

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

Backhouse, D.L. Corbett and Rees, JJ.

B E T W E E N :)
)
SUKHJEEV TATLA) *Rebecca Young and Efterpi Marinis, for the*
) Appellant
Appellant)
)
- and -)
)
ONTARIO COLLEGE OF PHARMACISTS) *Benjamin Kates and Uyên Tran, for the*
) for the Respondent
Respondent)
)
) **HEARD at Toronto:** November 24, 2025

REASONS FOR DECISION

Backhouse, J.

Overview

- [1] The appellant seeks to set aside the August 19, 2024 Decision (the “Decision”) of the Discipline Committee (the “Committee”) of the Ontario College of Pharmacists (“OCP”) that found him guilty of sexually abusing his patient and coworker under the *Health Professions Procedural Code* (the “Code”), being Sched. 2 to *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18 (“RHPA”). He requests an order setting aside both the Decision and the revocation of his license or, in the alternative, that the matter be remitted back to a differently constituted panel of the Discipline Committee.
- [2] The appellant submits that the Committee made an error in law in its determination that the appellant’s coworker, the complainant, was also the appellant’s patient. The appellant submits that the Committee erred in finding that the “direct interaction” criterion in the *Patient Criteria Regulation* in Ontario Regulation 260/18 enacted under the *Code* was met when the appellant dispensed a prescription and conducted a clinical verification, thereby providing a healthcare service to the complainant. The effect of finding the appellant had sexually abused a patient is an automatic revocation of his certificate of registration under s. 51 (5) of the *Code*.

- [3] The OCP asks that the appeal be dismissed.
- [4] I would dismiss the appeal for the reasons set out below. The Committee determined that when the appellant provided a health care service to the complainant by dispensing a prescription to her and conducting a clinical verification of that prescription, he engaged in a direct interaction with her, thereby creating a pharmacist-patient relationship. This is a conclusion consistent with the public interest, squarely within the expertise of the Committee on an issue of mixed fact and law and is entitled to deference. I find no palpable and overriding error.

Background.

- [5] The appellant was found guilty of professional misconduct under subsection 51(1) (b.1) of the *Code* for sexually abusing his patient and coworker, the complainant, by engaging in touching of a sexual nature and/or behaviour and/or remarks of a sexual nature. This conduct which is not disputed on this appeal occurred on August 14, 2022 in the span of a single shift. The appellant was a relief pharmacist at a pharmacy and the complainant was a pharmacy assistant at the same pharmacy. No other pharmacists or assistants were on duty on the day in question. The complainant as the pharmacy assistant processed the refill of her prescription. A video depicted the complainant “affixing labels to the bottle and making what appears to be markings on the prescription hardcopy before putting it in a basket and placing the basket on the counter space where the appellant was working. The video showed the appellant working on the same basket and bottle “affixing a label to the bottle and making what appeared to be some markings on the prescription hard copy” before leaving it in the basket for the complainant to retrieve. The complainant did not require a consultation. When the complainant left work for the day she took the prescription home with her.
- [6] The Committee found that the appellant was the dispensing pharmacist. He was the only pharmacist or College registrant involved in the filling and/or dispensing of her medication and the only pharmacist present at the pharmacy. It was an unchallenged fact that the complainant knew that the appellant would be administering her prescription refill. The Committee found that the appellant provided a health care service to the complainant by dispensing a prescription to her and conducting a clinical verification of that prescription by approximately 1:30 p.m. on August 14, 2022, thereby establishing a pharmacist-patient relationship.

Statutory Framework and Standards of Practice

- [7] The OCP is a self-governing body for the profession of pharmacy. Its mandate includes serving and protecting the public interest by regulating the practice of pharmacy and governing its members: The *Code*, ss. 3(1), 3(1)2. The role of the OCP, its authority, and powers are set out in legislation including the *RHPA* and the *Code*. The statutory scheme for addressing matters of professional misconduct, including the sexual abuse of a patient, is comprised of, among other things, the *RHPA*, the *Code*, the *Pharmacy Act, 1991, S.O. 1991, c.36* (the “*Pharmacy Act*”), and their regulations.

[8] The *Code*, at s. 1 (3), defines sexual abuse by a member of the pharmacy profession to mean:

- (a) sexual intercourse or other forms of physical sexual relationship between the member and the patient,
- (b) touching, of a sexual nature, of the patient by the member, or
- (c) behaviour or remarks of a sexual nature by the member towards the patient.

[9] Section 1.1 of the *Code* is a “statement of purpose” applicable to all provisions dealing with the sexual abuse of patients. The statement makes clear that these provisions are directed at the reporting, remediation, and elimination of sexual abuse:

1.1 The purpose of the provisions of this *Code* with respect to sexual abuse of patients by members is to encourage the reporting of such abuse, to provide funding for therapy and counselling in connection with allegations of sexual abuse by members and, ultimately, to eradicate the sexual abuse of patients by members.

[10] A finding of sexual abuse under s. 51(1) (b.1) of the *Code* (sexual abuse of a patient) requires there to be a patient relationship concurrent or overlapping with the conduct at issue. Until May 1, 2018, the definition of “patient” was determined under the common law. On that date, a number of amendments came into effect pursuant to the *Protecting Patients Act, S.O. 2017, c.11* at Schedule 5 and which pertained to circumstances of professional misconduct where allegations are of a sexual nature: ss. 1(6), 1.1, 42.2, 85.7.

[11] The *Protecting Patients Act* introduced the following definition of “patient” for the purpose of the *Code*’s sexual abuse provisions:

1(6) For the purposes of subsections (3) and (5), “patient”, without restricting the ordinary meaning of the term, includes,

(a) an individual who was a member’s patient within one year or such longer period of time as may be prescribed from the date on which the individual ceased to be the member’s patient, and

(b) an individual who is determined to be a patient in accordance with the criteria in any regulations made under clause 43 (1)(o) of the *Regulated Health Professions Act, 1991*; (“patient”) ... [Emphasis added.]

[12] An Explanatory Note accompanying the *Protecting Patients Act* and written as a reader’s aid describes the introduction of the definition as expanding the meaning of “patient”:

4. For the purposes of the sexual abuse provisions of the *Code*, the definition of “patient”, without restricting the ordinary meaning of the term, is **expanded to include** an individual who was a member’s patient within the last year or within such longer period of time as may be prescribed from the date on which they

ceased to be a patient, and an individual who is determined to be a patient in accordance with the criteria set out in regulations. [Emphasis Added.]

- [13] Also on May 1, 2018, Ontario Regulation 260/18 (the “*Patient Criteria Regulation*”) came into force, prescribing criteria for the purpose of the statutory definition of “patient” at s. 1(6)(b) of the *Code*. The *Patient Criteria Regulation* provided that the definition will be met where there is a direct interaction and at least one of four specified conditions are present while also setting out limited exceptions to that. It states:

The following criteria are prescribed criteria for the purposes of determining whether an individual is a patient of a member for the purposes of subsection 1 (6) of the *Health Professions Procedural Code* in Schedule 2 to the *Act*:

1. An individual is a patient of a member if there is direct interaction between the member and the individual and any of the following conditions are satisfied:
 - i. The member has, in respect of a health care service provided by the member to the individual, charged or received payment from the individual or a third party on behalf of the individual.
 - ii. The member has contributed to a health record or file for the individual.
 - iii. The individual has consented to the health care service recommended by the member.
 - iv. The member prescribed a drug for which a prescription is needed to the individual.
2. Despite paragraph 1, an individual is not a patient of a member if all of the following conditions are satisfied: [The conditions are not applicable here and have not been reproduced.]

- [14] The OCP has adopted the National Association of Pharmacy Regulator Authorities Model Standards of Practice for Canadian Pharmacists published March 2009 (the “NAPRA Standards”), which codify the standards of a reasonably prudent pharmacist practising in Ontario. The NAPRA Standards define “dispensing” to mean, with respect to a drug, any one or more of (i) evaluating a prescription for a drug, (ii) assessing the patient and the patient’s health history and medication record, (iii) packaging and labelling of a drug, or (iv) providing a drug to or for a person pursuant to a prescription.¹

¹ NAPRA Standards at Glossary, Agreed Statement of Facts at Tab 8.

Decision of the Discipline Committee

- [15] The Committee heard the merits of the allegations against the appellant on April 24 to 26 and May 13, 2024. The complainant testified; the appellant did not. In addition, the parties tendered a partial Agreed Statement of Facts, documents including prescription hardcopies, the complainant's Patient Medical Record, surveillance footage of the pharmacy on August 24, 2022, and the NAPRA Standards.
- [16] In its Decision released on August 19, 2024, the Committee made findings of professional misconduct against the appellant on all particulars alleged. The Committee found that:
- (a) the appellant engaged in touching of a sexual nature by grabbing the complainant's breast at around 15:00 and engaged in behaviour or remarks of a sexual nature to the complainant after that;
 - (b) there was a power imbalance between the appellant and the complainant which was aggravated by the complainant's subordinate position at work;
 - (c) the appellant engaged in a direct interaction with the complainant when he provided a health care service to her by dispensing her prescription and conducting a clinical verification of that prescription and satisfied the condition of contributing to her health record.
- [17] Because the complainant was a patient of the appellant as of around 13:30, the Committee found this was sexual abuse under the *Code* and the appellant's certificate of registration became the subject of an immediate interim suspension by operation of statute (*Code*, at s.51(4.2)).
- [18] In a subsequent penalty decision released on April 10, 2025, the Committee imposed a penalty order that included a mandatory revocation of the appellant's certificate of registration and awarded costs in the amount of \$100,000.

Issues

1. Is the error alleged by the appellant one of law or mixed fact and law?
2. Did the Committee err in finding that the complainant was a patient of the appellant at the time of the sexual assault?

Court's Jurisdiction

- [19] The Divisional Court is authorized to hear appeals on questions of law, fact, or both from a decision of the Discipline Committee: ss. 70(1) and (2) of the *Code*.

Standard of Review

- [20] This is a statutory appeal, so appellate standards of review apply: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at para. 37. Questions of law are

reviewable on a correctness standard. Questions of fact and questions of mixed fact and law (absent an extricable error of law) are reviewable on a standard of palpable and overriding error: *Housen v. Nikolaisen*, 2002 SCC 33, at para. 37.

Issue 1: Is the error alleged by the appellant one of law or mixed fact and law?

[21] The appellant submits the following:

- 1) The Committee committed an error of law in determining the complainant was his patient because it erred in its interpretation of the “direct interaction” requirement in the *Patient Criteria Regulation*.
- 2) There is no existing caselaw to date on the interpretation of the meaning of a “direct interaction” for the purposes of determining whether one is a patient. The appellant submits that the Committee was correct to look to the rules of statutory interpretation as cited in *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42, para.26.
- 3) Unlike the cases decided prior to the passage of the *Patient Criteria Regulation* where the common law factors had to be applied and whether there was a patient relationship was purely factual, the issue in this case is whether the Committee erred in law in its interpretation of the regulation’s requirement of “direct interaction” and the correctness standard is applicable.
- 4) Reading the words “direct interaction” in their grammatical and ordinary sense would logically require some form of direct interaction between the individual purported to be a patient and the health care professional in the context of the provision of a health care service. This is an extricable question of law to which the standard of correctness applies.

[22] The respondent submits that the question of whether someone is a patient is a question of mixed fact and law subject to a palpable and overriding error standard of review. It argues that when there is ambiguity in whether someone is a patient, it requires the Discipline Committee to apply its expertise in pharmacy practice and standards to the facts of a particular situation.

Analysis

Question of whether the complainant is a patient is one of mixed fact and law

[23] In 2017, the Legislature passed the *Protecting Patients Act*, which was intended to encourage the reporting of sexual abuse and implement zero tolerance for sexual abuse by health professionals. As noted above, the Explanatory Note accompanying the *Protecting Patients Act* and written as a reader’s aid states that for the purposes of the sexual abuse provisions of the *Code*, the introduction of the definition of “patient” is “without restricting the ordinary meaning of “direct interaction” and as expanding the meaning of the term “patient”. It follows that the Patient Criteria Regulation and its requirement of “direct

interaction” was not intended to narrow the definition of “patient” and the common law test for the definition of “patient” remains relevant.

- [24] Courts have repeatedly characterized the question of “who is a patient” as a factual inquiry calling for the specialized expertise of administrative decision-makers operating in the realm of professional discipline: *College of Physicians and Surgeons of Ontario v Dr Kayilasanathan*, 2019 ONSC 4350 at paras 37, 39; *Mussani v College of Physicians and Surgeons*, 2004 CanLII 48753 (ON CA) at para 66.
- [25] In making its determination of whether the complainant was the appellant’s patient, the Committee was required to draw upon its knowledge of the practice of pharmacy, consider pharmacy practice, NAPRA Standards, and the import of dispensing a prescription and a clinical verification of a prescription refill. It follows that the finding that the complainant was the appellant’s patient is a finding of mixed fact and law subject to the standard of review of palpable and overriding error and not an extricable question of law. Palpable and overriding error is a highly deferential standard which recognizes the expertise and competence of the Committee: *Housen, supra*, at paras.12-13.

Issue 2: Did the Committee err in finding that the complainant was a patient of the appellant at the time of the sexual misconduct?

- [26] The appellant submits that the Committee erred in finding the complainant was his patient at the time of the sexual misconduct because it misinterpreted the words “direct interaction” in s. 1(1) of the *Patient Criteria Regulation*, including interpreting the relevant caselaw, and therefore it erred in holding that a direct interaction occurred between the appellant and the complainant on August 14, 2022.
- [27] The appellant argues that the Committee erred in holding that the provision of a healthcare service can constitute a direct interaction because it failed to consider the words “direct interaction” in their grammatical and ordinary sense and because the interpretation of “direct interaction” renders other parts of the *Patient Criteria Regulation* moot. The appellant first argues that the plain meaning of “direct interaction” requires “some form of interaction, engagement, or communication between two people without the interference of any intermediaries or third parties” and that a failing to require this is contrary to the wording of the section as the section states provision of healthcare services is not enough on its own. The appellant also argues that the interpretation adopted by the Committee renders the subparagraphs to s. 1(1) redundant.
- [28] The appellant then submits that the Committee erred in holding that a direct interaction occurred between the appellant and the complainant when the appellant filled the complainant’s prescription. The appellant submits that there was no direct interaction because the complainant did not testify to any interaction with the pharmacist, there was no hand-off of the medication to the complainant (as she took it off the shelf herself after the appellant signed the prescription), and the complainant, as part of her job as pharmacy assistant, scanned the medication out. The appellant argues that all of this shows there was no direct interaction and therefore no patient relationship.

[29] The OCP submits that on the facts of this case, the complainant meets the ordinary meaning of the term “patient” because the appellant did pharmacist work for the complainant. The OCP submits the criteria outlined in *Ontario (College of Pharmacists) v Forcucci*, 2021 ONCPDC 2, at para. 170 are relevant in determining whether someone is a patient, even after the *Patient Criteria Regulation* was implemented. The OCP then argues that the practice of pharmacy includes dispensing drugs and that the appellant did this in addition to having a patient record and billing file for the complainant.

No palpable and overriding error in the Committee’s finding of “direct interaction”

[30] The Committee was asked to determine whether there had been a “direct interaction” between pharmacist and client. The answer required it to interpret the *Patient Criteria Regulation*—a regulation applicable to all 26 health regulatory colleges governed by the *Code*—in the specific context of the practice of pharmacy. Such an inquiry is a question of mixed fact and law, falls squarely within a Discipline Committee’s specialized expertise in professional misconduct matters as it relates to professional practice and as a question of mixed fact and law, is owed deference by the courts.

[31] The Committee considered the rules of statutory interpretation as cited in *Bell ExpressVu, supra*. It reasonably found that to interpret what constituted “direct interaction”, it must consider the *RHPA* as a whole and provisions in the *Code* including the College’s duty to serve and protect the public interest under ss. 3(2), and the statement of purpose relating to sexual abuse provisions contained in s. 1.1 and as amended by the *Protecting Patients Act*. (Para. 144 of the Decision).

[32] The appellant took the position before the Committee that a “direct interaction” requires a consultation occurring which the Committee rejected. The appellant abandoned this position on this appeal and does not argue a “direct interaction” requires a consultation. On this appeal, the appellant submitted that “direct interaction” refers to some form of interaction, engagement, or communication between two people without the interference of any intermediaries or third parties.

[33] Before the *Code* was amended effective May 1, 2018, the OCP’s discipline committees regularly determined whether an individual was the patient of a registrant, each case being specific to its own facts.

[34] *Ontario College of Pharmacists v Forcucci*, 2021 ONCPDC 2, (involving allegations that predated the *Patient Criteria Regulation*), considered the criteria set out in *Ontario (College of Physicians and Surgeons of Ontario) v Redhead, C.A.*, 2013 ONCPSD 18 for determining the context of the doctor-patient relationship, referred to as the “*Redhead* criteria”. The *Redhead* criteria include, among other things, the existence of a patient file, the existence of a billing record, and whether there was a coextensive relationship with another registrant. In *Forcucci*, the *Redhead* criteria were adapted to the experience of pharmacy professionals for determining the existence of a pharmacist-patient relationship. It also identified additional relevant factors to be considered, including the scope of

practice and authorized acts set out in ss. 3 and 4(1) of the *Pharmacy Act*, as well as the NAPRA Standards.

- [35] The *Pharmacy Act* defines the scope of practice of pharmacy to include the “custody” and “dispensing” of drugs (s.3 (a)) and the authorized acts of pharmacists to include among other things “dispensing, selling or compounding a drug or supervising the part of a pharmacy where drugs are kept.” (s. 4.1). The relevant factors identified in *Forcucci* for determining a pharmacist-patient relationship support the Committee’s conclusion in this case that the complainant was a patient of the appellant.
- [36] The Committee found at para. 145 that if it accepted the appellant’s position that a “direct interaction” required a consultation, the criteria for an individual to become a patient of a registrant would be more difficult than if the *Patient Criteria Regulation* had never been enacted. It found that this would tend to discourage victims of sexual abuse from coming forward to report sexual abuse. It held that this could not be the result the Legislature intended, having regard to the statement of purpose under s.1.1 of the *Code* and the provisions of the *Protecting Patients Act* and the *RHPA* as a whole. The same could be said if the Committee interpreted “direct interaction” in a manner that failed to take into account the way that pharmacists provide services to patients in pharmacies. On the facts of this case, it would be nonsensical to base the pharmacist-patient relationship on who scanned the medication or whether the pharmacist handed the prescription directly to the complainant.
- [37] In support of its conclusion that the appellant engaged in a direct interaction with the complainant, the Committee stated:

[148] The Complainant provided evidence that she processed a prescription refill for pms-benzydamin at 13:24 on the Incident Date. The dispensing pharmacist was the Registrant and the signature on the prescription hardcopy belonged to him. The Complainant stated that she knew it was the Registrant’s signature because she saw him sign the hardcopy. She testified that no other pharmacist or College registrant was involved in the filing or dispensing of her medication. The Complainant testified that the medication had been billed to her insurance plan and that the prescription was 100 percent covered by her insurance, therefore she was not required to pay anything for the prescription. The Complainant also stated that when she left the Pharmacy at the end of her shift, she took the pms-benzydamin prescription home with her. The Panel accepts the Complainant’s evidence on these points as credible and reliable.

[149] The Complainant’s evidence was supported by documentary evidence in the form of an Agreed Statement of Facts. The Agreed Statement of Facts included a hardcopy of a pms-benzydamin prescription filled on August 14, 2022 and timestamped at 13:24 for the Complainant (Exhibit 2 at Tab 3). The prescription hardcopy contained a billing record, showing that the Complainant’s insurance plan had provided a payment of \$37.02 for the prescription dispensed.

...

[151] The Panel finds that the Registrant engaged in a direct interaction with the Complainant on the Incident Date when he provided a health care service to her by dispensing the pms-benzydamine prescription. More specifically, the registrant conducted a controlled act under s.4(1)(1) of the *Pharmacy Act, supra* and only a pharmacist who is a registrant of the College is authorized to perform that act.

[152] The Panel finds that two conditions under paragraph 1.1 of the *Patient Criteria Regulation, supra*, have been met in that:

1. The Registrant, in respect of a health care service provided by the Registrant to the individual, charged or received payment from the individual or a third party on behalf of the individual; and

...

2. The Registrant contributed to a health record or file for the individual.

[38] I do not agree with the appellant's argument that the Committee's interpretation of "direct interaction" makes the four conditions in s. 1(1) of the *Patient Criteria Regulation* redundant. I find the OCP's submission reasonable that those conditions may be relevant in assessing whether informal advice provided by a regulated health professional meets the threshold of a pharmacist-patient relationship. Nor do I agree with the appellant's submission that the Committee's interpretation renders the phrase "direct interaction" redundant. Health care professionals may consult with one another regarding a patient matter and the NAPRA Standards refer specifically to collaboration (s.2 and Standard s.4). The OCP's submission is reasonable that reference to "direct interaction" makes clear that informal consultation between health care professionals, without more, will not necessarily be sufficient to trigger a patient relationship involving the professional being consulted.

[39] The filling of a prescription comprises multiple controlled acts performed by a registered pharmacist: dispensing, selling, and supervising drugs (*Pharmacy Act* at s. 4(1)). To find that the complainant was not a patient of the appellant would mean that a member of the public could have their prescription filled without ever becoming a patient, a conclusion that flouts the experience of pharmacists and patients and the power dynamic between them. As found by the Committee, there was a power imbalance between the appellant and the complainant which was aggravated by the complainant's subordinate position at work (para.234 of the Decision). The Committee's finding that the definition of "patient" under the *Patient Criteria Regulation* has been satisfied on the facts of the case is consistent with protecting the public interest. There is no palpable and overriding error.

Conclusion

[40] The appeal is dismissed.

Costs

[41] In accordance with the parties' agreement, the OCP as the successful party is entitled to costs in the amount of \$10,000.

“Backhouse J.”

I agree: “D.L. Corbett J.”

I agree: “Rees J.”

Released: December 08, 2025

CITATION: Tatla v. Ontario College of Pharmacists, 2025 ONSC 6728
DIVISIONAL COURT FILE NO.: 341/25
DATE: 20251208

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT
Backhouse, D.L. Corbett and Rees, JJ.

BETWEEN:

SUKHJEEV TATLA

Appellant

– and –

ONTARIO COLLEGE OF
PHARMACISTS

Respondent

REASONS FOR JUDGMENT

BACKHOUSE J.

Released: December 8, 2025