

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Jacobo Joffe, this is notice that the Discipline Committee ordered that no person shall publish the identity of the complainant witnesses and any information that could disclose their identity pursuant to 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, as amended.

Subsection 93(1) of the Code, which is concerned with failure to comply with these orders, reads, in relevant part:

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: Joffe (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. JACOBO JOFFE

PANEL MEMBERS:

**DR. M. GABEL
DR. E. ATTIA (Ph.D.)
DR. P. CHART
S. BERI
DR. P. HORSHAM**

Hearing Date:	December 11, 2008
Decision Release Date:	December 11, 2008
Release of Written Reasons:	February 5, 2009

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario (the “Committee”) heard this matter at Toronto on December 11, 2008. At the conclusion of the hearing, the Committee stated its finding that the member committed acts of professional misconduct and delivered its penalty order in writing with written reasons to follow.

THE ALLEGATIONS

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

1. under paragraph 51(1)(b.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, as amended, in that he has sexually abused patients; 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 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. Joffe entered a plea of no contest to the allegations in the Notice of Hearing.

Rule 3.02 of the *Rules of Procedure of the Discipline Committee* refers to a plea of no contest and reads as follows:

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 purpose 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.

3.02(3) A member shall not introduce any evidence on the issue of what finding ought to be made when the member pleads no contest.

3.02(4) A plea of no contest does not prevent the member from introducing evidence on the issue of what order the Discipline Committee ought to make so long as the evidence is consistent with the facts found and findings made by the Discipline Committee after the plea of no contest.

3.02(5) A plea of no contest does not constitute an admission by the member as to the facts or findings for the purpose of any other proceeding.

FACTS AND EVIDENCE

The following Uncontested Allegations for a Plea of No Contest was filed as an exhibit and presented to the Committee:

1. Dr. Joffe, a general surgeon licensed to practice in the Province of Ontario, does not contest the following facts for the purposes of this proceeding only:

PATIENTS A and B

2. In 2001, Patients A and B were referred to Dr. Joffe for weight loss surgery and attended at his Scarborough office for consultation.
3. Dr. Joffe performed gastric by-pass surgery on Patient A in 2002. Patient B's gastric surgery was booked for 2002 but she cancelled her appointment. Dr. Joffe eventually performed gastric bypass surgery on Patient B in 2005
4. Patient B attended for consultation with Dr. Joffe for lap band surgery and eventually had this procedure done in 2003.

5. In early 2003, during follow-up care and other medical needs, Dr. Joffe would hug and kiss Patients A and B on their lips and tell them how attractive they were, and that every man's fantasy is to have sex with [**deleted**].
6. In the summer of 2003, Dr. Joffe engaged in sexual touching and kissing of Patient A at his office.
7. In December, 2003, Patients A and B attended a Christmas party with the lap band support patients and Dr. Joffe. Dr. Joffe remarked that Patients A and B were "hot". Dr. Joffe kissed them on the lips and hugged them.
8. In January 2004, Dr. Joffe arranged to meet Patients A and B at a hotel, where Dr. Joffe engaged both women in sexual touching and kissing. On this date, Dr. Joffe also engaged Patient A in oral sex as well as intercourse at her residence.
9. Between January 2004 and 2006, while Patients A and B were still his patients, Dr. Joffe attended their home approximately every two weeks and almost every week during the summer months where he engaged in various sexual acts with them, both separately and together, including fondling, fellatio, cunnilingus and sexual intercourse. They also engaged in sexual acts in his office.
10. During these attendances, Dr. Joffe initiated and engaged in illicit drug use with Patients A and B, which Patient A purchased for Dr. Joffe at his request.
11. Dr. Joffe took steps to conceal his relationship with Patients A and B, knowing the professional consequences to him if the relationship was discovered.

PATIENT C

12. In 2002, Dr. Joffe performed lap band surgery on Patient C.
13. Commencing approximately two weeks following the lap band surgery, and while she was still his patient, Dr. Joffe initiated and engaged in sexual activities with Patient C, including oral sex and vaginal sexual intercourse. These sexual activities occasionally occurred at the Hospital when Patient C attended at Dr. Joffe for follow-up appointments and adjustments of her lap band.

14. Dr. Joffe told Patient C not to reveal their relationship to anyone, knowing the professional consequences to him if the relationship was discovered.

PATIENT D

15. In 1999, Dr. Joffe performed gastroplasty on Patient D.
16. During follow up medical visits post-operatively, and while she was still his patient, Dr. Joffe initiated and engaged in various types of sexual encounters with Patient D, including oral sex, and vaginal and sexual intercourse. On occasion, these sexual encounters occurred at the Hospital. In 2005 Dr. Joffe performed lap band surgery on Patient D. Their sexual relationship lasted until 2006.
17. Dr. Joffe told Patient D to keep their relationship a secret, knowing the professional consequences to him if the relationship was discovered.

FINDINGS

The Committee has reviewed and accepted as correct all of the facts set out in the Uncontested Allegations for a Plea of No Contest. Having regard to these uncontested facts, the Committee accepted the plea of no contest and found that Dr. Joffe committed acts of professional misconduct, in that he:

- (a) sexually abused patients under section 51(1)(b.1) of the Code; and
- (b) 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.

REASONS FOR FINDING

In making the finding of sexual abuse, the Committee had particular regard for the egregious nature of the conduct, which was repeated over a significant period of time and involved a number of patients. These acts took place in a variety of settings including a hospital, doctor's office and patient homes, all of which should be considered safe

settings. The scope of the sexual abuse committed by Dr. Joffe deeply offends the decency of the profession.

In making the finding as set out in the second allegation, the Committee had particular regard for the coercion of patients to obtain illicit drugs for use during the described sexual encounters. Additionally, Dr. Joffe pressured patients not to reveal the nature of the sexual relationships, knowing the professional consequences. These actions demonstrate a lack of understanding and respect for the moral and ethical responsibilities of a physician.

Based on the above, the Committee was satisfied to the requisite legal standard that Dr. Joffe had committed acts of professional misconduct as alleged in the Notice of Hearing.

PENALTY AND REASONS FOR PENALTY

On the matter of penalty, the Committee reviewed the findings, heard submissions of counsel and reviewed four Victim Impact Statements filed by the College and two letters of support filed by Dr. Joffe.

Under section 51(5)1 of the Code, where the Committee finds that a member has committed an act of professional misconduct by sexually abusing a patient, the Committee must reprimand the member; and pursuant to section 51(5)2, the Committee must revoke the member's certificate of registration if the sexual abuse consisted of, or included any of the following:

- (i) sexual intercourse;
- (ii) genital to genital, genital to anal, oral to genital, or oral to anal contact;
- (iii) masturbation of the member by, or in the presence of, the patient;
- (iv) masturbation of the patient by the member;
- (v) encouragement of the patient by the member to masturbate in the presence of the member.

There was no disagreement between counsel with respect to the need for a reprimand or for revocation of Dr. Joffe's certificate of registration. Indeed, even if it were not required by law, the Committee was of the opinion that nothing short of revocation could adequately express the profession's abhorrence of such conduct. The extent and degree of Dr. Joffe's violation of patients speaks to a moral and ethical vacuum. Dr. Joffe has breached the most fundamental trust with his patients. This conduct reflects negatively on the profession and is contrary to principles held from the time of Hippocrates.

The College has requested that Dr. Joffe 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 January 30, 2009, in the amount of \$40,000.

Under section 85.7(12) of the Code, the College is entitled to recover from the member money paid in accordance with this section for complainants' therapy or counselling. The Committee was of the opinion that the request for an irrevocable letter of credit by the College was not unreasonable given all of the circumstances of this case. The Committee had particular regard for the poignant description of the effects experienced by patients noted in their respective Victim Impact Statements which included humiliation, distortion of normal social relationships, fear of hospitals and physicians, destruction of family relationships, depression, psychological problems and employment problems. These problems flowed from Dr. Joffe's professional misconduct and the Committee felt that he should bear the financial responsibility for the consequences of his actions, not the membership at large.

The two letters from colleagues attesting to Dr. Joffe's professional status and technical skill indicate a senior surgeon of repute. While this makes his failings with respect to the findings on this matter all the more tragic, the Committee was of the opinion that they had no role as a mitigating factor in the offences described.

The Committee believes that the penalty proposed by the College, given all of the circumstances of this case, is appropriate, and meets the principles of protection of the public, denunciation of the conduct, and specific and general deterrence.

In respect of the costs requested by the College of \$3,650 (full day rate) to be paid by January 30, 2009, the Committee believes this to be fair and reasonable. Section 53.1 of the Code provides direction to the Committee on the question of costs, as follows:

53.1. In an appropriate case, the panel may make an order requiring a member who the panel finds has committed an act of professional misconduct or finds to be incompetent to pay all or part of the following costs and expenses:

1. The College's legal costs and expenses;
2. The College's costs and expenses incurred in investigating the matter;
3. The College's costs and expenses incurred in conducting the hearing.

The Committee has concluded that this is an appropriate case to make an award of costs. The Committee members (both professional and public), legal counsel, and staff have put aside the day to attend to this matter and, as is not unusual in one day hearings, the assessment of costs by the College is for a full day. Furthermore, it is recognized that this is but a fraction of the total cost of the investigation, preparation and completion of the matter.

The Committee requests that the Hearings Office schedule a reprimand at the earliest possible date.

ORDER

Therefore, on December 11, 2008 the Committee ordered and directed that:

1. The Registrar revoke Dr. Joffe's certificate of registration effective immediately.
2. Dr. Joffe appear before the panel to be reprimanded.

3. Dr. Joffe 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 January 30, 2009, in the amount of \$40,000.
4. Dr. Joffe pay costs to the College in the amount of \$3,650 by January 30, 2009.
5. The results of this proceeding be included in the register.