

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Gobi Ratnaswami Ganapathy, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of the complainant or any information that could disclose the identity of the complainant under subsection 47(1) of the Health Professions Procedural Code (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended.

Subsection 93(1) of the Code, which is concerned with failure to comply with these orders, reads, in relevant part:

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: Ganapathy (Re)

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

IN THE MATTER OF a Hearing directed
by the Executive Committee of
the College of Physicians and Surgeons of Ontario
pursuant to Section 36(1) of the **Health Professions Procedural Code**
being Schedule 2 of the *Regulated Health Professions Act, 1991*,
S.O. 1991, c. 18, as amended.

B E T W E E N:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. GOBI RATNASWAMI GANAPATHY

PANEL MEMBERS:

**DR. W. KING
M. THOMPSON
DR. F. SLIWIN
S. BERI
DR. R. EDNEY**

Hearing Dates:	August 18-19, 2008
Decision Release Date:	February 13, 2009
Release of Written Reasons:	February 13, 2009

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons (the “Committee”) heard this matter at Toronto on August 18 and 19, 2008. At the conclusion of the hearing, the Committee reserved its decision with respect to the allegations.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Gobi Ratnaswami Ganapathy committed an act of professional misconduct in that:

1. he has been found guilty of an offence that is relevant to his suitability to practice, under clause 51(1)(a) of the Health Professions Procedural Code (“the Code”) which is Schedule 2 to the *Regulated Health Professions Act, 1991*;
2. he has engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”); and,
3. he engaged in conduct unbecoming for a physician, under paragraph 1(1)34 of O. Reg. 856/93.

RESPONSE TO THE ALLEGATIONS

Dr. Ganapathy denied the allegations as set out in the Notice of Hearing.

FACTS AND EVIDENCE

Overview of the Case:

1. Dr. Ganapathy is a 67-year-old neurologist who has been in practice in London, Ontario since 1999.
2. Dr. Ganapathy provides consultations at clinics in southwestern Ontario every two weeks.
3. Dr. Ganapathy saw Ms. X in consultation for migraine headaches on two occasions, in August, 2001 and in November, 2001.
4. At the conclusion of the November, 2001 consultation Dr. Ganapathy hugged Ms. X.
5. On March 12, 2002, Dr. Ganapathy was charged by the Ontario Provincial Police with sexual assault contrary to the *Criminal Code of Canada* relating to the November, 2001 consultation.
6. On April 29, 2003, Dr. Ganapathy pleaded guilty to common assault contrary to s. 266 of the *Criminal Code of Canada*. The Crown did not proceed with the sexual assault charge.
7. Dr. Ganapathy was granted a conditional discharge, fined a victim fine surcharge of fifty dollars and given twelve months probation.
8. Dr. Ganapathy brought the matter to the attention of the College by answering “yes” to the question “have you been found guilty or are you charged with an offence in Canada or elsewhere relevant to your suitability practice medicine” on his 2004 College Annual Renewal form.

Summary of the Issues:

This case raises the following three issues:

- (i) Was Dr. Ganapathy found guilty of an offence relevant to his suitability to practice medicine?

- (ii) Would the conduct of Dr. Ganapathy be reasonably regarded by members of the profession as disgraceful, dishonorable or unprofessional?
- (iii) Was Dr. Ganapathy's conduct unbecoming for a physician?

Summary of the Evidence:

(i) The Criminal Proceedings

The College entered into evidence the Information document, dated March 12, 2002, whereby the criminal charge was laid, and the transcripts from the criminal court proceedings of April 29, 2003, at which time Dr. Ganapathy pleaded guilty to the offence of common assault. The Crown reviewed the facts, as set out in the transcript. In its description of the facts, the Crown noted that the complainant indicated that the hug lasted 10-15 seconds. There was an allegation by the complainant that Dr. Ganapathy had kissed her. During the criminal proceedings, Dr. Ganapathy admitted the facts alleged by the Crown, except that Dr. Ganapathy indicated that he did not kiss the complainant, but stated that his cheek may have brushed the complainant's cheek. The Crown accepted this qualification with respect to the facts.

There was a specific admission by Dr. Ganapathy in the criminal proceedings that the hug of the complainant was not consented to, was unwanted and was not expected by the complainant.

The patient, Ms. X, was not a complainant in this case and was not called as a witness by the College.

As indicated above, Dr. Ganapathy admitted the facts put on the record by the Crown except for the alleged kiss and pleaded guilty to the offence of common assault contrary to the *Criminal Code* and received a conditional discharge, a fine of \$50 and twelve months probation.

In its case before the Committee, the College called no evidence at the hearing beyond tendering the transcript of the criminal proceedings and related documents as described above.

(ii) Testimony of Dr. Ganapathy

Dr. Ganapathy testified on his own behalf at the hearing before the Committee. Dr. Ganapathy is a 67-year-old physician who completed medical school in India in 1966. He completed his internal medicine residency with a sub-specialty in neurology in 1972. Dr. Ganapathy was hired as a Professor of Internal Medicine in Nairobi prior to completing his final neurology qualification exams. After ten years of practice in Nairobi, he moved to Newfoundland where his wife was working as an anesthesiologist. He worked for two years as an internist in Newfoundland. In order to work as a neurologist in Canada, Dr. Ganapathy completed eight years of retraining in neurology in Canada and was certified as a neurologist at 57 years old.

Dr. Ganapathy saw Ms. X for migraine headaches in August, 2001 at a hospital in southwestern Ontario, where he consulted every two weeks. Ms. X had frequent debilitating headaches lasting two to three days, one to two times per week. After performing a thorough history and physical examination he prescribed medication for acute attacks and for prophylaxis of recurrent migraines. A follow-up appointment was scheduled for three months later.

Ms. X was again seen in November, 2001. Ms. X explained that the medication previously prescribed was not effective. Dr. Ganapathy discussed treatment plans and follow up. As Ms. X was leaving the office she advised Dr. Ganapathy that she may not be able to attend the next visit as she had been accepted for higher studies in another city.

Dr. Ganapathy testified that he gave Ms. X a quick, brief hug which he estimated lasted 5-6 seconds, as a gesture of congratulations for her success in spite of her debilitating headaches. Dr. Ganapathy denies ever having kissed or attempting to kiss Ms. X. He testified that it was possible that their cheeks brushed but he did not feel anything and had no intent to kiss her. Dr. Ganapathy denied any intent of a sexual nature and stated that he was not aroused in any way. Dr. Ganapathy testified that there was no intention other than the offer of support.

During both examinations, Ms. X was fully clothed and sitting on the edge of the examination table.

Dr. Ganapathy testified that he pleaded guilty to common assault because he received legal advice that touching anyone without their consent was, by definition, common assault.

Dr. Ganapathy voluntarily attended the College boundary course in 2006. He testified that he took the course to clarify whether a simple hug was a boundary crossing. However, hugs were not discussed during the course.

Dr. Ganapathy acknowledged in cross examination that the hug in this case amounted to a boundary crossing.

Dr. Ganapathy gave testimony about the following two questions on the annual renewal form of the College which he completed in 2004:

- Question I(d): “Have you had your privileges to practice in a hospital revoked, withdrawn or not renewed as a result of professional misconduct or incompetence or have you resigned your hospital privileges while under investigation in respect of such a matter?”

Dr. Ganapathy testified that he answered “yes” to this question as he voluntarily resigned his hospital privileges as a result of the police investigation relating to the incident with Ms. X. He indicated that he was not requested to do so by the hospital.

- Question I(e): “Have you been found guilty or are you charged with an offence in Canada or elsewhere relevant to your suitability to practice medicine?”

Dr. Ganapathy testified that he answered “yes” to this question as he did not want to mislead the College. He felt it was up to the College to decide if this offence interfered with his ability to practice medicine.

(iii) Expert Testimony

(a) Admissibility of the Expert Testimony:

Counsel for Dr. Ganapathy sought to call two persons as experts to give evidence in the area of medical ethics and boundaries. Those persons were Dr. A, a psychiatrist, and Dr. B, a licensed psychologist in Minnesota.

The College objected to the admission of the evidence of both proposed experts on the grounds that the evidence was not "necessary" and, in the case of Dr. A, that he was not a properly qualified expert in that he did not have expertise in the boundary crossing area.

We considered the four-part test for the admission of expert evidence laid down by the Supreme Court of Canada in *R. v. Mohan*, [1994] 2 S.C.R. 9 and *R. v. D.D.*, [2000] 2 S.C.R. 275, which, briefly stated, requires that the proposed expert evidence meet the following requirements: (a) the evidence must be relevant; (b) the evidence must be necessary to assist the trier of fact; (c) there must be an absence of any exclusionary rule; and (d) the witness must be a properly qualified expert.

We considered that both proposed experts met the four-part test cited above. In particular, on the question of necessity, we considered that the proposed expert evidence met the necessity requirement as the issue of boundary crossings was likely to be outside the experience and knowledge of at least some members of the Committee and would be necessary to determine at least some of the allegations before the Committee.

We also considered that Dr. A, by reason of his experience and qualifications, did have expertise in the area of medical ethics and boundaries. In the circumstances, the Committee exercised its discretion to receive the proposed expert evidence.

(b) Summary of Expert Testimony:

Dr. B's testimony may be briefly summarized as follows. He testified that:

- Hugs are in a grey area between what is clearly ok, and what is clearly not ok.

- Hugs are situation-specific and the context and physical nature of the hug are important.
- In 2001, at the time of the incident, supportive hugs had been occurring in the physician-patient setting for years.
- A supportive hug would be a common boundary crossing but not all boundary crossings are misconduct.
- Dr. B was unaware of any rules relating to hugs in 2001, nor are there any current rules specifically relating to hugs.

Dr. A's testimony may be briefly summarized as follows. He testified that:

- The context of a hug is important.
- Hugs are a behaviour related to many different circumstances such as hugs to a child, to a peer, in greeting, for encouragement, or during grieving.

FINDINGS

- (i) **Was Dr. Ganapathy found guilty of an offence relevant to his suitability to practice medicine?**

Subsection 51(1)(a) of the Code provides as follows:

51(1) A panel **shall find** that a member has committed an act of professional misconduct if,

- (a) **the member has been found guilty of an offence that is relevant to the member's suitability to practice.**

[emphasis added]

The language of the above provision is mandatory where the offence is relevant to the member's suitability to practice.

The Committee accepted as fact that Dr. Ganapathy was found guilty of the criminal offence of common assault on April 29, 2003. Having considered all of the evidence, the Committee has concluded that Dr. Ganapathy did commit an act of professional misconduct in that he was found guilty of an offence that is relevant to his suitability to practice medicine.

In particular, we note the following:

- Dr. Ganapathy pleaded guilty in a criminal court to the offence of common assault contrary to the *Criminal Code of Canada*;
- The common assault was of a patient and the assault occurred during a patient visit;
- Dr. Ganapathy admitted his actions and accepted responsibility in a court of law and by filling in sections I(d) and (e) on his annual CPSO registration form; and
- He admitted before this Committee that the hug amounted to a boundary crossing.

In the circumstances, the Committee is of the view that where the criminal offence of an assault by a physician of a patient occurs in the course of a patient's medical visit to the physician it must necessarily follow that it is an offence that is relevant to the member's suitability to practice. That is not to say that there may not be mitigating circumstances which may be relevant to penalty, but they do not change the basic fact that an assault of a patient occurred at a patient visit. In the Committee's view, such an offence must necessarily be related to the suitability of a physician to practice medicine.

This conclusion does not mean that all hugs in the physician-patient setting will amount to professional misconduct. Although in some circumstances hugs may be an act of sympathy or empathy, any touching of a patient that is not clinically appropriate may be considered a boundary crossing. Physicians must exercise caution in this respect.

- (ii) Would the conduct of Dr. Ganapathy be reasonably regarded by members of the profession as disgraceful, dishonorable or unprofessional?; and**
- (iii) Was Dr. Ganapathy's conduct unbecoming for a physician?**

The College took the position that if there was a finding of professional misconduct on the s. 51(1)(a) allegation, it was not seeking additional findings of professional misconduct on the additional grounds in the Notice of Hearing, so we will not address those allegations in this case.

The Committee requests that the Hearings Office schedule a penalty hearing pertaining to the findings made at the earliest possible opportunity.

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Gobi Ratnaswami Ganapathy, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of the complainant or any information that could disclose the identity of the complainant under subsection 47(1) of the Health Professions Procedural Code (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended.

The Committee also made an order to prohibit the publication of certain names under subsection 45(3) of the Code.

Subsection 93(1) of the Code, which is concerned with failure to comply with these orders, reads, in relevant part:

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: Ganapathy (Re)

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

IN THE MATTER OF a Hearing directed
by the Executive Committee of
the College of Physicians and Surgeons of Ontario
pursuant to Section 36(1) of the **Health Professions Procedural Code**
being Schedule 2 of the ***Regulated Health Professions Act, 1991***,
S.O. 1991, c. 18, as amended.

B E T W E E N:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. GOBI RATNASWAMI GANAPATHY

PANEL MEMBERS:

DR. W. KING (Chair)
S. BERI
DR. F. SLIWIN
M. THOMPSON

Penalty Hearing Date: January 6, 2010
Penalty Decision Date: January 6, 2010
Release of Written Reasons on Penalty: April 14, 2010

PUBLICATION BAN

PENALTY AND REASONS FOR PENALTY

The Discipline Committee of the College of Physicians and Surgeons of Ontario (the “Committee”) heard this matter at Toronto on August 18 and 19, 2008. At the conclusion of the hearing, the Committee reserved its decision. On February 13, 2009, the Committee delivered its written decision and reasons and found that Dr. Ganapathy committed an act of professional misconduct in that he has been found guilty of an offence that is relevant to his suitability to practice, under clause 51(1)(a) of the Health Professions Procedural Code (“the Code”) which is Schedule 2 to the *Regulated Health Professions Act, 1991*. The Committee heard evidence and submissions on penalty on January 6, 2010, and delivered its penalty order with written reasons to follow.

EVIDENCE AND SUBMISSIONS ON PENALTY

The College requested the following penalty, which was contested by counsel for Dr. Ganapathy:

- i) A suspension of two months;
- ii) a reprimand;
- iii) the results to be included in the Register; and
- iv) an order for costs at the tariff rate of \$3,650 per day, for four days total including the hearing on finding, adjournment and penalty hearing.

Counsel for Dr. Ganapathy requested that the penalty consist solely of a reprimand. Defence counsel tendered into evidence testimonial letters in support of Dr. Ganapathy. A Brief of Authorities was also presented for the Committee to consider with respect to penalties in similar cases.

DECISION AND REASONS ON PENALTY

In considering penalty, the Committee was cognizant of the principles of protection of the public, general and specific deterrence, rehabilitation of the member and upholding the reputation of the profession.

The Committee carefully considered the Brief of Authorities and the submissions of counsel with respect to penalty. The Committee also considered the testimonial letters in support of Dr. Ganapathy, which each author provided after having been made aware of the particulars of this case. The Committee was cognizant of the fact that a physician's public persona does not necessarily reflect on the physician's actions during a private doctor-patient relationship.

The mitigating factors in this case include the following:

- 1) Dr. Ganapathy admitted the facts in criminal court and pleaded guilty to common assault. He took responsibility for his actions and apologized to the patient in court.
- 2) Dr. Ganapathy brought the facts to the attention of the College, as he felt obliged to do.
- 3) Dr. Ganapathy wrote two letters to the College expressing remorse.
- 4) Dr. Ganapathy voluntarily donated \$5,000 to a local community medical clinic before the allegations were brought by the College.
- 5) Dr. Ganapathy successfully completed the Boundaries course before the allegations were brought by the College.
- 6) Dr. Ganapathy has had no previous disciplinary findings with the College. In the eight years since the offence, there have been no further complaints with the College.

After careful consideration and deliberation, the Committee decided to order that Dr. Ganapathy appear before the Committee for a public reprimand, and that the results be included in the Register.

Costs

The College requested that Dr. Ganapathy pay costs at the tariff rate for two days of hearing on finding, one day for a late adjournment, and one day of penalty hearing. Counsel for Dr. Ganapathy requested that he not be required to pay any costs.

The Committee considered that the College decided to proceed with three alternate allegations in this case, requesting that the Committee make a finding on only one of the three allegations. The three alternate allegations required the defense to present expert opinion evidence. The member was entitled to a vigorous defence. However, the Committee felt that the defence bore more responsibility for the late adjournment.

The Committee therefore ordered that Dr. Ganapathy pay costs in the amount of \$7,300, for the total of two days at the tariff rate.

ORDER

On January 6, 2010, the Discipline Committee therefore ordered and directed that:

1. Dr. Ganapathy shall appear before the panel to be reprimanded.
2. Dr. Ganapathy shall pay costs to the College in the amount of \$7,300.

At the conclusion of the hearing, Dr. Ganapathy waived his right to an appeal under subsection 70(1) of the Code and the Committee administered the public reprimand.