

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Jamal Ali Mohamed H. Rakem, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the name and any information that could disclose the name or identity of the patient referred to orally or in the exhibits filed at the hearing under subsection 45(3) of the Health Professions Procedural Code (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended.

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

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

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

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

Indexed as: Rakem, J. A. M. H. (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. JAMAL ALI MOHAMED H. RAKEM

PANEL MEMBERS:

DR. R. MACKENZIE (CHAIR)
D. GIAMPIETRI
DR. P. GARFINKEL
DR. E. ATTIA (Ph.D.)
DR. P. CASOLA

Hearing Date: July 7, 2014
Decision Date: July 7, 2014
Release of Written Reasons: September 3, 2014

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 July 7, 2014. At the conclusion of the hearing, the Committee stated its finding that the member committed an act of professional misconduct and delivered its penalty and costs order with written reasons to follow.

THE ALLEGATIONS

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

1. under clause 51(1)(b.1) of the Health Professions Procedural Code (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18, in that he has engaged in the sexual abuse of a patient; and
2. under paragraph 1(1)33 of Ontario Regulation 856/93 (“O./Reg. 856/93”) made under the *Medicine Act, 1991*, 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. Rakem admitted the allegations in the Notice of Hearing.

FACTS AND EVIDENCE

The following Agreed Statement of Facts and Admission was presented to the Committee and filed as an exhibit:

PART I - FACTS

1. Dr. Rakem is a fifty-year-old orthopedic surgeon qualified to practise medicine in Ontario since 2007. Dr. Rakem was educated in Libya, and moved to Canada in 2000. He completed a residency in orthopedic surgery at McMaster University and the University of Toronto.
2. Dr. Rakem has been practising orthopedic surgery in City 1, Ontario, for six years.
3. The complainant (“Patient A”) is an 18-year-old female student who first saw Dr. Rakem in September 2011 regarding a sports injury to her left knee.
4. Dr. Rakem performed an arthroscopy on Patient A in November 2011, diagnosing and treating a partial ACL tear.
5. Dr. Rakem saw Patient A in follow up in June 2012 with her mother. He ordered an MRI and explained to the patient and her mother that he would refer them to another orthopedic surgeon if knee reconstruction surgery was required, as he does not perform these surgeries.
6. During this visit, Patient A told Dr. Rakem that she planned to attend medical school. Dr. Rakem offered Patient A the opportunity to observe some surgeries to assist her in deciding if she was making the right career choice. Patient A expressed an interest in doing so.
7. Dr. Rakem offered to have Patient A watch him operate the next time he was on call at the hospital. Patient A and her mother agreed.
8. In June 2012, Dr. Rakem called Patient A, inviting her to come to Hospital X that afternoon to watch some surgeries.
9. Patient A arrived at the hospital in the afternoon with her mother, who brought gifts of food for Dr. Rakem to thank him for giving her daughter this opportunity.

10. Patient A changed into hospital scrubs provided by Dr. Rakem and observed him perform a hip replacement surgery.
11. Following the surgery, Patient A accompanied Dr. Rakem to another floor to see a patient. While mounting the stairs, Dr. Rakem patted Patient A on the buttock and chuckled. Patient A said nothing at the time.
12. Patient A then observed Dr. Rakem perform a second surgery. After this surgery Dr. Rakem invited Patient A to accompany him to his office across the street from the hospital.
13. It was approximately 7:30 p.m. and they were alone in Dr. Rakem's office.
14. At the office, Dr. Rakem began quizzing Patient A on her knowledge of anatomy. This “lesson” involved touching various body parts on Patient A and naming the muscle groups. He first asked about the muscles in the arm and then moved to touching her back, neck and shoulders. While seated in the kitchen area of his office, Dr. Rakem asked Patient A to stand up and face away from him. He pointed out the various muscles in her back, naming them and explaining their function, and touching them as he named them.
15. Dr. Rakem then asked Patient A to turn around to face him, and touched her abdomen. He lifted her scrub shirt to touch her rib cage, but then directed her to remove the shirt. Patient A took off the scrub shirt, but kept on the t-shirt she was wearing underneath.
16. Dr. Rakem lifted Patient A’s t-shirt to just beneath her bra and touched her stomach area, explaining that this was a reflex test done to test for a spinal injury. Dr. Rakem then asked Patient A to remove her scrub pants. Patient A reluctantly did so, with Dr. Rakem reassuring her that she need not feel embarrassed. The “lesson” continued with Patient A standing with her back to Dr. Rakem while wearing only a t-shirt and thong underwear. Dr. Rakem proceeded to touch Patient A’s bare buttocks while pointing out various muscle groups.

17. Dr. Rakem then suggested that it would be helpful if Patient A were to lie down and he directed her to a mattress on the floor (which he keeps in the office to sleep on when he is on call).
18. Dr. Rakem had Patient A lie face down, still in her t-shirt and underwear, while he knelt down beside her. He touched the back of her thighs and asked her if she knew the names of the muscles in the leg. Dr. Rakem then told Patient A to roll over. At that point, Dr. Rakem knelt down on the mattress between Patient A's spread legs. He began touching her stomach and thighs, eventually moving his hand to the inside of her thigh and groin area which made Patient A very uncomfortable.
19. Patient A states that Dr. Rakem then asked her to remove her underwear, which she refused to do. She told Dr. Rakem that she felt uncomfortable. Despite Dr. Rakem's assurances that it was okay and that she should not be shy, Patient A stood up at that point and returned to the kitchen to get dressed.
20. Patient A recalls that Dr. Rakem told her that his mouth was dry and said to her, "Do you have any saliva?" She told him she did not, and then he laughed and hugged her. Dr. Rakem does not recall making that specific comment.
21. Dr. Rakem then had Patient A assist him in assembling a futon that he kept in his office. Following this, Patient A advised Dr. Rakem that it was getting late and that she wished to go home rather than observe another surgery. Dr. Rakem told Patient A that next time she could "practice on him."
22. Dr. Rakem insisted on driving Patient A home.
23. The following week, Patient A received up to three or four blocked calls a day on her cell phone which she ignored. One of these calls resulted in a voicemail message to Patient A from Dr. Rakem asking her if she would like to return to watch more surgeries. Patient A did not return Dr. Rakem's call and never returned to see him as a patient.

24. Following this message, Dr. Rakem called Patient A's father to explain that she would be referred to another physician for reconstruction surgery.

PART II - ADMISSIONS

25. Dr. Rakem admits the facts specified in paragraphs 1 to 24 above, and acknowledges that the conduct as described in these paragraphs constitutes sexual abuse of a patient contrary to clause 51(1)(b.1) of the Health Professions Procedural Code (the "Code"), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18, and further 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 contrary to section 1(1)33 of O.Reg. 856/93 made under the *Medicine Act, 1991*.
26. Dr. Rakem acknowledges that his conduct constitutes professional misconduct.

FINDINGS

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts and Admission. Having regard to these facts, the Committee accepted Dr. Rakem's admission and found that he committed an act of professional misconduct under clause 51(1)(b.1) of the Code, in that he has engaged in the sexual abuse of a patient; and under paragraph 1(1)33 of O.Reg. 856/93 made under the *Medicine Act, 1991*, 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 order, which included a six-month suspension, terms, conditions and limitations on Dr. Rakem's certificate of registration, and a requirement that he appear before the panel to be reprimanded.

The joint submission also proposed that Dr. Rakem pay costs and that he reimburse the College for any funding provided to Patient A under the program required under 85.7 of the Code, and post security to guarantee payment of such amounts.

In considering the joint submission, the Committee was mindful that a penalty, jointly proposed, should be accepted unless it is contrary to the public interest and its acceptance would bring the administration of justice into disrepute. The Committee took into account a number of principles in assessing the proposed penalty including: protection of the public, a desire to express the abhorrence of the profession regarding Dr. Rakem's behaviour, maintenance of public confidence in the profession and its ability to regulate itself, deterrence, both of the member himself and of other physicians in the province, and, to the extent necessary, rehabilitation of the member. The penalty should be proportionate to the misconduct.

Aggravating factors in this case

Sexual misconduct is always reprehensible. Although the behaviours involved in this case fall short of those requiring a mandatory revocation of Dr. Rakem's certificate of registration, there are a number of aggravating factors here that warrant a severe penalty. There was a gross breach of trust: Dr. Rakem invited his patient to observe surgery, knowing that she was interested in a career in medicine. Her family was so grateful to Dr. Rakem for doing this that the patient's mother brought food to him. Dr. Rakem then broke this trust with his actions. Due to the age of the patient, eighteen at the time of the misconduct¹, the power imbalance that exists between physician and patient was considerably increased. Dr. Rakem's actions left the patient in a compromised and vulnerable position. It is fortunate that she had sufficient internal strength to terminate the encounter. Dr. Rakem set up the office visit after the surgery in the early evening. This seemed to represent opportunism in his conduct. This was not just a momentary

¹ Although the Agreed Statement of Facts states that Patient A "is" an 18 year old female student, counsel clarified to the Committee during the hearing that Patient A was 18 years old at the time of Dr. Rakem's misconduct in June 2012.

impulsive lapse, but rather Dr. Rakem invited the patient back to observe more surgery after the termination of their encounter.

Mitigating factors

Several mitigating factors were also considered by the Committee. Dr. Rakem admitted to his wrongdoing at an early point, thus showing that he accepted responsibility for his misconduct. He saved the College the cost and time of a contested hearing and he avoided subjecting the complainant to the stress of having to testify. Dr. Rakem was remorseful from the outset. He has no prior disciplinary history with the College.

The Committee hopes that Dr. Rakem's taking responsibility for his actions and his demonstrating remorse will have a significant impact on him, since the proposed penalty cannot totally prevent recurrence (that is, the monitors and signage that will be required of him in his practice do not guarantee the prevention of similar activities with patients in non-clinical settings).

Prior Cases

The Committee considered five previous cases that were presented to it of somewhat similar conduct: *Lee*, [2009] OCPSD No. 10; *Marks*, [2012] OCPSD No. 19; *Henderson*, [2005] OCPSD No. 30; *McInnis*, [2011] OCPSD No. 4; and *Bonin*, [2012] OCPSD No. 5. The penalties in those cases, including the length of the suspensions, differed significantly from one to another. However it must be noted that each case must be reviewed on its own facts. Having done so, the Committee was satisfied that the penalty proposed in this case was within the range of penalties imposed in the previous cases.

Discussion

Having considered all of these factors the Committee was satisfied that the proposed penalty in this case was appropriate. The proposed six-month suspension is at the high end of the range of suspensions that were imposed in the previous cases that were put before the Committee. This is appropriate given the aggravating factors in this case. The lengthy suspension, along with the reprimand, serves to denounce Dr. Rakem's conduct, thus expressing the profession's abhorrence of it. They will also act as a specific

deterrent to Dr. Rakem, and a general deterrent to other members of the profession, from engaging in such conduct. The term, condition and limitation that Dr. Rakem be monitored in his professional encounters with female patients, and that he post a sign notifying all patients of this requirement, will help to protect the public. The requirement that he attend a boundaries course will help with his rehabilitation.

The Committee also considered that this was an appropriate case in which to order that Dr. Rakem pay costs. In addition, since Dr. Rakem sexually abused Patient A, it is appropriate that he be required to reimburse the College for any funding that is provided to her under the College's program to provide funding for therapy and counselling for persons who, while patients, were sexually abused by members, and that he be required to post security for such payments up to the amount requested of \$16,060.

ORDER

Therefore, having stated the findings in paragraph 1 of its written order of July 7, 2014, on the matter of penalty and costs, the Committee ordered and directed that:

2. the Registrar suspend Dr. Rakem's certificate of registration for a six-month period, to commence at 12:01 a.m. on July 8, 2014.
3. the Registrar impose the following terms, conditions and limitations on Dr. Rakem's certificate of registration:

Practice Monitoring – Office Setting

- (i) Dr. Rakem shall not engage in any professional encounters with female patients except in the presence of a monitor who shall be a member of a regulated health profession pursuant to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18 as amended, who is acceptable to the College (the "Practice Monitor") and who has executed an undertaking with the College in the form attached [to the Order] as Appendix "A";

- (ii) The Practice Monitor must be present in the examination or consultation room at all times when professional encounters with female patients occur, and must carefully observe, with an unobstructed view, all physical examinations performed by Dr. Rakem on female patients;
- (iii) The Practice Monitor is required to maintain a log of all female patient encounters and the log shall provide the name of the female patient, and the purpose and date of the appointment. The Practice Monitor will sign and date the corresponding entry on the female patient's medical record;
- (iv) Dr. Rakem shall post a sign in the form attached[to the Order] as Appendix "B" in each examination and consultation room, as well as the waiting room, that states as follows:

"Dr. Rakem may only have encounters with female patients if a Practice Monitor acceptable to the College of Physicians and Surgeons of Ontario is present in the examination or consultation room."

Practice Monitoring – Hospital Setting

- (v) In the case of Dr. Rakem's hospital practice, the Practice Monitor shall be a member of a regulated health profession who is employed by the hospital where Dr. Rakem has privileges;
- (vi) The Practice Monitor must be present for all encounters as in (ii) above, which includes all surgeries and post-operative examinations;
- (vii) The Practice Monitor must initial the patient's chart at the end of the encounter, whether surgery or otherwise, to confirm her presence. If more than one monitor is present but at different times during a surgery, each monitor shall sign the patient's chart;

- (viii) Dr. Rakem shall ensure that the Chief of Staff in all hospitals in which he practises is aware of this restriction on his practice;
- (ix) Dr. Rakem shall keep the College updated with respect to all locations where he practises including, but not limited to, hospitals, clinics and offices, in any jurisdiction (collectively his “Practice Location(s)”) within 15 days of this Order, and shall inform the College of any and all new Practice Locations within 15 days of commencing practice at that location;
- (x) Dr. Rakem shall provide his irrevocable consent to the College to make appropriate enquiries of the Ontario Health Insurance Plan and/or any person or institution who may have relevant information, for the purposes of monitoring and enforcing his compliance with the terms of this Order;
- (xi) Dr. Rakem shall submit to, and not interfere with, unannounced inspections of his office(s) and practice(s) and patient charts by a College representative for the purposes of monitoring and enforcing his compliance with the terms of this Order;

Other

- (xii) Dr. Rakem 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; and
 - (xiii) Dr. Rakem shall be solely responsible for all fees, costs and expenses associated with his compliance with the terms of this Order.
4. Dr. Rakem appear before the panel to be reprimanded.
 5. Dr. Rakem reimburse the College for any funding provided to Patient A 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 30 days of the date of this Order, in the amount of \$16,060.

6. Dr. Rakem shall within 30 days pay the College its costs of this proceeding in the amount of \$4,460.00.

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