

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Sushma Joshi this is notice that the Discipline Committee ordered that no person shall publish the submissions relating to the motion made on behalf of Dr. Joshi's husband for exclusion of the public and non-publication order pursuant to subsection 45(3) of the Health Professions Procedural Code (the "Code"), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, as amended.

Subsection 93 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 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.

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on January 29, 2004. At the conclusion of the hearing, the Committee stated its finding that the member committed professional misconduct and delivered its penalty order with written reasons to follow.

PUBLICATION BAN

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ALLEGATION

The Notice of Hearing alleged that Dr. Joshi committed an act of professional misconduct under paragraph 1(1)(33) of Ontario Regulation 856/93 of the *Medicine Act*, namely, 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 ALLEGATION

At the outset of the hearing, Dr. Joshi admitted the allegation in the Notice of Hearing.

EVIDENCE

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

1. Dr. Sushma Joshi ("Dr. Joshi") is a family physician practicing in Mississauga. Dr. Joshi graduated from medical school in India in 1971. She has been licenced to practice in Ontario since 1979. Dr. Joshi has no record of disciplinary proceedings with the College.
2. Dr. Joshi is married to a physician. They have been married for 29 years and have three children.

3. In December, 1999 a patient of Dr. Joshi's husband made a complaint about her husband, who is also a physician, to the College. The patient made several serious allegations against Dr. Joshi's husband including that he committed fraud in that he asked for and received money from the patient.
4. Dr. Joshi learned of the complaint against her husband and became upset. She wished to speak to someone who knew the complainant about the complaint. Within a matter of days, Dr. Joshi obtained the telephone number of an acquaintance of the patient.
5. The acquaintance of the patient suggested that Dr. Joshi speak to the patient directly. Dr. Joshi spoke on the telephone with the patient on the same day. The patient advised her that if she paid her \$26,000 to \$30,000, which she claimed was owing to her, she would not proceed with the complaint. Dr. Joshi believed that the complaint would have a significant effect on her, her husband and her family and further believed that the patient's main concern was the money claimed by the patient. As a result, Dr. Joshi met with the patient and agreed to the patient's demand for the repayment of the money claimed by the patient and the patient agreed to withdraw the complaint.
6. On or about February 22, 2000, Dr. Joshi paid the patient \$24,000. The patient initially withdrew the complaint against Dr. Joshi's husband, as agreed, but then reinstated it.
7. The matter of the payment by Dr. Joshi came to the attention of the College Investigator assigned to investigate the complaint against Dr. Joshi's husband.
8. Dr. Joshi cooperated with the College's investigation in respect of her husband in an interview and a written response to the College in respect of that complaint and acknowledged the severity of her mistake.
9. Dr. Joshi has not recovered the funds paid to the patient and litigation over the issue is ongoing.
10. The Complaints Committee of the College did not refer the complaint against Dr. Joshi's husband to the Discipline Committee.

FINDINGS

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. Joshi's admission and found that she committed professional misconduct under paragraph 1(1)(33) of Ontario Regulation 856/93 of the *Medicine Act*; namely, 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 the member made a joint submission regarding penalty and costs.

Counsel for Dr. Joshi submitted a book of character evidence (Exhibit 3).

The Committee accepted the joint submission for penalty and costs. The penalty amply reflects the Committee's disapproval of the behaviour of Dr. Joshi, and should serve as a strong deterrent to other members of the profession. It is entirely unacceptable for a member of the College to make a payment to a complainant in exchange for the withdrawal of the complaint. The imposed suspension and the required ethics course address the need to ensure protection of the public and to govern Dr. Joshi's future behaviour. The Committee acknowledges mitigating circumstances in that Dr. Joshi admitted her conduct to the College in a letter and in an interview with the College investigator when the complaint against her husband was reinstated. She admitted at the outset she had made a serious mistake and did not attempt to hide her actions. She has accepted complete responsibility for her actions and has shown remorse and regret that she was before the committee. The Committee accepts that Dr. Joshi had a lapse of judgement and panicked about the complaint against her husband. The Committee also accepts that Dr. Joshi has no previous history of any misconduct with the College. As the letters regarding her character indicate, she is a valued member of her community and the medical profession. Nevertheless, the Committee wishes to emphasize to members of the profession that Dr. Joshi has committed an act of professional misconduct which requires an appropriate sanction.

ORDER

Therefore, the Discipline Committee ordered and directed that:

1. The Registrar is to suspend Dr. Joshi's certificate of registration commencing January 30, 2004, for a period of three months, two months of which will be suspended if, within twelve months, Dr. Joshi successfully completes the College ethics course;
2. Dr. Joshi is to attend before the Committee to be reprimanded;
3. Dr. Joshi is to pay costs to the College in the amount of \$2,500.00 by April 5, 2004; and
4. The results of this proceeding are to be included in the register.

After the hearing, Dr. Joshi waived her right to appeal and the Committee administered the reprimand.