

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 name or any information that could disclose the identity of Nurse A 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. W. KING
S. DAVIS
DR. P. POLDRE
D. DOHERTY
DR. P. CHART**

Hearing Dates:	May 24, 2013
Decision Date:	May 24, 2013
Release of Written Reasons:	September 16, 2013

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 May 24, 2013. 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 ALLEGATION

The Notice of Hearing alleged that Dr. James Edward Roland McInnis committed an act of professional misconduct:

1. under paragraph 1(1)33 of O. Reg. 856/93, in that he has engaged in 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. McInnis admitted the allegation of professional misconduct.

FACTS AND EVIDENCE

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

1. Dr. McInnis is a family physician. At the time of the incidents described below, Dr. McInnis was employed as an emergency physician at Hospital X.
2. The complainant, Nurse A, was a registered nurse employed in the Emergency Department of Hospital X at the time of the incidents.
3. In February, 2011, Dr. McInnis made repeated flirtatious comments to Nurse A with respect to her physical appearance. The comments were made in the presence of other colleagues. Nurse A felt uncomfortable as a result of the repeated inappropriate

comments.

4. In or around February of 2011, Dr. McInnis told Nurse A about a nearby coffee shop which he liked to attend. Nurse A reasonably perceived this as a personal invitation and declined, explaining that she was uncomfortable with the invitation. She advised Dr. McInnis that she wanted to maintain a strictly physician/nurse relationship. In response, Dr. McInnis explained that he wanted to do this as well. Dr. McInnis apologized to Nurse A.

5. Nurse A states that on more than one occasion while giving Nurse A orders to complete on a patient, Dr. McInnis put his arm around her shoulder.

6. On March 6, 2011, during the night shift at approximately midnight, Nurse A bumped into Dr. McInnis at a bank machine located in the hospital. As a result of Dr. McInnis' behaviour at the bank machine, Nurse A felt very uncomfortable.

7. Attached as Exhibit "A" [to the Agreed Statement of Facts and Admission] is a DVD containing footage of this incident from two different hospital surveillance cameras.

8. The DVD depicts the following events:

- At 12:00:28 am, Dr. McInnis is seen approaching an ATM at the hospital and commencing a transaction;
- At 12:00:49 am, Dr. McInnis completes his transaction and is seen to start a conversation with Nurse A. Although there is no sound on the video, it is agreed that Dr. McInnis stated words to the effect of "here comes a pretty nurse."
- At 12:01:00 am, Nurse A can be seen walking by the ATM, stopping, and conversing with Dr. McInnis. Dr. McInnis and Nurse A were discussing the fact this was the last day of work before Dr. McInnis would be leaving the hospital and getting married. Nurse A congratulated Dr. McInnis on his upcoming wedding;
- At 12:01:05 am, Nurse A pulls her phone out of her pocket and walks away from

Dr. McInnis. At 12:01:11 am, she returns towards the ATM. She is seen holding her wallet and taking out her bank card. Dr. McInnis and Nurse A are seen continuing to converse.

- At 12:01:18 am, Dr. McInnis reaches his left hand towards Nurse A, attempting to place it onto Nurse A's forearm. Nurse A moves away from Dr. McInnis, stepping backwards such that Dr. McInnis cannot touch her, making it clear that his actions were unwanted;
- Dr. McInnis then turns to leave, and Nurse A goes to the ATM to start a transaction;
- Dr. McInnis walks away at 12:01:36 am, it is agreed that he said "goodbye" to Nurse A at this point. Nurse A begins her banking transaction;
- At 12:01:41 am, Dr. McInnis returns towards Nurse A continuing to speak to her.
- Dr. McInnis walks straight towards Nurse A, very close to her, placing his left hand behind her back, and leaning in towards her, attempting to kiss her. As he does so, Nurse A turns her face away from Dr. McInnis and lifts her right foot off the ground, avoiding his approach, once again clearly communicating to him that this conduct was unwelcome and uninvited.
- Despite this, Dr. McInnis then places his left arm around her back, pulling her towards him and kisses her on the left cheek. Nurse A does not participate in the half embrace. Dr. McInnis then walks away.
- At 12:01:50 am, Dr. McInnis walks away and Nurse A completes her banking transaction. She walks away at 12:02:18 am.

ADMISSION

9. Dr. McInnis admits the facts set out in paragraphs 1 through 8 above, and admits that the conduct described constitutes an act of professional misconduct in that he engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all of the circumstances, would reasonably be regarded by

members as disgraceful, dishonourable or unprofessional contrary to section 1(1)33 of O. Reg. 856/93 made under the *Medicine Act, 1991*.

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. McInnis' admission and found that he committed an act of professional misconduct, in that he has engaged in 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.

In making this finding, the Committee wishes to make clear that in the health care setting not only patients but also staff and colleagues are entitled to a safe harassment-free environment. Unprofessional behavior can negatively impact the delivery of quality patient care.

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 proposed order included a suspension, a number of terms, conditions and limitations on Dr. McInnis's certificate of registration, a reprimand and payment of costs.

For the reasons that follow, the Committee accepted the joint submission of the parties as to penalty. The Committee considered the circumstances of the misconduct, aggravating and mitigating factors, relevant penalty principles, the submissions and case law submitted by the parties and the Court's direction as to joint submissions.

Circumstances of the Misconduct

Dr. McInnis was born in Prince Edward Island and attended Dalhousie University, graduating in medicine in 2004. Following a residency in family medicine, he worked as

an Army physician at CFB Borden. He also worked in emergency departments at hospitals in the area.

He is 42 years old, married and a father of three. He presently runs a family practice in Wasaga Beach, Ontario.

In 2011, at the time of the misconduct, Dr. McInnis was a full time emergency room physician at Hospital X. A video depicting the incident of March 6, 2011, was played for the Committee and filed as an exhibit. It was Dr. McInnis' last shift at the hospital before leaving to get married, and he had earlier received well wishes from hospital staff.

The conduct of Dr. McInnis which was captured on video was clearly of an unprofessional nature. Dr. McInnis either failed to recognize that his attentions were unwelcome or was unwilling or unable to control his actions. Regardless, the conduct was highly unprofessional and not what the public or the profession expects of physicians. His behavior was insensitive and demonstrated a lack of maturity and professionalism. Nurse A's discomfort was obvious. Furthermore, she had made known to him earlier that their relationship was to be a professional one. He returned to attempt to kiss her even knowing she was uncomfortable.

It was further noted by the Committee that, at the time of this incident, Dr. McInnis was about to face the Discipline Committee in relation to an earlier matter, the substance of which was of a broadly similar nature.

Aggravating and Mitigating Factors

The Committee considered the pattern of unprofessional behavior displayed by Dr. McInnis to be a significant aggravating factor. In particular, the Committee noted that in a prior hearing before the Discipline Committee (February 23, 2011), inappropriate advances with sexual innuendos were made to staff and patients. Dr. McInnis was serving in the Canadian military at that time. This conduct resulted in a court martial hearing where Dr. McInnis pleaded guilty to "conduct contrary to good discipline". This subsequently led to the February 23, 2011 College proceedings. The College matter at

that time proceeded by means of an agreed statement and admission and the Committee made a finding that Dr. McInnis committed an act of professional misconduct,

1. 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; and
2. 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.

While this prior College proceeding took place before the conduct demonstrated in the video, it did so by a very short time and the Committee expected that Dr. McInnis would have been sensitive to any conduct on his part which could be interpreted as unwanted. His lack of insight was a significant concern.

There were also a number of mitigating factors considered by the Committee as follows:

- The Committee heard that Dr. McInnis, recognizing how serious his behaviour was viewed by the College, immediately undertook an extensive psychiatric and psychological assessment. This occurred over 4 days in May 2011. As a consequence, he has been actively engaged in psychotherapy sessions with Dr. A to whom he was referred by the Physician Health Program of the Ontario Medical Association;
- Dr. McInnis took steps to ensure public safety by having a chaperone present while seeing with female patients and this was formalized in an Undertaking signed by Dr. McInnis with the College on September 12, 2012;
- The Committee received four letters of support (Exhibits 4, 5, 6, and 7) from the nurses who have been acting as Dr. McInnis's chaperone/monitor, which have noted no unprofessional behaviour. The letters comment further on Dr. McInnis's thoroughness and commitment;

- The Committee also received three letters from Dr. B (Exhibit 8a, 8b, 8c) outlining treatment up to and including April 11, 2013, indicating that over 45 sessions Dr. McInnis has been an active and willing participant in psychotherapy. The focus has been on self-awareness, healthy boundaries and other relevant areas. Dr. B indicates he will be continuing to provide regular psychotherapy addressing unresolved issues. He notes further that Dr. McInnis is a passionate and dedicated physician and that he is working hard to avoid inappropriate behavior.
- In coming to a resolution in this matter, the Committee acknowledges Dr. McInnis's acceptance of responsibility which obviates the need for Nurse A to give testimony.

Relevant Penalty Principles

The proposed penalty includes both a suspension and reprimand. These elements are the most direct way of expressing disapproval of the admitted misconduct. The proposed order serves as both a specific deterrent to Dr. McInnis and a general deterrent to the profession that such conduct cannot and will not be tolerated.

Protection of the public is achieved by the terms and conditions imposed in the order. Safety in the workplace is addressed specifically by the continued requirement for extensive direct monitoring and reporting to the College.

Public protection and rehabilitation are both addressed in the requirement for ongoing therapy which appears to be focussed on areas at risk. As a result, the Committee expects Dr. McInnis to be more aware and not engage in any conduct which might be misinterpreted.

Other Considerations

The Committee considered the submissions of both counsel and the case law to which they referred. The Committee agrees that the proposed suspension and terms are consistent with matters of a similar though not identical nature.

The Committee is aware that the courts have directed that trial judges and professional discipline committees should not reject joint submissions unless the order jointly proposed is contrary to the public interest and would bring the administration of justice into disrepute.

Finally, the Committee was of the view that the costs of the hearing in this matter are appropriately sought from the member and should not be borne in full by the membership at large.

For all of the foregoing reasons, the Committee accepted the joint submission and found that the proposed penalty represents appropriate censure in this matter.

ORDER

Therefore, having stated the finding of professional misconduct in paragraph 1 of its written order of May 24, 2013, the Committee ordered and directed, on the matter of penalty and costs, that:

2. the Registrar suspend Dr. McInnis's certificate of registration for a period of two (2) months commencing at 12:01 a.m. on June 14, 2013.
3. the Registrar impose the following terms, conditions and limitations on Dr. McInnis's certificate of registration:
 - i) Dr. McInnis shall conduct all professional encounters with female patients in the presence of a monitor who is a regulated health professional acceptable to the College. Dr. McInnis shall not be alone with any female patient, for any length of time, during any professional encounter, whether or not the parent or guardian of the patient is also present.
 - ii) Dr. McInnis shall ensure that the monitor shall:
 - 1) provide reports to the College on at least a monthly basis including confirmation regarding Dr. McInnis' compliance with this Order and Dr. McInnis' professionalism with office staff;

- 2) remain in the examination or consulting room at all times during all professional encounters with all female patients;
 - 3) carefully observe all of Dr. McInnis's physical examinations of all of his female patients including but not limited to internal examinations of female patients;
 - 4) maintain a log of all female patient encounters;
 - 5) initial all corresponding entries in the records of patients noted in the log and
 - 6) submit the original log to the College on a monthly basis.
- iii) Dr. McInnis shall inform the College of each and every location where he practises including, but not limited to, hospital(s), clinic(s) and office(s), in any jurisdiction within 15 days of commencing practise at that location.
 - iv) Dr. McInnis shall post a sign in his waiting room and in each of his examination rooms, in clearly visible locations that states: "Dr. McInnis may only have encounters with female patients, of any age, in the presence of a practice monitor acceptable to the College of Physicians and Surgeons of Ontario. Dr. McInnis may not be alone with any female patient unless this practice monitor is present in the examination or consulting room."
 - v) Dr. McInnis shall ensure that all female members of his current office staff review this Order and the Agreed Statement of Facts by no later than May 31, 2013 and shall ensure that that, if any new female office staff is hired during a period of two years from the date of this Order, any such staff shall review this Order and the Agreed Statement of Facts prior to starting work for Dr. McInnis.
4. the Registrar impose the following additional term and condition on Dr. McInnis's certificate of registration:
- i) Dr. McInnis shall continue in psychotherapy with his therapist or a therapist approved by the College, on a regular basis, for a minimum of two years from the date of this Order. Regular psychotherapy should continue until the therapist recommends, subject to the College's approval,

that psychotherapy is no longer required and

- ii) Dr. McInnis shall ensure that the therapist provides written reports to the College every 3 months for the 2 year period, at Dr. McInnis's expense.
- 5. Dr. McInnis appear before the panel to be reprimanded.
 - 6. Dr. McInnis pay costs to the College in the amount of \$3,650.00 within 30 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 the public reprimand.