

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Ghali, this is notice that the Discipline Committee ordered that there shall be a ban on the publication, including broadcasting, of the names of the complainant and/or information that could identify the complainant, pursuant to s. 47(1) of the Code. Under s. 47(1), such order is mandatory in respect of a complainant whose testimony is in relation to allegations of a member's misconduct of a sexual nature involving the complainant.

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

Every person who contravenes an order made under ... section 45 or 47... is guilty of an offence and on conviction is liable,

- (a) in the case of an individual to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence; or
- (b) in the case of a corporation to a fine of not more than \$50,000 for a first offence and not more than \$200,000 for a second or subsequent offence.

Indexed as: **Ontario (College of Physicians and Surgeons of Ontario) v. Ghali, 2016 ONCPSD 18**

**THE DISCIPLINE COMMITTEE OF THE COLLEGE
OF PHYSICIANS AND SURGEONS OF ONTARIO**

IN THE MATTER OF 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. ATEF MALAK SHEHATA GHALI

PANEL MEMBERS:

**DR. E. STANTON
DR. E. ATTIA (Ph.D)
DR. P. ZITER
MR. S. BERI
DR. C. LEVITT**

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS. E. WIDNER

COUNSEL FOR DR. GHALI:

MR. D. DOW

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MS. J. MCALEER

PUBLICATION BAN

Hearing Date: **May 24, 2016**

Decision Date: **May 24, 2016**

Release of Written Reasons: **July 22, 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 May 24, 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. Ghali committed an act of professional misconduct:

1. under clause 51(1)(b. 1) of the Health Professions Procedural Code which is schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18 (the “Code”) in that he engaged in sexual abuse of a patient; and
2. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”), in that he has engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

RESPONSE TO THE ALLEGATIONS

Dr. Ghali admitted the second allegation in the Notice of Hearing, 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 first allegation in the Notice of Hearing.

THE FACTS

The following Agreed Statement of Facts was filed as an exhibit:

Background

The College of Physicians and Surgeons of Ontario (“the College”) and Dr. Atef Malak Shehata Ghali (“Dr. Ghali”) agree to the following facts:

1. Dr. Ghali practices family medicine in Ottawa, Ontario, with his wife, who is also a physician, and in Casselman, Ontario.
2. At the times relevant to the facts set out below, Dr. Ghali was practicing in a medical clinic in Ottawa known as the CentrepoinTE Family Health Centre and in Casselman, Ontario.
3. Dr. Ghali obtained his medical degree in Egypt in 1986 and practiced family medicine in Egypt until 2006. He immigrated to Canada in 2009 and obtained his Certificate of Independent Practice in 2012.
4. The College began an investigation after receiving a mandatory report from the owner of the CentrepoinTE Family Health Centre in Ottawa in May 2014, setting out allegations made by Patient A as regards Dr. Ghali.

Patient A

5. Patient A, who was in her early 50s at the relevant time, was a patient in Dr. Ghali’s family practice at CentrepoinTE Family Health Centre in Ottawa, Ontario.
6. Between approximately December 2012 and May 2014, Dr. Ghali treated Patient A for a variety of health issues, including providing supportive counseling to Patient A on some occasions in respect of Patient A’s mental health issues and substance addiction. Patient A attended a 90-day in-patient substance rehabilitation program between May and August 2013. She continued thereafter to attend on Dr. Ghali including with respect to return to work issues, mental health issues and renewed substance use problems.

Facts and Admission

7. In May 2014, Patient A made a report of unwanted hugging and kissing by Dr. Ghali to staff at the Centrepointhe Family Health Centre, who then initiated the mandatory report to the College.

8. On two occasions, during the time period when he was Patient A's physician, Dr. Ghali concluded the appointment by kissing Patient A on the cheek and hugging her.

9. Patient A was upset by the kisses and hugs and felt that Dr. Ghali's conduct was inappropriate in the context of a medical appointment.

10. While Dr. Ghali intended his conduct to be supportive of Patient A, he now recognizes that his conduct was not appropriate conduct for a physician towards his patient, that it breached appropriate physician-patient boundaries and was not welcomed in any way by Patient A.

11. Dr. Ghali admits the facts set out in paragraphs 1 to 11 above, and admits that the conduct described constitutes an act of professional misconduct in that he engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all of the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional contrary to section 1(1)33 of O.Reg. 856/93 made under the Medicine Act, 1991.

FINDING

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts. Having regard to these facts, the Committee accepted Dr. Ghali's admission and found that he committed an act of professional misconduct 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.

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.

It is not in dispute that a joint submission should be accepted unless to do so would be contrary to the public interest and would bring the administration of justice into disrepute.

There are several principles the Committee considers in determining an appropriate penalty. The penalty should protect the public; serve as a specific deterrent to the individual; serve as a general deterrent to the profession; and strive to maintain the integrity of the profession and the public's confidence in self-regulation. The penalty should also serve to rehabilitate the member where appropriate.

In this particular case, the Committee was particularly concerned that a message be sent to the profession that it is imperative to maintain professional boundaries with patients.

The Committee considered the aggravating and mitigating factors in this case.

Mitigating factors

Dr. Ghali had an unblemished record from 1986 to 2006 while practising in Egypt. Then he moved to Canada. He had no previous history of complaints while practising in Egypt or since he began practising in Canada.

By accepting responsibility for his actions, Dr. Ghali saved the College the cost and time of a contested hearing. He also saved the complainant, a vulnerable patient, from the trauma of testifying as a witness at a full hearing.

Dr. Ghali admitted to his boundary transgression and has voluntarily enrolled in a boundaries course.

Aggravating Factor

The aggravating factor in this case was that this boundary transgression occurred during counselling sessions with a very vulnerable patient.

Case Law

Counsel presented cases to the Committee which they argued were similar and supported the proposed penalty in this case. The Committee reviewed the cases before coming to its decision. While this Committee is not bound by its prior decisions, it recognizes the principle that like cases should be determined in a like manner. The Committee was satisfied that the jointly-proposed penalty was consistent with the penalties imposed in prior Discipline Committee boundary violation cases.

The Committee agreed that the suspension of three months will serve the public interest and is appropriate in this case because it reflects the penalty given in other cases with similar facts. The penalty should specifically deter the member from any such conduct in the future. In addition to the impact of these proceedings, he will serve a three-month suspension and has been publicly reprimanded. He can be under no illusion with respect to this College's views on the inappropriateness of his behaviour. With respect to the profession generally, this Committee sincerely hopes that this case will serve as an example. While one can imagine circumstances in which it would be appropriate to comfort a patient through some form of touch, these circumstances will be rare and physicians should never take for granted that any form of non-medically indicated personal touch is welcome by the patient. The penalty should also maintain the integrity of the profession and public confidence in the profession's ability to self-regulate in the public interest. With respect to maintaining the integrity of the profession and public confidence in self-regulation, it is hoped that the penalty imposed will send a message to the public that this Committee recognises that such behaviour is inappropriate and should be sanctioned. The public reprimand conveys the Committee's disapproval with Dr. Ghali's behaviour. The Committee expects that the completion of the boundaries course will assist in Dr. Ghali's rehabilitation.

The proposed costs award against Dr. Ghali was appropriate in this case.

ORDER

Therefore, having stated the findings in paragraph 1 of its written order of May 24, 2016, on the matter of penalty and costs, the Committee ordered and directed on May 24, 2016 that:

2. the Registrar suspend Dr. Ghali's Certificate of Registration for a three (3) month period effective immediately;
3. the Registrar impose the following term, condition and limitation on Dr. Ghali's certificate of registration, to be removed once the College receives proof of completion of the course:
 - a. Dr. Ghali shall successfully complete the next available course in Understanding Boundaries, at his own expense.
4. Dr. Ghali appear before the panel to be reprimanded; and
5. Dr. Ghali pay costs to the College for a one day hearing in the amount of \$5,000.00 within 30 days of the date of this Order.

At the conclusion of the hearing, Dr. Ghali waived his right to an appeal and the Committee administered the public reprimand.

TEXT of PUBLIC REPRIMAND

Delivered May 24, 2016

in the case of the

COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO

And

DR. ATEF MALAK SHEHATA GHALI

THE CHAIRPERSON: It is always unfortunate when a member of our profession appears before this Committee. Dr. Ghali, you have been found to have committed an act of professional misconduct that would be considered disgraceful, dishonourable, or unprofessional by members of your profession.

Physicians are expected to behave professionally in all patient encounters. You have crossed a boundary by kissing and hugging a vulnerable patient. By crossing that boundary you have damaged the reputation, not only of yourself, but the profession as a whole, and as well that could undermine the public confidence in the profession.

We appreciate the fact that you will be taking the Understanding Boundaries course, but in the future we expect you will apply the lessons you have learned through this process in your practice. We trust that you will never appear before this Discipline Committee again.

This is not an official transcript