

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Cyril Philip Marks, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity and any information that would disclose the identity of the patients to whom the allegations in the Notice of Hearing relate under subsection 45(3) of the *Health Professions Procedural Code* (the Code), which is Schedule 2 to the *Regulated Health Professions Act, 1991*.

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: Marks, C.P. (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. CYRIL PHILIP MARKS

PANEL MEMBERS:

DR. J. WATTS (CHAIR)
S. DAVIS
DR. B. LENT
G. DEVLIN
DR. F. SLIWIN

Hearing Date:	February 27, 2012
Decision Date:	February 27, 2012
Release of Written Reasons:	March 26, 2012

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 February 27, 2012. 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. Cyril Philip Marks 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, as amended (“the Code”), in that he engaged in the 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. Marks pleaded no contest to the first allegation in the Notice of Hearing, that he engaged in the sexual abuse of a patient. Counsel for the College withdrew the second allegation in the Notice of Hearing.

PLEA OF NO CONTEST

Rule 3.02 of the Rules of the Discipline Committee provides in part as follows with respect to a plea of no contest:

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 the proceeding only;
- (b) that the Discipline Committee can accept that those facts constitute professional misconduct or incompetence or both for the purposes of the proceeding only; and
- (c) that the Discipline Committee can dispose of the issue of what finding ought to be made without hearing evidence.

3.02(2) Where the member enters a plea of no contest, the prosecutor shall state the facts alleged and the findings requested by the College and the member or his or her representative shall state that the member does not contest those facts and findings for the purposes of the proceeding only.

FACTS AND EVIDENCE

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

1. Dr. Marks is a general practitioner practising in North York, Ontario. He received his certificate of registration in Ontario in 1959.
2. Dr. Marks practises exclusively psychotherapy and hypnotherapy at an office in his home.

Patient A

3. In approximately October 2008, Patient A, an adult female, was referred by her family physician to see Dr. Marks for anxiety.
4. Patient A attended about seven appointments at Dr. Marks' office.

5. Patient A usually saw Dr. Marks in the afternoon around 4 p.m., although she saw him in the morning on a couple of occasions. Dr. Marks' secretary usually worked in the morning.

6. For the first six appointments, Patient A found Dr. Marks to be grandfatherly in demeanour.

7. At one point as she was leaving a session, Patient A gave Dr. Marks a hug. She did so again at a subsequent appointment.

8. The second time Patient A hugged Dr. Marks, Dr. Marks held the embrace a little longer and kissed Patient A on the forehead. Patient A felt awkward.

9. Patient A's last visit with Dr. Marks took place in the morning in early December 2008. Dr. Marks' secretary was in the outer office. Towards the end of the session, Patient A and Dr. Marks were discussing her request for a doctor's note, so that she would not have to go back to work. Dr. Marks questioned whether he was comfortable providing her with such a note. He stated that he was leaning towards it but was unsure. Dr. Marks then wheeled his chair towards Patient A, took both of her hands in his, and said that he liked who she was. Patient A was uncomfortable and leaned away. After about 2-3 minutes, Dr. Marks let go of her hands and returned to his desk. The interaction caused Patient A to feel awkward.

10. After further discussion, Patient A got up to leave. Dr. Marks and Patient A hugged. Dr. Marks held the embrace and stated that he could stay there forever. Patient A was uncomfortable and pulled back, but Dr. Marks still held her and proceeded to kiss her on the lips more than once. Patient A said she had to go and she walked out.

11. Dr. Marks telephoned Patient A on more than one occasion, including after the last appointment. He called her the afternoon of the last appointment, saying that he was willing to give her the doctor's note she had requested, and wanted her to pick it up. Patient A told him that she would get it at her next appointment, although she knew she intended to cancel the appointment, as she felt uncomfortable. Dr. Marks telephoned Patient A again following her cancellation of two subsequent appointments. He

apologized for his actions and asked Patient A to come back so that he could demonstrate that he was a gentleman.

Patient B

12. Dr. Marks was recommended to Patient B, an adult female, by her treating [health professional] in 1996 or 1997 for anxiety.

13. Patient B had about six or seven appointments over the course of approximately two months with Dr. Marks, usually around mid-day.

14. By the end of about the second session, Dr. Marks began hugging Patient B at the end of her appointments. At the time, she perceived the hugs as being in the nature of an encouraging, fatherly “squeeze” or “embrace” around the waist.

15. At Patient B’s last appointment, Dr. Marks’ receptionist was present in the outer office. Patient B and Dr. Marks had a normal session. When she stood up to leave and had gathered her things, Dr. Marks gave Patient B a hug that lingered, and then gave her a big kiss on the lips. He then looked at her, and Patient B had the sense that he was trying to gauge her reaction. Patient B was shocked. Dr. Marks then looked down. Patient B left the office immediately, without further conversation with Dr. Marks.

Patient C

16. Dr. Marks was recommended to Patient C, an adult female, by a friend. She was seeing him so that she could talk with someone about some family problems. She believes that she was seeing him weekly, and saw him a number of times, more than twenty times. Dr. Marks’ receptionist greeted her most times that Patient C arrived at his office, and was mostly present in the outer office when Patient C was leaving.

17. Patient C’s chart indicates she saw Dr. Marks about 50 times in the period September 2001 to August 2003.

18. Dr. Marks hugged Patient C at the end of her sessions with him. It made her feel uncomfortable.

19. During Patient C's last few sessions with Dr. Marks, Dr. Marks held the embrace at the end of the sessions. He would then kiss her on the lips. As a result, Patient C no longer believed Dr. Marks' embraces were fatherly. She communicated her discomfort, but Dr. Marks continued to hug and kiss her at the end of her next session.

20. Patient C continued to see Dr. Marks because she was going through a difficult time in her life and found it hard to talk about her problems: she did not want to start all over with a new therapist.

PLEA OF NO CONTEST

21. Dr. Marks does not contest the facts set out above for the purpose of this proceeding only, and does not contest that the conduct described above was sexual abuse of the patients in question, for the purpose of this proceeding only, thereby constituting professional misconduct.

FINDING

The Committee accepted as true all of the facts set out in the Statement of Uncontested Facts. Having regard to these facts, the Committee found that Dr. Marks committed an act of professional misconduct, in that he engaged in the sexual abuse of three patients.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for the member made a joint submission as to an appropriate penalty and costs order. It included a four-month suspension and terms, conditions and limitations to be imposed on Dr. Marks' certificate of registration. The terms, conditions and limitations included that Dr. Marks shall install and maintain a video monitoring system that records all encounters with female patients; provide written notice to all female patients advising them of this Order and the findings in this proceeding; post a sign in his office indicating that all female patient encounters are video monitored by Order of the College; cooperate with unannounced inspections of his office and records by the College; and that he complete the medical ethics and boundaries

courses. The joint submission also provided that Dr. Marks appear before the panel to be reprimanded and that he pay costs to the College at the tariff rate for a one day hearing.

Dr. Marks sexually abused three female patients in the course of psychotherapeutic relationships by hugging and kissing the patients during the course of their appointments. These patients were vulnerable and there was a clear power imbalance. Patient A was seeing Dr. Marks for anxiety and was hugged and kissed while asking Dr. Marks to provide a note for work. Patient B was also seeing Dr. Marks for anxiety. Patient C continued to see Dr. Marks after the abuse occurred as she was in need of therapy and did not feel she was able to start again with a new therapist.

The Committee considered the mitigating factors in this case. Dr. Marks has pleaded no contest to the allegations, thus alleviating the need for the patients to appear as witnesses. He is scheduled to take the boundaries course in April 2012 and he has been seeing a psychologist. Dr. Marks has had no prior appearances before the Discipline Committee.

The Panel considered the following principles of penalty:

1. Public protection
2. To express abhorrence of the behaviour
3. To uphold the honor and reputation of the profession
4. To maintain public confidence in self-regulation
5. General and specific deterrence
6. To the extent necessary, rehabilitation of the member

The proposed penalty will satisfy these principles. The four-month suspension will provide general and specific deterrence. The ethics and boundaries courses will serve to rehabilitate the member and provide public protection. The terms, conditions and limitations on Dr. Marks' certificate of registration, including the video monitoring, the posting of the sign in his waiting room and the written notice to each female patient, will further protect the public as well as provide specific deterrence to Dr. Marks. The public

reprimand will express the profession's abhorrence of Dr. Marks' conduct and will serve as a specific and general deterrent. The penalty will maintain public confidence in the profession's ability to self-regulate and will uphold the honour and reputation of the profession. The proposed order for payment of costs at the tariff rate will partially offset the costs to the College of conducting the hearing.

The Committee considered the previous decisions of the Committee that counsel for the parties provided, which involved similar conduct to that of Dr. Marks. The Committee was satisfied that the penalty in this case was within the range of penalties in the cases provided. As well, the Committee is aware that a joint submission on penalty should be accepted unless it is contrary to the public interest and would bring the administration of justice into disrepute.

ORDER

Therefore, the Committee ordered and directed that:

1. the Registrar suspend Dr. Marks' certificate of registration for a four month period, to commence at 11:59 p.m. on February 28, 2012.
2. the Registrar impose the following terms, conditions and limitations on Dr. Marks' certificate of registration:
 - a. Dr. Marks shall install and maintain a video monitoring system approved by the College and ensure all encounters with female patients are recorded and maintained in a manner acceptable to the College. This shall include:
 - i. installing video cameras in the waiting room area of his office so as to ensure that video coverage of the entire waiting room, with the date and time, is recorded at all times that Dr. Marks' office is open;
 - ii. installing video cameras in the office where Dr. Marks conducts patient appointments, so as to ensure that video and audio coverage

of the entire office, with the date and time, is recorded at all times that Dr. Marks sees female patients;

- iii. maintaining the recordings specified above in a viewable format (with audio in the case of recordings in Dr. Marks' office) acceptable to the College for a minimum period of ten years following the last patient encounter, or longer if requested by the College;
 - iv. producing a recording in a viewable format (with audio) when requested by the College;
 - v. maintaining a female patient log in a form approved by the College, in which each female patient will indicate her name, the time of her arrival and the time of her departure (the "Female Patient Log");
 - vi. providing a copy of the Female Patient Log to the College on a monthly basis, and maintaining the original Female Patient Log;
 - vii. ensuring appropriate consent is obtained from each female patient for video monitoring and the storage of recordings prior to providing treatment, and if a female patient's consent is not obtained, refraining from providing treatment to her.
- b. Dr. Marks shall participate in and successfully complete a program in medical ethics facilitated by the College within one year of the date of this Order;
- c. Dr. Marks 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;
- d. Dr. Marks shall provide a written notice to each female patient he sees in a form acceptable to the College advising them of this Order and the

findings in this proceeding, appending a copy of the Decision and Reasons when released, and advising the patient that the College may contact them to inquire about their treatment by Dr. Marks. Dr. Marks shall ensure before providing treatment to a female patient that she signs this written notice to acknowledge she has reviewed the Order and Decision and Reasons (when released), and Dr. Marks shall keep this signed document in the corresponding patient file;

- e. Dr. Marks shall post a sign acceptable to the College in a clearly visible location in his office indicating that all female patient encounters are video monitored by Order of the College;
- f. Dr. Marks shall provide his irrevocable consent to the College to make appropriate inquiries of the Ontario Health Insurance Plan and/or any person or institution that may have relevant information in order for the College to monitor compliance with the terms of this Order;
- g. Dr. Marks shall cooperate with unannounced inspections of his practice and records and any other step the College may require for the purposes of monitoring and enforcing compliance with the terms of this Order; and
- h. Dr. Marks shall be solely responsible for all fees, costs and expenses associated with his compliance with the terms of this Order.

3. Dr. Marks appear before the panel to be reprimanded.

4. Dr. Marks shall within 30 days pay the College its costs of this proceeding in the amount of \$3,650.00.

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