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Koren (Re)

**THE DISCIPLINE COMMITTEE OF THE COLLEGE
OF PHYSICIANS AND SURGEONS OF ONTARIO**

IN THE MATTER OF a Hearing directed
by the Complaints Committee of
the College of Physicians and Surgeons of Ontario
pursuant to Section 26(2) of the *Health Professional 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. GIDEON KOREN

PANEL MEMBERS:

DR. R. MACKENZIE (CHAIR)
DR. R. GUSCOTT
P. BEECHAM
J. ASHMAN

Hearing dates:

December 20, 2002

April 28, 2003

Decision/Released Date:

April 28, 2003

Penalty Decision/Released Date:

May 30, 2003

DECISION AND REASON FOR DECISIONS

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on December 20, 2002 and April 28, 2003. At the conclusion of the hearing, the Committee delivered an oral decision stating its finding that the member committed an act of professional misconduct, and reserved its penalty decision.

By written decision dated January 13, 2003, the complainants were given a limited right to participate in the hearing.

ALLEGATIONS

The Notice of Hearing alleged that Dr. Gideon Koren committed an act of professional misconduct:

1. under paragraph 1(1)33 of Ontario Regulation 856/93 of the *Medicine Act, 1991* (O. Reg. 856/93) in that he has engaged in an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and
2. under paragraph 1(1)(34) of O. Reg. 856/93 in that his conduct was unbecoming a physician.

RESPONSE TO ALLEGATIONS

Dr. Koren admitted the allegations of professional misconduct in paragraphs 1 and 2 in the Notice of Hearing.

EVIDENCE

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

FACTS**A. Anonymous Letters**

1. Dr. Koren is a paediatrician at the Hospital for Sick Children (“HSC”) with fellowships in paediatrics, nephrology, pharmacology, and toxicology.
2. Dr. Koren and Dr. X, also a physician at HSC, were originally co-investigators in a research project regarding the effectiveness of deferiprone (“L1”) in controlling iron-overload in thalassemia (a type of hereditary anemia) patients. The research consisted of clinical trials sponsored by the pharmaceutical company Apotex.
3. Dr. X came to doubt the effectiveness of L1 two years into the study. Dr. Koren disagreed with Dr. X and published papers outlining his interpretation of the data.
4. During the period from October 20, 1998 to May 20, 1999, five anonymous harassing letters relating to Dr. X and her research regarding the effectiveness of deferiprone in controlling iron-overload in thalassemia patients were received by the media, medical staff at the Hospital for Sick Children and Dr. A. One of the letters received by Dr. A. also made reference to Dr. B and Dr. C.
5. Dr. Koren denied that he was the author of the letters during investigations conducted by the Hospital for Sick Children jointly with the University of Toronto.
6. On December 17, 1999, Dr. Koren confessed that he was the author of the five letters.
7. The letters were dated as follows:
 - (i) anonymous fax letter dated October, 1998 sent to a reporter;
 - (ii) letter to Dr. A. dated October 21, 1998;
 - (iii) letter to Dr. A. received December 1, 1998;
 - (iv) letter sent to a number of physicians at the Hospital for Sick Children received February 4, 1999; and
 - (v) letter to Dr. A. received May 20, 1999.

8. As a result, Dr. Koren was suspended from HSC until June 1, 2001. The chair endowed in Dr. Koren's name was removed and he was ordered to make some restitution. Dr. Koren resigned two leadership positions at HSC. The matter received a great deal of media attention.

B. Research Misconduct

9. In 1998 Professor Gideon Koren submitted, as senior author, a manuscript investigating variability of response to the oral chelator, deferiprone, among heavily iron-loaded patients with thalassemia major. The two other authors, Drs. D. and E., were research trainees. The paper appeared in 1999 in *Therapeutic Drug Monitoring* (1999; 21:74-81).

10. The Faculty of the University of Toronto subsequently received complaints about this paper from Dr. X. A Committee of Investigation examined these complaints.

11. The Committee was clear in their finding of research misconduct against Professor Koren as a result of his actions in proceeding unilaterally to publish the findings concerning the efficacy of deferiprone. Specifically, the Committee found that Professor Koren used data arising out of the LAO3 study on which he was co-principal investigator, without obtaining consent, review or participation by Dr. X. as co-principal investigator on the study. Similarly, he did not obtain consent, review or participation by Drs. F. and G., two external collaborators who had worked directly and exclusively with Dr. X.

12. In a report delivered by Dr. H., Dean of the Faculty of Medicine, to the Members of Faculty Council at a meeting on April 22, 2000, Dr. H. publicly recorded a finding of research misconduct against Dr. Koren. He insisted that Dr. Koren write to the *Journal* to acknowledge his error in not involving or acknowledging colleagues, and to request of the editor that the offending article be deleted from the scientific record through appropriate notification of indexing services. He noted that Dr. Koren had done so, and

also sent appropriate personal letters of apology. Dr. H. also indicated that he considered the matter closed.

FINDINGS REQUESTED

13. On the basis of the facts above, the College requests that the Discipline Committee find that Dr. Koren committed an act of professional misconduct:

- (a) under paragraph 1(1)33 of Ontario Regulation 856/93 of the *Medicine Act, 1991* (O. Reg. 856/93) in that he has engaged in an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and
- (b) under paragraph 1(1)(34) of O. Reg. 856/93 in that his conduct was unbecoming a physician.

FINDINGS

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts. Having regard to these facts and Dr. Koren's admission to the allegations, the Committee found that Dr. Koren committed professional misconduct under paragraph 1(1)33 of Ontario Regulation 856/93 of the *Medicine Act, 1991* (O. Reg. 856/93) in that he has engaged in an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and under paragraph 1(1)(34) of O. Reg. 856/93 in that his conduct was unbecoming a physician.

PENALTY AND REASONS FOR PENALTY

SUBMISSIONS WITH RESPECT TO PENALTY

The parties presented a joint submission with respect to penalty, proposing a reprimand and an order of partial cost reimbursement of \$2500. College counsel submitted that this penalty adequately addresses the necessary principles of protecting the public,

maintaining the integrity of professional self-regulation and rehabilitation of the member. She further submitted that the Committee should consider the penalties already levied by the hospital and University as a mitigating factor which speaks to the issue of specific deterrence in this case. In their submissions, the College and counsel for Dr. Koren submitted that a reprimand is indeed a very serious penalty and particularly devastating to a physician who holds such a high standing in the medical community as does Dr. Koren. The significant contributions that Dr. Koren has made to the medical profession and scientific community were highlighted, and the Committee was invited to take this into account.

As permitted by the Committee in its ruling on the motion for allowing limited intervenor status, the intervenors submitted a written brief as evidence and counsel for the intervenors made additional oral submissions during the penalty phase of the hearing. The Committee agreed that it would consider submissions from the intervenors regarding the significance and impact of the finding of research misconduct. Counsel for the intervenors submitted that his clients were here to protect the integrity of the scientific process. He submitted that Dr. Koren knowingly and deliberately appropriated the work of other scientists for his own gain which, in the intervenors' opinion, constituted research fraud. He further submitted that Dr. Koren's misconduct undermines the public trust in the validity of medical research and this College must send a strong message to its members that such conduct will not be tolerated.

Defence counsel submitted in response that Dr. Koren was censured by the University for not reviewing the data with his colleagues before publication, not for misappropriation of that data. In fact, it is an accepted principle of scientific research that any researcher on a team can have access to and use such data. Dr. H. stated in his report to faculty council that *"the Committee categorically rejected 'the notion that any of these data be regarded as the private property of only one of the co-investigators' "*. Counsel for the College submitted that the intervenors' characterization of the research misconduct as fraud was not only incorrect, but inflammatory.

In his submissions with respect to penalty, Defence counsel presented a lengthy list of Dr. Koren's accomplishments in the medical and scientific community. He is clearly an accomplished and prolific scientific investigator and publisher of medical research which is attested to by his extensive curriculum vitae. He is greatly respected and appreciated by his colleagues and students. Many letters of support and excerpted comments from students and peers were presented to the Committee for its consideration. Dr. Koren has

received numerous awards and accolades for his work and has frequently been cited for his dedication to ensuring public and patient safety. He is recognized for his significant work in the founding of the “Motherisk” program at the Hospital for Sick Children.

Defence counsel submitted that Dr. Koren has already been seriously punished for the anonymous letters. He was suspended from his job at HSC for five months (two of which were without pay). His behaviour occurred in the context of a very stressful professional and personal time in his life. With respect to the need for specific deterrence, defence counsel submitted that there is virtually no chance of recidivism in this case.

Co-counsel for Dr. Koren reiterated in his submissions the high esteem in which Dr. Koren is held, his extensive scientific accomplishments as well as his ongoing contributions to medicine and the community at large. He argued that the Committee should consider the analogy of a debit/credit ledger wherein Dr. Koren’s credits significantly outweigh his debits.

In his advice at the conclusion of the hearing, Independent Legal Counsel reminded the Committee of the jurisprudence, which states that departures from a joint submission on penalty should be considered only in exceptional circumstances. Such departures should only be considered where, in the opinion of the Committee, the proposed penalty is so disproportionate to the finding that to accept it would effectively bring the administration of justice in the discipline process into disrepute.

PENALTY DECISION AND REASONS FOR DECISION

The Committee admits to being deeply troubled by this case and, in its deliberations, seriously considered administering a more severe penalty than that proposed in the joint submission. Although the Committee agrees with College counsel that a reprimand is serious and not simply a “summary” penalty, it is clearly at the lowest end of the penalty options available to it.

With respect to the allegation of research misconduct, the Committee was satisfied that the University investigation fully explored all aspects of this issue and arrived at a fair and balanced conclusion. It also accepts the parties’ submissions that this misconduct should not be represented as fraudulent.

It was the behaviour that preceded the research misconduct that the Committee found most unsettling. It defies belief that an individual of Dr. Koren’s professed character and

integrity could author such vicious diatribes against his colleagues as he did in the “poison pen letters”. His actions were childish, vindictive and dishonest. Ironically for this accomplished research scientist, it was only when confronted with irrefutable scientific evidence of his guilt did he admit that he was the perpetrator. Defence counsel submitted that Dr. Koren’s extreme remorse should be taken into consideration in deciding his penalty. However, the Committee feels constrained to point out that it did not hear directly from Dr. Koren as to his remorse and the agreed statement of facts was silent on this issue.

College counsel submitted that the penalty already administered by the University should be considered in the penalty decision inasmuch as it speaks to the issue of specific deterrence. Although the Committee accepts this in a limited context, it feels that general deterrence and maintenance of the integrity of the profession and its ability to regulate itself are equally important principles to be considered in this case. In past decisions of this Committee, it has clearly articulated its mandate to fashion penalties relevant to the member’s obligations to uphold the standards of the profession. A penalty imposed by Dr. Koren’s employer is separate and distinct and can only serve as a minor mitigating factor in any penalty meted out by this tribunal.

Notwithstanding these considerations, the Committee is mindful of its role as the trier of an adversarial dispute between two parties. In this case, the parties are the College and Dr. Koren. Although it gave serious consideration to the submissions of the intervenors, the Committee does not feel that the materials filed and submissions made warranted a departure from what was proposed by way of joint submission. The Committee accepts that it should deviate from joint submissions by the parties only where it is of the view that the proposed penalty is so unreasonable or contrary to the public interest that its acceptance would bring the administration of justice in the discipline process into disrepute. Accordingly, the Discipline Committee accepts the joint submission with respect to penalty.

However, in so doing, the Committee wishes to express unequivocally its condemnation of Dr. Koren’s misconduct. This discipline hearing is not the forum for congratulating Dr. Koren on his extensive and well-documented accomplishments. The Committee wishes to leave no room for either the public or the profession to misinterpret how seriously it considers the need for a strong message of sanction in this case. Although the aforementioned “credits on the ledger” do serve to mitigate the severity of penalty in this case, they cannot obviate the necessity for severe disapprobation of Dr. Koren’s actions.

ORDER

The Discipline Committee therefore makes the following order as to penalty and costs:

1. The Discipline Committee requires Dr. Koren to appear before the panel to be reprimanded and the fact of the reprimand to be recorded on the register.
2. The Discipline Committee orders Dr. Koren to pay to the College within 30 days of the date of this order the partial costs of this hearing fixed in the amount of \$2,500.00.