

This hearing was reconvened on March 18, 2014 to consider the arguments of legal counsel regarding an appropriate disposition of the matter and to impose penalty upon Dr. Fashoranti who was found guilty by this Committee on one of the two allegations against him:

That being registered under the *Medical Act* and being a physician in the Province of Nova Scotia, it is alleged that on or about July 29, 2010, with respect to patient A you violated patient/physician boundaries by engaging in:

- (i) in appropriate interaction, and/or
- (ii) an inappropriate examination.

The member was found not guilty of the first allegation but guilty of the second.

The Committee's authority and the range of penalties available are found in Section 66(2)(e)(i)(A)-(G) of the *Medical Act* for Nova Scotia.

At the outset of the penalty phase of this hearing the Committee was requested to rule on the admissibility of certain evidence sought to be introduced by Mr. Campbell, Counsel for Dr. Fashoranti. This evidence consisted of two letters prepared in support of Dr. Fashoranti. Counsel for the Doctor indicated his intention to call the authors of the letters and to provide *viva voce* evidence as well. The College objected to the admissibility of the letters and to the witnesses to be called. The Committee heard argument on this issue and was referred by Ms. Hickey, Counsel for the College, to **The Law Society of Upper Canada v. Julia Carmen Ranieri**, 2008 ONLSHP 0097. The position of the College was that these two letters were not relevant to the issues before the Committee. The letters were not provided to the Committee in advance nor during the discussions regarding their admissibility. Following a review of the Ranieri decision (*supra*) it appears obvious to us that Mr. Anand, Chair of the Ranieri Panel, had the opportunity to either review or otherwise receive the contents of the letters sought to be introduced. We did not. After paying careful heed to the arguments made by counsel for both the College and Dr. Fashoranti we ruled that the two

letters would be admissible before us but it would be a question of what weight, if any, we would give these letters once we heard the testimony of their authors.

Mr. John Mont gave evidence before and was the author of one of the disputed letters. Mr. Mont testified he had been a patient of Dr. Fashoranti's for approximately five years and found Dr. Fashoranti to be a caring individual and as being very helpful in arranging specialty appointments for him which are usually extremely difficult at the best of times.

The Committee also received a letter from a Ms. Embree an RN who had worked with Dr. Fashoranti. This letter was admitted by the agreement of counsel.

We next heard from Mrs. Dale Mont, who was the author of the second disputed letter. Ex. 3. Mrs. Mont had been a patient of Dr. Fashoranti's slightly longer than her husband, John Mont the previous witness. She too credited Dr. Fashoranti as always being professional and competent. Having had the opportunity to hear the *viva voce* testimony of both Mr. and Mrs. Mont the Committee having allowed Ex. 2 and Ex. 3 to be entered into evidence, rules that the letters are of little or no value to these deliberations. No other witnesses were called and the hearing proceeded to the submissions of counsel.

Ms. Hickey on behalf of the College stated her position on a penalty which would protect the public interest, provide individual and general deterrence, denounce the conduct, and which would maintain the public's confidence in the ability of the profession to regulate itself. Ms. Hickey argued that this case requires a suspension from practice in the minimum range of six months, participation in the so called Boundaries Course, and the ongoing requirement for a chaperone when examining a female patient and that costs of these proceedings be awarded to the College. Regarding the issue of costs the College submitted exhibit 5 in support of this claim. Exhibit 5 sets out the actual and anticipated costs of the College amounting to \$154,782.47. It is noted that there is no claim for costs as they relate to the investigative aspect of the matter before us. Counsel for the College further acknowledged the divided success of this matter and suggests there ought to be a 25% reduction of the total.

Mr. Campbell, on behalf of Dr. Fashoranti argued for a significantly lesser penalty. Mr. Campbell urged the Committee to consider imposing a reprimand and no suspension nor any requirement of having a chaperone present during the examination of a female patient. On the issue of costs, Mr. Campbell suggested that the costs should be further discounted once the fact that only one of the allegations is considered.

As previously noted, the Committee is governed by the provisions of the *Medical Act* as to the range of possibilities available to it. It is also noted that the Committee is not bound to accept one submission over the other. This principal was noted in *Pottie v. Nova Scotia Real Estate Commission* [2005] N. S. J. 276 at paragraph 59, Justice Warner noted the following:

The imposition of sanctions is not a mechanical exercise. While it is not improper for a Discipline Committee to take into account informal rules or guidelines and previous decisions for which written reasons have been given - all of which increase certainty, reduce inconsistency and raise the level of accountability to the public - the Discipline Committee must treat each case according to its own circumstances; that is, in accordance with the nature of the offence and the unique circumstances of the offender. It must not feel bound to automatically follow a rule, policy, guideline or precedent.

DECISION

The Committee has listened carefully to the arguments of Counsel and has reviewed the cases to which it has been referred. The Committee has considered both the mitigating and aggravating circumstances of this matter. The Committee is cognizant of its responsibility toward the protection of the public and the other principles of sentencing which are applicable in matters of professional discipline.

The Committee's decision is as follows:

1. That Dr. Fashoranti's license to practice medicine be suspended for a period of 3 months commencing on July 1, 2014.

2. That Dr. Fashoranti is required to have a chaperone present for any examination of a female patient.

3. That Dr. Fashoranti successfully complete the Understanding Boundaries Course offered by the University of Western Ontario at the earliest available date.

4. That Dr. Fashoranti shall pay costs of these proceedings in the amount of \$65,000.00 to the College, said costs to be paid according to the following schedule of payments:

1st installment of \$10,000.00 paid prior to the return to practice;

2nd installment of \$10,000.00 paid prior to December 31, 2014

3rd installment of \$25,000.00 prior to December 31, 2015 and

the balance to be paid by December 31, 2016.

Dated at Halifax, this 12th day of MAY, 2014.



W. Brian Smith, Q.C., Chair
on behalf of the Committee Members:
Dr. Allen J. Bishop
Ms. Mary Hamblin, Public Representative
Dr. Cynthia A. Forbes
Dr. Michael Teehan