

CASE NO.

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Cite as: Dhawan v. College of Physicians and Surgeons of Nova Scotia, 1998 NSCA 83

DR. PANKAJ M. DHAWAN

- and -

COLLEGE OF PHYSICIANS &
SURGEONS OF NOVA SCOTIA

Appellant

Respondent

C.A. No. 143933

Halifax

CHIPMAN, J.A.

APPEAL HEARD:

April 6 & 7, 1998

JUDGMENT DELIVERED:

May 6, 1998

SUBJECT:

MEDICAL ACT, S.N.S. 1995-96, c. 10 - Appeal to the Nova Scotia Court of Appeal from findings of a Hearing Committee constituted under the Act

PROFESSIONS - Appeal by physician from findings of Committee that he was guilty of professional misconduct - Appeal by physician from penalty decision of Committee

EVIDENCE - Permitting party to open case - rebuttal evidence - similar fact evidence

SUMMARY:

The appellant was found guilty of professional misconduct by a Committee. There were three broadly worded charges, each containing a number of particulars. Of approximately 60 particulars of matters alleged, the Committee found the appellant guilty with respect to 28 of them. Following submissions to the Committee, it sentenced the appellant to a suspension of his license for six months, a requirement that he attend at Abbott Northwestern Hospital for an assessment, and that in the event the assessment was not taken or in the opinion of the Registrar of the College the appellant did not follow the recommendations made as a result, the suspension would continue. The appellant was also required to have a female chaperone present during physical examinations of female patients. He was ordered to pay costs of \$50,000.

ISSUE:

On an appeal to the Nova Scotia Court of Appeal on questions of law pursuant to s. 68(1) of the **Medical Act**, a number of issues arose relating to the process followed by the Committee in finding the appellant guilty, particularly in permitting the College to reopen its case, in admitting similar fact evidence, and in admitting rebuttal evidence and, as well as to the terms

of the sentence imposed.

RESULT:

The Nova Scotia Court of Appeal dealt with eight specific issues with respect to guilt and one with respect to sentence. The Court dismissed the appeal from findings of guilt. In so doing, it reviewed the allegations and the evidence and reviewed the principles governing appeals to the Court on a question of law, the principles relating to burden of proof in disciplinary proceedings, to permitting a party to reopen its case, to rebuttal evidence and to similar fact evidence.

On the matter of penalty, the Court varied the penalty by deleting a provision which, in the opinion of the Court, was in effect a delegation of the Committee's powers to the Registrar of the College. In all other respects, the penalty decision was affirmed.

THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION. QUOTES MUST BE FROM THE DECISION, NOT FROM THIS COVER SHEET. THE FULL COURT DECISION CONSISTS OF 45 PAGES.