

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Andrew Paul Joseph Finnegan, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the name or any identifying information of the complainant under subsection 47(1) of the Health Professions Procedural Code (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended.

Subsection 93(1) of the Code, which is concerned with failure to comply with these orders, reads:

Every person who contravenes an order made under ... section 45 or 47... is guilty of an offence and on conviction is liable,

- (a) in the case of an individual to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence; or
- (b) in the case of a corporation to a fine of not more than \$50,000 for a first offence and not more than \$200,000 for a second or subsequent offence.

**Indexed as: Ontario (College of Physicians and Surgeons of Ontario) v.
Finnegan, 2015 ONCPSD 5**

**THE DISCIPLINE COMMITTEE OF THE COLLEGE
OF PHYSICIANS AND SURGEONS OF ONTARIO**

IN THE MATTER OF a Hearing directed
by the Inquiries, Complaints and Reports Committee of
the College of Physicians and Surgeons of Ontario
pursuant to Section 26(1) of the **Health Professions Procedural Code**
being Schedule 2 of the ***Regulated Health Professions Act, 1991***,
S.O. 1991, c. 18, as amended.

B E T W E E N:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. ANDREW PAUL JOSEPH FINNEGAN

PANEL MEMBERS:

DR. M. GABEL (CHAIR)
J. LANGS
DR. P. CHART
M. FORGET
DR. A. SIMPSON

Hearing Date: December 15, 2014
Decision Date: December 15, 2014
Release of Written Reasons: January 23, 2015

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on December 15, 2014. At the conclusion of the hearing, the Committee stated its finding that the member committed an act of professional misconduct and delivered its penalty and costs order with written reasons to follow.

ALLEGATIONS

The Notice of Hearing alleged that Dr. Finnegan committed an act of professional misconduct:

1. under clause 51(1)(b.1) of the Health Professions Procedural Code (the “Code”), Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18, in that he sexually abused a patient; and
2. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, in that he has engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

RESPONSE TO ALLEGATIONS

Dr. Finnegan admitted the allegations in the Notice of Hearing.

THE FACTS

The following facts were set out in an Agreed Statement of Facts and Admission that was filed as an exhibit and presented to the Committee:

PART I - FACTS

1. Dr. Finnegan is a psychiatrist practising in Toronto. He received his certificate of registration authorizing independent practice in June, 1974.
2. Patient A became Dr. Finnegan's psychiatric patient in the fall of 1983. From December 1983 to April 1995, Patient A attended for psychoanalysis at Dr. Finnegan's office. She generally attended for psychoanalysis several times a week.
3. During the summer of 1994, Patient A called Dr. Finnegan because she was feeling distressed. During this call, Dr. Finnegan asked whether she would like him to come by her apartment. Later that day, Dr. Finnegan came to Patient A's apartment and asked what she had been doing prior to his arrival. Patient A explained that she had been lying on the floor looking up at the sky through a window in her apartment. Dr. Finnegan asked her to lie down again. Patient A did so, lying on her left side. Dr. Finnegan then lay down behind her. For approximately 20-30 minutes, the two of them lay on the ground together. As Dr. Finnegan was about to leave Patient A's apartment, Patient A and Dr. Finnegan kissed.
4. At Patient A's next psychoanalytic session with Dr. Finnegan they talked about their kiss.
5. In the Fall of 1994, Dr. Finnegan attended at Patient A's home one day after work. During this occasion, Patient A and Dr. Finnegan had sexual intercourse.
6. Between the Fall of 1994 and April 1995, Patient A and Dr. Finnegan continued to have sexual intercourse on a regular basis. During this time Patient A and Dr. Finnegan continued in their psychoanalytic relationship.
7. In approximately April 1995, Patient A had discussions with Dr. Finnegan about stopping the psychoanalytic therapy, given that it was not permitted for doctors to have sex with their patients. Dr. Finnegan encouraged Patient A not to stop

psychoanalysis suddenly. Nevertheless, Patient A stopped the psychoanalytic relationship in April 1995.

8. This relationship continued up until 2003 when Dr. Finnegan broke off the relationship with Patient A.

PART II - ADMISSION

9. Dr. Finnegan admits the facts contained in paragraphs 1-8 of this Agreed Statement of Facts and agrees that his conduct amounts to the sexual abuse of Patient A and that he engaged in disgraceful, dishonourable or unprofessional conduct.

THE LEGISLATION

Under the Health Professions Procedural Code (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act*, the term sexual abuse is specifically defined and includes sexual intercourse or other forms of sexual relations between the member and a patient; touching of a sexual nature of the patient by the member; or behaviour or remarks of a sexual nature by the member towards the patient.

FINDINGS

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts and Admission. Having regard to these facts, the Committee accepted Dr. Finnegan’s admission and found that he committed an act of professional misconduct in that he sexually abused a patient.

The Committee also found that Dr. Finnegan has engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional. Dr. Finnegan created the opportunity for a sexual relationship to develop by failing to maintain appropriate boundaries and by so doing opened his patient to harm.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for the member made a joint submission as to an appropriate penalty and costs order.

The Code contains penalties specific to findings of sexual abuse. The Code requires a panel to revoke the physician's certificate of registration if the sexual abuse consisted of sexual intercourse or other certain acts as specified in the legislation. The Code also requires a panel to reprimand a physician where there is a finding of sexual abuse.

In addition, when there has been a finding of sexual abuse, the panel may order the physician to reimburse the College for funding provided to that patient for therapy and counselling, and to provide security for reimbursement of the fund. The joint submission addressed the above and asked for costs of a one day hearing to be paid to the College.

The Committee accepted the joint submission and the costs requested as the appropriate disposition in the circumstances of this case.

In making this decision the Committee notes the following:

The Nature of the Relationship

Dr. Finnegan provided Patient A with psychiatric care for twelve years, from 1983 until 1995. She attended several times a week for psychoanalysis. Therapy was intensive and dealt with traumatic periods of Patient A's life, as was clear from her Victim Impact Statement which will be commented on later.

Dr. Finnegan was a seasoned psychiatrist who would be well aware of the potential transference and countertransference forces which could surface as a consequence of the therapy he provided. Yet by pursuing the opportunity for intimacy he moved from helping her to a personal relationship outside of therapy that placed her at risk of harm. Allowing the relationship to progress to sexual intercourse and indeed having regular sexual relations while engaged in a psychoanalytic relationship only deepened the degree of exploitation of this highly vulnerable patient. The wrongness of his actions must have

been evident, yet he continued. Indeed, it was Patient A who ended the psychoanalytic relationship in April 1995.

There was nothing to suggest that Dr. Finnegan acted in any way to right the situation and reduce the potential impact on his patient.

Dr. Finnegan asked for and was granted the opportunity to say a few words at the conclusion of the case. Dr. Finnegan indicated a respect for College processes and said he took full responsibility for his actions in transforming the relationship. He went on to say that he deeply regretted the harm he caused to Patient A as a consequence of loving her so deeply. This did not reduce the Committee's concern regarding his continuing lack of insight.

Victim Impact Statement

Patient A poignantly described her history with Dr. Finnegan, highlighting the emotional trauma she suffered. The developing relationship is best expressed in her own words:

“As I began to trust him and trust the process, I became stronger as a person. Consequently there were more and more golden revelatory moments wherein I began to put the pieces of my jigsaw life not back together but into some explainable position”

and

“You Dr. Finnegan, or what you represented became my everything”

She described her analysis as being as important to her as the air she breathed. Her vulnerability is clear:

“So, when Dr. Finnegan offered his hand I took it and willingly accompanied him down the garden path off the couch.”

Without a doubt Patient A was vulnerable, needy and fragile, and she was hurting tremendously. Her description of the profound abandonment she experienced in 2003

when the relationship finally ceased, the subsequent effect on her career and her need for extensive medical care, all speak to the negative impact and lasting effect of the abuse she suffered.

Impact on the profession

Both the public and the profession expect physicians to act with care and respect for their patients. It is trust in the profession that underpins the therapeutic relationship. Dr. Finnegan's conduct was a stark betrayal of that trust. Furthermore, it deeply offends the decency of the profession. Such conduct reflects poorly on the profession and abuses the health care system within which we function. These effects extend far beyond Dr. Finnegan's loss of reputation.

There were no mitigating circumstances submitted to the Committee for consideration.

Two prior cases were placed before the Committee. These illustrate that sexual abuse of patients is viewed seriously and that revocation follows as the law provides, when specific circumstances exist. Zero-tolerance is not an ambiguous term.

In neither of the cases put before the Committee did the therapeutic relationship involve psychoanalysis. These cases serve to remind the profession that sexual misconduct can arise in a number of settings. Regardless, such behaviour is not tolerated. Nothing short of separating the member from the profession allows for sufficient protection of the public.

A reprimand was also ordered to express the abhorrence of the profession for this conduct.

The Committee further ordered under subsection 85.7 of the Code that Dr. Finnegan reimburse the College for funding the therapy that Patient A may need as a result of the doctor's actions and to post security for such funding.

In addition, the Committee determined that costs of a one day hearing in the amount of \$4,460.00, payable by Dr. Finnegan to the College is appropriate.

ORDER

Therefore, in its written order of December 15, 2014, on the matter of penalty and costs, the Committee ordered and directed that:

1. the Registrar revoke Dr. Finnegan's certificate of registration effective immediately.
2. Dr. Finnegan appear before the panel to be reprimanded.
3. Dr. Finnegan post an irrevocable letter of credit or other security acceptable to the College by January 15, 2015 in the amount of \$16,060.00 in order to reimburse the College for funding provided to patients under the program required under section 85.7 of the Health Professions Procedural Code, which is Schedule "A" to the *Regulated Health Professions Act*, 1991.
4. Dr. Finnegan pay costs to the College in the amount of \$4,460.00 by January 15, 2015.

At the conclusion of the hearing, Dr. Finnegan waived his right to an appeal under subsection 70(1) of the Code and the Committee administered the public reprimand.

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DR. ANDREW PAUL JOSEPH FINNEGAN

PANEL MEMBERS:

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M. FORGET
DR. A. SIMPSON

Hearing Date:	December 15, 2014
Decision Date:	December 15, 2014
Reprimand Date:	December 15, 2014
Release of Written Reasons:	January 23, 2015

PUBLICATION BAN

TEXT of PUBLIC REPRIMAND
Delivered December 15, 2014
in the case of the
COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO
and
DR. ANDREW PAUL JOSEPH FINNEGAN

Dr. Finnegan, your behaviour with the complainant was and is, very simply, shameful, exploitative and a betrayal of the sense of decency of our profession. Since the time of Hippocrates, behaviour such as yours has been condemned by our profession.

To paraphrase Dr. Milton Horowitz in a lecture given in 2005 to the Toronto Psychoanalytical Society, analysis can make it possible for the patient to be loving and lovable to a suitable person, not the psychoanalyst. Analysts do not need to be loved by their patients nor the patients to be loved by the analysts. Transference love is a vehicle for the analysis not the goal of analysis. The goal of analysis is independence.

Your disgraceful actions and behaviour with the patient and the question that remains of the degree of insight you have as to the wrongness of your action speak to the serious violations of a physician's duty of care and respect. You failed this patient in so many ways. Patients require from us trust and safety. You've breached boundaries in her home and in your office. Your actions were, whether you are aware of it or not, self-serving, preyed upon vulnerabilities, and misused the trust of your patient.

You have not only damaged and brought into disrepute your own name and reputation, but cast a shadow upon the whole profession by your behaviour. Your behaviour deeply offends the decency of our profession. It is an abuse of not only this patient but also the system in which we practise. We can only hope that this process will at least have the benefit of helping the victim on her journey forward. You may be seated.