## NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Shapiro, this is notice that the Discipline Committee ordered that no person shall publish the name of, or any information that would identify, any patient referred to orally or in exhibits filed at the hearing. This order was made 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 or 47… 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. Shapiro, 2020 ONCPSD 44**

**DISCIPLINE COMMITTEE**
**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 which is Schedule 2 of the *Regulated Health Professions Act*, *1991*, S.O. 1991, c. 18, as amended.**

**B E T W E E N:**

**COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO**

**- and -**

**DR. SOLOMON MARC SHAPIRO**

**PANEL MEMBERS:**

**DR. MELINDA DAVIE**
**MR. MEHDI KANJI**
**DR. MICHAEL FRANKLYN**
**MS LINDA ROBBINS**
**DR. STEPHEN HUCKER**

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

**MS ELISABETH WIDNER**

**COUNSEL FOR DR. SHAPIRO:**

**MS GLYNNIS BURT**
**MS CHRISTINE WALDMAN**

**INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:**

**MR. DAVID ROSENBAUM**

**Hearing Date and Decision Date: September 8, 2020**
**Release of Reasons Date: November 18, 2020**

**PUBLICATION BAN**

## DECISION AND REASONS FOR DECISION

The Discipline Committee (the "Committee") of the College of Physicians and Surgeons of Ontario ("the College") heard this matter via videoconference on September 8, 2020. At the conclusion of the hearing, the Committee released a written order stating its finding that the member 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. Shapiro 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 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; and

2. under paragraph 1(1)2 of O. Reg. 856/93, in that he has failed to maintain the standard of practice of the profession.

The Notice of Hearing also alleged that Dr. Shapiro is incompetent.

## RESPONSE TO THE ALLEGATIONS

Dr. Shapiro admitted the first and second allegations 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; and that he has failed to maintain the standard of practice of the profession.

Counsel for the College withdrew the allegation of incompetence.

## THE FACTS

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

## BACKGROUND

1. Dr. Shapiro is a 61-year-old psychiatrist with a sub-specialty in child and adolescent psychiatry who received his certificate of registration from the College of Physicians and Surgeons of Ontario (the "College") on August 7, 1987.

2. At the relevant time, Dr. Shapiro was in private practice at an office in Toronto, Ontario.

3. In 2014, Dr. Shapiro provided psychiatric treatment to Patient A.

## FACTS

### The College Received a Mandatory Report

4. On May 6, 2015, the College received a mandatory report from a Staff Psychiatrist at the Centre for Addiction and Mental Health, ("CAMH"), who had assessed Patient A in the CAMH Emergency Assessment Unit.

### The College Subsequently Received a Public Complaint

5. On February 3, 2016, the College received a public complaint from Patient A, regarding his former psychiatrist, Dr. Shapiro.

6. It was ultimately determined by the College that Patient A was the same patient referred to in the May 6, 2015, mandatory report from a Staff Psychiatrist at CAMH.

## I. DISGRACEFUL, DISHONOURABLE OR UNPROFESSIONAL CONDUCT

### Patient A's Psychotherapy with Dr. Shapiro

7. Patient A contacted Dr. Shapiro in 2014 asking for an appointment. Dr. Shapiro telephoned Patient A late on a Friday evening and an appointment was made for an initial assessment.

8. Following an initial assessment, Patient A began seeing Dr. Shapiro for sessions several times a week. The treatment included a few one-on-one appointments but mainly consisted of having Patient A participate in group sessions involving other patients of Dr. Shapiro. The group sessions sometimes included psychiatry residents. Dr. Shapiro invited Patient A to attend group sessions after the completion of the initial assessment.

9. As set out below, Dr. Shapiro's overall behaviour and clinical approach made Patient A feel uncomfortable, isolated and emotionally distraught. The CAMH psychiatrist who made the May 2015 mandatory report to the College stated that this culminated in Patient A's admission to the CAMH Emergency Department.

10. At the initial assessment conducted by Dr. Shapiro, Patient A started crying. Dr. Shapiro directed Patient A to look him in the eyes. Patient A found this interaction very uncomfortable as it was difficult to look into Dr. Shapiro's eyes while crying.

11. Patient A was particularly vulnerable at this point in his life. He was experiencing anxiety. He trusted that Dr. Shapiro would assist him with his difficulties and provide emotional support. At the conclusion of the initial assessment, Dr. Shapiro diagnosed

Patient A as suffering from chronic post-traumatic stress disorder, and documented various stressors, including anxiety and social isolation.

12. Patient A was disturbed by Dr. Shapiro's clinical approach during group sessions which included the use of terms such as "begging" and "commanding". Patient A found this confusing and unsettling. Patient A understood that he needed to "beg" or "command" the attention of other group members or Dr Shapiro to Dr. Shapiro's satisfaction, and that if he did, Dr. Shapiro would provide positive reinforcement. Dr. Shapiro failed to explain the rationale for this technique to Patient A, who was confused and disturbed by this practice. Patient A felt that he did not have the opportunity to simply discuss his concerns with Dr. Shapiro given that most of his sessions were with a group.

13. On one occasion, Patient A tried to get Dr. Shapiro's attention in a group session by calling out his name twice in a loud manner. Dr. Shapiro appeared to become irritated and made Patient A feel as if he could not participate at that time. Patient A broke down in tears in front of the group.

14. Another technique used by Dr. Shapiro was called "Words", a form of "mindful communication". In this technique, Patient A was told to use words to describe his feelings. On at least one occasion when Patient A tried to express his feelings, Dr. Shapiro disagreed with the words Patient A used and with Patient A's interpretation of his own feelings, leaving Patient A feeling unvalidated and embarrassed.

15. Dr. Shapiro made some inappropriate comments to Patient A, that contributed to his confusion and distress. On one occasion, Dr. Shapiro referred to "the spirit", which Patient A took as a religious reference that made him uncomfortable.

16. Dr. Shapiro hugged Patient A in his office, a hug that was not welcomed by Patient A.

**Music Festival**

17. Dr. Shapiro informed Patient A that he would be taking a one-week vacation and that Patient A should make a plan for what he would be doing that week.

18. Patient A became anxious at the thought of Dr. Shapiro's absence as he had been attending sessions 4-5 days per week with Dr. Shapiro and felt very dependent.

19. Towards the end of the week, Dr. Shapiro told Patient A that he was attending an overnight music festival north of Toronto, and suggested that it might be good for Patient A to attend. Dr. Shapiro told Patient A that, if he attended, they would not be spending time together at the festival and other attendees would not know that he was Dr. Shapiro's patient. Dr. Shapiro told Patient A that if anyone asked, Patient A could be vague and say he knew Dr. Shapiro from Toronto.

20. Patient A travelled alone to the festival.

21. Patient A approached and interacted with Dr. Shapiro on numerous occasions at the festival. On a couple of occasions, Patient A approached Dr. Shapiro for counselling and support. On both occasions, Dr. Shapiro responded in a frustrated and impatient manner, resulting in Patient A doubting himself and feeling unworthy of being supported or helped. At one point, Dr. Shapiro criticized Patient A for swearing, stating that he (Dr Shapiro) was being undermined in his own efforts to stop swearing by the fact that Patient A was swearing.

22. During the festival, Dr. Shapiro saw Patient A dancing with and kissing a woman. Dr. Shapiro made a comment to Patient A about this interaction. Patient A recalls the comment as being along the lines of, "oh that must have been terrible." Dr. Shapiro recalls making a comment based on his concern about Patient A becoming involved with someone he had just met. Patient A was confused by Dr. Shapiro's comment as his

sexuality had never been in issue and he became worried about Dr. Shapiro's boundaries and wondered if Dr. Shapiro was attracted to him.

23. Patient A attended several workshops run by Dr. Shapiro at the festival. Patient A also attended a workshop on gender identity that Dr. Shapiro said might be good for him to attend. This again confused Patient A as his gender identity was not in issue. During the festival Patient A experienced a pattern of Dr. Shapiro withholding his attention from Patient A until Patient A behaved and communicated in a manner approved by Dr. Shapiro. Another workshop was devoted to hugging (i.e. how to navigate hugging, including when it is not wanted). Dr. Shapiro hugged some participants in the workshop, but not Patient A, leaving Patient A feeling as if he had displeased Dr. Shapiro.

24. After the gender identity workshop, Dr. Shapiro spoke with Patient A using inappropriate phrases along the lines of, "your sentences are not short enough", and, "I'm a servant of God, use me." The religious connotation disturbed Patient A, as did Dr. Shapiro's frustration and impatient tone of voice. Patient A tried to use the "begging" form of communication to ask for help, saying "please help me". Minutes later, Dr. Shapiro walked away from Patient A. Patient A felt abandoned.

25. Patient A broke down crying uncontrollably. Patient A was given help by a member of the festival's Health and Safety team. Another festival attendee also came to help. Dr. Shapiro soon attended in the area where Patient A was being helped. The member of the festival Health and Safety team and the other attendee left when Patient A had settled down.

26. Later that same day, Dr. Shapiro requested that Patient A discuss with him in his vehicle what had occurred. Patient A accepted Dr Shapiro's invitation. Patient A told Dr. Shapiro that he did not feel safe around him. Dr. Shapiro said, "We are climbing a mountain together, and you're just going to give up now?" Patient A got out of the car and walked away.

**Relationship after the Festival**

27. Dr. Shapiro called Patient A within two days after he left the festival and encouraged Patient A to come in for another appointment. Patient A told Dr. Shapiro that he still did not feel safe around him. He finally agreed to see Dr. Shapiro but later changed his mind.

28. Patient A did not attend any further appointments with Dr. Shapiro.

**Summary – Disgraceful, Dishonourable or Unprofessional Conduct**

29. Dr. Shapiro engaged in disgraceful, dishonourable or unprofessional conduct towards Patient A, including by:

- hugging Patient A
- suggesting to Patient A that he attend a festival where Dr. Shapiro would be in attendance;
- suggesting to Patient A that he conceal the nature of their doctor-patient relationship at the festival;
- being frustrated and impatient with Patient A on occasion at the festival when Patient A sought his help;
- not responding adequately to Patient A's distress at the festival;
- criticizing Patient A for swearing based on Dr. Shapiro's own desire to stop swearing;
- using imagery with religious overtones, and;
- making comments that were unprofessional and misplaced.

## II. FAILURE TO MAINTAIN THE STANDARD OF PRACTICE OF THE PROFESSION

**Report of Dr. Taras Babiak**

30. The College retained a Neuropathologist and Psychiatrist, Dr Taras Babiak, to provide an independent opinion.

31. On February 25, 2019, Dr. Babiak provided his report to the College, a copy of which is attached at Tab 1 [to the Agreed Statement of Facts on Liability]. In his report, Dr. Babiak opined as follows:

***1. Did the care Dr. Shapiro provided to the patient meet the standard of practice?***

*"The care that Dr. Shapiro provided to the patient did not meet the standard of practice of the profession.*

*As the patient's Psychiatrist Dr. Shapiro failed to consider the patient's fragilities and vulnerabilities in deciding what sort of experiences to implement for the patient, for the purpose being therapeutic, namely exposure to individual and group therapy. When the patient reached out to Dr. Shapiro for help in dealing with his emotional turmoil at the Solstice gathering, Dr. Shapiro kept pushing him away, injuring the patient further emotionally, motivated out of concern by Dr. Shapiro for the patient's potential for "outing" the nature of the relationship to others. While Dr. Shapiro may have been concerned about confidentiality in this instance, I believe he was more concerned about his boundary crossing with the patient being revealed.*

*With regard to boundary crossings, these occurred as well prior to the events of the festival. There was his rather over-familiar and flippant response to the patient's expression of admiration and idealization for him. There was late Friday night call to initiate contact with the patient, his inclusion of the patient to "sit in" in group, individual and couple sessions, after only a handful of sessions with him following his assessment - another series of serious boundary crossings. Offering the patient the choice of attending a festival where Dr. Shapiro would be present, as well and leading events, and then instructing the patient that he needed to keep the nature of their relationship to himself, was a very serious boundary crossing. While not sexual in nature, it is a violation of boundaries. It is a violation, in my opinion, because the patient was engaged by him in colluding with his Psychiatrist with what should not have occurred according to the Profession's standards of conduct. While it is up to Physicians to maintain their professional obligations and conduct with respect to confidentiality, it is up to our patients to choose whether and whom they wish to*

*reveal their relationship with a Physician to. It is **not** the Physician's place to insist that patients protect their crossings or violations a boundary."*

*From the standpoint of documentation, however, his records lack documentation of the lion's share of what contacts his patient and he had, and what he exposed his patient to. This clearly falls below the Profession's standard with respect to clinical documentation."*

***2. Did Dr. Shapiro's care display any or all of the following:***

***Lack of skill?***

*"Yes, Dr. Shapiro's care **did** displayed [sic] a lack of skill in that he displayed a lack of ability to:*

(a) *exercise patience and restraint in his expectations for progress and outcomes in the treatment of patients with Post-Traumatic Stress Disorder. He addressed his remedial efforts and intentions with regard to his therapeutic hubris in his letter of response to the patient's complaint and the Appendix.*

(b) *in the application of skills regulating his countertransference in response to [Patient A]'s idealization of him and his reaching out to him for support in a context that the patient was unfamiliar with. Dr. Shapiro had set this problem up by offering the patient the choice of attending the festival, after having "sit in" in sessions with other patients. He first made him feel included, special and chosen, and then he betrayed his trust, abandoned and pushed him away, making him feel diminished and discardable. Dr. Shapiro was reacting instead of responding in a considered manner, with the patient's emotional well-being in mind."*

***Lack of judgment?***

*"Yes. Dr. Shapiro displayed a serious lack of judgment in the commission of boundary crossings with the patient in other patients' sessions, in his boundary violation regarding his requiring the patient keep the nature of their relationship to himself at the festival to protect his Psychiatrist's duty of confidentiality. In so doing, he retraumatized and overburdened the patient. First, he retraumatized the him [sic] by effectively rejecting and abandoning the patient the way his father had. Second, he overburdened him the way his mother had by putting the obligation to look after his Psychiatrist's duty to confidentially after having been rather loose with these boundaries in the clinical context. The patient, feeling that he had "fallen from grace", fell into a turmoil with psychotic reaction, and ended up in hospital."*

***3. Does Dr. Shapiro's clinical practice, behaviour or conduct expose or is likely to expose his patients to harm or injury?***

*"No, I believe they **no longer** do at this point. Given the insight, admissions and acknowledgement of how he injured the patient and could pose risks to other vulnerable patients that Dr. Shapiro details in his response letter and the remediation efforts that he lists (see Appendix), I cannot say he still poses a risk. He has done this in the identified areas of deficiency in his clinical work and documentation. This is encouraging, in particular with regard to boundary issues, their importance and management, where Dr. Shapiro has done course work and ongoing supervision. His continued work, consultation and supervision which he described with regard to boundary issues are and will be crucial for facilitating the transfer of knowledge and skills in considered clinical judgment and safe clinical practice."*

**ADMISSION**

32. Dr. Shapiro admits the facts specified above, and admits that, based on these facts, he engaged in professional misconduct as follows:

(a) he 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; and,

(b) he failed to maintain the standard of the profession.

**FINDING**

The Committee accepted as correct all of the facts set out in the Agreed Statement of Facts on Liability. Having regard to these facts, the Committee accepted Dr. Shapiro's admission and found that he committed an act of professional misconduct in that he 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; and, in that he failed to maintain the standard of practice of the profession.

## PENALTY AND REASONS FOR PENALTY

## FACTS ON PENALTY

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

## BACKGROUND

1. Dr. Shapiro is a 61-year-old psychiatrist with a sub-specialty in child and adolescent psychiatry who received his certificate of registration from the College of Physicians and Surgeons of Ontario (the "College") on August 7, 1987.

## DR. SHAPIRO'S HISTORY WITH THE COLLEGE

2. On May 12, 2014, following its consideration of a public complaint about Dr. Shapiro, the Inquiries, Complaints and Reports Committee, ("ICRC"), directed a written caution regarding maintaining appropriate boundaries, ensuring he follows the basic tenets of the Practice Guide, and noting that his first duty is to the patient (including maintaining patient confidentiality and following appropriate consent procedures). A copy of the Decision and Reasons dated May 12, 2014, is attached at Tab 1 [to the Agreed Statement of Facts Regarding Penalty].

3. On January 14, 2020, following its consideration of a public complaint about Dr. Shapiro, the ICRC directed a caution regarding maintaining patient confidentiality. A copy of the Decision and Reasons dated January 14, 2020, is attached at Tab 2 **[**to the Agreed Statement of Facts Regarding Penalty].

4. On January 14, 2020, following its consideration of another public complaint about Dr. Shapiro, the ICRC directed a caution regarding maintaining appropriate patient boundaries and ensuring patient confidentiality. A copy of the Decision

and Reasons dated January 14, 2020, is attached at Tab 3 **[**to the Agreed Statement of Facts Regarding Penalty]. The ICR Committee also directed that Dr. Shapiro sign an undertaking, that includes supervision and completion of the PROBE course on Ethics and Boundaries. A copy of Dr. Shapiro's undertaking dated February 20, 2020, is attached at Tab 4 **[**to the Agreed Statement of Facts Regarding Penalty].

## DR. SHAPIRO'S COMPLIANCE WITH HIS UNDERTAKING DATED FEBRUARY 20, 2020

5. Pursuant to his undertaking dated February 20, 2020, Dr. Shapiro is registered for the PROBE course on September 10-12, 2020.

6. Also pursuant to his undertaking dated February 20, 2020, Dr. Shapiro has been supervised by Dr. Kenneth Fung, a psychiatrist who practices at Toronto Western Hospital in Toronto. Supervision is complete as of August 19, 2020.

7. A copy of reports from Dr. Fung to the College dated June 19, 2020, July 11, 2020 and August 20, 2020 are attached at Tab 5, Tab 6 and Tab 7, respectively [to the Agreed Statement of Facts Regarding Penalty].

## OTHER REMEDIATION COURSES ATTENDED BY DR. SHAPIRO

8. Dr. Shapiro completed the University of Toronto's Medical Record Keeping course in 2016. Attached at Tab 8 [to the Agreed Statement of Facts Regarding Penalty] is a certificate of completion.

9. Dr. Shapiro completed the "Understanding Boundaries and Managing the Risks Inherent in Doctor-Patient Relationships" course at the University of Western Ontario in 2017. Attached at Tab 9 **[**to the Agreed Statement of Facts Regarding Penalty] is a certificate of completion.

10. Dr. Shapiro completed the Saegis Clinical Communication Program in 2019, which included a three-day residential component. Attached at Tab 10 [to the Agreed Statement of Facts Regarding Penalty] is a certificate of completion.

11. Beginning in 2016, Dr. Shapiro engaged in one-on-one remediation with respect to clinical communication with Dr. Dawn Martin. Attached at Tab 11 [to the Agreed Statement of Facts Regarding Penalty] is a copy of Dr. Martin's report dated July 11, 2019.

**SUBMISSIONS ON PENALTY**

Counsel for the College and counsel for Dr. Shapiro made a joint submission as to an appropriate penalty and costs order, which would include a reprimand, a 6-month suspension, the imposition of terms, conditions and limitations on Dr. Shapiro's certificate of registration relating to post-suspension practice supervision and re-assessment, and a requirement that Dr. Shapiro pay costs of $6,000.00.

Although the Committee has discretion to accept or reject a joint submission on penalty, the law provides that the Committee should not depart from a joint submission unless the proposed penalty would bring the administration of justice into disrepute, or is otherwise contrary to the public interest (*R. v. Anthony-Cook 2016 SCC 43*).

**ANALYSIS**

The Committee, in deciding whether to accept or reject a joint submission, must consider carefully if the proposal fulfills the general penalty principles: that is, public protection; maintaining the integrity of the profession and public confidence in the College's ability to regulate the profession in the public interest; specific deterrence; general deterrence; and where applicable or appropriate, rehabilitation. A penalty must also express denunciation of the misconduct.

A penalty must be fair and appropriate having regard to the specific facts and circumstances of the case, and proportionate to the misconduct. The case-specific aggravating and mitigating factors need to be considered in crafting an appropriate penalty.

It is also important to consider recent decisions of the Committee in similar cases. While the Committee is not bound by its previous decisions, as each case is unique in its facts and circumstances, generally like cases should be treated alike.

**Nature of the Misconduct**

As a psychiatrist with over 30 years of experience, Dr. Shapiro should have been more attuned to the needs of Patient A and his discomfort with the group therapy sessions and Dr. Shapiro's unusual treatment methods. Dr. Shapiro's chart entries for his intake interviews with Patient A show that he knew Patient A was a vulnerable patient in need of assistance, and yet his interactions with Patient A seemed to disregard this.

As noted in Dr. Babiak's expert opinion: "As the patient's psychiatrist Dr. Shapiro failed to consider the patient's fragilities and vulnerability in deciding what sort of experiences to implement for the patient, for the purpose being therapeutic, namely exposure to individual and group therapy."

Dr. Shapiro ought to have known better. The Committee was dismayed at his boundary crossings such as hugging the patient and inviting him to attend the music festival. The very fact that he requested of the patient that he avoid revealing their relationship should anyone ask at the festival is a clear indication that Dr. Shapiro was at least somewhat aware that this invitation to a non-professional setting was not appropriate. Of course this would confuse the patient.

It is never appropriate to display one's frustration or impatience with a patient such as he did on occasion at the festival when Patient A sought his help. Criticizing Patient A for swearing based on Dr. Shapiro's own desire to stop swearing clearly was a blurring of the boundaries with Patient A on many levels. Dr. Shapiro's own self-help concerns should never have entered into his interactions with Patient A even within an inappropriate informal setting such as the music festival. He ought to have known frank criticism would be a trigger for Patient A.

He further failed Patient A by not responding adequately to his distress at the festival. He should have recognized that Patient A was particularly vulnerable in that unusual situation.

Dr. Shapiro's unprofessional boundary violations with Patient A were multifold and very serious especially given that Patient A had only been a patient for a few weeks.

The expert report of Dr. Babiak also outlines Dr. Shapiro's failure to meet the standard of the practice of medicine through his incomplete charting and documentation of his contacts with Patient A.

**Aggravating Factors**

*Prior College Interactions*

Dr. Shapiro has had three prior cautions from the Inquiries, Complaints and Reports Complaints Committee (ICRC). One caution was for similar misconduct to this case, and it predated the events that gave rise to Patient A's complaint in this case. The Committee considered this to be a significant aggravating factor as Dr. Shapiro did not take advantage of the experience to avoid further transgressions. The Committee can only conclude that the caution was ineffectual.

The other two cautions, concerning inappropriate regard for confidentiality and, again, maintaining appropriate boundaries, were given after the misconduct in this matter took place. They therefore cannot be considered as aggravating factors. However the Committee can take note of the fact that Dr. Shapiro had undertaken remediation before engaging in the conduct that gave rise to the caution for boundary violations. The fact that he was cautioned for a further boundary violation makes it appear that his remediation efforts were not effective.

**Mitigating Factors**

Dr. Shapiro's cooperation with the investigation and his admission saved both time and resources for the College. Dr. Shapiro has no previous history with the Discipline Committee. Dr. Shapiro's agreed statement of facts and admission have saved the complainant further trauma from having to appear before the Committee.

The Committee noted Dr. Shapiro's compliance to date with the ordered undertaking after the most recent caution in January 2020, for prior conduct stemming from a patient complaint. He has completed the ordered period of supervision and received favourable reports from his supervisor. In addition, he has completed various courses in record keeping, boundaries and clinical communication. Also, his one-on-one coaching over the last several years since the misconduct with Patient A in July 2014 seems to have shown some promise. His coach, Dawn Martin, indicated in her report: "There is evidence of insight and a far deeper appreciation of his role and responsibility as a physician. For example, Dr. Shapiro routinely brings relevant patient scenarios for deconstruction and shares examples of how he has incorporated feedback. I have been genuinely impressed with the efforts he has made outside of our coaching sessions to make sure he has the necessary skills and awareness to provide optimal care to patients…"

With these factors in mind the Committee found that Dr. Shapiro has demonstrated some insight and has taken steps to begin his rehabilitation, which the Committee considered to be a significant mitigating factor.

**Prior Cases**

The parties submitted a number of cases for the Committee to consider. Previous cases can serve as a guide to help assess the proportionality of the proposed penalty to the conduct. Although prior Committee decisions are not binding as precedent, the Committee has accepted as a principle of fairness that generally, like cases should be treated alike.

Counsel drew the Committee's attention to two recent cases in which the Committee ordered a six-month suspension: *CPSO v. Leduc,* 2018 ONCPSD 59*, and CPSO v. Chadda,* 2019 ONCPSD 29.

Dr. Leduc**,** a GP, treated patient A for pain and a mood disorder and as well provided supportive counseling over a two-year period. This patient was known to be addicted to alcohol and Dr. Leduc prescribed benzodiazepines and opioids over a period of time. During this time, he also met his patient outside the office on three occasions for conversations and meals during which he purchased alcohol for her. He was found to have failed to maintain the standard of practice and to have engaged in disgraceful, dishonourable or unprofessional conduct. He had undertaken some remediation, and unlike in this case he did not have any prior history with the College. There was a joint submission, and the penalty consisted of a six-month suspension, a reprimand and costs.

Dr. Chadda, a psychiatrist, was found to have committed an act of professional misconduct in that she arranged, for her own financial benefit, a patient retreat to Italy. During the retreat there was a significant blurring of the boundaries which made Patient A very uncomfortable. Upon their return from the retreat, Dr. Chadda badgered Patient

A for a testimonial. The finding in this case was of disgraceful, dishonourable or unprofessional conduct. There was a joint submission, and the penalty was a six-month suspension, a reprimand, costs, and a requirement that Dr. Chadda complete the PROBE course.

Counsel for Dr. Shapiro referred to four other cases in which shorter suspensions of between one and four months were ordered: *CPSO v. Caro,* 2005 ONCPSD 15*; CPSO v. Porter*, 2012 ONCPSD 17*; CPSO v.Parikh,* 2013 ONCPSD 16 *and CPSO v. Peirovy*, *2019* ONCPSD 12. Each of the cases is distinguishable from Dr. Shapiro's case but they each involved boundary violations with vulnerable patients.

Overall, the Committee was satisfied that the proposed penalty in this case was within the range of penalties in prior cases having due regard to the differing facts and circumstances in each of those cases from those in the case of Dr. Shapiro. The fact that the suspension in this case was at the high end of the range is justified by the aggravating factors and the serious nature of Dr. Shapiro's misconduct, as set out above.

*Letters of Support*

Dr. Shapiro entered as an exhibit, on consent, a brief of 38 letters of support. These letters were from colleagues and patients. All letter writers referenced their awareness of a pending discipline proceeding against Dr. Shapiro. A number of them spoke of Dr. Shapiro's integrity and honesty. The letters of support did not however address the details of Dr. Shapiro's failure to maintain professional boundaries with Patient A, nor could they, as Dr. Shapiro's interactions with Patient A occurred in private.

The many letters are helpful to the Committee to glean a picture of Dr. Shapiro in general, however, little weight can be given to the letters given the nature of Dr. Shapiro's misconduct. As noted in *CPSO v. Lee,* 2018 ONCPSD 65*:*

*"The fact that Dr. Lee has strong support among his patients in no way excuses the professional misconduct in this case; however, it does assist the Committee in understanding Dr. Lee's general reputation among his patient population."*

**CONCLUSION**

Having regard to the above factors, the Committee was satisfied that the proposed penalty was appropriate and in the public interest.

The public reprimand will serve to express the Committee's abhorrence of Dr. Shapiro's misconduct and send a strong message to him and the membership at large that Doctor-Patient boundaries must be vigilantly respected at all times.

The long suspension of six months is necessary in this case. Given the previous caution that Dr. Shapiro received, the Committee would have expected Dr. Shapiro to have changed his conduct. Instead, he engaged in similar misconduct to that which he had been cautioned for, within a very short period of receiving the caution. A lengthy suspension reflects Dr. Shapiro's seeming inability to maintain boundaries and the fact that his prior remediation efforts do not appear to have been successful.

Furthermore, a significant suspension of six months will act as a general and specific deterrent, which will send a message to both Dr. Shapiro and the profession at large that such flouting of boundaries will not be tolerated. It will also serve to maintain public confidence in the College's ability to regulate the profession in the public interest.

The Committee was satisfied that the requirement for supervision and reassessment when Dr. Shapiro returns to practise psychiatry would both protect the public and help to maintain public confidence in the profession by ensuring that upon Dr. Shapiro's return to practice he is maintaining the standard of practice of the profession.

Dr. Shapiro has begun, through his February 2020 undertaking and previously, to partake in education programs which should impress upon him the need always to observe strict doctor-patient boundaries with patients. Dr. Shapiro will have ample time to reflect on his misconduct and prepare for his future practice. Dr. Shapiro must ensure that he does not harm patients with his choice of treatment or through his own countertransference issues by blurring the professional relationship.

**COSTS**

The Committee has the jurisdiction to order costs against a member in appropriate cases at the tariff rate without hearing evidence of the actual costs the College incurred. The Committee concluded that this was an appropriate case and therefore it accepted the parties' submission that Dr. Shapiro pay costs to the College in the amount of $6,000.00.

**ORDER**

The Committee stated its findings in paragraph 1 of its written order of September 8, 2020. In that order, the Committee ordered and directed on the matter of penalty and costs that:

2. Dr. Shapiro to appear before the panel to be reprimanded.

3. the Registrar suspend Dr. Shapiro's certificate of registration for a period of six (6) months, commencing from October 1, 2020 at 12:01 a.m.

4. the Registrar impose the following terms, conditions and limitations on Dr. Shapiro's Certificate of Registration:

**Clinical Supervision**

a. Prior to resuming practice following the suspension of his certificate of registration described above in paragraph 3, Dr. Shapiro shall retain, at his own expense, a College-approved clinical supervisor, who will sign an undertaking in the form attached hereto as Schedule “A” (the “Clinical Supervisor”);

b. For a period of three (3) months commencing within thirty (30) days from the date Dr. Shapiro resumes practice following the suspension of his certificate of registration described above in paragraph 3, Dr. Shapiro may practice only on terms of the Clinical Supervision set out herein and in Schedule A;

c. Clinical Supervision of Dr. Shapiro’s practice shall contain the following elements:

    i. An initial meeting with Dr. Shapiro to discuss the objectives for the Clinical Supervision;
    ii. The Clinical Supervision will be three (3) months in duration and consist of monthly meetings. At each meeting, the Clinical Supervisor will review a minimum of 15 patient charts, selected in the sole discretion of the Clinical Supervisor, to assess quality of documentation and care and observe either a group or an individual therapy session;
    iii. the Clinical Supervisor will keep a log of all patient charts reviewed along with patient identifiers; and
    iv. the Clinical Supervisor will provide a report to the College at the end of the three months of Clinical Supervision, or more frequently if the Clinical Supervisor has concerns about Dr. Shapiro’s standard of practice or conduct.

d. Dr. Shapiro shall abide by the recommendations of the Clinical Supervisor;

e. If a clinical supervisor who has given an undertaking as set out in Schedule "A" to this Order is unable or unwilling to continue to fulfill its terms, Dr. Shapiro shall, within twenty (20) days of receiving notice of same, obtain an executed undertaking in the same form from a person who is acceptable to the College and ensure that it is delivered to the College within that time;

f. If Dr. Shapiro is unable to obtain a clinical supervisor in accordance with this Order, he shall cease to practice until such time as he has done so;

g. Dr. Shapiro shall consent to the disclosure by his Clinical Supervisor to the College, and by the College to his Clinical Supervisor, of all information the Clinical Supervisor or the College deems necessary or desirable in order to fulfill the Clinical Supervisor's undertaking and Dr. Shapiro's compliance with this Order;

h. Dr. Shapiro shall inform the College of each and every location where he practices including but not limited to hospitals, clinics and offices, in any jurisdiction (collectively his "Practice Location(s)), within fifteen (15) days of the date he resumes practice following the suspension of his certificate of registration described above in paragraph 3 above, and shall inform the College of any new Practice Locations within fifteen (15) days of commencing practice at that location, for the purposes of monitoring his compliance with this Order;

**Re-Assessment**

i. Approximately three (3) months after the completion of the period of supervision as set out above Dr. Shapiro shall, at his own expense, undergo a re-assessment by a College-appointed assessor (the "Assessor(s)"). The

re-assessment may include chart reviews and direct observation of individual and group therapy sessions, interviews with Dr. Shapiro, his colleagues and co-workers, feedback from patients and any other tools deemed necessary by the College. The Assessor(s) shall submit a written report on the results of the re-assessment to the College;

j. Dr. Shapiro shall cooperate fully with the Reassessment and with the Assessor(s). Dr. Shapiro shall consent to the disclosure to the Assessor(s) of the reports of the Clinical Supervisor arising from the supervision, and shall consent to the sharing of all information between the Clinical Supervisor, the Assessor(s) and the College, as the College deems necessary or desirable; and,

k. Dr. Shapiro shall consent to the College making appropriate enquiries of the Ontario Health Insurance Plan and/or any person or institution that may have relevant information, in order for the College to monitor and enforce his compliance with the terms of this Order.

5. Dr. Shapiro shall be responsible for any and all costs associated with implementing this Order.

6. Dr. Shapiro to 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. Shapiro waived his right to an appeal under subsection 70(1) of the Code and the Committee administered the public reprimand via videoconference.

## SCHEDULE "A"

## TO THE ORDER OF THE DISCIPLINE COMMITTEE OF THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO (the "COLLEGE")

1. I am a practising member of the College of Physician and Surgeons of Ontario (the "College"), certificate of registration number _____.

2. I have read the Order of the Discipline Committee of the College dated September 8, 2020 (the "Order") regarding Dr. Shapiro Marc Shapiro ("Dr. Shapiro"), and have read the Agreed Statement of Facts and Admissions and attachments thereto and the Agreed Statement of Facts on Penalty and attachments thereto. I understand the terms, conditions and limitations that the Discipline Committee directed the Registrar of the College to impose on Dr. Shapiro's certificate of registration in the Order, and I understand the concerns regarding Dr. Shapiro's standard of practice. I will review as soon as practicable any additional materials provided to me by the College, including the College's Guidelines for College-Directed Supervision.

3. I agree that commencing from the date following the expiry of the period of suspension and/or the reinstatement of Dr. Shapiro's certificate of registration, I shall act as Clinical Supervisor for Dr. Shapiro for a three (3) month period (the "Clinical Supervisor"). My obligations, shall include, at a minimum:

   (a) Facilitate the education program set out in the Order dated September 8, 2020

   (b) Review the materials provided by the College and have an initial meeting with Dr. Shapiro to discuss the objectives for the Clinical Supervision and practice improvement recommendations;

   (c) Meet with Dr. Shapiro once every month. Meetings will take place at Dr. Shapiro's Practice Location, or another location approved by the College;

(d) Review at least fifteen (15) of Dr. Shapiro's patient charts at every meeting. I will be solely responsible for selecting all charts to be reviewed by me, independent of Dr. Shapiro's participation, on the basis of the educational needs identified in the College's materials and any concerns that arise during the period of Clinical Supervision;

(e) Discuss with Dr. Shapiro any concerns arising from such chart reviews;

(f) Observe one (1) group or individual therapy session at every meeting, ensuring that both group and individual therapy sessions are observed over the course of the Clinical Supervision;

(g) Make recommendations to Dr. Shapiro for practice improvements and ongoing professional development and inquire into Dr. Shapiro's compliance with my recommendations;

(h) Perform any other duties, such as reviewing other documents or conducting interviews with staff or colleagues, that I deem necessary to Dr. Shapiro's Clinical Supervision.

4. I undertake to submit a written report to the College, at minimum, once per three (3) months. Such report(s) shall be in reasonable detail, and shall contain all information I believe might assist the College in evaluating Dr. Shapiro's standard of practice, as well as Dr. Shapiro's participation in and compliance with the requirements set out in Dr. Shapiro's Undertaking.

5. I undertake that I shall immediately notify the College if I am concerned that:

(a) Dr. Shapiro's practice may fall below the standard of practice of the profession;

(b) Dr. Shapiro may not be in compliance with the provisions of Dr. Shapiro's Undertaking with the College; or

(c) Dr. Shapiro's patients may be exposed to risk of harm or injury.

6. I acknowledge that all information that I become aware of in the course of my duties as Dr. Shapiro's Clinical Supervisor is confidential information and that I am prohibited, both during and after the period of Clinical Supervision, from communicating it in any form and by any means except in the limited circumstances set out in section 36(1) of the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18 (the "RHPA").

7. I undertake to notify the College and Dr. Shapiro in advance wherever possible, but in any case immediately following, any communication of information under section 36(1) of the RHPA.

8. I undertake to immediately inform the College in writing if Dr. Shapiro and I have terminated our Clinical Supervision relationship, or if I otherwise cannot fulfill the provisions of my undertaking.

Dated at _____, this _____ day of _____, 2020

_____

**Dr.**

_____ Witness *(print name)*

_____ Witness *(Signature)*