

NOTICE OF PUBLICATION BAN

By its order of May 16, 2016, in the College of Physicians and Surgeons of Ontario and Dr. Muirhead, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of Patient A or any information that could identify Patient A under 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:

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: Ontario (College of Physicians and Surgeons of Ontario) v. Muirhead, 2016 ONCPSD 37

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

IN THE MATTER OF a Hearing directed by the Inquiries, Complaints and Reports Committee of the
College of Physicians and Surgeons of Ontario pursuant to Section 26(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. WILLIAM MACLAREN MUIRHEAD

PANEL MEMBERS:

**DR. E. STANTON
MR. S. BERI
DR. A. SIMPSON
MS. D. DOHERTY
DR. D. PITT**

**COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF
ONTARIO:**

**MS. L. BROWNSTONE
MS. S. SULEVANI**

COUNSEL FOR DR. MUIRHEAD:

NO ONE APPEARING

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

**MR. R. COSMAN
MR. G. FORREST**

PUBLICATION BAN

Hearing Dates: May 16 and 17, 2016

Decision Date: May 17, 2016

Release of Written Reasons: November 14, 2016

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 May 16 and 17, 2016. On May 17, 2016, the Committee stated its finding that the member committed an act of professional misconduct and delivered its penalty and costs order with written reasons to follow. The Committee directed in its order that the certificate of registration of Dr. Muirhead be revoked effective immediately, and ordered other penalty and costs provisions as set out below.

THE ALLEGATION

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

1. under clause 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, in that he engaged in the sexual abuse of a patient; and
2. under paragraph 1(1)33 of Ontario Regulation 856/93 (“O. Reg. 856/93”) made under the *Medicine Act, 1991*, 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.

NON-ATTENDANCE OF DR. MUIRHEAD AT THE HEARING

The Committee heard evidence from Ms. Anthea Ryan, Acting Hearings Coordinator of the College’s Hearings Office, that Dr. Muirhead had been served with the Notice of Hearing and that he had received proper notice of the hearing. An Affidavit of Service was filed with the Committee. It was clear that Dr. Muirhead was informed of the allegations against him and it was made clear that the Committee may proceed with the hearing in his absence if he chose not to attend.

Dr. Muirhead was initially represented by legal counsel, but by order of the Committee dated May 2, 2016, Dr. Muirhead's lawyers were removed as his solicitors of record on the basis that there had been a breakdown in their lawyer-client relationship. Dr. Muirhead was informed that the Committee intended to proceed with the hearing as scheduled. Dr. Muirhead elected not to retain alternative counsel to represent him and chose not to attend at the hearing. A physician cannot avoid a discipline hearing by failing to attend at the hearing.

The Committee decided that it was in the public interest to proceed with the discipline hearing in the absence of the physician, and did so.

RESPONSE TO THE ALLEGATION

In view of Dr. Muirhead's absence from the hearing, the Chair directed a response to the allegations be entered that Dr. Muirhead is deemed to have denied the allegations in the Notice of Hearing, that he engaged in the sexual abuse of a patient and 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.

FACTS AND EVIDENCE

(a) Overview of the Issues

The allegations in this case arise from the alleged conduct by Dr. Muirhead in relation to Patient A between September 2008 and December 2011 when she was his patient.

The allegations are that:

1. Dr. Muirhead engaged in sexual abuse of his patient, Patient A, by:
 - a. touching Patient A, including hugging and kissing and massaging patient A;

- b. making sexual comments to Patient A;
 - c. placing his hands around Patient A's neck and applying pressure;
 - d. masturbating Patient A;
 - e. engaging in oral sex with Patient A; and
 - f. having sexual intercourse with Patient A;
2. Dr. Muirhead engaged in disgraceful, dishonourable or unprofessional conduct by:
- a. his communication with and about Patient A;
 - b. giving money and gifts to Patient A;
 - c. driving recklessly with Patient A;
 - d. disclosing confidential information about other patients and/or College investigations to Patient A;
 - e. obstructing a College investigation by instructing Patient A to obstruct a College investigation and providing false information to Patient A to deter her from cooperating with the College, among other things.

This case raises two primary issues as follows:

- 1. Did Dr. Muirhead engage in sexual abuse of Patient A?
- 2. Would the conduct of Dr. Muirhead with Patient A be reasonably regarded by members as disgraceful, dishonourable or unprofessional?

Summary of Facts Established in the Evidence

In 2008, Patient A was an undergraduate student at a university in Ontario and attended her school's student health services for anxiety and depression. She was referred to Dr. Muirhead for management of her illness.

Her initial visit with Dr. Muirhead was in September 2008 at his office. She continued to see Dr. Muirhead for medical help until December 2011. Dr. Muirhead communicated with Patient A by email and Skype outside the office.

Dr. Muirhead's relationship with Patient A gradually progressed from therapeutic to sexual, including massaging, touching, masturbation, oral sex, and sexual intercourse in the back room of his office.

Dr. Muirhead gave Patient A gifts and money. With false information and encouragement, he induced her not to cooperate with and to obstruct a College investigation into his conduct.

WITNESSES

The Committee heard evidence from Mr. Thomas McNamara, College investigator, and from Patient A by live video-conferencing, pursuant to an order of the Committee under Rule 8 of the Rules of Procedure of the Discipline Committee.

Mr. Thomas McNamara, College Investigator

Mr. McNamara testified that he interviewed Patient A. He filed with the Committee a plastic bag containing underwear that Patient A said that Dr. Muirhead had given her (Exhibit 14) as well as a plastic bag containing four necklaces and three pendants that Patient A said were also given to her by Dr. Muirhead (Exhibit 15).

Mr. McNamara testified regarding OHIP's record of Patient A's visits for which Dr. Muirhead had billed OHIP. Mr. McNamara's testimony and the OHIP records established the doctor-patient relationship of Dr. Muirhead and Patient A in the relevant time period.

Patient A testimony

Patient A testified that she was an undergraduate student at a university in Ontario in 2008. She attended the student health services at her university in the spring of 2008 with problems of anxiety and depression. She saw a female physician there who referred her to Dr. Muirhead for management of her illness.

She was seen by Dr. Muirhead at his office which was on the main floor of a house that was off-campus. Initially, the visits were in the front room and there were no staff

present. Her visits were frequent, sometimes four or five times a week, some more than two hours in length. She described her patient encounters with Dr. Muirhead. At first, he had them sit on chairs which were close together with their knees touching. The sessions ended with a hug. He encouraged her to be dependent on him. The sessions then moved primarily to the back room where there was a mattress on the floor and a desk against the wall. Initial removal of her shirt and back massaging progressed to cuddling, digital penetration of her vagina on most visits and sexual intercourse. Most of the time in the sessions was spent in the back room.

The following are relevant quotes from Patient A regarding Dr. Muirhead's encounters with her.

"I trusted that he knew what he was doing."

"I was dependent on him."

"He couched all of our interactions in terms of psychotherapy."

"It was about giving him control"

Dr. Muirhead told Patient A in an email chat about an investigation of him by the College. He warned her not to tell the College about any activities in the "back room." "You need to be prepared. They're going to ask you about the back room."

Dr. Muirhead instructed her to explain his statement in emails to her of "I love you," as "I love you like he loved his dogs." And this is what she did say to the College investigator. She did not initially admit to a sexual relationship with him despite being asked by the College investigator. Dr. Muirhead told her that so many people, including her, were dependent on him. He convinced her that action by the College against him would ruin her life and her marriage. She was also concerned about Dr. Muirhead's "explosive" reaction if she told the College the truth. She said he would, "Scream, yell, say vile things."

She estimated the total amount of money he gave her over time was \$23,000.00.

Patient A's written complaint to the College about Dr. Muirhead was made after discussions with her husband and a therapist.

FINDINGS

Patient A was a credible witness. The Committee found her evidence to be believable and reliable. She related events in a straightforward manner with only minor hesitations related to anxiety and embarrassment about being duped by Dr. Muirhead into activities that, in retrospect, were inappropriate and non-therapeutic. Her description of events was detailed, and had the ring of truth. It sometimes lacked in minor details, but that would normally be expected with the passage of time. There was no indication that she made up any facts to fit her story. She gave clear and convincing testimony of sexual activity with Dr. Muirhead in his office during the time there was a patient/physician relationship between them. Her testimony was accepted by the Committee.

The Committee found on the basis of the testimony of Patient A that sexual activity including sexual intercourse had taken place with Dr. Muirhead while she was a patient of his. Accordingly, the Committee found that Dr. Muirhead engaged in sexual abuse of a patient.

The Committee accepted the testimony and evidence that Dr. Muirhead acted in a manner with Patient A that was disgraceful, dishonourable, and unprofessional when he advised her to obstruct the investigation of him by the College. The Committee found that he promoted a relationship with her that was excessively dependent, including giving her gifts and money so that he could use and exploit her for his own purposes.

Based on the evidence of inappropriate communication, gifts of money and other presents and instructing Patient A to give false information to obstruct a College investigation, the Committee found that Dr. Muirhead engaged in acts relevant to the practice of medicine that would reasonably be considered by members as disgraceful, dishonourable, or unprofessional.

Summary of Findings

The Committee found that Dr. Muirhead committed an act of professional misconduct in that:

- he engaged in the sexual abuse of a patient; and
- 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.

PENALTY AND REASONS FOR PENALTY

College Submission

Counsel for the College submitted that the appropriate penalty order was an immediate revocation of Dr. Muirhead's certificate of registration, a reprimand, funding of payment for Patient A's therapy, and reimbursement of costs for two days of hearings.

Guiding Principles

The penalties of revocation and reprimand are mandatory penalties under the Code for Dr. Muirhead's sexual abuse of his patient.

The guiding principles in determining an appropriate penalty are that the penalty should protect the public; express the disapproval of the profession toward the member's conduct; maintain public confidence in the profession and its ability to regulate itself in the public interest; act as a general and specific deterrent and, in an appropriate case, serve a rehabilitative function.

In determining the appropriate penalty, the Committee must give effect to the mandatory penalties in the Code. It must also have regard to the facts of the case and should take into account aggravating and mitigating factors. The penalty should generally be

proportionate to the misconduct and in keeping with the penalties imposed by the Committee in previous cases involving similar misconduct.

An aggravating factor was a previous College discipline decision in March 2014 suspending Dr. Muirhead for disgraceful, dishonorable or unprofessional conduct and failure to maintain the standard of practice of the profession for numerous boundary violations with female patients.

The Committee considered the conduct of Dr. Muirhead to be abhorrent and an extreme example of the abuse of the position of trust by a physician in a physician-patient relationship. The Victim Impact Statement attested to the significant, long-term harm that he caused his patient.

ORDER AS TO PENALTY AND COSTS

Therefore, having stated its findings in paragraph 1 of its written order of May 17, 2016, the Committee ordered and directed in that order, in regard to penalty and costs, that:

2. the Registrar revoke Dr. Muirhead's certificate of registration effective immediately;
3. Dr. Muirhead appear before the panel to be reprimanded within 90 days of this Order becoming final;
4. Dr. Muirhead 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 July 31, 2016, in the amount of \$16,060.00; and
5. Dr. Muirhead pay costs to the College in the amount of \$10,000.00, by October 31, 2016.