

## NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Koma Diryawish Israel, 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 patients referred to orally or in the exhibits filed at the hearing 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.... 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. Israel,**  
2019 ONCPSD 27

**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. KOMA DIRYAWISH ISRAEL**

**PANEL MEMBERS:**  
**MR. P. PIELSTICKER**  
**DR. C. CLAPPERTON**  
**MR. M. KANJI**  
**DR. Y. VERBEETEN**  
**DR. S. WOODER**

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

**MS. JESSICA AMEY**  
**MS. PENNY NG**

**COUNSEL FOR DR. ISRAEL:**

**MS. YOLA VENTRESCA**  
**MS. NATALIE CARROTHERS**

**INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:**

**MS. JENNIFER McALEER**

**PUBLICATION BAN'**

**Hearing Date:** May 13, 2019  
**Decision Date:** May 13, 2019  
**Written Decision Date:** June 28, 2019

## **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 May 13, 2019. At the conclusion of the hearing, the Committee released a written order stating its finding that Dr. Koma Diryawish Israel committed an act of professional misconduct and setting out its penalty and costs order with written reasons to follow.

### **THE ALLEGATIONS**

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

1. under clause 51(1)(b.1) of the Health Professions Procedural Code which is schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18 (the “Code”) in that he engaged in sexual abuse of a patient; and
2. 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**

Dr. Israel entered a plea of no contest to the second allegation in the Notice of Hearing, 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. Counsel for the College withdrew the first allegation in the Notice of Hearing.

## THE FACTS

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

1. Dr. Koma Diryawish Israel (“Dr. Israel”) is a 64-year-old general physician who practices in Hamilton, Ontario. He received his certificate of registration authorizing independent practice in 2000.
2. Dr. Israel was Patient A’s family doctor between approximately November 2013 and May 2017.
3. During an appointment with Patient A, Dr. Israel told Patient A that a woman needs a man and that maybe her problem was that she did not have a husband or boyfriend. Dr. Israel also asked Patient A, in an inappropriate and unprofessional manner, whether she was attaining sexual satisfaction by masturbating.

## NO CONTEST

4. Dr. Israel does not contest the facts set out in paragraphs 1-3 above, and does not contest that the conduct described constitutes acts or omissions relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, pursuant to paragraph 1(1)33 of Ontario regulation 856/93 made under the *Medicine Act, 1991*.

## RULE 3.02 - PLEA OF NO CONTEST

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.

## **FINDING**

The Committee accepted 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 found that Dr. Israel 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.

## **AGREED STATEMENT OF FACTS ON PENALTY**

The following Agreed Statement of Facts on Penalty was presented to the Committee:

1. Dr. Israel is a general practitioner who obtained his Bachelor of Medicine, Bachelor of Surgery (M.B.CH.B), from the M.B.C.C. College of Medicine – Baghdad University in 1979. Dr. Israel presently operates a family medicine practice in Hamilton, Ontario. Dr. Israel received his certificate of registration authorizing independent practice in 2000.
2. Dr. Israel has no previous history before the Discipline Committee.

## **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. The parties jointly proposed that Dr. Israel appear before the panel to be

reprimanded; be suspended for a period of 1-month; complete training in ethics and boundaries; and pay costs to the College in the mount of \$6000.00.

In accordance with the Supreme Court of Canada's decision in *R. v. Anthony Cook*, 2016 SCC 43, the Committee is aware that a joint submission on penalty must be accepted unless the proposed penalty would bring the administration of justice into disrepute, or is otherwise contrary to the public interest.

In assessing the penalty proposed, the Committee took into account the principles underlying penalty orders. The penalty must first and foremost protect the public. It should foster public confidence in the College's ability to regulate the profession in the public interest. The penalty should serve as a specific deterrent to the member, and a general deterrent to the profession, sending a clear message that this type of misconduct will not be tolerated. Further, where applicable and appropriate, the penalty should provide for the rehabilitation of the member.

### **Aggravating Factors**

#### ***Nature of the Misconduct***

In the Committee's view, Dr. Israel's manner of addressing Patient A was both demeaning and irresponsible.

Patient A had been a patient of Dr. Israel's for almost four years. It is essential that in all patient encounters, physicians conduct themselves in a respectful and dignified manner. Dr. Israel's behavior eroded the trust upon which a physician-patient relationship must be built. His comment to patient A about "a woman needing a man" and question about whether Patient A "was attaining sexual satisfaction by masturbating" were not clinically indicated. Rather, they were degrading and showed a lack of sensitivity for Patient A's comfort.

The Committee is tremendously concerned that Dr. Israel showed a lack of consideration for his patient's well-being. His communication style was both insensitive and disrespectful. Through

his actions, Dr. Israel brought his own reputation into disrepute and, by extension, cast a shadow on the broader medical profession.

### **Mitigating Factors**

This is the first time that Dr. Israel has appeared before the Discipline Committee. Dr. Israel was cooperative during the discipline process. His plea of no contest saved Patient A from having to testify before the Committee, and saved the time and expense of a contested hearing.

### **Prior Cases**

The parties provided the Committee with a joint Book of Authorities of four recent cases: *CPSO v. Jones*, 2018 ONCPSD 62; *CPSO v. Baird*, 2017 ONCPSD 45; *CPSO v. Bonin*, 2012 ONCPSD 7; and *CPSO v. Choptiany*, 2011 ONCPSD 29. While each case must be considered on its own facts, the Committee recognizes the principle that like cases should be treated alike. The Committee was satisfied that the proposed penalty was within the range of penalties established in the cases presented.

### **Penalty**

The Committee accepted the joint penalty as proposed. A period of suspension is necessary as a specific deterrent to Dr. Israel, and a general deterrent to the profession. The requirement that Dr. Israel take and unconditionally pass the PROBE Ethics & Boundaries Program offered by the Centre for Personalized Education for Professionals, will serve to rehabilitate Dr. Israel and provides for public protection. The reprimand allows an opportunity for the Committee to publically denounce Dr. Israel's misconduct, sending a clear message to the profession that such behaviour will not be tolerated.

**ORDER**

The Committee stated its findings in paragraph 1 of its written order of May 13, 2019. In that Order, the Committee ordered and directed on the matter of penalty and costs that:

2. Dr. Israel attend before the panel to be reprimanded.
3. The Registrar suspend Dr. Israel's certificate of registration for a period of one (1) month, commencing from May 14, 2019 at 12:01 a.m.
4. The Registrar place the following terms, conditions and limitations on Dr. Israel's certificate of registration:
  - a. Dr. Israel shall comply with the College Policy #2-07 "Practice Management Considerations for Physicians Who Cease to Practise, Take an Extended Leave of Absence or Close Their Practice Due to Relocation", a copy of which is attached at Schedule "A" to this Order; and
  - b. Dr. Israel will participate in and unconditionally pass the PROBE Ethics & Boundaries Program offered by the Centre for Personalized Education for Professionals, with a report or reports to be provided by the provider to the College regarding Dr. Israel's progress and compliance. Dr. Israel will complete this requirement within 6 months of the date of this Order.
5. Dr. Israel pay costs to the College in the amount of \$6,000.00 within 30 days of the date of this Order.

At the conclusion of the hearing, Dr. Israel 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 May 13th, 2019**  
**in the case of the**  
**COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO**  
**and**  
**DR. KOMA DIRYAWISH ISRAEL**

Dr. Israel,

It is most disappointing to see you in front of this Committee. You are a member of the medical profession, and as such you are held in high regard by the public and your peers. Your actions with respect to Patient A bring not only your individual reputation into disrepute, but adversely affect all members of the medical profession. The harm you have caused is irreparable.

A finding of dishonourable, disgraceful or unprofessional conduct is appropriate in these circumstances. Your attitude in addressing Patient A was demeaning and irresponsible. Your comments were degrading and reprehensible. This is not how a doctor should treat a patient.

We trust this matter has left its mark on your attitude and future behaviour. This type of interaction will not be tolerated under any condition.