

**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

B E T W E E N:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. ANTHONY THEODORE DELUCO

PANEL MEMBERS: D. MACKINNON (CHAIR)
DR. F. SLIWIN
DR. M. DAVIE
DR. P. HORSHAM
B. MOSELEY-WILLIAMS

Hearing Date: April 5, 2005
Decision/ Release Date: April 21, 2005

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on April 5, 2005. At the conclusion of the hearing the Committee stated orally its finding that the member committed an act of professional misconduct under paragraph 1(1)33 of Ontario Regulation 856/93, and reserved its decision on penalty after hearing evidence and submissions.

ALLEGATION

The Notice of Hearing alleged that Dr. Anthony Theodore Deluco committed an act of professional misconduct:

1. under paragraph 1(1)33 of O. Reg. 856/93 in that he engaged in conduct or an act or acts relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

RESPONSE TO THE ALLEGATION

Dr. Deluco admitted the allegation set out in the Notice of Hearing.

EVIDENCE

The following Agreed Statement of Facts was filed as exhibit #2 and presented to the Committee:

PART I – STATEMENT OF FACTS

1. Dr. Deluco is a 57 year old physician who has a family practice in Ontario. He received his independent practice certificate from this College in 1973.

2. On January 20, 2003, the Complaints Committee referred to the Discipline Committee allegations that Dr. Deluco committed acts of professional misconduct, including sexual abuse of three patients and disgraceful, dishonourable and unprofessional conduct. Attached at Tab 1 [to the Agreed Statement of Facts] is the Notice of Hearing dated January 20, 2003.

3. On February 18, 2003, the Executive Committee made an order, pursuant to section 37 of the Health Professions Procedural Code (the "Section 37 Order"), that the following terms, conditions and limitations be placed on Dr. Deluco's certificate of registration:

- (a) that Dr. Deluco be restricted from examining any female patients except in the presence of a female third party who is acceptable to the College; and
- (b) that Dr. Deluco display a sign in his office waiting room notifying patients that he is restricted from examining female patients except in the presence of a female third party.

The Section 37 Order became effective February 20, 2003 at 12:01 a.m. Attached at Tab 2 [to the Agreed Statement of Facts] is a copy of the Section 37 Order dated February 18, 2003.

4. In March, 2003, the College accepted an undertaking (the "Undertaking") from a registered nurse, and approved her to act as a monitor to be present at all of Dr. Deluco's examinations of female patients. Attached at Tab 3 [to the Agreed Statement of Facts] is the undertaking of the nurse dated March 11, 2003.

5. In October, 2003, the Complaints Committee referred allegations that Dr. Deluco committed additional acts of professional misconduct relating to two other patients, including sexual impropriety, sexual abuse and disgraceful, dishonourable and unprofessional conduct. Attached at Tab 4 [to the Agreed Statement of Facts] is the Notice of Hearing dated October 15, 2003.

6. The allegations in the Notices of Hearing dated January 20 and October 15, 2003 are pending and have not yet been determined by the Discipline Committee.

Patient A

7. On September 19, 2004, Patient A contacted Dr. Deluco's office requesting an appointment. She was anxious to see him because of pain in her ear. She was given an appointment for the next day.

8. On September 20, 2004, in contravention of the Section 37 Order, Dr. Deluco examined Patient A and removed wax from her ears, without the nurse or anyone else present. He prescribed the antibiotic Cipro. Attached at Tab 5 [to the Agreed Statement of Facts] is an excerpt from Dr. Deluco's medical record for Patient A for the period February 2, 2002 up to and including September 30, 2004.

Patient B

9. On May 23, 2003, Patient B attended at Dr. Deluco's office for a physical examination that she required for Citizenship and Immigration Canada.

10. On that day, in contravention of the Section 37 Order, Dr. Deluco conducted a full physical examination of Patient B, including a breast examination, without the College approved monitor, or anyone else present.

11. The nurse's log of female patients confirms that she worked in Dr. Deluco's office on May 23, 2003, but was not present for and did not monitor Dr. Deluco's examination of Patient B. No other third party was present for the examination, nor was the option of having a third party present at her examination discussed with Patient B. Attached at Tab 6 [to the Agreed Statement of Facts] is a copy of the monitor's patient log for May 23, 2003.

PART II - ADMISSION

12. Dr. Deluco admits that the conduct set out above constitutes professional misconduct:

- (a) under paragraph 1(1)33 of O. Reg. 856/93 in that he engaged in conduct or an act or acts relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

FINDING

The Committee accepted as true the facts set out in the Agreed Statement of Facts. Having regard to those facts and Dr. Deluco's admission, the Committee found that Dr. Deluco committed an act of professional misconduct:

- under paragraph 1(1)33 of O. Reg. 856/93 in that he engaged in conduct or an act or acts relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

PENALTY DECISION AND REASONS

Counsel for the College submitted that a six-month suspension (without credit for the interim suspension) was the appropriate penalty and requested \$5,000 in costs.

Counsel for Dr. Deluco submitted that an appropriate penalty would be a suspension for "time served" (84 days to the date of the hearing under the s.37 suspension order of January 11, 2005, related to the prior referral). He indicated that the Committee may also order a reprimand and a term, condition and limitation that Dr. Deluco take an ethics course as part of the penalty. He submitted that costs of \$2,500 were appropriate.

The Committee carefully considered the evidence filed and the submissions of both counsel. The Committee concluded that a penalty of six months suspension of Dr. Deluco's certificate of registration, with credit for the period of suspension served since the interim suspension order made on January 11, 2005, would be appropriate.

The College, as a regulatory body, with a mandate to protect the public, requires compliance with its orders. Because of the seriousness of the allegations made against Dr. Deluco, the College made an order pursuant to s. 37 of the Health Professions Procedural Code restricting him from examining any female patients except in the presence of a female third party acceptable to the College. This order was deliberately and flagrantly violated by Dr. Deluco when he chose to examine Patient B on May 23, 2003 in the absence of the appointed monitor and again when he examined Patient A on September 20, 2004 when the monitor was not even present at his office.

The Committee considered various factors submitted by counsel for the College and counsel for Dr. Deluco to be aggravating and mitigating in this case. Counsel for Dr. Deluco submitted as a mitigating factor a letter from the local physician recruitment office in the area in which Dr. Deluco practices, which pointed out that there is a significant physician shortage in that area. It was an admitted fact through oral agreement of counsel for the parties that the College received a significant number of letters written by patients of Dr. Deluco expressing concern about the loss of Dr. Deluco's medical services. While physician shortage is an unfortunate state and serious problem in many parts of Ontario, it cannot be a mitigating factor in this case. Physicians in under serviced areas must be held to the same standard as all physicians in the province. Most importantly, the patients in such areas cannot be subjected to lesser standards of physician conduct.

Secondly, counsel pointed out Dr. Deluco's significant voluntary contributions to the medical community over many years of service. While we recognize these contributions, it is apparent to the Committee that such an individual should be especially attuned to the need for public protection and, as a leader of the medical community, he should be a role model and should have understood the seriousness of complying with an order from this College.

Thirdly, Dr. Deluco's admission was taken into account. However, this admission in part occurred at the eleventh hour and as such caused unnecessary expense and prolongation of the process.

The Committee also considered the court cases and Committee cases presented by both counsel in support of their position that like cases should be treated alike.

The Committee is of the view that the blatant disregard of the College order in this case requires a significant penalty to deter the member from future behaviour of this nature, and to deter like conduct from another member of the College.

The Committee believes that a six-month suspension is required to satisfy the principles of public protection, general deterrence for the physician membership, specific deterrence for this member, as well as to maintain public confidence in the ability of the profession to regulate itself through compliance with its orders.

ORDER AS TO PENALTY AND COSTS

Therefore, the Discipline Committee orders and directs that:

1. The Registrar suspend Dr. Deluco's certificate of registration effective immediately, for a period of six months, with the period of suspension to be reduced by the period of suspension served to the date of this Order since January 11, 2005, the date of the interim suspension order.
2. Dr. Deluco pay costs to the College in the amount of \$5,000.00 within 30 days of the date of this order.