

ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

Citation: *College of Physicians and Surgeons of Ontario v. Ghumman*, 2023 ONPSDT 9

Date: March 28, 2023

Tribunal File No.: 22-004

BETWEEN:

College of Physicians and Surgeons of Ontario

- and -

Dr. Ejaz Ahmed Ghumman

FINDING AND PENALTY REASONS

Heard: March 7, 2023, by videoconference

Panel:

Mr. Raj Anand (chair)
Ms. Lucy Becker
Dr. Marie-Pierre Carpentier
Mr. Jose Cordeiro
Dr. James Watters

Appearances:

Ms. Emily Graham, for the College
Ms. Amanda Smallwood and Mr. Mark Veneziano, for Dr. Ghumman

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.

OVERVIEW

- [1] Dr. Ejaz Ghumman is a general surgeon. He received his medical degree in 1982 and his Canadian specialist qualification in general surgery in 2004.
- [2] The Inquiries, Complaints and Reports Committee (ICRC) of the College referred the allegation that Dr. Ghumman committed an act of professional misconduct under para. 1(1)2 of O. Reg. 856/93 made under the *Medicine Act, 1991*, SO 1991, c. 30. The College alleged that he failed to maintain the standard of practice of the profession when the median nerve was damaged during Dr. Ghumman's surgical removal of a lesion on the palm of Patient A's right hand.
- [3] The College and Dr. Ghumman entered into a Statement of Uncontested Facts that provided a brief account of what took place and summarized the expert opinion obtained by the College that supported the allegation.
- [4] At the hearing, based on this evidence, the member did not contest the allegation of failure to maintain the standard of the profession (he entered a plea of no contest), and the Tribunal panel made that finding.
- [5] The parties provided an Agreed Statement of Facts, and made a joint submission that the panel accepted, on the appropriate penalty and costs order. The panel imposed an immediate two-month suspension and delivered a reprimand. The member must also satisfy several professional education requirements, involving self-study, reporting on its completion and reassessment, monitoring and inspection of his practice.
- [6] We indicated at the conclusion of the hearing that written reasons for our decision would follow. These are the reasons.

PROFESSIONAL MISCONDUCT

- [7] In 2019, a family doctor referred Patient A to Dr. Ghumman regarding a large lipomatous lesion on the palm of his right hand. The member surgically removed the lesion under local anesthetic in the General Surgical Clinic minor procedure room of a hospital, often referred to as the "lumps and bumps clinic."

[8] During the surgery, there was damage to the median nerve on Patient A's hand. In 2021, the patient made a complaint to the College.

[9] The College retained Dr. John Hagen, an experienced general surgeon in a community hospital, to provide an expert opinion. Dr. Hagen concluded that Dr. Ghumman failed to maintain the standard of practice of the profession and demonstrated a lack of knowledge, skill and judgment in his care and treatment of Patient A.

[10] More specifically, Dr. Hagen stated:

- a) While surgery was warranted given the size of the lipoma and the patient's concern about cancer, Dr. Ghumman should have referred Patient A to a hand surgeon. Operating on the hand can be extremely difficult, and many general surgeons do not have the skill set to remove lipomas from the palm of the hand. While it is safe to remove lipomas from the dorsum (i.e. back) of the hand, the risks are much higher on the volar aspect (i.e. the palm), given the blood vessels, nerves, tendons and other structures involved;
- b) The technique Dr. Ghumman used to operate on Patient A was substandard. Dr. Ghumman demonstrated a lack of knowledge in doing the surgery in a "lumps and bumps" clinic, and a lack of skill in failing to identify the median nerve and trace it through its course. The surgery should have been done in the operating room using a tourniquet to provide a bloodless field, which would have assisted in the identification of the nerve. Only then would it be safe to remove the lipoma. It was important to identify and trace the nerve because the MRI showed that the median nerve was displaced; and
- c) Dr. Ghumman demonstrated a lack of judgment in feeling pressured to operate. The inevitable delay associated with obtaining a further consultation from a hand surgeon and in arranging for the surgery associated with such a referral was not a good reason for avoiding this option. The patient had had the lump for about three years, which had not changed in size.

[11] Based on these facts, including the expert opinion, we agreed with the uncontested allegation that the member failed to maintain the standard of practice of the profession.

PENALTY

[12] As noted, the parties made a joint submission. The jurisprudence is clear that our role in these circumstances is not to agree or disagree with the proposed penalty, but only to assess whether it would bring the administration of justice into disrepute. As the Supreme Court stated in the criminal law context in *R. v. Anthony-Cook*, 2016 SCC 43 at para. 34:

Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down.

[13] This principle was applied to the regulatory context by the Ontario Divisional Court in *Bradley v. Ontario College of Teachers*, 2021 ONSC 2303 at para. 9, and by numerous decisions of this Tribunal. See most recently, *College of Physicians and Surgeons of Ontario v. O'Brien*, 2023 ONPSDT 5 at paras. 29-30.

[14] The parties' joint submission on penalty included the following elements:

- a two-month suspension of the member's certificate of registration;
- a practice restriction that prevents him from performing surgery on the palm of the hand;
- self-study involving some 12 professional publications;
- reassessment of his practice six months following completion of the professional education; and
- provision of necessary information to the College to permit appropriate monitoring and unannounced inspections of his practice.

[15] The parties also agreed that Dr. Ghumman would pay the College the standard amount of \$6,000 in costs.

[16] We are satisfied that the parties' joint submission meets the legal requirements for acceptance and is in the public interest. While no two cases are alike, the penalty proposed by the parties is in line with the prior cases they provided in their joint

book of authorities. Moreover, the joint submission satisfies the broad objectives of penalty determinations by this Tribunal: protection of the public, confidence in the College's ability to govern the profession and maintain high standards in the public interest, specific and general deterrence, rehabilitation of the physician and expression of the profession's disapproval of the misconduct: *College of Physicians and Surgeons of Ontario v. Fagbemigun*, 2022 ONPSDT 22 at paras. 7-8.

[17] In coming to this conclusion, we considered several of the factors that the Tribunal referred to in *Fagbemigun*.

[18] The member's misconduct was serious. He showed a lack of judgment when he chose to proceed with Patient A's hand surgery, and a lack of knowledge and skill in feeling pressured to operate and in carrying out the procedure using a substandard technique. As a result, the patient sustained a significant injury.

[19] At the same time, the matter before the Tribunal relates to one patient and a single course of treatment. In Dr. Hagen's opinion, Dr. Ghumman's practice did not expose patients to harm or injury.

[20] Dr. Ghumman has a prior finding of professional misconduct in July 2017. He failed to maintain the standard of the profession in respect of a number of patients in his general surgery practice. On a joint submission, the Tribunal imposed a penalty that included a reprimand, 12 months of clinical supervision, a reassessment and the completion of specified professional education (*College of Physicians and Surgeons of Ontario v. Ghumman*, 2017 ONCPSD 34).

[21] On that occasion as well, the member showed a lack of skill and judgment in the manner in which he completed a patient's surgery once an unavoidable complication arose, and in his post-operative management of the patient's condition. He failed to obtain another surgeon's advice. The College in that case also obtained a review of 25 of Dr. Ghumman's patient charts that indicated a failure to maintain the standard of practice in several areas.

[22] It is concerning that further issues of surgical decision-making, knowledge and skill arose in Patient A's surgery, which took place not long after Dr. Ghumman completed the full year of clinical supervision, an education plan and the reassessment of his practice.

- [23] To Dr. Ghumman's credit, Dr. Hagen's review showed that the member's practice did not expose patients to harm or injury. Moreover, he has taken rehabilitative measures to improve his practice since Patient A's surgery in 2019, including completion of several courses and training sessions, comprising several days, in general surgery and specifically "lumps and bumps" surgery.
- [24] The manner in which the member has conducted himself in this proceeding demonstrated remorse and accountability for his misconduct. He facilitated resolution and saved time and expense for the College and the Tribunal. Dr. Ghumman did not contest the evidence of his misconduct, and he agreed to the facts that we have reviewed in relation to the penalty. In addition, through the cooperation of Dr. Ghumman and the College, there was no dispute between the parties on the three issues of finding, penalty and costs.
- [25] For all of these reasons, we accepted the parties' proposed penalty and costs order.

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College of Physicians and Surgeons of Ontario

- and -

Dr. Ejaz Ahmed Ghumman

The Tribunal delivered the following Reprimand
by videoconference on Tuesday, March 7, 2023.

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

Dr. Ghumman,

We are disappointed that you are appearing before us again with a finding that you failed to meet the standard of practice of the profession. You showed a lack of judgment when you chose to proceed with Patient A's hand surgery, and a lack of knowledge and skill in carrying out the procedure. As a result, Patient A sustained a significant injury.

We are particularly concerned that these events must have taken place when you had not long completed the full year of clinical supervision, education plan and the practice reassessment that followed the discipline finding in 2017. We'd have expected that you would have been especially sensitive to questions of surgical decision-making and ensuring that you had the necessary knowledge and skills for the procedures that you chose to carry out.

We recognize that, as a general surgeon, you are called upon to deal with a wide range of clinical problems, elective and more urgent, minor and major. Regardless, your patients rely on you to make appropriate decisions about whether to operate or not, when to seek additional information and when to seek assistance or refer to another surgeon. You are an experienced surgeon and should have the judgment to recognize what problems and procedures are within your clinical abilities and which are not. You must not be swayed by your patients, or anyone else, to act outside the scope of your clinical knowledge and skills.

We hope that you have gained insight from this experience, Dr. Ghumman, and that the coursework you have completed and the further work set out in today's penalty order will assist you in improving your practice and making appropriate choices in the future. Public protection requires no less.