

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Gerald Wayne Powell, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the names and any information that could disclose the identity of patients referred to orally or in the exhibits filed at the hearing under subsection 45(3) 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: Powell, G. W. (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. GERALD WAYNE POWELL

PANEL MEMBERS:

DR. E. STANTON (CHAIR)
D. DOHERTY
DR. D. WALKER
D. GIAMPIETRI
DR. M. DAVIE

Hearing Date: February 3, 2014
Decision Date: February 3, 2014
Release of Written Reasons: March 4, 2014

PUBLICATION BAN

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 3, 2014. At the conclusion of the hearing, the Committee stated its finding that the member committed an act of professional misconduct and delivered its penalty and costs order with written reasons to follow.

THE ALLEGATIONS

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

1. 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
2. under paragraph 1(1)33 of 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.

RESPONSE TO THE ALLEGATIONS

Dr. Powell admitted the second allegation in the Notice of Hearing that he 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. Counsel for the College withdrew the first allegation in the Notice of Hearing.

FACTS

The following facts were set out in an Agreed Statement of Facts that was filed as an exhibit and presented to the Committee:

1. Dr. Powell is a psychiatrist, certified by the Royal College in 1989. He has had a certificate of independent practice from the College since April, 1987.

Patient A

2. Dr. Powell treated Patient A regularly from January 1995 to November 1998 in a psychotherapeutic treating relationship which also included some counselling. Patient A had been abused as a child. Her psychotherapy considered some issues relating to her childhood, some related to her troubled marriage and some related to her extended family.
3. In the fall of 1998, the patient disclosed to Dr. Powell that she had a crush on him. Dr. Powell told Patient A that because of her crush, he could no longer treat her, and they agreed that the doctor-patient relationship was to be terminated.
4. Patient A asked Dr. Powell if he wanted to see her “not as a patient.” Patient A states that Dr. Powell had her read an article about what happens in doctor-patient relationship when the doctor falls in love, from which she took that Dr. Powell shared her romantic feelings.
5. The doctor-patient relationship ended in November, 1998.
6. Patient A and Dr. Powell began taking long walks together and he would share details with her about his personal life, including that he was separated.
7. Dr. Powell and Patient A began a romantic relationship shortly after termination of the doctor-patient relationship. Their relationship included hugging, followed by kissing commencing in or about February 1999 and sexual intercourse commencing in about September 1999.
8. In the late spring of 1999, Patient A started looking for her own apartment, as she

was leaving her husband.

9. Patient A and Dr. Powell planned to get married and Dr. Powell was looking for a home for them to move in together. Their personal, sexual relationship lasted between four and a half and five years.

Patient B

10. Patient B was a patient of Dr. Powell's from about March, 1995 to about May, 2004. Patient B saw Dr. Powell for weekly psychotherapy sessions during this time.
11. Patient B was referred to Dr. Powell by her family physician.
12. She sought help for recurring anxiety and depression and help with gaining insight in regards to her family of origin, which had been an alcoholic environment.
13. Patient B's last appointment with Dr. Powell was in May 2004.
14. In May 2004, Dr. Powell came to her place of work. This was a pre-arranged appointment made for him by Patient B. Afterwards, Dr. Powell asked her if she would she be interested in going out for a bite to eat. They went out for dinner.
15. Patient B called Dr. Powell to thank him for the meal and reciprocated with an invitation to dinner which he accepted, for the following week.
16. Patient B met with Dr. Powell one more time at his office a few days following the first dinner they had together. No therapy occurred during that brief appointment. Dr. Powell and Patient B mutually agreed at that time that Patient B could no longer be a patient, and the doctor-patient relationship was terminated.

17. Following the termination of the doctor-patient relationship, Dr. Powell and Patient B saw each other almost daily, going out to restaurants or coffee shops. Later they went camping on week-ends, on day trips, and spent week-ends away together.
18. Within the first two or three weeks of the conclusion of the doctor-patient relationship, Patient B was told by Dr. Powell of the rules concerning doctor-patient relationships, that their relationship should not be happening and that they should part ways.
19. Dr. Powell and Patient B first had sexual intercourse between four and six weeks after they had terminated the doctor-patient relationship. Dr. Powell and Patient B never engaged in touching in Dr. Powell's office, nor did Dr. Powell make sexual remarks or behave in a sexual manner with Patient B while she was his patient.
20. Patient B did not complain to the College about Dr. Powell's conduct; the relationship came to the College's attention through Patient A.

ADMISSION

21. Dr. Powell admits the facts in paragraphs 1 to 20 above and agrees that he 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, by entering into intimate, sexual relationships with each of Patient A and Patient B too soon after the termination of each of the long term psychotherapeutic relationships.

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. Powell's admission and found that he committed an act of professional misconduct, in that he 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.

PENALTY

Patient Impact Statement

On the penalty phase, College counsel introduced and marked as an exhibit, a victim impact statement from Patient A. That statement spoke to, among other things, feelings suffered by Patient A of powerlessness, manipulation, betrayal, depression and distrust as a result of the abuse of power by Dr. Powell. The Committee accepted the significant negative impact that Dr. Powell's conduct had on Patient A as reflected in the victim impact statement.

Reasons for Penalty

Counsel for the College and counsel for the member made a joint submission as to an appropriate penalty and costs order. The joint submission, briefly stated, proposed a reprimand, a suspension of Dr. Powell's certificate of registration for nine (9) months and the requirement that Dr. Powell undertake two courses.

The Committee acknowledged well accepted law that a joint submission as to an appropriate penalty must be accepted unless the proposed penalty would bring the administration of justice into disrepute and be contrary to the public interest. For the reasons set out below, the Committee accepted the joint submission as to penalty as fair and reasonable in all of the circumstances.

The Committee considered the aggravating factors in this case. In particular, the Committee is very concerned with Dr. Powell's pattern of engaging in personal, sexual relationships with patients too soon after the termination of the doctor-patient relationship and with patients to whom he has provided long term psychotherapy. These patients are vulnerable as evidenced by the very nature of the treatment they sought from Dr. Powell. Patient A, wrote in her victim impact statement that she has had a deep and continuing

mistrust of men following her relationship with Dr. Powell. She wrote that “my initial problems with trust were exacerbated by my relationship with Dr. Powell.... His misuse of power and his seduction permanently impacted my relationship with my husband and all men with whom I come into contact”.

It is of paramount importance that a psychiatrist maintains professional boundaries in a psychotherapeutic relationship in order to treat a patient effectively and that appropriate boundaries be maintained after the doctor-patient relationship is terminated. In fact, depending upon the circumstances, a sexual relationship may never be appropriate with a former psychotherapy patient. At all times, it is the physician's professional responsibility to maintain appropriate boundaries with patients and former patients. Dr. Powell's admitted behaviour demonstrates a blatant disregard for the well-being of his patients and cannot be condoned by the Committee, or the profession for that matter, and deserves a stiff penalty to uphold the integrity of the profession and protect the public.

The Committee also considered the mitigating factors in this case which included that Dr. Powell has acknowledged responsibility for his wrongdoing and obviated the need for a lengthy hearing and thereby spared the witnesses from having to testify.

The Committee reviewed and considered the case law concerning similar cases provided by both counsel for the College and Dr. Powell. The Committee is cognizant that no two cases are alike and each case must be considered on its own facts. We agree that the proposed penalty including the suspension of Dr. Powell's certificate of registration for nine (9) months is fair and just and within the range of prior penalties where a finding of disgraceful, dishonourable or unprofessional misconduct has been made for similar misconduct. This lengthy suspension will serve as a specific deterrent to Dr. Powell and as a general deterrent to the profession as a whole that such behaviour is unacceptable.

One purpose of a penalty is to provide for some element of rehabilitation for the member to the extent possible. The Committee expects that by ordering that Dr. Powell undertake both the College's course in Understanding Boundaries in Managing the Risks Inherent in the Doctor-Patient Relationship and the College-facilitated instruction in Ethics, Dr.

Powell might gain some insight into the seriousness of his transgressions and prevent further harm to patients in the future.

COSTS

This is an appropriate case for costs. As agreed by the parties, the Committee also orders that Dr. Powell pay the tariff for one day of hearing in the amount of \$4,460.00.

ORDER

Therefore, having stated the findings in paragraph 1 of its written order of February 3, 2014, on the matter of penalty and costs, the Committee ordered and directed that:

2. the Registrar suspend Dr. Powell's certificate of registration for a period of nine (9) months, effective immediately.
3. the Registrar impose the following term, condition and limitation on Dr. Powell's certificate of registration:
 - (a) Dr. Powell must successfully complete, at his own expense, the following courses within 12 months of the date of this Order:
 - (i) the College's Understanding Boundaries in Managing the Risks Inherent in the Doctor-Patient Relationship; and
 - (ii) the College-facilitated instruction in Ethics course.
4. Dr. Powell appear before the panel to be reprimanded.
5. Dr. Powell pay to the College costs in the amount of \$4,460.00, within 30 days of the date of this Order.

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