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Levy (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. LANCE DAVID LEVY

PANEL MEMBERS:

**R. SANDERS (CHAIR)
G. DEGROOT
DR. Y. DEBUDA
DR. R. KOKA
DR. F. SLIWIN**

Hearing Date: February 25, 2003
Decision/Released Date: February 25, 2003

PUBLICATION BAN

DECISION AND REASON FOR DECISIONS

A panel of the Discipline Committee of the College of Physicians and Surgeons of Ontario (the “Panel”) heard this matter at Toronto on February 25, 2003. At the conclusion of the hearing, the Panel found that Dr. Levy had committed an act of professional misconduct and pronounced its penalty order. The Panel further indicated that its reasons for decision would be delivered subsequently in writing.

PUBLICATION BAN

The Panel ordered that no person shall publish the identity of the complainant or any information that could disclose the identity of the complainant under subsection 47(1) of the Health Professions Procedural Code (the “Code”) which is schedule 2 to the *Regulated Health Professions Act, 1991* S.O. 1991, c.18.

ALLEGATIONS

The Notice of Hearing alleged that Dr. Levy committed an act of professional misconduct under:

1. clause 51(1)(b.1) of the Code in that he sexually abused patients; and
2. 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 ALLEGATIONS

The College withdrew the allegation in paragraph 1 regarding sexual abuse and proceeded with the allegation in paragraph 2 above. Based on an agreed statement of fact, reproduced below, as supplemented by the medical records, Dr. Levy admitted to the allegation of disgraceful, dishonourable or unprofessional conduct.

EVIDENCE

The parties agreed to the following statement of facts.

1. Dr. Levy is a 51-year-old paediatrician practicing in Toronto. Dr. Levy's practice includes providing therapy and counseling for patients with eating disorders.
2. Dr. Levy began to treat the complainant in July 1993 for an eating disorder. She was approximately 21 years of age.
3. Dr. Levy provided psychotherapy and counseling to the complainant on a regular basis for depression and eating disorders. The complainant had been diagnosed with anorexia nervosa. He obtained a consultation from Dr. M in May 1994, about how best to treat the mood disorder.
4. In the course of his care and treatment, Dr. Levy also prescribed various medications for the complainant, including antidepressants.
5. In 1998, D. Levy prescribed medication such as Cipro and Elmiron to the complainant.
6. During the course of the physician-patient relationship, Dr. Levy engaged in numerous boundary violations with the complainant, including:
 - (i) disclosing information about his personal life and marriage;
 - (ii) obtaining passes so that the complainant could work-out at his health club;
 - (iii) jogging and in-line skating with the complainant during sessions;
 - (iv) buying the complainant leather wrist guards for in-line skating;
 - (v) coming to the complainant's home to retrieve some protein powder he provided her, and taking her out for a drink;
 - (vi) going out for breakfasts and lunches with the complainant;
 - (vii) buying flowers for the complainant; and,
 - (viii) sending personal cards or letters to the complainant.

7. In October 1995, the physician-patient relationship was terminated. Dr. Levy advised the complainant that she could contact Dr. Levy for further treatment if need be.

8. Around that time, Dr. Levy advised the complainant that he wished to continue to see her as a friend. Dr. Levy and the complainant saw each other on the weekends for lunch and to go running, and met before work to run and have breakfast. The complainant wrote Dr. Levy a letter in December 1995 and the meetings ceased.

9. A few weeks later, in December 1995, Dr. Levy called the complainant and asked her for a drink. At that meeting, Dr. Levy told the complainant he had “feelings” for her.

10. In late January 1996, Dr. Levy asked the complainant out for breakfast. He told her that he was getting divorced, and that he would like to date her when he was separated. The complainant told him she would not spend time with him until he was separated from his wife.

11. On Valentine’s Day in 1996, Dr. Levy gave the complainant a card and a gift.

12. In March 1996, the complainant went on vacation. She arrived home to flowers Dr. Levy had sent to her.

13. In March 1996, Dr. Levy and the complainant began a sexual relationship, which continued until June 1996.

14. In September 1996, the complainant contacted Dr. Levy to assist her in signing a form so that she could have time off of work.

15. In February 1997, Dr. Levy made contact with the complainant, asking her to forgive him. They went out for dinner together in March 1997. Dr. Levy asked the complainant if they could start over again.

16. In May 1997, Dr. Levy and the complainant resumed a sexual relationship. By September 1997, they effectively lived together and vacationed together.

17. In August 1998, they mutually agreed to end the relationship, however, they continued to be intimate on an off again until November 1998.

18. During the course of their sexual relationship, Dr. Levy took Ativan nightly, and encouraged the complainant to take it as well.

FINDINGS

The Panel accepted as true all of the facts set out in the agreed statement of facts. Having regard to these facts, and Dr. Levy's admission to allegation 2, the Panel found Dr. Levy had committed an act of professional misconduct under paragraph 2 of the Notice of Hearing.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for Dr. Levy made a joint submission with respect to penalty and costs.

The Panel agreed with the joint submission on penalty, except for the period of time that Dr. Levy's certificate of registration would be suspended if he complied with the conditions set out in paragraphs (iii) to (xii) below. The Panel agreed that the seriousness of the case required Dr. Levy's certificate of registration to be suspended for a period of one year commencing on a date to be fixed by the Registrar. The Panel also agreed that a period of that suspension could be suspended if Dr. Levy complied with the conditions set out in the joint submission. However, the Panel did not consider a six-month suspension of the suspension to be appropriate. Given the fact that Dr. Levy started his personal relationship with the complainant shortly following the end of the doctor-patient relationship, the Panel considered a longer period of suspension to be necessary. The Panel therefore ordered, as set out below, the Registrar to suspend Dr. Levy's certificate

of registration for a period of one year and that only four months of that suspension be suspended if Dr. Levy otherwise complies with the conditions set out in sub-paragraphs (iii) to (xii) below. The Panel increased the severity of the penalty, given the seriousness of Dr. Levy's conduct and the Panel's insistence that boundary violations not be tolerated.

ORDER

The Discipline Committee therefore ordered and directed that:

- 1.(i) The Registrar shall suspend Dr. Levy's certificate of registration for a period of one year commencing on the date of this order;
- (ii) The Registrar shall suspend four months of this suspension on the condition that Dr. Levy provides confirmation to the College that he has complied with the conditions set out in subparagraphs (iii) to (xii) below;
- (iii) Dr. Levy will attend before this panel of the Discipline Committee to be reprimanded, with the fact of the reprimand to be recorded on the register;
- (iv) Dr. Levy will provide a formal apology to the complainant;
- (iii) Dr. Levy will pay to the College \$10,000.00, to be held by the College in trust, to guarantee the payment of any amount the College may pay out in respect of the complainant for funding for therapy and counseling, or in the alternative, Dr. Levy will post a letter of credit in the sum of \$10,000.00 for same, so long as it is permitted by law in the circumstances of Dr. Levy's bankruptcy;
- (ivi) Dr. Levy will submit to an assessment of his fitness to practice by a psychiatrist acceptable to the College, and prior to returning to practice at

the conclusion of his suspension, Dr. Levy will provide the psychiatrist's report, acceptable to the College, certifying his fitness to practise;

- (vi) Dr. Levy will attend, at his own expense, the boundaries course offered by the College no later than September 12 and 13, 2003;
 - (vii) Dr. Levy will attend, at his own expense, the records keeping course offered by the College no later than September, 2003;
 - (ix) Dr. Levy will accept an inspection of his practice by a person or persons designated by the College;
 - (x) Dr. Levy will accept supervision or other reasonable terms and conditions that the College might identify through its inspection with respect to his ongoing practice;
 - (viii) Dr. Levy will undertake not to do physical examinations of patients, with the exception of his need to take blood pressures because of medications prescribed, and will co-operate in the College's monitoring of this condition; and
 - (viii) Dr. Levy will pay costs to the College in the amount of \$2,500.00, so long as it is permitted by law in the circumstances of Dr. Levy's bankruptcy.
2. That if Dr. Levy fails to comply with sub-paragraphs (iii) to (xii) above, he will serve the remainder of his suspension.
 3. The results of this proceeding will be included in the register.

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

**DISCIPLINE COMMITTEE OF THE
COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO**

DR. M. GABEL (Chair))	Tuesday, the 23 rd day of
DR. R. EDNEY)	August, 2005
J. DHAWAN)	
N. CHUMMAR)	
DR. R. MACKENZIE)	

B E T W E E N:

DR. LANCE DAVID LEVY

Applicant

- and -

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

Respondent

ORDER and REASONS FOR ORDER

A motion by Dr. Levy for an Order to vary the Order of the Discipline Committee contained in its decision dated May 16, 2003 was heard on August 23, 2005 at Toronto, Ontario. The College consented to the variance sought in the Notice of Motion, and the Committee delivered its order orally and in writing on August 23, 2005.

MOTION MATERIALS

A Motion Record was filed as an exhibit at the hearing. The Notice of Motion was for an Order varying the Order of the Discipline Committee contained in its decision dated May 16, 2003, by removing the prohibition on Dr. Levy conducting physical examinations.

Dr. Levy was disciplined for professional misconduct in February 2003 relating to a post-termination sexual relationship with an ex-patient. There was a joint submission on penalty in that case which called for a suspension and certain conditions, one of which was that Dr. Levy would voluntarily undertake not to do physical examinations of patients with the exception of blood pressure monitoring. He claims to have misunderstood the permanent nature of this restriction and believed that it would be automatically lifted at the end of his suspension.

Dr. Levy completed his suspension and returned to practice in October 2003. He has complied with all aspects of his penalty order. He has continued to receive psychiatric treatment to address the stressors in his life that he believes led to a lapse in judgment. The motion record includes a detailed psychiatric report, which concluded that Dr. Levy does not suffer from a mental condition or disorder that would affect his ability to practice medicine and that he should be permitted to return to the practice of medicine. This report was prepared in July 2003 before Dr. Levy returned to practice following his suspension.

Dr. Levy has now been offered a position with a medical group that specializes in bariatric surgery for morbidly obese patients. His role would involve pre and post-operative care and would necessitate physical examinations of patients in order to provide complete and proper patient care.

ORDER AND REASONS FOR ORDER

The Panel considered the original decision of the Discipline Committee dated May 16, 2003. It also considered the submissions of both parties and noted that the College consents to the motion to vary. The Panel concluded that removal of this restriction will pose no risk to the public and, therefore, granted the motion and ordered that the Order of the Discipline Committee contained in its decision dated May 16, 2003, be varied by removing the prohibition on Dr. Levy conducting physical examinations.