

ONTARIO
SUPERIOR COURT OF JUSTICE

APPLICATION UNDER Rules 3, 14 and 40 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, s. 27, 30, and 33 of the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, s. 87 of the Health Professions Procedural Code, which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, s. 4 and 9 of the *Medicine Act, 1991*, S.O. 1991, c. 30, and s. 4 and 12 of the *Traditional Chinese Medicine Act, 2006*, S.O. 2006, c. 27 and Professional Misconduct, O. Reg. 318/12 under *Traditional Chinese Medicine Act, 2006*

BETWEEN:)
)
College of Physicians and Surgeons of) *Julia Wilkes* for the Applicant
Ontario)
)
Applicant)
)
- and -)
)
Alan Canon a.k.a. Oleg Kanaykhin, Oleg)
Konanykhin, 2183615 Ontario Inc., o/a)
Clinical Cranial Osteopathy Inc. and o/a)
Alan Canon Enterprise Corp. and)
2454920 ONTARIO INC., o/a Ozone)
Clinic Inc.)
)
Respondents)
) HEARD: August 9, 2018

PERELL, J.

REASONS FOR DECISION

A. Introduction

- [1] The Applicant is the College of Physicians and Surgeons of Ontario (the "College").
- [2] The Respondent is Alan Canon, also known as Oleg Kanaykhin or Oleg Konanykin. The Application as against 2454920 Ontario Inc. was abandoned.
- [3] Mr. Canon has operated as: Alan Canon Enterprises Corp., 2454920 Ontario Inc., and Ozone Clinic Inc.

[4] The College alleges that the Respondents have been practicing medicine contrary to the *Regulated Health Professions Act, 1991*¹ and related legislation.

[5] The College brings this application for a permanent injunction restraining the Respondents from performing “controlled acts,” which is a defined term under the legislation, and from holding Mr. Canon out as a doctor, osteopath, and neurosurgeon.

[6] For the reasons that follow, the application is granted.

B. Facts

[7] The College is the self-regulating authority for the medical profession in the province of Ontario.

[8] Mr. Canon claims to have been a licensed physician in Russia, although he has never sought to be licensed in Ontario. He is not and has never been a member of the College.

[9] In Toronto and Mississauga, Ontario, Mr. Canon operated businesses known as the Ozone Clinic, Alan Canon Enterprise Corp., and Clinical Cranial Osteopathy. His businesses operated as a medical clinic with a waiting area, treatment rooms, and administrative staff. Mr. Canon displayed certificates about his professional credentials in the treatment rooms. He treated patients.

[10] In October 2013, the College learned that Mr. Canon was holding himself as a doctor and performing injections. The College received numerous complaints that Mr. Canon used the titles doctor, physician, and doctor of osteopathy. Eight individuals confirmed that Mr. Canon referred to himself or his staff referred to him by the titles doctor and osteopathic physician.

[11] Mr. Canon used the titles: “doctor”, “Dr.”, “physician”, “Medical Doctor”, “Neurosurgeon”, “Osteopath”, “osteopathic physician”, “Doctor of Osteopathy”, “D.O”, and “M.D” in advertisements, business cards, brochures, and on the websites of his businesses.

[12] From 2013 until July 19, 2016, Mr. Canon was a member of the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario (Traditional Chinese Medicine College), but that regulator does not authorize its members to use the title “doctor”.

[13] During the course of carrying on his businesses in Mississauga and Toronto, Mr. Canon has performed the following acts, each of which is a “controlled act” under the *Regulated Health Professions Act, 1991*: (1) communicating diagnoses; (2) administering injections; (3) performing spinal manipulations; and (4) inserting needles below the dermis in a manner that did not constitute acupuncture.

[14] Many of the testimonials from patients on the businesses’ websites refer to Mr. Canon’s having communicated a diagnosis, having administered injections, or having performed spinal manipulations. Mr. Canon advertised his performance of injections on his website www.cranialosteopathy.com.

[15] As further illustrations of Mr. Canon’s communicating diagnoses, administering injections,

¹ 1991, S.O. 1991, c.18.

and performing spinal manipulations:

- Mr. Canon told Ms. Y that she had a blockage in her lymphatic system, problems with her pancreas, kidney stones, enlarged ovaries, and a prolapsed uterus. He diagnosed her as having a slipped disc in her lower back with bursitis in both shoulders. He proposed treatments based on those diagnoses. He performed a spinal manipulation on Ms. Y.
- Mr. Canon told Mr. K that he had problems with his spine caused by spending too much time in front of a computer. Mr. Canon injected Mr. K with ozone. The injection caused Mr. K to suffer a stroke and he was hospitalized.
- Mr. Canon injected Mr. S in his knee with "Prolozone B-12." A few days later, Mr. S was hospitalized with a severe infection in his knee and he had to undergo surgery to repair the damage.
- Mr. Canon injected Ms. M with liquid oxygen on at least two occasions to treat her arthritis.
- Mr. Canon performed a spinal manipulation on Ms. S and worsened her condition.

[16] Beginning in 2014, the College repeatedly asked Mr. Canon to refrain from holding himself out as a physician and to stop performing all controlled acts. Although he agreed to comply, he has continuously breached his undertaking.

[17] In 2014, the Traditional Chinese Medicine College received evidence that Mr. Canon was exceeding the scope of practice of a member of that regulator.

[18] On April 17, 2015, the Traditional Chinese Medicine College issued a Notice of Hearing setting out the allegations against Canon, and there was a hearing on October 20, 2015.

[19] At the hearing, Mr. Canon admitted, among other things that he had used a prohibited title contrary to s. 33(1) of the *Regulated Health Professions Act, 1991* and sections 1(32) and 1(39) of *Ontario Regulation 318/12*.

[20] At the hearing, he also admitted that he had contravened the *Regulated Health Professions Act, 1991* by performing an unauthorized controlled act, contrary to s.27(1) of the Act and s. 1(10) and 1(39) of *Ontario Regulation 318/12*. He admitted performing at least ten thread lift procedures, a procedure that involves inserting needles under the surface of the skin but does not constitute acupuncture.

[21] On November 12, 2015, the Traditional Chinese Medicine College imposed a 14-month suspension (to be remitted to 12-month upon meeting certain conditions) and required the completion of various courses related to ethics, recordkeeping, and fundamentals of traditional Chinese medicine. Mr. Canon's license was suspended effective November 12, 2015. The licence was never re-instated.

[22] On July 19, 2016, Mr. Canon resigned his license from the Traditional Chinese Medicine College.

[23] On July 7, 2017, after receiving and investigating additional complaints about Mr. Canon, the Traditional Chinese Medicine College issued a second Notice of Hearing, which is scheduled for August 14, 2018. The allegations include sexual abuse, performance of unauthorized controlled acts, use of a prohibited title and improper use of testimonials in respect of his practice.

[24] Mr. Canon has been charged with seven criminal offences including sexual assault (five counts), sexual exploitation (one count) and assault with intent to resist arrest (one count). One of the sexual assault allegations relates to a health care service offered by Mr. Canon. Having failed to appear at a recent Court appearance, there is a warrant out for Mr. Canon's arrest.

C. Discussion

1. The Regulation of Controlled Acts

[25] The practice of medicine and other regulated health care professions is governed by provincial legislation. The *Regulated Health Professions Act, 1991* and profession-specific legislation controls who may provide health care services to the public. Each health care profession has an associated college. A primary objective of the *Regulated Health Professions Act, 1991* and associated legislation is the protection of the public.²

[26] Under the *Regulated Health Professions Act, 1991* and the *Medicine Act, 1991*³ the College's statutorily mandated objects include the following: (a) to regulate the practice of the profession and to govern the members in accordance with the relevant legislation; (b) to develop, establish and maintain standards of qualification for persons to be issued certificates of registration; (c) to develop, establish and maintain programs and standards of practice to assure the quality of the practice of the profession; (d) to develop standards of knowledge, skill and judgment relating to the performance of controlled acts common among its members; and (e) to administer the *Medicine Act, 1991*, its Code and the *Regulated Health Professions Act, 1991* as it relates to the profession and to perform the other duties and exercise the other powers that are imposed or conferred on the College.

[27] An individual registered by the College is a "member". Any person who does not hold a Certificate of Registration issued by the College is not a "member" within the meaning of the *Regulated Health Professions Act, 1991* and the *Medicine Act, 1991*.

[28] Subsection 30(1) of the of the *Regulated Health Professions Act, 1991* prohibits a person who is not a member (absent appropriate delegation) from treating or advising someone about his or her health where it is reasonably foreseeable that serious physical harm may result.

[29] Subsection 27(1) of the *Regulated Health Professions Act, 1991* prohibits individuals who are not members (absent appropriate delegation) from performing specified "controlled acts" in the course of providing health care services. There are fourteen controlled acts, which are regarded as inherently dangerous and which have been taken out of the public domain.⁴

[30] Section 27(2) of the *Regulated Health Professions Act, 1991* lists the fourteen controlled

² *College of Optometrists of Ontario v. SHS Optical Ltd. (c.o.b. Great Glasses)*, [2006] O.J. No. 4708 at para. 77 (S.C.J.), aff'd 2008 ONCA 685.

³ S.O. 1991.

⁴ *College of Optometrists of Ontario v. SHS Optical Ltd. (c.o.b. Great Glasses)*, [2006] O.J. No. 4708 at para. 22 (S.C.J.), aff'd 2008 ONCA 685.

acts, which include: (1) communicating diagnoses; (2) administering injections; (3) performing spinal manipulations; and (4) inserting needles below the dermis in a manner that did not constitute acupuncture.

[31] The statute governing each of the regulated health professions sets out the scope of practice and which of the fourteen controlled acts its members may perform. The legislature has empowered the health professions colleges to determine whether individuals have appropriate skills and knowledge to provide those services, which limits the harm faced by the public.⁵

[32] The *Medicine Act, 1991* defines a broad scope of practice and Members of the College are permitted to perform 13 of the 14 controlled acts. In contrast, the *Traditional Chinese Medicine Act, 2006*⁶ defines a narrower scope of practice for its members, and members of the Traditional Chinese Medicine College may perform only two controlled acts, subject to certain limitations as follows: (1) communicating a traditional Chinese medicine diagnosis identifying a body system disorder as the cause of a person's symptoms using traditional Chinese medicine techniques; and (2) performing a procedure on tissue below the dermis and below the surface of a mucous membrane for the purpose of performing acupuncture.

2. Use of a Prohibited Title

[33] Under s. 33 of the *Regulated Health Professionals Act, 1991*, only members of the following regulated health colleges are permitted to use the title "doctor": (1) College of Naturopaths of Ontario (may use "naturopathic doctor"); (2) College of Chiropractors of Ontario (doctor); (3) College of Optometrists of Ontario (doctor); (4) College of Physicians and Surgeons of Ontario (doctor); (5) College of Psychologists of Ontario (doctor); and the Royal College of Dental Surgeons of Ontario (doctor).

[34] Members of the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario are not yet authorized to use the title "doctor". In December 2016, the *Regulated Health Professional Act, 1991* was amended to permit its members to use the title "doctor" if they hold a certificate of registration that entitles them to do so; but the College has not amended its Registration Regulation to create a "doctor" class.

[35] Section 33(1) of the *Regulated Health Professionals Act, 1991*, states: "Except as allowed in the regulations under this Act, no person shall use the title "doctor", a variation or abbreviation or an equivalent in another language in the course of providing or offering to provide, in Ontario, health care to individuals."

[36] In addition to the title doctor, the *Regulated Health Professionals Act 1991* restricts the use of three other titles: physician, surgeon, and osteopath. Section 9(1) of the *Medicine Act* prohibits the use of those titles by non-members as well as "a variation or abbreviation or an equivalent in

⁵ *College of Optometrists of Ontario v. SHS Optical Ltd. (c.o.b. Great Glasses)* [2006] O.J. No. 4708 at paras. 22, 32, aff'd 2008 ONCA 685.

⁶ 2006, S.O. 2006.

another language". Section 9(3) prohibits a non-member from holding himself out as a person who is qualified to practice in Ontario as an osteopath, physician, or surgeon.

3. Enforcing Compliance with the Regulated Health Professions Act, 1991

[37] The College's application is pursuant to s. 87 of the *Health Professions Procedural Code*, which is Schedule A of the *Regulated Health Professions Act, 1991*. Section 87 authorizes the College to apply to the Superior Court of Justice for an order directing a person to comply with a provision of the Code.

[38] The College is authorized by the *Regulated Health Professions Act, 1991* to apply to the Superior Court of Justice for an order directing a person to comply with the Act, the Procedural Code established by the Act, and the regulations or by-laws under those associated statutes. Each of the colleges may apply for an order, a statutory injunction, directing any person to comply with the *Regulated Health Professions Act* and its own profession-specific Act.⁷

[39] In *College of Physicians and Surgeons of Ontario v. Ravikovich*,⁸ Justice Swinton stated at para. 10:

An order directing a person to comply with the Code, pursuant to s. 87, is in effect a statutory injunction. When such an order is sought, in a case such as this, the Court must ask whether there has been a continued breach of the statute by the person against whom the injunction is sought and whether the statute permits the Court to make an order against that person. The College is not required to prove irreparable harm if the order is not made. A Court has discretion to refuse such an order - for example, where the order would be of questionable utility or inequitable (see, for example, *Ontario (Minister of Agriculture and Food) v. Georgian Bay Milk Co.*, [2008] O.J. No. 485 (S.C.) at para. 34).

[40] Thus, in the case at bar, the College may apply for an order directing an individual who is not a member to refrain from performing controlled acts while providing health care services, and the College may apply for an order directing an individual from using prohibited titles while providing health care services contrary to the *Regulated Health Professions Act, 1991* and the *Medicine Act, 1991*.

[41] In *Canada v. IPSCO Recycling Inc.*,⁹ at para. 51, Justice Dawson of the Federal Court summarized the legal principles that are to be applied in determining whether to grant a statutory injunction, as follows:

51. On the basis of the authorities cited by the parties I am satisfied that where a statute provides a remedy by way of injunction, different considerations govern the exercise of the court's discretion than apply when an Attorney General sues at common law to enforce public rights. The following general principles apply when an injunction is authorized by statute:

(i) The court's discretion is more fettered. The factors considered by a court when considering equitable relief will have a more limited application.

⁷ *College of Optometrists of Ontario v SHS Optical Ltd. (c.o.b. Great Glasses)*, [2003] O.J. No. 3077 at paras. 46-61 (S.C.J.).

⁸ 2010 ONSC 5714 at para. 10.

⁹ [2003] F.C.J. No. 1950 (Fed. Ct.).

(ii) Specifically, an applicant will not have to prove that damages are inadequate or that irreparable harm will result if the injunction is refused.

(iii) There is no need for other enforcement remedies to have been pursued.

(iv) The Court retains a discretion as to whether to grant injunctive relief. Hardship from the imposition and enforcement of an injunction will generally not outweigh the public interest in having the law obeyed. However, an injunction will not issue where it would be of questionable utility or inequitable.

(v) It remains more difficult to obtain a mandatory injunction.” [internal citations omitted]

[42] Proof of damages or proof of harm to the public is not an element of the legal test to obtain a statutory injunction.¹⁰

[43] Where a public authority applies to the court to enforce legislation, and a clear breach of the legislation is established, only in exceptional circumstances will the court refuse an injunction to restrain the continued breach.¹¹ The onus to raise the exceptional circumstances lies with the respondent,¹² and those circumstances are limited; for example, to where there was a right that pre-existed the enactment contravened or where the events do not give rise to the mischief the enactment was intended to preclude”.¹³

[44] This statutory injunction test has been applied to order unlicensed practitioners in Ontario to cease performing acts that are restricted to those who are properly licensed.¹⁴

[45] In the immediate case, the College has met the test for a statutory injunction. Moreover, although it was not required to establish actual harm from Mr. Canon’s activities as a prerequisite for obtaining an injunction, there is an ample evidence that Mr. Canon has caused harm and is a danger to those that receive treatments from him.

[46] Further, there is evidence that Mr. Canon has: (a) communicated a diagnosis to an individual which identified a disease or disorder as the cause of symptoms in circumstances in which it is reasonably foreseeable that the individual will rely on the diagnosis (b) administered a substance by injections to at least three patients who have communicated with the College, and the testimonials posted to his website suggest that Canon has administered many other injections; (c) performed spinal manipulations; and (d) he admitted that he has performed a thread lift procedure which is a procedure on tissue below the dermis that did not constitute acupuncture;

[47] Mr. Canon did not file any evidence on the application and did not attend the hearing of

¹⁰ *College of Physicians and Surgeons of Ontario v. Ravikovich*, 2010 ONSC 5714 at para. 10; *College of Opticians of Ontario v. City Optical Inc.*, [2009] O.J. No. 2200 at paras. 10-11, 14, 50-51 & 54-56 (S.C.J.); *Manitoba Assn. of Optometrists v. 3437613 Manitoba Ltd. (c.o.b. Eye-Deal Eyewear)*, [1997] M.J. No. 584 at para. 25-28 (Q.B.), aff’d [1998] M.J. No. 313 (C.A.).

¹¹ *Vancouver (City) v. Maurice*, [2005] B.C.J. No. 96 at paras. 34 and 57(C.A.).

¹² *Allied Properties v 1064249 Ontario Inc.*, 2016 ONSC 6665 at para. 7.

¹³ *Vancouver (City) v. Maurice*, [2005] B.C.J. No. 96 at para. 57; *British Columbia (Minister of Environment, Lands and Parks) v. Alpha Manufacturing Inc.*, [1997] B.C.J. No 1989 at paras 30-33 (B.C.C.A.); *College of Physicians and Surgeons of Ontario v. Ravikovich*, 2010 ONSC 5714 at para. 10.

¹⁴ *Law Society of Upper Canada v. Chiarelli*, 2013 ONSC 1428, aff’d 2014 ONCA 391 at paras. 22-26; *Law Society of Upper Canada v. Augier*, 2013 ONSC 45, at paras. 9 and 11.

the application. There are no exceptional circumstances that would justify denying the College the order it seeks.

[48] Further still Mr. Canon has admitted that he violated the prohibitions on the use of the title "doctor", and the evidence establishes that that he has also used the titles "doctor of osteopathy", "neurosurgeon", and "physician" contrary to s. 33(1) of the *Regulated Health Professions Act, 1991* and s. 9(1) of the *Medicine Act, 1991*.

D. Conclusion

[49] Therefore, I grant the Order requested by the College; that is, I grant an Order:

(a) directing Alan Canon, his employees, servants, agents or any person acting in association with his or under his instructions, to comply with sections 27 and 30 of the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18, and in particular to permanently refrain from:

(i) performing controlled acts in the course of providing health care services to any individual including, but not limited to:

- communicating to the individual or his or her representative a diagnosis identifying a disease or disorder as the cause of symptoms of the individual in circumstances in which it is reasonably foreseeable that the individual or his or her personal representative will rely on the diagnosis;
- inserting needles below the skin in a manner that does not constitute acupuncture;
- administering a substance by injection or inhalation; and
- performing spinal manipulations.

(ii) treating or advising a person with respect to his or her health in circumstances in which it is reasonably foreseeable that serious bodily harm may result from the treatment or advice or from an omission from them; and

(iii) possessing acupuncture needles, syringes, needles, or other injection paraphernalia that may be used to perform a procedure on tissue below the dermis at any office, clinic, or worksite where Canon provides services to clients, except where Canon practices with a member of a regulated health college who is licensed to perform procedures on tissue below the dermis;

(b) directing Alan Canon, his employees, servants, agents or any person acting in association with his or under his instructions, to comply with sections 33 of the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18, and in particular to permanently refrain from:

(i) using the title "doctor" and any variation or abbreviation thereof, or equivalent in another language, including "Dr.", in the course of providing or offering to provide health care services to individuals in Ontario;

(ii) using the restricted titles "physician", "surgeon", or "osteopath" and any variation or abbreviation thereof, or equivalent in another language; and

(iii) holding himself out as a person who is qualified to practice in Ontario as a physician, surgeon, or osteopath; and,

(c) an Order directing 2183615 Ontario Inc. o/a Clinical Cranial Osteopathy Inc. and/or Alan Canon Enterprise Corp. from holding Canon out as a person who is qualified to practice in Ontario as a physician, surgeon, or osteopath.

[50] I grant the College costs of \$24,934.60.

Perell, J.
Perell, J.

Released: August 10, 2018

CITATION: College of Physicians and Surgeons of Ontario, 2018 ONSC 4815
COURT FILE NO.: CV-17-588458
DATE: 20180810

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

College of Physicians and Surgeons of Ontario

Applicant

– and –

**Alan Canon a.k.a. Oleg Kanaykhin, Oleg
Konanykhin, 2183615 Ontario Inc., o/a Clinical
Cranial Osteopathy Inc. and o/a Alan Canon
Enterprise Corp. and 2454920 Ontario Inc., o/a
Ozone Clinic Inc.**

Defendants

REASONS FOR DECISION

PERELL J.

Released: August 10, 2018