

Indexed as: **Ontario (College of Physicians and Surgeons of Ontario) v. Podell, 2017 ONCPSD 4**

**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. MARC JEFFREY PODELL**

**PANEL MEMBERS:**

**DR. M. GABEL  
MR. A. RONALD  
DR. P. GARFINKEL  
MJR. A. KHALIFA  
DR. P. TADROS**

**COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:**

**MS A. CRANKER  
MS D. AWAD**

**COUNSEL FOR DR. PODELL:**

**MR. C.J. FREEDLANDER  
MR. W. BLACK**

**INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:**

**MR. B. SELLS**

**Hearing Date:** January 23, 2017  
**Decision Date:** January 23, 2017  
**Written Reasons Date:** February 1, 2017

## **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 Monday, January 23, 2017. At the conclusion of the hearing, the Committee released a written order stating its finding that Dr. Marc Jeffrey Podell committed an act of professional misconduct and setting out its penalty and costs order with written reasons to follow.

### **THE ALLEGATION**

The Notice of Hearing alleged that Dr. Podell committed an act of professional misconduct:

1. under paragraph 1(1)33 of 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.

### **RESPONSE TO THE ALLEGATION**

Dr. Podell admitted to the allegation in the Notice of Hearing.

### **THE FACTS**

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

#### **PART I – FACTS**

1. Dr. Marc Jeffrey Podell (“Dr. Podell”) is a physician who received his certificate of registration authorizing independent practice in 1981. Dr. Podell practiced as a surgical assistant at Trillium Health Partners (“the Hospital”) between 2003 and 2014.

2. Between 2008 and 2014, Dr. Podell was repeatedly inaccessible during his on-call periods. Dr. Podell did not respond to pages, was frequently late and/or did not attend for emergency surgery while he was on call. His conduct jeopardized patient care as surgeons in emergent cases were forced to proceed without assistance. Although Dr. Podell asserted that he encountered difficulties with his pager and cell phone, he took insufficient steps to address the issue such that he could be available to the physicians and staff of the Hospital, despite numerous attempts by the Hospital to address this ongoing problem.

3. Dr. Podell made repeated inappropriate comments in the operating room including commenting on the size and features of anesthetized patients.

4. In April of 2009, Dr. Podell, while in the doctor's lounge, amidst other physicians, made inappropriate comments while looking at pictures of women on a website entitled "Asian Kisses".

5. In May of 2013 Dr. Podell approached an 18 year old patient from Quebec four times in two days, aggressively requesting cash payment of his fee for assisting at her laparoscopic appendicitis surgery in the Paediatrics unit. The patient was upset by this experience. Both nursing and social work staff felt that his advances towards the patient were harassing. Dr. Podell conducted himself in this manner even though he had been told several years prior to this incident to refrain from repeat demands for immediate payment from Quebec patients for his services.

6. After speaking with the social worker who had assisted with the above incident, Dr. Podell inappropriately requested that she portray him in a more favorable light in her report.

7. In April of 2014, in the Operating Room, Dr. Podell bumped into Nurse X. Nurse X felt that the physical contact was intentional, and filed a complaint against Dr. Podell. Dr. Podell reported that the contact was unintentional. Dr. Podell was asked not to have any contact with

Nurse X. Nonetheless, he attempted to do so on three occasions, which Nurse X found intimidating.

8. On May 7 of 2014 the Hospital suspended Dr. Podell's privileges. Dr. Podell subsequently resigned his privileges on May 14, 2016.

## **PART II - ADMISSION**

9. Dr. Podell admits the facts set out in the paragraphs above and admits that he has committed acts of professional misconduct specifically 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, contrary to paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act*, 1991.

## **FINDING**

The Committee accepted as correct all of the facts set out in the Agreed Statement of Facts and Admission. Having regard to these facts, the Committee accepted Dr. Podell's admission and found that he 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.

## **PENALTY AND REASONS FOR PENALTY**

Counsel for the College and counsel for the member made a joint submission as to an appropriate penalty and costs order. This included a three-month suspension, terms, conditions and limitations on Dr. Podell's certificate of registration, and a requirement that he appear before the panel to be reprimanded and to pay costs

In considering the joint submission, the Committee was mindful that a penalty, jointly proposed, should be accepted unless its acceptance would bring the administration of justice into disrepute or it is otherwise not in the public interest. The Committee took into account a number of principles in assessing the proposed penalty including: protection of the public, to express the abhorrence of the profession regarding Dr. Podell's behaviour, maintenance of public confidence in the profession and the College's ability to regulate the profession in the public interest, deterrence, both of the member himself and of other physicians in the province, and, to the extent possible, rehabilitation of the member. The penalty should be proportionate to the misconduct.

### **Aggravating Factors**

Physicians are a self-regulating profession and the expectation is that each doctor personally is responsible to conduct him or herself with integrity, with honesty, and with respect for others and to follow policy and procedure that the profession has formulated to ensure the highest level of care and protection of patients. Respect for fellow workers and patients is a simple concept but is central to the professional behaviours expected of physicians.

Dr. Podell's behaviour was clearly disruptive to the surgical team. Disruptive behaviour is never acceptable. Civility is more than just being polite and involves the culture that an organization creates. A culture lacking in civility and respect has high rates of absenteeism, low employee engagement and high turnover. When unaddressed and uncorrected, it results in an infusion of risk and insecurity in the clinical environment.

More and more of clinical care requires a coordinated and well-functioning team. By repeatedly not being dependable when on call Dr. Podell had an effect on surgeries and brought people into danger. Dr. Podell improperly asked a social worker to portray him in a more favorable light in her report; this suggested a level of aggression and perhaps an attempt to intimidate. Dr. Podell's instilling fear in a nursing colleague adversely affected the team's functioning. Patient outcomes have been clearly demonstrated to be negatively affected in such circumstances.

Physicians must be able to learn from instruction and advice. Dr. Podell was warned to not ask post op patients for fees and persisted in this behaviour. Similarly, he was told not to approach the operating nurse who complained about him and yet he tried to speak with her on at least three further occasions.

This behaviour was not a single impulsive incident but persisted over six years in different settings of the hospital and with different colleagues, staff and a patient.

### **Mitigating Factors**

Several mitigating factors were also considered by the Committee. Dr. Podell admitted to his wrongdoing, thus showing that he accepted responsibility for his misconduct. He saved the College the cost and time of a contested hearing and he avoided subjecting complainants to the stress of having to testify. Dr. Podell has no prior disciplinary history with the College.

### **Similar Prior Cases**

The Committee is aware that no two cases are exactly alike. However, reviewing earlier cases can help determine the level of appropriate penalty. The Committee considered three previous cases that were presented to us. In *CPSO and Dr. Bhatt (2016)*, the Discipline Committee dealt with a general internist who was repeatedly disruptive over many years. The circumstance was complicated because of the physician's roles as Chief of Medicine and Chief of the ICU at the hospital where he worked. Also Dr. Bhatt had entered into a contract with the hospital after there were numerous complaints of disorderly and disruptive behaviours from staff and colleagues. Three years later after the contract had ended, new complaints were received by the hospital; another voluntary undertaking was completed successfully but in 2015, a female colleague registered a further complaint about feeling threatened by an interaction with Dr. Bhatt. Dr. Bhatt received a four month suspension, a reprimand, terms, conditions, and limitations on his ability to practice, and a monitor for a period of two years. The four month suspension was felt to be appropriate because of the repeatedly disruptive behaviours and because his positions in the hospital made him a role model and set a tone for acceptable behaviour in the clinical setting.

Another case of disruptive behaviour was heard by the College in 2013 (*CPSO and Dr. Sogbein, 2013*). This physician was a postgraduate resident in a hospital when he was involved in eleven incidents. These occurred over years in the hospital and in public. These related to his anger and disruptive behavior, violating a patient's personal privacy, changing an order of his senior colleague, and driving his automobile when his license was suspended. After a period of remediation, including anger management, communication skills, medical and professionalism skills, and after being referred to the College's Discipline Committee, Dr. Sogbein committed six further acts of unprofessional behaviour in a second hospital. These could have had a significant impact on patient care. At the College hearing, an agreed statement of facts was presented to the Discipline Committee. However, the parties differed on the proposed length of suspension – the College asking for four months, and the defence, one month. The Committee felt four months was the appropriate penalty.

A third case (*CPSO and Dr. Amer, 2011*) involved a single outburst by a physician towards the security staff at the hospital because he was unable to access his belongings from the doctors' lounge after the completion of his hospital rounds. In the confrontation with security, he eventually banged forcefully at the door, broke the door and intimidated the security staff. Based on an agreed statement of facts and jointly proposed penalty, Dr. Amer was ordered to receive a reprimand and pay costs.

## **Discussion**

Having considered all of these factors, the Committee was satisfied that the proposed penalty in this case was appropriate. The proposed three-month suspension is in keeping with the range of suspensions that were imposed in the previous cases that were put before the Committee. This suspension is appropriate given the aggravating factors in this case. The suspension, along with the reprimand, serves to denounce Dr. Podell's conduct, thus expressing the profession's abhorrence of it. They will also act as specific deterrents to Dr. Podell, and general deterrents to other members of the profession, from engaging in such conduct. The terms, conditions and limitations, including monitoring of Dr. Podell in his professional encounters, will help to protect

the public. Some rehabilitation is possible through Dr. Podell's connection to the Physician Health Program (PHP). Failing to address disruptive behaviour in the workplace can clearly affect the integrity and reputation of the profession and its ability to self-govern.

## **ORDER**

The Committee stated its findings in paragraphs 1 of its written order of January 23, 2017. In that order, the Committee ordered and directed on the matter of penalty and costs that:

1. The Registrar suspend Dr. Podell's certificate of registration for a period of three (3) months, commencing immediately.
2. The following terms, conditions and limitations be imposed on Dr. Podell's certificate of registration authorizing independent practice:
  - a) Upon his return to practice, Dr. Podell shall comply with the College's Changing Scope of Practice and/or Re-entering Practice policies, attached hereto as Appendix "A" and Appendix "B", if applicable.
  - b) Dr. Podell shall inform the College of any and all new Practice Locations within fifteen (15) days of commencing practice at that location.
  - c) Dr. Podell shall, at his own expense: enter into an agreement with the Physician Health Program (PHP), prior to returning to practice, which shall include workplace monitoring as recommended by the PHP and reports to the College every six months.
  - d) Dr. Podell shall comply with the agreement set out in (c) above.
  - e) Dr. Podell shall consent to information-sharing/reporting between the College and the workplace monitors, the PHP as well as any other persons necessary in order for the

College to receive information relevant to his compliance with these or any other terms of the order.

3. Dr. Podell appear before the panel to be reprimanded.
4. Dr. Podell to pay costs to the College in the amount of \$5,000.00 by July 23, 2017.

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

**TEXT of PUBLIC REPRIMAND**  
**Delivered January 23, 2017**  
**in the case of the**  
**COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO**  
**AND**  
**Dr. Marc Jeffrey Podell**

We are a self-regulating profession and the expectation is we are personally responsible to conduct ourselves with integrity, with honesty, respect for others and follow policy and procedure that the profession have formulated to ensure the highest level of care and protection of patients.

Respect for fellow workers and patients is a simple concept, which you apparently were willing to ignore for your own egocentric purposes. Disruptive behaviour in a hospital is a known cause of poor outcomes for the patients we serve. Your behaviour brought people into danger and we totally condemn the actions we have heard about today.

You knew or surely should have known what was proper conduct, and ignored it. We condemn that in the name of the profession and as members of the public.

Your actions bring the profession into disrepute. As well, they directly dishonour yourself. Is it possible to remediate and have you understand the issues that brought you here? We do not know, but the penalty is meant to protect the public, and bring forcefully to your attention your professional and personal transgressions, as well to provide a means to redeem yourself and get to a path of respect, care and understanding. The choice is yours, as to moving forward, but let us assure you that your role as a physician is in jeopardy unless you reform your behaviour.

*This is not an Official Transcript*