

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Gerald Paul Dempsey, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of the patients or their parents or any information that could disclose their identity 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.

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 to a fine of not more than \$10,000 for a first offence and not more than \$20,000 for a subsequent offence.

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 May 10, 2007. At the conclusion of the hearing, the Committee, by a written order, stated its finding that the member committed an act of professional misconduct and delivered its penalty order, with written reasons to follow.

PUBLICATION BAN

On May 10, 2007 in response to a request by counsel for the College on behalf of the complainants, the Committee ordered that no person shall publish the identity of the patients or their parents or any information that could disclose their identity pursuant to subsection 45(3) of the *Health Professions Procedural Code* (the “Code”), being Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended. The Committee’s order and reasons therefore were delivered in writing.

THE ALLEGATIONS

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

1. under paragraph 1(1)24 of Ontario Regulation 856/93 of the *Medicine Act, 1991* (“O. Reg. 856/93”) in that he engaged in conduct unbecoming a physician; and
2. under paragraph 1(1)33 of O. Reg. 856/93 in that he engaged in conduct or an act or 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 THE ALLEGATIONS

Dr. Dempsey admitted to the allegation of professional misconduct, that he committed 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, pursuant to paragraph 1(1)33 of O. Reg. 856/93. Counsel for the College withdrew the allegation that he engaged in conduct unbecoming a physician, pursuant to paragraph 1(1)24 of O. Reg. 856/93.

FACTS AND EVIDENCE

The following Agreed Statement of Facts was filed as an exhibit and presented to the Committee:

PART I - FACTS

1. Dr. Dempsey is a paediatrician in eastern, Ontario.

Patient A

2. Patient A was a paediatric patient of Dr. Dempsey from her birth in February, 1998 until August, 1999 [with one further visit for a vaccination in January, 2000]. Dr. Dempsey's medical chart with respect to Patient A is attached as **Tab 1** [to the Agreed Statement of Facts].
3. Patient A's mother, a doula, was one of her primary caregivers and decision makers with respect to health care issues for Patient A. Patient A's father was also a decision maker with respect to Patient A.
4. In or about early March, 1999, during the time Dr. Dempsey was Patient A's physician, he and Patient A's mother began a romantic and sexual relationship.
5. While involved in the romantic and sexual relationship with Patient A's mother, Patient A continued to be Dr. Dempsey's patient, during which time Dr. Dempsey provided medical treatment to Patient A in his office in June, 1999 (minor viral illness), in August, 1999 (checkup) and in January, 2000 (varivax vaccination).

Patient B

6. Patient B was born in May, 2001 and was a paediatric patient of Dr. Dempsey from July, 2001 until May, 2004. Dr. Dempsey's medical chart with respect to Patient B is attached as **Tab 2** [to the Agreed Statement of Facts].
7. Patient B's mother, a registered nurse, was one of his primary caregivers and decision makers with respect to health care issues for Patient B. Patient B's father was also a decision maker with respect to Patient B.
8. In or about the spring of 2003 (until in or about March, 2004), during the time Dr. Dempsey was Patient B's physician, he and Patient B's mother began a romantic and sexual relationship.
9. While involved in the romantic and sexual relationship with Patient B's mother, Patient B continued to be Dr. Dempsey's patient, during which time Dr. Dempsey provided medical treatment to Patient B in his office in June, 2003 (mild probable reactive airway disease) and in August, 2003 (possible mild viral gastric illness).

PART II – ADMISSION

10. Dr. Dempsey admits the facts in paragraphs 1-9 above and admits that by not terminating his physician-patient relationship with Patient A and Patient B prior to becoming involved in romantic and sexual relationships with each of Patient A's and Patient B's mothers, and by continuing to act as Patient A's and Patient B's physician while involved in romantic and sexual relationships with each of Patient A's and Patient B's mothers, he committed professional misconduct under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act*, 1991 ("O.Reg. 856/93"), in that he engaged in conduct or an act or 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.

FINDING

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts. Having regard to these facts, the Committee accepted Dr. Dempsey's admission and found that he committed an act of professional misconduct under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act*, 1991, in that he engaged in conduct or an act or 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.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for the member made a joint submission as to an appropriate penalty and costs.

Child patients are in a unique position in that they are entitled to decision makers who make unbiased decisions on their behalf. The children in this case had not only their parents making decisions for them, but also a physician who was in a position of trust. The Committee considered that Dr. Dempsey's sexual liaisons with the mothers of two of his pediatric patients had the potential to cloud his judgment and compromise his care of the children. In addition, the children's mothers may have also been unable to make the best choices for the care of their children, given that they were having a romantic relationship with the doctor providing that care. In his position of power and trust, Dr. Dempsey had a responsibility either to terminate the doctor-patient relationship with the child and his or her decision-maker, or not start a romantic relationship with the child's mother. He did neither of these things. Instead, Dr. Dempsey had not one, but two romantic relationships with mothers of his patients, indicating that this was not a one-time lapse of judgment. He took advantage of his privileged position as a pediatrician seeing young mothers and children to further his own ends, with no consideration to the potential for a detrimental effect on the vulnerable children who relied on his judgment.

There is no evidence that he saw the children for anything other than routine visits and minor ailments. Nor is there any evidence that the children were harmed because of his behaviour.

Dr. Dempsey has admitted to the allegation and, in doing so, is taking responsibility for his actions. The time and costs associated with a lengthy hearing are avoided and the complainants are spared the stress of testifying regarding personal matters in a public forum.

As a further mitigating factor, the Committee also considered submissions regarding Dr. Dempsey's devotion to his pediatric practice in his home-town as well as the high esteem in which he is held in the community. He has no prior discipline findings with the College.

The Committee understands that a joint submission on penalty should be accepted unless to do so would be contrary to the public interest and would bring the administration of justice into disrepute. The Committee decided that the penalty of a reprimand recorded in the register, as proposed in the joint submission, is appropriate. It will serve as a specific deterrent to Dr. Dempsey, and will promote general deterrence by indicating the seriousness and inappropriateness of the physician's actions.

ORDER

Therefore, the Discipline Committee ordered and directed that:

1. Dr. Dempsey appear before the panel to be reprimanded.
2. The results of this proceeding be included in the register.

Dr. Dempsey waived his right to an appeal under subsection 70(1) of the *Code* and the Committee administered the public reprimand.