

Indexed as: Kernerman (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(2)
of the *Health Professions 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. PHILIP DANIEL KERNERMAN

PANEL MEMBERS:

**P. BEECHAM (CHAIR)
DR. D. BOND
J. ASHMAN
DR. J. MANDEL
DR. M. GABEL**

Hearing Date: February 9, 2004

Decision/ Released Date: February 9, 2004

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on February 9, 2004. At the conclusion of the hearing, the Committee found that the member had committed acts of professional misconduct and delivered its penalty order with written reasons to follow.

ALLEGATION

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

- under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O/Reg. 856/93”), in that he has engaged in conduct or an act or acts relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

RESPONSE TO ALLEGATION

At the outset of the hearing, Dr. Kernerman indicated that he did not dispute the allegation in the Notice of Hearing.

EVIDENCE

The following Statement of Facts and Finding Requested was filed as Exhibit 2 and presented to the Committee:

I. STATEMENT OF FACTS

1. Dr. Kernerman is an intensivist who had privileges at North York General Hospital and Humber River Regional Hospital. He received his certificate of registration in 1993 and qualified as a specialist in internal medicine in 1998.

2. On a number of occasions between 1999 and early 2003, Dr. Kernerman behaved in an inappropriate and/or sexually suggestive manner to female staff and visitors at hospitals and clinics at which he worked, as set out below.

North York General Hospital

i) Ms. A

3. On December 24, 2001, Ms. C went to the Emergency Room at North York General Hospital for renal colic. As he was in a lot of pain, his girlfriend, Ms. A went to look for a doctor. After leaving the Emergency Room she ran into Dr. Kernerman. She and Dr. Kernerman struck up a conversation during which she asked for assistance for Ms. C. She and Dr. Kernerman continued friendly conversation during which Dr. Kernerman asked for her phone number. She provided her contact information and Dr. Kernerman put it in his palm pilot. Dr. Kernerman had no involvement in treating Ms. C. Subsequent to Ms. C's discharge, Ms. A received a voicemail message on her machine from Dr. Kernerman containing inappropriate suggestive comments.

ii) Ms. E

4. In 1999, Ms. E, [a staff member], was asked on a number of occasions by Dr. Kernerman to meet him for coffee. Ms. E reports that she found these unwanted advances intimidating and that she took steps to avoid further contact with Dr. Kernerman.

Humber River Regional Hospital

iii) Ms. G

5. Ms. G is a staff member at Humber River Regional Hospital. On December 13, 2001 she was in the coffee shop located in the front foyer of the hospital. At approximately 12:15 p.m., she was approached by Dr. Kernerman who began to ask her inappropriate questions and made inappropriate comments about her and her marriage. Shortly after returning to her desk, she received an internal e-mail from Dr. Kernerman on the hospital's MOX system. The e-mail included inappropriate and unwelcome advances to her. She replied to his e-mail, advising she would like to keep the relationship on a professional level. He responded thanking her for her directness and confidentiality. Subsequently, she continued to see Dr. Kernerman in the hallways and they would exchange professional pleasantries.

6. On Saturday, May 11, 2002 Dr. Kernerman came into Ms. G's office and they talked about work related topics. On May 13, 2002 Dr. Kernerman approached Ms. G in the hallway stating what a fantastic job she had done in transcribing his notes. On June 10, 2002 Dr. Kernerman came into the office and asked Ms. G if she had transcribed any more of his notes. He commented on her tan and hair, then left. Approximately one hour later she received another e-mail on the MOX system in which Dr. Kernerman stated that he was intrigued with her. She did not respond to the e-mail, but when she later saw Dr. Kernerman in the hallway she advised that she wanted to keep things on a professional level.
7. Dr. Kernerman does not dispute these contacts with Ms. G. However, during his contact with Ms. G in June, 2002 he did not recall their interaction a half year earlier in December, 2001.

iv) Ms. I

8. Ms. I is a nurse at Humber River Regional Hospital. On June 1, 2002 she was attending to a patient under Dr. Kernerman's care. After assessing the patient and dealing with the patient's family, Dr. Kernerman approached Ms. I and began asking personal questions, including her last name. Later that day, Ms. I received an e-mail on the hospital's MOX system from Dr. Kernerman containing unwanted inappropriate comments.

Gentle Vasectomy Clinic

v) Ms. K

9. Ms. K is a staff member of the Gentle Vasectomy Clinic. She worked with Dr. Kernerman over a two day period. On the first day, in January of 2003, Dr. Kernerman asked her a number of personal questions, such as whether she was married and whether she had children. She answered in the affirmative. On the second day, February 13, 2003, Dr. Kernerman made a number of sexual comments to her. At one point, Dr. Kernerman briefly touched Ms. K in the area of the hips or thighs while she was preparing a surgical tray. At other points throughout the day, Dr. Kernerman brushed against her for no apparent reasons.

10. On Friday, February 14, 2003, Dr. Kernerman called the office and asked to speak to Ms. K. He asked if she could talk or if there was someone else there and if so they could speak in code. He insisted she take his cell phone number although she said she did not need it.
11. Ms. K concedes that Dr. Kernerman had earlier advised her that he likes to joke around and that if she was uncomfortable with his comments or conduct, she should simply tell him and he would stop. Dr. Kernerman believed that Ms. K was consenting to his flirtations and his briefly touching her hips.

vi) Ms. M

12. On January 16, 2003, Ms. M attended the Gentle Vasectomy Clinic with her boyfriend for a consultation with Dr. Kernerman. Dr. Kernerman became intrigued by the fact that Ms. M was a Funeral Director and how she and her boyfriend had met at a “stag and doe” party for mutual friends. As Ms. M and her boyfriend were getting ready to leave the clinic, Dr. Kernerman asked Ms. M the name of the funeral home where she worked, which she provided to him.
13. On January 17, 2003, at approximately 2:00 p.m., Dr. Kernerman called Ms. M at her work. Dr. Kernerman said that he was calling to check on the patient and to see how he was doing. During that conversation, Dr. Kernerman made inappropriate sexual comments to Ms. M. She ended the call and advised her manager of the contents of the call. Ms. M was disturbed by the call and wanted to find Dr. Kernerman’s phone number so she could block his calls.
14. Dr. Kernerman’s employment at the Gentle Vasectomy Clinic was terminated, as was his employment at North York General Hospital and Humber River Regional Hospital.

II. FINDING REQUESTED

15. On the basis of the facts above, the College of Physicians and Surgeons requests that the Discipline Committee make the following findings:
 - (a) that Dr. Kernerman committed acts of professional misconduct in that he engaged in conduct relevant to the practice of medicine that, having regard to all the circumstances,

would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

FINDING

The Committee accepted as proven all of the facts set out in the Statement of Facts. Having regard to these undisputed facts, the Committee found that Dr. Kernerman committed professional misconduct under paragraph 1(1)33 of O/Reg. 856/93, in that he has engaged in conduct or an act or acts relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

PENALTY DECISION AND REASONS

Counsel for the College and counsel for Dr. Kernerman made a joint submission regarding penalty asking for revocation of Dr. Kernerman's certificate of registration.

The Committee noted that the complainants were not patients but were either involved with the delivery of health care or were close relatives to Dr. Kernerman's patients. The Committee further noted that the conduct outlined in the Statement of Facts and Finding Requested (Exhibit #2) took place over a period of several years (from 1999 to 2003), in at least three different locations (North York General Hospital, Humber River Regional Hospital and the Gentle Vasectomy Clinic), and involved more than one complainant from each location. The Committee also noted that Dr. Kernerman had his privileges removed at each of these locations.

This is a very severe penalty for any professional to accept. As Dr. Kernerman's counsel stated, Dr. Kernerman accepts responsibility for his actions, does not dispute the facts presented in Exhibit #2, and does not oppose the proposed penalty of revocation. **Defense counsel submitted that while the proposed penalty might be regarded as unusually severe, Dr. Kernerman has many issues in his life at the present time. Dr. Kernerman is currently not able to practice medicine and therefore considered this to be the responsible course of action to take at this time.**

Considering the time frame, variety of sites, and number of complainants, a severe penalty was warranted. The Committee considers that Dr. Kernerman's behaviour was disgraceful, dishonourable

and reprehensible. Under the circumstances presented by both counsel, the Committee accepts that revocation is the appropriate penalty in this instance. This will provide for the safety and protection of the public, restore confidence in the profession, and serve as a notice to members of the profession that all members of the public including patients, health care workers and relatives of patients should be treated with respect.

ORDER

Therefore, the Discipline Committee ordered and directed that:

1. The Registrar revoke Dr. Kernerman's certificate of registration, such revocation to take effect immediately.
2. The results of this proceeding to be included in the Register.