

Indexed as: Waxman (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(1) 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. MARK LAWRENCE WAXMAN

PANEL MEMBERS: DR. N. DE (CHAIR)
DR. Y. deBUDA
DR. I. BAXTER
G. DEGROOT
A. VANSTONE

Hearing Date: November 18, 2002

Decision/Released Date: November 18, 2002

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on November 18, 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 with written reasons to follow.

PUBLICATION BAN

At the request of counsel for the College and with the consent of the defence, the Committee made an order pursuant to subsection 47(1) of the *Health Professions Procedural Code* (the Code) which is Schedule 2 to the *Regulated Health Professions Act, 1991*, banning the publication of the identity or any information that could disclose the identity of the witnesses.

ALLEGATIONS

It was alleged in the Notice of Hearing that Dr. Mark Lawrence Waxman has committed an act of professional misconduct as follows:

1. under clause 51(1)(b.1) of the Code, in that he sexually abused patients;
2. under paragraph 27.29 of Ontario Regulation 448 ("O. Reg. 448") and paragraph 29.30 of Ontario Regulation 548 ("O. Reg. 548"), made under the *Health Disciplines Act*, in that he engaged in sexual impropriety with patients;
3. under clause 1(1)33 of O. Reg. 856/93 and under paragraphs 27.32 of O. Reg. 448 and paragraph 27.33 of O. Reg. 548 made under the *Health Disciplines Act*, in that he engaged in conduct or an act 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 ALLEGATIONS

Dr. Waxman did not contest the allegations set out in the Notice of Hearing. The Committee notes that under rule 3.02 of the Rules of the Discipline Committee, when a member does not contest an allegation, the member consents to the following:

- (a) that the Discipline Committee can accept as correct the facts alleged against the member on those allegations 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 purpose 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

The following Statement of Facts, Findings Requested and Proposed Disposition was filed as Exhibit 2 and presented to the Committee:

**STATEMENT OF FACTS, FINDINGS REQUESTED
AND PROPOSED DISPOSITION****FACTS****Patient A**

1. Dr. Waxman has had a certificate of registration authorizing independent practice in Ontario since June 1977. He practises as a family physician in Hamilton.
2. In the summer and early fall of 1999, Dr. Waxman had a sexual relationship with a patient, "Patient A", which included sexual intercourse and oral sex. Although there was one further encounter in the summer of 2000, the sexual relationship was not

ongoing between the fall of 1999 and the summer of 2000. The background of that relationship is as follows.

3. In about 1994, Patient A, who was 34 years old and married, required a new family physician, as hers was retiring. Patient A got the name of Dr. Waxman as a physician who was taking on new patients. His office was close to her home.
4. In January 1995, Patient A became Dr. Waxman's patient.
5. Dr. Waxman's office was on the third floor, and had several examination rooms.
6. Dr. Waxman provided general medical care to Patient A. This care included:
 - (i) On August 3, 1995, Patient A presented to Dr. Waxman for her first prenatal examination of her sixth pregnancy. She had two children and had previously suffered three spontaneous abortions. Her expected date of confinement was March 3, 1996.
 - (ii) To Dr. Waxman's knowledge, Patient A was admitted to the hospital on November 12, 1995, with a diagnosis of pre-term labour at 24 weeks gestation. Her infant was born on November 14, 1995. He was hospitalised from the date of his birth until March 1996. He is blind, and has numerous health problems. Dr. Waxman was his family physician from birth until Patient A left his care. In January 1996, Dr. Waxman referred Patient A for counselling in relation to sexual abuse she had suffered as a child at the hands of an uncle. Patient A had disclosed the abuse to police in 1995, and a criminal trial (and conviction) later followed.
 - (iii) Patient A and Dr. Waxman had discussions about problems in her marriage (and later problems in her divorce proceedings) and her problems with alcohol abuse.

- (iv) In 1996, Dr. Waxman wrote that [1] Patient A was unable to return to work as she was suffering from chronic anxiety and family stress related to the birth of her premature infant with numerous medical problems, and who required constant care, including the care of an ileostomy bag; [2] that she had seen a social worker weekly since May of 1996 and that her diagnosis was anxiety disorder. He further expressed his opinion that Patient A was psychologically unable to return to work and that she had marked limitation of functional capacity. [3] Dr. Waxman also noted that as the child's condition improves and care lessened, Patient A would soon be able to return to her regular work duties.
 - (v) In 1997, Dr. Waxman sent Patient A for a psychiatric consultation. She had problems with alcohol, an eating disorder, difficulties with her handicapped son and was dealing with the issue of her childhood sexual abuse.
 - (vi) In 1997, Patient A suffered from a major depressive episode.
 - (vii) In 1997, she attended Alcohol, Drug and Gambling Services to deal with her alcohol problems.
 - (viii) That is, during the course of the doctor-patient relationship, Patient A told Dr. Waxman about problems in her marriage, problems with her premature, blind and handicapped infant, alcohol abuse and her difficulties dealing with sex abuse proceedings against her uncle in which she was a complainant. Dr. Waxman consoled her and provided her with a referral to a social worker and a psychiatrist to deal with her emotional and psychological problems.
7. During the time that Patient A was Dr. Waxman's patient, Dr. Waxman prescribed to her Paxil 20 mg po OD a day from April 1997, which was initially increased to 40 mg a day prior to Patient A seeing Dr. A. in October, 1997, then switched

to Nortriptyline, 25 mg t.i.d. by Dr. A. in October, 1997. Dr. Waxman also prescribed sleeping pills, Fiorinal for migraines, and Antabuse, among other things.

8. During the course of the doctor-patient relationship, Patient A saw Dr. Waxman for medical appointments at varying frequency.

9. A chronology of the doctor-patient relationship is attached [not forming part of these Reasons].

10. On about July 5, 1999, when Patient A was feeling better, Dr. Waxman displayed his enthusiasm by hugging her and then kissing her on the cheek at the end of her appointment. Patient A's son was in day care, and she was being weaned off her antidepressants. She was functioning quite well. Dr. Waxman asked Patient A out for a cup of tea to get to know her better.

11. Dr. Waxman first attended her home on a Friday night in July 1999, after calling her that afternoon and asking whether they could get together that evening. Patient A agreed, and suggested that Dr. Waxman should come between 8:30 p.m. and 9:00 p.m. After Dr. Waxman arrived at her house, Patient A and Dr. Waxman talked for a while on her couch. He asked if he could kiss her, which she agreed to. The kissing led to sexual intercourse.

12. Dr. Waxman did not use protection. He told her he had had a vasectomy and was not around a lot of women, so that she did not have to worry.

13. Dr. Waxman and Patient A also engaged in oral sex.

14. Dr. Waxman telephoned her about once every couple of weeks, visited her at her home about once every two weeks, and usually engaged in sexual intercourse and/or oral sex with her during these visits. There were approximately six visits to Patient A's home over a two to three month period in the summer of 1999, and one further sexual encounter in or around June of 2000.

15. On two or three occasions, Patient A indicated to Dr. Waxman that it was not convenient to get together that night. Dr. Waxman accepted her wishes on these occasions.

16. Patient A asked Dr. Waxman about having a PAP test, as she had not been tested in quite some time. She said she did not feel comfortable having him carry out the PAP test in the circumstances, and suggested that he refer her to another doctor. Dr. Waxman said a nurse could attend in the room for the PAP test, or he could refer her to another doctor for the test. He advised he did not like the latter idea, as he did not want to lose her as a patient and also wanted to be her friend. He also said he wished her to feel comfortable. Patient A did not then repeat her request for a referral to another physician.

17. Near the beginning of their relationship, Dr. Waxman suggested that they could go to a movie or for coffee and he would pay for a baby sitter, but that situation never transpired. Dr. Waxman never socialized with Patient A outside of her residence.

18. During their relationship Dr. Waxman shared a significant amount of personal information with Patient A, including the following:

- (i) On weekends, he was dating a pharmacist. The pharmacist lived with her two sons. Dr. Waxman disclosed to Patient A, a medical condition of the pharmacist.
- (ii) Dr. Waxman also shared information regarding patients, but did not disclose patient names.
- (iii) Dr. Waxman complained about his colleague Dr. B. who left the practice after approximately 6 months.
- (iv) Dr. Waxman had just purchased a condominium in Dundas. His parents moved into the same building in order that Dr. Waxman could take care of their condominium when they travel to Florida.
- (v) Dr. Waxman had a daughter who was at the time 20 years old, and a son who was 17 years old; his ex-wife is a dental hygienist who now sells Amway and who remarried in 1999. Dr. Waxman advised that he paid his ex-wife \$3,650.00 each month in child support, and that she lives in their marital home in.

- (vi) Dr. Waxman played golf every Saturday.
- (vii) Dr. Waxman's father worked in a car wrecker's all his life and had recently purchased a new Honda.

19. Patient A was hesitant to change doctors because she knew there were very few doctors taking on new patients. However, she did not inform Dr. Waxman of this.

20. In June 2000, sexual relations between Dr. Waxman and Patient A discontinued. Sexual intercourse had occurred only once in the year 2000.

21. Patient A attended at Dr. Waxman's office for the last time in October 2000. This was for a wrist injury and there was no one else in the office, apart from a new receptionist.

22. In October 2000, Patient A found a new physician and signed a form requesting that Dr. Waxman's chart of his care of her be transferred.

23. Dr. Waxman then made several telephone calls to Patient A's residence, which she did not answer.

Patient B

24. Patient B was a patient of Dr. Waxman from 1987 to 1990. She suffered from anxiety and agoraphobia, and was prescribed anxiolytics by Dr. Waxman.

25. Patient B was separated from her husband during part of the time she was treated by Dr. Waxman.

26. During one appointment, Dr. Waxman kissed patient B on the lips. Patient B told Dr. Waxman that she was infatuated with him.

27. Patient B and Dr. Waxman engaged in a number of sexual activities during the course of the physician-patient relationship, including sexual intercourse. In a number of office appointments, Dr. Waxman and Patient B engaged in hugging and kissing.

28. On one occasion in about 1990, Dr. Waxman called Patient B and asked if he could visit her home in the evening. Patient B agreed. Dr. Waxman and the patient talked briefly, and then had sexual intercourse on the patient's living room sofa. Dr. Waxman left Patient B's house shortly after intercourse was completed.

29. In the summer of 1990, on the advice of a counsellor, Patient B transferred her care to a different family physician.

Patient C

30. Patient C was a patient of Dr. Waxman's from about 1992 to 1996. She saw Dr. Waxman monthly during this time, often with her husband, who was also Dr. Waxman's patient.

31. Patient C was about 76 years of age in 1996.

32. On one occasion in 1996, Patient C became upset about the difficulties she was having with her husband. Dr. Waxman hugged the patient as a gesture of compassion, although the patient did not interpret it this way.

33. On another occasion, at an appointment at which the patient was accompanied by her husband, Dr. Waxman was asked to look at a mole on the patient's nose. Dr. Waxman said "When I look into your big brown eyes I don't notice anything on your nose".

34. On a third occasion a few weeks later, Dr. Waxman hugged the patient tightly and kissed her on the lips at the end of an appointment, which he intended as a gesture of support, but which the patient did not interpret this way.

35. Patient C's husband often accompanied her to appointments and was present for one of the visits outlined above.

FINDINGS REQUESTED BY THE COLLEGE

36. On the basis of the facts agreed to above, Dr. Waxman pleads no contest to the allegations contained in the Notice of Hearing, that is that he has committed an act of professional misconduct:

- (a) under clause 51(1)(b.1) of Health Professions Procedural Code (the "Code"), Schedule 2 to the *Regulated Health Professions Act*, 1991, S.O. 1991, c.18, as amended, in that he sexually abused patients;
- (b) under paragraph 27.29 of Ontario Regulation 448 ("O. Reg. 448") and paragraph 29.30 of Ontario Regulation 548 ("O. Reg. 548"), made under the *Health Disciplines Act*, in that he engaged in sexual impropriety with patients;
- (c) under clause 1(1)33 of O. Reg. 856/93 and under paragraphs 27.32 of O. Reg. 448 and paragraph 27.33 of O. Reg. 548 made under the *Health Disciplines Act*, in that he engaged in conduct or an act relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

DISPOSITION

37. The College proposes that the penalty consist of the following:

- (i) Dr. Waxman will attend before the Discipline Committee to be reprimanded;
- (ii) Dr. Waxman's certificate of registration will be revoked, such revocation to take effect immediately;
- (iii) Dr. Waxman will pay costs to the College in the amount of \$2,500.00;
- (iv) Dr. Waxman will reimburse the College for any amount the College may pay, up to a maximum of \$10,000 for funding for therapy and counselling for Patient A under section 85.7 of the Health Professions Procedural Code;

- (v) Dr. Waxman will post security acceptable to the College to guarantee the payment of the amounts referred to in paragraph (iv) above; and
- (vi) The results of this proceeding will be included in the register.

FINDINGS

The Committee accepted as correct all of the facts set out in the Statement of Facts by reason of the plea of no contest entered. Having regard to these facts, and the allegations against the member, the Committee found Dr. Waxman had committed an act of professional misconduct under clause 51(1)(b.1) of the Code, in that he sexually abused patients and that he engaged in sexual impropriety with patients under paragraph 27.29 of O. Reg. 448 and paragraph 29.30 of O. Reg. 548, made under the *Health Disciplines Act*. The Committee also found Dr. Waxman committed professional misconduct under clause 1(1)33 of O. Reg. 856/93 and under paragraphs 27.32 of O. Reg. 448 and paragraph 27.33 of O. Reg. 548 made under the *Health Disciplines Act*, in that he engaged in conduct or an act 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 proposed that the disposition set out in paragraph 37 of the Statement of Facts, Findings Requested and Proposed Disposition above was the appropriate disposition in the circumstances of this case. Counsel for the College also submitted a Victim Impact Statement to the Committee. Counsel for Dr. Waxman did not oppose the disposition proposed by the College.

The Committee accepted the proposed disposition as the appropriate penalty in this case. Revocation is the mandatory penalty under subsection 51(5) of the Code in cases of professional misconduct by sexual abuse involving sexual intercourse or oral to genital contact.

Dr. Waxman did not contest the allegations or make submissions as to an appropriate alternative penalty. The Committee acknowledges that this saved his victims the trauma of having to testify at a public hearing and of being re-victimized through that process. This also saved the College the time and costs associated with a long hearing.

However, the Committee found that there were several aggravating facts that, in the opinion of the Committee, call for revocation of Dr. Waxman's certificate of registration even in the absence of the mandatory penalty called for by reason of Dr. Waxman's conduct toward Patient A.

Dr. Waxman engaged in sexual intercourse with Patient A and Patient B who were both vulnerable patients. Patient B suffered from anxiety and agoraphobia and received treatment for this from Dr. Waxman. She was also separated from her husband for part of this time. Patient A, was already a victim of sexual abuse by a family member and was particularly vulnerable. Her victim impact statement was very moving. She was dealing with a handicapped son and a divorce. She was suffering from depression and an eating disorder, for which Dr. Waxman was treating her. She admitted to Dr. Waxman that she was attracted to him, which was when the sexual intercourse started. He discouraged her from attending another doctor because he said he did not want to lose her even though she requested to be sent to another doctor for her Pap smear, because she would be uncomfortable if he did the test. Dr. Waxman also crossed several boundaries of appropriate professional behaviour with her in that he shared his own marital problems, personal facts about himself and his children and personal facts about some of his patients although he did not mention the patients' names.

Patient C, an elderly patient, was made to feel very uncomfortable, because of Dr. Waxman's comments and his hugging and kissing.

The Committee was of the view that Dr. Waxman did not show any remorse towards his victims. Dr. Waxman also failed to issue any type of apology to the patients he harmed.

Therefore, the Committee believes that revocation is required to satisfy the principles of public protection, specific and general deterrence, rehabilitation of the member and to maintain the public's confidence in the ability of the profession to regulate itself.

ORDER

Therefore, the Committee orders and directs that:

1. Dr. Waxman attend before the Discipline Committee to be reprimanded.
2. Dr. Waxman's certificate of registration be revoked and such revocation to take effect immediately.
3. Dr. Waxman pay costs to the College in the amount of \$2,500.00, within 30 days of the date of this order.
4. Dr. Waxman reimburse the College for any amount the College may pay, up to a maximum of \$10,000, within 30 days of the date of this order, for funding for therapy and counselling for Patient A under section 85.7 of the *Health Professions Procedural Code*.
5. Dr. Waxman will post security acceptable to the College to guarantee the payment of the amounts referred to in paragraph (4) above.
6. The results of this proceeding will be included in the register.

Dr. Waxman waived his right to appeal under s.70 of the Code and, the panel administered the reprimand following the conclusion of the hearing.