

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Larry Scott Henderson, this is notice that the Discipline Committee ordered that there shall be a ban on publication of the name or identity and any information that would disclose the name or identity of the witnesses whose names or identities are disclosed at the hearing or in the patient records or any other documents 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.

The Committee also made an order to prohibit the publication of certain names under subsection 47(1) of the Code.

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: Henderson (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 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. LARRY SCOTT HENDERSON

PANEL MEMBERS:

DR. T. MORIARITY (Chair)
DR. E. ATTIA (Ph.D.)
DR. M. GABEL
B. FEVREAU
DR. R. SHEPPARD

Hearing Dates:	December 14-17, 2009
Decision Release Date:	July 19, 2010
Release of Written Reasons:	July 19, 2010

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons (the “Committee”) heard this matter at Toronto on December 14 to December 17, 2009. At the conclusion of the hearing, the Committee reserved its finding.

ALLEGATIONS

The Notice of Hearing alleged that Dr. Henderson committed acts 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, in that he has 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. Henderson denied the allegations in the Notice of Hearing.

FACTS AND EVIDENCE

(a) Overview of the Issues

The allegations of professional misconduct in this case arise from an alleged sexual relationship between Dr. Henderson and Patient A during the time she was his patient. Further, that after being notified of Patient A’s complaint to the College, Dr. Henderson

inappropriately contacted Patient A several times and made reference to the fact of the complaint.

This case raises two primary issues:

- (i) Did the conduct of Dr. Henderson with Patient A constitute professional misconduct, specifically, sexual abuse; and
- (ii) Would the conduct of Dr. Henderson, after he became aware of Patient A's complaint, be reasonably regarded by members as disgraceful, dishonourable or unprofessional?

(b) Overview

Patient A was Dr. Henderson's patient from 1985 until the fall of 2000. Patient A alleges that a sexual relationship began in April 1997 and continued after the doctor-patient relationship ended. Dr. Henderson admits that the two had a sexual relationship, but maintains that it did not start until a year after their doctor/patient relationship terminated. It was admitted by both Patient A and Dr. Henderson that following Patient A's complaint to the College, they had renewed their sexual relationship, at least until two days before the commencement of the hearing. Dr. Henderson was in communication with Patient A before and after being notified of the allegations.

The analysis of the evidence rests to a major degree on the Committee's determination of the credibility of the witnesses, Patient A and Dr. Henderson.

With respect to the allegation of sexual abuse, the central issue is whether sexual activity, culminating in sexual intercourse and/or oral sex, occurred on a night in April 1997, or thereafter while Patient A was Dr. Henderson's patient.

The facts as presented during testimony indicate that following the letter of complaint, the two restarted and maintained a social and sexual relationship, in fact doing so up to the time of the hearing. We are of the opinion that while testimony on the subsequent relationship bears on the issues of credibility, and the allegation of disgraceful, dishonourable or unprofessional conduct, the existence of this post-complaint emotionally and intellectually confusing and difficult relationship does not influence the first issue we must determine: did a sexual relationship occur during the time when there was a doctor-patient relationship.

With respect to the first issue, the Committee concludes that there was a sexual relationship while the complainant was a patient of Dr. Henderson, and the allegation of sexual abuse of a patient is proven. With regard to the second issue, the College did not prove to the requisite standard that Dr. Henderson, through his contact with his former patient after the complaint, committed an act of professional misconduct.

(c) Summary of the Evidence

The Committee heard testimony from Patient A and from Dr. Henderson. There were exhibits entered concerning the complainant's interaction with the College, telephone messages from Dr. Henderson to the complainant, notes that the complainant had left on the cars of various women who had a relationship with Dr. Henderson, and the medical chart of Patient A as Dr. Henderson's patient.

Testimony of Patient A

Patient A was born in 1949. She had been married for over 25 years, and has two children and grandchildren. During the period in question, she worked as a clerk, a position she held for over 20 years. She first met Dr. Henderson when they were both attending a French class at a College. She and her children became his patients in 1985, in Whitby, where Dr. Henderson was in Family Practice.

In describing her marriage, Patient A said: “I didn't have a very good marriage, but that was something I – kind of, kept to myself.” She was not having sexual relations with her husband during the time in question. She testified that previous to the alleged incidents, she had never had sexual relationships with any man other than her husband.

There was nothing significantly different from the usual physician-patient relationship until February 1997, when Dr. Henderson’s wife died suddenly. On Patient A’s first visit to Dr. Henderson’s office following this event, she felt there may be more between them when there was a “bear hug” after she expressed sympathy concerning his wife’s death. Soon after, she sent him a card saying how sorry she was for his loss, and stating that if there was anything she could do to help with his son, she would be happy to do so (Dr. Henderson had a seven-year-old son at the time of his wife’s death).

She testified that he called her six weeks after his wife’s death, in response to her card. He said, “I think I need to come over and talk to you.” She testified that she told him her husband was out of town on a business trip. Both children were no longer living at home. She invited him over. He arrived around 8:00 p.m., and they sat in her living room. She described the gist of this meeting as:

[H]e told me all the right things that – you know, yeah, we were friends and everything, and that doctors can’t be involved with their patients, and that – you know, he – like, we were friends, and that he took care of me, and that he just – that wouldn’t be a good thing. And, I’m – like, “Oh, that’s okay. You know, I just thought if – you know, if you needed help with His son, or whatever, that would be good. I could help you out.” But, yeah, I mean, I was – kind of, making an advance.

She notes that they hugged and possibly kissed when he left. Her reaction to this was to call herself a “goof” for thinking there could be more to her relationship with him. Later that evening he returned, without calling, approximately between 11:00 p.m. and midnight. She testified that the doorbell rang and it was him, she thought, “Woo hoo, he does like you.” They went down to the family room and watched TV. He stayed until about 3:00 a.m., having told her that he had arranged for the babysitter to keep his son overnight because he was going to be delivering a baby that night. “Anyway, one thing

led to another, and we did have sex that night.” She described the sex as being unprotected and that it ended with oral sex, “and that was when he finally was able to complete the act.” Their interaction was interrupted by calls from the hospital concerning the status of the delivery. She remembered the date as it was the same as a family member’s birthday.

A relationship, according to Patient A, with regular sexual encounters continued after this event. She testified Dr. Henderson would meet her in the Walmart parking area, close to his home and drive her back to his house, where they would have sex. She also stated they would meet at his office, although it was mostly kissing and hugging. She described one particular incident when she performed oral sex on Dr. Henderson in his office. She asked Dr. Henderson to place a chair in front of his office door to prevent his secretary from entering when she returned from her dinner break. She remembered his secretary knocking as she had hurt her foot during her break. She found herself very uneasy during this episode of oral sex.

In the fall of 1997, she asked her husband to move out, and he did so before Christmas of that year. She testified that she told Dr. Henderson he could now come over to her place as well. She described her feelings at this time as not thinking that this was the “right thing” and she could “get him into lots of trouble. This was not a good thing for me, because I was still his patient, and it was bad.... He would come over, and then – and I would always want – you know, I wanted to have more of the – like, more consistent relationship.” She stated that she “was his Tuesday night girl,” although he would sometimes come on the weekends as well. It was surely not as consistent as she wanted.

She met his son, and began to assist with taking care of him, although he had a babysitter who she became friends with. She would pick him up from the babysitter and take him to his baseball and hockey practices and games, often later joined by Dr. Henderson. She told no one except her sister about the relationship. She testified that she continued to see Dr. Henderson as a patient, because, in her mind, it was difficult to think of trying to find another physician.

In 1998, she developed genital warts, as documented in her chart. She insisted the only person from whom she could have gotten the warts was from Dr. Henderson, as he was the only sexual partner she had had other than her husband. She noted that all their sexual activity was unprotected. He denied having warts, but did tell her he had some issue back in his university days, and “you know, this thing can happen.”

The relationship was never as complete as she hoped it would be and she became aware that there were other women involved with Dr. Henderson. She became “[u]pset. Found out he was cheating.” As noted in her chart, on a date in December 1999, she went to see a physician in the same group, and informed him of her anxiety concerning a “[r]eally recent break up with boyfriend.” She received a tranquilizer.

She began to spy on him, using the Walmart parking lot to watch who visited him, and even at one time confronting one woman in his garage. “It wasn’t very nice to do, but I did.”

She testified that there were fights, and she would confront him and he would say, “Oh well, you know.” She testified: “By now I had thrown my whole life away, and I just kept thinking, ‘He’s going to mellow. He keeps coming back. He must like you.’”

Her last chart entry is in November 2000. She testified she decided not to see him as a patient anymore. She testified that while she had the clinic at her job available to her, she was too embarrassed to see anyone else, and basically stopped seeing physicians. She later did get a new physician, but never told the new physician about the genital warts or the relationship with Dr. Henderson.

Patient A and Dr. Henderson took two vacation trips together, after the doctor/patient relationship was alleged to be over, along with his son and, on one of the trips, another child. They slept together during these vacations.

She testified that while her relationship with Dr. Henderson was “on again, off again,” it came to a climax when she discovered he was taking Ms B, another woman with whom he was involved to his home province, for Christmas 2006. “He was still my intimate partner, and when I found out he took her – I’m like, that – there’s no end. There’s never going to be an end. So I had my exorcism, and I wrote my letter.”

By this point, Patient A had taken to leaving notes on the vehicles of the women she suspected or knew were seeing Dr. Henderson. These notes were rhyming poems to inform these women that there were other women in his life. They were unsigned.

In describing her reasons for continuing to pursue a relationship with Dr. Henderson, she said, “I guess I have pretty low self-esteem. I don't know. I just threw my whole life away, and I just kept thinking: I know people mellow in their old age, and maybe when he mellows, I’ll be the one he’ll want to mellow with.”

In testimony she elaborated upon her activity of writing letters, spying and harassing the girlfriends of Dr. Henderson. There was no denial of the behaviour, nor rationalization of it. She admitted to being very angry with Dr. Henderson prior to writing the letter of complaint.

She testified in direct examination that she wrote the letter of complaint to the College over the Christmas break and mailed it in January. On cross-examination, she was shown that the letter had a November date, and admitted that she was mistaken and had started the letter earlier, although she did not mail it until the New Year. She described the letter as, “So that was my loaded gun and I shot it right into the mailbox.”

The letter of complaint did not specifically mention sexual relations on the night in April 1997, but did state that if that night had not occurred, the complaint would not have happened. Following the mailing of the letter, she subsequently met with an investigator for the College and wrote a detailed sequence of events. In these subsequent interviews

and written material she detailed the initial sexual incident of April 1997. During the meetings with the investigator, she was informed not to have contact with Dr. Henderson.

During the interval between filing her complaint and Dr. Henderson being notified, she received a phone message of birthday wishes from him. This was her first contact with him since ending the relationship prior to Christmas 2006. She was surprised to receive this message and it made her question the state of the relationship.

Patient A testified that following receipt of the notice of her complaint, Dr. Henderson called Patient A at work, something he had never done before. He was upset. She notified the College investigator of the contact.

During direct examination, Patient A was asked when she last talked to Dr. Henderson. She replied that it was the night prior to giving her testimony at this hearing. Further questioning revealed that following the complaint, Patient A and Dr. Henderson had started seeing each other again and in fact had slept together the weekend prior to the hearing date. This was not disclosed to the College prior to her testimony. She did not tell the College of the contact prior to the hearing, but did not deny it when asked the questions during her examination. She agreed that she had left the College with the impression that she was no longer seeing Dr. Henderson: "They did not ask and I did not say."

Soon after their contact resumed, she wrote a letter to the College wanting to retract her letter. "I wrote a letter saying that I didn't want to proceed with – I didn't want to have to sit here like this today. I didn't want to – I just wanted it to go away." She stated that Dr. Henderson had asked her numerous times, including the weekend just prior to the hearing, if she could remember the dates differently. She testified he never directly asked her to lie, and she stated numerous times that she wished it was different, but she could not lie either in a letter or when giving testimony under oath, even as she wished not to be testifying and was concerned that she would therefore not be able to keep up her relationship with Dr. Henderson. She testified: "It's the same thing. It's always – you

know, I mean, we're both sorry that things happened the way they did, and if I wasn't sure about the dates, maybe, it would be better for everybody. And, I wish I could say that it happened different, but it didn't."

She also stated that "we talked about the dates, and I said there would have been no point in me even writing the letter if it happened different. I wish it happened different. I wish I could change what I have to say, but this is what happened. [On a night in April 1997], if you had not come back to my house, we would not be here today." As to the timing of the sexual contact, she testified that "Dr. Henderson wanted me to have a reflection on the dates that I have told you about, and he wanted me to think if I could recall that our doctor-patient relationship had ended before our other relationship started. And, I told Dr. Henderson I can't tell a lie. I won't remember the lie, and it will be a big muddle, and that the story was what it was."

At no point did Patient A ever retract her assertion that the alleged sexual contact first occurred on the night in April 1997.

Their relationship continued after Dr. Henderson became aware of the complaint and, at least to the time of this hearing, was still occurring on a regular basis. She noted that "he kept calling me and he kept coming over and I was always very happy to see him and we just continued in our little denial state, and it was not anything that was ever addressed between him and I, it was just something that we were hoping would go away."

She accepted that as part of the complaint process, she alleged that Dr. Henderson wrote prescriptions she filled as his "mule," and accepted the information that the College had done a complete investigation and that he was "squeaky clean." She did not retract her description of the incident, although she accepted the outcome of the investigation.

Testimony of Dr. Henderson

Larry Scott Henderson, 59 years of age at the time of this hearing, is a family physician in Whitby. He is unmarried at present, and has a son. The practice is a full-service family practice with ten family physicians. He is originally from Alberta, where his family of origin still resides.

Consistent with the testimony of Patient A he described their meeting in a language class and she and her two children subsequently becoming his patients in 1985. He testified regarding the sudden death of his wife in February 1997, and his being the responsible parent for a then-seven-year-old boy with learning disabilities. There is no disagreement that Patient A came to an office visit, offered condolences, sent him a card one or two weeks after that visit, which mentioned that she was willing to be of any assistance with his child, and included her phone number.

He testified that while he had another school parent who helped him during the school year in caring for his son, and that he had a babysitter available nearby, he still felt the need for additional assistance as he needed to maintain a family practice, take care of his son, getting him to his extra schooling and to his little league baseball and hockey games. He therefore felt, since he knew Patient A, and thought she was bringing up her children well, that he would explore her offer.

His version of the events on the night in April 1997 differs from that of Patient A. The early part of the evening events does not differ in essential details other than the hour of the return visit. He testified that he decided to call her. He got directions and went to her house around 8:00 p.m. He talked with her about his loss and needing help. He said they discussed whether there could be more of a relationship between them. She told him she had always liked him. She mentioned more than just helping with his son. He told her that this was not appropriate, and he believed that she understood. Then he left, because he had a patient in labour and also needed to make arrangements for overnight care of His son. He testified that there was a hug goodbye, and he “pushed aside” and left quickly.

Following making arrangements for the night, he said he felt bad to have rushed off so curtly and to have not been appreciative, so he returned to her house at around 10:00 p.m., knocked on her door, and after staying 20 minutes, went to the delivery. He denied having sex with her that evening. He also denied knowing that her husband was not home at the first visit, but did know that when he subsequently returned. He testified that he needed help, and maybe she could help without it being unacceptable to the College. Although she had expressed interest in a relationship on his first visit to her, he said he still saw her as being helpful and did not see her as being interested in him, or he would not have accepted her offer of help.

He testified that subsequently, he called on her for favours as his babysitter could not meet all of the needs. Patient A would take his son to ball games that summer and he would meet them there when he finished work. During this time, she was a “good friend” as well as a patient, and they would sit together at ball games, and he enjoyed her company and shared stories. He stated that she only helped three to four hours a month, but also stated she took his son to a couple of games and practices per month.

He discussed an episode in the fall of 2000 when his son collapsed at hockey with a “cardiac arrest” and was taken to a hospital in another town. At that time, he was being cared for by Patient A, who went with him in the ambulance. On being notified of the event, Dr. Henderson asked Patient A to stay while he finished in his office, and went to join her and his son at the hospital after he had finished seeing patients. He testified that he felt that this event was a catalyst to realize that she could no longer be his patient.

With regard to Patient A’s husband, Dr. Henderson testified that he did not know they had marital problems, and thought her husband knew that she was helping Dr. Henderson and understood. He stated that he found out in 1998 that she had separated from her husband in December 1997. In cross-examination, he was led through the patient chart where it was noted on a date in April 1997 that there were “some marital and financial problems,” and on a date in May 1997, “stress at home and work still bad”, and on a date in September 1997, “separating with husband.” He attempted to explain this discrepancy

by noting that he did not remember these entries and while he wrote things about this, he had not recognized in regard to her family situation that “it was that serious.”

He was questioned in cross-examination about the increasing number of lengthy counseling sessions, charging for five of these sessions after the April 1997 meeting at her home. He denied these counseling sessions had anything to do with an opportunity for sexual contact. He testified that he charged the code for counseling whenever a visit took too long, as the usual code would not cover the time spent.

In reviewing Patient A’s chart, it was noted that he had performed complete examinations including pelvic and breast examinations on her as a patient. He also agreed that there were early chart entries noting her emotional state.

He also testified that she remained his patient until November 2000. He testified that he saw no reason to document the end of the doctor-patient relationship in the chart unless he was forwarding records. He had begun to “care” more for her, and knowing that the College policy concerning sexual relations with patients, in force at that time, required a year interval before a sexual relationship could be initiated, he discharged her from his practice in November 2000, and assumed she would get care at her workplace clinic. He felt this would be less “complicated” and people would not get the “wrong idea” when they were seen together.

He testified they became “romantic” at Christmas 2001, when he decided not to make the annual visit to Alberta, but to remain in Ontario to celebrate Christmas with his deceased wife’s family. He took Patient A with him to family events. He testified that they had their first sexual encounter during this time period. In the ensuing years, they talked about being together forever, but not marriage, as it would be difficult for her family. He testified their relationship was like a form of marriage.

In discussing Patient A's STDs before her discharge from his practice, he testified that he had never had an STD. He did not deny that sexual intercourse occurred between them without protection even though he knew of her diagnosis.

He acknowledged that they traveled together twice prior to 2005. He also testified their relationship changed around that time: "Things not going as well as they should." While the relationship was solid, he had to be at work extra hours, ignored her on occasion, made mistakes and "let her down." He said that she saw him as taking advantage of her by caring for his son for free, although he says he helped fix up her new house after she moved, and paid for most things. As well, he met Ms B around 2005. Patient A saw Ms B helping him and became angry. She began to watch his house and later began to put notes on Ms B's car. Additionally, there was another woman who he felt Patient A saw as a threat to their relationship. He kept the anonymous notes that were left on her car. He never notified any authorities about these notes.

Dr. Henderson testified that by the end of 2006, he was trying to sort things out with Patient A, but unless he left the relationship with Ms B behind, she threatened "dire consequences." He did see her in November 2006 to "thank her." He then took Ms B to visit his family in Alberta for Christmas.

He describes calling Patient A before March 2007, as it was her birthday and he felt bad that they had parted ways in an unhappy way, and wanted to sort things out with her, even knowing she was upset. He did not know at that time that she knew he had taken Ms B out west with him, and he did not yet know about her complaint to the CPSO when he made this call.

He was notified of the complaint on Friday, March 30, 2007 and advised to get legal counsel. He received the written notice of the complaint on April 5, 2007. He testified he was devastated, as he did not know what he had done. He acknowledged calling Patient A at work after receiving the complaint, not being able to believe she had done this, and was not able to sort it out by phone.

They agreed to meet in Ajax on the weekend. He testified that she told him she had sent the letter in a fit of anger and would write a letter of retraction. When asked if he told her what to say in the letter, he replied that if she felt like writing a retraction, that would be good and would be better for him and maybe her. She wrote the letter of retraction and he read it. She told him she could not write that she had lied, as that would not be in her best legal interest. He denied telling her to change the dates of their first sexual encounter.

Dr. Henderson denied that he was ever told in writing or in verbal exchange that he should not contact Patient A after he received the complaint. He stated he had not seen the notice of hearing containing allegations of unprofessional conduct concerning contact with Patient A after her complaint. He said all the papers went to his lawyer. He stated that the first time he heard about this issue of professional misconduct for contacting her was at this hearing.

After meeting her in Ajax, he testified that their relationship then continued. They met because he was devastated by it all and had no one else to talk about it with. What started out as self support, as she wished she had not complained, became mutual support and a romantic relationship. They have continued to see each other once or twice a week, stay overnight together, dine, shop and go to shows. He stated that it may seem strange, but they had a better relationship after the complaint. He continued to deny that at any time he told her to change dates in her complaint, had not known what to tell her to do, and did not want her to get in trouble with lies. He “told her to tell the truth about our relationship.” With reference to the discipline hearing, he testified that “she did not do so here.” He was unsure at the end of his testimony if the relationship was over.

Credibility of the Witnesses

(i) Patient A

In assessing the credibility of Patient A's testimony, we noted that it was given with emotions that ranged over the gamut of possible states. She cried, self-depreciated, was angry, resigned, and defensive. She was plainly ashamed of her actions, and conflicted over what she wanted in a relationship with Dr. Henderson, and what she had lost in way of family in her pursuit of that relationship. It was obvious that she did not want to testify, and that she was concerned that testifying would be destructive to the relationship she was still hoping would result in her living her life with Dr. Henderson.

Her testimony was internally consistent (she never wavered from the date of the initial sexual contact) and consistent with the contemporaneous medical chart record. She testified that there were extended visits at his office, and the chart confirms an increased number of time billed units which were the equivalent of at least 46 minute visits. The chart as well confirms Patient A's testimony that Dr. Henderson knew of her marriage issues. It confirms that Dr. Henderson knew of the difficulties in the marriage relationship long before he testified as to being aware there were any problems.

Patient A's testimony had one serious contradiction, in that she testified that she was "living like a nun" since 2006, when in fact she was still seeing and having sexual relations with Dr. Henderson up to the time of the hearing. She also never told the College about this continuing relationship, a matter of omission rather than commission. She had obviously not told the College all there was to tell, but as each fact of the history of contact subsequent to the complaint came out, she readily admitted the conduct, albeit berating herself for causing this entire hearing to occur. Our evaluation of this conflicting testimony is that she was in the admitted continuing relationship, and was still hoping for it to become permanent. Nothing in Dr. Henderson's testimony about this continuing relationship after the complaint would lead her (or us) to conclude otherwise. She is testifying about events that may be detrimental to the goal of relational permanence, will not lie on the stand, but will also not voluntarily contribute to what might be seen as

problematic to her hoped for outcome. We conclude that the living like a nun remark concerned being in or looking for any other sexual relationship other than Dr. Henderson.

Patient A's testimony was given with reluctance. It was obvious to the Committee that she was conflicted, did not want to testify, and in light of her continuing relations with Dr. Henderson, wanted this matter to "go away." She vacillated in the relationship and in her testimony, caught between love for Dr. Henderson, hope that he would still be her life partner, feelings of having thrown her life away for this affair, anger at herself for being naïve, jealousy for concurrent and subsequent relationships of Dr. Henderson, and anger and a desire for vengeance. She also continued to be led forward with the possibility of having a life-long relationship with him by the resumption of the affair after the filing of the complaint. In her testimony, it was obvious that Dr. Henderson's birthday call to her might well have brought her back to hoping something might yet develop and might well have resulted in her not sending in a letter of complaint and filling in the details in her interviews with the College investigator. Soon after re-contact, she did file a letter, asking to have the matter dropped.

In all of this, what stood out was that, under the stress of testifying and emotional conflict concerning the relationship, she would not change the basic and most salient facts of her allegations: the allegation of sexual contact on the night in April 1997, and continuing a sexual relationship while still his patient. It was the Committee's observation that this was based on her inability to lie under oath to us, rather than for any emotional or relational gain at this ultimate moment in their relationship.

We believe Patient A's version of the events of the night in April 1997. We do not believe Dr. Henderson's version of the events of that evening. Our analysis of the credibility of the two witnesses with respect to the events of the night in April 1997 is discussed below.

We also believe Patient A's testimony that the two continued in a sexual relationship while she was a patient. Having initiated the sexual relationship on that first night, there

is convincing evidence that their relationship continued. Patient A was definite in describing it; how she would be picked up, was his “Tuesday night girl”, that she was deeply entwined in his life, to the extent of being trusted with his child during and after a major cardiac event. We have evidence that the relationship was more than the 3-4 hours a month of child care that Dr. Henderson testified to. His minimalization of the obvious time she spent in child care, her definitiveness in when and where their relationship occurred, and the unrefuted evidence of extended visits at the office, leads us, on the balance of probabilities to prefer her version of the relationship.

Taken on the whole, her testimony was consistent with the background events she and Dr. Henderson described. We found her to be a credible witness, filled with emotional conflict, but steady in the essential details of the story.

(ii) Dr. Henderson

In direct examination, Dr. Henderson presented himself as a helpless person after the death of his wife; needy and willing to look anywhere for help with a son in difficulty. He testified with a wavering voice, and was hesitant.

Dr. Henderson did not acknowledge the inconsistencies in his testimony as noted below, and his testimony lacked external consistency with documented events and his own actions, which will be described in detail below.

A prime issue in his testimony was his version of the events of the night in April 1997. Patient A and Dr. Henderson agree that she expressed a desire to help him, wrote him a card and enclosed her phone number. He called her and arranged to come to her house, which he did at or after 8:00 p.m. Patient A says she told him on the phone that her husband was not home; he denies knowing this at that time. They both agree that she made advances, wishing to have a closer and more intimate relationship with him, and that he refused and told her that there was a doctor-patient relationship that precluded any such intimacy. Both were clear that this was what essentially transpired at this visit to her

home. She states he left with a hug and possibly a kiss, he states he left hurriedly. He did arrange for his son to spend the night at a babysitter, based on the fact that he had a woman in labour at the hospital. He then returned to her house unannounced at around 10:00 p.m. according to him, or after 11:00 p.m. on her evidence. He states that he returned and spent 20 minutes there, because he did not want her to have the wrong idea due to his previous brusqueness, and to thank her, as he was still in dire need of help for his son. He denies believing she was still interested in him, as he would not have accepted her offer of help if this was the case. She states he came, they talked, and then went to the basement family room where they had sexual contact culminating in oral sex. The sexual interaction was interrupted by cell phone calls from the hospital concerning the labour.

We find that Dr. Henderson's version of events is not credible. It is obvious that he knew that she had an interest in him, going far beyond what was acceptable in a doctor-patient relationship. He testified that she expressed that to him. He also would have known when he returned later in the evening, if he did not know before the visit, that her husband was not home and that she was alone. With those facts in mind, and stating that he was very aware that the College policy (which he had explained to her) precluded them having a relationship, he still arrived at her door, unannounced, at or after 10:00 p.m. We do not believe that he would be unaware of what this would signify to a woman who had made advances to him a few short hours previously. We believe he came back, having made arrangements for his son's overnight care, because he was aware of her interest in him.

His explanation for returning (*i.e.*, wanting to let her know he was appreciative of her offer to help with his son), belies all consideration of the meaning of returning late at night to the home of a patient who has expressed interest in a personal relationship. He attempts to explain his actions by stating that he needed help with his son. He already had help from people not in his practice, and one can at least assume that there was no need to cross boundaries in order to get hired help. His idea of using patients to care for his son, in itself, shows a disregard for boundaries. In total, his explanation is not plausible.

He also denied being the source of Patient A's STD, yet continued to have sex with her without protection. He stated that the disease was treated and therefore not an issue, when as a physician, he knows or should have known that the presence or absence of external lesions does not preclude the transmissibility of the disease. We interpret his not using protection during intercourse as a confirmation that he already had the illness himself and that this is consistent with Patient A's testimony that he had stated to her that he had a condition himself while in university.

He testified that he did not know about the status of Patient A's marriage, yet there are notes in the chart indicating that he had knowledge that there was difficulty in their relationship. He minimized the importance of these notes.

His explanation for the increased number of extended office visits (which he billed as counseling) was that the visits simply took longer than expected. We doubt that as an experienced physician, he did not know that counseling sessions were required to be pre-booked and were supposed to be related to specific counseling issues. We would see this as part of the pattern that, on the balance of probabilities, makes Patient A's version of events more plausible. The pattern we note is one of Dr. Henderson minimizing their involvement, when the facts noted above (the length of time she spent with his child, the not knowing of her marital difficulties, the stated ignorance of billing extended sessions) support our conclusions.

He minimized the amount of time that Patient A spent with him and his child, calling it three to four hours a month, when in fact, at the least, she was taking him to multiple baseball and hockey games and practices, and he would later meet her there and spend time together at the games. This minimizing of the time alone, aside from her other house-based time after school, belies the true nature of their relationship and brings his description of the relationship in the years following the April 1997 event into doubt. As well, the fact that he had enough confidence in Patient A to allow her to care for his child after a "cardiac arrest" and finish his clinic before joining her at the hospital implies a closer relationship more in line with the description by Patient A.

As well, Dr. Henderson's assertion that his decision to discharge her from his practice following the incident with his son at the hospital was to avoid people getting the "wrong idea" begs credulity, as they were by his own admission already seen together at ball games, and sat together and talked. As well she was in contact with his paid daytime babysitter, another member of the community, long before the discharge from his practice. Why he chose to end the doctor/patient relationship at the time she took his child to emergency to a local hospital is unclear to the Panel. It does not seem to have any relationship, however, to his testimony that it would be less complicated and avoid the community getting the wrong idea.

For these reasons, we do not consider Dr. Henderson a reliable witness, and prefer the evidence of Patient A.

Findings

The Committee is aware that the standard of proof is the balance of probabilities as delineated in *F.H. v. McDougall*. We "must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred."

(i) Sexual Abuse

The central issue is whether a sexual relationship commenced during the night in April 1997, into the next day and continued prior to the termination of the doctor-patient relationship in November of 2000. We find on the balance of probabilities that the evidence is convincing that a sexual relationship existed from the night in April 1997 and continued during the time of the doctor-patient relationship.

Having regard to these facts, the Committee finds that the allegations have been proven to the requisite standard that Dr. Henderson, pursuant to paragraph 51(1)(b.1) of the Code, has engaged in the sexual abuse of a patient.

(ii) Disgraceful, Dishonourable or Unprofessional Conduct

Dr. Henderson denied that he had knowledge that he should not have contact with Patient A after being informed of her allegations. He stated that he never read the final Notice of Hearing. The documents went to his counsel, and he only learned of this particular in the allegations at the time of the hearing.

Patient A knew she was not to have contact with Dr. Henderson as she had notified the College of Dr. Henderson's first contact with her following his notification of the allegations. We have no testimony that she told Dr. Henderson about this stricture.

In his letter of notification from the College concerning the allegations, there is no direction to him not to talk to the complainant. We heard no testimony from the College investigator that she had told him not to contact the complainant. Whether his counsel had told him that this was inadvisable or notified him of the particular related to this allegation is unknown, as that question by College counsel was objected to on the basis of solicitor-client privilege and was abandoned by College counsel.

On the other hand, Dr. Henderson knew of the seriousness of the sexual abuse complaint which ought to, at the least, have lead him to inquire about the appropriateness of his subsequent actions. That all correspondence concerning legal matters went to his counsel of record may be true, yet we would expect that he would be well informed of all the allegations as his counsel must receive instructions from him. We are bound by the privileged nature of these communications and will not assume what transpired between counsel and client. The issue was not pursued in cross examination. We therefore accept Dr. Henderson's testimony that he did not know that he was not to have any contact with Patient A.

Dr. Henderson testified that he did not directly ask Patient A to change her story, only to reconsider if the dates she had reported were correct. While the line is thin, this

distinction is supported by Patient A's testimony, although she stated that he asked her, "...if I could recall that our doctor-patient relationship had ended before our other relationship started. And I told Dr. Henderson I can't tell a lie. I won't remember the lie, and it will be a big muddle, and that the story was what it was." While she transforms his repeated requests to be sure she had the dates right into her inability to lie, there is no direct evidence that he baldly asked her to lie. The Committee found the line was "thin" between asking her to reconsider and asking her to lie, but the line was there in the evidence of both witnesses.

In evaluating the conversations between Patient A and Dr. Henderson concerning this issue, we are cognizant of their continued relationship. The relationship following the complaint was obviously emotionally complex. Both wished the complaint would go away. Dr. Henderson was apparently aware of the limits in what he could ask Patient A to do, and she was cognizant of the limits of what she could deny. We cannot speculate how the future plans or hopes of each of them played in the positions each took, we can only note that Patient A states she was not asked directly to lie, although she frames her response in terms of not being able to lie, and Dr. Henderson's unchallenged evidence does not contradict that position.

We conclude that the College has not proven this allegation to the required level of proof, based on the lack of direct testimony from the College investigator as to whether Dr. Henderson was warned not to contact the complainant, the lack of such a stricture in the original notice of complaint, and the lack of proof that he had seen the notice of allegations and the particulars noted in Schedule A of the version of the Notice of Hearing presented to the Committee.

The Committee requests that the Hearings Office schedule a penalty hearing pertaining to the finding made at the earliest opportunity.

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Larry Scott Henderson, this is notice that the Discipline Committee ordered that there shall be a ban on publication of the name or identity and any information that would disclose the name or identity of the witnesses whose names or identities are disclosed at the hearing or in the patient records or any other documents 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.

The Committee also made an order to prohibit the publication of certain names under subsection 47(1) of the Code.

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: Henderson, L.S. (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 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. LARRY SCOTT HENDERSON

PANEL MEMBERS:

DR. T. MORIARITY (Chair)
DR. E. ATTIA (Ph.D.)
DR. M. GABEL
B. FEVREAU
DR. R. SHEPPARD

Hearing Date:	November 2, 2010
Decision Date:	November 2, 2010
Release of Written Reasons:	January 18, 2011

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on December 14 to 17, 2009. At the conclusion of the hearing, the Committee reserved its decision. On July 19, 2010, the Committee delivered its written decision and reasons and found that Dr. Henderson had committed acts of professional misconduct in that he had engaged in the sexual abuse of a patient.

The Committee heard submissions on penalty on November 2, 2010, and delivered its penalty order on that date with written reasons to follow.

EVIDENCE AND SUBMISSIONS ON PENALTY

The Committee received a joint submission as to penalty; which provided that:

1. The Registrar revoke Dr. Henderson's certificate of registration;
2. Dr. Henderson appear before the panel to be reprimanded;
3. Dr. Henderson reimburse the College for funding provided to patients under the program required under section 85.7 of the Code posting an irrevocable letter of credit or other security acceptable to the College;
4. Dr. Henderson pay costs to the College in amount of \$10,950.00; and
5. The results of this proceeding be included in the register.

The College introduced a victim impact statement from Ms X. College counsel also submitted to the Committee two previous Discipline Committee decisions concerning Dr. Henderson, in particular:

- a) On March 10, 2004 the Discipline Committee found that Dr. Henderson committed professional misconduct 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; and,

- b) On March 24, 2005, the Discipline Committee found Dr. Henderson to have committed acts of professional misconduct in that he engaged in sexual abuse of a patient, sexual impropriety and conduct that would be regarded by members as disgraceful, dishonourable or unprofessional.

Counsel provided to the Committee two prior cases of the Discipline Committee: *Dobrowolski (Re)*, [2004] O.C.P.S.D. No. 46 and *Lukezich (Re)*, [2006] O.C.P.S.D. No. 24.

Counsel for Dr. Henderson submitted two unsolicited letters of support from his patients. Counsel for Dr. Henderson also pointed out that Dr. Henderson's two previous Discipline Committee decisions concerned facts that arose after the issues in this hearing and, therefore, should not be seen as a part of a repeat offender pattern.

DECISIONS AND REASONS FOR PENALTY

The Committee considered the submissions of counsel for the College and for Dr. Henderson and the documents filed by counsel. The Committee reviewed its decision and reasons on finding in this hearing. It also considered the victim impact statement as required under section 51(6) of the Health Professional Procedural Code (the "Code"), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18. The victim impact statement reflected the fact that the complainant was clearly vulnerable and had entrusted her physical care and her personal problems to Dr. Henderson. It delineates how his betrayal of trust was damaging to her. Behavior of this egregious nature is unacceptable to the profession and can bring the entire profession into disrepute. The Committee is of the opinion that Dr. Henderson's sexual abuse of his patient, his disregard for his patient's welfare and his misplaced sense of entitlement is shameful and reprehensible.

The Committee considered the fact that Dr. Henderson has twice previously appeared before the Discipline Committee. As noted in *Dobrowolski (Re)* in paragraph 55, "[b]ecause of the timing of the events involving complainant (#1) (taking place before the earlier findings of misconduct), the present case cannot as a matter of law or fact be

treated for penalty purposes as one involving a ... repeat offender who has failed to learn the lessons of the prior...finding”. Such is the case in this matter. However, it is obvious that Dr. Henderson has now been found on three occasions to have committed acts of professional misconduct, and the act involving Ms X was not an isolated incident, but part of a pattern of misconduct involving female patients.

Sexual misconduct involving intercourse calls for mandatory revocation and reprimand, under section 51(5) of the Code. Were it not mandatory, the Panel would have been inclined, based on the evidence before it, to order revocation and a reprimand in any event.

The Committee was mindful that, when a joint submission is made by the parties, the penalty should be accepted unless doing so would be contrary to the public interest and would bring the administration of justice into disrepute. In our view, the joint submission as to the penalty is appropriate in all the circumstances given our findings in this matter and our comments above.

Dr. Henderson was not present for the penalty hearing. Counsel for Dr. Henderson suggested that the reprimand could be delivered by reading it into the record and a certified copy delivered to Dr. Henderson in order to satisfy the requirements of the order of the Committee. The Committee disagrees with this suggestion. Section 51(2)(4) of the Code requires that “a member appear before the panel to be reprimanded”. It is the part of the process by which the profession, through this Committee, delivers to the physician directly its denunciation of the physician’s behavior. In this case, the Committee will express its abhorrence of the serious breach of trust by Dr. Henderson towards a vulnerable patient. By delivering the reprimand orally and in public, the goals of transparency and public accountability are achieved. Therefore, the Committee orders that Dr. Henderson appear before it for the oral reprimand and directs the Hearing Office to schedule the reprimand at the earliest opportunity. Furthermore, the penalty of revocation imposed meets specifically the penalty objectives of specific and general deterrence.

ORDER

The Discipline Committee therefore ordered and directed that:

1. The Registrar revoke Dr. Henderson's certificate of registration effective 11:59 p.m. on November 2, 2010;
2. Dr. Henderson appear before the panel to be reprimanded;
3. Dr. Henderson reimburse the College for funding provided to patients under the program required under section 85.7 of the Code, by posting an irrevocable letter of credit or other security acceptable to the College, by December 15, 2010, in the amount of \$13,130;
4. Dr. Henderson pay costs to the College in the amount of \$10,950 on November 2, 2010; and
5. The results of this proceeding be included in the register.