

## NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Siddhartha Mukherjee, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of the witness or any information that could disclose the identity of the witness 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. Mukherjee,**  
2019 ONCPSD 16

**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. SIDDHARTHA MUKHERJEE**

**PANEL MEMBERS:**

**DR. C. CLAPPERTON  
MR. M. KANJI  
DR. J. NICHOLSON  
MS. C. TEBBUTT  
DR. E. SAMSON**

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

**MR. K. MAIJALA**

**COUNSEL FOR DR. MUKHERJEE:**

**MS. LAURA STEWART  
MR. MARK FAASSEN**

**INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:**

**MS. ZOHAR LEVY**

**Hearing Date: March 4, 2019  
Decision Date: March 4, 2019  
Written Decision Date: April 23, 2019**

**PUBLICATION BAN**

## **DECISION AND REASONS FOR DECISION**

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on March 4, 2019. At the conclusion of the hearing, the Committee released a written order stating its finding that the member committed an act of professional misconduct.

### **THE ALLEGATIONS**

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

1. under clause 51(1)(a) of the Health Professions Procedural Code (the “Code”), Schedule 2 to the Regulated Health Professions Act, 1991, S.O. 1991, c.18 in that he has been found guilty of an offence that is relevant to his suitability to practise;
2. under 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
3. under paragraph 1(1)34 of O. Reg. 856/93 in that he engaged in conduct unbecoming a physician.

### **RESPONSE TO THE ALLEGATIONS**

Dr. Mukherjee admitted the first and second allegations in the Notice of Hearing, that he has been found guilty of an offence that is relevant to his suitability to practise, and 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. Counsel for the College withdrew the third allegation in the Notice of Hearing.

## THE FACTS

The following facts were set out in an Agreed Statement of Facts Re. Liability which was filed as an exhibit and presented to the Committee:

1. Dr. Siddhartha Mukherjee (“Dr. Mukherjee”) is a 57 year-old obstetrician/gynecologist. He began working at the Hospital in December 2009.
2. Dr. Mukherjee treated Ms. B as a patient in May and June 2009, when Ms. B attended at the Emergency Department at the Hospital and for a subsequent consultation. Ms. B was referred again to Dr. Mukherjee for a consultation concerning a different matter in June 2010. He did not see her as a patient after June 2010. A copy of Dr. Mukherjee’s OHIP billing records for Ms. B is attached at Tab 1 [to the Agreed Statement of Facts Re. Liability].
3. Dr. Mukherjee next encountered Ms. B when she was completing a nursing placement in the labour and delivery ward at the Hospital, where Ms. B subsequently worked as a part-time RN. Ms. B also worked as an RN in Dr. Mukherjee’s office.
4. Dr. Mukherjee was involved in an extra-marital sexual relationship with Ms. B. During their relationship, Dr. Mukherjee prescribed a common antibiotic for Ms. B’s two children and Lorazepam for Ms. B. for five days. Both Ms. B and her children had their own family doctor for the duration of the relationship.
5. Dr. Mukherjee’s wife learned of the affair. Dr. Mukherjee’s relationship with Ms. B deteriorated. Ms. B told Dr. Mukherjee on several occasions that she wanted to end the relationship, but Dr. Mukherjee pleaded for it to continue. During the relationship, Ms. B became financially dependent on Dr. Mukherjee. Dr. Mukherjee threatened to end Ms. B’s employment at his office, and take gifts back or demand to be repaid for cash gifts he had previously made to her. Ultimately, Ms. B went to the police.
6. On January 6, 2015, Dr. Mukherjee was found guilty by Justice Selkirk of the Ontario Court of Justice of the following offences under the *Criminal Code of Canada*, committed against Ms. B:

- a) mischief (two counts) pursuant to section 430(4); and
- b) uttering threats to cause death or bodily harm pursuant to section 264.1 (1)(a).

A copy of the criminal Information is attached at Tab 2 [to the Agreed Statement of Facts Re. Liability]. A copy of the Reasons for Judgment of Justice Selkirk is attached at Tab 3 [to the Agreed Statement of Facts Re. Liability].

7. The first mischief offence occurred when Dr. Mukherjee broke into the door of Ms. B's house leading from the garage when she was not home, damaging the door. Dr. Mukherjee was enraged and wanted to confront Ms. B.

8. The second mischief occurred when Dr. Mukherjee deliberately drove his car into Ms. B's car, thereby damaging it. After driving into her car once, Dr. Mukherjee reversed his car and drove into Ms. B's car again. Ms. B backed up her car and drove to the police station but did not go in.

9. Dr. Mukherjee uttered threats to Ms. B by text messages on three occasions. On one occasion, Dr. Mukherjee texted Ms. B, "[Ms B's name] someday I will slit Ur throat – I m slick surgeon u should know that" [sic]. On another occasion, Dr. Mukherjee texted Ms B, "U have got me mad I m fuckjng killing u" [sic] and "I will kill u someday" [sic]. Dr. Mukherjee's threats were intended to intimidate Ms. B. Screenshots of these text messages, taken from Ms. B's phone, are attached at Tab 4 [to the Agreed Statement of Facts Re. Liability].

10. On February 23, 2015, Dr. Mukherjee was sentenced to a conditional discharge and 12 months' probation. A copy of the Reasons for Sentence of Justice Selkirk is attached at Tab 5 [to the Agreed Statement of Facts Re. Liability]. A copy of the Probation Order is attached at Tab 6 [to the Agreed Statement of Facts Re. Liability]. Dr. Mukherjee's probation ended on February 23, 2016.

## **ADMISSION**

11. Dr. Mukherjee admits the facts in paragraph 1-10 above and admits that the conduct described constitutes an act of professional misconduct in that he has been found guilty of an

offence that is relevant to his suitability to practice under clauses 51(1)(a) of the *Health Professions Procedural Code*, Schedule 2 to the *Regulated Health Professions Act*, 1991, S.O. 1991, c.18; and that he has engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all of the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional contrary to section 1(1)33 of O.Reg. 856/93 made under the *Medicine Act, 1991*.

## **FINDING**

The Committee accepted as correct all of the facts set out in the Agreed Statement of Facts Re. Liability. Having regard to these facts, the Committee accepted Dr. Mukherjee's admission and found that he committed an act of professional misconduct in that he has been found guilty of an offence that is relevant to his suitability to practice, and has engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all of the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional

## **AGREED STATEMENT OF FACTS ON PENALTY**

The following Agreed Statement of Facts on Penalty was presented to the Committee:

## **FACTS**

1. Dr. Siddhartha Mukherjee ("Dr. Mukherjee") was sentenced to a conditional discharge and 12 months' probation on February 23, 2015. Dr. Mukherjee fulfilled all the terms of the conditional discharge, which included: complying with a safety plan as set out by the Hospital; making a \$1,000 charitable donation to the Bernadette McCann House; and completing a 12-session counseling and rehabilitation program for resolving conflict in non-abusive ways ("*Living Without Violence*").

2. Dr. Mukherjee's privileges at the Hospital have never been limited or restricted. Dr. Mukherjee voluntarily entered into an agreement with the Hospital to ensure that he did not encounter Ms. B in the workplace ("safety plan"). Dr. Mukherjee was required to comply with the safety plan as part of his bail conditions and subsequently as part of his probation. The agreement also required him to reflect on what had occurred by engaging in psychotherapy

sessions (including cognitive behavioural therapy) for a period of time to be determined by the therapist, and to work with a workplace mentor. Dr. Mukherjee has complied with all of these obligations to the full satisfaction of the hospital. Ms. B no longer works at the Hospital.

3. Since January 2015, Dr. Mukherjee has undergone therapy and remediation, including:

- Successful completion of the Partner Assault Response Program aka *Living Without Violence* (April to July 2015). A copy of the completion report is attached at Tab 1 [to the Agreed Statement of Facts on Penalty];
- Successful completion of the *Understanding Boundaries* course, at his own expense, at the Schulich School of Medicine & Dentistry in London, Ontario (June 5 and 6, 2015). A copy of the certificate of completion is attached at Tab 2 [to the Agreed Statement of Facts on Penalty];
- Assessment by forensic psychiatrist as required by the hospital, as well as completion of psychotherapy sessions (twelve hours, including cognitive behavioural therapy), at his own expense, with psychotherapist Michele Riopelle. Ms. Riopelle's opinion included that Dr. Mukherjee was fully engaged in receiving psychotherapy and gained understanding, insight and self-awareness throughout the therapeutic process. According to Ms. Riopelle:
  - "...I believe Dr. Mukherjee, found himself in a position, based on vulnerability in his home life, that escalated beyond what he could have foreseen given his experience, knowledge, information, and vulnerabilities at that time."
- Working with a workplace mentor at the Hospital on a monthly basis to discuss and review his conduct and interpersonal performance in the workplace, as required by his agreement with the hospital.

4. Dr. Mukherjee's probation ended on February 23, 2016. Since then, Dr. Mukherjee has had no further criminal charges and/or convictions.

5. Dr. Mukherjee cooperated with the College's investigation. He has had no previous findings before the Discipline Committee.

## **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, as follows: Dr. Mukherjee would attend before the panel to be reprimanded; Dr. Mukherjee's certificate of registration would be suspended for a period of six months; Dr. Mukherjee must successfully complete, at his own expense, comprehensive and intensive instruction in anger management approved by the College; and payment of costs to the College in the amount of \$6,000.00.

The Committee is cognizant that, as reiterated by the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43, joint submissions on penalty should be accepted unless the proposed penalty would bring the administration of justice into disrepute, or is otherwise contrary to the public interest.

In assessing a proposed penalty order, the Committee must ensure the penalty accords with the general penalty principles. First and foremost, an appropriate penalty should protect the public. Further, the penalty should serve as a specific deterrent to the member and general deterrent to the broader profession. It should maintain the integrity of the profession and public confidence in the College's ability to regulate the profession in the public interest. Also, where applicable, the penalty should provide for the rehabilitation of the member.

Following careful consideration of the unique facts and circumstances of this case, including the specific aggravating and mitigating factors present here, the Committee accepted the jointly proposed penalty for the reasons set out below.

### **Aggravating Factors**

The Committee considered the following to be aggravating factors.

Dr. Mukherjee engaged in an intimate relationship with his employee, an individual over whom he had power and control. This power imbalance was exacerbated by Ms. B's financial dependence on Dr. Mukherjee. As their relationship deteriorated, Dr. Mukherjee exploited Ms. B's reliance on him by threatening to end her employment and demanding that he be repaid for the cash gifts he had given her.

The criminal offences for which Dr. Mukherjee was found guilty are deplorable and show a disregard for the professional values all members of the profession must seek to uphold. Dr. Mukherjee broke into Ms. B's house and deliberately drove his car into Ms. B's car, while she was driving, causing damage to Ms. B's property. He threatened Ms. B via text by warning that one day he would use his surgical skills to "slit Ur throat" and told her that she had made him so mad that he would kill her.

Dr. Mukherjee's abusive behavior towards Ms. B was illegal and immoral. The Committee is particularly appalled by Dr. Mukherjee's reference to his surgical skills as a means to intimidate Ms. B and threaten physical harm. Dr. Mukherjee's conduct in this regard is disgraceful and dishonourable, and undermines public trust in the profession.

While they were intimately involved, Dr. Mukherjee prescribed Lorazepam, a controlled substance, for Ms. B, and antibiotics for her two children. Dr. Mukherjee prescribed these medications although Ms. B and her children were under the care of a family physician at the time. The Committee finds Dr. Mukherjee's prescription of a controlled substance to someone with whom he was in an intimate relationship particularly egregious and irresponsible. In so prescribing, Dr. Mukherjee failed to recognize and maintain appropriate boundaries with Ms. B and her children.

### **Mitigating Factors**

The Committee considered the following to be mitigating factors:

- The measures imposed upon and voluntarily undertaken by Dr. Mukherjee in light of his criminal charges and convictions, including,
  - Fulfillment of the terms of the conditional discharge sentence, including compliance with a safety plan set out by the hospital, and a 12-month counseling and rehabilitation program for resolving conflict in non-abusive ways.
  - Therapy and remediation, including successful completion, at his own expense, of the *Understanding Boundaries* course, assessment by a forensic

psychiatrist, completion of 12 hours of psychotherapy sessions, and work with a workplace mentor on a monthly basis.

Dr. Mukherjee's conduct with respect to the College's investigation was also a mitigating factor, as he cooperated with the College and agreed to a Statement of Facts Re. Liability and Joint Submission on Penalty, thus saving the time and expense of a contested hearing, as well as sparing witnesses, including Ms. B, from having to attend and testify.

### **Prior Cases**

Counsel for the College and counsel for the member provided the Committee with a joint Book of Authorities. Although the Committee's prior decisions are not binding as precedent, the Committee accepts the general principle that like cases should be treated alike. The Committee is satisfied that the penalty proposed by the parties is consistent with penalties set out in prior similar cases.

### **Conclusion**

In the Committee's view, the proposed penalty is proportionate to the seriousness of the misconduct. Dr. Mukherjee exploited the power imbalance in his relationship with Ms. B, an intimate partner and employee, by threatening to withdraw the monetary support he was providing her. He did so in a manner that was aggressive and violent, leading to criminal convictions.

The penalty reflects the Committee's and public's expectation that physicians lead by example, including in matters of intimate partner violence and abuse. The six-month suspension and reprimand will serve as deterrents to Dr. Mukherjee and the profession, and send a strong message that such conduct will not be tolerated. Instruction in anger management will provide for Dr. Mukherjee's further rehabilitation. The six month suspension and instruction in anger management also satisfy the need to protect the public, which remains a paramount principle in determining an appropriate penalty.

### **ORDER**

The Committee stated its findings in paragraph 1 of its written order of March 4<sup>th</sup>, 2019. In that

order, the Committee ordered and directed on the matter of penalty and costs that:

2. Dr. Mukherjee appear before the panel to be reprimanded.
3. The Registrar suspend Dr. Mukherjee's certificate of registration for a period of six (6) months, commencing immediately. Dr. Mukherjee 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."
4. The Registrar place the following terms, conditions and limitations on Dr. Mukherjee's certificate of registration:
  - (a) Dr. Mukherjee will, at his own expense, participate in and successfully complete comprehensive and intensive instruction in anger management approved by the College, no later than twelve (12) months from the date of this Order.
5. Dr. Mukherjee 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. Mukherjee waived his right to an appeal under subsection 70(1) of the Code and the Committee administered the public reprimand.

**TEXT of PUBLIC REPRIMAND**  
**March 4, 2019**  
**in the case of the**  
**COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO**  
**and**  
**DR. SIDDHARTHA MUKHERJEE**

Dr. Mukherjee,

Dr. Mukherjee, uttering threats to cause death and bodily harm was appalling behaviour. It is especially chilling to read your texts extolling your slick surgical skills as a means to cause harm. What a perversion of your Hippocratic Oath.

It must have been very disconcerting for your girlfriend to realize you had broken into her home; her safe place. Calling her from her house phone when she would not answer her cell adds another element of fear and intimidation for her. Ramming your girlfriend's car while she was in it was especially alarming as well. The totality of your violent and aggressive behaviour raises grave concerns about your thinking, judgment and behavioural control. Prescribing medications for your girlfriend and her two children was a boundary violation. Your prescription to her of a controlled drug elevates the level of egregiousness.

You should consider yourself fortunate that you have the opportunity for remediation of your behaviour, and we are hopeful that you are going to be diligent in this regard, given your performance to date. And that's it, you may sit down now Dr. Mukherjee.