

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Zadra this is notice that the Discipline Committee ordered that no person shall publish or broadcast the names or any information that could disclose the identity of the patients referred to orally or in any exhibits filed at the hearing under subsection 45(3) of the Health Professions Procedural Code (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended.

Subsection 93(1) of the Code, which is concerned with failure to comply with these orders, reads:

Every person who contravenes an order made under ... section 45... 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. Zadra,
2017 ONCPSD 24**

**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. JOSEPH ANTONIO ZADRA

PANEL MEMBERS: **DR. MARC GABEL (Chair)**
MR. SUDERSHEN BERI
DR. ROBERT SHEPPARD
DR. HARVEY SCHIPPER

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS ELISABETH WIDNER

COUNSEL FOR DR. ZADRA:

MR. MARK VENEZIANO

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. DAVID ROSENBAUM

Hearing Date: April 17, 2017
Decision Date: April 17, 2017
Release of Written Reasons: June 12, 2017

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 April 17, 2017. At the conclusion of the hearing, the Committee released a written order stating its finding that the member committed an act of professional misconduct in that he has engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional. The Committee also set out its penalty and costs order with written reasons to follow.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Joseph Antonio Zadra 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; and
2. under paragraph 1(1)2 of O Reg. 856/93 in that he has failed to maintain the standard of practice of the profession.

The Notice of Hearing also alleged that Dr. Zadra is incompetent as defined by subsection 52(1) of the Health Professions Procedural Code (the Code), which is Schedule 2 to the *Regulated Health Professions Act, 1991*.

RESPONSE TO THE ALLEGATIONS

Dr. Zadra admitted to the first allegation of professional misconduct in that he has engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or

unprofessional. The College withdrew the second allegation of professional misconduct and the allegation of incompetence.

THE FACTS

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

PART I - FACTS

A. Overview

1. Dr. Joseph Antonio Zadra (“Dr. Zadra”) is a 60 year old urologist, practising medicine in Barrie, Ontario. He received his certificate of registration authorizing independent practice in Ontario in 1984 and his specialist qualification in urology in 1988.
2. At the relevant times, Dr. Zadra was on staff as a urologist at the Royal Victoria Regional Health Centre (RVH) in Barrie, Ontario. Dr. Zadra has maintained his privileges throughout the College investigation, described below, to the present.
3. Dr. Zadra has no prior discipline history with the College.

B. Complaint to the College

4. In March 2014, Dr. James Shaver, the Chief of Staff at RVH, wrote to the College and reported that Dr. Zadra had been dictating operative reports that did not accurately reflect the work he had done. Dr. Shaver wrote that he had no evidence of patient harm to date as a result of this practice.
5. RVH conducted a review of a portion of Dr. Zadra’s work. Dr. Shaver provided examples from patient charts of specific concerns raised by Dr. Zadra’s operative reports, some of which are as follows:

- Cystometrogram: On July 20 and 27, 2013, Dr. Zadra inaccurately recorded the names of certain procedures that he performed. He dictated that he performed a procedure named “cystometrogram” or “water cystometrogram” on several patients. However, RVH had not had a functioning cystometrogram machine for at least two years;
- Pediatric urethrotomy: In three cases, Dr. Zadra dictated that he performed a “urethrotomy” when RVH does not have a pediatric urethrotome. This procedure should have been recorded as a “meatotomy”;
- Urethrotomy in Ambulatory Care: In one case, Dr. Zadra dictated that he performed a procedure using a urethrotome under local anesthetic, although it is unusual to do this procedure under local anesthetic and the urethrotome is only used in the operating room at RVH;
- Hernia repairs: Dr. Zadra dictated that a hernia repair was done on a patient. The nursing staff in the operating room noted that Dr. Zadra’s dictation of the particular size of sutures he used, were not in fact used according to the surgical count.

C. College Investigation

6. The College retained Dr. Joseph Chin to provide an expert opinion. Dr. Chin is Head of Surgical Oncology at London Health Sciences Centre, a Professor of Urology and Oncology, Schulich School of Medicine and Dentistry, at the University of Western Ontario, London, Ontario and is Past President of the Canadian Urological Association.
7. In a report to the College dated May 31, 2015, Dr. Chin provided his opinion following review of thirteen (13) patient charts and an interview with Dr. Zadra.
8. Overall, Dr. Chin found that Dr. Zadra’s practice did not expose patients to harm, but noted that there were some planned or proposed procedures that could have exposed patients to potential harm if they had been carried out.

9. Dr. Chin had concerns around Dr. Zadra's record keeping and documentation and description of the procedures performed, including the "semantics and labeling of the procedures actually performed". Dr. Chin provided examples from the charts he reviewed:
 - For five patients, Dr. Zadra dictated that he performed a "water cystometrogram" but in fact, as Dr. Zadra told Dr. Chin in his interview, the Ambulatory Care Unit did not have a functioning cystometrogram machine;
 - In one case of a circumcision of an 8-year old boy, Dr. Zadra failed to dictate issues that should have been documented, such as pre- and post-operative urine stream;
 - In one case, Dr. Zadra dictated a procedure of "hernia repair with multiple 2-0 and 3-0 Vicryl sutures" that did not correspond to the OR nurses' suture count. The discrepancy was that 3-0 sutures were in fact used;
 - In two cases, Dr. Zadra dictated that he performed a "urethrotomy" when he should have dictated it as a "meatotomy";
 - In two cases, Dr. Zadra amended his dictated note to different procedures than he had initially recorded.

10. In addition, in Dr. Chin's opinion, in a number of patient charts, the description of the procedures actually performed was inaccurate, leading to inaccurate and/or questionable claims submissions to OHIP. Although the amounts were small, there were a number of fee codes identified by Dr. Chin that were billed in error due to the inaccurate description of procedures performed. For example, for several patients, Dr. Zadra had billed code J163, which covers "pelvis limited study other than pregnancy" done by ultra-sound and was paid at \$21.95. In his interview with Dr. Chin, Dr. Zadra stated that in fact he had carried out a "post-void residual urine measurement" which should be billed as code G900, paid out at \$12.70. Another example was billing a G475 Code for what was dictated as a "water cystometrogram", when the procedure was not in fact performed on several patients, as described above.

PART II - ADMISSION

11. Dr. Zadra admits the facts contained in paragraphs 1 to 10 above and admits that he engaged in 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, contrary to paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*.

FINDING

The Committee accepted as correct all of the facts set out in the Agreed Statement of Facts and Plea. Having regard to these facts, the Committee accepted Dr. Zadra's admission and found that he committed an act of professional misconduct under paragraph 1(1)33 of 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.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for Dr. Zadra made a joint submission as to an appropriate penalty and costs order. The proposed penalty and costs order included: a three-month suspension of Dr. Zadra's certificate of registration; imposition of terms, conditions, and limitations on Dr. Zadra's certificate of registration, including requirements that he take and successfully complete instruction in medical ethics, successfully complete a record-keeping course, and practise under clinical supervision for six (6) months commencing from the resumption of his practice following the completion of his suspension; a public reprimand; and an order that Dr. Zadra pay costs to the College for a one-day hearing in the amount of \$5,000.00.

The principles guiding the imposition of penalty in the College's disciplinary proceedings are well-established. First and foremost is the protection of the public. Other principles to be applied include maintenance of public confidence in the integrity of the profession and the ability of the

College to govern effectively the profession in the public interest, specific deterrence of the individual member and general deterrence of the members of the profession, and, where appropriate, the opportunity for member rehabilitation.

In determining the appropriate penalty in this case, the Committee carefully considered the nature of the misconduct committed by the member. Relevant aggravating and mitigating factors were taken into account. The Committee is aware that the penalty imposed should be consistent with penalties previously imposed in similar cases, although each case will have unique aspects to it which will be taken into account.

In this case, the Committee was presented with a joint submission on penalty. The Committee is aware that, although the final decision is that of the Committee's, the threshold for rejecting the parties' joint submission on penalty is high. In this regard, the Committee reviewed the recent Supreme Court of Canada case of *R. v. Anthony-Cook*, 2016 SCC 43, submitted by counsel. Although this was a criminal matter, the same principles logically apply to disciplinary proceedings. The Supreme Court made it clear that a joint submission on penalty should be accepted, unless to do so would bring the administration of justice into disrepute or would otherwise be contrary to the public interest. A joint submission on penalty is a form of resolution agreement that was negotiated by the parties to reflect the interests of both the public and the member, in light of the facts to which the member had agreed. The parties have a right to a high level of confidence that their joint position will be accepted.

The Committee reviewed the jointly proposed penalty in this case in light of the above-stated principles. The Committee was satisfied that the proposed penalty was fair, necessary, and appropriate in the circumstances.

The professional misconduct committed by Dr. Zadra pertained to his record-keeping. As confirmed in the Agreed Statement of Facts and Plea, his records were inaccurate in several respects, including inaccurate descriptions of some of the procedures he performed. In some cases, he had retroactively altered his clinical notes. Some OHIP claims were submitted in error due to inaccurate descriptions of procedures that he performed.

While there was no evidence that patients were harmed by Dr. Zadra's actions, the Committee is concerned with his inaccurate records. Complete and accurate medical records are an essential component of quality patient care. Imprecision in terminology and the resulting billing irregularities are unacceptable, whether they resulted from carelessness, lack of knowledge, or intentional deceit.

The Committee agreed with the parties that the proposed penalty will address the deficiencies in Dr. Zadra's record-keeping practices, so that the public is protected. Specifically, the proposed instruction in medical ethics, the requirement that Dr. Zadra complete a record-keeping course, and the provision for clinical supervision following Dr. Zadra's return to practice at the conclusion of his suspension, will address his need for remediation in this area.

The Committee also agreed that a three-month suspension of Dr. Zadra's certificate of registration was necessary in the interests of both specific and general deterrence, and to maintain public confidence in the integrity of the profession and the ability of the College to govern effectively the profession in the public interest. A three-month suspension is a serious sanction that is warranted by Dr. Zadra's dishonourable and unprofessional conduct. Quality of patient care was potentially compromised. Members of the profession and the public must have confidence that misconduct of this nature will be appropriately dealt with by the Committee.

The Committee agreed that a public reprimand of Dr. Zadra is necessary, in light of the serious misconduct committed, to address specific and general deterrence, and to assist in maintaining public confidence in the integrity of the profession.

The Committee found that the proposed penalty was consistent with previous penalties imposed in earlier cases which also involved compromise to the integrity of patient records, specifically in *CPSO v. Remillard* (2017) and *CPSO v. Price* (2016).

In the *Remillard* case, the physician deliberately deleted his entries from electronic medical records for patients whom he had previously seen and who were being transferred to other

physicians in his group. He later restored the entries after the deletions were discovered and brought to his attention. His certificate of registration was suspended for three months, he was reprimanded, and he was required to successfully complete individual instruction in medical ethics.

In the *Price* case, the doctor was found to have altered a medical record in a misleading fashion, failed to date and initial the changes, and misled the College's investigator regarding his patient chart and charting practices. His certificate of registration was suspended for three months, he was reprimanded, he was required to complete courses in ethics and medical record-keeping, and he was subject to other terms, conditions and limitations on his certificate related to medical record-keeping, compliance with College policies and monitoring of his compliance with the Order.

Finally, the Committee agreed that this is an appropriate case in which to order that Dr. Zadra pay to the College costs of conducting the hearing.

ORDER

The Committee stated its finding in paragraph 1 of its written order of April 17, 2017. In that order, the Committee ordered and directed on the matter of penalty and costs that:

2. the Registrar suspend Dr. Zadra's certificate of registration for a period of three (3) months commencing May 29, 2017, at 12:01 a.m.
3. the Registrar impose the following terms, conditions and limitations on Dr. Zadra's Certificate of Registration:

Instruction in medical ethics

- (i) At his own expense and within twelve (12) months of the date of this Order, Dr. Zadra shall participate in and successfully complete individualized instruction in medical ethics satisfactory to the College, with an instructor selected by the

College. The instructor shall provide a summative report to the College including his or her conclusion about whether the instruction was completed successfully by Dr. Zadra.

Medical record-keeping

- (ii) At his own expense and within twelve (12) months of the date of this Order, Dr. Zadra shall participate in and successfully complete a record-keeping course acceptable to the College, and provide proof of completion thereof to the College;

Clinical Supervision

- (iii) At his own expense and within thirty (30) days of this Order, Dr. Zadra shall retain a Clinical Supervisor approved by the College, who will sign an undertaking in the form attached to this Order as Schedule “A”;
- (iv) For a period of six (6) months commencing from the date Dr. Zadra resumes practice following the suspension of his certificate of registration described in paragraph 2, Dr. Zadra may practise only under the supervision of the Clinical Supervisor (“Clinical Supervision”);
- (v) Clinical Supervision of Dr. Zadra’s practice shall contain the following elements:
 - (a) Review, on a monthly basis, operating room dictations and notes in a minimum of twenty-five (25) patient charts, to be selected at the sole discretion of the Clinical Supervisor, along with the corresponding OHIP claims submissions;
 - (b) Discuss with Dr. Zadra any concerns the Clinical Supervisor may have arising from the chart reviews;
 - (c) make recommendations to Dr. Zadra for practice improvements and ongoing professional development, and inquire into Dr. Zadra’s compliance with the recommendations;
 - (d) the Clinical Supervisor will keep a log of all patient charts reviewed along with patient identifiers; and
 - (e) the Clinical Supervisor will provide reports to the College on a bi-monthly basis for the six (6) month period of practice monitoring, or more frequently if

the Clinical Supervisor has concerns about Dr. Zadra's standard of practice or conduct.

- (vi) Throughout the period of Clinical Supervision, Dr. Zadra shall abide by the recommendations of the Clinical Supervisor;
- (vii) If a clinical supervisor who has given an undertaking as set out in Schedule "A" to this Order is unable or unwilling to continue to fulfill its terms, Dr. Zadra shall, within twenty (20) days of receiving notice of same, obtain an executed undertaking in the same form from a person who is acceptable to the College and ensure that it is delivered to the College within that time;
- (viii) If Dr. Zadra is unable to obtain a clinical supervisor in accordance with paragraph (vii) of this Order, he shall cease to practice until such time as he has done so;
- (ix) Dr. Zadra shall consent to the disclosure by his Clinical Supervisor to the College, and by the College to his Clinical Supervisor, of all information the Clinical Supervisor or the College deems necessary or desirable in order to fulfill the Clinical Supervisor's undertaking and Dr. Zadra's compliance with this Order;
- (x) Dr. Zadra shall inform the College of each and every location where he practises including but not limited to hospital, clinics and offices, in any jurisdiction (collectively his "Practice Location(s)), within fifteen (15) days of this order and shall inform the College of any new Practice Locations within fifteen (15) days of commencing practice at that location, for the purposes of monitoring his compliance with this Order;
- (xi) Dr. Zadra shall submit to, and not interfere with, unannounced inspections of his Practice Locations(s) and patient records by a College representative, for the purposes of monitoring his compliance with this Order;
- (xii) Dr. Zadra shall consent to the monitoring of his OHIP billings and cooperate with inspections of his practice, his patient charts and his OHIP billings by his Clinical Supervisor and College representatives for the purpose of monitoring his compliance with the terms of this Order;
- (xiii) Dr. Zadra shall provide consent to the College to make appropriate enquiries of OHIP, for a period of one (1) year after he resumes practice following the

suspension of his certificate of registration described in paragraph 2, for the purpose of monitoring his compliance with the terms of this Order; and
(xiv) Dr. Zadra shall be responsible for any and all costs associated with implementing this Order;

4. Dr. Zadra appear before the panel to be reprimanded.
5. Dr. Zadra pay costs to the College in the amount of \$5,000.00 within thirty (30) days of the date of this Order.

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

Schedule “A”

TO THE ORDER OF THE DISCIPLINE COMMITTEE WITH RESPECT TO
DR. JOSEPH ANTONIO ZADRA (“DR. ZADRA”) DATED APRIL 17th, 2017

UNDERTAKING OF DR. _____

TO THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

1. I am a practising member of the College of Physicians and Surgeons of Ontario (the “College”).
2. I have read the Order of the Discipline Committee of the College dated April 17th, 2017 (the “Order”), regarding Dr. Zadra, and have read the Agreed Statement of Facts and Plea. I understand the terms, conditions and limitations that the Registrar of the College has been directed to impose upon Dr. Zadra’s Certificate of Registration by the Order.
3. I will review as soon as practicable any additional materials regarding Dr. Zadra’s practice provided to me by the College, including the Report of Dr. Chin dated May 31, 2015, as well as the College’s Guidelines for College-Directed Supervision.
4. I agree that commencing from the date I sign this undertaking, I shall act as Clinical Supervisor for Dr. Zadra for a period of six (6) months. As Clinical Supervisor I will, at a minimum:
 - (a) review, on a monthly basis, operating room dictations and notes in a minimum of twenty-five (25) patient charts, to be selected at the sole discretion of the Clinical Supervisor, along with the corresponding OHIP claims submissions;
 - (b) discuss with Dr. Zadra any concerns I may have and make recommendations for practice improvements and ongoing professional development and monitor Dr. Zadra’s compliance with my recommendations;
 - (c) submit written reports to the College every two (2) months regarding my review of Dr. Zadra’s billings and charts for the duration of the monitoring. Such reports shall be in reasonable detail, and shall contain all information I believe might assist the College in evaluating Dr. Zadra’s compliance with the Discipline Committee’s Order, including the patient names and dates associated with the charts I have reviewed during the relevant period;
 - (d) keep a log of all patient charts reviewed along with patient identifiers; and
 - (e) notify the College immediately if I am concerned that Dr. Zadra may not be in compliance with the Order, and/or that Dr. Zadra’s patients may be exposed to risk of harm or injury.
5. I agree to immediately inform the College in writing if I cannot fulfill the terms of my undertaking.

Dated at _____, this ____ day of _____, 2017.

Dr.

Witness (Print Name)

Witness (Signature)

TEXT of PUBLIC REPRIMAND
Delivered April 17, 2017
in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
and
DR. JOSEPH ANTONIO ZADRA

Dr. Zadra, physicians are in a position of trust in society, and trust extends to their accuracy in patient's charting and billing is part of their professional responsibilities. To betray that trust undermines the work of honest, diligent, fellow physicians in the public eye. Inaccuracy in charting also raises the possibility of patient harm in their future care.

We expect good conduct and character of physicians, including areas where their conduct is self-monitored. You strayed from the behaviour and awareness expected of you by your community and by your colleagues. A society has given us the privilege of submitting our own OHIP charges; it is imperative that these billings be accurate and represent the work performed.

Hopefully your taking an ethics course, a medical records course, and being clinically supervised will increase your understandings of what is expected of you as a physician of high morals and ethics. We expect that your conduct will be such that you will not have reason to appear before this or any future panel in the future.

This is not an official transcript