

ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

Citation: *College of Physicians and Surgeons of Ontario v. Otto*, 2023 ONPSDT 1

Date: January 11, 2023

Tribunal File No.: 22-010

BETWEEN:

College of Physicians and Surgeons of Ontario

- and -

Dr. George Williams Otto

FINDING AND PENALTY REASONS

Heard: In writing

Panel:

Mr. David A. Wright (Tribunal Chair)

Dr. Rupa Patel

Mr. Rob Payne

Mr. Peter Pielsticker

Dr. Susanna Yanivker

Appearances:

Ms. Jessica Amey, for the College

No appearance or submissions by Dr. Otto

RESTRICTION ON PUBLICATION

The Tribunal ordered, under ss. 45-47 of the Health Professions Procedural Code, that no one may publish or broadcast the names or any information that would identify patients referred to in the case materials and written submissions filed with the Tribunal. There may be significant fines for breaching this order.

Introduction

- [1] Dr. Otto used his position as a physician to take part in a drug trafficking scheme that put lives at risk. For his own profit, he wrote unnecessary prescriptions for fentanyl that was later sold to users. Dr. Otto did so amid the opioid crisis. A jury convicted him of trafficking in fentanyl and he was sentenced to 14 years in prison. He also violated his bail conditions while awaiting trial by breaking his promise not to prescribe certain narcotics.
- [2] After sentencing and while his conviction was under appeal, Dr. Otto disappeared, breaching his release conditions. He has not taken part in this proceeding, despite proper notification. As there was no defence, to make the process more efficient, the Tribunal held the hearing in writing under the *Hearings in Tribunal Proceedings (Temporary Measures) Act, 2020*, SO 2020, c. 5, Sched. 3, s. 3. The College presented its evidence by affidavit and made submissions in writing.
- [3] Dr. Otto committed professional misconduct by being found guilty of an offence relevant to his suitability to practise medicine, fentanyl trafficking, and by engaging in disgraceful, dishonourable and unprofessional conduct through breaching his bail conditions. The appropriate penalty for this misconduct is the revocation of his certificate of registration. We do not order a reprimand given Dr. Otto is not participating. His certificate of registration is being revoked and a reprimand would not serve a useful regulatory purpose. We order costs of \$6,000.

The Misconduct

- [4] In his reasons for sentence, *R. v. Otto*, 2019 ONSC 6446, Justice Di Luca sets out the fentanyl trafficking scheme and Dr. Otto's role in it. Over about 5½ months in 2015 and early 2016, Dr. Otto prescribed about 4,000 patches of fentanyl without a medical need. Patients were paid to fill the prescriptions at a pharmacy owned by another participant in the scheme. The patients then handed the drugs on and they eventually made their way to end users. Dr. Otto could expect to be paid \$1,500 per prescription and he expected a very significant amount of money because of the quantities involved. Justice Di Luca found, at para. 11, that Dr. Otto's charts "reveal scant, if any, justification supporting the legitimate prescription of fentanyl." He found it "inconceivable that Dr. Otto would have honestly but mistakenly or

incompetently prescribed the quantities of fentanyl he did in relation to the ailments presented by the purported patients.”

- [5] After Dr. Otto was charged criminally, he entered into a recognizance of bail. One of the conditions was that he could not prescribe any narcotics listed under Schedule 1 of the *Controlled Drugs and Substances Act*, SC 1996, c. 19. Over the course of just over a year, Dr. Otto’s patients filled 798 prescriptions he wrote for Schedule 1 narcotics. These were mostly Tylenol #2 and Tylenol #3.
- [6] Under s. 51(1)(a) of the Health Professions Procedural Code, Schedule 2 to the *Regulated Health Professions Act, 1991*, SO 1991, c. 18, a member has committed an act of professional misconduct if they have been found guilty of an offence that is relevant to their suitability to practise. It is self-evident that misusing his prescribing privileges to traffic in opioids is relevant to Dr. Otto’s suitability to practise medicine. The College has established this allegation of professional misconduct.
- [7] Similarly, Dr. Otto’s failure to respect the condition of his bail prohibiting him from prescribing Schedule 1 narcotics is 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 bail conditions protected the public, and Dr. Otto agreed to respect them. He breached them many times. It was Dr. Otto’s responsibility to ensure that he knew which medications were on Schedule 1 and not prescribe them.

Penalty

Revocation

- [8] The only appropriate penalty for Dr. Otto’s misconduct is revocation of his certificate of registration. He used his privileges as a physician to knowingly prescribe opioid medications that were then distributed to users. He broke the law and put lives at risk for his own financial gain. This is among the most serious misconduct a physician can commit. Dr. Otto has not participated in this proceeding, having disappeared before serving his sentence, and so there is no evidence of mitigating factors.

- [9] In *College of Physicians and Surgeons of Ontario v. Fagbemigun*, 2022 ONPSDT 22 at paras. 12-18, the Tribunal described four principal factors applied in determining penalty: the seriousness of the misconduct, any discipline history, the physician's actions since the misconduct and their personal circumstances.
- [10] Dr. Otto committed a serious crime. Its effect was to contribute to the opioid crisis by increasing the supply of illicit drugs available to people with substance use disorders. Moreover, prescribing unnecessary medication could have contributed to a shortage of fentanyl, making this medication unavailable to those who needed it. Trafficking schemes like this one also contribute to the stigmatization of those who need medications like fentanyl, by connecting it to the illicit drug trade.
- [11] Some patients need narcotics, but they are also highly addictive and can be misused. The public relies on physicians to be gatekeepers so that those who need them can get them without improperly placing others at risk. By opening the gates wide to illegal sale of opioids, for his own financial gain, Dr. Otto betrayed the public's confidence in him and in all physicians. It is important that the Tribunal denounce this conduct in the strongest terms, expressing the public's and the profession's outrage at his misuse of power and authority. It has harmed public health, misused resources and damaged the reputation of the medical profession.
- [12] The seriousness of the misconduct would lead to revocation, even without a prior discipline history. We note, for completeness, that this is Dr. Otto's third finding of misconduct. In 2015, the Tribunal suspended his certificate of registration for two months and imposed a \$10,000 fine for improper completion of special diet allowance forms. This, like the current matter, showed a lack of integrity and the misuse of his authority for personal gain: *College of Physicians and Surgeons of Ontario v. Otto*, 2015 ONCPSD 38. In 2018, he received a three-month suspension for failing to provide patients with their records in a timely way. His discipline record also supports the penalty of revocation.
- [13] The third and fourth *Fagbemigun* factors are not relevant, because there is no evidence of steps Dr. Otto has taken to address his misconduct or personal circumstances that might explain it. Rather than trying to address what he did, Dr. Otto has disappeared.

- [14] Our conclusion is consistent with other cases where physicians have trafficked in narcotics where the penalty was revocation: see *College of Physicians and Surgeons of Ontario v. Sinclair*, 2015 ONCPSD 8 and *College of Physicians and Surgeons of Ontario v. Kitakufe*, 2010 ONCPSD 15.

Reprimand

- [15] We do not order a reprimand. In our view, reprimands should not be automatic unless required by the Code. Rather, the Tribunal should exercise its discretion to decide whether to reprimand a member or former member. To include a reprimand, there should be a good reason to believe that a reprimand would be helpful in regulating physician conduct in the public interest. There is no such reason here.

- [16] In *Fagbemigun* at para. 21, the Tribunal wrote:

This Tribunal, like many other health colleges in Ontario and in Canada, typically administers a reprimand in every case. A reprimand, the Tribunal has held, denounces the misconduct and deters the physician and others from future misconduct. In other contexts, such as American medical boards, the Law Society of Ontario and in employment law, a reprimand is a penalty on the lighter end of the spectrum similar to a warning, usually imposed only when there is no suspension or revocation: J. Morrison and P. Wickersham, "Physicians Disciplined by a State Medical Board" (1998), 217 JAMA 1891 (<https://jamanetwork.com/journals/jama/fullarticle/187649>); *Law Society of Upper Canada v. Desjardins*, 2016 ONLSTH 79 at paras. 22-23. The Tribunal's approach to reprimands may be worth reconsidering in a future case or through changes to rules or practices, keeping in mind that some reprimands are mandatory under the legislation. In this case, we follow the current practice of issuing a reprimand in every case.

- [17] There is no reason to think a reprimand would have any effect on Dr. Otto. He would not attend for an oral reprimand so we would be delivering it to an empty chair. We could issue a written reprimand, but we don't know if he would receive it or read it. Dr. Otto is being revoked, so a reprimand would not convey a message about how he should conduct himself as a physician in the future. A former member who absconded after receiving a 14-year prison sentence is unlikely to be influenced by our words, even if he did hear them.

- [18] The text of reprimands is publicly available on the College's register, and so our words directed to Dr. Otto as he leaves the profession would be shared with the

public. However, these reasons express publicly the Tribunal's condemnation of his actions, and little, if anything, would be accomplished by rephrasing them in the form of a reprimand.

Costs

[19] The College seeks \$6,000 in costs, which is the standard rate for a half-day hearing. This is appropriate, even though the hearing took place in writing. Costs compensate not only for hearing time, but the usually longer preparation time for counsel and the Tribunal's time in deliberating and writing reasons.

Order

[20] We make the following order:

1. The Tribunal finds that Dr. Otto has committed an act of professional misconduct under:
 - a. clause 51(1)(a) of the Health Professions Procedural Code, which is Schedule 2 of the *Regulated Health Professions Act, 1991*, in that he has been found guilty of an offence relevant to his suitability to practise; and
 - b. paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, SO 1991, c. 30 in that he has engaged in 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.
2. The Tribunal directs the Registrar to revoke Dr. Otto's certificate of registration effective immediately.
3. The Tribunal orders Dr. Otto to pay the College costs of \$6,000.00 by February 28, 2023.