

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Ramesh Patel, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of patients 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.
Patel, 2015 ONCPSD 22**

**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. RAMESH PATEL

PANEL MEMBERS:

DR. P. CHART (CHAIR)
S. BERI
DR. P. TADROS
DR. E. ATTIA (Ph.D.)
DR. J. WATTS

Hearing Dates:	March 9, 11 to 13, 2015
Order Date:	May 20, 2015
Release of Written Reasons:	June 8, 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 March 9 and 11 to 13, 2015. At the conclusion of the hearing, the Committee stated its finding that the member committed an act of professional misconduct and that the member is incompetent and reserved its decision on penalty after hearing evidence and submissions.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Patel 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 also alleged that Dr. Patel is incompetent as defined by subsection 52(1) of the Code.

RESPONSE TO THE ALLEGATIONS

Dr. Patel admitted to the facts set out in paragraphs 1 to 22 of the Agreed Statement of Facts and Admission set out in full below. He admitted that, based on these facts, he engaged in professional misconduct by having failed to maintain the standard of practice of the profession in his care of 25 patients, 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. Conduct, namely; inadequate supervision of staff; improper delegation of controlled acts; improperly prescribing and/or directing staff to prescribe to patients; inappropriately

having staff care for and treat patients in his absence; inappropriate billing to OHIP; and breaching his undertaking with the College.

Dr. Patel also admitted that he was incompetent in that his professional care of 25 patients displayed a lack of knowledge, skill or judgment that was of such a nature or to such an extent that his practice should be restricted or that he is unfit to continue to practise.

Dr. Patel did not contest the factual allegations set out in paragraphs 1 to 14 of the Statement of Uncontested Facts set out in full below, nor did Dr. Patel contest that these facts constitute professional misconduct as a failure to maintain the standard of practice of the profession, and as disgraceful, dishonourable and unprofessional misconduct on his part.

THE FACTS

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

1. Dr. Ramesh Patel (“Dr. Patel”) is a general practitioner who received his certificate of registration authorizing independent practice in 1980. At all relevant times he maintained a solo practice in Toronto, Ontario, providing family physician services, including walk-in services.

Broad Investigation in Dr. Patel’s Practice Under Section 75(1)(a) of the Health Professions Procedural Code

Initiation of the Investigation: Dr. Patel’s Staff Treated Patients While He Was out of Office

2. An investigation into Dr. Patel’s practice was initiated after the College received information in April 2011 from another family physician that Dr. Patel had been allowing staff to perform patient care beyond that which was appropriate for a non-physician staff member to provide. A member of this physician’s staff also worked for Dr. Patel and had expressed concerns that Dr. Patel was going to be away, that patients were booked for

physical examinations, and that staff members would be expected to perform these investigations and sign for prescription renewals.

3. College investigators attended at Dr. Patel's clinic on April 18, 2011, when Dr. Patel was on vacation. The office had a sign posted, which stated that "Dr. Patel will not be in office from 6th Apr. 2011 to 24th Apr. 2011. He will resume on 25th Apr. 2011. Sorry for your inconvenience." However, there were approximately half a dozen patients in the waiting room, and 4-5 non-physician staff members wearing scrubs were also present. An office worker advised investigators that Dr. Patel was on vacation, and that staff were performing only electrocardiograms and blood work in his absence. Staff members stated that they were not conducting assessments in Dr. Patel's absence.

4. Ontario Health Insurance Plan ("OHIP") billings for the time period of Dr. Patel's absence indicated that the total amount billed in his name while he was on vacation was \$34,079.14. An analysis of Dr. Patel's OHIP billings for this period is attached at Tab 1 (to the Agreed Statement of Facts and Admission). Billings included, among other things, 325 billings for "minor assessments" (A001), 1 billing for an "enhanced 18 month well baby visit" (A002A), 84 "annual adult physicals" (A003A), 379 "intermediate assessments" (A007A), 1 "pre-operative assessment" (A903A), 43 episodes of "counselling" (K013A), 1 "annual health exam for child after 2nd birthday" (K017A), 2 "minor prenatal assessments" (P004A), and 1 "incision of (2) abscess or haematoma with Local" (Z173A). A total of 1,801 separate billing codes were submitted for the twenty-day time period. Dr. Patel was not present in the office while any services were performed during this time.

Nature of Dr. Patel's Practice

5. Information was gathered during the investigation about the nature of Dr. Patel's practice. Dr. Patel's office was open six days per week, with patients being seen between 10 and 13 hours per day when the clinic was open. He advised that he saw 80 to 100 patients a day. In June 2011, Dr. Patel had 9 staff members, including an administrative assistant, 4 medical technologists who were members of the Ontario Society of Medical

Technologists, 1 physician's assistant who was an internationally trained physician unlicensed in Ontario, and 3 laboratory technicians who were not members of the Ontario Society of Medical Technologists.

6. A sample chart entry for an 'annual physical examination' from one of Dr. Patel's patient records is attached at Tab 2 [to the Agreed Statement of Facts and Admission]. If a patient was new to Dr. Patel's practice, the patient's first appointment would consist of an 'annual physical examination' of the type described in the chart entry. Registered patients also had annual physical examinations. Staff members would use templates found on Dr. Patel's electronic medical recordkeeping ("EMR") system to take the patient's subjective history, vital signs, medical history, family history, and social factors. Staff would also complete the "review of systems," conduct an electrocardiogram, take blood and urine samples, and, if prompted by the EMR system, conduct a pelvic examination and collect a Pap smear from a female patient. Laboratory requisitions would be generated when prompted by the EMR system, including for chest x-rays and abdominal and pelvic ultrasounds. This would all occur prior to Dr. Patel seeing the patient. Dr. Patel would generally conduct the physical examination noted at the end of the chart entry (beginning with the portion headed "Cardiovascular System"), although as noted above he did not conduct any portion of the patient encounter while he was on vacation in April 2011.

7. A sample chart entry for a patient, who was not new to Dr. Patel's practice and was presenting with a specific complaint, is attached at Tab 3 [to the Agreed Statement of Facts and Admission]. The 'diagnosis' at the top of the entry would be carried forward by the EMR system from an earlier visit and did not necessarily reflect the purpose of the visit. Staff would follow prompts in the EMR system based on what they determined to be the presenting symptom cited by the patient, e.g. 'pharyngitis.' That is, the information filled in by staff would be based on whatever prompts Dr. Patel had preloaded into the system for patients presenting with 'pharyngitis.' Staff would then take the patient's vital signs and conduct or requisition any tests that the system prompted them to do. Dr. Patel would then see the patient, guided by the information provided by

staff, although as noted above he did not conduct any portion of the patient encounter while he was on vacation in April 2011.

8. Dr. Patel did not obtain the informed consent of patients for the delegation of controlled acts to staff members, or to staff members' involvement in their care in general. In some cases, such staff involvement took place at Dr. Patel's office, but before Dr. Patel had any direct physical encounter with the patients, including in some cases where it was the patient's first visit to the office.

9. The majority of the entries in Dr. Patel's patient encounter notes are derived from the use of "Click Notes" within the templates on his EMR system, i.e. following prompts to answer yes/no questions or to enter information in generic form from among the choices presented by the system.

10. Dr. Patel maintained a series of memoranda to his staff on his office computer system. A sample of these is attached at Tab 4 [to the Agreed Statement of Facts and Admission]. These are not written medical directives within the meaning of the College's Policy on Delegation of Controlled Acts, attached at Tab 5 [to the Agreed Statement of Facts and Admission], which requires a number of safeguards regarding delegation, including establishment of a physician-patient relationship, the existence of a medical directive or direct order, appropriate evaluation of the delegate, informed patient consent, and quality assurance steps including appropriate supervision and documentation. As will be set out in greater detail below, certain of these safeguards were missing from Dr. Patel's practice.

Review of Care Provided to Dr. Patel's Patients

11. In the course of the College's investigation, Dr. X provided an independent expert opinion based on a review of 25 patient charts and an interview of Dr. Patel. As found by Dr. X, Dr. Patel failed to meet the standard of practice of the profession and lacked knowledge and judgment in his care and treatment of 25 patients.

12. Dr. X's report, received May 14, 2013, is attached at Tab 6 [to the Agreed Statement of Facts and Admission] and forms part of this Agreed Statement of Facts and Admission. Among the 25 patient charts reviewed, Dr. X identified a number of areas in which Dr. Patel's practice was unsatisfactory, including:

- (a) Dr. Patel made unsubstantiated diagnoses, including of diabetes.
- (b) Dr. Patel ordered numerous unnecessary tests that were not appropriate to patients' circumstances, based on the use of templates and routine. This resulted in, for example, patients undergoing chest x-rays or abdominal and pelvic ultrasounds at successive annual physical examinations even if not indicated by the patient's history or physical examination. Inappropriate blood tests were also ordered as a matter of routine, including for example blood tests that were not indicated during pregnancy. Decisions were generally made to order tests before Dr. Patel had seen the patient.
- (c) Dr. Patel inappropriately treated respiratory infections in both adults and pediatric patients with medications that do not meet the standard of practice, and he failed to consider asthma where it would have been indicated to do so. Patients with respiratory infections were sometimes required unnecessarily to come in daily or almost daily for a period of time for a treatment that was not indicated.
- (d) Dr. Patel failed to address patients' presenting concerns on occasion, for example by: failing to conduct a musculoskeletal examination when a patient complained about musculoskeletal illnesses, and failing to address a urine infection that had been noted as a presenting concern.
- (e) Dr. Patel failed on one occasion to follow up appropriately on an abnormal electrocardiogram.
- (f) Dr. Patel inappropriately prescribed the 'morning sickness' medication Diclectin to a prenatal patient who did not complain of nausea or vomiting.
- (g) Dr. Patel failed to ensure that information in the patient chart was informative. For example, the information in the chart was sometimes contradictory, as in one chart that stated that a patient was 'in respiratory distress' when the patient's oxygen saturation levels indicated otherwise, or in another chart in which a note

indicates both that the patient had no history of high blood pressure and a problem with hypertension. An encounter note in another chart stated that the patient had no history of heart attack, then later documented a previous acute myocardial infarction. A chart for a five-year-old patient stated that the patient “denies any problems with drug dependence.”

- (h) Dr. Patel failed to appropriately supervise staff and improperly delegated controlled acts. There was no documentation in the charts of instructions by Dr. Patel to his staff, including with respect to assessments and examinations conducted in his absence, nor were there any medical directives provided. It was apparent that care was being delivered by people other than Dr. Patel, but it was not clear “how they were being directed or if they were being directed at all.” Dr. X identified instances in which the care delivered in this manner showed a lack of appropriate clinical decision-making reflective of the lack of supervision.
- (i) Dr. Patel failed to obtain informed patient consent to the delegation of controlled acts to staff, or to staff involvement in their care.

13. In a number of the charts under review, Dr. X identified that care had been provided to the patient during the time that Dr. Patel was away from the office in April 2011, and was not appropriately supervised or delegated. These appointments while Dr. Patel was out of the office included: a ‘counselling’ appointment for a 5 year old child done by a person with the initials ‘RK’; completion of a hospital preadmission form; provision of a prescription; a number of annual physical examinations at which numerous tests were ordered without indication and/or contradictory information was gathered; a patient who had 7 appointments for bronchitis, at which treatment initially ordered in March was continued at each; a postpartum appointment at which a glucometer was done without indication; an annual physical examination at which no plan or comment was made as to how to address the patient’s health complaints; a patient who was seen numerous unnecessary times for changing of a dressing and it was noted that the wound was ‘healing well;’ an 18 month well baby visit, which is a detailed developmental examination which should be conducted by a physician; advising a child patient’s mother

of test results; an appointment at which a patient obtained medication and a special diet form (billed as an ‘intermediate assessment’).

Inappropriate OHIP Billing

14. Dr. Patel inappropriately billed OHIP during the time period that he was on vacation in April 2011. Physicians must be physically present in the office to bill OHIP for all but a limited number of simple office procedures (which must be rendered in accordance with the standard of practice).

15. In addition, as described in Dr. X’s report, Dr. Patel engaged in other inappropriate billing practices:

- (a) billing for a ‘minor assessment’ when faxing prescription renewals to or receiving them from pharmacies;
- (b) billing for a ‘minor assessment’ when a patient’s family member dropped off or picked up a document, prescription, or testing kit;
- (c) billing inappropriately with respect to administration of the Rotateq vaccination.

Dr. Patel’s Breach of his Undertaking to the College

16. After allegations against him were referred to the College’s Discipline Committee, Dr. Patel entered into an undertaking dated May 1, 2014, which is attached at Tab 7 [to the Agreed Statement of Facts and Admission]. Among other things, Dr. Patel undertook that, effective immediately, he would not “delegate to any other person any Controlled Act, as that term is defined in the Regulated Health Professions Act, 1991.” He also undertook to engage a Clinical Supervisor who would review his practice and meet with him every two weeks to observe his encounters with no fewer than 10 patients; review no fewer than 10 patient records randomly, discuss any issues or concerns arising therefrom, and make recommendations to Dr. Patel. The Clinical Supervisor would

report to the College. Dr. Patel undertook “to co-operate fully with the supervision of” his practice, and to abide by the recommendations made by his Clinical Supervisor, including but not limited to any recommended practice improvements and ongoing professional development.

17. Dr. Patel engaged Dr. Y as his Clinical Supervisor. Dr. Y reviewed patient charts from Dr. Patel’s practice and observed patient encounters in his office as required by the Undertaking.

18. In the course of her duties, Dr. Y found that Dr. Patel continued to delegate controlled acts in breach of his Undertaking, namely:

- (a) Staff put an instrument beyond the labia majora by continuing to perform Pap tests delegated by Dr. Patel.
- (b) Staff administered substances by injection and inhalation by carrying out immunizations and B12 injections, and by administering treatment by inhalation for respiratory issues.

19. Dr. Patel continued to delegate controlled acts in breach of his undertaking until July 8, 2014.

20. Dr. Patel failed to abide by practice recommendations made by Dr. Y, in breach of his undertaking, namely:

- (a) Dr. Patel did not follow Dr. Y’s recommendation to cease having staff enter billing codes for visits that were in progress and to begin entering billing codes only upon completion of a patient encounter.
- (b) Dr. Patel did not follow Dr. Y’s recommendation to cease billing for visits at which the patient was not present, including missed appointments and where the patient or family member was dropping off or picking up forms, specialist information, or specimens for testing.

- (c) Dr. Patel did not follow Dr. Y's recommendation to augment subjective histories documented by staff with his own additional questions.
- (d) Dr. Patel did not follow Dr. Y's recommendation to obtain informed consent from patients prior to staff documenting patients' subjective histories.
- (e) Dr. Patel did not follow Dr. Y's recommendation to take steps to ensure that his EMR system clearly indicated which details were entered by which individual.
- (f) Dr. Patel did not follow Dr. Y's recommendation to take steps to ensure his staff did not make clinical decisions.
- (g) Dr. Patel did not follow Dr. Y's recommendation to cease ordering unnecessary diagnostic tests.
- (h) Dr. Patel did not follow Dr. Y's recommendation to cease routinely prescribing Biaxin and Alupent for cough symptoms.

21. Dr. Patel failed to abide by a patient-specific treatment recommendation made by Dr. Y, in breach of his undertaking, in that he did not discontinue an outdated drug, Diabeta, which he had prescribed to an elderly patient to treat diabetes. Diabeta is associated with hypoglycemia, and the patient had been released from the hospital after a hypoglycemic episode. The hospital discontinued the Diabeta and partially attributed the patient's hypoglycemic episode to it, but Dr. Patel re-started the Diabeta when he saw the patient the following week. Dr. Y, upon seeing this in the patient chart, recommended that the patient be seen urgently. Dr. Patel agreed to see the patient urgently. Dr. Y recommended that the patient's Diabeta be stopped and a safer alternative used instead. Upon following up on her recommendation, Dr. Y later learned that Dr. Patel had decided not to stop Diabeta. Dr. Y contacted the College on an urgent basis because Dr. Patel's failure to follow this recommendation placed the patient at risk.

22. Dr. Patel failed to abide by further patient-specific treatment recommendations made by Dr. Y, in that he continued to prescribe narcotics to a patient without adequate documentation and continued to prescribe Ventolin to a patient without the suggested addition of another inhaler such as Advair to provide better symptom relief.

Admission

23. Dr. Patel admits the facts specified above, and admits that, based on these facts, he engaged in professional misconduct by having failed to maintain the standard of practice of the profession in his care of 25 patients, and was incompetent in that his professional care of 25 patients displayed a lack of knowledge, skill or judgment that was of such a nature or to such an extent that his practice should be restricted or that he is unfit to continue to practice.

24. While in admitting to his incompetence as set out above, Dr. Patel does not admit that he is unfit to continue to practice, Dr. Patel acknowledges that this determination will be made by the Discipline Committee.

25. Dr. Patel also admits that, based on the facts specified above, he engaged in disgraceful, dishonourable or unprofessional conduct, namely: inadequate supervision of staff; improper delegation of controlled acts; improperly permitting and/or directing staff to prescribe to patients; inappropriately having staff care for and treat patients in his absence; inappropriate billing to OHIP; and breaching his undertaking to the College.

The following facts are alleged in a Statement of Uncontested Facts that was filed as an exhibit and presented to the Committee:

Patient A

1. Patient A was experiencing foot problems and looking for a family physician. She called Dr. Patel's office to book an appointment and was told by office staff that a 'physical' was required for first-time patients.

2. When Patient A attended Dr. Patel's office for her appointment in June 2012, a female staff member took her into the examination room and took down Patient A's history in detail, as well as her blood pressure, weight, and height. Patient A believed that this staff member was a nurse, but was not sure. The staff member was not in fact a nurse. Patient A explained to the staff member that she was being followed by Hospital 1

in relation to her breasts and did not require a breast examination. Patient A told the staff member that the Hospital 1 physicians clearly stated that no other breast-related assessments or tests were needed. The staff member typed information into a computer while Patient A spoke. The staff member gave a paper gown to Patient A and told her to lie down, and that the doctor would come in to see her.

3. When Dr. Patel entered the room, he looked over the patient's chart on the computer. Dr. Patel then complained to Patient A that while he treated a lot of patients, no one appreciated him. This conversation made Patient A feel uncomfortable.

4. Dr. Patel asked Patient A some questions. She explained again that she was being followed at Hospital 1 for her breasts and did not require a breast examination. She told Dr. Patel that she had a problem with her feet, and that this was the primary reason for her visit. Dr. Patel told her without looking at her feet that she should exercise and skip rope to relieve her discomfort.

5. Dr. Patel then came closer to Patient A and without explanation or seeking her consent, pulled down her gown, looked first at her collar bone, and then pulled the gown down below her breasts, exposing her breasts. Patient A was shocked that her breasts were exposed without warning. Dr. Patel was rough in his examination, and asked her repeatedly where the fibroids were. Patient A repeated that she was being followed by Hospital 1 for that issue.

6. After Dr. Patel examined her breasts, he examined Patient A's stomach and recent surgical stitches. He then left the examination room.

7. The College obtained an independent opinion from Dr. X on the care provided to Patient A. Dr. X's report, received August 26, 2013, is attached at Tab 1 [to the Statement of Uncontested Facts] and forms part of this Statement of Uncontested Facts. As found by Dr. X, Dr. Patel's care did not meet the standard of practice of the profession. The history and other information in the chart obtained were contradictory. Patient A was subjected to unnecessary investigations, and did not have her concerns

regarding her presenting complaint addressed. She had a breast examination to which she had not consented. There were errors in judgment in not seeking to obtain information from Hospital 1 or ordering appropriate tests, and there was a lack of adequate supervision of the staff member who saw Patient A before Dr. Patel. Dr. Patel's care displayed a lack of knowledge and judgment.

8. Dr. Patel failed to provide an audit trail for Patient A's electronic medical record that accorded with College policy upon request by the College investigator.

Patient B

9. Patient B attended at the office of Dr. Patel, his family physician, in August 2012 complaining of chest pain. Patient B was initially seen by a member of Dr. Patel's staff, who recorded his history and vital signs, and performed an electrocardiogram. Dr. Patel subsequently entered the examination room and reviewed the information obtained by his staff. Dr. Patel informed Patient B that his electrocardiogram was normal, and that Dr. Patel could not treat him. Patient B continued to express concern about his pain, and Dr. Patel advised him that he could go to a hospital emergency department if he wished. Dr. Patel did not insist that Patient B attend an emergency department, although the last entry in the encounter note states 'advise to go to ER.' No diagnosis was stated in the chart.

10. The next day, Patient B was admitted to hospital, where he underwent triple bypass surgery. In September 2012, Patient B was discharged from hospital with instructions to follow up with his family physician.

11. In September 2012, Patient B attended Dr. Patel's clinic. However, after Patient B voiced concerns regarding post-operative care, he was discharged from Dr. Patel's practice by letter to Patient B, which was five days after the patient's discharge from hospital. The letter stated "you are hereby advised to get a new family physician."

12. The College obtained an independent opinion from Dr. X on the care provided to Patient B. Dr. X's report, received August 26, 2013, is attached at Tab 2 [to the Statement of Uncontested Facts], and forms part of this Statement of Uncontested Facts.

Dr. X opined that based on Patient B's account of his patient encounter in August 2013, Dr. Patel did not meet the standard of practice of the profession and lacked knowledge and judgment in his treatment of Patient B. It would have been appropriate for Dr. Patel to either call the emergency department or send information to the emergency department either separately or with the patient, but this was not done. Patient B's discharge from Dr. Patel's practice also exposed him to harm, as he was not given any time to find a new primary care provider, and the discharge instructions from the hospital had indicated the need to see his primary care provider within the week.

13. In responding to the College's investigation, Dr. Patel stated, among other things, that he had terminated the doctor-patient relationship with Patient B as a result of the patient's "defiant attitude."

14. Dr. Patel failed to provide an audit trail for Patient B's electronic medical record that accorded with College policy upon request by the College investigator.

Plea of No Contest

15. The facts as set out above are not contested for the purposes of this proceeding, nor does Dr. Patel contest that these facts constitute professional misconduct as a failure to maintain the standard of practice of the profession and as disgraceful, dishonourable and unprofessional conduct on his part.

FINDINGS

(1) With respect to the Agreed Statement of Facts and Admission, the Committee accepted these facts and the admission made and found that Dr. Patel engaged in professional misconduct by having failed to maintain the standard of practice of the profession in his care of 25 patients, and by engaging in disgraceful, dishonourable and unprofessional misconduct. The Committee also found Dr. Patel to be incompetent in that his professional care of the 25 patients displayed a lack of knowledge, skill or judgment,

that was of such a nature or to such an extent, that his practice should be restricted or he is unfit to continue to practise.

(2) With respect to the Statement of Uncontested Facts and the plea of no contest, Rule 3.02 of the Discipline Committee's Rules of Procedure states:

3.02(1) Where a member enters a plea of no contest to an allegation, the member consents to the following:

- a) that the Discipline Committee can accept as correct the facts alleged against the member on that allegation for the purposes of the proceeding only;
- b) that the Discipline Committee can accept that those facts constitute professional misconduct or incompetence or both for the purposes of the proceeding only; and
- c) that the Discipline Committee can dispose of the issue of what finding ought to be made without hearing evidence.

Accordingly, the Committee accepted as true all of the facts set out in the Statement of Uncontested Facts and found that these facts constituted professional misconduct, in that Dr. Patel has failed to maintain the standard of practice of the profession, 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, dishonorable or unprofessional.

EVIDENCE AND SUBMISSIONS ON PENALTY

Counsel for the College submitted that the only appropriate penalty consisted of a reprimand and revocation of Dr. Patel's certificate of registration. Counsel for Dr. Patel submitted that although the misconduct was serious, an appropriate penalty consisted of a reprimand, suspension of his certificate of registration for six months (with credit being given for the suspension of his certificate to date) and a detailed program of re-education that incorporated a three month period of supervision during which he would not be the

Most Responsible Physician (MRP) and a further twelve month period of supervision as the MRP. Two Agreed Statements of Facts were filed on the penalty hearing.

The following facts were set out in an Agreed Statement of Facts on Penalty:

1. In January 2015, the College initiated an investigation to determine whether Dr. Patel was treating patients while under suspension. By letter dated January 13, 2015 the College retained an investigation firm to send undercover investigators posing as patients to Dr. Patel's clinic. A copy of the College's letter setting out the investigation firm's mandate is attached hereto at Tab 1 [to the Agreed Statement of Facts] and forms part of this Agreed Statement of Facts.
2. A preliminary report of the investigator, Mr. M from the investigation firm, was provided to the College by email from Mr. N dated January 15, 2015.
3. A formal report from the investigation firm dated January 21, 2015 was subsequently provided to the College. A copy of the report is attached hereto at Tab 2 [to the Agreed Statement of Facts] and forms part of this Agreed Statement of Facts.
4. As described in the document attached hereto at Tab 2 [to the Agreed Statement of Facts], on January 14, 2015, Mr. M called Dr. Patel's clinic and asked to book an appointment with the doctor for an ailment. The receptionist informed Mr. M that Dr. Patel does not take walk-in patients, but that he was currently taking new patients. The receptionist further advised Mr. M that he could attend the clinic to enroll as a new patient of Dr. Patel and see Dr. Patel. She advised Mr. M to fast for at least 12-14 hours before attending the clinic, as he would undergo a mandatory physical examination, which would include taking a sample of his blood.
5. On a Thursday in January 2015, Mr. M attended at Dr. Patel's clinic. Mr. M told a woman at reception wearing scrubs that he had contacted the office the day before and been told to come in if he needed to see Dr. Patel. When Mr. M agreed to join the clinic, the staff member handed him a computer tablet and requested that he fill in information on the device.

6. There were two other females wearing blue scrubs in the clinic. After Mr. M had filled in the information on the device, one of the females wearing blue scrubs gave him a cup and asked for a urine sample.

7. Subsequently, a staff member that took the initial information led Mr. M to an examination room. On the way, Mr. M saw Dr. Patel sitting in an office area (this was not a patient examination room). There were three large monitors at the station where Dr. Patel was sitting, one of which was connected to a CCTV system that showed footage of what was happening in the office. Dr. Patel appeared to be browsing through some paperwork. Dr. Patel was wearing street clothes (not scrubs).

8. In the examination room, the staff member appeared to operate a voice recording device to record her interaction with Mr. M. She checked Mr. M's height and weight and asked him to sit on the examination table. She then asked a series of questions regarding Mr. M's family history, medical history and symptoms for approximately fifteen minutes, pausing at one point to take his blood pressure. When Mr. M asked if the doctor was busy, the staff member stated "later, he not here now."

9. The staff member then informed Mr. M that she needed to take his blood, and removed five vials of blood from Mr. M. When asked why so much blood was taken, she replied, "just the one time, once in a year."

10. The staff member then informed Mr. M that he would need to go for x-rays or ultrasound and suggested that since he was already fasting, he could go in for the examination that day. She gave him directions to a lab and printed out an x-ray requisition form (attached to Mr. M's report) and handed it to Mr. M. She then advised Mr. M that the doctor would be with him shortly and exited the room.

11. Dr. Z, who was working as a locum at the clinic at the time, then entered the room and introduced himself as "Dr. Z". Among other things, Dr. Z took a history of the presenting complaint, checked Mr. M's vital signs, used a tongue depressor to check his throat, and used a stethoscope to listen for any irregularities in the breathing. Dr. Z

also consulted the computer where the staff member had recorded Mr. M's medical history.

12. During the assessment, Mr. M asked Dr. Z if he was Dr. Patel. Dr. Z said "No".

13. Dr. Z gave Mr. M a prescription and suggested that he go for a chest x-ray.

14. On his way out of the examination room, Mr. M noted that Dr. Patel was still sitting in the office area looking at the computer monitor in front of him.

15. The patient chart which was created as a result of Mr. M's attendance is attached at Tab 3 [to the Agreed Statement of Facts] and forms part of this Agreed Statement of Facts.

16. Dr. Patel did not speak or interact with Mr. M in any way. To the best of Mr. M's knowledge, information and belief, Dr. Patel did not have any involvement in his medical treatment and care.

17. In total, Mr. M was at the clinic for approximately 40 minutes from 11:00 am to 11:40 am. During that time, Mr. M did not observe Dr. Patel in any of the patient examination rooms. Mr. M did not observe Dr. Patel providing medical treatment or care to any patients. Mr. M did not observe Dr. Patel speaking or interacting with patients.

18. On Monday in January 2015, a second investigator, Ms O, called Dr. Patel's clinic at approximately 1:36pm. As of that time, Dr. Patel had not yet been advised by the College that an undercover patient had been sent to his office to determine whether he was providing medical care while under suspension. Ms O asked if she could see Dr. Patel for an illness. The receptionist informed Ms O that Dr. Patel was temporarily not practising medicine. The receptionist indicated that she did not know when he would return to practice.

19. The investigator provided a verbal report to the College regarding this call to Dr. Patel's clinic. The investigator was not asked to attend at the clinic and pose as a patient.

20. A copy of the investigation firm's report dated January 26, 2015, received January 30, 2015, is attached hereto at Tab 4 [to the Agreed Statement of Facts] and forms part of this Agreed Statement of Facts.

Additional facts were set out in a supplementary Agreed Statement of Facts on Penalty that was filed as an exhibit and presented to the Committee:

1. By letter dated July 31, 2014, Dr. Patel provided reimbursement the Ministry of Health and Long-Term Care in the amount of \$86,428.94, for overpayments received from OHIP. A copy of the letter is attached at Tab 1 [to the Agreed Statement of Facts] and forms part of this Agreed Statement of Facts.

2. By letter dated August 11, 2014, the Ministry of Health and Long-Term Care acknowledged receipt of the repayment. A copy of the letter is attached at Tab 2 [to the Agreed Statement of Facts] and forms part of this Agreed Statement of Facts.

The College filed two previous disciplinary findings against Dr. Patel. In January 1992, the Discipline Committee found that he had failed to maintain the standard of practice of the profession with respect to his investigation, management and discharge of a patient with atrial fibrillation and stroke. Dr. Patel was reprimanded and required to participate in a series of educational programs including the completion of the McMaster Physician Review Program (PREP) and any recommended Physician Enhancement Program(s). In August 1999, Dr. Patel was found to have failed to maintain the standard of practice of the profession with respect to his prescription of an oral contraceptive to a patient with multiple contra-indications to such medication, failure to deal with the same patient's depression and failure to follow up on suggestions from consultants, or on abnormal laboratory results on this patient. In addition, his record-keeping was found to be "extremely poor". Dr. Patel received a second reprimand, was required to undergo a second assessment by the PREP program and to undertake a record-keeping course. A suspension of his certificate for three months was ordered, but this was itself suspended if he completed the required courses.

The Committee admitted in the penalty hearing the evidence of Dr. W, an experienced Family Physician who received his CCFP in 1985, and who has practised in north Toronto for 30 years. In addition to his medical qualifications, Dr. W has a Masters and a Doctoral degree in education and practised as an educational psychologist prior to qualifying as a physician. Dr. W teaches and supervises medical students and Family Medicine residents; he has mentored at least one Family Medicine trainee every year for the past 27 years. He has received a university award for his teaching and is an Assistant Professor in Family Medicine at the University of Toronto.

Dr. W has been a Peer Assessor, Practice Monitor and Medical Inspector for the College for many years, and has served on the Family Medicine Review Panel of the Quality Assurance Committee. He was one of only five assessors for PREP. In his varied roles at the College he has experience in the development and implementation of Individualized Education Plans (IEPs) for practising physicians.

The Committee accepted Dr. W as an expert in family medicine and medical education who is qualified to opine on the practice of family medicine and the assessment, remediation of deficits (including the development, implementation and supervision of remediation and education programs) and supervision and monitoring of community based family medicine physicians.

The subject matter of Dr. W's evidence was the structure and implementation of a proposed program of supervision, re-education and remediation for Dr. Patel. The Committee admitted Dr. W's evidence not as a substitute for its own expertise and experience or determining an appropriate penalty, but rather for his expertise on the structure and implementation of programs of supervision, re-education and remediation. The required terms of such a program are complex and fall, at least in part, outside the individual or corporate knowledge and experience of the Committee.

Dr. W stated an opinion that Dr. Patel's behaviour was remediable; he based this opinion on his review of the College's expert's report, his own review of the medical records on which that report had been based, the report of Dr. Patel's supervisor and an interview

with Dr. Patel lasting 2 ½ hours. He had drawn up a proposed remediation plan consisting of the following elements:

- cessation of the use of templates;
- prohibition of the employment of office assistants for anything other than taking basic vital signs and performing venipuncture, spirometry and ECGs;
- seeing no more than 30 patients per day and scheduling 15 minute encounter periods;
- limiting the number of walk-in patients;
- refraining from prescribing Alupent and Glyburide, and using office nebulisers or performing surgical excisions of potential neoplastic skin lesions;
- maintenance of his CFPC required program of Continuing Professional Development;
- assigning the care of all patients for three months to another licenced physician, while shadowing that physician's care; and
- practising under the supervision of a physician approved by the College for one year, with that physician observing a minimum number of patient encounters, reviewing a selected number of charts, and discussing with Dr. Patel both the management of those patients, while monitoring Dr. Patel's ongoing learning and means whereby his learning could be incorporated into practice.

Dr. W had laid out this plan using a template for an IEP which was recommended by, and used by the College, and which laid out suitable assessment methods and expected goals using a framework (CanMEDS) approved by the Royal College of Physicians and Surgeons and the Canadian College of Family Physicians. Dr. W also recommended that a repeat assessment of Dr. Patel's practice should be conducted after a year of supervision.

Dr. W testified that he felt that Dr. Patel's choice of practice style was less a matter of poor judgment than it was an attempt, albeit misguided, to meet the needs of a large and demanding patient population who had difficulty finding a culturally appropriate physician. Dr. W freely admitted that he tended to "give Dr. Patel the benefit of the doubt". Dr. W appeared surprised when faced with a report that he had written on behalf of Dr. Patel in 1999 during an earlier investigation of Dr. Patel, and said that although he recalled it when it was shown to him, he had not remembered doing the report when developing his current recommendations. In that earlier report, Dr. W had identified problems in the standard of care in 5 out of 17 patient records reviewed (with occasional deficiencies in a further 12), and problems with record keeping in all 17 charts. Dr. W's view at that time was that the chart deficiencies could be attributed to problems in a new computer program. In that report he was critical of another expert for failing to give Dr. Patel the "benefit of the doubt".

Counsel for Dr. Patel further submitted a volume of letters of support for Dr. Patel. This contained seven letters from consultant physicians to whom Dr. Patel had referred patients, attesting to the timeliness and appropriateness of referrals and Dr. Patel's responsiveness to recommendations. Two letters from members of Dr. Patel's staff described his dedication to his patients, and a further ten letters from patients supported Dr. Patel, his importance to their care and their willingness to travel substantial distances to see him.

In determining the appropriate penalty, the Committee considered the seriousness of Dr. Patel's misconduct, and the finding of incompetence, together with both aggravating and mitigating factors. The Committee took into account penalties imposed in somewhat similar cases while recognizing that cases are rarely identical and that each case must be considered on its own specific facts. The Committee also considered the principles that are well established in considering an appropriate penalty: the protection of the public, specific deterrence of the member, general deterrence of members of the profession, maintenance of the integrity of the profession and the College's ability to govern itself in the public interest; maintenance of public trust, and where possible, rehabilitation of the member.

The Committee took into account that it has disciplined Dr. Patel on two previous occasions, both for a failure to maintain the standard of practice of the profession. The findings in 1991 related to his failure to provide appropriate care for a patient with a life-threatening illness (stroke and atrial fibrillation), and in 1999 for prescribing of oral contraceptives to a patient with multiple contraindications, including a history of deep vein thrombosis; also a potentially life-threatening failure of maintenance of the standard of care. In the current hearing, although most of the failures consisted of the ordering of unnecessary tests and the provision of unnecessary treatments and visits, they included a failure to follow-up on an abnormal ECG and the prescription of medications that are no longer recommended or commonly used, thereby exposing his patients to harm. The Committee also noted a pattern of increasingly extensive and more serious levels of misconduct. The 1991 hearing involved a single patient's care. In 1999, Dr. Patel admitted not only his failures with respect to a single patient, but also multiple examples of "extremely poor records", including some in which notes had been re-written and others where documentation was missing entirely. The current Statement of Agreed Facts incorporated not only Dr. Patel's failure to maintain the standard of care, but also his failure to properly manage his practice, failure to properly supervise and delegate to his staff, and failure to demonstrate an understanding of his professional responsibilities, by allowing billing for activities when he was not present to supervise, as well as excessive billing for activities when he was present, such as renewing prescriptions. The cumulative impact of the breadth and pervasiveness of Dr. Patel's clinical misconduct, and its extent, together with his failure to respond to the recommendations of his College appointed supervisor, provided evidence of ungovernability and constitutes professional misconduct that in the view of the Discipline Committee deserves the most serious sanction, that of revocation of his certificate of registration.

Although Dr. W testified that he believed that Dr. Patel's conduct was remediable, the Committee did not accept his opinion and did not agree. Not only did Dr. Patel repeat (and extend) his misconduct, but, even when he was under the scrutiny of a supervisor and facing a disciplinary hearing by his professional governing body, he failed to abide by:

- an undertaking not to delegate controlled acts;

- a series of recommendations from his supervisor to change his practices of delegation, billing or documentation;
- several recommendations from his supervisor regarding the prescription of certain drugs; and
- patient specific recommendations from his supervisor, by continuing to use the drug Diabeta (glyburide) and prescribing narcotics without adequate documentation.

Dr. Patel's actions while under supervision provide the Committee with no confidence at all into his insight and his ability and willingness to take the necessary steps to be rehabilitated. In addition, the observations of the practices of his locum physician while Dr. Patel was under suspension were so similar to the practices of Dr. Patel himself that it is hard for the Committee to avoid the inference that Dr. Patel had a continuing influence on the nature of the practice in his office, even though he was not observed to be communicating with the staff at the time of the observations. That he would be sitting at computer terminals in the office without having an effect on what was going on around him was simply unbelievable and worrisome, having regard to public safety.

The Committee recognizes the seriousness of the penalty of revocation, but does not accept the sometimes used description of revocation as a "professional death sentence", and refers to the Alberta Court of Appeal in *Adams v. Law Society (Alberta)*, 2000, where the court states:

"It is erroneous to suggest that only the most serious misconduct by the most serious offenders warrants disbarment.....it is not reserved for only the very worst conduct engaged in by the very worst lawyers".

Furthermore, the legislation allows for an application for reinstatement after one year, and on such an application the member must persuade the Discipline Committee, among other things, that public safety will not be endangered by reinstating the certificate of registration of the physician.

The letters of reference provided by Dr. Patel are in sharp contrast with the facts agreed to by Dr. Patel. In comparing the comments of the physicians to whom Dr. Patel has referred patients, together with the experience of Dr. Patel's recent supervisor, the Committee found the latter to be of considerably greater value with respect to the potential for rehabilitation.

Although Dr. Patel has made restitution to OHIP of his over-billing, this was done in August 2014 for billings in April 2011, over three years later. The Committee does not accept this as sufficient mitigation to modify the penalty that is otherwise called for.

Dr. Patel's delegation practices, and his billing offences, represent a serious breach of public trust. The safety of the public, the maintenance of public confidence in the profession and its ability to govern itself, and the maintenance of the integrity of the profession, call for the imposition of a penalty of revocation in this case.

ORDER

Therefore, by written order on May 20, 2015, the Committee ordered and directed that:

1. the Registrar revoke Dr. Patel's certificate of registration, effective immediately.
2. Dr. Patel appear before the Committee to be reprimanded, and that the fact of the reprimand be recorded on the register.
3. The parties deliver written submissions with respect to costs payable to the College, to be exchanged and filed with the Hearings Office of the College within 21 days of the date of this order.

The Committee directs the Hearings Office to schedule a date for Dr. Patel's reprimand.

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**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. RAMESH PATEL

PANEL MEMBERS:

DR. P. CHART (CHAIR)
DR. P. TADROS
DR. E. ATTIA (Ph.D.)

Hearing Dates:	March 9, 11 to 13, 2015
Order Date:	May 20, 2015
Release of Written Reasons:	June 8, 2015
Reprimand Date:	September 9, 2015

PUBLICATION BAN

TEXT of PUBLIC REPRIMAND
Delivered September 9, 2015
in the case of the
COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO
and
DR. RAMESH PATEL

The Committee was utterly dismayed by the seriousness of your failure to maintain the Standard of Practice of the Profession. By acts of commission and omission you have fallen seriously short of what the public and profession expect of its physicians. This extends beyond clinical care to practice management, and abuse of the health care system.

The pattern of care you have admitted to is nothing short of appalling, and this Committee could see no evidence that you have developed insight into the nature of this problem. In fact, the past attempts at remediation have appeared to have fallen on deaf ears. You have had the opportunity to retrain in the past. Whatever you learned, however, did not translate effectively into practice. This is quite simply, unacceptable.

Your abuse of the health care system goes beyond billing for services provided when you were not there, and includes the ordering of unnecessary and totally unjustified tests, ordering inappropriate treatment and unnecessary patient visits. Many of these were ordered by your staff who are not qualified as health care personnel, and who were clearly and inadequately supervised.

Such behaviour compromises the effective functioning of our health care system, and seriously undermines the public trust. The Committee has no reason to believe that effective remediation is possible, and has concluded that you need to be separated from the practice of medicine in this province.

You may sit down.