

Indexed as: Noriega (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. ELEAZAR HUMBERTO NORIEGA

PANEL MEMBERS:

**R. SANDERS (CHAIR)
DR. M. GABEL
DR. P. KLOTZ
M. WAESE**

Hearing dates: November 24, 2003

Decision/ Released date: November 24, 2003

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on November 24, 2003. At the conclusion of the hearing, the Committee stated its finding that the member committed professional misconduct and delivered its penalty order with written reasons to follow.

ALLEGATION

The Notice of Hearing alleged that Dr. Noriega committed acts of professional misconduct:

1. under clause 51(1)(b.1) of Health Professions Procedural Code (the "Code"), Schedule 2 to the *Regulated Health Professions Act*, 1991, S.O. 1991, c.18, as amended, in that he engaged in the sexual abuse of a patient; and
2. under clause 1(1)33 of O/Reg. 856/93, in that he engaged in acts 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 ALLEGATION

Dr. Noriega pleaded no contest to the allegations as set out above in the Notice of Hearing.

EVIDENCE

The following Statement of Facts and Findings Requested was filed as Exhibit 2 and presented to the Committee:

PART I - STATEMENT OF FACTS

1. Dr. Eleazar Humberto Noreiga ("Dr. Noriega") is a Toronto paediatrician who was born in 1944 and received a certificate of registration in Ontario in June of 1977.
2. The complainant was a patient of Dr. Noreiga's since she was born until 2002. In May of 2002, the complainant was a 17-year-old high-school student. Attached at Tab 1 [to Exhibit 2] is a copy of the patient chart from February 2001 to May 2002. Attached at Tab 2 [to Exhibit 2] are Dr. Noriega's OHIP records for the complainant.

3. In mid April, 2002, the complainant attended at Dr. Noreiga's office for a follow-up regarding her chronic bronchitis. During the examination, Dr. Noriega touched her breasts in an inappropriate manner, including touching her nipples with his fingers, without medical explanation or justification.
4. In late May, 2002, the complainant went to see Dr. Noriega with complaints that she was experiencing a severe cough, fever, hot and cold flashes and dizziness. At that appointment, Dr. Noriega asked the complainant to remove her clothing from waist up and gave her a paper shirt. During the examination, Dr. Noriega touched the complainant's breasts and nipples with his fingertips in an inappropriate manner without medical explanation or justification.
5. Dr. Noreiga then asked the complainant to undo the buttons of her jeans. She complied and undid the first two buttons of her jeans. After examining the complainant's abdomen, Dr. Noriega undid the third button of the complainant's jeans and removed her pants. He then reached inside the complainant's underpants and touched her clitoris and vaginal area in an inappropriate manner without medical explanation or justification.
6. The complainant never returned to Dr. Noriega's office.

PART II – FINDINGS REQUESTED BY THE COLLEGE

7. On the basis of the facts above, the College of Physicians and Surgeons requested that the Discipline Committee make the following findings:
 - (a) that Dr. Noriega committed an act of professional misconduct 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, as amended, in that he engaged in the sexual abuse of a patient; and
 - (b) that Dr. Noriega committed an act of professional misconduct under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, in that he has 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.

FINDING

The Committee accepted as true all of the facts set out in the Statement of Facts and Findings Requested. Having regard to these facts and Dr. Noriega's plea of no contest, the Committee found that Dr. Noriega committed professional misconduct:

- under s. 51(1)(b.1) of the Code in that he sexually abused a patient; and
- under paragraph 1(1)33 of Ontario Regulation 856/93 of the *Medicine Act, 1991* (O. Reg. 856/93) in that he has engaged in an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

PENALTY DECISION AND REASONS

Counsel for the College and counsel for Dr. Noriega made a joint submission regarding penalty. The Committee then heard from counsel for the College and for Dr. Noriega supporting the joint submission. The College indicated that the proposed penalty was appropriate considering, among other factors, the plea of no contest saved the complainant from having to testify and avoided a longer hearing, and the aggravating factor of the complainant's age and her status as a long standing patient, which made the breach of trust all the more egregious. Counsel for Dr. Noriega submitted a book of letters of character reference and support from colleagues and supervisors at his teaching hospital as well as detailing the service he provides to a significant segment of Toronto's multicultural community as well as service at a teaching hospital.

While we have no reason to doubt the letters of character reference, even a single episode of such behaviour warrants a penalty that will meet the criteria set out below. The Committee is satisfied that the joint submission is an appropriate one taking into account all the factors that need to be addressed. These include, foremost, the protection of the public, followed by, expressing the abhorrence of Dr. Noriega's behaviour by the profession, punishment of the member, and rehabilitative efforts.

We would also make clear that we are aware the joint submission did not address the issue of costs in the consent disposition. In this case, the absence of awarded costs in the submission was not considered to meet the criteria of causing justice to be brought into disrepute, and so the proposed penalty was accepted as presented. The Committee does not want it to be taken that costs should not

be sought in future joint submissions, as we consider costs to be an appropriate consideration in all cases of this nature.

ORDER

Therefore, the Discipline Committee ordered and directed that:

1. Dr. Noriega attend before the Discipline Committee to be reprimanded;
2. The Registrar suspend Dr. Noriega's certificate of registration for a period of 18 months commencing on a date to be set by the Registrar between January 1 and February 14, 2004, nine months of which shall be suspended if Dr. Noriega successfully completes the College Medical Ethics and Informed Consent Course and the College Boundary Course;
3. Dr. Noriega will not examine any female patient unless accompanied by a member of the College of Nurses of Ontario or the CPSO, or where the patient is less than 12 years of age, a parent or guardian; and
4. The results of this proceeding be included in the Register.

At the conclusion of the hearing, Dr. Noriega waived his right to appeal under s.70 of the Code and the Committee administered the reprimand.