

**Indexed as:**

**Sandejaz (Re)**

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

**IN THE MATTER OF** a Hearing directed  
by the Executive Committee of The College of Physicians  
and Surgeons of Ontario, pursuant to Section 36(1)  
of the *Health Professions Procedural Code*,  
being Schedule 2 to the  
*Regulated Health Professions Act*, 1991,  
S.O. 1991, c.18, as amended

**BETWEEN:**

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

**- and -**

**DR. MARIO FERNANDEZ SANDEJAS**

**PANEL MEMBERS:**

DR. J. WATTS (CHAIR)  
DR. Y. deBUDA  
F. FREDERICK

**HEARING DATE(S):**     October 13, 2000  
                              November 21, 2000  
                              April 16, 2001

**DECISION/RELEASED:** October 22, 2001

**PUBLICATION BAN**

## **DECISION AND REASONS FOR DECISION**

This matter was heard on October 13, November 21 and April 16, 2001, before the Discipline Committee at the College of Physicians and Surgeons of Ontario at Toronto.

### **ALLEGATIONS**

In The Notice of Hearing it was alleged that Dr. Sandejas was guilty of an act of professional misconduct as defined in Clause 51(1)(a) of the *Health Professions Procedural Code* which is Schedule 2 to the *Regulated Health Professions Act (1991) S.O. 1991, c.18* in that he has been found guilty of an offence that is relevant to his suitability to practice and paragraph 29(33) of *Ontario Regulation 548 RRO 1990* in that he has engaged in conduct of an act 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 Notice of Hearing set out particulars relating to the allegations that on December 1, 1999, Dr. Mario Fernandez Sandejas pleaded guilty to and was found guilty of a charge of sexual interference with a minor related female contrary to Section 151 of the *Criminal Code of Canada*.

### **PUBLICATION BAN**

The Committee ordered under Section 45(3) of *The Health Professions Procedural Code* that neither the names of certain witnesses, nor information by which they might be identified, be published or broadcast.

The Committee heard a motion that the motion itself and the Discipline Hearing of Dr. Sandejas be held in camera under rules 1.02(1) and 45(2)(b) of the *Health Professions Procedural Code*. The motion was brought on the grounds that it was the victim's desire to testify as a witness at the hearing and protection of sensitive and personal information, involving a victim in a vulnerable position, outweighed the public interest in disclosure at an open hearing. Defence counsel stated that the victim was not a member of the public in the usual sense and that the

offences were in themselves not related to the practice of medicine. The public, therefore, would not be deprived of information, other than information that fell within a sensitive or personal arena.

The motion was opposed by the College on the grounds that the publication ban on identifying information was sufficient and that the educational and informative effects of a public discussion would be lost by an *in camera* hearing.

## **DECISION**

The Panel recognized the general principle that the operations of the Discipline Committee are required to be open to the public for scrutiny and public criticism. The Panel further recognized that the need for justice to be done openly is one of the hallmarks of a democratic society and important for the protection of parties as well as for the protection of the public and for the maintenance of the public visibility of the Committee. The Panel also noted that the Supreme Court of Canada has recognized the need to ensure that stress created by the presence of an audience not be allowed to effect adversely the proper administration of justice. The Panel considered: that this is a unique case which does not involve a physician/patient relationship; that a criminal hearing had already taken place in public; that since that hearing there has been, according to the evidence, a degree of healing which involved family members; and that this healing could be impaired by the requirement for evidence to be given in public.

The Panel noted that its decision would be rendered publicly and available to the public albeit without information that might identify witnesses. Therefore the Panel ordered that the public be excluded from the Hearing on the basis that information of a personal nature was likely to be disclosed and that the desirability of avoiding public disclosure, in the interests of the persons affected, outweighed the desirability of adhering to the principle that hearings be open to the public.

Dr. Sandejas pleaded guilty to Allegation #1 of the Notice of Hearing. The College withdrew

Allegation #2. The Panel accepted the plea of guilty and proceeded to hear submissions as to penalty.

The Panel heard evidence from the minor related victim. The witness described the series of events that occurred, how she finally disclosed this and the results of the disclosure.

Subsequently, Dr. Sandejas was extremely helpful to both her and her family. She further described how she had established a positive and trusting relationship with Dr. Sandejas despite the highly negative effects that the original behaviour had caused. The witness stated that she totally trusted Dr. Sandejas and believed he would not repeat his behaviour with other vulnerable parties. She described how she felt that revocation of Dr. Sandejas licence would have untoward or punitive effects not only on Dr. Sandejas, but on her and her family.

The Committee heard from two psychiatrists who had treated Dr. Sandejas. Dr. A., who was a practitioner with a rehabilitation and general psychiatric practice, had experience in the assessment of sexual abnormalities but not their treatment. The records of his treatment of Dr. Sandejas had been irretrievably lost, although he had access to the letters sent to the second psychiatrist and to hospital notes. Dr. A. diagnosed Dr. Sandejas as having major depressive disorder and initiated psychotherapy and anti depressants. Dr. Sandejas disclosed the sexual abuse that he had committed and also sexual abuse committed on him as a child. He appeared remorseful and distraught and was subsequently admitted to a general hospital psychiatric ward with suicidal ideation. He discharged himself from this ward following an unrelated episode with another patient and was subsequently admitted to a hospital specializing in psychiatric disorder. He remained in therapy with Dr. A. after this admission (which was complicated by a short period of self discharge, followed by spontaneous re-admission). Dr. A. felt that Dr. Sandejas made substantial progress in terms of his suffering and insight. Dr. A. referred Dr. Sandejas to Dr. B. when Dr. Sandejas moved to Toronto. Dr. A. described Dr. Sandejas as sincere, open and compliant. During therapy Dr. Sandejas admitted to self prescription of Lorazepam, but Dr. A. did not feel that there was substance abuse present. Dr. A. felt there was no evidence of psychopathy and that Dr. Sandejas was not a risk to children either in his family

or outside the family.

In cross-examination Dr. A. confirmed that Dr. Sandejas had admitted to intermittent binge drinking. However, Dr. A. did not feel that alcoholism was a major concern. Dr. A. had not provided a formal court assessment or a forensic assessment and had not performed psychological testing or sexual behaviour testing.

Dr. B., who also testified, described himself as a general psychiatrist with an in-patient and out-patient practice having a high proportion of physicians with stress related, depressive and marital problems. He is a psychotherapist who also uses pharmacotherapy. He saw Dr. Sandejas following referral by Dr. A. Dr. B.'s psychiatric diagnoses were major depressive disorder, a complex post traumatic stress disorder and a personality disorder without obsessional traits and some dependency. Dr. B. did not feel that Dr. Sandejas displayed evidence of paraphilia. His post-traumatic stress disorder related to his exposure to sexual abuse as a child. Dr. B. had found no evidence of sexual fantasies or feelings for children other than the victim. Family dynamics had improved substantially during psychotherapy. Dr. B. felt that Dr. Sandejas supported his family and his remorse was genuine. He noted that Dr. Sandejas had to cash in RRSP's in order to pay for his hospital therapy and believed that recurrence of any offences was unlikely. Like Dr. A., Dr. B. had not performed or arranged psychological or phallometric testing.

The Panel also heard from a third psychiatrist Dr. C., who was the Head of a Forensic Services Unit at a large psychiatric hospital. Dr. C. has extremely broad experience in forensic assessment including assessment of sex offenders. Dr. C. had not treated or assessed Dr. Sandejas. He expressed concern at the lack of a forensic assessment and the lack of any form of psychological testing specifically related to sexual dysfunction. He also expressed concern regarding: Dr. Sandejas intermittent alcohol and drug usage; the effect of Dr. Sandejas mood on his behaviour; and Dr. Sandejas' relationships with adult women. Dr. C.'s view was that Dr. Sandejas was probably not sexually deviant, but he could not confirm this. He also felt that it was not possible, on the basis of the evidence seen by him, to rule out borderline personality disorder. He explained to the Panel that there is controversy as to whether sexual offenders can

be separated from incestuous offenders. He pointed out there was some degree of cross over between the two, but that the two did not need to co-exist. Overall he stated that he felt that Dr. Sandejas was at low risk of re-offending.

The Panel considered the evidence and submissions of counsel and applicable principles as set out in case law provided. The Panel recognized that the behaviour which led to the criminal conviction and this proceeding would be repugnant to members of the public and to members of the College. The gravity of this offence justified a clear signal of denunciation to the profession and to the public. At the same time, the Panel was sensitive to the evidence of remorse on the part of Dr. Sandejas, his response to therapy and the effects of the earlier criminal proceedings. The Panel recognized the need for sensitivity in meeting the needs of the victim for privacy and to the victim's statement of support for Dr. Sandejas. The unique facts and context of this case, in which, as noted, there was no physician-patient relationship and family members requested leniency in support of the healing process that has occurred, influenced the Panel to conclude that a serious penalty short of revocation would serve the public interest.

The Committee therefore imposed the following penalty:

1. Dr. Sandejas is to be reprimanded with the fact of the reprimand to be recorded the register;
2. Dr. Sandejas' Certificate of Registration is to be suspended for a period of eighteen months commencing no later than June 1st., 2001;
3. Six months of the above suspension will be suspended if Dr. Sandejas provides to the Registrar evidence that he continues to receive care from a psychiatrist of Dr. Sandejas choice who is acceptable to the Registrar;
4. There will be a term on Dr. Sandejas' Certificate of Registration that his practice be restricted to patients over sixteen years of age;
5. This term on Dr. Sandejas' Certificate of Registration will be removed if Dr.

Sandejas undergoes a forensic psychiatric assessment by a psychiatrist acceptable to the

Registrar and that psychiatrist provides to the Registrar a report, satisfactory to the Registrar, indicating that Dr. Sandejas is within the lowest risk category for recurrence of sexual misconduct.