

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Wycliffe Hobart Baird, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the name of Nurse A, or any information that could identify Nurse A 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.

This is also notice that the Discipline Committee ordered a ban on the publication of the name and any information that could disclose the identity of Patient A whose testimony is in relation to allegations of misconduct of a sexual nature involving Patient A, under subsection 47(1) 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 ... sections 45 and/or 47... 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. Baird,
2017 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. WYCLIFFE HOBART BAIRD

PANEL MEMBERS: **DR. P. TADROS (Chair)**
 MS G. SPARROW
 DR. A. TURNER
 MR. J. LANGS
 DR. P. CHART

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS A. CRANKER

COUNSEL FOR DR. BAIRD:

MS S. POWELL

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. B. SELLS

Hearing Date: October 16, 2017
Finding Decision Date: October 16, 2017
Penalty Decision Date: November 1, 2017
Release of Written Reasons: November 1, 2017

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 October 16, 2017. At the conclusion of the hearing, the Committee stated its finding that the member committed an act of professional misconduct as alleged in the Notice of Hearing and reserved its decision on the matter of penalty and costs.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Wycliffe Hobart Baird 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.O. 1991, c.18 (the “Code”) in that he engaged in sexual abuse of a patient; and
2. 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 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. Baird entered a plea of no contest to the allegations in the Notice of Hearing.

THE FACTS

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

PART I – FACTS

A. Background

1. Dr. Wycliffe Hobart Baird (“Dr. Baird”) is a 74 year-old general practitioner who received his certificate of registration authorizing independent practice from the College of Physicians and Surgeons of Ontario (“the College) on July 13, 1972. Dr. Baird obtained his medical degree from Dalhousie University Medical School in Halifax, Nova Scotia in 1972.
2. At the relevant time, Dr. Baird practised Emergency Medicine at Trillium Health Partners (“the Hospital”), in Mississauga, Ontario.

B. Patient A: Dr. Baird’s Comments of a Sexual Nature

3. In May 2011, in the early morning, Patient A attended the Hospital’s emergency department in respect of a knee injury, sustained after falling off of her motorcycle. Mr. X, who was with Patient A at the time of her injury, attended at the Hospital with Patient A.
4. Patient A was provided with a hospital gown and removed her pants so that her injury could be assessed by Dr. Baird.
5. Patient A asked Dr. Baird when she would be able to stand on the leg. He responded that she could stand on the leg at whatever point she was able to handle the pain.
6. Patient A then asked Dr. Baird when she would be able to ride her motorcycle. Dr. Baird responded by looking at Mr. X, and stating words to the effect of: “he looks like a motorcycle, you could ride him.”
7. Patient A was shocked and offended by this comment, which she perceived as sexual harassment. Patient A promptly complained to the Hospital.
8. When Dr. Baird was advised of the complaint he expressed regret for his actions and

remorse that the patient had been emotionally injured by the encounter. Dr. Baird agreed to write a letter of apology to the patient including an assurance to the patient that as a result of the impact of this interaction being brought forward, it would change his behaviour.

9. The letter of apology was not sent to Patient A. Rather, attempts were made by the Hospital to arrange a meeting between Patient A and Dr. Baird. Ultimately, Patient A chose not to follow through with the invitation to meet with Dr. Baird.

C. Nurse A: Dr. Baird's Inappropriate Comments

10. In April 2012, Dr. Baird was the attending Emergency Room doctor, Nurse A was standing at the nursing station together with her co-workers. Dr. Baird was speaking to a patient and providing indirect instructions to the nursing staff.
11. Once the patient had left, Dr. Baird asked the nursing staff whether the instructions were understood. Nurse A jokingly stated that she did not understand. Dr. Baird turned around in his chair to face Nurse A, patted his knees and said: "Nurse A come and sit on my lap so that I can spank you." This comment was made in front of the nursing staff and two patients.
12. Nurse A and her nursing colleagues then left the area. Nurse A was upset and offended as a result of Dr. Baird's comments.
13. At the end of the shift Nurse A requested to speak to Dr. Baird. She informed him that she felt uncomfortable, embarrassed and insulted by his comments. Dr. Baird apologized and stated that it should be taken as a joke.
14. Nurse A filed a formal complaint against Dr. Baird.
15. As a result of the complaint, Dr. Baird agreed to provide a formal letter of apology and to seek professional coaching with respect to eliminating inappropriate comments in the workplace, demonstrating professional conduct and developing a sense of empathy in order

to understand how his comments can impact others.

16. Dr. Baird successfully completed the professional coaching.

PART II – NO CONTEST

17. Dr. Baird does not contest the facts in paragraphs 1 to 16 above, nor that these facts constitute professional misconduct in that he has engaged in the sexual abuse of Patient A and with respect to Patient A and Nurse A, 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.

Rule 3.02 of the Discipline Committee 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 correct all of the facts set out in the Statement of Uncontested Facts. Having regard to these facts, the Committee accepted Dr. Baird's plea and found that he committed an act of professional misconduct, in that he has engaged in the sexual abuse of Patient A; and in 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 with respect to Patient A and Nurse A.

SUBMISSIONS ON PENALTY

The parties have agreed that the penalty order should include the following:

- Dr. Baird appear before the panel to be reprimanded; and
- Dr. Baird pay costs to the College of \$5,500.00 within thirty days of the date of this Order.

The parties dispute the following:

i) The length of suspension

The College submits that a three-month suspension of Dr. Baird's certificate of registration, to commence fourteen days from the date of the order is appropriate in the circumstances of this case.

Dr. Baird submits that a four-week suspension of his certificate of registration is fair. Dr. Baird proposes that his certificate of registration be suspended for a two-week period from December 18 to December 31, 2017, and a two-week period from January 15 to January 28, 2018.

ii) *The remedial term, condition and limitation on the certificate of registration*

The College submits that Dr. Baird should be ordered to successfully complete a one-on-one course in medical ethics with an instructor approved by the College, at his own expense, and provide proof of completion to the College prior to his resumption of practice.

Dr. Baird submits that within six months, he should complete the course Understanding Boundaries and Managing Risks Inherent in Doctor-Patient Relationships at Western University.

iii) *Reimbursement of the College fund for therapy provided to Patient A*

The College submits that Dr. Baird should be ordered to reimburse the College fund for therapy provided to Patient A, under the program required under section 85.7 of the Code, by posting an irrevocable letter of credit or other security acceptable to the College, within thirty days of the date of the order, in the amount of \$16, 060.00.

Dr. Baird submits that the letter of credit is unnecessary.

EVIDENCE ON PENALTY

The Committee received a brief of documents on consent of the parties which included: a variety of reference letters in support of Dr. Baird; apology letters written by Dr. Baird; a Certificate of Attendance for the Understanding Boundaries course; and a post workshop appraisal.

PENALTY AND REASONS FOR PENALTY

Subsection 1(3) of the Code defines sexual abuse of a patient as follows:

1(3) “sexual abuse” of a patient by a member means,

- (a) sexual intercourse or other forms of physical sexual relations between the member and patient,
- (b) touching of a sexual nature of the patient by the member, or

(c) behaviour or remarks of a sexual nature by the member towards the patient.

1(4) For the purposes of subsection (3), “sexual nature” does not include touching, behaviour or remarks of a clinical nature appropriate to the service provided.

The Committee found that Dr. Baird committed an act of professional misconduct in that he engaged in the sexual abuse of Patient A. The sexual abuse found in this case fell within section 1(3)(c) of the Code in that it was “behaviour or remarks of a sexual nature” by Dr. Baird towards Patient A.

The Committee also found that Dr. Baird committed an act of professional misconduct in that he engaged in disgraceful, dishonourable or unprofessional conduct, in relation to his conduct towards Patient A and in making sexualized remarks to Nurse A.

Subsection 51(2) of the Code sets out the powers of the Discipline Committee following a finding of professional misconduct. It states:

51(2) If a panel finds a member has committed an act of professional misconduct, it may make an order doing any one or more of the following:

1. Directing the Registrar to revoke the member’s certificate of registration.
2. Directing the Registrar to suspend the member’s certificate of registration for a specified period of time.
3. Directing the Registrar to impose specified terms, conditions and limitations on the member’s certificate of registration for a specified or indefinite period of time.
4. Requiring the member to appear before the panel to be reprimanded.
5. Requiring the member to pay a fine of not more than \$35,000 to the Minister of Finance.
- 5.1 If the act of professional misconduct was the sexual abuse of a patient, requiring the member to reimburse the College for funding provided for that patient under the program required under section 85.7.

- 5.2 If the panel makes an order under paragraph 5.1, requiring the member to post security acceptable to the College to guarantee the payment of any amounts the member may be required to reimburse under the order under paragraph 5.1.

Subparagraphs 51(2)5.1 and 5.2 are specific to findings of sexual abuse.

Mandatory orders for findings of sexual abuse

Subsection 51(5) of the Code sets out mandatory penalties for findings of sexual abuse. It states:

51(5) If a panel finds a member has committed an act of professional misconduct by sexually abusing a patient, the panel shall do the following in addition to anything else the panel may do under subsection (2):

1. Reprimand the member.
2. Revoke the member's certificate of registration if the sexual abuse consisted of, or included, any of the following:
 - i. sexual intercourse.
 - ii. genital to genital, genital to anal, oral to genital, or oral to anal contact.
 - iii. masturbation of the member by, or in the presence of, the patient.
 - iv. masturbation of the patient by the member.
 - v. encouragement of the patient by the member to masturbate in the presence of the member.
 - vi. Touching of a sexual nature of the patient's genitals, anus, breasts or buttocks.
 - vii. Other conduct of a sexual nature prescribed in regulations made pursuant to clause 43 (1) (u) of the *Regulated Health Professions Act, 1991*.

Recent amendments to the *RHPA* expand the range of sexual acts that are subject to mandatory revocation. The sexual abuse found in this matter – remarks of a sexual nature made by Dr. Baird to Patient A – requires a reprimand, but does not require mandatory revocation. The appropriateness of the penalty of suspension of Dr. Baird's certificate of registration in the

circumstances of this case is not at issue; rather, the length of the suspension and other aspects of the order are in dispute.

General Penalty Principles

The Committee considered a number of factors in determining the appropriate penalty. Fairness and justice require that the penalty must be commensurate with the professional misconduct. The Committee, therefore, looked to the nature and circumstances of the professional misconduct as set out in the Statement of Uncontested Facts. The Committee also had regard for the impact of the misconduct on Patient A and Nurse A and on the reputation of the profession.

In addition, the Committee recognizes the well-established principles that a penalty for professional misconduct must reflect. The paramount consideration in assessing penalty is protection of the public. Other considerations include maintenance of the public confidence in the integrity of the profession and in College's ability to govern the profession in the public interest, specific and general deterrence, and the potential for rehabilitation of the member where appropriate.

DECISION

Length of Suspension

The Committee orders a two-month suspension of Dr. Baird's certificate of registration, to commence thirty days from the date of this Order.

The finding of sexual abuse relates to comments made by Dr. Baird during an emergency room visit to a vulnerable patient (Patient A) who had sustained a knee injury from falling off a motorcycle. She had removed her pants and was provided a hospital gown. She was inquiring about when she could stand on the injured leg. When she asked about when she could again ride her motorcycle, Dr. Baird responded with a flippant remark with obvious sexual overtones. This shocked and offended the patient. Such behaviour diminishes Dr. Baird personally and reflects

poorly on the profession. This kind of language cannot be dismissed as a joke or as merely emergency room banter. It is highly inappropriate and deserving of significant sanction.

Within a year of the incident with Patient A, and again in the emergency room, Dr. Baird made comments to Nurse A which were of a highly inappropriate nature. This is particularly disturbing as the comments were made in front of nursing staff and patients. This behaviour resulted in Nurse A being upset and offended. The effect of a failure of a physician to properly and respectfully communicate with staff is detrimental to patient care and can erode confidence in caregivers. It is Dr. Baird's responsibility to ensure that his communication with both patients and staff is at all times professional and appropriate.

In the view of the Committee, Dr. Baird's conduct is reprehensible and deserving of suspension of his certificate of registration for a period of two months.

The Committee does not accept Dr. Baird's submission that a four-week suspension, served incrementally in December and January, is sufficient. While this may suit Dr. Baird and minimize the inconvenience to his patients, the Committee is of the view that the sexual nature and repetition of the offensive conduct requires a longer suspension.

The College requested a three-month suspension, given the need for confidence in the profession and the College's commitment to treat sexual abuse by physicians very seriously. The College submitted that a three-month suspension will send a clear message to the profession that such behaviour will not be tolerated and will serve to protect the reputation of the profession.

The Committee finds, in the circumstances of this case, that a two-month suspension will achieve these objectives.

The Committee considered as a mitigating factor that Dr. Baird in pleading no contest to the allegations has saved the witnesses the inconvenience and stress of having to testify at a public hearing. Further, Dr. Baird made efforts to apologize and undertook to complete the Understanding Boundaries course prior to this hearing.

A number of letters of support were acknowledged by the Committee. However, it was unclear whether the authors of the letters of support were aware of Dr. Baird's professional misconduct. While the letters of support indicate that Dr. Baird is well thought of by some, the Committee gives little weight to these letters in determining the appropriate penalty.

The Committee considered as a factor that Dr. Baird has a prior finding before the Discipline Committee. In May 1990, the Discipline Committee found Dr. Baird had committed professional misconduct, in that: he charged a fee that was excessive in relation to the services performed; he failed to provide within a reasonable time and without cause a report or certificate requested by a patient or his authorized agent in respect of an examination or treatment performed by him; and he engaged in disgraceful, dishonourable or unprofessional conduct. At that time, the Committee ordered a three-month suspension. The Committee reviewed this decision and finds that this previous professional misconduct is not at all similar to the matter before the Committee. Therefore, the Committee gave little weight to Dr. Baird's previous finding in determining the appropriate penalty in this case.

The Committee reviewed the case law put before it by the parties. The Committee notes that in a number of these cases, the extent and nature of the professional misconduct at issue - inappropriate comments and behaviour including touching of a sexual nature - was more egregious than the misconduct of Dr. Baird. While Dr. Baird's misconduct constitutes sexual abuse, it did not include any touching of a sexual nature.

In *CPSO v. McInnis*, 2011 ONCPSD 11, "serious and repetitive boundary violations", including both comments and also inappropriate hugging of female patients, resulted in a three-month suspension of Dr. McInnis' certificate of registration.

In *CPSO v. Mohammad*, 2013 ONCPSD 23, a finding of sexual abuse was made and the professional misconduct involved both comments and hugging and kissing a female patient. A two-month suspension of Dr. Mohammad's certificate of registration was ordered.

In *CPSO v. Krishnalingam*, 2005 ONCPSD 25, the professional misconduct included both comments and inappropriate hugging of female patients, and resulted in a two-month suspension of Dr. Krishnalingam's certificate of registration.

Following consideration of the above, the submissions of counsel, the aggravating and mitigating factors and the case law as referenced by the parties, the Committee determined that a two-month suspension of Dr. Baird's certificate of registration is appropriate in the circumstances of this case. The penalty of a two-month suspension reflects the seriousness of the misconduct and should serve as both a specific deterrent to Dr. Baird and a general deterrent to the profession, demonstrating to the members of the profession and to the public that such behaviour will not be tolerated. The Committee views a two-month suspension as fair and just in the circumstances.

The Committee also orders that the suspension commence thirty days after the date of its Order. The Committee is cognizant that many of Dr. Baird's patients have chronic and complex medical problems which require ongoing care. The thirty-day period is intended to enable Dr. Baird to arrange for care of his patients.

Term, Condition and Limitation on Certificate of Registration

The College submits that Dr. Baird be required to successfully complete one-on-one instruction in medical ethics with an instructor approved by the College, at his own expense, and provide proof of completion to the College prior to his resumption of practice.

Dr. Baird submits that within six months, he will complete the course in Understanding Boundaries and Managing Risks Inherent in Doctor-Patient Relationships at Western University.

The Committee is of the opinion that it is critically important for Dr. Baird to have a full understanding of his professional responsibility. Dr. Baird has expressed regret and apologized; however, the Committee notes that he also needs to gain insight and understanding of the impact of his behaviour. The medical profession expects that its members behave appropriately and professionally, including using respectful language in the clinical setting. One-on-one instruction

in medical ethics will ensure that Dr. Baird is aware of the expectation of the profession and the public, including patients.

The Committee acknowledges that Dr. Baird voluntarily completed the Understanding Boundaries course earlier this June. Nonetheless this action was taken after four years had passed from the time of the incidents and his course assessment indicates that Dr. Baird has room to improve.

The Committee also notes that in 2012, Dr. Baird attended professional coaching with Dr. Manohar, a psychiatrist, for a period of time. However, based on Dr. Manohar's letter of January 12, 2013, the degree of Dr. Baird's exploration of professional responsibility and specific comments regarding insight gained are lacking. This offered little reassurance to the Committee.

In the Committee's view, Dr. Baird stands to benefit from the ethics instruction proposed by the College. This rehabilitative measure is included in the Committee's Order.

Posting of a Letter of Credit

The College submits that Dr. Baird reimburse the College for funding provided to Patient A under the program required under section 85.7 of the Code, by posting an irrevocable letter of credit or other security acceptable to the College, within thirty days of the date of this Order, in the amount of \$16,060.00.

Dr. Baird submits that this measure is unnecessary on the basis that: (a) Patient A has apparently not made an application for funding; and (b) given the time which has elapsed, and the nature of the sexual abuse, it is unlikely that Patient A will require therapy.

The Committee notes that the legislation is designed to ensure that patients who are victims of sexual abuse have access to appropriate counseling therapy. Even though it may be unlikely in the current circumstances that Patient A will avail herself of such therapy, she may do so.

The question before the Committee is not whether it is likely that Patient A will seek therapy, but rather in the event that Patient A does seek assistance under section 85.7 of the Code, who should pay for it?

In the Committee's view, given the circumstances of this matter, the member who perpetrated the sexual abuse properly bears the responsibility for reimbursement of the costs which directly relate to his actions.

ORDER

Therefore, the Committee orders and directs that:

1. The Registrar suspend Dr. Baird's certificate of registration for a period of two months, to commence thirty (30) days from the date of this Order.
2. The Registrar impose the following term, condition and limitation on Dr. Baird's certificate of registration:
 - a) Dr. Baird successfully complete individualized (one-on-one) instruction in medical ethics, with an instructor approved by the College, at his own expense and provide proof of completion to the College prior to his resumption of practice.
3. Dr. Baird reimburse the College for funding provided to Patient A under the program required under section 85.7 of the Code, by posting an irrevocable letter of credit or other security acceptable to the College, within thirty days of the date of this Order, in the amount of \$16,060.00.
4. Dr. Baird appear before the panel to be reprimanded within sixty (60) days of this Order.
5. Dr. Baird pay costs to the College in the amount of \$5,500.00 within thirty (30) days of this Order.