

Indexed as: McGowan (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(2)
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. HUGH DOUGLAS MCGOWAN

PANEL MEMBERS:

DR. O. KOFMAN (CHAIR)
H. WALKER
DR. J. MANDEL
J. DHAWAN
DR. M. DAVIE

Hearing Date: April 16, 2004

Decision/ Released Date: April 16, 2004

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on April 16, 2004. 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.

ALLEGATION

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

1. under paragraph 29.33 of Ontario Regulation 548/90 and paragraph 1(1)33 of Ontario Regulation 856/93, in that he has engaged in conduct or an act or acts 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 ALLEGATION

At the outset of the hearing Dr. McGowan admitted the allegation in the Notice of Hearing.

EVIDENCE

The following Statement of Facts and Finding Requested was filed as Exhibit #2 and presented to the Committee:

PART I: STATEMENT OF FACTS

1. At all material times Dr. Hugh Douglas McGowan ("Dr. McGowan") was an ophthalmologist with a certificate of registration in Ontario and had privileges to practise at the North York General Hospital.
2. On or about May 6, 2002, Dr. McGowan voluntarily disclosed to the Vice President, Medical Affairs, of the North York General Hospital that he had misrepresented, in his re-appointment applications for the years 1990 to 2002, inclusive, that he was a member of the Canadian Medical Protective Association ("CMPA"). He also attached a falsified CMPA membership card in support of his re-appointment applications for the years 2000 to 2002, inclusive.

3. The aforesaid disclosure was confirmed as accurate as a result of an investigation into the matter by North York General Hospital in 2002. Through that investigation, the hospital determined that Dr. McGowan had no professional liability coverage as required under the by-laws of North York General Hospital.

4. At the time of the aforesaid disclosure, Dr. McGowan voluntarily relinquished his hospital responsibilities and discontinued his surgical services during the period of May 2002 to November 18, 2002. As a result of the discontinuance of these professional activities, Dr. McGowan suffered substantial financial loss.

5. During the course of the investigation, Dr. McGowan participated in a psychiatric evaluation. The examining psychiatrist concluded that there was little risk of behaviour of this type recurring.

6. Dr. McGowan subsequently applied for and became a member of the CMPA. As a member, Dr. McGowan has had professional liability coverage since May 1, 2002. On August 5, 2003, Dr. McGowan provided an investigator of the College of Physicians and Surgeons of Ontario documentation in confirmation of his CMPA professional liability coverage.

7. Dr. McGowan admits that, by misrepresenting his CMPA membership status, he committed acts relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional. This misrepresentation did not relate to any concerns regarding the medical care or treatment of any patients.

PART II – FINDINGS REQUESTED

8. On the basis of the facts above, the College of Physicians and Surgeons requests that the Discipline Committee make the following finding:

- (a) that Dr. McGowan committed an act of professional misconduct under paragraph 29.33 of Ontario Regulation 548/90 and paragraph 1(1)33 of Ontario Regulation 856/93, in that he has engaged in conduct or an act or acts relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

FINDING

In response to a question from the Committee concerning the use of the word “voluntarily” in paragraph 2 above, Dr. McGowan requested the opportunity to respond directly to the Committee rather than through counsel. Therefore, Dr. McGowan was sworn in.

Dr. McGowan testified that, on or about May 6, 2002, of his own accord and without any urging from others, he revealed to the Vice President of Medical Affairs of North York General Hospital the facts of his misrepresentation that he had insurance from 1990-2002 and that he had falsified his CMPA membership card for 2000-2002 inclusive. Counsel for the College did not seek to cross-examine Dr. McGowan on this testimony.

The Committee accepted Dr. McGowan’s testimony and accepted as true all of the facts set out in the Statement of Facts and Findings Requested. Having regard to these undisputed facts, the Committee found that Dr. McGowan committed an act of professional misconduct under paragraph 29.33 of Ontario Regulation 548/90 and paragraph 1(1)33 of Ontario Regulation 856/93, in that he has engaged in conduct or an act or acts 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 DECISION AND REASONS

Counsel for the College and counsel for Dr. McGowan made a joint submission regarding penalty.

In considering the joint submission, the Committee was concerned about the apparent disrespect shown by Dr. McGowan for the public safety as well as the medical profession during the twelve (12) years that he practiced without any medical insurance. However, in accepting the joint submission, the Committee considered the following mitigating factors:

- As set out in paragraph 7 of the Statement of Facts, during the relevant period of time that Dr. McGowan was practicing, there was no issue with respect to the medical care and treatment of any patients.
- Dr. McGowan voluntarily disclosed to North York General Hospital his misrepresentation in his re-appointment applications from 1990-2002.

- Dr. McGowan voluntarily produced for evidence a falsified CMPA membership card.
- Dr. McGowan co-operated and assisted both the College of Physicians and Surgeons of Ontario and North York General Hospital in the investigation of this matter.
- Dr. McGowan voluntarily relinquished his hospital responsibilities and surgical services for six (6) months and has suffered a substantial financial loss thereby.
- Dr. McGowan voluntarily participated in a psychiatric evaluation.

ORDER

The Discipline Committee ordered and directed that:

1. Dr. McGowan attend before the panel to be reprimanded, with the fact of the reprimand to be recorded on the register; and
2. The results of this proceeding to be included in the register.

At the conclusion of the hearing, Dr. McGowan waived his right to appeal under s.70 of the Code and the Committee administered the reprimand.