practices and policies.

PART II - PLEA OF NO CONTEST

7. Dr. Remillard does not contest the facts specified above and he does not contest that, based on these facts, he engaged in professional misconduct, in that:
- a. He engaged in an act or omission relevant to the practise of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, under paragraph 1(1)33 of O. Reg. 856/93, made under the *Medicine Act, 1991* ("O/Reg. 856/93")

FINDING

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

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.

The Committee accepted as correct all of the facts set out in the Statement of Uncontested Facts on Liability. Having regard to these facts, the Committee found that he committed an act of professional misconduct in that he has engaged in conduct or an act or acts relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

UNCONTESTED FACTS ON PENALTY

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

1. After the deletions were discovered and brought to his attention, Dr. Remillard indicates that he restored the information to the EMR that he had previously deleted.

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 Committee considered the principles related to determining an appropriate penalty and found that the proposed penalty properly addressed them. These include protection of the public, specific and general deterrence, expressing the Committee's abhorrence of Dr. Remillard's behavior, upholding the honour of the profession, and where possible, the rehabilitation of the member.

The Committee is well aware of the principals in accepting a joint submission, and the high bar for rejection of a joint proposal. We are in agreement with the proposed joint penalty.

Medical records are an essential part of care of patients. The contents are of importance in the provision of care. Knowledge of past medical history and diagnosis is essential in proper care, especially when multiple physicians will be seeing patients. The advent of electronic medical records (EMRs) made sharing of a patient's record easier, and was meant to be a positive advance in patient care. Patient information was always meant to be private and to be used solely for the benefit of the patient and the health system. As part of the trust between physicians and patients, patients and the public expect EMRs to be private and truly recount the story of the patient. Removal of essential parts of the record, and altering the record, is an invasion of that privacy and can be highly detrimental to trust and to care.

Protection of the public is of paramount concern. The Committee expresses its denunciation of Dr. Remillard's behavior through the three month suspension and the reprimand. The suspension should bring home to Dr. Remillard the seriousness of his transgressions in altering patient charts. The requirement that Dr. Remillard participate and satisfactorily complete at his own expense an individualized instruction in medical ethics, will hopefully serve to influence Dr. Remillard's future behavior and buttress his understanding of his responsibilities to his patients, colleagues and the public.

The Committee agreed with the proposed cost order and that it was appropriate in this case.

The behavior of Dr. Remillard was shocking to the Committee. In his conflictual relationship with a colleague in his medical group, he used the personal medical records of patients as a weapon. Records that were to be transferred to the other physician were altered by removing essential diagnostic information from the EMR before transferring to the other physician. Aside from the purile nature of this action, the risk that he brought to the health of patients was high, and the consequences to patients caught in this crossfire could have been serious and highly significant. Utilizing the EMR for this purpose was disgraceful, dishonourable and unprofessional.

Dr. Remillard should have known full well that these actions were wrong. We were presented with previous decisions of the Inquiries, Complaints and Reports Committee (ICRC) in which multiple previous complaints related to medical records were dealt with by cautions and by Dr. Remillard being required to take and complete a course in Medical Record keeping. He

successfully completed this prior to the incidents being dealt with in this hearing. There is no excuse of ignorance regarding the proper use of medical records or that they can be altered in the way he did.

The only mitigating factor is that when these deletions were discovered, Dr. Remillard indicated that he restored the deleted information to the EMR. We acknowledge this, while noting the removal and the storing of the deleted information illustrates that Dr. Remillard knew full well how to utilize the mechanics of EMRs and used that knowledge in an unprofessional fashion.

Counsel for the College provided the Committee with two earlier cases, *CPSO vs. Dr. Ira Michael Price* (2016) and *CPSO vs. Dr. Mark Lee Miller* (2002). Both cases involved deliberate chart alterations and resulted in reprimands, ethics and/or medical records courses, costs and suspension of three months in Dr. Price's case, and six months in Dr. Miller's, with suspension of the suspension if the prescribed courses were completed. It is noted that while suspension of a suspension on terms occurred in the past, that is not the current practice in the penalty dispositions of the Discipline Committee. While the Committee is aware that each case rests on its own facts and no two cases are alike, the penalty ordered in this case is in line with previous cases of the same general nature.

ORDER

The Committee stated its finding in paragraph 1 of its written order of February 27, 2017. In that order, the Committee ordered and directed on the matter of penalty and costs that:

2. The Registrar suspend Dr. Remillard's Certificate of Registration for a three (3) month period, effective immediately.
3. The Registrar impose the following term, condition and limitation on Dr. Remillard's certificate of registration:
 - (a) At his own expense, Dr. Remillard shall participate in and successfully complete, within six (6) months of the date of this Order, individualized instruction in medical ethics satisfactory to the College, with an instructor selected by the

College. The instructor shall provide a summative report to the College including his or her conclusion about whether the instruction was completed successfully by Dr. Remillard.

4. Dr. Remillard appear before the panel to be reprimanded.
5. Dr. Remillard pay costs to the College for a one day hearing in the amount of \$5,000.00 within 30 days of the date of this Order.

At the conclusion of the hearing, Dr. Remillard 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 February 27, 2017
in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
and
Dr. Timothy Gordon Remillard

It is always unfortunate when a member of our profession appears before this Committee.

You intentionally altered medical records. Patients have a right to expect integrity and accuracy of their medical records. Your colleagues similarly expect to be able to rely on the medical record to provide appropriate medical care. By altering the records you put patients at risk of harm. Putting patients at risk of harm as a result of the deteriorating relationship between two physicians is not only immature behaviour but also unprofessional, disgraceful and dishonourable. Your actions have not only brought dishonour to yourself but the profession as a whole.

The Committee is dismayed that despite having taken a medical record keeping course and having been cautioned about your medical records in the past you intentionally altered medical records.

It is hoped that you will reflect on your misconduct and by taking the individualized instruction in medical ethics that you will not engage in such behaviour in the future and in addition that you will never appear before this Committee again.