

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Adams this is notice that the Discipline Committee ordered that no person shall publish or broadcast the name or any information that could disclose the identity of the 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. Adams,
2017 ONCPSD 22**

**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. KENNETH WEREZAK ADAMS

PANEL MEMBERS:
MR. P. GIROUX (CHAIR)
DR. M. DAVIE
DR. J. RAPIN
MR. A. RONALD
DR. C. CLAPPERTON

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS AMY BLOCK

COUNSEL FOR DR. ADAMS:

MR. ELI MOGIL
MR. ERIC PELLEGRINO

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MS JENNIFER MCALEER

Hearing Date: May 15, 2017
Decision Date: May 15, 2017
Release of Written Reasons: June 7, 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 May 15, 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 failed to maintain the standard of practice of the profession and 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. The Committee also set out its penalty and costs order with written reasons to follow.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Kenneth Werezak Adams 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 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 Notice of Hearing also alleged that Dr. Adams 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. Adams entered a plea of no contest to allegations 1 and 2: in that he has failed to maintain the standard of practice of the profession, and 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. Counsel for the College withdrew the allegation of incompetence.

THE FACTS

The following facts were set out in the Statement of Uncontested Facts and Plea of No Contest which was filed as an exhibit:

PART I – FACTS

A. OVERVIEW

1. Dr. Kenneth Werezak Adams (“Dr. Adams”) is a 61 year-old physician who received his certificate of independent practice from the College of Physicians and Surgeons of Ontario (the “College”) on October 18, 1983.
2. At the relevant time, Dr. Adams practised medicine in Toronto, Ontario.
3. As of October 17, 2016, Dr. Adams signed an undertaking with the College agreeing to restrict his surgical practice to hair transplantation procedures, ancillary procedures and commonly performed minor procedures of the skin and subcutaneous tissue. Attached at Tab A [to the Statement of Uncontested Facts and Plea of No Contest] is a copy of the undertaking of October 17, 2016.

B. FAILURE TO MAINTAIN THE STANDARD OF PRACTICE

Complaint to the College – Patient A

4. By letter dated January 26, 2014, Patient A wrote to the College complaining about the care he received from Dr. Adams. Patient A had undergone cosmetic procedures (liposuction and fat removal) several years prior with another physician. As a result of these treatments, Patient A had been left with hollows in his cheeks. Patient A consulted

Dr. Adams to see if injectable fillers would assist in correcting the hollows in Patient A's cheeks.

5. There are many commercially available preparations of hyaluronic acid that have been approved by Health Canada for injection into the skin as fillers. The cosmetic use of such fillers involves injection of hyaluronic acid into the dermis or subdermal layer of the skin to produce volume in the skin that acts to fill in hollows, folds and lines.
6. During the month of August 2010, Dr. Adams provided a series of four filler injections to Patient A. Dr. Adams used hyaluronic acid that was compounded at a compounding pharmacy, as the filler, rather than a filler that was commercially available and approved by Health Canada.
7. Although Patient A was initially pleased with the result of the injections, the effects dissipated rapidly and the hollows re-appeared. In addition, about three months after beginning the series of injections, Patient A noticed what he described as a "rather ugly, hook or bow-shaped demarcation above the jaw line, on the left side of my face". Patient A's family physician confirmed to the College that Patient A is left with a "hard 1 cm mobile lump over his left mandible".
8. When Patient A brought his concerns about the hard lump to Dr. Adams, Dr. Adams provided a series of injections of Hyaluronidase in an unsuccessful attempt to dissolve the lump.

Expert Opinion regarding Patient A

9. The College retained an expert, Dr. Paul Cohen, to provide an opinion regarding the care and treatment of Patient A, a copy of which is attached at Tab B [to the Statement of Uncontested Facts and Plea of No Contest]. Dr. Cohen is a Royal College of Physicians and Surgeons ("RCPSC") certified dermatologist practising in Toronto since 2001.
10. In his report, Dr. Cohen concluded that Dr. Adams failed to maintain the standard of practice in his use of compounded hyaluronic acid. Dr. Cohen concluded as follows:

Dr. Adams' care did display some lack of judgment. Using a non-commercially available form of hyaluronic acid is not usual practice. Perhaps in very rare instances where someone may have allergy to a component of the product, using a compounded product could be considered. However, this comes with risks and patients must be aware of these risks.

It would not be usual standard of care to use pharmaceutically compounded hyaluronic acid. ... Dr. Adams use of compounded hyaluronic acid does not meet the standard of care of physicians who perform this procedure. I think the use of these products show lack of judgment...

11. With respect to Patient A's chart, Dr. Cohen noted poor charting in that there is no patient consent form in the chart and no documentation of potential side effects. Commercial fillers have labels attached to them and the label is commonly affixed to the patient chart to confirm the dose and brand used and allows for tracking if there is something faulty with the filler. In this case, there was no label because Dr. Adams used a compounded filler. Dr. Cohen recommended that Dr. Adams use only commercially available fillers going forward, and that the patient records contain a signed consent form in respect of the treatment provided.

C. DISGRACEFUL, DISHONOURABLE OR UNPROFESSIONAL CONDUCT

Complaint to the College – Providing Treatment to Family Member

12. On July 20, 2016, the College received a complaint from the Associate Dean at the University, dated July 12, 2016.
13. The complaint indicated that Dr. Adams had provided a medical note to a student, for the purpose of seeking accommodation from an instructor at the University. The instructor who received the medical note became suspicious because the note indicated the student was incapacitated during a period in which the student had written an exam, and further,

all possible symptoms had been checked off on the form. The note is attached at Tab C [to the Statement of Uncontested Facts and Plea of No Contest].

14. The instructor telephoned the number indicated on the medical note, which is Dr. Adams' private cellular telephone number, and spoke to Dr. Adams. Dr. Adams reportedly confirmed that he had provided care to the student and would continue to do so.
15. The student is in fact Dr. Adams' family member. Dr. Adams did not reveal this fact in the initial telephone conversation with the instructor, detailed in the preceding paragraph.
16. In addition to the note that was subject of the complaint, Dr. Adams' family member had previously submitted four other medical notes to the University, all authored by Dr. Adams. The University provided the notes to the College.
17. The four medical notes authored by Dr. Adams for his family member and provided to the University are attached at Tab D [to the Statement of Uncontested Facts and Plea of No Contest].

College Investigation- Providing Treatment to Family Member

18. In his response to the College investigation, Dr. Adams confirmed that the student is in fact his family member and confirmed that he had written the five medical notes provided to the College by the University and had provided medical care to his family member.
19. Dr. Adams provided a copy of two patient charts for his family member. The first chart includes clinical notes dating from April 2010 to December 2013. The second chart includes clinical notes dating from April to July 2016. There are two charts, because when Dr. Adams saw his family member as a patient in April 2016, the first chart was in storage.
20. Dr. Adams provided medical treatment for his family member's medical conditions and billed for treatment on two occasions in May and July 2016.

21. The College obtained copies of Dr. Adams' billing to the Ontario Health Insurance Plan ("OHIP") in respect of his family member, attached at Tab E [to the Statement of Uncontested Facts and Plea of No Contest].
22. In his response to the College regarding the OHIP billings, Dr. Adams acknowledged that he ought not to have billed OHIP. Dr Adams has submitted Remittance Advice Inquiries to the Ministry of Health and Long-Term Care ("MOHLTC"), attached at Tab F [to the Statement of Uncontested Facts and Plea of No Contest], in order to repay OHIP for this improper billing.
23. The care that Dr. Adams provided to his family member violates professional boundaries. In providing medical treatment to his family member, Dr. Adams failed to recognize and maintain appropriate boundaries.
24. Dr. Adams' conduct is not consistent with professional obligations including as articulated in College Policy #2-16 "Physician Treatment of Self, Family Members or Others Close to Them" and an earlier version, College Policy #7-06 "Treating Self and Family Members", attached at Tab G [to the Statement of Uncontested Facts and Plea of No Contest], which provide that physicians must not provide treatment for themselves or family members except:
 - (a) for a minor condition or in an emergency situation, and
 - (b) when another qualified health-care professional is not readily available.

These conditions were not present when Dr. Adams repeatedly treated his family member.

PART II – PLEA OF NO CONTEST

25. Dr. Adams does not contest the facts contained in paragraphs 1 to 24 above and does not contest that the conduct described above constitutes professional misconduct in that he:
 - (i) failed to maintain the standard of practice of the profession contrary to paragraph 1(1)2 of Ontario Regulation 856/93 made under the *Medicine Act*, 1991:

- in respect of the care and treatment of Patient A including in his record keeping; and,
- (ii) 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.
- in respect of the care he provided to a family member.

FINDING

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.

The Committee accepted as correct all of the facts set out in the Statement of Uncontested Facts and Plea of No Contest. Having regard to these facts, the Committee accepted Dr. Adams' admission and found that he committed an act of professional misconduct in that he has failed to maintain the standard of practice of the profession, and 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.

PENALTY SUBMISSION

Counsel for the College and counsel for Dr. Adams made a joint submission as to an appropriate penalty and costs order.

The proposed order consisted of the following:

1. Suspension of Dr. Adams' certificate of registration for three months.
2. Terms, conditions and limitations on Dr. Adam's certificate of registration, to be implemented at his own expense, which include: instruction in medical ethics; clinical supervision for six months, and re-assessment approximately six months after the completion of the period of supervision. The full details of the terms, conditions and limitations are set out in the Order below.
3. A reprimand.
4. Costs in the amount of \$5,500.00 at the tariff rate, which represents a portion of the actual costs for one day of hearing.

PENALTY AND REASONS FOR PENALTY

The law is clear that the Committee should only depart from a joint submission in very limited circumstances, where the penalty proposed would bring the administration of justice into disrepute, or is otherwise not in the public interest.

In evaluating the proposed penalty, the Committee considered protection of the public, specific and general deterrence, denunciation of the specific misconduct, maintenance of public confidence in the medical profession and the College's ability to govern the profession in the public interest, and in so far as possible, rehabilitation of the member.

The Committee must also consider any aggravating and mitigating factors in assessing the proposed penalty. The case law can offer some guidance to the Committee, but no two cases are identical and the Committee is not bound by its prior decisions.

Aggravating Factors

With respect to the finding of failing to maintain the standard of practice of the profession, the Committee was concerned to learn of Dr. Adams' choice to prescribe a compound not approved by Health Canada. In doing so, he put the patient at an increased risk of complications. The Committee acknowledges that the expert opinion indicates that the complication suffered by Patient A may have occurred, even if Dr. Adams had used the approved fillers. However, the Committee notes that the risk is unknown with the non-proprietary compound. Dr. Adams' record keeping deficiencies make it impossible to know if the patient was aware of the added risks involved with using the compound.

Patient safety must always be put first. Patients must be able to trust that their physicians, including those that provide cosmetic and non-emergent care, will have patients' best interests at heart and utilize Health Canada approved products when treating patients. While side effects cannot be completely eliminated, it is physicians' responsibility to ensure they do everything they can to minimize the risk. The Committee is reassured that through the supervision and re-assessment of Dr. Adams' practice, after completion of his suspension, that the public will be protected as he continues to practise medicine.

With respect to the Committee's finding of dishonourable, disgraceful and unprofessional conduct in Dr. Adams' treating a family member, Dr. Adams ought to have known he was violating well circulated, long standing College policies. By treating his family member on repeated occasions over an extended period of time for non-emergent issues, Dr. Adams flouted the very straightforward and practical College policies with respect to treating self and family members.

The Committee finds Dr. Adams knew his conduct was wrong by virtue of the fact that when he was first contacted by the University faculty member regarding the verification of illness forms, he did not indicate that the student was his family member.

It is important for a physician to remain objective to provide the best care for a patient in an ongoing manner. This is not always possible with family members. The Committee is aware, of course, of exceptions, particularly when other physicians are not available or in emergent situations. However, the Committee finds that neither of those conditions was met when Dr. Adams repeatedly treated his family member for numerous diagnoses over a four year period. Dr. Adams ought to have sought another physician for his family member's ongoing health concerns.

Mitigating Factors

There are mitigating factors to consider, namely Dr. Adams' cooperation and plea of no contest, which spared the complainant from testifying in a contested hearing and saved the College considerable time and expense. In addition, Dr. Adams has no prior Discipline Committee history and has had a long career in the practice of medicine.

Case Law

Only two cases were provided for the Committee's consideration: *CPSO v. Moore* (2013) and *CPSO v. Irvine* (2011). These cases serve to illustrate that the proposed penalty is within the range of penalty for similar cases of this Committee. However, the Committee noted that these cases are very different on their facts. Consequently, the Committee found these cases of limited assistance.

DECISION

The Committee accepted the joint submission on penalty.

It is the Committee's expectation that individualized instruction in medical ethics will help Dr. Adams to truly understand how his conduct was detrimental beyond this immediate penalty, and how one's unethical conduct can have far reaching consequences.

The suspension and a reprimand should serve as specific deterrent to Dr. Adams and a general deterrent for other members of the profession in relation to conduct of this nature. The reprimand allowed the Committee to express the Committee's deep disappointment and denunciation of Dr. Adams' misconduct and send a message to the profession that misconduct of this nature will not be tolerated.

COSTS

The Committee has the jurisdiction to award costs in appropriate cases. The parties proposed costs in the amount of \$5,500.00, the tariff rate for one day of hearing. The Committee agreed that the proposed costs order was reasonable in the circumstances.

ORDER

The Committee stated its findings of professional misconduct in paragraph 1 of its written order of May 15, 2017. In that order, the Committee ordered and directed on the matter of penalty and costs that:

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

Instruction in Medical Ethics

- (a) At his own expense, Dr. Adams shall participate in and successfully complete, within 6 months of the date of this Order, individualized instruction in medical ethics satisfactory to the College, with an instructor approved 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. Adams;

Clinical Supervision

- (b) Prior to resuming practice following the suspension of his certificate of registration described above in paragraph 2, Dr. Adams shall retain, at his own expense, a College-approved clinical supervisor to review Dr. Adams' medical record keeping, who will sign an undertaking in the form attached hereto as Schedule "A" (the "Clinical Supervisor");
- (c) For a period of six (6) months commencing within thirty (30) days from the date Dr. Adams resumes practice following the suspension of his certificate of registration described above in paragraph 2, Dr. Adams may practise only on terms of the Clinical Supervision set out herein and in "Appendix A";
- (d) Clinical Supervision of Dr. Adams practice shall contain the following elements:
 - (i) Meet with Dr. Adams on a monthly basis and review a minimum of 15 charts for the duration of the supervision, to be selected in the sole discretion of the Clinical Supervisor;
 - (ii) the Clinical Supervisor will keep a log of all patient charts reviewed along with patient identifiers; and
 - (iii) the Clinical Supervisor will provide reports to the College on a monthly basis for the six (6) month period of practice monitoring, or more frequently if the Clinical Supervisor has concerns about Dr. Adams' standard of practice or conduct.
- (e) Dr. Adams shall abide by the recommendations of the Clinical Supervisor;
- (f) 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. Adams 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;
- (g) If Dr. Adams is unable to obtain a clinical supervisor in accordance with this Order, he shall cease to practice until such time as he has done so;

- (h) Dr. Adams 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. Adams' compliance with this Order;
- (i) Dr. Adams 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;

Re-Assessment

- (j) Approximately six (6) months after the completion of the period of supervision as set out above Dr. Adams shall undergo a re-assessment of his medical record keeping by a College-appointed assessor (the "Assessor(s)"). The Assessor(s) shall report the results of the re-assessment to the College;
 - (k) Dr. Adams shall consent to the disclosure to the Assessor(s) of the reports of the Clinical Supervisor arising from the supervision, and shall consent to the sharing of all information between the Clinical Supervisor, the Assessor(s) and the College, as the College deems necessary or desirable.
4. Dr. Adams be responsible for any and all costs associated with implementing this Order.
 5. Dr. Adams attend before the panel to be reprimanded.
 6. Dr. Adams pay costs to the College in the amount of \$5,500.00 within thirty (30) days of the date this Order.

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

Schedule "A"**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 May 15, 2017 regarding Dr. Adams, and have read the Statement of Facts and the attachments thereto. I understand the terms, conditions and limitations that the Registrar of the College has been directed to impose upon Dr. Adams' certificate of registration.
3. I will review as soon as practicable any additional materials regarding Dr. Adams' practice provided to me by the College as well as the College's Guidelines for College for College-Directed Supervision.
4. I agree that commencing from the date I sign this undertaking, I shall act as Clinical Supervisor for Dr. Adams, for the duration of six months. My obligations as Clinical Supervisor shall include, at a minimum:
 - (a) reviewing on a monthly basis, a minimum of fifteen patient charts, selected by me, which shall reflect a mix of new patients and ongoing management of existing patients. Such review shall focus on Dr. Adams' medical record keeping;
 - (b) Meeting with Dr. Adams on a monthly basis to discuss medical record keeping arising from my review of the patient charts, including any concerns arising from such chart reviews;
 - (c) making recommendations to Dr. Adams for record keeping improvements;
 - (d) following up on any recommendations to determine Dr. Adams' compliance with same;
 - (e) maintaining a log of all patient charts reviewed along with patient identifiers
 - (f) any other activities, such as reviewing other documents or conducting interviews with staff or colleagues, that I deem necessary to Dr. Adams' clinical supervision of record keeping.

5. I agree that I shall submit written reports to the College on a monthly basis for the duration of the clinical supervision. Such reports shall be in reasonable detail, and shall contain all information I believe might assist the College in evaluating Dr. Adams' standard of practice regarding record keeping and his compliance with the Discipline Committee's Order.
6. I agree that if I am concerned that Dr. Adams' practice may fall below the standard of practice of the profession, that Dr. Adams may not be in compliance with the terms of the Order, and/or that her patients may be exposed to risk of harm or injury, at any time during the clinical supervision I shall immediately notify the College.
7. I agree that to immediately notify the College in writing if Dr. Adams and I have terminated our clinical supervision relationship or if I otherwise cannot fulfill the terms of my Undertaking.

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

Dr.

Witness signature

Print name: _____

TEXT of PUBLIC REPRIMAND
Delivered May 15, 2017
in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
and
DR. KENNETH WEREZAK ADAMS

Dr. Adams, the practice of medicine is a privilege, not a right. As such, rules and policies have been established to ensure that this practice of medicine is carried out in a safe manner to protect the public, and maintain confidence in the profession.

The failure to maintain the Standard of Practice with the result of providing Patient A with a cosmetic procedure using a compound which was not approved by Health Canada is no small matter. As to the issue of disgraceful, dishonourable or unprofessional conduct in providing treatment to a family member, your College has been very clear on this policy; that only in exceptional circumstances can such treatment be provided. This is something you should have known.

We are deeply disappointed that a physician who has been in practice for so many years finds himself in this position by disregarding or ignoring College policies. It should be clear that suspension of your Certificate of Registration for three months, along with the significant terms, conditions and limitations to your certificate of registration expresses our profound disappointment in your conduct.

We trust that you will take these measures to heart, and that you will not appear before us again.

This is not an official transcript