

Indexed as: Bhattacharya (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(2) 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. ASHOK BHATTACHARYA

PANEL MEMBERS: DR. M. SPRUYT (CHAIR)
DR. D. BRADEN
J. FREDERICK
R. SANDERS

Hearing Dates: December 3 – 7, 2001
June 3 – 6, 2002

Decision/Released Date: October 17, 2002

PUBLICATION BAN

DECISION AND REASON FOR DECISIONS

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on December 3 to 7, 2001 and June 3 to 6, 2002.

PUBLICATION ORDER

Pursuant to subsection 47(1) of the Code, the Committee ordered that no person shall publish the identity of the complainant or any information that could disclose the identity of the complainant.

ALLEGATIONS

The Notice of Hearing alleged that Dr. Bhattacharya committed acts 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*, in that he has sexually abused a patient;
2. under paragraph 1(1)2 of Ontario Regulation 856/93 made under the Medicine Act, 1991 ("O/Reg.865/93"), in that he failed to maintain the standard of practice of the profession;
3. under paragraph 1(1) 33 of O/Reg. 856/93 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 as disgraceful, dishonourable or unprofessional.

It was also alleged that Dr. Bhattacharya is incompetent, as defined by subsection 52(1) of the Code, in that his care of a patient displayed a lack of knowledge, skill or judgment or disregard for the welfare of the patient of a nature or to an extent that demonstrates that he is unfit to continue practise or that his practise should be restricted.

PLEA

Dr. Bhattacharya pleaded not guilty to all of the allegations contained in the Notice of Hearing. During closing submissions, counsel for the College withdrew the allegations contained in paragraphs 2 and 3 above. Also, during closing submissions, counsel for the College informed the Committee that it was the position of the College that it was only the conduct on April 30,

1997 that constituted sexual abuse and that the conduct of Dr. Bhattacharya prior to April 30, 1997 demonstrated incompetence. We deal first with the allegation of incompetence and then with the allegation of professional misconduct on the basis of sexual abuse.

ALLEGATION OF INCOMPETENCE

The Committee heard evidence from the complainant, Dr. Bhattacharya, his wife, and various experts including Dr. E. on behalf of the College and Dr. F., Dr. H., and Dr. G. on behalf of the defence. The defence also called Dr. A., a former treating physician for the complainant, and Dr. B., Dr. Bhattacharya's treating psychiatrist.

A. Evidence Relating to Incompetence

A great deal of the conduct at issue is agreed upon by both the complainant and Dr. Bhattacharya. The following evidence is accepted by the Committee as fact.

Dr. Bhattacharya is a community psychiatrist practicing in Oakville. He is a sole practitioner without hospital privileges. He has an interest in and treats a relatively large number of patients with borderline personality disorder ("BPD"). He had seen about 50 BPD patients in total up to 1995 with usually 2 to 3 BPD patients at any one time.

Dr. Bhattacharya testified about his methods of treating patients with BPD and how it was applied to the complainant. Initially, he tries to develop a relationship with the patient. He considers this is more important than getting their old charts as patients with BPD often dwell on the contents of their old records and he thought that it might be detrimental to the complainant's therapy if he obtained her prior records. Patients often regress in therapy and become more manipulative. He attempts to put some structure in their lives and help them focus on some realistic goals such as family or work. His method was described as "open", meaning he tried to minimize the barriers between physician and patient. This could include personal disclosure by him.

The complainant became Dr. Bhattacharya's patient in the fall of 1994 and continued with him in regular treatment, usually weekly, until April 30, 1997. She was diagnosed with BPD and had seen a number of physicians prior to Dr. Bhattacharya.

The complainant had developed an attachment to Dr. C., a previous psychiatrist, and was worried about it happening again. The complainant had seen Dr. C. from 1977 to 1982. The complainant admitted creating a large fantasy world about her relationship with Dr. Faux and still felt that he is a part of her life even at the date of this hearing. She attended his office after hours many times even after therapy had been discontinued. At one point when she had waited for him at his office at about midnight, he threatened to call the police. She did not believe he would do so as he still 'smiled at her a lot'. She stated she "loved him and love just doesn't end with a letter or even a meeting". She stated she was entitled to see him even though he had threatened to call the police and had ended the therapy.

At her first session with Dr. Bhattacharya, the complainant told Dr. Bhattacharya about her attachment with Dr. C. and asked him not to let her fall in love with him. She also told Dr. Bhattacharya about an attachment with another psychiatrist, Dr. D. Notwithstanding this, Dr. Bhattacharya did not attempt to obtain the complainant's prior records.

In the period up to February 1997, many things occurred which show that appropriate professional boundaries between Dr. Bhattacharya and the complainant were gradually eroded. The complainant gave him gifts (socks, gold plate for his door, pen). He appeared uncomfortable about accepting the socks but did so because it made her feel good. He did refuse when she asked him to give her a pair of his socks. He gave her a white shirt of his that he had worn, expecting that she would use it in relation to a used clothing business that she hoped to start. However, she wore it to sleep in and this made her feel special and close to him. During one session, Dr. Bhattacharya gave the complainant an orange because of a concern about her nutrition and told her to eat it or the session would end. He told her later that he spoke at a conference about this incident as an example of therapeutic action. At the time, he felt that it was a way of demonstrating to her that he took his therapy with her seriously. However, the fact that he used this incident at a conference made her feel great and special. Dr. Bhattacharya told her many personal things about himself, including that he was in a band, had three children, had a father who was a psychiatrist and had lost his licence, that his mother's name was C, and that she was the third person named C in his life, including a woman named C to whom he had been engaged.

By October 1995, it was or should have been apparent to Dr. Bhattacharya that the complainant had developed fantasies or romantic inclinations towards him. At that time, she disclosed her fantasy of having a child with someone, including him as a possible father.

The complainant attended many concerts of the band he played in, including attending at least one concert out of town. She approached Dr. Bhattacharya's children at one music festival and asked them personal questions. This caused Mrs. Bhattacharya great concern. At other venues, Mrs. Bhattacharya thought the complainant was very intrusive, sitting very close to the band table and attempting to engage her in conversation. Both Dr. Bhattacharya and his wife appeared cold and distant when she approached them on these occasions.

Ultimately, the complainant called him at home in December of 1996 to clarify the location of a concert that night. Mrs. Bhattacharya was very angry at this. Dr. Bhattacharya told the complainant after that she had to choose between being a fan and being a patient and that she should not call him at home nor come to any more band performances. After this, she stopped going to hear the band but she appeared to regress in her therapy.

The complainant was unhappy with herself in about January of 1997, as she had gained weight. Dr. Bhattacharya testified that, on February 5, 1997, the complainant was very depressed. Discussions about her body image resulted in her disrobing on her own initiative and without warning during the last few minutes of her appointment with Dr. Bhattacharya on February 5, 1997. When she began to disrobe, his first reaction was shock. He left the room and walked into his office. While he was in his office, he reviewed the Task Force Report on Sexual Abuse of Patients and concluded that watching a patient disrobe could be considered a sexual offence, for which he could lose his license to practice. He returned to the room and she was dressing. She told him she wanted to stay but he insisted that she leave.

He believed that if he sent the patient for a consultation, the details of her disrobing would have to be reported due to the mandatory reporting obligations under the RHPA. Further, he was concerned about the safety of his wife and his kids and the possibility of the complainant stalking him. He knew that the complainant would take his failure to stop her from disrobing as a sign of encouragement. He described this as the beginning of a period of terror for him. He continued to see the complainant, hoping that if he could get the therapy back on track, things would work

out. There were a number of sessions where nothing inappropriate took place but on three occasions, described below, the complainant acted out sexually and Dr. Bhattacharya failed to take appropriate steps in the interests of the patient to stop it and obtain appropriate medical assistance for her.

At the February 24th session, the complainant disrobed during the last 10 minutes and this time began to masturbate herself. He pleaded with her to stop. He states he felt sick, terrified and repulsed and felt like he couldn't move. He acknowledged that the therapy had lost all integrity by this point.

There was no such conduct again until March 11, 1997 when she repeated her earlier actions. As she was masturbating, he kept requesting of her to "sit up, open your eyes, and put your clothes on." He made many disclosures about his personal life in an effort to explain why he would not get involved in a relationship with her. He stated at this time that he had lost his therapeutic mantle and was "pleading for his life". However, he believed that he could continue to treat her and "weather the storm" and that this behaviour would stop.

On April 30, 1997, at the end of the session, the complainant and Dr. Bhattacharya had a discussion about what it would take for her to stop the disrobing behaviour in his office. During that discussion, the complainant asked Dr. Bhattacharya to sit beside her on the couch. He sat beside her, feeling very uptight and concerned but with the purpose of complying with her request so that she would not disrobe in his office again. She took his hand, ran her fingers through his hair and proceeded to masturbate him.

He testified that he recalls this incident as if from a distance, like he was not there. He felt paralysed and did not move or speak. He described his state of mind while on the couch as "dissociated" or an "out-of-body" experience. He did not feel sexually attracted to her or gratified in any way. After getting up from the couch, he could barely talk because his mouth was so dry. He told her that he could not carry on seeing her. He stated that she had a look of total victory on her face and proposed several alternatives to encourage him to keep seeing her.

The complainant received a letter from him the following week stating that she could no longer be a patient and should continue her therapy with Dr. A.

On May 2, 1997, Dr. Bhattacharya received a phone message from Dr. A. telling him that she felt he should phone the College. Dr. A. told him that the complainant had been very distressed and had told her that something had happened in his office, but had not told her the details. He then called the College and discussed the incident. Dr. Bhattacharya also called a psychiatrist to seek consultation and the psychiatrist asked him if he had called the Canadian Medical Protective Association ('CMPA'). He then called the CMPA and, because of their advice and the reporting obligation under the RHPA, he did not seek psychiatric consultation until 1998.

The session on April 30, 1997 is also the subject of the allegation of sexual abuse as set out below.

(i) Testimony of Expert Witnesses: Nature of BPD

Expert witnesses for the College and Dr. Bhattacharya testified about the psychiatric disorder of BPD. All experts agreed that patients with BPD can be difficult patients to treat in general and that the complainant was a very challenging patient. The Committee accepts the evidence set out below.

BPD is often the result of a failure to develop normal social boundaries and patients with BPD display a high degree of impulsivity. Part of the pathology of the BPD patient is an intense need to feel special. Attempts to erode boundaries are typical of BPDs and the therapist's job is to deal with these boundary transgressions. They will continually test the limits of a relationship. The role of therapy is to provide a structured environment in which the individual will eventually learn to set his or her own limits. This can take many years and is not always successful. Many BPD patients are not shy about intruding into the therapist's personal life and are at risk for erotic transference. They do not cope well with abandonment or rejection. A psychiatrist should be aware of these problems and should be on alert for boundary violations and transference problems. Therapists working with these individuals must provide a structured environment with clear limits and be aware that these patients will place their own emotional interpretation on events that occur within the context of the patient-doctor relationship.

(ii) Testimony of Expert Witnesses: Conduct of Dr. Bhattacharya

The experts agreed that the first episode of undressing by the patient in Dr. Bhattacharya's office and his failure to stop it represented the beginning of the deterioration of any useful therapeutic alliance. The inability of Dr. Bhattacharya to put an end to this acting out behaviour allowed her to continue to push the limits of behaviour. There was no structure in the patient-physician relationship and she was able to take advantage of it.

Dr. E. was accepted as an expert witness on psychiatric issues. His practice includes many patients with personality disorders. The Committee accepts his evidence that Dr. Bhattacharya's care of the complainant was not acceptable. His treatment was, in some important respects, poorly documented. Furthermore, Dr. Bhattacharya crossed boundaries more than once, for instance in telling her sensitive personal information and in giving her his shirt. He failed to stop treatment when the patient crossed boundaries. This is in no way a criticism of the complainant whose illness or disorder resulted in her actions. It is a serious criticism of Dr. Bhattacharya who has the responsibility to ensure that boundaries are not transgressed and that the patient's welfare is always paramount. Dr. E. testified and the Committee accepts that Dr. Bhattacharya abdicated the physician's role in establishing the parameters and conduct of the therapy.

Dr. F. testified as an expert witness on behalf of the defence after reviewing certain disclosures as well as interviewing Dr. Bhattacharya on two occasions. He provided opinion evidence on psychiatry generally and on the dynamics of the patient-psychiatrist relationship.

Dr. F. identified the following 'multiple misjudgements' and concerns in Dr. Bhattacharya's treatment of the complainant:

- (i) his initial history was poor;
- (ii) there were some notable omissions in Dr. Bhattacharya's notes from early 1997 that meant the charts were misleading;
- (iii) lack of conversation at the end of the treatment session when disrobing first occurred was a pivotal mistake;
- (iv) poor liaison with the family doctor and the other treating psychiatrist;

- (v) Dr. Bhattacharya was over-confident regarding his ability to get by the problems of the complainant disrobing and masturbating;
- (vi) it was a mistake for Dr. Bhattacharya to give his shirt to the complainant;
- (vii) by the time Dr. Bhattacharya prohibited the complainant from attending any more of his band gigs, it was too late and too upsetting to the complainant and by then, her erotic transference was so severe she couldn't stop.
- (viii) Dr. Bhattacharya made a major error in the first few minutes after she disrobed for the first time in not taking steps to stop her behaviour;
- (ix) It was a mistake for Dr. Bhattacharya to give the complainant additional appointments after February 1997;
- (x) After February 1997, Dr. Bhattacharya was no longer doing therapy for the complainant and he was just hoping that she would stop the disrobing conduct;
- (xi) He failed to refer the complainant for a consultation at any time after the first disrobing; and
- (xii) The complainant was harmed because Dr. Bhattacharya did not stop the therapy in these circumstances.

Dr. G. qualified in psychiatry in 1968 and has treated difficult patients, including borderline patients since that time. He was qualified to give expert testimony in psychiatry, particularly borderline personality disorder and the interaction of therapists and patients who have borderline personality disorder. Unlike any of the other experts, Dr. G. had reviewed all of the prior medical records of the complainant in order to have an overview of the complainant's relationships with all of her prior therapists.

Consistent with the testimony of other experts, Dr. G. testified that BPD patients will have boundary issues more than other patients and he agreed that it is a known danger of BPDs that they will attempt to draw therapists out of the therapists' role. He also agreed that it is known that BPD patients need to feel special and that therapists treating them must be on high alert for these behaviours, particularly if the therapist is aware of prior erotic transference.

Dr. G. testified that things got out of hand for Dr. Bhattacharya. While Dr. G. was not of the view that Dr. Bhattacharya was incompetent, he agreed that Dr. Bhattacharya made the following mistakes:

- (i) As a principal mistake, Dr. Bhattacharya should have sought a consultation sooner in the circumstances of this case as the conduct could not be allowed to go on.
- (ii) Dr. Bhattacharya did not educate himself regarding the complainant's history and this extra knowledge is valuable for such patients.
- (iii) The physician should avoid giving a personal article of clothing.

The experts agreed that the complainant was a challenging patient. However, it was generally acknowledged that the way in which Dr. Bhattacharya conducted his therapy allowed the therapeutic relationship to deteriorate completely.

(iii) Assessment of Evidence

The complainant appeared sincere in her testimony. In many ways, her testimony about the events did not differ substantially from that of Dr. Bhattacharya. However, there were aspects of the complainant's testimony that caused the Committee to assess her evidence on disputed matters with considerable caution. In particular, the complainant testified as to a number of things that occurred during her treatment by Dr. A. that Dr. A. denied happened or that Dr. A. said were exaggerated by the complainant. The Committee accepted the testimony of Dr. A., the member of the College who was responsible for the reporting of the allegation of sexual abuse to the College. Dr. A. testified that the complainant's disorder may affect her perception of reality, in particular with respect to relationships. There was considerable evidence that the complainant's perception of the nature of her relationship with Dr. C. was not founded in fact.

Dr. Bhattacharya was honest, forthright and credible. The Committee believed his explanation of his intent and the manner in which he reacted during the therapy sessions from January to April 1997. The evidence of his wife, who appeared sincere and direct, supported Dr. Bhattacharya's evidence as to certain behaviour by the complainant and by Dr. Bhattacharya after April 30th. Dr. Bhattacharya appeared to be genuinely distressed by the events that had taken place and

expressed sincere regret at not having recognized the warning signs of the complainant's transference and at not having acted upon them. Where his evidence of the details of events conflicted with that of the complainant, the Committee accepted the evidence of Dr. Bhattacharya.

B. Finding on Incompetence

In the Committee's view, Dr. Bhattacharya's misjudgements and omissions were very serious, on a cumulative basis and in all the circumstances of this case. There was insufficient effort to obtain background information, including the past psychiatric records of this patient. More information about the extent and severity of her infatuation with her previous psychiatrist might have alerted him to the severity of her disorder. There was no clear formulation or outline of a treatment plan. Dr. Bhattacharya's casual style of therapy lacked the structure that is necessary for such patients. He improperly disclosed considerable information regarding his personal background. He improperly accepted gifts from the patient. He continued to give the patient extra appointments after he should have stopped doing so. However well intended, his gifts of an orange and a shirt further contributed to this patient's sense of "being special". The fact that he informed the complainant he had used the example of giving her the orange at a conference clearly fuelled her need to feel special.

The Committee finds that Dr. Bhattacharya failed to respond appropriately to the severity of the complainant's disorder in the face of warning signs which he ought to have recognized. Repeatedly, he demonstrated a lack of knowledge, skill or judgment in relation to the appropriate treatment for this unfortunate patient. His failure to obtain prior records, in light of the information he had regarding her prior relationship with Dr. C., demonstrated a serious lack of knowledge and judgment in this case. The acceptance and giving of gifts were not appropriate given the severity and long standing nature of the patient's disorder. Considerable disclosure of very personal information which he knew or should have known would cause the patient to feel special was also inappropriate. Many of his actions gave the patient reinforcement for her idea that there existed some special relationship between them beyond that of a professional relationship.

Dr. Bhattacharya's failure to take action after the first episode of disrobing led to an escalation of conduct with further disrobing and masturbation, again without appropriate intervention by Dr. Bhattacharya to stop it. His failure to stop treatment and seek a consultation demonstrated a serious lack of knowledge, skill and judgment in his treatment of this patient. It also displayed a serious disregard for the welfare of his patient, who was clearly harmed as a result of these circumstances. His concern about his own potential exposure to the College for letting this happen may explain, but does not justify, his conduct. He demonstrated a complete lack of concern for the impact of his actions on the patient.

The Committee concluded that there was an abundance of clear, cogent and convincing evidence that Dr. Bhattacharya is incompetent in that he displayed a lack of knowledge, skill and judgment in his treatment of the complainant and showed a disregard for her welfare to an extent that demonstrates that he is unfit to continue to practice or that his practice should be restricted.

ALLEGATION OF SEXUAL ABUSE

A. Evidence Relating to Sexual Abuse

As indicated above, the allegation of sexual abuse was based solely on what occurred on April 30, 1997. The conduct of Dr. Bhattacharya after April 30, 1997 set out below was considered relevant by the expert witnesses, and the Committee, in considering this matter.

Mrs. Bhattacharya testified that on the evening of April 30, 1997, Dr. Bhattacharya behaved strangely, insisting they go out for dinner even though a meal had been prepared. Later, he cut his hair and she found clothes of his cut up in the garbage.

She testified as to the changes in Dr. Bhattacharya after the incident at issue. He no longer played in the band nor practised his music. Their relationship suffered, including a lack of sexual relations. She noted that he didn't eat, lost 15 pounds, showered frequently, was jumpy and checked the locks frequently. For the next year, she would call him every day at the office at 10:00 a.m. (the usual time of the complainant's appointment) because he had a difficult time then.

After April 30, 1997, she received many phone calls, sometimes with the complainant leaving a message and sometimes hang-ups. They also received e-mails saying such things as “I have your address”.

Dr. Bhattacharya testified that he has never been the same since these events. It has affected his marriage. He was impotent for the better part of a year and he had flashbacks of the complainant touching him when having intimate moments with his wife. In retrospect, he acknowledges that he did not appreciate the depth of the problem that this patient represented. He had thought he was fairly good with patients with BPD but feels there was something deeper and darker in the therapy with the complainant that he did not recognize. In hindsight, he agrees that it would have helped him to get a more complete picture if he had communicated with Dr. C. and Dr. A. about their relationships with the complainant.

Dr. B. was Dr. Bhattacharya’s treating psychiatrist commencing about one year after April 1997. She concluded that Dr. Bhattacharya dismissed all possibilities of dealing with the complainant’s sexual acting out because of fear of the patient’s reprisals, including stalking, and the fear of not being believed by the College. Dr. B. drew the comparison of a similar series of events between a female psychiatrist and a male patient and pointed out that, in those circumstances, one could more readily accept the concept that the doctor could be paralysed with fear. She described many of the symptoms that Dr. Bhattacharya experienced as being consistent with a diagnosis of Post-Traumatic Stress Disorder. She treated him as a victim of sexual assault.

Dr. F. typified many of the complainant’s behaviours as “stalking”. He also discussed the gender reversal concepts with respect to Dr. Bhattacharya’s failure to leave the situation when it became sexual. He suggested that a female therapist would likely have been very frightened in the circumstances but there is a common myth that men cannot be sexually assaulted. However, they can be sexually assaulted as a result of coercion or manipulation. He testified that the complainant had power in the circumstances described and that it was possible for Dr. Bhattacharya to have a severe state of anxiety to the point of feeling detached. He concurred with Dr B.’s conclusion that Dr. Bhattacharya experienced many of the symptoms of post-traumatic stress disorder and that his behaviour of destroying clothes and cutting hair demonstrated victim behaviour.

It was the uncontested evidence of Dr. D., an endocrinologist, that an erection and ejaculation can occur even if there is no consent to a sexual act or desire.

B. Findings on the Allegation of Sexual Abuse

The term ‘sexual abuse’ is defined in section 1(3) of the Code. The subsection which counsel for the College stated is applicable to this case is section 1(3)(a) which provides that ‘sexual abuse’ means ‘...sexual intercourse or other forms of physical sexual relations between the member and a patient....’.

The Code does not define what is meant by ‘physical sexual relations’. However, counsel for the physician submitted and counsel for the College agreed that voluntariness on the part of the physician is necessary in order for conduct to constitute sexual abuse. By voluntariness, counsel for the College submitted that an element of choice was exercised on the part of the physician. The Committee agrees that a physician must have voluntarily engaged in sexual conduct for that conduct to constitute sexual abuse.

Counsel for the College also submitted that it is not necessary for there to be gratification or enjoyment from the act for the act to constitute sexual abuse. We agree with that proposition. Further, whether an act is sexual or not is an objective test.

We describe two extremes of conduct between a physician and a patient to illustrate the issue of voluntariness. At one end of the spectrum might be conduct where a physician engages a patient in sexual intercourse contrasted at the other end of the spectrum to conduct where a patient touches a physician in a sexual manner without the physician’s consent. It would not be reasonable to conclude that the second circumstance referenced above would constitute ‘sexual abuse’ by a physician. The Committee considered that it may be easier to contemplate the fact of an assault by a male patient on a female physician. If a female physician were sexually assaulted, there would be no doubt that an allegation of sexual abuse based on alleged physical sexual relations with her patient would be dismissed. The Committee concluded that it was important not to lose sight of possible stereotypes about assault and carefully assessed the events and the frame of mind of Dr. Bhattacharya in response to the actions of the complainant.

There is no question that a physician who voluntarily allows a patient to masturbate him, even if he does not touch her, commits sexual abuse. However, there were extraordinary and rare circumstances in this case which, unfortunately, arose by reason of the incompetence of Dr. Bhattacharya in his treatment of the complainant. The position of the defence, which was supported by the evidence before us, was that Dr. Bhattacharya was the subject of a touching by the complainant which was not voluntary on his part.

The Committee accepts that Dr. Bhattacharya did not consent to the touching by the complainant. The Committee accepts the evidence of Dr. Bhattacharya, his wife, Dr. B., and Dr. F. that Dr. Bhattacharya presented with symptoms of victimization and post-traumatic stress disorder. The Committee further accepts that these symptoms arose because of the combination of his fear for his own safety and that of his family and for his licence to practice. The Committee further accepts the evidence of Dr. F. that persons who are subjected to such an event may react in the manner described by Dr. Bhattacharya.

Dr. Bhattacharya found himself on April 30th in a position where he was paralysed and unable to act when the complainant masturbated him. The Committee assessed his evidence with great skepticism because of the unusual circumstances described but, in the end, the Committee finds that his participation of the events on April 30th was not voluntary. He was unable to free himself from a situation that he had created by his incompetence, on which we have already made a finding.

We should not be interpreted to condone the events which occurred on April 30th. Things were clearly out of control due to Dr. Bhattacharya's incompetence. We would reinforce that it is the physician's responsibility to take appropriate steps to ensure that boundaries are not violated. Ultimately, however, in the unique and rare circumstances of this case, we do not find the conduct on April 30th to be properly characterized as sexual abuse.

Accordingly, the Committee is not satisfied that the elements of sexual abuse were established on the basis of clear, cogent and convincing evidence on a balance of probabilities. Notwithstanding this conclusion, the Committee considers the harm caused to the complainant to be clearly the responsibility of Dr. Bhattacharya. Patients suffering from borderline personality disorder are entitled to proper care from physicians. This requires the sometimes difficult task

by physicians treating BPD patients of ensuring that proper boundaries are maintained between the patient and the physician. In having found Dr. Bhattacharya to be incompetent in his treatment of the complainant, the Committee has signalled clearly that failures such as those of Dr. Bhattacharya are very serious and not acceptable.

SUMMARY

Accordingly, the Committee concludes and finds that:

- (1) Dr. Bhattacharya is incompetent in that his care of his patient, the complainant, displayed a lack of knowledge, skill or judgment and disregard for her welfare of a nature and to an extent that demonstrates that he is unfit to continue to practise or that his practise should be restricted; and
- (2) Dr. Bhattacharya is not guilty of professional misconduct under s. 51(1)(b.1) of the Code.

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Hearing Date(s): December 3 – 7, 2001
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PUBLICATION BAN

DECISION AND REASON FOR DECISIONS AS TO PENALTY

On October 17, 2002, the Discipline Committee found that Dr. Bhattacharya was incompetent in that his care of his patient, (“the complainant”), displayed a lack of knowledge, skill or judgment and disregard for her welfare of a nature and to an extent that demonstrates that he is unfit to continue to practise or that his practise should be restricted. The Committee held a penalty hearing on December 20, 2002 in respect to that finding. At the conclusion of the penalty hearing, the Committee pronounced its decision and indicated its written reasons would follow.

EVIDENCE AND SUBMISSIONS AS TO PENALTY

Penalty submissions were received from both parties. The position of the College was that Dr Bhattacharya’s certificate of registration should be subject to terms, conditions and limitations. First, that Dr. Bhattacharya return to a training program in an academic setting and remain there until he had finished a program of training to the satisfaction of the program director. Second, that, upon completion of the training program, Dr. Bhattacharya should be permitted to practice only in an institutional setting under supervision.

Counsel for Dr. Bhattacharya presented evidence from: 1) Dr. Bhattacharya's residency program; 2) expert witness, Dr. G.; and, 3) Dr. Bhattacharya.

Dr. Bhattacharya’s final in-training evaluation report from the University of Toronto (Mt. Sinai) displayed twelve “outstanding” grades and two “very good” grades. No one identified any problems with Dr. Bhattacharya during his formal, supervised residency program.

Dr. G. testified regarding the effectiveness and availability of training positions. He had interviewed Dr. Bhattacharya and had reviewed his practice patterns before and after the problems with the complainant. He identified problem areas and provided his opinion on the likelihood of re-offending. He opined that the evaluation and evidence presented

during the hearing demonstrated that Dr. Bhattacharya already possessed the skills and knowledge but he had erred in his judgment during the treatment of this particular patient.

Dr. Bhattacharya testified on his own behalf. He was credible and remorseful and continues to be troubled by the events that occurred with the complainant. The Committee accepted his testimony that he had learned from his mistakes and had taken many measures to avoid similar events from happening again. He does not treat borderline patients in his practice any longer and refers these individuals to other psychiatrists. He now maintains a less “relaxed” and more professional appearance and demeanour in his office. He intends to relocate his office to a less isolated setting at the termination of this hearing. He has developed zero-tolerance for any behaviours or activities that could be interpreted as boundary testing. He accepts no gifts from any patients and refuses any physical contact including even a simple handshake.

REASONS FOR PENALTY ORDER

The Committee considered the evidence and agreed that there was little likelihood that Dr. Bhattacharya would demonstrate again the lack of judgment that supported the finding against him. Dr. Bhattacharya had completed an academic residency in a reputable program and no concerns had been noted. However, in the isolation of private practice, he had displayed a lack of judgment and then became further isolated as he felt there was no place or person that he could turn to for support or advice. The Committee did not have before it any evidence that his treatment of other individuals was of concern. The Committee decided that Dr. Bhattacharya’s practice of medicine should be restricted by terms, conditions and limitations on his certificate of registration and that the public would be protected and served by such restrictions.

ORDER

The Discipline Committee therefore ordered and directed that:

1. The Registrar shall impose the following terms and limitations on Dr. Bhattacharya's certificate of registration:
 - a) Dr. Bhattacharya shall only practise under the supervision of a physician supervisor approved by the Registrar. The physician supervisor shall sign a written monitoring agreement acceptable to the Registrar and provide written reports to the Registrar quarterly; such reports to state whether Dr. Bhattacharya is practising at an acceptable standard of care and to comment on the adequacy of clinical records.
 - b) Dr. Bhattacharya shall submit a written report to his supervisor for every new patient on the history diagnosis and treatment plan for that patient within a reasonable time, such time to be determined by the supervisor.
 - c) Dr. Bhattacharya shall meet with the supervisor monthly to discuss treatment plans for new and current patients. Dr. Bhattacharya shall make his charts available to the supervisor to review for this purpose or for any other purpose considered appropriate by the supervisor in order to fulfill his/her responsibilities.
 - d) The supervisor shall submit quarterly reports to the Registrar on the results of the supervision.
 - e) Dr. Bhattacharya shall bear the costs of the supervision.

- f) Dr. Bhattacharya shall successfully complete the College's Boundaries Course within one year at his own expense.
- g) After three years from the date of this Order, the Registrar may terminate the terms, conditions and limitations set out in this order if the reports received from the supervisor are satisfactory to the Registrar.