

ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

Citation: *College of Physicians and Surgeons of Ontario v. Safar Zadeh*, 2023 ONPSDT 8

Date: March 28, 2023

Tribunal File No.: 22-008

BETWEEN:

College of Physicians and Surgeons of Ontario

- and -

Dr. Erika Safar Zadeh

FINDING AND PENALTY REASONS

Heard: February 28, 2023, by videoconference

Panel:

Ms. Jennifer Scott (chair)
Mr. Paul Malette, K.C.
Dr. Joanne Nicholson
Dr. Ian Preyra
Ms. Shannon Weber

Appearances:

Ms. Emily Graham, for the College
Ms. Jenny Stephenson and Ms. Glynnis Burt, for Dr. Safar Zadeh

RESTRICTION ON PUBLICATION

Pursuant to Rule 2.2.2 of the OPSDT Rules of Procedure and ss. 45-47 of the Health Professions Procedural Code, no one shall publish or broadcast the names of patients or any information that could identify patients or disclose patients' personal health information or health records referred to at a hearing or in any documents filed with the Tribunal. There may be significant fines for breaching this restriction.

Introduction

- [1] The College's Inquiries, Complaints and Reports Committee (ICRC) referred allegations of Dr. Safar Zadeh's misconduct to the Tribunal. The College alleged Dr. Safar Zadeh had engaged in conduct that would reasonably be regarded as disgraceful, dishonourable or unprofessional.
- [2] During the hearing, the parties provided an Agreed Statement of Facts on Liability. In the Agreed Statement of Facts, Dr. Safar Zadeh agreed that she had engaged in disgraceful, dishonourable or unprofessional conduct.
- [3] Dr. Safar Zadeh and the College jointly submitted the penalty should be a reprimand, a five-month suspension and terms, conditions and limitations on Dr. Safar Zadeh's certificate of registration which require her to complete further education in medical ethics and professionalism, and privacy and confidentiality. The parties also agreed that Dr. Safar Zadeh would pay costs to the College of \$6,000.
- [4] We found professional misconduct and accepted the joint submission on penalty and costs at the hearing. These are our reasons for that decision.

Misconduct

- [5] Dr. Safar Zadeh is an endocrinologist practising at a Toronto hospital. She treated Patient A in the hospital in July 2015. This was the first and only time Dr. Safar Zadeh treated Patient A. After her admission, Patient A received mental health care at the hospital.
- [6] Dr. Safar Zadeh was dating Patient A's former spouse. She accessed Patient A's electronic medical records at the hospital three times without her knowledge or consent in 2019. She took photographs of Patient A's medical records, which included sensitive medical information, and texted them to Patient A's former spouse without her consent. Dr. Safar Zadeh told Patient A's former spouse that she would send the photographs to Patient A's children and would publish the information publicly if Patient A did not stop what Dr. Safar Zadeh asserted was harassment. Dr. Safar Zadeh repeated this threat to Ms. Y, who had been attempting to connect with Dr. Safar Zadeh on social media. Dr. Safar Zadeh believed Patient A was behind Ms. Y's request to connect.

- [7] Dr. Safar Zadeh sent a Facebook message to Ms. Z, a friend of Patient A's, and disclosed information about Patient A's health and treatment. She said she could file a lawsuit against Patient A for harassment and defamation that might affect her shared custody of her daughter. Dr. Safar Zadeh did not have Patient A's consent to disclose her personal health information to Ms. Z.
- [8] Dr. Safar Zadeh sent a series of text messages to Patient A's daughter in 2020 where she referred to her mother's health. Dr. Safer Zadeh did not have Patient A's consent to disclose her personal health information to her daughter.
- [9] Patient A felt scared and stressed by Dr. Safar Zadeh's actions. She lost trust in the medical system and in her physicians because most of them worked at the hospital. Patient A was reluctant to seek treatment because she was afraid Dr. Safar Zadeh would continue to access her personal health information.
- [10] There was no ongoing doctor-patient relationship between Dr. Safar Zadeh and Patient A at the time she accessed Patient A's medical records and disclosed her personal health information.
- [11] Dr. Safar Zadeh was aware of her confidentiality obligations. The hospital's electronic medical record-keeping system required her agreement not to access a patient's chart unless she was providing care or carrying out assigned duties. She also completed annual privacy and confidentiality training as part of the hospital's credentialing requirements.
- [12] Dr. Safar Zadeh's conduct was contrary to the College's policy on Confidentiality of Personal Health Information.

Finding

- [13] We find Dr. Safar Zadeh committed acts of professional misconduct. Dr. Safar Zadeh admits that her access and disclosure of Patient A's personal health information without her consent would reasonably be regarded by members of the profession as disgraceful, dishonourable or unprofessional.

Penalty

- [14] Dr. Safar Zadeh and the College made a joint submission on penalty. A joint submission on penalty will be rejected only where it is contrary to the public interest

in a way that brings the administration of justice into disrepute: *R. v. Anthony-Cook*, 2016 SCC 43 at para. 34 and *College of Physicians and Surgeons of Ontario v. Matheson*, 2022 ONPSDT 27 at para. 16.

- [15] The question before the Tribunal is whether implementing the proposed penalty would be contrary to the public interest because it fails to protect the public and impairs the ability of the College, and the Tribunal as an entity within it, to regulate the profession of medicine and govern physicians.
- [16] If the proposed penalty violates the public interest, the administration of justice is brought into disrepute. In the professional regulation context, this means the proper functioning of the College's professional discipline system has broken down.
- [17] We accept the joint submission and find that it does not bring the professional discipline system into disrepute. We make this finding having considered the seriousness of the misconduct, Dr. Safar Zadeh's discipline history, her actions since the misconduct, her personal circumstances and the parties' submissions on penalty. We address these considerations below.
- [18] Dr. Safar Zadeh has no disciplinary history with the College.
- [19] Dr. Safar Zadeh's conduct is extremely serious. Only regulated health professionals can access electronic records in the way that Dr. Safar Zadeh did. She accessed Patient A's confidential health records repeatedly for her own purposes. This, on its own, is harmful. Dr. Safar Zadeh went further and threatened to use the information that she obtained from the records in a way that could affect Patient A's custody of her daughter. Dr. Safar Zadeh's conduct had a significant impact on Patient A. It eroded her trust in the medical profession and consequently, her ability to receive the care that she needs.
- [20] The public's trust in the medical profession is fragile. It is undermined when physicians gain improper and unauthorized access to confidential medical records, which contain highly sensitive and personal information, and misuse it. Electronic health records provide easy access to health information and for that reason, they must be very secure.

[21] The parties rely on several cases involving unauthorized access to health care records. The clear message from these cases is that privacy breaches are taken very seriously and result in significant penalties. In *College of Physicians and Surgeons of Ontario v. Brooks*, 2016 ONCPSD 29, the Tribunal ordered a five-month suspension when Dr. Brooks, without authorization, accessed the electronic health care records of two patients over an extended period. In *College of Physicians and Surgeons of Ontario v. Di Paola*, 2016 ONCPSD 48, the Tribunal ordered a three-month suspension when Dr. Di Paola accessed the health care records of two patients many times over more than two years. In *College of Physicians and Surgeons of Ontario v. Yaghini*, 2017 ONCPSD 15, the Tribunal ordered a three-month suspension when Dr. Yaghini accessed a colleague's health care records on one occasion. And finally, in *College of Physicians and Surgeons of Ontario v. Kaveri*, 2017 ONCPSD 55, Dr. Kaveri received a two-month suspension when he accessed a family member's health care records and then used them in family court to gain custody of his children.

[22] While these cases are not identical to this case and are not binding on the Tribunal, they do provide support for the five-month suspension agreed to by the parties. Although some of the cases involve the records of more than one patient and a larger number of privacy breaches, they do not involve using confidential health information in a threatening manner. That is the case here. This puts the misconduct at the higher end of the scale. The five-month suspension is within the range of penalties in the caselaw when considering the totality of the misconduct.

[23] Turning now to what Dr. Safar Zadeh has done since the misconduct and her personal circumstances, Dr. Safar Zadeh admitted the misconduct and in doing so, spared Patient A from having to testify before the Tribunal and saved the costs of a hearing. While there is little information about Dr. Safar Zadeh's personal circumstances in the Agreed Statement of Facts, we do know, based on a letter from the Interim Chief of Medicine at her hospital, that she supports Dr. Safar Zadeh's return to the hospital after her suspension. The Interim Chief acknowledged that Dr. Safar Zadeh made serious mistakes but believes she has learned from those mistakes.

[24] The joint submission on penalty protects the public interest. The public is protected because Dr. Safar Zadeh is suspended from practice for five months and is

required to complete further education in medical ethics and professionalism, and privacy and confidentiality. The protection of the public and the Tribunal's censure of her conduct through the reprimand demonstrates the College's professional discipline system is working well.

[25] Having considered Dr. Safar Zadeh's circumstances, including her misconduct and the Tribunal's caselaw, we find the proposed penalty does not bring the administration of justice into disrepute and it is accepted for this reason.

Order

[26] At the conclusion of the hearing, we ordered:

- a. Dr. Safar Zadeh to attend before the panel to be reprimanded;
- b. The Registrar to suspend Dr. Safar Zadeh's certificate of registration for five months commencing March 20, 2023, at 12:01 am;
- c. The Registrar to place terms, conditions and limitations on Dr. Safar Zadeh's certificate of registration requiring her to complete individualized instruction in medical ethics and professionalism and the CMPA eLearning Module on Privacy and Confidentiality within six months of the date of the order. The complete terms, conditions and limitations are available on the College's Register, accessible through the "Doctor Search" function on the College website;
- d. Dr. Safar Zadeh pay costs to the College in the amount of \$6,000 by March 30, 2023.

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BETWEEN:

College of Physicians and Surgeons of Ontario

- and -

Dr. Erika Safar Zadeh

The Tribunal delivered the following Reprimand
by videoconference on Tuesday, February 28, 2023.

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

Dr. Safar Zadeh,

Physicians in Ontario are entrusted with access to their patients' personal health information for the sole purpose of providing them with the highest standard of care. The policies of the College clearly define how members of the profession ought to access and use this information for legitimate clinical purposes.

You exploited your position of trust to access and copy your patient's clinical record to further your own interests. In addition, you inappropriately shared this personal health information with a third party and threatened the release of this confidential material, causing further harm to your patient.

Your unethical and self-serving behaviour brings the profession into disrepute and has the potential to undermine the public's expectation of privacy when sharing sensitive health information with their physician.

This penalty reflects the seriousness of your professional misconduct. We encourage you to reflect on your actions and their consequences and to commit yourself, on your return to clinical practice, to upholding the highest ethical standards of the profession.

This concludes the reprimand.