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**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 28
of the ***Health Professions Procedural Code***,
being Schedule 2 to the
Regulated Health Professions Act, 1991,
S.O. 1991, c.18, as amended

BETWEEN:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. ALICE SUZANNE KOZNER

PANEL MEMBERS:

DR. J. MCGILLEN (Chair)
DR. D. BRADEN
J. FREDERICK
R. J. SANDERS

HEARING DATE: January 8, 2001

DECISION DATE: January 8, 2001

DECISION AND REASONS FOR DECISION

This matter came before the Discipline Committee on January 8, 2001 at the College of Physicians and Surgeons of Ontario, at Toronto.

The Amended Notice of Hearing alleged that Dr. Alice Suzanne Kozner had committed an act of professional misconduct, as defined in:

1. Paragraph 1(1)117 of the Ontario Regulation 856/93, in that she failed without reasonable cause to provide a report or certificate relating to an examination or treatment performed to the patient or his/her authorized representative within a reasonable time after the patient or his/her authorized representative had requested such report for certificate; and
2. Paragraph 1(1)33 of the Ontario Regulation 856/93, in that she has engaged in an act or omission relevant to the practise of medicine, that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

A Statement of Agreed Facts, Admission and Consent to Disposition were filed with the Discipline Committee. In summary, the Statement of Agreed Facts outlined background information about Dr. Kozner and four cases that formed the basis of the allegations in the Notice of Hearing.

Background Information on Dr. Kozner

Dr. Kozner received her LMCC in 1955, her Certificate in Paediatric Medicine from the Royal College of Physicians (Canada) in 1960 and her Fellowship in the Royal College of Physicians (Canada) in 1964. In 1986 she did a Mini-Fellowship in Developmental Behavioural paediatrics at Boston Children's Hospital (Harvard). In the same year she did a Preceptorship at the Clinical Centre for the Study of

Development and Learning at the University of North Carolina at Chapel Hill. In 1987, Dr. Kozner opened the Clinic for Learning and Developmental Paediatrics in Etobicoke where she practices exclusively in developmental-behavioural paediatrics specializing in children with developmental disorders of learning, including attention deficit (hyperactivity) disorder (ADD, ADHD). She employs a clinical psychologist, a registered nurse and an office manager. Dr. Kozner is the only physician at the clinic.

Patient 1

The first case, Patient 1 was a ten year-old who sought medical advice and treatment from Dr. Kozner in or about the spring of 1996. The patient and her mother sought information about the patient's learning disabilities for the purpose of classroom management techniques. The patient first saw Dr. Kozner in November of 1996 and had follow-up appointments in February, April, May and June of 1997. Following the assessment of November 1996, Dr. Kozner told the patient's mother that a written report would be provided and payment of her fee would be due on receipt of this report. At subsequent appointments outlined above the patient's mother asked about the delivery date of the report. On February 21, 1997 and April 7, 1997, the patient's mother was assured that she would have it for her daughter's Identification Placement Review Committee (APRC) on May 13, 1997. The patient's mother had advised Dr. Kozner that this review was particularly important since the patient would be changing schools in the fall.

Despite repeated requests and repeated promises from Dr. Kozner and her staff that the report would be forthcoming shortly, the patient's mother did not receive the report until March of 1998. Despite repeated requests for Dr. Kozner to return the patient's mother's calls in the late fall of 1997 and January of 1998, Dr. Kozner did not return any of these calls personally. On January 26, 1998, the patient's mother contacted the College of Physicians and Surgeons for assistance in obtaining the

reports from Dr. Kozner. Only after repeated intervention by the College did the patient's mother receive the report on or about March 28, 1998.

At no time did Dr. Kozner provide an acceptable reason or explanation for the failure to provide the report within a reasonable time period.

Patient 2

This eight year-old was seen by Dr. Kozner on September 20, 24, October 1 and November 14, 1996. On or about October 1, 1996, the patient had been diagnosed with an attention deficit disorder. Dr. Kozner informed the patient's parents that a written report which was required by the patient's school would be forwarded. The patient was seen in February, June and October of 1997 and on each occasion Dr. Kozner promised the parents that the patient's report would be completed. In November of 1997, the patient's general practitioner requested the report from Dr. Kozner on behalf of the parents. In December of 1997 the patient's parents contacted the College who made several phone calls to Dr. Kozner on the patient's parents behalf. Dr. Kozner promised the report would be received by December 19, 1997. Dr. Kozner did not provide the report.

On or about May 26, 1998 the College requested a written response to the patient's parents complaint about Dr. Kozner's failure to deliver the report. No response from Dr. Kozner was forthcoming. On July 3, 29, and August 26, 1998 Dr. Kozner was reminded in writing to provide her response to the College. Dr. Kozner's letter of response was received by the College in September 1998. At no time did Dr. Kozner provide an acceptable reason or explanation for her failure to provide the report within a reasonable time period.

Patient 3

This six year-old boy was seen by Dr. Kozner on October 14, November 23 and December 1, 1999. Dr. Kozner promised a written report to the patient's mother by Christmas of that year. The parents had explained that they required the report for a school board meeting on January 11, 2000. That meeting was to involve a number

of professionals and the report was necessary for the meeting to be useful. Dr. Kozner did telephone the patient's mother two working days before January 11, 2000 and promised the report by January 10, 2000. Dr. Kozner promised that the report would be couriered to the patient's home on January 10, 2000.

Dr. Kozner's office telephoned the patient's mother near the end of the day on January 10, 2000 advising the report was now ready to be picked up at the office. Dr. Kozner's office advised that a courier could not guarantee delivery of the report on that day. The patient's mother picked up the reports. The patient's parents called Dr. Kozner on several occasions in December 1997 with specific concerns about the report and her son's care. Dr. Kozner had left messages promising to telephone the patient's parents to discuss their concerns. The patient's parents rearranged their plans to stay home to ensure that they would be able to speak with Dr. Kozner but she did not call at the promised time. At no time did Dr. Kozner provide an acceptable reason or explanation for her failure to provide her report within a reasonable time period.

Patient 4

Dr. Kozner saw this six-year old boy on October 26 and November 23, 1999. Dr. Kozner had promised a written report concerning the patient to his parents by the end of December 1999. Dr. Kozner did not provide a report by that date. On March 8, 2000 the parents complained to the College that they had not received any reports from Dr. Kozner. On March 30, 2000, a College investigator spoke with Dr. Kozner about the complaint. On April 3, 2000 the College investigator wrote Dr. Kozner and enclosed a copy of the complaint and on April 24, 2000 the College sent Dr. Kozner a letter requesting a written response from her. On May 2, 2000 Dr. Kozner advised the College that she had mailed the report to the patient's parents the previous day. Dr. Kozner also advised that she was meeting with her lawyer to prepare a written response which she would send to the College. On June 2, 2000 another letter was sent to Dr. Kozner from the College requesting her response. On June 23, 2000 a response still had not been received by the College. A letter was

again sent to Dr. Kozner requesting a response. On July 6, Dr. Kozner faxed a copy of a report on the patient dated May 2, 2000 to the College and on July 14, 2000 Dr. Kozner provided the College with her response to the complaint of March 8. At no time did Dr. Kozner provide any acceptable reason or explanation for her failure to provide the report within a reasonable time.

Admission and Finding

On the basis of the facts agreed to above, Dr. Kozner admitted that she was guilty of professional misconduct in that:

1. she failed without reasonable cause to provide her report or certificate relating to an examination or treatment performed to either the patient or his/her authorized representative within a reasonable time after the patient or his/her authorized representative had requested such report or certificate; and in that
2. she engaged in conduct or an act 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 Committee accepted Dr. Kozner's admission and found Dr. Kozner guilty of professional misconduct as alleged in the Amended Notice of Hearing.

Penalty

The Committee considered a joint submission as to penalty, and made the following penalty order:

- a) attendance by Dr. Kozner before the Discipline Committee to be reprimanded, with the fact of the reprimand to be recorded on the register;
- b) the suspension of Dr. Kozner's Certificate of Registration for a period of six months, to commence at a date to be fixed by the Registrar within 60 days of this order being final, and;
- c) three months of the suspension referred to in paragraph (b) above to be suspended if Dr. Kozner;

- i. retains an assessor acceptable to the Registrar at her own expense;
- ii. successfully completes any remediation and reassessment required by the assessor at her own expense;
- iii. funds and cooperates with an annual inspection of her practise by the assessor or another person appointed by or acceptable to the Registrar for a period of three years;
- iv. Should Dr. Kozner cease private practise at any time prior to the end of the inspection periods referred to in paragraph (iii) above, but participate in any professional activities, whether by consulting or employment, Dr. Kozner shall advise the College that she has ceased to engage in private practise, and provide the College with a written undertaking that she will advise the College in advance of her returning to private practice, at which time the three year period of annual inspections referred to in paragraph (iii) above shall recommence.
- v. While not in private practise, Dr. Kozner shall provide the College with an annual report from any school board or other body to whom she provides consulting or professional services, or by which she is employed, indicating that she is meeting her obligations in a timely manner.

The Committee further ordered that costs shall be paid to the College by Dr. Kozner in the amount of \$10,000 on or before March 8, 2001.

REASONS FOR PENALTY

The Committee was comfortable in accepting the joint submission as to the penalty outlined above. The Committee believed that the penalty was significant enough to act as

both a specific and a general deterrent. The Committee also considered that Dr. Kozner now had a clearer understanding of the importance of timeliness in report writing and the delivery of her reports. The penalty addressed the concerns of the College and was appropriate in the circumstances. The Committee heard that an assistant had left Dr. Kozner's employ, and this has resulted in a backlog of work in her office. This was put forward as a reason, not a justification, for her delay. The Committee confirms that it is not a justification for the delay that occurred, where Dr. Kozner's patients were the victims of this backlog. Dr. Kozner after consultation with her counsel waived her right to appeal and the reprimand was administered.