



A HOSPITAL'S AUTHORITY TO GOVERN DISRUPTIVE PHYSICIAN CONDUCT

In a recent decision, the Health Professions Appeal and Review Board (HPARB) upheld the decision of The Scarborough Hospital (the Hospital) not to reappoint a physician to the medical staff as a result of the physician's lengthy pattern of disruptive conduct. HPARB held that the physician's conduct and history of communications with Hospital administrators justified the Hospital's decision not to renew his privileges.

The case involved Dr. Khan, who had courtesy staff privileges in the Hospital's Department of Family Practice from 1992 to 2008. Dr. Khan primarily provided surgical assistant services at the Hospital, and there was no issue with respect to his skills and competence in that regard. Rather, the issue that gave rise to the proceedings was the tenor of his communications with members of the administration, and in particular with his Chief of Staff. From 2003 onwards, Dr. Khan had repeatedly and often publicly disparaged administrators, and was intransigent in refusing to participate in a process to address concerns in a constructive and respectful manner.

In 2008, a panel of Dr. Khan's peers on the Medical Advisory Committee recommended to the Hospital Board that his privileges not be renewed. Dr. Khan requested a hearing before the Hospital Board, following which the Hospital Board decided to adopt the Medical Advisory Committee's recommendation. Dr. Khan was entitled to a fresh hearing before HPARB pursuant to the Public Hospitals Act. This quasi-judicial process took place over several days before a panel of three members of HPARB.

After hearing all of the evidence, HPARB held that "Dr. Khan violated any sense of decorum in his communications to and about [the Chief of Staff], as well as to and about [the Chief Executive Officer]." HPARB rejected Dr. Khan's argument that there had been bad faith on the part of the Hospital and that the Hospital had not followed due process in terminating his privileges.

Disruptive conduct on the part of physicians can create a toxic work environment and is often viewed by hospitals as exceedingly difficult to remediate. Administrators often perceive that there is little the hospital can do to govern the conduct of physicians unless the behaviour directly impacts upon patient care. The College of Physicians and Surgeons' Guidebook for Managing Disruptive Physician Behaviour is instructive, but in some instances, dispute resolution mechanisms and progressive discipline are insufficient to curtail disruptive conduct. In the case of a credentialed physician, the hospital must in such cases engage an exceedingly resource-intensive process, in accordance with its bylaws, to restrict or terminate a physician's



privileges. This process typically involves several meetings of the Medical Advisory Committee, a full hearing before the Hospital Board, and ultimately a full quasi-judicial hearing before HPARB.

HPARB's decision in this case is therefore an important one. It confirms the authority of a hospital's administration to govern the conduct of its professional staff, requiring them to adhere to codes of conduct to which other members of hospital personnel are held. The decision also suggests that where a hospital adheres to a fair process in disciplining and ultimately, if necessary, terminating a physician's privileges as a result of intransigent disruptive conduct, HPARB will not displace the Hospital's decision.

The HPARB noted that had Dr. Khan testified at the hearing in order to acknowledge his intemperate conduct and provide assurances that it would not recur, their decision might have been different. This is concerning given the extensive resources involved in governing disruptive physicians and ultimately terminating their privileges, a decision not lightly undertaken by a physician's peers at the Medical Advisory Committee or by a Hospital Board.

(This article is based on an article by John Morris and Melanie de Wit)

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