

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Esther Rachel Silver, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity and any information that would disclose the identity of the complainant whose name is disclosed at the hearing, under subsection 45(3) 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 45 or 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.

**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 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. ESTHER RACHEL SILVER

PANEL MEMBERS:

**DR. M. GABEL
S. DAVIS
DR. P. CHART
D. EATON-KENT
DR. J. MCGILLEN**

Hearing Date: February 24, 2009
Decision Release Date: February 24, 2009
Release of Written Reasons: April 15, 2009

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 February 24, 2009. At the conclusion of the hearing, the Committee stated its finding that the member committed an act of professional misconduct and delivered its penalty order with written reasons to follow.

THE ALLEGATIONS

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

1. under paragraph 1(1)24 of Ontario Regulation 856/93 of the *Medicine Act, 1991* (“O. Reg. 856/93”) in that she engaged in conduct unbecoming a physician; and
2. under paragraph 1(1)10 of O. Reg. 856/93 in that she gave information concerning the condition of a patient or any services rendered to a patient to a person other than the patient or his or her authorized representative.
3. under paragraph 1(1)33 of O. Reg. 856/93 in that she engaged in conduct or an act or 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. Silver admitted the third allegation in the Notice of Hearing, that she engaged in conduct or an act or 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. Counsel for the College withdrew the first and second allegations in the Notice of Hearing.

FACTS AND EVIDENCE

The hearing proceeded by way of an Agreed Statement of Facts which was filed as an exhibit and presented to the Committee as follows:

Background Regarding Dr. Silver's Practice

1. Dr. Esther Rachel Silver ("Dr. Silver") is trained as a paediatrician and was issued a certificate of registration in Ontario in 1993.
2. Dr. Silver was the Chief Resident in Psychiatry at [Clinic 1], as part of an elective residency year in the fourth and final year of her Pediatrics Residency Program, from July 1992 to July 1993. In 1993 and 1994, Dr. Silver did a one-year Fellowship in Child and Family Psychiatry, also at [Clinic 1].
3. Between 1994 and 2002, Dr. Silver also completed training as a psychoanalyst at [Institute 1].
4. Dr. Silver's current practice includes treating and consulting with children with Attention-deficit hyperactivity disorder and their parents, treating adults with Attention-deficit disorder, and providing supportive adult psychotherapy. Dr. Silver has ceased to practice psychoanalysis.

Treatment of Patient A

5. Dr. Silver began treating Patient A for depression in 1994. After several months of therapy, the treatment changed from psychotherapy to psychoanalysis.
6. Patient A remained in psychoanalysis with Dr. Silver for approximately ten years.
7. During the latter part of Patient A's psychoanalytic therapy, Dr. Silver engaged in unprofessional conduct in that she crossed over and violated boundaries in the physician-patient psychotherapeutic relationship.
8. The inappropriate and unprofessional conduct included:

- (a) Dr. Silver assisted Patient A in Patient A's business venture, including paying \$10,000 toward the purchase of a piece of equipment for Patient A's business and attending a course with Patient A related to Patient A's vocational retraining;
- (b) Dr. Silver encouraged Patient A to join a Parent Support Group, at a time when Dr. Silver was also a member of the same Parent Support Group, and attended support group meetings together;
- (c) Dr. Silver disclosed personal information during and outside of the psychotherapeutic relationship; and
- (d) Dr. Silver had contact with Patient A outside of the therapeutic relationship.

Admission

9. Dr. Silver admits that the conduct set out above is professional misconduct under paragraph 1(1)33 of Ontario Regulation 856/93 of the *Medicine Act, 1991*, in that she engaged in conduct or an act or 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.

FINDING

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts. Having regard to these facts, the Committee accepted Dr. Silver's admission and found that she committed an act of professional misconduct in that she engaged in conduct or an act or 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.

In making this finding, the Committee had particular regard for the intense and special nature of the therapeutic relationship which occurs in the context of psychoanalysis. The

boundary violations admitted to by Dr. Silver in her relationship with Patient A are of such a nature and degree as to constitute professional misconduct as alleged.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for the member made a joint submission as to an appropriate penalty and costs as follows:

1. Dr. Silver appear before the Committee to be reprimanded, with the fact of the reprimand recorded on the register.
2. Dr. Silver pay costs to the College in the amount of \$3,650.00 within thirty (30) days from the date of this Order.
3. The results of this proceeding to be included in the register.

In making its penalty order, the Committee considered the circumstances of the misconduct, both aggravating and mitigating factors, the relevant penalty principles, the case law submitted, and the joint disposition proposed by the parties.

In this matter where there was a ten-year history of psychoanalysis, the therapeutic relationship was of an emotionally intimate nature. The potentially harmful consequences of boundary crossings in such a context should have been clear. Indeed, Dr. Silver had no difficulty noting the violations once she was alerted to them. The boundary crossings included a gift of money, attending a vocational course with the complainant, referring the complainant to a parent support group of which Dr. Silver was a member, and attending the group meetings with the complainant. In addition, Dr. Silver admitted to disclosing her personal information to the complainant, and having contact outside the professional setting. The boundary violation consisted of multiple incidents, which occurred in differing circumstances. Such conduct with an emotionally vulnerable patient

disrupts the professional relationship, muddles the therapeutic goals and has the potential for significant harm. Clearly, this was unacceptable.

The Committee recognized a number of mitigating factors and gave weight to the following:

- (i) Dr. Silver cooperated with the College in this matter and had no prior discipline record. Dr. Silver has been forthcoming in admitting the essential elements of the allegation and thereby expediting the process.
- (ii) Dr. Silver acted in her patient's interest when she realized her boundary violations, by disclosing to Patient A, and advising Patient A of the need to get help from another therapist. There was no exploitation of Patient A (in particular, no sexual exploitation).
- (iii) Dr. Silver's actions subsequent to the events which constitute this matter demonstrated insight with respect to her inappropriate behaviour and recognition of her own poor judgment. This included a change of scope of practice with no psychoanalysis, the completion of the College's course on Understanding Boundary Issues, and the signing of an Undertaking with the College whereby she agreed to complete the College's course on Medical Ethics and Informed Consent and had practical limitations imposed on her practice.

The penalty principles of importance in this matter include protection of the public, specific and general deterrence, instilling confidence in the system of governance, and rehabilitation. The limitations on Dr. Silver's practice as reflected in her Undertaking and her scope of practice achieve protection of the public by ensuring that she practices

within her area of expertise. Specific and general deterrence is supported by the recording of the proceedings in the register. Her rehabilitation will be furthered by taking the College's courses on Understanding Boundary Issues and Medical Ethics and Informed Consent. Lastly, the reprimand allowed the Committee the opportunity to emphasize to Dr. Silver its view of her conduct.

The Committee considered the case law submitted, noting that all cases represented misconduct of a nature that significantly exceeded the misconduct in the matter at hand, and where there was exploitation of the patient either financially or sexually. The Committee did not consider these cases to be relevant to its decision in this matter. The Committee also had regard for the direction of the court, that a joint submission should not be disturbed unless in the Committee's opinion the administration of justice would be brought into disrepute.

With respect to costs, the Committee considered that this was an appropriate case for costs, to compensate the College for a single-day hearing.

Taking all of the above into consideration, the Committee accepted the proposed penalty as representing an appropriate censure in this matter.

ORDER

Therefore, the Committee ordered and directed that:

1. Dr. Silver appear before the Committee to be reprimanded, with the fact of the reprimand recorded on the register.

2. Dr. Silver pay costs to the College in the amount of \$3,650.00 within thirty (30) days from the date of this Order.
3. The results of this proceeding to be included in the register.

At the conclusion of the hearing, Dr. Silver waived her right to an appeal under subsection 70(1) of the Code and the Committee administered the public reprimand.