

**ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL**

**Citation:** *College of Physicians and Surgeons of Ontario v. Thomas*, 2024 ONPSDT 8

**Date:** February 27, 2024

**Tribunal File No.:** 23-015

**BETWEEN:**

College of Physicians and Surgeons of Ontario

**College**

- and -

Cholemkeril Kuncheria Thomas

**Registrant**

**ORAL FINDING AND PENALTY REASONS**

**Heard:** February 27, 2024, by videoconference

**Panel:**

David A. Wright (Tribunal Chair)

Jose Cordeiro (public)

Rob Payne (public)

Janet van Vlymen (physician)

James Watters (physician)

**Appearances:**

Victoria Cistrone, for the College

Cholemkeril Kuncheria Thomas, self-represented

**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. Thomas misled the College on his 2012 annual renewal form when he reported he had not been charged with a criminal offence in the previous year. In fact, he had been charged with dangerous operation of a motor vehicle. He also failed to report to the College when he was found guilty of this charge in 2014, as is required by law. He admits that this was disgraceful, dishonourable or unprofessional conduct. The parties jointly submit that the penalty should be a five-month suspension, a reprimand and a requirement that he complete instruction on ethics. They have also agreed on costs of \$6,000. Because this is a joint submission, we must make the requested order unless it is so unhinged that it would bring the College's professional discipline system into disrepute. We accept the joint submission.

[2] Under the Tribunal's Interim Practice Direction on Reprimands that took effect in January 2024, we are to consider the desirability of a reprimand in the circumstances of each case. Dr. Thomas has previously been disciplined for failing to comply with a College order, and has been before the Inquiries, Complaints and Reports Committee (ICRC) multiple times. In light of his history, we agree with the parties that this is a case in which a reprimand would promote public protection. The reprimand will allow a panel member to emphasize directly to Dr. Thomas this panel's concerns about the many times he has been before the College, and to provide a warning that consequences will become more severe if his unprofessional conduct continues.

[3] Tribunal Chair David Wright conducted case management conferences in this proceeding and sits on the panel with the consent of both parties.

## **Background**

[4] On September 26, 2011, the Peel Regional Police charged Dr. Thomas with Dangerous Operation of a Motor Vehicle, a criminal offence. On May 31, 2012, Dr. Thomas completed his annual renewal form. In answering the form, he specifically acknowledged that he understood that it may be found to be professional misconduct to provide false or misleading answers to the College. He answered "no" to the following question, which was not true:

Since April 1, 2011, have you been charged with any offence in Canada or elsewhere? (Include all offences under the Criminal Code of Canada, the Controlled Drugs and Substances Act, the

Food and Drugs Act or the Health Insurance Act or related legislation in any Province or jurisdiction. In addition, include any other offences related to the practice of medicine.)

[5] On September 30, 2014, Dr. Thomas pled guilty to this offence and in February 2015 was sentenced to pay a \$1,000 fine and was suspended from driving for six months. Under s. 85.6.1 of the Health Professions Procedural Code, Schedule 2 to the *Regulated Health Professions Act*, SO 1991, c. 18 (Code), a registrant “shall file a report in writing with the Registrar if the member has been found guilty of an offence.” Dr. Thomas did not do so at any time between 2014 and 2022. In 2022, the College independently obtained this information.

[6] The College and the public rely on registrants to be honest in their answers to questions and to self-report any charges and convictions,<sup>1</sup> so that the College can determine what regulatory action to take and update its public register. It is one of many obligations to the College that come with the privilege of practising medicine, including responding to inquiries and complying with College orders. When professionals do not comply with these obligations, public protection and public confidence in the profession suffer. We find that Dr. Thomas committed disgraceful, dishonourable or unprofessional conduct as alleged and as admitted.

## **Penalty**

### Legal Principles

[7] The parties’ agreement on penalty – a five-month suspension, reprimand and education – 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.

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<sup>1</sup> The Code was amended effective 2018 to require, in s. 85.6.4, the immediate reporting of charges as well as convictions. It was not in effect at the time of Dr. Thomas’s charges and the College does not rely on it here.

[8] As stated in *College of Physicians and Surgeons of Ontario v. Matheson*, 2022 ONPSDT 27 at para. 21:

Deciding whether a penalty meets the test is about the forest, not the trees. Neither the parties' arguments nor the panel's reasons need identify every consideration that a panel would apply if it were deciding what penalty to impose without an agreement. What is important are the key penalty factors that place this misconduct at a general point along the spectrum of potential penalties: see the factors set out in *College of Physicians and Surgeons of Ontario v. Fagbemigun*, 2022 OPSDT 22 at paras. 11-16. Comparing the penalty factors with those in other cases and their results helps the panel determine if the penalty is so far removed from what would be expected that it meets the high bar to consider rejection of the joint submission.

[9] In addition to the seriousness of deceiving the College and keeping it in the dark about a conviction he should have disclosed, there are other factors that make this misconduct more serious. First is its length. For over a decade, Dr. Thomas did not report the conviction or correct his misstatement in his annual renewal.

[10] Second, during that period he was cautioned by the ICRC four times:

- in 2012, following an allegation of inappropriate questions of a patient;
- in 2014, after a complaint from a prior employer and his failure to respond to a letter from the College's investigator regarding the matter;
- in 2017, after the ICRC identified concerns with his practice and the College had difficulty obtaining timely responses from him during the investigation;
- in 2021, after the College received information that he had not complied with an undertaking he had given to the College.

[11] While these matters do not establish a discipline history, they do show that Dr. Thomas continued with this misconduct after the ICRC brought to his attention the importance of his professional obligations and in particular, his obligations to communicate with the College. These are issues of relevance to his governability.

[12] Dr. Thomas also has a discipline history. As well as cautioning him, the ICRC ordered in 2017 that he complete a specified continuing education or remediation

program, also known as a SCERP. He did not do so and in 2019 he was reprimanded, suspended for one month and required to practise under supervision for nine months: *College of Physicians and Surgeons of Ontario v. Thomas*, 2019 ONCPSD 36. The discipline finding and his continuing failure to disclose after it was made trigger the principle of progressive discipline, under which sanctions increase in severity where it appears that the registrant does not “get the message” from previous discipline.

[13] The parties referred us to various cases. In *College of Physicians and Surgeons of Ontario v. Dhanoa*, 2020 ONCPSD 28, the registrant received a five-month suspension. The case differed from this one in several ways. First, the penalty was not only for a failure to report but also the criminal conviction itself which increased the penalty. Second, the registrant had a health issue that was considered a mitigating factor and he did not have a discipline history nor the previous warnings from the ICRC.

[14] In *College of Physicians and Surgeons of Ontario v. Nugent*, 2023 ONPSDT 25, the registrant was suspended for three months for both failure to report and for the underlying criminal offence, which was relevant to his suitability to practise. Dr. Nugent did not have a discipline history, had not received cautions from the ICRC about similar matters and the misconduct did not last as long.

[15] Two other cases demonstrate the extent to which a prior history with the College can influence the penalty. In *Matheson*, the registrant had, like Dr. Thomas, received multiple cautions and there had been a discipline finding, and this led to a higher penalty. A penalty in cases like this should, as the panel said in *College of Physicians and Surgeons of Ontario v. Beauchemin*, 2021 ONCPSD 30, demonstrate to the registrant that “enough is enough.” (para. 38)

[16] Considering the circumstances of this case in light of this jurisprudence, the proposed suspension of five months would not bring the professional discipline system into disrepute and we make the order requested.

#### Reprimand and Education

[17] The Interim Practice Direction on Reprimands notes that the Tribunal’s practice has been to issue a reprimand in almost every case, but that recent caselaw has questioned whether that should continue. The Practice Direction asks the parties to make submissions about the desirability and purpose of a reprimand, rooting their

submissions in the specific circumstances of the case and considering all regulatory tools available to the panel, including its written reasons for decision.

[18] In our view, a reprimand in this case would promote the public interest by having a panel member speak directly to Dr. Thomas, who has an extensive disciplinary and regulatory history, and tell him that if he is to avoid escalating penalties and keep his certificate of registration, he must change his behaviour. Given his pattern of ignoring or resisting the governance of the College even after multiple cautions, a reprimand and a suspension, the panel can emphasize to him the importance, for the public and the profession, as well as for his own interests, in taking his regulatory obligations much more seriously. That message will, we expect, be supplemented and reinforced in the ethics education we are also ordering. Dr. Thomas must use this opportunity to reflect on how he will act differently when he returns to practice to properly serve his patients, the public and meet his legal obligations. He must completely change his behaviour, something he failed to do after the previous warnings.

### **Costs**

[19] The parties have agreed to costs at the tariff rate of \$6,000. The parties have proposed a longer time to pay than is typical, six months. This meets the test for joint submissions, and we note that Dr. Thomas can also speak to the College's finance department about installments.

### **Finding**

[20] We find that the registrant committed the following act of professional misconduct:

(a) under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, 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 conduct.

## Penalty and Costs Order

[21] We make the following order:

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 five (5) months commencing February 28, 2024, at 12:01 a.m.;
  - b. place the following terms, conditions and limitations on the registrant's certificate of registration effective February 28, 2024, at 12:01 a.m.:
    - i. Dr. Thomas will, at his own expense, successfully complete the PROBE Ethics & Boundaries Program offered by the Centre for Personalized Education for Professionals **or** one-to-one instruction in professionalism with an instructor approved by the College.
      - (a) If Dr. Thomas proceeds with the PROBE course, he must receive a passing evaluation or grade, without condition or qualification. Dr. Thomas will complete the PROBE program within six (6) months of the date of this Order or, if it is not available within that timeframe, will complete it at the earliest available opportunity. Dr. Thomas will provide proof to the College of his completion, including proof of registration and attendance and participant assessment reports, within one (1) month of completing it.
      - (b) If Dr. Thomas proceeds with one-on-one instruction, the instructor will submit a report to the College and the College will determine in its sole discretion if the instruction has been completed satisfactorily. The one-on-one instruction will be completed within six (6) months of the date of this Order.
3. The Tribunal requires the registrant to pay the College costs of \$6,000.00 no later than August 27, 2024.

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- and -

Cholemkeril Kuncheria Thomas

**Registrant**

**The Tribunal delivered the following Reprimand  
by videoconference on Tuesday, February 27, 2024.**

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

Dr. Thomas, as members of the public and professional colleagues, we are deeply troubled by the misconduct that has led to this hearing: namely, your ongoing failure to report your criminal conviction to the College and your affirmation of the truthfulness of information that you knew to be false on your annual renewal form in 2012.

Physicians have unique authority and freedom in practising medicine. This privilege carries clear responsibilities. To regulate effectively and to maintain public confidence in the ability of the College to govern in the public interest, the College relies upon physicians to be accurate, truthful and forthright in their dealings with it. You have failed to meet this most basic obligation to be honest and trustworthy in your dealings with the College. It is up to the College, not you, to determine the relevance to the public interest of your criminal conviction.

There is nothing subtle or unclear about your obligation to have reported your conviction or about your willingness to provide false information to the College. These are very serious violations of your professional responsibilities and of the trust that the public and your colleagues place in you.

We are surprised that your experience with the ICRC in 2014, 2017, 2018, and 2021 has not made you sensitive to the need to fulfil your obligations to the College. We are deeply concerned by the multiple times the ICRC has made orders or accepted undertakings from you and by the misconduct finding against you in 2019 after you failed to complete



an educational mandate from the ICRC. This history and your current misconduct cause concern that you do not understand and will not respect your professional obligations to the College.

Dr. Thomas, your misconduct is extremely serious and unacceptable. We hope that, on this occasion if not previously, you will learn from the experience and the penalty being imposed. We trust that you will not engage in such misconduct again; if you do so, you risk more severe sanctions that may result in the loss of your privilege to practise medicine in Ontario.