Indexed as: Porter (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(2) 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. PAUL MICHAEL PORTER

PANEL MEMBERS: DR. P. HORSHAM (CHAIR)
DR. D. BRADEN
DR. J. MCGILLEN
P. BEECHAM
R. SANDERS

PUBLICATION BAN

Hearing Dates: May 28 to June 1, September 10 to 14, October 1 to 4, 2001, January 7 to11, February 26 to March 1, May 21 and 22, and July 15, 2002
Decision/Release Date: September 20, 2002

On July 10, 2003, the Divisional Court altered the Discipline Committee's decision on penalty. See College of Physicians & Surgeons (Ontario) v. Porter [2003] O.J. No. 540.

DECISION AND REASON FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on May 28 - June 1, September 10 – 14, October 1 – 4, 2001, January 7 – 11, February 26 – March 1, May 21 and 22, and July 15, 2002. The Committee also had the benefit of written submissions from counsel for the parties.

PUBLICATION BAN

The Discipline Committee ordered that no person shall publish the identity of the witnesses or any information that could disclose the identity of the witnesses who testified in relation to misconduct of a sexual nature, pursuant to ss. 47(1) of the Procedural Code ("the Code"), which is Schedule 2 to the *Regulated Health Professions Act*, 1991, S.O. 1991, c. 18, as amended. Additional orders were made under ss. 45(1) of the Code to prohibit the publication of names of Dr. Porter's children and grandchild, and information from the clinical records of Patient A that were entered as an exhibit on the voir dire.

The Committee also ordered that the evidence of Patient X, including her records, and her husband's evidence, be heard in camera pursuant to ss. 45(2) of the Code. The Committee delivered its written decision and reasons for decision for this order separately.

ALLEGATIONS

The Notice of Hearing alleged that Dr. Paul Michael Porter committed acts of professional misconduct:

1. under paragraph 51(1)(b.1) of the Code in that he has sexually abused patients;

2. under paragraph 1(1)34 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, ("O. Reg 856/93") in that he has engaged in conduct unbecoming a physician;

3. under paragraph 1(1)2 of O. Reg. 856/93 in that he has failed to maintain the standard of practice of the profession;

4. under paragraph 1(1)10 of O. Reg. 856/93 in that he gave information concerning the condition of a patient or any services rendered to a patient to a person other than the patient or his or her authorized representative except with the consent of the patient or his or her authorized representative or as required by law;

5. under paragraph 1(1)27 of O. Reg. 856/93 in that he contravened ss. 18 to 21 of O. Reg. 114/94 regarding his records for both patients; and

6. under paragraph 1(1)33 of O. Reg. 856/93, 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.

It was also alleged that Dr. Porter 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 that he is unfit to continue to practise or that his practice should be restricted.

PLEA

The College withdrew allegation #3 above. Dr. Porter entered a plea of not guilty to all of the other allegations in the Notice of Hearing.

INTRODUCTION

Dr. Porter is a 53-year-old psychiatrist who graduated from medical school in 1987. He practiced one year of family medicine and returned to do a psychiatric residency in 1988. Dr. Porter graduated as a psychiatrist in 1992. In the fall of 1992, he began private practice. He practiced for a short while at the Emergency department of a hospital.

Initially, Dr. Porter had an office in downtown Hamilton. He briefly shared an office with another psychiatrist while his new office was being constructed at his home.

Dr. Porter has been married to his second wife for 20 years and together they raised two children from his former marriage and also Dr. Porter's grandson whom they adopted.

***Allegation 1 – Sexual Abuse of Patients**

The allegations of sexual abuse stem from Dr. Porter's treatment of two psychiatric patients: Patient Y, who was diagnosed with borderline-personality disorder (BPD) and, Patient X, who was diagnosed with dissociative-identity disorder (DID).

(i) Allegation regarding Patient Y

Patient Y is a 35-year-old woman who resides in Hamilton and has been diagnosed with a very severe type of BPD. Dr. Porter began seeing Patient Y for treatment in late August 1995 and continued to treat her until he discharged her from his practice at the end of February 1998.

Patient Y testified that her relationship with Dr. Porter changed in December of 1996. She said that Dr. Porter often met her in the waiting room, hugging her and, at times, kissing her at the end of sessions. She testified that he told her that he loved her. She indicated that, within the first six months of 1997, they had two encounters that resulted in mutual oral sex and sexual intercourse. Patient Y was unable to assist the Committee by specifying when these encounters occurred. She testified that the sexual encounters with Dr. Porter occurred during scheduled therapy sessions.

Patient Y testified that she called Dr. Porter on a regular basis to request more time for her sessions. The defence provided to the Committee transcriptions of telephone messages indicating that Patient Y left 17 recorded messages for Dr. Porter in one day in December 1997. Patient Y admitted to leaving these messages.

In December of 1997, when Dr. Porter refused to extend the usual length of her session, Patient Y admitted that she flew into a rage, which included tearing the screens off the

windows in his office, threatening to take all her medications and throwing textbooks on the floor. Also, when Dr. Porter left the office that day, she disrupted the files in the office and examined the files of other patients. Following that session, Dr. Porter testified that he attempted to enter into a written contract regarding her behaviour that they would both sign if she were to continue as his patient. The contract is found in Patient Y's clinical record [Exhibit 16].

Patient Y admitted that, in January 1998, she again refused to end her session on time and flew into a rage when Dr. Porter left the office. Dr. Porter testified that he received a telephone call from her at home, which indicated that she was still in his office. On his return the following day, the office had again been ransacked and files had been disturbed.

Patient Y testified that she was planning to make an allegation of sexual impropriety and told Dr. Porter. Dr. Porter testified that he contacted his solicitor, Mr. V. On February 6, 1998, Patient Y swore an affidavit at Mr. V.'s office disavowing any inappropriate conduct by Dr. Porter. Dr. Porter testified that, on February 10th, Patent Y informed Dr. Porter that she had made a false allegation regarding Dr. Porter to a social worker and disavowed the allegation to Dr. Porter. This is documented in Patient Y's clinical record for this date. Dr. Porter thereafter immediately terminated her as a patient in his practice.

Despite being terminated as a patient, Patient Y continued to call Dr. Porter at the office and continued to show up at the office. In May of 1998, Patient Y came for an unscheduled visit and again flew into a violent rage. Dr. Porter's wife, who acted as a receptionist, was at the office at the time with their adopted son. Dr. Porter, his wife and son left the building. Patient Y admitted that she interfered with the office, moving furniture, files and books**.**

In the very early morning of a day in June 1998, Patient Y and Dr. Porter testified that Patient Y made an unwelcome visit in an intoxicated state to Dr. Porter's home. Dr. Porter testified that he called the police to deal with the situation. The police occurrence report, which was filed in evidence, indicates that, after the police arrived, Patient Y initially refused to leave stating that she had been sexually assaulted by another man that

evening and needed to see Dr. Porter for one more session. The police report indicates that the police asked Dr. Porter to see the patient at a later date in order to coax her to leave the premises. The Committee noted that, despite the allegation of a sexual assault, there was no evidence presented that the police took any action or that Patient Y sought medical attention.

Patient Y contacted Dr. R.P., who is the brother of Dr. Michael Porter and a general practitioner working in Hamilton, Ontario. Patient Y testified that she chose to contact Dr. R.P. because she knew that Dr. Michael Porter had told his brother about being involved with her. She also said that Dr. R.P. acknowledged to her that he was aware that she was in a sexual relationship with Dr. Michael Porter. Dr. R.P. denied this when he testified before the panel.

Testimony of Dr. R.P.

Dr. R.P. testified that he agreed to see Patient Y for a medical consultation in February of 1998. He said that his brother did not make the referral. Patient Y began calling his office frequently and left threatening messages with respect to allegations about his brother. Dr. R.P. testified that, in March of 1998, Patient Y began calling the office requesting to speak to him even though there were no scheduled appointments. She also began making threatening accusations to him.

Testimony of Mr. H.

Mr. H. is the husband of Patient Y's best friend, who was also a patient of Dr. Porter. Mr. H. stated that he met Dr. Porter and his wife when they were leaving the office one evening. He stated that he had a "man to man" conversation with Dr. Porter and knew that something had occurred with Patient Y. However, he was unable to provide any details of this conversation. The Committee felt that he was clearly an advocate for Patient Y during his testimony and provided no clear, useful evidence to the Committee.

Dr. Porter denied any conversation with Mr. H. Dr. Porter was not cross-examined regarding this conversation.

Testimony of Mrs. Porter

Mrs. Porter testified that she worked as a receptionist in her husband's office. Mrs. Porter testified that she was present at the office and witnessed Patient Y's behaviour at the May 1998 visit. The Committee accepted her evidence that she was often at the office and was unaware of any circumstance that raised a suspicion of any sexual impropriety or misconduct by her husband.

Testimony of Mr. V.

Mr. V. is a solicitor who was contacted by Dr. Michael Porter and wrote letters on Dr. Porter's behalf to Patient Y. Mr. V. testified that he wrote letters to Patient Y to try to end her harassing behaviour. He testified that nothing in the letters was designed to threaten Patient Y or prevent her from making allegations to the College about Dr. Michael Porter**.** Mr. V. accepted personal responsibility for what he said in his letters and for what may have been implied from them. Mr. V. testified that, on February 6, 1998, Patient Y swore an oath and signed an affidavit before a member of his staff stating that her allegations against Dr. Porter were untrue.

Testimony of defence psychiatric expert

The Committee accepted the expert evidence of Dr. Silver, psychiatrist, who opined that Patient Y suffered from a severe type of borderline personality. The Committee gave weight to his evidence that, as a direct result of perceived abandonment, Patient Y would be enraged and would have very strong feelings to the point of wishing to punish or seek vengeance on her therapist. The Committee accepted Dr. Silver's evidence that patients with BPD perceive the world in a very different and unique way and may exaggerate the events that occur around them. He testified that the nature of Patient Y's rage and sense of entitlement would leave her to have a distorted view of the events occurring around her.

(ii) Allegation regarding Patient X

Testimony of Patient X

Patient X is a 52-year-old woman, who suffers from dissociative identity disorder (DID). Patient X initially met Dr. Porter when she approached him in 1992, asking him to take her on as a new patient. At that time, Dr. Porter could not accommodate her in his practice. Patient X began seeing Dr. Porter as a patient in August of 1994 and continued to see him on a regular basis until February of 1998. At that time, she temporarily stopped treatment because of a change in her work hours but resumed treatment a few months later.

The Committee reviewed the previous medical records of Patient X. They demonstrated a long history of DID that was believed to have developed following childhood abuses. The records revealed a history of involvement in other abusive relationships that contributed to the splitting of her personality into more than a dozen altered personalities.

Commencing in November of 1998, Dr. Porter began sharing another office with a Dr. Z. Patient X testified that she saw Dr. Porter at the office he shared with Dr. Z. and that she felt uncomfortable and trapped when seen at this office. She testified that she also saw Dr. Porter at the office he had in his home on March 19, 1999, and attended there with her husband.

Patient X testified that Dr. Porter had sexually assaulted her on two occasions. Her recollection was that these assaults occurred on two consecutive sessions at the office shared with Dr. Z. She said that the two assaults occurred somewhere between August 1998 and March 1999. However, Patient X was unable to say in which month, which date or even which year the assaults occurred.

Patient X described feeling very strange during the assaults. She testified that she did not feel like herself. She felt like she was outside of herself and watching herself. She testified that she sat on Dr. Porter's lap facing him, her sweater was pulled up and he began kissing her breasts. In cross-examination, she described how she had recounted

that Dr. Porter had actually been kissing R's breasts; R is one of Patient X's altered personalities. She also testified that she had apologized to Dr. Porter because, initially, she thought that she had been sick. Later, she came to believe that he had ejaculated on her pants and on the rug and that he took a tissue to clean her pants and the rug.

Patient X testified that, while seeing Dr. Porter the following week, she had the same feeling again. *"He sat close to me and I felt that different, like I was looking at myself differently and I could tell that he wanted something from me, and I felt that I needed to have sex and get it over with"*. She then described the intimate sex act that they performed. *"So I laid my head on his lap, and he put his hand in my pants and he…it felt behind that he was masturbating himself. And then he took my hand out of my pants and he put my hand back into my pants again, and then he got up, and he didn't ejaculate. He got up and he went back into a small room at the back of the office, and then I remember him coming back in and saying, "What are you doing?" because my pants were undone, and he said that I must have been disassociating. And then I simply did myself up and then I went home"*

Patient X initially indicated that her memory of events had come back over time but later said that she was aware of the assaults happening when she left the appointments. She said that memories often came back to her over several weeks. The majority of the Committee found that her evidence lacked credibility and reliability.

Testimony of Mr. X

Mr. X., Patient X's husband, testified on behalf of the College. He testified that he assisted his wife in writing a letter of complaint to the College. He was unable to identify the dates the alleged assaults occurred. He was also unable to adequately identify when his wife disclosed these assaults to him. The Committee noted that, in the information she provided to the College, Mr. X. testified that, after he became aware of the alleged sexual assault, he contacted their family physician and asked him to cancel further appointments with Dr. Porter. He testified that he did not inform the family doctor, the police or any health care professionals regarding the alleged assaults that occurred to his wife.

Mr. X. testified that Dr. Porter called their home to find out why Patient X had not attended for her usual appointment. Mr. X testified that he and his wife decided that they should go see Dr. Porter to stop him from calling again. He testified that he believed that his wife had performed oral sex on Dr. Porter and that he wished to bring his wife to see Dr. Porter to obtain a confession from Dr. Porter.

Patient X and her husband met with Dr. Porter at the office he shared with Dr. Z. on October 20, 1999. Mr. X. stated that, during this appointment, Dr. Porter confessed to him that the sexual assault had occurred.

Dr. Porter testified that he met with Patient X and her husband on October 20, 1999 and that Patient X had a list of issues that she wished to discuss. One of the issues was that Patient X was trying to leave her husband. Near the end of the session, Patient X and her husband raised the allegation of the sexual encounters. Dr. Porter testified that he explicitly denied the allegation and explained what had happened in the previous sessions. Dr. Porter indicated that, by the end of the meeting, Mr. X. had appeared to accept his explanation and had left the meeting agreeing to consider re-enrolling Patient X into therapy. Dr. Porter then stated that he began a session with his next patient. Shortly thereafter, there was a knock on the door. Mr. X. had come back indicating that his wife had overdosed on drugs while in the washroom just outside of the office. Dr. Porter testified that he assessed Patient X and recommended that she be taken to the nearest hospital. He indicated that Mr. X. refused and left to get the family van. Dr. Porter testified that he stayed with Patient X until her husband brought the van. He then went with Patient X and her husband to their home. He returned to his office by cab.

Mr. X. testified that he then formulated a plan to record a telephone conversation that he hoped would extract a confession from Dr. Porter. He testified that Dr. Porter called him at work but he requested that Dr. Porter call him at home on October 29, 1999.

Mr. X. testified that he obtained a recording machine from Radio Shack. Dr. Porter called and he recorded the conversation, which lasted approximately 30 minutes. However, the recording was of such poor quality that none of the conversation or words spoken by Dr. Porter could be adequately assessed. Mr. X. had not taken any notes

regarding the conversation. He indicated that he listened to the tape for the first time one month later on November 30, 1999. He agreed that, during the discussion, Dr. Porter offered to hold further sessions with Patient X and her husband and also encouraged them to see another therapist.

Mr. X. had returned the tape recorder to Radio Shack in November 1999, for a full refund, saying that he became aware that he was able to obtain a tape recorder from his workplace. Later, Mr. X. testified that he had listened to the tape in its entirety the day after making the recording, yet, despite the obvious problems with the recording, he had not made any notes regarding his recollections of the conversation at that time.

The Committee noted that Patient X, with the assistance of her husband, complained to the College in January of 2000. They did not mention the tape or its contents until an interview at the College on February 24, 2000. Patient X had already been interviewed by the College but did not mention the tape or its existence in the earlier interview.

Dr. Stephen Pausak, a forensic engineer, a witness for the defence, gave evidence in a voir dire about the tape recording. He examined the tape and was unable to account for the distortion on the tape without having the tape recorder. The Committee did not accept the tape as evidence because of the unreliability of the recording. Most of what Dr. Porter said was unintelligible. The Committee further found that the few words of Dr. Porter that could be understood, were isolated from the context in which they were spoken, and in any event did not constitute a confession as Mr. X had contended.

Patient X's clinical record indicated that her medical history included a recurrent discussion regarding a sum of money that was left to her. Mr. X had used it as part of the down payment on their home. Patient X, Mr. X and Dr. Porter all testified to the discussions regarding the money. Patient X had not wanted the money used as part of the down payment as she felt it was her money alone and had complained about this to Dr. Porter. In September 1999, Patient X contacted Dr. Porter and left a message on his telephone answering machine requesting that Dr. Porter pay her the amount of the money. When the answering machine tape was played for Patient X at the hearing, she stated that she had no recollection of making this call.

Dr. Porter indicated that he had contacted his attorney, Mr. V., and informed him of the call requesting money.

Mr. V.'s testimony was that he telephoned Patient X and identified himself as a lawyer acting on behalf of Dr. Porter. Mr. V. indicated that he was attempting to repair any rift that had occurred between Dr. Porter and Patient X. He indicated that, on his own initiative and not on the instructions of Dr. Porter, he suggested a payment of $5000.00 to Patient X to see what she was looking for from Dr. Porter. Patient X stated that the children were present and she did not wish to speak at this time. She testified that she told Mr. V. that she would call him the next day and ended the call.

The following day, Mr. X. called Mr. V.. Mr. X. claimed that Mr. V. offered $5000.00 plus $500.00 a month for 5 years. Mr. V. specifically denied the additional $500.00 per month. Mr. X. contended that he told Mr. V. that the call had been upsetting to his wife and that he should not contact them again. Mr. V. testified that he agreed that he would not call back and the conversation ended.

Throughout the fall of 1999, Patient X continued to make telephone calls to Dr. Porter's office. She testified that she had no memory of making these calls and expressly denied making them but did admit that it was her voice heard on the tape that was played before the Committee. These calls continued in the fall months after the time that Patient X had ceased seeing Dr. Porter as a patient. None of these messages alleged sexual assault or otherwise made reference to any allegations of sexual misconduct. The very last call to Dr. Porter's office was in November 1999, when Patient X was requesting a renewal of a prescription.

Testimony of Mrs. Porter

The Committee accepted the testimony of Mrs. Porter that she assisted her husband in the office and was physically present in Dr. Porter's office for the majority of almost everyday when the office was first opened. She routinely attended at the office and was aware of Patient X and her condition. When Dr. Porter moved his practice to Dr. Z.'s office, Mrs. Porter attended mainly for the purpose of collecting the mail, returning

telephone messages and to pick up Dr. Porter to drive him home. Mrs. Porter indicated that she knew of Patient X's allegations from the time they were first made and was not aware of any situation or behaviour that had raised any concern regarding inappropriate behaviour by Dr. Porter.

Dr. George Glumac, defence psychiatric expert

The Committee accepted Dr. George Glumac's testimony as a qualified expert in DID. Dr. Glumac opined that Patient X suffers from severe DID and described it as one of the worst cases that he had ever seen. The Committee accepted his evidence that a patient who had a history of dissociation, confused past with present events, and as well was confused whether events really had happened. In her admission record to Homewood Health Centre, Patient X admitted that she often lives past events in the present and often does not discriminate between what is happening in her memory and current events.

Testimony of Dr. P.M. Porter

Dr. Porter denied the allegations of sexual abuse of these two patients. Dr. Porter stated the evidence given by these patients was untrue.

Dr. Porter's evidence was that, while he had contacted Mr. V. as his lawyer, he had never instructed him to offer money to any patient and had never instructed Mr. V. to use any threats in his letters to Patient Y. This evidence was supported by the testimony of Mr. V.

(iii) Similar Fact Evidence

A voir dire was held on October 30, 2001 to consider the prosecution's motion to introduce evidence as similar fact evidence.

Following a voir dire the majority of the panel held that the proposed evidence was unreliable and could not be admitted. The majority did not accept the testimony of the witness, finding it lacked credibility. Furthermore, there was a potential of contamination of the evidence related to the behaviour of Patient Y, and a marked lack of similarity to the allegations made by the complainants.

Decision regarding Allegation of Sexual Abuse

The majority of the panel found there was a lack of clear, convincing or cogent evidence to support the allegation of sexual abuse of Patient Y or Patient X by Dr. Porter.

Neither patient was able to say when these assaults allegedly occurred. It was accepted by a majority of the Committee that the nature of Patient X's illness resulted in her being unable to accurately and consistently recall when an event occurred to her and that she was unable to separate past and present events. Furthermore, the Committee did not accept the testimony of Mr. X that Dr. Porter had confessed his guilt; the tape was unreliable and inadmissible, and the transcription of the tape not helpful in that regard.

Therefore, in applying the *Bernstein* standard, which requires clear, convincing and cogent evidence, the majority of the Committee felt that the evidence against Dr. Porter was often fragile and the testimony at times suspect. After considering the totality of the evidence presented, the majority of the Discipline Committee was of the view that the evidence was insufficient to support a finding that Dr. Paul Michael Porter had sexually abused these two patients. Accordingly, that allegation was dismissed.

Allegation 4

The Committee found that there was inconclusive evidence to support a finding of guilty regarding allegation 4 in the Notice of Hearing.

The Allegation of Incompetence and the other allegations of Professional Misconduct (Allegation 2, 5 and 6)

The panel was unanimous in its findings that Dr. Porter was guilty of the allegations of professional misconduct alleged in paragraphs 2, 5 and 6 in the Notice of Hearing, and was incompetent, as defined in s. 52(1) of the Code. The evidence before us established the following:

- Dr. Porter voluntarily assumed the care of two complex psychiatric patients for which he displayed a lack of a skill and experience to treat.

- Dr. Porter lacked the insight and judgment to realize his limitations and thus failed to ask for help and/or refer these patients to more experienced psychiatrists.

- Dr. Porter consistently failed to keep up-to-date, complete and accurate clinical records of patients that he was actively treating. Regarding Patient X, sixty (60) percent of the notes of a most complex DID patient were missing and regarding Patient Y approximately 10%. This was not a mere matter of administrative inefficiency: the significant lack of clinical notes for seriously ill patients demonstrated disregard for the welfare of his patients of a nature and to an extent that demonstrates that he is unfit to continue to practise or that his practice should be restricted. In his testimony he showed no understanding of the significance for patients of his failing and no appreciation of his professional responsibility. The reasons why such medical records are critical are:

  1) treatment of complex patients require accurate medical facts and, accordingly, accurate and complete note-taking is necessary for the ongoing treatment of patients;
  2) medical records may be required by physicians and other professionals for ongoing therapy;
  3) professional practice demands medical records be kept for all OHIP billings.

- There was a pattern of reckless billing of OHIP for medical services. Dr. Porter billed for services rendered on dates upon which there is no record of his having seen patients.

- Dr. Porter failed to ensure security of his patients' files and confidential information. Patient Y trashed Dr. Porter's office after a stormy session in December 1997. Despite knowledge of this occurrence, Dr. Porter left her in his office on a second occasion in January 1998; Patient Y repeated the behaviour. Patient Y admitted reading at least one chart of a patient with whom she was

acquainted. Patient Y further admitted rummaging through the drawers of the office desk.

- Dr. Porter failed to ensure emergent medical intervention for his patients as appropriate;

  1) Dr. Porter displayed poor clinical judgment in that he failed to ensure that Patient X be taken to the hospital after being informed that she had overdosed on psychotropic medication in the bathroom of his office. It was obvious that she had symptoms that warranted immediate medical assessment. Dr. Porter assisted the husband to carry Patient X to the family car and accompanied her to her home. Dr. Porter made no further contact with the patient or her husband until the following day. The panel noted that Dr. Porter had no information about the dosages or the names of the medications that Patient X had taken prior to arrival at his office. The early onset of the symptoms (unsteady gait and drowsiness) as described by the husband raised the possibility that she took a massive overdose in the bathroom or had taken a moderate overdose prior to visiting his office and just added a smaller dose when she went to the bathroom. Dr. Porter ought to have performed a medical assessment of the patient to be satisfied that the patient was not in grave danger.

  2) Patient Y threatened to jump out of the window of Dr. Porter's office during a stormy session. Patient Y had threatened to strike Dr. Porter prior to jumping out of the window. The panel agreed that this situation called for immediate action by Dr. Porter such as calling for an ambulance and admission to a medical facility to protect Patient Y from self-harm.

- Dr. Porter showed serious lack of judgment with Patient Y and Patient X during his treatment of them. Without regard for the serious nature of their illnesses (or its impact on them) he communicated to these patients aspects of his life, his marriage, his children and their social life, his adolescent problems, his previous marital problems and his history of alcoholism.

The panel unanimously concluded that it had been established to the *Bernstein* standard that Dr. Porter was incompetent, in that his care of the complainants as patients displayed a lack of knowledge, skill and judgment, or disregard for the welfare of his patients, as indicated above, of a nature and to an extent that demonstrates that he is unfit to continue to practise or that his practice should be restricted. The panel also decided unanimously for the above reasons that he was guilty of professional misconduct in that he engaged in conduct unbecoming a physician, that he contravened ss. 18 to 21 of O. Reg. 114/94, and that he engaged in acts and omissions relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

*****Dissenting reasons were provided with respect to allegation 1.

On July 10, 2003, the Divisional Court altered the Discipline Committee's decision on penalty. See College of Physicians & Surgeons (Ontario) v. Porter [2003] O.J. No. 540.

CPSO and Dr. Paul Michael Porter

Minority Opinion

[Dr. P. Horsham and P. Beecham dissenting regarding allegation 1]

Hearing Dates: May 28 to June 1, September 10 to 14, October 1 to 4, 2001, January 7 to11, February 26 to March 1, May 21 and 22, and July 15, 2002

Decision/Release Date: September 20, 2002

We agree with the decision of the majority on all but the allegation of sexual abuse. We would have found Dr. Porter guilty of the allegation of sexual abuse as well as the other allegations of professional misconduct and incompetence on which the panel as a whole found Dr. Porter to be guilty.

The "Normal" Behaviour of the Complainants

The minority of the panel in reviewing the behavioural symptoms of both complainants noted that the defence utilized every aspect of their symptoms to boost the lack of credibility of the complainants. Although they had complex psychiatric illnesses, in considering the day-to-day behaviour of these complainants and observing their behaviour at the time of giving evidence, it was apparent that their behaviour is sometimes normal.

Examples of the "normal" behaviour include the fact that these women held down jobs, attended to their children's needs and appeared to have average normal interactions with others. There are other examples of protecting their children, in that Patient X refused to discuss with Mr. V. his offer of the 'reparations'. Patient Y was almost continuously occupied with the day-to-day welfare of her child, dealing with babysitters and performing associated functions.

The testimony of both expert psychiatrists gave a multitude of symptoms of their psychiatric illness but of utmost importance in their testimony, they explained that the symptoms were present in varying degrees, varying frequencies and varying intensities.

The minority looked behind the "façade" of the behavioural symptoms to all the real and circumstantial evidence associated with their complaints and found them credible in their evidence about the sexual abuse. Examples are the presence of documents of contemporaneous value seen in the transcript of the recorded telephone messages left by Patient Y for Dr. Porter and the interpretation of the available phrases and utterances on the transcript of the telephone recording of the conversation between Dr. Porter and the husband of Patient X.

The Behaviour of Dr. Porter

The minority considered the behaviour of Dr. Porter. A member of the panel asked Dr. Glumac if a physician faced with an accusation of "making a pass or sexual abuse" by a patient would continue seeing the patient alone. Dr. Glumac agreed that this was not to be the expected action of such a physician. Dr. Porter testified that he continued to see this patient for a long period after the allegation was made.

General Observation of Dr. Porter's Testimony

1. Dr. Porter referred to the activities of 'alters' that occurred during the testimony of Patient X given early in the hearing when his evidence was challenged by what this complainant had said. Dr. Porter overlooked the fact that, when this complainant was giving evidence, her psychiatrist was present at her side to act on any aspects of dissociation by the complainant. The direct observation by the members of the panel did not raise any questions of abnormal behaviour of the complainant during her testimony.

2. In his defence, he concentrated on painting strongly negative pictures of the complainants emphasizing the psychiatric aspects of their behaviour.

Complainant: Patient X

Patient X was a 52 year old woman who lived with her husband and two children and was diagnosed as suffering from DID. This complainant was accompanied by her present psychiatrist while giving evidence 'in camera' and was closely observed by the members of the panel throughout her testimony. She gave her evidence in a calm and straightforward manner and at no time was there evidence of dysfunction or upset even under aggressive cross-examination by the defence. Her psychiatrist did not indicate that there was any undetected distress or dissociation and there was no need for 'grounding'.

The main points in the evidence that were felt to be of the greatest importance are as follows:

Patient X described the abusive episodes and all the surrounding activities before and after the alleged sexual abuse, although she was not able to identify specific dates on which the abuse occurred. Her husband corroborated the activities that occurred before and after the alleged abuse at the time of his testimony.

Patient X clearly described a specific act during the abusive episode when Dr. Porter took her by the hand and guided her into a smaller room at Dr. Z.'s office saying that they must "beg God's forgiveness".

On cross examination, Dr. Porter admitted that this had occurred but explained that the reason was to get the "alters" to make peace with one another since there was some conflict between them. In the absence of a credible explanation, the minority believed that this statement constituted an admission by Dr. Porter.

Another episode described by Patient X was the finding of the semen and the wiping up of this by Dr. Porter, who explained to her that it was vomit. Patient X testified that at no time could she recall vomiting on herself when emotionally upset nor could she recall her 'alters' doing the same at any time.

Dr. Porter in his defence and in other areas of this hearing admitted to having normal semen. He gave evidence that this episode involving the semen on clothes and on the

floor was an example of the patient mixing up her past childhood abuse with present situations.

Patient X, in her evidence, denied knowing about any specific conditions of the penis of Dr. Porter, since it was in evidence that Dr. Porter was uncircumcised and had some lesions of the penis called 'penile papules'. The inability of Patient X to note these conditions was put forward by the defence as proof that no sexual abuse occurred.

The minority did not attach any significance to this in that there was no supporting evidence that Patient X had significant experience in the anatomy of the penis. Dr. Porter and Mrs. Porter had described the lesions as pinhead sized lesions at the glans of the penis under the foreskin and there was no photograph of the lesions of Dr. Porter's penis available to the Panel.

Members of the Panel did not have the opportunity to appreciate the size or the number of these lesions nor to examine the lesions. There was no certified photograph and/or description of Dr. Porter's penile lesions by any independent expert. There was only a "magnified" textbook photograph of what such lesions looked like.

Patient X had been receiving psychotherapy for years and, thus, was aware what is involved in her dissociation and replied to a member of the panel that at the time of dissociation she was aware of what was really happening. She further described that she felt like she was in a daze and observing the happenings as though it was happening to another part of her body.

The presence of this state was aptly described by the defence expert, Dr. Glumac, who advised that a patient with DID always retains a sense of reality during dissociation and that a patient can experience different degrees of dissociation.

The minority noted the important fact that, in the evidence, when reference was made to other activities of the alters of Patient X (such as the telephone calls by the 'alter' with the voice of a little boy and other such episodes), there was an obvious sense of reality since the "alter" knew the phone numbers of Dr. Porter's office, the phone number of her home and was able to find her way home despite the dissociation.

The minority panel members noted that the part of the testimony of the defence expert dealing with certain aspects of Patient X's psychiatric illness was successfully challenged on cross-examination by counsel for the College. Counsel for the College was able to show that significant documents were not given to the expert. A lack of opportunity to interview others (especially Mr. X, the husband of Patient X) resulted in incomplete knowledge of Patient X and the effect and degree of her illness on her testimony.

Examples were that Dr. Glumac did not know that Ms. I., one of the perpetrators, was still alive so that the report of the patient seeing Ms. I. was in fact true and not due to the patient's dissociation and reliving her childhood abuse. The suggestion that Patient X was confusing her childhood abuse with a present event by alleging recent sexual abuse of her daughter, thereby confirming past/present confusion, was negated when the previous psychiatrist received corroborating evidence that the daughter's abuse was in fact true. Dr. Glumac had incomplete and inaccurate information.

The evidence of the husband of Patient X corroborated that Patient X had a severe dislike for a pair of pants that she said she had worn during an abusive episode and that she said had been stained with Dr. Porter's semen. The dislike for the pants could be explained by the fact that the victim of abuse retains a dislike for certain objects, smells and sounds, even though a victim had dissociated into another alter at the time of the abuse. Dr. Glumac, the defence expert, confirmed this point in his testimony.

Testimony of Mr. X

Mr. X, the husband of Patient X, gave evidence "in camera" in a straightforward and believable manner. Mr. X was deeply involved in the care of his wife. He provided the panel with significant corroborating evidence of the revelations and the complaints of Patient X.

The minority members were impressed with the described activities of Mr. X and accepted his reasons for his reactions and activities aimed at getting a recording of Dr. Porter's revelation of sexual activity between him and Patient X. Some facts consistent with the plan of gathering information were:

He was the husband of a psychiatric patient who may have great difficulty being believed. It would be her word against that of a psychiatrist.

The act of going out and buying a telephone tape recording machine was very telling. Why would a man whose wife had been psychiatrically ill for many years suddenly want to record something that her doctor was saying about his wife?

Some of the words that were uttered to Dr. Porter by Mr. X on the tape when viewed in the context of the whole complaint were very revealing and highly suggestive of the topic being discussed. Such words were:

> *"trauma, breach of trust, - apology,- you were her doctor, her memory was right, you told me that.,- you know I call it basic betrayal**....** and you sure made that worse for her absolutely, right? When it happens, her own doctor uh that's why I say basic betrayal**....**"*

The minority noted the defence's challenge of the activities of Mr. X after the partially failed recording of the telephone conversation. The minority rejects the defence's position that Mr. X's activities do not ring true when viewed against his stated reason for the recording. There was no evidence that the taping of this conversation was for legal purposes since, as the defence pointed out, the couple did not volunteer the presence of this tape to the College investigator until some time into the investigation.

The minority noted that the defence offered no explanation to counteract Mr. X's action of asking his wife's family doctor to advise Dr. Porter that she will not be attending his office again. Mr. X explained that he did this because of the fear he noted in his wife and the calls from Dr. Porter to his home to enquire why his wife did not return to treatment.

The minority found Mr. X's testimony believable when viewed in the light of the circumstance of his wife's illness. His evidence stood up to rigorous cross-examination by the defence.

Complainant: PATIENT Y

Dr. Porter diagnosed this complainant as suffering from BPD. She is a 35-year old woman and had been diagnosed as suffering from a severe of type of BPD. This is a psychiatric disorder found in adults who had suffered significant child abuse. Dr. Silver, the expert for the defence, aptly described the disorder, which produces extremes of every-day behaviour that are extremely excessive in degree.

The minority members found that Patient Y's revelation of sexual abuse was not a delusion nor were there behavioural changes suggesting psychosis. Dr. Silver, in his testimony confirmed, that there was no evidence that Patient Y was psychotic or delusional.

Patient Y alleged several acts of sexual abuse by Dr. Porter during a short period and that he wooed her, just prior to that time, by hugs and comments of endearment plus promising her a future with him. The acts involved cuddling, kissing and finally sexual intercourse and oral sex.

Patient Y, who gave her evidence very early in the hearing, described how Dr. Porter would switch off the office lights and they would perform the sexual acts on the floor of the office. She further added that, if there was another patient waiting to be seen, Dr. Porter would first go out and dismiss that patient and then return to continue the interaction.

These facts were contrasted with the argument by the defence that the office was brightly lit and the windows were wide enough and not effectively draped to allow any intimacy for the sexual activity with Patient Y. The minority found from the photographs presented in evidence that intimate behaviour could have taken place in the office without observation.

Also, in reaction to the spiralling downwards of Patient Y's behaviour, Dr. Porter began to write very negative reports about her in her clinical chart. In many areas, these notes did not correlate with the recorded telephone calls made by Patient Y.

The notes in her chart made prior to the alleged abusive events gave a picture of normal physician – patient interaction and clearly explained the psychiatric history and progress of her treatment. The majority of the calls after the alleged abuse occurred were calls begging Dr. Porter to call her or to return her calls. In some of the calls, her messages registered her frustration at Dr. Porter for not returning her calls and, thus, she made threats. The overall change in her behaviour, as pointed out by the counsel for the College, occurred about the time that the sexual abuse is alleged to have occurred.

The minority noted that Patient Y was not aware that the recorded telephone messages would have been kept by Dr. Porter and agreed that the transcript of the tape of Patient Y's telephone messages was of significant importance since this was a true document made contemporaneously with what was occurring at the time between Patient Y and Dr. Porter.

The minority noted that the context of the telephone messages is for the most part different from the content of the clinical notes made by Dr. Porter on the same day.

The minority took into account that Patient Y admitted, in a straightforward manner early in her evidence, the making of certain documents, which contained false information and gave the reasons for this. She withstood aggressive cross-examination by the defence and was feisty in her dealings with other suggested discrepancies.

Patient Y additionally pointed out an important omission in the transcript of her calls when she had left a message for Dr. Porter accusing him of the sexual abuse. This message was correlated with notes Dr. Porter had written in her chart. Dr. Porter could not explain the absence of this message on the recording transcript.

The minority found Patient Y to be a credible witness and agreed with counsel for the College as to the importance of the recorded telephone messages, which clarified the truth of the relationship at the time of the alleged abuse. The minority was cognizant of the effect of the behavioural characteristics of BPD from which Patient Y suffered and the way that this behaviour could have impinged upon the credibility of her evidence by anyone ignorant of the presence of this illness, but accepts her evidence nonetheless.

Others areas not significantly challenged by the defence were:

- Patient Y reported the abuse to Dr. R. P., the brother of the accused, when she attended upon him for therapy. Dr. R. P. confirmed in his evidence that he had discussed Patient Y with his brother.

- Patient Y reported the abuse to a social worker, who saw Patient Y at her place of work when she felt that she needed some immediate counselling on that day.

Dr. Silver, Expert for the Defence

The minority took note of the evidence of Dr. Silver in which he described the symptomology of a patient with BPD. This was of great help in understanding the background behaviour of Patient Y and the subsequent effect of the alleged abuse on her.

Of great importance when assessing the challenges by the defence, there appeared to be little or no incorporation of Patient Y's behavioural symptoms of her psychiatric illness in attempting to explain some of her activities. In fact, conclusions about her behaviour are drawn as though she were a non-psychiatric patient. An example is the deduction by defence that her testimony is not worthy to be believed since she agreed to sign a false affidavit.

Dr. Glumac, Expert for the Defence

Dr. Glumac greatly assisted the panel on the condition of DID. His expertise was appreciated in explaining that despite the profound nature of the symptoms of the patient with DID, that some sense of reality, awareness of the world, and the intermittent nature and varying degrees of the symptoms can be present at any time.

The minority accepted this evidence, which assisted in understanding the activities of Patient X. Cross-examination revealed significant gaps in Dr. Glumac's information about Patient X, thereby resulting in an incomplete assessment of this complainant.

Dr. Michael Porter

Dr. Porter, in giving his evidence, displayed different types of behaviour. At times, he attempted to be argumentative with counsel for the College, tried to correct the counsel for the College on irrelevant facts and, at other times, it appeared that he attempted to use his knowledge of psychiatry to confuse the Panel. An example was his contention that Patient X was dissociating continuously during the giving of her evidence several months earlier. The minority paid attention to the fact that, at the time that Patient X was giving evidence, she had her psychiatrist in attendance at all times and there was no indication from the psychiatrist or on observation by the panel that Patient X was dissociating.

Dr Porter, in his evidence, absolutely denied ever hugging patients, but under cross-examination by counsel for the College, he did admit to infrequently hugging patients and, at other times, he allowed patients to touch his elbow and his shoulder.

The minority gave weight to the following factors in coming to their conclusions:

Potential Victims

Both complainants were significantly affected psychiatric patients.

Opportunity to Abuse

- The office door was always kept locked during the sessions. The windows of the office were covered with tinted reflective paper so it could not be seen from the outside looking in.

- Patient Y said very early in her testimony that Dr. Porter would turn off the lights and they would lie on the floor of the office to perform the sexual acts.

- Almost all of the listed appointments around the time of the alleged abuse were at the end of the day.

- Dr. Z.'s office was isolated and no one else was there. Mrs. Porter did not stay at that office which was the place where Patient X was allegedly abused.

- Mrs. Porter did not come and did not remain all day at the office on Yonge Street every day. By the time of the only two alleged sexual abusive acts in the late afternoon and with the last patient of the day, it is to be expected that Dr. Porter would have known if Mrs. Porter would be there to take him home.

Other Evidence

- Patient X told her husband and Dr. H. at a treatment centre about the sexual abuse by Dr. Porter. Her husband confirmed that she told him. Dr H. reported the allegation to the College.

- Patient Y told Dr. R. P., Dr. Porter's brother, about the sexual abuse. He confirmed that she did tell him.

- Dr. Porter admitted some aspects of sexual abuse to Mr. X, the husband of Patient X. It can be easily deduced that Mr. X heard something of significance about the alleged abuse since he tried to get it on tape during a conversation over the phone that he had set up with Dr. Porter.

- Patient Y said that the sexual abuse took place and her sessions had to be extended. She said that when this occurred that Dr. Porter would go out and cancel the appointment of the waiting patient. The appointment book showed that most of the appointments were at the end of the day and in a few there was one patient to be seen and occasionally that name was crossed out or not billed to OHIP.

Behaviour of Dr. Porter after being accused of Abuse by the Complainants

The minority believed that Dr. Porter offered Patient X a sum of money through his lawyer, Mr. V., who used the word 'reparation' in his communication with the complainant.

He paid a sum of $700 to Patient Y after she had missed an afternoon at work. She rejected this money as she stated in her recorded telephone message about the money not changing anything. In the recording she said

> *"I was just saying that so much harm has been done and the money doesn't change anything and it doesn't make up for nothing and just, just please, please just change that with your lawyer..."*

Mr. V., who was instructed by Dr. Porter, sent intimidating letters to Patient Y.

Dr. Porter directed Patient Y to sign a document denying that he had abused her and stating that she will take no legal action against him. He requested this as a condition of his continuing to see her as a patient.

Dr. Porter asked Mr. X during the conversation on the phone about being recorded and not walking into a trap.

The minority took note of all these above facts and, in the absence of any plausible acceptable alternative reason for the above actions (some of which were circumstantial evidence), concluded that the totality of the evidence supports that Dr. Porter is guilty of the allegations of sexual abuse.

Dr. R. P.

Dr. R. P. is the brother of the accused, Dr. Michael Porter. He was called by the defence and gave evidence that he had briefly treated Patient Y on her own referral. He was a general practitioner who dealt mainly in counselling of patients. The minority accepted his evidence that Patient Y had told him about the alleged sexual abuse by his brother. Dr. Michael Porter had agreed under cross-examination that he had discussed Patient Y with his brother.

Mrs. Porter

Mrs. Porter, the wife of Dr. Michael Porter, gave evidence to support the arrangements in the working relationship in the office. It was noted that Mrs. Porter was not always in the office on Yonge Street because of her many other commitments. In her evidence, it was apparent that her presence at the office was more frequent earlier, when Dr. Porter had begun his full time practice.

An important fact that emerged from her evidence was that she was not present at the office for 100% of the time and did not stay at Dr. Z.'s office except to pick up the mail. She did report witnessing one episode of Patient Y's thrashing of the office. She confirmed the reported conditions of the penis of her husband using very similar words to his to describe the papules.

The minority took into account that Mrs. Porter was speaking as the spouse of Dr. Porter. The Committee noted that her presence at the office was somewhat inconsequential in that Dr. Porter kept the office door locked during the times of his sessions with Patient Y and thus the hugging and kissing reported by Patient Y could have gone on unobserved.

Additionally, there were only two instances of significant physical activity associated with the sexual abuse of Patient Y.

Mr. V.

Mr. V., a friend and lawyer of Dr. Porter, gave evidence to explain his involvement with Dr Porter and his patients since he had contacted both the complainants on behalf of Dr. Porter. Initially, he advised the Panel that his interaction with Dr. Porter in this case was as a friend and not as a lawyer.

The minority gave little weight to the testimony of Mr. V. because of large gaps in his memory, the absence of notes of his conversations with Dr. Porter and inconsistencies in his evidence.

Examples were:

- Mr. V. could not recall if he ever met Patient Y.
- Mr. V. could not advise the Panel where he got extensive information about the private life of Patient Y.
- Mr. V. was very uncertain about the details of the preparation of the affidavit, which Patient Y alleges had false information. Mr. V. admitted that he received the request for the affidavit from Dr. Porter but was not involved in its preparation or execution.
- Mr. V. admitted on cross-examination that he was reminded about details of the sum of money involved in the discussion with Patient X by information that he received just before giving evidence.

In summary, the minority found Mr. V.'s testimony vague and inconsistent and agreed that some of the letters sent to Patient Y (filed as exhibits) contained clearly threatening information and showed in-depth knowledge about her. Also noted was Dr. Porter's admission on cross-examination of many discussions he held with Mr. V. in seeking his advice.

Conclusion

In conclusion, the minority would have found Dr. Porter guilty of allegation #1 in the Notice of Hearing.

The minority accepted that Dr. Porter abused each of the two complainants and had full sexual intercourse and/or oral sex with each complainant. Other acts of courting and boundary violations preceded these acts in the privacy of his office where the door was locked.

Dr. Porter created the ideal opportunity for intimacy and privacy to carry out the abusive acts at his office. It must be noted that there were only two acts of sexual intercourse, which took place with each complainant. This infrequency reduced the possibility of detection.

The minority believes that Dr. Porter, knowing the psychiatric illnesses of the complainants, sexually abused them and attempted to use the symptoms of their illnesses to explain their perception of being sexually abused. Dr. Porter used the flashbacks and dissociation and confusion of the past childhood events with present normal nonsexual events or aspects of their treatment to deny that real abuse took place.

Dr. Porter, on realizing that the complainants were still able to recall the abuse and had reported it to others, proceeded to intimidate the complainants by threats through his lawyer, offer of sums of money and altering their clinical notes to reflect significant deterioration in their psychiatric problems.

The minority further accepted the evidence of Patient A on the voir dire to determine its admissibility as similar fact evidence. The minority found this witness to be credible on the issue of whether she had also been sexually abused by Dr. Porter, and would have admitted this evidence as similar fact evidence to buttress the evidence of the complainants. The minority accepted the evidence of Mrs. Porter that Patient A's file was not tampered with during Patient Y's trashing of Dr. Porter's office as described in the majority decision.

Indexed as: Porter (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 Professional Procedural Code***

being Schedule 2 to 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. PAUL MICHAEL PORTER

PANEL MEMBERS:	DR. P. HORSHAM (CHAIR) DR. D. BRADEN DR. J. MCGILLEN P. BEECHAM R. SANDERS MS. N. PRIDAY
Hearing Dates:	May 28 to June 1, September 10 to 14, October 1 to 4, 2001, January 7 to11, February 26 to March 1, May 21 and 22, and July 15, 2002
Decision/Release Date:	September 20, 2002
Penalty Hearing Date:	October 23, 2002
Penalty Decision/Released Date:	November 29, 2002

PUBLICATION BAN

On July 10, 2003, the Divisional Court altered the Discipline Committee's decision on penalty. See College of Physicians & Surgeons (Ontario) v. Porter [2003] O.J. No. 540.

PENALTY DECISION AND REASONS

As set out in our Decision and Reasons, the panel found Dr. Porter guilty of certain of the allegations of professional misconduct made against him, and further found him to be incompetent in that his care of the complainants demonstrated that his practice should be restricted.

A penalty hearing was held on October 23, 2002. After considering the evidence and submissions of counsel for the College and counsel for Dr. Porter, the Committee determined that the following order as to penalty was appropriate in the circumstances of this case.

ORDER

The Committee orders and directs:

3. That Dr. Porter appear before the panel to be reprimanded and the fact of such reprimand is to be recorded in the register.

4. That Dr. Porter's certificate of registration be suspended for a period of 30 months. The Committee takes into account that Dr. Porter has been suspended on an interim basis since December 13, 2000, and includes the period of suspension already served in the 30 month suspension it imposes. Accordingly, the Registrar is directed to suspend Dr. Porter's certificate of registration from the date of this order to June 13, 2003, 12:01 a.m. at which date Dr. Porter will have completed a 30-month suspension.

5. That the Registrar impose as terms, conditions and limitations on Dr. Porter's certificate of registration

   (a) that he is prohibited from the practice of medicine either in a solo practice or a group setting

On July 10, 2003, the Divisional Court altered the Discipline Committee's decision on penalty. See College of Physicians & Surgeons (Ontario) v. Porter [2003] O.J. No. 540.

(b) that he may practice medicine in an institutional setting approved by the Registrar subject to the conditions for supervision set out below;

(c) that for a period of five years from the date Dr. Porter recommences practice in an institutional setting,

(i) Dr. Porter shall not treat patients with Dissociative Identity Disorder or Borderline Personality Disorder.

(ii) Dr. Porter be supervised by two physician supervisors approved by the Registrar in the institutional setting of his practice. These physician supervisors shall sign written monitoring agreements acceptable to the Registrar and provide written reports to the Registrar at the end of each six months period for five years, such reports to state whether Dr. Porter is practising at an acceptable standard of care, and to comment on the adequacy of clinical records and compliance with 3(c)(i), above.

That the Registrar impose further terms, conditions, and limitations on Dr. Porter's certificate of registration:

(a) that Dr. Porter undertake at his own expense no earlier than 6 months and no later than 12 months after he resumes practice, an assessment of competence through a Speciality Assessment Program (S.A.P.) of the Quality Assurance Committee of the College. The Quality Assurance Committee will be provided with the decision and reasons for decision of the Discipline Committee and the assessment should consider and address the concerns identified in our decision and focus on general psychiatric practice;

(b) that Dr. Porter shall abide by and implement forthwith any recommendations of the S.A.P. or the Quality Assurance Committee, including a recommendation, if any, for reassessment(s);

(c) that if at any time after 5 years of practice Dr. Porter wishes to treat patients with Dissociative Identity Disorder or Borderline Personality Disorder:

(i) Dr. Porter undertake at his own expense within 6 months of his resumption of such treatment, a further assessment of competence for the diagnosis and treatment of such disorders through a Speciality Assessment Program (S.A.P.) of the Quality Assurance Committee of the College. The Quality Assurance Committee will be provided with the decision and reasons for decision of the Discipline Committee and the assessment should consider and address the concerns identified in our decision and focus on general psychiatric practice with emphasis on the diagnosis and care of patients with Dissociative Identity Disorder and Borderline Personality Disorder;

(ii) that Dr. Porter shall abide by and implement forthwith any recommendation of the S.A.P. or the Quality Assurance Committee, including a recommendation, if any, for reassessment(s);

(iii) that until and unless the S.A.P. recommends otherwise, that Dr. Porter's treatment of such patients shall be supervised by a physician supervisor approved by the Registrar. The supervisor shall sign a written monitoring agreement acceptable to the Registrar and provide a written report to the Registrar at the end of each 6 month period, such report to state whether Dr. Porter is practising at an acceptable standard of care in his diagnosis and treatment of patients with Dissociative Identity Disorder or Borderline Personality Disorder.

(d) That Dr. Porter or the College may apply to the Discipline Committee at the end of a five year period of practice by Dr. Porter in an institutionalized setting for variation of this penalty order, at which time a panel of the Discipline Committee may review the terms, conditions and limitations on Dr. Porter's certificate of registration, and may determine the nature and extent of the supervision and reporting there should be regarding Dr. Porter's practice in an institutionalized setting. In the event that neither party applies to the Discipline Committee for such variation in the order, Dr. Porter may continue to practice in an institutionalized setting that is approved by the Registrar of the College, subject to paragraph 4 (c) above and the usual requirements of supervision imposed by that institution. The Committee believes that Dr. Porter

requires a long period of rehabilitation, not a short period, for the public to be truly protected.

REASONS FOR PENALTY

The Committee considered that the protection of the public was of paramount importance in setting a penalty in a case such as this which involved significant deficiencies in the treatment of two vulnerable patients.

The Committee realizes the strictness of these conditions and limitations on Dr. Porter's certificate of registration, but considers that they are necessary to protect the public. If Dr. Porter is unable to make arrangements for the kind of supervised institutional practice contemplated by this order, it is the opinion of the panel that Dr. Porter should not continue the practice of medicine. In such circumstances the College or Dr. Porter may apply to the panel for a reconsideration or variation of this order, which could include a revocation of his certificate of registration.

Counsel for the defence submitted that Dr. Porter's failure to keep appropriate clinical notes did not mean deficient patient care. The Committee disagrees. The Committee took into account the fundamental importance of clinical notes in the discipline of psychiatry, the serious nature of the illnesses of the two patients, and the significant extent of the deficiency in these cases. The Committee was of the view that Dr. Porter failed to appreciate the depth of his misconduct and demonstrated a cavalier attitude towards the significant deficiencies.

Dr. Porter's approach in this case was to challenge questions and focus on minor discrepancies in irrelevant facts when giving evidence. He took an argumentative and circular approach in replying to questions, which required a simple answer. His attitude while giving evidence was perceived by the Committee as a simple dismissal of the gravity of his discrepancies and showed a lack of insight into his problems.

Dr. Porter's lack of insight into his deficiencies in treating profoundly affected psychiatric patients demonstrates in the view of the panel a need for significant rehabilitation.

Dr. Porter also failed to issue any type of apology to his patients. The Committee noted that this signalled a lack of remorse on Dr. Porter's behalf for the problems he caused to his patients.

Counsel for Dr. Porter submitted to the panel that he did enrol in two courses given by the College and stated that this should be taken as a sign of his acceptance of his deficiencies and as an attempt at rehabilitation. The courses referred to which Dr. Porter took were (a) a two day course in boundary violations and (b) a record keeping course. These courses were both sanctioned by the College for use by physicians in general. However, the Committee did not feel that the courses were enough to rehabilitate Dr. Porter since there was evidence of significant fundamental deficiencies in his practice and a perceived reluctance to accept the Committee's findings. The Committee wishes to confirm that accepting one's deficiencies is the first important step to rehabilitation.

Accordingly, a serious penalty is required, which involves a significant suspension and thereafter removing Dr. Porter from independent practice and placing him in a supervised institutional setting. The panel also considered the appropriateness of a fine, but did not impose one in view of the length of suspension already served.

The panel is open to receiving costs submissions in writing. The College has 10 days to provide its submissions, and Dr. Porter's lawyer 10 days thereafter to reply, if costs are being requested.

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