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Ontario (College of Physicians and Surgeons of Ontario) v. Mansour, 2016 ONCPSD 33

**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. ALI ALI ABDULLA MANSOUR

PANEL MEMBERS:

**DR. M. GABEL (CHAIR)
MR. J. LANGS
DR. S. YOUNG
MAJOR A. KHALIFA
DR. W. KING**

**COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF
ONTARIO:**

MS. L. BROWNSTONE

COUNSEL FOR DR. MANSOUR:

**MS. G. BURT
MR. A. KALAMUT**

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MS. J. MCALEER

Hearing Date: **July 27, 2016**
Decision Date: **July 27, 2016**
Release of Written Reasons: **September 23, 2016**

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 July 27, 2016. At the conclusion of the hearing, the Committee stated its finding that the member committed an act of professional misconduct and delivered its penalty and costs order with written reasons to follow.

THE ALLEGATIONS

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

1. under paragraph 1(1)2 of Ontario Regulation 856/93 made under the Medicine Act, 1991 (“O. Reg. 856/93”), in that he has failed to maintain the standard of practice of the profession; and
2. under paragraph 1(1) 33 of O. Reg. 856/93, in that he 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 Notice of Hearing also alleged that Dr. Mansour is incompetent as defined by subsection 52(1) of the Health Professions Procedural Code, which is Schedule 2 to the Regulated Health Professions Act, 1991 (“the Code”).

RESPONSE TO THE ALLEGATIONS

Dr. Mansour admitted the first and second allegations in the Notice of Hearing, that he failed to maintain the standard of practice of the profession and that he 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.

Counsel for the College withdrew the allegation of incompetence.

THE FACTS

The following Statement of Agreed Facts and Admission was filed as an exhibit and presented to the Committee:

1. Dr. Mansour is a family physician whose certificate of registration authorizing independent practice was issued by The College of Physicians and Surgeons of Ontario (“the College”) on May 18, 2011. At all relevant times, Dr. Mansour practised for two and one half days per week through a Family Health Team at the Parliament Walk-In Clinic located at 1 Oak Street in downtown Toronto, Ontario (the “Clinic”).
2. A section 75(1)(a) investigation into Dr. Mansour’s practice was commenced in August 2013, after the College received information that raised concerns about Dr. Mansour’s use of an unregulated person in his practice (a physician’s assistant (“PA”)).
3. After the College attended at the Clinic in mid-August 2013, the College retained Dr. Kathleen Walker, a family physician, to review and opine on Dr. Mansour’s standard of care. Dr. Walker reviewed materials including 20 patient charts, and interviewed Dr. Mansour.
4. On February 12, 2016, after allegations of misconduct were referred to the Discipline Committee and notice of the College’s intention to make an order under s. 37 of the Health Professions Procedural Code was provided to him, Dr. Mansour signed an Undertaking with the College. A copy of the Undertaking is attached at Tab 1 of the Statement of Agreed Facts and Admission. The Undertaking requires that in the period ending when the matters referred to the

Discipline Committee are disposed of by a panel, Dr. Mansour not engage a PA or delegate, and that he practice under supervision, among other things.

5. At present, in accordance with the terms of the Undertaking, Dr. Mansour sees no more than 25 patients per day, and no more than five patients per hour. Dr. Mansour has not delegated any acts since August 2013.

DR. MANSOUR'S CONDUCT

6. On July 30, 2013, the College received an anonymous call from a physician who indicated she had concerns with Dr. Mansour's use of a PA, namely, that a PA was seeing and treating patients without proper supervision, while Dr. Mansour was not in the clinic and was in fact on vacation.
7. On August 14, 2013, representatives of the College attended unannounced at the Clinic and spoke with the receptionist, the PA, and the Clinic Manager. Dr. Mansour was not present. The receptionist said Dr. Mansour was away for a month and that Dr. Mansour's PA was seeing patients with no physician on the premises. The PA initially denied any knowledge of Dr. Mansour being out of the country on vacation, saying she understood Dr. Mansour was not in the clinic that day because he was home sick. Upon being advised that the College understood Dr. Mansour was away, the PA said Dr. Mansour was in Libya and had been gone for a month. She further indicated she was working on her regularly scheduled days in Dr. Mansour's absence, and did not work under the supervision of any other physician. She worked only under the supervision of Dr. Mansour. She stated that she communicated electronically with Dr. Mansour about any difficult cases. The PA confirmed Dr. Mansour had remote access to the patient records and could look at them (with the exception of lab results) and discuss the plan with her. If she was ordering medication she would enter the medications into the electronic record and print it out, then use a stamp of Dr. Mansour's. She would not prescribe narcotics or controlled drugs. Some of the patients she would see were walk-in patients and did not have an established physician-patient relationship with Dr. Mansour.

8. On or about August 14, 2013, Dr. Mansour spoke on the telephone with a College representative. He told the College representative that he was sick and therefore had been unable to go to work that day. Dr. Mansour states that this telephone conversation took place after Dr. Mansour spoke with the Clinic Manager, during which the Clinic Manager advised Dr. Mansour he ought not to have let the PA see patients in his absence, among other things. Dr. Mansour states that he panicked and told the College representative he was not at the Clinic because he was sick. In actuality, Dr. Mansour was out of the country at that time.
9. On March 26, 2014, the College sent a letter to Dr. Mansour's counsel requesting various documents and information pertaining to when Dr. Mansour was on vacation/out of the country, where he was during that period, and copies of any supporting documentation, as well as dates when the PA worked at the clinic and information about what Dr. Mansour billed OHIP during that period.
10. By letter from his counsel dated April 30, 2014, Dr. Mansour provided responses to the College's inquiries, including the questions posed about his whereabouts in the summer of 2013. He advised the College he was checking his records regarding where he was in July and August of 2013, and whether bills were submitted to OHIP during this time period, and would write again once this information had been compiled.
11. By letter from his counsel dated May 13, 2014, Dr. Mansour advised the College he had not found any records documenting where he was in July and August of 2013, and that his recollection was that he was in Libya from July 3 to 8, 2013, and in Turkey from August 9-15 or 16, 2013. He told the College that his PA worked at the clinic for 3 days in July and 4 days in August while he was away. Dr. Mansour further advised he was in Turkey when he spoke with the College representative on August 14, 2013, that he had "panicked and spoke without thinking first" and that he "is very anxious about this issue and until now has not known how to make things right." He further advised the College that he billed OHIP when he was out of the country and his PA was seeing patients, should not

- have done so, and was conducting a self-audit of these amounts in order to repay OHIP.
12. On May 23, 2014, the College wrote to Dr. Mansour's counsel requesting clarification about where Dr. Mansour was between July 9 and August 8, 2013. By letter dated June 3, 2014, Dr. Mansour's counsel advised Dr. Mansour was in Ontario between July 9 and August 8, 2013 and was in Toronto on any day on which he was scheduled to work during that time period.
 13. By letter dated July 21, 2014, the College asked Dr. Mansour to attend at the College with his passport and any other supporting documents to verify he was in Ontario between July 9 and August 8, 2013. The College sent a further letter dated July 24, 2014, requesting confirmation of a date upon which Dr. Mansour could attend the College, and a further request on August 7, 2014.
 14. By letter dated August 7, 2014, Dr. Mansour's counsel advised the College that Dr. Mansour was in Libya and his return to Canada had been delayed. Counsel advised Dr. Mansour would not be in a position to provide the requested documents until his return, which was expected on August 10, 2014. Counsel further advised dates upon which Dr. Mansour was available to attend at the CPSO for an interview by the Medical Inspector.
 15. By letter dated August 14, 2014, Dr. Mansour's counsel advised the College that Dr. Mansour had had to surrender his Libyan passport (which he used for his trip in July/August 2013) when he changed to a Canadian passport. Counsel also provided the billing and medication records requested by the College.
 16. By letter dated September 22, 2014, Dr. Mansour's counsel advised the College, among other things, that the information previously provided to the College by Dr. Mansour was incorrect in the following ways: i) Dr. Mansour had not surrendered his Libyan passport; and ii) Dr. Mansour was in Libya and Turkey continuously between July 5 and August 15, 2013, returning to Canada on August 16, 2013. He was not in Ontario between July 9 and August 8, 2013 as previously

- advised. Enclosed with the letter was a copy of Dr. Mansour's Libyan passport used in 2013. Dr. Mansour apologized through his counsel for having provided inaccurate information in the past and indicated that, having now shared the information about his whereabouts, he was eager to co-operate in full with the College's investigation.
17. The College interviewed the PA on August 19, 2015. The PA confirmed she saw patients at the Clinic without Dr. Mansour being present, at his request. The PA advised she initially worked under verbal orders from Dr. Mansour, and that she created Medical Directives later, and sent them to the Clinic for its use. Dr. Mansour confirms this is true.
 18. The PA also confirmed the following during her interview by the College: i) She had graduated from a PA program at McMaster University in about August, 2012, and started working with Dr. Mansour, her second employer, in about May, 2013; ii) Dr. Mansour spent a couple of weeks seeing patients with her, assessing her skills and discussing cases and patient management with her in breaks between seeing patients; iii) Dr. Mansour personally asked her to see patients when he was not there; iv) When Dr. Mansour was away in July and August 2013, he directed the PA to contact him if she needed him; v) At no time did Dr. Mansour discourage the PA from contacting him to discuss patient care; and vi) she was usually able to reach him.
 19. After a self-audit, Dr. Mansour repaid \$16,734.32 to the Ministry of Health and Long-Term Care in respect of billings made in relation to patient visits in the months of July and August 2013, where the patients were seen by the PA and were not also seen by Dr. Mansour.

STANDARD OF PRACTICE

20. Dr. Walker, after reviewing patient charts and interviewing Dr. Mansour, delivered a report to the College. Among other things, Dr. Walker opined that Dr. Mansour failed to meet the standards of practice in the following respects:
- (1) His use of a PA fell below the standard of care in respect of 19 patients, primarily with respect to supervision and delegation. The criteria for delegation were met in only one chart. These deficiencies could expose his patients to harm.
 - (2) His medical documentation fell below the standard of care in respect of 15-17 patients. In some cases, there were notes which appeared to be copied and pasted in patient charts.
 - (3) The care provided demonstrated concerns about his knowledge and judgment in almost all charts reviewed. In various files, this related to one or more of timely or appropriate follow-up of abnormal test results, lack of knowledge of current guidelines, and over-extensive investigations without apparent clinical reasoning documented or explained.
21. A copy of Dr. Walker's report dated June 12, 2015, is attached at Tab 2 of the Statement of Agreed Facts and Admission.
22. Dr. Mansour responded to Dr. Walker's report by letter dated September 30, 2015, advising the College that, among other things:
- (1) He had not used a PA in his practice since these issues arose in August 2013;
 - (2) Since the investigation and interview with Dr. Walker, he completed the U of T medical record keeping course and had become more comfortable with the Clinic's EMR system;

- (3) In response to Dr. Walker's concerns about his knowledge of various guidelines, Dr. Mansour reviewed five CPSO policies, as well as a number of clinical guidelines;
 - (4) Dr. Mansour had registered to take a course on diabetes management and a review course in internal medicine; and
 - (5) Dr. Mansour had performed a self-audit and repaid to OHIP the amounts he billed during the times he was not present at the Clinic.
23. Dr. Mansour completed the Medical Record Keeping course at the University of Toronto in November 2014.

ADMISSION

24. Dr. Mansour admits the facts set out above and admits that, based on these facts, he has failed to maintain the standard of practice of the profession under paragraph 1(1)2 of Ontario Regulation 856/93 made under the *Medicine Act*, 1991, and 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 under paragraph 1(1)33 of Ontario Regulation 856/93.

FINDINGS

The Committee accepted as true all of the facts set out in the Statement of Agreed Facts and Admission. Having regard to these facts, the Committee accepted Dr. Mansour's admission and found that he committed an act of professional misconduct in that he failed to maintain the standard of practice of the profession and that he 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 was appalled at Dr. Mansour's disrespect to the both the College and to the profession at large when he wilfully obstructed the College's investigation into his misconduct for over a year. Dr. Mansour's lies to and disrespect of the College as his governing body impeded and delayed the College's investigation.

Dr. Mansour should have familiarized himself with all of the components of the College's Delegation of Controlled Acts policy. Dr. Mansour should have strictly adhered to all components of that policy prior to engaging a PA who is an unregulated person.

By ignoring his obligations regarding delegation, Dr. Mansour put his patients at risk of potential harm. He also required his PA to perform outside her scope of practice.

The Committee was disturbed that Dr. Mansour ignored certain components of the policy while simultaneously deliberately capitalizing on improper delegation by billing of the Ministry of Health and Long Term Care (MOHLTC) in relation to patient visits in July and August of 2013, when the patients were not seen by Dr. Mansour. All Ontarians suffer when a physician improperly bills OHIP because it leaves fewer dollars available for legitimate care.

The Committee had grave concerns about Dr. Mansour's practice standards, especially as a physician in independent practice. These concerns included not only Dr. Mansour's delegation and record-keeping, but also the quality of his care as detailed by Dr. K. Walker, the College-appointed medical inspector. Dr. Walker opined that Dr. Mansour:

- fell short in terms of timely or appropriate follow-up of abnormal test results;
- lacked knowledge of current guidelines; and
- conducted over-extensive investigations without apparent clinical reasoning or documentation.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for the member made a joint submission as to an appropriate penalty and costs order. The proposed penalty was a nine-month suspension followed by the imposition of certain terms, conditions, and limitations on Dr. Mansour's certificate of registration, as well as a reprimand.

The Committee was mindful of the law that a joint submission should be accepted unless to do so would be contrary to the public interest and bring the administration of justice into disrepute.

The Committee accepted the jointly-proposed penalty and costs as being both just and in the public interest.

The Committee considered the following mitigating factors in coming to its determination:

- Dr. Mansour had no previous discipline findings;
- Dr. Mansour admitted the allegations;
- Dr. Mansour complied with his February 12, 2016 Undertaking with the College;
- Dr. Mansour has not delegated any acts since the College investigation commenced in August 2013;
- Dr. Mansour assessed what he owed to OHIP through a self-audit and repaid it; and
- Dr. Mansour has begun education and rehabilitation to improve his practice standards.

The Committee carefully reviewed both the College and member's Briefs of Authorities for the appropriate range of penalties.

The principles relevant to the imposition of penalty in disciplinary proceedings are well-established. The protection of the public is the paramount consideration. Others include maintenance of public confidence in the reputation and integrity of the profession and in the principle of effective self-governance; general deterrence as it applies to the membership as a whole; specific deterrence as it applies to the member; and the potential for the member's rehabilitation.

The public will be protected by the terms, condition and limitations on Dr. Mansour's certificate of registration following his suspension.

Dr. Mansour will be prohibited from delegating any acts and care of any patients to any unregulated health professionals. He will be required to continue his educational rehabilitation.

After Dr. Mansour has completed his suspension, he will be required to continue to retain a clinical supervisor, approved by the College, who will submit regular reports of Dr. Mansour's progress. Once the period of supervision ends, Dr. Mansour's practice will be reassessed.

Dr. Mansour will also be subjected to unannounced inspections of his practice. He has also consented to the College making appropriate enquiries of OHIP.

The significant length of Dr. Mansour's suspension should maintain public confidence in the profession and its ability to self-govern.

The reprimand denouncing the misconduct should specifically deter Dr. Mansour from future misconduct. It also should send an unequivocal message to the membership at large that inappropriate delegations of controlled acts, improper OHIP billings, failure to take personal responsibility, and acting without integrity will not be tolerated.

The nine month suspension should also serve as a specific deterrence for Dr. Mansour. It should also serve as a general deterrent to the profession. The educational rehabilitation plan should address Dr. Mansour's standard of care issues and should remind Dr. Mansour of the requirement for continued professional development.

The Committee found that this was an appropriate case to award the prescribed tariff of \$5000.00 for a one day hearing.

ORDER

Therefore, having stated the findings in paragraphs 1 and 2 of its written order of July 27, 2016, on the matter of penalty and costs, the Committee ordered and directed that:

3. Dr. Mansour appear before the panel to be reprimanded.
4. The Registrar suspend Dr. Mansour's certificate of registration for a period of nine (9) months commencing immediately.
5. The Registrar place the following terms, conditions and limitations, effective immediately, on Dr. Mansour's certificate of registration:

Restriction

- (a) Dr. Mansour shall not delegate any acts or any care of any patients to any unregulated health professional.

Education

- (b) Dr. Mansour shall, at his own expense, participate in and successfully complete the following educational courses:
 - i. Ontario College of Family Physicians course entitled "Practising Wisely" within six months from the date of this order; and
 - ii. Individualized instruction in ethics approved by the College at the instructor's earliest availability. Dr. Mansour will provide proof of successful completion within three (3) weeks of completing the instruction. The instruction will involve one-on-one sessions with a College-approved instructor, incorporating principles of guided reflection, tailored feedback, and other modalities customized to the specific needs of Dr. Mansour as assessed by the instructor. The instructor will report to the College regarding Dr. Mansour's progress and compliance.

Clinical Supervision & Re-Assessment

- (c) Dr. Mansour shall retain a clinical supervisor, approved by the College, who will sign an undertaking in the form attached hereto as Appendix “A” (the “Supervisor”) no later than 30 days prior to Dr. Mansour’s return to practice after the suspension referred to in paragraph 4 above. Dr. Mansour shall practice under the guidance of the Supervisor for a period of six (6) months. Dr. Mansour shall meet with the Supervisor monthly to discuss any concerns related to patient care.
- (d) Within six (6) months after the completion of the Clinical Supervision, Dr. Mansour will submit to a reassessment of his practice (the “Reassessment”) by an assessor or assessors selected by the College (the “Assessor(s)”). The Reassessment may include a chart review, direct observation of Dr. Mansour’s care, interviews with colleagues and co-workers, feedback from patients and any other tools deemed necessary by the College. The Reassessment shall be at Dr. Mansour’s expense and he shall co-operate with all elements of the Reassessment. Dr. Mansour shall abide by all recommendations made by the Assessor(s) subject to paragraph (e) below, and the results of the Reassessment will be reported to the College and may form the basis of further action by the College.
- (e) If Dr. Mansour is of the view that any of the Assessor(s)’s recommendations are unreasonable, he will have fifteen (15) days following his receipt of the recommendations within which to provide the College with his submissions in this regard. The Inquiries Complaints and Reports (“ICR”) Committee will consider those submissions and make a determination regarding whether the recommendations are reasonable, and that decision will be provided to Dr. Mansour. Following that decision Dr. Mansour will abide by those recommendations of the Assessor(s) that the ICR Committee has determined are reasonable.

Other

- (f) Dr. Mansour shall submit to, and not interfere with, unannounced inspections of his practice location(s) and to any other activity the College deems necessary in order to monitor his compliance with the provisions of this Order.
- (g) Dr. Mansour shall comply with the College Policy on Practice Management Considerations for Physicians Who Cease to Practise, Take an Extended Leave of Absence or Close Their Practice Due to Relocation

in respect of his period of suspension, a copy of which forms Appendix “B” to this Order.

- (h) Dr. Mansour shall inform the College of each and every location where he practices, in any jurisdiction (his “Practice Location(s)”) within fifteen (15) days of this Order, and shall inform the College of any and all new Practice Locations within fifteen (15) days of commencing practice at that location, until the report of the assessment of his practice have been reported to the College.
 - (i) Dr. Mansour shall consent to the College making appropriate enquiries of the Ontario Health Insurance Plan and/or any person who or institution that may have relevant information, in order for the College to monitor his compliance with this Order.
 - (j) Dr. Mansour shall be responsible for any and all costs associated with implementing the terms of this Order.
6. Dr. Mansour pay to the College costs in the amount of \$5,000.00, within 30 days of the date of this Order.

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

TEXT of PUBLIC REPRIMAND
Delivered July 27, 2016 in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
And
DR. ALI ALI ABDULLA MANSOUR

The Chairperson: Dr. Mansour, we are a self-regulating profession, and the expectation is that we personally responsible to conduct ourselves with integrity and with honesty, and follow policy and procedure that the profession have formulated to ensure the highest level of care and protection of our patients.

You ignored or cut corners in the improper way you delegated to others, which could have resulted in harm to your patients. You knew, or surely should have known, what was proper conduct, and ignored it. We condemn that in the name of the profession and as members of the public.

Trust is implicit in the doctor-patient relationship. You have brought the profession into disrepute and directly dishonoured yourself as well. Your behaviour in your interactions with the College was egregious in nature and totally reprehensible. Frankly, you lied, and more than once. This is shameful, and disgraceful, and dishonourable.

Patient safety and excellent patient care is a paramount responsibility, and we hope that the conditions that we have ordered will assist you in achieving that goal. We expect that you will use this process to change your conduct, to bring honour to yourself and to the profession. We expect nothing less of you, and we expect that you will not be brought before this Committee ever again.

This is not an official transcript