

ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

Citation: *College of Physicians and Surgeons of Ontario v. Zhang*, 2025 ONPSDT 1

Date: January 30, 2025

Tribunal File No.: 24-010

BETWEEN:

College of Physicians and Surgeons of Ontario

College

- and -

Kate Peiyin Zhang

Registrant

FINDING AND PENALTY REASONS

Heard: January 10, 2025, by videoconference

Panel:

Sophie Martel (panel chair)
Heather Badalato (physician)
Glen Bandiera (physician)
Lucy Becker (public)
Jose Cordeiro (public)

Appearances:

Penelope Ng, for the College
Keary Grace and Azin Samani, 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] Dr. Zhang is a family physician who practised in the emergency departments of various hospitals including the sites of Lakeridge Health (the hospital). As a physician practising emergency medicine, Dr. Zhang had access to the hospital's electronic patient health records. Dr. Zhang agrees that between December 2021 and October 2022, she accessed the health records of hundreds of patients without authorization or consent. She admits professional misconduct.

[2] Relying on her admission and an agreed statement of facts, we found that Dr. Zhang committed professional misconduct by engaging in an act that was disgraceful, dishonourable or unprofessional. She inappropriately and without authorization or consent accessed the health records of 710 patients.

[3] The parties jointly submitted that the penalty should be a reprimand and a four-month suspension.

[4] We accepted the jointly proposed penalty, concluding that it did not bring the administration of physician regulation into disrepute and was not otherwise contrary to the public interest. We also ordered costs of \$6,000, commensurate with the tariff rate and as agreed by the parties.

[5] These are our reasons.

Misconduct

Agreed Facts

[6] Dr. Zhang obtained her certificate of registration authorizing independent practice from the College of Physicians and Surgeons of Ontario in December 2020. She practised emergency medicine at the hospital's emergency departments. She had access to patient records through the hospital's electronic health record system.

[7] In November and December 2022, the hospital brought to the College's attention its investigation and conclusions regarding Dr. Zhang's privacy breaches. Dr. Zhang ultimately agreed to take a five-month voluntary leave of absence, which combined with a prior one-month voluntary leave of absence pending the investigation outcome, totaled a six-month voluntary leave of absence from the hospital.

[8] The College obtained the contents of the hospital's investigation, which included its audit reports.

[9] Between approximately December 2021 and October 2022, Dr. Zhang accessed the medical records of 710 patients when not authorized to do so.

First category of unauthorized access

[10] Between December 2021 and March 2022, Dr. Zhang accessed the electronic medical records of 322 hospital patients without their knowledge or consent. She was not providing care to these patients at the time. During the College's investigation, Dr. Zhang indicated that she did not know or have relationships with any of the 322 patients.

[11] For many of the patients, Dr. Zhang accessed each patient's record on a single occasion. For others, she accessed two areas of each patient's record with the second access taking place within one minute of the first access. For 51 patients, she accessed multiple areas of each patient's record within a few minutes of each other. For 29 of the 322 patients, she accessed multiple areas of each patient record for more than five minutes at a time. For eight of these 29 patients, she accessed the patient records over a period of 10 to 70 minutes. For nine of the 29 patients, she accessed multiple areas of each patient record on multiple days. She also printed portions of 17 of the 322 patient's medical records.

[12] The information she accessed varied with each patient and at various times included (but was not limited to): patient contact information, complaint details, encounter summaries, vitals, medications, medical histories, reports, labs, specimen collections, procedure lists and patient isolations and infections.

[13] During the hospital and College investigations, Dr. Zhang provided a variety of explanations for the unauthorized accesses, which the hospital did not accept. Her explanations included accidental accesses, accesses to assess emergency room staffing needs while she was on back-up call, accesses to ensure appropriate physician and patient designations, and physician pool notifications resulting in the receipt of patient tests results for whom she had not provided care.

Second category of unauthorized access during the hospital investigation

[14] The hospital advised Dr. Zhang of its investigation in April 2022 and instructed her not to access patient charts unless she was involved in the care of the patient. In September 2022, the hospital further advised Dr. Zhang that it was concerned about providing her with access to patient charts she had already inappropriately accessed for fear of further violations of patients' privacy interests.

[15] Despite the direction and concerns conveyed to her by the hospital, on September 26, 2022, Dr. Zhang ran a physician billing report for the period of December 2021 to March 2022, during which she viewed, printed or downloaded the health information of 306 patients.

[16] She ran a similar physician billing report on October 13, 2022, accessing the personal health information of 82 patients.

[17] Dr. Zhang's accesses to patient records on September 26, 2022 and October 13, 2022 were unauthorized. There is no reason for a physician to run billing reports more than six months after providing patient care because six months constitutes the period past which the Ontario Health Insurance Plan (OHIP) sets its deadline for submitted billings.

[18] In response to the hospital investigation, Dr. Zhang advised that she ran the billing reports for patients for whom she provided care for the purpose of responding to potential future billing audits because of an allegation that that she may have improperly billed for patients not seen.

Finding

[19] Dr. Zhang's conduct was contrary to the hospital policy on access to personal health information and contrary to the College's policy on Protecting Personal Health Information.

[20] We find that Dr. Zhang committed professional misconduct under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, SO 1991, c. 30. Her access to the electronic medical records of 710 hospital patients without authorization is conduct that would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

Penalty and Costs

[21] The parties jointly proposed a reprimand, a suspension of four months and costs of \$6,000.

[22] Our role is limited when the parties agree on penalty. We should only depart from a joint submission if 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. This is a high threshold. A disciplinary body that rejects a joint submission on penalty must show why the proposed penalty is so unhinged from the circumstances of the case that it must be rejected: *Bradley v. Ontario College of Teachers*, 2021 ONSC 2303.

[23] We are satisfied that the proposed penalty would not bring the administration of physician regulation into disrepute or is otherwise not in the public interest. We are also satisfied that the proposed penalty appropriately balances the penalty goals: the protection of the public, general and specific deterrence, rehabilitation and expressing the Tribunal and the profession's disapproval of the misconduct.

[24] The four-month suspension protects the public and achieves specific and general deterrence in sending the message that violations of patient privacy will not be tolerated. The suspension also recognizes the seriousness of the misconduct. In this case, Dr. Zhang accessed the records of hundreds of patients over several months. She continued to access such records even after being advised that she was under investigation for the unauthorized access to such records. Given the ease with which electronic records may be accessed, it is particularly important that physicians not abuse their position of trust and access to such records to maintain the public's confidence in the medical profession and in the security of their health information.

[25] Regarding rehabilitation, we note that Dr. Zhang has already taken a six-month voluntary leave of absence from the hospital. The joint submission, which does not include any requirement to complete professional development courses, recognizes the extensive rehabilitation already undertaken. In 2023, Dr. Zhang completed five different courses delivered by five different organizations relating to record-keeping, as well as the privacy, confidentiality and security of health care information.

[26] The four-month suspension and the reprimand also denounce the misconduct. The protection of personal and sensitive health information is a cornerstone of public

trust in the profession such that unauthorized access to such information is not tolerated and will be severely dealt with.

[27] Furthermore, the four-month suspension is within the three-to-five-month suspension range of other cases where physicians accessed personal health records: *College of Physicians and Surgeons of Ontario v. Mercado*, 2024 ONPSDT 7, *College of Physicians and Surgeons of Ontario v. Safar Zadeh*, 2023 ONPSDT 8, *College of Physicians and Surgeons of Ontario v. Yaghini*, 2017 ONCPSD 15, *College of Physicians and Surgeons of Ontario v. Di Paola*, 2016 ONCPSD 48 and *College of Physicians and Surgeons Ontario v. Brooks*, 2016 ONCPSD 29. While Dr. Zhang accessed many more records than the number of records accessed by the physicians in these cases, unlike these cases, there is no evidence before us that Dr. Zhang targeted patients she knew, disclosed the information to third parties or used the information in a threatening way.

[28] We also accept the parties' agreement to costs of \$6,000, which reflects the tariff rate in the Rules of Procedure.

Order

[29] For the above reasons, our order provides:

1. The Tribunal requires the registrant to appear before the panel to be reprimanded.
2. The Tribunal directs the Registrar to:
 - a. suspend the registrant's certificate of registration for four (4) months commencing January 11, 2025 at 12:01 a.m.
3. The Tribunal requires the registrant to pay the College costs in the amount of \$6,000.00 by February 10, 2025.

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BETWEEN:

College of Physicians and Surgeons of Ontario

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- and -

Kate Zhang

Registrant

**The Tribunal delivered the following Reprimand
by videoconference on Friday, January 10, 2025.**

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

Dr. Zhang, you engaged in disgraceful, dishonourable or unprofessional conduct by inappropriately and without authorization or consent accessing the health records of hundreds of patients. Physicians are entrusted with access to patients' personal health information for the sole purpose of providing them with the highest standard of care. Protection of personal and sensitive health information is a cornerstone of public trust in the profession. The College's policies outline the circumstances under which a physician may access a patient's personal health information. Such access should only be done with consent and if necessary for the physician to carry out their duties. Given the ease with which electronic records may be accessed, it is particularly important that physicians not abuse their access to such records in order to maintain the public's confidence in the medical profession and in the security of their health information. You exploited your position of trust by accessing confidential and private information of hundreds of patients. We are particularly concerned with the significant number of patients impacted and that you continued to inappropriately access electronic records after being advised that you were under investigation for the unauthorized access to such information.

We acknowledge your admission of having engaged in disgraceful, dishonourable or unprofessional conduct and your six-month long voluntary leave of absence from the hospital. We are encouraged by the rehabilitative efforts you have undergone by taking multiple professional development courses relating to the privacy, confidentiality and security of health records.

Today's penalty reflects the seriousness of your professional misconduct. We expect you to respect the privacy of patients and to comply with the regulatory requirements of the College and the policies of the medical facilities where you have privileges.