

ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

Citation: *College of Physicians and Surgeons of Ontario v. Clottey*, 2024 ONPSDT 26

Date: November 19, 2024

Tribunal File No.: 23-016

BETWEEN:

College of Physicians and Surgeons of Ontario

College

- and -

Clarence Edwin Clottey

Registrant

FINDING AND PENALTY REASONS

Heard: October 22, 2024, by videoconference

Panel:

Raj Anand (panel chair)
Madhu Azad (physician)
Stephen Bird (public)
Jose Cordeiro (public)
Joanne Nicholson (physician)

Appearances:

Simmy Dhamrait-Sohi, for the College
Jared Greenspan, for the registrant

RESTRICTION ON PUBLICATION

Pursuant to Rule 2.2.2 of the OPSDT Rules of Procedure and ss. 45-47 of the Health Professions Procedural Code, no one shall publish or broadcast the names of patients or any information that could identify patients or disclose patients' personal health information or health records referred to at a hearing or in any documents filed with the Tribunal. There may be significant fines for breaching this restriction.

Introduction

[1] The registrant, Dr. Clarence Clotley, is a family physician who practised in a group practice in Oakville, Ontario. He obtained his certificate of registration authorizing independent practice from the College of Physicians and Surgeons of Ontario on January 26, 2010.

[2] On January 10, 2020, the Discipline Committee of the College made findings of professional misconduct based on uncontested evidence that Dr. Clotley had carried out breast and internal examinations of five vulnerable female patients without proper communication, care, sensitivity and respect for their comfort and privacy. The Committee imposed a 12-month suspension and several terms, conditions or limitations on Dr. Clotley's certificate of registration, including an order preventing him from conducting breast, pelvic, or rectal examinations of any patient.

[3] Three years later, the registrant performed a breast and pelvic examination of Patient A without explaining the need for it. He made an inappropriate remark to Patient A and failed to respond appropriately when she expressed discomfort. Patient A later learned of Dr. Clotley's practice restrictions.

[4] In June 2024, as Patient A's complaint to the College was moving toward a contested hearing before the Tribunal, Dr. Clotley arranged for an undocumented pelvic examination of Patient B when his clinic was closed. He first took her for a meal, and afterwards he conducted a pelvic examination, engaged in sexual touching and made inappropriate remarks and showed Patient B personal photographs and videos.

[5] After this incident, the registrant and the College came to an agreement on a statement of uncontested facts, encompassing allegations with respect to both patients, and a joint submission on penalty and costs.

[6] At the hearing, Dr. Clotley did not contest the College's allegations of sexual abuse, contravention of the prohibition against conducting intimate examinations, and disgraceful, dishonourable or unprofessional conduct.

[7] The panel made this finding of professional misconduct, and we accepted the parties' joint submission on penalty and costs. As required by the Health Professions Procedural Code, Schedule 2 to the *Regulated Health Professions Act, 1991*, SO 1991, c. 18, in cases of sexual abuse, we revoked Dr. Clotley's certificate of registration and

reprimanded him. We also ordered him to pay the College costs of \$6,000, reimburse the College \$17,940 for funding for the complainants' therapy and counselling, and post security for this funding.

The evidence

[8] The statement of uncontested facts submitted by the College demonstrated the following.

Patient A

[9] On January 23, 2023, Patient A, who was pregnant, attended for her third medical appointment with Dr. Clotney. Patient A's partner accompanied her and remained in the examination room at all times with Patient A.

[10] During the appointment, Dr. Clotney discussed Patient A's medical history and concerns related to her pregnancy. He then told her he would conduct a physical examination.

[11] Patient A was surprised and told Dr. Clotney that if she had known she was to undergo a physical examination she would have shaved her legs. Dr. Clotney made an unprofessional and inappropriate remark to Patient A, stating that most women apologize for not having shaved their vaginas. Patient A and her partner were confused by this remark.

[12] Patient A changed into a gown after the registrant left the room.

[13] When Dr. Clotney returned, he told Patient A he would conduct a vaginal examination. He conducted a pelvic examination by inserting two fingers into Patient A's vagina and applied pressure. Patient A told Dr. Clotney that she was in pain and discomfort. Dr. Clotney did not respond, and he continued with the pelvic examination.

[14] Following the pelvic examination, Dr. Clotney told Patient A to undress from the top so that he could conduct a breast examination. Patient A removed her gown, exposing her breasts, and Dr. Clotney conducted a breast examination of Patient A.

[15] Dr. Clotney did not provide Patient A with any reason for conducting the pelvic and breast examinations. Patient A and her partner were unaware that Dr. Clotney was prohibited from conducting pelvic and breast examinations.

[16] Some time later, Patient A learned of Dr. Clotney's practice restrictions. She contacted the police and the College. Patient A was very upset and felt violated.

Patient B

[17] Patient B was Dr. Clotney's patient between about 2021 and 2024.

[18] On June 28, 2024, during an appointment to complete some medical paperwork for work, Patient B mentioned to Dr. Clotney that she was experiencing some recent gynecological issues.

[19] Dr. Clotney told Patient B she might have an infection, and he would need to conduct a pelvic examination to investigate. Dr. Clotney told her he could see her the next day, which was Saturday, at the end of his clinic day around 3:00 p.m. He gave Patient B his personal cellphone number. He told her to text him when she was ready to come to the clinic. He also told her not to call the clinic.

[20] As directed, Patient B arrived outside of Dr. Clotney's clinic at about 3:00 p.m. the next day and texted him on his personal cellphone number. Dr. Clotney responded by text: "will be coming to get you in 10." While Patient B was waiting in her car, the registrant called her to say he was running late and she should continue to wait.

[21] When Dr. Clotney came out of the office, he asked Patient B to go out and eat. He had not eaten, there were still people in the office and he did not want Patient B to have to wait.

[22] Patient B and Dr. Clotney went in Dr. Clotney's car to a restaurant, where they ate appetizers and consumed alcoholic beverages. Dr. Clotney paid for the meal and drinks.

[23] When they returned to the office, the registrant instructed Patient B to park at the rear side of the building, enter through the back door and go into an examination room.

[24] Patient B became uneasy. There was no one else in the office, and Dr. Clotney appeared to be looking around. At some point she turned on the "record" function on her cellular phone and audio recorded her encounter with Dr. Clotney. Dr. Clotney was unaware of the recording.

[25] When Dr. Clotney came into the examination room, he drew a picture of a body and uterus on a piece of paper and showed Patient B. He told her he would check to see

if the uterine walls were swollen to determine if she had an infection. While Dr. Clotney was drawing the picture, he made an unprofessional and inappropriate remark to Patient B that she was more gorgeous than the picture he had drawn.

[26] At his direction, after Dr. Clotney left the room, Patient B changed. She undressed from the waist down and covered herself with a sheet.

[27] When he returned to the examination room, Dr. Clotney made an inappropriate remark of a sexual nature to Patient B about a relaxation technique that brings people to an orgasm to relieve stress. He told her that he performs this for people if they require it.

[28] Dr. Clotney conducted a pelvic examination on Patient B by inserting his fingers into her vagina. He told her he could feel her cervix, bladder, and ovaries. Dr. Clotney engaged in touching of a sexual nature of Patient B's genitals, including her clitoris.

[29] The registrant told Patient B she did not have an infection and did not require antibiotics.

[30] Dr. Clotney left the room and Patient B changed into her clothes. When he returned, he showed Patient B personal photographs and videos on his computer and cellphone of events he had attended. While seated next to Patient B, he inappropriately commented on her appearance, and touched her leg, thigh, and face with his hands.

[31] Patient B attempted to leave the examination room. The registrant stood up in front of her, blocking her exit. He hugged Patient B and kissed her on the cheek. Patient B was shocked.

[32] Patient B's audio recording, which the parties filed, is approximately 57 minutes in length. Most of it contains their conversation while Dr. Clotney is showing her the pictures and videotapes.

[33] The audio recording shows that Dr. Clotney conducted the pelvic examination for about ten minutes.

[34] Dr. Clotney did not document his June 29, 2024 encounter with Patient B in her patient chart.

Finding of professional misconduct

[35] The uncontested evidence establishes that with respect to both patients, under para 1(1)1 of O. Reg. 856/93, Dr. Clotney contravened a term, condition or limitation on his certificate of registration by conducting breast and pelvic examinations that he was prohibited from doing as a result of the terms, conditions and limitations imposed as part of his previous disciplinary penalty.

[36] Indeed, that decision stipulated the text of a large notice that he was required to post, that would have alerted patients to this prohibition. The evidence before our panel did not indicate whether any such notices were posted when Patients A and B attended the registrant's clinic.

[37] The evidence also demonstrates that under s 51(1)(b.1) of the Code, he engaged in sexual abuse of Patient B, within the meaning of s. 1(3) of the Code, paragraphs (a) ("touching, of a sexual nature, of the patient by the member"), including kissing, as well as touching her face, leg and her clitoris, none of which was appropriate to any clinical services he was providing; and (b) ("behaviour or remarks of a sexual nature by the member towards the patient"), including joking with Patient A about shaving her vagina and with Patient B about reaching orgasm. .

[38] Moreover, we conclude that the registrant's conduct with respect to both patients would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, under para. 1(1)33 of O. Reg. 856/93 made under the *Medicine Act*, 1991, SO 1991, c. 30.

Penalty

[39] Under s. 51(5) of the Code, the panel must reprimand Dr. Clotney and revoke his certificate of registration, because the sexual abuse included touching of a sexual nature of genitals

[40] In fashioning an appropriate penalty, we also adopt the other terms of the parties' joint submission that are not specifically mandated by law. The Tribunal is only entitled to reject the parties' agreement if it meets the "undeniably high threshold" that the proposed penalty "would be viewed by reasonable and informed persons as a breakdown in the proper functioning of the justice system": *R. v. Anthony-Cook*, 2016 SCC 43 at para. 42, applied recently in *Ontario College of Teachers v. Merolle*, 2023 ONSC 3453 (Div. Ct.).

[41] Accordingly, we order the registrant to reimburse the College in the amount of \$17,940, and to post security for this purpose, to fund therapy and counselling under s. 85.7 of the Code.

[42] This is in keeping with s. 1.1 of the Code, which states that

The purpose of the provisions of this Code with respect to sexual abuse of patients by members is to encourage the reporting of such abuse, to provide funding therapy and counselling in connection with allegations of sexual abuse by members and, ultimately, to eradicate the sexual abuse of patients by members.

[43] In making our order, we have taken into account the victim impact statements provided by the two patients.

[44] Patient A spoke of the “devastating impact... grief, suffering and overwhelming stress” that she has experienced as a result of Dr. Clotney’s inappropriate comments about “female grooming etiquette”. He betrayed her trust when she accepted the registrant’s medical judgment and believed that both a pelvic and breast examination were necessary as part of her prenatal care. She was “heartbroken” to find that Dr. Clotney was not permitted to conduct such examinations at all, and she felt “violated, victimized and disgusted.”

[45] Patient B said Dr. Clotney’s actions left her sad, angry, lacking in focus, and fearful of both men and doctors. Her trust, safety and wellbeing were compromised by the registrant’s abuse of power and his manipulative behaviour, which have left her struggling to find her sense of self once again. Her hope was that writing this statement to express the impact on her would bring her closure and healing.

[46] In addition to the exploitation of these vulnerable patients, there are several other aggravating factors, including

- a. engaging in misconduct that harmed two different victims;
- b. Dr. Clotney’s serious disciplinary record just a few years earlier for behaviour that was similar in many ways, and that continued, despite an intervening 12-

month suspension and the course he was required to take on Professionalism and Communications;

- c. Dr. Clottey's failure to respect the existing order against him, which included a specific prohibition against conducting the examinations that took place here;
- d. devious steps taken to avoid detection in the case of Patient B;
- e. clearly premeditated conduct in late June 2024 that occurred at exactly the same time that the registrant and the College were deeply involved in significant pre-hearing activities including an evidentiary motion in this proceeding;
- f. an apparently brazen disdain for the presence of a witness to Dr. Clottey's inappropriate physical and verbal behaviour toward Patient A.

[47] We therefore issued the following order:

- 1. The Tribunal requires the registrant to appear before the panel to be reprimanded.
- 2. The Tribunal directs the Registrar to:
 - a. Revoke the registrant's certificate of registration, effective October 23, 2024 at 12:01 a.m.
- 3. The Tribunal requires the registrant to pay the College costs in the amount of \$6,000.00 by December 6, 2024.
- 4. The Tribunal requires the registrant to reimburse the College \$17,940.00 for funding provided for therapy and counselling under s. 85.7 of the Health Professions Procedural Code and to post security acceptable to the College to guarantee the payment for these amounts, by November 21, 2024.

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BETWEEN:

College of Physicians and Surgeons of Ontario

College

- and -

Clarence Edwin Clottey

Registrant

**The Tribunal delivered the following Reprimand
by videoconference on Tuesday, October 22, 2024.**

*****NOT AN OFFICIAL TRANSCRIPT*****

Dr. Clottey,

The deliberate and repetitive nature of your behaviour shows an appalling pattern of misconduct.

In the first instance before us today, you disregarded prior regulatory restrictions which were put in place to protect the public from your past unprofessional conduct. You knew you should not do a pelvic or breast exam, and yet you did so anyway. You also made inappropriate comments of a sexual nature during the course of the patient encounter, which caused the patient to feel confused, distressed and violated.

With respect to the second patient your misconduct was both premeditated and predatory, involving sexual abuse under the premise of a medical examination. You repeatedly crossed boundaries by sexualizing the medical appointment and you displayed a profound lack of professional integrity by arranging the appointment in the manner that you did.

Patients have an inherent expectation of safety when they visit a physician's office. They should not have to question the appropriateness of a comment, gesture or examination. Abusing a patient sexually is the ultimate betrayal of the trust placed in the physician and will not be tolerated by this Tribunal. It is also an abuse of the position and power that our society entrusts to physicians and a breach of the public's confidence in the profession as a whole.

The penalty today reflects the seriousness of your behaviour: your certificate of registration is hereby revoked.