

## NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. James Edward Roland McInnis, 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 whose names are disclosed in the Agreed Statement of Facts 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.

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,

(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:   McInnis, J.E.R. (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. JAMES EDWARD ROLAND MCINNIS**

**PANEL MEMBERS:**

**DR. M. DAVIE (CHAIR)  
G. DEVLIN  
DR. R. MACKENZIE  
DR. M. GABEL**

<b>Hearing Date:</b>	<b>February 23, 2011</b>
<b>Decision Date:</b>	<b>February 23, 2011</b>
<b>Release of Written Reasons:</b>	<b>March 23, 2011</b>

**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 February 23, 2011. 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. James Edward Roland McInnis committed an act of professional misconduct:

1. under paragraph 1(1)34 of O. Reg. 856/93, in that he has engaged in conduct unbecoming a physician;
2. under paragraph 1(1)33 of 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;
3. under clause 51(1)(b.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 in that he engaged in the sexual abuse of a patient; and
4. under clause 51(1)(a) of the Code, in that he has been found guilty of an offence that is relevant to his suitability to practise.

### **RESPONSE TO THE ALLEGATIONS**

Dr. McInnis admitted the second and fourth allegations in the Notice of Hearing, 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; and that he has been found guilty of an offence that is relevant to his suitability to practise. Counsel for the College withdrew the first and third allegations in the Notice of Hearing.

**THE FACTS**

A Statement of Agreed Facts and Admissions was filed as an Exhibit, setting out the following:

1. At times material to the allegations in the Notice of Hearing, Dr. McInnis was a Medical Officer in the Canadian Armed Forces employed as a physician at a Canadian Forces Base (CFB) health clinic in southern Ontario. Dr. McInnis also served on temporary duty as a medical doctor at the health unit at a northern Ontario CFB for a week at the end of January and early February 2008.

**Patient A**

2. In 2006, Patient A was working at a health services centre at the southern Ontario CFB, where she met Dr. McInnis. Dr. McInnis flirted and engaged in sexual innuendos with her during this time. Dr. McInnis told Patient A that she looked like a good looking blond actress from a popular TV show. He told her how attractive she was and he commented on her smock.

3. In approximately December 2006, Dr. McInnis saw Patient A in sick parade and, from this time forward, she became Dr. McInnis's patient.

4. During a previous pregnancy, Patient A had become addicted to narcotics which she began taking for migraine headaches. In February 2007, Dr. McInnis received a report from Dr. X outlining his suspicion that Patient A is a chronic drug user given her "significant drug seeking behaviour". Dr. McInnis did not record any follow-up on this report. Dr. McInnis was not prescribing any narcotics to Patient A at this time

5. By the spring of 2007, Patient A and Dr. McInnis began to discuss their private lives, including personal matters. Dr. McInnis sometimes commented on Patient A's appearance.

6. On one occasion, Dr. McInnis hugged Patient A. Dr. McInnis noted the hug in Patient A's chart on April 10, 2007.

7. Patient A's boyfriend discovered her drug addiction in May 2008 and called Patient A's parents. On June 2, 2008, Patient A's mother attended a medical appointment with her and spoke with Dr. McInnis about getting help for Patient A. At this appointment, Dr. McInnis referred Patient A to a health clinic for drug rehabilitation.

8. Dr. McInnis admits that making inappropriate comments and hugging Patient A constitutes a boundary violation.

### **Patient B**

9. On January 30, 2008, Dr. McInnis saw Patient B at the hospital of the northern Ontario CFB. Patient B wanted prescriptions refilled for a chronic back and shoulder pain condition. During the appointment, Dr. McInnis asked Patient B a number of questions about her personal life and marriage. Patient B told Dr. McInnis that her husband was posted to a military base on imposed restriction. Dr. McInnis recorded in her chart that Patient B was tearful and that he had observed mood swings. Dr. McInnis discussed Patient B's sex life and noted in her chart that she was not sexually active. Patient B's breast augmentation surgery was also discussed and Dr. McInnis commented on her breasts. Patient B was upset by this conversation.

10. During the appointment, Dr. McInnis asked Patient B to remove her top. He had her do range of motion movements and he palpitated her back and shoulder areas. When Patient B stood up to leave, Dr. McInnis came around the desk and offered his hand to shake. They shook hands then briefly embraced.

11. Dr. McInnis recorded in Patient B's chart that the medication currently prescribed to Patient B, including Diazepam (anti-anxiety medication, also known as Valium), T3's (Tylenol 3 – a combination of acetaminophen, codeine and caffeine), Tramecet (a combination of an opioid analgesic and acetaminophen) and Diclofenac (a non-steroidal anti-inflammatory drug). He recorded that he provided a prescription for Diazepam and recommended a follow-up with a psychologist.

12. Following the appointment, Dr. McInnis left a message on Patient B's work phone stating that he wondered if she needed another kind of medication, and to call the

clinic. Patient B did not reply to the call. Patient B reported this incident to her chain of command.

13. Patient B left her office in order to prepare for an overnight medical appointment. Dr. McInnis called Patient B at home. Patient B answered and told Dr. McInnis she was not at home and pretended to be the dog sitter. Dr. McInnis asked when she would be home.

14. Dr. McInnis attempted to contact Patient B by calling her at her office three or four times the day following her medical appointment.

15. Dr. McInnis made a second entry on Patient B's chart on January 30, 2008, indicating that he had left a message with Patient B to discuss the possibility of adding a new medication to her medication regime.

16. Dr. McInnis attempted to contact Patient B three more times at home, but did not leave a message. As a result of these phone calls, Patient B felt harassed and scared. Patient B sought the assistance of her chain of command to get Dr. McInnis to stop calling her. Patient B's chain of command intervened and Dr. McInnis stopped attempting to contact her.

17. Following a meeting with Dr. McInnis's colleagues in respect of Patient B's concerns, Dr. McInnis made a further entry in Patient B's chart, dated January 31, 2008, explaining his version of what occurred during his appointment with Patient B.

18. Dr. McInnis admits that the personal comments he made to Patient B, the phone calls following the appointment and the brief embrace upset Patient B and constitute a boundary violation.

### **Colleague B**

19. Colleague B worked with Dr. McInnis at the health service centre at the southern Ontario CFB, starting in 2006. Colleague B was never Dr. McInnis's patient.

20. Over a period of several months, Dr. McInnis made personal comments of a flirtatious nature to Colleague B.

21. In January 2007, Dr. McInnis was advised by his superior officer that Colleague B had made a complaint regarding his behaviour. By that time, Colleague B had left the clinic and Dr. McInnis has not seen her since.

22. Dr. McInnis admits that he did not conduct himself appropriately and in a manner commensurate with his professional obligations in respect of the comments he made to Colleague B.

### **Finding Requested**

23. Dr. McInnis admits that the totality of the foregoing conduct amounts to disgraceful, dishonourable, and unprofessional conduct contrary to s. 1(1)(33) of the *Professional Misconduct Regulation*, O. Reg. 856/93, made pursuant to the *Medicine Act 1991*, S.O. 1991, Chap. 30.

### **Canadian Armed Forces Court Martial**

24. At a Court Martial held on August 23, 2010, Dr. McInnis pled guilty to two offences of conduct to the prejudice of good order and discipline contrary to s. 129 of the *National Defence Act* in respect of allegations made by Patient A and Patient B.

25. The Reasons for Sentence of Commander P.J. Lamont, M.J., dated August 23, 2010, is attached [to the Statement of Agreed Facts and Admissions] as Appendix "A".

26. The Statement of Circumstances, Exhibit 7 at the August 23, 2010, Court Martial, is attached [to the Statement of Agreed Facts and Admissions] as Appendix "B".



27. Dr. McInnis admits that as a result of this plea he has been found guilty of an offence that is relevant to his suitability to practice contrary to s. 51(1) of the Health Professions Procedural Code.

## **FINDINGS**

The Committee accepted as true all of the facts set out in the Statement of Agreed Facts and Admissions. Having regard to these facts, the Committee accepted Dr. McInnis' admissions and found that he committed an act of professional misconduct, 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, and in that he has been found guilty of an offence that is relevant to his suitability to practise.

## **PENALTY AND REASONS FOR PENALTY**

Counsel for the College and counsel for the member made a joint submission with respect to an appropriate penalty and costs order. The recommended penalty includes a three month suspension, a public reprimand, and costs to the College in the amount of \$3,650.00.

College counsel outlined for the Committee the principles of penalty that must be considered in its decision. The penalty should express abhorrence of the misconduct, uphold the honour of the profession, and maintain public confidence in the ability of the profession to regulate its members. The penalty must also serve to protect the public, provide both specific and general deterrence, and address appropriate rehabilitation of the member.

In her submission, College counsel drew the Committee's attention to a number of aggravating factors to consider in this case. Dr. McInnis' conduct demonstrated serious and repetitive boundary violations. Patient A was known by Dr. McInnis to have an addiction to narcotics and was therefore a particularly vulnerable individual. He then

engaged in personal disclosures with her, commented on her appearance and concluded the encounter by hugging the patient. He also hugged Patient B and made inappropriate comments about her breasts. This behaviour extended beyond the clinical encounter as he placed no fewer than seven telephone calls to the patient at her work and home. The patient was sufficiently concerned about this that she felt it necessary to involve her military chain of command to intervene.

Although there was no doctor-patient relationship with Colleague B, Dr. McInnis' conduct towards her was also inappropriate and unacceptable.

Perhaps most disturbing, the Committee noted, is that Dr. McInnis' conduct demonstrates a very concerning pattern of behaviour. College counsel referred the Committee to a transcript of the reasons for penalty in Dr. McInnis' court martial hearing. The presiding officer noted that "it was clear from the facts, with respect to both these offences (patient A and B), there was a sexual aspect to the harassing behaviour in which you engaged".

As significant mitigating factors, College counsel noted that Dr. McInnis admitted his boundary violations and accepts responsibility for his misconduct. In so doing, he has reduced the time and costs to the College and spared the complainants from having to testify at a contested hearing. It was also acknowledged that Dr. McInnis had no record of previous disciplinary findings.

Defence counsel concurred that the allegations are serious, but shared for the Committee that Dr. McInnis was not found guilty of sexual abuse either at his court-martial or at this discipline hearing. He submitted that Dr. McInnis has demonstrated both remorse for and insight into the inappropriate nature of his behaviour. Dr. McInnis pled guilty to the allegations at his court martial and admitted the allegations at this discipline hearing. He has voluntarily extricated himself from the military environment by requesting and receiving an honourable discharge. On his own initiative, he attended the College boundaries course prior to attending this discipline hearing.

With respect to the Statement of Agreed Facts and Admissions, counsel for Dr. McInnis asked the Committee to consider a number of factors. In the case of Patient A, the comments on her personal appearance were made prior to the commencement of any doctor patient relationship. Counsel further submitted that there was no evidence before the Committee that either of the hugs given to Patient A or Patient B had any sexual intent, although he accepted that they may have been perceived as such by the patients. In regard to the telephone calls to Patient B, counsel submitted that there was no evidence to suggest that Dr. McInnis was not making the calls for legitimate medical concerns.

Defence counsel also invited the Committee to consider that allegation #4, that Dr. McInnis has been found guilty of an offence that is relevant to his suitability to practice, is the identical offence for which he is appearing in front of the Committee, and does not represent a separate set of allegations of inappropriate behaviour.

Counsel for the College and counsel for the member referred the Committee to a number of prior Discipline Committee decisions where similar penalties were ordered for similar findings, and agreed that the proposed disposition in this case was comfortably between the lower and upper ranges of penalties imposed in those cases. The Committee concluded that the penalty jointly proposed was appropriate in the circumstances.

## **ORDER**

Therefore, the Committee ordered and directed that:

1. Dr. McInnis appear before the panel to be reprimanded.
2. The Registrar suspend Dr. McInnis' certificate of registration for a period of three (3) months (90 days) commencing at 12:01 a.m. on April 2, 2011.
3. Dr. McInnis pay to the College costs in the amount of \$3650.00 within 60 days of the date of this Order.

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