

## NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. John Hyunsik Shin, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity or any information that could disclose the identity of patients referred to orally or in the exhibits 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: Ontario (College of Physicians and Surgeons of Ontario) v.  
Shin, 2015 ONCPSD 19**

**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. JOHN HYUNSIK SHIN**

**PANEL MEMBERS:**

**DR. M. GABEL (CHAIR)**  
**S. BERI**  
**DR. A. FALCONER**  
**P. GIROUX**  
**DR. P. CASOLA**

**Hearing Date:** April 1, 2015  
**Decision Date:** April 1, 2015  
**Release of Written Reasons:** May 5, 2015

**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 April 1, 2015. 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. Shin committed an act of professional misconduct:

1. under clause 51(1)(a) 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 has been found guilty of an offence that is relevant to his suitability to practise.
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.

### **RESPONSE TO THE ALLEGATIONS**

Dr. Shin admitted the allegations in the Notice of Hearing.

### **THE FACTS**

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

#### **PART I - FACTS**

##### **Background**

1. Dr. John Hyunsik Shin (“Dr. Shin”) is a physician who received his certificate of registration authorizing independent practise in Ontario on August 12, 1993.

2. At all material times, Dr. Shin was practising as an ophthalmologist with practice locations in Toronto, Oshawa, and Whitby, Ontario.

**Fraud Charge under the *Criminal Code***

3. On January 23, 2013, Dr. Shin was charged with fraud over \$5,000 pursuant to subsection 380(1) of the *Criminal Code*, R.S.C. 1985, c.46 (the “*Criminal Code*”). It was alleged that, between January 1, 2006 and March 20, 2007, Dr. Shin “did by deceit, falsehood or other fraudulent means defraud the Ministry of Health and Long Term Care of money exceeding \$5,000 by billing the Ontario Health Insurance Plan for services not rendered”. Attached at Tab 1 [to the Agreed Statement of Facts and Admission] is a copy of the Information regarding the above-noted charge.

**Criminal Proceedings and Admissions in the Ontario Court of Justice**

4. On November 13, 2013, Dr. Shin pleaded guilty to the charge described above, before the Honourable Justice D.M. Stone of the Ontario Court of Justice in Oshawa, Ontario.

5. Dr. Shin admitted to the following in his guilty plea, among other things:

- (a) He billed the Ontario Health Insurance Plan (“OHIP”) for uninsured eye examinations and uninsured contact lens fittings;
- (b) He did not perform contact lens fittings for any of his patients. His staff did the fittings; and
- (c) He billed OHIP for 4,495 services from 2003-2007, the next closest ophthalmologist billed for 966 services.

6. With respect to the contact lens fittings, Dr. Shin had a high volume of billings for the billing code G424, which is an OHIP billing code reserved for patients who have at least one of the medical conditions set out in s. 24(1) of Regulation 552 of the *Health Insurance Act* (the “HIA”). The criminal investigation revealed that Dr. Shin did not provide contact lens fittings for any of his patients. The staff would receive a prescription

from the patient, which was completed by Dr. Shin, and the staff would do all contact lens fittings. The investigation also revealed that the patients did not suffer from any of the conditions set out in s. 24(1) of Regulation 552 of the HIA, and thus were not insured for that service. This was confirmed by 34 patients who were interviewed, all of whom confirmed they did not obtain a contact lens fitting from Dr. Shin and all of whom confirmed they did not suffer from any of the conditions eligible for billing.

7. With respect to the eye exams, Dr. Shin had a high volume of billings for the code A233, which is an OHIP billing code for ‘Specific assessment’.

8. An expert was retained to examine Dr. Shin’s patient records to determine if Dr. Shin’s billing of the G424 and A233 codes was appropriate. The expert determined that 222 out of 233 records contained fraudulent billings. The total amount of Dr. Shin’s fraud was calculated on the basis of those records to be \$43,176.

9. Attached at Tab 2 [to the Agreed Statement of Facts and Admission] is a certified copy of the transcript of the guilty plea proceedings held in Oshawa at the Ontario Court of Justice on November 13, 2013.

### **Criminal Conviction and Sentence**

10. On November 25, 2013, Dr. Shin was convicted in the Ontario Court of Justice of fraud exceeding \$5,000 contrary to subsection 380(1) of the *Criminal Code*.

11. On November 25, 2013, following his conviction, Dr. Shin was sentenced to:

- (a) An 8-month conditional sentence to be served in the community;
- (b) Provide a sample of his DNA for the national database; and
- (c) Following the sentence, 2 years of probation, including 125 hours of community service.

12. By the date of the sentencing hearing, Dr. Shin had made restitution in the amount of \$43,176 to the Ministry of Health and Long-Term Care.

13. Attached at Tab 3 [to the Agreed Statement of Facts and Admission] is a certified copy of the transcript of the sentencing proceedings held in Oshawa at the Ontario Court of Justice on November 25, 2013.

## **PART II – ADMISSION**

14. Dr. Shin admits the facts upon which his criminal convictions were based and admits the facts set out in paragraphs 1-13 above.

15. Dr. Shin admits that the conduct described above constitutes professional misconduct and admits he has engaged in professional misconduct in that:

- (a) he has been found guilty of an offence relevant to his suitability to practise contrary to clause 51(1)(a) of the Health Professions Procedural Code, which is Schedule 2 to the *Regulated Health Professions Act*, 1991 S.O. 1991 c.18; and
- (b) he has engaged in an act or omission relevant to the practice medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, contrary to paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act*, 1991, S.O. 1991, c.30.

## **FINDINGS**

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts and Admission. Having regard to these facts, the Committee accepted Dr. Shin's admission and found that he committed an act of professional misconduct in that he has been found guilty of an offence that is relevant to his suitability to practise; and, 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.

## **PENALTY AND REASONS FOR PENALTY**

Counsel for the College and counsel for the member made a joint submission as to the appropriate penalty and costs order. The Committee is aware that a joint submission must be accepted unless to do so would be contrary to the public interest and would bring the administration of justice into disrepute. The Committee is also aware of the accepted principles that guide the determination of an appropriate penalty. These principles include protection of the public from further misconduct by the physician, specific and general deterrence, communicating the profession's disapproval of the misconduct, maintenance of public confidence in the College's ability to self-govern and rehabilitation.

Aggravating and mitigating factors should also be considered.

Dr. Shin is an ophthalmologist appearing before the Discipline Committee as a result of being convicted of OHIP fraud. His conviction stems from a criminal investigation into his billing practices between the period of January 1, 2006 to March 20, 2007. He was ultimately found to have billed for services he did not provide and for services for which he was not entitled to bill.

The initial investigation into Dr. Shin's billing practices began in 2006. He was subsequently charged on January 23, 2013, and a criminal conviction was made on November 25, 2013. It was evident to the Committee that the Court considered this to be a serious matter, given that in addition to restitution monies, Dr. Shin was placed under house arrest for eight months, resulting in his activities and movements being restricted. Dr. Shin was also required to provide a DNA sample to the police for inclusion in the national database, and to complete two years of probation, in addition to 125 hours of community service, following his sentencing.

The Committee also considered this to be very serious misconduct. Dr. Shin's actions clearly violated the trust placed by the public in the profession, and undermined the credibility of the profession as a whole. The schedule of OHIP benefits with respect to these codes is clear, and the requirement for said codes and fees to be submitted for payment is also clear. Physicians are responsible for ensuring that they understand the requirements for billing for a service. This is a fundamental responsibility for physicians

in the practice of medicine in Ontario who bill the public healthcare (OHIP) system. The Committee viewed Dr. Shin's actions as not an act of omission, but rather one of commission, which is a deliberate act to defraud the public healthcare system as evidenced by the criminal conviction that ensued.

Although Dr. Shin ceased these billing practices when it was brought to his attention in 2006, by changing his clinical practice and billing practices to reflect the actual services rendered, the Committee must conclude that this activity would have continued in the same manner had an intervention not occurred.

While the Committee accepts and recognizes the changes made in Dr. Shin's practice since the criminal investigation began, it also recognizes that these changes occurred only after Dr. Shin was forced to so do. External scrutiny can be a powerful motivator for change. It appears to have been the case here. Only through the passage of time can it be determined whether these changes become internalized. Dr. Shin's activities have demonstrated, in short, that he is not to be trusted in his billings with the public healthcare system. Thus, the importance in the penalty of ongoing monitoring by a Practice Monitor for a period of three years is warranted. While the Committee expects that Dr. Shin will continue with the changes that he has made since the criminal investigation, his past conduct strongly supports the requirement for ongoing monitoring. The Committee also hopes that inclusion of an educational program in ethics will provide insight to Dr. Shin regarding his behaviour. The penalty ordered for Dr. Shin, therefore, directly addresses the misconduct that brought him to the attention of the Court and to the College, which can be considered both a violation of public trust and unethical behaviour.

OHIP fraud is an issue which has been dealt with by the Committee on multiple occasions. Both counsel for Dr. Shin and counsel for the College provided cases to support their jointly submitted penalty order. These cases demonstrate that the Discipline Committee, in more recent years, has imposed significant penalties to members who violate the public health care system. These penalties have considered parameters such as the length of time over which the activity occurred, the total amount defrauded, an admission of responsibility, and prior misconduct.



The Committee was of the opinion that the proposed penalty reflected both the public's and profession's level of disdain for this activity and fell within the spectrum of penalties imposed in similar cases. As stated in *CPSO v. Bogart (2001)* (CPSO Brief of Authorities, p4), "fraud by unethical physicians not only is an affront to the honest physicians who make up the vast majority of the profession, it is an affront to the trust that society places in physicians". The same principle applies in the case of Dr. Shin: it can easily be restated here. Furthermore, fraud of any sort, regardless of objective parameters such as actual monies involved, length of time, and so forth, is an affront to the trust the public places in physicians, and thus undermines the credibility of the profession.

The Committee recognizes the shame that Dr. Shin has experienced both personally and professionally, and expects that through monitoring over three years and the completion of an educational program in ethics, this behaviour will not occur again. In addition, the Committee agreed this was an appropriate case for costs and ordered Dr. Shin to pay to the College the tariff cost of \$4,460.00, for one day of hearing.

## **ORDER**

Therefore, having stated the findings in paragraph 1 of its written order of April 1, 2015, on the matter of penalty and costs, the Committee ordered and directed that:

2. Dr. Shin appear before the panel to be reprimanded.
3. the Registrar suspend Dr. Shin's certificate of registration for a period of five (5) months, commencing at 12:01 a.m. on May 1, 2015.
4. the Registrar place the following terms, conditions and limitations on Dr. Shin's certificate of registration:
  - (i) Dr. Shin shall participate in and successfully complete an educational program satisfactory to the College in Ethics, with a report or reports to be provided to the College regarding Dr. Shin's progress and compliance. Dr.

Shin shall complete the next available course and shall forthwith thereafter provide proof of completion thereof to the College;

- (ii) Dr. Shin will, at his own expense, retain an ophthalmologist practice monitor approved by the College to review Dr. Shin's Ontario Health Insurance Plan ("OHIP") billings and the corresponding patient charts to ensure his compliance with the Health Insurance Act and who will sign an undertaking in the form attached [to the Order] as Schedule "A" (the "Practice Monitor");
- (iii) The Practice Monitor will review twenty-five (25) of Dr. Shin's patient charts for which he has billed OHIP once every three (3) months for a minimum of three (3) years. If Dr. Shin bills OHIP for fewer than twenty-five (25) patients in any given three-month period, the Practice Monitor will review all of the patient charts for which Dr. Shin billed OHIP. In the event that Dr. Shin has billed OHIP for fewer than 300 patients during the three-year period of monitoring, the monitoring will continue until 300 charts have been reviewed;
- (iv) If a Practice Monitor who has given an undertaking in Schedule "A" to this Order is unable or unwilling to continue to fulfill its terms, Dr. Shin 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;
- (v) If Dr. Shin is unable to obtain a Practice Monitor in accordance with paragraphs 4(ii), 4(iii) and 4(iv) of this Order, he shall cease to submit bills to OHIP until such time as he has done so;
- (vi) Dr. Shin shall consent to the disclosure by his Practice Monitor to the College, and by the College to his Practice Monitor, of all information the Practice Monitor or the College deems necessary or desirable in order to

fulfill the Practice Monitor's undertaking and to monitor Dr. Shin's compliance with this Order;

- (vii) For an indefinite period of time, Dr. Shin shall inform the College of each and every location where he practises including, but not limited to hospitals, clinics, and offices, in any jurisdiction (collectively, his "Practice Location(s)"), within fifteen (15) days of this Order, and shall inform the College of any and all new Practice Locations within 15 days of commencing practice at that location, for the purposes of monitoring his compliance with this Order;
  - (viii) For an indefinite period of time, Dr. Shin shall submit to, and not interfere with, unannounced inspections of his Practice Location(s) and patient records by a College representative for the purposes of monitoring his compliance with this Order;
  - (ix) Dr. Shin shall consent to the monitoring of his OHIP billings and cooperate with inspections of his practice and patient charts by his Practice Monitor and College representatives for the purpose of monitoring and enforcing his compliance with the terms of this Order; and
  - (x) Dr. Shin shall be responsible for any and all costs associated with implementing the terms of this Order.
5. Dr. Shin pay to the College costs in the amount of \$4,460, within thirty (30) days of the date of this Order.

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

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**B E T W E E N:**

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

**- and -**

**DR. JOHN HYUNSIK SHIN**

**PANEL MEMBERS:**

**DR. M. GABEL (CHAIR)**  
**S. BERI**  
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<b>Hearing Date:</b>	April 1, 2015
<b>Decision Date:</b>	April 1, 2015
<b>Reprimand Date:</b>	April 1, 2015
<b>Release of Written Reasons:</b>	May 5, 2015

**PUBLICATION BAN**

**TEXT of PUBLIC REPRIMAND**  
**Delivered April 1, 2015**  
**in the case of the**  
**COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO**  
**and**  
**DR. JOHN HYUNSIK SHIN**

Dr. Shin, physicians are in a position of trust in society. This trust extends to their billing as part of their professional responsibilities. To betray this trust, not only is shocking as to your conduct, but also undermines the work of honest, diligent, fellow-physicians in the public eye; the whole profession and the concept of self-regulation suffers.

We expect good conduct and character of physicians, including areas where their conduct is self-monitored. We are frankly shocked of what we consider to have been shameful behaviour. You strayed from the behaviour and awareness expected of you by your community and by your colleagues. On a larger society basis, money needed for necessary care is not available when it is siphoned off by billings that have no validity.

Hopefully your taking the ethics course will increase your understanding of what is expected of you as an honest physician of high morals and ethics. We expect that your conduct will be such that you will not have reason to appear before this or any other panel in the future.

You may be seated, sir.