

UNDERTAKING, ACKNOWLEDGEMENT AND CONSENT
(“Undertaking”)

of

DR. ADAM SETH FOGEL
(“Dr. Fogel”)

to

COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO
(the “College”)

A. PREAMBLE

- (1) In this Undertaking:

“Code” means the Health Professions Procedural Code, which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended;

“Discipline Tribunal” means the Ontario Physicians and Surgeons Discipline Tribunal of the College;

“OHIP” means the Ontario Health Insurance Plan;

“Ontario Physicians and Surgeons Discipline Tribunal” means the Discipline Committee established under the Code;

“Public Register” means the College’s register that is available to the public.

- (2) I, **Dr. Fogel**, certificate of registration number **112115**, am a member of the College.
- (3) I, **Dr. Fogel**, acknowledge that following a public complaint, the College conducted an investigation bearing File Number CAS-128115-M9N3C4 (the “Investigation”) into my care of, and conduct towards, a patient in my practice.
- (4) I, **Dr. Fogel**, acknowledge that, in addition to accepting this Undertaking, the College will also deliver a caution in person.

B. UNDERTAKING

- (5) I, **Dr. Fogel**, undertake to abide by the provisions of this Undertaking, effective immediately.
- (6) ***Practice Restrictions***
- (a) I, **Dr. Fogel**, undertake that I shall not engage in any professional encounters, in

person or otherwise (“ Professional Encounter” or “ Professional Encounters”), with patients of any age, in any jurisdiction, unless the Professional Encounter takes place in the continuous presence and under the continuous observation of a monitor who is a regulated health professional acceptable to the College (the “ Practice Monitor” or “ Practice Monitors”), and unless the other requirements provided in this Undertaking are fulfilled. For further clarity, I understand that I must not be alone with any patient, for any length of time, during any Professional Encounter, whether or not the parent or guardian of the patient is also present.

- (b) I, **Dr. Fogel**, undertake to inform my patients of the indication for any breast, pelvic, genital and/or rectal examination that I may perform and to document the discussion in the corresponding patient chart.
- (c) I, **Dr. Fogel**, undertake to remain free of any conflict of interest with the Practice Monitor.
- (d) I, **Dr. Fogel**, acknowledge that I have reviewed the Practice Monitor’s undertaking, attached hereto as Appendix “ A” and understand what is required of the Practice Monitor including, but not limited to:
 1. providing reports (as described in the Practice Monitor’s undertaking) to the College on at least a monthly basis;
 2. remaining present at all times during all Professional Encounters, in person or otherwise, with all patients;
 3. carefully observing all of my Professional Encounters with patients, including but not limited to physical and internal examinations. I further acknowledge my obligation to ensure the Practice Monitor’s view of all of my Professional Encounters with patients, including physical and internal examinations, is unobstructed at all times;
 4. refraining from performing any other functions, except those required in the Practice Monitor’s undertaking attached as Appendix “ A”, while observing me in all my Professional Encounters with patients;
 5. maintaining a log of all Professional Encounters with patients in the form attached to this Undertaking as Appendix “ B” (the “ Log”) and in the manner described in Appendix “ A”, including listing the indication I described to my patient for any breast, pelvic, genital or rectal examination performed and confirming that I have documented the discussion in the corresponding patient chart;
 6. initialing all corresponding entries in the records of patients noted in the Log;
 7. submitting the **original** Log to the College on a monthly basis; and
 8. remaining free of any conflict of interest with me.

- (e) I, **Dr. Fogel**, undertake to maintain an up to date copy of the Log by ensuring a copy is made at the end of each business day, and to make it available to the College upon request.

(7) ***Posting a Sign***

- (a) I, **Dr. Fogel**, undertake that I shall post a sign in all waiting rooms, examination rooms and consulting rooms, in all of my Practice Locations, except hospital units, in a clearly visible and secure location, at all times whether or not I am physically present at the Practice Location, in the form set out in Appendix “C” that states: Dr. Fogel must not have professional encounters, in person or otherwise, with patients, of any age, unless in the continuous presence and under the continuous observation of a practice monitor acceptable to the College of Physicians and Surgeons of Ontario. Dr. Fogel must not be alone during any professional encounter with any patient. Further information may be found on the College website at www.cpsso.on.ca.

For further clarity, I shall not be required to post a sign in the hospital setting.

- (b) I, **Dr. Fogel**, undertake to post a certified translation in any language in which I provide services, of the sign described in section (7)(a), in all waiting rooms, examination rooms and consulting rooms, in all of my Practice Locations, except hospital units, in a clearly visible and secure location, in the form set out at Appendix “C.”
- (c) I, **Dr. Fogel**, undertake to provide the certified translation described in section (7)(b), to the College within thirty (30) days of executing this Undertaking.
- (d) I, **Dr. Fogel**, undertake that if I elect, after the execution of this Undertaking, to provide services in any other language, I will notify the College prior to providing any such services.
- (e) I, **Dr. Fogel**, undertake to provide to the College the certified translation described in section (7)(b) prior to beginning to provide services in any language described in section (7)(d).
- (f) I, **Dr. Fogel**, acknowledge that the College may accept an alternative arrangement with respect to signage in a hospital setting, in its sole discretion.

(8) ***Notifying Patients***

- (a) I, **Dr. Fogel**, undertake to ensure that each patient with whom I have a Professional Encounter is directly notified, prior to the Professional Encounter, of the details of the restriction described in section (6)(a), above.
- (b) With respect to patients with whom I have appointments that are scheduled at least seven (7) days in advance, I, **Dr. Fogel**, undertake to ensure that each patient is directly notified, within seven (7) days after the appointment is scheduled, of the

details of the restriction described in section (6)(a), above.

- (c) I, **Dr. Fogel**, acknowledge that the College may accept an alternative arrangement with respect to patient notification in a hospital setting, in its sole discretion.

(9) ***Clinical Supervision***

- (a) I, **Dr. Fogel**, undertake to practise under the guidance of a clinical supervisor or clinical supervisors acceptable to the College (the “Clinical Supervisor” or “Clinical Supervisors”), for at least six (6) months (“Clinical Supervision”).
- (b) I, **Dr. Fogel**, undertake to remain free of any conflict of interest with the Clinical Supervisor.
- (c) I, **Dr. Fogel**, acknowledge that I have reviewed the Clinical Supervisor’s undertaking, attached hereto as Appendix “D”, and understand what is required of the Clinical Supervisor. The Clinical Supervisor will, at minimum:
1. Facilitate the education program set out in the Individualized Education Plan (“IEP”), attached hereto as Appendix “E”;
 2. Review the materials provided by the College and have an orientation session with me, including to discuss the objectives for the Clinical Supervision;
 3. Meet with me at my Practice Location, or another location approved by the College, once every two (2) weeks for a minimum of three (3) months;
 4. After a minimum of three (3) months of Clinical Supervision, if my Clinical Supervisor recommends and the College approves a reduction in the level of supervision, my Clinical Supervisor will meet with me at my Practice Location, or another location approved by the College, once every month for a further three (3) months;
 5. Review at least fifteen (15) of my patient charts at every meeting;
 6. Discuss any concerns arising from the chart reviews;
 7. Make recommendations to me for practice improvements and ongoing professional development and inquire into my compliance with the recommendations;
 8. Perform any other duties, such as reviewing other documents or conducting interviews with staff or colleagues, that the Clinical Supervisor deems necessary to my Clinical Supervision;
 9. Submit written reports to the College at least once every month for three (3) months or until the College approves a reduction in the level of supervision,

and then once at the end of supervision, or more frequently if the Clinical Supervisor has concerns about my standard of practice; and

10. Remain free of any conflict of interest with me.

- (d) I, **Dr. Fogel**, acknowledge that the charts reviewed shall be selected by the Clinical Supervisor based on the educational needs identified in the IEP, attached hereto as Appendix “ E”, as well as the areas of concern identified in the report of the assessor dated April 9, 2023 and the assessor’s addendum dated July 18, 2023 and concerns that may arise during the period of Clinical Supervision.
- (e) I, **Dr. Fogel**, undertake to cooperate fully with the Clinical Supervision of my practice, conducted under the term of this Undertaking and Appendix “ D” to this Undertaking, and to abide by the recommendations of my Clinical Supervisor, including but not limited to, any recommended practice improvements and ongoing professional development.
- (f) I, **Dr. Fogel**, undertake to ensure that Appendix “ D” to this Undertaking is signed and delivered to the College within thirty (30) days of the date I execute this Undertaking.
- (g) I, **Dr. Fogel**, undertake that if a person who has given an undertaking in Appendix “ D” to this Undertaking is unable or unwilling to continue to fulfill its provisions, I shall, within twenty (20) days of receiving notice of same, obtain an executed undertaking in the same form from a similarly qualified person who is acceptable to the College and ensure that it is delivered to the College within that time.
- (h) I, **Dr. Fogel**, undertake that if I am unable to obtain a Clinical Supervisor on the provisions set out under sections (9)(f) and/or (g) above, I will cease practising medicine until such time as I have obtained a Clinical Supervisor acceptable to the College.
- (i) I, **Dr. Fogel**, acknowledge that if I am required to cease practise as a result of section (9)(h) above this will constitute a term, condition or limitation on my certificate of registration and that term, condition or limitation will be included on the public register.

(10) ***Professional Education***

- (a) I, **Dr. Fogel**, undertake to participate in and successfully complete all aspects of the detailed IEP, attached hereto as Appendix “ E”, including all of the following professional education (the “Professional Education”):
 1. Review, reflection, and a written summary of the following policies and other self-study:
 1. [Boundary Violations](#), College policy;

2. [Protecting Personal Health Information](#), College policy;
3. The College's [Practice Guide: Medical Professionalism and College Policies](#);

2. Review and reflection of the following resources:

1. [Personal Health Information Protection Act, 2004](#);
2. [Physician wellness resources](#), College of Physicians and Surgeons of Ontario; and

3. PROBE: Ethics & Boundaries Program, by receiving a passing evaluation or grade, without any condition or qualification. I, **Dr. Fogel**, will agree to abide by any recommendations of the PROBE program.

- (b) I, **Dr. Fogel**, undertake to provide proof to the College of my successful completion of the Professional Education, including proof of registration and attendance and participant assessment reports, within one (1) month of completing it. I acknowledge that the College will determine, in its sole discretion, whether I have successfully completed the Professional Education.
- (c) I, **Dr. Fogel**, undertake to complete this requirement within three (3) months, or, if no satisfactory program is available by that time, by the first possible opportunity thereafter.
- (d) I, **Dr. Fogel**, acknowledge that a report or reports may be provided to the College regarding my progress and compliance with the Professional Education.
- (e) I, **Dr. Fogel**, acknowledge that if any of the programs listed above become unavailable, substitution requests will be reviewed by the College and the College will determine in its sole discretion whether substitution is appropriate.

(11) ***Reassessment of Practice***

- (a) I, **Dr. Fogel**, undertake that, approximately six (6) months after the completion of the Clinical Supervision set out in section (5) above and Appendix "D" to this Undertaking, and the completion of the Professional Education set out in section (10) above, I will submit to a reassessment of my practice ("the Reassessment") by an assessor or assessors selected by the College (the "Assessor" or "Assessors"). I acknowledge that the Reassessment will include a chart review of a minimum of fifteen (15) charts, and may include direct observation of my care, interviews with me, colleagues and co-workers, feedback from patients, and any other tools deemed necessary by the College.
- (b) I, **Dr. Fogel**, undertake to co-operate fully with the Reassessment, conducted under the term of this Undertaking.

- (c) I, **Dr. Fogel**, acknowledge that my Clinical Supervisor may receive and review the findings of the Assessor, and may discuss with the Assessor any issues or concerns arising from the Reassessment.
- (d) I, **Dr. Fogel**, acknowledge that the results of the Reassessment will be provided to me and reported to the College and the Reassessment may form the basis of further action by the College.

(12) **Monitoring**

- (a) I, **Dr. Fogel**, undertake to inform the College of each and every location at which I practise or have privileges, including, but not limited to, any hospitals, clinics, offices, and any Independent Health Facilities with which I am affiliated, in any jurisdiction (collectively my “Practice Location” or “Practice Locations”), within five (5) days of executing this Undertaking. Going forward, I further undertake to inform the College of any and all new Practice Locations within five (5) days of commencing practice at that location.
- (b) I, **Dr. Fogel**, undertake that I will submit to, and not interfere with, unannounced inspections of my Practice Locations and patient records by a College representative for the purposes of monitoring my compliance with the provisions of this Undertaking.
- (c) I, **Dr. Fogel**, give my irrevocable consent to the College to make appropriate enquiries of OHIP, and/or any person who or institution that may have relevant information, in order for the College to monitor my compliance with the provisions of this Undertaking.
- (d) I, **Dr. Fogel**, acknowledge that I have executed the OHIP consent form, attached hereto as Appendix “F”.

C. ACKNOWLEDGEMENT

- (13) I, **Dr. Fogel**, acknowledge that all appendices attached to or referred to in this Undertaking form part of this Undertaking.
- (14) I, **Dr. Fogel**, acknowledge and undertake that I shall be solely responsible for payment of all fees, costs, charges, expenses, etc. arising from the implementation of any of the provisions of this Undertaking.
- (15) I, **Dr. Fogel**, acknowledge that I have read and understand the provisions of this Undertaking and that I have obtained independent legal counsel in reviewing and executing this Undertaking, or have waived my right to do so.
- (16) I, **Dr. Fogel**, acknowledge that the College will provide this Undertaking to any Chief of Staff, or a colleague with similar responsibilities, at any Practice Location (“Chief of Staff” or “Chiefs of Staff”).

- (17) I, **Dr. Fogel**, acknowledge that a breach by me of any provision of this Undertaking may constitute an act of professional misconduct and/or incompetence, and may result in a referral of specified allegations to the Discipline Tribunal of the College.
- (18) I, **Dr. Fogel**, acknowledge that this Undertaking constitutes terms, conditions, and limitations on my certificate of registration for the purposes of section 23 of the Code.
- (19) ***Public Register***
 - (a) I, **Dr. Fogel**, acknowledge that, during the time period that this Undertaking remains in effect, this Undertaking shall be posted on the Public Register.
 - (b) I, **Dr. Fogel**, acknowledge that, in addition to this Undertaking being posted in accordance with section (19)(a) above, the following summary shall be posted on the Public Register during the time period that this Undertaking remains in effect:

Following a public complaint, a College investigation was conducted into Dr. Fogel's care of, and conduct towards, a patient in his practice. As a result of the investigation:

Dr. Fogel must not engage in any professional encounters, in person or otherwise, with patients of any age, in any jurisdiction, unless the patient encounter takes place in the presence of a monitor who is a regulated health professional acceptable to the College, and unless the other requirements provided in Dr. Fogel's Undertaking with the College are fulfilled. For further clarity, Dr. Fogel must not be alone with any patient during any professional encounter.

Dr. Fogel shall post a sign in all waiting rooms, examination rooms and consulting rooms, in all Practice Locations, except hospital units, in a clearly visible and secure location, that states: "Dr. Fogel must not have professional encounters, in person or otherwise, with patients of any age, unless in the presence of a practice monitor acceptable to the College of Physicians and Surgeons of Ontario. Dr. Fogel must not be alone with any patient during any professional encounter. Further information may be found on the College website at www.cpsso.on.ca".

Dr. Fogel will practise under the guidance of a Clinical Supervisor acceptable to the College for a minimum of 6 months.

Dr. Fogel will engage in professional education in maintenance of professional boundaries and protection of personal health information.

Dr. Fogel's practice will be reassessed by an assessor selected by the College within 6 months of the end of the period of Clinical Supervisor and professional education.

D. CONSENT

- (20) I, **Dr. Fogel**, give my irrevocable consent to the College to provide the following information to any person who requires this information for the purposes of facilitating my completion of the Professional Education:
- (a) any information the College has that led to the circumstances of my entering into this Undertaking;
 - (b) any information arising from any investigation into, or assessment of, my practice; and
 - (c) any information arising from the monitoring of my compliance with this Undertaking.
- (21) I, **Dr. Fogel**, give my irrevocable consent to the College to provide all Chiefs of Staff with any information the College has that led to the circumstances of my entering into this Undertaking and/or any information arising from the monitoring of my compliance with this Undertaking.
- (22) I, **Dr. Fogel**, give my irrevocable consent to any persons who facilitate my completion of the Professional Education, and to all Chiefs of Staff, to disclose to the College, and to one another, any of the following:
- (a) any information relevant to this Undertaking;
 - (b) any information relevant to the provisions of the Practice Monitor's undertaking set out at Appendix "A" to this Undertaking;
 - (c) any information relevant to the provisions of the Clinical Supervisor's undertaking set out at Appendix "D" to this Undertaking;
 - (d) any information relevant to the Reassessment;
 - (e) any information relevant for the purposes of monitoring my compliance with this Undertaking;
 - (f) any information which comes to their attention in the course of providing the Professional Education and which they reasonably believe indicates a potential risk of harm to my patients.