

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Edmund Mrozek, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the names and any information that could disclose the identity of patients 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

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... 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. Mrozek,
2018 ONCPSD 17**

**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. EDMUND MROZEK

PANEL MEMBERS:

**DR. W. KING (Chair)
MAJOR A. H. KHALIFA
DR. C. LEVITT
MR. P. PIELSTICKER
DR. J. RAPIN**

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS B. DAVIES

COUNSEL FOR DR. MROZEK:

MR. M. SAMMON

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. G. FORREST

Hearing Date: July 17 to 19, 2017
Finding Decision Date: April 6, 2018
Release of Written Reasons: April 6, 2018

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 July 17 to 19, 2017. At the conclusion of the hearing, the Committee reserved its decision.

THE ALLEGATIONS

The Notice of Hearing (Exhibit 1) alleged that Dr. Edmund Mrozek committed an act of professional misconduct:

1. under paragraph 1(1)2 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”), in that he has failed to maintain the standard of practice of the profession; and
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.

The Notice of Hearing also alleged that Dr. Mrozek is incompetent as defined by subsection 52(1) of the Health Professions Procedural Code (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*.

RESPONSE TO THE ALLEGATIONS

Dr. Mrozek admitted the first allegation in the Notice of Hearing, in that he failed to maintain the standard of practice of the profession in his care of Patient A.

Dr. Mrozek denied the second allegation 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.

The College withdrew the allegation of incompetence.

FACTS and EVIDENCE

The parties submitted two agreed statements of facts. The first addressed the allegation of failure to maintain the standard of practice of the profession and contained the Dr. Mrozek's admission to a finding in support of this allegation. The second agreed statement of facts pertained to the facts that the College submits support a finding of disgraceful, dishonourable and unprofessional conduct on the basis of a failure to cooperate with the College investigation. Dr. Mrozek admits the facts, but denies that those facts support a finding of disgraceful dishonourable or unprofessional conduct.

(i) Agreed Statement of Facts and Admissions Regarding Standard of Care

The following facts were set out in the Agreed Statement of Facts and Admissions Regarding Standard of Care, which was marked as Exhibit 2:

1. Dr. Michal Edmund Mrozek ("Dr. Mrozek") is a psychiatrist practicing in Toronto. Dr. Mrozek received his certificate of registration authorizing independent practice from the College of Physicians and Surgeons of Ontario (the "College") in November 1972. He was certified as a specialist in psychiatry by the Royal College of Physicians and Surgeons of Canada in 1980.
2. At the relevant times, he maintained an office practice in the community, as well as a practice seeing patients at a Hospital.

Investigation Regarding Care and Treatment of Patient A

3. Patient A first saw Dr. Mrozek in November 2007 at the Hospital. At the time Dr. Mrozek first saw Patient A, she was in her fifties and, as far as Dr. Mrozek was aware, she had no prior psychiatric history.

4. Thereafter, Dr. Mrozek saw Patient A in his office practice in 2009. He continued to see her in his office practice until June 2013. He also saw Patient A in Hospital in March and April 2009.
5. In May 2013, Patient A's family member complained to the College about the care Dr. Mrozek had provided to Patient A. A copy of her written complaint, dated May 14, 2013, is attached at Tab 1 to the Agreed Statement of Facts and Admissions Regarding Standard of Care.
6. The College retained Dr. Joseph Ferencz, a psychiatrist practicing at St. Joseph's Healthcare in Hamilton, to review Dr. Mrozek's care and treatment of Patient A.
7. Dr. Ferencz concluded that Dr. Mrozek had fallen below the standard of practice in his care of Patient A. Dr. Ferencz expressed the following opinions:
 - a. Dr. Mrozek had failed to recognize or elicit the symptoms of psychosis, particularly hallucinations, delusions and lack of insight into illness by Patient A, and did not attend with adequate care to the opinions of colleagues and information provided by family members;
 - b. Dr. Mrozek did not use accepted, standard diagnostic descriptors in his documentation regarding Patient A; and
 - c. Dr. Mrozek used sub-therapeutic doses of anti-psychotic medication in a form that was unlikely to be taken, and discontinued treatment in an individual who was likely to relapse.
8. Dr. Ferencz prepared a report summarizing his opinion, dated April 13, 2014, which addresses solely the care Dr. Mrozek provided to Patient A. Dr. Ferencz's report of April 13, 2014 is attached at Tab 2 to the Agreed Statement of Facts and Admissions Regarding Standard of Care.
9. Dr. Mrozek admits the facts set out above. He admits that he failed to maintain the

standards of practice of the profession under paragraph 1(1)2 of Ontario Regulation 856/93 made under the Medicine Act, 1991 in respect of his care and treatment of Patient A.

(ii) Agreed Statement of Facts - Alleged Failure to Cooperate

The following facts were set out in the Agreed Statement of Facts - Alleged Failure to Cooperate, which was filed as Exhibit 5:

1. Dr. Michal Edmund Mrozek (“Dr. Mrozek”) is a psychiatrist practicing in Toronto. Dr. Mrozek received his certificate of registration authorizing independent practice from the College of Physicians and Surgeons of Ontario (the “College”) in November 1972. He was certified as a specialist in psychiatry by the Royal College of Physicians and Surgeons of Canada in 1980.
2. At the relevant times, he maintained an office practice in the community, as well as a practice seeing patients at a Hospital.
3. On May 24, 2012, the Registrar of the College appointed investigators pursuant to s. 75(1)(a) of the Health Professions Procedural Code to investigate Dr. Mrozek’s practice.
4. On May 29, 2012, Karen Woodside, an investigator at the College with carriage of the s. 75(1)(a) investigation, wrote to Dr. Mrozek to advise him of the investigation. A copy of Ms. Woodside’s letter dated May 29, 2012 with attached Appointment of Investigators is attached at Tab 1 to the Agreed Statement of Facts.
5. The College retained Dr. Joseph Ferencz as a Medical Inspector to review a number of patient records obtained from the Hospital during the s. 75(1)(a) investigation of Dr. Mrozek.

6. The College later retained Dr. Ferencz to also review the care provided by Dr. Mrozek to Patient A in relation to a complaint made by her family member in May 2013 as set out below.
7. On April 25, 2013, Ms. Woodside wrote to Dr. Mrozek's counsel to arrange an interview between Dr. Ferencz and Dr. Mrozek. Ms. Woodside proposed 3 dates for the interview. Her letter also states as follows: "As you are aware, an interview between the Medical Inspector and the physician is a standard part of the College's process." A copy of Ms. Woodside's letter dated April 25, 2013 is attached at Tab 2 to the Agreed Statement of Facts.
8. On May 2, 2013, Dr. Mrozek's counsel wrote to Ms. Woodside and advised that Dr. Mrozek would be available to meet with Dr. Ferencz on Monday June 17, 2013. A copy of Ms. Tremayne-Lloyd's letter dated May 2, 2013 is attached at Tab 3 to the Agreed Statement of Facts.
9. On May 7, 2013, Ms. Tremayne-Lloyd spoke with Ms. Woodside, and asked the College to produce the medical records it had obtained from the Hospital in the investigation. Ms. Woodside advised that the College was not prepared to do this, and that Dr. Mrozek would have to obtain the records directly from the Hospital. Ms. Woodside confirmed that Dr. Ferencz would only see Dr. Mrozek's records and no prior reviews of clinical care. Ms. Woodside confirmed that Dr. Ferencz was unaware of any prior review of records and unaware of any history of concerns. Ms. Woodside also said she would provide counsel with a list of the records that had been reviewed by Dr. Ferencz.
10. Ms. Woodside subsequently confirmed in writing on May 7, 2013 that Dr. Mrozek would have to obtain the records directly from Hospital and provided a list of the patient charts obtained by the College from the Hospital. She wrote: "In regards to your request for a copy of all hospital records reviewed by Dr. Ferencz it is the College's view that hospitals are permitted by section 41(1)(a) and 42(2) of PHIPA (*Personal Health Information Act*, 2004) to disclose the requested patient records to a physician, as long as

the physician is or was an agent of the hospital.” In that letter, Ms. Woodside confirmed that she would be present at the interview between Dr. Mrozek and Dr. Ferencz on June 17, 2013. The letter states that the interview “be recorded and a copy of the recording will be provided” to counsel for Dr. Mrozek. Ms. Woodside also advised that all of the records reviewed by Dr. Ferencz will be available for reference at the interview.

11. On May 29, 2013, Ms. Tremayne-Lloyd wrote to Ms. Woodside by email, once again asking the College to produce copies of the Hospital records it had already obtained. A copy of the text of Ms. Tremayne-Lloyd’s email of May 29, 2013 is attached at Tab 4 to the Agreed Statement of Facts.
12. On May 29, 2013, Ms. Woodside responded to Ms. Tremayne-Lloyd, again reiterating that Dr. Mrozek would have to obtain the records directly from Hospital. She did not explain why the College would not simply produce copies of the records it had already obtained. A copy of Ms. Tremayne-Lloyd’s letter dated May 29, 2013 is attached at Tab 5 to the Agreed Statement of Facts.
13. On June 4, 2013, Ms. Woodside wrote to Ms. Tremayne-Lloyd, reiterating that Dr. Mrozek would have to obtain the records directly from Hospital. A copy of Ms. Woodside’s letter dated June 4, 2013 is attached as Tab 6 to the Agreed Statement of Facts.
14. On June 6, 2013, counsel for the Hospital, Mr. Patrick Hawkins, wrote to Ms. Woodside, advising that he could not understand why the Hospital needed to be put to the additional time and expense of producing another copy of the Hospital charts the College had already copied. He suggested that it would be much simpler for the College to make another copy of what had already been produced to the College. A copy of Mr. Hawkins’s letter dated June 6, 2013 is attached at Tab 7 to the Agreed Statement of Facts.
15. On June 7, 2013, Ms. Woodside wrote to Ms. Tremayne-Lloyd, advising that the hospital would follow up with her about obtaining copies of the records. The letter also states:

“Please know that Dr. Mrozek has the ability to review all records electronically (he has remote access from his out-patient office). I am providing you with this information as this should assist him with preparing for his interview with Dr. Ferencz while awaiting the paper copy of the records.” A copy of Ms. Woodside’s letter dated June 7, 2013 attached as Tab 8 to the Agreed Statement of Facts.

16. On June 10, 2013, Ms. Tremayne-Lloyd wrote to Ms. Woodside, advising that she had been trying for weeks now to obtain the records from the Hospital, unsuccessfully. She noted that it was not a “realistic or reasonable option” for Dr. Mrozek to access the charts via Meditech as “Some of the chart content is not on the Meditech system” and that the Meditech system was “notoriously unreliable when accessed from a remote location and, very importantly, Dr. Mrozek has no idea what parts of the charts have been copied and provided to Dr. Ferencz.” Ms. Tremayne-Lloyd’s letter of June 10, 2013 also noted that it would be very unfair to expect Dr. Mrozek to attend at the interview on June 17th, given he still had not reviewed the records. She indicated that her office would continue to press the Hospital for production, and that as soon as the documents were in her office’s possession the meeting could be rescheduled. A copy of Ms. Tremayne-Lloyd’s letter dated June 10, 2013 is attached as Tab 9 to the Agreed Statement of Facts.
17. On June 11, 2013, Ms. Woodside wrote to Dr. Ferencz by email, advising that “we’ve run into some difficulty with ensuring Dr. M receives a copy of all records prior to his interview with you on Monday. To ensure procedural fairness, we will have to reschedule the meeting.” A copy of the text of Ms. Woodside’s email of June 11, 2013 attached at Tab 10 to the Agreed Statement of Facts.
18. On June 12, 2013, Ms. Woodside received an email from Ms. Tremayne-Lloyd, who advised that the Hospital had “finally relented and agreed to copy the charts.” She noted that the parties would need to arrange an alternative date to give Dr. Mrozek a reasonable opportunity to review the charts before his interview. Ms. Woodside was also copied on an email from Dr. Mrozek to Ms. Tremayne-Lloyd on June 12, 2013 in which he state that he requires “a reasonable amount of time” to review the charts in question and that a

meeting in June or early July would be too early. Dr. Mrozek also states: “my wife and I have an out of the country trip scheduled on family business in July to August. That leaves dates past August 9 as realistic for holding a meeting.” A copy of Ms. Woodside’s memo containing the text of the email messages from Ms. Tremayne-Lloyd and Dr. Mrozek on June 12, 2013 is attached at Tab 11 to the Agreed Statement of Facts.

19. On June 12, 2013, Ms. Woodside wrote to Ms. Tremayne-Lloyd. Ms. Woodside agreed to reschedule the meeting between Dr. Mrozek and Dr. Ferencz. A copy of the letter from Ms. Woodside dated June 12, 2013 is attached at Tab 12 to the Agreed Statement of Facts.
20. On June 17, 2013, Dr. Mrozek copied Ms. Woodside on an email to Ms. Tremayne-Lloyd. In the email, Dr. Mrozek states that he would be available to meet with Dr. Ferencz after August 9, 2013. A copy of Dr. Mrozek’s email to Ms. Tremayne-Lloyd, copied to Ms. Woodside dated June 17, 2013 is attached at Tab 13 to the Agreed Statement of Facts.
21. On June 19, 2013, Ms. Woodside wrote to Ms. Tremayne-Lloyd and proposed three dates for the meeting between Dr. Mrozek and Dr. Ferencz: July 5, July 8 or July 10, 2013. Ms. Woodside asked Ms. Tremayne-Lloyd to confirm one of the proposed dates by June 26, 2013. A copy of Ms. Woodside’s letter dated June 19, 2013 is attached at Tab 14 to the Agreed Statement of Facts.
22. On June 19, 2013, Ms. Tremayne-Lloyd sent an email to Ms. Woodside which states that the hospital charts were ready for pick up. The email also advised that Ms. Tremayne-Lloyd thought Dr. Mrozek was going to be in Europe in July 2013. A copy of Ms. Tremayne-Lloyd’s email is attached at Tab 15 to the Agreed Statement of Facts.
23. On June 21, 2013, Ms. Woodside was copied on an email Dr. Mrozek sent to Ms. Tremayne-Lloyd about who should bear the cost of copying the medical records. A copy of Dr. Mrozek’s email is attached at Tab 16 to the Agreed Statement of Facts.

24. On June 24, 2013, Ms. Tremayne-Lloyd sent an email to Ms. Woodside advising that there had been a sudden death in Dr. Mrozek's family and he was leaving for Europe. The email states that Dr. Mrozek intends to return to Canada at the end of July. A copy of Ms. Tremayne-Lloyd's email is attached at Tab 17 to the Agreed Statement of Facts.
25. On June 25, 2013, Ms. Woodside wrote to Ms. Tremayne-Lloyd and proposed two dates for the meeting between Dr. Mrozek and Dr. Ferencz: August 15 or August 22, 2013. Ms. Woodside asked Ms. Tremayne-Lloyd to confirm one of the proposed dates by July 10, 2013. A copy of Ms. Woodside's letter to Ms. Tremayne-Lloyd dated June 25, 2013 is attached at Tab 18 to the Agreed Statement of Facts.
26. On June 25, 2013, Ms. Tremayne-Lloyd sent a letter to Ms. Woodside acknowledging receipt of her letter of the same date. Ms. Tremayne-Lloyd states that she may not be able to provide confirmation of a date for the proposed interview until August as Dr. Mrozek said he would not have access to email while away. A copy of Ms. Tremayne-Lloyd's letter of June 25 [2013] is attached at Tab 19 to the Agreed Statement of Facts.
27. On June 26, 2013, Ms. Woodside sent a letter to Ms. Tremayne-Lloyd which states, in part, as follows: "I understand that Dr. Mrozek may not contact you while in Europe. The Inquiries, Complaints and Reports Committee (ICRC) may not view Dr. Mrozek's lack of availability as reasonable, given the status of the current investigation." A copy of Ms. Woodside's letter of June 26, 2013 is attached at Tab 20 to the Agreed Statement of Facts.
28. Also on June 26, 2013, Ms. Woodside wrote to Dr. Mrozek advising him of a complaint that had been made by the family member of one of his patients (Patient A). A copy of Ms. Woodside's letter of June 26, 2013 is attached at Tab 21 to the Agreed Statement of Facts.
29. On July 17, 2013, Ms. Woodside sent a letter to Ms. Tremayne-Lloyd in a further attempt to confirm a date for the interview between Dr. Mrozek and Dr. Ferencz. The letter states, in part, as follows: "I understand that Dr. Mrozek is back in Canada. I therefore request that you confirm one of the below dates for Dr. Ferencz to interview Dr. Mrozek without

delay.” A copy of Ms. Woodside’s letter of July 17, 2013 is attached at Tab 22 to the Agreed Statement of Facts.

30. On July 22, 2013, Dr. Mrozek advised Ms. Woodside by email that Ms. Tremayne-Lloyd was no longer his counsel, and that she had withdrawn unilaterally and unexpectedly. Dr. Mrozek asked that all future correspondence from the College be directed to him. A copy of Dr. Mrozek’s email is attached at Tab 23 to the Agreed Statement of Facts.
31. On July 24, 2013, Ms. Woodside sent a letter to Dr. Mrozek. Ms. Woodside proposed two dates for the interview with Dr. Ferencz and asked Dr. Mrozek to confirm a date by July 29, 2013. A copy of Ms. Woodside’s letter of July 24, 2013 is attached at Tab 24 to the Agreed Statement of Facts.
32. On July 27, 2013, Dr. Mrozek sent Ms. Woodside an email asking for additional time to retain new counsel before meeting with Dr. Ferencz. A copy of Dr. Mrozek’s email dated July 27, 2013 is attached at Tab 25 to the Agreed Statement of Facts.
33. On July 29, 2013, Ms. Woodside sent Dr. Mrozek a letter which states that the College will not provide additional time to schedule the meeting. Ms. Woodside advised that the meeting would take place on August 22, 2013. A copy of Ms. Woodside’s letter of July 29, 2013 is attached at Tab 26 to the Agreed Statement of Facts.
34. On August 8, 2013, Dr. Mrozek wrote a letter to Ms. Woodside. Dr. Mrozek advises that given that the College would not afford him with more time to obtain counsel, he has asked a colleague, Dr. Yufe, to attend the meeting with Dr. Ferencz with him. Dr. Mrozek also advises that Dr. Yufe is not available on the date scheduled for the meeting, and proposed two alternative dates in August. A copy of Dr. Mrozek’s letter of August 8, 2013 is attached at Tab 27 to the Agreed Statement of Facts.
35. On August 9, 2013, Ms. Woodside sent a letter to Dr. Mrozek indicating that Dr. Yufe was not permitted to attend the meeting and confirming that the meeting will proceed on August 22, 2013 as scheduled. A copy of Ms. Woodside’s letter of August 9, 2013 is attached at Tab 28 to the Agreed Statement of Facts.

36. On August 19, 2013, Dr. Mrozek sent Ms. Woodside a letter indicating that he would not be able to meet with Dr. Ferencz because of a health emergency. A copy of Dr. Mrozek's letter of August 19, 2013, which included a note from his physician, is attached at Tab 29 to the Agreed Statement of Facts.
37. On August 20, 2013, Ms. Woodside sent a letter to Dr. Mrozek asking that he provide an update on his medical status by August 30, 2013. A copy of Ms. Woodside's August 20, 2013 letter is attached at Tab 30 to the Agreed Statement of Facts.
38. On August 23, 2013, Dr. Mrozek sent a letter to Ms. Woodside by email, asking her to confirm a prior communication between herself and Ms. Tremayne-Lloyd. Ms. Woodside did not respond to this letter.
39. On August 26, 2013, Ms. Woodside sent a letter to Dr. Mrozek which states, in part as follows: "If you are planning to return to practice, please confirm this in writing as your meeting with Dr. Ferencz will be rescheduled as soon as possible. If you are not practising due to illness, please confirm this in writing." A copy of Ms. Woodside's letter of August 26, 2013 is attached at Tab 31 to the Agreed Statement of Facts.
40. On August 27, 2013, Dr. Mrozek sent Ms. Woodside a letter indicating that he had been cleared to return to work and will "await information regarding a meeting with Dr. Ferencz." A copy of Dr. Mrozek's letter of August 27, 2013 is attached at Tab 32 to the Agreed Statement of Facts.
41. On September 4, 2013, Ms. Woodside sent Dr. Mrozek a letter proposing two further dates for the meeting with Dr. Ferencz: October 4 or 17, 2013. Ms. Woodside asks Dr. Mrozek to confirm a date by September 9, 2013. A copy of Ms. Woodside's letter of September 4, 2013 is attached at Tab 33 to the Agreed Statement of Facts.
42. On September 10, 2013, Ms. Woodside sent Dr. Mrozek another letter which states, in part, as follows: "Further to my letter of Sept 4, 2013, as you have not chosen one of the two dates offered to you by the deadline of Sept 9, 2013, I am writing to advise you that you will meet with Medical Inspector, Dr. Joseph Ferencz...in Dr. Ferencz's office on

October 17, from 1 – 5 pm.” Ms. Woodside provides a detailed chronology of the College’s attempts to arrange a meeting with Dr. Ferencz. At the end of the letter, Ms. Woodside referenced Dr. Mrozek’s “obligation to the College outlined in section 76 of the *Health Professions Procedural Code* (a copy of which has been provided to you in previous letters).” A copy of Ms. Woodside’s letter of September 10, 2013 is attached at Tab 34 to the Agreed Statement of Facts.

43. At the relevant time, s. 76(3.1) of the *Health Professions Procedural Code* stated as follows: “A member shall co-operate fully with an investigator.”
44. On October 2, 2013, Dr. Mrozek sent a letter to Ms. Woodside in response to her letter of September 10, 2013. Dr. Mrozek provides a detailed chronology of events between 2009 and 2013. He then states “while continuing to cooperate with the investigation, I respectfully request that the Medical Inspector be directed to evaluate the merits and demerits of [a number of other expert reports], and that the resulting evaluations be made available to me prior to the interview taking place.” A copy of Dr. Mrozek’s letter of October 2, 2013 is attached at Tab 35 to the Agreed Statement of Facts. Ms. Woodside did not respond to Dr. Mrozek’s requests that the assessor evaluate the reports.
45. On October 7, 2013, Ms. Woodside sent a letter to Dr. Mrozek confirming that the interview with Dr. Ferencz will proceed on October 17, 2013 as scheduled. Ms. Woodside again referenced s. 76 of the *Health Professions Procedural Code*. A copy of Ms. Woodside’s letter of October 7, 2013 is attached at Tab 36 to the Agreed Statement of Facts.
46. On October 9, 2013, Dr. Mrozek sent Ms. Woodside an email asking for a response to his letters of August 23, 2013 and October 2, 2013. A copy of Dr. Mrozek’s email of October 9, 2013 is attached at Tab 37 to the Agreed Statement of Facts.
47. On October 14, 2013, Dr. Mrozek sent a letter to Ms. Woodside again asking for a reply to his letters of August 23, 2013 and October 2, 2013. A copy of Dr. Mrozek’s letter of October 14, 2013 is attached at Tab 38 to the Agreed Statement of Facts.

48. On October 16, 2013, Dr. Mrozek sent an email to Ms. Woodside in which he states that he considers the meeting with Dr. Ferencz cancelled because he had not received a response to his early correspondence. A copy of a memorandum prepared by Ms. Woodside containing the text of Dr. Mrozek's email is attached at Tab 39 to the Agreed Statement of Facts.
49. Also on October 16, 2013, Ms. Woodside sent a letter to Dr. Mrozek which states that the meeting scheduled for October 17, 2013 will proceed as scheduled. She also indicates that if the College cancels a meeting, he would be notified of the cancellation in writing and "you should not otherwise presume that any meeting scheduled by the College is cancelled." Ms. Woodside referenced s. 76 of the *Health Professions Procedural Code*. A copy of Ms. Woodside's letter of October 16, 2013 is attached at Tab 40 to the Agreed Statement of Facts.
50. On October 16, 2013 at 4:47 pm, Ms. Woodside received an email message from Dr. Mrozek which states "under the circumstances, I confirm my non-participation in the October 17, 2013 meeting." A copy of a memorandum prepared by Ms. Woodside containing the text of Dr. Mrozek's email is attached at Tab 41 to the Agreed Statement of Facts.
51. On October 17, 2013, Ms. Woodside sent a letter to Dr. Mrozek which states that the College expects him to attend the meeting with Dr. Ferencz, in accordance with his duty to cooperate with College investigations. Ms. Woodside cautioned Dr. Mrozek about the potential consequences of not attending: "Should you fail to attend, this is notice that this information will be brought to the attention of the Inquiries Complaints and Reports Committee (ICRC), and it may take any action permitted under the Code, including a referral to the discipline committee for failure to cooperate." A copy of Ms. Woodside's letter to Dr. Mrozek dated October 17, 2013 is attached at Tab 42 to the Agreed Statement of Facts.
52. On October 17, 2013, Ms. Woodside attended at Dr. Ferencz's office at 1:00 p.m. as scheduled to facilitate the meeting with Dr. Mrozek. By 1:30 p.m., Dr. Mrozek had not

attended for the meeting. A copy of a copy of a memorandum prepared by Ms. Woodside on October 17, 2013 is attached at Tab 43 to the Agreed Statement of Facts.

53. On October 21, 2013, Dr. Mrozek wrote to Dr. Ferencz, apologizing for any inconvenience caused to him, and explaining that he was concerned that Dr. Ferencz had been incompletely briefed. A copy of Dr. Mrozek's letter dated October 21, 2013 is attached at Tab 44 to the Agreed Statement of Facts.
54. In early November 2013, Ms. Elaine Stone, an investigator with the College, took over carriage of the investigation of Dr. Mrozek. On November 5, 2013, Ms. Stone left a voicemail for Dr. Mrozek to contact the College. Dr. Mrozek responded by email on November 6, 2013, thanking Ms. Stone for her voicemail message, and advising that he looked forward to her introductory communication. A copy of Dr. Mrozek's email of November 6, 2013 is attached at Tab 45 to the Agreed Statement of Facts.
55. The next communication from the College to Dr. Mrozek was on April 10, 2014, Ms. Stone wrote to Dr. Mrozek to advise him that the complaint regarding Patient A remains under investigation and that the College is awaiting a report from Dr. Ferencz. A copy of Ms. Stone's letter dated April 10, 2014 is attached at Tab 46 to the Agreed Statement of Facts.
56. On April 11, 2014, Ms. Stone wrote to Dr. Mrozek advising him that the 75(1)(a) investigation is ongoing and that she would provide an update when she was able. She also confirmed that nothing was required of Dr. Mrozek at that time. A copy of Ms. Stone's letter of April 11, 2014 is attached at Tab 47 to the Agreed Statement of Facts.
57. Dr. Mrozek responded to Ms. Stone's letter on April 15, 2014. He asked whether the College had gathered any further material. A copy of Dr. Mrozek's letter of April 15, 2014 is attached at Tab 48 to the Agreed Statement of Facts.
58. On April 22, 2014, Ms. Stone provided Dr. Mrozek with a copy of Dr. Ferencz's independent opinion report regarding Patient A and asked for a response by May 30,

2014. A copy of Ms. Stone's letter of April 22, 2014 is attached at Tab 49 to the Agreed Statement of Facts.

59. On May 26, 2014, Ms. Nada Nicola-Howorth, counsel at Lerner LLP, sent a letter to Ms. Stone, advising that she had been retained to assist Dr. Mrozek with respect to the complaint regarding Patient A. Ms. Nicola-Howorth requested an extension until June 30, 2014 to respond. A copy of Ms. Nicola-Howorth's letter dated May 26, 2014 is attached at Tab 50 to the Agreed Statement of Facts.
60. On May 27, 2014, during a telephone call with Ms. Nicola-Howorth, Ms. Stone agreed to the extension requested.
61. On June 2, 2014, Ms. Nicola-Howorth wrote to Ms. Stone, noting that Dr. Ferencz had reviewed materials (to prepare his report regarding Patient A.) that the College had failed to produce. She requested production of the documents so that Dr. Mrozek could respond to the report. A copy of Ms. Nicola-Howorth's letter dated June 2, 2014 is attached at Tab 51 to the Agreed Statement of Facts.
62. On June 4, 2014, Ms. Stone responded to Ms. Nicola-Howorth, refusing to produce the information, on the basis that the College did not have a duty of disclosure. A copy of Ms. Stone's letter dated June 4, 2014 is attached at Tab 52 to the Agreed Statement of Facts.
63. On June 5, 2014, Ms. Nicola-Howorth responded, advising the College of the duty of fairness it did owe to Dr. Mrozek. A copy of Ms. Nicola-Howorth's letter dated June 5, 2014 is attached at Tab 53 to the Agreed Statement of Facts.
64. Also on June 5, 2014, Ms. Nada Nicola-Howorth sent a letter to Ms. Stone indicating that her firm had been retained to assist Dr. Mrozek with the section 75(1)(a) investigation. A copy of Ms. Nicola-Howorth's letter of June 5, 2014 is attached at Tab 54 to the Agreed Statement of Facts.

65. On June 16, 2014, Ms. Nicola-Howorth wrote to Ms. Stone, requesting an immediate response to her letter of June 5, 2014, requesting the additional investigative materials that Dr. Ferencz had reviewed. A copy of Ms. Nicola-Howorth's letter dated June 16, 2014 is attached at Tab 55 to the Agreed Statement of Facts.
66. On June 24, 2014, Ms. Stone sent a letter to Ms. Nicola-Howorth. Attached to the letter was a report prepared by Dr. Ferencz with respect to the section 75(1)(a) investigation. Ms. Stone invited Dr. Mrozek to provide any response to Dr. Ferencz's report by July 24, 2014. A copy of Ms. Stone's letter of June 24, 2014 is attached at Tab 56 to the Agreed Statement of Facts.
67. On July 3, 2014, Ms. Stone sent a letter to Ms. Nicola-Howorth containing "addition investigative materials." In her letter, Ms. Stone invites Dr. Mrozek to make submissions in relation to "his cooperation with the Medical Inspector; the College and his behaviour during the course of the interview, as per section 76(3.1) of the Code." Ms. Stone asks for any submissions by August 11, 2014. A copy of Ms. Stone's letter of July 3, 2014 is attached at Tab 57 to the Agreed Statement of Facts.
68. On August 7, 2014, Ms. Zohar Levy, counsel at Lerner LLP, sent a letter to Ms. Stone which states as follows: "As you know, we are relatively new to this investigation. We note the invitation in your letter of July 3, 2014, to make submissions in response to Dr. Mrozek's 'behaviour during the course of the investigation.' We would appreciate it if you could advise the behaviour you are referring to." A copy of Ms. Levy's letter of August 7, 2014 is attached at Tab 58 to the Agreed Statement of Facts.
69. On August 19, 2014, Ms. Stone spoke to Ms. Nicola-Howorth and Ms. Levy. During that call, Ms. Stone outlined the College's concerns about Dr. Mrozek's behaviour during the investigation. It was agreed that Dr. Mrozek's reply submissions would be provided on or before September 30, 2014. A copy of a memorandum prepared by Ms. Stone of her August 19, 2014 conversation with counsel for Dr. Mrozek is attached at Tab 59 to the Agreed Statement of Facts.

70. On September 29, 2014, Ms. Nicola-Howorth provided Dr. Mrozek's response to the complaint about Patient A. A copy of the cover letter dated September 29, 2014 is attached at Tab 60 to the Agreed Statement of Facts.
71. Also on September 29, 2014, Ms. Nicola-Howorth advised that Dr. Mrozek "has been called away unexpectedly to deal with an urgent family matter overseas", and therefore would not be in a position to respond to Dr. Ferencz's reports regarding the section 75(1)(a) investigation until his return. A copy of Ms. Nicola-Howorth's letters dated September 29, 2014 is attached at Tab 61 to the Agreed Statement of Facts.
72. On October 16, 2014, Ms. Stone sent a letter to counsel for Dr. Mrozek. Ms. Stone sets out a summary of the College's efforts to arrange for Dr. Ferencz to interview Dr. Mrozek. Ms. Stone then proposed eight dates for Dr. Ferencz to interview Dr. Mrozek. Ms. Stone, once again, reminded counsel of Dr. Mrozek's obligation to cooperate with the Appointed Investigators under s. 76 of the *Code* and asked them to confirm a date by October 22, 2014. A copy of Ms. Stone's letter of October 16, 2014 is attached at Tab 62 to the Agreed Statement of Facts.
73. On October 22, 2014, counsel for Dr. Mrozek sent a letter to Ms. Stone. A letter from Dr. Mrozek is attached to counsel's letter. In his letter, Dr. Mrozek states that he is willing to meet with Dr. Ferencz on December 19, 2014 on the condition that it would take place "in the absence of third parties, notably investigators, lawyers, and recorders human or electronic." A copy of Ms. Levy's letter of October 22, 2014, including Dr. Mrozek's letter of October 21, 2014 as an attachment, is attached at Tab 63 to the Agreed Statement of Facts.
74. On October 23, 2014, Ms. Stone sent a letter to Ms. Levy confirming the interview would proceed on December 19, 2014. Ms. Stone advised that she would be present for the interview and that the interview would be recorded. A copy of Ms. Stone's letter of October 23, 2014 is attached at Tab 64 to the Agreed Statement of Facts.
75. On October 30, 2014, Ms. Nicola-Howorth sent a letter to Ms. Stone which states "Dr. Mrozek is giving further consideration to the meeting with Dr. Ferencz. He has told me

he will advise us by November 10, 2014.” A copy of Ms. Nicola-Howorth’s letter of October 31, 2014 is attached at Tab 65 to the Agreed Statement of Facts.

76. On November 10, 2014, Ms. Levy sent a letter to Ms. Stone which states as follows:
“Further to our letter of October 30, 2014, we have heard from Dr. Mrozek with respect to the meeting with Dr. Ferencz. We would like to speak with him before providing his response. He is out of town until November 13, 2014, but we will advise as soon as possible thereafter. A copy of Ms. Levy’s letter of November 10, 2014 is attached at Tab 66 to the Agreed Statement of Facts.
77. On November 24, 2014, Ms. Nicola-Howorth forwarded to Ms. Stone a letter from Dr. Mrozek dated November 7, 2014. In his letter, Dr. Mrozek states “I confirm my availability for a meeting with Medical Inspector Dr. Joseph Ferencz.” Nonetheless, he insists that he will only meet with Dr. Ferencz “in the absence of an investigator and a recorder. A copy of Ms. Nicola-Howorth’s letter of November 24, 2014, including Dr. Mrozek’s letter of November 7, 2014 as an attachment, is attached at Tab 67 to the Agreed Statement of Facts.
78. On November 26, 2014, Ms. Stone sent a letter to Ms. Nicola-Howorth. Ms. Stone confirmed that Dr. Ferencz would attend Dr. Mrozek’s office on December 19, 2014 for the interview. She reiterated that she would be in attendance and the meeting would be recorded. A copy of Ms. Stone’s letter of November 26, 2014 is attached at Tab 68 to the Agreed Statement of Facts.
79. On December 16, 2014, Dr. Mrozek copied Ms. Stone on an email he wrote to Ms. Nicola-Howorth. Dr. Mrozek confirmed he would meet with Dr. Ferencz on December 19, 2014, “thus cooperating fully with an investigator.” Dr. Mrozek states that a physician colleague will also be present as an observer. He also states that he agrees that the meeting can be recorded by a court reporter or it will not be audiotaped. He also insists that Ms. Stone not be present for the interview. A copy of Dr. Mrozek’s email of December 16, 2014 is attached at Tab 69 to the Agreed Statement of Facts.

80. On December 16, 2014, Ms. Nicola-Howorth forwarded to Ms. Stone a letter from Dr. Mrozek dated December 13, 2014. Dr. Mrozek's letter contains his submissions about his conduct during the investigation. A copy of Ms. Nicola-Howorth's letter of December 16, 2014, including Dr. Mrozek's letter of December 13, 2014, is attached at Tab 70 to the Agreed Statement of Facts.
81. On December 17, 2014, Ms. Stone sent a letter to Ms. Nicola-Howorth confirming the arrangements for the meeting on December 19, 2014. A copy of Ms. Stone's letter of December 17, 2014 is attached at Tab 71 to the Agreed Statement of Facts.
82. On December 18, 2014 at 10:33 am, Ms. Nicola-Howorth sent an email to Ms. Stone which states as follows: "I understand from Dr. Mrozek that after being advised that the meeting would not be proceeding tomorrow, he cancelled his staff and his colleague observer. He has advised that the meeting will have to be rescheduled to the New Year. Before rescheduling the meeting, however, you should be aware that Dr. Mrozek's position remains unchanged. In particular, it is Dr. Mrozek's position that if you wish the meeting to proceed, it will take place in your absence and without audio recording (except by a court reporter). Dr. Mrozek also requires that a colleague, who is a member of the active staff at the hospital, attend the meeting as an observer." Ms. Stone responded to Ms. Nicola-Howorth's email at 10:40 am and stated as follows: "Dr. F and I will be attending Dr. M's practice, as scheduled at 1000h tomorrow. In the event that Dr. M is not available, and/or does not grant appointed investigators access to his office, that information will inform the Committee's review and disposition in this matter." Ms. Stone sent a second email in response at 12:07 pm which states, in part as follows: "Just to reiterate, when we spoke yesterday about Dr. M's email, I indicated that I would follow up with you formally later in the day. I did not confirm that the interview was cancelled though I did relay the challenge Dr. M's position posed to myself as an agent of the College." A copy of the emails exchanged between Ms. Nicola-Howorth and Ms. Stone on December 18, 2014 are attached at Tab 72 to the Agreed Statement of Facts.
83. On December 18, 2014 at 4:59pm, Ms. Nicola-Howorth sent another email to Ms. Stone which states, in part, that Dr. Mrozek's office was closed for the holidays and he was

prepared to reschedule the meeting with Dr. Ferencz for the New Year. A copy of Ms. Nicola-Howorth's email of December 18, 2014 at 4:59 pm is attached at Tab 73 to the Agreed Statement of Facts.

84. Notwithstanding the email correspondence of December 18, 2014, Ms. Stone and Dr. Ferencz attended at Dr. Mrozek's office as scheduled on December 19, 2014. Counsel for Dr. Mrozek was also in attendance. Dr. Mrozek initially objected to the meeting proceeding if it was recorded. He repeatedly asked that the recording be switched off, at one point indicating that he does not feel free to speak with the recording on. At another point, Dr. Mrozek told Dr. Ferencz not to ask him any question while the recorder was on. Dr. Mrozek reiterated his earlier request to have a colleague present for the interview. In fact, Dr. Mrozek called a colleague on the phone while Dr. Ferencz and Ms. Stone were in his office and asked his colleague to come to attend the meeting. When Ms. Stone reminded Dr. Mrozek that, because of issues of confidentiality, nobody else was permitted to attend the interview, Dr. Mrozek asked Ms. Stone to point him to the College regulation that prevents others from attending an interview. Dr. Mrozek also repeated his request to speak to Dr. Ferencz without Ms. Stone present. Ms. Stone explained that she had been appointed as an Investigator and would participate in the interview. Ms. Stone also explained that if she leaves, Dr. Ferencz would also leave. Eventually he did agree to the interview proceeding and responded to questions. He stated he was doing so "under duress" and on the condition that he could make his own recording of the interview. Ms. Stone agreed to him recording the interview himself.
85. At no time did the College investigators ever issue a summons to Dr. Mrozek under the *Public Inquiries Act, 2009*, or declare the intent to do so.

(iii) Testimony of Jennifer Beaumont

The College called evidence from one witness: Jennifer Beaumont. Dr. Mrozek did not call any witnesses.

Ms. Beaumont is the Regional Manager of Information Security and Privacy, at the Hospital. She is responsible for all of the information security and privacy programs at the Hospital, which includes protection of the systems from unauthorized access, preparation of audits, incident reporting, incident management, and privacy protection of the health records in compliance with legislation.

Ms. Beaumont testified that the majority of Hospital health records are stored within the MEDITECH system, which she described as their core health information management system. Within the MEDITECH system there are many modules of access to information. One of the modules is the Patient Care Inquiry (PCI) module, which contains notes, orders, medication, history, scanned documents and effectively everything with the patient's health record. Each employee has access to the MEDITECH system, but only some employees get access to the PCI module. Most clinicians get access to the PCI module. Everyone receives their own username (mnemonic) and password.

The MEDITECH system captures information about who accesses the PCI module. Ms. Beaumont testified that one can run a "PCI audit" on all access to patients for a specific mnemonic or one can run all access on a specific patient. The PCI audit report will show times and dates when there was access to the patient health information and the data source that was accessed.

Ms. Beaumont testified that at some point in time, she became involved in an investigation into Dr. Mrozek. Dr. Ian Smith, Chief of Staff of the Hospital, asked her office to conduct an audit to determine whether or not patient files referred to in a letter from Dr. Mrozek, dated November 9, 2012, were accessed appropriately. Ms. Beaumont was provided with a copy of the letter from Dr. Mrozek to Dr. Smith. The letter indicated that in March 2012, Dr. Smith had appointed Dr. M. Razi Sayeed as supervisor in respect of Dr. Mrozek's practice. The November 9, 2012 letter indicates that it is written in response to a report by Dr. Sayeed of August 27, 2012. In his letter of November 9, 2012, Dr. Mrozek addresses a concern raised by Dr. Sayeed, namely, that Dr. Mrozek was not employing the DSM multi-axial recording formats for his diagnoses. In his November 9th letter, Dr. Mrozek describes 11 charts (12 entries), "where other psychiatrists also

don't use the multi-axial recording format in the DSM." He then went on to identify the charts, using numbers assigned to each.

Ms. Beaumont testified that her analyst, Jennifer Hynes, ran a Patient Care Inquiry audit ("PCI audit"). The PCI audit was run using Dr. Mrozek's mnemonic, which is his unique username, over a three month period - September 1 to December 1, 2012. The PCI audit looked at which patients were accessed, at what times, on which dates, for how long, the data source that was accessed, the machine name that accessed it, the patient location, and the patient's unique MRI number. The patient name would also be disclosed on the PCI audit. Ms. Beaumont testified that the PCI audit was sent to Dr. Kocerginski, to review the record of access, and advise as to what access fell outside the circle of care.

A report was prepared in respect of the investigation called the Privacy Incident Investigation and Report Form ("PIIRF"). The PIIRF was prepared by Jennifer Hynes, and then reviewed and signed by Ms. Beaumont on June 17, 2013. Ms. Beaumont testified that the PIIRF was created for the institution's internal investigation file, and to submit to the Information and Privacy Commissioner of Ontario.

In order to confirm the results of the 2012 PCI audit, Ms. Beaumont, shortly before testifying, personally ran the PCI audit with the same parameters that Ms Hynes had used in 2012. Ms. Beaumont then compared the two PCI audit reports and confirmed the results were the same.

She testified, using the PCI audit report to refresh her memory, that the patient charts listed in Dr. Mrozek's letter of November 9th were all accessed by someone using Dr. Mrozek's credentials on November 10, 2012. She also testified that there were other charts accessed beyond the ones that are listed in Dr. Mrozek's letter of November 9th. There were a total of 41 patient charts accessed, involving 39 patients. These charts were all accessed within a one hour window.

Ms. Beaumont testified that the records accessed using Dr. Mrozek's credentials were accessed through the Citrix server. The Citrix application is used to gain remote access, and for that reason she could not identify the machine used.

She testified that in response to the investigation, she was provided with a copy of a letter to Mr. Christopher Parkes, General Counsel of the Hospital, by Dr. Mrozek, dated May 25, 2013. This letter indicates that it was written in response to a letter from Mr. Parkes dated March 12, 2013, in which Mr. Parkes had requested Dr. Mrozek's response regarding a potential privacy breach with respect to patient records that he accessed in November 2012. In the May 25th letter, Dr. Mrozek confirms that he accessed the patient records. He states, "I confirm that in response to a supervision report regarding my practice, I accessed the above patient records for the sole purpose of reviewing the psychiatric diagnosis recording formats, as employed by my Department of Psychiatry colleagues in their charting." He emphasizes in his letter that he "did not access the patient records for any improper or illicit purpose, but rather did so for solely educational and informational reasons, so as to assist me in preparing my response to the supervision report." Dr. Mrozek also states in this letter, "In retrospect, notwithstanding the legitimate reason for my accessing of the patient records, I believe that obtaining prior authorization to access those of the records that were outside of my circle of care would have prevented unnecessary concerns."

Ms. Beaumont testified on cross examination that she had not interviewed or corresponded with Dr. Mrozek, nor had she reviewed any patient charts. She testified that without reference to the original unredacted audit inquiry, she would not be able to recall the names of the patients involved and to provide accurate information about the specifics of what the PCI audit revealed.

Ms. Beaumont testified that the incident was closed on June 7, 2013 and the PIIRF report was signed, released and dated June 17, 2013.

Ms. Beaumont testified that she had not maintained a calendar or journal of the specific steps she had undertaken during the course of this investigation other than what was in the file. She testified that what is documented on the PIIRF report are the dates on which things were done.

There was no date which documented when she specifically reviewed the PCI audit, nor when she compared the PCI audit report to the November 9th correspondence from Dr. Mrozek. She had no specific recollection now of taking that step in this investigation, because it was four years ago. However, she testified that a report would not have gone to Dr. Koczerginski without her review.

On re-examination, she confirmed for the Committee, with reference to the 2012 PCI audit report, that each of the patient records identified in Dr. Mrozek's letter to Dr. Smith of November 9th were the same as those numbers on the PCI audit report.

THE ISSUES

The issues for the Committee to determine are as follows:

- 1) Did Dr. Mrozek fail to maintain the standard of practice of the profession in respect of his care and treatment of Patient A?
- 2) Did Dr. Mrozek fail to cooperate with the College in respect of his obligations under section 76 of the Code or under a separate common law duty to cooperate? If so, was this 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) Did Dr. Mrozek access patients' personal health information without consent or authorization? If so, was this 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?

BURDEN AND STANDARD OF PROOF

The College has the burden of proving an allegation of professional misconduct against a member. The standard of proof is on a balance of probabilities based on clear, cogent and convincing evidence.

ANALYSIS

1. Did Dr. Mrozek fail to maintain the standard of practice of the profession in respect of his care and treatment of Patient A

A failure to maintain the standard of practice of the profession is an act of professional misconduct under section 1(1)2 of O. Reg. 856/93, made under the *Medicine Act, 1991*.

The standard of practice has been defined as the standard expected of the ordinary, competent practitioner in the member's field of practice. It is not necessary to find that there has been harm in order to find there has been a failure to maintain the standard of practice of the profession.

The Committee received an Agreed Statement of Facts and Admission Regarding Standard of Care (with respect to Patient A). The Committee accepts as correct all of the facts set out in that document. Having regard to these facts and admissions, the Committee finds that Dr. Mrozek committed an act of professional misconduct in that he failed to maintain the standard of practice of the profession with respect to Patient A.

2) Did Dr. Mrozek fail to co-operate with the College and thereby engage in disgraceful, dishonourable or unprofessional conduct?

(i) Failure to Co-operate Fully

The College submitted that Dr. Mrozek failed to co-operate with College efforts to arrange an interview between Dr. Mrozek and Dr Ferencz.

Section 76 of the Code provides as follows:

Application of *Public Inquiries Act, 2009*

76 (1) An investigator may inquire into and examine the practice of the member to be investigated and section 33 of the *Public Inquiries Act, 2009* applies to that inquiry and examination.

Reasonable inquiries

(1.1) An investigator may make reasonable inquiries of any person, including the member who is the subject of the investigation, on matters relevant to the investigation.

Idem

(2) An investigator may, on the production of his or her appointment, enter at any reasonable time the place of practice of the member and may examine anything found there that is relevant to the investigation.

Obstruction prohibited

(3) No person shall obstruct an investigator or withhold or conceal from him or her or destroy anything that is relevant to the investigation.

Member to co-operate

(3.1) A member shall co-operate fully with an investigator.

Conflicts

(4) This section applies despite any provision in any Act relating to the confidentiality of health records.

In *Jain v the College of Physicians and Surgeons of Ontario*, 2012 ONCPSD 30 (CanLII), Dr. Jain asked for an order declaring that answers given at an earlier interview were compelled, and should be protected from future use at the discipline hearing. Dr. Jain had sought the protection of section 9(2) of the *Ontario Evidence Act* on the basis that her answers could expose her to liability in civil proceedings. In the context of that case, the Committee explained the history of the 2009 section 76 (1.1) and (3.1) amendments to the *Code* as follows:

“Prior to 2009, Section 76 did not contain any equivalent to Subsections 1.1 or 3.1 which were described in the proceedings before us as the 2009 amendments. The legislative history of these amendments indicate that they were requested by the College following incidents of substandard cosmetic surgery where the investigative powers of the College under the legislation then in force had been challenged by members. The legislative history supports that the 2009 amendments were enacted to give the College additional investigative tools to ensure the safety of the public.” (page 5)

Later at page 9 of the decision, in rejecting Dr. Jain’s argument under section 9(2) of the *Ontario Evidence Act*, the Committee states:

“The committee concluded that the protection contained in section 9(2) is a narrow exception and that it does not apply or result in the exclusion at the discipline hearing of relevant evidence given by a physician *responding to questions as required under the physician’s duty to co-operate with the College as regulator.*” (emphasis added)

College counsel submitted that *Jain* stands for the proposition that the duty to co-operate includes the duty to respond to questions posed by a College investigator, without having to be summonsed.

College counsel also cited two cases on the duty to cooperate which were decided by the Committee prior to the 2009 amendment of section 76 of the Code. Counsel for the College submitted that, separate and apart from the statutory duty to cooperate imposed by section 76 of the Code, there was a pre-existing common law duty to cooperate with college investigations, which included a duty to respond to inquiries made by the College. Those cases were *Vincent v College of Physicians and Surgeons*, 2001 and *Faulkner v College of Physicians and Surgeons*, 1995. Counsel for the College submitted that the common law duty to co-operate includes an obligation to respond to the College “in a respectful and timely manner.”

The College also relied on the Discipline Committee decision of *CPSO re Tadros* (2010). Following an agreed statement of facts and admission, the Committee found that Dr. Tadros had

committed an act of professional misconduct on the basis of disgraceful, dishonourable and unprofessional conduct. The College had requested Dr. Tadros transcribe handwritten notes that were illegible from 23 patient charts. Transcripts were provided in a piecemeal fashion over a period of time. Like Dr. Mrozek, Dr. Tadros ultimately complied with the College's request but he admitted that he failed to respond appropriately or within a reasonable time to written inquiries. The Committee found that, "Failure to respond in a timely fashion is disrespectful to the College process of self-regulations and hinders its ability to protect the public... Members are required to co-operate with College investigators and failing to do so in a timely fashion brings into question the governability of the member."

Finally, the College relied on the case of *CPSO v Aziz* (2014) in which the member admitted to having committed an act of professional misconduct on the basis of disgraceful, dishonourable and unprofessional conduct. During a section 75(1) investigation, Dr. Aziz was asked to complete a physician questionnaire and return it to the investigators, which he failed to do. Later, the investigator requested Dr. Aziz to transcribe entries in the patient records, and again requested that he complete the physician questionnaire. The investigator (similar to Dr. Mrozek's case) advised Dr. Aziz that his failure to co-operate was contrary to Section 76 of the Code. Dr. Aziz did not provide the transcriptions of the charts or the completed physician questionnaire until after the allegations of professional misconduct were referred to the Discipline Committee

Counsel for Dr. Mrozek submitted that the Code does not explain what the "duty to cooperate fully" in section 76 (3.1) means. He submitted that nothing in section 76 of the Code expressly allows the investigator to compel a member to submit to an interview or attend a meeting. He pointed out that there is a separate provision dealing with a summons at section 33 of the *Public Inquiries Act*, (which is incorporated into the Code via section 76(1)) which includes specific procedural protections for witnesses who are subject to a summons. This includes the right to object to answering questions on the basis of privilege. No summons was ever issued to Dr. Mrozek. In the absence of any statutory requirement to submit to an interview and the absence of a summons, Dr. Mrozek submits his attendance was purely voluntary.

The Committee finds that it was not necessary to issue a summons to Dr. Mrozek to have him attend a meeting with the investigator and Dr. Ferencz. The Committee finds that Dr. Mrozek's

statutory duty “to cooperate fully” required him to attend a meeting with the investigator and Dr. Ferencz, if requested, and respond to questions asked. Subsection 76(1.1) provides that, “An investigator may make reasonable inquiries of any person, including the member who is the subject of the investigation, on matters relevant to the investigation.” That subsection stands alone without any requirement for a summons. In the context of the section 76 as a whole, including, subsection 76(1.1), the duty to co-operate fully in subsection 76(3.1) must include a duty to respond to the “reasonable inquiries” of an investigator, without having to be summonsed.

If the member frustrates the process by failing to meet with the investigator in a timely manner, he risks being found to have breached the duty to cooperate fully. Being a member of a self-regulating profession entails respecting one’s obligations to the College, including the obligation to co-operate fully with an investigation. Further, public protection requires members to co-operate fully with the College’s investigation so that the College can determine on a timely basis whether there are any patient safety concerns; this includes making efforts to meet with an investigator promptly upon request. Dr. Mrozek had been reminded of his duty to cooperate in writing by the College investigator twelve times.

The Committee finds that there was nothing unreasonable about any of the requests made by the College investigator to Dr. Mrozek, including requests made about the interview being recorded, the investigator being present, or excluding a third party (not legal counsel) from attending. Counsel for Dr. Mrozek argued that Dr. Mrozek’s conduct was very different from the conduct at issue in the failure to cooperate cases relied upon by the College. In those cases, the physicians were unresponsive. In contrast, Dr. Mrozek exchanged professional and courteous communications, responded to requests and initiated correspondence. The Committee finds, however, that failure to cooperate is not only about failure to communicate or being unresponsive. The Committee finds that Dr. Mrozek was willfully non-compliant with the College’s request. He did not respond to all correspondence in a timely fashion. He cancelled scheduled appointments, and he attempted to impose unreasonable conditions on the appointment. Ultimately, Dr. Mrozek only participated in the interview when the investigator and Dr. Ferencz showed up at his office, 20 months after the first request for an interview was

made. Dr. Mrozek's delay and attempt to frustrate and set parameters on the interview, in the face of twelve reminders of his duty to co-operate, constitutes a breach of the duty to fully co-operate with the College investigator.

(ii) Disgraceful, Dishonourable or Unprofessional

Counsel for Dr. Mrozek submitted that even if the Committee finds Dr. Mrozek failed to cooperate with the College, the College must prove that his conduct rises to a level of professional misconduct and is not the result of mere errors of judgement.

Reid v. College of Chiropractors of Ontario, 2016 ONSC 1041 (CanLII) involved an appeal by Dr. Reid to the Divisional Court on both liability and penalty, including a finding of professional misconduct on the basis of a failure to co-operate. The Divisional Court held that in order to make a finding of professional misconduct there must be more than a simple error of judgment -- there must be finding of a significant departure from professional standards that rises to the level of professional misconduct.

The Court in *Reid* relied on the decision of Court of Appeal in *Barrington v. The Institute of Chartered Accountants of Ontario*, 2011 ONCA 409:

[79] Justice Karakatsanis confirmed that the Tribunal must articulate the proper test and determine whether the departure by a professional was significant enough to bring an error of judgment to the threshold of professional misconduct:

[122] The DC articulated the proper test and the requirement that any departure from the standards of the profession must be so significant that it constitutes professional misconduct: para. 54. Similarly, after making the findings that the particulars were proven, the DC specifically addressed the issue of whether the departures from the required standards and the failure to comply with GAAP constituted professional misconduct. It found that the breaches by the members were "significant enough, in and of themselves, to constitute professional misconduct": paras. 327-29.

[80] When considering the allegation in this case, I reiterate the applicable legal test that must be applied: allegations of professional misconduct must be proven on the basis of evidence that is clear, convincing and cogent and that supports a finding that there has been a significant departure from acceptable professional standards: see *Re Bernstein; Barrington*.

Case Law on Failure to Cooperate

[81] The few cases on professionals not cooperating with disciplinary investigations suggest that it is not enough for there to be delayed or sparse responses, but rather there must be a clear refusal to cooperate with the investigation.

In that case, Dr. Reid initially declined to meet with the investigator. Once he was sent a copy of the governing legislation confirming his mandatory obligation to cooperate, he was cooperative and the meeting took place at a reasonable time. The Court characterised his initial refusal to attend the meeting as an error of judgement.

The facts in Reid are quite different from the facts in this case. Dr. Mrozek was reminded of his obligation numerous times, yet he continued to be uncooperative and to frustrate and prolong the process. The Committee finds that Dr. Mrozek's failure to co-operate is not a mere error of judgement, rather his conduct rises to the level of professional misconduct. There were repeated opportunities for Dr. Mrozek to reconsider his stance towards the College's investigation and repeated warnings from the College investigator with respect to his duty to cooperate fully.

The Committee finds that Dr. Mrozek failed to cooperate with the College in respect of his obligations to the College outlined in section 76 of the *Code*. The Committee further finds that in failing to co-operate with the College investigation, Dr. Mrozek committed 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 the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

Adverse Inference from Failure to Testify regarding Duty to Cooperate

The College submitted that the Discipline Committee could draw an adverse inference from the fact that Dr. Mrozek failed to testify with respect to the issue of his failure to co-operate. A member has no right to remain silent in a disciplinary hearing. When a member does not testify, the Discipline Committee can infer that any evidence that could have been given on a point that the College has already established prima facie proof of would not assist the member. This does not change the fact that the College still has the burden of proof.

The late Justice Sopinka noted in *The Law of Evidence in Canada*, Third Edition, at para. 6.449, that an adverse inference can be drawn in civil cases when,

“in the absence of an explanation, a party litigant does not testify, or fails to provide affidavit evidence on an application, or fails to call a witness who would have knowledge of the facts and would be assumed to be willing to assist the party. In the same vein, an adverse inference may be drawn against a party who does not call a material witness over whom he or she has exclusive control and does not explain it away. Such failure amounts to an implied admission that the evidence of the absent witness would be contrary to the party’s case, or at least would not support it.”

The issue of adverse inference was canvassed in *CPSO re Garcia* (2016). The Discipline Committee stated as follows:

‘A member has no right to remain silent in a disciplinary proceeding. In *McIntyre*, the Discipline Committee determined it can draw an adverse inference against the member for her failure to testify. In doing so, it firmly rejected the argument that there would have been unfairness to the member from drawing an adverse inference. As the Committee stated in *McIntyre*

‘The onus is and always remains entirely on the College to prove the allegation on a balance of probability and based on clear, cogent and convincing evidence. That

said, a physician subject to discipline does not enjoy a “right to remain silent” and accordingly, the decision not to testify in his own defence permits the Committee to draw an adverse inference where it is appropriate... This does not involve any speculation by the Committee as to the content of the missing testimony or any reliance upon the substance of that presumed testimony. It is simply a statement of the common-sense proposition that if the College’s evidence establishes *prima facie* proof of a fact and the physician chooses not to testify to answer that evidence, it is open to the committee to draw an adverse inference from her failure to testify.”

The Committee finds that it does not have to draw an adverse inference as the evidence that has been accepted by the Committee establishes on a balance of probabilities that Dr. Mrozek committed an act of professional misconduct by failing to co-operate fully with the College’s investigation. This is a case, however, in which the Committee agrees that Dr. Mrozek could have provided relevant evidence in response to the *prima facie* evidence established by the College that he repeatedly avoided meeting with Dr. Ferencz and attempted to set conditions on the interview, although reminded in twelve different letters of his duty to co-operate. The Committee draws the inference from Dr. Mrozek’s failure to testify that his testimony would not have assisted to refute these facts.

3) Did Dr. Mrozek access patients’ personal health information without consent or authorization? If so, was this 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?

College counsel submitted that the allegation that Dr. Mrozek breached the privacy of patients at the Hospital is proven on the basis of his own correspondence. In the November 9, 2012 letter, Dr. Mrozek admits that he accessed a sample of recent Hospital charts. He writes “If you look at these charts, you would see that these psychiatrists also don’t use the DSM multi-axial recording format.” It is clear from this letter that the records that he refers to in his letter are those of other psychiatrists and not his own. Further, in his May 25, 2013 letter, Dr. Mrozek wrote: “I believe

that obtaining prior authorization to access those records that were outside of my circle of care would have prevented unnecessary concerns.” The Committee finds that this constitutes an admission by Dr. Mrozek that he accessed records of patients outside his circle of care without obtaining prior authorization.

Counsel for Dr. Mrozek argues that the College has not proven which of the accessed charts were outside Dr. Mrozek’s circle of care. Ms. Beaumont did not provide this evidence, nor did the College call the Chief of Psychiatry, Dr. Koczerginski, who Ms. Beaumont testified was assigned the task of determining which patients were outside Dr. Mrozek’s circle of care. The Committee agrees that the evidence does not indicate how many of these patients were outside his circle of care. The Committee finds, however, that on Dr. Mrozek’s own admission, as contained in his letter of May 25, 2013, he accessed records that were outside his circle of care.

The Committee found Ms. Beaumont to be a credible and reliable witness. Ms. Beaumont gave evidence with respect to the number of patients whose records were accessed, and the date and the time they were accessed. Ms. Beaumont testified that her audit showed that someone using Dr. Mrozek’s credentials accessed a total of 41 patient charts from 39 unique patients during approximately one hour on November 10, 2012. Of these, twelve patient charts and eleven unique patient files were the very same as those in Dr. Mrozek’s letter dated November 9, 2012 to Dr. Smith.

The Committee finds that Dr. Mrozek accessed the twelve patient charts referred to in his letter of November 9, 2012, a finding that could be made purely on his own correspondence. Further, there is compelling circumstantial evidence that he accessed all the other unique patient records identified in the audit. They were accessed using his personal credentials and during the same period of time as the twelve records identified in his letter of November 9th. There is no evidence, however, to indicate which of these patients were outside his circle of care.

Further, the Committee finds that the reason that Dr. Mrozek accessed these records was to assist him in his argument with the Hospital. It is clear from his letter dated November 9th that he was looking for examples of cases where other psychiatrists used the same practice as he did. The

Committee finds that there can be no reasonable inference that he accessed the records to provide patient care. It defies common sense to suggest that one would access 41 different patient charts from 39 different patients, remotely, over approximately one hour, if one was trying to provide patient care. Further, the Committee rejects the position stated in Dr. Mrozek's letter of May 25, 2013, that these records were accessed for educational or research purposes. It was clear from the wording of the November 9th letter that the charts that were listed by Dr. Mrozek were being proffered as evidence in support of his dispute with the Hospital and that it had nothing to do with patient care, or research or education directed at patient care.

The Committee also rejects the submission that the *Personal Health Information Protection (PHIPA) Act* permitted access of the records for patients outside of Dr. Mrozek's circle of care. Section 3(1) of the *Personal Health Information Protection (PHIPA) Act*, defines "health information custodian" as follows:

Health information custodian

3 (1) In this Act,

"health information custodian", subject to subsections (3) to (11), means a person or organization described in one of the following paragraphs who has custody or control of personal health information as a result of or in connection with performing the person's or organization's powers or duties or the work described in the paragraph, if any:

1. A health care practitioner or a person who operates a group practice of health care practitioners.
2. A service provider within the meaning of the Home Care and Community Services Act, 1994 who provides a community service to which that Act applies.
3. A community care access corporation within the meaning of the Community Care Access Corporations Act, 2001.

Note: On November 1, 2017, the day named by proclamation of the Lieutenant Governor, paragraph 3 of the definition of “health information custodian” in subsection 3 (1) of the Act is repealed. (See: 2016, c. 30, s. 43 (1))

...

8. Any other person prescribed as a health information custodian if the person has custody or control of personal health information as a result of or in connection with performing prescribed powers, duties or work or any prescribed class of such persons. 2004, c. 3, Sched. A, s. 3 (1); 2006, c. 17, s. 253; 2007, c. 8, s. 224 (2-4); 2007, c. 10, Sched. H, s. 1; 2009, c. 33, Sched. 18, s. 25 (1); 2010, c. 11, s. 128.

Section 29 of PHIPA provides:

29 A health information custodian shall not collect, use or disclose personal health information about an individual unless,

(a) it has the individual’s consent under this Act and the collection, use or disclosure, as the case may be, to the best of the custodian’s knowledge, is necessary for a lawful purpose; or

(b) the collection, use or disclosure, as the case may be, is permitted or required by this Act. 2004, c. 3, Sched. A, s. 29.

Section 37 of PHIPA permits a health information custodian to use records for quality improvement purposes:

Permitted use

37 (1) (d) for the purpose of risk management, error management or for the purpose of activities to improve or maintain the quality of care or to improve or maintain the quality of any related programs or services of the custodian;

While it is correct that Dr. Mrozek, as a health care practitioner, falls within the definition of a “health information custodian” in section 3(1) of *PHIPA*, it does not follow that Dr. Mrozek could access patient records for those not in his circle of care for his own personal interests. Dr. Mrozek accessed charts for the purpose of defending himself in his dispute with the Hospital and such a purpose is not consistent with the statutory purpose of *PHIPA*, which is set out in section 1 of *PHIPA*:

Purposes

1 The purposes of this Act are,

- (a) to establish rules for the collection, use and disclosure of personal health information about individuals that protect the confidentiality of that information and the privacy of individuals with respect to that information, while facilitating the effective provision of health care;
- (b) to provide individuals with a right of access to personal health information about themselves, subject to limited and specific exceptions set out in this Act;
- (c) to provide individuals with a right to require the correction or amendment of personal health information about themselves, subject to limited and specific exceptions set out in this Act;
- (d) to provide for independent review and resolution of complaints with respect to personal health information; and
- (e) to provide effective remedies for contraventions of this Act.

The Committee finds that the College has proved, based on Dr. Mrozek’s own admissions in his correspondence of November 9, 2012 and May 25, 2013, that Dr. Mrozek accessed patient personal health information for those outside his circle of care without consent or authorization.

The Committee further determined that in so doing, Dr. Mrozek 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. The Committee endorses the comments made in *CPSO re Di Paolo* (2016):

Privacy is a cornerstone of trust. Privacy refers to an individual having the right to choose what information she shares with others, individually or collectively. Privacy supports or creates feelings of security, and is an important human right. Violating privacy destroys trust, both for the individual physician, but also for the profession as a whole.

The principles of the Hippocratic Oath, dating from antiquity, are held sacred by physicians to this day and include the following concepts: "...to treat the sick to the best of one's ability, preserve patient privacy, teach the secrets of medicine to the next generation "... (Peter Tyson, The Hippocratic Oath Today, Posted March 27, 2001).

Trust is fragile and can be undermined to a very significant degree, even when health records are disclosed through inadvertence. It can be undermined to an even greater degree when access to a patient's confidential records is intentional and unauthorized. Electronic health records are intended to facilitate effective and efficient patient care. But when a physician seeks to gain improper and unauthorized access to sensitive patient information in confidential medical records, public trust in the profession is eroded.

Confidentiality is emphasized to be one of the fundamental pillars within medical education. Patients must feel that their personal medical information is handled in a confidential manner. Medical records contain information about their background, their experiences, their illnesses and their treatments, and may only be disclosed with the patients' informed consent

Although Dr. Mrozek did not access patient records for the purpose of investigating the personal circumstances of the patients whose records he accessed (as was the case in *Di Paolo* and *Brooks*), but rather to look for evidence related to the practices of other psychiatrists, this does not mean that the privacy of the patients was not violated. As a physician, and in particular as a psychiatrist, Dr. Mrozek should have appreciated the confidential nature of these documents and the fact that they could not be accessed simply to provide him with ammunition in his dispute with the Hospital. It was unprofessional for him to have done so.

Again, the College asked the Committee to draw an adverse inference from Dr. Mrozek's failure to give evidence on the issue of the privacy breach. The Committee finds that the College's evidence establishes *prima facie* proof that Dr. Mrozek accessed patient information without consent or authorization. He admits this in his own correspondence. The Committee is prepared to infer from Dr. Mrozek's failure to testify that he would not have provided evidence to show that he in fact had consent or authorization to access all of these records or that there was a legitimate basis for accessing the records of those outside his circle of care.

The Committee directs that the Hearings Office schedule a penalty hearing pertaining to the findings made at the earliest opportunity.

**Indexed as: Ontario (College of Physicians and Surgeons of Ontario) v. Mrozek,
2018 ONCPSD 69**

**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. EDMUND MROZEK

PANEL MEMBERS:
DR. W. KING (Chair)
MAJOR A. H. KHALIFA
MR. P. PIELSTICKER
DR. J. RAPIN

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS B. DAVIES

COUNSEL FOR DR. MROZEK:
MR. M. SAMMON
MS A. WHEELER

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. G. FORREST

PUBLICATION BAN

Penalty Hearing Date:	August 13, 2018
Penalty Decision Date:	December 11, 2018
Written Penalty Decision Date:	December 11, 2018

PENALTY DECISION AND REASONS FOR DECISION

On August 13, 2018, the Discipline Committee heard evidence and submissions on penalty and costs regarding this matter and reserved its decision.

THE COMMITTEE'S FINDINGS

On April 6, 2018, the Discipline Committee found that Dr. Mrozek committed an act of professional misconduct, in that: he has failed to maintain the standard of practice of the profession; and, 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.

Dr. Mrozek's failure to maintain the standard of practice of the profession related to his psychiatric care of a single patient, Patient A, whose care he admitted was substandard. Dr. Ferencz, the psychiatrist retained by the College to review the matter, concluded that Dr. Mrozek had fallen below the standard of practice in his care of Patient A as follows:

- d. Dr. Mrozek had failed to recognize or elicit the symptoms of psychosis, particularly hallucinations, delusions and lack of insight into illness by Patient A, and did not attend with adequate care to the opinions of colleagues and information provided by family members;
- e. Dr. Mrozek did not use accepted, standard diagnostic descriptors in his documentation regarding Patient A; and
- f. Dr. Mrozek used sub-therapeutic doses of anti-psychotic medication in a form that was unlikely to be taken and discontinued treatment in an individual who was likely to relapse.

The conduct found to be disgraceful, dishonourable or unprofessional was twofold:

1. Dr. Mrozek failed in his duty to cooperate with the College's investigation over an approximately 20-month-period.

The Committee found that a member must respect his or her obligations to the regulator, including the obligation to co-operate fully with an investigation. Dr. Mrozek's statutory duty to cooperate fully required him to attend a meeting with the investigator and Dr. Ferencz if requested, and respond to questions. Dr. Mrozek participated in the interview only when the investigator and Dr. Ferencz showed up at his office, 20 months after the first request for an interview was made. The Committee found that Dr. Mrozek was willfully non-compliant with the College's request to attend for an interview. The Committee also found that Dr. Mrozek's delay and attempt to frustrate and set parameters on the interview, in the face of twelve reminders of his duty to co-operate, constituted a breach of the duty to co-operate fully with the investigation.

2. Dr. Mrozek accessed the confidential medical records of 39 patients, a number of whom were beyond his circle of care, for inappropriate, personal purposes.

The Committee found that it was unprofessional for Dr. Mrozek to have accessed these records in an attempt to obtain comparable patient data that would support Dr. Mrozek's position in an investigation being conducted by his hospital. Dr. Mrozek accessed patient personal health information for those outside his circle of care without consent or authorization.

EVIDENCE ON PENALTY

Prior to the commencement of penalty submissions, two exhibits were admitted: Exhibit 1 is a binder of Letters of Support; and Exhibit 2 is a two-volume set of Supervision Reports and Correspondence between the Supervisor and the Compliance Office.

While the letters of support were evidence that Dr. Mrozek is held in high regard by colleagues, they had little bearing on the specific matters which were the subject of the finding and were given relatively little weight by the Committee in its determination of the appropriate penalty.

Admissibility of Patient Impact Statement

College counsel sought to introduce into evidence a Patient Impact Statement (the “Statement”) authored by the daughter of Patient A, the patient whose care by Dr. Mrozek was found by the Committee to have failed to maintain the standard of practice of the profession. Counsel for Dr. Mrozek objected to its admission.

The Committee held a *voir dire* to determine its admissibility. With the agreement of the parties, the Committee ruled that, rather than interrupt the proceedings, it would reserve its decision on the admissibility of the Statement and render a decision with its Decision and Reasons on Penalty.

Counsel for Dr. Mrozek submitted that while it is a legal requirement that patient impact statements must be considered in cases of sexual abuse, it is unusual (although not unprecedented) for impact statements to be considered in cases of other forms of misconduct. Moreover, the author of the Statement is not the patient, but rather the patient’s daughter who is presuming to speak for her mother.

Dr. Mrozek’s counsel also submitted, and College counsel agreed, that the Committee should be guided by the words of Justice Hill in *R. v. Gabriel* 1999 CanLII 15050, who states at para 35, albeit in the criminal context, that “Impact statements should describe the harm done to, or loss suffered by, the victim arising from the commission of the offence. The statements should not contain criticisms of the offender, assertions as to the facts of the offence, or recommendations as to the severity of the punishment.” Dr. Mrozek’s counsel submitted that the Statement contains direct allegations of negligence, criticisms of Dr. Mrozek’s care beyond the failings to which he admitted in the Agreed Statement of Facts, and opinions on causation properly the prerogative of a qualified medical expert.

College counsel brought to the Committee's attention examples from hearings before this Committee in which patient impact statements have been received from family members, *Yazdanfar* (2011), or other third parties, *Wong* (2014). She further submitted that there is no attempt in Patient A's daughter's Statement to directly influence the penalty decision.

Both parties agreed that the Committee had the ability to redact the Statement to comply with principles articulated in the *Gabriel* case.

The Committee determined that, suitably redacted of all accusations, criticisms and matters of opinion, the Statement is reduced to a first-hand account of the events which have befallen her mother and the unfortunate state into which her mother's life has degenerated. In our opinion, she deserves to be heard and the Statement deserves to be part of the record. The Committee admitted the redacted Statement as Exhibit 3. A copy of the Statement as redacted by the Committee will be released to the parties with this Penalty Decision and Reasons.

SUBMISSIONS ON PENALTY

The parties were in agreement that the penalty and costs order should include a suspension, a reprimand, and the payment of costs to the College. The parties disagreed on the length of suspension, whether terms, conditions and limitations should be imposed on Dr. Mrozek's certificate of registration and the quantum of costs.

The College submitted that a nine-month suspension was appropriate. Dr. Mrozek submitted that a three-month suspension was appropriate.

The College also submitted that the imposition of terms, conditions and limitations, requiring a period of supervision and a reassessment and individualized instruction in ethics, was appropriate. Dr. Mrozek's counsel submitted that no terms, conditions and limitations should be imposed in the circumstances.

The College's Submissions

Length of Suspension

The College submitted that a nine-month suspension was appropriate in the circumstances of this case. College counsel spoke to the mitigating and aggravating factors, from the College's perspective.

Regarding mitigating factors, College counsel submitted that the admission of a failing to maintain the standard of practice of the profession saved hearing time in that no expert testimony was required, and indicated some degree of insight on the part of Dr. Mrozek into his failings. Counsel noted, however, that there was only partial agreement in that the two allegations of disgraceful, dishonourable or unprofessional conduct were denied. Also, there was no indication of remorse by Dr. Mrozek or of any attempt to rectify deficiencies, although counsel rightly acknowledged that Dr. Mrozek is entitled to a vigorous defence and that the absence of a mitigating factor, such as remorse, is not an aggravating factor. College counsel noted further that Dr. Mrozek's supervision reports have been universally supportive and that he has no prior history with the College.

Regarding aggravating factors, College counsel submitted these include the grave consequences of the substandard care to Patient A and the seriousness of the findings of disgraceful, dishonourable or unprofessional conduct.

While recognizing that the appropriate penalty should be a global penalty reflecting all of the aspects of the case, rather than an additive exercise in which a separate penalty is assessed for each act of professional misconduct and added together, counsel for the College submitted that the multiplicity and seriousness of the findings in this matter place it beyond the range of suspension which findings on each similar allegation might attract, particularly, those in which an agreement on all the facts resulted in a negotiated joint submission on penalty. As a less serious example, she offered the *Di Paola* case (*CPSO v Di Paolo* 2016 ONCPSD 48), in which a breach of patient confidentiality had attracted a three-month suspension. Dr. Di Paola had

breached confidentiality out of concern for the welfare of a child, had already been sanctioned by her hospital, had expressed remorse and apologized and had instituted remedial measures prior to the hearing. By contrast, College counsel submitted, Dr. Mrozek had made a deliberate decision to violate confidentiality for his own purpose in a dispute with his hospital and could claim none of the other mitigating factors applicable in the *Di Paola* matter.

Similarly, in *Brooks* (*CPSO v Brooks* 2016 ONCPSD 29), the doctor in an Agreed Statement of Facts admitted accessing the medical records of two patients without consent. After a joint submission on penalty, the Committee ordered a five-month suspension, despite the presence of mitigating factors not present in this case.

In the realm of failure to cooperate with the College, counsel for the College offered the examples of *Aziz* (*CPSO v. Aziz, S. B.*, 2014 ONCPSD 33), and *Botros* (*CPSO v. Botros*, 2015 ONCPSD 42), in which failures to cooperate with College processes attracted significant suspensions (three and six months, respectively) despite mitigating factors, at least in the case of Dr. Aziz, not present in the case of Dr. Mrozek.

Terms, Conditions and Limitations on Certificate of Registration

Counsel for the College submitted that the other components of the Order requested were in the interest of public protection and rehabilitation of Dr. Mrozek.

Despite the repeated supervision reports that Dr. Mrozek has been practising to the standard, public confidence would be enhanced, she submitted, by a period of “tapering” supervision when he returns from a lengthy absence from practice and the re-assessment, a year following the cessation of supervision, would demonstrate that he can practice within the standard, unsupervised. College counsel made it clear that the College would still urge the reassessment requirement if the Committee did not decide to order further supervision.

College counsel further submitted that individualized instruction in ethics would offer the opportunity for Dr. Mrozek to gain greater insight into the ethical principles, which he violated,

and an educational program in psychosis would refresh his knowledge in the area where he was found, and admitted to have been, deficient.

Dr. Mrozek's Submissions

The submissions of counsel for Dr. Mrozek differed on every particular save the appropriateness of the public reprimand.

Dr. Mrozek's counsel asked the Committee to consider as additional mitigating factors the letters of support from colleagues, which establish Dr. Mrozek's good professional reputation and the fact that Dr. Mrozek has already been "penalized" by the long period of close supervision resulting from the interim s.37 order of the Inquiries, Complaints and Reports Committee (the ICRC).

Dr. Mrozek's counsel described the nine-month suspension sought by the College as "punitive, disproportionate and unreasonable." He reviewed several of the same prior cases which had been introduced by the College. While conceding that the degree of similarity in the findings varied, he noted that the suspensions ordered were, in each case, less than the nine months sought by the College, ranging from six months (*Fenton*) to one month (*Faulkner*). He submitted that an appropriate order for Dr. Mrozek would be a three-month suspension.

Counsel for Dr. Mrozek submitted that "there is no basis for the imposition of further terms, conditions and limitations upon the member's clinical practice," based primarily on the fact that Dr. Mrozek has already undergone a long period of close supervision with uniformly positive reports. Indeed, he submitted further, the Committee should exercise its authority to vacate, immediately, the supervision order of the ICRC.

DECISION AND REASONS

In determining the appropriate penalty, the Committee considered the underlying principles of penalty. These include: public protection; specific deterrence of the member and general

deterrence of the profession from similar actions; demonstration to the public that the College will act, and is able, to govern the profession in the public interest; and lastly, where appropriate, to provide rehabilitation for the member.

In determining the appropriate penalty, the Committee carefully considered the submissions of the parties, the evidence and the prior decisions offered as precedent for our guidance.

The Committee is aware that it is not bound by its prior decisions on penalty but was also mindful of the principle that, while no two cases are ever exactly alike, similar misconduct should attract similar penalties.

Below, the Committee sets out its consideration of the various components of the draft order sequentially.

Length of Suspension

Regarding the appropriate length of suspension, the parties were in agreement that a suspension should be ordered but College counsel sought a suspension of nine months, whereas Dr. Mrozek's counsel submitted that a three-month suspension would be appropriate. This is a complex case and the Committee found insufficient similarity with the previous decisions provided to feel that a defined penalty range had been established.

In the opinion of the Committee, Dr. Mrozek's actions obstructing and delaying the investigations ordered by the College were reprehensible in the extreme. We did not agree with the submissions of counsel for Dr. Mrozek that his actions were no more serious than the actions in the other decisions referred to on this issue.

It was also the Committee's assessment that the unauthorized access to records of patients beyond his circle of care was a fundamental ethical violation which should have been obvious to Dr. Mrozek and lacked any higher motivation which might have served to mitigate its seriousness.

With respect to the finding of a failure to meet the standard of practice of the profession, the Committee found merit in the submissions of both counsel. While the seriousness of the consequences for Patient A was a serious aggravating factor, the fact that Dr. Mrozek had no prior history with the College and that he had practised for a long period under close supervision with universally positive reports from his supervisor, could fairly be considered mitigating factors. The Committee agreed with the submission of counsel that, taken in isolation, this finding would likely attract no more severe penalty than a reprimand, an order for remediation with the addition, perhaps, of a minor suspension.

In the end, the Committee based its decision on its own assessment of the severity of the misconduct which it found to have occurred. In our opinion, a suspension of nine months would be unduly harsh, while a suspension of three months would be unduly lenient.

The Committee concluded that a six-month suspension is appropriate in the circumstances of this case.

Terms, Conditions and Limitations

The Committee next considered whether terms, conditions and limitations should be imposed on Dr. Mrozek's certificate of registration. The College submitted an order for individualized instruction in ethics and patient confidentiality was appropriate.

The Committee is of the opinion that, at this stage in Dr. Mrozek's practice life and considering his several years of interaction with the College's legal processes, further instruction in ethics would be unlikely to benefit him, his patients or the public and to order an individualized course would, in our opinion, be a waste of time, effort and money. In light of this Committee's decision in this case and the obvious importance of patient confidentiality, the Committee expects that Dr. Mrozek has learned the lesson from this episode and does not require further instruction to teach him the importance of maintaining patient confidentiality.

The College also submitted that Dr. Mrozek should complete an educational course approved by the College which includes instruction in identifying and diagnosing psychosis. This is the area of his specialty in which Dr. Mrozek admitted that his care of Patient A had failed to maintain the standard of practice of the profession. Counsel for Dr. Mrozek had already submitted that there was no indication for terms and conditions of any sort upon Dr. Mrozek's return to practice. However, during his submissions on the appropriate length of suspension, counsel submitted that a standard penalty for a failure to maintain the standard of practice regarding a single patient would be limited to a reprimand *and remediation*.

The Committee had no means of ascertaining from the reports of Dr. Mrozek's supervisor whether Dr. Mrozek continues to treat psychotic, or formerly psychotic, patients. Nonetheless, it is the opinion of the Committee that it would bolster public confidence, both in Dr. Mrozek and the profession, if he could demonstrate that he had made an effort to rectify his deficiency and makes the order requested.

Regarding the more contentious question whether Dr. Mrozek should undergo further clinical supervision, College counsel submitted that, on resumption of his practice after the period of suspension, Dr. Mrozek should undergo less onerous supervision for a further six-month period. (She described it as "tapering off"). The supervision would consist of chart reviews, without direct observation of patient encounters, the frequency of meetings and supervisor reports to decrease provided that Dr. Mrozek continues to practice to the standard. She also submitted that Dr. Mrozek should undergo another practice inspection after one year of unsupervised practice. Counsel for Dr. Mrozek submitted that, given that Dr. Mrozek had undergone close supervision over a two-year period with uniformly positive reports, there was no indication for further clinical supervision.

The Committee concludes that, since Dr. Mrozek will be returning from a second six-month absence from practice, public protection would be better ensured by a relatively brief period of further supervision (of the sort, and on the schedule, recommended by the College) until it can be established that he can continue to practice to the standard of the profession. The Committee

applied the same reasoning to the recommendation for a practice reassessment one year following the cessation of supervised practice.

Reprimand

The parties were in agreement that a public reprimand is appropriate and the Committee so orders.

COSTS

Last, the Committee considered an award of costs to the College intended to partially reimburse the costs incurred in conducting a successful prosecution. College counsel requested an order for costs in the amount of \$26,680 based on three liability hearing days (July 17-19, 2017) at the then-current daily tariff rate of \$5,500, and \$10,180 (the current tariff rate) for the single day of the penalty hearing. No costs were requested for the two hearing days consumed by *Voir Dire One* or for the single day of the motion for adjournment.

Counsel for Dr. Mrozek submitted that, as Dr. Mrozek was not responsible for the abnormal delay between liability and penalty hearings, during which time the daily tariff rate almost doubled, that costs should be awarded at the lower tariff rate. Further, Mr. Sammon noted that the College had created a five-month delay prior to the liability hearing by instituting proceedings in the Divisional Court and that Dr. Mrozek should not suffer a higher tariff because of that delay. Finally, Mr. Sammon noted that the member has been under an onerous supervision order for a longer period than he would have if there had been no delays.

Counsel for the College noted that any delay in this case must be considered in light of the 20 month delay caused by Dr. Mrozek's failure to cooperate with the investigation. Counsel for the College also noted that there is no evidence that liability hearing and penalty hearing would have both occurred before the end of 2017, even if the case had not been adjourned to permit the College to make its application to the Divisional Court.

The Committee understands that it is our prerogative to award *no* costs or to award costs at the rate in effect at the beginning of the hearing, the end of the hearing or some hybrid of the two. The Committee reviewed the prior decisions and determines that a hybrid approach, as was taken in *Garcia* (2018), is appropriate. Lacking any grounds for assigning responsibility for the delay between liability and penalty hearing days, or any evidence that this penalty hearing would have been concluded before the new tariff came into effect absent the Divisional Court application, the Committee finds it proper to assign costs at the tariff rate in effect on the various hearing days and will so order.

ORDER

The Discipline Committee orders and directs on the matter of penalty and costs that:

1. The Registrar suspend Dr. Mrozek's certificate of registration for a period of six (6) months, commencing immediately.
2. The Registrar impose the following terms, conditions and limitations on Dr. Mrozek's certificate of registration:

Education in the Identification and Diagnosis of Psychosis

- (a) Within nine (9) months of the date of this Order, and at his own expense, Dr. Mrozek shall participate in and successfully complete an educational course approved by the College, which includes instruction in identifying and diagnosing psychosis. Dr. Mrozek will provide proof of successful completion within two (2) weeks of completing the course.

Clinical Supervision

- (b) Prior to resuming practice following the suspension of his Certificate of Registration described above in paragraph 1, Dr. Mrozek shall retain, at his own expense, a College-approved clinical supervisor to review Dr. Mrozek's practice, who will sign an undertaking in the form attached hereto as Schedule "A" (the "Clinical Supervisor");
- (c) For a period of six (6) months commencing on the date Dr. Mrozek resumes practice following the suspension of his Certificate of Registration described above in paragraph 1, Dr. Mrozek may practise only under the terms of the clinical supervision set out herein and in "Schedule "A";

(d) Clinical supervision of Dr. Mrozek 's practice shall contain the following elements:

- I. meeting with Dr. Mrozek on a monthly basis and reviewing a minimum of 20 (twenty), with charts to be selected at the sole discretion of the Clinical Supervisor;
- II. the Clinical Supervisor will keep a log of all patient charts reviewed along with patient identifiers; and
- III. the Clinical Supervisor will provide reports to the College every two (2) months for the six (6) month period of clinical supervision, or more frequently if the Clinical Supervisor has concerns about Dr. Mrozek's standard of practice or conduct.

(e) Dr. Mrozek shall abide by the recommendations of the Clinical Supervisor;

(f) If a Clinical Supervisor who has given an undertaking as set out in Schedule "A" to this Order is unable or unwilling to continue to fulfill its terms, Dr. Mrozek shall, within twenty (20) days of receiving notice of same, obtain an executed undertaking in the same form from a person who is acceptable to the College and ensure that it is delivered to the College within that time;

(g) If Dr. Mrozek is unable to obtain a Clinical Supervisor in accordance with this Order, he shall cease to practise until such time as he has done so;

(h) Dr. Mrozek shall consent to the disclosure by his Clinical Supervisor to the College, and by the College to his Clinical Supervisor, of all information the Clinical Supervisor or the College deems necessary or desirable in order to fulfill the Clinical Supervisor's undertaking and Dr. Mrozek' s compliance with this Order;

Re-Assessment

(i) Approximately twelve (12) months after the completion of the period of supervision as set out above, Dr. Mrozek shall undergo a re-assessment of his practice (the "Assessment") by a College-appointed assessor (the "Assessor(s)"). The Assessor(s) shall report the results of the Assessment to the College;

(j) The Assessment may include chart reviews , direct observation of Dr. Mrozek's care, interviews with colleagues and co-workers, feedback from patients and any other tools deemed necessary by the College. Dr. Mrozek shall abide by all recommendations made by the Assessor(s), and the results of the Assessment will be reported to the College and may form the basis of further action by the College;

(k) Dr. Mrozek shall consent to the disclosure to the Assessor(s) of the reports of the Clinical Supervisor arising from the supervision, and shall consent to the sharing of all information between the Clinical Supervisor, the Assessor(s) and the College, as the College deems necessary or desirable;

Other

- (l) Dr. Mrozek shall comply with the College's Policy on Practice Management Considerations for Physicians Who Cease to Practise, Take an Extended Leave of Absence or Close Their Practice Due to Relocation in respect of his period of suspension, a copy of which forms Schedule "B" to this Order.
 - (m) Dr. Mrozek shall submit to, and not interfere with, unannounced inspections of his practice location(s) and to any other activity the College deems necessary in order to monitor his compliance with the provisions of this Order.
 - (n) Dr. Mrozek shall inform the College of each and every location where he practises, in any jurisdiction (his "Practice Location(s)") within five (5) days of the date Dr. Mrozek resumes practice following the suspension of his Certificate of Registration described above in paragraph 1, and shall inform the College of any and all new Practice Locations within five (5) days of commencing practice at that location, until the report of the Assessment has been provided to the College.
 - (o) Dr. Mrozek shall consent to the College making appropriate enquiries of the Ontario Health Insurance Plan and/or any person who or institution that may have relevant information, in order for the College to monitor his compliance with this Order.
 - (p) Dr. Mrozek shall be responsible for any and all costs associated with implementing the terms of this Order.
3. Dr. Mrozek appear before the panel to be reprimanded.
 4. Dr. Mrozek pay costs to the College in the amount of \$26,680 within 30 days of the date of this Order.

SCHEDULE A

TO THE ORDER OF THE DISCIPLINE COMMITTEE IN RESPECT OF DR. MICHAL EDMUND MROZEK, DATED DECEMBER 11, 2018

UNDERTAKING OF DR. _____ TO THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

I am a practising member of the College of Physicians and Surgeons of Ontario (the "College").

I have read the Order of the Discipline Committee of the College dated December 11, 2018, as varied by Order dated December 20, 2018 (collectively, the "Order") regarding Dr. Mrozek, and have read the Decision and Reasons for Decision on Liability dated April 6, 2018 and the Decision and Reasons for Decision on Penalty dated December 11, 2018.

I understand the terms, conditions and limitations that the Discipline Committee directed the Registrar of the College to impose upon Dr. Mrozek's Certificate of Registration, and I understand the concerns regarding Dr. Mrozek's standard of practice.

I will review as soon as practicable any additional materials regarding Dr. Mrozek's practice provided to me by the College as well as the College's Guidelines for College-Directed Clinical Supervision.

I agree that commencing from the date I sign this undertaking, I shall act as Clinical Supervisor for Dr. Mrozek, for the duration of six (6) months. My obligations as Clinical Supervisor shall include, at a minimum:

- reviewing on a monthly basis, a minimum of twenty (20) patient charts, to be selected solely by me independent of Dr. Mrozek's participation;

- meeting with Dr. Mrozek on a monthly basis for six months discuss any concerns arising from such chart reviews;

- making recommendations to Dr. Mrozek for practice improvements, including in relation to the identification and diagnosis of psychosis. and ongoing professional development and inquiring into Dr. Mrozek's compliance with my recommendations;

- following up on any recommendations to determine Dr. Mrozek's compliance with same;

- maintaining a log of all patient charts reviewed along with patient identifiers:
and

any other activities, such as reviewing other documents or conducting interviews with staff or colleagues, that I deem necessary to Dr. Mrozek's clinical supervision.

I agree that I shall submit written reports to the College at least every two (2) months or more frequently if I have concerns about Dr. Mrozek's standard of practice, for the duration of the clinical supervision. Such reports shall be in reasonable detail, and shall contain all information I believe might assist the College in evaluating Dr. Mrozek's standard of practice and his compliance with the Discipline Committee's Order.

I agree that if I am concerned that Dr. Mrozek's practice may fall below the standard of practice of the profession, that Dr. Mrozek may not be in compliance with the terms of the Order, and/or that his patients may be exposed to risk of harm or injury, at any time during the clinical supervision I shall immediately notify the College.

I agree to immediately notify the College in writing if Dr. Mrozek and I have terminated our clinical supervision relationship or if I otherwise cannot fulfill the terms of my undertaking.

Dated at _____ this _____ day of _____, 2019.

Witness

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)
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)
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Dr.

Print Name

SCHEDULE B

**TO THE ORDER OF THE DISCIPLINE COMMITTEE IN RESPECT OF
DR. MICHAL EDMUND MROZEK, DATED DECEMBER 11, 2018**

**CPSO Policy Statement # 2-07 - Practice Management Considerations for Physicians Who
Cease to Practise, Take an Extended Leave of Absence or Close Their Practice Due to
Relocation**



Practice Management Considerations for Physicians Who Cease to Practise, Take an Extended Leave of Absence or Close Their Practice Due to Relocation

APPROVED BY COUNCIL: September 2006, February 2007

REVIEWED AND UPDATED: September 2007

TO BE REVIEWED BY: September 2011

PUBLICATION DATE: April 2007

KEY WORDS: Leave of absence; Cease practise; Sabbatical; Retirement; Extended illness; Suspension; Revocation; Guidelines; Practice closure; Relocation.

RELATED TOPICS: Confidentiality of Personal Health Information; Medical Records.

LEGISLATIVE REFERENCES: *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3, Sched. A; Ontario Regulation 114/94 (*General*) made under the *Medicine Act, 1991*, S.O. 1991, c. 30; Ontario Regulation 856/93 (*Professional Misconduct*) made under the *Medicine Act, 1991*, S.O. 1991, c. 30.

COLLEGE CONTACT: Physician Advisory Service

Practice Management Considerations for Physicians Who Cease to Practise, Take an Extended Leave of Absence or Close Their Practice Due to Relocation

PURPOSE

Physicians ceasing practise or taking a leave of absence frequently contact the College to seek guidance about the measures they should take before they stop practising. The College also receives calls from patients asking how they can obtain outstanding prescriptions, laboratory reports, or their medical records because their physician has stopped practising.

This policy explains the practice management measures physicians should take when they cease to practise or will not be practising for an extended period of time.

APPLICATION

(i) General

This policy applies to physicians who take an extended leave of absence or cease to practise for various reasons, including educational leave, sabbatical, parental leave, extended illness, practice closure due to relocation, or retirement.

Generally, any absence from practice that is three months in length or longer without coverage by another physician is considered an “extended” leave of absence.¹ Having consideration to reasonable patient needs and the nature of his or her medical practice (e.g., where patients require frequent care, or where patients are awaiting laboratory results for potentially critical conditions) it may be prudent for a physician to take some or all of the recommended steps even if the leave of absence is shorter than three months.

Physicians who take an extended leave of absence or cease to practise should, to the extent possible, act in accordance with the guidelines that are applicable to their particular circumstance. In situations where the physician is suddenly and unexpectedly required to take a leave of absence or cease practising (e.g., sudden illness or disability), the physician should, to the best of his/her ability and as soon as it is practical to do so, take reasonable steps to act in accordance with the applicable guidelines set out below.

(ii) Suspensions/Revocations/Voluntary Commitments to Suspend Practise

The policy also applies to physicians whose certificates of registration have been affected by a suspension, revocation or voluntary commitment to suspend practise.

In addition to the practice management guidelines articulated for all physicians, there are specific considerations included at the end of the policy that apply to physicians who are subject to a suspension, revocation or voluntary commitment to suspend practise.

PRINCIPLES

Physicians have a duty to act in the best interests of their patients. When a physician does not practise for a period of time, his/her patients’ care is likely to be affected. To the extent possible, physicians should take reasonable measures to ensure their practice closure or extended leave of absence does not impede their patients’ ability to obtain appropriate care from another health care provider.

GUIDELINES

The College recommends that physicians take reasonable steps to address the following practice management issues, in order to minimize the effects taking a leave of absence or ceasing to practise may have on their patients’ care:

1. Notification

(a) Patients

The physician should provide his/her patients with notification of practice closure or restrictions as soon as possible after it becomes apparent that he/she will be leaving or restricting practice, in order to allow patients an opportunity to find another physician.

Acceptable methods of notification are:

- In person, at a scheduled appointment;
- Letter to the patient; and/or
- Telephone call to the patient.²

Supplementary methods of notification the physician may also wish to use include:

- Printed notice, posted in the office in a place that is accessible even when the office is closed;
- Newspaper advertisement; and/or
- Recorded message on the office answering machine.

When providing this notification, the physician should remind patients where they can go to obtain emergency or urgent care.

¹ Where a physician has not been engaged in practice for a period of two consecutive years or more and wishes to re-enter practice, the CPSO policy Ensuring Competence: Changing Scope of Practice and/or Re-entering Practice is also applicable.

² Physicians should exercise caution in leaving messages for patients on their voicemail or with a third party, due to the risks of breaching the patient’s confidentiality and privacy rights. For more information, please consult the CPSO’s policy on Confidentiality of Personal Health Information.



Where, because of the nature of the physician's practice or the care being provided, there is no expectation of an ongoing physician-patient relationship (e.g., walk-in clinic physicians, emergency room physicians, and/or some specialists), the physician is only expected to notify those patients to whom they are actively providing care.

(b) Employers, Hospitals, Colleagues

Where applicable, the physician should provide notification of practice closure or an extended leave of absence as soon as possible to his/her employer (university, healthcare institution, clinic, or other facility or employer) and any hospitals where he/she holds privileges.

The physician should also, where applicable, provide notice to his/her partners, as well as any colleagues who also provide care to patients of the physician (e.g., referring physicians).

2. Medical Records

Subject to the limited exceptions set out in the provincial *Personal Health Information Protection Act, 2004 (PHIPA)*,³ patients must have access to their medical records, even if their physician will not be practising for a period of time or has closed his/her practice. To facilitate patient access, the physician must make appropriate arrangements for either the retention or transfer of patient medical records.

Physicians should also:

- Give patients the information they will need in order to access their medical records; and
- Consider notifying the College of where they are storing their patients' medical records, and how patients may access those records. Patients often contact the College seeking information about how to access their medical records after their physician has stopped practising; and the College will then be able to pass the relevant information on to any enquiring patients.

For more information on patient access to medical records and the transfer and retention of medical records, please refer to the College's Medical Records policy.

3. Patients Requiring Ongoing Care

The physician should try to ensure that patients requiring ongoing care (such as patients in hospital, personal care homes or other care facilities), and patients who require post-operative follow-up will continue to receive

necessary care. Ideally, the physician should arrange to have another physician cover or assume care for these patients. However, at a minimum, the physician must ensure that the care facility or hospital is notified that the physician will not be practising for a period of time.

4. Laboratory Tests, Results

The physician should take reasonable steps to ensure that his/her patients can access the results of laboratory tests ordered by the physician, that all abnormal results undergo required review and follow-up, and that patients know whom to contact in order to obtain their results.

Where the physician is unable to interpret and follow up on the test personally, the physician should:

- Arrange to have another physician cover or assume his/her practice;
- Arrange to have another physician review results for patients with outstanding laboratory tests, and to advise patients of the results and any requirements for follow-up; or
- Arrange for patients to obtain their test results from the physician's office or the testing facility, where the facility will permit (e.g., delivery of results to the patient, arranging for patients to pick results up), and provide patients with instructions to obtain follow-up as soon as possible.

5. Prescription Medication

The physician should attempt to facilitate patient access to prescription medication required for long-term or chronic conditions. To facilitate access, the physician may do one of the following:

- Where medically appropriate, provide the patient with renewals or repeats of the required medication(s) in order to allow the patient reasonable time to find alternative care; or
- Advise the patient to attend another physician as soon as possible to have their prescription(s) renewed.

It is suggested that physicians keep their prescription pads safe and secure while they are not practising, or destroy them.

Physicians Under Suspension, Revocation or Voluntary Commitment to Suspend Practise

The College expects physicians whose certificates of registration are affected by a suspension, revocation or vol-

³ S.O. 2004, c. 3, Sched. A, s. 52.

PRACTICE MANAGEMENT CONSIDERATIONS FOR PHYSICIANS WHO CEASE TO PRACTISE, TAKE AN EXTENDED LEAVE OF ABSENCE OR CLOSE THEIR PRACTICE DUE TO RELOCATION

untary commitment to suspend practise to follow the guidelines set out above.

Additional Guidelines

The following additional guidelines also apply to physicians whose certificates of registration have been suspended or revoked, or who have undertaken a voluntary commitment to suspend practise:

1. Notification

A physician who is suspended, revoked or voluntarily commits to suspend practise should ensure that employers, partners, colleagues who are also known to provide care to his/her patients, hospitals where he/she holds privileges, and all other authorities with which he/she holds a certificate of registration or licence to practise medicine, are notified of these restrictions.

2. Reports

While under suspension or voluntary commitment to suspend practise, or upon revocation, a physician is permitted to:

- Sign reports that were completed before the suspension or revocation, if competent and capable; and
- Finalize reports based on assessments and analysis conducted prior to the suspension or revocation, if competent and capable.

The physician is not permitted to:

- See patients to prepare reports;
- Prepare reports requiring the exercise of clinical judgment. This includes making clinical assessments, evaluations or conclusions based on patient information, and providing clinical advice in a report; or
- Complete reports, unless only administrative work is required to complete the report. 'Administrative work' is work such as editing draft reports, summarizing conclusions, or signing reports completed prior to ceasing practise.

3. Laboratory Tests, Results

A physician under suspension, revocation or voluntary commitment to suspend practise cannot interpret test results or provide follow-up care. The physician should make alternate arrangements for the review and follow-

up of patient test results, as recommended in part four (Laboratory Test, Results) above, to ensure patients obtain the required care.

Patients with a standing order for laboratory test(s) should be advised that the laboratory will cancel the standing order upon revocation or suspension of the physician's certificate of registration. The physician should attempt to arrange for alternate care for these patients.

4. Prescription Medication

Physicians who are under suspension or voluntary commitment to suspend practise, or have had their certificate of registration revoked, cannot write prescriptions. The physician should advise all patients taking prescription medication(s) for long-term or chronic conditions that he/she will not be able to provide renewals or repeats of the medication(s), and that the patient should attend another physician to have the prescription(s) renewed. The physician may arrange for the referral of a patient to a colleague for renewal of their prescription(s). The physician should also advise patients that repeats for prescriptions written prior to the date of the suspension or revocation will not be legally valid after the date of suspension or revocation.

5. Express Requirements as Set Out In Orders or Agreements, Expectations on Revocation

To ensure patients' best interests are protected, an Order or agreement related to a physician's suspension or voluntary commitment to suspend practise may include express requirements regarding notification, medical records, reports, laboratory tests and results, and/or prescription medication. The College expects the physician to comply with any requirements included in an Order or agreement. Under the regulations to the *Medicine Act, 1991*, it is considered an act of professional misconduct for a physician to contravene a term, condition or limitation on his/her certificate of registration.⁴

A physician's conduct in complying with College policies and continuing to act in the best interests of former patients may also be a factor in the College's determination of whether it is appropriate to reinstate a physician's revoked certificate of registration.

⁴ Ontario Regulation 856/93, as amended (made under the *Medicine Act, 1991*) s. 1(1) 1.

