

Indexed as: Khan, E.U. (Re)

**THE DISCIPLINE COMMITTEE OF THE 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**
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. EHSAN ULLAH KHAN

PANEL MEMBERS:

DR. M. GABEL (Chair)
G. DEVLIN
DR. B. LENT
DR. E. ATTIA (PhD)
DR. N. DE

Hearing Date:	December 6, 2010
Decision Date:	December 6, 2010
Release of Written Reasons:	January 20, 2011

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 December 6, 2010. 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. Ehsan Ullah Khan committed an act of professional misconduct:

1. under paragraph 1(1)2 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O.Reg. 856/93”), in that he failed to maintain the standard of practise of the profession;
2. under paragraph 1(1)33 of 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

The Notice of Hearing also alleged that Dr. Khan, a member of the College, is incompetent as defined by subsection 52(1) of the Health Professions Procedural Code (the “Code”), which is schedule 2 to the *Regulated Health Professions Act, 1991* in that his care of patients displayed a lack of knowledge, skill or judgment or disregard for the welfare of his patients of a nature or to an extent that demonstrates that he is unfit to continue practise or that his practice should be restricted.

RESPONSE TO THE ALLEGATIONS

Dr. Khan admitted the first allegation in the Notice of Hearing, that he failed to maintain the standard of practice of the profession. Counsel for the College withdrew the second

allegation of disgraceful, dishonourable or unprofessional conduct and the allegation of incompetence.

FACTS AND EVIDENCE

The following are the facts as set out in the Agreed Statement of Facts and Admission filed as an exhibit and presented to the Committee:

PART I - FACTS

1. Dr. Ehsan Ullah Khan (“Dr. Khan”) is a family physician who practices in Woodbridge, Ontario. In addition to his family practice, Dr. Khan has performed liposuction on five patients.
2. In March 2009, after receiving information from the Quality Assurance Committee of the College of Physicians and Surgeons of Ontario (the “College”), the Executive Committee of the College requested that the Registrar conduct an investigation of Dr. Khan’s cosmetic surgery practice, pursuant to s. 75(b) of the Health Professions Procedural Code.
3. In the course of this investigation, the College obtained a report from an expert outlining deficiencies in Dr. Khan’s liposuction practice. Specifically, these deficiencies pertained to Dr. Khan engaging in liposuction in an unsafe facility, failing to monitor patients before and after liposuction procedures and in charting deficiently.
4. As described below, Dr. Khan failed to maintain the standard of practice of the profession between 2006 and 2008 in his care of five liposuction patients in each of these areas.

Engaging in Liposuction in an Unsafe Facility

5. Dr. Khan failed to maintain the standard of practice of the profession by engaging in liposuction in an unsafe facility. The details of these deficiencies are specified in an excerpt from the College's expert report dated July 8, 2009, which is attached as Schedule 1 [to the Agreed Statement of Facts] and forms part of this Agreed Statement of Facts and Admission.

Dr. Khan's Failure to Monitor Patients before and after Liposuction Procedures

6. Dr. Khan also failed to maintain the standard of practice of the profession in his failure to monitor patients before, during and after performing liposuction. Specifically, in his care of these liposuction patients, Dr. Khan failed to note blood pressures, heart rates, and oxygen saturation rates.

Deficient Charting

7. Dr. Khan also failed to maintain the standard of practice of the profession in relation to his charting in respect of the five liposuction cases referenced above. In particular, in his charting relating to these patients, there were repeated instances where Dr. Khan:
 - (a) failed to chart a recent history or reasons for the surgery;
 - (b) failed to record a physical examination of the patient,
 - (c) failed to adequately chart and/or complete information pertaining to informed consent;
 - (d) failed to complete the procedural note by omitting information including the date and time of the procedure, who was present, and pre-operative physiologic data such as height, weight, blood pressure, and resting pulse;
 - (e) failed to indicate the amount of fat removed from different areas of the body;

- (f) failed to specify how much fat and how much supernatant was removed;
 - (g) failed to include a physical description of the part(s) of the body where liposuction was to be performed including an estimated thickness of the tissue; and
 - (h) failed to note the final results of the liposuction surgery in follow-up records.
8. Dr. Khan admits the facts set out above and that on the basis of those facts he failed to maintain the standard of practice of the profession.

FINDING

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts and Admission. Having regard to these facts, including the findings of the College's expert, the Committee accepted Dr. Khan's admission and found that he committed an act of professional misconduct, in that he failed to maintain the standard of practice of the profession.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for the member made a joint submission as to an appropriate penalty and costs order.

In evaluating this proposed penalty, the Committee recognized that a joint submission should be accepted unless to do so would be contrary to the public interest and would bring the administration of justice into disrepute. In addition, the Committee accepted that the general principles to be followed in determining an appropriate penalty include specific and general deterrence, protection of the public, and the need to assure the public that the profession recognizes and accepts its responsibility with respect to self-regulation.

By accepting the facts as set out in the Agreed Statement of Facts and Admission, Dr. Khan acknowledges that his clinical behavior did not meet the standard of practice of the profession. This admission obviates the need for the Committee to review more detailed testimony by various expert witnesses, thereby minimizing the costs to the College.

The elements of the joint submission on penalty and costs address the principles of public safety as well as specific deterrence. Dr. Khan is prohibited from performing invasive cosmetic surgery and/or liposuction independently. Should he choose to participate in liposuction procedures in the future, he is required to do so with a College approved Royal College certified surgeon in an approved facility, and to keep a detailed log of patient information. These terms and conditions contribute to the protection of the public. In addition, the public reprimand and the recording of the decision and penalty on the Register contribute to specific and general deterrence.

Thus, the Committee has concluded that, in total, the proposed penalty meets the criteria enunciated above in a complete and meaningful manner, and should be accepted.

ORDER

Therefore, the Committee ordered and directed that:

1. Dr. Khan attend before the panel to be reprimanded, with the fact of the reprimand to be recorded on the Register.
2. The Registrar impose the following terms, conditions and limitations on Dr. Khan's certificate of registration:
 - a. Dr. Khan shall be prohibited from performing liposuction unless and until such time as he is approved by the College in accordance with the College's Changing Scope of Practice Policy #1-08, as may be amended from time to

time, and any other applicable regulations, guidelines or policies as may exist at the time he seeks approval;

- b. Notwithstanding paragraph 2(a), Dr. Khan may surgically assist in liposuction procedures on the following terms:
 - i. at a facility approved by the College in accordance with Ontario Regulation 114/94 made under the *Medicine Act, 1991* (“O/Reg. 114/94”);
 - ii. with a College approved Royal College certified surgeon who is performing liposuction and who is in attendance for the duration of the liposuction procedure performed; and
 - iii. Dr. Khan shall not be the most responsible physician for any patients;
 - c. Dr. Khan shall keep a log containing the names and dates of birth of all patients for whom he surgically assists and the name of the College approved surgeon for whom Dr. Khan is assisting. Dr. Khan shall send this log to the College at the end of each month that he acts as a surgical assistant for one or more liposuction procedures;
 - d. In any facility owned or operated by Dr. Khan, Dr. Khan shall be prohibited from engaging in any invasive cosmetic surgical procedures as defined in O/Reg. 114/94, as may be amended from time to time, including hair transplants;
 - e. Dr. Khan shall not interfere with unannounced inspections by the College for the purpose of determining his compliance with this Order.
3. Dr. Khan shall within 30 days pay the College its costs of this proceeding in the amount of \$3,650.00.

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