

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 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*.

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.

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(1) 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. J. LAMONT (CHAIR)
P. BEECHAM

PUBLICATION BAN

Hearing Dates: August 7-10, 2001
October 22-26, 2001
November 26-30, 2001
March 18, 2002
March 14, 2004
Decision/ Released Date: March 10, 2004

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 August 7-10, October 22-26, November 26-30, 2001, March 18, 2002 and March 10, 2004. At the conclusion of the hearing on March 10, 2004, the Committee delivered its finding that the member had committed an act of professional misconduct, and pronounced its penalty order, with written reasons to follow.

PUBLICATION BAN

The Committee ordered that no person shall publish or broadcast the identity of the complainant, or any information that could disclose the identity of the complainant. The order was made pursuant to 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 acts of professional misconduct:

1. under clause 51(1)(b.1) of the Code, in that he sexually abused a patient;
2. under paragraph 29.30 of Ontario Regulation 548 (“O/Reg. 548”), R.R.O. 1990, made under the *Health Disciplines Act*, R.S.O. 1990, in that he engaged in sexual impropriety;
3. under clause 1(1)2 of Ontario Regulation 856/93 (“O.Reg. 856/93”) made under the *Medicine Act, 1991*, S.O. 1991, in that he failed to maintain the standard of practice of the profession;
4. under paragraph 29.22 of O/Reg. 548, in that he failed to maintain the standard of practice of the profession;

5. under clause 1(1)33 of O/Reg. 856/93, in that he engaged in acts relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional conduct; and
6. under paragraph 29.33 of O/Reg. 548, 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 conduct.

The Notice of Hearing also alleged that Dr. Henderson is incompetent as defined by subsection 52(1) of the Code, in that his care of a patient displayed a lack of knowledge, skill or judgment, or disregard for the welfare of the patient, of a nature or to an extent that demonstrates that he is unfit to continue practice or that his practice should be restricted.

RESPONSE TO ALLEGATIONS

At the outset of the hearing, Dr. Henderson denied all of the allegations as set out in the Notice of Hearing. However, at the continuation of the hearing on March 10, 2004, Dr. Henderson admitted to allegation 5 and the College withdrew allegations 1, 2, 3, 4 and 6 and the allegation of incompetence.

EVIDENCE

This hearing initially proceeded as a fully contested matter, and the Committee heard evidence from several witnesses over a number of days. However, the hearing was interrupted when a dispute arose over the proposed inclusion in the proceeding of an additional complaint, which did not form part of the Notice of Hearing filed at the outset of the hearing. That dispute ultimately was determined by the Ontario Court of Appeal, which found that the additional complaint could not be adjudicated in this proceeding, in all of the circumstances of the case. When the hearing thereafter resumed on March 10, 2004, the parties advised the Committee that they were jointly proposing a disposition of

the proceeding on the basis of the plea and withdrawals set out in the preceding paragraph, an agreed statement of facts, and a joint submission on penalty.

As a result, and at the joint request of the parties, the Committee restricted itself to consideration of the agreed statement of facts and not the oral and documentary evidence previously presented.

The following Agreed Statement of Facts and Admission was marked as an exhibit and filed before the Committee:

Dr. Larry Scott Henderson is a general practitioner. During the relevant time period, he practised family medicine out of a clinic in Whitby, Ontario.

Dr. Henderson was the family physician of the complainant, "Patient 'A'", from May 1990 to September 1995. He was also the family physician of her two sons. Dr. Henderson treated Patient 'A' for a variety of family medicine issues, including pre-natal and post-partum care, migraines, and skin problems. The doctor-patient relationship also included some supportive psychotherapy, but psychotherapy was not a significant component of the doctor-patient relationship. The psychotherapy was for post-partum depression, and marital problems and related depression and stress. The OHIP records show that there were 8 visits billed as K007 (which is consistent with the patient chart), all in 1993 (out of a total of 18 office visits billed that year).

Dr. Henderson terminated the doctor-patient relationship with Patient 'A' in September 1995. Thereafter, Dr. Henderson and Patient 'A' entered into a romantic relationship. In mid-late 1996, less than one year after the termination of the doctor-patient relationship between Dr. Henderson and Patient 'A', Dr. Henderson commenced a sexual relationship with Patient 'A'. The sexual relationship between Dr. Henderson and Patient 'A' lasted until approximately February 1999.

ADMISSION

Dr. Henderson admits that in the particular circumstances of this case, commencing and continuing a sexual relationship with Patient 'A' less than one year after the termination of his doctor-patient relationship with her is an act relevant to the practice of medicine that, having regard to all of the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

FINDING

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts and Admission. Having regard to the allegation against Dr. Henderson, the agreed facts, and Dr. Henderson's admission, the Committee found that Dr. Henderson committed an act of professional misconduct under clause 1(1)2 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 conduct.

PENALTY DECISION AND REASONS

Counsel for the College and counsel for Dr. Henderson made a joint submission as to penalty. The joint submission consisted of a proposed three month suspension of Dr. Henderson's certificate of registration, together with a term that Dr. Henderson complete the College's Boundaries Course.

The Committee concluded that the jointly-proposed penalty was an appropriate penalty in all of the circumstances. The Committee noted several mitigating factors in determining the appropriateness of the proposed penalty, including the fact that Dr. Henderson had an unblemished record, that he acknowledged his actions as inappropriate, that he expressed remorse for his actions, and that, by accepting the allegation, he has prevented further time and expense, and distress to the complainant, in not prolonging the hearing.

The suspension acts as both a specific deterrent to Dr. Henderson and as a general deterrent to the profession. A sexual relationship so soon after the termination of the

doctor-patient relationship, particularly where psychotherapy had been an element of treatment, is not appropriate and is contrary to the College's published guideline on the issue. The penalty sends a message to the profession of the need to maintain appropriate boundaries in doctor-patient relationships. The Boundaries Course will assist Dr. Henderson in assessing and improving his own respect for physician-patient boundaries, and assist in protecting the public.

ORDER

The Discipline Committee therefore ordered and directed that:

1. The Registrar suspend Dr. Henderson's certificate of registration for a period of three (3) months commencing at 12:01 a.m. on May 3, 2004; and
2. The Registrar impose the following term, condition and limitation on Dr. Henderson's certificate of registration:
 - (i) Dr. Henderson is to successfully complete the College's Boundaries Course by November 2004, at his own expense, and provide satisfactory proof thereof to the Registrar.