

Indexed as: **Ontario (College of Physicians and Surgeons of Ontario) v. Wojcicka,**
2016 ONCPSD 13

**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. ANNA MARIA WOJCICKA

PANEL MEMBERS:

**DR. W. KING (CHAIR)
DR. T. MORIARITY
DR. J. RAPIN
MS. D. GIAMPETRI
MAJOR A. KHALIFA**

**COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF
ONTARIO:**

MS. L. CADER

COUNSEL FOR DR. WOJCICKA:

**MR. J. FREEDLANDER
MR. A. MATHESON**

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. R. COSMAN

Hearing Date: **February 17, 2016**
Decision Date: **February 17, 2016**
Release of Written Reasons: **June 9, 2016**

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 17, 2016. 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. Wojcicka committed an act of professional misconduct:

1. in that she has failed to maintain the standard of practice of the profession; under paragraph 1(1)2 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”).

The Notice of Hearing also alleged that Dr. Wojcicka is incompetent as defined by subsection 52(1) of the Health Professions Procedural Code (the “Code”), which is Schedule 2 to the Regulated Health Professions Act, 1991.

RESPONSE TO THE ALLEGATIONS

Dr. Wojcicka admitted the first allegation in the Notice of Hearing, that she failed to maintain the standard of practice of the profession. Counsel for the College withdrew the second allegation in the Notice of Hearing.

THE FACTS

The following Agreed Statement of Facts and Admission was filed as an exhibit and presented to the Committee:

1. Dr. Anna Maria Wojcicka (Dr. Wojcicka) is a radiation oncology and internal medicine specialist who received her medical degree from Bialystok University in Poland in 1977. She obtained her certificate of registration authorizing independent practice from the College of Physicians and Surgeons of Ontario in 1998.
2. Currently, Dr. Wojcicka provides radiation oncology consultation services and practices general medicine in an office located at 6165 Vivian Road, Mount Albert, Ontario. She also provides complex medical rehabilitation care at Southlake Regional Health Centre (SRHC) in Newmarket, Ontario.

Investigation into Dr. Wojcicka's Practice of Bioidentical Hormone Replacement Therapy under Section 75(1)(a) of the Health Professions Procedural Code

3. An investigation into Dr. Wojcicka's Bioidentical Hormone Replacement Therapy (BHRT) practice was initiated by the College in June 2012 after it received information about membership fees and services relating to the Vivian Medical Spa, also located at 6165 Vivian Road, Mount Albert, Ontario (6165 Vivian Road).
4. The College retained Dr. Erin Lovett to provide an opinion on the care of 22 patients who were receiving BHRT from Dr. Wojcicka at 6165 Vivian Road. On the basis of her chart reviews and an interview, Dr. Lovett concluded that Dr. Wojcicka's care did not meet the standard of practice of the profession in all 22 cases in that she failed to meet some component of the College's Policy on Complementary and Alternative Medicine for each patient. In 14 of the 22 cases, Dr. Lovett also found that Dr. Wojcicka's care demonstrated a lack of knowledge, skill and judgement and that her practice posed a risk of harm to patients. Her concerns with respect to Dr. Wojcicka's BHRT practice include:

- a) 17 cases of prescription BHRT administered without performing a pelvic exam;
- b) 3 cases where BHRT was prescribed and no physical exam was documented in the chart;
- c) 4 cases of pelvic ultrasound being performed without reasonable cause;
- d) 15 charts where a conventional diagnosis is not listed;
- e) 17 charts where salivary or blood hormone levels are used to guide treatment;
- f) 1 chart in which there is no documented discussion or consent surrounding administration of BHRT;
- g) 1 chart in which a woman who has had a total hysterectomy receives a Pap test;
- h) 3 charts in which BHRT is prescribed to a smoker over 40; 1 in a patient with history of migraine; 1 with undiagnosed vaginal bleeding;
- i) 1 chart in which a patient's method of contraception is discontinued without proper counselling; and
- j) 1 chart in which a patient's diastolic blood pressure is read as over 100 and they are not directed to urgent care.

A copy of Dr. Lovett's report, received on May 22, 2014, as well as a copy of the addendum to her report, received on November 4, 2014 are attached at Tab 1 to the Agreed Statement of Facts.

5. In response to Dr. Lovett's report, Dr. Wojcicka provided her own rebuttal defending her care of the patients reviewed. Dr. Wojcicka also retained Dr. Lawrence Komer to provide an opinion with respect to her BHRT practice. Dr. Komer reviewed the same 22 patient charts that were reviewed by Dr. Lovett and provided a report, dated July 8, 2015. The concerns noted in his report include:

- a) There seems, in some cases, to be a reluctance [by Dr. Wojcicka] to do pelvic examinations and PAP smears. She also does not undertake endometrial biopsies and so this would necessitate referring to a Gynaecologist.
- b) She relies heavily on saliva levels ... it is not generally agreed that this is accurate testing and I have concerns in this regard, particularly looking at progesterone levels in saliva when they do not appear to be the same in blood or tissue levels.
- c) The literature suggesting that compounded therapy using such things as BiEst and progesterone cream is not strong. There is great literature from Europe ... showing that transdermal estrogen such as Estrogel and oral progesterone such as Prometrium do have many of the benefits that she is attributing to the compounded medications and I do not think that is true.
- d) Dr. Wojcicka does not appear to be letting patients know that so-called [BHRT] is available in the form of Estrogel and Prometrium. These are often covered by Drug Plans, whereas compounded therapy often is not and in addition, there are traditional physicians who do offer this type of [BHRT].
- e) There is a lot of redundant testing done in her practice. She does salivary levels which cost the patient money and then she does blood levels. I am not sure if she is doing salivary levels, why she is doing blood levels. In addition, there is often an abdominal ultrasound as well as a pelvic ultrasound and in many cases, this is not necessary.
- f) I see no clear delineation of who is responsible for various conditions in patients. Dr. Wojcicka says that she is doing [BHRT], but then she is looking into other things that Family Doctors would look at such as liver problems ... cholesterol testing and a lot of other blood work that she is doing, I feel should be left to the Family Doctor who is doing this anyway. It seems that there is a real potential here for double doctoring on some conditions.
- g) ...physical examination in women, particularly pelvic examination ... is a staple in looking after women with vaginal symptoms and in menopause and so, I do not

think this should be avoided by Dr. Wojcicka. I also agree with [Dr. Lovett's statement] that the first thing to be done is not an ultrasound, but physical examination. I also agree with [her] statement that there are good clinical trials showing the use of BiEst and TriEst for hormone replacement therapy. Studies using Estrogel and oral progesterone are readily available. Studies using transdermal progesterone are few and far between and this is not equivalent to choosing oral progesterone.

6. Despite his concerns, Dr. Komer concluded that at the present time he did not see that Dr. Wojcicka's patients had undergone any harm.

7. Dr. Lovett reviewed Dr. Komer's report and indicated that she agreed with many of the issues raised by Dr. Komer and that her opinion, as contained in her report and addendum, did not change.

Section 37 Interim Order by the College

8. On February 2, 2015, after referring allegations of professional misconduct to the Discipline Committee, the Inquiries Complaints and Reports Committee directed the Registrar to impose terms, conditions and limitations on Dr. Wojcicka's certificate of registration pursuant to s. 37 of the Health Professions Procedural Code. The Order required that Dr. Wojcicka cease to provide care with regards to BHRT to patients.

PART II - ADMISSION

9. Dr. Wojcicka admits the facts specified in paragraphs 1 to 8.

10. Dr. Wojcicka admits that the conduct described above constitutes professional misconduct under paragraph 1(1)2 of Ontario Regulation 856/93 made under the Medicine Act, 1991, and that she has failed to maintain the standard of practice of the profession.

FINDING

The Committee accepted all of the facts set out in the Agreed Statement of Facts as true. Having regard to these facts, the Committee accepted Dr. Wojcicka's admission and found that she committed an act of professional misconduct in that she failed to maintain the standard of practice of the profession.

The College's expert, Dr. Erin Lovett, and Dr. Wojcicka's expert, Dr. Lawrence Komer, reviewed the same 22 charts of patients who received care by Dr. Wojcicka in her BHRT practice. Both experts provided opinions on Dr. Wojcicka's care.

Both experts raised a number of significant concerns regarding Dr. Wojcicka's BHRT practice. These are outlined above in the Agreed Statement of Facts. Dr. Lovett opined that Dr. Wojcicka's practice posed a risk of harm to the patients she reviewed. Dr. Komer concluded that Dr. Wojcicka's patients had not undergone any harm. The Committee is aware that the issue is whether the practice posed a risk of harm as opposed to whether any actual harm to patients was caused.

Dr. Lovett and Dr. Komer agreed on the following:

1. Dr. Wojcicka failed to do pelvic and physical examinations;
2. Dr. Wojcicka relied on hormone levels in saliva, a form of testing not generally considered accurate and;
3. Dr. Wojcicka engaged in redundant testing by doing both pelvic and abdominal ultrasounds when this was not necessary, as well as both salivary and blood hormone level testing when it was not necessary.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for the member made a joint submission on penalty and costs. The terms of the proposed penalty and costs are:

1. That Dr. Wojcicka receive a reprimand;
2. That her certificate of registration be suspended for one month;
3. That terms, conditions and limitations be placed on Dr. Wojcicka's certificate of registration including that Dr. Wojcicka:
 - a. Is prohibited from practising Complementary or Alternative medicine;
 - b. Is prohibited from consulting or treating patients with respect to Bioidentical Hormone Replacement Therapy (BHRT);
 - c. Shall refer any female patient requesting or requiring hormonal or menopausal care or treatment to a gynecologist;
 - d. Shall post a sign in the waiting room and each examination room in any location she provides primary care to patients outlining these terms, limitations and conditions;
 - e. Shall submit to an assessment of her office practice by an assessor or assessors selected by the College within 3 to 6 months of the Order; and
4. Pay the College costs in the amount of \$5000.

The Committee recognized that a jointly-submitted penalty should be accepted unless it would be contrary to the public interest and bring the administration of justice into disrepute. However, it remains the Committee's obligation in each case to consider the components of a proposed penalty order and ensure it is appropriate.

In considering a proposed penalty, the Committee must consider the specific facts supporting the finding, any aggravating or mitigating factors, and the principles that underlie a suitable penalty. Penalty principles include: protection of the public from the member who committed the misconduct; specific and general deterrence; the maintenance of the public's confidence in the medical profession and its ability to self-regulate in the public interest; and the extent to which rehabilitation of the member is possible.

Aggravating factors

Dr. Wojcicka committed an act of professional misconduct by failing to maintain the standard of practice of the profession. The misconduct included, but was not limited to:

1. Failing to do physical examinations;
2. Failing to document diagnoses;
3. Ordering tests without reasonable cause;
4. Ordering redundant testing;
5. Using forms of testing generally considered to be inaccurate;
6. Failing to document discussion of consent or actual consent;
7. Failing to offer alternative forms of treatment covered by drug plans;
8. Prescribing BHRT to patients with contraindications such as smoking and vaginal bleeding not yet diagnosed; and
9. Failing to follow the College's policy on Complementary and Alternative Medicine.

Mitigating factors

1. Dr. Wojcicka acknowledged the concerns expressed by the College and her own expert;
2. Dr. Wojcicka admitted to failing to maintain the standard of her practice in her BHRT and accepted responsibility for her actions obviating the need for a lengthy and costly hearing with expert witnesses; and

3. The proposed penalty falls within the range of penalties in similar cases.

College counsel submitted four similar fact cases for the Committee to consider:

Armstrong (December 15, 2014), *Judah* (April 10, 2012), *Martin* (May 20, 2014) and *Syan* (April 14, 2015). Similar cases are instructive as a matter of fairness in ensuring that a proposed penalty is consistent with penalties imposed in similar circumstances. In reviewing these cases, the Committee determined that the penalty proposed in Dr. Wojcicka's case is proportionate to penalties imposed in previous similar decisions.

The Committee is satisfied that the proposed penalty satisfies the requisite penalty principles in the following manner:

Dr. Wojcicka's prohibition from practising Complementary and Alternative Medicine and from consulting and/or treating patients with respect to BHRT as well as the other terms, conditions and limitations on her certificate of registration all serve to protect the public and maintain the public's confidence in the profession and its ability to self-regulate in the public interest.

The Committee's reprimand of Dr. Wojcicka serves to denounce her conduct, and provides specific and general deterrence.

The Committee found that Dr. Wojcicka failed to maintain the standard of practice in the care of her BHRT patients. It is essential to the public interest that the College assure the public that its members practise in accordance with the standard of practice of the profession.

Dr. Wojcicka failed in her obligation in multiple respects. The Committee expressed its hope that the prospect of a forthcoming assessment of Dr. Wojcicka's medical practice will lead her to reflect upon whether other aspects of her care meet the expected standard.

Dr. Wojcicka's payment of costs compensates the College, at least in part, for the cost of her hearing.

The Committee accepted the jointly-submitted penalty and costs order as appropriate in the circumstances of this case.

ORDER ON PENALTY AND COSTS

Therefore, having stated the findings in paragraph 1 of its written order of February 17, 2016, on the matter of penalty and costs, the Committee ordered and directed that:

2. Dr. Wojcicka to appear before the panel to be reprimanded;
3. the Registrar suspend Dr. Wojcicka's certificate of registration for a period of one (1) month commencing on February 29, 2016 at 11:59 p.m.;
4. the Registrar to place the following terms, conditions and limitations, effective immediately, on Dr. Wojcicka's certificate of registration:
 - a. Dr. Wojcicka is prohibited from practicing any Complementary or Alternative medicine;
 - b. Dr. Wojcicka is prohibited from consulting and/or treating patients with respect to Bioidentical Hormone Replacement Therapy ("BHRT");
 - c. Dr. Wojcicka shall refer to a gynaecologist any female patient requesting or requiring hormonal or menopausal care or treatment;
 - d. Dr. Wojcicka shall post a sign in the waiting room and in each of the examination rooms at 6165 Vivian Road, and in any other location where she provides primary care to patients, in a clearly visible location. The form of the sign is attached hereto as Appendix "A"; and
 - e. Within three (3) to six (6) months of this Order, Dr. Wojcicka shall submit to an assessment of her office practice at 6165 Vivian Road by an assessor or assessors selected by the College (the "Assessment"). The Assessment may include chart reviews, direct observation of Dr. Wojcicka's care, interviews with colleagues and co-workers, feedback from patients and any other tools deemed necessary by the College. Dr. Wojcicka shall abide by all recommendations made by the assessor(s), and the results of the Assessment will be reported to the College and may form the basis of further action by the College; and
5. Dr. Wojcicka pay to the College costs in the amount of \$5,000.00, within 30 days of the date of the February 17, 2016 Order.

REPRIMAND: FEBRUARY 17, 2016

THE CHAIRPERSON: Dr. Wojcicka, it is essential to the public interest that the College is able to assure the public that its members practise in accordance with its guidelines and to the standard of the profession. You failed in this obligation in multiple respects, and that no patient came to harm, that may be more a factor of good fortune than good management.

The provisions of the Committee's Order will assure public protection, at least in this limited area of your practice. The prospect of a forthcoming assessment of your practice in general, should give you a good reason to consider whether the other aspects of your practice meet the expected standard.

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