

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Mourcos, this is notice that the Discipline Committee ordered that there shall be a ban on the publication, including broadcasting of the name of the complainant, or any information that could identify the complainant under subsection 47(1) of the *Health Professions Procedural Code* (the Code), which is Schedule 2 to the *Regulated Health Professions Act, 1991*.

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: Ontario (College of Physicians and Surgeons of Ontario) v. Mourcos,
2018 ONCPSD 11**

**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. ASHRAF FEKRY ZAKI MOURCOS

PANEL MEMBERS:
DR. B. LENT (CHAIR)
MAJOR A.H. KHALIFA
DR. M. DAVIE
MR. P. PIELSTICKER
DR. P. CHART

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS A. BLOCK

COUNSEL FOR DR. MOURCOS:
MR. D. PORTER
MR. P. LEIGH

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MS J. MCALEER

Hearing Date: January 15, 2018
Decision Date: January 15, 2018
Release of Written Reasons: March 13, 2018

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 January 15, 2018. At the conclusion of the hearing, the Committee released a written order stating its finding that the member committed an act of professional misconduct and setting out its penalty and costs order with written reasons to follow.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Ashraf Fekry Zaki Mourcos committed an act of professional misconduct:

1. 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 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. Mourcos entered a plea of no contest to the 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.

THE FACTS

The following facts were set out in the Statement of Uncontested Facts, which was filed as an exhibit and presented to the Committee:

BACKGROUND

1. Dr. Ashraf Fekry Zaki Mourcos (“Dr.Mourcos”) is a 51 year-old family physician who received his certificate of registration authorizing independent practice from the College of Physicians and Surgeons of Ontario (the “College”) on May 28, 2001.
2. At the relevant time, Dr. Mourcos practised family medicine in his clinic in Kitchener, Ontario.

**DISGRACEFUL, DISHONOURABLE AND UNPROFESSIONAL CONDUCT
REGARDING MS A**

3. Ms A commenced employment for Dr. Mourcos as medical receptionist. She was in her early thirties at the time. She is married. Her job involved answering telephones, filing, booking appointments, collecting urine samples and taking patients to examination rooms.
4. Several months after commencing her employment, after the last patient for the day had left the office, Ms A and Dr. Mourcos engaged in conversation. They were alone in the office at the time. It had been a very busy day, with several patient appointments. Ms A commented that it had been a rough day.
5. Dr. Mourcos responded that Ms A looked tense. She said “Yeah” and was rubbing her neck and shoulders due to upper back pain. He offered to give Ms A a massage.
6. Dr. Mourcos had offered massages on earlier occasions, and had massaged the back of her neck while she sat at her desk working. On those occasions, Ms A agreed to the massage and when Ms A asked Dr. Mourcos to stop, he stopped.
7. On that day, Ms A declined Dr. Mourcos’ offer. She told him she did not need a massage.

8. Dr. Mourcos persisted, telling her that he was taking classes in massage therapy, and that this would be good practice for him. Ms A gave in and agreed to the massage.
9. Dr. Mourcos stood behind Ms A at her desk, and started rubbing her shoulders for about a minute. He told her he couldn't massage her in the reception area and asked her to go into an examination room.
10. Ms A went into the examination room, and sat on a stool. Dr. Mourcos had gone into his office briefly, and unbeknownst to Ms A at the time, he locked the main entrance to the office.
11. Dr. Mourcos entered the examination room and told Ms A that he could give her a better massage if she lay down. He asked Ms A to lie on the examination table.
12. Ms A lay on the examination table face down. Dr. Mourcos then commenced massaging Ms A's back, over top of her shirt. Ms A was wearing scrubs at the time.
13. Dr. Mourcos then inserted his hands underneath her shirt. Ms A did not object to this touching, as she felt it was like a regular massage.
14. Dr. Mourcos began touching her lower back and moving his hands down her back towards the waistband of her pants.
15. Ms A felt Dr. Mourcos slip his hand underneath the waistband of her pants and move his hand towards her right hip. He asked if he could massage under her pants and she said "no". Dr. Mourcos then moved his hand upwards.
16. Dr. Mourcos continued to massage Ms A's back, under her shirt for about a minute.
17. Dr. Mourcos then moved his hands towards Ms A's mid-back and unclasped her bra. Ms A did not realize at the time he had undone her bra.

18. Without warning or consent, Dr. Mourcos moved his right hand toward her right breast, placing his fingers on the side and upper part of her right breast for a couple of seconds.
19. Ms A sat up quickly, and ended the massage. At that point, Ms A realized that her bra was undone. She struggled to do it up.
20. Dr. Mourcos stood at the doorway, and told her everything was “okay”.
21. Dr. Mourcos asked if he could help her with her bra. Ms A, in shock, did not respond. Dr. Mourcos inserted his hands under her shirt, and helped her do up her bra.
22. As she moved towards the door to leave the exam room, Dr. Mourcos stood at the doorway and repeated “it’s okay”.
23. Dr. Mourcos asked Ms A to kiss him. Ms A said no. He leaned in to kiss her, but Ms A turned her head, and he ended up kissing her on the cheek. He stepped back from the door so she could leave.
24. Ms A left the exam room and returned to her desk in the reception area.
25. Shortly thereafter, Dr. Mourcos engaged her in conversation in the reception area. He asked her about her marriage and whether she had engaged in sexual relations with other people.
26. The conversation ended when the phone rang, and Ms A attended to the call.
27. At that time, Dr. Mourcos returned to his office. He then unlocked the main door to the office.
28. Ms A finished her duties for the day and left the office. She was upset about what had occurred. She reported what had occurred to a family member, and then contacted police

that evening. She did not return to work.

PLEA OF NO CONTEST

29. Dr. Mourcos pleads no contest to the facts as set out in paragraphs 1-28 above and does not contest for the purposes of College proceedings, that based on these facts, he engaged in professional misconduct, in that:

- (a) he engaged in an act or omission relevant to the practise 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, made under the *Medicine Act, 1991* (“O/Reg. 856/93”)

RULE 3.02 OF THE DISCIPLINE COMMITTEE’S RULES OF PROCEDURE

Rule 3.02 of the Discipline Committee’s Rules of Procedure states as follows:

3.02(1) Where a member enters a plea of no contest to an allegation, the member consents to the following:

- (a) that the Discipline Committee can accept as correct the facts alleged against the member on that allegation for the purposes of College proceedings only;
- (b) that the Discipline Committee can accept that those facts constitute professional misconduct or incompetence or both for the purposes of College proceedings only; and
- (c) that the Discipline Committee can dispose of the issue of what finding ought to be made without hearing evidence.

FINDING

The Committee accepted as correct all of the facts set out in the Statement of Uncontested Facts. Having regard to these facts, the Committee found that Dr. Mourcos 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.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for Dr. Mourcos made a joint submission as to an appropriate penalty and costs order.

The proposed penalty and costs order, which the Committee accepted on the date of the hearing, includes:

1. a six-month suspension of Dr. Mourcos' certificate of registration;
2. a reprimand;
3. terms, conditions and limitations on Dr. Mourcos' certificate of registration, such that he shall be subject to workplace monitoring in all practice locations by a regulated health professional, approved by the College, for a minimum of two years. The specific details of the monitoring are outlined in the order;
4. the cost of a one day hearing at the rate of \$5,500.00, payable to the College within 30 days.

The Committee is well aware of the Supreme Court of Canada decision in *R v. Anthony Cook* (2016), which states that when adversarial parties propose a joint submission as to penalty, it should be accepted, unless to do so would bring the administration of justice into disrepute, or is otherwise contrary to the public interest.

The Discipline Committee must ensure that the jointly proposed penalty satisfies the guiding penalty principles, including the paramount purpose of public protection. The penalty should express the profession's abhorrence of the physician's behaviour and serve to maintain public confidence in the integrity of the profession and the College's ability to regulate the profession in the public interest. The penalty must send a strong message of specific deterrence to the member,

and general deterrence to the profession. Finally, in as far as is possible, the penalty should serve to rehabilitate the member where appropriate.

Case law can offer some guidance to the Committee, but the Committee is not bound by its prior decisions. The parties provided the Committee with a book of authorities of similar cases dealing with physicians whose professional misconduct included professional boundary violations and disruptive behaviour with coworkers to illustrate that the proposed penalty is reasonable and appropriate in the circumstances of this case.

The Committee notes that the proposed penalty takes into account present day societal concerns with respect to this type of professional misconduct. All employees are entitled to work in an environment that is free from harassment. Dr. Mourcos' professional misconduct was indeed very serious and demonstrated a significant lack of judgement. He exploited his position of power over a new young vulnerable employee. Today, there is an increasing sense in society that the public will no longer turn a blind eye and tolerate this sort of exploitation in the workplace.

There is always a power imbalance between physicians and their employees. It is the physician's responsibility to respect and maintain the boundaries and lead by example. Further, misconduct in the workplace is disruptive and has the potential to affect patient care. Indeed, as noted in the Agreed Statement of Facts, Ms A did not return to work after the incident. Sexual harassment can affect everyone in the workplace, the healthcare system and ultimately the professional as a whole.

A six-month suspension of Dr. Mourcos' certificate of registration sends a very strong message to the profession that boundary violations of this nature are completely unacceptable and will not be tolerated.

The Committee acknowledges that this is a first appearance for Dr. Mourcos before the Discipline Committee. He has no prior discipline history. The plea of no contest and joint submission as to penalty has spared the complainant from testifying at a contested hearing. In addition, Dr. Mourcos voluntarily attended a boundaries course and recently underwent an

individualized preceptorship in ethics and professionalism. The Committee reviewed the report of the preceptor, indicating favourable findings. These are all mitigating factors. Further, these actions of Dr. Mourcos' demonstrate an element of insight into his professional misconduct and serve as evidence of his willingness for remediation. As well, the Committee reviewed a letter from his long-time employee, whom Ms A was replacing while the employee was on leave. She described Dr. Mourcos as 'a man of excellent character and behaviour.' There was no evidence before the Committee to indicate this is a pattern, but rather a single incident of misconduct.

The Committee agreed with the imposition of rigorous terms, conditions and limitations on Dr. Mourcos' certificate of registration, including the minimum of two years of monitoring of Dr. Mourcos' practice as outlined in the order. All new staff at all locations where Dr. Mourcos works will be made aware of this discipline finding and penalty; they will not be hidden or buried. This will help to ensure Dr. Mourcos' workplace misconduct is not repeated.

Costs

With respect to the costs order, the Committee has the discretion to award costs at the College's tariff rate in appropriate cases. The Committee is of the opinion that in this case, it is appropriate to order that Dr. Mourcos pay costs to the College in the amount of \$5,500.00 to cover the partial costs of a single day of the hearing.

ORDER

The Committee stated its finding of professional misconduct in paragraph 1 of its written order of January 15, 2018. In that order, the Committee ordered and directed on the matter of penalty and costs that:

2. Dr. Mourcos attend before the panel to be reprimanded.
3. the Registrar suspend Dr. Mourcos' certificate of registration for a period of six (6) months, to commence immediately.

4. the Registrar impose the following terms, conditions and limitations on Dr. Mourcos' certificate of registration:

- (i) Dr. Mourcos shall be subject to workplace monitoring in all practice locations by a regulated health professional, approved by the College, who executes an undertaking with the College in the form attached as Appendix "A" (Office Practice) or "B" (Other Practice Locations) (the "Practice Monitor"). Monitoring shall continue for a minimum period of two years in each of Dr. Mourcos' practice locations and shall continue, in the College's sole discretion, if reports are unsatisfactory;
- (ii) The Practice Monitor(s) shall be required to, among other things:
 - (a) provide written reports to the College on a quarterly basis. Such reports are to include information regarding Dr. Mourcos' conduct, behavior, and professionalism including information provided to the Practice Monitor by nurses, medical staff and/or any other staff working directly or indirectly with Dr. Mourcos; and
 - (b) provide immediate reporting to the College if the Practice Monitor has any concerns about Dr. Mourcos' conduct, behavior or professionalism, concerns that people or patients in the workplace may be at risk of harm, or concerns that Dr. Mourcos is not in compliance with the panel's Order;
- (iii) Dr. Mourcos shall provide an executed Appendix "A" and "B" from a College approved Practice Monitor no later than thirty (30) days before he resumes practice following his suspension. If the person who has given an undertaking in the form of Appendix "A" or "B" is unable or unwilling to continue to fulfill its terms, or the College determines the Practice Monitor is no longer acceptable, Dr. Mourcos shall, within twenty (20) days of receiving notice of same, obtain an executed undertaking in the same form from a similarly qualified person who is acceptable to the College and ensure that it is delivered to the College within that time. If Dr. Mourcos is unable to

obtain a Practice Monitor on the terms set out in this Order, he shall cease practicing medicine until such time as he has obtained a Practice Monitor acceptable to the College on the terms set out above;

- (iv) Dr. Mourcos shall provide written notice to the College at least thirty (30) days before seeking privileges, employment or any other position, at any hospital, independent health facility, out-of-hospital premise, facility, or any other location. Dr. Mourcos shall inform the College within ten (10) days of the date he receives notice that he has been granted such privileges, employment or position. Dr. Mourcos shall ensure that he has obtained an undertaking in the form of Appendix “B” from a College-approved regulated health professional who works at that location and shall provide same to the College before commencing work at such location;
- (v) Dr. Mourcos shall ensure that all individuals who work in his office, whether employed by him or not, review this Order and the Statement of Uncontested Facts by no later than January 30, 2018 and review the Decision and Reasons of the Discipline Committee within 15 days of its release.
- (vi) Dr. Mourcos shall ensure that any new individual hired to work in his office shall review this Order, the Statement of Uncontested Facts and the Decision and Reasons of the Discipline Committee prior to commencing work at Dr. Mourcos’ office.
- (vii) Dr. Mourcos shall be responsible for any and all costs associated with implementing the terms of this Order.

5. Dr. Mourcos to pay the College costs in the amount of \$5,500 within thirty (30) days from the date of this Order.

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

APPENDIX "A"

**TO THE ORDER OF THE DISCIPLINE COMMITTEE DATED JANUARY 15, 2018
(OFFICE PRACTICE- WEST HEIGHTS MEDICAL CLINIC)**

WORKPLACE MONITOR'S UNDERTAKING

**UNDERTAKING OF _____ TO THE COLLEGE OF PHYSICIANS
AND SURGEONS OF ONTARIO ("the College")**

1. I acknowledge that I have read the Decision and Reasons of the Discipline Committee, the Statement of Uncontested Facts and the Order of the Discipline Committee dated January 15, 2018 (the "Order") relating to Dr. Mourcos
2. I am a regulated health professional registered with:

(Name of Regulatory Body)

(Registration Number)

3. I agree that upon Dr. Mourcos' return to practice following the completion of his suspension ordered by the Discipline Committee on January 15, 2018, I shall act as practice monitor for Dr. Mourcos ("Practice Monitor").
4. As Practice Monitor, I agree to fulfill monitoring and reporting duties which shall include:
 - (a) interviewing nurses, medical staff and/or any other staff who work directly or indirectly with Dr. Mourcos in his office setting regarding Dr. Mourcos' conduct, behavior and professionalism, as necessary;
 - (b) submitting written reports to the College every three months for a minimum period of two years, with the first report being due three months from Dr. Mourcos' return to practice following his suspension. Such reports shall be in reasonable detail, and shall contain at least the following information:
 - (i) Dr. Mourcos' compliance with the terms of the Order;
 - (ii) any concerns regarding Dr. Mourcos' conduct, behavior and professionalism communicated by staff working directly or indirectly with Dr. Mourcos;
 - (iii) any comments or concerns I otherwise have regarding Dr. Mourcos' conduct, behavior and professionalism; and
 - (iv) any information I believe will assist the College in its monitoring of Dr. Mourcos.

5. I confirm that my activities as a Practice Monitor are within my scope of practice as a _____
 _____ *(insert type of regulated health professional)* or
 that my Regulatory Body has formally approved my participation in these activities.
6. I will immediately notify the College if I have any concerns with Dr. Mourcos' conduct, behavior or professionalism in any way, if I have concerns that people or patients in the workplace may be at risk of harm, or if I have concerns regarding Dr. Mourcos' compliance with the Order.
7. I acknowledge that Dr. Mourcos has consented to my disclosure to the College and to any facility operator of any facility in which Dr. Mourcos' practices, all information relevant to the Decision and Reasons of the Discipline Committee, relevant to the terms of my undertaking and/or relevant to the terms of Dr. Mourcos' Order.
8. I agree to immediately inform the College in writing if I am no longer able to monitor Dr. Mourcos' conduct, behavior and professionalism or to continue reporting to the College regarding same, or if I otherwise cannot fulfill the terms of my undertaking.
9. I acknowledge and understand that the practice monitoring shall continue for a minimum period of two (2) years and will not cease until I am so notified by the College.

Dated at _____, this _____ day of _____, 2018.

Witness (Print Name)

Witness (Signature)

APPENDIX “B”

**TO THE ORDER OF THE DISCIPLINE COMMITTEE DATED JANUARY 15, 2018
(ALL OTHER PRACTICE LOCATIONS/FACILITIES)**

WORKPLACE MONITOR’S UNDERTAKING

**UNDERTAKING OF _____ TO THE COLLEGE OF PHYSICIANS
AND SURGEONS OF ONTARIO (“the College”)**

10. I acknowledge that I have read the Decision and Reasons of the Discipline Committee, the Statement of Uncontested Facts and the Order of the Discipline Committee dated January 15, 2018 (the “Order”) relating to Dr. Mourcos
11. I acknowledge that I work with Dr. Mourcos at:
(*specify address*)

12. I am a regulated health professional registered with:

(*Name of Regulatory Body*) (*Registration Number*)
13. I agree that upon Dr. Mourcos’ return to practice following the completion of his suspension ordered by the Discipline Committee on January 15, 2018, I shall act as practice monitor for Dr. Mourcos (“Practice Monitor”).
14. As Practice Monitor, I agree to fulfill monitoring and reporting duties which shall include:
 - (c) interviewing nurses, medical staff and/or any other staff who work directly or indirectly with Dr. Mourcos at _____
(*specify address*)
regarding Dr. Mourcos’ conduct, behavior and professionalism, as necessary;
 - (d) submitting written reports to the College every three months for a minimum period of two years, with the first report being due three months from Dr. Mourcos’ return to practice following his suspension. Such reports shall be in reasonable detail, and shall contain at least the following information:
 - (i) Dr. Mourcos’ compliance with the terms of the Order;
 - (ii) any concerns regarding Dr. Mourcos’ conduct, behavior and professionalism

communicated by staff working directly or indirectly with Dr. Mourcos;

- (iii) any comments or concerns I otherwise have regarding Dr. Mourcos' conduct, behavior and professionalism; and
 - (iv) any information I believe will assist the College in its monitoring of Dr. Mourcos.
15. I confirm that my activities as a Practice Monitor are within my scope of practice as a _____
 _____ *(insert type of regulated health professional)* or
 that my Regulatory Body has formally approved my participation in these activities.
 16. I will immediately notify the College if I have any concerns with Dr. Mourcos' conduct, behavior or professionalism in any way, if I have concerns that people or patients in the workplace may be at risk of harm, or if I have concerns regarding Dr. Mourcos' compliance with the Order.
 17. I acknowledge that Dr. Mourcos has consented to my disclosure to the College and to any facility operator of any facility in which Dr. Mourcos' practices, all information relevant to the Decision and Reasons of the Discipline Committee, relevant to the terms of my undertaking and/or relevant for the purposes of monitoring Dr. Mourcos' compliance with the Order.
 18. I agree to immediately inform the College in writing if I am no longer able to monitor Dr. Mourcos' conduct, behavior and professionalism or to continue reporting to the College regarding same, or if I otherwise cannot fulfill the terms of my undertaking.
 19. I acknowledge and understand that the practice monitoring shall continue for a minimum period of two (2) years and will not cease until I am so notified by the College.

Dated at _____, this _____ day of _____, 2018.

Witness (Print Name)

Witness (Signature)

TEXT of PUBLIC REPRIMAND
Delivered January 15, 2018
in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
and
DR. ASHRAF FEKRY ZAKI MOURCOS

Dr. Mourcos,

The Committee is disgusted and dismayed to hear about the incident with your employee, Ms A.

The Committee considers your misconduct reprehensible.

You persisted in your efforts to provide a massage, even though Ms A had declined, and you locked the office door.

Your decision to touch her under her clothes, unfasten her bra, place your fingers on the side of her breast, and kiss her demonstrates your clear sexual intent.

It is always the doctor's responsibility to establish respectful boundaries in relationships with staff, as well as with patients.

This is not an official transcript