

Indexed as: Otoo (Re)

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

IN THE MATTER OF a Hearing directed
by the Complaints and Executive Committee of the
College of Physicians and Surgeons
of Ontario, pursuant to Section 58(2) and 60(6)
of the **Health Disciplines Act**,
R.S.O., 1990, c.H-4 as amended

BETWEEN:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. ANDREW A. OTOO

PANEL MEMBERS: DR. J. CURTIS (CHAIR)
DR. J. THOMPSON
DR. A. RAPOPORT
R. FORTIN
J. FINLAYSON

HEARING DATE: AUGUST 21-23, 1995
FEBRUARY 28, 1996

DECISION/RELEASED DATE:

JUNE 10, 1996

DECISION AND REASONS FOR DECISION

This matter came before the Discipline Committee of the College of Physicians and Surgeons of Ontario (CPSO) on August 21-23, 1995 and February 28, 1996 at Toronto.

In the Amended Notice of Hearing it was alleged that Dr. Andrew A. Otoo was guilty of professional misconduct, because of conduct or an act relevant to the practice of medicine that having regard to all the circumstances would reasonably be regarded by members as disgraceful, dishonourable or unprofessional contrary to Section 29(33) of Ontario Regulation 548/90. The particulars are as follows:

- 1) With respect to his patient ZPC it was alleged that:
 - (a) he knew or he ought to have known that his patient was a victim of abuse, and instead of providing a report as requested, he threatened to provide a misleading report;
 - (b) in a telephone discussion with his patient he directly, or indirectly, threatened or intimidated his patient to withdraw a complaint to the CPSO about his conduct, and to discharge Ms. ZPC's solicitor (Mr. RFX);
 - (c) he informed his patient, in writing, that he would not "perform" (i.e. respond to a request for a medical report requested by her solicitor) unless she, in a writing confirmed to him, disassociated herself, or withdrew, from proceeding with a complaint to the College about his conduct.
- 2) He delivered Accident Benefit Reports or Statements as noted below concerning his patient, Mr. EJE, that he knew, or ought reasonably to have known, contained false or misleading information about his patient or, alternatively, he delivered a medical report dated February 28, 1992 that contained statements that he knew or ought reasonably to have known, contained false or misleading information about Mr. EJE;

3) In the alternative to 2):

- (a) In support of Accident Benefit Claims by his patient, Mr. EJE, he signed Physician's Reports or Statements dated July 25, August 3, August 22, September 3, September 23, October 14, October 27, November 10, November 30, 1988 and February 9, 1989. In these reports he stated, among other things his patient was disabled, that his condition was "quite serious", his progress "very little" or none at all, that his patient had not returned to work and that it was his opinion that it was "indefinite" as to when Mr. EJE would be able to resume work;
- (b) He referred Mr. EJE to a psychiatrist for feelings of depression while he remained his patient;
- (c) In October 1991 Mr. EJE complained to the CPSO that Dr. Otoo had not delivered a medical report, or reports, to his solicitor (RFX) as requested;
- (d) Dr. Otoo delivered a medical report concerning Mr. EJE dated February 28, 1992;
- (e) He knew, or ought reasonably to have known, that his report would be disclosed to third parties to assist Mr. EJE in obtaining financial compensation for the injuries which Mr. EJE had suffered and for which he had treated Mr. EJE;
- (f) In his medical report he stated, among other things, that:

"The injuries sustained were not serious enough to disable him"

"Mr. EJE's involvement in three motor vehicle accidents within a four-year period obviously affected his nerves but the intensity was not severe enough to warrant any special treatment such as a referral to a psychiatrist (sic)."

"...They did, however, cause some temporary suffering for about a month after each accident."

- (g) It was alleged that the statements made by him in his Reports or Statements noted in paragraph 3(a) were false or misleading or, alternatively, that the statements made by him in his Report noted in paragraph 3(f) were false or misleading.

MOTION

At the outset of the hearing, defence counsel made a motion to stay the proceedings because of both an alleged failure of disclosure by the prosecution and a jurisdictional issue. He explained that after a long standing professional relationship between Dr. Otoo and Mr. RFX, a solicitor, there was a rupture which led to mutual antagonism. This in turn spilled into their professional relationship. During this period of time Mr. RFX laid complaints about Dr. Otoo with the College regarding three clients and a Notice of Hearing was served in March 1994. Further information from Mr. RFX supplied to the Executive Committee by the prosecutor led to an Amended Notice of Hearing.

First, the defence submitted a motion for disclosure of Mr. RFX's files regarding the relevant clients. Before the motion was heard, the prosecution acceded to the request, dependent, however, on obtaining consent from the clients. Shortly thereafter, the College withdrew all of the allegations except those related to Ms. ZPC and Mr. EJE. These allegations had been referred to the Discipline Committee by the Executive Committee. Subsequently, Ms. ZPC and Mr. EJE refused to allow disclosure of Mr. RFX's files to the defence. Even though he had consent to review these files, prosecution counsel did not do so and therefore he could not assess their relevance.

Defence counsel alleged that the prosecution counsel either directly or indirectly failed to disclose relevant documents.

Second, he claimed that the minutes of the Executive Committee meeting and other documents supplied to the Executive Committee must be disclosed to the defence to determine if the Amended Notice of Hearing corresponded with the intention of the Executive Committee.

Third, defence counsel also wanted the clinical notes of Dr. TFJ, a psychiatrist, who assessed Mr. EJE.

Fourth, defence counsel wanted insurance company records with respect to Mr. EJE.

Finally, he claimed that having Mr. RFX testify without advance information regarding his testimony represented a breach of the disclosure rules.

He cited *R. v. Stinchcombe* (1991), 68 C.C.C. (3d) 1 (S.C.C.) where the Supreme Court of Canada stated, in part, that the prosecution must disclose all material which could be of some use to the defence, this determination to be made by the defence. Refusal can be allowed if the material is irrelevant or if it is protected by solicitor/client privilege. On the basis of the *Stinchcombe* decision, a stay of the proceedings was requested to prevent an alleged abuse of the process.

Prosecution counsel submitted that in view of the narrow and focused allegations, further disclosure was irrelevant but he did offer to supply the Executive Committee minutes. He also advised the Committee that in his opinion, the jurisdictional issue related to the compliance of the Amended Notice of Hearing with the concerns of the Executive Committee was not raised prior to the motion and was therefore not at issue.

The Committee received advice from its independent legal counsel, considered the matters in detail, and found no merit for the motion to stay the proceedings. It ruled that at this time the solicitor's files were not relevant. The request for disclosure of the Executive Committee minutes had already been agreed upon by the prosecution and the Committee denied the request for disclosure of other documents supplied to the Executive Committee regarding the allegations. The Committee concluded that there was no unfairness in not disclosing the clinical notes of Dr. TFJ or the records of the

insurance company. Finally there was no prejudice in the late disclosure of Dr. TFJ's report nor in calling Mr. RFX for the limited purposes outlined.

Subsequently the minutes of the Executive Committee were disclosed. On February 28, 1996, when the hearing resumed following an adjournment, defence counsel made another motion challenging the jurisdiction of the Discipline Committee to hear Allegation 1(a) because the allegation was not properly brought before the Discipline Committee. This allegation was appended to a page submitted to defence counsel entitled "Executive Committee Penalty Recommendations". The following sentences were appended to the penalty recommendation.

The Amended Notice of Hearing was approved with one addition. With respect to point 11 in the Notice, Patient ZPC (R), the Committee asked that an allegation be included along the lines of: "He knew or ought to have known that the complainant was a victim of abuse and instead of providing the report as requested, threatened to provide a misleading report".

Defence counsel maintained that there was no evidence that this page was a minute of the Executive Committee, nor was there any mention of anyone in attendance, nor was there evidence of a motion, a mover, a seconder or of a vote. He maintained that this procedure does not comply with the **Health Professions Procedural Code**, s. 36(1) being Schedule 2 to the **Regulated Health Professions Act**, 1991.

Prosecution counsel submitted that nothing improper or not in compliance with Section 36 of the **Code** occurred. The matter was considered by the Executive Committee and was, in fact, referred to the Discipline Committee. A possible minor technical departure from the usual protocol was not unfair in any way and the Committee ought to dismiss the motion.

The Committee considered the motion and found that it had no merit. There was clear evidence that the allegation was framed by the Executive Committee and referred to the Discipline Committee. It is true that the mode of recording of the consideration and referral was not the same as for the other two allegations as they appeared in the

minutes of the Executive Committee but the fact of the referral and the wording of the allegation, were all documented. Thus the motion was dismissed.

PLEA

Dr. Otoo pleaded not guilty to the allegations.

PROSECUTION CASE

ZPC

Ms. ZPC was a patient of Dr. Otoo's from 1975 until 1990. Over the years a close relationship developed. Dr. Otoo gave medical care and also gave direct and candid advice regarding a host of personal matters including advice against having an abortion, advice on how to win her future husband and whether to buy a house. Thus a father-daughter type of relationship developed.

In 1988 Dr. Otoo referred Ms. ZPC to a solicitor, Mr. RFX, following a motor vehicle accident. February 13, 1989 during a marital dispute, Ms. ZPC was physically and emotionally assaulted by her husband. The next day she consulted Dr. Otoo who recorded the details and examined her. He telephoned her husband who confirmed the details of the assault. Subsequently she saw Dr. Otoo frequently and provided detailed information regarding continuing strife at home. Dr. Otoo rendered specific advice, as was his custom.

On January 30, 1990 a request with authorization signed by Ms. ZPC was sent by Mr. RFX to Dr. Otoo for information regarding the assault for the purposes of a divorce proceeding. Mr. RFX received no reply to this request.

On February 19, 1990 a letter of ultimatum signed by Ms. ZPC was sent to Dr. Otoo threatening to complain to the College unless the requested report was received within 10 days.

Within a few days Dr. Otoo called Ms. ZPC at home. She was surprised at the tone and content of this conversation and after 10 to 15 minutes began to record the conversation. The tape terminated five to ten minutes before the conversation ended.

Defence counsel objected to the admissibility of the tape on the grounds that it was incomplete and inaccurate and therefore not representative of the facts or the statements made during the conversation. The Committee accepted the advice of its counsel that the tape was admissible because there was no evidence that it was inaccurate. Although the tape was incomplete, the Committee could attribute the appropriate weight to its contents bearing in mind that it is not complete.

In the tape, Dr. Otoo repeatedly and vehemently expressed his disappointment that Ms. ZPC had acceded to Mr. RFX's advice that she threaten to report him to the College unless he submitted the report within 10 days. He expressed a profound sense of betrayal since he had been her doctor for 15 years. They had developed a close relationship and he had given her good service, he stated. Dr. Otoo repeatedly indicated how distressed he was that Ms. ZPC acceded to Mr. RFX's wishes and signed the threatening document. Dr. Otoo told her that if he refused to prepare the report, prepared a weak report, or delayed significantly it would make her case difficult. In this taped conversation Ms. ZPC responded that she had asked for the letter twice and that Dr. Otoo had not prepared it. She believed that he was "taking sides" with her husband. Dr. Otoo denied the allegation that he said "don't be stupid.....don't be silly". He told her the report would be unbiased. Dr. Otoo was repeatedly critical of Mr. RFX for his previous actions and predicted that he would "muck up" her divorce proceedings. Dr. Otoo threatened to withdraw his services.

Ms. ZPC testified that she told Dr. Otoo about the difficulty she was having with her husband several times and in mid-1989 she mentioned her intention to divorce but Dr. Otoo was not listening.

Ms. ZPC knew that Mr. RFX had asked for the reports several times by telephone and she had asked for it twice. All requests had apparently been made between January 30 and February 19, 1990. She believed Dr. Otoo did not produce the report because he

did not believe in divorce.

In a letter dated February 25, 1990 to Ms. ZPC, Dr. Otoo reiterated his criticisms of Mr. RFX and his shock that she had signed the ultimatum. He asked her to repudiate the document in writing.

Defence counsel elicited Ms. ZPC's agreement that, in a letter of complaint to the College of July 14, 1992, she stated she was not aware of a rift between Mr. RFX and Dr. Otoo and that this statement was contradicted by her testimony at this hearing when she testified that Dr. Otoo had told her of the rift and suggested another lawyer in February 1989 or February 1990. Further, in the letter of complaint she wrote that the taped conversation was 20 minutes in length whereas at the hearing she said it was one hour. Previously she said she started taping the conversation 30 to 45 minutes from its start, but at the hearing she said this period of time was 10 to 15 minutes. She agreed that he expressed concern for her welfare in a number of different of ways in the taped conversation.

Mr. EJE

This man had sustained a number of injuries mostly to his low back and to a lesser extent his neck resulting from several motor vehicle accidents and a work related injury. He was seen many times by Dr. Otoo and by several specialists. Dr. Otoo completed the necessary forms for disability payments. Mr. EJE was the recipient of payments through Workers= Compensation Board (W.C.B.) and an insurance company for varying periods. He was either off work or sub-optimally employed between 1977 and 1991. Between October 1990 and February 1991 he was seen three times by Dr. TFJ, a psychiatrist, because of depression. In Dr. TFJ's opinion, the depression was due to his injuries and his inability to work.

In 1988, on the advice of Dr. Otoo, Mr. EJE retained Mr. RFX because of an accident. Eventually he retained Mr. RFX to represent him in a suit involving an insurance company because of a total of three accidents, one occurring in 1985 and two in 1988. On three occasions Mr. RFX requested a report from Dr. Otoo regarding the accidents.

Mr. EJE knew of a dispute between Dr. Otoo and Mr. RFX but was not aware of the nature of the dispute. Mr. EJE gave Mr. EJE a cheque for \$600.00 which he in turn was to deliver to Dr. Otoo for a report which was to refer to all three accidents. However, Dr. Otoo refused to accept this cheque saying his fee was \$1,800.00. When he did not receive these reports, Mr. EJE, with the help of Mr. RFX, prepared and sent a letter of complaint to the College dated October 15, 1991.

Finally, on February 28, 1992 Dr. Otoo completed the report requested. This report indicated that Mr. EJE's injuries were minor and did not cause physical disability. Dr. Otoo acknowledged that Mr. EJE had some accident-related psychological problems but he said these were not severe enough to warrant a psychiatric referral.

Ultimately, Mr. EJE received a settlement for these accidents but the settlement was for less than he expected, in his opinion, because of the unsupportive letter from Dr. Otoo. Mr. EJE acknowledged that he had seen other doctors and he agreed that if these reports had been helpful they would have been tendered at the hearing.

RFX

Mr. RFX testified for the purposes of confirming that documents presented in evidence, which were photocopies, were true copies of the originals.

Defence counsel made another motion for disclosure of Mr. RFX's records regarding both Ms. ZPC and Mr. EJE. After argument, the motion was denied because relevance was not shown and no compelling reason was put forth to override the principle of solicitor/client privilege.

On cross-examination Mr. RFX revealed the nature of the dispute between Dr. Otoo and himself. Mr. RFX had acted for Dr. Otoo in a private matter and Dr. Otoo refused to pay his bill. A claim and counter-claim were initiated but the litigation has not been pursued.

Mr. RFX asserted that, in his letters and his telephone conversations with Dr. Otoo

requesting the report concerning the assault on Ms. ZPC and the attendant injuries, he did not ask Dr. Otoo to specifically state anything in his report. Mr. RFX testified that Dr. Otoo told him there were two ways to write a report: if the lawyer wrongs him he will write a bad report; if the patient is cooperative and the lawyer pays his bill he will write a good report. Mr. RFX said that Dr. Otoo acknowledged knowing the details of the assault but he purposely withheld information.

DEFENCE CASE

Dr. Otoo

Dr. Otoo graduated from University of Birmingham in 1965. Subsequently he did post-graduate training in pediatrics and internal medicine. He began a general practice in Ontario in 1975.

ZPC

Ms. ZPC came to his practice in 1975 and they developed a close relationship. Dr. Otoo testified that she became quite dependent on him and a father-daughter relationship developed as an extension of the doctor-patient relationship. He saw her 336 times over a 15-year period and gave advice regarding relationships, abortion, emotional problems, etc. He was involved in her deliveries.

He testified that he knew of the assault by her husband February 14, 1989. He knew that Ms. ZPC's husband threw her onto the sofa and hit her on the head, that the police were called and that her husband threw coffee at a policeman's face. Dr. Otoo examined her and documented bruises on her right forehead, left cheek, left buttock and right elbow. He advised her to reconcile with her husband.

He continued to see her at office visits where he rendered advice regarding the relationship with her husband, the purchase of a home and the importance of a stable environment for her children. He did not see further evidence of assault but he was aware that there were "rows".

On cross-examination, prosecution counsel reviewed Dr. Otoo's office notes which described several instances of harassment and threats by Ms. ZPC's husband, as well as an episode of choking. For a period of time Ms. ZPC received police protection. Dr. Otoo's notes indicated that Ms. ZPC was afraid of her husband and specifically she was afraid he would kill her. There was mention of her husband living out of the house. The notes stated, in part, "wants out of marriage....she wants out....the marriage is over.... threatening to kill her....disaster....child support....taking to court....the marriage is all over, divorce pending". Despite these entries, Dr. Otoo said in evidence, that he was astonished to learn of an impending divorce and he insisted he had no idea about her living arrangements or further assaults.

He continued to advise Ms. ZPC to reconcile with her husband since he believed that she still loved him and a continuing relationship would ensure a home for both her and her children. His understanding was that Ms. ZPC's husband had *threatened* to kill her not that he had *tried* to kill her. He affirmed there were never any objective signs of assault except for those which he saw February 14, 1989.

Dr. Otoo acknowledged receiving the letter dated January 30, 1990 from Mr. RFX requesting a report in relation to assaults, as detailed in a divorce petition included with the letter. He was asked to detail her complaints, his diagnosis, the treatment and prognosis.

Dr. Otoo said he was astonished by the details of the assault allegations since he was unaware of any assault save that of February 14, 1989. He had no knowledge of a threat to pour hot water on Ms. ZPC and understood that Ms. ZPC's husband had spilled hot water on a policeman's face. He had no knowledge of an alleged rape that day. He was shocked that Ms. ZPC had not told him that she and her husband had separated in June 1989. He was not aware of an alleged rape after the separation.

He said he could not comply with the request detailed in the letter because he had no direct knowledge from Ms. ZPC of other assaults or any rapes.

Dr. Otoo explained to Mr. RFX by telephone that he could not prepare a report regarding the incidents about which he knew nothing. Mr. RFX threatened to complain to the College but Dr. Otoo was confident that Ms. ZPC would not consent to registering such a complaint.

Dr. Otoo saw Ms. ZPC February 17, 1990 in his office and, according to his testimony, this was the first time he became aware that the marriage was over.

When he received the letter of February 19, 1990 threatening College action, Dr. Otoo's reaction was "profound astonishment....profound disbelief". In the letter Ms. ZPC indicated that she believed he refused to provide a report because he feared that he would be contributing to the dissolution of the marriage and he did not want to appear to be taking sides. In the letter, Dr. Otoo was again requested to provide information regarding the complaints and findings related to the alleged assaults and he was also asked to state that the mental trauma Ms. ZPC suffered was solely the result of the physical injuries and required psychiatric referral. The letter stated that if the report was not received within 10 days a complaint would be submitted to the College. Such action was approved by Ms. ZPC with her signature.

In his testimony Dr. Otoo denied holding firm views about marriage, such as those referred to in the letter. Personal beliefs do not enter into his professional life, he stated. His major concern was that he was being asked to prepare a false report since he was being asked to give information that was not contained in his record. He had recorded only one incident, that of February 13, 1989 and had no record of rape. He had no *recent* information regarding subsequent assaults. Dr. Otoo testified that he understood from their telephone conversations that Mr. RFX was insisting that he include all the details regarding assaults as listed in the divorce petition. Since he had no record of most of these events he believed he was being asked to provide false information.

He was also upset by the threat to report him to the College. He feared that if he did make a false report it would be exposed in court, whereas if he did not make such a report he would be reported to the College. Further, he had not referred Ms. ZPC to a

psychiatrist because of marital trauma but for nervousness and depression, not specifically related to the marital problems.

When questioned about the telephone call, part of which was recorded and presented at the hearing, Dr. Otoo stated that Ms. ZPC called him at his office, and that the conversation lasted 1 1/2 hours, apparently while he had patients in his office. In this conversation he told her that he could not prepare the letter because he had not recorded the incidents in his file and that a letter, such as that requested, would not be in her best interest.

He denied that there was any intention to intimidate her in the telephone conversation or that he threatened to withdraw his services. He told her that he had nothing in his record to indicate that her husband beat her although at the hearing he admitted he knew the assailant was her husband.

In a letter to Ms. ZPC dated February 19, 1990, Dr. Otoo expressed shock regarding her complicity in the threat to report him to the College. He was very critical of Mr. RFX and asked Ms. ZPC to repudiate the document. At the hearing, he testified that the purpose of the letter was to explain to Ms. ZPC that he could not write a false or inappropriate report. He wanted her to know one cannot lie before the courts, and that he could only function appropriately for her when there was no threat involved.

Mr. EJE

Dr. Otoo testified that Mr. EJE sustained a work-related back injury in 1981. He was involved in a motor vehicle accident in June 1985 when he sustained shoulder, neck and back injuries. In July 1988 and October 1988 he had two more motor vehicle accidents in which he suffered neck and low back injuries. Dr. Otoo prepared ten reports for Mr. EJE's insurance company as detailed in the Notice of Hearing.

A report to Mr. RFX was sent February 28, 1992 containing statements detailed in the Notice of Hearing. By then, Dr. Otoo testified he had developed a different understanding of Mr. EJE's problems. For some time he had been concerned regarding Mr. EJE's failure to improve and his presenting features which included his unusual posture, his use of a cane and his inability to straighten up. Furthermore, in 1987 a W.C.B. physician indicated "delayed recovery...ample evidence of secondary gain...seems convinced he has major low back disability...long-term treatment has fixated his problem in his mind...on his physical assessment no significant degree of disability". A psychiatric report indicated a diagnosis of "psychogenic pain disorder" and "no injury related psychological problems". Initially, Dr. Otoo thought the W.C.B. might be trying to avoid payment. Subsequently, however, another W.C.B. report in 1987 described Mr. EJE as showing no abnormality when he was observed but not directly tested.

In 1988 Dr. Otoo referred Mr. EJE to an orthopedist whose observations were "marked adverse emotional response...enhanced awareness of somatic complaints...functional overlay...risk of chronic pain syndrome."

When Mr. EJE's failed to respond to treatment he was referred to another orthopedist who found very little abnormality in his back in May 1989. Subsequently this orthopedist arranged for nerve conduction studies and a CT scan but Mr. EJE failed to keep these appointments. The CT scan was eventually done and showed no serious problems. The second orthopedist felt there was a "lot of functional overlay" and he was not prepared to see Mr. EJE again because of his lack of co-operation.

At some point Dr. Otoo put these pieces of information together, talked with Mr. EJE's wife and decided that he was "faking it". Subsequently he wrote the report of February 28, 1992 to the lawyer, Mr. RFX, some 2 1/2 years after the request. In this report he made no mention of the specialists who had seen the patient.

When questioned about the insurance forms that he had filled out subsequent to the accidents in 1988 he stated that he was not overly impressed with the physical injuries but he gave Mr. EJE the benefit of the doubt for fear of repercussions.

He did refer Mr. EJE to a psychiatrist, Dr. TFJ, but it was because of depression related to marital and physical problems which were unrelated to the accidents.

ARGUMENT

Prosecution Argument

Prosecution counsel opened his submissions by stating that the genesis of the allegations lies in the rupture of the professional and personal relationship between Dr. Otoo and Mr. RFX. Dr. Otoo's personal vendetta with Mr. RFX led him to use his patients as tools to redress Mr. RFX.

The prosecution maintained that the allegations with respect to Ms. ZPC were supported by her testimony, the audio tape, Dr. Otoo's letter to Ms. ZPC of February 25, 1990 and the contents of Dr. Otoo's charts. He reviewed six instances in Dr. Otoo's charts which recorded emotional or physical abuse by her husband between February 14, 1989 and August 24, 1989. He reviewed the evidence of a special father-daughter relationship between Dr. Otoo and Ms. ZPC.

Prosecution counsel maintained that where Dr. Otoo's evidence differed from that of Ms. ZPC's, Ms. ZPC's should be accepted as more credible. Examples were Dr. Otoo's refusal to acknowledge or accept that Ms. ZPC was a vulnerable woman, his refusal to accept divorce and the possibility of losing custody of her children as a significant stress, and his failure to understand that he was not required to include in his report to Mr. RFX more than he knew.

Prosecution counsel also challenged Dr. Otoo's credibility with respect to Mr. EJE. He said he could not write a medical/legal report which supported the reports he made to the insurance company three to four years earlier. When he did write the report in

1992 there was no mention of the second and third accidents in 1988, which made the report totally misleading. He said Mr. EJE was depressed but not so severely as to warrant a referral to a psychiatrist. However, Dr. TFJ saw him in 1990 because of reactive depression quite possibly related to the motor vehicle accidents. According to Mr. RFX's testimony, Dr. Otoo told him that he could write a good report or a bad report depending on the circumstances.

DEFENCE ARGUMENT

The defence counsel reminded the Committee of the evidentiary burden of proof required in order to find Dr. Otoo guilty.

He agreed that the proceedings arose from the dispute between Mr. RFX and Dr. Otoo.

Mr. RFX resolved to make life miserable for Dr. Otoo and did so by engineering many complaints to the College regarding the doctor. He assailed Mr. RFX's credibility as a witness pointing out instances of selective memory.

Defence counsel referred to the testimony of Dr. Otoo in which he maintained that Mr. RFX insisted that he wanted a medical record relating to the events as recorded in the divorce petition and that he had no knowledge of many of these events. Defence counsel submitted that Mr. RFX's letter to Dr. Otoo of January 30, 1990 supported this direction. Dr. Otoo could not write the letter demanded of him because he could not satisfy the demand but he did not refuse to write a report, nor did he threaten Ms. ZPC.

He believed, also, that Ms. ZPC should not be pushed into divorce by Mr. RFX. Defence counsel maintained that the close father-daughter and doctor-patient relationship between Dr. Otoo and Ms. ZPC may be explained on a cultural basis. He also pointed out that such a relationship was necessary because of Ms. ZPC's indecisiveness regarding life issues. The nature of this relationship must be borne in mind, he submitted, when considering the allegations.

Defence counsel maintained that during the telephone conversation Dr. Otoo was speaking with Ms. ZPC less as a physician and more as a father and rather than being intimidating he was merely being frank. Dr. Otoo told her that he could not produce

information that he did not have. Second, he was concerned about her decision in view of some of her previous decisions. A review of the tape, he submitted, reveals that Dr. Otoo did not intimidate or threaten Ms. ZPC. If Dr. Otoo said anything that was inappropriate, at most, it should be considered an error in judgment. It should also be considered in a cultural context.

With respect to Mr. EJE, defence counsel then dealt with the differences between the accident benefit forms and the report Dr. Otoo sent to Mr. RFX dated February 28, 1992. He maintained that the reason for the discrepancy lay in the emergence of new information: Dr. Otoo determined from Mr. EJE's wife that Mr. EJE was driving a school bus while he was coming to Dr. Otoo's office apparently in quite severe pain and claiming he could not work; his CT scan and nerve conduction studies were normal; and, he cancelled his appointment with the orthopedist. Dr. Otoo concluded that the patient was exaggerating. Defence counsel submitted that Dr. Otoo was entitled to change his opinion.

Second, in one of his letters Dr. Otoo rightly stated that he referred Mr. EJE to Dr. TFJ because of depression related to his common-law wife leaving him. This referral was two years after the accident and, therefore, was not related to the accident.

DECISION

In this case the issues are whether, in the case of Ms. ZPC, Dr. Otoo *threatened* to provide a report that was *misleading*, whether he threatened or intimidated Ms. ZPC by telephone and in the case of Mr. EJE whether he made false or misleading statements in either his Accident Benefit Reports in 1988 to 1989 or in the medical report to Mr. RFX dated February 28, 1992.

The Committee decided unanimously that Dr. Otoo was guilty of professional misconduct with regard to the allegations concerning both patients because of conduct that would be regarded as disgraceful, dishonourable or unprofessional.

The Committee reviewed all of the evidence regarding both of these issues and

including the testimony of Ms. ZPC, Mr. EJE, Dr. Otoo and Mr. RFX. Credibility was a significant consideration.

Ms. ZPC

There were no substantive details where Ms. ZPC's testimony differed from that of Dr. Otoo or Mr. RFX save the interpretation of the tone of the telephone conversation and Dr. Otoo's letter to her, who initiated the telephone conversation, and whether or not Mr. RFX had asked Dr. Otoo twice for the report before sending the threatening letter. It is clear from the transcript of the audio tape and the letter in question that Dr. Otto did threaten Ms. ZPC. Who initiated the telephone conversation is not material. There is no evidence of an office visit in Dr. Otoo's record just prior to the threatening letter but the request could have been made by telephone or Ms. ZPC may have requested the letter from Dr. Otoo's secretary.

Mr. EJE

Mr. EJE's credibility was not at issue. The nature of the dispute between Dr. Otoo and Mr. EJE was clear and confined to the documents.

Mr. RFX

Mr. RFX's credibility was not at issue at the hearing except as it related to the telephone conversation between Dr. Otoo and Mr. RFX around the time of the January 30, 1990 letter from Mr. RFX to Dr. Otoo. No assessment of whose version was more believable was attempted. Both were parties to a bitter personal dispute and this would tend to colour the description of the contents and tone according to their own interests. There is no record of the conversation.

Dr. Otoo

Dr. Otoo's credibility was tested in the taped conversation. First he said AI didn't record anything, I just made a little diagram. I didn't say anything in that report that you were

beaten by your husband or anything, because I didn't want this thing -- you know, later on to become anything that is big, or serious, and interfere with the kids things.@ Clearly he knew it was her husband who had assaulted her and it is so recorded in his charts. In his testimony Dr. Otoo denied that he had had any ulterior reason not to cooperate, such as concern for the children's welfare, but the above quote and other incomplete notations suggested this was a concern. Dr. Otoo also denied that he knew of any possibility of divorce until the taped telephone call but separation and a disruption of the marriage arrangements were clearly mentioned in several of his clinical notes prior to the telephone call. In his testimony Dr. Otoo said that he saw evidence of physical injury only once. Although only one physical assault was documented in detail in Dr. Otoo's clinical notes, which are very difficult to read, there are at least six references to physical and emotional abuse and physical threats.

In the audio taped telephone call Dr. Otoo indicated his reasons for not doing a report were the threat of the College complaint, the concern that a letter would not help Ms. ZPC's case, and her betrayal of him. At the hearing, however, he insisted that he did not have information complete enough to satisfy what he interpreted as Mr. RFX's requirements.

Dr. Otoo's credibility was also questionable with regard to his testimony concerning Mr. EJE. He volunteered that in his insurance reports he omitted any reference to Mr. EJE seeing the two orthopedists because it would be bad for Mr. EJE's case. However, he had previously acknowledged that he knew of a College Position Statement regarding medical/legal documents instructing that he should be objective and not act as an advocate. Second, in his insurance report he indicated no previous cervical and dorsal spine injury although Mr. EJE had sustained a previous injury in 1985.

Finally, there were several examples in his cross-examination where Dr. Otoo was inexplicably unable to answer clear questions which had obvious answers. The Committee was unable to attribute any significance to this part of his testimony and did not give it any significant weight.

DECISION REGARDING MS. ZPC

With regard to writing the requested letter concerning the assaults on Ms. ZPC, Dr. Otoo's defence was that he had information regarding only one incident and he therefore felt unable to comply with Mr. RFX's instructions. However, a review of his office records reveals several entries where he noted physical and mental abuse, albeit not in the same detail as his note of February 14, 1989 and not describing physical injuries. However, he could have, and should have, indicated the incidents outlined in the divorce petition where he had no information and included the information that was available to him. There is no suggestion in Mr. RFX's written request for the letter that he expected Dr. Otoo to embellish his knowledge of Ms. ZPC's marital difficulties. Mr. RFX stated at the hearing that this request would not have been made by telephone because it would be improper.

Thus, there was no question that Dr. Otoo could not provide a satisfactory report. The Committee believes that he delayed sending a report to irritate or embarrass his foe, Mr. RFX, or that his judgment was distorted as a result of his acrimonious relationship with Mr. RFX. Subsequently, he was shocked by the effrontery of Ms. ZPC in accepting Mr. RFX's advice to threaten to report him to the College. A review of the audiotape and the letter to Ms. ZPC (February 25, 1990) reveals that he did threaten her with withdrawal of services or that he would not write a report or that he would submit a misleading report unless she withdrew the letter and dissociated herself from Mr. RFX.

The evidence that he threatened to supply a misleading report includes a clear statement that he did not know that it was her husband who had beaten her. Second, shortly thereafter he said "there is nothing in there" (referring to his records) that supports the fact of her husband as the assailant. Finally he said "I'm still going to sit on the fence" which implies he would submit a report not containing all he knew about their relationship.

There is clear evidence heard on the audiotape, that he was both intimidating and unprofessional. He bullied Ms. ZPC and failed to allow her autonomy. The Committee

did not accept the defence explanation that he was functioning as a father and not as a doctor. The issues involved were in a medical context, and in such a situation his behaviour was unprofessional.

The Committee was unwilling to accept that Dr. Otoo's behaviour could be seen to be acceptable when possible cultural differences were considered. Ms. ZPC did not accept his behaviour nor, in the opinion of the Committee, would members of the profession in Ontario where the relevant standards are extant.

Mr. EJE

The Committee was unable to accept that Dr. Otoo merely changed his opinion regarding the veracity of Mr. EJE's complaints on the basis of further evidence. First, the two WCB reports referred to at the hearing were received in 1987 before the insurance forms were completed in 1988 and 1989. These physicians were quite direct in their assertions that Mr. EJE was exaggerating. This should have alerted Dr. Otoo to that possibility in his future dealings with Mr. EJE. Second, the Committee presumes that when he made out some of the later insurance reports, Dr. Otoo did have in his possession the report of the first orthopedist who saw Mr. EJE November 14, 1988 and reported "marked adverse emotional response,enhanced awareness of somatic complaints,functional overlay,risk of chronic pain syndrome". Yet Dr. Otoo was still completing forms February 9, 1989 indicating a continuing problem. In fact Mr. EJE's condition was described as "much worse".

The Committee acknowledges that subsequently Mr. EJE saw another orthopedist on May 12, 1989, June 25, 1989 and November 10, 1989 and serious doubt regarding the real nature of his problems was expressed.

If Dr. Otoo did change his opinion after the last form was filled out in February 1989, one would expect a lengthy report such as that of February 28, 1992 to Mr. RFX would have mentioned the change of opinion and its evolution. Dr. Otoo stated he did not include the opinions of the two orthopedists because that would have hurt his case! It appears to the Committee that on reviewing each incident Dr. Otoo changed his views

and minimized the injuries for extraneous reasons, to embarrass Mr. RFX. Such use of a patient to satisfy personal feelings of antipathy toward an opponent clearly satisfies the meaning of the words, disgraceful, dishonourable or unprofessional.

Similarly, with regard to the psychiatric referral, Dr. Otoo had in his possession the opinion of Dr. TFJ, that the depression was Aprobably relating to the motor vehicle accidents@. Even so, Dr. Otoo failed to mention this opinion and said that the psychological effects were Anot severe enough to warrant any treatment such as a referral to a psychiatrist.@ This is another example of a distortion of the facts from those contained in the record. This was found to be more than an oversight but a deliberate distortion for the purposes of discounting Mr. EJE-s claim and embarrassing Mr. RFX. This is clearly unprofessional and disgraceful.

The Committee therefore finds Dr. Otoo guilty of professional misconduct as set out in the particulars referred to in these reasons.

Indexed as: Otoo (Re)

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

IN THE MATTER OF a Hearing directed
by the Complaints and Executive Committee of
the College of Physicians and Surgeons
of Ontario, pursuant to Section 58(2) and 60(6)
of the **Health Disciplines Act**,
R.S.O., 1990, c.H-4 as amended

BETWEEN:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. ANDREW A. OTOO

PANEL MEMBERS: DR. J. CURTIS (CHAIR)
DR. J. THOMPSON
DR. A. RAPOPORT
R. FORTIN
J. FINLAYSON

HEARING DATE: AUGUST 21-23, 1995
FEBRUARY 28, 1996

DECISION/RELEASED DATE:

JUNE 10, 1996

PENALTY HEARING DATE:

NOVEMBER 27, 1996

PENALTY DECISION/RELEASE DATE:

NOVEMBER 27, 1996

PENALTY DECISION AND REASONS FOR PENALTY

This matter came before the Discipline Committee of The College of Physicians and Surgeons of Ontario on November 27, 1996 at Toronto.

Defence Evidence Regarding Penalty

Defence counsel filed a Brief of Patient Letters, in which document patients attested to their affection for Dr. Otoo and to the valuable role he has played as a physician to them and their families. Two of these patients also testified.

A colleague and partner, Dr. RSV, testified. He said that with the unavailability of locum tenens physicians, in the event of a suspension, Dr. Otoo's patients would suffer.

Mrs. Blossom Otoo, Dr. Otoo's wife and office manager, also testified. She described Dr. Otoo's very busy day, which includes long hours divided among two offices, visits to a nursing home and house calls. In response to questions from the Committee, it became evident that Mrs. Otoo believed that Mr. RXF used the weakest of the patients to exact vengeance on her husband. It was the impression of the panel that Mrs. Otoo did not accept the findings of the Committee.

A letter from a psychiatrist, who assessed Dr. Otoo, was submitted. His understanding was that Dr. Otoo had come to his present difficulties as a result of the acrimonious relationship with Mr. RXF. The psychiatrist described no mental illness. He quoted Dr. Otoo as having stated ~~A~~that he has learned a very bitter lesson from this affair and that he has profited substantially from the proceedings at the College... He now realizes that he displayed poor judgment because he felt that he was being harassed by Mr. RXF.

Submissions Regarding Penalty

Prosecution counsel submitted that the appropriate penalty would be a recorded reprimand, a six-month suspension and a fine of \$10,000.00. Such a penalty would satisfy the principles of sentencing and the degree of repudiation would be appropriate. Prosecution counsel submitted that in Dr. Otoo's conduct with two patients, he demonstrated arrogance and contempt and threatened, or perpetrated deliberate distortion in an attempt to satisfy his personal interests in his vendetta against Mr. RXF.

Defence

Defence counsel proposed a less harsh penalty (a reprimand and a fine of \$3,000.00) for a number of reasons. Dr. Otoo was provoked as a result of the acrimonious relationship with Mr. RXF. There was no financial gain for Dr. Otoo. Defence counsel emphasized the effect that a suspension of Dr. Otoo would have on his patients and family. Dr. Otoo has had a previously clean record and he has had no difficulties with his practice otherwise. Defence counsel pointed to the letter from the psychiatrist, in which he stated that Dr. Otoo had profited from the experience and that he acknowledged his poor judgment. The psychiatrist believed that there was a minimal chance of a recurrence of such conduct. Dr. Otoo and his family have already suffered over a period of time dating back to 1989. Finally, Dr. Otoo's plea of not guilty cannot be held against him in sentencing.

Reply

Prosecution counsel noted that Dr. Otoo has not acknowledged any wrong doing and has offered no apology. He submitted that the argument that a suspension would be of potential harm to his patients is not worthy of consideration, since this applies to all physicians.

Decision

The Committee believed that such behaviour is reason for a suspension. Dr. Otoo allowed his personal animosity toward Mr. RXF to interfere with his honest approach to patient matters. In its determination of penalty, the College must make it clear to Dr. Otoo, to the profession and to the public that such actions cannot be condoned.

The Committee is not of the mind that a lengthy suspension would be of great help in assisting Dr. Otoo to understand how he went wrong. Further, the Committee believes that Dr. Otoo

should be assisted in his future dealings with patients by some instruction in communication skills, ethical behaviour and in gender issues and paternalism in the doctor/patient relationship. Accordingly, the Discipline Committee ordered:

1. The Doctor is to receive a recorded reprimand.
2. Dr. Otoo's certificate of registration is to be suspended for three (3) months, commencing within sixty (60) days of this Order becoming final.
3. The last two months of the suspension are to be suspended, provided that Dr. Otoo completes, at his own expense, and to the satisfaction of the Registrar, within eight (8) months of this Order becoming final:
 - (a) the College's course on communication skills with particular emphasis on gender sensitivity and patient autonomy; and
 - (b) a dialogue with a medical ethicist acceptable to the Registrar for a minimum of five two-hour sessions. These sessions are to include the counselling of patients who are victims of domestic abuse and the issue of paternalism in the doctor/patient relationship.
4. A copy of the Committee's Decisions and Reasons for Decision is to be delivered to the provider of each course.
5. If the said conditions are not met within the said eight (8) months, the remaining two (2) months's suspension shall be served starting no later than eight (8) months from the date at which this Order becomes final.