

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. A Vaito Manohar, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of the complainant, or other information that might tend to identify the complainant (including a description of the complainant, the complainant's age or the complainant's place of employment or former employment), under subsection 47(1) of the *Health Professions Procedural Code* (the "Code"), which is Schedule 2 to the *Regulated Health Professions Act, 1991*.

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: Manohar, A. V. (Re)

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

IN THE MATTER OF a Hearing directed
by the Registrar to the Discipline Committee of
the College of Physicians and Surgeons
of Ontario, pursuant to Section 73
of the *Health Professions Procedural Code*

BETWEEN:

DR. A VAITO MANOHAR

- and -

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

PANEL MEMBERS:

**DR. W. KING (Chair)
D. GIAMPIETRI
DR. D. WALKER
DR. E. ATTIA (Ph.D.)
DR. J. WATTS**

Hearing Dates:	October 7 to 9, 2013
Order Date:	November 18, 2013
Release of Written Reasons Date:	June 18, 2014

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

Dr. A Vaito Manohar (“Dr. Manohar”) made an application to the College of Physicians and Surgeons of Ontario (the “College”) for reinstatement of his certificate of registration. His certificate had been revoked for professional misconduct on October 5, 2006. The Registrar referred Dr. Manohar’s application for reinstatement to the Discipline Committee and the Committee heard the application on October 7 to October 9, 2013. At the conclusion of the reinstatement hearing, the Discipline Committee granted Dr. Manohar’s application for reinstatement with terms, conditions and limitations to be placed on his certificate of registration with reasons to follow.

REVOCATION OF CERTIFICATE OF REGISTRATION

On October 5, 2006, the Discipline Committee made a finding that Dr. Manohar committed an act of professional misconduct under paragraph 51(1)(b.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, in that he had engaged in sexual abuse of a patient; that he engaged in conduct relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional under paragraph 1(1)(33) of Ontario Regulation 856/93; and further, that he engaged in conduct unbecoming a physician under paragraph 1(1)(34) of Ontario Regulation 856/93.

At the outset of the original hearing, Dr. Manohar denied all the allegations but later entered the plea of ‘no contest’ to all of the allegations.

The sexual abuse included an act of sexual intercourse. Dr. Manohar’s certificate of registration was revoked under section 51(5) of the Code, and no application for reinstatement could be made for five years. The findings of disgraceful, dishonourable or unprofessional conduct and conduct unbecoming a physician were made with respect to Dr. Manohar’s having fabricated a story to the College; having persuaded a witness to do the same; and having attempted to interfere with the College’s investigation.

NATURE OF THIS APPLICATION

Section 72 (1) of the Code provides:

A person whose certificate of registration has been revoked or suspended as a result of disciplinary or incapacity proceedings may apply in writing to the Registrar to have a new certificate issued or the suspension removed.

Section 72(3)(a) provides that an application under subsection (1), in relation to a revocation for sexual abuse of a patient, shall not be made earlier than five years after the date on which the certificate of registration was revoked.

Pursuant to section 73(1)(a), an application for reinstatement is referred to the Discipline Committee by the Registrar if the original revocation was on the grounds of professional misconduct or incompetence.

Section 73(5) of the Code provides that following a hearing, the Discipline Committee may direct the Registrar to issue a certificate of registration to the applicant, with or without the imposition of specified terms, conditions and limitations.

Section 73(5.1) of the Code states that a panel may not make an order directing that the Registrar issue a new certificate of registration to an applicant whose certificate had been revoked for sexual abuse of a patient, unless the prescribed conditions are met. There are no prescribed conditions.

TEST FOR REINSTATEMENT

On an application for reinstatement, the burden of proof is on the applicant to establish suitability for reinstatement of his certificate of registration. The standard of proof is on the balance of probabilities. The Code does not provide statutory guidance with respect to the factors that the Committee has to consider in determining whether reinstatement is appropriate.

The parties agreed that the general requirements for a certificate of registration set out in Ontario Regulation 865/93 under the *Medicine Act, 1991*, S.O. 1991, c. 30, are applicable on an application for reinstatement. Those requirements provide, in part:

Section 2(1) It is a non-exemptible standard and qualification for a certificate of registration that the applicant's past and present conduct afford reasonable grounds for belief that the applicant,

- a) is mentally competent to practise medicine;
- b) will practise with decency, integrity and honesty and in accordance with the law;
- c) has sufficient knowledge, skill and judgment to engage in the kind of medical practice authorized by the certificate; and
- d) can communicate effectively and will display an appropriately professional attitude.

In considering Dr. Manohar's application, the Committee was also guided by factors identified in prior decisions of this Committee. In the case of *Gillen v. CPSO (2010)*, the Discipline Committee identified two broad issues for consideration on an application for reinstatement:

1. What is the risk of further misconduct, and if there is a risk, is it manageable with terms, conditions and limitations?
2. Is the applicant suitable to practice both in terms of protection of the public and the confidence of the public in the profession's ability to govern itself?

In the cases of *Kulkarni v. CPSO (2004)* and *Kernerman v. CPSO (2010)*, the Discipline Committee identified a list of factors that could be considered on applications for reinstatement. These factors include:

- a) the facts giving rise to the misconduct that led to revocation and other conduct relevant to the physician's suitability to return to practice;
- b) changes in the physician's circumstances since the time of revocation;

- c) the success of rehabilitation including the degree of insight into past inappropriate conduct;
- d) the physician's current mental health and future prognosis;
- e) the physician's attempts of restitution, if any;
- f) the physician's current knowledge, skill and judgment;
- g) the physician's present character – will he practice medicine with decency, integrity and honesty and in accordance with the law;
- h) the impact of the physician's readmission on the reputation of the profession; and
- i) the protection of the public

EVIDENCE

The Committee heard oral evidence from Dr. Manohar, from a treating physician and from two expert witnesses. The College did not call witnesses to give oral evidence but introduced a Victim Impact Statement. The application record of Dr. Manohar also included:

- 1) the transcript of his hearing of October 5, 2006, together with the Decision and Reasons from the same hearing and the Statement of Facts introduced at that hearing;
- 2) the Decision and Reasons in the case of Dr. Y, released October 20, 2008; and
- 3) a record of Dr. Manohar's continuing medical education from 2010 to the present.

OVERVIEW OF THE EVENTS LEADING TO THE REVOCATION OF DR. MANOHAR'S CERTIFICATE AND SUBSEQUENT EVENTS

The complainant in the hearing leading to Dr. Manohar's revocation first began attending his clinic in or about March 2002, following injuries in a motor vehicle accident.

Following these injuries, she lost her business and became depressed. Dr. Manohar treated her approximately twenty times over the subsequent two and a half years, including prescribing anti-depressants and conducting two sessions of psychotherapy.

On several occasions, Dr. Manohar provided the complainant with his cell phone number and in January 2003, met with her for a drink at a bar. In September 2004, Dr. Manohar

invited the complainant to dinner with a friend and colleague, Dr. Y and Ms X. The party of four met for drinks at a bar in the condominium building in which both Dr. Manohar and Ms X had apartments. They proceeded on to a restaurant for dinner and then returned to Ms X's condominium where, after some time spent dancing, Dr. Manohar and Ms X retired to a bedroom where they were intimate. At some point, all four members of the party were present in Ms X's bedroom where the suggestion of group sex was made although not pursued. While dancing, there was a period when both women were topless.

At about 4:00 a.m., Dr. Manohar, Dr. Y and the complainant went to Dr. Manohar's condominium. At a later point that night, Dr. Manohar and the complainant engaged in sexual intercourse in Dr. Manohar's bedroom. The complainant was an unwilling participant in this activity. All members of the group had consumed significant amounts of alcohol.

The complainant subsequently complained to the College and also instigated a civil suit against Dr. Manohar. Dr. Manohar initially denied having had intercourse with the complainant, moreover, he persuaded Dr. Y also to deny that the events occurred. He also conspired with Ms X to falsely claim that they had earlier used a condom when they were intimate. He alleged this condom was the source of semen used by the complainant to provide evidence of his semen on her underwear for later investigation.

At the hearing in October 2006, Dr. Manohar acknowledged engaging in sexual abuse and professional misconduct. His certificate of registration was therefore revoked. On October 20, 2008, Dr. Y was found to have committed professional misconduct, in that he engaged in an act or omission relevant to the practice of medicine that would reasonably be regarded by members as disgraceful, dishonourable and unprofessional. Dr. Manohar testified at this hearing. His testimony was described by the Committee as vague, repetitive and rather evasive and that "the fluidity of his testimony detracted from his credibility". At that time, the Committee did not find Dr. Manohar's story to be generally reliable with the exception of concluding that he was being truthful when he said that he had initially lied about some of the material facts in the case.

In contrast, in the present hearing Dr. Manohar gave evidence in what appeared to be a candid, forthright and remorseful manner. At one point, he became upset when talking about how much he had let his family down. He was highly critical of his earlier behaviour, both with respect to the sexual acts and with respect to his lying and attempted deception.

Dr. Manohar described his early life in a small village in Guyana. Having completed primary and secondary schooling in Guyana, he was able to go to City University in New York to complete his BSc in chemistry. He was briefly married at this time and was able to immigrate to Toronto where he completed his Masters and Doctoral degrees in biochemistry and molecular biology. He then was admitted to medical school. He was candid in admitting that his first marriage was primarily for the purpose of obtaining landed immigrant status in Canada. Following family practice residency in Toronto, he established a practice of walk-in clinics and also practised at two city homes for the aged.

At the time of his initial misconduct, he described himself as being hard-working and living a life that was reckless and pleasure filled. He admitted to having given false accounts to the College and attempting to hide his involvement. He admitted to persuading Ms X to lie about the use of a condom. He described his insight at the time as being very disturbed with an attempt to blame everyone else, partly in an attempt to protect his friend, but also in an attempt to hide his actions, which even at that stage he recognized as being wrong.

At the reinstatement hearing, Dr. Manohar took full responsibility for, and admitted to having intercourse with the complainant. He also admitted that he had provided her with psychotherapy when she was depressed and had suicidal ideation and admitted that he took advantage of her vulnerability. He admitted he would normally advise patients who were on anti-depressants not to drink and that he took no steps to prevent the complainant from doing so. Dr. Manohar agreed that although he had earlier stated that the sexual activity was consensual, it was not possible for a patient, especially under these circumstances, to give consent to intercourse. He felt strongly that it was the physician's

responsibility to avoid this, rather than that of the patient. Dr. Manohar also admitted that although he initially claimed that the completion of the boundaries course in 2006 had been helpful and that he had learned a great deal from it, he continued to deliberately mislead the College in the hearing and investigation regarding Dr. Y.

At no point in his testimony during the reinstatement hearing did Dr. Manohar try to excuse or rationalize his behaviour either on the night of sexual contact or subsequent to it. The only exception to this is that he pointed out that both he and the complainant may have been disinhibited by the consumption of alcohol. However, he also stated that this was no excuse for his behaviour.

Dr. Manohar described his first two years after revocation as being a haze during which he continued to provide scheduling and administration for his walk-in clinic. He stated that his father died in his arms three days after revocation. By 2009, he sold his house in order to pay his debts, including the settlement of the civil suit by the complainant. He stated that he felt weak and hollow inside, but that eventually he found a spiritual tradition that resonated with him. In 2010, he attended an intensive teacher's training program in an ashram in the Himalayan foothills of Rishikesh. He embarked on a process of meditation and self-reflection; he became a vegetarian, gave up alcohol and began an exercise program culminating in running half-marathons. After his return to Toronto, he has helped to rebuild the Toronto chapter of the Himalayan Yoga tradition. In a written reference, his mentor in this tradition describes a dramatic change in his life upon his return to Toronto after the 2010 retreat. In addition to playing a significant role in leading the spiritual tradition, he has raised money for Indian primary schools and participated in other charitable activities. He has also presented educational programs for international youth retreats in Guyana.

Dr. Manohar provided a summary of the continuing education that he had engaged in between 2010 and 2012. This included completion of the College sponsored boundaries course at Western University and a series of one-to-three day programs focusing on hypertension, heart disease, stroke and updates in primary care. His program also

included small group learning in a family medicine oriented group sponsored by McMaster University. In 2012, he attended a comprehensive family practice review program at the University of Toronto and as part of this, underwent a program of coaching from a faculty member in this program. The total time devoted to these activities appeared to the Committee to substantially exceed the requirements of the College of Family Practice of Canada for Continuing Professional Development.

The Evidence of Dr. A

Dr. A is a family physician whose practice is restricted to psychotherapy. Dr. Manohar was referred to Dr. A by the Physician Health Program of the Ontario Medical Association (OMA). He was called as a treating physician, but the College did not object to his providing opinion evidence. Dr. A is a mentor and supervisor for the Ontario College of Family Physicians and is Chair of the Executive of the OMA section of GP Psychotherapy. From 2004 to 2009, he was associated with the Physician Health Program as a resource for physicians in that program. Dr. A met with Dr. Manohar weekly between February and May 2012, and every two weeks from June 2012 to January 2013, and subsequently. It was Dr. A's opinion that Dr. Manohar showed no evidence of addiction or any current or past psychiatric disorder. He appeared to Dr. A to be forthright, not withholding any information and to have genuine remorse. He appeared to be taking significant responsibility for his change in lifestyle and approach. On the basis of Dr. Manohar's openness about the past and his insight into the fact that people might be cynical about his current change, it was Dr. A's opinion that he was at no greater risk of offending than the average physician in the profession. He recommended that Dr. Manohar continue supervisory psychotherapy for at least another year.

On cross-examination, Dr. A acknowledged that the fact that he was testifying on Dr. Manohar's behalf might modify Dr. Manohar's behaviour in counselling. He also admitted that the change to a more balanced lifestyle alone would be inadequate as a preventative measure. He admitted to his limitations in assessing the risk of reoffending, however, he remained firm in his belief that Dr. Manohar was a good candidate for reinstatement. He felt that Dr. Manohar's failure to immediately accept responsibility was

not necessarily a reflection of a fundamental disrespect of authority and that multiple episodes of dishonesty earlier did not represent an inherent dishonesty with disregard of authority.

Expert Evidence

The Committee heard expert opinion evidence from two witnesses, Dr. B and Dr. C.

Dr. B

Dr. B is a professor of psychiatry at the University of Toronto, founding co-director of the Women's Mental Health Program and co-founder of the Toronto Rape Crisis Centre. She has done research and won awards for her work and teaches courses on the maintenance of boundaries. She worked closely with the College of Physicians and Surgeons of Ontario's task force on sexual abuse of patients and has previously acted as an expert witness on the issue of sexual abuse for other health professions.

The College objected to Dr. B's qualification as an expert on the issue of return to practice of physicians who have committed professional misconduct in the form of sexual abuse of patients. The Committee ruled that Dr. B's wide experience, research and educational activities in this field did qualify her to give expert evidence. She was qualified to give expert evidence on risk assessment and suitability of the physician to return to practice.

Dr. B provided a written report and an opinion based on a three hour interview with Dr. Manohar. It was her view that Dr. Manohar was completely open about his sexual misconduct and his dishonesty towards the College. She described him as a "golden boy" who came from a very poor background to achieve significant professional success. He was subsequently shattered by the events that followed his misconduct and tried to protect both himself and his colleagues by lying. He has since gone through a significant spiritual journey which she felt provided more than a superficial change. She noted that he had a somewhat egotistical and narcissistic attitude, which made the humiliation of his

revocation and the loss of everything he had achieved professionally especially shattering. Indeed, she felt this was so distressing to him that he would do anything to avoid it happening again. In Dr. B's testimony, she noted that a significant spiritual journey involving intensive self-reflection and subsequent behavioural change may be more effective than psychotherapy, in that its origin lies within the individual himself, rather than coming from external counselling. She also stated that his failure to seek psychiatric help earlier in his attempts to establish reinstatement was understandable given his focus on internal change. She testified that he appeared totally remorseful and that at no time did he try to justify his actions or blame anyone but himself. She admitted there were some disturbing factors including his apparent early marriage to enable immigration and the narcissistic and self-gratifying aspects of his personality. However, she felt the two latter aspects also have a somewhat protective effect. She further stated that she felt the statements that were made about him at the time of the misconduct (and in the initial stages of his revocation) are not necessarily reflective of his character and behaviour at the current time and in his current state.

In her written report, Dr. B noted that at the time of his interview, Dr. Manohar maintained that the episode of sexual intercourse with the patient was consensual. However, she felt that this was largely an issue of his terminology. She pointed out that if a patient agrees to, or even wants sexual activity, it is still not consensual when the patient is vulnerable as a result of having been a patient and as a result of alcohol intoxication. She felt that Dr. Manohar fully understood that what happened was clearly wrong and could not be allowed to happen again. It was Dr. B's opinion that although Dr. Manohar engaged in psychotherapy at a relatively late stage, this was less important than the changes that he had made in his lifestyle and behaviour on his own initiative.

Dr. B acknowledged that her opinion was based upon a single three-hour interview and did not incorporate interviews or information from any other source. However, she firmly maintained that Dr. Manohar would be fit to practise medicine.

Dr. C

Dr. C is a clinical psychologist who has longstanding experience in the assessment of sexual offenders, particularly Catholic priests. He acts as a consultant to sex-offender programs and is also a member of the Association for the Treatment of Sexual Abusers. He has worked for fifteen years in a centre dealing with a broad array of sexual concerns and conducted numerous assessments of individuals accused of and/or admitting to the sexual abuse of others. He has publications dealing with specialized treatment centres for priests who commit sexual abuse and the assessment of persons with other spiritual backgrounds.

The College objected to Dr. C as an expert on the risk of a physician reoffending, given that most of his experience was with non-physicians. The Committee, however, accepted Dr. C's expertise on the general topic of the likelihood of sexual offenders repeating their actions.

Dr. C administered four standard tests including:

1. a personality assessment inventory;
2. a Wisconsin personality inventory;
3. a Millon clinical multi axial inventory; and
4. Paulhus deception scales.

Dr. C met with Dr. Manohar on two occasions each lasting three hours. It was Dr. C's opinion that Dr. Manohar did not meet the criteria for any condition in the DSM 5 and that his scores on the deception test suggested that he was responding in an honest fashion. Dr. C was aware of Dr. Manohar's history of repetitive lying and dishonesty. He came to the conclusion that this behaviour was completely contextual and that such an individual was capable of being rehabilitated. Dr. C believes that Dr. Manohar had taken significant steps in changing his behaviour prior to his accessing psychotherapy. Dr. Manohar, he felt, was aware of the damage that was done both to his patient and to victims in general. Dr. C felt that although Dr. Manohar demonstrated some elements of

narcissism in his personality testing, this did not reach clinical levels and appeared to be non-exploitative.

Dr. C on cross-examination said that he sought no further information other than what he received in Dr. Manohar's interview and the information that was present in the material provided by Dr. Manohar's counsel. Dr. C admitted that there was an inherent limitation in assessing a patient, such as Dr. Manohar, on self-report alone. However, he stated his conclusion that Dr. Manohar was reasonably unlikely to reoffend was as strong a conclusion as he ever reached.

Documentary Evidence

In addition to oral evidence, the Committee also relied upon:

- a letter from Dr. D, dated January 22, 2013, attesting to Dr. Manohar's performance and behaviour while shadowing his practice and participating in small group learning initiatives;
- a report from Dr. Manohar's family physician, Dr. E, dated May 7, 2012, regarding the state of Dr. Manohar's general health; and
- a letter from Mr. F, dated October 17, 2012, commenting on Dr. Manohar's spiritual life, his changes in lifestyle and his role in community education, fundraising and other activities.

Dr. Manohar also presented two letters of reference:

1. one written in 2007, from Dr. G; and
2. a second written in 2009, updated October 5, 2013, from Dr. H, which specifically attested to Dr. Manohar's character and stated that she would trust to have Dr. Manohar treat a female member of her own family.

The College presented no oral evidence. It did, however, submit a Victim Impact Statement from the original complainant. This impact statement left the Committee in no doubt as to the devastating effects that Dr. Manohar's actions in 2004 had on her life, and that these effects persist to this day.

SUBMISSIONS

Dr. Manohar submitted that he had made a dramatic and significant change in his attitude and behaviour, which resulted in his apologizing and requesting forgiveness. He also has insight into conduct that he regards now as disgraceful and humiliating.

This was a single encounter with a single patient, which he now recognizes could not have been consensual, and he has made no attempt to place blame on the victim and made remorseful and contrite admissions both on direct and cross-examination.

Dr. Manohar's counsel referred this Committee to the test for reinstatement outlined in *Watt v. The Law Society of Upper Canada* (2004). Although this dealt with the readmission of a lawyer following disbarment, it did so with respect to a charge of misappropriation of a client's funds which Dr. Manohar claimed was similar in significance to sexual misconduct for a physician.

The test from the *Watt* case is as follows:

1. There should be a significant period of time since revocation. In this case Dr. Manohar has been revoked for seven years.
2. The applicant should demonstrate unimpeachable conduct since revocation. Dr. Manohar did not initially demonstrate such conduct but has done so since 2010.
3. To the extent that it is possible, Dr. Manohar has removed himself from the circumstances which led to his misconduct, particularly in making changes in lifestyle and giving up the use of alcohol.

4. Dr. Manohar has made a sincere admission of guilt and remorse. He has also admitted profound humiliation among his friends, family and parents.
5. There is substantial and satisfactory evidence that he is unlikely to reoffend.
6. He has remained current in the practice of family medicine.

The College submitted that the misconduct giving rise to the revocation was an extremely serious one, which the Committee had stated would have resulted in revocation, even if this were not required by statute. Furthermore, the Committee stated in the reprimand that dishonesty constituted a major problem. Moreover, Dr. Manohar's subsequent lying and evasiveness, which occurred after his legal counsel had apologized for his earlier behaviour, constituted a significant degree of ungovernability.

The College submitted that relatively little weight could be placed upon the recommendations of experts who had examined Dr. Manohar on only one (Dr. B) or two (Dr. C) occasions. The College pointed out that his psychotherapy had been very limited and that there was no evidence of a satisfactory relapse prevention plan.

ANALYSIS

The Committee applied the factors outlined in *Gillen v. CPSO* (2010), the risk for recurrence of the misconduct and the applicant's current suitability to practise, and reviewed each of these using the eight factors that were outlined in the *Kulkarni*, *Kernerman* and *Dawson* decisions.

1. What is the risk of further misconduct, and if there is a risk, is it manageable with terms, conditions and limitations?

- a) What are the facts giving rise to the misconduct that led to revocation?

There can be no denying that Dr. Manohar's conduct was serious, both in terms of his sexual abuse of a vulnerable patient and his repetitive lying and evasiveness. His actions and behaviour fully justified the penalty that was imposed and the comments that were

made by the Discipline Committee at that time. For the purposes of this application, however, the Committee noted that the sexual abuse occurred with a single patient in an environment where alcohol played a role. Dr. Manohar's subsequent dishonesty was clumsy, unplanned and easily detected. The Committee in Dr. Y's hearing found that Dr. Manohar's lack of credibility and evasiveness were easy to detect and establish. The Committee considered that this dishonesty was opportunistic and contextual and rejected the argument that it necessarily constituted ungovernability.

- b) What are the changes in the physician's circumstances since the time of revocation?

Although Dr. Manohar was slow in embarking on a process of personal rehabilitation and failed to do so for two years, the Committee was persuaded that he did indeed engage in a process of significant self-reflection and spiritual change. The Committee found themselves in agreement with Dr. B's contention that although this process was, in many ways, atypical and largely independent of professional counselling and advice, such a process of personal change was likely to be at least as effective and possibly more so than conventional psychiatric or psychotherapeutic approaches. Both of the expert witnesses, Dr. Manohar's therapist and his spiritual colleague supported this, and no evidence was presented to contest it.

- c) What was the success of rehabilitation including the degree of insight into Dr. Manohar's past inappropriate conduct?

Dr. Manohar's evidence was given in a way which was a marked contrast to the evidence given in Dr. Y's hearing. He was remorseful and contrite, willing to take entire responsibility for his actions, and devoid of any attempt to make excuses that would mitigate his conduct. His testimony echoed his responses to the experts who had assessed his current state. There were two areas where his responses were less convincing than might have been expected. These were in his discussions of consent by the complainant and his description of transference and counter-transference. Dr. B testified that the issue

of consent could be interpreted very differently depending on the context and that Dr. Manohar's initial response reflected a social context for consent, rather than a formal, professional or legal context.

2. Is the applicant suitable to practise both in terms of protection of the public and the confidence of the public in the profession's ability to govern itself?

d) What is the physician's current mental health and future prognosis?

All witnesses were in agreement that Dr. Manohar's physical, as well as mental health was normal. There was no evidence of a DSM 5 diagnosis. Although some testing demonstrated or suggested a degree of narcissism, this was considered by both experts to be within the normal range for a high functioning individual.

e) Has the physician made attempts at restitution in addition to demonstrating remorse and contrition?

Dr. Manohar was the subject of a civil suit. He testified that the settlement in that action resulted in him selling his home. Although the Committee was not provided with any further details, the suggestion was that some payment had been made to the complainant. This was not a voluntary act of restitution, given the lawsuit, but the Committee acknowledges that there were financial consequences for Dr. Manohar.

f) What is the physician's current level of knowledge, skill and judgment?

To the extent that it is possible to make a judgment in the absence of a formal assessment and practice evaluation, the Committee found that Dr. Manohar has made significant efforts to remain current in his knowledge of practice.

Dr. Manohar has maintained a program of continuing education that is entirely appropriate for a family physician. The evidence in his portfolio for continuing education

showed that he was industrious, involved and received highly positive evaluations. Although it would be necessary to incorporate a period of retraining, as part of a return to practice, Dr. Manohar appeared to have maintained the knowledge base suitable for practice.

- g) What is the physician's present character, will he practise medicine with decency and integrity and honesty and in accordance with the law?

It was the view of the Committee that all evidence heard at this hearing confirmed that Dr. Manohar had undergone a significant and substantial change in attitude and behaviour which was likely to be persistent. Dr. B testified that Dr. Manohar's somewhat narcissistic traits meant that the humiliation, the loss of everything he had achieved and the effect of the revocation were so shattering that he would, in her words, do anything to avoid this happening again. The Committee was particularly aware of the predictive nature of previous behaviour in a general sense, but was convinced by the evidence that this was not likely to be the case with Dr. Manohar.

- h) What would be the impact of the physician's readmission on the reputation of the profession?

The Committee took note that the independent task force on the sexual abuse of patients (1991) initially recommended a "lifetime ban" penalty for such offences. However, they modified this recommendation recognizing that a small proportion of offenders could be rehabilitated and return safely to practice. The Committee concluded that Dr. Manohar's change in behaviour and attitude placed him in this category and that he could therefore safely be returned to practice in a graduated and initially supervised environment.

- i) The protection of the public.

In considering the circumstances under which Dr. Manohar could return to practice, the Committee found that Dr. Manohar must continue with supportive psychotherapy for a

minimum of one year. Given Dr. Manohar's absence from practice, now for seven years, he will be subject to the College's policy on re-entering practice and must therefore undergo a needs assessment to determine the education and training, if any, which is required. This shall be followed by a competency evaluation which will be for a minimum of three months and thereafter by a period of supervision from a practice monitor for at least one year. The supervision shall specifically incorporate an ongoing assessment of Dr. Manohar's interaction with, and respect for, the boundaries of female patients. The period of supervision shall be followed by an assessment of Dr. Manohar's practice.

The Committee gave full consideration to the College's request for formal chaperoning with all encounters of female patients and/or the provision of a notice requiring this in writing in Dr. Manohar's waiting room. The Committee concluded this was not necessary in order to protect the public. Dr. Manohar's misconduct related to a single patient, arose in a social context (although the complainant was a patient), and did not occur at his office. The Committee determined that patient safety would be better protected by unannounced or random inspections, surveys or questionnaires, and using methods that shall be determined by the College. Dr. Manohar shall cooperate with any such evaluations.

ORDER

Therefore, the Discipline Committee ordered and directed on November 18, 2013, that:

1. the Registrar issue a certificate of registration to Dr. Manohar. The certificate of registration shall only become effective after Dr. Manohar has completed the Needs Assessment referred to in 2(i)(a) (including the completion of any training or education as recommended by the Needs Assessment) and after the appointment of a clinical supervisor for the Competency Evaluation referred to in 2(i)(b).

2. the Registrar impose the following terms, conditions and limitations on Dr. Manohar's certificate of registration:
 - i. Dr. Manohar shall comply with the College Policy on Re-entering Practice (Policy Statement #2-08) and will provide to the College a plan for re-entry that incorporates the following components:
 - a. a Needs Assessment, to be performed by a clinical preceptor, who shall not be a physician who is or has acted as a physician in a practice owned by Dr. Manohar and who is acceptable to the College, to determine the education and training, if any, that is required of Dr. Manohar. The Needs Assessment shall also specifically take into account the particulars of this order and determine if any additional supervision is required;
 - b. a Competency Evaluation during which Dr. Manohar will work in the practice of a clinical supervisor, who shall not be a physician who is or has acted as a physician in a practice owned by Dr. Manohar, and who is acceptable to the College. This period of evaluation shall include direct observation of Dr. Manohar's patient interactions and a review of his patient charts. This period of evaluation shall be for at least three (3) months or until such longer time as the clinical supervisor shall determine that Dr. Manohar has the required knowledge and skills to practice under the supervision of a clinical supervisor as set-out in paragraph 2(i)(c) below. The clinical supervisor shall sign an undertaking with the College, in a form approved by the College, and shall provide written reports to the College each month.
 - c. On completion of the Competency Evaluation and when approved by the College, Dr. Manohar shall work in a practice under the supervision of a clinical supervisor, acceptable to the College, for a period of at least one year. The clinical supervisor will report in writing quarterly to the College and execute an undertaking acceptable to the College. The clinical supervisor may be the same or a different physician as the clinical

supervisor referred to in 2(i)(b). The clinical supervisor shall meet with Dr. Manohar initially on a weekly basis to review patient care, including direct observation of patient interactions, and shall pay special attention to Dr. Manohar's interactions with, and respect for the boundaries of, female patients. The quarterly reports from the clinical supervisor shall include the clinical supervisor's impression of Dr. Manohar's judgement, behaviour and attitude in the provision of patient care including Dr. Manohar's interaction with patients, colleagues and co-workers. The frequency of meetings may be decreased at the recommendation of the clinical supervisor and with the approval of the College; and

- d. Dr. Manohar shall agree to and cooperate in an assessment of his practice to be conducted approximately one year after starting with the clinical supervisor, as referred to in paragraph 1(i)(c) above. The assessment is to be carried out by a physician appointed by the College and may include direct observation of patient interactions, chart review and the review of the result of surveys, questionnaires or reports from patients, staff and associated health professionals and physician colleagues. The physician who conducts the practice assessment shall be provided with a copy of the Discipline Committee's Reasons for Decision in this matter and copies of the reports of the clinical supervisors referred to above. The College shall review the final assessment and make a determination as to whether Dr. Manohar can enter unsupervised practice.
- ii. Dr. Manohar shall continue with supportive psychotherapy with Dr. A, or with a therapist acceptable to the College, for at least one year from the date of this Order, or longer if recommended by the psychotherapist. The psychotherapist shall sign an undertaking acceptable to the College, shall see Dr. Manohar on at least a monthly basis and shall provide quarterly reports to the College.
 - iii. Dr. Manohar shall cooperate with the College in the College's evaluation, by a method to be determined by the College, of patient satisfaction with Dr.

Manohar's treatment and care and of Dr. Manohar's respect for patient boundaries.

- iv. Any person who acts as a preceptor, assessor, supervisor, or psychotherapist for Dr. Manohar shall be provided with and read the reinstatement decision and reasons and order of the Discipline Committee, and shall immediately report to the College any failure to maintain the terms of this Order.
- v. Dr. Manohar shall pay all of the costs of the needs assessment, competency evaluation, clinical supervision and practice assessment associated with this re-entry to practice program.