

Indexed as: Wesley (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. STEVEN JOHN WESLEY

PANEL MEMBERS:

R. SANDERS (CHAIR)
DR. R. MACKENZIE
DR. Y. DEBUDA
P. BEECHAM

Hearing Date: June 24, 2002

Decision/Released Date: June 24, 2002

PUBLICATION BAN

DECISION AND REASON FOR DECISIONS

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on June 24, 2002. At the conclusion of the hearing, the Committee made a finding that the member was guilty of professional misconduct and pronounced its penalty order. The Committee further indicated that the reasons for decision would be delivered subsequently in writing.

PUBLICATION BAN

The Committee ordered that no person shall publish or broadcast the identity of the patient or any information which could disclose the identity of the patient under ss.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. Steven John Wesley 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* (the "Code"), in that he has sexually abused a patient;
2. under clause 1(1)2 of Ontario Regulation 856/93 (O. Reg. 856/93") made under the *Medicine Act, 1991*, in that he failed to maintain the standard of practice of the profession; and
3. under subsection 1(1)33 of O. Reg. 856/93, in that he committed 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. Wesley is incompetent as defined by subsection 52(1) of the Code in that his care of the 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

Dr. Wesley pleaded guilty to allegations 1 and 3 as outlined in the Notice of Hearing. The College did not proceed with allegation 2 or with the allegation of incompetence.

EVIDENCE

The following Agreed Statement of Facts, Admission and Consent Disposition was filed as an exhibit and presented to the Committee:

Agreed Statement of Facts, Admission and Consent Disposition

FACTS

1. In 1997, Dr. Wesley was a first year psychiatric resident.
2. X was a patient of Dr. Wesley for approximately seven months.
3. Dr. Wesley's records of his care and treatment of the patient were attached to this document.
4. The patient sought Dr. Wesley's care and treatment in relation to difficulties with self-esteem and anxiety in social situations. One of the issues discussed during her sessions with Dr. Wesley was her difficulty in developing relationships of trust.
5. During the course of the patient's therapy sessions with him, Dr. Wesley made inappropriate and unacceptable comments and disclosures to the patient, including the following:
 - (a) his sister was a stripper;
 - (b) his brother was a biker; and

(c) he had been in therapy during medical school.

6. Dr. Wesley also engaged in sexual joking with the patient, both by telling a joke or jokes with sexual content and by not discouraging the patient from telling such jokes.

7. On what became the patient's final psychotherapy session, Dr. Wesley told the patient that he had a "romantic interest" in her. The patient suggested he discuss these feelings with his supervisor. Dr. Wesley suggested the patient return for her next appointment three days later at 5:45 p.m. The patient did not attend for this or any further appointment.

8. Dr. Wesley advised his supervisor of what had happened. The patient also reported the conduct to Dr. Wesley's supervisor. Dr. Wesley's supervisor told Dr. Wesley not to contact the patient again. Nonetheless, Dr. Wesley did contact the patient again. He contacted directory assistance to get her telephone number and telephoned her at her home in December 1997. In that telephone conversation, he asked her to return to therapy, but the patient declined, again indicating that she did not think this was a good idea given the situation.

9. Three hours later, Dr. Wesley telephoned her again, and again told her that he had a "romantic interest" in her. He proposed a face-to-face meeting, which the patient also declined.

10. In January 1998 at approximately 4:15 a.m., Dr. Wesley called the patient again. He did not speak with her at that time but spoke with her partner.

11. After the College became involved, Dr. Wesley executed an undertaking, by which he continues to abide.

12. The contacts and remarks described above were neither solicited nor desired by the patient. In fact, the patient repeatedly asked Dr. Wesley not to continue to contact her.

ADMISSION

13. Dr. Wesley admits that the conduct set out above constitutes professional misconduct in that it is:

- (i) contrary to Section 51(1)(b.1) of the Health Professions Procedural Code (“the Code”) contained in Schedule 2 of the *Regulated Health Profession Act, 1991*, in that it is sexual abuse of a patient as defined by Section 1(3)(c) of the Code, including behaviour or remarks of a sexual nature by the member towards the patient; and
- (ii) an act or omission relevant to the practise of medicine that, having regard to all the circumstances, would reasonably be regarded as disgraceful, dishonourable and unprofessional.

CONSENT DISPOSITION

14. The parties agree that the penalty will consist of the following:

- (i) Dr. Wesley shall attend before the Discipline Committee to be reprimanded, with the fact of the reprimand to be recorded on the register; and
- (ii) Dr. Wesley’s certificate of registration shall be subject to terms, conditions and limitations set out in the undertaking that was attached at Tab 2, which terms, conditions and limitations shall be available to the public on the College of Physicians and Surgeons of Ontario’s register.

FINDINGS

The Committee accepted as true the facts as set out in the Statement of Agreed Facts. Having regard to these facts, the allegations and the admissions of the member, the Committee found Dr. Wesley guilty of professional misconduct regarding sexual abuse of a patient as defined by ss.1(3)(c) of the Code, which includes behaviour or remarks of a sexual nature by the member towards the patient; and guilty of professional misconduct

regarding an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded as disgraceful, dishonourable or unprofessional.

PENALTY SUBMISSIONS

Counsel for the College and counsel for Dr. Wesley jointly submitted the consent disposition set out above as an appropriate penalty in this case.

Counsel for the College also submitted the patient's witness impact statement (Exhibit #3). In it, the patient states that Dr. Wesley's conduct had an immediate destructive impact on her mental, emotional and physical well being that, five years later, continues to be extremely painful for her everyday. She describes that she has tried to escape through alcohol and attempted suicide on at least three occasions.

Counsel for Dr. Wesley indicated that Dr. Wesley was still in his first year of psychiatric residency when the complaint was made. The conduct occurred early in his residency during his first outpatient rotation and the patient was one of his first outpatients. Dr. Wesley asked to tape the sessions but the patient declined. In his submissions on penalty, counsel indicated that Dr. Wesley was casual and friendly with the patient. He told a Howard Stern sexual joke and she told several back. He suggested that she could improve her self-esteem and tried to keep her out of going back to prostitution. Some sessions lasted for longer than were scheduled; one session went all afternoon. He didn't want her to feel rejected. He thought things were going quite well in therapy up until the session during which he told her he had a romantic interest in her.

Counsel indicated that Dr. Wesley was suspended from his residency program from January 15 to June 30, 1998. During his suspension, he could not receive income or bill OHIP. He continued his studies independently and developed a curriculum course on boundary violations.

After a psychiatric assessment, he was reinstated into the residency program and completed his residency in December 2000. He has a postgraduate registration certificate in psychiatry. He passed his fellowship exam in November 2000 and is working

successfully at a community hospital where he has been offered a permanent position if he is granted an independent certificate of registration.

At the hospital, he is on a team that sees mostly psychiatric in-patients. Therefore, he never sees patients alone as a nurse or social worker accompanies him. His approach to patients is now more formal and he is more vigilant about personal disclosures.

In support of the proposed penalty, counsel for Dr. Wesley reminded the Committee that Dr. Wesley admitted the facts as outlined in the Statement of Agreed Facts and Admission and was found guilty of the lowest level of sexual abuse under the Code, that is, inappropriate language and boundary transgressions. He has had a psychiatric assessment at the request of the College and must now go back to the Registration Committee to apply for his certificate of registration for independent practice.

REASONS FOR PENALTY

The Committee considered the witness impact statement, the circumstances surrounding Dr. Wesley's behaviour, his admission, the consent disposition and his undertaking to the College, which requires ongoing workplace and psychiatric monitoring.

The Committee considered that Dr. Wesley was a first year resident faced with a difficult patient, and that he had served a nine-month suspension through the medical school, which delayed his independent certificate of registration for a year and a half. There was no evidence that Dr. Wesley is a sexual predator. He was a young man who made a serious error in judgment.

The Committee, however, was not entirely satisfied with the proposed consent disposition. On the face of the Agreed Statement of Facts, Admission and Consent Disposition, and the limited record before the Committee, there was no indication of remorse from Dr. Wesley or any indication that he was aware of the harm done to the patient. Therefore, after requesting further submissions from counsel for the College and counsel for Dr. Wesley, and after hearing evidence from Dr. Wesley, the Committee made the following order, which it believes will serve to protect the public, maintain the

integrity of the profession and rehabilitate the member. In addition, it addresses the objectives of specific and general deterrence.

ORDER AS TO PENALTY AND COSTS

The Discipline Committee ordered and directed that:

1. Dr. Steven John Wesley attend before this panel to be reprimanded, with the fact of the reprimand to be recorded on the register;
2. Dr. Wesley's certificate of registration be subject to terms, conditions and limitations set out in the undertaking attached as an appendix to this order, which terms, conditions and limitations shall be available to the public on the College of Physicians and Surgeons of Ontario's register.
3. In addition to the conditions in the undertaking, it is to be a further condition that Dr. Wesley is to have a third party in attendance at all times while seeing female patients.
4. Dr. Wesley post an irrevocable letter of credit, or other security, acceptable to the College, in the amount of \$10,000.00 to reimburse the College for funding provided to the patient under the programme required under section 85.7 of the Code.
5. Any subsequent variance of the conditions is to be requested through a panel of the Discipline Committee as then constituted.
6. Dr. Wesley pay \$2,500.00 to the College toward the costs of the hearing
7. The results of this proceeding be included in the register.

Dr. Wesley waived his right to appeal under the Code and the panel administered the reprimand at the conclusion of the hearing.

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

DR. M. GABEL)	
E. COLLINS)	
DR. P. CHART)	
DR. E. ATTIA (PH.D.))	TUESDAY, THE 2 ND DAY
DR. F. SLIWIN)	OF DECEMBER, 2008

B E T W E E N:

DR. STEVEN JOHN WESLEY

(Applicant)

-and-

COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

(Respondent)

**ORDER AND REASONS FOR ORDER
(On Motion to Vary the Order of the Discipline Committee of 2002)**

INTRODUCTION

On Tuesday, December 2, 2008, the Discipline Committee (the “Committee”) heard a motion brought by Dr. Steven John Wesley for an order seeking to remove terms, conditions and limitations imposed on his certificate of registration pursuant to an Order of the Committee made on June 24, 2002 and set out in its decision dated July 23, 2002 (the “2002 Order”). The motion was brought on the consent of the College of Physicians and Surgeons of Ontario (the “College”). At the conclusion of the hearing, the Committee allowed the motion and delivered its order removing the terms, conditions and limitations imposed on Dr. Wesley’s certificate of registration in writing, with written reasons to follow.

THE MOTION

The member's Notice of Motion sought:

1. (a) An order for the removal of the terms, conditions and limitations imposed on Dr. Wesley's Certificate of Registration pursuant to the June 24, 2002, order of the Discipline Committee; and
- (b) such further and other relief as may seem just.

BACKGROUND

The circumstances which led to the imposition of restrictions flow from events occurring in the fall of 1997 to January 1998 when Dr. Wesley was a first-year resident in psychiatry. He was assigned a female patient to whom he made inappropriate comments, disclosures, engaged in sexual joking and professed a "romantic interest". Subsequent to these events, he did not see her again. However, he made three telephone calls to her, contrary to the advice of his supervisor. Following a complaint made to the College of Physicians and Surgeons of Ontario, the Complaints Committee of the College worked out an agreement that resulted in Dr. Wesley signing an undertaking dated June 16, 2000. This undertaking included an apology to the patient, workplace monitoring and psychiatric treatment. The patient later repudiated and the matter came before the Discipline Committee for a hearing on June 24, 2002. The penalty order from the discipline proceeding was made on June 24, 2002, and is reflected in the Discipline Committee's written Decision and Reasons for Decision dated July 23, 2002 (the "2002 Order"). The 2002 Order specified that, in addition to the conditions in the undertaking, Dr. Wesley be required to have a third party in attendance at all times when seeing female patients. In July 2004, after his educational license expired, the Registration Committee granted Dr. Wesley a certificate of registration with the same terms, conditions and limitations as his educational license and further required that he participate in the Physician Health Program ("PHP") facilitated by the Ontario Medical Association ("OMA"). As noted below, Dr. Wesley has complied with all the terms, conditions and limitations imposed since 2004.

EVIDENCE

Documentary evidence was presented to and received by the Committee as follows: Affidavit of Steven John Wesley (sworn March 24, 2008) with attached Exhibits; Decision and Reasons for Decision of the Discipline Committee dated July 23, 2002; Statement of Agreed Facts, Admission and Consent Disposition dated June 24, 2002, with attached medical record of the complainant and undertaking of Dr. Wesley dated June 16, 2000, undertaking of workplace monitoring physician, and undertaking of treating physician; Dr. Wesley's Certificate of Registration as it appears on the CPSO website with Registration Committee's directive effective July 23, 2004; and, a Curriculum Vitae of Steven John Wesley. In addition, the Committee was presented with and received five letters from Mr. A (case manager PHP) dated August 31, 2005, August 14, 2006, August 31, 2007, October 29, 2007, December 4, 2007, and a psychiatric assessment report of Dr. Steven Wesley by Dr. B, dated August 29, 2007. The evidence was received and filed on consent and was not disputed.

DECISION AND REASONS FOR DECISION

As stated above, the College consented to Dr. Wesley's motion to vary the 2002 Order. There is no express authority in the Code for a panel of the Discipline Committee to vary an order made by a prior panel, except in the very serious matter of reinstatement of a certificate revoked or suspended. While the Code is silent as to the authority to consider an application to vary by the Committee, in the past, the Committee has heard and decided motions to vary and has proceeded on the basis of an implied authority in the Committee to grant such orders. In this case, the 2002 Order in question expressly reserves to a subsequent panel the authority to vary the terms and conditions of that order. The 2002 Order, at paragraph 5, provides: "[a]ny subsequent variance of the conditions is to be requested through a panel of the Discipline Committee as then constituted". In any event, there was no dispute between the parties that the Committee has the jurisdiction to vary the Order. This was clarified by a recent ruling of the Divisional Court in *Li v. C.P.S.O.*, [2008] CanLii 37613 (Ont. Div. Ct.).

Counsel for both parties agreed that the onus was upon Dr. Wesley to show that a change in circumstances has occurred such that it is in the public interest for the terms, conditions and limitations to be removed. The burden of proof to be met is the civil standard or a balance of probabilities. In this case the College has conceded that Dr. Wesley has met this burden.

After hearing the submissions of counsel and reviewing and considering the evidence presented, the Committee found that Dr. Wesley had met the required burden of proof and had indeed demonstrated that it was no longer in the public interest to have terms, conditions and limitations imposed on his certificate of registration.

The Committee was satisfied that Dr. Wesley understands and takes responsibility for his past behaviour. He has acknowledged making a serious error in judgment and the unacceptable nature of his remarks. At the time he was a novice physician, unskilled in the management of difficult patients and failed to appreciate his own vulnerabilities. He recognized that he lost sight of the patient and the task. In the psychiatric report prepared by Dr. B, it was clear that Dr. Wesley understands that he indulged his feelings resulting in boundary violations and regrets acting the way he did. He acknowledged his actions to his superior right from the beginning and has faced the consequences of his unfortunate behaviour.

Dr. Wesley has faced a significant penalty which has resulted in more than ten years of uncertainty with respect to his career and finances. He was out of work for two periods related to the events which led to the 2002 Order (six months suspension of residency, and delay in renewal of his certificate of registration when his educational license expired). He has paid the price of having colleagues report on his work, psychiatric monitoring and PHP supervision. He has complied in all respects with the limitations imposed.

Notwithstanding the supervision outlined above, Dr. Wesley has established a stable forensic psychiatric practice, where he spends four days each week. He also spends one

day each week as a consulting psychiatrist and has a small private psychiatric practice. He has a stable marriage and home environment with five children. He states that, as a result of the incident and the therapy which followed, he has become a better person, more mature and compassionate. There has been no other blot on his personal or professional life.

Dr. Wesley has maintained a relationship with the PHP in recent years at his own request and reports from his case manager and experts involved have always indicated full compliance, no evidence of addiction and no concerns. Alcohol has not affected his life significantly in any way. At one time, he used marijuana regularly but, since 2000, he decided to abstain and has not used marijuana at all in the past five years. He has never abused prescription drugs.

In addition, Dr. Wesley has sought an independent psychiatric opinion from Dr. B. The Committee was impressed with the thoroughness of this assessment. Specifically, the Committee acknowledges the conclusions which highlight Dr. Wesley's maturity and responsibility. Dr. B wrote that: "[h]e appears to be a responsible physician, who demonstrates a good understanding of boundary issues and how to manage them."

The Committee was cognizant of the fact that almost eleven years have elapsed since the events which led to the imposition of the terms and limitations, and six years have elapsed since the Discipline Committee's 2002 Order. Not only does the *Regulated Health Professions Act* (RHPA) provide for the possibility of reinstatement after revocation for the most egregious sexual abuse after five years (see section 72(3)), but the prior 2002 Order from the Discipline Committee in this matter envisioned a future request for variation of its order. Taking guidance from this, and considering all the evidence before it, the Committee had no reservation in accepting that it is now time for the terms, conditions and limitations on Dr. Wesley's certificate of registration to be removed. The Committee further understands that the Registration Committee is to be made aware of the Discipline Committee's order.

ORDER

Therefore, on December 2, 2008, the Discipline Committee ordered and directed:

1. The Registrar to remove as of the date of this Order the terms, conditions and limitations imposed upon Dr. Wesley's certificate of registration imposed on June 24, 2002 in its decision of July 23, 2002.