

FEB 13 2023



Filed pursuant to the *Class Proceedings Act*, RSBC 1996, c.50

S 231056

No.

Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

RODNEY MADRYGA

PLAINTIFF

AND:

COLLEGE OF PHYSICIANS AND SURGEONS OF BRITISH COLUMBIA

DEFENDANT

NOTICE OF CIVIL CLAIM

**This action has been started by the plaintiffs for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

**JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.**

**Time for response to civil claim**

A response to civil claim must be filed and served on the plaintiffs,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

## CLAIM OF THE PLAINTIFF

### Part 1: STATEMENT OF FACTS

#### The Parties

1. The Plaintiff, Rodney Madryga, is resident of British Columbia. The Plaintiff was injured in a motor vehicle accident in 1997, which resulted in permanent and painful injury. The Plaintiff has been prescribed high doses of opioids to manage pain on an ongoing basis since his accident. The Plaintiff has an address for service at 511-55 East Cordova Street, Vancouver, BC, V6A 0A5.
2. The Defendant, College of Physicians and Surgeons of British Columbia (the "College"), is an entity that regulates physicians and surgeons within the Province of British Columbia. The College is continued and maintained by the *Health Professions Act*, RSBC 1996, c.183.

#### The Plaintiff's Medical Condition and Treatment

3. The Plaintiff suffers from chronic and debilitating pain resulting from a motor vehicle accident that occurred in April of 1997. He was injured when a heavy truck he was driving while working broke through a road and slammed downwards. His air cushioned seat broke from the force of the impact and he was drive down towards the floor of the truck. He was exposed to a sudden downward loading as well as a lateral loading of his buttock area.
4. At the time of the injury, he felt something tear and experienced acute pain to the left side of his anus. Following the injury, his pain became persistent and he came to experience chronic spasms of his pelvic floor and ongoing acute pain that is localized to the left side of his coccyx.
5. It was concluded following various referrals in 1998 and 1999 that the source of the Plaintiff's pain is a subluxation of the coccyx and quite likely some damage to soft tissue surrounding his perineal area or possibly a ligamentous injury. An unsuccessful surgery in 1999 exacerbated rather than lessened the Plaintiff's pain.
6. After ongoing x-rays, CT scans, MRIs and other diagnostic evaluations, as well as pursuing physiotherapy and counselling, the Plaintiff's physicians and specialists concluded by late 1999 or early 2000 that no further surgical management or comparable interventions were indicated. His physicians and specialists settled on a treatment course consisting primarily of long-term pain management

consisting primarily of various opiates. His treatment has undergone a slow evolution over the course of approximately 24 years, including M-Eslon, Percocet, morphine sulphate and oxycodone. Methadone treatment was contra-indicated and the Plaintiff did not respond to alternative treatments, including non-opiate analgesics.

7. Pain management by means of opiates has allowed the Plaintiff a measure of normalcy for the past 24 years. The opiates allow him to be ambulatory, leave his house, engage socially with friends and family, engage in household tasks and enjoy, to a limited extent, low-impact recreational activities. The abatement of pain allows him to concentrate and communicate effectively with others.
8. The Plaintiff's physicians have repeatedly concluded that there are no concerns that the Plaintiff is misusing, abusing or diverting any prescribed opiates. The Plaintiff's dosage has remained stable, there have been no early refills, no lost prescriptions and none of the many other warning signs of problematic opiate use.

#### **Interference by the College with the Plaintiff's Treatment**

9. Beginning approximately August of 2015, and continuing unabated since then, the College has attempted to interfere with the Plaintiff's pain treatment.
10. Under the guise of a continuing education program, called the Prescription Review Program (the "Program"), the College accesses patient Pharmacare records to identify persons with high-dose opiate prescriptions (the "Target Patients"). The College then purports to "educate" the Target Patients' physicians by directing their treating physicians to reduce the prescription dosage of their Target Patients. Physicians who do not follow the directions to reduce the Target Patients' dosage of opiates are subject to relentless regulatory harassment and sanctions, including repeated time consuming interviews and written interrogatories, demands for production of patient documents, requirements to undertake unnecessary literature reviews, requirements to take unnecessary and undignified ethical lectures and seminars, and formal investigation and discipline.
11. The College asserts in its written Practice Standard – Safe Prescribing of Opioids and Sedatives that high-dose opioids (>90 mg morphine equivalent daily dose) are permissible only if there is substantive evidence of exceptional need and benefit to the patient, but this exception is nominal and illusory and expressed in bad faith. In practice, the College does not recognize any exceptions. In administering the Program, the College takes the position that no patients should receive opioid

medication in a daily dose that exceeds 90 mg morphine equivalent. The College leaves no room for the treating physician to disagree with the College's view that 90 mg morphine equivalent is the maximum allowable dose. Although the College claims that there is an evidence-based rationale for this standard, the scientific evidence does not support an upper limit of 90 mg/day morphine equivalent.

12. In administering the Program, the College does not meet with or interview the Target Patients, make specific investigation of the Target Patients' needs or histories, and does not conduct a paper review of the Target Patients' medical histories. The College has a generalized, non-individualized, dogmatic and moralizing belief that dosages above 90 mg morphine equivalent are necessarily and intrinsically harmful.

### **The Program as Applied to the Plaintiff**

13. On August 11, 2015, and January 11, 2016, the College wrote to the Plaintiff's then-physician, Dr. L, and directed Dr. L to commence tapering the Plaintiff's opiate prescription by 10% every two weeks. Dr. L repeatedly advised the College that there was no evidence or concerns that the Plaintiff was misusing, abusing or diverting any prescribed opiates, and no positive reason, such as adverse side effects, to disrupt the Plaintiff's treatment. The College insisted that Dr. L taper or reduce the Plaintiff's medication by 10% every two weeks.
14. The Plaintiff was reluctant and unwilling to taper his dosage. On the basis of his past experience, the Plaintiff anticipated that he would suffer if his dosage was reduced. Dr. L told the College that the Plaintiff did not consent to tapering his dosage, but the College insisted to Dr. L that the Plaintiff's dosage be tapered. At the urging of the College, Dr. L told the Plaintiff that if the Plaintiff did not attempt tapering, Dr. L would stop treating him entirely and cease prescribing any opiates for pain management. At that point, Dr. L explained to the Plaintiff that the College was compelling him to reduce the dosage, and Dr. L simply prescribed a lower dosage. The Plaintiff had no choice but to fill the prescription for a tapered dosage of his medication.
15. Shortly after commencing opiate tapering, the Plaintiff started to suffer unbearably from debilitating pain. As his dosage was lowered and his suffering increased, the Plaintiff was increasingly deprived of the standard of living he enjoyed on his pre-tapered dosage. The Plaintiff became bedridden, rarely left his house, rarely socialized with friends and family, and was unable to do household tasks or

engage in recreational activity. The intensity of his pain made it difficult to concentrate or communicate with others. The Plaintiff was in constant pain, whether he was standing, sitting or lying down.

16. The Plaintiff explained his unbearable suffering to Dr. L and asked to be returned to his pre-tapering dosage. Dr. L was directed by the College not to return the Plaintiff to his pre-tapering dosage and continue the reductions of the Plaintiff's dosage by 10% every two weeks. Dr. L was manifestly distressed by the College's direction and told the Plaintiff that he felt compelled to follow the College's direction. Dr. L suggested to the Plaintiff that the Plaintiff urgently seek treatment from another physician.
17. The Plaintiff retained legal counsel and, under threat of litigation, the College temporarily suspended the Program in respect of the Plaintiff and advised Dr. L that the tapering could cease. Dr. L told the Plaintiff that he was shaken by this encounter with the College and, although he would not immediately abandon the Plaintiff, the Plaintiff should continue to seek treatment from another physician. The Plaintiff thereafter established a treating relationship with another physician, Dr. M, who has prescribed high dosage opiate medication that relieves the Plaintiff's pain.
18. After a brief remission, the College tracked the Plaintiff down by means of his Pharmacare records and initiated the Program in respect of the Plaintiff's new physician, Dr. M. Since 2018, the College has relentlessly harassed Dr. M regarding the Plaintiff's dosage of opiate medication. Dr. M has refused the College's direction to taper the Plaintiff's dosage of opiate medication on the basis that the Plaintiff benefits from the medication, is stabilized, shows no signs of adverse side-effects, shows no signs of opiate abuse and, importantly, lowering the Plaintiff's dosage will cause him unbearable suffering. The College also attempted to compel Dr. M to stop treating the Plaintiff altogether, and to stop prescribing combinations of pharmaceutical drugs to the Plaintiff that assist the Plaintiff with other medical problems.
19. The College responded to Dr. M's refusal to follow the College's direction to taper the Plaintiff's dosage by harassing Dr. M with unceasing interviews, interrogatories, investigations, demands for documentation, imposition of unnecessary training, threats of greater discipline, including suspension of his entitlement to practice medicine and has indirectly threatened to suspend his

entitlement to bill the Medical Services Plan. Dr. M has endured this harassment by the College, principally with respect to the Plaintiff's prescription medication, for more than five years.

20. The College inflicted physical and psychological suffering on the Plaintiff, deprived the Plaintiff of properly prescribed medical treatment, and engaged in conduct that terminally undermined his relationship with Dr. L and threatens his relationship with Dr. M. If the Plaintiff is denied access to safe and effective high-dose pharmaceutical opiates, the Plaintiff will be forced to medicate using toxic street drugs and will be at risk of overdose and death. The realistic prospect of losing his relationship with another physician and of being forced to resort to street drugs causes the Plaintiff severe psychological distress and uncertainty. The College knowingly causes the Plaintiff ongoing and severe psychological distress. The Plaintiff is stigmatized and marginalized and rendered an object of suspicion by the actions of the College.
21. The College has never met with the Plaintiff, has never undertaken a medical examination of the Plaintiff and has never reviewed the Plaintiff's medical history. The College's insistence on applying the Program to the Plaintiff is ideological, dogmatic and unscientific. The College's interference with and attempts at interference with the Plaintiff's medical treatment is in bad faith, in the sense that the College has no individualized or clinical basis to believe that it is acting in the Plaintiff's best interests. The College's implementation of the Program on the Plaintiff reflects the College's arrogant delusion that, despite having no clinical relationship with the Plaintiff, the College knows what is best for the Plaintiff, knows better than the Plaintiff's physician, and is more capable of choosing the Plaintiff's treatment than the Plaintiff himself.
22. There is no scientific support for a universal >90 mg morphine equivalent daily dosage limit, with or without an exception. The >90 dosage limit is arbitrary and overbroad. The science shows that patients commonly benefit from doses in excess of 90 mg morphine equivalent on a long-term basis without adverse effect. There is no scientific basis for tapering patients who have stabilized at a long-term high-dose of opioid medication. Outside the College, even general guidelines that recommend tapering long-term high-dose opioid patients acknowledge that tapering can and should cease if a patient is suffering or debilitated. The College is aware of this fact and its decisions are accordingly made in bad faith.

### **Adverse Effect on the Public**

23. Physicians are generally aware of the Program and are generally aware that the College harasses and disciplines physicians who prescribe opioids in dosages higher than >90 mg/daily equivalent, even when it is required by their patients for pain management. Physicians are aware that the College mines the Pharmanet database for Target Patients who are prescribed long-term or high-dose opioids.
24. The Program generally intimidates physicians and makes physicians reluctant and unwilling to prescribe opiates and reluctant and unwilling to accept patients who require long-term or high-dosage opiate treatment. Patients who require long-term and/or high-dose opiate treatment are forced to live with acute pain resulting from under-dosing or are forced out of the medical system or are compelled to seek relief of their pain and suffering by resorting to toxic and lethal street drugs, or to suicide. The Program contributes to the epidemic of deaths from overdose of toxic street drugs, especially fentanyl.
25. The College is aware that the Program intimidates physicians and deprives patients of access to safe long-term and/or high-dosage pharmaceutical opiates.

### **The Proposed Class**

26. This action is brought on behalf of the following proposed classes of persons:
  - a. All persons within British Columbia subject to the Program;
  - b. All persons within British Columbia prescribed opiates at a dosage of greater than 90 mg morphine equivalent daily;
  - c. All persons whose prescriptions have been altered or reduced by the Program;
  - d. All persons whose treatment has been interfered with by the College's implementation of the Program; and
  - e. All persons whose pharmacare records were accessed by the College pursuant to the Program.

(collectively, the "Class Members")



## **Part 2: RELIEF SOUGHT**

1. The Plaintiff seeks the following injunctive relief:
  - a. An order directing the College to end all aspects of the Program that infringe patient privacy and/or interfere with individual medical treatment;
  - b. An order directing the College to cease all harassment of physicians in respect of high-dose and/or long-term opiate prescriptions; and
  - c. An order directing the College to cease all investigations, audits, threats, interviews, interrogatories and other administrative action against Dr. M in respect of the Plaintiff;
2. The Plaintiff additionally seeks the following relief:
  - a. A declaration that the Program infringes the rights of the Plaintiff to liberty and security of the person pursuant to s.7 and the right of the Plaintiff to privacy pursuant to s. 8 of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c.11*;
  - b. Damages pursuant to s. 24(1) of the *Charter*;
  - c. General and aggravated damages;
  - d. Punitive damages; and
  - e. Costs, including special costs.

## **Part 3: LEGAL BASIS**

1. The Plaintiff relies on the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c.11* (the "*Charter*").
2. The Plaintiff says that the College has infringed his *Charter* right to liberty and security of the person, including his right to medical autonomy and his right against forced treatment. This interference is overbroad, arbitrary and the purported benefits thereof are grossly disproportionate to the suffering and distress caused by the interference. Taken at its most charitable, the goal of the Program relates to generalized considerations and concerns that do not apply to the Plaintiff. Furthermore, the goals of the Program could be achieved without interfering with

medical autonomy or interfering with the physician-patient relationship. The Plaintiff does not require the protection of the College from his physicians or from himself.

3. The Plaintiff says that the College's illicit and non-consensual access to his Pharmanet records infringes his right to privacy pursuant to ss.7 and 8 of the *Charter*. The College's illicit and non-consensual access to his Pharmanet records constitutes a violation of the privacy of the Plaintiff pursuant to s. 1 of the *Privacy Act*, RSC 1996, c.373. The goals of the Program could be achieved without violating patient privacy.
4. The relationship between the Plaintiff and his physicians is a fiduciary relationship requiring the Plaintiff's physicians to act in his best interests, in accordance with their professional judgment. The College's actions constitute a deliberate interference with this fiduciary relationship, including the torts of counselling and directing a breach of fiduciary duty.
5. The actions of the College are taken in bad faith. The College falsely purports to the public, with the intention to deceive, that prescriptions of opioids of greater than 90 mg morphine equivalent daily are permissible in exceptional circumstances, when, in reality, the College does not recognize any exceptional circumstances and the prohibition on prescriptions above 90 mg morphine equivalent daily is absolute. The College maintains this pretense because it knows that it is unlawful, reprehensible and publicly indefensible to impose an absolute ban on higher dose opioid prescriptions.
6. The College is aware that successful treatment of serious chronic and ongoing pain can require prescriptions in excess of 90 mg morphine equivalent daily. The College is aware that denial of access to medical treatment for serious chronic pain causes patients to resort to toxic street drugs and risk of overdose and death. The College is aware that tapering opioids can cause unbearable suffering. This knowledge affixes the College with a duty of care to take reasonable care to ensure that its generalized concerns apply specifically to the Plaintiff. By failing to meet basic standards for assessing the Plaintiff on an individualized basis, the College breached its duties in respect of the Plaintiff.
7. By targeting the Plaintiff and interposing itself into the treatment of the Plaintiff, the College took on the role of the Plaintiff's physician, without the Plaintiff's consent

and against his wishes. The College forced a course of medical treatment on the Plaintiff contrary to his wishes and instructions, without providing him with sufficient information to give informed consent, without meeting with him or interviewing him or reviewing his medical history, and with calculated foreknowledge that its actions would cause and did cause him severe pain and suffering. The conduct of the College constitutes an aggravated form of medical negligence or medical malpractice that deserves special rebuke.

8. Nothing in the *Health Professions Act* awards the College the power to target individual patients and commandeer their treatment. The actions of the College are an abuse of process. The Plaintiff seeks compensation for the harms visited on him by the College, and an injunction restraining future interference with his medical treatment.

Plaintiffs' address for service:                   Gratl & Company  
Barristers and Solicitors  
511-55 East Cordova Street  
Vancouver, BC V6A 0A5  
Attn: Jason Gratl


Fax number for service:                           604-608-1919

E-mail address for service (if any):           n/a

Place of trial:                                       Vancouver

The address of the registry is:                 The Law Courts  
800 Smithe Street  
Vancouver, British Columbia  
V6Z 2E1

Date: February 13, 2023

  
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Signature of lawyer for plaintiff  
fr: Jason Gratl

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

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## Appendix

### Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This is a proposed class action dealing with the Defendant's interference with individual pain management treatment.

### Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

### Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

### Part 4:

*Class Proceedings Act*, RSBC 1996, c.50

*Health Professions Act*, RSBC 1996, c.183