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ARTICLE

Doctoring The Complaints Process? Procedural Fairness And Professional Discipline Legislation

Abdul v. Ontario College of Pharmacists, 2018 ONCA 699

The Ontario Court of Appeal released its decision in *Abdul v. Ontario College of Pharmacists*, 2018 ONCA 699, assessing whether a College may institute a Registrar-initiated complaint against a member after the original complaint has been withdrawn.

Briefly, the College received two complaints from individuals alleging that the respondent's pharmacy was taking back unused medications that had already been dispensed and re-dispensing them to different patients. One of the complaints was in writing. The College failed to deal with the written complaint within 150 days of its receipt as required by the *Health Professions Procedural Code* (the "Code"), and only contacted the author of the complaint over a year later.

The College advised the author that she had two options with respect to her complaint: continue with it, or withdraw and have the it proceed as a Registrar-initiated complaint. The author elected the latter option. The respondent provided only a cursory response to the Registrar's investigative report, and the matter was referred to the Discipline Committee.

The Discipline Committee dismissed the member's motion to quash the charges on the ground that the College had lost jurisdiction to prosecute the allegations by failing to abide by the process mandated by the Code and improperly proceeded with a Registrar-initiated investigation. The Divisional Court quashed the Discipline Committee's Decision and found for the member. The College appealed.

The Ontario Court of Appeal concluded that the College's irregular treatment of the written complaint and allowing the withdrawal of the complaint did not constitute a breach of fairness to the member, and the College did not exceed its jurisdiction. There was nothing in the Code that forbid the withdrawal of the written complaint and the complaint was taken up by a Registrar-initiated investigation with full-procedural safeguards. The Court emphasized that the interpretive principle of strict compliance with and construction of professional discipline legislation is not exclusive or overriding. A balancing of the public interest and the fair hearing rights of the accused member is essential.

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