

ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

Citation: *College of Physicians and Surgeons of Ontario v. Assad*, 2023 ONPSDT 3

Date: January 24, 2023

Tribunal File No.: 21-027

BETWEEN:

College of Physicians and Surgeons of Ontario

- and -

Dr. Samir Roshdy Girgis Assad

FINDING AND PENALTY REASONS

Heard: December 13, 2022, by videoconference

Panel:

Ms. Jennifer Scott (chair)

Mr. Jose Cordeiro

Dr. Joanne Nicholson

Dr. Rupa Patel

Ms. Linda Robbins

Appearances:

Ms. Alice Cranker, for the College

Mr. Howard Rubel, for Dr. Assad

RESTRICTION ON PUBLICATION

The Tribunal ordered, under ss. 45-47 of the Health Professions Procedural Code, that no one may publish or broadcast the names or any information that would identify patients referred to during the Tribunal hearing or in any documents filed with the Tribunal. There may be significant fines for breaching this order.

Introduction

- [1] The College's Inquiries, Complaints and Reports Committee (ICRC) referred allegations of Dr. Assad's misconduct to the Tribunal. The College alleged Dr. Assad had engaged in conduct that would reasonably be regarded as disgraceful, dishonourable or unprofessional, had failed to maintain the standard of practice of the profession and had contravened a term, condition or limitation on his certificate of registration.
- [2] On December 8, 2022, Dr. Assad signed an undertaking promising to abide by certain practice restrictions which included not performing massage therapy, not engaging in professional encounters in the absence of a practice monitor who is a regulated health professional and posting signage about the practice monitor requirement in all locations where he practises medicine or has privileges.
- [3] During the hearing, the parties provided a Statement of Agreed and Uncontested Facts and an Agreed Statement of Facts on Penalty. In the Statement of Agreed and Uncontested Facts, Dr. Assad agreed that he had failed to maintain the standard of practice, had engaged in disgraceful, dishonourable conduct and had contravened a term, condition or limitation on his certificate. He agreed to some facts and did not contest others and more importantly, did not contest that all the facts established professional misconduct.
- [4] Dr. Assad and the College jointly submitted the penalty should be a reprimand, a four-month suspension and terms, conditions and limitations on Dr. Assad's certificate of registration until the completion of the reassessment of his practice. The parties agreed further that Dr. Assad pay costs to the College of \$6,000.
- [5] We found professional misconduct and accepted the joint submission on penalty and costs at the hearing. These are our reasons for that decision.

Misconduct

Breach of Undertaking

- [6] In 2012, Dr. Assad signed an undertaking with the College that he would not engage in any professional encounters with female patients unless a female

monitor was present. He undertook to place signage of this requirement in the waiting room and examination rooms.

- [7] On a compliance visit in 2019, College staff found that Dr. Assad was not in compliance with his undertaking. His practice monitor was standing behind the reception desk when they arrived, and a female patient was alone with Dr. Assad in an examination room with the door closed. In one examination room, the sign required by the undertaking was not clearly visible to patients. There was proper signage in the other rooms.

Standard of Practice

- [8] The College obtained information about Dr. Assad's Ontario Health Insurance Plan (OHIP) claims for services provided to female patients from May 1 to September 20, 2019. The College was unable to reconcile the claims submitted with his patient charts and his practice monitor's logs due to numerous discrepancies.
- [9] The College retained Dr. Mark Nassim to provide an independent opinion. Dr. Nassim reviewed patient records and OHIP data for 14 patients and concluded that in his view, Dr. Assad failed to maintain the standard of practice of the profession in the following ways:
- a. Dr. Assad's medical record-keeping was deficient. His notes were insufficient to reconstruct his clinical encounters and important information was missing from some patients' profiles;
 - b. Dr. Assad ordered blood tests for cancer screening in the absence of relevant personal or family history;
 - c. Dr. Assad administered vitamin B12 injections to patients who were not B12 deficient;
 - d. Dr. Assad's documentation of his clinical encounters failed to meet the necessary criteria to support his OHIP claims. Dr. Nassim provided specific examples of global billing issues in Dr. Assad's practice.
- [10] Dr. Nassim was of the view that Dr. Assad displayed a lack of knowledge, skill and judgment.

Disgraceful, Dishonourable and Unprofessional Conduct

[11] Patient A filed a complaint with the College. Dr. Assad was her family physician.

[12] At the end of a clinical encounter in April 2019, Dr. Assad hugged Patient A from the side with one arm. Patient A was wearing a gown, which did not fully conceal her body. She felt very uncomfortable. Dr. Assad does not admit, but does not contest, that during this interaction, he kissed Patient A on the cheek. Patient A voiced her discomfort and distress immediately after this encounter. She spoke to Dr. Assad in the presence of staff. She did not return to see Dr. Assad again.

[13] Dr. Assad does not admit, but does not contest, that during prior physician-patient encounters, Patient A was uncomfortable when Dr. Assad would sometimes hug her in greeting. Dr. Assad also made unprofessional comments to Patient A including commenting on her appearance.

[14] Dr. Assad does not admit, but does not contest, that prior to the April 2019 encounter, the practice monitor sometimes entered the examination room for Patient A's appointments after Patient A and Dr. Assad were already in the room with the door closed. The practice monitor was the same individual whom the College removed in the spring of 2019 because of the breach of undertaking described above.

Finding

[15] We find Dr. Assad committed acts of professional misconduct. We accept the expert opinion that he failed to meet the standard of practice and agree with the parties that the other facts establish a violation of the terms, conditions and limitations on his certificate of registration. The uncontested facts about his interactions with Patient A describe acts that would reasonably be regarded by members of the profession as disgraceful, dishonourable or unprofessional.

Penalty

[16] Dr. Assad 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 and *College of Physicians and Surgeons of Ontario v. Matheson*, 2022 ONPSDT 27 at para. 16.

- [17] 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 impairs the ability of the College, and the Tribunal as an entity within it, to regulate the profession of medicine and govern physicians.
- [18] 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.
- [19] We accept the joint submission and find that it does not bring the professional discipline system into disrepute. We make this finding having considered the seriousness of the misconduct, Dr. Assad's discipline history, his actions since the misconduct, his personal circumstances and the parties' submissions on penalty.
- [20] Dr. Assad has no disciplinary history with the College. He has appeared before the ICRC three times to receive advice or be cautioned. His first appearance was in 2012 when he gave his original undertaking. He attended before the ICRC in 2014 and 2018 regarding compliance with the undertaking. The misconduct before us relates to the very same undertaking. Dr. Assad's failure to follow his undertaking after receiving advice and warnings from the ICRC makes his misconduct more serious.
- [21] Dr. Assad's misconduct is multi-faceted. It involves unprofessional conduct with Patient A, breach of an undertaking and failure to maintain the standard of practice because of deficiencies in his record-keeping and billings.
- [22] The parties rely on cases involving similar misconduct; however, none of the cases involve the same constellation of misconduct as here. Included in the joint book of authorities is a decision that involves both record-keeping and billing deficiencies resulting in a three-month suspension (*College of Physicians and Surgeons of Ontario v. Goldstein*, 2019 ONCPSD 35). There are two decisions involving breach of an undertaking resulting in three-month suspensions (*College of Physicians and Surgeons of Ontario v. Roy*, 2018 ONCPSD 66 and *College of Physicians and Surgeons of Ontario v. Li*, 2007 ONCPSD 24) and two decisions involving boundary

violations resulting in two-month suspensions (*College and Physicians and Surgeons of Ontario v. Hajcsar*, 2014 ONCPSD 13 and *College of Physicians and Surgeons of Ontario v. Fikry*, 2019 ONCPSD 53).

- [23] While these cases are not identical to this case and are not binding on the Tribunal, they do provide support for the four-month suspension agreed to by the parties. The suspension is within the range of penalties in the caselaw when considering the totality of the misconduct here.
- [24] The joint submission on penalty, together with Dr. Assad's undertaking, protects the public interest. The public is protected because Dr. Assad is suspended from practice for four months, is under clinical supervision for 12 months following the suspension and is subject to a reassessment of his practice after the period of clinical supervision. The public is protected further because Dr. Assad will participate in an education program with his clinical supervisor and will take two courses, one on ethics and boundaries and one on medical record-keeping. The protection of the public and the Tribunal's censure of his conduct through the reprimand demonstrates the College's professional discipline system is working well.
- [25] Having considered the circumstances of Dr. Assad including his undertaking, his misconduct and the Tribunal's caselaw, we find the proposed penalty does not bring the administration of justice into disrepute and it is accepted for this reason.

Order

- [26] At the conclusion of the hearing, we ordered:
- a. Dr. Assad to attend before the panel to be reprimanded;
 - b. The Registrar to suspend Dr. Assad's certificate of registration for four months commencing immediately;
 - c. The Registrar to place terms, conditions and limitations on Dr. Assad's certificate of registration including provisions relating to closing his medical practice, clinical supervision of his practice for 12 months following his suspension, completion of the PROBE Ethics and Boundaries program, completion of the Medical Record Keeping Program and the reassessment of his

practice six months after the completion of the clinical supervision. The complete terms, conditions and limitations are available on the College's Register, accessible through the "Doctor Search" function on the College website.

- d. Dr. Assad pay costs to the College in the amount of \$6,000 by January 13, 2023.

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- and -

Dr. Samir Roshdy Girgis Assad

The Tribunal delivered the following Reprimand
by videoconference on Tuesday, December 13, 2022.

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

Dr. Assad,

Despite a prior undertaking with your regulatory body, you have continued to exhibit a lack of skill, knowledge and judgment in your care of patients. Your deficiencies have been multifaceted, not only permeating care and judgement, but also boundaries, billing, professionalism and governability. You have exposed individual patients to potential harm, and have had a negative impact on the practice of medicine in general.

The nature of the physician-patient relationship involves a power dynamic such that all patients are vulnerable. The boundary violations in your case are especially concerning to this Tribunal.

It is hoped that during your upcoming suspension, you will take the time to reflect upon and remediate your shortcomings as a physician. A prolonged period of supervision and education is required so that when you do return to practice, both the College and most importantly the public is assured that you are competent.

You are now dismissed.