

RE: THE MATTER OF AN APPEAL PURSUANT TO
S. 45(1) OF THE REGIONAL HEALTH SERVICES ACT AND S. 8(1) OF
THE PRACTITIONER STAFF APPEALS REGULATIONS WITH RESPECT TO
THE SUSPENSION OF THE APPELLANT'S PRIVILEGES AND
SUBSEQUENT TERMINATION OF THE APPELLANT'S APPOINTMENT
TO THE ASSOCIATE MEDICAL STAFF BY THE BOARD OF THE
FIVE HILLS REGIONAL HEALTH AUTHORITY

BETWEEN:

DR. ALEXANDER KAMMER,

APPELLANT

AND:

FIVE HILLS REGIONAL HEALTH AUTHORITY,

RESPONDENT

DECISION OF THE PRACTITIONER STAFF APPEALS TRIBUNAL

David Thera acted on behalf of the Appellant

Chris Boychuk acted on behalf of the Respondent

A. INTRODUCTION

This is an appeal by Dr. Alexander Kammer, the Appellant, pursuant to Section 45(1) of The Regional Health Services Act (“the Act”) of two decisions of the Five Hills Regional Health Authority (“FHRHA”), the Respondent, made on May 10, 2008, and confirmed in writing on May 15, 2008, and June 9, 2008, which confirmed the suspension of the Appellant’s privileges by the Senior Medical Officer of the Respondent effective April 29, 2008, and which upheld the recommendation of the Practitioner Advisory Committee of the Respondent to terminate the Appellant’s appointment to the Associate Medical Staff.

The basis for the FHRHA’s decision concerning the suspension of Dr. Kammer’s privileges was set out in correspondence dated May 15, 2008, addressed to the Appellant from Dale Toni, the chairperson of the FHRHA:

“At the meeting of the Board to consider the matter, the Board received submissions from Dr. Josdal and his solicitor, Christopher Boychuk, and from Dr. Kammer and his solicitor, David Thera. Mr. Thera also submitted written argument on behalf of Dr. Kammer.

There was evidence presented to the Board that Dr. Kammer had some difficulties in performing a number of standard obstetrical procedures such as hysterosalpingograms and amniocentesis.

On 25 April 2008, Dr. Kammer performed a D & C on a patient and during the course of the procedure perforated the patient’s uterus and bowel. The evidence at the hearing was that the perforation of the uterus was a known risk of such a surgery but that perforation of both the bowel and the uterus was uncommon. As a result of the perforation, the patient was severely injured. The Board viewed the D & C performed on 25 April 2008 as a culminating incident. The Board found that, based on the above evidence, there was legitimate concerns regarding Dr. Kammer’s performance and competence as an obstetrician and found that he had caused harm or injury to the patient who underwent the D & C. Further, that Dr. Kammer was reasonably likely to cause harm or injury to other patients and that an immediate action was justified to protect other patients from harm and injury.

The Board therefore confirms the immediate suspension of Dr. Kammer to 10 May 2008.”

The basis for the FHRHA's decision concerning the termination of the Appellant's appointment to the Associate Medical Staff was set out in correspondence dated June 9, 2008, addressed to the Appellant from Dale Toni, the chairperson of the FHRHA:

“At a meeting of the Board to consider the matter, the Board received submissions from Dr. Josdal and his solicitor, Christopher Boychuk, and from Dr. Kammer and his solicitor, David Thera. Mr. Thera also submitted written argument on behalf of Dr. Kammer.

During the course of the hearing, there was evidence presented to and accepted by the Board, that Dr. Kammer had:

- a. On several occasions failed to respond and present in a timely fashion when on call and particularly when requested by Dr. W. Geyer and a nurse to attend and assist during a difficult delivery;
- b. Did not read Non-Stress Strips in a timely manner and expected nursing staff and general practitioners to interpret the same when his expertise as an obstetrician was needed in interpreting the Strips;
- c. Failed on a number of occasions to work as a member of the health care team including failure to following Authority protocols with respect to the booking of procedures on the Women's Health Unit;
- d. Failed to adequately determine whether the products of conception had been fully removed from the uterus after delivery;
- e. Failed to attend at the Women's Health Unit at the request of nursing staff to attend upon a patient at approximately 30 weeks gestation with no prenatal care and active bleeding when his expertise as an obstetrician was required by the staff of the Authority in treating the patient.

On the basis of those findings, the Board was of the view that Dr. Kammer failed to provide to the Authority the appropriate level of obstetrical support expected of a specialist and had lost the confidence of many members of the health care team.

For these reasons, the Board accepts the recommendation of the Practitioner Advisory Committee and Dr. Kammer's appointment to the Associate Medical Staff of the Authority is hereby terminated.”

A Notice of Appeal dated May 21, 2008, sets out Dr. Kammer's grounds of appeal:

- “2. THAT the appeal is taken on the following grounds:

- a. The Region failed or follow proper procedure set out in its bylaws;
- b. In addition or in the alternative, the Region's bylaws do not provide sufficient procedural fairness;
- c. The Region failed to follow the principles of Natural Justice with respect to suspension and termination of the Appellant's privileges;
- d. The Region failed to consider the appropriate threshold;
- e. The Region's decisions were based on false evidence, hearsay and other evidence which should have been excluded or given little weight;
- f. The Region considered evidence which was irrelevant and prejudicial to the Appellant;
- g. The Region considered unproven allegations of misconduct which were irrelevant and prejudicial;
- h. The Region failed to consider the Appellant's response to the evidence presented;
- i. The Region failed to consider or give appropriate weight to professional opinions with respect to the Appellant's ability to safely exercise his privileges;
- j. The Region failed to consider other measures less drastic than suspension and termination;
- k. The Region failed to consider the need to provide continuing obstetrical and gynaecological services to the patients of the region;
- l. Such further and other grounds as counsel may advise and this Honourable Tribunal may allow."

In the Notice of Appeal, the Appellant sought the following relief:

- "4. The Appellant requests the following relief:
 - a. An order quashing the decision of the Region to confirm the immediate suspension;
 - b. An order quashing the Region's decision to terminate the Appellant's privileges;
 - c. An order declaring that the Appellant is appointed to category of Associate Medical Staff, including all privileges he held prior to April

29, 2008, subject to any further probationary period this Honourable Tribunal might deem appropriate;

- d. Such further an other relief as the Appellant may request and this Honourable Tribunal may allow.”

B. JURISDICTION OF THE TRIBUNAL

The jurisdiction of this Tribunal is derived, in part, from Section 45(1) of the Act which provides:

“45(1) A person who is aggrieved by a decision of a regional health authority or an affiliate made in relation to the following matters may, in accordance with the regulations, appeal the decision to a tribunal established by the regulations:

- (a) the appointment of the person to the practitioner staff or the reappointment, suspension or termination of appointment of the person;
- (b) the disciplining of the person as a member of the practitioner staff;
- (c) the granting of privileges to the person as a member of the practitioner staff, or the amending, suspending or revoking of privileges granted to the person.”

Pursuant to Section 64 of the Act, the Practitioner Staff Appeals Regulations (“the Regulations”) were enacted which provide, inter alia:

“8(1) A practitioner who is aggrieved by a decision of a board with respect to a matter set out in subsection 45(1) of the Act may appeal that decision to the tribunal by serving a notice of appeal on the tribunal and a copy of the notice of appeal on the respondent within 30 days after the day on which the practitioner is served with a copy of the decision.”

.....

“11(1) An appeal to the tribunal shall be conducted as a hearing *de novo*.

- (2) At a hearing, the appellant and the respondent have the right to appear before the tribunal and may, at their own expense, be represented by counsel.”

.....

“12(1) At a hearing, the tribunal may accept any evidence that it considers appropriate and is not bound by rules of law concerning evidence.”

C. EVIDENCE/SUBMISSIONS

At the commencement of the appeal hearing, counsel for the Appellant and the Respondent provided the Tribunal with a document entitled Joint Submission to Practitioner Appeals Tribunal, which is dated September 26, 2008, and consented to by the counsel for each party. It reads as follows:

- “1. Dr. Kammer is an obstetrician and gynecologist. He has practiced for about 22 years. He was granted privileges with the Five Hills Regional Health Authority on May 1, 2007. On April 29, 2008 the Health Region’s Senior Medical Officer suspended Dr. Kammer’s privileges. On May 10, 2008 a hearing was held before the board of the Five Hills Regional Health Authority. They confirmed the suspension, and accepted a recommendation from the Practitioner Advisory Committee to terminate Dr. Kammer’s appointment to associate medical staff.
2. Copies of the written reasons for the two decisions are attached.
3. Subsequently, an error was discovered in the evidence which was before the Senior Medical Officer when he imposed the suspension and before the Board when it confirmed the suspension and terminated Dr. Kammer’s appointment. A potential procedural issue was identified as well. The Authority recognizes that the above matters do provide substantive grounds for an appeal to this Tribunal.
4. While it cannot be said for certain that the end result would have been different, it was agreed that the appropriate remedy would be to return matters to the status quo prior to the suspension.
5. Dr. Kammer decided that it was not practical to return to work in the Health Region. He has agreed to resign his appointment to the practitioner staff in any event, and he is looking for a position elsewhere.
6. While Dr. Kammer will not be returning to practice at the Five Hills Health Region, in light of the fact that there appears to be substantive grounds for an appeal, it has been agreed that a return to the status quo prior to the suspension

is appropriate. Accordingly, the parties have consented to an Order from the Practitioner Appeals Tribunal quashing the suspension and termination.

7. A copy of the Consent Order which is being requested is attached.”

As referenced in paragraph 7 of the Joint Submission document, a draft Consent Order was attached thereto, which reads as follows:

“BY CONSENT of the parties hereto, the Appellant’s appeal in this matter is hereby granted in the following manner:

1. The decision of the Five Hills Regional Health Authority to confirm the immediate suspension of Dr. Kammer’s privileges effective April 29, 2008 is here by quashed and the suspension is set aside;
2. The decision of the Five Hills Regional Health Authority to terminate Dr. Kammer’s appointment Associate Medical Staff dated May 10, 2008 is hereby quashed and set aside.”

D. REMEDY

Section 14 of the Regulations provides the following:

14(1) Within 30 days after the completion of a hearing, the Tribunal shall make a decision:

- (a) confirming the decision of the Board;
- (b) varying the decision of the Board;
- (c) quashing the decision of the Board and substituting its own decision for that of the Board.

Given that there is no evidence before the Tribunal other than that contained in the document entitled Joint Submission to Practitioner Staff Appeals Tribunal, the Tribunal accepts the said submission of counsel for the Appellant and Respondent. Furthermore, given that the parties have also consented to the terms of a proposed resolution of this matter (as set out in the Consent Order filed with the Tribunal), the Tribunal, although recognizing that it may make

any of the decisions described in Section 14(1) of the Regulations, has concluded that the said terms are reasonable given the evidence contained in the joint submission.

E. DECISION

The Tribunal's decision is as follows:

1. The decision of the Five Hills Regional Health Authority to confirm the immediate suspension of Dr. Kammer's privileges effective April 29, 2008 is hereby quashed and the suspension is set aside;
2. The decision of the Five Hills Regional Health Authority to terminate Dr. Kammer's appointment Associate Medical Staff dated May 10, 2008 is hereby quashed and set aside.

Dated this "24th" day of October, 2008.

Practitioner Staff Appeals Tribunal

"Dirk Silversides"
Dirk Silversides, Chair

"Michael Fisher"
Michael Fisher, Q.C., Member

"Robert Weiler"
Dr. Robert Weiler, Member