

COLLEGE OF PHYSICIANS & SURGEONS OF ALBERTA

IN THE MATTER OF  
A HEARING UNDER THE *HEALTH PROFESSIONS ACT*,  
R.S.A. 2000, c. C-7

AND IN THE MATTER OF A HEARING REGARDING  
THE CONDUCT OF DR. NORMAN GOLDSTUCK

**DECISION OF THE HEARING TRIBUNAL OF  
THE COLLEGE OF PHYSICIANS  
& SURGEONS OF ALBERTA**

## I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Dr. Norman Goldstuck. In attendance on behalf of the Hearing Tribunal was Ms Fiona Moore, legal counsel for the College of Physicians & Surgeons of Alberta. Also present was Dr. Karen Mazurek, the Complaints Director for the College. Absent from this meeting of the Hearing Tribunal was Dr. Norman Goldstuck, as well as any legal counsel representing him. The members of the Hearing Tribunal are as follows: Dr. John Bradley Sr. of Calgary as Chairman, Dr. Robin Cox of Calgary, and Mr. Lloyd Hickman of Lethbridge.

Also present was Mr. Greg Sim who acted as independent legal counsel to the Hearing Tribunal.

The hearing took place on Monday, November 29, 2010 at the College of Physicians & Surgeons of Alberta office in Edmonton, Alberta. The hearing was held under the terms of Part 4 of the Health Professions Act. There were no objections to the composition of the Hearing Tribunal or the jurisdiction of the Hearing Tribunal to proceed with a hearing.

Before the allegations could be read, it had to be shown that a reasonable effort was made to contact Dr. Goldstuck and that he was aware of the date of the Hearing Tribunal.

## II. ALLEGATIONS

A Notice of Hearing was issued to Dr. Norman Goldstuck, notifying him that the Hearing Tribunal at the College of Physicians & Surgeons of Alberta, appointed pursuant to the *Health Professions Act* R.S.A. 2000 would meet in the Council Chamber at the College of Physicians & Surgeons of Alberta on Monday, November 29, 2010 at the hour of 9:00 o'clock. The Notice of Hearing provided:

It is charged:

1. on or about April 30, 2010, you did fail to fulfill your professional obligations, particulars of which include one or more of the following:
  - a. you terminated your relationship with your patients without adequate notice contrary to Section 8(3)(a) of the Standards of Practice;
  - b. you failed to ensure continuity of care for the patients contrary to Section 8(3)(c) and (d) and Section 21(5) of the Standards of Practice;
  - c. you did fail to establish an appropriate process for transfer of your patients' medical records contrary to Section 8(3)(e) of the Standards of Practice;

- d. you did fail to make appropriate arrangements to ensure the confidentiality and security of your patients' medical records contrary to Section 20(9) and (10) and Section 21(3) of the Standards of Practice;
- e. you did fail to provide adequate or any notice to the College of Physicians and Surgeons of Alberta regarding your intention to close your medical practice contrary to Section 21(1) of the Standards of Practice;
- f. you did fail to dispose of medications, equipment and supplies in a safe manner upon your closing of your medical practice contrary to Section 21(4) of the Standards of Practice;

All of which is contrary to the provisions of the *Health Profession Act*, R.S.A. 2000, c.H-7 as amended, the Regulations, or Bylaws enacted pursuant thereto, constituting unprofessional conduct.

### III. PRELIMINARY MATTERS

#### Spectators

There were three spectators in the room. They were addressed to make sure they were not witnesses in this case. They stated they were not.

#### Service Upon Dr. Goldstuck

Dr. Karen Mazurek, the Complaints Director, testified. She reviewed Dr. Goldstuck's registration. He was on the Alberta Medical Register prior to the General Register and at present on the General Register on January 1, 2010.

On October 8, 2010, Mr. Craig Boyer, as legal counsel for the Complaints Director of the College of Physicians & Surgeons of Alberta, sent Dr. Norman Goldstuck a Notice of Hearing for November 29, 2010 to the Edmonton address on record at the College, #22, 9228 - 144 Avenue NW, Edmonton, AB, T5E 6A3, but it was returned by Canada Post.

Also on October 8, 2010, the same letter addressed to Dr. Goldstuck's Edmonton address was emailed to him in South Africa. The email address was the same email address that he later responded to on October 25, 2010.

Mr. Jeremy Murphy, Information Certificate Officer for the College of Physicians & Surgeons of Alberta, also testified. Mr. Murphy advised he had emailed Dr. Goldstuck on October 15, 2010 at the same email address asking Dr. Goldstuck what he would like done with the medical records of patients that were calling and wondering where and how they would be able to obtain their records. Dr. Goldstuck did respond by email on October 25, 2010, stating, in part, "I don't much care either".

Ms. Sharon Barron, Manager of Complaints for the College testified. Ms. Barron explained that Dr. Goldstuck emailed her on October 26, 2010 from the same email address, stating, "I have no interest in any complaints against me as I do not intend to work in Alberta ever again."

Ms Sharon Barron stated that on October 26, 2010, she replied via email to Dr. Goldstuck stating, "I understand you have no intention of returning to Alberta to practice medicine." He was again informed in this email of the hearing set for November 29, 2010 at 9:00 a.m.

Ms. Barron also explained that on October 26, 2010, a copy of the Notice of Hearing was emailed to Dr. Goldstuck at the same email address. There was no response from him.

Ms Fiona Moore, legal counsel for the College of Physicians & Surgeons of Alberta, made submissions about the sufficiency of service of the Notice of Hearing upon Dr. Goldstuck. Ms. Moore argued that reasonable efforts were made to notify Dr. Goldstuck of the date of the Tribunal so it could proceed today. She pointed out a Notice of Hearing was sent to the address on record at the College of Physicians & Surgeons of Alberta on October 8, 2010. This was sent by registered mail and returned by Canada Post. She pointed out that it was the responsibility of the doctor to notify the College of any change of address. An address was obtained through the Health Profession Council of South Africa on July 15, 2010. Correspondence was sent to that address but was not returned. However, in an email on August 25, 2010 from Dr. Goldstuck email account, he stated the address was not correct. The Tribunal adjourned to discuss the submission.

The Tribunal unanimously agreed to proceed with the hearing today. The Hearing Tribunal is aware of s. 120(3) of the *Health Professions Act* and notes that the College did present evidence that it complied with the section by serving the Notice of Hearing by registered mail to the address last recorded in its records. The Hearing Tribunal also noted that Dr. Goldstuck exchanged multiple emails with College staff from his identified email address and that the Notice of Hearing was sent to that email address. The Hearing Tribunal found that in all likelihood, Dr. Goldstuck received the Notice of Hearing and that it would be appropriate to continue with the matter pursuant to s.79(6) of the *Health Professions Act*.

#### IV. EVIDENCE

Dr. Karen Mazurek, Complaints Director for the College of Physicians & Surgeons of Alberta, was then recalled to give evidence. She reviewed an email that she received on May 7, 2010 from Mr. John Swiniarski, Assistant Registrar for the College of Physicians & Surgeons of Alberta, address to her and Dr. Trevor Theman, the Registrar, about charges being laid against Dr. Norman Goldstuck for closing his practice without notice, making no arrangements for the continuing care of his patients, and abandoning his files. This was followed up by a written complaint of May 7, 2010. Dr. Mazurek received the formal complaint on May 11, 2010 from Mr. Swiniarski, outlining the facts.

The next witness was [REDACTED]. For the last 3 ½ years, she was an employee of Dr. Goldstuck and was working in April, 2010. A written statement by her dated April 30, 2010 was entered as an exhibit. She informed the Tribunal that on April 30, 2010, a Friday, Dr. Goldstuck came in to the office, told her he was not coming back. He apparently said it was due to health problems. She thought it was "heart trouble". He told her to call the College and to give the patients their files. He then left. As patients came seeking further appointments, she gave their files to them and as word got out more people came in for their files. She also notified Edmonton Primary Care Network who sent staff to help with closing up the office. When they became involved, Ms. Sim walked out.

[REDACTED] also stated she had no inkling that this was going to happen. She told the Tribunal that other than her interaction with Dr. Goldstuck on April 30, 2010, she has not heard from Dr. Goldstuck since.

The next witness was [REDACTED]. She told the Tribunal that she had been employed with Dr. Goldstuck for 5½ years in the position of medical office manager. She confirmed the same story as presented by [REDACTED]. She also stated that since April 30, 2010 she has had no contact with Dr. Goldstuck. |

Mr. John Swiniarski was then called as the Assistant Registrar for the College of Physicians & Surgeons of Alberta. He testified that the College had received "a string of emails" from Ms. [REDACTED] of Edmonton Primary Care Network. They were trying to locate Dr. Goldstuck. After talking to Dr. Goldstuck's office staff, Mr. Swiniarski felt that he should notify Dr. Karen Mazurek, Complaints Director for the College of Physicians & Surgeons of Alberta.

Mr. Swiniarski informed the Tribunal that on May 6, 2010 he attended Dr. Goldstuck's office at about 3:00 p.m. He found the office "in a state of disarray". It was not clean and there were files strewn all over. He also tried to contact Dr. Goldstuck. He had contacted a Mr. [REDACTED] an accountant, of Smoky Lake, who had not heard from Dr. Goldstuck since January or February 2010. He also spoke with Dr. Hendrik Lourens of Smoky Lake, where Dr. Goldstuck had previously done locums, but he did not know how to contact Dr. Goldstuck. He contacted Dr. Goldstuck's ex-wife and she had not seen him since 2007 but had talked to him on the telephone but not recently. She told Mr. Swiniarski that Dr. Goldstuck "went haywire" in 2007.

Mr. Swiniarski took custody of Dr. Goldstuck's office on May 7, 2010, rekeyed the door locks, and secured the sample drugs, sharps, and prescription pads, and arranged for Iron Mountain to take over the files for permanent storage.

Mrs. Sharon Barron, Manager of the Complaints Department for the College was then recalled to give evidence. She reviewed the steps that she took trying to contact Dr. Goldstuck to inform him that an investigation was being initiated after the receipt of a complaint about closing his office without any direction. On May 18, 2010, a copy of the complaint was sent to his address on record at the College, #22, 9228 - 144 Avenue NW,

Edmonton, AB, T5E 6A3. There was no response and another letter was sent to the same address on July 12, 2010.

Another letter went out on July 21, 2010 to Dr. Goldstuck's office address in Edmonton, telling him that they had received a forwarding address from the Health Professions Council of South Africa. She also sent a copy of this letter to that address, Illovo, Sandton, Gauteng, South Africa. Apparently these letters were not answered. Another letter on August 24, 2010 was sent to the Edmonton address and the South Africa address.

## V. SUBMISSIONS

Since neither Dr. Goldstuck nor legal counsel on his behalf were present, no evidence was led on behalf of Dr. Goldstuck. Ms Fiona Moore, for the College, presented her submissions.

Ms Moore referred the Tribunal to the *Health Professions Act*, R.S.A. 2000, c. C-7, Section 1(1) (pp) for review. This is the definition of unprofessional conduct. She pointed out that Dr. Goldstuck showed unprofessional conduct by disbanding his practice, showed a lack of responsibility, and disregard of any respect for patients and colleagues. He showed disregard to the College and displayed a lack of judgment and skills as pointed out by the evidence presented. Section 1(1) (pp)(i) of the legislation provides that unprofessional conduct includes displaying a lack of skill or judgment in the provision of professional services. Section 1(1)(pp)(ii) provides that a breach of a properly enacted Standard of Practice falls within the definition of unprofessional conduct. Section 1(1)(pp)(iii) of the legislation provides that a contravention of another enactment that applies to the profession would also be unprofessional conduct. With regard to the College's consolidated Standards of Practice under the *Health Profession Act* at section 8(3)(a), it is required by the physician when he unilaterally terminates the relationship to give advance notice to his patients. Ms. Moore pointed out that the evidence shows that at no time did Dr. Goldstuck do this, he gave no consideration to his patients, did not ensure continuity of follow-up care, or transfer of care.

Ms Moore emphasized that Dr. Goldstuck walked into his office, told his staff that he was closing his office, and just to give patients their chart.

Also under the Standards of Practice, Section 20(9) and (10), Dr. Goldstuck did not maintain safeguards to protect the confidentiality of his patients' records. He just left his office and told his staff to give the patients their chart. He had no plan for the security or accessibility of those records as required by the Standards of Practice

Also under the Standards of Practice for Closing, Leaving or Moving a Medical Practice, Section 21(1), (2), (3), (4) and (5), Dr. Goldstuck did not follow the requirements. He did not notify the College of Physicians & Surgeons of Alberta, he gave no forwarding address. Ms Moore pointed out that even when Ms Barron had contacted Dr. Goldstuck by email, he wrote "if you check PubMed periodically you will be able to get my academic address from the publications.", this was not helpful. She pointed out that Dr.

Goldstuck's actions were in contravention of the *Physicians, Surgeons, and Osteopaths Profession Regulation*, Alta. Reg. 350/2009 at Section 40, which required Dr. Goldstuck to provide certain contact information to the Registrar when there are changes to the information. This included giving a home address, business mailing address, telephone number, fax number, and email address. Section 40 of that Regulation also required Dr. Goldstuck to give the College advance notice of his intention to close his office practice by a given date. He omitted to do this. Dr. Goldstuck's forwarding contact information was obtained by the staff at the College.

## VI FINDINGS

The Tribunal found the two witnesses, from Dr. Goldstuck's office staff, consistence, both in their written submission presented as evidence as well in their questioning under oath. Both stories were the same. Dr. Goldstuck, on or about April 30, 2010, walked into his office, advised that he was closing the office and told his staff to give the patients their charts, and contact the College of Physicians & Surgeons of Alberta. Every effort by the College and the Primary Care Network was made to contact Dr. Goldstuck. When he was finally contacted, he made no effort to correct this situation. Dr. Goldstuck's decision to abandon his medical practice gave rise to a number of breaches of the College's Standards of Practice, each of which constitutes unprofessional practice as defined by the *Health Profession Act*.

The Tribunal finds that Dr. Goldstuck's conduct as set out in these six proven allegations was unprofessional.

- a) Dr. Goldstuck did terminate his relationship with his patients without adequate notice contrary to Section 8(3)(a) of the Standards of Practice.

Dr. Goldstuck walked into his office on April 30, 2010 and told his staff that he was closing his office. He did not give his patients any written advance notice.

- b) Dr. Goldstuck failed to ensure continuity of care for the patients contrary to Section 8(3)(c) and (d) and Section 21(5) of the Standards of Practice.

Dr. Goldstuck did not ensure continuity of care of his patients until they found a new physician, let alone no continuity of outstanding investigations or treatment of patients with ongoing serious medical problems. The patients were left high and dry.

- c) Dr. Goldstuck did fail to establish a proper process for transfer of patient medical records contrary to Section 8(3)(e) of the Standards of Practice.

Dr. Goldstuck just told his staff to give patients their medical charts which is unacceptable. There is a formal process that has to be followed.

- d) Dr. Goldstuck did fail to make appropriate arrangements to ensure the confidentiality and security of patient medical records contrary to Section 20(9) and (10) and Section 21(3) of the Standards of Practice.

Dr. Goldstuck gave no instructions to his staff about the security of the office and its contents. He had made no arrangements for storing of medical charts for at least a 10 year period.

- e) Dr. Goldstuck did fail to provide adequate or any notice to the College of Physicians & Surgeons of Alberta regarding his intention to close his medical practice contrary to Section 21(1) of the Standards of Practice.

Dr. Goldstuck gave his staff no information on how to get in touch with him. As a result, a lot of time and effort was taken by the College to track him down.

- f) Dr. Goldstuck did fail to dispose of medications, equipment, and supplies in a safe manner upon closing of his medical practice contrary to Section 21(4) of the Standards of Practice.

Dr. Goldstuck gave no instructions to his staff in regards to medications, equipment and supplies to be disposed of in a safe and proper manner.

The Tribunal concludes that Dr. Goldstuck's proven conduct placed his patients and the security of their health records at risk. His conduct also reflects very poorly on the medical profession. The public is entitled to trust physicians to take proper steps to ensure the safe termination of a medical practice and the safe transfer and continuity of care. Dr. Goldstuck's callous omission to do so harms the integrity of the medical profession.

Following its delivery of its decision that Dr. Goldstuck had committed unprofessional conduct as alleged, the Tribunal reconvened to hear submission for penalty

Ms. Moore recommended the following sanctions:

- A. That the Tribunal direct Dr. Goldstuck to satisfy the Hearing Tribunal that he is not incapacitated and that his practice permit be suspended until he does satisfy the Tribunal:
- B. That Dr. Goldstuck be responsible for the full costs of the investigation and the hearing; and
- C. That Dr. Goldstuck be assessed the maximum fine of \$10,000.00 per finding of unprofessional conduct to be limited to the maximum aggregate fine of \$50,000.00 pursuant to section 158 of the Health Professions Act.

Regarding proposed sanction A, the suspension, there was some evidence that Dr. Goldstuck might be medically incapacitated. The concern was based on the evidence of Dr. Goldstuck's office staff that he had mentioned he was "sick" on April 30, 2010 when he abandoned his office practice. There was also some suggestion from his office staff that Dr. Goldstuck might at some point have had cardiac problems, but there was no other credible evidence that Dr. Goldstuck was suffering from medical issues on April 30, 2010 and from the evidence given, the Tribunal concluded that this did not appear to be the case. Similarly, there is no subsequent evidence before the Tribunal to indicate Dr. Goldstuck is presently suffering under any capacity.

Regarding proposed sanction B, the costs of the investigation and hearing, the Tribunal agrees that it is appropriate for Dr. Goldstuck to be responsible for these costs pursuant to section 82.(1)(j) of the Health Professions Act within one (1) month after the Tribunal issues its written decision and the College demonstrates the amount of these costs. This is appropriate in the Tribunal's view because in the abandonment of his office and his failure to cooperate, made the investigation much more complicated than it would otherwise have been. The medical profession should not bear the cost of handling the proper closure of Dr. Goldstuck's medical practice.

Regarding proposed sanction C, the fine, an issue arose as to the precise number of charges in the Notice of Hearing that could rise to a finding of unprofessional conduct and a fine of up to \$10,000.00 per finding. The Tribunal requested written submissions from the parties on this point by December 13, 2010 and subsequently extended this deadline to December 24, 2010 to ensure Dr. Goldstuck could be given an opportunity to make submissions on the point.

Ms. Moore provided written submissions on this issue on December 16, 2010. Dr. Goldstuck has not made any submissions to the Tribunal on this issue by the deadline, or at all.

In her written submissions on the College's behalf, Ms. Moore explained that the rule against multiple convictions can bar multiple findings of unprofessional conduct where there is both a factual and legal nexus between the allegations. When both a factual and legal nexus do not exist, then the allegations may each stand as unique delicts. In *R. v Prince*, [1986] 2 S.C.R. 480 at para. 24, the Supreme Court of Canada stated:

A single act of an accused can involve two or more delicts against society which bear little or no connection the one to the other. If an accused is guilty of several wrongs, there is no injustice in his or her record conforming to that reality.

The rule has been applied in professional discipline proceedings: *Richard v. College of Optometrists of Ontario* (1995), 25 O.R. (3<sup>rd</sup>) 448 (Ont. Gen. Div.). In this context, the rule has also been held not to bar multiple delicts, causes or matters arising from the same course of conduct when the required nexus was lacking: *Carruthers v. College of Nurses of Ontario* (1996), 31 O.R. 377 (Ont. Gen. Div.). The Alberta courts have adopted these principles in the professional discipline context: *K.C. v. College of Physical Therapists of Alberta* (1999), 244 A.R. 28, 1999 ABCA 253.

The Tribunal agrees with the College's submissions that there are at least four delicts demonstrated by Dr. Goldstuck's conduct that are factually or legally distinct. There are therefore at least four findings of unprofessional conduct.

Ms. Moore argued that the rationale to seek a substantial fine was that the College is alone in bearing the expense to store and access Dr. Goldstuck's patients files and it will continue to bear these expenses for the next plus years. Mr. John Swiniarski testified about the costs incurred by the College to properly secure the patients' records from Dr. Goldstuck's office.

Mr. Swiniarski said that it had already cost approximately \$7,000.00 to have Iron Mountain come in, index all the charts, and file them. He further explained that together with file retrieval costs, he estimated the College had incurred total expenses of over \$22,000.00 in relation to Dr. Goldstuck's records. There would also be a cost of approximately \$57.00 per month for the next 10 years just to store the records. There are approximately 100 boxes of files. While the College is attempting to seek partial recovery of its retrieval costs from the requesting parties, he felt the total cost to the College would be approximately \$50,000.00.

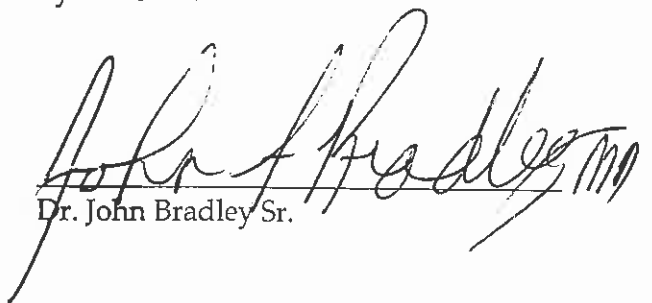
The Tribunal agrees that in light of the significant financial burdens Dr. Goldstuck has foisted on the College by his unprofessional conduct, it is appropriate to assess a substantial fine upon him. The Tribunal agrees with the College that there are at least four findings of unprofessional conduct that could rise to a fine as a sanction. The Tribunal agrees that given the onerous financial burdens placed on the College, it would be appropriate to impose the maximum fine for each of the four findings of unprofessional conduct. The aggregate fine the Tribunal imposes is therefore \$40,000.00.

#### VI. ORDERS / SANCTIONS

The Hearing Tribunal hereby orders the following sanction:

- A. that Dr. Goldstuck be responsible for the full costs of the investigation and the Hearing; and
- B. that Dr. Goldstuck be fined \$40,000.00 for unprofessional conduct to pay for the archiving of his charts.
- C. that Dr. Goldstuck's practice permit be suspended if the fine and costs are not paid in a time acceptable to the Registrar.

Signed on behalf of the Hearing Tribunal  
by the Chair



Dr. John Bradley Sr.

Dated: February 11, 2011