

Indexed as: Xuereb (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. DENNIS XUEREB

PANEL MEMBERS: DR. J.D. CURTIS (CHAIR)
DR. A. RAPOPORT
R. FORTIN
L. EDINBORO

HEARING DATE: NOVEMBER 23, 1995

DECISION/RELEASE DATE:

NOVEMBER 23, 1995

DECISION AND REASONS FOR DECISION

This matter came before the Discipline Committee of the College of Physicians and Surgeons of Ontario on November 23, 1995 at Toronto.

In the Amended Notice of Hearing it was alleged that Dr. Xuereb is guilty of professional misconduct in that:

- a) he failed to maintain the standard of practice of the profession contrary to Ontario Regulation 548, Section 29(22), as amended;
- b) 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), amended.

It is alleged in the alternative that Dr. Xuereb has committed an act of professional misconduct in that:

- a) he failed to maintain the standard of practice of the profession contrary to Ontario Regulation 856/93, Section 1(1)(2), as amended;
- b) he engaged in 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 856/93, Section 1(1)(33), as amended.

AGREED STATEMENT OF FACTS

An Agreed Statement of Facts was submitted at the hearing by the parties stating as follows:

- 1) Dr. Xuereb is a gynecologist. He saw JCK for the first time on September 20, 1990, on referral from her family doctor. Save for JCK's presenting complaint of pain in her leg, JCK was a healthy, active 72-year-old

woman;

- 2) Dr. Xuereb diagnosed a pelvic tumour arising from the left ovary and arrangements were made for surgery;
- 3) On October 15, 1990, Dr. Xuereb performed surgery on JCK at Hospital IAJ, specifically a laparotomy, total abdominal hysterectomy with bilateral salpingo-oophorectomy and omentectomy. Washings were obtained for cytology;
- 4) Specimens were sent by Dr. Xuereb to the Pathology Department and he spoke with Dr. RXI, who had examined the specimens;
- 5) Dr. Xuereb saw JCK for the last time, for a post-operative appointment, on November 27, 1990. By that time, he had Dr. RXI's pathology report of October 19, 1990. Dr. Xuereb advised JCK that he had removed the entire tumour, unfragmented, and that no further treatment was necessary. Based on Dr. Xuereb's opinion of the stage of the tumour, he concluded that adjuvant therapy and a formal consultation with an oncologist were not necessary;
- 6) Had Dr. Xuereb testified before the Discipline panel, it is anticipated that he would have given evidence to the panel that he reviewed JCK's case over the telephone with an oncologist, Dr. KFV, at Hospital GFQ. Dr. Xuereb would say that based on the description of the tumour provided by him to Dr. KFV, Dr. KFV concurred with Dr. Xuereb's decision not to administer any adjuvant therapy to JCK. It is admitted that Dr. KFV was not provided with a copy of the pathology report or any other information concerning JCK. Had Dr. KFV testified before the Discipline panel, it is anticipated that she would have given evidence to the panel that she has no recollection of Dr. Xuereb contacting her about JCK in 1990 and that it was not in accordance with her practice to provide such opinions without reviewing the case and seeing the patient. The Discipline panel is not asked to make a factual finding with respect to this issue;

- 7) Dr. Xuereb does admit that he did not obtain an adequate consultation from a gynecological oncologist or general oncologist with respect to his treatment of JCK and that, in failing to do so, he fell below the standard of the profession contrary to Ontario Regulation 548/90, s. 29(33), as amended;
- 8) In the Spring of 1991, JCK began to experience back and side pain and was ultimately referred to Dr. WIU, a gynecological oncologist, who readmitted her to hospital on July 1, 1991. Dr. WIU diagnosed recurrent ovarian carcinoma and began chemotherapy;
- 9) JCK was admitted to hospital on five separate occasions for chemotherapy ending in November 1991;
- 10) JCK remained well clinically for quite a while following the termination of chemotherapy. In June 1992, she began to be symptomatic from her disease;
- 11) JCK died on September 16, 1992 as a result of extensive carcinomatosis resulting from the recurrent tumour with supra-added pulmonary infection.

Prosecution counsel withdrew allegation b (disgraceful, dishonourable or unprofessional conduct) and the alternative allegations (a) and (b). Dr. Xuereb pleaded guilty to failing to maintain the standard of practice of the profession.

FINDING

The Committee understands that the Agreed Statement of Facts constitutes a negotiated agreement (plea bargain) and that more evidence would have emerged had the hearing been contested. Nevertheless, the doctor admitted his failure to meet the standard and the Committee is satisfied that a finding of guilt is appropriate. Therefore, the Committee accepted Dr. Xuereb's plea and made a finding of guilty.

SUBMISSIONS REGARDING PENALTY

A joint submission regarding penalty was presented, the essence of which is as follows:

- 1) Dr. Xuereb resigned his membership in the College on June 1, 1994;
- 2) If Dr. Xuereb reapplies for a Certificate of Registration to practise medicine and such is granted, the Registrar is directed to impose the limitation on his Certificate of Registration for an indefinite period of time that he is not permitted to practise gynecological oncology;
- 3) The imposition of the above limitation is to be suspended by the Registrar if Dr. Xuereb takes a gynecological oncology course acceptable to the Registrar and completes such a course to the satisfaction of the Registrar. The imposition of the limitation will remain suspended provided Dr. Xuereb submits to an audit of his gynecological oncology cases thereafter for a period of two years by the Chief of Staff of his hospital and the results of the audit are satisfactory to the Registrar. On satisfaction of these terms, the limitations on Dr. Xuereb's Certificate of Registration as set out in paragraph (2) herein will be removed;
- 4) Dr. Xuereb is required to appear before the Discipline panel to be reprimanded and the fact of the reprimand is to be included in the public portion of the Register of the College.

The Committee was informed that, in addition to the above penalty, Dr. Xuereb had agreed to compose a written apology to the family. The penalty with the apology is satisfactory to the family.

Prosecution counsel submitted that the agreed penalty provides specific and general deterrence, protection of the public and rehabilitation of the physician.

Defence counsel presented a Brief of Character Evidence which described Dr. Xuereb's leadership role in obstetrics and gynecology, particularly in the area of peri/neonatal bereavement, his exemplary practice, his concern for patients and his excellent working relationship with his colleagues.

Defence counsel submitted that the error involved a misinterpretation of a clinical situation.

Dr. Xuereb's assessment regarding staging of the tumour was erroneous due to a misunderstanding of the pathological assessment and apparently perpetuated by other advice he was given from another consultant.

Defence counsel emphasized the serious nature of a reprimand which attaches a stigma forever to the physician's reputation.

DECISION REGARDING PENALTY

Although Dr. Xuereb's failure to meet the standard was an isolated instance occurring in an apparently exemplary practice, it was nevertheless a serious error.

If Dr. Xuereb is to practise again in Ontario he must demonstrate his ability to practise gynecological oncology according to the standard expected of gynecologists. While defence counsel considered the error a misinterpretation or a misunderstanding, Dr. Xuereb did plead guilty to falling below the standard.

The agreed disposition is appropriate in that punishment beyond a reprimand is not needed, and the profession will be reminded, through publication of this decision in *Members= Dialogue*, of the standard expected of physicians. The public is protected by the assurance that Dr. Xuereb's knowledge will be upgraded, if necessary, through the gynecologic oncology course and subsequent audits.

Therefore, the Committee accepted the proposed penalty, as detailed above and made the Order.

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