

## MEDICAL APPEAL BOARD OF BRITISH COLUMBIA

BETWEEN	Dr. Kewal Krishan Jain	APPELLANT
AND	The North and West Vancouver Hospital Society and The Lion's Gate Hospital	RESPONDENTS

Members of the Panel:

Mr. Harvey J. Grey, Chair  
Dr. L.L. Ptak , Member  
Rev. Sister Marion Macdonald, Member

Heard Thursday, the 18<sup>th</sup> day of July, 1974

### REASONS FOR JUDGMENT

In December, 1973 the Appellant, a practicing neurosurgeon, applied to the Administrator of Lion's Gate Hospital operated by the Board of Management of the North and West Vancouver Hospital Society, for renewal of his permit to practise medicine in the hospital. He had enjoyed hospital privileges at the Lion's Gate Hospital for some nine years and at the time of this application was one of two neurosurgeons with practicing privileges at the hospital. The Appellant's application was referred to the Credentials Committee in accordance with the by-laws of the hospital and the regulations passed pursuant to the *Hospital Act*. The Credentials Committee conducted an investigation into his application and in a report to the Medical Staff Advisory Council of the hospital recommended against such renewal.

The Medical Staff Advisory Council then considered the Appellant's application and the report made by the Credentials Committee and made the following written recommendation dated December 18th, 1973 to the Hospital Board of Management:

The Credentials Committee, having investigated the application of [the Appellant] for Renewal of his Permit to practise medicine in this Hospital; and having heard the reports of the Chief of Staff, the

Administrator and the President of the Medical Staff, and having considered the documents copies of which are attached hereto:

REGULARLY MOVED AND SECONDED THAT the Medical Staff Advisory Council Reports and Recommends to the Board of Management that such application for Renewal of the privileges of [the Appellant] be rejected on the grounds that

1. The Committee has lost confidence in the willingness of [the Appellant] to conform to and abide by the decisions of this Committee and of the Medical Staff Advisory Council as to the treatment of patients in the hospital; and in particular with respect to the decision of the Medical Staff Advisory Council of 28th August, 1973 not to permit the insertion of a Dorsal Column Stimulator (for relief of pain) in any patient in the Hospital.
2. The Committee has noted that [the Appellant] on or about the 5th Day of September, 1973 without the authority of the Administrator or any other responsible officer of the Hospital or Medical Staff sought to reproduce and circulate to all the Members of the Medical Staff a letter written by him, which the Committee considers to be an unwarranted and unethical attempt to interfere in the proper discharge of the duties of the Medical Staff Advisory Council.

The Committee has further noted that between September 1973 and November 1973, the Administrator of the Hospital has received communications from the Business Representative of the Union to which [FM] belongs and from an employee of his employer..., seeking to influence the Hospital to alter its declared policy not to permit the said operation of insertion of a Dorsal Column Stimulator in the said [FM].

The Committee has reason to suspect that such communications were instigated by [the Appellant] in an attempt to influence the Medical Staff Advisory Council to permit this operation upon this patient, contrary to its declared policy; and is of the opinion that if this is so such instigation is not conducive to the proper operation of the Hospital and is unethical.

3. The Committee has lost confidence in the willingness of [the Appellant] to accept or give proper consideration to the advice and opinion of the attending physician, or of other reputable Neurosurgeons, as to the proper treatment and place of treatment of Patients in his care, or in respect of whom he has been consulted; and in particular in respect of the proper care and treatment of one [FM] who, until 28th November 1973, was a patient in the Hospital.

4. The Committee has lost confidence in the standard of patient care afforded by [the Appellant], in a consulting capacity, to the said [FM] while he was a patient in the Hospital.
5. The Committee is of the opinion that [the Appellant] has advised, counselled and influenced said [FM] to refuse to comply with, and to disobey, the order of the Board of Management of the Hospital dated 28th November 1973 and that the said [FM] be discharged from the Hospital; with the result that the said [FM] remained in the Hospital as a Trespasser until Wednesday, 12th December, 1973.
6. The Committee is of the opinion that [the Appellant] has obstructed the recommendation of [Dr. M], the attending physician of said [F M], that said [FM] should be transferred to the Vancouver General Hospital Neurological Teaching Centre for further diagnosis and possible treatment; and has further obstructed the arrangements made by [Dr. M] for such transfer.
7. The Committee has concluded that any or all of the foregoing grounds indicate that' the renewal of the Permit of [the Appellant] to practise in the Hospital will not be in the interests of proper administration of, or of a proper standard, of Patient Care in the Hospital.
8. The Committee has also reviewed the file of [the Appellant] since he first became a member of the Medical Staff of the Hospital; and has noted numerous complaints by members of the Nursing Staff of the Hospital; and of charges made by [the Appellant] against other members of the Medical Staff during the period 1966-73.

Most of these complaints against and by [the Appellant] have been resolved by passage of time or by some action.

They are therefore not specifically included in the Committee's grounds for its present recommendation.

However, the Committee observes that they do nothing to indicate that the standard of care of patients, or the well-being of the Hospital or Staff will be served by the renewal of his Permit to Practise in the Hospital.

The Board of Management of the hospital reviewed the Appellant's application, considered the recommendations of the Medical Staff Advisory Council and by resolution dated December 19th, 1973 decided not to renew his permit to practise medicine in the hospital for the calendar year 1974. He was notified of the Board's decision.

The Appellant, on receipt of the Board's decision not to renew his practicing permit, made application in writing to the Board as he was entitled to do under Section 15(5) of the Regulations pursuant to the *Hospital Act* for a re-hearing or re-

*consideration* of the Board's decision. After a full hearing, at which the Appellant and the Medical Staff Advisory Council were represented by counsel and evidence heard, the Board on February 23rd, 1974 resolved unanimously that the resolution of the Board dated 19th of December, 1973 be affirmed.

The Appellant thereupon brought, this appeal to the Medical Appeal Board pursuant to the *Act* and the regulations alleging in his Notice of Appeal that he was dissatisfied with the decision of the Board.

At the outset of the appeal counsel for the Board of Management took the position that the appeal to the Medical Appeal Board was a mere review of the hearing before the Board of Management and that its decision should be affirmed unless the Appeal Board was satisfied on the evidence that the decision of the Board of Management was clearly wrong or that the Appellant had not received a full and proper hearing. The Appeal Board after hearing the submissions of counsel rejected this submission and concluded that by the terms of the *Act* and regulations the Appeal Board is not limited in its jurisdiction to a mere review of the evidence before the Board of Management. In the opinion of the Appeal Board the appeal of a physician who is dissatisfied with the decision of the Board is a re-hearing in the full sense of that term.

The recommendation of the Credentials Committee to refuse the Appellant's request for renewal of his practicing permit seems to have stemmed largely, if not wholly, from the actions of the Appellant following a decision of the Medical Staff not to permit the carrying out at the hospital of a procedure known as the implantation of a dorsal column stimulator.

This procedure is a controversial one. The Appeal Board heard evidence both for and against the procedure. Whatever may be the merits of this treatment the Appeal Board is satisfied the Medical Staff were fully justified in making this decision and it was one which members of the hospital staff were bound to accept and to adhere to. The Appellant had prior to this decision performed two such procedures at the hospital and was very much a proponent of this particular procedure. He did not accept the decision of the Medical Staff and sought over a period of several months to reverse their ruling. In so doing his relationship with the Chief of Staff, the hospital administration and other staff doctors became strained and ultimately deteriorated into hostility and mutual recrimination.

In June 1973 one FM was referred to the Appellant by his general physician, Dr. M, for a neurosurgical consultation. FM was suffering from a painful back condition which was diagnosed by the Appellant as arachnoiditis. In the opinion of the Appellant the best hope of alleviating FM's pain was through a surgical intervention by way of the implantation in the spinal column of a dorsal column stimulator. FM accepted this advice and indicated his desire to have this procedure carried out.

The evidence discloses that either before or shortly after FM's admission to hospital the Appellant was advised of the Medical Staff's decision not to permit this procedure to be carried out in future at the hospital. Further, that in the case of FM it could not be carried out. The position of the Medical Staff was clear and

unequivocal. They were not satisfied that this treatment had any beneficial effect and were concerned that it might have a harmful effect on patients.

This refusal to grant permission to the Appellant to perform this procedure on FM was not accepted. He persisted in his efforts to obtain the right to carry out the procedure on FM. He was censored for his actions by a unanimous vote of the Credentials Committee and by a letter dated September 7th, 1973 was warned that if he continued to press the matter the Committee would recommend to the Board of Management that his privileges be suspended. The Appellant was requested to obtain a further neurological opinion but declined to do so on the grounds that it was impossible at the particular time to arrange for a further consultation. The controversy continued and at a meeting attended by members of the staff and the Appellant on October 18th, 1973 his actions were criticized and he was again warned of the obligations attendant upon a physician's privilege to practise at the hospital.

On November 1st, 1973 Dr. C, Chief of Staff, wrote a letter to the Appellant which read in part as follows:

"From the time of admission of this patient and even before this patient was admitted and also before August 27th, 1973 you were told that we would not permit the procedure in question to be done at our hospital. Despite this, you persisted in your attempts to arrange for this procedure to be done. At one time you wrote that, of all the neurosurgeons in B. C. you and only you would be allowed access to the dorsal column stimulator. You have stated from the start that dorsal column stimulator implantations was the treatment of choice in this patient's case and yet prior to October 18, 1973 and equipped with that information, you did not voluntarily attempt to transfer the patient to a suitable institution.

I realize the serious nature of the "charges" that "were laid against you". It is for that reason that I reply to your letter and I hope that you will acknowledge, to yourself, your many errors and, further, I enjoin you to act upon the advice of those present at the October 18th meeting."

The patient FM had received treatment at the hospital prior to August, 1973. The admission to hospital which gave rise to this controversy occurred on August 21st, 1973. FM remained in hospital contrary to the wishes of the administrator of the hospital and the Board of Management until he was discharged on December 12, 1973. There had been an earlier discharge of the patient on October 11th but he was immediately thereafter re-admitted by the Appellant. Throughout this period of time the hospital wanted FM discharged because, in the opinion of the staff, he was not receiving the required treatment for his condition. FM stubbornly refused to be discharged either with or without the tacit approval of the Appellant. In fairness to the Appellant it should be commented that he did take steps to have FM

transferred to an American hospital where the treatment he had recommended could be provided.

Evidence was led to the competence of the Appellant. His professional competence was not in issue before the Board of Management. In the opinion of the members of the hospital staff who gave evidence the Appellant was a competent neurosurgeon. It is unnecessary therefore to deal with the evidence relating to this question.

The Board of Management of every hospital is fixed with the responsibility under the *Hospital Act* "for the proper carrying out of the administration and management of the hospital's affairs and the provision of a high standard of care and treatment for patients". This includes the responsibility of determining whether or not a particular medical practitioner shall be permitted to practise medicine in the hospital, in what category of practise and subject to any condition.

The question on this appeal is whether, in the circumstances related above, the Board of Management's decision not to renew the Appellant's permit to practice at the hospital was a proper one. It must be remembered that the Board in reaching this decision acted on the recommendation of the Credentials Committee and the Medical Advisory Council.

This recommendation and the reasons therefore, if substantiated, are, in the opinion of the Medical Appeal Board, sufficient grounds for declining to renew the Appellant's practising permit. It is clear beyond doubt that the Appellant refused to accept the decision of the Medical Staff not to permit the carrying out at the hospital of a procedure known as the implantation of a dorsal column stimulator. That he continued to insist on the hospitalization of FM contrary to the wishes of the Board of Management while he worked to reverse this decision. The prolonged hospitalization without any effective treatment undoubtedly was detrimental to the patient FM.

No hospital can function unless the members of the Medical Staff enjoying hospital privileges loyally follow and accept policy decisions of the Board of Management. If every doctor on the staff of a hospital were free to ignore decisions of the Board or, the Medical Staff relating to medical treatment and patient care simply because he did not agree with them, or to persist in a form of treatment or procedure not approved by the Board, the result would be chaos.

The responsibility for deciding whether or not to renew the Appellant's permit to practise medicine in the hospital rested with the Board. In the opinion of the Appeal Board the Board was justified in declining to renew his privileges. The decision of the Board of Management in this case is affirmed.

While concluding that the Board of Management was justified in its decision the Appeal Board is of the opinion that it would have been open to the Board to discipline the Appellant by a temporary suspension of his privileges. He has been on the staff of the hospital for some nine years. While there have been personality clashes with other members of the hospital staff during his tenure there is no

suggestion that he was other than an asset to the hospital. His professional competence as a surgeon was not in question before the Board. The FM affair was an isolated incident. The action of the Board in declining to renew the Appellant's practise permit will make it extremely difficult for him to gain acceptance at another hospital and could have an adverse effect on his professional career.

Having regard to the above the Appeal Board feels that should the Appellant see fit to submit a further application for a permit to practise medicine at the hospital that his application should receive an open minded and generous reception by the Board of Management. The Appeal Board is powerless to attach any conditions to its decision in this case. This footnote to its decision is by way of recommendation only.

Harvey J. Grey

Dr. L.L. Ptak

Rev. Sister Marion MacDonald