

## NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Bassam Mohamed Khalil Darwish El-Tatari, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of the witnesses or any information that could disclose the identity of the witnesses under subsection 45(3) of the Health Professions Procedural Code (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended.

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

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

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

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

Indexed as: **Ontario (College of Physicians and Surgeons of Ontario) v. El-Tatari,**  
2019 ONCPSD 26

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

**IN THE MATTER OF** a Hearing directed by  
the Inquiries, Complaints and Reports Committee of the College of Physicians and Surgeons of  
Ontario  
pursuant to Section 26(1) of the **Health Professions Procedural Code**  
being Schedule 2 of the *Regulated Health Professions Act, 1991*,  
S.O. 1991, c. 18, as amended.

**B E T W E E N:**

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

**- and -**

**DR. BASSAM MOHAMED KHALIL DARWISH EL-TATARI**

**PANEL MEMBERS:**

**MR. P. GIROUX  
DR. P. GARFINKEL  
MS. G. SPARROW  
DR. E. SAMSON  
DR. E. STANTON**

**COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:**

**MS. KIRK MAIJALA**

**COUNSEL FOR DR. EL-TATARI:**

**MS. JENNIFER MCKENDRY**

**INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:**

**MR. ROBERT COSMAN**

**PUBLICATION BAN**

**Hearing Date: April 30, 2019  
Decision Date: April 30, 2019  
Written Decision Date: June 25, 2019**

## **DECISION AND REASONS FOR DECISION**

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on April 30, 2019. At the conclusion of the hearing, the Committee released a written order stating its finding that Dr. El-Tatari committed an act of professional misconduct and setting out its penalty and costs order with written reasons to follow

### **THE ALLEGATIONS**

The Notice of Hearing alleged that Dr. El Tatari committed an act of professional misconduct under:

- (i) clause 51(1)(b.1) of the Health Professions Procedural Code, which is Schedule 2 of the *Regulated Health Professions Act, 1991*, (the “Code”) in that he engaged in sexual abuse of a patient; and
- (ii) paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”), in that he has engaged in conduct or an act or 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.

### **RESPONSE TO THE ALLEGATIONS**

Dr. El-Tatari did not contest the second allegation in the Notice of Hearing, that he 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. Counsel for the College withdrew the first allegation in the Notice of Hearing.

## **PART I - THE FACTS**

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

1. Dr. El-Tatari is a 46-year-old family physician who has held a certificate of independent practice with the College of Physicians and Surgeons of Ontario since 2010. At all material times, Dr. El-Tatari practised at a walk-in clinic and at his own office in Windsor, Ontario.

### **Patient A**

2. Dr. El-Tatari was Patient A's family physician from 2011 to 2014.

3. On a number of occasions, Dr. El-Tatari hugged Patient A before and after her appointments. The hugs made Patient A feel nervous and uncomfortable.

4. During one appointment, Patient A complained of a pimple on her labia. Without adequate explanation to Patient A, Dr. El-Tatari examined and palpated the pimple on Patient A's labia. This caused Patient A discomfort and upset.

### **Patient B**

5. Patient B was a patient of Dr. El-Tatari's from 2013 to 2014.

6. On a number of occasions, Dr. El-Tatari hugged Patient B at the end of her appointments. On one occasion, following a clinically indicated breast examination, Dr. El-Tatari hugged Patient B, and told her that she was his "favourite patient." Dr. El-Tatari's conduct made Patient B feel awkward and uncomfortable.

7. Dr. El-Tatari performed breast examinations on Patient B. Dr. El-Tatari found the examinations difficult due to Patient B's breast implants. Dr. El-Tatari did not provide an

adequate explanation of the nature and purpose of the extended examinations. As a result, Patient B was left feeling concerned and upset about the length of those examinations.

### **Patient C**

8. Patient C was a patient of Dr. El-Tatari from 2011 to 2015.

9. At the end of some medical appointments with Dr. El-Tatari, Dr. El-Tatari hugged Patient C. Dr. El-Tatari told Patient C that she was “one of his special ones”.

10. During one appointment, Dr. El-Tatari hugged Patient C while she was wearing an examination gown. While hugging Patient C, Dr. El-Tatari asked her if she liked being hugged. He touched her face with his hand.

11. Dr. El-Tatari’s conduct made Patient C uncomfortable. Patient C made a follow up appointment, but never returned to see Dr. El-Tatari after this appointment.

### **Patient D**

12. Patient D was a walk-in patient of Dr. El-Tatari in 2014.

13. During an early appointment, Dr. El-Tatari hugged Patient D after she told Dr. El-Tatari that she had a miscarriage. This made Patient D feel awkward.

14. During some appointments, Dr. El-Tatari touched her face with his hand, which made her feel uncomfortable.

### **Patient E**

15. Patient E was a patient of Dr. El-Tatari in 2014.

16. During one appointment, Dr. El-Tatari conducted a clinically indicated pelvic examination on Patient E. During the examination, without an adequate explanation to Patient E, Dr. El-Tatari asked Patient E to squeeze his finger and commented about the strength of her vaginal muscles. Dr. El-Tatari did not explain to Patient E the purpose of this part of the examination or the reason for his comment.

17. On another occasion, Dr. El-Tatari also touched her face with his hand, and told her he does that to all his favourite patients.

18. Dr. El-Tatari's conduct made Patient E uncomfortable.

### **Patient F**

19. Patient F was a patient of Dr. El-Tatari from 2012 to 2013.

20. During his appointments with Patient F, Dr. El-Tatari regularly hugged Patient F, and told her she was his "favourite patient."

21. During one appointment in or about July 2013, Dr. El-Tatari kissed Patient F on the cheek and, while hugging her, asked Patient F what she would like him to do.

22. Dr. El-Tatari's conduct made Patient F uncomfortable. Patient F stopped seeing Dr. El-Tatari after this appointment.

### **Patient G**

23. Patient G was a patient of Dr. El-Tatari from 2011 to 2013.

24. At the end of appointments with Patient G, Dr. El-Tatari regularly hugged Patient G. Patient G found the hugs "weird".

25. On one occasion, Dr. El-Tatari commented to Patient G's boyfriend that he loved Patient G and that Patient G was "like a sister" to him. Patient G found the comment unprofessional.

### **Patient H**

26. Patient H was a patient of Dr. El-Tatari in 2011 and 2012.

27. On one occasion, during a clinically indicated pelvic examination, while checking her pelvic tone, Dr. El-Tatari commented on the tightness of her pelvic tone. Dr. El-Tatari did not provide an adequate explanation to Patient H as to the reasons for this comment. Patient H felt shocked and upset by the comment.

### **PART II – ADMISSION**

28. Dr. El-Tatari pleads no contest to the facts as set out above and does not contest that the conduct described constitutes 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, dishonorable or unprofessional.

### **FINDING**

The Committee accepted as correct all of the facts set out in the Statement of Uncontested Facts and Plea of No Contest. Having regard to these facts, the Committee found that Dr. El-Tatari committed an act of professional misconduct, in that he 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.

It is noted that the issue of sexual abuse had been withdrawn and was not before the Committee. Counsel for the College stated to the Committee that there was no evidence to suggest that the touching, behaviour or remarks of Dr. El-Tatari were of a sexual nature. The responsibility of the

Committee was to determine whether Dr. El-Tatari in this case engaged in conduct that could be reasonably regarded by members as disgraceful, dishonourable or unprofessional.

## **PENALTY AND REASONS FOR PENALTY**

Counsel for the College and counsel for the member made a joint submission as to an appropriate penalty and costs order, which included: suspending Dr. El-Tatari's certificate of registration for a period of five months; imposing terms, conditions and limitations on Dr. El-Tatari's certificate of registration; a public reprimand; and payment of costs to the College in the amount of \$6,000.00.

The Committee is aware that it should not depart from a joint submission on penalty 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).

The Committee took into account a number of principles in assessing the proposed penalty. The primary consideration of the Committee was ensuring public protection. The penalty should express the profession's denunciation of the misconduct, and serve to maintain the public's confidence in the College's ability to regulate the profession in the public interest. The penalty should be a specific deterrent to the member, and general deterrent to the broader profession. The penalty should be proportionate to the misconduct, and where possible, should provide for the rehabilitation of the member.

In assessing the appropriateness of the penalty proposed, the Committee considered aggravating and mitigating factors, as well as prior similar cases decided by the Committee.

### **Aggravating Factors**

#### *Nature of the Misconduct*

Dr. El-Tatari committed repeated boundary violations with a number of patients, as described above. In doing so, he prioritized his own interests above those of his patients. His actions show



a concerning insensitivity to the power imbalance that exists in all physician-patient relationships. Physicians have a fiduciary responsibility to act in good faith, and in patients' best interests. Dr. El-Tatari has shown a blatant disregard of this duty.

Boundary violations must always be treated seriously and it is the physician's responsibility to maintain appropriate boundaries. The College policy titled, *Maintaining Appropriate Boundaries and Preventing Sexual Abuse* is explicit in this regard: "At all times, a physician has an ethical obligation not to exploit the trust, knowledge and dependence that develops during the physician-patient relationship for the physician's personal advantage."

The Committee was troubled that Dr. El-Tatari's actions were not a single lapse in judgment, but a pattern of boundary violations repeated over several years, with eight different women. Often, these events took place in situations where the patient felt particularly vulnerable – when undergoing an examination and clothed only in a gown. Dr. El-Tatari abused his position of trust and power. He acted in a manner that, in the Committee's view, eroded the public's trust in the profession. He engaged in hugs and made comments that made his patients feel uncomfortable. He conducted sensitive examinations without proper explanation, which demonstrated a disregard for his patients.

### **Mitigating Factors**

Dr. El-Tatari has no prior disciplinary involvement with the College. His plea of no contest saved the time and expense of a contested hearing, and of witnesses having to attend and testify at the hearing. Dr. El-Tatari entered into an undertaking under Section 25.4 of the Code, and has been in full compliance.

### **Prior Cases**

Counsel presented a joint book of authorities that included three prior similar cases: *CPSO v. Hajcsar* (2014), *CPSO v. Ghali* (2016), and *CPSO v. Leduc* (2018). While the Committee is aware that each case must be decided on its unique facts, the Committee accepts the principle of fairness that like case should be treated alike.

In *CPSO v. Dr. Hajcsar*, Dr. Hajcsar was found to have engaged in disgraceful, dishonorable, or unprofessional conduct in his treatment of a female patient from 1995-2012. During this period, he committed boundary violations by commenting on her physical appearance, brushing back her hair, touching her shoulder and kissing her. The Committee accepted the jointly proposed penalty, which included a two-month suspension, a public reprimand, and costs for the single day of the hearing. Dr. Hajcsar had previously taken a boundaries course of his own volition.

*CPSO v. Ghali*, Dr. Ghali, treated a patient over a two-year period in his family practice. Her treatment included supportive counseling. During this time, when she was upset, Dr. Ghali hugged her and kissed her on the cheek. Dr. Ghali's certificate of registration was suspended for three months and he received a public reprimand

In *CPSO v. Leduc*, Dr. Leduc began seeing a teenaged patient in his family practice in 1998, and continued to see her until 2013. The patient had a range of psychiatric issues, including an eating disorder, depression, anxiety, addiction and post-traumatic stress disorder (PTSD). Dr. Leduc met the patient at a restaurant and paid for her meal, including wine, even though he knew she had an addiction. In several office encounters, Dr. Leduc hugged the patient and they exchanged kisses on the cheek. Dr. Leduc's penalty included a six-month suspension, a public reprimand, a period of clinical supervision, and training in maintaining appropriate boundaries.

The Committee is satisfied that the proposed penalty in this matter is in keeping with the range of penalties in prior similar discipline cases.

## **CONCLUSION**

The proposed penalty expresses the Committee's denunciation of Dr. El Tatari's misconduct, and serves as a deterrent to the membership at large. The reprimand provides the Committee with an opportunity to express its disapproval of Dr. El Tatari's actions publically. The five-month suspension is in keeping with earlier somewhat similar cases and again serves notice that the College takes boundary violations extremely seriously.

Specific deterrence is accomplished by the public reprimand and significant suspension. In addition, the penalty permits remediation. The boundaries course will inform Dr. El-Tatari on maintaining appropriate boundaries in effective physician-patient relationships. The public is protected by the presence of a practice monitor at all clinical encounters, and by the posting of a sign in Dr. El-Tatari's office.

The penalty as a whole upholds the reputation of the profession and promotes public confidence in the College's ability to regulate the profession in the public interest.

## **ORDER**

The Committee stated its finding of professional misconduct in paragraph 1 of its written order of April 30<sup>th</sup>, 2019. In that order, the Committee ordered and directed on the matter of penalty and costs that:

2. Dr. El-Tatari attend before the panel to be reprimanded.
3. The Registrar suspend Dr. El-Tatari's certificate of registration for a period of five (5) months, commencing from May 1, 2019 at 12:01 a.m.
4. The Registrar place the following terms, conditions and limitations on Dr. El-Tatari's certificate of registration:
  - a. Dr. El-Tatari shall comply with the College Policy #2-07 "Practice Management Considerations for Physicians Who Cease to Practise, Take an Extended Leave of Absence or Close Their Practice Due to Relocation", a copy of which is attached at Schedule "A" to this Order;
  - b. Dr. El-Tatari shall not engage in any professional encounters of any kind, in person or otherwise, with patients, unless the patient encounter takes place in the presence of a College-approved monitor;

- c. Dr. El-Tatari shall post a sign in each of his examination and consultations rooms that states: “Dr. Bassam Mohamed Khalil Darwish El-Tatari must not have professional encounters, in person or otherwise, with patients, unless in the continuous presence of and under the continuous observation of a practice monitor acceptable to the College of Physicians and Surgeons of Ontario. Dr. El-Tatari must not be alone with patients in any examination or consulting room. Further information may be found on the College website at [www.cpsso.on.ca](http://www.cpsso.on.ca),” and
  - d. Dr. El-Tatari shall successfully complete the ‘Understanding Boundaries and Managing the Risks Inherent in Doctor-Patient Relationships’ course offered by the University of Western Ontario at his own expense, with a report or reports to be provided by the provider to the College regarding Dr. El-Tatari’s progress and compliance. Dr. El-Tatari will complete this requirement within 6 months of the date of this Order or, if it is not possible to do so within 6 months, at the first available Boundaries course for which Dr. El-Tatari is eligible.
5. Dr. El-Tatari pay costs to the College in the amount of \$6,000.00 within 30 days of the date of this Order.

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

**TEXT of PUBLIC REPRIMAND**  
**Delivered April 30th, 2019**  
**in the case of the**  
**COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO**  
**and**  
**DR. BASSAM MOHAMED KHALIL DARWISH EL-TATARI**

Dr. El-Tatari,

This Panel is appalled at the litany of your unprofessional conduct. It has been outlined in the Statement of Uncontested Facts and the plea of no contest. The College has made it abundantly clear in its guidance of physicians on a necessity to maintain appropriate professional boundaries, avoidance of inappropriate comments, and a need to provide prior adequate explanations to patients when conducting intimate exams. Yet despite this readily available information you willingly disregarded this advice.

In doing so, you created an atmosphere in your practice that made these particular patients feel unwelcome, uncomfortable and awkward in their interactions with you. After practising medicine for ten years in Ontario you should have been aware of the inherent power imbalance in the physician/patient relationship and guided your practice accordingly. However, since you did not you're now faced with both costly and inhibiting terms, conditions and limitations on your practice. These terms will serve as a general deterrent to the medical profession who may have strayed beyond the rules of engagement in a physician's practice.

In addition to having your Certificate of Registration suspended for five months, you have agreed to remedial actions that will help improve your understanding of patient boundaries. We trust this will be a learning experience and we will not see you before a Discipline Panel in the future.

You're dismissed.