

Indexed as: Freeman (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 to 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. JOEL BERNARD FREEMAN

PANEL MEMBERS:

DR. L. THURLING (CHAIR)
S. BERI
DR. P. CHART
J. DHAWAN
DR. F. SLIWIN

Hearing Date: February 11, 2008
Decision/Release Date: February 11, 2008
Release of Written Reasons Date: March 13, 2008

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on February 11, 2008. At the conclusion of the hearing, the Committee stated its finding that the member committed an act of professional misconduct and delivered its decision with respect to penalty and costs with written reasons to follow.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Freeman committed an act of professional misconduct:

1. in that he has been found guilty of an offence that is relevant to his suitability to practice under clause 51(1)(a) of the Health Professions Procedural Code (“the Code”) which is Schedule 2 to the *Regulated Health Professions Act*, 1991;
2. in that he has engaged in conduct or 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 under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act*, 1991 (“O. Reg. 856/93”); and
3. in that he engaged in conduct unbecoming a physician under paragraph 1(1)34 of O. Reg. 856/93.

RESPONSE TO THE ALLEGATIONS

Dr. Freeman admitted to the third allegation in the Notice of Hearing, that he committed an act of professional misconduct in that he engaged in conduct unbecoming a physician. The College withdrew allegations 1 and 2 in the Notice of Hearing.

THE FACTS

The facts were agreed upon by the parties and set out in an Agreed Statement of Facts and Admission that was filed as an exhibit and presented to the Committee. The following facts were thereby established:

PART I – FACTS

1. Dr. Joel Bernard Freeman (“Dr. Freeman”) is a general surgeon practising in Ottawa. At all material times he was a member of the College of Physicians and Surgeons of Ontario (the “College”).
2. On April 13, 2006 Dr. Freeman entered a plea of guilty to a charge of common assault arising from a traffic incident which occurred on September 23, 2004 in Ottawa, Ontario.
3. The facts which Dr. Freeman admitted to at the time of the plea were as follows:
 - (a) Dr. Freeman was proceeding along St. Laurent Boulevard when a driver operating a Honda Civic cut in front of him causing Dr. Freeman to have to brake hard to avoid a collision. The driver of the Honda then proceeded to follow Dr. Freeman's car and was seen by an independent witness punching his fist into his palm and yelling and screaming at Dr. Freeman who was in the car directly in front;
 - (b) Dr. Freeman pulled into the bank parking lot and the Honda driver pulled in after him; and
 - (c) When they got into the parking lot, Dr. Freeman approached the vehicle to ask the driver what his problem is. As he did so, the driver of the Honda Civic struck out with his left fist at him. At this point, Dr. Freeman, grabbed the other driver's left arm and struck several blows in the lip area and one in the shoulder.
4. Dr. Freeman received an absolute discharge which is not a conviction.

PART II – ADMISSION

5. Dr. Freeman admits the facts in paragraph 3 above and admits that during the incident on September 23, 2004, he committed an act of professional misconduct under paragraph 1(1)34 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* in that he engaged in conduct unbecoming for a physician.

FINDING

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts and Admission. Having considered these facts and the admission to professional misconduct, the Committee found that Dr. Freeman committed an act of professional misconduct under paragraph 1(1)34 of O. Reg. 856/93, in that he engaged in conduct unbecoming a physician.

The Committee noted that under section 730 of the *Criminal Code*, the court may enter an absolute discharge in disposing of criminal charges where it considers it to be in the best interest of the accused and not contrary to the public interest. The court may do so where the accused pleads guilty to or is found guilty of an offence. Dr. Freeman did plead guilty to a charge of common assault in criminal court, and an absolute discharge was ordered rather than a conviction.

In making the finding of professional misconduct, the Committee had particular regard for the following:

- The public has an expectation that physicians will behave as responsible members of society and will respond in a reasonable and temperate manner, even when provoked. The public invests a great deal of trust in physicians and behaviour outside the clinical context must be worthy of that trust. Assault is never acceptable.

- It is important to emphasize that this was not a matter of self-defence, notwithstanding there was some degree of provocation.
- Dr. Freeman responded inappropriately when he overreacted by striking the other driver repeatedly in the face.
- Dr. Freeman pled guilty in criminal court to the charge of common assault and admitted that he engaged in conduct unbecoming a physician, and thereby committed an act of professional misconduct.

The reprehensible conduct admitted to in this matter reflects poorly on Dr. Freeman as a member of the profession.

DECISION AND REASONS ON PENALTY

Counsel for the College and counsel for the member made a joint submission as to an appropriate penalty. They proposed that the appropriate penalty in this case is as follows:

1. Dr. Freeman appear before the panel to be reprimanded.
2. Dr. Freeman pay costs to the College in the amount of \$2,500.00 within 60 days of the date of this Order.
3. The results of this proceeding be included in the register.

The Committee reviewed the agreed facts, submissions of counsel, documents in support of the joint submission and advice of independent legal counsel. The Committee is 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.

The penalty principles that particularly apply in this case are protection of the public, denunciation of the conduct, and specific and general deterrence.

In considering the proposed penalty in this matter, the Committee had regard for the following:

- Abusive behaviour towards others outside of the clinical context cannot be tolerated or considered lightly. Such behaviour undermines the public's respect for and trust in the profession.
- Dr. Freeman has had a distinguished career and has achieved pre-eminence in his practice with extensive teaching experience and publications. The many letters of support describe a dedicated, sensitive and caring man who was well respected and influential as a role model for younger surgeons.
- Dr. Freeman has paid dearly for this single regrettable episode, having had to face embarrassment and humiliation attendant with extensive media coverage.
- Dr. Freeman has no prior discipline history. His full cooperation with the College and admission to the allegation has expedited the proceedings.

The Committee accepted the joint submission on penalty as reflecting the appropriate measure of censure in this matter and as consistent with the case law referred to in the authorities submitted.

ORDER

Therefore, the Committee ordered and directed that:

1. Dr. Freeman appear before the panel to be reprimanded.
2. Dr. Freeman pay costs to the College in the amount of \$2,500.00 within 60 days of the date of this Order.

3. The results of this proceeding be included in the register.

Dr. Freeman waived his right to appeal under subsection 70(1) of the Code and the Committee administered the public reprimand.