

## **NOTICE OF PUBLICATION BAN**

In the College of Physicians and Surgeons of Ontario and Dr. Theepa Sundaralingam, this is notice that the Discipline Committee ordered a ban on the publication, including broadcasting of the name of the patient, or any information that could identify the patient who has been referred to in this proceeding as Patient A, extending to Patient A's age, presenting medical issue in emergency, the specific diagnosis made of Patient A and the hospital in which Patient A was treated, pursuant to 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 ...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. Sundaralingam,**  
2019 ONCPSD 11

**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. THEEPA SUNDARALINGAM**

**PANEL MEMBERS:**

**MR. JOHN LANGS  
DR. PAUL CASOLA  
MR. MEHDI KANJI  
DR. PAUL GARFINKEL  
DR. ELIZABETH SAMSON**

**COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:**

**MS. AMY BLOCK**

**COUNSEL FOR DR. SUNDARALINGAM:**

**MS. JENNY STEPHENSON**

**INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:**

**MS. ZOHAR LEVY**

**Hearing Date: January 23, 2019  
Decision Date: January 23, 2019  
Written Decision Date: March 14, 2019**

**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 January 23, 2019. At the conclusion of the hearing, the Committee released a written order stating its finding that Dr. Sundaralingam committed an act of professional misconduct and setting out its penalty and costs order with written reasons to follow.

### **THE ALLEGATIONS**

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

1. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”), in that she has engaged in 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; and
2. under clause 51(1)(b.1) of the Health Professions Procedural Code which is schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18 (the “Code”) in that she engaged in sexual abuse of a patient.

### **RESPONSE TO THE ALLEGATIONS**

Dr. Sundaralingam did not contest the allegations in the Notice of Hearing, that she engaged in 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, and that she has engaged in sexual abuse of patient.

### **PART I - FACTS**

The following facts were set out in a Statement of Facts and Plea of No Contest which was filed as an exhibit and presented to the Committee.

**A. BACKGROUND**

1. Dr. Theepa Sundaralingam (“Dr. Sundaralingam”) is a 37 year-old physician who received her certificate of registration authorizing independent practice on June 30, 2011. She is certified in internal medicine and oncology by the Royal College of Physicians and Surgeons.
2. At the material time, Dr. Sundaralingam practiced oncology at Hospital in Toronto.

**B. SEXUAL ABUSE AND DISGRACEFUL, DISHONOURABLE AND UNPROFESSIONAL CONDUCT RE. PATIENT A**

**(i) Patient A**

3. In January 2015, Patient A, a man, was referred to Dr. Sundaralingam from the emergency room where he had attended. Dr. Sundaralingam ordered bone marrow testing.
4. At a follow-up appointment in February 2015, Dr. Sundaralingam diagnosed Patient A with cancer. Dr. Sundaralingam continued to treat Patient A regularly. She treated him 23 times between January 2015 and July 2015 and one time in March 2016.
5. In February 2015, the day after Dr. Sundaralingam diagnosed Patient A with cancer, she provided Patient A with her personal contact information and Instagram ID. Dr. Sundaralingam breached appropriate boundaries with her patient, as the two immediately commenced texting in a highly personal manner. Copies of some of the texts exchanged in February 2015 are attached at Tab 1[to the Statement of Facts and Plea of No Contest]. Incoming texts at Tab 1 [to the Statement of Facts and Plea of No Contest] are sent by Dr. Sundaralingam to Patient A. Outgoing texts at Tab 1 [to the Statement of Facts and Plea of No Contest] are sent by Patient A to Dr. Sundaralingam.
6. In the next several weeks, Dr. Sundaralingam continued to breach appropriate boundaries with Patient A including by:
  - a. Frequently texting Patient A, communicating in a highly personal and flirtatious manner;

- b. Meeting outside her clinic, including meeting at a coffee shop a few days after she communicated his cancer diagnosis;
  - c. Holding hands with Patient A, hugging Patient A for long periods of time and kissing Patient A.
- 7. In or around March 2015, Patient A was admitted to Hospital for chemotherapy. While cancer treatments were provided, Dr. Sundaralingam continued to monitor Patient A regularly and treated him by administering regular blood transfusions.
- 8. While a patient in Hospital, Dr. Sundaralingam visited Patient A, at times staying for 5-7 hours at a time. His entire family got to know her. During these visits, the discussions between Dr. Sundaralingam and Patient A became more sexually explicit, including discussions about the pornography they enjoy. A copy of some of the sexually explicit texts is attached at Tab 2 [to the Statement of Facts and Plea of No Contest]. Incoming texts in Tab 2 [to the Statement of Facts and Plea of No Contest] are sent by Dr. Sundaralingam to Patient A. Outgoing texts in Tab 2 [to the Statement of Facts and Plea of No Contest] are sent by Patient A to Dr. Sundaralingam.
- 9. One evening, Dr. Sundaralingam visited Patient A after hours, when she had been drinking. Dr. Sundaralingam lay with Patient A in his bed, and the two engaged in mutual sexual touching. Patient A touched Dr. Sundaralingam's breasts. Dr. Sundaralingam touched Patient A's penis. They kissed.
- 10. In March 2015, Dr. Sundaralingam and Patient A engaged in texting during which they described sexual activities with each other while masturbating. A copy of the March 2015 exchange is attached at Tab 3 [to the Statement of Facts and Plea of No Contest]. Incoming texts in Tab 3 are sent by Dr. Sundaralingam to Patient A. Outgoing texts in Tab 3 [to the Statement of Facts and Plea of No Contest] are sent by Patient A to Dr. Sundaralingam. Dr. Sundaralingam asked Patient A to delete the texts.

11. Dr. Sundaralingam continued to treat Patient A throughout this period, including after his inpatient treatment. He saw Dr. Sundaralingam regularly at her clinic in Hospital, where she examined him, administered tests and administered blood transfusions.
12. During their medical appointments, Dr. Sundaralingam behaved in a physical, flirty and sexual manner toward Patient A. In addition to examining him, Dr. Sundaralingam asked Patient A to examine her. During these appointments, Patient A touched Dr. Sundaralingam's breasts.
13. While examining a birthmark on his inner thigh during a medical appointment, Dr. Sundaralingam removed Patient A's pants and underwear and touched his penis sexually. She recorded in the medical record "On examination, he does have a mole in the inner-left thigh. This will be monitored. I have instructed Patient A to keep an eye on the skin lesion".
14. On a number of occasions, Dr. Sundaralingam visited Patient A in his home, where he lived with his family. They spent hours together in his bedroom where they continued to engage in sexual activities, including mutual masturbation. They regularly engaged in phone sex.
15. In July 2015, Patient A returned to Hospital for a bone marrow transplant. At that time, Dr. Sundaralingam visited him frequently.
16. While Patient A was in the Hospital, she masturbated him, but on one occasion ceased abruptly when a friend walked in. Towards the end of his inpatient stay, she slept overnight with him in his bed in his hospital room. They had sexual intercourse on two occasions while he was an inpatient.
17. Dr. Sundaralingam repeatedly asked Patient A to delete their texts and keep their relationship a secret, as she was concerned the College would become aware of their sexual and inappropriate relationship.

18. By the end of September 2015, their sexual relationship came to an end. After having sexual intercourse with Patient A at his home, Dr. Sundaralingam told Patient A that she was in love with a colleague with whom she was having an affair. Their friendship continued, but it was non-sexual. From November 2015 onward, Dr. Sundaralingam refused to see him. She refused to meet him when he reached out to her in February 2016. He found this very difficult to deal with.
19. In March 2016, Patient A developed an infection. Dr. Sundaralingam treated him. This was their last formal clinical interaction. He was subsequently admitted to Hospital. Dr. Sundaralingam did not visit him there. She did not treat him again or engage in any further sexual encounters with Patient A.
20. Dr. Sundaralingam engaged in sexual abuse and disgraceful, dishonourable and unprofessional conduct in respect of Patient A.

**C. DISGRACEFUL, DISHONOURABLE AND UNPROFESSIONAL CONDUCT RE HOSPITAL RECORDS**

21. When Dr. Sundaralingam visited Patient A in the bone marrow transplant unit in July 2015, Dr. Sundaralingam was required to sign her name and signature on the log to identify herself and who she was visiting.
22. Dr. Sundaralingam engaged in disgraceful, dishonourable and unprofessional conduct by asking Patient A to alter the hospital records by scratching out her name after she left so that there would be no evidence that she was there. Patient A did as she instructed.

**PART II – NO CONTEST**

23. Dr. Sundaralingam does not contest the facts set out in paragraphs 1- 22 above, and does not contest, for the purposes of College proceedings, that she engaged in professional misconduct, in that:

- (a) she engaged in sexual abuse of Patient A under section 51(1) of the Health Professions Procedural Code, schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18 (the “Code”); and
- (b) she engaged in 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, under paragraph 1(1)33 of O/Reg. 856/93, made under the *Medicine Act, 1991* (“O/Reg. 856/93”).

## **FINDING**

The Committee accepted as correct all of the facts set out in the Statement of Facts and Plea of No Contest. Having regard to these facts, the Committee found that Dr. Sundaralingam committed an act of professional misconduct, in that she engaged in 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 and engaged in sexual abuse of Patient A .

## **SUBMISSIONS ON PENALTY**

Counsel for the College made a submission as to an appropriate penalty and costs order. This involved:

1. Immediate revocation of Dr. Sundaralingam’s certificate of registration;
2. Administration of a public reprimand;
3. Payment of \$16,060 to the College fund for therapy for Patient A as prescribed under section 85.7 of the Code; and
4. Payment of \$6,000 in costs of the proceeding.

Counsel for Dr. Sundaralingam did not contest the proposed penalty.

## **PENALTY AND REASONS FOR PENALTY**

The Committee took into account a number of principles in assessing the proposed penalty. The protection of the public is of paramount concern to the Committee. The Committee has also



considered the importance of expressing the abhorrence of the profession for the member's behavior, and maintaining public confidence in the profession and the College's ability to regulate the profession in the public interest. Deterrence, both of the member and other physicians, is also important in determining the penalty. When possible, the penalty should also provide for rehabilitation of the member. The penalty should also be proportionate to the misconduct.

As noted in *Re Tse and College of Physicians and Surgeons of Ontario*, 1979 CanLII 2047 (ON SC), the proportionality of a penalty involves consideration of the seriousness of the conduct, which includes the impact of the conduct on its victims.

Given the Committee's finding of sexual abuse, and that this abuse consisted of mutual masturbation, oral sex and sexual intercourse, the Committee is aware that mandatory revocation is required under section 51(1) of the *Code*. Dr. Sundaralingam will not be eligible to apply for reinstatement of her certificate of registration for five years.

The Committee was appalled by Dr. Sundaralingam's behaviour, for which revocation is a just and appropriate penalty. In reaching its decision regarding the penalty to be imposed here, the Committee considered aggravating and mitigating factors and considered the impact statement provided by Patient A. The Committee also looked to previous similar cases.

### **Aggravating Factors**

1. The main aggravating factor in this case is the nature of the misconduct. Dr. Sundaralingam's behaviour represents the most serious breach of a patient's trust. It involves an abuse of her power over an extremely dependent, vulnerable man at a time when his life was threatened by serious illness. Patient A was referred to Dr. Sundaralingam for diagnosis, treatment and support and she quickly turned this into a sexualized relationship for her own purposes.

The day after Dr. Sundaralingam diagnosed Patient A with cancer, she provided him with her personal phone number and Instagram ID. Immediately, they began texting in a highly personal, sexualized manner. Very soon after, they met in a coffee shop. When

Patient A was admitted to hospital one month later, Dr. Sundaralingam treated Patient A and visited him for lengthy periods – up to 5-7 hours, where they discussed sexually explicit topics. They also lay in bed together in hospital and engaged in kissing and sexual touching. On a number of occasions, they met at Patient A’s home and engaged in various sexual activities, including sexual intercourse. Dr. Sundaralingam turned the clinical relationship into a sexual one – for her own purposes - almost immediately.

2. Boundaries are at the core of a doctor patient relationship, and the doctor’s ability to effectively treat his or her patient depends on maintaining appropriate boundaries. Dr. Sundaralingam fundamentally violated the duty of a physician to do no harm. Sexual relations between physicians and patients have long been considered unethical. The Hippocratic Oath states that physicians: “....will come for the benefit of the sick, remaining free of all intentional injustice, of all mischief and in particular of sexual relations with both female and male persons ....” The CPSO policy on Maintaining Appropriate Boundaries and Preventing Sexual Abuse is explicit on this topic, stating: “At all times, a physician has an ethical obligation not to exploit the trust and dependence that develops during the physician-patient relationship for the physician’s personal advantage”.
3. Dr. Sundaralingam maintained her sexual relationship with Patient A for many months in many locations while she continued to provide Patient A his medical treatment. This was not a single impulsive act or single act of poor judgment.
4. Dr. Sundaralingam knew what she was doing was wrong and tried to prevent detection. She asked Patient A to delete her texts. She visited Patient A in the bone marrow transplant unit and was required to sign-in on a log sheet. She asked Patient A to alter the hospital records by scratching out her name so that there would be no evidence she was there. Patient A did so, which is but one example of the extent of her influence over him.

5. A trained oncologist should have been fully aware of how vulnerable patients are at the time of diagnosis of a life threatening illness. Maintaining boundaries, while being supportive, is especially important in such a moment.
6. Patient A's impact statement highlights how harmful Dr. Sundaralingam's behaviour has been. He described its effect as "devastating". Because of this he has required therapy for the past two years. He described that, "I felt taken advantage of. I felt disconnected from myself and apathetic toward the world. There was an imbalance of power in the relationship because of my dependence on her for both medical care and emotional and sexual intimacy."
7. According to Patient A's impact statement, Dr. Sundaralingam terminated the relationship abruptly because of her own needs and wishes, and stopped providing medical care to him: "I was physically emaciated and emotionally exposed and the loss of a critical relationship defeated me. What compounded the toll was her refusal to continue providing medical care at the same time."

### **Mitigating Factors**

The Committee recognized that by entering a plea of no contest, Dr. Sundaralingam saved Patient A from the difficult and emotionally taxing experience of testifying at the hearing. Also, her plea saved the College the time and expense of a contested hearing.

### **Prior Cases**

Although prior Committee decisions are not binding as precedent, the Committee accepts as a principle of fairness that like cases should be treated alike. As stated by the Divisional Court in *Stevens v. the Law Society of Upper Canada*, 1979 CanLII 1749 (ON SC), and adopted by the Ontario Court of Appeal in *College of Physicians and Surgeons of Ontario v. Peirovy*, 2018 ONCA 420 (CanLII): "A conscious comparison should be made between the case under consideration and similar cases wherein sentences were imposed. If the comparison with other cases is not undertaken, there may well be such a wide variation in the results so as to constitute not simply unfairness but injustice."

Each case, however, is unique. There are no previous cases that have come before the College that are identical to the current case. However, two cases considered by the Committee had some similar elements to this case.

The case involving Dr. Zvi Margaliot was heard by the Discipline Committee in 2016 (*Ontario (College of Physicians and Surgeons of Ontario) v. Margaliot*, 2016 ONCPSD 53 (CanLII)). In that case, a hand surgeon had a sexual affair with a young patient in her 20s. The patient was also his student and very admiring of him. In revoking Dr. Margaliot's certificate of registration, the Committee highlighted how reprehensible his behaviour was, given that this woman was vulnerable because of her age, her position as a student, and her need for care as a patient. Similar to this case, the patient in question was particularly vulnerable.

In a second case, *Ontario (College of Physicians and Surgeons of Ontario) v. Manohar, A. V.*, 2013 CanLII 96588 (ON CPSD), Dr. Manohar sought out a patient for a date or social interaction. He then engaged in sexual intercourse with her for his own gratification in disregard for her well-being. He also lied to College investigators and persuaded the patient to fabricate a story to investigators. As in the current case, this was not a momentary lapse of judgment but a planned activity. The Discipline Committee revoked Dr. Manohar's certificate of registration.

## CONCLUSION

Physicians have an ethical obligation to not exploit the trust, power imbalance and dependence that characterize the relationship between a doctor and a patient. The relationship must never be used for the physician's personal advantage: the physician's duty is to act in the patient's best interest.

The Committee found Dr. Sundaralingam's behavior to be abhorrent. Even if revocation were not mandatory, the Committee would have made such an order. Her actions were deliberate and carried on over an extended period of time. Nothing short of revocation could protect the public and uphold public confidence in the integrity of the profession and the College's ability to regulate the profession in the public interest. It sends a strong message of general deterrence to the entire membership. The profession will not tolerate members who misuse patients for their own needs and purposes.

**ORDER**

The Committee stated its findings in paragraph 1 of its written order of January 23, 2019. In that order, the Committee ordered and directed on the matter of penalty and costs that:

2. the Registrar revoke Dr. Sundaralingam's certificate of registration effective immediately.
3. Dr. Sundaralingam appear before the panel to be reprimanded.
4. Dr. Sundaralingam reimburse the College for funding provided to patients under the program required under section 85.7 of the Code, by posting an irrevocable letter of credit or other security acceptable to the College, within thirty (30) days of this order in the amount of \$16,060.00.
5. Dr. Sundaralingam pay to the College its costs of this proceeding in the amount of \$6000.00 within thirty (30) days from the date of this order.

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

**TEXT of PUBLIC REPRIMAND**  
**Delivered January 23, 2019**  
**in the case of the**  
**COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO**  
**and**  
**DR. THEEPA SUNDARALINGAM**

Dr. Sundaralingam,

Your actions are abhorrent and reprehensible. Even if revocation was not mandatory, the Committee would have made such an Order.

Physicians are taught from the earliest days of medical school to respect boundaries. From virtually the beginning of your doctor/ patient relationship, you crossed boundaries and ultimately sexually abused an extremely vulnerable patient suffering from a life threatening illness.

Your actions were deliberate and carried on over an extended period of time. This was not an isolated incident or momentary lapse of judgement. You knew your actions were wrong and tried to conceal the evidence.

You were responsible for your patient's health, care and support, but instead you took advantage for your own personal satisfaction. You then withdrew that support for your own personal preference at a time when your patient was at his lowest point.

You have disgraced yourself and the profession. The Committee can only hope that this process prompts you to undergo a long, hard searching self-examination of what lies behind your abusive and abhorrent behaviour.

*This is not an official transcript*