

DISCIPLINARY COUNCIL

COLLÈGE DES MÉDECINS DU QUÉBEC

CANADA
PROVINCE DE QUÉBEC

No.: 24-2021-01102

DATE: 27 octobre 2021

THE COUNCIL:	M ^e LYDIA MILAZZO	Chair
	Dr. TERESA PETRAGLIA	Member
	Dr. VANIA JIMENEZ	Member

Ms. YVONNE SAM

Complainant

v.

Dr. ETHAN LICHTBLAU (97243), doctor (orthopedic surgery)

Respondent

DECISION ON THE COMPLAINANT'S REQUEST TO WITHDRAW HER COMPLAINT

OVERVIEW

[1] On or about March 29, 2020, Ms. Yvonne Sam (Complainant) filed a private complaint against Dr. Ethan Lichtblau (Respondent) in relation to an expert medical report prepared by Respondent in February 2015 regarding an injury she sustained to her left ankle (the expert report).

[2] The expert report was prepared by Respondent in the context of Complainant's claim to the CNESST.

[3] Complainant accuses Respondent of having made several errors in the expert report, including references to tests and manoeuvres that, according to Complainant, were never in fact carried out.

[4] Complainant also alleges that she had difficulty obtaining a copy of her records from Respondent.

[5] Initially, Complainant requested an investigation by the Office of the syndic of the Collège des médecins (the Syndic).

[6] Following its investigation, the Syndic decided not to file a disciplinary complaint against Respondent. In doing so, it determined that “Dr. Lichtblau’s report respects the standards of good practice.”¹

[7] In the meantime, Complainant instituted proceedings against Respondent in the small claims division of the Quebec Court which resulted in a settlement being reached by the parties and ratified by the Court on July 14, 2021² (the settlement agreement).

[8] As part of the settlement agreement, Complainant agreed to withdraw the present complaint.

[9] On October 1, 2021, a hearing was held pursuant to which Complainant, with the consent of Respondent, asked for the withdrawal of her complaint on a without costs basis.

QUESTION AT ISSUE

[10] The Council must answer the following question:

¹ As cited in the Complaint, dated March 28, 2020.

² Exhibit R-1.

- Should the Council grant Complainant's request for the withdrawal of her complaint, and if so, should this withdrawal be permitted on a without costs basis?

[11] For the reasons stated below, the Council grants Complainant's request to withdraw her complaint against Respondent, the whole on a without costs basis.

ANALYSIS

[12] As stated by the disciplinary council in the matter of *Ruben*³, where a complainant files a complaint against a professional before a disciplinary council, said council becomes seized of it such that the complainant no longer controls the fate of his complaint.

[13] Therefore, a complainant who wishes to withdraw his complaint must obtain from the Council the authorization to do so, as the right to such withdrawal is not automatic⁴.

[14] The Council's discretion in deciding whether to allow a complainant to withdraw his complaint must be exercised judiciously⁵.

[15] The Council can decide to accept the withdrawal, but it could also, where the protection of the public so requires, proceed with a hearing notwithstanding the request for withdrawal of the complaint⁶.

³ *Clark v. Ruben*, 2017 QCCDBQ 96, para. 11.

⁴ *Palacios c. Comité de déontologie policière*, 2007 QCCA 581; *Tassé c. Chiropraticiens du Québec*, 2001 QCTP 74; *Duranleau c. Chiropraticiens*, 2003 QCTP 76.

⁵ *Ingénieurs (Ordre professionnel des) c. Allard*, 2016 CanLII 12889 (QC CDOIQ).

⁶ *Clark v. Ruben*, *supra*, note 3, para. 14.

[16] In light of the above, the terms of the settlement agreement are not, in and of themselves, determinative of the issue before the Council, although they do serve to indicate that the issues, as between the parties, have been resolved.

[17] The Council must, however, decide if the protection of the public would nonetheless be compromised by the withdrawal of the Complaint.

[18] The Council is of the view that the protection of the public is not compromised by the withdrawal of the present complaint.

[19] In this regard, the Council notes that following its investigation, the Syndic decided not to file a complaint against Respondent.

[20] The Council is entitled to rely thereon in its assessment of the risks to the public of allowing the withdrawal of the present complaint, given that the mission of the Office of the syndic is to ensure the very protection of said public.

[21] Article 151 of the *Professional Code* provides that where the complainant is a person who has lodged a complaint under the second paragraph of article 128, as is the case here, the disciplinary council may condemn him to pay the costs only if the respondent is acquitted of every charge contained in the complaint and the complaint was excessive, frivolous or clearly unfounded.

[22] In this case, the Council has not decided that the Complaint is excessive, frivolous or clearly unfounded.

[23] Moreover, Respondent herein does not contest the complainant's request to withdraw her complaint on a without costs basis.

[24] Under the circumstances, the withdrawal of the complaint shall be authorized on a without costs basis.

FOR THESE REASONS, THE COUNCIL, UNANIMOUSLY:

[25] **GRANTS** Complainant's request to withdraw her complaint;

[26] **AUTHORIZES** the withdrawal of the complaint filed against Respondent;

[27] **The whole without costs.**

Lydia Milazzo
Original signé électroniquement

M^e LYDIA MILAZZO

Chair

Vania Jimenez
Original signé électroniquement

Dr. VANIA JIMENEZ

Member

Teresa Petraglia
Original signé électroniquement

Dr. TERESA PETRAGLIA

Member

Mrs. Yvonne Sam
Complainant

M^e Sajeda Hedaraly and M^e Ayse Dalli
Attorneys for Respondent

Date of hearing: October 1, 2021