

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. A. Vaito Manohar, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of the complainant, or other information that might tend to identify the complainant (including a description of the complainant, the complainant's age or the complainant's place of employment or former employment), under subsection 47(1) of the *Health Professions Procedural Code* (the "Code"), which is Schedule 2 to the *Regulated Health Professions Act, 1991*.

Subsection 93(1) 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 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 Manohar (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 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. A. VAITO MANOHAR

PANEL MEMBERS:

**DR. O. KOFMAN (CHAIR)
R. PRATT
DR. C. RAO
J. ASHMAN
DR. L. THURLING**

Hearing Dates:	October 5, 2006
Decision Date:	October 5, 2006
Release of Written Reasons Date:	November 7, 2006

Publication Ban

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario (the “Committee”) heard this matter at Toronto on July 17 (third party records motion) and October 5, 2006. At the conclusion of the hearing, the Committee stated its finding that Dr. Manohar committed professional misconduct and delivered its penalty order, with written reasons to follow.

PUBLICATION BAN

On July 17, 2006, the Committee made an order that no person shall publish or broadcast the identity of the complainant, or other information that might tend to identify the complainant (including of a description of the complainant, the complainant’s age or the complainant’s place of employment or former employment), pursuant to subsection 47(1) of the *Health Professions Procedural Code* (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*.

ALLEGATIONS

The Notice of Hearing alleged that Dr. A. Vaito Manohar committed professional misconduct:

1. under clause 51(1)(b.1) of the Code in that he engaged in the sexual abuse of a patient;
2. 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; and

3. under paragraph 1(1)34 of O. Reg. 856/93 in that he engaged in conduct unbecoming a physician.

RESPONSE TO THE ALLEGATIONS

At the outset of the hearing, Dr. Manohar denied all of the allegations. However, when the hearing resumed on October 5, 2006, Dr. Manohar changed his plea and entered a plea of no contest to all of the allegations set out in the Notice of Hearing.

Rule 3.02(1) of the Rules of Procedure of the Discipline Committee provides:

3.02(1) Where a member enters a plea of no contest to an allegation, the member consents to the following:

- (a) that the Discipline Committee can accept as correct the facts alleged against the member on that allegation for the purposes of the proceeding only;
- (b) that the Discipline Committee can accept that those facts constitute professional misconduct or incompetence or both for the purposes of the proceeding only; and
- (c) that the Discipline Committee can dispose of the issue of what finding ought to be made without hearing evidence.

EVIDENCE

Counsel for the College filed the following agreed Statement of Facts, which was marked as Exhibit No. 3:

PART 1: FACTS

1. Dr. A. Vaito Manohar (“Dr. Manohar”) is a family physician who practises in Woodbridge, Ontario. He currently owns and runs the Medical Clinic where he practises several days a week. He also works shifts at the Humber River Regional Hospital.

The Doctor-Patient Relationship

2. The complainant first began attending at Dr. Manohar's clinic in or about March, 2002. Dr. Manohar treated her at the clinic approximately 20 times from March 2002 to September 2004.

3. On or about February 2002, the complainant was injured in a motor vehicle accident. Following these injuries, she lost her business and became depressed. Dr. Manohar prescribed an anti-depressant to her in approximately November 2003.

PART A: Dr. Manohar's Boundary Violations and Sexual Abuse**Social Contact**

4. In or around December, 2003, Dr. Manohar provided the complainant with his cellular phone number written on a prescription pad. The complainant states that Dr. Manohar repeatedly asked her out. Dr. Manohar states that the reason for giving the complainant his phone number was that he was concerned about the complainant's tendency following her motor vehicle accident to stay home and become isolated and depressed. He told her that she could call him if she became suicidal, and encouraged her to get out more to socialize.

5. On one occasion, in response to Dr. Manohar providing her with his telephone number, the complainant invited Dr. Manohar to her home. Dr. Manohar did not accept the invitation, advising the complainant that he was well known in the community in which she lived.

6. In or around early January 2003, the complainant met Dr. Manohar for drinks at a bar. The two met briefly and went their separate ways at the end of the evening. There were no social sexual overtures or sexual activities during this meeting.

7. In or around early September 2004, during an appointment, Dr. Manohar invited the complainant to join him with two of his friends the next evening, which was a

Saturday in September 2004. Again, Dr. Manohar provided the complainant with his cellular phone number by writing “Vaito” and his cellular number on a prescription pad. A copy of this note is attached at Tab 1 [to the Statement of Facts].

The Events of September 2004

8. The complainant accepted Dr. Manohar’s invitation and on that evening of a Saturday in September 2004, joined Dr. Manohar and his then girlfriend, Ms. X, as well as another member of the College, Dr. Y. No one told Dr. Y that the complainant was a patient of Dr. Manohar’s, so neither Ms. X nor Dr. Y were aware of that fact. Dr. Y had never met the complainant before, and was at no time her physician.

9. After meeting at the bar in the condominium, the four stopped briefly at Dr. Manohar’s condominium and had a glass of wine. They then proceeded to an Oyster Bar for dinner. More wine was consumed during dinner at the Oyster Bar.

The Events at Ms. X’s Condominium

10. After dinner, and just as the Oyster Bar was closing at or around midnight, the complainant, Dr. Manohar, Dr. Y and Ms. X all went back to Ms. X’s condominium, which was located in the same building as Dr. Manohar’s condominium.

11. The four sat on the terrace, chatted, consumed more alcohol and began dancing in Ms. X’s living room.

12. Around this time, the complainant states that she began to feel numb, heavy and disoriented. She describes the feeling as being “extremely buzzed”.

13. Dr. Manohar and Ms X then retired to Ms X’s bedroom. They had not seen each other for some time, and engaged in intimate sexual activities. They left the complainant and Dr. Y on their own in the living room.

14. While the complainant was alone with Dr. Y, Ms X and Dr. Manohar engaged in intimate activities in the bedroom. At some point later in the evening, Dr. Y and the

complainant entered Ms X's bedroom. All four were on Ms X's bed. Dr. Manohar admits that there was a suggestion to engage in group sex; however, he states that no group sex occurred.

The Events at Dr. Manohar's Condominium

15. At approximately 4:00 or 4:30 a.m., Dr. Manohar, Dr. Y and the complainant left Ms X's condominium.

16. After Dr. Manohar, Dr. Y and the complainant left Ms. X's condominium, they went to Dr. Manohar's condominium. There, at some time during the night, Dr. Manohar and the complainant engaged in sexual intercourse in Dr. Manohar's bedroom.

17. The complainant denies that she consented to any sexual activity that evening and states that she was not in a position to do so because she felt intoxicated.

18. It is Dr. Manohar's position that the complainant was a willing participant in the sexual intercourse and that she did not appear to him to be inebriated.

19. The next thing the complainant claims to remember is waking up in Dr. Manohar's bed. Dr. Manohar remained sleeping. The complainant left his condominium and drove herself home. When she was leaving Dr. Manohar's apartment, she saw Dr. Y asleep in Dr. Manohar's living room.

The next Sunday September, 2004

20. On the evening of the following Sunday in September, 2004, Dr. Manohar called the complainant and suggested that they meet so that he could give her the morning after pill, as they had used no birth control the evening before. The complainant did not meet with Dr. Manohar.

The Complainant's Attendance at a Walk-In Clinic

21. The following week, the complainant attended at another Medical Centre, requesting a pregnancy test. The attending physician recorded that she had been raped by two men the night before, when in fact, the events in question had taken place two evenings before.

22. On physical examination, the physician noted contusions on the complainant's chest, left arm and leg. He advised her to undergo a vaginal examination under the sexual assault protocol at the nearest emergency room hospital, as well as a blood or urine drug screen. The complainant did not undergo any such tests or examinations.

23. The complainant originally complained to the police, but then, while being interviewed, decided not to pursue the matter.

PART B: Dr. Manohar's Obstruction of the College's Investigation

24. On or about November 2, 2004, the College of Physicians and Surgeons of Ontario (the "College") notified Dr. Manohar about the complainant's allegations of sexual abuse.

Dr. Manohar's Initial Response

25. On or about November 23, 2004, Dr. Manohar, through his legal counsel, responded to the College's notice of the complaint. A copy of this letter is attached at Tab 2 [to the Statement of Facts].

26. In this response, Dr. Manohar denied having sex with the complainant, stating there was no merit to such an allegation.

27. In Dr. Manohar's version of the events of the evening of the Saturday in September, 2004, he indicated that there would have been no opportunity to have had sex

with the complainant without the knowledge of Ms. X and Dr. Y and that both of these individuals supported his version of the events.

28. In his version of events, Dr. Manohar stated that after the four of them began to dance, he and Ms. X retired to Ms. X's bedroom where they talked for a couple of hours. He stated that between 4 and 4:30 a.m., the complainant left Ms. X's condominium and that he and Dr. Y left shortly thereafter.

The College's Request for a DNA Sample

29. During the course of the investigation, the College obtained a forensic examination of the underwear worn by the complainant on the Saturday evening in September 2004. The examination indicated that semen from one male was present on the crotch of the complainant's underwear.

30. On or about November 25, 2004, the College requested that Dr. Manohar provide a DNA sample.

31. On or about December 1, 2004, Dr. Manohar advised the College that he would not agree to provide a DNA sample. His position was that the complainant had manufactured the allegations of drugging and raping, and that he did not have sex with her. He stated that while in the bedroom with Ms. X that night, he and Ms. X had sexual intercourse. He used a condom during sex, and afterwards disposed of this condom in a wastebasket, which was located in a bathroom used by the complainant that night. He further stated that the complainant could simply have appropriated the used condom and either retained it or spilled its contents onto a tissue or article of clothing and then retained it as ostensible evidence that she had intercourse with him.

32. In the December 1, 2004 letter, Dr. Manohar suggested that the College conduct an interview with Ms. X and Dr. Y as they could corroborate his version of events. A copy of this December 1, 2004 letter is attached at Tab 3 [to the Statement of Facts].

33. Dr. Manohar now admits that his story surrounding the complainant's appropriation of the condom was untrue as he and Ms. X neither used a condom nor engaged in sexual intercourse that night. Although they engaged in intimate sexual activities, these activities did not include intercourse. He also admits that his statement that the complainant left Ms. X's condominium before him was untrue as he, the complainant and Dr. Y left Ms. X's condominium together and went back to his condominium.

The College's First Interview with Ms. X

34. On or about December 6, 2004, the College interviewed Ms. X. She confirmed Dr. Manohar's November 23, 2004 version of events, stating, in part:

- a) that she and Dr. Manohar used a condom when they had sex on the Saturday night of September, 2004;
- b) that Dr. Manohar would have used the guest bathroom and not her en-suite bathroom to dispose of the condom;
- c) that Dr. Manohar usually disposed of used condoms by either throwing them in the wastebasket or flushing them down a toilet; and
- d) that the complainant left her condominium approximately 20 minutes before Dr. Manohar and Dr. Y.

The College's Disclosure of the DNA "Match"

35. In November 2005, the College disclosed to Dr. Manohar evidence of having obtained his DNA by seizing at a restaurant and café, without Dr. Manohar's knowledge, a mug and a drinking glass, and having completed a forensic analysis of his DNA, which matched that of the DNA found on the crotch of the complainant's underwear.

The College's Second Interview with Ms. X

36. On or about August 16, 2006, the College re-interviewed Ms. X. During this interview, Ms. X advised the College that Dr. Manohar had asked her to give false evidence to the College about certain events that took place on the evening of September 2004. Ms. X advised that Dr. Manohar asked her to corroborate:

- a) the existence of a used condom, when, in fact, the two of them had neither used a condom nor had sexual intercourse; and
- b) that the complainant left Ms. X's condominium approximately 20 minutes earlier than Dr. Manohar and Dr. Y when, in fact, the complainant, Dr. Manohar and Dr. Y all left her condominium together.

37. Ms. X advised that as part of an understanding that she would support Dr. Manohar's manufactured story, Dr. Manohar offered to pay some of her legal expenses and to perform cosmetic treatment on her, free of charge.

38. Dr. Manohar admits that he asked Ms. X to support his false story to the College, thereby obstructing the College's investigation.

PART II - ADMISSION

39. Dr. Manohar acknowledges that he engaged in:

- a) sexual abuse of a patient, pursuant to clause 51(1)(b.1) of the Health Professions Procedural Code which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18;
- b) conduct that is disgraceful, dishonourable or unprofessional, pursuant to paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* ("O. Reg. 856/93"); and
- c) conduct unbecoming a physician, pursuant to paragraph 1(1)34 of O. Reg. 856/93.

FINDINGS

The Committee accepted as true all of the facts set out in the Statement of Facts. Having regard to these uncontested facts and Dr. Manohar's acknowledgement that he committed acts of professional misconduct, as specified, the Committee found that Dr. Manohar committed professional misconduct with respect to the allegations in the Notice of Hearing, in that:

1. he engaged in the sexual abuse of a patient, under clause 51(1)(b.1) of the Code;
2. he 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, under paragraph 1(1)(33) of O.Reg. 856/93; and
3. he engaged in conduct unbecoming a physician, under paragraph 1(1)34 of O.Reg. 856/93.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for Dr. Manohar made a joint submission regarding an appropriate penalty and costs order. The joint submission proposed: (i) the revocation of Dr. Manohar's certificate of registration, (ii) a reprimand, (iii) that Dr. Manohar reimburse the College for funding for therapy provided to the complainant, pursuant to section 85.7 of the Code, (iv) that Dr. Manohar post security acceptable to the College in respect of the therapy funding requirement, and (v) costs of \$2,500 payable by Dr. Manohar to the College.

Counsel for the College filed a Victim Impact Statement, which was marked as Exhibit No. 4. In it, the complainant described the very deleterious effect of Dr. Manohar's behaviour on her mental state and current relationships.

Given the Committee's finding that Dr. Manohar engaged in sexual abuse of a patient involving sexual intercourse, revocation of Dr. Manohar's certificate of registration and a reprimand are mandatory orders under subsection 51(5) of the Code. Even absent such a mandatory statutory penalty, the Committee would have unhesitatingly ordered revocation, on the facts as found. Dr. Manohar sought out the complainant, whom he knew to be a current patient, for a date or social interaction. He then engaged in sexual intercourse with her for his own gratification, in disregard of her well-being, and in circumstances which raise very serious concerns. Dr. Manohar's conduct represents a patent breach of trust. Moreover, Dr. Manohar lied to College investigators and persuaded Ms. X to provide a fabricated story to College investigators in exchange for items of significant value, his own professional services and payment of some legal accounts. In all of the circumstances, Dr. Manohar's conduct was egregious and a most serious case of professional misconduct. His actions were most certainly not the result of a momentary lapse of judgment; rather, his conduct in 2004 was planned and deliberate, and his actions relating to the College investigation were calculated, deceitful and disgraceful. His conduct clearly had a very serious harmful effect on the complainant, whose interests Dr. Manohar was obliged to selflessly protect. His conduct has also brought dishonour on the profession.

The Committee noted that the most serious misconduct, sexual abuse, had begun with significant but less serious boundary violations (the drinks and socializing), which apparently led inexorably to the revocable conduct referred to in the Statement of Facts. This progression should serve as a warning to all physicians of the dangers inherent in crossing proper professional boundaries between doctor and patient.

The only mitigating factor in the circumstances is Dr. Manohar's ultimate acknowledgement of his misconduct, but it must be said that this came only after the

evidence against him likely appeared insurmountable (the DNA evidence and Ms. X's change of story). Dr. Manohar did finally acknowledge his grievous errors and apologized for them. He has taken the College's Boundaries Course.

As to the non-mandatory aspects of the proposed penalty, the Committee concluded that the therapy funding requirement, and security therefore, were appropriate in the circumstances. While it is not a necessary precondition to such an order, it is apparent that the emotional difficulties suffered by the complainant should have been readily foreseeable to Dr. Manohar if he had focussed on his patient's well-being, rather than his own gratification. Dr. Manohar's obstruction of the investigation undoubtedly caused the complainant further distress.

The Committee also concluded that the costs order jointly proposed was appropriate. This is plainly a proper case for an award of costs. The misconduct was grave. Moreover, Dr. Manohar's actions in obstructing the investigation, lying to College investigators, and persuading a key witness to lie in exchange for valuable benefits, made for a more expensive investigative process than would otherwise have been the case. However, Dr. Manohar's ultimate acknowledgement of misconduct did shorten the hearing and spare the complainant from having to testify. The modest extent of the costs order reflects this factor.

ORDER

The Discipline Committee therefore ordered and directed that:

1. The Registrar revoke Dr. Manohar's certificate of registration, effective immediately;
2. Dr. Manohar appear before the panel to be reprimanded;

3. Dr. Manohar reimburse the College for any funding provided for the complainant, as set out under section 85.7 of the Code;
4. Dr. Manohar post security acceptable to the College to guarantee the payment of any amounts Dr. Manohar may be required to reimburse the College, pursuant to paragraph 4 of this Order;
5. Dr. Manohar pay costs to the College in the amount of \$2,500.00.

At the conclusion of the hearing, Dr. Manohar waived his right to appeal, and the Committee administered a reprimand.