

ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

Citation: *College of Physicians and Surgeons of Ontario v. Steinberg*, 2023 ONPSDT 13

Date: June 1, 2023

Tribunal File No.: 22-015

BETWEEN:

College of Physicians and Surgeons of Ontario

- and -

Dr. Jeffrey Martin Steinberg

FINDING AND PENALTY REASONS

Heard: May 8, 2023, by videoconference

Panel:

Ms. Shayne Kert (chair)
Mr. Peter Pielsticker
Ms. Linda Robbins
Dr. Janet van Vlymen
Dr. Susanna Yanivker

Appearances:

Ms. Morgana Kellythorne, for the College
Mr. Stephen Ronan, for Dr. Steinberg

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.

Overview

- [1] Dr. Jeffrey Steinberg is a general practitioner who practises in North York. He received his certificate of independent practice from the College in 1980. He has no discipline history.
- [2] In July 2020, Dr. Steinberg became Patient A's family physician. At this hearing, the College alleged and Dr. Steinberg admitted that by hugging Patient A on one occasion during a medical appointment in his office, and by inviting her to his house via text message in June 2021, Dr. Steinberg failed to maintain appropriate boundaries with Patient A.
- [3] At the hearing we found that based on the agreed facts, Dr. Steinberg committed professional misconduct as alleged. The parties made a joint submission that the penalty should be a reprimand and a three-month suspension of his certificate of registration, with conditions.
- [4] Our role in assessing a joint penalty submission is limited. Unless the panel finds that imposing the proposed penalty would bring the system of physician professional regulation into disrepute, the joint submission should be accepted. Applying that test, we accepted the joint submission at the hearing. We also ordered costs to be paid to the College of \$6,000, as agreed by the parties. These are our reasons.

The Misconduct

The Agreed Facts

- [5] The treatment that Dr. Steinberg provided to Patient A included treatment for mental health conditions. He prescribed medications to her for these conditions, making some changes to the medications over time. During the same period, on a referral by Dr. Steinberg, Patient A also received specialty mental health care.
- [6] Patient A's medical appointments with Dr. Steinberg took place in his office. She normally saw him every two weeks. During one of these appointments, Patient A disclosed to Dr. Steinberg that she had been experiencing significant distress. After her disclosure, Dr. Steinberg hugged Patient A and gave her his cell phone number, telling her to call him if she needed to talk.

- [7] During a subsequent interview with the College investigator, Patient A said that she did not feel forced to receive the hug. While she thought it was odd, the hug did not make her feel uncomfortable at the time. She also said that she did not feel pressure to accept Dr. Steinberg's cell phone number.
- [8] Patient A had an appointment with Dr. Steinberg on May 31, 2021, and a follow-up appointment scheduled for June 14, 2021.
- [9] On June 3, 2021, Dr. Steinberg received a report from Patient A's treating psychiatrist. The report outlined recommendations for ongoing care and treatment, including that Patient A would continue in follow-up with Dr. Steinberg, and that her current medication combination should continue "for now," with one possible change that Dr. Steinberg and Patient A planned to discuss at the scheduled appointment on June 14.
- [10] At 4:10 pm on June 8, 2021, Dr. Steinberg initiated a text message exchange with Patient A. This was the first time that he had communicated with her by text. He said "hi" and asked how she was doing. The following text exchange then took place:

4:38 pm – Dr. Steinberg: Have you got any time to visit me

4:38 pm – Patient A: Yes, I do/must.

4:38 pm – Dr. Steinberg: My house? 😊.

4:39 pm – Patient A: Oh...I don't know. With baby and all.

4:39 pm – Patient A: Thank you for inviting me, though

4:39 pm – Dr. Steinberg: You can bring the baby

4:40 pm - Patient A: He is crying now. Can I message you when he is asleep?

4:40 pm – Dr. Steinberg: Yes

4:41 pm – Patient A: Thank you

4:42 pm – Dr. Steinberg: What time?

- [11] Patient A did not respond to Dr. Steinberg's question asking what time she would message him. At 9:17 that same evening, Dr. Steinberg texted "???" Again, Patient A did not respond. She did not go to Dr. Steinberg's house and he did not contact her further.
- [12] The text exchange on June 8, 2021 was the last contact that Patient A had with Dr. Steinberg, as she no longer felt comfortable or safe going back to him for care. In her interview with the College investigator, Patient A said that during the text exchange she initially thought that Dr. Steinberg was asking if she would be attending her next scheduled office appointment. However, when he mentioned going to his house, she wanted to express her hesitation. She said that despite her discomfort about being asked to his home, she found it difficult to say "no" more directly to Dr. Steinberg as she was concerned about how her response would impact their physician-patient relationship.
- [13] On June 18, 2021, another physician made a report to the College about Dr. Steinberg's conduct toward Patient A. The reporting physician described the conduct as having caused a "cascade of concerns" for Patient A and noted that she had been in crisis since the text exchange. Patient A also complained to the College about a month later.
- [14] During the College investigation, and in response to Patient A's complaint, Dr. Steinberg said that when he hugged Patient A in his office his intent was to offer support to her. He acknowledged, however, that physical contact with patients is generally not appropriate and should be avoided. He also recognized that it was not appropriate to invite Patient A to his home, describing his conduct as a momentary lapse of judgment. Dr. Steinberg said that when he initiated the text communication with Patient A, his intention was to discuss concerns about his ability to manage her symptoms and medication.

Finding of Professional Misconduct

- [15] The agreed facts support a finding that Dr. Steinberg breached his professional obligations as alleged. By hugging Patient A in his office, and particularly by texting Patient A and suggesting that she meet him at his home (despite having an appointment at his office scheduled for six days later), Dr. Steinberg violated

physician-patient boundaries. In doing so he engaged in conduct that would reasonably be regarded by members of the profession as disgraceful, dishonourable or unprofessional.

Penalty and Costs

- [16] As this was a joint submission on penalty, the “undeniably high threshold” of the public interest test established by the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43, applies: *Bradley v. Ontario College of Teachers*, 2021 ONSC 2303 at para. 11.
- [17] The public interest test requires that a joint submission be accepted unless “the proposed penalty is so ‘unhinged’ from the circumstances of the case that it must be rejected”: *Bradley* at para. 14; *Anthony-Cook* at para. 34. In the context of this Tribunal, a joint submission will only be contrary to the public interest if it is “so markedly out of line with expectations of reasonable persons aware of the circumstances of the case that they would view it as a break down in the proper functioning” of the College’s professional discipline process: *Anthony-Cook* at para. 33; *College of Physicians and Surgeons of Ontario v. Bahrgard Nikoo*, 2022 ONPSDT 15 at para. 34. Put simply, “[t]here must be something completely unacceptable, unusual or unconscionable about [a joint submission] to reject it”: *College of Physicians and Surgeons of Ontario v. Matheson*, 2022 ONPSDT 27 at para. 17.
- [18] We are satisfied that, in the circumstances, the proposed resolution is: i) not contrary to the public interest; and ii) achieves the relevant penalty goals in this case. This is so for several reasons.
- [19] First, while Dr. Steinberg’s misconduct involved one patient over a fairly short period of time, and although he provided information to the College that his intentions were supportive and clinical, his failure to maintain clear professional boundaries with Patient A is nonetheless concerning.
- [20] Professional boundaries are fundamentally important. They recognize the inherent power differential in any physician-patient relationship and define the limits of a safe and effective professional relationship between physician and patient.

- [21] Patients depend on physicians for their knowledge and expertise, treatment, counselling and advice. They often share highly personal information with their physician, which can heighten the inherent power imbalance. As Patient A's family physician, Dr. Steinberg knew (or ought to have recognized) that she was particularly vulnerable due to her personal health needs. The text messages from Dr. Steinberg made her feel uncomfortable and unsafe both because of past events in her life (unrelated to Dr. Steinberg) and because she relied on Dr. Steinberg as her family physician to support her medical decision-making, including prescribing her medications.
- [22] Second, in some measure the goals of specific deterrence, remediation and rehabilitation have already been achieved in this matter. Dr. Steinberg has acknowledged the inappropriateness of his actions and admitted his misconduct. During the College investigation, he took steps to enroll in the PROBE Ethics & Boundaries Program. While he has not yet begun the program (which is personalized to the individual health care professional and addresses issues identified by their regulator), our order will ensure that Dr. Steinberg successfully completes the program.
- [23] Third, the proposed penalty is in line with the range of penalties in (broadly) similar cases involving boundary violations provided to us, particularly where, as here, the member has no discipline history: *College of Physicians and Surgeons of Ontario v. Heymans*, 2018 ONCPSD 57; and *College of Physicians and Surgeons of Ontario v. Peirovy*, 2019 ONCPSD 12.
- [24] Finally, the proposed penalty addresses the goal of general deterrence by reinforcing that the College takes boundary violations seriously. Specifically, it reminds other members of the medical profession that they must carefully consider the nature of any physical contact and private communications with their patients to ensure that all patients feel safe and secure, and that the College will take steps to address the misconduct where they fail to do so.
- [25] Balancing the relevant facts and caselaw, we find that the proposed penalty is appropriate and not contrary to the stringent public interest test. The costs

proposed are also reasonable and reflect the Tariff in the Tribunal's Rules of Procedure.

Order

[26] At the conclusion of the hearing, we ordered:

- a. Dr. Steinberg to attend before the panel to be reprimanded;
- b. The Registrar to suspend Dr. Steinberg's certificate of registration for three months commencing May 9, 2023 at 12:01 a.m.;
- c. The Registrar to place terms, conditions and limitations on Dr. Steinberg's certificate of registration requiring that he participate in and complete the PROBE Ethics & Boundaries program within three months of the Order, or if the program is not available within that timeframe at the earliest available opportunity, and that he provide proof of completion within one month of completing the program.
- d. Dr. Steinberg pay costs to the College in the amount of \$6,000 by June 8, 2023.

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College of Physicians and Surgeons of Ontario

- and -

Dr. Jeffrey Martin Steinberg

The Tribunal delivered the following Reprimand
by videoconference on Monday, May 8, 2023.

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

Dr. Steinberg,

We hope this reprimand will serve an educational purpose for you and send a message to the public and the profession that the Tribunal will deal with this type of misconduct in a way that reflects its seriousness.

Dr. Steinberg, with Patient A, you crossed boundaries of professionalism that are core to the physician-patient relationship. The physician who initially reported your conduct to the College said that it caused “a cascade of concerns” for Patient A and she had been in crisis since. You yourself acknowledge that physical conduct with patients, for instance when you hugged Patient A in your office, is generally inappropriate. Further, you exhibited a fundamental lack of judgment when you invited Patient A to your home. This communication understandably made Patient A feel uncomfortable and unsafe. Among other reasons, because of the inherent power imbalance that exists in the physician-patient relationship, you must maintain proper professional boundaries at all times. You must never again compromise the boundaries between medical care and a patient’s personal and private life.

Your actions were truly unwarranted. We note you have now enrolled in the PROBE Ethics and Boundaries program. We trust this will be a truly memorable learning experience for you. Among other things, it will assist in ensuring that you carefully consider the ways in which you interact with your patients so that you do not open yourself to the possibility of appearing before this Tribunal in the future.