

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Ernest Eugene Hajcsar, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the name and any information that could disclose the identity of the patient 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 or 47... is guilty of an offence and on conviction is liable,

- (a) in the case of an individual to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence; or
- (b) in the case of a corporation to a fine of not more than \$50,000 for a first offence and not more than \$200,000 for a second or subsequent offence.

Indexed as: Hajcsar, E. E. (Re)

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

IN THE MATTER OF a Hearing directed
by the Inquiries, Complaints and Reports Committee of
the College of Physicians and Surgeons of Ontario
pursuant to Section 26(1) of the **Health Professions Procedural Code**
being Schedule 2 of the *Regulated Health Professions Act, 1991*,
S.O. 1991, c. 18, as amended.

B E T W E E N:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. ERNEST EUGENE HAJCSAR

PANEL MEMBERS:

DR. P. CHART (CHAIR)
S. BERI
DR. W. KING
DR. A. FALCONER

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| Hearing Date: | May 1, 2014 |
| Decision Date: | May 1, 2014 |
| Release of Written Reasons: | May 13, 2014 |

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 May 1, 2014. At the conclusion of the hearing, the Committee stated its finding that the member committed an act of professional misconduct and delivered its penalty and costs order with written reasons to follow.

THE ALLEGATIONS

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

1. under clause 51(1)(b.1) of the Health Professions Procedural Code (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18, in that he has engaged in the sexual abuse of a patient; and
2. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, in that he has engaged in conduct or 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.

RESPONSE TO THE ALLEGATIONS

Dr. Hajcsar admitted the second allegation in the Notice of Hearing, that he has engaged in conduct or 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. Counsel for the College withdrew the first allegation in the Notice of Hearing.

FACTS AND EVIDENCE

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

1. Dr. Hajcsar practices family medicine and offers cosmetic treatments in Burlington, Ontario. He obtained his medical degree from Queen's University in 1999 and completed his residency in Family Medicine in 2001.
2. At all material times, Dr. Hajcsar practiced medicine in a clinic that he shares with his now ex-spouse, Dr. X.
3. Dr. Hajcsar treats his own family medicine patients at the clinic, sometimes treats Dr. X's family medicine patients, and offers cosmetic treatments to all patients of the clinic.
4. Patient A has been a patient of the clinic since 1995, with Dr. X being her primary family physician. Since Dr. Hajcsar began practicing at the clinic in 2001, Patient A has also seen him as a patient on numerous occasions. Dr. Hajcsar saw Patient A when Dr. X was running behind or was unable to see her for another reason. He also acted as Patient A's family physician when Dr. X was on maternity leave.
5. Between approximately 2004 and January 2012, Dr. Hajcsar treated Patient A for a variety of health issues, including providing supportive psychotherapy to Patient A on some occasions:
 - In 2004, Dr. Hajcsar saw Patient A on approximately eight occasions. In February, he treated her for flu-like symptoms on two occasions, during which she was dehydrated and weakened. In April, he treated her for coughing and pleuritic pain. He saw her again in July for a possible urinary tract infection. In August 2004, Dr. Hajcsar provided supportive counselling and screening for sexually transmitted diseases following the patient's discovery of her husband's marital infidelity. In his progress note, Dr. Hajcsar noted that Patient A was "of course...having problems with trust issues." In September, Dr. Hajcsar saw Patient A at an appointment at which she reported a rash, but went on to disclose that she was "crying constantly," having trouble sleeping, and vomiting. At that time, Dr. Hajcsar noted that she was a "classic case of agitated depression."

- In 2005, Dr. Hajcsar treated Patient A in the clinic for respiratory issues and flu-like symptoms.
 - In 2009, Dr. Hajcsar treated the patient in the clinic on approximately three occasions. In November 2009, Dr. Hajcsar treated the patient for issues including muscle ache, ‘sweats,’ chancre sores, and sleep issues. In December 2009, Dr. Hajcsar saw Patient A regarding a sore throat, diarrhea, sleep issues, and depression/mood disorder, noting that she “feels she is lonely” and that “she is in a constant state of anxiety.
 - In 2011, Dr. Hajcsar treated Patient A in the clinic on approximately four occasions for non-cosmetic medical care. In March 2011, Dr. Hajcsar saw Patient A regarding back and hip and sciatic pain. In July 2011, Dr. Hajcsar saw Patient A regarding diarrhea, vomiting, headache, sore throat, coughing, and dehydration. As a result, he wrote a letter to the emergency department asking to have her assessed and admitted for severe dehydration. In doing so, he noted her history, including depression, chronic sleep disorder, and post-traumatic stress disorder. In August 2011, Dr. Hajcsar saw Patient A regarding spots on her arms, and issues relating to her Seroquel prescription. In November 2011, he immunized her against the flu.
 - At all times, Dr. Hajcsar had access to Patient A’s full chart, which included test results, consult letters, and entries by not only himself but Dr. X, including regarding a significant C. difficile infection in 2007 and a complaint of a sexual assault experienced by Patient A in 2010.
6. Beginning in August 2011, Dr. Hajcsar also provided Patient A with cosmetic treatments, including Botox treatment and cosmetic filler injections as further described below.
 7. Dr. Hajcsar inappropriately violated appropriate boundaries with Patient A on a number of occasions:

- Dr. Hajcsar would comment inappropriately on Patient A's physical appearance, such as by greeting her with "Hi beautiful, how are you?" or "Still beautiful, as I see."
 - Sometimes Dr. Hajcsar would brush back the front of Patient A's hair when speaking to her.
 - On two or three occasions, Dr. Hajcsar kissed Patient A briefly while assisting her in putting on her coat when she was leaving the clinic.
 - Dr. Hajcsar would touch Patient A's shoulder as she was leaving in what she perceived as an affectionate manner.
 - Dr. Hajcsar also hugged Patient A from time to time or put an arm around her shoulder, either in greeting or by way of reassurance, for example when she was going to receive an influenza vaccination.
8. Patient A felt this behaviour was confusing and odd.
 9. Dr. Hajcsar performed the first of two rounds of cosmetic treatments on Patient A by way of Botox injections to her face in November 2011. Dr. Hajcsar performed a second round of cosmetic treatment on Patient A by way of injecting filler into her cheeks, jowls and lips in December 2011.
 10. A few weeks after the second round of treatment, in January 2012, Patient A returned for a follow-up appointment so that Dr. Hajcsar could assess the results of the cosmetic treatment.
 11. At the conclusion of this follow-up assessment, Dr. Hajcsar joked to Patient A, offering to "test" her "new lips." He then kissed her on the lips. It was not a long kiss, but was what Patient A described as a "big kiss." Dr. Hajcsar then walked into the waiting area with Patient A and, in the presence of Patient A and the receptionist, joked that he "gave [Patient A]'s lips a test drive." Patient A heard laughter in the waiting room and was uncomfortable. This conduct violated the appropriate boundary between a physician and a patient.

12. Dr. Hajcsar has stated that he is a “very demonstrative person,” and that he had misguidedly intended his actions towards Patient A to be supportive of her.

ADMISSION

13. Dr. Hajcsar admits the facts in paragraphs 1 to 12 above, and admits that they constitute disgraceful, dishonourable or unprofessional conduct, and that he has thereby committed an act or acts of professional misconduct under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act*, 1991.

FINDING

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts and Admission. Having regard to these facts, the Committee accepted Dr. Hajcsar’s admission and found that he committed an act of professional misconduct, in that he has engaged in conduct or 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.

AGREED STATEMENT OF FACTS REGARDING PENALTY

The parties then presented the Committee with an Agreed Statement of Facts Regarding Penalty as follows:

1. When provided with the opportunity to respond to the College’s investigation into his conduct towards Patient A, Dr. Hajcsar, by way of a letter to the College investigator, expressed regret for his conduct and the desire to convey his regret and apology to Patient A.
2. After the College investigation of Dr. Hajcsar’s conduct began, but before the allegations of professional misconduct against him were referred to the Discipline Committee of the College, Dr. Hajcsar enrolled in and completed a two-day course regarding appropriate boundaries at the University of Western Ontario.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for the member made a joint submission in support of a penalty and costs order, the terms of which included a two month suspension, a public reprimand and costs to the College for a single day of hearing.

In considering the jointly proposed penalty, the Committee was mindful of judicial direction that a penalty, jointly proposed, should be accepted unless it is both contrary to the public interest and its acceptance would bring the administration of justice into disrepute. In assessing the joint submission, the Committee took into consideration the principles that the courts have stated should guide the choice of a penalty, which include: public protection, specific and general deterrence, maintenance of public confidence in the process of self-regulation and, where appropriate, rehabilitation of the member.

The behaviour of Dr. Hajcsar was clearly an unprofessional boundary violation. The agreed facts depict a highly vulnerable patient. Dr. Hajcsar should have known better than to engage in such behaviour. His conduct was insensitive and caused a vulnerable patient understandable confusion and discomfort. Patients place great trust in the medical profession and have every right to expect that their physician's office will be a safe and secure environment.

A two month suspension is significant and should demonstrate, both to Dr. Hajcsar and to the profession at large, that such behaviour will not be tolerated. The Committee was provided with previous decisions of the Discipline Committee which established that this penalty falls within the range of those ordered in previous matters of a similar nature. The Committee is of the opinion that the jointly proposed penalty is appropriate.

The Committee was encouraged by the fact that the member had taken the boundaries course of his own volition even before this matter had even been referred to the Discipline Committee. It was a positive step that should contribute to rehabilitation.

In admitting to the allegation, Dr. Hajcsar both spared his patient the further trauma of testifying and also made unnecessary the costs of a contested hearing. The Committee also accepts that the proposed costs order, by which Dr. Hajcsar is to pay costs to the

College in the amount of \$4,460.00, the tariff for one day of hearing, is appropriate in the circumstances.

ORDER

Therefore, having stated the findings in paragraph 1 of its written order of May 1, 2014, the Committee ordered and directed that on the matter of penalty and costs:

2. the Registrar suspend Dr. Hajcsar's certificate of registration for period of two (2) months, to commence at 12:01 a.m. on June 1, 2014.
3. Dr. Hajcsar appear before the panel to be reprimanded.
4. Dr. Hajcsar pay to the College costs of this proceeding in the amount of \$4,460.00 within thirty (30) days of the date of this Order.

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