

FILE NO. 8402

REGARDING A REQUEST TO REVIEW A DECISION
OF THE COMPLAINTS COMMITTEE OF THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO
BY BONNIE J. KAPLAN, PURSUANT TO THE *REGULATED HEALTH PROFESSIONS ACT, 1991*,

CONCERNING A COMPLAINT FILED WITH THE COLLEGE BY
BONNIE J. KAPLAN, Ph. D.

REGARDING THE MEMBER
TERRY ALAN POLEVVOY, M. D.

DECISION AND REASONS

OF THE REVIEW HELD

Wednesday, the 5th day of October, 2005, at Toronto

FOR THE BOARD:

John S. Herron, Designated Vice-Chair, Presiding
Malcolm Fealing, Member
Judith C. Kennedy, Member

APPEARANCES:

Bonnie J. Kaplan, Ph.D, (by Teleconference)
Terry Alan Polevoy, MD
James Cranton, College Representative

BACKGROUND

This review of a decision of the Complaints Committee (the "Committee") of the College of Physicians and Surgeons of Ontario (the "College"), requested by Dr. Bonnie J. Kaplan concerns the conduct and actions of Dr. Terry Alan Polevoy during a period of several years prior to the filing of the complaint with the College on November 3, 2004.

Dr. Kaplan was at no time a patient of Dr. Polevoy. She is a senior clinical researcher in the Faculty of Medicine at the University of Calgary and has been, for some years, together with various colleagues, studying the impact of vitamin/mineral supplementation on mental function. The complaint she filed alleged that Dr. Polevoy, together with two

named associates who were not members of the College, had systematically harassed her and her colleagues by filing "frivolous" complaints and maligning their reputations, with the intention of undermining their research efforts.

Following receipt of Dr. Kaplan's complaint on November 3, 2004, the Committee wrote to her advising that the Committee had made a preliminary decision to take no action with respect to the complaint under the provisions of subsections 26(4) and 26(5) of Schedule 2 of the *Regulated Health Professions Act, 1991, (the Code)*. The Committee's letter read, in part, as follows:

The essence of your complaint regarding Dr. Polevoy is that he has been systematically harassing you and your colleagues over the past four years by (among other things) making numerous unwarranted complaints against you, maligning your reputations and undermining your research efforts. You suggest that the behaviour of Dr. Polevoy, as documented in your letter of complaint "demonstrates significant deviance from the standards expected of a professional physician."

The Complaints Committee's principal mandate is to consider and address complaints which relate to the provision of medical care. Your complaints regarding Dr. Polevoy do not relate to patient care, but rather arise in connection with criticisms which he has evidently expressed about your research methods, findings and publications. It seems to the committee, however, that the forceful expression and rigorous examination of differing opinions and positions is more or less fundamental to the work which goes on in universities, and in the Committee's view the various institutions and authorities referred to in your correspondence should themselves be best able to determine whether the criticisms Dr. Polevoy has raised about your research have any merit. Put another way, the Complaints Committee does not feel that it falls within its own jurisdiction to silence any debate which may arise with regard to the research that you and your colleagues are carrying out.

The Committee's letter then outlines its authority to take no action with respect to a complaint which it considers frivolous, vexatious, made in bad faith or otherwise an abuse of process. It advised that the Committee intended to take no action with respect to this matter but, as required by the enabling legislation, Dr. Kaplan, as the complainant, had the opportunity to make further written submissions regarding the complaint and the expressed intentions of the Committee. Dr. Polevoy, as the member of the College complained against, was given the same opportunity.

Dr. Kaplan responded to the Committee by a letter dated February 16, 2005. She expressed concern that the Committee was interpreting her complaint as a request that it

evaluate her research or determine whether or not Dr. Polevoy's criticism had merit. She asserted that she wished the Committee to "address the methods used by Dr. Polevoy to express his criticism" and to "determine whether his behaviour constitutes harassment." Her letter continues:

- The standards of the College require that physicians demonstrate competence in several roles, including those of Scholar and Professional. She questioned "Dr. Polevoy's ability to fill the role of Scholar, e.g. critical appraisal skills, and that of Professional, e.g. exhibits appropriate personal and interpersonal professional behaviours." The letter suggested that letter of complaint "demonstrates significant deviance from the standards expected of a professional physician."
- The Committee was encouraged to review its own files to "find the number of phone call queries and formal complaints you have received about this harassment."
- The letter ends with a request that the Committee re-examine the letter of complaint and refer this matter to the Discipline Committee of the College.

Dr. Polevoy also responded to the College by several e-mails in which he expressed shock at the filing of the complaint, continued with criticism of Dr. Kaplan's research work and set-out additional information which, he suggested, justified his criticism. He also offered to provide the Committee with a copy of the book published by himself and his associates entitled "Pig Pills, Inc."

THE COMMITTEE'S DECISION

In its *Decision and Reasons* issued on May 3, 2005, the Committee decided to take no further action with respect to this matter.

Dr. Kaplan's original letter of complaint purports to "document" her allegations of harassment by setting out nine instances where Dr. Polevoy and his two associates, Mr. Marvin Ross and Mr. Ron Reinhold, allegedly acted inappropriately. Dr. Kaplan candidly admitted that she did not know which of the three individuals were responsible for a particular event but suggested that this was perhaps irrelevant as they "openly worked together." The nine instances of allegedly inappropriate conduct were as follows:

1. Dr. Polevoy e-mailed the Faculty of Medicine at the University of Calgary, including Dr. Kaplan's Dean, Department Head and the Ethics Office, complaining about her research and demanding that it be investigated. This inevitably led to an adverse impact on her professional reputation among her colleagues.

2. In 2003 Dr. Polevoy and his associates published an e-book entitled Pig Pills, Inc., which Dr. Kaplan considers to be full of "innuendo and guilt-by-association, as well as irrational thought processes" which is advertised and distributed on the Web.
3. On June 11, 2002 she was stalked at Alberta Children's Hospital by Ron Reinhold. Security was called and he left the grounds.
4. Dr. Polevoy wrote to a scientific journal which had published one of her articles alleging "scholarly misconduct" and demanding retraction of the article. She did not name the journal in question, but described it as a major international journal. She stated that it had had to investigate, requiring her to prepare "about twelve" documents and taking dozens of hours of her time. Her professional reputation was again compromised.
5. Dr. Kaplan and her associates have undergone rigorous peer review to obtain research grants. Dr. Polevoy and his colleagues have written to/complained to the funding agencies, "maligning their scientific reputations." Each such complaint requires hours of time and caused untold damage to their reputations.
6. Dr. Polevoy and his colleagues have twice complained to the FDA in the USA, leading to personal investigations of the client files of two American psychiatrists. Each office was closed down for about three days. Both were cleared of wrongdoing.
7. The ethics bodies of the two psychiatrists, (the Universities of Harvard and Utah) conducted their own investigations. Hundreds of hours were spent and reputations damaged. Everyone was cleared of any wrongdoing.
8. Dr. Polevoy recently wrote to the Presidents of the University of Calgary and CIHR as well as the Director General of Health Canada, alleging scholarly misconduct. Some politician (unnamed) had misquoted her research. Each letter led to an internal investigation and reply.
9. Dr. Polevoy consistently misquotes the office of Human Research Protection. When OHRP investigated Dr. Kaplan's colleague at the University of Utah, it chose, appropriately, to quote the Ethics Committee of that university which had decided that the risks to patients outweighed the potential benefits. This decision by the Ethics Committee led to the cancellation of the clinical trial and the withdrawal of their Utah colleague. Dr. Polevoy refers to this statement as if OHRP had investigated the nutrient supplement and had drawn this conclusion when in fact, he is only quoting the Ethics Committee's decision with which Dr. Kaplan and her colleagues had complied.

The Committee had before it the original letter of complaint and also the additional communications received from Dr. Kaplan and Dr. Polevoy in response to the required notice from the College. All of this information is referred to in the Committee's decision and the reasons expressed for its decision is as follows:

The Committee remains of the view not only that Dr. Polevoy has the right to voice his opinion about Dr. Kaplan's research to whomever he wishes, but also that it is not the Committee's role to determine the point at which Dr. Polevoy's expression of that opinion may constitute "harassment". That Professor Kaplan would find Dr. Polevoy's criticisms to be "an enormous burden", while regrettable, does not mean that his conduct in making those criticisms has been unprofessional. As for the methods that Dr. Polevoy has utilized in challenging Dr. Kaplan's work, it would appear that he appealed openly to those who might be expected to hear such complaints, and that his various allegations have, in turn, been properly investigated by those who might be expected to have an interest in them.

In accordance with its statutory authority the Committee concluded that this complaint was frivolous, vexatious, made in bad faith or otherwise an abuse of process and decided to take no further action with respect to this matter.

The complainant, Dr. Kaplan, was dissatisfied with the Committee's decision and in a letter received on May 11, 2005, requested that the Health Professions Appeal and Review Board (the Board) review it.

COMMENTS OF THE PARTIES TO THE BOARD

In her letter requesting review, Dr. Kaplan reviewed the background to the matter and challenged the reasonableness of the Committee's decision. She attended the review by teleconference and made the following submissions to the Board:

- She acknowledged Dr. Polevoy's right to express his opinion forcefully, in a university setting but he has claimed the privilege of extending this right to the public media as well and has not restricted his assertions to scientific comment.
- She has never been paid, or employed, to do research.
- Dr. Polevoy uses misstatements of fact on his website when she is quoted as saying the vitamin/mineral supplement is a cure for bi-polar conditions.
- When referring to her original letter of complaint she explained "Complaints by Dr. Polevoy or his group led to action by the Ethics Committee."

- She raised a new issue with the Board regarding e-mail messages sent to university presidents, Deans of Medical Schools within Canada, and to five major medical journals on October 5, 2000 which contained a number of accusations. All charges were subsequently dismissed but this just led to additional complaints from Dr. Polevoy.
- This is not just scientific debate. His track record establishes this. His efforts, for more than five years, have been to interfere with research.
- Dr. Polevoy has made repeated false accusations regarding Dr. Kaplan to her funding sources or agencies. This should be added to the nine points previously listed in her letter of complaint.
- Dr. Polevoy has assumed a role as "adversary." He is stalking her by internet.

By e-mail received on June 7, 2005, Dr. Polevoy made the following submissions to the Board:

- The complaint does not involve patient care.
- The complaint is an unfounded personal attack by someone who doesn't like his Website or his book. Dr. Kaplan has provided no details of the questionable methods to assist, over the years, in the promotion of the product.
- Dr. Kaplan states that "it is the unprofessional way he has attempted to stop our research which forms the basis of my complaint." This is a false accusation and she offers no substantiation in its support. The Federal Government in Ottawa halted the research, as did the University of Utah.
- Dr. Kaplan attacks his general deportment.
- "She claims that there have been numerous complaints to the College. I have been the victim of 'vicious smear campaigns' but they have all been dismissed."
- "I will not stoop to her level of personal attack. No legal action has ever been taken regarding my book, statements or personal presentations."

Dr. Polevoy made the following submissions to the Board during the review:

- Whistle-blower legislation protects complainants. He has attempted to blow the whistle on some research which he considers will endanger patients, especially children.

- The allegations made against him were carefully considered by the Committee and its decision is reasonable.
- He considers it part of his medical obligations to speak out when he believes he has encountered "quackery."
- Dr. Kaplan denies any commercial intent but the manufacturer is still using her studies to sell the products. She is also counselling people to discontinue medications.

James Cranton, the College Representative attending the review, in response to a question from the Board, advised that he was not aware of any similar complaints made to the College regarding the conduct of Dr. Polevoy.

ANALYSIS

Subsection 33(1) of the *Code* provides that the Board, in conducting a review of a decision of the Complaints Committee, shall consider either or both of the adequacy of the investigation conducted, or the reasonableness of the decision. In this instance, no investigation was required by the Committee as the provisions of subsections 26(4) and 26(5) contemplate a decision being made in circumstances such as this, to take no further action. The Board is accordingly required to determine only the reasonableness of the Committee's decision

Reasonableness of the Decision

In considering the reasonableness of the Committee's decision the Board has concluded that it will consider only the information which was before the Committee. Additional complaints or further information or explanation provided to the Board by either of the parties prior to or during the review ought not to be considered, unless there is an appropriate explanation as to why it had not been previously provided to the Committee. In such a situation the Board might see fit to return the matter to the Committee for reconsideration. In this instance, no such explanation was offered and no new information or additional complaints have been considered by the Board as having any relevance.

The only information before the Committee when it dealt with this matter consisted of the letter of complaint from Dr. Kaplan and the responses of both parties following the required notification of the intention of the Committee to take no further action. In reviewing the reasonableness of that decision the Board must determine whether or not it stands up to a somewhat probing questioning or whether or not it is supported by the information upon which it was based.

There is no doubt that the "principal mandate" of the Committee involves complaints relating to the provision of medical care. It is also agreed that the complaint filed by Dr. Kaplan is not directed to the question of the merit of Dr. Polevoy's criticisms but rather to the methods used by him to express his criticisms. The Committee has been specifically requested to "determine whether his behaviour constitutes harassment and warrants investigation" while admitting Dr. Polevoy's right to voice his opinion. The Committee has determined that it is not its role to decide at what point the expression of an opinion may be considered to be harassment. It acknowledged that Dr. Polevoy's criticisms may be "an enormous burden" without his conduct in making the criticisms being unprofessional. The Committee also observed that Dr. Polevoy's challenges regarding Dr. Kaplan's work appear to have been addressed to those with the responsibility to hear and properly investigate such allegations. Having expressed these conclusions, the Committee decided to take no further action in this matter.

The Committee's conclusions are supported by the information before it. With respect to the Committee, it would not be expected to have any specialized knowledge or experience in the determination of what does or does not constitute harassment in an academic dispute. It would appear that this issue could more reasonably be determined by some academic tribunal or at least by some body having experience in this field. The information before the Committee refers to several matters which appear to have no bearing on the allegations against Dr. Polevoy, e.g. the reference to stalking by Ron Reinhold at the Alberta Children's Hospital. Several of the events mentioned in the letter of complaint appear to have led to action having been taken by either Ethics Committees, Government agencies or funding sources. If only the methods used to express the opinions are to be considered, how can this effectively be done without consideration of the merits of the expressed opinions? Yet Dr. Kaplan agrees that the right to criticize is not in issue. Having considered the Committee's decision and the information upon which it is based, the Board finds that the decision stands up to a probing inquiry and is also supported by the information before the Committee. The Board accordingly finds the decision to be reasonable.

DECISION

For all of the above reasons the Board confirms the Committee's decision.

DATED at TORONTO
this 11th day of April 2006



John S. Herron

I agree



Malcolm Fealing

I agree



Judith C. Kennedy