

**Indexed as: Kirsh (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 ss. 26(2) 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 -**

**BRIAN SHELDON KIRSH**

**PANEL MEMBERS:**                    **DR. M. GABEL**  
    **DR. R. EDNEY**  
    **E. COLLINS**  
    **DR. K. BRACKEN**

**Hearing Date:**                        **November 18, 2008**  
**Decision Release Date:**            **November 18, 2008**  
**Release of Written Reasons:**      **February 17, 2009**

## **DECISION AND REASONS FOR DECISION**

The Discipline Committee of the College of Physicians and Surgeons of Ontario (the “Committee”) heard this matter at Toronto on November 18, 2008. At the conclusion of the hearing, the Committee delivered its finding that the member committed an act of professional misconduct and its penalty order with written reasons to follow.

### **THE ALLEGATION**

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

1. 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 THE ALLEGATIONS**

Dr. Kirsh admitted to the allegation as set out in the Notice of Hearing.

### **FACTS AND EVIDENCE**

The following Agreed Statement of Facts was filed as an exhibit and presented to the Committee:

1. Dr. Brian Sheldon Kirsh (“Dr. Kirsh”) was licensed in 1980. He initially carried on practice as a family physician in Richmond Hill for approximately 13 years prior to the completion of his post-graduate training in psychiatry in 1998. Since then, his practice has focussed exclusively on psychiatry. Dr. Kirsh has no disciplinary history.
2. In approximately 2003, Dr. Kirsh moved from Richmond Hill to Hamilton where his practice is now based. His practice involves the psychiatric assessment and

- treatment of new patients for a multi-disciplinary pain program. Dr. Kirsh's primary practice is in long-term chronic pain management. Only a small number of individuals are seen for non-pain related psychiatric disorders.
3. Dr. Kirsh initially met the complainant, Mr. X, and his wife, Ms. Y, approximately 18 years ago. They were all members of a religious community in Richmond Hill and were involved in a religious study group. In particular, Dr. Kirsh and Ms. Y worked closely together within the religious community. In that context, Dr. Kirsh developed feelings for Ms. Y which he never disclosed to her.
  4. On one occasion, approximately fourteen years ago, Dr. Kirsh saw Mr. X for an annual physical examination. After Dr. Kirsh moved from Richmond Hill, he had very little interaction with Ms. Y and Mr. X.
  5. In early 2007, Ms. Y contacted Dr. Kirsh to ask if she and her husband could meet with him. Dr. Kirsh saw Mr. X and Ms. Y at his old family practice office in Thornhill, in March, 2007. At the commencement of the meeting Dr. Kirsh asked for Ms. Y's OHIP card. During the meeting, which lasted one hour, they discussed that they were having marital difficulties and sought Dr. Kirsh's advice.
  6. Dr. Kirsh asked them preliminary questions about the number of years that they had been married. He indicated that he was not a marriage counsellor, but that they should see a professional marriage counsellor and in the interim that they should not make any hasty decisions. They did not see Dr. Kirsh professionally thereafter.
  7. Ms. Y confirmed to the College that she understood that Dr. Kirsh had seen them as family friends and not as a physician. Mr. X believed they were seeing Dr. Kirsh in his professional capacity.
  8. After the meeting occurred, Dr. Kirsh's staff submitted an OHIP claim for the hour session. The claim was rejected within a few days as lacking information. Dr. Kirsh then notified his staff not to re-submit the claim. The decision not to

re-submit the claim was made before the second meeting with Ms. Y, described below.

9. There was no scheduled follow-up with Mr. X and Ms. Y.
10. Thereafter, Dr. Kirsh decided he would tell Ms. Y about the feelings he had for her, which had originated in their personal relationship years previously. He met her in April, 2007 at the same office in Thornhill. Ms. Y confirmed that she returned to see Dr. Kirsh only as a friend and not as a physician and that their discussion was in a purely personal context.
11. Dr. Kirsh told Ms. Y of his feelings towards her. Ms. Y advised that her marriage to Mr. X was over for other reasons, completely unrelated to Dr. Kirsh. Thereafter, Dr. Kirsh corresponded with Ms. Y by e-mail in which he reiterated his personal feelings towards her. She did not respond in kind at any time. At no time did Dr. Kirsh seek to date or attempt any physical contact with Ms. Y.
12. Mr. X found the e-mail exchanges between Ms. Y and Dr. Kirsh. Mr. X subsequently discovered the reasons for Ms. Y's decision to end their marriage, which had nothing to do with Dr. Kirsh. They separated thereafter.
13. Prior to the initiation of the complaint but after he became aware of Mr. X's concerns, Dr. Kirsh e-mailed Mr. X. Dr. Kirsh stated in that e-mail that he had seen Ms. Y and Mr. X in a "spirit of friendship" and he was sorry that Mr. X had confused this with a doctor-patient relationship. Dr. Kirsh also wrote that he made a mistake in both taking Ms. Y's OHIP number and not advising Mr. X directly that he was acting only as a friend and not as a physician, as he had communicated to Ms. Y.

***Admission:***

14. Dr. Kirsh admits that he committed an act of professional misconduct in that he 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 by erring in his judgment in

failing to set distinct professional boundaries in his communication with Mr. X, in that he took Ms. Y's OHIP card at the beginning of the meeting, saw Ms. Y and Mr. X in his former medical office and then failed to communicate clearly to Mr. X that he was not seeing the couple in his professional capacity.

## **FINDING**

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts. Having regard to these facts, the Committee accepted Dr. Kirsh's admission and found that he has committed an act of professional misconduct under paragraph 1(1)33 of O. Reg. 856/93, in that he engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

## **PENALTY AND REASONS FOR PENALTY**

Counsel for the College and counsel for the member made a joint submission as to an appropriate penalty and costs.

The Committee is aware that when a joint submission is made by the parties, it should be accepted unless to do so would be contrary to the public interest and would bring the administration of justice into disrepute.

The Committee reviewed the circumstances of the admitted behaviour, and heard submissions by counsel for the College and counsel for Dr. Kirsh. In addition to the facts set out in the Agreed Statement of Facts, mitigating circumstances were taken into account in arriving at the appropriate penalty.

In mitigation, Dr. Kirsh has no previous disciplinary history with the College. He also cooperated fully with the College, thereby sparing the complainant and other witnesses from having to testify and reducing the length of the proceedings. He has apologised to the affected individuals for his lapse of judgment in failing to maintain professional boundaries.

The Committee also placed weight on a letter submitted by Dr. Kirsh's wife, which demonstrated that Dr. Kirsh has already paid a price for his transgression of boundaries. The Committee took into account her description of the price he has paid, his remorse, and the vigilance that he now exercises with respect to boundary issues, as well as her estimation of his character, and her willingness to support him and to assist in his rehabilitation.

The penalty must address the need for individual deterrence and must remind the medical community that boundary transgressions may lead to untoward effects and patient harm, and will not be tolerated. As the facts of this case illustrate, a physician may act with the best of intentions, but a lack of awareness and attention to proper boundaries can result in the physician engaging in acts of professional misconduct.

In evaluating the proposed penalty, the Committee concluded that the public reprimand, in particular, addresses these principles, and that participation in the boundaries course will assist Dr. Kirsh in avoiding future problems, and thereby protect the public.

## **ORDER**

Therefore, the Committee ordered and directed that:

1. Dr. Kirsh appear before it to be reprimanded, with the fact of the reprimand recorded on the register.
2. The Registrar impose the following term, condition and limitation on Dr. Kirsh's certificate of registration:
  - i. Dr. Kirsh shall enroll in and successfully complete, at his own expense, the College course "Understanding Boundary Issues and Managing the Risks Inherent in the Doctor-Patient Relationship". Upon proof of completion this term will be removed from Dr. Kirsh's certificate of registration.
3. Dr. Kirsh pay costs to the College in the amount of \$3,650.00.

4. The results of this proceeding to be included in the register.

At the conclusion of the hearing, Dr. Kirsh waived his right to an appeal under subsection 70(1) of the Code, and the Committee administered the public reprimand.