The Ontario Situation regarding the Abuse of Medical Regulation

By Helke Ferrie October 2016

Because of the close relationship of the CPSO with the **insurance industry** (see Dr. George Gail in *Glasnost Report*) and their equally close ties to the **pharmaceutical industry**, it is dangerous for doctors to practice medicine according to published medical research. The ties between the CPSO and the insurance industry was for a long time so close that the Deputy Registrar of the CPSO, who is in charge of all matters involving discipline, was also the secretary of the organization whose members are all the private insurance companies of Canada. Furthermore, the CPSO's Registrar, who is its chief executive officer, was for some years (including the period during which the Dr. Nancy Olivieri case was happening – see be below) a director of the pharmaceutical company APOTEX; his name was until recently shown on their letterhead. This person is still the CPSO's Registrar: Dr. Rocco Gerace.

There also exists a serious disconnect between the way the CPSO enforces its view of what constitutes the proper **"standard of practice"** and what is taught in Canadian medical schools and with what is actually published in medical journals.

Examples: a doctor was brought into discipline for treating autistic children with detox protocols. He was in serious danger of losing his license but was effectively rescued by the US National Institutes of Health which recruited him for a large research project on childhood autism and toxic metals. The CPSO dropped the case. Another doctor refused to use pharmaceutical hormone replacement drugs after published research showed causative connections to cancer, osteoporosis, and cardiovascular disease. His use of bio-identical substances instead, compounded specifically for the patient's needs, brought him into discipline. The MacMaster Medical School professor asked by the CPSO to review this doctor's work informed the CPSO that they would have to bring him into discipline as well because no gynecologist familiar with current research would prescribe pharmaceutical/synthetic hormone replacement drugs. The CPSO placed the doctor under supervision, but since he refused to follow that supervisor's orders to use pharmaceuticals, he was warned that a Section 75 discipline case would be launched for insubordination; the doctor told the CPSO to go right ahead. Nothing has happened so far. Three years have passed. Other examples include doctors treating Lyme disease but taking all patient files home and recording nothing in the office computers on them. Again others have referred Lyme patients to veterinarians who (unlike the CPSO) treat Lyme disease in animals according to international guidelines and frequently treat the owners of Lyme-infected dogs under the dogs' names. People suffering from Lyme or Multiple Chemical Sensitivity (Environmental Illness) after having been poisoned by pesticides, building materials etc, frequently go to the US to be treated at their own expense.

You may have read the presentation I made to the CPSO for their review of their so-called Complementary Medical Policy. Pat Gill sent it to you. One of the points I made is

that the CPSO insists on differentiating between "standard" and "complementary" medicine which is a wholly artificial polarization originally invented by the pharmaceutical industry primarily because “complementary” medicine frequently does not use synthetic drugs and even cures patients from illnesses caused by the drugs, not a disease. Depending on the chosen mode of attack, the CPSO will arbitrarily decide what is "standard" and what is "complimentary". Indeed, during the disciplinary investigation of environmental medicine expert, Dr. Jozef Krop, the CPSO Deputy Registrar, Dr. John Carlisle, went on record stating that there was no need for defining the standard because "I know what the standard is." **In 2012, during a CPSO Council meeting, a definition of standards of practice was actually presented**. Significantly, the membership (i.e. the doctors of Ontario) do not know this. <u>It has never been formally communicated to them</u>.

It is the policy of the **CPSO to appoint reviewers or expert witnesses who are either hostile to or ignorant of the work that the doctor under review actually practices and is trained in.** I know about this first hand because my husband, who is a doctor practicing in Ontario, had to go through this process of getting a reviewer who practices in the same field as my husband does. Of course, that can only be done through private lawyers – see more on that below.

I would like to say that the situation here has changed since the ***Glasnost Report*** was published in 2001. Unfortunately that is not really the case. However, awareness has increased and more and more doctors have fought the CPSO and more and more lawyers have become successfully involved; the former Deputy Registrar Dr. John Carlisle (in charge for some 2 decades of all discipline matters) was fired in 2005 and this has slowed down the persecution of doctors working in accordance with the published literature. Now the CPSO uses other methods, such as “supervising” a doctor for unspecified periods of time allowing him/her to avoid a disciplinary investigation. This, too, is arbitrary, because no finding of neglect or harm or inadequate medical knowledge is made, so it isn’t clear just what the doctor is expected to learn or change. Noncooperation results in raising a Section 75, i.e. a disciplinary investigation. In fact, this supervision is a form of coercion.

The other new method of controlling doctors arbitrarily is what was done to Dr. Hui and many others: they are **made to sign an agreement or undertaking** not to do this or that in his practice, again without any reason justifying this order. Here we are squarely in the territory of Charter violations, specifically regarding the issue of a fair trial. The Olivieri case was in this territory as well.

The cost of defending oneself in a Section 75 is huge. In Canada doctors have access to the free-of-charge legal services CMPA (Canadian Medical Protective Association), but the CMPA will only defend a physician in situations involving some alleged harm to a patient, e.g. cutting off the wrong leg. **The CMPA will <u>never</u> defend a doctor in a standards of practice matter because, as they have stated often, that would put them into an adversarial position against the Colleges** (CPSO in Ontario - the same applies to the whole country). The Colleges maintain medical standards and fighting the colleges on standards is not considered the CMPA’s work. The CMPA will only defend

situations where the patient is challenging the doctor. A doctor has no hope of winning a standards of practice case and continue the use of new methods and diagnoses unless he/she hires a private law firm able to attack abuse of administrative law processes.

That said, there was **one** case a few years ago where the CMPA-appointed lawyer, Jerome Morse (now retired), assigned to Dr. George Gale realized what was going on and proceeded to warn the CMPA that if he was not permitted to defend this doctor as he saw fit with if the CMPA refused to pay for his defense, Morse would sue the CMPA under our *Charter of Rights and Freedoms* which guarantees a fair trial. The CMPA had no choice but to agree. Jerome Morse won the case, Dr. Gale recovered his license, and the CPSO had to pay Dr. Gale something close to half a million dollars in compensation. This case is a glorious exception. Standards of practice disciplinary trials are won only by lawyers from law firms specializing in such matters, specifically administrative law.

Quite a few such cases have been won against the CPSO. One of the most famous being that of Dr. Nancy Olivieri who was in danger of losing her license because of her struggle against APOTEX which ordered her **not** to inform trial participants of the fact that the thalassemia drug L-Deferiprone carries the risk of a close to 50% chance of liver failure. The *New England Journal of Medicine* editor backed her insistence to amend the consent forms to reflect this liver failure issue, as did 12 medical Nobel laureates (see ***The Olivieri Report*** published by the Canadian Association of University teachers with University of Toronto's Lorimer Press in 2001). The CPSO raised a Section 75 disciplinary investigation against Dr. Olivieri while the Registrar of the CPSO was then also on the board of APOTEX. The two lawyers who stopped this successfully, so that the case was dropped and she was reinstated in her professorship at the University of Toronto, were Matthew Wilton (who is copied here) and Michael Code, now a judge.

Simultaneously, while these prosecutions of doctors who did no harm were ongoing, the CPSO also protected doctors who were doing a great deal of harm. **The Toronto Star** in 2001 began a series entitled "Medical Secrets" which ran for several years and won the investigative reporting team the top Michner Award twice. The series detailed the ***many cases of doctors guilty of tremendous harm to patients, who in these cases were protected by the CPSO***. In one case, even after the discipline panel found the doctor guilty of physical harm to many patients, he was allowed to carry on working as if nothing had happened.

A famous case is that of Dr. Jozef Krop which started in 1988 and ended in 2010. I worked for his defense from 1996 through 2010. He had to defend himself twice: once for diagnosing and treating Multiple Chemical Sensitivity (MCS) and the second time for diagnosing and treating Lyme Disease (2007 – 2010). When the first disciplinary investigation ended in 1999, he was found "guilty" of diagnosing MCS; at that time some 11, 000 scientific papers on this condition were on PubMed and the Canadian federal government had recognized it several years earlier as a condition eligible for disability payments. The provincial government stepped in and ordered the CPSO (as they can under the powers given to the Minister of Health) to find a way to allow Dr. Krop to

continue practicing exactly as he had been all along and to set aside this absurd finding of guilt. The CPSO, therefore, "reprimanded" Dr. Krop and ordered that he have a consent form (drawn up with his lawyer Matthew Wilton) which each patient would be required to sign. It stated that Dr. Krop is diagnosing and treating MCS according to his own opinion, not according to science. While this is manifestly untrue, it is amusing that the CPSO, after all those many years and all those millions spent on both sides, ***acknowledged formally that the patient-doctor relationship trumps regulatory power.*** (This, by the way is law in Germany.) In legal circles this is now known as the **Krop Defense** and has been successfully invoked in many more such cases ever since. This probably forced the CPSO to turn to "supervision" or "undertakings" to achieve their ends and avoid a legal confrontation within the setting of a formal disciplinary hearing. This alternative coercive approach succeeds because the cost of defending oneself against the CPSO in a Section 75 trial runs into the millions and takes years.

The second Section 75 the CPSO against Dr. Krop was invoked for diagnosing and treating Lyme Disease (especially chronic Lyme), it had to be dropped in the face of overwhelming evidence contradicting the CPSO's position and also because the *Canadian Medical Association Journal* had published many research articles on Lyme in Canada since 1995. In 2010, I published a book, which I edited and co-wrote with various specialists in the field, including Dr. Krop, called *Ending Denial – The Lyme Disease Epidemic A Canadian Public Health Disaster.* It was given to federal and provincial politicians, deans of Canada's medical schools and the various medical associations. With the support of the Canadian Medical Association, a bill was tabled in the House of Commons which recognized Lyme as serious threat to Canadian public health and mandates the availability of proper tests and education of doctors with regard to Lyme disease. It became law in 2014. This is now in progress, albeit slowly.

As you can see, this situation is a complex web of political and corporate abuse of medicine. What is clearly needed is changes to existing laws, specifically the *Regulated Health Professions Act*, and its *Regulations*. However, this not very likely at this time. What is perhaps really needed is a case that can be taken to court to challenge these arbitrary behaviors which are likely to be found to be in contravention of our Charter right to a fair trial. To me it seems that Dr. Hui has a perfect case to sue the Ministry of Health for allowing the CPSO to force him into an agreement that is totally inappropriate and insupportable on every level. That agreement cannot be supported scientifically nor legally, it overrules patients' right to choose their therapies, and certainly is not in the public interest, which the CPSO is mandated to protect and serve.

Perhaps it is possible to sue the Minister of Health for allowing these abuses of the *Regulated Health Professions Act* and not stopping the CPSO from such abuses that are clearly not in line with our Charter rights. Patient and medical groups have repeatedly informed the Ministry of Health of this situation and many presentations were formally made by such groups asking for changes to the law, but nothing ever happened. In the Lyme situation, formal petitions were made with 15,000 signatures and 35,000 signatures etc. The Canadian Broadcasting Corporation ran many programs on both the CPSO's abuses of doctors and patients' rights as well as those diagnoses and therapies arbitrarily attacked by the CPSO. I already mentioned the Medical

Secrets series which was published in Canada's largest newspaper. Nobody has ever gone to court on this matter, though! A case won on these issues against the CPSO would automatically change the behavior of all provincial medical regulators throughout Canada.

The idea of suing the Ministry of Health has a certain precedent: The CPSO's Medical Review Committee a few years ago decided to audit *hundreds* of doctor. What actually happened was that they visited the doctors' offices, informed them that they were to repay the Ontario Health Insurance Plans X number of dollars for allegedly over-billing (as determined, without evidence, on the basis of the doctor's annual billings), and that the doctor would not be allowed to retain legal advice nor challenge this arbitrarily imposed amount, as well as not communicate to anybody that they had signed this agreement. If the doctor refused to comply he was threatened with a forensic audit and would have to pay for its expense as well. I was able to persuade one doctor to give me a copy of this outrageous agreement and forwarded it to Michael Code who informed the Ontario government of the consequences of such coercion. The result was the **Cory Commission of 2005;** Michael Code suggested this retired Supreme Court judge to head the investigation. Ontario avoided a huge legal scandal, the Medical Review Committee was stripped of its powers and in effect reprimanded, hundreds of doctors were off the hook, and hundreds more had their improperly garnished funds returned to them to the tune of millions of dollars.

As for a class action, I cannot see that being possible. There is no body count, so to speak, but instead systematic stifling of innovation in medical practice and ignoring patients' rights as well as doctors' rights to a fair trial. What is happening here is a betrayal of the public interest, which the CPSO is mandated to defend.

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