

## **NOTICE OF PUBLICATION BAN**

In the College of Physicians and Surgeons of Ontario and Dr. Zvi Margaliot, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of the complainant or any information that could disclose the identity of the complainant under subsection 47(1) of the Health Professions Procedural Code (the Code), which is Schedule 2 to the Regulated Health Professions Act, 1991.

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

Every person who contravenes an order made under ... section 47... is guilty of an offence and on conviction is liable,

(a) in the case of an individual to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence; or

(b) in the case of a corporation to a fine of not more than \$50,000 for a first offence and not more than \$200,000 for a second or subsequent offence.

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

**IN THE MATTER OF** a Hearing directed by the Inquiries, Complaints and Reports Committee of the College of Physicians and Surgeons of Ontario pursuant to Section 26(1) of the **Health Professions Procedural Code** being Schedule 2 of the *Regulated Health Professions Act, 1991*, S.O.1991, c. 18, as amended.

**B E T W E E N:**

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

**- and -**

**DR. ZVI MARGALIOT**

**PANELMEMBERS:**

**DR. J. WATTS (CHAIR)  
MS. D. GIAMPIETRI  
DR. M. GABEL  
MAJ. A. KHALIFA  
DR. P. CASOLA**

**COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF  
ONTARIO:**

**MS. A. BLOCK**

**COUNSEL FOR DR. MARGALIOT:**

**MR. M. SAMMON  
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**MR. D. ROSENBAUM  
MS. J. MCALEER**

**PUBLICATION BAN**

Hearing Dates: September 19 and 22, 2016

Decision Date on Finding and Revocation: September 19, 2016

Decision Date on Other Matters of Penalty and Costs: September 22, 2016

Release of Written Reasons: December 22, 2016

## **DECISION AND REASONS FOR DECISION**

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on September 19 and September 22, 2016.

On September 19, 2016, the Committee stating its finding that Dr. Margaliot committed an act of professional misconduct and directed immediate revocation of Dr. Margaliot’s certificate of registration.

Counsel for Dr. Margaliot requested a short adjournment of the penalty hearing in order to submit a further record to the Committee with regard to other aspects of penalty. The penalty hearing resumed on September 22, 2016, and on that date, the Committee released its written order on finding, penalty and costs, with written reasons to follow.

## **THE ALLEGATIONS**

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

1. under 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 (the “Code”) in that he engaged in sexual abuse of a patient; and
2. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, in that he has engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, or unprofessional.

## **RESPONSE TO THE ALLEGATIONS**

Dr. Margaliot entered a plea of no contest to the allegations in the Notice of Hearing.

**THE FACTS**

The following facts were set out in a Statement of Facts and Plea of No Contest which was presented to the Committee and filed as an Exhibit:

**PART I:FACTS**

1. Dr. Zvi Margaliot (“Dr. Margaliot”) has held a certificate of registration authorizing independent practice in Ontario since 2005. He is certified by the Royal College of Physicians and Surgeons of Canada as a specialist in plastic surgery, and practises medicine as a hand surgeon.
2. Patient A was referred to Dr. Margaliot for recurring wrist pain and was first treated by him in March 2009. At the time, Patient A was in her early 20s.
3. Between March 2009 and June 2010, Dr. Margaliot treated Patient A on ten (10) occasions, including performing two surgeries on her right wrist. A copy of Patient A’s medical records is attached at Tab A of the Statement of Facts and Plea of No Contest.
4. In April 2010, during the currency of their physician-patient relationship, Patient A sent Dr. Margaliot a “friend” request through Facebook. Dr. Margaliot accepted.
5. On a date in June 2010, at the last post-operative appointment following her second wrist surgery, Dr. Margaliot stated in his clinical record that he would be happy to see Patient A back if she has any concerns.
6. In August 2010, Patient A contacted Dr. Margaliot through Facebook. Shortly thereafter, the two began to correspond by email.
7. In October 2010, Patient A invited Dr. Margaliot for coffee. Dr. Margaliot proposed a meeting place and the two met for coffee. The two continued to exchange emails of a sexual nature, copies of which are attached at Tab B of the Statement of Facts and Plea of No Contest.
8. On a date in December 2010, Patient A emailed Dr. Margaliot as follows:

Zvi, my wrist is killing me..its bad enough I can barely use a speculum because its so weak...

- a) Is this anything physio might fix (friend's suggestion)
- b) is it still appropriate for you to be my physician and
- c) is there anything else we can do for this because it hurrtrts☹

9. Dr. Margaliot replied:

R or L wrist

PT is usually not indicated until you a) have a diagnosis and b) it is something amenable to PT

I can look at it for you next week. Call Zohra...

Dr. Margaliot then asked "why, are you over-using your wrist?" and she replied "you'd like that wouldn't you". A copy of their email exchange is attached at Tab C of the Statement of Facts and Plea of No Contest.

10. Dr. Margaliot treated Patient A in his office practice on a date in January 2011. Eight days later in January 2011, the two met for coffee. After this meeting, the two began texting. Some of the texts were of a sexual nature. A copy of texts retained by Patient A between January and May 2011 are attached at Tab D of the Statement of Facts and Plea of No Contest.

11. In February 2011, the two met for coffee and kissed. They met two days later in his office, in the evening and engaged in kissing and touching of a sexual nature. In early March 2011, following a sexually explicit Gchat communication, attached at Tab E of the Statement of Facts and Plea of No Contest, the two met in the on-call room of the Hospital and had intercourse.

12. Dr. Margaliot treated Patient A again on a date in the middle of March 2011. He examined her for 50 minutes. In the appointment, she signed a consent for a third surgery, this time on her left wrist. Subsequently, in close proximity to the appointment, during the currency of the physician-patient relationship, the two had sexual intercourse including in his office.

13. The surgery did not proceed. The two continued to have a secret sexual affair, on again and off again, in 2011 and 2012.

**PART II: PLEA OF NO CONTEST**

14. Dr. Margalio pleads no contest to the facts set out above, and does not contest, for the purposes of College proceedings, that he engaged in sexual abuse and disgraceful, dishonourable and unprofessional conduct including by:

- a. Making remarks of a sexual nature not appropriate to the care provided;
- b. Engaging in a sexual relationship which included intercourse during the physician-patient relationship.

**FINDING**

The Committee accepted as true all of the facts set out in the Statement of Facts and Plea of No Contest. Having regard to these facts, the Committee found that Dr. Margalio committed an act of professional misconduct in that: he engaged in the sexual abuse of a patient; and, he engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, or unprofessional.

**PENALTY SUBMISSIONS**

College counsel submitted that an appropriate penalty was the immediate revocation of Dr. Margalio's certificate of registration and a public reprimand. Additionally, College counsel submitted that Dr. Margalio should be required to post a letter of credit in the amount of \$16,060.00, as security to guarantee the payment of that amount to the patient fund for therapy and counseling under the program required under section 85.7 of the Code. College counsel also submitted that Dr. Margalio be required to pay costs to the College in the amount of \$15,000.00.

Dr. Margalio did not contest the revocation of his certificate of registration or the ordering of a reprimand. However, Dr. Margalio submitted that regarding posting security for reimbursement of the patient fund, the penalty order should specify a five year limit on the letter of credit. He also submitted that he should have to pay \$10,000, and not \$15,000.00, in costs to the College.

**PENALTY AND REASONS FOR PENALTY**

Dr. Margaliot's sexual abuse of his patient is completely unacceptable and requires the most severe sanction. Section 51.5 of the Code mandates revocation for specified acts of sexual abuse, including sexual intercourse, which occurred in this case, and a reprimand for any finding of sexual abuse. Accordingly, the Committee ordered on September 19, 2016, the revocation of Dr. Margaliot's certificate of registration, effective immediately.

Immediate revocation serves to protect the public from such reprehensible behavior and to maintain public confidence in the integrity of the profession and the College's ability to regulate the profession in the public interest.

A reprimand serves to denounce Dr. Margaliot's misconduct in the strongest possible terms and to deter the profession at large from engaging in such misconduct.

**Impact on the Patient and Funding for Therapy**

In reaching its decision on penalty, the Committee carefully considered the patient's victim impact statement. It was distressing to hear how this patient's sexual relationship with Dr. Margaliot has impacted her life, both on a professional and personal basis. She was younger than Dr. Margaliot and held an admiration for and infatuation with Dr. Margaliot. She was therefore vulnerable on multiple fronts. Dr. Margaliot's behaviour towards her as his patient has had a negative impact on her subsequent relationships with other physicians. Her trust of physicians has been severely shaken, something which continues to affect her life to the present day.

While an order for funding for patient therapy is discretionary, the Committee viewed this as essential in Dr. Margaliot's case given that the sexual abuse so negatively impacted his patient, as evidenced by the impact statement. Furthermore, the Committee is of the opinion that requiring a member to reimburse the College fund for patient therapy for a finding of sexual abuse effects general deterrence in relation to the membership.

### **Time Limit on Letter of Credit**

Counsel for Dr. Margaliot submitted that the letter of credit should have a term limit of five years, and relied on section 85.7 of the Code and Regulation 59/94 in support of this submission. The College argued that no term limit should be placed on the letter of credit. The Committee examined the relevant legislation and found it difficult to reconcile the eligibility provisions in section 85.7(4) and 85.7(10) of the Code with the funding timelines provided in Regulation 59/94.

Regulation 59/94 states:

1. For the purposes of a program established under section 85.7 of the Code,  
...
  - (b) the period of time within which funding may be provided for a person in respect of a case of sexual abuse is five years from,
    - (I) the day on which the person first received therapy or counselling for which funding is provided under subsection 85.7 (10) of the Code, or
    - (ii) if funding is not provided under subsection 85.7 (10) of the Code, the day on which the person becomes eligible for funding under subsection 85.7 (4) of the Code. O.Reg. 59/94, s. 1

Section 85.7(4) of the Code states:

A person is eligible for funding only if,

- (a) There is a finding by a panel of the Discipline Committee that the person, while a patient, was sexually abused by a member; or
- (b) The alternative requirements prescribed in the regulations made by the Council are satisfied.

Section 85.7(10) states: "Funding may be used to pay for therapy or counseling that was provided at any time after the sexual abuse took place."



Neither party provided the Committee with any authority regarding how these sections should be interpreted. There was also no evidence with respect to whether the patient had received any therapy or counseling before the Committee made its finding.

Reading section 85.7(10) and section 1(b)(i) in conjunction would, on one interpretation, provide that funding would be available for five years at any point after the sexual abuse took place. Consequently, the Committee concluded that the order should not specify a time limit on the letter of credit.

### **Letters of Support for Dr. Margaliot**

The Committee considered the many letters of support submitted by counsel on behalf of Dr. Margaliot (Exhibits 4, 5, and 6). These letters speak to the abilities of Dr. Margaliot as a surgeon and his history of positive interaction with colleagues. While the Committee does not doubt the sincerity of these insights into Dr. Margaliot's clinical expertise and his collegiality, character references are of limited utility in the circumstances of this case. The Committee has before it a case of sexual abuse of a patient, and not a case involving clinical acumen or surgical expertise. The Committee agrees with the Discipline Committee's observation in *CPSO vs. Gillen* (2010), an application for reinstatement case, in which the Committee wrote: "This Committee does not believe character evidence should be given much weight when dealing with sexual offenses. By their nature, these offenses take place in private and have little connection to the external persona of the perpetrator." The character references for Dr. Margaliot stand in marked contrast to the finding of sexual abuse made by the Committee.

### **COSTS**

The Committee also ordered that Dr. Margaliot pay costs to the College in the amount of \$15,000.00 within 30 days of this order becoming final. The Committee determined the costs based on the time required to conduct the hearing and on the defence's request to adjourn the proceedings to permit the filing of additional evidence on penalty. The parties only reached an agreement on finding on the eve of the hearing. In all of the circumstances, we find costs of \$15,000.00 to be appropriate.

**ORDER**

The Committee stated its findings in paragraph 1 of its written order of September 22, 2016. In that order, the Discipline Committee ordered and directed on the matter of penalty and costs that:

2. The Registrar revoke Dr. Margaliot's certificate of registration effective immediately on September 19, 2016;
3. Dr. Margaliot appear before the Committee to be reprimanded;
4. Dr. Margaliot reimburse the College for funding provided to patients under the program required under section 85.7 of the Code, by posting an irrevocable letter of credit or other security acceptable to the College to guarantee payment of such amounts within thirty (30) days of the date the Order becomes final, in the amount of \$16,060.00; and
5. Dr. Margaliot pay costs to the College in the amount of \$15,000.00 within thirty (30) days of the date the Order becomes final.

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

**TEXT of PUBLIC REPRIMAND**  
**Delivered September 22, 2016**  
**in the case of the**  
**COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO**  
**and**  
**DR. DR. ZVI MARGALIT**

When you qualified as a physician, you were given the privilege of joining a profession that was marked by respect. You have abused that privilege and that respect by your selfish, sordid, and reprehensible behaviour.

You victimized a young woman who was doubly, even triply vulnerable, as a result of her age, her position as a student, and most of all her need for your care as a surgeon.

You brought disgrace on yourself and on your colleagues in the profession. You brought about distrust of this profession by the public.

Not only did you harm the victim herself, you harmed vulnerable patients far beyond your own patients by introducing doubt and distrust into their relationship with their physicians.

You have received the most severe, some would say the harshest, penalty that this college can impose. But let there be no mistake: it is a penalty which this Committee would have imposed even if it were not mandated by legislation.

We are saddened to see a physician to being the cause of his own self-destruction. It is even more saddening when we read the testimonials to your surgical skill and care.

We can only hope that this process prompts you to undergo a long, hard, searching self-examination of what lies behind your abusive and abhorrent behaviour.

***This is not an official transcript***