

ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

Citation: *College of Physicians and Surgeons of Ontario v. Phillips*, 2023 ONPSDT 16

Date: July 14, 2023

Tribunal File No.: 21-023

BETWEEN:

College of Physicians and Surgeons of Ontario

- and -

Dr. Patrick Brian Phillips

FINDING AND PENALTY REASONS

Heard: June 6, 2023, by videoconference

Panel:

Ms. Sophie Martel (chair)

Dr. Catherine Grenier

Mr. Shahab Khan

Dr. Roy Kirkpatrick

Ms. Linda Robbins

Appearances:

Ms. Elisabeth Widner and Ms. Sayran Sulevani, for the College

Mr. Michael Alexander and Mr. Clint Cole, for Dr. Phillips

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 during the Tribunal hearing or in any documents filed with the Tribunal. There may be significant fines for breaching this order.

INTRODUCTION

- [1] Dr. Phillips is a family and emergency medicine physician who practised in a community in Northern Ontario. The allegations against Dr. Phillips originate in his communications and actions in respect of the public health measures and vaccinations relating to COVID-19.
- [2] Dr. Phillips does not contest that he engaged in professional misconduct and that he is incompetent.
- [3] Relying on a Statement of Uncontested Facts and Plea of No Contest, we concluded that Dr. Phillips committed professional misconduct by engaging in disgraceful, dishonourable or unprofessional conduct, by failing to maintain the standard of practice of the profession, by failing to respond to the College's written inquiries, and by contravening a term, condition or limitation on his certificate of registration. We also concluded that he is incompetent as defined in subsection 52(1) of the Health Professions Procedural Code, Schedule 2 to the *Regulated Health Professions Act, 1991*, SO 1991, c. 18 (Code).
- [4] The parties made a joint submission on penalty and costs, which we accepted. We reprimanded the member, revoked his certificate of registration, and ordered him to pay costs of \$6,000.
- [5] These are our reasons.

MISCONDUCT AND INCOMPETENCE

Online/Digital Communications

- [6] Dr. Phillips maintained publicly available social media pages and profiles on platforms including Twitter, GETTR, and Gab. He had thousands of followers on his Twitter accounts. From about November 2020 to September 2021, Dr. Phillips communicated on these platforms in a manner intended to undermine public confidence in measures taken to address the COVID-19 pandemic and to deter the public from complying with public health measures. His communications included:
 - a. Asserting that government, public health authorities, and other institutions should not be trusted, are lying to the public, and are acting out of improper and financial motives.

- b. Comparing government action during the pandemic to residential schools with the intention of causing and concealing children's deaths as well as asserting that public health measures were "ritualized child abuse."
 - c. Comparing public health measures to Nazi policies and to thalidomide.
 - d. Asserting that the College should not be trusted because it relies on propaganda rather than science, that he will not comply with the College's pandemic response measures, and that the restrictions the College imposed on him are a "badge of honour."
- [7] In 2021, Dr. Phillips posted tweets promoting vaccine exemptions via a website that was offering vaccine exemptions to the public.
- [8] Dr. Phillips also started an organization called Angel's Heart Medical. The website for this organization states that Dr. Phillips "drew the wrath of the [College] which threatened him, limited his practice and ordered him to be silent." The website refers to the "voice of dissent." It states that "abandoned by his hospital," Dr. Phillips is ready to offer his support through virtual visits and to make local home visits.
- [9] On April 27, 2021, an Acting Medical Officer of Health (AMOH) sent a letter to Dr. Phillips thanking him for submitting Adverse Event Following Immunization (AEFI) reports but also advising him that the five cases he had reported did not meet the AEFI criteria. Dr. Phillips subsequently posted the AMOH's letter on his Twitter account, criticizing Canada's adverse events reporting system. Other Twitter users responded to Dr. Phillips' post with further tweets identifying the AMOH by name. One user stated that the AMOH "needs to be in prison for crimes against humanity. He is a liar... Shame on this man for not protecting the people in this area! This man is a coward!" Another user stated that their trust in the AMOH was "damaged beyond repair."

Posting College investigative information online

- [10] On June 21, 2021, Dr. Phillips publicly posted a link to the College's investigative information online contrary to his obligation to use such investigative materials solely for the purpose of responding to the issues raised. The materials included the names, contact information, and other identifying details of two witnesses who

had raised concerns about Dr. Phillips' online communications. Several of Dr. Phillips' followers made harassing comments about these two witnesses. One witness was directly targeted on his own Twitter account with dozens of harassing messages including referring to him as a "murderer" and stating that he was a "criminal" and "complicit in Nuremburg code violations."

- [11] Dr. Phillips repeatedly refused to remove the information publicly identifying the witnesses in the College investigation despite the College's repeated requests for the removal in June and July 2021. He did not remove the information from the internet until after the College obtained an order from the Ontario Superior Court of Justice requiring him to do so in January 2022.

Other conduct and communications regarding COVID-19

- [12] In May 2021, Dr. Phillips interfered with the testing of a 10-month-old child who was not his patient. The child had been identified by the local health unit as being a close contact of a COVID-19-positive household member. The local health unit advised the mother to have her child swabbed to test for the virus. Dr. Phillips was not the assessment centre's ordering physician but found out about the child's presence at the assessment centre. He spoke with the mother but did not take a history nor examine her child. After speaking with Dr. Phillips, the mother declined to have the baby swabbed and returned home. The health unit manager subsequently found out about the interaction between Dr. Phillips and the mother and called the mother to fully explain the swabbing process. The mother was reassured and returned to the assessment centre that day where she had her child swabbed.

- [13] The College also received reports from Dr. Phillips' hospital colleagues that he communicated to them and to patients his opinion that COVID-19 vaccines are unsafe and that ivermectin was a useful drug in the treatment and prevention of COVID-19.

Failing to cooperate with a College investigation

- [14] Dr. Phillips waited five months before he responded to the College's repeated requests that he return a completed Physician Practice Questionnaire and he

waited four months to provide other information requested in writing by the College as part of its investigation.

Breaching the terms of an order made under s. 25.4 of the Code

- [15] On September 27, 2021, the Inquiries, Complaints and Reports Committee (ICRC) issued an order under s. 25.4 of the Code placing terms, conditions or limitations on Dr. Phillips' certificate of registration, including a requirement that Dr. Phillips comply with the College's efforts to monitor his compliance with the order. On April 15, 2022, Dr. Phillips advised that he would no longer comply with the monitoring terms set out in the ICRC order. As a result of his refusal to comply, on May 2, 2022, the ICRC issued a new order suspending his certificate of registration.

Failure to maintain the standard of practice and incompetence

Regarding communications

- [16] The College retained Dr. Gardam, a senior infectious disease specialist, to provide an opinion regarding Dr. Phillips' public social media and other internet postings on COVID-19.
- [17] Dr. Gardam referenced many of Dr. Phillips' statements or tweets that he found particularly problematic. For example, he referred to Dr. Phillips' "harassing" response to a father who had posted a photo of his son being vaccinated on Twitter in which Dr. Phillips asked: "Did you inform your child that he has a lower risk of dying from Covid than the Flu? Did you inform your child that you gave him a vaccine that has no long-term safety studies, unlike all other vaccines? Parents should be protecting their children." Dr. Gardam also referred to Dr. Phillips' "distasteful" invocation of the Nuremberg trials in another post.
- [18] Dr. Gardam found many instances where Dr. Phillips' statements were either misleading or incorrect such as his repeated insistence that COVID-19 vaccines do not prevent infection or transmission and that the original vaccination trials did not look at serious events such as hospitalizations or deaths. He indicated that Dr. Phillips' promotion, enthusiasm, and definitive comments regarding ivermectin, hydroxychloroquine, and vitamin D as effective drugs against infection were not generally supported by the scientific community. Dr. Gardam was also of the view that Dr. Phillips dramatically overplayed the risk of vaccines without providing a

balanced assessment regarding other risks including the fact that a sizeable population of people infected with COVID-19 will develop long term sequelae.

- [19] Dr. Gardam concluded his opinion by stating that Dr. Phillips had not met the standard of his profession, displayed a lack of knowledge and judgment, and that his behaviour could expose members of the public to harm or injury:

He does not meet the standard of his profession, in that many of his public statements are incorrect, misleading, or inflammatory and are beyond what I would consider reasonable scientifically-informed debate.

...

In many of his public statements, Dr. Phillips has displayed a lack of knowledge and a lack of judgement. To my knowledge, Dr. Phillips does not have additional training in epidemiology, microbiology, public health, or vaccinology and many of his statements are uninformed or incorrect. Yet as a practising physician, his statements could be seen as authoritative and evidence based. Indeed, during his interviews, his status as a physician is often remarked upon. In this respect, he has shown a lack of judgment.

...

Dr. Phillips' behaviour could expose members of the public to harm or injury, in that his statements are frequently incorrect, misleading or inflammatory and may encourage the public to disregard public health advice on public health measures meant to reduce their risk of infection yet take treatments such [as] vitamin D in the belief that it will protect them from severe COVID-19 disease.

Regarding patient care

- [20] The College retained Dr. Hodge, a specialist in public health and preventative medicine and family and emergency medicine, to provide an opinion on the care that Dr. Phillips provided to patients regarding COVID-19 vaccines and treatments, his reporting of AEFIs, and his provision of medical exemptions.

- [21] Among his concerns, Dr. Hodge identified issues with Dr. Phillips' inadequate documentation for multiple patients such as lack of documentation regarding patient

consent, his use of identical treatment orders¹ for 20 of 21 patients (including one who had clear contraindications to the prescribed substance and dose), his approach to diagnosis and documentation relating to possible AEFIs, and his intervention regarding a patient with whom he had not established an appropriate physician-patient relationship. Regarding the identical treatment orders, Dr. Hodge stated:

The use of the identical treatment orders for 20 of 21 patients, particularly when at least one patient had clear contraindications to the prescribed substances and doses, falls short of the standard of practice for any physician providing inpatient or emergency care. It is not possible to parse this among deficits of knowledge, skill or judgment from the provided documentation but is concerning as a 'sentinel event' that can be expected to cause harm to patients.

[22] Dr. Hodge reviewed several charts of patients Dr. Phillips saw for vaccine counselling and/or vaccine exemptions. He found deficits in documentation as well as substantial deficits in Dr. Phillips' understanding of the eligibility criteria for COVID-19 vaccines and his understanding of consent under the applicable health legislation. He indicated that Dr. Phillips had not established a physician-patient relationship with some individuals whom he counselled not to be vaccinated against COVID-19, nor did he document appropriately. He also found that his vaccine exemption notes, which stated that patients were not "eligible" for vaccination or that vaccination was not recommended for them, were factually incorrect and misleading.

[23] In summary, Dr. Hodge was of the view that Dr. Phillips failed to maintain the standard of practice of the profession, demonstrated a lack of knowledge, skill and/or judgment, and exposed or was likely to expose his patients to harm or injury. In particular, he felt that there was a high likelihood of harm to patients when Dr. Phillips used the same treatment orders for all patients coupled with a lack of evidence that the combination of prescribed substances would benefit these patients.

¹ Vitamin D 4000 IU PO daily, Vitamin C 3000 mg PO daily, Zinc gluconate 50 mg PO daily x 2 then M W F.

FINDINGS

- [24] Dr. Phillips did not contest the above facts and expert opinions nor that, based on these facts, he engaged in professional misconduct and is incompetent.
- [25] Relying on the Statement of Uncontested Facts and Plea of No Contest, we conclude that he is incompetent and that he engaged in the professional misconduct set out in the Notice of Hearing.
- [26] Dr. Phillips' communications were misleading, incorrect, and inflammatory. His communications, such as his post in response to a parent's picture of his child being vaccinated, were not aimed at fostering scientific debate but rather, were of a harassing nature. Similarly, by posting a letter he received from the AMOH and by posting confidential College investigation information online, he exposed other individuals to harassing posts. He promoted vaccine exemptions via a website. Such actions were disgraceful, dishonourable or unprofessional.
- [27] Dr. Phillips also failed to provide information in a timely way to the College and failed to comply with a s. 25.4 order, which amount to professional misconduct, as specified in subsection 1(1)30 and 1(1)1 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, SO 1991, c. 30. The credibility of the medical profession, and the College as its regulator, depends on the College being able to investigate complaints or other issues of potential concern and to take appropriate action in a timely way (see *College of Physicians and Surgeons of Ontario v. Hanmiah*, 2022 ONPSDT 9 at para. 11). We are particularly troubled by the fact that Dr. Phillips refused to remove the witness identification information on the internet until ordered to do so by a court.
- [28] Relying on the uncontested opinions of Dr. Gardam and Dr. Hodge, we conclude that Dr. Phillips failed to maintain the standard of practice of the profession with respect to his public communications and in his treatment of patients.
- [29] Similarly, relying on the uncontested opinion of Dr. Hodge, we conclude that Dr. Phillips is incompetent within the meaning of s. 52(1) of the Code, which provides.

A panel shall find a member to be incompetent if the member's professional care of a patient displayed a lack of knowledge, skill or judgment of a nature or to an extent that demonstrates that the

member is unfit to continue to practise or that the member's practice should be restricted.

- [30] Dr. Phillips' professional care of patients displayed a lack of knowledge, skill or judgment, particularly in respect of his treatment orders, which were identical for multiple patients, were based on incomplete documentation, and in at least one case, were contraindicated. His vaccine exemption notes were misleading and based on erroneous criteria. The deficiencies were to an extent that demonstrates that he is unfit to continue to practise or that his practice should be restricted.

PENALTY AND COSTS

- [31] The parties jointly proposed that the member's certificate of registration be revoked, that Dr. Phillips be reprimanded, and that he pays costs of \$6,000.
- [32] To depart from a joint submission would require a finding that the proposed penalty would bring the administration of justice into disrepute or is otherwise not in the public interest: *R. v. Anthony-Cook*, 2016 SCC 43. A disciplinary body that rejects a joint submission on penalty must show why the proposed penalty is so unhinged from the circumstances of the case that it must be rejected: *Bradley v. Ontario College of Teachers*, 2021 ONSC 2303.
- [33] We are satisfied that the proposed penalty is not contrary to the public interest. The primary goal of a penalty order is the protection of the public: *College of Physicians and Surgeons of Ontario v. Fagbemigun*, 2022 ONPSDT 22 at para. 7. The revocation of Dr. Phillips' certificate of registration will protect the public as he will no longer be practising medicine. The allegations and ensuing findings in this matter were serious and numerous. They were not limited to Dr. Phillips' communications related to COVID-19 but also included his actions in response to the College's investigation process and in response to the s. 25.4 order, which he contravened. Dr. Phillips also failed to meet the standard of practice of the profession and was found to be incompetent.
- [34] In our view, the revocation of Dr. Phillips' certification of registration along with a reprimand, which we delivered at the hearing, accomplishes the main goal of protecting the public and is, therefore, not against the public interest.

ORDER

[35] For the above reasons, we ordered:

- a. The Tribunal requires the member to appear before the panel to be reprimanded.
- b. The Tribunal directs the Registrar to revoke the member's certificate of registration, effective immediately.
- c. The Tribunal requires the member to pay the College costs of \$6,000 by July 6, 2023.

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BETWEEN:

College of Physicians and Surgeons of Ontario

- and -

Dr. Patrick Brian Phillips

The Tribunal delivered the following Reprimand
by videoconference on Tuesday, June 6, 2023.

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

Dr. Phillips,

We are dismayed by the deliberate steps you took to undermine the public health response to the COVID-19 pandemic. As a physician, the information you communicate is trusted by many. Your communications to colleagues, patients, and your thousands of followers on social media regarding COVID-19 and public health response measures, were careless, often offensive and at times, possibly harmful.

You inappropriately leveraged your position of trust as a physician to advance your own personal viewpoints. This included, for instance, promoting vaccine exemptions via a website without clinical rationale; attempting to obstruct COVID-19 testing for a 10-month old who had been exposed by a household member; and making inflammatory statements about the public health measures carried out by government.

The panel is troubled by your deliberate and coordinated attempts to deter the public from complying with public health measures. By doing so, you heightened public fear during a global public health crisis.

Further, to advance your personal view that the COVID-19 vaccine is unsafe, you publicly criticized Canada's adverse reporting system. Furthermore, you posted a private letter you received from an Associate Medical Officer of Health (AMOH) online, which opened the AMOH to abusive comments from those who shared your views.

Further, while under investigation, you breached your obligations to the College by publicly posting investigative materials on the internet. These materials identified the two witnesses who had reported their concerns about your online communications. Due to your dissemination of this information, the two witnesses were subject to harassing comments by your followers such as being called a "murderer" and a "criminal." Despite repeated requests from the College, you refused to remove this information until compelled to do so by court order. Later, you expressly stated that you would not be complying with the monitoring order put in place by the College.

Your blatant disregard of your obligations as member of the College, including your purposeful obstruction of the investigation process, is unacceptable and cannot be tolerated.

Dr. Phillips, your misconduct is concerning, warranting the most serious penalty. You advanced your own viewpoints in a manner that was not aimed at fostering scientific debate but rather, descended into the realm of aggression and intimidation. In so doing, you exposed or potentially exposed your patients and the public to harm or injury. You did so in the midst of a health crisis, where the public's reliance on the medical profession was heightened. We can only conclude that the public interest is best served by the revocation of your certificate of registration.