

ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

Citation: *College of Physicians and Surgeons of Ontario v. Li*, 2024 ONPSDT 11

Date: March 28, 2024

Tribunal File No.: 23-007

BETWEEN:

College of Physicians and Surgeons of Ontario

College

- and -

Heung-Wing Li

Registrant

FINDING AND PENALTY REASONS

Heard: March 4, 2024, by videoconference

Panel:

Sherry Liang (panel chair)
Glen Bandiera (physician)
Jose Cordeiro (public)
Steve Hucker (physician)
Rob Payne (public)

Appearances:

Robin Goldberg and Simmy Dhamrait-Sohi, for the College
Andrew Matheson and Kara Smith, 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. Li improperly accepted payment for completing Accessible Parking Permit (APP) applications for patients. Further, for some of these patients, his charts did not contain documentation supporting eligibility for an APP. He admits that his conduct in relation to APP applications was disgraceful, dishonourable or unprofessional and that he failed to maintain the standard of practice of the profession. Dr. Li also engaged in clinical encounters with female patients, contrary to the terms of a Discipline Committee order and subsequent undertakings. He did not contest, and we found, that this conduct amounted to professional misconduct.

[2] At the hearing, we accepted the parties' joint submission that the appropriate penalty is a twelve-month suspension, reprimand and requirement to take a course in medical ethics and professionalism. We also accepted their submission that Dr. Li pay the College \$6,000 in costs. We delivered the reprimand at the conclusion of the hearing.

The registrant improperly charged patients for completing APP applications

[3] An APP can be issued to a person with a disability. To apply for an APP in Ontario, an applicant must have a health condition that meets the eligible health requirements. A regulated healthcare practitioner, including a physician, must certify on the application form that the applicant has one or more of the listed eligible health conditions. The regulated healthcare practitioner must also indicate on the application form whether the health condition is permanent, temporary or subject to change.

[4] In August 2019, the College received a letter from ServiceOntario expressing concerns that the registrant may be completing APP applications for persons with no medical conditions and inappropriately accepting money in exchange for completing APP applications. ServiceOntario subsequently sent the College records that included numerous APP applications completed, signed and stamped by the registrant.

[5] The Ontario Medical Association's Physician's Guide to Uninsured Services (OMA Guide) provides direction to physicians about whether they can charge money for completion of forms and applications. The OMA Guide states that a physician is not permitted to charge for completion of an APP application.

[6] Between approximately 2014 and 2020, the registrant improperly accepted money in exchange for completing APP applications for patients who requested APP applications. He charged patients up to twenty (20) dollars.

[7] The registrant admits and we find that by charging patients for completing APP applications, he engaged in professional misconduct under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, SO 1991, c. 30, , in that he 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 OMA Guide explicitly states that physicians are not permitted to charge fees for completing APP applications. By charging his patients for completing these forms, he knew or ought to have known that he was acting contrary to the OMA Guide and accepting payment unethically for a service he should not have charged for. He took advantage of vulnerable patients requiring his help to access a government program.

The registrant failed to maintain the standard of practice

[8] During the investigation, the College retained a physician (the assessor) to review patient charts and provide an opinion on the registrant's practice in completing APP applications. The assessor reviewed nine patient charts and their corresponding APP applications. In the report, the assessor gave the opinion that the registrant failed to maintain the standard of practice of the profession for eight of the nine patients in that their charts did not contain sufficient documentation to explain why the patient would be eligible for an APP. For seven patients, the APP applications noted an inability to walk without assistance of a person or device. However, these patients' charts had no documentation of any such assistance being required. In fact, in three of these cases, there was documentation of a normal gait, which would not support the eligibility criteria under the APP application.

[9] Further, one chart contained no documentation of any condition or reason which would make the patient eligible for an APP. In most of the charts reviewed, the description of the condition was brief. The charts made no mention of any underlying etiology or re-evaluation of symptoms, both of which would be important since the completed accessible parking permit forms indicated a disability of 12 months duration.

[10] The assessor opined that in seven of nine charts there was a lack of judgment in routinely completing APP applications for a period of 12 months, without considering the reason, eligibility criteria, etiology of the patient's condition and duration and evolution of symptoms. In sum, in the assessor's opinion, the seven charts did not contain sufficient documentation to explain the need for an accessible parking permit for a period of 12 months.

[11] The registrant admits and we find that in failing to sufficiently document the basis for which he completed APP applications, he engaged in professional misconduct under paragraph 1(1)2 of O. Reg. 856/93, in that he failed to maintain the standard of practice of the profession. He certified that patients met the eligible health requirements for an APP without documentation supporting this professional opinion.

The registrant breached his undertaking restricting clinical encounters to male patients

[12] In January 2006, the Discipline Committee (as it was then) found that the registrant committed acts of professional misconduct. The Committee ordered, among other things, that following completion of certain steps, the registrant had the choice of practising as a surgical assistant or being subject to a permanent limitation that his general practice be confined to male patients only. The registrant appealed the penalty order to the Divisional Court, which altered the part of the order imposing a permanent restriction. The result was that, at the registrant's option, his practice would be confined to male patients only, unless and until varied by the Committee.

[13] In 2008, the registrant entered into a practice undertaking under which he agreed to restrict his practice to male patients only. In 2017, he entered into a further undertaking which replaced the previous one. In the 2017 undertaking, the registrant agreed to have clinical encounters with male patients only. This undertaking was in turn replaced by another undertaking in February 2020, requiring the registrant to have clinical encounters with male patients only. This undertaking remains in effect to this day.

[14] Between approximately 2015 and 2019, the registrant had in-person clinical encounters with six female patients, which included completing 14 separate APP applications for them. For one patient, he completed an APP application and for the other five, he completed APP applications as well as renewal applications. He did not

document any of the clinical encounters with these patients nor bill the Ontario Health Insurance Plan for them.

[15] By engaging in clinical encounters with these six female patients, the registrant contravened a term, condition or limitation on his certificate of registration pursuant to the Discipline Committee order, the 2008 undertaking and/or the 2017 undertaking. For the purposes of these proceedings, he does not contest the facts above and does not contest that, based on these facts, he engaged in professional misconduct.

[16] We find that by having clinical encounters with six female patients, in contravention of undertakings restricting his clinical encounters to male patients only, the registrant committed professional misconduct. His failure to comply with the undertakings would reasonably be regarded by members of the profession as disgraceful, dishonourable or unprofessional conduct. It was also professional misconduct 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

[17] The parties made a joint submission on penalty, agreeing that the member should receive a reprimand, twelve-month suspension and be required to take a self-funded course in medical ethics and professionalism.

[18] The parties' agreement on penalty must be implemented unless it is so "unhinged from the circumstances" that implementing it would bring the administration of the College's professional discipline system into disrepute: *R. v. Anthony-Cook*, 2016 SCC 43; *College of Physicians and Surgeons of Ontario v. Bahrgard Nikoo*, 2022 ONPSDT 15 at para. 34; *Bradley v. Ontario College of Teachers*, 2021 ONSC 2303. We are satisfied that the proposed penalty is not contrary to the public interest in this manner. In deciding that the circumstances do not meet the high bar for rejection of a joint submission, we have considered key penalty factors including the seriousness of the misconduct, the registrant's discipline history, the caselaw on penalties in similar cases, and the registrant's conduct since the misconduct.

[19] The most important goal of a penalty order is the protection of the public. For this reason, a breach of an undertaking or order imposing practice restrictions is a serious matter. In fulfilling its mandate to govern the profession in the public interest, the College

must be able to rely on undertakings made by its registrants. The cases the parties provided us in which the misconduct included failing to comply with practice restrictions resulted in significant suspensions ranging from six to 12 months. Although each of those cases has its own set of unique facts as well as, in some, additional distinct penalty orders, they show that the penalty proposed here is not outside of a reasonable range of penalties for similar misconduct.

[20] The registrant's discipline history is a relevant factor. In 1996, the Discipline Committee found that he failed to maintain the standard of practice of the profession, ordering, among other things, a suspension of his certificate of registration for three months. In 2006, the Committee again made findings of professional misconduct against the registrant, ordering a twelve-month suspension. Although these proceedings were many years ago, this discipline history weighs in favour of a more severe penalty. Also relevant is a verbal caution that the Inquiries, Complaints and Reports Committee of the College ("ICRC") issued to the registrant concerning his undertaking not to treat female patients, in 2011. The registrant was well aware of the importance of complying with this undertaking.

[21] The registrant's actions since the misconduct weigh in his favour. He has changed his practice to stop charging patients a fee for completing APP applications. He has also taken responsibility for his actions by admitting or not contesting the facts and allegations, thus sparing the parties and Tribunal the time and expense of a contested hearing.

[22] The parties made submissions on the appropriateness of a reprimand in the circumstances of this case. We accept their submission that a reprimand serves the goal of public protection. It will be published on the public register and in this manner will act as a general deterrent, signalling that this kind of conduct will have serious consequences. A reprimand will also allow the panel to speak directly to the registrant to express its disapproval of his conduct and remind him of his professional responsibilities. Finally, the course on medical ethics and professionalism will also serve the goal of public protection, by supporting rehabilitation.

[23] In sum, we find that the proposed penalty protects the public and is not so "unhinged from the circumstances" that implementing it would bring the administration of

the College's professional discipline system into disrepute. We also accept the parties' agreement that the registrant pay the College \$6,000 in costs.

Order

[24] We made the following order:

1. The Tribunal requires the registrant to appear before the panel to be reprimanded.
2. The Registrar shall:
 - a. suspend the registrant's certificate of registration for twelve (12) months commencing March 5, 2024 at 12:01 a.m.;
 - b. place the following terms, conditions and limitations on the registrant's certificate of registration effective immediately:
 - i. Dr. Li shall participate in and successfully complete, at his own expense and within six (6) months of the date of this Order, 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 whether Dr. Li successfully completed the instruction.
3. The Tribunal requires the registrant to pay the College costs of \$6,000.00 by April 3, 2024.

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Registrant

The Tribunal delivered the following Reprimand by videoconference on Monday, March 4, 2024.

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

Dr. Li,

In this proceeding, we have found that you committed professional misconduct by accepting money for completing applications for accessible parking permits. You also completed applications for these permits when your records lacked documentation to explain the need for the permits.

In addition, you committed professional misconduct in having clinical encounters with female patients, in contravention of a longstanding restriction on your certificate of registration.

We are deeply disappointed that you are appearing before us after an extensive discipline history that includes previous findings of misconduct, suspensions, reprimands, various terms, conditions and limitations, practice under clinical supervision, and educational courses.

You knew or ought to have known that it was unethical to accept payment for the completion of the applications for accessible parking permits. Completing them without adequate documentation showed poor judgement and suggests you were motivated by personal gain. You should have known better than to complete some of these for female patients, knowing of your practice restriction.

Your history of misconduct shows a repeated failure to respect the requirements and expectations of the profession. This does not reflect well on you. Physicians hold a privileged position in our society. In return, we must accept the responsibility to act ethically and diligently to maintain the public's trust in us.

We are glad that you chose to admit to the misconduct and take steps to address it. We hope that after completing your suspension and the instruction in ethics and professionalism, you will be diligent and careful in fulfilling your professional obligations in the future. We would not like to see you back before this Tribunal again.