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

IN THE MATTER OF a Hearing directed
by the Executive Committee of the College of Physicians
and Surgeons of Ontario, pursuant to Section 36(2)
of the *Health Professions Procedural Code*,
being Schedule 2 to 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. JACK BARABTARLO

PANEL MEMBERS:

P. BEECHAM (CHAIR)
DR. G. BOND
DR. Y. DEBUDA
A. VANSTONE
DR. W. KING

Hearing Dates: September 3, 2003
Decision Date: September 4, 2003
Release of Written Reasons Date: November 11, 2003

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on September 3, 2003. At the conclusion of the hearing, the Committee reserved its decision. On September 4, 2003, the Committee released its finding and penalty order with written reasons to follow.

ALLEGATIONS

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

1. under clause 51(1)(a) of the Health Professions Procedural Code (the "Code"), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, in that he has been found guilty of an offence that is relevant to his suitability to practise; and
2. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, S.O. 1993 ("O. Reg. 856/93"), in that he engaged in 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.

RESPONSE TO ALLEGATIONS

At the outset of the hearing, counsel for the College withdrew allegation #2. Dr. Barabtarlo admitted allegation #1 that he had been found guilty of an offence that is relevant to his suitability to practise.

THE EVIDENCE

Counsel for the College filed, on consent, a Book of Exhibits (Exhibit No.1), which included an Agreed Statement of Facts regarding Dr. Barabtarlo's conviction under s.43(3) of the *Health Insurance Act (Ontario)*. Dr. Barabtarlo signed the Agreed Statement of Facts on December 12, 2001 and it was filed with the Ontario Court of

Justice in support of his guilty plea on December 14, 2001. The Agreed Statement of Facts states as follows:

“This matter relates to a fraud investigation by the Ontario Provincial Police with respect to the allegations of over-billing to the Ontario Health Insurance Plan (OHIP) by the accused doctor and a charge laid against him under s.43(3) of the *Health Insurance Act (Ontario)*.

Dr. Jack Barabtarlo, a physician, is licenced to practise psychiatry in the Province of Ontario. He operates a practice at two locations, 200-637 Davis Drive, Newmarket Ontario and 15 Wetheim Court, Richmond Hill, Ontario.

Dr. Barabtarlo has opted into the Ontario Health Insurance Plan and is remitted on a ‘fees for service’ basis by OHIP.

He bills primarily for “psychotherapy” type services which are “time based” billed in half hour “UNITS”. These “UNITS” and the specific services, are defined in the Ministry of Health and Long Term Care, Schedule of Benefits, which Dr. Barabtarlo has access to and understands.

- “1 UNIT” requires a minimum of 20 minutes, up to 45 minutes with the patient.
- “2 UNITS” requires a minimum of 46 minutes, up to 75 minutes with the patient.
- “3 UNITS” requires a minimum of 76 minutes, up to 105 minutes with the patient.

In November 1996, the Ministry of Health and Long Term Care (M.O.H.) received a complaint from a person who used to be a receptionist for Dr. Barabtarlo. She worked for Dr. Barabtarlo from October 1994 until July 1996. Her duties included the submission of OHIP billings on behalf of Dr. Barabtarlo, per his instructions. This receptionist reported that Dr. Barabtarlo had billed OHIP for more time than he actually spent with the patients.

The receptionist opened the office at 8:30 a.m. each day, but Dr. Barabtarlo did not see the first patient until 9:00 a.m. The last patient was seen usually between 4:30-5:00 p.m.

If a patient came in for prescription renewal, they would be squeezed in between other patients. Patients were rarely seen for more than one half hour, unless they were first

time assessments or referrals. As long as she worked there, no sessions lasted more than one hour. Dr. Barabtarlo was like clockwork. He would terminate the session precisely at the scheduled time. Sometimes he would not start the next session on time, but would always end the session on time.

She wrote the names of the patients that were seen each day on a pink sheet of paper, which was given to the doctor. Dr. Barabtarlo would return the pink sheet after he added the numbers “2” or “3” beside each patient name. These numbers represented the number of “UNITS” that the receptionist was to bill OHIP.

According to the receptionist, Dr. Barabtarlo should have been billing primarily “1 UNIT” services, with the occasional “2 UNIT” service. She alleges that Dr. Barabtarlo was “padding” the service length by adding an extra “UNIT” to many of the patient visits.

Some 66 patients were contacted by police. 29 of these patients either verified the service, or were unable to remember. 11 patients did not agree, saying the sessions were not as long as billed, but were not in a position to commit themselves with certainty.

26 patients actually disputed the length of service, saying the sessions were not as long as billed. These patients were confident with their recollection.

A search warrant was executed at the offices of Dr. Barabtarlo and a quantity of appointment sheets were seized.

The information provided by the patients was compared with the OHIP billing and the appointment sheets of Dr. Barabtarlo. This analysis supports the estimate that a significant amount of the billing to OHIP was inappropriate.

\$41,689.82 of this amount has been verified with the 26 patients who have actually disputed the in-office service(s) as billed by Dr. Barabtarlo.

The total amount estimated to be over-billed over the 10 year period (1990-1999) is considerably in excess of the amount referred to in the immediately proceeding paragraph.

Dr. Barabtarlo agrees that this estimate is substantially correct and admits that he knowingly billed OHIP for services in excess of what he was actually entitled to for in-office consultations with patients.

Dr. Barabtarlo hereby pleads guilty to an offence under s.43(3) of the *Health Insurance Act (Ontario)* based on the above statement of fact and, with the agreement of the prosecutor, hereby waives the six month limitation period requiring that the proceeding herein be instituted within six-months of the date of the offence.”

Also, filed in evidence was a certified true copy of an Information under s.23 of the *Provincial Offences Act* indicating that, on December 14, 2001, Dr. Barabtarlo was found guilty of knowingly giving false information to the Ministry of Health and Long Term Care in an application, return or statement made to the Ontario Health Insurance Plan contrary to section 43(3) of the *Health Insurance Act (Ontario)*.

FINDING

Having considered the evidence, the Discipline Committee accepted Dr. Barabtarlo’s admission with regard to allegation #1 and found that he had committed an act of professional misconduct in that he was found guilty of an offence that is relevant to his suitability to practise.

SUBMISSIONS AND EVIDENCE AS TO PENALTY

Counsel for the College proposed a 12-month suspension of Dr. Barabtarlo’s certificate of registration, a condition on Dr. Barabtarlo’s certificate of registration that he not bill OHIP directly with a right to reapply after two years, a reprimand and costs of \$2,500.

Counsel for Dr. Barabtarlo proposed a penalty along the lines of a reprimand, a fine of \$3,000 and costs of \$2,500. Defence counsel called four witnesses: Dr. Barabtarlo, Dr. A, Dr. B and Dr. C. Defence counsel also submitted Dr. Barabtarlo’s curriculum vitae, a record of Dr. Barabtarlo’s OHIP billing, a selection of newspaper clippings and some letters of support for Dr. Barabtarlo.

Dr. Barabtarlo

Dr. Barabtarlo testified that he was 50 years old and born in Mexico. He divorced from his first wife and has joint custody of his 15-year-old daughter. He remarried in 2002 and has two stepchildren.

Dr. Barabtarlo graduated from the National Institute of Medicine in Mexico and was licensed in 1978. In Canada, he did an unpaid, rotating internship at Memorial University in Newfoundland. To achieve his landed immigrant status, he worked in an under-serviced area for three years, from 1982 to 1985, in Kirkland Lake, Ontario. In 1985, he completed a psychiatric residency at the University of Toronto. In 1989, he took over an existing psychiatric practice in Newmarket, which is also an under-serviced area.

Dr. Barabtarlo does general, adult psychiatry and has an open practice. Sixty to seventy percent of his patients are low income. He has several high-risk cases such as patients with mood disorders, general depression, bi-polar disorder, personality disorders and substance abuse, patients on court probation, and patients with major physical disabilities who require counselling. His practice is one hundred percent covered by OHIP. His patients come from Newmarket and the surrounding areas. His referrals come mostly from general practitioners but also from other psychiatrists and patients.

Dr. Barabtarlo testified that the first time he had his own office was in Newmarket. He asked other psychiatrists how to do the billings and to explain the OHIP codes. His secretary did his billings. He stated that the basis for his billings was the time spent with patients. Patients with extraordinary needs, such as those involved with probation officers, court officials and other professionals, required more time for matters such as written and oral reports, phone calls and other paper work and he believed he was entitled to bill for this time.

Dr. Barabtarlo testified that patients told him they had received phone calls about their OHIP bills from OHIP. He told them to respond to the calls to the best of their knowledge. In February 1999, patients advised that they were receiving phone calls from

the Ontario Provincial Police (the OPP) about the billings. Dr. Barabtarlo became concerned and went to seek legal advice from a lawyer. He stated that, at that time he did not perceive that he was billing OHIP inappropriately. He wrote several letters to the OPP. The OPP had received a complaint but OHIP had not taken any action. In March 2000, the OPP came to his office with a search warrant and took billing sheets and appointment books. He co-operated with the police.

Dr. Barabtarlo testified that, in April 2000, he was charged with adding extra time to the time he was seeing patients. He stated that he stopped doing that right away and has since never billed in this manner. Charges were laid and the charges were made public in the Toronto Sun, the Toronto Star, on television, on radio and in the local media. It was disclosed that a secretary that worked for him in 1994 and 1995 made the complaint.

Dr. Barabtarlo admitted that he did not examine the OHIP schedule and that this was negligence on his part. He acknowledged that he was wrong in his behaviour and was more than willing to pay the money back.

Dr. Barabtarlo testified that more than \$40,000 was at issue in the provincial prosecution. The initial charge was withdrawn and replaced with a charge of “knowingly giving false information”. The penalty consisted of a fine of \$4,500 with costs of \$900. Dr. Barabtarlo reached a separate agreement with OHIP to repay, and has repaid, the amount of \$41,689.82. He has never been requested by OHIP or the Medical Review Committee (MRC) to repay any further amount. He read the Agreed Statement of Facts before he signed it and agrees with it. He acknowledged that the total amount estimated over the 10 years was considerably in excess of the \$41,000 estimated by the Crown.

Dr. Barabtarlo paid for \$50,000 for his lawyer’s services. He stated that he felt very bad, careless and negligent. He also stated that he has caused hurt to the profession, to his family and his patients. His present wife is not working. He supports his first wife (who has multiple sclerosis) and his daughter.

Dr. Barabtarlo testified that a suspension would be very harmful to his patients, many of whom are Spanish speaking and speak little or no English. Many of the patients are very sick, at high risk, and also very poor. He has advertised for locums through the Internet and the media to cover his practice should he be suspended, with no replies.

On cross-examination, Dr. Barabtarlo testified that he is currently doing charitable work for B'nai Brith. He acknowledged that the original charge against him was under the Criminal Code, and that this was changed to a provincial offence when he agreed to plead guilty. He stated that his lawyer acted on his behalf for most of the time in court, while he waited outside.

Dr. Barabtarlo testified that, when he first started billing OHIP, he didn't understand what the units were (Exhibit 1, Tab 3). He agreed that the facts in the Agreed Statement are correct and that he would not have signed something that was not true. Dr. Barabtarlo has about three hundred active patients a year and an annual income of \$208,000. OHIP contacted sixty-six of three hundred patients. Of the sixty-six that were contacted, over one-third were adamant that Dr. Barabtarlo had overcharged. This would indicate that more billings than the 26 reflected in the Agreed Statement would have been inflated. He stated that between 1989 and 1999, he was healthy. He was not on the verge of bankruptcy. He owned his own home and one car.

Dr. A

Dr. A has been a family practitioner in Newmarket for the past 10 years. He has referred patients to Dr. Barabtarlo for about 8 years. He stated that he refers about twenty-five percent of his more difficult patients to Dr. Barabtarlo. He and the patients have always been satisfied with Dr. Barabtarlo's care. Dr. Barabtarlo always provided consult notes and was well equipped to do his job as a psychiatrist. He stated that Dr. Barabtarlo was a great addition to the area and was always referred to in good terms.

Dr. A testified that it is very difficult to make psychiatric referrals everywhere in Ontario. In his area, there are six psychiatrists for approximately 150,000 patients. They are specialists with a waiting period of four to six months. Many of the psychiatrists are very selective about the patients they see. Dr. Barabtarlo was always very timely, seeing patients in less than four months and provided excellent feedback. He stated there would be a substantial impact on his practice if Dr. Barabtarlo was suspended, and that it would be detrimental to the community.

On cross-examination, Dr. Windsor stated that he referred one or two patients a month to Dr. Barabtarlo. He was aware of the charges against Dr. Barabtarlo. He knew Dr.

Barabtarlo on a professional level based on his reputation as a physician, not on a personal level or as to his honesty and integrity.

Dr. B

Dr. B is a family physician. He has practised in Newmarket since 1980. He commenced a professional relationship with Dr. Barabtarlo just after Dr. Barabtarlo started his practice in Newmarket in 1989. Dr. B stated that he referred his more difficult psychiatric patients (about fifty percent) to Dr. Barabtarlo, primarily because Dr. Barabtarlo was accessible. He stated that he and his patients were very satisfied with Dr. Barabtarlo's care. He received no negative comments, and Dr. Barabtarlo provided very good consult notes. He stated that Dr. Barabtarlo was a valuable member of the profession with a good reputation. Dr. B also testified that Newmarket was very under-serviced in the area of psychiatry, with six psychiatrists accepting referrals, five of whom are now booking six or seven months in advance and one of whom is away for six weeks. The very urgent are referred to the hospital. Dr. Barabtarlo knows that Dr. B only refers serious cases, and he accommodates more urgent requests. According to Dr. B, there would be a significant negative impact if Dr. Barabtarlo were suspended.

On cross-examination, Dr. B stated that he was not aware of all the details of Dr. Barabtarlo's over billing. He was not a close friend and could not verify Dr. Barabtarlo's honesty and integrity.

Dr. C

Dr. C testified that she is a family physician who has practised in Sutton since July 1988. She has a professional relationship with Dr. Barabtarlo in that she has referred most of her psychiatric patients to him since he has been in the community. These patients are usually in dire need of help. Her patients are pleased with Dr. Barabtarlo and describe him as empathetic. She continues to see the patients as their family physician.

She described Dr. Barabtarlo as an excellent psychiatrist who is available for patients and a valuable member of the community. He is the only remaining psychiatrist who takes referrals, and his waiting time is three to four months. If Dr. Barabtarlo was suspended, there would be more people in trouble and they would probably end up in emergency.

On cross-examination, Dr. C stated that she refers two to three patients a month to Dr. Barabtarlo. She has known Dr. Barabtarlo since 1990 in a professional capacity only and can speak to his honesty and integrity only with regard to his dealings with patients but not otherwise.

PENALTY DECISION AND REASONS

Counsel for the College submitted that doctors are in a position of trust regarding the public and patients. Fraudulent or improper billing is deceitful and results in a false medical record for the patient. This breach of trust is very serious and is not to be tolerated. By improperly billing OHIP, Dr. Barabtarlo was hurting patients and compromising patient care. Further, such billing can have a significant impact on the availability of OHIP funds. This breach of trust took place over a 10 year time period, and likely would have continued had Dr. Barabtarlo not been caught. The magnitude of the improper billing was significant. Dr. Barabtarlo agreed that the true amount was considerably in excess of the \$41,000.00. He was not in a desperate situation, which would precipitate the need for more money. Had this offence been committed in 2002, the College would be seeking revocation. Regarding the letters of support, College counsel indicated that the writers might not have had all the facts before them.

Counsel for Dr. Barabtarlo noted that the conviction was not for a Criminal Code fraud offence. Dr. Barabtarlo signed an Agreed Statement of Facts and has explained the circumstances of the conduct. He distinguished this case from other cases related to Criminal Code fraud and argued that the penalty should not be as severe where the offence involved is a provincial offence. Defence counsel submitted that a 12-month suspension could destroy Dr. Barabtarlo's practice, and a 24-month OHIP ban could cause him to leave the profession. He noted that the MRC has not sought any further recovery. Dr. Barabtarlo's approach to billings was reckless, erroneous and careless. Dr. Barabtarlo otherwise has an unblemished record, is important to the community and is obligated to support two families.

The Committee considered the arguments and weighed the evidence. The Committee noted certain aggravating factors: the duration of the conduct; the monetary amount related to the conviction; and, the fact that considerably more improper billings would have been submitted; the fact that Dr. Barabtarlo admitted to knowingly, falsely billing

OHIP; and, that he was not under any undue stress due to family situations or monetary problems.

The Committee also took into account certain mitigating factors: Dr. Barabtarlo admitted his wrongdoing, accepted responsibility and ceased any further improper billing; Dr. Barabtarlo was convicted of the provincial offence of giving false information, i.e., dishonesty in the health care system, and not a Criminal Code offence; he has paid back the \$41,689.82; he has expressed remorse for his actions; and, he provides a valuable service to the community.

The Committee had particular concerns about preventing Dr. Barabtarlo from serving his patients for an extended period of time. Nevertheless, the profession must be sent a message that improper billing of OHIP is a serious offence, which reflects negatively on the profession, withdraws scarce and necessary funds for patient care from the community and brings into question the honesty and integrity, not only of the doctor in question but of the profession at large. Abuse of OHIP is an abuse of other doctors, patients and the public in that less funds will be available for essential procedures. Doctors must not improperly bill OHIP.

Therefore, the Committee determined that a suspension of Dr. Barabtarlo's certificate of registration would be in order, and that terms, conditions and limitations should be imposed on Dr. Barabtarlo's certificate of registration that will prevent him from directly billing OHIP for a period of time. He also should be reprimanded. The Committee considers that this penalty addresses the principles of both specific and general deterrence and also protects the public. It provides clear notice to the profession that inappropriate billing of OHIP cannot be tolerated. Such improper conduct is a breach of trust, deceitful and amounts to dishonesty in relation to patients, the profession and the public of Ontario.

ORDER

Therefore, the Discipline Committee orders and directs that:

1. Dr. Jack Barabtarlo attend before the panel to be reprimanded, with the fact of the reprimand to be recorded on the register;

2. The Registrar suspend Dr. Barabtarlo's certificate of registration for a period of three (3) months, effective on a date to be fixed by the Registrar, with the period of suspension to commence no later than October 31st, 2003;
3. The Registrar impose as a term, condition and limitation on Dr. Barabtarlo's certificate of registration that Dr. Barabtarlo refrain from directly billing OHIP for a period of six (6) consecutive months commencing from the date the suspension of Dr. Barabtarlo comes into force; and
4. Dr. Barabtarlo pay costs to the College in the amount of \$2,500.00 by October 31st, 2003.