NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Stanley Thomas Dobrowolski, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of the complainants or any information that could disclose the identity of the complainants under subsection 47(1) of the *Health Professions Procedural Code* (the "Code"), which is Schedule 2 to the *Regulated Health Professions Act, 1991*.

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.

On December 20, 2005, the Divisional Court, on consent of the parties, altered the Discipline Committee's decision on penalty. See Dobrowolski v. College of Physicians & Surgeons (Ontario) 2005, Court File No. 686/04.

Indexed as: Dobrowolski (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 subsection 26(2) of the ***Health Professional Procedural Code*****,** being Schedule 2 to 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. STANLEY THOMAS DOBROWOLSKI

PANEL MEMBERS: **DR. M. GABEL (CHAIR)**
P. BEECHAM
J. DHAWAN
DR. P. CHART

PUBLICATION BAN

Hearing Dates: July 6-8, 2004
July 13-14, 2004
Decision/Released date: July 8, 2004
Penalty Decision/Released Date: November 29, 2004

On December 20, 2005, the Divisional Court, on consent of the parties, altered the Discipline Committee's decision on penalty. See Dobrowolski v. College of Physicians & Surgeons (Ontario) 2005, Court File No. 686/04.

DECISION AND REASONS FOR DECISION

The Discipline Committee (the "Committee") of the College of Physicians and Surgeons of Ontario (the "College") heard this matter at Toronto on July 6-8 and July 13-14, 2004. On July 8, the Committee pronounced its findings on the allegations of professional misconduct, and found that the allegation of professional misconduct was established in respect of complainant #1, but that the allegations were not established in respect of the complainants #2 and #3. These Reasons set out the Committee's analysis in connection with these findings, and include the Committee's decision and reasons in respect of the appropriate penalty order.

PUBLICATION BAN

The Committee ordered that no person shall publish or broadcast the identities of the complainants or any information that could disclose their identities, pursuant to a request made under subsection 47(1) of the *Health Professions Procedural Code* (the "Code"), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, as amended.

ALLEGATION

The Notice of Hearing alleged that Dr. Stanley Thomas Dobrowolski committed acts or omissions relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

The specified allegations of professional misconduct concerned three former patients, complainant #1, complainant #2 and complainant #3. The allegations involving complainant #1 related to events in the period 1989-92, and were governed by the former *Health Disciplines Act*. There was one additional allegation involving complainant #1 relating to certain correspondence in 1997; this one aspect of the allegations involving complainant #1 was governed by the Code, which came into effect in December, 1993. The allegations involving complainants #2 and #3 post-date the coming into force of the Code, and are governed by the Code.

On December 20, 2005, the Divisional Court, on consent of the parties, altered the Discipline Committee's decision on penalty. See Dobrowolski v. College of Physicians & Surgeons (Ontario) 2005, Court File No. 686/04.

RESPONSE TO THE ALLEGATION

Dr. Dobrowolski admitted the allegation of professional misconduct in relation to complainant #1 as set out in paragraph 1 of the Specifications in the Notice of Hearing. Dr. Dobrowolski denied the allegations in relation to complainant #2 and complainant #3 as set out in paragraphs 2 and 3 of the Specifications in the Notice of Hearing.

EVIDENCE

Overview of the Evidence

An Agreed Statement of Fact was submitted in respect of the allegations concerning complainant #1. The Committee heard testimony from complainant #2 and complainant #3. Various exhibits were filed, including OHIP lists of services billed, and clinical notes and records for complainant #3 and complainant #2.

Complainant #1

Counsel for the College filed an Agreed Statement of Fact regarding complainant #1:

1. In the fall of 1989, while complainant #1 was a graduate student at University in Ontario, she was referred to Dr. Dobrowolski by her general practitioner. Her general practitioner felt she should see a psychiatrist for the depression she was experiencing.

2. At Dr. Dobrowolski's invitation, she called him Stan. She always called him Stan.

3. Dr. Dobrowolski had a very small office in a corner at Student Health Services. The lights were always dim in the office. There was a two seater couch in the office and Dr. Dobrowolski's desk and chair. There was about 3.5 feet between his chair and the couch.

4. In the beginning, Dr. Dobrowolski helped her therapeutically with depression and anger. He prescribed Prozac, either 40 or 60 mg. He also recommended she read

"*The Drama of the Gifted Child*" by Alice Miller which she found very helpful. Two or three weeks after she started taking the Prozac, she had an adverse reaction (she became super anxious) and Dr. Dobrowolski switched her to another medication. She does not recall the name of the medication. She may have discussed a memory with him of an emotional trauma when she was 5 or 6 years old. She did not mention any past physical or sexual abuse to Dr. Dobrowolski.

5. She recalls one session she was wearing a long black leather skirt. There was a thread loose on the front of the skirt and Dr. Dobrowolski pulled it out. The thread was above her knees, between her knees. When this happened, she was sitting on the couch in his office and he was sitting on his chair. It was at this point that she felt their relationship changed. She was awestruck that Dr. Dobrowolski had touched her and she felt special. She reached out and touched his pant leg below the knee and he didn't move her hand away. Dr. Dobrowolski does not recall this specific incident but does not deny that it may have taken place.

6. Within a few sessions after that, Dr. Dobrowolski was sitting on the couch with her. She recalls that he wore a yellow crew neck cotton knit sweater a lot. In many sessions, Dr. Dobrowolski would hold her with her head on his chest and his arm around her and he would stroke her hair or massage the top of her leg in the mid thigh area, not near her groin. He would also hold her hand. There was not a lot of talking in these sessions. There was lots of silence. She felt so safe. Dr. Dobrowolski told her once that he shouldn't be billing for these sessions. She just felt so safe and protected.

7. Dr. Dobrowolski told her details about his personal life during their sessions. She knew he had 3 boys, that he was busy driving them to hockey and that one boy was 7 or 8 years old at the time she began seeing him. She knew he was married and had a cottage in Ontario and that they went to the lake in the summer. Dr. Dobrowolski does not recall telling complainant #1 these specific details but does not deny that he may have done so.

On December 20, 2005, the Divisional Court, on consent of the parties, altered the Discipline Committee's decision on penalty. See Dobrowolski v. College of Physicians & Surgeons (Ontario) 2005, Court File No. 686/04.

8. She booked the last appointment on Friday afternoons with him because she didn't want any other patient coming in after her. Dr. Dobrowolski's secretary would be there when she arrived for her appointments. She booked her appointments through the secretary. When she left at the end of her appointments, the secretary was usually gone. There was usually someone at the main desk in Student Health Services when she left.

9. In April 1990 (on a Friday), she had a crisis at school and saw Dr. Dobrowolski in the afternoon. She told him she was afraid to go home. He drove her to the hospital and had her admitted. She discharged herself on the Monday.

10. The sessions continued in the same way. In every session, there was some form of physical contact. Dr. Dobrowolski would hug her goodbye, hold her hand and put his hand on her leg. This behaviour continued pretty much until she moved to Halifax in August 1990. When he hugged her, it was always inside his office. His office was always dark. If the office had a window, there was a curtain on it. She is not sure whether there was a window in the door but it was so dark in the office no one would have been able to see in. She can't remember how Dr. Dobrowolski took notes. She thinks he took them initially while she was there but certainly not when they were sitting together on the couch. She received no telephone calls from Dr. Dobrowolski while she was at the University. She knew what was going on wasn't right but she didn't want it to stop. Dr. Dobrowolski was so endearing. By the end of their relationship while she was at the University, she didn't want Dr. Dobrowolski to stop holding her and she told him that.

11. After her last appointment with him, Dr. Dobrowolski said he would drive her home. Dr. Dobrowolski was looking for a house for either his mother or his mother-in-law and they stopped and looked at the house together. Afterwards, he drove her to her apartment in his van. He gave her a pin. It was a stone with a hand-painted farm scene on it. Dr. Dobrowolski told her that the two birds in the scene were he and she. She kept the rock pin with her always. She asked his

permission to write to him and he said it was okay. He hugged her goodbye when he left. This was the only time he drove her home. They never met anywhere while she was at the University other than his office at Student Health Services.

12. Complainant #1 moved back to her home (another province) in August 1990 because she had a job offer. She initiated the correspondence with Dr. Dobrowolski and wrote to him about a month after she left. Her letters to him were sad. She wrote about how she wasn't seeing him anymore and she wrote about her job. Initially, she didn't think Dr. Dobrowolski would write back. All of her letters to him were handwritten. She did not retain copies. She wrote to Dr. Dobrowolski more than he wrote to her. She wrote about five letters to his one letter. Initially, she kept her correspondence at a fairly superficial level. She didn't want to tell him her true feelings because she wanted to see what he was going to say to her. Dr. Dobrowolski wrote sporadically. She couldn't count on when he would write back. She waited with anticipation every day for correspondence from him. At the time, she wasn't in therapy and she was very sad and kept her letters in a therapeutic mode. Attached as Schedule "A" [to the Agreed Statement of Fact] were copies of letters written by Dr. Dobrowolski to complainant #1.

13. In terms of adjusting to a new job, working in a neonatal Intensive Care Unit, having babies die, she gained some benefit from his letters. She also received Dr. Dobrowolski's encouragement to finish her dissertation. Although she felt that she gained some therapeutic benefit from her letters, 80 to 90% of her gain was from the emotional aspect of his letters. She cared deeply for him and loved him. She told him in her letters that she loved him. In the sessions while she was at the University, she would have told Dr. Dobrowolski that she cared for him and loved him and that she liked what they were doing in the office. Dr. Dobrowolski was of the view that the therapeutic relationship had terminated when his appointments with complainant #1 terminated in August of 1990.

14. She addressed all of her correspondence to Student Health Services at the University. She knew he was married and she didn't have his home address. She sent her letters by regular mail. She put her return address on the letters. Dr. Dobrowolski's secretary may have seen the letters.

15. In one of her letters to Dr. Dobrowolski, she told him she was attending the Canadian Paediatric Society meetings in a city in Ontario and she suggested that they get together there. They agreed to meet there. Dr. Dobrowolski chose the hotel to stay at. He told her his family had stayed there and it was a reasonable price. She made the reservations. The night before they were to meet was very emotional for her. She cried a lot. She didn't know what to expect of her meeting with Dr. Dobrowolski and she didn't know what she wanted.

16. On September 13th, 1992, she arrived at the hotel before Dr. Dobrowolski. The front desk called her room when he arrived and asked if it was okay for him to go up. At one point during their visit, Dr. Dobrowolski, while they were sitting on the couch, said that his neck and back were sore. He said he had just driven up and could they move to the bed. They laid on one of the double beds in the room, the bed to the right. She remembers she was wearing a pant suit at the time and Dr. Dobrowolski was clothed. Within 15 to 30 minutes of his being in the room, they discussed whether they would make love or not. They both decided they should not make love. She decided they should not make love because Dr. Dobrowolski was married. They went out to dinner. She does not remember the name of the restaurant. Dr. Dobrowolski told her that he had told his wife he was going to psychiatric meetings in a different city. He telephoned his wife from the restaurant. Dr. Dobrowolski paid for the meal. She is not sure whether he paid cash or not. They walked back to the hotel arm in arm. When they got back to their room they changed. She put on her pyjamas, a peach coloured t-shirt and shorts and Dr. Dobrowolski put on a blue plaid housecoat with a belt tie. She is not sure what he wore beneath the housecoat. Dr. Dobrowolski wore the housecoat to bed and said he did this to make her feel more comfortable. While they were in bed, she began to cry. She was emotionally overwrought and feeling

guilty. She recalls that Dr. Dobrowolski fondled her breasts but is not sure whether, if he did, Dr. Dobrowolski touched her breasts over or under her top. Dr. Dobrowolski does not recall fondling complainant #1's breasts. Complainant #1 touched Dr. Dobrowolski's chest and nipples. Dr. Dobrowolski told her that he liked his nipples touched. They kissed. She was laying close to Dr. Dobrowolski. She recalls that she observed that Dr. Dobrowolski had an erection. Dr. Dobrowolski does not recall whether or not he had an erection. They talked until 1:30 a.m. and then she went to her own bed to sleep.

17. She awoke early the next morning. When Dr. Dobrowolski woke up, she went back to his bed and they kissed and hugged some more. Dr. Dobrowolski went out and brought back orange juice and bagels or croissants. He paid for them. They went to a museum but it was a Monday and the museum was closed. They then went to various antique stores. They also went to an area with a big grassy hill. They were laying close together and kissing. They spent 21 hours together. She paid cash for the hotel room and Dr. Dobrowolski gave her half in cash. Later, Dr. Dobrowolski drove her to the airport.

18. She doesn't think she wrote to Dr. Dobrowolski after their meeting out because the guilt was too much for her. She felt guilty because she had agreed to rendezvous with a married man, her former psychiatrist, and she should have known better. She and Dr. Dobrowolski talked about this while they were together and he comforted her. She thinks that they talked about her keeping the weekend confidential.

19. The encounter was incredibly devastating to her. She felt she had put her emotional needs before what was right. She felt she was in the wrong.

20. Dr. Dobrowolski telephoned her on December 18th, 1992 at home. She was surprised to hear from him.

21. Dr. Dobrowolski also telephoned her once at a friend's home in a city in Ontario.

22. In November or December of 1989, complainant #1 no longer viewed the relationship with Dr. Dobrowolski as a therapeutic one. Emotionally, she was enthralled with him. She would have done anything for him.

23. She telephoned Dr. Dobrowolski in about July 1997 to ask him whether he could recommend a psychiatrist where she now lived. Dr. Dobrowolski said he didn't know of anyone. Following this telephone call, she received Dr. Dobrowolski's last letter.

Copies of letters between Dr. Dobrowolski and complainant #1, attached as Schedule "A" to the Agreed Statement of Fact, were also filed with the Committee.

Complainant #2

Complainant #2 is now a 33-year-old teacher. She has taught for ten years, and obtained her B.A and her B.Ed. She is from a family of eight children. Her father died when she was in her second year of university.

Complainant #2 first saw Dr. Dobrowolski at student services at teachers' college in the fall/winter of 1993. She started having headaches. Her family practitioner diagnosed anxiety and depression and sent her to student services. She was prescribed Amitriptyline. Dr. Dobrowolski concurred with the diagnosis of depression and told her that it was moderate to severe.

At the time she first started receiving treatment from Dr. Dobrowolski, complainant #2 was single. She was in a relationship with a man she later married, and had two children. She is now separated.

Complainant #2 saw Dr. Dobrowolski every two weeks. He was monitoring the Amitriptyline for side effects and had to increase the dosage. Dr. Dobrowolski had an office at the University Community Centre. At some point Dr. Dobrowolski changed her medication to Prozac. After a year and a half, she stopped seeing him as she was feeling better and had no need to continue treatment.

Complainant #2 resumed therapy with Dr. Dobrowolski shortly after she was married in the fall of 1995. Her marital relationship was troubled. At that time Dr. Dobrowolski was practising out of the basement of his home. Patients entered by a side entrance. There was a waiting area. The office had two chairs and a table. The patient sat in a leather recliner chair. Dr. Dobrowolski sat in a chair not quite facing the table to the right. The office had antique furniture, bookcases, a desk, a computer table with a video camera (at one time) and a window. The video camera was not ever turned on during her appointments. There was no other staff present.

Complainant #2's marriage was troubled, and she was attempting to get things together, but was depressed. Dr. Dobrowolski prescribed Prozac for mild depression.

A typical session was one hour, with the main emphasis on a discussion of medications. Dr. Dobrowolski took a very physiological approach. He was not her family physician but she felt he was very supportive and kind to her. He did regular blood and blood pressure checks, and discovered her diabetes and post-partum thyroid condition. She was not clear on when and how often blood pressure checks were done – perhaps once every 10 visits. It was a standard blood pressure test with the velcro cuff. Prozac was the only medication prescribed until she was switched to Praxil. She took antidepressants in 2001 after the birth of one of her children, and in 2003 when her husband left.

Dr. Dobrowolski used the stethoscope to check her heart. He detected a heart murmur when she was pregnant. He examined between her breasts and around her back. She was clothed. She testified that it was a standard exam, comparable to similar exams performed by other doctors.

Dr. Dobrowolski ordered blood work to monitor medications and also discovered her pregnancy. He ordered results sent to her family doctor and her endocrinologist. Physical examinations took place about every six visits. She developed a goitre after the birth of her son in 1999. Dr. Dobrowolski saw some T3 and T4 levels and wondered if she might have a tumour. He felt for her thyroid with his thumb and forefinger up and down her throat. He corresponded with her family doctor and referred her to an

endocrinologist who diagnosed the thyroid problems. He also tested reflexes about the time of her thyroid diagnosis.

When the sessions ended, Dr. Dobrowolski tried to be reassuring to her and hugged her on occasion. She felt they were appropriate hugs and considered their relationship "fatherly".

After her son was born (1999), complainant #2 came into the office wearing open-toed sandals. She had a dark mole between her toes. Dr. Dobrowolski observed this and contacted a dermatologist. He told her that she should get her husband to check her for moles, and that in turn she should check him for moles. He showed her a picture of a mole on a toe (Ex. 3). He later asked if her husband had checked for moles, which he had not done. Dr. Dobrowolski offered to do a full body check for moles, which she agreed to. He went to the cupboard and brought out a gown, which she put on. She testified that at that point she had some misgivings, but did not communicate these to Dr. Dobrowolski. He left the room while she undressed and put on her gown. He returned with an instrument and looked at her arms and legs. She took the gown off and stood in her underpants. She felt very uncomfortable. Dr. Dobrowolski did not find anything and told her to put the gown back on and then get dressed. He left the room. The gowns (approximately two dozen) were stored in an antique cupboard. This occurred close to the end of the session. Complainant #2 did not recall how the session ended.

The subject of her having moles checked occurred again. Dr. Dobrowolski asked if she wanted him to do a full check again. She declined. He inquired whether he might have made her feel uncomfortable. She told him "no" but felt "yes."

Dr. Dobrowolski commented twice on complainant #2's physical appearance. The first occurred after she started receiving treatment at the Health Services, when, in the context of a discussion with her about matters, he told her that he did not find her attractive. The second occurred during an appointment at his home office, when he said he found her attractive after her son's birth She felt this was a contradiction given his earlier comment. Also, during an appointment at the Health Services, she felt uncomfortable when he asked her if she masturbated.

There was no cross-examination by counsel for Dr. Dobrowolski, and the Committee accepted complainant #2's evidence as credible.

Complainant #3

Complainant #3 is the sister of complainant #2. She is 25 years old and now lives in Southwestern Ontario. She first saw Dr. Dobrowolski in the fall of 1997 when she was in Grade 12 and living with her sister. Her sister was a regular patient of Dr. Dobrowolski and suggested complainant #3 should see him about certain issues. Complainant #3 had no family doctor. She attended appointments with Dr. Dobrowolski weekly or bi-weekly in his basement office, which was at the back of the house and downstairs.

Complainant #3 had about seven sessions with Dr. Dobrowolski in the fall of 1997 and winter of 1998. She had questions about health issues and wanted to get tested for HIV, which Dr. Dobrowolski set up for her. She had no other health issues but had questions about sexually transmitted diseases, which they talked about in these sessions.

Dr. Dobrowolski performed medical procedures such as checking her heart, blood and pulse. She remembers being asked to put her arms straight out to her side, but does not remember the context of this examination. She did not know what it meant and thought it was odd. Dr. Dobrowolski checked her heart by placing the stethoscope on her sternum between her breasts and moved it around an inch or two. She was sitting while this was being done. This happened two or three times over the seven sessions. He also took her blood pressure at the same time. She does not remember Dr. Dobrowolski making notes during the sessions.

In 1997/1998, Dr. Dobrowolski prescribed medication for either weight loss or depression. She took one or two pills, but did not continue after that.

Complainant #3 stopped seeing Dr. Dobrowolski when she moved back to her home city in 1998. In 2001, she contacted him again and set up an appointment because she and her boyfriend were having trouble. She was concerned that her boyfriend was cheating on her. Dr. Dobrowolski replied that all men cheat. She was stunned. This was not the

answer she thought she would hear. She said that Dr. Dobrowolski was rather nonchalant.

He commented on one occasion that she appeared to have lost weight.

There was no cross-examination, and the Committee accepted complainant #3's evidence as credible.

Both complainant #2 and complainant #3 were generally complimentary about Dr. Dobrowolski's quality of care and his manner.

Dr. Dobrowolski elected not to call evidence in respect of the allegations concerning complainant #2 and complainant #3.

FINDINGS AND DECISION

On July 8, 2004, the Committee made a finding of professional misconduct in relation to complainant #1, pursuant to the regulations under the former *Health Disciplines Act*. The Committee found that Dr. Dobrowolski 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.

The Committee also found that the allegations of professional misconduct in respect of complainants #2 and #3 were not established on the evidence.

Complainant #1

Dr. Dobrowolski knew that complainant #1 was vulnerable, and was particularly dependent on him. In his position of power, he allowed a personal relationship to develop between them, which went well beyond an acceptable physician-patient relationship. He crossed boundaries by sitting on the couch with her, stroking her hair and legs, giving her presents, and driving her home. After complainant #1 moved back home, Dr. Dobrowolski continued corresponding with her, which continued her dependence on him. The September 1992 encounter very clearly exceeded the boundaries of propriety, given the circumstances and the fact that Dr. Dobrowolski had

provided psychiatric treatment for complainant #1. While no longer treating complainant #1 in person at that time, there remained a strong power imbalance from the period of direct treatment, which was fostered by the continuing correspondence. In his letters, Dr. Dobrowolski encouraged complainant #1 in a therapeutic manner to write frequently and share problems. Complainant #1 was enthralled with Dr. Dobrowolski, and told him in the letters that she loved him. The exchange of letters increased or in the very least, maintained her dependence on him.

The September 1992 encounter was entirely inappropriate. Dr. Dobrowolski knew or should have known that complainant #1 was enthralled with him. The Committee concluded that there was significant transference on her part, which he encouraged by agreeing to meet in another city in the first place. He either ignored or failed to recognize his own counter-transference

Dr. Dobrowolski failed to recognize complainant #1's growing dependence on him. He encouraged her dependence and failed to recognize his. This is clear in the letters he wrote to her. For example, in the letter dated April 11, 1991, on page 8, he writes:

> *"Thinking of you these days makes me feel happy, excited but vaguely uncomfortable too…let's work on it and see what we can accomplish in terms of mutual understanding. My love and support for you daily in each hour and endeavour! Keep those cards and letters and feelings coming, I need to hear them/want to hear them. Stan"*

Dr. Dobrowolski must have known that this was not in the best interests of complainant #1

Having regard to the Agreed Statement of Fact and Dr. Dobrowolski's own admission that his conduct was unprofessional in respect of complainant #1, the Committee found that the allegation concerning complainant #1 was established.

Complainant #2

The College did not actively pursue specified allegation 3(1) regarding Dr. Dobrowolski asking questions about masturbation.

On December 20, 2005, the Divisional Court, on consent of the parties, altered the Discipline Committee's decision on penalty. See Dobrowolski v. College of Physicians & Surgeons (Ontario) 2005, Court File No. 686/04.

As to specified allegation 3(2), complainant #2 herself interpreted Dr. Dobrowolski's actions as a fatherly touch and not inappropriate. From the Committee's perspective, they may have been an exercise of poor judgment, but in the circumstances did not rise to the level of professional misconduct.

The allegation regarding inappropriate comments was not established on the evidence, to the satisfaction of the Committee. The challenged comments were made in the course of the psychotherapeutic relationship during which related subject matters were raised by the patient. The Committee was not satisfied on the evidence that, in this context, the comments constituted acts of professional misconduct.

There was no evidence adduced by the College that the physical examinations and tests alleged in paragraph 3(4) were inappropriate. No expert or other evidence was introduced as to whether such routine tests and checks would be inappropriate for a psychiatrist. There was no evidence before the Committee to determine what would be an unnecessary or contextually inappropriate physical examination or blood test, within the framework of an ongoing psychotherapeutic relationship.

From the records in evidence, there were medically indicated physical and laboratory tests performed – for example, blood tests, pregnancy tests, blood pressure and neurological examinations. These resulted in the identification of medical conditions such as thyroid dysfunction.

Psychiatry and psychotherapy do not exclude the continuing practice of general physical medicine. To the contrary, physical health and psychological health can be closely entwined. Psychiatrists and psychotherapists are physicians before they are specialists. The Committee concluded that the general medical tests and checks were conducted for proper medical reasons and were not carried out in a manner that was disgraceful or dishonourable.

The Committee was concerned about the appropriateness of the fully body mole exam. The Committee concluded that Dr. Dobrowolski's decision to undertake this examination in the context displayed poor judgment. However, he obeyed all the correct procedures,

by informing the patient and giving reasons for conducting a physical exam. He provided a robe, left the room while she changed, and knocked before re-entering. In all of the circumstances, the Committee found that this examination did not rise to the level of professional misconduct.

Complainant #3

The Committee found that the allegations involving complainant #3 were not established to the requisite standard. Significantly, no expert evidence was called on the question whether it was inappropriate for a psychiatrist to conduct certain physical checks or blood tests more typically undertaken by a general practitioner. There was therefore insufficient evidence to support this allegation in relation to complainant #3. On the evidence, there was nothing that was clearly unprofessional or inappropriate about the manner in which the physical examination was conducted. There was therefore no evidence to support the College's argument that such an examination was medically unnecessary, or, alternatively, that it was not appropriately carried out by the member.

In view of the evidence, the College did not actively pursue the allegation that Dr. Dobrowolski made inappropriate comments during psychotherapy encounters about the patient's appearance. The only evidence was that Dr. Dobrowolski told complainant #3 that she appeared to have lost weight. There was simply insufficient context from the evidence to determine whether this comment was inappropriate in the circumstances.

The Committee therefore concluded that the College had not established the allegation with regard to complainant #3.

Conclusion

In respect of the complainant #1, the Committee found that, pursuant to paragraph 27.32 of O.Reg. 448 of 1980 and paragraph 29.33 of O.Reg. 548 of 1990, Dr. Dobrowolski had engaged in conduct or an act relevant to the practice of medicine that having regard to all of the circumstances would reasonably be regarded by members of the profession as disgraceful, dishonourable or unprofessional.

The Committee further found that the allegations of professional misconduct in respect of complainants #2 and #3 were not established on the evidence.

DECISION AND REASONS AS TO PENALTY

Evidence on Penalty

The following additional documents were introduced into evidence during the penalty phase of the hearing:

- The prior disciplinary record of Dr. Dobrowolski
- Dr. Dobrowolski's certificate of completion of the boundaries course
- The CPSO sexual abuse recommendations dated September 1992
- Schedule "A" Patient Questionnaire
- CPSO Physician-Patient Dating Policy (May, 1992)
- CPSO Reprosecution Policy (February 1998)
- Victim Impact Statement from complainant #1, and
- Letters of support for Dr. Dobrowolski

Dr. Dobrowolski's counsel challenged the admissibility of the victim impact statement and alternatively sought to cross-examine complainant #1 on the statement. After hearing argument, the Committee decided to admit a slightly redacted form of the victim impact statement, containing reference only to underlying facts that were in evidence, together with statements as to the impact of the member's misconduct on the complainant. Although this was not a case where "sexual abuse" under the Code was alleged or established, the Committee concluded that it nonetheless had the authority to admit the statement, and in its discretion decided to so admit the statement. The Committee further concluded that the proposed cross-examination of complainant #1 on her statement was neither necessary or appropriate in this case. The Committee noted by analogy that victim impact statements are not normally subject to cross-examination in the criminal courts, nor when they are admitted pursuant to the mandatory provision of subsection 51(6) of the Code.

On December 20, 2005, the Divisional Court, on consent of the parties, altered the Discipline Committee's decision on penalty. See Dobrowolski v. College of Physicians & Surgeons (Ontario) 2005, Court File No. 686/04.

The Committee took note of the clearly expressed impact of Dr. Dobrowolski's misconduct on complainant #1.

The Committee considered the letters of support for Dr. Dobrowolski. These were all dated late June or July of 2004. Few of the letters indicated any meaningful understanding of the misconduct. The letters are consistent in attesting to the value of Dr. Dobrowolski to the Polish speaking community, and mention the safe and comfortable setting of his office, and the appropriateness of care and professionalism. Many of the letters speak to the importance of the member's ability to communicate with patients in their first language. In all of the circumstances, the Committee did not place a great deal of weight on the letters.

The prior discipline history of Dr. Dobrowolski was also entered into evidence. It is to be noted that the conduct involving complainant #1 which led to the Committee's finding of professional misconduct in the present case occurred earlier in time to the three other hearings before panels of this Committee. Those three earlier discipline hearings involving nine complainants, with the alleged incidents taking place between 1985 and 1992. The allegations were proven in respect of six of those complainants. The nature of the facts underlying those findings also included inappropriate conduct toward female patients. The penalties in the earlier hearings included suspensions, reprimands, and restrictions placed upon the member's certificate of registration. Because of the timing of the events involving complainant #1 (taking place before the earlier findings of misconduct), the present case cannot as a matter of law or fact be treated for penalty purposes as one involving a four-time "repeat" offender who has failed to learn the lessons of the prior three findings. However, it is beyond argument that the member has now been found on four occasions to have committed acts of professional misconduct, and the Committee concluded that the conduct involving complainant #1 was plainly not an isolated incident but rather part of a pattern of serious misconduct involving female patients.

Positions of the Parties

In the present hearing, the College requested a reprimand, a suspension of sixteen months, as well as restrictions on the member's certificate of registration. The defence proposed a reprimand, a written apology to complainant #1, a suspension of six months (crediting 9 months "credit" from a suspension order under s. 37 of the Code from 1995), and proposed that Dr. Dobrowolski complete the record keeping course and file proof thereof with the College on completion.

Analysis

The Committee concluded that the College's "reprosecution" policy should have no impact on the appropriate penalty in all of the circumstances. Moreover, the Committee has already taken into account the fact that the underlying facts occurred before the prior hearings and findings.

The Committee also concluded that Dr. Dobrowolski's argument concerning "banked suspension time" from 1995 should have no impact on the appropriate penalty. That time related to other conduct and was already taken into account in the earlier hearings. Even if some portion of that time notionally remains, the imposition of an appropriate penalty nine years later for separate conduct should not be affected by it.

In the decision of the panel in Dr. Dobrowolski's third disciplinary hearing, the Committee commented on the nature of Dr. Dobrowolski's practice at that time:

> "*Since his return to practice, the Committee was told that Dr. Dobrowolski has built up a practice of 50-60 patients, mainly middle aged men. Approximately half his practice is of Polish descent, and he is one of the few psychiatrists who can converse with those patients in their own language. He now limits his practice to the management of anxiety disorder and depression and excludes severely psychotic patients…He refuses to take adolescent patients.*"

In setting an appropriate penalty, the Committee had regard to the principles of public protection, specific and general deterrence, denunciation of the member's conduct, and maintaining the integrity of the profession. The Committee had careful regard to the gravity of the misconduct as found by it, the prior findings of misconduct (including the sequencing of events), and all of the circumstances of the case.

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Both parties agreed that a reprimand was appropriate.

With regard to a suspension, the Committee took note of the gravity of the finding in respect of complainant #1 and the egregious way in which Dr. Dobrowolski as a psychiatrist took advantage of the situation in the hotel out of town, when he knew such contact was not in complainant #1's interest. He had cultivated and maintained an intense relationship through letters to an extent that complainant #1 was "enthralled" with him. The letters demonstrate such an intent on the physician's part. Knowing that complainant #1 was highly dependent upon him, Dr. Dobrowolski plainly took advantage of complainant #1 for his own gratification. While this conduct occurred 12 years ago, it is very serious and calls for a commensurate period of suspension. The Committee concluded that a six month suspension was appropriate in all of the circumstances.

With regard to conditions imposed on the member's certificate of registration, the Committee considered several possible restrictions on Dr. Dobrowolski's practice after the period of suspension was served. The College sought to prevent any further physical examinations, but this condition was not related to the misconduct involving complainant #1 that was established on the evidence. It was clear to the Committee that, based on his pattern of conduct, Dr. Dobrowolski poses some risk to female patients. While a prohibition on the treatment of female patients would protect the public, it does not address female patients currently receiving treatment from Dr. Dobrowolski. The Committee concluded that Dr. Dobrowolski should not be permitted to accept any new female patients and that current female patients should be referred to other health care providers where possible and appropriate from the perspective of their best interests. Dr. Dobrowolski should be directed not to engage in any non-professional relationships with patients and former patients, including not maintaining correspondence. Support for these restrictions is found in three areas:

1. Dr. Dobrowolski has demonstrated a pattern of multiple boundary violations. This has resulted in disciplinary hearings on four occasions, and findings of disgraceful, dishonourable and unprofessional conduct on four occasions. He testified in one of the

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earlier hearings that he stopped doing physical examinations in about 1993, but that was clearly inconsistent with the unchallenged evidence of complainant #2 in this hearing.

2. Dr. Dobrowolski demonstrated an inability to recognize and terminate a relationship with complainant #1 that he knew was inappropriate and ultimately harmful to the patient. He had the opportunity to do so before the 1992 encounter and he did not. He willfully acted in his own interest, either not recognizing, or ignoring the harm to complainant #1. He was a seasoned psychiatrist, and was or should have been well aware of transference in a psychotherapeutic relationship. Such a relationship was fostered through intensive and personal correspondence.

3. As late as 1997, he wrote a letter to complainant #1. This letter promoted an ongoing communication and relationship between them: *"I too want for some reason to keep up some communication with you",* he wrote, though he knew or should have known her feelings for him and that the impact on her would be harmful. He suggested the intervening years had melted away. He used phrases such as: "*daring to care"; "I feel your raw emotions"; "your pulse"; "I think our relationship and communication can be a positive force."* While acknowledging the need for boundaries, he painted continued communication as being safe to share in an "*emotional/spiritual and truthful way all the contents of your heart without reserve or risk"; "I like receiving and reading your letters and want to hear from you";* He added that he *"eagerly awaits further installments"*. The letter demonstrates the method he used to set in place a continuing dependence. Thus, even in 1997, after his many disciplinary interactions with the College, it is apparent to the Committee that Dr. Dobrowolski had little insight into the risk he posed to vulnerable female patients.

While counsel for Dr. Dobrowolski asserted that the member had undergone rehabilitation, there was no evidence put before the Committee to suggest this has had any effect, and Dr. Dobrowolski did not testify as to how his practice had changed.

Restricting his practice to exclude female patients (without harming the best interests of current female patients to the extent possible) offers protection of the public while allowing Dr. Dobrowolski to continue to play a useful and valued role in treating male

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patients, especially those who speak Polish. In addition, such a restriction squarely addresses the problem Dr. Dobrowolski has repeatedly faced in disciplinary proceedings.

ORDER

Therefore, the Committee orders and directs that:

1. Dr. Dobrowolski shall attend before the Committee to be reprimanded, with the fact of the reprimand to be recorded on the Register.

2. The Registrar shall suspend Dr. Dobrowolski's certificate of registration for a period of six (6) months, commencing 60 days after the release of this Order.

3. Dr. Dobrowolski's certificate of registration shall be immediately subject to the following terms, conditions and limitations which (subject to clause 3(i), below) shall remain in place for an indefinite period of time:

   (a) Dr. Dobrowolski shall not accept any new female patients into his practice;

   (b) Dr. Dobrowolski shall, within 60 days of the approval of the form of document by the College, provide each of his current female patients with an Acknowledgment in a form approved by the College, indicating that he has been found to have committed professional misconduct, setting out all of the restrictions on his practice, and indicating that he cannot have any form of contact with any female patient outside of the office;

   (c) Dr. Dobrowolski shall have all female patients sign the Acknowledgment referred to in clause 3(b), above, indicating that each female patient has reviewed the document. Dr. Dobrowolski shall maintain a copy of each executed Acknowledgment in the patient's chart;

   (d) An independent supervising psychiatrist, approved by the College, shall be retained by Dr. Dobrowolski by the end of the period of suspension and prior to resuming practice, who will meet with Dr. Dobrowolski with a view to permanently transferring to other psychiatrists as many of Dr. Dobrowolski's female patients as is therapeutically possible, in the sole opinion of the supervising psychiatrist. This shall be effected by:

      (i) reviewing all current female patients with Dr. Dobrowolski with the mandate to permanently transfer as many of these patients to

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alternative psychiatrists as is therapeutically possible. The best interests of each patient (including having regard to this Decision and the three prior Decisions of the Discipline Committee) shall be the sole consideration;

(ii) the supervising psychiatrist shall review with Dr. Dobrowolski on his return to practice the then current female patient list on an at least monthly basis for the first twelve months, and quarterly thereafter, for as long as Dr. Dobrowolski continues to have any female patients;

(iii) if Dr. Dobrowolski is unwilling or unable to obtain the services of a supervising psychiatrist, approved by the College, then he shall cease treating any female patients by no later than his return to practice from the suspension imposed under paragraph 2;

(iv) the supervising psychiatrist shall sign an undertaking and report to the College after three months, six months, twelve months, and thereafter annually, or as otherwise directed by the College, in respect of his mandate;

(v) any replacement supervising psychiatrist must be engaged within 60 days of the first ceasing to serve, must also be approved by the College, and must sign the undertaking referred to above. In the event that a replacement supervising psychiatrist is not retained within this period, then Dr. Dobrowolski shall cease treating any female patients within 120 days of the first supervising psychiatrist ceasing to serve; and

(vi) Dr. Dobrowolski shall pay all costs incurred in connection with the supervising psychiatrist and the process set out in this clause 3(d);

(e) Dr. Dobrowolski shall, within 30 days of the date of this Order, provide to the College consent to access his OHIP billings and Dr. Dobrowolski will submit to, and not interfere with, unannounced inspections of his office(s), practice(s) and patient chart by a CPSO representative for the purposes of monitoring and enforcing compliance with the Order;

(f) Dr. Dobrowolski shall, within 30 days of the date of this Order, apologize in writing to complainant #1. The apology will be delivered through the respective counsel;

(g) Dr. Dobrowolski shall display a sign in his waiting room in English and Polish stating that “The Discipline Committee of the College of Physicians and Surgeons of Ontario has ordered that Dr. Dobrowolski is no longer permitted to accept any new female patients”;

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(h) If Dr. Dobrowolski fails to comply with any of the terms, conditions or limitations set out in this paragraph 3, the Registrar may suspend Dr. Dobrowolski's certificate of registration upon giving 10 days' notice; and

(i) Dr. Dobrowolski may seek a variance of any term, condition or limitation imposed by this paragraph 3 by applying to the Discipline Committee for that purpose. No such application shall be considered by a panel of the Discipline Committee until a period of three years has elapsed from the date of this Order, unless the Registrar consents to the hearing of an earlier application.

Counsel are invited to make submissions in writing regarding costs. Written submissions by the College are to be filed with the Hearings Office within 10 days after the release of this decision, and Dr. Dobrowolski's counsel will have 10 days thereafter to respond.

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