

## MEDICAL APPEAL BOARD

BETWEEN:	Donna A. Cuthbert	APPELLANT
AND:	Royal Jubilee Hospital	RESPONDENT

### Members of the Panel:

T.C. Marshall, Esq., Chair  
D.W. Tokarek, Esq., Member  
J.T. Sandy, M.D., Member

Counsel for Appellant: R.A. Higinbotham, Esq.

Counsel for Respondent: Rodney Taylor, Esq.

Heard at Victoria, British Columbia, April 21 and 22, 1986.

## REASONS FOR JUDGMENT

This appeal is brought by Dr. Donna Cuthbert ("the Appellant") as a result of the refusal on May 2, 1985 by the Board of Trustees of the Greater Victoria Hospital Society (the "Trustees"), the responsible authority for the administration of the Royal Jubilee Hospital (the "Hospital") to grant her application of January 18, 1985 for active staff privileges. At the conclusion of this 2-day hearing, this Board unanimously agreed to and did order that the Appellant be granted admitting privileges on the active staff of the Hospital effective April 22, 1986 with written reasons to follow.

This Board was not called upon to deal with any administrative issues such as the method or form of any such application by the Appellant. No issue was taken with respect to her qualifications and credentials and consequently we restrict these reasons to those matters raised at the hearing.

The Appellant was denied privileges by the Trustees on the "basis of demonstrated and documented interpersonal difficulties with staff and patients while previously associated with the Royal Jubilee Hospital and the Victoria Cancer Clinic". The Trustees came to their decision after considering six letters, marked Exhibits 2, 5, 6, 7, 8 and 9 in this hearing, and relied upon the first four of these.

Although the Trustees granted the Appellant a hearing with respect to their decision to deny privileges, the Appellant was refused copies of the letters in question despite requests for the same on the basis that such letters were "privileged". Consequently it was not until the hearing before this Board that the Appellant knew the substance and received copies of the relevant exhibits.

Under the circumstances, it was difficult, if not impossible, for the Appellant to have any reasonable, let alone fair, opportunity to present her case to the Trustees.

Regardless of whether the Appellant should have been given particulars of the information and the relevant exhibits, the Trustees were unjustified in acting upon the information therein contained as it now has been established that much of that information was misleading, inaccurate or easily explained.

The first complaint was evidenced by Exhibit 2, wherein Dr. L complained of the Appellant's actions in leading one of his patients to believe he did not have cancer even though this was obviously so and especially since Dr. L had told the Appellant of the advanced cancer he found after performing surgery on that patient. This particular patient was a longtime friend and patient of Dr. L and after Dr. L had performed surgery and concluded that the patient had only a short time to live because of the extent of the cancer, he made arrangements for the patient to see the Appellant with a view to considering chemotherapy. The complaint against the Appellant was to the effect that she somehow allowed the patient to believe that he did not have cancer, specifically by reading him a portion of a pathology report which had just been handed to her. After the patient had had his spirits lifted by this belief, Dr. L faced the most difficult task of again explaining to the patient that he in fact had terminal cancer.

The evidence was that Dr. L would not or did not listen to the Appellant's explanation of the incident at the time it arose. In summary, the explanation was that the Appellant did not lead the patient to believe he did not have cancer and in fact told him she was certain he did because Dr. L was an experienced and knowledgeable surgeon who had seen the extent of the cancer firsthand. The Appellant could not begin chemotherapy on the patient without the appropriate laboratory analysis confirming the cancer and the first report she received did not show any cancer for reasons anticipated by the Appellant. She therefore had to wait for the necessary report of the biopsy. This Board fully accepts the Appellant's explanation of the incident and in particular that she confirmed to the patient the previous diagnosis of Dr. L.

This incident between Dr. L and the Appellant may well have been completely avoided had the Appellant been given the opportunity to explain.

Although Dr. L may have thought his beliefs reasonable at the time, this Board is satisfied after considering the evidence of both Dr. L and the Appellant that the complaint in Exhibit 2 is unfounded.

Several complaints are contained in the memorandum from Director of Laboratories at the Hospital, to the Medical Director, dated March 25, 1985 (Ex. 5). This Board notes in passing that many of the complaints listed in Exhibit "5" are based on hearsay, inaccuracies and opinions of others, perhaps inadvertently worded in such a way as to suggest that the conclusions therein stated were those of the Director of Laboratories. Again many of the complaints in Exhibit "5" were not brought to the Appellant's attention at the time of the incident. The Appellant gave satisfactory explanations or denied the incidents and complaints referred to in Exhibit "5" and this Board accepts her evidence in that regard.

With respect to Paragraph 2(a) of Exhibit "5", the Appellant's evidence was to the effect that she was anxious to try to have the malignant lymphoma classified in order that she might then embark upon the best form of treatment. Coincidentally, at this time a visiting and renowned expert from the United States was visiting Vancouver and the Appellant recognized that this might be an opportunity to assist a patient by making use of his specialty. Consequently, she requested and obtained from the Hospital's Pathology lab certain thin slides to forward to the expert. As this laboratory procedure was rather unusual, the Appellant said that she was in effect asking a favour of the technicians and was most definitely not "rude or demanding" as alleged. The Appellant testified that the entire matter was carried out without any problems whatsoever and at no time prior to receiving a copy of Exhibit "5" did she realize that there had been any problems with the technician. The latter was not called upon to give evidence nor were there any specifics given as to work that was "unacceptable" to the Director of Laboratories about the procedure.

In paragraph 2(b) of Exhibit "5", the Director of Laboratories accused the Appellant of having "directly intervened in Blood Bank requiring results and ordering investigations and requiring Techs to do things in an entirely inappropriate manner". The Director of Laboratories testified he had no personal knowledge of this incident.

The Appellant testified she knew nothing of this complaint and did not recall ever ordering such investigations. On one occasion she recalls the Blood Bank technician phoning her at home with respect to a cross-match blood problem, at which time the Appellant gladly volunteered some suggestions.

With respect to paragraph 2(c) of Exhibit "5", there was no evidence whatsoever to establish a "spate of Stat marrows" as therein alleged. The complaint with respect to the case is one that was brought to the Director of Laboratories attention by Dr. W who was and is in charge of the laboratory procedures in question.

Dr. W complained in a letter to the Director of the Cancer Clinic, dated May 1, 1984 (Ex. 3) that the Appellant made an urgent request of the Hematology Department requesting a technologist to attend for a bone marrow on patient X. This was somewhat inconvenient to Dr. W because some technologists were on their afternoon coffee break and the urgent request for one of the remaining technologists may have disrupted the orderly functioning of the lab. The Appellant's explanation to Dr. W to the effect that patient X was seriously ill and required treatment that day caused Dr. W to arrange for the technologist to attend in a short period of time. However, Dr. W examined the patient's chart the following day and determined that no treatment had in fact been conducted the previous day as the Appellant had suggested would be required.

Unfortunately, it was not brought to Dr. W's attention until early May that in fact treatment had been started that day on the patient and that the same was not noted on the chart as the treatment had commenced through the Victoria Cancer Clinic. Dr. W testified that when he found out that in fact treatment had been started that day he made that known to the Director of Laboratories. However, Exhibit "5" continues to perpetuate the mistake made by Dr. W and does not reflect that treatment was started immediately.

With respect to paragraph 4 of Exhibit "5" and in particular with respect to the case of patient Y, this Board finds there is no substance to that complaint. The patient Y incident arose as a result of a complaint by Dr. W as summarized in Exhibit "4". This Board accepts the evidence that the information given to Dr. W by the Appellant was not "totally inadequate" and was in fact all of the relevant information the Appellant possessed that could be of any assistance to Dr. W in performing the analysis. The statement in paragraph 4 of Exhibit 5 that the Appellant's attitude was one of "total unconcern" was contradicted by the Appellant who gave evidence that she in fact had an unpleasant conversation with Dr. W surrounding this incident when she spoke to him about it the following day and determined from Dr. W that he had not yet looked at the slides.

Exhibit "6" is a letter from Dr. C who was not called as a witness. That letter does not advance matters as the contents refer to the Appellant's approach while she was employed at the Victoria Cancer Clinic and her difficulty in accepting the structured environment of that institution. The Appellant is no longer associated with the Victoria Cancer Clinic and this appeal concerns her present private practice. The Appellant accepts that she did have some difficulty with the structured environment of the Victoria Cancer Clinic.

Exhibit "7", being a letter dated March 26, 1985 from the Head of the section of Hematology/Oncology to the Medical Director of the Hospital, is of limited assistance because of the lack of specifics therein contained and as well because it too deals substantially with the situation with respect to the Victoria Cancer Clinic. The Head of the section of Hematology/Oncology did not testify before this Board.

Exhibits 8 and 9 were far more persuasive as they were letters based upon the personal observations by the authors and were highly complimentary of the Appellant both professionally and personally.

In summary, this Board finds that there is insufficient evidence of interpersonal difficulties of such nature that would justify the denial of privileges to this highly qualified physician. The true difficulty appears to stem from a difference of opinion between the Appellant and Dr. W with respect to the administrative procedures the Appellant should have carried out when requesting the services of the Hospital's Laboratory facilities. To the extent there were such difficulties, this Board does not find that those matters were of a significant nature and in any event, we are completely satisfied with the Appellant's assertion that upon having these matters drawn to her attention she has taken and will continue to take every reasonable step to comply with the practice and procedures required by Dr. W, the Director of Laboratories or both.

The Appellant's application appears to have been supported by the Department of Medicine in July of 1984 (Exhibit 10, Tab 6) and the appointment of a clinical hematologist was supported by the Department of General Practice in March of 1985 (Exhibit 11, Tab 1).

We also note that the Appellant was given admitting privileges regarding Cancer Clinic patients in December 1984. Previously, she had only had consulting privileges. In light of the "complaints" that had arisen by the winter of 1984 it seems unusual that the granting of the Appellant's admitting privileges in December 1984 was dealt with as a routine matter and yet the same complaints now form the basis of refusing her application. Apparently the "interpersonal difficulties" were not significantly disruptive in December 1984 to warrant any action and there have been no substantial complaints arising from her conduct after December 1984.

Exhibit 11 contains a number of letters from various physicians in the Victoria area supporting the Appellant's application and referring to the need for a second hematologist/oncologist. Tab 8 of Exhibit 11 is but one example of the feeling of many physicians for a further hematologist, and in particular that the Appellant is needed in the community. Mr. T, on behalf of the Trustees, informed us that the Trustees did not consider the question of need in their decision, but only the personality issue. This Board has previously held that the need or lack of need of a particular hospital and community are relevant considerations in the decision making process of a hospital board. Although it cannot be suggested that any particular hospital board should always consider the question of need, in this case it would have been appropriate for the Trustees to weigh the question of need against the degree of interpersonal difficulties had the facts been fully before it. However, the Trustees relied completely upon the personality issue and were content to have the Appellant's appeal dealt with on that issue.

On the evidence presented before us, this Board finds that there was and is an exhibited need for the Appellant's services in the community and that granting her admitting privileges in the Hospital would not constitute any significant

burden on the Hospital's financial resources we also conclude that there is no basis for finding that there are' such "interpersonal difficulties" as to warrant a denial of hospital privileges. This is particularly so when one measures the quantity or degree of such "interpersonal difficulties" against the benefits to the quality of medical services provided to the community as a result of the Appellant's expertise, qualifications and high standards of patient care.

For these reasons the appeal is allowed.

T.C. Marshall

D.W. Tokarek

J.T. Sandy