

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Wameed Ateyah, this is notice that the Discipline Committee ordered that no person shall publish, including broadcasting, the identity of the patients referred to and any information that could identify those patients, whether contained in exhibits or submissions 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*, 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. Ateyah*, 2021 ONCPSD 29

Date: June 18, 2021

BETWEEN:

College of Physicians and Surgeons of Ontario

- and -

Dr. Wameed Ateyah

FINDING AND PENALTY REASONS

Heard: April 5, 2021, by videoconference

Panel:

Mr. J. Paul Malette, Q.C. (chair)
Dr. Pamela Chart
Dr. Stephen Hucker
Dr. John Rapin
Ms. Linda Robbins

Appearances:

Ms. Simmy Dhamrait, for the College
Mr. Adam Patenaude, for Dr. Wameed Ateyah
Ms. Zohar Levy, Independent Legal Counsel to the Discipline Committee

Introduction

- [1] Dr. Ateyah's misconduct involved two young female patients from his family practice with whom he had inappropriate communications electronically and outside the office. After those patients complained to the College, Dr. Ateyah communicated with their respective family members, who were also his patients, revealing their young relatives' medical information and trying to persuade them to get the young women to retract their complaints.
- [2] At the time of his contact with these patients, Dr. Ateyah had already signed an undertaking with the College to see female patients of any age only in the presence of a practice monitor. No chaperone was present during his contact with one of the two patients and the monitor contacted the College with concerns about his practice and that he was seeing patients without a monitor present.
- [3] After considering the evidence as presented in an uncontested statement of facts on liability and an agreed statement of facts on penalty and hearing the parties' submissions, we found Dr. Ateyah's conduct amounted to professional misconduct. In accordance with the parties' joint submission, we ordered a reprimand, suspension of Dr. Ateyah's certificate of registration for 12 months and we placed terms, conditions and limitations on his certificate of registration. We also ordered Dr. Ateyah to pay costs of this hearing. These are the reasons for our decision.

Facts and Finding on Allegations

- [4] The following summary is drawn from facts that were set out in a Statement of Uncontested Facts on Liability.
- [5] Dr. Ateyah is a 50-year-old family physician who received his certificate of registration authorizing independent practice from the College of Physicians and Surgeons of Ontario on January 12, 2006.
- [6] Dr. Ateyah is currently not practising medicine.

Disgraceful, Dishonourable or Unprofessional Conduct: Patient A

- [7] Beginning in approximately May 2018, Dr. Ateyah was Patient A's family physician and she attended appointments with him until he moved his practice in October 2018. Some of her family members were also his patients.
- [8] In approximately March 2019, Patient A, then in her early 20s, began experiencing painful symptoms in her genital area. A family member told Patient A that Dr. Ateyah was out of the country and suggested that she contact him on Facebook. Patient A sent Dr. Ateyah a message on Facebook Messenger telling him about her symptoms. Dr. Ateyah immediately responded with "OMG."
- [9] The communications on Facebook Messenger continued with Dr. Ateyah telling Patient A that he was in the United States and would not be returning until the following week. He said that he did not want her to wait for him to return. He then asked her whether the area was "red." She replied, "No, but it's swollen." He then asked Patient A, "Sorry to ask you to do this. Can you send me a picture of the labia opened? I want to see the inside." He told Patient A that he would delete the photographs. Patient A sent the requested photographs to Dr. Ateyah by Facebook Messenger.
- [10] Dr. Ateyah told Patient A what he thought was wrong. He called in a prescription to her local pharmacy and provided Patient A with instructions on how to take the medication. He told her that he would refer her to a specialist and asked that she retain the photo as he had "deleted" it. Dr. Ateyah then messaged Patient A and said, "Contact me any time. You know how much I adore you."
- [11] Dr. Ateyah did not document Patient A's concerns, the photograph or the Facebook Messenger communications of March 15, 2019 in her patient record.
- [12] A few days later, Dr. Ateyah messaged Patient A on Facebook Messenger to ask how she was feeling. She replied that she was improving and Dr. Ateyah responded, "Good. I didn't hear from you. I was worried. Best of luck and later on we will talk about how to prevent this from happening. Take care." Patient A did not respond. She felt odd and uncomfortable as a result of the communications with Dr. Ateyah and she never returned to see him as a patient.

[13] Patient A contacted the College with her concerns, making a complaint in July 2019. Following the complaint, Dr. Ateyah contacted a family member of Patient A, stating that he was “sad” and “dumbfounded” that Patient A had made a complaint against him as he was only trying to help her. In his communication with Patient A’s family member, Dr. Ateyah disclosed Patient A’s personal health information without her consent. He was hoping that Patient A’s family member would convince her to retract the complaint.

Failure to Maintain the Standard of Practice of the Profession: Patient A

[14] On December 12, 2019, the College’s Inquiries, Complaints and Reports Committee (ICRC) approved an Appointment of Investigators to investigate Dr. Ateyah’s care of Patient A.

[15] The College retained family physician Dr. Verbora to provide an independent opinion. In his report dated December 14, 2019, Dr. Verbora indicated that the use of social media for this type of work is not the standard of practice. Dr. Verbora said it would have been reasonable to notify Patient A that the College discourages/prohibits the use of such technology for assessing patients and to refer her for an in-person assessment. Dr. Verbora further noted that Dr. Ateyah failed to document his contacts with the patient in her medical record and he therefore did not meet the standard of practice. Dr. Verbora noted that it would be inappropriate to store medical records on any platform not in compliance with the *Personal Health Information Protection Act* (PHIPA). Dr. Verbora indicated that any attempt by Dr. Ateyah to contact Patient A’s family member would be a breach of Patient A’s right to privacy and confidentiality. There was no evidence that Dr. Ateyah had Patient A’s permission to do this. Dr. Verbora noted Dr. Ateyah’s lack of knowledge and judgment with respect to the use of social media platforms for assessing patients and of the relevant College policies. However, Dr. Verbora acknowledged that it was extremely unlikely that this behaviour would lead to significant harm or injury to Patient A but there was a theoretical risk that private “chats” could be hacked or decrypted. Finally, Dr. Verbora noted that while photographs of the areas affected by disease are required to conduct a proper clinical assessment, Facebook Messenger was not the appropriate platform for these photos. Given the additionally sensitive nature of the communication, extra

precautions would need to be taken to ensure that an approved electronic platform was used.

Disgraceful, Dishonourable or Unprofessional Conduct: Patient B

[16] Patient B was a patient of Dr. Ateyah's between approximately 2009, when she was a young child, and 2019. He provided care and treatment for her for various health problems including anxiety and depression. Other family members were also his patients.

[17] In October 2018, Patient B, then in her 20s, attended an appointment with Dr. Ateyah for a routine check-up on a blood test. During the appointment she mentioned that she was enjoying the school she was attending and was feeling "really happy." She said she felt a little lonely at times as she did not have a lot of friends but was "doing okay." Dr. Ateyah examined her, wrote her a prescription and suggested a follow-up in two weeks.

[18] Later that evening, Dr. Ateyah started a series of text messages to Patient B inquiring how she was doing. This was followed by a succession of other texts in which he revealed some information about himself and made remarks about his feelings towards her, e.g., "I can't just think of you like a patient. You are much more than that." Patient B was taken aback and confused by his remarks which went on, "You are a very mature woman and I am impressed about the way you look at things ... [s]o proud of you going through a very hard time and still smiling ... I am your friend so don't say you have no friends ... If you want to talk or you feel alone then send me a message and we can talk or meet."

[19] Patient B replied to Dr. Ateyah's messages and he continued messaging her with statements such as "You are very close to me ... Open to me and forget I am your doctor ... For me you are very very close person ... Rosy cheek girl ... Take care and be happy ... Be in touch." Patient B told Dr. Ateyah that she was fine and that he need not worry about her but he tried to continue the messaging which she was feeling uncomfortable with. She terminated the exchange with, "Goodnight sir!" The messaging had lasted about 45 minutes.

[20] The following day Dr. Ateyah left a phone message for Patient B and texted her asking her to call back. She did so to tell him she was fine and he did not need to worry about texting her. Later that day, Dr. Ateyah texted Patient B apologizing if he had made her feel uncomfortable and sent her a picture of his dog with a message telling her what he was doing. She texted back saying she was uncomfortable and that the communications were “inappropriate between a doctor and patient.” He responded with a further apology and said that he felt the need to talk to someone and to ask her advice. He claimed he had no other intention and was “disappointed at myself that I was not clear. Sorry again.” Although she did not feel comfortable with Dr. Ateyah’s communications, Patient B continued to attend appointments with him as her health was her priority.

[21] Previously, on a few occasions while she was away at school, Patient B had communicated with Dr. Ateyah by text messages strictly about health-related concerns, upcoming appointments and prescriptions.

[22] Following her complaint to the College in July 2019, Dr. Ateyah discussed the matter with Patient B’s family member, who was also his patient, during a medical appointment. During that appointment the doctor disclosed Patient B’s health information without her consent. He showed her letter of complaint and the related text messages to her family member and said that he was very upset about it and did not understand why Patient B had made this complaint about him. Dr Ateyah was hoping that the family member would convince Patient B to retract the complaint.

Contravene a Term, Condition or Limitation on his Certificate of Registration

[23] On May 30, 2017, Dr. Ateyah entered into an undertaking with the College. This was not related to the subject of the current proceedings but it required, among other things, that any professional encounter with female patients of any age take place in the presence of a female practice monitor acceptable to the College. The monitor was to maintain a log of all of Dr. Ateyah’s professional encounters with female patients.

[24] On February 26 and 27, 2019, the College received information from Dr. Ateyah’s former practice monitor that between October 2018 and February 2019 she had

concerns about his practice including that he was conducting professional encounters with female patients without a monitor being present.

[25] On October 8, 2020, the College initiated an investigation into whether Dr. Ateyah had engaged in professional misconduct or is incompetent. That investigation determined that on a number of occasions between October 2018 and February 2019, Dr. Ateyah started and/or conducted professional encounters with female patients without a practice monitor being present.

[26] In October 2018, Patient B attended an appointment alone with Dr. Ateyah for a routine checkup. No intimate examination was conducted but he did not have a practice monitor present. Dr. Ateyah therefore breached a term of his undertaking to the College, which is a limitation on his certificate of registration.

Plea of No Contest

[27] When a member enters a plea of no contest to an allegation, the member agrees that:

- we may accept as correct the facts alleged against the member on that allegation for the purposes of the College proceedings only
- we may accept that those facts constitute professional misconduct or incompetence or both for the purposes of the College proceedings only
- we can dispose of the issue of what finding ought to be made without hearing evidence.

[28] For the purposes of this proceeding, Dr. Ateyah does not contest the facts set out above and further, having regard to all the circumstances, he does not contest that those facts constitute professional misconduct.

Finding

[29] On the basis of the facts set out above, we find that Dr. Ateyah has committed an act of professional misconduct under:

- i. 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 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;

ii. paragraph 1(1)2 of O. Reg. 856/93, in that he failed to maintain the standard of practice of the profession; and

iii. paragraph 1(1)1 of O. Reg. 856/93, in that he has contravened a term, condition or limitation on his certificate of registration.

Penalty

Submissions on Penalty

[30] Counsel for the College and counsel for Dr. Ateyah made a joint submission as to an appropriate penalty and costs order.

[31] Although the Committee has discretion to accept or reject a joint submission on penalty, the law provides that the Committee 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.

Evidence on Penalty

[32] We considered an Agreed Statement of Facts on Penalty and have incorporated agreed facts into our analysis of penalty, below.

Penalty principles

[33] Penalty principles we considered were: protection of the public; maintaining the integrity of the profession and 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 medical profession as a whole. Where applicable or appropriate, rehabilitation should be considered. Other principles we considered include denunciation of the misconduct and proportionality.

Aggravating Factors

[34] Several factors contributed to the seriousness of Dr. Ateyah's conduct.

- [35] The misconduct involved two different patients. Dr. Ateyah defied a College undertaking over several months. His conduct had a negative effect on both patients. The first felt so odd and uncomfortable that she never returned to see Dr. Ateyah again. The second also clearly expressed her discomfort with his behaviour and returned to see him only because she was prioritizing her health. Based on the evidence set out above, it appeared to us, and we can infer, that Dr. Ateyah's communications were essentially attempts to groom the women for further, more intimate contacts outside the office.
- [36] The Agreed Statement of Facts on Penalty identified that previous concerns about Dr. Ateyah's communications with patients and professional boundaries resulted in the College providing guidance to him in the past. Specifically, in its decision dated July 2009, the ICRC counselled the doctor about his communications in the context of clinical examinations, following a patient's complaint. Dr. Ateyah was provided with a copy of the College's policy then in effect, *Maintaining Appropriate Boundaries and Preventing Sexual Abuse*. He was provided with a copy of the College's boundaries policy again in 2018. In May 2016, ICRC directed him to complete a Specified Continuing Education or Remediation Program (SCERP), which also included a review of the boundaries policy. Despite these actions by the College, Dr. Ateyah failed to adhere to these policies and change his conduct.
- [37] A prior Discipline Committee finding is normally considered an aggravating factor, although in this case the misconduct in the current proceeding predated the finding in Dr. Ateyah's 2019 discipline hearing. Given that this misconduct occurred after Dr. Ateyah had already been referred to the Discipline Committee for professional misconduct, however, we would have expected Dr. Ateyah to make every effort to ensure that he was abiding by the terms of the undertaking he had signed and was maintaining appropriate communications and conduct towards all of his patients.

Mitigating Factors

- [38] Dr. Ateyah's decision to plead no contest made it unnecessary for the College to call any witnesses. The hearing was originally scheduled for over a week, but as a result of that resolution we were able to hear the matter in a much shorter time thereby saving the College the expense of a full hearing. That is the only mitigating factor here.

Prior Cases

- [39] Although prior Committee decisions are not binding as precedent, we accept as a principle of fairness that, generally, like cases should be treated alike. The prior cases we considered assisted us by providing a guide to the range of penalties imposed for similar misconduct.
- [40] Counsel provided a number of cases in which the Committee found that doctors had engaged in inappropriate conduct with respect to their patients, described below. In those, the penalty ranged between a two-month suspension and a voluntary resignation. Counsel also provided cases in which the doctors inappropriately tried to influence complainants to withdraw their complaints. In those, the penalties were two-to-three-month suspensions. Finally, counsel provided cases relating to breaches of similar undertakings. In those, the penalties ranged from a three-month suspension to a voluntary resignation. Considering the ranges of penalties for conduct similar to that of Dr. Ateyah, the Committee accepts that the jointly submitted penalty is within a reasonable range.
- [41] In *College of Physicians and Surgeons of Ontario v. Parikh*, 2013 ONCPSD 16, the Committee found the doctor had engaged in disgraceful, dishonourable or unprofessional conduct involving boundary violations with one of his patients. He provided her with his cellphone number and used this to contact her. Dr. Ateyah similarly contacted Patient B by cellphone text messages. Dr. Parikh did, of his own accord, take a course about understanding boundaries before his discipline hearing. The Committee accepted a joint submission and also the recommendation for a two-month suspension, which is at the low end of the spectrum of penalties in comparable cases. Dr. Parikh's case is not comparable to Dr. Ateyah's case, given Dr. Ateyah's prior history, breach of undertaking and the fact that Dr. Ateyah's conduct was inappropriate with respect to more than one patient.
- [42] *College of Physicians and Surgeons of Ontario v. LeDuc*, 2018 ONCPSD 59 also involved a finding of disgraceful, dishonourable or unprofessional conduct and failure to maintain the standard of the profession relating to a series of boundary violations. Dr. LeDuc's patient was a teenager whom he contacted using his cellphone to ask if she wanted to meet and talk with him. In his communications he disclosed personal information to her. As well, he drove the patient home and

several times met her outside his clinic for coffee. Like Dr. Parikh, Dr. LeDuc completed a boundaries course prior to the decision on penalty. A six-month suspension was ordered. Again, on the facts of the case before us, Dr. Ateyah's conduct is more egregious than that of Dr. LeDuc for the reasons set out above.

[43] The penalty in *College of Physicians and Surgeons of Ontario v. Muirhead*, 2014 ONCPSD 9 included an 18-month suspension of the certificate of registration. This was at the upper end of penalties in similar cases and was more serious than the case here as many more patients and far more serious boundary violations were involved. Dr. Muirhead sent emails to patients and, as with Dr. Ateyah, the language used was more characteristic of a friendship than of a professional relationship.

[44] In *College of Physicians and Surgeons of Ontario v. Hardwick*, 2019 ONCPSD 21, the physician made inappropriate communications to a young, single patient but he had no previous disciplinary history with the College. The Committee accepted his resignation, which represents the upper range of penalty in boundary and inappropriate communication cases.

[45] *College of Physicians and Surgeons of Ontario v. Joshi*, 2004 ONCPSD 12 also involved disgraceful, dishonourable or unprofessional conduct as well as attempts by the physician to interfere with a College complaint and investigation which involved the doctor's husband, who was also a physician. Dr. Joshi spoke to an acquaintance of the patient in an attempt to address a complaint made against her husband and she also spoke directly to the patient. Dr. Joshi agreed to the patient's demand for money and the patient agreed to withdraw the complaint, and initially did so, but later reinstated the complaint. Dr. Joshi's actions on behalf of her husband resulted in a three-month suspension of her certificate of registration.

[46] In *College of Physicians and Surgeons of Ontario v. Auchinachie*, 2008 ONCPSD 6, the College received a complaint from a family member of one of the doctor's patients regarding his care of the patient. During the investigation into the matter, the doctor asked the very elderly patient to sign a letter he had drafted asserting her satisfaction with his care and asking to withdraw the complaint and the patient did so. The Committee found the physician had engaged in disgraceful,

dishonourable or unprofessional conduct and ordered suspension of his certificate of registration for two months.

[47] *College of Physicians and Surgeons of Ontario v. Li*, 2007 ONCPSD 24 was one of three cases the Committee reviewed in which the doctors, like Dr. Ateyah, breached their undertakings to the College. Dr. Li failed to have a College approved monitor for all his female patients. His certificate of registration was suspended for three months.

[48] In *College of Physicians and Surgeons of Ontario v. Noriega*, 2013 ONCPSD 26, the physician also breached his undertaking to the College which required him to post signage and to have a College-approved chaperone for all encounters with female patients. He was aware that there were other serious allegations against him and that the College was concerned about the safety of his female patients. The doctor deliberately disregarded the clear and unambiguously worded undertaking, as did Dr. Ateyah, resulting in a penalty of six months' suspension of his certificate of registration.

[49] In *College of Physicians and Surgeons of Ontario v. Singh*, 2020 ONCPSD 30, Dr. Singh, like Dr. Ateyah, breached an undertaking to the College that he would have a chaperone present for all his female patient encounters. The Committee accepted the doctor's resignation and ordered a reprimand and costs.

Conclusion

[50] Protection of the public is of paramount importance. Penalties must demonstrate to both the public and the profession as a whole that the College will enforce regulations enacted and procedures adopted for the public's protection and that it will apply a sanction when there is non-compliance.

[51] We were deeply concerned that Dr. Ateyah disregarded the warnings given on two previous occasions regarding his need to maintain professional boundaries. We were also concerned that he had signed an undertaking to have a chaperone for all his contacts with female patients whatever their age and then breached it. We deliberated very carefully whether we could support the joint submission.

[52] In accepting the joint submission, we were persuaded through our review of prior cases that the jointly submitted penalty is within a reasonable range and is appropriate.

[53] A 12-month suspension will serve as a specific deterrent to Dr Ateyah, a general deterrent to the profession and will protect the public while maintaining the integrity of the profession and the College's ability to regulate in the public interest. If Dr. Ateyah returns to practice he will still be subject to the continuing terms and conditions and limitations of the undertaking he entered into on 2007 in that his practice will continue to be monitored. This will further ensure that the public is protected and that the integrity of the profession is maintained. We note, further, that even had the Committee revoked Dr. Ateyah's licence, he could have applied for reinstatement after 12 months and as such, the 12-month suspension and continued terms will provide protection to the public.

Costs

[54] The parties' agreement on facts meant that a more costly contested hearing was averted and the amount jointly recommended is commensurate with awards in previous and broadly similar cases. Therefore, we accepted the joint proposal for an order of \$6,000 in costs as appropriate.

Order

[55] In our order issued on April 5, 2021, we ordered and directed as follows, with respect to penalty and costs:

- Dr. Ateyah is to attend before the panel to be reprimanded.
- The Committee directs the Registrar to suspend Dr. Ateyah's certificate of registration for a period of twelve (12) months, commencing 12:01 a.m. on April 6, 2021.
- The Committee directs the Registrar to impose the following terms, conditions and limitations on Dr. Ateyah's certificate of registration effective 12:01 am on April 6, 2021:

- i. Dr. Ateyah, prior to his return to practice and at his own expense, shall participate in and successfully complete individualized instruction in professionalism and ethics, satisfactory to the College, with an instructor approved by the College, who shall provide a summative report to the College including whether Dr. Ateyah has successfully completed this instruction.
- Dr. Ateyah is to pay costs to the College in the amount of \$6,000 within sixty (60) days of the date of this Order.

Reprimand

[56] At the conclusion of the hearing, Dr. Ateyah waived his right to an appeal under subsection 70(1) of the Code and we administered the public reprimand via videoconference.

In the matter of:

COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. WAMEED ATEYAH

Reprimand delivered in person by the Discipline Committee on April 5, 2021

(Not an official transcript)

Dr. Ateyah, what is most disturbing about your behaviour is that you have had a number of opportunities to rectify how you interact with young female patients, to learn from your mistakes, yet you continued to put your personal gratification ahead of your patients' well-being. You have compounded your misconduct with Patients A and B by breaching doctor-patient confidentiality and by attempting to have Patients A and B withdraw their complaints to the College.

In so doing, you were putting your self-interest, your self-preservation ahead of your patients' interest. You seem to think that as a physician, it is always about what you want, not what your patients need. There are also questions of governability in this instance. You entered into an undertaking with the College yet chose to ignore what you had agreed to do.

You would do well during your suspension to reflect on what a certificate of practice of medicine in Ontario means. It is not a licence to conduct yourself in any way you choose. It is not a licence for self-indulgence. A licence to practice to medicine is a privilege, not a right. You, sir, have abused this privilege in many, many ways.