

ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

Citation: *College of Physicians and Surgeons of Ontario v. Rosenthal*, 2024 ONPSDT 6

Date of Oral Reasons: February 5, 2024

Date Written Reasons Released: February 5, 2024

Tribunal File No.: 22-020

BETWEEN:

College of Physicians and Surgeons of Ontario

College

- and -

Gary Alan Rosenthal

Registrant

ORAL REASONS ON FINDING AND PENALTY

Heard: February 5, 2024, by videoconference

Panel:

David A. Wright (Tribunal Chair, public)

Jose Cordeiro (public)

Peter Pielsticker (public)

Janet van Vlymen (physician)

Susanna Yanivker (physician)

Appearances:

Elisabeth Widner and Simmy Dhamrait-Sohi, for the College

David Humphrey and Jill Makepeace, for the registrant

RESTRICTION ON PUBLICATION

Pursuant to Rule 2.2.2 of the OPSDT Rules of Procedure and ss. 45-47 of the Health Professions Procedural Code, no one shall publish or broadcast the names of patients or any information that could identify patients or disclose patients' personal health information or health records referred to at a hearing or in any documents filed with the Tribunal. There may be significant fines for breaching this restriction.

Introduction

[1] The registrant, Dr. Rosenthal, does not contest the College's allegations that he sexually abused two patients and engaged in disgraceful, dishonourable or unprofessional conduct. He touched the first patient sexually during a medical appointment. He did the same with the second patient, and then had a sexual relationship with her that lasted nearly four years, during which he continued to treat her.

[2] Under the Health Professions Procedural Code, we are required to revoke Dr. Rosenthal's certificate of registration and reprimand him. The parties have also jointly proposed that Dr. Rosenthal pay the College costs of \$6,000 and reimburse the College for funding provided to the complainants for therapy and counselling of \$35,580. These terms are appropriate, and we make the requested order.

[3] Tribunal Chair David Wright conducted case management conferences in this matter and sits on the panel with the consent of the parties.

Facts

[4] Dr. Rosenthal pleaded no contest and the College entered a statement of uncontested facts as its only evidence. Under this procedure, Dr. Rosenthal does not admit the allegations but is not calling any evidence. He agrees that, for the purposes of this proceeding, we can rely on the facts in the statement of uncontested facts to decide whether the College has proven the allegations: see Rule 14.3.1 of the Tribunal's Rules of Procedure.

Sexual Touching of Patient A

[5] During a medical appointment with Patient A in 2019, Dr. Rosenthal touched Patient A's genitals, breasts and buttocks in a sexual manner, including, through her clothes with his genitals. He also moved her hand to touch his genitals. She resisted. She felt frozen and in shock.

Sexual Touching and Relationship with Patient B

[6] During an appointment with Patient B in September 2015, Dr. Rosenthal rubbed her with his genitals and engaged in sexual touching of her breasts and buttocks. He told

her that he liked her, that he was divorced and lived alone and gave her his cellphone number.

[7] After the appointment, he called Patient B and said he wanted to see her. She texted him her home address. In early October 2015, he went to her home, where they engaged in sexual touching and kissing. Patient B had a medical procedure with Dr. Rosenthal on October 9, during which he engaged in sexually inappropriate behaviour toward her. At the follow-up appointment on October 14, they had sexual intercourse in Dr. Rosenthal's office.

[8] Over the next four years, Dr. Rosenthal continued to have sexual relations with Patient B, including sexual intercourse in Dr. Rosenthal's office and home. During that time, they exchanged over 1,250 text and WhatsApp messages that confirm an ongoing sexual relationship concurrent with the physician-patient relationship.

[9] These facts establish sexual abuse, which is defined in s. 1(4) of the Health Professions Procedural Code, Schedule B to the *Regulated Health Professions Act, 1991*, SO 1991, c. 18, s. 51(5) (Code), to include sexual intercourse and other forms of physical sexual relations. This is also conduct that would be reasonably regarded by other registrants as disgraceful, dishonourable and unprofessional. Dr. Rosenthal has committed misconduct as alleged.

Impact Statements

[10] Both patients wrote statements in which they outlined the impact of these events upon them. They were vulnerable and had limited supports. Dr. Rosenthal's misconduct has had devastating effects on their lives. It has had a wide-ranging impact, including on their work, their relationships, their trust of the medical profession and confidence in people in general. The misconduct stays with them, and its negative effects continue.

Penalty: Revocation and Reprimand

[11] Under the Code, revocation and a reprimand are a mandatory penalty for sexual abuse of this kind. This provision reflects the Legislature's intention to "eradicate the sexual abuse of patients": Code, s. 1.1. Abusing a patient sexually is the ultimate betrayal of the confidence the patient has placed in the physician. It is an abuse of power and a breach of the public's trust. In these reasons, and in implementing the

penalty, we express the profession's condemnation of Dr. Rosenthal's actions and of all sexual abuse by registrants.

[12] The costs of \$6,000, that reflect the Tribunal's tariff rate, and the requirement that Dr. Rosenthal reimburse the College for funding for therapy and counselling for the patients is reasonable and appropriate.

Finding

[13] We find that the registrant committed the following acts of professional misconduct:

(a) under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, SO 1991, c. 30, in that he 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

(b) under clause 51(1)(b.1) of the Code, in that he sexually abused two patients.

Order

[14] We make the following order:

Penalty

1. The Tribunal requires the registrant to appear before the panel to be reprimanded.
2. The Tribunal directs the Registrar to revoke the registrant's certificate of registration effective February 6, 2024, at 12:01 a.m.

Costs

3. The Tribunal requires the registrant to pay the College costs of \$6,000 by March 6, 2024.

Reimbursement for Therapy and Counselling

4. The Tribunal requires the registrant to reimburse the College \$35,880 for funding provided for therapy and counselling under s. 85.7 of the Health Professions Procedural Code and to post security acceptable to the College to guarantee the payment of these amounts within thirty (30) days of this order.

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- and -

Gary Alan Rosenthal

Registrant

**The Tribunal delivered the following Reprimand
by videoconference on Monday, February 5, 2024.**

*****NOT AN OFFICIAL TRANSCRIPT*****

Dr. Rosenthal,

We are deeply disturbed and disappointed by your egregious misconduct.

You have violated the trust of your patients by engaging in touching of a sexual nature of a patient during a consultation leaving them feeling confused, upset, and helpless. Additionally, you engaged in a sexual relationship with another patient over a three-year period while continuing to provide medical care. You initiated this relationship during a patient encounter, had sexual relations at the patient's home, and engaged in sexual intercourse in your home and your office. This is a gross violation of your patients' trust and an exploitation of your power and authority. Your actions constitute sexual abuse and your conduct is disgraceful, dishonourable and unprofessional.

As a physician, engaging in a sexual relationship with a patient is a fundamental breach of professional ethics and boundaries. It violates the trust and integrity that should exist in the doctor-patient relationship and causes harm to the patient's well-being. We trust that you have carefully reviewed the patient's impact statements and that you will reflect on the ongoing serious consequences of your misconduct that they have shared.

This reprimand and the revocation of your certificate send a powerful message that we will not tolerate members who abuse their power and privilege and will serve as a message to others that sexual abuse will not be tolerated.