

## NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Suneel Upadhye, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the names of patients or any information that would identify the 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 or 47... is guilty of an offence and on conviction is liable,

(a) in the case of an individual to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence; or

(b) in the case of a corporation to a fine of not more than \$50,000 for a first offence and not more than \$200,000 for a second or subsequent offence.

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

**Citation:** *College of Physicians and Surgeons of Ontario v. Upadhye*, 2021 ONCPSD 14

**Date:** April 9, 2021

**BETWEEN:**

College of Physicians and Surgeons of Ontario

- and -

Dr. Suneel Upadhye

**FINDING AND PENALTY REASONS**

**Panel:** Dr. Paul Garfinkel (chair)  
Mr. Peter Pielsticker  
Dr. John Rapin  
Ms. Linda Robbins  
Dr. Susanna Yanivker

**Heard:** January 15, 2021, by videoconference

**Appearances:**

Ms. Penelope Ng, for the College  
Ms. Carolyn Brandow and Mr. David Isaac, for Dr. Suneel Upadhye  
Ms. Jennifer McAleer, Independent Legal Counsel to the Discipline Committee

## **Introduction**

- [1] In 2013-2014, Dr. Upadhye provided interventional pain procedures, including nerve blocks, in clinics he knew were not College-approved Out-of-Hospital Premises (OHP). Further, Dr. Upadhye made false statements to the College with respect to whether he was conducting these procedures. When these clinics were ultimately inspected, they both failed. In addition, an assessor retained by the College found that Dr. Upadhye had failed to maintain the standard of practice of the profession in his care in all five of the chronic pain patient charts the assessor reviewed.
- [2] The hearing proceeded by way of an agreed statement of facts and admission on finding and a further agreed statement of facts and joint submission on penalty. At the conclusion of the hearing, we found that Dr. Upadhye committed an act of professional misconduct on the basis that he had engaged in conduct that would reasonably be viewed by members of the profession as disgraceful, dishonourable or unprofessional and on the basis that he failed to maintain the standard of practice of the profession. We ordered that he be suspended for four months, attend before the Committee to be reprimanded, have extensive terms, conditions and limitations placed on his certificate of registration and pay the College's costs of \$6,000.

## **Facts & Finding on Allegation**

### Relevant Facts

- [3] Dr. Upadhye is a physician who worked in Hamilton, Ontario and the surrounding regions where he practised chronic pain management and emergency medicine. His chronic pain work involved the provision of interventional pain procedures at free-standing clinics including the Minerva Pain Management Clinic (the "Minerva Clinic") in Hamilton, and the Wellbeings Pain Management Clinic (the "Wellbeings Clinic") in Burlington. Dr. Upadhye also performed nerve blocks in the emergency room hospital setting.
- [4] Nerve blocks performed outside a hospital for the treatment or management of chronic pain must be performed in an OHP that is approved by the Out-of-Hospital

Inspection Program (“OHPIP”). All OHPs are subject to the OHPIP, to relevant legislation and to OHPIP Standards.

#### *Out of Hospital Premises Inspection Program*

- [5] The OHPIP is administered by the College and applies to all settings or premises outside a hospital at which procedures are performed involving the use of anesthesia or sedation as defined in O. Reg. 114/94, made under *the Medicine Act, 1991*, S.O. 1991, c. 30 (“the Regulation”). Part XI of the Regulation sets out the definition of “procedure” for the purposes of the OHPIP.
- [6] Mandatory standards for OHP are set out in Program Standards (“the Standards”), authorized under the Regulation. The Medical Director of an OHP is responsible for the duties outlined in the Standards, including providing notification to the College of plans to operate a new OHP or move an existing OHP.
- [7] The Standards categorize procedures into levels. Level 1 and Level 2 procedures (which include nerve blocks used in interventional pain management) can only be performed in an approved OHP or a hospital.
- [8] The College’s Premises Inspection Committee (“PIC”) and Program Staff oversee the OHPIP.
- [9] The OHPIP is based on trust and relies on self-reporting from Medical Directors and physicians. As mandated in the Standards, a Medical Director is required to notify the OHPIP before opening an OHP clinic so that the premises can be inspected. In order to ensure patient safety and quality of care, strict adherence is required to the detailed requirements set out in the Standards.
- [10] The PIC must approve the premises following an inspection before any Level 1 or Level 2 procedures can be performed.
- [11] As set out in Standards 2.1.2, 2.2.1, and 2.2.4, any member planning to operate a new OHP, or planning to move an existing OHP, must notify the College. The premises must be inspected and receive a “Pass” or “Pass with conditions” from the PIC prior to providing OHP services to patients. This requirement applies

without exception to all OHP premises. The only mechanism set out in the Standards for initiating this process is notification by a member to the College.

*The Minerva Clinic*

- [12] Since at least January 2011, Dr. Upadhye had been performing nerve blocks at the Wellbeings Clinic, and/or the Minerva Clinic.
- [13] In or around November 2013, Dr. Upadhye took over as the lead physician at the Minerva Clinic and started to identify himself as the “Medical Director” of the Minerva Clinic.
- [14] By no later than March 2014, Dr. Upadhye notified the OHPIP that he was performing Level 1 procedures at the Wellbeings Clinic and sought approval from the OHPIP. He was therefore aware that many of the nerve blocks that he was performing at the Minerva Clinic were also only permitted to be performed in an approved OHP and that responsibility for notifying the OHPIP is on the physician, yet he did not notify the OHPIP as a providing physician, nor as the Medical Director of the Minerva Clinic.
- [15] By May 2014, the Minerva Clinic moved to a new location. Dr. Upadhye never gave notice to the College that he and his colleagues had performed OHP procedures at the previous Minerva Clinic location, and Dr. Upadhye never gave notice to the College that he and his colleagues were planning to perform OHP procedures at the new Minerva Clinic location.
- [16] In July 2014, Dr. Upadhye stopped performing OHP procedures at the Minerva Clinic.
- [17] In October 2017, the College received information indicating that OHP interventional pain management procedures were being performed at the Minerva Clinic, contrary to the OHP Standards.
- [18] One month later, in November 2017, College investigators attended at the Minerva Clinic to conduct an unannounced Infection Prevention and Control inspection which revealed multiple deficiencies pertaining to the clinic’s ability to perform the procedures safely, and consequently, the clinic received a “Fail”.

[19] In response to the “fail” issued to the Minerva clinic, and despite the fact that OHP procedures were being performed at the Minerva clinic, Dr. Upadhye wrote to the College on November 28, 2017 via email, and November 29, 2017 via letter in which he stated “...there is no desire to pursue OHP status at Minerva as there has never been any interest in doing those types of procedures/nerve blocks at our clinic, and there will be none going forward...we can reconfirm that we have not and will not be doing any OHP procedures in our facility.”

#### *The Wellbeings Clinic*

[20] On July 17, 2014, the OHPIP conducted an inspection-assessment of the Wellbeings Clinic, which revealed multiple deficiencies, resulting in a “Fail.” Following the inspection-assessment, Dr. Upadhye withdrew the Wellbeings Clinic from the OHPIP.

#### *OHIP Billings*

[21] On August 20, 2018, through his counsel, Dr. Upadhye told the College that, “To the best of Dr. Upadhye’s knowledge, OHIP has never been billed for nerve block services provided by Dr. Upadhye (or anyone else) at the Minerva Pain Management Clinic during his tenure at the clinic.” However, OHIP billings for the Minerva Clinic show that between October 4, 2013 and July 17, 2014, Dr. Upadhye billed approximately \$67,000 for over 2,000 procedures he performed at the Minerva clinic.

#### *Standard of Practice*

[22] In June 2019, the College retained Dr. Smith as an assessor to provide an opinion on Dr. Upadhye’s care of patients. The assessor reviewed five of Dr. Upadhye’s patient charts from the Minerva clinic and interviewed Dr. Upadhye. He opined that Dr. Upadhye’s care failed to meet the standard of practice of the profession in all five of the patient charts he reviewed. Dr. Smith’s report described numerous “highly concerning” serious deficiencies in Dr. Upadhye’s care and found that Dr. Upadhye had demonstrated a lack of knowledge and judgement such that as a result of his care, patients were exposed to the risk of harm or injury.

## **Admission**

[23] Dr. Upadhye admits the allegation of professional misconduct.

## **Finding**

[24] Based on the facts presented in the Agreed Statement of Facts and Admission (Liability), we find that Dr. Upadhye has committed an act of professional misconduct under:

- a. paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act*, 1991 (“O. Reg. 856/93”), in that he has engaged in 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. paragraph 1(1)2 of O. Reg. 856/93, in that he has failed to maintain the standard of practice of the profession.

## **Penalty**

### Test on a Joint Submission on Penalty and Penalty Principles

[25] Although we have discretion to accept or reject a joint submission on penalty, the law provides that we should not depart from a joint submission, unless the proposed penalty would bring the administration of justice into disrepute or is otherwise not in the public interest (*R. v. Anthony-Cook*, 2016 SCC 43).

[26] In considering a joint submission on penalty and the test in *Anthony-Cook*, we must also have regard to the basic principles underlying penalty orders. These include public protection, maintaining the integrity of the profession and public confidence in the College’s ability to regulate the profession in the public interest; specific deterrence; general deterrence; and where applicable or appropriate, rehabilitation. Other principles include denunciation of the misconduct and proportionality.

[27] We accept the joint submission of a four-month suspension, terms and a reprimand as appropriate, for the reasons set out below.

## Nature of the misconduct

### *Dr. Upadhye's lack of ethics and honesty*

- [28] On March 7, 2014, Dr. Upadhye notified OHPIP that he was performing Level 1 procedures at the Wellbeings Clinic and sought approval from OHPIP. He was, therefore, well aware that the Minerva clinic, where the same procedures were being performed, would also need approval from OHPIP. As the lead physician and medical director of the Minerva clinic it was Dr. Upadhye's duty to inform OHPIP. Not only did Dr. Upadhye choose not to inform OHPIP that the Minerva clinic had been providing Level 1 procedures in March 2014, he continued to provide the procedures himself at the location until July 2014.
- [29] When, in October 2017, the College eventually learned that interventional pain procedures were being performed at the Minerva clinic, it performed an OHP inspection. The clinic received a "Fail." Dr. Upadhye then wrote a letter dated November 29, 2017 to OHPIP stating, with regard to those types of procedures/nerve blocks, "we can reconfirm that we have not and will not be doing any OHP procedures in our facility." This was clearly not true.
- [30] In a system which is dependent upon physician honesty to trigger the assessment process like the OHPIP, a physician's lack of honesty can jeopardize public safety. By failing to inform the College that Level 1 procedures were being performed at the Minerva clinic, Dr. Upadhye knowingly endangered the public. This is an ethical breach that stands in direct contrast to his duty as a physician to act in the best interests of his patients and provide them with safe care.
- [31] Additionally, we found it difficult to believe that even without access to patient records, Dr. Upadhye would not be able to recall that he had performed thousands of interventional pain procedures. Dr. Upadhye's statement in his August 20, 2018 letter to the College (that to the best of his knowledge OHIP had never been billed for nerve block services by him or anyone else at the Minerva clinic) was misleading at best.
- [32] In order to protect the public, any penalty we impose must address Dr. Upadhye's lack of honesty and ethical deficiencies.

*Dr. Upadhye's failure to meet the standard of practice of the profession*

[33] In order to keep the public safe, any penalty we impose must also address Dr. Upadhye's clinical deficiencies and his failure to maintain the standard of practice of the profession.

*Dr. Upadhye's previous dealings with the College*

[34] This is not the first time that Dr. Upadhye's behaviour or clinical care has come to the attention of the College.

[35] We understand that the College has a duty to investigate most complaints<sup>1</sup>, and that throughout their careers, physicians may come to the attention of the College, or come before the College to be investigated. That a complaint, investigation or ICRC review occurred is not the issue of concern. The issue is that Dr. Upadhye's behaviour and clinical care required a caution in one case, and an undertaking in the other.

[36] In 2017, Dr. Upadhye posted a comment on a Facebook group in which he referred to the Minister of Health and Long Term Care as "Reichsminister H." and as a dictator. The ICRC stated that Dr. Upadhye appeared to have disregarded his duty as a physician to maintain medical professionalism as recommended in the College's publication "The Practice Guide". They issued a caution to Dr. Upadhye, and to address his behaviour, the ICRC required him to participate in a Specified Continuing Education and Remediation Program ("SCERP") and in self-directed learning. The ICRC also noted that although his comments caused immediate offence and negative feedback from members of his Concerned Ontario Doctors Facebook group, Dr. Upadhye did not apologize to Dr. H, the College, nor the profession.

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<sup>1</sup> An investigation is not compulsory if a complaint is deemed to be frivolous, vexatious, made in bad faith or moot: Health Professions Procedural Code, which is Schedule 2 to the *Regulated Health Professions Act*, SO 1991, c.18, s. 28(4).

- [37] This ICRC case demonstrates that prior to his current admission to the allegation of disgraceful, dishonourable or unprofessional behaviour, Dr. Upadhye had already engaged in behaviour to which the members of the profession took exception. This demonstrates a pattern of concerning behaviour.
- [38] In 2017, a College investigation revealed deficiencies with Dr. Upadhye's 2016 opioid prescribing practices and charting. The assessor also found that in several of the charts, Dr. Upadhye demonstrated a lack of knowledge, skill and judgement, and that his clinical practice exposed patients to the risk of harm or injury. In September 2017, Dr. Upadhye entered into an undertaking with the College which included professional education on opioid prescribing and medical record keeping as well as clinical supervision, monitoring and practice reassessment.
- [39] In November 2017, the assessor reviewing Dr. Upadhye's care at Minerva stated that his prescribing practice of multiple controlled substances to a single patient was "highly concerning" in one case (2015 chart) and was of "substantial concern" in another. This demonstrates that Dr. Upadhye's standards of practice, particularly with respect to opioid prescribing practices, were found to be deficient over at least a two-year period and underscores the need for particular focus on this aspect of Dr. Upadhye's patient care.
- [40] In 2014, a person complained to the College about Dr. Upadhye's care of her late family member in a hospital emergency department. The Complainant specified that Dr. Upadhye failed to appreciate that extent of the patient's injury after a fall and planned on sending her home with only a prescription for an analgesic. The Complainant also felt that Dr. Upadhye failed to conduct himself in a professional manner when he told the family that the patient was "perfectly healthy" and that the hospital was not a "geriatric dumping ground," despite the fact that the patient was in severe pain and was experiencing confusion. Dr. Upadhye denied any recollection of such comments. With divergent views on the interaction between the physician and the family, the ICRC focused on review of the relevant documentation and found that Dr. Upadhye's documentation was "less than ideal for an elderly person who had just suffered a fall...did not outline a treatment plan" and showed "no indication that Dr. Upadhye assessed [the patient] for

neurological status.” The ICRC issued advice to Dr. Upadhye to assist him with improving his future practice.

[41] Although the College provided Dr. Upadhye with specific advice for future improvement in 2014, the medical expert reviewing Dr. Upadhye’s care at the Minerva clinic noted issues with documentation in his 2015 chartwork, as was the case in 2014 when Dr. Upadhye’s documentation was found to be less than ideal. This suggests a pattern of deficiency in Dr. Upadhye’s documentation between 2014 and 2015, despite advice from the College that he should make efforts to improve in this regard.

[42] While the resolution of these past investigations did not result in a referral to Discipline, it is evident that Dr. Upadhye did not learn from past experience as clinical deficiencies and behavioural issues persisted.

#### Other considerations on penalty

[43] We also considered the aggravating and mitigating factors in this case as well as prior decisions of the Discipline Committee.

#### *Aggravating Factors*

[44] Aggravating factors include:

- As a member of the College, Dr. Upadhye should have been aware of OHP requirements, which serve to protect the public. A purported lack of awareness is in and of itself a serious failure.
- When evidence showed that he was aware of the OHP requirements, Dr. Upadhye nevertheless continued providing interventional pain procedures in a non-OHP approved setting.
- We were particularly concerned that Dr. Upadhye misled the on-site College investigator that OHP procedures were not provided at Minerva, when this was not the case.
- Similarly, we were further concerned that even after the inspection had occurred, Dr. Upadhye would not admit that OHP procedures had taken place at Minerva and instead misled the College by continuing to deny (in

his November 28, 2017 email and November 29, 2017 letter) that he and his colleagues had ever been providing OHP procedures at the Minerva clinic.

- Dr. Upadhye's failure to report to the College resulted in numerous patients receiving care in a clinic (Minerva) that did not meet safety requirements, as the Minerva clinic would ultimately "fail" its site inspection due to safety concerns.
- Not only was Dr. Upadhye practicing in a non-OHP approved site, but also his own patient care failed to meet the standard of practice of the profession.
- Dr. Upadhye was a Medical Director at the Minerva clinic and as such, he was in a position of leadership over other physicians at the clinic, and as Director, he had an added duty to report the procedures to the College, yet he failed to do so.
- Dr. Upadhye also informed OHIP that he could not recall billing for procedures that he had performed and billed for thousands of times.
- Dr. Upadhye's previous behaviour has resulted in a caution by the College, and his patient care required an undertaking with the College.

[45] While Dr. Upadhye has not appeared before the Discipline Committee until this hearing, he has come before the ICRC on multiple occasions, and the ICRC dispositions indicate that Dr. Upadhye's previous conduct and patient care resulted in a caution, remediation, or education.

#### *Mitigating Factors*

[46] Mitigating factors include:

- Dr. Upadhye's admission to the allegation demonstrates insight and that he accepts responsibility for his behaviour.
- Dr. Upadhye agreed to the joint submission on penalty. This spared witnesses, including experts, from having to testify at a hearing, and avoided the time and expense of a contested hearing.

- Dr. Upadhye voluntarily terminated the provision of interventional pain procedures in a non-OHP setting. This was prior to the College learning that he had been engaged in their provision and before the initiation of an investigation. This reflected a positive, and self-directed step in rectifying his misconduct.

### *Prior Cases*

- [47] Although prior Committee decisions are not binding as precedent, we have accepted as a principle of fairness that generally, like cases should be treated alike, and that prior cases may be of assistance and useful as a guide with respect to the range of penalties imposed for similar misconduct.
- [48] Although none of the following six cases were identical to Dr. Upadhye's, we found that certain similarities in the cases made them useful in considering the joint submission on penalty for Dr. Upadhye.
- [49] In the first case, *Ontario (College of Physicians and Surgeons of Ontario) v. Bélanger*, 2018 ONCPSD 18, Dr. Bélanger, who was a family physician, successfully expanded the scope of his practice to include College approval to perform interventional pain management procedures. He informed the College that he planned to open his own practice location and wished to apply for OHP approval at a new location. For various reasons, Dr. Bélanger did not open his own practice, and instead, he provided interventional pain treatments to patients, including Level 2 nerve blocks, while working in a clinic that was not an approved OHP site. Even though Dr. Bélanger was aware of his duty to report the OHP procedures to the College, he did not provide any notification to the College's OHPIP, and the OHPIP did not conduct any inspection of the clinic. When it became evident that Dr. Bélanger was performing OHP procedures at this clinic, OHPIP conducted an inspection of the site which revealed numerous deficiencies. This case proceeded on the basis of an agreed statement of facts, admission and a joint submission on penalty and costs. The penalty included:
- a five-month suspension of Dr. Bélanger's certificate of registration;
  - a reprimand;

- the successful completion of the PROBE course in ethics and professionalism;
- the approval of the College's OHP program before Dr. Bélanger could resume the role of Medical Director in Out of Hospital Premises; and
- costs of the proceeding to the College.

[50] This case is particularly similar to that of Dr. Upadhye's in that the physician was well aware of the OHPIP requirements, abdicated their responsibility to report the procedures, and provided OHP procedures in a non-approved setting which was found to be deficient. Dr. Bélanger's OHIP billings were also used to confirm that he had provided and billed for nerve blocks. Unlike Dr. Upadhye, Dr. Bélanger had not provided repeated communications to the College (after the inspection) continuing to deny that he and other physicians had ever provided OHP procedures at the practice site in question. We found this aspect of Dr. Upadhye's behaviour to be a source of serious concern. While the behaviour of these physicians differed in some respects, it was sufficiently similar that a four-month suspension for Dr. Upadhye is within close range of Dr. Bélanger's five-month suspension, and we find it to be within the reasonable range.

[51] In the second case, *Ontario (College of Physicians and Surgeons of Ontario) v. Kesarwani*, 2018 ONCPSD 7, Dr. Kesarwani, a plastic surgeon, told a College OHP representative that he had only been performing non-OHP procedures in his new cosmetics practice location. When an OHP inspector arrived unannounced to conduct an inspection, it became evident that Dr. Kesarwani had begun performing OHP procedures in his new practice location before a mandatory inspection could take place. The unannounced inspection revealed numerous deficiencies and the premises received a "Fail." The College alleged that Dr. Kesarwani's conduct was disgraceful, dishonourable or unprofessional, and the case proceeded on the basis of an agreed statement of facts, admission and a joint submission on penalty and costs. The penalty included:

- a three-month suspension of Dr. Kesarwani's certificate of registration;
- a reprimand;

- the successful completion of the PROBE course in ethics and professionalism;
- the approval of the College's OHP program before Dr. Kesarwani could resume the role of Medical Director in Out of Hospital Premises; and
- costs of the proceeding to the College.

[52] This case is similar to Dr. Upadhye's in that the physician denied that he had performed OHP procedures at his old non-approved site and failed to inform the College that he was performing OHP procedures in his new site.

[53] In the third case, *Ontario (College of Physicians and Surgeons of Ontario) v. Billing*, 2017 ONCPSD 30, after receiving information from the Ministry of Health and Long-Term Care, the College commenced an investigation into Dr. Billing's clinical practice. The 2011 investigation revealed multiple deficiencies in documentation, and infection control. Dr. Billings pleaded no contest to an allegation of failure to maintain the standard of practice. The Committee had no doubt that patients were exposed to the risk of harm, and ordered:

- a four-month suspension of Dr. Billing's certificate of registration;
- a reprimand;
- multi-level clinical supervision of Dr. Billing's practice;
- a practice reassessment;
- multi-level practice monitoring; and
- costs of the proceeding to the College.

[54] This case is similar to that of Dr. Upadhye in that the Committee found that Dr. Billing had clinical deficiencies which required rectifying. The Committee did not find that Dr. Billing had intentionally deceived the College.

[55] In the fourth case, *Ontario (College of Physicians and Surgeons of Ontario) v. Bray*, 2019 ONCPSD 37, Dr. Bray, who was the Medical Director of the site at issue, did not advise College assessors during his on site inspection that he was using propofol at his practice site despite the absence of an anaesthetist (when the presence of an anaesthetist was required and the College had previously

informed all Medical Directors of OHPs of this). An assessor retained by the College also opined that that Dr. Bray failed to maintain the standard of practice in his administration of intravenous propofol as additional sedation during procedures and that he displayed a moderate lack of judgment both in his role as Medical Director of the OHP and as most responsible physician to the patients in question. The Committee found that Dr. Bray committed an act of professional misconduct in that he failed to maintain the standard of practice of the profession and 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. This case proceeded on the basis of an agreed statement of facts, admission and a joint submission on penalty and costs. The penalty included:

- a four-month suspension of Dr. Bray's certificate of registration;
- a reprimand; and
- costs of the proceeding to the College.

[56] Similarly to Dr. Upadhye, the physician ignored a College expectation regarding a standard (that an anaesthetist must be present when propofol is used) and failed to disclose that he was doing so at his site-inspection.

[57] In the fifth case, *Ontario (College of Physicians and Surgeons of Ontario) v. Shiozaki*, 2018 ONCPSD 14, Dr. Shiozaki was performing Level 1 procedures/nerve blocks in a non OHP approved site. Additionally, College-appointed experts opined that Dr. Shiozaki failed to meet the standard of practice of the profession and that he demonstrated a lack of knowledge, skill and/or judgment in his prescribing of controlled drugs, including narcotics, and, in some cases, his injecting of opioids and associated storage and disposal of injectable opioids. One of the experts also expressed concern regarding a lack of preparedness for medical emergencies, given that Dr. Shiozaki was performing Level 1 nerve block procedures in a non-approved facility. The Committee found that Dr. Shiozaki had committed an act of professional misconduct in that he failed to maintain the standard of practice of the profession, and had 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. The Committee also found that Dr. Shiozaki was incompetent. When determining the penalty, the Committee also considered that Dr. Shiozaki had a history with the College's ICRC for opioid prescribing and conflict of interest issues; and with the Discipline Committee in 2004, for boundary violations with a patient, including kissing her on the lips and breasts, putting his hand in her pants, and lying on top of her. The 2018 case proceeded on the basis of an agreed statement of facts, admission to all three allegations, and a joint submission on penalty and costs. The penalty included:

- a six-month suspension of Dr. Shiozaki's certificate of registration
- a reprimand;
- extensive practice restrictions including a requirement for a posted sign in his waiting room listing specific restrictions to his practice, education, re-assessment, and practice monitoring; and
- costs of the proceeding to the College.

[58] While this case has similarities to Dr. Upadhye's in that the physician provided OHP procedures in a non-approved setting, Dr. Shiozaki was also found to be incompetent, and the Committee was also considering his prior College history for boundary violations. Not surprisingly, the suspension duration for Dr. Shiozaki was higher than Dr. Upadhye's and those of the first four prior cases discussed.

[59] In the sixth case, *Ontario (College of Physicians and Surgeons of Ontario) v. Smith*, 2019 ONCPSD 49, Dr. Smith wrote to the College in 2011, stating that he did not fall within the College's OHPIP and that he did not perform procedures that can only be performed in an OHP. In reality, between 2012 and May 2017, Dr. Smith provided nerve blocks to patients for the treatment or management of chronic pain in a clinic that was not an approved OHP. As a result of his letter, his clinic was not inspected or approved by the OHPIP, until an unannounced inspection of the premises found numerous deficiencies (including the lack of appropriate resuscitation equipment) for which the location received a "Fail." It should be noted that Dr. Smith was also renting space to another physician, who was providing Level 2 OHP procedures in the non OHP approved site. A College appointed expert opined that Dr. Smith failed to meet the standard of practice of

the profession, and that he showed a lack of judgement. The Committee found that Dr. Smith had 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. His misconduct included misleading the College about the procedures he was performing and not meeting the requirements for an OHP including those for equipment, physical premises, medication, policy and procedure manuals and staffing. Further, the Committee found that Dr. Smith had failed to maintain the standard of practice of the profession, including performing high-risk procedures in a non-OHP setting without adequate staffing, failing to do pre- and post-procedure vital signs and intraoperative monitoring and document vital signs and consent, failing to have ACLS certification and lacking essential resuscitation equipment and medication. The case proceeded on the basis of an agreed statement of facts and a joint submission on penalty and costs. The penalty included:

- a seven-month suspension of Dr. Smith's certificate of registration;
- a reprimand;
- the imposition of terms, conditions and limitations on Dr. Smith's certificate of registration requiring that he comply with College Policy #2-07 "Practice Management Considerations for Physicians Who Cease to Practice, Take Extended Leave of Absence or Close their Practice Due to Relocation"; and successful completion of the PROBE course in ethics and professionalism; and
- costs of the proceeding payable to the College.

[60] The Discipline Committee in Dr. Smith's case considered that his letter delayed the OHP approval process for years, during which time patients were receiving high-risk procedures in a site with multiple deficiencies from a physician whose care failed to meet the standard of the profession. Dr. Smith was also renting his space to another physician who was providing high risk OHP procedures. The seven-month suspension reflects these (and other) concerns. In this case, Dr. Smith also stopped performing these procedures only after a College inspection,

whereas Dr. Upadhye stopped doing so on his own before the College became aware that the Minerva Clinic was providing OHP procedures.

- [61] In these cases, the Committee tailored penalties to fit the specific deficiencies of the physicians. All the physicians were ordered to pay the College the costs of their proceedings, received a reprimand, and a suspension (ranging from three to seven months). Most of the physicians who demonstrated dishonest behaviour were ordered to complete the PROBE course in ethics and professionalism which is a standardized and College-approved course designed to address the special needs and ethical deficiencies of healthcare professionals. The jointly-proposed penalty in the current case requires that Dr. Upadhye successfully complete this course.
- [62] With regard to the failure to maintain the standard of practice, the prior cases illustrate that when physicians demonstrate deficiencies in their care of patients, the Discipline Committee orders ensured that the public would not be vulnerable to inadequate care. The physicians either entered into undertakings that placed restrictions on their practices or submitted to supervision and/or reassessment and monitoring of their practices. The proposed penalty would impose similar requirements on Dr. Upadhye.
- [63] With regard to suspension length, Dr. Upadhye's four-month suspension falls within the range of penalties in the prior cases. Dr. Smith was given a higher penalty, and he delayed an inspection for years while providing OHP procedures, was renting space to another physician, and had not stopped providing procedures until he was exposed by an unannounced inspection. Similarly Dr. Shiozaki's suspension was longer, and he had a prior discipline history that included boundary violations.
- [64] Dr. Upadhye's four-month suspension falls within the three to five month range of suspension ordered for the other four physicians and reflects Dr. Upadhye's failure to meet the standard of care of the profession, his lack of disclosure of OHP procedures to the College and to the on-site inspectors; his ongoing and repeated failure to admit that he had been performing OHP procedures at Minerva

(even after an inspection), and the breach of his Medical Director duties to report his clinic's OHP procedures to the College.

### Application of the Penalty Principles

[65] With regard to the penalty principles, the reprimand will denounce Dr. Upadhye's conduct to other physicians, the public and Dr. Upadhye. The four-month suspension will act as a general deterrent to the members at large, and as a specific deterrent to Dr. Upadhye. It will also send a message that we will not tolerate this type of conduct. The penalty will also demonstrate to the public and the members that they can count on the College's ability to regulate the profession and act in the interest of public safety, and to maintain the integrity of the profession by ensuring that physicians who have committed professional misconduct engage in activities that redress specific shortcomings in ethical behaviour and in the care of their patients. Additionally, in this case, rehabilitation is both appropriate, and possible, and the penalty provides Dr. Upadhye an opportunity to remediate his care by way of oversight and feedback via supervision, practice re-assessment and monitoring.

### **Conclusion**

[66] The College must protect the public. The College must demonstrate to the public and the profession that it will enforce regulations enacted and procedures adopted for the public's protection, and that it will sanction noncompliance.

[67] In the interest of public safety and with the paramount goal of protection of the public, the OHP program is designed to ensure that physicians provide high quality and safe care to the public, particularly when performing potentially high-risk procedures in non-hospital settings. By providing inadequate care to his patients, and intentionally avoiding the oversight of the OHP program, which depends on physician honesty, Dr. Upadhye placed the public at risk of harm, and betrayed the trust of the public, the members and his regulator.

[68] We cannot condone such conduct and it requires that Dr. Upadhye receive a tailor-made penalty to ensure that the behaviour will not continue or recur.

[69] We are satisfied that the proposed joint submission on penalty adequately addresses Dr. Upadhye's specific deficiencies including his ethical violations and failures with regard to patient care, it falls within the range of penalties for similar cases submitted by the parties, and it satisfies the penalty principles and the paramount goal of keeping the public safe.

[70] Finally, our view is that the penalty as a whole assists to maintain the integrity of the profession and public confidence in the College's ability to regulate in the public interest.

### **Costs**

[71] The Committee has the power pursuant to section 53.1 of the Code to award costs. Costs are always in the discretion of the Committee. Any costs order must be reasonable, and based on the costs actually incurred, or pursuant to Tariff A. The Committee is prepared to order costs in the amount agreed-upon by the parties, which, in our view, represents an appropriate costs order in this case.

### **Order**

[72] In our order made at the hearing and issued on January 18, 2021, we stated our findings in paragraph 1. In paragraphs 2-5, we set out our order and direction on the matter of penalty and costs, as follows:

2. The Discipline Committee orders Dr. Upadhye to attend before the panel to be reprimanded.
3. The Discipline Committee directs the Registrar to suspend Dr. Upadhye's certificate of registration for a period of four (4) months, commencing from February 1, 2021 at 12:01 a.m.
4. The Discipline Committee directs the Registrar to place the following terms, conditions and limitations on Dr. Upadhye's certificate of registration effective immediately:
  - i. Dr. Upadhye shall comply with the College Policy "Closing a Medical Practice".

- ii. Dr. Upadhye will participate in the PROBE Ethics & Boundaries Program offered by the Centre for Personalized Education for Professionals, by receiving a passing evaluation or grade, without any condition or qualification. Dr. Upadhye will complete the PROBE program within six (6) months of the date of this Order, and will provide proof to the College of his completion, including proof of registration and attendance and participant assessment reports, within one (1) month of completing it.
- iii. Dr. Upadhye will provide proof of satisfactory completion of the University of Toronto Medical Record-Keeping Course upon the earlier of: (a) within six (6) months of the date of this Order; and (b) within 30 days of receipt of evidence of Dr. Upadhye's completion of the Course from the University of Toronto.

#### Clinical Supervision

- iv. Prior to resuming practice following the suspension of his certificate of registration described above in paragraph 3, Dr. Upadhye shall retain, at his own expense, a College-approved clinical supervisor, who will sign an undertaking in the form attached hereto as Schedule "A" (the "Clinical Supervisor").
- v. For a period of six (6) months commencing on the date Dr. Upadhye resumes practice following the suspension of his certificate of registration described above in paragraph 3, Dr. Upadhye may practice only under the supervision of the Clinical Supervisor, who shall facilitate the education program set out in the Individualized Education Plan ("IEP") attached hereto as Schedule "B" ("Clinical Supervision"), and as follows.
- vi. Clinical Supervision of Dr. Upadhye's practice shall contain the following elements:
  - a. An initial meeting with Dr. Upadhye to discuss the objectives for the Clinical Supervision;

- b. The Clinical Supervision will be six (6) months in duration and consist of monthly meetings. At each meeting, the Clinical Supervisor will:
  - 1. Review a minimum of 15 patient charts, selected in the sole discretion of the Clinical Supervisor in accordance with the education needs in the IEP attached hereto as Schedule "B", to assess quality of documentation and care; and
  - 2. Directly observe a minimum of three (3) of Dr. Upadhye's patient encounters with patients receiving injections for chronic pain, subject to the following: after three (3) months of Clinical Supervision, if recommended by the Clinical Supervisor and approved by the College, direct observation of patient encounters will not be required for the remaining three (3) months of Clinical Supervision.
- c. The Clinical Supervisor shall discuss with Dr. Upadhye any concerns the Clinical Supervisor may have arising from the chart reviews and/or direct observation;
- d. The Clinical Supervisor will make recommendations to Dr. Upadhye for practice improvements and ongoing professional development, and inquire into Dr. Upadhye's compliance with the recommendations;
- e. The Clinical Supervisor will keep a log of all patient charts reviewed along with patient identifiers; and
- f. The Clinical Supervisor will provide a report to the College at the end of every two (2) months of Clinical Supervision, or more frequently if the Clinical Supervisor has concerns about Dr. Upadhye's standard of practice or conduct or that Dr. Upadhye's patients may be exposed to harm or injury.
- vii. Dr. Upadhye shall fully cooperate with the Clinical Supervision and shall abide by the recommendations of the Clinical Supervisor.

- viii. 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. Upadhye 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.
- ix. If Dr. Upadhye is unable to obtain a Clinical Supervisor in accordance with this Order, he shall cease to practice medicine until such time as he has done so.
- x. If Dr. Upadhye is required to cease to practice medicine as a result of section 4(ix) above, this will constitute a term, condition or limitation on his certificate of registration and that term, condition or limitation will be included on the public register.
- xi. Dr. Upadhye 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. Upadhye's compliance with this Order.

#### Reassessment

- xii. Approximately three (3) months after the completion of the PROBE program, Medical Record-Keeping Course, and the period of Clinical Supervision, each as set out above, Dr. Upadhye shall, at his own expense, undergo a re-assessment by a College-appointed assessor (the "Assessor(s)"). The Reassessment shall include a review of at least 15 patient charts and direct observation of Dr. Upadhye's practice, and may also include interviews with Dr. Upadhye, his colleagues and co-workers, feedback from patients, and any other tools deemed necessary by the College. The Assessor(s) shall submit a written report on the results of the Reassessment to the College.
- xiii. Dr. Upadhye shall cooperate fully with the Reassessment and with the Assessor(s). Dr. Upadhye 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.

#### Monitoring

- xiv. Dr. Upadhye shall inform the College of each and every location where he practices including but not limited to hospitals, clinics and offices, in any jurisdiction (collectively his "Practice Location(s)"), within fifteen (15) days of the date he resumes practice following the suspension of his certificate of registration described in paragraph 3 above, and shall inform the College of any new Practice Locations within fifteen (15) days of commencing practice at that location, for the purposes of monitoring his compliance with this Order.
- xv. Dr. Upadhye shall cooperate with unannounced inspections of his practice, patient charts and Ontario Health Insurance Plan ("OHIP") claims submissions by a College representative(s) for the purpose of monitoring and enforcing his compliance with the terms of this Order.
- xvi. Dr. Upadhye shall consent to the College making appropriate enquiries of the OHIP and/or any person or institution that may have relevant information, in order for the College to monitor and enforce his compliance with the terms of this Order. Dr. Upadhye shall promptly sign such consents as may be necessary for the College to obtain information from these persons or institutions.

#### Costs of Order

- xvii. Dr. Upadhye shall be responsible for any and all costs associated with implementing this Order.
5. The Discipline Committee orders Dr. Upadhye to pay costs to the College in the amount of \$6,000.00 within 30 days of the date of this Order.

#### Reprimand

[73] At the conclusion of the hearing, Dr. Upadhye waived his right to an appeal under subsection 70(1) of the Code and we administered the public reprimand via videoconference.

## **SCHEDULE "A"**

### **TO THE ORDER OF THE DISCIPLINE COMMITTEE OF THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO**

#### **Undertaking of Dr. \_\_\_\_\_ to the College of Physicians and Surgeons of Ontario**

- [1] I am a practising member of the College of Physicians and Surgeons of Ontario (the "College"), certificate number \_\_\_\_\_.
- [2] I have reviewed the materials regarding Dr. Suneel Upadhye's ("Dr. Upadhye") practice provided to me by the College, including but not limited to, the Order of the Discipline Committee of the College dated \_\_\_\_\_ regarding Dr. Upadhye (the "Order"), the Agreed Statement of Facts and Admission (Liability) dated January 15, 2021 and attachments thereto, the Agreed Statement of Facts (Penalty) dated January 15, 2021 and attachments thereto. I understand the terms, conditions and limitations that the Discipline Committee directed the Registrar of the College impose on Dr. Upadhye's certificate of registration in the Order, and I understand the concerns regarding Dr. Upadhye's standard of practice. I will review as soon as practicable any additional materials provided to me by the College, including the College's Guidelines for College-Directed Supervision.
- [3] I agree that commencing from the date following the expiry of the period of suspension of Dr. Upadhye's certificate of registration, I shall act as Clinical Supervisor for Dr. Upadhye for a six (6) month period (the "Clinical Supervision"). My obligations, shall include, at a minimum:
- a. Facilitate the education program set out in the Individualized Education Plan attached as Schedule "B" to the Order ("IEP");
  - b. Review the materials provided by the College and have an initial meeting with Dr. Upadhye to discuss the objectives for the Clinical Supervision and practice improvement recommendations;
  - c. Meet with Dr. Upadhye once every month. Meetings will take place at Dr. Upadhye's Practice Location, or another location approved by the College;

- d. Review at least fifteen (15) of Dr. Upadhye's patient charts at every meeting. I will be solely responsible for selecting all charts to be reviewed by me, independent of Dr. Upadhye's participation, on the basis of the educational needs identified in the College's materials, including IEP, and any concerns that arise during the period of the Clinical Supervision;
- e. At every meeting, directly observe at least three (3) of Dr. Upadhye's patient encounters with patients receiving injections for chronic pain, subject to the following: after three (3) months of Clinical Supervision, if recommended by me and approved by the College, direct observation of patient encounters will not be required for the remaining three (3) months of Clinical Supervision;
- f. Discuss with Dr. Upadhye any concerns arising from such chart reviews and/or direct observation;
- g. Make recommendations to Dr. Upadhye for practice improvements and ongoing professional development and inquire into Dr. Upadhye's compliance with my recommendations;
- h. Keep a log of all patient charts reviewed along with patient identifiers; and
- i. Perform any other duties, such as reviewing other documents or conducting interviews with staff or colleagues, that I deem necessary to Dr. Upadhye's Clinical Supervision.

[4] I undertake to submit a written report to the College, at minimum once every two (2) months. Such report(s) shall be in reasonable detail and shall contain all information I believe might assist the College in evaluating Dr. Upadhye's standard of practice, as well as Dr. Upadhye's participation in and compliance with the requirements set out in Dr. Upadhye's Undertaking.

[5] I undertake that I shall immediately notify the College if I am concerned that"

- a. Dr. Upadhye's practice may fall below the standard of practice of the profession;
- b. Dr. Upadhye may not be in compliance with the terms of the Order; or
- c. Dr. Upadhye's patients may be exposed to risk of harm or injury.

[6] I acknowledge that Dr. Upadhye has consented to my disclosure to the College and all other Clinical Supervisors and Assessors of all information relevant to any of the following:

- a. the Order;
- b. the provisions of this, my Clinical Supervisor's undertaking;
- c. any Reassessment of Dr. Upadhye's practice; and
- d. Monitoring Dr. Upadhye's compliance with the Order.

[7] I acknowledge that all information that I become aware of in the course of my duties as Dr. Upadhye's Clinical Supervisor is confidential information and that I am prohibited, both during and after the period of Clinical Supervision, from communicating it in any form and by any means except in the limited circumstances set out in section 36(1) of the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18 (the "RHPA").

[8] I undertake to notify the College and Dr. Upadhye in advance wherever possible, but in any case, immediately following any communication of information under section 36(1) of RHPA.

[9] I undertake to immediately inform the College in writing if Dr. Upadhye and I have terminated our Clinical Supervision relationship, or if I otherwise cannot fulfill the provisions of my undertaking.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 2021

\_\_\_\_\_  
Dr.

\_\_\_\_\_  
Witness (print name)

\_\_\_\_\_  
Witness Signature

**SCHEDULE “B”**

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

<b>EDUCATIONAL NEED/CANMEDS ROLE</b>	<b>OUTCOMES (GOALS)</b>	<b>PROPOSED EDUCATIONAL METHOD</b>	<b>METHOD OF OUTCOME MEASUREMENT</b>
<p>Medical Expert</p> <p>Areas to be enhanced, including but not limited to:</p> <p>Management of chronic pain in keeping with current, accepted clinical guidelines, including guidelines relevant to opioid prescribing</p>	<p>Practice that meets the standard of a competent physician practising in the Province of Ontario</p>	<p>Clinical Supervision – see details in section below the table</p>	<p>Supervisor reports that demonstrate Dr. Upadhye’s commitment to learning and ongoing improvement</p> <p>Supervisor reports that reflect ongoing discussion of educational resources outlined in the plan, with strategies to incorporate learning into practice</p>
<p>Manager</p> <p>If delegating any aspect of patient care, to do so in keeping with the CPSO delegation policy</p>	<p>Delegation that meets the standard of a competent physician practicing in the Province of Ontario</p>	<p>Clinical Supervision – see details in section below table</p> <p>Review, reflect, and discuss with Clinical Supervisor:</p> <p>CPSO Delegation of Controlled Acts Policy  <a href="https://www.cpso.on.ca/Physicians/Policies-Guidance/Policies/Delegation-of-Controlled-Acts">https://www.cpso.on.ca/Physicians/Policies-Guidance/Policies/Delegation-of-Controlled-Acts</a></p>	<p>Documented completion of courses</p> <p>Incorporation of learning into practice</p> <p>Reassessment three months after completion of this IEP – details of reassessment below</p>

EDUCATIONAL NEED/CANMEDS ROLE	OUTCOMES (GOALS)	PROPOSED EDUCATIONAL METHOD	METHOD OF OUTCOME MEASUREMENT
<p>Communicator (Record Keeping)</p> <p>Medical Record keeping needs to be enhanced including but not limited to:</p> <p>Documentation of consent discussion including risks, benefits, alternative therapies, etc.</p> <p>Documentation of procedures, including appropriate adherence to IPAC standards, procedural technique and doses used per injection site</p> <p>Appropriate use of templates</p> <p>Comprehensive medical record keeping that is compliant with OHIP billing requirements</p>	<p>Documentation that meets the standard of a competent physician in the Province of Ontario</p>	<p>Clinical Supervision – see details in section below table</p> <p>Course:</p> <p>Medical Record-Keeping Course, University of Toronto: <a href="http://www.cpd.u-toronto.ca/recordkeeping/">www.cpd.u-toronto.ca/recordkeeping/</a></p> <p>Review, reflect, and discuss with Clinical Supervisor:</p> <p>CPSO Consent to Treatment Policy</p> <p><a href="https://www.cpso.on.ca/Physicians/Policies-Guidance/Policies/Consent-to-Treatment">https://www.cpso.on.ca/Physicians/Policies-Guidance/Policies/Consent-to-Treatment</a></p>	
<p>Professional</p> <p>Areas to be enhanced, including but not limited to:</p> <p>Fulfill and adhere to the professional and ethical codes,</p>	<p>Demonstration of an understanding of acceptable professional behaviour by a physician in the Province of Ontario</p>	<p>Course:</p> <p>PROBE Canada Program, Center for Personalized Education for Professionals (CPEP): <a href="http://www.cpepdoc.org/cpep-">www.cpepdoc.org/cpep-</a></p>	

EDUCATIONAL NEED/CANMEDS ROLE	OUTCOMES (GOALS)	PROPOSED EDUCATIONAL METHOD	METHOD OF OUTCOME MEASUREMENT
standards of practice, and laws governing practice, including: Adherence to the College's Out-of-Hospital Premises and Inspection Program Accurate representation of information to the College		<a href="#">courses/probe-ethics-boundaries-program-canada/</a>	

All educational activities associated with this plan are potentially available for credit from College of Family Physicians of Canada Mainpro+ program. Check with the relevant program for details about obtaining educational credits. The CPSO does not award Continuing Professional Development credits.

### Clinical Supervision

A Clinical Supervisor's prime responsibility is to assure the College (and the public) that patient care is safe.

1. Dr. Upadhye will recruit a Clinical Supervisor who must be acceptable to the College.
2. The Clinical Supervisor must sign a supervisor's undertaking with the College.
3. The Clinical Supervisor will review materials, then visit Dr. Upadhye's practice no less than monthly.
4. The Clinical Supervision will be a minimum of six (6) months in duration.
5. At each visit, the Clinical Supervisor will directly observe three (3) patient encounters in which the patient is receiving injections for chronic pain; subject to the following: after three (3) months of Clinical Supervision, if

recommended by the Clinical Supervisor and approved by the College, direct observation of patient encounters will not be required for the remaining three (3) months of Clinical Supervision.

6. At each visit, the Clinical Supervisor will review a minimum of fifteen (15) charts to assess for the quality of documentation and care; ten (10) of the fifteen (15) charts at a minimum will be those focusing on treatment of patients receiving injections for non-malignant chronic pain.
7. The Clinical Supervisor will submit three (3) reports to the College, one (1) report every two (2) months. Each report will include commentary on recommendations made and Dr. Upadhye's response to same.

### Course Work

Dr. Upadhye will register and complete the indicated courses in a timely manner, preferably at the earliest available date. Satisfactory completion of the course requirements will be indicated by proof of registration and attendance and will include any participant assessment reports that are normally provided by the course. Final determination of satisfactory completion is the prerogative of the College. Substitution requests will be reviewed by the College for courses no longer offered and for other reasonable indications.

### Reassessment

1. A Reassessment of Dr. Upadhye's practice will take place approximately 3 months following the completion of all of the components of this IEP.
2. The Reassessment will focus on those deficiencies that were identified in this IEP and may include issues that arose during the period of clinical supervision.
3. The Reassessment will be conducted by an assessor chosen by the College.

4. The Reassessment will include a review of at least 15 patient charts and direct observation of Dr. Upadhye's practice and may also include the use of any assessment tool including but not limited to interviews with Dr. Upadhye and other stakeholders, such as colleagues and co-workers.
5. The assessor will submit a written report to the College in order to comment on the standard of documentation and care.

**TEXT of PUBLIC REPRIMAND**  
**Delivered January 15, 2021**  
**in the case of the**  
**COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO**  
**and**  
**DR. SUNEEL UPADHYE**

Dr. Upadhye:

It is always unfortunate when a member of our profession appears before this Committee. While it is your first appearance before the Discipline Committee, it is not the first time that serious issues concerning your practice were raised here at the College.

The responsibility for maintaining medical professionalism lies with physicians themselves. Each one of us contributes to defining the expectations or standards of the profession as a whole. We must uphold these standards in all our actions. Fulfilment of this duty is essential for self-regulation. You have failed in this regard.

There is good reason for Out-of-Hospital Premises to be regulated and reviewed. This in large part relies on an honour system which you have failed. This was not a single impulsive act. You actively misled the College regarding the Minerva Clinic several years ago, and on more than one occasion. This cannot and will not be condoned or tolerated by the profession or by the public. Honesty in dealing with the College as your regulator is essential to self-regulation and protection of the public.

When you did apply for an OHP licence, you failed in not having appropriate space, a safe evacuation route, or the required equipment. Your patients were placed at risk of serious harm because of your sub-standard care. There were instances of poor documentation, lack of a diagnosis, or lack of clinical indication connecting to appropriate treatment, including nerve blocks.

***This is not an official transcript***

You have provided inappropriately large amounts of opioids to patients during a significant crisis in our communities. For another patient, you prescribed multiple controlled substances in spite of many red flags for abuse. Misconduct of this type is so extremely serious; it will not be tolerated.

With regard to medical record keeping, there is no excuse for records that are incomplete, inaccurate, or don't reflect the quality of medical care expected to be provided. Documenting consent for treatment is essential. The medical record is an integral part of providing patient care.

Dr. Upadhye, given the serious nature of r lapses, this Committee has ordered education, supervision, and monitoring. We hope you learn from this experience, and that you will never, ever appear before this Committee again.