

PROVINCE OF BRITISH COLUMBIA

MEDICAL APPEAL BOARD

BETWEEN:

ADELAIDO G. TANHUECO

APPELLANT

AND:

PRINCE GEORGE REGIONAL HOSPITAL

RESPONDENT

REASONS FOR JUDGMENT

Members of Board: T. C. Marshall, Esq. Chairman

R. M. Christensen, M.D.

M. D. Moscovich, M.D.

Counsel for the Appellant:

Dick Byl, Esq.

Counsel for the Respondent:

J. C. Grauer

HEARD at Vancouver, B.C. October 27 and 28, 1986.

The Appellant appeals from an Order of the Board of Trustees of Prince George Regional Hospital (the "Hospital") rendered July 31, 1986 refusing his application for admission to the active medical staff of the Hospital as a general practitioner with the Basic Privileges described in Appendix "C" of the Medical Staff By-Laws (Ex. 2, Tabs 8, 9 & 10).

Two principal grounds were advanced in the Notice of Appeal:

1. The Board failed to take into account the Appellant's professional experience, background, competence and abilities;
2. Procedural error in that the Board failed to conduct its initial hearing on July 9th fairly.

Although some evidence was led in support of the second ground, the evidence before this Board dealt principally with the first ground. In short, the Appellant claims he has the training and competence required by the Hospital for admission to the active staff. The Board denies this and says that after due consideration of these factors as well as the needs of the community, it would not be in the best interest of the Hospital to grant the Appellant privileges. Furthermore, the Board received information leading it to believe that the Appellant had not been totally honest with them and this was a contributing factor in arriving at their decision.

The Appellant, age 46, was born in the Philippines receiving his basic education in Angeles City. He attended the University of the Philippines taking a BSC degree in 1960, majoring in zoology and botany. From 1960 to 1964, he studied medicine at the University of Manila. He said this is a Class "A" medical school according to United States rating and is

similar in status to U.B.C. He received a certificate from the Educational Council for Foreign Medical Graduates, Evanston, Illinois, on March 25, 1964 and said he had to sit for a series of examinations in order to qualify. He received his Diploma of Medicine from the University of the Philippines the same year followed by a certificate from the Government empowering him to practise medicine.

He proceeded to practise in Angeles City for a short period during 1964 and 1965 and then came to Canada and did a one year internship at Ottawa General Hospital from July 1, 1965 to June 30, 1966, following which he went to the University of Michigan where he did a residency in neurology from 1966 to 1969. In 1967, he returned to the Philippines to pick up his Bachelor of Science diploma which he had missed receiving in 1964. He received a Certificate from the University of Michigan in July 1969 certifying that he had satisfactorily completed a term of service in the University Hospital's Department of Neurology. The same year, he came to Vancouver where he did one year at Vancouver General Hospital as an associate in Pathology, receiving a Certificate to that effect on June 30, 1970.

Next, he put in a one year residency in Surgery at the University of Minnesota Health Sciences Center and received a Certificate on June 30, 1971.

On the same date, he received a Certificate from the Veterans Administration that he had completed a residency in general surgery at the Veterans' Administration Hospital in Minneapolis. He had apparently worked in both hospitals.

He then returned to Neurology as a senior resident at the University of Oregon Medical Centre. He said he was unable to get into a residency in neuro-surgery.

He received his LMCC on August 4, 1971. He flew out to Vancouver to sit for it. He was enrolled in the British Columbia College of Physicians and Surgeons on December 22, 1971 and is thus licensed to practise in British Columbia. In 1972, he completed his one year residency in neurology at the University of Oregon Medical School and received a certificate from the American Academy of Neurology in August 1972.

Further licensures to practise were received for Washington, February 1973, which, he said, is recognized throughout the United States, Illinois in June 1973 and Michigan in July 1973.

From 1973 to 1977, he practised as a neurologist with a clinic of about 20 doctors in Mt. Prospect, Illinois. He received other certificates from time to time, none of which is material to this appeal.

His visa in the U.S. having expired, he returned to the Philippines, joining the Manila Central University as a guest lecturer in internal medicine and neurology.

He says he practised as a general practitioner on weekends in what he termed "bedside clinics" and submitted that in this way he had continued to maintain his skills as a general practitioner.

He remained in the Philippines from 1977 to 1980. The clinic he had been connected with in Illinois had gone bankrupt. He lost his entire investment and testified that he lost as well his home, his car and, in fact, everything. He tried, while in the Philippines, to pay off the loans he had taken out for his clinical partnership.

In 1980, he returned to Canada and joined the University of Alberta Medical School. He said the financial disaster he had suffered plunged him into depression, leading eventually to hospitalization for a short period. He said he made a good recovery from his illness and in March 1983, he applied to be registered in Alberta but was refused because of his prior illness.

In 1982, he took leave of absence for one year and returned to the Philippines to relax after his illness. He did not work while there. He said he had friends and family there and he still regarded it as home.

Returning to Canada at the end of 1983, he obtained admitting privileges in Glace Bay General Hospital in Nova Scotia, a 250 bed hospital. He had obtained his licensure for that Province by correspondence. His privileges included medicine and neurology but no obstetrics. He said he had also received privileges in Illinois and in the Philippines for neurology only during the period of 1973 to 1977.

In April 1986, partly he said because his wife was not happy in the Maritimes and could not work there, he moved to Prince George where he has been ever since. He joined the Northawke Medical Clinic located on the Hart Highway north of the Nechako River. He said it serves a community of about 10,000. There are 6 other doctors with the Clinic, each focussing his practice in different fields. He said he has been conducting a general practice including accident victims and Workers' Compensation Board cases but with emphasis on neurology. He said he handles 5 to 6 cases per day involving back and soft tissue problems. He said the clinic has about 8,000 to 10,000 patients between 6 doctors.

The Appellant expressed his willingness to accept a probationary status and be supervised by one of the other Clinic doctors and to give a written undertaking to restrict his practice in hospital to neurology cases and not to take obstetrics and gynecology cases. He further states his clinic colleagues had agreed to cover for him in those areas of practice in which he was deficient. (see infra). He said there is only one neurologist in Prince George and that the waiting period for a consultation is up to 6 months.

By letter of May 9, 1986, the Appellant was informed by the Hospital's Chief of Staff that his application for Provisional Staff Status, List 1 -Basic General Practice privileges (Ex. 2, Tab 5) had been declined. He said he had not seen this letter until this hearing although the delivery slip produced indicated it had been delivered to the Northawke Medical Clinic.

On July 9, 1986, the Hospital Board held a special in camera meeting to reconsider the Appellant's application. This was in effect an appeal to the Board pursuant to Section 15(5) of the Hospital Act Regulations. He was represented by Mr. Byl, his counsel on this appeal. Mr. Byl asked the Board if they could clarify their reasons for the denial of privileges. Mr. Dives, solicitor for the Hospital, suggested "these reasons had already been explained to Dr. Tanhueco at the Medical Advisory Committee hearing". The Appellant agreed with this excerpt from the minutes (Ex. 2, Tab 19) ie. that it was an accurate record of what happened. The minutes further disclose that Mr. Byl informed the Board that Dr. Dykes, the head of the Northawke Clinic, would give an undertaking to assume any cases in Obstetrics, Gynecology, Pediatrics and Emergency Medicine which the Appellant would otherwise be expected to handle if he received General Practice Basic privileges. According to the minutes:

"Mr. Byl stated that Dr. Tanhueco's practice would primarily consist of neurology consultations (eg. headaches, backache, musculo-skeletal conditions) and that there was considerable need for this type of service in Prince George."

The following exchange is reported in the minutes:

"Dr. Blackman (Chief of Staff): 'Dr. Tanhueco, have you ever requested registration anywhere else and been turned down?'"

Dr. Tanhueco: 'No'.

Dr. Blackman repeated the question and again received the answer of no."

Mr. Dives asked Mr. Byl if the Appellant would authorize the Board to make enquiries of any jurisdiction in Canada. The Appellant then informed the Board "he had applied to Alberta for registration and had been turned down because of an illness". On his application form (Ex. 2, Tab 5) the Appellant stated he had not had any "previous significant illness". Dr. J. McKenzie, Medical Director of the Hospital, pointed this out to the Appellant who explained he had been suffering from depression and was treated by a psychiatrist. When asked if he considered his depression to be a significant illness, the Appellant agreed that it was.

In testifying before this Board, the Appellant sought to justify his misstatement. He said he felt his illness was a thing of the past. He explained that he felt it was a black mark on his life and he was embarrassed by it. He said he was surprised when Dr. McKenzie made that comment in front of so many doctors. In cross-examination, he agreed that he had withheld information to hide his illness. He said that when he completed his application form, he wanted to hide the fact he had been in Alberta. When Mr. Grauer pointed out to him

that the Glace Bay Hospital had apparently treated him fairly when he told the truth, he replied that he wanted to hide his illness as he thought he would have a better chance to obtain admitting privileges if he did so. He said he knew there was a surfeit of doctors in B.C. and that some areas of the Province were closed to additional doctors. He had already tried Vancouver, Trail and Nelson but without success.

The Appellant testified that he had not taken the Board examination in neurology in the United States. In Canada, one year of internal medicine is required in addition to the residency in neurology in order to qualify. While at Glace Bay, he said he had done mostly neurology in the hospital setting.

The Appellant's application was initially refused by the Credentials Committee on April 7, 1936. The minutes of that meeting (Ex. 2, Tab 14) state:

"That Dr. Tanhueco's application for privileges be denied on the basis that:

1. He does not have his fellowship in Internal Medicine or neurology and hence does not qualify to fill that position within our community.
2. He has not done routine general practise for many years and we wonder whether he is truly qualified to do so."

Mr. Blackman and Dr. McKenzie met with the Appellant on April 15 to discuss the matter with him. It was what Dr. McKenzie described as a "courtesy meeting". Although minutes of the meeting, prepared later (Ex. 2, Tab 15) reflect that the reasons for declining his application had been verbally communicated to him as well as a letter from the President of the Medical Staff, the Appellant insisted he had been given

no reason for being turned down. This Board rejects his evidence and finds as a fact that he was indeed given reasons which he apparently either does not remember or chooses to ignore.

The Appellant says further that he did not receive a fair hearing, referring to the special meeting of the Board on July 9th. There was nothing in the evidence to support this. Although the point was not stressed in argument, this Board is satisfied that the Appellant was dealt with fairly at every level of the Hospital's administration - the Credentials Committee, the Medical Advisory Committee and the Hospital Board.

In response to the Hospital's request for additional references, letters were received from former colleagues in Sydney Mines, Minneapolis, Des Plaines, Illinois and Jacksonville, Florida. These were not too helpful as in some cases, they referred back to a period of several years ago. The most useful was one from Dr. W. M. Nicholson, Chief of Staff at Glace Bay General Hospital dated April 1, 1986 (Ex. 2, Tab 12) who confirmed the Appellant had enjoyed consultant's privileges in Neurology and General Medicine and had been a member of the Medical Staff since February 1984. He stated "He has been well received in the community and by the patients whom he has treated. His interpersonal relationships with his colleagues has been very good." Dr. Nicholson wrote again on September 29, 1986 (Ex. 1, Tab 29) confirming that the Appellant's "speciality" was Neurology, that he had referred patients to him and "was well satisfied with the results." Dr. John B. Hajarian of the Department of Surgery, University of Minnesota Medical School with whom the Appellant had worked once or twice a week for six months, wrote to Dr. Dykes on October 9, 1986 (Ex. 1, Tab 21) saying, in part: "We were all aware that Dr. Tanhueco's primary interest was in the field of neurosurgery when we accepted him into our surgical residency program" and "he seemed to have an adequate fund of knowledge as well as technical ability."

All of the foregoing letters referred to him in positive terms but none were of real assistance to the Hospital insofar as the Appellant's experience in general practice was concerned.

Dr. Steven de Villiers, of the Department of Psychiatry, the Health Unit, Prince George, wrote to Dr. Dykes on July 17, 1986 (Ex. 1, Tab 33) confirming that he had seen the Appellant as a patient. The account given him by the Appellant indicates that the latter had indeed undergone a serious illness. The Appellant's background was outlined. It conforms substantially with his evidence before this Board. His diagnosis failed to indicate any psychiatric disorder but he referred to a "mood disorder" occurring in 1981 from which the Appellant had recovered and was now coping well.

In cross-examination, the Appellant conceded that his experience as a general practitioner before coming to Prince George had been limited to weekends in the Philippines for a period of 3 or 4 years, some general practice in Glace Bay but no experience as a full time general practitioner.

In re-examination, in response to a question from Dr. Christensen, he agreed that it takes a population of 40,000 to support a full-time neurologist. Surprisingly, he said he did not know he needed privileges in order to practice in a hospital and then added that he had assumed he would be granted privileges. From the Appellant's experience in Alberta and Nova Scotia, it seems unbelievable that he would be unaware of this vital fact and the Board rejects his evidence on that point.

Dr. J. G. McKenzie testified he had contacted Dr. Nicholson in Glace Bay who told him the Appellant had not been engaged in primary care medicine. Although this evidence is

hearsay, it is confirmed by Dr. Nicholson's letter, supra. The Appellant also told him he had told the Glace Bay Hospital he was leaving to do a year in internal medicine so as to qualify for his Canadian fellowship in Neurology. Dr. McKenzie said he advised the Appellant to tell them the truth.

On cross-examination, Dr. McKenzie agreed that Prince George was short a qualified neurologist but emphasized that aside from not being qualified in neurology, the Appellant's experience in general practice was deficient and he concluded that the Hospital would be at some risk if they granted his privileges.

Dr. Lyle Daly, a neurologist on staff at the Hospital and a fellow of the R.C.P.S. explained that in Canada the minimum residency requirement for neurology is 1 to 2 years of internal medicine and 3 to 3-1/2 years of neurology. He said that while the Appellant's credentials seem impressive, he found it odd that the Appellant would not have attempted to take the one additional year which would have qualified him in Canada. He said he had advertised for assistance but requires special skills as well as neurology in order to enhance the diagnostic facilities. As there is no neurosurgeon in the Hospital, he sees all the head and trauma cases himself and really requires someone with more expertise. He concluded by stating he would not be comfortable turning over patients to a general practitioner-neurologist.

In cross-examination, Dr. Daly stated the Appellant's credentials were not too helpful and said he had some concern over the way in which the Appellant had moved around so much.

Dr. Douglas Blackman, Chief of Staff of the Hospital, confirmed Dr. Daly's opinion. The references were of limited

assistance to the Credentials Committee and the Medical Advisory Committee. He said they were concerned that the Appellant lacked his fellowship in neurology. He had done largely consulting work and had no pediatrics, psychiatry or emergency experience.

Dr. Blackman also testified that the Appellant's Certificate for Nova Scotia referred to his address as Wetaskiwin, Alberta. He asked the Appellant if he had ever practised there. The Appellant said he had not and had not applied for hospital privileges in Alberta. Later he admitted that he had tried but had been turned down. Dr. Blackman, in referring to the Appellant's illness, stated it was important that the Credentials Committee should know about it. He said that situation had been encountered before and sometimes it turned out well and sometimes it did not. He said it was evident he and his colleagues were being misled, that trust is a pre-requisite and if the applicant is not truthful, the trust relationship breaks down.

Mr. Byl submitted that his client's mental competency is a red herring and is not in issue. Quite properly, he agreed that the Appellant had not been candid. But he said the circumstances underlying the reason for the Appellant's concealing his illness - that it was a black mark on his life which he was trying to put behind him and to cover up - mitigated against his failure to tell the whole truth.

He submitted the uncertainty of dates ought not to reflect on his credibility but should be considered only in the light of his illness.

He submitted that his client's references pointed to the Appellant's competency as a general practitioner.

He said some weight should be attached to the fact that the Appellant was qualified to practise in B.C. as well as in several other jurisdictions and that he had received privileges in these places.

Finally, he maintained that the Appellant's skills would benefit the community and that an adverse conclusion should not be drawn from the fact that he had not acquired his Fellowship. He had a higher level of skill in neurology than the average general practitioner.

Mr. Grauer referred to the two key factors before the Hospital Board being the adequacy of the Appellant's credentials and qualifications and the question of his character and integrity. He conceded that the Appellant's mental illness was not in itself a bar. He submitted that all the training the Appellant had undergone does not help him because it was in the main limited to neurology and he lacked sufficient experience in general practice. He argued that the community needs more than the Appellant's skills can provide and that the letters of reference do not refer to his capabilities as a provider of primary care.

As to the question of character, Mr. Grauer contended that the Appellant, by his own admission, had deliberately misled the Hospital Board by supplying information he knew to be false.

This, he said, cast some doubt on the value of the undertaking the Appellant and his clinic colleagues were prepared to give. Finally, Mr. Grauer reminded the Board that the Appellant's prior admitting privileges had been at the University Hospital in Manila, Mt. Prospect, Illinois and Glace Bay General Hospital but all involved primarily a consultancy in neurology and very little general practice as his application form attempted to make out.

Turning to the two grounds of appeal (supra, p.11), it is clear from the evidence that the Hospital Board did take into account the Appellant's professional experience, background, competence and abilities, all of which were considered carefully and fairly by the Credentials Committee, the Medical Advisory Committee and the Hospital Board. The Appellant was informed by Dr. McKennie and Dr. Blackman the reasons for their concern. Everything required to be done was done openly. The Appellant ought never to have been in doubt as to why the Hospital took the position it did.

Objection is taken in the Notice of Appeal to what occurred at the special Hospital Board Meeting on July 9th although the appeal is from a decision rendered by the Hospital Board on July 31st. It is to be noted that while Dr. Dykes was excluded from the hearing, Mr. Byl was not and he in fact participated in the proceedings without any apparent limitation. Furthermore, even if there was some defect in these proceedings, the question of the Appellant's admissability was tabled until the regular Board Meeting on July 31st, to enable the Medical Director to make enquiries from various sources given by the Appellant. The responses apparently did nothing to change the opinion of the Hospital Board and their decision of July 9th was confirmed.

At the July 9th hearing, Mr. Byl requested reasons be given for the denial of privileges for the Appellant. According to the minutes of that meeting, Mr. J. Dives, counsel for the Hospital, pointed out reasons had already been explained to the Appellant at the Medical Advisory Committee Meeting of May 8th (Ex. 2, Tab 16) confirming their previous meeting of April 10th. Although the minutes of this latter meeting were not put in evidence, this Board is satisfied that the reasons were fully set out in the meeting of the Credentials Committee on April 7th (Ex. 2, Tab 14).


Although there were no minutes entered for the Hospital Board's meeting of July 31st, it is apparent to this Board that at all stages, the Appellant knew and understood the nature of the Hospital's concern about his ability and experience. While there is lacking in some respects the niceties of procedure which might be desirable in a more perfect world, the Appellant has not been prejudiced thereby since he had the benefit of a hearing de novo before this Board.

Section 2 of the Hospital Act, R.S.B.C. Ch. 176 provides that every hospital as defined in Section 1 (and the Respondent fits into that category) shall have a board of management thought necessary by the Minister for "the provision of a high standard of care and treatment for patients", Hospital Boards are responsible for their medical staffs which are vested with all powers necessary to ensure that only competent and qualified medical practitioners shall be granted admitting privileges. These are not lightly granted and are not a question of right. Full disclosure to the Credentials Committee is a sine qua non. Were it not so, the whole scheme of hospital care as we know it in Canada would collapse. The Appellant considered the end justified the means and in so doing, he acted less than truthfully and destroyed the very trust which must exist between administration and medical staff members. For this reason alone, the Appellant's appeal must fail. But this Board also concludes from the evidence before it that the Hospital, through its medical staff, arrived at the only conclusion open to it in respect of the Appellant's usefulness to the community. Further training and experience in general practice or completion of his Fellowship in neurology might well alter the situation. That is entirely up to the Appellant.


This being a hearing de novo, it is not necessary for us to decide whether anything that was done or omitted in respect

to the July 31st meeting of the Hospital Board violated any of the so-called rules of natural justice. The Appellant was not prejudiced in any way.

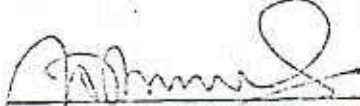
The Board finds therefore that the decision of the Hospital was justified on the evidence before it and no additional evidence has been presented to this Board to cause it to overrule that decision. The appeal is accordingly dismissed.


T. C. Marshall

CHAIRMAN


R. M. Christensen, M.D.

MEMBER


M. D. Moscovich, M.D.

MEMBER

December 22, 1986