

## ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

**Citation:** *College of Physicians and Surgeons of Ontario v. Mortada*, 2022 ONPSDT 35

**Date:** October 11, 2022

**Tribunal File No.:** 20-005

**BETWEEN:**

College of Physicians and Surgeons of Ontario

- and -

Dr. Awad Abdul Hadi Mortada

### FINDING AND PENALTY REASONS

**Heard:** September 16, 2022, by videoconference

**Panel:**

Ms. Sherry Liang (chair)

Dr. Ida Ackerman

Ms. Julia Goyal

Dr. Paul Hendry

Mr. Peter Pielsticker

**Appearances:**

Ms. Emily Graham, for the College

Ms. Yola Ventresca and Mr. Mitchell Brown, for Dr. Mortada

#### RESTRICTION ON PUBLICATION

The Tribunal ordered that no one may publish or broadcast any information that would identify: (i) the complainant in the criminal proceeding, except the physician's name and the specific nature of his convictions; (ii) any information that would identify Dr. Mortada's family members, including the specific nature of the relationships; and (iii) information disclosed during the court and tribunal applications for non-publication orders. There may be significant fines for breaching this order. The courts have also issued a non-publication order in relation to the criminal matter.

## **Introduction**

- [1] Dr. Mortada is a neurologist in Southwestern Ontario. In 2019, he was convicted of assault, uttering a death threat and breaching a bail condition, contrary to sections 266, 264.1 and 145(3) of the *Criminal Code*, RSC 1985, c. C-46, respectively.
- [2] Based on these convictions, as well as the events leading to the convictions, the College's Inquiries, Complaints and Reports Committee (ICRC) referred allegations Dr. Mortada committed misconduct to the Tribunal. At the hearing before the Tribunal, Dr. Mortada and the College provided an Agreed Statement of Facts and Admission on Liability and an Agreed Statement of Facts on Penalty. Dr. Mortada admitted, and we found, that he engaged in disgraceful, dishonourable or unprofessional conduct and has been found guilty of an offence that is relevant to his suitability to practice under s. 51(1)(a) of the Health Professions Procedural Code, Schedule 2 to the *Regulated Health Professions Act, 1991*, SO 1991, c. 18 (Code).
- [3] Dr. Mortada and the College jointly submitted we should order Dr. Mortada to be reprimanded, that his certificate of registration be suspended for eight months and that he complete individualized instruction in ethics within six months. They also agreed that Dr. Mortada should pay costs to the College of \$6,000.
- [4] Because this is a joint submission, we must implement it unless it would be contrary to the public interest and bring the system of professional physician regulation into disrepute. Applying that test, we accepted the joint submission at the hearing.
- [5] These are our reasons for our findings.

## **Professional Misconduct**

- [6] In these reasons, as a result of a publication ban, we do not identify the specific relationship between Dr. Mortada and the victims.
- [7] While driving in a car with family members including an adult female and three minors, Dr. Mortada became angry and threatened to kill the whole group by driving into a transport truck. Another time, Dr. Mortada pushed and spat in the face of the same adult female.

- [8] The next month, Dr. Mortada became angry and spat on the adult female family member while the minors were nearby. Dr. Mortada then threatened to kill everyone including himself. The adult female phoned other family members for help.
- [9] The other family members arrived and tried to talk things out. Dr. Mortada again became enraged and threatened the adult female's life. He began punching her face and chest and pushed her so hard that she fell backwards. Dr. Mortada also pushed another family member who attempted to intervene. Someone called 911 and police arrived, taking the adult female to the hospital. The assault caused bruising and soft tissue injuries.
- [10] Dr. Mortada was arrested and charged with various criminal offences. He was released on bail with conditions including that he not communicate in any way or approach the family members involved. He was also ordered not to come within 100 metres of the place where the events happened. Two months after this, the police found Dr. Mortada there and in contact with the adult female family member, contrary to the terms of his bail.
- [11] Dr. Mortada pleaded guilty and was convicted of assaulting the adult female family member, uttering death threats against her and breaching a bail condition. In relation to the offences of assault and uttering death threats, the court gave Dr. Mortada a suspended sentence and placed him on probation for two years. Terms of his probation included attending any assessment, counselling or rehabilitative programs directed by his probation officer. In relation to the offence of failing to comply with a bail condition, he was sentenced to three days in custody, which was served pre-sentence, and placed on probation for two years concurrent with the other probation order.
- [12] Under s. 51(1)(a) of the Code, the Tribunal shall find a member has committed an act of professional misconduct if the member has been found guilty of an offence that is relevant to the member's suitability to practise. Dr. Mortada admitted and the Tribunal is satisfied that, in the circumstances described above, he has been found guilty of an offence that is relevant to his suitability to practise. In *College of Physicians and Surgeons of Ontario v. Jha*, 2020 ONCPSD 36, the Tribunal found, on the facts of that case, that a finding of assault was relevant to the member's suitability to practise. This finding was upheld on appeal to the Divisional Court, in

*Dr. Jha v. College of Physicians and Surgeons of Ontario*, 2022 ONSC 769. At paras. 119-121 of its decision the court stated and we agree, that:

It is well-established that actions of members of a profession in their private lives may in some cases be relevant to and have an impact on their professional lives – including where the conduct is not consistent with the core values of a profession and/or where there is a need for a regulated profession to maintain confidence of the public in the profession and not be seen to condone certain types of conduct by its members...

...I find no error in the Discipline Committee's finding, grounded in the record before it, that the criminal findings in this case are relevant to the appellant's suitability to practise.

Discipline committees of regulated health professions in this province have consistently found that criminal findings of guilt of assault in a domestic violence context are relevant to a member's suitability to practise because such conduct displays "poor judgment, lack of self-control, and capacity for violent acts which stands in stark opposition to the caring, protecting, and healing goals and values" characteristic of health professions...

[13] The facts of this case involve violence and threatened violence against a female family member. Dr. Mortada's actions undermine the public's trust in the profession, in particular, his ability to respond with sensitivity and care to a female victim of violence. We find he has been found guilty of an offence that is relevant to his suitability to practise.

[14] Dr. Mortada also admitted and the Tribunal is satisfied that he has 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.

## **Penalty**

### **Agreed Facts**

[15] Dr. Mortada has been receiving treatment for mental health issues. He enrolled in a three-year Psychiatric Monitoring Contract with the Ontario Medical Association Physician Health Program (PHP), under which he is required to attend regular sessions with his psychiatrist and psychologist and hold monthly meetings with his PHP monitor.

- [16] Dr. Mortada's psychologist states that Dr. Mortada displays genuine remorse and empathy about the impact his actions have had on his family and community. His PHP coordinator has told the College that Dr. Mortada has good "insight, supportive treatment network, excellent social and family supports" and has fully complied with all aspects of the PHP monitoring program.
- [17] Dr. Mortada retained a psychiatrist to conduct a psychiatric assessment and provide an opinion on his risk of reoffending. The psychiatrist reports that the risk of future violent and inappropriate behaviour is "very low."
- [18] The member has no prior discipline history with the College.
- [19] As indicated above, the parties jointly submit that the appropriate penalty in this case is a reprimand, eight-month suspension of Dr. Mortada's certificate of registration and completion of a course in ethics. They also agree he should pay costs to the College in the amount of \$6,000.

## **Finding**

- [20] The Tribunal has stated that the most important goal of a penalty order is the protection of the public: *College of Physicians and Surgeons of Ontario v. Fagbemigun*, 2022 ONPSDT 22 at para. 7. The public must have confidence in the member, the profession and in the College's ability to govern the profession in the public interest. Other important purposes of a penalty which support this overarching goal include discouraging the member and other physicians from committing misconduct, rehabilitating the physician, ensuring a safe return to practice where appropriate and expressing the Tribunal and the profession's disapproval of the misconduct.
- [21] Where the parties agree on the penalty, the Tribunal must accept their agreement unless it is so "unhinged from the circumstances" that implementing it would bring the administration of the College's professional discipline system into disrepute: *College of Physicians and Surgeons of Ontario v. Bahrgard Nikoo*, 2022 ONPSDT 15 at para. 34; *Bradley v. Ontario College of Teachers*, 2021 ONSC 2303. Although this test has its genesis in the Supreme Court's analysis in the criminal law context in *R. v. Anthony-Cook*, 2016 SCC 43, it has been accepted as the proper approach at this Tribunal and in all professional discipline contexts.

- [22] In considering the joint submission, our role is not to decide whether the penalty proposed by the parties is what we would have ordered following a contested hearing and a finding of misconduct. Rather, we review the facts, the nature of the misconduct and the submissions and authorities provided by the parties to be satisfied that the proposed penalty is not contrary to the public interest because it fails to protect the public and brings the College's system for regulating the profession into disrepute.
- [23] In the circumstances before us, we are satisfied that the agreed penalty protects the public and we accept it.
- [24] The reprimand and eight-month suspension of the member's certificate of registration protect the public by deterring the member and others from future misconduct and express the profession's disapproval of the member's actions.
- [25] The factors the Tribunal considers in determining the length of a suspension include the nature and seriousness of the misconduct, any prior disciplinary history, the physician's actions since the misconduct and their personal circumstances. The Tribunal may also look at the penalties ordered in other similar cases as guidance.
- [26] The misconduct in this case is serious. It involved gender-based violence in a family setting, causing physical and psychological harm. Minors were present and drawn into the violent encounter. The assaults and threats occurred on several occasions and were compounded by Dr. Mortada's breach of his bail condition.
- [27] On the other hand, Dr. Mortada's personal circumstances are relevant. He has no prior discipline history, has admitted to the misconduct and has taken meaningful steps to address underlying mental health issues. He has shown insight into the impact of his actions and genuine remorse.
- [28] The requirement to take a course in ethics helps in the member's continued rehabilitation efforts and accordingly serves to protect the public.
- [29] The parties provided us with other cases in which the Tribunal ordered penalties, including suspensions, where physicians engaged in violent behaviour against female family members or domestic partners (among others, *College of Physicians and Surgeons of Ontario v. Jha*, 2021 ONCPSD 18 (three-month suspension),

*College of Physicians and Surgeons of Ontario v. Dhanoa*, 2020 ONCPSD 28 (five-month suspension), *College of Physicians and Surgeons of Ontario v. Mukherjee*, 2019 ONCPSD 16 (six-month suspension). Although no case is exactly like the one before us, none suggest that the penalty to which the parties have agreed is contrary to the public interest.

[30] In conclusion, we are satisfied that the proposed penalty protects the public and demonstrates the College's ability to regulate the medical profession in the public interest. We ordered:

- a. Dr. Mortada to attend before the panel to be reprimanded;
- b. the Registrar to suspend Dr. Mortada's certificate of registration for a period of eight months, commencing from September 17, 2022 at 12:01 a.m.
- c. the Registrar to place the following terms, conditions and limitations on Dr. Mortada's certificate of registration effective immediately:
  - i. Dr. Mortada shall comply with the College Policy, "Closing a Medical Practice."
  - ii. Dr. Mortada shall, at his own expense and within six months of the date of this Order, participate in and successfully complete individualized instruction in ethics satisfactory to the College, with an instructor approved by the College, who shall provide a summative report to the College including his or her conclusion about whether Dr. Mortada successfully completed the instruction.

[31] We also ordered Dr. Mortada to pay costs to the College in the amount of \$6,000, payable by no later than October 16, 2022.

**ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL**

**Tribunal File No.: 20-005**

**BETWEEN:**

College of Physicians and Surgeons of Ontario

- and -

Dr. Awad Abdul Hadi Mortada

**The Tribunal delivered the following Reprimand**  
by videoconference on Friday, September 16, 2022.

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

Dr. Mortada,

Our society abhors violence and assault especially against intimate partners and family. Laws are in place to reflect that to protect society. Additionally, the medical profession's primary tenet is to first do no harm – to anyone whether a patient or not.

You have acted violently and committed assault against members of your family not once but repeatedly. You have also broken your legal agreement not to approach or contact members of your family. This is most disturbing and worsens the misconduct.

Physicians are expected to control their emotions and behave as professionals both within and outside the clinical setting. Our patients' lives and welfare depend on it.

Your actions have undoubtedly caused physical and emotional trauma to members of your family, and you have lost their trust. The loss of trust resulting from your failure to abide by your legal agreement is also grave and cannot be underestimated.

We acknowledge your rehabilitative activities and ongoing treatment, but your misconduct is abhorrent and cannot be excused. Your conduct reflects poorly on you and the profession, and your violent behaviour must be sanctioned.

Your significant suspension will serve as a specific deterrent against future misconduct and will send a strong message to all physicians. It will maintain public confidence in the ability of the profession to govern itself in the public interest and safety.