

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Sastri Narendra Maharajh, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the names and any information that could disclose the identity of patients of Dr. Maharajh described in the proceeding 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.

The Committee also made an order under subsection 47(1) of the *Code*, that no person shall publish the identity of the complainant in this case or any information that could disclose the identity of the complainant.

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: Maharajh, S. N. (Re)

**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. SASTRI NARENDRA MAHARAJH

PANEL MEMBERS:

DR. M. DAVIE (Chair)
S. BERI
DR. H. SCULLY
M. FORGET
DR. D. PITT

Hearing Date:	July 29-30, 2013
Finding Decision Date:	July 29, 2013
Penalty Decision Date:	November 5, 2013
Release of Written Reasons:	November 5, 2013

PUBLICATION BAN

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 July 29 and 30, 2013. After receiving an Agreed Statement of Facts and Admission and hearing the submissions of counsel, the Committee stated its finding that the member committed an act of professional misconduct. After receiving a further Agreed Statement of Facts with respect to the penalty hearing and hearing other evidence and submissions, the Committee reserved its decision on penalty.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Maharajh 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 has engaged in the sexual abuse of a patient; and
2. under paragraph 1(1)33 of Ontario Regulation 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.

RESPONSE TO THE ALLEGATIONS

Dr. Maharajh admitted the allegations in the Notice of Hearing.

FACTS AND EVIDENCE

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

FACTS

1. Dr. Sastri Narendra Maharajh (“Dr. Maharajh”) is a fifty three year old family physician practising in Mississauga, Ontario. Dr. Maharajh obtained his independent certificate of registration in 1985.

Patient A

2. Patient A, born in 1975, was a patient of Dr. Maharajh’s since approximately 1992.

3. Patient A had been followed by Dr. Maharajh since October 2007 for fibrocystic breast disease. She had several ultrasounds of the breast performed in order to investigate breast masses, which were always benign. In the spring of 2011, Patient A saw Dr. Maharajh twice for counselling in relation to marital difficulties she was experiencing. Dr. Maharajh prescribed anxiety medication to Patient A.

4. On July 5, 2011, Patient A attended for an appointment with Dr. Maharajh. Her complaints that day included wheezing and ongoing pain in the left breast.

5. Dr. Maharajh examined Patient A’s ears, nose and throat first and found that her throat was red. Dr. Maharajh told Patient A that she likely had a viral infection.

6. Dr. Maharajh next began examining Patient A’s chest with his stethoscope. He asked her to take deep breaths, with her head turned sideways towards the wall.

7. At this point, Patient A was lying on the exam table with her left arm under her head. The wall was on her left hand side, and Dr. Maharajh was standing to her right. She was not wearing a gown.

8. Dr. Maharajh instructed Patient A to breathe deeply, and he placed the head of the stethoscope on her chest. He listened to both lung fields.

9. At this point in the examination, Patient A felt something odd on her right nipple. She noticed that Dr. Maharajh’s head was close to her chest. She felt something warm

and pinching on her nipple. Dr. Maharajh instructed Patient A to breath [sic] and then quickly put his lips on her nipple. This occurred three times.

10. Patient A turned her head to look and saw Dr. Maharajh cupping her nipple with his mouth.

11. Patient A said, “What are you doing?” Dr. Maharajh stood up and said “Nothing”. He then proceeded to examine both breasts of Patient A. Patient A asked Dr. Maharajh whether he had found anything unusual and Dr. Maharajh said no.

12. Dr. Maharajh left the room and Patient A got dressed. Dr. Maharajh gave her a prescription for Rivotril at her request, and asked Patient A to rebook her ultrasound test. Dr. Maharajh then inquired with Patient A about how things were going with her husband. Patient A told Dr. Maharajh that she was not comfortable answering his questions or sitting on his examination table anymore and that she was going to leave.

ADMISSION

13. Dr. Maharajh admits the facts set out in paragraphs 1 through 12 above, and admits that the conduct described in those paragraphs constitutes an act of professional misconduct, in that, under clause 51(1)(b.1) of the Health Professions Procedural Code, which is Schedule I to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18, he engaged in the sexual abuse of a patient and under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, in that he 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.

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. Maharajh’s admission and found that he committed an act of professional misconduct, in that he has engaged in the sexual abuse of a patient, and 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.

EVIDENCE AT THE PENALTY HEARING

Agreed Statement of Facts

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

FACTS

1. Dr. Maharajh has disclosed to the College that between approximately 2005 and 2011, he engaged in conduct that was similar to the inappropriate conduct engaged in with Patient A, with approximately ten to twelve other female patients.
2. These female patients did not make any complaint to the College, nor were any mandatory reports received by the College respecting them.
3. The fact that the inappropriate conduct had occurred with additional patients was first disclosed to the College during a settlement discussion on May 24, 2012 and confirmed for the first time in writing in a Pre-Hearing Conference memorandum in August of 2012.
4. For each of these ten to twelve patients, Dr. Maharajh acknowledges that he either placed his mouth on the patient's breast, or he rested his cheek lightly on the patient's breast.
5. Dr. Maharajh is unable to recall all of the details with respect to these ten to twelve patients but is able to provide the following details with respect to five of the patients:
 - i. Dr. Maharajh reports that the first incident occurred in approximately 2006 or 2007. Patient B was a woman in her late forties or in her fifties. She had been a patient of Dr. Maharajh for years and was having a difficult time in her marriage.

- When Dr. Maharajh examined her breast in order to check an issue with lumps, he put his mouth on her breast.
- ii. The next occurrence took place over a year later. Patient C was also a woman in her forties or fifties. A breast examination took place. Dr. Maharajh kissed the breast of Patient C.
 - iii. Patient D, another patient with whom Dr. Maharajh engaged in inappropriate physical contact with her breast, was a woman approximately seventy years of age. Dr. Maharajh described Patient D as a “[patient’s ethnicity] mother type person”.
 - iv. Patient E was a bit older than Dr. Maharajh at the time of the incident. When he touched her nipple with his lips, the patient said “cheap thrills”. Dr. Maharajh then removed his mouth from her nipple and carried on with the appointment as if nothing had transpired.
 - v. Patient F did not accept the offer of a robe from Dr. Maharajh. She undid her bra and removed it through the sleeve of her blouse. Dr. Maharajh perceived that she may have been flirting with him. During the patient encounter he placed his lips on the breast of Patient F.
6. Dr. Maharajh acknowledges and agrees, that any penalty ordered with respect to the professional misconduct related to Patient A should not only reflect the conduct that he engaged in respecting Patient A, but also the conduct involved in placing his cheek or lips on the breasts of the other ten to twelve patients that are referred to in this document.

Other Evidence

The Committee heard oral evidence from three witnesses for Dr. Maharajh as part of the penalty phase of the hearing: Dr. Maharajh himself, his treating psychiatrist, Dr. B., and his marital therapist, Ms D. Written reports from Dr. B. and Ms D. were also filed in evidence. The Committee also received into evidence a Victim Impact Statement from Patient A, and a brief of character letters from patients and colleagues of Dr. Maharajh.

(i) Victim Impact Statement

In her statement, Patient A wrote that she trusted Dr. Maharajh with her personal and medical issues, and he was like a family member to her. His actions hurt, abused and traumatized her. Dr. Maharajh was aware from their many conversations that she was vulnerable and that her life was a mess. He took advantage of her at a very vulnerable point in her life. His actions have scarred her. Immediately after the abuse, she had a hard time being around men. She was angry, cautious, disgusted and had very little trust of people's true intentions. She spent many months crying and going in and out of depression, which affected her ability to focus at work and her trust in personal relationships. Even two years after the event, she continues to have difficulties with intimacy.

(ii) Evidence of Dr. Maharajh

Dr. Maharajh testified about his difficult family circumstances, including serious challenges with all three of his children. He described himself as being periodically suicidal since 2006. He testified that he went to two psychiatric colleagues for help but they declined to help. He has obsessive-compulsive disorder which started when he was a child and has recently been confirmed by his psychiatrist.

On the morning of Patient A's attendance at his office at which he sexually abused her, he was both mentally and physically unwell. He had just returned from a trip with his parents to the Caribbean, in which they had belittled him in front of his wife and children. His guru in India, whom he had regarded as like a parent to him, had just died, which hit him hard. His relationship with his wife was unsettled and rough. He would have angry outbursts because he kept his pain inside. His children would see this and were traumatized by it.

Dr. Maharajh testified that he did not walk into the room planning to abuse Patient A. Patient A started telling him about her problems, he started feeling sorry for himself, and he "just lost it". He was conducting a breast examination of her at her request. His face was close to her breast because of the stethoscope configuration – this was his routine

practice. The “next thing he knew”, his mouth was on her nipple. He described himself as feeling dizzy, out of touch, having lost his higher thinking and his control; his actions were “semi-automatic”. He was only shocked back to reality when he heard the patient’s voice. After the abuse, Dr. Maharajh felt disgusted with himself and ashamed.

Dr. Maharajh testified that when he abused the other patients, his stress level was at its peak and he had no comfort. He described losing his “entire thinking” and losing control. He testified that he was not conscious of what he was doing until after he had done it. In all cases, his decision was impulsive and had not been planned in advance. It seemed that he had no control and could not stop himself. Each time, he felt disgusted with himself, fearful of infection, and upset that he had violated patients’ well-being.

After Patient A complained, Dr. Maharajh felt relieved in part, because he needed help, but he also felt scared. He admitted to the College what he had done.

Dr. Maharajh described a childhood in which his parents gave him no emotional support and his father bullied him. His mother’s way of comforting him was through breastfeeding, which she continued until he was more than 3 years old. He was bullied a lot at school because of being overweight – his parents told him that he must have done something to deserve it. His mother was unhappy when he got married, especially that his wife did not come from their cultural group. His parents continued to be very controlling of him, even after he married. His parents were not nice to his wife, treating her as if she did not belong. His mother used guilt based on the teachings of his guru to maintain control over him.

After Patient A complained to the College, Dr. Maharajh sought help from a psychiatrist, Dr. B. He testified that he has been seeing Dr. B almost weekly since October 2011, and he intends to continue therapy with him for the long term. Dr. B prescribed Zoloft for him, which has helped him tremendously with depression. Dr. B has helped him with setting boundaries, both professionally and personally. Dr. B. also recommended that he and his wife see a marriage counsellor, Ms D, who he said has been very helpful. He has recently registered for the College's understanding boundaries course, to be given in November 2013.

Dr. Maharajh testified that since Patient A's complaint, he has been working in accordance with an undertaking he gave to the College that, among other things, he will not engage in any professional encounters with female patients unless they take place in the presence of a monitor who is a regulated health professional. Dr. Maharajh has hired RPNs as practice monitors and they document every encounter he has with female patients. He described this as very positive.

On July 26, 2013, two years after the abuse took place, Dr. Maharajh wrote a letter of apology to Patient A. When asked why it had taken him so long to apologize, he said that he had thought about it for a long time but did not know how to do it. He acknowledged that he has not apologized to the other ten to twelve patients he abused.

When asked whether he has attained insight into what led to his behaviour, Dr. Maharajh said that the doctors have said that his actions were not sexual but a cry for help.

On cross-examination, Dr. Maharajh acknowledged that Patient A had been his patient for 20 years as of the date of the abuse, that he had counselled her in relation to, among other things, her marital difficulties, and had prescribed anxiety medications for her. He acknowledged that she was in a vulnerable state, that she had emotional and physical difficulties, and that she was seeking the support of her long time doctor.

He further acknowledged that as a physician, he was in a position of power and authority over his patients, and that they were all vulnerable. They were even more vulnerable when he was examining their breasts. He admitted that he put his own needs over theirs, but says that he did not do so intentionally.

When asked why he had put his mouth to Patient A's breast three times, Dr. Maharajh testified that his obsessive compulsive disorder makes him do things three times. However, he could not say whether he had also put his mouth to Patient B's or Patient F's breast three times.

Dr. Maharajh testified that stress was a trigger for his actions. He was very stressed and was looking for comfort from his female patients. The number of patients he sees every day affects his level of stress. Since November 2012, he has been working in a walk-in

clinic which is much less demanding. The great needs of his children and poor boundaries in his extended family have been a source of stress for him. He and his wife are now taking a strong stance to keep his extended family at a distance; for example he is no longer taking vacations with his parents.

Dr. Maharajh acknowledged that he has had a history of alcohol abuse. He acknowledged telling Dr. B that he would consume five to six drinks quickly at the end of each day before dinner. After Patient A made her complaint, Dr. Maharajh's wife made him pour all his alcohol down the drain, which he admitted made him angry at her and led to a physical altercation with her that was witnessed by his teenage son. He is taking treatment for alcohol abuse through Dr. B, who monitors his intake because he is also on Zoloft. He feels that he has been dealing with alcohol well, although he acknowledged that he has two to three drinks per evening, not to get drunk but in order to relax.

Dr. Maharajh acknowledged that he knew from the beginning of his abuse that what he was doing was wrong, and yet he kept on doing it. After he approached the two colleagues for help, and they declined, he did not seek any other support. He admitted that this was partly because he feared being reported. However he also said that he really wanted to get out of his "rut" and did not know where else to turn. He wrote to his guru but got no reply. He admitted that he could have been more creative. He admitted that he did not hire a chaperone for his female patients until after Patient A's complaint. He also admitted that his behaviour continued for six years and that he had as many as 13 victims.

(iii) Evidence of Dr. B

Dr. B's testimony and accompanying report were very helpful to the Committee in providing background into Dr. Maharajh's upbringing and continued family struggles with both his immediate nuclear family, consisting of his wife and three children, and his extended family of origin. Dr. B's concluding DSM-IV diagnosis after his initial assessment of Dr. Maharajh consisted of a major depressive episode with concurrent chronic dysthymic disorder, obsessive compulsive disorder in remission and resolved alcohol abuse.

Dr. B testified that in their initial meetings, Dr. Maharajh was bewildered, shocked, guilty and remorseful and unable to understand why he did what he did. Dr. Maharajh spontaneously told him that the incident with Patient A was not the first time he had engaged in such behaviour, and that he had done it with 10 to 12 other patients.

Dr. B concluded that Dr. Maharajh's intent in carrying out these acts was not sexual, and that he obtained no sexual gratification from them. What underlay his behaviour was his wish to find fulfilment of his childhood needs for security, psychological nurturing, a sense of being soothed, validated, and acknowledged, and being treated as someone with dignity, esteem and value. These needs had not been properly gratified or addressed by his parents, who behaved toward him in a damaging way. His father was a bully who hit him with a belt and intimidated him; when he came to his father for support, he castigated him. His mother saw how her husband treated her son but did nothing; she behaved as if it were not happening, as if she was not there emotionally. Dr. Maharajh's emotional health was further damaged by the absence of social networks; his peers taunted him and called him names.

Dr. B testified that when children are treated like this, they grow up with the self-image of being worthless. In trying to understand why, they decide it must be their fault. He found that these two dynamics played a role in Dr. Maharajh's life-long depression and his obsessive compulsive disorder. Other factors that contributed to Dr. Maharajh's difficulties included rejection by his guru, and the guru's sudden death, as well as the strain and stress of the situation with his children.

Dr. B explained that in placing his mouth on his patients' breasts, Dr. Maharajh was seeking the same sort of psychological nurturing that babies seek when they suckle at their mother's breasts. The pressures and stress to which he was subject led him to seek some sense of security, soothing and nurturing. Dr. Maharajh attempted through physical contact to address his emotional needs and to feel validated and secure. Dr. B did not, however, see the sexual abuse as acts arising from Dr. Maharajh's obsessive compulsive disorder.

Dr. B stated that Dr. Maharajh grew up in a trans-generational family in which he had no role models to teach him how to set boundaries; instead his family members taught him how to break through boundaries. He in turn could not set boundaries to protect himself from patients. Dr. B is working with Dr. Maharajh on setting boundaries.

Dr. B. testified that Dr. Maharajh has the capacity to reflect, think, be curious, and make links between his current difficulties and past events. He is gaining insight and trying out new ways of behaving. He finds that Dr. Maharajh has made changes and progress, and expects that he will solidify them. He sees the significant ways in which Dr. Maharajh has changed as the direct result of the insight he has gained into issues of which he was previously unaware. Dr. Maharajh has taken steps to implement, monitor and maintain boundaries. He has started saying no to areas of parental intrusion into his life, and is far better able to say no to patients.

Dr. B feels that Dr. Maharajh is not in the same situation as he was in July 2011. He is feeling far better and is not in a major depression. He still has traces of an obsessive compulsive personality, as most physicians do, but his severe obsessive compulsive disorder has diminished considerably. He continues to feel remorse and guilt, and he chastizes himself for what he did. Dr. B described Dr. Maharajh as a good patient who works very hard in therapy and thinks about what goes on. He says that Dr. Maharajh “absolutely” accepts responsibility for his actions. Dr. B intends to continue working with Dr. Maharajh. He acknowledged that treatment could take several years, but that it would not necessarily take that long to deal with the issue for which he came to see Dr. B.

On cross-examination, Dr. B agreed that the number of patients whom Dr. Maharajh sees affects his level of stress, and that the number of patients he sees at his walk-in clinic is an issue. Dr. B described the clinic’s atmosphere as hectic. Dr. Maharajh sees more patients there than he did before. Dr. B has advised him to see fewer patients. Dr. Maharajh’s children are a continuing source of stress for him, as is his extended family and how he deals with them. Dr. B agreed that Dr. Maharajh has a history of alcohol abuse, which included hiding bottles in his car. He confirmed that Dr. Maharajh was furious at his wife for throwing out his bottles of alcohol. Dr. B is aware that Dr.

Maharajh continues to drink 4 ounces or fewer of brandy per day, and said that he supports that. While he agrees that treatment for alcohol abuse would not hurt, he feels that the extent and impact of Dr. Maharajh's drinking are different from what they were six or seven years ago, when he experienced blackouts, was hung over, and was drunk in public.

(iv) Evidence of Ms D

Ms D is a social worker who has been providing couples therapy to Dr. Maharajh and his wife since September 2012, on a referral from Dr. B. She testified that Dr. B referred Dr. and Mrs. Maharajh to her. She understood that the referral was because of boundary violations by Dr. Maharajh that had been reported to the College. Dr. B asked her to work with them to help them repair as a couple. Ms D gave evidence about her assessment of why Dr. Maharajh engaged in the behaviour, and about the therapy she has been providing. She felt that there had been improvement in Dr. Maharajh's relationship with his wife since the therapy began.

The Committee appreciates that ongoing marital counselling is of benefit to Dr. Maharajh and his wife. However, it found Ms D's testimony to be of little assistance in determining the appropriate penalty in this case. Ms D has only been seeing Dr. Maharajh for a short time. She did not add anything to explain Dr. Maharajh's behaviour, beyond what the Committee heard from other witnesses. Further, while she acknowledged being aware that Dr. Maharajh had committed boundary violations, she was not aware that his conduct constituted sexual abuse, and she expressed reluctance to call it sexual abuse (although she acknowledged that it was certainly a violation).

POSITIONS OF THE PARTIES ON PENALTY

The parties agreed on several aspects of what an appropriate penalty would be for Dr. Maharajh, and disagreed on others. The points of agreement were:

- that the Committee should require Dr. Maharajh to appear before it to be reprimanded;

- that the Committee should direct the Registrar to impose as a term, condition and limitation on Dr. Maharajh's certificate of registration, for an indefinite period of time, that he continue in regular therapy with a psychiatrist acceptable to the College who shall be required to make a written report to the College every six months; and
- that the Committee should require Dr. Maharajh to reimburse the College for any funding provided by the College for therapy and counselling to Patient A as well as to up to an additional six patients, and to post security by way of irrevocable letter of credit or other security acceptable to the College to guarantee the payment of those amounts, within three months of the Committee's order, equal to \$112,420, being the maximum amount of \$16,060 for each patient.

The parties also agreed that there should be a period of suspension of Dr. Maharajh's certificate of registration. However, they differed as to the length of the suspension. Counsel for the College submitted that the suspension should be for ten months, and counsel for Dr. Maharajh submitted that it should be for six months.

The College sought an order directing the Registrar to impose a term, condition and limitation on Dr. Maharajh's certificate of registration that, for an indefinite period, his practice be restricted to male patients only, and that a sign be posted anywhere he practises to that effect. Dr. Maharajh opposes such an order, and asked instead that the Committee impose a term, condition and limitation on his certificate of registration that maintains the status quo in accordance with the undertaking under which he has been practising, namely that any professional encounters with female patients must take place in the presence of a monitor who is a regulated health professional acceptable to the College. Counsel for Dr. Maharajh advised the Committee (and counsel for the College confirmed this) that, since the institution of this undertaking in February 2012, there have been no complaints about Dr. Maharajh's compliance with this undertaking. Counsel for Dr. Maharajh urged the Committee to allow Dr. Maharajh to continue with this practice model of having a chaperone present for all encounters with female patients.

PENALTY AND REASONS FOR PENALTY

Dr. Maharajh has admitted, and the panel has found, that he has committed an act of professional misconduct, in that he has engaged in the sexual abuse of a patient, and 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. These are very serious findings. Particularly of concern is the repeated nature of Dr. Maharajh's actions over an extended period of time with a staggering number of female patients.

Although Dr. Maharajh admits his misconduct, the Committee was not persuaded that he has taken responsibility for his actions. The Committee heard evidence from Dr. Maharajh about childhood challenges and family dynamic issues that led to his need for comfort, and about his personal life stressors that exacerbated his difficulties. While the Committee is sensitive to these background facts, it viewed this testimony as offering excuses for his behaviour, rather than as an acceptance of responsibility for it. Dr. Maharajh also testified that his obsessive compulsive disorder played a role in the sexual abuse (causing him to put his mouth to Patient A's breast three times). However, his psychiatrist Dr. B testified that it did not. In fact, as noted above, Dr. B's assessment of Dr. Maharajh when he began treating him was that his obsessive compulsive disorder was in remission. The Committee concluded that Dr. Maharajh's attempt to blame his behaviour on this disorder was a further illustration of his failure to take responsibility for his actions. There was no suggestion in the evidence that Dr. Maharajh suffers from a mental illness that would somehow relieve or diminish his responsibility for his behaviour.

The Committee concluded that while psychodynamic analysis of Dr. Maharajh's background and struggles is interesting, it does not mitigate the effect of such repeated violations of patient trust. Patients who trusted Dr. Maharajh came to see him for help, some at particularly vulnerable times in their lives, and while they were literally exposed to him he put his own feelings of vulnerability and neediness before theirs. His abuse of them only served to add to their own struggles as evidenced by the victim impact

statement of Patient A, who reported difficulties in many areas of her life following the abuse, including her interpersonal relationships, even her capacity to focus at work.

The Committee also concluded, and was dismayed by the fact, that Dr. Maharajh lacks insight into his behaviour. In his testimony, he spoke of himself as a victim far more than he did as a perpetrator. His attempt to blame the abuse in part on his obsessive compulsive disorder also demonstrates his lack of insight. In addition to his testimony, four of the reference letters that were submitted into evidence on his behalf relate the writer's understanding (in one of those letters, the writer states specifically that Dr. Maharajh told him) that he was seeking professional help for an obsessive disorder exacerbated by stresses in his life that caused him to act as he did.

Dr. Maharajh's failure to take responsibility for his actions and his lack of insight into his behaviour caused the Committee to conclude that he remains at great risk of reoffending. He only sought psychiatric help for his problems after one of his victims complained to the College. (Although he testified that he sought help from two colleagues prior to that, they declined and he did not seek any other support until after Patient A complained.) He has only been in treatment for two years. The Committee was of the view that this was not a long enough period of time to determine whether he has adequately dealt with the factors that led him to engage in his pattern of misconduct over a six-year period. Dr. B acknowledged that Dr. Maharajh still needs therapy and medication. The Committee noted as well that Dr. Maharajh continues to have stressors in his life, including work in a hectic walk-in clinic, continued challenges with his children and his extended family, and depression.

Although there was evidence that Dr. Maharajh has been adhering to the terms of the undertaking he gave to the College, and seeing female patients only with a chaperone, this gave the Committee little comfort. The Committee noted that the College's original decision to permit Dr. Maharajh to continue to see female patients provided he adhered to the undertaking was taken and accepted at a time when only one victim was known to the College. Dr. Maharajh has now admitted that he engaged in repeated acts of inappropriate behaviour with multiple female patients over a long period of time. Further, Dr.

Maharajh's inappropriate actions with the female patients happened quickly, spontaneously and impulsively in circumstances where he completely lost control. Allowing him to continue to treat female patients while he is in the early stages of treatment for that would not adequately protect the public. If he were to repeat his actions with another female patient, a chaperone may not be able to move quickly enough to stop him.

College counsel provided a brief of authorities for the Committee to consider. Included in it were three cases in which physicians who had previously been ordered or had given an undertaking to see female patients only in the presence of a chaperone were found to have failed to comply with the order or undertaking: *Noriega (Re)* [2013] O.C.P.S.D No 18; *Li (Re)* [2007] O.C.P.S.D. No 21; *Deluco (Re)* [2005] O.C.P.S.D. No 10. These cases demonstrate that such orders are not foolproof.

Also included in the brief of authorities were four previous cases where physicians' practices were restricted to male patients only in the interest of public protection: *Beresford (Re)*, [1994] O.C.P.S.D. No.6; *Gutman (Re)* [2011] O.C.P.S.D. No.1; *Doyle (Re)* [2009] O.C.P.S.D. No. 26 and [2013] O.C.P.S.D. No.15; and *Li (Re)* [2006] O.C.P.S.D. No 1. None of these cases was identical to the present one, however each case involved transgressions by a physician with female patients. In *Li*, where the penalty was contested, the Committee noted that the physician appeared not yet to understand fully or appreciate the level of distress that his behaviour imposed on the patient. Despite the fact that there was expert evidence before the Committee in that case that the risk of relapse was low, the Committee felt that the penalty should indicate a "significant level of both general and specific deterrence and a very high level of public protection". This Committee was of the view that Dr. Maharajh's conduct was worse than that of the physicians in these four cases, as it involved physical contact with multiple patients over an extended period of time.

Protection of the public is paramount. The Committee concluded that the only way to achieve such public protection in this case, given the factors described above, is to order that for an indefinite period of time, Dr. Maharajh's practice should be restricted to male

patients only, and that prominent signage be placed in the waiting rooms of any office that Dr. Maharajh works in notifying patients that he can only treat male patients. The Committee also concluded that such an order was necessary in order to uphold the integrity of the profession and the public's confidence in its ability to adequately self-regulate.

The Committee agreed that suspension of Dr. Maharajh's certificate of registration is an appropriate penalty in this case, and with such a lengthy history of repeated misconduct with numerous patients, a significant length of suspension is warranted. There must be serious consequences for such egregious behaviour against female patients. The Committee is inclined to agree with the College submission that had Dr. Maharajh's misconduct also involved male patients, a suspension would not have been sufficient to protect the public, and revocation would have been in order. However, given the evidence that Dr. Maharajh's impulsive behaviour only affects female patients, the Committee was satisfied that he can safely be allowed to continue to practise medicine, after his suspension, on male patients only. A lengthy suspension will impress upon Dr. Maharajh, and the membership at large, that patients must be able to trust that their physicians will always put their health and needs first and, of course, do no harm. Dr. Maharajh completely failed to consider the impact his actions would have on his patients and continued to abuse vulnerable female patients over a period of six years. Only when the most recent patient made a complaint did he stop this behaviour and seek treatment. Serious misconduct warrants serious sanction. The Committee acknowledged the mitigating factors that Dr. Maharajh has no previous Discipline Committee findings; he was cooperative with the College once the allegations were made; he voluntarily brought forward the information regarding his other victims; and he has undertaken therapy since Patient A came forward. Having regard to all the circumstances, the Committee concluded that an eight-month suspension of Dr. Maharajh's certificate of registration was appropriate.

A reprimand is a mandatory penalty under sec. 51(5) of the Code when a member has been found to have engaged in the sexual abuse of a patient. A reprimand will express the

Committee's abhorrence of Dr. Maharajh's misconduct, and send a strong message to the membership that this kind of misconduct will not be tolerated.

The Committee agreed with the submission of both parties that there should be a term, condition and limitation on Dr. Maharajh's certificate of registration that he continue to see a College-approved psychiatrist regularly and that the psychiatrist report to the College every six months as to Dr. Maharajh's participation and compliance with his therapy. This will serve to monitor Dr. Maharajh's progress, and to whatever extent possible, aid in his rehabilitation. The Committee was of the view that the marital therapy Dr. Maharajh has been receiving with Ms D. would be in his best interest to continue, and that given his history of alcohol abuse his rehabilitation might also benefit from addressing this issue as well. However, it is not ordering that he do so.

Having found that Dr. Maharajh sexually abused Patient A, the Committee has the power under section 51(2)5.1 of the Code to order that Dr. Maharajh reimburse the College for any funding provided to Patient A under the College's program to provide funding for therapy and counselling for persons who, while patients, were sexually abused by members, in the maximum amount of \$16,060, and under section 51(2)5.2 of the Code to require Dr. Maharajh to post security to guarantee the payment of such amounts. The Committee concluded that it was appropriate to make this order. As noted above, the parties also agreed that Dr. Maharajh should be required to reimburse the College for funding for therapy and counselling for an additional six patients with whom he admitted during the penalty part of the hearing to have engaged in similar inappropriate conduct to that with Patient A, and to post security up to the maximum of \$16,060 for each. The Committee was satisfied that it can impose a term, condition and limitation on Dr. Maharajh's certificate of registration to that effect, and that it is appropriate for it to do so.

At the conclusion of the hearing, counsel jointly asked that the Committee's decision on the costs of the hearing be deferred until after the release of this decision. The Committee granted this request at the conclusion of the hearing. The Committee will receive written

submissions as to the appropriate costs from the parties, according to the timetable set out below.

ORDER

Therefore, the Committee ordered and directed that:

1. The Registrar suspend Dr. Maharajh's certificate of registration for eight (8) months. This suspension is to take effect immediately.
2. The Registrar impose the following terms, conditions and limitations on Dr. Maharajh's certificate of registration for an indefinite period of time:
 - a. Dr. Maharajh's practice shall be restricted to male patients only.
 - b. Dr. Maharajh shall post a clearly visible sign in his waiting room, and any waiting room where he practises, stating that he may only treat male patients.
 - c. Dr. Maharajh shall continue in individual psychodynamic psychotherapy with a College-approved psychiatrist who shall provide written reports to the CPSO every six (6) months.
3. Dr. Maharajh appear before the panel to be reprimanded.
4. Dr. Maharajh reimburse the College for funding provided to Patient A under the program required under section 85.7 of the Code, and shall, within three (3) months of the date of this order, post security acceptable to the College, in the amount of \$16,060.00, to guarantee the payment of such amounts.
5. The Registrar impose the following term, condition and limitation on Dr. Maharajh's certificate of registration for an indefinite period of time:
 - a. Dr. Maharajh shall reimburse the College for funding for any therapy and counselling provided to up to six of the patients referred to in the Agreed Statement of Facts for Penalty Hearing, and shall, within three (3) months

of the date of this order, post additional security acceptable to the College, in the amount of \$96,360.00, to guarantee payment of such amounts.

6. The parties may make written submissions with respect of the costs of the hearing. The College shall provide its submissions within ten (10) days of the release of this Order. Dr. Maharajh shall provide his submissions within ten (10) days of receipt of the College's submissions. The College shall have a further five (5) days after receipt of Dr. Maharajh's submissions to make any reply submission. Should independent legal counsel provide the Committee with advice in respect of costs, such advice shall be provided to counsel for their comments.

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Sastri Narendra Maharajh, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the names and any information that could disclose the identity of patients of Dr. Maharajh described in the proceeding 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.

The Committee also made an order under subsection 47(1) of the *Code*, that no person shall publish the identity of the complainant in this case or any information that could disclose the identity of the complainant.

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: Maharajh, S. N. (Re)

**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. SASTRI NARENDRA MAHARAJH

PANEL MEMBERS:

DR. M. DAVIE (Chair)
S. BERI
DR. H. SCULLY
M. FORGET
DR. D. PITT

Hearing Date:	July 29 to 30, 2013
Finding Decision Date:	July 29, 2013
Penalty Decision Date:	November 5, 2013
Release of Written Reasons:	November 5, 2013
Release of Costs Order:	February 4, 2014

PUBLICATION BAN

SUPPLEMENTARY DECISION AND REASONS ON COSTS

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on July 29 and 30, 2013. On July 29, 2013, the Committee stated its finding that the member committed an act of professional misconduct, in that he has engaged in the sexual abuse of a patient, and 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.

On November 5, 2013, the Committee released its penalty order in this matter, suspending Dr. Maharajh’s certificate of registration for eight months, imposing terms, conditions and limitations on his certificate of registration, requiring him to reimburse the College for funding provided to Patient A pursuant to section 85.7 of the Health Professions Procedural Code (the “Code”), and requiring him to attend before the panel to be reprimanded. At the parties’ request, the Committee did not make an order as to costs at that time, and instead invited the parties to make written submissions with respect to the costs of the hearing.

In their written submissions, the parties agreed that the appropriate costs order is that Dr. Maharajh should pay costs of \$8,920 to the College, calculated at the Tariff rate of \$4,460 for each of the two days of the hearing, payable within 60 days of the costs order.

REASONS FOR COSTS

Pursuant to section 53.1 of the Health Professions Procedural Code, in “an appropriate case”, a panel may make an award requiring a member who the panel finds has committed an act of professional misconduct to pay all or part of certain types of costs, including “the College’s costs and expenses incurred in conducting the hearing”. It is the Committee’s decision that Dr. Maharajh’s case is an “appropriate case” for costs.

Dr. Maharajh was cooperative with the College and, by way of an Agreed Statement of Facts, his hearing was considerably shortened. However, there was a finding against him and he was not successful in his argument on penalty, and accordingly he should bear some of the costs of the two-day hearing.

Rule 14.04(3) of the Rules of Procedure of the Discipline Committee provides that where a request for costs includes the cost to the College of conducting a day of hearing, no evidence of the cost or expense of a day of hearing is needed if the request is equal to or less than the amount set out in Tariff A. Tariff A sets the fee of prosecuting counsel, independent legal counsel and the court reporter at \$4,460 per day.

The panel is cognizant of the agreement of the parties by way of this joint submission on costs and will not interfere, as it is just and reasonable and consistent with the Rules and the Tariff.

ORDER

Therefore, the Discipline Committee orders Dr. Maharajh to pay costs to the College in the amount of \$8,920.00 within 60 days of the date of this Order.