

Indexed as: Alberti (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(2)
of the **Health Disciplines Act**,
R.S.O. 1980, c.196 as amended

BETWEEN:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. PETER WILLIAM RICHARD MAYER ALBERTI

PANEL MEMBERS: DR. J. CURTIS (CHAIR)
DR. D. BRADEN
DR. J. HOMER
J. FINLAYSON
F. HOSHIZAKI

HEARING DATE: OCTOBER 7, 1996

DECISION/RELEASED DATE:

OCTOBER 7, 1996

DECISION AND REASONS FOR DECISION

This matter came before the College of Physicians and Surgeons of Ontario on October 7, 1996, at Toronto.

In the amended Notice of Hearing it was alleged that Dr. Alberti is guilty of professional misconduct for:

- 1) failure to maintain the standard of practice of the profession, contrary to section 27(21) of Regulation 448, Revised Regulations of Ontario 1980, as amended; contrary to Section 29(22) of Regulation 548, Revised Regulations of Ontario 1990, as amended;
- 2) charging a fee for services not performed, contrary to Section 27(15) of Regulation 448, Revised Regulations of Ontario 1980, as amended; contrary to Section 29(16) of Regulation 548, Revised Regulations of Ontario 1990, as amended;
- 3) knowingly submitted a false and misleading account or false or misleading charges for services rendered to a patient, contrary to Section 27(17) of Regulation 448, Revised Regulations of Ontario 1980, as amended; contrary to Section 29(18) of Regulation 548, Revised Regulations of Ontario 1990, as amended;
- 4) failing to carry out the terms of an agreement or contract with a hospital, contrary to Section 27(28) of Regulation 448, Revised Regulations of Ontario 1980, as amended; and contrary to Section 29(29) of Regulation 548, Revised Regulations of Ontario 1990, as amended;

- 5) falsifying a record in respect of the examination or treatment of a patient contrary to Section 27(16) of Regulation 448, Revised Regulations of Ontario 1980, as amended; and contrary to Section 29(17) of Regulation 548, Revised Regulations of Ontario 1990, as amended; and
- 6) conduct or an act 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 Section 27(32) of Regulation 448, Revised Regulations of Ontario 1980, as amended and contrary to 29(33) of Regulation 548, Revised Regulations of Ontario 1990, as amended.

Counsel for the College and counsel for Dr. Alberti made a joint submission in support of a draft order, which was itself supported by a joint written Statement executed on behalf of the Department of Otolaryngology, Hospital RHX, and Dr. Alberti. The Committee was informed that a long standing and complex disagreement between the parties has been subjected to mediation. An agreement was reached which counsel for the parties submitted to the Panel, was in the best interest of the public to accept, and which involved a plea of guilty by Dr. Alberti to certain allegations, and the withdrawal of other allegations, with a proposed penalty that the parties jointly submitted as appropriate.

The Committee considered the information that was placed before it through the draft Order and written Statement, the latter of which is appended to this Decision.

The Committee also considered evidence that the University through the Dean of Medicine was supportive of the settlement provided for in the draft Order and Statement.

The Committee further took into account additional information that it obtained from the parties through independent counsel to the Committee. The Committee ascertained that the funds in question derived from the testing of patients in Workers' Compensation Board (WCB) cases by technicians at Hospital RHX. The agreement that the Otolaryngology Department states prevailed was an allocation of 60% of the funds to the Hospital and 40% to Dr. Alberti's department. There was a dispute between Dr. Alberti and his partners over the distribution of the funds that he was to disburse. Dr. Alberti asserts that there was an agreement to support his position: the Hospital denies it. The funds in question came into an account controlled by Dr. Alberti, who distributed them for his purposes. The College's position is that the funds were used for his own staff, research and for other improper purposes. Dr. Alberti's position was that no funds were used for his private purposes, outside of the department. The Committee was informed that there is no evidence that the funds were used by Dr. Alberti for his private purposes.

The Committee also ascertained that Dr. Alberti billed the partnership at Hospital RHX for interpretative reports for periods when it is contended he was absent and on occasion when he was being compensated by the WCB for the same readings. Furthermore, Dr. Alberti was absent while residents and students collected data for hearing loss for the WCB. Dr. Alberti admitted that in this respect he defaulted in his responsibilities to his residents and students.

For his part, Dr. Alberti accepts as unprofessional conduct:

- i. his failure to adequately disclose to his partners in the Department of Otolaryngology of Hospital RHX an agreement he asserts he made with

Hospital RHX, in 1976, on behalf of the Department of Otolaryngology, and which agreement affected the distribution of academic enrichment and research funds;

- ii. his submission of certain inappropriate billings to Hospital RHX Otolaryngology Associates; and
- iii. his inadequate supervision of the clinical activities of certain residents and medical students who collected data on hearing loss for the (WCB).

After careful consideration of the draft Order, the written Statement and the above information, the Committee decided that it was prepared to accept the disposition of this matter in accordance with the joint submission of the parties. The Committee therefore makes the following Order:

ORDER

Upon being advised that the College, Dr. Alberti, the complainants and certain witnesses with an interest in these proceedings have agreed to a resolution of this complaint, and upon considering the allegations in the Amended Notice of Hearing and hearing the submissions of counsel for the College and for Dr. Alberti,

- 1. The Discipline Committee hereby approves and adopts the said resolution of this complaint as set out in a **A** Statement **@** dated October 7, 1996, and attached hereto.

2. The Discipline Committee hereby finds Dr. Alberti to have committed professional misconduct in that:
 - (i) he failed to adequately disclose to his partners in the Department of Otolaryngology of Hospital RHX an agreement he asserts he made with Hospital RHX in 1976 on behalf of the Department of Otolaryngology and which agreement affected the distribution of academic enrichment and research funds.
 - (ii) his submission of certain billings to Hospital RHX Otolaryngology Associates was inappropriate, and
 - (iii) his supervision of the clinical activities of certain residents and medical students who collected data on hearing loss for the WCB was inadequate,

and the Discipline Committee hereby finds that these acts were unprofessional contrary to paragraph 27.32 of Regulation 448, R.R.O. 1980, as amended and paragraph 29.33 of Regulation 548 of R.R.O. 1990, as amended.

3. The Discipline Committee hereby grants leave to the College to withdraw the remaining aspects of the complaint and accordingly the remaining allegations are hereby dismissed.
4. The Discipline Committee hereby directs the Registrar of the College of Physicians and Surgeons of Ontario to suspend Dr. Alberti's certificate of registration as a member of the College of Physicians and Surgeons of Ontario for a period of 6 months commencing on a date to be fixed by the

Registrar, however, 5 months of the suspension shall be suspended provided that Dr. Alberti shall comply with the following conditions:

- (i) Dr. Alberti shall provide evidence of having paid the sum of \$130,000 in the manner hereinafter set out:
 - (a) \$100,000 shall be paid in two installments, \$35,000 before December 31, 1996, and \$65,000 before December 31, 1997, respectively, to Hospital RHX Foundation for academic enrichment and research in the Department of Otolaryngology at the hospital;
 - (b) \$30,000 shall be paid directly to the Department of Otolaryngology, Hospital RHX, by December 31, 1996.

The Committee is satisfied that the Order which it makes reflects the position of the Committee that the actions of Dr. Alberti are reprehensible and deserving of condemnation. The Committee believes that its Order does justice in the circumstances of this case and serves the public interest.

Under Section 56(5) of the Health Disciplines Act, the fact of the suspension is noted by the Registrar of the College. Furthermore, under Section 28(1) of the Regulations under the Health Disciplines Act, the identity of the member shall be made known and the reasons for the decision prepared by the Discipline Committee shall be published in Members Dialogue, the College publication.