

ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

Citation: *College of Physicians and Surgeons of Ontario v. Stein*, 2023 ONPSDT 21

Date: September 28, 2023

Tribunal File No.: 22-023

BETWEEN:

College of Physicians and Surgeons of Ontario

- and -

Dr. Raymond David Stein

FINDING AND PENALTY REASONS

Heard: August 18, 2023, by videoconference

Panel:

Mr. Raj Anand (chair)

Dr. Madhu Azad

Ms. Lucy Becker

Dr. Philip Berger

Ms. Shannon Weber

Appearances:

Ms. Elisabeth Widner, for the College

Mr. Jaan Lilles, for Dr. Stein

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. Raymond Stein has been a member of the College of Physicians and Surgeons for over 40 years, practising in Toronto in internal medicine and immunology. Prior to the events in this case, he had no disciplinary history with the College.
- [2] In late 2019, the member crossed professional boundaries, both verbally and physically, with a longstanding patient despite knowing that his actions were inappropriate. Then, during the College's investigation the following year, Dr. Stein attempted to bully an acquaintance into providing a written alibi that would mislead the College. The parties put forward a statement of uncontested facts, which we summarize below, the member entered a plea of no contest and the parties made a joint submission on penalty and costs.
- [3] At the hearing, we found that Dr. Stein engaged in disgraceful, dishonourable or unprofessional conduct. We imposed a six-month suspension, ordered Dr. Stein to complete a recognized program on ethics and boundaries and delivered a reprimand.
- [4] These are our reasons.

Professional misconduct

Disgraceful, dishonourable or unprofessional conduct towards Patient A

- [5] Patient A began seeing Dr. Stein as a patient when she was 26 years old. By 2019, she had been his patient for about 30 years.
- [6] On October 26, 2019, Patient A attended an appointment with Dr. Stein. A few days later, Dr. Stein telephoned Patient A from his personal cell phone.
- [7] This was the first time he had ever called her. The call alarmed Patient A, because she thought Dr. Stein might be calling with bad news about her medical condition.
- [8] In fact, Dr. Stein told her he had tickets to a Beatles tribute concert in Oakville on December 2, 2019. Dr. Stein told Patient A that he would be accompanying her to the concert. He asked her to meet him at his office and they would go to Oakville from there. Although she felt uncomfortable, Patient A agreed to go to the concert

because the member had been her doctor for such a long time and she respected him.

- [9] In late October 2019, when Dr. Stein referred Patient A to a specialist, he asked her not to mention their planned outing to that physician. This showed his awareness even then of the inappropriateness of taking her to the concert.
- [10] On December 2, 2019, after several text exchanges with the member confirming the plans for that evening, Patient A went to Dr. Stein's office. He was there alone, sitting in his office chair and sleeping.
- [11] When he saw her, the member stood up, put his arm around Patient A's waist and said, "can you imagine me escorting you to your daughter's wedding?" Patient A felt very uncomfortable. Dr. Stein gave her a Christmas card and a gift, which she later opened at home. Patient A viewed the card and gift as inappropriate coming from her physician.
- [12] As they walked into the concert, Dr. Stein put his arm tightly around Patient A's waist. Patient A disengaged.
- [13] While they were seated at the concert, Dr. Stein appeared to be asleep, but then he grabbed Patient A's upper right thigh quite hard. Patient A pulled her leg back and leaned away. She again felt very uncomfortable with the member's conduct.
- [14] Dr. Stein and Patient A were together from about 6:00 p.m. to 10:30 p.m. When he drove her home from the concert, Dr. Stein commented that he knew where she lived. Patient A realized that this information would have been available from her patient records.
- [15] Patient A did not want him close to her residence and insisted he drop her on the street. By this point, Patient A was nervous about Dr. Stein's intentions, and she wanted to be away from him.
- [16] The entire evening was profoundly upsetting to Patient A. The member sent a text message to Patient A after the event, but she did not reply. Patient A did not return to see Dr. Stein again.

Disgraceful, dishonourable or unprofessional conduct – Interfering in College Investigation

[17] On December 20, 2019, the College received a mandatory report from a physician about an incident involving one of her patients and Dr. Stein. The College commenced an investigation.

[18] On January 14, 2021, an individual we refer to as Ms. X contacted the College and reported the following.

[19] She was an acquaintance of Dr. Stein and had known him socially for about three years. On the Labour Day weekend of 2020, she had been a guest at Dr. Stein's cottage.

[20] The member approached her and asked if she lived in Oakville. Later, he came to her again and asked her to sign a letter confirming that she was with him on the evening of December 2, 2019. Dr. Stein told her he needed an alibi.

[21] Ms. X refused, and that caused the member to become upset. Ms. X left.

[22] Ms. X was very upset by Dr. Stein's request. She felt he was bullying her and putting her in a very difficult position. The experience caused her stress.

Finding of professional misconduct

[23] The uncontested facts support a finding that the member violated his professional obligations in two ways.

[24] First, Dr. Stein breached acceptable physician-patient boundaries with Patient A through several of his actions, by:

- effectively directing her to attend a concert with him, which he clearly recognized as inappropriate;
- making flirtatious remarks to her;
- giving her a Christmas card and a gift;
- putting his arm around her waist at his office and at the concert, and later grabbing her thigh;

- commenting on the way home that he knew her address; and
- making her uncomfortable and upset because of these actions, to the extent that she terminated a 30-year-long physician-patient relationship.

[25] Second, Dr. Stein interfered with the College’s investigation when he tried to cover up his attendance with Patient A at the concert by asking an acquaintance to sign a false statement that would give him an alibi. Again, the member’s actions upset this acquaintance who felt he was bullying her.

[26] We accepted the parties’ joint submission that in both respects, Dr. Stein engaged in conduct that would reasonably be regarded by members of the profession as disgraceful, dishonourable or unprofessional.

Penalty and costs

[27] The parties made a joint submission to the panel on the appropriate penalty. In these circumstances, we apply the public interest test that was adopted by the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43 and applied in the professional regulation context by the Divisional Court in *Bradley v. Ontario College of Teachers*, 2021 ONSC 2303 at para 11. The joint submission must be accepted unless “the proposed penalty is so ‘unhinged’ from the circumstances of the case that it must be rejected”: *Bradley* at para 14.

[28] Before this Tribunal, rejection is only appropriate where the penalty put forward by the parties is “so markedly out of line with expectations of reasonable persons aware of the circumstances of the case that they would view it as a breakdown in the proper functioning’ of the College’s professional discipline process”: *College of Physicians and Surgeons of Ontario v. Bahrgard Nikoo*, 2022 ONPSDT 15 at para. 34. In other words, “[t]here must be something completely unacceptable, unusual or unconscionable” about the parties’ proposal: *College of Physicians and Surgeons of Ontario v. Matheson*, 2022 ONPSDT 27 at para. 17.

[29] Taken together, the three elements of the proposed penalty – an immediate six-month suspension of Dr. Stein’s certificate of registration, delivery of a reprimand and completion of the PROBE program on ethics and boundaries – meet the public

interest test for acceptance by the Tribunal. We reached this conclusion for several reasons.

- [30] First, while every Tribunal case involves a different factual matrix, with variations in aggravating and mitigating circumstances, the penalty proposed for Dr. Stein falls within a reasonable range of prior precedents dealing with similar types of misconduct. The parties provided cases that imposed suspensions in the two- to six-month range for each category – boundary violations and interference with a College investigation. See for example, *College of Physicians and Surgeons of Ontario v. Leduc*, 2018 ONCPSD 59 and cases cited at pp. 11-13 and *College of Physicians and Surgeons of Ontario v. Price*, 2016 ONCPSD 30 and cases cited at p. 11.
- [31] Second, the penalty recognizes that this was serious misconduct. The suspension is lengthy, and it will have a significant impact at this stage of the member's career. Our reprimand expressed the profession's profound disapproval of the breaches of public trust that occurred in this case. As such, the Tribunal's order meets objectives of both specific and general deterrence, contributes to public protection and promotes public confidence in the regulation of the profession.
- [32] Third, the significant penalty reflects the profound impact that Dr. Stein's misconduct had on his patient and his acquaintance, as well as the broader effect on the public when a member breaches professional boundaries and attempts to frustrate the College's public protection mandate.
- [33] Fourth, the parties' proposal takes account of important mitigating factors here. The member had no prior disciplinary history. He cooperated with the College, entered a plea of no contest and signed a statement of uncontested facts and a joint submission on penalty and costs. This facilitated the Tribunal proceeding and spared Patient A and Ms. X the need to relive their experiences by attending as witnesses.
- [34] The parties incorporated the standard costs award of \$6,000 in their draft order, which we accepted.

Order

[35] We therefore ordered:

- Dr. Stein to attend before the panel to be reprimanded.
- the Registrar to suspend Dr. Stein's certificate of registration for six months effective August 21, 2023 at 12:01 am.
- the Registrar to place terms, conditions and limitations on Dr. Stein's certificate of registration requiring that he participate in and complete the PROBE Ethics and Boundaries program within 12 months of the order, or if the program is not available within that timeframe, then at the earliest available opportunity, and that he provide proof of completion within one month of completing the program.
- Dr. Stein to pay costs to the College in the amount of \$6,000 by September 18, 2023.

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College of Physicians and Surgeons of Ontario

- and -

Raymond David Stein

The Tribunal delivered the following Reprimand
by videoconference on Friday, August 18, 2023.

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

Dr. Stein,

Your misconduct was serious and inappropriate.

You engaged in disgraceful, dishonourable and unprofessional misconduct when you called a long-standing patient at home after she had seen you for a medical appointment to tell her you would be accompanying her to a concert.

You clearly knew that you were crossing a boundary when you referred the patient to another physician and asked her not to mention the planned outing.

Furthermore, you interfered with the College's investigation when you tried to cover up the incident by asking an acquaintance to sign a letter confirming that she was with you on the evening in question as you needed an "alibi".

The public and patients expect that their physicians will act in a professional and ethical manner. Not only was it inappropriate to contact your patient at home to invite her to a concert but your actions during the outing were unacceptable. You behaved inappropriately by putting your arm around her waist and then touching her thigh during the concert.

Your actions put your patient in a difficult and very uncomfortable position. You also acted inappropriately by giving your patient a Christmas card and a gift. In addition, your actions also upset your acquaintance who felt you were bullying her when you asked her to lie for you.

We acknowledge that you are not contesting the facts nor are you contesting that based on those facts you committed an act of professional misconduct.

We hope that today's penalty enables you to reflect on what you did wrong and to understand that this kind of behaviour on your part cannot happen again. The public and patients put their trust in their physicians and expect them to act professionally and ethically. Your actions breached that trust.