

ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

Citation: *College of Physicians and Surgeons of Ontario v. Benoit*, 2024 ONPSDT 5

Date of Oral Reasons: January 30, 2024

Date Written Reasons Released: February 1, 2024

Tribunal File No.: 22-013

BETWEEN:

College of Physicians and Surgeons of Ontario

College

- and -

Jean-Marc Benoit

Registrant

ORAL REASONS ON FINDING AND PENALTY

Heard: January 30, 2024, by videoconference

Panel:

David A. Wright (Tribunal Chair, public)

Madhu Azad (physician)

Veronica Mohr (physician)

Rob Payne (public)

Peter Pielsticker (public)

Appearances:

Sayran Sulevani and Victoria Cistrone, for the College

Lisa Bildy, for the registrant

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.

Introduction

[1] For the College to effectively regulate the medical profession in the public interest, it is essential that registrants respond appropriately and within a reasonable time to written inquiries from the College. Prompt responses to requests for information in the context of investigations lead to a timelier resolution of the matter for complainants, the public and registrants. The requirement to respond quickly to the regulator is one of the obligations that comes with the privilege of practising a regulated profession.

[2] It took Dr. Benoit two years and five months to respond to a request from an investigator to fill out a practice questionnaire. This was professional misconduct. The College and the registrant agree that the penalty in these circumstances should be a reprimand only, together with costs of \$6,000. Because this is a joint submission, we must make the requested order unless it is so unhinged that it would bring the College's professional discipline system into disrepute. We make the order the parties request.

[3] Tribunal Chair David Wright conducted case management conferences in this proceeding and sits on the panel with the consent of both parties.

Facts

[4] Dr. Benoit pleaded no contest, and the facts were put into evidence through a statement of uncontested facts. That means that he agrees that the Tribunal can rely on those facts for the purposes of this proceeding and can make a finding of professional misconduct based on those facts (see Rule 14.3 of the Tribunal's Rules of Procedure).

[5] On June 18, 2021, a College investigator wrote to Dr. Benoit as part of an investigation and asked him to complete a Physician Practice Questionnaire and return it by July 9, 2021. The investigator spoke to Dr. Benoit's lawyer on July 7, 2021, and reiterated this requirement, extending the deadline to August 6, 2021. The investigator and Dr. Benoit's counsel communicated about the questionnaire over the next ten months. Dr. Benoit did not complete the questionnaire until November 27, 2023, when he retained a new lawyer.

[6] Under s. 1(1) 30 of O. Reg. 856/93 under the *Medicine Act*, SO 1991, c. 30, it is professional misconduct to fail "to respond adequately or within a reasonable time to a written inquiry from the College." The College must be able to obtain information from

registrants to fulfil its statutory duties to conduct investigations to protect the public. Whatever a physician thinks of the merits of the complaint or investigation, or whatever others tell them, they must provide what the College requests. Dr. Benoit committed misconduct as alleged.

Penalty

[7] The parties agree that the penalty should be a reprimand. It would usually be a term, condition or limitation in a case like this that the registrant attend education about their ethical responsibilities. That is not included here, appropriately, because Dr. Benoit has recently completed a course on Professionalism and Medical Ethics that meets the certification criteria of the College of Family Physicians of Canada as the Inquiries Complaints and Reports Committee required in another case.

[8] 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.

[9] 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.

[10] The penalty would doubtless be more significant if Dr. Benoit had not responded before the hearing. We note that he did so shortly after he retained a new lawyer. Having now responded and taken the course, Dr. Benoit has been reminded of his responsibility to cooperate with his professional regulator and we will again emphasize the importance of that in our reprimand. The parties have pointed us to the following cases where the

registrant responded to the College before the hearing and received a reprimand: *College of Physicians and Surgeons of Ontario v. Tadros*, 2010 ONCPSD 19; and *College of Physicians and Surgeons of Ontario v. Vincent*, 1995 ONCPSD 19. We are cautious about putting much reliance on *Vincent*, given that it was decided nearly 30 years ago and the Tribunal's approach to discipline and penalty has evolved considerably since then. In *College of Physicians and Surgeons of Ontario v. Smith*, 2020 ONCPSD 35, where different misconduct at the less serious end of the spectrum was found, there was also a penalty without a suspension. Both it and *Tadros*, decided within the last 15 years, help us conclude that this penalty is appropriate.

[11] The costs of \$6,000 reflect the Tribunal's tariff.

Order

[12] We order:

- The registrant to appear before the panel to be reprimanded.
- The registrant to pay the College costs of \$6,000 by February 29, 2024.

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Tribunal File No.: 22-013

BETWEEN:

College of Physicians and Surgeons of Ontario

College

- and -

Jean-Marc Benoit

Registrant

**The Tribunal delivered the following Reprimand
by videoconference on Tuesday, January 30, 2024.**

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

REPRIMAND

Dr. Benoit, as you have heard in our reasons, your misconduct hampered the ability of the College to carry out its duty to regulate the medical profession in the public interest. When members fail to cooperate with the College, it affects the confidence of the public in the entire profession and its governance. We trust that this process and the course that you have taken have assisted you in understanding the importance of meeting your legal obligations to the College and that we will not see you before this Tribunal again.