

Indexed as: Jabouin (Re)

**THE DISCIPLINE COMMITTEE OF THE COLLEGE
OF PHYSICIANS AND SURGEONS OF ONTARIO**

IN THE MATTER OF a Hearing directed
by the Complaints Committee of
the College of Physicians and Surgeons
of Ontario, pursuant to Section 58(2)
of the **Health Disciplines Act**,
R.S.O. 1990, c. H.4

BETWEEN:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. SERGE JABOUIN

PANEL MEMBERS: J. McSKIMMINGS (Chair)
DR. A. RAPOPORT
B. HAMMOND

HEARING DATE: AUGUST 22, 1994

DECISION/RELEASE DATE:

AUGUST 24, 1994

DECISION AND REASONS FOR DECISION

This matter was heard at the College of Physicians and Surgeons of Ontario commencing on August 22, 1994 in Toronto.

It was alleged that Dr. Serge Jabouin was guilty of professional misconduct in that:

- (a) He engaged in sexual impropriety with a patient or patients contrary to Ontario Regulation 548, Section 29(33) as amended;
- (b) He failed to maintain the standard of practice contrary to Ontario Regulation 548, Section 29(22) as amended; and
- (c) He engaged in conduct or an act relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded as disgraceful, dishonourable or unprofessional, contrary to Ontario Regulation 548, Section 29(33) as amended.

No evidence was brought in support of allegation (b).

The hearing commenced on August 22, 1994 at the College of Physicians and Surgeons of Ontario with the reading of the Notice of Hearing.

Dr. Jabouin entered a plea of not guilty.

The panel ordered that the identity of witnesses not be published or broadcast pursuant to Section 47(1) of the **Regulated Health Professions Act**.

CASE FOR THE PROSECUTIONWitness # 1 - LMG

The first witness, LMG was a young woman who had worked for the doctor as a receptionist. In October 1991 when she commenced employment she was a 19-year-old college student. At the first interview LMG confided to the doctor that she had been sexually harassed at her previous place of employment. During her employment with Dr. Jabouin she worked from 1700 hours to 2100 hours in the evening during the week and from 1200 hours to 1700 hours on some weekends. She described three incidents to the Committee.

The witness testified that shortly after she began working for the doctor she received a telephone call from a male friend near the end of her shift. Her friend arranged to pick her up and take her to look for a new apartment. Dr. Jabouin asked her who had called and she explained. Dr. Jabouin then questioned her regarding her relationship with this man. He suggested to her that her friend did not want to be her friend but wished to sleep with her. He then asked her if she slept with her boyfriend. This conversation made her feel uncomfortable and scared. Before ending the conversation, Dr. Jabouin suggested that if she needed a place to stay she could stay at his place.

The second incident took place in December of 1991. LMG had come to the office to pick up a paycheque and had to wait for about half an hour. While he was writing her cheque, the doctor asked if she had found a place to stay yet. She replied that she was going to remain in her apartment and had instead found a roommate to share expenses with. On questioning her and discovering that her new roommate was a male university student, the doctor expressed concern. He said that because her new roommate was male he might rape her. He then suggested that if he had known she was looking for a roommate he would have moved in with her. This conversation also made her feel uncomfortable and scared. She reported this conversation to the day time receptionist.

The final incident took place on December 26, 1991. The witness was sick that day but had reported for work as she knew that she was the only staff available. She and the

doctor worked alone that day. The doctor knew that she was sick and he knew that several times during the day she had gone into the washroom to vomit. At the end of her shift he offered to give her some Gravol. She followed him from the reception area to his office expecting him to give her sample pills from the cabinet in his office. From where she was standing in the doorway to his office she could not see into the cabinet. She testified that the doctor looked in the cabinet, told her there was no more oral Gravol but he could give her an injection. She began to roll up her sleeve. He told her to "put her pants down". She refused the medication and returned to the reception area. She asked for a prescription for the Gravol before she left the office but she did not have the prescription filled.

She reported this incident to the regular receptionist within a couple of days of the incident. That woman checked the medicine cabinet and reported that there were several boxes of Gravol pills.

She testified that during all of these incidents Dr. Jabouin was laughing at her in an unpleasant manner. By mid-February she found another job and left her employment with Dr. Jabouin.

Under cross-examination the witness remained firm in her testimony. She testified that she had not told Dr. Jabouin that she was uncomfortable and that she had needed the job in order to continue in school.

The Committee found this complainant's testimony to be very credible.

Witness # 2 - ATQ

The second witness, ATQ, was the regular day time receptionist. She described an unusual working arrangement whereby she was employed by a local laboratory to work in the doctor's office as his receptionist and perform some minor laboratory work such as obtaining samples of blood. She also began this employment in October 1991. She testified that she knew the first witness although they did not work the same shift. The first witness, LMG, usually began work early and so their shifts overlapped to some extent.

She testified that LMG had told her of the incidents complained about and that she appeared upset and disturbed by them. She further testified that LMG had reported the final incident to her on December 27 and that she had checked the medicine cabinet at that time. She reported that there were at least 24 sample boxes of adult oral Gravol in the medicine cabinet and that they were in plain view. ATQ testified that it was part of her job to put the medications away when they were left at the office during regular working hours by the drug company representatives. She continued to work at the clinic until June 1992 when she returned to her previous assignment at the laboratory which employed her to work in Dr. Jabouin's clinic.

On cross-examination she testified that she was not bilingual, which was a requirement for the position, and that the doctor had paid for French lessons for her. She could not testify with certainty that the Gravol that she found in the cabinet had not been placed there after the incident. However, she confirmed that she saw it the next day and as December 26 was a statutory holiday, no drug representatives would have called. She testified that she had not been pleased with the manner in which her employment at Dr. Jabouin's office had ended but she did not lose her job; she was only relocated.

ATQ further testified on questions from the panel that Dr. Jabouin had asked her inappropriate questions at the beginning of her employment but she had made it clear she would not accept such behaviour.

Witness # 3 - Dr. PHJ

Dr. PHJ is a family physician with extensive experience as a consultant in medical legal cases involving family physicians. He testified that he had heard the evidence in the case and had reviewed the correspondence. In his opinion, the doctor had acted in an inappropriate manner and his statements to the complainant had been unacceptable. He should have known when she confided in him about her previous recent sexual harassment that she needed to be treated sensitively. He believed that the three incidents described were completely unacceptable and constituted behaviour that was disgraceful, dishonourable and unprofessional.

He remained firm in his testimony under cross-examination.

Counsel for the prosecution informed the panel that the second complainant, a patient, had decided she would not testify. Thus, no evidence was brought in support of allegation B, that he did not maintain the standard of practice of the profession pursuant to Ontario Regulation 548, Section 29(22).

THE CASE FOR THE DEFENSE

Witness #1 - Dr. Serge Jabouin

Dr. Serge Jabouin testified that he was born in Haiti and received his medical degree there from the University of Haiti in 1973. He practised general surgery and orthopaedics in Haiti until emigrating to Canada in 1976. He practised in New Brunswick and Quebec before coming to Ontario. Dr. Jabouin studied rehabilitation medicine at University LXP but did not pass his fellowship examinations. In 1989 he opened a general practice at Clinic OPC. There he treats a complex mixture of patients: middle class families, welfare recipients and drug and alcohol abusers. The clinic is a walk-in type of practice with long hours and he employs other physicians to cover the shifts when he is not there.

Dr. Jabouin testified that he had been pleased with the work of the complainant and that he was surprised when she called him on February 14, 1992, to say she would not be returning to work. He further testified that he did not know she was dissatisfied with her employment. Their relationship had been mostly work-related with some social conversation. He knew she was a student and that she needed to work to support herself through college. He was also aware that she had been sexually harassed in her previous job, but testified that he did not know the details of that incident.

Dr. Jabouin testified that he recalled the conversations reported by the complainant but that he remembered them slightly differently. He testified his concern was of a fatherly nature; he did not believe she should be sharing an apartment with a young man. He denied asking intimate personal questions. He admitted that he had offered her a room at his house but he testified that he was just joking. He agreed that the incidents as

described by the complainant would have been unprofessional conduct.

Witness #2 - Mr. YMC

Mr. YMC is the manager of quality control for the producers of Graval. Pursuant to the provisions of the Food and Drug Act they are required to keep records of sample distribution, including expiration dates. From May to December 1991 they had been promoting chewable adult Graval. On request from the defence attorney for Dr. Jabouin, he had checked the computer for records of samples given to Dr. Jabouin in that time period. None were found.

On cross-examination, he testified that the computer records of sample distribution relating to the other doctors, who were employed during the day at the clinic, were not checked. He agreed that the other doctors were more likely to encounter the drug representatives during their shifts. He identified the type of box in which Graval samples were distributed. From this evidence, the Committee was able to determine that the boxes were small enough for several to fit easily into a standard medicine cabinet.

CLOSING ARGUMENT

Argument for the Prosecution

Counsel for the prosecution reviewed the Notice of Hearing with the Committee. She pointed out that the doctor had admitted the least offensive statements and denied the most offensive. She argued that Dr. Jabouin knew of the previous sexual harassment and that LMG needed the money to continue in school. She submitted that because of her age and inexperience LMG was even more vulnerable. Counsel noted that Dr. Jabouin admitted asking LMG to stay at his house but said he was joking. He later contradicted himself by saying that he did not joke with her, that they had a professional relationship only. The prosecution made the further point that each of the incidents was an escalation of sexually harassing behaviour on Dr. Jabouin's part. Further, the drug company was not asked to and did not check on deliveries to other physicians at the clinic so there could very well have been adult chewable Graval in the cupboard as reported by the second witness, ATQ.

Counsel also argued that ATQ had reported overhearing the conversation regarding the complainant's boyfriend and had testified that the complainant was clearly upset by the incidents as reported to her. The complainant's testimony was clear and compelling. She was afraid of losing her job but quit as soon as she was able to find another one. Each incident alone constitutes sexual harassment; adding them together and knowing the complainant was vulnerable compounds the offence.

Argument for the Defence

Counsel for the defence requested that the Committee dismiss the allegation about which no evidence had been led. Further, he stated that LMG was not a patient, although the panel had heard evidence that the doctor had offered to treat her at the time of the last incident. Therefore, there was no evidence to support a charge of sexual impropriety.

THE DECISION

After due consideration, the panel decided that the complainant, LMG, was not a patient of Dr. Jabouin and therefore dismissed allegation A of sexual impropriety.

However, the panel was satisfied that the case was proven that Dr. Jabouin engaged in conduct that would reasonably be regarded as disgraceful, dishonourable or unprofessional in that he sexually harassed a young and vulnerable employee. The panel found him guilty of that allegation.

PENALTY SUBMISSIONS

The panel heard the impact statement of the complainant, LMG.

THE DEFENCE

Defence counsel called Dr. UAP, an expert in the treatment of physician sexual offenders. He had assessed Dr. Jabouin in August 1994 and had reviewed documentation from the case. He found the doctor to have no major mental disorders with no indications of social problems. He recommended that Dr. Jabouin receive counselling in sexual harassment and

in setting boundaries with employees. He felt there was a minimal chance of this physician reoffending.

Counsel for the defence suggested an appropriate penalty would be a recorded reprimand.

THE PROSECUTION

Counsel for the prosecution asked the panel to assess a penalty of a recorded reprimand and a three-month suspension with the suspension to be reduced to one month if Dr. Jabouin agrees to attend Dr. BDU or someone in his department for assessment and required counselling with regular reports to the Registrar on his progress.

THE DECISION

The Committee ordered that Dr. Jabouin be reprimanded and that the fact of the reprimand be recorded on the Register. The Committee further ordered that Dr. Jabouin's licence to practice be suspended for a period of three months. However, that suspension will be suspended if Dr. Jabouin undertakes a gender sensitivity counselling program as outlined. The Committee further ordered that periodic reports be made to the Registrar on a frequency to be agreed upon between the Registrar and the treating physician.