

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Shawn Chi Wai Seit, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the names of any patients or any information that would identify any patients referred to orally at the hearing or in the exhibits filed, 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. Seit*, 2021 ONCPSD 36

Date: August 11, 2021

BETWEEN:

College of Physicians and Surgeons of Ontario

- and -

Dr. Shawn Chi Wai Seit

FINDING AND PENALTY REASONS

Heard: July 19, 2021, by videoconference

Panel:

Dr. Eric Stanton (chair)
Mr. Jose Cordeiro
Dr. Roy Kirkpatrick
Dr. Veronica Mohr
Ms. Linda Robbins

Appearances:

Ms. Penelope Ng and Ms. Elisabeth Widner, for the College
Mr. Colin Johnston and Mr. Patrick A. Wright, for Dr. Seit
Ms. Jennifer McAleer, Independent Legal Counsel to the Discipline Committee

Introduction

- [1] Dr. Seit is a family physician. Between March 1 and October 18, 2018, he performed 45 Out-of-Hospital Premises (OHP) procedures that are required to be performed in an approved OHP, without having the required approval. Dr. Seit failed to seek clarification from the College about whether a cosmetic procedure (FaceTite) he was planning to use was approved for non-OHP use in Ontario, despite being advised by the training instructor to check with the College. Dr. Seit billed for procedures performed in an unapproved premises and breached the OHP Inspection Program (OHPIP) Standards.
- [2] Dr. Seit admitted his conduct would reasonably be regarded by members of the profession as disgraceful, dishonourable or unprofessional.
- [3] Based on the Agreed Statement of Facts and Admission, we found Dr. Seit had committed an act of professional misconduct:
- in that he engaged in an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.
- [4] We ordered a reprimand, a suspension of two months, terms, conditions and limitations placed on his certificate of registration and that he pay costs to the College.

Issues

- [5] Would Dr. Seit's failure to contact the College and confirm the procedure he planned to perform was approved for non-OHP use, before proceeding to perform and bill for this procedure, be regarded by members of the profession as disgraceful, dishonourable or unprofessional conduct?
- [6] If so, what is the appropriate penalty for the misconduct?

Analysis

Nature of the Procedure

- [7] FaceTite is a cosmetic procedure performed using a device that is manufactured and sold by InMode Aesthetic Technologies. When Dr. Seit purchased the FaceTite device, an InMode representative told him that it was a non-surgical, office appropriate technology.
- [8] Dr. Seit attended training set up by InMode. The instructor advised him that he thought the FaceTite procedure could be safely performed in the office setting, but that Dr. Seit should check with the College. Dr. Seit did not take this advice or contact the College to check whether FaceTite was approved for non-OHP use in Ontario.
- [9] On October 18, 2018, OHPIP conducted an unannounced on-site inspection of the clinic. The clinic failed the inspection which revealed the absence of required equipment, it did not meet general physical and medication standards, did not have policy and procedural manuals in place and did not meet infection prevention and control requirements.
- [10] The College obtained an opinion from Dr. Antoniak, an Otolaryngologist and the Medical Director and Chief Surgeon of the Facial Surgery and Cosmetic Centre in Ottawa. In Dr. Antoniak's opinion, the FaceTite procedures Dr. Seit performed are surgical in nature and must be performed in an OHP. The parties accept this opinion.

OHPIP Program and Standards

- [11] The OHPIP applies to all OHPs that perform procedures involving the use of anesthesia or sedation as defined in O.Reg.114/94. The OHPIP is overseen by the College's Premises Inspection Committee (PIC) and by Program Staff. The OHPIP is based on trust and relies on self-reporting from medical directors and physicians. The medical director of an OHP is responsible for providing notification to the College of plans to operate a new OHP and providing a list of all OHP Procedures to be performed.

[12] In order to ensure patient safety and quality of care, strict adherence is required to the detailed requirements set out in Program Standards (Standards), authorized under the Regulation. PIC must approve the premises following an inspection before any patient OHP Procedures can be performed. OHP Procedures can only be performed if the premises receive a “Pass” or “Pass with Conditions” from PIC.

[13] The parties agree that the clinic where Dr. Seit performed the FaceTite procedures has never been approved as an OHP. Neither the clinic nor Dr. Seit notified the OHPIP that FaceTite procedures were being performed on the premises.

Conclusion

[14] Dr Seit failed to check with the College as to the status of the FaceTite procedure and did not obtain a designation of OHP for the clinic prior to conducting this procedure. He displayed reckless behaviour in regard to his obligation to clarify the status of the procedure with the College and this resulted in his being in breach of the Ontario Regulations. Regulations are enacted to protect the public. We find this behaviour is conduct that members of the profession would find disgraceful, dishonourable or unprofessional.

Penalty

Joint Submission on Penalty

[15] The parties provided a joint submission on penalty and costs. They proposed Dr. Seit receive a public reprimand, a two-month suspension of his certificate of registration, comply with the College’s Policy on [Closing a Medical Practice](#) and complete a course on medical ethics and professionalism. They also agreed Dr. Seit would pay costs associated with a half-day hearing.

[16] Although we have discretion to reject the parties’ submission on penalty, we should not depart from a joint submission unless the proposed penalty would bring the administration of justice into disrepute or is otherwise not in the public interest. *R. v. Anthony-Cook*, 2016 SCC 43.

[17] When assessing whether a proposed penalty is appropriate, we consider protection of the public, maintaining the integrity of the profession and maintaining public confidence in the College’s ability to regulate the profession in the public interest.

The penalty should also serve as a specific deterrent to the member and a general deterrent to the profession, as well as, if appropriate, an opportunity for the member's rehabilitation. Other principles considered include denunciation of the misconduct and proportionality.

Evidence on Penalty

[18] Dr. Seit accepted the proposed penalty. Dr. Seit was co-operative with the College investigation and complied with all requests. On receiving a copy of the PIC's decision letter, Dr. Seit ceased performing FaceTite procedures.

Mitigating Factors

[19] We considered the following factors as mitigating:

- Dr. Seit admitted to the Agreed Statement of Facts.
- Dr. Seit accepts responsibility for his misconduct and shows insight by admitting the allegation and cooperating with the College.
- On receiving a copy of the PIC's decision letter, Dr. Seit ceased performing FaceTite procedures.
- Dr. Seit's admission has reduced the time and cost of the hearing to the College.
- Dr. Seit accepted the draft order on penalty.

Aggravating Factors

[20] We considered the following as aggravating:

- Dr. Seit failed to take responsibility to inform himself about the status of the procedure and instead ignored the advice to check with the College about the status of the procedure preferring to rely on the manufacturer's opinion that the FaceTite procedure was a non-surgical procedure safe for office practice. This behaviour was reckless.

Assessing appropriateness of the proposed penalty

[21] In considering the proposed penalty we considered the cases provided by the parties. Although prior Committee decisions are not binding as precedent, we accept that as a principle of fairness, like cases should be treated alike. The suspensions ordered in these cases ranged between three to five months.

- [22] In *College of Physicians and Surgeons of Ontario v. Upadhye*, 2021 ONCPSD 14, the Committee found Dr. Upadhye engaged in disgraceful, dishonourable or unprofessional conduct when he performed nerve blocks in a clinic not approved as an OHP. The Committee ordered a four-month suspension, noting that Dr. Upadhye had another clinic that was OHP approved, was aware of OHP standards required and had initially lied to the College about the procedures being performed. Dr. Seit was at all times honest in his dealings with the College.
- [23] In *College of Physicians and Surgeons of Ontario v. Bélanger*, 2018 ONCPSD 18, Dr. Bélanger was found to have engaged in disgraceful, dishonourable or unprofessional conduct for performing interventional pain management procedures in an unapproved OHP site. The Committee ordered a five-month suspension finding Dr. Bélanger knowingly provided care in an unapproved facility. The Committee found this to be an egregious abrogation of professional duty that could have compromised the care of his patients and imperiled public confidence in professional standards and the regulatory process. There is no evidence that Dr. Seit purposely tried to circumvent the regulations in defiance of College policy.
- [24] In *College of Physicians and Surgeons of Ontario v. Kesarwani*, 2018 ONCPSD 7, Dr. Kesarwani was a plastic surgeon who failed to notify the College that he was moving his practice to a new OHP location. He was also found to have engaged in disgraceful, dishonourable or unprofessional conduct and the penalty included a three-month suspension. In that case the doctor was found to have deliberately misled the College in its inspection and approval process. Dr. Seit never misled the College.
- [25] In summary, while these cases all involved longer suspensions, the physicians concerned either tried to mislead the College or knowingly circumvented the regulations. Thus, their conduct was more serious as reflected by the length of the suspensions. In the circumstances, we accept that the proposed two-month suspension is appropriate and does not bring the administration of justice into disrepute or is otherwise not in the public interest.

Conclusion on penalty

- [26] We find Dr. Seit was reckless when failing to check with the College as to the status of the FaceTite procedure despite being advised to do so. This resulted in his performing this cosmetic procedure in a non-OHP-approved facility. Dr. Seit immediately ceased doing so when notified by the College that this procedure was only to be performed in an OHP site and that the site must pass OHPIP inspections. There was never any intent to mislead the College, but he failed to get clarification from the College.
- [27] The health care system is changing from one where all but the simplest procedures are done in hospitals to a devolved system where more care is provided in smaller clinics and private facilities. It is in the public interest, and that of physicians, that there be no question that wherever that care is provided, the requisite standards are established, monitored and maintained. It is the responsibility of the physician to be aware of and to follow all regulations as required.
- [28] The College must protect the public. The College must demonstrate to the public and the profession that it will enforce regulations enacted and procedures adopted for the public's protection and that it will sanction noncompliance. We therefore find the penalty imposed reflects the seriousness of the matter and is appropriate.
- [29] Finally, our view is that the penalty assists to maintain the integrity of the profession and public confidence in the College's ability to regulate in the public interest. The terms, limitations and conditions on his certificate of registration will help Dr. Seit in understanding his professional obligations.

Order

- [30] In the Order issued on July 19, 2021, we ordered and directed:

- Dr. Seit to attend before the Committee to be reprimanded.
- The Registrar to suspend Dr. Seit's certificate of registration for 2 months commencing July 20, 2021 at 12:01 am.
- The Registrar to place the following terms, conditions and limitations on Dr. Seit's certificate of registration, effective immediately:

- (i) Dr. Seit shall comply with the College Policy, "Closing a Medical Practice"
 - (ii) Dr. Seit shall, at his own expense and within six (6) months of the date of this Order, participate in and successfully complete individualized instruction in medical ethics and professionalism satisfactory to the College, with an instructor approved by the College, who shall provide a summative report to the College including his or her conclusion about whether Dr. Seit successfully completed the instruction.
- Dr. Seit to pay the College costs in the amount of \$6,000 payable no later than August 19, 2021.

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

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

In the matter of:

College of Physicians and Surgeons of Ontario

- and -

Dr. Shawn Chi Wai Seit

Reprimand delivered by the Discipline Committee
by videoconference on Monday, July 19, 2021.

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

Dr. Seit,

You have been found by this Committee to have engaged in an act or admission relevant to the practice of medicine that having regard to all the circumstances would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

The public expects and must have the confidence that the College will regulate the profession in the public interest.

It is the responsibility of all members of the profession to not only be aware of but also to strictly comply with any and all regulations and policies that govern our profession.

You should have been aware or sought clarification that the cosmetic procedure you were performing could only be performed in an approved Out of Hospital Premises or in a hospital setting.

The purpose of regulations, policies and standards is to protect the public interest.

By failing to check with the College prior to performing the FaceTite cosmetic procedure, despite being advised by one of your instructors to do so, you displayed reckless behaviour which resulted in a breach of the Ontario Regulation that regulates OHP's.

This cannot and indeed will not be tolerated by the public or the profession.

However, the panel recognizes that you have co-operated with the College investigation and on receipt of the Premises Inspection Committee's decision letter you ceased performing the FaceTite procedure at the North York Clinic.

We sincerely hope you have learned from this experience and that you will not appear before this Committee again.