NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Alan Ralph Abelsohn, this is notice that the Discipline Committee ordered on February 9, 2004 pursuant to ss.47(1) of the Health Professions Procedural Code (the Code), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, that no person shall publish the name of the complainant or any information that could disclose the identity of the complainant including the names of her family members (including her children, her husband, her father and her mother); names of her friends, and her former friends who testify; her address; her former employer; and professional names and nicknames she used on her employment as a writer.

The Committee further ordered on February 12, 2004, pursuant to ss. 45(2) and (3) of the Code, that no person shall publish or broadcast the name of patient #2 or any information that may identify her including the name of the health institution where she is employed.

Subsection 93 of the Code, which is concerned with failure to comply with these orders, reads:

> 93(1) 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.

Indexed as: Abelsohn (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(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. ALAN RALPH ABELSOHN

PANEL MEMBERS:	DR. J. MCGILLEN (CHAIR) G. DEGROOT DR. I. BAXTER B. LAFLECHE
Hearing Dates:	December 1-5, 2003 January 5-9, 2004 February 9-12, 2004 March 31- April 1, 2004
Decision/ Release Date:	August 5, 2004

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 December 1, 2, 3, 4 and 5, 2003, January 5, 6, 7, 8 and 9, February 9, 10, 11 and 12, March 30, 31 and Apri1 1, 2004. At the conclusion of the hearing, the Committee reserved its decision.

PUBLICATION BAN

The Committee ordered on February 9, 2004, pursuant to subsection 47(1) of the Health Professions Procedural Code (the "Code"), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, as amended, that no person shall publish the name of the complainant or any information that could disclose the identity of the complainant. Such information will include the names of her family members, including her children, her husband, her father and her mother; names of her friends, and her former friends who testify; her address; her former employer; and professional names and nicknames she used in her employment as a writer.

The Committee further ordered on February 12, 2004, pursuant to ss. 45(2) and (3) of the Code, that no person shall publish or broadcast the name of patient #2 or any information that may identify her including the name of the health institution where she is employed.

These orders and the reasons for them were delivered in writing.

ALLEGATIONS

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

1. under clause 51(1)(b.1) of the Code in that he sexually abused a patient; and

2. under clause 1(1)33 of O/Reg. 856/93 of the *Medicine Act*, in that he engaged in 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.

The Notice of Hearing also alleged that Dr. Abelsohn is incompetent, as defined by subsection 52(1) of the Code, in that his care of a patient displayed a lack of knowledge, skill or judgment or disregard for the welfare of the patient of a nature or to an extent that demonstrates the he is unfit to continue practise or that his practise should be restricted,

RESPONSE TO THE ALLEGATIONS

Dr. Abelsohn denied the allegations set out in the Notice of Hearing.

SUMMARY OF FINDINGS

After lengthy deliberation, the Committee found Dr. Abelsohn committed an act of professional misconduct, in that he sexually abused a patient by engaging in touching of a sexual nature of the patient, and by engaging in behaviour of a sexual nature towards the patient. The Committee also found that Dr. Abelsohn had committed acts of professional misconduct by engaging in acts relevant to the practise of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional. The Committee also found that Dr. Abelsohn was incompetent as defined by subsection 52(1) of the Code, in that his care of a patient displayed a lack of knowledge, skill and judgment or disregard for the welfare of the patient of a nature and to an extent that demonstrated that he is unfit to continue to practise or that his practice should be restricted. The Committee was divided on whether Dr. Abelsohn "encouraged" the patient to masturbate in his presence, and the Committee therefore made no finding that there was an encouragement to masturbate within the meaning of s. 51(5)(2)(v) of the Code.

OVERVIEW OF THE ISSUES

The Committee addressed the following questions:

1. Did Dr. Abelsohn engage in touching of and behaviour of a sexual nature towards the patient, which constitutes sexual abuse as defined in the Code. (A secondary issue was whether Dr. Abelsohn encouraged the patient to masturbate in his presence).

2. Did Dr. Abelsohn engage in acts relevant to the practise of medicine that would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

3. Is Dr. Abelsohn incompetent, i.e. did he show a lack of knowledge, skill or judgment or disregard for the welfare of the patient of a nature and to an extent that demonstrates that he is unfit to continue practise or that his practise should be restricted.

Counsel for Dr. Abelsohn submitted that the patient's evidence was unreliable and should not be accepted. The Committee agreed. Counsel for the College in final argument did not ask the panel to rely on any uncorroborated evidence of the complainant, but rather to rely on the evidence provided in Dr. Abelsohn's chart, the testimony of Dr. Abelsohn and the evidence of the expert witnesses. The Committee approached the evidence and made findings of fact on that basis.

Issue #1 – Allegation of Sexual Abuse

In regards to the sexual abuse allegation, the Code clearly defines sexual abuse of a patient by a member to include touching of a sexual nature of the patient by the member, or behaviour or remarks of a sexual nature by the member towards the patient.

The panel considered a number of events that occurred over the two and a half year period when Dr. Abelsohn was treating the complainant in psychotherapy sessions.

Dr. Abelsohn had engaged in regular hugs at the end of sessions. These hugs were brief in duration but regular and repetitive and occurred at the end of many sessions. The patient introduced the concept of cradling hugs where the patient would lie on the floor in

between Dr. Abelsohn's legs with her head on his chest and he would wrap his arms around the patient holding her for a prolonged period of time, often five to ten minutes. Dr. Abelsohn made a practice of engaging in these cradling hugs, on numerous occasions.

The patient also requested what she described as scanning or rewiring forms of therapy. In the therapy sessions, Dr. Abelsohn, under the guidance of the patient, would place his hands on top of her hands as she moved her hands across her dressed body, often touching her breasts, her buttocks, her pubic area, her face and her lips. On other occasions, she guided his hands over the same areas.

The patient also requested that the physician participate in re-enacting a rape situation, which the patient had claimed had occurred to her at the hands of her father. On two of these occasions, the physician stood behind the patient, placed his hands around the patient's neck or his hand across her mouth. The patient relived the episode and then imagined the physician rescuing her from this horrendous event.

Near the end of the two and half year therapy sessions, the patient requested that she be able to masturbate in the physician's office. Dr. Abelsohn acceded to her requests. Dr. Abelsohn admitted that he and the patient had discussions before each of these events, that he would then rise from his desk go over and place a pillow on the floor for the patient, sit beside the patient on the floor and that the patient would then masturbate. This occurred on six occasions. On at least two of these occasions, the physician had his hands placed on the patient's chest and, on at least one occasion, he had eye contact with the patient while she masturbated.

The panel accepted that this touching and behaviour constituted sexual abuse, in that it was touching and behaviour of a sexual nature, for which there was no justification, i.e., the touching and behaviour were not of a clinical nature appropriate to the psychotherapy service provided. This touching and behaviour, including the masturbation, is all documented in Dr. Abelsohn's notes and was admitted in his testimony.

The Committee also took into account that the patient had told Dr. Abelsohn on numerous occasions that she was in love with him and wished to have a relationship with

him. Notwithstanding this, Dr. Abelsohn continued his therapy sessions with her and engaged in the conduct described. The Committee weighed carefully the evidence that, after the termination of therapy sessions, Dr. Abelsohn continued to meet this patient in public places such as bars and restaurants and she continued to convey her wishes to have a relationship outside of the office setting.

The Committee assessed that there were more than thirty occasions where, because of the various touching and behaviour of a sexual nature, sexual abuse occurred. The Committee concluded that Dr. Abelsohn on each occasion had to make a professional judgment about whether to participate in these various encounters. Each time Dr. Abelsohn failed to display any evidence of the professional character required of a physician. He failed in his fiduciary responsibilities to the patient by choosing to participate in behaviour that constituted sexual abuse of a patient. His only excuse appeared to be that he felt his participation might help the patient. However, he did appear to recognize that his conduct was not in accordance with professional standards and he ultimately recognized that there was no benefit to this patient during her therapy.

It was quite apparent that Dr. Abelsohn terminated therapy only after the patient had followed him to Ottawa when he had travelled there for a conference. He recognized the relationship that had developed during the psychotherapeutic sessions would soon become apparent to others. While the patient had displayed increasingly erratic behaviour during the prior six months of her therapy, she was described as remarkably improved and therapy was terminated. There was no documentation to support that the patient had actually improved. It was apparent that therapy had ended as a reaction to the patient following Dr. Abelsohn to Ottawa.

Dr. Abelsohn continued to meet the patient approximately every six months in a public setting. This was despite the fact that Dr. Abelsohn knew and could no longer deny the patient's infatuation with him and desire to have a relationship with him. Despite her repeating these requests, even during these meetings, Dr. Abelsohn continued to meet with her.

The fact that the patient had masturbated six times in the physician's office in the presence of the physician was inexcusable. Dr. Abelsohn had a fiduciary responsibility to his patient to respect her sexual integrity, and by his conduct he violated that duty. Permitting or encouraging her to masturbate in his presence reflected gross misconduct and blatant sexual abuse of the patient that could not be interpreted in any other fashion.

The Committee felt that Dr. Abelsohn could not shirk his responsibility as a physician because the patient was difficult, strong willed and manipulative. The fact that he had failed to seek medical help in managing this difficult and very ill patient does not excuse his own behaviour. Dr. Abelsohn used the excuse that he believed that he was helping the patient. Although this may have been his intention, there was absolutely no evidence in the chart or by the expert witnesses that this was occurring or that such behaviour as exhibited by Dr. Abelsohn would help her.

Dr. Abelsohn stated that, at no time, did he seek or gain sexual gratification from the various types of conduct and behaviour that occurred. The panel was divided on this, which in any event is not an essential component of sexual abuse, which might have various motivations. The chart clearly reflected a pattern over two and a half years where the patient requested different types of activity, of a sexual nature, and Dr. Abelsohn was willing to participate. The touching and behaviour of a sexual nature was allowed by Dr. Abelsohn to increase over time to the point where the patient was repeatedly masturbating in his presence, in his office. The chart revealed no convincing evidence that Dr. Abelsohn attempted to terminate that behaviour. Even accepting that the patient had requested repeatedly the touching and behaviour of a sexual nature, there is no excuse, reason or circumstance for a physician to comply with such requests. It is the responsibility of the physician to stop it from happening. It is the responsibility of the physician to say that such conduct is improper and to recognize that it is not in the interest of a very ill patient.

The Defense expert explained how physicians with BPD patients can have a false belief that they are rescuing these patients from a terrible life. While the defense expert explained this on a theoretical basis, these two members of the Committee did not find

acceptable evidence to support that this had occurred in this case. Dr. Abelsohn was quite aware that he was not capable of providing the level of care required by this patient and did not seek professional consultation for either the patient or himself.

The Committee found that Dr. Abelsohn had sexually abused the patient by touching her and by engaging in behaviour of a sexual nature and that he had therefore committed an act of professional misconduct.

Encouragement

While it was clear to the panel that Dr. Abelsohn engaged in behaviour of a sexual nature when he allowed the patient to masturbate in his presence, the Committee also addressed the issue whether Dr. Abelsohn had provided encouragement to the patient to masturbate in his presence. This issue is of special importance as it relates to the penalty that would be prescribed. If Dr. Abelsohn is found to have provided encouragement to the patient to masturbate in his presence, the mandatory penalty of revocation of Dr. Abelsohn's certificate of registration would be imposed for a finding of sexual abuse of this nature.

The panel was divided on this issue, and accordingly no finding was made that Dr. Abelsohn had encouraged his patient to masturbate in his presence. These two panel members believed that Dr. Abelsohn by his words and conduct encouraged the patient to masturbate in his presence. They found that Dr. Abelsohn's actions, by discussing the behaviour prior to it happening, by remaining present in the room while it happened, by positioning himself on the floor beside the patient during the activity, by placing a pillow on the floor for her head, by maintaining eye contact on at least one occasion, and on two occasions allowing his hand to be held to the patient's chest while she masturbated, and by discussing with her afterwards how it helped her, constituted encouragement.

Dr. Abelsohn did not provide any evidence to suggest that he attempted to leave the room or stop the patient from engaging in this activity in his presence. His charts showed that this activity had not occurred on one occasion but had occurred six times. Dr. Abelsohn provided testimony that he had discussions before and after each event and had positioned himself as described above. This was not a situation where a patient takes a

physician by surprise by masturbating in his presence and refusing to stop when asked. Dr. Abelsohn did not walk out, but rather engaged in the same pattern of behaviour, six times, over an extended period. Finally, there was no clinical justification for the touching and behaviour of Dr. Abelsohn.

It was the opinion of these two members of the Committee that Dr. Abelsohn had encouraged the patient to masturbate, in that his words and conduct promoted the patient to request this type of behaviour repeatedly. Dr. Abelsohn had allowed the patient to engage in different types of physical contact of a sexual nature over a two and a half year period, and these forms of behaviour required his active participation. This participation led to more serious acts, finally leading to repeated episodes of the patient masturbating in his presence. The repeated and various types of touching and behaviour of a sexual nature that Dr. Abelsohn had participated in created an atmosphere and environment that encouraged the patient ultimately to masturbate in his presence.

The Committee felt that the level of encouragement required for a finding of "an encouragement to masturbate" was high, because of the mandatory revocation provision. These two members of the Committee believe that the conduct of Dr. Abelsohn met that threshold, and that Dr. Abelsohn, by his words and activity, promoted and assisted (i.e. encouraged) the patient to masturbate in his presence. The other two members of the Committee, whose reasons are stated separately on this point, did not find that this threshold was met.

Issue #2 – Allegation of Disgraceful, Dishonourable or Unprofessional Conduct

Counsel for Dr. Abelsohn conceded that it was open to the Committee to make this finding on the evidence. The College expert and the defense expert agreed that there had been boundary violations, that Dr. Abelsohn's failure to seek supervision was inappropriate, and that his therapy had no scientific or clinical basis. The Committee also considered the fact that Dr. Abelsohn had continued to meet the patient after the therapy had terminated and after the patient had conveyed to him that she was in love with him and wished to have an affair with him. The panel found on the expert evidence and Dr. Abelsohn's admissions, that this allegation of professional misconduct was proved, in

that he engaged in acts relevant to the practice of medicine that would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

Issue #3 – Allegation of Incompetence

The Committee accepted Dr. Abelsohn's testimony in which he conceded that he lacked the knowledge, skill and judgement to treat the patient with her severe pathology. The expert witnesses, the defense expert and the College expert, testified that there was no acceptable therapeutic basis for the physical contact. The frequent hugs, cradling or parenting hugs, the scanning or rewiring behaviour, the re-enactment of the rape scenarios, which included the therapist, as well as the episodes of masturbation in the presence of the therapist, had no therapeutic basis and could be of no benefit to the patient. Both experts agreed that Dr. Abelsohn was responsible for actions that occur in therapy. Both the defense expert and the College expert agreed that Dr. Abelsohn had a duty to seek supervision in these circumstances and that, while he was aware of this duty to seek supervision, Dr. Abelsohn did not attempt to do so. Dr. Abelsohn did not discuss his problems managing this patient with his fellow physician with whom he worked. He did not discuss the management problems of this patient with the other therapist that he studied cases with in a group. Dr. Abelsohn failed to turn for medical advice regarding a patient even though he was aware he was no longer able to manage the patient professionally. Both experts recognized that there were many warning signs to his failure to manage this patient, including the patient's frequent unexpected visits to the physician's office and her demands on both the physician and his staff. The experts both recognized that Dr. Abelsohn was unable to maintain the appropriate boundaries with this patient and that Dr. Abelsohn committed repeated boundary violations as well as allowed the patient to commit repeated boundary violations. Dr. Abelsohn was also unable to manage the transference and counter transference that occurred throughout the psychotherapy.

This evidence led the Committee to conclude that Dr. Abelsohn lacked the knowledge, skill and judgement to treat patients in psychotherapy. There was no evidence before the Committee to suggest that Dr. Abelsohn, since these events had occurred, had taken

further training to provide him with insight or to improve his knowledge, skill or judgement to be able to continue with psychotherapy in the future.

The Committee found Dr. Abelsohn to be incompetent, in that his care of a patient displayed a lack of knowledge, skill or judgment and disregard for the welfare of the patient of a nature and to an extent that demonstrates that he is unfit to continue practice or that his practice should be restricted.

DR. J. MCGILLEN (CHAIR)

G. DEGROOT

We agree, except as stated in our Separate Reasons for Decision, attached.

DR. I. BAXTER

B. LAFLECHE

SEPARATE REASONS FOR DECISION

These two members of the Committee agree with and adopt the findings stated in the Decision and Reasons for Decision, but have a different perspective on some of the facts and issues.

We wish to provide our reasons separately where our perspective is different.

Sexual Abuse

We agree that the touching of the intimate body parts of the patient, acting out of the rape fantasy, and staying in the room while the patient masturbates was conduct and behaviour "of a sexual nature", and was not acceptable as part of the therapy that a physician provides. At the same time we feel strongly that the evidence showed that Dr. Abelsohn acquiesced to the patient demands only because of his overwhelming desire to help, and because she told him several times that the therapy was helping her. These two Committee members saw Dr. Abelsohn as a caring, compassionate, and empathetic physician, with a well earned reputation in the community, as came out in evidence from patients and physician colleagues. These two felt that he was in no way, or in any sense, to be considered a sexual predator. Nevertheless, he erred in his conduct and failed in his fiduciary responsibility to the patient, even for the best of reasons.

Therapy was terminated after the Complainant followed Dr. Abelsohn to Ottawa when he went there to attend a Medical Conference. It appeared to us that Dr. Abelsohn felt that the doctor patient relationship was getting out of hand, and that her repeated requests to have a relationship with him were not going to be thwarted. She had had periods of erratic behaviour in the last few months, which the expert evidence showed was not unusual with Borderline Personality Disorder. The panel also learned from the expert witnesses that her condition is not "curable". Dr. Abelsohn felt that therapy should be terminated because of her increasing attachment to him and after she stated that she felt much better, which was recorded in the medical chart, and stated by the doctor's secretary.

Dr. Abelsohn gave testimony that at no time, did he gain sexual gratification from the various types of conduct and behaviour that occurred. This was supported by the evidence of the defense expert, whose opinion was that Dr. Abelsohn's conduct was explained by his background, his need to rescue the patient, and the overwhelming nature of her psychopathology. The members of the Committee did not agree on whether there was any sexual gratification, but it is noted that this is not, in any event, an essential component of sexual abuse. The chart showed a pattern, over two and a half years, where the patient requested different types of activity with which Dr. Abelsohn was prepared to go along, constituting sexual abuse. The touching and behaviour of a sexual nature followed a fairly steady course over the two and a half years of treatment, and the masturbation by the patient was relatively infrequent, occurring in January 1996, twice in June 1996, once in July 1996, and in January 1997. There was no evidence in the chart that Dr. Abelsohn attempted to terminate the behaviour. The panel noted that the patient had repeatedly requested the behaviour, and while the Committee felt there was no excuse, reason or circumstance for the physician to comply, these two members felt that there was a good faith justification in Dr. Abelsohn's mind to do so, however misguided this was. It was for this reason that he felt his conduct might help his patient, that he did not tell the patient that the conduct was improper, and try to stop it.

The defense expert explained how physicians with BPD patients can have a false belief that they are rescuing their patients from a terrible life. While half of the panel were of the opinion that this was only theoretical, these two members were persuaded, noting the evidence that Dr. Abelsohn was a caring physician and very respectful of women, that he did indeed have an element of the rescue fantasy in his makeup of which Dr. Abelsohn was unaware until a late point in his treatment. He was in "over his head", and was not capable of providing the level of care required by this patient, and this explains in our minds why he failed to seek consultation and supervision earlier, and indeed never did so, though he recorded in his clinical notes that he was thinking of doing so. This was a significant failure on his part.

The Issue of Encouragement

We are of the opinion that there was no encouragement to masturbate, for the following reasons.

The Code in subsection 51(5)2., item v., provides that the member's certificate of registration shall be revoked if the sexual abuse included "encouragement of the patient by the member to masturbate in the presence of the member." The act of masturbating in the presence of the member does not attract mandatory revocation, unless there is "encouragement". In other words, there is a range of penalties for sexual abuse ranging from reprimand to revocation. We believe that the provision of mandatory revocation is aimed at the worst type of predatory sexual behaviour, motivated by the physician's own desire for sexual gratification. In our view Dr. Abelsohn was not a sexual predator seeking sexual gratification.

We also are persuaded that "encouragement" under item v. in the Code must be interpreted as the active inducement of a patient to masturbate in the presence of the member. We find no compelling evidence that there was any inducement, incitement, inspiring with courage, emboldening or energizing of the patient by the doctor. "Encouragement", as in incitement, requires an act of persuasion or "spurring-on", and incitement is not synonymous with "failure to resist". Therefore, the fact that Dr. Abelsohn allowed or permitted the behaviour, does not mean necessarily that he encouraged it. The College, in the view of these two members, has failed to prove that the doctor instigated, counselled, or incited the patient to do what she would not otherwise have done. Rather, the patient had come to be in control of the situation, as was apparent from Ms. X's evidence that the complainant told her that she could get the doctor to do anything she wanted. Dr. Abelsohn also recorded in the clinical notes that the patient was aware she was manipulating him, and apologized in the entry of 9-2-96.

In his expert evidence, the College expert stated his opinion that the act of masturbation was not in itself harmful, but doing it in the office while the doctor is present encroaches on the therapeutic relationship, and is a boundary violation. The College expert also gave his opinion that when the complainant took the actions she did, and the doctor did not say

"no" or leave the room, she could very well have felt in her mind that the doctor was allowing her to do it, and therefore was encouraging her. Again, we are of the opinion that there was not the necessary incitement, or active spurring on which would be necessary for a finding of the most serious degree of encouragement envisioned in the Code.

In the defense expert's expert evidence, he made the point that sex therapists use encouragement all the time. For example, the complainant had problems with orgasm, and the recommended treatment was firstly, the use of a book, "For Yourself". The patient was "encouraged" to go home and read it, and try to carry out the instructions. When this did not work, she came up with her own idea that she would be better helped by trying masturbation in the office. Dr. Abelsohn's failure was in not insisting that she go home and try there, but any encouragement that he gave her was not of the kind of incitement envisaged in the Code as attracting the mandatory penalty of revocation. In this case, Dr. Abelsohn got onto the slippery slope, as more and more boundaries were crossed, as frequently happens with BPD patients, and she asked for more and more, such as suggesting that she would be able to masturbate better with his hand on her chest. The defense expert's firm opinion, which we accepted, was that this did not amount to encouragement.

The defense expert, also in his testimony, addressed the issues of whether there were more subtle ways of encouragement, apart from directly saying "You should do this". He was of the opinion that there would be the more obvious way of doing it, but that it seemed to him that the patient was really in control, she was calling the shots, and it gave her a feeling of omnipotence. The number of times that she was allowed to masturbate, the discussion before and after of the effects of the therapy, the placing of the pillow, and sitting beside her head (in psychological, not physical contact), the occasional eye contact, and the taking of his hand to her chest, to the defense expert showed no evidence that there was any encouragement, subtly or otherwise, by him. In answer to the Chair, who re-iterated all of the above actions, the defense expert gave his opinion that "…there didn't seem to be any indication to me that he was deliberately, or unconsciously, for that

matter, sending out cues or clues that this would be okay, or encouraging her to do this kind of thing for his own gratification…."

These two members of the Committee therefore do not find there is any clear, cogent, and convincing evidence that there was encouragement of the kind envisaged in the Code, namely incitement, inducement, emboldening or energizing of the patient, and do not find that encouragement was proven, on the balance of probabilities. We do agree with the other findings in the Decision and Reasons for Decision.

DR. I. BAXTER

B. LAFLECHE

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. ALAN RALPH ABELSOHN

PANEL MEMBERS:	DR. J. MCGILLEN (CHAIR) G. DEGROOT DR. I. BAXTER B. LAFLECHE
Hearing Dates:	October 14, 2004
Decision/ Release Date:	October 14, 2004

Publication Ban

ORDER AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on December 1 to 5, 2003, January 5 to 9, February 9 to 12, March 30, 31 and Apri1 1, 2004. On August 5, 2004 the Committee delivered in writing its decision and reasons for decision as to finding.

The Committee found that Dr. Abelsohn committed acts of professional misconduct:

- 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*, as amended. in that he sexually abused a patient.

- under clause 1(1)33 of O/Reg. 856/93 of the *Medicine Act*, in that he engaged in 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.

The Committee also found Dr. Abelsohn to be incompetent as defined in the Code.

On October 14, 2004, the Committee heard evidence and submissions on penalty, and delivered its order as to penalty in writing.

PUBLICATION BAN

The Committee ordered on February 9, 2004, pursuant to subsection 47(1) of the Code that no person shall publish the name of the complainant or any information that could disclose the identity of the complainant. Such information will include the names of her family members, including her children, her husband, her father and her mother; names of her friends, and her former friends who testify; her address; her former employer; and professional names and nicknames she used in her employment as a writer.

The Committee further ordered on February 12, 2004, pursuant to ss. 45(2) and (3) of the Code, that no person shall publish or broadcast the name of patient (witness #2.) or any

information that may identify her including the name of the health institution where she is employed.

These orders and the reasons for them were delivered in writing.

DECISION AND REASONS ON PENALTY

Counsel for the College and counsel for Dr. Abelsohn made a joint submission on penalty. The Committee received in evidence letters, reports and an Affidavit, including written reports from Dr. A, psychiatrist and psychoanalyst; from Dr. B, Family Physician and Practice Associate of Dr. Abelsohn; from Prof. Z, Psychoanalyst; and from Dr. C, Family Physician and Peer Assessor for the CPSO. A victim impact statement was also read into the record by the complainant.

The Committee has made its decision as to penalty on the basis of the evidence at the hearing and the submissions of counsel. In the view of the Committee, the penalty proposed is appropriate and just. The Committee concluded that the proposed penalty meets the need for general deterrence as well as specific deterrence against such behaviour by this physician. The Committee considered that the serious findings against this physician were deserving of a serious penalty, and also took into account that the findings were of specific and aberrant behaviour that occurred in this physician's practice. The expert evidence before the Committee indicated that the likelihood of further similar behaviour from this physician was low. Some of that evidence is set out below.

Dr. A has been supervising Dr. Abelsohn's family and marital therapy practice for the past year and a half, on behalf of the CPSO, generally on a weekly basis, and has had an opportunity to discuss cases with him, review summaries of cases, diagnoses, management and outcome and, in the course of this, to perform an educational function in the realm of borderline personality disorder - including what had gone wrong in this particular instance - transference and counter-transference, and the need for boundaries and their maintenance. Also, he was able to discuss and review such syndromes as

delusional erotomania. He found that Dr. Abelsohn was a willing and insightful student, and that he was remorseful for what had taken place. He found nothing to indicate that Dr. Abelsohn was at risk for further boundary violations, and stated that he was willing to continue to supervise him in the future.

Dr. B stated in his written report that "I had the impression that Dr. Abelsohn was aware of the error in judgement that he had made in his individual psychotherapy of the complainant" and that despite these lapses "my view of him as an exemplary family physician remained unchanged." He notes that the Committee did not find Dr. Abelsohn incompetent with respect to family medicine. "I continue to believe that Dr. Abelsohn is an excellent family physician who provides exemplary care. I continue to believe that a distinction must be made between his competence as a family physician and his practice of family medicine and family therapy on the one hand, and his competence in the practice of individual psychotherapy on the other hand." He also stated: "I would continue to have complete trust in Dr. Abelsohn as a family physician, and would not hesitate to have him treat my patients in my absence…I am still prepared to continue working with Dr. Abelsohn."

Professor Z has been seeing Dr. Abelsohn every two weeks for psycho-analysis, and states that he has gained critical insight into what went wrong and has learned a great deal about himself and of the nature of transference and counter-transference.

Dr. C conducted a peer assessment of Dr. Abelsohn's medical practice for the CPSO in December 2003. He noted that his practice mix was approximately 70% family medicine and the rest marital therapy, with a very small component being individual therapy. He states, "I found no reason for concern with respect to the quality of care provided by Dr. Abelsohn." Also that "I found all aspects of Dr. Abelsohn's practice to be satisfactory or better."

Because of the failure in this physician's practice in the realm of individual psychotherapy, it was the view of the Committee that he must never be allowed to do this

type of practice again in order to ensure protection of the public. This not only removes a low risk of recurrence, but also eliminates any risk at all.

The Committee feels that Dr. Abelsohn has learned from his mistakes, has learned a great deal from supervising physicians, and has benefited from psychiatric and psychoanalytic help, which further makes the panel feel that the penalty is appropriate. The sanctions imposed in the penalty were specifically directed towards Dr. Abelsohn's failings in individual psychotherapy, and not against his family medicine practice, for which there was evidence of exemplary performance. They were directed towards retraining in boundary issues, which he had breached, towards his cessation of all individual psychotherapy, and to monitoring of his practice to ensure compliance.

Along with the salutary effect of a twelve-month suspension and a reprimand, the Committee considered that the terms of the proposed penalty in the joint submission were appropriate and just.

ORDER

Therefore, the Discipline Committee ordered and directed that:

1. The Registrar suspend Dr. Abelsohn's certificate of registration for a period of twelve (12) months, to commence on December 1, 2004.

2. The Registrar impose the following terms, conditions and limitations on Dr. Abelsohn's certificate of registration for an indefinite period of time:
   (a) Dr. Abelsohn must successfully complete a boundaries course acceptable to the College at his own expense before November 1, 2005;
   (b) Dr. Abelsohn is prohibited from providing individual psychotherapy to patients, and from providing or billing for any service, which should be billed under the OHIP codes applicable to individual psychotherapy, including K006 and K007. With respect to billing code K005, Dr. Abelsohn shall maintain a separate log by patient name of all services

billed under Code K005, to be submitted to the Registrar within five days of the end of each month. Dr. Abelsohn may provide family or marital therapy to patients, but may only provide such treatment in the presence of two or more family members or individuals;

(c) Dr. Abelsohn will forthwith execute a consent in the form attached at Schedule "A" to the order consenting to the release of his OHIP billing information to the College; and

(d) Dr. Abelsohn will co-operate with any medical inspector chosen by the College who may conduct random inspections of Dr. Abelsohn's OHIP billings and their supporting chart entries for specified codes and periods subsequent to the date of this Order of the inspector's choosing.

3. Dr. Abelsohn attend before the panel to be reprimanded, with the fact of the reprimand to be recorded on the register.

4. The results of this proceeding be included in the Register.

At the completion of the hearing, Dr. Abelsohn waived his right to appeal and the reprimand was administered.

DISCIPLINE COMMITTEE OF
THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

DR. C. CLAPPERTON (CHAIR)	**)**	**Hearing date:**
DR. F. SLIWIN	**)**	October 14, 2009
S. BERI	**)**	

B E T W E E N:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

(Responding Party)

- and -

DR. ALAN RALPH ABELSOHN

(Moving Party)

ORDER AND REASONS FOR ORDER
(On a Motion to Vary the Order of the Discipline Committee of 2004)

INTRODUCTION

On October 14, 2009, the Discipline Committee (the "Committee") heard a motion brought by Dr. Abelsohn for an order seeking to vary the terms, conditions and limitations imposed on his certificate of registration pursuant to an order of the Committee made on October 14, 2004 (the "2004 Order"). At the conclusion of the hearing, the Committee allowed the motion and delivered its order varying the terms, conditions and limitations imposed on Dr. Abelsohn's certificate of registration in writing, with written reasons to follow.

THE MOTION

The member's Notice of Motion sought an order directing the Registrar to remove the following term and condition from the certificate of registration held by Dr. Abelsohn:

> Dr. Abelsohn is prohibited from providing individual psychotherapy to patients, and from providing or billing for any service which should be billed under the OHIP codes applicable to individual psychotherapy, including K006 and K007. With respect to billing code K005, Dr. Abelsohn shall maintain a separate log by patient

name of all services billed under Code K005, to be submitted to the Registrar within five days of the end of each month. Dr. Abelsohn may provide family or marital therapy to patients, but may only provide such treatment in the presence of two or more family members or individuals.

Counsel for Dr. Abelsohn advised that he wished to vary the 2004 Order to permit him to provide psychotherapy and hypnotherapy, no more than once per week, to a maximum of four visits per patient, subject to Dr. Abelsohn being required to maintain a log and to obtain a practice monitor.

BACKGROUND

Dr. Abelsohn originally appeared before the Discipline Committee on various dates between December 2003 and April 2004. That hearing related to incidents occurring with respect to a single patient receiving psychotherapy with Dr. Abelsohn from 1994 through 1997. The patient had a diagnosis of Borderline Personality Disorder and initiated inappropriate treatment modalities with which Dr. Abelsohn complied, including "touching of the intimate body parts of the patient," acting out the patient's "rape fantasies" and remaining in the room while the patient masturbated.

At that time, the Discipline Committee found that Dr. Abelsohn had committed an act of professional misconduct, in that he sexually abused a patient by touching the patient in a sexual nature, and by engaging in behaviour of a sexual nature towards the patient. The Committee also found that Dr. Abelsohn had committed acts of professional misconduct by engaging in 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. The Committee also found that Dr. Abelsohn was incompetent as defined by section 52(1) of the Code, in that his care of a patient displayed a lack of knowledge, skill and judgment or disregard for the welfare of the patient of a nature and to an extent that demonstrated that he is unfit to continue to practise or that his practice should be restricted.

The 2004 Order included the following provisions:

1. The Discipline Committee directs the Registrar to suspend Dr. Abelsohn's certificate of registration for a period of twelve (12) months, to commence on December 1, 2004.

2. The Discipline Committee directs that the Registrar impose the following terms, conditions and limitations on Dr. Abelsohn's certificate of registration for an indefinite period of time:

   (a) Dr. Abelsohn must successfully complete a boundaries course acceptable to the College at his own expense before November 1, 2005;

   (b) Dr. Abelsohn is prohibited from providing individual psychotherapy to patients, and from providing or billing for any service which should be billed under the OHIP codes applicable to individual psychotherapy, including K006 and K007. With respect to billing code K005, Dr. Abelsohn shall maintain a separate log by patient name of all services billed under Code K005, to be submitted to the Registrar within five days of the end of each month. Dr. Abelsohn may provide family or marital therapy to patients, but may only provide such treatment in the presence of two or more family members or individuals;

   (c) Dr. Abelsohn will forthwith execute a consent in the form attached at Schedule "A" consenting to the release of his OHIP billing information to the College; and

   (d) Dr. Abelsohn will co-operate with any medical inspector chosen by the College who may conduct random inspections of Dr. Abelsohn's OHIP billings and their supporting chart entries for specified codes and periods subsequent to the date of this Order of the inspector's choosing.

3. The Discipline Committee orders Dr. Abelsohn to attend before the panel to be reprimanded, with the fact of the reprimand to be recorded on the register.

4. The Discipline Committee further orders that the results of this proceeding be included in the Register.

EVIDENCE

Dr. Abelsohn returned to practise in December 2005, and is complying with all of the terms and conditions on his certificate of registration. After his return to practise, an issue arose with respect to the interpretation of the terms imposed. In his practice as a family physician, a patient may arrive with a mental health issue. Dr. Abelsohn wanted to ensure that he could see the patient, assess him or her, and refer the patient for treatment without breaching the terms and conditions. In 2006, Dr. Abelsohn sent a letter to Dr. X [at the College of Physicians and Surgeons of Ontario] to clarify the issue. Dr. X's response confirmed that Dr. Abelsohn could assess such a patient, prescribe medication and arrange referrals in a single visit. However, counsel for Dr. Abelsohn states that this does not appear to be sufficient to ensure continuity of care for some patients with a mental health diagnosis, as it is not always possible to obtain a

referral to a specialist in a short time. This issue has given rise to the present motion for a variation of the terms imposed on Dr. Abelsohn's certificate.

Rule 16.01 of the Rules of Procedure of the Discipline Committee states:

> A party may make a motion to the Discipline Committee to have an order varied, suspended, or cancelled, on the grounds of facts arising or discovered after the order was made. Such motion does not act as a stay of the original order.

The onus is on Dr. Abelsohn to show that a change in circumstances has occurred such that it is in the public interest for the terms, conditions and limitations to be varied. The burden of proof to be met is the civil standard, or balance of probabilities, as noted in *CPSO v. Wesley* (2008) and *CPSO v. Cowan* (2009).

With respect to the change in circumstances, counsel for Dr. Abelsohn drew the Committee's attention to the following three considerations:

1. The passage of time since the imposition of the 2004 Order. Dr. Abelsohn continued to comply with the terms and conditions of the 2004 Order since his return to practise in December 2005. When there was any doubt with respect to the terms, he communicated with the College to ensure that he was in compliance.
2. The full effect of the 2004 Order was not apparent at the time it was made. Dr. Abelsohn is concerned with ensuring that patients are cared for while waiting for appropriate referrals to be arranged.
3. Dr. Abelsohn has undertaken numerous educational steps since the imposition of the penalty, including a number of courses in psychotherapy in the context of family medicine.

Counsel for Dr. Abelsohn stated that it is in the public interest to vary the terms and conditions in order to provide for the continuity of care for patients, at least to a limited degree. The terms that Dr. Abelsohn is seeking to have imposed are in themselves very strict, in that he will be closely monitored by the College, he will report monthly on all billings of K005, K006 and K007 to OHIP, and a practice monitor suitable to the College will review all charts with K005, K006 and K007 billings.

College counsel agreed that it would be in the public interest to vary the terms and conditions, and that the public would be protected by the new Order limiting the number of visits per week to one, and the total visits to a maximum of four. In addition, the new Order requires monitoring by a College-approved monitor who will look at all charts billed K005, K006 and K007. The College agreed that Dr. Abelsohn had met the burden and demonstrated that there has been a change in circumstances such that it is in the public interest to vary the 2004 Order.

However, the Committee had concerns regarding the provision of hypnotherapy (code K006) by Dr. Abelsohn.

Counsel for Dr. Abelsohn stated that although it would be unlikely, Dr. Abelsohn would be permitted to bill hypnotherapy within the limited scope of the Order. The case underlying the original decision did not involve hypnotherapy, nor have there ever been allegations against Dr. Abelsohn with respect to hypnotherapy in the past. Furthermore, any inappropriate hypnotherapy would quickly come to the attention of the practice monitor.

While the College had initially agreed to include hypnotherapy in the Order, College counsel stated that should the practice monitor identify any inappropriate hypnotherapy, it would only be identified after the fact. Thus, College counsel submitted that the provision allowing Dr. Abelsohn to bill for hypnotherapy should be removed from the Order.

DECISION AND REASONS FOR DECISION

After hearing the submissions of counsel and all the evidence presented, the Committee found that Dr. Abelsohn had discharged his burden, and that it would be in the public interest to vary the terms and conditions of the original 2004 Order; however, the provision of hypnotherapy (the K006 OHIP billing code) would be excluded. The Committee is of the view that the potential vulnerability of patients with respect to hypnotherapy would not be alleviated by the practice monitor, as the monitoring occurs only after the fact. The protection of the public is a paramount consideration for the Committee, and the Committee was not convinced that the terms of the Order as suggested by counsel for Dr. Abelsohn would adequately protect the public with respect to the provision of hypnotherapy.

With respect to the provision of individual psychotherapy (the K007 OHIP billing code), the Committee felt that the public would be adequately protected by having a practice monitor in place, and by limiting the number of visits per week to one and the maximum number of visits per patient to four.

ORDER

Therefore, the Discipline Committee ordered and directed that:

1. Paragraphs 2(b), (c) and (d) of the Order of the Discipline Committee dated October 14, 2004, is hereby varied and directs the Registrar to impose the following terms, conditions and limitations on Dr. Abelsohn's certificate of registration:

   (a) Dr. Abelsohn is to continue to report all K005 billings to the College, and commence reporting any K007 billings to the College on a monthly basis. With respect to billing codes K005 and K007, Dr. Abelsohn shall maintain a separate log by patient name of all services billed under these Codes, to be submitted to the College within five days of the end of each month. Dr. Abelsohn may provide family or marital therapy to patients, but may only provide such treatment in the presence of two or more family members or individuals;

   (b) Dr. Abelsohn is to continue to co-operate with any medical inspector that the College wishes to send who may conduct random inspections of Dr. Abelsohn's OHIP billings and their supporting clinical record entries for specified codes and periods subsequent to the date of this Order of the inspector's choosing;

   (c) Dr. Abelsohn will forthwith execute a consent in the form attached at Schedule "A" [to the Order] consenting to the release of his OHIP billing information to the College;

(d) Dr. Abelsohn is to obtain a practice monitor acceptable to the College to review any charts relating to individual psychotherapy including, but not limited to, any patients for whom K007 code has been billed, for a period of two years; and

(e) with respect to billing code K007, the maximum number of patient visits that Dr. Abelsohn may have with any one patient is limited to four and the maximum number of visits per week for each patient is one. Dr. Abelsohn may bill 2 unit sessions (totaling 46 minutes) per patient, per week as long as the units are consecutive and the maximum number of visits per week does not exceed one.