

**Indexed as: Ontario (College of Physicians and Surgeons of Ontario) v. Bingham,
2018 ONCPSD 8**

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

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

B E T W E E N:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. JOHN LEE BINGHAM

PANEL MEMBERS:
DR. M. DAVIE (CHAIR)
MAJOR A.H. KHALIFA
DR. H. SCHIPPER
MR. P. GIROUX
DR. J. RAPIN

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS S. SULEVANI

COUNSEL FOR DR. BINGHAM:

MS A. SPAFFORD

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. R.W. COSMAN

Hearing Date: January 9, 2018
Decision Date: January 9, 2018
Release of Written Reasons: March 6, 2018

DECISION AND REASONS FOR DECISION

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on January 9, 2018. At the conclusion of the hearing, the Committee released a written order stating its finding that the member committed an act of professional misconduct. The Order also set out the Committee’s penalty and costs order, with written reasons to follow.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. John Lee Bingham committed an act of professional misconduct:

1. under paragraph 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; and
2. 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 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.

RESPONSE TO THE ALLEGATIONS

Dr. Bingham admitted the allegations in the Notice of Hearing, that he has engaged sexual abuse of a patient, and 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.

THE FACTS

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

PART I – FACTS

1. Dr. John Lee Bingham (“Dr. Bingham”) is a family physician who obtained his certificate of registration in Ontario on December 1, 1980.
2. Dr. Bingham was, at the material time, practising in psychotherapy in Toronto, Ontario.
3. Patient A began seeing Dr. Bingham in 2016, following the death of a family member. She was having significant problems in her relationship with her partner at the time. She was in her thirties. Patient A saw Dr. Bingham in his office a total of around eight times over a period of two months in 2016.
4. At the first visit, Patient A cried a lot. Dr. Bingham asked Patient A if he could give her a hug because she was crying non-stop. Patient A said “Yes, that would be okay”. Patient A thought Dr. Bingham was compassionate and seemed professional. Dr. Bingham hugged Patient A, which she described as a non-sexual, platonic hug. Thereafter, Dr. Bingham hugged Patient A after each appointment.
5. Patient A attended for an appointment at Dr. Bingham’s office, which was the last appointment of the day. Patient A was planning to walk home and Dr. Bingham asked to walk with her. Dr. Bingham stated that he was headed to a store in the same direction Patient A was walking. Patient A said it would be okay.
6. While walking Dr. Bingham stated that he wondered what people would think seeing a pretty young girl like her with him. Patient A found the comment odd but thought he was trying to make her feel good about herself. When Patient A and Dr. Bingham got to the

store, they hugged as usual but Dr. Bingham held her longer and closer than before. Dr. Bingham then kissed Patient A on the cheek.

7. Patient A continued to see Dr. Bingham. During the last few appointments in August, Dr. Bingham asked Patient A to pull her chair close to his. Dr. Bingham helped pull the chair over. The chairs were so close their knees were nearly touching.
8. During Patient A's last appointment, she and Dr. Bingham were completing paperwork for her employer. Again the chairs were moved close together. Patient A was wearing shorts and while they talked Dr. Bingham patted on her thigh, with his hand.
9. As the appointment continued, Dr. Bingham said he would have to start seeing her every week. Patient A asked if he had time in his schedule. Dr. Bingham said that he always had time for her.
10. When Patient A got up to leave, Dr. Bingham pulled her towards him for another hug. He told her he had been thinking about her a lot. Dr. Bingham held her more tightly, like a bear hug, so that her body was pressed firmly against his. One of his hands was on her lower back tailbone area just below the waistline. Patient A describes herself as petite. Dr. Bingham is a tall, large man. He began rubbing her back. He pressed his face to hers asking if it felt good. He placed Patient A's head on his shoulder. She tried to pull away but he held onto her arms. Dr. Bingham held her face close to his and kissed Patient A's forehead and cheek and kept looking at her mouth. She felt he want to kiss her on the mouth.
11. At one point when Dr. Bingham was holding Patient A's face, he said "sometimes two people just click." Dr. Bingham also said that she was helping him too. When Patient A asked him what he meant, he stated that she gave him good feelings.
12. Patient A left the appointment and did not see Dr. Bingham again.

PART II – PLEA OF NO CONTEST

13. Dr. Bingham does not contest the facts specified above, and he does not contest that, based on these facts, he committed acts of professional misconduct, in that:

- (a) he engaged in sexual abuse of a patient 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; and
- (b) he 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, under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*.

RULE 3.02 OF THE DISCIPLINE COMMITTEE’S RULES OF PROCEDURE

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

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

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

FINDING

The Committee accepted as correct all of the facts set out in the Statement of Uncontested Facts on Liability. Having regard to these facts, the Committee accepted Dr. Bingham's plea and found that he committed an act of professional misconduct, in that he has engaged in sexual abuse of a patient, and 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.

AGREED STATEMENT OF FACTS ON PENALTY

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

1. Dr. John Lee Bingham ("Dr. Bingham") entered into an undertaking to the College, effective January 9, 2018, by which he has, among other things, resigned his membership with the College of Physicians and Surgeons of Ontario ("the College") and agreed never to apply or re-apply for membership in Ontario or in any other jurisdiction. The undertaking is attached at Tab 1 [to the Agreed Statement of Facts Regarding Penalty].

Prior Discipline History

2. On June 6, 2003, the Discipline Committee found, on the basis of an Agreed Statement of Facts, that Dr. Bingham had committed an act of professional misconduct in that he committed 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. Patient 1 was in her late twenties when she received psychotherapy from Dr. Bingham. After one of her sessions, Dr. Bingham hugged Patient 1 as she was leaving his office. During her final session with Dr. Bingham, Dr. Bingham gave her a kiss on her lips. She did not return for further therapy as a result. The events underlying the 2003 decision occurred in 2001.

3. The Discipline Committee ordered that Dr. Bingham's certificate be suspended for 6 months (3 months of which would be suspended pending the following conditions): that Dr. Bingham complete the boundaries course and that he post security by way of letter of credit in the amount of \$10,000 to guarantee the payment of any amount the College may pay out in respect of funding for therapy and counseling. A copy of the Decision and Reasons for Decision of the Discipline Committee dated June 6, 2003 is attached at Tab 2 [to the Agreed Statement of Facts Regarding Penalty].
4. Between 2001 and 2016, there were no other complaints to the College about Dr. Bingham's behaviour.
5. Had Dr. Bingham not resigned and agreed never to reapply, the College would have been seeking a very significant penalty.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for Dr. Bingham made a joint submission as to an appropriate penalty and costs order, which included a reprimand and costs of \$5,500.00 payable to the College for a day of hearing. The joint submission was considered in light of Dr. Bingham's undertaking to resign, effective January 9, 2018, the day of the hearing, and never to apply or re-apply to practise medicine in Ontario or in any other jurisdiction.

The Supreme Court of Canada, in *R. v. Anthony Cook* [2016] 2 SCR 204, indicated that a joint submission on penalty must be accepted, unless it would bring the administration of justice into disrepute or it is otherwise not in the public interest.

The Committee assessed the proposed penalty in light of the following well-established penalty principles:

1. Public protection;

2. Maintaining the public confidence in the profession and in the College's ability to regulate the profession in the public interest;
3. Specific deterrence of the member;
4. General deterrence of the membership of the profession; and
5. Rehabilitation of the member where appropriate.

Prior Finding of Professional Misconduct

The Committee noted that this was Dr. Bingham's second finding of sexually inappropriate behaviour, which involved a vulnerable younger patient and occurred in the context of his GP psychotherapy practice. While the two incidents occurred seventeen years apart, the Committee observed that in both instances, there was evidence of escalating conduct, by way of repetition and progression of boundary crossings. In the current case, there is a finding of sexual abuse.

The effect of Dr. Bingham's progressively inappropriate behaviour of a sexual nature was harmful and enduring to Patient A, as evidenced in her Victim Impact Statement, which made a strong impression on the Committee. The consequence of the progressive, insidious violation of Patient A's initial open and vulnerable trust in Dr. Bingham, at a time when her world was spinning because of personal loss, has left her deeply wounded.

The touching of Patient A by Dr. Bingham was in no way clinically justified. It was touching of a sexual nature and a serious violation of the trust owed to a patient by a physician. Although both counsel agreed that his conduct does not fall into the current statutory requirements calling for mandatory revocation, in the Committee's view, his conduct would have warranted revocation, given the progressive and intrusive nature of Dr. Bingham's sexually inappropriate behaviour, had he not entered into the undertaking with the College to resign and never to apply or re-apply to practise medicine again in Ontario or in any other jurisdiction. The Committee was in agreement that an undertaking to resign and never to apply or re-apply to practise medicine again in Ontario or in any other jurisdiction, in effect, is a broader penalty than an order of revocation by the Committee, since an application for reinstatement may be made after a

revocation order. Dr. Bingham will never practise medicine again and the public is well protected as a result.

Although not part of the joint submission, the Committee considered whether Dr. Bingham should, additionally, be required to contribute to Patient A's counselling costs. Counsel for the College made it clear that support is readily available to Patient A from the College, even if Dr. Bingham is not required to reimburse the College fund for patient therapy and counselling under the program established under section 85.7 of the Code.

Case Law

Counsel for the College referred to a number of cases previously decided by the Discipline Committee. The Committee noted that it is not bound by previous decisions and that no two cases are exactly the same. Nevertheless, prior decisions can serve as a guide in determining an appropriate penalty.

The Committee found the following cases to be of assistance.

In *CPSO v. Calverhill*, 1994 ONCPSD 23, Dr. Calverhill was permitted to resign his membership with the College, rather than face the revocation of his certificate of registration for violations, including having engaged in intercourse with a patient. It was noted that Dr. Calverhill admitted to the allegations made against him and entered into an undertaking with the College to resign and never to apply or re-apply for membership in Ontario or in any other jurisdiction. The Committee stated in its reasons, at page 7:

The Committee considered the implications of a resignation and the undertaking not ever to reapply for a licence as well as the letter of credit as opposed to a revocation. While a revocation would have been imposed and therefore a stronger condemnation of his activity, the penalty proposed, despite the implication of voluntariness, accomplishes the same result. The public is protected. The doctor, the profession and the public will be fully informed of the attitude of the College towards such egregious behaviour. The

complainants were spared the need to testify. In addition, since this offence occurred when the *Health Disciplines Act* was law, a revocation would allow re-application for reinstatement in a year. By making this undertaking, Dr. Caverhill has foreclosed the possibility of reinstatement.

In *CPSO v. Krishnalingham*, 2016 ONCPSD 8, the member engaged in a highly intrusive and suggestive line of inquiry about the patient's sex life. He then progressed to making attempts at hugging and kissing the patient, which the patient rejected. This was followed by invitations to see the patient alone in a social setting, which were also rejected. There was evidence of Dr. Krishnalingham's repeated interactions with the College with respect to similar behaviours involving other patients. Dr. Krishnalingham's certificate of registration was revoked.

CPSO v. Sweet, 2017 ONCPSD 40, was a case where the Committee found that the physician engaged in serious misconduct that would have warranted a revocation, if he had not entered into an undertaking to resign and never to reapply for membership. The Committee stated as follows, at page 19:

The Committee found that Dr. Sweet's behaviour represents professional misconduct of the most egregious kind and, in the absence of the Undertaking, it would have imposed the most severe penalty, a revocation of his certificate of registration. The Committee accepted that Dr. Sweet's July 12, 2017 Undertaking, wherein he undertakes to resign his membership with the College and never to apply or re-apply for membership in Ontario or in any other jurisdiction, is an even more serious result, than an order of revocation. Accepting Dr. Sweet's Undertaking to resign his membership with the College and never to apply or re-apply for membership in Ontario or in any other jurisdiction will ensure better public protection than a revocation of his certificate of registration, as the governing legislation would allow him to re-apply in Ontario and is not binding in other jurisdictions.

In *CPSO v. Roche*, 2017 ONCPSD 13, Dr. Roche, a psychiatrist, asked a long-term patient whether she might consider moving to British Columbia with her to become a tenant in her

home. Those discussions continued during therapy sessions. Later, while the clinical relationship was still ongoing, Dr. Roche hired the same patient to be her nurse, following the member's surgery. The relationship deteriorated and the patient terminated the doctor-patient relationship amidst the Dr. Roche's recriminations about quality of nursing care and money. It was also noted that Dr. Roche asked other patients to perform errands for her. Dr. Roche admitted to the allegations of professional misconduct and entered into an undertaking to resign her membership with the College and never to apply or re-apply for membership in Ontario or in any other jurisdiction. The undertaking was posted on the Public Register. The Committee accepted the joint submission on the principle that the public interest had been protected. The Committee stated, at page 14:

Having regard to all the above factors, as well as the dispositions in the prior cases, the Committee was satisfied that the reprimand and the award of one day of costs was a suitable penalty in this case. The resignation of Dr. Roche and undertaking not to re-apply were key to the Committee in accepting the proposed penalty as appropriate, as revocation would have been warranted had she not done so.

Counsel for Dr. Bingham referred to two cases where the penalty for sexual misconduct was not a revocation.

In *CPSO v. Ghali*, 2016 ONCPSD 18, the member hugged and kissed a patient at the end of an appointment on two occasions. Dr. Ghali had treated the patient for a number of issues, including mental health and substance addition over a two-year period. While he intended to be supportive, Dr. Ghali breached appropriate physician-patient boundaries. His prior discipline record with the College was unblemished, and he voluntarily completed a course in boundaries. In that case, the Committee ordered a three-month suspension of his certificate of registration.

In *CPSO v. Yaghini*, 2017 ONCPSD 29, the Committee found that Dr. Yaghini committed an act of professional misconduct. He told a teenage patient on each of two appointments that she was pretty and on the second appointment, he kissed her on the cheek and attempted to kiss her on the lips during an examination. When the patient reacted, he stopped and apologized. Dr.

Yaghini's certificate of registration was suspended for a period of nine months. The Committee also ordered that he attend counselling, complete the boundaries course, and reimburse the College for funding provided to the patient under the program required under section 85.7 of the Code.

Conclusion

The Committee was in agreement that the jointly proposed penalty was appropriate taking into account Dr. Bingham's undertaking to resign his membership with the College and never to apply or re-apply for membership in Ontario or in any other jurisdiction. This prohibits him from ever practising medicine again, and serves to protect the public and maintain public confidence in the integrity of the profession and the College's ability to regulate the profession in the public interest. The Committee was satisfied that the penalty, including the posting of the undertaking and the Committee's decision on the College's public register, will serve the interests of public protection and will act as general deterrence to the profession.

In addition, the reprimand, which was publicly administered and is on the public record, allowed the Committee to express its dismay at Dr. Bingham's behaviour, exacerbated by Dr. Bingham's prior professional misconduct of a similar nature. Dr. Bingham's professional misconduct demonstrated a self-interested disregard for the vulnerability of a young patient. The Committee stated expressly in its reprimand that it was dismayed by Dr. Bingham's remarks, behaviour and touching of Patient A. The Committee expressed its abhorrence of Dr. Bingham's misconduct and is relieved that Dr. Bingham will not be seeing patients again as he will no longer practise medicine.

Costs

This was a one-day uncontested hearing. The Committee accepted that this was an appropriate case in which to order that Dr. Bingham pay to the College its hearing costs in the amount of \$5,500.00, which is in keeping with the current tariff.

ORDER

The Committee stated its finding of professional misconduct in paragraph 1 of its written order of January 9, 2018. In that order, the Committee ordered and directed on the matter of penalty and costs that:

2. Dr. Bingham appear before the Committee to be reprimanded;
3. Dr. Bingham pay to the College costs in the amount of \$ 5,500.00 within thirty (30) days of the date of this Order.

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

TEXT of PUBLIC REPRIMAND
Delivered January 9, 2018
in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
and
DR. JOHN LEE BINGHAM

Dr. Bingham,

The Committee is extremely disappointed to hear of your sexual abuse and the history with this Committee for such similar misconduct.

In the absence of your undertaking to resign today and to never reapply in any jurisdiction, we would have revoked your certificate of registration to practise medicine on the facts presented to us.

We are dismayed by your remarks, behaviour and touching of Patient A, involving the violation of her personal space.

The Committee agrees that your misconduct was an escalation of the misconduct found by the Committee in 2003 with Patient 1.

We accept the agreed penalty today, as it does protect the public going forward from today.

Your sexual abuse of Patient A has clearly had far reaching and everlasting effects on this very fragile, vulnerable patient, as stated in her victim impact statement.

She came to you seeking your professional guidance and help and you successfully provided her with more problems by placing your self-centered needs above hers. You were entrusted by this College and the public to do no harm. You failed miserably at this.

It is a great shame to end your career in this way. This finding of sexual abuse and professional misconduct will be on the public register and will reflect on you.

This is not an official transcript