

Indexed as: Koffman (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 Professional 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. ALLYSON ENID KOFFMAN

PANEL MEMBERS:

R. SANDERS (CHAIR)
DR. G. MORRISON
DR. P. CHART
DR. M. GABEL

PUBLICATION BAN

Hearing Date(s):

February 10, 2003
March 4-7, 2003
April 29- May 2, 2003

Decision/ Released Date:

June 23, 2003

DECISION AND REASON FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on February 10, March 4 to 7, March 10 to 14 and April 29 to May 2, 2003. At the conclusion of the hearing, the Committee reserved its decision.

PUBLICATION BAN

The Committee ordered a publication ban pursuant to s.47(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, that no person shall publish the identity of the complainant or any information that could disclose the identity of the complainant and pursuant to s.45 of the Code prohibiting the publication of the name of the female co-worker of the complainant identified in the testimony of the complainant.

ALLEGATIONS

The Notice of Hearing alleged that Dr. Allyson Enid Koffman committed an act of professional misconduct under:

1. clause 51(1)(b.1) of the Code in that she engaged in the sexual abuse of a patient; and,
2. paragraph 1(1)(33) of Ontario Regulation 856/93 under the *Medicine Act* for 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.

RESPONSE TO ALLEGATIONS

Dr. Koffman denied the allegations in the Notice of Hearing.

MOTION TO STAY PROCEEDINGS

Defence counsel brought a motion to stay the proceedings as a result of the loss of certain records of Dr. M which it was argued undermined Dr. Koffman's ability to make full answer and defence and compromised the fairness of the hearing. The panel did not accept that the College had acted in an improper or negligent manner in not obtaining the records of Dr. M. Rather, in keeping with established process, the College investigator obtained a consent for release of these records in the course of the investigation but did not execute it as the documents in question were not judged to be relevant. Full disclosure to the defence was made by the College of all documents in the possession of the College and the College informed defence counsel on April 16, 2002, that they would not be pursuing the records. This left open to the defence the opportunity to seek third party production. Neither party knew that the records might be lost as of August 2002. There was no duty on the College to obtain the records, and accordingly, no breach of duty for not doing so. The Committee did not find any abuse or that the integrity of the process had been undermined and dismissed the motion for a stay.

THE EVIDENCE

Overview of the Issues

The allegations of sexual abuse and disgraceful, dishonourable or unprofessional conduct arise from the alleged conduct of Dr. Koffman in relation to a single patient, Mr. X, over the period of September 2000 to January 3, 2001.

The case raises two primary issues:

- (i) Did the conduct of Dr. Koffman constitute sexual abuse; and
- (ii) Would the conduct of Dr. Koffman otherwise be reasonably regarded by members as disgraceful, dishonourable or unprofessional, on the basis of boundary violations, for her interactions with a former psychotherapy patient, for the alleged provision of cocaine to the

patient, for an alleged failure to maintain records, and for the alleged improper billing of OHIP.

What is in issue is the nature of the relationship between Dr. Koffman and Mr. X, as a patient and as a former patient? Mr. X testified that Dr. Koffman commenced a sexual relationship with him while he was a psychotherapy patient (kissing and sexual touching). Dr. Koffman denies this. Mr. X also testified that after Dr. Koffman terminated their formal psychotherapeutic relationship, she continued to see Mr. X socially, and engaged in a sexual relationship with him, in the period from November 2000 through January 2001. Dr. Koffman denied that there had been a sexual relationship at any time. It was the duty of the Committee on the evidence before it to determine if Dr. Koffman had had a sexual relationship with her patient, or former psychotherapy patient, which would be sexual abuse and disgraceful, dishonourable or unprofessional conduct. In addition to the issue of sexual abuse, the Committee had to determine on the evidence before it whether the conduct of Dr. Koffman, in admitting to the disclosure of personal information and to going to a party at a bar with a former psychotherapy patient, and otherwise socializing with him, would be considered by members as disgraceful, dishonourable or unprofessional. Other factual issues are whether Dr. Koffman provided the patient with cocaine and other drugs to be taken in association with the cocaine, which she denies, and whether her billing of OHIP for her attendance at the party with Mr. X and for home calls in December 2000, which she admits, would be considered by members to be disgraceful, dishonourable or unprofessional.

THE EVIDENCE

The Committee heard oral evidence from Mr. X and from Dr. Koffman, where on all critical factual issues involving the existence or not of a sexual relationship or the use of cocaine, the evidence was in conflict. Mr. X asserted that there was a sexual relationship. This was denied by Dr. Koffman. Mr. X testified that Dr. Koffman introduced him to the

use of cocaine as a recreational drug, and provided him with it. Dr. Koffman also denied this.

The Committee also heard testimony from the College Investigator, the College Intake Officer, from Dr. Koffman's husband and her father, and from two expert witnesses called by the defence.

The following prescriptions written by Dr. Koffman for Mr. X were filed as exhibits:

Citalopram dated December 19, 2000

Lorazepam dated December 28, 2000

Benzydamine rinse dated December 28, 2000

Penicillin V K dated December 28, 2000

BACKGROUND

Mr. X first saw Dr. Koffman in December 1999 concerning a mole he wanted removed. Dr. Koffman was in her second year of Family Practice Residency, which had begun in July 1997 but had been interrupted by an 8-month hiatus for an illness that included care by a psychiatrist. She was due to finish in May 2000. In January 2000, Mr. X phoned Dr. Koffman and asked to be referred for psychotherapy. Dr. Koffman offered to see him for that purpose and began psychotherapy sessions under the supervision of the Family Medicine program. The sessions were interrupted in May 2000 when Dr. Koffman finished her residency and wrote her examinations. In the interim, it was arranged that Dr. M was to care for Mr. X and supervise his medications. When Dr. Koffman established an office for a psychotherapy practice, Dr. M advised Mr. X who contacted Dr. Koffman and the psychotherapy sessions were resumed on September 12, 2000.

TESTIMONY OF MR. X

Mr. X testified that he is a graphic artist. In January 2000, he sought psychotherapy at the encouragement of his girlfriend, family, and co-workers. Dr. Koffman initially conducted the therapy at a University of Toronto Teaching Unit. In September 2000, Dr. Koffman established her practice at her condominium. The bedroom was utilized as an office for psychotherapy purposes. Mr. X described the layout in detail. Dr. Koffman initially said she would see him twice a week, but later indicated to him that therapy would be on a weekly basis. His medications at the time of resumption of psychotherapeutic sessions were Valproic acid 500 mg BID and Citalopram 20 mg daily.

Mr. X described Dr. Koffman's clothing when she treated him as low-cut, revealing and tight fitting. He said it was similar to but more revealing compared to her dress during her residency at the teaching unit where she first treated him.

After a scheduled psychotherapy session on November 16, 2000, Mr. X called Dr. Koffman and asked her to come to a party the following Saturday to celebrate his boss's birthday. He stated she accepted and he was to call on the Saturday of the party to make final arrangements. They met in the bar at the restaurant located at her condominium for a drink, which he stated she put on a tab she maintained. He had consumed two glasses of wine beforehand with friends. At the party, they met several of his co-workers, danced and he had several more drinks (three or four beers) but he said he was not very drunk. They sat together on a couch in a smoking room where they kissed. After about one and a half hours, they went to another bar and to an eatery but he was unable to remember how they had travelled. She asked him if he would come over to her place if he knew nothing was going to happen. He said yes. He testified that at her apartment they kissed and touched each other in a sexual manner. He subsequently went home.

At his regular session on the following Thursday, Dr. Koffman told Mr. X she was going to have to dismiss him as a patient because of what had happened and they discussed what she should write in the chart. He asked if he could see her again and she agreed.

He was not clear whether this was for another date or just for friendship. He felt scared medically but excited personally.

The next contact was in less than a week. When he called her, she said to come over to her place. That evening, they kissed, took a bath together at her suggestion, and had sexual intercourse multiple times.

He testified that they saw each other regularly - two or three nights a week and usually on weekends - with continued sexual activity. They met friends of hers socially (a fellow physician she worked with at the walk-in clinic and others). At Christmas, she agreed to join him at his parent's home, where personal gifts were exchanged. He testified that he spent New Years Eve 2000 with Dr. Koffman at her apartment. On another occasion, he met Dr. Koffman's parents when Dr. Koffman was picking up something at her mother's home.

On the way back to her place after they had been to a bar, he testified that she said, "When I offered you coke I didn't mean Coca Cola. Do you want to try some?" They returned to her apartment and used cocaine. This subsequently became a regular habit before going out. He stated he had witnessed a possible exchange of cocaine for money with a male contact at a named restaurant and at the apartment. The cocaine usage was just on weekends until towards the end when it occurred on some weeknights as well.

Subsequent to the last therapy session in November, Dr. Koffman prescribed him treatment for a sore throat, as well as Ativan, Citalopram, and Divalproex. Once when he used too much cocaine, she gave him some pills to calm him down.

Six colour photographs were filed in evidence. One came from his mother and showed Dr. Koffman with his parents' gift to her at Christmas. He stated that he had taken the other five and presented them to the College as an undeveloped roll. They were taken to finish off a roll by Mr. X in Dr. Koffman's apartment. They showed Dr. Koffman in

several outfits, some of which were tight and revealing and one with the zipper of her skirt partially open. The pictures appeared to reflect a significant familiarity in their relationship. In one, she was looking directly at the camera. He did not mention these photographs as evidence in any of his letters to the College nor in his interviews until he handed in the roll of film in March 2001.

On January 2, 2001, Dr. Koffman came over to his apartment. He had to work the next day and went to bed. By this time, he testified that he was having difficulty with their relationship. He felt she was taking too much cocaine. He believed she was lying to him about several of her personal health problems. He believed she was anorexic and on cocaine daily.

While he slept, she remained up watching TV. She then came into his room with troubled breathing. He wanted to take her to hospital but she didn't want to go for fear of them detecting cocaine. She said she needed an Epipen. He rapidly drove her to her apartment to get one. On arriving she phoned Dr. A, a friend and colleague, who took her to the emergency department. Mr. X testified that he stayed at her apartment and went to sleep in her bedroom and was there when she returned.

The next day, after sleeping late, he stated that he and Dr. Koffman had sex. He then asked her to drive him home and, en route, he said he wished to end the relationship. He did call her the next day because he said he was worried about her.

During the testimony he showed that he had considerable familiarity with her family, that he was aware of her previous marriage, knew of her father's occupation, that her brother was in Asia and that she had been under psychiatric care. When asked if Dr Koffman had any markings on her body, he identified that she had a mole on her buttock.

After discussing the events with his parents, two female colleagues at work and Dr. M, Mr. X testified that he contacted the College of Physicians and Surgeons of Ontario by

telephone on January 15 and, subsequently, made a complaint in writing on January 29, 2001.

On cross-examination, Dr. Koffman's records of the psychotherapy sessions from the teaching unit (TU) and from her office were reviewed with him. These notes were written during the sessions. There were repeated examples of Mr. X not recalling issues that were described in the notes. These included conflicts at work, feelings that people pick on him, feelings toward female co-workers, anxiety about a Thanksgiving family reunion, his relationship with his family, that his family (especially his brother) was afraid of him, panic at work, people picking on him, pushing his girlfriend into sex, concerns regarding a forthcoming surprise party for his boss and that he wanted to be an interesting patient to Dr. Koffman. His responses to cross-examination included: "do not recall" "that's Dr. Koffman's interpretation" "not what I said" "it's not true what she has written" "I didn't say this" "not a word I would use" "not using my language" "blatant mistruth" "comes to conclusions that are hers". There were a number of words or phrases in the clinical notes that were punctuated as quotations. Some of these such as "hate people at work", "feeling a breast", "lost it", "going out to get laid", "wanted to hurt someone", "difficulty coping" with issues at work, "don't trust self with females", he did not recall using or felt it was not what he would say. Terms such as "bad ass", "pack of wolves" referring to accountants, family "weird", "surrounded by idiots", "brand managers are stupid", are phrases that he stated he may have used. Throughout the examination he said he wanted the psychotherapy in order to get better.

TESTIMONY OF THE COLLEGE INVESTIGATOR

The College investigators who first met with Dr. Koffman to inform her of the allegation found her to be co-operative and she answered all their questions. Dr. Koffman indicated that she had medical problems during her residency for which she had been on Clonazepam. Anti-depressant therapy with an SSRI had been ineffective. Dr. Koffman told them that she had tried cocaine once years ago.

TESTIMONY OF DR. KOFFMAN'S HUSBAND

The husband of Dr. Koffman testified that he had been married to Dr. Koffman since October 26, 2001. They had first met in early September 2000. By mid-October, they had established a commitment with intimate relations. They saw each other four to five times per week, usually including the weekends. He testified that he spent December 31, 2000, at Dr. Koffman's apartment and went home the next day. He remembers it as a quiet evening for just the two of them. His evidence directly contradicted that of Mr. X who had testified that he had spent New Years Eve with Dr. Koffman.

When asked if Dr. Koffman had any distinctive bodily markings, he said she had prominent breast reduction scars, bilaterally. They were also palpable. Photographs of Dr. Koffman's breasts were submitted showing the scars of breast reduction surgery.

In the fall of 2000, he was aware of the office party that Dr. Koffman attended with a patient. He was not at her apartment that Saturday. He testified that, although she did not tell him immediately, she did indicate she would be carrying on a social relationship with a patient. She told him about the Christmas dinner from the time she knew. He knew about a gift exchange but did not know specifically about a putative sweater as a Christmas gift from Mr. X. He was aware of the dinner party with her friends. She told him the next day about the anaphylactic reaction late at night at Mr. X's apartment. She told him that when she came home from the emergency, she found Mr. X still there in her apartment bed. He knew at that point Dr. Koffman's decision that she would no longer see Mr. X, and that she so advised him as she drove him back to his place.

On January 3, 2001, Mr. X telephoned and subsequently there were other telephone messages and unannounced visits. Attempts to end these contacts included advice to her to keep the door locked. Dr. Koffman's husband was not privy to her patients and felt that in dealing with Mr. X she was capable of taking care of herself. There was a security guard and sign-in procedure but they did not ask for special precautions and in any case it was not difficult for someone to circumvent the reception area. Notwithstanding the

vested interest of being Dr. Koffman's husband, the Panel found his evidence to be credible.

TESTIMONY OF THE COLLEGE INTAKE OFFICER

The College Intake Officer testified that, on January 15, 2001, he recorded contemporaneously the telephone call in which Mr. X said he had a personal relationship that had ended two and a half months ago with his physician, Dr. Koffman. In response to a question, Mr. X indicated that he had no other corroborative evidence at that time.

The witness also spoke with Dr. M. Dr. M said the complainant had relationship issues and becomes attracted to females. On cross-examination, it was also established that Dr. M said the patient was stable at that time, he took his medications regularly, and he kept his appointments.

TESTIMONY OF THE DEFENCE EXPERTS

The first expert witness for the defence, Dr. B, is a certified specialist, on staff at a university, who specializes in Forensic Psychiatry. He outlined the diagnostic criteria for Narcissistic Personality Disorder and Anti-Social Personality Disorder. A patient may have the full criteria for the diagnosis or just some of the traits. He also described a Borderline Personality Disorder (BPD). There can be overlap between the diagnoses. He summarized the manifestations of the syndromes and itemized a number of instances in which he concluded that Mr. X showed one or other of these manifestations.

He was of the opinion that Mr. X had a life-long personality disorder and his behaviour was typical of such a condition. He indicated that he had dealt with such cases in therapy and in medico-legal assessments. He based much of his testimony on Dr Koffman's amplification of her hand written notes which were more commentary than verbatim.

He was asked why he regarded as relevant the office records of Dr. M from April to August 2000, November 27, 2000 and January 11, 2001. His reasons included that Mr.

X's anger would likely be evident in the notes of November and January, it was useful to see how he presented to Dr. M and, as Mr. X had disputed Dr. Koffman's notes, it would be useful to compare his response to another physician's records.

He agreed with the College he could only give an opinion and could not make a diagnosis unless he examined Mr. X. He was informed of a psychiatric consultant from a psychiatric institute who had seen Mr. X in consultation in August for Dr. M and had made an Axis I diagnosis of Bipolar Disorder. This psychiatric consultation did not change his over-all impression.

Dr. C is a forensic psychiatrist who has written and testified widely in areas of sexual deviancy, boundary violation and false allegations. He had reviewed the evidence presented at the hearing, interviewed Dr. Koffman over three hours, and attended the examination and part of the cross-examination of Mr. X as well as reading the transcripts of testimony. Because he had not examined Mr. X, he could not make a diagnosis but he had formed the opinion that he had either Borderline Personality Trait or Disorder (BPD). He testified that it can be misdiagnosed as a Bipolar Disorder. He stated his opinion that patients with BPD are subject to abandonment and rejection feelings, and can be quite vengeful towards the person who has abandoned them, including false accusations. He quoted a renowned expert (Guthiel): "Clinicians in training and even those who are seasoned professionals may fall prey to the borderline's sense of specialness making exceptions that they would never make with other patients." He concluded Dr. Koffman was unskilled and did not seek consultation in regards to dealing with the patient's erotic feelings to her. He said that Mr. X was complicated, difficult and beyond the skills of Dr. Koffman.

As part of his evaluation of Dr. Koffman, he assessed whether she was a risk to patients in relation to boundaries. He believed that she now understood that she should not have dealt with Mr. X socially, that she made an error in her office setting for psychotherapy, that she understood boundary violation and that she should have sought consultation.

On cross-examination, this expert witness acknowledged that his opinion was based on what she had said to him and what he had read from the information given to him. He also agreed that the literature showed that patients with BPD are over-represented in both false accusation as well as in victim groups in studies done in females but he was not sure of this in males.

Dr. C was of the opinion that an experienced therapist would not have gone to a party for a patient's boss, but that she acquiesced to Mr. X's intense requests. He testified that transference can continue even after the psychotherapy is ended.

TESTIMONY OF DR. KOFFMAN

Dr. Koffman testified that she graduated in medicine in 1997 and completed a two-year Family Practice residency from July 1997 to May 2000 with an eight-month hiatus for an illness that included care by a psychiatrist. She was interested in what psychotherapy could do for patients but was working in a Family Practice Teaching Unit that did not emphasize training in psychotherapy. However, she took two electives with physicians doing psychotherapy and several workshops including one on psychodrama. She was certified in Family Practice in June 2000 and joined a walk-in practice in August working four days a week. She also wanted to start doing Psychotherapy, one day a week. She chose a rented warehouse condominium that served the double purpose of office and living accommodation. The receptionist at the entrance served as reception. The bedroom served as an office when she had psychotherapy appointments, with the bed futon folded as a couch. The living room served, when necessary, as a waiting area.

In conducting psychotherapy sessions with Mr. X during her residency, she found his symptoms troubling and did a literature search on Medline and, feeling the need for consultation, she discussed medication issues with a GP-psychotherapist who had been an eight week preceptor. A staff physician in the Teaching Unit signed off each visit after discussion but Dr. Koffman did not appear to receive specific guidance regarding the

diagnosis or management. In April, her residency was finishing. This and a necessary cancellation of one of Mr. X's visits resulted in feelings of rejection by him. However, it was resolved that another resident, Dr. M, would supervise his medications until Dr. Koffman was established in practice and able to see him again.

Psychotherapy sessions of usually one or one and a half hours were established initially twice a week. When Dr. Koffman reduced them to once a week, Mr. X called her answering service to say he was "not impressed". This was recorded in her chart. Recurrent themes of the psychotherapy sessions as recorded in Dr. Koffman's contemporaneous notes included: anxiety about a family reunion at Thanksgiving, his girlfriend, de-compensating at work, relating to women and talking about some employees in derogatory words.

After a session on November 16, 2000, he called to ask her to go to a party to celebrate his boss's birthday. He sounded desperate and said he would be fired if he didn't go, but he was without friends at work. Dr. Koffman testified that she was afraid to say no because he was so desperate and said she would consider it. She decided on the 17th that she would go in order to help him and to perhaps obtain a better insight into his work environment by meeting some of the co-workers. She viewed it as a "field trip". She discussed it with her boyfriend who was supportive. The actual time at the party was approximately 90 minutes.

On November 18, 2000, she met him in the reception area of the bar on the ground floor of her condominium building. She stated there was no drinking at that time. En route to the party, it was agreed that he would call her Allie, which was what her friends called her so as not to embarrass him by having his doctor with him. At the party, she was concerned regarding his alcohol consumption and was also unable to make any useful observations of the work interactions.

They went into a side smoking room and were sitting on a couch when he turned and attempted to kiss her. Dr. Koffman testified that she pushed him away and he tried again. She got up and asked him if he realized what he had done and that she could no longer be his doctor. She returned to her residence alone. She testified that they did not go to any bars thereafter and she stated there was no physical intimacy, directly contradicting the testimony of Mr. X.

He attended his next appointment on November 23, 2000. After asking to have his prescription refilled, he started in on his "usual stuff" of a session. Dr. Koffman interrupted to discuss what had happened at the party. She talked about the legal implications and his response was that the only reason that he came to see her was because he liked her. She talked about transference at this time and reassured him it occurs frequently and can be dealt with, but not after he had kissed her. The session was billed as three units of psychotherapy.

She next heard from him in late November when he telephoned, crying and upset and feeling alone. He wanted her to continue as his therapist and promised physical attempts at intimacy would not happen again. She felt sad for him, felt he was alone in the world, felt guilty about abruptly needing to stop care and wondered if she had not gone to the party, she would not have had to discharge him.

He called quite a bit with the same message but no longer was asking that she be his doctor. After a number of these phone calls she agreed to see him. She thought that socializing would help him to meet normal people where there was no excessive drinking. For this reason, she took him to a dinner party at a colleague's, and to a restaurant meal with him and others, trying to integrate him into a normal social context.

In this period, she gave him a number of prescriptions - one for Citalopram and Valproic acid - because he didn't want to get it from Dr. M, and Lorazepam, because of anxiety regarding the upcoming family Christmas. After a number of requests, she decided to

attend his family Christmas dinner out of town. She testified that there was an exchange of gifts between her and the parents but no personal exchange of gifts with Mr. X. This was also directly contradictory of the testimony of Mr. X.

After Christmas, he called complaining of a sore throat for which she prescribed Benzydamine throat rinse and Penicillin VK. She made a house call to attend to this problem. She stated that she spent that New Years Eve with her boyfriend, quietly at her residence, not with Mr. X, as he had testified.

Mr. X phoned late at night on January 2, 2001, very distraught with no support and no money. He refused her request that he go to a walk in clinic. In her briefcase, she carried a Form 1. She was very concerned that he was suicidal and might require commitment. When she went to his residence, Mr. X was a different person than on the phone and in no distress. She said that she was very upset by this sudden change. He went to bed. Because she felt light-headed and hungry, she took some cereal from his kitchen and quickly became dyspnoeic. She knew she had allergies but did not think that included almonds in the cereal. She had not taken her Epipen with her. She now felt in desperate need for help, unable to drive safely, and awakened him and asked him to drive her home in her car so she could get an Epipen, which she subsequently administered to herself. Although she felt better, she phoned one of her colleagues for advice. He came over and took her to a hospital emergency. She asked Mr. X to get security people to lock up after he had left. She did not wait for him to leave.

She came home to find him sleeping in her bed. She was very upset and told him to get out and to take a cab home. Because he had no money, she had to drive him home. She realized she could not help him anymore and needed to terminate the social relationship.

He called the next day. She told him that he was very sick and that he should see Dr. M and get an urgent psychiatric consultation.

In March, Mr. X came to her apartment, unannounced. He apologized for his behaviour. She thought that he now realized the feelings he had for her were only in his mind and that he understood the effects of transference. In trying to help him, she testified that she had thought that a social relationship was okay.

In response to specific questions, she testified that:

- there had never been any sex between them
- the photographs of her breasts were taken recently by a plastic surgeon, for the purpose of demonstrating the presence of scars
- she had no idea of when the photos of her filed in evidence by Mr. X were taken, except for the one taken by his mother at Christmas. Mr. X did have a camera with him most of the time
- she tried cocaine once but didn't like the sensation
- she was co-operative with the College representatives when they presented the allegations
- she does have a mole on her buttock. She believes that it was probably when Mr. X was worried about having his removed, that he asked if she had one, and to reassure him she said yes, but it is in a place I can't see

On cross-examination, Dr. Koffman testified that she was the only one interested in doing psychotherapy at the residency training site. She had read about psychodrama and had taken a workshop on it. She had learned of transference in medical school but it was not strongly emphasized in the residency, on her electives in psychotherapy or in the workshop. She had not considered it played a role in Mr. X's psychotherapy until after the putative kissing episode.

She did her billings for psychotherapy by telephoning the details to a billing clerk at the walk-in clinic where she worked. On the Friday before going to the party, but when she knew she was going on what she regarded as a therapeutic intervention, she called in a charge for B994 (special visit) and four units of K004 (family psychotherapy). She

thought that this visit would be helpful to Mr. X but found that was not the case. She said that she would not have billed for it after the fact because it turned into a fiasco. She could have cancelled the charge on Monday, but she did not. She did not document the session at the time, recognizes she should have, and regards it as an oversight. She should also have recorded the names of the people she met from his workplace.

After the party, she consulted with her colleague about the unwanted incident, but more as a friend than professionally.

Mr. X's telephone call to ask her to go to the party was to her message service but because she was at her desk, she picked it up. He was desperate and tearful and asked her to be his doctor at the party, as his support person. She had never had a similar outside therapy session with anyone else and had not heard of other therapists doing it. She said that it was an attempt to see his environment. In searching for background to help understand his problems, she had tried to have his girlfriend of eight years come in, and she had spoken by telephone to his mother and saw the party as a continuance of the process.

She stated that she believed that transference did not occur in all psychotherapy interventions and did not think it was happening in this relationship until the event at the party. In fact, she said she was shocked when she learned he was attracted to her.

The next appointment after the party, she terminated the professional psychotherapeutic relationship. At that meeting, Mr. X told her he had feelings for her since their first meeting. She said she had no feelings for him except for his welfare. She would not have terminated the doctor-patient relationship if he had not kissed her. Subsequently, he phoned several times.

When she ascertained that he had not gotten any therapy through Dr. M, she determined that she would try to help him until a therapist took over, which she acknowledged was a “big mistake”.

A picture taken at one of the social events that she arranged showed him with a beer in his hand, but she felt this was not a problem as he was not drinking to excess, as was his custom.

She had difficulty remembering when Mr. X met her mother but believed it may have been when she was taking him to the party at her colleague’s home. They had to go to her mother’s first in north Toronto and, then, back to the waterfront. On another occasion, she had stated that Mr. X had gotten to this party on his own.

After November, she had stopped her telephone line dedicated to her psychotherapy practice. He called on her other line late on January 2, 2001 and his conversation made her fear for his potential suicide so that she went to his apartment with a Form 1 to use if necessary to admit him to hospital.

In March 2001, Dr. Koffman testified that Mr. X came to her apartment, unannounced. He apologized for his behaviour. She thought that he now realized the feelings he had for her were only in his mind and that he understood the effects of transference. In trying to help him, she had thought that a social relationship was okay.

The home visits for which she charged OHIP were reviewed. The necessity of a house call for an upper respiratory infection was questionable. She stated she did document them on specific House Call forms. These were filed in her desk in a different file. These files were later stored at her father’s house along with her furniture, and were later vandalized when this house was used by renters for illegal purposes. This was supported by the evidence of Dr. Koffman’s father in unopposed testimony.

She could not recall the exact time that she tried cocaine with some friends in a back room at a bar, but under questioning reported it as probably in the summer of 2000. She had told an expert witness and her husband that it had been years ago. She felt very anxious from the cocaine and regrets having tried it.

There were inconsistencies in her description of the allegations against her by Mr. X when she reported them to Dr. C, an expert witness for the defence. She used the term “bubbles in the bath”, whereas Mr. X at no time mentioned this. She said this was an inadvertent addition when referring to the exaggerated nature of the allegations in general.

When Dr. Koffman started her psychotherapy practice, she established a web site. On it, she listed her degree as MD CCFP (PSY). She said that this was to show her interest in psychotherapy and that she had extra skills in this area, even though it had no official status with the College of Family Practice (and in the Panel’s view inappropriate).

Of the pictures taken of her by Mr. X, she did not recall any of them being taken, except for the picture taken by his mother at Christmas. She agreed they were taken in her apartment and that birds in a picture were hers.

FINDINGS AND REASONS

(i) Sexual Abuse

The Committee found Mr. X consistent and definite in his testimony. He looked down throughout his testimony and seldom made eye contact with the lawyers or the panel. There was a degree of antagonism during cross-examination. His denial of significant and likely statements attributable to him in the charts, including the period at the Teaching Unit prior to any personal relationship, was troubling to the Panel. He knew a remarkable amount of detail about Dr. Koffman such as her keeping a tab at a bar, her own health details, that her first husband was South African (although he was not accurate in his name), her father’s occupation, that her brother was in Asia, and that she

had a mole on her buttock. The panel noted significantly that he made no mention of the scars on her breasts, nor appeared to have knowledge of the contemporaneous relationship with her soon to be husband. In some details he was inaccurate, such as when he testified as to the dates of his written complaint to the College and that he said he had met her parents at their home, when they were in fact separated. It was noted that the information he provided about the complaint to the College was added to over several months including the photographs, which he did not mention in several initial communications and interviews. They remain undated and the Panel could not determine whether they were taken during the social relationship or after the complaint was filed.

There were a number of questions raised by Dr. Koffman's evidence such as the reference to "bubbles in the bath". There was inconsistency as to when she had utilized cocaine. There was implausibility to aspects of her story, such as her reasons for making the visit to Mr. X's apartment on January 2, 2001, and her taking of cereal from a patient's kitchen. The Panel also found it surprising that in her November 23, 2000 note about the discontinuation of therapy, she does not record the actual reason for termination, i.e., an unwanted kiss.

The Panel accepted her testimony that she was very sorry to have had to discharge Mr. X from her practice out of concern for him and that, until he was established with another psychotherapist, she would try to help him by developing his social skills and interactions. However, the naivety of that approach, her lack of knowledge of basic concepts such as transference, and a disturbing degree of ignorance in her treatment of Mr. X as a psychotherapy patient caused the Panel concern. Mr. X coming to therapy was an indication of his vulnerability. Dr. Koffman's lack of insight into her behaviour and her personal disclosures and social behaviour would make it that much more possible for Mr. X to interpret her conduct in erotic terms and could well be harmful to the patient.

The Panel gave little weight to the testimony of Dr. B as he was assessed to be more an advocate for Dr Koffman's position than providing independent testimony. This was

particularly the case when he was asked regarding the appropriateness of the social relationship after the November 23, 2000 termination. He agreed that such a relationship existed, believed that Dr. Koffman had difficulty in establishing and maintaining the boundaries of the relationship and then maintaining termination of the relationship. He found the relationship post-termination troubling but felt that this situation was complex and challenging even for a senior psychiatrist.

Dr. C's testimony was cogent and helpful to the Panel in understanding possible influences of personality traits on the situation. The Panel was less convinced by his assessment of the present state of Dr. Koffman's knowledge and ability, as well as her understanding of what transpired during the relationship. In many areas, the Committee was not satisfied by the explanations given by either party, particularly concerning events on the night of January 2, 2000.

After serious consideration and weighing of the evidence before it, the Panel could not accept the testimony of Mr. X and concluded that the allegation of sexual abuse had not been proved to the requisite standard of proof, for the following reasons:

- The husband's evidence that he was with her on New Year's Eve directly contradicting the evidence of Mr. X. While we acknowledge the intimate relationship creates some possible doubt about his testimony, we felt him to be a credible witness.
- There was no evidence other than that of Mr. X to support a relationship between Dr. Koffman and Mr. X.
- Mr. X, in his extensive knowledge of Dr. Koffman's background, did not mention the role of her husband who was seeing her as a boyfriend during the time of his therapy at her home. Although this could have been something which Dr. Koffman did not disclose, Dr. Koffman's husband provided testimony, which the Committee accepted, of the great amount of time he and Dr. Koffman spent together in the relevant period which rendered implausible the time Mr. X said he was spending with her in a sexual relationship.

- The scars on Dr. Koffman's breasts that we would have expected to be evident to Mr. X if they had a sexual relationship of the extent, type, and nature he described.
- Dr. C's opinion that false accusations or vengeful behaviour might well be consistent with the psychiatric disorder of Mr. X.

Therefore, the Panel found on the balance of probabilities, keeping in mind the Bernstein criteria, that the allegation of professional misconduct for sexual abuse was not proved.

(ii) Disgraceful, dishonourable or unprofessional behaviour

The Committee found that this allegation was not proved, insofar as it related to the alleged provision of cocaine to Mr. X and the failure to maintain records. However, the Committee did find that Dr. Koffman engaged in conduct that was disgraceful, dishonourable or unprofessional, in the following respect:

1. Billing OHIP for services not yet performed, billing for attendance at a party at a bar, billing for four units of group or family therapy when only one and a half hours were spent at the party, and not cancelling this billing when she had the opportunity, is improper. In the opinion of the Panel, combining of social and medical visits under the rubric of billing is unacceptable.
2. The boundary violations as evidenced by the familiarity in the photographs, the complainant's detailed knowledge of her personal life, the misguided socialization, setting up an office using the bed in her personal living quarters and the doubtful nature of the house calls in December, when he was already under the care of someone else were serious professional mistakes. They are not mere errors in judgment, but rather are unprofessional acts exposing a patient to potential harm.
3. The panel felt that Dr. Koffman demonstrated extraordinary poor judgement in agreeing to carry on a relationship with a patient or former patient who had

admitted he was sexually attracted to her and who already had made a pass at her, including going to his apartment and taking him to social events.

4. Overall the Committee was perturbed by the adequacy of training and knowledge that allowed Dr. Koffman to consider she was capable of providing psychotherapy to patients suffering from a complex illness, and her ability to even now recognize her own inadequacy and the deleterious effects she had upon the complainant. She also failed to recognize the need for a referral of a patient who was beyond her skill.
5. Physicians must comport themselves ethically and in the interests of their patients. Dr. Koffman's behaviour with Mr. X does not meet either criteria.

For all of these reasons the Panel found that Dr. Koffman's conduct, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, and that the second allegation of professional misconduct was proved.

Indexed as:

Koffman (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 Professional 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. ALLYSON ENID KOFFMAN

PANEL MEMBERS:

R. SANDERS (CHAIR)
DR. G. MORRISON
DR. P. CHART
DR. M. GABEL

PUBLICATION BAN

Hearing Date(s):

February 10, 2003
March 4-7, 2003
April 29- May 2, 2003

Decision/ Released Date:

June 23, 2003

Penalty Hearing Date:

August 19, 2003

Penalty Decision/Released Date:

August 26, 2003

PENALTY DECISION AND REASONS

The Discipline Committee of the College of Physicians and Surgeons of Ontario conducted the penalty hearing in this matter on August 19, 2003.

PUBLICATION BAN

The publication ban ordered by the Committee in the first part of the hearing pursuant to s.45 and s.47(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, remains in effect. The Committee ordered that no person shall publish the identity of the complainant or any information that could disclose the identity of the complainant, and prohibited the publication of the name of the female co-worker of the complainant identified in the testimony of the complainant on March 11, 2003.

EVIDENCE AND CONSIDERATION OF PENALTY SUBMISSIONS

An exhibit book was entered into evidence. It included the Committee’s decision and reasons, Dr. Koffman’s medical school transcript including indication that she was on the Dean’s Honour List and winner of a student award, and copies of a series of articles published in the Toronto Star and the National Post.

In its deliberations on the appropriate penalty, the Committee took into account its concerns expressed in its reasons for decision about Dr. Koffman’s naiveté, her lack of understanding and knowledge of transference, her boundary violations, and the fact that she exposed the patient to potential harm. Findings in the following paragraphs were an important consideration in determining what should be the appropriate penalty.

1. The boundary violations as evidenced by the familiarity in the photographs, the complainant’s detailed knowledge of her personal life, the misguided socialization, setting up an office using the bed in her personal living quarters and the doubtful nature of the house calls in December, when the patient was already

under the care of someone else, were serious professional mistakes. They are not mere errors in judgment, but rather are unprofessional acts exposing the patient to potential harm.

2. The Committee felt that Dr. Koffman demonstrated extraordinary poor judgment in agreeing to carry on a relationship with a patient or former patient who had admitted he was sexually attracted to her and who already had made a pass at her, including going to his apartment and taking him to social events.
3. Overall the Committee was perturbed by the adequacy of training and knowledge that allowed Dr. Koffman to consider she was capable of providing psychotherapy to patients suffering from a complex illness, and her ability to even now recognize her own inadequacy and the deleterious effects she had upon the complainant. She also failed to recognize the need for a referral of a patient who was beyond her skill.
4. Physicians must comport themselves ethically and in the interests of their patients. Dr. Koffman's behaviour with the patient does not meet either criteria.

The Committee, at the request of the parties, did not take into account its findings on the OHIP issue in arriving at an appropriate penalty.

The Committee considered as mitigating factors Dr. Koffman's youth and inexperience as a physician, that her conduct had been motivated by a concern for the patient, and that she cooperated responsibly with the College investigation. An important consideration was the media publicity which resulted in a "a painful, protracted and humiliating learning process" for Dr. Koffman. The Committee considered what was said about publicity in the Court of Appeal ruling in *Regina vs. Ewanchuk*: "without specific evidence of publicity and its effect on a particular offender, the weight to be placed on publicity as a mitigation factor may be limited". The Committee also took into account

that this was a single case involving one patient occurring over a three month period and that the patient would have presented a difficult therapeutic challenge for any physician.

The Committee also considered a number of previous Discipline Committee decisions that were submitted to it and referred to by counsel in their submissions.

The Committee was informed that, at present, Dr. Koffman had one patient in psychotherapy and that this patient's care could be peer reviewed. The Committee was told that it is Dr. Koffman's present intention to refer patients needing psychotherapy, and to remove any website reference to an interest in providing psychotherapy. The Committee was also informed that Dr. Koffman was already enrolled in a course in psychotherapy as well as planning to take the next College boundary course at the University of Western of Ontario.

PENALTY DECISION AND REASONS

In arriving at its penalty decision, the prime concerns of the Committee were safety of the public and the competent provision of medical care that includes respect for appropriate boundaries. The panel is of the opinion that psychotherapy is an inherent component of Family Practice wherever delivered. The public is entitled to competency in the provision of psychotherapy services appropriate to the needs of the patient.

In the opinion of the Committee, the penalty must also serve as a reminder to the profession and to assure the public that a basic level of care and an appropriate standard of conduct must be present in any physician, whether at the commencement of their medical practise or after many years of practice experience. The Committee must therefore balance punitive action with rehabilitation. The Committee was motivated by the elements of fairness and the need to preserve the integrity of the profession, as well as rehabilitation of the member.

The Committee was of the opinion that there should be a suspension of three months, for the following reasons:

- Dr. Koffman failed to uphold the conduct and core values of the profession.

- Dr. Koffman was in breach of her professional responsibility to know what was appropriate and not to cross professional boundaries.
- Dr. Koffman failed to recognize or act in what was the best interest of the patient.
- Potential harm and embarrassment has been done to the patient and to the profession as a result of Dr. Koffman's actions.
- The length of the suspension recognizes the significant punishment already sustained as a result of the extensive media reporting.

The Committee also believes that there is a need for further training and establishment of supervision of Dr. Koffman's practice of psychotherapy. The Committee agrees that, except for the period of the suspension, Dr. Koffman may continue to practice while she is taking the courses and curriculum required by its penalty order below.

ORDER

The Discipline Committee therefore orders and directs that:

1. Dr. Koffman be required to appear before the Panel to be reprimanded and that the fact of the reprimand be recorded on the register.
2. The Registrar shall suspend Dr. Koffman's certificate of registration for a period of three months, the date of commencement of which is to be fixed by the Registrar.
3. The Registrar shall impose on Dr. Koffman's certificate of registration the term, condition and limitation that she successfully complete at her own expense a course on boundaries approved by the College within twelve months, and provide to the Registrar satisfactory proof that she has done so.
4. The Registrar shall impose on Dr. Koffman's certificate of registration the further term, condition, and limitation that she is not to provide any services billable to OHIP as psychotherapy, unless the following criteria are met:

- (i) That she be enrolled in, participate in and successfully complete at her own expense within eighteen months a basic skills in psychotherapy curriculum satisfactory to the Registrar, and provide to the Registrar satisfactory proof that she has done so.
- (ii) That she co-operate in a monthly review of her psychotherapy practice by a qualified supervisor acceptable to the Registrar, with quarterly reports to the Registrar, which shall include approval of the acceptability of the practice milieu. Compensation of the supervisor will be the responsibility of Dr. Koffman. Removal of this condition shall be on the recommendation of the Quality Assurance Committee to the Registrar following a satisfactory review and assessment at Dr. Koffman's expense after two years.

If there are any questions or concerns raised by the form of this Order, or any aspect of how it should be implemented, that the parties cannot work out, the Committee may be addressed in writing by the parties. The Order shall become effective in ten days if there are no issues raised by the parties that the Panel needs to resolve.

The parties should deliver their costs submissions in writing in accordance with the schedule established by the Committee at the conclusion of oral argument.

Indexed as: Koffman (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 Professional 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. ALLYSON ENID KOFFMAN

PANEL MEMBERS:

R. SANDERS (CHAIR)
DR. G. MORRISON
DR. P. CHART
DR. M. GABEL

PUBLICATION BAN

Hearing Date(s):	February 10, 2003 March 4-7, 2003 April 29- May 2, 2003
Decision/ Released Date:	June 23, 2003
Penalty Hearing Date:	August 19, 2003
Penalty Decision/Released Date:	August 26, 2003

ORDER AND REASONS AS TO COSTS

The Committee reserved its decision on costs at the request of the parties at the conclusion of the penalty part of the hearing. The Committee heard oral submissions on costs from the College at that time, and put in place a schedule for the delivery of written submissions in response, as well as advice from independent legal counsel. In its deliberations the Committee had before it:

1. A brief of costs submissions filed for Dr. Koffman and a reply.
2. A final submission and responding brief for the College and a brief of authorities.
3. Advice and supplementary advice in writing from independent legal counsel.

1. Costs of Adjournment

When the Committee granted an adjournment of the third party records motion in February 2003, it indicated that costs would be awarded due to the manner and timing of the motion. A third party records motion by counsel for Dr. Koffman had been scheduled in January 2003, but was abandoned. It was renewed on the first day scheduled for the hearing of evidence in February 2003. The motion could not proceed because Dr. Koffman's expert witness was not available for cross-examination on the day on which the motion was renewed. This resulted in time thrown away of four days.

The defence position was that a motion for third party records should be brought on the first day of a discipline hearing. The Committee agrees and had done that very thing. It has been the established practice of the Discipline Committee to set a date for the commencement of the hearing and to consider a motion for third party records prior to the hearing days scheduled for the commencement of presentation of the evidence. The

practice allows time for consideration of the motion and review of any records that might be made available by ruling of the panel, well in advance of the hearing of evidence.

The Committee was satisfied that there had been time thrown away by the actions of the defence. The Committee concluded that appropriate costs should be \$7,500, representing one day of preparation and two days of hearing time, and orders the payment of that amount to the College by Dr. Koffman.

2. Costs of Motion for Third Party Records

The defence asked for costs of the motion for third party records pertaining to Dr. Koffman's own records while at the Teaching Unit that were not in her possession.

There is no authority under the *Statutory Power Procedures Act* or under the *Health Professions Procedural Code* (the "Code") that would allow the Committee to award costs for a motion for third party records (or for any motion). Consequently, the panel could make no such award and does not do so.

3. Hearing Costs

The defence submitted that it was entitled to costs of the disciplinary hearing because Dr. Koffman had offered to admit to the allegation of boundary violations and to accept a suspension of her certificate of registration. Section 53 of the Code allows the panel to award costs to the member if the panel is of the opinion that the commencement of proceedings by the College was unwarranted.

The Committee accepted the position of the College that it has a duty in the interests of the public to prosecute cases that raise serious allegations. Although the Committee concluded in the end that the burden of proof was not met relating to the allegation of sexual abuse, the panel agreed that there was sufficient reason to warrant the commencement of proceedings in this case. Therefore, the Committee was of the view that the request for costs of the hearing should be denied.