

ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

Citation: *College of Physicians and Surgeons of Ontario v. Israel*, 2024 ONPSDT 29

Date: December 4, 2024

Tribunal File No.: 24-002

BETWEEN:

College of Physicians and Surgeons of Ontario

College

- and -

Koma Diryawish Israel

Registrant

FINDING AND PENALTY REASONS

Heard: November 6, 2024, by videoconference

Panel:

Raj Anand (panel chair)
Lucy Becker (public)
Markus de Domenico (public)
Janet van Vlymen (physician)
Susanna Yanivker (physician)

Appearances:

Simmy Dhamrait-Sohi, for the College
Lisa Constantine, for the registrant

RESTRICTION ON PUBLICATION

Pursuant to Rule 2.2.2 of the OPSDT Rules of Procedure and ss. 45-47 of the Health Professions Procedural Code, no one shall publish or broadcast the names of patients or any information that could identify patients or disclose patients' personal health information or health records referred to at a hearing or in any documents filed with the Tribunal. There may be significant fines for breaching this restriction.

Introduction

[1] Since 2000, the registrant Dr. Koma Diryawish Israel has held a certificate of registration authorizing independent practice from the College of Physicians and Surgeons of Ontario.

[2] Between 2017 and 2021, he engaged in sexual abuse of two patients, as well as several related forms of professional misconduct.

[3] He repeatedly made comments of a sexual nature to Patient A, who was also his employee for most of this period. On several occasions he grabbed, kissed, rubbed, and held her, and attempted to pull her pants down. She audio recorded some of these incidents, and ultimately she quit her job and terminated the physician-patient relationship with Dr. Israel in January 2020.

[4] The registrant was then arrested and charged with sexual assault. On October 18, 2022, he pleaded guilty to common assault and received a suspended sentence.

[5] Meanwhile, Dr. Israel saw Patient B three times in 2021, and on September 2, 2021, he engaged in inappropriate touching and remarks of a sexual nature with her.

[6] On July 7, 2022, Dr. Israel gave an undertaking to the College that he would not see patients except in the presence and observation of a College approved practice monitor. He breached this undertaking over 110 times between August 2022 and April 2024.

[7] Effective May 1, 2024, Dr. Israel's certificate of registration was suspended by the Inquiries, Complaints and Reports Committee.

[8] When this referral reached hearing on November 6, 2024, the registrant did not contest a statement of the facts. Based on this evidence, we accepted the College's position, also uncontested, that Dr. Israel had engaged in sexual abuse and four other particulars of professional misconduct, all of them stemming from Dr. Israel's inappropriate physical and verbal conduct of a sexual nature with these two patients. We also accepted the parties' joint submission on penalty, which included mandatory revocation of his certificate of registration, costs in favour of the College, and payments for therapy and counselling for the patients.

[9] The mandatory penalty also included a reprimand. Dr. Israel did not attend the hearing, and when we inquired, his counsel said she could not arrange for his virtual participation to receive the reprimand that day or on another date that we would set on consent. We nevertheless delivered the reprimand, after the registrant's counsel assured us that the video recording would reach Dr. Israel.

Professional Misconduct

[10] We have summarized the evidence under headings that indicate the corresponding allegations of professional misconduct in the notice of hearing that we accepted as proven.

Patient A: Sexual Abuse and Disgraceful, Dishonourable or Unprofessional Conduct

[11] Between May 2016 and January 2020, Patient A was a patient of Dr. Israel. Between October 2017 and January 2020, Patient A was also employed by Dr. Israel in his medical practice.

[12] During Patient A's employment with Dr. Israel, he regularly commented on Patient A's body and appearance. Patient A was uncomfortable with this.

[13] On June 7, 2019, while Patient A was working at the medical practice, Dr. Israel called to tell her he was coming to the office to pick up some paperwork. He told her to come to the back door, which Patient A thought was unusual.

[14] After they engaged in some conversation, Dr. Israel pinned Patient A against a wall and put his hands around her body. He held both of her hands, preventing her from leaving. He pulled down his pants and tried to pull down Patient A's pants. Patient A repeatedly told him to stop. He began kissing her and told her he missed her. She managed to push him away and free herself.

[15] In early November 2019, while Patient A was working in the filing room of the medical practice, Dr. Israel entered the room behind her. He told her he missed her. Dr. Israel pushed Patient A, grabbed her, and started kissing her on the neck, face and chest. He held her hands down. She begged him to let her go.

[16] On November 19, 2019, Patient A was working at the front desk of the medical practice. Dr. Israel grabbed Patient A's hand and told her that he could palm read. He

told her that a line on her palm meant that she loved sex a lot. Patient A did not respond, and she walked away.

[17] The following day, while Patient A was in an empty clinic room, Dr. Israel approached her from behind and grabbed her. He started kissing her and attempted to push her down. Patient A begged him to stop and managed to run away.

[18] On November 22, 2019, Patient A was feeling sick while she was working. Dr. Israel told her he would examine her. They went into an examination room, where he examined her mouth, throat and ears, and told her it was a viral cold. He asked whether she had any concerns with her hips. She told him she did not.

[19] The registrant told her he thought there was something wrong. He engaged in touching of a sexual nature of Patient A's body, including rubbing her vagina with his hand over her pants. He asked her if she felt anything. Patient A hit Dr. Israel's hand and left the room.

[20] On December 3, 2019, Patient A was cleaning an examination room. Dr. Israel came behind her and told her he missed her. Patient A told him to leave her alone. He pushed her against a wall, held her hands down, and started singing to her. He began kissing her and tried to pull her pants down. Patient A told Dr. Israel to stop. He continued to kiss her. She eventually pushed him away and left the room.

[21] A few days later, while Patient A was cleaning one of the exam rooms, Dr. Israel came in and pulled his pants down. He told her he wanted to show her how "big it is", referring to his penis. He asked her to look at his penis and made a sexual remark to Patient A about having sex with him. Patient A asked him to leave her alone. Dr. Israel left the room.

[22] On January 30, 2020, Dr. Israel approached Patient A while she was working and told her he missed kissing and hugging her. Patient A got upset. She quit her job the following day.

[23] Patient A audio recorded her interactions with Dr. Israel on June 7, November 19, and December 3, 2019. Dr. Israel was unaware that Patient A was recording the interactions. On the recordings, Dr. Israel makes remarks of a sexual nature to Patient A. He comments on her body and appearance, tells her about his own sexual encounter with another woman, and says he believes Patient A was a sex expert.

Patient A: Offence Relevant to Dr. Israel's Suitability to Practice; Disgraceful, Dishonourable, or Unprofessional Conduct; and Conduct Unbecoming

[24] On April 16, 2020, Dr. Israel was arrested and charged by the Hamilton Police Service under s. 271 of the *Criminal Code*, SC 1985, c. C-46, for sexual assault against Patient A.

[25] When the case came before the Ontario Court of Justice on October 18, 2022, the incidents of June and November 2019 and January 2020 formed the basis of the facts read in by the Crown. Dr. Israel pleaded guilty to the lesser included offence of assault under s. 266 of the *Criminal Code*, and he received a suspended sentence with two years' probation.

Patient B: Sexual Abuse of a Patient; and Disgraceful, Dishonourable or Unprofessional Conduct

[26] Patient B saw Dr. Israel three times between July and September 2021.

[27] On September 2, 2021, Patient B attended Dr. Israel's office to ask the registrant to fill out some medical forms. During the appointment, Patient B told Dr. Israel that she had been experiencing some chest pain and pointed out the area of concern. Dr. Israel told her he needed to conduct an examination.

[28] The registrant asked Patient B to stand up and lift up her shirt, which she did. Without explanation or consent, Dr. Israel moved Patient B's bra, exposing her breasts. He engaged in touching of a sexual nature of Patient B by squeezing Patient B's breast with his hand. He did not examine the area of her body that she had pointed out to him.

[29] Patient B was in shock and in pain as a result of Dr. Israel's conduct.

[30] Later that same day, Patient B saw Dr. Israel smoking outside in the parking lot as she was leaving. Dr. Israel engaged in sexually inappropriate behaviour towards Patient B by making remarks of a sexual nature.

[31] Patient B was very upset and immediately reported the incident to a friend, who contacted the police on behalf of Patient B.

Breach of July 7, 2022 Undertaking: Disgraceful, Dishonorable or Unprofessional Conduct; and Contravention of a Term, Condition or Limitation on the Registrant's Certificate of Registration

[32] On July 7, 2022, while the two public complaints were being investigated by the College, Dr. Israel entered into an interim undertaking, in lieu of the ICRC making an Order under s. 25.4 of the Health Professions Procedural Code, Schedule 2 to the *Regulated Health Professions Act, 1991*, SO 1991, c. 18 ("Code"), imposing terms, conditions and limitations on his certificate of registration. Among other things, the undertaking required that Dr. Israel not engage in any professional encounters, in person or otherwise, with patients of any age, unless in the continuous presence and under the continuous observation of a College approved practice monitor.

[33] Between August 5, 2022 and April 10, 2024, Dr. Israel breached the terms, conditions and limitations of his undertaking by engaging in over 110 professional encounters with patients without the presence of a practice monitor.

[34] The undertaking required the registrant to post a clearly visible sign announcing the exact terms of his undertaking and to inform his patients. The evidence did not disclose whether Dr. Israel had this sign in place during this period.

Conclusion Regarding Allegations of Professional Misconduct in the Notice of Hearing

[35] Dr. Israel did not contest, and we find, that under s. 51(1)(b.1) of the Code, he engaged in sexual abuse of both patients, which is defined in s. 1(3) of the Code as touching of a sexual nature, of the patient by the registrant, or behaviour or remarks of a sexual nature by the registrant towards the patient.

[36] With respect to Patient A, there were many instances of touching of a sexual nature by the registrant, including:

- hugging her,
- grabbing her,
- rubbing her vagina,
- holding her hands to prevent her from getting away,
- pushing and pinning her against a wall,

- putting his hands around her body,
- trying to pull down her pants,
- kissing her face, neck and chest,

[37] Dr. Israel's behaviour or remarks of a sexual nature included:

- his comments to her about loving sex,
- his statements about having sex with him,
- asking whether she felt anything when he was rubbing her,
- remarks about "how big" his penis was,
- pulling down his pants,
- telling her how he missed kissing and hugging her,
- telling her about his sexual encounter with another woman, and
- his comments about Patient A being a sex expert.

[38] With respect to Patient B, the registrant removed her bra without explanation or consent, and squeezed her breast without examining the area she had pointed out to him. Later he made remarks of a sexual nature to her.

[39] In the case of both patients, Dr. Israel's touching, behaviour and remarks were not of a clinical nature appropriate to the service provided, within the meaning of s. 1(4) of the Code.

[40] All of the conduct described above by Dr. Israel is entirely outside the bounds of acceptable behaviour by a physician toward their patients. Under para 1(1)33 of O. Reg. 856/93, made under the *Medicine Act*, 1991, SO 1991, c. 30 (Professional Misconduct Regulation), his conduct involved acts or omissions relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

[41] The registrant's October 18, 2022, conviction for an assault against Patient A while she was both a patient and an employee of Dr. Israel, undoubtedly related to an

offence relevant to his suitability to practise, within the meaning of s. 51(1)(a) of the Code. It is also conduct unbecoming a physician, under para 1(1)34 of the Professional Misconduct Regulation, and would reasonably be regarded by registrants as disgraceful, dishonourable or unprofessional.

[42] Finally, the evidence demonstrates an egregious contravention, over 110 times, of the registrant's July 7, 2022 undertaking not to engage in any professional encounters in the absence of a practice monitor. The College and the public have a right and an expectation that the public will be protected when, in the face of public complaints, the ICRC refrains from making an order against a physician under s. 25.4 of the Code because it receives a solemn undertaking by the physician to correct their behaviour. That clearly did not occur. This contravention is also disgraceful, dishonourable or unprofessional conduct by Dr. Israel.

Penalty and Costs

[43] As I noted earlier, the parties made a joint submission on all aspects of the penalty, and on an appropriate costs order.

[44] Under s. 51(5)3(vi) of the Code, the panel was required to reprimand Dr. Israel and revoke his certificate of registration, because the sexual abuse included touching of a sexual nature of Patient A's genitals and breasts, and Patient B's breasts. Our order revoked his certificate immediately, and the panel delivered a reprimand at the conclusion of the hearing.

[45] In fashioning an appropriate penalty, we also adopted the other terms of the parties' joint submission that were not specifically mandated by law. The Tribunal was not entitled to reject the parties' agreement, because their joint submission did not meet the "undeniably high threshold" that the proposed penalty "would be viewed by reasonable and informed persons as a breakdown in the proper functioning of the justice system": *R. v. Anthony-Cook*, 2016 SCC 43 at paras. 34 and 42, applied recently in *Ontario College of Teachers v. Merolle*, 2023 ONSC 3453 (Div. Ct.).

[46] Accordingly, we ordered the registrant to reimburse the College for funding provided for therapy or counselling under s. 85.7 of the Code, up to \$35,880. We also ordered Dr. Israel to post security to guarantee payment, on the timetable agreed to by the parties.

[47] This is in keeping with s. 1.1 of the Code, which states that

The purpose of the provisions of this Code with respect to sexual abuse of patients by members is to encourage the reporting of such abuse, to provide funding therapy and counselling in connection with allegations of sexual abuse by members and, ultimately, to eradicate the sexual abuse of patients by members.

[48] In coming to our conclusion, we considered the objectives the Tribunal attempts to achieve in ordering penalties; the conduct in this case; and the aggravating and mitigating circumstances. In keeping with the jurisprudence, in the circumstances of this case, we accepted the parties' joint submission.

[49] In our view, the revocation of Dr. Israel's certificate of registration serves the paramount consideration of protection of the public, as well as maintenance of public confidence in the profession and the College's ability to regulate the profession effectively. The penalty achieves specific deterrence in removing the registrant from the position of trust and authority he held, providing medical services to the public, through which he carried out his objectionable behaviour. The penalty also provides general deterrence to other registrants. There is no available rehabilitation in these circumstances.

[50] The only mitigating factors in this case relate to Dr. Israel's agreement not to contest the allegations against him. That saved time and expense for the College and the Tribunal, and spared the patients the need to testify. At the same time, the registrant was not present for our hearing, and as noted, his counsel could not confirm that he would attend to hear a reprimand from the panel.

[51] There are numerous aggravating factors, quite apart from the seriousness of sexual abuse on its own that led the Legislature to make the ultimate professional penalty mandatory.

[52] In making our order, we took into account the judge's comments at the sentencing stage about the aggravating features of the registrant's conduct. The court stated:

[C]ertainly, sir, it is acknowledged that this type of offence, albeit given what was pled guilty to, it was not a one time incident. It compromised someone, someone you were in a position of authority to by virtue of being an employer, as well as the overall concern as is raised that you had a professional standing and one would expect that this behaviour should not have happened at all let alone to someone who was in your employ.

[53] Dr. Israel's conduct involved persistence and repetition over a lengthy time period in his pursuit of Patient A for apparent sexual gratification. He ignored her protestations, and took advantage of her doubly disadvantaged status, as a woman dependent on her employment for her livelihood, and a patient in a relationship of trust that the registrant betrayed.

[54] Even after Patient A had had enough and terminated both relationships with Dr. Israel, and even after he was arrested and was answering to the criminal justice system, he abused Patient B. The registrant disregarded the area of her body she had pointed out. Without explanation or consent, he moved her bra in order to squeeze one of her breasts. He left her in shock and pain, which he exacerbated by making sexual remarks to her outside the clinic.

[55] In both cases, Dr. Israel violated the trust that every patient is entitled to rely on that their physician will act in their best interests, and will not take advantage of the physician's position of authority, especially in matters as private, sensitive and vulnerable as physical and verbal conduct of a sexual nature.

[56] The situation is further aggravated by Dr. Israel's failure to correct his conduct despite receiving prior discipline and signing an undertaking: see *College of Physicians and Surgeons of Ontario v. Israel*, 2019 ONCPSD 27. He was previously suspended by the Discipline Committee for one month and ordered to take the PROBE Ethics and Boundaries program after he made sexually charged, unacceptable comments to a female patient about "needing a man" and questioned whether she "was attaining sexual satisfaction by masturbating," none of which was clinically indicated subject matter. The Committee characterized his behaviour as "degrading" and showing "a lack of sensitivity for [the patient's] comfort."

[57] That decision was released on June 28, 2019, just after the first specific incident on June 7, 2019 involving Patient A in our case. In ordering the joint penalty as requested, the Committee expressed the rationale that it "will serve to rehabilitate Dr. Israel and [provide] for public protection." Instead, this was the beginning of the train of sexual abuse in the second half of 2019 that left Patient A violated, begging him to stop, and pushing him away to free herself.

[58] Then and in 2021, Dr. Israel's behaviour did not improve; he drove his patients away, and landed himself in criminal court. Even after the criminal conviction in 2022,

Dr. Israel showed flagrant disregard for his professional obligations, including the undertaking to the College, and he has now lost his registration as a physician.

[59] We accepted the parties' joint submission for the registrant to pay \$6,000 in costs and \$35,880 for reimbursement for funding for therapy and counselling for the patients to the College by December 9, 2024.

Order

[60] We therefore ordered:

1. The Tribunal requires the registrant to appear before the panel to be reprimanded.
2. The Tribunal directs the Registrar to:
 - a. Revoke the registrant's certificate of registration, effective November 7, 2024 at 12:01 a.m.
3. The Tribunal requires the registrant to pay the College costs in the amount of \$6,000.00 by December 9, 2024.
4. The Tribunal requires the registrant to reimburse the College \$35,880.00 for funding provided for therapy and counselling under s. 85.7 of the Health Professions Procedural Code and to post security acceptable to the College to guarantee the payment for these amounts, by December 9, 2024.

ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

Tribunal File No.: 24-002

BETWEEN:

College of Physicians and Surgeons of Ontario

College

- and -

Koma Diryawish Israel

Registrant

**The Tribunal delivered the following Reprimand
by videoconference on Wednesday, November 6, 2024.**

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

Dr. Israel,

We are disappointed that you chose not to be here today to receive this reprimand.

Your actions, which included sexual abuse, severely violated the trust placed in you by two patients who enlisted you as their physician.

The public and patients expect that their physicians will act in a manner that is professional, respectful and dignified, and conduct becoming of a physician.

You seriously breached that trust when you engaged in touching of a sexual nature towards two patients. This included conduct that continued for almost four years towards one woman who was not only your patient but also your employee, which made her doubly vulnerable to your degrading behaviour. Your actions, including flagrant sexual touching and your remarks of a sexual nature to these two patients, were both demeaning and irresponsible.

Your behaviour was also predatory in nature. The way you intentionally isolated Patient A and then physically confined her to facilitate your abuse demonstrates the seriousness of your conduct. Not only were your actions extremely upsetting, but they left your patients in shock and/or pain.

Furthermore, your criminal conviction for assault by the Ontario Court of Justice undermines your suitability to practice and puts the profession into disrepute.

In addition, you ignored your signed undertaking to the College of Physicians and Surgeons of Ontario to engage in professional encounters of any kind with patients of any age, only if a college-approved practice monitor was present. Between July 2022 and April 2024, you showed blatant disregard by contravening this term on your certificate of registration over 110 times.

It is troubling that the misconduct that brings you before us today was taking place before, during and after you were found in June 2019 to have made inappropriate and unprofessional comments to a patient about how she was attaining sexual satisfaction. Your disturbing conduct reflects pervasive and repeated acts and choices on your part.

You have violated the public's trust, and we can only conclude that the public interest and profession will be served by your losing the privilege of practising medicine.