

## **ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL**

**Citation:** *College of Physicians and Surgeons of Ontario v. Czilli*, 2023 ONPSDT 12

**Date:** April 28, 2023

**Tribunal File No.:** 22-009

### **BETWEEN:**

College of Physicians and Surgeons of Ontario

- and -

Dr. Tiffany Czilli

### **FINDING AND PENALTY REASONS**

**Heard:** March 24, 2023, by videoconference

#### **Panel:**

Mr. Raj Anand (chair)

Dr. Roy Kirkpatrick

Dr. Veronica Mohr

Mr. Peter Pielsticker

Ms. Linda Robbins

#### **Appearances:**

Ms. Emily Graham, for the College

Ms. Carolyn Brandow and Ms. Sarah Martens, for Dr. Czilli

### **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. Tiffany Czilli practises family medicine in a solo practice in Windsor and has been a member of the College of Physicians and Surgeons (CPSO) since 2014. By then she was also a member of the Ontario College of Pharmacists (OCP), having received her certificate of registration from that College in 2006.
- [2] In 2015, Dr. Czilli set up a pharmacy with no intent to serve the community. It was open at most one hour a day, did not dispense medications and had no pharmacist on site. She used the pharmacy almost exclusively to bill the Ontario government for some 8,000 MedsChecks, which are annual interviews that pharmacists hold with patients to review the medications they are taking.
- [3] Dr. Czilli and her pharmacy entered into a funding agreement with the government that allowed the pharmacy to bill for MedsChecks conducted at an accredited community pharmacy. In fact, they were performed at her clinic or at the office of another physician, despite the contrary information in the forms she submitted. The MedsChecks were carried out either by the member or by a pharmacist she employed and monitored, and they did not comply with various Ministry policies and requirements. For example, the necessary forms were not used; patients were not eligible for the program; neither Dr. Czilli nor her pharmacist had dispensed the medications and there was no explanation why the MedsChecks were not performed at the patients' regular pharmacy.
- [4] After an audit of the claims for a six-month period, the Ministry required Dr. Czilli to reimburse the entire amount of \$115,755 that she had been paid for that period.
- [5] On October 21, 2020, the member entered into an agreed statement of facts before the Discipline Committee of the OCP and admitted that she had engaged in a series of acts of professional misconduct, including disgraceful, dishonourable and unprofessional conduct. These included the submission of documents and charges that she knew to be false or misleading and non-compliant with Ministry requirements and falsifying or failing to keep necessary records. In accordance with a joint submission, the OCP Discipline Committee made these findings and issued an order that included a reprimand, completion of ethical education requirements, prohibition against owning or managing any pharmacy and a suspension of her certificate of registration for about 12 months.

- [6] After receiving the OCP decision, the CPSO commenced an investigation, and based on Dr. Czilli's admissions and the findings at the OCP, the Inquiries, Complaints and Reports Committee (ICRC) ultimately referred allegations to the Tribunal for decision.
- [7] At the Tribunal hearing, Dr. Czilli confirmed the admissions in her agreed statement of facts before the OCP and in the OCP decision. Based on the joint submission of the member and the CPSO, we found that she had engaged in professional misconduct in two respects.
- [8] First, another health profession regulatory College (the OCP) has found that she committed an act that constitutes professional misconduct under s. 51 of the Health Professions Procedural Code or as defined in the regulations.
- [9] Second, under para 1(1)33 of O. Reg. 856/93 under the *Medicine Act, 1991*, SO 1991, c. 30, she engaged in acts relevant to the practice of medicine that would reasonably be regarded as disgraceful, dishonourable or unprofessional.
- [10] Again, based on the joint submission of the parties, we ordered and delivered a reprimand, and suspended Dr. Czilli's certificate of registration with the CPSO for 12 months. We also ordered the member to pay \$6,000 in costs to the College, as agreed by the parties.
- [11] These are our reasons.

## **The Evidence**

### The MedsCheck program

- [12] This is a program of the Ministry of Health and Long-Term Care (the Ministry) that began in 2007. Pharmacists conduct one-on-one interviews with their patients at which they discuss the medications being taken. The purpose is to promote patients' understanding of their medication therapy and to help ensure they are taking medications as prescribed and with the most benefit.
- [13] At all relevant times, the Ministry provided information about the program to pharmacists through a guidebook, on its website, and via emails and webinars.
- [14] As of 2015, as part of its payment conditions, the Ministry required that a patient:

- a. be an Ontario resident with a valid Ontario Health Card;
- b. be currently taking a minimum of three prescription medications for a chronic condition;
- c. agree to the MedsCheck service; and
- d. could generally receive only one MedsCheck a year.

[15] The Ministry required a pharmacist conducting an annual MedsCheck to:

- a. conduct the MedsCheck with the patients in an accredited community pharmacy;
- b. obtain a copy of the original MedsCheck if it was not conducted at their pharmacy;
- c. consult with the patient for 20-30 minutes;
- d. provide the patient at the end of the consultation with a comprehensive drug review list that was dated and authorized with the pharmacist's and the patient's signatures;
- e. document the consultation using specific standard form documents or other documentation that complied with the Ministry requirements and College standards, keeping copies of documents on file at the pharmacy for audit purposes for a minimum of two years; and
- f. bill the MedsCheck on the same day that it was conducted.

#### The member's pharmacy

[16] Dr. Czilli's pharmacy opened on April 20, 2015, and closed on July 12, 2017. She was the designated manager of the pharmacy, and the sole director and shareholder of the corporation that operated the Wellington Apothecary in Windsor.

[17] There were virtually no medications kept there, and only one prescription was dispensed at the pharmacy in the first six months. The pharmacy was initially open one hour per day. Later, after an inspection by the OCP, this decreased to one hour a week.

[18] Dr. Czilli practised as a physician at a clinic, where she employed a pharmacist, Colin Peters. Mr. Peters was found to be incapacitated by a panel of the OCP

Fitness to Practise Committee in October 2012 and had terms, conditions and limitations imposed on his certificate of registration. He could only practise pharmacy with a workplace monitor and he was prohibited from dispensing narcotics. The member was Mr. Peters' workplace monitor.

- [19] The conditions did not prohibit Mr. Peters from performing MedsChecks. His work at the clinic included filing, answering the telephone, recording ultrasound reports into notes, processing swabs and urine samples, interviewing patients to ascertain why they were at the clinic and performing medication reviews. Mr. Peters also conducted medication reviews for patients of a dermatologist who practised elsewhere.
- [20] The medication reviews conducted by Mr. Peters at the clinic and for patients of the dermatologist were billed to the Ministry as MedsChecks from the pharmacy. Indeed, the pharmacy was used almost exclusively to bill the Ministry for MedsChecks that were conducted by Dr. Czilli or Mr. Peters at the clinic on the member's medical patients or conducted by Mr. Peters at the dermatologist's office.
- [21] Between 2015 and 2017, approximately 4,000 MedsChecks were conducted annually by Dr. Czilli and Mr. Peters. According to MedsChecks claims filed with the Ministry, MedsChecks were conducted five or six days a week, and frequently, more than 20 MedsChecks were conducted in a day.
- [22] Generally, the documentation that was completed consisted of a hard copy that indicated the MedsCheck was conducted by "Dr. Colin Peters" at the pharmacy, and a "Patient Summary" sheet that contained cursory information about the patient such as a name and contact information, and a list of prescription medications and non-prescription substances, including vitamins. Patient Summary sheets were signed in most but not all cases by the person conducting the MedsCheck and the patient.
- [23] During the period between October 1, 2016 and April 1, 2017, the pharmacy claimed for 2,283 MedsChecks and was paid \$115,755.00 by the Ministry. Every one of them breached Ministry policies and guidelines that governed the pharmacy's subscription agreement to do MedsChecks.

[24] After an audit, the Ministry required the member to repay the entire amount, citing non-compliance with several Ministry policies:

- a. the required forms were not used;
- b. MedsChecks were not conducted at an accredited community pharmacy;
- c. MedsChecks were not billed on the date of service;
- d. MedsChecks were completed on patients who were not eligible for the program, including patients who were not receiving three prescription medications for a chronic condition;
- e. neither the member nor Mr. Peters dispensed medications for the patients. There was no documentation demonstrating that the pharmacist billing the MedsCheck discussed this issue with the patient, ensured an accurate patient record was attained or provided the reasons why the MedsCheck was not performed at the patients' regular pharmacy.

[25] Before the OCP Discipline Committee, Dr. Czilli admitted that between 2015 and 2017, she and Mr. Peters conducted MedsChecks and submitted claims for payment in a manner that was in breach of Ministry policies, and the standards of practice, guidelines, and Code of Ethics of the OCP. The records she created and maintained for MedsChecks did not comply with the OCP's standards of practice, College guidelines or Ministry requirements.

[26] The member also admitted that the documentation that was submitted to the Ministry regarding the MedsChecks was misleading and contained false information, specifically that the MedsChecks were conducted at the pharmacy.

### **The OCP Discipline Committee's Finding and Penalty Order**

[27] Based on these facts, the OCP Discipline Committee found that Dr. Czilli had engaged in the following acts of professional misconduct:

- a. under s. 1(2) of Ontario Regulation 681/93 made under the Pharmacy Act, 1991, S.O., 1991, c. 36 by failing to maintain the standard of practice of the profession in that she:

- i. submitted accounts or charges for services that she knew or reasonably ought to have known were misleading to the Ontario Drug Benefit (“ODB”) program for MedsCheck reviews that were non-compliant with the guidelines of the Ministry;
  - ii. falsified pharmacy records in relation to claims made to the ODB program for MedsCheck reviews that were non-compliant with the guidelines of the Ministry; and
  - iii. failed to keep records as required in relation to MedsChecks and claims for MedsChecks made to the ODB program;
- b. under s. 1(14) of O. Reg. 681/93 by falsifying records relating to her practice with respect to MedsCheck reviews that were non-compliant with the guidelines of the Ministry;
- c. under s. 1(15) of O. Reg. 681/93 by signing or issuing, in her professional capacity, documents she knew contained a false or misleading statement with respect to MedsCheck reviews that were not conducted in compliance with the guidelines of the Ministry;
- d. under s. 1(16) of O. Reg. 681/93 by submitting accounts or charges for services that she knew was false or misleading with respect to MedsCheck reviews that were non-compliant with the guidelines of the Ministry;
- e. under s. 1(21) of O. Reg. 681/93 by contravening the Pharmacy Act, the Drug and Pharmacies Regulation Act, R.S.O. 1990, c. H.4 the Regulated Health Professions Act, 1991, S.O. 1991, c. 18, or the regulations under those Acts, namely ss. 20 and 21 of O. Reg. 264/16 made under the Drug and Pharmacies Regulation Act with respect to:
  - i. MedsCheck reviews that were non-compliant with the guidelines of the Ministry; and
  - ii. failing to keep records as required in relation to MedsCheck claims made to the ODB program;

- f. under s. 1(13) of O. Reg. 681/93 by failing to keep records as required with respect to MedsCheck reviews; and
- g. under s. 1(30) of O. Reg. 681/93 by engaging in conduct or performing an act or acts relevant to the practice of pharmacy that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional with respect to:
  - i. submitting accounts of charges for services that she knew or reasonably ought to have known were false or misleading to the ODB program for MedsCheck reviews that were non-compliant with the guidelines of the Ministry;
  - ii. falsifying pharmacy records relating to her practice in relation to claims made to the ODB program for MedsCheck reviews that were non-compliant with the guidelines of the Ministry; and
  - iii. failing to keep records as required in relation to MedsCheck claims made to the ODB program.

[28] The OCP Discipline Committee ordered:

- a. a reprimand;
- b. a requirement that Dr. Czilli successfully complete the ProBE program with an unconditional pass within 11 months of the date that the Order became final;
- c. a 12-month suspension, which would be reduced by one month if Dr. Czilli completed a ProBE program by the end of the first 11 months;
- d. a three-year prohibition from:
  - i. acting as Designated Manager of any pharmacy; and
  - ii. having a proprietary interest in a pharmacy as a sole proprietor or partner, or director or shareholder in a corporation that owns a pharmacy, excepting only that she is permitted to own shares in a



publicly traded company that has an interest in a pharmacy, or in any other capacity; and,

e. Costs to the OCP in the amount of \$35,000.

## **Misconduct**

[29] On the joint submission of the parties before this Tribunal, the panel found that the member had engaged in professional misconduct in two ways.

[30] First, under para 51(1)(b) of the Health Professions Procedural Code, Dr. Czilli committed professional misconduct as a member of the CPSO because the OCP has found that she “committed an act of professional misconduct that would, in the opinion of the panel, be an act of professional misconduct under this section or an act of professional misconduct as defined in [Reg. 856/93 made under the *Medicine Act*, 1991].”

[31] In our view, the member’s conduct that underlies the OCP Discipline Committee’s seven findings, quoted just above, is an act of professional misconduct under several paragraphs of s. 1(1) of O. Reg. 856/93, including s. 1(1)33 (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 (DDU)). The submission of false and misleading documents that did not comply with Ministry requirements and were found to be DDU as a member of the OCP, would also reasonably be regarded as disgraceful, dishonourable or unprofessional by CPSO members. Indeed, such findings have been made by this Tribunal in relation to physicians where they have improperly billed the public health insurance plan for medical services.

[32] We found on the agreed evidence that the second allegation in the notice of hearing was proven because Dr. Czilli engaged in conduct that would reasonably be regarded by CPSO members as disgraceful, dishonourable or unprofessional. The scheme that she devised to set up a pharmacy in name alone was false and misleading, and showed disregard for the publicly funded billing system and the conditions under which the province agreed to compensate pharmacists for participation in an important and beneficial safeguard in our health care system.

## Penalty

[33] 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.

[34] 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 the recent decision in *College of Physicians and Surgeons of Ontario v. O'Brien*, 2023 ONPSDT 5, at paras 29-30.

[35] The parties' joint submission was that Dr. Czilli should receive a 12-month suspension, effective immediately and a reprimand. The parties also agreed that Dr. Czilli would pay the College the tariff amount of \$6,000 in costs.

[36] We are satisfied that the parties' joint submission meets the legal requirements for acceptance, and it is in the public interest. While none of the cases presented by the parties is closely analogous to this one on the facts, the penalty proposed by the parties is broadly in line with the prior cases when the relevant penalty factors are considered together and balanced.

[37] 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 Tribunal's and the profession's disapproval of the misconduct: *College of Physicians and Surgeons of Ontario v. Fagbemigun*, 2022 ONPSDT 22 at paras. 7-8.

[38] In *Fagbemigun*, the Tribunal identified four broad sets of factors to be considered in deciding on an appropriate penalty: the seriousness of the misconduct, the

physician's discipline history, their actions since the misconduct and their personal circumstances. Aggravating and mitigating factors must be taken into account alongside the nature, duration and impact of the misconduct.

- [39] Dr. Czilli's false and misleading behaviour was serious, longstanding and corrosive of the honour system under which programs such as MedsCheck must function. Both the College and the Ministry rely on the honesty and integrity of physicians. The member's behaviour reflects poorly on the profession and on the ability of the College to regulate the profession in the public interest. The member's actions are deserving of a significant sanction.
- [40] The member has no disciplinary history as a member of the CPSO. She was not charged with a criminal offence, but this does not lessen the severity of her conduct. The OCP Discipline Committee recognized the seriousness of her same misconduct and imposed a substantial suspension, along with prohibitions on operational and financial interests in pharmacies. Dr. Czilli has been through two lengthy legal processes that go some distance in deterring both her and other physicians from engaging in similar misconduct. There is no evidence of any new or recurrent ethical problems since the events of 2015 to 2017.
- [41] Under the OCP order, the member had to undertake significant ethical training, which stands to her credit and need not be duplicated in this Tribunal's order. She fully complied with that Discipline Committee's order. She repaid the Ministry the full amount of \$115,755 that she received for MedsChecks during its six-month audit period.
- [42] Dr. Czilli closed the pharmacy in 2018, and she resigned her membership from the OCP in 2022. These are significant personal, professional and financial impacts that we acknowledge as part of the overall circumstances in which we are imposing a further penalty.
- [43] The member cooperated fully at the hearing stage, executed an agreed statement of facts and entered into a joint submission on finding, penalty and costs. This demonstrated acknowledgment of her responsibility and served the public interest by facilitating a fair and expeditious hearing and saving time and cost for the parties, the Tribunal and the public.

[44] The parties put six cases before us as examples of the range of penalties that the Tribunal has imposed for false or misleading billing<sup>1</sup>. As we noted earlier, none of them presented a fact pattern or a corresponding penalty that was very similar to Dr. Czilli's case.

[45] The cases present substantial variation in the seriousness of the misconduct and the aggravating and mitigating factors for example, the length and extent of improper billing, the amount of money involved, risk to patient safety, fraudulent behaviour, criminal convictions, proceedings with other regulators, covering up of misconduct, governability, repayment and remorse and acknowledgment of responsibility. The resultant penalties in these cases ranged from no suspension at all to revocation, but the length of suspension cannot be considered in isolation; other penalties were concurrently imposed, including supervision, reassessment of practice, other terms and conditions, rehabilitative measures and fines.

[46] The joint submission on penalty in Dr. Czilli's case falls within the broad range presented by the parties' cases, and as noted, it satisfies the *Anthony-Cook* test.

[47] We also accepted the parties' joint submission on costs.

## **Order**

[48] We therefore ordered:

- a. The panel requires the member to appear before the panel to be reprimanded.
- b. The Tribunal directs the Registrar to suspend the member's certificate of registration for twelve (12) months commencing on March 25, 2023, at 12:01 a.m.

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<sup>1</sup> *College of Physicians and Surgeons of Ontario v. Abdurahman*, 2018 ONCPSD 42; *College of Physicians and Surgeons of Ontario v. Attallah*, 2020 ONCPSD 12 and 38; *College of Physicians and Surgeons of Ontario v. Michael*, 2020 ONCPSD 43; *College of Physicians and Surgeons of Ontario v. Buckley*, 2012 ONCPSD 31; *College of Physicians and Surgeons of Ontario v. Cohen*, 2012 ONCPSD 22; *College of Physicians and Surgeons of Ontario v. Paikin*, 2002 ONCPSD 49.

- c. The Tribunal requires the member to pay the College costs of \$6,000.00 by April 24, 2023.

**ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL**

**Tribunal File No.: 22-009**

**BETWEEN:**

College of Physicians and Surgeons of Ontario

- and -

Dr. Tiffany Czilli

**The Tribunal delivered the following Reprimand**  
by videoconference on Friday, March 24, 2023.

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

Dr. Czilli,

The College relies on the honesty and integrity of its members in order to govern the profession in the public interest. Physicians are trusted by the public to uphold the highest standards in both their medical knowledge and care of their patients, and in following the rules of remuneration established by the government. Although no patients were medically harmed by your actions directly, their time was occupied by you unnecessarily, and they may again have been asked to take time to respond to an audit later.

The fact that you knowingly established a pharmacy with no intent to serve the community but simply to enable your false billings, that you planned this in conjunction with a person whom you were supposed to be mentoring and that you continued in your deceit for a period of two years, demonstrates a lack of integrity which reflects poorly on our profession as a whole.

Your prolonged deceit in your submissions for publicly funded payment are reprehensible. This was not a case of inadvertent errors in billing but a conscious plan to provide yourself with monetary gains for services you were not eligible to provide. This undermines the trust the public has in our profession.

We acknowledge that you have taken the ethics course and made financial restitution and sincerely hope that you will never appear before this panel again.