

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

**DR. RONALD YOUNG,
MEDICAL PRACTITIONER OF
SWIFT CURRENT, SASKATCHEWAN**

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

**Saskatoon, Saskatchewan
October 28, 2002**

**Before: Walter Matkowski, Deputy Chair
Dr. Carla Eisenhauer
Dr. Lionel Lavoie**

**Counsel: Bryan E. Salte, for the College of Physicians and Surgeons
Neil Gabrielson, Q.C., for Dr. Young**

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. Ronald Young.

Count 1

You Dr. Ronald Young 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 one or more of the following:

- (a) On or about the 8th day of November, 2001, you telephoned Dr. Holly Wells;
- (b) In the course of that conversation you sought patient specific information relating to the practice of medicine by Dr. Dawood Moola while Dr. Moola was situated in Prince Albert;
- (c) You sought this information without the consent of the patient or patients involved;
- (d) In seeking patient-specific information from Dr. Wells, you encouraged Dr. Wells to breach patient confidentiality.

Count 2

You Dr. Ronald Young, 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 one or more of the following:

- (a) On or about the 8th day of November, 2001, you telephoned Dr. Holly Wells;
- (b) In the course of that conversation, you made one or more statements to Dr. Wells that were threatening to Dr. Dawood Moola, or could reasonably have been understood by Dr. Holly Wells to be threatening to Dr. Dawood Moola.

At the hearing, Dr. Young plead not guilty to both charges.

Facts

1. Dr. Moola and Dr. Wells testified on behalf of the College while Dr. Young testified on his own behalf.
2. Dr. Moola now practices in Swift Current, Saskatchewan and had practiced in Prince Albert, Saskatchewan for approximately thirteen (13) years prior to that.
3. Dr. Moola was acting Chief of Staff for the Swift Current Health District from October, 2000 to September, 2001. At that time, he was charged with investigating Dr. Young's medical

practice. Dr. Moola testified that there existed some concerns with Dr. Young's utilization patterns.

4. On February 15, 2001 at a meeting of the Board of the Swift Current Health District, the following motion was put forward:

“Motion 103-00/01

That the Board call for an external review of Dr. Young's practice patterns in relation to established utilization rates and patient day statistics used by the Canadian Institute for Health Information and Saskatchewan Health. Additionally, we direct the MAC to determine if Dr. Young's practice patterns would constitute a misconduct under Section 9.2.2 of The Medical Staff Bylaws.”

5. By letter dated March 12, 2001, the Swift Current Health District asked for the College of Physicians and Surgeons' assistance in conducting a comprehensive review of Dr. Young's clinical practice.
6. Dr. Young ultimately received a copy of the March 12, 2001 letter sent by the Swift Current Health District to the College of Physicians and Surgeons. Dr. Young testified that he was very anxious about the investigation and that he was being treated as a “suspect criminal”. Dr. Young testified that he was being attacked unnecessarily, that he was not being given the opportunity to defend himself, and that it was his belief that he was being severely attacked. Dr. Young testified that he was under a lot of stress at this time and that he was very anxious that his medical career might be destroyed. Dr. Young provided that he was not angry at this time.
7. On November 8, 2001, Dr. Young made the decision to telephone Dr. Holly Wells, a radiologist practicing in Prince Albert. The conversation between Dr. Wells and Dr. Young lasted approximately 10 - 15 minutes. Dr. Young testified that he felt anxious in contacting Dr. Wells and that he only contacted Dr. Wells as a result of receiving some information that Dr. Moola may have had some difficulties with a Prince Albert doctor and that Dr. Moola may have been threatened by this Prince Albert doctor. Dr. Young received Dr. Wells' name from another physician and had no prior relationship or dealings with Dr. Wells.
8. Dr. Wells testified that during this telephone conversation, Dr. Young asked her for information in regard to “any cases where Dr. Moola had screwed up”. Dr. Wells testified that she wasn't able or was not prepared to give Dr. Young those names.
9. Dr. Wells testified that early during the telephone conversation, Dr. Young advised her that he was being investigated by the College and that Dr. Moola initiated the “investigation”. Near the end of their telephone conversation, Dr. Young advised Dr. Wells that he was

concerned about the investigation into his practice and in regard to Dr. Moola that he “somehow had to shut him down, even if he had to blow him away”. Dr. Wells instructed Dr. Young not to tell her words such as this and said to Dr. Young that “something like this wasn’t worth going to jail over”. Dr. Young then said words to the effect that “it might not be so bad to go to jail”.

10. Dr. Wells testified that the telephone conversation with Dr. Young bothered her and that she hoped Dr. Young was joking but that she did not know him and was thus unsure what he might or might not do or be capable of doing. Later that evening Dr. Wells contacted her Chief of Staff in regard to the telephone conversation and was instructed by him to contact the College of Physicians and Surgeons. That same evening Dr. Wells attempted to contact the College of Physicians and Surgeons and eventually talked to representatives of the College of Physicians and Surgeons the next day in regard to the telephone conversation with Dr. Young.
11. Dr. Wells sent a letter to the College of Physicians and Surgeons dated November 20, 2001 which provided:

“November 20, 2001

Mr. Brian Salte
College of Physicians and Surgeons
211-4th Ave South
Saskatoon, Sask.
S7K 1N1

Dear Brian:

I am writing to confirm our conversation last week regarding Dr. Young and myself about Dr. Dawood Moola. I am not sure whom else to specifically direct this to but I know you will deal with it appropriately and present it before Council if needed.

As I have already related to you, it is with the deepest regret that I am even writing this letter about my recent conversation with Dr. Young. I had sincerely hoped that things would not have even progressed this far! To the best of my ability, this is how I remember the details...

Early in the afternoon, of Nov 8, 2001 I was contacted by a Dr. Young (I believe his first name is Ron)- a physician whom I have

never spoken to before nor did I know who he was. He explained to me that he was a General Practitioner who had practiced for 41 years in Swift Current and was currently being investigated for “incompetence” by the College of Physicians and Surgeons. He did tell me that this was supposedly because of the direct actions of Dr. Moola. I did not ask at that time what the details were and felt it was none of my business.

He wanted to know whether I had ever had any particular “problems” with Dr. Moola when he was in Prince Albert. I did admit that I had but it was a long time ago and I felt that we had both put our differences behind us. We chatted for a little while and none of the conversation up till now had disturbed me in particular. I admit that I did feel somewhat sympathetic with his situation and I did understand that he must be feeling very badly about the whole situation. I would have NEVER contacted the College had our conversation merely ended with “Good-bye”. What he did say to me then was “I have to shut this guy up somehow, even if I have to blow him away” I admit the statement chilled me a little and I responded by saying that I didn’t feel this would be worth going to jail over. He then said-“you don’t think so?” What bothered me most was his tone of such complete seriousness. If he had laughed or seemed even a bit jovial, I don’t think I would have acted on it.

In any case, I was a bit disturbed after the conversation and stewed over calling Dr. Moola directly but instead phoned Dr. Louis Poulin (our Chief of Staff) at home that night. I related the story to him and asked what I should do about it. He felt that I definitely needed to let someone know about it at the College level. I then looked up your home number and called you around 8 p.m. You weren’t home so I left a message and you tried early the next morning to return my call. Of course, like most Radiologists in this Province, I was long gone for work by 7 am! When we spoke around 8:30 am, it was decided that I should put this all down in writing.

Although I truly hoped that Dr. Young was only joking or at least had a sense of humour different than mine, I felt that in the light of other events (school shootings and the missing and presumed dead physician from Fairview, Alberta) I could not take that chance. I know that with his license to practice medicine possibly in jeopardy, Dr. Young could be desperate and possibly do something “foolish”. Perhaps my background as an RCMP officer has made me overly cynical or maybe I have just been watching too much A&E on

TV! I did know in my heart, however, that I had to speak to someone at the College and I trust that this will all be dealt with in an appropriate manner.

Sincerely,

(signature)

Holly D. Wells”

12. Dr. Young conceded that he exercised bad judgement in contacting Dr. Wells but he provided that he was interested in finding out about the physician who had threatened Dr. Moola and he was hoping that this incident might be similar to his dealings with Dr. Moola. Dr. Young testified that he did not ask for patient information from Dr. Wells and he didn't make comments that could be perceived as threatening to Dr. Moola.
13. Dr. Young testified that on November 9, 2001, his solicitor contacted him by telephone inquiring about the November 8, 2001 telephone attendance with Dr. Wells. Dr. Young confirmed that he had made the telephone conversation but he categorically denied threatening Dr. Moola in any way.
14. Dr. Moola testified that both Dr. Wells and the College of Physicians and Surgeons contacted him advising him of Dr. Young's comments and putting him on notice with regard to Dr. Young's comments. Dr. Moola confirmed that he had never previously received threats from Dr. Young, that he did not contact the police in regard to Dr. Young's alleged comments on November 8, 2001, and that he continued to maintain his working relationship with Dr. Young, in that Dr. Young would send x-rays to him and he would send reports back to Dr. Young. Dr. Moola did testify that he was flabbergasted that a fellow physician wanted to “blow him away”, that he had never been threatened by anyone before, and that he felt truly threatened and that he was “watching his back”.

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. Young.

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.”

Analysis - Charge One

The first charge against Dr. Young stems from the allegation that Dr. Young requested specific patient information from Dr. Wells. If the College is unable to prove this, it's first charge must fail. If the College is able to get by this first hurdle, the College must prove that in seeking this specific patient information, Dr. Young encouraged Dr. Wells to breach patient confidentiality.

The College has failed to establish that Dr. Young sought patient specific information from Dr. Wells in relation to the practice of medicine by Dr. Moola. In her November 20, 2001 letter to the College, Dr. Wells does not reference Dr. Young seeking patient specific information from her or that she was somehow encouraged to breach patient confidentiality or that patient confidentiality even existed. In her testimony, Dr. Wells indicated that Dr. Young asked her if there were any cases where Dr. Moola had “screwed up” or words to that effect. She provided that Dr. Young would have been asking her for names of patients where Dr. Moola had made a mis-diagnosis. She indicated that Dr. Young only asked for this information once and that she advised him that she wasn't willing to give him these names.

This Committee finds that the evidence of the alleged misconduct as set out in Charge One was not clear and convincing. It is possible to interpret that Dr. Young was asking Dr. Wells for publicly reported cases or public information in regard to Dr. Moola. There was very limited evidence in regard to what specific patient information Dr. Young was seeking from Dr. Wells. As such, this Committee finds Dr. Young not guilty of Charge One.

Analysis - Charge Two

In regard to the second charge, the College must prove that Dr. Young telephoned Dr. Wells on November 8, 2001 and during that conversation, made one or more statements to Dr. Wells that were threatening to Dr. Moola, or could reasonably have been understood by Dr. Wells to be threatening to Dr. Moola.

The evidence is uncontraverted that on November 8, 2001, Dr. Young telephoned Dr. Wells and that but for this telephone call, Dr. Wells and Dr. Young had no other dealings. The evidence indicates that Dr. Young was encountering an extremely stressful time in his life. His reputation as a capable physician was being attacked and he blamed Dr. Moola for the investigation by the Health District and the College.

As Counsel for the College provides in his Brief of Law, "Dr. Wells is a classical independent witness." She has absolutely no reason whatsoever to misrepresent anything which Dr. Young said in regard to Dr. Moola. While the November 8, 2001 telephone conversation was fresh in her mind, she recorded her recollections in a letter to the College.

Dr. Wells found herself in a difficult predicament. Dr. Young, a total stranger made comments that could reasonably be understood to be threatening to Dr. Moola. Dr. Wells was aware that Dr. Young was concerned about the investigation into his practice and that he blamed Dr. Moola for initiating the investigation. She acted wisely in contacting the College in regard to the November 8th telephone call.

This Committee has no hesitation in accepting the evidence of Dr. Wells over that of Dr. Young. Dr. Young's denial that he made threatening remarks to Dr. Wells about Dr. Moola is rejected. Dr. Young's explanation that he was attempting to get the name of a Doctor in Prince Albert who may have threatened Dr. Moola is rejected. Counsel for Dr. Young's argument that Dr. Wells misunderstood what Dr. Young said to her during the telephone conversation is rejected. The Committee finds, based on cogent well-founded evidence, that Dr. Young did make statements to Dr. Wells that were threatening to Dr. Moola or could reasonably have been understood by Dr. Wells to be threatening to Dr. Moola.

Given this determination, the Committee must now decide if the threats made by Dr. Young, to Dr. Wells, about Dr. Moola are in breach of the standard of conduct expected of physicians.

The Code of Ethics provides in part:

"The Code has been prepared by physicians for physicians. It is based on the fundamental ethical principles of medicine, especially compassion, beneficence, nonmaleficence, respect for persons and justice. It interprets these principles with respect to the responsibilities of physicians to individual patients and their families

and significant others, to colleagues, to other health professionals and to society.

35. Recognize that the self-regulation of the profession is a privilege and that each physician has a continuing responsibility to merit this privilege.

37. Avoid impugning the reputation of colleagues for personal motives; however, report to the appropriate authority any unprofessional conduct by colleagues.”

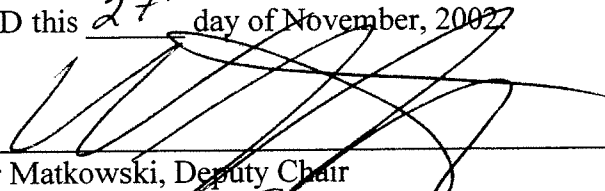
Section 46(o) of *The Medical Profession Act*, 1981, s.s. 1980-81 c. M-10.1 states:

“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:

(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;”

This Committee finds that the threatening comments made by Dr. Young to Dr. Wells in regard to Dr. Moola do constitute a breach of the standard of conduct expected of a physician and were improper, unprofessional and amounted to discreditable conduct. As such, the Committee finds Dr. Young guilty of the charge as set out in Count 2.

DATED this 27th day of November, 2002.



Walter Matkowski, Deputy Chair



Dr. Carla Eisenhauer



Dr. Lionel Lavigne