

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 no person shall publish or broadcast the identity of Patient A or any information that could disclose the identity of Patient A, under subsection 47(1) of the *Health Professions Procedural Code* (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*.

Subsection 93 of the Code, which is concerned with failure to comply with these orders, reads:

93(1) Every person who contravenes an order made under section 45 or 47 is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 for a first offence and not more than \$20,000 for a subsequent offence.

**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 to 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. R. MACKENZIE (CHAIR)
DR. W. KING
N. CHUMMAR
DR. R. EDNEY
J. DHAWAN

Hearing Date:

March 24, 2005

Decision Release Date:

March 24, 2005

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on March 24, 2005. At the conclusion of the hearing, the Committee stated its finding that Dr. Henderson committed professional misconduct and delivered its penalty order with written reasons to follow.

PUBLICATION BAN

The Discipline Committee ordered that no person shall publish or broadcast the identity of Patient A, or any information that could disclose the identity of Patient A, under subsection 47(1) of the *Health Professions Procedural Code* (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*

ALLEGATIONS

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

1. under paragraph 51(1)(b.1) of the Code in that he engaged in the sexual abuse of a patient;
2. under paragraph 27.29 of Ontario Regulation 448 of the Revised Regulations of Ontario 1980 made under the *Health Disciplines Act*, R.S.O. 1980 (“O. Reg. 448/80”) and paragraph 29.30 of Ontario Regulation 548 of the Revised Regulations of Ontario 1990 made under the *Health Disciplines Act*, R.S.O. 1990 (“O. Reg. 548/90”), in that he engaged in sexual impropriety; and
3. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, S.O. 1990, 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.
4. under paragraphs 27.32 of O. Reg 448/80 and 29.33 of O. Reg. 548/90, in that he 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.

RESPONSE TO THE ALLEGATIONS

Dr. Henderson admitted to the allegations set out in the Notice of Hearing.

EVIDENCE

The following Agreed Statement of Facts and Admission was filed as an exhibit at the hearing:

PART I - STATEMENT OF FACTS

1. Dr. Henderson is a 54 year old family physician who received an independent practice certificate from this College in 1978.
2. Dr. Henderson was Patient A's family physician from about 1981 until about 1998. The medical records of Patient A are attached at Tab 1 [to the Statement of Facts]. Dr. Henderson provided primary care and treatment for Patient A and her children as their family physician. On four occasions between 1981 and 1998, Dr. Henderson provided counselling for marital difficulties and depression.
3. In or about 1984, Dr. Henderson made inappropriate remarks of a sexual nature to Patient A regarding her appearance.
4. In 1991, Dr. Henderson and Patient A engaged in kissing in the examination room and Dr. Henderson fondled Patient A's breasts.
5. In 1994, Patient A and Dr. Henderson engaged in kissing in the examining room and Dr. Henderson fondled Patient A's breasts
6. On at least one occasion, Dr. Henderson and Patient A engaged in kissing and hugging outside of the office.

PART II – ADMISSION

7. Dr. Henderson admits that the conduct set out above constitutes professional misconduct:

(a) 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;

(b) under paragraph 27.29 of Ontario Regulation 448 of the Revised Regulations of Ontario 1980 made under the *Health Discipline Act*, R.S.O. 1980 ("O. Reg. 448/80") and paragraph 29.30 of Ontario Regulation 548 of the Revised Regulations of Ontario 1990 made under the *Health Disciplines Act*, R.S.O. 1990 ("O. Reg. 548/90"), in that he engaged in sexual impropriety;

(c) 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; and

(d) under paragraphs 27.32 of O. Reg. 448/80 and 29.33 of O. Reg. 548/90, in that he 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.

FINDINGS

The Committee accepted as true all of the facts set out in the agreed Statement of Facts. Having regard to these facts and Dr. Henderson's admissions, the Committee found that Dr. Henderson committed professional misconduct:

- under paragraph 51(1)(b.1) of the Code in that he engaged in the sexual abuse of a patient;

- under paragraph 27.29 of Ontario Regulation 448 and paragraph 29.30 of Ontario Regulation 548/90 in that he engaged in sexual impropriety;
- under paragraph 1(1)33 of Ontario Regulation 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; and
- under paragraphs 27.32 of O. Reg. 448/80 and 29.33 of O. Reg. 548/90, in that he 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.

Such conduct represents very serious professional misconduct. The findings were amply justified by the agreed facts.

PENALTY AND REASONS THEREFOR

Counsel for the College and counsel for Dr. Henderson made a joint submission regarding penalty. The joint submission consisted of a proposed nine month suspension of Dr. Henderson's certificate of registration, a term, condition and limitation on his certificate of registration that Dr. Henderson complete the College's Ethics Course, and an order that the results of the proceeding be included in the Register.

Subsequent to the oral hearing, both counsel also agreed that a reprimand was required by the Code in the circumstances, and should form part of the Committee's order.

The Committee concluded that the jointly proposed penalty was appropriate in all the circumstances. In accepting the length of suspension, the Committee had regard to analogous prior decisions — *Bingham v. The College of Physicians and Surgeons of Ontario*; *Noriega v. The College of Physicians and Surgeons of Ontario*; *Sharma v. The College of Physicians and Surgeons of Ontario*.

The Committee took into account the penalty objectives of the protection of the public, upholding the integrity of the profession, deterrence and rehabilitation. This case involved serious misconduct of a sexual nature. Given the power imbalance in the physician/patient relationship, such conduct is abhorrent. In addition, there were aggravating factors. There was a previous finding of professional misconduct which resulted in a three-month suspension and other conditions.

The Committee noted several mitigating factors in determining the appropriateness of the penalty, including the fact that Dr. Henderson acknowledged his actions were inappropriate and constituted professional misconduct. By accepting the allegations, he has prevented further distress and pain to the complainant in not prolonging the hearing.

The Committee did not accept the submission made by defence counsel that Dr. Henderson's conduct was at the lower end of the spectrum, whereas the penalty proposed is at higher end. The Committee concluded that Dr. Henderson's conduct was very serious and that the penalty was commensurate with that conduct.

The suspension acts as both a specific deterrent and as a general deterrent. The College's Ethics course will assist Dr. Henderson in improving physician-patient relations.

The Committee amended the penalty order pronounced at the hearing to include a reprimand, as agreed by counsel. Such a reprimand is mandatory where sexual abuse is established.

ORDER

Therefore, the Discipline Committee ordered and directed that:

1. The Registrar suspend Dr. Henderson's certificate of registration for a period of nine (9) months commencing on May 31, 2005;
2. Dr. Henderson attend, at his own expense, the College's Ethics Course, to be completed prior to his return to practice;

3. Dr. Henderson appear before the Committee to be reprimanded; and
4. The results of this proceeding to be included in the Register.