

NOTICE OF PUBLICATION BAN

By its order of February 8, 2016, in the College of Physicians and Surgeons of Ontario and Dr. Chinniah Krishnalingam, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of the patient at issue, Patient A, or any information that could identify Patient A 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,
- (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.

**Indexed as: Ontario (College of Physicians and Surgeons of Ontario) v. Krishnalingam, 2016
ONCPSD 8**

**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. CHINNIAH KRISHNALINGAM

PANEL MEMBERS:

**DR. P. TADROS (Chair)
D. GIAMPIETRI
DR. C. LEVITT
D. DOHERTY
DR. R. SHEPPARD**

Hearing Date: February 8, 2016
Decision Date: April 8, 2016
Release of Written Reasons: April 8, 2016

PUBLICATION BAN

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 February 8, 2016. At the conclusion of the hearing, the Committee stated its finding that Dr. Krishnalingam committed an act of professional misconduct, and delivered its penalty and costs order with written reasons to follow.

THE ALLEGATIONS

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

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

RESPONSE TO THE ALLEGATIONS

Dr. Krishnalingam pleaded no contest to the allegations in the Notice of Hearing.

THE FACTS

The following facts were set out in a Statement of Uncontested Facts that was filed as an exhibit and presented to the Committee:

1. Dr. Chinniah Krishnalingam (“Dr. Krishnalingam”) obtained his certificate of registration with the College in 1991. Dr. Krishnalingam practiced as a psychiatrist until December 21, 2015 when he resigned his certificate of registration.
2. Dr. Krishnalingam treated Patient A on at least 26 separate occasions between May and June 2011, and during follow-up appointments in 2011 and 2012. The treatment took place at a hospital in Ontario (“the Hospital”), where Patient A attended the Hospital’s mental health Program between May and June 2011. Patient A had a history of experiencing abuse and suffered repeated depressive episodes throughout her life.
3. During appointments, Dr. Krishnalingam asked Patient A insensitive and inappropriate questions about her sex life, including how many times per week she had sex with her husband. Dr. Krishnalingam also suggested that Patient A’s husband had engaged in extramarital sex because she did not have sex with him often enough. Dr. Krishnalingam advised that she should have sex with her husband more often so that he would not have to ‘go elsewhere’ for sex.
4. Dr. Krishnalingam also made inappropriate comments about Patient A’s appearance, including telling Patient A she was a very beautiful woman and that her lips were very sexy.
5. Dr. Krishnalingam grabbed and hugged Patient A on several occasions despite her clear indications on each occasion that she did not consent to physical contact.
6. On one occasion, at the end of a session as Patient A was leaving, Dr. Krishnalingam grabbed and hugged her with both arms, pressing his chest against hers. Dr. Krishnalingam attempted to kiss Patient A during this hug; she pushed him away and turned her head to the side such that his lips touched her cheek.
7. On several occasions Dr. Krishnalingam asked Patient A to attend the hospital on weekends when he was on call. When she asked why, he indicated so they could be alone and would not be disturbed. He gave his personal phone number to her and asked that she call him to arrange meetings while he was on call at the hospital. Patient A did not call him on his personal phone number or see him when he was on call. During follow-up appointments Dr. Krishnalingam inquired as to why she was not coming to see him when he was on call and again

indicated nobody else would be present on the floor, they would be alone together, and they could talk and get to know one another.

8. During sessions with Patient A, Dr. Krishnalingam failed to maintain patient confidentiality by leaving patient files out on his desk such that Patient A could see the patients' names, dates of birth, medications, and other personal health information.

9. On at least one occasion Dr. Krishnalingam disclosed to Patient A that he was being investigated by the College and asked whether she had reported him.

FINDINGS

Under the Rules of the Discipline Committee, certain legal consequences follow when a physician pleads no contest to allegations of professional misconduct. Rule 3.02 of the Discipline Committee's Rules of Procedure provides:

3.02(1) Where a member enters a plea of no contest to an allegation, the member consents to the following:

- a) that the Discipline Committee can accept as correct the facts alleged against the member on that allegation 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 purposes 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.

The Committee accepted as correct all of the facts set out in the Statement of Uncontested Facts and found that these facts constituted professional misconduct for the purposes of this proceeding, in that Dr. Krishnalingam:

- engaged in the sexual abuse of Patient A; and
- 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 AND REASONS FOR PENALTY

Counsel for the College made a submission on penalty which Dr. Krishnalingam's counsel did not oppose.

The College sought an order which would:

- direct the Registrar to revoke Dr. Krishnalingam's certificate of registration;
- require Dr. Krishnalingam to appear before the panel to be reprimanded;
- require Dr. Krishnalingam to reimburse the College for funding provided for therapy for patients who had been abused by their physicians, and post acceptable security to guarantee payment of such amounts in the amount of \$16,060.00; and
- require Dr. Krishnalingam to pay costs to the College in the amount of \$5,000.00.

EVIDENCE ON PENALTY

During the penalty portion of the hearing, the College introduced additional evidence pertaining to Dr. Krishnalingam's prior history with the College, which consisted of a Complaints Committee Decision and Reasons from January 1996 (exhibit 4); a Decision and Reasons of the Discipline Committee dated September 12, 2005 (exhibit 5); a Decision and Reasons of the Inquiries, Complaints and Reports Committee (ICRC) dated March 21, 2012 (exhibit 6); and a memorandum dated June 15, 2011 documenting that the College had notified Dr. Krishnalingam that a Registrar's Investigation had been initiated following receipt of a mandatory report from a physician (exhibit 7).

The College provided the Committee with an impact statement of the complainant (Patient A) (exhibit 3).

Dr. Krishnalingam introduced no evidence.

DECISION

The Committee decided that the penalty, which the College proposed and Dr. Krishnalingam did not contest, was fair, necessary, and appropriate in the circumstances.

REASONS FOR DECISION

Of foremost importance in the principles governing penalty imposition in disciplinary proceedings is the protection of the public. Other key principles include maintenance of public confidence in the integrity of the profession and in the profession's ability to govern itself effectively in the public interest; general deterrence of the membership as a whole; specific deterrence of the member; and the rehabilitative needs of the member, where relevant. The Committee's task is to weigh these principles in light of the specific circumstances of the case in order to arrive at a penalty that is fair, reasonable, and appropriate.

The Committee considered the nature of the misconduct committed by Dr. Krishnalingam as described in the Statement of Uncontested Facts. As a psychiatrist working in a hospital-based mental health clinic, Dr. Krishnalingam had seen the complainant frequently over a period of approximately six weeks in May and June 2011. His behaviour with this patient was very troubling to the Committee. Boundary violations were frequent, repetitive, and alarming. Dr. Krishnalingam, for example, inappropriately and insensitively inquired about his patient's sexual activities with her husband. He made inappropriate comments about her appearance, grabbed and hugged her repeatedly, and tried to kiss her on the lips on one occasion. He invited her to meet him at the hospital on weekends so that they could be alone together, and he gave her his personal telephone number so that she could call to arrange such a meeting (which she did not do). Dr. Krishnalingam subjected this patient to actions and remarks of a sexual nature which amount to not only a most serious breach of trust, but also to a complete failure of his professional responsibility towards this emotionally disturbed and vulnerable individual.

The complainant, in her impact statement, stated that her experience with Dr. Krishnalingam was “scary and hurtful.” She was evidently in a vulnerable state when she started to see him. She wrote that the experience has left her with severe depression, an inability to trust, and nightmares about what occurred. The complainant has been unable to find another psychiatrist, leaving her feeling further victimized by the system. It is clear to the Committee that this patient, already struggling with mental health problems, was further traumatized by her experience with Dr. Krishnalingam.

The Committee found that Dr. Krishnalingam’s interaction with this patient represents a pattern of behaviour and was not merely an isolated set of circumstances. Previous concerns regarding Dr. Krishnalingam behaving similarly have surfaced regularly over a very long period of time:

- As early as 1996, the College’s Complaints Committee (the predecessor committee to the Inquiries, Complaints, and Reports Committee [“the ICRC”]) cautioned Dr. Krishnalingam after he was alleged to have asked a patient insensitive questions of a sexual nature and touched the patient inappropriately in 1994.
- In 2005, the Discipline Committee found that Dr. Krishnalingam had committed professional misconduct with two female patients in 2003 because of boundary violations, unnecessary and insensitive sexual questions, and physical contact which included holding the patients’ hands and hugging them. In its 2005 decision, the Committee expressed some optimism that Dr. Krishnalingam had insight and was committed to remediation attempts, including a boundaries course. However, it appears that this optimism was misplaced.
- In November 2010, a physician made a mandatory report to the College stating that one of her patients had disclosed that Dr. Krishnalingam had made inappropriate remarks, hugged her, held her hand, and invited her to kiss his cheek. Dr. Krishnalingam denied these allegations to the College. Although the ICRC was unable to determine what had in fact happened, Dr. Krishnalingam’s response to the College was sufficient for the ICRC to conclude in its March 2012 decision that he had made comments to a patient that constituted a boundary violation, although Dr. Krishnalingam seemingly did not understand the meaning of boundaries in the doctor/patient relationship. The ICRC accordingly decided to caution to Dr. Krishnalingam in person with respect to maintaining boundaries and required him to complete a boundaries course and individualized ethics instruction.

The Committee is aware of the limited use which can be made of previous cautions based on allegations that have not been proven in disciplinary proceedings. There is, however, precedent for the Discipline Committee considering prior complaints and cautions as an aggravating factor.

In *CPSO v. Chung (2014)*, the Committee found “striking similarity” between the substance of previous complaints and the findings which it had made in the matter before it. The Committee in *Chung* concluded that the physician was either dismissive or intransigent: despite his knowledge of concerns about his practice, Dr. Chung had done nothing to change his behaviour. This Committee found that these observations apply to Dr. Krishnalingam as well.

The evidence overall confirms a pattern of behaviour whereby Dr. Krishnalingam, over many years, has subjected his patients to behaviour and remarks of a sexual nature. Dr. Krishnalingam has persisted in doing so despite a previous caution, a previous finding of professional misconduct, and several prior attempts at remediation. In this manner, Dr. Krishnalingam has repeatedly caused potential or actual harm to his patients, and his poor response to prior interventions by the College indicates a poor prognosis for his remediability. The Committee considered this an aggravating factor in the present circumstances.

On June 15, 2011, the College informed Dr. Krishnalingam of the mandatory report that later became the subject of the ICRC’s March 2012 decision discussed above. At that time, Dr. Krishnalingam denied the allegations. Dr. Krishnalingam’s misconduct with the complainant in the instant case occurred between May and June 2011. This means that his misconduct continued for a number of days after he had learned about the allegations in the mandatory report. Evidently, knowing that he was again subject to a College investigation did not deter Dr. Krishnalingam from continuing with his abusive behaviour. This suggested to the Committee that Dr. Krishnalingam simultaneously lacked insight and disregarded the authority of the College. Both factors suggested little prospect for favourable change.

The College referred the Committee to prior Committee decisions in cases which each bore some similarities to the facts in Dr. Krishnalingam’s. The Committee is not bound by previous

decisions of the Discipline Committee, and each case will have unique features to be taken into account. In general, however, the Committee accepts that similar cases should be dealt with in a similar fashion. The Committee was satisfied that the penalty the College proposed with respect to Dr. Krishnalingam was consistent with these earlier decisions of the Committee.

In *CPSO v. Kernerman (2004)*, Dr. Kernerman's certificate of registration was revoked following a finding of professional misconduct arising from actions found to have been disgraceful, dishonourable or unprofessional. His misconduct consisted of a variety of inappropriate and sexually suggestive behaviours with patients and staff over an extended period of time.

In *CPSO v. Minnes (2015)*, the Committee revoked Dr. Minnes' certificate of registration for outlandish sexual behaviour with an adolescent female. Although the young woman had not been Dr. Minnes' patient, he was found to have engaged in conduct that members would reasonably regard as disgraceful, dishonourable, or unprofessional.

While Dr. Krishnalingam did not oppose the penalty proposed by the College, he did not consent to it, either. Defence counsel submitted that Dr. Krishnalingam had resigned from the College on December 21, 2015, and is now retired. Defence counsel submitted that if Dr. Krishnalingam had not resigned his certificate and retired, Dr. Krishnalingam might have made a different submission at this hearing.

The Committee considered all the evidence as well as the submissions of counsel. The Committee accepted the College's submission that the protection of the public requires that Dr. Krishnalingam be removed from practice. The evidence discloses Dr. Krishnalingam's pattern of behaviour over many years which repeatedly exposed his patients to potential and actual harm. Dr. Krishnalingam continually abused his position of trust and authority, taking advantage of his vulnerable patients by subjecting them to behaviour and remarks of a sexual nature. He has been given multiple opportunities to reform his behaviour, but he has not done so. Previous cautions and disciplinary sanctions have proven ineffective.

Dr. Krishnalingam does not appear to have developed any insight, and the prognosis for favourable change at this point is poor. He has not provided the Committee with any explanation for his behaviour, and presented no evidence with respect to his rehabilitative potential. The only mitigating factor, in the view of the Committee, is that Dr. Krishnalingam entered a plea of no contest, which spared the complainant from having to testify at the hearing.

In the Committee's view, nothing short of revoking Dr. Krishnalingam's certificate of registration would meet the goals of protecting the public, maintaining public confidence in the integrity of the profession, and adequately expressing the membership's and the general public's abhorrence of sexual abuse of patients by their physicians. The Committee therefore ordered that Dr. Krishnalingam's certificate of registration be revoked.

The Committee ordered that Dr. Krishnalingam appear before it to be reprimanded. In the Committee's view, a public reprimand helps the public maintain confidence in the integrity of the profession, and serves the interest of general deterrence. Dr. Krishnalingam waived his right of appeal, and the Panel administered the reprimand.

The Committee also accepted that Dr. Krishnalingam should be required to reimburse the College fund under its program for assisting patients who have been sexually abused by their physician, and to post security to guarantee payment of \$16,060.00, which is the maximum amount that could be provided to the complainant. The complainant in this case had been struggling to pay for her therapy on her own, as indicated in her impact statement. The maintenance of this fund is for the purpose of assisting victims of physician sexual abuse like her.

Finally, the Committee is of the view that this is a suitable case for a costs order and accepts the College's submission that Dr. Krishnalingam be required to reimburse the College for the cost of a one-day hearing.

ORDER

Therefore, having stated its findings of professional misconduct in its written order of February 8, 2016, the Committee ordered and directed on the matter of penalty and costs that:

1. the Registrar revoke Dr. Krishnalingam's certificate of registration effective immediately;
2. Dr. Krishnalingam appear before the panel to be reprimanded;
3. Dr. Krishnalingam reimburse the College for funding provided to patients under the program required under section 85.7 of the Code, and shall post 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 this Order becomes final, in the amount of \$16,060; and
4. Dr. Krishnalingam pay to the College costs in the amount of \$5,000 within 30 days of the date of this Order.

TEXT of PUBLIC REPRIMAND
Delivered February 8, 2016
in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
and
Dr. Chinniah Krishnalingam

Dr. Krishnalingam,

The panel has heard the uncontested statement of facts and concluded the proposed order is just and appropriate.

The panel is appalled at the repetitive nature of your misconduct, about which you were previously cautioned and disciplined. You attended boundary courses under the pretense of rehabilitating yourself and appeared to show insight into your behaviour.

But you repeatedly exposed your patients to harm and showed a disturbing insensitivity to the needs of vulnerable individuals under your care.

You have let your profession down; you are an embarrassment to your medical colleagues. You have undermined the public trust.

Even though you are bound to do no harm, you have caused harm.

The harm you caused to your patient as reported in her victim impact statement demonstrates how re-victimized she was by your professional misconduct and how she has lost trust in the medical profession. Clearly her symptoms have escalated as a result of her experience with you.

It is unfortunate that you have ended your medical career in this way.

This is not an official transcript