

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Malcolmson, this is notice that the Discipline Committee ordered that there shall be a ban on the publication of the name or identity (including initials) and any information that would disclose the name or identity of the patient referred to in this hearing, or the patient's son, whose names may be disclosed at the hearing or in documents filed at the hearing, under subsection 45(3) of the Health Professions Procedural Code (the "Code"), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended.

Subsection 93(1) of the Code, which is concerned with failure to comply with these orders, reads, in relevant part:

Every person who contravenes an order made under ... section 45 or 47... is guilty of an offence and on conviction is liable,

- (a) in the case of an individual to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence; or
- (b) in the case of a corporation to a fine of not more than \$50,000 for a first offence and not more than \$200,000 for a second or subsequent offence.

Indexed as: Malcolmson (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 36(1) of the *Health Professions Procedural Code*
being Schedule 2 of the *Regulated Health Professions Act, 1991*,
S.O. 1991, c. 18, as amended.

B E T W E E N:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. SAMUEL ALEXANDER MALCOLMSON

PANEL MEMBERS:

**DR. M. DAVIE (CHAIR)
DR. E. ATTIA (Ph.D.)
DR. K. BRACKEN
D. EATON-KENT
DR. M. GABEL**

**Hearing Date: June 11, 2009
Decision Release Date: June 11, 2009
Release of Written Reasons: August 26, 2009**

PUBLICATION BAN

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 June 11, 2009. At the conclusion of the hearing, the Committee stated its finding that the member committed acts of professional misconduct and delivered its penalty order with written reasons to follow.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Malcolmson committed acts of professional misconduct:

1. 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 an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and
2. under clause 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 (the “Code”) in that he engaged in the sexual abuse of a patient.

RESPONSE TO THE ALLEGATIONS

Dr. Malcolmson pleaded no contest to the allegations in the Notice of Hearing.

FACTS AND EVIDENCE

The following Agreed Statement of Facts and Plea of No Contest was filed as an exhibit and presented to the Committee:

PART I – FACTS

1. Dr. Samuel Malcolmson (“Dr. Malcolmson”) is a psychiatrist who received a certificate of registration authorizing independent practice in Ontario in 1965. At all

relevant times, Dr. Malcolmson carried on a private practice of psychiatry in Toronto, Ontario.

2. In 2000, Patient “A” was referred to Dr. Malcolmson for a psychiatric assessment. She began regular psychiatric treatment with Dr. Malcolmson in the summer of 2001 and remained his patient until approximately June 2003.

3. Beginning in approximately 2001, Dr. Malcolmson engaged in the following actions with Patient “A”: kissing Patient “A”; having Patient “A” perform fellatio on him; having intercourse with Patient “A”; giving Patient “A” gifts and money; showing Patient “A” pornographic magazines; watching pornography with Patient “A”; and travelling with Patient “A”.

4. The sexual acts referenced in paragraph 3 took place in Dr. Malcolmson’s office, among other places.

PART II – PLEA OF NO CONTEST

5. Dr. Malcolmson pleads no contest to the facts in paragraphs 1 to 4 above and pleads no contest to the allegations contained in the Notice of Hearing that he committed acts of professional misconduct under:

- a. clause 51(1)(b.1) of the Health Professions Procedural Code, which is Schedule 2 to the *Regulated Health Professions Act, 1991*; and
- b. paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, in that he engaged in an act or omission relevant to the practice of medicine that, having regard to all of the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

FINDINGS

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts and Plea of No Contest. Having regard to these facts, the Committee found that Dr. Malcolmson committed acts of professional misconduct in that he engaged in the

sexual abuse of a patient; and in that he has engaged in an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

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.

It was proposed that:

1. The Registrar be directed to revoke Dr. Malcolmson's certificate of registration immediately.
2. Dr. Malcolmson appear before the panel to be reprimanded.
3. Dr. Malcolmson pay costs to the College in the amount of \$3,650.
4. The results of this proceeding be included in the register.

Given the Committee's finding that Dr. Malcolmson committed an act of professional misconduct in that he engaged in the sexual abuse of a patient, which included sexual intercourse and oral to genital contact, it was mandatory for the Committee to order that he be reprimanded and that his certificate of registration be revoked. The Committee, in reviewing the uncontested facts, found that Dr. Malcolmson's behaviour was unacceptable, egregious and a betrayal of the trust that is essential to the physician-patient relationship. Dr. Malcolmson was a psychiatrist of long standing, and he ought to have been well aware of the expected boundaries and respect due to patients. He should have been particularly sensitive to the power relationships and patient vulnerability inherent in the practice of psychiatry.

The Committee is satisfied that the penalty proposed in the joint submission fulfills the primary objective of protecting the public from the member, upholds the public trust in the profession, and expresses the profession's abhorrence of Dr. Malcolmson's conduct.

Even if it were not mandatory that Dr. Malcolmson's certificate of registration be revoked, based on the admitted facts, the Committee would still have made that order.

The joint submission requested costs at the current tariff amount for a one-day hearing. The Committee concluded that this was an appropriate case in which to make such an order.

ORDER

Therefore, the Committee ordered and directed that:

1. The Registrar revoke Dr. Malcolmson's certificate of registration immediately.
2. Dr. Malcolmson appear before the panel to be reprimanded.
3. Dr. Malcolmson pay costs to the College in the amount of \$3,650.
4. The results of this proceeding be included in the register.

The Committee requests that the Hearing Office schedule the reprimand as soon as possible.