

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Anastasio, this is notice that the Discipline Committee ordered there shall be a ban on the publication, including broadcasting, of the name of the patient at issue, Patient A, or any information that could identify Patient A under subsection 47(1) of the *Health Professions Procedural Code* (the Code), which is Schedule 2 to the *Regulated Health Professions Act, 1991*.

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. Anastasio, 2016 ONCPSD 47

**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. ROMULO FANIO ANASTASIO JR.

PANEL MEMBERS:

**DR. P. POLDRE (CHAIR)
MR. P. PIELSTICKER
DR. J. RAPIN
DR. E. ATTIA (PHD)
DR. R. SHEPPARD**

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

MS. A. BLOCK

COUNSEL FOR DR. ANASTASIO:

**MR. D. PORTER
MR. T. COURTIS**

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. R. COSMAN

Hearing Date: November 1, 2016

Decision Date: November 1, 2016

Release of Written Reasons: December 15, 2016

PUBLICATION BAN

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 November 1, 2016. At the conclusion of the hearing, the Committee released a written order stating its finding that Dr. Romulo Fanio Anastasio Jr. 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. Anastasio committed an act of professional misconduct:

1. under paragraph 1(1)33 of O. Reg. 856/93, in that he 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;
2. under paragraph 1(1)1 O Red.856/93 in that he has contravened a term, condition, or limitation on a member’s certificate of registration; and
3. 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 he engaged in the sexual abuse of a patient.

RESPONSE TO THE ALLEGATIONS

Dr. Anastasio entered a plea of no contest to the allegations in the Notice of Hearing, that he 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; that he contravened a term, condition, or limitation on a member’s certificate of registration; and that he engaged in the sexual abuse of a patient.

THE FACTS

The following facts were set out in a Statement of Facts and Plea of No Contest which was filed as an exhibit and presented to the Committee:

PART I: FACTS

1. Dr. Romulo Fanio Anastasio Jr. (“Dr. Anastasio”) is a 70-year-old physician who held a certificate of registration with the College of Physicians and Surgeons of Ontario (the “College”) from 1981 to 2016, when he resigned his membership.

A. Sexual Abuse and Disgraceful, Dishonourable and Unprofessional Conduct Regarding Patient A

2. Patient A became a patient of Dr. Anastasio when she was an infant. She saw him as her family doctor until she was in her late 20s.

3. In or around the fall of 2007, when Patient A was in her late 20s, she attended Dr. Anastasio’s office for her annual physical. At that time, Dr. Anastasio performed an internal exam. Dr. Anastasio told her he was concerned about a possible HPV infection because her cervix appeared red. Dr. Anastasio advised her that HPV infections could lead to cervical cancer and requisitioned a genital culture pap smear to investigate these concerns. He told her he wanted to keep track of this with regular visits.

4. At that appointment, Dr. Anastasio told Patient A he wanted to monitor her closely. He gave her his pager number so that she could reach him whenever she wanted. He asked Patient A to provide him with her cell phone number, so that she could be kept up-to-date on the matter. Patient A gave Dr. Anastasio her cell phone number as she was grateful that her doctor appeared concerned for her health.

5. After this encounter, Dr. Anastasio called Patient A several times on her cell phone to come to the clinic for follow-up. He asked her to come to the clinic after five p.m. Although she understood that his office was closed at this time and she had never

attended his office after five before, she trusted him, and so she complied with his request.

6. Patient A arrived at his office in the early evening in the fall of 2007. No one else was present at the office at that time. Dr. Anastasio showed her around the clinic space and pointed to a couch at the rear of the clinic where he advised her he sleeps if he needs to.

7. Dr. Anastasio brought Patient A into an examination room. He told her he was pleased she was staying on top of the issue; and not to be concerned, he wanted to ensure it was not something leading to cancer.

8. Dr. Anastasio told Patient A he wanted to examine her to see if the redness was spreading. Dr. Anastasio asked her to undress from the waist down. Dr. Anastasio gave Patient A a sheet to cover herself and left the examination room while she got undressed.

9. Dr. Anastasio sat on a stool at the foot of the examination table and asked Patient A to move her buttocks to the edge of the examination table. He inserted a speculum and examined Patient A's vaginal area. He removed the speculum and stood up from the stool. As he stood up, Dr. Anastasio pressed his groin area onto Patient A's naked genital area.

10. Dr. Anastasio then stood next to Patient A while she lay on the examination table. He removed his gloves. Without warning, with his bare hands, he took her hand and pushed it into her vagina. He told her he wanted her to feel her cervix and know where it is.

11. Pushing Patient A's hand into her vagina served no legitimate medical purpose.

12. Dr. Anastasio maintained no clinical record of this patient encounter.

13. Following that evening, Dr. Anastasio continued to call Patient A requesting that she return to his office for further examination after hours. On one occasion, he called her while she was at home and she became angry and threw the phone on the kitchen table.

At that time, her mother made inquiries and she disclosed to her mother what had happened. Her mother disclosed to her doctor, who then reported the incident to the College.

B. Breach of Discipline Committee Order

14. Dr. Anastasio was the subject of a prior discipline proceeding. Dr. Anastasio was found to have engaged in disgraceful, dishonourable and unprofessional conduct in respect of two patients. He was found to have kissed a patient during a medical appointment and he was found to have made inappropriate comments to another patient, as well as brushing his hand against her bottom area. A copy of the Decision and Reasons of the Discipline Committee is attached at Tab 1 of the Statement of Facts and Plea of No Contest.

15. By Order dated June 15, 2012 (the "Order"), attached at Tab 2 of the Statement of Facts and Plea of No Contest, the Discipline Committee of the College imposed terms, conditions and limitations on Dr. Anastasio's certificate of registration, requiring among other things, that Dr. Anastasio shall:

- provide a written notice to each female patient he sees in a form set out at Appendix "C" to the Order advising each female patient of the Order and the findings in the proceeding., appending a copy of the Decision and Reasons when released, and advising the patient that the College may contact them to inquire about their treatment by Dr. Anastasio. Dr. Anastasio shall ensure before providing treatment to a female patient that she signs this written notice to acknowledge she has reviewed the Order and Decisions and Reasons (when released); and
- keep this signed document in the corresponding patient file.

16. On November 12, 2013, an inspection of Dr. Anastasio's practice was conducted by a College Investigator. It was noted that Dr. Anastasio was providing female patients with copies of:

- (a) Appendix "C" to the Order as required; and
- (b) A written document attached at Tab 3 of the Statement of Facts and Plea of No Contest.

17. Dr. Anastasio was not providing patients with a copy of the Decision and Reasons of the Discipline Committee of the College, dated July 6, 2012 (the "Decision and Reasons"), nor was Dr. Anastasio appending copies of the Decision and Reasons and the Order to the Appendix "C", as required.

18. The written document that Dr. Anastasio was providing stated:

In 2009, two female patients reported me to the College with the following accusations: one said that I tried to kiss her and the other said that she felt my hand on her behind after I scolded her for her sexuality and after doing a pap test on her.

I pleaded "no contest" as this was the advice given to me when I stated that I wanted the least disruption to my personal life as well as the running of the office. The College made their judgment based on the "no contest" plea and this [sic] are the results:

- 1) That I was suspended for two months;
- 2) I have to make sure I have signs in the waiting room as well as all the examination rooms that I cannot do pap, breast or rectal examinations without the presence of a chaperone duly approved by the College;
- 3) I also must have all female patients I am seeing for the first time after my suspension sign a form saying they are aware of the accusations against me, as well as the judgment of the College and the limitations imposed on me and the way I practice and that this signed form will be kept with you [sic] medical records;

- 4) If a female patient expresses unease on seeing me by herself, the office has to provide a chaperone duly approved by the College.

The College may contact you re the above.

I thank you for your continued trust and support.

19. Dr. Anastasio told the College Investigator that this written document had been prepared by his lawyer, Jennifer McKendry and that she had prepared it for him to show his patients. In fact, contrary to his statement to the College Investigator, Dr. Anastasio prepared the written document.

20. Dr. Anastasio told the College Investigator that his lawyer had not provided him with a copy of the Decision and Reasons which he was required to give to his female patients. In fact, Dr. Anastasio had been provided with a copy of the Decision and Reasons on July 9, 2012, and there was nothing preventing him from providing the Decision and Reasons to his female patients in accordance with the terms of the Order.

21. On November 28, 2013, Dr. Anastasio sent a letter to the College confirming that he had modified his practice to comply with the Order. A subsequent compliance visit revealed that on two occasions, Dr. Anastasio failed to attach a copy of the Order and the Decision and Reasons to the patient acknowledgement as required by the Order, although the two patients confirmed having read both the Order and the Decision and Reasons.

PART II: PLEA OF NO CONTEST

22. Dr. Anastasio pleads no contest to the facts as set out in paragraphs 1-20 above and does not contest the findings set out below, for the purposes of College proceedings:

- (a) With respect to Patient A, that he engaged in an act of professional misconduct:
 - (i) in that he engaged in sexual abuse of a patient and he engaged in acts or omissions relevant to the practice of medicine that, having

regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, including by pushing his genital area onto Patient A's naked genital area in a purported medical examination, and pushing Patient A's hand in her vagina with his bare hand for no legitimate medical purpose; and,

- (ii) in that he engaged in acts or omissions relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, including by repeatedly calling Patient A and seeking to have her return to the office after hours.
- (b) With respect to his breach of the Discipline Committee Order, he engaged in an act of professional misconduct:
- (i) in that he contravened a term, condition and limitation on his certificate of registration by failing to comply with the Order; and,
 - (ii) he engaged in acts or omissions relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, including by:
 - a. providing inaccurate information to the College Investigator during a College Investigation; and,
 - b. failing to comply with an Order of the Discipline Committee.

FINDING

The Committee accepted as correct the facts set out in the Statement of Facts and Plea of No Contest. Having regard to these facts, the Committee found that Dr. Anastasio engaged in professional misconduct in that he 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; contravened a term, condition, or limitation on a member's certificate of registration; and engaged in the sexual abuse of a patient.

PENALTY AND REASONS FOR PENALTY

Counsel for the College made a submission on penalty and costs which was not opposed by Dr. Anastasio.

The College sought an order:

- revoking Dr. Anastasio's certificate of registration effective immediately;
- directing Dr. Anastasio to appear before the panel to be reprimanded within 60 days of the order becoming final;
- directing Dr. Anastasio to reimburse the College for funding provided to patients under the program required under section 85.7 of the Code, in the amount of \$16,060.00; and
- directing Dr. Anastasio to pay costs to the College in the amount of \$5,000.00 within 30 days of the date of the order.

DECISION

The Committee accepted that the penalty and costs order proposed by the College was fair, reasonable, and necessary in the circumstances, and made that order accordingly.

REASONS FOR PENALTY AND COSTS

The principles guiding the imposition of penalty in disciplinary proceedings are not in dispute. The protection of the public is the paramount imperative. Other principles are the maintenance of public confidence in the integrity of the profession and in the College's ability to govern the profession effectively in the public interest; specific deterrence as it applies to the member; general deterrence as it applies to the membership as a whole; and, where appropriate, the rehabilitative needs of the member. It is for the Committee to apply these principles in light of the facts and circumstances of the case in order to arrive at a fair and reasonable penalty. The nature of the misconduct and the context in which it occurred, and case specific aggravating and mitigating factors, are considered. Finally, the penalty should generally be within the range of penalties imposed for similar misconduct in previous cases, although the manner in which the Committee gives expression to the guiding principles is likely to evolve over time, consistent with changes in societal values and expectations.

The Committee carefully considered the nature of the misconduct committed by Dr. Anastasio as described in the Statement of Uncontested Facts. The Committee is extremely troubled by Dr. Anastasio's actions. He committed an egregious act of sexual abuse on a longstanding patient with whom he had previously maintained a trusting therapeutic relationship. His actions constituted a most serious breach of that trust.

Dr. Anastasio manipulated this patient into attending his office after normal hours, with apparent predatory intent, on the pretext of concern for her potential for developing cancer, thereby causing her stress and anxiety. He harassed her with repeated telephone calls, further increasing her anxiety level. Dr. Anastasio's actions in relation to this patient are deserving of denunciation in the strongest possible terms.

Other aspects of Dr. Anastasio's misconduct are equally disturbing. The evidence discloses that Dr. Anastasio has previously been sanctioned by the Discipline Committee,

following a finding of disgraceful, dishonourable or unprofessional conduct in 2012. The misconduct in question at that time involved boundary violations and sexualized behaviour. That Committee carefully crafted an order intended to protect the public; specific terms and conditions were imposed, including a clear procedure to be followed by Dr. Anastasio to ensure that his female patients were fully informed of the details of his professional misconduct.

Dr. Anastasio not only failed to abide by the terms and conditions ordered by that Committee, but also took no responsibility for his actions, blamed others, and misled the College investigator when his failure was detected through subsequent College investigation. Dr. Anastasio's actions were deceitful, dishonest, and self-serving. He demonstrated a disregard for the authority of his governing body. Of greatest concern to this Committee is that, through Dr. Anastasio's refusal to abide by an order of the Discipline Committee, the primary goal of which was to protect the public, the public was again placed at risk.

The misconduct committed by Dr. Anastasio in the case before this Committee dates to 2007. The previous discipline proceedings referred to above occurred in 2012. The chronology establishes, therefore, that the previous proceedings are not an aggravating factor with respect to penalty in this case. Nevertheless, Dr. Anastasio's repeat misconduct is relevant in that it demonstrates that his actions in this case were not an isolated incident; a pattern of sexualized behaviour towards his female patients is established, and his previous disregard for terms and conditions imposed by the Committee demonstrates ungovernability.

The Committee accepts, as a mitigating factor, that Dr. Anastasio did not contest the allegations against him, thus avoiding the need for a contested hearing and sparing the complainant from having to testify.

Defence counsel submitted that Dr. Anastasio had resigned from the College and had retired from practice. If he had not done so, counsel for Dr. Anastasio submitted that it is possible he would have made different submissions on penalty. Under the circumstances, however, Dr. Anastasio did not oppose the College's position on penalty.

The Committee, as it is required to do, carefully considered the impact statement of the complainant. It is clear that this patient was severely affected by the abuse perpetrated on her by Dr. Anastasio. Her fears and anxieties were heightened by his repetitive, unwelcome telephone calls. The sexual abuse itself left her feeling disgusted, embarrassed, and humiliated. Her feelings of confidence and trust in the medical profession as a whole were severely shaken. Dr. Anastasio's actions caused this patient to suffer psychological harm.

The Committee considered the four previous decisions of the Discipline Committee which were submitted by College counsel. Each of these were cases in which prior Committees had ordered revocation of the member's certificate of registration in circumstances which did not, by statute, require mandatory revocation. The circumstances of these earlier cases, all involving sexual transgressions of some description, were such that revocation was felt to be the only suitable penalty in the circumstances.

The Committee is aware that prior decisions of the Discipline Committee are not binding precedent. Furthermore, there will be unique aspects to each case which set them apart from others. In general, however, the Committee accepts that similar cases should be dealt with in a similar fashion.

Of the previous cases submitted, the case of *CPSO v. Krishnalingam* (2016) is factually similar to Dr. Anastasio's case. Dr. Krishnalingam's misconduct involved repeat boundary violations of a sexual nature constituting sexual abuse of a patient and disgraceful, dishonourable or unprofessional conduct, to which he pleaded no contest. Dr.

Krishnalingam had resigned from the College and retired from practice, as has Dr. Anastasio. The Committee revoked Dr. Krishnalingam's certificate of registration, noting that nothing short of revocation would maintain public confidence in the integrity of the profession, or would adequately express the abhorrence of the public and the profession of sexual abuse of patients by their physicians. Similar considerations apply here.

The Committee considered all the evidence and the submissions of counsel. Dr. Anastasio's professional misconduct included the sexual abuse of a patient, disgraceful, dishonourable or unprofessional conduct, and contravention of terms and conditions previously ordered by the Discipline Committee, which had been put in place to protect the public. Misconduct of this nature is harmful to Dr. Anastasio's patients, demonstrates his disregard for the authority of the College, and severely undermines public confidence in the integrity of the profession as a whole.

Dr. Anastasio's misconduct cannot be tolerated and must be denounced in the strongest terms. The Committee accepted the College submission that revocation of Dr. Anastasio's certificate of registration is required for these reasons.

The Committee also ordered that Dr. Anastasio appear before it to be reprimanded. A public reprimand helps maintain confidence in the ability of the College to regulate the profession in the public interest, and serves the objective of general deterrence. The Committee also ordered that Dr. Anastasio is to reimburse the College for funding provided to his patient for counseling and therapy under the program available for patients who have been sexually abused by their physicians, pursuant to section 85.7 of the Code, in the amount of \$16,060.00. Finally, the Committee was of the view that this is a suitable case for a costs order and ordered Dr. Anastasio to reimburse the College for costs of a one day hearing, in the amount of \$5000.00.

ORDER

The Committee stated its findings of professional misconduct in paragraph 1 of its written order of November 1, 2016. In that order, the Committee ordered and directed on the matter of penalty and costs that:

2. The Registrar revoke Dr. Anastasio's certificate of registration effective immediately.
3. Dr. Anastasio appear before the panel to be reprimanded within 60 days of the Order becoming final.
4. Dr. Anastasio reimburse the College for funding provided to patients under the program required under section 85.7 of the Code, and shall post an irrevocable letter of credit or other security acceptable to the College to guarantee payment of such amounts within thirty (30) days of the date this Order becomes final, in the amount of \$16,060.00.
5. Dr. Anastasio pay costs to the College in the amount of \$5,000.00 within thirty (30) days of the date this Order.

TEXT of PUBLIC REPRIMAND
Delivered December 1, 2016
in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
AND
DR. ROMULO FANIO ANASTASIO JR.

The Chairperson: The Committee is dismayed that you have yet again come before this Committee on matters related to your professional misconduct. Your sexual abuse of a patient you treated since she was an infant is deplorable. You lured her into your office after hours under the pretence of a cancer scare. The impact on your patient was profound. She felt humiliated, disgusted and embarrassed. Not only did she lose faith in you, but she was left with a profound distrust of all physicians.

Your predatory manipulation of a patient's trust is truly deserving of the revocation you have received. Your flagrant disregard of the 2012 Discipline Committee order demonstrates that you do not deserve to be a member of the medical profession. The purpose of that Discipline Committee's order was to protect the public. The Committee carefully crafted its orders with that in mind. Every detail mattered. Every aspect of the order must be honoured.

It is never permissible to modify or edit such orders in the self-serving manner you did. You even failed to take personal responsibility for your failure to obey the Committee's orders.

Dr. Anastasio, with your revocation, you depart the profession in disgrace.

This is not an official transcript