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**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
of the **Health Disciplines Act**,
R.S.O. 1980, Chapter 196 as amended.

BETWEEN:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. JOHN SPENCER BERESFORD

PANEL MEMBERS: DR. J. CURTIS (Chairman)
DR. D. BRADEN
MS. J. McSKIMMINGS

HEARING DATE: SEPTEMBER 7 AND NOVEMBER 5, 1993

DECISION/RELEASE DATE:

APRIL 12, 1994

DECISION AND REASONS FOR DECISION

This matter was heard on September 7 and November 5, 1993 at the College of Physicians and Surgeons of Ontario at Toronto, Ontario.

The Notice of Hearing contained the following statement of allegations:

1. It is alleged that Dr. John Spencer Beresford is guilty of professional misconduct for:
 - (a) sexual impropriety with a patient;
 - (b) failure to maintain the standard of practice of the profession;
 - (c) conduct or act relevant to the practice of medicine, that having regard to all relevant circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.
2. It is further alleged that Dr. John Spencer Beresford has displayed in his professional care of the patient, Ms. ZGV, a lack of knowledge, skill or judgment or disregard for the welfare of the patient of a nature or to an extent that demonstrates that he is unfit to continue in practice.
3. Ms. ZGV "the patient" was a patient of Dr. John Spencer Beresford from February 1989 to February 1991.
4. During that period, Dr. John Spencer Beresford was a psychiatrist in private practice in Toronto, Ontario and was also on staff at the Clarke Institute of Psychiatry.
5. The patient was 22-years-old when she was referred to Dr. Beresford. She had a history of severe psychiatric problems and had been diagnosed as suffering from Borderline Personality Syndrome.

6. The complainant, Ms. NGO, is a member of a support group called PRL, which assists parents of children involved in the mental health system. The patient was referred to the complainant for support by an advocacy resource centre.
7. Commencing in October 1990, the complainant developed a relationship with the patient. The patient was distressed and eventually confided in the complainant that she was distressed because her psychiatrist was buying her presents, telling her he loved her and was pressuring her to have sex with him.
8. Starting in the fall of 1990, Dr. Beresford overstepped the professional boundaries of the therapeutic relationship with this patient. He developed passionate feelings for this patient and offered her a romantic and sexual relationship.
9. On November 14, 1990, Dr. Beresford gave the patient Nike running shoes as a present on her 24th birthday.
10. On Friday, February 1, 1991, Dr. Beresford had asked her to meet him at a hotel room and spend the night with him.
11. The patient called the complainant in a distressed state after this telephone request from Dr. Beresford to meet the patient at the hotel. The complainant escorted the patient to the hotel and waited for her while the patient met with Dr. Beresford in the hotel room.
12. During the following week, Dr. Beresford offered to marry this patient. He gave the patient an engagement ring, a large bouquet of roses for Valentine's Day, a cheque for \$200.00 and a credit card.
13. The complainant was disturbed at Dr. Beresford's behaviour and made arrangements to bring this matter to the attention of the College of Physicians and Surgeons of Ontario.

14. On February 7, 1991, Dr. Beresford wrote a letter to the College of Physicians and Surgeons of Ontario professing his love for the patient and his plans to marry her in April and to escape from city life.
15. On May 31, 1991, Dr. Beresford wrote a letter to the College of Physicians and Surgeons of Ontario indicating that he had lapsed into a "hypomaniac" state at the end of January 1991 when he experienced a sudden onset of elated mood, racing thoughts and grossly impaired judgment. He indicated in his letter that this period lasted 19 days and ended on February 15, 1991 when he realised that his behaviour had been reckless and that he had utterly disregarded professional and social norms as well as the well being of his patient.
16. The conduct alleged in paragraphs 8, 10 and 12 is sexual impropriety with a patient and constitutes professional misconduct as defined in paragraphs 27(29) of Regulation 448.
17. The conduct alleged in paragraphs 8,9,10 and 12 is a failure to maintain the standard of practice of the profession and constitutes professional misconduct in paragraph 27(21) of Regulation 448.
18. In the alternative, it is alleged that the conduct in paragraphs 8,9,10 and 12 is conduct or an act relevant to the practice of medicine, that having regard to all relevant circumstances would reasonably be regarded by members as disgraceful, dishonourable or unprofessional and constitutes professional misconduct as defined in paragraph 27(32) of Regulation 448.
19. As a further alternative, it is alleged that by the conduct in paragraphs 8,9,10 and 12, Dr. John Spencer Beresford is incompetent as defined in Section 60(4) of the **Health Disciplines Act** in that he has displayed in his professional care of the patient, Ms. ZGV, a lack of knowledge, skill or judgment or disregard for the welfare of the patient of a nature or to an extent that demonstrates that he is unfit to continue in practice.

An Agreed Statement of Facts, which was submitted, is summarized as follows:

Dr. Beresford is a 68-year-old psychiatrist who, at the time of the events in question, was a psychiatrist with an appointment at the Clarke Institute of Psychiatry and a private practice as well. Ms. ZGV, 25 years of age, became a patient in February 1989. She had a history dating back to early adolescence of involvement in the mental health system and had been diagnosed with borderline personality disorder. During this therapy Ms. ZGV consistently asked for "hugs" and other signs of physical affection from Dr. Beresford but these were rebuffed. He advised her that these requests were inappropriate and counter productive. However, on November 14, 1990 Dr. Beresford gave her a birthday present of running shoes. After January 25, 1991 he gave her a series of gifts including a \$200.00 cheque, an engagement ring, flowers and a Valentine's Day card. He arranged to meet her at a hotel on February 1, 1991. They remained in a hotel room together for approximately two hours. There was embracing but no disrobing or acts of sexual intimacy. Subsequently Dr. Beresford learned that Ms. ZGV had been accompanied to the hotel by a support person, who is the complainant in this case. On February 7, 1991 he wrote an unsolicited letter to the College of Physicians and Surgeons of Ontario outlining his relationship with Ms. ZGV and describing his plan to marry her. This letter was an exhibit at the hearing. According to the letter, he knew at this time that a family physician and a social worker had reported the relationship to an investigator at the College. On February 8, the next day, he went to a Buddhist monastery in central Ontario. He returned to Toronto on February 18, 1991 and began therapy with a psychiatrist. The next day he terminated his professional relationship with Ms. ZGV. He continued to see the psychiatrist regularly for the next two years.

A diagnosis of manic-depressive disorder was made, with an acute manic episode having occurred in early February 1991 which involved Ms. ZGV. In February 1991 he began to wind up his private practice in Toronto and moved to a central Ontario town in June 1991, where he resides today.

A prosecution expert witness, Dr. JKD, reviewed the file available and submitted a detailed report in which she stated Dr. Beresford was psychiatrically impaired for a period of time and that his behaviour clearly fell below the standard of practice for a period of time.

A defence expert, Dr. NTD, who reviewed some of the documentation and interviewed Dr. Beresford, submitted a report as well. He concluded that Dr. Beresford suffered from a bipolar mood disorder and was in a manic phase when the events described occurred. His opinion was that Dr. Beresford while in this phase was not capable of appreciating that his behaviour was wrong or unacceptable and that his judgment and insight were severely impaired.

Dr. Beresford entered a plea of guilty.

The Committee expressed reservations about finding a man guilty of professional misconduct for sexual impropriety that was committed while he was mentally ill. Both parties urged the Discipline Committee to accept this plea and argued that the doctor had accepted the wrongness of his conduct, and that the proposed penalty would take into account the extenuating circumstances, prospects for rehabilitation, and also would take into account the public interest.

Mr. ABS sought standing before the Committee to speak on behalf of Ms. ZGV and, particularly, regarding the impact of Dr. Beresford's behaviour on her. The Committee ruled that he could speak to the issue of penalty but not to the issue of whether the physician's plea of guilty should be accepted. Counsel for the College and the physician had no objections.

After careful consideration of all the issues involved, the Discipline Committee accepted the plea and made a finding of guilty.

PENALTY

Prosecution Counsel

Considering the circumstances, the prosecution counsel recommended that Dr. Beresford's practice be restricted to the care of male patients only to protect the public from harm; that he be required to attend at least monthly sessions with a psychiatrist acceptable to the Registrar; that this psychiatrist submit quarterly reports certifying that Dr. Beresford is stable and compliant with treatment; and that this psychiatrist report immediately any deviation that might jeopardize the public.

Defence Counsel

Defence counsel agreed with these penalty submissions adding that this approach was reasonable, considering the circumstances, and would result in adequate deterrence and protection of the public.

Counsel for Ms. ZGV

Counsel for Ms. ZGV sought disclosure of the patient's full chart and of Dr. NTD's report regarding Dr. Beresford, and further, requested an adjournment so that he could examine the documentation, confer with his client, and prepare to call evidence.

Defence counsel maintained these documents were not relevant to Mr. ABS' role which was to transmit to the Committee the impact of the actions of Dr. Beresford on the victim. Secondly, the reports regarding Dr. Beresford were personal and Ms. ZGV might be harmed by seeing her own personal records. Counsel for the College agreed that these documents should not be disclosed. Defence and prosecution counsel opposed any adjournment.

Counsel for the Discipline Committee advised the Committee that in deciding whether to order the release of these documents to counsel for Ms. ZGV, the Committee should consider fairness to all and weigh the prejudice to both the doctor and the victim against the probative value of releasing the documents. She supported the submissions of the other counsel that releasing the defence psychiatric report and the patient's records was inappropriate, if not irrelevant to the limited role in the proceedings of Mr. ABS on behalf of his client. She offered several alternative solutions to an adjournment.

The Committee decided that the patient records and the defence psychiatric report were not relevant to Mr. ABS's role and that their release was potentially harmful. Therefore it ruled that these documents would not be released to counsel for Ms. ZGV. It did, however, grant him an adjournment to prepare his submission.

The hearing re-convened November 5, 1993.

Further Submissions of Defence Counsel Regarding Penalty

On resumption of the hearing, defence counsel presented a brief of character letters which described Dr. Beresford's long years of service in psychiatry, his willingness to accept the most difficult patients and his exemplary record.

In addition, defence counsel proposed hearing the submissions of counsel for the victim "*in camera*" to protect the patient, Ms. ZGV. Both prosecution counsel and counsel for Ms. ZGV opposed this proposal, both because Ms. ZGV wanted the submissions heard in open session and because the relevant test indicates that there must be a compelling reason to close a hearing.

The Discipline Committee ordered that the hearing be kept open.

Submissions of Counsel for Ms. ZGV Regarding Penalty - Evidence Regarding Victim Impact

Counsel for Ms. ZGV indicated his intention to call four witnesses. He urged an order by

the Committee requiring the parties, the Committee and the press to protect the identity of Ms. ZGV. In addition he asked that certain arrangements in the hearing room be changed to prevent Ms. ZGV from having eye contact with Dr. Beresford because of her feeling that he could intimidate her. The Committee accepted the advice of its counsel that it does not have jurisdiction to direct the media to withhold information regarding a hearing. It requested the media representatives who were present to exercise their discretion in favour of protecting Ms. ZGV's identity. Physical modifications were effected to the hearing room to accommodate the wishes of the victim with regard to her testimony.

Ms. ZGV

Ms. ZGV reviewed the unusual relationship that developed with her psychiatrist from the fall of 1990 to February 1991.

Ms. ZGV described her extreme confusion in her dealings with Dr. Beresford, his power, his intimidation and what she said were his implied threats to certify her mentally ill and confine her to a hospital. She is now very distrustful of psychiatrists and other therapists. Furthermore, she said that it is now more difficult for her to engage in therapy because therapists fear recriminations.

On questioning by defence counsel she admitted she had been treated at a hospital in a city in the United States for six months but she added that therapists there were reserved in their management because of her involvement with Dr. Beresford. She also acknowledged that she had been seen at a number of hospitals in the Toronto area since the incident with Dr. Beresford but she maintained that there were some limitations imposed on her as a result of her involvement with Dr. Beresford.

Dr. KGH

Dr. KGH was the general practitioner for Ms. ZGV from January 1990 until October 1992. Her voluminous office notes relating to her involvement with Ms. ZGV were presented as an exhibit. She asserted that Ms. ZGV was even more troubled and distressed after the relationship with Dr. Beresford, than before.

Ms. ILQ

Ms. ILQ, M.S.W., was Ms. ZGV's therapist from November 1988 until she arranged for the transfer of her care to Dr. Beresford in February 1989. Subsequently, however, she maintained telephone contact with the patient and maintained a strong supportive relationship with her. Immediately after the complaint was made to the College she testified that Ms. ZGV was "very, very confused" regarding her feelings for Dr. Beresford, and her plan of action. Her thinking was fragmented. She also stated that Ms. ZGV remains unable to reconcile her involvement with Dr. Beresford and is "terrified" of therapeutic relationships more now than she was previously. She acknowledged, however, that Ms. ZGV had developed therapeutic relationships in the city subsequent to the events in question.

Ms. NGO

Ms. NGO is a volunteer/advocate/support person for individuals in the community. She became involved with Ms. ZGV around the beginning of 1990, mainly through numerous telephone conversations. She described an escalating disintegration of her thinking and behaviour as the relationship with Dr. Beresford developed until Ms. ZGV was admitted to hospital in the U.S.A. Now, she is distrustful of others, isolated and unable to develop relationships. She has "changed completely". She believed she will never recover.

Defence counsel elicited from Ms. NGO an acknowledgement that Ms. ZGV had been "black listed" in many hospitals in the city and by the police well before her involvement with Dr. Beresford.

Argument Regarding Penalty by Counsel for Ms. ZGV

Ms. ZGV's counsel argued that to allow Dr. Beresford to continue to practise psychiatry would not be consistent with the College's mandate, which is to protect the public. He argued to do so would be inconsistent with the concept of zero tolerance previously adopted by the College. Further, he argued that a harsh penalty was warranted in view of the worsening of the mental condition of the patient and her distrust of therapists. Dr. Beresford, he argued, should be prohibited from practising, not because he is guilty of professional misconduct, but because he is mentally ill and, therefore, not fit to practice.

Further Submissions Regarding Penalty by Prosecution Counsel

This counsel supported the joint submissions regarding penalty, reminding the Discipline Committee that Dr. Beresford was previously a caring physician who took on a most difficult patient, and he was effective as a therapist until he himself developed an emotional and mental crisis compounding a chronic psychiatric condition. He pleaded guilty and accepted full responsibility for his actions. He agreed to submit to psychiatric monitoring and his continuing to practice psychiatry depended on favourable psychiatric reports. He cannot repeat the "horror of these acts" because he will not be seeing female patients. The public interest, she argued, is protected by these measures and the public will still benefit from his restricted professional care. Finally, the profession and the public would be reminded by such a penalty that preying on the public cannot be countenanced.

Further Submissions Regarding Penalty by Defence Counsel

Defence counsel supported these submissions of the prosecution counsel. She also argued that these events occurred in the context of an acute manic phase of a bipolar affective disorder in this physician rendering him incapable of appreciating that his behaviour was wrong and unacceptable. According to the expert evidence, he is now stable and with the proposed monitoring system in place there should be no significant danger to his engaging in limited practice.

Argument in Reply by Counsel for Ms. ZGV

Counsel for Ms. ZGV argued that monitoring cannot be completely reliable and therefore Dr. Beresford should not be permitted to practise.

Decision Regarding Penalty

In arriving at a decision regarding penalty, the Discipline Committee was cognizant of the unique features of this case. Dr. Beresford has had an exemplary career and has accepted the burden of treating the most difficult of patients. Evidence presented at the hearing was clear that the doctor had a bipolar affective disorder and that a manic phase of this illness was responsible for his impairment of judgment that led to the improper behaviour. The Committee also accepted that there has been a deleterious effect on the victim which may be long lasting.

The Committee did not accept the contention of counsel for the patient that Dr. Beresford should not practise because of his mental illness. This condition is a psychiatric disorder eminently responsive to treatment. There is no indication that Dr. Beresford has not been compliant. Monitoring and control of his illness can provide protection to the public.

Accordingly, the Committee ordered that the penalty shall be a reprimand and the reprimand shall be recorded on the Register. In addition, the Committee ordered that Dr. Beresford's practice be restricted to male patients; that he be required to attend sessions with a psychiatrist at least every three weeks for at least three months and thereafter no less frequently than every four weeks; that the psychiatrist must be acceptable to the Registrar; that the psychiatrist must submit quarterly reports to the Registrar stating that Dr. Beresford is compliant and stable; and that the psychiatrist must report immediately any deviation that might jeopardize the public.