

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Linda June McNally, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the name or identity of the Patient "A" or any information that could disclose the name or identity of patient under subsection 47(1) of the *Health Professions Procedural Code* (the "*Code*"), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended.

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 45 or 47 is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 for a first offence and not more than \$20,000 for a subsequent offence.

Indexed as: McNally (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 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. LINDA JUNE McNALLY

PANEL MEMBERS:

**DR. L. THURLING
D. EATON-KENT
DR. M. DAVIE
J. DHAWAN
DR. F. SLIWIN**

Hearing Date: November 9, 2006
Decision Date: November 9, 2006
Release of Written Reasons Date: November 29, 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 November 9, 2006. At the conclusion of the hearing, the Committee stated its finding that Dr. McNally committed acts of professional misconduct and delivered in writing its penalty order, with written reasons to follow.

PUBLICATION BAN

In response to a request by counsel for the physician on behalf of Patient “A”, the Committee ordered that no person shall publish or broadcast the name of the patient or any information that could tend to disclose the name or identity of the patient, pursuant to subsection 47(1) of the *Health Professions Procedural Code* (the “Code”), being Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended.

THE ALLEGATIONS

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

1. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”), in that she 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
2. under clause 51(1)(b.1) of the Code, in that she engaged in sexual abuse of a patient.

RESPONSE TO THE ALLEGATIONS

Dr. McNally admitted to allegation #1 as set out in the Notice of Hearing. Counsel for the College withdrew allegation #2.

FACTS AND EVIDENCE

The following facts were established by the Agreed Statement of Facts and Admission filed as an exhibit and presented to the Committee:

PART I – FACTS

1. Dr. McNally began practising medicine as a general practitioner in 2000 and was posted to a Canadian Forces base in Ontario in February 2003. At the base, Dr. McNally worked at the Health Centre, where Patient A also worked.
2. Dr. McNally provided medical services to Patient A, as a general practitioner, beginning on or about May, 2003.
3. In September, 2003, at an office visit, Dr. McNally referred Patient A to a psychologist. The psychologist conducted interviews and testing of Patient A commencing in September, 2003 and conducted eight sessions with Patient A from September 2003 to January 2004.
4. Dr. McNally states that she did not provide psychotherapy to Patient A then, or at any time.
5. Subsequent to a suicide attempt (an impulsive overdose of prescribed and over-the-counter medications), Patient A was admitted to a local hospital by Dr. McNally for 3 days in November, 2003, where she arranged for a psychiatric consultation. Patient A was treated with prescription medication during that hospital admission. Following hospitalization, Patient A met with the psychologist in January, 2004.
6. Dr. McNally states that in early 2004, although there was no romantic relationship, she concluded that it would be preferable if she did not act as Patient A's physician, because Patient A was a staff member who needed follow up with respect to emotional issues.

7. Dr. McNally took steps to refer Patient A to a psychiatrist no later than the end of February, 2004. In mid April, 2004, Patient A was seen by a psychiatrist at a psychiatric hospital. Prior to that, at the end of March, 2004, Patient A attended on another general practitioner at the base Health Centre in relation to the emotional condition.

8. Throughout the remainder of 2004, Dr. McNally provided incidental medical services to Patient A by signing requisitions in May, 2004 for physiotherapy and in September, 2004 for an orthotics assessment. She renewed the prescription related to Patient A's psychiatric medication in September, and November, 2004.

9. Dr. McNally was absent from town (where Patient A continued to reside) on a foreign deployment from early December, 2004 until returning, on leave, in March, 2005. Prior to her departure in December 2004, Dr. McNally and Patient A's relationship became somewhat romantic in nature. Specifically, Dr. McNally states that on one occasion, in December 2004, Dr. McNally and Patient A held hands, kissed and embraced. Dr. McNally states that she and Patient A had sexual intercourse for the first time in late March, 2005.

10. Dr. McNally signed a Statutory Declaration on May 21, 2005 stating that she and Patient A had "resided together for a continuous period of at least one year immediately preceding the application for recognition" (of May 21, 2005). Dr. McNally now states that the Declaration is false. Dr. McNally did so to enable Patient A to accompany her on her foreign deployment as her dependant which would have permitted Patient A to have access to facilities on the multi-national military base, and have employment and educational opportunities associated therewith.

11. Dr. McNally and Patient A now live together in a committed relationship.

PART II – ADMISSION

12. Dr. McNally admits that by commencing a sexual relationship with a former patient too soon after the termination of the physician-patient relationship, she committed professional misconduct under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”), in that she 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.

FINDING

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts. Having regard to these facts, the Committee accepted Dr. McNally’s admission and found that she has committed an act of professional misconduct under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, in that she 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.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for Dr. McNally made a joint submission as to penalty and costs. It was jointly proposed that Dr. McNally’s certificate of registration be suspended immediately for six months, three months of which shall be suspended upon successful completion of the College’s Boundaries and Medical Ethics courses within a specified time period, at her own expense, at the next available date. The proposal also provided that Dr. McNally receive a public reprimand, pay costs to the College of \$2,500.00 and that the results of the discipline hearing be included in the register.

College counsel submitted in support of the proposed penalty that a discipline penalty must serve to express abhorrence of the misconduct, to uphold the reputation of the profession, to provide specific deterrence to the member and general deterrence to the

profession, and to protect the public. Counsel for the parties submitted that these objectives were met by the jointly proposed order.

Dr. McNally's misconduct displayed her fundamental disregard for the core values of the profession. She should have been aware of the power imbalance in the doctor-patient relationship, particularly with a vulnerable patient such as Patient A. Although Dr. McNally did not provide psychotherapy to the patient, which would have carried with it lifetime prohibition against a sexual relationship, she had referred Patient A to a psychologist for treatment of Patient A's condition. The College has a clear dating policy which states that it is appropriate to wait a period of one year after the cessation of the doctor-patient relationship, when no psychotherapy has been provided, before commencing a sexual relationship with a former patient. Dr. McNally did not abide by this policy, as she engaged in a sexual relationship too soon after cessation of the doctor-patient relationship.

Counsel pointed out mitigating factors in this case. Dr. McNally's early admission to the allegation and cooperation with the proceedings aided in expeditiously resolving the matter. In addition, this is the first time Dr McNally has appeared before the Discipline Committee.

Counsel for the parties provided the panel with copies of various similar cases. These recent Discipline Committee decisions, though not identical, illustrated previous penalties for similar findings of between two and six months suspension of the doctor's certificate of registration, provided the College Boundaries or Ethics courses, or both, were successfully completed by the physicians.

The panel was also reminded of the very clear direction from the appellate court that we must accept a jointly proposed penalty unless it is contrary to the public interest or would bring the administration of justice into disrepute.

The Committee concluded that the jointly proposed penalty was appropriate and should be accepted by the Committee.

ORDER

Therefore, the Discipline Committee ordered and directed that:

1. The Registrar suspend Dr. McNally's certificate of registration for a period of six (6) months, three (3) months of which shall be suspended if Dr. McNally successfully completes, at her own expense, the College's Boundaries Course on the next available date and the College's Medical Ethics Course by May 9, 2007, and provides proof thereof to the College. The commencement date for the suspension is today, November 9, 2006.
2. Dr. McNally appear before the panel to be reprimanded.
3. Dr. McNally pay to the College costs in the amount of \$2,500.00 within ninety (90) days of the date of this Order.
4. The results of this proceeding shall be included in the register.

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