

Indexed as: O'Connell (Re)

**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 59(6)
of the **Health Disciplines Act**,
R.S.O. 1980, c. 196, as amended.

BETWEEN:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. LOUIS STEPHEN O'CONNELL

PANEL MEMBERS: DR. A. RAPOPORT (Chairman)
DR. H. ALLEN
DR. R.K. MacLEOD
R. McFADDEN
J. McSKIMMINGS

HEARING DATE: APRIL 7, 1994

DECISION/RELEASE DATE:
APRIL 7, 1994

DECISION AND REASONS FOR DECISION

This matter was heard before the Discipline Committee on April 7, 1994 at the College of Physicians and Surgeons of Ontario in Toronto.

The particulars of the prosecution's case were as follows:

- (1) It was alleged that Dr. Louis Stephen O'Connell, on or about August 29, 1991, in the Ontario Court of Justice (Provincial Division) at Ottawa, Ontario, was convicted on his plea of guilty of an offence relevant to his suitability to practise, to wit that between January 1, 1988 and July 31, 1990, in the Village of QHP and elsewhere in the Province of Ontario, Dr. Louis Stephen O'Connell did by deceit, falsehood or other fraudulent means, defraud the Government of Ontario, Ontario Ministry of Health, of a sum of money exceeding \$1,000.00 contrary to Section 380(1)(a) of the Criminal Code of Canada, which is professional misconduct under Section 60(3)(a) of Part III (Medicine) of the **Health Disciplines Act**, 1980.

- (2) It was further alleged that Dr. Louis Stephen O'Connell between January 1, 1988 and July 31, 1990, in the Village of QHP and elsewhere in the Province of Ontario, did conduct himself in a fashion that constituted conduct relevant to the practice of medicine, that having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, the particulars of which are as follows:

that he did, by deceit, falsehood or other fraudulent means, defraud the Government of Ontario, Ontario Ministry of Health, of a sum of money exceeding \$1,000.00, contrary to Section 380(1)(a) of the Criminal Code of Canada, which is professional misconduct under paragraph 32 of Section 27, as amended, of Regulation 448 made under Part III (Medicine) of the **Health Disciplines Act**, 1980, and Section 60(3)(c) of the

said Act.

In his opening remarks, counsel for the prosecution pointed out that Dr. O'Connell had in fact defrauded OHIP of \$100,000.00. Criminal proceedings were undertaken against Dr. O'Connell and, on August 29, 1991, he was found guilty and sentenced to and did:

- 1) Reimburse OHIP in the amount of \$100,000.00;
- 2) Spend 89 days in incarceration;
- 3) Perform 250 hours of community service;
- 4) Report to a parole officer on a regular basis over a two-year period.

Dr. O'Connell pleaded guilty to the charge of professional misconduct. The prosecution and the defence made the following joint submissions on penalty:

- 1) Dr. O'Connell should receive a recorded reprimand;
- 2) Dr. O'Connell should be suspended from the practice of medicine for a period of 180 days, 120 of which are to be remitted if the following conditions are met:
 - a) Dr. O'Connell is to pay a \$5,000.00 fine to the College of Physicians and Surgeons of Ontario;
 - b) Dr. O'Connell is to pay the costs of the prosecution in this matter fixed at \$5,000.00;
 - c) Dr. O'Connell is to perform 45 hours of community service at an AIDS hospice.

The only issue outstanding between the prosecution and the defence was that the College wished the 60 day suspension to be served all at one time while the defence wanted the 60 days to be served in four segments of 15 days each.

In her opening remarks, counsel for the defence referred the Committee to a letter from the administrator of TVA Care Centre, which stressed the excellent care to the residents of

this centre provided by Dr. O'Connell as well as his support of the staff and administration. Counsel for the defence then reviewed an affidavit prepared by Dr. O'Connell. In it he made a number of statements and claims including the following:

- 1) He is the only family physician in the town in which he practices, a small town of approximately 3,000 people;
- 2) On average he sees about 40 to 60 patients per day during weekdays. This does not include weekend or evening calls;
- 3) He believes that a prolonged absence from practice would have a seriously negative impact upon the health and welfare of his patients. Many of these patients are chronically ill and his inability to attend them for at least 30 days could result in serious harm to their well being.
- 4) While his first and greatest concern is for the well being of the patients in his practice, he is also concerned about the ruinous economic consequences of a prolonged suspension from practice.
- 5) That even the Crown prosecutor in his criminal fraud trial was of the view that his 89 days of incarceration were to be served on weekends so that his patients would be protected and that he would not be economically ruined.
- 6) It is true that if he were to be suspended from practice for a prolonged period of time, a physician could be hired to act as a locum in his practice. However, given the small community in which he practises, it would likely be difficult to obtain such a person for the relevant time period.

- 7) He verily believes and is deeply concerned about the fact that any suspension from practice for longer than 15 day intervals could result in great harm to the well being of his patients and to his community in general. It would also be likely to be economically ruinous to him personally.

Counsel for the defence stressed that Dr. O'Connell had already made two payments of \$50,000.00 each to the Treasurer of Ontario by way of reparation. She referred to a letter from a case worker, which states that Dr. O'Connell performed 250 hours of community service and that the reports from his placement supervisors were very positive. He contributed immensely to the community. She then referred the Committee to a number of letters received from patients of Dr. O'Connell which were very supportive of him despite the charges laid against him. Counsel then referred to several letters received from physicians who are colleagues of Dr. O'Connell. They stress that Dr. O'Connell is not only an exemplary physician but also a fine human being. Counsel also referred the Committee to the last sentence in a letter from Dr. O'Connell's probation officer which states "there is every indication that the sanction imposed by the Court has had a salutary affect upon his thinking in terms of his responsibility to the community as a whole."

Counsel for the defence then went on to stress that Dr. O'Connell had already acknowledged his wrong-doing for which he has paid a heavy price. He did not need an additional penalty to deter him from future wrong-doing. Furthermore, a suspension of 60 consecutive days was not in the public interest as it would punish both his patients and the community that he served. Finally she mentioned that Dr. O'Connell was undergoing a civil proceeding launched against him by OHIP which has yet to be resolved. This obviously was adding further strain to him.

The Committee considered the submissions of counsel carefully. It accepted that Dr. O'Connell had already undergone considerable personal and professional suffering. However the Committee was impressed by the following facts: that the amount of fraud carried out by Dr. O'Connell had been very large; that the Committee was mindful of the trust placed in the medical profession by the public and the breach of that public trust which had occurred as a result of Dr. O'Connell's actions and finally that it was necessary, in its sentencing, to deter members of the profession from committing such offences.

Accordingly the Committee made the following decision:

It accepted Dr. O'Connell's plea and found him guilty of professional misconduct as alleged in paragraph 1 of the Notice of Hearing.

It made the following orders as to penalty:

- 1) That Dr. O'Connell be reprimanded and the fact of the reprimand be recorded on the Register;
- 2) That Dr. O'Connell pay within 30 days from the date of the hearing, a fine in the amount of \$5,000.00 to the Minister of Finance;
- 3) That the licence of Dr. O'Connell be suspended for 180 days;
- 4) That 120 days of that licence suspension shall itself be suspended on the condition that:
 - i) Dr. O'Connell provide satisfactory proof to the Registrar that he has paid the fine that he was ordered to pay;
 - ii) Dr. O'Connell pay to the College within 30 days of the date of the hearing \$5,000.00 as the costs of this prosecution;

- iii) Dr. O'Connell perform 45 hours of community service at a specified AIDS hospice and file with the Registrar proof to the satisfaction of the Registrar that he has performed such service;
- 5) That the suspension of Dr. O'Connell shall commence on a date to be fixed by the Registrar within 60 days from the date of the hearing. Provided that the conditions above are satisfied the suspension will be 60 days to be served in 60 consecutive days.

Dr. O'Connell waived his right of appeal and the reprimand was administered.