

ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

Citation: *College of Physicians and Surgeons of Ontario v. Bahrami*, 2024 ONPSDT 10

Date: March 11, 2024

Tribunal File No.: 23-001

BETWEEN:

College of Physicians and Surgeons of Ontario

College

- and -

Tahmoures Bahrami

Registrant

FINDING AND PENALTY REASONS

Heard: January 16, 2024, by videoconference

Panel:

Jennifer Scott (panel chair)

Lucy Becker (public)

Roy Kirkpatrick (physician)

Rob Payne (public)

James Watters (physician)

Appearances:

Victoria Cistrone, for the College

Eric Pellegrino and Daniel Moholia, for the registrant

RESTRICTION ON PUBLICATION

Pursuant to Rule 2.2.2 of the OPSDT Rules of Procedure and ss. 45-47 of the Health Professions Procedural Code, no one shall publish or broadcast the names of patients or any information that could identify patients or disclose patients' personal health information or health records referred to at a hearing or in any documents filed with the Tribunal. There may be significant fines for breaching this restriction.

Introduction

[1] The College's Inquiries, Complaints and Reports Committee (ICRC) referred allegations of Dr. Bahrami's misconduct to the Tribunal. The College alleged that Dr. Bahrami engaged in sexual abuse of a patient, conduct that would reasonably be regarded as disgraceful, dishonourable or unprofessional, and had failed to maintain the standard of practice of the profession.

[2] Dr. Bahrami did not contest that he had engaged in disgraceful, dishonourable or unprofessional conduct and failed to maintain the standard of practice of the profession. The Tribunal found misconduct on these bases and the College withdrew the allegation of sexual abuse.

[3] The parties jointly submitted the penalty should include a reprimand, a three-month suspension and completion of the PROBE course. They also agreed Dr. Bahrami would pay costs to the College of \$6,000.

[4] As part of the penalty, the College sought an indefinite practice monitor for all patient encounters. Dr. Bahrami did not agree to this term.

[5] We accept the joint submission and reject the College's request for a practice monitor. These are our reasons for the decision.

Misconduct

[6] Dr. Bahrami is a family physician who, at the relevant time, practised in North York.

[7] Patient A was a regular patient of Dr. Bahrami. Between April 2020 and March 2022, she was seen by Dr. Bahrami five times and consulted with him twice by telephone.

[8] On October 30, 2020, Patient A saw Dr. Bahrami for a physical examination. He performed a costovertebral angle tenderness examination and put his arm around Patient A while palpating her side. Dr. Bahrami did not explain the examination and told Patient A she had "a woman's body." Patient A felt uncomfortable.

[9] On March 17, 2022, Patient A saw Dr. Bahrami for a physical examination. She talked about her weight and Dr. Bahrami told her that her body was perfect. Patient A

told Dr. Bahrami that she hurt her back and was in a lot of pain. Dr. Bahrami performed the same costovertebral examination. Patient A did not know why Dr. Bahrami was touching her in this way and she felt uncomfortable.

[10] While examining Patient A's breathing, Dr. Bahrami placed a stethoscope on her back. He tugged on Patient A's sweatshirt and started to remove it. He told Patient A she had to take off her sweatshirt for the examination.

[11] During this examination, Dr. Bahrami indicated to Patient A that he would do a breast examination and he removed Patient A's bra. Patient A was not given a gown and draping was not used during the examination. Dr. Bahrami did not offer to have a chaperone present and did not give Patient A privacy to take her clothes off or put them back on. During the breast examination, he made inappropriate complimentary comments about Patient A's appearance. These comments made Patient A uncomfortable.

[12] The College retained Dr. Karen Ferguson to provide an opinion on whether Dr. Bahrami met the standard of practice of the profession. Dr. Ferguson gave the following opinion:

1. There was a clinical indication to perform the breast examination.
2. Dr. Bahrami's care fell below the standard of practice of the profession when he failed to offer Patient A a gown, draping or privacy when dressing or undressing, or the presence of a chaperone for the breast examination, and when he removed her bra without permission. Dr. Ferguson said Dr. Bahrami's actions displayed a lack of judgment and were likely to expose patients to harm or injury by causing discomfort during sensitive examinations.
3. It was reasonable for Dr. Bahrami to examine the costovertebral angle if an adequate explanation was provided to the patient.

Finding

[13] Dr. Bahrami failed to meet the standard of practice of the profession and engaged in disgraceful, dishonourable or unprofessional conduct when, during a breast examination, he did not provide Patient A with a gown, draping or privacy when she was

dressings and undressings, or with the presence of a chaperone and when he removed her bra without her permission. He engaged in further disgraceful, dishonourable or unprofessional conduct when he made inappropriate comments about Patient A's body and appearance at two medical appointments where Dr. Bahrami put his arm around Patient A and palpated her side (costovertebral examination) without explaining why he was touching her in this way.

Penalty

Joint Submission

[14] Dr. Bahrami and the College made a joint submission on penalty. A joint submission on penalty will be rejected only where it is contrary to the public interest in a way that brings the administration of justice into disrepute: *R. v. Anthony-Cook*, 2016 SCC 43 at para. 34.

[15] The question before the Tribunal is whether implementing the proposed penalty would be contrary to the public interest because it fails to protect the public and/or impairs the ability of the College, and by extension, the Tribunal to regulate the profession of medicine and govern physicians.

[16] If the proposed penalty violates the public interest, the administration of justice is brought into disrepute. In the professional regulation context, this means the proper functioning of the College's professional discipline system has broken down.

[17] We have considered the seriousness of Dr. Bahrami's misconduct, his actions since the misconduct, his discipline history and the caselaw on penalties in similar cases because these are the factors that are relevant in determining whether the joint submission is contrary to the public interest. We address these factors below.

Seriousness of the Misconduct

[18] Dr. Bahrami's misconduct is serious. He failed to respect the privacy and dignity of Patient A and caused her harm and discomfort during a sensitive breast examination and when he made personal comments about her body and appearance.

[19] Dr. Bahrami was aware of the importance of respecting the privacy of patients during examinations. In 2014, the Investigations Committee of the College of Physicians and Surgeons of Manitoba (Manitoba Committee) expressed concerns about Dr.

Bahrami's examination techniques when he moved a patient's bra without prior consent and failed to use gowns and drapes. The Manitoba Committee accepted an undertaking from Dr. Bahrami to complete a self-directed learning program that included training on the use of gowns and drapes.

[20] In 2017, the College's ICRC accepted a remedial agreement for self-study for Dr. Bahrami in the areas of boundaries and communication, including when examining patients in their home and communication prior to a physical examination.

[21] Despite participating in these self-directed learning programs, Dr. Bahrami was insensitive to the needs of Patient A and cavalier in his approach when he performed the intimate breast examination.

Dr. Bahrami's Actions Since the Misconduct

[22] After receiving notice of Patient A's complaint, Dr. Bahrami completed the Saegis Clinical Communication Program and an English language program.

Discipline History

[23] Dr. Bahrami has no disciplinary history.

Penalties in Similar Cases

[24] The caselaw provided by the parties supports the penalty of a reprimand, three-month suspension and PROBE course. The suspension is in the range of suspensions in cases involving a single patient and conduct that is somewhat similar to the conduct here: *College of Physicians and Surgeons of Ontario v. Noza*, 2019 ONCPSD 19, *College of Physicians and Surgeons of Ontario v. Wilson*, 2016 ONCPSD 46 and *College of Physicians and Surgeons of Ontario v. Nahas*, 2020 ONCPSD 37. While these cases are not identical to this case and are not binding on the Tribunal, they do provide support for the three-month suspension agreed to by the parties.

[25] In January 2024, the Tribunal issued an interim practice direction on reprimands asking parties to make submissions about the desirability and purpose of a reprimand in each case, including where the matter is proceeding by joint submission.

[26] Dr. Bahrami's counsel submitted the reprimand is of value to Dr. Bahrami as it clarifies the concerns of the panel. He stated a reprimand is an impactful event that is seared in the mind of the physician and highlights the misconduct.

[27] College counsel submitted the reprimand expresses the profession's disdain for Dr. Bahrami's conduct and acts as a general deterrent through the Tribunal's expression of dismay with his conduct. College counsel submitted the reprimand is warranted in this case and should not be deviated from as it is part of the joint submission.

[28] We agree with the submissions of counsel. The reprimand is published on the public register. It, together with this decision, communicates to Dr. Bahrami that a repeat of his misconduct will not be tolerated.

Practice Monitor

[29] In addition to the joint submission, the College requests an indefinite practice monitor for all patient encounters.

[30] The parties provided cases where practice monitors were ordered or prohibitions put in place for intimate examinations because of a registrant's disgraceful, dishonourable or unprofessional conduct. These cases involve repeated boundary violations with multiple patients over a prolonged period of time or the physical touching of patients. That is very different conduct from the conduct in this case: *College of Physicians and Surgeons of Ontario v. El-Tatari*, 2019 ONCPSD 26; *College of Physicians and Surgeons of Ontario v. Malette*, 2020 ONCPSD 2; *College of Physicians and Surgeons of Ontario v. Clottey*, 2020 ONCPSD 6 and *College of Physicians and Surgeons of Ontario v. Iannantuono*, 2023 ONPSDT 20.

[31] They also provided cases where practice monitors were not ordered for disgraceful, dishonourable or unprofessional conduct. Many of these cases involve comments that were more sexualized, more intentional, more repetitive than the comments here and/or were made over a longer period of time, or the conduct involved multiple patients; *College of Physicians and Surgeons of Ontario v. Jones*, 2018 ONCPSD 62, *College of Physicians and Surgeons of Ontario v. Szozda*, 2019 ONCPSD

14, *College of Physicians and Surgeons v. Wardle*, 2022 ONPSDT 4 and *College of Physicians and Surgeons of Ontario v. Gerber*, 2023 ONPSDT 11.

[32] The College proposes a significant penalty term that would require a practice monitor for all patient encounters for the duration of the registrant's practice. The caselaw is mixed on when practice monitors of this type are ordered.

[33] The College has not established that the proposed practice monitor is required here. There is no disciplinary history and no pattern of conduct. As set out in the Notice of Hearing, this case involves a single patient and inappropriate comments and conduct at two appointments. While Dr. Bahrami exercised bad judgment during these appointments, his comments must be placed in context. For example, at the second appointment, Dr. Bahrami's comments about Patient A's body were made in response to her concerns about her weight. At neither appointment was Dr. Bahrami's conduct sexual in nature.

[34] The College relies on the fact that Dr. Bahrami had prior knowledge of the need for increased sensitivity and privacy, including the use of gowns and draping, through the ICRC processes. The fact that Dr. Bahrami committed the misconduct after the importance of respecting the privacy of patients was brought to his attention makes his conduct more serious. But that knowledge cannot be used as the sole factor to justify the imposition of an indefinite practice monitor for all patient encounters.

[35] Dr. Ferguson found Dr. Bahrami's care displayed a lack of judgement when he performed a breast examination without offering a gown or drape, privacy to undress, or the presence of a third-party chaperone. Dr. Ferguson said the degree of his deficit was moderate. She also said the costovertebral examination was a reasonable maneuver to perform, while providing adequate explanation to the patient.

[36] In her report, Dr. Ferguson said Dr. Bahrami was aware of the concerns that she raised and it was possible that his plans to address them might make a similar situation less likely to occur in future. The facts of this case together with Dr. Ferguson's opinion do not establish a practice monitor is required.

[37] We accept the joint submission of a reprimand, three-month suspension and PROBE course. It is in keeping with the penalties ordered in similar cases and shows the College's professional discipline system is working. We find the joint submission protects

the public interest and does not bring the administration of justice into disrepute. We also accept the parties' joint submission that Dr. Bahrami pay costs to the College in the amount of \$6,000.

Order

[38] At the conclusion of the hearing, we directed the Registrar to:

1. Suspend Dr. Bahrami's certificate of registration for three (3) months commencing February 1, 2024 at 12:01 a.m.;
2. Place the following terms, conditions and limitations on Dr. Bahrami's certificate of registration effective January 17, 2024 at 12:01 a.m.:
 - i. Dr. Bahrami will, at his own expense, participate in the PROBE Ethics & Boundaries Program offered by the Centre for Personalized Education for Professionals, by receiving a passing evaluation or grade, without condition or qualification. Dr. Bahrami will complete the PROBE program within six (6) months of the date of this Order or, if it is not available within that timeframe, will complete it at the earliest available opportunity. Dr. Bahrami 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.
3. Dr. Bahrami will pay costs to the College in the amount of \$6,000 by February 16, 2024.

[39] We make the following additional orders:

4. Dr. Bahrami must appear before the panel to be reprimanded.

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BETWEEN:

College of Physicians and Surgeons of Ontario

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- and -

Tahmoures Bahrami

Registrant

**The Tribunal delivered the following Reprimand
by videoconference on Thursday, March 14, 2024.**

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

Dr. Bahrami, as members of the public and physicians, we are deeply disturbed by your misconduct in caring for Patient A, namely your failure to respect her privacy and proper professional boundaries.

On two separate occasions, you made inappropriate comments about Patient A's appearance, including during a breast exam. Also, in your examination of her costovertebral angles, you reached around her in a way that made her feel uncomfortable, without explaining your examination to her. Lastly, at the second visit, you began to remove Patient A's sweatshirt during an examination and then removed her bra for a breast examination. You did not offer to have a third-party present during the breast examination, nor did you allow her privacy to remove her own clothing or provide a gown once she had done so.

The requirements for physicians to respect professional boundaries and to communicate effectively with their patients are not minor or optional. Rather they are fundamental to effective treating relationships, they apply in respect of every patient, and they are expected of physicians in every encounter.

We are particularly disturbed that in 2014 and again in 2017 patient complaints raised issues that seem very similar to those that are the subject of this hearing. You completed remedial learning on both occasions, and we are at a loss to understand why you were not diligent in providing privacy to Patient A, sensitive to her needs and respectful of her dignity.

Dr. Bahrami, your misconduct is serious and unacceptable. We hope that you have learned from the communications program you recently completed, and that your participation in the ethics and boundaries program will assist you further. We trust that your experience with the discipline process, the public reprimand you are receiving today, and your three-month suspension from practice will deter you from any further such misconduct. You risk much more serious sanctions should you engage in similar misconduct in the future.