

## **NOTICE OF PUBLICATION BAN**

In the College of Physicians and Surgeons of Ontario and Dr. Harmander Singh Gill, the Discipline Committee ordered that no person shall publish or broadcast the name or any information that would identify the names of any patients referred to orally or in the exhibits 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*, SO 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. Gill*, 2021 ONCPSD 37

**Date:** August 18, 2021

**BETWEEN:**

College of Physicians and Surgeons of Ontario

- and -

Dr. Harmander Singh Gill

**FINDING REASONS**

**Heard:** May 25-26, 2021, by videoconference

**Panel:**

Dr. Paul Hendry (chair)  
Dr. Steven Bodley  
Dr. Terri Paul  
Ms. Linda Robbins  
Ms. Shannon Weber

**Appearances:**

Ms. Morgana Kellythorne, for the College  
Ms. Margaret Bojanowska, for Dr. Gill  
Ms. Kimberly Potter, Independent Legal Counsel to the Discipline Committee

## Introduction

- [1] Dr. Gill is a family physician practising in Toronto and Brampton. In 2017 the College began an investigation into Dr. Gill's practice. After an initial period where Dr. Gill provided charts, the College requested more information and an assessment in April 2018. After this date the investigation process stalled and, over the next nine months, attempts to complete the investigation were unsuccessful. Repeated requests for the necessary information and to schedule the assessment were frustrated by delays on the part of Dr. Gill and his inconsistent communication.
- [2] The College alleges that Dr. Gill engaged in disgraceful, dishonourable or unprofessional conduct by failing to cooperate with the College's investigation contrary to paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, SO 1991, c. 30. Specifically, the College alleges that from approximately April 2018 onwards Dr. Gill: (a) failed to cooperate with respect to observation of his practice and a requested interview, and (b) failed to respond to inquiries from a College investigator and to provide answers to questions from the investigator.
- [3] Dr. Gill disputes all the allegations and does not agree that he engaged in disgraceful, dishonourable or unprofessional conduct.
- [4] After hearing evidence and the parties' submissions we reserved our decision. For the reasons that follow we find Dr. Gill 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.

## Issues

- [5] The issues before us were:
- Did Dr. Gill fail to cooperate with the College's request for an interview and to observe his practice?

- Did Dr. Gill fail to respond to the investigator's inquiries and to respond to the investigator's questions?
- If we find Dr. Gill failed to cooperate and/or respond, does that constitute disgraceful, dishonourable or unprofessional conduct?

## **Evidence**

- [6] An Agreed Statement of Facts was introduced into evidence. It outlined the sequence of events between May 16, 2017, when the investigation was initiated, and January 27, 2019, when the matter was referred to the Inquiries, Complaints and Reports Committee (ICRC).
- [7] Dr. Gill was the only witness to testify before us. He testified about the issues he was facing during this period which resulted in his lack of cooperation with the College's investigation. His credibility as a witness was central to our decision making.
- [8] He told us he was delayed in responding to the requests from the College investigator primarily for two reasons: (1) the challenges he faced in obtaining legal representation and (2) situations that arose in his personal life that distracted him. He testified that he had every intention of complying with the College's requests but he did not do so, initially because of challenges he faced in obtaining legal counsel, and later, after retaining counsel, because he thought that counsel was handling communication with the College investigator. Personal issues with his family also were responsible for his lack of cooperation.

## **Initial requests for documents**

- [9] On May 16, 2017, the College's investigator notified Dr. Gill that the ICRC had approved the Registrar's appointment of investigators under s. 75(1)(a) of the Code. Dr. Gill was represented by Stephen Darroch. In October 2017 the investigator requested that Dr. Gill produce medical records. Mr. Darroch provided the requested records to the investigator on November 30.

- [10] In January 2018, the investigator requested clarification of certain chart entries, complete medical records and an audit trail. Mr. Darroch provided this information on February 9, 2018.
- [11] On April 16, 2018, the investigator wrote to Mr. Darroch to advise that the College appointed assessor wished to interview Dr. Gill and proposed dates for that interview.
- [12] On April 17, 2018, Mr. Darroch notified the College that his firm had withdrawn as Dr. Gill's legal counsel.
- [13] Dr. Gill testified that he spent the next several months corresponding with the Canadian Medical Protective Association (CMPA) in an unsuccessful bid to be represented by it. After weeks, or months, the CMPA denied his request to handle his case and he set out to retain legal counsel at his own expense. He suggested that this represented a significant financial hardship and led to more delays while he canvassed several law firms and struggled to obtain financial resources to pay for his representation.

April to August 2018: Investigator attempts to schedule assessment/observation and requests practice profile

- [14] On April 18 the investigator sent a letter by registered mail to Dr. Gill seeking an interview with the assessor with proposed dates in May and June. He was asked to respond by April 28. He did not respond.
- [15] On April 20 the investigator sent another letter by registered mail to Dr. Gill outlining the need for an assessment and requesting details about his practice (the practice profile).
- [16] Dr. Gill was asked to respond by May 1. He failed to do so. The investigator followed up by telephone on May 2 and continued to reach out by email extending the deadline for response to May 25.
- [17] Dr. Gill finally responded by email on May 24 requesting a further extension. In a May 30 email he asked for an extension of 6-8 weeks.

- [18] In her June 1 email the investigator repeated her request that the assessment proceed and proposed June 7 or June 14. Dr. Gill responded on June 5 reiterating his request to postpone the assessment and advising that he anticipated finalizing arrangements with new legal counsel within a month.
- [19] On June 6 the investigator agreed to postpone the assessment but requested an update in the next several weeks. In response to the investigator's follow-up email Dr. Gill emailed on July 15 to advise that he would provide an update in a few weeks.
- [20] This pattern continued for the rest of the summer. The investigator requested an update by August 14 and Dr. Gill responded on August 18 that he was still waiting for a response from legal counsel.

#### Scheduling the practice assessment

- [21] By secure email dated September 5, 2018, the investigator sent Dr. Gill a letter for review and response. She confirmed that the investigation must continue in a timely manner and provided three dates for assessment/observation of his practice. The observation and assessment would proceed on October 18 if the other dates were not more suitable for Dr. Gill. She asked that he confirm the date for the assessment/observation by September 14, 2018 and forward the information previously requested prior to the assessment date.
- [22] Dr. Gill did not respond to this email. He testified that he did not receive this email. Dr. Gill testified that he did not get this information when it was sent September 5 yet there is no mention in the follow-up correspondence that he had not received it. Notification of secure delivery of the email was produced as part of the Agreed Statement of Facts. Given the clear evidence of delivery of the email and the absence of any documented response from Dr. Gill prior to his testimony before us to support his claim he did not receive it, we are satisfied, on a balance of probabilities, that he did receive the September 5 email.
- [23] Not having received a response, the investigator followed up by email on September 17 and, again, by email and registered mail on September 19. In her

September 19 registered letter, the investigator confirmed the assessor would attend at Dr. Gill's office on October 18 at 9 am.

- [24] Dr. Gill did not respond to these communications until October 14. He did not provide the requested practice profile and asked again to postpone the assessment until he retained legal representation. The investigator responded the next day confirming the assessment would proceed as scheduled. Dr. Gill responded on the same day repeating his request for a postponement of the October 18 assessment. The investigator emailed by secure email stating the assessment/observation would proceed on October 18.

October 18: observation/assessment does not proceed

- [25] On October 18 the investigator and the assessor arrived at Dr. Gill's clinic to find it closed. Attempts to reach Dr. Gill by email and by telephone were unsuccessful.
- [26] Dr. Gill testified that his wife, who was in the late stages of her pregnancy, was admitted to hospital on October 17 for tests. He cancelled his clinics on October 17 and 18 because of this emergency. He stated that he left his cell phone at his apartment when he and his wife went to the hospital and so was unaware of the attempts by the College to contact him when they found his clinic closed. Without his phone he had no contact information for the College and "didn't think" to call the general number to inform the investigation team of the closure and his inability to attend the assessment.
- [27] On October 19, the day after the assessment was to have taken place, a lawyer, Josh Koziembrocki, wrote an email to Dr. Gill, which stated "it was nice to hear from you today. I would be happy to arrange a meeting to discuss your case." It was Dr. Gill's evidence that for some time prior to when this email was sent, he had been in the process of retaining Mr. Koziembrocki in respect of the investigation, as well as in a separate disciplinary matter before the College. He stated that he provided a portion of his retainer funds to Mr. Koziembrocki on October 25, and the full retainer was paid on November 5.

#### Follow up to failed assessment/observation

- [28] After Dr. Gill failed to attend his scheduled assessment on October 18, the investigator sent a secure email and registered letter to Dr. Gill dated October 22. She repeated her request for the practice profile. Two dates were suggested with a firm date set for November 15 should the other date not be suitable. Dr. Gill was directed to respond by October 26.
- [29] Dr. Gill did not respond until November 14. He advised the investigator that, due to a personal/family emergency, he would not be working on November 15 and asked that all correspondence be addressed to his legal counsel. He did not respond to the three follow-up emails sent in November and December seeking the identity of his legal representative.
- [30] Dr. Gill testified that he forwarded the emails from the investigator to Mr. Koziembrocki and expected Mr. Koziembrocki would correspond with the investigator on his behalf. Further, he testified that he assumed that the College knew Mr. Koziembrocki was his counsel because Mr. Koziembrocki had appeared for him at an October 25 pre-hearing conference in the other disciplinary matter.
- [31] Dr. Gill testified that, in addition to the challenges he faced in obtaining legal representation, he did not respond to requests from the investigator because he was preoccupied with his wife's medical difficulties during the late stages of her pregnancy. Their child was born in late November and, after the delivery, both mother and baby continued to experience difficulties which made it necessary for Dr. Gill to take on the role of caregiver.

#### January 2019: investigation of Dr. Gill's cooperation

- [32] On January 2, 2019, investigators were appointed in respect of Dr. Gill's conduct, including his cooperation with the College investigation. Dr. Gill was notified of the investigation by letter from the investigator dated January 3, 2019, sent by registered mail.
- [33] Dr. Gill testified that he was "surprised and shocked" to receive this letter and realized his failure to co-operate with the investigation process had now escalated to a complaint. He immediately approached and received legal advice from the



CMPA. This escalated the matter to a new level which Dr. Gill recognized. At that point he went directly to the CMLA and retained them as counsel on the matter.

[34] On January 27 he emailed the practice profile, originally requested on April 20, 2018, to the investigator.

[35] Dr. Gill was notified by registered mail on February 20, 2019 that the ICRC would consider the investigation into his cooperation on March 6, 2019. He did not provide any submissions for consideration by the ICRC.

[36] Ultimately, no observation of Dr. Gill's practice or interview of Dr. Gill by the designated assessor took place.

## **Analysis**

### Failure to respond to the investigator's inquiries and cooperate with the investigation

[37] Section 76 of the Code provides as follows:

76(3) No person shall obstruct an investigator or withhold or conceal from him or her or destroy anything that is relevant to the investigation.

76(3.1) A member shall co-operate fully with an investigator.

[38] The case most recently and directly exploring the obligations of a regulated professional to cooperate with their regulator is *Law Society of Ontario v. Diamond*, 2021 ONCA 255. While that decision involved regulatory proceedings at the Law Society of Ontario, we find the Court of Appeal's analysis equally applicable to proceedings before the College. The Court of Appeal described the test as follows at para 50:

In the end, the test for determining a failure to cooperate with the Law Society's requests, as espoused by the Hearing Division, the Appeal Division, and the Divisional Court, focusses on the determination of a licensee's good faith efforts to cooperate with the Law Society. While articulated slightly differently by the Hearing Division, the Appeal Division, and the Divisional Court, the following considerations emerge from these decisions: (a) all of the circumstances must be taken into account in determining whether a licensee has acted responsibly and in good faith to respond promptly and completely to the Law Society's inquiries; (b) good faith requires the licensee to be honest, open, and helpful to the

Law Society; (c) good faith is more than an absence of bad faith; and (d) a licensee's uninformed ignorance of their record-keeping obligations cannot constitute a "good faith explanation" of the basis for the delay.

- [39] It is clear from the Agreed Statement of Facts that Dr. Gill did not "respond promptly and completely" to the investigator's requests. He did not cooperate in arranging the assessment. On multiple occasions responses to emails were delayed. Further, Dr. Gill did not provide the practice profile requested in April 2018 until January 17, 2019 despite repeated requests and only after the matter was referred to the ICRC.
- [40] Dr. Gill does not dispute these facts but maintains that the circumstances he found himself in over this period were responsible for his failure to cooperate and respond to the investigator.
- [41] During the initial stages of the investigation he says this was because he was unable to secure legal representation. Beginning in April 2018 when Mr. Darroch indicated that he no longer represented him, Dr. Gill began a pattern of responding to the College which consisted of repeated attempts to evade the scheduling of the requested assessment, ostensibly because he was in the process of obtaining legal representation. Initially the investigator allowed him latitude on this request to retain legal counsel prior to complying with her requests. Dr. Gill testified he did not retain counsel until October 25, 2018.
- [42] Dr. Gill testified that he was desperate and working actively to retain counsel. We do not accept this explanation for the nearly five-month delay to even produce his physician profile as reasonable. Dr. Gill provided no support for his efforts to retain the CMPA or his claim that the CMPA took several weeks or months before advising that it would not represent him. His testimony that he then spent considerable time canvassing other lawyers prior to deciding to retain Mr. Koziembrocki is similarly unsupported. The explanation that he ultimately decided to retain Mr. Koziembrocki because he was familiar with his case is also not compelling. That fact would have been known to him well prior to when he claims Mr. Koziembrocki was allegedly retained.

- [43] Dr. Gill presented himself as someone who did not understand the process or the costs associated with obtaining legal representation. We heard, however, that since his first wife's death Dr. Gill has been involved in 11 years of legal proceedings about her estate. From that lengthy experience we conclude Dr. Gill has acquired a good understanding and appreciation of the costs of legal proceedings. Any exploration of avenues to raise the necessary funds for a retainer should not have taken months. His eventual decision to approach his sister for the funding, without some further or better explanation for that aspect of the delay, also ought not to have required so much time. We find his explanation that problems in retaining legal representation for his delay in responding to the College and cooperating with the investigation is neither credible nor reasonable.
- [44] On September 5, 2018 the College indicated by secure email that it would schedule the assessment on October 18, 2018. Dr. Gill testified that he did not get this information when it was first sent but in the follow-up correspondence there was no mention by Dr. Gill that he had not received it. Dr. Gill waited until over a month, until October 14, to respond. At that point he again asked for a postponement on the grounds that he was still trying to engage counsel. This pattern of delayed response is inconsistent with a physician dealing with the College in good faith and attempting to cooperate with an investigation in an open, honest and transparent way.
- [45] In respect of Dr. Gill's failure to attend the assessment scheduled for October 18, his explanation for why he did not contact the College to explain his absence lacks credibility. Dr. Gill claims he was so preoccupied with his wife's condition that he could not contact the College to explain his behaviour and the missed assessment until November 14. Yet, he was able to contact and speak with counsel the next day on October 19. That he was able to speak to counsel the following day but did not even attempt to contact the College despite knowing he had missed the scheduled assessment is not reasonable or consistent with his obligation to deal with the College in good faith and cooperate with an investigation in an open, honest and transparent way.
- [46] He also testified he forgot his cell phone in the haste to get to the hospital with his wife. He did not have the investigator's contact information and so could not

contact her to explain his absence from the clinic on October 18. Yet, he could have contacted the College through the general number. There is no evidence that Dr. Gill reached out at any time to contact the investigator to explain his absence from the clinic on the date arranged for his assessment.

[47] On November 14, the day before the re-scheduled assessment was to take place, Dr. Gill emailed the investigator to explain that, because of a family emergency, he would not be working at his clinic regularly for the next few months and would not be present on November 15. He does not explain the nature of the emergency which prevented his attendance the following day. While Dr. Gill testified about multiple problems experienced by his wife and their child in the weeks and months following the birth, this email was sent a week before the birth. There is no evidence to suggest these issues could be anticipated or would preclude scheduling an assessment at any time in the following months.

[48] Dr. Gill's concerns about his wife's pregnancy and need to care for her and their child following the birth do not explain his failure to respond to the investigator and to cooperate with rescheduling of the assessment and observation.

#### Retention of counsel

[49] Dr. Gill testified that he retained Mr. Koziembrocki on October 25 to represent him in respect of both the investigation and the prior disciplinary proceeding. He expected that Mr. Koziembrocki would correspond with the investigator on his behalf for both matters. From this date onward Dr. Gill did not respond to correspondence from the College because he thought Mr. Koziembrocki was answering on his behalf. He testified that all emails from the College were forwarded to him and it was his understanding that Mr. Koziembrocki was responding to them.

[50] Dr. Gill referred to a transcript of the pre-hearing conference held with respect to the prior matter in support of his position. The transcript was not entered as an exhibit. In any event, in our view, the transcript does not establish that Mr. Koziembrocki represented Dr. Gill in respect of this investigation. Further, the investigator's repeated requests for counsel's name ought to have signalled to Dr. Gill that she was unaware of his identity and triggered a response. If Mr. Koziembrocki had been retained to represent Dr. Gill on this investigation, Dr. Gill's

explanation for his failure to respond to those emails is neither reasonable nor credible.

[51] Asked why he had not provided a copy of his retainer agreement or any communications about the scope of his retainer with Mr. Koziebrocki, or any of the communications from the investigator that he said he forwarded to Mr. Koziebrocki, Dr. Gill asserted solicitor-client privilege over those communications. This position was reaffirmed after Dr. Gill, with the consent of College counsel, was allowed to confer with his counsel in private during a break in his cross examination for the sole purpose of obtaining legal advice as to whether he should maintain that he would not produce them because of this privilege.

[52] Counsel for the College argued that Dr. Gill implicitly waived solicitor client privilege over those communications. She asked us to draw an adverse inference that the reason he would not produce evidence of these communications with Mr. Koziebrocki was that they would not prove he had been representing Dr. Gill on the matters related to the investigation.

[53] In support of its contention that Dr. Gill had waived his right to solicitor client privilege by making this relationship central to his defence and then not filing any evidentiary support, the College relied on the following authority.

[W]hen his conduct touches a certain point of disclosure, fairness requires that his privilege shall cease whether he intended that result or not. He cannot be allowed, after disclosing as much as he pleases, to withhold the remainder.

Sopinka, Lederman & Bryant, *The Law of Evidence in Canada*, 5th ed. at 10. Loss of Solicitor-Client Privilege on “Waiver by Implication”

[54] Counsel for Dr. Gill argued that it was only when pressed during his cross-examination that Dr. Gill referenced these discussions. But Dr. Gill testified repeatedly in his examination in chief that he had retained Mr. Koziebrocki on both the investigation and disciplinary matter and that he sent correspondence from the investigator to Mr. Koziebrocki.

[55] Our decision, after careful review of the case law in this area, is that it is unreasonable for Dr. Gill to make the purported solicitor-client relationship central

to his reason for not responding directly to emails from the College and then refuse to provide any documentation in support. Even correspondence redacted to avoid sensitive legal discussions should have been able to support his assertion that Mr. Koziembrocki was retained to represent him on this investigation. We draw an adverse inference from the failure to produce any evidence to support finding Mr. Koziembrocki was retained on October 25, or at any time, to represent him on this investigation.

- [56] Even had we not accepted that, by his testimony, Dr. Gill had implicitly waived his right to solicitor client privilege and drawn an adverse inference from this, it is our view that by failing to support his testimony on this issue with any evidence Dr. Gill seriously undermined his credibility.

#### Dr. Gill's admission that he previously lied to the College

- [57] We were also provided with evidence that Dr. Gill lied to the College when applying for his educational licence in 2008. His application was entered into evidence. Dr. Gill admitted that he was not truthful with the College on his application. This represents a serious and direct lie to the College. Counsel for Dr. Gill did not object to the introduction of this evidence but noted the incident had occurred many years before which should be a factor in any weight given to it. Counsel for the College argued that it showed a pattern of lying to his regulator. While it was not necessary to consider the prior lie in reaching our conclusions about Dr. Gill's credibility on the specific facts before us, we agree with College counsel that it is a further example of a lack of honest, open and helpful dealings with the College, his professional regulator.

#### **Conclusion**

- [58] Dr. Gill's testimony was the only evidence presented apart from the Agreed Statement of Facts. In it he attempted to paint himself as the victim of difficulties in retaining counsel and as subject to distractions related to family events and that these were the reasons behind his lack of co-operation. We find, for the reasons given above, that his explanations were neither reasonable nor credible.
- [59] Dr. Gill was not "honest, open and helpful" in his dealings with the College investigator. Dr. Gill maintained that he retained Mr. Koziembrocki in respect of the

investigation, but he did not provide his contact information as requested by the investigator. He testified that a family emergency was responsible for his not being in attendance at his clinic on October 18 when the assessor arrived, but he did not communicate this to the College at the time of the failed assessment, or even in any later correspondence. When subsequent efforts to arrange this meeting were made, he maintained that his family situation would mean he would not be practising regularly for several months. This chain of events and his final anticipation of difficulties which would stretch into the future before they had occurred, led us to the conclusion that Dr. Gill demonstrated a consistent approach designed to avoid co-operation with the College in its investigation.

[60] While Dr. Gill's counsel argued that Dr. Gill did not refuse to co-operate with the investigator, in *Diamond* the Court of Appeal held that there is no need to establish a "clear refusal to cooperate," in the sense of an outright refusal to cooperate, before a finding of professional misconduct can be made. The Court went on to say that "Any such approach would distort the test and undermine the self-regulating nature of the profession."

[61] Therefore, on a balance of probabilities, we find the College has proven:

1. Dr. Gill failed to cooperate with the College's request for an interview and to observe his practice, and
2. Dr. Gill failed to respond to the investigator's inquiries and to respond to the investigator's questions.

Did Dr. Gill's failure to respond and cooperate amount to disgraceful, dishonourable or unprofessional conduct?

[62] Disgraceful, dishonourable or unprofessional conduct is not defined in legislation but the caselaw confirms it applies to a situation where a member disregards their professional obligations.

[63] The core principle of professional regulation is its duty to protect the public. In order to do so regulators must be able to inquire into the conduct of its members and have the means at its disposal to gather all relevant information. It is the duty of all members of a regulated health profession to cooperate in such inquiries.

Refusal to permit observation of a clinical practice constitutes obstruction of the investigator. *Wise v Law Society of Upper Canada*, 2010 ONSC 1937

[64] In *Diamond*, the Court of Appeal held that failure to cooperate with the regulator constitutes a “significant departure from acceptable professional standards.”

[65] It is for these reasons we find Dr. Gill’s behaviour constitutes disgraceful, dishonourable or unprofessional conduct.



## ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

**Citation:** *College of Physicians and Surgeons of Ontario v. Gill*, 2021 ONPSDT 51

**Date:** December 20, 2021

**Tribunal File No.:** 19-004-I

### **BETWEEN:**

College of Physicians and Surgeons of Ontario

- and -

Dr. Harmander Singh Gill

### **PENALTY REASONS**

**Heard:** November 12, 2021, by videoconference

#### **Panel:**

Dr. Paul Hendry (chair)

Dr. Steven Bodley

Dr. Terri Paul

Ms. Linda Robbins

Ms. Shannon Weber

#### **Appearances:**

Ms. Morgana Kellythorne, for the College

Ms. Margaret Bojanowska, for Dr. Gill

Ms. Jennifer McAleer, Independent Legal Counsel

### **RESTRICTION ON PUBLICATION**

The Tribunal ordered, under ss. 45-47 of the Health Professions Procedural Code, that no one may publish or broadcast the names or any information that would identify patients referred to during the Tribunal hearing or in any documents filed with the Tribunal. There may be significant fines for breaching this order.

## **Introduction**

- [1] On August 18, 2021, following a three-day hearing, we found that Dr. Gill had engaged in conduct or an act or acts relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional by failing to cooperate with a College investigation. We therefore found he had committed acts of professional misconduct: *College of Physicians and Surgeons of Ontario v. Gill*, 2021 ONCPSD 37.
- [2] The proceeding resumed on November 12, 2021, to hear evidence and submissions on penalty and costs. While other terms were agreed, the parties disagreed on the appropriate length of suspension. The College submitted there should be a 12-month suspension. Dr. Gill argued for a one-month suspension. For the following reasons, we order a four-month suspension and the other terms the parties have agreed upon.

### **Decision: Agreed Upon Terms**

- [3] Counsel for the College and Counsel for Dr. Gill agree that the panel should order a public reprimand, and that the Registrar be directed to impose terms, conditions and limitations on Dr. Gill's certificate of registration requiring him to participate in the PROBE ethics and boundaries program. The parties also agree that Dr. Gill should be ordered to pay the College \$31,110 in costs. We are satisfied that these terms are appropriate.

### **Decision: Length of Suspension**

#### **Penalty Principles**

- [4] The Tribunal considered the following penalty principles: protection of the public, maintenance of public confidence in the reputation and integrity of the profession and in the principle of regulation of the profession in the public interest, general deterrence to the membership as a whole and specific deterrence to this member. Finally, the penalty must take into consideration the potential for rehabilitation of the member, where appropriate. Other penalty principles include denunciation and proportionality. The Tribunal applies these principles, considering the relevant aggravating and mitigating factors.

## **Analysis**

- [5] The College submitted that Dr. Gill's repeated failure to cooperate with its investigation was a grave transgression. It called into direct question the College's ability to do its work and, in doing so, ensure public confidence in its ability to regulate its members in the public interest. It argued that Dr. Gill's failure to cooperate was so serious it also brought into question his governability. A lengthy suspension was needed, it submitted, to restore public confidence and to serve as a deterrent to other members of the profession who might be considering a similar course of action.
- [6] Dr. Gill argued that the suspension should be one month but the focus was on explanations made and positions taken at the merits hearing. We rejected all of those explanations in finding he had failed to cooperate with the College. The penalty hearing is not an opportunity to revisit those findings.

## **Mitigating Factors**

- [7] We did consider whether Dr. Gill's personal circumstances in the fall of 2018 might be accepted as mitigating factors on penalty. As noted above, given our findings of fact concerning the reasons for his conduct during that time, Dr. Gill's personal circumstances are not mitigating.
- [8] We note that the merits hearing proceeded on the basis of an Agreed Statement of Facts. This is a mitigating factor because it reduced the length of the hearing and eliminated the need for witnesses to testify.
- [9] Dr. Gill had no discipline history at the time he committed this misconduct. In *College of Physicians and Surgeons of Ontario v. Okafor*, 2021 ONCPSD 24 at para. 14, the Tribunal held that the absence of discipline history is not a mitigating factor but is neutral. Earlier cases treated the lack of discipline history as a mitigating factor. We do not need to decide this issue given the facts of this case, and will consider the lack of discipline history as a mitigating factor here.

## **Aggravating Factors**

- [10] Aggravating factors included the length of time over which the failure to cooperate occurred and its persistent and pervasive nature including unanswered emails,

failure to be present for in-person appointments and failure to complete requested documents including a practice profile.

### Review of Caselaw

- [11] The Tribunal accepts that while we are not bound by prior decisions of this Tribunal, generally speaking, like cases should be decided in a like manner. Neither party, however, provided us with a decision where the only finding had been a failure to cooperate. The decisions cited to us all involved additional findings of professional misconduct, usually related to the standard of practice.
- [12] The caselaw provided to us in which the misconduct included a failure to cooperate led to suspensions from three to six months: *College of Physicians and Surgeons of Ontario v. Beauchemin*, 2021 ONCPSD 30; *College of Physicians and Surgeons of Ontario v. Mrozek*, 2018 ONCPSD 69; *College of Physicians and Surgeons of Ontario v. Botros*, 2015 ONCPSD 42; *Artinian v. College of Physicians and Surgeons of Ontario*, 1990 CanLII 6860 (ON SC Div. Ct); *College of Physicians and Surgeons of Ontario v. Aziz, S.B.*, 2014 ONCPSD 33; *Ontario (College of Physicians and Surgeons of Ontario) v. Bailey*, 2020 ONCPSD 4; *Ontario (College of Physicians and Surgeons of Ontario) v. Vasovich*, 2015 ONCPSD 32.
- [13] The College argued that the Tribunal had found a number of mitigating factors present in the decisions ordering four to six month suspensions that were not present here. The College submitted that this weighed in favour of a longer suspension. A significant and notable difference, however, is that in all of these cases there were other incidents of misconduct considered in determining the penalty.
- [14] Counsel for Dr. Gill relied on *Artinian*. That case, which is 30 years old, involved a very different penalty to that proposed by Dr. Gill.
- [15] Other cases were cited where not only was there a failure to cooperate, but other aggravating factors were involved in arriving at suspensions that were shorter than 12 months. *Aziz* included a breach of an undertaking and only a three-month suspension resulted. *Bailey* was another case where ungovernability was raised as a concern and only a four-month suspension resulted.

[16] We were also directed to decisions of the Law Society Tribunal. We did not find them helpful given the different context and approach to penalties.

[17] Ultimately, given our conclusion Dr. Gill's misconduct was deliberate and prolonged, this impaired the College's ability to govern its members, carry out its public protection responsibilities and maintain public confidence in the profession. This calls for a significant period of suspension. There was no precedent to support a 12-month suspension and we find none. Nor do we find significant mitigating factors that might support a one-month suspension. A suspension of significance is necessary to act both as a specific and general deterrent. As such it is our decision to impose a four-month suspension.

### **Order**

[18] We therefore order and direct:

- a. Dr. Gill to attend before the Tribunal to be reprimanded;
- b. The Registrar to suspend Dr. Gill's certificate of registration for four months commencing from December 21, 2021, at 12:01 am; and
- c. the Registrar to place the following term, condition and limitation on Dr. Gill's certificate of registration commencing from December 21, 2021 at 12:01 am.

Dr. Gill 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. Gill will complete the PROBE program within six 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.

[19] Dr. Gill shall pay costs to the College in the amount of \$31,110 within 30 days of the date of our order.

**ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL**

**Tribunal File No.: 19-004-I**

**BETWEEN:**

College of Physicians and Surgeons of Ontario

- and -

Dr. Harmander Singh Gill

**The Tribunal delivered the following Reprimand**  
by videoconference on Friday, October 7, 2022.

**\*\*\*NOT AN OFFICIAL TRANSCRIPT\*\*\***

Dr. Gill,

We are very concerned and disappointed by your misconduct, which was serious and persistent. You repeatedly failed to respond to the College about an investigation and failed to cooperate with a request for an interview and observation of your practice. In doing so, you obstructed the College process. You have demonstrated a lack of honesty, openness and helpfulness in dealing with the College. This is totally unacceptable.

The core principle of professional regulation is its duty to protect the public. Physicians are provided the privilege to practice medicine in our province and this privilege brings with it the responsibility for physicians to respond promptly and appropriately to the College. In its regulatory duties, the College relies on physicians respecting this obligation in order that it can carry out its fundamental mandate to regulate the practice of medicine in the public interest and to foster public confidence in the integrity of the profession. Your repeated failure to engage with the College has undermined this principle.

Your misconduct was deliberate and prolonged and impaired the College's ability to govern its members. Your misconduct is serious and unacceptable and warranted a significant period of suspension. It demonstrates to the public and the profession that this misconduct will not be tolerated.

This concludes today's reprimand.