

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Eli Judah, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of the patients or any information that could disclose the identity of the patients whose names are disclosed 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.

Indexed as: Judah, E. (Re)

**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. ELI JUDAH

PANEL MEMBERS:

DR. M. DAVIE (CHAIR)
D. GIAMPIETRI
DR. B. LENT
DR. E. ATTIA (Ph.D.)
DR. J. WATTS

Hearing Date:	April 10, 2012
Decision Date:	April 10, 2012
Release of Written Reasons:	May 8, 2012

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 April 10, 2012. At the conclusion of the hearing, the Committee stated its finding that the member committed an act of professional misconduct and is incompetent and delivered its penalty and costs order with written reasons to follow.

THE ALLEGATIONS

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

1. under paragraph 1(1)2 of O. Reg. 856/93 made under the *Medicine Act, 1991*, in that he has failed to maintain the standard of practice of the profession.

The Notice of Hearing also alleged that Dr. Judah is incompetent as defined by subsection 52(1) of the Code.

RESPONSE TO THE ALLEGATIONS

Dr. Judah admitted the first allegation of professional misconduct in the Notice of Hearing, that he failed to maintain the standard of practice of the profession. Dr. Judah also admitted the allegation of incompetence.

FACTS AND EVIDENCE

The following facts were set out in an Agreed Statement of Facts and Admission that was filed as an exhibit and presented to the Committee:

1. Dr. Judah is a general practitioner who, at the time of the events at issue, performed cosmetic surgery at his clinic, the Yorkville Cosmetic Surgery Centre.
2. Dr. Judah obtained a Doctor of Medicine from McGill University in 1987. He obtained a certificate of registration to practice medicine in Ontario in 1988. Dr. Judah completed 3 years of surgical training in a residency program, but does not have a Royal College certification in a surgical specialty.
3. During a College investigation into Dr. Judah’s cosmetic surgery practice, the

College obtained reports from two expert plastic surgeons specifying various deficiencies in Dr. Judah's cosmetic surgery practice, primarily relating to his practice of administering conscious sedation. The reports dated February 5, 2010, May 11, 2010, May 14, 2010, September 28, 2010, July 15, 2010 and email dated December 1, 2010 (the "Reports"), are attached as Schedule 1 [to the Agreed Statement of Facts and Admission] and form part of this Agreed Statement of Facts and Admission.

4. Further details of the deficiencies set out in paragraphs 4(a) and 4(b) are contained in the Reports. To the degree that other deficiencies are referenced in the Reports, Dr. Judah does not admit to same. Dr. Judah admits to the following:

- a) Dr. Judah failed to maintain the standard of practice of the profession in his care and treatment of 29 cosmetic surgical patients in the following ways:
 - i) He failed to employ staff with appropriate training;
 - ii) He failed to administer IV sedation in the presence of a qualified anaesthesiologist;
 - iii) In respect of some of his patients, he failed to properly store harvested fat that he later injected;
 - iv) He excessively sedated patients during surgery; and
 - v) He performed combined surgery on an unsuitable candidate.
- b) Dr. Judah is incompetent in that his professional care of patients displayed a lack of knowledge, skill and judgment in the following ways:
 - i) He used IV sedation in the absence of a qualified anaesthesiologist;
 - ii) He directed the use of IV sedation while also being responsible for performing the surgery;
 - iii) He lacks training in administering IV sedation; and
 - iv) He lacks knowledge and judgment in IV sedation.

5. Dr. Judah admits the facts set out above and admits that he failed to maintain the standard of practice of the profession and is incompetent in his cosmetic surgery practice in the manners identified in the expert reports and summarized above.

FINDINGS

The Committee accepted as true the facts set out in the Agreed Statement of Facts and Admission. Having regard to these facts, the Committee accepted Dr. Judah's admission and found that he committed an act of professional misconduct, in that he failed to maintain the standard of practice of the profession. The Committee also found Dr. Judah to be incompetent under subsection 52(1) of the Code, in that his care of patients displayed a lack of knowledge, skill or judgment of a nature or to an extent that demonstrates that he is unfit to continue to practise or that his practice should be restricted.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for Dr. Judah made a joint submission as to an appropriate penalty and costs order. The Committee determined that the seriousness of the findings warranted a serious penalty. The Committee also determined that the following mitigating factors should be taken into account in assessing the proposed penalty:

- Dr. Judah acknowledged the deficiencies described in the agreed statement of facts, and admitted the allegations that he failed to maintain the standard of practice and that he was incompetent.
- By admitting the allegations, Dr. Judah obviated the need for a lengthy and costly hearing and spared witnesses from having to testify.

The Committee recognizes, as a matter of law, that the proposed penalty must be accepted unless to do so would be contrary to the public interest and would bring the administration of justice into disrepute. The Committee knows that, in addition to the fundamental principle of protecting the public, the penalty must promote public

confidence in the College's ability to self-govern and speak to specific and general deterrence for the individual physician and for the profession-at-large.

Counsel for the College referred the Committee to four previous cases involving general practitioners performing cosmetic procedures, in which similar terms, conditions and limitations had been imposed on the certificates of registration of the physicians (*Re Blair*, [2011] O.C.P.S.D. No. 17; *CPSO and Jain* [2011]; *Re Poon* [2008] O.C.P.S.D. No. 17; and *Re Khan* [2011] O.C.P.S.D. No. 24.

The Committee was very concerned with Dr. Judah's cavalier approach to patient care and with the gravity of his misconduct, in that he chose to *simultaneously* perform cosmetic surgical procedures and administer potentially dangerous drugs intravenously, without properly trained assistants or an adequate backup plan, thereby putting his patients at risk for significant complications and potential harm. The Ontario public deserves to be treated by well-trained physicians who practise in accordance with the standards of practice of the profession, and expects the College to ensure that this is in fact the case.

After careful consideration, the Committee accepted the penalty as jointly proposed. The Committee is of the view that prohibiting Dr. Judah from performing cosmetic surgical procedures and from administering drugs parenterally is necessary to protect the public from potential harm. A complete prohibition on invasive cosmetic procedures and parenteral administration of anaesthetic drugs is appropriate. The Committee wishes to make clear that the profession will not tolerate the kind of behaviour exhibited by Dr. Judah. The serious sanctions imposed demonstrate that the profession condemns such behaviour and upholds the role of the College in self-governance. This penalty also provides specific and general deterrence.

In accepting the proposal that Dr. Judah be allowed to continue to do hair transplants under local anaesthesia, the Committee was reassured that this particular aspect of Dr. Judah's clinical practice is currently being reviewed as part of the Out-of-Hospital Premise Inspection Program.

The Committee was informed that Dr. Judah intends to continue to provide non-surgical cosmetic procedures (in the form of injections), and to maintain his “small general practice”. In its direct comments to Dr. Judah, the Committee highlighted the requirement for members of the profession to participate regularly in accredited continuing professional development relevant to the member’s clinical practice, and reinforced its expectation that Dr. Judah abide by this requirement.

The Committee concluded that the proposed penalty in its totality meets the criteria enunciated above in a complete and meaningful manner, and should be accepted.

ORDER

Therefore, the Committee ordered and directed that:

1. the Registrar place the following terms, conditions and limitations on Dr. Judah’s certificate of registration:
 - a) Dr. Judah shall be prohibited from administering parenteral sedation;
 - b) With the exception of hair transplant procedures, Dr. Judah shall be prohibited from performing cosmetic surgical procedures;
 - c) Dr. Judah’s performance of hair transplant procedures shall be in accordance with any and all conditions and dispositions made by the Premises Inspection Committee of the College; and
 - d) Dr. Judah shall co-operate with unannounced inspections of his practice and such other steps as the College may take for the purpose of monitoring and enforcing his compliance with the terms of the Order at his expense.
2. Dr. Judah appear before the panel to be reprimanded.
3. Dr. Judah pay costs to the College in the amount of \$3,650 within thirty (30) days from the date of this Order.

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