

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Szozda, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the names and any information that could disclose the identity of patients referred to orally or in the 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. Szozda,
2019 ONCPSD 14**

**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. TIMOTHY JAMES PETER SZOZDA

PANEL MEMBERS:

**DR. M. DAVIE
MS. E.M. MILLS
DR. E. STANTON
MR. M. KANJI
DR. A. TURNER**

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS. EMILY GRAHAM

COUNSEL FOR DR. SZOZDA:

MR. STEPHEN DARROCH

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. D. ROSENBAUM

**Hearing Date: January 30, 2019
Decision Date: January 30, 2019
Written Decision Date: March 25, 2019**

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 January 30, 2019. At the conclusion of the hearing, the Committee released a written order stating its finding that the member committed an act of professional misconduct and setting out its penalty and costs order, with written reasons to follow.

THE ALLEGATIONS

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

RESPONSE TO THE ALLEGATIONS

Dr. Szozda entered a plea of no contest in relation to the second allegation in the Notice of Hearing, that he engaged in 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 allegations 1 and 3 in the Notice of Hearing.

THE FACTS

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

PART I - THE FACTS

A. BACKGROUND

1. Dr. Szozda is 57 years old, and practises family medicine in Kitchener, Ontario. He received his certificate of registration authorizing independent practice from the College, and his specialist designation in family medicine in 1988.

B. PATIENT A

2. Patient A was a patient of Dr. Szozda's from 1992 to 2016. During appointments with Patient A, Dr. Szozda made inappropriate and unprofessional comments to her, and engaged in inappropriate and unprofessional conduct towards her as follows:

- a) On May 21, 2013, Patient A attended an appointment with Dr. Szozda for an assessment of her acne. As she was sitting in a chair facing him, Dr. Szozda leaned over and lowered the top of her shirt to expose the upper chest above the bra line to examine her chest for acne. Dr. Szozda then told her to stand up and turn around, and pulled up her shirt at the back to determine if she had any acne on her upper back as well. Dr. Szozda did not adequately explain his examination of Patient A's upper chest and back before performing it. The inadequate explanation caused Patient A to be alarmed.
- b) During the appointment on May 21, 2013, Dr. Szozda assessed Patient A's need for oral contraceptives, both as a matter of birth control, and to determine the combination of therapies to treat her acne. In doing so, Dr. Szozda inappropriately asked Patient A if she had a boyfriend. When Patient A replied that she did not have a boyfriend, Dr. Szozda replied "Oh really, a pretty girl like you?" It was inappropriate of Dr. Szozda to comment on Patient A's appearance.
- c) On August 8, 2014, Dr. Szozda performed a pelvic examination on Patient A.

The examination required her to be undressed from the waist down. She was provided with a gown. During the pelvic examination, before inserting the speculum, Dr. Szozda made an unnecessary and inappropriate comment to Patient A regarding the number of fingers he was able to insert into her introital opening. Patient A was upset by his comment.

- d) After the pelvic examination, Patient A was not given sufficient privacy to change back into her own clothes. Dr. Szozda remained in the examination room, with his back turned to the patient, looking at his computer screen and typing his chart notes into his electronic medical record.
- e) After Patient A was fully clothed, Dr. Szozda briefly hugged Patient A. This was inappropriate in the circumstances and demonstrated poor judgment. The hug made Patient A uncomfortable;
- f) Between 2014 and 2015, Patient A had an ongoing problem with yeast infections. She had several vaginal examinations by Dr. Szozda in that period. Each time she was asked to undress from the waist down. Dr. Szozda failed to give her sufficient privacy when putting her clothes back on. Dr. Szozda remained in the room, looking at the computer, which did not adequately protect the patient's privacy.

3. In May 2017, Patient A submitted a complaint to the College regarding Dr. Szozda's inappropriate conduct and comments.

PART II – PLEA OF NO CONTEST

4. Dr. Szozda does not contest the facts at paragraphs 1-3 above, and does not contest that, based on these facts, he engaged in professional misconduct under paragraph 1(1)33 of O Reg. 856/93, in that he engaged in acts or omissions relevant to the practice of medicine that would be regarded by members as disgraceful, dishonourable or unprofessional.

RULE 3.02 OF THE DISCIPLINE COMMITTEE'S RULES OF PROCEDURE

Rule 3.02 of the Discipline Committee's Rules of Procedure regarding a plea of no contest states as follows:

3.02(1) Where a member enters a plea of no contest to an allegation, the member consents to the following:

- (a) that the Discipline Committee can accept as correct the facts alleged against the member on that allegation for the purposes of College proceedings only;
- (b) that the Discipline Committee can accept that those facts constitute professional misconduct or incompetence or both for the purposes of College proceedings only; and
- (c) that the Discipline Committee can dispose of the issue of what finding ought to be made without hearing evidence.

FINDING

The Committee accepted as correct all of the facts set out in the Statement of Uncontested Facts. Having regard to these facts, the Committee found that Dr. Szozda committed an act of professional misconduct, in that he has engaged in 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.

SUBMISSION AND EVIDENCE ON PENALTY

Counsel for the College and counsel for Dr. Szozda made a joint submission as to an appropriate penalty and costs order. The proposed order consisted of a two-month suspension of Dr. Szozda's certificate of registration; the imposition of terms, conditions and limitations on Dr. Szozda's certificate of registration requiring completion of an ethics and boundaries education program; a reprimand; and costs payable to the College in the amount of \$6,000.00.

The Committee is aware of the Supreme Court of Canada's decision in *R. v. Anthony-Cook*, 2016 SCC 43, which indicates that a joint submission on penalty must be accepted, unless doing so would bring the administration of justice into disrepute, or is otherwise contrary to the public interest.

Counsel for Dr. Szozda provided the Committee with a document brief containing letters of support for Dr. Szozda from colleagues, an employee and his spouse. While the letters of support indicate that Dr. Szozda is held in high regard by these individuals, the Committee did not give substantial weight to the letters in accepting the joint submission on penalty. The letters of support did not indicate that the authors had reviewed the Statement of Uncontested Facts, or were aware of Dr. Szozda's plea or the details of Dr. Szozda's misconduct.

PENALTY AND REASONS FOR PENALTY

The Committee's determination on penalty is based, firstly and most importantly, on the guiding principle of public protection. The penalty should serve as a general deterrent to the profession and a specific deterrent to the member; express the profession's denunciation of the misconduct; be proportionate to the misconduct; uphold the honour and integrity of the profession; and maintain the public's confidence in the College's ability to regulate the profession in the public interest. Furthermore, to the extent possible, the penalty should serve to rehabilitate the member.

Nature of the Misconduct

In order to build and maintain a patient's trust, a physician must demonstrate respect and sensitivity for the patient's personal dignity and for professional boundaries. This is particularly important in relation to the conduct of physical examinations, which include exposure and examination of private and sensitive areas of the body.

Prior to performing a physical examination, it is the duty of every physician to explain to the patient the purpose of the examination and to describe the nature of the examination, so that the patient understands and expects what will happen. At the appointment in May 2013, Dr. Szozda failed to provide an adequate explanation to Patient A, prior to lowering the top of her shirt to expose her upper chest to examine it, and prior to raising the back of her shirt to examine her back. This lack of explanation caused Patient A to be alarmed by Dr. Szozda's actions.

Upholding appropriate boundaries, by words and actions, is essential to maintaining a professional relationship between a physician and a patient. Dr. Szozda's question at the May 2013 appointment as to whether Patient A had a boyfriend, in the context of assessing her need

for oral contraceptives, was unprofessional, as was his comment regarding her appearance when she indicated that she did not have a boyfriend. Furthermore, Dr. Szozda's comment at the August 2014 appointment regarding the number of fingers he was able to insert into Patient A's introital opening during a pelvic examination was highly inappropriate and demonstrated a lack of respect and sensitivity towards Patient A and poor professional judgment. Dr. Szozda also failed to recognize that it was a boundary violation and inappropriate to hug Patient A, even briefly, at the end of an appointment during which he had conducted a pelvic examination.

At the 2014 appointment and at other appointments between 2014 and 2015, Dr. Szozda failed to demonstrate respect for Patient A's personal dignity by not providing her with sufficient privacy to change back into her clothes following a physical examination that required her to remove her clothes from the waist down.

Dr. Szozda's misconduct in relation to Patient A was serious and unprofessional. His insensitivity to Patient A, in failing to appreciate how his inappropriate comments and actions might be perceived by and impact her, was deplorable and reflects negatively on the reputation of the medical profession.

Mitigating Factors

The Committee took into account the following mitigating factors:

- (i) This was Dr. Szozda's first appearance before the Discipline Committee;
- (ii) There was no other relevant complaint history;
- (iii) Dr. Szozda agreed to a Statement of Uncontested Facts and a Joint Submission on Penalty, thus saving the time and expense of a contested hearing, as well as sparing witnesses from having to attend and testify; and
- (iv) Prior to the hearing, Dr. Szozda registered for the course, "Understanding Boundaries and Managing the Risks Inherent in the Doctor-Patient Relationship". While the Committee has ordered that Dr. Szozda attend a specific training course on ethics and boundaries, namely the "PROBE" course, the fact he previously enrolled in a boundaries

course demonstrates that Dr. Szozda has some insight into his misconduct and recognizes the need for, and benefit of, training for maintaining professionalism during patient encounters.

Aggravating Factors

The Committee also considered the following aggravating factors:

- (i) Dr. Szozda exhibited a multifaceted disregard for professional boundaries on multiple occasions;
- (ii) Dr. Szozda's inappropriate comments could have been interpreted by the patient as sexualizing the patient encounter; and
- (iii) There was inappropriate physical contact between Dr. Szozda and Patient A when Dr. Szozda hugged her following a pelvic examination.

Prior Cases

The Committee accepts as a general principle of fairness that like cases should be treated alike. The Committee was provided with a Joint Book of Authorities describing previous similar cases before the Discipline Committee (*CPSO v. Krishnalingam*, 2005 ONCPSD 25, *CPSO v. Hajcsar*, 2014 ONCPSD 13, *CPSO v. Chopitany*, 2011 ONCPSD 29, *CPSO v. Anastasio Jr.*, 2012 ONCPSD 21, *CPSO v. Wilson*, 2016 ONCPSD 46, *CPSO v. Tennen*, 2013 ONCPSD 41 and *CPSO v. McInnis*, 2011 ONCPSD 11).

While the Committee appreciates that prior decisions may be of some assistance in its determination of an appropriate penalty, the Committee is not bound by its previous decisions. Each case before the Committee is unique and must be carefully considered on its specific facts and any mitigating and aggravating factors.

While there were no previous decisions before the Committee that were directly comparable to this matter, the Committee was satisfied that the joint submission on penalty fell within the range of penalties established in the cases presented.

Conclusion

After careful consideration, the Committee accepted the parties' jointly proposed penalty and costs order. In the view of the Committee, the penalty is fair, proportionate and just in light of the nature of Dr. Szozda's misconduct.

A two-month suspension serves to protect the public, maintain public confidence in the integrity of the profession, and act as a general as well as a specific deterrent. The public reprimand also serves as a general and specific deterrent; the Committee expressed directly to Dr. Szozda in the reprimand the public's and the profession's denunciation of his misconduct. With respect to rehabilitation, the requirement that Dr. Szozda complete a course in ethics and boundaries provides Dr. Szozda with the opportunity to deepen his insight and amend his behavior to prevent future boundary violations of this nature. The penalty also demonstrates that such misconduct will not be tolerated by the profession and reinforces the profession's expectation that all physicians interact with their patients in a professional and respectful fashion such that their dignity is respected and preserved.

ORDER

The Committee stated its findings in paragraph 1 of its written order of January 30, 2019. In that order, the Committee ordered and directed on the matter of penalty and costs that:

2. The Registrar suspend Dr. Szozda's certificate of registration for a period of two (2) months, effective February 1, 2019.
3. Dr. Szozda attend before the panel to be reprimanded.
4. The Registrar to impose the following terms, conditions and limitations on Dr. Szozda's certificate of registration:
 - (i) Dr. Szozda will successfully complete the PROBE course in ethics and boundaries, at his own expense, by obtaining an unconditional pass, and will provide proof of completion to the College within eight (8) months from the date of this Order.

5. Dr. Szozda pay costs to the College in the amount of \$6,000 within thirty (30) days from the date of this Order.

TEXT of PUBLIC REPRIMAND
Delivered January 30, 2019
in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
and
DR. TIMOTHY JAMES PETER SZOZDA

It is indeed regrettable that you find yourself in front of this Committee at this point in your career. Patients expect and deserve to be treated in a professional manner at all encounters, and your conduct around inadequate explanation of sensitive examinations and inappropriate personal comments, speaks to your lack of understanding regarding professional boundaries.

Patients should be helped to feel as comfortable as possible. They must be afforded adequate privacy and respect. You must always be aware of patient's sensitivities. Clear communication is needed. It is the patient's perception of our exams and comments that we must be attuned to.

We trust that you will use the ordered two-month suspension to reflect on your misconduct, and we trust that you will apply what you learn in the PROBE to finish your career as a more considerate and respectful physician. You may be seated.