

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Lawrence Gotkind, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of the patients or any information that could disclose the identity of the patients 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.

**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. LAWRENCE GOTKIND

PANEL MEMBERS:

P. BEECHAM (CHAIR)
DR. P. ZITER
J. DHAWAN
DR. C. RAO
DR. J. DOHERTY

Hearing Date: July 18, 2005

Decision/ Release Date: July 18, 2005

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 July 18, 2005. At the conclusion of the hearing the Committee stated its finding that the member committed professional misconduct and delivered its penalty order with written reasons to follow.

PUBLICATION BAN

On July 18, 2005, the Committee ordered that no person shall publish the identity of the patients or any information that could disclose the identity of the patients under section 47(1) of the Health Professions Procedural Code (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, as amended (the “RHPA”).

ALLEGATIONS

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

- (1) under paragraph 51(1)(b.1) of the Code in that he engaged in the sexual abuse of a patient; and
- (2) under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O/Reg. 856/93”), in that he has engaged in conduct or an act or acts 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 Notice of Hearing also alleged that Dr. Gotkind is incompetent as defined by subsection 52(1) of the Code, in that his care of patients displayed a lack of knowledge, skill and judgment or disregard for the welfare of his patients of a nature or to an extent that demonstrates that he is unfit to continue to practise or that his practice should be restricted.

RESPONSE TO THE ALLEGATIONS

Dr. Gotkind entered a plea of no contest to allegation 2 in the Notice of Hearing. The College withdrew allegation 1 of sexual abuse and the allegation of incompetence.

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 FACTS

The following Statement of Facts was filed as exhibit #2 and presented to the Committee:

PART I - STATEMENT OF FACTS

1. Dr. Gotkind is a 67 year old physician who received an independent practice certificate from this College in 1967.

Patient A

2. Patient A, was referred to Dr. Gotkind by her family physician as a result of issues concerning depression and anxiety due to a miscarriage. Patient A attended at her appointment with Dr. Gotkind in May, 2003. Upon arrival, Patient A was asked by the receptionist to come back at 5:00 p.m. as Dr. Gotkind was running late. Patient A returned and signed in, as the receptionist had left for the day.

3. At approximately 6:00 p.m, Dr. Gotkind called Patient A into his office. Dr. Gotkind showed her an article which indicated a link between Paxil and an increased risk of breast cancer and he advised that it was not good to be on Paxil for a length of time. Dr. Gotkind asked to see Patient A's breast.

4. During the session, Dr. Gotkind touched Patient A's knee several times.
5. Just prior to leaving Dr. Gotkind's office, he asked her again, "You're sure I can't see your breasts?" Patient A said "no" and exited the office.
6. Dr. Gotkind came out to the reception area and asked Patient A to come back into his office so that he could speak with her further and could explain why he had made the comments.
7. Dr. Gotkind called Patient A several times the day following the appointment and the next day to convey that he was sorry if he had upset her.
8. The medical chart and OHIP records of Patient A are attached at Tab 1 [to the Statement of Facts].

Patient B

9. Patient B, a University student, was referred to Dr. Gotkind by her family physician.
10. In May, 2003, Patient B attended at Dr. Gotkind's office for a previously arranged appointment. The receptionist requested that Patient B return at 5:00 p.m., as Dr. Gotkind was running behind.
11. During the appointment, Dr. Gotkind engaged in unacceptable conduct towards Patient B, including the following:
 - (a) Dr. Gotkind patted her leg close to the knee with his hand;
 - (b) During a discussion concerning Patient B's past suicide attempts, Dr. Gotkind stated, "You're so beautiful, why would you give up your life?"
 - (c) When Patient B advised Dr. Gotkind that she was taking Paxil, he drew her attention to an article about Paxil and it's possible linkage to breast cancer. Dr. Gotkind said that having an operation to remove her breasts would be terrible for her husband or boyfriend;

- (d) When Patient B told Dr. Gotkind that she thought that it was odd that her boyfriend enjoyed sucking her toe, Dr. Gotkind commented that this did not sound terrible or abnormal to him; and
- (e) Dr. Gotkind commented that if Patient B went in to medicine, her patients would be distracted by her looks or beauty.

12. The medical chart and OHIP records of Patient B are attached at Tab 2 [to the Statement of Facts].

Patient C

13. Patient C first became a patient of Dr. Gotkind's in early 1999 and continued as a patient in relation to anxiety concerns until early 2004.

14. During some of Patient C's visits with Dr. Gotkind, he made comments to Patient C about her appearance. He told her that [she was] dressing too provocatively, and that, given her body proportions, she should be covering herself up more.

15. When Patient C was a high school student, Dr. Gotkind remarked that her looks and manner of dress would arouse the male students.

16. Dr. Gotkind commented on Patient C's clothing and told her that she looked like a "piece of ass," that guys liked looking at her because of the way she dressed, and that her employer probably liked looking at her too.

17. During sessions, Dr. Gotkind would sometimes touch Patient C's knee.

18. The medical chart and OHIP records of Patient C are attached at Tab 3 [to the Statement of Facts].

19. Dr. Gotkind does not contest that the above conduct constitutes professional misconduct:

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

FINDING

The Committee accepted as correct the facts set out in the Statement of Facts. Having regard to these uncontested facts, the Committee found that Dr. Gotkind committed an act of professional misconduct under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O/Reg. 856/93”), in that he has engaged in conduct or an act or acts 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 COSTS DECISION AND REASONS

Counsel for the College and counsel for Dr. Gotkind made a joint submission regarding penalty and costs. That joint submission proposed a public reprimand, a suspension, the imposition of terms, conditions and limitations on Dr. Gotkind’s certificate of registration, security to guarantee the cost of therapy and costs of the College in the proceeding.

The Panel accepted the jointly proposed penalty as being appropriate in the public interest. The misconduct of Dr. Gotkind in his words and behaviour towards the three complainant-patients was deserving of a serious penalty. A four-month suspension is consistent with the case law brought to the attention of the Panel and will serve as a deterrent to Dr. Gotkind and any physician who would engage in such conduct, which is harmful to patients and in violation of the physician’s oath to do no harm. The comments about the patients’ appearance and the request to see a patient’s breasts were uncalled for and offensive.

Dr. Gotkind’s counsel informed the Panel that Dr. Gotkind had already voluntarily closed his practice for family medical reasons, and requested that this should serve as part of the four-month suspension of his certificate of registration. She also asked that the penalty be fragmented and served in two separate two-month periods so that it would minimize the financial hardship on Dr. Gotkind as well as minimize the disruption of service to his patients. The Panel considered his conduct to be so unacceptable that the suspension should start immediately, and not take into

account time voluntarily taken out of practice already. The Panel also felt that the suspension should be served in one block of time. The Panel noted that these acts of misconduct occurred with three separate patients and that the magnitude of the misconduct dictated an immediate start to the suspension as a deterrent.

The Panel also took into consideration a number of mitigating factors cited by College counsel and indicated that, in circumstances where there were not these mitigating factors, an even more serious penalty may have been imposed. Dr. Gotkind accepted responsibility and admitted his misconduct. This saved his three patients the necessity of testifying in a full hearing. Moreover, Dr. Gotkind had no prior history of professional misconduct and took the College's boundaries course before the hearing took place.

Counsel for Dr. Gotkind made submissions about family difficulties that the member was experiencing at the time of his misconduct. The Panel wants to make clear its view that personal or family difficulties never justify or diminish the seriousness of a physician's misconduct towards patients.

The terms, conditions and limitations imposed on Dr. Gotkind's certificate of registration build in safeguards to protect against any recurrence of such behaviour. Dr. Gotkind's female patients are to be informed of the discipline finding by the Discipline Committee by written notice, to be signed by them, and the College by re-inspections and access to Dr. Gotkind's female patients will ensure that he is complying with the terms and conditions imposed by the Committee's order.

The public reprimand will send a message to the profession that misconduct of this nature will not be tolerated.

ORDER

Therefore, the Discipline Committee ordered and directed that:

1. Dr. Gotkind attend before the panel to be reprimanded, with the fact of the reprimand to be recorded on the register;

2. The Registrar suspend Dr. Gotkind's certificate of registration for a period of four (4) months commencing immediately;
3. The Registrar impose the following terms, conditions and limitations on Dr. Gotkind's certificate of registration:
 - (a) Dr. Gotkind will keep a list of all female patients he sees, indicating the date of visit, and provide copies to the College on a monthly basis;
 - (b) Dr. Gotkind will provide a written notice to each female patient he sees in a form acceptable to the College advising them of the discipline findings relating to inappropriate and unprofessional comments/behaviour and advising them that the College may contact them to inquire whether they have experienced any inappropriate comments or behaviour during their treatment by Dr. Gotkind. The patients will sign this written notice to acknowledge they have reviewed it and Dr. Gotkind will keep this signed document in each patient file;
 - (c) Dr. Gotkind will consent to the College conducting random re-inspections of his practice at his expense to ensure that he is complying with these terms and conditions; and
 - (d) Dr. Gotkind will consent to release his billing information to the College so that the College can ensure that he is complying with these terms and conditions.
4. Dr. Gotkind post \$30,000 as security to guarantee the payment of any amount that the College may be required to pay out for funding for therapy and counselling under section 85.7;
5. Dr. Gotkind pay costs to the College in the amount of \$2,500; and
6. The results of this proceeding are to be included in the register.

At the conclusion of the hearing, Dr. Gotkind waived his right to appeal and the reprimand was administered.