

CANADA / JUDGMENT

Purchas v. Ogunremi

2025 BCSC 1246

COURT

Supreme Court of British Columbia

DECIDED

4 July 2025

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2025 BCSC 1246 Purchas v. Ogunremi

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Purchas v. Ogunremi,

2025 BCSC 1246

Date: 20250704

Docket: S210196

Registry: Vancouver

Between:

Jenifer Purchas

Plaintiff

And

Dr. Stephen Ayotunde Ogunremi

Defendants

Corrected Judgment: The text of the judgment was corrected on the front page and at paragraph 199 on July 9, 2025

Before: The Honourable Justice Stephens

Reasons for Judgment

Counsel for the Plaintiff:

D. Shane

F. Balandari

Counsel for the Defendant:

A. Turner

R. Wood

Place and Dates of Trial:

Vancouver, B.C.

January 27-31, 2025 and

February 3-7, 2025

Place and Date of Judgment:

Vancouver, B.C.

July 4, 2025

Table of Contents

OVERVIEW.. 4

FACTUAL BACKGROUND.. 5

Abilify (Aripiprazole) 5

Plaintiff's Pre-Abilify Circumstances. 8

November 4, 2019: First Meeting with the Defendant 10

Events Immediately Following Being Prescribed Abilify. 12

The Plaintiff's Post-Prescription Circumstances. 13

December 2, 2019: Second Meeting with the Defendant 14

Events after Second Meeting with the Defendant 15

January 2, 2020: Meeting at OAT Clinic. 16

January 6, 2020: Third Meeting with Defendant 16

February 20, 2020: Fourth Meeting with Defendant 17

Plaintiff's Circumstances After She Stopped Taking Abilify. 17

Other Lay Witnesses. 18

Plaintiff's Current Employment 19

EXPERT EVIDENCE. 20

The Plaintiff's Expert Witness. 20

Dr. Rosemary Abu - Psychiatry.	20
The Defendant's Expert Witnesses.	23
Dr. Pierre Blier- Neuropharmacology.	23
Blier Report #1.	24
Blier Report #2.	25
Tanya Percy - Occupational Therapy.	29
Mark Gosling - Economist	29
Dr. Michael Zaitzow - Psychiatry.	29
Zaitzow Report #1.	29
Zaitzow Report #2.	31
Zaitzow Report #3 (Supplemental Report)	32
Professionalism of Experts at Trial	34
POSITIONS OF THE PARTIES.	34
The Plaintiff's Position.	34
The Defendant's Position.	36
ISSUES.	37
CREDIBILITY.	38
DISCUSSION AND ANALYSIS.	40
Issue 1: Did the Defendant Breach a Duty of Care to the Plaintiff?.	40
Legal Principles - Standard of Care of Physician.	41
Step One- Did the Defendant Doctor follow a Standard Practice?.	43
Step Two - Is the Standard Practice Followed Nevertheless Negligent?.	44
The Buckingham Case.	45
Findings: Standard of Care.	48
Step One - The Defendant Did Follow a Standard Practice.	48
Step Two -Standard Practice That the Defendant Followed Was Not Negligent	49
Issue 2: Causation.	53
Issue 3: Damages.	55

CONCLUSION AND ORDER MADE. 56

OVERVIEW

- [1] For about two months commencing in November 2019 the plaintiff, Ms. Jennifer Purchas, took the prescription medication Abilify (also referred by its pharmacological name, Aripiprazole) which had been prescribed by her then psychiatrist, the defendant Dr. Stephen Ogunremi.
- [2] In this action, the plaintiff, alleges that the defendant physician breached his standard of care when prescribing a 2 mg dose of Abilify, by failing to warn her of a risk of a potential side effect of compulsive gambling and shopping, and by not monitoring for that side effect a month later, on follow up when he re-filled her prescription.
- [3] She alleges that, as a result of taking that medication, she engaged in extreme and negative compulsive behaviour such as excessive gambling and shopping, that her life and personal relationships have been negatively impacted, her employment has been materially adversely affected, and that she has suffered damages. Her evidence, and submissions at trial, especially emphasizes excessive gambling which she contends led to, among other things, significant financial losses and personal injury damages.
- [4] The plaintiff claims for damages against the defendant, Dr. Ogunremi, in the amount of approximately \$1.2 million.
- [5] The plaintiff experienced pre-existing mental health challenges, and difficulties associated with the use of opioids, at the time she was prescribed Abilify. After taking Abilify, I accept the degree of her gambling markedly increased, particularly during the second month of her taking that medication. I accept that she believes that Abilify caused her to engage in compulsive gambling and shopping, and blames the defendant for how this negatively affected her life. She has brought this action and testified in court about difficult experiences, deeply personal matters, and related financial loss she claims to have sustained.
- [6] Nevertheless, this action concerns whether the plaintiff has demonstrated, on the evidence adduced a trial, that under the law of negligence the defendant physician faces legal liability because he did not warn of, and monitor for, compulsive gambling and other behaviour when prescribing a low daily dose of 2 mg of Abilify. This concerns whether he complied with a standard professional practice as to what side effects to mention when prescribing the 2 mg dose, and if so whether the standard practice that he followed was itself negligent. And, whether the plaintiff has proven that the Abilify that he prescribed more likely than not caused the loss and damage complained of to happen, and that but for the defendant's alleged negligence, she would not have experienced such asserted losses.

- [7] In these Reasons, I find that applying the law of negligence to the evidence at trial, the plaintiff has not demonstrated that the defendant breached the standard of care, and that causation has also not been proven. I find the defendant followed a standard professional practice of not mentioning a risk of compulsive gambling when prescribing the plaintiff the low 2 mg dose of Abilify in the circumstances (which practice was not itself negligent). I also find that the plaintiff has not demonstrated that it is more likely than not that Abilify was the cause of her increased gambling and shopping activity in any event. Accordingly, the action should be dismissed.
- [8] Having said that, while these Reasons decide the law's application to facts as I have found them, they do not express any personal judgment of the plaintiff in connection with, nor do they intend to minimize, her past mental health struggles.

FACTUAL BACKGROUND

Abilify (Aripiprazole)

- [9] According to Dr. Blier, an expert qualified to give opinion evidence at trial in the areas of neuropharmacology and psychopharmacology:

Abilify® was first approved in the USA in November 2002 for the treatment of schizophrenia and bipolar I disorder and subsequently in 2007 for adjunctive treatment of major depressive disorder (MDD) in inadequate response to antidepressants. In Canada, it was approved in 2009 for the treatment of schizophrenia and related psychotic disorders and in 2013 for the treatment of MDD in inadequate response to antidepressants. Generic versions of aripiprazole were subsequently approved from 2018.

- [10] Dr. Blier further opined that the "standard doses of aripiprazole in schizophrenia and bipolar mania are customarily between 15 and 30 mg per day. In MDD [major depressive disorder], the standard doses used in Canada are between 2 and 10 mg/day". The plaintiff here was prescribed the lowest dose of 2 mg per day.
- [11] A "Brief Report" entitled Mahyar Etminan et al, "Risk of Gambling Disorder and Impulse Control Disorder With Aripiprazole, Pramipexole, and Ropinirole: A Pharmacoepidemiologic Study" (2017) 37:1 J of Clinical Psychopharmacology 102 (the "Brief Report"), found that in a cohort of approximately six million subjects, there were 335 cases of a gambling disorder occurring. In the conclusions section of the abstract, it states, "Our study confirms an association between aripiprazole, pramipexole, or ropinirole and impulse control disorder and gambling disorder". Dr. Blier was critical of this data and noted that in the study there were 335 cases of gambling disorder, only five of whom had ever used aripiprazole. The defendant submits that the:

Etminan study, which reviewed 6.1 million subjects, 355 of which had gambled, 5 of which had ever been on Abilify. That is one in every 1.22 million patients

[12] There is evidence before me that on November 2, 2015, Health Canada published an information update entitled, "Safety information for antipsychotic drug Abilify and risk of certain impulse-control behaviours", which states:

Labels for the prescription antipsychotic drugs Abilify and Abilify Maintena (aripiprazole) have been updated to advise of an increased risk of impulsive behaviours of pathological gambling and hypersexuality.

The Canadian Product Monograph revisions are the result of a Health Canada safety review that found an increased risk of two types of impulsive behaviours with the use of these drugs: pathological (uncontrollable) gambling, and hypersexuality (uncontrollable and/or inappropriate sexual thoughts, urges or behaviours that are so severe or last so long that they cause distress).

[Emphasis omitted.]

[13] The Health Canada information update also states that:

Health Canada also received five Canadian reports of pathological gambling and/or hypersexuality, but these contained limited information and therefore no conclusions could be made regarding what role, if any, the drugs may have played.

[14] There is evidence at trial that on April 15, 2020, a manufacturer of Abilify, Otsuka Pharmaceutical Co., Ltd., released a revision to its product monograph, which included the sentence, "With regards to pathological gambling, patients with a prior history of gambling disorder may be at increased risk and should be monitored carefully". The paragraph reads as follows:

Pathological Gambling and Other Impulse-Control Disorders

Post-marketing reports of pathological gambling have been reported in patients treated with aripiprazole. These reports suggest that patients can experience increased urges, particularly for gambling, and the inability to control these urges while taking aripiprazole. With regards to pathological gambling, patients with a prior history of gambling disorder may be at increased risk and should be monitored carefully. Other urges, reported very rarely, include: increased sexual urges, compulsive spending, binge or compulsive eating, and other impulsive and compulsive behaviors.

The paragraph goes on:

Because patients may not recognize these behaviors as abnormal, it is important for prescribers to ask patients or their caregivers specifically about the development of new or increased gambling urges, sexual urges, compulsive spending, binge or compulsive eating, or other urges while being treated with aripiprazole. It should be noted that impulse control symptoms can be associated with the underlying disorder; however, in some cases, although not all, urges were reported to have stopped when the dose was reduced or the medication was discontinued. Although impulse-control disorders have been reported very rarely, impulse-control disorders

may result in harm to the patient and others if not recognized. Consider dose reduction or stopping the medication if a patient develops such urges while taking aripiprazole.

[15] However, Dr. Blier opined that the risk of gambling or compulsive behaviour caused by Abilify, when taken at the very low dose of 2 mg/day, is extremely rare.

Plaintiff's Pre-Abilify Circumstances

[16] The plaintiff is 49 years old, and has a university degree.

[17] She testified that growing up her father had addiction issues with drugs and gambling, and that another family member has also experienced alcoholism.

[18] After completing her post secondary education, in about 2004 she obtained employment and worked up to the position of national account manager.

[19] She worked there until 2022, following the events that give rise to this action.

[20] She testified that from the years 2014 to 2019 she would gamble a little bit, in small amounts; and she did not gamble alone. She did not consider gambling a problem, and it was a "social thing". She testified that she did not lose much money during this time period. She testified that she never gambled like she did when she took Abilify. She told Dr Abu that she "never spent more than \$100 at a sitting before" taking Abilify (and in her testimony at trial she estimated between \$100 and \$200).

[21] However, her banking records show withdrawals at casinos prior to November 2019 which are larger than \$100. For example, on September 21, 2019, the withdrawn amount was for \$503; withdrawals in a similar amount on August 18, 2019 and on February 8, 2019; approximately \$400 was withdrawn at a BC casino on November 30, 2018, and approximately \$600 was withdrawn on October 26, 2018.

[22] The plaintiff stated in cross examination that her gambling was about ten times in a year in casinos during the year prior to November 2019; she testified she did not have a problem with gambling before that time--that she had a problem only after Abilify.

[23] The plaintiff was taken in cross examination to a medical record entry from October 3, 2019 which states: "Notes decreased inclination to gamble since started dexedrine", and testified on cross examination she did not remember saying this.

[24] She testified that prior to Abilify she did exhibit some behaviours of compulsive eating, and her weight fluctuated, but not as much as after taking the medication.

[25] She testified that prior to seeing the defendant in 2019, her marriage was good.

- [26] She testified that prior to 2019 she experienced some mental health issues. She struggled with depression and anxiety most of her teenage life. She testified that in her adult life she was able to control it with medication which did not cause her issues on a regular basis. Though on cross examination she acknowledged that she struggled with mental health most of her life.
- [27] The plaintiff testified that in about 2017 she had a fall while in Las Vegas, and was later prescribed Percocet.
- [28] On cross examination she acknowledged that she was up and down in July 2018, and not doing well emotionally. She acknowledged that 2019, before she took Abilify, was a difficult year for her.
- [29] She acknowledged taking a pill once not knowing it was fentanyl. She had tested positive for fentanyl at a doctor visit in May 2019 (although the evidence is that this could have been a false positive).
- [30] By 2019 she testified that she had developed an addiction to pain medication (opioids), and commenced visiting the Opioid Agonist Treatment (OAT) Clinic where she was seen by Dr. L. Stokvis. She testified that the OAT clinic was able to help her get on track and not use opioids anymore. She was prescribed the medication Suboxone.
- [31] She testified that during this time, while attending the OAT clinic, she still got her work done. However, the opioid addiction had negatively affected her marriage. She testified that she still was attending the OAT clinic at the time of this trial.
- [32] She testified that prior to seeing the defendant, she did not have any problems at work.
- [33] On cross examination, she generally denied the suggestion that she changed her medication at times on her own without physician instruction, and testified that she saw her physician regularly to discuss changes to medication. She also testified that she follows her physician's instructions about medication but for some medications discussed tapering them with her physician. However, one of her medical records documents that on August 27 2019, she was advised to not adjust her dose of medications on her own or they "may need to revise current lenient carry parameters".

November 4, 2019: First Meeting with the Defendant

- [34] The plaintiff was referred to the defendant by the OAT clinic. She saw the defendant for the first time on November 4, 2019.
- [35] At this time she was struggling and wanted her life back on track. In the months prior to seeing the defendant, including in September 2019, she was having a very hard time. She acknowledged that at this time for the last couple of years she had been dealing with multiple health issues, and other sources of stress in her life.

- [36] At this meeting, she did not tell the defendant she had any history of gambling. The defendant did not ask her if she gambled frequently or about her history of gambling.
- [37] The plaintiff recalls at the meeting with the defendant he said he was going to try her on a new medication, and she said OK. She recalled that she asked for an increase to Vyvanse, and he did not want to do that and to instead try Abilify. The defendant declined to increase her dose of Vyvanse since she was already on a high dose and because of a risk of serotonin syndrome which he understood to be life threatening. The defendant suggested taking time off work, and the plaintiff declined.
- [38] The plaintiff testified that the defendant did not talk to her about potential side effects of Abilify, of agitation, at this meeting. She testified he did not talk to her about the risk that it could cause compulsive behaviours--there is a conflict with the defendant's evidence on this point, discussed below.
- [39] At this visit, the defendant diagnosed the plaintiff with major depressive disorder; anxiety; and noted she had an established diagnosis of opiate disorder.
- [40] The defendant recorded in his notes from November 4, 2019, and I find, that he was concerned about the plaintiff's dosage of Vyvanse given the risk of serotonin syndrome, and that he decided to prescribe Abilify. He again referred to that risk on December 2, 2019 in the follow up meeting, when he renewed her medications including Abilify and set a further follow up one month later.
- [41] The defendant testified that he told the plaintiff the Abilify medication was effective, and told her of possible side effects of Abilify being commonly reports of headache, anxiety and restlessness; and said that very rarely it can cause compulsive disorder. He testified he did not discuss compulsive gambling, or a risk of gambling. He testified that his understanding was that there was not a strong association between gambling and Abilify, and if a patient has an established gambling disorder it might come up, but not in this case. He did not inquire as to her gambling history.
- [42] At that meeting, the defendant prescribed 2 mg of Abilify daily to the plaintiff. He also recommended her for psychological treatment or counselling.
- [43] The defendant spoke at times in his evidence at trial from his standard practice, not from specific memory of his meetings with the plaintiff.
- [44] I find that on a balance of probabilities the defendant did not mention to the plaintiff a risk of compulsive behaviour or disorders (generally) as a potential side effect of Abilify. This is consistent with my finding below that, at the follow up meeting on December 2, 2019, he did not ask the plaintiff if she had been experiencing any compulsive behaviours. The defendant was concerned with a significant risk associated with the plaintiff's use of Vyvanse, and noted this concern in the medical record, but did not refer in the record to cautioning of a risk of compulsive behaviour associated with taking Abilify.

- [45] I do not find determinative that the defendant's charting of this visit with the plaintiff did not mention his reference to side effects of Abilify; but I do find, on the evidence as a whole, that the defendant did not tell the plaintiff about a potential risk of side effect of a compulsive behaviour from Abilify. He also did not refer to compulsive gambling or shopping as a potential side effect.
- [46] When the defendant later met with the plaintiff, on January 6, 2020 (after her gambling had increased), he told her about his understanding there was a class action regarding Abilify, and wrote a note that said "ABILIFY and GAMBLING". It is unlikely he would have told her that for the first time on January 6, 2020 if he had already discussed the risk of compulsive behaviour with her when he prescribed Abilify on November 4, 2019. I acknowledge that I have concerns with the reliability of the plaintiff's evidence, and her memory of this meeting in particular. Nevertheless, I do not find, on a balance of probabilities, that the defendant mentioned a risk of a side effect of compulsive behaviour to the plaintiff when prescribing Abilify at this November 4, 2019 meeting.

Events Immediately Following Being Prescribed Abilify

- [47] The plaintiff filled the prescription for Abilify and began to take it right away. She did not recall if she asked any questions of the pharmacy about the medication; she testified that no one talked to her about Abilify side effects, but she could not say whether she asked either.
- [48] Due to a dental issue, the plaintiff took a T3 the next day.
- [49] On November 7, 2019, the plaintiff told her family doctor, Dr. Stokvis, that the defendant Dr. Ogunremi had suggested an increase her Vyvanse dose to 70 mg, which Dr. Ogunremi had not done. Her family doctor increased her dose of Vyvanse to 70 mg, which is the maximum amount. In her testimony, the plaintiff did not have an explanation for this and thought it may have been a misunderstanding.
- [50] I find that the plaintiff did, in fact, inaccurately tell Dr. Stokvis at this meeting that the defendant had suggested an increase to her Vyvanse dose to 70 mg, which the defendant had specifically not done. I am unable to conclude whether she did so intentionally or not. However, I find the plaintiff giving this inaccurate information to Dr. Stokvis is a reflection of the significant mental health difficulties she was experiencing at that time.

The Plaintiff's Post-Prescription Circumstances

- [51] The plaintiff testified that after being prescribed Abilify, she engaged in gambling, in a manner different than she had before. She testified she would gamble by herself, playing slot machines, and not in a social way; and that she gambled more: instead of spending \$100 (as she said she did before), it was ten or twenty thousand. She testified she would sneak away from her family and lie to her family about it.

- [52] She placed in evidence her bank account statement and other records which she testified records her gambling activity after being prescribed Abilify.
- [53] The plaintiff testified that while she would win at the slot machines from time to time, she did not often walk away with any winnings since she would go back. She testified that she ended up with zero savings.
- [54] The plaintiff also testified that she had an urge to shop, and did so excessively. For example, she would buy 10 pairs of the same shoes with slightly different colours, and bought multiple high-end bags and purses. She testified at one time, she had 25 Louis Vuitton bags. She testified she had never shopped like that before. She testified about her purchases with reference to banking and other records. The significant degree of her shopping was generally consistent with the testimony of her husband at trial.
- [55] The plaintiff described her behaviour at this time as "like a robot".
- [56] She testified that had she known that Abilify could cause pathological gambling disorder she would have stopped it immediately and reported these side effects to a doctor, and addressed it right away knowing that she had an addictive personality.
- [57] She testified on cross examination she went to the pharmacy six times from November 4 to December 2, 2019, but on none of those occasions did she mention that she was experiencing compulsive gambling or shopping. She testified in this time period she did not know what was going on.

December 2, 2019: Second Meeting with the Defendant

- [58] The plaintiff had a follow up meeting with the defendant on December 2, 2019. She testified that at that meeting he did not ask her if she had engaged in any gambling or other compulsive behaviour. She testified that at that meeting he did not tell her that Abilify could cause compulsive gambling.
- [59] She testified that she did not tell him she was having issues with the medication, or that she was spending a significant amount of time at the casino or about compulsive shopping. She did mention she had experienced a rash.
- [60] She testified that at this second meeting he wrote another prescription for her for Abilify, which she filled and took as directed.
- [61] She testified that neither at her first or second meeting with the defendant did he ask her if she had a history of addiction, or if she had gambled before, or if she had family members who gambled.
- [62] The defendant asked the plaintiff if she noticed anything unusual, and she mentioned a rash on her skin. He did not warn her of the risk of compulsive behaviours or discuss gambling.

[63] I find that at this meeting, the plaintiff did not mention her gambling or shopping behaviours, and that the defendant did not ask her if she had been experiencing any compulsive behaviours after taking Abilify.

Events after Second Meeting with the Defendant

[64] The plaintiff testified that after her follow up visit with the defendant she continued to gamble, and engaged in excessive shopping. She testified to this with reference to her banking/financial records.

[65] For example, her financial records show over 10 transactions at a casino on December 12, 2019, most of which were in amounts of \$1,000 or \$2,000 each; on December 18 and 19, 2019, again several transactions at a casino in amounts of \$2,000 or more for each transaction.

[66] The plaintiff's financial records indicate that the plaintiff had engaged in periodic gambling activity before November 2019. However, the transactions recorded in the plaintiff's financial records would tend to indicate that the increase in amount and frequency of her gambling activity during the month of December 2019 was marked.

[67] She testified that she would also buy multiple and duplicate pairs of shoes, of different colour, and the same with clothes and purses.

[68] The plaintiff testified that in November and December she also ate excessively (for example, ice cream bars).

[69] When taken to medical records she acknowledged going to the emergency room at a hospital in December 2019 for a rash, but does not have much memory of this. She went to see physicians in December 2019 but did not report to them any compulsion to gamble or shop.

[70] She testified that her husband, in the period of time after she starting taking Abilify, was not aware of her gambling and shopping. While her husband, in his testimony, was unable to say precisely when he learned of the gambling, I find he did immediately notice her shopping behaviours because of the products she ordered appearing at their home.

January 2, 2020: Meeting at OAT Clinic

[71] The plaintiff met with Dr. Stokvis at the OAT clinic on January 2, 2020. She told her that she had been gambling and shopping, did not know why, and had spent a lot.

[72] She told Dr. Stokvis she had been banned from BC casinos.

[73] Dr. Stokvis went online, and looked up her medication, and told her to stop taking Abilify and she immediately did so.

January 6, 2020: Third Meeting with Defendant

- [74] The plaintiff met with the defendant on January 6, 2020. She testified she was completely distraught and she had realized how much damage she had done. The defendant also recalls the plaintiff was very distraught at this meeting. He decided to cease the Abilify.
- [75] She testified that by this time, in January 2020, she had banned herself from BC Casinos. She testified that the defendant told her that Abilify caused her behavior. The defendant told her there was a class action lawsuit against the manufacturer of Abilify. He testified in this regard that he felt his role was to be supportive, and displace the shame she felt, and validate her. The plaintiff testified that the defendant said she should explore a lawsuit against the manufacturer of Abilify, which in his evidence the defendant denied.
- [76] I find that at this meeting the plaintiff was distraught, and things were tense with her husband. At this meeting the defendant was trying to be compassionate to the plaintiff, and attempted to deflect responsibility for her behaviour to the Abilify medication. I do not find, however, that he told the plaintiff to consider suing the manufacturer of Abilify.

February 20, 2020: Fourth Meeting with Defendant

- [77] The plaintiff met with the defendant again on February 20, 2020, and at that time he referred her to a program called "CRESST" for stabilization. She testified at this time she was advised she needed to go there, since she could not cope with what she had done. When asked what she meant by what "she had done", she answered:

Destroyed everything that we worked for, like--just the lying and just the shame, and just--I don't know, the embarrassment, all of it. It was awful--I didn't know how I was going to move on, I didn't know I was going to put it behind me.

Plaintiff's Circumstances After She Stopped Taking Abilify

- [78] The plaintiff testified that after she stopped taking Abilify the gambling went down, the shopping and eating all went away.
- [79] She testified that, though, the gambling "still haunts" her today, and she still does gamble. When asked to explain she testified that she still has an urge or desire to gamble, and she just cannot stop it - but it is nothing like when she was on Abilify. She testified that her current gambling is not consistent: she testified some weeks she does not gamble at all, and some weeks maybe once a week - whenever she gets the urge -- and she does not stay as long or spend as much as she used to.
- [80] The plaintiff was admitted to CRESST on February 21, 2020 and testified she stayed at CRESST for about two weeks.
- [81] She was discharged from CRESST on March 4, 2020.
- [82] The plaintiff did not return to work in 2020.

- [83] She testified that her husband was not happy with what she had done, and they had to re-mortgage their house.
- [84] The plaintiff testified she continued to see Dr. Stokvis weekly throughout 2020, with whom she has a good relationship and who she thinks highly of. She testified she felt really hurt by the defendant.
- [85] She testified she went to another facility called Georgia Strait Women's Clinic for 32 days, to assist her to cope with her depression, in March to April 2021.
- [86] The plaintiff testified that the incident with her gambling affected everything in her life, her employment, her marriage, and her relationship with her children. She testified on cross examination that after Abilify, her relationship with her husband completely changed (although acknowledged difficulties prior to that, when she was on opioids and doing "crazy" things). She testified she lost her trust with her husband, and her family.
- [87] The plaintiff returned to work in 2021, though at a lower level than her previous position. She testified she was not in a mindset to work in 2021.
- [88] She testified she was upset when she later lost her job, where she had worked for many years.
- [89] In May 2022 she obtained new employment, where she stayed for one year, until May 2023.
- [90] The plaintiff testified that her mental health was not good in 2023, but she is feeling a little better today.
- [91] The plaintiff testified that she believes Abilify caused her gambling behaviour, and also that it caused her to be a changed person, including feeling shame and embarrassment. She testified that before Abilify she was, a "different person", and since Abilify she has changed, she used to be "really happy, really confident reliable, [she] used to like to go and have fun, [she] was a completely different person, 100% different".

Other Lay Witnesses

- [92] Some other lay witnesses testified at trial. Heidi Doucet, a friend of the plaintiff testified. She testified she and the plaintiff would go to casino from 2010 to 2016, and not spend much. She testified after 2020 the plaintiff was not herself anymore.
- [93] Andrew Bayfield, a former work colleague of the plaintiff, testified. He worked with her from about 2004 to 2018, and described her as a very capable worker.
- [94] The plaintiff's husband testified. He described her as previously very responsible, including with money, and hard working. He testified he never had a concern with the amount of her gambling up to 2019. However, he testified that going into 2020 she was not herself. He noticed excessive shopping, and at some point, realized she had been gambling.

- [95] Dr. Stokvis, a physician at the OAT clinic, testified about her interactions with the plaintiff. I find that she testified in a very professional manner.
- [96] Emily Knight socialized with the plaintiff for several years, and testified she went to a casino once or twice with her in 2019.
- [97] Helen Korberly socialized with the plaintiff, and testified she went to the casino with her two times, she believed in 2019. She gave evidence about the plaintiff once winning money at a casino and asking for Ms. Korberly's assistance claiming it, although the evidence about this event in Ms. Korberly testimony and in general, including the other evidence at trial, was not clear as to what transpired.
- [98] Nicholas Jerrold, who worked with the plaintiff from 2022 to 2023, also testified.
- [99] Shannon Lohnes is a friend of the plaintiff. She testified as to learning of the plaintiff's use of opiates in late 2018 or 2019, was concerned for her, and sought to help her seek assistance with that. On cross examination she testified that the plaintiff is different than she was in 2019: for example, less reliable, less stable and more insecure.

Plaintiff's Current Employment

- [100] The parties agreed to certain facts regarding the plaintiff's current employment. Those agreed facts included that the following.
- [101] The plaintiff is currently employed as a National Account Manager, responsible for western Canada accounts, and has been so employed since September 18, 2023.
- [102] The Director of Sales of the plaintiff's current employer has not observed the plaintiff to be overwhelmed at work.
- [103] The plaintiff has not expressed to the Director of Sales that she is overwhelmed.
- [104] The plaintiff has not requested excessive periods of time off from work.

EXPERT EVIDENCE

The Plaintiff's Expert Witness

Dr. Rosemary Abu - Psychiatry

- [105] Dr. Abu, a psychiatrist, completed a virtual telephone psychiatric assessment of the plaintiff, and was qualified to give opinion evidence at trial in the area of psychiatry. She has practiced psychiatry in BC since 2017, working in Smithers, BC. She is a fellow of the Royal College of Physicians of Canada.
- [106] She opined as to the standard procedure for psychiatrists when prescribing Aripiprazole (Abilify), and that it included (among other things) warning patients about the risk of pathological gambling and compulsive shopping:

As of November 4, 2019, it was standard procedure and the acceptable/minimum standard of care for psychiatrists to warn patients about the risk of pathological gambling, sexual acts, compulsive shopping, and other impulsive acts when prescribing Aripiprazole (IMS Health, 2015).

[107] She further opined, in essence, that the defendant breached the standard of care when prescribing Abilify to the plaintiff:

It is breach of the acceptable standard of care to start a medication and not warn the patient about the common and uncommon (but high stakes) side effects of the said medication. In this case, Dr. Ogunremi breached his fiduciary responsibility, and, the standard of care, when he started this medication and did not document any process of informed consent. To allow Jenifer to give informed consent to commence treatment with Aripiprazole, Dr. Ogunremi was required to inform her of the risks/benefits of Aripiprazole, alternative treatments, risk/benefits of the alternative treatments and the refusal to accept treatment with Aripiprazole or any other treatment options and to obtain her verbal consent or refusal after the above discussion about treatment with Aripiprazole.

[108] She further opined as to the risks of Abilify that "are usually discussed", including, among other risks, compulsive behaviours such as gambling addiction, as follows:

The risks of Aripiprazole that are usually discussed includes, Akhatisia (a feeling of inner restlessness/constant pacing and inability to seat down or still for long periods), shakiness/tremors, insomnia, headache, nausea/vomiting, indigestion, constipation, dry mouth, high blood sugar/risk of diabetes, sexual dysfunction (difficulties with erectile function, difficulty with orgasm, lower libido), Tardive dyskinesia (involuntary movements of different parts of the body such as grimaces of the face, tongue thrusting, grinding of teeth etcetera), sleepiness/sedation/fatigue, blurred vision, risk of increased suicidal thinking in adolescents/children/young adult, weight gain, insomnia (trouble sleeping), higher risk of death in elderly dementia patients with Dementia, slightly increased risk of stroke, link to compulsive behaviors/impulse control difficulties such as gambling addiction, excessive spending/shopping, sexual urges/other risk taking behaviors and it is contraindicated in pregnancy because it has been associated with teratogenicity (Marder et al, 2003; Etminam et al, 2017).

[109] As to follow up visits, following prescribing a patient Abilify, she opined that it, "has been standard practice for Physicians to check with their patients during follow up appointments whether they are experiencing any side effects to their treatment, including compulsive gambling amongst other potential side effects; since November 4, 2019".

[110] She opined that if the defendant did not ask the plaintiff whether she was experiencing any compulsive gambling behaviour on December 2, 2019, that this would "be a breach of the acceptable standard of psychiatric care."

[111] As to causation, she opined that, "[t]here are a number of positive factors that support the inference that aripiprazole likely caused or at the very least significantly worsened her impulsivity, especially as it pertains to gambling/overspending". She notes, among other things, that the "the date of commencement of Abilify by [the plaintiff] was very close to the onset of the compulsive gambling and spending that are documented in her medical records".

[112] Dr. Abu assumed in her causation opinion that "a review of her medical records did not show any previous history or pre-morbid diagnosis of gambling disorder; prior to the index prescription of Abilify." On cross examination, she testified that she understood the plaintiff gambled socially prior to November 2019, but it was small amounts of money.

[113] She also states that "there is no history of a pre-existing diagnosis of Bipolar disorder" and "such a pre-existent diagnosis would be an alternative explanation for the risk taking/impulsive behaviors she experienced after treatment with Aripiprazole".

[114] She opined, as support for her causation opinion, among other reasons:

I have reached the conclusion that Abilify (Aripiprazole) likely contributed to the disordered gambling and impulsive shopping behavior that [the plaintiff] suffered from November 2019 till early January 2020, because the manufacturers have identified that this drug has a link to such behaviors in patients during previous pharmaco-vigilance research .

[115] She opined that the plaintiff was not a good candidate for Abilify:

although aripiprazole augmentation is an evidenced based strategy for treating persistent depression/anxiety/paranoia, [the plaintiff] was not a good candidate for Aripiprazole augmentation. At best, she should have been warned about these side effects and monitored regularly for them, and at worst she should have been prescribed a different second generation antipsychotic, or a mood stabilizer, Wellbutrin or Buspirone as augmentation; rather than Aripiprazole, because of the aforementioned risk factors which her psychiatrist was fully aware of including specifically her diagnoses of chronic Depression, Cluster B personality traits, Opiate use disorder, Attention deficit hyperactivity disorder and in general, the family history of Addiction in her Father, both paternal grandparents, multiple biological paternal cousins (3 or 4) and her brother.

[116] Dr. Abu opined as to the effects of Abilify on the plaintiff, including "significant financial loss" which "made things harder for [the plaintiff] and her husband". She further opines that,

she had significant deterioration of her Anxiety/Mood disorder and her Gambling disorder following treatment with Aripiprazole and the resultant compulsive gambling disorder that ensued.

She adds in this regard that, "She will continue to struggle with the gambling disorder and eating disorder until she goes to treatment for management of the addiction disorder".

- [117] I note that while Dr. Abu opined that the plaintiff has experienced a gambling disorder, this was not the focus of her opinion evidence, and there was not a detailed explanation for this diagnosis. In general, the expert opinion evidence at trial, including that of Dr. Blier and Dr. Zaitzow, did not focus on or explain in a significant way whether plaintiff has experienced, or currently does experience, a pathological gambling disorder. I did not find the expert evidence at trial to speak directly and in a detailed way as to whether the plaintiff has or had a diagnosis of a gambling disorder, including when such a disorder commenced relative to the time period that she took Abilify.
- [118] Dr Abu opines that "If she gets the support [described] above, her prognosis in relation to depression, addiction (to gambling/food/shopping) and anxiety is good".
- [119] On cross examination, she stated that it would be expected that a high stakes side effect would be told to a patient, or if a high stakes risk (like death), one would need to ask about those side effects specifically, and make inquiries of a patient about their use of medication.

The Defendant's Expert Witnesses

Dr. Pierre Blier- Neuropharmacology

- [120] Dr. Blier is a practicing physician, holding an M.D. as well as a Ph.D. in Neurological Sciences. He has medical licences in Ontario, Quebec and Florida. He is a professor in the Departments of Psychiatry and Cellular and Molecular Medicine at the University of Ottawa (also an adjunct professor at McGill University), and also serves as the Director of the Mood Disorders Research Program at the University of Ottawa Institute of Mental Health Research (IMHR) at the Royal Ottawa Mental Health Care Center.
- [121] He is a fellow of the Canadian College of Neuropsychopharmacology (CCNP), of the International College of Neuropsychopharmacology, and of the American College of Neuropsychopharmacology (ACNP). He is also a member of the European College of Neuropsychopharmacology (ECNP). He is also a fellow of the Royal Society of Canada.
- [122] He is a co-author on several practice guidelines for psychiatric disorders. These include the 2014 Canadian Treatment Guidelines for the Treatment of Anxiety, Post- Traumatic Stress, and Obsessive-Compulsive Disorders, the 2016 CANMAT Treatment Guidelines for Major Depressive Disorder, the 2017 CINP Treatment Guidelines for Bipolar Disorder, and the 2023 CANMAT Treatment Guidelines for Major Depressive Disorder.
- [123] He was qualified to give opinion evidence at trial in the areas of neuropharmacology and psychopharmacology.

Blier Report #1

- [124] He opined that "[t]hese five facts are sufficient to account for the alleged rapid onset of the patient's erratic behavior and not the minimal dose of aripiprazole":

- (a) there was an admitted prior history of gambling
- (b) the patient was using cannabinoids
- (c) there was increase of the dose of Vyvanse from 60 to 70 mg/day
- (d) she took the opioid drug codeine
- (e) the OAT Suboxone regimen was self-tapered (see #12 below)

[125] He opines that "Aripiprazole was an appropriate medication to be prescribed to [the plaintiff]"; and that "The dose of aripiprazole prescribed to [the plaintiff] was appropriate", and that the "2 mg/day dose of aripiprazole is a very low dose".

[126] He testified that a "typical overview of risks when adding a 2 mg dose of aripiprazole in a case of inadequate response to a medication for MDD is to mention that there could be some transient feeling of agitation or restlessness". But, that "my colleagues in Canada and I do not mention the risk of pathological gambling or hypersexuality unless there is a past personal history of such problems."

[127] He opined that since, among other reasons, the risk of gambling or compulsive behaviour "when this occur[s] is extremely rare",

It was not standard of care in November 2019 to warn all patients about a risk of gambling or compulsive behavior prior to prescribing aripiprazole at the low dose of 2 mg/day, and to this day I do not provide that warning.

[128] He opined that, "it is my firm opinion that the prescription of 2 mg/day of aripiprazole by Dr. Ogunremi was provided according to the guidelines, followed up adequately, and did not result in the alleged pathological gambling."

Blier Report #2

[129] In his second report, he disagreed with Dr. Abu's opinion as set out in her report. He opines that "The prescription of the very low and minimally effective dose of 2 mg per day low is rarely problematic." In his view,

There was no overt indication that [the plaintiff] had a history of problematic gambling prior to November 4, 2019. Consequently, there was no need to mention the risk of pathological gambling.

[130] He further disagreed with Dr. Abu's "position on the obligation to mention all the potential side effects to patients initiating a 2 mg daily dose of aripiprazole".

[131] Dr. Blier also disagreed with Dr. Abu's opinion with respect to standard practice for physicians on follow up after prescribing Abilify:

Just as it is not customary to mention that pathological gambling is associated with Aripiprazole for the reasons mentioned above, this specific question is not required for physicians to ask this question in the follow up.

[132] Finally, he disagreed with Dr. Abu's opinion "that Abilify (Aripiprazole) likely contributed to the disordered gambling and impulsive shopping behaviour". Instead, in his view, there were "several confounding factors that prevent from attributing her pathological gambling to a low dose of Aripiprazole". Those factors in his view were: (1) that she was already displaying erratic behaviour in September 2019; (2) that "she had an opioid addiction disorder and, on her own, decreased the dose of her AOT medication Suboxone", "took the opioid medication Codeine", and had previously had tested positive for fentanyl, which "raise[] the issue of a recurrent illicit drug use"; (3) further he was of the view that the plaintiff's consumption of cannabinoids could have explained the food craving since this is a common side effect. In 2019, the plaintiff did take CBD oil to help her sleep.

[133] In cross examination, Dr. Blier stated that he has been an expert witness in prior litigation relating to pathological gambling (involving a different medication) in Canada, which involved Otsuka. He also stated he was retained as an expert in 2018 about a case in Florida alleging that Abilify caused compulsive gambling.

[134] On cross examination he testified that:

- (a) in 2010 the first published report began appearing in the literature suggesting a possible link between Abilify and pathological gambling; and
- (b) in November 2015, Health Canada erred on the side of safety and ordered drug companies to update the product monograph to include pathological gambling and hypersexuality with Abilify use.

[135] Dr. Blier testified about the change to the wording of the Abilify product monograph, which added this sentence at some point after 2016 - "With regards to pathological gambling, patients with a prior history of gambling disorder may be at increased risk and should be monitored carefully" - but could not say when the sentence was added and had to go by the revision date of 2020.

[136] He testified with respect to the 2017 Brief Report, that the conclusion of the authors of an association between Aripiprazole and impulse control and gambling disorders, was based on a result of five out of six million patients, without having their patient profiles, and in his view totally inadequate. He testified "the data did not support their conclusion".

[137] He testified on cross examination, that "there's nothing in the literature that shows that 2 milligrams per day has caused pathological gambling"; and "there is absolutely no case where there's pathological gambling with 2 milligrams per day" of Aripiprazole, it is always with 15, 20 or 30mg doses. His testimony supported the view that with the plaintiff, a side effect of gambling was not because of a 2 mg dose of Abilify.

[138] He testified that, "in our group of opinion leaders across Canada, and if you look at the CANMAT guidelines, we don't mention" pathological gambling "to patients" as a side effect.

[139] CANMAT refers to a group called the "Canadian Network for Mood and Anxiety Treatments".

[140] Dr. Blier testified there are a lot of listed side effects, which include choking, but "when we prescribe aripiprazole, especially at 2 milligrams when people are depressed, we don't go through a whole paragraph of side effects" - instead "you talk about the most likely side effects" when prescribing medication.

[141] Dr. Blier testified on cross-examination:

depression can be a life threatening condition so it's very important that we ask for suicidal ideation and when we treat, especially in this case here, somebody who has been not responding adequately to medication, suicide is something that you fear, so if you don't treat depression, I always tell my patients, what you have to fear is not the medication it's the disorder it's the depression because depression can kill.

[142] He testified the risk of pathological gambling is a "fraction of a percentage point", and "you don't warn patients about all these side effects"; and that "we don't recommend that we warn people about all these side effects" which are "extremely rare". He also testified that appetite increase is one of the rare side effects of Abilify.

[143] On cross examination, he also testified that it would be highly suspicious from a pharmacological point of view for a person's compulsion to gamble to stop immediately after taking Abilify, given only 2 mg a day was prescribed, and that it takes a minimum of two weeks for the medication to leave the body's system (given the half life of Abilify). That gambling would have stopped immediately after taking Abilify was something Dr. Blier testified "I don't buy that from a pharmacokinetic point of view".

[144] Dr. Blier testified that he would warn a patient starting Abilify of a risk of gambling if they had a past history of a gambling disorder; that, it is a possibility that such patients are at higher risk.

[145] When asked if the literature suggests that gambling can start after taking Abilify, in some cases a week or later, he answered at higher doses it is possible.

[146] He was asked about the plaintiff taking 70 mg a day of Vyvanse (which he testified was the maximal recommended dose), and testified at this time she was in a "pharmacological perfect storm":

So basically I think she was in a what we call a pharmacological perfect storm. The decrease in suboxone and the codeine and the Percocet and doubling of the Vyvanse at one point and the THC which was documented in that period like on January 2nd so we don't know how much, what the concentration of THC she was taking and actually when I got the other evaluation after I produced my report I saw that she had actually stopped the escitalopram she admitted to that and

that is a problem too. I mean discontinuation from serotonin reuptake inhibitor can produce some pretty severe discontinuation symptoms in the form of agitation and all kinds of body sensations.

[147] He added: "What I'm saying is that independently of the low dose of aripiprazole for which there is no case in the literature to cause pathological gambling at 2 milligrams per day. All these other factors put together were sufficient to explain her erratic behaviours".

[148] I generally accept Dr. Blier's opinion evidence in these Reasons. I add that to the extent in his testimony that Dr. Blier placed reliance on an assumed fact that the plaintiff was "freaking out" during the time she was taking Abilify, an apparent reference from Dr. Zatisow's expert evidence, I place less weight on his views in this regard. I do not find that this factual assumption - that the plaintiff described herself at the time the events occurred as "freaking out" after taking Abilify -- was proven by the defendant. However, that this assumption was not proven does not detract in any material way from the weight of Dr. Blier's opinions, since this assumption formed only one part of the conclusions and opinions expressed in his reports and testimony.

Tanya Percy - Occupational Therapy

[149] Tanya Percy is an occupational therapist who gave expert evidence at trial in the areas of occupational therapy and cost of future care.

[150] She reviewed the expert reports which preceded hers and opined as to the cost ranges of residential treatment programs for gambling.

[151] She opined, among other things, that there "appears to be limited potential for [the plaintiff] to benefit from attending a residential treatment program at this time given limited benefits during a prior admission and the lack of consensus for this treatment in terms of managing [the plaintiff's] complex psychiatric issues".

Mark Gosling - Economist

[152] Mark Gosling's two expert reports were place in evidence at trial to assist, as necessary, with calculations for the plaintiffs alleged past and future income loss.

Dr. Michael Zaitzow - Psychiatry

[153] Dr Zaitzow is a practicing psychiatrist who conducted an independent medical examination of the plaintiff.

Zaitzow Report #1

[154] In his first report, he provided the following provisional diagnoses of the plaintiff of:

Major Depression

Anxiety

Attention Deficit Disorder by history, though "not well substantiated"

Substance use disorder (Opioids)

Cluster B personality or traits, possible Borderline Personality Disorder

Bipolar I reaction (manic, possibly with psychosis), possibly triggered by abilify augmentation

Differential diagnosis includes Bipolar II disorder. This could not be effectively ruled in or out.

[155] He opined that "[the plaintiff] very likely presented in an activated bipolar state following treatment with abilify", and "[f]ollowing treatment with abilify, she reported a number of clinical features characteristic of a bipolar mood state or Bipolar I Disorder; these included "some form of activation" and "impulsive behaviour including spending [and] gambling" (among others). While undocumented, in his view "the story is coherent and points provisionally to a diagnosis of Bipolar I, manic state during the abilify trial".

[156] In his first report, Dr. Zaitzow opined that "The abilify (aripiprazole), which at low doses can enhance the stimulant effect, was likely one of a number of significant triggers of a mood switch from active Major Depression to a manic state (Bipolar I Disorder) even though, paradoxically, it is a very common treatment for Bipolar I Disorder itself".

[157] He opined that "Abilify causing gambling as an isolated side effect is an uncommon side effect. What is much more likely in this case is the evidence supports her experiencing a switch to a bipolar activated state ". Relatedly, he stated:

Despite the potential to trigger a mood switch from Major Depression to a bipolar state, it should be noted that abilify (aripiprazole) is commonly used to treat bipolar I conditions. Abilify is a first line treatment for psychosis, including the psychosis of Bipolar I Disorder, mania.

[158] He added, Abilify has a "switch rate [from depression to mania], probably within the range of 2-3 percent". He opined that "[the plaintiff] should avoid future treatment with abilify due to her Bipolar I reaction to the drug".

[159] In his third report, he changed his opinion about the causal relationship between Abilify and the plaintiff's compulsive activity, which I will return to below.

Zaitzow Report #2

[160] In his second report, Dr. Zaitzow opined that prior to her being seen by Dr. Ogunremi, the psychiatric condition of the plaintiff's presentation supported a "diagnosis of longstanding mood disorder with anxiety (probably Major Depressive Disorder but possibly Bipolar II Disorder), possible attention Deficit Disorder, Opioid Use Disorder and possible Borderline Personality Disorder."

[161] In his view, "[t]he standard of care provided to Ms. [the plaintiff] by Dr. Ogunremi was reasonable and within the expected care of a psychiatrist." That, "[t]he augmentation dose of aripiprazole 2 mg represents an appropriate intervention." And that "Appropriate follow up was provided".

[162] Dr. Zaitzow was asked to explain what risks he would inform a patient prior to treatment of Abilify in this context. In his opinion:

- (a) "First and foremost, patients should be informed that weight gain is a significant side effect of abilify".
- (b) "I would also mention the risk of some form of activation", and that "Examples of activation include increased anxiety, tremor, insomnia and/or switch to a more activated mood state, such as mania or hypomania."
- (c) "If the patient was prone to impulsiveness, I would mention that a sign of this type of activation and/or switch to mania is increased impulsiveness".

[163] However, in his view, he "would not itemize the detailed symptoms of Bipolar I Disorder, such as gambling, compulsive spending and/or hypersexuality unless the patient had already demonstrated an inclination to demonstrate these symptoms in the past".

[164] He added:

"Most commonly, gambling, compulsive spending, inappropriate travel and/or hypersexuality are features of an impulsive mood state such as bipolar I disorder. I would not necessarily specify the list of potential impulsive behaviours associated with a Bipolar I mood state when prescribing these medicines including the abilify."

[165] He states: "I have never had a patient refuse abilify based on the isolated risk of gambling", and that "the risk of an isolated risk of gambling on abilify is very low."

[166] He opined:

The choice of abilify was a reasonable prescription for [the plaintiff] at this point in time. The abilify dose of 2 mg was reasonable, given that it is low and is the most common initial augmentation dose used in the treatment of Major Depressive Disorder.

Zaitzow Report #3 (Supplemental Report)

[167] In a supplemental report issued mid-trial, Dr. Zaitzow provided a further opinion with respect to causation.

[168] His third report lists as revised assumed facts, certain dates, and location of the plaintiff's withdrawal of amounts of cash at casinos before November 2019 when she was prescribed Abilify.

[169] His report opines "Treatment with Abilify (Aripiprazole) as an isolated factor does not cause gambling". He states:

I was not provided with a prior history of gambling at her IME, despite inquiring. The clinical presentation is now more coherent. The Factual Assumptions support the judgement that gambling was an established behaviour prior to the exposure to Abilify. Abilify did not cause or aggravate Ms. Purchas's symptoms or behaviours in November and December 2019.

[170] In his view, "[the plaintiff's] gambling is part of her underlying condition and not due to the Abilify". He opined, among other things, that her "complex combination of disorders, including the addictive aspect (substance use disorder.) accounts for the gambling."

[171] He stated: "Gambling is part of or is caused by the underlying listed comorbid conditions", and that:

"The effect of prescribing Abilify in this situation might have temporarily provided some stabilizing influence in the presence of the dramatic destabilizing forces detailed above. It did not cause the gambling"

[172] In cross examination, Dr. Zaitzow referred to Abilify as only a "potential rivulet, little rivulet, in a tsunami". While he may have previously been of the view to a 99% certainty that Abilify was not a factor in his first report, he opined he was now 100% confident that Abilify was not a cause. He testified that if anything the Abilify probably helped her.

[173] In his testimony, he clarified that his first report was based on the assumption the plaintiff did not gamble before, but after she was exposed to Abilify she developed gambling behaviour. He testified his first report explored an explanation of the role of Abilify and her gambling. He testified that once this factual assumption was corrected, the "entire story makes sense" and he changed his understanding of the case as reflected in his supplemental report. He testified the case is now coherent and "Abilify is just not a factor".

[174] I was not persuaded from his testimony (including exhibit 31) that the plaintiff told Dr. Zaitzow that the plaintiff felt at the time that she was 'freaking out' after taking Abilify, but instead it seems equally as likely she told him that is how she felt when she later saw Dr. Ogunremi on January 6, 2020.

[175] On cross examination, Dr. Zaitzow testified that during the IME the plaintiff told him that she did not gamble prior to receiving Abilify, and had an issue with this assumed fact - he apologized for not making this clear in his report. He acknowledged this fact was at odds with some information he had received which indicated she had gambled pre-Abilify, but he testified he was trying to determine a diagnosis not determine why there was a discrepancy.

[176] The plaintiff testified that she did not recall if during the IME he did or did not ask if she ever gambled before Abilify, but if he did ask she would have said she gambled socially every couple of months.

- [177] He testified he was not necessarily diagnosing the plaintiff with gambling addiction or disorder in the period prior to taking Abilify.
- [178] He agreed in cross examination with the suggestion that he was characterizing the timing of gambling and Abilify as a coincidence.
- [179] Dr. Zaitzow during cross examination explained his change of opinion, and his answers at some point were lengthy and at times non responsive. He stated that his first report identified a "theoretical risk" that Abilify could have activated a manic state , and he testified it was not what happened in this case.
- [180] Despite the lack of clarity in his first reports including with respect to his reliance on an assumption the plaintiff did not gamble pre-Abilify, his apparent change of opinion in his supplemental report, and the manner of his answering questions in cross-examination, I am satisfied that Dr. Zaitzow was trying to assist the court. I found his testimony in general to be forthright, professional and thoughtful.

Professionalism of Experts at Trial

- [181] I find that all the experts who testified at this trial, as witnesses for the plaintiff and the defendant, were professional in their testimony.
- [182] I find they were all trying to assist the court, and be accurate in their testimony. I detected no advocacy in their testimony. I do not accept the suggestion by the plaintiff that Dr. Blier's evidence is not credible or reliable because of past work he has done for Otsuka. He denied that this had any impact on his opinions in this trial, and I accept his evidence in this regard.

POSITIONS OF THE PARTIES

The Plaintiff's Position

- [183] The plaintiff contends that, while taking Abilify, she withdrew approximately \$186,000 at casinos, over the course of 25 casino visits, during a roughly eight week period (the significant majority of which being in the latter half of this time period).
- [184] The plaintiff submits that the defendant did not advise the plaintiff of the risk of gambling, nor warn of the risk of compulsive behaviours.
- [185] The plaintiff contends that, "[e]ven if the court finds that the Defendant likely did warn of the risk of compulsive behaviours, the Plaintiff submits that it was still a breach of care to not define and explain those compulsive behaviours, and in particular, to fail to mention the risk of gambling". The plaintiff relies on the case of *Buckingham v. Hobza*, 2023 BCSC 399, and submits "the within situation is very similar to the facts in *Buckingham*".
- [186] The plaintiff submits:

the Defendant breached [the] standard of care by: (1) not advising the Plaintiff of the risk of pathological gambling on November 4, 2019; and (2) not following up and specifically asking the Plaintiff about pathological gambling on December 2, 2019.

[187] The plaintiff argues that a breach of standard of care resulted in the plaintiff experiencing a period of significant pathological gambling, that "but for" the breach would not have occurred. The plaintiff contends that pre-Abilify, the "evidence does not show someone with a gambling "issue", let alone a gambling disorder." The plaintiff submits "it is not necessary for the Abilify to have been the only cause of the gambling. It is sufficient if it was a cause that was beyond the de minimis range".

[188] The plaintiff submits that, "the facts are overwhelmingly in support of a conclusion that the Abilify, on a balance of probabilities, caused the compulsive/pathological gambling that occurred throughout November and December 2019 ". The plaintiff "submits causation has been made out" for a number of reasons, including the "Health Canada warning of Abilify causing pathological gambling", information on the product monographs, the "fact the gambling started 11 days after the introduction of the Abilify to the medication regime", the "fact that the Defendant himself charted that Abilify was a possible factor", and Dr. Abu's opinion and Dr. Zaitzow's original opinion.

[189] As I appreciate it, the plaintiff's position is that the risk of compulsive gambling (or other behaviour) was not a self-evident risk that the plaintiff would associate with taking Abilify. Thus, had the plaintiff been warned by the defendant of a risk of compulsive gambling (or shopping), she would have recognized her behaviour as a medication side effect and either stopped taking the medication very quickly (or sought medical advice which would have led to her halting the medication), and not suffered loss and damage. Conversely, she contends that, unaware of this medication's potential side effect, she continued taking Abilify for about two months, experiencing losses caused by the medication.

[190] The plaintiff submits that damages should be assessed at \$1,286,778.30, which includes heads of damage for non-pecuniary damages, past wage loss and loss of earning capacity, past treatment expenses, cost of future care, and approximately \$220,000 of gambling losses.

[191] There is no claim advanced in this action against the pharmacy which dispensed the Abilify medication. In her second amended notice of civil claim, the plaintiff:

expressly waives any and all rights to recovery from the Defendant, Dr. Stephen Ayotunde Ogunremi any portion of the loss which Plaintiff claims and damages which this Honourable Court may attribute and apportion to the fault, liability or responsibility of the Defendant Plateau Pharmacy Ltd., now known as JSD Consulting Ltd., to the extent that the Defendant. Dr. Stephen Ayotunde Ogunremi might reasonably be entitled to claim contribution or indemnity as against the Defendant Plateau Pharmacy Ltd., now known as JSD Consulting Ltd., pursuant to the Negligence Act. RSBC 1996. c. 333, or any equivalent successor legislation, or at common law.

The Defendant's Position

[192] The defendant contends that,

The plaintiff has not met her burden in proving on a balance of probabilities that Dr. Ogunremi breached the standard of care, nor that any breach caused her injuries. In the alternative, if proven, she is not entitled to the damages she claims. (para. 375)

[193] The defendant submits "that neither of the risks present in Buckingham that led to the finding that the standard of care itself was negligent are present in this case" (para. 224). They argue "It cannot be said that prescribing Abilify at a dose of 2mg without specifically warning of compulsive gambling is fraught with obvious risk".

[194] Further, "even if this court finds that there is such a risk, which is denied, the patient, unlike Buckingham, has the ability to monitor their gambling behaviours to bring to the attention of their physician." And that "a sudden onset of gambling is a behaviour that a reasonable person would be aware of and report to their physician" (para. 225).

[195] The defendant argues this "is not the case of the 'simple issue' that was at play in Buckingham", and instead "this is the exact type of situation where expert evidence is required to determine the appropriate standard of care." (para. 229).

[196] Further, the defendant "submits that even if the plaintiff succeeds on the standard of care issue, she cannot establish causation" (para. 230). They argue "there is no indication that "but for" taking Abilify the plaintiff would not have gone on to experience these same compulsive behaviours." (para 293). The defendant further, in the alternative, makes submissions on damages.

ISSUES

[197] The defendant admits he owed the plaintiff a duty of care.

[198] The plaintiff does not advance an informed consent claim, since counsel for the plaintiff submits that the plaintiff would have gone ahead and taken the medication anyway. Accordingly, I do not analyze the plaintiff's negligence claim with reference to principles applicable to an informed consent claim.

[199] Instead, the plaintiff contends that there was a breach of the standard of care: a failure to warn of compulsive gambling side effects, and monitor them on follow up, so that when this occurred she did not connect her compulsive gambling and other behaviour to the Abilify medication and take steps to halt it, or report it which would have led to halting it the medication to lessen her loss. The plaintiff submits these breaches of the standard of care occurred both at the time of prescribing the medication, and also on follow up.

[200] The issues in this action are:

- (a) Did the defendant breach the standard of care to the plaintiff on November 4, 2019, by failing to warn her of the risk of compulsive gambling and shopping?
- (b) Did the defendant breach the standard of care to the plaintiff on December 2, 2019 by failing to ask about, and monitor, for compulsive gambling and shopping?
- (c) Did the defendant's breach of any standard of care cause the asserted damage to the plaintiff, including gambling losses?
- (d) If so, what damages should be awarded against the defendant in favour of the plaintiff, in respect of these claimed damages:
 - i. Non-pecuniary damages
 - ii. Gambling Losses
 - iii. Past Wage Loss
 - iv. Loss of Earning Capacity
 - v. Past Treatment Expenses
 - vi. Cost of Future Care

CREDIBILITY

- [201] The factors to be considered when assessing credibility were summarized by Justice Dillon in *Bradshaw v. Stenner*, 2010 BCSC 1398, aff'd 2012 BCCA 296, as follows:
- [186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Farnya v. Chorny*, [1952] 2 D.L.R. 152 (B.C.C.A.) [*Farnya*]; *R. v. S.(R.D.)*, [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Farnya* at para. 356).
- [202] As explained by this Court in *Hardychuk v. Johnstone*, 2012 BCSC 1359, credibility and reliability are distinct assessments:

- [101] The typical starting point in a credibility assessment is to presume truthfulness: Halteren. Truthfulness and reliability are not, however, necessarily the same. A witness may sincerely attempt to be truthful but lack the perceptive, recall or narrative capacity to provide reliable testimony. Alternatively, he or she may unconsciously indulge in the human tendency to reconstruct and distort history in a manner that favours a desired outcome. There is, of course, also the possibility that a witness may choose, consciously and deliberately, to lie out of perceived self-interest or for some other reason. Accordingly, when a witness's evidence is demonstrably inaccurate the challenge from an assessment perspective is to identify the likely reason for the inaccuracy in a cautious, balanced and contextually sensitive way.
- [203] I found the plaintiff, generally, to be fair and forthright in her answers, and was trying to be honest in her testimony. However, her memory of some events was not good, which detracts from the reliability of her evidence. For example, her characterization of the degree of pre-Abilify gambling, and the extent of her gambling after coming off that medication, appears to understate (although not markedly) the amount she spent during these time frames, given the evidence in her financial records. I have also found that the plaintiff misrepresented to her doctor in November 2019 that the defendant had approved an increase dosage to her Vyvanse, which he did not do, but I am unable to conclude whether this was intentional or not; in either case, it tends to detract from the reliability of her evidence.
- [204] I find that in general, the plaintiff was trying to be honest in her evidence to give an accurate account of the events as she remembers them; however, she was having a difficult situation at the time both before and after her prescription of Abilify, and so some of her evidence is not necessarily reliable: *Ediger v. Johnston*, 2009 BCSC 386 at para. 117.
- [205] Similarly, I found the defendant Dr. Ogunremi was trying to be honest in his evidence, and was credible. However, I found his evidence about his interactions with the plaintiff at times to be unclear as to whether he was recounting his specific memory of the events, or his general practice when dealing with his patients. He at times referred to his medical record notes in his testimony. I have some doubt about the accuracy of his memory of what precisely was said during some of his meetings with the plaintiff. The defendant was professional throughout in his testimony, however these aspects of his testimony detract somewhat from the reliability of some of his evidence recounting his interactions with the plaintiff.
- [206] The lay witnesses I found to be generally credible and reliable in their evidence. This is with the exception of Ms. Knight, who I found did not have a good recollection of events in 2019 which she testified to, which detracts from the reliability of her evidence. I also have uncertainty as to the accuracy of some aspects of Ms. Korberly's evidence.

DISCUSSION AND ANALYSIS

Issue 1: Did the Defendant Breach a Duty of Care to the Plaintiff?

- [207] A successful action in negligence requires that the plaintiff demonstrate (1) that the defendant owed them a duty of care; (2) that the defendant's behaviour breached the standard of care; (3) that the plaintiff sustained damage; and (4) that the damage was caused, in fact and in law, by the defendant's breach: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at para. 3.
- [208] The plaintiff contends that the defendant breached a duty of care to her in two ways. Broadly speaking, the plaintiff alleges a breach during the initial visit on November 4, 2019, by failing to warn her about the side effects of Abilify, and in the follow up meeting when he re-filled the prescription by not adequately monitoring her side effects.
- [209] During oral submissions, counsel for the plaintiff clarified that they rely on the side effects of both gambling and shopping to establish a breach of the standard of care (although no damages are sought for breach of duty for money spent by the plaintiff on shopping). But, while the side effects complained of by the plaintiff is excessive gambling and shopping (and, in evidence, eating is also referred to), it is the gambling that the plaintiff emphasizes.
- [210] The plaintiff characterizes the breaches in this way in their written submission (p. 2):
- In the current circumstances, there are areas of negligence, though they are related.
- [1] The first issue is one of disclosure or risks - ie should the defendant have warned the plaintiff of the side effect of gambling on November 4, 2019.
- [2] The second issue is one of monitoring - ie should the defendant have inquired about whether the plaintiff was experiencing compulsive behaviour such as gambling on December 2, 2019.

Legal Principles - Standard of Care of Physician

- [211] Under the law of negligence, "physicians have a duty to conduct their practice in accordance with the conduct of a prudent and diligent doctor in the same circumstances": *ter Neuzen v. Korn*, [1995] 3 SCR 674 at para. 33, 1995 CanLII 72.
- [212] The standard is reasonableness, not one of perfection. A "'standard of excellence' has never, for obvious and good reason, [been] imposed on physicians and surgeons": *Carlsen v. Southerland*, 2006 BCCA 214 at para. 13; *Buckingham* at para. 188. To apply a "standard of excellence that amounted to perfection" is to "set a standard that [is] impossible to rebut": *Carlsen* at para. 15; see also *Scrimgeour v. Singer*, [1988] B.C.J. No. 31 at para. 47, 1988 CarswellBC 3542 (S.C.).
- [213] The "standard of care that a physician must provide will take into account all the factors affecting or potentially affecting the life and health of the patient"; thus, "the degree of care required is commensurate with the potential danger to the patient", and so the "the greater the risk, the higher the standard of care": *Ediger v. Johnston*, 2009 BCSC 386 at para. 49, aff'd in part 2013 SCC 18.

- [214] The court must exercise caution to avoid holding a physician "to a standard of perfection by using a poor outcome or a low risk of injury to infer negligence": *Pellerin v. Balfour*, 2024 BCSC 2135 at para. 207, quoting *Siever v. Interior Health Authority*, 2021 BCSC 880 at para. 102.
- [215] Justice Girn also stated in *Pellerin*:
- [208] The standard of care is assessed with reference to the time of the events in issue. A physician will not have failed to meet the standard if their treatment "corresponds to recognized medical science at the time, even if there are competing theories": *Gilmore* at para. 232, citing *Ter Neuzen* at 695. Physicians "should not be held liable for errors of clinical judgment that are distinguishable from professional fault": *Medina v. Wong*, 2018 BCSC 292 at para. 100.
- [209] In evaluating clinical judgment, the Court in *Medina* explained that "exercises of clinical judgment are decisions made by medical practitioners once they have considered all of the relevant information it is reasonably possible to obtain under the circumstances": at para. 101.
- [210] Recognizing that treatment requires an exercise of clinical judgment, "there will be cases where two reasonable physicians, acting reasonably, may disagree as to a course of action and diagnosis": *Gilmore* at para. 237. In such cases, so long as the defendant follows one such reasonable course of action, they will not have failed to meet the required standard of care: *Gilmore* at paras. 237-238, citing *O'Connor v. Wambera*, 2018 BCSC 886 at paras. 50, 110-111.
- [211] Further, any given error of judgment is not necessarily a negligent one. An error must be evaluated "relative to the conduct of a reasonable practitioner in similar circumstances": *Medina* at para. 103.
- [216] For a specialist, "the doctor's behaviour must be assessed in light of the conduct of other ordinary specialists, who possess a reasonable level of knowledge, competence and skill expected of professionals in Canada, in that field". Thus, a specialist, such as the defendant, "who holds himself out as possessing a special degree of skill and knowledge, must exercise the degree of skill of an average specialist in his field": *ter Neuzen* at para. 33.
- [217] Further, the "conduct of physicians must be judged in the light of the knowledge that ought to have been reasonably possessed at the time of the alleged act of negligence" (*ter Neuzen* at para. 34). Thus, "courts must not, with the benefit of hindsight, judge too harshly doctors who act in accordance with prevailing standards of professional knowledge": para. 34, referring to *Roe v. Ministry of Health*, [1954] 2 All E.R. 131 (C.A.) at 137, [1954] 2 Q.B. 66; and *Lapointe v. Hôpital Le Gardeur*, [1992] 1 S.C.R. 351 at 362, 1992 CanLII 119 (SCC) ("courts should be careful not to rely upon the perfect vision afforded by hindsight").
- [218] Professional guidelines are not dispositive of the standard of care, as explained in *Ediger*:

[59] To breach a recommendation of a professional guideline does not of itself constitute a failure to meet the applicable standard of care. guidelines are practical tools to assist practitioners in the delivery of services; they are not a substitute for a determination, on all the evidence, of the applicable standard of care.

[219] The standard of care analysis for physicians can be characterized as a two-step process.

Step One- Did the Defendant Doctor follow a Standard Practice?

[220] First, "it is generally accepted that when a doctor acts in accordance with a recognized and respectable practice of the profession, he or she will not be found to be negligent": *ter Neuzen* at para. 38. This is because, as explained in *ter Neuzen*:

[38] courts do not ordinarily have the expertise to tell professionals that they are not behaving appropriately in their field. In a sense, the medical profession as a whole is assumed to have adopted procedures which are in the best interests of patients and are not inherently negligent.

[221] However, while adherence to common practice "may be strong evidence of reasonable and diligent conduct", it is "not determinative": *ter Neuzen* at para. 42, quoting *Roberge v. Bolduc*, [1991] 1 S.C.R. 374 at 436-437, 1991 CanLII 83. The Court in *ter Neuzen* quotes Professor Fleming in this respect, stating that, "even a common practice may itself be condemned as negligent if fraught with obvious risks" (emphasis in the original), or "fraught with danger": paras. 39, 43, citing John G. Fleming, *The Law of Torts*, 7th ed (Sydney: Law Book Company, 1987).

Step Two - Is the Standard Practice Followed Nevertheless Negligent?

[222] Thus, there is a second step to analyzing the physician's standard of care: "while conformity with common practice will generally exonerate physicians of any complaint of negligence, there are certain situations where the standard practice itself may be found to be negligent": *ter Neuzen* at para. 41. Specifically, "this will only be where the standard practice is 'fraught with obvious risks' such that anyone is capable of finding it negligent, without the necessity of judging matters requiring diagnostic or clinical expertise": para. 41; see also para. 39. This question may be framed as follows: whether "the standard established by the evidence itself departed from that of a prudent and diligent physician and that the respondent [physician], in failing to conform with a higher standard, was guilty of negligence": para. 36.

[223] As to the second step, the court should exercise caution where the medical judgment at issue would require "resolving scientific disputes which require the expertise of the profession". The Court in *ter Neuzen* states:

[44] courts should not involve themselves in resolving scientific disputes which require the expertise of the profession. Courts and juries do not have the necessary expertise to assess technical matters relating to the diagnosis or treatment of patients. Where a common and

accepted course of conduct is adopted based on the specialized and technical expertise of professionals, it is unsatisfactory for a finder of fact to conclude that such a standard was inherently negligent. On the other hand, matters falling within the ordinary common sense of juries can be judged to be negligent. For example, where there are obvious existing alternatives which any reasonable person would utilize in order to avoid a risk, one could conclude that the failure to adopt such measures is negligent notwithstanding that it is the prevailing practice among practitioners in that area.

[224] Similarly, when considering the question of whether an accepted medical practice is negligent because it is "so fraught with obvious risks that it was negligent", a court "should not involve themselves in controversial questions of assessment having to do with diagnosis or the treatment": Focken v. Miller, 2024 BCCA 74 at paras. 51-53, quoting ter Neuzen at para. 38.

[225] This second step admits of a general rule, and an exception, expressed this way in ter Neuzen (quoted in Focken at para. 56):

[51] as a general rule, where a procedure involves difficult or uncertain questions of medical treatment or complex, scientific or highly technical matters that are beyond the ordinary experience and understanding of a judge or jury, it will not be open to find a standard medical practice negligent. On the other hand, as an exception to the general rule, if a standard practice fails to adopt obvious and reasonable precautions which are readily apparent to the ordinary finder of fact, then it is no excuse for a practitioner to claim that he or she was merely conforming to such a negligent common practice.

The Buckingham Case

[226] In Buckingham, the plaintiff sued two physicians in negligence, arising from the manner in which they prescribed the steroid prednisone to him. He alleged that he developed glaucoma due to elevated pressure within the eye, a potential side effect of prednisone, which damaged his vision.

[227] The plaintiff alleged that these doctors failed to obtain informed consent from him before prescribing the medication to him; and that they failed to meet the standard of care in monitoring his condition after he began taking it: para. 3.

[228] Justice Schultes set out the breach of standard analysis as follows:

[189] If a physician acts in accordance with the recognized practices of their profession, they will usually not be found negligent, because in most cases courts lack the expertise to say that professionals did not know what they were doing. The exception is when the practice itself is negligent, which can only be found when it is "fraught with obvious risks", so that no diagnostic or clinic expertise is required to make that finding, or it "fails to adopt obvious and reasonable precautions which are readily apparent to the ordinary finder of fact". In such cases, expert evidence is not required to make that finding: ter Neuzen at paras. 38, 41,

51-52.

- [229] The Court first addressed the claim of lack of informed consent, finding, as a threshold matter, that the side effect in question was a material risk a person would want to know about:
- [207] I am satisfied that the risk of continuing with high-dose prednisone for more than four weeks is a material risk that a reasonable person being prescribed the drug at that dose and duration would want to know about.
- [208] Four percent of the population is vulnerable to their intraocular pressures being raised by prednisone, there are no symptoms until permanent damage has been done to the optic nerve, the patient is not capable of self-monitoring, and the consequences of the glaucoma that elevated pressures can cause include blindness. This clearly falls into the category of "low risk-bad consequences", as it was described in Brito, and required an explanation to Mr. Buckingham, at the very latest, at the point when he was approaching the four-week mark.
- [230] However, In Buckingham, the claim of breach of informed consent was dismissed, since a reasonable person would not have refused the prednisone as prescribed in any event:
- [210] The problem in applying the [informed consent] analysis arises at the second stage, with respect to whether a reasonable person possessed of Mr. Buckingham's attributes would have refused the prednisone as prescribed, if that risk had been explained to them. His counsel concedes that such a person would not have refused it, but only with the crucial accompanying element of intraocular pressure monitoring. That was a sensible concession, in light of the abundant evidence that prednisone is the first-line treatment for dermatomyositis, that there are no real alternatives to it, and that failing to treat the condition can lead to serious health consequences for the patient.
- [211] However, I do not think the test can be applied in the manner suggested by Mr. Buckingham's counsel. The essence of the "breach" that makes a lack of informed consent negligent is that the physician's failure led the patient to submit to treatment that they would not have agreed to if they had known the true risks. Mr. Buckingham clearly would have taken that treatment even if he had known those risks, and I do not think that monitoring his pressures once he had agreed, which is really an aspect of the ongoing management of that medication after consent has been given, can be grafted onto the informed consent test. In my opinion, it belongs in the analysis of the standard of care.
- [231] I note in passing that, in the case at bar, the plaintiff does not pursue an informed consent claim against the defendant Dr. Ogunremi, for the same reason as in Buckingham: that she would have taken Abilify anyway.

- [232] Having dismissed the informed consent claim, the Court in Buckingham went on to deal with the issue of whether the plaintiff should have been informed of the risk of elevated intraocular pressures leading to glaucoma as part of alleged breach of standard of care:
- [212] Since I have found the issue of informed consent to be inapplicable at this stage of the analysis, it is unnecessary to go on to consider whether the risk that Mr. Buckingham should have been informed of - elevated intraocular pressures leading to glaucoma - actually materialized. I will consider that question in relation to the causation element of the alleged breaches of the standard of care.
- [233] The Court concluded that there was a breach of the standard of care by failing to institute a regime of intraocular pressure monitoring for a patient to whom they had prescribed high-dose prednisone, and finding "negligence, based on adherence to an inadequate standard of care in the monitoring of intraocular pressures when prescribing high-dose prednisone": para. 226.
- [234] While the Court found, "prudent and diligent family physicians in Dr. Hobza's circumstances and rheumatologists in Dr. Law's would not have instituted a regime of intraocular pressure monitoring for a patient to whom they had prescribed high-dose prednisone for more than four weeks" (para. 213), that standard of care was itself negligent:
- [217] to be negligent in itself, the existing standard must be one that is fraught with obvious risk and/or that fails to adopt obvious and reasonable precautions which are readily apparent to the ordinary finder of fact. As the trier of fact in this case, I am aided by the opinions of two medical professionals that those deficiencies exist. I do not think Dr. Stein being based in Ontario and Dr. Faber not being familiar with current practices in family medicine or rheumatology really matter to the weight of their opinions, because their opinions were based on fundamental medical principles that I am satisfied cut across all locations and specialties - that a medication that can seriously affect eyesight in a way that does not manifest until it is too late to be fixed needs to be monitored before that effect occurs.
- [218] At the end of the day however, I would reach the same conclusion without those expert opinions, since I am satisfied that the adequacy of the current standard of care is within my ability to determine as an ordinary trier of fact, and does not require diagnostic or clinical knowledge.
- []
- [221] Similarly, I do not think that finding the standard of care negligent in this case requires any diagnostic or clinic expertise. This standard is fraught with risk in a particular situation and type of patient, and reasonable precautions to avoid that risk - in the form of a system of ongoing monitoring - are obviously available, even from the perspective of the non-medically trained trier of fact.

[Emphasis added.]

- [235] The Court explained that it found the practice of not monitoring negligent, because:
- [223] it left a meaningful percentage of patients unable to protect themselves against the onset of a life-altering side effect, when a means of ensuring that protection - regular visits to an optometrist for intraocular pressure monitoring - was easily available.
- [236] Thus, ultimately, the finding of breach of the standard of care in Buckingham turned on a failure to monitor for a certain side effect of medication, a practice which was itself negligent, not a failure to inform the patient of the risk of that side effect.
- [237] Ultimately, the claim of negligence against the physicians was dismissed for want of causation: Buckingham at paras. 227-240.

Findings: Standard of Care

- [238] Returning to the facts of the case before me, I find that the defendant did not breach his standard of care when he did not affirmatively warn the plaintiff of a potential side effect of compulsive gambling (or shopping) when prescribing the 2 mg dose of Abilify to the plaintiff, and in his conduct on follow up with the plaintiff.

Step One - The Defendant Did Follow a Standard Practice

- [239] I find that there are two different professional views, or standard practices, as to whether to tell the patient about the risk of compulsive behaviour such as gambling when prescribing a 2 mg dose Abilify. Dr Abu's opinion is that this risk should be mentioned.
- [240] However, Dr. Blier's opinion is that it "was not standard of care in November 2019 to warn all patients about a risk of gambling or compulsive behavior prior to prescribing aripiprazole at the low dose of 2 mg/day".
- [241] Dr. Zaitzow's second report, which relied on his opinion that the plaintiff has a Bipolar 1 diagnosis, opined that he would not necessarily mention a risk of "gambling, compulsive spending, inappropriate travel and/or hypersexuality" when prescribing Abilify (p. 15). He further opined that he "would not itemize the detailed symptoms of Bipolar I Disorder, such as gambling, compulsive spending and/or hypersexuality unless the patient had already demonstrated an inclination to demonstrate these symptoms in the past" (p. 14). (I do not consider the view expressed in his report that he would mention a risk of activation or mania to be the same as a practice of mentioning a risk of compulsive gambling or shopping as potential side effects.)
- [242] Dr. Blier's and Dr. Zaitzow's opinions are evidence of a professional practice to not warn of the risk of side effect of compulsive gambling or shopping when prescribing the 2 mg dose of Abilify in this case.

[243] There are thus "two schools of thought" about the professional practice of what, if anything, to say to a patient about possible compulsive gambling or shopping side effects when prescribing a 2 mg dose of Abilify: see *Fairley v. Waterman*, 2002 BCSC 10 at para. 42. The defendant complied with one of them, in that he did not warn of potential side effects of compulsive gambling or shopping to the plaintiff when he prescribed this medication. He followed "a recognized and respectable practice of the profession": *ter Neuzen* at para. 38. The defendant thus complied with one standard practice, and so he would breach his standard of care only if the standard practice he followed was itself negligent: *Medina v. Wong*, 2018 BCSC 292 at para. 99, citing *Belknap v. Greater Victoria Hospital Society*, 64 F.L.R. 4th 452 at paras. 79-80, 1989 CanLII 5268 (B.C.C.A.); *Brimacombe v. Mathews*, 2001 BCCA 206 at para. 90.

Step Two -Standard Practice That the Defendant Followed Was Not Negligent

- [244] The plaintiff has also not established that the standard practice of not warning of this potential side effect, and monitoring for it on follow up, to be negligent.
- [245] Unlike *Buckingham*, there is no evidence of a significant risk of side effect of compulsive gambling or shopping with a 2 mg dose of Abilify. Dr. Blier opined the risk of this side effect is extremely rare. That degree of risk is far less than in *Buckingham*, where the practice found negligent was "fraught with risk" where "one in every 25 patients who receive[d] such a dose for such a period of time [was] susceptible to this risk": para. 222; see also paras. 208, 221.
- [246] In my view, the plaintiff has not demonstrated that this is a case where prescribing the 2 mg dose of Abilify was "fraught with foreseeable risk": *Rybakov v. Khattak*, 2024 BCCA 96 at para. 22; or "fraught with obvious risks": *ter Neuzen* at para. 41.
- [247] Relatedly, "the greater the risk, the higher the standard of care" (*Edinger* at para. 49); here, the plaintiff has not demonstrated that there is a significant risk of a side effect of compulsive gambling from taking Abilify at a 2 mg dose, and so the practice of not warning of such a risk in the circumstances of this case was not negligent for this reason.
- [248] In addition, this case is not similar to *Buckingham*, in that here the issue involves "substantive medical knowledge" as opposed to a "focus on practical, systems-based, or common-sense considerations": *Focken* at para. 57
- [249] The issue of whether to warn of this side effect risk, "involves difficult or uncertain questions of medical treatment or complex, scientific or highly technical matters" and thus it is "not open to find [the] standard medical practice negligent": *ter Nuezen* at para. 51.

[250] In Focken, Justice Willcock referred to Buckingham, and stated that the: "common thread" in "instances where standard practices have been considered to be negligent" is "a focus on practical, systems-based, or common-sense considerations, rather than on substantive medical issues"; and stated that "[m]any involve simple issues such as the quality of communication or observation or the adequacy of arrangements for follow up": paras 57-58.

[251] This is not a case where providing information about side effects reduces merely to a matter of "practical, systems-based, or common-sense considerations", but instead concerns "substantive medical issues": Focken at para. 57.

[252] In my view, while what a physician tells a patient about Abilify has a practical component and relates to patient communication, the physician's practice of choosing which side effects to mention when prescribing a 2 mg dose of Abilify nevertheless also concerns substantive medical issues.

[253] The plaintiff's claim of negligence effectively challenges the medical judgment associated with a physician's decision as to which potential side effects to mention to a patient when prescribing a 2 mg dose of Abilify. Also implicit in the plaintiff's claim of negligence is a criticism of the defendant not having asked the plaintiff her previous gambling practices when taking her medical history, to identify whether there may have been a past history of compulsive gambling.

[254] Dr. Blier's first report stated that it was "not [the] standard of care in November 2019 to warn all patients about a risk of gambling or compulsive behaviour prior to prescribing aripiprazole at the low dose of 2 mg/day" since, in part:

First, when this occur it is extremely rare. When prescribing medications, we mention the most common side effects that they could encounter, and not all the possible side effects as patients may be reluctant to take their medication on a regular basis. We often have problems with the exhaustive lists of possible side effects that are provided at pharmacies. This can markedly affect compliance and thereby therapeutic benefits. For instance, in the aripiprazole product monograph (D-PP 1.1;p.60), there are 12 most common side effects listed. As well, there are 4 additional adverse events that may occur, the first being difficulties in swallowing, aspiration and choking, and gambling is one of them. We do not recite these to our patients when prescribing aripiprazole, unless there is a clear history of one of these problems.

[255] Similarly, he stated, in his second report:

my colleagues and I, co-authors of the CANMAT Guidelines, using Aripiprazole as an adjunctive strategy for inadequate response in MOD at 2 mg/day do not go through with patients the extensive list of all reported side effects in controlled trials. This would discourage any patient from using this highly beneficial medication.

- [256] I also took Dr. Blier to express the opinion that there is medical judgment associated with deciding what information to seek out during the taking of a patient's history, prior to prescribing Abilify.
- [257] The question of whether a potential side effect of compulsive gambling behaviour should be told to a patient when prescribing 2 mg of Abilify, or on follow up, involves medical judgment including that of assessing the degree of risk of such a side effect, in all the circumstances of the patient. This also relates to the medical judgment of what information to seek out when taking a patient's history.
- [258] The court should exercise caution where the medical judgment at issue requires resolving disputes which require the expertise of the profession: *ter Neuzen* at paras. 38-51.
- [259] From the evidence at trial, I detect disagreement in the professions of psychiatry, neuropharmacology and psychopharmacology about whether to warn of a risk of compulsive gambling or other behaviours when prescribing Abilify at a 2 mg dose. Matters such as this which are disputed within a profession is something, the law of negligence holds, courts should not insert themselves into: *Focken* at paras. 51-53.
- [260] For similar reasons, there was no breach of the standard of care in the defendant not inquiring about compulsive behaviour such as gambling, or advising of the risk of a side effect of compulsive gambling, on follow up on December 2, 2019.
- [261] In summary, the defendant did not breach his duty of care prescribing Abilify on November 4, 2019, and in his conduct on follow up when he met with the plaintiff on December 2, 2019, when the Abilify prescription was re-filled.
- [262] The plaintiff focussed their argument of alleged breach of standard of care on the defendant not warning the plaintiff of the risk of potential compulsive gambling and shopping. I have found that, in addition, the defendant did not warn the plaintiff of a risk of compulsive behaviour generally. Dr. Blier's opinion is that it was not the standard of care to mention a risk of compulsive behaviour in the circumstances. For similar reasons as expressed with respect to the failure to advise the plaintiff of a risk of gambling or shopping specifically, I also find there was no breach of the standard of care by not advising the plaintiff of a potential risk of compulsive behaviour more generally.
- [263] I add that my finding is that the plaintiff has not demonstrated on the evidence that there was a breach of the standard of care when the defendant prescribed a 2 mg dose of Abilify, in the circumstances of this case. I express no opinion on the standard of care of a physician prescribing a higher dose of such medication, or prescribing Abilify in circumstances other than the one before me in this case.

Issue 2: Causation

- [264] Despite my finding that the defendant did not breach the standard of care, I go on, in any event, to decide whether, even if there was a breach or breaches of the standard of care as alleged, they caused injuries to the plaintiff for which she is seeking damages.
- [265] If there has been a breach of the duty of care, the plaintiff must then show on a balance of probabilities that "but for" that negligent act, the injury would not have occurred: Buckingham at para. 191, citing Clements v. Clements, 2012 SCC 32 at para. 8; see also Athey v. Leonati, [1996] 3 S.C.R. 458 at paras. 13-17, 1996 CanLII 183; and Sacks v. Ross, 2017 ONCA 773 at paras. 46-48, 100.
- [266] The test for causation is the 'but for' test, which requires the plaintiff to show that the injury would not have occurred but for the negligence of the defendant": Resurfice Corp. v. Hanke, 2007 SCC 7 at para. 22 [Resurfice]. The Court in Resurfice explains:
- [23] The "but for" test recognizes that compensation for negligent conduct should only be made "where a substantial connection between the injury and the defendant's conduct" is present. It ensures that a defendant will not be held liable for the plaintiff's injuries where they "may very well be due to factors unconnected to the defendant and not the fault of anyone": Snell v. Farrell, at p. 327, per Sopinka J.
- [267] "The 'but for' causation test must be applied in a robust common-sense fashion. There is no need for scientific evidence of the precise contribution the defendant's negligence made to the injury": Buckingham at para. 192, quoting Clements at para. 9. To similar effect, the Court in Athey states:
- [16] the plaintiff must prove that the defendant's tortious conduct caused or contributed to the plaintiff's injury. The causation test is not to be applied too rigidly. Causation need not be determined by scientific precision; as Lord Salmon stated in Alphacell Ltd. v. Woodward, [1972] 2 All E.R. 475 (H.L.), at p. 490, and as was quoted by Sopinka J. at p. 328, it is "essentially a practical question of fact which can best be answered by ordinary common sense". Although the burden of proof remains with the plaintiff, in some circumstances an inference of causation may be drawn from the evidence without positive scientific proof.
- [268] I accept that the plaintiff did engage in increased gambling activity and shopping while taking Abilify after November 4, 2019. I make no finding as to precisely how much money the plaintiff spent gambling while she was taking Abilify, given my concern as to the reliability of her evidence. However, I am satisfied from the evidence that her change in behaviour in this respect was not subtle; it was marked. According to the plaintiff's financial records, her gambling patterns did increase somewhat in about mid-November 2019, and then significantly more so after her December 2, 2019 appointment with the defendant.

[269] However, given the plaintiff's complex medical circumstances at the time, in light of the expert evidence at trial which I accept, I find I cannot conclude that simply because of the approximate temporal connection between the plaintiff being prescribed Abilify and her change in behaviour, it is more likely than not that Abilify must have caused her increased gambling and shopping activity.

[270] Instead, there is competing evidence, as to whether Abilify caused the plaintiff to increase her gambling and shopping activity.

[271] On the one hand, the evidence that there is a causal connection is supported by:

- (a) The timing of the plaintiff's change in behaviour, including the increase in gambling, commencing after commencing Abilify, and reducing after she ceased taking that medication (although not completely);
- (b) The opinion of Dr Abu;
- (c) The Health Canada and product monograph warnings, placed in evidence at trial; and
- (d) The opinion in Dr Zaitzow's first report that Abilify was likely one of a number of significant triggers of a mood switch to a manic state.

[272] On the other hand, there is evidence that the 2 mg dose of Abilify did not cause the plaintiff's behaviour in the circumstances of this case:

- (a) Dr. Blier's opinions, including that other "confounding" factors caused the plaintiff's behaviour; and
- (b) Dr Zaitzow's opinions in his third report, and related testimony, that there is no causal connection.

[273] I do not place weight on the defendant's views as to whether Abilify in fact caused the plaintiff to experience compulsive behaviour or not, including from his note in the January 6, 2020 medical record that there is "some sense to feel that the medication might have contributed to this behaviour". The defendant did not testify as an expert witness in this trial, and accordingly did not provide opinion evidence as to whether the Abilify medication, in fact, caused the plaintiff's change in behaviour.

[274] I find the evidence equally balanced on the causation issue, and thus that the plaintiff has not proven on a balance of probabilities that the 2 mg dose of Abilify caused her to experience increased gambling and shopping behaviours at issue in this action.

[275] Since I have concluded that the plaintiff has not demonstrated the 2 mg dose of Abilify caused the compulsive behaviour that she contends resulted in her injuries, then she has not proved causation for the defendant's alleged negligence, in any event. Put another way, I find that it is equally likely that the plaintiff would have experienced the personal and financial losses she complains of in this action in any event, despite the defendant's conduct: Sacks, at para. 48.

Issue 3: Damages

[276] As in Buckingham, having found that the defendant is not liable, it is not necessary for me to assess damages: para. 241.

CONCLUSION AND ORDER MADE

[277] For these reasons, the action is dismissed.

[278] If the parties cannot agree on costs they may, within 30 days, submit a request to Supreme Court Scheduling for an appearance before me to make submissions on the matter of costs.

"Stephens J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/25/12/2025BCSC1246cor1.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/purchas-v-ogunremi-2025-bcsc-1246>

Prepared on 24 October 2026 · Esheria