

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Al Abdulmohsin, this is notice that the Discipline Committee ordered that there shall be a ban on publication of the names and any information that could disclose the identity of the two nurse complainants, Ms A and Ms C, referred to orally or in the exhibits filed at the hearing under subsection 45(3) of the Code.

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 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.

**Indexed as: Ontario (College of Physicians and Surgeons of Ontario) v. Al Abdulmohsin,
2017 ONCPSD 44**

**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. MOHAMMED ABDULLAH H. AL ABDULMOHSIN

PANEL MEMBERS: **DR. CAROLE CLAPPERTON (Chair)**
MAJOR ABDUL KHALIFA
DR. SHEILA-MAE YOUNG
MR. PETER PIELSTICKER
DR. JAMES WATTERS

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MR. PETER WARDLE

COUNSEL FOR DR. AL ABDULMOHSIN:

MR. ELI MOGIL

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. BERKLEY SELLS
MR. DAVID ROSENBAUM

Hearing Date: April 7 and May 11, 2017
Decision Date: October 11, 2017
Release of Written Reasons: October 11, 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 April 7 and May 11, 2017. At the conclusion of the hearing, the Committee reserved its decision.

THE ALLEGATIONS

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

1. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”), in that he has engaged in conduct or 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 ALLEGATIONS

Schedule “A” to the Notice of Hearing alleged that Dr. Al Abdulmohsin engaged in disgraceful, dishonourable or unprofessional conduct including, but not limited to, three specific allegations. Dr. Al Abdulmohsin entered a plea of no contest to allegation 1.a. in Schedule “A”: that he engaged in disgraceful, dishonourable or unprofessional conduct by inappropriately submitting clinical billings for payment for activities directly related to his residency education program, which was not permitted, and in his responses to inquiries from his program with respect to this conduct. Dr. Al Abdulmohsin denied allegation 1.b.: that he engaged in disgraceful, dishonourable or unprofessional conduct in his dealings with nursing staff at the hospital, including by making inappropriate comments and engaging in inappropriate physical contact. The College withdrew allegation 1.c.: that Dr. Al Abdulmohsin engaged in disgraceful, dishonourable or unprofessional conduct in relation to a letter he sought to obtain from his program director dated March 27, 2014.

ALLEGATION 1.a: Inappropriate OHIP Clinical Billings**THE FACTS**

The following facts were set out in the Statement of Uncontested Facts and Plea of No Contest which was presented to the Committee and filed as an Exhibit.

PART I: FACTS**Introduction**

1. Dr. Al Abdulmohsin is a 36 year old general surgeon, who participated in a PGY 7 residency in thoracic surgery at McMaster University, funded by the Saudi Bureau. Dr. Al Abdulmohsin is a graduate of the Arabian Gulf University in Bahrain. He was granted an Independent Practice Certificate by the College as of December 18, 2012.

OHIP Billings

2. In June, 2014, the College received a letter from Dr. Mark Walton, the Assistant Dean of Postgraduate Medical Education at McMaster University. Dr. Walton indicated that during Dr. Al Abdulmohsin's thoracic surgery residency, he was billing OHIP for services he provided, despite this not being permitted under the agreement between the Saudi Bureau and Revenue Canada.
3. In or about February, 2013 Dr. Al Abdulmohsin approached Dr. Y. Shargall, Division Head and Dr. Colin Schieman, Program Director to ask whether he could submit OHIP billings to help supplement his income. Both physicians, after making inquiries of Dr. Walton and the Office of Postgraduate Medical Education, advised Dr. Al Abdulmohsin that he was not permitted to do so, as this would be considered double billing, given that he was being paid by the Saudi Bureau for his training.

4. Both physicians also explained to Dr. Al Abdulmohsin that he was being paid a salary to learn through his program and as a result could not bill for procedures that he observed during his learning period.
5. In April, 2014, it was discovered by the thoracic surgeons at Hamilton Healthcare and McMaster University that despite being told he was not permitted to do so, Dr. Al Abdulmohsin nonetheless submitted clinical billings to OHIP for the purposes of personal payment. Dr. Al Abdulmohsin was placed on paid leave from the program for two months.
6. On May 23, 2014 Dr. Al Abdulmohsin submitted a letter to Dr. Walton asserting that there had been a “profound misunderstanding” of what had been communicated to him by Drs. Schieman and Shargall regarding his request to bill.
7. In the letter, Dr. Al Abdulmohsin stated that other than Dr. Schieman reporting that the post graduate office had raised concerns regarding income tax issues, no other concerns were expressed to him in response to his request to bill, and “most certainly there were no red flags raised regarding general propriety of such billing”.
8. The information Dr. Al Abdulmohsin provided in the May 23, 2014 letter set out above was inaccurate, given Dr. Shargall’s and Dr. Schieman’s advice to Dr. Al Abdulmohsin that he was not permitted to bill.
9. In May 2014, Dr. Al Abdulmohsin voluntarily proposed that he be re-admitted to the thoracic surgery residency program, under the following terms and conditions to which McMaster University agreed:
 - (i) He repays the full amount billed to OHIP;
 - (ii) He undertakes professionalism training sessions at his own cost with David Smith, MSW RSW, at McMaster University; and
 - (iii) He will issue an apology to the staff and the program.

10. These terms and conditions were satisfactorily completed by Dr. Al Abdulmohsin and Dr. Al Abdulmohsin was re-admitted to the thoracic surgery residency program in June, 2014.
11. McMaster University reported these developments to the College by way of letter dated June 27, 2014, a copy of which is attached as Exhibit “A” [to the Statement of Uncontested Facts and Plea of No Contest]

PART II: PLEA

12. Dr. Al Abdulmohsin does not dispute the facts set out above, and pleads no contest that he engaged in professional misconduct by engaging in disgraceful, dishonorable or unprofessional conduct under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”).

FINDING RE: OHIP Clinical Billings

Rule 3.02 of the Discipline Committee’s Rules of Procedure regarding a plea of no contest states as follows:

3.02(1) Where a member enters a plea of no contest to an allegation, the member consents to the following:

- (a) that the Discipline Committee can accept as correct the facts alleged against the member on that allegation for the purposes of College proceedings only;
- (b) that the Discipline Committee can accept that those facts constitute professional misconduct or incompetence or both for the purposes of College proceedings only; and

- (c) that the Discipline Committee can dispose of the issue of what finding ought to be made without hearing evidence.

The Committee accepts as correct all of the facts set out in the Statement of Uncontested Facts and Plea of No Contest. Having regard to these facts, the Committee accepts Dr. Al Abdulmohsin's plea of no contest and finds that he has committed an act of professional misconduct, in that he engaged in conduct which would reasonably be regarded by members as disgraceful, dishonourable or unprofessional by inappropriately submitting OHIP clinical billings for payment for services he provided during his residency education program for personal gain, despite this not being permitted under the agreement between the Saudi Bureau and Revenue Canada and against the express advice of his Divisional Chief and Program Director.

ALLEGATION 1.b.: Dealings with Nursing Staff at the Hospital

From 2012 to 2014, Dr. Al Abdulmohsin was a thoracic surgery resident at McMaster University. He worked at a large teaching hospital.

The allegations against Dr. Al Abdulmohsin relating to his dealings with nursing staff derive from concerns expressed by two nurses in 2012 about unwelcome physical contact, and about a comment that Dr. Al Abdulmohsin made to one of the nurses in 2014.

The two nursing colleagues not only asked Dr. Al Abdulmohsin directly to stop the behaviour, they also complained of his behaviour to the Nurse Manager.

ISSUES

This allegation raises the following issues:

1. Did Dr. Al Abdulmohsin make inappropriate comments and engage in inappropriate physical contact with nursing staff at the hospital?

2. If Dr. Al Abdulmohsin did make inappropriate comments and engage in inappropriate physical contact, did that behaviour constitute conduct relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional?

THE EVIDENCE

The Committee heard the testimony of four witnesses called by the College. Dr. Al Abdulmohsin called three nurse colleagues who worked with him.

A number of exhibits were entered into evidence by the College. These included: i) an email chain, dated October 2012, between the Nurse Manager and Dr. Al Abdulmohsin's Program Chief and the Divisional Chief about the nurses' concerns with Dr. Al Abdulmohsin's behavior; ii) evaluation forms of Dr. Al Abdulmohsin's residency performance, completed by the teaching staff at McMaster University; and iii) the report of Dr. Al Abdulmohsin's suspension written by McMaster University Program Director, Dr. Colin Schieman, dated April 29, 2014.

The Committee found all the witnesses to be credible and their testimony to be reliable.

Witness #1: Dr. Yaron Shargall

Dr. Shargall's testimony provided the Committee with the context of the work environment in which the behaviour that was the subject of the complaints from the nurses occurred, as well as information about how the University dealt with the complaints and Dr. Al Abdulmohsin's response to them.

Dr. Shargall is the Divisional Chair of the Thoracic Surgery Program at McMaster University. He is on staff at the Hospital. He testified that on a date in October 2012, he received an email from the Nurse Manager of a Hospital Unit that contained a report that a resident, who turned out to be Dr. Al Abdulmohsin, had been making some nurses feel uncomfortable by making unprofessional comments and showing "a lack of respect for personal space, including

massaging, pinching of cheeks and rubbing arms”. After receiving the email, Dr. Shargall met with Dr. Colin Schieman, who was the Program Director on behalf of the University, and the Nurse Manager to learn more details. Dr. Shargall and Dr. Schieman then arranged for an additional meeting, this time with Dr. Al Abdulmohsin and the Nurse Manager, which took place a day or two later.

Dr. Shargall testified that when Dr. Al Abdulmohsin was confronted with these complaints at their meeting, he was surprised, apologetic and embarrassed. Dr. Shargall and Dr. Schieman made Dr. Al Abdulmohsin aware of the serious nature of the behaviour. They told him that they would supervise him to make sure the behaviour did not recur, and if it did, they would have to report it to the University. Dr. Al Abdulmohsin responded that he would change his behaviour to accommodate the request of the nurses. Over the next six months, Dr. Shargall checked in periodically with the Nurse Manager. Dr. Shargall testified that no further complaints regarding this type of behaviour were received during the next six months, or after.

Dr. Shargall testified that a letter that referred to the meeting with Dr. Al Abdulmohsin was placed in his university file, but he did not report it to the Postgraduate office. In April, 2014, Dr. Shargall was involved in the preparation of a letter signed by Dr. Schieman that aimed to capture the events that led to Dr. Al Abdulmohsin’s suspension (related to the OHIP billing issues). The letter included a paragraph dealing with his behaviour toward nurses in 2012. Dr. Shargall explained that this was included in the letter because they felt that taking such a significant step as to suspend a resident would require a complete evaluation of the resident’s performance throughout his time with them.

Dr. Shargall testified that during the course of his interactions with Dr. Al Abdulmohsin, he did not observe any of the issues that were referred to in the complaint from the nurses about Dr. Al Abdulmohsin’s behaviour.

Witness #2: Ms A

In 2012, Ms A was a young, recently graduated nurse, who was working in a Hospital Unit. She testified that when she first met Dr. Al Abdulmohsin, he was very friendly. Over a few months he became more physical. When one asked him a question about a patient, he would “kind of take a step in and step right next to you as if your shoulders were just touching.” He would lean forward slightly and begin conversing to the point where she would move away. That evolved within the first year or two his placing his hands on the small of her back, close to the line of her scrub pants, while he was speaking with her - she estimated this happened at least 20 times. She described Dr. Al Abdulmohsin’s placing of his hand at the small of nurses’ backs to be a frequent occurrence on the Unit, especially with newer younger staff.

This behavior progressed to an event that caused Ms A particular discomfort. Ms A testified that one day, she was sitting at a desk, charting in the nursing station, during a change of shift. Approximately nine or ten nursing colleagues were present in the same area. She asked Dr. Al Abdulmohsin a question; he then approached her from behind and as he was speaking to her, he started to massage her shoulders, which she found uncomfortable. She responded by raising her shoulders to her ears and pushing the chair away and she told Dr. Al Abdulmohsin to stop. She told him that it made her very uncomfortable, and she asked him not to do it again. Ms A testified that Dr. Al Abdulmohsin appeared embarrassed when she confronted him; he finished replying to her questions and then left the work space. Ms A further testified that some of her co-workers in the nursing station witnessed Dr. Al Abdulmohsin’s behaviour and her response to the incident. Her Charge Nurse approached her and asked about the incident; Ms A described it for her and the Charge Nurse asked if she could pass the information about the incident along to the Nurse Manager. Ms A gave her permission to do so.

Ms A testified that she believed this incident involving the shoulder massage occurred in the summer of 2013, but that she was unsure of the date. The Committee finds that the conduct to which she testified likely occurred in 2012, not 2013, because it was consistent with the types of conduct described in the Nurse Manager’s email of October 2012, and with Dr. Shargall’s evidence that after Dr. Al Abdulmohsin was confronted a few days after the email, there were no

further complaints about such behaviour on his part. The Committee finds this error in Ms A's testimony to be minor and explained by the fact that many years had elapsed between when the events occurred and when she testified.

Ms A testified that after making her complaint, she did not experience any further unwanted behaviour from Dr. Al Abdulmohsin. She developed personal strategies by placing physical barriers to prevent further conversations in close proximity to him, and he did not advance further than that. As far as she was concerned, the issue had been resolved.

Witness #3: Ms B

In 2012, Ms B was a senior nurse with more than 25 years of work experience the Hospital Unit. She testified that she witnessed Dr. Al Abdulmohsin spending a lot of time around the nurses' station, especially when the younger nurses were present. She observed him quite a few times approaching younger nurses from behind and rubbing their shoulders. She recalls being contacted by the Nurse Manager around October 2012 in relation to Dr. Al Abdulmohsin. She relayed to the Nurse Manager the information to which she testified before the Committee.

Witness #4: Ms C

In 2012, Ms C was a young nurse working in the Hospital Unit. She testified that she witnessed Dr. Al Abdulmohsin's behaviour of frequently massaging the shoulders of nurses and other staff, and she discussed the behaviour with fellow nursing staff.

Ms C testified that several times, she personally experienced Dr. Al Abdulmohsin rubbing or massaging her lower mid back. She also recalled one particular incident of Dr. Al Abdulmohsin caressing the upper part of her wrist with a circular gesture. She testified that she told Dr. Al Abdulmohsin at times to stop. Dr. Al Abdulmohsin's conduct caused her to complain to her Charge Nurse.

Ms C also testified that after she got engaged to be married, she was upset and hurt by an unsolicited comment from Dr. Al Abdulmohsin; he asked her why she would want to stay with someone for the rest of her life. She said that he didn't express it as a joke, that he was very serious.

Witness #5: Charge Nurse; Witness #6: Ms D; and Witness #7: Ms E

All three of these witnesses are nurses; they were called to testify by Dr. Al Abdulmohsin. In 2012, all three of these nurses worked in the Hospital Unit with Dr. Al Abdulmohsin. They all testified that although they observed Dr. Al Abdulmohsin touching nurses on their arms, shoulders and backs, they saw nothing inappropriate about it. All three witnesses testified that they were not disturbed by Dr. Al Abdulmohsin's behaviour.

The Charge Nurse described Dr. Al Abdulmohsin as "tactile". He was approachable, compassionate to patients and always treated her very respectfully. He would put his arm on her shoulder or back, but she was never uncomfortable with it. Ms D, who has worked at the Hospital since 1994, testified that the tactile nature of Dr. Al Abdulmohsin was part of his personality. She described him as being very friendly and easy to deal with, and as having an excellent rapport with patients. She did not observe him treating younger nurses any differently than he treated experienced nurses. Ms E, who was in her early twenties when she began working at the Hospital in 2007, testified that Dr. Al Abdulmohsin occasionally grabbed her shoulder and gave a squeeze to her arm. She described him as friendly and approachable and always patient. All three witnesses testified that they were not disturbed by his behaviour.

LEGAL PRINCIPLES

The text *A Complete Guide to the Regulated Health Professions Act* by Richard Steinecke notes the following about the general "catch-all" definition of professional misconduct which, under the College's professional misconduct regulation, is described as "an act or omission relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional":

“... the catch-all definition is not supposed to reflect the values of the general population, but the values of the profession itself. Members of the profession best understand the circumstances in which practitioners operate”.

The text further states:

“The catch-all provision is not intended to capture the legitimate exercise of professional discretion or mere errors of judgment. However, conduct need not be dishonest or immoral to fall within the definition. A serious or persistent regard for one’s professional obligations is sufficient.”

Both disgraceful and dishonourable conduct carry an element of moral failure, whereas conduct need not involve dishonest or immoral elements to be considered unprofessional.

CASE LAW

The Committee considered the cases that both the College and Dr. Al Abdulmohsin put before it, and found them all to be distinguishable.

The College relied on *CPSO v. McInnis* (2011). In that case, the finding of disgraceful, dishonourable and unprofessional conduct was based on an Agreed Statement of Facts (as were all of the other cases that the College put before the Committee). To the extent the unprofessional conduct involved physical contact, it was with patients, not colleagues. The finding concerning Dr. McInnes’ conduct toward a colleague was with regard to personal comments of a flirtatious nature, which is not this case. Also, Dr. McInnis’ behaviour was repetitive and more intrusive than Dr. Al Abdulmohsin’s. In *CPSO v. McInnis* (2013), the doctor made repeated flirtatious comments to a nurse with respect to her personal appearance, which made her uncomfortable, and on more than one occasion he put his arm around her shoulder.

There was one incident that the Committee found especially troubling, which took place after the nurse had told the doctor that she wanted strictly a physician/nurse relationship between them. On that occasion, the doctor made a flirtatious comment, tried to touch the nurse on the arm, which the nurse then made clear was unwanted, then again moved close to the nurse, placed his hand behind her back, and leaned in to try to kiss her, which she avoided, and then he leaned in again, tried to embrace her and kissed her on the cheek. Again, this is more intrusive behaviour than Dr. Al Abdulmohsin's conduct in the present case, and the doctor persisted in his conduct even after the nurse clearly communicated to him that it was unwelcome.

The Committee also found that *CPSO v. Minnes* (2014) involved conduct that was more intrusive in intensity than Dr. Al Abdulmohsin's, took place over a lengthy period, and involved numerous workplace colleagues. Finally, in the case of *CPSO v. Saunders* (2008) the physician caused physical injury to a nurse, and when she told him that he was hurting her, he made a flippant comment.

In summary, the Committee concluded that the physicians' misconduct as described in the cases provided by the College was more serious in intensity and pervasiveness than was Dr. Al Abdulmohsin's conduct toward his two nursing colleagues. The Committee therefore found all the cases to be distinguishable from the case before it.

Dr. Al Abdulmohsin relied on the following cases: *CPSO vs. Yar* (2007), *CPSO vs. QRS* (2012), *CPSO vs. RST* (2016), *Ontario College of Teachers v. Fabel*, 2010 ONOCT 12 and *Ontario College of Teachers v. Fabel* (Penalty Decision), 2010 ONOCT 14. The Committee did not find these cases to be helpful, as they all involved behaviour that was very different from Dr. Al Abdulmohsin's.

Issue of Adverse Inference

The College submitted that the Committee should draw an adverse inference from the fact that Dr. Al Abdulmohsin did not testify. The Committee declined to do so. The Committee's finding of professional misconduct was based on facts that were not disputed. The Committee therefore

did not need to infer that Dr. Al Abdulmohsin's evidence would have been unfavourable to his case.

FINDINGS RE: Dealings with Nursing Staff at the Hospital

The College has the onus to prove the allegations in the Notice of Hearing on a balance of probabilities based on evidence that is clear, cogent and convincing.

Touching of Ms A and Ms C

The Committee was satisfied on the evidence, and finds, that Dr. Al Abdulmohsin repeatedly touched Ms A and Ms C on the small of their backs, close to the line of their scrub pants, massaged Ms A's shoulders on one occasion, and caressed Ms C's wrist on one occasion. This behaviour was clearly inappropriate and unacceptable. In the Committee's view, it rose above the level of unacceptable into unprofessional conduct based on the intrusiveness and intimate nature of the behaviour. There are boundaries to physicians' behaviour towards patients, colleagues and the general public. Physicians are expected to strictly maintain those boundaries and if they do not do so, they should expect to be judged adversely. Massaging professional colleagues, touching them at their waistline, and caressing their wrists are intrusive acts and are of an intimate nature. These actions cross acceptable boundaries, and they constitute unprofessional conduct.

In coming to this conclusion, the Committee considered the effect of the physician's actions on the workplace environment. Unprofessional conduct in a workplace as displayed by Dr. Al Abdulmohsin cannot be tolerated. Boundaries in a physician's workplace are important so as to provide an atmosphere of safety and respect for all health professionals working there. The intrusion by a member of the health care team into the physical space of another could precipitate many reactions, including fear and discomfort, and can have negative consequences for the overall collegiality of the workplace environment. In this case, Dr. Al Abdulmohsin's touching caused discomfort to two nurses to the extent that they complained; one of the nurses even took steps to avoid him touching her in the future.

It does not matter that only two individual nurses out of a larger group complained, or that other nurses found Dr. Al Abdulmohsin's tactile behaviour toward them to be acceptable. The fact that some individuals may not have been offended by Dr. Al Abdulmohsin's conduct does not change the fact that he crossed acceptable boundaries in his conduct toward Ms A and Ms C.

The fact that his inappropriate physical behaviour toward nurses stopped after it was brought to Dr. Al Abdulmohsin's attention shortly after the October 2012 email, does not detract from the finding that his conduct was unprofessional. A single event can constitute professional misconduct, and in this case there was more than one instance of unprofessional behaviour.

In making these findings, the Committee is not to be taken as saying that physicians can never touch professional colleagues in the course of their work. Touching is an important feature of human interactions at times. The Committee recognizes that in a fast-paced and no doubt, sometimes stressful, workplace, camaraderie among professional colleagues and touching one another on the arm or shoulder, for example, may occur. However, it is incumbent upon physicians to be self-aware of how they touch their colleagues, and of how that touch may be perceived.

Considering the context, and the at least seven years of experience that Dr. Al Abdulmohsin had as a surgical resident, he should have known better and should have been more sensitive to the effect of his actions. However, based on Dr. Shargall's testimony about Dr. Al Abdulmohsin's surprised, apologetic demeanor and embarrassment when he was told that his behaviour had caused harm and discomfort to his nursing colleagues, and Ms A's testimony to a similar reaction when she confronted him about his massaging of her shoulders, it was evident that Dr. Al Abdulmohsin was not aware of the impact of his behavior. Furthermore, as soon as the concern about his behaviour was brought to his attention, he stopped the behaviour and did not repeat it.

As noted in the section, Legal Principles, above, both disgraceful and dishonourable generally carry an element of moral failure, whereas unprofessional conduct does not require dishonest or immoral elements. Therefore, while finding Dr. Al Abdulmohsin's conduct is unprofessional, the Committee is not satisfied that it is disgraceful or dishonourable.

Comment to Ms C

The Committee finds that Dr. Al Abdulmohsin made the comment to Ms C to which she testified. Dr. Al Abdulmohsin's comment implied that there was something wrong with Ms C wanting to stay with her husband for the rest of her life. The comment was inappropriate and is a further indication of Dr. Al Abdulmohsin's limited awareness of the effects of his actions on colleagues. However, the Committee finds that the comment does not rise to the level of professional misconduct because it was most likely made in a tactless, impulsive manner. It was inappropriate, but it was not conduct relevant to the practice of medicine that in the circumstances, members would reasonably regard as disgraceful, dishonourable or unprofessional. Physicians too may have moments when their comments come out in a thoughtless way.

SUMMARY of FINDINGS**Allegation 1.a – OHIP Clinical Billings**

The Committee finds that Dr. Al Abdulmohsin committed an act of professional misconduct in that he engaged in conduct which would reasonably be regarded by members as disgraceful, dishonourable or unprofessional by inappropriately submitting OHIP clinical billings for payment for services he provided during his residency education program for personal gain, despite this not being permitted under the agreement between the Saudi Bureau and Revenue Canada and against the express advice of his Divisional Chief and Program Director.

Allegation 1.b - Dealings with Nursing Staff at the Hospital

The Committee finds that Dr. Al Abdulmohsin committed an act of professional misconduct in that he engaged in conduct which would reasonably be regarded by members as unprofessional by touching two nurses in an intimate and intrusive manner.

The Committee finds the allegation of disgraceful, dishonourable or unprofessional conduct is not proven in relation to the comment made to Ms C regarding staying with her husband.

The Committee directs that the Hearings Office schedule a penalty hearing pertaining to the finding it has made at the earliest opportunity.

**Indexed as: Ontario (College of Physicians and Surgeons of Ontario) v. Al Abdulmohsin,
2018 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. MOHAMMED ABDULLAH H. AL ABDULMOHSIN

PANEL MEMBERS:

**DR. C. CLAPPERTON (CHAIR)
MAJOR A. H. KHALIFA
DR. S-M. YOUNG
MR. P. PIELSTICKER
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**COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:
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MR. D. ROSENBAUM

Penalty Hearing Dates:	December 18, 2017
Penalty Decision Date:	December 18, 2017
Penalty Reasons Date:	February 15, 2018

PUBLICATION BAN

PENALTY DECISION AND REASONS FOR DECISION

On October 11, 2017, the Discipline Committee of the College of Physicians and Surgeons of Ontario found that Dr. Al Abdulmohsin committed an act of professional misconduct, in that he engaged in conduct which would reasonably be regarded by members as disgraceful, dishonourable or unprofessional by inappropriately submitting OHIP clinical billings for payment for services he provided during his residency education program for personal gain, despite this not being permitted under the agreement between the Saudi Bureau and Revenue Canada and against the express advice of his Divisional Chief and Program Director.

The Discipline Committee further found that Dr. Al Abdulmohsin committed an act of professional misconduct, in that he engaged in conduct which would reasonably be regarded by members as unprofessional by touching two nurses in an intimate and intrusive manner.

On December 18, 2017, the Committee heard submissions on penalty and costs.

SUBMISSIONS ON PENALTY

Counsel for the College and counsel for the member made a joint submission as to an appropriate penalty and costs order. The proposed penalty included a three month suspension of Dr. Al Abdulmohsin's certificate of registration, followed by the imposition of terms, conditions, and limitations on Dr. Al Abdulmohsin's certificate of registration, as well as a public reprimand.

Both counsel referred the Committee to a Brief of Authorities, which consisted of an extract from "A Complete Guide to the Regulated Health Professions Act" by Richard Steinecke" (pp. 6-133-144) and three cases: *CPSO v. Baird* (2017), *CPSO v. Foote* (2016) and *R. v. Anthony-Cook*, 2016 SCC 43.

PENALTY AND REASONS FOR PENALTY

The Committee is aware of the high threshold that is required for rejecting a joint submission on penalty - that the proposed penalty would bring the administration of justice into disrepute or is otherwise contrary to the public interest (*R. v. Anthony-Cook*, 2016). For the reasons set out below, the Committee was satisfied that the proposed penalty was just and in the public interest.

The Committee found that the proposed penalty complied with the general and well-established penalty principles:

- protection of the public is the paramount consideration;
- the penalty should maintain the public's confidence in the integrity of the profession and the College's ability to govern the profession in the public interest;
- the penalty should be a specific deterrent to the member and a general deterrent to the members of the profession; and
- the penalty should address the potential for rehabilitation of the member where appropriate.

In addition, when determining the appropriate penalty in this case, the Committee considered aggravating and mitigating factors.

Inappropriate OHIP Billings

The Committee considered it to be an aggravating factor that Dr. Al Abdulmohsin demonstrated a disturbing lack of honesty and integrity in his personal code of conduct. He not only inappropriately billed OHIP to further his own personal ends while earning a resident's salary, he did so after having been told by his superiors that billing OHIP was not allowed. He then offered as an excuse to the Associate Dean for his conduct that no "red flags" had been raised with him regarding the propriety of such billing, which was inaccurate.

The Committee found that it was a mitigating factor that Dr. Al Abdulmohsin pleaded no contest to the OHIP billings allegations, and thus saved the cost of additional hearing days and relieved the witnesses from the inconvenience and stress of having to testify at a public hearing.

Boundary Violation

The Committee found that Dr. Al Abdulmohsin repeatedly touched two nursing colleagues in an intimate and intrusive manner. The medical profession has a heightened abhorrence of any professional misconduct by its members that is intimate, intrusive and repetitive. This was an aggravating factor for the Committee on penalty.

The Committee noted as a mitigating factor that when Dr. Al Abdulmohsin was told that his behaviour had caused harm and discomfort to his nursing colleagues, he was surprised, apologetic and embarrassed. Furthermore, after the professional misconduct was brought to his attention, he did not engage in any further inappropriate touching of his colleagues. The Committee noted in its Reasons for Decision dated October 11, 2017 that this did not detract from finding that his conduct was unprofessional, but it as a mitigating factor with respect to penalty.

However, that the fact that Dr. Al Abdulmohsin was a newcomer to Canada was not a mitigating factor from the Committee's perspective. He had several years of opportunity in his Canadian residency program to observe and model appropriate behaviour from his teachers, colleagues and other professional staff.

Case Law

The Committee considered the previous cases of *CPSO v. Baird* (2017) and *CPSO v. Foote* (2016), to which counsel referred. The *Foote* case involved a breach of integrity and honesty, and resulted in a suspension of one month and a requirement that the physician undertake individualized instruction in medical ethics. The *Baird* case involved comments of a sexual

nature made to a patient and inappropriate comments to a nurse, and resulted in a suspension of two months and a requirement that the physician take a course in medical ethics.

Given that the Committee made findings against Dr. Al Abdulmohsin, involving both a breach of integrity and honesty and inappropriate behaviour, the Committee was satisfied that the proposed penalty was within the range of the penalties in those cases.

Conclusion

The Committee was satisfied that a three month suspension of Dr. Al Abdulmohsin's certificate of registration indicates the seriousness with which the medical profession holds its duty to protect professional colleagues from disrespectful behaviour by its members; such behaviour has the potential to create unhealthy working environments in hospitals and other medical facilities that could put patients at risk. The suspension also demonstrates that the profession will not tolerate conduct that is inconsistent with the professional integrity and honesty of all members upon which our health care system and the OHIP billing system rules are grounded.

The three month suspension of his certificate of registration will provide Dr. Al Abdulmohsin with time to reflect on the personal integrity and honesty that a medical professional is required to have, and thus will act as a specific deterrent against the repetition of such behaviour in future, as will the fact that he will not be able to earn income from the profession while the suspension is in effect. The suspension will also serve as a general deterrent to the profession by demonstrating that conduct of this nature will result in a significant penalty.

The term, condition and limitation on Dr. Al Abdumohsin's certificate of registration that he complete educational programs in professional ethics and understanding boundaries, after the completion of his suspension, will ensure public protection, and will provide the opportunity to Dr. Al Abdulmohsin to reflect and learn further from the consequences of his professional misconduct, thus serving the goal of rehabilitation. In addition, the requirement to complete the boundaries course will provide Dr. Al Abdulmohsin with the opportunity to learn and practise

the development of positive working relationships and model this behaviour to others, while contributing to a positive work environment.

The public reprimand will serve the goal of specific deterrence and should also assist in Dr. Al Abdulmohsin's rehabilitation. It will challenge him, as a relatively new member of this profession, to take his professional misconduct to heart and make all changes necessary to allow him to be a respected, honourable member of the profession. The public condemnation of Dr. Al Abdulmohsin's inappropriate behaviour will also serve as a general deterrent to the profession.

COSTS

The Committee finds that this is an appropriate case in which to order that Dr. Al Abdulmohsin pay costs to the College for the three day hearing at the College's prescribed tariff, for a total of \$16,500.00.

ORDER

Therefore, the Committee ordered and directed that:

2. Dr. Al Abdulmohsin appear before the panel to be reprimanded.
3. the Registrar suspend Dr. Al Abdulmohsin's certificate of registration for three (3) months commencing December 18, 2017.
4. the Registrar impose a term, condition, and limitation on Dr. Al Abdulmohsin's certification of registration that at his own expense, Dr. Al Abdulmohsin shall participate in and successfully complete all aspects of the following programs, at the earliest opportunity:
 - (i) Individualized instruction in professionalism/ethics satisfactory to the College, with an instructor selected by the College; and
 - (ii) Understanding Boundaries in Managing the Risks Inherent in the Doctor- Patient Relationship.

5. Dr. Al Abdulmohsin pay to the College its costs of this proceeding in the amount of \$16,500.00 within thirty (30) days from the date of this Order.

At the conclusion of the hearing, Dr. Abdulmohsin 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 December 18, 2017
in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
and
DR. MOHAMMED ABDULLAH H. AL ABDULMOHSIN

Dr. Abdulmohsin, your professional misconduct falls into two general areas. One, dishonesty and lack of integrity; and two, inappropriate touching of health care staff.

The Panel is particularly disturbed that even after being told by your superiors that you were not allowed to bill OHIP while earning a resident's salary, you went ahead and did so. Your actions speak volumes about your personal code of conduct. Honesty and integrity were lacking on a very basic level. Our profession and OHIP billing system are grounded in the need for honesty. You failed to demonstrate honesty and integrity and defied the rules.

On behalf of the profession, we express our abhorrence for what you did. Any further misconduct in a similar way in the future will no doubt bring serious consequences. The apology to your colleagues in Hamilton, repayment to OHIP, and suspension from your residency were appropriate, and we trust that the penalty here today will further deter you from similar conduct in the future.

Your inappropriate unprofessional behaviour with the nurses was also very troubling to the Panel. You had been in your residency program for a number of years and had ample opportunity to observe and model appropriate behaviour from your teachers, colleagues, and other professional staff. We are reassured that you apparently have not repeated this behaviour. We trust you understand why your actions were not acceptable and have consequences.

We hope the Order for the Boundaries course will reinforce your understanding of why respectful behaviour is important in a healthy work environment. We hope that it will allow you

to develop positive working relationships, model the behaviour to others, and contribute positively at work. We trust we will not see a repetition of your professional misconduct.