

Indexed as: Faulkner (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 26(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. JOHN ROGER FAULKNER

PANEL MEMBERS: DR. J. WATTS (CHAIR)
DR. O. KOFMAN
R. DODDS
J. FREDERICK

HEARING DATE: April 26, 2001

DECISION DATE: April 26, 2001

DECISION AND REASONS FOR DECISION

The Discipline Committee held a hearing at the College of Physicians and Surgeons of Ontario on April 26, 2001 at Toronto.

ALLEGATIONS

It was alleged that Dr. Faulkner committed an act of professional misconduct:

1. Under s. 1(1) 8 of Ontario Regulation 856/93 in that he failed to fulfil the terms of an agreement for professional services.
2. Under s. 1(1) 7 of Ontario Regulation 856/93 in that he failed at reasonable cost to provide a report relating to an examination or treatment performed by the member to the patient or his authorized representative within reasonable time after the patient or his or her authorized representative had requested such a report or certificate.
3. Under s. 1(1) 30 of Ontario Regulation 856/93 in that he failed to respond appropriately or within a reasonable time to a written inquiry from the College.
4. Under s. 1(1) 33 of Ontario Regulation 856/93 in that he was guilty of an act or omission relevant to the practice of medicine that having regard to all the circumstances would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

A fifth allegation under s. 1(1) 34 of Ontario Regulation 856/93 that he was guilty of conduct unbecoming a physician was withdrawn by the College at the start of the proceedings.

The Committee initially heard a submission from Dr. Faulkner who appeared without counsel, that the hearing should be adjourned to a later date. Amongst other things, Dr. Faulkner submitted that:

1. He needed to be represented by counsel;
2. He had not been provided with notice of the names of witnesses;
3. There had been no pre-hearing scheduled for the matter; and
4. There had been a period when the College had recommended delaying the hearing.

It was explained by counsel for the College that written notice was provided to Dr. Faulkner in a letter dated November 14, 2000 from the Hearings Office that the case would commence on Thursday, April 26, 2001 at 9:00 a.m. A letter from the College on March 30, 2001 stated that following unsuccessful attempts to reach Dr. Faulkner by telephone, the Hearing had been adjourned to a date to be fixed in order to enable an expedited matter to be heard. This letter had followed a telephone call on March 20, 2001 from the Hearings Office to Dr. Faulkner's secretary in which it was suggested that the matter could be heard on the afternoon of April 27, 2001. Dr. Faulkner did not follow up on this telephone call and was not available for a subsequent telephone call from the College on March 22, 2001. A message was left on April 4, 2001 inquiring if he was still available on April 26, 2001. Dr. Faulkner's secretary indicated that he had surgery scheduled in the afternoon of April 26, 2001 but that the morning would still be available. A letter dated April 9, 2001 was sent to Dr. Faulkner confirming that the matter would be heard on April 26, 2001. In the absence of a response from Dr. Faulkner, a further letter was sent, dated April 17, 2001 indicating that the matter was scheduled for a full day Hearing and would start on the morning of April 26, 2001 even in his absence. It was clear from what Dr. Faulkner said that he was not denying the foregoing in any material way, and that he was familiar with the underlying facts giving rise to the allegations set out in the Notice of Hearing.

Counsel further indicated that the College intended to call four witnesses, all of whom were related to matters referred to in the document brief that was provided to the Committee and that had been provided to Dr. Faulkner, and confirmed that the College had not provided Dr. Faulkner with a separate list of the names of the witnesses.

The Committee ruled that the Hearing should proceed on the grounds that more than sufficient notice had been received by Dr. Faulkner to enable him to retain counsel and to make himself available for this date. In addition, there is no legal requirement for a Pre-Hearing Conference to take place, and the identity of the College witnesses was self-evident from the correspondence contained in the document brief which Dr. Faulkner had received.

Dr. Faulkner entered no plea to the charges, which was accepted as a plea of not guilty.

The Committee heard evidence from a solicitor, the solicitor, who testified that he had sought release of the records and report regarding his client, a child, who was injured by a falling display pile at a supermarket. The first request was made in writing on August 5, 1997 and subsequent requests were made November 24, 1997 and January 13, 1998. The solicitor received an invoice for \$250. The invoice was dated December 11, 1997, and stated that the report was already prepared.

The solicitor mailed a cheque to Dr. Faulkner on March 9, 1998. However, he did not receive the report despite follow-up letters sent on September 30, 1998 and February 3, 1999. The solicitor complained to the College on November 17, 1998 that he had not received the report, which he needed to provide information regarding the injury, including its cause, extent and length of treatment. The solicitor testified that the cheque was never cashed. The original lawsuit was settled after the solicitor received the records of a paediatrician caring for the child. These records included the letter of consultation from Dr. Faulkner. Because the paediatrician's records were not requested until August 18, 2000, there was a delay in settlement of the legal case.

Following the solicitor's evidence and following negotiation with counsel for the College, Dr. Faulkner entered a plea of guilty to all four allegations, including that of failing to respond to the College. The Committee did not hear direct evidence on the latter issue although it is recorded in the document brief that Dr. Faulkner failed to respond to seven voice mail messages from a

College intake investigator and failed to respond to letters from a College investigator on December 9, 1998, July 14, 1999, July 30, 1999 and August 13, 1999.

The Committee received a joint submission from counsel for the College and from Dr. Faulkner recommending a penalty, which would consist of a recorded reprimand, a fine, and a period of suspension of one month. The College recommended that the suspension should begin within 30 days. Dr. Faulkner requested that it begin in September 2001 to allow him to complete surgery on patients who had stored autologous blood for transfusion and to maintain his commitments to colleagues for emergency call. Dr. Faulkner also stated that he had initiated efforts to improve the administrative mechanisms in his office to avoid a recurrence of such an event, and stated that he would give a voluntary undertaking to report his quality assurance procedures quarterly.

The Committee heard that Dr. Faulkner, in 1991, had been found guilty of professional misconduct, that included a failure to reasonably respond to attempts by a patient, her husband, and their family physician to receive information that related to the patient's condition.

THE COMMITTEE DECISION

The Committee accepted Dr. Faulkner's plea of guilty and felt that the offence was a serious one, which brings the profession into disrepute. The Committee particularly concerned about the similarity between this offence and the earlier offence of which Dr. Faulkner had been found guilty, and it was concerned that he appeared to have failed to learn from previous experience, either about the need for organizational skills and efficiency, or about the need to respond to the College as a governing body in a respectful and timely manner. The Committee noted that Dr. Faulkner had been represented counsel on that previous occasion.

The Committee imposed the following penalty:

1. That Dr. Faulkner be reprimanded with the fact of the reprimand to be recorded on the Register;

2. Dr. Faulkner's licence to practise be suspended for a period of one month, to start no later than May 31, 2001; and
3. Dr. Faulkner to pay costs in the amount of \$6,500, the amount to be paid within 30 days of the hearing.
4. The Committee also ordered that a peer assessment of Dr. Faulkner's office practice and an office inspection be performed at Dr. Faulkner's expense in one year's time with special attention being paid to the maintenance of patient records, the adequacy of communication, and the timeliness thereof. The results of such an assessment are to be reported to the Registrar who is directed to take appropriate action should the results be anything other than satisfactory.

Dr. Faulkner waived his right to appeal and the reprimand was administered.

