

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Romulo Fanio Anastasio Jr., this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity and any information that would disclose the identity of the patients whose names are disclosed at the hearing under subsection 45(3) of the *Health Professions Procedural Code* (the Code), which is Schedule 2 to the *Regulated Health Professions Act, 1991*.

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

Every person who contravenes an order made under ... section 45 or 47... is guilty of an offence and on conviction is liable,

- (a) in the case of an individual to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence; or
- (b) in the case of a corporation to a fine of not more than \$50,000 for a first offence and not more than \$200,000 for a second or subsequent offence.

Indexed as: Anastasio Jr., R.F. (Re)

**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. B. LENT (Chair)
S. DAVIS
DR. M. GABEL
S. BERI
DR. J. WATTS

Hearing Date: June 15, 2012
Decision Date: June 15, 2012
Release of Written Reasons: July 6, 2012

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 June 15, 2012. At the conclusion of the hearing, the Committee stated its finding that the member committed acts of professional misconduct and delivered its penalty and costs order with written reasons to follow.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Romulo Fanio Anastasio Jr. committed acts of professional misconduct:

1. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“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; and
2. 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 sexual abuse of a patient(s).

RESPONSE TO THE ALLEGATIONS

Dr. Anastasio did not contest the first allegation of professional misconduct 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. Counsel for the College withdrew the second allegation in the Notice of Hearing and also the allegations with respect to Patient B.

PLEA OF NO CONTEST

When a plea of no contest is entered, Rule 3.02 of the Rules of the Discipline Committee provides as follows:

- a) that the Discipline Committee can accept as correct the facts alleged against the member on that allegation for the purposes of that proceeding only
- b) that the Discipline Committee can accept that those facts constitute professional misconduct or incompetence for the purposes of the proceeding only; and
- c) that the Discipline Committee can dispose of the issue of what finding ought to be made without hearing evidence.

FACTS AND EVIDENCE

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

Facts

1. Dr. Romulo Fanio Anastasio Jr. (“Dr. Anastasio”) is a 64 year old physician. He has held a certificate of independent practice with the College of Physicians and Surgeons of Ontario since 1981. He practises family medicine in Hamilton, Ontario.

Patient A

2. Ms A was born in 1967. In 1992, Ms A became a patient of Dr. Anastasio’s family practice seeing him several times a year until she terminated the doctor-patient relationship in 2005.

3. In 2005, Patient A attended on Dr. Anastasio for a medical appointment in connection with her employment; she was required to show proof of her Hepatitis A and B immunizations. During that appointment, Patient A complimented Dr. Anastasio on being a good doctor and asked about his wife. Dr. Anastasio gave Patient A a kiss and she pushed him away and asked him what he was doing.

Patient C

4. Ms. C was a patient of Dr. Anastasio's family practice from approximately 1995, when she was ten years old, until 2008.

5. In 2008, Dr. Anastasio performed a medically-indicated pelvic examination upon Patient C as part of her routine annual appointment. When the internal examination was complete, Dr. Anastasio made an inappropriate, unnecessary and irrelevant comment to Patient C regarding her sexuality.

6. Later during this same appointment, Dr. Anastasio failed to take sufficient care to maintain spatial boundaries with the patient. This resulted in Patient C feeling Dr. Anastasio's hand brushing her bottom area as she stood up to leave the office.

No Contest

7. Dr. Anastasio pleads no contest to the facts as set out above and admits that the conduct described constitutes 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.

FINDING

The Committee accepted as true all of the facts set out in the Statement of Uncontested Facts. Having regard to these facts, the Committee found that Dr. Anastasio committed acts of professional misconduct, in that he has engaged in conduct or 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.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for the member made a joint submission as to an appropriate penalty and costs order. The submission proposed a two month suspension and the imposition of terms, conditions and limitations on Dr. Anastasio's certificate of

registration. The proposed terms and conditions required the presence of an approved chaperone for all intimate (breast, pelvic and/or rectal) examinations performed by Dr. Anastasio, the presence of an approved chaperone for all patient encounters of any sort when requested by a patient, a sign posted in his waiting and examination rooms making patients aware of their right to a chaperone, and the provision of a notice to each female patient advising them of this Order and the findings in this proceeding. The jointly proposed order also called for Dr. Anastasio's consent for any enquiries by the College of his OHIP billing and Dr. Anastasio's cooperation with unannounced inspections by the College of his practice, both for the purpose of monitoring compliance. The joint submission further proposed that Dr. Anastasio appear before the Committee to be reprimanded, that he attend the next available course on boundary issues approved by the College, and that he pay costs to the College, in the amount of \$3,650.00

In accepting the proposed penalty, the Committee emphasized the importance of ensuring that all physician encounters with patients should be conducted in a considerate and respectful manner and that appropriate boundaries between physician and patient be maintained. Conduct such as that of Dr. Anastasio undermines public trust in the profession and gives rise to distrust and distress in individual patients.

In considering the penalty, the Committee took into account as mitigating factors Dr. Anastasio's admission that his behaviour was inappropriate and the apology that was offered on his behalf. The Committee also noted that Dr. Anastasio's behaviour had resulted in the loss of hospital privileges and it considered that Dr. Anastasio's plea of no contest had spared the complainants the need to testify. The imposition of a suspension and reprimand serve to meet the principles of denunciation of the behaviour and specific and general deterrence. The terms and conditions placed on Dr. Anastasio's certificate of registration, particularly the provision of a chaperone and the notice to patients that they have a right to a chaperone and details of the Order and findings, serve to protect patients and the public. Finally, the requirement that Dr. Anastasio undergo an educational program on boundary issues provides him with an opportunity for remediation.

The Committee was provided with four previous decisions of the Discipline Committee (*Choptiany, Bingham, Krishnalingham and Eisen*). The Committee agreed that the length of the proposed suspension and the measures taken in protection of the public were proportionate and consistent with the circumstances and with case law.

The Committee was aware of the legal obligation to accept a joint submission unless to do so would be contrary to the public interest and would bring the administration of justice into disrepute. The Committee concluded that the proposed penalty was fair, just and commensurate with the factual circumstances of this case.

ORDER

Therefore, the Committee ordered and directed that:

1. the Registrar suspend Dr. Anastasio's certificate of registration for a two month period, to commence 11:59 p.m. on July 1, 2012.
2. the Registrar impose the following terms, conditions and limitations on Dr. Anastasio' certificate of registration:
 - a. Dr. Anastasio shall conduct all breast, pelvic and/or rectal examinations of any female patient in the presence of another female regulated health professional approved by the College as set out in the undertaking attached to the Order as Appendix "A";
 - b. If any female patient who is not undergoing a breast, pelvic and/or rectal exam requests a chaperone, Dr. Anastasio shall provide and shall ensure that the approved female regulated health professional is present throughout the entire encounter. Dr. Anastasio shall make a notation of same in the patient's chart including the identification of the chaperone.
 - c. Dr. Anastasio shall post a sign in his waiting room and in each of his examination rooms, in clearly visible locations, in the form attached [to the Order] as Appendix "B" that states: "Under no circumstances will Dr. Anastasio perform a breast, pelvic, or rectal examination except in the presence of a female regulated

- health professional approved by the College. If a female patient requests a chaperone for any other encounter, Dr. Anastasio shall provide and shall ensure that the approved female regulated health professional is present throughout the entire encounter.”
- d. Dr. Anastasio shall participate in and successfully complete the next available course regarding boundary issues and risks inherent in the doctor-patient relationship approved by the College;
 - e. 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 this Order and the findings in this 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 Dr. Anastasio shall keep this signed document in the corresponding patient file;
 - f. Dr. Anastasio shall provide his irrevocable consent to the College to make appropriate inquiries of the Ontario Health Insurance Plan and/or any person or institution that may have relevant information in order for the College to monitor compliance with the terms of this Order;
 - g. Dr. Anastasio shall cooperate with unannounced inspections of his practice and records and any other step the College may require for the purposes of monitoring and enforcing compliance with the terms of this Order; and
 - h. Dr. Anastasio shall be solely responsible for all fees, costs and expenses associated with his compliance with the terms of this Order.
- 3. Dr. Anastasio appear before the panel to be reprimanded.
 - 4. Dr. Anastasio shall within 60 days pay the College its costs of this proceeding in the amount of \$3,650.