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

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

BETWEEN:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. IAN GORDON IRVINE

PANEL MEMBERS: DR. J. THOMPSON (CHAIR)
DR. R. GERACE
C. HYETT
E. STEEP

HEARING DATE: JUNE 6, 1996

DECISION/RELEASED DATE:

JUNE 6, 1996

DECISION AND REASONS FOR DECISION

This matter came on for a hearing at the College of Physicians and Surgeons of Ontario at Toronto, Ontario on June 6, 1996.

The College proceeded under paragraph (a) of the Notice of Hearing, where it was alleged that Dr. Irvine was guilty of professional misconduct in that he engaged in sexual impropriety with a patient contrary to Ontario Regulation 548/90, s.29(30) as amended.

A Brief of Agreed Documents was tendered as evidence. It outlined the basis for the allegation, as follows:

For a period of six weeks in 1985, Dr. Irvine, a family physician, was involved sexually with a patient of many years=standing. This followed immediately upon the patient coming to him for help in dealing with her emotional reaction to the termination of another relationship. Both doctor and patient viewed their sexual activity as consensual. Had the patient not complained, in 1993, about another matter -- later dismissed by the Complaints Committee -- the present allegation would not have come to the attention of the College.

The Committee ordered that, under Section 47(1) of the Health Professions Procedural Code, the identity of the complainant -- or any information that might serve to identify her, not be published.

Dr. Irvine entered a plea of guilty to the allegation. The Committee accepted the plea and found Dr. Irvine guilty of professional misconduct.

Submissions Regarding Penalty

Defence counsel called Dr. DSG, a specialist in forensic psychiatry, who had begun, in August 1995, a course of assessment and treatment of Dr. Irvine. His testimony, as well

as written evidence submitted, painted a picture of a physician who was not aware of the need to separate the social from the professional in the doctor-patient relationship, and who had habitually blurred this boundary with his patients. Although these boundaries had not been violated sexually before the present episode, Dr. Irvine had not considered it, as a general principle, improper to initiate a relationship with a patient which might ultimately lead to sexual relations. At the time, 1985, Dr. Irvine was divorced and socially isolated, seeking a new and meaningful relationship. When he first approached the complainant for a date, he did so in the belief that she was his social equal. At the time, he viewed the events that followed as occurring between consenting adults.

Dr. DSG further testified that, while these factors do not make Dr. Irvine's actions excusable, they do make them understandable. His opinion is that Dr. Irvine is not a sexual predator nor a physician who consciously seeks to exploit the power differential of the professional relationship. At no time has he denied the events or, in the course of therapy, viewed them as anything but wrong. He has come to realize the harm suffered by the complainant. Dr. DSG expressed the strong belief that Dr. Irvine's risk of re-offending is extremely low. This opinion he based on a number of factors. These include the specifics of the present case -- which he viewed as an isolated incident -- and the impact the present proceeding has had upon Dr. Irvine. He viewed as genuine the efforts made by Dr. Irvine to understand the issues involved. He also noted that generally recognized risk factors, which have in the past led him to judge recidivism risk in other physicians to be unacceptably high, are in this instance absent. Furthermore, Dr. Irvine is now in a stable relationship, and has been so for the past 10 years.

Also received in evidence was a statement of Dr. Irvine in which he stated how he had become aware of the importance of boundaries in the doctor-patient relationship. He recognized and regretted the manner in which his patient's trust was abused and the serious harm she subsequently suffered. He expressed his sense of guilt and remorse, and indicated just how much he had learned from his work with Dr. DSG.

Counsel for the College and the physician made a joint submission on penalty.

Decision

Having viewed the evidence, and having heard testimony from Dr. Irvine's treating psychiatrist, the Committee accepted, with minor changes, the joint penalty submission. In so doing, it attempted to blend the principles of denunciation of the offending behaviour, protection of the public, and rehabilitation of the physician.

The Committee wishes to emphasize that a sexual relationship with a patient is always wrong. There may be instances, however, where such transgression does not automatically warrant revocation. The present case appears to be one of those. It was an isolated event, understandable if not excusable in context. The physician has made every effort to understand the issues and has accepted full responsibility. The risk of a similar event occurring in future is extremely low, particularly in that the penalty allows for ongoing psychiatric supervision.

The Committee believes that the major feature of its penalty, a public and professional denunciation of Dr. Irvine's behaviour, is not insignificant. The particulars of this case will be published, and become known to Dr. Irvine's community and his colleagues.

The Committee therefore orders that:

- (1) Dr. Irvine be reprimanded and the reprimand be recorded on the Register.
- (2) Dr. Irvine's certificate of registration be suspended for a period of six months, five months of which shall be suspended provided that:
 - (a) he continue in the present therapeutic relationship with his treating

psychiatrist, Dr. DSG, until such time as termination is deemed appropriate by Dr. DSG, but in any case at least until the end of 1996.

- (b) he consent to Dr. Hill's reporting to the Registrar regarding his progress at the end of 1996.
- (c) he undertake to perform an act of community service, of appropriate character, that is acceptable to the Registrar.

Dr. Irvine waived his right of appeal, and the reprimand was administered.