

ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

Citation: *College of Physicians and Surgeons of Ontario v. Peirovy*, 2023 ONPSDT 26

Date: November 20, 2023

Tribunal File No.: 22-022

BETWEEN:

College of Physicians and Surgeons of Ontario

- and -

Dr. Javad Peirovy

FINDING AND PENALTY REASONS

Heard: September 29, 2023, by videoconference

Panel:

Ms. Jennifer Scott, chair

Dr. Roy Kirkpatrick

Mr. Peter Pielsticker

Ms. Linda Robbins

Dr. Susanna Yanivker

Appearances:

Ms. Sayran Sulevani and Ms. Penelope Ng, for the College

Mr. Michael Alexander, for Dr. Peirovy

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 College's Inquiries, Complaints and Reports Committee (ICRC) referred allegations of Dr. Peirovy's misconduct to the Tribunal. The College alleged that Dr. Peirovy had contravened a term, condition or limitation on his certificate of registration and had engaged in conduct that would reasonably be regarded as disgraceful, dishonourable or unprofessional.

[2] At the commencement of the hearing, we were advised by Dr. Peirovy's legal counsel that Dr. Peirovy was unable to attend the hearing due to unforeseen circumstances and that he had agreed the hearing should continue in his absence. The College had no issue proceeding this way given Dr. Peirovy's agreement. As a result, the hearing proceeded in Dr. Peirovy's absence.

[3] The parties provided a Statement of Uncontested Facts and Plea of No Contest. In the Statement, Dr. Peirovy did not contest that he had engaged in professional misconduct by contravening a term, condition or limitation on his certificate of registration and by engaging in disgraceful, dishonourable or unprofessional conduct.

[4] Dr. Peirovy and the College jointly submitted the penalty should be a reprimand, a seven-month suspension, education in medical ethics, and further terms, conditions and limitations on his certificate of registration. The parties agreed that Dr. Peirovy would pay costs to the College of \$6,000.

[5] We found professional misconduct and accepted the joint submission on penalty and costs at the hearing. Additional costs were ordered at the discretion of the Tribunal because a further hearing had to be scheduled to deliver the reprimand. These are our reasons for the decision.

Misconduct

[6] Dr. Peirovy is a general practitioner practising in North York, Ontario. In July 2015, the Discipline Committee found Dr. Peirovy had engaged in sexual abuse of four patients. In April 2016, the Discipline Committee (now the Ontario Physicians and Surgeons Discipline Tribunal) imposed the following terms, conditions and limitations on Dr. Peirovy's certificate of registration (2016 Discipline Committee Order):

- a. He would not engage in professional encounters with female patients unless in the presence of a practice monitor who is a female member of the regulated health profession and acceptable to the College;
- b. He must ensure the practice monitor remains in the examination or consultation room during professional encounters with female patients, keeps a patient log, initials all entries in the log, and submits the original log to the College on a monthly basis; and
- c. He must post signage in his waiting and examination/consultation rooms in all practice locations in the form attached to the 2016 Discipline Committee Order.

[7] In March 2021, the College conducted routine compliance monitoring of the 2016 Discipline Committee Order. It randomly selected 10 female patients and obtained their patient charts from Dr. Peirovy. The College conducted telephone calls with the patients to inquire about Dr. Peirovy's compliance with the 2016 Discipline Committee Order.

[8] The College determined that Dr. Peirovy saw female patients without the practice monitor in the room and as a result, terminated its approval of the practice monitor. Dr. Peirovy proposed a new practice monitor and told her that she had been approved by the College. He saw female patients with the proposed practice monitor on October 12, 2021, even though she had not been approved by that date. Dr. Peirovy failed to produce his patient log for October 12, 2021 to the College, with the rest of the logs for that month.

[9] The College determined further that Dr. Peirovy failed to post proper signage about his practice restrictions as required by the 2016 Discipline Committee Order. The sign in the waiting room was folded and the restrictions were not visible, and there was no sign in one of the examination rooms.

Finding

[10] Under the 2016 Discipline Committee Order, conditions were placed on Dr. Peirovy's certification of registration which require him to see female patients in the presence of a practice monitor approved by the College and to place signage of this requirement in his waiting room and examination rooms: see *College of Physicians and Surgeons of Ontario v. Peirovy*, 2015 ONCPSD 30. His failure to comply with this Order

would reasonably be regarded by members of the profession as disgraceful, dishonourable or unprofessional. He also committed an act of professional misconduct by contravening a term, condition or limitation on his certificate of registration. See s. 1(1), paras. 1 and 33 of Ontario Regulation 856/93 under the *Medicine Act, 1991*, SO 1991, c. 30. We therefore made a finding of misconduct as admitted.

Penalty

[11] Dr. Peirovy and the College made a joint submission on penalty. A joint submission on penalty will be rejected only where it is contrary to the public interest in a way that brings the administration of justice into disrepute: *R. v. Anthony-Cook*, 2016 SCC 43 at para. 34.

[12] The question before the Tribunal is whether implementing the proposed penalty would be contrary to the public interest because it fails to protect the public and/or impairs the ability of the College, and by extension the Tribunal, to regulate the profession of medicine and govern physicians.

[13] If the proposed penalty violates the public interest, the administration of justice is brought into disrepute. In the professional regulation context, this means the proper functioning of the College's professional discipline system has broken down.

[14] We have considered the seriousness of Dr. Peirovy's misconduct, his discipline history and the caselaw on penalties in similar cases because these are the factors that are relevant in determining whether the joint submission is contrary to the public interest. We address these factors below.

[15] Dr. Peirovy's misconduct is extremely serious. He breached the 2016 Discipline Committee Order when he saw female patients without a practice monitor and when he saw female patients before a new practice monitor was approved by the College. He breached the 2016 Discipline Committee Order further when he did not have signage or visible signage of the practice monitor requirement in the waiting room and one examination room.

[16] Terms, conditions and limitations on a certificate of registration are a serious matter and must be followed. Dr. Peirovy's repeated breaches of the 2016 Discipline Committee Order showed a blatant disregard for the Order and for the College's responsibility to govern its members.

[17] Dr. Peirovy has a significant discipline history. In July 2015, the Discipline Committee found that he had engaged in the sexual abuse of four patients. This finding led to the 2016 Discipline Committee Order. In February 2018, Dr. Peirovy was found to have engaged in disgraceful, dishonourable and unprofessional conduct when he initiated a personal relationship with a young female patient by giving her his personal cell number at the end of an appointment. In May 2019, the ICRC cautioned Dr. Peirovy on being vigilant to ensure compliance with the 2016 Discipline Committee Order.

[18] The parties rely on several cases involving the failure of physicians to comply with restrictions on seeing female patients. In *College of Physicians and Surgeons of Ontario v. Noriega*, 2013 ONCPSD 26, the Tribunal ordered a six-month suspension when Dr. Noriega breached his undertaking to see female patients in the presence of a practice monitor and to post signage of this requirement. In *College of Physicians and Surgeons of Ontario v. Gutman*, 2017 ONCPSD 47, a seven-month suspension was ordered when Dr. Gutman breached the order of the Discipline Committee prohibiting him from prescribing narcotics and having professional encounters with female patients. In *College of Physicians and Surgeons of Ontario v. Li*, 2007 ONCPSD 24, the Tribunal ordered a three-month suspension when Dr. Li saw female patients before one practice monitor was approved and with another practice monitor who was never approved by the College, contrary to his undertaking. And finally, in *College of Physicians and Surgeons of Ontario v. Deluco*, 2005 ONCPSD 8, Dr. Deluco received a six-month suspension when he breached an order to see female patients in the presence of a practice monitor and to post signage of this requirement.

[19] While these cases are not identical to this case and are not binding on the Tribunal, they do provide support for the seven-month suspension agreed to by the parties. The seven-month suspension is within the range of penalties in the caselaw.

[20] The joint submission on penalty protects the public interest. The public is protected because additional requirements have been made to ensure that all female patients understand Dr. Peirovy's restrictions by requiring him to translate the signage in any language in which he provides services. Where Dr. Peirovy provides services in another language, he must provide a copy of the sign and a certified translation to every patient for whom a practice monitor is required. Female patients are required to initial the patient log completed by the practice monitor and day sheets must be kept. These requirements ensure that Dr. Peirovy complies with the 2016 Discipline Committee Order

and all female patients are protected even where Dr. Peirovy provides services in another language.

[21] Underlying these terms is the College's commitment to protect female patients regardless of the language spoken. The purpose of the sign translation is to ensure that all patients understand the practice monitor requirement when Dr. Peirovy provides medical services to female patients in another language. Dr. Peirovy should not undermine this requirement by refusing to translate his patient discussions with his practice monitor, as he did in 2021.

[22] The joint submission shows the College's professional discipline system is working. Dr. Peirovy is suspended from practice for seven months and he is required to complete further education in medical ethics. He will be reprimanded. We find the joint submission protects the public interest and does not bring the administration of justice into disrepute. It is accepted for this reason.

[23] At the conclusion of the hearing on September 29, 2023, we ordered:

1. Dr. Peirovy to appear before the panel to be reprimanded.
2. The Registrar to suspend Dr. Peirovy's certificate of registration for seven months commencing October 10, 2023, at 12:01 a.m.
3. The following terms, conditions and limitations be placed on Dr. Peirovy's certificate of registration, effective September 29, 2023:
 - i. Dr. Peirovy shall 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. Peirovy will complete the PROBE program within three (3) months of the date of this Order or, if it is not available within that timeframe, will complete it at the earliest available opportunity, and will provide proof to the College of its completion, including proof of registration and attendance and participant assessment reports, within one (1) month of completing it.
 - ii. Dr. Peirovy shall, within seven (7) days of the date of this Order, obtain and provide to the College for approval a certified translation in any language in which he provides services, of the sign described in the Order of the Discipline Committee dated April 27, 2016 (the "2016 Discipline Committee Order").
 - iii. Dr. Peirovy shall, upon approval of the certified translation by the College, post the certified translations described in (ii) above in his

waiting room(s) and each of his examination and/or consulting rooms, in all of his Practice Locations, in a clearly visible and secure location.

- iv. Dr. Peirovy shall, upon approval of the certified translation by the College, provide every patient for whom a Practice Monitor is required pursuant to the terms of the 2016 Discipline Committee Order with a copy of the sign described in the 2016 Discipline Committee Order, and with a certified translation described in (ii) above, if Dr. Peirovy provides services to the patient in another language.
 - v. Dr. Peirovy shall, upon approval of the certified translation by the College, ensure that, prior to every professional encounter with the patient, the patient (or their next of kin if the patient is incapable), initials the sign, along with the date of their initials, and that a copy of the initialed and dated sign is maintained in the patient chart.
 - vi. Dr. Peirovy shall immediately ensure that every patient, for whom a Practice Monitor is required pursuant to the terms of the 2016 Discipline Committee Order, initials the Practice Monitor's patient Log, as described in the 2016 Discipline Committee Order, following completion of the Log by the Practice Monitor on the date of the professional encounter.
 - vii. Dr. Peirovy shall immediately comply with the obligation to maintain day sheets as required pursuant to s.18(2) of Ontario Regulation 114/94 made under the *Medicine Act, 1991* (the "Day Sheets"). Dr. Peirovy shall include in his Day Sheets the gender of each patient and the check-in time of each patient.
 - viii. Dr. Peirovy shall provide a copy of his Day Sheets to the College at any time upon request by the College.
4. Dr. Peirovy to pay costs to the College in the amount of \$6,000 by October 30, 2023, and costs for the further hearing to deliver the reprimand as determined by the Tribunal.

[24] We set costs in the amount of \$1,000 for the hearing on November 10, 2023 to deliver the reprimand, payable within 30 days of the date of this decision.

ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

Tribunal File No.: 22-022

BETWEEN:

College of Physicians and Surgeons of Ontario

- and -

Javad Peirovy

**The Tribunal delivered the following Reprimand
by videoconference on Friday, November 10, 2023.**

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

REPRIMAND - Dr. Javad Peirovy

Dr. Peirovy, you have once again committed serious misconduct. Not only did you violate the terms and conditions on your certificate of registration, but you attempted to conceal this from the College and misled your new practice monitor into participating in patient encounters that were not permitted.

As part of the penalty for your previous misconduct, you were required to only meet with female patients in the presence of a practice monitor, post signage and keep a log of your encounters with female patients. These restrictions are in place to protect the public. Nevertheless, you met with multiple female patients without an approved practice monitor, failed to post required signage and did not properly maintain the log.

This is the third time this Tribunal has found you committed professional misconduct. Your now extensive disciplinary record involving multiple types of misconduct greatly harms the reputation of this profession and the public's trust.

Not long before these events happened, the Investigations, Complaints and Reports Committee cautioned you about your previous failure to post signage as required and to have a practice monitor present whenever you saw female patients. In its decision, the ICRC noted its concern that despite your undertaking and a College discipline order, you did not seem to appreciate the gravity of your restrictions and provided excuses for your behaviour and breaches. It found that this spoke to an issue of governability and emphasized that you should remain vigilant and always ensure complete compliance with your restrictions. Yet less than one year later, you began engaging in the misconduct we have found today.

In addition to failing to respect the terms, conditions and limitations on your license you attempted to deceive the College and your practice monitor. You betrayed the trust of your patients, the public, the College and your practice monitor.

Given your multiple findings of misconduct and their nature, you are at high risk of having your certificate of registration revoked if you appear before this Tribunal again and misconduct is found. Members must be willing and able to comply with the rules and the College's regulatory authority. You must immediately change your behaviour if you want to continue in this profession.