

**SUMMARY of the Decision of the Inquiries, Complaints and Reports Committee
(the Committee)**
(Information is available about the complaints process [here](#) and about the Committee [here](#))

**Dr. James Broatch Rathbun (CPSO #20853)
(the Respondent)**

INTRODUCTION

In January 2016, the Respondent performed surgery to correct the Complainant's bunion and bilateral hammer toes. The Complainant contacted the College of Physicians and Surgeons of Ontario (the College) to express concerns about the Respondent's care and conduct.

COMPLAINANT'S CONCERNS

The Complainant is concerned that from 2015 to 2017, the Respondent failed to provide her with appropriate care in the management of her hammer toes and conducted himself in an unprofessional manner. Specifically, the Complainant is concerned that the Respondent:

- **failed to obtain informed consent and performed surgery on the Complainant's third and fourth toe on both feet when he did not have permission to do so, resulting in ongoing pain and permanent nerve damage in the third and fourth toe of her left foot;**
- **failed to surgically correct the Complainant's hammer toes and dismissed her concerns post-surgery that her hammer toes were "twisting"; and,**
- **dismissed the Complainant's reports of ongoing numbness and tingling as "something that will go away with time".**

COMMITTEE'S DECISION

A Surgical Panel of the Committee considered this matter at its meeting of October 11, 2019. The Committee required the Respondent to attend at the College to be cautioned in person with respect to performing an unconsented procedure and medical record-keeping.

COMMITTEE'S ANALYSIS

- The Respondent advised of changes he made to his record-keeping practices following a peer assessment in August 2016. Nevertheless, the Committee remained seriously concerned with the Respondent's record-keeping in the present case, as his notes were illegible and brief, making consideration of this matter more difficult. This did not seem to demonstrate isolated deficiencies, as identified in his peer assessment and in prior complaints to the College raising concerns around his communication and record-

keeping. As a result, the Committee believes that it is appropriate to caution the Respondent with respect to his medical record-keeping.

- In responding to the Complainant's concern that he performed surgery on her third and fourth toe on both feet when he did not have permission to do so, the Respondent noted that the consent form and the office notes stated tenotomies would be performed. The Respondent stated that the tenotomies were done to prevent further deformity in the future and that the Complainant signed the standard consent form which included the tenotomies.
- The Committee noted that the consent form only specified that tenotomies would be performed on the right foot, not the left foot. The Respondent's notes and consent form indicated that the planned procedure was for all toes on the right foot, and only the first and second toes on the left. The consent form does not mention the third, fourth, and fifth toes on the left foot. As such, the Respondent operated on the Complainant's toes that were not part of the proposed procedure. Given this serious error, the Committee believes it is appropriate to caution the Respondent regarding performing an unconsented procedure.

This summary was amended following an appeal heard by the Health Professions Appeal and Review Board ("HPARB"), a decision by HPARB dated August 16, 2019, and the Committee's consideration of the matter on September 21, 2018.