

## NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Hu, the Discipline Committee ordered that no person shall publish or broadcast the names of patients or any information that could disclose the identity of patients referred to orally at the hearing or in the exhibits filed, 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 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.

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

**Citation:** *College of Physicians and Surgeons of Ontario v. Hu*, 2021 ONCPSD 27

**Date:** June 3, 2021

**BETWEEN:**

College of Physicians and Surgeons of Ontario

- and -

Dr. William Hu

**FINDING AND PENALTY REASONS**

**Heard:** May 11, 2021, by videoconference

**Panel:**

Mr. Pierre Giroux (chair)  
Dr. Melinda Davie  
Dr. Michael Franklyn  
Dr. James Watters  
Ms. Shannon Weber

**Appearances:**

Ms. Ruth Ainsworth, for the College  
Mr. Ian MacLeod, for Dr. Hu  
Mr. Gideon Forrest, Independent Legal Counsel to the Discipline Committee

## **Introduction**

- [1] Dr. William Hu has been in general practice in Toronto for more than 30 years. Throughout this time, there has existed the professional expectation that physicians will provide only minor or emergency services to their family members. There are important reasons for this expectation.
- [2] Between 1986 and 2016, Dr. Hu repeatedly provided care and treatment to 15 members of his immediate and extended family of a nature that is contrary to this professional expectation.
- [3] The parties submitted a Statement of Uncontested Facts. Dr. Hu did not contest the College's allegation that he had engaged in professional misconduct. We accepted the facts and made a finding that Dr. Hu had engaged in professional misconduct, specifically that his actions constituted disgraceful, dishonourable or unprofessional conduct.
- [4] The parties made a joint proposal on penalty, which we accepted. Accordingly, we directed that, among other things, Dr. Hu be reprimanded, his certificate of registration be suspended for 12 months, his practice be restricted solely to surgical assisting in the future, and he complete a course in professional ethics and boundaries.
- [5] These are the reasons for our finding of misconduct and penalty decision.

## **Issues to be decided**

- [6] The issues for us were:
  - a. Did Dr. Hu's care and treatment of family members constitute professional misconduct?
  - b. If so, is the jointly proposed penalty appropriate?

## **Statement of Uncontested Facts**

- [7] The parties submitted a Statement of Uncontested Facts which is summarized as follows.

- [8] In 2009, Dr. Hu entered into an undertaking with the College to restrict his practice primarily to surgical assisting and to limit his family medicine practice to patients already in his practice.
- [9] The College monitored Dr. Hu's compliance with this undertaking, including the details of his billings to OHIP. In 2016, this brought to light that Dr. Hu had billed OHIP for providing care and treatment to a number of family members.

#### Professional Expectations When Treating Family Members

- [10] The Code of Ethics of the Canadian Medical Association addresses physicians' treatment of family members and has done so throughout the time Dr. Hu has been in practice. The Code of Ethics states that an ethical physician will provide only minor or emergency services to their family and do so without payment.
- [11] In 2002, the College first published a policy intended to clarify what is expected of physicians in respect of treating their family members. It sets out that physicians are not permitted to provide such treatment except for minor conditions and in emergency situations, and then only when another physician is not readily available.
- [12] In 2007 the College updated the policy to give additional detail of how treating a family member can affect the quality of the family member's care:
- a. The family relationship may undermine the physician's ability to focus on the patient's best interests, ask sensitive questions, make objective clinical decisions, provide advice unaffected by their own feelings, and decline inappropriate requests,
  - b. The family member may be unduly influenced by the physician's opinion, be reluctant to decline a recommendation or ask for another opinion, or be disinclined to disclose sensitive information,
  - c. Family relationships may make it more difficult for the physician to maintain the confidentiality of personal health information.
  - d. Treating a family member more than episodically, even for a minor condition, may adversely affect the relationship the family member has with their own physician.

### Dr. Hu's Care and Treatment of Family Members

- [13] Dr. Hu provided medical services to family members repeatedly over periods of years. He did so on more than 2000 occasions in total, more than 300 occasions in respect of one family member and more than 50 occasions in respect of each of 13 family members.
- [14] All but one of Dr. Hu's family members had their own physician or ready access to clinics throughout the years that Dr. Hu provided care to them. Dr. Hu continued to provide services until 2016 for one family member who initially did not have their own family physician but acquired one in 2005.
- [15] A number of assessments by Dr. Hu related to providing advice and explanations about treatment provided by other physicians or minor conditions, such as a mild upper respiratory tract infection.
- [16] Dr. Hu provided counselling and primary mental health care to eight family members. On various occasions, this included providing information to and having discussions with one family member about health conditions experienced by other family members and counselling regarding family dynamics. Central to the substance of these sessions were Dr. Hu's own behaviour, emotions, and relationships with other family members, and his perceptions of the personalities of other family members and their interactions with the family member to whom he provided counselling.
- [17] In respect of two family members, Dr. Hu's care treatment included intimate or sensitive examinations/procedures.

### **Dr. Hu's Plea of No Contest**

- [18] Dr. Hu does not contest the facts set out in the Statement of Uncontested Facts or that these facts constitute professional misconduct.
- [19] According to the Committee's rules of procedure, when a member enters a plea of no contest to an allegation, the member agrees that:

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

## **Analysis**

- [20] Dr. Hu provided medical care and treatment for a great many family members on multiple occasions over periods of many years. By his ongoing care, maintenance of medical records and billings to OHIP, he firmly established physician-patient relationships with his family members despite the close and, at times, complex personal relationships he had with them. Dr. Hu acted in complete disregard of the professional expectation and specific policies against such care other than in very limited circumstances. He breached professional boundaries to an extreme degree, demonstrated profoundly poor clinical judgement, and ultimately put at risk the quality of his family members' medical care and, indeed, their health.
- [21] There is no justification for Dr. Hu's actions. He knew or should have known of the professional expectation that physicians treat family members only in limited circumstances, even prior to the publication of the College policy in 2002. None of his care fell into these circumstances. Further, his actions were unnecessary. Dr. Hu's family members had ready access to care and treatment by their own or other physicians for minor, urgent, or any other conditions.
- [22] Dr. Hu showed a profound lack of objectivity in his counselling of various family members in respect of family dynamics and conflicts. As he himself was a central figure in a number of such sessions, he failed to maintain proper, or at times any, boundaries between his objective, professional role as a physician and his personal role as a sensitive and supportive family member. For example, in two encounter notes, he describes a family member and himself crying and apologizing to each other. In multiple other instances, Dr. Hu's notes record that he explained and discussed with one family member medical conditions experienced by other family members.

## **Finding of Professional Misconduct**

- [23] We accept that the facts in the Statement of Uncontested Facts are correct, and find that Dr. Hu committed an act of professional misconduct in 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 under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act*, 1991
- [24] The College withdrew the other allegations contained in the Amended Notice of Hearing, dated August 5, 2020.

## **Penalty**

- [25] The College and Dr. Hu's counsel made a joint proposal as to what they considered an appropriate penalty. Their proposal includes a public reprimand, 12-month suspension, restriction of Dr. Hu's practice to surgical assisting, and mandatory education on ethics and boundaries.
- [26] In making our penalty decision, we considered the uncontested facts, oral submissions by the College and Dr. Hu's counsel, and several prior discipline cases involving treatment of family members.
- [27] We accept the jointly proposed penalty, set out in the order below, for the reasons that follow.

## **Analysis on Penalty**

### Penalty Principles

- [28] Although we have discretion to accept or reject a joint submission on penalty, the law provides that we should not depart from a joint submission unless the proposed penalty would bring the administration of justice into disrepute or is otherwise not in the public interest. *R. v. Anthony-Cook*, 2016 SCC 43.
- [29] The joint submission on penalty must satisfy the fundamental principles underlying penalty orders. These include public protection and maintaining public confidence in the College's ability to regulate the profession in the public interest. The penalty

should express our denunciation of the misconduct and act as a deterrent, both to the member and to the profession as a whole. As well, we need to consider the Committee's decisions in prior cases, to the extent they are similar to this one and the penalty should be proportionate to the misconduct.

#### Aggravating Factors

- [30] The magnitude of Dr. Hu's misconduct, in terms of the number of family members, the length of time over which he provided such care, and the ongoing nature of the care, is an important aggravating factor. Dr. Hu began to provide improper care and treatment to his family members early in his practice career and continued for nearly 30 years.
- [31] The severity of Dr. Hu's boundary violations and poor judgment nature is a serious aggravating factor. Dr. Hu provided care not just for minor conditions but, in two instances, carried out highly inappropriate intimate or sensitive examinations and procedures. In addition, Dr. Hu engaged in psychotherapy, counselling and primary mental health care with several family members in relation to family dynamics in circumstances in which his own personal feelings, responses, and behaviour were thoroughly implicated.
- [32] Dr. Hu received a financial benefit from his misconduct in the form of OHIP billings. The available records yield a total of approximately \$117,000.

#### Mitigating Factors

- [33] Dr. Hu ceased providing care and treatment to family members in 2016 and had provided less care to them for several years before.
- [34] Dr. Hu entered a plea of no contest to the allegations with the result that witnesses were spared the need to testify and the College was spared the commitment of resources and the expense of a contested hearing. That said, Dr. Hu's plea was entered at a relatively late date and provides no evidence that he accepts responsibility for his misconduct or has experienced remorse.



## Prior Cases

[35] Although prior Committee decisions are not binding as precedent, the Committee has accepted as a principle of fairness that generally, like cases should be treated alike.

[36] We considered four prior cases in which there were findings of disgraceful, dishonourable or unprofessional conduct arising from improper care of family members:

- *College of Physicians and Surgeons of Ontario v. Vasovich*, 2015 ONCPSD 32
- *College of Physicians and Surgeons of Ontario v. Guirguis*, 2018 ONCPSD 47
- *College of Physicians and Surgeons of Ontario v. Irvine*, 2011 ONCPSD 39
- *College of Physicians and Surgeons of Ontario v. Chan*, 2018 ONCPSD 24

[37] The cases differ in the details of the misconduct, which was more serious in some respects and less in others. The misconduct related primarily to writing prescriptions for family members in *Guirguis*, *Irvine*, and *Chan*. The prescriptions were for controlled substances in *Chan* and *Guirguis*, making the misconduct more serious in that regard. Further, in addition to prescribing various other medications, Dr. Guirguis forged opioid prescriptions for himself and family members. He also made claims to OHIP. Dr. Hu did not prescribe controlled substances for members of his family or engage in forgery.

[38] However, Dr. Hu's misconduct in treating his family members is far more extensive than in any of the prior cases in terms of:

- the number of family members (15 compared with one to three family members in the prior cases),
- the number of clinical encounters or prescriptions (more than 2000 compared with for example, more than 100 prescriptions in *Irvine*), and

- the length of time over which Dr. Hu provided care (nearly 30 years compared with eight years in respect of one individual in *Vasovich*, two years in *Irvine* and *Guirguis*, and four years in *Chan*).

[39] The penalties included suspensions of four months in *Irvine* and *Vasovich*, five months in *Chan* and six months in *Guirguis*.

### **Conclusion on Penalty**

[40] We find that the jointly proposed penalty is reasonable and appropriate. It is proportionate to the scope and seriousness of Dr. Hu's misconduct which is markedly greater than in the prior cases.

[41] The full restriction of Dr. Hu's practice to surgical assisting, and only when a certified surgeon or other qualified physician is present, will protect the public and should support public confidence in the integrity of the profession and the ability of the College to regulate in the public interest.

[42] The suspension of Dr. Hu's certificate for 12 months is a serious penalty which, together with the public reprimand, will denounce his misconduct and deter him from future misconduct. It will make the profession aware that misconduct such as Dr. Hu's is wholly unacceptable and will not be tolerated and will underscore that the boundaries between a physician's professional and personal lives must be scrupulously maintained.

[43] Remediation is a reasonable objective in this case, and it is appropriate that Dr. Hu successfully complete a personalized educational program in professional ethics and boundaries.

### **Costs**

[44] We find that this is an appropriate case in which to award costs and accept the joint proposal that Dr. Hu pay costs to the College equivalent to one hearing day at the tariff rate, as set out below.

## Order

[45] We ordered and directed:

1. Dr. Hu to attend before the panel to be reprimanded.
2. The Registrar to suspend Dr. Hu's certificate of registration for a period of twelve (12) months, commencing from May 17, 2021 at 12:01 a.m.
3. The Registrar to place the following terms, conditions and limitations on Dr. Hu's certificate of registration effective immediately:
  - i. Dr. Hu will participate in the PROBE Ethics & Boundaries Program offered by the Centre for Personalized Education for Professionals, by receiving a passing evaluation or grade, without any condition or qualification. Dr. Hu will complete the PROBE program and will provide proof to the College of his completion, including proof of registration and attendance and participant assessment reports, within one (1) month of completing it. Dr. Hu shall not return to practice until he has completed the PROBE course.

### Practice Restriction

- ii. Dr. Hu shall restrict his practice of medicine to surgical assist, and only when a certified surgeon or another qualified physician is performing the surgery and in attendance. Dr. Hu will not be the most responsible physician or provide any continuity of care to surgical patients.
- iii. This Order replaces and supersedes Dr. Hu's undertaking to the College dated December 1, 2009.
- iv. Dr. Hu shall consent to the College making enquiries of the Ontario Health Insurance Plan and/or any person or institution who may have relevant information in order for the College to monitor his compliance with the terms of this Order and shall promptly sign such consents as may be necessary for the College to obtain relevant information from these persons or institutions. And

- v. Dr. Hu shall be solely responsible for payment of all fees, costs, charges, expenses, etc. arising from the implementation of any terms of this Order.
4. Dr. Hu to pay costs to the College in the amount of \$10,350 within 30 days of the date of this Order.

**Reprimand**

[46] At the conclusion of the hearing, Dr. Hu waived his right to an appeal under subsection 70(1) of the Code and we administered the public reprimand by videoconference.

**In the matter of:**

**COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO  
- and -  
DR. WILLIAM HU**

**Reprimand delivered in person by the Discipline Committee on May 11, 2021.  
(Not an official transcript)**

Dr. Hu:

This panel is exceedingly disappointed in your lack of judgment and insight in that over a period of many years, you provided medical care to many members of both your immediate and extended family. Such activities were deemed inappropriate by both the CMA and your regulatory college. You should have known better.

These activities were not only boundary violations; they also disregarded the fundamental tenets of the profession. There existed the potential to do unnecessary harm to these individuals by indulging in psychotherapy and other clinical practices for which you interposed yourself in issues of family dynamics in which you played a part. You also undermined the relationships with their own family physicians.

The order that has been imposed to restrict your medical activities or surgical assisting and prohibit you from providing any clinical care clearly is the only way to protect the public. Additionally, the suspension of your certificate of registration for 12 months will send a message both to the profession and the public that such unethical conduct will not be tolerated.

It is unfortunate that you have not expressed any remorse for your actions or indicated an intention to change. It is hoped your attendance at a PROBE course and your reflection on this experience might provide you with the insight that you clearly lacked throughout your career.