

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Joseph Lukezich, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of the complainant or any information that could disclose the identity 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*.

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

93(1) Every person who contravenes an order made under section 45 or 47 is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 for a first offence and not more than \$20,000 for a subsequent offence.

Indexed as: Lukezich (Re)

**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.

B E T W E E N:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. JOSEPH TONY LUKEZICH

PANEL MEMBERS:

DR. J. SCHILLINGER (CHAIR)
J. DHAWAN
DR. P. HORSHAM
J. ASHMAN
DR. O. KOFMAN

Hearing Dates: November 30- December 1, 2005
May 1-4, 2006
Decision Date: August 15, 2006
Release of Written Reasons Date: August 15, 2006

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario (the “Committee”) heard this matter at Toronto on November 30 to December 1, 2005 and May 1 to 4, 2006. At the conclusion of the hearing, the Committee reserved its decision.

PUBLICATION BAN

On November 30, 2005 the Discipline Committee ordered that no person shall publish or broadcast the identity of the complainant (identified hereinafter as “Patient A”), nor any information that could disclose the identity of the complainant, pursuant to subsection 47(1) of the *Health Professions Procedural Code* (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Joseph Lukezich committed acts of professional misconduct:

1. under clause 51(1)(b.1) of the Code, in that he sexually abused a patient; and
2. under clause 1(1)33 of Ontario Regulation 856/93 (“O/Reg. 856/93”) under the *Medicine Act, 1991* in that he engaged in acts 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 THE ALLEGATIONS

Dr. Lukezich, who was self-represented, denied the allegations set out in the Notice of Hearing.

It should be noted that Dr. Lukezich was granted a five month adjournment of the hearing from December 1, 2005 to May 1, 2006 to allow him to retain counsel. The hearing resumed in May, 2006 with Dr. Lukezich still self-represented. The procedural history of prior

adjournment requests and orders is set out in the Committee's earlier Order and Reasons on a motion for an adjournment, dated December 1, 2005 (released December 20, 2005).

EVIDENCE

The allegations arose from alleged conduct of Dr. Lukezich in relation to Patient A. Two principal factual issues arise out of the allegations and the evidence:

1. What was the precise nature of the personal relationship that developed between Dr. Lukezich and Patient A beginning in or about November, 2002, and did it involve sexual contact?
2. Was there a continuing physician-patient relationship between Dr. Lukezich and Patient A during all or part of this period?

The Witnesses

The Committee heard testimony from Patient A, from two of her friends who observed Patient A and Dr. Lukezich interacting socially, and from Patient A's daughter and son. All were called as witnesses for the College. At the request of Dr. Lukezich, the College also called a member of the College's investigative staff, who was involved in the investigation of Patient A's complaint. The Committee also heard evidence from Dr. Lukezich himself, and from an additional witness, who was another long-time patient of Dr. Lukezich.

Evidence of Patient A

Patient A, who is 55 years old, became Dr. Lukezich's patient in 1979 at the time of the birth of her first daughter. Dr. Lukezich continued thereafter as Patient A's family physician and also as the family doctor from time-to-time of her children.

Dr. Lukezich had a family practice in Toronto.

Patient A saw Dr. Lukezich for typical family medical care, including treatment of asthma, bronchitis and pneumonia. Later in the professional relationship, Dr. Lukezich also provided

psychotherapy over several sessions. Patient A also regularly attended for treatment of common ailments involving her children.

In about 1998, Patient A asked for a referral to a psychiatrist because of depression and loneliness that she was experiencing at that time. She had recently broken up with her husband, and her grandparents, who had raised her, had both died within a short period. Patient A described how she held Dr. Lukezich in very high esteem and felt free to discuss her problems with him. Dr. Lukezich had provided occasional psychotherapy to Patient A, and the OHIP records entered into evidence reflect more frequent psychotherapy in the 1998-1999 period (about ten appointments). Patient A noted that Dr. Lukezich's behaviour towards her changed in this period in that he began giving her full embraces at the end of the sessions. The last psychotherapy appointment reflected in the OHIP records took place in November, 1999.

According to Patient A, in late September, 2002, Dr. Lukezich gave Patient A a full kiss on the mouth at the conclusion of a routine appointment during which she advised him that she was about to leave on a trip to Europe. The appointment with him that day was to obtain a prescription for Ventolin, a medication for her asthma. After the kiss, she promised to bring Dr. Lukezich a gift of a beret and chocolates from Europe.

After returning from Europe, Patient A attended at Dr. Lukezich's office and gave him the beret and chocolates. He accepted the gifts, tried on the beret and then ate some of the chocolate while she was present in his office. Patient A testified that, on this occasion, in November, 2002, Dr. Lukezich said he would like to hear more about her trip to Europe and, since he had a few patients left to be seen that day, he suggested that she come to his house later that evening. He then used a page of his prescription pad and drew a map to show her how to get to his home. The map was marked at the hearing as Exhibit 3.

According to Patient A, just before the visit that evening, Dr. Lukezich called to tell her that it would be better if he came to her home for privacy reasons because his brother lived with him. He came to her home later that evening and, according to Patient A, they smoked

marijuana together. Patient A had originally obtained the marijuana from a friend. Dr. Lukezich subsequently followed Patient A into the kitchen, and the two embraced and kissed. Thereafter, according to Patient A, she and Dr. Lukezich went to a bedroom and had both oral sex and sexual intercourse. Patient A described it as a very powerful experience for her as she had not had intercourse for a long time. She testified that Dr. Lukezich stayed overnight at her home on that occasion.

According to Patient A, that night marked the beginning of a seven month personal and sexual relationship with Dr. Lukezich that included sexual intercourse as often as four to five times per week. The two spent a great deal of time together, including sleeping at each other's home four to five nights a week. They also socialized together regularly and often took long walks in the neighbourhood with their dogs. They went out to dinners, to shows, to the opera, and also dined with family and friends at their homes and at restaurants. Patient A testified that Dr. Lukezich often smoked marijuana with some of her friends, at her home, and also at the homes of her friends. She said that he always smoked his own marijuana, even when there was marijuana available from others.

Patient A provided other details of her personal interaction with Dr. Lukezich. She described the layout of his home and his bedroom, and described its contents in detail. She testified that she kept toiletries and a nightgown at his home, and described an arrangement made for him to always have clean underwear and pair of socks at her home for him to change into on his arrival. She still had a pair of men's underwear and a pair of socks that she said belonged to Dr. Lukezich. These were entered as Exhibit 6. Patient A also testified that she had photographs of Dr. Lukezich taken at his home, and photographs of each other standing inside his front door (see Exhibits 4 and 5).

The OHIP records reflect that the last billing by Dr. Lukezich in respect of Patient A was in November, 2002 (the office visit on the day that Patient A testified she and Dr. Lukezich first had sexual intercourse). Patient A testified that Dr. Lukezich never discussed with her the termination of the physician/patient relationship, nor of the possible transfer of her medical care to another physician. Dr. Lukezich wrote a further prescription for Ventolin for Patient

A in December, 2002 (see Exhibit 16). That prescription permitted three repeat orders, and the last repeat was checked and initialed by the pharmacist in July, 2003, after phoning the office of Dr. Lukezich.

Patient A gave evidence of gifts that she and Dr. Lukezich exchanged, including at Christmas and on Valentine's Day. For example, she gave him an expensive tie on Valentine's Day. He gave her a gift of a day at the spa, a sweater, two shirts and a pin. She also testified that they had Christmas dinner together in December, 2002, and Easter dinner together in 2003.

Patient A testified that Dr. Lukezich disclosed to her personal information about his childhood in Sudbury, Ontario, and also about his adult life. He also disclosed information about his friendship with another woman, and details of his treatment of a patient who had a street-drug problem.

Patient A also gave evidence of how she developed a friendship with Dr. Lukezich's brother, who lived with Dr. Lukezich.

Patient A acknowledged that she usually had a glass or two of wine most days, and that there were a few times with Dr. Lukezich when she had too much to drink. She has never been treated for alcoholism.

Patient A testified about a week-long holiday trip she and Dr. Lukezich took together to Cuba in early 2003. According to Patient A, he asked her to bring marijuana, and then asked her to carry the marijuana through customs. He told her that he would face serious consequences if he carried it and was caught. She was terrified when "sniffer" dogs appeared. Patient A testified that she and Dr. Lukezich shared a hotel room and shared a bed on their trip to Cuba.

Patient A and Dr. Lukezich took over 100 photographs on the Cuban trip, which were collectively marked as Exhibit 9. The photographs appeared in all respect to depict a middle-aged couple on a sun vacation together. Certain of the Cuban photographs were quite notable. Photographs 1, 3, 6, 13, 57, 63, 93 and 102 depicted Dr. Lukezich with his arm

around Patient A for the photographic pose. Patient A testified that the photographs of her (without Dr. Lukezich in the frame) were taken by Dr. Lukezich. Of these photographs, Photograph 7 appears to be taken in a hotel bathroom and depicts Patient A apparently getting herself ready in front of the mirror. Photograph 8 is a relative close-up of Patient A's posterior while wearing a summer dress (her head and feet do not appear in the photograph). Photographs 12 and 14 are of the two having dinner together. Photograph 18 is taken of Patient A (from the shoulders up) in the shower of what appears to be a hotel bathroom with the curtain partially open. Photograph 19, significantly, depicts Patient A smiling, apparently standing nude in the shower of a hotel room, and at least partly reveals her breasts. Photograph 32, somewhat akin to photograph 8, is a relative close up of Patient A sitting on the beach with an obscured view of her open skirt, and with her head not appearing in the photograph.

Patient A gave evidence of another trip she and Dr. Lukezich took together in the spring of 2003, to Nova Scotia. Boarding passes and a hotel guest questionnaire were marked as exhibits in this regard. She said that the main purpose of the trip was to attend her son's university graduation. She testified that she and Dr. Lukezich once again shared a hotel room and a bed on this trip. They also smoked marijuana together. However, she added that he began to say hurtful things toward her on this trip.

Patient A testified that she realized that the end of the relationship was approaching when Dr. Lukezich began making negative, unprovoked comments and gestures towards her. Patient A described how this made her feel crushed, used, vulnerable, depressed, frightened and abandoned. This was in sharp contrast to the beginning of their relationship when she had felt that she had won the lottery when she realized that he favored her. The relationship ended in May, 2003.

After the end of the relationship, Patient A testified that she waited for a couple of weeks to be sure of her decision and then she reported Dr. Lukezich's conduct to the College. She admitted that, after the report, she still had feelings for him and tried to warn him about her

complaint to the College. She then paid a visit to his home, however Dr. Lukezich was not there so she had a discussion with his brother, and advised him about the complaint.

Patient A testified that Dr. Lukezich subsequently phoned her home and left a message on her voice-mail that was recorded. A transcript of the voice-message was entered as Exhibit 13. In the message, Dr. Lukezich said:

“Hello [Patient A], um, I understand you came by and visited my brother that’s great. Um, just in case you’re under any mistaken assumptions you should know that I haven’t been seeing Ms. C and I don’t intend to and, um, ah, you know if you say to the College that you know we were sexually involved I lose my license, if I lose my licence my brother ends up on the street again and, ah winters are cold and that could be disastrous in a final kind of way. Needless to say, ah, my ex-wife and her 85 year old woman uh mother would be destitute and that would cause a lot of pain for my children so, um, um, if by some chance you’ve already you know contacted the College I’d appreciate knowing that, ah, I wanta sort of minimize damage. Ah, I hate to uh I’d hate to think, ah, I’d have to worry about my brother you known on cold winter nights this winter. Um, if you have any remorse about the, you know, the chaos and pain you’re causing then, ah, let me know. Um, you know, friendship is still possible. So I, ah, hope you’re feeling well and, ah, we should be in touch. Okay bye bye.”

In the message, Dr. Lukezich (who later acknowledged that he had spoken these words) did not deny a sexual relationship in reference to a possible complaint to the College. Patient A testified that she perceived the message to be a threat. However, she felt sorry for Dr. Lukezich. She did not wish him ill, but thought that he had a problem.

There were several contacts between Patient A and Dr. Lukezich in the two months after he became aware of the complaint to the College. During these contacts, according to Patient A, Dr. Lukezich questioned her about what she actually told the College, and whether she had given DNA to the College. She testified that, at one such meeting, he told her that he had some nasty patients and alluded to possible consequences.

Patient A testified that in the fall of 2003, she received a parcel from Dr. Lukezich that contained a sweater (that had been her grandfather’s), the Valentine’s gift tie and two photographs (Exhibit 14). On the back of one of the photographs (in which Patient A was holding a glass of wine), Dr. Lukezich had written “I try to pray for you every day”.

Patient A said she was disturbed by the package. She testified that she received a second mailing (Exhibit 15). The envelope was addressed to Patient A in handwriting that was not Dr. Lukezich's (he later suggested at the hearing that his some-time girlfriend, Ms. C, had sent it). The envelope contained a typed note that read, in part, "your jealous fantasies were pure fiction...You will bear the guilt of being the seducer, the maker of unrealistic demands and the destroyer of a good physician and supporter of many vulnerable people".

Patient A told the Committee that she currently has no family doctor because she has lost faith in physicians as a result of her experience with Dr. Lukezich. She has since used a walk-in clinic for her medical needs.

On cross-examination, Patient A testified that she was physically abused by her father as a child, but is not a vindictive person. She was also asked about her drinking habits and an apparent statement to the College investigator "that she was drunk". Patient A explained that, though the word "drunk" was used by her in her reports, she was not inebriated such as to interfere with the driving of her car.

Patient A was also cross-examined about the fact that she had carried marijuana with her to Cuba, and about a small amount she brought into Canada from Europe. She testified that the small amount had been forgotten by her in her pocket, and she had made no effort to conceal it.

Patient A testified that she had told the College investigator that she thought that Dr. Lukezich is circumcised (he is apparently not). She then testified that she was not an expert in identifying circumcised or uncircumcised penises, and is not sure. This evidence did give the Committee some pause, given the number of times Patient A testified they had sexual relations. However, one could misperceive whether or not an erect penis was circumcised.

Evidence of Ms. D

Ms. D, a friend of Patient A, was called as a witness by the College. Patient A and Ms. D came to know each other when their children went to the same school. Ms. D. met Dr.

Lukezich through Patient A. She explained that the first time she met Dr. Lukezich occurred when she and Patient A were comparing jewelry at Patient A's home after her return from Cuba with Dr. Lukezich.

Ms. D testified that Patient A and Dr. Lukezich were happily discussing their Cuba trip when Dr. Lukezich mentioned what he called the "tit shot". He was referring to the photograph (Photograph 19 of Exhibit 9) which depicted Patient A in the shower. Ms. D found Dr. Lukezich's description of the photograph to be crass. When Ms. D left Patient A's home after 10.30 that night, Dr. Lukezich was still there.

Ms. D testified that she next saw Dr. Lukezich in March, 2003 on a subsequent visit to Patient A's home. Ms. D recalled that there was a fire in the fireplace, candles lit on the table, and a very warm scene. She recalled that Patient A and Dr. Lukezich were very comfortable with each other and appeared warm, relaxed and friendly.

Ms. D met Dr. Lukezich on a third occasion, once again at Patient A's home one evening later in March, 2003. On this visit, Ms. D found that Dr. Lukezich's demeanor was completely different from their two previous meetings. He appeared to be giddy and his face was covered in perspiration. Patient A at one point stood next to Dr. Lukezich, rubbing his arm, and then he hugged her in a very close embrace. Dr. Lukezich then insisted that Patient A go along in his car with him to his house, and she agreed.

Dr. Lukezich chose not to cross examine Ms. D

Evidence of Mr. E

Mr. E a friend of Patient A, was also called as a witness by the College. Mr. E is a film writer, director and actor. He explained that he was a classmate of Patient A's former husband, and that his girlfriend speaks the same European language as Patient A, and thus they socialize together.

Mr. E and his girlfriend invited Patient A and Dr. Lukezich for a meal at Mr. E's house. At the end of the meal, the two couples began dancing in the family room and Mr. E observed how Patient A and Dr. Lukezich danced together, and started getting close on the dance floor. He described how Dr. Lukezich later gently pulled Patient A down onto the sofa, and how Patient A and Dr. Lukezich began cuddling and kissing "like teenagers" in Mr. E's presence. According to Mr. E that evening both Mr. E and Dr. Lukezich smoked marijuana. Mr. E described how Dr. Lukezich brought and smoked his own marijuana blend which also contained tobacco.

Mr. E testified about another occasion when he observed Dr. Lukezich at Patient A's home "stoned" in that he was exuberant and had a laid back, blissed-out manner. Mr. E gave evidence that he and Dr. Lukezich smoked marijuana together on other occasions.

Mr. E testified that he saw Dr. Lukezich display a lot of amorous, physical attention (hugging and kissing) toward Patient A on an occasion while she was preparing a meal. Later that same evening, Mr. E observed Patient A sitting on the floor between Dr. Lukezich's legs with her head resting on his crotch.

Mr. E also described other outings that the two couples had together, and noted the continued emotional and very affectionate interaction between Dr. Lukezich and Patient A. He noted that Patient A at times seemed embarrassed by Dr. Lukezich's amorous attention, but generally appeared quite happy with it.

On cross-examination, Mr. E testified that Dr. Lukezich had told him several times that the product he was smoking was marijuana or a combination of marijuana and tobacco. Mr. E added that Dr. Lukezich had once offered Mr. E some of Dr. Lukezich's marijuana and Mr. E smelt it and noted the very distinct aroma.

Evidence of Patient A's Daughter, Ms. F.

Patient A's daughter was also called as a witness by the College. She is presently a student at a specialized institute.

The daughter testified that she had always known Dr. Lukezich as her family doctor. She said that she called him “Dr. Joe” and saw him about every two months because she required treatment for her allergies. She testified that she always had a very good impression of him, and that he was always available and close to the family. The last time that he attended to her in his capacity as physician was to remove stitches from a laceration she suffered in April, 2003.

Patient A’s daughter gave evidence about the close friendship that had developed between her mother and Dr. Lukezich after they began seeing each other socially. On one occasion in late 2002 or early 2003, her mother and Dr. Lukezich visited her apartment that she shared with her boyfriend. The four of them had dinner together and then went to the cinema to see a film. The daughter testified that she noted for the first time, on this evening, the change in the interaction between her mother and Dr. Lukezich. Patient A and Dr. Lukezich were intimate, and the daughter noted that they were affectionate and touching each other. The daughter explained that this change took some getting used to.

Patient A’s daughter gave other examples of Dr. Lukezich’s new and deeper involvement with Patient A and her family, including going for walks with Patient A, the daughter and her boyfriend and family activities which included Dr. Lukezich and her mother.

The daughter no longer sees Dr. Lukezich for her medical needs as a result of what transpired between her mother and Dr. Lukezich.

She was not cross-examined by Dr. Lukezich.

Evidence of Patient A’s Son, Mr. G

The College called Patient A’s son as a witness. He lives in Nova Scotia is married and has children.

Patient A's son testified that he met Dr. Lukezich in the spring of 2003, on the day of his university graduation, in the company of his mother. His mother and Dr. Lukezich had come to Nova Scotia to attend the graduation.

He met his mother and Dr. Lukezich at an inn and observed that they appeared to be staying in the same hotel room together. The son noted that his mother's luggage consisted of one large suitcase lying on a double bed. There were no other suitcases and he observed items that indicated to him that his mother and Dr. Lukezich were sharing a room. For example, he saw both of their coats hanging in the closet, and men's shaving supplies in the room. He noted that Dr. Lukezich came out of the bathroom when his mother introduced them. He put on his watch after coming out of the bathroom.

During the remainder of the Nova Scotia visit, the son observed the close interaction between his mother and Dr. Lukezich, and even remarked to them that they looked like an older married couple. The son recalled his mother and Dr. Lukezich hugging each other and sitting close together. He observed that they appeared very comfortable with each other.

Dr. Lukezich also declined to cross-examine Patient A's son.

Evidence of Ms. H

At Dr. Lukezich's request, counsel for the College called Ms. H, a complaints investigator employed by the College. This was done as a courtesy to Dr. Lukezich, who indicated that he wished to cross-examine Ms. H about possible differences between her summary of an investigative interview with Patient A and the subsequently prepared transcript of that tape-recorded interview.

Ms. H has been a College investigator for several years and is a former police officer. She was assigned to investigate Patient A's complaint against Dr. Lukezich.

Ms. H testified that she understood that at one point Patient A did not wish to appear at this discipline hearing.

Dr. Lukezich also examined Ms. H about information given to the media, an unannounced visit to his office to obtain Patient A's chart, and other pre-hearing processes.

Ms. H testified that she interviewed Patient A about her complaint, and tape-recorded the interview. Based on her notes, she prepared a memorandum setting out the substance of the interview. The memorandum was not a verbatim record, and could be expected to be less detailed than the verbatim transcript that was later prepared. The tapes themselves had been given to Dr. Lukezich as part of the disclosure long before the transcript was prepared.

Evidence of Dr. Lukezich

Dr. Lukezich testified that he did go with Patient A on a vacation trip to Cuba, in February of 2003, but that they had a two-room suite. He said there were separate beds and that they had not shared a bed. He testified that he looked upon Patient A as a big sister and agreed to take her to Cuba since she had said to him that she had never seen a third world country and wanted to see one.

Dr. Lukezich confirmed that the photographs of Patient A taken in Cuba were taken by him. He testified that Patient A liked having photographs taken, and that he took a large number, including the photograph in the shower. He explained that Patient A called him to take a photograph of her in the shower. He said that, after taking a first photograph, her towel slipped and he got an unexpected photo of her breast. He described it as a towel "malfunction".

Dr. Lukezich acknowledged that he traveled to Nova Scotia with Patient A, but said he stayed at a friend's house, not at an inn with Patient A.

Dr. Lukezich gave evidence that he never had sexual intercourse or a sexual relationship with Patient A. He regarded her as being like a sister, and she wanted to be treated as a woman. He said that she had paid many visits to his home in his absence and had many long conversations with his brother about the arts and the opera.

Dr. Lukezich gave evidence that he had tried marijuana only once, in 1969, and that he became dizzy and did not try it again. He testified that the cigarettes that he smoked during the 2002-03 period in issue were organic low nicotine, low tar tobacco (not marijuana), and that he rolled his own because the cigarettes sold at stores get too hot very quickly. He denied taking marijuana to Cuba.

Dr. Lukezich said that he was a friend of Patient A's family and went out in family groups. He claimed that he had grave concerns about her drinking.

On cross-examination, Dr. Lukezich agreed unconditionally that it was the duty of a physician to resist any sexual advances made by a patient to the physician, and that the physician should communicate clearly to the patient that that was prohibited. He also testified that such an advance should be clearly recorded in the chart, detailing what transpired. He also agreed that any sexual relationship with a patient is wrong.

Dr. Lukezich further testified that he does not always record in a patient's chart a request for termination of his services. He would do so if he terminated the professional relationship. He agreed that, as demonstrated by Patient A's medical chart, he saw her for medical purposes over the many years and there were several lengthy periods between appointments, e.g., thirteen months, six months and seventeen months.

Dr. Lukezich gave evidence that in December, 2002 Patient A was still his patient (although he added that she was not his patient for all of December, 2002). He said he still had possession of her chart at that time. There was no note or letter in the chart indicating that the doctor-patient relationship had ended. He added that she said, at about this time, that she would find a new doctor, but that he did not know if she had. He conceded that he had put nothing in her chart about a discussion about discontinuing services.

There was nothing documented in her chart dealing with any issue concerning alcoholism. Dr. Lukezich testified that he had not known about any drinking problem at the time, and only became aware of an issue when he began seeing her socially.

Dr. Lukezich conceded on cross-examination that he and Patient A had frequently socialized together and gone on outings together. He also agreed that he accepted gifts of chocolate and a beret from Patient A when she returned from Europe. He however could not remember accepting some of the other gifts that she said that she had given him.

Dr. Lukezich agreed that the underwear and the pair of socks that Patient A had in her possession (Exhibit 6) were his. He explained that Patient A had free access to his home when she had gone to pay visits to his brother, and implied that she may have obtained these items on one of those occasions.

Dr. Lukezich testified that he was Patient A's family doctor for some twenty-five years, and that he knows her and felt that she was harassed into appearing at this discipline hearing. He conceded that he left the voice-mail message that was marked as Exhibit 13, but emphasized that he had used the word "if" as a preface to the comment about sexual involvement. He denied sending her the note that might be perceived as threatening (Exhibit 15).

Dr. Lukezich concluded his evidence by admitting that a social relationship developed between Patient A and himself, but said that there was no sexual relationship. He acknowledged that with the benefit of hindsight a relationship of this nature with a patient was foolish and was not appropriate. At the time, he thought it was appropriate.

Evidence of Ms. I

Dr. Lukezich also called as a witness Ms. I who had been his patient for some twenty-five years. Ms. I testified that Dr. Lukezich had been her family physician since the birth of her baby. She said that she always had, and continues to have, a high degree of confidence in Dr. Lukezich.

She said that she believed that other patients held similar views. She noted that her daughter, also a patient of Dr. Lukezich's, was willing to come and give evidence in support of him.

Ms. I conceded on cross-examination that she only knew Dr. Lukezich as a physician, and did not know him socially. She also testified that she had no knowledge of the facts underlying the allegations against him.

FINDINGS OF THE COMMITTEE

The Committee carefully considered all of the evidence given at the hearing. In a number of respects, the evidence was not in conflict. There was no contest that a relationship (albeit of disputed intensity) had developed between Dr. Lukezich and Patient A beginning in about late 2002. Both Patient A and Dr. Lukezich agreed that they socialized together, visited each other's homes, had dinner with other couples, and went on walks together. Both agreed that they had traveled together on a holiday to Cuba in early 2003, and also traveled together to Nova Scotia in the spring of 2003, where they attended the university graduation of Patient A's son. There was also agreement that the relationship ended unhappily in the late spring of 2003 and that statements were made back and forth thereafter.

There was also agreement that Patient A was formally a patient of Dr. Lukezich at least into December, 2002.

There were, however, important disagreements in the evidence. Patient A testified that a passionate sexual affair began in November, 2002 and continued for several months thereafter. This relationship included regular sexual intercourse, as often as four or five times a week. She testified that they often shared a bed overnight, and shared a bed on both their Cuba and Nova Scotia trips. In contrast, Dr. Lukezich vehemently denied that there was any sexual component to the relationship, and denied that he and Patient A shared a bed together, whether in Toronto, Cuba or Nova Scotia.

Dr. Lukezich also denied that he regularly smoked marijuana in Patient A's presence (or at all), and denied that he had Patient A carry marijuana through customs on the trip to Cuba.

He also denied attempting to intimidate or persuade Patient A not to proceed forward with her complaint to the College.

Considering all of the evidence, the Committee concluded that it preferred the evidence of Patient A, and of the other witnesses called by the College, over that of Dr. Lukezich on all points about which they disagreed. Patient A gave her evidence in a clear, consistent and straightforward manner. This was true of the other witnesses called by the College as well. Patient A's evidence was consistent with all of the documentary evidence, and the evidence of the other witnesses. It was also internally consistent, and entirely logical and plausible. Dr. Lukezich's evidence on the key contested points, on the other hand, was not credible. It was evident from the testimony of the other witnesses (which evidence the Committee accepted) that there was a romantic relationship between Dr. Lukezich and Patient A. His evidence of the "two room suite" in Cuba was not persuasive, particularly in view of the bathroom photographs. Dr. Lukezich's explanation for the shower photograph (photograph 19 of Exhibit 9) was utterly unconvincing. He described having taken a first photograph of Patient A in the shower with her towel up, covering her, and that the towel then slipped. However, photographs 18 and 19 are not consistent with this explanation. The evidence of Patient A's son with respect to the shared hotel room in Nova Scotia was not cross-examined upon, and was convincing. The evidence of Ms. E. in respect of Dr. Lukezich's frequent marijuana use was straightforward and persuasive. He was not shaken on cross-examination. The transcript of Dr. Lukezich's voice-message to Patient A, in the view of the Committee, was clearly intended to persuade or intimidate her not to proceed with her complaint to the College.

On the basis of the evidence given and the credibility findings that the Committee reached, the Committee made the following findings of fact:

1. Dr. Lukezich began treating Patient A in 1979 and served as her family physician into 2003. In the latter 1990's, he provided psychotherapy to her on several occasions. At about this point, he began regularly hugging or embracing her at the end of appointments.

2. In late 2002, at the conclusion of an appointment, Dr. Lukezich gave Patient A a full kiss on the mouth.
3. In 2002, at the conclusion of a medical appointment which was billed to OHIP, Dr. Lukezich invited Patient A to his home and drew a map of the area on his prescription pad to show her where his home was situated. The planned get-together took place that evening, but at Patient A's home rather than Dr. Lukezich's. After smoking marijuana together, the two engaged in oral sex and sexual intercourse at her home that evening.
4. From November, 2002 and for approximately seven months thereafter, Dr. Lukezich and Patient A embarked on a romantic and social relationship that included regular sexual intercourse.
5. Dr. Lukezich and Patient A socialized together in the same manner as a typical middle-aged couple who were dating. They had dinners together at each other's homes and at restaurants, went to shows and events, socialized with other couples, and went on outings. They also socialized with Patient A's children.
6. The physician-patient relationship between Dr. Lukezich and Patient A continued through December, 2002 (a fact which Dr. Lukezich effectively conceded) and included Dr. Lukezich's writing a prescription for Ventolin for Patient A in December, 2002. Indeed, the physician-patient relationship was not terminated in the months thereafter and no steps were taken by Dr. Lukezich to refer Patient A to another family physician, nor by Patient A to find another family physician. There is no notation in his patient chart as to the termination of the professional relationship. The physician-patient relationship effectively continued at least until Patient A filed her complaint against Dr. Lukezich with the College.
7. Dr. Lukezich made personal disclosures to Patient A about his childhood, his relationship with another woman, and a former patient who had a street drug problem.
8. Dr. Lukezich and the complainant exchanged gifts during their relationship, including at Christmas and on Valentine's Day. These gifts included a beret, chocolates, a tie, a spa day, a sweater, shirts and a pin.

9. Dr. Lukezich left personal items of clothing, including socks and underwear, at the home of Patient A. This occurred because he often spent the night there with Patient A.
10. Dr. Lukezich and Patient A took a holiday together to Cuba, and shared a hotel room and a bed. Dr. Lukezich deliberately took a semi-nude photograph of Patient A, with her consent, in the shower at their hotel in Cuba.
11. Dr. Lukezich regularly smoked marijuana (mixed with tobacco) in the presence of Patient A and others. They took marijuana with them on the trip to Cuba, and Dr. Lukezich asked Patient A to carry it through customs.
12. Dr. Lukezich visited Nova Scotia with Patient A to attend her son's university graduation. They shared a single hotel room together and shared a bed.
13. Dr. Lukezich attempted to persuade or intimidate Patient A into withdrawing her complaint to the College. Soon after he was told of the complaint to the College, he telephoned Patient A and left a voice mail message. In the transcript of the recorded message, Dr. Lukezich said "if you say to the College that you know we were sexually involved I lose my license"..., and went on to say that this would harm the well-being of his brother and ex-wife.

In view of the Committee's factual finding that the physician-patient relationship lasted at least until the summer of 2003, and that Dr. Lukezich and Patient A carried on a consensual romantic and sexual relationship, including sexual intercourse, from November, 2002, the Committee was compelled to conclude that Dr. Lukezich had engaged in "sexual abuse" of Patient A, as that term is defined in the Code.

In addition to the sexual abuse of the patient, there was considerable evidence that Dr. Lukezich's conduct and behaviour toward and in the presence of Patient A would reasonably be regarded by members of the College as disgraceful, dishonourable or unprofessional, and the Committee so finds. Such conduct and behaviour included hugging and (on one occasion) kissing Patient A in his office, exchanging gifts with Patient A, making inappropriate personal disclosures about himself (and another patient) to Patient A,

developing and continuing an inappropriate personal and social relationship with Patient A, taking vacations with Patient A, smoking marijuana in the presence of the patient for non-medicinal purposes, asking Patient A to transport marijuana through customs, and attempting to persuade or intimidate her into withdrawing a complaint about him to the College. Each of these instances of conduct individually, and collectively, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional. It goes without saying that the sexual relationship with Patient A would be reasonably regarded by members as disgraceful, dishonourable and unprofessional.

DECISION

Having regard to its findings of fact as detailed above, and the submissions on behalf of the College and Dr. Lukezich, the Committee concluded that the College had clearly and convincingly discharged the burden resting on it of proving the allegations in the Notice of Hearing. The Committee therefore finds that Dr. Joseph Lukezich has committed acts of professional misconduct:

1. under clause 51(1)(b.1) of the Code in that he sexually abused a patient; and
2. under clause 1(1)33 of O/Reg. 856/93 under the *Medicine Act*, 1991 in that he engaged in acts relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

The Committee will consider evidence, if any, and submissions directed at the appropriate penalty order that should be made consequent upon these findings of professional misconduct. In view of the gravity of these findings, the Committee expects that a further hearing date will be scheduled at the first available opportunity.

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Joseph Tony Lukezich, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of the complainant, or any information that could disclose the identity 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*.

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

93(1) Every person who contravenes an order made under section 45 or 47 is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 for a first offence and not more than \$20,000 for a subsequent offence.

Indexed as: Lukezich (re)

**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.

B E T W E E N:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. JOSEPH TONY LUKEZICH

PANEL MEMBERS: DR. J. SCHILLINGER (CHAIR)
J. DHAWAN
DR. P. HORSHAM
J. ASHMAN
DR. O. KOFMAN

PUBLICATION BAN

Hearing Dates: September 26 & October 16, 2006
Decision Date: October 16, 2006
Release of Written Reasons Date: November 20, 2006

PENALTY DECISION AND REASONS

The Discipline Committee of the College of Physicians and Surgeons of Ontario (the “Committee”) heard this matter at Toronto on November 30 to December 1, 2005 and May 1 to 4, 2006. At the conclusion of the hearing, the Committee reserved its decision. On August 15, 2006, the Committee delivered its written decision and reasons, and found Dr. Lukezich to have committed acts of professional misconduct, under clause 51(1)(b.1) of the Health Professions Procedural Code (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, in that he sexually abused a patient, and under clause 1(1)33 of O/Reg. 856/93 made under the *Medicine Act, 1991* in that he engaged in acts relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

PUBLICATION BAN

On November 30, 2005 the Committee ordered that no person shall publish or broadcast the identity of the complainant (identified hereinafter as “Patient A”), nor any information that could disclose the identity of the complainant, pursuant to subsection 47(1) of the Code.

PRELIMINARY PROCEDURAL ISSUE

The penalty hearing in this matter was scheduled to take place on September 26, 2006. Dr. Lukezich did not attend the penalty hearing on that date. The information presented to the Committee appeared to indicate that Dr. Lukezich had received notice of the hearing date; however, because of a change of office location by the member, the Committee could not be entirely certain. Out of an abundance of caution, the Committee adjourned and fixed a new penalty hearing date for October 16, 2006, and gave directions in respect of the delivery and service of the notice of the October 16 hearing date, by several alternative means, to ensure that it reached Dr. Lukezich. Immediately following the adjournment on September 26, it came to Committee’s attention that Dr. Lukezich had sent a letter to the Committee on that day in which he advised that he would not be attending the penalty hearing. It was apparent from the letter that Dr. Lukezich had received notice of the original September 26 hearing date.

On the resumption of the penalty hearing on October 16, the College filed affidavit evidence indicating that notice of the October 16, 2006 hearing date had been provided to Dr. Lukezich in accordance with the Committee's September 26 directions. After hearing submissions from College counsel and taking advice from its independent counsel, the Committee ruled that the fact of the October 16 penalty hearing had come to Dr. Lukezich's attention, and that it was appropriate to proceed in his absence. The Committee concluded that Dr. Lukezich consciously chose not to attend or otherwise be represented at the penalty hearing. The Committee had reference to section 7 of the *Statutory Powers Procedure Act*, R.S.O. 1990 c. S.22 in this regard.

The Committee thereafter heard submissions from College counsel on penalty, and delivered its penalty order, with written reasons to follow.

EVIDENCE AS TO PENALTY

There was no oral evidence called by the College. A complainant impact statement was filed, as was the above-noted letter written by Dr. Lukezich about his intended non-attendance at the penalty hearing.

DECISION AND REASONS ON PENALTY

Given the Committee's finding in its August 15, 2006 decision that Dr. Lukezich engaged in intimate sexual contact, including sexual intercourse, with Patient A during the currency of the physician-patient relationship, the terms of subsection 51(5) of the Code were engaged. Revocation of the member's certificate of registration, and a reprimand, are mandatory orders thereunder, and the Committee so directed. This was a serious case of sexual abuse. Dr. Lukezich entered into a sexual relationship with Patient A while she was under his care as her family practitioner. The first sexual encounter occurred on the same day as a billed medical visit to his office by Patient A. The sexual relationship continued thereafter for some seven months. This was not a case involving a momentary lapse in judgment by a member. It was clear from the transcribed voice-mail message (marked as Exhibit 13 at the hearing) that Dr. Lukezich was fully aware that a sexual relationship was inappropriate and would result in the loss of his certificate, if established before this Committee. Patient A was vulnerable, as would have been evident to Dr. Lukezich. It was apparent to the Committee that there was power imbalance in the

relationship, and that Dr. Lukezich breached the trust that Patient A had developed in him, arising over a 25 year physician-patient relationship.

The College also sought an order requiring Dr. Lukezich to reimburse the College for funding that might be provided to the complainant under section 85.7 of the Code, and to post security therefor. The Committee concluded that both of these terms were appropriate in the circumstances. Such orders are commonly made in cases of serious sexual abuse. It was or should have been readily apparent to Dr. Lukezich that his misconduct would cause emotional injury to Patient A. It is clear from Patient A's impact statement that the relationship and the manner in which it was ended has had a devastating effect on her in myriad ways. She has, regrettably but perhaps understandably, lost confidence in the medical profession as a whole.

Counsel for the College submitted that the Committee's penalty order should appropriately express the profession's abhorrence of the misconduct, discourage other members from engaging in similar conduct, uphold the honour and integrity of the profession, and, above all, serve the public interest by protecting the public. The Committee adopts these principles as applicable in this case. The penalty order proposed by counsel for the College, having regard to these principles and all of the circumstances of this case, is just and appropriate.

The College also sought a costs order against the member, in the amount of \$15,000. The Committee concluded that this is an appropriate case for an award of costs against the member, pursuant to section 53.1 of the Code. Serious misconduct was committed by the member, and it is proper that the member reimburse the College for a portion of the costs of the hearing. As to quantum, although there were delays in the hearing, Dr. Lukezich was self-represented at the outset of the hearing and the Committee granted an adjournment to permit him to seek to retain counsel. He ultimately did not retain counsel, but his request, in the Committee's judgment, was not made in bad faith. The hearing, once resumed in May, proceeded efficiently. The Committee concluded that a costs award in favour of the College in the amount of \$5,000 was appropriate in the particular circumstances of this case.

ORDER

The Discipline Committee ordered and directed on October 16, 2006 that:

1. The Registrar revoke Dr. Lukezich's certificate of registration, effective immediately.
2. Dr. Lukezich appear before the panel to be reprimanded on a date no later than 3 months from the date that this order becomes final.
3. Dr. Lukezich reimburse the College for funding provided for the complainant under the program required under section 85.7 of the Code.
4. Dr. Lukezich post security acceptable to the College to guarantee the payment of any amounts Dr. Lukezich may be required to reimburse the College pursuant to paragraph 3 of this Order.
5. Dr. Lukezich to pay costs to the College in the amount of \$5,000.00