

## **EXTRACT OF THE COUNCIL MINUTES FOR NOVEMBER 14, 2003**

451h Dr. C.D. Huerto accompanied by legal counsel, Mr. B. Scherman, was present to speak to penalty following his having been found guilty of unprofessional conduct by a Discipline Committee Hearing. Mr. B. Salte, College legal counsel, was also present at this time.

452h For the information of Council, College legal counsel reviewed the events leading up to Dr. Huerto's finding of guilt by the Discipline Committee. He recommended Dr. Huerto's license be revoked and cited examples of similar cases and the decisions reached by previous Councils. He also recommended Dr. Huerto be assessed costs in the amount of \$52,500.00. This takes into consideration that all charges had not been proceeded with and that Dr. Huerto was found guilty on only three charges laid against him.

453h Mr. Scherman contended that in the event Council does assess costs against Dr. Huerto they should amount to only one-third of the costs incurred by the College in the prosecution of this case since Dr. Huerto was found guilty of only three of the initial ten charges.

454h During its deliberations Council unanimously agreed that any revocation of Dr. C. Huerto's license be open-ended.

### **MOTION**

#### **A. Introduction**

Dr. C. Huerto was found guilty of three charges, being counts 2, 3 and 6, by an Appointed Discipline Committee in its decision of November 6, 2003. The Discipline Committee found Dr. Huerto not guilty of charges 4, 7, 8, 9 and 10. Charges 1 and 5 had been withdrawn by the College. It is the duty of Council to now fix an appropriate penalty. In so doing, Council has carefully considered the oral and written submissions of Mr. B. Salte on behalf of the College, and of Mr. B. Scherman on behalf of Dr. Huerto. Council considered, but will not in these reasons, repeat all the submission on the facts and the Law.

#### **B. Reasons for Penalty**

Council considered and accepted Mr. Salte's summary that the appropriate penalty is to be based on the seriousness of Dr. Huerto's conduct as found by the Discipline Committee, his refusal to accept responsibility for his actions, the lack of likelihood of rehabilitation and his previous record of unprofessional conduct.

The finding of guilt and the circumstances involved in Count 2 reveal, in essence, sexual abuse of a patient. It shows a serious breach of a physician's fiduciary duty. Council has considered the previous discipline decisions in this area and the literature referred to by Mr. Salte regarding the effect of such transgression. It also considered Mr. Scherman's submissions that Dr. Huerto did admit to a sexual relationship with a patient, though he felt that the circumstances of same were important to address.

The finding of guilt and the circumstances of Counts 3 and 6 reveal, at a minimum, dishonesty, lack of integrity and fundamental untruthfulness. This is further echoed by the findings of the Discipline Committee with respect to Dr. Huerto's credibility in his testimony at the Discipline Hearing.

Combined with the above, the finding of the Discipline Committee that Dr. Huerto exhibited a continuing pattern of blaming others and his misleading Council leaves the Council with the view that the possibility of rehabilitation is unlikely.

Council is very mindful that Section 69.1 of **The Medical Profession Act, 1981**, requires us to ensure that protection of the public takes priority over the interests of Dr. Huerto and his protestation that a suspension and assessment should suffice as a penalty.

Finally, Council has considered the recommendations of the Discipline Committee to consider "the highest possible discipline be imposed" on Dr. Huerto. In our view revocation of license is the highest possible discipline that can be imposed. However, even without the sentencing recommendation of the Discipline Committee, Council considers revocation to be the appropriate sanction based on the guilty findings, the previous discipline history and the unlikelihood of rehabilitation.

Council has deliberated on the issue of whether there should be a minimum period of time to elapse before any application for licensure, with or without conditions. After debate it is the finding of Council that unconditional revocation of license is the most appropriate sanction that protects the public and furthers the integrity of the profession.

Therefore Council hereby orders that:

1. Pursuant to Section 54(1)(a) of **The Medical Profession Act, 1981**, the name of Dr. Carlos Huerto is immediately struck from the register of the College of Physicians and Surgeons; and
2. Pursuant to Section 54(1)(i) of **The Medical Profession Act, 1981**, Dr. Carlos Huerto shall forthwith pay the sum of \$52,500 towards the costs of and incidental to the investigation and hearing;
3. Council recognizes that a decision whether to grant a license to Dr. Carlos Huerto in future, or a decision whether to restore his license to practice in future, will be a decision of a future Council. It provides the following recommendations to a future Council as the

minimum conditions to be met before a future Council should consider restoring Dr. Huerto's license to practice:

- a) Dr. Huerto's license to practice should not be restored, nor should he be granted a license to practice medicine, until he has undergone an assessment by a recognized assessment program approved by the College of Physicians and Surgeons that specializes in boundary violations by professionals. Dr. Huerto's license to practice should not be restored, nor should he be granted a license to practice medicine until a report from that program has been provided to the College of Physicians and Surgeons;
- b) Dr. Huerto's license to practice should not be restored, nor should he be granted a license to practice medicine, until he has taken the rehabilitation, treatment and training that may be recommended by the assessment program and the Council has received a report from the persons or agencies that have provided such rehabilitation, treatment or training that includes the opinion that Dr. Huerto is unlikely to once again engage in a boundary violation with a patient;
- c) Dr. Huerto's license to practice should not be restored, nor should he be granted a license to practice medicine, until he has satisfied the Council that he has been rehabilitated and that granting a license to practice to Dr. Huerto would not unduly place the public of Saskatchewan at risk;
- d) If a license is to be granted to Dr. Huerto or his license to practice restored, that license be subject to a condition that Dr. Huerto can only practice under the direct supervision of another Saskatchewan physician, approved by the Council, who will provide regular reports to the College respecting his supervision of Dr. Huerto's practice;
- e) If a license is to be granted to Dr. Huerto by a future Council, that Council consider whether it should limit his license to practicing Internal Medicine.