

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Sol Julian Goldstein, this is notice that the Discipline Committee ordered that there shall be a ban on publication of the names and any information that could disclose the identity of patients referred to orally or in the exhibits filed 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... 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. Goldstein,
2019 ONCPSD 35**

**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. SOL JULIAN GOLDSTEIN

PANEL MEMBERS:
MR. J. LANGS
DR C. CLAPPERTON
DR. W. KING
MS. C. TEBBUTT
DR. J. RAPIN

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS. JESSICA AMEY

COUNSEL FOR DR. GOLDSTEIN:

MS. JESSICA LAHAM

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MS. JENNIFER MCALEER

Hearing Date: June 19, 2019
Decision Date: June 19, 2019
Written Decision Date: August 2, 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 June 19, 2019. At the conclusion of the hearing, the Committee released a written order stating its finding that Dr. Sol Julian Goldstein committed an act of professional misconduct. In its Order, the Committee also set out its penalty and costs order with written reasons to follow.

THE ALLEGATIONS

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

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

RESPONSE TO THE ALLEGATIONS

Dr. Goldstein entered a plea of no contest to the allegations in the Notice of Hearing, 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 that he has failed to maintain the standard of practice of the profession.

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.

A. BACKGROUND

1. Dr. Goldstein is an 80-year-old psychiatrist practising in Toronto, Ontario, who received his certificate of registration authorizing independent practice in 1968.
2. On the basis of information received from the Health Services Branch of the Ontario Ministry of Health and Long-Term Care (the “Ministry”) identifying concerns with Dr. Goldstein’s recordkeeping and billing practices, as well as other information, the College commenced an investigation under section 75(1)(a) of the Health Professions Procedural Code (the “Code”) to obtain a broader view of Dr. Goldstein’s psychiatry practice.

B. INVESTIGATION OF DR. GOLDSTEIN’S PRACTICE

Reports of Dr. Boachie

3. The College retained Dr. Ahmed Boachie (“Dr. Boachie”), a psychiatrist and Assistant Professor in the Department of Psychiatry at the University of Toronto, to opine on Dr. Goldstein’s psychiatry practice including his documentation and billing practices. Dr. Boachie reviewed 24 patient charts, the associated OHIP billing for 21 patients, and certain other information.

4. Dr. Boachie opined that Dr. Goldstein’s documentation practices fell below the standard of practice of the profession in all 24 of the charts reviewed. In particular, he noted that:

There is a clear pattern for concern regarding Dr. Goldstein’s assessment, documentation, and billing practices. It is practically ubiquitous that:

- a) *Notes are handwritten and difficult to decipher...;*
- b) *Notes are very short, or sometimes there is no note at all, but only a date and time period for the appointment; and*
- c) *Although Dr. Goldstein can clearly assess and formulate mental health disorders, as is evident when he writes letters regarding*

patients for insurance or legal purposes, there are no assessment notes or formulations written in the chart notes. Nor are there treatment plans.

These practices would make it very difficult for another psychiatrist to take over care of one of Dr. Goldstein's patients, should he be unavailable to them.

These documentation practices do not meet minimum standards of care.

5. Dr. Boachie also opined that Dr. Goldstein's billing practices failed to meet the standard of practice of the profession. He noted:

With regard to billing practices, there were numerous cases in which dates of treatment that were billed to OHIP did not have corresponding dates and/or chart notes in the patients' files. In some cases, billing dates were not in sequence, not even roughly in sequence, but all over the place. These concerns require further investigation.

6. Dr. Boachie interviewed Dr. Goldstein and submitted a further report following that interview. He noted that:

Dr. Goldstein appeared to have a very good memory of events when prompted, but because of inadequate documentation there were still certain cases where we could not get a clear idea why many decisions were made. He could also not give any appropriate explanation for the discrepancies in OHIP billing described in my first report.

7. A copy of Dr. Boachie's reports is attached at Tab 1 to the Statement of Uncontested Facts and Plea of No Contest.

Report of Dr. Pignatiello

8. Dr. Boachie, in his reports, raised certain issues with regard to Dr. Goldstein's patient charts in assessments conducted for use in family court or in cases of family conflict. As Dr. Boachie did not practise in this area, the College retained Dr. Anthony Pignatiello, the Associate Psychiatrist-in-Chief at the Hospital for Sick Children, to review certain patient records previously reviewed by Dr. Boachie. Dr. Pignatiello reviewed five patient charts and interviewed Dr. Goldstein.

9. As with Dr. Boachie, Dr. Pignatiello's review identified issues related to Dr. Goldstein's documentation and billing. In particular, in his report Dr. Pignatiello commented:

The patient files of Dr. Goldstein reviewed were consistently very disorganized, unclear, vague, often times with scant information provided. In some sections dates of service were identified; however, no content was written. Two of the files had beginning elements of an assessment note whereas with others there was no evidence of any assessment. There was no clear approach to an impression, formulation or clear management plan, nor was there any periodic review of the service provided or further plans of action... There was also unclear documentation required for billing purposes

Relevant History

10. On August 27, 1999, the General Manager of the Ontario Health Insurance Plan ("OHIP"), based on the recommendation of the Medical Review Committee of the College (the "MRC"), directed Dr. Goldstein to reimburse OHIP for billing in the amount of \$54,705.49. A copy of the Decision of the General Manager of OHIP dated August 27, 1999 is attached at Tab 2 to the Statement of Uncontested Facts and Plea of No Contest.

11. Dr. Goldstein's inadequate documentation and billing as set out in the reports of Dr. Boachie and Dr. Pignatiello is unprofessional.

PLEA OF NO CONTEST

12. Dr. Goldstein does not contest the facts in paragraphs 1 to 11 above.
13. Dr. Goldstein does not contest that the facts in paragraphs 1 to 11 above constitute professional misconduct, in that:

- a) 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, under paragraph 1(1)33 of O. Reg. 856/93; and

- b) he failed to maintain the standard of practice of the profession in his care of patients, under paragraph 1(1)2 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*.

FINDINGS

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. Goldstein committed an act of professional misconduct 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 has failed to maintain the standard of practice of the profession.

AGREED STATEMENT OF FACTS RELEVANT TO PENALTY

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

Repayment of the Ministry of Health and Long-Term Care

1. In 2013, the Health Services Branch of the Ontario Ministry of Health and Long-Term Care (the “Ministry”) requested repayment by Dr. Goldstein of certain OHIP claims in the amount of \$10,740, comprising those claims without any corresponding patient

record for the encounter billed, and those claims where the records were created months after the patient encounter.

2. Dr. Goldstein repaid approximately \$7,500, comprising only those claims without any corresponding patient record for the encounter billed.

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. The proposed penalty consisted of: a three-month suspension; a public reprimand; terms, conditions and limitations on Dr. Goldstein's certificate of registration (including completion of education in ethics and boundaries, a twelve-month period of clinical supervision followed by a reassessment, and ongoing monitoring); and payment of costs to the College in the amount of \$6,000.00.

In considering the penalty proposed, the Committee took into account the Supreme Court of Canada's decision of *R. v. Anthony-Cook*, 2016 SCC 43. This case establishes the public interest test, stating that a joint submission on penalty must be accepted unless doing so would bring the administration of justice into disrepute, or is otherwise contrary to the public interest.

The Committee is also cognisant of the principles that must guide the assessment of penalties. First and foremost, the penalty must protect the public. The penalty should serve as a specific deterrent to the member and a general deterrent to the membership. 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, to the extent possible, the penalty should serve to rehabilitate the member. The penalty must also be proportionate.

Aggravating Factors

Previous College History

In 1995, Dr. Goldstein was referred to the Medical Review Committee (the "MRC") of the College by the General Manager of the Ontario Health Insurance Plan (OHIP). At that time, the

General Manager expressed concern with Dr. Goldstein's accounts because of the high number of repeat visits and large number of claims for family therapy and individual psychotherapy.

In its consideration of the matter, the MRC reviewed copies of Dr. Goldstein's appointment books for the period under review, patient index cards, and patient charts. Dr. Goldstein's documentation was extremely brief in capturing psychotherapeutic encounters and rarely contained a plan of treatment. Further, Dr. Goldstein did not maintain individual patient charts, but rather organized documentation according to date.

When interviewed, Dr. Goldstein acknowledged that he kept his notes solely for his own reference, without keeping in mind the medico- obligations with respect to documentation.

The MRC concluded that Dr. Goldstein's documentation did not meet the standard of the profession. The MRC recommended that all of Dr. Goldstein's accounts rendered for family psychotherapy and individual psychotherapy be reduced given that adequate records had not been created and those that did exist did not meet the accepted standards.

Dr. Goldstein requested a follow-up interview with the MRC, which took place on July 14, 1999. In that interview, Dr. Goldstein stated that he had changed his manner of record keeping in accordance with the Committee's recommendations, and had worked diligently to help his patients. Dr. Goldstein acknowledged that although he accepted the Committee's recommendations, he found them to be excessively punitive. The MRC disagreed and was of the view that the recommendations should stand as previously stated.

On August 27, 1999, based on the recommendations of the MRC, the General Manager of the Ontario Health Insurance Plan (OHIP) directed Dr. Goldstein to reimburse OHIP for billing in the amount of \$54,705.49.

This prior history is an aggravating factor. The Committee is struck by the similarities between the prior matter before the College's MRC, and the matter at hand. In 1999, upon receiving the MRC's recommendations, Dr. Goldstein stated that he had made every effort to change his record keeping practices. In the Committee's view, these words now ring hollow as similar deficiencies remain.

The Seriousness of the Current Findings

As reported by Dr. Boachie, upon review of 24 patient files, Dr. Goldstein's patient notes were short, difficult to decipher and sometimes entirely absent. Dr. Goldstein's assessments were not documented, nor were his patient treatment plans. This pattern of inadequate documentation was consistent in all charts reviewed by Dr. Boachie.

For instance, one file showed that Dr. Goldstein saw a patient on an uncommonly frequent basis - two or three times in the same week. Yet, there was no note in the chart to indicate that the case was urgent, and that frequent/intensive therapy was warranted, as Dr. Goldstein claimed during an interview.

Equally concerning to the Committee was that there were numerous instances where treatments billed to OHIP did not have corresponding entries in patients' charts. For instance, in another chart reviewed, Dr. Goldstein started to see the patient in August 2011, following a suicide attempt, but did not start to chart until March 2012. When interviewed, Dr. Goldstein indicated that the patient had asked that he not take notes. This request, however, was not documented in the patient's chart. Further, Dr. Goldstein billed for family therapy sessions, but did not record how many family members were seen or which ones. On two occasions, Dr. Goldstein made notes in the patient's chart, but did not bill OHIP.

The College retained Dr. Pignatiello to review five patient files that were also reviewed by Dr. Boachie. Dr. Pignatiello observed the same pattern of inadequate documentation and troubling billing practices. Dr. Pignatiello opined that patient files reviewed were "consistently very disorganized, unclear, vague, often times with scant information...." He noted that the files did not contain assessments or management plans, and the documentation required for billing purposes was unclear.

The Committee is appalled by Dr. Goldstein's ongoing practice deficiencies in the areas of documentation and billing. Dr. Goldstein should be well aware that good medical record-keeping is fundamental to providing quality medical care. By not keeping a comprehensive and

detailed patient history, Dr. Goldstein compromised future patient clinical encounters, clinical decision-making, and continuity of care.

With regards to billing practices, Dr. Goldstein inappropriately billed OHIP for services for which there were no medical records. The Committee is troubled that although these deficiencies were initially identified several years ago, Dr. Goldstein's record keeping and billing practices remain far below the standard of practice of the profession.

Mitigating Factors

As a mitigating factor, the Committee took into account Dr. Goldstein's plea of no contest which saved the time and expense of a contested hearing and of witnesses having to attend and testify at the hearing.

Case Law

The Committee was provided with a Joint Book of Authorities containing three prior decisions of this Committee. Although the Committee's prior decisions are not binding as precedent, the Committee accepts as a principle of fairness that like cases should be treated alike.

In *CPSO v. Billing*, 2017 ONCPSD 30, numerous deficiencies were found in Dr. Billing's record keeping, as well as failures to maintain the standard of practice with respect to infection control. The Committee ordered a two-month suspension, a twelve-month period of clinical supervision, a re-assessment three months after the end of the clinical supervision, ongoing monitoring, a reprimand and costs to the College as agreed upon. Dr. Billing had no prior history before the College's Discipline Committee.

In *CPSO v. Powell*, 2017 ONCPSD 9, the Committee found that Dr. Powell, a psychiatrist, failed to maintain the standard of practice of the profession and engaged in disgraceful, dishonourable, or unprofessional conduct by failing to maintain an appropriate frame in the psychotherapeutic relationship and by engaging in inappropriate OHIP billing practices. Dr. Powell's concerning billing practices included, for instance, billing for missed/canceled appointments and double billing for the same block of appointment time. Dr. Powell had a prior history with the Discipline

Committee. In 2014, he admitted to entering into intimate sexual relationships with two patients too soon after the termination of each of their long term psychotherapeutic relationships.

The Committee accepted the joint proposal on penalty and ordered a four-month suspension, a \$20,000 fine to the Minister of Finance, a reprimand, and terms, conditions and limitations on Dr. Powell's certificate of registration. Dr. Powell was also required to pay costs to the College.

In *CPSO v. Wojcicki*, 2016 ONCPSD 9, Dr. Wojcicki, an internal medicine specialist, admitted and the Committee found that he failed to maintain the standard of practice of the profession in his care of 25 patients, and that he engaged in disgraceful, dishonourable or unprofessional conduct with respect to his OHIP billings. Dr. Wojcicki was also found to be incompetent.

The Committee found that Dr. Wojcicki inappropriately billed OHIP for services for which there was no documentation. The Committee accepted the joint proposal on penalty, which included a two month suspension, a reprimand, educational courses, and office and hospital practice clinical supervision, followed by a reassessment. He was also ordered to pay costs. Dr. Wojcicki had no previous findings by the Discipline Committee. He also admitted his misconduct and incompetence, and agreed to sign an undertaking to limit the scope of his practice.

Having reviewed the cases provided by the parties, the Committee was of the view that the penalty proposed fell within the range of penalties imposed in similar cases.

Conclusion

Dr. Goldstein's approach compromised patient safety and continuity of care. Given Dr. Goldstein's record keeping practices, it would be unfeasible for another physician or care provider to gain a comprehensive picture of a patient's history from the records maintained. Further, Dr. Goldstein did not fulfill the requirement that records be properly kept in order to bill OHIP for services.

Given the serious nature of the misconduct at issue in this case, the Committee initially had concerns with respect to the proposed penalty in that the penalty was viewed by the Committee as too lenient. In considering the public interest test, however, as set out in *R. v. Anthony-Cook*,

the Committee did not conclude that the proposed penalty would bring the administration of justice into disrepute, or was contrary to the public interest. Further, upon considering the aggravating and mitigating factors, as well as prior decisions of this Committee, the Committee accepted the parties' joint submission on penalty as an appropriate penalty in the circumstances of this case.

The penalty proposed will serve to rehabilitate Dr. Goldstein. The intensive supervision requirements will ensure that Dr. Goldstein remains in compliance. The three month suspension and reprimand will serve as a reminder to Dr. Goldstein and the membership that inadequate record keeping and inappropriate billing practices will not be tolerated. The Committee is confident that the public is protected by the penalty as proposed.

ORDER

The Committee stated its findings of professional misconduct at paragraphs 1 and 2 of its written Order dated June 19, 2019. In that Order, the Committee ordered and directed on a matter of penalty and costs that:

3. Dr. Goldstein attend before the panel to be reprimanded.
4. The Registrar suspend Dr. Goldstein's certificate of registration for a period of three (3) months, commencing from June 27, 2019 at 12:01 am.
5. The Registrar place the following terms, conditions and limitations on Dr. Goldstein's certificate of registration:
 - a. Dr. Goldstein 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;

PROBE Program

- b. Dr. Goldstein shall participate in and unconditionally pass the PROBE Ethics & Boundaries Program offered by the Centre for Personalized Education for

Professionals, with a report or reports to be provided by the provider to the College regarding Dr. Goldstein's progress and compliance. Dr. Goldstein shall complete this requirement within six (6 months) of the date of this Order.

Clinical Supervision

- c. Within twenty (20) days of this Order, Dr. Goldstein shall retain a College-approved clinical supervisor or supervisors (the "Clinical Supervisor") with respect to his psychiatry practice, who has signed an undertaking in the form attached hereto as Schedule "B".
- d. For a period of twelve (12) months commencing on the date that Dr. Goldstein resumes practice following the suspension of his certificate of registration, Dr. Goldstein may practise psychiatry only under the supervision of the Clinical Supervisor ("Clinical Supervision"), who shall facilitate the education program set out in the Individualized Education Plan ("IEP"), attached hereto as Schedule "C"; as follows:
- e. For an initial period of two (2) months, Dr. Goldstein will meet with the Clinical Supervisor every week, at which meetings the Clinical Supervisor will:
 - i. review a minimum fifteen (15) of Dr. Goldstein's patient records, to be selected at the sole discretion of the Clinical Supervisor, and the associated OHIP claims submissions or planned OHIP claims submissions, and discuss any issues or concerns arising from this review with Dr. Goldstein;
 - ii. make recommendations to Dr. Goldstein for practice improvements and ongoing professional development, and inquire into Dr. Goldstein's compliance with the recommendations; and
 - iii. keep a log of all patient charts reviewed along with patient identifiers.

- f. After the initial period of two (2) months, if the Clinical Supervisor is satisfied that Dr. Goldstein's patient records and associated OHIP billings reflect the knowledge, skills and judgment necessary for Dr. Goldstein to practise in a less highly supervised environment, the Clinical Supervisor may recommend to the College that supervision be reduced for the balance of the Clinical Supervision period of twelve (12) months.
- g. Upon the recommendation of the Clinical Supervisor and approval of the College of a reduction in supervision, Dr. Goldstein will meet with the Clinical Supervisor every month, at which meetings the Clinical Supervisor will:
 - i. review a minimum fifteen (15) of Dr. Goldstein's patient records, to be selected at the sole discretion of the Clinical Supervisor, and the associated OHIP claims submissions or planned OHIP claims submissions, and discuss any issues or concerns arising from this review with Dr. Goldstein;
 - ii. make recommendations to Dr. Goldstein for practice improvements and ongoing professional development, and inquire into Dr. Goldstein's compliance with the recommendations; and
 - iii. keep a log of all patient charts reviewed along with patient identifiers.

Other Elements of Clinical Supervision

- h. Throughout the period of Clinical Supervision, Dr. Goldstein shall abide by all recommendations of his Clinical Supervisor regarding his recordkeeping and OHIP billing, practice improvements, and ongoing professional development.
- i. The Clinical Supervisor shall submit written reports to the College at least once every month, or more frequently if the Clinical Supervisor has concerns about Dr. Goldstein's standard of practice.

- j. If a person who has given an undertaking in Schedule “A” to this Order is unable or unwilling to continue to fulfill its provisions, Dr. Goldstein shall, within twenty (20) days of receiving notice of the same, ensure that an executed undertaking is delivered to the College in the same form from a similarly qualified person who is acceptable to the College.
- k. If Dr. Goldstein is unable to obtain a Clinical Supervisor as set out in this Order, he shall cease practising medicine until he has obtained a Clinical Supervisor acceptable to the College.
- l. If Dr. Goldstein is required to cease to practise medicine as a result of section (5)(k) above, this will constitute a term, condition or limitation on his certificate of registration and that term, condition or limitation will be included on the public register.

Reassessment of Practice

- m. Approximately six (6) months after the completion of Clinical Supervision, Dr. Goldstein shall undergo a reassessment of practice by a College-appointed assessor (the “Assessor”). The re-assessment shall include a review of Dr. Goldstein’s patient charts and associated OHIP claims submissions or planned OHIP claims submissions. The results of the re-assessment shall be reported to the College.
- n. Dr. Goldstein shall consent to such sharing of information among the Assessor, the Clinical Supervisor, and the College, as any of them deem necessary or desirable in order to fulfill their respective obligations.

Monitoring

- o. Dr. Goldstein shall inform the College of each and every location where he practises, in any jurisdiction (his “Practice Location(s)”) within fifteen (15) days of this Order and shall inform the College of any and all new Practice Locations within fifteen (15) days of commencing practice at that location.

- p. Dr. Goldstein shall cooperate with unannounced inspections of his practice, patient charts and OHIP claims submissions by a College representative(s) for the purpose of monitoring and enforcing his compliance with the terms of this Order.
 - q. Dr. Goldstein shall consent to the College's making appropriate enquiries of the Ontario Health Insurance Plan and/or any person or institution that may have relevant information, in order for the College to monitor and enforce his compliance with the terms of this Order.
 - r. Dr. Goldstein shall be responsible for any and all costs associated with implementing the terms of this Order.
6. Dr. Goldstein 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. Goldstein waived his right to an appeal under subsection 70(1) of the Code and the Committee administered the public reprimand.