

**DIVISIONAL COURT FILE NO.: 678/03  
DATE: 20070813**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
DIVISIONAL COURT**

**BETWEEN:**

**DR. WAGDY BOTROS**

**Applicant**

**- and -**

**DAVID BEADLE, THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO AND  
THE HEALTH PROFESSIONS APPEAL AND REVIEW BOARD**

**Respondents**

**Divisional Court No. 677/03**

**DR. WAGDY BOTROS**

**Applicant**

**- and -**

**JAMES MacLEAN, THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO  
AND THE HEALTH PROFESSIONS APPEAL AND REVIEW BOARD**

**Respondents**

**Divisional Court No. 676/03**

**DR. WAGDY BOTROS**

**Applicant**

**- and -**

**GEORGE VANSLACK, THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO  
AND THE HEALTH PROFESSIONS APPEAL AND REVIEW BOARD**

**Respondents**

**HEARD:** At Toronto, May 31, 2007

**BEFORE:** Lane, Brockenshire and Jennings JJ.

**COUNSEL:** *Gordon Slemko*, for the Applicant  
*Vicki White* for the Respondent College  
*David P. Jacobs* for the Respondent Board

## REASONS FOR JUDGMENT

### LANE J.:

[1] Dr. Botros applies for judicial review of three decisions of the respondent Health Professions Appeal and Review Board (Board) dated October 1, 2003 in files # 7228, 7229 and 7230. He is an Ontario physician practicing in the areas of psychiatry and sleep medicine. He operates as principal, Medical Director and Quality Assurance Officer of sleep clinics in Mississauga, Kitchener and London.

[2] After being complaint-free for his entire practice, Dr. Botros was the subject of three complaints in the period from August 2000 to February 2002. The essence of these complaints was improper diagnosis and treatment of the sleep apnea condition of each patient and rudeness and unprofessional dealings with the patients. The complaint of Mr. Beadle of August 30, 2000 also complained of a refusal to transfer original patient sleep test records to the successor physician.

[3] As a result of the Beadle complaint, the Complaints Committee of the respondent College made an investigation into Dr. Botros' practice. Dr. Hussain, as medical inspector, and Ms. E. Doris and three other staff investigators of the College were appointed investigators. The investigation included a review of 13 patients' charts, a review of correspondence relevant to the complaint, the opinion of a sleep technologist as to the 13 charts, an interview with Dr. Botros and his lawyer and observations made in the London clinic. The report contained, at page 3<sup>1</sup>, some general comments on the review of the charts, summarizing the "Concerns" section at the end of the analysis of each chart:

\* The technical performance and scoring of sleep studies is often inaccurate and below acceptable standards

\* Dr. Botros' interpretation reports lack normative data, do not categorize the types of arousals, often misrepresent data, lack a clear diagnosis and always lack behavioural advice to the patient

\* His management of the patients are often misguided by the inaccuracies resulting from the performance of the technicians in his sleep laboratory

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<sup>1</sup> Application Record, page 167

[4] The report also contained a summary of the interview with Dr. Botros on February 28, 2002, making some comments which were very critical of his management and interpersonal skills, including:

that he was irritable, condescending, judgmental and accusatory during the interview;  
that he knowingly withheld certain data re Mr. Beadle;  
that he was unconcerned about significant reporting variances of his technical staff; about reporting certain findings which he regarded as minor, but which were of potential relevance; and about correcting recording artifacts in sleep studies;  
that he had no formal quality management program;  
that he regarded patients requesting second opinions as in a conflict position, difficult to treat and possibly "looking for a fight";  
that he did not regard withholding the raw data of the sleep study of Mr. Beadle from the successor physician as denying care to the patient, despite the six-month period in which the successor physician waited to review the data. He justified this by expressing fears that the successor physician would alter the data.

[5] The Beadle complaint and the report of the investigators, and the other two complaints were considered seriatim by the Committee on the same day. In its reasons on the other two complaints, the Committee took into account the fact of the other complaints and the medical inspector's report in the Beadle case. The Committee issued three decisions on June 10, 2002. The Committee decided that Dr. Botros should be cautioned by it regarding the content of the three complaints and that he should be referred to the Quality Assurance Committee for discussions on his practice.

[6] In an unrelated development, an inspection by Dr. Michael Hawke of Dr. Botros' sleep clinic in London had been scheduled to occur on July 16, 2002 pursuant to the Independent Health Facilities Program operated by the Ontario government to ensure compliance with relevant legislation and the Clinical Practice Parameters for Sleep Medicine established by the respondent College. Dr. Botros' lawyer had requested the Committee to withhold its consideration of the complaints until the report of Dr. Hawke became available, but the Committee noted in its reasons in the Beadle case that it had determined that such a delay was

unnecessary as it was satisfied that it had before it sufficient information to properly dispose of the complaint.<sup>2</sup>

[7] In its reasons regarding the Beadle complaint the Committee concluded that it was inappropriate for Dr. Botros to withhold the raw sleep test data from the successor physician, Dr. George. The Committee agreed with the medical inspector that this behaviour demonstrated a lack of concern for the welfare of the patient. The Committee directed that Dr. Botros be required to attend before a panel of the Committee to be cautioned with respect to that conduct. This attendance would provide an opportunity for Dr. Botros to reflect upon his behaviour and for the Committee to explore with him the appropriate response to requests for clinical information to assist him in avoiding such a situation in the future. The Committee noted that a caution in person was a serious outcome for a physician as it signalled the disapproval of one's peers and the need for improvement.

[8] The Committee also noted that the investigation into Dr. Botros' practice had given rise to other significant concerns re his practice. While Dr. Botros maintained that he complied in general with the appropriate standards of practice, and had provided a supporting expert opinion, the Committee nevertheless believed that further review of his practice was required. Therefore the Committee determined that referral to the Quality Assurance Committee (QAC) was required.

[9] In its reasons on the MacLean complaint, the Committee concluded that the major complaint, that Dr. Botros had wrongfully contacted the Ministry of Transportation about Mr. MacLean's driving privileges, was not established, as it was unable to conclude that Dr. Botros was doing anything but fulfilling his legal obligations. The Committee observed that Mr. MacLean's complaint included that Dr. Botros had been rude to him; that the other two complainants had also alleged rudeness; and that the medical inspector in the Beadle case had found Dr. Botros irritable and condescending. The Committee was quite concerned about Dr. Botros' communication style with his patients. Therefore it directed that Dr. Botros be required

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<sup>2</sup> Application Record, vol. II, Tab U, page 365, footnote 4.

to attend before a panel of the Committee to be cautioned with respect to his communication style. The Committee also noted that although Mr. MacLean had suggested that Dr. Botros may have had an inappropriate arrangement with the supplier of CPAP<sup>3</sup> apparatus, it could not so conclude and would take no action on that part of the complaint. Finally, the Committee noted that Mr. MacLean had objected to the refusal of Dr. Botros to provide him with the results of the sleep study over the telephone. The Committee found that it was not unreasonable for Dr. Botros to decline to communicate the results by telephone as doing so, or not, is an individual judgment on the part of each physician. However, the Committee noted the concerns arising from the medical inspector's report in the Beadle case together with the erroneous diagnosis of Mr. MacLean of "mild to severe apnea", which was communicated to the successor physician and which Dr. Botros acknowledged should have read "moderate to severe apnea", and concluded that this complaint should also be referred to the QAC.

[10] In its reasons in the Vanslack complaint the Committee noted that the patient had complained of an inappropriate prescription of CPAP air pressure, and of rudeness when he asked Dr. Botros to speak more slowly and to repeat something. Dr. Botros accused the patient of calling him incompetent, and the patient departed with his prescription without further discussion. He purchased the CPAP machine and it was set at the prescribed pressure of 13 centimetres of water. He had trouble using the machine at that pressure and returned to see Dr. Botros who yelled at him that he did not make mistakes and he should simply stick with the machine. The patient departed, saw another doctor who did a study and set the pressure at 8 centimetres of water, at which pressure the patient was able to use the machine. The Committee considered Dr. Botros' detailed explanation, together with the other complaints of rudeness and determined that Dr. Botros should attend to be cautioned as to his communication style with patients. The Committee reviewed the material as to the pressures prescribed by Dr. Botros and concluded that this incident added to its concerns about Dr. Botros' practice. Accordingly it also referred this complaint to the QAC.

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<sup>3</sup> Continuous Positive Airway Pressure (CPAP) is a device to use positive air pressure to prevent the patient's airway, particularly the pharynx, from closing during sleep, the primary cause of the condition of sleep apnea. It consists of a mask connected to a pump maintaining the prescribed air pressure, measured in centimetres of water.

[11] In July 2002, the applicant requested that the respondent Board review each of the decisions of the Complaints Committee. That review was conducted on January 28, 2003. Four days before the hearing, the Registrar forwarded to the Board 28 pages relating to the Beadle complaint, and seven pages relating to the MacLean complaint, all of which had been before the Committee, but had not been disclosed by it to Dr. Botros. The Board decided to disclose some of the new Beadle materials and none of the new MacLean materials to Dr. Botros.

[12] In reasons dated October 1, 2003, the Board essentially confirmed the decisions of the Complaints Committee. In each case, the Board affirmed the Committee decision that Dr. Botros be cautioned. In the Beadle and MacLean matters, it affirmed the Committee decision to refer them to the QAC, but it directed that no referral take place in the Vanslack matter. It also upheld the Committee decisions not to provide complete disclosure to Dr. Botros on the basis that confidentiality was necessary due to the nature of the materials.

[13] We are now asked to quash the Board's orders approving the decisions of the Complaints Committee, and to send the complaints back to the College with a direction that they be dismissed; or for reconsideration in the light of additional relevant information, with each complaint confined to its own facts.

### **Legislative Framework**

[14] Pursuant to the *Health Professionals Procedural Code*,<sup>4</sup> each of the health professions has seven Committees with designated functions: Executive, Registration, Complaints, Discipline, Fitness to Practise, Quality Assurance and Patient Relations. As to Complaints, the Code provides that:

25(1) A complaint filed with the Registrar regarding the conduct or actions of a member shall be investigated by a panel ...of the Committee.

25(5) The Registrar shall give the member who is the subject of a complaint notice of the complaint [and of the right to make submissions]

26(2) A panel, after investigating a complaint..., considering the submissions of the member and considering or making reasonable efforts to consider all records and documents it considers relevant to the complaint, may do any one or more of the following:

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<sup>4</sup> S.O. 1991, c. 18, s. 10(1)

- 1) refer a specified allegation of the member's professional misconduct or incompetence to the Discipline Committee if the allegation is related to the complaint.
- 2) [re incapacity]
- 3) Require the member to appear before the panel or another panel of the Complaints Committee to be cautioned.
- 4) Take action it considers appropriate that is not inconsistent with [the legislation].

27. A panel shall give the complainant and the member who is the subject of the complaint,
- a) a copy of its decision;
  - b) a copy of its reasons ....
  - c) [A notice re right of review]

[15] The Code provides by section 29 for a review of the decision of the Complaints Committee by the Board with certain exceptions inapplicable here. For that purpose, the Registrar is required to forward the material before the Committee to the Board and the Board is required by section 32 to disclose that material to the parties, subject to section 32(3):

- 32 (3) The Board may refuse to disclose anything that may, in its opinion,
- a) [omitted – public safety]
  - b) undermine the integrity of the complaint and review process;
  - c) disclose financial or personal matters of such a nature that the desirability of avoiding their disclosure in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that disclosure be made;
  - d) [omitted: criminal or civil proceedings]
  - e) jeopardize the safety of any person.

[16] The mandate of the Board is set out in section 33:

- 33(1) In a review, the Board shall consider either or both of,
- a) the adequacy of the investigation conducted; or
  - b) the reasonableness of the decision.
- 33(2) In conducting a review, the Board:
- (a) shall give the party requesting the review an opportunity to comment on the matters set out in clauses (1) (a) and (b) and the other party an opportunity to respond to those comments;
  - (b) may require the College to send a representative;
  - (c) may question the parties and the representative of the College;
  - (d) may permit the parties to make representations with respect to issues raised by any questions asked under clause (c);

(e) shall not allow the parties or the representative of the College to question each other.

35 (1) After conducting a review of a decision, the Board may do any one or more of the following:

- 1. Confirm all or part of the decision.
- 2. Make recommendations the Board considers appropriate to the Complaints Committee
- 3. Require the Complaints Committee to do anything the Committee or a panel may do under the Health Profession Act and this Code except to request the Registrar to conduct an investigation.

(2) The Board shall give its decision and reasons in writing to the parties and the Complaints Committee.

**Issues**

[17] The applicant raises three issues in its factum:

- a) That the Board made an error of law and acted outside its jurisdiction;
- b) That the Board breached the rules of procedural fairness;
- c) That the Board erred in its conclusion that the Committee's investigation was adequate and its conclusions reasonable.

**Error of Law**

[18] The error of law alleged is that the Board asked itself the wrong question when it concluded that the conclusions of the Hawke report would not have altered the conclusions of the Complaints Committee. It should have asked whether the report was a relevant document and whether the failure of the Committee to consider it meant that the Committee's investigation was inadequate. Secondly, the Board erred and acted beyond its jurisdiction in concluding that the Hawke report would not have affected the Committee's decision.

[19] The Hawke Report was not available when the Committee made its decision; indeed the inspection by Dr. Hawke did not take place until after the Committee decision. The Board noted that the Committee proceeded without waiting for the Hawke Report because it was satisfied that it already had sufficient facts to proceed. The Board considered the decision of the Committee to



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proceed at page 11 of its decision<sup>5</sup>, observing that the Committee was not required to consider all records or documents but only to make reasonable efforts to consider the documents relevant to the complaint. The Board noted that the Committee already had the complaint, the report of the medical inspector, and the comments on that report by Dr. Botros and his expert, Dr. Awad. The Board found that, "Given the discretion of the Committee to determine what documents are relevant, it is not obvious that a Committee must be required to delay its investigation of a matter on the chance that a report obtained by a different body for a different purpose, may be relevant to the issues before the Committee."

[20] In short, the Board found that the decision of the Committee not to wait for Dr. Hawke to do his inspection and write his report was a reasonable one.

[21] That would have been enough to dispose of the issue, but the Board then went on to examine the Hawke Report and observe that its focus on "process and procedures" differed from the "member-oriented, complaints-based focus of the Committee" and that it was not evident that the report would have altered the conclusions of the Committee. The applicant seizes on the Board's reference to itself as a lay Committee and not able to prefer one medical opinion over another, to argue that it went beyond its jurisdiction to find that the Hawke Report would not have altered the Committee's decision. But that comment must be seen in context: the Board was stating that its mandate was to consider the reasonableness of the Committee's decision. It had already found that the only decision the Committee made as to the Hawke Report - not to wait for it- was reasonable. It did not need to prefer Dr. Hawke over the medical inspector or vice versa; that was not what was before it. The issues before the Committee, and therefore the Board, largely dealt with Dr. Botros' communications with his patients, specific diagnostic errors and his apparent lack of concern over what might happen to Mr. Beadle when Dr. George was not given the data. That was what the Committee dealt with and that was not what the Hawke Report dealt with.

[22] The Board was entirely capable of reading this Report and seeing that it did not address these issues. The closest the Hawke Report comes to the issues raised before the Committee are

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<sup>5</sup> Application Record page 37.

the entries as to the examination of seven charts in the London clinic<sup>6</sup>, five of which were criticized by the examiners, including one comment critical of the Quality Advisor, presumably Dr. Botros as he held that position. In my opinion, no medical expertise was required to understand that the Hawke Report did not deal with the particular issues before the Committee and the Board.

[23] The Board did not err in law or exceed its jurisdiction in its finding that the Committee decision not to wait for the Hawke Report was reasonable, nor in its comments on that Report.

### **Procedural Fairness**

[24] Turning to the allegation that the Board breached the rules of procedural fairness, the applicant submitted that the Committee and the Board failed to make full disclosure to the applicant, which ought to have been done in fairness to him. The applicant acknowledges that the Board has a discretion not to disclose material where disclosure might undermine the integrity of the complaint process or unduly disclose private matters, but this discretion ought to be exercised sparingly and disclosure is the norm. It was unfair to Dr. Botros to conceal information from him.

[25] Counsel for Dr. Botros also submitted that the sleep technician's report was received only the night before the hearing and this was unfair. However, the record does not disclose that any request for an adjournment was made to enable consideration of the report. The technician's name was not given and the main complaint made to the Board was that "little was known" about the author<sup>7</sup>.

[26] In *Kadoke*<sup>8</sup> this court noted that the duty of disclosure is based upon the duty to act fairly resting upon everyone discharging a statutory mandate and accordingly the discretion not to disclose must be exercised sparingly. Nevertheless, there are times when the discretion may be exercised by the Board in the interests of a patient or a person vitally concerned. In particular, the *Kadoke* court recognized the necessity in some circumstances to redact the names of experts

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<sup>6</sup> Application Record, page 397

<sup>7</sup> Reasons of the Board (Beadle) Application Record, pages 441-442.

<sup>8</sup> *Kadoke v. Ontario (Health Disciplines Board)* (1987), 23 O.A.C. 75 (Div. Ct.), see also *Nicholson v Haldimand-Norfolk Regional Board of Commissioners of Police*, [1979] 1 S.C.R. 311.

where disclosure might impair the Board's ability to obtain opinions from them in the future. This type of redaction was done in connection with the material disclosed and found in Tab Y of the Application Record. In addition, in Beadle, the Board declined to produce records of contacts with witnesses, pages 38a to 38e and pages 132a and 132b, in their entirety because these pages affect a third party who is not a party to the complaint review. Similarly in MacLean the Board withheld seven pages recording contacts with witnesses on the same basis.

[27] Before us, counsel for Dr. Botros stated that he had not reviewed the pages so withheld because he would not sign an undertaking not to disclose the material to his client. Hence he could not make pointed submissions. He submitted that, as the Board did not describe the material as irrelevant, it must be presumed to be relevant. He questioned the description as inadequate: the Board should have advised in what way the production of the material would affect the individual: privilege, confidentiality?

[28] Counsel for the Board submitted that there was no reason to believe that these materials played a role in the making of the decision: the Board does not refer to them and does refer to materials amply justifying what they did. Further, the Board gave specific reasons<sup>9</sup> for the disclosure ruling on January 28<sup>th</sup>, 2003, which show that the Board understood its Act and the responsibility it had to balance the interests of Dr. Botros in receiving full disclosure against the interests of persons giving information to the investigators. He submitted that the decision of this court in *Silverthorne*<sup>10</sup> addressed the issue of the scope of disclosure necessary for procedural fairness in this investigatory procedure and that the Board had met the standard.

[29] In *Silverthorne*, this court dealt with a judicial review of the decision of the Complaints Committee of the College of Social Workers that the applicant, a member, should be cautioned. The applicant sought judicial review on the basis of breach of the duty of procedural fairness. Swinton J., for the majority, referred to *Baker*<sup>11</sup> where the Supreme Court:

“... emphasized that the duty of fairness is variable and depends on a number of factors, including the following:

<sup>9</sup> Application Record, Tab Z, page 426.

<sup>10</sup> *Silverthorne v. Ontario College of Social Workers* (2006), 264 D.L.R. (4<sup>th</sup>) 175 (Div. Ct.)

<sup>11</sup> *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817.

1. the nature of the decision being made
2. the nature of the statutory scheme
3. the importance of the decision to the individual or individuals affected
4. the legitimate expectations of the person challenging the decision and
5. the choices of procedure made by the agency itself (at paras. 22-27).

14. Taking these factors into account, I am satisfied that the Committee owed the applicant a duty of procedural fairness, because [page182] the decision whether to refer a complaint and whether to caution a member affects that individual's interests as a professional social worker. However, the content of the duty is limited, given the nature of the decision being made and the statutory context.

15. Turning to the nature of the decision being made, this is a case where the Committee investigates complaints and disposes of them by referring them to another process or by determining that they should not be referred. The Committee does not make findings of fact nor determine whether discipline is warranted; rather, it weighs the evidence to determine whether there is sufficient evidence to refer to the matter to the Discipline Committee or the Fitness to Practise Committee. It is those bodies which will make findings of fact.

16. While the Complaints Committee can itself caution a member, a caution is not a sanction. It is advisory in nature and intended to be remedial (*Modi v. Ontario (Health Professions Board)* (1996), 27 O.R. (3d) 762 at p. 780, 133 D.L.R. (4th) 424 (Div. Ct.)). A caution is not recorded in the public registry of the College nor publicized by it. While the applicant has expressed concern about certain information disclosed on a website, that is not information that was disclosed by the College. Moreover, while the applicant has raised concerns about the impact of a caution on her ability to act as a social worker, there is no evidence, other than her perceptions, that an advisory caution is likely to have any negative effect on her career."

[30] *Silverthorne* illustrates the approach to be taken in reviewing the decisions of the Complaints Committee and of the Board. The central feature of the procedure against Dr. Botros is that the Committee was exercising a screening function: it was an investigation and a decision as to the existence of sufficient evidence to warrant referral. It was not a hearing to determine with finality what the facts were and whether punishment should be imposed. Accordingly, following the analytical approach of *Baker*, and of *Silverthorne*, the scope of disclosure may be

limited for the reasons permitted by the statute and relied on by the Board, including the protection of the interests of persons not parties.

[31] Even if it is possible that the undisclosed material was relied on to some extent or even simply informed the approach of the Board, the statute gives the Board that discretion: nothing in the statute requires the Board to ignore the material not disclosed to one or more parties. The court accepts this as consistent with fair procedure because of the nature of the inquiry, the limited role of the Complaints Committee and the Board as screening agencies, not as decision makers, and, of course, the language of the statute.

[32] In considering the exercise of this discretion by the Board on its merits, the court must first observe that there is clear statutory language vesting in the Board a discretion to withhold information which, in its opinion may disclose matters that it is desirable not to disclose in the interest of any person affected or in the public interest: section 32 (3) (b) and (c) supra. The language of these sections makes it clear that the discretion is a function of the Board's opinion; it is appointed to review the complaints proceedings of a wide variety of professions and has acquired expertise in so doing and its opinion is deserving of some deference from us.

[33] Applying the pragmatic and functional approach to determine the standard of judicial review, and considering the cases to which we were referred,<sup>12</sup> I conclude that the standard of review of the Board's decision is at least reasonableness. It has specialized knowledge, experience and skill in analyzing the proceedings of Complaints Committees about professional conduct and determining the reasonableness of their disposition of complaints. The primary objective of the professional Colleges and their Complaints Committees is to protect the public interest by regulating the practice of the profession in question and the legislative mandate of the Board is to review their work in the public interest. That is not a task for which "correctness" could be required. It is not necessary on the facts of this case, to determine whether "reasonableness" or "patent unreasonableness" should be the standard.

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<sup>12</sup> *Drake v. Royal College of Dental Surgeons of Ontario*, [2005] O.J. No. 755; 194 O.A.C. 394 (Div. Ct.) and cases cited at paras. 14 and 15 therein.

[34] I have reviewed the private records in Beadle and in MacLean containing the documents that were withheld. In my opinion the Board acted reasonably in exercising its discretion to withhold them. I am also of the opinion that the Board acted reasonably in not redacting them as they could not have been redacted without either becoming unusable or disclosing information as to the witnesses involved of such a nature that the desirability of avoiding disclosure in the interests of the persons affected outweighed the principle of disclosure.

**The Adequacy of the Investigation**

[35] The final issue is the adequacy of the Committee's investigation overall. Several points were put forward. Counsel for Dr. Botros submitted that the Committee should have considered the three complaints individually, but instead used the evidence from each in the other cases. It appeared however, that no request was made of the Committee at the time to separate the cases. Reliance was placed upon the decision of this court in *Moreau*<sup>13</sup> in which the majority quashed the decision of the Board because it had based its decision on material not before the Committee, including two other complaints about the member. That is very different from the Committee hearing three cases together and relying on the evidence as a whole, which might have happened here. However, in the present case, the Board stated in its reasons that the Committee did not rely on the evidence in the other two cases in making its Beadle decision. Either way, this is not a case where the Board decided the reasonableness of the Committee's decision based on material never before the Committee. In all the circumstances, I would not give effect to this submission.

[36] The submissions made regarding the Hawke Report were relied on. They have already been dealt with.

[37] It was submitted that the Committee and the Board had failed to balance the interests of Dr. Botros and of the public in referring him to the QAC. The referral to QAC was punitive from the point of view of Dr. Botros because it would involve a seriously intrusive investigation of his practice, had the potential to detrimentally affect his professional reputation and could involve the payment of fees related to his participation in the quality assurance process. Reference was made to statements to such an effect in *Moreau*, supra. The Board took strong

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<sup>13</sup> *Moreau and Andrea Wuyinia-Meilun v. The Health Professions Review Board*; Divisional Court February 14, 2003 (unreported)

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exception to those comments, which were made in a short endorsement without citing any evidence on the point. It submitted that the inquiries made by the QAC will necessarily vary, but do not necessarily involve an extensive or intrusive examination into a physician's practice. The process contains procedural safeguards for the member and the proceedings are mainly confidential with only a "highly remote" potential to affect the professional reputation of the member. Any impact upon a member's reputation would occur only if the QAC decided to refer the member to the Discipline Committee and he was convicted.

[38] Reference was made to the text written by Mr. Steinecke<sup>14</sup> who described the role of the QAC as follows:

The Quality Assurance Committee is not required to hold hearings. Its role is to educate and enhance, not to punish. However, because the imposition of terms, conditions or limitations on a member's practice, the Committee must show procedural fairness. At the very least, procedural fairness requires some period of notice of the QAC's intention to impose terms, conditions and limitations to enable the practitioner to make written submissions. In addition the QAC must follow all of the safeguards set out in its enabling regulation.

[39] The scale of jeopardy to the member is limited in the present case; he has not been referred to Discipline, the only Committee empowered to punish. The referral to QAC is clearly reasonable upon the evidence referred to in the decisions of the Committee and of the Board leaving aside altogether the undisclosed material. The Board concluded in the Beadle reasons<sup>15</sup>:

The within Record contained the medical inspector's report, Dr. Botros' response and Dr. Awad's comments as well as all the requisite information concerning the withholding of the electronic data. While Dr. Botros and Dr. Awad disagreed with the medical inspector's opinions and conclusions, the Committee also has medical expertise and may reasonably prefer the opinion of one expert over that of another in deciding what action, if any, ought to be taken.

In the circumstances of this matter, given the serious concerns expressed by the medical inspector about the nature of the practice issues and standards in question, which conclusions Dr. Botros and Dr. Awad contest, the Board finds that the Committee's decision to refer the matter to QAC is reasonable. The QAC is a body specifically designed to review and assess practice issues. While the QAC may have the authority to impose limitations and restrictions on a member,

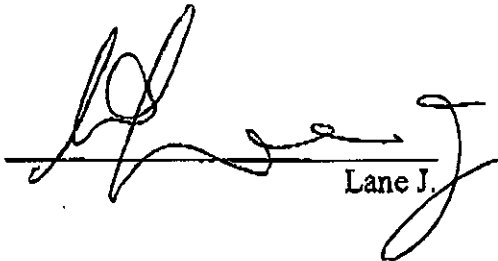
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<sup>14</sup> *A Complete Guide to the RHPA*: R. Steinecke; Canada Law Book; para. 9.180

<sup>15</sup> Application Record, vol. I page 39

its role and function is remedial. Any practice deficiencies identified can be addressed by appropriate educational activities.

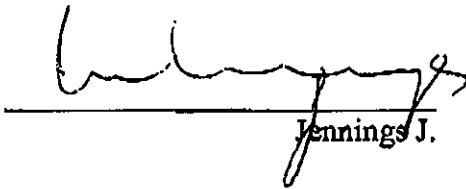
[40] The practice deficiencies raised in the materials go to the heart of the public interest mandate of the College, the Committee and the Board. The reasons of the Committee and of the Board were supported by evidence and withstand "somewhat probing scrutiny". I would dismiss the application for judicial review. The Board does not seek costs.

  
Lane J.

I AGREE

  
Brockenshire J.

I agree

  
Jennings J.

DATE: AUG 13 2007



DR. WAGDY BOTROS  
DR. WAGDY BOTROS  
DR. WAGDY BOTROS  
Applicant

and  
and  
and

BEADLE, et. al.  
MacLEAN, et. al.  
VANSLACK, et. al.  
Respondents

Court file no. 678/03  
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LANE J, BRCKENSHIRE J, JENNINGS

August 13/07 May 31/07

*Dismissed in writing. No costs. Private Record re-sealed.*

*[Signature]*  
(LANE)  
*for the panel.*

DIVISIONAL COURT  
SUPERIOR COURT OF JUSTICE  
Proceeding commenced at TORONTO

APPLICATION RECORD  
(VOLUME I OF II)

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