

**IN THE MATTER OF THE *MEDICAL PROFESSION ACT*, 1981,
R.S.S. 1980-81, C. M-10.1, AND**

**DR. CARLOS HUERTO,
MEDICAL PRACTITIONER OF
SASKATOON, SASKATCHEWAN**

**HEARING OF THE DISCIPLINARY HEARING COMMITTEE
OF THE COLLEGE OF PHYSICIANS AND SURGEONS
OF SASKATCHEWAN**

**Saskatoon, Saskatchewan
November 6, 2003**

**Before: Walter Matkowski, Deputy Chair
Dr. David Johnston
Dr. Lorne Rabuka**

**Counsel: Bryan E. Salte, for the College of Physicians and Surgeons
Brian Scherman, Q.C. and Heather MacMillan-Brown
for Dr. Carlos Huerto**

Decision

The Council of the College of Physicians and Surgeons had directed that the Disciplinary Committee hear and determine the following disciplinary charges brought against Dr. Carlos Huerto.

Charge #2

You Dr. Carlos Huerto are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of section 46(o) and/or section 46(p) of *The Medical Profession Act*, 1981 s.s. 1980-81 c. M-10.1 and/or bylaw 44(2) and/or bylaw 51(2)(q) of the bylaws of the College of Physicians and Surgeons of Saskatchewan.

The evidence that will be lead in support of this charge will include the following:

- (a) A female person hereinafter referred to in this charge by the initials K.H. was your patient;
- (b) You engaged in a sexual relationship with K.H.

Charge #3

You Dr. Carlos Huerto are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of section 46(n) and/or section 46(o) and/or section 46(p) of *The Medical Profession Act, 1981* s.s. 1980-81 c. M-10.1 and/or bylaw 44(2) of the bylaws of the College of Physicians and Surgeons of Saskatchewan.

The evidence that will be lead in support of this charge will include the following:

- (a) A female person hereinafter referred to in this charge by the initials K.H. was your patient;
- (b) In or about the year 1992 you prescribed medications for K.H.;
- (c) Some or all of the medications that you prescribed to K.H. were not necessary for her medical condition and/or were not intended for her use and/or were not used by her.

Charge #4

You Dr. Carlos Huerto are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of section 46(o) and/or section 46(p) of *The Medical Profession Act, 1981* s.s. 1980-81 c. M-10.1 and/or bylaw 51(2)(g) of the bylaws of the College of Physicians and Surgeons of Saskatchewan.

The evidence that will be lead in support of this charge will include the following:

- (a) A female person hereinafter referred to in this charge by the initials K.H. was your patient;
- (b) You placed one or more entries in the patient chart for K.H. which were inaccurate and/or misleading and/or false.

Charge #6

You Dr. Carlos Huerto are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of section 46(o) of *The Medical Profession Act, 1981* s.s. 1980-81 c. M-10.1.

The evidence that will be lead in support of this charge will include the following:

- (a) You swore affidavits on or about the 14th of July, 2000, the 5th of January 2001 and the 9th of February, 2001 relating to your financial circumstances;
- (b) The information that you provided in one or more of these affidavits was false and/or misleading and/or failed to provide full and complete disclosure of your financial situation.

Charge #7

You Dr. Carlos Huerto are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of section 46(o) of *The Medical Profession Act, 1981* s.s. 1980-81 c. M-10.1.

The evidence that will be lead in support of this charge will include the following:

- (a) You, through your legal counsel, made representations to the Council of the College of Physicians and Surgeons of Saskatchewan relating to your ability to pay a cost award to the College of Physicians and Surgeons at your penalty hearing in February, 2000;
- (b) In providing those representations, you provided false and/or misleading information and/or failed to provide full and candid information relating to your ability to pay a cost award.

Charge #8

You Dr. Carlos Huerto are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of section 46(o) and/or section 46(p) of *The Medical Profession Act, 1981* s.s. 1980-81 c. M-10.1 and/or bylaw 44(2) of the bylaws of the College of Physicians and Surgeons of Saskatchewan.

The evidence that will be lead in support of this charge will include the following:

- (a) The College of Physicians and Surgeons received a complaint with respect to your treatment of a patient hereinafter referred to in this charge by the initials S.O.;
- (b) The College of Physicians and Surgeons investigated that complaint by obtaining an order authorizing a search for the patient chart for the patient S.O. and appointing a preliminary inquiry committee to investigate that complaint;
- (c) You represented to the preliminary inquiry committee that the patient chart for the patient S.O. was not in your possession and suggested that the patient chart had been removed by S.O.;
- (d) In so doing, you knowingly provided false information to the preliminary inquiry committee;
- (e) You represented to your patient S.O. that you did not have possession of her patient chart;
- (f) During a search of your home on or about the 12th of June, 2001, the patient chart for S.O. for the period ending with 1998 was located;
- (g) You failed to co-operate with the investigation of the College of Physicians and Surgeons by advising the College of Physicians and Surgeons that you had possession of that patient chart;
- (h) You failed to notify your patient, S.O. that you were in possession of her patient chart.

Charge #9

You Dr. Carlos Huerto are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of section 46(o) and/or section 46(p) of *The Medical Profession Act, 1981* s.s. 1980-81 c. M-10.1 and/or bylaw 44(2) and/or bylaw 51(2)(q) of the bylaws of the College of Physicians and Surgeons of Saskatchewan.

The evidence that will be lead in support of this charge will include the following:

- (a) A female patient hereinafter referred to in this charge by the initials S.O. was your patient;
- (b) You kissed S.O.;

- (c) You told S.O. that you loved her;
- (d) You used inappropriate language with your patient S.O. describing her fiancée as “the person that you are screwing” or using similar language.

Charge #10

You Dr. Carlos Huerto are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of section 46(o) and/or section 46(p) of *The Medical Profession Act, 1981* s.s. 1980-81 c. M-10.1 and/or bylaw 44(2) of the bylaws of the College of Physicians and Surgeons of Saskatchewan.

The evidence that will be lead in support of this charge will include the following:

- (a) You did not provide S.O. with the information necessary for her to provide informed decisions about her medical care; and/or
- (b) You did not advise S.O. of the drugs that you were providing to her; and/or
- (c) You did not advise S.O. of the reason that she was undergoing tests; and/or
- (d) You did not provide S.O. with information relating to the treatment he was planning or alternatives to that treatment and/or
- (e) You did not answer S.O.’s questions to the best of your ability.

At the hearing, Dr. Huerto plead not guilty to all charges. The College withdrew Charges #1 and #5.

Relevant Statutory Authorities

“Section 46(n) of *The Medical Profession Act, 1981* provides as follows:

46. Without in any way restricting the generality of “unbecoming, improper, unprofessional or discreditable conduct”, a person whose name is entered on the register, the education register or the temporary register is guilty of unbecoming, improper, unprofessional or discreditable conduct, where he:

- (n) prescribes drugs for other than medical or therapeutic purposes.”
- (o) does or fails to do any act or thing where the discipline hearing committee considers that action or failure to be unbecoming, improper, unprofessional or discreditable.
- (p) does or fails to do any act or thing where the council has, by bylaw, defined that act or failure to be unbecoming, improper, unprofessional or discreditable.

Sections 44(2) and 51(2)(q) of the Bylaws provide as follows:

44(2) Contravention of or failure to comply with the Code of Ethics is unbecoming, improper, unprofessional or discreditable conduct for the purpose of the Act.

51(2) The following acts or failures are defined to be unbecoming, improper, unprofessional or discreditable conduct for the purpose of clause 46(p) of *The Medical Profession Act, 1981*. The enumeration of this conduct does not limit the ability of Discipline Hearing Committees to determine that conduct of a physician is unbecoming, improper, unprofessional or discreditable pursuant to clause 46(o):

- (q) committing an act of sexual impropriety with a patient or an act of sexual violation of a patient.

Sexual impropriety is defined as follows in section 51(1)(g) of the Bylaws:

51(1) In this section:

- (g) “sexual impropriety” and “sexual violation” include, but are not limited to:
 - (i) acts or behaviors which are seductive or sexually demeaning to a patient or which reflect a lack of respect for the patient’s privacy, such as examining a patient in the presence of third parties without the patient’s consent or sexual comments about a patient’s body or underclothing;

- (ii) making sexualized or sexually demeaning comments to a patient;
- (iii) requesting details of sexual history or sexual likes or dislikes when not clinically indicated;
- (iv) making a request to date a patient, or dating a patient;
- (v) initiation by the physician of conversation regarding the sexual problems, preferences or fantasies of the physician;
- (vi) kissing of a sexual nature with a patient;
- (vii) physician-patient sex whether initiated by the patient or not;
- (viii) conduct with a patient which is sexual or may reasonably be interpreted as sexual, such as touching any sexualized body part of a patient except for the purpose of an appropriate examination or treatment;
- (ix) touching any sexualized body part of the patient where the patient has refused or withdrawn consent;
- (x) sexual acts by the physician in the presence of the patient.”

Introduction:

Counsel for both the College and Dr. Huerto argued that most of the charges against Dr. Huerto turned on questions of credibility. From the College’s perspective, the testimony of both Dr. Huerto and Jane Heaslip left much to be desired. Counsel for the College also argued that the testimony of Francisco Norez Garcia in regard to providing Dr. Huerto with \$100,000.00 was fabricated testimony.

Counsel for Dr. Huerto argued that the testimony of K.H. was beyond belief and lacked any credibility. Counsel for Dr. Huerto submitted that the testimony of S.O. and T.R., in regard to what transpired with Dr. Huerto, was incorrect, and nothing more than a simple mistake due to the extreme stress they were both under as a result of S.O.’s medical condition.

This was a difficult case for the Committee to consider, in that most if not all of the primary witnesses who testified had some arguable reason to lie or to be inaccurate in regard to various portions of their testimony.

For example, Ms. Heaslip was a former lover of Dr. Huerto. They lived together from 1972 to 1978. In the 1980's, Dr. Huerto and Ms. Heaslip renewed their relationship in a social way only. At that time, Dr. Huerto's wife returned to the United States. Dr. Huerto maintained custody of their son, Charlie. Dr. Huerto asked Ms. Heaslip if she would assist raising Charlie because he had no time to look after his son. Ms. Heaslip agreed and had Charlie live in her home and cared for him. She described her relationship with Dr. Huerto as that of a co-parent. Dr. Huerto committed to stay involved in Charlie's family life and to have one meal a day with Charlie and Ms. Heaslip, as a family. Dr. Huerto and Ms. Heaslip lived in close proximity to one another.

Ms. Heaslip also became involved in Dr. Huerto's clinic and worked countless hours at the clinic and never received a salary or wage from Dr. Huerto. When the clinic ran into financial difficulties, Ms. Heaslip cashed in RRSPs and jewellery and provided the proceeds to Dr. Huerto's clinic. The evidence indicated that Ms. Heaslip supported Dr. Huerto in any way that she could. Given these facts, it was certainly arguable that Ms. Heaslip's testimony was biased in favor of Dr. Huerto. It was also evident that Ms. Heaslip did not like K.H. and her evidence in regard to K.H. was often not credible. For example, Ms. Heaslip attempted to convince the Committee that she was not aware Dr. Huerto and K.H. maintained a sexual relationship for eleven years.

Dr. Huerto's testimony was nothing short of dismal. Following his testimony, he apologized to the Committee for being a poor witness. Dr. Huerto gave evidence in an evasive and contradictory fashion. The Committee will give an example of this in its discussion in regard to Charge #2.

K.H. also had reason to fabricate testimony. In 1989 while a patient, she entered into a sexual relationship with Dr. Huerto which lasted until 2000. Soon after the relationship started, she became an employee of the clinic. At about this time, she started cleaning Dr. Huerto's house. She continued to do domestic chores such as painting Dr. Huerto's house and Ms. Heaslip's house. K.H. committed herself wholeheartedly to Dr. Huerto and the clinic. Her relationship with Ms. Heaslip was estranged. Ultimately, K.H. came to the realization that she was being used. The sexual relationship with Dr. Huerto ended and her employment at the clinic ended. She later came forward with the sexual allegations as against Dr. Huerto. She attended at Dr. Huerto's house during the College's 2001 search uninvited and attempted to assist the individuals who conducted the search. This demonstrated her more than passing interest in seeing Dr. Huerto held accountable for his actions.

It was also demonstrated that K.H. gave testimony before this Committee which was inconsistent with the testimony which she gave before a different disciplinary Committee in 1999.

In regard to the testimony of S.O. and T.R., both individuals were under a tremendous amount of stress due to the fact that S.O. was extremely ill and had been advised by a physician prior to her

seeing Dr. Huerto that she may have multiple sclerosis. It is therefore conceivable or arguable that their testimony was inaccurate or mistaken.

In regard to the testimony of Francisco Norez Garcia, Senior Garcia was a long-time close family friend of Dr. Huerto. This placed his testimony, which was at times incredible, in doubt.

Both counsel masterfully argued that various witnesses were inaccurate or in fact, intentionally misleading this Committee. Both counsel possessed an abundance of incredible stories provided by the various witnesses to assist them in their arguments that certain witnesses could not be believed.

Burden of Proof for Disciplinary Charges in Saskatchewan

In his Brief of Law, counsel for the College set out a number of recent Saskatchewan decisions dealing with the burden of proof in a disciplinary hearing. Counsel for the College accepted that the burden of proof rests upon the College to produce “cogent evidence”, “well-founded evidence” or “credible testimony” to establish the allegations made against Dr. Huerto.

This Committee accepts the recent pronouncement on the issue of the burden of proof for disciplinary charges in Saskatchewan as set out in the decision *Hanna v. College of Physicians and Surgeons of Saskatchewan* [1999] S.J. No. 334. In *Hanna, supra*, Mr. Justice Baynton provides at page 5:

“¶ 14. The parties disagree as to the appropriate standard of proof that applies to charges heard by a disciplinary hearing committee. Courts have from time to time utilized different terminology to describe the standard of proof in any given situation. In my view there is but one standard of proof in a civil case, and that is on a balance of probabilities. Even when serious allegations are involved, the standard of proof does not shift to proof beyond a reasonable doubt as is the standard in a criminal case. I adopt the reasoning and the authorities relied on by Klebuc J. in dealing with this issue in *Westfair Foods Limited (Superstore) v. United Food and Commercial Workers, Local 1400, and Laurie Stewart*, [1998] S.J. No. 822 (Q.B. 1117 of 1997, J.C.S., November 13, 1998). He concludes in effect that the standard of proof does not shift but what constitutes cogent evidence will vary from one case to another depending on the nature of the matter to be established.”

Charge #2

Charge: You Dr. Carlos Huerto are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of section 46(o) and/or section 46(p) of *The Medical Profession Act, 1981* s.s. 1980-81 c. M-10.1 and/or bylaw 44(2) and/or bylaw 51(2)(q) of the bylaws of the College of Physicians and Surgeons of Saskatchewan.

The evidence that will be lead in support of this charge will include following:

- (a) A female person hereinafter referred to in this charge by the initials K.H. was your patient.
- (b) You engaged in a sexual relationship with K.H.

Analysis - Charge #2:

Both counsel agreed, based on the evidence, that Dr. Huerto was guilty of this charge.

However, even when admitting his guilt, Dr. Huerto was less than candid with this Committee. Dr. Huerto would admit his guilt, then testify that technically K.H. was no longer his patient when he commenced the sexual relationship with her and that she was his employee. He then stated that he still treated her on occasion if she asked or if it was an emergency situation. She then became his patient again in 1997, at her insistence, while their sexual relationship was still ongoing.

Under cross-examination, Dr. Huerto stated that he told K.H. on the night that their sexual relationship started, that he couldn't be her doctor anymore and that his relationship with her was that of employer/employee, not doctor/patient. The Committee finally asked Dr. Huerto to clarify whether or not he was guilty of Charge #2. Dr. Huerto admitted he was guilty.

Though finally conceding his guilt, Dr. Huerto still would not take full responsibility for his actions. He continued to make excuses and attempted to justify his disreputable conduct. Dr. Huerto's testimony in regard to his sexual relationship with K.H. was nothing short of unacceptable and unbelievable.

This Committee accepts the evidence of K.H. and finds that a sexual relationship started shortly after she commenced seeing Dr. Huerto as her physician and lasted until 2000. This Committee accepts that K.H. was a vulnerable patient and that Dr. Huerto preyed on her vulnerability. This Committee accepts the evidence of K.H. that the sexual relationship with Dr. Huerto started in 1989 rather than Dr. Huerto's testimony that a sexual relationship with K.H. started in approximately 1993.

This Committee accepts the evidence of K.H. and finds that she was infatuated with Dr. Huerto, being the worldly, powerful, knowledgeable physician. This Committee accepts the testimony of K.H. that she was used by Dr. Huerto, who had her clean his home, paint his house and help with repairs at the clinic. It was sheer folly for Dr. Huerto to have established this type of a relationship with a patient.

This Committee rejects the suggestion that at the very least, “this was a long standing consensual sexual relationship between two adults which K.H. very much wanted to exist.”

This Committee accepts that initially, K.H. was in a very vulnerable position when she first saw Dr. Huerto and that Dr. Huerto preyed upon K.H. when, as a physician, dealing with a patient, he ought to have known better. This is especially so because Dr. Huerto provided psychotherapy to K.H. on a number of occasions.

The Committee accepts that Dr. Huerto maintained and held the power in the relationship. K.H. worked long hours for Dr. Huerto, cleaned his home, painted his home, did numerous other tasks and maintained a sexual relationship with Dr. Huerto. She did not hold the power in this relationship.

This Committee has no hesitation in finding that as admitted by Dr. Huerto, he entered into a sexual relationship with a patient which is contrary to the provisions of *The Medical Profession Act* and the bylaws of the College, and that he is guilty of Charge #2.

Charge #3:

Charge: You Dr. Carlos Huerto are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of section 46(n) and/or section 46(o) and/or section 46(p) of *The Medical Profession Act, 1981* s.s. 1980-81 c. M-10.1 and/or bylaw 44(2) of the bylaws of the College of Physicians and Surgeons of Saskatchewan.

The evidence that will be lead in support of this charge will include the following:

- (a) A female person hereinafter referred to in this charge by the initials K.H. was your patient.
- (b) In or about the year 1992 you prescribed medications for K.H.;
- (c) Some or all of the medications that you prescribed to K.H. were not necessary for her medical condition and/or were not intended for her use and/or were not used by her.

Facts and Analysis

It is accepted that K.H. was Dr. Huerto's patient in 1992. It is accepted that a large quantity of drugs were prescribed by Dr. Huerto to K.H. in 1991 and 1992 and that a large quantity of drugs prescribed by Dr. Huerto to K.H. were found in Dr. Huerto's home and/or Ms. Heaslip's home during the 2001 search. On May 16, 1992, the following drugs were prescribed by Dr. Huerto to K.H. and were found in the 2001 search:

- i) Questram, 600 Disbursed
 12 boxes x 30 pouches = 360 Found in Search;
- ii) Tylenol #3, 120 Disbursed
 120 Found in Search;
- iii) Ranitidine, 200 Disbursed
 200 Found in Search;
- iv) Dexamethasone, 300 Disbursed
 300 Found in Search;
- v) Simvastatin, 400 Disbursed
 400 Found in Search;
- vi) Lorazepam, 500 Disbursed
 500 Found in Search;
- vii) Flecainide, 300 Disbursed
 300 Found in Search;
- viii) Salbutamol, 400 Disbursed
 400 Found in Search;
- ix) Digoxin, 2 Bottles x 100 Tablets Disbursed
 200 Found in Search;
- x) Furosemide, 200 Tablets Disbursed
 200 Found in Search;
- xi) Cloxicillin, 56 Tablets Disbursed
 56 Found in Search.

Dr. Huerto conceded that there was nothing in K.H.'s patient chart which would medically justify prescribing the various medications to K.H. on May 16, 1992. Dr. Huerto testified that the majority of medications would have lasted K.H. to at least the end of August, 1992.

Dr. Huerto sent correspondence dated June 17, 1992 to K.H.'s referring physician, Dr. Kost. In the letter, Dr. Huerto lists the medications which K.H. is taking as "Cimetidine". No other medications are listed. The June 17 letter to Dr. Kost was typed by K.H.

A second letter was sent by Dr. Huerto to Dr. Kost dated July 7, 1992 which again listed that K.H. was on the medication "Cimetidine". The correspondence, typed by K.H., also provides in part:

"In view of the above findings, she was placed on a series of medications including Gravol intramuscularly, Serc 8 mg stat and 4 mg tid, surgam SR 600 mg per day, Coumadin 10 mg od, and electric panty hose...A subsequent electrocardiogram has demonstrated no signs of acute pericarditis or signs of left or right ventricular decompensation except for the H2 blocker and the Coumadin, all other medication has been discontinued."

Dr. Huerto prepared a History and Physical Sheet, St. Paul's Hospital, dated January 26, 1993 for K.H. prior to K.H. having surgery. The document lists that K.H. is receiving Cimetidine.

In June, 1991 and September, 1991, K.H. was prescribed the following drugs by Dr. Huerto, which were also found in the 2001 search:

- i) Furosemide, June 26, 1991, 400 Tablets Disbursed (T.D.)
800 Found in Search;
- ii) Flecainide, June 26, 1991, 400 T.D.
800 Found in Search;
- iii) Transderm Nitro, June 26, 1992, 90 T.D.
180 Found in Search;
- iv) Adalat, June 26, 1991, 600 T.D.
1200 Found in Search;
- v) Lorazepam, June 26, 1991, 200 T.D.
400 Found in Search
- vi) Dexamethasone, September 12, 1991, 800 T.D.
400 Found in Search;

- vii) Salbutamol, September 15, 1991, 400 T.D.
400 Found in Search;
- viii) Danazole, September 12, 1991 200 T.D.
100 Found in Search.

Dr. Huerto conceded that the prescribed quantities of drugs for K.H. would mean that he intended for K.H. to remain on these medications until after December 6, 1991.

In correspondence to Dr. Kost dated December 6, 1991, Dr. Huerto lists the "present medications" which K.H. is on as "Cimetidine." No other medications are listed.

Ms. Heaslip testified that K.H.'s patient chart was incomplete and that it did not document medical conditions and medical problems that K.H. had. She testified that there were holter monitor reports, echos and ECG's missing from the charts. Ms. Heaslip testified that K.H. took the drugs, Questran, Cimetidine, Digoxin, Flecainide, Furosemide, Isosorbide Dinitrate, Ranitidine, Simvastatin and Triamterene.

Ms. Heaslip testified that she had no idea how the drugs found in the 2001 search came to be in her house.

The Committee was able to examine the vast quantity of drugs prescribed by Dr. Huerto to K.H. in 1991 and 1992 which were seized by the College during the 2001 search. The majority of the pill bottles or boxes were unopened and appeared to be in their original prescription containers.

K.H. testified that she maintained her patient chart while she saw Dr. Huerto. She testified that the vast majority of the drugs which were prescribed to her by Dr. Huerto in 1991 and 1992 were drugs which she had never used. She specifically testified that she never took the drugs Flecainide, Salbutamol, Ranitidine, Dexamethasone, Digoxin, Questran and Adalat. She testified that she had taken samples of Furosemide, Lorazepam and Cloxicillin in the past, and had taken Tylenol #3 only after some recent surgery.

K.H. testified that Dr. Huerto wrote out a prescription on two occasions (as best she recalled), and asked her to pick up the drugs prescribed. Dr. Huerto advised her that the cost would be nominal because the drugs were covered under the drug plan. K.H. testified that she picked up the drugs and gave them to Dr. Huerto. She recalled Dr. Huerto referencing that he wanted to use the drugs to treat Ms. Heaslip's father. K.H. testified she had no idea how the seized drugs came to be found in either Dr. Huerto's home or Ms. Heaslip's home.

Dr. Huerto testified that he prescribed the various drugs for K.H.'s use and that K.H.'s patient chart was incomplete. Dr. Huerto testified that if the chart had been complete, the medications which he prescribed in 1991 and 1992 to K.H. would have been medically warranted. Dr. Huerto alleged that K.H. must have planted the various drugs in his house.

Charge #3 provides that Dr. Huerto prescribed medications for K.H. in 1991 and 1992. The evidence confirms this fact. The College alleges firstly, that the medications were not intended for K.H. and were not used by K.H. Counsel for the College argued that in the event this Committee came to the conclusion that the various drugs were intended for use by K.H., that the drugs were not necessary for her medical condition.

Counsel for Dr. Huerto argued that this Committee look beyond K.H.'s patient chart prior to determining Dr. Huerto's guilt. Counsel argued that because K.H. maintained her own patient chart, she was able to strip the chart of any evidence which would assist Dr. Huerto in proving his innocence. Counsel for Dr. Huerto submitted that it was probable K.H. planted all the drug containers which were in her name in Dr. Huerto's home and Ms. Heaslip's home.

This Committee accepts the evidence of K.H. that she obtained the various drugs for Dr. Huerto in 1991 and 1992 and that the drugs were not intended for her use and were not used by her, but rather, were given to Dr. Huerto by K.H.

The independent evidence confirms that the drugs were not intended for K.H.'s use and were never used by K.H. This independent evidence consists of the letters sent by Dr. Huerto to Dr. Kost in 1991 and 1992. These letters do not reference the many drugs that Dr. Huerto claims K.H. was taking at that time, or the serious medical conditions that, according to Dr. Huerto's testimony, medically justified K.H. receiving the drugs.

This Committee rejects counsel for Dr. Huerto's assertion that K.H., as the typist of the letters to Dr. Kost, would have deleted relevant information. This Committee rejects Dr. Huerto's testimony that he verbally advised Dr. Kost of the many medications he prescribed for K.H. and the diagnosis leading to the prescription of the medications. Dr. Huerto's supposed diagnosis to Dr. Kost was that K.H. was suffering from atrial paroxysmal fibrillation, paroxysmal super ventricular tachycardia and non-sustained tachycardia.

Another independent piece of evidence was the St. Paul's Hospital History and Physical Sheet, prepared and signed by Dr. Huerto for K.H.'s admission dated January 25, 1993. This document against lists K.H.'s only medication as "Cimetidine" and provides that her cardiovascular system was only "atypical chest distress."

This Committee rejects Dr. Huerto's assertion that he simply signed anything that K.H. placed in front of him to explain the variance between the letters to Dr. Kost (and the St. Paul's document) and his testimony.

This Committee rejects the proposition that K.H., having been diagnosed by Dr. Huerto with serious medical conditions, would maintain these prescriptions, unopened, and plant them in Dr. Huerto's and Ms. Heaslip's home approximately 9 years later.

This Committee rejects the evidence of Dr. Huerto and Ms. Heaslip and the ensuing arguments of counsel for Dr. Huerto that K.H. was prescribed the drugs and simply chose not to use them. This Committee rejects the self-serving evidence of Dr. Huerto and Ms. Heaslip that K.H. was taking all or some of the medications prescribed to her in 1991 and 1992 by Dr. Huerto. This Committee rejects Dr. Huerto's evidence and Ms. Heaslip's evidence that K.H.'s file was incomplete during the relevant time for Charge #3.

This Committee rejects the assertion that K.H. manipulated the Dr. Kost letters and the St. Paul's Admission Document. As counsel for Dr. Huerto points out in regard to a later charge, K.H., as at July 1999, was still a strong advocate for Dr. Huerto. She testified on his behalf in front of a 1999 Disciplinary Committee. This is many years after the 1991, 1992 and 1993 documents so she would have had no reason to type these documents incorrectly.

This Committee therefore finds that Dr. Huerto prescribed medications for K.H. that were not intended for her use. Rather the drugs were given to Dr. Huerto by K.H. This conduct constitutes a breach of the standard of conduct expected of a physician and is improper, unprofessional and amounts to discreditable conduct. Therefore, this Committee finds Dr. Huerto guilty of Charge #3.

Counsel for the College asked this Committee to consider if the drugs had been intended for K.H. whether they were necessary for her medical condition. The Committee has found that the drugs were not intended for K.H.'s use and that Dr. Huerto was lying to this Committee. It is therefore not necessary to pursue this request by counsel for the College.

Charge #4:

Charge: You Dr. Carlos Huerto are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of section 46(o) and/or section 46(p) of *The Medical Profession Act, 1981* s.s. 1980-81 c. M-10.1 and/or bylaw 51(2)(g) of the bylaws of the College of Physicians and Surgeons of Saskatchewan.

The evidence that will be lead in support of this charge will include the following:

- (a) A female person hereinafter referred to in this charge by the initials K.H. was your patient.
- (b) You placed one or more entries in the patient chart for K.H. which were inaccurate and/or misleading and/or false.

Facts and Analysis

Counsel for the College provided that in order for this Committee to find Dr. Huerto guilty of this charge, the evidence of K.H. would have to be accepted over that of Dr. Huerto. Counsel for Dr. Huerto provided that the evidence of K.H. in regard to Charge #4 was very much in doubt and was contradicted by independent testimony.

K.H. testified that her patient chart was accurate from 1989 to July 2, 1998 (see also: her handwritten notes, Exhibit C-23 which confirmed this fact). Thereafter, K.H. testified that she did not see Dr. Huerto as her physician until December, 1998. K.H.'s patient chart shows that she did see Dr. Huerto for the period of time between July and December, 1998.

K.H. testified that she did not receive an Endoscopy on July 2, 1998, as stated in her patient chart. K.H. testified that she did not see Dr. Huerto on the dates August 26, 30, September 12, 14, 17, 20, October 18, 20, November 3, 11, 14, 17, 18, 20, 24 and December 1, 1998 and that any entries in her patient chart to this effect were inaccurate.

K.H. testified that in 1998, Dr. Huerto had been suspended by the College and that he had said to her words to the effect that he was going to make up for lost time and make money for the time he was suspended.

K.H. specifically testified that she did not receive joint injections from Dr. Huerto for the dates November 24, 1998 and December 3, 1998, as listed in her patient chart.

Counsel for Dr. Huerto vigorously attacked the credibility of K.H. in regard to her testimony that Dr. Huerto was making false entries into her chart to obtain payments for services not performed. He questioned her in regard to previous testimony which she had provided on behalf of Dr. Huerto before a Discipline Committee of the College of Physicians and Surgeons in July, 1999. Before that Committee, while under oath, K.H. had described Dr. Huerto as "a very good doctor, an excellent doctor, as far as what I've seen of doctors."

K.H. also testified before the 1999 Committee that "I've worked there for as many years as you've said and I have not see Dr. Huerto do anything that shouldn't be done."

K.H.'s testimony before the 1999 Committee was that Dr. Huerto was being treated unjustly and that the College was unfairly pursuing complaints against him.

Prior to K. H. being questioned about her 1999 testimony, K.H. testified before this Committee that by 1998 she could see that Dr. Huerto was doing things that were improper. In response to a question from Mr. Scherman that "In 1998 what I'm understanding from your evidence is you're saying you could see clearly that he was doing these improper, illegal and criminal things," K.H.

answered, “Yes, and I talked to him and Jane about it.”

K.H. also testified that in 1998 she realized what Dr. Huerto was doing in regard to his billings and that she had lost respect for him.

Mr. Scherman then utilized the transcripts from K.H.’s testimony before the 1999 Committee and asked her “were you perjuring yourself yesterday or were you perjuring yourself in 1999 when you testified?”

Certainly Mr. Scherman is correct when he argues that K.H.’s testimony in 2002 is at odds with her 1999 testimony.

K.H. conceded that from 1999 to 2002, both her sexual relationship with, and her employment with Dr. Huerto ended.

Barbara Lingley, a nurse resident in Alberta, testified that she has been a patient of Dr. Huerto’s since 1996. She testified that she received joint injections from Dr. Huerto and that during a conversation with Ms. Heaslip about joint injections, K.H. entered into the conversation and added that she had received the injections and that they really worked.

Gail Joyce Brown, a patient of Dr. Huerto’s for seven years testified that K.H. advised her that she was getting injections for her back and joints. Ms. Brown estimated that this conversation occurred in the time period 1997 - 2000.

Charles Van Der Vort, a patient of Dr. Huerto’s, testified before this Committee. He recalled an occasion when he went to Dr. Huerto’s clinic and put some fish in Dr. Huerto’s fridge as an act of kindness. While he was doing this, he saw Dr. Huerto injecting K.H. in the knee.

Dr. Huerto testified that the patient chart entries were accurate.

In regard to Charge #4, there was not clear and cogent evidence that Dr. Huerto placed one or more entries in K.H.’s patient chart for the period in question, which were inaccurate, misleading or false. K.H.’s 2002 testimony was at odds with her 1999 testimony. In addition, three witnesses testified in regard to K.H. receiving joint injections, which was contrary to K.H.’s testimony. Therefore, the majority of this Committee finds Dr. Huerto not guilty of Charge #4. Dr. Rabuka would have found Dr. Huerto guilty of this charge.

Charge #6 and Charge #7:

Charge #6: You Dr. Carlos Huerto are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of section 46(o) of *The Medical Profession Act, 1981* s.s. 1980-81 c. M-10.1.

The evidence that will be lead in support of this charge will include the following:

- (a) You swore affidavits on or about the 14th of July, 2000, the 5th of January 2001 and the 9th of February, 2001 relating to your financial circumstances.
- (b) The information that you provided in one or more of these affidavits was false and/or misleading and/or failed to provide full and complete disclosure of your financial situation.

Charge #7: You Dr. Carlos Huerto are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of section 46(o) of *The Medical Profession Act, 1981* s.s. 1980-81 c. M-10.1.

The evidence that will be lead in support of this charge will include the following:

- (a) You, through your legal counsel, made representations to the Council of the College of Physicians and Surgeons of Saskatchewan relating to your ability to pay a cost award to the College of Physicians and Surgeons at your penalty hearing in February, 2000;
- (b) In providing those representations, you provided false and/or misleading information and/or failed to provide full and candid information relating to your ability to pay a cost award.

Facts:

In regard to Charge #6, counsel for Dr. Huerto conceded that based on the evidence, Dr. Huerto had provided a false Affidavit to the Court of Queen's Bench. However, counsel for Dr. Huerto argued that this was nothing more than human error and that Dr. Huerto had no intent to mislead either the Council or the Court of Queen's Bench. As such, counsel for Dr. Huerto argued that Dr. Huerto was not guilty of these charges.

Counsel for the College argued that Dr. Huerto's evidence that he had "forgotten an investment" when providing the February 9, 2001 Affidavit was again, not credible. Counsel provided that the Committee had a truly independent witness, Ms. Linda Alberts, the RBC Dominion Securities investment advisor, who contradicted Dr. Huerto's testimony. As such, based on the evidence, Dr. Huerto must be found guilty of Charge #6.

The background facts in regard to Charge #6 are not in dispute. In 2000, Dr. Huerto was convicted of certain disciplinary offences. At the penalty hearing conducted in February 2000, counsel for the

College sought a costs order as against Dr. Huerto in the amount of \$172,600.00.

Counsel for Dr. Huerto advised the Council that Dr. Huerto was financially unable to pay a costs award of \$172,600.00 and asked that Dr. Huerto be given time prior to making monthly payments in regard to the costs sought. Council ordered that Dr. Huerto pay costs of \$172,600.00 by way of monthly payments of \$5,000.00 commencing in six months time.

Dr. Huerto applied on two separate occasions to the Court of Queen's Bench for an order staying the payment of the costs. In doing so, he filed three Affidavits dated July 14, 2000, January 5, 2001 and February 9, 2001. In his February 9, 2001 Affidavit, Dr. Huerto states:

"I no longer hold any RRSPs or any other investments. In October of 1999, my last RRSP was cashed in to cover my expenses."

The February 9, 2001 Affidavit was filed in response to a specific concern raised by the College in regard to Dr. Huerto having any RRSP's or other investments.

In 2001, documents were seized during a search of Dr. Huerto's residence which confirmed that in September 2000, Dr. Huerto had invested \$10,700.00 in an account with RBC Dominion Securities. In mid-November, a further \$6,858.14 was invested into the account.

Ms. Linda Alberts, the investment advisor for RBC Dominion Securities, testified before the Committee. She provided that Dr. Huerto contacted her in the fall of 2000 in regard to opening an account and that she attended at his office. She recalled Dr. Huerto stating that he wanted to open an investment account and begin saving for retirement. She estimated that she spent 30 minutes with Dr. Huerto and that Dr. Huerto signed the necessary documents to open the account. In response to an inquiry from Dr. Huerto about biotech stocks, she faxed to Dr. Huerto information about a biotech investment and ultimately received confirmation from Dr. Huerto to make an investment of \$10,700.00.

In approximately mid-November, Ms. Alberts received similar instructions from Dr. Huerto to invest \$6,858.14 in an additional fund.

Dr. Huerto testified that his February 9, 2001 Affidavit was incorrect. He stated that he had forgotten about his investments with RBC Dominion Securities and that he had little recollection of his dealings with Ms. Alberts. Under cross-examination, Dr. Huerto stated that Ms. Alberts called him and that it was inaccurate that he had called her. Dr. Huerto denied spending 30 minutes with Ms. Alberts during their meeting but said the meeting lasted 5 minutes. Dr. Huerto did not recall receiving any faxed information from Ms. Alberts.

Analysis

The Committee accepts the evidence of Ms. Alberts in its entirety and rejects the evidence of Dr. Huerto in regard to Dr. Huerto's investment dealings with RBC Dominion Securities. Ms. Alberts was an independent witness who had absolutely no reason whatsoever to misrepresent any of her dealings with Dr. Huerto.

The Committee rejects the assertion of Dr. Huerto that he forgot about the RBC Dominion Security investments when he swore his February 9, 2001 Affidavit.

It is not necessary for this Committee to determine why Dr. Huerto filed the false Affidavit in order to find Dr. Huerto guilty of Charge #6.

What was necessary was that Dr. Huerto file a truthful affidavit. This Committee finds that by not filing a truthful Affidavit, Dr. Huerto breached the standard of conduct expected of a physician and that his conduct was improper, unprofessional and amounted to discreditable conduct.

Charge #7

Facts and Analysis

Charge #7 was linked with Charge #6 and deals with representations made by Dr. Huerto's counsel at the penalty hearing in February 2000. The charge alleges that false and/or misleading information was provided, or that Dr. Huerto failed to provide full and candid information relating to his ability to pay a cost award. At that time, Dr. Huerto had not made the investments with RBC Dominion Securities.

The representations as made by counsel for Dr. Huerto are recorded in the minutes of the meeting of council as follows:

“Ms. McMillan-Brown stated that since Dr. Huerto was convicted of only eleven of the thirty-five charges brought against him it would be unfair to assess him the costs of the entire proceedings. Council must also remember that Dr. Huerto has been prevented from practicing for fifteen months and that his only income has come from the rental of some of his properties. She indicated it would be difficult for Dr. Huerto to meet the expectation of him paying \$172,600.00 immediately and provided Council with bank statements to back her claim that Dr. Huerto is almost destitute. She contended that Dr. Huerto should be responsible for only 30-40% of the total costs incurred by the College in its prosecution of its case against him.

It was Ms. McMillan-Brown's suggestion that Dr. Huerto be given

time to pay any costs assessed against him by Council. She indicated he would be in a better position to pay the assessed costs once his application under The Health Facilities Act had been approved.

Ms. McMillan-Brown asked that Council not impose any further suspension on Dr. Huerto's privilege to practice medicine and that Council consider issuing Dr. Huerto a reprimand in lieu of any further suspension."

This was an extremely difficult charge for the Committee to consider. This Committee was not comfortable with the proportion that a physician could be held responsible for comments made by his or her solicitor to council of the College of Physicians and Surgeons. If the physician's solicitor is not 100% accurate in conveying information to the council, is the physician responsible? If the physician's solicitor, accustomed to an adversarial system, exaggerates or minimizes a fact, is the physician responsible? This Committee does not think so.

Even if this Committee were wrong in this regard, it would be left with the impossible task of determining the intent of what certain words were meant to convey. For example, the statement that "it would be difficult for Dr. Huerto to meet the expectation of him paying \$172,000.00 immediately" was not challenged as incorrect or misleading. Rather, the College was upset that it found approximately \$75,000.00 at Dr. Huerto's home while conducting a search over one year after Ms. Brown made her representations. Firstly, did Ms. Brown equate "destitute" to Dr. Huerto's assets not equaling his liabilities? Did she equate "destitute" to a negative cash flow? Secondly, did Dr. Huerto acquire any of these monies subsequent to his counsel's representations? Based on the submissions of the College, the \$75,000.00 seized was Dr. Huerto's, not Sr. Garcia's. If that is accepted, it still does not answer when the \$75,000.00 was acquired by Dr. Huerto.

Needless to say, from the Committee's perspective, there was not "clear and cogent evidence" that Dr. Huerto, through the representations of his legal counsel on February 11, 2000, provided false or misleading information, or failed to provide full and candid information relating to his ability to pay a costs award. The Committee therefore finds Dr. Huerto not guilty of this charge.

Charge #8:

Charge #8: You Dr. Carlos Huerto are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of section 46(o) and/or section 46(p) of *The Medical Profession Act, 1981* s.s. 1980-81 c. M-10.1 and/or bylaw 44(2) of the bylaws of the College of Physicians and Surgeons of Saskatchewan.

The evidence that will be lead in support of this charge will include the following:

- (a) The College of Physicians and Surgeons received a complaint with respect to your treatment of a patient hereinafter referred to in this charge by the initials S.O.;
- (b) The College of Physicians and Surgeons investigated that complaint

by obtaining an order authorizing a search for the patient charge for the patient S.O. and appointing a preliminary inquiry committee to investigate that complaint;
- (c) You represented to the preliminary inquiry committee that the patient chart for the patient S.O. was not in your possession and suggested that the patient chart had been removed by S.O.;
- (d) In so doing, you knowingly provided false information to the preliminary inquiry committee;
- (e) You represented to your patient S.O. that you did not have possession of her patient chart;
- (f) During a search of your home on or about the 12th of June, 2001, the patient chart for S.O. for the period ending with 1998 was located;
- (g) You failed to co-operate with the investigation of the College of Physicians and Surgeons by advising the College of Physicians and Surgeons that you had possession of that patient chart;
- (h) You failed to notify your patient, S.O. that you were in possession of her patient chart.

Facts and Analysis

The substance of Charge #8 is that Dr. Huerto knowingly “provided false information to the preliminary inquiry committee” and that Dr. Huerto failed to advise his patient S.O. or the College, that he was in possession of S.O.’s patient chart.

Facts a, b, and c of the Charge were admitted to by counsel for Dr. Huerto. In regard to S.O.’s patient chart, Dr. Kendel, Registrar of the College, obtained a search warrant on behalf of the College to search Dr. Huerto’s clinic for S.O.’s patient chart. Dr. Kendel attended Dr. Huerto’s clinic on October 7, 1998 and unsuccessfully attempted to locate S.O.’s patient chart. Based on representations by Dr. Huerto that he believed S.O.’s patient file was at Dr. Huerto’s home, Dr. Kendel accompanied Dr. Huerto to his home and observed Dr. Huerto search for S.O.’s patient file.

Dr. Kendel observed a substantial number of patient files throughout Dr. Huerto's home, but none were S.O.'s patient file.

Drs. Kendel and Huerto then returned to the clinic, where Dr. Kendel again searched the clinic but to no avail.

On June 1, 2001, a search warrant was issued authorizing Garnet McGinley to search Dr. Huerto's home for a number of items, including S.O.'s patient chart. On June 12, 2001, the search produced the old file of S.O. which was found under a seat cushion in a room in Dr. Huerto's home. It did not produce S.O.'s new chart which dealt with Dr. Huerto's diagnosis of M.S. and his treatment of S.O. That portion of the chart, which is the relevant portion of the chart, remains missing.

Dr. Huerto testified that he did not file patient charts and that K.H. or Christy filed the vast majority of the patient charts. K.H. was also in charge of storing patient charts.

It was the unchallenged evidence that the clinic had a practice of opening a new patient file when the old file became too large, or if a patient presented with a unique problem. There can be no doubt that the College was seeking S.O.'s new patient chart from Dr. Huerto.

Counsel for Dr. Huerto argued that for this Committee to find Dr. Huerto guilty of Charge #8, because the search revealed S.O.'s old file, which was irrelevant to S.O.'s complaint as against Dr. Huerto, would be a "perverse interpretation". This Committee agrees. Dr. Kendel's letter to Dr. Huerto dated October 9, 1998 is clearly seeking the patient file in regard to S.O.'s treatment for M.S.

Secondly, it was possible that Dr. Huerto had simply misplaced the old file of S.O. The evidence of Dr. Kendel was that when he accompanied Dr. Huerto to Dr. Huerto's home in 1998, there were patient files throughout the house. It was the evidence of Dr. Huerto that he took patient files home with him to work on.

Counsel for Dr. Huerto argued that the S.O. file was "planted" by K.H., who in 2001 was now the spurned lover. The evidence that K.H. was allowed to enter into Dr. Huerto's house and at least observe the search certainly caused this Committee a great deal of concern. This should not have occurred. In any event, other than a great deal of speculation on the part of counsel for Dr. Huerto, there was no evidence that K.H. planted the old S.O. patient chart in Dr. Huerto's home.

Counsel for the College attempted to argue that Dr. Huerto had developed a practice or pattern of secreting files. On a previous occasion, when the College searched for patient files of two patients of Dr. Huerto's, the "old" portion of the patient file was located but the "new" portion of the file was not. During another search by the College, Dr. Huerto alleged that clinical notes from the file had been lost by the College. On two other occasions, when the College was searching for files, Dr. Huerto explained that the files were not at the clinic but were elsewhere being used to obtain an opinion respecting the suitability of the files for teaching purposes.

Counsel for the College argued these previous incidents provided the foundation for an argument that Dr. Huerto hid the patient chart of S.O. Other than this speculative argument by the College, there was no evidence that Dr. Huerto hid or secreted the patient chart of S.O. While there exists a pattern of the College not being able to obtain patient files or the relevant information from patient files, this Committee cannot conclude that the reason for this is that Dr. Huerto secreted patient files without some evidence. This does not mean the Committee was not extremely concerned by this pattern. However, this pattern of missing files does not mean that Dr. Huerto hid the S.O. patient file. Cogent evidence was required for this Committee to find Dr. Huerto guilty of Charge #8.

The second part of Charge #8 is that Dr. Huerto made a knowingly false statement to the preliminary inquiry committee. The statement made by Dr. Huerto was that the chart may have been taken by S.O.

Both Dr. Huerto and S.O. testified that their final meeting following the conclusion of nine days of treatments was not a positive one. Dr. Huerto raised the issue of S.O. receiving a bill for medications and S.O. reacted angrily. Dr. Huerto testified that when he left his office, S.O. was still present in his office and her patient chart was on his desk.

While the statement by Dr. Huerto in regard to S.O. taking the chart was speculative, so is the contention that the disappearance of S.O.'s chart was a deliberate act by, or on behalf of Dr. Huerto. This Committee would have to find that Dr. Huerto secreted the file of S.O. and thus knew the statement made to the preliminary inquiry committee in regard to S.O. possibly taking her own file, was false. Based on the evidence, this Committee is not prepared to do this.

Counsel for the College also attempted to rely on the testimony of Dr. Huerto that he heard his secretary, Christy, say she saw the S.O. file in his office on top of his television. The Committee is unsure what time period this meant as Christy did not testify. However, given that Dr. Kendel's search was unannounced and that he searched Dr. Huerto's office, if the file had been on top of the television on the search day, presumably Dr. Kendel would have found it.

This Committee therefore finds Dr. Huerto not guilty of Charge #8. Cogent evidence means something more than speculation or reliance on previous instances where the College was unable to obtain file information in regard to a patient of Dr. Huerto.

Charge #9

Charge #9: You Dr. Carlos Huerto are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of section 46(o) and/or section 46(p) of *The Medical Profession Act, 1981* s.s. 1980-81 c. M-10.1 and/or bylaw 44(2) and/or bylaw 51(2)(q) of the bylaws of the College of Physicians and Surgeons of Saskatchewan.

The evidence that will be lead in support of this charge will include the

following:

- (b) A female patient hereinafter referred to in this charge by the initials S.O. was your patient;
- (c) You kissed S.O.;
- (d) You told S.O. that you loved her.
- (e) You used inappropriate language with your patient S.O. describing her fiancée as “the person that you are screwing” or using similar language.

Charge #10:

Charge #10: You Dr. Carlos Huerto are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of section 46(o) and/or section 46(p) of *The Medical Profession Act, 1981* s.s. 1980-81 c. M-10.1 and/or bylaw 44(2) of the bylaws of the College of Physicians and Surgeons of Saskatchewan.

The evidence that will be lead in support of this charge will include the following:

- (a) You did not provide S.O. with the information necessary for her to provide informed decisions about her medical care; and/or
- (b) You did not advise S.O. of the drugs that you were providing to her; and/or
- (c) You did not advise S.O. of the reason that she was undergoing tests; and/or
- (d) You did not provide S.O. with information relating to the treatment he was planning or alternatives to that treatment and/or
- (e) You did not answer S.O.’s questions to the best of your ability.

Charges 9 and 10 dealt with Dr. Huerto’s actions in regard to his patient S.O. When considering these charges, the Committee had to block out its conclusion about Dr. Huerto’s testimony in regard

to his sexual relationship with K.H., his prescription of drugs to K.H. and the false Affidavit which he provided to the Court of Queen's Bench. In other words, just because this Committee did not believe Dr. Huerto in regard to these incidents, did not mean Dr. Huerto was lying in regard to his dealings with S.O.

Facts and Analysis

S.O. testified that in 1998 Dr. Huerto was her mother's doctor and in effect acting as her family doctor. In September, 1998, S.O. started going blind. She was admitted to Royal University Hospital for 5 days and was advised there was a chance she had or would develop M.S. She described herself as really scared. While at Royal University Hospital, her mother contacted Dr. Huerto and arranged an appointment for her. S.O. testified that she didn't receive a lot of information or answers from the doctors treating her at Royal University Hospital. When she saw Dr. Huerto, she was still very anxious.

S.O. had some blood work done and went to get an MRI in Calgary. S.O. and her fiancée, T.R. attended at Dr. Huerto's office. S.O. testified that Dr. Huerto advised her that she had M.S. S.O. was devastated and began to cry. She described her future at that time as bleak. Dr. Huerto discussed the possibility of a wheelchair for her and they discussed the problems of S.O. having anymore children.

During this attendance, Dr. Huerto kissed S.O. with her fiancée present. S.O. acknowledged that Dr. Huerto was trying to reassure her and comfort her and be supportive of her. S.O. acknowledged that she didn't take the kiss as a sexual one.

The evidence was sketchy but S.O. testified that at some stage, Dr. Huerto referred to her fiancée as "the person you are screwing."

S.O. testified that she received 9 days of treatment from Dr. Huerto. She knew she received alpha beta interferon, gravol and potassium. She knew she received minerals, vitamins and a cardiac pill. She knew she was having blood work done and was receiving intravenous therapy.

After the 9 days of treatment, S.O. stated that she was still sick and blind. She discontinued any further treatment from Dr. Huerto. She complained that she never had an understanding of what was wrong with her or what medication she was receiving. S.O. asked Dr. Huerto for a list of the drugs she was receiving and was advised by Dr. Huerto that they would be itemized on her bill. S.O. testified that this was the first that she heard of a bill. She acknowledged that she reacted negatively to the mention of a bill. She knew that her mother had paid bills from Dr. Huerto on previous occasions.

S.O. testified that Jane Heaslip acted as her nurse and was very kind and helpful to her. Ms. Heaslip gave her some information in regard to M.S. and the drugs she was taking.

S.O. testified that she was angry at Dr. Huerto and that Dr. Huerto misdiagnosed her and hadn't advised her what drugs she had taken. She has sued Dr. Huerto as a result of her unhappiness.

T.R. was aware that S.O. was informed prior to seeing Dr. Huerto that she may have M.S. T.R. testified that he was present when Dr. Huerto informed S.O. that she had M.S. T.R. confirmed that both he and S.O. were very upset. Dr. Huerto then told S.O. he loved her and gave her a little kiss or little peck on the lips.

Dr. Kendel testified that when he had contact with S.O. in regard to Charges #9 and 10, S.O. did not mention to him that Dr. Huerto had made the comment about "the person you are screwing."

Dr. Huerto testified that he received a frantic call from S.O.'s mother in regard to her daughter's condition. He was aware that S.O. had received a possible diagnosis of M.S. Dr. Huerto saw the MRI and confirmed that it was likely she had M.S.

Dr. Huerto testified that he tried to console S.O. and that he hugged her. While he did not recall kissing her, he testified that he normally does this with all his patients and that he normally tells his patients that he loves them. This was confirmed by a number of Dr. Huerto's male and female patients who testified on his behalf.

Dr. Huerto testified that he discussed M.S. and the problems with getting pregnant with S.O. He may have said something about the person you are having sex with, but he did not use the words "the person you are screwing." Dr. Huerto described S.O. during this period of time as being unable to control her mood in that she was often crying.

Dr. Huerto testified that he gave S.O. a great deal of information about the drugs she was receiving and their actions and side effects. Dr. Huerto testified that he spoke to S.O. and her family on a number of occasions about S.O. obtaining a bill. Dr. Huerto stated that S.O. did not want to pay the bill and became extremely angry.

Ms. Heaslip testified that she was involved in S.O.'s care. She obtained material from the M.S. Society for S.O. and confirmed that Dr. Huerto had stated S.O. likely had M.S.. She reviewed materials on M.S. which S.O. had acquired from the internet. She described to S.O. the drugs she was receiving. Ms. Heaslip described S.O.'s behavior as emotional and irritable in that S.O. would be crying at times or confused at times. Ms. Heaslip confirmed that she discussed costs with S.O. and that she had called the drug plan and stated that the drugs were probably not covered.

Given the testimony, the Committee finds that the evidence of the alleged misconduct as set out in Charges #9 and 10 is not "clear" and "convincing," or did not amount to unprofessional conduct.

Both S.O. and T.R. were extremely distraught when dealing with Dr. Huerto in the fall of 1998. S.O.

had been advised by a physician at Royal University Hospital that she may have M.S. It is possible, given her agitated state, that she did not truly hear or understand the information she was receiving from Dr. Huerto and Ms. Heaslip. Likewise, T.R. acknowledged he was upset by the possible diagnosis of M.S. He was also not present on most occasions when S.O. received treatment from Dr. Huerto.

While Dr. Huerto did kiss S.O. and advise S.O. that he loved her, it was only in the context of supporting S.O. The actions occurred in front of S.O.'s fiancée and were described as non-sexual and supportive by S.O.

The evidence that Dr. Huerto referred to S.O.'s fiancée as "the person you are screwing" was weak.

Therefore, this Committee finds Dr. Huerto not guilty of Charges #9 and 10.

Other Evidence

The Committee did not review in its decision the testimony of a number of witnesses such as Natalie Austin, Ruben Terry and Nicolas Katsiris. The testimony of most of these witnesses raised questions about the credibility of K.H. The Committee considered the evidence of all the witnesses in arriving at its determination in regard to the credibility of K.H.

Recommendations Respecting Penalty

"Decision of discipline hearing committee"

- 52(1) The decision of the majority of the members of the discipline hearing committee present at a hearing is the decision of the discipline hearing committee.
- (2) The discipline hearing committee shall submit a written report of its decision to the council signed by the concurring members of the discipline hearing committee in the decision, and the discipline hearing committee may make any recommendations that it considers advisable."

The Committee has found Dr. Huerto guilty of three of the eight charges and is therefore able to "make any recommendations that it considers advisable." The Committee's recommendations are based on Dr. Huerto's demeanor, credibility and likelihood that he will modify his behavior to meet the expectations of the medical profession.

As is evident from the Committee's decision, Dr. Huerto was at times an untruthful witness. He often provided his evidence in an evasive and contradictory manner. Dr. Huerto did not take responsibility for having a sexual relationship with his patient, K.H. His testimony that K.H. initiated the sexual relationship and that he succumbed to a beautiful woman in a negligee after he had consumed some champagne was nothing short of absurd. His explanation that he maintained the relationship because K.H. blackmailed him was incredible.

What was perhaps most troubling for the Committee was Dr. Huerto's continual pattern of blaming others rather than accepting blame himself. When blaming others, Dr. Huerto's favorite villain was K.H. K.H. initiated the sexual relationship and blackmailed him so that he had to maintain the sexual relationship. K.H. planted drugs in his home. K.H. planted a file in his house. K.H. destroyed portions of her patient chart that would have allowed Dr. Huerto to defend himself against one charge brought against him by the College. The Committee rejected all these assertions by Dr. Huerto.

Dr. Huerto's testimony that K.H. performed her own pap smears was quite correctly portrayed by counsel for the College as nothing short of bizarre and is perhaps the best example of Dr. Huerto's failure to be truthful before this Committee. The proposition that Dr. Huerto, twice during the four month period prior to his February 9, 2001 Affidavit, forgot that he had been contributing to an investment fund, was absolutely unbelievable.

On at least two occasions, Dr. Huerto attempted to take some responsibility for his actions. He begrudgingly acknowledged having a sexual relationship with K.H. but then attempted to place a number of caveats on the relationship. Dr. Huerto also apologized that his letters to Dr. Kost did not list the medications that should have been listed. He called this "very sloppy" but of course, attempted to convince this Committee that Dr. Kost and he were very close and that he would have communicated K.H.'s medications and medical conditions, to Dr. Kost verbally.

Given Dr. Huerto's failure to take responsibility for his actions, this Committee's recommendation is that the highest possible discipline be imposed on Dr. Huerto. The seriousness of the charges that Dr. Huerto has been convicted of goes without saying.

This Committee rejects Mr. Scherman's suggestion that the reason Dr. Huerto was such a poor witness was that he was scared his career was threatened and that he was suffering from emotional overload.

Assuming, as it is not our decision to make, that Dr. Huerto will be allowed to practice medicine again, the suggestion that this Committee recommend that Dr. Huerto only be permitted to practice medicine under close supervision makes a great deal of sense. Dr. Huerto admitted that his clinic was not perfect and that he did not keep the best patient charts and that he was not a good administrator. In reality, Dr. Huerto's patient file maintenance was substandard. Dr. Huerto attempted to justify his clinic's poor patient chart maintenance by making the bizarre statement that he would "prefer a good result for a patient versus a beautiful patient chart and a cadaver." Surely

Dr. Huerto should have figured it out by now that proper patient chart maintenance goes a long way towards ensuring the patient does not become a cadaver.

Dr. Kendel's October 16, 1998 letter to Dr. Huerto emphasizes the importance and logic of proper patient file maintenance, portions of which provide:

"Over the past week S.O. has repeatedly communicated to the College of Physicians and Surgeons her growing frustration and anger in respect to your failure to locate her medical records and/or the MRI report from a study which you ordered and for which S.O. paid \$750.00. More than a week has elapsed during which you have been unable to locate these records. Lack of access to information regarding your assessment and treatment of S.O. compromises her ability to receive optimal care from other physicians in respect to a very serious illness.

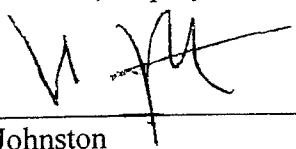
As I indicated in my letter of October 9, 1998, responsible and reliable management of patient records is a very important element in the provisions of quality health care. Unreliable health records management may be an indication of substandard health services."

Dr. Huerto must be made aware that proper file maintenance is crucial in that the potential risk is minimized for both the patient and the doctor. If Dr. Huerto practices medicine under close supervision, the hope would be that patient charts no longer go missing or are misplaced or misfiled and potential risk to his patients is minimized.


DATED this 6th day of November, 2003.



Walter Matkowski, Deputy Chair



Dr. David Johnston



Dr. Lorne Rabuka