

Indexed as:

Ahmed (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 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. AFTAB AHMED

PANEL MEMBERS:

**J. MARTEL (CHAIR)
DR. Y. DEBUDA
DR. J. THOMPSON
P. BEECHAM**

**Hearing Date: March 11, 2002
Decision/Released Date: March 11, 2002**

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter on March 11, 2002 at Toronto.

PUBLICATION BAN

The Discipline Committee ordered pursuant to section 47 of the *Health Professions Procedural Code*, which is Schedule 2 to the *Regulated Health Professions Act, 1991* (hereinafter the “Code”), that neither the name of the complainant nor any information by which the complainant might be identified be published or broadcast.

ALLEGATIONS

A Notice of Hearing was filed as Exhibit 1. The College alleged that Dr. Ahmed was guilty of professional misconduct under paragraph 51(1)(b.1) of the Code in that he sexually abused a patient.

PLEA

Dr. Ahmed pleaded guilty to the allegation of professional misconduct set out above.

EVIDENCE

Counsel for the College and counsel for the member filed an Agreed Statement of Facts (Exhibit 2), which provided as follows:

1. Dr. Aftab Ahmed was at all material times a psychiatrist practising in Cornwall, Ontario. He is approximately 69 years of age and married.
2. Ms. A was a patient of Dr. Ahmed's for approximately 8 years from approximately November, 1991 until July, 1999. At the time Ms. A started to attend Dr. Ahmed, she was approximately 21 years of age. Dr. Ahmed was approximately 59 years of age.

3. During the physician-patient relationship, Dr. Ahmed provided Ms. A, among other things, psychotherapy and counselling. Dr. Ahmed's medical records for Ms. A are contained in the Joint Document Book, Tab 1. The OHIP billings of Dr. Ahmed for Ms. A are contained in the Joint Document Book, Tab 2.
4. Dr. Ahmed originally started treating Ms. A for an anxiety disorder. Ms. A advised Dr. Ahmed that she believed she had been the victim of prior sexual abuse, as well as emotional abuse. Dr. Ahmed diagnosed her as having obsessive compulsive disorder. In 1998, Dr. Ahmed began to provide psychotherapy in relation to the breakdown of her marriage.
5. In approximately April/May of 1998, Dr. Ahmed hugged Ms. A at the end of a session in his office. Thereafter, Dr. Ahmed engaged in sexual relations approximately twice monthly with Ms. A in the office, in hotels and at their residences, including sexual intercourse, until approximately August, 1999. (Dr. Ahmed did not see Ms. A professionally during the period of October 1998 to April 1999).

It was conceded by counsel for the member that at least a portion of the sexual relationship, including at least some of the instances of sexual intercourse, occurred during the active physician-patient relationship.

A Joint Book of Documents, consisting of Medical records and OHIP records in regard to the treatment given by Dr. Ahmed to Ms. A, was also filed as an exhibit.

FINDINGS

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts. The Committee concluded that Dr. Ahmed carried on a sexual relationship with the complainant, which relationship included repeated instances of sexual intercourse, while Dr. Ahmed was treating the complainant as a patient.

Having regard to the facts as found and the allegations against the member, the Committee therefore accepted Dr. Ahmed's plea and finds him guilty of professional misconduct under paragraph 51(1)(b.1) of the Code, in that he sexually abused a patient.

EVIDENCE AND SUBMISSIONS IN RESPECT OF PENALTY AND COSTS

In addition to the Agreed Statement of Facts and Joint Book of Documents, the Committee, at the penalty phase of the hearing, also considered an impact statement signed by the complainant, as well as two reference letters attesting to Dr. Ahmed's reputation and quality of care. The complainant, in her impact statement, described the significant emotional and psychological harm caused to her by Dr. Ahmed's breach of trust, including great confusion and inner turmoil, leaving her depressed and less trusting of doctors in general. She felt that she would not get over the breach of trust, nor that it would ever go away.

Counsel for the College submitted that, in view of the nature of the sexual abuse, a reprimand and revocation of the member's certificate of registration was mandated by subsection 51(5) of the Code. Counsel for the member agreed that subsection 51(5) mandated a reprimand and revocation.

Counsel for the College also sought an order requiring the member to reimburse the College for the cost of funding which the College might be required to pay the complainant under section 85.7 of the Code. Counsel for the member opposed such an order.

In relation to costs, counsel for the College sought an order requiring that Dr. Ahmed pay costs to the College in the amount of \$2,500.00. This was opposed by counsel for the member.

DECISION AND REASONS IN RESPECT OF PENALTY AND COSTS

In view of the evidence indicating that Dr. Ahmed had repeated sexual intercourse with a patient while treating her, and the concession by counsel for the member in this regard, the Committee concluded that paragraphs 52(5)(1) & (2) of the Code applied, mandating that the Committee reprimand the member and direct that the Registrar revoke the member's certificate of

registration. The Committee also concluded that this was an appropriate case for a funding reimbursement order under paragraph 51(2)(5.1) of the Code.

The Committee found that Dr. Ahmed's conduct constituted a serious breach of trust in the context of the physician-patient relationship. The patient was young and vulnerable and was under Dr. Ahmed's care for psychotherapy and counselling. Dr. Ahmed took advantage of the patient's vulnerability for his own sexual gratification. This involved a series of deliberate and calculated actions over a period of time spanning more than one year.

The Committee concluded that this was an appropriate case for a funding reimbursement order under paragraph 51(2)(5.1) of the Code. No request was made that the member provide a letter of credit or other security to guarantee payment of the funding reimbursement requirement. The Committee was of the view that such an additional term may be beneficial in many cases where a funding reimbursement order is made, but declined to make that order in this case as no such order was sought.

The Committee, in reaching its conclusions, had regard to penalty objectives including public protection, specific and general deterrence, the need to uphold the integrity of the profession, and, in appropriate cases, the rehabilitation of the member. The Committee was of the view that its order appropriately addresses the above penalty objectives, recognizing that rehabilitation was not appropriate due to the circumstances of this case.

The Committee considered that this was an appropriate case to order costs against the member, having regard to the half-day hearing that took place.

ORDER

The Discipline Committee therefore ordered and directed that:

1. Dr. Ahmed be reprimanded and the fact of the reprimand be recorded on the register;

2. the Registrar be directed to revoke Dr. Ahmed's certificate of registration, such revocation to take effect immediately;
3. Dr. Ahmed pay to the College the costs of this hearing fixed in the sum of \$2,500.00, and that the costs are payable forthwith; and
4. Dr. Ahmed reimburse the College for funding paid by the College to the patient named in the Notice of Hearing, for therapy and counselling pursuant to the provisions of the Code.

CONTINGENT ISSUE

The Committee was advised that there is currently a challenge before the courts to the constitutionality of the mandatory revocation provision in the Code for listed types of sexual abuse, including sexual intercourse. Both counsel therefore asked that the Committee in its reasons indicate what penalty order it would have imposed absent paragraph 51(5)(2) of the Code.

Counsel for the College argued that the Committee should direct revocation even if it were not mandated to do so. He argued that revocation should be imposed for all serious forms of sexual abuse, except in the most rare and unusual cases. He argued that this was not such a case.

Counsel for the member submitted that revocation is equivalent to professional capital punishment, and should be reserved for the most serious cases. He submitted that a gradation of penalties should be employed so that only the most serious cases attracted the gravest form of penalty. He argued that revocation should therefore be restricted to cases where there is predatory and abusive conduct exploiting the balance of power. Counsel for the member sought a contingent direction that Dr. Ahmed's certificate of registration be suspended for one year, with six months of that suspension itself being suspended provided that Dr. Ahmed successfully undergo enhancement in the areas of boundaries and ethics.

Taking all factors into account, the Committee concluded that it would impose the same penalty order that it has directed even in the absence of paragraph 51(5)(2) of the Code. The Committee considered that Dr. Ahmed's conduct was indeed egregious and abusive, and exploited the balance of power between the physician and the patient. This case involved a series of calculated and deliberate actions by the member. It represented a fundamental breach of trust of the doctor-patient relationship, particularly given that the member was a psychiatrist providing psychotherapy. The sexual abuse itself was very serious as it took place on a repeated basis and in many locations, including in his office. This would blur the personal versus professional relationship even further.

As noted, the patient was young and particularly vulnerable at that time, being newly separated and coping with a young child, and with apparent financial difficulties. She was being treated for stress and anxiety, and was receiving therapy due to her marriage break-up. Additionally, as she believed that she was dealing with possible memories of prior sexual abuse, that made her even more vulnerable. Dr. Ahmed, as her psychiatrist, had access to all the information relating to her vulnerabilities, and utilized this to his advantage.

The Committee also noted that the doctor-patient relationship was long-term, from 1991 until 1998 (when the abuse started to occur). The build-up of trust over those years would be even greater than that which would occur in a shorter time frame, making the misconduct which started after April of 1998 even more reprehensible.

The Committee therefore concluded that this would be a clear case for revocation even in the absence of the mandatory provisions of paragraph 51(5)(2) of the Code.