

6 March, 2023

## **Punished for Doing the Right Thing? The Battle for Ethical Medicine in Ontario**

The College of Physicians and Surgeons of Ontario (CPSO) continues to pursue disciplinary proceedings against three Ontario doctors for providing vaccine exemption letters and making allegedly “misleading” statements questioning the health benefits of CPSO policy on COVID-19. The stakes are high for Doctors Crystal Luchkiw, Patrick Phillips, and Mark Trozzi; with their medical licenses indefinitely suspended, they are risking their right to practice medicine, their income, and their reputations as health care professionals in a struggle over both the right of patients to receive personal health care and advice from their physicians, and the right of physicians to debate medical matters of public concern. For Dr. Mark Trozzi, it all comes down to following the golden rule of doing no harm, and the Hippocratic oath to uphold the medical profession’s ethical standards. The ethical practice of medicine is simply the non-negotiable means and end of being a real doctor. For Dr. Crystal Luchkiw, the ethical and effective practice of medicine depends upon doctors’ freedom to make independent clinical judgments based on the doctor’s knowledge of both the relevant medical domain and the patient’s unique needs. It is imperative that such judgements proceed from both expertise and cornerstone medical fundamentals, and that they be exercised free from any and all coercive external interference.

According to Doctors Luchkiw, Phillips, and Trozzi, the COVID-19 related restrictions that the College of Physicians and Surgeons of Ontario has imposed upon doctors in Ontario are not only unethical and contrary to best medical practice, but they are also unlawful. As Dr. Patrick Phillips has explained, none of the policies imposed by the CPSO have any formal legal “force or effect to lawfully prosecute physicians.”<sup>1</sup> According to the most recent amendment of the Medicine Act of 1991, legally binding regulations may only be made by the CPSO’s council “subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister [of Health].” The CPSO’s COVID-19 policies do not have the Lieutenant Governor’s approval and were not reviewed by the Minister, and they do not, therefore, meet the criteria of legally binding regulations. The point might seem insignificant at first glance, but it is of major importance. Essentially, if the COVID-19 policies imposed by the CPSO have no legally binding power, then the CPSO has no grounds for launching investigations against Doctors Luchkiw, Phillips, and Trozzi, no grounds for disciplinary proceedings and charges against them, and no grounds for suspending their medical licenses.

A recent hearing panel at the College of Physicians and Surgeons of Ontario rejected a motion to dismiss the CPSO investigations and disciplinary proceedings against Doctors Luchkiw, Phillips, and Trozzi. This means that all three of these highly qualified and ethically conscientious doctors continue to have their licenses suspended. In spite of this disappointing outcome, the hearing panel **did** result in several significant victories for the trio of physicians. In fact, the CPSO conceded that its restrictions on speaking out against public health orders, on prescribing off-label lifesaving treatments for COVID-19, and on writing exemptions for vaccines

are **only suggestions** "properly characterized as guidance documents, not binding rules." Now clearly, there is tremendous irony in this concession. The hearing panel has essentially exonerated all three doctors by admitting that the CPSO's COVID-19 restrictions are recommendations that do not have the force of law and are not mandatory. At the same time, the panel refused to dismiss the CPSO's disciplinary proceedings against Doctors Luchkiw, Phillips, and Trozzi, and their licenses to practice medicine remain suspended.

As Dr. Patrick Phillips has explained, what he and his two colleagues are facing, in the ongoing litigation with the CPSO, should be of major concern to all Ontarians and to all Canadians. What is at issue is, firstly, the right of all Canadians to receive personalized medical advice, treatment, and care; secondly, who determines the nature of that care; and thirdly, what advice and opinions medical doctors can express privately to patients and publicly to their communities. By depriving physicians of the freedom to treat and to communicate with patients in accordance with their medical experience and expertise and knowledge of individual patients' needs, the CPSO effectively prohibits the basis for informed consent and compels patients to accept whatever advice is promoted by the CPSO in lieu of proper personalized care.

The threat to Doctors Luchkiw, Phillips, and Trozzi's continued medical practice constitutes a real crisis in Canadian medicine that needs to be addressed immediately. The crux of the problem is that the colleges have been given virtually unlimited power to investigate, discipline and de-license doctors. Section 7 of the Canadian Charter of Rights and Freedoms states that "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice." This section of the Charter should protect Canadian citizens from both investigations that are unconstrained by fact-based allegations, and from punishments being imposed before the allegations have been determined. Contrary to common sense, however, courts have ruled that section 7 does not apply to investigations related to professional licenses. Alarming, this restriction of section 7 rights and freedoms grants regulatory bodies like the CPSO unreasonably broad powers to investigate and to suspend medical practice licenses prior to a hearing. As Dr. Patrick Phillips writes, this means that the College "can charge anyone for absolutely anything and get away with it."

The hearing panel at the College of Physicians and Surgeons of Ontario chose to schedule a hearing of the allegations against Doctors Luchkiw, Phillips, and Trozzi, even after conceding that the CPSO's statements upon which the proceedings are based--regarding speaking out against CPSO COVID-19 policies, prescribing off-label lifesaving treatments for COVID-19, and providing individual vaccine exemption--were only ever **suggestions** and not binding rules. For a great many Canadians following these proceedings, it must surely appear self-evident that such **suggestions** should not be used as grounds for suspension, investigation or punishment of any doctor. Indeed, it seems highly questionable whether the CPSO panel has acted in good faith during the hearing. To wit, the CPSO hearing panel refused even to address Doctors Luchkiw, Phillips, and Trozzi's key submissions that the CPSO "Registrar, Dr. Nancy Whitmore, did not have reasonable and probable ground to order [their] investigations [... and that] the

College ... failed to establish that [they] had violated a standard of practice.” Quite frankly, to ignore these submissions has all the earmarks of hubristic folly, appearing contrary to the principles of fundamental justice and the spirit of law in Canada. Dr. Patrick Phillips has expressed the matter succinctly—”In a free and democratic society, citizens are protected from laws that are so broad you can't know if you're violating them beforehand.”

Discussions of legal proceedings rarely make for good reading. The plodding pace of legal arguments and the barrier posed by technical vocabulary inevitably get in the way of visceral understanding. That’s why it’s absolutely essential that, in closing, we return to the fundamental issues. Doctors Crystal Luchkiw, Patrick Phillips, and Mark Trozzi have lost their licenses, their careers are under threat, and their lives are being marred by the unpleasant necessity of enormously costly ongoing legal battles. The personal cost they are paying is no laughing matter, but that personal cost is not what’s driving them, and it’s not where the gravity of this situation lies. These doctors are fighting for the right to care for their patients in the best way they know how, as determined by their medical knowledge and the individual needs of each individual patient. In reminding us what is at stake with the COVID-19 related restrictions imposed upon doctors by the CPSO, Dr. Phillips pulls no punches:

Countless patients have needlessly died from COVID while being denied early treatments with life-saving medications. Countless patients have been deprived of informed consent around the risks of vaccines. Countless patients were denied exemptions even though they had horrendous adverse events after the first dose. Countless patients have been forced to take genetic therapy against their will and many of those patients have died or been maimed by that therapy.

Dr. Phillips, for one, has had enough—in view of the terrible harms associated with the CPSO’s unchecked power over medical care throughout the declared pandemic, he is calling for a “complete dismantlement of the College of Physicians and Surgeons of Ontario” and the subsequent creation of a new College, “one with leaders who respect the rule of law” and whose power is “limited to prosecutions of offences that are in line with the charter and protect the rights of all.”

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<sup>i</sup> All quoted and paraphrased materials, including quotes and paraphrases of statements made by Doctors Luchkiw, Phillips, and Trozzi, are drawn from the documents, video, and written statements shared by Dr. Patrick Phillips in the following 31 part Twitter thread. [https://twitter.com/DrP\\_MD/status/1616861353649602560?s=20&t=zs-jR4PiAgEA-10p31V-Fg](https://twitter.com/DrP_MD/status/1616861353649602560?s=20&t=zs-jR4PiAgEA-10p31V-Fg) When paraphrasing statements, I have done my best to remain true to both the content and spirit in which they were made. I apologize, in advance, for any inaccuracies that I may have inadvertently introduced.