

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

IN THE MATTER OF a Hearing directed
by the Executive Committee of the College of Physicians
and Surgeons of Ontario, pursuant to Section 36(2)
of the *Health Professions Procedural Code*,
being Schedule 2 to the
Regulated Health Professions Act, 1991,
S.O. 1991, c.18, as amended

BETWEEN:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. EDDY HYMIE PAKES

PANEL MEMBERS:

DR. R. MACKENZIE (CHAIR)
DR. A. KENSHOLE
DR. B. GIBLON
P. BEECHAM
A. MACKENZIE

Hearing Date:

Release of Written Reasons:

DECISION AND REASONS FOR DECISION

A hearing before the Discipline Committee of the College of Physicians and Surgeons of Ontario with regard to allegations concerning Dr. E.H. Pakes was held in Toronto on May 25, 2000. A Notice of Hearing was entered as an exhibit, and the College proceeded with the allegations of professional misconduct as set out below.

ALLEGATIONS:

It was alleged in the notice of hearing that Dr. Pakes is guilty of professional misconduct under clause 51(1)(a) of the *Health Professions Procedural Code* ("the Code"), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, in that he has been found guilty of an offence that is relevant to his suitability to practice. The particulars of this allegation are:

- (a) On October 4, 1999 in the Ontario Court (Provincial Division), Dr. Pakes pleaded guilty and was found guilty of fraud under clause 380(1)(a) of the *Criminal Code of Canada* by the Honorable Judge W. Horkins.
- (b) The facts on which the finding was based are that between July 1993 and October 1996, Dr. Pakes defrauded the Ontario Ministry of Health of a sum of money exceeding five thousand dollars by submitting false claims, for which payment was remitted to Dr. Pakes by the Ontario Health Insurance Plan, for psychiatric services that were in excess of the services that Dr. Pakes actually performed or rendered.

PLEA:

Dr. Pakes pleaded guilty to the allegation of professional misconduct as set out in the Notice of Hearing.

EVIDENCE:

At the outset of the hearing, an Agreed Book of Documents and an Agreed Statement of Facts regarding the evidence of Dr. X were entered as exhibits and presented to the Committee. A Victim Impact Statement from a previous patient of Dr. Pakes was also received in evidence and considered by the Committee in its deliberations. The following facts were thereby established:

In January of 1996, as a result of an inquiry from a former patient of Dr. Pakes, the Ministry of Health commenced an investigation. The information from the patient was that Dr. Pakes was billing OHIP for services he was not providing. The complaint was that Dr. Pakes billed 2½ hours for group psychotherapy sessions when in fact the sessions were only 1½ hours in length. Subsequently, verification letters were sent to 70 of Dr. Pakes patients. Of the 37 replies that were returned, 12 had comments stating that the group sessions were only 1½ hours in length, however 2½ hours were billed for and paid. The College was made aware of the Ministry of Health Investigation in early 1998.

On August 17, 1998 Dr. Pakes was arrested and charged with Fraud over \$5000.00 contrary to section 380(1) of *The Criminal Code*. On October 4, 1999 Dr. Pakes pleaded and was found guilty of fraud over \$5000.00. The Crown entered into a joint submission on penalty with defense counsel. It was agreed in the joint submission that Dr. Pakes defrauded OHIP of \$16,129.00. In addition to making restitution in that amount, Dr. Pakes agreed to repay an additional \$50,000.00 back to OHIP, and he has done so. Based on the joint submission, His Honour Judge Horkins imposed a suspended sentence with two years probation, including an order for performance of 160 hours of community service to commence within 30 days, restitution and a term that Dr. Pakes only bill OHIP in accordance with the billing codes.

FINDING:

The Committee considered the factual admissions contained in the Agreed Book of Documents and Dr. Pakes' plea of guilty and found Dr. Pakes guilty of professional misconduct as alleged in the Notice of Hearing.

EVIDENCE REGARDING PENALTY:

Mr. Y

Mr. Y is a Detective with the OPP and is the team leader of the Health Fraud Investigation Unit. Mr. Y described the scope of the problem of healthcare fraud in Ontario, which has been escalating steadily since the early 1970's. He also described the process of a typical fraud investigation, which involves the interviewing of patients who respond to Ministry of Health enquiries about billing irregularities. The investigators must proceed cautiously in such situations

because of the sensitivity and confidentiality of the doctor-patient relationship. Many patients feel decidedly uncomfortable about providing evidence against a physician with whom they have developed a positive therapeutic relationship. In addition, the investigators must limit, or expand the scope of the investigation in order to secure sufficient evidence and witness cooperation to enable the crown to bring the case successfully to court.

Mr. Y confirmed that Dr. Pakes has made restitution to the extent of the \$16,129.00 stipulated in the sentence from the criminal court as well as an additional \$50,000, agreed to on a consensual basis, as an estimate of additional inappropriate billings that were not identified in the actual investigation. On cross-examination, Mr. Y agreed that such additional payments are the exception rather than the rule in most cases of healthcare fraud convictions.

Dr. X

Dr. X is a physician employed in the Ministry of Health and Long-Term Care as a medical consultant in the Provider Services Branch. That branch of the Ministry is involved in the administration of the Ontario Health Insurance Program (OHIP). Dr. X monitors the OHIP billing patterns of physicians and other practitioners and recommends corrective action when claims to OHIP appear to be inappropriate or fraudulent.

The following facts regarding the growth and impact of health care fraud were established through the statement of Dr. X, filed as an Agreed Statement of Fact:

All the claims submitted by physicians and practitioners are processed through the OHIP mainframe computer. In approximate numbers, 24,000 physicians and practitioners submit 130 million claims a year to OHIP and receive total payments of more than \$4 billion.

OHIP relies on physicians and practitioners to only submit claims for services covered by the Plan, and to submit claims that are an honest and accurate representation of the services actually rendered. While the Ministry of Health and Long-Term Care uses computer technology to screen and process claims, the practical reality is that the sheer volume of claims and the large number

of providers leaves OHIP no choice but to rely heavily on the integrity of each and every health care provider in the submission of his/her account.

Society has not only a need to trust its health care providers, but really has little choice other than to do so. That confers a power on the health care profession that few other professions hold. When a health care professional abuses his or her power by defrauding the public health care system, that professional has breached the trust of his or her patients and society.

In the United States, the Government Accounting Office estimates that 10% of the total health care budget in that country is lost to fraud and abuse. In Ontario, since the 1970's, an average of three health care professionals per year were referred to the police for fraud investigation. In the last four years, that number has more than tripled.

Fraudulent claims not only rob the public purse, but can have a direct and personal impact on patients. A false claim creates a false health record for an individual patient. People rely completely on the accuracy of their OHIP records when they authorize others access to their personal OHIP file for such purposes as obtaining life and disability insurance. As another example of the personal impact of fraudulent claims, the annual restrictions on some services may be artificially and prematurely depleted. False exhaustion of that annual allowance of services through fraudulent claims will cause patients difficulty in accessing required health care.

The fraudulent appropriation of funds also impacts on the professional colleagues of doctors who commit fraud. The medical profession, as a whole, places considerable value on preserving the public trust. Fraudulent actions compromise that trust.

Dr. Eddy Hymie Pakes

Dr. Pakes graduated from medical school at the University of Alberta in 1962. He qualified for his fellowship in psychiatry in 1973. Since 1981 he has been an associate professor of psychiatry at the University of Toronto. During the early 1980's, he developed a particular interest in the treatment of bereavement, evolving out of his activities as a consultant to the pediatric oncology service at the Hospital for Sick Children.

Approximately 15 years ago, he joined the medical staff of Mount Sinai Hospital where he began doing family therapy and subsequently initiated group therapy sessions for families dealing with bereavement. He was involved as a founding board member of the organization, "Bereaved Families of Ontario". He currently divides his professional activities among individual and group counseling for bereavement, psychotherapy and referred consultative psychiatric practice. He estimates that between 50% and 75% of his time is committed to the treatment of bereavement in one form or another.

Dr. Pakes identifies himself as having special expertise in the field of bereavement. He is frequently invited to speak at local and international symposia on the subject of bereavement. In addition to his clinical activities, he has devoted a significant amount of personal time to serving on the volunteer board of Bereaved Families of Ontario as well as setting up community support groups for bereavement at his synagogue.

Dr. Pakes admits that the billings identified in the investigation were fraudulent. He regularly conducted group therapy sessions of 1½ hours in length and submitted bills to OHIP for 2½ hours. By way of explanation, he offered that he regularly spent significantly more than the allotted clinical time consulting with the other members of the therapeutic team, returning phone calls and dealing with other miscellaneous administrative duties. He did not offer this as an excuse for his inappropriate billing. He acknowledged that he was well aware that he was only allowed to bill for actual time spent in patient treatment. He also admitted that he regularly billed OHIP for therapeutic encounters when patients did not show up for booked appointments. Although he realized that he was not allowed to bill OHIP for missed appointments, he confessed that he felt awkward charging his patients directly for these services because of their distraught emotional state. Once again he offered this as explanation for his own reasoning, not as an excuse for his actions that he acknowledges were wrong.

Dr. Pakes described the implications of his criminal conviction as emotionally devastating for him and his family. He is ashamed and embarrassed and has lost a great deal of self-esteem in the process. The criminal charges and ultimate conviction attracted a great deal of media attention in Toronto.

Although he admits his private practice is as busy as ever, his university appointment has been revoked which will ultimately result in loss of staff privileges at the Hospital for Sick Children and Mount Sinai Hospital. In the community, he has been asked to leave the synagogue group that he helped to found.

CHARACTER WITNESSES:

A brief containing no less than 170 letters of character reference was submitted as an exhibit. The authors of these letters included former patients of Dr. Pakes as well as students and professional colleagues. In addition, five witnesses were called to provide character evidence on behalf of Dr. Pakes. In all instances, this evidence attested to the high regard in which Dr. Pakes is held both within the community and the medical profession.

PENALTY AND REASONS FOR PENALTY:

After careful consideration of the evidence and submissions of counsel, the Committee unanimously agreed that Dr. Pakes' conduct in this case represents a serious breach of professional trust and warrants a significant penalty to address both specific and general deterrence.

The Committee accepts and relies on the evidence of Dr. X in arriving at its decision. When a physician such as Dr. Pakes abuses his power by defrauding the public health care system, he has breached the trust of his patients, his professional colleagues and society at large. Such a breach of trust serves to undermine the relationship that is a necessary part of an effective doctor-patient relationship. It is quite conceivable that awareness of conduct such as this could potentially discourage patients from seeking out psychiatric help.

In the public's perception, trust is fostered by the honesty and integrity of every physician. The medical profession, as a whole, places considerable value on preserving the public trust and must condemn any members who willingly compromise it.

In addition to the aggravating factors relevant to penalty, the Committee also considered Dr. Pakes' previously unblemished record and service to the community in arriving at a decision on penalty. The Committee could not help but be impressed by the character witnesses and letters submitted in support of Dr. Pakes. Clearly, Dr. Pakes is a dedicated, compassionate and effective physician who has made a major contribution to the medical community in Toronto and the well being of his patients. Unfortunately the contrast between his esteemed professional stature and the deliberate nature of his fraudulent conduct only serves to make his offence seem that much more repugnant. It is clear that he fully acknowledges his wrongdoing and is genuinely remorseful. The Committee also believes that the not insignificant penalty imposed through the criminal court is sufficient to ensure that Dr. Pakes will not re-offend.

The Committee hopes that the penalty imposed by this Committee will serve as an appropriate general deterrent, and convey the message that health care fraud is a serious and escalating societal problem, which will not be tolerated by the medical profession in Ontario. In future, physicians who are found to have participated in health care fraud should be prepared to face penalties of increasing severity as their cases come before panels of the Discipline Committee of this College.

ORDER:

The Committee orders and directs that:

- (a) Dr. Pakes be reprimanded and that the reprimand be recorded on the register.
- (b) The Registrar is directed to suspend Dr. Pakes' certificate of registration for a period of three months, to commence on a date to be fixed by the Registrar.
- (c) Dr. Pakes shall pay a fine of \$10,000.00 to the Minister of Finance within 30 days of commencing his suspension.

- (d) Dr. Pakes shall pay costs to the College in the amount of \$2500.00 within 30 days of commencing his suspension
- (e) Two months of the suspension ordered shall be suspended, provided that paragraphs (c) and (d) above are complied with.
- (f) In the event that Dr. Pakes fails to comply with paragraphs (c) or (d), then the balance of his suspension will be served to commence on a date to be fixed by the Registrar.