

ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

Citation: *College of Physicians and Surgeons of Ontario v. El-Tatari*, 2023 ONPSDT 17

Date: August 15, 2023

Tribunal File No.: 22-019

BETWEEN:

College of Physicians and Surgeons of Ontario

- and -

Dr. Bassam Mohamed Khalil Darwish El-Tatari

FINDING AND PENALTY REASONS

Heard: July 10, 2023, by videoconference

Panel:

Mr. David A. Wright (Tribunal Chair)

Dr. Marie-Pierre Carpentier

Dr. Joanne Nicholson

Mr. Rob Payne

Mr. Peter Pielsticker

Appearances:

Ms. Emily Graham, for the College

Mr. Robin McKechney and Ms. Sarah O'Neill, for Dr. El-Tatari

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] Dr. El-Tatari was required to have a practice monitor observe all his professional encounters with patients. He provided routine medical care to three of his practice monitors without another practice monitor present. He did this numerous times over four years. He admitted this was professional misconduct and the parties jointly submitted that the penalty should be a three-month suspension and a reprimand. We made an order at the hearing implementing the joint submission. These are our reasons.
- [2] Panel member David Wright conducted pre-hearing conferences and sits on the panel with the consent of both parties.

Preliminary Issue: What Misconduct Was Admitted?

- [3] As a result of panel questions to counsel during submissions on finding, it became apparent that the parties had different understandings of the basis on which Dr. El-Tatari had admitted professional misconduct. Both parties agreed we should find that it was misconduct for Dr. El-Tatari to treat his practice monitors without another practice monitor present. The College, but not the member, understood that the member was also admitting that it was misconduct to treat his practice monitors whether or not another monitor was also there.
- [4] We decided that we would confine our decision to the allegation that he treated his monitors without another monitor present. Neither interpretation of the materials is unreasonable: in fact, different panel members initially read the materials each way. However, with the ambiguity the member did not have clear notice that he was admitting to the College's broader theory.
- [5] The allegation in the Notice of Hearing reads as follows:

Between 2018 and 2022, Dr. El-Tatari engaged in disgraceful, dishonourable, or unprofessional conduct and/or contravened a term, condition or limitation on his certificate of registration by having professional/patient encounters with his Practice Monitor(s) by providing medical care and/or treatment to them, including outside of the presence of and not under the observation of another Practice Monitor.

[6] The key paragraphs in the Agreed Statement of Facts (ASF) read:

Dr. El-Tatari Treated his Practice Monitors

7. Under both the 2017 interim Undertaking and the 2019 Discipline Committee Order, various individuals were approved to act as Dr. El-Tatari's practice monitors.

8. On multiple occasions between 2018 and 2022, as recorded in the patient charts, Dr. El-Tatari provided routine family medicine care and treatment to three of his practice monitors in the absence of another practice monitor to observe, including performing in person assessments; prescribing medication to treat illnesses like diabetes, infections, high cholesterol, hypothyroidism, and shingles; and requisitioning laboratory tests and diagnostic imaging.

PART II – ADMISSION

9. Dr. El- Tatari admits the facts at paragraphs 1 to 8 above, and admits that based on these facts, he engaged in professional misconduct under:

a. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the Medicine Act, 1991 ("O. Reg. 856/93"), in that he has engaged in 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; and

b. under paragraph 1(1)1 of O. Reg. 856/93, in that he contravened a term, condition or limitation on his certificate of registration.

[7] The Notice of Hearing covers the broader allegation, because it alleges that the member's actions would be reasonably be regarded as disgraceful, dishonourable or unprofessional "including outside the presence of...another practice monitor." Both because the word "including" was there, and because a notice of hearing is not to be read in a technical manner (*College of Physicians and Surgeons of Ontario v. Gerber*, 2022 ONPSDT 21 at para. 9), the Notice of Hearing supports the allegations as the College presents them.

[8] However, para. 8 of the ASF, which is the document in which Dr. El-Tatari made his admissions, is reasonably read as restricted to the absence of another practice monitor. Moreover, in our view explaining whether there was misconduct on the College's theory would require reference to College policies that were not included

in the agreed-upon evidence. When pressed on the basis for a finding under the College's theory, the College introduced the *Guidelines for College-Directed Practice Monitoring* and the panel raised the potential applicability of the policy and advice to the profession on *Physician Treatment of Self, Family Members, or Others Close to Them*. These would have been, in our view, important to the analysis, and the member was not aware they would be considered when he agreed to the ASF.

- [9] For that reason, we decide this case only on the basis that it was misconduct for the member to treat his practice monitors without another practice monitor present. We leave the issue of whether it is ever appropriate to treat one's practice monitor for another day.

Finding

- [10] In 2017, Dr. El-Tatari entered into an interim undertaking in which he agreed that he would not engage in professional encounters with patients unless there was a practice monitor present. His undertaking continued in effect until the Discipline Committee ordered a permanent term, condition or limitation on his certificate of registration requiring a practice monitor: see *College of Physicians and Surgeons of Ontario v. El-Tatari*, 2019 ONCPSD 26. His failure to comply with his undertaking and the panel's order by seeing practice monitors without another practice monitor present would reasonably be regarded by members of the profession as disgraceful, dishonourable or unprofessional. He also committed an act of professional misconduct by contravening a term, condition or limitation. See s. 1(1), paras. 1 and 33 of Ontario Regulation 856/93 under the *Medicine Act, 1991*, SO 1991, c. 30. We therefore made a finding of misconduct as admitted.

Penalty

- [11] When the parties make a joint submission, the Tribunal is required to implement it unless it is so unhinged from the circumstances that it would bring the administration of justice into disrepute: *Ontario College of Teachers v. Merolle*, 2023 ONSC 3453; *Bradley v. Ontario College of Teachers*, 2021 ONSC 2303. We must "consider a joint submission with humility and confidence that negotiations by the parties have resulted in both the public interest and the physician's interest

being balanced”: *College of Physicians and Surgeons of Ontario v. Matheson*, 2022 ONPSDT 27 at para. 20. As summarized in *Matheson* at paras. 18-19:

There are many reasons for this high bar. It encourages settlement. If the College and physicians do not have confidence that settlements will be implemented, they will be less likely to happen, with negative consequences for the public interest. Settlements have many benefits for the discipline process. They avoid the stress of a hearing for witnesses, the physician and those close to them. They save time and costs and lead to a faster resolution of the issues for the parties and quicker action to protect the public interest.

Compromise also avoids an “all or nothing” situation for either party. Both parties avoid the risk that challenges in their case, such as weaknesses in witness testimony, legal arguments or evidence that may be inadmissible will affect the outcome. This information is not available to the panel but is usually an important factor in the parties’ decisions. Joint submissions help protect the public interest by making sure that, subject to very limited exceptions, a finding will be made and a penalty implemented. For the physician, they remove uncertainty about the result of the case and the penalty. Settlement can also involve creative and meaningful terms, conditions and limitations that would be difficult to order and implement without buy-in from both parties.

[12] There have been previous cases where physicians required to have a practice monitor saw patients without one. Of course, each case is different and the seriousness of such a violation depends on the circumstances. In this case, we note that the misconduct occurred on multiple occasions and over a long period of time. The member also has a discipline history, which generally leads to higher penalties: *College of Physicians and Surgeons of Ontario v. Fagbemigun*, 2022 ONPSDT 22.

[13] The parties relied on *College of Physicians and Surgeons of Ontario v. Li*, 2007 ONCPSD 24, where the member received a three-month suspension for violating his undertaking to have a practice monitor, *College of Physicians and Surgeons of Ontario v. Seit*, 2021 ONCPSD 36, where the member received a two-month suspension for performing procedures at an Out-of-Hospital Premises without approval and *College of Physicians and Surgeons of Ontario v. Assad*, 2023 ONPSDT 3, where, among other misconduct, the member breached an undertaking by seeing a patient without a practice monitor. Dr. Assad received a four-month suspension.

Conclusion and Order

[14] The penalty of a three-month suspension and a reprimand, as well as costs of \$6,000 at the Tariff rate, is not unhinged, and we made the order requested.

ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL*

Tribunal File No.: 22-019

Date of Order: July 10, 2023

Mr. David Wright (chair)
Dr. Marie-Pierre Carpentier
Dr. Joanne Nicholson
Mr. Rob Payne
Mr. Peter Pielsticker

BETWEEN:

College of Physicians and Surgeons of Ontario

College

- and -

Dr. Bassam Mohamed Khalil Darwish El-Tatari

Member

ORDER

This referral was heard on July 10, 2023.

Finding

The Tribunal finds that the member committed the following act(s) of professional misconduct:

1. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the Medicine Act, 1991 ("O. Reg. 856/93"), in that he has engaged in 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; and
2. under paragraph 1(1)1 of O. Reg. 856/93, in that he contravened a term, condition or limitation on his certificate of registration.

Penalty

3. The panel has reprimanded the member.
4. The Tribunal directs the Registrar to:

- a. suspend the member's certificate of registration for three (3) months commencing July 11, 2023 at 12:01 a.m.

Costs

5. The Tribunal requires the member to pay the College costs of \$6,000.00 by August 10, 2023.

The reasons for the decision will be released later.

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BETWEEN:

College of Physicians and Surgeons of Ontario

- and -

Dr. Bassam Mohamed Khalil Darwish El-Tatari

The Tribunal delivered the following Reprimand
by videoconference on Monday, July 10, 2023.

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

Dr. El-Tatari,

Despite ongoing terms, conditions and limitations on your certificate of registration with the College of Physicians and Surgeons of Ontario, you continue to exhibit a lack of judgment and understanding of boundaries for which these very restrictions were imposed.

You provided ongoing medical care to your practice monitors, without oversight. In doing so, you breached the terms, conditions, and limitations placed on your certificate of registration as part of the penalty ordered by the College's Discipline Committee. Surely you could not have expected your practice monitors to monitor their own care. It was your responsibility and professional obligation to follow the terms of the Discipline Committee's order and you did not do so.

It is especially troubling that this was not a single lapse in judgment but involved three practice monitors over a four-year period. This raises concerns regarding your judgment and governability in the future. It is this panel's hope that your period of suspension will give you time to reflect upon and take steps to familiarize yourself with all of your professional obligations as a physician.