

Indexed as: Cauchi (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(1) of the *Health Professional Procedural Code*,
being Schedule 2 of 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. MARIO MARK CAUCHI

PANEL MEMBERS:	DR. J. DOHERTY (CHAIR)
	DR. J. WATTS
	DR. P. CHART
	A. VANSTONE
	J. ASHMAN

Hearing Date:	January 20, 2003
Decision Release Date:	April 16, 2003

DECISION AND REASON FOR DECISIONS

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on January 20, 2003. At the conclusion of the hearing, the Committee made a finding that the member was guilty of professional misconduct and reserved its penalty order with written reasons to follow.

ALLEGATIONS

The Notice of Hearing alleged that Dr. Cauchi has committed professional misconduct:

1. under sections 5, 6 and 9 of Ontario Regulation 114/94, made under the *Medicine Act, 1991*, in that he communicated false, misleading or deceptive information and held himself out as a specialist in an area or branch of medicine in which he is not certified by the Royal College of Physicians and Surgeons of Canada.
2. under clause 1(1)16 of Ontario Regulation 856/93, made under the *Medicine Act, 1991*, ("O. Reg. 856/93") in that he falsified a record related to his practice;
3. under clause 1(1)33 of O. Reg. 856/93, in that he committed 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.

RESPONSE TO ALLEGATIONS

Dr. Cauchi denied all allegations set out in the Notice of Hearing. The allegation of having held himself out as a specialist, in an area or branch of medicine in which he was not certified, was withdrawn by the counsel for the College.

EVIDENCE

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

AGREED STATEMENT OF FACT

1. Dr. Cauchi invested his life savings in a Cosmetic Surgery Clinic, which was opened on November 12, 1997.

2. The patient consulted with Dr. Cauchi regarding liposuction on December 2, 1997. As part of her pre-operative assessment, blood tests were performed on the same date.
3. On December 9, 1997, the patient returned to the clinic at which time Dr. Cauchi assessed her history and did some physical examinations pertaining to abnormal liver function tests, which were found as a result of the blood tests.
4. On December 18th, 1997, the patient attended at the clinic and signed an "Operative Consent Form for Liposuction", after discussing the risks and benefits of the procedure with Dr. Cauchi. On that same date she paid \$2,756.32 for a liposuction procedure to be performed on her neck.
5. Dr. Cauchi performed a complete pre-operative physical examination of the patient on January 5, 1998.
6. Dr. Cauchi performed liposuction surgery of the patient's neck on January 8, 1998.
7. On January 12, 1998, an employee of the clinic telephoned the patient to see how she was doing after the surgery. The patient discussed the use of an ultra sound type of machine, which she used on horses to reduce swelling. The employee discussed this conversation with Dr. Cauchi who instructed her to tell the patient not to use the machine on her neck and to leave the area alone until Dr. Cauchi saw the patient on the five-day post-operative visit.
8. On January 13, 1998, the patient was assessed by Dr. Cauchi at which time she was instructed to continue to wear the neck compression garment, that had been provided to her by the clinic after the surgery, 24 hours per day for three more days, then 12 hours per day.
9. On January 16, 1998, the patient was assessed regarding her incision.

10. On January 21, 1998, Dr. Cauchi drained a seroma, which had formed on the patient's neck and a pressure dressing was applied.
11. On January 28, 1998, the patient attended at the clinic for an assessment. The seroma had resolved but there were irregularities of the skin at the liposuction site noted by Dr. Cauchi. During this attendance, the patient informed Dr. Cauchi that after the seroma had been drained (January 21) she had removed the compression garment/dressing and replaced it with a wide band (child's head band), which she stretched under her chin and over the top of her head. Dr. Cauchi instructed the patient to discontinue using the headband and to begin endermologie and massage treatments of the neck on the following day.
12. On January 30, 1998, the patient was weepy and afraid that the neck wrinkling may be permanent.
13. On January 31, 1998, Dr. Cauchi injected cortisone into the area of skin irregularity, which had the appearance of bunched-up skin or tethering.
14. The patient attended upon Dr. Cauchi on February 2, 3 and 6 during which time the wrinkling problem was unchanged so on February 10, Dr. Cauchi consulted with a physician who is a world-renown authority on liposuction. This physician advised two options, one was a conservative approach and the second was a more aggressive surgical approach. These options were discussed with the patient on the same date and she chose the surgical option.
15. On February 24, 1998, Dr. Cauchi performed a second surgical procedure involving lysis of the adhesions, in an effort to free up the skin by breaking down the adhesions that were causing the wrinkling.
16. On March 13, 1998, the skin irregularities were beginning to re-appear.

17. Between March 24 and May 28, 1998, the patient had 19 endermologie treatments on her neck.
18. Between February 25 and September 8, 1998, the patient was assessed or treated by Dr. Cauchi on 15 occasions. On four of those dates Dr. Cauchi administered cortisone injections into the neck folds.
19. On December 23rd, 1998, Dr. Cauchi received a letter from the patient's lawyer requesting a copy of her file.
20. Dr. Cauchi was served with a Statement of Claim on June 29, 1999, in which the patient was seeking monetary compensation based on the unsatisfactory liposuction results.
21. The civil litigation involving the patient was settled on November 23, 2000, when the patient's proposal for financial compensation was accepted.
22. On April 17, 2000, the patient filed a complaint against Dr. Cauchi to the CPSO.
23. After Dr. Cauchi was notified of the patient's complaint by the CPSO, he filed a response dated August 25, 2000.
24. On March 13, 2001, two representatives of the CPSO attended at Dr. Cauchi's office (unannounced) and removed the patient's medical records. Dr. Cauchi signed the Acknowledgement and Receipt Form.
25. The CPSO arranged to have Dr. Cauchi's records regarding the patient examined by a forensic document examiner.
26. The results of the forensic document examination lead to the conclusion that there are four documents relevant to the patient's treatment, which were not written on the dates specified in the documents.

27. Exhibit "C" is a copy of Dr. Cauchi's progress notes dated December 9, 1997. The forensic document examiner has concluded that the words, "& prn Lorazepam for anxiety", were added sometime after April 7 - May 7, 1998.
28. Lorazepam is the generic name for the drug whose trade name is Ativan. Ativan is an anxiolytic, which is commonly prescribed for anxiety. The patient acknowledges that she was taking Ativan on December 9, 1997, but she states that she was taking it for dizziness and/or tinnitus (ringing in the ears) and she never told Dr. Cauchi it was for anxiety.
29. Exhibit "D" is the Operative Consent Form for Liposuction, which was signed by the patient on December 18th, 1997. The witness signature and Dr. Cauchi's handwritten notation at the end of the document were written sometime after March 6, 1998.
30. The patient acknowledges that the risks and benefits of the surgery were discussed with her by Dr. Cauchi, but she disputes that there was a discussion about scarring in her neck related to a previous face lift which was performed in 1989. Dr. Cauchi is prepared to accept that he may not have had a discussion at that time about the scarring caused by the previous facelift surgery, however, there was in fact scarring from the facelift surgery. The operative note of January 8th, 1998, confirms that, "there was a lot of scar tissue adhesions secondary to the facelift surgery." Reference to the scarring is also contained in a letter to the physician who is a world-renown authority on liposuction dated February 5th, 1998. A copy of the operative note is annexed as Exhibit "G" [to the Agreed Statement of Fact]. A copy of the letter to the physician is annexed as Exhibit "H" [to the Agreed Statement of Fact].

31. Exhibit "E" are notes from the employee and from Dr. Cauchi dated January 12, 1998. The forensic document examiner concludes that these notes were made after February 2 - 27, 1998.
32. The content of Exhibit "E" is acknowledged by the patient to be accurate, with the exception of the statement that she had actually used the device. The patient indicates that she informed the employee that she had a "maser". She explained to the employee that, "it's kind of like an ultrasound but it's not an ultrasound machine and it takes down swelling and bruising". The patient states she asked the employee, "I asked her what she thought of my using it, could I use it?" The patient confirms that the employee called her back after consulting with Dr. Cauchi and told her, "Dr. Cauchi said no, he would prefer that I didn't use anything". The patient confirmed that she had the maser because at the time she had horses and it was used to take down the swelling on the legs of the horses.
33. Exhibit "F" is a progress note entry dated January 28th, 1998. The forensic document examiner concludes that this entry was written sometime after January 29 - 31, 1998.
34. The contents of Exhibit "F" relate to the patient's removal of the compression dressing/garment which had been applied by Dr. Cauchi and replacing it with a child's headband, which she stretched under her chin and over the top of her head. The contents of Exhibit "F" are accurate.
35. Dr. Cauchi maintains that the information which is contained in Exhibits "C", "D", "E" and "F" occurred on the dates of those entries. Dr. Cauchi acknowledges that those four exhibits were made subsequent to the dates indicated on the entries, but contemporaneous with the patient's care, as indicated on the dates specified by the document examiner.

With respect to the contents of the late entries on these exhibits, Dr. Cauchi's position is as follows:

Exhibit “C”: The patient was in fact on Ativan although, in this late entry, Dr. Cauchi incorrectly attributed this prescription to anxiety, as opposed to tinnitus.

Exhibit “D”: The patient was advised of the risks and benefits of surgery but Dr. Cauchi may not have discussed with her specifically any scarring on her neck related to a previous face lift and the witness signature was added after March 6, 1998.

Exhibit “E”: There was in fact a discussion about an ultrasound machine (a “maser”) and the contents of the late entry on this exhibit are accurate. However, there is a dispute between the employee and the patient as to whether the patient said that she had actually used the machine or was intending to use it.

36. These four entries were made for the purpose of ensuring that the records were complete at a time during the patient’s care when it had become apparent that the surgical results were less than satisfactory and litigation was a possibility. Dr. Cauchi further acknowledges that in retrospect, the appropriate manner of making such entries should have been to record both the date of the occurrence and the date when he recorded the note.
37. On February 7th, 2000, a letter of complaint was received by the College with respect to Dr. Cauchi’s advertising. It is alleged by the College that these advertisements infringe the regulations as they contain testimonials, superlatives and references to specific drugs, appliances or equipment. Upon learning of this complaint, Dr. Cauchi modified his advertisements to comply with the College requirements. The general approach of the CPSO to advertising infractions is to contact the physician and seek an amendment of the advertisement and to take no further action.

CASE OF THE COLLEGE

Counsel for the College argued that the charts entries were misleading in that they were not written on the date specified and that they were designed to be self-serving in that they could potentially be helpful in the defence of civil litigation or a complaint. Counsel for the College also argued that the consent form annotation, stating that The patient had

been told about the increased risk of scarring, represented falsification in that the patient, The patient, had denied that such a discussion took place and that Dr. Cauchi had admitted that it may not have.

Counsel also argued that advertisements for Dr. Cauchi's cosmetic surgery clinic, examples of which were included in the agreed statement of facts, included references to testimonials, superlatives and to the use of specific products by name, which was said to contravene the legislation. The agreed statement of facts noted that upon learning of the complaint, Dr. Cauchi modified his advertisements to comply with College requirements, and further that the general approach of CPSO to advertising infractions was to contact the physician and seek an amendment of the advertisement and to take no further action.

CASE OF THE MEMBER

Counsel for the defence argued that while the entries to the chart, which were specified as exhibits C, D, E and F, were admittedly written after the dates of the entries, they represented a true understanding of events on the part of Dr. Cauchi and that they would not affect the civil case. Counsel introduced a letter from a peer review done on Dr. Cauchi in August 2002, which described his family practice record as being well-organized and much better than average. Dr. Cauchi had admitted that this was only his second neck-liposuction and that the results were poor and that this may have been due to inexperience.

FINDINGS

The Committee noted that the specific allegation in the Notice of Hearing regarding advertising referred to communication of "false, misleading or deceptive information". The Committee concluded that, while the advertising in question might be considered to be, at the very least, in poor taste it could not be considered to be either false, misleading or deceptive. The Committee did not rely upon the argument that similar advertising was common in the field of cosmetic surgery and noted that some of the competitors' advertising might be considered to be unprofessional, but that was not a matter before this panel.

The Committee determined that the dating of entries at the time of the event described, rather than at the time at which the entries were made, did indeed represent falsification in that there was misrepresentation with the intention of minimizing liability in potential legal actions. The misrepresentation was, therefore, self-serving. Furthermore, in the case of the supplementary comment on the consent document, it was likely to lead to misrepresentation in any account of the discussion that took place. The Committee accepted the contention that one of the four additions (regarding the use of Ativan) represented an innocent presumption with minimal or no intention of benefit.

The Committee, therefore, found that allegation No. 1 regarding the communication of false, misleading or deceptive information was not proved. Allegation No. 2, relating to the falsification of a record relating to his practise, was proved. The Committee also concluded that the act of falsification of a record would reasonably be regarded by members as unprofessional and that allegation No. 3 was, therefore, proved.

PENALTY AND REASONS FOR PENALTY

In regards to penalty, counsel for the College proposed to the Committee that Dr. Cauchi be suspended for a period of 6 to 18 months and that he pay costs in the amount of \$15,000.00. The defence proposed that no suspension be imposed and that a reprimand be recorded.

In establishing the penalty, the panel took into account Dr. Cauchi's previous behaviour and the importance of honesty in the medical record with respect to the administration of justice; in mitigation the panel noted the financial consequences already suffered by Dr. Cauchi, his contrition and cooperation at the hearing and that Dr. Cauchi had apologised and made restitution to the patient. Dr. Cauchi had recognised the need to practice in a supervised environment where his records could be reviewed or audited by a third party.

The authorities quoted by counsel for the College regarding penalty (the cases of Dr. Holder and Dr. Laws) resulted in operative suspensions of two and three months, but in the opinion of the panel, involved fabrications of a more serious and extensive nature than did those of Dr. Cauchi.

ORDER

The Discipline Committee therefore ordered and directed that:

1. Dr. Cauchi attend before the panel to be reprimanded, with the fact of the reprimand to be recorded on the Register.
2. The Registrar suspend Dr. Cauchi's certificate of registration for a period of three (3) months, commencing on May 1, 2003. Two (2) months of the suspension will be suspended on the condition that Dr. Cauchi successfully complete a course in ethics acceptable to the Registrar, the course to be completed by May 1, 2004.
3. The Registrar impose the following terms, conditions and limitations on Dr. Cauchi's certificate of registration for a period of 3 years: Dr. Cauchi is not to practice as a sole practitioner in an independent practice and is to practice only in a setting acceptable to the Registrar with a partner or partners, supervisor or employer .
4. Dr. Cauchi pay a portion of the College's costs, fixed in the amount of \$2,500.00 by April 1, 2004.