

## MEDICAL APPEAL BOARD

BETWEEN:	Dr. Mary Robertson	APPELLANT
AND:	Lions Gate Hospital	RESPONDENT

### Members of the Panel:

D.W. Tokarek, Chair  
Dr. M.G. Clay, Member  
Dr. F. Forrest-Richards, Member

Counsel for Appellant:	T.R. Braidwood, Q.C. J.E. Dorsey, Esq.
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Counsel for Respondent:	D.A. Webster, Esq. D.J. Dardi
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Heard at Vancouver, British Columbia, January 5, 6, 7, 10, 1987.

## REASONS FOR JUDGMENT

This is an appeal from the decision of the Board of Directors of Lions Gate Hospital (the "Hospital") made on July 16, 1986 determining that the Appellant's privileges at the Hospital "not be renewed past July 17, 1986". (Exhibit 4) For the purposes of this appeal the issue of appointment to the medical staff will be treated synonymously with the granting of privileges.

Counsel for both the Appellant and Respondent made submissions with respect to whether the Appellant's appointment to the temporary medical staff was cancelled as opposed to her application for re-appointment being denied. This Board is prepared to treat the matter as though the Appellant applied for active staff privileges pursuant to her letter of March 19, 1986 and that application was denied. (Exhibit 1, Tab 15)

The Appellant was a member of the medical staff at the Hospital from October 27, 1976 until July 17, 1986. The Appellant was granted temporary medical staff privileges for approximately one year and associate medical staff privileges from September, 1977 to December 31, 1980. Thereafter she was granted active medical staff privileges from January 1, 1981 to December 31, 1985. As a consequence of a series of complaints and difficulties alleged by the Credentials Committee of the Hospital, the Appellant was put on probationary medical staff privileges from January 1, 1986 to April 16, 1986. She was then restored to temporary medical staff privileges from April 17, 1986 to July 17, 1986 and thereafter the Hospital refused to grant any further privileges.

The decision of the Hospital to refuse to grant the Appellant any hospital privileges was the subject of several days of hearing before this Board which entailed a review of the Appellant's conduct at the Hospital from October, 1976. Little will be gained by examining the Appellant's conduct in detail in the early years as the Appellant has admitted that her behaviour through the early years and into the spring of 1983 was unacceptable. It is also apparent from the correspondence and conduct of the Hospital that the incidents giving rise to complaints about the Appellant were forgiven and forgotten on several occasions. Although the earlier incidents cannot be ignored, this Board feels that in light of the actions taken by the Hospital over the various incidents and the degree of significance placed upon those incidents, it is most relevant to deal with the Appellant's conduct from 1983 to the denial of privileges in 1986.

In summary, the Hospital's position is that the Appellant's behaviour, as evidenced by the numerous incidents and complaints, can only be categorized as inappropriate and unacceptable conduct in her communication with members of the medical and Hospital staff. The Hospital's concern is that the unacceptable behaviour and disruptive personality of the Appellant were so severe as to cause or likely cause disruption in the efficient performance of the Hospital team thereby potentially affecting quality patient care. The Hospital took the position that the Appellant's clinical judgment was suspect, particularly in the Obstetrical Ward and the Case Room. No part of this hearing dealt with the issue of the Appellant's competency, which was admitted, except that the Hospital took the position that it was difficult if not impossible to make a clear distinction between inter-personal confrontations involving the Appellant and the Appellant's clinical judgment, particularly where the confrontations occurred during the course of the Appellant's treatment of a patient. However, the Hospital felt that if the Appellant's behaviour in communication skills could be improved, in all probability any concerns regarding the Appellant's clinical judgment would be satisfied.

The Appellant's position is that she was the victim of a series of circumstances and determinations based on erroneous facts which the Credentials Committee and others at the Hospital chose to act upon and which in turn were rubber-stamped by the Hospital's Board of Directors. The Appellant categorizes some of the acts of the Credentials Committee and various individuals as outrageous.

The first witness called by the Hospital, Dr. G, was on staff at the Hospital since 1966 and the Chief of the Department of General Practice from 1979 to June, 1983. Dr. G gave evidence that throughout this period he had often received complaints

about the Appellant which he ignored if they were isolated complaints but pursued if the complaints came in a series or a group. Dr. G had an unsatisfactory conversation with the Appellant in 1983 concerning various complaints that had come to his attention and did not think the Appellant had any insight into the problems as presented. The Appellant met with the Credentials Committee on June 14, 1983. The Credentials Committee felt that the Appellant "did demonstrate sufficient insight to hopefully be able to affect improvement ...." (Exhibit 2, Tab 13)

Dr. G's successor, Dr. B, was most diligent and took a great deal of time in compiling and assessing the various subsequent complaints against the Appellant. Dr. B concluded in October, 1983 that since the Appellant's June 1983 meeting with the Credentials Committee, the Appellant had worked hard to improve things and it was Dr. B's impression from a number of heads of departments that the verbal complaints against the Appellant had decreased and he complimented her on that change. (Exhibit 2, Tab 15)

Dr. B recommended that the Appellant be re-appointed to the active staff for 1984. Shortly thereafter, in December, 1983, Dr. M, the then Chief of the Department of Obstetrics and Gynaecology, wrote to the Hospital's Chief of Staff concerning the Appellant and, after having reviewed both the personal file of the Appellant and the review undertaken by Dr. B, concluded that

...there has been a dramatic improvement in her behaviour and efforts to communicate with medical and nursing staff.

I believe that this physician has demonstrated insight into her problem and is effecting improvement in her behaviour and in her medical practice.

I find no areas of her obstetrical management which would justify her removal from the medical staff or the Department of obstetrics.  
(Exhibit 9)

The Hospital consistently took the position, through the evidence of Dr. B, that the Appellant lacked any insight whatsoever into the complaints made against her and continually put up what Dr. B called a "wall of denial". Unfortunately, although the allegations of lack of insight and "wall of denial" arose repeatedly throughout Dr. B's testimony, the documentation and acts of the Appellant do not substantiate those assertions. Exhibit 9 and Exhibit 2, Tab 13 are two instances refuting the suggestion of a lack of insight. In fairness to Dr. B, his evidence was that there were periods when the Appellant would seem to deal with matters reasonably and responsibly and then there would be other periods when she demonstrated no capacity to understand the problems whatsoever. The Appellant had in fact been put on an "observation" status for a period of one year embracing part of 1983 and part of 1984. The exact meaning of "observation" status was never made clear to this Board but it would appear that this was a designated period of time during which the Appellant's conduct would be more closely scrutinized by her peers. In any event there appeared to be very few complaints with respect to the Appellant's conduct during this period. One incident giving rise to concern on Dr. B's part involved the Appellant and Dr. A. The Appellant was taken to task for berating Dr.

A in the presence of his colleagues. Dr. B felt that any such conversation should have been conducted in private. The issue was not whether there was any merit in the substance of the Appellant's complaints about Dr. A but rather that the complaints were aired in an inappropriate forum. Therefore, although there were some reservations with respect to the Appellant, Dr. B ultimately informed the Appellant that several of her colleagues had noticed a significant improvement in her behaviour over the latter part of 1983. (Exhibit 2, Tab 17)

We are mindful of another incident that may have caused Dr. B some concern with respect to a verbal altercation between the Appellant and Dr. BE, which was referred to during the hearing as the "fire-fight". On the basis of the evidence presented before this Board, we cannot give any significance to the alleged incident between Dr. BE and the Appellant. Dr. BE did not give evidence and the Appellant's version of events concerning that incident would not suggest any inappropriate conduct whatsoever on her part. Throughout the period of 1984 Dr. B dealt with the Appellant's file in a thorough and careful fashion. Dr. B was concerned about the continuing rude and abrasive manner of the Appellant in her dealings with Hospital staff and colleagues but in November, 1984 gave her credit for making efforts to reduce the confrontations she had previously been experiencing. Dr. B concluded that the Appellant "has taken suitable steps to relieve the problem and in fact the problem has markedly improved over when I first took over as Chief of General Practice. I would therefore recommend her to active staff position, Department of General Practice for the 1985 year." (Exhibit-2, Tab 18)

Consequently, the Appellant was removed from the "observation" status and was given active staff status for the year 1985.

Unfortunately for the Appellant, particularly in light of the reputation she had gained at the Hospital, further incidents came to light in 1985, in particular, a letter from Dr. WM (Exhibit 2, Tab 19) and a letter of March 7, 1985 from Mr. T (Director of the North Shore Community Mental Health Centre). (Exhibit 2, Tab 20).

The complaint by Dr. WM, a Medical Health Officer at the North Shore Health Department, was somewhat vague in terms of what behaviour was being complained of. The Appellant's explanation with respect to this incident related more to an administrative mix-up in terms of the forms and information that she had to have when she attended Dr. WM's facility to obtain the requisitioned supplies. Mr. T's complaint more directly refers to the abrasive conduct of the Appellant. Neither Mr. T nor Dr. WM gave evidence with respect to their particular complaints and this Board was left with the explanation of events as presented by the Appellant, which did not seem unreasonable. In any event, neither of these complaints were related to her hospital practice.

Nevertheless, these written complaints as well as some verbal complaints received by Dr. B caused him to reconsider this matter with a view towards having the Credentials Committee interview the Appellant. The other complaints received by Dr. B were from two locum tenens physicians commenting on the lack of cleanliness in the Appellant's office, from an employee at the Lonsdale X-Ray Facility and from Dr. MA that his conversations with the Appellant were becoming increasingly bizarre. These complaints were also unrelated to the Appellant's hospital practice.

The Appellant asks us to accept the evidence of Dr. MAD that the purpose of the Credentials Committee was to deal with those matters that were within the Hospital. There is merit to this request as Dr. B himself did not include some complaints in the Appellant's file and downplayed others on the basis that the complaints came from outside the Hospital. (Exhibit 2, Tab 23).

It is obviously impossible for this Board to appreciate the human dynamics occurring throughout this period but it is apparent that Dr. B reached the end of his patience and he, and the Credentials Committee on his recommendation, began to take fairly firm steps in dealing with the Appellant. From the Appellant's perspective, she was somewhat unaware of what was going on behind the scenes as she chose not to associate with her colleagues in a social setting within the Hospital. She preferred to dedicate her activities and time towards a very substantial practice which she had built up over the years. Perhaps it is best to describe the Appellant as a "loner" who did not seek or walk the corridors of power within the Hospital medical hierarchy. The Appellant would have been further puzzled in that she appears to have repeatedly and consistently asked that complaints concerning her conduct be brought to her attention as soon as possible in order that she could deal with them appropriately. This did not appear to happen. As well, Dr. B had previously instituted a policy whereby he would only accept complaints in writing but in early 1985 he chose to act on verbal complaints.

The course of unfolding events may have limited Dr. B's perception of his options. However, the actions taken by Dr. B and the Credentials Committee in this March/April, 1985 period do raise some questions. For example, Dr. B wrote to the Registrar of the College of Physicians and Surgeons on March 25, 1985 summarizing the various complaints made against the Appellant. (Exhibit 2, Tab 23)

Although this letter was written with the apparent objective of obtaining the College's direction in dealing with the Appellant, it is nevertheless curious in the sense that it refers to some complaints that were on occasion two or three years old which had long been forgiven and forgotten by the Hospital, and also refers to many incidents outside of the Appellant's practice at the Hospital. One reference is to a comment based on hearsay three times removed.

In any event the Appellant was subject to an interview before the Credentials Committee held on April 2, 1985. At that time a summary of the Appellant's file had been prepared and Dr. B had as well visited the Registrar of the College of Physicians and Surgeons to discuss the Appellant's circumstance. Furthermore, Dr. C had consulted the Hospital's solicitor. Dr. B also had drafted a seven point rehabilitation program which he felt should be imposed upon the Appellant but neither that program nor any of the above-mentioned facts were made known to the Appellant either before or during the Credentials Committee meeting of April 2nd. The series of verbal complaints reported by Dr. B in his letter to Dr. AR of March 25, 1985 (Exhibit 2, Tab 23) were also discussed at the Credentials Committee meeting.

It is interesting to note that in Dr. B's letter to the Registrar he is most concerned by the Appellant's total lack of insight. On April 4, 1985, two days after the Credentials Committee meeting, Dr. B and the Appellant had a conversation

concerning the recommendations of the Credentials Committee and Dr. B reported that the Appellant did not see any difficulty in acknowledging to the Credentials Committee that the number of complaints against her were excessive and that she had no difficulty in securing the services of a psychiatrist. In fact the Appellant, on her initiative, had sought assistance from a psychiatrist for approximately two years with respect to the personality complaints leveled against her.

Although the general nature of the Credentials committee's recorded recommendations were discussed at the April 4 meeting between the Appellant and Dr. B, she was not shown a copy until she attended a meeting in the presence of Dr. B and Dr. MAD, the Chief of Staff, on April 29, 1985. She was then shown a copy of the Credentials Committee recommendations for the first time and was noticeably upset. The first point of the Credentials Committee recommendations suggested that she write a letter acknowledging unacceptable behaviour amounting to unprofessional conduct. She was also led to believe that she was to see a psychiatrist not for the purpose of diagnosis, but for the purpose of treatment, thereby believing that the Credentials Committee had assumed she suffered a psychiatric disorder. Her conclusion may have been well founded in that Dr. B stated in his letter to the Registrar that Dr. TE, the former Chief of Psychiatry, was of the opinion that the Appellant suffered some form of "bipolar disorder". (Exhibit 2, Tab 23.)

It also became apparent to the Appellant that some of the verbal complaints which had not previously been reported to her were the subject of the Credentials Committee deliberations and she was concerned that the Credentials Committee had assumed those complaints to be true.

Despite the rather shocking effect these recommendations would have had on most of us, the Appellant reacted in a satisfactory manner and, not unreasonably, sought legal advice. On May 6, 1985 the Appellant's solicitor offered to deliver recommendations agreeable with Dr. R based on the Credentials Committee motion. (Exhibit 1, Tab 8) As well, the Appellant's psychiatrist, Dr. L wrote to Dr. B on May 6, 1985 informing Dr. B that the Appellant was aware of the difficulties she had created for the Hospital, was making an effort to change, and confirmed that she had initiated visits to Dr. L. (Exhibit 1, Tab 7)

Nevertheless, the Credentials Committee passed a motion on May 7, 1985 referring to the Appellant's lack of recognition of the problems and recommended suspension until such time that there was satisfactory evidence of remedial action. (Exhibit 2, Tab 30)

Unfortunately, Dr. L suffered a heart attack and could not continue his relationship with the Appellant. The Appellant, through her solicitor, suggested another psychiatrist, Dr. V, who was completely acceptable to Dr. B and the Credentials Committee. The Appellant saw Dr. V on July 17 and again on August 14, 1985.

Regrettably, at this point a mistake was made which further compounded the Appellant's problems. Apparently Dr. V had a system whereby his patients were to book sessions six visits in advance whereas the Appellant was used to booking only one or two sessions in advance. Because she did not book the six advance sessions

the erroneous impression was created with the Credentials Committee that she was not entering into a treatment program with Dr. V. The correction was subsequently made but not until after the Credentials Committee had decided to inform the Appellant's solicitor that the Appellant had failed to meet the necessary criteria of recognizing that she had a problem, that the problem needed treatment and that she was voluntarily entering into the treatment program. (Exhibit 2, Tab 36)

Dr. B gave evidence that throughout the balance of 1985 there were some ups and downs in terms of his relationship with the Appellant. On occasion the "wall of denial" was down and on other occasions up.

Dr. B advised the Credentials Committee that matters were not being resolved satisfactorily and in October by majority vote, the Credentials Committee was prepared to demote the Appellant to the probationary level. Apparently, counsel for the Hospital and the Appellant reached an agreement in October, 1985, pursuant to which the Appellant accepted probationary staff status for 1986 starting January 1, 1986. Thereafter the Appellant wrote to the Credentials Committee recognizing that she had a problem with her personal relations with the staff at the Hospital, stating that she had entered into a course of treatment and committing herself to a course of therapy to improve her relationships. She also authorized her psychiatrist to discuss with Dr. B the status and progress of her psychiatric treatment in respect of the Hospital's concerns about her interpersonal relationships. (Exhibit 2, Tab 45)

Shortly thereafter two further disputes arose between the Appellant and Dr. B. The first matter involved the method chosen by the Appellant to provide care to her patients while she was on probationary staff without admitting or attending privileges. The Appellant wished to use a locum in a manner that was unacceptable to Dr. B and his colleagues and words were exchanged. There were two aspects to this intended use of a locum but for the purposes of these reasons it is not necessary to detail this incident. We find nothing unreasonable in the Appellant intending to use the locum as she suggested nor was there anything unreasonable in her questioning Dr. B as to the details of why she could not so use the locum.

The second incident involved a dispute between the Appellant and Dr. B with respect to the extent of consultation the Credentials Committee expected to have with Dr. V concerning his treatment of the Appellant. Not surprisingly, the Appellant, now in a treatment phase, wished to maintain a doctor/patient confidentiality and was concerned of the potential of the confidentiality being breached by Dr. V should he discuss too many details with the Credentials Committee. Correspondence passed back and forth between the parties on this issue but ultimately Dr. B gave way and was prepared to accept a report from Dr. V to the effect that the Appellant could return to the staff and fit in in a suitable fashion.

On April 1, 1986 the Credentials Committee agreed to move the Appellant from probationary staff to temporary staff on the basis that she continue to see Dr. V as a resource person (not a disciplinary action) and that at the end of three months her case would again be reviewed.

No sooner had the Appellant regained temporary staff privileges than three events occurred in very short order which ultimately spelled the end of her privileges. These three incidents have been referred to as the Baby J incident, the Dr. CA incident, and the Dr. MO incident. It was not suggested that any of these incidents in isolation were significant enough to warrant a decision not to grant any further privileges, rather that the three incidents taken together were serious, significant and an obvious recurrence of the kind of behavioural complaints leveled against the Appellant throughout the years.

The Baby J incident concerned conduct of the Appellant in the Case Room shortly after she received her temporary privileges. One of the nurses felt that the Appellant exhibited rude and abrasive conduct toward an intern during a delivery. The nurse involved gave evidence of what transpired in the Case Room on this occasion but unfortunately, the intern was away in New Zealand and was unable to give evidence. However the intern's written report does not suggest the same perception of the incident as that possessed by the nurse. The Appellant did not think she was rude or abrasive to the intern and says she subsequently spoke to him and that there was no difficulty in regard to this incident. Although we accept that the nurse, the Appellant and the intern may well have a different perspective of the incident, we are concerned that these kinds of allegations of rudeness and abrasiveness should be felt by a member of the nursing staff. Unfortunately in the absence of the intern's evidence we cannot satisfactorily resolve the nature or extent of the perceived rudeness.

The Dr. CA incident arose as a result of a misunderstanding in that Dr. CA was not made aware that the Appellant had been given temporary staff privileges in April, 1986. The Appellant had made arrangements with Dr. CA for Dr. CA to do a locum while the Appellant went on vacation. Dr. CA, who herself had been away for the previous month and unaware of the Appellant's status, questioned the Appellant as to whether she had privileges. The Appellant took exception to being questioned in this manner and, according to Dr. CA, reacted in a rude and unprofessional way during the abbreviated balance of the conversation. From the Appellant's point of view, she had concluded during her April meetings with Dr. B that she had become "labelled". She believed many people had been talking about her behind her back and perhaps considered her "crazy". Without discussing the concept or merits of the Appellant's belief, it is reasonable to conclude that she had some justification for her belief. In the context of that background one can understand, but not necessarily condone, the Appellant's reaction to what she thought was an affront to her credibility.

The Dr. MO incident is perhaps the most serious of the three incidents. The complaint arose as a result of the Appellant's error. Her temporary staff privileges were to become effective on April 17, 1986 after the Hospital administration had notified the wards. Though the Appellant had made arrangements to have her patients "covered" at the Hospital while she was on probationary status, those arrangements ended at midnight, April 16, 1986. There was therefore a period when the Appellant had not arranged for coverage and it was during that interval when one of the Appellant's patients required care at the Case Room. The Appellant alleges a misunderstanding between her and Dr. MO to the effect that she understood Dr. MO would be available to cover. Dr. MO said that no such



arrangements were ever made and that she knows of no way the Appellant could have interpreted that there were any such arrangements. The issue is not whether there was an arrangement but whether the Appellant's communications with Dr. MO were inappropriate. Without going into great detail, it appears that Dr. MO and the Appellant had a conversation in the early morning hours of April 17, 1986 during which the Appellant made statements to Dr. MO to the effect that the Appellant was accepting no responsibility for the patient as the patient was Dr. MO's responsibility. According to Dr. MO the Appellant refused to do anything with respect to that patient and was rude and abrasive as well. The problem was ultimately resolved by Dr. MO attending without any jeopardy to the patient.

Later that morning the Appellant sent flowers and a note to Dr. MO thanking her for her assistance in this matter. By this time the damage had been done and Dr. MO was not then nor was she before this Board prepared to accept the Appellant's conduct. The Appellant, when questioned by this Board, agreed that she should have handled the situation in a much different and preferable way, and stated that she regretted the way in which she handled the affair.

Although this Board has not referred to the evidence of the other witnesses called by the Hospital, we are mindful of and have considered that evidence in our deliberations. We are similarly mindful of the evidence led by the Hospital through various witnesses with respect to the need for efficient team work within the Hospital setting and the potential for the adverse effect on patient care in the absence of this team work.

As has often been stated, this Board hears the matter de novo and our concern is to determine what is in the best interests of the public as "consumers" of the Hospital facilities and as well to deal with the rights of the individual physician. On the evidence before us we cannot reach any conclusion other than that the Appellant was not highly regarded by many of her colleagues at the Hospital with respect to her interpersonal communications and skills. As in the *Kelowna General Hospital and Dr. T.J. O'Neil* case, it is apparent that many of the Appellant's colleagues considered her rude, abrasive and abrupt. The difficulty is that many of these perceptions may be the result of hearsay, innuendo, and an acceptance of the Appellant's reputation which may not have been deserved. For example, the Head Nurse in the Case Room gave evidence that the Appellant quite clearly tried to change her ways and discussed how she could get on better with the nursing staff. The Head Nurse made some suggestions and the Appellant subsequently followed up with the Head Nurse as to how matters were going in that regard. In July, 1986, the Head Nurse felt that the Appellant should be given an extension of her privileges and would have done so if the choice were hers. However, at the hearing she completely reversed herself and was not in favour of extending privileges because she had since gone around and spoken to others and as a result changed her independent opinion.

As another example, Dr. B repeatedly gave evidence about a "wall of denial" and constant "paranoia" on the part of the Appellant. Dr. B's assertions of paranoia could not be remotely sustained on cross-examination. Although it is very difficult for this Board to reach conclusions in the absence of the daily interaction going on at the Hospital, we see very little evidence of a "wall of denial". To the contrary,

there is significant evidence of the Appellant recognizing some personality problems and attempting to deal with them. Furthermore, there appears to be no factual basis for the belief of the Credentials Committee that the Appellant suffered from a mental disorder.

Although this Board has some reservation with respect to the Appellant's convenient memory loss under cross-examination and her lack of appreciation of the obvious benefits of associating more closely with her colleagues in the Hospital, on the evidence before us this Board cannot agree that the Appellant's conduct was or is such as to warrant a complete denial of Hospital privileges.

Although we have heard evidence of the potential disruption to the team approach and consequent level of patient care, we are not convinced that the Appellant's rude or abrasive attitude on occasion is likely to affect patient care adversely. The evidence presented suggests it may be that this would be a greater concern with respect to her clinical competence but that is not a matter in issue in this appeal.

This Board would therefore allow the appeal and re-instate the Appellant with full active staff privileges upon the terms and conditions hereinafter described:

- (a) the Appellant undertake some appropriate re-training or reorientation through the first available refresher course in obstetrics acceptable to the Chief of Obstetrics and Gynecology, not because of an issue of competency but because the same would likely increase her confidence and assist her with her inter-personal relationships within the case room;
- (b) the Appellant forthwith undertake a substantial involvement in the Hospital's medical committees and initiate and maintain contact with her colleagues in the Hospital;
- (c) the Hospital set up an appropriate system involving no more than two people through whom all complaints (verbal or written) concerning the Appellant's inter-personal behaviour shall be referred. Those complaints in turn shall be communicated to the Appellant within 24 hours of receipt and shall not be communicated to or discussed by any other Hospital representative until the Appellant has had 48 hours to respond;

- (d) any complaints received concerning the Appellant's conduct outside the Hospital be returned to the author with the suggestion they be taken up directly with the Appellant or the College of Physicians and Surgeons of British Columbia.

For these reasons the appeal is allowed on the terms above.

D.W. Tokarek

Dr. M.G. Clay

Dr. F. Forrest-Richards