

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Barry Alan Miller, this is notice that the Discipline Committee ordered that no person shall publish the identity of the patient with whom Dr. Miller engaged in sexual impropriety, leading to the revocation of his certificate of registration in Manitoba and Ontario, or any information that could disclose her identity, pursuant to s.45 and s.47 of the *Health Professions Procedural Code* (the Code), which is Schedule 2 to the *Regulated Health Professions Act, 1991*. The Committee released written reasons for this order

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:

Miller (Re)

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

IN THE MATTER OF a Hearing directed
by the Registrar to the Discipline Committee of
the College of Physicians and Surgeons
of Ontario, pursuant to Section 73
of the **Health Professions Procedural Code**

BETWEEN:

DR. BARRY ALAN MILLER

- and -

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

PANEL MEMBERS:

DR. J. DOHERTY (CHAIR)
J. ASHMAN
DR. J. SCHILLINGER
J. DHAWAN
DR. I. BAXTER

PUBLICATION BAN

Hearing date: September 7-28, 2004

Decision/Released Date: September 28, 2004

DECISION AND REASONS FOR DECISION

Dr. Miller made an application to the College of Physicians and Surgeons for reinstatement of his certificate of registration. Dr. Miller's application for reinstatement was referred by the Registrar to the Discipline Committee, and was heard on September 27 and 28, 2004. The College did not contest the application. At the conclusion of the reinstatement hearing, the Discipline Committee delivered a written order, with written reasons to follow, directing the Registrar to issue to Dr. Miller a certificate of registration subject to specified terms and conditions.

PUBLICATION BAN

On September 27, 2004, the Committee ordered that no person shall publish the identity of the patient with whom Dr. Miller engaged in sexual impropriety, leading to the revocation of his certificate of registration in Manitoba and Ontario, or any information that could disclose her identity, pursuant to s.45 and s.47 of the *Health Professions Procedural Code* (the Code), which is Schedule 2 to the *Regulated Health Professions Act, 1991*. The Committee issued written reasons for this order.

BACKGROUND

On April 11, 2001, the Discipline Committee of the College of Physicians and Surgeons of Ontario found that Dr. Barry Alan Miller committed an act of professional misconduct and made an order revoking his certificate of registration. The finding was based on a finding by the College of Physicians and Surgeons of Manitoba ("CPSM"), which found that Dr. Miller engaged in a sexual impropriety with a patient who had been a student and colleague at the time that the professional misconduct occurred, and falsified a number of entries in the patient's medical record. On October 5, 1994, the CPSM decided to erase Dr. Miller's name from the Manitoba register.

APPLICATION FOR REINSTATEMENT

Section 72(1) of the Code provides that a physician whose registration is revoked as a result of disciplinary hearing has the right to apply after one year from the date of

revocation to have a new certificate issued except in certain circumstances that do not apply in this case.

The Registrar is required to refer the reinstatement application to the Discipline Committee, which may, after a hearing, dismiss the application or make an order doing any one or more of the following:

1. Directing the Registrar to issue a certificate of registration to the applicant.
2. Directing the Registrar to remove the suspension of the applicant's certificate of registration.
3. Directing the Registrar to impose specified terms, conditions and limitations on the applicant's certificate of registration.

The statute is silent on the criteria that the Discipline Committee must apply on an application for reinstatement. However, the Committee considered the following:

- The practice of medicine is a privilege and not a right.
- The physician, whose certificate of registration was revoked, has the burden of proof to persuade the Committee that the certificate of registration should be reinstated.
- The Committee must be guided by what is in the public interest, i.e., is it in the public interest to return the physician to practice and, if so, under what conditions?
- Public safety is the central factor, i.e., has the physician been rehabilitated?

Further, what is required to ensure that his medical knowledge, skill and judgment are at the required level to practice properly? Has he shown the necessary insight into his wrongdoing to ensure that he will practice medicine safely, if he is returned to practice?

The Position of the College

College counsel informed the Committee that the College was not opposing the application for reinstatement. However, she submitted that certain terms and conditions should be imposed on Dr. Miller's certificate of registration.

It was the duty of the Committee to consider the evidence and to determine if Dr. Miller has satisfied the burden of proof that it was in the public interest that his certificate of registration be reinstated and, if so, under what terms and conditions.

THE EVIDENCE

Dr. Miller's counsel filed very strong evidence in support of the application. Also, the Committee heard from Dr. Miller who, by his testimony, acknowledged the impropriety of the conduct that led to revocation and expressed remorse for his misconduct. The Committee relied on the following evidence that was filed on consent.

Dr. A., Professor Emeritus and Professor, Department of Community Health and Epidemiology, at a University and Chief of Psychiatry at a university affiliated Hospital, conducted an evaluation of Dr. Miller at the request of the College. Dr. A. examined Dr. Miller at his office over three interviews on September 2, 3 and 11, 2004. The interviews lasted eight hours. With Dr. Miller's agreement, these interviews were taped and transcribed. At the end of these thorough and complete interviews, Dr. A. came to and presented a very detailed and comprehensive conclusion:

“Among males in our society, especially among those who attain high levels of power in politics, finances or the professions there are points of weakness in their personality dynamics that sometimes deflect their social armour. At the time of events in Winnipeg, Dr. Miller was at the peak of his achievements and had reached a zenith in his professional development but his life was out of balance and there was no harmony in his emotional makeup. Work and success had become an obsession and much as he loved his wife and family, home was a secondary level of satisfaction. He was also isolated in his profession as a psychoanalyst and, geographically, in his forays to the North as a Medical Officer of Health. These factors are no longer at play. He has found a better balance in his life between work endeavors, family life and recreational activities. His

relationship with his wife has taken a new dimension as he feels she needs his support regarding her medical problems and as he realizes that without her support and that of his children, he would have not been able to survive. Many times in depth of his depression and distress he thought of suicide and it was only their emotional pressure that prevented him from attempting. The support from his wife, his children and other members of his family and his colleagues in Law and Medicine is a further protective factor. If reinstated, he would not be alone in his person, nor isolated in his profession.

Dr. Miller does not have a pattern of predation on his patients and he is not narcissistic, antisocial or psychopathic, which if present, would be major predisposing factors to recidivism. He is in good mental and physical health. Intellectually, cognitively and emotionally he has good knowledge of his transgression, what went wrong, and what rules he infringed so that he knows and has learnt in courses on ethics and on boundary violations how to spot the risk factors and when to go for consultations and help if a similar situation ever arises again in his professional work. Furthermore, the remorse, the humiliation and the pain that he has experienced will be constant reminders of his transgression for the rest of his life. He has expiated, but chagrin has become a trait in his personality make-up.

Except for death and taxes as some wags would say, there are no hundred percent certainties in life. All things being equal however, it is my opinion that Dr. Miller has had a long time to assess and to come to grips with factors leading to ethical violations and that he is ready now to resume his life as a physician.”

Dr. A. made the following recommendation:

“Reinstatement is recommended but he has to go through a period of reappraisal regarding his clinical skills. Once this period is terminated, he should work within a group and, to provide a further level of assurance, retrain his practice to general psychiatry. As he has now a law degree and is a member of the Law Society of Upper Canada, if reinstated he should consider a switch to Forensic Psychiatry.”

Another letter dated September 7, 1999, from Dr. B., Children’s Hospital of Eastern Ontario, reflected on Dr. Miller’s personal, professional and social skills and abilities.

Dr. B. writes:

“My experience with Dr. Miller in Manitoba was that he was very intent in developing very high quality teaching for doctors and other treatment professionals and a very high treatment standard for child and adolescent patients

and their families. While in Winnipeg, he was involved in improving teaching to a significant extent involving social workers, psychologists, occupational therapists and nurses. Together we developed treatment services and wrote a proposal for the improvement of psychiatric services for children and adolescents in Manitoba.

Dr. Miller always had high regards for his fellow workers. He showed a lot of selflessness, charity, compassion, dedication, commitment, empathy, courtesy, loyalty and diligence.

In regards to whether Dr. Miller would reoffend I do not believe that he would. I believe that such behaviour would be out of his character for him. I believe that the College of Physicians and Surgeons of Ontario would greatly benefit by having Dr. Miller practice in Ontario.”

Dr. C., Huron Perth Hospital Partnership, expressed his opinion about Dr. Miller in a letter dated March 26, 2003:

“Dr. Miller was extremely upfront with us, having disclosed the fact that he lost his medical license in Manitoba as a result of having had a relationship with a patient (whom I understand became a student and colleague of Dr. Miller but was still a patient during the time period that his relationship developed) Dr. Miller told us about the significant efforts he has undertaken to prepare himself for reentry to professional practice, including regular participation in hospital rounds and continuing medical education events; completing intensive self study in psychiatry and undergoing personal therapy as well as the College’s course in boundaries to ensure that his transgressions will never again be repeated.

There is a severe shortage of qualified physicians in nearly all specialties across the province, and the need for a qualified psychiatrist at HPHP’s Stratford site is particularly acute. It would truly be a shame for this qualified physician to continue to sit idly while patients go without adequate psychiatric care. I similarly believe that Dr. Miller with his psychiatric and legal training, has a great deal to offer as a lawyer and I strongly support his application for admission to the Bar of Ontario.”

Dr. D., Regional Mental Health Care, London, writes about Dr. Miller on September 23, 2004:

“I am writing in regard to Dr. Barry Miller’s request to practice psychiatry in Ontario. Since moving to Ontario, he has continued to maintain his level of

competency by attending a number of CME events and rounds over the past five years. I have personally been in attendance with him on many of these occasions and he has participated in a most intuitive and competent manner. I feel that Dr. Miller would provide an invaluable service, particularly in the areas of community psychiatry and working with native people. In addition his law degree will complement his background in psychiatry dealing with a host of legal issues in the mental health field.

It has been five years since I have first written on Dr. Miller's behalf. I do feel that Dr. Miller has the necessary skills to be reinstated as a psychiatrist. In this regard I would be willing to supervise Dr. Miller if the College felt performance evaluation was required. If I can be of any assistance with a reintroduction program I would be more than happy to participate in any way, especially when I feel that Dr. Miller's expertise is greatly needed in the province."

Dr. E., HSC, Winnipeg Regional Health Authority, provides a letter of reference dated April 4, 2004, for Dr. Barry Miller, in which he states:

"While in Winnipeg Barry was considered a very gifted teacher and clinician. When he came to Winnipeg in the mid-eighties, he was one of the few physicians with formal psychiatry and psychoanalysis training. After spending several years working in the hospital system he shifted his practice to a community based setting. He continued his practice until shortly before leaving to return to Ontario.

Barry was very well regarded by students who appreciated his sharp intellect, wit and deep insight. He was also admired by his peers, who would refer difficult patients to him for care, particularly those borderline personalities disorder.

These patients are particularly challenging to treat, since they form strong, often pathologic, attachments and the analysts must carefully manage the transference dynamics.

Barry was always very professional. He took his obligations to patients very seriously and was willing to juggle his busy schedule to look after their urgent needs. He was a very gifted analyst who successfully treated patients in the community, who may otherwise have required repeated hospitalizations.

He has raised three outstanding children who are hardworking, caring, compassionate, honest and ethical. His oldest son has applied to be a police officer. I believe the patient issues that were the subject of the College complaint

were the result of an exceptional circumstance and do not reflect his fundamental character.

I am very confident that Dr. Miller would strictly adhere to the ethical and legal principles and values of the profession, and strongly support his application for reinstatement of his medical license.”

DECISION AND REASONS

The Committee concluded that Dr. Miller had satisfied the burden of proof on an application for reinstatement to the satisfaction of the Committee that he could safely be returned to the practice of medicine, subject to the imposition of terms or conditions on his certificate of registration. The Committee considers that the terms and conditions imposed provide a careful and safe framework for Dr. Miller’s re-entry to practice in a staged and supervised manner.

ORDER

The Discipline Committee directed the Registrar to issue a certificate of registration to the applicant, Dr. Barry Alan Miller, subject to the following terms and conditions set out in its Order:

1. Dr. Miller’s practice will be restricted to a hospital or institutional setting agreeable to the College;
2. Dr. Miller will successfully complete the following re-entry to practice program (the “Program”) at his own expense:
 - a) For a period of twelve (12) months following the date of its Order, Dr. Miller’s practice will be supervised by two monitors acceptable to the College (the “Monitors”); in accordance with the undertakings attached to the Order;

- b) Throughout the term of the Program, the Monitors will submit a written report to the Registrar every three (3) months regarding Dr. Miller's competence and behaviour, which reports will specifically address the following:
- (i) The objectives of the Program approved by the College at the outset of the Program;
 - (ii) The Monitors' impression of Dr. Miller's general medical knowledge, including use of current diagnostics and therapeutics;
 - (iii) The Monitors' impression of Dr. Miller's clinical skills, including:
 - History-taking
 - Examination
 - Problem formulation
 - Communication and interviewing skills
 - Record-keeping practices
 - Relevant technical skills
 - (iv) the Monitors' impression of Dr. Miller's judgment, behaviour and attitude in the provision of patient care including Dr. Miller's interaction with patients, colleagues and co-workers;
 - (v) whether Dr. Miller meets the standard of practice expected of a psychiatrist in Ontario;
 - (vi) if indicated, suggested enhancement, remedial or educational activities which may be of assistance to Dr. Miller; and

- (vii) if indicated, the areas of practice that should be monitored and/or re-evaluated;
 - (c) at the conclusion of the Program, the Monitors shall submit a final report to the College regarding Dr. Miller's overall performance and identifying whether Dr. Miller is ready for independent practice or whether further supervision or retraining is required;
3. If any of the reports required in connection with the Program are not delivered or are unsatisfactory to the College, the College may suspend Dr. Miller's certificate of registration;
 4. Dr. Miller will take and successfully complete the College's record-keeping course, at his expense, within one year following the date of this Order;
 5. Dr. Miller will undergo a Specialties Assessment Program (SAP), at his expense, within the second year following the date of this Order;
 6. Following the successful completion of the record-keeping course, the SAP, and the Program, to the satisfaction of the Registrar, the Registrar shall remove the foregoing terms, conditions and limitations on Dr. Miller's certificate of registration.
 7. If at the conclusion of the Program, the Monitors are of the opinion that Dr. Miller is not ready for unsupervised practice, or requires further retraining or

supervision, then until the recommended period of retraining and supervision are completed, it will be a term, condition and limitation of Dr. Miller's certificate of registration that:

- (i) he shall continue to practice only under supervision of the Monitors
 - (ii) he shall continue to practice only in an institutional setting approved by the College.
8. In the event that Dr. Miller is unsuccessful in the completion of the record-keeping course, the SAP, or the Program, as determined by the Registrar, or if his certificate of registration is suspended pursuant to paragraph 3 of this Order, the Discipline Committee retains jurisdiction on the application of a party, to vary the terms and conditions of this Order, including to order the Registrar to suspend Dr. Miller's certificate of registration.