

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Elaine Raddatz, this is notice that the Discipline Committee ordered that no person shall publish or broadcast any names or information that would identify the names of patients, referred to orally or in the exhibits filed at the hearing.

The Committee made this order under subsection 45(3) of the *Code*.

Subsection 93(1) of the Code, which is concerned with failure to comply with these orders, reads:

Every person who contravenes an order made under ... section 45 or 47... is guilty of an offence and on conviction is liable,

- (a) in the case of an individual to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence; or
- (b) in the case of a corporation to a fine of not more than \$50,000 for a first offence and not more than \$200,000 for a second or subsequent offence.

Indexed as: Ontario (College of Physicians and Surgeons of Ontario) v. Raddatz, 2020 ONCPSD 27

**DISCIPLINE COMMITTEE
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**
which is Schedule 2 of the ***Regulated Health Professions Act, 1991***,
S.O. 1991, c. 18, as amended.

B E T W E E N:

COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. ELAINE RADDATZ

PANEL MEMBERS:

**MR. JOHN LANGS (CHAIR)
DR. JOHN RAPIN
MS ELLEN MARY MILLS
DR. CAROLE CLAPPERTON
DR. JAMES WATTERS**

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS EMILY GRAHAM

COUNSEL FOR DR. RADDATZ:

**MS JENNIFER McKENDRY
MR. PETER LEIGH**

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MS JENNIFER McALEER

Hearing Date and Decision Date: April 6, 2020
Release of Reasons Date: June 24, 2020

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario (“the College”) heard this matter at Toronto on April 6, 2020. Due to the Covid 19 pandemic, this hearing was held by teleconference. At the conclusion of the hearing, the Committee made an order (released April 14, 2020) stating its finding that the member had committed an act of professional misconduct, and setting out its penalty and costs order with written reasons to follow.

THE ALLEGATION

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

1. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”), in that she 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.

THE FACTS

The following facts were set out in a Statement of Uncontested Facts and Plea of No Contest (Liability) which was filed as an exhibit and presented to the Committee:

STATEMENT OF UNCONTESTED FACTS AND PLEA OF NO CONTEST (Liability)

PART I – FACTS

Background

1. Dr. Raddatz is 44 years old. She received her certificate of registration authorizing independent practice from the College in 2008, and currently practices family medicine in Toronto, Ontario.

Treatment of Self and Family Members; Writing Prescriptions for Self and Family Members in Colleague's Name

2. In 2018, the College received a complaint that raised concerns that Dr. Raddatz had written prescriptions to herself and/or one or more of her family members using a colleague's prescription pad.
3. Between April 2015 and July 2017, as set out below, Dr. Raddatz treated herself and members of her family by writing 28 prescriptions in her colleague's name and using her colleague's prescription pad. Dr. Raddatz's colleague did not execute or authorize any of the 28 prescriptions written by Dr. Raddatz.
4. Dr. Raddatz signed her colleague's name on 27 of the 28 prescriptions. The remaining prescription was not signed, though it was written by Dr. Raddatz on her colleague's prescription pad.
5. Dr. Raddatz treated herself by writing 21 prescriptions to herself in her colleague's name between April 2015 and July 2017 for sixty-six (66) medications: antibiotics, aerosol inhalers, antihistamines, contraceptives, non-steroidal anti-inflammatories, an antiemetic, an oral vaccine, antivirals, a proton pump inhibitor, and topical prescription creams including antifungals, corticosteroids, and an immunomodulator. The prescriptions for antifungals were refills of existing prescriptions.

6. Dr. Raddatz treated Family Member A by writing 4 prescriptions to Family Member A in her colleague's name between November 2015 and September 2016 for 18 medications: antibiotics, aerosol inhalers, antihistamines, a proton pump inhibitor, a selective serotonin and norepinephrine reuptake inhibitor, an anti-asthmatic, and topical prescription creams including antifungals and a corticosteroid.
7. Dr. Raddatz treated Family Member B by writing 2 prescriptions to Family Member B in her colleague's name in April 2015 and February 2016 for 3 medications: antibiotics and a steroid cream.
8. Dr. Raddatz treated Family Member C by writing one prescription to Family Member C in her colleague's name in October 2015, for Ritalin. The prescription for Ritalin was a refill of an existing prescription. Ritalin is a controlled substance. None of the other prescriptions at issue were for a controlled substance.
9. During the investigation, in response to a question from College investigators, Dr. Raddatz acknowledged that she had written the 28 prescriptions in her colleague's name.
10. Dr. Raddatz did not maintain patient charts for the family members to whom she prescribed and who she treated.
11. Dr. Raddatz did not bill OHIP for prescribing to and treating herself and her family members.
12. Dr. Raddatz's treatment of herself and her family members did not comply with the College's Policy on *Physician Treatment of Self, Family Members, or Others Close to Them*, attached at Tab 1 to the Statement of Uncontested Facts and Plea of No Contest (Liability), which provides that:

(a) physicians must not provide treatment for themselves or family members except for a minor condition or in an emergency situation and when another health-care professional is not readily available; and

(b) physicians must not provide recurring episodic treatment for the same disease or condition, or provide ongoing management of a disease or condition, even where the disease or condition is minor. Another physician must be responsible for ongoing management.

PART II - ADMISSION

13. Dr. Raddatz does not contest the facts at paragraphs 1 to 12 above, and does not contest that, based on these facts, she engaged in professional misconduct under:

(a) paragraph 1(1)33 of O Reg. 856/93, in that she engaged in acts or omissions relevant to the practice of medicine that would be regarded by members as disgraceful, dishonourable or unprofessional.

RULE 3.02 – PLEA OF NO CONTEST

Rule 3.02 of the Rules of Procedure of the Discipline Committee regarding a plea of no contest states:

3.02(1) Where a member enters a plea of no contest to an allegation, the member consents to the following:

a) that the Discipline Committee can accept as correct the facts alleged against the member on that allegation for the purposes of College proceedings only;

- b) that the Discipline Committee can accept that those facts constitute professional misconduct or incompetence or both for the purposes of College proceedings only; and
- c) that the Discipline Committee can dispose of the issue of what finding ought to be made without hearing evidence.

FINDING

The Committee accepted as correct all of the facts set out in the Statement of Uncontested Facts and Plea of No Contest (Liability). Having regard to these facts, the Committee accepted Dr. Raddatz's admission and found that she engaged in professional misconduct under paragraph 1(1)33 of O Reg. 856/93, in that she engaged in acts or omissions relevant to the practice of medicine that would be regarded by members as disgraceful, dishonourable or unprofessional.

PENALTY AND REASONS FOR PENALTY

The evidence on penalty, submissions heard, and the Committee's analysis are summarized as follows.

FACTS ON PENALTY

The following facts were set out in an Agreed Statement of Facts (Penalty) which was filed as an exhibit and presented to the Committee:

Dr. Raddatz's personal circumstances

1. Dr. Raddatz's misconduct took place during a period of significant personal stress and anxiety, and in the context of a difficult family dynamic, including an acrimonious marital breakdown and the death of her father.

Dr. Raddatz's Prior History

2. In December 2017, the Inquiries, Complaints and Reports Committee ("ICRC") considered an investigation into Dr. Raddatz's practice undertaken pursuant to s. 75(1)(a) of the Health Professions Procedural Code. The ICRC was of the view that Dr. Raddatz could improve on deficiencies in her records management. It directed Dr. Raddatz to complete a Specified Education and Remediation Program ("SCERP"), consisting of:

- (a) two CMPA e-learning modules on medical record-keeping;
- (b) the University of Toronto Medical Record-Keeping Course;
- (c) review and written summary of the College's policies on *Test Results Management* and *Medical Records*, and the College's Practice Guide;
- (d) a six (6) month period of clinical supervision; and
- (e) a reassessment of Dr. Raddatz's practice.

3. The ICRC's December 2017 decision is attached at Tab 1 to the Agreed Statement of Facts (Penalty).

4. Dr. Raddatz completed all elements of the SCERP, including a reassessment of her practice by Dr. Karen Ferguson in July 2019. Dr. Ferguson summarized her conclusions as follows:

The care provided to these patients by Dr. Raddatz meets the standard of practice of the profession in all 20 charts. Dr. Raddatz has made significant improvements in her record-keeping and her test results management. She has implemented several new processes to ensure that abnormal test results are followed up appropriately and managed in a timely fashion.

Dr. Raddatz's care does not display a lack of knowledge, skill, or judgement in any of these 20 charts.

Dr. Raddatz's clinical practice, behavior, or conduct is not likely to expose her patients to harm or injury in any of these 20 charts.

5. Dr. Raddatz has no prior Discipline history.

SUBMISSIONS

The parties were largely in agreement in their submissions on penalty and costs. The parties agreed that the penalty order should include a reprimand, a six-month suspension of Dr. Raddatz's certificate, and a requirement to complete the PROBE Ethics & Boundaries Program, and that Dr. Raddatz should pay costs in the amount of \$6,000 for one-half day hearing.

At issue between the parties was College counsel's proposal that the penalty order should direct that - as a term, condition or limitation on her certificate of registration - Dr. Raddatz be required to comply with the College policy "Closing a Medical Practice" in respect of the period of her suspension.

College counsel submitted that compliance with the “Closing a Medical Practice” policy (or its predecessor) has been an element of many previous penalty orders where suspension is directed. College counsel provided three examples of such orders made in 2019 and 2020; the suspensions ranged from three to 12 months. The expectations set out in the policy are intended to ensure continuity of care for a physician’s patients when the physician’s practice is closed. College counsel set out three grounds of support:

First, Dr. Raddatz knowingly and deliberately breached another College policy (“Physician Treatment of Self, Family Members, or Others Close to Them”) over a period of two years.

Second, the “Closing a Medical Practice” policy is directly relevant to the closure of Dr. Raddatz’s practice during a six-month suspension.

Third, including such a requirement is a means to ensure Dr. Raddatz’s compliance with the policy and to reduce the chance that her patients’ care will be compromised during the period when she is unavailable.

College counsel agreed in general that the elements of the penalty order should connect to the facts of the case, but not necessarily to the nature of the misconduct. She gave as examples of ancillary orders, provision for unannounced practice inspections and monitoring of OHIP billing.

Counsel for Dr. Raddatz submitted that the Committee should not require Dr. Raddatz to comply with the “Closing a Medical Practice” policy in its penalty order, and that to do so would be an error. She argued this on two grounds.

First, there is no connection between such a provision and the underlying misconduct. In her submission, the Committee heard no evidence that Dr. Raddatz

would have difficulty complying or would not comply with the “Closing a Medical Practice” policy. All physicians are expected to comply with College policies and there are, arguably, many other College policies – all intended to protect the public – that are relevant to Dr. Raddatz’s practice. Yet the College is not requesting that compliance with such policies be included in the Committee’s order.

Second, were the Committee to direct that compliance with a College policy be a term, condition or limitation on a physician’s certificate of registration, then the Committee would be elevating the force of College policy from setting out expectations to requiring compliance. If this were the College’s intention in respect of its policies in general, then contravening any policy would be defined as misconduct.

Counsel for Dr. Raddatz identified four penalty orders made in 2019 and 2020 which included suspensions from one to 14 months; none specified a requirement to comply with the “Closing a Medical Practice” policy.

ANALYSIS

The protection of the public is the paramount principle guiding the imposition of penalty. Other key considerations are: maintaining the integrity of the profession and public confidence in the College’s ability to regulate the profession in the public interest; denouncing wrongful conduct; specific deterrence as it applies to the member; general deterrence in relation to the membership as a whole; and, where appropriate, rehabilitating and remediating the member.

A penalty which is fair, reasonable and appropriate must take into account the facts and circumstances of the case and weigh the penalty principles. The nature of the misconduct and aggravating and mitigating factors need to be considered. The penalty should be proportionate to the misconduct: like cases should be treated alike and the

Committee should have regard to penalties imposed in similar cases, although it is not bound by its prior decisions.

Nature of Dr. Raddatz's misconduct

Dr. Raddatz engaged in very serious misconduct over a period of more than two years. First, between April 2015 and July 2017, without justification, she wrote numerous prescriptions for herself and family members. Dr. Raddatz deliberately breached the College policy "Physician Treatment of Self, Family Members, or Others Close to Them". In doing so, she risked compromising both her own health and that of her family. The quality of care that physicians provide to themselves or family members, outside very limited circumstances that are not present here, is too easily compromised.

Further, Dr. Raddatz wrote the prescriptions using the prescription pad of a colleague and by forging the colleague's signature. In her actions, Dr. Raddatz took advantage of her working relationship with her colleague and put her colleague's professional standing at risk. Her intention in using her colleague's prescription pad was to disguise that she herself was the author of the prescriptions, as she knew that her actions were wrong and dishonest.

Dr. Raddatz's misconduct was deliberate, deceitful, and repeated. Dr. Raddatz violated the trust that is a cornerstone of professional relationships and demonstrated a deeply concerning lack of judgment and respect for professional boundaries.

Aggravating factors

The scope and the deliberate and ongoing nature of Dr. Raddatz's misconduct are aggravating factors.

Mitigating factors

Dr. Raddatz's recent interaction with ICRC arose from concerns about her office records and management of test results, i.e., different concerns to those raised in this discipline matter. The successful conclusion of that process speaks to Dr. Raddatz's commitment to her practice and patients, a willingness to take responsibility, and an ability to make appropriate changes.

Dr. Raddatz's misconduct occurred during a period of significant personal stress and anxiety, and in the context of a difficult family dynamic, including an acrimonious marital breakdown and the death of her father.

Dr. Raddatz cooperated fully with the College's investigation which led to this hearing, and pleaded no contest to the misconduct allegations. Her doing so reduced the time and cost of the discipline process to the College, and avoided the stress and burden on witnesses who may have been called to testify.

Prior cases

Counsel for the College and for Dr. Raddatz provided a joint book of authorities.

In *Ontario (College of Physicians and Surgeons of Ontario) v. Irvine*, 2011 ONCPSD 39, a family physician wrote prescriptions for his wife and step-son for a period of two years, in contravention of the College policy "Treating Self and Family Members". He did not prescribe narcotics or other controlled substances. He did not bill OHIP or maintain medical records. Unlike the present matter, the physician did not use a colleague's prescription pad or forge their signature and accordingly the misconduct is less severe than in the present matter. The physician had no discipline history and admitted his misconduct. The penalty included a reprimand and four-month suspension.

In *Ontario (College of Physicians and Surgeons of Ontario) v. Gill*, 2016 ONCPSD 49, the physician was an internist who relapsed following treatment for alcohol addiction and engaged in a range of misconduct aimed at maintaining a supply of opioids for his personal use. As a result, he faced both professional disciplinary and criminal proceedings. The physician enrolled in the Physician Health Program. The penalty included a reprimand, five-month suspension, and various practice restrictions. The misconduct was more egregious than in the present matter, although the circumstances and mitigating factors were significantly different.

Ontario (College of Physicians and Surgeons of Ontario) v. Guirguis, 2018 ONCPSD 47, involved a family physician who, over a period of two years, forged prescriptions for himself and family members for Percocet and other medications, using the prescription pad of a colleague who shared his office. He did not keep medical records but did bill OHIP. The physician did not have a substance use disorder and this was viewed as an aggravating factor, in that he had full control of his actions. He admitted some of his misconduct. The penalty included a reprimand, six-month suspension, various practice restrictions and educational requirements.

Each of the cases is readily distinguishable from the present matter, but the Committee accepts that they represent a range of somewhat similar misconduct and circumstances relevant to consideration of penalty in the present matter.

Application of the penalty principles

The Committee finds that a reprimand, six-month suspension, and completion of the PROBE program is an appropriate penalty that satisfies the penalty principles and reflects the range in prior cases.

Dr. Raddatz's misconduct did not involve her patients in any direct way but, insofar as public protection is an issue, it will be served by her completing an educational program in ethics and boundaries (PROBE program) and by the specific deterrence arising from the Committee's reprimand and imposition of a suspension. The period of suspension is significant and is a serious sanction. The reprimand will allow the Committee to express its abhorrence of Dr. Raddatz's actions in a public forum.

The reprimand and suspension will make the profession aware that such misconduct is wholly unacceptable and will not be tolerated. The penalty should reassure the public that such serious misconduct will be appropriately dealt with, and should assist in maintaining public confidence in the integrity of the profession and the College's ability to regulate the profession in the public interest. The goal of remediation is relevant and is served by the requirement for Dr. Raddatz to complete an appropriate educational program.

The parties agree, and the Committee accepts, that Dr. Raddatz's suspension should be delayed until at least October of this year at her request to allow her to work in her clinical practice during the current public health emergency arising from the COVID-19 virus pandemic.

After discussion with the parties, the Committee directs that Dr. Raddatz complete the PROBE program within six months. In the event that Dr. Raddatz is unable to complete the PROBE course within six months either because the course is not being offered or because her medical services are required due to the Covid-19 pandemic, she must complete it within 12 months.

Requirement to comply with the “Closing a Medical Practice” policy as a term, condition or limitation

The Committee finds that it is not appropriate to direct in its penalty order that Dr. Raddatz be required to comply with the “Closing a Medical Practice” policy. Although the Committee has not been consistent in including such a provision in the past, it accepts that there should be a concern addressed that rises above the need for every physician to have proper regard to all College policies.

In this instance, the Committee is not persuaded that Dr. Raddatz’s disregard for the College’s “Physician Treatment of Self, Family Members, or Others Close to Them” policy, while deliberate and repeated, gives rise to significant concern that she would fail to comply with the “Closing a Medical Practice” policy or other practice-related policies. Dr. Raddatz’s professional misconduct occurred in a particular context and did not directly involve her patients. Further, her recent successful completion of a SCERP and the positive findings of her practice re-assessment suggest that she is quite capable of reflection, learning, and implementing changes in her practice that benefit her patients.

Costs

The Committee finds that this is an appropriate case in which to award costs, and accepts the submissions of the parties that Dr. Raddatz pay costs to the College in the amount of \$6,000.00.

ORDER

The Committee stated its findings in paragraph 1 of its written order released on April 14, 2020. In that order, the Committee ordered and directed on the matter of penalty and costs:

2. Dr. Raddatz is to attend before the panel to be reprimanded.

3. The Registrar is to suspend Dr. Raddatz's certificate of registration for a period of six (6) months, commencing from the later of:
 - (a) October 6, 2020 at 12:01 a.m.; or

 - (b) fifteen (15) days after such date on which all declarations of emergency with regard to the outbreak of the novel coronavirus COVID-19 have been officially lifted from each of the City of Toronto, the Province of Ontario, and if applicable, the country of Canada.

4. The Registrar is to place the following terms, conditions and limitations on Dr. Raddatz's certificate of registration:
 - (a) Dr. Raddatz will participate in the PROBE Ethics & Boundaries Program offered by the Centre for Personalized Education for Professionals ("the PROBE program") by receiving a passing evaluation or grade, without any condition or qualification. Dr. Raddatz will complete the PROBE program within six (6) months of the date of this Order, and will provide proof to the College of her completion, including proof of registration and attendance and participant assessment reports, within one (1) month of completing it. In the event that Dr. Raddatz is unable to complete the PROBE course within six months, either because the course is not being

offered or because her medical services are required due to the Covid-19 pandemic, then she will have an additional six (6) months in which to complete the PROBE course.

5. Dr. Raddatz is to pay costs to the College in the amount of \$6,000.00 within ninety (90) days from the date of the Order.

TEXT of PUBLIC REPRIMAND
Delivered March 31, 2021
in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
and
DR. ELAINE RADDATZ

This is not an official transcript

Dr. Raddatz:

Your conduct was unethical and unacceptable.

You deliberately treated family members with the full knowledge that it was wrong to do so. This was not an isolated incident or a momentary lapse in judgement. Your actions were repeated on multiple occasions over a two year period with the full knowledge that it was wrong. Your misconduct was compounded and made even more reprehensible by the fact that you misappropriated a colleague's prescription pad and forged their signature 27 times to disguise the fact that you were treating your family members. You did this with a seemingly total disregard of the potentially damaging consequences to your colleague. This was a terrible betrayal of the trust of a fellow physician. This conduct is a sad reflection on you and on the profession as a whole.

The Committee is aware that you took these actions against a background of extremely troubling personal issues. While this is no excuse for your misconduct, it helps the Committee understand your behaviour.

We understand that the troubling issues are now behind you and you have had time to reflect on your actions and gain insight into your conduct.

The Committee acknowledges that you agreed to delay your suspension until the end of the current pandemic crisis, so that you could continue to provide medical services. This is commendable and is a reflection of your desire to return to an active, caring and conscientious practice.

It is against that background that the Committee expects that you will never have to appear before the College's disciplinary committee again.