

**IN THE MATTER OF AN APPLICATION BY
DR. CARLOS HUERTO FOR A LICENCE TO PRACTICE
MEDICINE IN SASKATCHEWAN**

**DECISION OF THE COUNCIL REGARDING DR. CARLOS HUERTO'S
APPLICATION FOR A LICENCE**

A. INTRODUCTION

1. On September 8, 2006, after lengthy oral representations made by legal counsel on behalf of Dr. Carlos Huerto ("the Applicant") and legal counsel on behalf of the College of Physicians and Surgeons of Saskatchewan ("the College") and after reviewing voluminous documents from both the Applicant and the College, the Council of the College unanimously passed a resolution to refuse the Applicant's application for a licence. At that time, the Council indicated that reasons for its decision would follow by the next Council meeting in November, 2006. What follows are those reasons.

2. As described by the Applicant's legal counsel, the Applicant is presently 64 years old, twice divorced with three children. He has been in Saskatoon since 1984. What is also the case is that he has a long history of negative interaction with the College, more recently resulting in a significant and troubling record of proven unprofessional conduct. The unprofessional conduct will be reviewed below. The Council, in November, 2003, took the rare step of revoking the Applicant's licence. He continued to practice with restrictions, pending appeal, pursuant to an order of the Court of Queen's Bench. The revocation of licensure was upheld by the Court of Queen's Bench in March, 2005. Subsequently the Applicant failed to have the

revocation overturned by the Saskatchewan Court of Appeal. He now returns to the Council to apply for a licence.

B. PAST DISCIPLINE

3. The significant and troubling record of unprofessional conduct referred to above, in reverse chronological order, culminated in a finding of unprofessional conduct that led to the revocation of licence in 2003. The Applicant was found guilty of engaging in a sexual relationship with a patient K. H. in circumstances whereby the patient was found to be in a very vulnerable position and the Applicant preyed upon that vulnerability. In the same proceedings, the Applicant was found guilty of a charge of prescribing medications to K. H. that were not necessary for her condition nor were they intended to be used by her. Further, at the same hearing, the Applicant was found guilty of swearing false or misleading affidavits regarding disclosure of his financial affairs. (For ease of reference, these proceedings can be characterized as the “Matkowski proceedings”.)

4. In 2000, the Applicant was found guilty of a number of matters involving unprofessional conduct relating to two patients. The Applicant was found to have acted in a manner that was unbecoming, improper, unprofessional or discreditable in connection with his treatment of patients B. B. and J. R. The lengthy specifics of these guilty findings are itemized in the written submissions on behalf of the College at pages 4 through 6 and will not be repeated here. (For ease of reference, these proceedings can be characterized as the “Bilson proceedings”.) With respect to the guilty findings in 2000, the Applicant received a 14 month suspension from practice retroactive to the date that the interim suspension had been imposed upon him was instituted.

5. In 1988, the Applicant was found guilty of unprofessional conduct for an unprofessional internal examination of a patient. He received a reprimand.

6. In 1977, the College of Physicians and Surgeons of Manitoba found the Applicant guilty of professional misconduct in performing non-indicated surgery, which surgery was performed without adequate training or recent experience and in circumstances that endangered the life of the patient. The Manitoba College revoked his licence but he was allowed to be restored to the register on the basis that he limit his practice to internal medicine.

7. Also in 1997, the Applicant was charged by the Manitoba College and in the circumstances he was allowed to resign as a member without admission of those charges on paying the costs to the inquiry.

8. It is this history and the submissions of both counsel with respect to the nature of the findings in the Matkowski proceedings and the Applicant's actions thereafter that comprised much of the representations made to the Council on behalf of the Applicant and on behalf of the College.

C. PRESENT PENDING PROCEEDINGS

9. There are presently further pending proceedings against the Applicant comprising of matters currently under investigation by the College and criminal charges pending before the Court. With respect to matters currently under investigation by the College, the first deals with complaints of a patient J. W. alleging various allegations with respect to examinations and medication prescription. The second of the complaints involves a patient V. P. alleging similar misconduct. The details of the allegations can be found in the written submissions on behalf of the College at pages 7 through 9. They will not be repeated here. The allegations on

their face are also very troubling, and if proven true, would very likely result in a substantive response from the Council. However, they remain presently unproven. The College states that the reason for the delay in proceeding to a preliminary inquiry committee and, potentially, a hearing by a Discipline Committee with respect to these present pending investigations is due to the request of the Applicant's legal counsel to defer same until after the Applicant's criminal trial.

10. The Applicant also faces an indictment with two counts of criminal fraud. Council was advised that the nature of the evidence to be lead at the criminal trial will be that the Applicant prescribed medications in patients' names when the patients did not receive the medications that were prescribed in their names. This apparently followed the College's seizure of a large volume of drugs that had been prescribed in various patients' names and which were located in the Applicant's home and that of a Ms. Heaslip. These criminal charges have apparently been adjourned to April, 2007. As with the pending College investigation matters, these criminal charges remain to date unproven.

11. The College responds to the Applicant's present application for licensure by indicating that the application is premature and Council should dismiss the application until the two College investigations are complete and the criminal matters have been dealt with. The Applicant asserts that Council should consider his application for licensure now and that the Applicant is confident that he will be acquitted of the criminal charges. As will be outlined below, Council is of the unanimous view that on the basis solely of the past discipline imposed upon the Applicant and his failure to provide sufficient evidence to satisfy Council that he is rehabilitated, the present refusal of his application is more than warranted without waiting to consider the outcome of any pending proceedings.

D. SUBMISSIONS ON BEHALF OF THE APPLICANT

12. Legal counsel on behalf of the Applicant submitted to Council documentation under 55 separate tabs, which documentation begins with the present application form for licensure and then continues with substantial documentation regarding the applicant's history, assessments and other matters.

13. In addition to any matters already referenced, in his oral submissions the Applicant's legal counsel took Council through the documentation. Legal counsel advised that since the effective revocation of licensure in March of 2005, the Applicant has studied and travelled. Letters of reference from 1978 and 1986 were reviewed, among others, as well as more recent references found at Tabs 50 and 51, Tab 51 being correspondence regarding a boundaries seminar.

14. Reference was made to assessments performed by Professional Assessment Services in May, 2004 (pursuant to a consent court order found at Tab 33) and assessments performed by National Forensic and Medico-Legal Services Inc. prepared in June and September, 2004 and September, 2005. These are found at Tabs 34 to 36. Viewed together, it was suggested to Council that the original diagnosis of a narcissistic personality disorder may be open to question. The Applicant appears to favour the assessment done by Dr. Darlington on behalf of National Forensic and Medico-Legal Services Inc. as it questions the diagnosis of narcissistic personality disorder and minimizes the characterization of the Matkowski proceedings involving patient K. H. Dr. Darlington does agree that there was boundary transgression.

15. The Applicant's counsel argued that the professional assessments should be reviewed in the context that patient K. H., from the Matkowski proceedings, appears to be the only instance of alleged patient abuse and harm to public safety. Neither of the assessments referenced state that the Applicant is a present risk of harm or danger to patients. Counsel also continued in making observations regarding patient K. H.

with respect to speculation as to her medical condition and her wellness following the alleged sexual abuse.

16. Next, the Applicant's legal counsel submitted certain written views of a Dr. Clements attacking certain commonly held beliefs on "sexual abuse". (Council notes that the views of Dr. Clements were placed before the Court of Queen's Bench on the appeal of the Matkowski proceedings but this did not apparently influence the Court as it upheld the penalty of revocation as an appropriate response to the proven matters in those proceedings. Council further notes that the submissions in this area appear to be a rearguing of the Council's penalty of revocation from the Matkowski proceedings, upheld on appeal.)

17. The Applicant's legal counsel reviewed the documentation at Tab 51 of the Applicant's documentation with respect to a Boundaries Program at Vanderbilt University Medical Centre wherein it appears the Applicant completed a three day continuing medical education course entitled "Maintaining Proper Boundaries".

18. The Applicant's legal counsel then referenced summaries of penalties from British Columbia, made comment that in the Bilson proceedings the Applicant was found guilty of only 5 out of 30 charges and that there may be local mentoring opportunities for the Applicant, should his licence be restored. Finally, the Applicant himself addressed Council to apologize to the College, to his colleagues and to society. He stated that he had "harmed patients the most". He stated that what had occurred with patient K. H. would never happen again and that he had learned a lot.

E. SUBMISSIONS ON BEHALF OF THE COLLEGE

19. Legal counsel on behalf of the College submitted a 38 page written submission as well as filing a list of documents comprising 27 distinct documentary items. Legal

counsel began with the submission that the present application for licensure was premature given the pending College investigations regarding patients J. W. and V. P. and the pending criminal charges.

20. With respect to the merits of the application itself, the College's legal counsel referenced an alleged lack of evidence of rehabilitation and that the Applicant appears to not accept the findings of the Matkowski proceedings with respect to the nature of the sexual relationship with a patient. She canvassed the history of past professional misconduct which includes, among other things, sexual abuse charges and clinical performance issues. She referenced Section 69.1 of *The Medical Professions Act*, 1981. Mention was made of past negative assessments by Drs. Sommerville, Smith and Fenton. She referenced Ontario legislation which in similar circumstances would have precluded the Applicant from applying for a licence for 5 years. She outlined the specific criteria for licence restoration in Ontario and addressed them in relation to how the Applicant's present situation can be characterized.

21. In particular, reference was made to the 1991 Report of the Ontario Task Force on Sexual Abuse of Patients, commissioned by the Ontario College of Physicians and Surgeons, which outlined some criteria that must be met for a physician to have a license restored. These criteria, along with the College's perspective as to how such applies to the Applicant, are found at pages 14 to 19 of the College's written submissions. What follows are just a few of the criteria and their application to the Applicant:

- (a) the physician must have acknowledged the harm of his actions (Dr. Huerto did apologize before Council but continues to minimize the circumstances regarding patient K. H.);
- (b) a physician must have come to an understanding of why the abuse occurred, and been able to demonstrate that the conditions leading to the abuse

will not occur again (the Applicant has neither provided any insight into why he sexually abused K. H. nor taken any meaningful steps to prevent a reoccurrence);

(c) the physician must have participated in an approved rehabilitation program with specific treatment goals, and have complied with and met all goals (the Applicant has not entered into a rehabilitation program and has not established any goals for rehabilitation or shown compliance with such goals. The Boundary Course attended did not address the issues and matters giving rise to the K. H. conviction);

(d) the physician must demonstrate that his behaviour relevant to the abuse has changed and will remain changed (the Applicant has done nothing to indicate a change in behaviour);

(e) a physician must demonstrate ongoing rehabilitation therapy and monitoring by the College (the Applicant has not undertaken any therapy and there is no plan for monitoring by the College);

(f) the College's written submissions go on to identify numerous other examples of criteria and non-compliance by the Applicant.

22. The written submissions on behalf of the College as to the characterization of the patient K. H. circumstances and whether the Applicant would likely modify his conduct in the future are found at pages 19 to 36. In short, the College's submissions are to the effect that it is beyond doubt that the Applicant abused and exploited patient K. H. in circumstances where it was clearly sexual abuse, even though the Applicant continues to downplay the effect of the relationship. Though the written submissions are lengthy, reference to one aspect is warranted. In the Ontario Report of the Task

Force on Sexual Abuse of Patients it was concluded, among other things, that the doctor-patient relationship is a fiduciary relationship in which the physician cannot permit a conflict between the interest of the patient and any other interest, particularly his own. Due to the position of power the physician brings to the doctor-patient relationship there are no circumstances – none – in which sexual activity between a physician and patient is acceptable. Sexual activity between a patient and a doctor always represents sexual abuse, regardless of what rationalization or belief system the doctor chooses to excuse it. With respect to the likelihood of the Applicant modifying his conduct in the future, in addition to the lack of response to the Ontario criteria referred to above, the findings in the Matkowski proceedings and the Bilson proceedings strongly indicate a lack of truthfulness on the part of the Applicant and any indication of an ability to change his behaviours. Finally, the assessment by Professional Assessment Services concluded that “the likelihood of any change in his style of practice or personal relationship is vanishingly small”. The College outlines as well a number of reasons for questioning the assessment carried out by National Forensic and Medical-Legal Services Inc. including the fact that some of the information the Applicant provided to that latter assessment service was not truthful and was incomplete. In addition, the latter assessment, in many areas, flies in the face of the conclusions of the Matkowski proceedings.

F. ANALYSIS

23. In considering the submissions on behalf of both the Applicant and the College, Council begins from the perspective that its revocation of the Applicant’s licensure in November, 2003, put in final effect in March, 2005, was based on the extremely serious nature of the charges for which the Applicant had been then found guilty and his previous disciplinary history. The present debate about the Applicant’s risk of harm and the present debate before Council as to the true nature of the sexual relationship with K. H. must be considered in the context of the Council’s rulings in

November, 2003 which are not, in the present proceedings, properly to be the subject of an appeal to this Council. In November, 2003 Council stated the following:

Council considered and accepted Mr. Salte's summary that the appropriate penalty is to be based on the seriousness of Dr. Huerto's conduct as found by the Discipline Committee, his refusal to accept responsibility for his actions, the lack of likelihood of rehabilitation and his previous record of unprofessional conduct.

The finding of guilt and the circumstances involved in count 2 reveal, in essence, sexual abuse of a patient. It shows a serious breach of a physician's fiduciary duty. Council has considered the previous discipline decisions in this area and the literature referred to by Mr. Salte regarding the effect of such transgression. It also considered Mr. Scherman's submissions that Dr. Huerto did admit to a sexual relationship with a patient, though he felt the circumstances of the same were important to address.

The finding of guilt and the circumstances of count 3 and 6 reveal, at a minimum, dishonesty, lack of integrity and fundamental untruthfulness. This is further echoed by the findings of the Discipline Committee with respect to Dr. Huerto's credibility in his testimony at the Discipline Hearing.

Combined with the above, the finding of the Discipline Committee that Dr. Huerto exhibited a continuing pattern of blaming others and his misleading Council leaves the Council with the view that the possibility of rehabilitation is unlikely.

Council is very mindful that Section 69.1 of *The Medical Professions Act*, 1981, requires us to ensure that the protection of the public takes priority over the interests of Dr. Huerto and his protestation that his suspension and his assessment would suffice as a penalty.

Finally, Council has considered the recommendations of the Discipline Committee to consider "the highest possible discipline be imposed" on Dr. Huerto. In our view revocation of Licence is the highest possible discipline that can be imposed. However, even without the sentencing recommendation of the Discipline Committee, Council considers revocation to be the appropriate sanction based on the guilty findings, the previous discipline history and the unlikelihood of rehabilitation.

24. In the above ruling, Council made conclusions on the likely rehabilitation prospects of the Applicant. In considering such, and considering the submissions of the Applicant and the College in these proceedings as to what has, or has not,

occurred, the Applicant has not met the threshold of convincing Council that its decision in November, 2003 is now no longer appropriate. Council adopts the submissions of the College found at pages 14 to 19 and 24 to 36 of its written submissions and in particular finds that the Ontario Task Force criteria for license restoration is an appropriate benchmark and the Applicant has failed to even come close to meeting the stated criteria. Many of these criteria speak to providing some assurance that public safety is being addressed. In the absence of compliance with so many criteria, Council is partially left with the conclusion that the best predictor of the future is the past. Further, with respect to the post-revocation assessments, Council finds that the assessment by Professional Assessment Services is the only reliable assessment before Council as it was a multidisciplinary assessment conducted pursuant to court order and both the Applicant and the College had input into the information to assist the assessment. However, even with this assessment, the Applicant provided information that was not truthful. In any event, this assessment does conclude the strong unlikelihood of any change in the Applicant's style of practice or personal relationships and concludes that the Applicant has a narcissistic personality disorder. In contrast, the assessment by Dr. Darlington is flawed by reason, among other things, of being based solely on input from the Applicant himself and is based on an inaccurate factual foundation.

25. Related to this is the Applicant's apparent attempt to "appeal" to Council or to otherwise convince it that the November, 2003 findings of Council with respect to patient K. H. should now be characterized as something other than sexual abuse. Council has considered the material and the submissions made by the Applicant on this matter as well as those of College which can be found at pages 19 to 24 of the College's written submissions. In this regard, Council accepts the submissions and characterization of the matter as argued on behalf of the College that the Matkowski proceedings involved sexual abuse and that the Applicant continues to argue otherwise or diminish the implications in these proceedings. All of this might of itself

be sufficient reason to refuse the application for licensure. That is, that the Applicant evinces an ongoing and present inability or unwillingness to accept Council's November, 2003 penalty and the reasons therefore.

G. CONCLUSION

26. Council finds that it need not consider this present application for licensure premature. The reasons for revocation of licensure in November, 2003 were based on extremely serious proven allegations as well as a previous history of disciplinary proceedings. Council further finds that the Applicant has done nothing of significance to change Council's mind that revocation continues to be appropriate. Finding the application premature might suggest to the Applicant that if the present pending matters were resolved in his favour, Council would look favourably on his application. That is not the case. Council is convinced that the present request for application is not in any sense appropriate given the proven past disciplinary record of the Applicant and the lack of evidence as to rehabilitation.

27. The submissions on behalf of Applicant are of the nature that Council should view the revocation as a suspension that can be lifted at this time. It is Council's view that a revocation must have a significant punitive connotation and effect. Though it is not willing to indicate a minimum period of time to pass before reapplication, it is clear to Council that given the past history of professional discipline and the failure of the Applicant to show that there has been significant change since then makes the refusal of the application for licensure at this time the most appropriate response. The application is refused.