

ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

Citation: *College of Physicians and Surgeons of Ontario v. Alexander*, 2022 ONPSDT 41

Date: November 10, 2022

Tribunal File No.: 21-024

BETWEEN:

College of Physicians and Surgeons of Ontario

- and -

Dr. Alexander Michael Alexander

FINDING AND PENALTY REASONS

Heard: August 30, 2022, by videoconference

Panel:

Mr. David A. Wright (Tribunal Chair)

Dr. Glen Bandiera

Ms. Julia Goyal

Dr. Catherine Grenier

Ms. Shannon Weber

Appearances:

Ms. Morgana Kellythorne, for the College

Ms. Glynnis Burt and Mr. Patrick Healy, for Dr. Alexander

The Ontario Physicians and Surgeons Discipline Tribunal is the Discipline Committee established under the Health Professions Procedural Code.

Introduction

- [1] This case is about Dr. Alexander's failure to meet the standard of practice of the medical profession and to comply with a previous order of the Tribunal. It is the third time in the last decade that he has failed to meet the standard of practice of the profession and the second time that he has engaged in disgraceful, dishonourable or unprofessional conduct. He has still not met required standards and has made more unethical choices. However, the remedial steps to which Dr. Alexander agreed and that previous panels ordered have helped him improve patient care and his failures to meet standards are less serious than before.
- [2] Dr. Alexander admitted that he failed to maintain the standard of practice of the profession, engaged in disgraceful, dishonourable or unprofessional conduct and failed to comply with a term, condition or limitation on his certificate of registration. He and the College jointly submitted that the penalty should be a six-month suspension followed by a period of at least three months of unpaid practice under constant supervision, followed by less intensive supervision and other terms. This proposal, which we accepted, imposes a significant penalty while supporting Dr. Alexander in maintaining and further improving his skills. However, Dr. Alexander should expect that if he comes before this Tribunal again having failed to meet the standards of the profession or committed other misconduct, the penalty will likely be revocation.
- [3] Chair David Wright conducted pre-hearing conferences in this matter and sits on the hearing panel with the consent of both parties.

The History

- [4] Dr. Alexander's relevant involvement with the formal discipline process started in 2012. He admitted that he had failed to maintain the standard of practice including in his record-keeping, follow-up of patients and management of patients taking narcotics: *College of Physicians and Surgeons of Ontario v. Alexander*, 2012 ONCPSD 18. The parties agreed and the panel accepted that the penalty should be a reprimand and comprehensive assessment of his practice. He also took various courses.

- [5] The assessment under the 2012 order identified continuing problems, including Dr. Alexander's approach to chronic disease management, his conduct of physical examinations, his infection control techniques, his prescribing, his record-keeping and his communication with consultants. In 2014, Dr. Alexander agreed to supervision and a second assessment.
- [6] The second assessment showed ongoing failures to meet the standard of practice of the profession. He took limited patient histories; performed physical examinations that were not tailored to the patient's presenting problems and/or were performed incorrectly; did not consistently document physical examinations; performed assessments that were lacking; did not prepare appropriate treatment plans; failed to take appropriate steps to manage infection control and provided only monthly prescriptions to patients on chronic medication, requiring them to return frequently and unnecessarily to the office.
- [7] In a 2018 discipline hearing, *College of Physicians and Surgeons of Ontario v. Alexander*, 2018 ONCPSD 60, Dr. Alexander admitted that the second assessment showed that he failed to maintain the standard of practice. He also admitted that he engaged in disgraceful, dishonourable or unprofessional conduct by backdating three opioid treatment agreements for patients whose charts the College was reviewing. The panel's order based on the parties' agreement included a six-month suspension, a period of clinical supervision and a third assessment. It also included terms on his certificate of registration that limited the number of patients he saw in each two-hour period (eight), the number of hours he worked per day (seven) and the number of days per week he saw patients (alternating between five and six).
- [8] Dr. James Kleiman supervised Dr. Alexander after the 2018 discipline hearing. His monthly reports to the College show ongoing improvement and Dr. Kleiman said in his final report that after thirteen months of supervision:

Based on the feedback from his patient's [sic] and staff, and based on my observations of his office in operation and his interactions with patients during my visits to his office the past several years, I note Dr. Alexander has significantly improved his practice in the past several years.

[9] Dr. Irene Cohen conducted the third assessment. She found that Dr. Alexander did not meet the standard of practice in 10 of 15 charts she reviewed. Dr. Cohen found significant problems including:

- Dr. Alexander's chart notes were much improved since his prior reassessments, but some chart notes and the Cumulative Patient Profiles were still missing important clinical information, and diabetes flow charts were not completed.
- Dr. Alexander did not accurately and completely document vitamin B12 injections provided to patients.
- Dr. Alexander prescribed chronic pain medications to patients without charting discussion of potential risks and complications.
- Dr. Alexander prescribed opioid and benzodiazepine medications without documenting proper pain assessments or using appropriate pain assessment/addiction tools and prescribed short-acting opioids to manage pain without clear consideration of other non-opioid pain medications.
- Dr. Alexander routinely ordered bloodwork or laboratory testing without clinical indication.
- In one chart, Dr. Alexander did not refer the patient to a cardiologist soon enough after an abnormal test.
- Dr. Alexander did not clinically manage four patients' diabetes appropriately.

[10] What is more, Dr. Alexander saw more patients than allowed. He saw too many patients in a day nearly three dozen times, worked too many days about 12 times and did not maintain accurate logs.

Findings

[11] We find Dr. Alexander failed to maintain the standards of the profession based on Dr. Cohen's report. He also did not comply with the conditions on his certificate of registration. The panel imposed these conditions to protect the public because Dr. Alexander was not meeting the standard of practice. His decision not to follow them is disgraceful, dishonourable and unprofessional.

Penalty and Costs

[12] The central terms of the agreed penalty and costs order are as follows (the entire order is reproduced at the end of these reasons):

- Dr. Alexander will be suspended for six months;
- Dr. Alexander will be supervised for at least one year after he returns to practice in the following stages. Dr. Alexander can only move from one stage to the other with the approval of both the clinical supervisor and the College.
 - **High level supervision:** For at least the first three months after returning to practice, Dr. Alexander will not be entitled to submit claims to the Ontario Health Insurance Plan. His clinical supervisor will be present for all patient care and act as the Most Responsible Physician.
 - **Medium level supervision:** For at least three months, his clinical supervisor will meet with him at least every two weeks and review 15 patient charts selected by the supervisor at each meeting.
 - **Low level supervision:** For at least six months, his clinical supervisor will meet with him at least every month and review 15 patient charts selected by the supervisor at each meeting.
- Dr. Alexander will complete six courses set out in the order.
- An assessor will re-assess Dr. Alexander's practice six months after the supervision ends.
- Dr. Alexander will pay costs of \$6,000.

[13] This penalty recognizes the seriousness of the misconduct, protects the public and provides support for Dr. Alexander in meeting the standards of the profession. The suspension is six months but combined with at least three months during which he cannot bill, the financial consequences are similar to a nine-month suspension. The intensive supervision and requirement that the supervisor and College agree before lowering the level of his supervision protect the public. The supervision and courses give Dr. Alexander training that will support him in meeting the requirement to provide competent and ethical medical care.

[14] The parties' agreement on penalty must be implemented unless it is so "unhinged from the circumstances" that implementing it would bring the administration of the College's professional discipline system into disrepute: *R. v. Anthony-Cook*, 2016 SCC 43; *College of Physicians and Surgeons of Ontario v. Bahrgard Nikoo*, 2022 ONPSDT 15 at para. 34; *Bradley v. Ontario College of Teachers*, 2021 ONSC 2303.

[15] As stated in *College of Physicians and Surgeons of Ontario v. Matheson*, 2022 ONPSDT 27 at para. 21:

Deciding whether a penalty meets the test is about the forest, not the trees. Neither the parties' arguments nor the panel's reasons need identify every consideration that a panel would apply if it were deciding what penalty to impose without an agreement. What is important are the key penalty factors that place this misconduct at a general point along the spectrum of potential penalties: see the factors set out in *College of Physicians and Surgeons of Ontario v. Fagbemigun*, 2022 OPSDT 22 at paras. 11-16. Comparing the penalty factors with those in other cases and their results helps the panel determine if the penalty is so far removed from what would be expected that it meets the high bar to consider rejection of the joint submission.

- [16] The purposes of penalty include discouraging the member and other physicians from committing misconduct (specific and general deterrence), rehabilitation, ensuring a safe return to practice where appropriate and expressing the Tribunal and the profession's disapproval of the misconduct.
- [17] We will consider the first two *Fagbemigun* factors together: the seriousness of the misconduct and discipline history. Dr. Alexander's penalty would likely be at the lesser end of the spectrum if he had no discipline history and if the misconduct was limited to either the failure to meet the standards of practice of the profession or the failure to comply with conditions on his certificate of registration. However, due to the multiple types of misconduct at issue here and his discipline history, the penalty must be much more severe.
- [18] For the second time, Dr. Alexander has thumbed his nose at the College as his regulator, first by creating misleading records and now by ignoring clear restrictions to which he agreed. For the third time, multiple aspects of his practice have not met the standards expected of a family physician. Penalties become stronger and supervision becomes more intensive when previous discipline and support have not been enough to change a physician's behaviour.
- [19] The third *Fagbemigun* factor looks at actions the physician has taken since the misconduct. Here, Dr. Alexander gets credit for admitting the misconduct, avoiding the need for a contested hearing and for agreeing to a penalty that includes supervision, restrictions and courses. Dr. Alexander has agreed that he can only move to less intense supervision if both the supervisor and the College agree. These aspects of the penalty support the purposes of rehabilitation and promoting a safe return to practice.

- [20] The strongest demonstration that this penalty is not “unhinged” is that Dr. Alexander received a six-month suspension the last time. The penalty must increase given the recurrence of two different types of misconduct. Another six-month suspension plus a further three-month loss of income does so.
- [21] Other cases involving a combination of disgraceful, dishonourable or unprofessional conduct and failure to meet the standard of practice resulted in a six-month suspension for a member without a formal discipline history (*College of Physicians and Surgeons of Ontario v. Kakar*, 2017 ONCPSD 8) and a four-month suspension for another, also with no discipline history (*College of Physicians and Surgeons of Ontario v. Anjema*, 2021 ONCPSD 20). We also note *College of Physicians and Surgeons of Ontario v. Fenton*, 2020 ONCPSD 11, where a physician who failed to follow an undertaking and order received a nine-month suspension. These cases show that the nine-month loss of income is within the general range, although none have significant weight because of significant factual differences with this case.
- [22] Counsel for both sides have carefully crafted the order to meet multiple penalty purposes through significant consequences for Dr. Alexander combined with measures that protect the public and do the utmost to improve his medical practice. It is an appropriate last chance for Dr. Alexander and meets the legal standard for a joint submission. The other terms and the standard costs for a half-day hearing of \$6,000 are also reasonable.

Order

- [23] The details of our order are as follows:

1. **The Tribunal finds** that Dr. Alexander has committed an act of professional misconduct under:
 - a. paragraph 1(1)2 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, in that he failed to maintain the standard of practice of the profession.
 - b. paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, 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.

- c. paragraph 1(1)1 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, in that he has contravened a term, condition or limitation on his certificate of registration.
- 2. **The Tribunal orders** Dr. Alexander to attend before the panel to be reprimanded.
- 3. **The Tribunal directs** the Registrar to suspend Dr. Alexander's certificate of registration for 6 months commencing September 1, 2022 at 12:01 a.m.
- 4. **The Tribunal directs** the Registrar to place the following terms, conditions and limitations on Dr. Alexander's certificate of registration:

Clinical Supervision

- a. Prior to resuming practice after the suspension of his certificate of registration, Dr. Alexander will retain a College-approved clinical supervisor or supervisors (the "Clinical Supervisor"), who will sign an undertaking in the form attached hereto as Schedule "A."
- b. For a period of at least 12 months commencing on the date Dr. Alexander resumes practice following the suspension of his certificate of registration, Dr. Alexander will practise only in accordance with the terms of the Clinical Supervision set out herein and in Schedule "A."
- c. Clinical Supervision will contain the following elements:
 - i. An orientation session with Dr. Alexander, including to discuss the objectives of the Clinical Supervision.
 - ii. For at least 3 months after he resumes practice following the suspension of his certificate of registration, Dr. Alexander will practise only under High- Level Clinical Supervision, for which the Clinical Supervisor will be present for all patient care. The Clinical Supervisor will be the Most Responsible Physician during High-Level Clinical Supervision.
 - iii. During High-Level Clinical Supervision, Dr. Alexander will not be the Most Responsible Physician and will not be permitted to submit claims to the Ontario Health Insurance Plan ("OHIP").
 - iv. If recommended by the Clinical Supervisor and approved by the College in its sole discretion, after at least 3 months of High-Level Clinical Supervision, Dr. Alexander will practise under

Medium-Level Clinical Supervision for at least 3 further months. During this time, the Clinical Supervisor will meet with Dr. Alexander at least every 2 weeks at Dr. Alexander's practice location, or another location approved by the College, and will review at least 15 of Dr. Alexander's patient charts at every meeting, selected at the sole discretion of the Clinical Supervisor.

- v. If recommended by the Clinical Supervisor and approved by the College in its sole discretion, after at least 3 months of Medium-Level Supervision, Dr. Alexander will practise under Low-Level Supervision for at least 6 further months. During this time, the Clinical Supervisor will meet with Dr. Alexander at least once every month at Dr. Alexander's practice location, or another location approved by the College, and will review at least 15 of Dr. Alexander's patient charts at every meeting, selected at the sole discretion of the Clinical Supervisor.
- vi. The Clinical Supervisor will keep a log of all patients whose charts were reviewed or whose care was observed or otherwise supervised, along with patient identifiers.
- vii. The Clinical Supervisor will discuss with Dr. Alexander any concerns arising from the care and charts reviewed.
- viii. The Clinical Supervisor will make recommendations to Dr. Alexander for practice improvements and ongoing professional development and inquire into Dr. Alexander's compliance with their recommendations.
- ix. Dr. Alexander shall abide by the recommendations of the Clinical Supervisor.
- x. The Clinical Supervisor will perform any other duties, such as reviewing other documents or conducting interviews with staff or colleagues, that the Clinical Supervisor deems necessary to Dr. Alexander's Clinical Supervision.
- xi. The Clinical Supervisor will provide a report to the College at a minimum of once a month, or more frequently if the Clinical Supervisor has concerns about Dr. Alexander's standard of practice or conduct. Such reports shall be in reasonable detail and shall contain all information the Clinical Supervisor believes might assist the College in evaluating Dr. Alexander's standard of practice and conduct, as well as Dr. Alexander's participation in and compliance with the requirements set out in this Order.

- xii. If Dr. Alexander is unable to obtain a Clinical Supervisor in accordance with this Order, he will cease to practise until such time as he has done so.
- xiii. After at least 12 months of Clinical Supervision, if recommended by the Clinical Supervisor and approved by the College in its sole discretion, Clinical Supervision may cease.

Other Education To be Completed

- d. Dr. Alexander will participate in and successfully complete within 6 months of the date of this Order or, if not offered within that time frame, at the earliest possible opportunity, and will provide proof to the College of his completion, including proof of registration and any attendance and participant assessment reports, within 1 month of completion:
 - i. 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.
 - ii. the Drexel Physician Refresher/Re-entry Program offered by Drexel University College of Medicine.
 - iii. the educational program, Internal Medicine: A Practical Approach to Common Primary Care Problems, offered by American Medical Seminars.
 - iv. the educational program, Primary Care: An Evidence Based Approach to Patient Care, offered by American Medical Seminars.
 - v. the educational program, Dermatology: Principles and Practice Strategies in Primary Care, offered by American Medical Seminars.
 - vi. The Medical Record Keeping Seminar offered by the Centre for Personalized Education for Professionals.

If any of the foregoing programs become unavailable to be completed during the stated time period or a reasonable time period thereafter, another equivalent program may be substituted, if approved by the College.

Reassessment

- e. Approximately 6 months after the completion of Clinical Supervision, Dr. Alexander will undergo a Reassessment of his practice by a College-appointed assessor or assessors (the "Assessor"). The Reassessment may include a review of Dr. Alexander's patient charts, direct observation of patient care, an interview with Dr. Alexander, interviews with staff and colleagues, feedback from patients and any other tools deemed necessary by the College. The Assessor will submit a written report on the results of the Reassessment to the College.
- f. Dr. Alexander will cooperate fully with the Reassessment and with the Assessor.

Other Provisions

- g. Dr. Alexander will consent to the sharing of information among the Assessor, the Clinical Supervisor, the College, and any of the providers or facilitators of the education described under paragraph 4(d) above as any of them deem necessary or desirable to fulfill their respective obligations.
- h. Dr. Alexander will consent to the College providing any Chief(s) of Staff or a colleague with similar responsibilities at any hospital or medical facility where he practises or has privileges ("Chief(s) of Staff") with any information the College has that led to this Order and/or any information arising from the monitoring of his compliance with this Order.
- i. Dr. Alexander will inform the College of each and every location where he practises, in any jurisdiction (his "Practice Location(s)") within 15 days of this Order and at least 5 days before resuming practice after his suspension, and furthermore will inform the College of any and all new Practice Locations within 15 days of commencing practice at that location.
- j. Dr. Alexander will cooperate with unannounced inspections of his practice and patient charts by a College representative(s) for the purpose of monitoring and enforcing his compliance with the terms of this Order.
- k. Dr. Alexander will consent to the College making appropriate enquiries of OHIP and/or any person who or institution that may have relevant information, in order for the College to monitor and enforce his compliance with the terms of this Order.

- I. During the period of High-Level Supervision, the following summary will be posted on the Public Register:

As a result of the Order of the Ontario Physicians and Surgeons Discipline Tribunal made August 30, 2022, Dr. Alexander is currently practising under High-Level Supervision. During this time, his Clinical Supervisor must be present for all patient care. Dr. Alexander cannot be the Most Responsible Physician for patient care. Dr. Alexander cannot submit claims to the Ontario Health Insurance Plan.

- m. Dr. Alexander will be responsible for any and all costs associated with implementing the terms of this Order.

5. **The Tribunal orders** Dr. Alexander to pay the College costs in the amount of \$6,000 by September 30, 2022.

ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

Tribunal File No.: 21-024

BETWEEN:

College of Physicians and Surgeons of Ontario

- and -

Dr. Alexander Michael Alexander

The Tribunal delivered the following Reprimand
by videoconference on Tuesday, August 30, 2022.

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

Dr. Alexander,

You have been entrusted with a licence to practise medicine in Ontario for over 33 years. Over many years, concerns about your patient care have arisen and you have been formally disciplined twice in the past 11 years. You are now answering to the Tribunal for a third time about standard of care issues and a second time about your compliance with your obligations to the College. In the past you have undertaken specific educational interventions and supervised practice and, while there has been progress, still your practice has fallen below expectations.

This is extremely concerning to us, and we have yet to regain confidence in your ability to provide acceptable care. It is regrettable that, despite the previous interventions, you still demonstrate a failure to fulfill your professional obligations to the public. Patients are being put at risk by your actions. Furthermore, you have demonstrated disrespect for the role of the College in your flagrant disregard for the terms imposed on your licence, specifically exceeding the maximum patient encounters permitted on many occasions. We find this repeated disregard to be disgraceful, dishonourable and unprofessional.

We do recognize the work you have done to improve and the improvements made, along with your willingness to engage in supervisory and educational requirements. However, compromises in patient care must not continue. We see a further six-month suspension, extensive further education and rigorous supervision thereafter as one further opportunity for you to re-establish confidence that the College and patients may have in your abilities.