

Indexed as Yaroshevsky (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 Section 26(2) of the *Health Professions Procedural Code 1991*,
being Schedule 2 of the *Regulated Health Professions Act*,
S.O. 1991, c. 18, as amended.

B E T W E E N:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. FELIX YAROSHEVSKY

PANEL MEMBERS:

**DR. W. KING (CHAIR)
DR. M. DAVIE
S. DAVIS
DR. J. BROWN
J. DHAWAN**

Hearing Dates: March 1, 2007
Decision Date: March 1, 2007
Release of Written Reasons Date: April 9, 2007

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 March 1, 2007. At the conclusion of the hearing, the Committee stated its finding that the member committed acts of professional misconduct and delivered its penalty order in writing, with written reasons to follow.

THE ALLEGATIONS

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

1. under paragraph 51(1)(b.1) of the Health Professions Procedural Code which is schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18, as amended, 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.

RESPONSE TO THE ALLEGATIONS

Dr. Yaroshevsky entered a plea of no contest to allegation #2, as set out in the Notice of Hearing. The College withdrew allegation #1.

FACTS AND EVIDENCE

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

PART I – FACTS

1. Dr. Yaroshevsky is a 74 year old psychiatrist who has practised medicine for 50 years, and in a major city for over 30 years. Dr. Yaroshevsky has a general psychiatric practice.
2. In about September, 2000, when she was 25, Patient A became a patient of Dr. Yaroshevsky’s, and saw him in the office for the first time. Dr. Yaroshevsky continued to see Patient A on a regular basis from late September, 2000 until late May, 2003.

3. Patient A was referred to Dr. Yaroshevsky while a patient at a center for addiction and mental health, for her depressed mood, interpersonal difficulties and, at times, suicidal ideation. Patient A discussed with Dr. Yaroshevsky, at her regular therapy sessions, issues surrounding childhood sexual abuse by her father, her depression and difficulties she was experiencing in certain relationships.
4. In late May, 2003, Dr. Yaroshevsky saw Patient A for a scheduled appointment in the afternoon. During his session with Patient A, Dr. Yaroshevsky told Patient A that he had an upset stomach from some spoiled chicken he had eaten at lunch, and he took a drink of whiskey from a whiskey bottle that he says a patient had left in his office as a Christmas present. He said the drink was to calm his queasy stomach. Dr. Yaroshevsky returned to his seat after having the drink and continued the therapy session with Patient A.
5. As Patient A was leaving the office at the end of the session, both Dr. Yaroshevsky and Patient A stood up. Dr. Yaroshevsky hugged Patient A.
6. During the hug, Dr. Yaroshevsky's hands were on Patient A's back, over her clothes. He moved them down her back, again over her clothes, to the top of her buttocks. Patient A states that during the hug Dr. Yaroshevsky attempted to kiss her. Dr. Yaroshevsky denies that he attempted to do so. Patient A left Dr. Yaroshevsky's office.
7. Later that evening, Dr. Yaroshevsky called Patient A twice and left her two voicemail messages, apologizing for how his conduct might have affected her and stating that he hoped that he had not upset her. He also called the next morning and left a message.
8. As a result of the conduct described above, Dr. Yaroshevsky was charged on July 15, 2005 with one count of sexual assault pursuant to s. 271 of the Criminal Code.
9. On August 2, 2006, Dr. Yaroshevsky pled guilty in the Ontario Court of Justice to one count of simple assault under s. 265 of the Criminal Code.

10. Dr. Yaroshevsky accepted the charge of hugging Patient A and his hands moving down her back to the top of her buttocks. However, he denied sexual intention, and denied all sexual elements to the touching.
11. The Court accepted the facts before it, accepted Dr. Yaroshevsky's plea to one count of simple assault, and Dr. Yaroshevsky was sentenced to a suspended sentence, and one year's probation. He was ordered to keep the peace and be of good behaviour, have no weapons in his possession, and have no contact, direct or indirect, with Patient A.
12. Dr. Yaroshevsky states that he is complying with the sentence imposed by the Court, including the terms of his probation.
13. Dr. Yaroshevsky does not contest that the facts set out above constitute professional misconduct under paragraph 1(1)33 of Ontario Regulation 856/93 made under the Medicine Act, 1991 in that the conduct described is 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.

FINDING

The Committee accepted as true all of the facts set out in the Statement of Facts. Having regard to these facts, the Committee accepted Dr. Yaroshevsky's plea of no contest and found that he committed acts 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 REASONS FOR PENALTY

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

The draft order proposed by counsel for the College set out a five (5) month suspension of Dr. Yaroshevsky's certificate of registration, two (2) months of which shall be suspended if Dr. Yaroshevsky successfully completes, at his own expense, the College's Boundaries Course and provides proof thereof to the College. Further, that Dr. Yaroshevsky pay to the College costs in the amount of \$2,500.00 and that the results of the proceeding be included in the register.

Counsel for the member was in agreement regarding the substance of the proposed order, but presented an order in the alternative with respect to how the penalty was to be phrased. The order in the alternative was for a three (3) month suspension and a further two (2) months which would be suspended on completion of the Boundaries Course. Counsel for the member urged the panel to accept this alternative order so that the net length of time would be represented on the register.

College counsel made submissions regarding the precedential value of a five (5) month suspension given the facts of this case. Dr. Yaroshevsky committed a significant boundary violation with a young, vulnerable patient; a violation a psychiatrist of Dr. Yaroshevsky's experience should have known would be extremely distressing given the facts of her case which he was aware of through their regular psychotherapeutic relationship. College counsel submitted a signed statement from Patient A expressing her refusal to write an impact statement as she wants Dr. Yaroshevsky to know no further details about her.

Counsel for the member submitted as evidence a receipt for payment for an upcoming College Boundaries Course and a brief of patient letters of support.

Given the agreed to facts of the case, the need for a penalty to serve both specific deterrence and general deterrence for the membership, as well as public protection, the panel unanimously accepted the College's order.

ORDER

Therefore, the Discipline Committee ordered and directed that:

1. The Registrar suspend Dr. Yaroshevsky's certificate of registration for a period of five (5) months commencing March 15, 2007, two (2) months of which shall be suspended if Dr. Yaroshevsky successfully completes, at his own expense, the College's Boundaries Course and provides proof thereof to the College.
2. Dr. Yaroshevsky pay to the College costs in the amount of \$2,500.00.
3. The results of this proceeding to be included in the register.