

## ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

**Citation:** *College of Physicians and Surgeons of Ontario v. Al-Khafaji*, 2022 ONPSDT 36

**Date:** October 26, 2022

**Tribunal File No.:** 22-001

**BETWEEN:**

College of Physicians and Surgeons of Ontario

- and -

Dr. Ali Mohammed Abdul-Razak Al-Khafaji

### FINDING AND PENALTY REASONS

**Heard:** September 21, 2022, by videoconference

**Panel:**

Ms. Sherry Liang (chair)

Dr. Ida Ackerman

Ms. Lucy Becker

Mr. Rob Payne

Dr. Deborah Robertson

**Appearances:**

Ms. Simmy Dhamrait-Sohi and Ms. Elisabeth Widner, for the College

Mr. Robin McKechney and Ms. Jennifer McKendry, for Dr. Al-Khafaji

### RESTRICTION ON PUBLICATION

The Tribunal ordered, under ss. 45-47 of the Health Professions Procedural Code, that no one may publish or broadcast the name of the witness to whom the allegations of misconduct of a sexual nature relate or publish any information that could disclose the identity of that witness 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] Dr. Al-Khafaji was, until 2021, a general practitioner licensed to practise medicine in Ontario. The College's Inquiries, Complaints and Reports Committee (ICRC) referred allegations that Dr. Al-Khafaji committed misconduct to the Tribunal.
- [2] At the hearing before the Tribunal, Dr. Al-Khafaji and the College provided an Agreed Statement of Facts. The member admitted, and we found, that he committed professional misconduct under s. 51(1)(b.1) of the Health Professions Procedural Code (Code) (Schedule 2 to the *Regulated Health Professions Act, 1991*, SO 1991, c. 18) (RHPA) by engaging in sexual abuse of a patient and under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, SO 1991, c. 30, by engaging in actions relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.
- [3] Because of the type of sexual abuse the member committed, revocation is mandatory under the Code and we directed the Registrar to revoke Dr. Al-Khafaji's certificate of registration effective immediately. We also ordered the member to be reprimanded (a requirement under the Code), pay costs to the College of \$6,000 and reimburse the College \$16,060 for funding provided to the patient for therapy.
- [4] These are our reasons for our findings.

## Professional Misconduct

- [5] Patient A became the member's patient in January 2019. Shortly after this, he began flirting with her in the office and sexual activity began to occur during medical appointments, including hugging and kissing. By late July 2019, Dr. Al-Khafaji and Patient A were in a sexual relationship outside the office. Sexual activity took place in various locations, including in a condominium Dr. Al-Khafaji rented for Patient A. The member and Patient A also took trips together and rented hotel rooms for sexual encounters. The sexual relationship lasted until approximately March 2020 when Dr. Khafaji broke it off.
- [6] Patient A obtained another family doctor in mid-July 2019. Despite this, Dr. Al-Khafaji continued to provide medical care to Patient A, submitting two claims to

Ontario Health Insurance Plan (OHIP) for her care. He also prescribed for her up to March 2020.

- [7] Dr. Al-Khafaji admits that while he was Patient A's physician, he engaged in a sexual relationship with her.
- [8] Following the break-up, Patient A needed hospital care in March 2020. Patient A told hospital doctors that her boyfriend was also her physician, resulting in two mandatory reports to the College under s. 85.1(1) of the Code. Patient A also made a complaint about Dr. Al-Khafaji to the College.
- [9] Dr. Al-Khafaji knew Patient A had a medical history that made her particularly vulnerable. She experienced significant and ongoing distress as a result of the relationship with Dr. Al-Khafaji.
- [10] Dr. Al-Khafaji had numerous telephone calls with Patient A between July 2019 and June 2020 and exchanged thousands of text messages with her. The text messages refer explicitly to sexual preferences and sexual encounters between Dr. Al-Khafaji and Patient A and include sexually intimate photographs.
- [11] Dr. Al-Khafaji did not dispute the contents or authenticity of the communications with Patient A and advised the College that he would not be providing any further submissions in the investigation and would consent to a referral to the Tribunal.

#### **Notice under s. 25.4 of the Code and Resignation**

- [12] On February 4, 2021, the ICRC gave notice that it intended to make an order against Dr. Al-Khafaji under s. 25.4 of the Code (interim suspension). In response to the notice, Dr. Al-Khafaji resigned his membership with the College, effective March 10, 2021. In light of Dr. Al-Khafaji's resignation, the ICRC did not order an interim suspension.

#### **Finding on Professional Misconduct**

- [13] Under s. 51(1)(b.1) of the Code, professional misconduct includes sexual abuse of a patient. "Sexual abuse" means sexual intercourse or other forms of physical sexual relations between the member and the patient, touching of the patient by the

member of a sexual nature and behaviour or remarks of a sexual nature by the member towards the patient: s. 1(3).

- [14] An individual is a patient if the member has had direct interaction with them or has, among other things, billed OHIP for health care services or prescribed them a drug: Ontario Regulation 260/18 made under the RHPA.
- [15] The member's admitted actions are sexual abuse within the meaning of the Code. Among other things, he had intercourse with her and sent her communications of a sexual nature, at a time she was his patient. Even though Patient A began to see another family doctor after their sexual relationship began, the member continued to provide health care to her for which he billed OHIP. As well, it is sexual abuse where a member engages in sexual activity within a year of providing the person care: Code, s. 1(3).
- [16] We find that Dr. Al-Khafaji committed professional misconduct by engaging in sexual abuse of Patient A, including sexual intercourse.

### **Penalty**

- [17] Under the Code, the Tribunal must order revocation of the member's certificate of registration and a reprimand if the sexual abuse includes sexual intercourse: s. 51(5)3. The member does not dispute that these mandatory penalties apply.
- [18] The Legislature has decided the penalty in a case like this. The mandatory penalty of revocation and reprimand reflects the serious nature of the misconduct. It sends a strong message that the public will not tolerate members who abuse their power and privilege for their own gratification. Physicians occupy a place of trust. When Dr. Al-Khafaji became a physician, he, as all physicians do, agreed to "first, do no harm." Dr. Al-Khafaji breached this agreement in a fundamental way when he entered into a sexual relationship with a patient and, in this case, a particularly vulnerable one.
- [19] Section 85.7 requires the College to establish a program to provide funding for therapy and counselling for persons alleging sexual abuse by a member. The College is entitled to recover from the member money paid from this program for such therapy and counselling. In this case, the parties agree on the College's right to payment under this section and the amount the member will pay. We see no

reason not to accept the parties' agreement and order the member to reimburse the College \$16,060 for funding provided to Patient A for therapy and counselling under the program established under s. 85.7 of the Code.

### **Report of Gail Siskind**

- [20] Although a reprimand is mandatory, the wording of the reprimand is within the panel's discretion. The member provided a report by Gail Siskind, who delivered a course to the member on "Establishing and Maintaining Professional Boundaries with Patients; Preventing Sexual Abuse of Patients," for our review in crafting our reprimand. Although the College did not object to the panel receiving the report, it submits that we should give no weight to it. The member submits it is relevant to the reprimand but takes no position on the weight which we should place on the report. He simply submits that the work he has undertaken with Ms. Siskind, as described in the report, shows his dedication to understanding the consequences of his conduct and how to make different choices moving forward.
- [21] We reviewed the report and accept the College's submission that we give no weight to it.
- [22] Evidence of insight, remorse and rehabilitation is relevant to the content of a reprimand, even when it is a mandatory penalty: see *College of Physicians and Surgeons of Ontario v. Verma*, 2022 OPSDT 6 at para. 15. Such evidence is admissible when presented through the member's own testimony, as it is based on the member's first-hand knowledge of those facts. It may also be admissible when presented through the opinion of a properly qualified expert, depending on the Tribunal's assessment of the value of the expert evidence: *Verma*, paras. 17-22.
- [23] In this case, the member does not offer information about his insight, remorse and rehabilitation in his own words, but only through Ms. Siskind's second-hand account. He gave us no basis, and we see no good reason, to rely on hearsay evidence in relation to facts which he is best placed to testify about.
- [24] To the extent the report provides some of Ms. Siskind's opinions on these issues, we give these opinions no weight. The member did not ask us to accept Ms. Siskind as an expert in these proceedings and her opinions do not therefore qualify as expert evidence.

[25] In conclusion, we ordered and directed that:

- a. Dr. Al-Khafaji attend before the panel to be reprimanded;
- b. the Registrar revoke Dr. Al-Khafaji's certificate of registration effective immediately;
- c. Dr. Al-Khafaji reimburse the College for funding provided to patients under the program required under s. 85.7 of the Code, by posting an irrevocable letter of credit or other security acceptable to the College, within 30 days of this Order in the amount of \$16,060;
- d. Dr. Al-Khafaji pay the College costs in the amount of \$6,000, by October 21, 2022.

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College of Physicians and Surgeons of Ontario

- and -

Dr. Ali Mohammed Abdul-Razak Al-Khafaji

**The Tribunal delivered the following Reprimand**  
by videoconference on Wednesday, September 21, 2022.

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

Dr. Al-Khafaji,

We are profoundly disturbed by your egregious misconduct.

By entering into a sexual relationship with a patient in your office, renting her an apartment and engaging in ongoing sexual activity and sexual communication while you were also providing medical care to her, you grossly violated the trust your patient placed in you. A primary tenet of the medical profession is to do no harm and your actions resulted in your patient – who was particularly vulnerable – suffering significant and ongoing distress. Your conduct was disgraceful, dishonourable and unprofessional.

We acknowledge that you admitted to engaging in professional misconduct and the sexual abuse of a patient, and that you chose to resign in March 2021. However, your deeply troubling behaviour was an egregious breach of public trust and damaged the confidence that the public places in the integrity of the medical profession. The public expects and demands that physicians act with integrity and in their patients' best interests while providing the highest quality of health care possible.

This reprimand and the revocation of your certificate of registration sends a strong message that we will not tolerate members who abuse their power and privilege in the community for their own gratification.

We believe that today's hearing demonstrates the ability of the profession to govern itself in the public interest and sends a strong message of deterrence to others that sexual abuse will not be tolerated.