

**ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL**

**Citation:** *College of Physicians and Surgeons of Ontario v. Rourke*, 2021 ONPSDT 45

**Date:** November 18, 2021

**Tribunal File No.:** 20-008

**BETWEEN:**

College of Physicians and Surgeons of Ontario

- and -

Dr. Timothy Wade Rourke

**FINDING AND PENALTY REASONS**

**Heard:** October 13, 2021, by videoconference

**Panel:**

Ms. Shayne Kert (chair)

Mr. Paul Malette, Q.C.

Dr. Peeter Poldre

Dr. Ian Preyra

Ms. Linda Robbins

**Appearances:**

Ms. Simmy Dhamrait-Sohi and Ms. Carolyn Silver, for the College

Ms. Carolyn Brandow and Ms. Sarah Martens, for Dr. Rourke

**RESTRICTION ON PUBLICATION**

The Tribunal ordered, under ss. 45-47 of the Health Professions Procedural Code, that no one may publish or broadcast the name or identity of the complainant, or the names or any information that would identify patients referred to during the Tribunal hearing or in any documents filed with the Tribunal. There may be significant fines for breaching this order.

## **Introduction**

- [1] At the hearing, Dr. Timothy Rourke admitted that he committed acts of professional misconduct that would reasonably be regarded as disgraceful, dishonourable or unprofessional by failing to comply with the College of Physicians and Surgeons of Ontario policy regarding the treatment of a family member or a person close to him; inappropriately prescribing and/or providing medications to a family member; failing to maintain medical records of the medications that he prescribed or provided to his family member; and failing to discuss with his family member the risks, benefits or potential side effects of the medications that he prescribed or provided to her. Dr. Rourke also improperly stored and failed to dispose of prescription medications and samples from his medical practice.
- [2] The parties provided agreed statements of facts (ASF) on the issues of liability and penalty. They jointly submitted that the facts outlined in the ASFs constituted professional misconduct and that the penalty should include a reprimand, a 10-month suspension of Dr. Rourke's certificate of registration and a requirement that he participate in individualized instruction on medical ethics. They also agreed that Dr. Rourke should pay costs to the College of \$6,000. The sole issue of disagreement was whether the order should specify that Dr. Rourke must comply with the College's policy on closing a medical practice.
- [3] On the day of the hearing, for reasons to follow, we made a finding of professional misconduct and decided that the proposed joint penalty, without the inclusion of the disputed clause, was not contrary to the public interest. Our order suspended Dr. Rourke's licence for 10 months commencing October 14, 2021. We also awarded costs as agreed by the parties. These are our reasons.

## **The Agreed Facts**

### Background

- [4] Dr. Rourke is a 61-year-old family physician. He received his certificate of registration authorizing independent practice from the College in August 1988. Until May 2014, he practised family medicine in Ottawa. In 2016, he practised at the Leamington Community Health Clinic. Since May 2017, he has practised at the Chatham-Kent Community Health Centres (CHC). He has no discipline history.

- [5] Throughout the relevant time, Dr. Rourke and Ms. A were either in a relationship or were married.

#### Prescribing/Providing Medications to a Family Member

- [6] In October 2018, following a complaint from Ms. A, the College commenced two investigations. During those investigations, the College obtained copies of prescription receipts and records indicating that between October 2011 and December 2013, Dr. Rourke prescribed and/or provided medications to Ms. A. The College also obtained a copy of a handwritten prescription to Ms. A dated October 2017.
- [7] Two of the drugs that Dr. Rourke prescribed or provided to Ms. A were not medically indicated. None of the prescribed medications were narcotics and only one was a controlled substance.

#### Improper Storage/Failing to Dispose of Prescription Medications and Samples

- [8] On November 6, 2018, College investigators seized a variety of prescriptions and sample medications from Dr. Rourke's residence. Among the items were over 5000 pills of a variety of medications, including controlled substances such as hydromorphone, oxycodone, lorazepam and clonazepam. The prescriptions that the investigators found were in the names of numerous patients and were prescribed by Dr. Rourke and other doctors. Some of the medications had expired more than 10 years earlier.
- [9] Since February 2020, the CHC has had a policy that sets out the correct procedures for the safe handling, storage, administration and disposal of all medications stored on site at the clinic.

#### **Findings of Professional Misconduct**

- [10] The agreed facts support a finding that Dr. Rourke breached his professional obligations as alleged. To ensure that a physician's ability to maintain the necessary amount of emotional and clinical objectivity is not compromised (thereby potentially impacting the quality of care), the College policy regarding physician treatment of family members (or others close to the physician) prohibits physicians

from providing treatment to a family member, except for treatment of a minor condition or in emergency situations, and only when another qualified health care professional is not readily available. In treating Ms. A (his spouse) outside the limited circumstances permitted by the College policy, Dr. Rourke breached that policy.

[11] By inappropriately prescribing or providing medications to Ms. A, failing to discuss with her the risks, benefits and potential side effects associated with the prescribed or provided medications (to ensure her informed consent) and failing to maintain records of the medications he prescribed or provided to her, Dr. Rourke failed to comply with the College policies concerning prescribing drugs and medical records documentation. The cache of medications seized from Dr. Rourke's home supports a finding that he also failed to ensure the safe and secure storage and disposal of prescription medications and samples.

[12] Based on the agreed facts and the parties' agreement, we found that Dr. Rourke committed professional misconduct by engaging in acts that would reasonably be regarded by members of the profession as disgraceful, dishonourable or unprofessional.

### **Penalty and Costs**

[13] As this was, for the most part, a joint submission on penalty, the public interest test established by the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43, applies: *Bradley v. Ontario College of Teachers*, 2021 ONSC 2303. The public interest test requires that joint submissions are to be accepted unless "the proposed penalty is so 'unhinged' from the circumstances of the case that it must be rejected": *Bradley* at para. 14; *Anthony-Cook* at para. 34.

[14] We are satisfied that, in the circumstances of this case, the penalty proposed is not so improper that accepting the joint submissions would be contrary to the public interest. This is so for several reasons.

[15] The jurisprudence provided to us indicates that in cases involving some elements of similar misconduct - physicians prescribing for themselves, for family members or for other close individuals - the penalties imposed have included a reprimand with suspensions ranging from three to six months: *College of Physicians and Surgeons*

*of Ontario v. Bell*, 2021 ONCPSD 35; *College of Physicians and Surgeons of Ontario v. Adams*, 2021 ONCPSD 11; *College of Physicians and Surgeons of Ontario v. Raddatz*, 2020 ONCPSD 27; *College of Physicians and Surgeons of Ontario v. Hurmatov*, 2019 ONCPSD 42; *College of Physicians and Surgeons of Ontario v. Vasovich*, 2015 ONCPSD 32. This is a useful starting point but does not address all the misconduct in issue here.

- [16] Each case, of course, turns on its own facts. Dr. Rourke has practised family medicine for over 33 years and has no discipline history. He accepted responsibility and admitted his misconduct, obviating the necessity of what was anticipated to be a week-long contested hearing. At least some of the misconduct (prescribing medications to his now former spouse; collecting medications from his previous clinics) appears to have ended prior to the involvement of the College, and all of the misconduct concluded upon the search of and seizure from his home in November 2018.
- [17] Dr. Rourke has continued to provide clinical care without incident since that time. The letter from the Executive Director of the CHC describes Dr. Rourke as an “experienced, proficient, compassionate and supportive physician” who provides primary care to disenfranchised, vulnerable and marginalized patients, none of whom were directly impacted by his misconduct. These are all positive factors.
- [18] However, the misconduct at issue here was serious. In violation of the College policy, Dr. Rourke prescribed and provided medications to Ms. A for about six years. Two of the medications that he prescribed to her were not medically indicated, potentially putting her at risk of harm. Dr. Rourke’s failure to discuss the risks, benefits and potential side-effects of the medications with Ms. A is a further aggravating factor.
- [19] There is also a novel aspect to this matter – the misconduct involving the improper storage and failure to dispose of thousands of pills and other prescription medications and samples. As described by College counsel, Dr. Rourke had a “pharmacy” of medications stored at his residence. The sheer volume, variety and nature of the prescriptions and samples seized from his home, and Dr. Rourke’s failure to safely dispose of the medications years earlier, must be considered significant aggravating factors.
- [20] Balancing the aggravating and mitigating factors, we find that the proposed penalty of a reprimand and a 10-month suspension is appropriate in the circumstances and

not contrary to the stringent public interest test. It is a strong statement denouncing the wrongfulness of Dr. Rourke's misconduct, provides both the necessary general and specific deterrence and sufficiently fulfils the objectives of ensuring public safety and confidence in the medical profession. There is also a focus on rehabilitation through remedial education, as Dr. Rourke will be required to engage (at his own expense) in individualized instruction around the principles of medical ethics. The costs proposed were also reasonable.

[21] Finally, for the reasons outlined in *Raddatz*, above, and given Dr. Rourke's objection, we do not find it necessary to specifically direct in our order that he be required to comply with the College's "Closing a Medical Practice" policy. Before us, the College argued that because Dr. Rourke failed to meet the College's "Physician Treatment of Self, Family Members, or Others Close to Them" policy, we should be necessarily concerned about his future compliance with the "Closing a Medical Practice" policy. The College made similar submissions in *Raddatz*.

[22] We do not find this argument persuasive. As in *Raddatz*, Dr. Rourke's professional misconduct occurred in a particular context (his personal relationship) and did not directly involve any of his other patients. Apart from the current misconduct, there is no history of him failing to comply with College policies or being unwilling to do so. Put simply, the evidence before us does not support a finding that absent the requested additional requirement, Dr. Rourke is unlikely to comply with the College policy on closing his practice, or with any of his other professional obligations.

## **Order**

[23] At the conclusion of the hearing, we ordered and directed:

1. Dr. Rourke to attend before the panel to be reprimanded.
2. The Registrar to suspend Dr. Rourke's certificate of registration for 10 months commencing October 14, 2021, at 12:01 am.
3. The Registrar to place the following terms, conditions and limitations on Dr. Rourke's certificate of registration commencing from October 14, 2021, at 12:01 am.:

- a. Dr. Rourke shall participate in, at his own expense, individualized instruction on medical ethics satisfactory to the College with an instructor approved by the College.
  - 4. Dr. Rourke to pay costs to the College in the amount of \$6,000 within 30 days of our order.
- [24] After Dr. Rourke waived his right of appeal, the panel delivered the reprimand by video.

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- and -

Timothy Wade Rourke

**The Tribunal delivered the following Reprimand**  
by videoconference on Wednesday, October 13, 2021.

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

Dr. Rourke

We are profoundly disappointed that you tarnished your lengthy career by not abiding by your professional regulator's policy on the treatment of family members.

You contravened this policy on numerous occasions, in circumstances for which there is no evidence of an emergency and prescribing for inappropriate and off-label indications and a controlled substance without discussion of risks and benefits with the patient.

As the Policy clearly indicates, an appropriate standard of care cannot be provided when one's clinical objectivity is compromised.

Your failure to properly store and dispose of prescriptions, including controlled substances, and sample medications is totally unacceptable conduct.

We expect you to rigorously follow the policies of the College of Physicians and Surgeons of Ontario especially regarding the Closing of a Medical Practice.

We expect you to rigorously follow the policies established by the Community Health Centre where you will presumably return to practice after your suspension.

Your ten-month suspension is a strong denunciation of your unprofessional behaviour.

Your personal ethics instruction is expected to return you to practice with a clear understanding of the responsibilities the public expects of the medical profession.

This concludes the reprimand.