

ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

Citation: *College of Physicians and Surgeons of Ontario v. Abraham*, 2022 ONPSDT 1

Date: January 7, 2022

Tribunal File No.: 21-002

BETWEEN:

College of Physicians and Surgeons of Ontario

- and -

Dr. Ken Shafquat Intikhab Abraham

FINDING AND PENALTY REASONS

Heard: December 6, 2021, by videoconference

Panel:

Ms. Sophie Martel (chair)

Ms. Lucy Becker

Dr. Paul Hendry

Mr. Peter Pielsticker

Dr. James Watters

Appearances:

Ms. Emily Graham, for the College

Ms. Dena Varah and Ms. Brianne Westland, for Dr. Abraham

Introduction

- [1] Dr. Abraham is a family physician who practises in southern Ontario. Dr. Abraham was also licensed to practise medicine in Florida and North Carolina at various times.
- [2] Dr. Abraham provided inaccurate information as to whether there were disciplinary actions pending against him in another jurisdiction in his Ontario College of Physicians and Surgeons annual renewal statements between 2012 and 2017. He failed to make reasonable inquiries as to whether a Florida complaint constituted a pending disciplinary action. Dr. Abraham admitted that this conduct would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.
- [3] In July 2018, the North Carolina Medical Board found that Dr. Abraham committed an act of professional misconduct because he had failed to disclose the Florida complaint on his 2017 annual registration. Dr. Abraham admitted that the North Carolina Medical Board's finding would also be an act of professional misconduct under s. 51 of the Health Professions Procedural Code, which is Schedule 2 to the *Regulated Health Professions Act, 1991*, SO 1991, c. 18 ("Code"), or an act of professional misconduct as defined in the regulations under the *Medicine Act, 1991*, SO 1991, c. 30.
- [4] Based on the Agreed Statement of Facts and Admission, we found that:
- Dr. Abraham 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.
 - the governing body of another jurisdiction (the North Carolina Medical Board) found that Dr. Abraham committed an act of professional misconduct that would be an act of professional misconduct under s. 51 of the Code, or an act of professional misconduct as defined in the regulations.
- [5] We ordered a reprimand, a suspension of two months, terms, conditions and limitations on Dr. Abraham's certificate of registration and costs to the College. These are our reasons.

Findings: Florida Matter

- [6] Dr. Abraham became licensed to practise medicine in Florida in 2005. In 2011, the State of Florida Department of Health filed an administrative complaint against him about his prescribing. The administrative complaint was amended in February 2017, setting out substantially the same allegations.
- [7] Under the Florida regime, an administrative complaint is a publicly filed document following an investigation into a complaint about a physician and approved by a panel of the State of Florida Board of Medicine. It sets out alleged misconduct that has not yet been proven. After the administrative complaint is filed, the case goes before the Board, which can dismiss the complaint or impose disciplinary action through a final order.
- [8] In March 2018, the Board made a final order regarding the administrative complaint in which it approved a settlement agreement between Dr. Abraham and the Florida Department of Health. Dr. Abraham neither admitted nor denied the allegations, but admitted that the facts alleged, if proven, would constitute violations of Florida law. The Board made no findings but issued a consent order imposing a reprimand, a fine, reimbursement of costs and various terms, conditions and limitations on Dr. Abraham's licence.
- [9] In his Ontario College annual renewal statements between 2012 and 2017, Dr. Abraham answered "no" to the question of whether there were pending disciplinary actions against him by a licensing authority other than the College. Dr. Abraham's yearly answers to this question between 2012 and 2017 were inaccurate because the Florida administrative complaint was a pending action against him. Before completing the annual renewal statements during this period, Dr. Abraham did not make reasonable inquiries to inform himself about the nature of the administrative complaint, which would have enabled him to accurately answer the annual renewal questions.
- [10] Dr. Abraham reported the outcome of the Florida administrative complaint to the College in April 2018 after the final order was entered.
- [11] We are satisfied that in failing to make reasonable inquiries about the nature of the administrative complaint and in inaccurately responding to the question of whether

there were pending disciplinary actions, Dr. Abraham engaged in behaviour that members of the profession would reasonably find disgraceful, dishonourable or unprofessional.

Findings: North Carolina matter

[12] In 2009, Dr. Abraham became licensed to practise medicine in North Carolina. In July 2018, the North Carolina Medical Board made a consent order based on the following admissions, findings and conclusions:

- the final order of the Florida Board of Medicine constituted his licence to practise medicine being restricted or acted against by the licensing authority of another jurisdiction; and
- Dr. Abraham failed to report the Florida Board of Medicine's administrative complaint on his 2017 North Carolina Medical Board annual registration. He agreed that this constituted making false statements or representations to the Board, or willfully concealing from the Board material information in connection with the annual registration of his licence.

[13] The North Carolina Board reprimanded Dr. Abraham and ordered him to pay a fine.

[14] Section 51(1)(b) of the Code states that a panel shall find that a member has committed an act of professional conduct if the governing body of another health profession in Ontario, or the governing body of a health profession in a jurisdiction other than Ontario, has found that the member committed an act of professional misconduct under this section or an act of professional misconduct as defined in the regulations. The North Carolina Medical Board is the governing body of a health profession in a jurisdiction other than Ontario. That body found that Dr. Abraham made a false statement or representation or willfully concealed material information about his annual registration licence. We conclude that Dr. Abraham was found to have committed an act of professional misconduct in North Carolina that would be an act of professional misconduct under s. 51 of the Code, or an act of professional misconduct as defined in the regulations.

Penalty

- [15] The parties provided a joint submission on penalty and costs. They proposed that Dr. Abraham receive a public reprimand, a two-month suspension and complete a course on medical ethics and professionalism. They also agreed that he pay costs of a half-day hearing.
- [16] We have considered the joint submission. 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. We accept the joint submission and find that the proposed penalty would not bring the administration of professional discipline into disrepute for the following reasons.
- [17] While Dr. Abraham may not have intentionally misled the College, there is more than one finding of misconduct in this case. Dr. Abraham failed to make reasonable inquiries about the Florida administrative complaint and provided inaccurate information on his Ontario Statement of Renewal for six consecutive years. He similarly failed to provide accurate information to the North Carolina Board, ultimately resulting in a misconduct finding in that jurisdiction as well.
- [18] On the other hand, the evidence jointly submitted by the parties suggests no current concerns about Dr. Abraham's prescribing practices. Because the Florida complaint related to Dr. Abraham's prescribing, the College reviewed a sample of charts from Dr. Abraham's practice and identified no concerns with respect to his prescribing.
- [19] As mitigating factors, we note that Dr. Abraham admitted to the Agreed Statement of Facts and accepts responsibility for his misconduct. His admission reduced the time and cost of the hearing.
- [20] The parties jointly provided us with a book of authorities. Three of these cases dealt with a physician's failure to provide complete or inaccurate registration information to various medical boards and colleges about past practice in either overstating the length of that practice, not accurately reporting disruptions in practice or failing to disclose a practice in another country: *College of Physicians and Surgeons of Ontario v. Abdel-Malek*, 2010 ONCPSD 9, *College of Physicians*

and Surgeons of Ontario v. Awad, 2012 ONCPSD 38 and *College of Physicians and Surgeons of Ontario v. Hussein*, 2013 ONCPSD 38. The Tribunal did not order a suspension in these cases. The Tribunal ordered a reprimand, completion of an ethics course and costs.

[21] In our view, the most applicable cases are *College of Physicians and Surgeons of Ontario v. Khuon*, 2019 ONCPSD 3 and *College of Physicians and Surgeons of Ontario v. Varenbut*, 2015 ONCPSD 40, both of which address omissions relating to pending investigations or other discipline-related information.

[22] Dr. Khuon, who had previously reported his registration in Quebec, failed to do so during a three-year period from 2014 to 2016 even though he continued to hold a certificate of registration and had hospital privileges in Quebec. This coincided with the time during which he was under investigation in Quebec relating to patient care. In stating that Dr. Khuon had been dishonest and manipulative, the Committee ordered a reprimand, a suspension of two months, costs and that Dr. Khuon take an ethics course. The Tribunal noted that reporting these matters is not optional. The College, in its mandate to regulate the profession in the public interest, must know where the member holds other certificates of registration and whether problems have arisen there in the nature of complaints, investigations, licence restrictions and regulatory findings. The College is hampered in performing its role regulating physicians if members are not transparent.

[23] Dr. Varenbut was also found to have failed to disclose discipline-related information over a period of eight years when he applied for an appointment or a renewal of privileges at several hospitals and at an educational institution. The institutions required that he disclose such information, which he failed to do. The Committee ordered a reprimand, a suspension of three months and costs.

[24] Considering the nature of Dr. Abraham's misconduct, the mitigating factors and the penalties imposed in *Khuon* and *Varenbut*, we find that the proposed penalty satisfies the stringent test set out in *Anthony-Cook*.

Order

[25] In the Order issued on December 6, 2021, we ordered and directed:

- Dr. Abraham attend before the panel to be reprimanded.
- The Registrar suspend Dr. Abraham's certificate of registration for two (2) months commencing December 7, 2021 at 12:01 am.
- The Registrar place the following terms, conditions and limitations on Dr. Abraham's certificate of registration effective immediately: Dr. Abraham shall, at his own expense and within six (6) months of the date of this Order, participate in and successfully complete individualized instruction in medical ethics and professionalism satisfactory to the College, with an instructor approved by the College, who shall provide a summative report to the College including his or her conclusion about whether Dr. Abraham successfully completed the instruction.
- Dr. Abraham pay the College costs in the amount of \$6,000 by January 6, 2022.

[26] At the conclusion of the hearing, Dr. Abraham waived his right to an appeal under subsection 70(1) of the Code and the Tribunal administered the public reprimand.

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College of Physicians and Surgeons of Ontario

- and -

Dr. Ken Shafquat Intikhab Abraham

The Tribunal delivered the following Reprimand
by videoconference on Monday, December 6, 2021.

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

Dr. Abraham,

We are disturbed by your misconduct. You failed to make reasonable inquiries and properly fulfill your professional reporting obligations, and you gave inaccurate answers on your annual College renewal forms. In addition, the North Carolina Board found that you had made false statements or concealed information in renewing your registration there.

Trust is the cornerstone of the care of patients and of the social contract between the profession and the public. Society allows physicians in Ontario the privilege of self-regulation. It does so in return for the covenant that this regulation will occur in the public interest. In regulating and maintaining public confidence in the integrity of the profession, the College relies upon physicians to be accurate, truthful and forthright in their dealings with it. You have, as we have heard today, failed to meet this obligation.

We hope that you now have a clear understanding of the seriousness of your misconduct. We take some reassurance from your acknowledgement of your misconduct, from your having reported the outcome of the Florida proceedings to the College once final, and from the absence of prescribing concerns in the patient charts reviewed by the College. We trust that you have learned from this experience, that the instruction in medical ethics and professionalism will assist you, and that you will be diligent in fulfilling your professional obligations in the future.