

ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

Citation: *College of Physicians and Surgeons of Ontario v. Armstrong*, 2024 ONPSDT 28

Date: November 25, 2024

Tribunal File No.: 24-005

BETWEEN:

College of Physicians and Surgeons of Ontario

College

- and -

Jennifer Margaret Armstrong

Registrant

FINDING AND PENALTY REASONS

Heard: October 31, 2024, by videoconference

Panel:

David A. Wright (Tribunal Chair)

Lucy Becker (public)

Stephen Bird (public)

Roy Kirkpatrick (physician)

Veronica Mohr (physician)

Appearances:

Robin Goldberg, for the College

Mark Faasen and Daniel Yang, 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] In 2014, as part of its order following a finding of professional misconduct for failure to meet standards of practice, the Discipline Committee (as this Tribunal was then called) imposed terms, conditions and limitations on Dr. Armstrong's certificate of registration. These required that all her patients have a family physician or specialist who would provide concurrent care, and that she send information about any treatment she initiates or changes to the primary care physician. But Dr. Armstrong didn't always do so. When the College raised this issue with her in 2020, she told the College they were accidental, and she would fix the problem. However, her lapses continued, leading to this discipline proceeding.

[2] Dr. Armstrong admits that her failure to fully comply with her restrictions was professional misconduct. The parties jointly submitted that the penalty should be a two-month suspension, a reprimand and a requirement that she keep a log and checklist of patients seen. When the parties have agreed on a penalty, we must make the order unless it is so unhinged that it would bring the administration of the professional discipline system into disrepute. This penalty is within an appropriate range, and so we made the order requested. These are our reasons.

[3] Panel member David Wright conducted case management conferences in this matter and sits on the panel with the consent of the parties.

Background

[4] Dr. Armstrong is a general practitioner with additional training and a focused office-based practice in environmental medicine. In 2014, the Discipline Committee found that she failed to meet the standard of practice of the profession: *College of Physicians and Surgeons of Ontario v. Armstrong*, 2015 ONCPSD 2. She did not take steps to investigate or treat a patient's mental health issues, nor assist her in finding a primary care physician, specialist or mental health professional. Tragically, the patient later died by suicide. The Discipline Committee's order imposed terms, conditions and limitations, including that all Dr. Armstrong's patients have a family physician or certified specialist. She is required to advise the patient's family physician or certified specialist of all treatment and changes to treatment.

[5] Dr. Armstrong cooperated with periodic visits conducted by the College's compliance department between 2014 and 2023. A November 2019 audit of five patient

charts uncovered changes to patients' treatment that Dr. Armstrong had made without advising the family physician. When advised of this in early 2020, Dr. Armstrong acknowledged the concerns as unintentional oversights and said she planned to address the concerns administratively and through voluntary education. As a result, the College took no action.

[6] After receiving concerns in 2022 about Dr. Armstrong's communications with family physicians relating to two patients, the College investigated. Dr. Cara Flamer, a family physician who offers complementary and alternative medicine, reviewed 15 patient charts. She found 42 times between 2015 and 2023 when Dr. Armstrong should have written to the patient's physician, but either did not do so, or was late in doing so. Half of those breaches of the Discipline Committee's order happened after the College alerted her to the problem in 2020.

[7] Dr. Flamer explained that most of the time, Dr. Armstrong provided detailed information and that she treated the patients appropriately. However, she failed to update the concurrent physician, particularly when the change occurred after an email exchange.

After reviewing 15 charts of Dr. Armstrong, it is clear to me that in the majority of cases she sends very thorough and detailed notes to the patient's physician. She practices environmental medicine, and part of the nature of that area of specialty is that the patients can be quite complex... She does an excellent job of communicating the main issues and treatment with the physician, including testing done and their results, adverse effects experienced by the patient, and treatments initiated or changed. In the majority of cases she sends detailed letters to the physician.

On a small percentage of occasions, she did not send a letter to the physician to communicate treatment changes. In some of these cases it was because the treatment change occurred during an email exchange between booked appointments- it was a pattern I noticed that after an email exchange she does not routinely send a letter to the physician... In all cases she treated the patient appropriately and remained within her scope of practice.

[8] Terms, conditions and limitations on a certificate of registration must be respected all the time. The College's mandate is to protect the public, and for it to be effective in doing so, registrants must scrupulously follow its rules. Dr. Armstrong committed misconduct by contravening a term, condition or limitation on her certificate of registration (s. 1(1) para. 1 of O. Reg. 855/93, made under the *Medicine Act, 1991*, SO

1991 c. 30.) Like most or all misconduct, this is also covered by the general prohibition on conduct that would reasonably be regarded by members as disgraceful, dishonourable or unprofessional (paragraph 33 of the same provision).

Penalty

[9] 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 (Div. Ct.).

[10] 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.

[11] This misconduct is at the less serious end of the spectrum, and so is the penalty of a two-month suspension. It is consistent with penalties in the 1-3 month range awarded in many other cases where physicians violated undertakings or orders: see, for example, *College of Physicians and Surgeons of Ontario v. Roy*, 2018 ONCPSD 66; *College of Physicians and Surgeons of Ontario v. Taniguchi*, 2019 ONCPSD 24; *College of Physicians and Surgeons of Ontario v. Baranick*, 2019 ONCPSD 13; *College of Physicians and Surgeons of Ontario v. Kakar*, 2019 ONCPSD 20.

[12] The biggest concern is that Dr. Armstrong promised in 2020 that she would fix this problem, but did not do so. She also has a discipline history involving serious consequences, which led to the conditions being imposed. We also recognize that Dr. Armstrong takes seriously her responsibilities to provide detailed information to her

patients' concurrent physicians and is providing good care. She needs to ensure that she has the systems in place, so that she complies with the terms, conditions and limitations on her certificate of registration. The requirement we are adding that she keep a daily log/checklist of patients seen, provides another safeguard. But she must be vigilant and always keep these restrictions top of mind. The reprimand allowed us to emphasize this to Dr. Armstrong directly, and we trust that this will be the last time she appears before this Tribunal.

Order

[13] We made 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 two (2) months commencing November 1, 2024 at 12:01 a.m.

 - b. place the following additional terms, conditions and limitations on the registrant's certificate of registration effective immediately:
 - i. Dr. Armstrong will maintain a daily log/checklist of all patients seen. The log will indicate: the patient name; the name of the patient's family physician or certified specialist who provides concurrent care; whether any treatment was initiated; whether any treatment was changed; and, if any treatment was initiated or changed, the date on which the information about the treatment that was initiated or changed was sent to the patient's family physician or certified specialist. Dr. Armstrong will maintain this log, which will be made available to the College at any time upon request.

3. The Tribunal requires the registrant to pay the College costs of \$6,000 by November 29, 2024.

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Registrant

**The Tribunal delivered the following Reprimand
by videoconference on Thursday, October 31, 2024.**

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

Dr. Armstrong,

The practice of medicine is a great privilege as patients turn to us in times of need and expect and deserve professionalism at all times. You were fully aware of the terms, conditions and limitations imposed on your practice by the Discipline Committee in 2014, yet you failed to notify the family physicians and other specialists involved concurrently with your patients' care of changes in their medications/treatment. As well, you were unavailable for a timely period in responding to another physician about a mutual patient's care. You were found to be in breach of your order on numerous occasions between 2015 and 2023. This could have hindered decisions made by other physicians in the care of your patients, to the detriment of the patient.

The assessor did acknowledge the quality of your care and clinical notes.

The mandate of the College is the protection of the public. We trust that going forward you will be meticulous in your communications with other physicians involved in your patients' care, follow all the terms, conditions and limitations on your certificate of registration and that you will not appear before this Tribunal in the future.