

Indexed as: Eskander (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. IHAB ALBAIR AZIZ ESKANDER

PANEL MEMBERS:

**DR. W. KING (CHAIR)
DR. B. TAA (Ph.D.)
DR. J. BROWN
S. BERI
DR. T. MORIARITY**

**Hearing Date: June 22, 2009
Decision Release Date: June 22, 2009
Release of Written Reasons: August 21, 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 June 22, 2009. At the conclusion of the hearing, the Committee rendered its decision 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. Eskander 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 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. Eskander 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. Ihab Albair Aziz Eskander is a community family physician practicing in Kitchener, Ontario.

2. Dr. Eskander was born in Egypt and received his medical degree from Cairo University in 1986. Following graduation, he completed a two year internship and a three year residency in family medicine. He practised medicine in Cairo as a family practitioner between 1992 and 1995, at which time he moved to Kitchener, Ontario.
3. In 1999, Dr. Eskander applied to the Newfoundland Medical Board and in 2000 he completed six months of training in Newfoundland. Between November 2000 and December 2002, Dr. Eskander practiced as a family doctor in Bonavista, Newfoundland.
4. In July 2002, Dr. Eskander applied to the College of Physicians and Surgeons of Ontario (the “CPSO”) for a certificate of registration authorizing independent practice.
5. In his application to the CPSO for a certificate of registration authorizing independent practice in Ontario, Dr. Eskander 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?” Attached as Exhibit A [to the Agreed Statement of Facts] is a true copy of the application.
6. When asked in the same application to list the names of every jurisdiction where he practiced medicine and provide the time period, Dr. Eskander wrote: “[Medical Clinic 1], Cairo, Egypt – 06, 1989-08, 1999”. See Exhibit A [to the Agreed Statement of Facts].
7. In his 1999 application to the Newfoundland Medical Board for a licence to practice medicine, Dr. Eskander advised that he practiced as a general practitioner in Egypt from March, 1988 until August, 1997 at [Medical Clinic 1]. See Exhibit B [to the Agreed Statements of Facts]. A reference letter indicating that he worked as a general practitioner at [Medical Clinic 1] from June, 1989 to August, 1997 was submitted. See Exhibit C [to the Agreed Statement of Facts].

8. Dr. Eskander admits that the above information supplied to the CPSO and the Newfoundland Medical Board was not accurate in that it failed to disclose interruptions in practice after Dr. Eskander came to Canada in 1995.

9. At the time of providing the above information, Dr. Eskander maintained an active Egyptian medical license and he maintains that he returned to practice medicine in Egypt in 1997 and, while in Canada, spent time studying for Canadian licensing examinations.

10. Dr. Eskander admits that he did not seek clarification from the CPSO or the Newfoundland Medical Board concerning how to report his work history in his applications.

11. Dr. Eskander 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. Eskander'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. While the Agreed Statement of Facts needs to read as a whole, of particular importance was Dr. Eskander's admission that the information supplied to the CPSO and the Newfoundland Medical Board was not accurate in that it failed to disclose interruptions in practice after Dr. Eskander came to Canada in 1995.

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. Eskander successfully complete, at his own expense, the College's Medical Ethics and Informed Consent Course on the next available date, and in any event within six months of the date of the Order, and to provide proof thereof to the College;
2. Dr. Eskander appear before the panel to be reprimanded;
3. The results of this proceeding be included in the register; and
4. Dr. Eskander pay to the College costs in the amount of \$3,650 within 30 days of the date of the Order.

Counsel for the College made submissions regarding the aggravating and mitigating factors in Dr. Eskander's case, and drew the Committee's attention to five previous cases to help guide the Committee in their decision.

He suggested that the aggravating factors to be considered were as follows:

- (a) Dr. Eskander's misrepresentation to the CPSO was not an isolated incident, in that he had also misled the Newfoundland Medical Board; and
- (b) The College's mandate is to protect the public, and in order to do so, it relies on the accurate and truthful reporting of information by its members. Thus, misleading the College is very serious.

College counsel also submitted that the following mitigating factors should be taken into consideration:

- (a) Dr. Eskander has no previous findings with the College; and
- (b) He admitted to the conduct and thereby spared the College a lengthy hearing involving witnesses.

Counsel for the College next reviewed the case law relevant to this matter.

In the first case (*Gagliano v. CPSO*), the facts indicated that Dr. Gagliano had knowingly misstated his age and date of birth on an application and reapplication for a medical appointment at a hospital, in order to maintain his privileges at the hospital. Dr. Gagliano resigned his privileges as soon as the issue of misstated age was raised by the hospital, he had no previous disciplinary findings and he cooperated fully with the College. The penalty ordered in that case included a reprimand and the recording of the results of the proceedings in the Register.

College counsel noted that the *Gagliano* case was similar to Dr. Eskander's case in that it involved the misrepresentation of information to a hospital on an application for hospital privileges and that the penalty in Dr. Gagliano's case was in line with the penalty proposed for Dr. Eskander.

In the second case (*McGowan v. CPSO*), Dr. McGowan acknowledged that, on an application for reappointment to a hospital, he had misrepresented himself as being a member of the CMPA and that he had falsified a CMPA membership card in support of this misrepresentation. The Committee in that matter found that Dr. McGowan had demonstrated an apparent disrespect for public safety as well as the profession in practicing without any medical insurance. In determining the appropriate penalty, the following factors were considered:

- (a) There were no issues regarding patient care;
- (b) Dr. McGowan voluntarily disclosed the misrepresentation and cooperated with the College and the hospital in the investigation;

- (c) Dr. McGowan voluntarily relinquished his hospital responsibilities and surgical services for a six-month period, thereby suffering a financial loss; and
- (d) He voluntarily participated in a psychiatric evaluation; the outcome of which indicated that there was little risk of repeating such conduct.

The penalty ordered in Dr. McGowan's case was a reprimand, with the results of the proceeding included in the Register.

College counsel submitted to the Committee that the *McGowan* case was relevant because it involved the misrepresentation of information, with a similar penalty order to that proposed in the instant case.

In the third case referred to in argument by College counsel (*Tesher v. CPSO*), Dr. Tesher, on a billing questionnaire, failed to advise the College that there were disciplinary actions pending against him by the licensing authority in the state of New York. The penalty ordered by the Discipline Committee was a reprimand, a three-month suspension to be lifted once courses ordered in the United States were completed, and costs.

College counsel submitted that this case was relevant, in that it involved a misrepresentation to the College on a renewal of registration with the CPSO, and the penalty was similar to the penalty jointly-submitted in this matter.

The fourth case (*Vasic v. CPSO*) was a contested case and involved the member providing inaccurate information to the CPSO on a registration renewal form. In that case, Dr. Vasic failed to advise the College of his disciplinary history in two jurisdictions in the United States. The penalty included a suspension of twelve months, three months of which would be lifted on completion of an ethics course, an award of costs and recording of the results of the proceedings on the Register.

College counsel noted the penalty in that case was on the higher end of the spectrum. The Committee in that case found that Dr. Vasic demonstrated a lack of remorse in his

testimony and a lack of insight into the nature of his conduct, and he had a previous finding of professional misconduct.

In the last case referred to by College counsel (*Rassouli-Rashti v. CPSO*), Dr. Rassouli-Rashti misled the College in the course of an investigation into an allegation of sexual abuse by another physician (Dr. W). A number of factors were considered by the Committee in determining the penalty in that matter:

- (a) Dr. Rassouli-Rashti had no previous disciplinary history;
- (b) His misconduct did not affect the ultimate outcome of Dr. W's case; and
- (c) An application he had made for an independent practice certificate had been deferred.

The penalty order in that case was a suspension of three months, two months of which would be lifted upon completion of an ethics course, a reprimand, and costs.

College counsel advised the Committee that these cases demonstrated the range of appropriate penalties. He submitted that the proposed jointly-submitted penalty in Dr. Eskander's case, should fall toward the lower end of the spectrum, given that the misrepresentations made by him did not conceal any disciplinary issues in other jurisdictions or involve issues with patient care.

College counsel submitted to the Committee that the four principles to be considered in determining an appropriate penalty were as follows: A penalty should serve to protect the public; provide specific and general deterrence; serve to rehabilitate the member; and maintain the public's confidence in the ability of the profession to regulate itself. He submitted that the penalty proposed would satisfy those principles as follows:

- (a) The reprimand expresses the College's abhorrence of Dr. Eskander's conduct;
- (b) Completion of the ethics course would serve to rehabilitate Dr. Eskander and maintain the public's confidence in the ability of the profession to self-regulate; and

- (c) Recording the results of the proceeding on the Register serves as a deterrent to the profession at large and provides the public with notice of the misconduct.

College counsel suggested that the awarding of costs as per the tariff for a one-day hearing is appropriate, given Dr. Eskander's admission of the conduct.

In his submissions, counsel for Dr. Eskander agreed that the joint penalty proposed fulfils all of the relevant penalty principles. He also asked the Committee to consider the following as mitigating factors:

- (a) Dr. Eskander has cooperated and thereby resolved this issue at the earliest opportunity, saving the College considerable cost;
- (b) He has demonstrated insight into his behaviour and a willingness to accept responsibility;
- (c) He has no prior disciplinary findings with the College; and
- (d) This is not a case involving patient safety.

Counsel for Dr. Eskander presented the Committee with the very recent decision in *CPSO v. Eskandar*, heard by another panel of the Discipline Committee. He noted that the *Eskandar* case involved another physician, despite the similar (but not identical) spelling of the name of the physician. He submitted that the *Eskandar* case was virtually identical to Dr. Eskander's matter in that Dr. Eskandar had misrepresented information on an application for a certificate of registration to the College by falsely answering the same questions that Dr. Eskander had answered falsely. In Dr. Eskandar's case, there was a joint submission on penalty that included an order for a reprimand, a requirement to complete an ethics course, and an award of costs.

In his review of the case law submitted by College counsel, Dr. Eskander's counsel made the following further submissions:

- (a) The *Gagliano* case involved a very serious misrepresentation based on reporting a false age. Dr. Gagliano was an anesthetist who was actually 10 years older than the age he stated on his hospital application;
- (b) The *McGowan* case involved repeated misrepresentations about the member's CMPA membership and involved falsifying a CMPA card.

In both of these cases, the Committee accepted a jointly-submitted penalty of a reprimand.

- (c) In the *Tesher* case, the facts warranted a higher penalty given that there was a failure to disclose existing disciplinary findings and a continued misrepresentation of the member's standing in the State of New York. In their reasons for the decision on penalty, the Committee acknowledged the seriousness of the situation, but accepted the joint submission which recommended that the suspension be reduced upon completion of the ethics course.
- (d) The facts in the *Vasic* case indicated a more serious range of conduct, and Dr. Vasic may have in fact been ungovernable.
- (e) In *Rassouli-Rashti*, there was a deliberate obstruction of a College investigation, which constituted very serious misconduct.

Counsel agreed that these cases supported the propriety of the jointly-submitted penalty and suggested that the more recent *Eskandar* case also provided very useful guidance in determining an appropriate penalty for Dr. Eskander.

Finally, counsel for Dr. Eskander also tendered letters of support for the Committee's consideration.

In making its decision regarding penalty for Dr. Eskander, the Committee considered the following matters to be of particular significance:

1. The Committee accepted that, as a matter of law, a joint submission must be accepted, unless to do so would be contrary to the public interest and would bring the administration of justice into disrepute.
2. The Committee accepted the submissions of counsel for both parties that the case law presented by counsel provided appropriate guidance in terms of the range of penalties to be considered.
3. The Committee accepted that the aggravating factors presented by College counsel were reasonable considerations in determining an appropriate penalty, as follows:
 - (a) Dr. Eskander's misrepresentation of information to the College was not an isolated incident; and
 - (b) Misrepresenting information to the College seriously interferes with the College's mandate to protect the public.
4. The Committee accepted that the mitigating factors, as outlined by both counsel, were also reasonable considerations in determining the penalty, as follows:
 - (a) Dr. Eskander cooperated with the College and admitted to the misrepresentation of information;
 - (b) He demonstrated insight into his behaviour and accepted responsibility for his actions;
 - (c) Dr. Eskander has no disciplinary history with the College; and
 - (d) His misrepresentations did not conceal any disciplinary issues in other jurisdictions or deal with issues of patient care.
5. The Committee agrees that the jointly-submitted penalty will satisfy the relevant penalty principles as follows:
 - (a) The reprimand expresses the Committee's disapproval of Dr. Eskander's misrepresentation and the lack of honesty and integrity that such conduct represents;

- (b) The completion of an ethics course will serve to assist in Dr. Eskander's rehabilitation and maintain the public's confidence in the ability of the medical profession to self-regulate; and
 - (c) Recording the results of these proceedings in the Register will serve as public notice of the misconduct and act as a general deterrent to other members of the profession.
6. The Committee agrees that it is appropriate to award costs in this matter as per the tariff for a one-day hearing and acknowledged that Dr. Eskander's admission of the misconduct avoided a costly and lengthy hearing.

ORDER

Therefore, the Committee ordered and directed that:

1. Dr. Eskander successfully complete, at his own expense, the College's Medical Ethics and Informed Consent Course on the next available date, and in any event within six months of the date of the Order, and to provide proof thereof to the College.
2. Dr. Eskander appear before the panel to be reprimanded.
3. The results of this proceeding be included in the register.
4. Dr. Eskander pay to the College costs in the amount of \$3,650 within 30 days of the date of the Order.

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