

**UNIVERSITY TRIBUNAL
UNIVERSITY OF TORONTO**

IN THE MATTER of charges of academic dishonesty made on May 24, 2013

AND IN THE MATTER OF the University of Toronto *Code of Behaviour on Academic Matters, 1995,*

AND IN THE MATTER OF the *University of Toronto Act, 1971*, S.O. 1971, c. 56 as amended S.O. 1978, c. 88

B E T W E E N:

UNIVERSITY OF TORONTO

- and -

A [REDACTED] K [REDACTED]

Hearing Date: October 22, 2013

Panel Members:

Ms. Julie Rosenthal, Barrister and Solicitor, Chair

Dr. Maria Rozakis-Adcock, Faculty Panel Member, Faculty of Medicine

Mr. Afshin Ameri, Student Panel Member

Appearances:

Ms. Tina Lie, Assistant Discipline Counsel for University, Paliare Roland Barristers

Mr. Damon Chevrier, Registrar, St. Michael's College, University of Toronto

Ms. Janice Patterson, Legal Assistant, Paliare Roland Barristers

In Attendance:

Dr. Kristi Gourlay, Manager of Office of Academic Integrity, Faculty of Arts and Science

Mr. Christopher Lang, Director, Appeals, Discipline and Faculty Grievances

Ms. Sinéad Cutt, Administrative Assistant, Appeals, Discipline and Faculty Grievances

Not in Attendance:

Mr. A [REDACTED] K [REDACTED], the Student

Preliminary Matters – Service on the Student and Reasonable Notice

1. The Trial Division of the Tribunal held a hearing on Tuesday, October 22, 2013 to consider charges brought by the University against A [REDACTED] K [REDACTED] (referred to in the balance of these reasons as “the Student”) under the *Code of Behaviour on Academic Matters*. The Student did not attend the hearing, nor did anyone attend on his behalf.
2. The Tribunal waited several minutes after the appointed time for the start of the hearing. Neither the Student nor any representative of his arrived.
3. The University introduced affidavit evidence of Janice Patterson, a legal assistant to the discipline counsel who was acting in the matter. Ms. Patterson’s evidence established that the Student was served with notice of the charges against him on May 24, 2013. Service was effected by emailing a copy of the charges, along with a covering letter, to two email addresses, one of which was the email address on file with the University’s Repository of Student Information (known informally as “ROSI”), the other of which was a Gmail address, being a [REDACTED].k@gmail.com.
4. Ms. Patterson’s evidence further established that notice of the charges came to the Student’s attention, as the Student subsequently exchanged emails with discipline counsel (on which Ms. Patterson was copied) with respect to the charges and with respect to scheduling of the hearing.
5. After the Office of Appeals, Discipline and Faculty Grievances wrote to the Student suggesting a number of possible dates for the hearing, the Student responded via email on

August 19, 2013, and said that October 22, 2013 at 9:45 was a “suitable schedule” for him. The email address used by the Student in this correspondence was the Gmail address referred to above. Two days later, the discipline hearing coordinator at the university sent to the Student (at the same Gmail address as above) a formal Notice of Hearing, which set out the date and time selected by the Student – i.e., Tuesday, October 22, 2013 at 9:45 a.m. – as the appointed time for the hearing. The Notice of Hearing and the letters enclosed with it set out the following:

- (a) a statement of the date, time and place of the hearing;
 - (b) a statement that, if the Student did not attend the hearing, the hearing could proceed in his absence and without any further notice in the proceeding;
 - (c) a statement of the charges against the Student pursuant to the *Code of Behaviour on Academic Matters*; and
 - (d) a statement that the hearing was to proceed according to the procedures set out in section C.II of the *Code of Behaviour on Academic Matters*.
6. The Tribunal finds that the foregoing constituted reasonable notice of the hearing, in accordance with section 6 of the *Statutory Powers Procedure Act*.
7. In addition, the Tribunal considered the fact that a further email was sent to the Student six days before the time appointed for the hearing, using the same Gmail address as before, which again set out the time for the hearing (and also provided further information to the Student with respect to the conduct of the hearing). Evidence as to the

sending of this further email was provided by Ms. Patterson, who testified via teleconference. A copy of the email itself was introduced as an exhibit.

8. Ms. Patterson also testified that she was not aware of any response being sent by the Student indicating that he was unable to attend on the appointed date (which, as noted above, he had selected as his preferred date).
9. In light of all of the foregoing, the Tribunal determined that, pursuant to section 7(1) of the *Statutory Powers Procedure Act*, it was appropriate to proceed with the hearing in the absence of the Student.

The Charges

10. The charges against the Student were as follows:

1. On or about October 24, 2012, you knowingly forged or in any other way altered or falsified documents or evidence required by the University of Toronto, or uttered, circulated or made use of any such forged, altered or falsified documents, namely your personal statement, which you submitted in support of your request for academic accommodations or relief in CHM139H1, MAT135H1 and BIO271H1, contrary to Section B.I.1(a) of the Code.
2. On or about October 24, 2012, you knowingly forged or in any other way altered or falsified documents or evidence required by the University of Toronto, or uttered, circulated or made use of any such forged, altered or falsified documents, namely a University of Toronto Student Medical Certificate, purportedly prepared and signed by Dr. J. Klein of Greenwood Walk-In Clinic, dated April 11, 2012, which you submitted in support of your request for academic accommodations or relief in CHM139H1, MAT135H1 and BIO271H1, contrary to Section B.I.1(a) of the Code.
3. On or about October 24, 2012, you knowingly forged or in any other way altered or falsified documents or evidence required by the University of Toronto, or uttered, circulated or made use of any such forged, altered or falsified documents, namely a University of Toronto

Student Medical Certificate, purportedly prepared and signed by Dr. J. Klein of Greenwood Walk-In Clinic, dated April 16, 2012, which you submitted in support of your request for academic accommodations or relief in CHM139H1, MAT135H1 and BIO271H1, contrary to Section B.I.1(a) of the Code.

4. On or about October 24, 2012, you knowingly forged or in any other way altered or falsified documents or evidence required by the University of Toronto, or uttered, circulated or made use of any such forged, altered or falsified documents, namely a University of Toronto Student Medical Certificate, purportedly prepared and signed by Dr. J. Klein of Greenwood Walk-In Clinic, dated April 19, 2012, which you submitted in support of your request for academic accommodations or relief in CHM139H1, MAT135H1 and BIO271H1, contrary to Section B.I.1(a) of the Code.

5. On or about October 24, 2012, you knowingly forged or in any other way altered or falsified documents or evidence required by the University of Toronto, or uttered, circulated or made use of any such forged, altered or falsified documents, namely a University of Toronto Student Medical Certificate, purportedly prepared and signed by Dr. J. Klein of Greenwood Walk-In Clinic, dated April 30, 2012, which you submitted in support of your request for academic accommodations or relief in CHM139H1, MAT135H1 and BIO271H1, contrary to Section B.I.1(a) of the Code.

6. On or about October 24, 2012, you knowingly forged or in any other way altered or falsified documents or evidence required by the University of Toronto, or uttered, circulated or made use of any such forged, altered or falsified documents, namely a University of Toronto Student Medical Certificate, purportedly prepared and signed by Dr. Nerina Garcia of Brooklyn Medical Complex, dated October 19, 2012, which you submitted in support of your request for academic accommodations or relief in CHM139H1, MAT135H1 and BIO271H1, contrary to Section B.I.1(a) of the Code.

7. In the alternative, on or about October 24, 2012, you knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in order to obtain academic credit or other academic advantage of any kind by submitting falsified or forged document(s) to the University of Toronto in support of your request for academic accommodations or relief in CHM139H1, MAT135H1 and BIO271H1, contrary to Section B.I.3(b) of the Code.

The Evidence

11. The University led the evidence of one witness, Mr. Damon Chevrier. For the last seven years, Mr. Chevrier has worked as the Registrar at St. Michael's College, where the Student was registered. Prior to that, he worked for over twenty years as the Registrar at Woodsworth College. As part of his duties, Mr. Chevrier is involved in what he referred to as the "petition process" – which is a process whereby a student can ask that an accommodation be granted with respect to certain rules governing the completion of work. Such accommodations include the granting of an extension of time for the submission of work and, pertinent to the present case, the deferral of an examination.
12. Mr. Chevrier explained that, in order to obtain the desired accommodation, a student must fill out a petition form and provide a letter in support, along with all relevant documentation. The petition form along with the supporting material is reviewed by personnel in the Registrar's office and is then forwarded on to the central Office of the Faculty of Arts & Science, which makes the decision on whether or not to grant the petition.
13. In cases where the student is seeking an accommodation on the grounds of ill health, Mr. Chevrier explained that the petition form must be accompanied by a University of Toronto Student Medical Certificate – which is a form found on the Faculty of Arts & Science website and which must be completed by a physician.
14. In the event that the Faculty rejects the petition, the student has a right to appeal for a reconsideration of his or her petition. As part of this reconsideration process, the student

can provide a further explanation as to why he or she is asking for the accommodation, and can provide additional supporting documentation.

15. Mr. Chevrier testified that, on May 7, 2012, his office received a petition from the Student. As set out in the petition form, the Student sought the following accommodations:

(a) deferral of the final examination in BIO271H1S, which had been scheduled for April 11, 2012; and

(b) a second deferral of the final examinations in CHM139H1F and MAT135H1F.

16. With respect to the two deferrals referred to in subparagraph (b) above, the Student had, in the preceding term, already sought and been granted deferrals of the examinations in the courses in question. He was now seeking a further deferral for both of these already deferred exams. Those exams (as originally deferred) in CHM139H1F and MAT135H1F had been scheduled for April 19, 2012 and April 30, 2012, respectively.

17. In support of his petition, the Student submitted a document entitled "Absent declaration letter", which detailed what he described as a "severe viral infection", which he said had begun on April 3, 2012. In the letter, the Student said that, while sick, that he had "referred to a health care clinic on Bay Street". He said that the attending physician had prescribed "several types of antibiotics" and "recommended several anti-viral medications" and "prescribed at least 10 days of treatment time to rest in order to recover". The letter went on to say that the Student had attended at a further appointment (which he described as a "follow up session"), in which the attending physician prescribed "additional medications and three weeks of treatment and recovery time".

Finally, the letter stated that the Student's physician had filled out the requisite University of Toronto medical certificates, which were attached to the petition. The two certificates, one dated April 4, 2012 and the other dated April 23, 2012, both show the attending physician's name as "Dr. Lei". And they each show a stamp from "Bay College Medical & Lockwood Diagnostics".

18. Mr. Chevrier reviewed the petition and the supporting documentation and forwarded it on to the central Office of the Faculty of Arts & Science on May 8, 2012.
19. On May 25, 2012, the Office of the Faculty Registrar of the Faculty of Arts & Science refused the Student's petition. In its reasons for denying the petition, the Faculty focussed on two things: first, the time elapsed between the dates of the medical certificates (which were April 4 and April 23) and the dates of the examinations (which were April 11, 19 and 30); second, the fact that the student saw his physician on April 23rd, was able to write two other examinations held on April 25th and 27th respectively, but claimed to be unable to write a third examination held on April 30th. The Faculty's reasons for the refusal of the deferral include the following statements:

The time intervals between the times you sought medical attention to the actual dates of the three (3) examinations are unreasonably apart and cannot be considered to adequately justify your inability to write the examinations as scheduled.

You first sought medical attention on April 4th for an acute illness you reported to have started on March 27th, and the BIO271HIS 20121 examination was held on April 11th and the CHM139H1F deferred examination was on April 19th. You then saw your physician again on April 23rd and did not write the MAT135H1F 20119 deferred examination held on April 30th, yet you were able to write two (2) other examinations on April 25th and 27th.

20. Mr. Chevrier testified that, approximately five months later, on October 24, 2012, his office received a further petition from the Student, which consisted of an appeal from the Faculty's denial of his request for a deferral of the three exams. As with the original petition, the documentation submitted in support of the appeal consisted of:

(a) a completed petition form;

(b) an absent declaration letter; and

(c) supporting documentation, specifically, University of Toronto Student Medical Certificates.

21. However, there were significant differences between the contents of the supporting documentation submitted with the October 24, 2012 appeal, and what the Student had submitted in support of his original petition filed in May 2012.

22. First, the "Absent Declaration Letter" submitted in October 2012 stated that, "over the course of one month from early April to May", the Student was seen by "2 different physicians on 6 different occasions (family doctors)" and stated that "on one occasion" the Student "was also admitted to Emergency department of hospital due to [his] viral infection". This appears to be inconsistent with the Student's original Absent Declaration Letter, submitted in May 2012, which had mentioned only one physician (not two), had mentioned only two doctor's visits (not six) and had made no mention of any admission or visit to an emergency department.

23. Second, the October 2012 petition attached four University of Toronto Student Medical Certificates which had not been attached to, or referred to in, the Student's initial petition.

These Certificates indicated doctor's visits on April 11, April 16, April 19 and April 30. The Certificates showed the physician's name as "Dr. Klein", showed a hand-written College of Physicians and Surgeons of Ontario Registration Number that appears to be 10455, and were stamped "Greenwood walk-in clinic", showing the address for the purported clinic as 1100 Sheppard Ave. East.

24. Third, the petition attached one further University of Toronto Student Medical Certificate, showing the name "Dr. Nerina Garcia", with a "NY License# 0181063", and stamped "Brooklyn Medical Complex", with an address of 350 13th Avenue, Brooklyn, NY. This final certificate indicated that the nature of the treatment was "psychological", stating that "the patient has been undergoing psychotherapy since 10/June/2012 on scheduled basis". It also states, "The patient wishes not to disclose the details of his problems, the circumstances and problems he has been going through since February 2012 have prevented him to properly focus on his academic life."
25. It should be noted that the dates on three of the Certificates are the precise dates of the three examinations in respect of which the Student was seeking a deferral, namely, April 11, April 19 and April 30.
26. Mr. Chevrier testified that, when he reviewed the appeal petition and the supporting documentation, he thought that the matter warranted further investigation before submitting the materials to the central Office of the Faculty of Arts & Science. Among his reasons for concluding that the matter warranted further investigation were the following:

- (a) He thought that the language used in the Medical Certificates signed by “Dr. Klein” did not sound like the type of language a physician would use. For example, the Certificate dated April 11, 2012, under the heading, “Nature and timeline of the problem and its treatment”, stated as follows:

Nature of the Disease: Non-life threatening contagious Cold and sinusitis

Mr. Chevrier said that it struck him as odd for a physician to describe a cold as “non-life threatening”. He also found it odd for the physician to write, “The nature of his disease is contagious and his presence among students can cause others to be infected.”

- (b) He said that it was unusual for the physician to have typed the information onto the Certificates, rather than to have written it by hand.
- (c) He said that it struck him as unusual that the physician recorded the Student’s temperature in Fahrenheit, rather than in Celsius.

27. Because his suspicions were aroused, Mr. Chevrier testified that he conducted a search on the website of the College of Physicians and Surgeons of Ontario for the registration number that was written on the Certificates. The search results – a copy of which was entered into evidence – revealed that the number, 10455, was not associated with any physician in Ontario.

28. Mr. Chevrier testified that he used the website of the College of Physicians and Surgeons of Ontario to conduct a search for the name of the physician that was typed onto the Certificates. That search revealed a number of physicians in Ontario whose surname was

“Klein”, but none of those had a registration number that was the same as or similar to the registration number that appeared on the Certificates. A copy of the search results was entered into evidence.

29. Mr. Chevrier testified that he also telephoned the College of Physicians and Surgeons of Ontario. He was told that the registration number set out on the Certificates had never been associated with any physician in Ontario.

30. Then, on October 29, 2012, Mr. Chevrier emailed the Student, saying that he would like to see him “to discuss the medical documentation” that the Student had submitted in support of his petition. Mr. Chevrier’s email suggested two possible times that week for a meeting. The Student responded the next day to say that he was “out of Toronto”, returning on December 11.

31. Mr. Chevrier testified that, some time later, he continued his investigation into the medical Certificates submitted by the Student. Specifically, he telephoned the phone number that was shown on the Certificates purportedly signed by “Dr. Klein”. He testified that his call went to an automated voicemail system, wherein the caller was prompted to press particular numbers on his or her telephone to reach the desired physician. Mr. Chevrier testified that he pressed the number indicated for “Dr. Klein” and left a message with his name and phone number, asking for information about the clinic’s hours of operation.

32. He received a return call several days later. The call was received at 9:15 p.m. Mr. Chevrier was not in his office at that time, and the caller left a message on his voicemail. In that message, a person identifying himself as “Andrew Ashford” stated as follows:

(a) that he was calling from the “Vancouver branch” of the “Greenwood Walk-In Clinic”;

(b) that the hours of operation for the Toronto branch were Monday to Friday, 10 a.m. to 6 p.m. and Saturdays from 1 p.m. to 5:30 p.m.;

(c) that the Toronto branch was “currently closed” and that it would “resume its normal operations” beginning on the 25th of April, 2013;

(d) that the phone and fax number of the Toronto branch was still “active”;

(e) that if Mr. Chevrier required “verification of any documents or just prescription or prescription-related documents issued by our clinic,” he should fax the documents in question to the telephone number that he had originally called and that “we will try to provide you with a response within 48 hours”.

33. Mr. Chevrier testified that he was struck that the person who left him the message should specifically mention the possible need for the “verification of documents”. Mr. Chevrier thought that this was peculiar, because, when he had left his message for “Dr. Klein”, he had simply asked for the clinic’s hours of operation; he had not asked any questions or made any comments with respect to the need for any documents to be verified.

34. After having received the message, Mr. Chevrier did a Google search for a “Greenwood Walk-In Clinic” in Toronto. His search returned no hits.

35. He then travelled to the address noted on the Certificates for the “Greenwood Walk-In Clinic”, namely 1100 Sheppard Avenue East. He testified that the building was several

stories high and had a number of medical offices in it. However, the building directory showed no reference to a "Greenwood Walk-In Clinic".

36. Mr. Chevrier made inquiries of two women who worked in a pediatric walk-in clinic on the building's main floor. However, they told him that they did not know of any Greenwood Walk-In Clinic, nor did they know of any physician named Dr. Klein working in the building.
37. Mr. Chevrier also undertook certain investigations relating to the fifth medical Certificate submitted by the Student, which named "Dr. Nerina Garcia", as the treating physician.
38. Specifically, Mr. Chevrier conducted an internet search for the name "Nerina Garcia" and found a "Licensee List" from the New York State Office of Professions database for a psychologist named Nerina Garcia. The licensee number listed for Dr. Garcia was 68 018106. This was very close to the licensee number indicated on the Certificate submitted by the Student, which was 0181063, with the only differences being that the number submitted by the Student omitted the digits "68" at the beginning of the number, and had an additional "3" at the end.
39. Mr. Chevrier then found contact information for Dr. Garcia and spoke with her on the telephone. Mr. Chevrier testified that Dr. Garcia confirmed that she was a psychologist, but said that she had no recollection of treating a patient with the Student's name. Mr. Chevrier then testified that he sent Dr. Garcia a scanned copy of the fifth Certificate submitted by the Student, which had Dr. Garcia's name on it. Dr. Garcia responded by email as follows:

This document is not legitimate. I have never worked with this student, I have never worked at Brooklyn Medical Complex [i.e. the name of the medical facility listed on the Certificate], my license number is incorrect (additional 3 at the end) and that is not my signature.

40. Following these further investigations, Mr. Chevrier exchanged a series of emails with the Student. In those emails, Mr. Chevrier told the Student that he believed that the medical Certificates were “not legitimate”. More specifically, he told the Student that:

(a) he could not find any evidence of a Dr. Klein with the College of Physicians and Surgeons of Ontario Registration Number 10455; and

(b) he had spoken with Dr. Garcia, who said that she had not signed the Certificate submitted by the Student.

41. The Student responded via email on January 7, 2013 that he was “very confused” and that he did not know “what is going on with Dr. Klein’s CPSO number”. He also said, “[R]egarding Dr. Garcia, I am sure that there must have been some kind of administrative or clerical [sic] mistake.” The Student said that he would call “both of the clinics”, and would get back to Mr. Chevrier as soon as he had received the clinics’ “explanations and clarifications”. Lastly, he asked that Mr. Chevrier not submit the matter to the Office of Student Academic Integrity, until he had had an opportunity to seek further information from the clinics in question.

42. Mr. Chevrier responded that he would wait until the end of the day on January 18th to submit the matter to the Office of Student Academic Integrity..

43. At 4 pm on January 18th, the Student sent an email to Mr. Chevrier. In that email, the Student said that he had attended “in person” at Dr. Garcia’s clinic, and that the secretary

“clearly explained that they never verify any documents over the phone, she said that the proper protocol for document verification is via Fax.” The Student continued:

She asked me to inform you that if you would like to verify the authenticity of the medical certificate, you need to fax the document to their clinic’s Fax line . . . and they will reply to you via Fax.

44. With respect to the issues regarding the Certificates purportedly signed by “Dr. Klein”, the Student said that he had left “more than 15 messages” with the clinic and that he had not yet heard back.

45. Lastly, the Student said that he would be back in Toronto on February 1 to “sort this problem out” and again asked Mr. Chevrier not to forward the matter on to the Office of Student Academic Integrity until that date.

46. Mr. Chevrier next wrote to the Student on February 15 as follows:

In your last e-mail, you wrote that you would be returning to Toronto on February 1 specifically to address my concerns about the Greenwood Clinic medicals.

I have not heard from you since.

I am now forwarding your file to the Office of Student Academic Integrity.

47. The Student responded – not with any explanation with respect to either the Certificate allegedly signed by Dr. Garcia or the Certificates allegedly signed by “Dr. Klein” – but rather with a statement that he would attend at Mr. Chevrier’s office on Monday, February 18 to “discuss the details”. The Student then sent a further email, asking Mr. Chevrier again not to involve the Office of Student Academic Integrity and again stating

that he would “certainly” attend at Mr. Chevrier’s office on Monday, February 18, However, Monday, February 18 was a statutory holiday.

48. On Tuesday, February 19, Mr. Chevrier wrote to the Student, pointing out that the university had been closed the preceding day. He said that he was available to see the Student on short notice on that day – i.e. Tuesday – should the Student wish to come in.

49. The Student responded the following day on Wednesday, February 20, asking whether the matter had been forwarded to the Office of Student Academic Integrity. He said:

If the documents have not be [sic] submitted to the office of student academic integrity (OSAI) I would like to see you and provide you with my explanations that I have obtained from Greenwood walk-in clinic regarding the concerns you had previously addressed.

50. Mr. Chevrier responded that same day that the file had already been sent to the Office of Student Academic Integrity.

51. Mr. Chevrier had no further contact with the Student.

Analysis and Factual Findings

52. The Tribunal accepts the evidence of Mr. Chevrier with respect to the steps he took to investigate the medical Certificates submitted by the Student, and the information that he obtained as a result of those investigations. However, to the extent that Mr. Chevrier’s testimony included his own views as to whether the Certificates were falsified, the Tribunal attaches no weight to that testimony. This is not due to any inherent frailties in Mr. Chevrier’s testimony, but simply to the Tribunal preferring to reach its own

conclusion as to the authenticity of the Certificates, without reliance on, or reference to, Mr. Chevrier's opinion.

53. Based on Mr. Chevrier's testimony and the documentary evidence tendered in connection with it, the Tribunal finds that the four medical Certificates submitted by the Student with the physician's name noted as "Dr. Klein" were all falsified, within the meaning of Section B.I.1(a) of the *Code of Behaviour on Academic Matters, 1995*. In reaching this conclusion, the Tribunal relies in particular on the following.

- (a) No physician with the family name of "Klein", with a CPSO Registration Number of 10455 (or any number close to it), was identified through Mr. Chevrier's search on the College of Physicians and Surgeons of Ontario website.
- (b) No physician at all with a CPSO Registration Number of 10455 was identified through Mr. Chevrier's search on the College of Physicians and Surgeons of Ontario website.
- (c) Mr. Chevrier's telephone inquiry to the College of Physicians and Surgeons of Ontario revealed that no physician in Ontario has ever been associated with the CPSO Registration Number of 10455.
- (d) A visit by Mr. Chevrier to the address noted on the medical Certificates revealed no evidence of any "Greenwood Walk-In Clinic".
- (e) The Certificates themselves raise questions as to their authenticity. For example, the language used on the Certificates does not ring true to the type of language that one would expect to be used by a physician (for example, the use of phrases

such as “non-life threatening”, and “the nature of his disease is contagious”, when used to describe a common cold). As a further example, the stamp bearing the clinic’s name and address has improper capitalization, with “Greenwood” bearing a capital “G”, but “walk-in clinic” being entirely in lower case letters. In addition, all of the references to “Tylenol” in the certificates purportedly signed by Dr. Klein show the word “Tylenol” entirely in upper case letters, followed by the trade-mark symbol “®” – a legal convention that we would not expect a practising physician to use on a medical certificate.

- (f) The Student’s first “Absent declaration letter”, submitted in May 2012, referred to visits to a single physician at a “health care clinic on Bay street”, but made no mention of any visits to any other physician, and certainly no mention of any visits to any health care clinic on Sheppard Avenue East. The Student’s second “Absent declaration letter”, submitted in October 2012, contains no explanation as to why the first letter made no mention of these four alleged visits to the “Greenwood Walk-In Clinic” and no explanation as to why the first “Absent declaration letter” had referred only to a single physician, rather than to two different treating physicians.

- (g) The Student’s first petition, submitted in May 2012, did not include any of the four Certificates from the “Greenwood Walk-In Clinic”. This is particularly noteworthy, since these four Certificates are all dated from April 2012 and were, therefore, ostensibly in the Student’s possession at the time that he submitted his first petition. The Student’s second petition, submitted in October 2012, contains no explanation as to why the Certificates were not included in the first petition.

(h) The reason given to the Student for the rejection of his first petition was that the two medical Certificates that he had submitted (dated April 4th and April 23rd, respectively) were not close enough in time to the dates of the exams in respect of which he sought a deferral (which dates were April 11th, April 19th and April 30th, respectively). When the Student submitted his second petition in October 2012, of the four additional medical Certificates submitted from “Dr. Klein”, three were dated April 11th, April 19th and April 30th, respectively – the very same dates on which the exams were to have been written. The Tribunal finds this apparent “coincidence” to be highly suspect.

(i) When Mr. Chevrier called the phone number indicated on the Certificates for the “Greenwood Walk-In Clinic”, and left a message inquiring about the clinic’s hours of operation, the return message indicated that the clinic was “currently closed”, but stated that if the caller required “verification of any documents”, the clinic’s Vancouver office would be able to assist. This offer of assistance with respect to the “verification of documents” was highly suspect in the circumstances.

54. With respect to the Certificate purportedly signed by Dr. Nerina Garcia, based on Mr. Chevrier’s testimony and the documentary evidence in connection with it, the Tribunal finds that the Certificate was falsified, within the meaning of Section B.I.1(a) of the *Code of Behaviour on Academic Matters, 1995*. In reaching this conclusion, the Tribunal relies in particular on the following:

(a) Dr. Garcia’s email to Mr. Chevrier stated that she had never worked with the Student, that she had never worked at the “Brooklyn Medical Complex” (which

was the clinic name stamped on the Certificate submitted by the Student), and that the signature on the Certificate was not hers.

- (b) When Mr. Chevrier told the Student that Dr. Garcia had told him that she had not signed the Certificate, the Student's response was that "the secretary [at the alleged clinic] clearly explained that they never verify any documents over the phone", and that the "proper protocol for document verification is via Fax". The Student then suggested that Mr. Chevrier fax the Certificate to a number that was listed as the phone number for the Brooklyn Medical Complex on the Certificate submitted by the Student – the same Brooklyn Medical Complex where Dr. Garcia had told Mr. Chevrier that she had never worked. The Tribunal finds the Student's reaction to Mr. Chevrier's advice that Dr. Garcia had denied signing the Certificate to be highly suspect. Among other things, the Student did not, as one might have expected, insist that Dr. Garcia had in fact treated him on the date indicated on the Certificate, nor did he insist that she had in fact completed and signed the Certificate. Rather, he simply attempted to distract Mr. Chevrier away from his inquiries made directly of Dr. Garcia herself and instead to redirect those inquiries to a fax line that would not appear to have any connection with Dr. Garcia.

55. Finally, the Tribunal finds that the Student knowingly engaged in a form of fraud or misrepresentation not otherwise described in order to obtain academic advantage by submitting the "Absent declaration letter", dated October 23, 2012, contrary to Section B.I.3(b) of the *Code of Behaviour on Academic Matters, 1995*.

56. The Tribunal finds that the Absent Declaration Letter contained a number of misrepresentations, notably, the statements:

- (a) that he was seen by “2 different physicians on 6 different occasions”, when the evidence is that he was only seen by one physician on two separate occasions;
- (b) that the attached Certificates had been filled out by the Student’s doctor (when the evidence is that the “physician” whose name is indicated on the four impugned Certificates likely does not exist and, certainly, is not a physician licensed to practise medicine in Ontario); and
- (c) that one of the attached Certificates had been completed by the Student’s psychologist, who had been treating the Student for the past several months (when the evidence is that the psychologist whose name appears on the Certificate had never treated the Student).

57. The Tribunal notes that the University argued that the misrepresentations in the letter fell within the scope of the Section B.I.1(a) of the *Code* and constituted a “forgery or falsification”. We note that the letter itself was not forged nor had it been falsified, although it contained false information.

58. An instructive decision on this issue is that of the University Tribunal in *The University of Toronto and N [REDACTED] R [REDACTED]* (Case# 714; October 11, 2013). In that case, the student sent a series of emails which contained false information. The Tribunal considered whether the emails constituted “forgeries” or “falsifications” such as would fall within the scope of Section B.I.1(a). The Tribunal held that the emails did not

constitute forgeries or falsifications, since “the documents themselves are not forged, altered or falsified”:

The information contained in the documents is false, fraudulent and a misrepresentation, but the documents themselves are not falsified.

59. We agree with that analysis and adopt it in this case. Accordingly, with respect to the “Absent declaration letter”, the Tribunal finds that the Student violated Section B.I.3(b) of the *Code of Behaviour on Academic Matters, 1995*, as the letter contains information that is false, fraudulent and a misrepresentation.

Penalty

60. The penalty sought by the University in this case was as follows:

- (a) that the Student be awarded a grade of zero in the three courses in respect of which he sought the exam deferrals, being CHM139H1, MAT135H1 and BIO271H1;
- (b) that the Tribunal recommend to the President that he recommend to Governing Council that the Student be expelled;
- (c) that, pending the decision of Governing Council, the Tribunal suspend the Student for five years; and
- (d) that the matter be reported to the Provost.

61. In considering the appropriate penalty, the Tribunal is guided by the principles enunciated *In the Matter of Mr. C.* (at page 12 of the decision; Case# 1976/77-3; November 5, 1976), which explained that the penalty should serve the three goals of

reformation, deterrence and “protection of the public”. In trying to meet these goals, the Tribunal must consider the following factors:

- (a) the character of the person charged;
- (b) the likelihood of repetition of the offence;
- (c) the nature of the offence committed;
- (d) any extenuating circumstances surrounding the commission of the offence;
- (e) the detriment to the University occasioned by the offence; and
- (f) the need to deter others from committing a similar offence.

62. The Tribunal has considered all of these factors.

63. First, with respect to the character of the Student, because the Student did not appear at the hearing, the Tribunal knows little of his character beyond that revealed by the nature of the offence that he committed. In that regard, the evidence is that he was prepared to be dishonest. He submitted five forged medical certificates, along with an explanatory letter that contained false statements. Those certificates, combined with the suspect voicemail message received by Dr. Chevrier (in which the caller offered assistance in “verifying documents”), suggest an involved and intricate scheme by the Student to mislead the University. That scheme was furthered by the Student’s response to Dr. Chevrier’s expressed doubts about the certificate allegedly signed by Dr. Garcia, whereby the Student instructed Dr. Chevrier to send a fax to a number at an alleged clinic (with

which clinic Dr. Garcia had already confirmed that she had no association), in order to “verify” the medical certificate submitted by the Student.

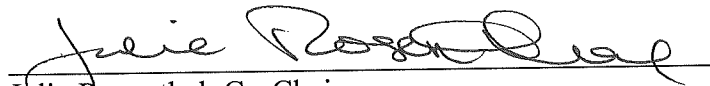
64. Certainly, the Tribunal has seen no evidence of any remorse by the Student.
65. Second, with respect to the likelihood of repetition of the offence, it was the Student’s first offence. However, the Student’s failure to appear at the hearing and the lack of any other expression of remorse do nothing to provide any indication that the Student will not re-offend.
66. Third, with respect to the nature of the offence, the offence is very serious. It involved the forging of multiple documents and required planning and deliberation, extending over a number of months.
67. Fourth, with respect to any extenuating circumstances, the Tribunal is aware of none.
68. Fifth, with respect to the detriment to the University, it is important that the University be able to rely on the process that it has put in place to enable students to seek indulgences for the sitting of exams.
69. Sixth, with respect to the need to deter others from committing a similar offence, the Tribunal agrees that it is important to convey a strong message to the University community at large that this sort of behaviour will not be tolerated and will be met with a strong disciplinary measure.
70. The Tribunal also reviewed a number of other decisions referred to by the University. In the *University and XD* decision (Case # 636; January 24, 2012), the Tribunal recommended expulsion for a student who had committed one forgery and had submitted

a false personal statement. In the *University and Y* decision, the Tribunal recommended expulsion for a student who admitted having submitted a number of forged medical notes, as well as other false documentation.

71. The Tribunal also reviewed a number of decisions (including in the *University and K* (Case #681; May 14, 2013), the *University and P* (Case #702; April 15, 2013), the *University and M* (Case # 562; January 20, 2010), the *University and M* (Case # 696; September 12, 2013), the *University and F* (Case #690; September 5, 2013), the *University and P* (Case #642; June 10, 2011), and the *University and QW* (Case #633; March 22, 2012), in which the student was found to have committed the offence of forgery and in which the penalty imposed was a five-year suspension. We note that, in each of those decisions, the student had admitted guilt and the penalty had been agreed upon by the accused student and the University.
72. Considering all of the foregoing, the Tribunal is persuaded that this is an appropriate case in which to recommend to the President that he recommend to Governing Council that the Student be expelled.
73. For all of these reasons, the Tribunal imposes the following sanction:
- (a) The Student receive a grade of zero in the three courses in respect of which he sought the exam deferrals, being CHM139H1, MAT135H1 and BIO271H1;
 - (b) The Tribunal recommends to the President that he recommend to Governing Council that the Student be expelled from the University;

- (c) Pending the decision of Governing Council, the Student be suspended for five years; and
- (d) That this case shall be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanctions imposed, with the name of the Student withheld.

Dated at Toronto, this 28th day of March, 2014.


Julie Rosenthal, Co-Chair