

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on May 22, 2007. At the conclusion of the hearing, the Committee stated its finding that the member committed an act of professional misconduct and delivered in writing its penalty order, with written reasons to follow.

THE ALLEGATION

The Notice of Hearing alleged that Dr. Whitton committed professional misconduct:

1. 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 acts 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

At the outset of the hearing, Dr. Whitton admitted to the allegation of professional misconduct set out in the Notice of Hearing.

EVIDENCE

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

1. Dr. Joel Lloyd Whitton (“Dr. Whitton”) is a psychiatrist practising in Toronto and was at all material times, a member of the College of Physicians and Surgeons of Ontario.
2. In December, 1997, Dr. Whitton testified in court at a criminal trial as an expert witness for the defence.
3. On October 30, 1998, Dr. Whitton gave sworn evidence in a civil matter during cross-

examination on an affidavit he swore on November 18, 1997.

4. Dr. Whitton acknowledges that in both the criminal and civil matters referred to above, he made a number of errors in his evidence and in his curriculum vitae which was filed in both of these matters, including the following:

(a) Dr. Whitton is a member of the American College of Forensic Examiners. He incorrectly gave evidence that, in order to become a member of the American College of Forensic Examiners, one's files and reports must be peer-reviewed, and that three psychiatrists "came up and...literally went through my files";

(b) Dr. Whitton was incorrect when he gave evidence that he had "been retained by the F.B.I., Canadian Intelligence Service, the Ontario Provincial Police, the Metropolitan Police and various regional police forces";

(c) Dr. Whitton was incorrect when he gave evidence that his research office is located at the "Toronto hospital";

(d) Dr. Whitton's curriculum vitae was not up-to-date insofar as it stated:
"1980 - Staff, Toronto Hospital, Western Division..."
 He had been a staff member, but was not at the time;

(e) Dr. Whitton was incorrect when he indicated that he still had a teaching position at the University of Toronto; and

(f) Dr. Whitton's curriculum vitae was not up-to-date insofar as it stated:
*"1979 - Assistant Professor, Department of Psychiatry,
 University of Toronto"*
 He had been an assistant professor but was not at the time.

5. The errors were made at a time when Dr. Whitton was in a state of emotional turmoil

as a result of his wife's diagnosis and treatment for breast cancer.

6. In 1998, a police investigation into Dr. Whitton's evidence in the criminal and civil matters was commenced. As a result of that investigation, Dr. Whitton was charged with perjury. On June 2, 2003, Dr. Whitton, who by this time had retired from medical-legal work, entered into an agreement with the Crown Attorney that he would not present himself to the court as an expert witness in any future proceedings. As a result of the agreement, the court proceedings were stayed.

7. The parties agree that Dr. Whitton committed an unprofessional act when he made the above-noted errors in the criminal and civil matters referred to above. They further agree that this conduct amounts to professional misconduct within the meaning of section 1(1).33 of O. Reg. 856/93 and clause 51(1)(c) of the Health Professions Procedural Code.

FINDING

The Committee accepted as true all of the facts set out in the Statement of Agreed Facts. Having regard to these facts, the Committee accepted Dr. Whitton's admission and found that he committed an act of professional misconduct under section 1(1)33 of O. Reg. 856/93, made under the *Medicine Act*, 1991, in that he engaged in conduct or an act or acts 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 AND COSTS

Counsel for the College and counsel for the member made a joint submission regarding penalty and costs.

The Committee must take into account the nature and severity of the misconduct in considering the appropriateness of the proposed penalty. When a physician is called upon as an expert witness to testify in civil or criminal proceedings, it is very important that the physician testifies with care for the accuracy of the facts and not mislead the

court. Integrity must be the hallmark of the physician not only in dealing with patients, but also in dealing with the judicial institutions of our society on behalf of patients.

In deciding the appropriate penalty, the Committee considered as an aggravating factor the fact that the misconduct of Dr. Whitton occurred on two separate occasions. This was mitigated to some extent by both instances having occurred during the same time period of emotional turmoil for Dr. Whitton during his wife's diagnosis and treatment for breast cancer. Although this was provided as an explanation for his behaviour, it was, of course, not a justification.

The Committee also considered that Dr. Whitton has entered into an agreement with the Crown Attorney that he will not present himself as an expert witness in any future proceedings. The Committee further considered that Dr. Whitton has accepted responsibility and admitted to professional misconduct thereby saving the College the time and expense of a full hearing. It was also a mitigating factor that Dr. Whitton has been a member of the College since 1972 and has no previous disciplinary history.

Taking these factors into account, the Committee concluded that the jointly proposed order as to penalty and costs was appropriate. The goal of public protection has been met by Dr. Whitton's undertaking with the Crown Attorney that he will not present himself as an expert witness in any future legal proceedings. In imposing a 30 day suspension and a public reprimand, the proposed penalty met the goal of specific deterrence. As well, the penalty will send a message to the membership of the College that conduct of this nature is unacceptable, thereby serving the goal of general deterrence.

The Committee therefore accepted the joint submission as to penalty and costs made by counsel for the College and counsel for Dr. Whitton.

ORDER

The Discipline Committee ordered and directed that:

1. The Registrar suspend Dr. Whitton's certificate of registration for a period of 30 days commencing June 22, 2007.

2. Dr. Whitton appear before the panel to be reprimanded.
3. Dr. Whitton pay to the College costs in the amount of \$2,500.00 within 14 days.
4. The results of this proceeding be included in the register.

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