

ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

Citation: *College of Physicians and Surgeons of Ontario v. Karim*, 2023 ONPSDT 18

Date: August 24, 2023

Tribunal File No.: 23-004

BETWEEN:

College of Physicians and Surgeons of Ontario

- and -

Dr. Sadiqa Karim

FINDING AND PENALTY REASONS

Heard: July 27, 2023, by videoconference

Panel:

Ms. Sherry Liang (chair)

Mr. Paul Malette, K.C.

Ms. Linda Robbins

Dr. Janet van Vlymen

Dr. James Watters

Appearances:

Ms. Amy Block, for the College

Mr. Robin McKechney, for Dr. Karim

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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] The College's Inquiries, Complaints and Reports Committee (ICRC) referred allegations Dr. Karim committed misconduct to the Tribunal.
- [2] At the hearing, Dr. Karim and the College provided an Agreed Statement of Facts. Dr. Karim admitted that, based on the facts, she committed professional misconduct by engaging in disgraceful, dishonourable or unprofessional conduct and conduct unbecoming a physician. The College and the member made a joint submission on penalty. We found that the member committed professional misconduct as admitted and accepted the joint submission, ordering a reprimand, a five-month suspension of the member's certificate of registration and terms and conditions on the member's certificate. We also directed the member to pay a \$16,636.00 fine to the Minister of Finance and \$6,000.00 in costs to the College. These are the reasons for our findings and penalty.

Professional Misconduct

Unlawfully Obtaining Ontario Health Insurance Coverage

- [3] The member received her certificate of registration from the College in 2010 and has a family medicine practice in Ontario. Although she practises medicine in Ontario, she resides in New York.
- [4] In 2015, the member applied to the Ministry of Health for Ontario Health Insurance Plan (OHIP) coverage, using the address of her family medicine practice in Ontario. In signing the application, she expressly confirmed the information she provided was true and accurate, and confirmed that she:
- would be physically present in Ontario for at least five (5) months (153 days) in any 12-month period;
 - must not be absent from Ontario for more than 30 days within the first 183 days immediately after establishing residency in Ontario; and
 - makes and intends to continue to make Ontario her primary place of residence.
- [5] On the basis of this application and her representations, the member obtained OHIP coverage. However, as she lived and continued to live in New York, she was

not entitled to that coverage. Between 2015 and 2017, the member used the OHIP coverage, incurring OHIP \$1,795.38 for services and the province \$3,920.00 for hospital visits. The member's family member also obtained OHIP coverage to which they were not entitled. The member treated her family member, remitting and receiving payment from OHIP on seven occasions for an amount totalling \$240.40.

[6] The member states that she was under the mistaken understanding that because she was able to obtain permanent resident status with the assistance of legal counsel, based on her office address, she was entitled to use that address for Ontario health benefits. She acknowledges that she knew or ought to have known that she was not entitled to OHIP coverage.

[7] In exchange for immunity from criminal prosecution, the member and her family member made restitution to the Crown in Right of Ontario in the amount of \$16,636.00.

Treatment of family member

[8] Between 2016 and 2018, the member treated a family member, assessing and managing chronic medical conditions. She made referrals and renewed and issued prescriptions for various medical conditions.

[9] The College's policy on *Physician Treatment of Self, Family Members or Others Close to Them*, in effect at the time, states that personal or close relationships can compromise a physician's emotional and clinical objectivity, making it difficult for physicians to meet the standard of practice. The policy provides that physicians must not provide treatment for themselves or family members, except for a minor condition or in an emergency situation and when another qualified health care professional is not readily available. The member's care and treatment of her family member was ongoing and treatment was not for minor conditions, nor was it provided in the context of an emergency.

Failing to Provide Complete and Accurate Information to the College

[10] The College's Annual Renewal forms of 2013, 2014, 2016, 2017, 2018, 2019, 2020, 2021, and 2022 required the member to advise whether she was registered with medical licensing authorities other than Ontario. She failed to disclose that she was licensed to practise medicine in the United States. Although she had not been

practising in the United States during these time periods, she continued to maintain her American licence and should have disclosed this in the annual renewal process.

Finding on professional misconduct

[11] Based on the above facts, we found that the member engaged in conduct that is disgraceful, dishonourable or unprofessional and conduct unbecoming a physician in that she:

- a. applied for and was approved for OHIP coverage and incurred costs for OHIP and the province when she knew, or ought to have known, she was not entitled to it;

[12] She engaged in disgraceful, dishonourable and unprofessional conduct when she:

- a. treated a family member for ongoing medical conditions;
- b. remitted and received payment from OHIP for services provided to her family member who was not entitled to such benefits; and
- c. failed to provide complete and accurate information in the College's annual renewal process.

Penalty

[13] The parties agreed on a penalty that included a reprimand, a five-month suspension of the member's certificate of registration and successful completion, at her own expense, of an ethics and boundaries program and individualized instruction in ethics and professionalism. The parties also agreed to the member paying a fine to the Minister of Finance in the amount of \$16,636.00.

[14] Because the parties agree, the question for us is whether the proposed penalty would bring the administration of justice into disrepute. A joint submission on penalty will be rejected only where it causes "reasonable and informed persons, aware of all of the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system has broken down". See *R. v. Anthony-Cook*, 2016 SCC 43 at para. 34 and *Bradley v. Ontario College of Teachers*, 2021 ONSC 2303 at para. 9.

- [15] It is not our role on a joint submission to consider whether we agree with the proposed penalty or whether it is a penalty that we would order following a contested hearing and a finding of misconduct. The question is not whether the proposed penalty is the most appropriate fit, but rather, whether it is contrary to the public interest in a way that would bring the administration of justice into disrepute: *College of Physicians and Surgeons of Ontario v. Gutman*, 2021 ONPSDT 50 at para. 15.
- [16] We are satisfied that the proposed penalty is not contrary to the public interest and satisfies the objectives of penalty determinations. The most important goal of a penalty is protection of the public. The public must have confidence in the College's ability to govern the profession in the public interest. In determining a penalty, the Tribunal also seeks to achieve the goals of 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.
- [17] The seriousness of the misconduct is usually the most significant factor in deciding on a penalty. Here, obtaining OHIP coverage and incurring costs for OHIP when the member knew, or ought to have known, she was not entitled to do so is serious misconduct and a breach of the trust placed in physicians by the province's publicly-funded health care system. Physicians are responsible for ensuring that they understand the requirements for OHIP coverage and billing.
- [18] By assessing and managing a family member's chronic medical conditions, the member disregarded the expectations set out in College policy, including boundaries that are fundamental to a proper and effective doctor-patient relationship. As the College's policy makes clear, personal or close relationships can compromise a physician's emotional and clinical objectivity, making it difficult for physicians to meet the standard of practice.
- [19] Finally, the cases the parties provided to us describe the importance of a member's reporting obligations to the College (see, for example, *College of Physicians and Surgeons of Ontario v. Khuon*, 2019 ONCPSD 3). In fulfilling its mandate to regulate the profession in the public interest, the College must be aware of other jurisdictions in which members hold certificates of registration and if problems have

arisen there. Even if, as in this case, there is no suggestion that the member has faced discipline in the United States, the requirement to be transparent is not merely technical. The member did not disclose her New York licence in reporting to the College over many years.

[20] As a whole, we are satisfied that the proposed penalty maintains public confidence in the College's ability to regulate the profession in the public interest. The parties provided us with other cases in which the Tribunal considered similar misconduct. While they all differ in their facts, they show that the Tribunal has considered suspensions an appropriate penalty where the professional misconduct includes wrongfully obtaining OHIP payments, breaching professional boundaries by treating family members and failing to provide the College with accurate information. In those cases, the Tribunal was satisfied that suspensions served as general and specific deterrence, signalling to the member and the public at large that misconduct of that nature will not be tolerated. Here, payment of a fine to the Ministry of Finance also serves as deterrence.

[21] A reprimand in this case supports the goals of general and specific deterrence and expresses the Tribunal and the profession's disapproval of the member's conduct. The successful completion of the ethics and boundaries program and individualized instruction in ethics and professionalism furthers the member's rehabilitation and protects the public.

[22] On the facts before us, the proposed penalty is broadly within the range of that imposed in cases of similar misconduct. It is not contrary to the public interest in a way that would bring the administration of justice into disrepute.

Order

[23] For the above reasons, the Tribunal accepted the parties' joint submission. The panel has reprimanded the member. The panel further ordered as follows:

- a. The Tribunal directs the Registrar to:
 - i. suspend the member's certificate of registration for five (5) months commencing July 28, 2023 at 12:01 am;

- ii. place the following terms, conditions and limitations on the member's certificate of registration effective immediately:
 - 1. The member will, at her own expense, participate in 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. The member will complete the PROBE program within six (6) months of the date of this Order or, if it is not available within that timeframe, will complete it at the earliest available opportunity. The member will provide proof to the College of their completion, including proof of registration and attendance and participant assessment reports, within one (1) month of completion; and
 - 2. The member will, at her own expense and within six (6) months, participate in and successfully complete individualized instruction in medical ethics and professionalism satisfactory to the College, with an instructor approved by the College, for a minimum of three (3) sessions (with associated readings, reflective paper and reports). The instructor shall provide a summative report to the College including their conclusion about whether the member successfully completed the instruction.
- b. The Tribunal orders the member shall within three (3) months of this Order, pay a fine to the Minister of Finance in the amount of \$16,636.00, and that the member shall provide proof of this payment to the Registrar of the College.
- c. The Tribunal requires the member to pay the College costs of \$6,000.00 within 30 days of the date of the order.

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BETWEEN:

College of Physicians and Surgeons of Ontario

- and -

Dr. Sadiqa Karim

The Tribunal delivered the following Reprimand
by videoconference on Thursday, July 27, 2023.

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

Dr. Karim,

We are deeply disappointed that you are appearing before us, having engaged in conduct that was disgraceful, dishonourable or unprofessional and unbecoming of a physician.

We are particularly concerned that these findings arise from a series of poor choices on your part.

First, you sought personal gain in the form of OHIP benefits when you knew or ought to have known that you were not entitled to those benefits. By your signature on the application, you affirmed information that was not truthful and accurate.

Second, you showed a lack of judgment when you chose to provide ongoing medical care to a family member for conditions that were not minor or urgent. In doing so, you disregarded the boundaries that are fundamental to a proper and effective doctor-patient relationship, and potentially compromised the quality of that person's care.

Last, you failed for many years to provide complete and accurate information to the College on your annual registration renewal. The information sought is not ambiguous or trivial and the College depends on physicians being careful, honest and forthright in their answers in order to fulfill its mandate to protect the public.

Your actions suggest more than a momentary inattention or inadvertent misunderstanding. Rather, you disregarded the requirements and expectations that allow, first, the publicly funded OHIP system to function effectively and, second, the College to govern the medical profession in the public interest. Physicians hold a position of power and authority in our society, and we enjoy considerable autonomy in practising our profession. In return, each of us accepts the responsibility to respect the public trust, to act ethically, with honesty and in our patients' best interests.

Dr. Karim, your misconduct is serious and unacceptable. We hope that you have learned from this experience and that, on completing your suspension and the educational requirements set out in today's penalty order, you will be diligent and truthful in fulfilling your professional obligations in the future.