

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Philip Jerome Choptiany, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity and any information that could disclose the identity of the patients whose names are disclosed in the Agreed Statement of Facts 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 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: Choptiany, P.J. (Re)

**THE DISCIPLINE COMMITTEE OF THE COLLEGE
OF PHYSICIANS AND SURGEONS OF ONTARIO**

IN THE MATTER OF a Hearing directed
by the Complaints Committee and the Inquiries, Complaints and Reports Committee of
the College of Physicians and Surgeons of Ontario
pursuant to Section 26(2) and 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. PHILIP JEROME CHOPTIANY

PANEL MEMBERS:

DR. C. CLAPPERTON (CHAIR)
S. BERI
DR. M. GORDAN
DR. E. ATTIA (Ph.D)
DR. P. CHART

Hearing Date:	August 9, 2011
Decision Date:	August 9, 2011
Release of Written Reasons:	September 6, 2011

PUBLICATION BAN

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 August 9, 2011. At the conclusion of the hearing, the Committee stated its finding that the member committed an act of professional misconduct and delivered its penalty and costs order with written reasons to follow.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Philip Jerome Choptiany committed acts of professional misconduct:

1. under paragraph 1(1)33 of 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; and
2. 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 in that he engaged in the sexual abuse of a patient.
3. under paragraph 27.32 of O. Reg. 448/80 made under the *Health Disciplines Act* in that he engaged in conduct or an act 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
4. under paragraph 27.29 of O. Reg. 448/80 made under the *Health Disciplines Act* in that he engaged in sexual impropriety with a patient.

RESPONSE TO THE ALLEGATIONS

Dr. Choptiany did not contest the first allegation in the Notice of Hearing 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. Counsel for the College withdrew the second, third and fourth allegations in the Notice of Hearing.

When a plea of no contest is entered, Rule 3.02 of the Rules of the Discipline Committee provides 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 the proceeding only;
- (b) that the Discipline Committee can accept that those facts constitute professional misconduct or incompetence or both for the purposes of the proceeding only; and
- (c) that the Discipline Committee can dispose of the issue of what finding ought to be made without hearing evidence.

3.02(2) Where the member enters a plea of no contest, the prosecutor shall state the facts alleged and the findings requested by the College and the member or his or her representative shall state that the member does not contest those facts and findings for the purposes of the proceeding only.

3.02(3) A member shall not introduce any evidence on the issue of what finding ought to be made when the member pleads no contest.

3.02(4) A plea of no contest does not prevent the member from introducing evidence on the issue of what order the Discipline Committee ought to make so long as the evidence is consistent with the facts found and findings made by the Discipline Committee after the plea of no contest.

3.02(5) A plea of no contest does not constitute an admission by the member as to the facts or findings for the purpose of any other proceeding.

FACTS AND EVIDENCE

The following Statement of Facts and Admission was filed as an exhibit and presented to the Committee:

Facts

1. Dr. Choptiany is a 62 year old general practitioner who has held a certificate of independent practice with the College of Physicians and Surgeons of Ontario since 1976. He practices within a Family Health Organization in Toronto.

Patient A

2. Patient A immigrated to Canada in 2001. She was referred to Dr. Choptiany through a friend.
3. During her second appointment with Dr. Choptiany in the summer of 2006, Dr. Choptiany performed a medically-indicated breast examination upon Patient A. During the breast examination, Dr. Choptiany inappropriately commented to Patient A, “nice Brazilian tan lines.”
4. During this same appointment, Dr. Choptiany performed a medically-indicated pelvic examination upon Patient A. Prior to undertaking the pelvic examination, Dr. Choptiany did not:
 - a) Explain why he viewed this examination as appropriate in the circumstances;
 - b) Explain the steps involved in the examination; or
 - c) Ascertain whether the patient was comfortable with the steps involved in the examination that he was about to undertake.
5. Patient A did not return to see Dr. Choptiany.

Patient B

6. Patient B immigrated to Canada in 1988. She became Dr. Choptiany’s patient in approximately 1994. She was referred to Dr. Choptiany by her pediatrician when she requested a referral to a family physician.

7. During her first and only appointment with Dr. Choptiany, Dr. Choptiany performed a medically-indicated breast examination upon her. Dr. Choptiany did not take sufficient care to maintain spatial boundaries. This resulted in Patient B feeling Dr. Choptiany's pelvic area against her arm while he conducted the breast examination.
8. During the same medical appointment, Dr. Choptiany made inappropriate comments to Patient B regarding her sexual relationship with her husband.

Patient C

9. Patient C became Dr. Choptiany's patient in 1987.
10. During a medical appointment in 1991, Patient C sought Dr. Choptiany's support with respect to marital issues. During this same appointment, Dr. Choptiany made inappropriate comments to Patient C with respect to her sexual relationship with her husband.

Admission

11. Dr. Choptiany pleads no contest to the facts as set out above and admits 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, dishonorable or unprofessional.

FINDING

The Committee accepted as true all of the facts set out in the Statement of Facts and Admission. Having regard to these facts, the Committee found that Dr. Choptiany 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, dishonorable or unprofessional.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for the member made a joint submission on penalty, which proposed that:

1. Dr. Choptiany appear before the panel to be reprimanded.
2. The Registrar suspend Dr. Choptiany's certificate of registration for a period of two (2) months commencing at 12:01 a.m. on August 10, 2011.
3. The Registrar imposes the following terms, conditions and limitations on Dr. Choptiany's certificate of registration:
 - i) Dr. Choptiany shall conduct all breast, pelvic and/or rectal examinations of any female patients in the presence of another female regulated health professional as set out in the undertaking attached to this Order as Appendix "A".
 - ii) Dr. Choptiany shall post a sign in his waiting room and in each of his examination rooms, in clearly visible locations that states: "Under no circumstances will Dr. Choptiany perform a breast, pelvic, or rectal examination except in the presence of a female regulated health professional."
4. Dr. Choptiany pay to the College costs in the amount of \$3,650 within 30 days of the date of this Order.

The Committee noted the fundamental importance of proper and respectful boundaries in dealing with subjects of an intimate nature or performing intimate examinations. It is of particular importance that patients be informed, that spatial boundaries are respected and that physicians refrain from inappropriate comments. Failing to act appropriately undermines public trust in the profession and may cause patients to feel embarrassed or offended.

The Committee viewed the conduct in this matter as highly unprofessional, with Dr. Choptiany exhibiting poor judgment in his comments and failure to maintain spatial boundaries during the examination of female patients who were exposed and vulnerable.

In considering the proposed penalty, the Committee also had regard for a number of mitigating factors, which included that:

- Dr. Choptiany has voluntarily completed the College's course in Understanding Boundaries: Managing the Risks Inherent in the Doctor-Patient Relationship;
- Dr. Choptiany has had no prior discipline findings with the College;
- Patients have been saved the difficult and embarrassing prospect of having to testify in a contested hearing; and
- Letters of reference were submitted from a number of close working colleagues of Dr. Choptiany who were fully aware of the issues of this case and their impact on Dr. Choptiany's practice.

The principles which apply in the assessment of an appropriate penalty order include denunciation of the conduct, specific and general deterrence, protection of the public, maintaining the public trust and upholding public confidence in the profession.

The suspension included in the proposed penalty clearly serves to denounce the conduct of the member and supports the position of the profession that such conduct is not tolerated. Serious breaches in conduct will result in significant penalties. This provides both specific and general deterrence. Furthermore, the reprimand allows the Committee to directly address the member and express in clear terms its view of the misconduct.

Protection of the public is achieved by the terms, conditions and limitations imposed on the member's certificate of registration, which require that Dr. Choptiany be in the presence of a female health professional when performing intimate examinations on

female patients. The sign posted in his waiting room sets out clearly for patients that this is a requirement.

The partial recovery of costs of the Panel and legal counsel is appropriate. It is fair and reasonable that the hearing costs be paid by Dr. Choptiany rather than be borne by the membership at large.

Counsel for the College referred to a number of previous decisions of the Discipline Committee, which support that the proposed length of suspension in this matter is similar to other cases where inappropriate comments formed the basis of the allegations. Other cases which involved consent for intimate examinations and respect for spatial boundaries likewise contained comparable elements of penalty. The Committee concluded the penalty proposed for Dr. Choptiany to be proportionate given the circumstances and relevant case law.

Lastly, the Committee understands its legal obligation where there has been a joint submission to accept the joint submission unless to do so would be contrary to the public interest and bring the administration of justice into disrepute.

The Committee concluded that the proposed penalty represents appropriate censure in this matter and it accepted the joint submission.

ORDER

Therefore, the Committee ordered and directed that:

1. Dr. Choptiany appear before the panel to be reprimanded.
2. The Registrar suspend Dr. Choptiany's certificate of registration for a period of two (2) months commencing at 12:01 a.m. on August 10, 2011.
3. The Registrar impose the following terms, conditions and limitations on Dr. Choptiany's certificate of registration:

- iii) Dr. Choptiany shall conduct all breast, pelvic and/or rectal examinations of any female patients in the presence of another female regulated health professional as set out in the undertaking attached to this Order as Appendix “A”.
 - iv) Dr. Choptiany shall post a sign in his waiting room and in each of his examination rooms, in clearly visible locations that states: “Under no circumstances will Dr. Choptiany perform a breast, pelvic, or rectal examination except in the presence of a female regulated health professional.”
4. Dr. Choptiany pay to the College costs in the amount of \$3650.00 within 30 days of the date of this Order.

At the conclusion of the hearing, Dr. Choptiany waived his right to an appeal under subsection 70(1) of the Code and the Committee administered the public reprimand.