

## NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Houshmand, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of the patients or any information that could disclose the identity of the patients 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. Houshmand, 2020 ONCPSD 16

**DISCIPLINE COMMITTEE  
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**  
which is Schedule 2 of the ***Regulated Health Professions Act, 1991***,  
S.O. 1991, c. 18, as amended.

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

**COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO**

**- and -**

**DR. HENRY HOUSHMAND**

**PANEL MEMBERS:**

**DR. MELINDA DAVIE (Chair)  
MR. JOHN LANGS  
DR. STEPHEN HUCKER  
MR. J. PAUL MALETTE, QC  
DR. JOHN RAPIN**

**COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:**

**MS PENNY NG  
MR. PETER WARDLE**

**COUNSEL FOR DR. HOUSHMAND:**

**MS. MEGHAN K. O'BRIEN**

**INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:**

**MR. DAVID ROSENBAUM  
MS. ZOHAR LEVY**

**Hearing Dates: January 6 and 20, 2020**

**Decision Date and Release of Reasons Date: April 14, 2020**

**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 January 6, 2020. On January 6, 2020, the Committee orally advised the parties of its finding that the member committed an act of professional misconduct and that the member is incompetent, with written reasons and an order to follow.

On January 20, 2020, the Discipline Committee heard evidence and submissions on penalty and costs and reserved its decision.

## **THE ALLEGATIONS**

The Notice of Hearing alleged that Dr. Houshmand 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 has failed to maintain the standard of practice of the profession; and
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.

The Notice of Hearing further alleged that Dr. Houshmand is incompetent.

## **RESPONSE TO THE ALLEGATIONS**

Dr. Houshmand 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 in the Notice of Hearing, that Dr. Houshmand 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.

Dr. Houshmand did not contest that he is incompetent.

## **THE FACTS - LIABILITY**

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

### **Part I - Facts**

#### **Dr. Houshmand**

1. Dr. Henry Houshmand is a 65-year-old general practitioner anesthetist. He received his certificate of registration authorizing independent practice from the College of Physicians and Surgeons of Ontario (the "College") on April 1, 2014.
2. At the relevant times, Dr. Houshmand worked at Provis Rudd Endoscopy Services-Ottawa (the "Provis Clinic") and at the Hawkesbury & District General Hospital (the "Hawkesbury Hospital").
3. Dr. Houshmand ceased working at the Provis Clinic on June 8, 2015.
4. Dr. Houshmand ceased working at the Hawkesbury Hospital on February 2, 2018, pending an external review of his practice. Dr. Houshmand's privileges at the Hawkesbury Hospital were not renewed at the end of April 2018. Dr. Houshmand

has advised the College that he did not re-apply for privileges at the Hawkesbury Hospital. Dr. Houshmand does not currently have hospital privileges.

5. Dr. Houshmand has not practised medicine since February 2, 2018.

## **Background**

6. In June of 2015, the College's Out-of-Hospital Premises Inspection Program (the "OHPIP") received information from a staff member at the Provis Clinic who had concerns about Dr. Houshmand's anesthesia practice and conduct.

## **Incompetence / Failure to Maintain the Standard of Practice**

### ***Initial Section 75(1)(a) Investigation and Reports of Dr. Miller***

7. On the basis of the information set forth in paragraph 6 above and other information, including a chart review conducted by the OHPIP that revealed concerns regarding Dr. Houshmand's practice, the College commenced an investigation under section 75(1)(a) of the *Health Professions Procedural Code* (the "Code") to investigate into Dr. Houshmand's anesthesia practice.
8. The College retained the services of Dr. Paul Miller, a general practice anesthetist, to conduct an assessment of Dr. Houshmand's anesthetic practice. Dr. Miller reviewed 20 charts from Dr. Houshmand's out-of-hospital premises-based practice at the Provis Clinic and 25 charts from Dr. Houshmand's hospital-based practice at the Hawkesbury Hospital. Dr. Miller also reviewed the Provis Clinic schedule of patients for June 8, 2015, Dr. Houshmand's OHIP billing for June 8, 2015, and Dr. Miller interviewed Dr. Houshmand.

9. Dr. Miller's report dated October 17, 2016 is attached at Tab 1 to the Agreed Statement of Facts and Admission and Statement of Uncontested Facts and forms part of it; provided, however, Dr. Houshmand does not admit the two paragraphs in the report immediately under the heading "Additional note re: endoscopy clinic". Of the 20 charts reviewed from the Provis Clinic, Dr. Miller did not provide an opinion on the care provided by Dr. Houshmand in two charts. Of the remaining 18 charts, Dr. Miller opined that most elements of the patient's care were at standard in 3 charts, some of the elements of the patient's care fell below standard in 2 charts, most elements of the patient's care fell below standard in 12 charts, and all elements of the patient's care fell below standard in 1 chart. Of the 25 charts reviewed from the Hawkesbury Hospital, Dr. Miller opined that Dr. Houshmand's performance was on balance within the standard of care in 6 charts, that some elements of the patient's care were below standard while other elements met the standard in 8 charts, most elements of the patient's care were below standard in 10 charts, and all elements of the patient's care were at least in part below standard in one chart. Dr. Miller's conclusions were that Dr. Houshmand did not meet the standard of practice of the profession in his care and treatment of 18 out of 18 patients whose charts Dr. Miller reviewed from the Provis Clinic and Dr. Houshmand did not meet the standard of practice of the profession in his care and treatment of 19 out of 25 patients whose charts Dr. Miller reviewed from the Hawkesbury Hospital. As Dr. Miller further opined, Dr. Houshmand demonstrated a lack of knowledge, judgment and/or skill in many of these cases.

10. Based on Dr. Miller's review of patient charts and interview with Dr. Houshmand, Dr. Miller identified the following list of knowledge/performance gaps in Dr. Houshmand's anesthesia practice:

- a) He tended to give the same anesthetic to all patients irrespective of their age and medical comorbidities. For example, he gave the same initial bolus dose of propofol for sedation to all of his endoscopy patients.

- b) He used the same ventilator parameters for normal, obese and asthmatic patients. This could lead to hypoventilation, atelectasis and hypoxia in some and potential barotrauma in others.
- c) He uses abnormally high flow rates (4 liters). While this would not cause harm to patients directly it does increase the cost and environmental impact of the volatile gases used.
- d) He uses unusually high doses of intrathecal opioids in his spinal blocks. This would lead to an increased risk of respiratory depression, pruritus and nausea.
- e) There were a number of instances where patients were hypotensive for prolonged periods of time. Nothing was documented regarding the probable cause(s) and no steps were taken to correct the derangement.
- f) His charted airway assessments were incomplete. In the interview he did not perform significantly better.
- g) He does not typically describe the extent or impact of a medical comorbidity on the patient's functional capacity. He merely documents that it is present. This is fundamental to assessing the likely impact that the illness will have on the patient's ability to tolerate the planned surgery and anesthetic.
- h) He rarely gives an assessment of the patient's functional capacity.
- i) He proceeds with a spinal anesthetic in a patient with a significant infection (Fournier's gangrene) and possible sepsis. This may have been indicated but there needs to be a well detailed discussion of the risks and potential benefits.
- j) In the charts reviewed by Dr. Miller, there was no routine screening for obstructive sleep apnea and there was no detailed management plan for those who are found to have it.
- k) The dose of Toradol (an intravenous NSAID) should be reduced in elderly and those with renal impairment. This was not done in one of his cases.

- l) In several of his cases, a history of GERD was not documented though clearly identified elsewhere in the chart. A history of uncontrolled GERD should prompt a change in the approach to securing the airway.
  - m) Long acting opioids were not routinely used in longer cases where significant pain might be expected.
  - n) Neuromuscular monitoring is checked as being done but actual levels of block are not recorded. The timing and dosing of the reversal agents are not regularly documented. Inadequate neuromuscular block reversal can have significant impacts on post-operative respiratory function, aspiration risk and patient comfort.
  - o) Dr. Houshmand's approach to the difficult airway during the interview was substandard. He did not follow any of the difficult airway algorithms. His documented assessment of the airway was substandard throughout the majority of the cases reviewed.
  - p) Dr. Houshmand's approach to managing massive transfusion during the interview was substandard. He failed to ask for the appropriate blood work in a timely way. He failed to give platelets and either fresh frozen plasma or cryoprecipitate when it was clearly indicated.
11. With respect to his assessment of Dr. Houshmand's anesthetic practice, Dr. Miller concluded, "I believe that there are significant enough lapses in knowledge, judgement and skill so as to put patients at potential risk of harm."
12. Dr. Houshmand provided a response to Dr. Miller's October 17, 2016 report and provided a letter from a family practice anesthesiologist, Dr. Jesse Guscott. Upon reviewing these materials, Dr. Miller provided the College with an addendum to his initial report dated March 28, 2017, which is attached at Tab 2 [to the Agreed Statement of Facts and Admission and Statement of Uncontested Facts] and forms part of the Agreed Statement of Facts and Admission. Following his review of Dr. Houshmand's comments and the comments provided by Dr. Guscott, Dr. Miller did



not change the conclusions reached in his initial report. Rather, Dr. Miller remained concerned that Dr. Houshmand had gaps in his knowledge and performance of anesthesia. Dr. Miller opined, “I believe that there are still significant lapses in knowledge, judgment and skill so as to put patients at potential risk for harm.”

13. In response to further information, Dr. Miller provided a second addendum to his initial report dated June 26, 2017. Dr. Miller did not change the conclusions reached in his initial report or his addendum report. Dr. Miller concluded that the additional information did not dissuade him from his original assessment that Dr. Houshmand did not meet the standard of care.
14. Dr. Houshmand admits that he failed to maintain the standard of practice of the profession in his care and treatment of 37 patients whose charts were reviewed by Dr. Miller.
15. Dr. Houshmand does not contest that his care of 37 patients, whose charts were reviewed by Dr. Miller, displayed a lack of knowledge, skill or judgment of a nature or to an extent that demonstrates that Dr. Houshmand is unfit to continue to practice or that his practice should be restricted.

***Interim Undertaking, Clinical Supervision and Resignation of Clinical Supervisor***

16. In July of 2017, the College gave notice to Dr. Houshmand that the Inquiries, Complaints and Reports Committee of the College (the “ICRC”) would be considering whether to suspend or to impose restrictions on Dr. Houshmand’s certificate of registration pursuant to s. 25.4 of the *Code*.
17. On September 5, 2017, Dr. Houshmand signed an interim undertaking with the College, in lieu of the ICRC making an order under s. 25.4 of the *Code*. The Undertaking required, among other things, that Dr. Houshmand practice in a hospital

setting only, and that he practice under the guidance of a Clinical Supervisor who would conduct monthly chart reviews. A copy of Dr. Houshmand's Undertaking dated September 5, 2017 is attached at Tab 3 to the Agreed Statement of Facts and Admission.

18. Pursuant to the Undertaking, Dr. Richard McCall was retained as Dr. Houshmand's Clinical Supervisor on September 18, 2017. On November 19, 2017, Dr. McCall wrote to the College expressing concerns about Dr. Houshmand's practice. These concerns included Dr. Houshmand's management of an obstetrical patient in October 2017 (the "index case"). Dr. McCall advised that, in light of the situation, the hospital decided to take the unusual action of restricting Dr. Houshmand's hospital privileges to providing anesthesia services for endoscopy sedation only while waiting for further guidance from the hospital Medical Affairs Committee and the College.
19. On February 4, 2018, Dr. McCall resigned as Dr. Houshmand's Clinical Supervisor. In his letter to the College, Dr. McCall wrote, among other things:

*I have been the clinical supervisor for Dr. Houshmand since September 28th, 2017. As per my letter of letter [sic] November 13th, 2017, Dr. Houshmand has been restricted to performing sedation for endoscopy procedures only...*

*I have been spending a lot of time on the clinical supervision of Dr. Houshmand for the last 4 months. It has been one of my most difficult responsibilities. I have been trying to balance the supervisory role of mentoring my friend and colleague Dr. Houshmand while protecting the public as part as my role of Chief of Anesthesia, at the Hawkesbury General Hospital. I have come to the conclusion that Dr. Houshmand's practice falls below the standard of practice of the profession and that*

*his patients may be exposed to risk of harm or injury. I therefore resign as the clinical supervisor of Dr. Henry Houshmand effective immediately.*

20. As a result of Dr. McCall's resignation as Dr. Houshmand's Clinical Supervisor, pursuant to the terms of Dr. Houshmand's September 5, 2017 Undertaking, Dr. Houshmand was required to cease to practice medicine.

***The ICRC's s. 25.4 Interim Order***

21. On April 24, 2018, the ICRC ordered terms, conditions and limitations to be placed on Dr. Houshmand's certificate of registration pursuant to s. 25.4 of the *Code* (the "ICRC's s. 25.4 Interim Order"). A copy of the ICRC's s. 25.4 Interim Order is attached at Tab 4 to the Agreed Statement of Facts and Admission. Pursuant to the ICRC's s. 25.4 Interim Order, among other things:

- a) Dr. Houshmand shall practice only in a hospital setting and shall not practice or seek to practice in any out of hospital premises, independent health facility or health clinic.
- b) Dr. Houshmand shall practice only under high-level supervision of a Clinical Supervisor acceptable to the College. The Clinical Supervisor must be on site and available at all times that Dr. Houshmand is providing care or treatment to patients and must review and approve treatment plans, and observe Dr. Houshmand during the administration of sedation and during intubation of a patient.

22. As of January 6, 2019, Dr. Houshmand has not commenced Clinical Supervision under the terms of the ICRC's s. 25.4 Interim Order. Dr. Houshmand has not been in medical practice since February 2, 2018.

***Second Section 75(1) Investigation and Report of Dr. Knox***

23. Based in part on concerns raised by Dr. McCall, the College commenced a second investigation under section 75(1)(a) of the *Code*, including an additional chart review.

24. The College retained the services of Dr. Andrew Knox, a general practice anesthetist, to conduct an assessment of Dr. Houshmand's anesthetic practice. Dr. Knox reviewed 25 charts from Dr. Houshmand's practice at the Hawkesbury Hospital including the 'index case' and interviewed Dr. Houshmand.

25. Dr. Knox's report received by the College on June 4, 2018 is attached at Tab 5 of the Agreed Statement of Facts and Admission. Dr. Knox concluded that Dr. Houshmand fell below the standard of practice of the profession in his care and treatment of 15 out of 25 patients whose charts Dr. Knox reviewed. Dr. Knox concluded that Dr. Houshmand met the standard of practice in the 'index case'.

26. Based on Dr. Knox's review of patient charts and interview with Dr. Houshmand, Dr. Knox raised the following concerns about Dr. Houshmand's anesthesia practice, and his knowledge, skill, and judgment:

- a) Dr. Houshmand erroneously ordered acetaminophen for a patient in the preoperative period, failing to recognize that another physician had already ordered the same medication, and then erroneously ordered acetaminophen again in the postoperative period;
- b) with respect to a patient who reported dysphoria and then dizziness in the post-operative period, Dr. Houshmand did not consider a diagnosis of acute emergence reaction to ketamine and during questioning was unable to identify an appropriate approach to emergence phenomenon, such as the use of benzodiazepines;

- c) in three cases Dr. Houshmand incorrectly documented the Ramsey Sedation Score for a patient on the anesthetic record. He then was unable to accurately describe the scale during the interview;
- d) in six cases, the time of administration of anesthetic agents was incorrect and had been estimated by Dr. Houshmand after the case had begun;
- e) in four cases, oxygen saturation and/or blood pressure were not monitored for significant periods of time during the intraoperative period;
- f) in an endoscopy case where the patient suffered from asthma, Dr. Houshmand inappropriately gave metoprolol to treat intraoperative hypertension, which could have induced bronchospasm in a patient who was already hypoxic;
- g) in a case where sevoflurane was used as the primary anesthetic agent with a concurrent low dose ketamine infusion for lengthy surgery (reversal of Hartmann's procedure), Dr. Houshmand permitted the end-tidal Sevoflurane percentage concentration to be as low as 0.28%, and at less than 1.0% for a lengthy period of time, corresponding to Minimum Alveolar Concentration ("MAC") of less than 0.5%, placing the patient at risk of intraoperative awareness and subsequent emotional distress, PTSD and life-changing suffering;
- h) in a case involving dental extractions, Sevoflurane end-tidal percentage concentration was allowed to fall to 0.98% in the middle of the case, corresponding to MAC of 0.49%, again placing this patient at risk of intraoperative awareness and subsequent emotional distress.
- i) in an endoscopy case involving a patient with Reynaud's syndrome, Dr. Houshmand failed to take appropriate steps to obtain an alternate monitoring site for oxygen saturation, leading to a failure to respond to the warning signs of respiratory compromise.

27. Dr. Knox concluded that of the 15 cases in which Dr. Houshmand failed to meet the standard of practice, the patients were put at risk of harm by Dr. Houshmand's actions in six cases. These risks were caused by poor or absent intraoperative monitoring, a lack of care, or poor judgment with respect to anesthetic depth. The

errors occurred in areas of expertise that should be considered key competencies for an anesthetist.

28. Dr. Houshmand responded to Dr. Knox's report by letter dated July 20, 2018. In response to this letter, Dr. Knox provided a supplementary report to the College dated August 12, 2018. A copy of Dr. Knox's August 12, 2018 supplementary report is attached at Tab 6 [of the] Agreed Statement of Facts and Admission. Dr. Knox's opinion that Dr. Houshmand failed to meet the standard of practice remained unchanged. Dr. Knox further noted that Dr. Houshmand's pattern of practice repeatedly placed his patients at risk by failing to monitor them appropriately during anesthesia.
29. Dr. Houshmand admits that he failed to maintain the standard of practice of the profession in his care and treatment of 15 patients whose charts were reviewed by Dr. Knox.
30. Dr. Houshmand does not contest that his care of 15 patients, whose charts were reviewed by Dr. Knox, displayed a lack of knowledge, skill or judgment of a nature or to an extent that demonstrates that Dr. Houshmand is unfit to continue to practice or that his practice should be restricted.

***Additional Information***

31. The College also obtained a report prepared for the Hawkesbury Hospital by an external reviewer, Dr. Paul Kenny, a general practice anesthetist who retired from practice in 2017. Dr. Kenny's review raised concerns regarding Dr. Houshmand's standard of practice and his risk of harm to patients. Dr. Kenny's review consisted of the 'index case', as well as 25 additional charts that had been pre-screened for possible problems by the head of the anesthesia department. Dr. Kenny also interviewed Dr. Houshmand. Dr. Kenny's report dated February 7, 2018 is attached at Tab 7 [ of the] Agreed Statement of Facts and Admission.

32. Dr. Kenny opined that Dr. Houshmand did not meet the standard of practice in the 'index case'. With respect to his review of 25 of Dr. Houshmand's pre-screened patient charts from the Hawkesbury Hospital, Dr. Kenny opined, among other things, that:
- a) None of the charts met the standard of care, although some of the deficiencies were minor.
  - b) 8 out of 25 charts demonstrated a significant violation of the standard of care of an anesthetist practising in a community hospital in Canada, although in 3 of those cases, the loss of patient records secondary to a problem with the new electronic medical record had not been ruled out.
  - c) 11 out of 25 charts provided evidence of non-standard drug use, some of which could cause patient harm.
  - d) In 15 out of the 25 cases reviewed by Dr. Kenny, the patient suffered harm or potential harm, but in no case was the harm serious and permanent harm was not foreseen in any of the cases reviewed.
  - e) Dr. Houshmand's standard general anesthetic management did not appear to vary much according to patient age, procedure, comorbidities, or length of procedure. Young healthy patients with short procedures received remarkably similar techniques to those having longer techniques or those with multiple comorbidities.
33. Dr. Kenny also concluded that there was evidence of other clinical practices that did not meet the standard of practice of the profession, including that Dr. Houshmand admitted that he has occasionally, maybe three times in the recent past, reused the same syringe containing a drug, for more than one patient, after changing the infusion line that connects the drug-containing syringe to the main line, which introduces the risk of blood borne infection, and which practice is absolutely contraindicated.

34. Dr. Houshmand admits that he failed to maintain the standard of practice of the profession in his care and treatment of 25 patients whose charts were reviewed by Dr. Kenny. Dr. Houshmand does not admit that he failed to maintain the standard of practice of the profession in his care and treatment of the patient in the 'index case'.
35. Dr. Houshmand does not contest that his care of these 25 patients, whose charts were reviewed by Dr. Kenny, displayed a lack of knowledge, skill or judgment of a nature or to an extent that demonstrates that Dr. Houshmand is unfit to continue to practice or that his practice should be restricted.

## **Part II – Admission and Plea of No Contest**

36. Dr. Houshmand admits the facts specified above, with the exception of those facts set out at paragraphs 15, 30 and 35 and subject to the qualification in paragraph 34. Dr. Houshmand does not contest the facts specified at paragraphs 15, 30 and 35. Dr. Houshmand does not admit that he is incapable of remediating his standard of practice and to the extent that Drs. Miller, Knox and/or Kenny may have opined to the contrary, Dr. Houshmand reserves his right to contest the validity of those opinions regarding his remediability.
37. Based on the facts he has admitted, Dr. Houshmand admits that he committed an act of professional misconduct under paragraph 1(1)2 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* ("O. Reg. 856/93"), in that Dr. Houshmand has failed to maintain the standard of practice of the profession.
38. Dr. Houshmand does not contest that he is incompetent as defined by subsection 52(1) of the *Code*.



## **FINDINGS ON LIABILITY**

The Committee accepted as correct all of the facts set out in the Agreed Statement of Facts and Admission and Statement of Uncontested Facts. Having regard to these facts, the Committee accepted Dr. Houshmand'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.

Dr. Houshmand did not contest that he is incompetent under subsection 52(1) of the Code. Rule 3.02 of the Rules of Procedure of the Discipline Committee regarding a plea of no contest states 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 College proceedings only;
- b) that the Discipline Committee can accept that those facts constitute professional misconduct or incompetence or both for the purposes of College proceedings only; and
- c) that the Discipline Committee can dispose of the issue of what finding ought to be made without hearing evidence.

In light of Dr. Houshmand's response to the allegation of incompetence and the facts set out above, the Committee finds that Dr. Houshmand is incompetent.

## **EVIDENCE ON PENALTY**

The Committee considered the evidence submitted by the parties on penalty, including the testimony of Dr. Houshmand, summarized below.

Dr. Houshmand testified at the penalty phase of the hearing. He described his background, including his medical education in Iran, followed by military service in that country. He escaped the regime there in 1984 and went first to Germany, then Spain, before arriving to Canada in 1987. He applied for a residency position but was unable to find a vacancy in Canada, so obtained one in the United States (US). He passed the medical licensing examinations in the US in 1990/91 and was offered a residency in internal medicine in Ohio in 1993. He remained there for three years but failed to request a renewal of his visa, and had to return to Canada. It was four months before he was able to return to the US, during which time he lost his former position and his program director recommended that he seek a place in New York beginning in 1998.

After this, he stated that he returned to Canada without completing his board examinations. He was offered an appointment in New Brunswick, starting in 2000, and worked there for eight years. He reported that he obtained a specialty license in 2005/6 and is still licensed in that province. The closure of two large factories resulted in a large population reduction in the area in which he was working. He was unable to find alternative work, so decided to leave that province and obtained a position as an “instructor” at a New York hospital. He continued to seek work in New Brunswick and returned there upon finding a position. He said he worked happily there until 2013. At that point, the hospital where he worked was “washed out by floods.”

He applied for employment in Ontario and was appointed to Hawkesbury General Hospital. He also did work at Provis Clinic for gastrointestinal disorders and did locums in hospitals in Kapuskasing and Sault Ste. Marie.

In his testimony Dr. Houshmand acknowledged that he had been the subject of three expert evaluations and reports which he said he had reviewed many times and found “very fair”. He said that he had thought he had been following best practices, but admitted that it “wasn’t updated...and I saw they were right...I put patients at risk...I feel awful...bad.” He also conceded that he initially disputed some findings but no longer did so admitting frankly that he was wrong. He said Dr. McCall’s supervision of him was not successful as they were colleagues and friends and that Dr. McCall was under a lot of time pressure.

Dr. Houshmand indicated that the period of supervision conducted by Dr. McCall was in 2017 at “the worst time in my life”. During that year, a family member developed serious neurological symptoms that were eventually diagnosed in 2018. She required surgery which involved insertion of a ventriculo-peritoneal shunt. This intervention was then followed by her gradual improvement.

In April 2018, the College restricted Dr. Houshmand’s license to only permit him to practice with high-level clinical supervision, but he has found this difficult to arrange. He testified that he has a possible opening at Sault Ste. Marie Hospital, a tertiary care facility which takes anaesthesia residents. He is known at that hospital from having previously completed locum placements there. He has always been on their priority list for doing locums. He said the hospital has apartments for staff and, if a position for him is confirmed there, he would relocate there once he obtained hospital privileges and approval of the College and the hospital’s Medical Advisory Committee. His plan is to support himself as a surgical assistant while practicing anaesthesia under high-level clinical supervision. He would continue under supervision “for as long as it takes”.

Dr. Houshmand was asked about his problem with record keeping. He acknowledged this long-standing issue and indicated that he completed an “intense” course at University of Toronto in 2018. He said it showed him, “where I was deficient...I was totally in a different zone from where I had to be.” In response to questions, Dr.

Houshmand indicated that his post-course knowledge was assessed by completing the questionnaires he was sent and the response returned. He was told he had passed the test with full marks and added that he “wished I’d had the course before.”

He indicated that he “never stopped reading about medicine” except during the period when his family member was ill. He said that he was so distraught about her situation that he couldn’t read or concentrate.

Counsel for the College questioned Dr. Houshmand further about his background and training. Dr. Houshmand provided several copies of certificates regarding CME courses, some of which, it was pointed out, were only peripherally related to anaesthesiology. Dr. Houshmand indicated that nevertheless he thought they were relevant. He said he was unable to go for any in-person courses for financial reasons. When Dr. Houshmand was cross-examined about his prior failure to fulfill CME requirements, as identified in one of the expert reports, he admitted that he had not participated in CME programs during the time his family member was sick, but had done so before that.

In cross examination, Dr. Houshmand was asked if he was familiar with the guidelines of the Canadian Anaesthetists’ Society (CAS). Dr. Houshmand indicated that he was, and agreed that they are intended to inform standards for all Canadian anaesthetists. He also agreed the experts who interviewed him noted that he had deficiencies in the requisite skills. Dr. Houshmand testified that “It is very true...100% agree.” He further agreed that the expert investigations reported concerns about his practice that predated his family member’s illness.

Dr. Houshmand maintained on cross-examination that he had insight into his shortcomings: “I know my deficiencies...I want to remedy these issues...I want to upgrade myself.” He indicated that he did not disagree with comments made by Dr. Knox, but added that “I didn’t understand what he wants. I agree with what he said...just

saying what is my thought...whatever Dr. Knox says is fair." He further remarked that he found that expert's report "enlightening."

Dr. Houshmand insisted that public safety is and always has been his priority. He said of his patients: "I didn't provide them with the best service...I would like to provide best ...[and] apologize...I would like another chance to practice safe medicine."

## **SUBMISSIONS ON PENALTY**

### **Submissions of the College**

Counsel for the College seeks the following penalty:

- a. Revocation of Dr. Houshmand's certificate of registration;
- b. A reprimand; and
- c. Costs in the amount of \$41,480, calculated at the tariff rate for four hearing days.

The College submitted that revocation is the appropriate penalty due to Dr. Houshmand's very serious and repeated acts of professional misconduct and incompetence in his anaesthetic care of patients. Only revocation adequately protects the public, maintains confidence of the public in the medical profession, and provides general and specific deterrence.

The College stated Dr. Houshmand is not suitable for remediation and, even if he were suitable, remediation would not meet the penalty principles of protecting the public and maintaining the reputation and integrity of the profession and public confidence in the College's ability to regulate the profession in the public interest.

The College submitted that revocation is consistent with prior decisions of the College and presented several cases for the Committee's consideration. The College submitted that these prior cases support the conclusion that revocation is the appropriate penalty in this case. The Committee considered the cases submitted by the College and by the member, as discussed in more detail below in the section regarding Reasons for Penalty.

### **Submissions of Dr. Houshmand**

Dr. Houshmand agreed that a reprimand was appropriate but submitted that in lieu of revocation, terms conditions and limitations should be ordered to be imposed on Dr. Houshmand's license. Instead of four days of costs, Dr. Houshmand submitted that only partial costs should be awarded, for two days.

Dr. Houshmand submitted that no suspension is required in order to achieve the aims of the penalty principles. The professional misconduct at issue relates solely to clinical standards and competence, with no additional disgraceful, dishonourable or unprofessional conduct that would usually merit a period of suspension. Dr. Houshmand has already effectively served an almost two-year suspension while he was searching for a high-level clinical supervision program and it would be overly punitive and serve to delay remediation if the Committee imposed a suspension.

Dr. Houshmand submitted that the appropriate penalty would be an order limiting his ability to practice such that he had clinical supervision for a minimum period of 12 months, including three months at the degree of high-level clinical supervision contemplated in the current restriction on Dr. Houshmand's license.

That level of supervision could be reduced slightly for a further minimum of three months if the reduction was recommended by the supervisors and agreed to by the College. The supervision requirements during that second stage would include:

- a. preoperative review of all patients classed [American Society of Anesthesiologists] ASA-3 or higher;
- b. no intubation without another anaesthetist/anaesthesiologist present on the premises and available to assist;
- c. weekly review of all patient charts;
- d. biweekly in-person meeting;
- e. monthly reports by the supervisor(s) to the College.

This could be followed by a potential reduction in clinical supervision for a further minimum six months. The supervision requirements in this third period would include:

- a. monthly chart review;
- b. monthly meetings;
- c. monthly reports by the supervisor(s) to the College

Dr. Houshmand submitted that he should be permitted to request a reassessment by the College after the minimum period of 12 months of supervision, after which the College could permit him to practice with no restriction other than maintaining only a hospital-based practice.

In order to allow Dr. Houshmand the opportunity to earn some income during the high-level clinical supervision, his proposal also includes the possibility of working as a surgical assistant after the first month of supervision, providing it is recommended by his clinical supervisor and by the Chief of Surgery, and approved by the College. After three months of surgical assisting at his supervising hospital, his privileges could be extended to surgical assisting in hospitals outside the supervising hospital, provided the Chief of Surgery recommends this and the College approves.

Dr. Houshmand submitted that these proposed terms, limitations and conditions will ensure that the public is protected, as he will not be permitted to move from high-level clinical supervision, where he would be acting essentially as a resident, until both his clinical supervisors and the College feel it is safe and appropriate for him to do so.

Even if the period of high-level supervision ends, Dr. Houshmand would still be subject to close supervision for a period thereafter, with the potential to be under low-level clinical supervision indefinitely.

Dr. Houshmand accepted that it would be appropriate for him to pay some costs associated with the hearing but submitted that it would be appropriate to take his financial circumstances into account when awarding costs. He has not worked for nearly two years and will potentially incur significant expenses associated with the remediation program proposed.

Dr. Houshmand submitted that the proposed penalty upholds the principles governing penalty. Importantly, in a case such as this, which involves only clinical standards and competence issues, the proposed restriction involving high-level clinical supervision would ensure that the public is protected, while also permitting remediation of the member. The proposed penalty, which includes a reprimand, will further uphold the reputation of the profession. The broad range of rehabilitative terms, conditions and limitations being proposed will protect the public and maintain its confidence in the profession.

Dr. Houshmand also provided certain cases which he submitted were analogous to the present case and which showed that the penalty proposed by Dr. Houshmand is within the range of prior penalties in similar cases. There is one distinguishing factor, which is that in those other cases, there were additional findings of disgraceful, dishonourable or unprofessional conduct meriting a suspension, which is not the case here. Those cases



and the Committee's assessment are discussed below in the section on Reasons for Penalty.

## **PENALTY AND REASONS FOR PENALTY**

The Committee carefully considered the submissions of both the College and Dr. Houshmand, and analysed them using the framework of the penalty principles referenced by both counsel. The penalty principles include: protection of the public, maintenance of the integrity of the profession, maintenance of public confidence in the College's ability to regulate the profession in the public interest, general deterrence of the membership of the profession, specific deterrence of the member, and, where appropriate, the potential for the member to be rehabilitated.

The parties agreed that the penalty should include a reprimand, but disagreed as to whether the Committee should order revocation of, suspension of, or terms, conditions and limitations on the member's license. The parties further disagreed about the quantum of costs which Dr. Houshmand should be ordered to pay.

### *Prior Jurisprudence*

In reaching a decision on the appropriate penalty, the Committee is aware of the general principle that like cases should be treated alike but each case must be determined based on its own facts. Of the cases presented to the Committee by the parties, the Committee found the following cases and principles to be helpful:

- In decisions where the Committee ordered revocation, there was often evidence showing that the doctor lacked insight, and there was no evidence or unconvincing evidence of potential for remediation. The Committee considered the degree to which the member failed to meet the standard of practice. Further, the Committee always carefully considers public safety and potential risk to

patients (even if no actual harm to patients occurred). See, for example, *CPSO v. Wales* (2017) *CPSO v. Kamermans* (2017), and *CPSO v. Shum* (2013), *CPSO v. Bhardwaj* (2006), *CPSO v. Bacon* (2001), *CPSO v. Wojcicki* (2016). This Committee considered these same principles in reaching its decision, however, did not find these cases to be sufficiently factually similar to the case at hand.

- In *CPSO v. Liberman* (2012), the Committee considered the same factors including the doctor's judgment, apparent insight or lack thereof, and his capacity for remediation including his lack of participation in ongoing education. The Committee also considered that his actions in trying to cover up the events in question indicated a lack of integrity. There was no such cover-up here. In that case, the doctor made submissions that it would be difficult to resume practice if he was suspended for a year. The Committee held that if there is potential risk to the public, that consideration outweighs the risk to the member that he may not be able to rebuild his career. This Committee considered that the *Liberman* decision was distinguishable in that there were no concerns about Dr. Houshmand's integrity, but still considered the principle that the risk to the public is a more important consideration on penalty than barriers to a member's ability to rebuild a career.
- In *CPSO v. DePass* (2010), the Committee imposed a term, condition or limitation on the member's certificate of registration restricting his practice to being a surgical assistant in a hospital setting, amongst other restrictions. It did not accept his plan for remediation to upgrade his skills and resume practice as a surgeon, as there was expert evidence that the proposed remediation plan would not address Dr. DePass's problems, which extended beyond his lack of surgical skill and judgment. As well, the Committee gave weight to the fact that no academic center would agree to supervise his remediation and the community-based hospital where surgeons were willing to supervise him may not have sufficiently rigorous standards of assessment or experienced supervisors. This

Committee considered the absence of any similar expert evidence in Dr. Houshmand's case and that the proposed remediation plan had sufficiently rigorous standards with supervision at a tertiary care / academic center, distinguished the present case from that of Dr. DePass.

- *CPSO v. Irwin* (2018) was provided by Dr. Houshmand. In that case, the member admitted he failed to maintain the standard of practice and was incompetent, and had a prior history of complaints before the ICRC, which is not the case here. A College assessor who directly observed Dr. Irwin noted several deficiencies in his skills. Still, the Committee did not order the revocation of Dr. Irwin's license and instead imposed terms, conditions and limitations on Dr. Irwin's certificate of registration, amongst other penalties. The limitations proposed by Dr. Houshmand are similar to those in Dr. Irwin's case, notwithstanding the lack of a prior history here. The Committee considers the *Irwin* case to support the imposition of restrictions on Dr. Houshmand's license here, because of the stringent restrictions without any prior complaints.
- This Committee also considered the case of *CPSO v. Straka* (2016), also presented by Dr. Houshmand. In that case, the anaesthesiologist admitted to failing to maintain the standard of practice. Incompetence allegations were withdrawn. Certain of the problems with Dr. Straka's practice were similar to the problems identified with Dr. Houshmand's practice, including lack of proper documentation, and incorrect treatment of patients. The penalty imposed on Dr. Straka included a reprimand; clinical supervision for at least six months involving monthly chart reviews and meetings, as well as preoperative review of certain cases and ensuring prior to intubation that another anaesthesiologist is on premises and available to assist; after four months of clinical supervision, the possibility of doing call, with more high-level supervision required in the circumstances; courses including simulator-based education in anaesthesia; and a reassessment, following which the College may in its discretion, permit the

member to practice without restriction. Costs were ordered in the amount of \$10,000. The Committee considered this case to be similar and those restrictions to be within the same range as the restrictions proposed here.

### *Reasons on Penalty*

Protection of the public is a key penalty principle. In this case, considering prior cases and the specific facts found by the Committee with respect to both liability and penalty, the Committee finds that revocation or suspension is not necessary to protect the public here. The goals underlying the penalty principles can be achieved through a period of intensive remediation, largely as proposed by Dr. Houshmand but for a longer time.

### **Mitigating and Aggravating Factors**

The Committee considered the aggravating and mitigating factors in this matter.

### **Mitigating factors**

The Committee recognized that this was Dr. Houshmand's first appearance before the Discipline Committee, though noted that he has only been licensed in Ontario since 2014. By accepting responsibility for his misconduct, he saved the time and expense of a contested hearing and the need for witnesses to testify. Moreover, he fully cooperated with hospital and College investigations.

The Committee also considered that Dr. Houshmand showed remorse and wished to improve. He stated clearly in his testimony that he had absorbed the criticisms in the reports of Drs. Miller, Knox and Kenney and agreed with their conclusions. He told the Committee that he felt "awful" that he fell short of the standard of practice and expressed apology to the patients concerned. As well, he expressed awareness of his

shortcomings and asked for an opportunity to update himself and remedy his deficiencies. He had begun this by participating in the University of Toronto medical record-keeping course in which he obtained full marks.

### **Aggravating factors**

The nature of the misconduct - the degree and extent of Dr. Houshmand's deficiencies and failure to meet the standard of practice - is an aggravating factor. These problems were identified by all three of the experts who evaluated his practice, and by Dr. McCall, his previous Clinical Supervisor. The Committee notes that Dr. Houshmand was unaware of his shortcomings until they were pointed out to him by the assessing experts, and cross-examination revealed that his CME participation to date did not seem to address those shortcomings, other than the medical records course. For example, he seemed unfamiliar in practice with Canadian guidelines for anaesthetists. For that reason, education will be a critical component of Dr. Houshmand's remediation.

### **Remediability**

Dr. Houshmand's circumstances have been somewhat unsettled and he did not obtain his certificate of registration in Ontario until April 1, 2014. He discontinued practice on April 24, 2018, when the ICRC ordered terms, conditions and limitations be placed on Dr. Houshmand's certificate of registration, including that he practice only under high level supervision of a Clinical Supervisor acceptable to the College, and as of January 6, 2019, he had not commenced Clinical Supervision. To date, the Committee finds that Dr. Houshmand has not had a meaningful opportunity for remediation.

The parties differed in their views on Dr. Houshmand's potential for remediation. The Committee gave weight to the expert opinions in this regard. The Committee noted that the experts were of the view that certainly some aspects of Dr. Houshmand's practice were remediable and that he was capable of improvement. For example, Dr. Kenney did

note some improvement in charting, a longstanding problem. This observation preceded Dr. Houshmand's participation in the University of Toronto course. His success with that course also supports the conclusion that Dr. Houshmand is remediable.

As well, the Committee notes that, despite knowing Dr. Houshmand's background with the College, the Sault Ste. Marie Hospital tentatively accepted Dr. Houshmand for supervision and to provide care at its facility. The Committee placed significant weight on the willingness of the physicians at Sault Ste. Marie to provide direct and meaningful supervision to Dr. Houshmand. The doctors there had previously known Dr. Houshmand through locums he had completed there, and would not have agreed to supervise him if there had been no likelihood of it being beneficial. Further, the Committee has found that Dr. Houshmand has shown remorse and is aware of the work he needs to do to gain competency, as in his testimony he acknowledged that he has serious deficiencies and accepted that he would have to take the role of a resident if the proposal is accepted.

The Committee does not accept the College's submissions that the failure of the clinical supervision by Dr. McCall means that Dr. Houshmand should not be given a further opportunity to remediate his practice. That period of supervision was only four months of low level supervision and was not the extensive remediation that is clearly required. Moreover, Dr. McCall acknowledged that his role as a friend and colleague of Dr. Houshmand made his supervisory task very difficult. The Committee finds that the College has not proved on the balance of probabilities that Dr. Houshmand is not remediable.

## **CONCLUSION**

The Committee concludes that the goals underlying the penalty principles, including public protection, specific deterrence, and remediation, are best served by the penalty proposal submitted by Dr. Houshmand, which provides for a highly structured and supervised placement in a tertiary care facility. In the Committee's view, however, to ensure public protection, the minimum duration of the first period of high-level supervision must be six months, rather than the three months which Dr. Houshmand proposed. Further, the Committee will require Dr. Houshmand's clinical supervisors to sign undertakings with the College to ensure that the supervision is being conducted in accordance with the terms, conditions and limitations on Dr. Houshmand's license. During those six months and for as long as necessary, the high-level supervision by qualified physicians will adequately protect the public from harm.

The reprimand serves to preserve the reputation and integrity of the profession, and the College's ability to regulate the profession in the public interest. It also denounces the wrongful conduct and deters the member from future misconduct, and acts as a general deterrent to members of the profession as a whole.

## **Costs**

Under s. 53.1 of the *Code*, the Committee may order a member to pay the College's costs in an appropriate case. The Committee finds this to be an appropriate case for the award of two days of costs at the tariff rate. In reaching its conclusion on costs, the Committee noted that the parties reached a resolution on liability and efficiently addressed the issue of penalty, such that only two hearing days were ultimately necessary. Further, the Committee noted that Dr. Houshmand has not worked for the past two years while dealing with an ill spouse. In the circumstances, the Committee concludes that an award of costs as set out herein is just and reasonable.

**ORDER**

Therefore, the Committee ordered and directed on the matter of penalty and costs:

1. Dr. Houshmand shall appear before the Committee to be reprimanded;
2. The Registrar shall place the terms and conditions and limitations on Dr. Houshmand's certificate of registration as are set out in Schedule 1 hereto.
3. Dr. Houshmand pay to the College costs of two days of hearing, in the amount of \$20,740 within 30 days of the date of this Order or as agreed by Dr. Houshmand and the College.



## **Schedule 1**

In accordance with paragraph (2) of the Committee's Order, above, the Registrar shall place the following terms and conditions and limitations on Dr. Houshmand's certificate of registration:

### **Practice Restriction**

1. Dr. Houshmand shall practice only in a hospital setting and shall not practice or seek to practice in any out of hospital premises, independent health facility or health clinic.

### **Clinical Supervision**

2. Subject to paragraphs 6, 9 and 10, Dr. Houshmand shall practice under the guidance of a Clinical Supervisor(s) acceptable to the College. Within ten (10) days of this Order, Dr. Houshmand shall have a College-approved clinical supervisor (the "Clinical Supervisor") sign an Undertaking in the form attached hereto as **Schedule 2**.
3. For a minimum of six (6) months, Dr. Houshmand may practice only under the high-level supervision of a Clinical Supervisor(s) acceptable to the College, at his own expense. This will require that the Clinical Supervisor(s) be on site and available at all times that Dr. Houshmand is providing care or treatment to patients. The Clinical Supervisor's responsibilities will include the following:
  - a. For each patient for whom Dr. Houshmand intends to provide or has provided general anesthesia, regional anesthesia or sedation, the Clinical Supervisor will:
    - i) Review and approve of the pre-operative assessment and the treatment plan prior to the anesthesia or sedation being provided. The anesthesia or sedation is not to be provided by Dr. Houshmand until approval of the Clinical Supervisor has been obtained;
    - ii) In the case of sedation, observe Dr. Houshmand during the administration of sedation and be immediately available during the subsequent monitoring of the patient throughout the procedure until the patient has fully returned to consciousness;

- iii) In the case of general anesthesia, observe Dr. Houshmand during the administration of sedation and the insertion of an airway beyond the oropharynx ("intubation");
  - iv) After the administration of sedation and subsequent intubation, and until the patient has been extubated and has fully returned to consciousness, be immediately available to provide assistance if required;
  - v) In the case of major regional anesthesia, such as spinals and epidurals, observe Dr. Houshmand during the performance of the procedure and be immediately available during the subsequent monitoring of the patient throughout the procedure;
  - vi) Review and approve all of Dr. Houshmand's perioperative documentation prior to the patient leaving the recovery room; and
  - vii) Report to the College once every two weeks for the first month, following which if the supervisor recommends and the College approves, the reporting can be reduced to once a month.
4. After a minimum of six (6) months of high-level supervision described in paragraph 3, the level of clinical supervision of Dr. Houshmand's practice may be reduced as follows, upon the recommendation of Dr. Houshmand's Clinical Supervisor(s) and, in its discretion, approval by the College:
- a) Dr. Houshmand shall pre-operatively review with the Clinical Supervisor his plan for management of any patient who is a Class ASA 3 or higher anesthetic risk;
  - b) Dr. Houshmand shall ensure that prior to performing intubation that another anesthetist or anesthesiologist is present on the premises and available to assist him if necessary;
  - c) Dr. Houshmand shall facilitate review by the Clinical Supervisor on a weekly basis of all charts of patients he has treated;
  - d) Dr. Houshmand shall meet with the Clinical Supervisor in person on a bi-weekly basis;

- e) The Clinical Supervisor shall report to the College every month, or more frequently if there is a risk of harm or other concerns.
5. After a minimum of three (3) months of clinical supervision as described in paragraph 4, the level of supervision of Dr. Houshmand's practice may be further reduced as follows, upon the recommendation of Dr. Houshmand's Clinical Supervisor(s) and, in its discretion, approval by the College:
- a) Dr. Houshmand shall facilitate review by the Clinical Supervisor of 10 charts on a monthly basis;
  - b) Dr. Houshmand shall meet with the Clinical Supervisor in person on a monthly basis;
  - c) The Clinical Supervisor shall report to the College every month, or more frequently if there is a risk of harm or other concerns.
6. After a minimum of six (6) months of clinical supervision as described in paragraph 5, Dr. Houshmand may request a reassessment of his hospital-based anesthesia practice (the "Reassessment") by a College-appointed assessor (the "Assessor"). The Reassessment may include a review of Dr. Houshmand's patient charts, direct observations, interviews with staff and/or patients, and any other tools deemed necessary by the College. The results of the Reassessment shall be reported to the College after which, should it be recommended by the Assessor, the College may in its discretion permit Dr. Houshmand to practice with no restriction other than that in paragraph 1.
7. If all Clinical Supervisors who has given an undertaking to the College are unable or unwilling to continue to fulfil its terms, Dr. Houshmand shall 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.
8. If Dr. Houshmand is unable to obtain a Clinical Supervisor(s) in accordance with paragraphs 2-5 of this Order, he shall cease practising medicine immediately until such time as he has done so, and the fact that he has done so will constitute a term, condition or limitation on his certificate of registration until that time.

### **Surgical Assisting**

9. After a minimum of one (1) month of high-level clinical supervision as described in paragraph 3, should it be recommended by both Dr. Houshmand's Clinical Supervisor(s) and the Chief of Surgery at the Hospital where Dr. Houshmand is being supervised, the College may in its discretion permit Dr. Houshmand to practice with no restriction as a surgical assistant at the hospital where Dr. Houshmand is being supervised.
10. After a minimum of three (3) months of surgical assisting as described in paragraph 9, should it be recommended by both Dr. Houshmand's Clinical Supervisor(s) and the Chief of Surgery at the Hospital where Dr. Houshmand is being supervised, the College may in its discretion permit Dr. Houshmand to practice with no restriction as a surgical assistant in any hospital setting.

### **Notification of Practice Locations**

11. Dr. Houshmand shall, within five (5) days of the date of this Order, provide the College with the addresses of any locations where he practises medicine ("Practice Location(s)"), and, if he commences practice at a new location, shall provide the College with its address within five (5) days.

### **Monitoring**

12. Dr. Houshmand shall consent to the College providing the following information to all Clinical Supervisors:
  - a) Any information the College had that led to the imposition of this Order;
  - b) Any information arising from any investigation into or assessment of Dr. Houshmand's practice; and
  - c) Any information arising from the monitoring of Dr. Houshmand's compliance with this Order.

13. Dr. Houshmand shall consent to the College providing all Chief(s) of Staff with any information the College has that led to the imposition of this Order and/or any information arising from the monitoring of his compliance with this Order;
14. Dr. Houshmand shall consent to all Clinical Supervisor(s) and Chief(s) of Staff disclosing to the College, and to one another, any information:
  - a. Relevant to this Order;
  - b. Relevant to the provisions of the Clinical Supervisor's Undertaking to the College; and/or
  - c. Relevant for the purposes of monitoring Dr. Houshmand's compliance with this Order.
15. Dr. Houshmand shall submit to, and not interfere with, unannounced:
  - a. inspections of his Practice Location(s) and to any other activity the
  - b. College deems necessary in order to monitor his compliance with the terms of this Order.
16. Dr. Houshmand shall consent to the College making appropriate enquiries of the Ontario Health Insurance Plan and/or any person who or institution that may have relevant information, in order for the College to monitor his compliance with the terms of this Order.
17. Dr. Houshmand shall be responsible for any and all costs associated with implementing the terms of this Order.

## SCHEDULE 2

### UNDERTAKING OF DR. \_\_\_\_\_ TO THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

1. I am a practising member of the College of Physicians and Surgeons of Ontario (the "College"), certificate number \_\_\_\_\_ .
2. I have read the Decision and Reasons for Decision of the Discipline Committee of the College dated April 14, 2020 regarding Dr. Houshmand. I understand the concerns regarding Dr. Houshmand's standard of practice. I will review as soon as practicable any additional materials provided to me by the College, including the College's Guidelines for College-Directed Supervision.
3. I agree that, commencing on the date I sign this Undertaking, I shall act as Clinical Supervisor for Dr. Houshmand's practice for a minimum period of 15 months. My obligations as Clinical Supervisor shall include, at a minimum:

#### Clinical Supervision

4. For a minimum of six (6) months, I will provide high level supervision to Dr. Houshmand, as set out in paragraph 3 of the Order incorporated in the Discipline Committee's decision dated April 14, 2020 ("the April 2020 Order"). During this period, I am required to be on site and available at all times that Dr. Houshmand is providing care or treatment to patients. My responsibilities during this period will include the following:
  - a. For each patient for whom Dr. Houshmand intends to provide or has provided general anesthesia, regional anesthesia or sedation, I will:
    - i. Review and approve of the pre-operative assessment and the treatment plan prior to the anesthesia or sedation being provided. The anesthesia or sedation is not to be provided by Dr. Houshmand until he has obtained my approval;
    - ii. In the case of sedation, I will observe Dr. Houshmand during the administration of sedation and be immediately available during the subsequent monitoring of the patient throughout

the procedure, until the patient has fully returned to consciousness;

- iii. In the case of general anesthesia, I will observe Dr. Houshmand during the administration of sedation and the insertion of an airway beyond the oropharynx ("intubation");
- iv. After the administration of sedation and subsequent intubation, and until the patient has been extubated and has fully returned to consciousness, I will be immediately available to provide assistance if required;
- v. In the case of major regional anesthesia, such as spinals and epidurals, I will observe Dr. Houshmand during the performance of the procedure and be immediately available during the subsequent monitoring of the patient throughout the procedure;
- vi. I will review and approve all of Dr. Houshmand's perioperative documentation prior to the patient leaving the recovery room; and
- vii. I will report to the College once every two weeks for the first month, following which, if I recommend and the College approves, I can reduce my reporting to once a month.

5. After a minimum of six (6) months of high-level supervision described in paragraph 3 of the April 2020 Order (and in paragraph 4, above, of this Undertaking), the level of clinical supervision of Dr. Houshmand's practice may be reduced as follows, upon my recommendation and, in its discretion, approval by the College:

- a. I shall pre-operatively review with Dr. Houshmand his plan for management of any patient who is a Class ASA 3 or higher anesthetic risk;
- b. Dr. Houshmand shall ensure that prior to performing intubation that another anesthetist or anesthesiologist is present on the premises and available to assist him if necessary;

c. Dr. Houshmand shall facilitate review by myself, on a weekly basis, of all charts of patients he has treated;

d. Dr. Houshmand shall meet with me in person on a bi-weekly basis;

d. I shall report to the College every month, or more frequently if there is a risk of harm or other concerns.

6. After a minimum of three (3) months of clinical supervision as described in paragraph 4 of the April 2020 Order (and paragraph 5, above, of this Undertaking), for a further period of a minimum of six (6) months, the level of supervision of Dr. Houshmand's practice may be further reduced as follows, upon my recommendation and, in its discretion, approval by the College:

a. Dr. Houshmand shall facilitate review by myself of 10 charts on a monthly basis;

b. Dr. Houshmand shall meet with me in person on a monthly basis;

c. I shall report to the College every month, or more frequently if there is a risk of harm or other concerns.

7. Throughout the period of Clinical supervision, my specific duties will include:

- i. Discussing with Dr. Houshmand the charts I have reviewed and the care I have directly observed as well as any other concerns;
- ii. Making recommendations to Dr. Houshmand, including but not limited to recommendations for practice improvements, practice management, and/or continuing education;
- iii. Following up on any recommendations that I have made to Dr. Houshmand to determine his compliance with the same;
- iv. Any other activities, such as reviewing other documents or conducting interviews with staff or colleagues, that I deem necessary to Dr. Houshmand's clinical supervision;
- v. Submitting written reports to the College at time intervals set out above, in this Undertaking. Such reports must be in reasonable detail and contain all information I believe might assist the College in evaluating Dr. Houshmand's standard of practice, including but not limited to a list of all charts reviewed and care observed with patient



identifiers, review of charts and care discussed with Dr. Houshmand and concerns identified, a summary of the topics that we have reviewed and Dr. Houshmand's success in implementing changes into his practice; and

- vi. Notifying the College **immediately** if I am concerned that Dr. Houshmand's practice may fall below the standard of practice of the profession, and/or that his patients may be exposed to risk of harm or injury.
8. I acknowledge that Dr. Houshmand has consented to such sharing of information among myself, any other Clinical Supervisors, Assessors, and the College as any of us deem necessary or desirable in order to fulfill our obligations and in order to monitor his compliance with the April 2020 Order.
  9. I acknowledge that all information that I become aware of in the course of my duties as Dr. Houshmand's Clinical Supervisor is confidential information and that I am prohibited, both during and after the period of Clinical Supervision, from communicating it in any form and by any means except in the limited circumstances set out in sections 36(1)(a) through 36(1)(j) of the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18 (the "RHPA").
  10. I undertake to notify the College and Dr. Houshmand in advance wherever possible, but in any case immediately following, any communication of information under section 36(1) of the RHPA.
  11. I agree to immediately inform the College in writing if Dr. Houshmand and I have terminated our Clinical Supervision relationship, or if I otherwise cannot fulfill the provisions of my undertaking.

Dated at \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Dr.

\_\_\_\_\_  
Witness signature

Print name: \_\_\_\_\_ Print name: \_\_\_\_\_



**TEXT of PUBLIC REPRIMAND**  
**Delivered August 27, 2020**  
**in the case of the**  
**COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO**  
**and**  
**DR. HENRY HOUSHMAND**

Dr. Houshmand:

The Committee appreciates the very circuitous career path that led you to finally obtain the great privilege of practicing anaesthesia in Ontario. All physicians have their own unique life circumstances; it is their responsibility alone, regardless of those circumstances, always to put patient safety first and foremost.

Each patient, no matter how routine their procedure may seem, must be treated individually. We were appalled that you failed to meet the standard of care in this regard, using the same type of anaesthesia for most cases, and shockingly you even used the same syringe of medication for different patients' anaesthesia infusions. As well, the other findings of your shortcomings from the three separate reviews of your practise are disheartening. We are very disappointed that you hadn't kept up your continuing medical education over your practise. Had you done so, you might have avoided some of your failings. We found you to have failed to meet the standard of practise and to be incompetent.

We have ordered a very intensive prolonged period of supervision for you, should you return to practise. If you should satisfy the terms of supervision there will be a reassessment of your practise. We accept your words that you know you were wrong and with our order have given you a chance to remediate. We trust you will take advantage of this very generous opportunity.

*This is not an official transcript*

We are confident that the public will be protected from risk during your period of supervision under our order and that the public confidence in our regulation of the profession will be maintained, but Dr. Houshmand, success lies with YOU.

You must do your utmost to meet the standard of practise of anaesthesia that Ontarians deserve. Substandard practise is unacceptable, whether harm comes to patients or not - it is the risk of harm that must be controlled. Your patients literally place their lives in your hands when you provide them anaesthesia for their necessary procedures. If you cannot meet the standard you will not be permitted to continue to practise.

That is all, Dr. Houshmand, this concludes the reprimand.

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