

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Anthony Theodore Deluco, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of the complainants or any information that could disclose the identity of the complainants under subsection 47(1) of the *Health Professions Procedural Code* (the Code), which is Schedule 2 to the *Regulated Health Professions Act, 1991*.

The Committee also made an order to prohibit the publication regarding the identity or any information that would disclose the identity of the witness identified as “C” in the Notice of Hearing and any other patients whose identity is disclosed in testimony or exhibits regarding the alleged misconduct of a sexual nature under ss.45(3) of the Code.

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

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

**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(1) 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. ANTHONY THEODORE DELUCO

PANEL MEMBERS:

DR. J. WATTS (CHAIR)
J. DHAWAN
DR. C.J. CLAPPERTON
J. ASHMAN
DR. M. GABEL

Hearing Dates: March 1-4, 2005
May 9-12, 2005
Decision/ Release Date: August 2, 2005

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on March 1, 2, 3, and 4, 2004. The matter was then adjourned sine die and resumed on May 9, 10, 11 and 12, 2005. At the conclusion of the hearing, the Committee reserved its decision.

PUBLICATION BAN

On March 1, 2004, the Committee ordered that no person shall publish the identity of the complainants or any information that could disclose the identity of the complainants under section 47(1) of the Health Professions Procedural Code (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, as amended (the “RHPA”).

On March 1, 2004, the Committee ordered a further publication ban under section 45(3) of the Code regarding the identity or any information that would disclose the identity of the witness identified as “C” in the Notice of Hearing and any other patients whose identity is disclosed in testimony or exhibits regarding the alleged misconduct of a sexual nature. Reasons for this order were provided in writing.

ALLEGATIONS

The Notice of Hearing alleged that Dr. Deluco committed an act of professional misconduct:

1. under paragraphs 27.29 of O. Reg. 448 and 29.30 of O. Reg. 548, made under the *Health Disciplines Act*, and under clause 51(1)(b.1) of the Code, in that he engaged in sexual impropriety with, and sexually abused patients; and
2. under paragraphs 27.32 of O. Reg. 448 and 29.33 of O. Reg. 548, made under the *Health Disciplines Act*, and under clause 1(1)33 of O. Reg. 856/93, in that he engaged in acts relevant to the practice of medicine that having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

RESPONSE TO THE ALLEGATIONS

Dr. Deluco denied the allegations set out in the Notice of Hearing.

EVIDENCE

(a) Overview of the Issues

The allegations of sexual abuse, sexual impropriety and disgraceful, dishonourable or unprofessional conduct in this case arise from alleged conduct by Dr. Deluco in relation to four patients patient B, patient A, patient E, and patient D.

At the time of final argument, College counsel provided to the Committee a summary of the findings that he was asking the Committee to make based on the evidence at the hearing. The allegation of sexual impropriety, which deals with sexual misconduct allegations prior to December 31, 1993, was not pursued, and accordingly that allegation is dismissed. Counsel for the College submitted that the allegations of sexual abuse was established in relation to patient B, patient A, and patient E and that the allegation of disgraceful, dishonourable or unprofessional conduct was established in relation to patient A, patient E, patient D, and patient B (unprofessional).

The Committee considered the following primary issues:

1. In relation to patient B:
 - (i) Did the alleged incidents of sexual intercourse in her home and in his medical office occur?
 - (ii) Did Dr. Deluco engage in acts of sexual abuse during sexual activity between this patient and her friend by touching, behaviour or remarks of a sexual nature towards the patient, or was he an unwilling observer of that activity?
 - (iii) Did the phone messages left by Dr. Deluco constitute sexual abuse and unprofessional conduct?

2. In relation to patient A:
 - (i) Did Dr. Deluco hug and kiss her in his office, as well as touch her buttocks in a context other than a medical examination, and did he give her a pornographic videotape?
 - (ii) Did Dr. Deluco's behaviour constitute sexual abuse?
 - (iii) Did Dr. Deluco engage in conduct that was disgraceful, dishonourable or unprofessional?

3. In relation to patient E:
 - (i) Did Dr. Deluco make inappropriate comments concerning her breasts during an examination, cause her to penetrate her own vagina, and rub her thigh while asking her to promise not to get pregnant?
 - (ii) Did his verbal and physical behaviour in the office and emergency room constitute sexual abuse and was it disgraceful, dishonourable or unprofessional conduct?

4. In relation to patient D:
 - (i) Did his verbal and physical behaviour in the office constitute disgraceful, dishonourable or unprofessional conduct, especially in relationship to actions concerning her WSIB claims?

The Committee considered the allegations of each complainant separately. The Committee was not requested to and did not rely on the application of similar fact evidence to reach its decision. The Committee considered:

- Is the testimony of each of the complainants credible? If not, the allegation regarding that complainant must be dismissed.
- Are the facts presented by each complainant in harmony with the preponderance of the probabilities, which a practical and informed person would readily recognize as reasonable in the place and under the conditions present when the

allegations took place? In other words, does the testimony “hang together” and make sense?

- Is Dr. Deluco’s testimony credible? If the panel believes the testimony of Dr. Deluco in respect to his denial of an allegation, then that allegation must be dismissed.
- Has the College persuaded the Committee, on the balance of probabilities, on the totality of the evidence, to the *Bernstein* standard of proof, that the events took place as alleged? A discipline hearing is not a credibility contest. Even if the member is disbelieved, this burden of proof must be met.
- The standard in *Bernstein* requires that proof of the allegations must be clear and convincing and based upon cogent evidence accepted by the Committee.

(b) Summary of the Evidence

The Committee heard the testimony of patient B, patient A, patient E, patient D and Detective Sergeant L on behalf of the College. The Committee heard the testimony of Dr. Deluco for the defence. Multiple exhibits were filed including the clinical records of each of the above patients, photographs of Dr. Deluco’s office, tapes of the messages left on the phone of patient B, maps of Sault Ste Marie, and an agreed statement of facts which included the notice of hearing and the decision and reasons of the Discipline Committee regarding allegations against Dr. Deluco heard by a different panel.

The hearing took place in two separated periods of time. The Committee had the benefit of the transcripts of the first part of the hearing and reviewed these transcripts in their entirety prior to the hearing resuming on May 9, 2005. They were reviewed individually as well as by the entire panel sitting together. No discussion or deliberations occurred among panel members during the interval between the two parts of the hearing.

Several witnesses described the layout of Dr. Deluco’s office. There was a joint waiting room shared with other physicians on the same floor of the office building. Dr. Deluco’s secretary occupied a desk outside of the door to his examination rooms. On that door was a posted notice required by the CPSO, following the referral by the Complaints Committee to the Discipline Committee. There were two examination rooms, almost

identical in size, décor and equipment. Each had an examination table and a chair. There was a private office space as well as an equipment room. The office is located in downtown Sault Ste Marie and various maps of the city allowed the panel to locate it in relationship to the hospitals, YMCA, the home of patient B, the contiguous home of her friend, Ms. C [identified as C in the Notice of Hearing], the home of Dr. Deluco, and the home of an additional patient of Dr. Deluco where a house call occurred.

The tapes of phone messages left for patient B by Dr. Deluco were transcribed and there was no disagreement as to their content. Dates of the messages were not presented, but were determined by the Committee based on the evidence presented.

(c) Testimony

Patient B

Patient B was a patient of Dr. Deluco over a period of time that spanned her multiple residences in Sault Ste Marie. Her first visit was in October 1980, and the last visit noted on Dr. Deluco's medical chart was in January 2001. The period during which the allegations took place was following her return to Sault Ste Marie in February 2000. During this period of residence, she saw Dr. Deluco as a patient from March 2000 to her last visit in January 2001. There are two additional notes in April 2001 in her chart concerning non-visit, non-medical issues.

Patient B had seen Dr. Deluco over the span of the doctor-patient relationship for a variety of complaints including Chlamydia infections, genital herpes, urinary tract infections, gynecological issues, depression, and back pain. There were various treatments for these illnesses.

She testified that she has four children, the youngest two accompanying her to Sault Ste Marie from another part of Ontario during this last period of residency. On her return to Sault Ste. Marie, she first resided in a woman's shelter, next in an apartment, and then in a townhouse. She had not remembered if and for how long she stayed at a friend's house (Ms. C, referred to on occasion in Dr. Deluco's testimony and records as "C"), located next door to her final residential townhouse, for some period of time between the shelter

where she stayed for 6 weeks and the apartment. She indicated that she might have stayed there for a short period. The exact period of time at each place was unknown, but was approximated by seasons and refreshed by notes in the chart. Her youngest son, G, under the age of 12 at the time of the alleged events, was also a patient of Dr. Deluco, with his main illness being asthma.

She testified that she had no complaints with Dr. Deluco during interactions prior to the period in question, except for sometimes being uncomfortable with him.

When she moved back to Sault Ste Marie for the last time, following the end of a relationship, she described herself as “a little bit emotional”, did not know what she was doing with her life, “always finding losers” in her relationships and always moving around. Along with her treatments for physical conditions, she also discussed her personal life and difficulties with Dr. Deluco. She testified that, “he told me that if I was ever horny he - like I call him, if it was just sex that I was looking for.” She stated, “I felt okay” with this. She knew he was married. She had Dr. Deluco's cell phone number which she said she received from him in order “to call him for sex.”

It was her testimony that during the late winter or early spring of 2000, she called him on his cell phone one evening and invited him over for that purpose after her son was asleep. She believed he was on call that evening. Over a 45 minute to one hour period, they had sexual intercourse. She testified that he brought her Victoria Secret lingerie, which included two under-wire bras and two underpants to go with it, as well as some chocolates. This was the only time she could remember this happening at her residence. She stated that she questioned him about his concern if she had an outbreak of her herpes, and he said, “if I had he would bite it off of me.” It should be noted that her chart shows no episodes of genital herpes on any of her office visits since her return to Sault Ste. Marie and prior to her hysterectomy.

Patient B described a second incident of sexual intercourse at his office. During direct and later cross-examination, it appeared the date of this office visit was in April 2000. Dating was arrived at by reference to her forthcoming hysterectomy, which was in late April 2000. She attended his office as she had a chest cold and wished to get treatment

prior to her hysterectomy. Her appointment time on that date was confirmed as 11:30 a.m. on the office sheet, although she remembered it as being around noon. She stated that the secretary put her in a room, and then left for lunch. It took Dr. Deluco a few minutes before he came to her room. She did not recall any other patients, but stated she really did not know if others were there. She stated he gave her a full body massage with a cream he had, then said, "I should fuck you right now" and this was followed by unprotected intercourse. She stated he pulled down his pants, his tie was over his shoulder and that he did not climax. She testified that there was a "crook" in Dr. Deluco's penis. She did not know if he was circumcised. She stated that "at one point during sex he reached over and he opened the door, and he pretended to call his secretary in."

Following her hysterectomy two days later, patient B continued to see Dr. Deluco. She did not feel anything was "really wrong except he was a married man." And "I think I felt that it would be okay because I wouldn't be up there with the losers, and it would just be an okay thing between him and I because I thought I could trust him."

Dr. DeLuco denied that these acts of intercourse occurred. He said many patients get his cell phone number, possibly she got it from a source available to her friend Ms. C, and that the events at the office were not possible due to other appointments at the time of her visit. The evidence of the day sheet will be discussed further in the analysis of the testimony.

Patient B testified that the next sexualized encounter occurred in the early spring. This was later dated by reference to Dr. Deluco's personal date book. There was no denial that the incident in its broad generalities occurred, but it was described differently by patient B and by Dr. Deluco.

Patient B's version was that, on a Sunday, she had called him on his cell phone to come examine her friend, Ms. C, for lower abdominal pain. She acknowledged that this was a ruse, as she wanted the sexualizing of their relationship to end, and she knew that Ms. C was interested in Dr. Deluco and she hoped they would have sex. She felt pressured to have "anal sex" with him, and testified that at one point when she asked him for some

money, he said, “Does that mean I get to, like, butt-fuck you now?” She did not want to do that but thought that Ms. C did not mind this. She stated she refused the \$300 that he offered her at that time. While the details of this encounter differ, there is a notation in January, 2001, in Dr. Deluco's chart “NB: she has now big money worries - I guess I can spare \$300.”

During the phone call mentioned above, he suggested she come to the office, but she told him that Ms. C could not get out of bed. He arrived one hour later. The only other person in Ms. C's townhouse was Ms. C's son. On arrival, patient B brought Dr. Deluco up to Ms. C's bedroom, where Ms. C was in a nightgown or a “teddy” and she introduced them. Patient B wanted to go downstairs but Dr. Deluco asked her to stay. He then examined Ms. C including an internal examination, utilizing gloves brought to him by patient B from those Ms. C had from her nursing home job. He then pointed out to her the various parts of Ms. C's anatomy, helped patient B undress and the two then, under his direction, kissed and sucked each others nipples. He wanted them to perform oral sex, but they did not. Dr. Deluco performed oral sex on Ms. C. She first testified that he performed oral sex on Ms. C and then on her, but later testified she could not be sure if he did the same with her.

In relation to this episode, patient B testified, “I feel bad I brought C into the situation. She's a single mother just trying to make ends meet herself. She didn't need—at the time I felt OK about it. I thought I was doing a good thing, but now I don't feel good about it at all. I shouldn't have brought her into it. It was my situation to deal with, not hers.”

Following this episode, there were a series of seven phone messages left by Dr. Deluco for patient B. Tapes of these saved messages were entered into evidence, and a transcript was provided to the panel.

The first six messages related to patient B and Dr. Deluco. Additionally, patient B testified that Dr. Deluco offered to take her and Ms. C to Toronto for a weekend. She did not go. Dr. Deluco testified such a trip was being arranged by him, but only for the purpose of dropping patient B off in another city for a neurological appointment while he continued to a hockey tournament in Toronto with two other physicians.

The Committee listened to the tapes. The following is the transcript of the contents. Pertinent comments by patient B are noted.

Message #1 (undated): “[Patient B] it’s too bad you didn’t answer the phone cause I’d be there right now silly girl I guess I’ll talk to you tomorrow. Goodbye”

Patient B testified that she only remembered him using “silly girl” once, but “it was always the tone. I felt like he was my father, like he was superior to me, and I felt like, you know, if I didn’t give him sex, then I was like being naughty or I wasn’t pleasing him.”

Message #2: “Ah like [patient B] call me right now. I’m sitting here waiting for the two of you. See you soon. Bye”. (Dr. Deluco stated this occurred while he was in the cigar bar of the Holiday Inn.)

Patient B testified she understood this to refer to her and Ms. C .

Message #3: “Oh, Hi [patient B] just got in. You want company or not give me a call within the next ten minutes maybe fifteen cause I’m just leaving the airport. I’ll be passing by your house at that time. If you would like to see me like I would like to see you it would be nice to hear from you. Maybe I’ll talk to you later and then again maybe I won’t. Bye bye.”

Patient B testified of her interpretation of this message “In my mental state, I understood sex.”

Message #4: “Well good morning sleeping beauty. Thought I’d give you a call and try to get in touch with you. Missed you last night seem to been missing you all the time. Anyway, I just want you to know I was thinking about you and hope you have a good day. I’m going to [town] today. Ah maybe you can give me a call later this evening on my cell as it is going to be free or maybe you can call me tomorrow morning at the office who knows. What ever suits you. Love to talk to you. Have a good day. Bye.”

Message #5: “[patient B] it’s Tony just back from a [town]. If you would like

give me a call sometime around ah 7:30 and I'll come and pick you up. I'll take you for coffee and then I'd just love to take you over to the office for some private time with you and do whatever comes to mind and make you feel wonderful and talk to you and find out what the hell has been going on. At any rate, I hope you find that a somewhat intriguing suggestion. If you don't, give me a call tomorrow anyway. Talk to you then. Bye."

Patient B testified that her understanding of this message was to "go back to the office and have sex with him." She also placed this as well as other calls as subsequent to the alleged incident of sexual intercourse at the office.

Message #6: "Ah [patient B], it's Tony I just back from being away for a week ah give me a call today, this morning, as soon as possible on my cell phone I need to talk with you. I've got to make reservations for Toronto and I need to know whether you are coming, [Ms. C] is coming, the both of you are coming or none at all. So please give me a call asap. Thanks bye."

Patient B testified that this message referred to "a trip to Toronto that he wanted to bring us on."

The last message followed an incident reported in Dr. Deluco's chart and about which he testified that a man by the name of Mr. H approached him requesting narcotics in exchange for information relating to patient B and Ms. C. In the message, he expressed disappointment and a wish for an explanation. Patient B testified that she did not know of a Mr. H, but that she understood Dr. Deluco was angry at her for telling "somebody about what happened between us." She was either in the hospital or recently discharged at the time of receiving this message. She testified that she did tell another patient at the hospital, but was asked by the nurses to stop telling her in "case he had other patients there." "So I stopped talking about it."

Patient B then reported the above to a "Dr. [I]" a Mental Health worker whom she had been seeing. This person came to her house, and brought her to the police station. Patient B believed that it was this person who reported the incidents to the CPSO,

although it was not clear if it was physicians at the hospital where she was also an inpatient during this period. A notation is present in Dr. Deluco's chart dated in April 2001 "call from police! Re: stay away from [patient B]!" Patient B confirmed the content of this note stating she had asked the police to tell him to stop making the calls.

Patient B finished her direct testimony by saying "I'd just like to say that I don't know what's right or wrong in this situation, I'm ashamed of what I've done. I'm not here to hurt him, I'm just here to tell what happened. I know I've done wrong in the past, myself, you know, shoplifting, and not being able to provide properly for my kids, but I've always righted my wrongs in life, always." The panel notes that the referred to shoplifting was presented in testimony as having occurred in 1989, and that she did not disagree that she was fined \$200.

The Committee found patient B's testimony to be credible, in both the way it was given, and her demeanor. Some of her comments such as, "I don't know who is right or wrong", "I'm ashamed", "I haven't always been able to provide for the kids", "I am not here to hurt him", and "I just want to say what happened" were given in an eloquent and honest fashion. She was very straightforward in her testimony but not always consistent - her version sometimes changed. We note she testified that he had oral sex with her and Ms. C at Ms. C's home, but later stated that she was not sure if he had oral sex with her at that time. There was an obvious memory lapse, but the Committee concluded there was no sense of invention or attempt to mislead. She did not attempt to embellish or dramatize the incidents. She had obvious difficulty with dates, and could best relate to specific incidents. She did not attempt to cosmetize her background or her troubles. Her testimony concerning the events around the alleged office sexual encounter preceded any knowledge of the appointment sheets documenting times of her visits and, therefore, could be seen not to be tailored in advance to match details noted. Her basic approach was an acquiescence to authority when questions were raised that questioned her accuracy about dates. She was always willing to agree that others might know better than her. She was malleable and tried to be "helpful" in her testimony and was easily swayed by deference toward authority in her answers, suggesting a vulnerability that is consistent with her story. She offered no complaints about Dr. Deluco's medical care prior to the events described

above. We heard no testimony that would lead to a conclusion that there were ulterior motives for her testimony. However, we do understand that there is no obligation on Dr. Deluco to establish an ulterior motive, and the onus is on the College to prove the allegations.

Patient A

The complainant was a patient of Dr. Deluco since 1977. Her last visit to the office was in June 2000, but there was a “no show” listed in the chart in May 2002. She saw Dr. Deluco for a variety of physical complaints, as well as anxiety and marital difficulties. She had long-term marital difficulties, which were often discussed with Dr. Deluco. She stated that she always respected Dr. Deluco, and would trust him “with my life.”

Patient A testified that, at one visit, during a regular examination, Dr. Deluco grabbed her nipple. She found the examination different from any other breast examination she had ever had. She said nothing about it at the time.

When asked about a notation in Dr. Deluco’s chart, “Here to discuss her husband (Again!)”, she agreed that this was an often discussed topic. She testified that, at the end of one visit when she discussed such personal problems, Dr. Deluco hugged her. She felt uncomfortable, but said nothing at the time. This was the first time he had ever hugged her. At a subsequent office visit, she stated that she told him, “That hug that you gave me there, whatever happened, it just felt -- I didn’t feel that it was right. I didn’t feel very good about it.” She stated that he then kissed her on the lips and hugged her again as a response to this statement. She didn’t know what to say then. “Like, I don’t think - I just didn’t know how to feel then.”

Patient A described a subsequent incident where she was standing at the secretary’s desk to make an appointment and Dr. Deluco, carrying a chart in one hand, passed behind her and “grabbed her bum”. She said nothing about this at the time. She stated she did mention the incidents to her daughter.

Patient A testified that they had a history of exchanging books. At one visit, she brought him a book and he gave her a videotape. On viewing the videotape, she stated that it

started with cartoon pornography and then continued into live pornography. She then brought the tape to a male social worker, who viewed it, and took her to the police. This officer took her and the tape to a detective in Sault Ste Marie. The latter reported this to the CPSO. There was difficulty in dating the tape, how long she kept it before viewing it, how long thereafter before she brought it to the attention of the authorities, and where it was kept in her home prior to her consulting others about it. As well, testimony by the Sault Ste Marie detective did not confirm the exact nature of the pornography on the tape, nor identifying characteristics. Because no further action was to be taken by the police, the police destroyed the tape. Patient A did not follow-up concerning charges and was reluctant to proceed further on this issue. She was later contacted by the CPSO concerning this issue.

The Committee considered patient A to be a reliable witness. We note that the procrastination noted in reporting events was based on her feeling “who's going to believe me? I'm a native person, I'm a woman...” She gave her testimony in a forthright way, and was consistent in her sparse description of her allegations. Her sense or remembrance of time regarding each incident was imprecise and, throughout her testimony, factual incidents were related more to other events than to specific calendar or clock time.

Patient E

Patient E testified that she first saw Dr. Deluco in 1976 as a young child. She had a tumultuous childhood with multiple episodes of sexual abuse. She testified that, at one visit, Dr. Deluco commented on the size of her breasts. In June 1994, she presented with a variety of symptoms. History and physical examination revealed a possible lower abdominal mass. She states that Dr. Deluco took her hand and put her fingers in her vagina in order for her to feel it. A later ultrasound showed no mass present. She also stated that, at a later visit, he told her she should not get pregnant until she was 35 and, while telling her this, patted her thigh and his finger was near her vagina while doing so. Additional allegations concerned an hospital emergency room visit with vaginal bleeding. She felt that he had examined her roughly and failed to identify that she had not

miscarried. He told her to show up at his office for birth control pills. She testified she was uncomfortable with Dr. Deluco and, as well, was uncomfortable with most men, based on her history and her present diagnosis of post-traumatic stress disorder (PTSD) and anxiety. The Committee felt that, while she was sincere and wished to be helpful, there were gaps in her testimony and when compared with Dr Deluco's recollections, and the hospital chart, her evidence did not reach a level of required credibility or reliability.

Patient D

Patient D was a long-term patient of Dr. Deluco, seeing him from 1976 to 2001. Her major work related injury difficulties began following the death of her husband in 1996. There were multiple WSIB claims, and she was cut off from WSIB benefits following a long complicated set of assessments, reports and appeals. During her testimony, it became apparent she blamed Dr. Deluco for the rejection of her last claim.

Patient D testified that, during an examination, he pushed her breast up, suggested she get plastic surgery for her breasts and abdomen, and he would be able to employ her as a high priced call girl thereafter. She stated that he said she would get no WSIB compensation unless she agreed.

During examination into the details of these allegations, she was obstinate in not providing details, insisting what she said was all that was necessary to say.

Patient D's testimony was contradictory and did not carry the ring of truth. There was sufficient documentation in the chart concerning the WSIB claims to cast serious doubt on her testimony about that matter and her other allegations.

Dr. Anthony Deluco

Dr. Deluco is a 57-year-old solo family physician, with hospital privileges, practicing since 1974 in Sault Ste Marie. In testifying in his own defense, he reviewed the allegations of the four complainants. Their charts were available, as well as his personal day timer, and a map of Sault Ste Marie.

In relationship to patient B, Dr. Deluco denied that either of the two episodes of sexual intercourse occurred. He explained that many patients get his cell phone number and that patient B could have gotten it from her friend Ms. C who worked at a nursing home. He never told her not to use this number. He denied bringing her Victoria Secret lingerie explaining that there is no Victoria Secret store in Canada.

Dr. Deluco's office appointment sheet was introduced as evidence for the day agreed upon that the alleged event of intercourse could have taken place. He states that he sees two patients per 15-minute period, in two examination rooms, and attempts are always made to stay on schedule. His secretary leaves for lunch at 12 or 12:15 and does not return until 1 p.m. At 11 a.m. on the day in question (April 25, 2000), he had an 11 a.m. appointment for a physical with a patient leaving Sault Ste Marie and another listed appointment. He had no bookings for 11:15. He had a booking for patient B and an asthmatic patient at 11:30. At 11:45, he had a single booking for a drug representative. He previously testified he only saw drug representatives in his private office during lunch and never at the times when patients were scheduled. He testified that he also had to make a house call on an older sick patient during the lunch hour. Testimony using maps of the area showed that the distance was less than five minutes away from the office on foot. He testified that he saw this patient and called for an ambulance to take him to hospital and, according to the hospital record, this patient was not admitted until 3:30 that afternoon. There was no evidence that patient B arrived earlier than was noted on the appointment sheet. He did not testify that he was behind that day. Dr. Deluco testified that the unprotected sex described by patient B with someone who had a history of herpes would not be logical. The chart showed no episodes on previous visits of herpetic lesions in the period of this return to Sault Ste Marie and an outbreak noted in the period following the alleged episode. Dr. Deluco testified that herpes was transmissible even with no apparent lesions or an outbreak of symptoms.

Dr. Deluco did not deny the sexual episode that occurred at Ms. C's house, but denied his active involvement as alleged. His description was that he received a call on a Sunday on his cell from patient B requesting an aerochamber for her son. As he was on his way to the YMCA, he thought he would drop it off at her house. He states there was a second

call directing him to Ms. C's townhouse instead, which was easy for him to find as it was next to patient B's townhouse. He states that he was familiar with her street as he would pass by it on his way to the Y, but had never been there before. He took his medical bag with him from the vehicle to the door and, on being admitted by patient B, noted there were "millions" of kids around. Patient B suggested, after he removed his coat and boots, that he stay for coffee and, as he had the time, he accepted and proceeded upstairs to Ms. C's room. He described this room as her "bedsitting room". He described the room as having a bed, barely enough room for two dressers, night table and large fish tank. There was room for one chair at the foot of the bed, which is where he sat. Questions were raised concerning his calling this a "bedsitting" room, considering the nature of the town house, furniture, and use of a term not generally in use in North America. Dr. Deluco insisted on this word rather than bedroom. He described Ms. C as sitting in her bed in an appropriate nightgown with blanket covering her. He denies doing any examination on her. Patient B went down for coffee, returned with it, left again and returned in a housecoat having taken a shower. She proceeded to undress, joined Ms. C in bed and proceeded to perform sexual acts. He denied removing any of his clothing, or performing oral sex on either of them. Regarding the allegation that he touched the women, he stated, "From where I was sitting, I certainly did touch Ms. C. I touched her legs. I don't think I touched patient B but there were four legs and they were entangled. If pushed, I wouldn't say I didn't touch patient B's legs."

Dr. Deluco testified that he remained riveted by this scene until Ms. C asked him about her breast asymmetry and if plastic surgery would help. He stated that, at that time, he realized the situation he was in, and fled the room. He testified that the time, from when patient B was nude until he left, was ten minutes. He also testified that he was at the home for forty-five minutes to an hour in total. He testified that he then waited in the foyer at the foot of the stairs until both women came down. He then was able to give patient B the aerochamber she had requested and also discuss her appointment in Sudbury with a neurologist and find out if she was to take up his offer of a ride. He stated that he stayed because, as an emergency room doctor, he is able to work under pressure and deal with what was needed. He testified that the events as described had him in a state of fascination. He then left. He demonstrated what an aerochamber looked

like taking an adult one from his doctor's bag, which he described he used for house calls and to take to the ER as back up if they did not have the equipment he needed, and pointed out that he had given patient B the pediatric aerochamber and that, therefore, it was not in the bag at this time, (which is over three years later).

In relation to the recorded phone calls noted in patient B's testimony, he states he did not have sexual intercourse as a purpose in making them. He said that his purpose was to get her to call him so he could know if she wanted a ride to Sudbury for a medical appointment. The use of the term "make reservations" in Toronto was a mistake of words, as he was thinking about the reservations he needed to make for the hockey tournament he was going to with two other physicians at the same time as dropping her off in Sudbury.

The Committee requested clarification from Dr. Deluco as to his intent when he said (as recorded), "I'll take you for coffee and then I'd love to take you over to the office for some private time with you and do whatever comes to mind and make you feel wonderful". Dr. Deluco's answer was, "I also by the way didn't intend to take her to the office. What I was trying to do here, in this absolutely over the top comment, was what I'd been trying to do all along, which was get her attention because I was, (a), inordinately interested in the relationship between her and her friend Ms. C, and the experience that I witnessed. As I explained before, from the point of view of a sexual interest other than what I had seen, I had no interest in being sexually active with these two girls. I equate the whole issue with something like being in, for lack of a better term, Sin City. Amsterdam, Las Vegas. You're free to look -- in this case, I wasn't even free to look -- but that doesn't mean you're going to touch. It was simply an attempt to get her to give me a call, because I needed to, (a), know some things; but (b), I did also want to see her, and perhaps Ms. C. But not in the context of taking them to the office for a private time."

Dr. Deluco testified as to the economic condition of patient B. She told him she needed money, and when asked how much, said \$900. He knew he would not give her that much, so gave her \$300, a sum he had in cash in his pocket, not expecting to get it back.

He said anyone knowing the economic straits she was in would have done the same. He also stated it was not his policy to give money to patients. In his chart in January 2001, which preceded the town house incident, he notes that she was off work at his request, and “NB: She has now big money worries - I guess I can spare \$300.” He described it as having replied to her request for \$900, as having emptied his pocket and giving her what cash he had on him.

There was further testimony concerning his last recorded message concerning the visit by a male requesting drugs in exchange for information being spread about him. In the chart in April 2001 he states, “call [patient B] re her friends.”

Dr. Deluco also made notes in his chart in late April 2001 concerning a call from police “re stay away from [patient B].” And in June 2001, he made a note regarding a meeting at the hospital concerning the allegations, stating “this should be interesting.” However, when he was asked why no notation was made concerning the events at Ms. C’s townhouse, he replied it “wasn’t billed to OHIP”.

Concerning patient B’s testimony about a crook in his penis, Dr. Deluco testified that it was “straight as an arrow.” Later testimony concerned his visit to an urologist in Toronto during the first phase of this hearing, in which he first injected himself with “triple P” at his hotel room and then was examined. He agreed that this examination concluded that a full erection was not present but there was a dorsal curve as well as a deviation to a side. Dr. Deluco testified that this was because there was too long a space between the injection and the visit and there was not a full erection. This examination was repeated during the second phase of the hearing. Again, an erection was not achieved, which Dr. Deluco ascribed to having injected himself in his hotel room, he then went in the wrong direction, going west rather than east and arrived too late at the consulting urologist’s office. A further injection was done there and, apparently, a description of a dorsal curvature was noted. Dr. Deluco states that this is in keeping with his “straight as an arrow” description based on the perspective of the observer. He denied that this series of events indicated a sexual difficulty, which would explain his leaving the home of Ms. C without sexual consummation. As the urologist was not called to testify, nothing could

be ascertained of his clinical opinion of this matter beyond what Dr. Deluco agreed to in his testimony.

In testimony concerning patient A, Dr. Deluco denied that any of the reported events had happened. He did not pull on her nipple during a breast examination, did not hug her or later kiss her and hug her, nor touch her buttocks at the secretary's station. He did discuss that he exchanged books with her, giving her a book and receiving books from her. He denied that a videotape was ever given to her and nothing with his initials on it. He described her as a long-term patient whose confidence he had, that he was the only person she could talk with about her problems. He noted that chart entries such as, "here to talk about her hubby and his private affairs-nice try!" were an obvious reaction to her wanting to know more about her husband's interaction with him. He stated he was hurt and surprised to find out that she had made this complaint. Her last visit to the office was in June 2000. He testified that she called the office for medication refill after the complaint was filed and this was refused and he, therefore, sent her a letter dismissing her from his practice. No notation is made in the chart concerning prescription renewals or the practice dismissal letter. A letter dated 09/10/02 was entered as Exhibit 22. In this hand written letter, Dr. Deluco states "as you are aware from my previous letter" of which there is no record in the chart. The letter also states that it is "handwritten and sent without a return address to prevent any undue curiosity on J's part, or that of my office staff."

In reference to patient E, Dr. Deluco denied that he commented on the size of her breasts, caused her to put her fingers in her vagina during her pelvic examination, or rubbed her thigh near her genitalia while asking her to promise not to get pregnant. He stated that he probably asked her to feel the mass through the external abdominal wall while he did the vaginal examination, since that was his common practice. He also denied any failure to properly care for her during a threatened miscarriage at the hospital. He did testify that he was probably very emphatic with her and might well have used hyperbole in attempting to convince her not to get pregnant.

In reference to patient D, Dr. Deluco testified about the work he did with her following

the death of her husband, and her multiple injuries and WSIB claims. He described the chart intakes where he felt her symptoms, supported by charting, were fictitious, and what he did to be supportive, yet not falsify the information. He stated that any decisions to deny her benefits were WSIB's not his, and he provided the best information tests and referrals possible in this complex situation. He denied any conversation in which he offered her positive results in her claims in return for her having plastic surgery and entering the sex trade.

In analyzing the overall credibility of Dr. Deluco, the panel took into consideration the charts and his testimony concerning entries and events not entered, his general demeanor, his tonality on the taped exhibit, his explanations of the evidence especially concerning the visit and sexual events at the home of Ms. C, and the explanations he offered concerning the content of the taped phone messages. The panel found that Dr. Deluco was not a credible witness and we explore that conclusion further in the analysis of the evidence to follow.

FINDINGS

The Committee considered the following factors in reviewing the testimony and arriving at its decision. In considering the evidence, the Committee was aware that the burden of proof rests with the College. Following *Bernstein*, this proof must be convincing and based upon clear and cogent evidence accepted by the Committee. The seriousness of the allegations is an element to be considered in weighing the evidence. In those instances where the events took place between the complainants and the doctor in private, the Committee felt that it must be convinced of the credibility of the complainant, and the plausibility and consistency of the evidence supporting the allegations. The Committee took note of any corroborating evidence, or lack thereof, if particular evidentiary sources were mentioned, but not brought forward. The Committee understood that corroborating evidence was helpful, but not essential. The Committee recognized that Dr. Deluco did not have to prove or disprove anything.

Issues 1, 2 and 3 - Allegations of sexual abuse and disgraceful, dishonourable or unprofessional behaviour regarding patient B, patient A and patient E.

Patient B

As noted, the Committee found her testimony to be credible for the reasons stated. We examined it from the point of view as to its harmony with the preponderance of the probabilities, which a practical and informed person would readily recognize as reasonable in the place and under the conditions present when the allegations took place. In other words, the Committee examined if her testimony “hung together” and made sense. The Committee concluded that her description of events met these criteria. Her story carried the ring of truth and she did not attempt to embroider or make excuses for her past, her perceived failings, or her role in the events. Neither direct nor cross-examination impugned her story to any meaningful degree. Because of this, the testimony of Dr. Deluco bears close examination to see if there were alternative credible explanations that would bring the proof below the bar set by *Bernstein*.

The panel carefully considered the evidence about the events that transpired at Ms. C’s home, and the telephone calls that followed. The issues of the alleged episodes of intercourse at her home and at the office are examined in light of the events that followed at the home and over the phone. The Committee concluded that the overall pattern of events, communications and credible or uncredible testimony was relevant to the determination of the probabilities of the previous events having occurred.

As to the sexual events at the home of Ms. C, Dr. Deluco admitted to being there and that sexual acts took place. At minimum, he agreed that his patient was naked, he observed her sexually interacting with Ms. C, he did not leave, he touched Ms. C’s legs and did not deny that he touched patient B’s legs as well. This much is not in issue. Patient B is straightforward that she used subterfuge to get Dr. Deluco there, and it was for the purpose of getting him to transfer his sexual needs to Ms. C and, therefore, leave her alone. She admits this was not the way she ought to have handled it. That Dr. Deluco was coming to examine Ms. C was supported by his coming on a Sunday, bringing into her home his doctor bag and going up to her bedroom. We found that Dr. Deluco’s explanation that he was dropping off his only pediatric aerochamber on Sunday morning,

carrying it in his bag to the home, accepting a coffee invitation and going up to the bedroom (“bed sitting room”) for same and not reacting on finding Ms. C in night clothes, to be incredible, and to lack the ring of truth. His description of the bedroom as a bed sitting room appeared to be intended to influence the Committee to conclude this was an innocuous and commonplace event. In addition, Dr. Deluco brought his bag to the hearing and demonstrated that he no longer had a pediatric aerochamber in it. If it was part of what he always carried to house calls and emergency rooms, it begs credulity that more than three years later, it had not been replaced, if he had given it to patient B. The Committee did not believe Dr. Deluco’s testimony.

Dr. Deluco states that when he did become aware of the seriousness of the events, he left the room but not the house. Incredibly, he stated that he still wanted to conclude the business of passing on the aerochamber and to discuss the ride to another city. He explains this as his ER training coming to the fore even in highly charged situations. If the events had transpired as Dr. Deluco testified, surely this training might have been expected to surface when the sexualized encounter began to happen. We cannot believe he became cool and decisive after, but not earlier, if the training to do so was as ingrained as described. He denied that he would have had oral sex or intercourse with patient B because of her history of STD’s. He testified that she had multiple syphilis screens. The last one noted in the chart was in January 2001, and this along with previous VDRL testing noted in the chart, were negative. We noted here that her chart has a notation that she was off work under his orders, which would imply that she was working during the times in question and, therefore, was more able than he testified. The Committee concluded that here and in other areas where he testified that she was penniless and unable to function, Dr. Deluco was trying to raise doubt about her and to demean her. His explanation that he was fascinated by what he was seeing and, therefore, stayed without participating in the sexual activity was not believed by the Committee and does not fit the persona of the in-control and competent physician that he portrayed as to his office practice and his behaviour afterwards.

The Committee was convinced by the content and the tonality of the recorded messages

that Dr. Deluco was attempting to continue behaviour that had occurred before, and that he did indeed wish to bring patient B to his office for sex and that, at another time, he called to get both women to the hotel that he was calling from. We also concluded that he was attempting to set up a trip to Toronto, with patient B and/or Ms. C, for non-medical purposes. We do not accept that he was attempting to be helpful in giving her or both of them a lift to Sudbury for her neurological consultation. There is no mention of Sudbury noted in any of the calls. To wish to help a patient get to a consultation is admirable, but the normal course of events for any physician would be that this would be handled by a secretary, or at the least with one phone call from the office. To be importuning her, to call her intimate names, to invite her to his office “for some private time” and “to do whatever comes to mind and to make you feel wonderful”, to ask if either or both women were coming as he had to make reservations, and then to testify as he did as to the rationale and meaning of the calls, added to Dr. Deluco’s lack of credibility. The Committee found his answer to the panel Chair’s query of the meaning of the office invitation to be no explanation at all, and untruthful.

The Committee examined the incident of the request or offer of money and Dr. Deluco’s explanation and charting of the event. Dr. Deluco had previously testified that he did not give money to patients, and this would be as expected. Yet, if we were to accept that patient B did request it of him to the sum of \$900, his having no difficulty giving her \$300 out of his pocket is in opposition to his practice and stands out as being for another purpose. We find that her testimony that he offered her money to get lingerie to be a more credible explanation. Dr. Deluco’s testimony that anybody would have given her the money was an ingenuous attempt to paint himself as a naive but charitable man. Yet the notations in his chart, his knowledge of boundaries, his statement that he did not do this kind of thing, the amount he stated as given, lent additional credence to her story and again brought Dr. Deluco’s credibility into question.

The Committee considered Dr. Deluco’s evidence as to the alleged sexual events at the office and found them to be unbelievable. Dr. Deluco’s explanations as to how the surrounding appointments would preclude the event taking place were facile, and did not

fit the facts noted in the appointment sheets. There is no evidence that patient B arrived early for her appointments and, therefore, would not have been there for lunchtime. Although he testified that he often saw as many as three drug representatives in the lunch hour and never at a time reserved for patient visits, on this occasion, one such identified name was in the appointment book and that was at 11:45. We see his explanation as an attempt to fill up the lunch hour in a way not supported by the day sheet. The house call, as well, fits into a short time frame. He was only minutes away from the home and did not stay there, having quickly concluded hospitalization was required. That hospitalization did not happen until late in the afternoon would indicate that this was a routine, non emergency, and a rapid visit that would not have taken his lunch break to accomplish. Dr. Deluco testified that he works a tight and controlled schedule, yet, for this day, he states he spent forty-five minutes with a patient who was leaving town, continuing the attempt to show how the available time would have been filled. Patient B's testimony that he opened the door during the sex act and made believe he was calling his secretary, is a detail that was unnecessary for her to produce and fits the pattern of the secretary not being present during lunch. To testify as to this detail prior to knowing the testimony concerning the day sheet and the habits of the secretary lent additional credence to her testimony. The Committee also noted that, prior to this event date, there was no charting of any STD's after her return to Sault Ste Marie. All STD charting occurs after this agreed date, and after her subsequent hysterectomy.

The Committee believed patient B's testimony as to these events and on all of the evidence concluded that the events described by patient B did in fact occur and are proved to the requisite level. Patient B testified that she called him on his cell phone to come to her home for a sexual liaison. Dr. Deluco testified that people could get his cell phone number. At no time did he testify that he told her not to use the cell number, something the Committee would expect. Her description fits in with the remainder of her testimony and rings true.

The Committee concluded that Dr. Deluco sexually abused patient B by having intercourse with her at her home and in his office. The Committee further concluded that

he committed acts of sexual abuse, verbally and by touching and behaviour of a sexual nature at Ms. C's home. Furthermore, the invitations to further sexual activity in the telephone messages constituted sexual abuse, as remarks of a sexual nature towards patient B. As well, these actions were unprofessional.

The Committee adds that the results of Dr. Deluco's prior hearing concerning his breach of a College order not to examine female patients without the presence of a monitor, and the admission of this breach was filed in evidence. While this might be said to speak to Dr. Deluco's standards of behaviour, we did not consider this in our analysis and the Committee would have arrived at the same decision had we not known of this behaviour.

In summary, the Committee finds the allegations of sexual abuse including intercourse, sexual touching, and verbal sexual abuse to be proved. The Committee also finds the allegation of unprofessional conduct to be proved, and a finding of professional misconduct is made.

Patient A

Patient A's allegations carry the ring of truth about them. She had nothing to gain, her story was told in a reasonable and clear manner, and we find that her description, in her overall testimony, of Dr. Deluco's hugs to be true. The first hug causes the Committee no problem. That a hug might well be exchanged after an emotional visit with a long-term patient would not necessarily be a boundary violation. However, the reaction she described of Dr. Deluco responding to her statement of discomfort about the hug at a subsequent appointment, by kissing her on the lips and hugging her again, was a pattern of assertion of control that constitutes a boundary violation and sexual abuse. The Committee further accepted her testimony of being patted on the buttocks.

As to the alleged episode of nipple squeezing, we must balance Dr. Deluco's description of his usual method of breast examination and the possibility of misinterpretation of an examination, and on the balance of probabilities, do not accept that this allegation was proved.

While the panel is convinced that, in the weighing of patient A's and Dr. Deluco's testimony concerning the videotape, that she did receive a tape from him, the Committee does not accept that the proof of the tape's pornographic nature was established, because of the loss of continuity of possession of the tape, its availability to others during the time between when it was given and when given to the police, and the conflict as to its content.

In conclusion, the Committee finds that the College proved the allegation of professional misconduct for sexual abuse consisting of an unwanted hug and kiss, and the touching of her buttocks, and we find that this behaviour was disgraceful, dishonourable and unprofessional.

Patient E

Patient E's testimony was poorly remembered, and we believe coloured by her unfortunate history of sexual abuse and her subsequent distrust of men. The Committee believes that she misinterpreted the meaning of the conversations with Dr. Deluco in the office and the emergency room and we cannot, based on the hospital record and Dr. Deluco's testimony, fault the clinical handling by Dr. Deluco of her case. The Committee finds improbable her description of the alleged events during her pelvic examination. While Dr. Deluco's form of communication, with large amounts of hyperbole, were not well understood by her, the Committee does not find that an act of sexual abuse took place. Therefore, the Committee does not find the allegation of professional misconduct for sexual abuse and disgraceful, dishonourable or unprofessional conduct to be proved in relation to patient E.

Issue 4 - Patient D: Did Dr. Deluco's verbal and physical behaviour in the office constitute disgraceful, dishonourable or unprofessional conduct, especially in relationship to actions concerning her WSIB claims?

The Committee found that patient D's testimony was self serving and motivated by her

unhappiness concerning the outcome of her WSIB claims, and the possibility that a finding here would aid her future case to get the decisions reversed. The Committee did not accept her evidence as to the events described. As well, the Committee found that Dr. Deluco performed his role in a professional and caring fashion and, although there were inconsistencies in some of the reports to the various institutions, these were well within the realm of the standard expected of a physician and appear to have been directed toward helping the patient to the best degree possible.

The allegation of professional misconduct in relation to patient D is not proved.

SUMMARY

The Committee finds Dr. Deluco committed acts of professional misconduct in that he sexually abused patient B and patient A, and that he engaged in acts relevant to the practice of medicine that having regard to all the circumstances, in relation to them, that would reasonably be regarded by members as disgraceful, dishonourable or unprofessional. The Committee does not find that Dr. Deluco committed acts of professional misconduct in relation to patient E and patient D.

The Committee directs the Hearing Office to arrange a date for a penalty hearing in respect to the findings made.

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Anthony Theodore Deluco, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of the complainants or any information that could disclose the identity of the complainants under subsection 47(1) of the *Health Professions Procedural Code* (the Code), which is Schedule 2 to the *Regulated Health Professions Act, 1991*.

The Committee also made an order to prohibit the publication regarding the identity or any information that would disclose the identity of the witness identified as “C” in the Notice of Hearing and any other patients whose identity is disclosed in testimony or exhibits regarding the alleged misconduct of a sexual nature under ss.45(3) of the Code.

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

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

Indexed as

Deluco (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(1) 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. ANTHONY THEODORE DELUCO

PANEL MEMBERS:

DR. J. WATTS (CHAIR)
J. DHAWAN
DR. C.J. CLAPPERTON
J. ASHMAN
DR. M. GABEL

Hearing Date: September 7, 2005
Decision/ Release Date: September 7, 2005

PUBLICATION BAN

PENALTY DECISION AND REASONS

On August 2, 2005, the Discipline Committee found that Dr. Deluco committed acts of professional misconduct in that he sexually abused Patient B and Patient A, and that he engaged in acts relevant to the practice of medicine that, having regard to all the circumstances, in relation to them, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

The Committee heard evidence and submissions on penalty on September 7, 2005, and on that date delivered its order as to penalty orally and in writing.

EVIDENCE AND SUBMISSIONS ON PENALTY

Counsel for the College submitted that the Discipline Committee should order by way of penalty for the finding made of professional misconduct:

- revocation of Dr. Deluco's certificate of registration as required by subsection 51(5)2. of the Code.
- reprimand of Dr. Deluco as required by subsection 51(5)1. of the Code.
- that Dr. Deluco reimburse the College up to \$20,000 for funding of therapy provided to Patient B and Patient A under section 85.7 of the Code.
- that Dr. Deluco post security acceptable to the College in the amount of \$20,000 to cover the costs of such therapy .
- that Dr. Deluco pay costs to the College in the amount of \$10,000.

Counsel for the College submitted and read into the record the victim impact statements of Patient B and Patient A.

Counsel for Dr. Deluco did not oppose the requested order for revocation and reprimand as required by the Code, or the amount requested for costs. He submitted that the start date of the revocation should be January 11, 2005, rather than commencing immediately

upon the Committee's decision. Also, he submitted that the security requested by the College for the funding for therapy be reduced to \$10,000.

DECISION AND REASONS FOR PENALTY

The Panel considered the submissions of counsel for the College and for Dr. Deluco. We also considered the written victim impact statements filed.

This Panel considered its decision on finding in this hearing as well as its reasons for that decision. The victim impact statements demonstrated that the complainants were clearly vulnerable and had entrusted their physical care and their personal problems to Dr. Deluco. They delineate how his betrayal of that trust was damaging to these two women. Behavior of this egregious nature is unacceptable to the profession and can bring the entire profession into disrepute. The Panel was of the opinion that the sexual nature of Dr. Deluco's behaviour, his disregard for their welfare and his misplaced sense of entitlement was shameful and reprehensible. Sexual misconduct involving intercourse calls for a mandatory revocation under the *Regulated Health Professions Act*. Were it not mandatory that the Panel order revocation and a reprimand, the Panel would, in any event, based on the evidence before the Panel, have ordered revocation and a reprimand in this case.

We considered the issue of the start date for the revocation. The normal process is for it to take effect immediately following the decision. We found no reason to depart from that practice. The serious nature of the transgression of the values of the profession and its social contract with the public argue for the penalty to begin immediately. We were not persuaded that this was a situation that any mitigating factors might cause an effective reduction in the length of the time before an application for reinstatement would be possible.

We considered the request for the reduction in the posting of security in an amount that would cover the maximum costs of possible therapy for the complainants. We believe that the profession as a whole should not have to bear any of the cost of therapy that these

two patients may require arising from Dr. Deluco's misconduct. The imposition of a requirement for security for the entire possible cost is a reasonable assurance that the burden will be upon Dr. Deluco alone.

The Committee noted that counsel agreed as to the amount of costs requested, which represented half of the costs that are usually ordered based on \$2,500 per day. The Committee accepted that the payment by Dr. Deluco of \$10,000 in costs was reasonable, as the findings in this hearing related to two of the four complainants.

ORDER

The Discipline Committee therefore ordered and directed that:

1. The Registrar revoke Dr. Deluco's certificate of registration, such revocation to take effect immediately.
2. Dr. Deluco is required to attend before the panel to be reprimanded.
3. Dr. Deluco is required to reimburse the College for funding provided for the patients under the program of therapy and/or counselling required under s.85.7 of the Code to a maximum of \$10,000 per patient.
4. Dr. Deluco is required to post security acceptable to the College, in the amount of \$20,000 to guarantee the payment of any amounts the member may be required to reimburse under the order made pursuant to ss.51(2)5.1 of the Code.
5. Dr. Deluco is required to pay part of the College's costs, fixed in the amount of \$10,000, to the College within 60 days of the date of this order.

Following the delivery of the penalty order, Dr. DeLuco waived his right of appeal, and the reprimand was delivered in open hearing.