

Indexed as: Silva-Ruette (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. ENRIQUE GERARDO SILVA-RUETTE

PANEL MEMBERS: DR. P. KLOTZ (CHAIR)
J. ASHMAN
DR. M. GABEL
J. DHAWAN

Hearing Date: May 26, 2003
Decision/Release Date: May 26, 2003

DECISION AND REASON FOR DECISIONS

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on May 26, 2003. At the conclusion of the hearing, the Committee stating its finding that the member committed professional misconduct and pronounced its penalty order with written reasons to follow.

ALLEGATIONS

The Notice of Hearing alleged that Dr. Enrique Gerardo Silva-Ruette has 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 of the *Medicine Act* for 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 ALLEGATIONS

As set out in the Statement of Facts, Admission and Consent Disposition, counsel for the College withdrew allegation 1 at the outset of the hearing and Dr. Silva-Ruette admitted to allegation 2.

EVIDENCE

The following Statement of Facts, Admission and Consent Disposition dated May 26, 2003, was filed as an exhibit and presented to the Committee:

1. Dr. Enrique Gerardo Silva-Ruette was born on January 12, 1939. He completed his residency training in Psychiatry at McGill University. He received his certificate of registration for Hospital Practice on September 23, 1983 and his Independent Practice certificate on September 8, 1988. He has specialty qualifications in psychiatry and has conducted a private practice in psychiatry in Ottawa, Ontario for twenty years.
2. The complainant, [Patient #1], was a patient of Dr. Silva-Ruette from April 8, 1997 through to February 22, 2000. She was approximately forty-one years of age when she first began to see Dr. Silva-Ruette and had a nursing background. She was referred to Dr. Silva-Ruette by her family physician for depression.
3. Following the initial session on April 8, 1997 Dr. Silva-Ruette diagnosed [Patient #1] as suffering from a major recurrent depressive disorder and recommended weekly psychotherapy sessions with him.
4. In addition to her depression [Patient #1] suffered from a variety of physical ailments, including migraines, low potassium, primary aldosteronism, hypertension, chronic diarrhea, arthritis, fatigue and insomnia. She also had a significant concern that she suffered from multiple sclerosis.
5. Dr. Silva-Ruette saw [Patient #1] on a weekly basis and dealt with a number of issues including depression, her negative self-image, her relationship with her family (in particular, her husband) her difficulties in obtaining long-term disability and her concern about multiple sclerosis. [Patient #1] described her ongoing physical symptoms and difficulties to Dr. Silva-Ruette as well as the treatments she received. A very significant issue became [Patient #1]'s belief that she had the symptoms of MS. She expressed frustration with the opinions of the neurologists she consulted and told Dr. Silva-Ruette that she felt her symptoms were being disregarded. Dr. Silva-Ruette entertained the possibility that [Patient #1] suffered from a conversion disorder.

6. With respect to [Patient #1]'s physical complaints, Dr. Silva-Ruette arranged a referral to an internist. He also received copies of consultation reports from [Patient #1]'s other physicians, including two neurologists and a gynecologist. Dr. Silva-Ruette also provided reports to [Patient #1]'s family physician, her two neurologists and her Long-Term Disability Insurer.

7. In response to [Patient #1]'s physical complaints (in particular the loss of sensation on the left side of her body), and in an attempt to explore the working diagnosis of conversion disorder, Dr. Silva-Ruette conducted physical examinations of [Patient #1] on three occasions.

8. On two occasions Dr. Silva-Ruette offered [Patient #1] a gown and left the room while she changed. On the third occasion [Patient #1] told Dr. Silva Ruette that he did not have to leave the room and he remained in the room while she changed. During the physical examinations, Dr. Silva-Ruette explained to [Patient #1] that he was conducting neurological examinations by testing her sensitivity to touch. He proceeded to compare sensation on the left and right sides of her body by touching her with a pencil eraser and a needle, including touching the bare skin of her breasts, nipples, bikini area and buttocks. The results of these examinations were documented in Dr. Silva-Ruette's chart. The relevant excerpts are attached as Exhibit "A".

9. At some point [Patient #1] after the second physical examination [Patient #1] complained to Dr. Silva-Ruette about a change in sensitivity in her genital area.

10. Dr. Silva-Ruette's third examination of [Patient #1] included a brief, gloved examination of [Patient #1]'s introitus. Dr. Silva-Ruette maintains that he had the patient's consent for this examination. [Patient #1] maintains that she was surprised and embarrassed by the examination.

11. At an appointment following the third examination Dr. Silva-Ruette produced a note that he read to [Patient #1]. [Patient #1] understood Dr. Silva-Ruette to be thanking

her for the trust that she had shown towards him by permitting him to remain in the examination room while she undressed and to be telling her that he cared for her a great deal. A copy of the note was contained in Dr. Silva-Ruette's records for [Patient #1] which he produced to the College of Physicians and Surgeons of Ontario (the "College") and is attached hereto as Exhibit "B".

12. As a result of the note, [Patient #1] became confused over Dr. Silva-Ruette's feelings toward her and wrote Dr. Silva-Ruette a letter expressing her confusion. A copy of the letter was contained in Dr. Silva-Ruette's records for [Patient #1] and is attached hereto as Exhibit "C". [Patient #1] and Dr. Silva-Ruette discussed the letter and her feelings toward him and [Patient #1] came to believe that Dr. Silva-Ruette had special feelings toward her and that he was attracted to her. [Patient #1] came to believe that Dr. Silva-Ruette wished to have a personal relationship with her.

13. In the course of these appointments Dr. Silva-Ruette held [Patient #1]'s hands, hugged her and on at least one occasion kissed her. Dr. Silva-Ruette maintains that any physical contact between himself and [Patient #1] was platonic and intended only to provide support and comfort to [Patient #1] and that he did not seek to initiate a personal relationship. Dr. Silva-Ruette has acknowledged that he failed to recognize and maintain strict boundaries with [Patient #1] and he has apologized to [Patient #1] for this.

14. In February of 2000 [Patient #1] discontinued therapy with Dr. Silva-Ruette. She felt embarrassed and guilty over her relationship with the doctor and now questions the propriety of the physical examinations that he conducted in the earlier appointments.

15. Dr. Silva-Ruette appeared before the Discipline Committee in 1992 and was found to have engaged in conduct or an act relevant to the practice of medicine that would reasonably be regarded as disgraceful, dishonourable or unprofessional. A copy of the Decision and Reasons for Decision is attached as Exhibit "D".

16. Throughout this investigation Dr. Silva-Ruette has cooperated fully with the College and from outset has acknowledged his breach of appropriate physician-patient boundaries.

ADMISSION AND WITHDRAWAL

17. On the basis of the facts agreed to above, Dr. Silva-Ruette admits the allegations contained in paragraph 2 of the Notice of Hearing, that is professional misconduct:

- (a) under paragraph 1(1)(33) of Ontario Regulation 856/93 of the *Medicine Act, 1991*, 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.

18. The College withdraws the allegation contained in paragraph 1 of the Notice of Hearing, that Dr. Silva-Ruette committed an act of professional misconduct:

- (a) under clause 51(1)(b.1) of the Health Professions Procedural Code, which is Schedule 2 to the *Regulated Health Professions Act, 1991*, in that he has sexually abused patients.

FINDINGS AND DECISION

The Committee accepted as true all of the facts set out in the Statement of Facts. Having regard to these facts and Dr. Silva-Ruette's admission, the Committee made a finding that Dr. Silva-Ruette committed professional misconduct under paragraph 1(1)(33) of Ontario Regulation 856/93 of the *Medicine Act, 1991*, 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.

PENALTY SUBMISSIONS

Counsel for the College and counsel for Dr. Silva-Ruette made a joint submission regarding penalty in paragraph 19 of the Statement of Facts, Admission and Consent Disposition, which is set out below.

19. The parties agree that the penalty will consist of the following:
- (a) Dr. Silva-Ruette will attend before the Discipline Committee to be reprimanded, with the fact of the reprimand to be recorded on the register.
 - (b) Dr. Silva-Ruette's certificate of registration will be suspended for a period of nine months commencing on or before June 23, 2003.
 - (c) A condition or limitation will be imposed on Dr. Silva-Ruette's certificate of registration that he will not conduct any physical examinations of his female patients.
 - (d) Dr. Silva-Ruette will obtain his patients' written acknowledgement of their awareness of the condition or limitation on his certificate of registration (in a form acceptable to the College) and will keep the signed acknowledgement in the appropriate patient record.
 - (e) The College shall have the right to attend at Dr. Silva-Ruette's office on a random basis once per year to conduct a chart pull to ensure that Dr. Silva-Ruette has obtained his patients' written acknowledgement of the condition or limitation on his certificate of registration.
 - (f) Dr. Silva-Ruette will post a letter of credit in the amount of \$10,000 to guarantee the payment of funding provided to the patient under the programming specified in section 85.7 of the Code.
 - (g) Dr. Silva-Ruette will pay costs to the College in the amount of \$2,500.00.
 - (h) Dr. Silva-Ruette will complete the College's boundaries course within the next twelve months.

Counsel for the College also submitted a victim impact statement of the patient.

PENALTY AND REASONS FOR PENALTY

The panel accepted the joint submission for the following reasons.

The length of suspension was appropriate considering the fact that Dr. Silva-Ruette had previously been reprimanded for similar behaviour and the fact of that reprimand had not deterred this incidence from occurring.

The primary need to protect the public is accomplished through the limitations placed on his practice and the continued scrutiny of his adherence to the terms of the limitations.

The requirement to complete the College boundary course will hopefully emphasize the importance of boundary awareness to Dr. Silva-Ruette.

The need to assist the patient was addressed by Dr. Silva-Ruette's willingness to voluntarily fund appropriate ongoing therapy for the complainant.

The level of the penalty will illustrate to the profession the panel's desire to emphasize the importance of awareness of appropriate boundaries. Boundary violations can lead to serious unfortunate clinical outcomes and psychological damage to the patient, cause mistrust of the entire profession by the public, and have serious consequences for the physician. Seemingly benign boundary crossings can be the start of a "slippery slope" leading to disgraceful, dishonourable and unprofessional behaviour. Awareness of this is a prime need especially in the practice of psychotherapy.

ORDER

The Discipline Committee therefore ordered and directed that:

1. Dr. Silva-Ruette attend before the Discipline Committee to be reprimanded, with the fact of the reprimand to be recorded on the register.
2. The Registrar suspend Dr. Silva-Ruette's certificate of registration for a period of nine months commencing on or before June 23, 2003.
3. The Registrar impose a term, condition or limitation on Dr. Silva-Ruette's certificate of registration that he will not conduct any physical examinations of his female patients.
4. Dr. Silva-Ruette will obtain his patients' written acknowledgement of their awareness of the condition or limitation on his certificate of registration (in a form acceptable to the College) and will keep the signed acknowledgement in the appropriate patient record.
5. The College shall have the right to attend at Dr. Silva-Ruette's office on a random basis once per year to conduct a chart pull to ensure that Dr. Silva-Ruette has

obtained his patients' written acknowledgement of the term, condition or limitation on his certificate of registration.

6. Dr. Silva-Ruette agreed to post a letter of credit in the amount of \$10,000 to guarantee the payment of funding provided to the patient under the programming specified in section 85.7 of the Code.
7. Dr. Silva-Ruette will complete the College's boundaries course within the next twelve months.
8. Dr. Silva-Ruette will pay costs to the College in the amount of \$2,500.00 prior to the end of the suspension.

Following the conclusion of the hearing, Dr. Silva-Ruette waived his right to appeal under subsection 70(1) of the Code and the panel administered the reprimand.