

Indexed as: Awad, A. I. (Re)

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

IN THE MATTER OF a Hearing directed
by the Inquiries, Complaints and Reports Committee of
the College of Physicians and Surgeons of Ontario
pursuant to Section 26(1) of the **Health Professions Procedural Code**
being Schedule 2 of the *Regulated Health Professions Act, 1991*,
S.O. 1991, c. 18, as amended.

B E T W E E N:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. AWAD IBRAHIM AWAD

PANEL MEMBERS:

DR. B. LENT (CHAIR)
D. GIAMPIETRI
DR. A. FALCONER
D. DOHERTY
DR. H. SCULLY

Hearing Date: April 4, 2014
Decision Date: April 4, 2014
Release of Written Reasons: June 12, 2014

DECISION AND REASONS FOR DECISION

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on April 4, 2014. At the conclusion of the hearing, the Committee stated its finding that the member committed an act of professional misconduct and delivered its penalty and costs order with written reasons to follow.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Awad 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 conduct or 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. Awad is incompetent as defined by subsection 52(1) of the Health Professions Procedural Code, which is Schedule 2 to the *Regulated Health Professions Act, 1991*, (“the Code”).

RESPONSE TO THE ALLEGATIONS

Dr. Awad admitted the first allegation in the Notice of Hearing, that he has failed to maintain the standard of practice of the profession and pleaded no contest to the second allegation that he has engaged in conduct or 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. Counsel for the College withdrew the allegation of incompetence.

FACTS AND EVIDENCE

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

FACTS

1. Dr. Awad Ibrahim Awad (“Dr. Awad”) is a member of the College of Physicians and Surgeons of Ontario (“College”) who was issued a certificate of registration authorizing independent practice on October 2, 1989.
2. Dr. Awad is a 65 year old psychiatrist, practising sleep medicine in Oakville, Mississauga, and Burlington. He is a diplomate of the American Board of Sleep Medicine.
3. Dr. Y, a respirologist who practises sleep medicine, was retained by the College to review Dr. Awad’s practice. Dr. Y’s report was based on a review of Dr. Awad’s patient charts, patient interviews conducted by College Investigators and an interview of Dr. Awad conducted by Dr. Y.
4. Dr. Y concluded that Dr. Awad’s care did not meet the standard of practice of the profession with respect to twelve of fifteen patient charts he reviewed. Examples of Dr. Y’s concerns include the following:
 - a) Dr. Awad routinely directed nasal Continuous Positive Airway Pressure (CPAP) pressure titration studies after the patients had undergone sleep studies without having seen and evaluated the patients in question.
 - b) A patient had received immovane (5 mg) prior to CPAP titration study, without a physician assessment or clear physician’s order. On the basis of severe obstructive sleep apnea and information provided by the family doctor in the patient’s referral form, the patient could be seen to be at

risk of hypoventilation and excessive daytime somnolence.

- c) In one instance, Dr. Awad signed an Assisted Devices Program (ADP) form for the use of nasal CPAP prior to having seen the patient in consultation.
 - d) Dr. Awad, through his staff in the use of form letters, influenced patients to return to his clinic for follow-up studies, by indicating that the patient's condition was reportable to the Ministry of Transportation in case of lack of compliance to treatment recommendations. Such communications were made even in instances when patients were not documented to have excessive daytime somnolence or worrisome driving-related problems. Dr. Y was of the opinion that these letters were inappropriate and coercive.
 - e) Dr. Awad has delegated tasks to non-physician members of his staff inappropriately. A discussion of diagnosis and treatment cannot be made by telephone by unqualified clerical and technical staff.
5. Dr. Awad responded to the report of Dr. Y through counsel, advising that:
- a) He had changed his practice such that all patients are seen following an initial sleep study and prior to any CPAP titration tests;
 - b) He is cognizant of the concern that patients not receive sedative medication before sleep studies (unless first assessed by the clinician who has determined the medication is appropriate), and has instituted a process to ensure that this does not occur;
 - c) He had struggled with the appropriate means of warning patients of driving-related risks. He has since made changes to this area of his practice, and has commenced using different form letters which did not contain the language that Dr. Y viewed as coercive;

- d) He had addressed the issue of delegation raised by Dr. Y. Dr. Awad now sees patients after the initial sleep study test and before any CPAP titration is ordered. Accordingly, his staff no longer communicate the results of initial sleep study to patients.
6. Patient A made a complaint pertaining to Dr. Awad. Dr. Y was provided the case material for review and concluded that Dr. Awad had fallen below the standard of practice in his care of Patient A. Dr. Y outlined the following concerns:
 - a) Dr. Awad's letter to Patient A's family physician provides evidence that the clinic was predisposed to CPAP therapy before patients had been seen by a sleep physician;
 - b) Dr. Awad's records of care show that he misinformed the referring physician by declaring Patient A to have a condition reportable to the Ministry of Transportation, before the patient had been seen or assessed by a sleep physician.
7. The College received communication from the Ministry of Health and Long Term Care (OHIP), raising concerns about Dr. Awad. Details of OHIP's investigation into their concerns were provided to the College including names of 29 patients in respect of whom Dr. Awad's office had billed OHIP for consultations, listing Dr. X as the referring physician.
8. The College requested Dr. X's comments. Dr. X indicated that he does not and never has referred patients to Dr. Awad. Dr. X further stated that he has no record of having seen any of the 29 patients in respect of whom he was listed as the referring physician.

ADMISSIONS

9. Dr. Awad admits the facts set out in paragraphs 1-6. He admits that he failed to maintain the standard of practice of the profession under paragraph 1(1)2 of

Ontario Regulation 856/93 made under the *Medicine Act, 1991*.

10. Dr. Awad pleads no contest to the facts set out in paragraphs 7-8. He admits that the conduct described therein constitutes acts or omissions relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional under paragraph 1(1)33 of O. Reg. 856/93.

FINDINGS

Dr. Awad admitted to the allegation of having failed to maintain the standard of practice of the profession.

In relation to the allegation of disgraceful, dishonourable and unprofessional conduct, Dr. Awad's response was to plead no contest to the facts set out in paragraphs 7 to 8 of the Agreed Statement of Facts and Admissions. Regarding a 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.

Taking into account the admission and the plea of no contest, the Committee accepted as true all of the facts set out in the Agreed Statement of Facts and Admissions and found that Dr. Awad committed an act of professional misconduct in that: he has failed to maintain the standard of practice of the profession and he has engaged in conduct or 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.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for Dr. Awad made a joint submission as to the appropriate penalty and costs. In considering the proposal, the Committee reviewed the Agreed Statement of Facts and Admissions and the Joint Book of Authorities. The Committee was mindful of the fact that a joint submission should be accepted unless it is contrary to the public interest and its acceptance would bring the administration of justice into disrepute. The Committee is aware that the penalty should be fair and reasonable and that, while the Committee is not bound by other decisions of the Discipline Committee, it is desirable that the penalty arrived at by this Committee be consistent with penalties imposed in other similar cases.

The proposed penalty included a reprimand, a three-month suspension of Dr. Awad's certificate of registration, and a requirement that Dr. Awad submit to an assessment of both his clinical practice and his performance as Quality Advisor (as referenced in the *Independent Health Facilities Act*, Ontario Regulation 57/92). The joint submission also proposed that Dr. Awad pay costs for a one-day hearing at the tariff rate of \$4,460.

With respect to mitigating factors, the Committee notes that by agreeing to the Statement of Facts and Admissions and the joint submission on penalty, Dr. Awad saved the Committee and the College the time and expense of a contested hearing.

The Committee was also somewhat comforted to learn that, in response to Dr. Y's report, not only has Dr. Awad acknowledged the problems in his practice, but he has already made important changes to his clinical care and office procedures. In particular, he informed the Committee that he now:

- arranges to see all patients following a sleep study and prior to prescribing CPAP;
- chooses not to prescribe sedative medication prior to a clinical assessment;

- warns patients of driving-related risks in non-coercive language; and
- communicates results of initial sleep studies to patients himself, rather than delegating this task to his office staff.

The Committee also noted that Dr. Awad has had no previous findings made against him by the Discipline Committee.

With respect to a consideration of the aggravating factors, the Committee was deeply concerned about Dr. Awad's decision to prescribe medication and other treatments before he had completed appropriate clinical assessments, and to use coercive and incorrect information to influence patients to return for follow-up.

The Committee also found the evidence with respect to Dr. Awad's use of another physician's name particularly disconcerting. Improper billing practices reflect negatively not only on the physician submitting such claims to OHIP, but can also raise questions among the public about the honesty and integrity of the profession at large.

The Committee considered the principles set out in case law with respect to determining appropriate penalty in the discipline setting, including: denunciation of the misconduct, specific and general deterrence, rehabilitation of the member, and upholding public confidence in the profession. The overall penalty as proposed reflects the profession's and the public's denunciation of Dr. Awad's behaviour, and will support public confidence in the profession's ability to regulate its members appropriately. The suspension and practice assessment will serve to protect the public. The Committee expects that these components of the penalty will also serve to deter Dr. Awad from repeating the misconduct in the future, and will provide general deterrence. The ongoing oversight of his practice will provide Dr. Awad with an opportunity for remediation.

The penalty proposed is also consistent with the penalty imposed in other similar cases.

In summary, the Committee is satisfied that the penalty that has been jointly proposed is appropriate, reasonable and fair.

ORDER

Therefore, having stated the findings in paragraph 1 of its written order of April 4, 2014, on the matter of penalty and costs, the Committee ordered and directed that:

2. the Registrar to suspend Dr. Awad's certificate of registration for a period of three (3) months, to commence immediately.
3. that the Registrar imposes the following terms, conditions and limitations on Dr. Awad's certificate of registration:

Practice Assessment

- i) Dr. Awad, at his own expense, shall submit to an assessment of his practice by an assessor selected by the College within six months of the date of this order. The assessor shall focus the assessment upon the deficiencies identified in the review of Dr. Awad's practice and shall additionally consider Dr. Awad's performance as Quality Advisor as referenced in the *Independent Health Facilities Act, Ontario Regulation 57/92*.
 - ii) Dr. Awad shall abide by all reasonable recommendations of the Assessor.
4. Dr. Awad to appear before the panel to be reprimanded.
 5. Dr. Awad to pay to the College costs in the amount of \$4,460.00, within 30 days of the date of this Order.

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