Indexed as: Galipeau (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 38 to 56 of the Health Professions Procedural Code of the Regulated Health Professions Act 1991, S.O.1991, c. 18 as amended.

BETWEEN:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. JOSEPH DANIEL FRANCOIS JOCELYN GALIPEAU

PANEL MEMBERS:

DR. A. BIENENSTOCK (CHAIR)
DR. M. RAPP
DR. J. LAMONT
H. MAEOTS

HEARING DATE: March 22 - 24, 1999

DECISION/RELEASED: March 24, 1999

DECISION AND REASONS FOR DECISIONS

This matter was heard by the Discipline Committee of the College of Physicians and Surgeons of Ontario at Toronto commencing March 22 through to March 24, 1999 inclusive. The decision of the Committee was delivered after deliberations on March 24, 1999. Written Reasons for Decision were reserved, and are here delivered.

ALLEGATIONS

It was alleged in the Notice of Hearing that Dr. Galipeau is guilty of professional misconduct in that:

(a) He has been found guilty of an offence that is relevant to his suitability to practise, contrary to paragraph 51(1)(a) of Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18, as amended;

(b) He failed to maintain the standard of practice of the profession, contrary to paragraph 1(1)2 of Ontario Regulation 856, R.O. 1993, as amended;

(c) He signed or issued, in his professional capacity, a document that he knew or ought to have known is false or misleading, contrary to paragraph 1(1)18 of Ontario Regulation 856, R.O. 1993, as amended;

(d) He performed 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, contrary to paragraph 1(1)33 of Ontario Regulation 856, R.O. 1993, as amended;

(e) He engaged in conduct unbecoming a physician, contrary to paragraph 1(1)34 of Ontario Regulation 856, R.O. 1993, as amended.

Particulars of these allegations were set out in Appendix "A" to this Notice.

PLEA

Counsel for the College withdrew allegations b), c), and e) at the start of the hearing. Dr. Galipeau, through his counsel, entered a plea of guilty to the allegations a) & d), as set out in the Notice of Hearing.

AGREED STATEMENT OF FACTS

Dr. Galipeau accepted as correct, the facts set out in the Agreed Statement of Facts (Exhibit #2). The Committee made findings of fact, as follows:

1. Dr. Galipeau has been licensed to practise medicine in Ontario since March 10, 1983. At all times relevant to these proceedings he carried on his practice in a community in northern Ontario.

2. Dr. Galipeau was an owner of a senior retirement residence in Ontario. Dr. Galipeau was the medical director at the facility and the physician to some of its residents.

3. From July 1993 until April 1994, the patient was a resident of the retirement home and under the care of Dr. Galipeau who was his family physician. The patient, was 69 years of age at the time of his death. He was admitted to the retirement home with a history of alcohol abuse and suffered from organic brain syndrome.

4. In April of 1994, the patient resided on the third floor of the retirement home. Early one April morning in 1994, the patient attempted to leave his room by climbing out his third floor window. He fell to his death.

5. At approximately 7:15 a.m. that April morning, the patient s body was discovered by the night nurse on the patio below his window. Mr. T.C. and Ms. J.R., co-workers at the retirement home examined the patient who was pale and had no pulse.

6. At 7:20 a.m., Ms. L.D., Director of Nursing Care was notified and contacted Dr. Galipeau and informed him of the circumstances.

7. Dr. Galipeau attended the retirement home at approximately 7:45 a.m. and pronounced the patient dead.

8. At approximately 8:20 a.m., Dr. Galipeau called the patient s daughter, told her that her father had passed away in his room of a heart attack. Dr. Galipeau enquired whether the daughter wanted an autopsy performed, but she replied that it was not necessary.

9. Mr. T.C. was asked by Dr. Galipeau to place the patient s body on a stretcher, undress his body, robe the body in a hospital gown, and place the body back inside the home. He was further instructed that if anyone inquired about the cause of the patient s death, to say that he had a heart attack and fell back on the couch in his room.

10. Dr. Galipeau paged a maintenance worker at the retirement home, Mr. B., to help Mr. C. lift the patient s body and a stretcher. Dr. Galipeau also instructed Mr. B. that if anyone asked, to say the death was caused by a heart attack.

11. Dr. Galipeau attended the nursing station on the third floor where he completed and signed the death certificate which is attached as Appendix A to the Statement of Agreed Facts. Dr. Galipeau listed the cause of death on the certificate as myocardial infarction (heart attack). Dr. Galipeau gave the death certificate to Ms. D. to provide to the employees of the funeral home upon their arrival.

12. The death certificate was provided by Ms. D. to an employee of the Funeral Home upon their attendance to pick up the patient s body. The death certificate was subsequently forwarded by the funeral home to be filed at the Registrar General Branch of the Ministry of Consumer and Commercial Relations in accordance with the *Vital Statistics Act.*

13. Mr. J. happened to be driving past the retirement home at approximately 7:55 a.m. on the April morning when he observed a sheet hanging out an open third floor window of the home. He further observed a mound on the ground below the window which had been covered by a sheet. Later that day he learned of the patient s death and that it was purported to be by heart attack.

14. The following day, Mr. J. contacted the O.P.P. because he was suspicious of the reported cause of death and informed Constable F. what he had observed the previous day.

15. At approximately 3:30 p.m. on the day after the death Constable F. met with Dr. Galipeau at the retirement home. Constable F. informed Dr. Galipeau that he was conducting an

investigation into the death of the patient. Dr. Galipeau advised Constable F. of the following:

(a) he received notification of the death of the patient while at his house and immediately proceeded to the retirement home;

(b) he observed something hanging out a third floor window and something on the ground;

(c) he attended the patient s third floor room;

(d) he pronounced the patient dead in his room. A lot of the patient s belongings had been thrown around the room and out of the window;

(e) that the patient had suffered a heart attack. That he was at the retirement home for alcoholism related mental illness and from heart problems for which he had been on medication;

(f) The patient s body had been discovered by the night nurse;

(g) that when he contacted the patient s daughter, he did not tell her about the belongings which had been thrown around the room because her father was there against his own will and by telling her would only cause further depression.

16. Constable F. then spoke with the night nurse who corroborated Dr. Galipeau s version of events contained in paragraph 17.

17. Two days after the patient s deaath, Dr. Galipeau informed the Coroner, that the patient had been found dead in his bed. He also informed the coroner that the cause of death was myocardial infarction. Dr. Galipeau further informed the Coroner that the family had requested that no autopsy be performed. After speaking to Dr. Galipeau, the Coroner felt that no further action was indicated at that time.

18. Three days post mortem, the patient was interred at the cemetery.

19. In May 1994, a former employee, Mr. B. contacted the O.P.P. and informed them that contrary to what Dr. Galipeau represented to them, the patient died when he fell from his third floor room attempting to escape the home.

20. In May 1994, Dr. Galipeau contacted the O.P.P. and arrangements were made to meet. Dr.

Galipeau admitted to Constable F. that the patient s body had been found on the patio below his third floor window at the retirement home. He told the police that he had lied about the location of the body due to pressure resulting from public scrutiny into an earlier death of another resident who had walked out of the home in mid-winter and died of complications resulting from hypothermia.

21. In May, 1994, the patient was disinterred. A post-mortem examination was conducted. The cause of death was found to be due to injuries from a fall.

22. In July, 1994 Dr. Galipeau attended at the O.P.P. detachment where he was arrested and charged with:

(a) obstruction of justice in a police investigation by furnishing false information to the police contrary to section 129(a) of the *Criminal Code*;

(b) failing to immediately notify a coroner or police officer of the death of a person he had reason to believe died as a result of violence, misadventure, etc., contrary to section 10(1) of the *Coroners Act*;

(c) knowingly obstructing a coroner s investigation by furnishing him with false information regarding the death of the patient contrary to section 16(6) of the *Coroners Act*; and

(d) wilfully making a false statement on a certificate of death contrary to section 56(1) of the *Vital Statistics Act*.

23. In November, 1994, Dr. Galipeau pleaded guilty to one count of obstruction of justice and one count of making a false statement on a medical certificate of death. He was fined $2,000.00 for each count (total $4,000.00), placed on probation for 18 months and ordered to perform 500 hours of community service. Dr. Galipeau fulfilled all his sentencing obligations. The criminal conviction and probation orders were attached as Appendix B .

24. A coroner s inquest was held in June, 1995. The family initiated a civil action in October 1995, which was settled in 1996. The verdict rendered in June, 1995 was attached as Appendix C . A section 75 inspection of Dr. Galipeau was ordered in October, 1994 and conducted in October, 1995.

25. The Notice of Hearing in this matter was served on Dr. Galipeau in December, 1995.

26. Dr. Galipeau sold his interest in the retirement home in December 1995. Prior to doing so he had moved to the north where he did "locums" for approximately one year. For the last 3 years Dr. Galipeau has been the Chief of Staff of the hospital. He is the only family physician in the community (population 1,800), is on-call 24 hours a day, three weeks out of four and is the emergency room physician.

These agreed facts demonstrate that Dr. Galipeau s acts constitute professional misconduct.

DECISION

The Discipline Committee found Dr. Galipeau guilty of professional misconduct as alleged in paragraphs (a) and (d) in the Notice of Hearing.

PENALTY

The Discipline Committee heard evidence pertaining to penalty.

Called as witnesses were Dr. Galipeau and various character witnesses.

DR. GALIPEAU:S EVIDENCE

Dr. Galipeau s curriculum vitae was entered as Exhibit #3.

This documented indicates that, apart from one year working as medical co-ordinator at the Windsor Regional Office of the Workmens Compensation Board, all his professional activities have been in small town, rural areas.

It also shows that he has actively engaged in continuing medical education of a nature very appropriate to his practice. He began CME courses immediately after graduating, and, with the exception of 1992-1996, this activity has been continued, the last recorded in December 1998.

Dr. Galipeau testified that he had developed and built the retirement home with two partners, beginning in 1988. It opened in July 1990, and very soon afterwards it became apparent that there

were problems of a business nature. This required him to be more involved in the running of the residence than he had intended.

Furthermore other physicians in the area did not wish to be family doctors for the residents of the retirement home He stated that, with reluctance, he became physician, administrator and owner.

Finally, in June 1991, he sold his family practice and moved to Windsor, having put the retirement home on the market. This move was intended to distance himself from the business. However, the problems between the remaining partner and administrator became more acute and in 1992 he went back, reorganized the business, the care of residents and hired a new administrator. He stated that things went smoothly until December 1993, when the death of a resident as described in the Agreed Statement of Facts took place.

Dr. Galipeau testified that when he was told of the patient s death, he was devastated, thinking that this event would result in all his hard work going down the drain . He then made what he now describes as a stupid and disastrous decision. He stated that he had accepted a locum tenens position for the following two weeks, but in May, received a call from Mr. D. that things were getting out of hand . He stated that he called the OPP on that day and told them that he had lied about the circumstances of the patient s death.

In the resulting and criminal court proceeding, he pleaded guilty. He stated in evidence that he had to plead guilty, that it was important to get this behind him and that he wanted the family to have peace of mind and that it wasn t right to have a lengthy trial . He also stated that he apologized verbally to the patient s daughter.

In cross-examination, he agreed that the purpose of developing the retirement home was as a moneymaking concern, as well as providing a resource for old people.

He agreed that his actions were totally inappropriate and stupid and he stated that he could not believe such harm was coming to the family . He completed 500 hours of community service in a small community nearby, surveying health care services, conducting community meetings, and doing house visits, to assess community needs and prepare an MSA proposal.

During this time, he also worked as locum tenens in various northern communities. In September 1995, he accepted his latest position as the practitioner in the community, and chief of staff at the hospital, providing emergency coverage for the hospital. He now provides this service 24 hours a day, with seven to ten days off each month, employing a locum tenens while he is away.

Since 1995 he has reorganized the out-patient clinic and general practice office, with complete reorganization of the health records department and appointment system.

The town is 85-90% French speaking, and Dr. Galipeau is bilingual. This is seen by the community as very important for good health care.

Dr. Galipeau agreed that various staff members had not been happy with his methods of practise and reorganization of the clinic, and that some staff members resigned. Dr. Galipeau gave the opinion that some resignations may have been as a result of his strict rules regarding confidentiality, hard work, and correct roles for staff.

Dr. Galipeau testified that he had committed no other offences, had never appeared before the Discipline Committee before. His only contact with the police, before or since the events of 1994, had been with regard to child abuse cases. He had appeared in court before only as an expert witness.

Four letters attesting to Dr. Galipeau s good character, and his medical skill were entered in evidence. (Exhibit #4).

CHARACTER WITNESSES

Dr. P

Dr. P. is a obstetrician/gynaecologist, previously Chief, Obstetrics and Gynaecology in a major city hospital.

He testified that Dr. Galipeau s referrals to him were worked up well, thoughtfully referred, his referral notes of an unusually high standards.

He described the clinic where Dr. Galipeau worked as well organized and well run. He saw no reason to distrust Dr. Galipeau s work.

Dr. L

Dr. L. is a family practitioner who, on a regular basis, acts as locum tenens in northern communities. For seven to ten days each month, he provides this service in Dr. Gallipeau s city. He confirmed that the clinic is well run, a good place to be a locum tenens since management and treatment of patients is appropriate and well organized. He stated that Dr. Galipeau provided great stability in the community and he was shocked and surprised by the facts surrounding Dr. Galipeau s behaviour, believing it to be very out of character.

Ms. M.

Ms. M. is a Social Worker who described Dr. Galipeau s work with the Childrens Aid Society in the area. She stated he is the only physician in the area knowledgeable in the area of child abuse, the only M.D. she recalls who reports cases, is available for case conferences and will write letters in these matters. She stated he shows concern and provides good care for patients and their families.

Ms. B.

She is an RPN in Dr. Galipeau s office and testified that he is able to work well as a team leader and is able to separate business from socializing and is very strict about confidentiality.

Ms. O.

Ms. O. is the clinic manager and has a common-law relationship with Dr. Galipeau. She testified as to his ability with patients, and to separate work from private life.

Mr. B.

Mr. B. is the Chief Administrator at the local hospital. He testified as to Dr. Galipeau s energy and enthusiasm and that he has reorganized the medical care to make it smooth running and efficient, with a minimum of problems. He was aware of problems with some staff who have left, since Dr. Galipeau s arrival. He stated that he believed this was inevitable in any situation of reorganization.

Mr. B.

He is the town pharmacist. He described Dr. Galipeau as available and co-operative. He stated Dr. Galipeau showed good management in prescribing and was not defensive if problems arose.

Two witnesses were patients. Both described him in glowing terms. One testified that she had been prescribed codeine for some years and that Dr. Galipeau had been helpful in getting her off this medication.

A member of the hospital Board and the mayor also testified.

Both were of the opinion that Dr. Galipeau was a major asset to the community, fitting in well and providing exceptional medical care.

PENALTY DECISION

The Committee is of the opinion that Dr. Galipeau s actions were disgraceful, criminal and shameful, and brought disrespect on to the profession. He has been found guilty of a criminal act and has complied with the sentence imposed in criminal court.

Factors taken into account in setting the penalty were as follows:

- There is no doubt that Dr. Galipeau committed a serious criminal offence.
- He has no record, either before or since that event, of any other offence.
- This is his first contact with the Discipline Committee.
- There is no evidence or suggestion that, apart from this offence, he is a poor physician. In fact, the evidence shows that he is a competent, compassionate and committed physician, who practises effective and well informed medicine. There is evidence to show that he has, from his graduation, been committed to life-long learning.

The Committee found that Dr. Galipeau has accepted responsibility for his actions and pleaded guilty of the offence on all occasions, and fulfilled the sentencing requirements.

The Committee has no reason to believe that the community in which he currently works, or the public at large, is under threat from him and his practice.

In the circumstances, having regard to the offence, and after hearing the doctor, the Discipline Committee decided that there should be a serious penalty, but one short of revocation.

He has brought shame on himself, but in the past four years has contributed very efficiently to the health and welfare of a community in an under-serviced area of Ontario.

The Discipline Committee is of the opinion that a severe penalty is justified that will act as a punishment, a deterrent to the profession and thus, a protection of the public. The Committee, after long and careful discussion, concluded that to remove this physician from the community in which he is currently practising would not be an act of protection of the public.

Having heard the evidence presented and submissions of counsel for the College and of counsel for Dr. Galipeau, the Discipline Committee of the College made the following order as to penalty which takes into account the circumstances presented and principles appropriate to penalty, and which it believes fully protects the public:

1. Dr. Galipeau shall be required to attend before a panel of the Discipline Committee to be reprimanded.

2. The Registrar of the College of Physicians and Surgeons of Ontario shall be directed to suspend Dr. Galipeau s certificate of registration for a period of twelve months. This suspension shall itself be suspended provided that Dr. Galipeau complies with the following conditions:
   (a) he will continue the practice of medicine where he is, or such other under serviced area as may be approved by the Discipline Committee, for a period of 24 months;

   (b) he will make a donation of $35,000 in each of the next two years from the date of this Order to the local hospital. He shall provide proof, satisfactory to the Registrar, of the first payment within twelve months of the date of this Order and of the second payment within twenty-four months of the date of this Order.

   (c) Dr. Galipeau will provide an undertaking satisfactory to the Registrar that he will not in future hold any financial or ownership interest in a home for senior citizens, nursing

home, other residential facility, or Independent Health Facility in which he is performing medical services and that he will not provide medical services in any such facility in which there is a financial or ownership interest by a family member.

(d) Dr. Galipeau will successfully complete an ethics course, with a focus on conflict of interest, to be arranged by the Department of Professional Enhancement of the College, at his own expense, within the next twelve months.

3. In the event of non-compliance with any of the conditions imposed in paragraph 2, as determined by the Registrar, Dr. Galipeau will be required to serve the twelve month suspension, to commence on a date to be fixed by the Registrar. However, in the event of a disagreement between Dr. Galipeau and the College with regard to compliance, the decision on this issue will be made by the Discipline Committee.