

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Allan Beitel, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of the complainant or any information that could disclose the identity of the complainant under subsection 47 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: Beitel, A. (Re)

**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. ALLAN BEITEL

PANEL MEMBERS:

**DR. P. CHART (CHAIR)
D. DOHERTY
DR. P. TADROS
S. BERI
DR. W. KING**

Hearing Dates: February 24, May 9 and May 10, 2011
Decision Date: November 4, 2011
Release of Written Reasons: November 4, 2011

PUBLICATION BAN

On February 13, 2013, the Divisional Court overturned the Discipline Committee's decision and returned the matter for rehearing. See *College of Physicians and Surgeons of Ontario v. Beitel*, 2013 ONSC 1599.

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 24, May 9 and May 10, 2011. At the conclusion of the hearing, the Committee reserved its decision on finding.

ALLEGATIONS

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

1. under clause 51(1)(b.1) of the Health Professions Procedural Code (the “Code”), Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18, in that he sexually abused a patient;
2. under paragraph 1(1)2 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”), in that he has failed to maintain the standard of practice of the profession; and
3. under paragraph 1(1)33 of O. Reg. 856/93, in that he has 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.

RESPONSE TO ALLEGATIONS

Dr. Beitel denied the allegations in the Notice of Hearing that he sexually abused a patient, that he has failed to maintain the standard of practice of the profession, and that he has 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.

THE ISSUES

Only two witnesses testified at the hearing: 1) the complainant, Mr. X; and 2) the member, Dr. Allan Beitel.

Mr. X testified that he saw Dr. Beitel for psychiatric consultation on August 18, 2009, and that, in the course of the consultation, Dr. Beitel asked him to drop his trousers and expose his genitals.

Dr. Beitel maintained that he saw Mr. X on August 14, 2009, and that no such incident, or anything else untoward, occurred.

The task of the Committee was to determine on the evidence whether sexual abuse occurred, whether there was a failure to maintain the standard of practice of the profession, and whether Dr. Beitel engaged in disgraceful, dishonourable or unprofessional conduct. An assessment of the credibility of the two witnesses was key to this determination.

THE EVIDENCE

Testimony of Mr. X

Mr. X testified that he was born in 1980 in Europe and moved with his family to Canada in the early 1990's, settling in southern Ontario. He enrolled in a training program at a community college but did not graduate. He tried various careers and, at the time of the hearing, was employed.

In the spring of 2008, he was living in Western Canada where he had gone, in part, to pursue a hobby and was employed. He met, became attached to, and moved in with the girlfriend who played a prominent role in subsequent events.

In the spring of 2008, he had a serious motor vehicle accident, sustaining multiple leg fractures, a fractured shoulder and a head injury. He testified that he was unconscious for

a period of time and that he had little memory of the four weeks following the injury. He was in hospital for six and a half weeks, the first three weeks in Western Canada and subsequently in southern Ontario where he was transferred for further care through the arrangements of his family. His injuries were sufficiently severe that he was in a wheelchair for six months, that he was told, at one point, that he might never walk again and that the healing of one fractured tibia was markedly delayed. He received stress counselling but denied that he was ever diagnosed with post-traumatic stress disorder. He took the antidepressant, Celexa, at one time but his records indicate that it was stopped in April 2009.

In the spring of 2009, although not completely recovered, he decided to walk a long trail through Europe to demonstrate the fact that he had overcome the dire predictions concerning his ability to walk. His father accompanied him for part of the journey. The girlfriend with whom he had lived in Western Canada had not come to Ontario with him but was then living in Europe. He testified that his plan was, on completion of the walk, to move in with his girlfriend. He was shocked to find that she was “having relations” with a roommate. He became profoundly depressed and testified that “everything was upside down.” He returned to Ontario and lived in his parents' home but was unable to work. He admitted to consuming four to five shots of “moonshine” (plum liquor) four days a week, commencing soon after his return from Europe, and to smoking marijuana with an indefinite frequency (recorded in his medical chart as every two days). Prior to going to Europe, he had benefited from counselling from a social worker, Ms Z, but testified that he was embarrassed to go back to her given the circumstances regarding the break-up with his girlfriend.

Realizing that his situation was intolerable, he did a Google search for psychiatrists (he had been advised, by a medical doctor he knew who practised in Europe, to seek help from a psychologist) and testified that Dr. Beitel's name was the first to come up. He had never seen a psychiatrist before.

Mr. X was uncertain at the time of the hearing whether Dr. Beitel had told him that he would need a referral letter, but he formed the impression at the time that one would be required and contacted the office of his family doctor, Dr. Y, for that purpose. In Dr. Y's absence, he saw her partner, Dr. W, on August 18, 2009.

He testified that he took the referral documents and drove to downtown Toronto, where he had a mid-afternoon appointment with Dr. Beitel. Under cross-examination, he said that he had no specific memory of how the documents got there.

He testified that Dr. Beitel's address was in a large apartment building. He recalled nothing to identify it as a medical building, nor was there any sign on the door of the suite except the apartment number. He knocked on the door, was admitted by Dr. Beitel and introduced himself. He recalled sitting in a hallway, perhaps ten to fifteen feet in length, separated from the adjacent room by a room divider. No secretary or receptionist was present and no other person was visible, although he could hear voices from the next room. After he had sat in the hallway for perhaps five minutes, a gentleman emerged from the next room, walked past him and went out the door.

Dr. Beitel then conducted him into the next room. He testified that it looked to him like a living room with a couch, a dining room table and a computer-type desk; he does not recall whether or not there was a computer. He saw nothing, such as medical textbooks or diplomas, to indicate that it was a medical office. He testified that it was most unlike his expectation of a psychiatrist's office, but admitted that that expectation had been formed from the movies. He testified that he was nervous, never having seen a psychiatrist before.

He was directed to sit on the couch and Dr. Beitel sat beside him at a distance, which he estimated at about three or four feet. No one else was present.

He stated that Dr. Beitel told him to start from the beginning and tell him his "life story." He related his personal history, the stages in his development, the details of the accident,

the walk in Europe and the fact that the breakup with his girlfriend had caused him great pain. He testified that Dr. Beitel questioned him specifically about sexual preferences and practices with his girlfriend, “what kind of things we would do, what kind of things we would discuss”. He had not expected this line of questioning but answered the questions. He also related that his father had not approved of his choice of girlfriend.

After a period of time, which he estimated to be about 45 minutes, Dr. Beitel asked him to stand up, move to stand in front of him, and turn first to the left and then to the right. He complied. Dr. Beitel then asked him to come and stand right in front of where he was sitting, to pull his pants down and to “let me see it.” He asked, “See what?” Dr. Beitel said, “Your cock.” (On some other occasions, Mr. X indicated that Dr. Beitel had said, “Your thing.”)

Mr. X was taken aback and quickly moved back. He testified that he couldn't believe what was happening and asked, “Are you serious?” Dr. Beitel asked what he was thinking and he testified that he responded that Dr. Beitel's actions were unprofessional. He doesn't remember much of the rest of the conversation but recalls that Dr. Beitel asked him to come back for follow-up. Another person entered as he was leaving the apartment.

He drove home feeling “disappointed” and “more lost.” When he reached home, he phoned Dr. Beitel's office and left a message stating that Dr. Beitel's behaviour had been inappropriate and that he was not going to return. He testified that Dr. Beitel called him back the same day. He believes that they spoke and that he repeated his opinion that Dr. Beitel's behaviour had been inappropriate. He does not remember the response.

When asked if he had called the College of Physicians and Surgeons, Mr. X replied that he did not know of its existence at that time.

He subsequently attended at his family doctor's office for a history and physical at the end of August, 2009. He testified that he told the nurse practitioner who saw him about

the episode with Dr. Beitel and asked if it was normal at a psychiatric consultation to be asked to take your pants off.

Dr. Y (having been alerted by the nurse practitioner) contacted him within the next day or two and asked him about the incident. She told him that he should make a complaint to the College and also indicated that she had a responsibility to do so as well.

When asked if he was happy to testify at the hearing, Mr. X replied that he was not. He had had to return from a work-related mentorship in the United States and, in any case, regarded this as an old episode and wanted to “get on with his life.”

Under cross examination, Mr. X clarified that his head injury had included a subarachnoid hemorrhage and swelling of the frontal lobe, but that he had required no surgery on his head. He had needed extensive rehabilitation and had required pain medication to a sufficient degree that he had been concerned about it. He never underwent any psychological testing but denied any problems “thinking”, and said that he has no issues now. He reiterated that, although he had had stress counselling, he had never been diagnosed with post-traumatic stress disorder.

Mr. X was questioned concerning his use of other substances. He denied using steroids. Initially, he denied using synthetic growth hormone but subsequently, without prompting, correcting his answer, with some apparent embarrassment, stated that he had used it for a limited time in the belief that it might speed healing of his tibial fracture. He also clarified his use of Celexa as being a strategy to help him get off pain medication, and indicated that he didn't take anything else for depression. He testified that he was not on any medication, or under the influence of any intoxicant, when he saw Dr. Beitel.

The issue of the accuracy of dates in the record was raised in cross-examination with Mr. X and will be reviewed in detail below.

Testimony of Dr. Allan Beitel

Dr. Beitel recounted that he trained at McGill University, graduating from medical school in 1976, doing a general internship in Montréal and then residency training in psychiatry in Toronto, culminating in an FRCPC in 1981. He is a member of the American Board of Psychiatry and Neurology and was recognized by the Canadian Institute of Psychoanalysis in 1987. He practised at 477 Richmond Street, Apartment 603 at the time of the appointment in question. It was a home/office. He does primarily psychoanalytic psychotherapy.

With respect to the order of events, Dr. Beitel testified that Mr. X left a message on his telephone, after which he called back and asked typical screening questions, which was his practice before agreeing to see patients who were self-referred. He agreed to assess Mr. X. He indicated that a referral letter was not necessary but that Mr. X could bring one if he had it. He testified that he agreed to meet him on Friday, August 14, 2009, and stated that the appointment was reflected in his date calendar (see Exhibit #8).

He identified his hand written note, made during the session (Exhibit #3), and the transcription, which he prepared personally (Exhibit #4). He testified that he recalls an overall impression of the session, but not all the specifics.

He recalls that Mr. X was very nervous, “spooked and agitated”, and that he thought it important to put him at ease.

He testified that he has a standard interview format which consists of: 1) an open-ended question concerning the reason for the visit; 2) a structured interview including family history, personal history and psychosexual history; and, 3) recommendations. He indicated that the whole interview with Mr. X did not get past stage one, and that they did not get to the discussions of the problems with his girlfriend until near the end of the session.

He stated that they started with the history of the 2008 accident. He asked, “why [province in Western Canada]?” This led to a discussion of family issues. Mr. X indicated that he came from a strong European family, that he was regarded as the “black sheep” and that family relations had gone sour over the fact that he had not lived up to expectations. Dr. Beitel stated that the interview then turned to the period of 2005. At that point, dissatisfied with life in Ontario, Mr. X packed up and moved to Western Canada, in part to pursue his hobby but also because it was “easier to find girls.” Although Mr. X’s perception was that he did well there, the family was not satisfied and wanted him home. He purchased what he described as a “junk car” and drove back to Ontario, but relations with his family did not improve and he soon realized that he had made a mistake. In the spring of 2007, he decided to go back to Western Canada.

Dr. Beitel testified that Mr. X told him he had planned to go to the United States, but that this plan changed when he met, and soon thereafter moved in with, his girlfriend. He got a job and described his boss as “cool”, saying that they used to smoke pot together.

He went home for a month for his sister's birthday celebration and brought his girlfriend with him. The family was not happy with her. He was told that she was “not marriage material” and that he should find a European girl.

He returned to Western Canada and he and his girlfriend lived together.

He told Dr. Beitel about the accident and about the prediction that he might never be able to walk. He said that he was in hospital for six weeks, three weeks in the ICU, and that his family had arranged for him to be transferred to a hospital in southern Ontario. He was very disappointed that his girlfriend was not invited to come too.

Dr. Beitel testified that Mr. X never mentioned that he had had a head injury and that he would have regarded this as an important piece of history, as he would want to explore the possibility of cognitive or emotional sequelae.

As page 2 of Dr. W's referral letter (attached to the hand written consultation notes as part of Exhibit #3) makes clear mention of the head injury, Dr. Beitel offered this as evidence of the fact that it was not present at the time of the consultation. His recollection was that the letter arrived by mail one to two weeks after the consultation.

He testified that Mr. X told him that he had had ambivalent thoughts about his girlfriend and had started seeing someone else. It was when he told her about the new relationship that she decided to go back to live with her mother in Europe. Dr. Beitel testified that he was never told that the girlfriend was found with another man.

Dr. Beitel testified that, although time had run out for the session, Mr. X was anxious to continue. He told him that they could do so at the next session.

Dr. Beitel was asked whether he had formed a diagnosis or treatment plan. He testified that he tries not to come to premature conclusions and that he was anxious to give Mr. X "the benefit of any doubt." He said that Mr. X had appeared extremely anxious and somewhat paranoid. He wondered whether there might be an organic component. He noted the extreme impulsiveness evidenced by Mr. X's numerous jobs and the fact that he moved around a lot. He questioned the possibility of an underlying personality disorder, but stated that he hadn't reached any final view.

He testified that he was never told about the stress counselling, which might have been significant, but that it would probably have come up as part of the structured interview at stage two. He stated that his primary concern at the initial interview was to try to get Mr. X to relax.

Dr. Beitel testified that he didn't know anything about a prior diagnosis of borderline personality disorder. He dislikes the term and says that patients with this problem are very difficult to treat so it is not uncommon that no mention is made of that diagnosis by a referring doctor.

He was asked how the session ended. He repeated that Mr. X wanted to keep talking and, when he told him that they could continue with the next session, Mr. X seemed happy about that. He denied that any such incident as that described by Mr. X ever occurred. He testified that he does not use the word, “cock.” Incongruously, he then stated, “Had I said something like that, I would have remembered.”

Dr. Beitel testified that he received the telephone message that Mr. X did not want to return but he does not remember when. He does not remember talking with Mr. X but testified that it would be his usual practice to follow up by phone. He has had no further contact with the patient since that day.

Under cross examination, Dr. Beitel was taken through a description of his home/office. He agreed that the absence of a receptionist, secretary or nurse meant that he would be alone with patients, but described that as “usual practice for a psychotherapist.” He agreed that no one else would know when a patient comes and goes.

Dr. Beitel was asked again about Mr. X's demeanour and repeated that he was nervous and agitated. He agreed that his notes say nothing about that but says that it stayed in his mind. He indicated that he would have recorded it “in the appropriate place”, with the mental status exam which would have taken place during a subsequent visit. He described his system of recording information as “a matter of style.”

He agreed that he testified about Mr. X going to Western Canada to pursue his hobby but that there was no mention of this in the notes. He agreed that he testified concerning the orthopaedic injuries but had made no note of them. He agreed that he testified that Mr. X had told him that he felt his family had taken advantage of his girlfriend and their treatment of her had been most unfair, but there was no record of this in his notes either.

Dr. Beitel testified that his preliminary differential diagnosis included paranoia, anxiety and personality disorder, but that it is not recorded in his notes. He stated that it was “recorded in his mind”, and that it is not appropriate to make a differential diagnosis at an

early stage, although he considers it continuously. He agreed that a mental record might be expected to diminish over time.

Dr. Beitel agreed that there were certain legal requirements with respect to a medical record. He agreed that his note concerning Mr. X is undated and that no start or finish time is recorded. He testified that he had merely neglected to record the date and that his schedule (Exhibit #8) establishes start and finish times. He agreed, however, that the times in the calendar represent fixed intervals and are not necessarily a precise reflection of when an interview begins and ends.

He testified that the August 14, 2009 date of the appointment could be verified by his schedule. He stated that the schedule is generated electronically, by him. Patients call him on his cell phone (he does not use a landline) and, if he is not at the computer, he asks for a number and calls back. He agreed that there is no audit trail for entries and that there is a possibility of error.

Concerning the referral letter, which he testified he received one to two weeks after the appointment, he agreed that no address was shown on the letter. He recalled that the envelope had been discarded.

Dr. Beitel's response to the letter of complaint to the CPSO (written by Mr. R, defence counsel) was introduced as Exhibit #9. He agreed that the response had taken more than three months but blamed the delay on communication difficulties associated with changing law firms. He agreed that a complaint to the College is a serious matter, that the response had been carefully considered and that he supplied the information on which Mr. R relied in drafting the response. He agreed that the letter says that he received the letter of referral on August 18, 2009. He stated that he was relying on the date on the letter and thought it might have come by fax, but he agreed that there was no fax line. He testified that he remembers receiving the letter "sometime after the appointment", but then reiterated that he received it one to two weeks after the appointment. He stated that it "didn't seem relevant at the time." It was put to him that he had entered the date after the

appointment, but he denied it. He also denied that the referral letter was brought to the appointment by Mr. X. He testified that, had he seen the information contained in the patient profile portion of the referral letter, he would have asked Mr. X to sign a release to obtain the records of the head injury from Western Canada.

Dr. Beitel was challenged by College counsel that the incident of sexual abuse occurred as described by Mr. X. He denied that it did.

DECISION AND REASONS

The Committee gave careful consideration to the issues and reviewed the evidentiary record.

While the issue of dates seemed, in the opinion of the Committee, peripheral to the main issue of sexual abuse, both defence and College counsel expended considerable energy leading testimony and making submissions concerning the date discrepancies, doubtless in the interests of bolstering or diminishing the credibility of the two witnesses.

Therefore, the Committee considered the testimony and documentary evidence in which dates appeared in some detail.

The Notice of Hearing stated that Mr. X's appointment with Dr. Beitel occurred “on or about August 14, 2009.” Legal precedent was provided to the Committee to indicate that the phrase “on or about” covers a range of dates sufficiently broad to encompass August 18, 2009.

The chart of Dr. W indicates that he saw Mr. X for the purpose of providing the referral letter on August 18, 2009.

The medical chart of Dr. Y, under the heading “talk appointment”, dated August 28, 2009, indicates that Mr. X saw Dr. Beitel on August 18, 2009.

Dr. Y's letter to the College, referred to in testimony, indicated that the appointment took place on August 14, 2009.

The interview notes of Mr. D, College Investigator, referred to in testimony, indicate that Mr. X told him that the appointment occurred on August 14, 2009.

The self-generated, electronic calendar of Dr. Beitel indicates that the appointment took place at 11 am on August 14, 2009.

Defence counsel challenged the credibility of Mr. X on the basis of an e-mail from College counsel, received shortly prior to the hearing, which indicated that, upon review of the medical records in preparation for the hearing, Mr. X realized that the date of the appointment with Dr. Beitel was August 18 and not August 14. The clear implication was that he had changed his story upon reviewing the records. His credibility in this regard was not aided by the fact that he initially denied reviewing medical records, although he later clarified that, compared to the volume of records which his care in Western Canada had generated, Dr. W's letter had not fallen within his concept of "medical records." College counsel submitted that Mr. X's statement, quoted by Dr. Y, that the appointment occurred on August 18 was a "prior consistent statement", made at a time when there were no medical records to review.

The conflicting evidence on dates appeared confusing but can be resolved by careful scrutiny.

The Committee believes that the confusion may have arisen from Mr. X's letter of complaint to the College dated Tuesday, September 8, 2009.

In the letter, Mr. X states, "On August 14, 2009, I *arranged* (emphasis added) my first meeting with a psychiatrist named Dr. Alan Beitel." He goes on to say, "He called me back after I left him a message", and, "On the day of our first meeting, I visited my family doctor's office for a referral." The date of the visit to the family doctor's office is

not specified in this letter, but it is known from several entries in Dr. W's uncontested records that it was August 18, 2009.

Mr. X testified that his appointment with Dr. Beitel occurred in the mid-afternoon after he had driven approximately one hour to Dr. Beitel's office. The second page of Dr. W's referral letter, dated August 18, 2009, is time stamped 12:20 p.m., consistent with the chronology which Mr. X outlined.

The Committee was not persuaded by Dr. Beitel's testimony that he remembers receiving the referral materials by mail, one to two weeks after the appointment. As mentioned above, the covering letter lacks an address line, which might have been evidence of an intention to send the materials by mail. It also lacks a fax line, which would have been evidence of an alternative means, other than hand delivery, of Dr. Beitel receiving the materials on August 18, 2009, as his counsel's letter to the College indicates that he did.

The Committee concluded that it is most probable that Mr. X brought the referral materials with him, as he testified.

This leaves unresolved the matter of Dr. Beitel's electronic calendar which showed that Mr. X's appointment took place at 11 a.m. on August 14, 2009. The Committee observes that it would certainly be technologically possible to alter a self-generated electronic appointment calendar after the fact by inserting the appointment into a vacant slot on an earlier date. The Committee can see no satisfying reason why Dr. Beitel would feel that it was in his interest to do so, other than finding that the patient's chart was undated.

The Committee found completely *incredible* the scenario in which Mr. X, having left a message for Dr. Beitel (which Dr. Beitel concurred he had received) stating that he had no intention of returning, would then go, four days later, to his family doctor's office to obtain a letter of referral to the same doctor.

The Committee therefore finds, on the balance of probabilities, that the events occurred as Mr. X described; that he arranged the appointment by telephone on August 14, 2009; that he went to the family practice office on August 18, 2009 to obtain a referral letter; and that he drove approximately one hour to downtown Toronto in time for his appointment on the mid-afternoon of August 18, 2009.

The Committee then considered, in detail, the evidence surrounding the incident which is the foundation of the College's allegation of sexual abuse.

The Committee established four possible alternatives: 1) that Mr. X fantasized the incident which he described; 2) that he misremembered or misunderstood the incident; 3) that he deliberately fabricated his account of the incident; or 4) that the incident occurred substantially as he testified.

The Committee then considered each possibility in turn.

- 1) There was no medical evidence to suggest that Mr. X suffered from any delusional pathology such as psychosis or the use of hallucinogenic substances. While he conceded that he had used alcohol heavily in the period after his return from Europe and that he used marijuana intermittently, it was his uncontroverted testimony that he had taken neither medication nor intoxicant on the day of his visit to Dr. Beitel. There was no evidence to support the possibility that his account of the incident which occurred during his consultation was a fantasy.
- 2) Mr. X testified that he has “trouble with dates” and, on other occasions, demonstrated that his memory of other details is imperfect. However, there was no evidence to establish that he has any cognitive or memory problems sufficient to render him incapable of remembering and/or understanding an incident as traumatic as the one which he described.

- 3) To fabricate a story of sexual abuse by an innocent doctor would be a monstrous act, and one which Mr. X's testimony would lead the Committee to believe him incapable of. His testimony and demeanour displayed embarrassment and not vengeance. He testified that he appeared at the hearing reluctantly and that he had “got on with his life.” Defence counsel submitted that Mr. X had been diagnosed with borderline personality disorder. The Committee found that borderline personality disorder was, in this case, one of a computer-generated list of possible diagnoses and that it had not been applied as a diagnosis to Mr. X. The Committee did not accept that Mr. X had fabricated the story of sexual abuse. The Committee believed his testimony and did not accept as truth the testimony of Dr. Beitel.

- 4) Mr. X maintained the substance of his account of the incident to the nurse practitioner, to Dr. Y, in his letter to the College, in his interview with Mr. D and under vigorous cross-examination. While he admitted the possibility of minor wording inconsistencies in his evidence, his description of the incident did not vary in any major point and remained unshaken. The Committee found Dr. Beitel's account of an interview which “went well” and his description of a happy patient, eager to continue the process, to be wholly inconsistent with the fact that Mr. X called, the same day, to indicate that he would not be returning. The Committee did not accept Dr. Beitel's version of events that nothing untoward happened. It believed Mr. X and found Mr. X's version of the incident to be entirely consistent with his subsequent behaviour. While details of an event occurring in private between two people can never be known precisely by a third-party, the Committee found that the incident occurred substantially as Mr. X described.

In summary, the Committee found, on the balance of probabilities, based on clear, cogent and convincing evidence, that the allegations that Dr. Beitel sexually abused a patient and that he engaged in conduct relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, have been proved.

No expert evidence was introduced to establish a standard of practice and the College did not ask in its final submission for a finding on the allegation that there was a failure to maintain the standard of practice. The acts found to have occurred are covered in the findings made.

The Committee requests that the Hearings Office schedule a penalty hearing pertaining to the findings made.

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On February 13, 2013, the Divisional Court overturned the Discipline Committee's decision and returned the matter for rehearing. See *College of Physicians and Surgeons of Ontario v. Beitel*, 2013 ONSC 1599.

PENALTY AND REASONS FOR PENALTY

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario delivered its written decision and reasons on finding in this matter on November 4, 2011, and found that Dr. Allan Beitel has committed an act of professional misconduct, in that he sexually abused a patient, and in that he engaged in conduct relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonorable or unprofessional.

The Committee heard evidence and submissions on penalty and costs on March 1, 2012, and reserved its decision. On March 15, 2012, pursuant to leave granted, written submissions from the College and reply submissions from Dr. Beitel were delivered to the Committee and considered by the Committee in its deliberations.

EVIDENCE AND SUBMISSIONS ON PENALTY

The principles guiding the fashioning of an appropriate penalty have been well-established by judicial authority and were the subject of submissions from both parties. Primary among them is the need to ensure protection of the public. Other principles include the need for specific deterrence (to deter the member from repeating similar misconduct), general deterrence (to educate the profession that such misconduct is not tolerated), proportionality (the need to make "the punishment fit the crime"), the need to maintain public confidence in professional self-regulation and, where appropriate, rehabilitation of the member.

Counsel for the College submitted that an appropriate penalty should include a four-month suspension, a requirement that Dr. Beitel's practice be restricted to a group setting approved by the College, a reprimand, and a requirement that Dr. Beitel post security for the cost of therapy for the patient, if needed. It was further submitted that Dr. Beitel should pay the costs of the hearing.

Counsel for Dr. Beitel submitted, orally and in writing, that this case is "perhaps the mildest case of sexual abuse that this Committee has ever identified" - the implication being that Dr. Beitel's misconduct was too trivial to attract a significant penalty - and that the only appropriate punishment is a reprimand.

Evidence before the Committee on the penalty phase of the hearing included expert testimony from Dr. Z, a psychiatrist and psychoanalyst, called on behalf of Dr. Beitel to testify about the difficulties of practising psychoanalysis in a group setting. The Committee found Dr. Z's testimony to be clear, forthright, even-handed and helpful. He testified that, in the non-institutional practice of psychiatry, and particularly psychoanalysis, solo practice is the norm. He knew of only two non-institutional group practices and, while these involved the sharing of physical facilities, it did not necessarily imply that more than one psychiatrist would be present at any one time. He described psychoanalysis as an intense, ongoing, one-on-one relationship in which the need to ensure patient trust, privacy and confidentiality is fundamental, and in which the injection of any third party would be an intolerable intrusion, likely to invalidate the process. He testified that even in an institutional setting patients undergoing psychoanalysis are usually seen one at a time, and in a location where privacy is ensured.

Dr. Z testified that the home/office practice of psychiatry is common but that certain features are standard in such practices in the interests of patient privacy. The clinical area is separate from the living quarters and has its own entrance and separate exit. Adequate soundproofing ensures that the interchange between patient and psychiatrist will not be overheard and that external noise will not intrude. A secretary/receptionist may be employed but this is not common. Although not asked to comment on the specifics of Dr. Beitel's practice situation, when asked to consider a hypothetical apartment/office similar to that of Dr. Beitel which the Committee heard described in testimony, Dr. Z opined that the home practice situation described would be "unusual."

Dr. Z was questioned concerning the impact of group practice on patient safety. He opined that it could be beneficial but that, given privacy concerns, the impact would be

minimal. He cited an authority in the field of boundary transgressions by psychiatrists that a group requirement is "sometimes helpful but not part of the main approach."

DECISION AND REASONS FOR PENALTY AND COSTS ORDER

The Committee did not accept the submission that Dr. Beitel's misconduct should be treated lightly. If the complainant's account of events is to be believed (as the Committee found it should), Dr. Beitel's instruction to the patient to expose his genitals can in no way be dismissed as an offhand or joking remark. It can reasonably be construed as inviting a sexual act. It is to no credit of Dr. Beitel's that the patient refused, thereby perhaps preventing a much more serious transgression. The Committee does not accept that a reprimand (while an important aspect of the expression of the profession's condemnation of misbehavior) would be or would reasonably be seen as an appropriate penalty if meted out as a sole punishment. Moreover, it is evident from the patient's statement, that "I have lost my full trust in doctors" that Dr. Beitel's actions damaged not only his patient but also his profession.

After careful consideration it was clear to the Committee that Dr. Beitel's misconduct warranted a suspension. Careful attention was given to the appropriate length of suspension, taking account of the case law provided by both parties. The behaviour of Dr. Beitel was clearly less egregious than some, where physical contact had been initiated by the doctor, but was also more serious than others in which a flippant remark or remarks had been made in less-threatening circumstances. The Committee determined that a suspension of two months would be appropriate in the circumstances of this case.

The Committee also determined that an award to the College of costs of \$14,600, for four hearing days at the tariff rate, was appropriate.

An order that Dr. Beitel post security to assure funding for potential counseling to the patient had, in the opinion of the Committee, important value as an indication of the view of the Committee that the costs of rehabilitating a victim shall be borne by the offender and not by the public. If it is of little practical import in this instance, it is only because it

appears unlikely that the patient will need or want to avail himself of this counseling. But if he does, the counseling will be available at the expense of Dr. Beitel.

It was the matter of crafting a penalty order, designed to ensure public safety, that gave the Committee its greatest challenge. The Committee was persuaded that the requested order to restrict Dr. Beitel to practise in a group setting was, in effect, a prohibition of his psychoanalytic practice. Even if group psychoanalytic practices were common (which, we heard testimony, they are not), it would seem unlikely that one could be found which would undertake an arrangement with a senior psychiatrist who had been found to have sexually abused a patient. Moreover, were Dr. Beitel to practise in an arrangement such as those described, where two or more psychiatrists share physical facilities but are not on the premises at the same time, it is hard to see how an increase in patient safety would be achieved.

The Committee considered other measures, including a requirement for a chaperone, a requirement for video surveillance of patient encounters and a requirement to employ a receptionist or other third-party, but rejected each, either as incompatible with the psychoanalytic relationship or as adding no great value with respect to patient protection. In the end, the Committee decided that the greatest public protection would be achieved by requiring Dr. Beitel to practise in a more professional setting. In determining the elements of this environment, the Committee drew heavily on the testimony of Dr. Z and upon our perception of the inadequacies of Dr. Beitel's apartment/office arrangement at the time of his encounter with the patient as described in the evidence. The first requirement is that all patient encounters must take place in a dedicated clinical area, physically separate from the residential area in the same building. In so ordering, we would seek to remove the blurring of boundaries inherent in the apartment/office arrangement. The office must be identified as a medical office by means of external signage. There must be separate and dedicated consultation and waiting room areas, the former protecting patient privacy and intrusive external noise through adequate soundproofing. There must be separate entrance and exit arrangements so that patients leaving a therapeutic session need not encounter others awaiting their turn. Lastly, while

inspection of patient encounters might be unacceptably intrusive, we would require Dr. Beitel to submit to the inspection of his premises by College officials to ensure that they are in compliance with the terms of this order.

As a final measure, the Committee heard submissions that, since July 25, 2010, Dr. Beitel has been required to keep a sign up in his office which instructed patients:

If you have concerns regarding unprofessional conduct or comments by Dr. Allan Beitel, please call the Intake Coordinator at the College of Physicians and Surgeons of Ontario at 416-967-2600.

This sign might have a negative effect on Dr. Beitel's practice but is, in our opinion, both less intrusive and less costly than requiring a third-party to be present in the office, while achieving the same degree of deterrent effect on potential misbehaviour. We would require that the signage be maintained indefinitely. We would hope that, in time, Dr. Beitel might come to see that its presence offers him a measure of protection as well.

ORDER

Therefore, the Discipline Committee orders and directs that:

1. The Registrar shall suspend Dr. Beitel's certificate of registration for a period of two months, the suspension to commence within 30 days of the date that this Order becomes final.
2. The Registrar shall impose immediately the following terms, conditions and limitations on Dr. Beitel's certificate of registration for an indefinite period of time:
 - a) Dr. Beitel may practise in a home/office premises only if the following conditions are met:
 - i. The office shall be identified by means of external signage.

- ii. The clinical area (consultation room and waiting room) shall be maintained as separate and distinct from the residential area.
 - iii. Dr. Beitel shall display the sign that is currently required to be displayed in his office in the office waiting room.
 - iv. Separate consultation and waiting room areas shall be maintained.
 - v. The consultation area shall have sufficient soundproofing to ensure patient privacy.
 - vi. Separate entrance and exit opportunities shall be provided to ensure patient privacy.
 - vii. The Committee directs that the parties shall each have 10 days to deliver written comments on the form and implementation of the above terms, conditions and limitations, following which the Committee shall either confirm them, or revise them after taking into account the comments of the parties. The Committee would like to clarify that in inviting comments on the form and implementability of this order we are not inviting re-argument of the penalty.
3. Dr. Beitel shall, at his own expense, comply with inspections of his premises by the College to ensure compliance with the above terms.
 4. Dr. Beitel shall appear before the panel to be reprimanded, on a date to be fixed by the Panel, which shall be no later than three months from the date that this Order becomes final.
 5. Dr. Beitel is ordered to reimburse the College for funding provided to patients, under the program required under section 85.7 of the Code, by posting an irrevocable letter of credit or other security acceptable to the College, in the amount of \$16,060, within 30 days of the date that this Order becomes final.
 6. Dr. Beitel shall pay the College its costs of this proceeding in the amount of \$14,600 within 30 days of the date that this Order becomes final.

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Allan Beitel, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of the complainant or any information that could disclose the identity of the complainant under subsection 47 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.

**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. ALLAN BEITEL

PANEL MEMBERS:

**DR. P. CHART
D. DOHERTY
DR. P. TADROS
S. BERI
DR. W. KING**

Release of Supplementary Decision and Reasons on Penalty: July 17, 2012

PUBLICATION BAN

SUPPLEMENTARY DECISION AND REASONS ON PENALTY

BACKGROUND

In its Penalty Order, released to the parties on May 1, 2012, the Committee gave notice to both parties that it was proposing the imposition of terms, conditions and limitations on Dr. Beitel's certificate of registration relating to the home/office environment in which Dr. Beitel would be required to practise. Before finalizing that part of the Penalty Order, the Committee invited submissions on the form and implementation of the proposed terms, conditions and limitations. It was the intention of the Committee to give the parties the opportunity to be heard with respect to the proposed terms, conditions and limitation, before a final decision was made as to their imposition.

The College in its submissions suggested a minor formatting change in which the wording of the sign which the Committee required to be displayed in Dr. Beitel's office waiting room should be attached as an Appendix. The College suggested no other modifications to the proposed terms, conditions and limitations in the Penalty Order of May 1, 2012.

Dr. Beitel recognized in his submissions that the Committee had not decided on the actual final terms and conditions. He submitted that the proposed terms, conditions and limitations "unduly interfere with his practice and would require him to leave his current premises," and he asked the Committee not to impose them.

Further, he submitted that the terms and conditions were inappropriate in that they "bear no relationship to the misconduct that he has been found to have committed".

Dr. Beitel also submitted that it was "highly unorthodox" to impose penalty terms which were not sought by either party and that it would be a breach of his "right to natural justice and procedural fairness to deprive him of the opportunity to lead evidence and make submissions on the proposed penalty". In his submissions, he made reference to

evidence which he would like to have called to support his submissions on penalty had the Order been anticipated or advised.

Following the submissions of both parties, independent legal counsel (ILC) advised the Committee in writing that a panel is not legally obliged to select one or the other of a penalty order that is proposed by the parties. It may impose a penalty order that it considers to be appropriate to the findings made, including one that is different from what the parties proposed. However, when a panel is considering an order that is substantially different from that which the parties proposed, ILC advised that it is appropriate for the Discipline Committee to provide the parties with an opportunity to make submissions and, if requested, to call evidence with respect to the proposed order.

ILC advised that evidence cannot be advanced through counsel except on consent, but the Committee could receive evidence from Dr. Beitel in either of two ways: 1) by scheduling a hearing day to hear evidence, or 2) by way of an agreed statement of facts agreed upon by the parties.

Counsel for the parties were given the opportunity to comment on the advice and procedural options suggested by ILC.

In his written submissions, Dr. Beitel submitted that it would be "an error" and "unnecessary" to hold an additional hearing to introduce further evidence on the terms and conditions and he reiterated his submission that they are not "rationally connected" to the misconduct found to have been committed.

The College in its written submissions agreed with the advice of ILC that a panel is not bound to choose one or the other of the penalty orders proposed by the parties to a proceeding, but can make an order it determines to be the most appropriate, based on the evidence before it. The College also indicated support for ILC's advice that the panel may provide parties with an opportunity to make submissions and, where appropriate, to lead

evidence with respect to the penalty contemplated by the panel when it is of a different nature than that proposed by the parties.

DECISION AND REASONS

The Committee concluded that it was not restricted to imposing a penalty order that is different from that proposed by the parties if it determines that another penalty order is appropriate to the finding of professional misconduct it made.

The Committee decided that the wording change proposed by the College to paragraph 2(a)(iii) of the Order of May 1, 2012 proposed by the College would improve clarity, and directs that paragraph 2(a)(iii) of the order, which states:

“Dr. Beitel shall display the sign that is currently required to be displayed in his office in the office waiting room.”

be replaced by:

"Dr. Beitel shall display the sign, attached as Appendix "A" to this decision, in his office waiting room."

The other components of the Penalty Order of May 1, 2012, remain unaltered.

The Committee did not accept the submissions made by Dr. Beitel that the terms and conditions are inappropriate or unworkable. Far from being "not rationally connected" to the finding of misconduct made, the intimate and unprofessional environment in which the patient encounter took place was, in the opinion of the Committee, a major enabler of the sexual abuse. As stated in its reasons, the Committee considered ordering the presence, in some form, of a third-party during patient encounters but rejected it as

antithetical to the psychoanalytic process. Supported by the testimony of the defense's own expert concerning the features of a "professional" psychiatric office, the Committee, after very careful consideration, crafted an order that would permit Dr. Beitel to continue with his psychoanalytic practice, but would minimize the risk of Dr. Beitel reoffending by prohibiting that practice from taking place in an unprofessional residence/office that lacked the appropriate features of a professional environment.

The Committee considered in crafting its penalty order that relocation from the unprofessional environment in which the sexual abuse occurred might be necessary. The fact that the Committee was unaware that relocation had already occurred is essentially irrelevant. The Order does not stipulate the setting or nature of Dr. Beitel's practice (group practice vs. solo, home office vs. medical office) but rather imposes terms, conditions and limitations which, in the Committee's best judgment, offer the maximum practical protection for the public if Dr. Beitel wishes to continue his practice in a residence/office environment.

If modification of Dr. Beitel's existing location to satisfy the terms, conditions and limitations proves impossible, by virtue of expense or local regulation, and a further relocation is required, that is what should be done in the public interest. The Committee considers it can do no less to reduce the risk of Dr. Beitel's re-offending and to demonstrate to the profession and to the public the importance of practising in a professional environment.

The Committee was prepared to offer Dr. Beitel the opportunity to lead evidence and to make further submissions respecting the proposed terms, conditions and limitations but he has declined that opportunity. Dr. Beitel put forward in his submissions facts that he said he would have wished to establish before the Committee to show that the proposed terms, conditions and limitations "unduly interfere" with his practice and would require him to move from his present location. The Committee understands that those "facts" have not been established by evidence, and are not agreed facts, but the Committee fully appreciated in proposing the terms, conditions and limitations that there was the potential

for expense, or even the requirement that Dr. Beitel find another residence/office location, if the terms, conditions and limitations could not be satisfied in a particular location. Even accepting as true the facts that Dr. Beitel says he would have like to establish, those facts do not change the view of the Committee that the proposed terms, conditions and limitation should be imposed to ensure that Dr. Beitel practises in a professional setting, to minimize the risk to the public of Dr. Beitel reoffending.

After considering all of the submissions made by the parties, it is the decision of the Committee that the proposed terms, conditions and limitations as revised be made final.

ORDER

Accordingly, the Committee orders that paragraph 2 of its Order of May 1, 2012, shall be finalized to read as follows:

2. The Registrar shall impose immediately the following terms, conditions and limitations on Dr. Beitel's certificate of registration for an indefinite period of time:
 - a) Dr. Beitel may practise in a home/office premises only if the following conditions are met:
 - i. The office shall be identified by means of external signage.
 - ii. The clinical area (consultation room and waiting room) shall be maintained as separate and distinct from the residential area.
 - iii. Dr. Beitel shall display the sign that is attached as Appendix "A" to this decision, in his office waiting room.
 - iv. Separate consultation and waiting room areas shall be maintained.
 - v. The consultation area shall have sufficient soundproofing to ensure patient privacy.
 - vi. Separate entrance and exit opportunities shall be provided to ensure patient privacy.

Appendix A

NOTICE TO PATIENTS

If you have any concerns regarding unprofessional conduct or comments by Dr. Allan Beitel, please call the Intake Coordinator at the College of Physicians and Surgeons of Ontario at 416-967-2600.