

Patient sues over CMPA's ability to "insure"

A psychiatrist was found guilty of sexually abusing his patient and the patient was awarded \$550 000 in damages, but a New Brunswick court ruled she's **not entitled to compensation** from the Canadian Medical Protective Association (CMPA), which provides liability coverage to physicians. Now the patient is suing the New Brunswick Medical Society, the province's College of Physicians and Surgeons and its hospital corporations, claiming a doctor's CMPA membership does not constitute adequate liability insurance.

"This decision says the CMPA is not an insurer. The CMPA says it is under no obligation to pay any judgment. They say any assistance they provide is totally discretionary. It's crazier than hell," says Pete Mockler, the Fredericton lawyer who represented Shirley Shannon and her husband before the Court of Queen's Bench of New Brunswick.

Shannon was sexually and emotionally abused by her former psychiatrist, Dr. K.A. Akuffo-Akoto, who was subsequently struck from the registry by the province's College of Physicians and Surgeons.

Compensating patients who have been harmed as a result of a doctor's negligent medical care is a key element of the CMPA's role, but this case was not about medical negligence, says Tracy Murphy, a senior policy analyst with the CMPA in Ottawa. "The CMPA does not pay damages awarded to plaintiffs arising out of a finding of sexual impropriety committed by a member since such acts are widely considered to be outside the practice of medicine."

She points out that the New Brunswick court accepted expert evidence that covering such damages is not feasible. "Even if the doctor had been insured by a commercial insurance provider, the outcome of this case likely



The Canadian Medical Protective Association doesn't have to pay damages in a sexual abuse decision because the act is "outside the practice of medicine."

would have been the same — the insurance policy would not have covered acts of sexual abuse."

Shannon's lawyer believes the decision raises an important public policy issue because the provincial government pays for and requires physicians to carry liability insurance, but the court has found the CMPA is not an insurer and its assistance is discretionary. "The court is saying that there is no legal obligation on the CMPA to pay. With an insurance company there is an obligation to pay," says Mockler.

In her 52-page decision, Justice Tracey DeWare offered some support for Mockler's position. She noted that there is significant misunderstanding among New Brunswick doctors and the government about the CMPA's role and that it may be that the law requiring insurance coverage is not being adhered to. "It is certainly true that there does appear to be on its face to be a disconnect between the licensing requirements under the *Medical Act*

and the coverage provided by the CMPA," she wrote.

The CMPA dismisses the public policy argument. "The objectives of the CMPA do not include any notion of protection of the public or obligations to society as a whole," says Murphy.

Other jurisdictions are watching what is happening in New Brunswick. Tony Kiritis, spokesperson for the Nova Scotia Department of Health and Wellness in Halifax, says, "We are reviewing and considering the public policy implications of that decision to ensure the public continues to be protected and the goal of ensuring adequate liability coverage is being met as required by our medical practitioners regulations."

Mockler estimates it will take approximately one year for the latest lawsuit to be resolved. It is not known if Shannon and her husband will appeal the recent Court of Queen's Bench decision. — donalee Moulton, Halifax, NS

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