

**IN THE MATTER OF *THE MEDICAL PROFESSION ACT, 1981***

**AND IN THE MATTER OF AN APPLICATION BY DR. CARLOS HUERTO OF  
SASKATOON, SASKATCHEWAN FOR REINSTATEMENT TO THE  
COLLEGE OF PHYSICIANS AND SURGEONS OF SASKATCHEWAN AND  
RESTORATION OF A LICENCE TO PRACTICE MEDICINE**

Mr. Nicholas J. Stooshinoff for Dr. Carlos Huerto

Ms. Gwen V.G. Goebel for the College of Physicians and Surgeons of Saskatchewan

**REASONS FOR DECISION**

**1. Introduction**

[1] Dr. Carlos Huerto has had a long and difficult history with the College of Physicians and Surgeons of Saskatchewan (the “College”). Originally, the College granted Dr. Huerto a licence to practice medicine in 1984. However, since then Dr. Huerto’s unorthodox professional conduct compelled the College to intervene on a number of occasions and he was found guilty of professional misconduct in 1988 and again in 2000. On November 14, 2003, following yet another finding of professional misconduct, the Council of the College (“Council”) took the extraordinary measure of striking Dr. Huerto’s name from the College’s register. Subsequent appeals from the Council’s Order to both the Saskatchewan Court of Queen’s Bench and the Saskatchewan Court of Appeal proved unsuccessful.

[2] In September 2006, Dr. Huerto applied for reinstatement and the restoration of his licence to practice medicine pursuant to section 86 of *The Medical Profession Act, 1981*. S.S.1980-81, c.M-10.1 (the “Act”). Following a hearing and due deliberation, Council rejected Dr. Huerto’s application and issued written reasons for its decision in November, 2006. No appeal was taken from this decision.

[3] Compounding his professional difficulties, Dr. Huerto also was charged with two counts of fraud over \$5,000 contrary to section 380(1)(a) of the *Criminal Code of Canada*. Ultimately, however, on September 4, 2009, the Honourable Mr. Justice Kovach of the Saskatchewan Court of Queen’s Bench acquitted Dr. Huerto on these charges. The Crown did not appeal from these acquittals. As Dr. Huerto has now been exonerated of these charges, these matters formed no part of Council’s deliberations on his application for the restoration of his licence to practice medicine in Saskatchewan.

[4] In 2011, Dr. Huerto again applied under section 86 of the *Act* for the restoration of his licence. On June 24, 2011, Council conducted a hearing on the merits of this application. At that hearing, Dr. Huerto was represented by Mr. Nicholas Stooshinoff and the College was represented by Ms. Gwen Goebel. Dr. Douglas Schmeiser, Q.C. acted as counsel to the Council and provided legal advice both during the hearing itself and Council’s *in camera* deliberations. Dr. Huerto testified at length and was cross-examined

extensively by Ms. Goebel. Counsel for both parties not only submitted voluminous books of documents as well as written submission but also made extensive oral presentations to Council.

[5] At the conclusion of the hearing, Council deliberated on Dr. Huerto's application for reinstatement and restoration of his licence to practice medicine. Ultimately, Council rejected it advising that formal written reasons would follow. These represent Council's reasons for rejecting Dr. Huerto's most recent application under section 86 of the *Act*.

## **2. Issues**

[6] At the hearing three issues emerged from Dr. Huerto's application:

- Has he satisfied the requirements under section 86 of the *Act* for the restoration of his licence to practice medicine? ("The Section 86 Issue");
- If so, can or should conditions be placed upon his licence? ("The Conditional License Issue"), and
- In the event members of the public wish to review the documents introduced at the hearing on June 24, 2011, should information which would identify innocent third parties be redacted? ("The Document Redaction Issue").

[7] In view of Council's decision to reject Dr. Huerto's application for restoration, it is unnecessary to address the Conditional License Issue. Mr. Stooshinoff had argued that should Council be amenable to restoring a licence to Dr. Huerto, it had the authority under section 86 of the *Act* to attach to this licence any conditions Council deemed appropriate. Ms. Goebel strongly contended that when acting under section 86, Council lacked statutory authority to impose any conditions.

## **3. Law Applicable to Applications for Restoration of Licence**

### **3.1 Onus and Burden of Proof**

[8] Both counsel agreed that on an application for restoration of licence under section 86 of the *Act*, the onus is on the applicant and the burden of proof is the civil burden of a balance of probabilities. Each accepted as correct the statement of law found in *Law Society of Upper Canada v. Clark*, 2010 OHLSP 11 at paragraph 4 that on professional regulatory readmission applications such as this one, "the balance of probabilities requires that proof be 'clear and convincing and based upon cogent evidence'" quoting *Heath v. College of Physicians and Surgeons (Ontario)* (1997), 6 Admin. L. R. (3d) 304 (Ont. Ct. (Gen.Div.)) at para. 53. See also: *F.H. v. McDougall*, 2008 SCC 53, at para. 31.

[9] It is noted that initially the onus is on the College to establish that the original misconduct occurred on a balance of probabilities, see e.g.: *Law Society of Upper*

*Canada v. Teller*, 2010 ONLSHP 55, at paragraph 7. At the hearing, Dr. Huerto's counsel took no exception to the findings made against him by Disciplinary Hearing Panel on November 6, 2003. The findings of professional misconduct which are at the root of his application for restoration are of long-standing and have never been seriously challenged by Dr. Huerto. Accordingly, Council proceeded on the basis that the College had established the original offence and the onus is on Dr. Huerto to persuade Council on evidence which is clear, convincing and cogent that his licence to practice medicine in Saskatchewan should be restored.

### **3.2 Section 86 of the Act**

[10] Section 86 of the *Act* which governs applications for restoration of a licence or a permit issued under the *Act* and which is central to Dr. Huerto's application reads as follows:

**86** The council may restore the licence or permit, as the case may be, of any person where it consider that the interest of the public has been adequately protected, and it may require that person to pay a restoration fee, the amount of which is not to exceed the amount of the registration fee.

[11] As is plain from the statutory language, Council has considerable discretion whether to restore a medical licence or not. When exercising this discretion, the overarching consideration is always the public interest. The function of Council is to govern the medical profession in the public interest, and accordingly protection of the public must be its paramount objective. This is evident from the text of section 86 itself which states that Council may restore licence where it considers "that the interest of the public has been adequately protected". It is also consistent with the general direction found in section 69.1 of *The Medical Profession Act, 1981* as follows:

**69.1** In any proceeding before the competency committee or the discipline hearing committee, in any consideration by the council of a report from either of these committees and in any appeal pursuant to this Act, the protection of the public and the safe and proper practice of medicine shall take priority over the rehabilitation, treatment and welfare of a member.

#### **3.2.1 Relevant Factors under Section 86 and Dr. Huerto's Application for Restoration of Licence**

[12] Section 86 is silent, however, respecting the kind of factors which Council should consider when assessing an application by a physician to restore his or her medical licence. Ms. Goebel on behalf of the College included in her written submissions a few decisions rendered by various Hearing Panels of the Law Society of Upper Canada, including *Clark, supra*; *Teller, supra*, and *Law Society of Upper Canada v. Levenson*, 2009 ONLSHP 98. A reading of these decisions reveals that the general standard applied

by the Law Society of Upper Canada in applications for readmission is that identified by the Ontario Divisional Court in *Robert Watt v. Law Society of Upper Canada*, 2005 CanLII 21111 (ONSCDC). In *Watt*, Molloy J. for a unanimous bench of the Divisional Court endorsed a six-part test for determining whether an application for readmission should be allowed. As set out in paragraph 14 of her reasons for judgment, these six factors are:

- Is there a long course of conduct showing that the applicant is a person to be trusted?
- Has the applicant's conduct since disbarment been unimpeachable?
- Has there been a sufficient lapse of time since the disbarment?
- Has the applicant purged his guilt?
- Is there substantial evidence that the applicant is extremely unlikely to misconduct himself again if readmitted?
- Has the applicant remained current in the law through continuing legal education or is there an appropriate plan to become current?

Ms. Goebel did not insist that these factors also applied to applications under section 86 of the *Act*. It should be observed, however, that a number of these considerations played a role in Council's deliberations and final decision. This speaks to the universal relevance of such considerations to professional discipline matters such as this one.

[13] Not surprisingly, in light of the fact that the professional misconduct for which Dr. Huerto's licence was revoked involved the sexual abuse of a patient, Ms. Goebel expressly referred to factors identified in The Final Report of the Task Force on Sexual Abuse of Patients commissioned by the College of Physicians and Surgeons of Ontario and dated November 25, 1991 (the "Ontario Task Force"). She submitted that these factors were relevant when assessing his section 86 application. At Appendix A of its Final Report, the Ontario Task Force identified twelve factors to be considered when a provincial medical regulatory body decides whether to readmit a physician whose licence previously had been removed because of sexual misconduct with a patient. (These criteria can be found at pages 338 and 339 of the document entitled "Summary of Information from the Registrar's Office pertaining to Dr. Huerto's Application for Restoration of his Licence" ("Registrar's Summary of Information") and dated May 2011 filed at the hearing of Dr. Huerto's application.)

[14] The Ontario Task Force advocated that all provincial colleges adopt an attitude of "zero-tolerance" towards physicians who sexually abuse their patients. Furthermore, the Ontario Task Force recommended that when a physician whose licence had been removed because they sexually abused patients, the College should require proof on a number of matters not the least of which was rehabilitation of past misconduct. In its November 2006 ruling rejecting Dr. Huerto's previous application for restoration of his licence, Council referred to a number of these criteria, see: "*Decision of the Council Regarding Dr. Carlos Huerto's Application for a Licence*" ("*Council's 2006 Decision*") beginning at pages 292 and 293, paragraph 21 of the Registrar's Summary of Information.

[15] Council recognizes that these criteria are onerous and for good reason. Sexual abuse of a patient by his or her physician is the ultimate betrayal of trust. Trust between physician and patient is the foundation of every healthy, functional and successful therapeutic relationship. A serious breach of trust like that occasioned by patient sexual abuse more often than not ruptures the professional relationship beyond repair.

#### **4. The Applicant's History of Professional Misconduct**

##### **4.1 The Applicant's Background**

[16] Dr. Huerto was born in 1942 and is now 69 years of age. In 1965, he graduated from the Faculty of Medicine, University of Santiago de Compostela in Spain as a medical doctor. He undertook post-graduate work and training in Europe and then in Canada. He obtained a Master of Science degree in neuroanatomy from Queen's University, Kingston, Ontario in May 1969.

[17] Dr. Huerto came to Saskatchewan in 1984 and has always lived in Saskatoon. He practiced medicine in this province for most of this time, save for approximately the past 6 years when his medical licence has been revoked. He has 3 children from 2 marriages. One of his sons attended the hearing with him.

[18] He has an extensive professional discipline history which he acknowledges. This history is summarized in Council's November 2006 ruling and does not warrant wholesale repetition here. However a brief description of events leading up to Council's earlier ruling and subsequent to it provides sufficient context for Council's decision in this matter.

##### **4.2 Events Leading to Council's Decision in November 2006**

[19] On November 6, 2003, a Disciplinary Hearing Committee of the College found Dr. Huerto guilty of a number of charges of professional misconduct, see: *Decision of the Disciplinary Hearing Committee Respecting Dr. Carlos Huerto*, Registrar's Summary of Information at pages 216 to 237. Shortly after this decision was filed, the College's Executive Committee suspended him from practicing medicine. As already noted, Council later struck Dr. Huerto's name from the College's register and revoked his licence to practice medicine.

[20] On November 28, 2003, Allbright J. allowed Dr. Huerto's application seeking a stay of Council's decision pending the disposition of his appeal. As a result, Dr. Huerto was permitted to continue his medical practice but subject to restrictions requested by the College: *Huerto v. Council of the College of Physicians and Surgeons of Saskatchewan*, Q.B.G. No. 1996 of 2003, Judicial Centre of Saskatoon.

[21] The Saskatchewan Court of Queen's Bench on February 22, 2005 ultimately dismissed Dr. Huerto's appeal, see: *Huerto v. College of Physicians and Surgeons of*

*Saskatchewan*, 2005 SKQB 94 per Klebuc J. (as he then was). Council was advised a further appeal to the Saskatchewan Court of Appeal also failed.

[22] While these matters were on-going, further complaints of professional misconduct unrelated to events underlying this application were levied against Dr. Huerto. On October 12, 2004, the Council's Executive Committee suspended Dr. Huerto from practicing medicine pending Council's consideration of the matter at its next meeting in November 2004. Prior to this suspension Dr. Huerto had been working as permitted by Allbright J. who had stayed Council's earlier suspension order. Again, Dr. Huerto sought the intervention of the Saskatchewan Court of Queen's Bench. On October 28, 2004, Foley J. stayed the temporary suspension of Dr. Huerto's medical licence and allowed him to continue to practice medicine subject to a number of practice conditions: *Huerto v. College of Physicians and Surgeons*, 2004 SKQB 423, at para. 29. This stay applied only until Council had decided the allegations of professional misconduct.

[23] When Dr. Huerto had exhausted all appeals from Council's November 2003 order, the revocation of his medical licence became final in 2005. Yet, only one year later in 2006 Dr. Huerto applied for reinstatement as a member of the College and restoration of his medical licence. Council considered this matter at its regularly scheduled meeting in September 2006 and unanimously rejected Dr. Huerto's application. Extensive written reasons were subsequently released following Council's meeting in November 2006.

#### **4.3 Council's November 2006 Decision on Dr. Huerto's Previous Section 86 Application**

[24] In its decision, Council reviewed at some length Dr. Huerto's professional discipline history dating back to 1977 when he was permitted to resign his membership in College of Physicians and Surgeons of Manitoba. Council also considered the criteria identified by the Ontario Task Force referred to above. At the time Dr. Huerto's first applied for restoration of his licence in 2006, he faced other professional disciplinary matters as well as the criminal charges referred to earlier. Although Council acknowledged that in view of these outstanding matters, the application appeared to be premature, it chose to decide the application on its merits. See: *Council's 2006 Decision, supra*, at p. 297.

[25] At bottom, Council found insufficient evidence demonstrating that Dr. Huerto had rehabilitated himself. Council characterized the Ontario Task Force's criteria as "an appropriate benchmark" by which to measure a physician's rehabilitation and concluded that "the Applicant has failed to even come close to meeting the stated criteria": *Council's 2006 Decision, supra*, at p. 296. In particular, Council made specific reference to the following five considerations (at pp. 292 and 293):

- The physician must have acknowledged the harm or his actions;
- The physician must have come to an understanding of why the abuse occurred and be able to demonstrate that the conditions leading to the abuse will not occur again;

- The physician must have participated in an approved rehabilitation program with specific treatment goals, and have complied with and met all goals;
- The physician must demonstrate that his behaviour relevant to the abuse has changed and will remain changed, and
- The physician must demonstrate ongoing rehabilitation therapy and monitoring by the College.

[26] Council concluded Dr. Huerto failed to present sufficient evidence that he had satisfied any of these criteria. While he apologized for his inappropriate conduct, he continued to blame others, most notably the complaint for his troubles. He was unable to demonstrate an understanding of the true effect his conduct had on his victims. As for rehabilitation, Council concluded that in view of his lack of understanding of the nature of his actions and his failure to enter a rehabilitation program or to undertake continuing therapy, there was nothing to indicate such misconduct would not occur again. Finally, Council did not find most of the post-revocation assessment reports compelling. In particular, they noted some of them were based on little more than self-serving and less than honest information provided by Dr. Huerto himself.

[27] Together then Dr. Huerto's past history of professional discipline and his failure to demonstrate any significant change in attitude, behaviour or thinking since 2003 persuaded Council that "the refusal of the application for licensure at this time [was] the most appropriate response": *Council's 2006 Decision*, supra, at p. 297.

#### **4.4. Relevant Events Post-Council's 2006 Decision**

[28] At the hearing on June 25, 2011, evidence was presented respecting Dr. Huerto's attempts to rehabilitate himself following *Council's 2006 Decision*. It must be said, however, that there was little to indicate a concerted effort on Dr. Huerto's part to better understand his circumstances, his behaviour or to seek therapeutic assistance to gain insight into his actions and enable him to overcome his problems.

[29] In particular, two events which occurred post-*Council's 2006 Decision* are worthy of mention here. These two events are: (1) the revocation of Dr. Huerto's medical licence by the State of Washington in 2010, and (2) his qualified admission of responsibility at the hearing itself.

##### **4.4.1 Revocation of Medical Licence by State of Washington**

[30] Dr. Huerto had obtained a medical licence in the State of Washington on August 12, 1982. It does not appear he had any difficulties with the medical regulatory body in that jurisdiction until it learned of his licence revocation in Saskatchewan.

[31] On March 5, 2010, the Washington State's Department of Health Medical Quality Assurance Commission held a hearing to determine the status of Dr. Huerto's medical licence in that state. At its conclusion, the Commission revoked his "licence to practice as a physician and surgeon in the state of Washington...with no right to seek reinstatement

or modification for a period of five years from the date of service of this Order.” See: *In the Matter of Carlos D. Huerto, M.D., Licence No. MD00020174*, State of Washington Department of Health Medical Quality Assurance Commission dated March 30, 2010 found in Registrar’s Summary of Information at p. 305.

[32] It appears from the HMQA Commission’s written decision that at that proceeding Dr. Huerto submitted much of the same documentation which was presented to Council at the June 2011 hearing including the letter dated August 18, 2006 from Vanderbilt University Medical Centre attesting to the fact that he had attended and participated fully in a three-day CME course entitled “Maintaining Proper Boundaries”. The HMQA Commission summarized its conclusion as follows at paragraph 2.7 found at pp. 304-5 of the Registrar’s Summary of Information:

The Commission notes the following aggravating factors: failure to take responsibility for conduct; personal problems having a nexus with the unprofessional conduct; dishonesty and evasiveness during the disciplinary proceedings; lack of remorse or awareness of why his conduct was wrong and the impact on the patient over whom he had considerable control; lack of potential for rehabilitation; and minimal efforts at rehabilitation. The Commission finds no mitigating factors. While [Dr. Huerto] did complete a three-day CME course on “maintaining proper boundaries”, the Commission does not find that this three-day course is sufficient proof of rehabilitation. In fact, [Dr. Huerto] continues to deny his own responsibility. His failure to take personal responsibility after taking the CME course prevents the Commission from considering the course as qualifying as a factor in mitigation.

[33] Council found it troubling that as of March 2010, approximately 5 years after the order revoking his medical licence became final Dr. Huerto still clung tenaciously to the view he was a victim in these circumstances, and misfortune had befallen him solely through the irresponsible actions of others. At that late date there was still a complete absence of personal responsibility, let alone insight into why he had conducted himself so inappropriately.

#### **4.4.2 Qualified Admission of Responsibility at June 2011 Hearing**

[34] At the hearing on June 24, 2011, Dr. Huerto for the first time publicly admitted responsibility and acknowledged the inappropriateness of his conduct. In his oral statement to Council, Dr. Huerto stated that he had had much time to weigh the nature of his actions. He indicated he now accepted that because “the physician is always in control”, there can never be an intimate relationship between a physician and his patient, “it is always wrong.” At times during the hearing, Dr. Huerto appeared to have an epiphany of sorts; he seemed to have accepted that because of the power imbalance

inherent in all physician-patient relationships, any intimate personal relationship between them clearly crosses appropriate professional boundaries.

[35] As Ms. Goebel commented during her submissions this was the first time Dr. Huerto had publicly acknowledged his actions were wrong and had articulated the reasons why.

[36] Yet, as the hearing continued Dr. Huerto's commitment to his admission appeared tenuous. He asserted that "a relationship between a doctor and a patient or doctor and an ex-patient it can never be consensual because we have the power over them" (Transcript at p. 177). Almost in the next breath, he stated that "I didn't rape her, I didn't force her, in fact, it was all the other way around...it wasn't brutal" (Transcript, at p. 177).

[37] Council acknowledges that Dr. Huerto appears to be beginning to understand why his conduct is blameworthy and such a marked departure from the norm. By any measure this manifests a step forward in his thinking. However, Council is not satisfied on evidence which is clear, convincing and cogent that Dr. Huerto's rehabilitation has truly begun, let alone is complete.

## **5. Submissions of Counsel and Council's Ruling**

### **5.1 Submissions on Behalf of Dr. Huerto**

[38] In brief compass, Mr. Stooshinoff offered four general arguments as to why Council should exercise its discretion under section 86 of the *Act* to restore Dr. Huerto's licence to practice medicine. First, Mr. Stooshinoff stated that Dr. Huerto had mellowed since his last appearance before Council due to his age and the duration of the revocation of his licence. He no longer had any interest in pursuing intimate personal relationships with a patient or a desire to challenge the supervisory authority of the College. Second, he disputed certain psychological diagnoses given to Dr. Huerto in various assessment reports. Third, Mr. Stooshinoff indicated that Dr. Huerto wished to integrate back into the Saskatoon medical community and wanted to "give back" to the profession through teaching medical students and collaborating with other physicians in the city. Fourth, Mr. Stooshinoff stated that Dr. Huerto would comply with any conditions imposed by Council. To buttress this argument, he indicated that Dr. Huerto had complied with the various conditions imposed by Foley J. in his fiat dated October 28, 2004.

[39] Dr. Huerto in particular objected to the finding contained in the PAS Report that he exhibited a narcissistic personality disorder. Three reports were filed, all of which were prepared post-*Council's 2006 Decision*. These reports were: (1) a psychological assessment report prepared by Dr. Dennis Pusch, a registered clinical psychologist and dated April 16, 2007; (2) a psychological assessment prepared by Dr. Alan LeBoeuf and dated July 27, 2007, and (3) a brief initial report prepared by Dr. O.A. Okunola, a psychiatrist and dated December 9, 2010.

[40] Dr. Pusch, for example, stated that he concurred with the earlier reported prepared by Dr. Darlington of PAS which suggested that “Dr. Huerto shows evidence of both obsessive compulsive and mild narcissistic personality traits” (Dr. Huerto’s Book of Documents at page 429). Dr. Pusch did opine that he did not believe these “personality traits are sufficiently problematic to cause him any significant impairments in his direct provision of medical services” (Dr. Huerto’s Book of Documents at page 430). In the event Council decided to restore Dr. Huerto’s medical license, Dr. Pusch recommended that he have a professional mentor with whom he consult about issues arising in his medical practice.

[41] Dr. Le Boeuf disagreed with a diagnosis of Narcissistic Personality Disorder but did concede “the possibility, if not the probability of some mild narcissistic traits” (Dr. Huerto’s Book of Documents, at pages 441-2).

[42] In his assessment report which was simply conclusory, Dr. Okunola stated that his opinion Dr. Huerto did not require further treatment. Dr. Okunola also acknowledged that Dr. Huerto exhibited certain obsessive compulsive personality traits. (Dr. Huerto’s Book of Documents at page 445.)

[43] Although much time was expended on reviewing these reports, Council did not find them particularly helpful. The reference letters which also were submitted while interesting and laudatory of his activities particularly within his church and wider faith community, did not shed much light on the issues Council had to address in this matter, namely Dr. Huerto’s attempts to rehabilitate himself following a professional disciplinary conviction.

## **5.2 Submissions on Behalf of the College**

[44] Ms. Goebel focused on three general areas in her closing submissions on behalf of the College. First, she reviewed Dr. Huerto’s discipline history which admittedly is lengthy. Second, although she acknowledged that at the hearing Dr. Huerto for the first time had publicly admitted his culpability in the wrongdoing, she submitted that he had not made any serious efforts to rehabilitate himself since 2006. She contended that since his first section 86 application, Dr. Huerto has instead concentrated primarily on vindication rather than rehabilitation. Third, she underscored the fact that by his own admission Dr. Huerto had failed to read, let alone comply with, the recommendations contained in the Ontario Task Force Report. She submitted that the more recent reports submitted at the hearing were questionable, especially the letter from Dr. Okunola which she asserted was based on very limited information.

### **5.3 Council's Ruling**

[45] Council was cognizant of the fact that in this section 86 application, the burden rested with Dr. Huerto to present clear, convincing and cogent evidence that a restoration of his medical licence was in the public interest. On balance, he failed to meet it.

[46] As stated earlier, Council was encouraged that Dr. Huerto now acknowledges his wrong doing and seems to be beginning to understand why his conduct was so reprehensible. Yet, it is plain that he must do more work preferably in some type of therapeutic setting which will enable him to truly understand and internalize the reasons why all professional regulatory bodies condemn sexual abuse of clients or patients so severely.

[47] It cannot be denied that Dr. Huerto has a lengthy professional discipline history going back almost a quarter century. It is plain he is a physician who has considerable difficulty in submitting to the regulation and oversight of his professional regulatory body. Yet Council found his most recent discipline history to be more relevant to this application. In particular, Council was troubled by the ruling of the State of Washington's Department of Health Medical Quality Assurance Commission in 2010. It showed quite clearly that Dr. Huerto's admission of responsibility is new and somewhat tenuous.

[48] The few reports prepared after 2006 which were presented at the hearing did not satisfy Council that much had changed since Dr. Huerto's first section 86 application. In particular, Dr. Okunola's opinion contained in his letter is based on the skimpiest information and offers only bald conclusions.

[49] In closing, Council acknowledges Mr. Stooshinoff's point that Dr. Huerto is not likely to re-offend in large measure due to his age and time of life. However, when deciding under section 86 of the *Act* the significant question of restoring to Dr. Huerto his licence to practice medicine, Council cannot base its decision simply on hope and expectation.

### **6. The Document Redaction Issue**

[50] The final issue to be addressed in these reasons is the Document Redaction Issue. As already mentioned a large number of documents containing very personal information not only about Dr. Huerto but also third parties to these proceedings were presented at the hearing. As a consequence, the issue arose as to whether these documents which formed part of the record before Council should be redacted prior to being released as a public document.

[51] Council recently considered this very question albeit in the context of a penalty hearing, see: *Re Chambers* dated September 17, 2009 especially at paragraphs 44 to 49. In those reasons, Council observed that redaction is a delicate issue requiring a careful balancing of two competing interests. On the one hand, this is a public process and as such it must be undertaken in as open and transparent a manner as possible so as to

sustain public confidence in Council's ability to regulate the medical profession in the public interest. On the other, Council is sensitive to the fact that revealing intimate personal medical information may embarrass the physician or other parties involved. In *Re Chambers* itself, Council declined to order that documents containing the physician's medical information be redacted.

[52] This matter is clearly distinguishable. It involves an application under section 86 of the *Act* for readmission to membership in the College and the restoration of a medical licence. Evidence of rehabilitation which most likely will include the applicant's medical or psychological reports is essential to determining whether such an application should be granted. It is not like cases of professional misconduct "where the physician is attempting to mitigate his or her conduct on the basis of health related or addiction related issues": *Re Chambers*, at paragraph 46. Furthermore, very personal information in respect of innocent third parties having no involvement in these particular proceedings is susceptible to disclosure in the absence of a redaction order.

[53] Accordingly for these reasons, should members of the general public seek access to the documents submitted during the hearing Council directs that any information relating to third parties or to Dr. Huerto's medical or psychological circumstances which is contained in those documents be redacted.

[54] In conclusion, Council extends its appreciation to Ms. Goebel and Mr. Stooshinoff for their thorough and respectful presentations at the hearing as well as their extensive written materials. Their assistance was most helpful.

Dated the 25<sup>th</sup> day of November, 2011 at Saskatoon, Saskatchewan.