

ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

Citation: *College of Physicians and Surgeons of Ontario v. Kozerawski*, 2024 ONPSDT 13

Date: April 8, 2024

Tribunal File No.: 23-011

BETWEEN:

College of Physicians and Surgeons of Ontario

College

- and -

Waldemar Jacek Kozerawski

Registrant

FINDING AND PENALTY REASONS

Heard: February 28, 2024, by videoconference

Panel:

Raj Anand (panel chair)
Joanne Nicholson (physician)
Rob Payne (public)
Peter Pielsticker (public)
Deborah Robertson (physician)

Appearances:

Victoria Cistrone, for the College
Keary Grace and Azin Samani, for the registrant

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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] In May 2021, the registrant, Dr. Waldemar Kozerawski, was arrested upon his arrival in Canada because he was travelling with Oxycocet, a controlled substance. He was also carrying several other prescription medications that were not prescribed to him.

[2] While the registrant was not charged and was released without any conditions, the College initiated a conduct investigation. In the course of that investigation, it became clear that several of the medications, including controlled substances, were prescribed to Dr. Kozerawski's close family member, Patient A, and that he had treated her for many serious and chronic health conditions for more than a decade.

[3] Ultimately the College alleged in this hearing that Dr. Kozerawski had engaged in disgraceful, dishonourable or unprofessional conduct (DDU):

- by improperly using 11 medications for his personal use that were not prescribed to him, and by improperly storing and failing to properly dispose of these medications; and
- by providing continuing care and treatment to Patient A, contrary to College policy about doctor-patient relationships with family members, and even after being advised during the investigation of the College's concerns.

[4] The College also alleged, relying on an expert opinion, that Dr. Kozerawski failed to maintain the standard of practice of the profession in his care and treatment of Patient A:

- by entering into a long-term doctor-patient relationship with her;
- by prescribing oxycodone, a powerful narcotic, to Patient A for a prolonged period;
- by failing to obtain appropriate assistance from a consultant regarding her pain management strategy;
- by employing a questionable strategy to reduce Patient A's narcotic use;

- by failing to disclose her narcotic use to other physicians who were treating Patient A at the same time;
- by using several questionable intervention strategies for different aspects of Patient A's care, including Botox injections, benzodiazepines, atypical antipsychotics, and second- and third-line therapies, and in failing to corroborate his approach with specialists or other evidence-based sources; and
- by failing to document important aspects of Patient A's care in his records of her treatment.

[5] The College's expert concluded that the registrant's clinical practice, behaviour or conduct was likely to expose patients to harm or injury.

[6] Dr. Kozerawski admitted these facts, which the parties presented at the hearing in an agreed statement of facts (ASF), and he admitted that he had engaged in professional misconduct as alleged.

[7] We accepted the parties' joint submission and made findings of DDU and failure to maintain the standard of practice of the profession.

[8] After reviewing the parties' ASF on penalty and hearing their representations, we also accepted their joint submission on penalty and costs. We imposed an eight-month suspension, ordered Dr. Kozerawski to complete a recognized program on ethics and boundaries, and delivered a reprimand.

[9] These are our reasons.

Professional misconduct

Disgraceful, dishonourable or unprofessional conduct regarding the prescription medications

[10] In early May 2021, Dr. Kozerawski returned to Canada at Pearson International Airport after about two weeks abroad. He was detained for travelling with Oxycocet, a Schedule 1 substance under the *Controlled Drugs and Substances Act*, SC 1996, c.19. He was later released, and was not charged.

[11] Dr. Kozerawski also had 11 other medications with him, totalling some 333 pills, that were not prescribed to him. Five of the medications were prescribed by the registrant to his patients. Two of the medications were prescribed to other patients by another physician. Four of the medications were not prescribed to any specific patient, but were prescribed by Dr. Kozerawski for “office use”.

[12] The breakdown of the medications in his possession was as follows:

- a. three medications, totalling 151 pills, he had prescribed to Patient A, who was his patient from 2010 to 2022;
- b. two medications, totalling 74 pills, he had prescribed to Patient B, who had been his patient since 1996;
- c. one medication, totalling 16 pills, which another physician had prescribed to Patient C in February 2020; and
- d. Oxycocet, totalling 39 pills, which another physician had prescribed to Patient D in 2015. At a subsequent appointment with Dr. Kozerawski, Patient D told the registrant that he no longer needed the medication, and did not know what to do with it. He offered it to Dr. Kozerawski, who accepted it and told Patient D he would use it himself; and
- e. four medications, totalling 53 pills and four vials, prescribed for “office use”.

[13] In summary, the registrant admitted that he improperly used these eleven medications for his own personal use. He improperly stored these medications and failed to properly dispose of them.

[14] Based on these admitted facts, we found that Dr. Kozerawski had engaged in disgraceful, dishonourable or unprofessional conduct.

Disgraceful, dishonourable or unprofessional conduct in providing continuing care and treatment to a family member, Patient A

[15] Patient A, who is elderly, lived with the registrant throughout the period of treatment, between 2010 and 2022. The registrant treated Patient A for several acute and chronic comorbidities.

[16] The registrant's treatment of his family member was extensive and ongoing. It included:

- ordering investigations, including laboratory and imaging investigations;
- making referrals, including to several specialists, and receiving consultant reports;
- prescribing medications, including narcotics, benzodiazepines and antipsychotics; and
- administering Botox injections.

[17] Dr. Kozerawski prescribed benzodiazepines to Patient A to manage what he described as her increasing mental instability and "violent outbursts," which occurred in their shared home. He consulted with another family member, who is a psychiatrist, before prescribing this medication.

[18] Dr. Kozerawski maintained a patient chart for Patient A. He did not submit any claims for services rendered to Patient A to the Ontario Health Insurance Plan (OHIP).

[19] The parties presented 30 pages of pharmacy records, containing the details of several hundred of Dr. Kozerawski's prescriptions that were filled by three pharmacies for Patient A between January 2012 and March 2022.

[20] The registrant's last documented care of his family member was a prescription dated March 22, 2022. Patient A was admitted to hospital in November 2022 and then discharged to long-term care.

[21] During its investigation, the College raised concerns with Dr. Kozerawski about his possible treatment of a family member in a letter dated November 23, 2021. The registrant confirmed the close family relationship on December 22, 2021.

[22] On January 26, 2022, the College investigator provided him with the College's Policy Statement on Treatment of Self, Family Members or Others Close to Them. On March 1, 2022, Dr. Kozerawski confirmed that he was familiar with the College's policies on this issue. He is a longstanding registrant of the College, having received his certificate of registration in 1984.

[23] The parties provided the panel with the College's three policy statements that were in effect during Patient A's treatment between 2010 and 2022, and they contained similar College expectations.

[24] For example, the 2016 Policy Statement, after defining terms and setting out the broad principles, indicates that personal or close relationships can compromise a physician's emotional and clinical objectivity. The Statement goes on:

In order to meet their professional obligations to practise medicine safely and effectively, physicians must only provide treatment for themselves and family members in limited circumstances, as set out below...

Physicians must not provide treatment for themselves or family members except:

- For a minor condition or in an emergency situation, and
- When another qualified health-care professional is not readily available.

Physicians must not provide recurring episodic treatment for the same disease or condition, or provide ongoing management of a disease or condition, even where the disease or condition is minor. Another physician must be responsible for ongoing management.

[25] It is clear from the duration and substance of Dr. Kozerawski's care of his close family member, and the nature of Patient A's comorbidities, that her health condition was the antithesis of what the College considered a "minor condition." The Policy Statement carefully defines that exception as "a non-urgent, non-serious condition that requires only short-term, episodic, routine care and is not likely to be an indication of, or lead to, a more serious, complex or chronic condition, or a condition which requires ongoing clinical care or monitoring."

[26] We do not accept the registrant's explanation, given at one point during the investigation, that Patient A, would not have sought care from anyone else. The evidence shows, as noted below, that Patient A did see other health professionals, during the time Dr. Kozerawski was her primary care physician. There is no evidence that the registrant attempted to arrange alternate care for her on an ongoing basis.

[27] Despite being put on notice of the College's concerns as of at least November 2021, Dr. Kozerawski continued to provide care to his close family member until at least his prescription on March 22, 2022.

[28] In summary, for more than a decade, the registrant provided extensive and ongoing care and treatment to his close family member for multiple serious and chronic conditions, and it continued even when he was put on notice of the College's concerns. He disregarded the College's policies, which make clear that physicians should not treat their family members or themselves except in very limited circumstances.

[29] Based on these admitted facts, we found that Dr. Kozerawski had engaged in disgraceful, dishonourable or unprofessional conduct.

Failure to maintain the standard of practice of the profession in the care and treatment of Patient A

[30] The College retained Dr. Mark Nassim, a member of the College of Family Physicians of Canada, to provide an opinion regarding Dr. Kozerawski's care and treatment of Patient A.

[31] In his first report dated July 11, 2022, Dr. Nassim concluded that by entering into a long-term physician-patient relationship with his close family member, Dr. Kozerawski had failed to maintain the standard of practice of the profession.

[32] In Dr. Nassim's opinion, Dr. Kozerawski also demonstrated a lack of judgment in providing care and treatment of a close family member despite being aware of the relevant College policy.

[33] In his addendum report dated December 9, 2022, Dr. Nassim identified deficiencies in relation to several specific actions that the registrant took, or failed to take, in treating Patient A.

[34] Dr. Nassim raised several concerns about the registrant's prescribing of oxycodone to Patient A between 2010 and 2019.

[35] Dr. Kozerawski prescribed a dosage that exceeded the recommended maximum of 90 mg morphine equivalents for the daily management of chronic non-cancer pain.

[36] The registrant prescribed oxycodone regularly, contrary to College policy. The College's Policy Statement on the treatment of family members explicitly states that physicians must not prescribe or administer narcotics for family members. Dr. Kozerawski prescribed oxycodone 80 mg 38 times, for a total of 3580 tablets over 10 years.

[37] The registrant struggled to wean Patient A off narcotics, but did not reach out to a consultant for recommendations or corroboration of his pain management strategy.

[38] For example, Dr. Kozerawski switched Patient A's oxycodone to a multivitamin placebo without telling her. This was a questionable strategy, which underscored his inability to directly reduce and taper her narcotic use.

[39] The registrant did not disclose Patient A's narcotic use to her consultants, including the orthopedic surgeon who managed her care after she suffered a fracture. It was important for consultants to factor her prescribing history into their management strategy.

[40] Dr. Nassim concluded that the registrant's prolonged prescription of high-potency opioids to Patient A, and his failure to consult with a chronic pain specialist, constituted a failure to maintain the standard of practice, demonstrated a significant lack of judgement and lack of knowledge and was likely to expose the patient to harm or injury.

[41] In his addendum report, Dr. Nassim raised several additional concerns regarding the registrant's treatment of Patient A.

[42] His use of Botox injections was an invasive intervention that was repeatedly performed on a family member without consultation or collaboration. This displayed a significant lack of judgment.

[43] Dr. Nassim stated that the registrant's use of benzodiazepines for an elderly patient carried risks, and he regarded its use as controversial.

[44] Dr. Kozerawski used atypical antipsychotics as a first-line therapy for the management of agitation or insomnia in an elderly patient, and this was not a supported

approach. He did not consider using safer agents for this purpose, such as Trazodone or Mirtazapine.

[45] Dr. Kozerawski's cumulative patient profile for Patient A did not meet the requirements of the College's policy on medical records documentation, as it omitted details about her shoulder fracture and shoulder dislocation that were relevant to her pain management and the use of oxycodone. In addition, the registrant did not list oxycodone in the cumulative patient profile. These omissions displayed a significant lack of judgment.

[46] In managing Patient A's agitation and dementia, the registrant relied on potentially harmful second- and third-line therapies. He did not corroborate his approach with specialists or robust, evidence-based sources. Instead, he relied on another family member, a psychiatrist, to provide guidance. The registrant displayed a significant lack of knowledge in this respect.

[47] Overall, Dr. Nassim concluded that Dr. Kozerawski's clinical practice, behaviour or conduct was likely to expose patients to harm or injury.

[48] We accept the undisputed expert opinion of Dr. Nassim. Based on his conclusions, the registrant failed to maintain the standard of practice of the profession in his care and treatment of Patient A.

Penalty and costs

[49] The parties made a joint submission to the panel on the appropriate penalty. In these circumstances, we apply the public interest test that was adopted by the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43 and applied in the professional regulation context by the Divisional Court in *Bradley v. Ontario College of Teachers*, 2021 ONSC 2303 at para. 11.

[50] The joint submission must be accepted unless "the proposed penalty is so 'unhinged' from the circumstances of the case that it must be rejected": *Bradley* at para. 14. In other words, "[t]here must be something completely unacceptable, unusual or unconscionable" about the parties' proposal: *College of Physicians and Surgeons of Ontario v. Matheson*, 2022 ONPSDT 27 at para. 17.

[51] In our view, taken together, the three elements of the proposed penalty jointly submitted by the parties – an immediate eight-month suspension of Dr. Kozerawski's certificate of registration, delivery of a reprimand and completion of the PROBE program on ethics and boundaries – meet the public interest test. We reached this conclusion for several reasons.

[52] First, while every Tribunal case involves a different factual matrix, with variations in aggravating and mitigating circumstances, the penalty proposed for Dr. Kozerawski falls within a reasonable range of prior precedents dealing with similar types of misconduct.

[53] In their joint book of authorities, the parties provided cases that imposed suspensions between four and 12 months, where the professional misconduct involved prolonged treatment of a family member, contrary to College policy: *College of Physicians and Surgeons of Ontario v. Adams*, 2021 ONCPSD 11; *College of Physicians and Surgeons of Ontario v. Rourke*, 2021 ONPSDT 45; *College of Physicians and Surgeons of Ontario v. Hu*, 2021 ONCPSD 27; and *College of Physicians and Surgeons of Ontario v. Kao*, 2023 ONPSDT 23. In the first three decisions, there was the added element of substandard care.

[54] On the facts, the misconduct in the *Rourke* case is most similar to the case before us. Dr. Rourke was a family physician who treated his spouse for six years, including the prescribing of two drugs that were not medically indicated, potentially putting her at risk of harm. He failed to discuss the risks, benefits and potential side-effects of some of the medications. College investigators also seized some 5000 pills, including controlled drugs, in the names of many patients, that were prescribed by Dr. Rourke and other doctors. The medications were not properly stored or disposed of, and some of them had expired many years earlier. The Tribunal accepted the parties' joint submission and imposed a 10-month suspension, ordered him to participate in instruction on medical ethics, and delivered a reprimand.

[55] Second, the proposed eight-month penalty recognizes that this was serious and multi-faceted misconduct. It occurred over a lengthy period of time, even after the registrant was aware of the College's concerns and his non-compliance with its policy on

treating family members. The suspension is lengthy and will have a significant impact at this stage of the registrant's career.

[56] Third, the parties' joint submission takes account of important mitigating considerations. Dr. Kozerawski cooperated with the College in the presentation of this hearing. He admitted the College's allegations, signed ASFs with respect to both liability and penalty and acknowledged the seriousness of his misconduct by making a joint submission on penalty and costs. This facilitated the Tribunal proceeding and obviated the need for any oral evidence.

[57] Dr. Kozerawski has no prior disciplinary history. Nevertheless, he was cautioned by the Inquiries, Complaints and Reports Committee in 2019 with respect to matters that included inadequate record keeping, an issue that overlaps with this case, as well as inappropriate collection of monies from a third-party for insured services.

[58] Overall, the Tribunal's order meets objectives of both specific and general deterrence, contributes to public protection and promotes public confidence in the regulation of the profession. It provides a clear message to registrants of the College about the importance of following College policies. At the same time, the requirement to participate in medical ethics education serves the purpose of rehabilitation.

[59] The parties made brief submissions about the desirability and purpose of a reprimand, as requested by the Tribunal in its January 2024 interim practice direction.

[60] The registrant essentially submitted that the parties' agreement on a reprimand was an important part of a resolution that preceded the release of the interim practice direction. Clearly, one of the motivating institutional purposes underlying the presumptive acceptance of joint submissions is to avoid disturbing a carefully negotiated settlement. He has participated in the Tribunal process, unlike the registrant in *College of Physicians and Surgeons of Ontario v. Otto*, 2023 ONPSDT 1, which is referred to in the interim practice direction. Both parties argued that the delivery of a reprimand expresses the profession's and the Tribunal's denunciation of Dr. Kozerawski's conduct, and is in accordance with precedent.

[61] Applying the prevailing jurisprudence on joint submissions, we did not view any aspect of the penalty as unconscionable or unhinged from the circumstances of this case. We accordingly delivered the panel's reprimand at the conclusion of the hearing.

[62] We also ordered costs in favour of the College in accordance with the parties' agreement.

Order

[63] We therefore made the following order:

1. Dr. Kozerański to attend before the panel to be reprimanded.
2. The Tribunal directs the Registrar to:
 - a. Suspend Dr. Kozerański's certificate of registration for eight (8) months commencing February 29, 2024 at 12:01 a.m.;
 - b. Place the following terms, conditions and limitations on the registrant's certificate of registration, effective immediately:
 - i. Dr. Kozerański, at his own expense, will participate in the PROBE Ethics & Boundaries Program offered by the Centre for Personalized Education for Professionals, by receiving a passing evaluation or grade, without condition or qualification. Dr. Kozerański will complete the PROBE program within six (6) months of the date of this Order, or if it is not available within that timeframe, will complete it at the earliest opportunity. He will provide proof to the College of his completion, including proof of registration and attendance and participant assessment reports, within one (1) month of completion.
3. Dr. Kozerański to pay the College costs of \$6,000 by March 29, 2024.

ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

Tribunal File No.: 23-011

BETWEEN:

College of Physicians and Surgeons of Ontario

College

- and -

Waldemar Jacek Kozerawski

Registrant

**The Tribunal delivered the following Reprimand
by videoconference on Wednesday, February 28, 2024.**

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

Dr Kozerawski,

As a registrant of the College of Physicians and Surgeons of Ontario, it is expected that you adhere to its policies and guidelines. The College's policy on treating self and family members provides, among other things, that physicians should not treat their family members or themselves except in very limited circumstances. It is disappointing that after having been in practice for so many years you have disregarded this policy.

The medical care that you provided to your close family member was extensive. It occurred over more than a decade, and continued even after you were put on notice of the College's concerns. You treated this family member for multiple serious and chronic health conditions. Furthermore, your treatment fell below the standard of care. We are especially concerned that you prescribed benzodiazepines, narcotics and atypical antipsychotics. The College's policy specifically prohibited the prescription of drugs of this nature. In addition, your administration of these medications, and your failure to disclose this narcotic use to your family member's consultants, showed a significant lack of judgment and lack of knowledge, exposing this relative to harm.

This tribunal rejects your explanation that your relative would not have sought care from anyone but you, as we have evidence that they did see other health professionals including a surgeon and cardiologist during the time you were their primary care physician. We also have seen no evidence that you attempted to arrange alternate care. This shows a remarkable lack of insight and judgement, as does the other issue

addressed in this hearing, that you carried and used medications not prescribed to you, including narcotics.

It is hoped that during your suspension you will reflect on your serious misconduct and educate yourself on the College's policies and guidelines before returning to practice.