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**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 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. ELIJAH ZEPHANIA RABIN

PANEL MEMBERS:

R. SANDERS (CHAIR)
DR. I. BAXTER
DR. D. BRADEN

PUBLICATION BAN

Hearing Dates:

January 20 to 23, May 9, June 3 to 5, 2003

Decision/Release Date:

June 23, 2003

DECISION AND REASON FOR DECISIONS

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on January 20 to 23, 2003. At the conclusion of the hearing, the Committee reserved its decision on finding.

On May 9, 2003, the Committee granted a defence motion to reopen the hearing to introduce fresh evidence. The hearing resumed from June 3 to 5, 2003.

PUBLICATION BAN

At the request of counsel for the College, the Committee made an order pursuant to subsection 47(1) of the *Health Professions Procedural Code* (the Code) which is Schedule 2 to the *Regulated Health Professions Act, 1991*, banning the publication of the identity or any information that could disclose the identity of the complainant witness.

ALLEGATIONS

The Notice of Hearing alleged that Dr. Rabin committed professional misconduct as follows:

1. under section 51(1)(b.1) of the Code in that he engaged in the sexual abuse of a patient;
2. under section 1(1)(34) of Ontario Regulation 856/93 of the *Medicine Act, 1991* in that his conduct was unbecoming a physician; and
3. under section 1(1)(33) of Ontario Regulation 856/93 of the *Medicine Act* for 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 ALLEGATIONS

Dr. Rabin denied all of the allegations in the Notice of Hearing.

I Overview of the Issues

This case raises the following two issues.

1. In the period March 1996 to April 2000, Dr. Rabin was involved in a sexual relationship with the Complainant. The issue is whether that relationship began, or continued, while the Complainant was a patient of Dr. Rabin, i.e., did Dr. Rabin sexually abuse the Complainant as a patient.
2. Did the writing of prescriptions or repeat prescriptions by Dr. Rabin for the Complainant in the period between 1996 and 2000, or the informal “referral” of her to other physicians in that period for medical services or for an x-ray, result in a doctor-patient relationship, or was it otherwise conduct unbecoming a physician or unprofessional.

II Summary of the Evidence

The Committee heard the testimony of the Complainant, the complainant, called by the College, and the testimony of Dr. Rabin and Ms. X called by the defense. Various documents were filed as exhibits, as follows:

1. Notice of Hearing.
2. Joint Book of Documents.
3. Dr. Rabin’s Book of Documents.
4. Form by Canadian Plus.
5. Photocopy of flight coupons for Canadian Airlines.
6. Letter of complaint dated April 4, 2001.
7. Contact sheet dated April 5, 2000.
8. Copy of fax from the Complainant to the College investigator.

9. Lab report.
10. Fax from the Complainant to the College investigator.
11. Letter from Dr. Y to Dr. Z dated January 7, 1998.
12. File folder for the Complainant.
13. Excerpt from CPS re rhinocort aqua.
14. Excerpt from CPS re flonase.
15. Excerpt from CPS re Xanax.
16. Forensic report and illustrative charts.
- 17 to 19. Copies of prescriptions signed by Dr. Rabin.
- 20 & 21. Copies of documents from the U.S. Courts.
22. Copy of a letter from the Complainant to Dr. Rabin dated March 28, 2001.

III Findings of Fact

Dr. Rabin practiced medicine in Ottawa up until 1996, at which time he moved to Phoenix, Arizona. He returned from Arizona in 1998 to take up a position in St. Catharines, Ontario where he has practiced to this date.

(a) Dr. Rabin's Relationship with the complainant

(i) Non-Medical Relationship

In Ottawa, the Rabin family and the Complainant's family had been social acquaintances during the period from 1977 to 1996. Dr. Rabin's wife had met the complainant through a common school for their children. A social relationship had developed which included regular dinners at each other's homes. At all times in the period up until Dr. Rabin's departure from Canada in January 1996 to live and practice medicine in Phoenix, he had nothing other than a social relationship with the Complainant.

In March 1996 that situation changed. On a visit by the Complainant and her then husband to Dr. Rabin's home in Phoenix, Dr. Rabin and the Complainant for the first time spoke to each other of their unhappiness in their respective marriages. They commenced a sexual relationship at that time. After the Complainant returned to Ottawa, she and Dr. Rabin spoke daily on the telephone, up to five times a day. They made plans to leave their spouses and to live together. After a long distance relationship for about two years, Dr. Rabin moved back to Canada in March 1998. He and the Complainant purchased a house together in Niagara-on-the-Lake and lived together as common law spouses. They registered as husband and wife at the local synagogue and held themselves out to the community as such. Dr. Rabin made a new will making the Complainant the beneficiary of his estate. He also made the Complainant the beneficiary of his RRSP's. Dr. Rabin and the Complainant had a relationship of mutual commitment for approximately four years.

In the spring of 2000, their relationship fell apart, they separated and the Complainant launched a lawsuit for support and division of matrimonial property. What would otherwise have been a sad story is an issue for the Discipline Committee, in that the Complainant claimed that Dr. Rabin was her family physician before and throughout their sexual relationship. Dr. Rabin denied this.

(b) Medical Relationship

The evidence disclosed that Dr. Rabin had on four occasions in Ottawa, in the eleven-year period September 1982 to March 31, 1993, provided medical assistance to the Complainant. From the OHIP records and Dr. Rabin's testimony, which was accepted by the Committee, the Committee was of the view that Dr. Rabin was not the Complainant's family physician. The four attendances were for acute conditions, and done as a favour to her as a family friend. Similarly, in the years in Ottawa that the Rabin and the Complainant's families were friends, Dr. Rabin had acted as a personal physician to the husband of the Complainant, had visited the Complainant's family home on one occasion to visit a sick child and send him on to the hospital for an x-ray, and on two occasions

attended on the mother of the Complainant for acute heart problems in emergency situations. The Committee found no evidence of any medical treatment of the Complainant by Dr. Rabin apart from the four specific occasions for which OHIP was billed in the period September 1982 to March 1993. The Committee did not accept the evidence of the Complainant that Dr. Rabin was her family doctor. There were no OHIP billings and no medical record since 1993, and there was no evidence of regular physicals such as might be expected from a family doctor.

The Committee found that there never was an established doctor-patient relationship but rather, occasional, sporadic advice and prescribing for a social acquaintance and, latterly, when they were in an intimate relationship, prescriptions given as they might be given to a spouse. The Committee found that the sexual relationship developed in the context of a social and spousal relationship, and not as a result of a treating relationship between a doctor and his patient. This was not the case of a pre-existing doctor patient relationship that continued concurrently with a sexual relationship.

There was evidence from the OHIP records of billings that the Complainant was seen by a gynaecologist in December 1993 and February 1996. There was no letter reporting back to Dr. Rabin, or anyone else, as to a family doctor. Dr. Rabin suggested that the Complainant was seeing the gynaecologist for family physician services, since older gynaecologists commonly performed such services.

There was also evidence before the Committee that the Complainant attended upon Dr. Y, a female family physician, on February 26, 1996, for the first time. The evidence was that Dr. Y performed a complete physical examination on her at that time, and saw her again on September 23, 1996, October 22, 1996, October 29, 1996, December 10, 1996, and eleven times for psychotherapy, once for a general examination during 1997, and for immunization visits during 1996 and 1997 as well.

The Complainant denied that these physicians were her family physicians.

It is the Committee's finding that the Complainant may have been utilizing the gynaecologist's services both as gynaecologist and family physician in December 1993, and February 1996 and that Dr. Y was the Complainant's family doctor from February 1996 through to at least March 1998, when Dr. Rabin and the Complainant took up residence together in Niagara-on-the-Lake.

She also had visits to her dermatologist in November 1993 and February 1994.

(c) "Referrals" and Prescriptions

It was suggested that there had been "referrals" of the Complainant by Dr. Rabin to various physicians and the issuance and renewal of prescriptions, and that this demonstrated that Dr. Rabin acted throughout as the Complainant's family doctor. There was no notation of such referrals in any medical records of Dr. Rabin, no copies of referrals, no OHIP billings arising out of such "referrals", and generally no referral reports except as described below. Dinner table discussions about who are competent physicians do not constitute a referral, and are not evidence of a doctor-patient relationship, even if the Complainant went to see some of these physicians.

There was evidence that Dr. Q had given a consultation to the Complainant on February 7, 1996, and a letter was sent back to Dr. Rabin as the referring doctor. There was, however, no evidence that Dr. Rabin had seen and examined her prior to the referral, no billing by him to OHIP, the letter does not bear Dr. Rabin's initials signifying that he had read Dr. Q's letter, and Ms. X, Dr. Rabin's secretary at the time, testified that she does not believe that he ever saw the letter. It was also noted that Dr. Rabin was in Phoenix at this time, and had been since January 1996. It should also be noted that Dr. Q recommended the discontinuance of Nasocort at this visit, and the first doctor to prescribe Flonase as replacement for this was Dr. Y on February 26, 1996, and not Dr. Rabin.

Dr. Rabin testified an x-ray that was ordered on May 19, 1995 was not ordered by him, though his name is shown as the referring physician and his initials appear on the report.

The Committee accepted Dr. Rabin's explanation that it was likely the result of a suggestion to the Complainant that if she had certain symptoms, then she should go to the hospital for an x-ray. There was no evidence that any examination was made by Dr. Rabin, nor was OHIP billed for any services.

Prescription records for the Complainant under Dr. Rabin's signature were introduced into evidence, and his evidence was that these were continuations of prescriptions from other attending physicians, or were for emergency, acute problems when the Complainant did not have ready access to a family physician. Dr. Rabin said in his evidence that he would not see a patient for renewals, if they were for innocuous, well-tolerated drugs.

On the question of prescribing anti-depressants such as Xanax (Alprazolam), Dr. Rabin says that he does not use it or like it. He did, however, prescribe it for the Complainant, and admitted that he would be responsible for its effects on the patient. He gave evidence that it was likely recommended by another doctor, and he was merely acting as the agent. He gave evidence that he initially prescribed it by telephone from Phoenix to an Ottawa pharmacy in 1996.

Exhibit 2 showed that Dr. Rabin prescribed numerous medications for the Complainant over the period January 1995 until April 2001. This period covered the time of the romantic relationship between Dr. Rabin and the Complainant. They include the drugs: Ranitidine, Rhinacort Aqua, Canesten, Alprazolam (Xanax), Diclofenac, Misoprostol, Fluticasone (Flonase), Penicillin V K, Lamisil, Sod. Sulamyd, Hydroquinone Cream, Ibuprofen, Nizoral Cream, Celebrex, Baycol, Eltroxin & Synthroid, Serzone, Solaquin, Lipitor, Paxin, Zoloft, Ambien, Extosone Cream, Fiorinal C1/4, Keflex.

Some of these drugs were prescribed on more than one occasion. Dr. Rabin agreed in his testimony that he had prescribed these drugs on the dates indicated. There was no evidence that the Complainant was examined prior to the prescribing by Dr. Rabin, other than his observation of her when she was suffering from migraine, prior to prescribing Fiorinal C1/4, and that she had a fungal infection of the nails before he had prescribed

lamisil and nizoral treatment, which had helped her before. She had long standing peptic ulcer problems, for which ranitidine had been a long-term treatment. For the majority of the time that psychotropic drugs – anti-depressant, anxiolytic, and anti-obsessional – were being prescribed, the Complainant was under the care of a psychiatrist. Dr. Rabin gave evidence that he had given the Complainant a sample of Ambien, and a prescription for this drug, not available in Canada, when she complained of jet lag, and she also found that it helped her migraine.

At the re-opened hearing on June 3, 2003, additional prescriptions admitted to have been signed by Dr. Rabin were provided as exhibits covering the period from March 31, 2000 to October 22, 2002, two for Ambien and one for Zoloft. The Complainant testified that she had forged certain other prescriptions and had them filled in upper New York State, and had been charged criminally for this conduct.

An entry in Dr. Rabin's office records by the secretary, Ms. X, on August 28, 1995, for a prescription for Canesten Vaginal tablets, was accepted by the Committee as the continuance by Dr. Rabin of a prescription by a gynaecologist, as a favour to the Complainant as a friend. It would have been most unusual for Dr. Rabin, a nephrologist, to have been prescribing a preparation for gynaecological use. It is also noted in the record of that date that "she hadn't been here for a long time", by Ms. X.

Ms. X gave evidence that the medical records of the Complainant were held in Dr. Rabin's office and sent for storage in June or July 1996 at the latest. It was argued this was evidence that he was her family physician at the time. The Committee concluded that the fact that the records were kept on a shelf in the office does not mean that the file was active, or that the Complainant was a current patient.

Regarding the writing of the certificate for the Complainant on March 18, 1998, the evidence of Dr. Rabin was that it was done as a favour for the Complainant for the purpose of indicating "to whom it may concern" that she needed a six week course of physiotherapy for chronic low back pain and chronic neck discomfort, a condition for

which the Complainant had consulted him in 1982 and 1989. He in no way suggested that she needed a leave of absence for this. The Complainant's evidence was that it was intended to obtain a leave of absence, and she used it as such. The Complainant admits it was a deception, of which she was not proud. The Committee accepted Dr. Rabin's explanation as to what was intended by him.

Because of the shortage of doctors in the Niagara region, the Complainant did not find a new family doctor until February 2000. She was attending a psychiatrist for multiple visits from February 2000 onwards. In May 1998, Dr. Rabin had facilitated a consultation with another physician because of his concern that the Complainant might have post-polio syndrome, a potentially serious condition, and Dr. Rabin said in evidence that the referral was through the good offices of a physician friend of his at the Hotel Dieu, St. Catharines, and that the report was to be sent back to him at the Complainant's request, marked "personal and confidential", since she did not want anyone at Hotel Dieu to know her private affairs.

Dr. Rabin gave evidence that he told the Complainant that if she needed to see a gynaecologist, then she should make an appointment, and that Dr. V was one. Dr. Rabin did not know him. She consulted him in November 1998, a letter being sent back to Dr. Rabin in the absence of the Complainant having a family physician. Dr. Rabin denied in evidence that he examined The Complainant prior to the consultation, which was accepted by the Committee.

FINDINGS

On the allegation of sexual abuse, the Committee found that the sexual relationship between Dr. Rabin and the Complainant commenced in March 1996, after he had moved to Arizona. At no time was Dr. Rabin the Complainant's family physician. He did see her as a family friend for acute conditions on four occasions, over an eleven-year period, between September 1982 and March 31, 1993, and none of the medical services provided involved psychotherapy. Furthermore, we found that the Complainant had her own family physician, Dr. Y, whom she commenced to see on February 26, 1996.

The Committee did not find that the sexual relationship, which began in 1996, was in any way unequal, with a patient or vulnerable former patient. In no way was it an exploitive relationship. The College of Physicians and Surgeons of Ontario dating guideline (November 1994) cautions that a doctor contemplating a relationship with a former patient should seriously consider to what extent the previous professional relationship involved a power imbalance. The Committee did not feel that the relationship between the Complainant and Dr. Rabin involved any power imbalance. The evidence demonstrated that she was a sophisticated, mature and knowledgeable individual. This is clearly not the case of a physician taking advantage of the power imbalance from a former doctor-patient relationship.

The Committee wishes to comment on its findings of credibility of the witnesses. The Committee found that the Complainant tailored her answers to what she considered to be the promotion of her case. We found that her fraudulent conduct and admitted forgeries with respect to prescriptions did not lend credence to her case. We found her to be evasive and unresponsive, and not credible on the critical issues. On the other hand, we found that Dr. Rabin was a credible witness, direct and straightforward in his testimony.

In summary, the Committee did not find that Dr. Rabin committed an act of sexual abuse with a patient, or that his conduct was unbecoming.

However, the Committee did find that his writing of prescriptions for the Complainant was often inappropriate. The College of Physicians and Surgeons states in their policy on self-prescribing by physicians, that “it is inappropriate for physicians to diagnose or treat either themselves or family members, except for minor or emergency conditions” and that “an ethical physician will not provide medical care to himself/herself or his/her immediate family except in minor or emergency circumstances”. Dr. Rabin often prescribed for the Complainant, or repeated prescriptions of others, doing a favour for her as his common law spouse. Some of the prescriptions, which Dr. Rabin issued for the Complainant, were repeats for prescriptions issued originally, or ordered, by other

physicians. As such, we were of the opinion that there was a lesser duty to supervise on Dr. Rabin and that he could rely on the expertise and knowledge of the ordering physician, than if Dr. Rabin was the initial ordering physician. However, some of the prescriptions were initiated by Dr. Rabin himself.

A physician has a responsibility to appropriately assess a patient and supervise medications that he prescribes. This Dr. Rabin did not do, and we found him to be somewhat cavalier in his issuance of prescriptions for the Complainant. In that respect, we find he committed an act or omission relevant to the practice of medicine that, having regard to all the circumstances would reasonably be regarded by members as unprofessional.

In summary, the Committee's findings are as follows:

1. That Dr. Rabin did not engage in the sexual abuse of a patient, contrary to section 51(1)(b.1) of the Code;
2. That Dr. Rabin's conduct was not unbecoming a physician, contrary to section 1(1)(34) of Ontario Regulation 856/93 of the *Medicine Act*, 1991;
3. That Dr. Rabin committed an act of professional misconduct for an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as unprofessional, contrary to section 1(1)(33) of Ontario Regulation 856/93 of the *Medicine Act*, 1991.

Indexed as:

Rabin (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. ELIJAH ZEPHANIA RABIN

PANEL MEMBERS:

R. SANDERS (CHAIR)
DR. I. BAXTER
DR. D. BRADEN

PUBLICATION BAN

Hearing Date(s):	January 20-23, May 9, June 3-5, 2003
Decision/Released Date:	June 23, 2003
Penalty Hearing Date:	September 16, 2003
Penalty Decision/Released Date:	October 2, 2003

PENALTY DECISION AND REASONS

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on January 20 to 23, 2003. At the conclusion of the hearing, the Committee reserved its decision on finding. On May 9, 2003, the Committee granted a defence motion to reopen the hearing to introduce fresh evidence. The hearing resumed from June 3 to 5, 2003.

On June 23, 2003, the Discipline Committee delivered its decision and reasons in writing. The Committee found that Dr. Rabin committed an act of professional misconduct for an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as unprofessional, contrary to section 1(1)(33) of Ontario Regulation 856/93 of the *Medicine Act*, 1991, regarding his writing of prescriptions for the complainant as his common law spouse, which was often inappropriate.

On September 16, 2003, the Committee held a hearing with respect to penalty.

PUBLICATION BAN

At the request of counsel for the College, the Committee made an order pursuant to subsection 47(1) of the *Health Professions Procedural Code* (the Code) which is Schedule 2 to the *Regulated Health Professions Act, 1991*, banning the publication of the identity or any information that could disclose the identity of the complainant witness.

EVIDENCE AND SUBMISSIONS ON PENALTY

No evidence was lead by either the College or the defence on penalty.

The College submitted that Dr. Rabin should be reprimanded and a one month suspension be imposed. The basis for the College's submission was the view that Dr. Rabin had shown a lack of insight and honest remorse regarding the inappropriate writing of prescriptions, that he was an experienced physician who ought to have known better, and that the behaviour was repeated on many occasions, even though only with respect to his

common law spouse. The Committee was also referred by College counsel to the case of Re S.T.O. in support of the College's submissions although noting that the case did not exactly mirror the present case with Dr. Rabin because there were factors in Re S.T.O. tending to mitigate the penalty that might otherwise be imposed on the doctor.

The defence made submissions that the Committee should have regard to the nature and circumstances of the misconduct, and the impact the misconduct has had on a member of the public, a member of the profession, and the general reputation and integrity of the profession.

The defence further submitted that the aims and goals of the penalty should be

1. protection of the public,
2. specific deterrence,
3. general deterrence regarding how the College regards breach of ethics; and
4. to maintain the integrity of the profession and its ability to govern itself in the eyes of the public;

and that these four aims would be achieved in this case by an unrecorded reprimand.

In support of its position, defence counsel argued that there was no evidence led that Dr. Rabin prescribed inappropriately to any other patients. The only evidence was that he prescribed inappropriately for his common law spouse. There was also no evidence, the defence submitted, that the complainant or any other patient, or the public was at risk.

Regarding specific deterrence, the defence submitted that it is very unlikely that Dr. Rabin would re-offend, given the extensive negative press publicity and the impact of the proceedings on Dr. Rabin.

In essence, the defence argued that the emotional cost of this process mitigates against a harsher penalty being imposed given that Dr. Rabin was defending himself against the much more serious charges of sexual abuse. It was further argued that Dr. Rabin has

suffered greatly by the adverse publicity and the complainant has not suffered the same indignity, so that in terms of general deterrence, the circumstances of this case are so unique that anything other than an unrecorded reprimand would be unnecessary. The Committee was presented with examples of the press coverage of the proceedings.

Last, the defence submitted that in the reasons for the Committee's finding in the original decision in June, there was no suggestion that Dr. Rabin's prescribing was an ethical issue, but rather one of standards of practice that would have been more appropriately dealt with by the Quality Assurance Committee, rather than discipline and logically leading to remedial action rather than suspension.

DECISION AND REASONS FOR PENALTY

The Discipline Committee has deliberated at length on the presentations made by the College and Defence at the penalty hearing. We have considered all aspects of this case and note the unusual and unique circumstances of this case.

This is a case of a doctor in a common law relationship with the complainant over an extended period of time, including two years in which they lived together, and who subsequently accused him of sexual impropriety with a patient. At the hearing the personal relationship was not in issue and the Committee had to deal, in essence, with this personal relationship in the context of whether there was a doctor/patient relationship and which conduct may well not have come to this panel if the relationship had not fallen apart. As set out in the Reasons for Decision, the Discipline Committee did not find that there was sexual impropriety with a patient so that we are only addressing penalty in the context of professional misconduct referred to in the Reasons.

The Committee notes the emotional strain and punishment already inflicted on Dr. Rabin by the publicity surrounding this case. We have considered the requested penalties of the reprimand and one month suspension. We do not determine that a suspension will serve any good purpose regarding specific or general deterrence, because we do not believe that Dr. Rabin is ever likely to repeat this behaviour particularly considering that he is near the end of a long and undoubtedly distinguished career.

With respect to an unrecorded reprimand, we heard argument regarding whether we have the ability to impose such a penalty. There is no dispute that the *Health Professions Procedural Code (the Code)* permits us to impose a reprimand. In our view however, we do not have authority to make it unrecorded as could previously be done under the *Health Disciplines Act*. Section 23 of the Code requires that the register contain certain things including the “result” of every disciplinary and incapacity proceeding. Subsection 23(7) states:

(7) For the purpose of this section and section 56, “result”, when used in reference to a disciplinary or incapacity proceeding, means the panel’s finding, particulars of the grounds for the finding, and the penalty imposed, including any reprimand.

We therefore are of the view that a reprimand must be recorded.

It is our considered opinion therefore that Dr. Rabin, by the extensive publicity focusing on the charges of sexual impropriety, has been punished sufficiently severely and that no further action regarding penalty be taken.