ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

Citation: *College of Physicians and Surgeons of Ontario v. Morin,* 2022 ONPSDT 10
Date: March 14, 2022
Tribunal File No.: 21-015

BETWEEN:

College of Physicians and Surgeons of Ontario

- and -

Dr. Jason Matthew Morin

FINDING AND PENALTY REASONS

Heard: January 27, 2022, by videoconference

Panel:

Ms. Sherry Liang (chair)
Dr. Allan Kaplan
Dr. Rupa Patel
Ms. Linda Robbins
Ms. Shannon Weber

Appearances:

Ms. Simmy Dhamrait-Sohi, for the College
Ms. Shauna Powell and Ms. Danielle Douek, for Dr. Morin

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. Morin practises family medicine. Patient A was Dr. Morin's patient from 2009 to 2019. Patient A's spouse, Patient B, was also Dr. Morin's patient at the relevant times. In 2019, Patient A complained to the College about Dr. Morin, including about his prescribing and disclosure to Patient B of a letter Patient A had written to Dr. Morin.

[2] After investigating the complaint, the College referred allegations of professional misconduct against Dr. Morin to this Tribunal. The College alleged that Dr. Morin engaged in sexual abuse of and/or dishonourable, disgraceful or unprofessional conduct in relation to Patient A. The College also alleged that Dr. Morin failed to maintain the standard of practice of the profession in respect of Patient A.

[3] The hearing proceeded on an Agreed Statement of Facts. Dr. Morin admitted to failing to maintain the standard of practice of the profession. The College withdrew the allegation of sexual abuse and disgraceful, dishonourable or unprofessional conduct. We found Dr. Morin had committed professional misconduct under paragraph 1(1)2 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, in that he failed to maintain the standard of practice of the profession.

[4] The parties made a joint submission on penalty. We accepted the joint submission, ordering a one-month suspension of Dr. Morin's certificate of registration, terms and conditions on his certificate of registration as described below, and a reprimand. We also ordered Dr. Morin to pay the College $6,000 as legal costs.

[5] These are the reasons for our decisions.

Finding on Misconduct

Overprescribing

[6] During the time she was his patient, Patient A consulted with Dr. Morin about a variety of conditions. The College retained a family physician, Dr. Karen E. Ferguson, to provide an opinion on Dr. Morin's care of Patient A, including his prescribing of controlled substances to her.

[7] The expert's opinion was that Dr. Morin met the standard of practice of the profession for most of the time he cared for Patient A. However, for one 13-month

period, from July 2017 to August 2018, Dr. Morin prescribed high doses of two medications which, in the opinion of the expert, should not be taken together on a nightly basis. In this respect, and for this period, the expert concluded that Dr. Morin's prescribing to Patient A did not meet the standard of practice of the profession.

[8] The expert concluded that this episode did not demonstrate a lack of knowledge, skill or judgement with respect to prescribing the controlled substance in question, as for most of the time he cared for the patient, he was adequately cautious in his prescribing practices. The expert described the steps the member took to try alternative treatments and to monitor the ongoing use of the medications.

[9] The expert also stated that Dr. Morin's clinical practice, behaviour or conduct with respect to his prescribing in this case was not likely to expose his patients to harm or injury.

Disclosure of Patient A's Letter

[10] According to the Agreed Statement of Facts, in approximately March 2019, Patient A accompanied Patient B to an appointment with Dr. Morin. Patient A brought a letter for Dr. Morin. The letter stated, among other things, that Patient B was abusing Patient A. Patient B did not know that Patient A had written this letter.

[11] Patient A provided the letter to a receptionist in the doctor's office and asked that it be given to Dr. Morin. Patient A also asked that Dr. Morin read the letter before he saw Patient B and Patient A that day.

[12] During Patient B's appointment with Dr. Morin, and while Patient A was in the waiting room, Dr. Morin told Patient B about the letter and held it up to show it to Patient B. Patient A did not know that that Dr. Morin had disclosed the letter to Patient B. Sometime later, Dr. Morin invited Patient A to the examination room with Patient B and told Patient A, in Patient B's presence, that he had disclosed the letter to Patient B. Dr. Morin offered both patients resources during the appointment.

[13] The following month, Patient A attended an appointment with Dr. Morin, alone. During this appointment Patient A repeated concerns about domestic abuse by

Patient B. Dr. Morin referred Patient A for counselling, discussed the option of reporting to the police and offered information about shelters and crisis lines.

[14] In her report, Dr. Ferguson concluded that the care Dr. Morin provided to Patient A did not meet the standard of practice of the profession with respect to how he managed Patient A's disclosure of alleged domestic abuse. In her opinion, Dr. Morin should have discussed the letter with Patient A directly and obtained permission before discussing the letter with Patient B. However, Dr. Ferguson noted that Patient A's intentions in presenting the letter were unclear. Dr. Morin's disclosure may have been due to a misinterpretation of Patient A's request in the letter.

[15] Dr. Ferguson felt that the care displayed a lack of judgement in that Dr. Morin disclosed some of the contents of the letter without obtaining Patient A's consent to discuss this information.

Finding on Liability

[16] Based on the facts before us and having regard to Dr. Morin's admission, we decided that Dr. Morin engaged in professional misconduct under paragraph 1(1)2 of O. Reg. 856/93 made under the *Medicine Act, 1991*, in that he failed to maintain the standard of practice of the profession.

Finding on Penalty

[17] The College and Dr. Morin both submitted that the penalty for the misconduct should be:

a. a reprimand;

b. suspension of Dr. Morin's certificate of registration for period of one (1) month commencing January 28, 2022 at 12:01 am;

c. the following terms, conditions and limitations to be placed on Dr. Morin's certificate of registration effective immediately:

i. Dr. Morin shall comply with the College Policy "Closing a Medical Practice";

ii. Dr. Morin shall participate in and successfully complete, at his own expense, within six (6) months of the date of this Order, the Safer Opioid Prescribing course offered by the University of Toronto, and will provide proof to the College of his successful completion, including proof of registration and attendance and participant assessment reports; and

iii. Dr. Morin shall participate in and successfully complete, at his own expense, within (6) months of the date of this Order, individualized instruction in medical ethics and professionalism (including education in the management of domestic violence), satisfactory to the College with an instructor approved by the College, who shall provide a summative report to the College including whether Dr. Morin has successfully completed the instruction.

d. Payment to the College of costs in the amount of $6,000 by February 28, 2022.

[18] A joint submission on penalty will be rejected only where it is contrary to the public interest in a way that brings the administration of justice into disrepute: see *R. v. Anthony-Cook*, 2016 SCC 43 at para. 34 and *Bradley v. Ontario College of Teachers*, 2021 ONSC 2303 at para. 9.

[19] The question before the Tribunal is whether implementing the proposed penalty would be contrary to the public interest because it fails to protect the public and impairs the ability of the College, and the Tribunal as an entity within it, to regulate the profession of medicine and govern physicians.

[20] If the proposed penalty violates the public interest, the administration of justice is brought into disrepute. In the professional regulation context, this means the proper functioning of the College's professional discipline system has broken down.

[21] Applying the above, 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 best fit but, rather, whether it is contrary to the public interest in a way that would bring the administration of justice into disrepute.

[22] In this case, having considered the facts before us, the nature of the misconduct, the submissions of the parties and the authorities the parties cited, we are satisfied that the proposed penalty does not bring the administration of justice into disrepute.

[23] Dr. Morin has no prior history of discipline by the College. The misconduct related to a single patient and was not repeated or extensive. The expert did not view the failure to maintain the standards of practice of the profession in either instance to be egregious.

[24] Although the facts before us do not suggest that Dr. Morin's actions caused serious harm to Patient A, with respect to both the overprescribing and the breach of privacy, the failure to maintain the standard of practice of the profession could have led to grave consequences. It is not hard to imagine the potential for harm in the overprescribing of controlled substances. It is also not hard to imagine the potential for harm when an allegation of domestic abuse is disclosed to the very person accused of the abuse.

[25] The parties provided the panel with five decisions in which this Tribunal or its predecessor considered the appropriate penalty in cases involving prescribing practices or breaches of patient privacy. While none of the facts of those cases are exactly like the ones before us, they help in assessing whether the proposed penalties in this case are contrary to the public interest in a way that would bring the administration of justice into disrepute.

[26] The parties referred us to three decisions in which the Tribunal or its predecessor ordered penalties in cases involving overprescribing (*College of Physicians and Surgeons of Ontario v. Pasternak*, 2018 ONCPSD 49; *College of Physicians and Surgeons of Ontario v. Gutman*, 2021 ONPSDT 50; *College of Physicians and Surgeons of Ontario v. Matheson*, 2017 ONCPSD 32). All three cases were more serious than the one before us, affecting numerous patients and resulting in findings of multi-faceted deficiencies. In conjunction with an array of other measures, one resulted in an order of clinical supervision for a year, another the doctor's resignation, and the third, a four-month suspension of a certificate of registration.

[27] *College of Physicians and Surgeons of Ontario v. Kaveri*, 2017 ONCPSD 55 and *College of Physicians and Surgeons of Ontario v. Yaghini*, 2017 ONCPSD 15 were cases of breaches of patient privacy in which the members deliberately and for personal gain improperly accessed the confidential medical information of other individuals. The Discipline Committee imposed penalties which included two and three-month suspensions of the members' certificates of registration, respectively.

[28] Considering the more serious nature of the misconduct in those cases, the proposed penalty is well within the range of penalties ordered for misconduct involving overprescribing and breach of patient privacy, even when combined.

[29] The proposed penalty protects the public and demonstrates the ability of the College to regulate the medical profession in the public interest. A one-month suspension of a certificate of registration and reprimand serve the goals of general and specific deterrence and denunciation of the misconduct. The requirement to take specified courses helps to ensure that the member maintains the standards of practice of the profession in the areas of prescribing and patient privacy. The penalty does not bring the administration of justice into disrepute.

[30] We delivered our decision on liability and penalty at the hearing. Dr. Morin waived his right to appeal and we administered the reprimand.

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The Tribunal delivered the following Reprimand
by videoconference on Thursday, January 27, 2022.

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

In this proceeding, you have admitted to committing two acts of professional misconduct:

1. The overprescribing of controlled substances (zolpidem and temazepam) to one patient.

2. The manner in which you managed this patient's disclosure to you of the alleged abuse she experienced by her partner, who was also your patient. This represented a breach of confidentiality on your part and had the potential to cause harm to the patient.

These failures to meet professional standards of practice do not reflect well on you. You have let down your patient, who had a right to expect better from a member of our profession.

Although it is disappointing that your actions led to this proceeding, we are glad that you chose to admit to the misconduct and take steps to address it. We trust that the lessons learned from this experience and the courses we have ordered you to take will prevent incidents like this from happening again.