

## NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Jane Catherine Gilbert, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of the witness or any information that could disclose the identity of the witness under section 47 of the Health Professions Procedural Code (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended.

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

Every person who contravenes an order made under ... section 47... is guilty of an offence and on conviction is liable,

(a) in the case of an individual to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence; or

(b) in the case of a corporation to a fine of not more than \$50,000 for a first offence and not more than \$200,000 for a second or subsequent offence.

**Indexed as: Ontario (College of Physicians and Surgeons of Ontario) v. Gilbert,  
2019 ONCPSD 8**

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

**IN THE MATTER OF** a Hearing directed by  
the Inquiries, Complaints and Reports Committee of the College of Physicians and Surgeons of Ontario  
pursuant to Section 26(1) of the **Health Professions Procedural Code**  
being Schedule 2 of the *Regulated Health Professions Act, 1991*,  
S.O. 1991, c. 18, as amended.

**B E T W E E N:**

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

**- and -**

**DR. JANE CATHERINE GILBERT**

**PANEL MEMBERS:**

**MR. J. LANGS  
DR. I. ACKERMAN  
MS. E.M. MILLS  
DR. D. HELLYER  
DR. P. GARFINKEL**

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

**MS. C. SILVER  
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**COUNSEL FOR DR. GILBERT:**

**MR. T. FISHER  
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**INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:**

**MR. R.W. COSMAN**

**PUBLICATION BAN**

**Hearing Date: January 9, 2019  
Decision Date: January 9, 2019  
Written Decision Date: March 5, 2019**

## **DECISION AND REASONS FOR DECISION**

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on January 9, 2019. At the conclusion of the hearing, the Committee released a written order stating its finding that Dr. Gilbert committed an act of professional misconduct and setting out its penalty and costs order with written reasons to follow.

## **THE ALLEGATIONS**

The Notice of Hearing alleged that Dr. Jane Catherine Gilbert committed an act of professional misconduct:

1. under clause 51(1)(b. 1) of the Health Professions Procedural Code, which is Schedule 2 to the Regulated Health Professions Act, 1991, S.O. 1991, c.18 (the "Code") in that she engaged in sexual abuse of a patient; and
2. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the Medicine Act, 1991 ("O. Reg. 856/93"), in that she has engaged in an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

## **RESPONSE TO THE ALLEGATIONS**

Dr. Gilbert was not in attendance at the hearing. It was confirmed by Dr. Gilbert’s Counsel that Dr. Gilbert had been appropriately served with the Notice of the Hearing and agreed to the hearing proceeding in her absence. On behalf of Dr. Gilbert, her Counsel entered a plea of no contest to the allegations of professional misconduct in the Notice of Hearing.

## **PART I: FACTS**

The following facts were set out in a Statement of Uncontested Facts, which was filed as an exhibit and presented to the Committee:

## **A. Background**

1. Dr. Jane Catherine Gilbert (“Dr. Gilbert”) is a psychiatrist who received her certificate of registration authorizing independent practice in 1990.

2. From 2009 to October 2011, Dr. Gilbert practised at the Urgent Care Clinic (“UCC”) in the Oakville Trafalgar Memorial Hospital (“OTMH”). Dr. Gilbert provided interim psychiatric care to patients who were awaiting outpatient psychiatry appointments. In October 2011, Dr. Gilbert resigned from the UCC at OTMH and opened her own psychiatric care clinic called The Bear Clinic in Oakville.

## **B. Sexual Abuse and/or Disgraceful, Dishonorable or Unprofessional Conduct: Patient A**

3. On October 29<sup>th</sup>, 2009, Patient A attended for a psychiatric consultation at the OTMH. He was suffering from depression. He had, the month prior, been hospitalized for anxiety. Between 1997 and 2005, Patient A was diagnosed with lymphoma and subsequently with prostatic cancer. He underwent chemotherapy, surgery, radiation, and a stem cell transplant. Patient A developed severe anxiety and depression following his cancer treatments. Patient A had a history of psychiatric difficulties, including suicidal ideation, anxiety and panic attacks.

4. Following the initial intake, Patient A was referred to Dr. Gilbert for an additional psychiatric consultation. Dr. Gilbert first provided psychiatric treatment to Patient A at the UCC at OTMH on November 5<sup>th</sup>, 2009. She continued to provide psychiatric treatment to Patient A at OTMH until December 2009, and then from March 2010 to November 2010. Her last appointment with Patient A at the UCC was in December 2010. A copy of the OTMH Admissions Patient Visit History is attached at TAB A to the Statement of Uncontested Facts. A copy of Dr. Gilbert’s OHIP billings for Patient A is attached at TAB B to the Statement of Uncontested Facts.

5. In September 2010, during an appointment with Patient A, Dr. Gilbert started to cry. She disclosed to Patient A details about her marital problems, and told him her husband was leaving her. Patient A did not know what to do. He gave Dr. Gilbert a hug to console her. He invited

Dr. Gilbert to his house to have dinner with him and his wife. Dr. Gilbert accepted the invitation and attended Patient A's house that evening.

6. While treating Patient A at OTMH, Dr. Gilbert became friends with Patient A and his wife and started to attend at their home regularly. Dr. Gilbert would go to Patient A's home in the mornings around 7:30 a.m. and would stay for hours while Patient A's wife was at work. She would also go to Patient A's home regularly on Friday evenings where she would drink alcohol with Patient A.

7. In the fall of 2010, while still treating Patient A at the OTMH, Dr. Gilbert initiated a sexual relationship with him. This occurred one afternoon while Dr. Gilbert and Patient A were alone at his home drinking together. Patient A's wife was at work. Dr. Gilbert told Patient A she was attracted to him and wanted to cultivate "that kind of friendship." He told Dr. Gilbert he had undergone a prostatectomy and it took him a long time to get sexually aroused and get an erection. Dr. Gilbert asked Patient A if he wanted help with getting an erection. He said no and Dr. Gilbert then asked, "Wouldn't you like to get back on track and take that back to [your wife]?" Dr. Gilbert asked Patient A to see his penis. Patient A took out his penis and could not get an erection. Dr. Gilbert asked Patient A, "Should I help you with my mouth?" Patient A said no. Dr. Gilbert then commenced masturbating Patient A by fondling his penis with her hands. Patient A touched Dr. Gilbert's breasts and vagina with his hands.

8. Patient A had not had sex with his wife in many years. His sexual encounter with Dr. Gilbert was very emotionally significant for him.

9. A few days after this sexual encounter, Patient A told Dr. Gilbert he loved her and would leave his wife for her. Dr. Gilbert responded that she loved him and wanted to be with him. Copies of notes Dr. Gilbert wrote to Patient A professing her love for him are attached at TAB C to the Statement of Uncontested Facts, together with emails she sent to him between May and August 2011 attached at TAB D to the Statement of Uncontested Facts.

10. Dr. Gilbert continued to engage in a sexual relationship with Patient A until April 2014. Patient A's wife did not know about the relationship. Dr. Gilbert continued to spend time with Patient A at his house and Patient A spent time at Dr. Gilbert's house. Patient A met Dr. Gilbert's two children.

11. Pharmacy records were obtained from three different pharmacies. These records demonstrate that between 2009 and 2014, Dr. Gilbert prescribed to Patient A numerous medications including anti-depressants, sedatives, narcotics, and medications for erectile dysfunction.
12. Prescription records were obtained from Metro Pharmacy #509. The records show that between November 2009 and February 2014, Dr. Gilbert issued Patient A over ninety (90) prescriptions for ten (10) different medications: Apo-Citalopram, Novo-Olanzapine, Cymbalta, Apo-Lorazepam, Ativan Sublingual, Apo-Methylphenidate, Oxycocet, Vyvanse, Clonazepam, and ML Coactifed. A copy of the Metro Pharmacy #509 records are attached at TAB E to the Statement of Uncontested Facts.
13. Prescription records were obtained from Shopper's Drug Mart Pharmacy #1271. These records confirm that from December 5, 2011 to September 25, 2012, five (5) prescriptions for Oxycodone were issued by Dr. Gilbert to Patient A. A copy of the Shopper's Drug Mart Pharmacy #1271 records are attached at TAB F to the Statement of Uncontested Facts.
14. Prescription records were also obtained from Sobey's Pharmacy #7230. These records confirm that from January 28, 2011 to June 20, 2012, Dr. Gilbert issued twenty (20) prescriptions to Patient A for Ratio-Oxycocet, Levitra and Cialis. A copy of the Sobey's Pharmacy #7230 records are attached at TAB G to the Statement of Uncontested Facts.
15. Dr. Gilbert also provided Patient A non-prescription pills to treat Patient A's erectile dysfunction. She told Patient A that she ordered these pills from a "third world country."
16. During their physician-patient relationship, Dr. Gilbert and Patient A engaged in sexual acts including kissing, performing oral sex on each other, Patient A kissing and fondling Dr. Gilbert's breasts, Dr. Gilbert masturbating Patient A, and sexual intercourse. Dr. Gilbert and Patient A engaged in these sexual acts at her house, in her office at the hospital, at Patient A's cottage, and at a hotel in Oakville. Patient A would sleep at Dr. Gilbert's house. Dr. Gilbert took Patient A to a sex store. He had never been to a sex store in the past. He tried on a penis ring to maintain an erection.

17. In July of 2013, Dr. Gilbert attempted to end the sexual relationship with Patient A. Dr. Gilbert and Patient A, however, continued the sexual relationship until April of 2014.

18. Dr. Gilbert made statements, which were untrue, about the timing of the commencement of her sexual relationship with Patient A.

19. Dr. Gilbert's conduct described above constitutes sexual abuse of a patient and disgraceful, dishonourable or unprofessional conduct.

## **PART II: PLEA OF NO CONTEST**

20. Dr. Gilbert pleads no contest to the facts set out in paragraphs 1-19 above, and does not contest, for the purposes of College proceedings, that she engaged in professional misconduct, in that:

- (a) she engaged in sexual abuse of Patient A under section 51(1)(b.1) of the Health Professions Procedural Code, schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18 (the "Code"); and
- (b) she engaged in an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, under paragraph 1(1)33 of O/Reg. 856/93, made under the *Medicine Act, 1991* ("O/Reg. 856/93").

## **PLEA OF NO CONTEST – DISCIPLINE COMMITTEE RULES OF PROCEDURE**

Rule 3.02 of the Discipline Committee's Rules of Procedure regarding a plea of no contest states:

3.02(1) Where a member enters a plea of no contest to an allegation, the member consents to the following:

- (a) that the Discipline Committee can accept as correct the facts alleged against the member on that allegation for the purposes of College proceedings only;
- (b) that the Discipline Committee can accept that those facts constitute professional misconduct or incompetence or both for the purposes of College proceedings only; and

- (c) that the Discipline Committee can dispose of the issue of what finding ought to be made without hearing evidence.

## **FINDING**

The Committee accepted as correct all of the facts set out in the Statement of Uncontested Facts. Having regard to these facts, the Committee found that Dr. Gilbert committed an act of professional misconduct in that she: engaged in sexual abuse of Patient A and engaged in an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

## **SUBMISSION ON PENALTY**

Counsel for the College made a submission as to an appropriate penalty and costs order, which was not opposed by counsel for Dr. Gilbert. The College submitted that the Order should include:

1. immediate revocation of Dr. Gilbert's certificate of registration;
2. a reprimand;
3. that Dr. Gilbert reimburse the College in the amount of \$16, 060.00 for funding provided to patients under the program required under section 85.7 of the Code by posting an irrevocable letter of credit, or other security acceptable to the College; and
4. that Dr. Gilbert pay costs of the proceeding in the amount of \$6000.00.

## **PENALTY AND REASONS FOR PENALTY**

For the reasons that follow, the Committee accepted the College's penalty and costs submission as appropriate. Revocation of Dr. Gilbert's certificate of registration and a reprimand are mandatory in the circumstances of this case.



Section 51(5) of the *Code* states as follows:

**Orders relating to sexual abuse**

(5) If a panel finds a member has committed an act of professional misconduct by sexually abusing a patient, the panel shall do the following in addition to anything else the panel may do under subsection (2):

1. Reprimand the member.
2. Suspend the member's certificate of registration if the sexual abuse does not consist of or include conduct listed in paragraph 3 and the panel has not otherwise made an order revoking the member's certificate of registration under subsection (2).
3. Revoke the member's certificate of registration if the sexual abuse consisted of, or included, any of the following:
  - i. Sexual intercourse.
  - ii. Genital to genital, genital to anal, oral to genital or oral to anal contact.
  - iii. Masturbation of the member by, or in the presence of, the patient.
  - iv. Masturbation of the patient by the member.
  - v. Encouraging the patient to masturbate in the presence of the member.
  - vi. Touching of a sexual nature of the patient's genitals, anus, breasts or buttocks.
  - vii. Other conduct of a sexual nature prescribed in regulations made pursuant to clause 43 (1) (u) of the *Regulated Health Professions Act, 1991*. 2017, c. 11, Sched. 5, s. 19 (3).

The specific acts of sexual abuse that Dr. Gilbert was found to have committed, including sexual intercourse, masturbating Patient A, and touching of a sexual nature found to have taken place, require mandatory revocation of her certificate of registration and the imposition of a reprimand under Section 51(5) of the *Code*.

The Committee considered the accepted penalty principles. An appropriate penalty order ensures public protection, maintains the integrity, honour and reputation of the profession, and maintains public confidence in the College's ability to regulate the profession in the public interest. Other

principles include denunciation of the misconduct, general deterrence of the members of the profession and specific deterrence of the individual member. Rehabilitation of the physician is also taken into account, although it is not applicable in this case.

Revocation of Dr. Gilbert's certificate of registration, a reprimand, and requiring Dr. Gilbert to reimburse the College fund for patient therapy and counselling satisfy the applicable penalty principles. In the Committee's view, even if revocation were not mandatory, the egregious nature of Dr. Gilbert's misconduct would require these serious sanctions to ensure public protection and maintain confidence in the integrity of the profession and medical regulation in the public interest.

### **Nature of the Misconduct**

Patient A was a very vulnerable patient who had experienced a serious medical illness and had a known history of psychiatric problems. He turned for help to Dr. Gilbert, who knew his entire history. Rather than helping him, Dr. Gilbert initiated a personal and sexual relationship, and used the doctor-patient relationship to meet her own needs. Despite the patient's expressed reluctance to engage in sexual relations, Dr. Gilbert persisted and encouraged this very vulnerable patient to have sexual relations with her. This led to repeated sexual acts with Patient A over a number of years, despite a continuing ongoing therapeutic relationship. Dr. Gilbert focused on her needs rather than those of Patient A, to his discredit.

As a psychiatrist, Dr. Gilbert should have been even more cognizant of the boundaries between doctor and patient, particularly given the vulnerabilities that Patient A disclosed to her in the course of their therapeutic relationship. Dr. Gilbert flagrantly violated her responsibilities as a doctor to do no harm and not to exploit the trust and dependence that develops in such circumstances. Dr. Gilbert abused Patient A's trust and her own power, in a most serious manner.

### **Impact Statement**

The Committee considered an impact statement from Patient A. Subsection 51(6) of the Code provides the following:

**Statement re impact of sexual abuse**

(6) Before making an order under subsection (5), the panel shall consider any written statement that has been filed, and any oral statement that has been made to the panel, describing the impact of the sexual abuse on the patient.

Patient A's impact statement outlined the profound long-term negative impact of the sexual abuse. Patient A has experienced a loss of spousal respect and happy home life. Patient A feels isolated from his family and unable to regain their support. Moreover, Patient A is mistrustful of strangers, reluctant to interact in any new situations, and feels he cannot leave his home without the company of his wife. Patient A stated that he feels, "taken advantage of, lied to and abused". He feels "broken". Patient A feels he can never see a psychiatrist again because he would never trust one again and is fearful of them.

**Conclusion**

In conclusion, Dr. Gilbert engaged in sexual abuse of Patient A. Her actions were dishonourable, disgraceful and unprofessional, and seriously undermined the trust and confidence of the public in the entire profession. The severest sanctions and penalties are mandated legally, and justified.

**ORDER**

The Committee stated its finding of professional misconduct in paragraph 1 of its written order of January 9, 2019. In that order, the Committee ordered and directed on the matter of penalty and costs that:

2. The Registrar revoke Dr. Gilbert's certificate of registration effective immediately.
3. Dr. Gilbert appear before the panel to be reprimanded.
4. Dr. Gilbert reimburse the College for funding provided to patients under the program required under section 85.7 of the Code, by posting an irrevocable letter of credit or other security acceptable to the College, within sixty (60) days from the date of this Order, in the amount of \$16, 060.00.

5. Dr. Gilbert pay to the College its costs of this proceeding in the amount of \$6000.00 within sixty (60) days from the date of this Order.