

Indexed as: Beshay (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 36(1) of the **Health Professions 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. HANY YOUSSEF TAWFEEK BESHAY

PANEL MEMBERS:

DR. M. GABEL (CHAIR)
DR. E. ATTIA (Ph.D.)
DR. M. GORDON
M. THOMPSON
DR. S. YOUNG

Hearing Date: July 14, 2009
Decision Release Date: July 14, 2009
Release of Written Reasons: August 31, 2009

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario (the “Committee”) heard this matter at Toronto on July 14, 2009. At the conclusion of the hearing, the Committee stated its finding that the member committed an act of professional misconduct and delivered its penalty order with written reasons to follow.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Beshay committed acts of professional misconduct:

1. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”), in that he has engaged in 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; and
2. under paragraph 1(1)34 of O. Reg. 856/93 in that he engaged in conduct unbecoming a physician.

RESPONSE TO THE ALLEGATIONS

Dr. Beshay admitted the first allegation in the Notice of Hearing, that he engaged in 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. Counsel for the College withdrew the second allegation in the Notice of Hearing.

FACTS AND EVIDENCE

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

1. Dr. Hany Youssef Beshay is a community family physician practicing in Mississauga, Ontario.

2. Dr. Beshay was born in Egypt and received his medical degree from Alexandria University in Egypt in 1986. Following graduation, he completed a one year rotating internship followed by eight years of postgraduate studies in psychiatry and orthopaedic surgery. Dr. Beshay practised medicine in the Egyptian Ministry of Health in the North Sinai Rural area from October 1987 till November 1988. Dr. Beshay then did two years of military service working in surgery and orthopaedic surgery. Thereafter, Dr. Beshay practised medicine in Egypt until November 1996 at which time he moved to Mississauga, Ontario.
3. Between November 1996 and June 2001, Dr. Beshay did not practice medicine save for one period in 1998 when he maintains that he returned to Egypt and practiced there.
4. In 2000, Dr. Beshay obtained his Canadian citizenship. Dr. Beshay obtained his LMCC in June 2001 and obtained a license to practice medicine in the Yukon in September 2001.
5. Between September 2001 and May 2004, Dr. Beshay practised as a family and emergency physician in Watson Lake, Yukon.
6. In December 2003, Dr. Beshay applied to the College of Physicians and Surgeons of Ontario (the "CPSO") for a certificate of registration authorizing independent practice (the "Application"). A copy of the Application is attached hereto as Exhibit "A" [to the Agreed Statement of Facts]. Dr. Beshay was granted registration in Ontario effective February 19, 2004.
7. In his Application, Dr. Beshay answered "No" to the question, "Have you ever discontinued your undergraduate medical education, post-graduate medical training, or medical practice for one year or longer?"
8. When asked in the same Application to list the names of every jurisdiction where he practiced medicine and provide the time period, Dr. Beshay wrote: "Ministry of Health Kafer Ell Dawar, Egypt, April 1990 to March 2001".

9. In his declaration to account for breaks in training or practice history (the “Declaration”), Dr. Beshay disclosed that he had breaks in practice from March 2001 to September 2001 and from January 1999 to January 2000. Attached as Exhibit “B” [to the Agreed Statement of Facts] is a true copy of Dr. Beshay’s Declaration. The Declaration does not disclose or account for the remaining breaks in Dr. Beshay’s practice between 1996 and 2001.
10. In his 2001 application to the Yukon Medical Council for a licence to practice medicine (the “Yukon Application”), Dr. Beshay advised that he practiced medicine at a hospital and clinic in Egypt from 1990 to 2001. A copy of the Yukon Application is attached hereto as Exhibit “C” [to the Agreed Statement of Facts].
11. Further, a reference letter was submitted in support of Dr. Beshay’s Yukon Application, indicating that Dr. Beshay worked as a general practitioner at the hospital in Egypt for over 7 years prior to July 2001. A copy of that letter is attached hereto as Exhibit “D” [to the Agreed Statement of Facts].
12. Dr. Beshay admits that the above information he supplied to the CPSO and the Yukon Medical Council was in error in that it failed to disclose interruptions in practice after Dr. Beshay came to Canada in 1996. In particular, although Dr. Beshay maintained an active medical license in Egypt during the period between 1996 and 2001, he did not practice medicine during these years save for one period in 1998 when Dr. Beshay maintains he practiced in Egypt.
13. Dr. Beshay admits that he did not seek clarification from the CPSO or the Yukon Medical Council concerning how to report his work history in his applications.
14. Dr. Beshay admits that these actions constitute 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 O. Reg. 856/93 made under the *Medicine Act, 1991*.

FINDING

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts. Having regard to these facts, the Committee accepted Dr. Beshay's admission and found that he committed an act of professional misconduct, in that he engaged in 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.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for the member made a joint submission as to an appropriate penalty and costs. The joint submission was as follows:

1. Dr. Beshay appear before the panel to be reprimanded;
2. Dr. Beshay pay to the College costs in the amount of \$3,650 within 30 days of the date of the Order; and
3. The results of this proceeding be included in the register.

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

1. Between September 2001 and May 2004, Dr. Beshay practised as a family and emergency physician in Watson Lake, Yukon. Dr. Beshay received praise for his work in this northern community. Attached hereto as Exhibit "A" [to the Agreed Statement of Facts - Penalty] is correspondence from Liard Aboriginal Women's Society and Pharelion Medical Society.
2. In February 2005, Dr. Beshay completed a palliative medicine training program at a hospital through the University of Toronto. Attached hereto as Exhibit "B" [to the Agreed Statement of Facts - Penalty] is correspondence from Dr. A, Professor, Department of Family and Community Medicine, University of Toronto confirming Dr. Beshay's studies in palliative medicine.

3. Dr. Beshay first received an inquiry into this matter from the CPSO on May 30, 2006. Dr. Beshay responded on June 20, 2006. In his response, Dr. Beshay admitted to his professional misconduct in its entirety.
4. On August 28, 2006, the Yukon Medical Council received information from the CPSO. The information included the admission contained in Dr. Beshay's June 20, 2006 letter to the CPSO. On September 14, 2006, Dr. Beshay was struck from the Yukon Register. Dr. Beshay reapplied for licensure in the Yukon and his license was reinstated on July 24, 2007.
5. Dr. Beshay has not had any previous findings made against him by the Discipline Committee of the CPSO, nor have any complaints been lodged with the CPSO regarding his conduct or standard of practice as a physician.

The relevant penalty principles which guided the Committee were the principles of protection of the public, specific and general deterrence, rehabilitation, maintaining the integrity of the profession and maintaining public confidence in self-regulation. The Committee, in considering general deterrence, wanted to ensure that the penalty would send a message to future applicants for registration that it is crucial to be clear and truthful in their application submissions to the College.

Dr. Beshay did have the opportunity to contact the College during the application process if he was unsure about how to address some of the questions being asked, but did not avail himself of that opportunity. He did not make any enquiries or provide any communication about the errors on his application until these errors were brought to his attention.

The Committee reviewed the evidence and considered the penalty proposed. In considering the penalty, the Committee was aware that the law requires that the joint submission be accepted unless to do so would be contrary to the public interest and would bring the administration of justice into disrepute.

Counsel for the College submitted that the proposed penalty was consistent with the cases cited in the Book of Authorities. These cases dealt with various forms of untruthfulness in interaction with the College or with hospitals. While the Committee recognized that it was not bound by previous decisions, these cases did provide some guidance as to the range of possible penalties. In cases of this nature, a comprehensive penalty is generally imposed, which has ranged from a reprimand and costs, to a suspension of the member's certificate of registration, costs, and a program of remediation.

The Committee was satisfied that the joint submission on penalty was appropriate in the circumstances and reflected the principles enunciated above. The cases cited by counsel had a common theme, *i.e.*, public trust in the medical profession is based, in part, on the assurance that physicians are honest and forthright in all areas of their professional life. We agree that misrepresentation to the College is an extremely serious matter.

In arriving at its decision on penalty, the Committee took into account the mitigating factors of Dr. Beshay's clinical service in remote areas of the Yukon as noted in letters submitted in his support; the fact of his previous revocation by the Yukon Medical Council and the subsequent resubmission of his application to that body in order to be reinstated; the fact that he has no complaint or disciplinary history with this College; and his cooperation with the College when this matter was first brought forward, saving the need for witness testimony and an extended hearing.

The Committee believes that the public reprimand is an appropriate penalty to express directly to Dr. Beshay the gravity of his conduct, and to let future members know that failure to be truthful on registration applications will not be tolerated.

The Committee believes that this is an appropriate case in which to order costs, as per the tariff for a one-day hearing, as proposed in the joint submission.

ORDER

Therefore, the Committee ordered and directed that:

1. Dr. Beshay appear before the panel to be reprimanded.
2. Dr. Beshay pay to the College costs in the amount of \$3,650 within 30 days of the date of the Order.
3. The results of this proceeding be included in the register.

At the conclusion of the hearing, Dr. Beshay waived his right to an appeal under subsection 70(1) of the Code and the Committee administered the public reprimand.