

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Kanhai, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of the patients whose names are disclosed in the Agreed Statement of Facts and Admission or patient records filed at the hearing, or any information that could disclose the identity of the patients 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,

(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: Kanhai, D.V. (Re)

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

IN THE MATTER OF a Hearing directed
by the Complaints Committee and the Executive Committee
of the College of Physicians and Surgeons of Ontario
pursuant to Sections 26(2) and 36(1) 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. DENIS VIBART KANHAI

PANEL MEMBERS:

DR. E. STANTON (Chair)
D. DOHERTY
DR. A. JONES
S. BERI
DR. F. SLIWIN

Hearing Date: November 29, 2010
Decision Date: November 29, 2010
Release of Written Decision: January 11, 2011

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on Monday, November 29, 2010. At the conclusion of the hearing, the Committee stated its finding that the member committed acts of professional misconduct and delivered its order with written reasons to follow.

THE ALLEGATIONS

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

1. under clause 51(1)(a) of the Health Professions Procedural Code (the “Code”), Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18, in that he has been found guilty of an offence that is relevant to his suitability to practise;
2. under clause 51(1)(b.1) of the Code, in that he sexually abused a patient;
3. under paragraph 1(1)2 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, (“O. Reg. 856/93”), in that he has failed to maintain the standard of practice of the profession; and,
4. under paragraph 1(1)33 of O. Reg. 856/93, in that he has engaged in conduct or 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. Kanhai admitted to allegations #1 and #3 in the Notice of Hearing, that he has been found guilty of an offence that is relevant to his suitability to practise and that he has

failed to maintain the standard of practice of the profession. Counsel for the College withdrew allegations #2 and #4 in the Notice of Hearing.

FACTS AND EVIDENCE

The following facts were disclosed in the Agreed Statement of Facts and Admission, filed as an exhibit at the hearing:

PART I – FACTS

Background

1. Dr. Kanhai is a 66-year old family physician who received his first independent practice certificate in Ontario in 1975. The current allegations relate to two separate incidents, the first in 2003 and the second a criminal conviction in 2007.

Failure to Maintain the Standard of Practice of the Profession

2. On August 20, 2003, a 13-year-old patient and her mother attended on Dr. Kanhai for suture removal. After removing the sutures, Dr. Kanhai performed a medically unnecessary breast examination on the patient which failed to meet the standard of practice of the profession. A copy of Dr. Kanhai's patient chart is attached at Tab 1 [to the Agreed Statement of Facts and Admission].

Criminal Sexual Assault Conviction

3. On August 16, 2006, a patient attended at Dr. Kanhai's medical clinic for the purpose of having a physician sign her diet forms in support of her claim for a diet allowance.

4. Without consent or medical justification, Dr. Kanhai put his hand down her bra and manipulated her breast and nipple.

5. On or about November 9, 2007, Dr. Kanhai was found guilty of one count of sexual assault contrary to the *Criminal Code* in relation to this incident. A copy of the Reasons for Judgment of Mr. Justice Di Zio dated November 9, 2007 are attached at Tab 2 [to the Agreed Statement of Facts and Admission]. A copy of the Reasons for Sentence of Mr. Justice Di Zio dated January 18, 2008 are attached at Tab 3 [to the Agreed Statement of Facts and Admission].

PART II – ADMISSION

6. Dr. Kanhai admits the facts in paragraphs 1 to 5 above and admits that he engaged in professional misconduct in that he failed to maintain the standard of practice of the profession under paragraph 1(1)2 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, in his care and treatment of a patient, and has been found guilty of an offence that is relevant to his suitability to practise medicine under clause 51(1)(a) of the Health Professions Procedural Code, Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18.

FINDINGS

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts and Admission. Having regard to these facts, the Committee accepted Dr. Kanhai's admission and found that he committed acts of professional misconduct, in that he has been found guilty of an offence (sexual assault of a patient) that is relevant to his suitability to practise medicine, under clause 51(1)(a) of the Code, and that he failed to maintain the standard of practice of the profession in his care and treatment of a patient, under paragraph 1(1)2 of O. Reg. 856/93.

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 order, which included: 1) Costs to the College in the amount of \$3650.00; and, 2) the results of the proceeding to be included on the register.

Where a joint submission is made to the Committee, the law is clear that the penalty proposed must be accepted unless to do so would bring the administration of justice into disrepute and be contrary to the public interest.

The Committee considered a number of factors in assessing the jointly proposed penalty.

Prior Discipline History

Dr. Kanhai has a complicated history with the College and a disciplinary record of prior findings of professional misconduct

In April 1982, Dr. Kanhai had his certificate of registration revoked for failure to maintain the standard of practice of the profession by engaging in improper prescribing of narcotics and controlled substances, and for unprofessional conduct in respect to his language and general behaviour with a patient.

In October 1986, Dr. Kanhai was granted a restricted certificate of registration to practise only in an institutional setting under direct supervision of another physician, was prohibited from prescribing narcotics and controlled drugs, and was required to undergo periodic practice assessments.

In August 1990, Dr. Kanhai was reprimanded for breaching a restriction on his certificate of registration for not obtaining the approval of the Registrar for his practice location. At the same time, the Committee amended the restrictions on his certificate of registration to allow him to prescribe narcotics and controlled drugs at the institution where he was employed.

In October 1992, an application by Dr. Kanhai for removal of the remaining restrictions on his certificate of registration was dismissed by the Discipline Committee.

In April 1995, Dr. Kanhai applied again for the removal of the restrictions on his certificate of registration. The Committee amended the restriction to require that he notify the Registrar of his practice location and submit to periodic inspections. The amended restriction further stipulated that if such an inspection indicated practice deficiencies, the earlier restrictions would be automatically reinstated.

In March 1998, Dr. Kanhai was required to close his practice as a result of a concerning practice inspection. Dr. Kanhai went through a 13-week hospital based training program.

In April 1999, Dr. Kanhai applied for removal of the restrictions on his certificate of registration. The terms were amended to require Dr. Kanhai to notify the College of his practice location and to submit to 3 practice inspections, with further restrictions to be imposed if practice deficiencies were identified.

In March 2004, Dr. Kanhai entered into an undertaking with the College for bimonthly assessments for a minimum of 1 year, which terminated in January 2006.

On November 15, 2010, Dr. Kanhai entered into an undertaking with the College to resign from practice and never to apply or reapply for registration as a physician in any jurisdiction. It was also agreed that this undertaking would be entered on the register as information that is available to the public. The breadth of this undertaking, a permanent ban from the practice of medicine, is beyond what the Discipline Committee can order. The Discipline Committee can revoke a certificate of registration but cannot prevent an application for reinstatement in this or any other jurisdiction.

If this undertaking never to practise medicine again had not been entered into, the Discipline Committee would have ordered a revocation of Dr. Kanhai's certificate of

registration in light of the facts of this case and Dr. Kanhai's record, aggravated by Dr. Kanhai's ungovernability, and to express the Committee's abhorrence for his actions. The Discipline Committee has the jurisdiction to revoke even if a member has resigned and no longer has a certificate of registration. A member cannot resign in order to avoid the discipline process, including the imposition of a penalty, which includes revocation.

Section 14(1) of the Code states:

s.14(1) A person whose certificate of registration is revoked or expires or who resigns as a member continues to be subject to the jurisdiction of the College for professional misconduct or incompetence referable to the time when the person was a member and may be investigated under section 75.

In the circumstances of this case, including the undertaking entered into by Dr. Kanhai with the College which is tantamount to a permanent ban on his practice of medicine in Ontario and in any other jurisdiction, the Committee accepted the joint submission.

The goals of specific deterrence and public protection have been met, as Dr. Kanhai will no longer have the ability to practise medicine. General deterrence has been met as the membership is informed that the Committee would have revoked Dr. Kanhai's certificate of registration had he not entered into the undertaking with the College never to practise medicine again. Rehabilitation in this case is not possible in the view of the Committee, which is demonstrated by Dr. Kanhai's continued failure to meet the standard of practice of the profession and his ungovernability.

ORDER

Therefore, the Committee ordered and directed that:

1. Dr. Kanhai pay to the College costs in the amount of \$3,650.00, within 30 days of the date of this Order; and,

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2. The results of this proceeding be included on the register.