

## **NOTICE OF PUBLICATION BAN**

In the College of Physicians and Surgeons of Ontario and Dr. Heather Allison Larton, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the name or any information that could disclose the name or identity of the patient whose name is disclosed 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: Larton, H. A. (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. HEATHER ALLISON LARTON**

**PANEL MEMBERS:**

**S. DAVIS  
DR. A. SHARMA  
DR. E. ATTIA (Ph.D.)  
DR. R. WAGMAN  
DR. E. STANTON**

<b>Hearing Date:</b>	<b>November 12, 2012</b>
<b>Decision Date:</b>	<b>November 12, 2012</b>
<b>Release of Written Reasons:</b>	<b>December 18, 2012</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 November 12, 2012. At the conclusion of the hearing, the Committee stated its finding that the member committed acts of professional misconduct and delivered its penalty and costs order with written reasons to follow.

### **THE ALLEGATIONS**

The Notice of Hearing alleged that Dr. Heather Allison Larton committed an act of professional misconduct:

1. under paragraph 1(1)17 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”), in that she failed without reasonable cause to provide a report or certificate relating to an examination or treatment performed by the member to the patient or his or her authorized representative within a reasonable time after the patient or his or her authorized representative has requested such a report or certificate;
2. under paragraph 1(1)30 of O. Reg. 856/93, in that she failed to respond appropriately or within a reasonable time to a written inquiry from the College; and
3. under paragraph 1(1)33 of O. Reg. 856/93, in that she 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. Larton admitted the allegations in the Notice of Hearing.

### **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. Heather Allison Larton (“Dr. Larton”) is a physician who currently practices family medicine in Waterloo, Ontario.
2. Between 1998 and 2008, Patient A was Dr. Larton’s patient at her practice in Sudbury, Ontario.
3. Commencing on April 15, 2004, Patient A, through her legal counsel, requested copies of Dr. Larton’s clinical notes and records. Patient A’s counsel required the clinical notes and records from Dr. Larton, Patient A’s treating physician, in furtherance of litigation related to two car accidents in which Patient A was involved. In total, Patient A’s counsel sent Dr. Larton 14 requests of increasing urgency over the course of four years.
4. In 2008, Dr. Larton closed her practice in Sudbury. As Patient A had yet to obtain a copy of her clinical notes and records, she complained to the College of Physicians and Surgeons of Ontario.
5. Counsel for Patient A sent a letter to the College’s investigator outlining the consequences to Patient A of the delay. In particular, Patient A’s new family physician could not complete her application for CPP Disability Benefits without the clinical notes and records of her previous physician, Dr. Larton. In addition, litigation relating to the two car accidents was unable to proceed. A copy of the letter from Patient A’s counsel to the College’s investigator dated January 7, 2009 is included at Appendix 1 [to the Agreed Statement of Facts and Admission].
6. Upon receipt of Patient A’s letter of complaint on August 20, 2008, College staff made attempts to contact Dr. Larton to secure the delivery of Patient A’s patient records. Despite repeated requests by College staff to Dr. Larton regarding the urgent need for her to respond to Patient A’s records request, Dr. Larton failed to do so.
7. Dr. Larton also failed to provide any response to Patient A’s complaint, despite the College’s repeated requests that she do so.
8. On the eve of the Discipline hearing scheduled to commence on March 7, 2012,

Dr. Larton retained counsel and requested an adjournment. Dr. Larton subsequently located and delivered the patient's chart to her. A copy of the letter from Dr. Larton's counsel dated July 6, 2012, confirming delivery of the patient's chart is included at Appendix 2 [to the Agreed Statement of Facts and Admission].

### **Admission**

9. Dr. Larton admits to having engaged in acts of professional misconduct under paragraphs 1(1)17 and 1(1)30 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, in that she failed without reasonable cause to provide a report or certificate relating to an examination or treatment performed by her to her patient or her authorized representative within a reasonable time after the patient or her authorized representative requested such a report or certificate and she failed to respond appropriately or within a reasonable time to a written inquiry from the College. Dr. Larton admits that the conduct described in the Agreed Statement of Facts constitutes disgraceful, dishonourable or unprofessional conduct.

### **FINDINGS**

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. Larton's admission and found that she committed acts of professional misconduct, in that she failed without reasonable cause to provide a report or certificate relating to an examination or treatment performed by her to her patient or her authorized representative within a reasonable time after the patient or her authorized representative requested such a report or certificate and she failed to respond appropriately or within a reasonable time to a written inquiry from the College; and in that she 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.

### **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.

Where the parties have come to an agreement on penalty by way of a joint submission, as in this matter, the Committee is mindful that the proposed penalty should be accepted unless to do so would be contrary to the public interest and would bring the administration of justice into disrepute.

In making a penalty determination, the Committee is guided by the need to provide protection to the public, proportionality with its finding, and to maintain public confidence in the profession and its ability to regulate itself. The Committee's penalty order should reflect its denunciation of the misconduct, and should address specific and general deterrence and, where appropriate, rehabilitation of the member.

In considering the proposed penalty, the Committee was mindful of the seriousness of the finding and the aggravating factors in this matter.

Despite repeated requests from Patient A's counsel commencing on April 15, 2004 and, in addition, repeated requests from the College of Physicians and Surgeons of Ontario, Dr. Larton did not send Patient A the requested clinical notes until July 6, 2012. Dr. Larton sent them, through her counsel, only after discipline proceedings had been commenced against her and several months after requesting and having been granted an adjournment of the original hearing date. The Committee considers this to be unacceptable behaviour.

In this case, failure to respond in a timely fashion to requests from Patient A's counsel for clinical notes and records potentially jeopardized Patient A's claim for CPP benefits and, in addition, her civil remedies arising from two motor vehicle accidents. It is essential for the maintenance of public confidence and trust in the profession that physicians fulfil their obligation to respond to a patient's requests for a copy of their clinical notes and records in a timely fashion. Producing requested clinical records in a timely fashion is an important component of effective office management. In addition, physicians must respond to requests by the College of Physicians and Surgeons of Ontario in a timely fashion. Failure to do so is disrespectful to the College and its process of self-regulation, and to the profession as a whole. When, as in this case, a member does not respond to

repeated requests from her governing body to secure delivery of a patient's clinical notes and records, it can also call into question the governability of that member.

The Committee also considered mitigating factors. Dr. Larton admitted to the facts and in doing so saved the time and expense of a contested hearing. This is Dr. Larton's first appearance before this Committee. The Committee also noted that in a letter to the College of Physicians and Surgeons of Ontario dated January 7, 2009, Patient A's counsel noted that, "Even though it has been an extremely difficult task to obtain any medical documentation from Dr. Larton, she has been a wonderful physician to [Patient A]."

After considering the facts in this case as well as the aggravating and mitigating factors, the Committee was satisfied that the proposed penalty of a public reprimand, and terms, conditions and limitations to be placed on Dr. Larton's certificate of registration, addresses the principles of specific and general deterrence and rehabilitation of the member. It upholds the honour and reputation of the profession, and at the same time will maintain public confidence in the profession's ability to govern and regulate itself while protecting the public. In particular, the Committee felt that rehabilitation would be addressed through the proposed terms, conditions and limitations to be imposed on Dr. Larton's certificate of registration. Dr. Larton will be required to have a Clinical Supervisor at all the locations where she practises for at least two years. The Clinical Supervisor will address issues related to Dr. Larton's office management, administrative, organizational and communication skills. The Committee is also satisfied that this condition, taken together with the other terms, conditions, and limitations imposed on Dr. Larton's certificate of registration, will protect the public from such behaviour in the future.

The Committee also concluded that this was an appropriate case in which to order that the member pay a portion of the College's costs and expenses incurred in conducting the hearing.

**ORDER**

Therefore, having stated its findings in paragraphs 1 and 2 of its written order of November 12, 2012, on the matter of penalty and costs, the Committee ordered and directed that:

3. Dr. Larton attend before this panel to be reprimanded.
4. the Registrar impose the following terms, conditions and limitations on Dr. Larton's certificate of registration:
  - (i) Dr. Larton shall obtain a clinical supervisor, being a Director, office manager or other person in a comparable role, at each location at which she practices ("Clinical Supervisor(s)"), who is acceptable to the College and who has signed an undertaking in the form attached to the Order as Appendix A. The Clinical Supervisor(s) shall report to the College on a quarterly basis in respect of Dr. Larton's office management, administrative, organizational and communications skills;
  - (ii) Dr. Larton shall abide at her own expense with the Clinical Supervisor(s)'s recommendations with respect to her practice, including with respect to any practice improvements and/or ongoing professional development and/or education;
  - (iii) If a Clinical Supervisor who has given an undertaking is unwilling or unable to continue to fulfill its terms, Dr. Larton shall, within 30 days, obtain an undertaking in the same form from a person who is acceptable to the College;
  - (iv) If Dr. Larton is unable to obtain a Clinical Supervisor at a location at which she practices as set out in (i) or (iii) above, Dr. Larton shall cease to practice at that location immediately until such time as she has obtained a Clinical Supervisor at that location acceptable to the College; and
  - (v) If, at any time after two years have passed since the Order, every one of Dr. Larton's Clinical Supervisor(s) is or are of the opinion that Dr. Larton's office management, administrative, organizational and



communications skills are such that there is no further purpose to be served by clinical supervision, such clinical supervision shall be discontinued only upon:

- (a) An assessment of Dr. Larton's practice at her primary practice location, undertaken by a College-appointed assessor at Dr. Larton's expense, the results of which are satisfactory to the College; and
  - (b) The approval of the College.
- (vi) Dr. Larton shall be solely responsible for all fees, costs and expenses associated with her compliance with the terms of this Order.
5. Dr. Larton pay costs to the College in the amount of \$3,650.00 within 60 days of the date of this order.

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