



THE
COLLEGE
OF
PHYSICIANS
AND
SURGEONS
OF
ONTARIO

December 8, 2011

PRIVATE AND CONFIDENTIAL

Sent by fax

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Income Security Advocacy Centre
425 Adelaide Street West, 5th Floor
Toronto, Ontario M5V 3C1

Dear Counsel:

Re: College of Physicians and Surgeons of Ontario and Dr. Wong

Please find enclosed the Discipline Committee's Order and Reasons for Order on Motion to Participate under section 41.1 of the Code heard on October 3, 2011.

Yours truly,

Bilquees Tunio
Hearings Assistant

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cc. Mr. R. Cosman

**THE DISCIPLINE COMMITTEE OF THE
COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO**

DR. P. ZITER (Chair))	Heard: October 3, 2011
MS D. DOHERTY)	
DR. R. SHEPPARD)	
DR. E. ATTIA (Ph.D))	
DR. J. WATTS)	

B E T W E E N:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. ROLAND CHEE KONG WONG

**ORDER AND REASONS
(Motion to participate under section 41.1 of the Code)**

A motion was made under section 41.1 of the Health Professions Procedural Code (“the Code”) by the Income Security Advocacy Centre (“the Applicant”) for leave to participate in this hearing. The notice of motion was contained in a motion record, supported by Affidavit and documentation appended as exhibits.

By the notice of motion filed, the Applicant requested an order allowing it to participate in this hearing by way of oral and written submissions.

Counsel for the Applicant made oral submissions in support of the motion and relied as well on Written Submissions and a Book of Authorities. Counsel for Dr. Wong supported the motion. Counsel for the College opposed the motion, relying upon a factum and a Book of Authorities filed. At the conclusion of argument on the motion, the Committee

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granted the Applicant leave to participate in the hearing, to the extent of filing written submissions and making one hour of oral argument at the time of Final Argument.

Discretion of the Committee

The Code provides that a panel may allow a non-party to participate in a hearing if certain criteria are satisfied, and further provides that the panel may determine the extent of the participation.

Section 41.1 of the Code is the governing statutory provision. It states:

41.1 (1) A panel, on application of a person who is not a party, may allow the person to participate in a hearing if,

- (a) the good character, propriety of conduct or competence of the person is an issue at the hearing; or
- (b) the participation of the person, would, in the opinion of the panel, be of assistance to the panel.

(2) The panel shall determine the extent to which a person who is allowed to participate may do so and, without limiting the generality of this, the panel may allow the person to make oral or written submissions, to lead evidence and to cross examine witnesses. 1993, c. 37, s. 10.

The Applicant relied on the criterion in Section 41.1(1)(b). Accordingly, the Committee had to decide, based on the motion material before it, whether the participation of the Applicant would, in the opinion of the Committee, be of assistance to it. If so, the Committee then had to decide the extent of the participation.

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Limitations on an Intervention

The Committee wishes to make clear the limitations it considers appropriate on motions to participate.

First, there is no “right” to participate in a discipline hearing by any person other than the parties specified under the Code. The only parties in a discipline hearing are the College, as prosecutor, and the member, who is the subject of the proceeding. An applicant to participate does not become a party. The Committee may allow a non-party to participate to a defined extent if the criteria under the Code are satisfied.

Second, the Committee will not allow non-parties to become prosecutors at a discipline hearing. There cannot be two sets of prosecutors. The College is “the prosecutor” charged with the responsibility of protecting the public interest, and the Committee will not allow a non-party to intervene to become a “second prosecutor”. This, in the view of the Committee, would be fundamentally unfair, and would unnecessarily protract discipline hearings and add to the costs of the parties to the proceeding, which is not in the public interest.

Third, a non-party will not be permitted to make allegations that are not before the Committee. As the Divisional Court stated in the *College of Physicians and Surgeons and Dr. Krop*, a January 30, 2002, court decision filed with the Committee, “The Notice of Hearing particularizes the charges against [the physician] and constitutes the commencement of the prosecution...The Discipline Committee takes its jurisdiction from the notice of hearing served on [the physician]”. The Discipline Committee has no jurisdiction to hear or consider additional complaints or allegations that a non-party may have against a physician.

The Factual Context

The Applicant is an organization funded by Legal Aid, and charged with ensuring that the administration of social assistance in Ontario is effective and efficient. It exercises its mandate through the pursuit of legal test cases, policy advocacy, community

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development and public education. The Applicant stated that approximately half of its current work-load relates to the application of Special Dietary Allowance ("SDA") claims, including 100 outstanding Human Rights applications and 500 appeals to Social Service Tribunals. The Applicant, therefore, has wide experience with the variations in the way in which SDA forms are completed, or in some cases refused, as well as experience and understanding of the needs of administrators of social benefit funds. The organization also has a special insight and understanding of the consequences of variations in the completion of SDA forms.

Counsel for the Applicant made it clear in her submissions that the Applicant understood that this was not a public hearing into the adequacy of the existing social system. The Applicant stated that, if leave to participate were granted, it was not the Applicant's intention to raise issues related to the adequacy of this part of the social benefit system, nor will the Applicant take a position with respect to the allegations against Dr. Wong, that he failed to maintain the standard of practice. The Applicant stated that it would limit its participation to the presentation of written and oral submissions at the conclusion of the hearing on the implications of the completion of social benefit application forms from the perspective of patients who are social assistance recipients. It was the Applicant's position that this would not seriously impact the time required for the hearing.

ORDER

After considering the documentation filed and the submissions made, the Committee decided in the circumstances of this case to grant the Applicant a limited right to participate. Given the nature and range of the Applicant's expertise, the Committee agreed that the Applicant has the potential to be of assistance to the Committee in its consideration of the matters before it.

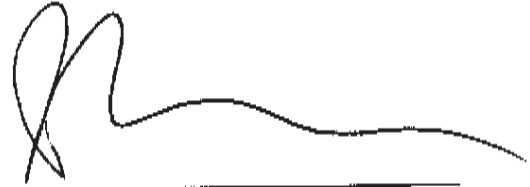
The Applicant's participation is limited to the delivery of written submissions and one hour of oral submissions at the conclusion of the hearing. A subsequent agreement on the evidentiary basis for the submissions of the Applicant was set out in an e-mail from

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Independent Legal Counsel for the Committee to the Applicant and the parties, and is attached to this Order.

The Committee may make further directions as to the timing for delivery and length of submissions by the parties and the Applicant.

Dated this 8 day of December, 2011.



Dr. Paul Ziter, Chair
(on behalf of the Committee)

Branquinho_Maria

From: Cosman_Robert W.
Sent: Thursday, October 06, 2011 4:16 PM
To: Jackie Esmonde (ISAC); Carolyn Silver; Lindsay Cader
Cc: Peter Rosenthal; Reni Chang
Subject: CPSO and Dr. Wong

Dear Counsel,

This is to confirm our discussion and your agreement when we met on Monday October 3rd, on how ISAC is to proceed with respect to the evidence it wishes to put before the panel to support the submissions it wishes to make at the hearing, given the Committee's ruling granting ISAC leave to participate to the extent of making written and oral submissions.

Firstly, counsel for ISAC will deliver to counsel for the College, with a copy to counsel for Dr. Wong, a draft statement of the evidence it proposes as the basis for its submissions. This may include evidence from the motion record on the motion to participate and such additional evidence as ISAC wishes to put forward.

Secondly, counsel for the College will respond to counsel for ISAC, advising as to the evidence in the statement that it agrees may be filed with the Committee on consent. If there is evidence in the proposed statement that the College disputes and is not prepared to agree be filed on consent, then the statement will be revised by counsel for ISAC to include the evidence that the College is prepared to put before the Committee on consent. With the consent of counsel on behalf of Dr. Wong, this statement of evidence may be filed with the Committee.

Thirdly, evidence that ISAC wants to rely upon that the College disputes and is not prepared to have filed on consent may be tendered through counsel for Dr. Wong in the hearing. In this way it can be the subject of objection or tested by cross-examination as counsel for the College considers appropriate.

ISAC may then rely upon in its submissions evidence that is admitted at the hearing, which will include the statement of evidence that is filed on consent and other evidence that is otherwise properly admitted during the hearing.

Please confirm if I have accurately described the process agreed to with respect to the evidentiary record that ISAC may rely upon on in its submissions.

Upon your confirmation that the process as described is as agreed, I will advise the Committee of the agreement reached by the parties.

Robert W. Cosman
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12/7/2011