

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Maal-Bared this is notice that the Discipline Committee ordered that no person shall publish or broadcast the name or any information that could disclose the identity of the 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... 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. Maal-Bared,
2017 ONCPSD 23**

**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. HAYA MAAL-BARED

PANEL MEMBERS: **DR. WILLIAM KING (Chair)**
 MS DEBBIE GIAMPIETRI
 DR. PAUL GARFINKEL
 MR. PIERRE GIROUX
 DR. JOHN RAPIN

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS CAROLYN SILVER

COUNSEL FOR DR. MAAL-BARED:

MS REBECCA JONES

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. ROBERT COSMAN

Hearing Date: April 6, 2017
Decision Date: April 6, 2017
Release of Written Reasons: June 12, 2017

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on April 6, 2017. At the conclusion of the hearing, the Committee released a written order stating its finding that the member committed an act of professional misconduct and setting out its penalty and costs order with written reasons to follow.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Haya Maal-Bared committed an act of professional misconduct:

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

The Notice of Hearing also alleged that Dr. Maal-Bared is incompetent as defined by subsection 52(1) of the Health Professions Procedural Code (the Code), which is Schedule 2 to the *Regulated Health Professions Act, 1991*.

RESPONSE TO THE ALLEGATIONS

Dr. Maal-Bared admitted to the allegations in the Notice of Hearing that she has failed to maintain the standard of practice of the profession and 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 College withdrew the allegation of incompetence.

THE FACTS

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

Background

1. Dr. Haya Maal-Bared (“Dr. Maal-Bared”) is a psychiatrist who received her certificate of registration authorizing independent practice from the College of Physicians and Surgeons of Ontario (“the College”) on January 15, 2009.
2. Dr. Maal-Bared is a sole practitioner, with an office practice in Toronto, Ontario. She graduated University of Ottawa Medical School in 2003. From 2003-2008, she completed a five year post-graduate residency program in psychiatry at the University of Toronto. She started her private practice as a psychiatrist in February 2009.

Complainants

3. Early on in her practice, Dr. Maal-Bared took on the following three patients (i) Patient A; (ii) Patient B, who is Patient A’s mother; and (iii) Patient C, who is Patient B’s common law spouse. These patients are collectively referred to herein as the “Family”.
4. Dr. Maal-Bared treated Patient A, a teenager, from March, 2009 to September, 2011.
5. At Patient A’s first appointment, Patient B was present and expressed an interest in individual psychotherapy for herself.
6. Although Dr. Maal-Bared told Patients A and B that it was "not usually advisable" for psychiatrists to treat members of the same family in individual psychotherapy due to the possibility that one may forget the source of a piece of information thereby threatening confidentiality, Patient A and B said they were agreeable to Dr. Maal-Bared treating both of them.
7. Between April, 2009 and approximately July, 2011, Dr. Maal-Bared provided regular psychotherapy and/or psychiatric care to Patient B. Many of these sessions went over the time scheduled. Between May and September 2009, Dr. Maal-Bared prescribed narcotics (oxycontin and fentanyl) for Patient B. Patient B’s family physician had previously prescribed narcotics for Patient B’s medical condition.

8. While treating Patient A and B, Dr. Maal-Bared also began treating Patient B's common law spouse, Patient C. Patient C was Dr. Maal-Bared's patient from May, 2009 to March, 2011. Dr. Maal-Bared diagnosed Patient C with two mental health conditions. She treated Patient C for mental health conditions and provided pharmacological treatment for a medical condition.

Failure to Maintain Boundaries

9. Dr. Maal-Bared and Patient B developed a friendship shortly after Patient B became her patient. Dr. Maal-Bared found her likeable and charismatic. While treating the Family, Dr. Maal-Bared socialized with the Family including by visiting the Family at their home, attending Patient A's birthday party, going out to meals together, and attending one of Patient A's public events. Dr. Maal-Bared and her husband, who was an artist, attended a "life drawing class" with the Family, which Dr. Maal-Bared had suggested as beneficial to the Family. Life drawing classes involves drawing a person from observation of a live nude model.
10. While socializing with Patient B, Dr. Maal-Bared shared information with her about her personal life, marital issues and family.
11. Dr. Maal-Bared gave Patient B skincare oil and some clothes she no longer wore. She also commissioned a piece of artwork from Patient A, which she paid for but ultimately decided not to accept.
12. During the treating relationship, Dr. Maal-Bared and Patient B regularly exchanged emails. Dr. Maal-Bared and Patient B used nicknames for each other. Dr. Maal-Bared was "Eva" and Patient B was "Zsa Zsa", referring to the Hollywood actresses and sisters Eva and Zsa Zsa Gabor.
13. While Dr. Maal-Bared was her physician, Dr. Maal-Bared hired Patient B as her administrative and personal assistant. Patient A and Patient C were aware of and did not object to this arrangement. Patient B left Ontario Disability Support Program.
14. Patient B's administrative work provided her with access to Dr. Maal-Bared's patients' medical records. Patient B's responsibilities included organizing patient records and creating a database of patient contact information. Dr. Maal-Bared was aware that Patient

- B was working on a database of patient contact information from home and had made copies of patient contract information sheets. Dr. Maal-Bared's position is that she had no knowledge and did not permit Patient B to remove medical records from her office.
15. As Dr. Maal-Bared's personal assistant, Patient B worked in Dr. Maal-Bared's home, including organizing her closet, and helped Dr. Maal-Bared with personal errands, such as driving her to the veterinarian once.
 16. Dr. Maal-Bared also hired Patient A to clean her office on a number of occasions. Patient B arranged for Patient C to purchase a computer for Dr. Maal-Bared and install software on it. Patient C also took professional photographs of Dr. Maal-Bared. Dr. Maal-Bared hired Patient B's sister to move a desk for her.
 17. At Dr. Maal-Bared's request, as set out in an email attached at Tab A [to the Agreed Statement of Facts], as part of her administrative work, Patient B arranged to have her father, who lived in the U.S., and sister pick up art work in the U.S. that Dr. Maal-Bared had ordered. Patient B's sister brought it across the U.S. border to Toronto for Dr. Maal-Bared.
 18. Dr. Maal-Bared later asked her father to pick up the artwork from the Family's home.
 19. Dr. Maal-Bared attended in person at a hospital with the Family when Patient B's nephew became ill to advocate for his admission.
 20. Dr. Maal-Bared's medical records for the Family and OHIP records for Patients A and B are attached at Tabs B and C [to the Agreed Statement of Facts]. Dr. Maal-Bared's position is that these records are not complete because they were removed from her office by Patient B without her knowledge.

Complaints and Dr. Maal-Bared's Acknowledgement of Failure to Maintain Boundaries

21. By the end of May 2012, Dr. Maal-Bared's relationship with the Family broke down, at which time Dr. Maal-Bared apologized to Patient B, and acknowledged that the situation was her (Dr. Maal-Bared's) fault. Dr. Maal-Bared advised the Family that if they wanted to make a complaint to address their concerns, she would cooperate.
22. In May 2014, the Family sent letters of complaint to the College of Physicians and Surgeons of Ontario (the "College"). The Family alleged, among other things, that Dr.

Maal- Bared violated professional boundaries by socializing with the Family, and employing Patient A and B.

23. In her response to the Family's College complaints, Dr. Maal-Bared acknowledged that she had compromised professional boundaries by developing a personal and employment relationships with the Family.

Admission

Dr. Maal-Bared admits that she failed to maintain the standards of practice of the profession and engaged in disgraceful, dishonourable and unprofessional conduct in relation to her failure to maintain appropriate boundaries as described above.

FINDING

The Committee accepted as correct all of the facts set out in the Agreed Statement of Facts. Having regard to these facts, the Committee accepted Dr. Maal-Bared's admission and found that she committed an act of professional misconduct in that she has failed to maintain the standard of practice of the profession and in that she 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.

AGREED STATEMENT OF FACTS ON PENALTY

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

1. Dr. Maal-Bared took steps to remediate her behaviour by completing the following professional development courses:
 - "Medical Ethics and Legal Medicine" course. Attached at Tab A [to the Agreed Statement of Facts on Penalty] is a copy of Dr. Maal-Bared's Certificate of Participation in this course;

- “Understanding Boundaries and Managing the Risks Inherent in the Doctor/Patient Relationship” course. Attached at Tabs B and C [to the Agreed Statement of Facts on Penalty] are copies of Post Workshop Appraisals completed by the lead facilitator following Dr. Maal-Bared’s three week Self Report and her final Self Report, respectively;
 - “Medical Record Keeping” course. Attached at Tab D [to the Agreed Statement of Facts on Penalty] is a copy of Dr. Maal-Bared’s Certificate of Completion for this course; and
 - “Safe Opioid Prescribing” course. Attached at Tab E [to the Agreed Statement of Facts on Penalty] is a copy of Dr. Maal-Bared’s Certificate of Completion for this course.
2. Dr. Maal-Bared was cooperative during the College’s investigation.

In addition, the Committee was informed that Dr. Maal-Bared has signed an undertaking with the College on March 6, 2017, agreeing to the following terms:

1. Dr. Maal-Bared will practise under the guidance of a Clinical Supervisor acceptable to the College for at least six (6) months. The details of the supervision are specified in the undertaking (i.e., chart reviews, audio tapes of interviews, written reports back to the College);
2. Dr. Maal-Bared’s practice will be reassessed at the completion of the clinical supervision;
3. Dr. Maal-Bared will be monitored and have unannounced inspections of her practice and patient records.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for Dr. Maal-Bared made a joint submission as to an appropriate penalty and costs order, which included:

1. that Dr. Maal-Bared's certificate of registration be suspended for a period of four (4) months;
2. that Dr. Maal-Bared comply with her undertaking, dated March 6, 2017;
3. that Dr. Maal-Bared appear before the Committee to be reprimanded; and
4. that Dr. Maal-Bared pay costs to the College of the one-day hearing.

In considering a joint submission on penalty, the Committee was mindful of the "public interest test", which specifies that a tribunal or court should not depart from a penalty jointly proposed by the parties, unless the proposed penalty would bring the administration of justice into disrepute, or is otherwise not in the public interest. This is the "high hurdle" recently affirmed by the Supreme Court of Canada in *R v. Anthony-Cook*, 2016 SCC 43.

The Committee also took into account a number of principles in assessing the proposed penalty. The paramount principle is the protection of the public. Also important is a desire to express the abhorrence of the profession for the member's behavior and to maintain public confidence in the profession and its ability to regulate itself. Deterrence both of the member and of other physicians is also important in determining the appropriate penalty. When possible, the penalty should provide for rehabilitation of a member. It is also an important principle that the penalty should be proportionate to the misconduct.

Aggravating Factors

Dr. Maal-Bared's inappropriate behaviour was not a single impulsive act. She was unprofessionally involved with three different patients over several years and in many different settings. In disregarding professional boundaries, she ignored fundamental tenets of the physician-patient relationship. The concept of boundaries in medical practice is rooted in the nature of the relationship between a physician and a patient. Boundaries are the parameters that describe the limits of a fiduciary relationship, in which one person entrusts his or her welfare to another. This relationship engages for physicians the ethic of care and a tradition of comfort and healing, which cannot be attained without provision of a secure framework that delineates the

purpose and meaning of the relationship and a set of expectations necessary for comprehending the experience.

The parameters of the doctor-patient relationship are at the core of the capacity to treat. Physicians are taught early in their clinical training to provide care only according to the patient's needs, not their own; to avoid harm to the patient; to respect the individual; and, not to exploit the dependency of the patient on the physician, while maintaining privacy and truthfulness.

Trust, integrity and a commitment to the patient's well-being are essential to the provision of safety in a therapeutic environment. Trust is fundamental to a physician-patient relationship and a physician's ability to treat. Privacy is the cornerstone of that trust. Privacy refers to an individual having the right to choose what information she shares with others, both individually and collectively. Privacy and confidentiality creates and supports feelings of security and are important rights deserving of protection by the College. Trust is fragile and can be undermined to a very significant degree.

By employing Patient B, Patient A's mother and Patient C, patient B's common law partner, and permitting Patient B's access to the medical records, Dr. Maal-Bared not only violated the appropriate boundaries with her patients, she also permitted Patient B's examination of sensitive medical information of other members of Patient B's family. This not only destroyed trust between this doctor and her patients, it also erodes public trust in the profession.

Witness Statements

Counsel for the College provided the Committee with statements made by Patients A and B regarding the impact of their involvement with Dr. Maal-Bared. They bear witness to the loss of trust.

Patient A's Statement:

"I have not trusted another therapist since my time seeing her and my mother and I have struggled psychologically with our terrors, doubts, loneliness, and anger. I have not been able to

finish my education as the “occurrences” surrounding Dr. Maal-Bared disrupted my ability to continue concentrating on my school unhindered by the unfolding outcome of her actions. And I have to say that the effect her betrayal had on my mother and on her trust in other people has been a painful experience for both of us as we remain isolated from most people, most of the time”.

Patient B’s Statement:

“My mistrust of people after her conduct has left me expecting the same results with any relationship, which is assumed rejection, disaffection and unfaithfulness. This fear has increased to the point of socially immobilizing me”.

Mitigating Factors

A number of mitigating factors were taken into account by the Committee. First, Dr. Maal-Bared admitted to the conduct from the beginning of the College’s investigation. She has shown remorse and took responsibility for her actions. Second, Dr. Maal-Bared fully cooperated with the College. By accepting the joint submission, she spared the emotional distress of potential witnesses who otherwise would have had to testify at a public hearing. The College was spared the costs of a contested hearing. Third, Dr. Maal-Bared has proactively enrolled in and completed a number of courses; a facilitator of one of these courses has noted that she has shown insight after the course. Fourth, Dr. Maal-Bared has no prior history of appearances before the Committee. Fifth, Dr. Maal-Bared’s behavior occurred at a particular time when she was first establishing her independent practice – youth, inexperience or naivety may have contributed to her poor decisions.

Case Law

Counsel for the College referred to four cases previously decided by the Discipline Committee. The Committee noted that it is not bound by previous decisions and that no two cases are exactly the same. Nevertheless, prior decisions can serve as a guide in determining the penalty.

In *Bergstrom v. CPSO* (2000), Dr. Bergstrom, a psychiatrist who treated a vulnerable patient, attended her residence, stayed for dinner, slept on the couch and helped her purchase clothing. He also let his patient stay at his parents' condominium in Florida. Dr. Bergstrom fully admitted his behaviour. The Committee ordered a reprimand and a six-month suspension, required peer supervision, mentorship, and completion of a course on boundary violations.

In *CPSO v. Koffman* (2003), Dr. Koffman, a new graduate in family medicine, entered into a psychotherapeutic relationship with a man who later claimed they had a prolonged sexual involvement. In this case, the Committee did not make a finding of sexual abuse, but did find Dr. Koffman had engaged in disgraceful, dishonourable, or unprofessional conduct due to significant boundary violations, as evidenced by photographs and the complainant's detailed knowledge of Dr. Koffman's personal life, as well as misguided socialization. The parties in this case disagreed as to the appropriate penalty. The mitigating factors considered by the Committee included Dr. Koffman's youth and inexperience as a physician and the fact that she cooperated with the College investigation. In addition to a reprimand, Dr. Koffman's certificate of registration was suspended for three months, she was required to complete a course on boundaries and a course on basic skills in psychotherapy. She was also ordered to have a monthly review of her psychotherapy practice by a qualified supervisor.

In *CPSO v. Caro* (2005), Dr. Caro provided psychotherapy over a five-year period to a man with whom he socialized and introduced to his religious community. He later involved his patient in a financial transaction. Dr. Caro accepted his culpability and was cooperative. The Committee ordered a two-month suspension of Dr. Caro's certificate of registration and required that Dr. Caro complete College courses in ethics and boundaries.

Finally, in *CPSO v. Clements* (2005), Dr. Clements, a general practice psychotherapist, was continuously treating a patient for six years. During that time, Dr. Clements engaged in an unprofessional behavior by socializing with the patient and her family, including at Dr. Clements' cottage. They vacationed together, Dr. Clements loaned the patient one of her dresses, they engaged in regular hugging, and Dr. Clements used the legal services of the patient's

husband without payment. While Dr. Clements initially denied that the hugging occurred, she eventually cooperated and agreed to resign from her practice and never practise again.

Conclusion

Having considered the foregoing factors, the Committee was satisfied that the proposed penalty in this case was appropriate. A four-month suspension serves as a general deterrent to the members of the profession and reminds all Ontario physicians that one cannot ignore the issues of boundaries and confidentiality. The penalty also serves as a specific deterrent, showing Dr. Maal-Bared that serious consequences occur when there is disregard of professional boundaries. Even before the College hearing, Dr. Maal-Bared took responsibility for completing courses in her areas of weakness. This helps toward her rehabilitation. The monitoring of her practice and the ongoing supervision will prevent recurrence of the misconduct and ensure public protection. The public can be reassured of the profession's ability to regulate itself with patient protection as its paramount consideration.

ORDER

The Committee stated its findings of professional misconduct in paragraphs 1 and 2 of its written order of April 6, 2017. In that order, the Committee ordered and directed on the matter of penalty and costs that:

3. Dr. Maal-Bared appear before the panel to be reprimanded.
4. The Registrar suspend Dr. Maal-Bared's certificate of registration for a period of four (4) months effective immediately.
5. Dr. Maal-Bared pay costs to the College in the amount of \$5,500.00 within thirty (30) days of the date this Order becomes final.

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

TEXT of PUBLIC REPRIMAND
Delivered April 6, 2017
in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
and
DR. HAYA MAAL-BARED

Dr. Maal-Bared, the most generous possible interpretation of your misconduct is that it arose from youth, inexperience or naiveté. Your professional training should have included extensive instruction in maintaining appropriate boundaries. There is little evidence that you remembered it. Appropriate boundaries are the foundation of trust. They are critical to the doctor/patient relationship, and are solely the responsibility of the doctor.

You have taken significant steps in your rehabilitation. It is beyond unfortunate that they came too late to prevent or undo the significant harm to this family whose elegant statements we heard. The Committee urges you to continue your efforts at personal remediation and to seek whatever help you need to become a fully competent, healthy, and ethical practitioner.

This is not an official transcript