

ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

Citation: *College of Physicians and Surgeons of Ontario v. Nugent*, 2023 ONPSDT 25

Date: November 6, 2023

Tribunal File No.: 23-006

BETWEEN:

College of Physicians and Surgeons of Ontario

- and -

Dr. Nathan Zane Nugent

FINDING AND PENALTY REASONS

Heard: September 26, 2023, by videoconference

Panel:

Ms. Shayne Kert, chair

Dr. Paul Hendry

Mr. Rob Payne

Ms. Linda Robbins

Dr. Deborah Robertson

Appearances:

Ms. Carolyn Silver and Ms. Simmy Dhamrait-Sohi, for the College

Mr. Marc Flisfeder, for Dr. Nugent

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. The Tribunal ordered that in addition to the Rule 2.2.2 restrictions, no one shall publish or broadcast the name of the victim referred to at the hearing or in any documents filed with the Tribunal. There may be significant fines for breaching this restriction.

Overview

[1] Dr. Nathan Nugent is a physician with a specialty in family medicine. He received his certificate of independent practice from the College in 2016. At the relevant times, he was practising family medicine, as well as public health and preventative medicine, aviation medicine and travel and tropical medicine. He was also employed with the Canadian Armed Forces, practising military and occupational medicine. He has no discipline history.

[2] In August 2019, Dr. Nugent was arrested and charged criminally with assaulting his wife, Ms. X. He was released on bail with conditions. His lawyer advised the College of the charge and the conditions of his release.

[3] In September 2019, Dr. Nugent was charged with failing to comply with the conditions of his bail order. He was released from custody on conditions in respect of the new charge. In May 2020, he was charged with two additional counts of failing to comply with conditions of his release and was again released from custody on conditions. He did not report the new charges or his additional release conditions to the College in a timely way, as he was required to do.

[4] After a trial, in February 2022, Dr. Nugent was found guilty on the assault charge. In March 2022, all three charges of failing to comply were withdrawn by the Crown. In April 2022, Dr. Nugent received a sentence of an absolute discharge in respect of the assault charge.

[5] At the hearing, Dr. Nugent admitted, and we found that based on the agreed facts (summarized below) he committed professional misconduct. The parties made a joint submission that the penalty should be a reprimand and a three-month suspension of his certificate of registration, with conditions.

[6] Our role in assessing a joint penalty submission is limited. Unless the panel finds that imposing the proposed penalty would bring the system of physician professional regulation into disrepute, the joint submission should be accepted. Applying that test, we accepted the joint submission at the hearing. We also ordered costs of \$6,000 to be paid to the College, as agreed by the parties. These are our reasons.

The Misconduct

The Agreed Facts

i. Charge of Assault

[7] In finding Dr. Nugent guilty on the charge of assault, the trial judge made findings of fact, including (but not limited to):

- In August 2019, Dr. Nugent and Ms. X were living together at the family home with their two children, who were then 11 and seven years old. The relationship between Dr. Nugent and Ms. X was “conflicted” at the time.
- Dr. Nugent and Ms. X were arguing at intervals in the afternoon and evening of August 5, 2019. Sometime after 9:00 p.m. that day, Dr. Nugent went to the guest room with the intention of sleeping there for the night.
- Sometime after 5:00 a.m. the next morning, Dr. Nugent entered the master bedroom where Ms. X and the two children were lying in bed together. Ms. X was awake. Dr. Nugent turned on the ceiling light and moved to the bathroom, which was located beside the bed. Ms. X used her cell phone to film Dr. Nugent without his permission. She tried to cover her phone, except for the video lens, so that Dr. Nugent would not see what she was doing.
- Dr. Nugent noticed that Ms. X had her cell phone directed at him. He immediately left the bathroom and approached the far side of the bed where Ms. X was laying. She stopped recording, turned away from Dr. Nugent and onto her stomach and held her phone in her hands under her body.
- Dr. Nugent applied force to Ms. X by placing his hand on her shoulder and reaching over her body to take the phone out of her hands. He did not have her consent to the application of force or to taking the phone. During this physical encounter, the children woke up and one child ran from the bedroom. Immediately after taking Ms. X’s cell phone from her, Dr. Nugent left the bedroom.

[8] The trial judge found that Dr. Nugent was in a state of anger when he grabbed Ms. X’s shoulder, and that Ms. X suffered some transitory pain and discomfort as a result of the physical interaction. The judge also found that despite his anger, Dr. Nugent did

not engage in any gratuitous violence and that he had applied force to Ms. X for no purpose other than to obtain the phone from her.

ii. *Failure to Report Criminal Charges and Conditions to the College*

[9] On August 7, 2019, after being arrested and charged with assaulting Ms. X, Dr. Nugent was released on bail with conditions. His lawyer subsequently wrote to the College to advise of the assault charge and the conditions of his release.

[10] On September 25, 2019, and again on May 25, 2020, Dr. Nugent was arrested and charged with failing to comply with conditions in his release orders and was released from custody on conditions. He did not report the charges of failing to comply or the associated bail conditions to the College. Further, when he completed his June 2020 and July 2021 online annual renewal reports (for the previous year), Dr. Nugent falsely answered “no” in response to questions regarding any new charges and/or bail conditions not previously reported to the College.

Finding of Professional Misconduct

[11] The agreed facts, and Dr. Nugent’s admission, support a finding that he engaged in professional misconduct as alleged. Following a trial, Dr. Nugent was found guilty of assault of his then spouse. We accepted the parties’ joint submission that, in the circumstances described above, Dr. Nugent has been found guilty of an offence that is relevant to his suitability to practise, and that the conduct underlying the finding of guilt was conduct unbecoming a physician: *Dr. Jha v. College of Physicians and Surgeons of Ontario*, 2022 ONSC 769 at paras. 119-121.

[12] Dr. Nugent’s failure to report his charges and bail conditions to the College, and his failure to be candid with the College about those charges and conditions, is also concerning. Section 85.6.4 of the Health Professions Procedural Code, Schedule 2 to the *Regulated Health Professions Act, 1991*, SO 1991, c. 18, requires a member to report (in writing) to the College if the member has been charged with an offence, as well as to report any bail condition imposed on the member in connection with the charge, as soon as reasonably practicable after they receive notice of the charge or bail condition. In failing to disclose his new charges and bail conditions to the College in a timely manner, Dr. Nugent engaged in conduct that would reasonably be regarded by members of the profession as disgraceful, dishonourable or unprofessional.

Penalty and Costs

[13] As this was a joint submission on penalty, the “undeniably high threshold” of the public interest test established by the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43, applies: *Bradley v. Ontario College of Teachers*, 2021 ONSC 2303; *Ontario College of Teachers v. Merolle*, 2023 ONSC 3453. The public interest test requires that a joint submission be accepted unless “the proposed penalty is so ‘unhinged’ from the circumstances of the case that it must be rejected”: *Bradley* at para. 14; *Anthony-Cook* at para. 34.

[14] In the context of this Tribunal, a joint submission will only be contrary to the public interest if it is “so markedly out of line with expectations of reasonable persons aware of the circumstances of the case that they would view it as a break down in the proper functioning” of the College’s professional discipline process: *Anthony-Cook* at para. 33; *College of Physicians and Surgeons of Ontario v. Bahrgard Nikoo*, 2022 ONPSDT 15 at para. 34. In other words, “[t]here must be something completely unacceptable, unusual or unconscionable about [a joint submission] to reject it”: *College of Physicians and Surgeons of Ontario v. Matheson*, 2022 ONPSDT 27, at para. 17.

[15] We are satisfied that, taken together, the three elements of the proposed penalty amount to a resolution that is: i) not contrary to the public interest and ii) achieves the relevant penalty goals in this case. We reached this conclusion for several reasons.

[16] First, the imposition of a three-month suspension recognizes that the misconduct here was serious. Dr. Nugent’s assault occurred at a time when the victim was his spouse and when his two young children were present. While Ms. X’s behaviour the prior evening and immediately preceding the offence was challenging for Dr. Nugent, he was not justified in applying unwanted force to her. Given that a primary tenet of the medical profession is to do no harm to anyone, physicians are expected to be able to control their emotions and behave as professionals in stressful situations (even when provoked), both within and outside of the clinical setting.

[17] Further, although the failure to comply charges were ultimately withdrawn in this case, the principle underlying the requirement to report to the College remains nonetheless applicable. Reporting charges and bail conditions to the College is an important professional obligation. The College must be able to properly assess whether conduct issues are raised by the charge, whether a conduct investigation should be

undertaken and (while it was likely not the case here) whether restrictions on a physician's practice may be necessary to ensure the protection of the public.

[18] Second, while every Tribunal case involves different facts, with variations in the aggravating and mitigating circumstances of the misconduct and the physician, the proposed penalty is in line with the range of penalties in cases involving broadly similar misconduct. The parties provided cases that included reprimands and suspensions in the three- to eight-month range, though those at the higher end involved much more significant violence and injuries: *College of Physicians and Surgeons of Ontario v. Jha*, 2021 ONCPSD 18 (three-month suspension); *College of Physicians and Surgeons of Ontario v. Dhanoa*, 2020 ONCPSD 28 (five-month suspension, upheld on appeal as above); and *College of Physicians and Surgeons of Ontario v. Mortada*, 2022 ONPSDT 35 (three-month suspension).

[19] Third, there are several mitigating circumstances in this case. After graduating from medical school and finishing his residency in family medicine, Dr. Nugent obtained a master's degree in public health, as well as postgraduate training in aerospace medicine. During his career with the Armed Forces, he served in various roles, including as an Ontario Regional Surgeon, where he oversaw the delivery of healthcare to all Armed Forces personnel in the province. As explained by the trial judge, the letters of support provided by a number of Dr. Nugent's colleagues (all of whom worked with him) describe him as a capable and caring clinician who is known to have consistently given generously of his time to his patients, his colleagues and his volunteer activities. Before the Tribunal, he accepted responsibility and admitted his misconduct, making a contested hearing unnecessary.

[20] Fourth, the proposed penalty addresses the relevant penalty objectives in this case. The goals of public protection and specific deterrence have, to a large extent, already been achieved. In sentencing Dr. Nugent for the assault charge, the trial judge found that Dr. Nugent is not likely to engage in criminal behaviour again. We agree. As submitted by his counsel, the criminal proceedings and discipline process have had a profound impact on Dr. Nugent both personally and professionally, and it is unlikely that he will repeat the misconduct in future. In terms of rehabilitation, Dr. Nugent has continued to engage professional resources to address some of the difficulties that he was experiencing at the relevant time. The requirement that he complete a course of individualized instruction in medical ethics and professionalism provides further opportunity for his rehabilitation. All

of this contributes to public protection and promotes public confidence in the regulation of the profession.

[21] Finally, the proposed penalty addresses the goal of general deterrence by reinforcing that the College takes such misconduct seriously. Specifically, it reminds other members of the medical profession not only of the importance of being candid and forthcoming with their regulator about any criminal charges and related conditions, but also that physicians must conduct themselves professionally at all times, and that the College will take steps to address the misconduct where they fail to do so.

[22] Balancing the relevant facts and caselaw, we find that the proposed penalty is appropriate and not contrary to the stringent public interest test. The costs proposed are also reasonable and in accordance with the Tribunal tariff.

Order

[23] At the conclusion of the hearing, we ordered:

- a) Dr. Nugent to attend before the panel to be reprimanded;
- b) The Registrar to suspend Dr. Nugent's certificate of registration for three months commencing September 27, 2023 at 12:01 a.m.;
- c) The Registrar to place terms, conditions and limitations on Dr. Nugent's certificate of registration requiring that he participate in and successfully complete individualized instruction in medical ethics and professionalism satisfactory to the College, within six months of the Order;
- d) Dr. Nugent pay the College costs in the amount of \$6,000 by November 10, 2023.

ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

Tribunal File No.: 23-006

BETWEEN:

College of Physicians and Surgeons of Ontario

- and -

Nathan Zane Nugent

**The Tribunal delivered the following Reprimand
by videoconference on Tuesday, September 26, 2023.**

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

REPRIMAND - Dr. Nathan Zane Nugent

Dr Nugent,

A primary tenet of the medical profession is to do no harm to anyone, whether a patient or not. To cause physical harm to an intimate partner is especially disturbing. Physicians are expected to be able to control their emotions and behave as professionals in stressful situations, both within and outside of the clinical setting. Our patients' welfare and lives depend on this personal attribute. Your misconduct in this regard reflects poorly on you and the profession.

The core principle of professional regulation is the duty to protect the public. Physicians are provided the privilege to practice medicine in our province and this privilege brings with it the responsibility for physicians to provide accurate information to the College in a timely manner. To fulfill its regulatory duties, the College relies on physicians respecting this obligation in order that it can carry out its fundamental mandate to regulate the practice of medicine in the public interest and to foster public confidence in the integrity of the profession. While we recognize that your charges of failure to comply were ultimately withdrawn by the Crown, your repeated failure to be candid with the College about those charges and your related bail conditions nonetheless undermined this principle.

The public deserves better of our members. We expect that your significant suspension will serve as a specific deterrent against similar misconduct, will send a strong message to all physicians that the College takes such misconduct very seriously, and will maintain public confidence in the ability of the profession to govern itself in the public interest.

Finally, we note your willingness to take responsibility for your actions before this Tribunal, as well as the challenging circumstances that you were experiencing in 2019 and 2020, around the relevant time. While those circumstances do not excuse your actions, they do provide some context for the misconduct against a background of what appears to have been an otherwise successful academic and medical career. We trust that the insights you have gained through this process will ensure that you are diligent in complying with your professional obligations in the future.

This concludes the reprimand.