

Indexed as: Dobrowolski (Re)

**THE DISCIPLINE COMMITTEE OF THE COLLEGE
OF PHYSICIANS AND SURGEONS OF ONTARIO**

IN THE MATTER OF a Hearing directed
by the Executive Committee of
the College of Physicians and Surgeons
of Ontario, pursuant to Section 58(2)
of the **Health Disciplines Act**,
R.S.O. 1980, c. 196.

BETWEEN:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. STANLEY T. DOBROWOLSKI

PANEL MEMBERS: DR. J.D. CURTIS (Chairman)
DR. A. RAPOPORT
DR. L. ROBINSON
F. HOSHIZAKI
L. EDINBORO

HEARING DATE: OCTOBER 31 - NOVEMBER 4, NOVEMBER 25, 27 AND
DECEMBER 6, 1994

DECISION/RELEASE DATE:

MAY 25, 1995

DECISION AND REASONS FOR DECISION

This matter came before the Discipline Committee of the College of Physicians and Surgeons of Ontario on October 31-November 4, November 25 and 27 and December 6, 1994 at Toronto.

In the Further Amended Notice of Hearing it was alleged that Dr. Stanley Dobrowolski was guilty of professional misconduct in that:

1. he failed to maintain the standard of practice of the profession contrary to paragraph 27(21) of Ontario Regulation 448, R.R.O. 1980 as amended;
2. he engaged in sexual impropriety with a patient contrary to paragraph 27(29) of Ontario Regulation 448, R.R.O. 1980 as amended;
3. he engaged in conduct or an act relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, contrary to paragraph 27(32) of Ontario Regulation 448, R.R.O. 1980, as amended; and
4. in connection with the patient and for the time periods mentioned, he failed to maintain the records that are required to be kept respecting a member's patients contrary to paragraph 27(3) of Ontario Regulation 448, R.R.O. 1980, as amended.

It was also alleged that Dr. Stanley Dobrowolski is incompetent as defined in subsection 60(4) of the **Health Disciplines Act**, R.S.O. 1980, c. 196, as amended, in that he has displayed, in his professional care of the patient Ms. SND, a lack of knowledge, skill or judgment or disregard for the welfare of his patient of a nature or to an extent that demonstrates that he is unfit to continue in practice.

The particulars alleged in the Notice of Hearing are as follows:

- (1) Ms. SND became his patient in about March or April 1987 when she was a student at the University and approximately 22 years of age and continued to be his patient until about the summer of 1990. She saw him after a suicide attempt in about March 1987.
- (2) During the period from about April to August 1987, on at least one occasion, Dr. Dobrowolski arrived at Ms. SND's home without warning. During about this period, he also invited Ms. SND to his house and drove her there from the University.
- (3) Commencing in the spring 1987, Dr. Dobrowolski wrote numerous inappropriate letters to Ms. SND.
- (4) Between March and the end of July 1987, Dr. Dobrowolski frequently visited Ms. SND's home to deliver letters he had written to Ms. SND and on one occasion he had a conversation with her in her livingroom.
- (5) During the period from about September 1987 to August 1988 when Ms. SND had left JCV, the city where she was attending university, Dr. Dobrowolski wrote and telephoned her.
- (6) In about May 1988, Dr. Dobrowolski invited Ms. SND to accompany him to a conference he was attending in Ottawa. He drove Ms. SND to Ottawa and checked into a hotel with her, telling her that he was unable to get a room with two beds. He had sexual intercourse with Ms. SND and suggested that she start taking the birth control pill.
- (7) In about May or June 1988, Dr. Dobrowolski invited Ms. SND to accompany him to his cottage. On route, he stayed in a hotel with Ms. SND here he had sexual intercourse with her.
- (8) In about July 1988, Dr. Dobrowolski invited Ms. SND to stay at his home while his wife and children were away at the cottage. He had sexual intercourse with and performed oral sex on Ms. SND.
- (9) In about August 1988, Dr. Dobrowolski invited Ms. SND to stay in a house he owned which

was next to his family home. He saw Ms. SND over the weekends and continued to have sexual intercourse with her.

- (10) In September 1988 Dr. Dobrowolski invited Ms. SND and her boyfriend to his house for a social visit with his wife and advised Ms. SND his wife knew that Ms. SND was his patient.
- (11) From about September to December 1988, Dr. Dobrowolski scheduled Ms. SND's appointments at his office between the hours of 9:00 p.m. and 11:00 p.m. He had sexual intercourse with Ms. SND in his office during these appointments.
- (12) From about January to June 1989, Dr. Dobrowolski continued to see Ms. SND at his office and also occasionally met her for lunch. In June 1989, he had lunch with Ms. SND at her apartment.
- (13) In about 1988 or 1989, he invited Ms. SND to his cottage for the weekend where he had sexual intercourse with her.
- (14) In about July or August 1989, Dr. Dobrowolski invited Ms. SND to accompany him to a medical conference. On route, he stayed in a hotel with Ms. SND where he had sexual intercourse with her.
- (15) In about the summer of 1990, Dr. Dobrowolski picked Ms. SND up at her house and accompanied her to the university's health clinic after 10:00 p.m. so that he could perform some medical tests on her.

PLEAS AND ADMISSIONS OF FACT

Dr. Dobrowolski pleaded guilty to (1) the standards allegation, and (3) the allegation of disgraceful, dishonourable or unprofessional conduct but he pleaded not guilty to (2) the sexual impropriety charge, and to (4) the failure to maintain records and to the allegation of incompetence.

In a statement Dr. Dobrowolski made the following admissions of fact:

- (1) Ms. SND became his patient in March 1987 when she was a student at the university and approximately 22 years of age and continued to be his patient until about the summer of 1987.
- (2) During the period from about April to August 1987, on one occasion, he attended on Ms. SND at her home after being summoned there by others and on one occasion conducted a clinical session with Ms. SND at this house, having taken her there from the university.
- (3) In May and June 1987 he wrote four letters to Ms. SND, some of the content of which was inappropriate.
- (4) In May and June 1987 Dr. Dobrowolski occasionally visited Ms. SND's home to deliver those letters to her and on at least one such occasion had a conversation with her there.
- (5) During the period from about September 1987 to about October 1987, when Ms. SND was residing elsewhere, he telephoned her on one or more occasions, possibly in response to letters she had written to him or calls she had placed to him.
- (6) In May 1988 he agreed to have Ms. SND accompany him to Ottawa and had sexual intercourse with her there.
- (7) At or shortly after this occasion, he suggested that Ms. SND start taking the birth control pill.
- (8) In or about May or June 1988 he invited Ms. SND to accompany him to his cottage and en route they stayed in a hotel together and had sexual intercourse.
- (9) In or about July 1988 he had sexual intercourse with Ms. SND at his home.
- (10) In about August 1988 he permitted Ms. SND to stay briefly in a house he owned which

was next door to his family home and had sexual intercourse with her on this occasion.

- (11) At some point thereafter he permitted Ms. SND and her boyfriend to attend at his house for a social visit.

THE EVIDENCE

From testimony of both Ms. SND and Dr. Dobrowolski the details of this relationship may be summarized as follows: Ms. SND became Dr. Dobrowolski's patient after a drug overdose in March 1987. An intense therapeutic relationship ensued. In addition to the therapeutic sessions Ms. SND wrote numerous letters to Dr. Dobrowolski and he responded at times. In August 1987 Ms. SND was admitted to a hospital in another city. Dr. Dobrowolski saw her in his office on one occasion subsequent to this admission in August 1987. From the other city she corresponded regularly with Dr. Dobrowolski at least initially, and he reciprocated with at least one or two telephone calls until November 1987. In May 1988 he invited her to go to Ottawa and although some of the facts are in dispute, it is agreed that the sexual relationship began there.

In September 1988 Ms. SND moved back, and the sexual relationship continued in his office and elsewhere. There is disagreement as to whether the office visits also involved psychotherapy. Ms. SND terminated the relationship in 1990. A complaint was laid with the College in August 1993.

The two main factual disputes between the college and the physician are, first, whether Ms. SND was still Dr. Dobrowolski's patient after August 14, 1987 and second, whether at that time it was clearly accepted in the psychiatric community that post-termination intimate relationships were improper.

Termination of the Doctor-Patient Relationship

Ms. SND testified that at the August 14, 1987 appointment she was allowed to continue to write him letters. She testified that they exchanged letters and telephone calls at least monthly, which were initiated by both parties between August 1987 and May 1988. She considered the interaction to be therapeutic and continued to view him as her therapist.

At the August 14 meeting Dr. Dobrowolski's dictated note described this as "probably our last formal appointment unless of course she was to move back to the City of JCV at some point" and "if she returns to JCV at Christmas or thereafter I have agreed that I will pick up with her from where we left off." He did not say he would not see her again but it was his firm belief that their relationship had ended August 14, 1987.

Dr. Dobrowolski acknowledged that he consented to receive the letters in view of the fact that he realized she was dependent on him and he wanted to avoid a sense of rejection by an abrupt termination. He told her he would not be responding. He testified that she continued to write letters until October or November. His only response was one or two telephone calls in late September or early October. However, in May 1988 he acknowledged telephoning her because of personal curiosity arising from a previously intense therapeutic relationship in order to ascertain her well being.

These letters from Ms. SND to Dr. Dobrowolski were returned to Ms. SND in a package some time in 1988. Another package was given to the College during the course of the investigation. There were no letters from Ms. SND to Dr. Dobrowolski between October or November 1987 and May 1988. In the same time frame, no letters from Dr. Dobrowolski to Ms. SND surfaced.

Dr. Dobrowolski was aware that Ms. SND was seeing a therapist from Hospital A during the late summer and the fall of 1987. He assumed that this therapist had taken over her care. There was no formal transfer of care effected by either Dr. Dobrowolski or the therapist.

Ms. SND did have a good and intense relationship with the therapist from Hospital A but therapy was terminated after several months. She then had an unsatisfactory therapeutic relationship with another psychiatrist for a few sessions only. In November 1987 she became engaged in a therapeutic relationship with a pastoral counsellor. This relationship was intense by January and it continued until May. She relied on him greatly and wrote the same type of letters she had written to Dr. Dobrowolski. This relationship changed and eventually diminished by the summer of 1988 but Ms. SND continued to see him on occasion for three to four more years. Importantly, Dr. Dobrowolski was not aware of this relationship before May 1988.

Details of the Evolution of the Sexual Relationship

The details of the evolution of the sexual relationship as it began in Ottawa in May 1988 were in some slight dispute. Dr. Dobrowolski's understanding was that Ms. SND would be staying with friends in Ottawa. After arriving in Ottawa several unsuccessful attempts to contact these friends were made and they decided that she would stay the night with him. She was very eager and desirous of sexual contact, according to Dr. Dobrowolski. Before consummation he informed her he could never again be her treating psychiatrist.

On the other hand, according to Ms. SND's testimony, there was never any mention of her staying with friends. Her expectation was that they would have separate rooms or at least separate beds. They were unable to get a room with two beds. She trusted him and felt safe. However, with no preamble and without discussion or her permission, they had intercourse. Subsequently, although initially shocked, she decided she must comply. She trusted him, and believed he would do nothing to harm her. If he expected her to engage in this activity she assumed it was for her benefit and she would cope and accept it.

Sexual relations continued sporadically during May to August when she returned to JCV. In July he again warned her that if she moved back to JCV he could not be her therapist because it would be wrong. However, she clearly believed he was still her therapist and she resumed seeing him in his office, according to Ms. SND, for therapeutic reasons with incidental sex at night every one to two weeks from September 1988 to late 1989 or 1990. In her opinion, therapy continued but was not as intense. The correspondence also continued. She continued the sexual relationship because she still needed therapy. Finally in 1990 she terminated the sexual relationship. Six months later she terminated the friendship.

Dr. Dobrowolski testified that when the visits in his office resumed after the summer of 1988 they were all clandestine and at night and Dr. Dobrowolski did not bill OHIP. It was his opinion that there was no therapy. The relationship was that of lovers. He agreed that they had, according to Ms. SND, "weekly hours of meaningful communication."

Finally, there was evidence from Ms. SND regarding Particular 15. Dr. Dobrowolski remembered nothing about this mysterious evening. Nothing turns on it and the Committee did not consider this matter further.

EXPERT OPINION

Termination

Prosecution Expert

The prosecution expert was canvassed regarding whether the relationship ended in August 1987. She was firmly convinced that the relationship had not terminated at this point. There was no formal termination. The opportunity was left open for Ms. SND to return to see Dr. Dobrowolski should she return to JCV. Letter writing continued. Ms. SND was still strongly attached to Dr. Dobrowolski. The expert still saw the therapeutic relationship as existing in May 1988. He had failed to make it clear to the patient that the relationship had ended.

Even in the Fall of 1988, when he was seeing her in his office and was not billing OHIP and after he had clearly discussed with her that there could not be a therapeutic relationship, he did not make it clear that the relationship had terminated. The interactions were in his office and Ms. SND continued to view the interaction as psychotherapeutic.

On cross-examination she allowed that despite her strong feelings that the doctor-patient relationship had not terminated by May 1988 there would be a small minority of psychiatrists in 1988 who would feel the relationship had terminated. She acknowledged that Schoener et al Psychotherapists' Sexual Involvement with clients : Intervention and Prevention, Minneapolis, Walk-In Counselling Centre, 1989 described standards regarding actual termination as "woefully lacking".

Defence Expert

The defence expert was accepted as an expert in psychiatry and psychoanalysis. The defence

expert was questioned primarily regarding whether there was a continuing doctor/patient relationship after August 14. He believed the relationship terminated after August 14 on the basis of the contents of the August 14 note dictated by Dr. Dobrowolski in which he stated in part "[Ms. SND] came in for probably our last formal appointment today unless of course she were to move back to [JCV] at some future point.... Most of the session [Ms. SND] was spent saying goodbye, talking about the sadness that comes with separation and much of it was a tearlatten (sic) hour.... If she returns to JCV at Christmas or thereafter I have agreed to pick up with her where we left off". Even the last sentence, in his opinion, did not make her his patient.

In addition, she saw a nurse/psychotherapist twice weekly and a psychiatrist was prescribing Lithium in the fall of 1987. If Dr. Dobrowolski was still her doctor on admission to Hospital A they would have requested information from him. Subsequently she saw a psychiatrist for a few sessions and then a pastoral counsellor until at least May 1988. At times more than one therapist may be involved in the care of a patient but in the present circumstances Dr. Dobrowolski was not one of them.

The defence expert believed the records of these three therapists would be relevant to determine whether, at those times, she considered Dr. Dobrowolski to be her therapist.

The defence expert testified that it would be unkind and demeaning to terminate a relationship with a patient abruptly by stating formally that he would never see the patient again. Such a statement would be particularly damaging for a patient with a borderline personality disorder.

That the patient was continuing to send letters which had a tone similar to those sent during the therapeutic relationship does not mean that there was an ongoing doctor/patient relationship. However, he allowed that these letters may well indicate that the patient viewed the relationship as continuing. Her letters in the fall of 1987 indicated her understanding that the relationship was over but she continued to express ambivalence. If these letters dwindled and she began writing similar letters to another therapist, this would again indicate a change in her concept of who her therapist was.

The expert witness described the tenet that after termination there must be no contact as "theoretical silliness".

The intimate and personal letters after May 1988 would not be described as a facet of the doctor-patient relationship but as an indication of "an affair".

He asserted that follow-up regarding a patient's condition several months after the patient was last seen does not constitute a continuing doctor-patient relationship.

Termination ideally should be clearly appreciated by the patient. On the other hand, one can never be sure what is the idea in the patient's mind in this regard unless there is another therapist.

Standards Regarding Post-Termination Relationships

The second major area of dispute concerned what were the existing ethical standards among psychiatrists regarding post-termination relationships at the time period in question, 1987 to 1988. Only the prosecution expert gave expert testimony in this regard. On review of the literature around this time, it became clear that this was an evolving issue. Numerous publications were cited.

In 1980 the Canadian Medical Association Code of Ethics Annotated for Psychiatrists states that "the ethical psychiatrist will scrupulously avoid using the patient-psychiatrist relationship to gratify his or her emotional, financial or sexual needs." Relationships with former patients were not specifically addressed.

In 1987, in a survey of American psychologists almost 30 percent said post-termination sexual contact could *sometimes* be acceptable. This article also advised that the American Psychological Association should revise its Principles of Medical Ethics and declare that post-termination sex is *always* unethical.

In 1987, Herman et al, in the American Journal of Psychiatry, published a survey of psychiatrists which showed that almost 30 percent said post-termination sexual contact might *sometimes* be acceptable. The survey showed "considerable confusion" among the respondents and that "a considerable minority of psychiatrists" believed that the "prohibition against sexual contact with

patients ends with termination of the therapeutic relationship or that it can be varied for love or marriage". Most offenders believed post-termination sex was acceptable. The article concluded with a firm recommendation that post-termination sexual interaction *always* be deemed unethical.

In 1988 in *Psychotherapy* 1988; 25:249 - 257 Brown acknowledged that post-termination sexual relationships were not expressly prohibited by the American Psychiatric Association Code of Ethics but were *almost always* unethical. The potentially harmful effects on the former client were beginning to be understood. Some believed that the individual circumstances needed to be considered and that such interaction might be reasonable if the patient was not fragile or unstable or vulnerable, if there was an appropriate cooling off period of six months to two years, if both therapist and client consulted their own individual therapists regarding the advisability of an intimate relationship and if the two in question were "in love" and committed to a long-term relationship. All four criteria must be satisfied.

At around the same time (1987) the Committee on Professional Practice of the American Psychiatric Association stated that such relationships were *unconditionally* unethical.

In 1988 a survey of American psychologists reported that 31 percent felt post-termination sex was neither ethical nor unethical or was even ethical to some degree.

In 1988 the Canadian Psychiatric Association issued a position paper acknowledging that post-termination sexual interaction was *almost always* wrong. Termination of therapy in itself is not justification. The particular circumstances must be reviewed.

In 1988 one author advised "no harm no foul". In 1991 a controversial one year ban was proposed. The prosecution expert took strong exception to these views.

In 1989 a book by Schoener et al described the evolution of thought regarding post-termination sex. He described an "intense debate" regarding the issue and in conclusion he described as appalling the then current lack of clarity regarding parameters of sexual relationships after termination.

Finally, following the report of the Task Force on Sexual Abuse of Patients which was delivered in 1991, the College of Physicians and Surgeons of Ontario published guidelines that prohibit sexual activity after psychiatric treatment for life. However, the Ontario Medical Association recommended a case by case approach.

Thus the Committee is left with the idea that at the time of the allegations the ethical issue regarding the propriety of post termination sex was controversial, murky and evolving. Approximately 30 percent of psychiatrists and psychologists were of the opinion that post-termination sex was acceptable under some circumstances. As time has passed the guidelines and codes of ethics have become more clear and it is now more or less accepted that post-termination sex is unethical.

Standard of Care

The prosecution expert reviewed the boundary violations as exemplified in the four letters Dr. Dobrowolski wrote to Ms. SND in the spring of 1987. Additional examples of an inappropriate personal relationship were the visits to each others' homes, hugs, hand holding and comments regarding her personal appearance. The prosecution expert testified that this blending of a personal and professional relationship would be confusing and dangerous especially in a vulnerable patient. This failure to define the relationship constitutes a failure to maintain the standard of the profession.

Incompetence

The prosecution expert testified that Dr. Dobrowolski displayed a lack of knowledge, skill and judgment and disregard for Ms. SND's welfare and was therefore incompetent on the basis of his failure to define boundaries and the consequences suffered and potentially suffered by this vulnerable patient. Her problems were not treated, she developed problems with trust especially of therapists, she developed features of post traumatic stress syndrome and she continued to be a suicide risk.

CLOSING SUBMISSIONS OF THE PROSECUTION

The prosecution counsel reviewed the chronology and related the facts to the pleas.

Standard of Care

The relationship Dr. Dobrowolski developed in the spring of 1987, exemplified by the letters, as well as the testimony of Dr. Dobrowolski and Ms. SND, was inappropriate. The letters reflect a lack of clear boundaries and the development of a personal relationship at the same time as a therapeutic relationship. Other examples of Dr. Dobrowolski's failure to maintain boundaries, prosecution counsel submitted, include his returning from his cottage in July to see her, four visits to her house to deliver letters, having a therapeutic session at his home, visiting Ms. SND at Hospital A and giving her a ride back to Toronto. All agreed that it is the psychiatrist's responsibility to set boundaries especially with a patient with borderline personality disorder. He knew of her feeling for him and that she had developed an idealized dependent attachment to him, as exemplified in the letters before August 14. However, he failed to deal with these feelings.

Prosecution counsel submitted that there is uncontroverted evidence that this behaviour represents a failure to maintain the standard and the Committee was urged to either accept his plea or find this disgraceful, dishonourable or unprofessional conduct.

Sexual Impropriety

The second issue is whether the sexual misconduct, to which Dr. Dobrowolski pleaded guilty, also constitutes sexual impropriety with a patient. Dr. Dobrowolski maintained that the relationship had terminated. The prosecutor submitted that the relationship had not terminated.

Prosecution counsel maintained that at the August 14 session the door was left open for a resumption of the therapeutic relationship. The failure to establish clear boundaries before the visit of August 14 set the stage for a continuing "mixed" relationship. Her letters after the August 14 visit clearly reflect Ms. SND's lack of understanding that Dr. Dobrowolski was not her therapist. It is always the doctor's responsibility to make it clear that the therapeutic relationship has been terminated.

The Defence Expert's evidence was not helpful regarding termination in that his statements did not apply to the present case. Although Dr. Dobrowolski knew about the nurse/psychotherapist there was no discussion regarding transfer of care. Furthermore, he did not know about the pastor until May 1988.

The defence expert suggested that the May 1988 telephone call, at which time the trip to Ottawa was arranged, constituted follow-up and that such follow-up should not be viewed as representing a continuing relationship. Prosecution counsel asserted that this idea is untenable under the circumstances in which an intense relationship with blurred boundaries developed, and the relationship continued after she left JCV.

Prosecution counsel submitted that since there was discussion regarding Dr. Dobrowolski not ever being her therapist again at the May 1988 meeting in Ottawa and/or in the summer in JCV, it is implicit that termination was not effected in August 1987. If therapy had been terminated, why would Dr. Dobrowolski not have arranged for another therapist when she came back to JCV? That he met her weekly in his office after the summer of 1988 implies at least a therapeutic aspect, albeit confusing to the patient, to the relationship. Ms. SND testified it was a confusing mixture of sex and therapy. An exchange of notes and cards continued in 1988 to 1990 just as had occurred in the therapeutic relationship before August 1987 once again implying a continuing therapeutic relationship.

There is evidence of significant harm to Ms. SND as a result of the sexual relationship. Her problems were not being treated, she has stated that she will never again see a psychiatrist and she is confused regarding sexuality. His behaviour has put her squarely at risk for self harm.

Disgraceful, Dishonourable or Unprofessional Conduct

Prosecution counsel then made submissions, should the Committee find that termination *had* occurred. In 1988 most psychiatrists believed that post-termination sex was wrong. The four provisos which the minority of psychiatrists believe could temper their beliefs regarding the prohibition were not satisfied in this case. If the Committee were to decide that Ms. SND was not his patient, the Committee was urged to accept the plea of guilty to disgraceful, dishonourable or unprofessional conduct.

Records

Prosecution counsel submitted that the allegation that Dr. Dobrowolski failed to maintain the records that are required to be kept was satisfied in that for five appointments there was no record whatsoever. The law requires that a record must be made of each visit.

Incompetence

Finally, the incompetence charge is proven, prosecution counsel maintained, given the circumstances here in which a vulnerable patient with borderline personality disorder is given no boundaries and is drawn into a sexual relationship which ultimately must end, thereby probably leaving her even more vulnerable.

CLOSING SUBMISSIONS OF THE DEFENCE

In his submissions, defence counsel reviewed the evidence to support his contention that his client was guilty of disgraceful, dishonourable and unprofessional conduct rather than sexual impropriety with a patient, since she was no longer his patient. At the time of the offence there was controversy in the psychiatric world regarding post-termination sexual relations and thus the severity of the offence would have been viewed less harshly than it would be today.

Termination

1. By May 1988 Ms. SND had seen three other therapists. This fact, in itself, indicates that she was no longer Dr. Dobrowolski's patient. That no records of these therapists were produced at the hearing leads to an adverse inference that information might have been produced which indicated that Ms. SND considered the therapeutic relationship with Dr. Dobrowolski finished.
2. The letters that Ms. SND wrote to Dr. Dobrowolski in the fall of 1987 indicated that she was aware that the relationship was terminating by statements such as "changing therapists [is hard]," "if you're not even my therapist," "I'll try very hard to make this the last time, [I write]". The letters indicated a gradual process of separation as these letters dwindled. The evidence was that she began writing similar letters to the pastoral counsellor which would reflect the fact that he became her therapist.
3. The evidence of a continuing doctor-patient relationship in May 1988 is supported only by the testimony of the complainant and this testimony lacks cogency and certainty. Defence counsel suggested her motivation for insisting Dr. Dobrowolski was still her therapist may lie in her desire to demonstrate to her partner that she was under Dr. Dobrowolski's influence at the time in an effort to exonerate her behaviour.

Defence counsel reviewed the evidence to support the contention that the repeated statement by the complainant that "he was my therapist" was not believable:

- a) it was only by accident that the existence of another psychiatrist who Ms. SND. saw in the fall of 1987 was established and his name and address could not be remembered;
- b) that no records of the subsequent three therapists were produced at the hearing suggests that these records may have contained information which was against her credibility;

- c) there were no telephone company records produced to show objective confirmation of her evidence that there was frequent telephone contact in the fall of 1987;
- d) no letters from Dr. Dobrowolski to Ms. SND were produced for the period between August 1987 and May 1988 even though these were not "love letters", as were the letters written after May 1988 that she destroyed to protect her present relationship;
- e) the testimony regarding friends in Ottawa was not at all clear. At first she did not remember this aspect of the story and later there was inconsistent evidence from Ms. SND regarding her plans;
- f) the story of the trip to Ottawa with a married man, staying in the same room or bed and not expecting any sexual interaction is completely implausible. Further, Ms. SND's testimony regarding what was said about future therapy at the Ottawa weekend changed under cross-examination;
- h) at the hearing Ms. SND insisted that the sexual part of the relationship was not at all pleasurable but this was contradicted by contemporaneous letters;
- i) Ms. SND's letters indicate that she was not unduly under Dr. Dobrowolski's influence as she stated at trial but rather that she had a definite and assertive mind of her own with regard to Dr. Dobrowolski;
- j) the woman with which Ms. SND had the interview before making the complaint to the College was not called to testify and an adverse inference can be made in this regard as well; and,
- k) on the other hand Dr. Dobrowolski admitted most of the allegations and he volunteered further information that could have been harmful to his case. He acknowledged his offence and accepted responsibility for his actions.

4. The prosecution expert did not consider Dr. Dobrowolski's note of August 14, 1987 in its entirety. She based her belief that a doctor-patient relationship persisted on one sentence in this note which itself was conditional.
5. After the summer of 1988 a social and sexual relationship progressed. Previously Dr. Dobrowolski had told Ms. SND probably twice but at least once, that he could not be her therapist. Secondly he did not bill OHIP for these visits at his office. Thirdly, they attended social functions together which is compatible with an affair and not with a therapeutic relationship. Finally, in her letters Ms. SND referred to Dr. Dobrowolski as her lover, and never as her therapist.
6. Dr. Dobrowolski did not refer her to another psychiatrist because he was not the treating psychiatrist.
7. From the evidence of the complainant it was clear that she had difficulty distinguishing when a professional relationship ended and a social relationship started with the pastoral counsellor as well as with Dr. Dobrowolski.
8. There is no objective contemporaneous evidence, only Ms. SND's assertions, of any contact between October 1987 and May 1988.

Defence counsel submitted that the prosecution expert was an advocate for a particular perspective on sexual issues and her evidence should be viewed in that context. This expert, he asserted, reached her conclusions regarding a continuing therapeutic relationship without any knowledge of subsequent therapists. On the other hand, the defence expert presented "a real world approach." In order to determine whether there was a continuing doctor-patient relationship he would have wanted more information from the subsequent therapist. These two experts thus gave conflicting opinions. It would be improper for the Discipline Committee to conclude that Ms. SND was still a patient when respected opinions differ.

Defence counsel presented what he submitted was objective evidence that Dr. Dobrowolski was not Ms. SND's therapist by referring the Committee to legislation such as the **Mental Health Act**

which defines an attending physician as "the physician to whom responsibility for the observation, care and treatment has been assigned" and a patient as "a person under the observation, care and treatment of a facility". According to these standards, Dr. Dobrowolski was definitely not her physician after August 1987.

The literature contains no clear criteria to define termination or to help in determining in this case, if there was an actual termination. Ideally, there should have been a mutual understanding that therapy was over but in this case, of course, there was disagreement.

In deciding whether the doctor-patient relationship persisted after the fall of 1987, the Discipline Committee is obliged to consider the credibility of the parties, the evidence of the experts and the facts of the case. The doctor is entitled to the protection provided in *Re: Bernstein and the College of Physicians and Surgeons of Ontario*.

Sexual Relations with Former Patients

The prosecution expert, on cross-examination, acknowledged that post-termination sex in 1987 to 1989 was not universally accepted as unethical. A significant minority of psychiatrists could accept such a relationship as not improper under certain circumstances.

The defence expert was not questioned on this issue.

Previous College cases have supported the concept that post-termination sex, when it is improper, constitutes disgraceful, dishonourable and unprofessional conduct rather than sexual impropriety.

Incompetence

The only evidence to support incompetence is that the prosecution expert said that Dr. Dobrowolski's behaviour put Ms. SND at a high risk of suicide. There was however no evidence of harm presented at the hearing. In fact, Ms. SND has graduated from university with high grades, has a responsible job and she has a stable relationship.

According to the Discipline Committee reports regarding the case of Dr. R. Morgan, in order to find incompetence, there must be evidence of current behaviour that is considered incompetent. No such evidence was presented.

Records

Although strictly speaking the law may require a written note for every appointment, there is a lengthy comprehensive summary covering the entire period and this allegation is not proven.

REPLY SUBMISSIONS

Prosecution counsel submitted that legislation such as the **Mental Health Act** had no application to this disciplinary proceeding.

The examples cited by defence counsel of post-termination sex representing disgraceful, dishonourable and unprofessional conduct and not sexual impropriety were markedly different from the present case, especially, in that in both cases relied upon by the defence it was clear that termination had occurred and there was objective evidence of such termination.

The authorities cited by defence counsel on the issue of credibility were all criminal cases and the questions at issue were very different. Therefore, these cases provide little assistance to the Committee.

Incompetence has been found by the Discipline Committee where no evidence of present incompetence was tendered. Prosecution counsel submitted that such a profound and fundamental failure to grasp the significance and seriousness of repeated boundary violations over a six-month period in this case clearly supports a finding of incompetence.

COUNSEL FOR THE DISCIPLINE COMMITTEE

In written advice, counsel for the Discipline Committee advised the Committee to use an

objective standard in deciding whether, at the time of the sexual activity, a professional doctor/patient relationship existed. Whether the patient is under active care by the doctor is only one of the many relevant issues in consideration of the evidence. He also advised that the statutory definitions of a patient as suggested by the defence counsel are not helpful.

Adverse inferences in reference to other therapists and notes can only be made if the Committee would have expected the prosecutor to call these therapists as witnesses.

The counsel for the Discipline Committee also advised that the criminal cases cited by the defence counsel can be relied upon in assessing credibility if the factual bases for these cases is appropriate.

Incompetence, he advised, can be found, as a matter of law, on the basis of Dr. Dobrowolski's professional care of the patient and evidence of current incompetence is not necessary.

Other Submissions

Defence counsel, in response to the advice of the counsel for the Discipline Committee, reiterated that his use of the statutory definition of a patient represents an attempt to apply objective standards to the issue. A patient is actually receiving active medical services in the form of observation care and treatment.

According to the defence submissions failing to adduce evidence from the other therapists clearly leads to an adverse inference. The defence requested disclosure of these records and the prosecution declined to cooperate. The defence could not be expected to tender this evidence without advance knowledge of what the records would reveal.

Prosecution counsel countered that if defence counsel had wanted these records he could have made a motion for production of the records or he could have moved to subpoena the therapists and their notes.

DECISION

Standard of Practice

Dr. Dobrowolski pleaded guilty of failing to maintain the standard of practice of the profession contrary to Section 27(31) of Ontario Regulation 448, R.R.O. 1980, as amended. Such failure is demonstrated by his failure to establish and maintain boundaries and the mingling of a therapeutic and personal relationship between March and August 1987. This charge was uncontested. Bearing in mind the evidence, exemplified mostly by Dr. Dobrowolski's letters, the Committee accepted the plea and made a finding of guilt.

Sexual impropriety or disgraceful, dishonourable or unprofessional conduct.

Was she still a patient?

The more difficult area of decision for the Committee was whether the relationship had ended before May 1988. The prosecution's position was that the relationship had not ended and therefore the subsequent sexual relationship would be characterized as sexual impropriety. In the event the Committee decided that the relationship had ended, prosecution counsel still maintained that sexual impropriety had occurred. On the other hand, defence counsel maintained that the relationship had ended and that the proper assignment for Dr. Dobrowolski's conduct was disgraceful, dishonourable or unprofessional conduct, as described in the third allegation of the Notice of Hearing.

The Committee concluded that Ms. SND was no longer a patient of Dr. Dobrowolski after approximately October 1987. The reasons for this conclusion are outlined below.

According to the evidence, the therapeutic relationship dwindled and ended in the late fall of 1987. There was no further contact until May 1988, when the personal relationship began. Furthermore, Ms. SND developed significant therapeutic relationships, initially with the nurse/psychotherapist from August until October 1987 and then with the pastoral counsellor from November 1987 until approximately May 1988.

The evidence is clear that there was no formal termination. In his final clinical note Dr. Dobrowolski clearly indicated that the relationship had terminated but he left the door open for renewed contact in the future. He also allowed her to write letters. These letters were similar in nature to those written during therapy. These letters reflected her understanding however, that the therapeutic relationship was over but at the hearing she repeatedly stated, "He was still my therapist".

Although the nature of their relationship was ambiguous, the Committee believed that the therapeutic relationship ended and that she was no longer his patient after the fall of 1987 at the latest.

According to her testimony, Ms. SND believed that the therapeutic relationship resumed when she returned to JCV in September 1988. Regular sessions took place in his office in the evenings. She continued to write letters which were similar to those of the previous year. Ms. SND maintained that these sessions were a mixture of sex and therapy and that she complied sexually in order to continue with the therapy. Importantly however, both agreed that Dr. Dobrowolski had told Ms. SND in July that if she returned to JCV he could not be her therapist. Dr. Dobrowolski neither billed OHIP, nor kept a clinical record. For these reasons, the Committee was not of the opinion that the relationship from September 1988 until 1990 could be described as a therapeutic relationship.

Another prominent issue at the hearing was whether Ms. SND believed she was still Dr. Dobrowolski's patient after the fall of 1987. As previously stated, her letters in the fall of 1987 clearly indicated that she believed the relationship was over. However, at the hearing she repeatedly stated "He was my therapist".

The Committee believes that the records or the testimony of the other therapists seen by Ms. SND might have shed light on whether Ms. SND viewed Dr. Dobrowolski as her therapist during the interval between August 1987 to May 1988. However, the Committee was not confident that the records would have helped. Therefore, in accordance with the advice of counsel for the Discipline Committee, no adverse inference was drawn.

The Committee also evaluated the credibility of the protagonists, in order to assess whether Ms. SND truly believed that Dr. Dobrowolski was still her therapist in May 1988 and thereafter until 1990. Dr. Dobrowolski's evidence was clear and mostly uncontested. In contrast, Ms. SND's evidence regarding staying with friends in Ottawa was confusing and not convincing. Her statement that even though she was staying in the same hotel room and possibly the same bed, did not lead her to believe that there would be sexual interaction strains her credibility. However, she may have blocked admitting the likelihood of a sexual relationship at the time and she appears to continue to block such an admission. Her denial of any enjoyment of the sexual relationship is refuted by her letters after May 1988. Her acknowledgement that he told her in July 1988 that he could not be her therapist would underscore that she clearly knew the relationship was personal and not therapeutic. While aspects of the therapeutic relationship continuing would be unavoidable, the Committee believes she ought to have known that the relationship was not psychotherapeutic at that time.

The defence argued that it was in Ms. SND's interest to claim a continuing therapeutic relationship through to 1990, and inferentially, that she was, in some way under his control and direction, in order to expiate her guilt and to justify her behaviour in the view of her boyfriend. The Committee considered such an explanation plausible.

Thus, Ms. SND, while a reliable and intelligent witness, gave some testimony to cast doubt on her credibility, or more accurately, her testimony, possibly because of psychological mechanisms, demonstrated her lack of ability to clearly see what was obvious.

While there was an unresolvable difference of opinion between the parties regarding when the therapeutic relationship ended, the Committee was, nonetheless, obligated to decide when in fact it did end. Because the charges are of sexual impropriety, the degree of proof enunciated in *Re Bernstein v. The College of Physicians and Surgeons of Ontario* must be applied. The Committee must be reasonably satisfied of the facts "not by inexact proofs, indefinite testimony or indirect inferences" but by a "fair and reasonable preponderance of credible testimony". Proof must be "clear and convincing and based on cogent evidence accepted by the Tribunal". The "seriousness of the charge" and "the gravity of the consequences flowing from a particular

finding" are factored in when deciding the degree of certainty a panel must find in the evidence.

The Committee is satisfied that Ms. SND is no longer a patient in August or at the latest October when the letter writing stopped and she began an intense relationship with the pastoral counsellor. Secondly, although Ms. SND claimed the therapeutic relationship recommenced when she returned to JCV in July 1988, she agreed that she was fully informed that she could not be a patient.

Post-termination sexual relations

There was extensive testimony from the experts regarding whether post-termination sex was, in 1987 to 1989, considered unethical. From the literature, it was evident that at that time the issue was controversial and evolving. Approximately 30 percent of psychiatrists and psychologists believed that post-termination sex was acceptable under some circumstances. Around that time, when there were proven post-termination sexual relations, CPSO Discipline Committees made a finding of disgraceful, dishonourable or unprofessional conduct. The Committee, for these reasons, found that in 1988 to 1990 Dr. Dobrowolski's conduct did not constitute sexual impropriety but that his conduct was disgraceful, dishonourable or unprofessional and made a finding of guilt contrary to Section 27(32) of Ontario Regulation 448, R.R.O. 1980 as amended.

Records

According to the strict letter of the law, Dr. Dobrowolski is also guilty of violating Section 27(3) of Ontario Regulation 448, R.R.O. 1980 as amended (failure to maintain the records) and a finding of guilty was made. He did keep records but records for each and every visit were not kept. This finding pales in comparison to the other findings.

Incompetence

There was dispute regarding what constitutes incompetence and whether evidence of continuing incompetence is necessary to make such a finding. The prosecution held that the egregious nature of Dr. Dobrowolski's boundary violations (and the subsequent sexual relationship)

constitutes grounds for a finding of incompetence. Counsel for the Discipline Committee is of the opinion that incompetence involving sexual impropriety must, per se, involve the care of a patient. In the paragraphs above the Discipline Committee has decided that Ms. SND was not a patient when the sexual relationship began. Therefore incompetence cannot be found. Furthermore, the Committee did not find the boundary violations sufficiently egregious to warrant a finding of incompetence.

Finally, at the hearing, Dr. Dobrowolski admitted his boundary violations and recognized the gross error in his behaviour. Thus, his current behaviour would not be such as to warrant a finding of incompetence had the Committee decided that his behaviour between 1987 and 1988 did represent incompetence.

Indexed as: Dobrowolski (Re)

**THE DISCIPLINE COMMITTEE OF THE COLLEGE
OF PHYSICIANS AND SURGEONS OF ONTARIO**

IN THE MATTER OF a Hearing directed
by the Executive Committee of
the College of Physicians and Surgeons
of Ontario, pursuant to Section 58(2)
of the **Health Disciplines Act**,
R.S.O. 1980, C. 196

BETWEEN:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. STANLEY DOBROWOLSKI

PANEL MEMBERS: DR. J. CURTIS (Chair)
DR. A. RAPOPORT
DR. L. ROBINSON
F. HOSHIZAKI
L. EDINBORO

HEARING DATE: OCTOBER 31-NOVEMBER 4, 1994
NOVEMBER 25, 27 AND DECEMBER 6, 1994

DECISION/RELEASED DATE:

APRIL 25, 1995

PENALTY HEARING DATE:

MAY 25, 1995

PENALTY DECISION/RELEASED DATE:

MAY 25, 1995

PENALTY AND REASONS FOR PENALTY

This matter came before the Discipline Committee at the College of Physicians and Surgeons of Ontario on May 25, 1995 at Toronto.

Before penalty submissions were heard, counsel debated the admissibility of a Victim Impact Statement. Counsel for the College proposed to file the statement as evidence without calling the complainant to attest to its contents. Defence counsel objected. He pointed to the provisions in the **Health Professions Procedural Code** which limit evidence to that which is admissible in a civil court but which nevertheless allow such a statement to be entered into evidence during penalty submissions regarding sexual abuse. Sexual abuse was not found in this case, and thus he contended that the statement could not be filed. He further objected to an alleged lack of disclosure by the prosecution as required by Section 42(1) of the HPPC. Finally, if the Committee were to allow the statement to be tendered, he submitted that he must be allowed to cross-examine the witness.

Upon hearing advice from its legal counsel, the Discipline Committee ruled that the disclosure objection was ill founded. In any event, the Committee had the authority to receive the evidence since it believed the physician would not be prejudiced. Therefore, it ruled that the Victim Impact Statement could be tendered, but ruled that it must be formally proven, by way of testimony from the complainant, in light of the defence objection.

Because of the latter proviso, the witness declined to enter this statement.

EVIDENCE

Defence counsel then presented Dr. DWM, a psychiatrist who testified earlier in the hearing. He has examined Dr. Dobrowolski and concluded that he is neither predatory nor anti-social but that his offence occurred as a result of marital problems, financial difficulties, inadequate training in the understanding of transference and counter-transference and a mild to moderate depression.

Defence counsel then presented testimonial material from patients and colleagues and friends attesting to his competence, compassion and skill as a psychiatrist.

Further, he presented letters from Dr. Dobrowolski's personal psychiatrist, who has been seeing him since January 1994, describing his progress.

SUBMISSIONS

Prosecution counsel, in her submissions, reviewed the fact that the extremely vulnerable and fragile complainant with a personality disorder placed her trust in a very dependent way on Dr. Dobrowolski. She viewed the offences as of the most serious type and recommended revocation.

Defence counsel disagreed that this offence was the most egregious and gave examples of more serious offences.

He submitted that there was no convincing evidence of harm and any apparent harm might also be due to the relationship with the pastoral counsellor.

Dr. Dobrowolski, he submitted, has pleaded guilty, shown contrition and has accepted responsibility. The testimonials indicate he is an exceptional psychiatrist. Standards regarding post-termination sexual relations at the time of this relationship were "confused and confusing".

He submitted that Dr. Dobrowolski has suffered greatly as a result of the publicity and needs no personal deterrence. Furthermore, it is inappropriate to use Dr. Dobrowolski as a scape-goat to satisfy the public.

Defence counsel reviewed other Discipline Committee decisions regarding penalty to provide perspective in order to help the Committee make a penalty order consistent with other offences of a similar nature occurring around the same time period. On this basis, defence counsel proposed a suspension, supervision of Dr. Dobrowolski's practice and continued psychiatric care.

CONCLUSIONS

The Committee in its decision, made a finding of guilty of conduct that is disgraceful, dishonourable and unprofessional and conduct that is below the standard of practice of the profession but it did not make a finding of professional misconduct for sexual impropriety because it ruled that the complainant was no longer a patient when the most serious incidents took place (May 1988 to 1990). There was confusion at that time among psychiatrists regarding the propriety of post-termination sexual relationships. The Committee applied the standards extant at that time in imposing penalty. The Committee decided that at that time the offence would not be considered the most egregious but nevertheless represented a serious failure to understand the harm that could result especially in such a vulnerable woman.

In order to reflect the Committee's concern for the public welfare, to repudiate Dr. Dobrowolski, and to inform the profession regarding what the Committee considers appropriate behaviour, the Committee believed that a suspension but not a revocation was in order.

Dr. Dobrowolski did plead guilty to some of the allegations, appeared contrite, acknowledged his errors and sought psychiatric help. However, the Committee believed that ongoing psychiatric care and supervision of his psychiatric practice were essential to ensure that Dr. Dobrowolski does not offend again.

PENALTY

- 1) Dr. Dobrowolski is to be reprimanded and the fact of the reprimand is to be recorded on the Register;
- 2) Dr. Dobrowolski's Certificate of Registration is to be suspended for a period of 12 months. The period of suspension is to commence not more than 60 days after the decision becomes final;

- 3) The latter nine (9) months of the 12-month period of suspension shall be suspended, provided the following conditions are met:
- a) Through the 12-month period Dr. Dobrowolski shall continue to see his treating psychiatrist at least once a month;
 - b) The treating psychiatrist shall submit reports, satisfactory to the Registrar, every two months, confirming that Dr. Dobrowolski is continuing in his course of treatment, that he is making satisfactory progress and that he is unlikely to pose any threat to the well being of his patients. The first such report shall be received by the Registrar no more than 75 days after this Order becomes final and subsequent reports shall be received every 60 days thereafter;
 - c) During the 10-month period immediately following the resumption of his practice, Dr. Dobrowolski shall submit himself to nine months of weekly supervision of his practice, at his expense, with a supervisor or his or her alternate, both acceptable to the Registrar. The supervision shall include, but shall not be limited to, the use of tapes and videotapes of patient interviews, chart reviews, and attention to issues of transference, counter-transference and boundary violations. The proposed supervisor shall, no later than 75 days after this Order becomes final, confirm in writing to the Registrar that he or she shall undertake the supervision of Dr. Dobrowolski's practice;
 - d) The supervisor shall submit reports, satisfactory to the Registrar, every two months confirming that supervision of Dr. Dobrowolski's practice has been carried out in accordance with the foregoing terms and that Dr. Dobrowolski's psychiatric care is appropriate and ethical. The first such report shall be received by the Registrar no more than 165 days after this Order becomes final and subsequent reports shall be received every 60 days thereafter.

- 4) In the event that the Registrar fails to receive the reports required under paragraph 3 (b) and (d) above, the suspension of Dr. Dobrowolski's Certificate of Registration shall resume and continue for the remaining nine (9) months;
- 5) By agreement of counsel, in light of the Section 37 Order against Dr. Dobrowolski the time that he has been unable to practice will be credited against the suspension imposed by this Committee, provided that the terms imposed under paragraphs 3 (a) through (d) shall apply forthwith upon his resuming practice, for the time periods therein specified.

Dr. Dobrowolski waived his right to appeal the decision to the Divisional Court and the reprimand was administered.